

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11288 SENATE RESOURCES

role in the future. This alone, could result in project delays. Nearly all the project examples that Governor Murkowski has used to justify the transfer and – equally important – nearly all of the new project initiatives he mentioned in his State of the State speech to “get Alaska moving” – are highly dependent on *federal* funds. Most also have federal requirements, and are subject to federal agency reviews, including in many cases, Environmental Impact Statements.

No one should expect agencies such as U.S. Fish and Wildlife Service to defer to (or follow the lead of) a small, isolated group of habitat permit staff in DNR. Rather, Alaskans should expect that federal managers will continue to consult (by law) with biologists in ADF&G, then, become increasingly proactive and independent in their review of state federal-aid projects. The current Katalla oil and gas project is worth noting here. After initial statements that implied Habitat division has been responsible for the lengthy permitting process, the project proponent publicly acknowledged that most of the lengthy process (over eight months) was directly attributable to the U.S. Forest Service, not ADF&G. The lengthy process underway for the Falls Creek Hydro-Project is a federal EIS.

More immediate than the federal agency issues, will be the impacts from the reduction in staff. Based on my project experience inside and outside government, I am confident that the significant and lasting result from these layoffs will be the loss of ability for habitat biologists to get out on the ground, respond timely to the needs of project managers in the field when issues arise, and resolve problems on-site. Even when individual contractors, agencies, or large companies spend the time and effort to thoroughly evaluate site conditions prior to construction, unexpected challenges inevitably arise. It might be the discovery of additional stream tributaries or stream reaches that hold fish, or a lens of unstable soil material. This is the nature of the business. It is not uncommon for Habitat division biologists to respond on-site. But that requires two things: sufficient number of staff to respond; and staff who have both the biological knowledge to assess the situation, and the legal authority to revise or grant a permit. By cutting staff, EO 107 compromises the first. By separating ADF&G biologists from DNR permitters, EO 107 compromises the second.

One significant issue regarding EO 107 that has not been discussed is the increasing trend toward use of “design-build” contracts for major projects, such as state highway improvements. Under the “design-build” system, neither Habitat division staff, nor DOT project managers see all of the detailed design, engineering or construction plans and specifications “up front”. Many important details unfold more like a “work in progress” as the project proceeds through key stages. Certainly, the overall project can be permitted. But how could anyone responsibly determine the specific permit stipulations needed for the setting of pilings in a fish stream if he/she didn't know the time, location, or proposed construction method (e.g. materials, equipment)? Where important fish resources were at stake, the permit conditions would have to be so sweeping that they would very likely unnecessarily impact the contractor's work and the project schedule. This is not hypothetical. **The Glenn-Parks Interchange project is a “design-build”.** In fact, the design-build contractor proposed a major

change to DOT's original entrance-exit ramp alignments – after the project was permitted. The new design actually reduced impacts to wetlands. Habitat division worked with the contractor and DOT to permit the new design.

There is no question that developers, other agencies and even members of the public are wary and/or frustrated from time to time about ADF&G's positions (or expected positions) regarding projects. **But EO 107 will not solve the challenges for some of the projects that have received the most attention from the public, the administration and the legislature over the past few years. The Anchorage Coastal Trail South Extension, Nenana Oil & Gas License project, and the Glenn Parks Highway Interchange all have potential significant effects on state refuges.** Under EO 107, state refuge and critical habitat area management remains within ADF&G, consolidated within the Division of Wildlife Conservation. It would, of course, be ridiculous on its face to transfer state fish and wildlife refuge management out of the state's fish and game. The point of these examples is to further illustrate EO 107's flaws and misguided approach. Equally important, they show that *the present system already enables a governor or the legislature (e.g. Nenana Oil & Gas) to determine policy and make decisions regarding the balance of fish and wildlife protection, and resource development whenever they feel it is warranted.*

5. THE EXAMPLES OF STATES AND SINGLE RESOURCE AGENCY MODELS IN THE LOWER 48 INCLUDE APPLES/ORANGES COMPARISONS TO ALASKA

There are a number of basic principles common to both good science and good decision/policy-making. One of those principles that has been drilled into me over the years by professors and mentors in both fields is that **comparison and correlative value is important, but “mimicry is deadly dangerous”.**

Administration officials and some supporters of EO 107 have pointed to examples of combined, single-agency resource management models in other states in the Lower 48 as evidence of the merits of EO 107. The single (natural resource/fish and wildlife) permitting agency has been touted as a “tried and true model” that works extremely well. When looking at comparisons – and especially when considering another form as a “model” for one's own situation – the critical question to ask is, “what is the same, and what is different?” I am familiar with some of the states and agencies being used as comparisons, including Oregon, which has been referred to most often. **I urge the Legislature to scrutinize these comparisons. If you do, you will discover numerous, substantive differences between these examples and Alaska in key areas such as: agency staffing; agency scope of responsibility and authority; condition of natural and healthy fish and wildlife resources; scale and role of natural resource economies; and the roles, relationships and authorities of other state, local and federal agencies and commissions.**

The various resource management structures in different states, including the unified agency model, work well to a greater or lesser extent within the context of the individual situations and places for which they were designed. Some have certain elements that

could be used to improve Alaska's current system, either by incorporating or adapting certain aspects. However, embracing any of these systems as a model for Alaska, or proof that EO 107 is the right approach for Alaska is naïve and foolhardy.

6. EO 107 WILL COMPROMISE THE STATE'S ABILITY TO PROTECT FISH HABITAT IN MANAGEMENT DECISIONS ON NON-STATE LANDS

Discussion of EO 107 has focused on project permitting, but given the nature of land ownership and resources in Alaska, many proposed activities and decisions with the greatest potential effects on Alaska's wildlife and (particularly) fish resources are not located on state lands, do not include direct involvement by DNR (or other state agencies), and are not specifically subject to state permitting. By breaking up the existing habitat management structure in ADF&G, EO 107 could seriously diminish the state's ability to effectively review and influence major land management decisions to protect fish habitats statewide.

More than one third of Alaska is federally owned public land. In addition to lands set aside by Congress (in ANILCA) as national parks, refuges and other conservation system units, there are millions of acres of federal lands across the state that are subject to multiple use and significant resource development – from National Petroleum Reserve-Alaska (NPR-A) on the north, to Tongass National Forest on the south.

Planning in NPR-A, or the Tongass Land Management Plan (TLMP) are not development *projects* in the traditional sense of the word, but they will certainly result in decisions that establish the pattern – and the standards for major resource development activities over many years. Oil and gas development in NPR-A could have significant effects on fish resources vital to subsistence. Federal management practices on the Tongass will have significant, long-term effects on productivity and sustainability of natural fish stocks important to commercial, subsistence and sport users throughout Southeast Alaska. The State of Alaska has both a role and responsibility under state law to insure that federal agency plans and decisions for these (and other) lands across the state include appropriate measures to protect important fish and wildlife habitats and resources.

The State of Alaska has generally been very successful in raising fish and wildlife issues in federal undertakings. This has been due almost entirely to ADF&G's commitment to active participation in federal project reviews, federal planning efforts and other federal actions. ADF&G has often been the sole voice of the state regarding protection of fish and wildlife resources on which many Alaskans depend. DNR and Department of Community and Economic Development (DCED) had opportunity to actively participate in the TLMP process, but did not. TLMP was arguably one of the most significant resource decisions to face southeast Alaska over the past decade. There are many others. DNR and DCED rarely participate in Corps of Engineer permits that are not directly associated with their own respective agency actions or projects. And, certainly in southeast, these agencies commonly review and actively participate in proposed mining, transportation, hydroelectric, and other projects only to

the extent that these actions may involve state permits (e.g. rights-of-way) or leases of state lands.

This is not intended as criticism of DNR. There are legitimate reasons for DNR's limited involvement. Neither DNR nor DCED have had sufficient funding to participate in broader project review. Due to budget, staffing and agency programs, DNR is focused almost entirely on the management of state lands. Perhaps most important, the great majority of public concerns statewide regarding plans and proposed developments on non- state lands has always centered around fish and wildlife, and water quality issues.

The key points are that, under our present system: 1) ADF&G provides the states oversight for protection of fish and wildlife resources of public concern on many (large and small) plans and activities statewide; and 2) the effectiveness of that effort is directly tied to the current structure of habitat, fisheries and wildlife conservation that exists within ADF&G. Habitat division is (naturally) responsible for habitat – those actions that directly involve land planning, management and permitting. Habitat division commonly serves as the lead representative for the department's involvement in federal planning efforts or project reviews. However, it is critical to understand that Habitat division's role is to coordinate, not decide, overall department input. Virtually every effort – from NPR-A and TLMP, to review of individual Forest Service proposed timber sales, to road projects (developed directly by Federal Highway Administration as opposed to ADOT) – involves a team approach among the ADF&G divisions (Subsistence, Commercial Fish, Sportfish, Wildlife Conservation). Equally important, habitat biologists (including regional supervisors) work directly on both Title 16 permits and on issues such as NPR-A or TLMP.

Lastly, in addition to the direct benefits of ADF&G involvement in plans and reviews, this system has led to the development of state/federal working relationships and cooperative efforts that have resulted in other significant improvements in fish and wildlife stewardship. A prime example is the cooperative survey of fish passage and culvert installations on Forest Service roads in the Tongass. For years, the U.S. Forest Service did not provide opportunity for ADF&G habitat biologists to review proposed stream crossing and culvert installation plans. A comprehensive survey was initiated in 1996. The first official report was published in 2000. However, based on the initial data that documented widespread fish passage problems, the Forest Service officials took a number of immediate steps. The Forest Service expanded internal review by their own biologists regarding proposed culvert design and installation plans for forest roads, and executed an agreement with the state that provides ADF&G with a thirty-day review and concurrence of proposed culvert installations. Recent studies show that these actions have already resulted in significant decrease in fish passage problems on projects.

In addition to comments above regarding EO 107's negative impacts on "good science" in state permitting decisions, dismantling the current habitat protection structure in ADF&G – separating habitat biologists from other fish and wildlife professionals – will seriously impact the state's ability for coordinated, effective

input into major non-permit actions on non-state lands that involve significant fish and wildlife issues.

7. THE PROCESS BEHIND EO 107 IS RECKLESS AND FATALLY FLAWED

With the stroke a pen, Governor Murkowski has proposed to radically alter the system of fish and wildlife, and resource management that has existed in Alaska since Statehood. EO 107 was signed without so much as a single public discussion. **If Alaska's longstanding habitat protection and permit process truly warrants substantive tune-up, let alone fundamental structural change, then it also warrants thoughtful analysis by a range of expertise, careful legislative and public review and – most certainly - a thorough discussion of other options and viable alternatives.**

The Governor's Transition Team for ADF&G never met with ADF&G division directors. Neither the Commissioner, nor the Habitat Director was ever contacted by the team's Habitat Committee. Even so, the Transition Team did *not* recommend transfer of ADF&G permit authority to DNR.

There has been no discussion of any alternatives to EO 107, and no indication that other options were even considered. Wholesale transfer is the only management option being proposed. This in itself is bad public policy, bad science, and dangerous business strategy. If Legislators believe there is a real problem, or even (as I do) that every system can stand review and improvement, there are a number of reasonable actions that should be considered. Establishment of the proposed inter-agency Mat-Su Permit Center would bring to the fastest growing area of our state the proven Alaska model that has received widespread praise on the Kenai. Information systems within Habitat division could easily be upgraded. In October 2002, I proposed to the Board of Forestry several steps that could be taken within the existing Forest Resources Practices Act structure to improve coordination between DNR and ADF&G, and between the state and timber operators. "Cross trainings" between ADF&G and DNR permit staff, and project workshops between permit staff and project managers (e.g. DOT, road contractors, timber operators) could be conducted. (Holding such coordinating workshops was one of my objectives for 2003, had I remained as Habitat director.) These are actions that have been employed with success in both government agencies and corporations to improve coordination, project management and operations.

In the course of the recent committee hearings, Legislators have heard support for EO 107 from some individual developers, several commercial fishing groups (while other groups have expressed opposition), timber operators, and several organizations that promote resource development in Alaska. **What is the analysis and position of professionals within individual, major oil and gas companies, and major project engineering and management firms – the people who actually develop, permit and operate Alaska's major projects – in the industries that actually produce the vast majority of economic activity and revenue in Alaska? I suggest that their absence in the current discussion speaks loudly. I cannot know what the result would be if these**

sorts of individuals with knowledge and experience were given the opportunity to participate in a forum designed for thoughtful review and discussion, but I believe that such a forum would provide useful and meaningful insights. In addition to my experience with industry as Habitat director, I have a number of friends and colleagues in the oil and gas industry and engineering firms. I would never speak for them, but based on our recent conversations, I can assure you that among many professionals who work with the state's current system and who are directly responsible for permitting and developing projects throughout Alaska, there is serious concern over EO 107.

While the recent legislative committee hearings have been extremely important in bringing to light some of the serious flaws and widespread public opposition to EO 107, industry generally does not like to get in the middle of a high-profile public debate. In addition to being naturally conservative, there is no profit for individual companies to engage in the current forum. Industry and business leaders are well aware of the growing public sentiment regarding EO 107. If company officials and professionals express support for EO 107 they will publicly appear to be "anti-habitat" and "anti-fish and wildlife". If they express serious reservations (which I know that many have) regarding EO 107, they will publicly contradict a new, development-friendly Governor at the very start of his four-year term. It is a no-win. Unfortunately, it is the Administration's process (or lack of process) in proposing EO 107 that has put industry, along with many other Alaskans, in this position. The process itself has compromised opportunity for true, substantive review. Thus, the Legislature has been left with the task of sorting out various claims made on behalf of Alaska's major industries and companies.

One of the claims is that under the current system, ADF&G essentially holds a "veto" over projects. **ADF&G has no "veto authority" – either legal or virtual – over resource development projects.** On controversial projects, when issues cannot be resolved and/or agreement reached between agencies at the staff level, the system provides for "elevation" to the respective directors, then to the commissioners. **The final decision-maker – the only entity with veto (or approval) authority – is the Governor.** If Alaska's Governors – whether Jay Hammond, Wally Hickel or Tony Knowles – usually decided in favor of the commissioner of ADF&G instead of the commissioner of DNR, that was both their right and role in the system. Before criticizing the track record of Alaska's governors regarding decisions between ADF&G and other departments, it is worth considering some examples where ADF&G's advice was rejected.

In the Lower Cook Inlet Oil & Gas Lease Sale, DNR refused to delete certain sensitive tracts and include other stipulations. The sale went to court. The state lost. Oil and gas exploration on the large majority of the area that was not subject to dispute was delayed. A resulting citizen commission proposed new, tougher standards for leasing in the entire Cook Inlet basin.

In the early 90's, DOT embarked on the Copper River Highway project over objections and recommendations by ADF&G and other concerned entities. The state was sued – by landowners, Alaska Natives, citizen conservation groups, and cited by the Federal Highway Administration. In the spring of 2002 – ten years after

the event – I worked with Habitat division staff and DOT officials to approve the last of four mitigation/restoration projects that were required by the court-approved settlement. These projects cost the state hundreds of thousands of dollars - paid with scarce state general funds. The state could not pay for its federal violations with federal dollars.

EO 107 did not arise in response to widespread problems permitting among a broad spectrum of resource industries and development activities across the state, or because of working relationships between the great majority of resource company staff and ADF&G habitat biologists at the field level. The issues that gave rise to EO 107 came from a segment of Alaska's timber industry. I will not delve further into that in these comments. There is an extensive written record and documentation regarding the recent situation between ADF&G and segments of the timber industry. It accurately documents the history of ADF&G's implementation of the Fishway Act and the Anadromous Fish Act regarding the timber industry, identifies changes in timber industry economics and practices that led to recent controversies, separates claims and suppositions from facts, and offers workable, reasonable steps (for both timber operators and agency staff) to improve both the efficiency and effectiveness of current timber harvest planning and permitting within the current basic structure of the law. I simply urge you to read it, and would be glad to discuss any questions.

IN CLOSING. A FINAL NOTE

The comments above have been (appropriately) focused on projects, structure, and management. However in closing, I am compelled offer one last observation on a personal level, regarding the people I worked with and was charged with directing over the past year.

Through a series of public statements, whether intentionally or not, Governor Murkowski has smeared the personal and professional integrity of many outstanding individuals with a broad brush. **Despite the Governor's assertions, habitat division permit staff do not conduct daily business based on personal agendas. They are highly professional.** They rarely fly "solo". Habitat staff consult regularly with commercial fisheries, sportfish and wildlife biologists in other ADF&G departments depending on the issues. **They process nearly two thousand permits per year – and handle a substantially higher number of permits per staff than most corporations do – or would consider reasonable.** Complex or sensitive issues are regularly elevated and reviewed by division directors and commissioners. Do ADF&G managers simply support recommendations by staff biologists without question? No. In most cases, adjustments that work for both the project and fish protection are found.

Do habitat biologists have personal views? Of course. Just like doctors or engineers or accountants. Do they sometimes let those views affect their better judgment? Unfortunately, occasionally. That's what management is for. No person, staff, or organization is perfect. Boeing corporation recently withdrew from the National Missile Defense competition – the largest defense contract in the world, because three employees misused information. In addition to losing the project, Boeing may owe the government eight hundred (\$800) million dollars - nearly the size of Alaska's fiscal gap. Habitat

permitting and Habitat division can always be improved. But no one in the division, or ADF&G, has ever made that kind of judgment error. Moreover, thus far, no one has cited a single, important, legitimate project that did not happen because of permit stipulations required by Habitat division. To the contrary, people have been able to cite numerous projects that have been built, and that, because of the efforts of Habitat division staff, will also continue to protect public fish and wildlife resources.

Look at the actual lay-off notices that have been issued as part of EO 107 implementation. They include the biologist who has been working successfully on-site with Glenn-Parks Interchange project managers, and the Habitat representative on the cooperative Kenai River Management Board. EO 107 closes the Sitka office, staffed by one of the most widely respected habitat biologists – and ironically a person who has built one of the most cooperative, effective working relationships with DNR foresters in the division. How can actions like these improve responsiveness in the field, cooperative protection of world-class resources, or coordination among agencies and disciplines?

Alaska is still a young state. There can be no question that there will be much more development in our future as Alaska grows. Will there still be the habitats to support the fish and wildlife opportunities that Alaskans depend on and enjoy today? That is the most important question. There are other questions. And the stakes are incredibly high.

EO 107 is a radical move, promoted through a reckless process, based on falsehoods. I am convinced that it will prove a blunder of historic proportion. I urge the Legislature to thoroughly investigate EO 107 and the claims behind it. If you do, I trust that you see it for what it is and understand the risks that EO 107 implies for the future of Alaska's environment and economy - and will reject it.

Thank you.

Frank Rue Carl Rosier Don Collinsworth Ron Skoog Jim Brooks
c/o 7083 Hendrickson Road
Juneau, AK 99801

January 30, 2003

Dear Governor Murkowski:

As former commissioners of the Alaska Department of Fish and Game, with a combined experience of over 30 years managing the department, we urge you not to move the statutory authority and responsibility to protect Alaska's salmon, trout, and other fish resources from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

We served under Republican, Democratic, and Independence party governors and we all agree that ADF&G must continue to be responsible for protecting the stream habitat of Alaska's salmon and trout. We share the belief that the loss of this authority will result in unnecessary and potentially irreversible harm to these resources that are critical to Alaska commercial, sport, and subsistence users.

At Alaska's Constitutional Convention in 1955, our founding fathers debated whether the new state should have one resource agency or two. They understood the need to develop our oil, mineral, and timber resources, and build the roads and highways needed to open up our vast state, and they recognized the need to balance that development with protection of fish and wildlife by purposefully giving the responsibility and authority to protect in-stream fish habitat to ADF&G.

The two resource agency approach provides for appropriate checks and balances in development decisions and it recognizes the importance and value of both our renewable and non-renewable resources.

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.840).

We understand your administration's goal of streamlining economic development, but feel the problem you are trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, 2,000 "Title 16" permits are issued each year by ADF&G in an average time of just 15 days, with 99 percent of them approved. This achievement can be credited to a responsive, professional and experienced staff in the Habitat, Commercial Fisheries and Sport Fish divisions who have a long, laudable record of working collaboratively to maintain Alaska's fishery resources and the habitat on which they depend. We do not think it is possible to replicate this capability within another agency

and doing anything less will erode or destroy Alaska's capacity to aid development in ways that avoid or minimize threats to our fishery resources.

We know from experience that some would prefer not to worry about impacts of development on salmon, trout, and other fish. Life might be easier without having to ensure adequate culverts, bridges, and buffers around spawning streams, but this comes at a cost to those Alaskans who depend on fish for a job or a meal, and for whom the loss of fish habitat will mean an inevitable loss of opportunity.


Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper regulatory balance.

Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

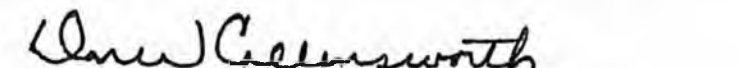
You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

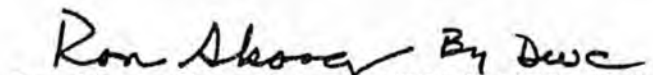
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

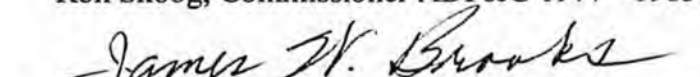
Sincerely,


Frank Rue, Commissioner ADF&G 1995 - 2002


Carl Rosier, Commissioner ADF&G 1991 - 1995


Don Collinsworth, Commissioner ADF&G 1983 - 1991


Ron Skoog, Commissioner ADF&G 1977 - 1983


Jim Brooks, Commissioner ADF&G 1972 - 1977

Re: Fraser Report – Annual Survey of Mining Companies

A Statement In Opposition To Governor Murkowski's Executive Order 107
To: Alaska Senate Resource Committee hearings regarding EO 107 – 3/10/03
To: State Affairs Committee hearings regarding EO 107 – 3/11/03 *2003*

MAR 17 2003

From: Doug Hill
Anchorage
I am testifying on behalf of myself.

On numerous occasions (3/7/03 - administrative press conference, 3/10/03 - Senate Resource Committee EO 107 hearing, 3/11/03 - House State Affairs Committee EO 107 hearing) I have listened to Tom Irwin (Commissioner of ADNR) along with Kevin Duffy (Acting Commissioner of ADF&G) cite the **Fraser Report** as a justification for moving fish and fish habitat protection authority from ADF&G to ADNR. I do not agree with agree with Commissioner Irwin. The results of the Fraser Institute's "Annual Survey of Mining Companies" do not warrant dismantling Alaska's ability to protect fish, fish habitat, wildlife and humans supported by fish and fish habitat, near shore and inland subsistence, sport, commercial, and personal use fisheries.

What is the Fraser Report? Since 1997 the Fraser Institute (Vancouver, British Columbia, Canada) has been surveying mining companies annually to assess how mineral potential and governmental policy factors such as taxation, environmental regulations, native issues, protected areas, infrastructure, labor relations, and socioeconomic agreements affect exploration and investment decisions. Survey results represent the opinions of exploration managers in mining companies operating around the world. As the notoriety of the survey has grown, the survey has expanded to include more governments/geographical regions. The Fraser Report currently queries 162 companies for their opinions about the investment attractiveness of 45 jurisdictions around the world. The Fraser Report is essentially a report card that rates governments/geographical regions on their investment attractiveness.

The Fraser Report provides three index rating numbers: a Policy Potential Index, a Mineral Potential Index, and an Investment Attractiveness Index. The Investment Attractiveness Index is a combination of the Policy and Mineral Potential Index. The index rating numbers that a government/geographical region receives are a composite index derived from a compilation of the ratings provided by a subset of the companies that responded. **The index numbers do not mean that a particular jurisdiction was rated, say 50 out of 100 jurisdictions. The index numbers are simply scores; the same as a score that one receives on a math test.**

Commissioner Irwin wishes us to believe that according to the Fraser Report, Alaska ranks 50 out of 100 governments/geographical regions in attractiveness to mining exploration and investment. Commissioner Irwin has also stated that according to the Fraser Report Alaska has, for the past number of years, decreased in attractiveness to mining investment. Neither statement is true.

Alaska actually ranked 15th overall out of 47 jurisdictions rated in the 2002/2003 Fraser Report. The number 50, that Commissioner Irwin claims ranks Alaska 50th out of all the countries rated, was the 2002/2003 Policy Potential Index rating and not the overall attractiveness to mining companies. In terms of policy, the 2002/2003 Fraser Report rated Alaska as more attractive for mining investment than China, Ecuador, Kazakhstan, and Russia to name a few. Further, contrary to Commissioner Duffy's statements Alaska has not decreased in mining company investment attractiveness over the past "several" years. In fact, Alaska's attractiveness to mining investment has, according to the Fraser Report's

Investment Attractiveness Potential Index, increased significantly during the life of the survey. Alaska has decreased a bit in status "only in the past year".

According to the Fraser Report and contrary to what Commissioner Duffy would like the legislature and the public to believe, Alaska's attractiveness to mining company investment is not low.

Throughout the life of the survey, and as the survey expanded its range in terms of the number of governments/geographical regions, Alaska's overall attractiveness to mining company investment has increased.

This increase in attractiveness to mining investment occurred while ADF&G Habitat Division controlled fish and fish habitat protection authority and during the so-called extreme pro-environmental administration of ex-Governor Tony Knowles.

Commissioner Irwin has been involved in the mining industry in Nevada and Alaska for a number of years. I have a hard time believing that he does not understand the content of the Fraser Report. If it is true that he does not understand the report, what faith can I have in a man that spreads doctrine without knowing what it is that he is promoting. However, considering his potentially deliberate misinterpretation of the report's Alaska rating as a means of justification for transferring Title 16 permitting authority to ADNR, I suspect that he may not have the best interest of fish and fish habitat or the public trust in mind as he persists in supporting and promoting an EO which he clearly does not fully understand.

On a number of occasions both ADNR Commissioner Irwin and Acting ADF&G Commissioner Duffy had to publicly defer to Chris Kennedy (Assistant Attorney General) for answers about basic policy procedure questions such as, when there is a contentious issue will the debate rise to commissioner or the deputy commissioner? These are the men that may be implementing EO 107. It does not appear that Commissioner Irwin and Acting Commissioner Duffy have done their EO 107 homework, yet they blindly support and promote EO 107. How can we have faith that fish and fish habitat will be protected when these men do not have clear understanding of what it really is that they are promoting?

EO 107 places supervision of fish and fish habitat protection under the Deputy Commissioner and the State Forester. The Governor appoints neither position. In other words, the board recommends neither position and neither position receives legislative scrutiny and approval. Currently Title 16 is under the ultimate supervision of a Commissioner who must be approved publicly by the legislature. What happened to transparency in government that Governor Murkowski spoke of on numerous occasions?

"Mining Watch", a pan-Canadian group whose aim is to ensure that mineral development practices are consistent with the goals of sustainable communities and environmental health and advocates policies to improve the efficiency and reduce the risks of mineral development, released a critique of the Fraser Report. Mining Watch issued the following statement regarding the Fraser Report, *"It is clear from the report that a vote for mining friendly policy is a vote against fair taxation, against collective bargaining, against environmental protection, against aboriginal land rights, and against protected areas."* In light of this statement, remember that Commissioner Duffy cited the Fraser Report as justification for transferring fish and fish habitat authority from ADF&G to the state agency (ADNR) that is responsible for mining, oil, and gas development.

Notwithstanding, if Alaskans looked to a social and economic future that included only mining, the obvious course would be to dismantle environmental regulation in an effort to boost Alaska's Policy Potential Index. I don't believe that Alaskans are that foolish and hope that our legislature

will take heed to the italicized "Mining Watch" quote above. While considering the resounding lack of supportable reasons for EO 107, remember that Governor Murkowski has appointed Tom Irwin as Commissioner of ADNR; a man with significant mining industry background. Then your vision of Murkowski administration and industry intent will be clear.

The relevance of what I have reported is that the administration is using documented misinterpretations and falsehoods to support moving fish and fish habitat protection from ADF&G to ADNR. Despite a lack of logical justifications and the numerous documented false arguments, the Murkowski administration wants us to believe that moving fish and fish habitat protection authority from ADF&G to ADNR will not decrease the level protection provided by ADF&G. I am supposed to believe this when the messengers do not even understand the details of what it is that they are promoting.

EO 107 is neither a cost cutting measure nor an administrative streamlining measure. EO 107 is the Murkowski administration's Hydro-Ax that is idling and ready to clear a right of way for development at the cost of salmon, resident fish, fish habitat, wildlife and humans supported by fish and fish habitat, nearshore and inland subsistence, sport, commercial, and personal use fisheries.

Salmon have benefited Alaskan socially and economically for thousands of years. Look to the future and do not allow salmon, resident species of fish, and wildlife and humans that depend on fish and fish habitat to be trampled in the stampede for the "New Wealth" of Alaska. **I support responsible development, therefore the only choice I have is to Strongly urge the legislature and all Alaskans to DISAPPROVE Governor Murkowski's transfer of fish and fish habitat protection authority from ADF&G to ADNR. Please DISSAPPROVE EO 107.**

Thank you for your time,

Doug Hill
P.O. Box 220236
Anchorage, Alaska 99522
348-8519
deeryard2001@yahoo.com



Brief Summary of Alaska's Fraser Report Investment Attractiveness (IA) Ratings
(The higher the IA score the more attractive a government/geographical region is for mining company investment)

In the 1998/99 Fraser Report Alaska received an IA index rating of 46 and ranked the 9th most attractive of 31 governments/geographical regions surveyed. Twenty-two out of 31 governments/geographical regions were less attractive for investment than Alaska.

In the 1999/00 Fraser Report Alaska received an IA index rating of 55 and ranked the 8th most attractive of 35 governments/geographical regions surveyed. Twenty-seven out of 35 governments/geographical regions were less attractive for investment than Alaska.

In the 2000/01 Fraser Report Alaska received an IA index rating of 74 and ranked the 8th most attractive of 35 governments/geographical regions surveyed. Twenty-seven out of 35 governments/geographical regions were less attractive for investment than Alaska.

In the 2001/02 Fraser Report Alaska received an IA index rating of 80 and ranked the 7th most attractive of 45 governments/geographical regions surveyed. Thirty-eight out of 45 governments/geographical regions were less attractive for investment than Alaska.
Russia received an IA index rating of 58.
China received an IA index rating of 57.

In the 2002/03 Fraser Report Alaska received an IA index rating of 62 and ranked the 15th most attractive of 47 governments/geographical regions surveyed. Thirty-two out of 47 governments/geographical regions were less attractive to investment than Alaska. Russia received a score of 63 and Alaska ranked higher, and therefore more attractive, than Argentina, New Guinea, Kazakhstan, Indonesia, Venezuela and Ecuador to name a few.

Percentage Of Companies Who Consider Factor A Deterrent To Investment
2002/2003 Fraser Report

The percentage of companies that consider *environmental regulation* as a deterrent to exploration investment in Alaska was 41 percent. Ninety-three percent was the highest.

The percentage of companies that consider *regulatory duplication and inconsistencies* as a deterrent to exploration investment in Alaska was 25 percent. Seventy-six percent was the highest.

The percentage of companies that consider *uncertainty concerning the administration, and interpretation, and enforcement of environmental regulations* a deterrent to exploration investment in Alaska was 26 percent. Eighty-four percent was the highest percentage.

The percentage of companies that consider *taxation* as a deterrent to exploration investment in Alaska was eleven percent. Seventy-three percent was the highest.

Percentage Of Companies Who Indicate That Factor Encourages Investment
2002/2003 Fraser Report

The percentage of companies who consider *mineral potential assuming current regulations/land use policies* encourages exploration investment in Alaska was 71 percent. Ninety-four percent was the highest percentage.

My name is Doug Hill

Thank you for allowing this testimony.

I am an Alaska resident.

I am 44 and have been in Alaska since my teens.

I have lived on and off the road system – most of my life in Alaska has been spent in rural areas.

I am currently an employee of the ADF&G.

I have worked as a building construction carpenter

I have worked for Alaska Packers unloading fish and as a carpenter.

I have been a village maintenance worker for the catholic diocese

I have extensive experience with Alaska's inshore and inland fisheries as a commercial fisherman, a personal use fisherman, a sport fisherman, and a subsistence fisherman.

While living in the Yukon River village of St Marys I spent summers with Yupik friends at their fish camp on Manning Island near the mouth of the Yukon River.

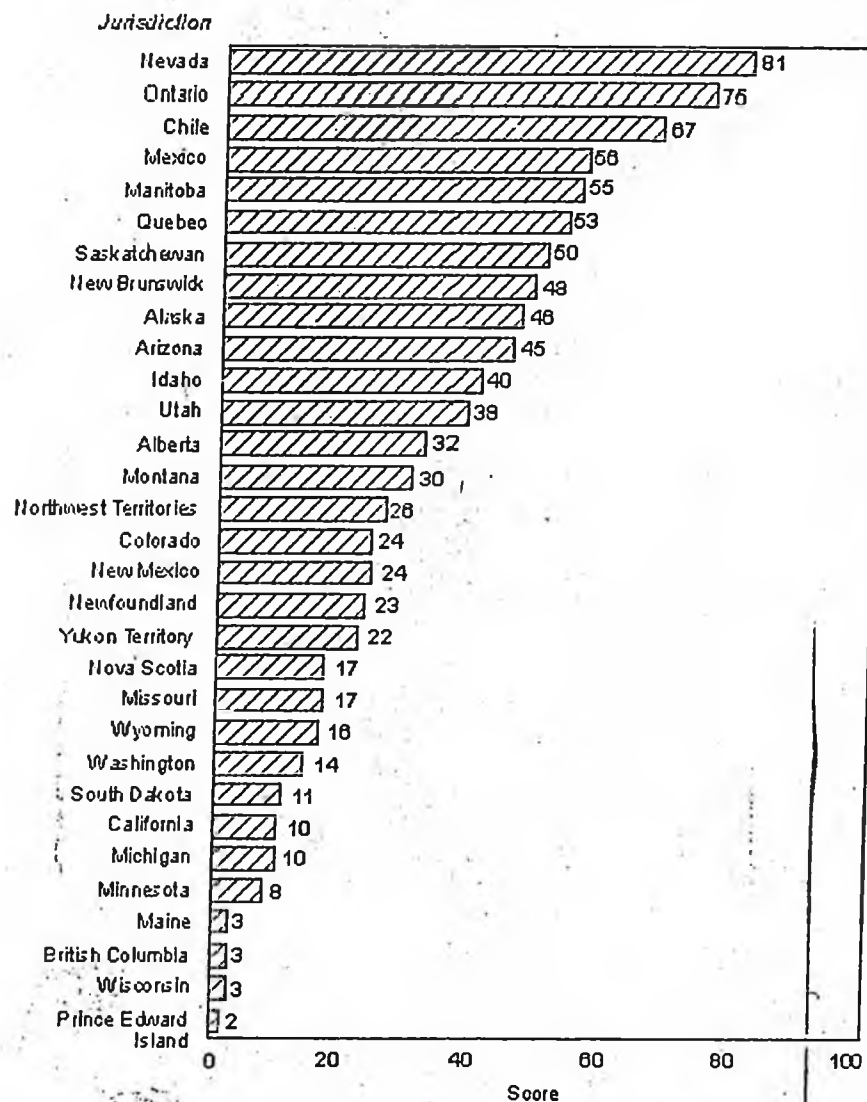
I also have extensive field experience with Alaska's inshore and inland fisheries while working for the Alaska Department of Fish and Game's Habitat, Wildlife, Sportfish and Commercial fisheries Division. I have a degree in biology from UAF and I have approximately 14 years of combined technician and biologist experience with ADF&G.

I spend a lot of personal time fishing, hunting, and paddling on the inshore and inland waterways of Alaska.

I am testifying on behalf of myself.

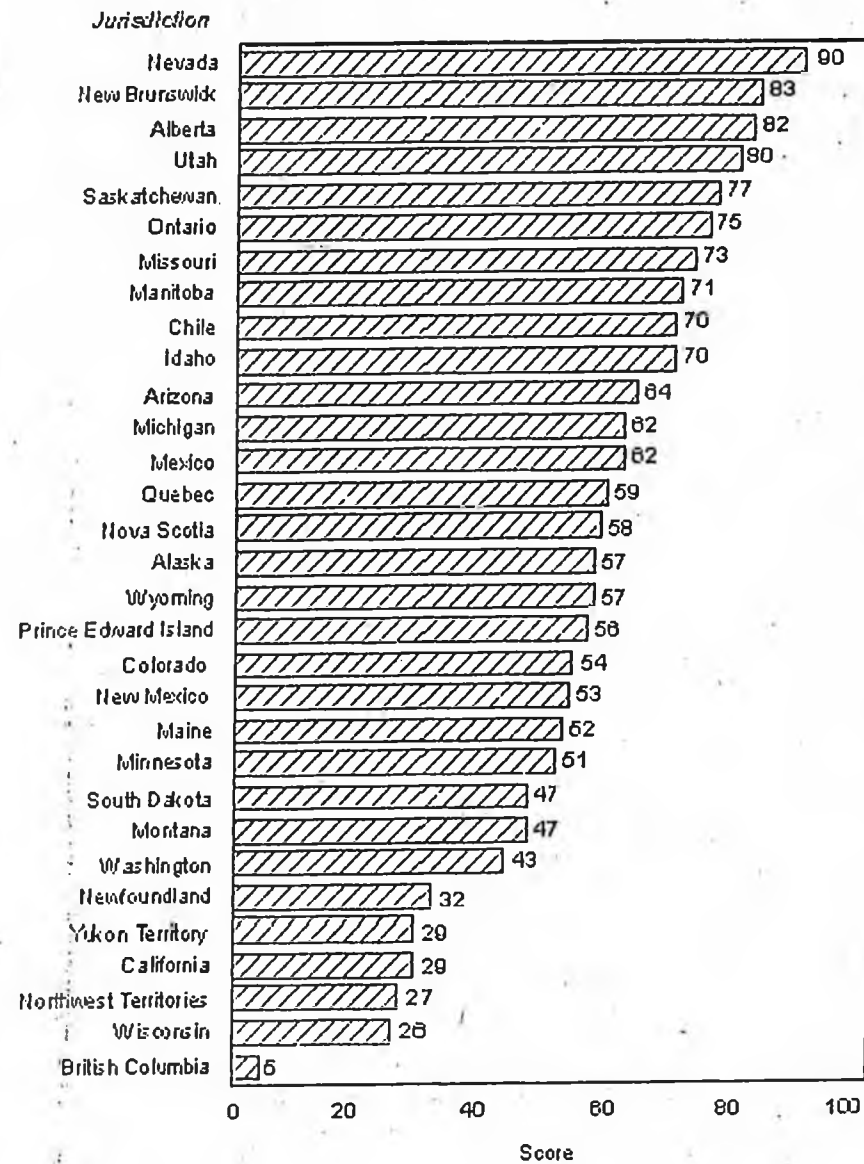
Fraser Institute Survey of Mining Companies Operating In the USA 1998/1999 Report

Figure 22: Investment Attractiveness Index (North America)



Fraser Institute Survey of Mining Companies Operating In the USA 1998/1999 Report

Figure 21: Policy Potential Index (North America)

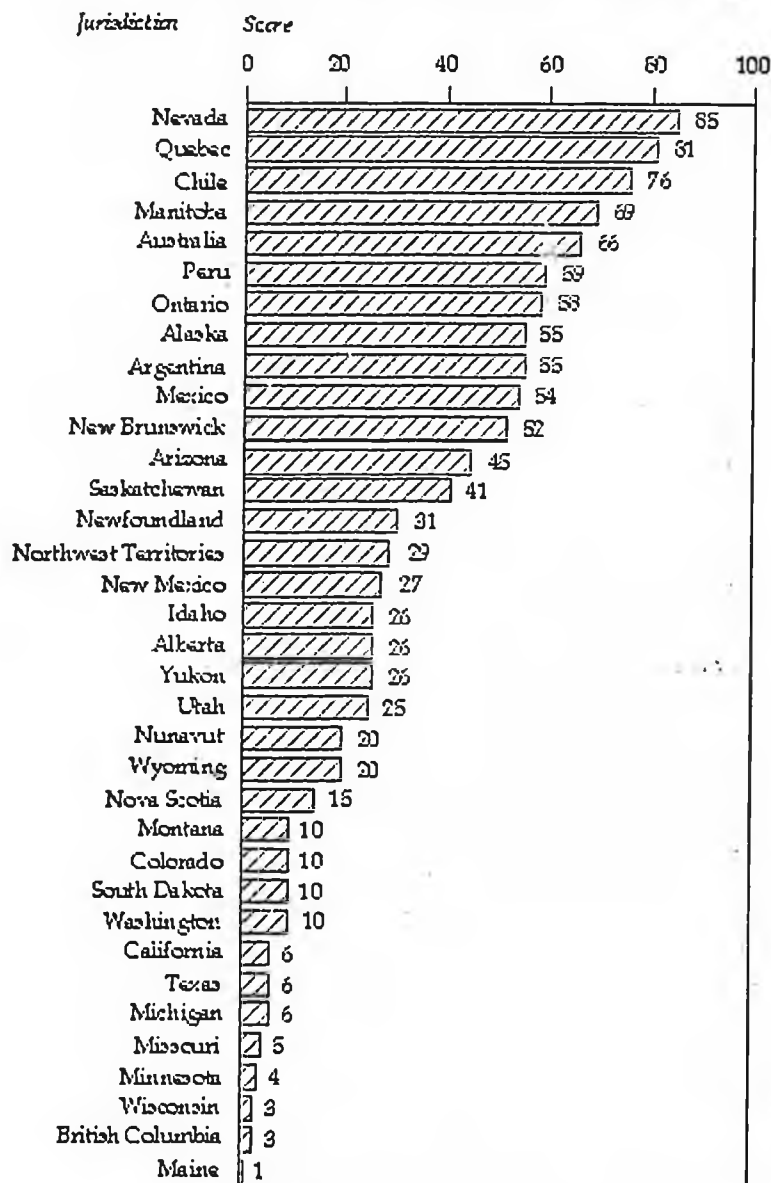


and favourable investment environments.

Also placing in the top ten jurisdictions for overall investment attractiveness are Peru (59), Ontario (58), Argentina and Alaska (tied at 55), and Mexico (54).

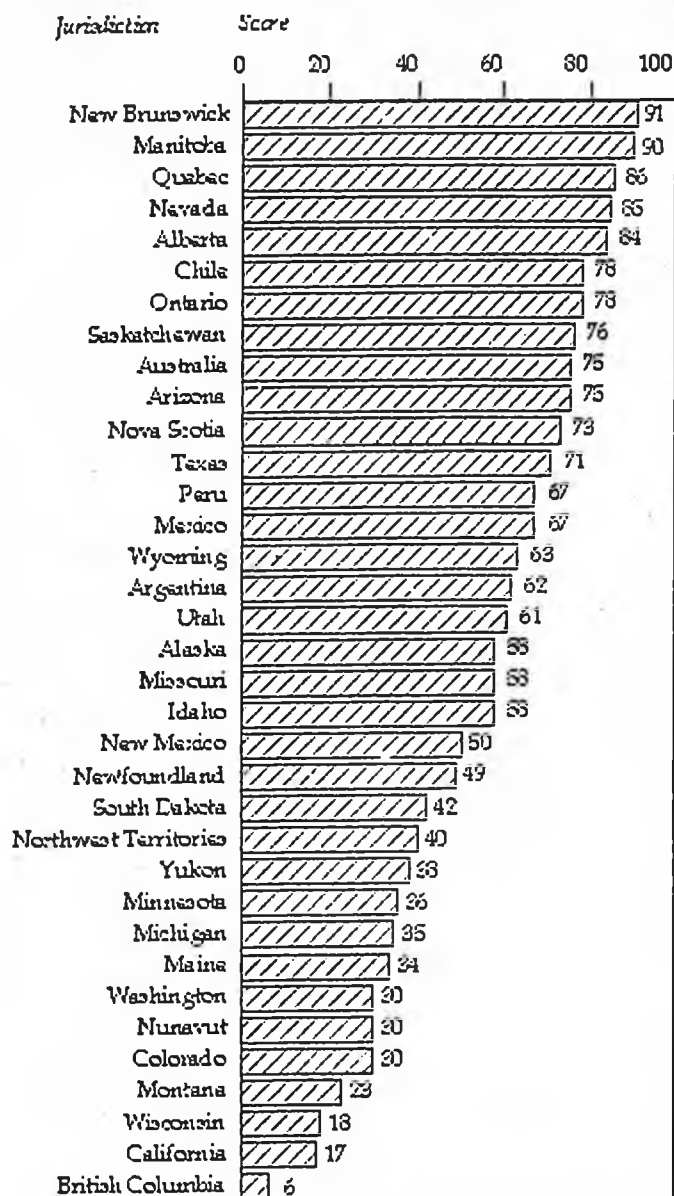
On the other end of the scale, Maine (1), Wisconsin and British Columbia (tied at 3), Minnesota (4), and Missouri (5), were rated the least attractive areas for new mining investment. British Columbia's low rating on the investment attractiveness index is mainly due to its abysmal performance on the policy potential index. Wisconsin's low investment attractiveness score suggests the results of its moratorium on mining and well-publicized anti-mining attitude as well as its low score on the mineral potential index. Maine did poorly because of its bottom rating on the mineral potential index and its mediocre performance on policy. Other low scoring jurisdictions include Michigan, Texas and California (tied at 6).

Figure 3: Investment Attractiveness Index



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Figure 1: Policy Potential Index



The Mineral Potential Index

The Mineral Potential Index rates a region's attractiveness based on companies' perceptions of geology. The top-rated regions are Nevada, with a perfect score of 100, Chile (97), Quebec and Alaska (tied at 94), Australia, Peru, and Argentina (tied at 89). The worst-rated regions on this index include Maine (3), Missouri and Texas (tied at 9), Minnesota (11), and Michigan and Wisconsin (tied at 17).

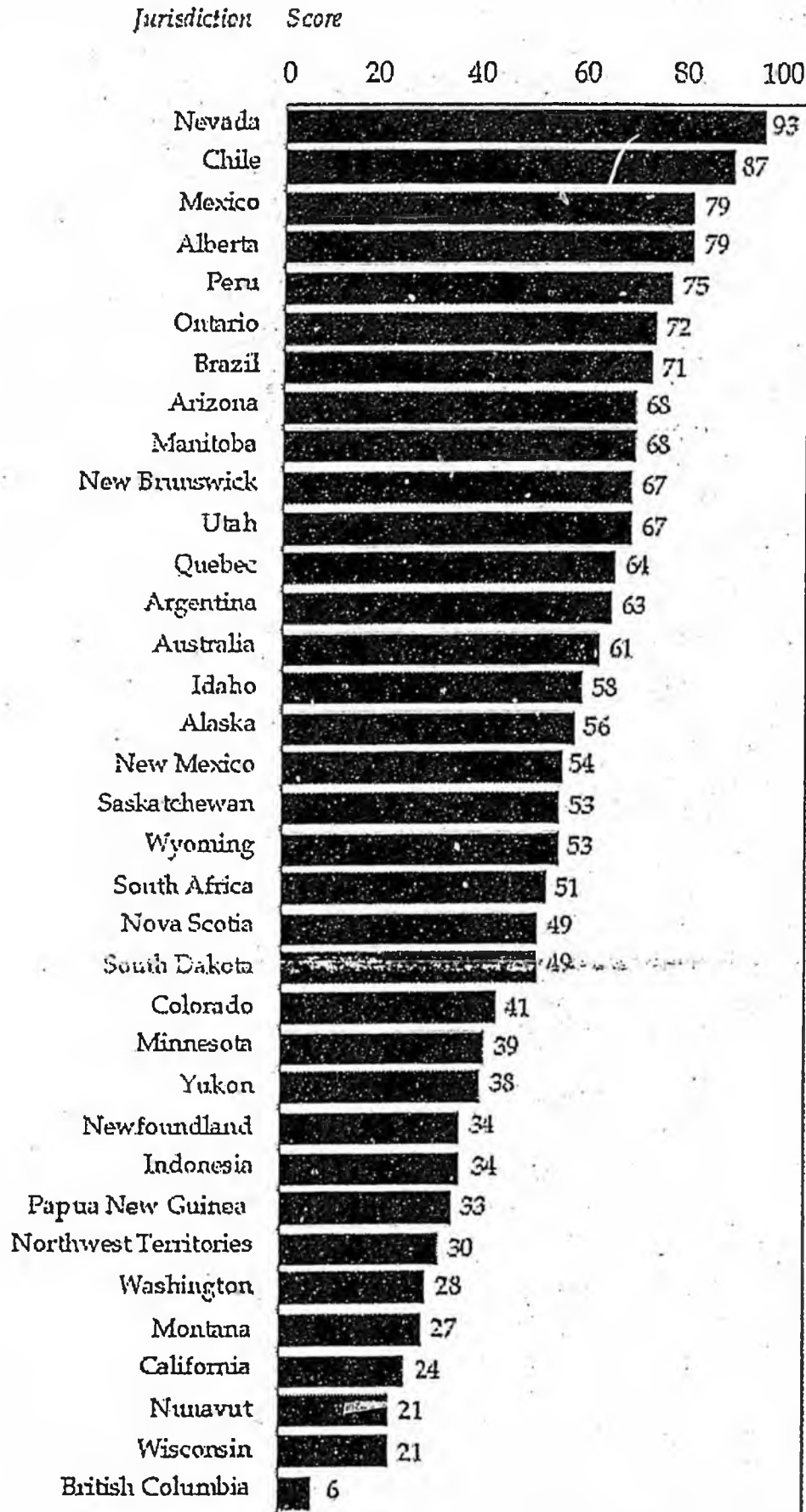
Figure 3: Investment Attractiveness Index



The Investment Attractiveness Index Shows the Best- and Worst-Rated Places to Spend Exploration Dollars

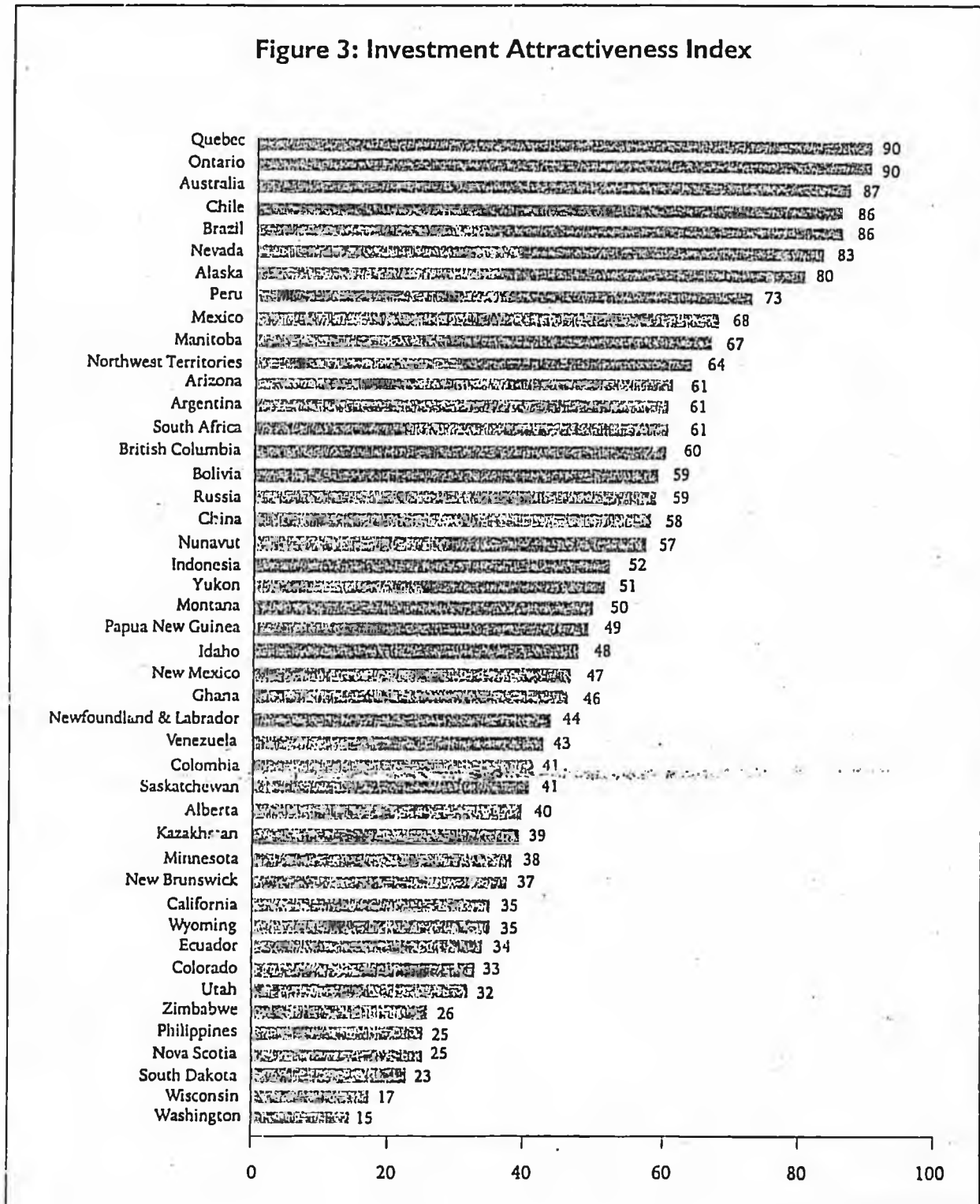
An overall Investment Attractiveness Index is constructed by combining the mineral

Figure 1: Policy Potential Index



In past years, we have given equal weight to the policy and mineral scores. This year we asked respondents what weights they would put on policy and mineral potential. We used the median result, which puts a 60 percent weight on mineral potential and a 40 percent weight on policy.

Figure 3: Investment Attractiveness Index



year's first place, rates a close second with a score of 98. Other top jurisdictions include Australia (96), Brazil (93), Alaska (91), British Columbia (91), Chile (87), Russia (84), Nevada (82) and the Northwest Territories (80). The worst-rated regions on this index include Nova Scotia (2), South Dakota (4), Washington (7), Wisconsin (9), and Alberta (11).

Figure 1: Policy Potential Index

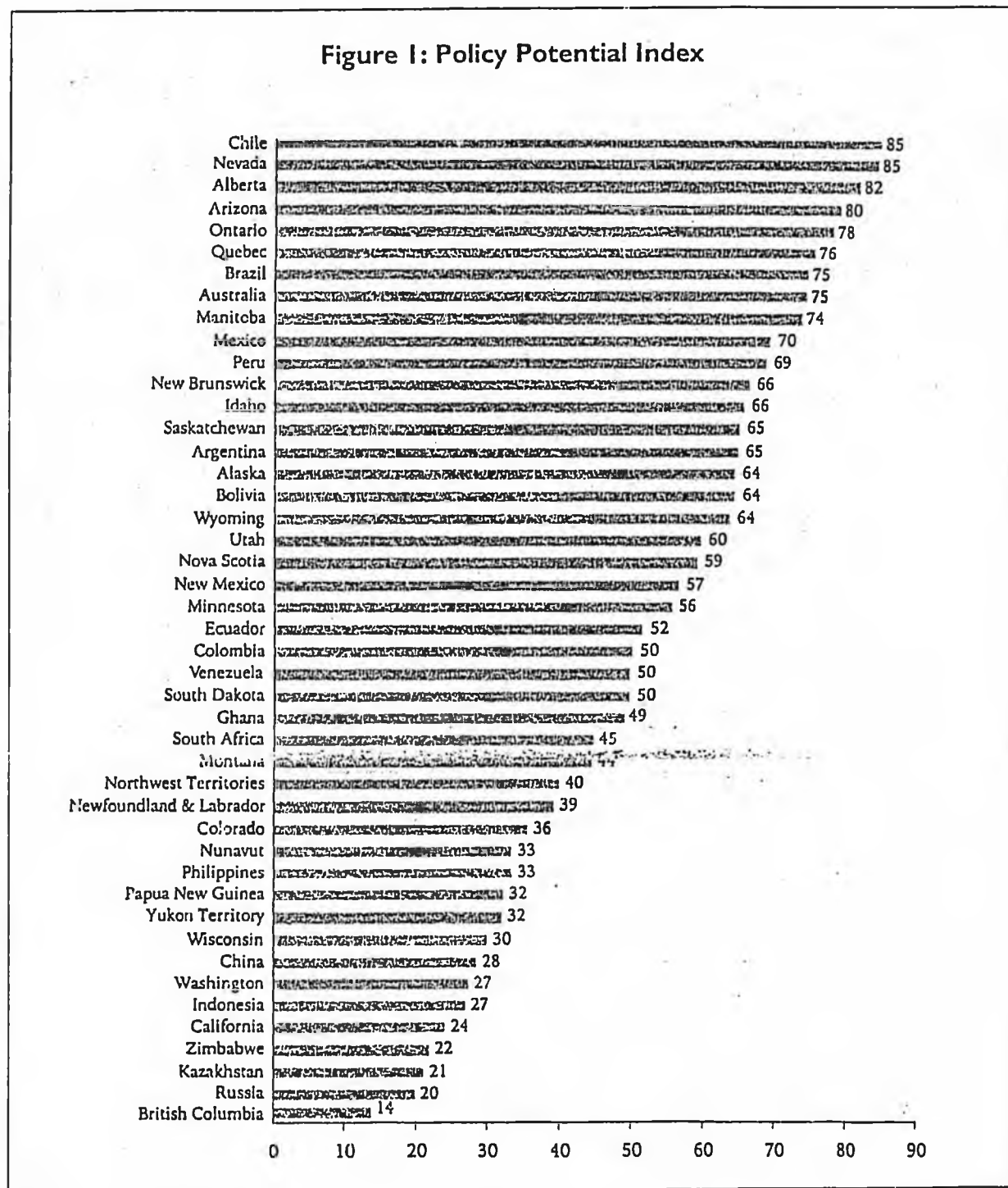


Figure 3: Investment Attractiveness Index

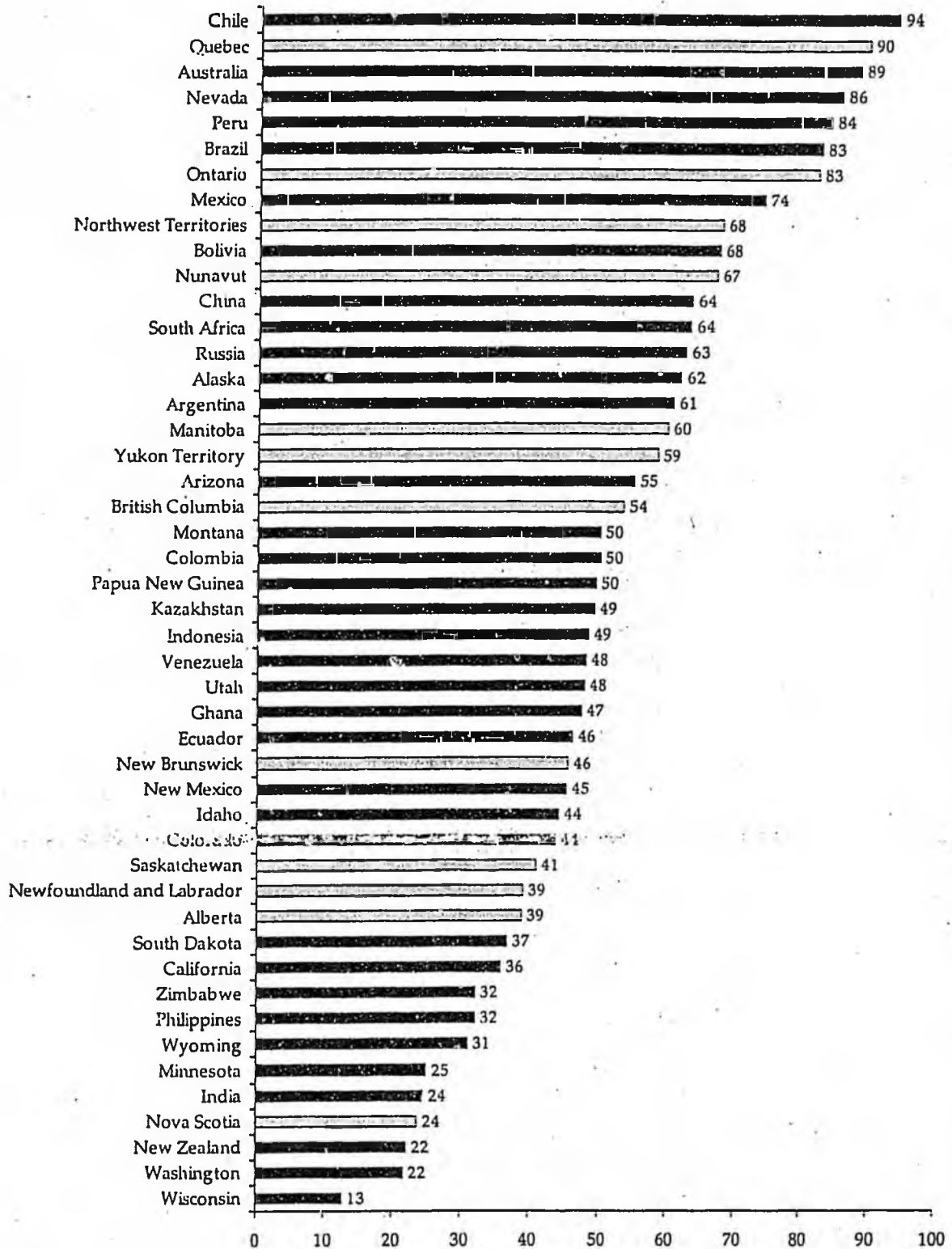
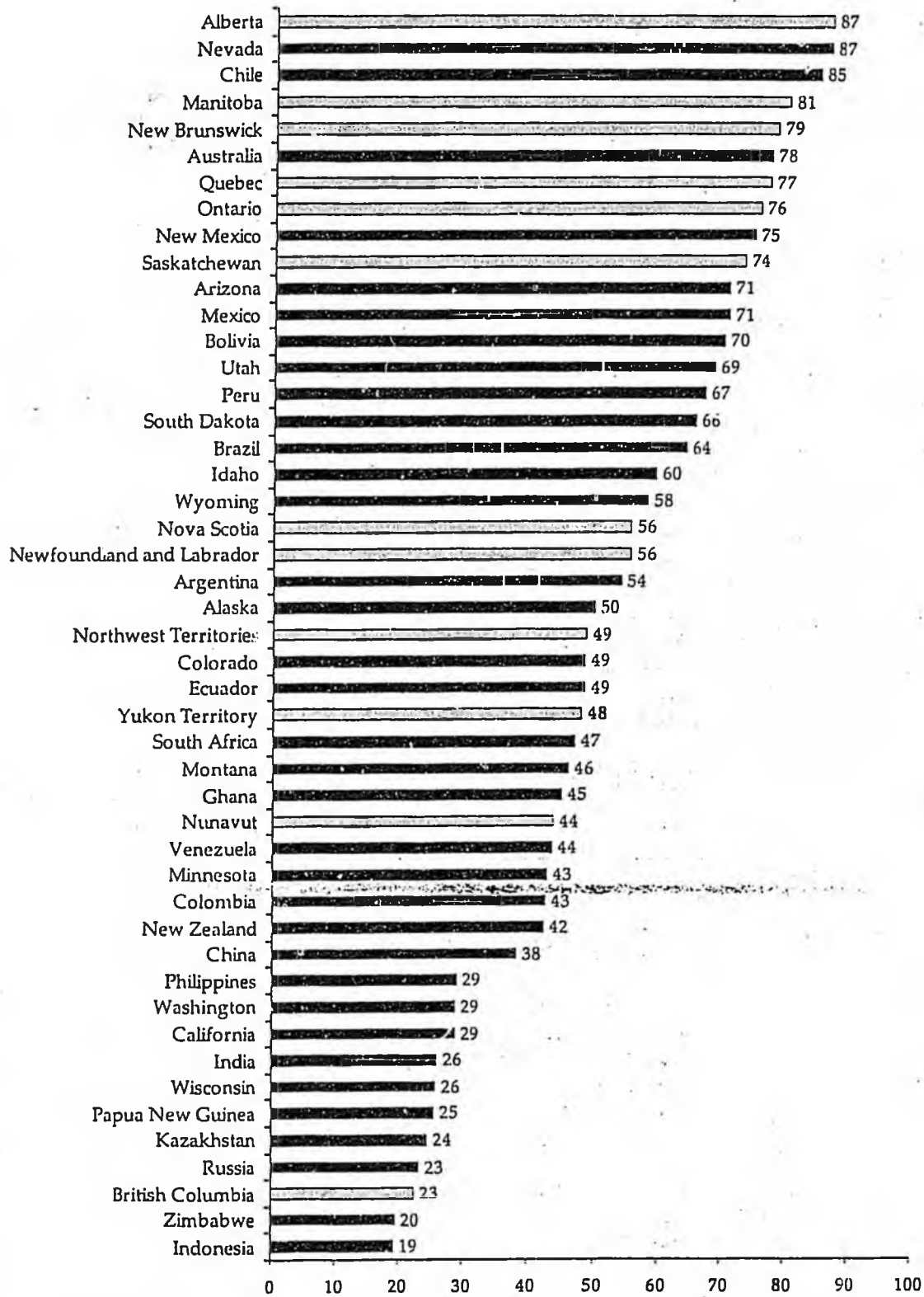


Figure I: Policy Potential Index



DIST.
by Sen.
Elton

February 18, 2003

**Trout Unlimited's Comments to Alaska Boards of Fish and Game
Regarding Executive Order No.107**

What's At Stake

Executive Order No. 107 (EO), February 12 2003, transfers Title 16 permitting authority [AS16.05.840-.860 (Fishways Act) and AS16.05.870-900 (Anadromous Fish Act)] and certain other fish and wildlife habitat oversight and protection functions to the Department of Natural Resources (DNR). This transfer ignores the wisdom and experience of Alaska's fish and wildlife managers and will make the job of fish and wildlife management even more difficult than it is now.

Other than anecdotes and accusations that the Habitat and Restoration Division is the major stumbling block to all manner of projects, the governor has released no information or analysis as justification for his initiative. Although the governor claims that this major shift in resource management is in the public interest, he has refused to engage in public dialogue. That the EO has the support of the state's major resource development industries, including the commercial fishing industry, does not necessarily engender public confidence and trust in the move. Yet, the governor is assured that the consolidation of most permitting and oversight in the Department of Natural Resources will spur economic development by streamlining the project review, permitting and approval process without sacrificing the current level of environmental protection.

The Boards of Fish and Game and the Commissioner are entrusted with the duty of conserving the state's fish and wildlife resources consistent with the *public interest*. Not only does this order virtually eliminate the Department of Fish and Game's (ADF&G) ability to manage for protection of fish and wildlife habitat within the stream and riparian zone, but also abridges the power of the Boards of Fish and Game to conserve the fish and wildlife resource to ensure sustainable yield.

Trout Unlimited (TU) believes the boards have an obligation to independently examine the veracity of the claim that the department willfully delays or blocks legitimate projects and the legitimacy of the transfer of habitat authority to DNR. TU also believes that without the power to protect fish and wildlife habitat, that the boards' power to allocate and regulate utilization of the surplus yield of fish and game, especially salmon, will pale as that yield declines over time.

The "Public Interest"

Historical Roots

If the executive order were in the public interest, it meets the requirements set forth in the state constitution, Article VIII, Section 1 and Section 4. Section 1 states that it is the policy of the State of Alaska "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Section 4 further qualifies the resource development policy by stipulating that renewable resources "shall be utilized, developed and maintained on the sustained yield principle." Presumably, in their assertion of a "public interest," the framers of the constitution recognized that resource development projects are not always a public good and require regulation.

The constitution's concern that the public get a square deal and a square meal is rooted in the development and use of the renewable salmon resource during the territorial era. The territorial government took note as well as offense at the salmon packers rapacious exploitation of the resource and the federal government's inept management of the fishery. To underscore its anxiety that federal fisheries managers were not doing enough to protect salmon, the 1949 territorial legislature established a Department of Fisheries and Board of Fisheries to assist in the conservation of Alaska's fish and fisheries and to develop fisheries management capacity in anticipation of statehood. Thus, the constitution is predicated upon ensuring that development does not reduce the productivity of the resource base. While the constitution is prescriptive, it is not a cookbook. Concocting and preparing the recipes that transform raw resources into profitable dishes is the job of industry; while government is there to ensure the recipes do not jeopardize sustainability of the resource base.

The constitution's sustained-yield mandate forbids any action by government or private industry that would reduce the sustained yield of any renewable resource. Whether an action would have the consequence of reducing yield can only be determined through research and analysis, which can be both time-consuming and expensive. There is no escape clause for projects seeking to avoid or otherwise short cut this determination -- there are no "ifs," no "maybes," no wiggle-room whatsoever. Neither does the subordinate clause "subject to preferences among beneficial uses" in any way condition the sustained-yield requirement. On the contrary, it presupposes sustained yield. On the other hand, Article VIII does not preclude development; presumably, economic development is intrinsic to the utilization of replenishable resources. In simplest terms, the Alaska constitution admonishes: "thou shall not harm the goose that lays the golden eggs."

Hence, to achieve sustained yield of the state's wild salmon resource and to provide for the greatest utilization of the salmon, salmon production must be maintained at the highest possible level. Salmon production depends upon the productivity of the freshwater and marine environments. In a sense, habitat is the container in which the various chemical and biological actions and reactions take place that produce salmon.

Habitat is undeniably the basis for sustained yield of salmon. Indeed, salmon habitat itself is a replenishable resource. Therefore, the responsibility of government is to ensure that the habitat conditions that maximize the yield of fish are maintained, not degraded. Moreover, this responsibility is not discretionary; not optional; and certainly not conditional on other factors, be they cultural, social, political, or economic.

Securing the Public Interest

As the impetus for statehood was to provide for the public interest in the conservation and development of salmon fisheries, the first Alaska Legislature was especially concerned that the Department of Fish and Game and the Boards of Fisheries and Game have the power to both conserve and develop the fish and wildlife resource. In so doing, the legislature affirmed the territorial Department of Fish and Game's rationale for habitat-protection authority as explained in its 1950 annual report:

While it is true that overfishing is responsible for many declines, there is evidence to show that in numerous cases it is of minor or no consequence. The actual reasons are often found to be changes in the environment of the salmon due to natural and unnatural (man-made) conditions. This is especially true of the fresh water stages of its existence. Many examples could be cited. Some of the natural ones are cyclic climatic changes, floods, droughts, freezes, earthquakes, earth-slides, beaver dams and increase in predators. On the other hand, there are such man-made, or unnatural, causes as deforestation due to logging; hydro-electric, irrigation, flood control, and navigation projects; pollution, especially from pulp mills; soil conservation and reclamation schemes; gravel washing and mining operations; road construction such as stream culverts; insect control using poisonous sprays; and many others. The listing of these does not necessarily mean that all are inimical to the continuation of our salmon fisheries. It does mean, however, that if such projects are improperly and unwisely planned, the results will be disastrous to our fisheries. Alaska needs new industries, but not at the expense of her most important resource, which if properly cared for, will produce year after year. Luckily the advance of civilization has, as yet, had but very minor adverse effects on our fisheries. It therefore seemed appropriate that the Alaska Department of Fisheries institute [a new habitat division] . . . to become a "watchdog" to ward off the evil effects of advancing civilization, it is not intended to block progress. By profiting from the mistakes of the past and by cooperation of all parties, it should be possible to have new industries and still maintain our fisheries.

The revision of the Forest Practices Act in 1989 sparked a debate over ADF&G's habitat authority to protect fish streams. The debate ended by reaffirming the rationale for the department's authority: the authority to protect habitat is the power to ensure a sustained yield of fish and wildlife, the surplus of which can be made available to the public for maximum use, as allowed by regulation and managed appropriately.

In so far as habitat is the corpus that produces wealth for the State of Alaska, the Boards of Fish and Game have a fiduciary duty to protect that corpus. This corpus is the state's

original and preeminent "Permanent Fund." The boards have a joint responsibility to contest any measure or action that would undermine their fiduciary responsibility. Consequently, it would seem incumbent upon the boards to independently assess the legitimacy of the executive order. To put the matter another way: what has changed that now justifies abandoning the logic and experience of 50 years of conserving Alaska's fish and wildlife? Apart from the recent spate of anecdotes and unsupported accusations, what body of information and analysis justifies a decision to transfer Fish and Game habitat permitting and oversight functions to DNR?

Practical Considerations

Contained within the issue of the legitimacy of the executive order is the question of the practical consequence of transferring habitat permitting and oversight to DNR. The transfer of fish and wildlife habitat permitting and oversight to DNR does not alter DNR's mission, which is the conservation and development of the state's land and water resources. At first impression, providing habitat-protection authority to the agency with land and water responsibility may appear to be a good fit. Yet, on closer inspection, it is clear that DNR relegates habitat protection to a secondary concern. The reason for this is two-fold.

First, DNR's conservation and development mandate and jurisdiction extends only to state-owned land and waters, while ADFG's conservation and development mandate for fish and wildlife covers all state, federal and private lands, and all marine waters to three miles offshore. The vast majority of the 40,000 projects affecting fish habitat that the ADF&G's Habitat and Restoration Division has administered over the last 20 years are not on state land; most of these project are on privately owned land, borough land, or federal land.

Second, DNR holds oil and gas leases, sells timber, agricultural lands, leases minerals, and issues permits for activities on state owned land and water. DNR's responsibility for conservation of the state's water resource is primarily to ensure that water is 1) not over-appropriated, which would impair resource development; and 2) retained for use within the hydrologic unit. Historically, DNR has taken no responsibility to reserve instream-flow for fish and wildlife, leaving that responsibility to ADF&G, U.S. Fish and Wildlife Service and nongovernmental agencies, including The Nature Conservancy and Trout Unlimited. With respect to conservation of state lands, even though the Forest Practices Act requires the agency to enforce certain conservation restrictions on state and private lands, DNR's primary business is getting timber cut. So, when there is uncertainty about the impact of a logging plan on fish and wildlife habitat, DNR is not inclined to a precautionary approach to habitat protection. Consequently, transferring Title 16, fish-passage permitting to an agency with a land and water development mandate would seem to increase the likelihood of government mismanagement of the fish and wildlife resources in the pursuit of maximizing utilization of the land and water resource.

Due to their different missions, there have been many well-publicized disputes between ADF&G and DNR staff over stream buffers, stream buffer variations, forest plans and forest practices. The resolution of these disputes suggest the two-agency approach is more likely to ensure that decision makers and the public receive reliable information and analysis from the relevant expertise – foresters, geologists, hydrologists, and biologists. Thus, when a dispute arises between the experts, there is less likelihood that the dispute will be suppressed before it receives a public airing and the benefit of an open discussion. A few examples are illustrative:

- *Mixing zones in spawning areas:* In the mid-1990s the Department of Environmental Conservation proposed to changes to water quality regulations to allow mixing zones for toxic waste-water discharges in spawning areas. (Applications for mixing zones are allowed in less sensitive portions of salmon streams, but must receive ADF&G approval under the Anadromous Fish Act). Mixing zones in spawning areas were supported by DNR Division of Mining, but opposed by the Habitat Division. Public opposition prevented changes in the regulations.
- *Forest management:* In late 1980s, the DNR proposed to transfer management of hundreds of thousands of acres of state-owned, forest lands in the Susitna River basin to a Finnish timber company per a “forest management agreement.” DNR boosted the agreement as “streamlining” because it would allow the company to avoid the competitive timber-sale process with its associated public hearings and subsequent state oversight. Habitat Division reviewed the proposal and found it to be inconsistent with the Alaska Coastal Management Program due to lack of assurance that fish habitat would be protected or that public access for hunting and fishing would be maintained. When the public learned of these ramifications, overwhelming opposition derailed the impending agreement.
- *Oil and gas exploration:* In 1992, the DNR Division of Oil and Gas proposed to lease state lands and waters on the Kenai Peninsula for oil and gas exploration. Unfortunately the oil and gas division proposed reducing or eliminating some setbacks from water bodies for drilling rig and oil-production facilities as well as reducing or eliminating other safeguards to protect salmon streams from spills and discharges. ADF&G protested the DNR proposal. When the public became aware and involved, the stipulations that were normally required in such leases were reinstated.

The preceding examples exemplify the dynamic tension between ADF&G and DNR that stem from their different, often conflicting, but equally essential missions. These missions constitute a division of labor for the conservation and development of the state’s different resources and this division of labor has long been held to be in the public’s interest.

Therefore, if locating the fish and wildlife habitat-protection authority in DNR will not affect conservation of the fish and wildlife, then why go to the trouble of transferring it? If the argument is that the transfer will streamline the permitting process without while

maintaining the same level of environmental protection, then why not just streamline the process without transferring it? If the argument is that transferring staff to another department will improve their performance, why would that be? If the argument is about consolidating environmental permitting and authority in one agency, why is DNR the more appropriate choice than the ADF&G?

In 2002, ADF&G permitters processed about 2000 fish-passage permits; each permit averaging 14 days; with only 9 permits were denied. This doesn't include scores of other habitat appraisals by ADF&G for the Coastal Zone Management Program, Federal Energy Regulatory Commission, Forest Practices Act. ADF&G non-Title 16 reviews averaged 18 days, recognizing that many approvals for time-critical projects were provided in days and some in hours. On the other hand, DNR last year had a backlog of about 700 water rights applications – some having been in the queue for 20 years – and another 2000 miscellaneous applications yet to be processed. Moreover, in order to cope with the backlog, DNR had adopted a water-user permitting scheme that the court ruled illegal because it did not protect the public interest. Now, on top of the existing backlog, DNR will be required do ADF&G's job with less staff. Indeed, it has been announced 50 of the 85 biologists in the Habitat and Restoration Division will be eliminated. This raises the question of which ADF&G biologists would be the ones transferred to DNR. Will they be the most experienced biologists? State personnel rules and union contracts dictate that in a layoff, staff with greater seniority bumps staff in the same job class with less seniority. As a result, many permitting positions may be filled with staff from other types of projects with little or no experience in permitting.

It is difficult to understand how consolidating permitting and other habitat oversight functions in DNR will streamline permitting, spur economic development, and provide the same level of environmental protection.

The Price of Failure

Even under the Department of Fish and Game management, habitat permitting has not always prevented harm to fish and habitat, particularly from bad roads and culverts. For instance, one timber company claims to have installed up to 3000 culverts without a permit. A recent studies by ADF&G found about 55% of culverts surveyed in the Matanuska-Susitna Borough and 60% of culverts on logging roads in the Kenai peninsula impeded fish passage. The very efficiency with which ADF&G has issued Title 16 permits ought to raise questions about thoroughness of the permit review prior to approval. Streamlining this permitting even more does not bode well. For instance, in the Tongass National Forest, where logging roads have been permitted under a streamlined, federal process, roads slough into streams and nearly 70% of all culverts impede or block fish passage.

Moreover, it is important to understand that AS16.05.840-.860 (the Fishways Act) and AS16.870 -.895 (Anadromous Fish Act) do not provide strict habitat protection standards. As written, both statutes provide for agency discretion when determining fish habitat

protection requirements. Since there are no standards by which to determine the "proper protection of fish and game," how might DNR staff make this determination? In the 1980s, ADF&G attempted to adopt regulatory standards for "proper protection," but development interests and DNR successfully opposed such regulations. Ironically, the special interests that blocked adoption of regulations to provide such standards continue to criticize ADF&G for arbitrary and subjective permit decisions. Just last year, for instance, the timber industry suggested eliminating ADF&G's role in permitting fish-stream crossing structures on forest roads, which DNR Division of Forestry supported.

Conclusion

Alaska is the world's greatest reservoir of salmonid biodiversity. Alaska has plenty of pristine habitats, which is why Alaska still has plenty of salmon, steelhead, and trout. The major reason there is so much good habitat is that most of Alaska has been free of the sort of heavy human use that has proven inimical to fish. In those areas where people have settled in large numbers, where major industries operate, or where roads wind, fish habitat in Alaska has not fared much better than elsewhere.

Enforcement is a key ingredient to any regulatory program. In the last 20 years, the Habitat Division issued about 38,000 Title 16 permits; not surprisingly permit stipulation violations have occurred and projects that have been built without permits. The Department of Public Safety has been reluctant to investigate alleged fish habitat violations, let alone prosecute. To some extent, this reflects the fact that the Division of Fish and Wildlife protection budget priority (excluding marine enforcement) in relation to total state expenditures declined 32% between 1983 and 2003. (In 2003, the budget is 3/10th of one percent of state expenditures.) There is currently a proposal to eliminate the Division of Fish and Wildlife Protection and incorporate the staff into the state troopers. Moreover, DNR does not have a sterling record of enforcing its regulations or prosecuting violations. Consider the hundreds of trespass cabins, which have been built on state land. Trout Unlimited suggests that fish habitat permitting and enforcement ought to be strengthened if balance between development and conservation is to be achieved.

Therefore, Trout Unlimited urges the Boards of Fish and Game oppose the EO No. 107 by requesting the governor to withdraw his executive order. Should the governor refuse, the Boards of Fish and Game should then request that the legislature disapprove the executive orders. Finally, if there are outstanding concerns about the overall efficacy of state environmental permitting and habitat oversight functions, the Boards of Fish and Game ought to convene a special session/workshop to consider such concerns as well as urging the legislature to conduct an audit of state environmental permitting and habitat oversight functions.

Frank Rue Carl Rosier Don Collinsworth Ron Skoog Jim Brooks
c/o 7083 Hendrickson Road
Juneau, AK 99801

January 30, 2003

Dear Governor Murkowski:

As former commissioners of the Alaska Department of Fish and Game, with a combined experience of over 30 years managing the department, we urge you not to move the statutory authority and responsibility to protect Alaska's salmon, trout, and other fish resources from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

We served under Republican, Democratic, and Independence party governors and we all agree that ADF&G must continue to be responsible for protecting the stream habitat of Alaska's salmon and trout. We share the belief that the loss of this authority will result in unnecessary and potentially irreversible harm to these resources that are critical to Alaska commercial, sport, and subsistence users.

At Alaska's Constitutional Convention in 1955, our founding fathers debated whether the new state should have one resource agency or two. They understood the need to develop our oil, mineral, and timber resources, and build the roads and highways needed to open up our vast state, and they recognized the need to balance that development with protection of fish and wildlife by purposefully giving the responsibility and authority to protect in-stream fish habitat to ADF&G.

The two resource agency approach provides for appropriate checks and balances in development decisions and it recognizes the importance and value of both our renewable and non-renewable resources.

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.340).

We understand your administration's goal of streamlining economic development, but feel the problem you are trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, 2,000 "Title 16" permits are issued each year by ADF&G in an average time of just 15 days, with 99 percent of them approved. This achievement can be credited to a responsive, professional and experienced staff in the Habitat, Commercial Fisheries and Sport Fish divisions who have a long, laudable record of working collaboratively to maintain Alaska's fishery resources and the habitat on which they depend. We do not think it is possible to replicate this capability within another agency

and doing anything less will erode or destroy Alaska's capacity to aid development in ways that avoid or minimize threats to our fishery resources.

We know from experience that some would prefer not to worry about impacts of development on salmon, trout, and other fish. Life might be easier without having to ensure adequate culverts, bridges, and buffers around spawning streams, but this comes at a cost to those Alaskans who depend on fish for a job or a meal, and for whom the loss of fish habitat will mean an inevitable loss of opportunity.

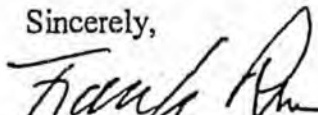
Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper regulatory balance.

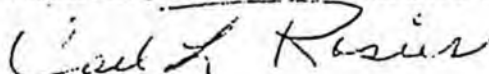
Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

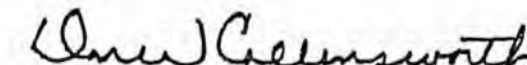
You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

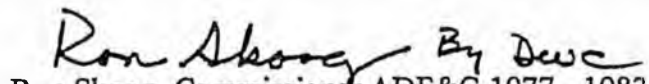
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

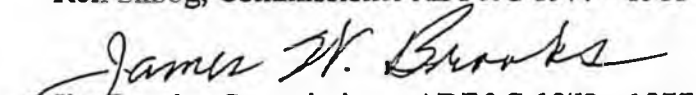
Sincerely,


Frank Rue, Commissioner ADF&G 1995 - 2002


Carl Rosier, Commissioner ADF&G 1991 - 1995


Don Collinsworth, Commissioner ADF&G 1983 - 1991


Ron Skoog, Commissioner ADF&G 1977 - 1983


Jim Brooks, Commissioner ADF&G 1972 - 1977

STATE OF ALASKA

Anchorage Fish & Game Advisory Committee

February 14, 2003

The Honorable Frank Murkowski
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski:

The Anchorage Fish & Game Advisory Committee at its regular public meeting on February 4, 2003 voted unanimously to voice our strong opposition to the proposed move of permitting from the Department of Fish & Game to the Department of Natural Resources. This vote was based on the public testimony at our meeting, the knowledge & experience of our members, and our understanding of potential impact this change could affect. All individuals that testified were adamantly opposed to this move.

In order to put this letter in perspective, I would like to provide you with some information about our AC. The Anchorage AC has a long history of taking actions to make a positive contribution to managing Alaska's natural resources for maximum use consistent with the interest of the public. Those actions have included assisting in the development of provisions for a moose hunt in Chugach State Park which was subsequently passed by the Board of Game in March of 1999. We have also contributed to formulating and supporting predator control plans as they affected GMU 13 (as well as other GMU's). Our AC also understands that development of our natural resources also includes logging and mining when it is not inconsistent with other important uses.

The concerns expressed were focused on the permitting process and the potential negative impact on the resource. In our deliberations, specific concerns were expressed about possible impact of ineffective application of the fishways provisions (16.05.840) and provisions for the protection of fish and game (16.05.870) on populations of fish. We have examined the information available on the permitting process in order to determine if these concerns were over some individual performance failures by individuals or small groups within the habitat and restoration division or a systems wide failure. The attached charts support that if anything, it is a performance rather than a system failure. Specifically, in fiscal years 1999 through 2002 the habitat and restoration division processed an average of 1974 permits each year. The T-16 permits took an average of 15 days to review in 1999, 14 days in 2000, 17 days in 2001 and 14 days in 2002. The average days to review permits regarding fish habitat did vary with the three regions, however the longest was 19 and the shortest was 7 days. When you consider the tasks involved, it does not support a systems problem that requires a system solution, such as moving the entire permitting function.

Other factors that lead us to believe that the movement of this function is not in the best interest of the State are:

1. Improved effectiveness of this division based on new appointments to fill current and future vacancies.

Anchorage Fish & Game Advisory Committee

Page 2

2. By taking permitting out of this area, it reduces accountability for effective decisions from the department and division which should be held accountable for an effective process.
3. Creates an opportunity for numerous groups to make legal challenges. This is often very costly and holds up the process regardless of the outcome.
4. Issues raised by unions could tie up a smooth and effective transition.

It is clear there is concern within parts of the natural resources community (fisheries, timber, and mining) about the effectiveness of the permitting process. However these concerns appear to be issues of individual instances of performance rather than system based problems. It is our belief that the first effort to address these concerns may be best made by attempting to correct the performance issues rather than moving these functions from one agency to another. We are confident that the concerns raised can be dealt with without moving this function on a case by case basis prior to moving this function to DNR.

In addition, we have done some preliminary research regarding some of the instances that you have been advised that have caused concern and it does not appear that the Habitat and Restoration Division was the primary cause of the delays. We understand that a number of individuals and groups are in the process of researching the instances that have been cited as causing a concern to identify any specific problems. We are looking forward to reviewing the results of that research as are many other concerned members of the public.

I am confident that any problems that may exist regarding permitting can be resolved by improving the process as it exists. Your administration has demonstrated this by the public meetings and forums where you have asked the public for their ideas of how to improve our state and the agencies within the State. In those forums you combined subject matter experts with informed members of the public and came up with solutions to problem areas. This approach would be more effective than expending significant funds for such services as consultants, special task forces, etc.

Sincerely,

(via email)

Bob Churchill, Chair
3415 Wentworth
Anchorage, AK 99508

cc: House Resources Committee Members
Senate Resources Committee Members
House Special Committee on Fisheries Members

FEB-14-03 10:19

FROM-ANCH DIV USPS

0072615400

T-421 P.01/03 F-024

**ADF&G Statewide Habitat and Restoration Division
Workload Summary, FY 99 to 02**

Table 1. Title 16 Project Reviews

Fiscal Year	Total # T 16 Project Reviews	# T 16 Permits Issued	# T 16 Denials	# T 16 No Permit Required
99	1831	1479	13	339
00	2141	1779	14	348
01	1999	1712	13	274
02	1926	1669	9	248

Table 2. Other Agency Project Reviews

Fiscal Year	Total # Reviews	Recommended Approval	Recommended Denial	Provided General Comments
99	900	530	29	341
00	1045	615	26	404
01	1267	700	49	518
02	1152	636	23	493

Table 3. Grand Total All Reviews (T 16 + Other Agency)

Fiscal Year	Reviews Completed	# Recommend Approval	Recommended Denial	General Comments
99	2731	2009	42	680
00	3186	2394	40	752
01	3266	2412	62	792
02	3078	2305	32	741

Table 4. Response Efficiency

Fiscal Year	T 16 Average # Days to Complete Review	Other Agency Average # Day to Complete Review
99	15	18
00	14	23
01	17	16
02	14	18

↑
Time to
issue
permit T16

FY 02

ALASKA DEPARTMENT OF FISH AND GAME.
HABITAT AND RESTORATION DIVISION
FY 2002 ANNUAL PERMIT SUMMARY
GENERATED: 04-Oct-02

Table 2. GENERAL SUMMARY OF ADFG TITLE 18 AND OTHER AGENCY REVIEWS STATEWIDE

Region	Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Reqd.	Average Review Days	Percent within Deadline	# Pre-issued Insp.	# Post-issued Insp.
I	Fish Habitat	248	244	0	4	14	85	645	1787
	Special Area	3	3	0	0	4	100	13	35
	Hazing Permit	3	3	0	0	18	87	0	0
	Sub Total Reg I	254	250	0	4	14	86	658	1822
II	Fish Habitat	744	648	5	91	10	84	538	450
	Special Area	118	112	2	4	26	78	10	10
	Hazing Permit	0	0	0	0	N/A	N/A	0	0
	Sub Total Reg II	862	760	7	95	20	83	548	460
III	Fish Habitat	721	579	0	142	7	89	467	623
	Special Area	14	14	0	0	0	100	25	19
	Hazing Permit	1	1	0	0	39	0	0	0
	Sub Total Reg III	736	594	0	142	7	89	492	642
JPO	Fish Habitat	68	67	2	0	13	88	15	10
	Special Area	0	0	0	0	N/A	N/A	0	0
	Hazing Permit	2	2	0	0	14	100	0	0
	Sub Total Reg JPO	70	69	2	0	13	88	15	10
Total All Regions		1926	1569	9	246	14	91	1700	2334
		Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
I	Other Agency	238	106	2	131	31	87	231	228
II	Other Agency	408	188	21	211	28	72	104	70
III	Other Agency	513	382	0	181	8	100	143	124
JPO	Other Agency	0	0	0	0	N/A	N/A	12	0
Total Other Agency		1159	576	23	483	18	86	490	422
I	Not Reviewed	8	Withdrawn		2				
II	Not Reviewed	33	Withdrawn		57				
III	Not Reviewed	0	Withdrawn		1				
JPO	Not Reviewed	0	Withdrawn		0				
Total Not Reviewed		41	Total Withdrawn		60				

Notes: 1) Regions: I = Southeast II = Southcentral/Southwest/Western, III = Arctic/Interior/Western, JPO = Joint Pipeline Office

2) OMB-coordinated reviews with associated AS16 reviews are counted in this table as AS16 reviews.

Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

3) Virtually all project reviews in Region I, and a substantial number in Regions II and III, are coordinated by OMB under a 30 or 60 day time frame. This increases the average ADFG response time.

FY 02

ALASKA DEPARTMENT OF FISH AND GAME
HABITAT AND RESTORATION DIVISION
FY 2002 ANNUAL PERMIT SUMMARY

GENERATED: 04-Oct-02

Table 1. GENERAL STATEWIDE SUMMARY OF ADFG TITLE 16 AND OTHER AGENCY REVIEWS

Type of Review	Reviews Completed	Reviews Issued	Reviews Denied	Reviews Not Required	Average Review Days	Percents within Deadline	# Pre-issued Insp.	# Post-issued Insp.
Fish Habitat	1778	1828	7	243	13	92	1682	2870
Special Area	142	135	2	3	22	92	48	64
Nozing Permits	6	6	0	0	20	67	0	0
Sub Total A318	1926	1969	9	246	14	91	1709	2934
	Reviews Completed	Recm. Approved	Recm. Denied	General Comments				
Other Agency	1152	636	23	493	18	88	490	420
GRAND TOTAL	3078	2305	32	741	15	89	2199	3354
Not Reviewed	38							
Withdrawn	60							

Notes:

OMB-coordinated reviews with associated A318 reviews are counted in this table as A318 reviews.
Other OMB-coordinated reviews are counted as 'Other Agency' Reviews.

PAGE 2 Cooper Landing Advisory Committee February 15, 2003

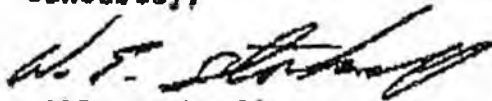
resources. We ask that the Board of Fisheries and Board of Game be given ample time and we ask the Boards to conduct a full and open comment and testimony period for the general public, effected organizations and advisory committees and that the Boards be allowed to make recommendations to you on the substance of this transfer. We also ask that the Alaska Legislature be given ample time to hear and consider the public's concerns on the issue and we ask our Legislators to conduct hearings for their constituents on this transfer.

Next, our other major concern is the future protection of the habitat so vital to the sustainability of our common use fish and wildlife resources and how the Cooper Landing Advisory Committee will continue to interface in the process. We believe, as do many Alaskans, that the proper management of the public's fish and wildlife resources are a vital part of the Alaska's future and that proper management must start with habitat protection and restoration.

Most issues that effect the Community of Cooper Landing deal with habitat. The residents and the advisory committee have over the years had a close working relationship with ADF&G on fish, wildlife and habitat issues of concern to our Community. This relationship has always included the advice and aid available from the Habitat Division. The Community feels that the loss of this asset could have a future negative impact on our quality of life and our economy. The Cooper Landing Advisory Committee is worried that the necessary coordination with ADF&G to function as the local forum for fish and wildlife habitat matters will be permanently lost and the vital habitat for fish and wildlife in our area will suffer.

Governor Murkowski, we thank you for your time and ask that you give our committee opinion and that of other advisory committees due deference prior to finalizing this transfer.

Sincerely,



Bill Stockwell, Chair

cc: Senator, District R
Representative Seaton, District 35, House Fisheries Comm.
Alaska Board Of Fisheries
Alaska Board of Game
Acting Commissioner Duffy, ADF&G
Commissioner Irwin, Dept. of Natural Resources

Alaska Public Waters Coalition

10332 High Bluff
Eagle River, AK 99577

The Honorable Frank Murkowski, Governor
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

February 10, 2003

Dear Gov. Murkowski:

Your announced decision to transfer selected permit functions from the Habitat Division of ADF&G to DNR appears to have not been well thought out! First off, why would you give more work to a Department that can not do the work it is now charge to do? DNR has been failing to protect the public trust values by managing water resources in accordance with statute and regulations for more than 10 years. Do you propose to give them Habitat's job with no more money and staff and allow them to fail in this assignment too?

If this is such a good idea, why did you not offer it during the campaign when you were asked for details on just how you would go about jump starting the Alaska economy.

Secondly, your perception of the job ADF&G's Habitat Division has been doing appears to be based on poor and inaccurate advice! Habitat has denied only 9 permits out of 2000 in the past year. That hardly constitutes an indictment of an overly aggressive public service division.

Thirdly, regarding behavior of some Habitat Division employees, I sat through four hours of town meeting with members of your transition team. There were a couple of complaints about performance of employees of the Habitat Division. It became evident to me that these should appropriately be handled by supervisor attention, rather than government reorganization.

On behalf of the Alaska Public Waters Coalition, I urge you to reconsider this matter.

Sincerely,

Keith Bayha, Steering Committee Chair

cc: all legislators

Subject: ADFG Habitat Permit Authority (cc: of letter to Pete Kott)

Date: Mon, 3 Feb 2003 21:31:41 EST

From: BradMeiklejohn@aol.com

To: representative_les_gara@legis.state.ak.us

Dear Mr. Kott,

I am a resident of Eagle River, a sportsman and a conservationist. I am writing about Governor Murkowski's proposal to move habitat permitting authority from the Alaska Department of Fish and Game to the Department of Natural Resources. As a long-time Alaskan I have long been proud of fisheries management in this state. While salmon populations in the lower 48 have been decimated, Alaska maintains strong runs in most of its river systems, thanks largely to the effective management by Fish and Game.

I think we send the wrong message to the world if we strip habitat permitting authority from Fish and Game. This move would tell the world that we are not concerned with "doing it right" but only with "just do it." While Alaskans pride themselves on not caring what folks Outside think, public perception does matter on issues such as ANWR.

It is appropriate to have biologists, not bureaucrats, managing our fish and wildlife. We have the finest fish and wildlife resources in the world, and I hope we keep it that way.

Sincerely,

Brad Meiklejohn
Eagle River, Alaska 99577
(907) 694-9060

POSTAGE PAID

Paxson Fish and Game Advisory Committee
John Schandelmeier, Chair
HC 72 Box 7193
Paxson, Alaska 99737
(907) 822-5424

February 6, 2003

To: all State of Alaska Legislators

The Paxson Fish and Game Advisory Committee opposes merger of the Alaska Department of Fish Game's Habitat Division with the Department of Natural Resources.

We believe that these departments are very different in both focus and objectives. They should remain so. These two separate departments contribute to an effective system of checks and balances with Alaska's state government.

Wildlife habitat is important to our states' future; both for our residents opportunity to hunt, fish and recreate and for our states' economic health in the form of tourism.

The Department of Fish and Game is the agency best suited to protect and manage these most important values.



American Fisheries Society

ALASKA CHAPTER

February 10, 2003



Governor Frank Murkowski
Office of the Governor
P.O. Box 110011
Juneau, AK 99811-0001

Dear Governor Murkowski:

The members of the Alaska Chapter of the American Fisheries Society urge you not to transfer habitat permitting from the Department of Fish and Game to the Department of Natural Resources. We believe that this action will cause long-term, cumulative harm to Alaska's fishery resources. Fish are Alaska's most valuable renewable natural resource and have critical historical, cultural, and economic importance to Alaska's subsistence, commercial, and sport users. This valuable resource also represents additional opportunity for economic development.

The American Fisheries Society is the oldest and largest international scientific organization of professional fisheries scientists with nearly 8000 members dedicated to wise management and use of our sustainable aquatic resources and the continuing education of fishery scientists. The Alaska Chapter is one of over 100 subunits of the American Fisheries Society and includes more than 400 fisheries professionals who work in state and federal government, academia, and the private sector. A primary mission of the American Fisheries Society is "to ensure self-sustaining populations that support commercial and recreational fishing both now and in the future."

The Alaska Constitution states that fish and wildlife resources must be managed by the State for the sustained yield, maximum benefit and common use of all people. The framers of our State Constitution were concerned for the long-term viability of Alaska's most important renewable resource when they enacted safeguards to ensure that fish habitats would be maintained. These safeguards are a "check and balance" to assure that fishery and aquatic resources have equal standing with other important resources. This is accomplished by a review of project plans that may affect fish habitat by an independent professional fisheries scientist.

There is ample evidence from States in the Pacific Northwest that poorly designed, installed, or maintained culverts result in loss of access by fish to thousands of miles of productive habitat. Fishery scientists have estimated that the production of anadromous fish in Washington and Oregon is about three percent of historic levels; resident fish abundance is affected as well. Most of the productivity loss has been attributed to loss of aquatic habitat. Alaska is not immune to such loss; for example, recent studies of the State road system and logging roads on the Kenai Peninsula revealed that more than half of culverts block or impede fish passage to spawning, rearing and overwintering habitats.



American Fisheries Society

ALASKA CHAPTER

We, the Alaska Chapter of the American Fisheries Society, believe that if Alaska's fisheries resources are to be sustained for the benefit of all Alaskans, common property fisheries and aquatic resources must be given equal consideration with other land uses at the highest level. The best way to achieve this is to maintain the time-tested process enacted by the first State Legislature. We believe that if the review and permitting function is transferred from the Alaska Department of Fish and Game to the Department of Natural Resources the invaluable system of checks and balances that have existed in

State Statute since statehood will be lost. We believe that professional fisheries scientists within the Department of Fish and Game must continue to review and approve the design and installation of all proposed projects that affect our fish and aquatic resources in Alaska to ensure responsible stewardship of our sustainable fisheries and the healthy habitats that support them.

We encourage a dialogue (public hearings for example) concerning this matter and members of the Alaska Chapter of American Fisheries Society are available to assist if that will be useful. Please feel free to contact us if you have questions about our fishery and aquatic resources (akafs@hotmail.com).

Thank you,
Alaska Chapter of the American Fisheries Society

cc:
Senate and House Legislators



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KRSMA board opposes Murkowski's new permit plan *Resolution to keep responsibilities under Fish and Game gets group's full support*

By **MATT TUNSETH**
Peninsula Clarion


The group responsible for advising Alaska State Parks on issues affecting the Kenai River spoke out Thursday against Gov. Frank Murkowski's plan to move permitting responsibilities from the Habitat Division of the Department of Fish and Game to the Department of Natural Resources.

The Kenai River Special Management Advisory Board unanimously passed a resolution opposing Murkowski's Executive Order 107. Murkowski has said the move will streamline permitting processes, but board members said the opposite may end up being the case.

"The honest-to-God truth is it will slow the permit process down," committee member Lance Trasky told the board.

The governor unveiled his plan to change the way the permitting process works during his State of the State Address. He proposes shifting permitting responsibilities -- often a necessary step in some road and construction projects that cross streams -- to the state Department of Natural Resources.

The plan would effectively give the more industry-friendly Department of Natural Resources final say in issuing permits. It's a significant change since the current process puts state departments at odds with each other when reviewing



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 36° Kenai
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proposals.

Although the implications of the move are not fully known, it's believed the transfer of permitting responsibilities will affect roughly 85 positions within Fish and Game. Of those, Trasky said less than half will be moved to DNR, while the others will likely lose their jobs. Because fewer people will be tasked with more responsibilities, permitting processes could actually take longer.

The governor's order is scheduled to take effect April 15. However, the Alaska Legislature can override the order.

The main problem board members had with the transfer has to do with the perception that habitat concerns will be brushed aside if the permitting process moves to DNR. Board members said they believe Fish and Game -- not Natural Resources -- is best suited to keep tabs on critical habitat issues. Trasky said important Kenai River fish concerns Fish and Game looks at when granting permits may not get the same scrutiny at DNR.

"Everyone says it won't be any different at DNR, but I think that it will be," Trasky said.

Other board members said the Habitat Division has been an effective, efficient mechanism that ensures basic habitat protections are in place before permits are granted.

"The Habitat Division has been the single most effective agency," board member Robin West said. "I think it's a no-brainer."

Board member Chris Degernes -- who also works within DNR as the Kenai area State Parks superintendent -- said the current system is better because it allows both agencies to have a say in what happens to the Kenai River.

"I think if we vote (to oppose the order), we're voting for what's good for the river," Degernes said. "We all know we stand better on two legs than one. ... The Kenai River would be better standing on two legs."

Despite their strong opposition to the governor's proposal, board members said they didn't want to send the message they have a problem with Murkowski's attempt to streamline government -- just that they disagree with this particular approach.

"I would hope we would do this with a little tact and decorum," board member Paul Shadura cautioned.

In the end, the board voted unanimously to send letters to both the Alaska Legislature and Murkowski registering their opposition to the move and asking the Legislature to override the executive order.

The KRSMA board is not the first group to come out against the

Perry Parsons wrote:

> Dear Senator Ellis and Representatives Gara & Heinze:

>

> I am writing to request that you take proactive action regarding Governor
> Murkowski's Executive Order 107. As I'm sure you know, EO 107 will remove
> the Alaska Department of Fish & Game authority to safeguard fish and
> wildlife habitat under Title 16 of the Alaska statutes. The Governor's
> vague proposal has met with much incredulity by all sorts of folks, from
> common people like myself, to former Governors and ADF&G Directors.
> Independent review is essential to the future of fish and wildlife, and
> therefore to the lifestyle and economy of rural Alaskans, fishers, and
> Alaska Natives.

>

> EO 107 goes into effect unless you vote against it. Please press for
> immediate and thorough hearings on this issue so that we all know more
> clearly what the effects of EO 107 will be. And when it comes to a vote, I
> ask that you vote against it.

>

> Thank you for your attention to this matter.

>

> Sincerely

>

> Perry Parsons
> 227 E. 12th #1
> Anchorage, AK 99501

>

Subject: TRANSFERRING ADF&G HABITAT PROTECTION PROGRAMS-PERMITTING TO DNR

Date: Wed, 5 Feb 2003 07:09:36 -0900

From: "walsh" <aawalsh@nushtel.net>

To: <representative_les_gara@legis.state.ak.us>

Dear Representative Gara--

I've heard of the Governor's intention to transfer the ADFG Habitat Protection division to the Department of Natural Resources, and I ask you to convince him to reconsider. I am a hunter and fisherman, a supporter of the current administration, and a strong supporter of the economic development of our state, but I truly believe that protection of natural resources (and fish and wildlife habitat in particular) on state lands is of tremendous importance to everyone. Healthy fish and wildlife habitats makes good business sense in the long term. There are too many examples from the lower 48 where wildlife habitat was placed second to other economic considerations, and the price tag for cleanup and restoration has far exceeded any short-term benefit. Please don't let that happen here.

DNR's economic development mission is clear and straightforward, and certainly an honorable mission. However, that agency should not be placed in charge of overseeing habitat protection. ADFG is the department that remains best suited for this job.

Sincerely,

Patrick Walsh
Dillingham, Alaska

Sunday, March 02, 2003

ADN

Don't look to Oregon for sound fish habitat protection standards

John Sturgeon's comments regarding the virtues of moving habitat permitting to DNR are pretty funny. ("Governor's proposal has precedence, merit," Feb. 27) So Oregon's Department of Forestry has environmental protection responsibilities for fish passage? Has anyone noticed the effects of Oregon's management of wild fish (and their absence thereof)? Habitat protection standards in Alaska depend a great deal on the discretion of the agency that applies them. Alaska Department of Fish and Game commissioners have chosen to professionally apply a high standard. Under the governor's proposal, DNR will soon have discretion in applying habitat standards. And therein lies the problem. DNR's track record on environmental protection is abysmal and their permitting performance is characterized by delay. How can they measure up to the current standard with a reduced habitat work-force to boot? Sturgeon's self-serving analysis is flawed and, as a forest industry mouthpiece, environmental protection is the least of his concerns. Urge your legislators to disapprove the governor's ill-considered proposal.

-- Allan Shayer

Anchorage

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

FRANK MURKOWSKI, GOVERNOR

333 Raspberry Road
Anchorage, AK 99518-1599
PHONE: (907) 267-2285
FAX: (907) 267-2464

MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Bill Hanson
Regional Supervisor
Region I
Habitat and Restoration Division

DATE: February 20, 2003

SUBJECT: Region I Response to Governor Murkowski's State of the State Address and
Subsequent Press Conference Comments

During his State of the State address on January 23, 2003, and in a February 3, 2003 statewide press conference, Governor Murkowski cited several projects in the Southeast Alaska as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. The following information is presented to provide a more clear understanding of the Division's role in these projects.

The examples from H&R Region I include (1) the Juneau Golf Course; (2) Dorothy Lake Hydroelectric Project; (3) Ward Lake, and by association the Connell Lake Hydroelectric Project; (4) Falls Creek Hydroelectric Project; (5) the Ketchikan Southeast Intertie Project; and (6) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A brief summary of our response to each of these topics is provided below. More detailed explanations can be provided as needed.

In addition, in the February statewide news conference, Governor Murkowski stated that Habitat Division had sponsored a pizza party in Juneau to celebrate the closure of the Ketchikan Pulp Company mill in Ketchikan. Although we were certain that the Division had not and would not have sponsored such an event (and certainly what employees do on their own time is irrelevant), we have asked all of our staff as well as the former SE Regional Supervisor whether any such

event took place inside or outside the workplace. No one has any idea what the Governor was referring to, and we can state categorically that this statement was erroneous.

In summary, we disagree that the Division of Habitat and Restoration has caused undue delays in projects. We believe that we have provided exceptionally efficient and professional service to the state, federal government, municipalities, applicants and the public. Our staff has provided a unique and useful combination of skills that unite:

- Implementing the mission of ADF&G to protect, enhance, maintain and extend fish and wildlife as well as protecting uses of these resources;
- Substantial experience and expertise in understanding the physical, economic and technical needs and limitations of diverse industries and applicants, including mining, timber harvest, municipal development, hydroelectric development, coastal development, transportation, road construction and many others;
- Identifying and understanding creative ways to allow development activities to proceed while protecting fish and wildlife and their uses;
- A detailed knowledge, gained by experience and fieldwork, of the landscapes across Alaska.

We recognize that it takes time, money and effort to fully evaluate and carefully consider the potential effects of development activities and the options for avoiding unnecessary damage. This can only be done with a strong commitment to listening to the needs of applicants and detailed knowledge gained by field review. ADF&G has been and continues to be fully committed to both.

Discussion of Specific Projects

JUNEAU GOLF COURSE – In the February 3 press conference, the governor said, *"I don't know why we always start out with the Juneau Golf Course. But they've been trying since 1996 to get a conditional use permit granted to build a golf course. In 1998, after consulting with the Habitat Division, the Division of Governmental Coordination assented to the project. However, the Habitat's field biologist kept reopening the process by alleging that new information was required. The project's proponents have now spent more than one million dollars and I understand they still don't have a conditional use permit."*

H&R Region I Response – Summary

The Totem Creek, Inc. (TCI) golf course project (the "Juneau Golf Course" to which the Governor refers) is proposed for undeveloped city-owned land in the Peterson Creek drainage, a cataloged anadromous watershed on North Douglas Island. Approximately 24 fish-bearing tributaries of Peterson Creek are within the project area. Peterson Creek provides habitat for a number of anadromous fish species, including pink, chum, and coho salmon, Dolly Varden char, and cutthroat trout. Currently, this watershed is in nearly pristine condition and provides excellent fishery and wildlife values. The watershed is also a popular deer hunting area.

ADF&G participated in the Alaska Coastal Management Program (ACMP) review of the golf course that resulted in issuance of a Consistency Determination (CD) on January 23, 1998. To

address CBJ and State concerns about the lack of information related to the project, TCI made a number of commitments to provide several additional documents for future planning and review. These commitments were incorporated into the project description of the CD, including future development of a wildlife management plan, pest management plan (related to use of pesticides) and others. TCI, the CBJ and the agencies all knew that these additional materials would require review in the future. ADF&G issued a Title 16 Fish Habitat permit for 23 stream crossings in a timely fashion following issuance in 1998 of the ACMP Consistency Determination (CD).

Since 1998, ADF&G has participated in the next phase of the review: the issuance of the Conditional Use Permit (CUP), which is a City and Borough of Juneau (CBJ) requirement, not an ADF&G permit. ADF&G has been consulted by the City both as an expert agency and as a legal participant in the CBJ review process. As the recognized expert on fish and wildlife for the state, ADF&G provides such assistance on a daily basis to municipalities, other agencies, commercial businesses, and the general public.

The Governor's statement points toward "*the Habitat's biologist*" who "*kept reopening the process by alleging that new information was required.*" We strongly disagree. There was no subsequent "reopening" of the process. The Department of Fish and Game, not an individual biologist, continued to work with the CBJ and TCI. The 1998 ACMP review included commitments by TCI to provide additional planning and review documents prior to construction of the golf course. The CBJ added to these requirements during their CUP process. ADF&G has worked with both the City and the applicant to obtain and review the required information.

The original ACMP project description, which describes TCI's proposal, also included the following commitment:

"There would be 66-foot buffers on each side of ordinary high water on all tributaries of Peterson Creek."

Note that this applies to all tributaries, not just fish habitat. It describes the applicant's proposal, not ADF&G or ACMP requirements.

An additional stipulation proposed by ADF&G was included in the final CD:

"Sixty-six foot undisturbed stream buffers measured from the ordinary high water mark on each side of the stream, and in the condition they are found today, must be maintained along all fish streams other than at road and golf cart trail crossings."

Note that this is less stringent than the applicant's proposal as described in the project description, since it applies only to fish streams. It does not distinguish between anadromous and non-anadromous habitat. Like all applicants, TCI had the opportunity to discuss the description and stipulation in draft, as well as the opportunity to elevate the CD to the directors and commissioners if they disagreed with any portion of the CD. TCI did not object to the description or stipulation, nor did they elevate the ACMP CD.

In 2000, after two years in which no further documents or plans related to the golf course were submitted to ADF&G for review, TCI requested that ADF&G reissue the Fish Habitat Permits for stream crossings, and applied for a Conditional Use Permit from the CBJ. At this point, TCI

objected to the 66-foot buffers on any streams other than 6 cataloged tributaries of Peterson Creek. TCI indicated that they had never intended to place such buffers on all streams or on all fish streams, despite the clear language in the CD. TCI contended that the CD inaccurately portrayed the project and their commitments, but we have found no documentation that this is correct.

Given the disagreement between TCI and the state regarding the protection of fish habitat, ADF&G agreed to work with TCI to evaluate smaller buffers on streams affected by the project. ADF&G conducted a full survey of streams in the project area, identifying 17 additional anadromous waters that TCI had not identified as fish bearing in the original project review. After considerable discussion and negotiation, TCI redesigned the golf course to minimize effects on fish habitat, and ADF&G agreed to variable-width buffers that range from no standing trees at all to 66 feet, depending on specific stream characteristics and values. ADF&G, TCI and the CBJ signed a letter of agreement pertaining to these changes in September 2002.

This is a complex project located in an area with high fish and wildlife values. The need to address such issues as use of pesticides, protection of drinking water and water quality, wetland protection and windthrow, and other issues managed by a variety of federal and state agencies as well as the CBJ have required substantial time and effort, only a portion of which has been related to ADF&G's concerns for protection of fish, wildlife, and the users of these resources.

DOROTHY LAKE HYDROELECTRIC PROJECT – In the press conference, the governor said, *"The Dorothy Lake Hydro Project, which will provide electricity to southeastern Alaska, is being held up over the concerns about eastern brook trout, which was introduced in the 1920s. One of the functions of the Department of Fish and Game commissioner is to manage, protect, maintain, improve and extend the fish, game and aquatic plant resources of the state in the interest of the economy and the general well being of the state. This statutory requirement clearly envisions a balancing of public interest, such as those embodied in the Dorothy Lake hydro project. Further, there is no specific statute or regulation that says the Department of Fish and Game has to protect non-native species, although I personally feel that they certainly should. Requirements for instream flow, intake screens and minimum water depths, which go beyond reasonable measures needed to protect the state's legitimate interest, only serve to make the project uneconomical. From a personal experience point of view, I have observed the Ward Lake system in Ketchikan, where the third lake was dammed to accommodate the Ketchikan Pulp Mills in the late 60s or thereabout, and there's a significant flow of water goes out of that dam and down in the pulp mill. There are eastern brook trout in that system previous to this dam being built, and there are eastern brook trout today. And I don't know a lot about habitat biology, but I do know that they managed to survive and they're still there for the enjoyment for folks in Ketchikan."*

H&R Region I Response - Summary

Lake Dorothy is a 4-mile long lake at 2400 feet elevation that spills down to Lieuy Lake, then Bart Lake and finally empties into Taku Inlet, 12 miles from Juneau. The applicant, Lak Dorothy Hydro, Inc. (LDHI), has proposed a hydroelectric project that would:

- Prevent Lake Dorothy brook trout from reaching their spawning habitat in some years.
- Allow brook trout to be entrained into the hydro facility's intakes, with potential high mortality;
- Seasonally remove all water from Lower Dorothy Creek between Bart Lake and Taku Inlet, eliminating an isolated population of brook trout

ADF&G has the duty to protect, maintain, enhance and extend fish and wildlife populations under the State Constitution, duties of the commissioner, and the Fishway Act (AS 16.05.840). These statutes also recognize that fish and wildlife values must be evaluated against other beneficial uses. ADF&G has always recognized that fish and wildlife and their users are only a portion of the beneficial uses that must be considered. Clearly, considerations such as the reduction in use of fossil fuels, economics and municipal needs for electricity are valid and important uses that must be considered as well.

The statutes do not differentiate between native species and non-native species (e.g. elk, bison, eastern brook trout, and rainbow trout) or species that have been extended into additional areas (e.g. black-tailed deer, coho, sockeye and Chinook salmon).

Under §10(j) of the Federal Power Act, Federal Energy Regulatory Commission (FERC) licensing statutes recognize the importance of state input, and give state fish and wildlife agencies such as ADF&G, along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, special authority to make recommendations for terms and conditions for power projects.

ADF&G approaches all projects, including FERC licenses, in a routine, organized manner that includes: 1) Identification and analysis of fish and wildlife values (including both populations and habitat) along with the users of these resources; 2) Determination of the protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility. (Note that although our staff are very experienced, and therefore able to ask pertinent questions and suggest possible alternative measures, we normally rely on the applicant for this information); and 4) Working with the applicant to identify and select appropriate and feasible mitigation actions to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

To obtain this information, FERC and resource agencies typically ask the applicant to conduct studies in order to assess environmental effects and to determine the resource protection, mitigation and enhancement measures. FERC must obtain adequate information on all aspects of the project, including effects on fish and wildlife and natural, cultural, recreational, and tribal resources, in order to perform its NEPA environmental analysis, to assess project economics and feasibility, and to carry out other regulatory responsibilities.

FERC also needs information from studies in order to make an informed decision as to the appropriate level and type of resource measures to include in licenses, and to ensure that their decisions are supported by substantial evidence. FERC recognizes that both state and federal

agency expertise in fish and wildlife is critical to maintaining the credibility and success of the licensing process, and ensuring that the needed studies are scientifically and professionally designed. FERC regulations provide several means of dispute resolution if a dispute arises between an applicant and a resource agency or Indian Tribe regarding the need to conduct studies or gather information.

At the time of the Governor's State of the State address, ADF&G and LDHI had completed steps 1 and 2 above, and we were in the process of working through steps 3 and 4. The entire timeline and schedule for FERC licensing is set in federal regulation. Delay of the project is not at the discretion of ADF&G or other reviewing agencies, and our recommendations are not intended in any way to block the project. ADF&G's comments to FERC were due on February 19th, and have been submitted.

As confirmed in LDHI's January 21, 2003 letter to Bill Hanson, H&R Regional Supervisor, ADF&G and LDHI have worked conscientiously and well to consider all aspects of this project and discuss various options for protection, economic feasibility and off- site mitigation.

The Governor's comments on this project suggest that parallels exist between the brook trout populations potentially affected by the Dorothy Lake project and brook trout in the Ward Lake system in Ketchikan. A comparison of the potential effects of a hydroelectric project on the Dorothy Lake brook trout population and the population in the Ward Lake system would not be valid. ADF&G Division of Sport Fisheries data indicate that brook trout in the Ward Lake system occur only in Perseverance Lake, the uppermost lake in the system, which is inaccessible to anadromous fish due to a natural barrier. Unlike Lake Dorothy, therefore, fish passage needed to maintain access to spawning habitat in Perseverance Lake was not put at risk by Connell Lake Dam, nor was the Perseverance Lake brook trout population ever affected by downstream water withdrawals associated with the this dam. However, Connell Lake Dam, which was built to provide water for the Ketchikan Pulp Company in 1953, prior to any requirement for a federal NEPA review and prior to the existence of ADF&G, currently blocks several miles of stream and lake habitat that previously supported coho salmon, sockeye salmon, and steelhead.

Falls Creek Hydroelectric Project – The governor said, *"The Habitat Division, together with the US Park Service, has also contributed to the delays in moving forward in the Falls Creek Hydro project near Gustavus. Unending demands for more studies have become a hallmark for the way this division oftentimes does business, and having had a personal opportunity to pursue a FERC waiver for that particular project, which obviously would reduce dependency of Glacier Bay of power generation from diesel power, why I could never understand why everybody didn't get behind this and recognize it as a considerable contribution to the environment."*

H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be

required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

FERC licenses are issued for a 50-year period. Such a long-term project, which can essentially be renewed forever, deserves careful consideration, including studies sufficient to fully evaluate the short and long-term effects on fish and wildlife populations and their users. This commitment to making decisions on the basis of science, which includes both studies and the best judgment of highly professional biologists, is a fundamental goal and task of ADF&G.

For the Falls Creek project, ADF&G, the US Fish and Wildlife Service and the National Marine Fisheries Service have completed steps 1 and 2 above. During our most recent discussions with the applicant, he indicated that an instream flow license requirement to maintain an isolated Dolly Varden char population in the bypass reach would make the project economically unfeasible. Instream flow requirements to sustain fish production are among the basic conditions required at hydroelectric projects. Nearly all projects in operation are required to maintain instream flows if sport or commercial fish species are present.

The applicant indicated that he would investigate alternatives for off-site mitigation in lieu of the instream flow reservation, but has not returned for any further discussions with ADF&G. ADF&G is simply waiting for his proposal.

The National Park Service (NPS), which is currently the landowner, and FERC are completing an environmental impact statement (EIS) on the proposed Falls Creek project. The project also involves a complicated land swap of Glacier Bay National Park and Preserve wilderness area for state land. Under the Federal Power Act (FPA), FERC is not allowed to license a project in a national park. Therefore, legislation was enacted to change the status of land ownership contingent on agreement that the project will not adversely impact the purposes and values of the park and preserve. The Falls Creek project area will become state land only if the project is acceptable for licensing by FERC. Conservation groups provided some support for the enabling trade legislation. However, several national and Alaska groups now oppose either this land trade or the project. Locally, two neighboring Native Allotments, the Bear Track Lodge, and the Hoonah Indian Association have intervened with FERC opposing the hydroelectric project.

ADF&G has not delayed this project. Rather, we are waiting for the applicant's proposal for off-site mitigation and will be asked to comment on the EIS.

Ketchikan Southeast Intertie – In the State of the State address, the governor mentioned the southeast intertie as an example of his statement that “*On many occasions, the Habitat Division has been the sole agency opposing and delaying legitimate projects important to the state.*”

H&R Region I Response - Summary

In no way did ADF&G oppose or delay this project. In our 1995 scoping comments to the Forest Service on the Tyee-Swan Lake Intertie (the Ketchikan Southeast Intertie to which the Governor refers), ADF&G sought clarification of the extent of road construction associated with the intertie project, which would construct a transmission line to connect the electrical systems serving Ketchikan, Wrangell, and Petersburg. Although road construction was included in several of the original scoping alternatives, the Alaska Energy Authority (AEA) originally proposed using helicopters instead of constructing a road. This was based on an independent feasibility study (completely unrelated to ADF&G) that concluded road construction would not be cost-effective. In our scoping comments, ADF&G indicated “...a helicopter constructed transmission line should not significantly affect fish habitat”. We also stated: “Construction of the transmission line only, in the absence of the road, would eliminate the majority of environmental impacts which would need to be considered in the EIS”.

The ADF&G review of the 1996 Draft EIS acknowledged clarification of the issue and stated the reduction in road construction “... has resulted in significantly fewer stream crossings, the avoidance of wetlands and other sensitive areas, less cumulative impact, fewer secondary impacts, and an overall reduction in fish and wildlife habitat losses.”

Following issuance of the FEIS, ADF&G did not provide any formal additional comments, but did indicate to DGC that the EIS adequately addressed protection of fish and wildlife. ADF&G told a consultant for the Forest Service that right-of-way clearing would not require Fish Habitat permits, provided nothing (equipment, trees, brush, etc.) entered fish streams. The DGC Final Consistency Determination included standard conditions necessary to protect water quality by minimizing the introduction of sediments and petroleum products into streams.

Rather than delaying this project, ADF&G worked hard to ensure that it was reviewed and handled efficiently.

1996 Board of Forestry Report: The Governor’s statement that “*almost all of the allegations were proven to be unfounded*” is incorrect.

The Science and Technical Committee (S/TC) organized under the auspices of the Board of Forestry, and including both agency and industry representatives, evaluated the concerns raised by ADF&G in the 1996 Board of Forestry Report. The S/TC recommended that approximately 12 issues should be handled by staff training, monitoring, or informational pamphlets to timber operators, but did not require changes to the FRPA statutes or regulations, and that one issue,

yarding corridors through riparian buffers, should be remanded back to the three resource agencies for further discussion and resolution.

The S/TC and S/TC Implementation Group further dealt with the remainder of the issues directly, with important recommendations (among others) for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources relating to the following topics:

- Requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- Ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- Removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- Recommendations for road construction in unstable or steep areas (Issue 3)
- Requiring a variation to remove trees within fish streams
- New definition of blockage to fish passage (Issues 6 and 16)
- Stream classification system and unclassified streams (Issue 17a)
- Improved slope stability standards encouraging retention of low-value and non-merchantable trees

Clearly, the concerns raised by ADF&G (which were not "allegations"), included many valid and important issues. The S/TC process was a difficult, but essential, means of handling these issues, and resulted in substantial improvements to the FRPA process.

cc: A. Ott, ADF&G
L. Trasky, ADF&G
E. Fritts, ADF&G

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Lance Trasky
Regional Supervisor
Region II
Habitat and Restoration Division

DATE: February 11, 2003

SUBJECT: Response to Governor Murkowski's February 3, 2003, Press Conference Comments

During his press conference on February 3, 2003, Governor Murkowski cited several projects in the Southcentral Region of Alaska that he viewed as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. He also stated that ". . . we have seen in the Habitat Division the development of a reputation on some major clearances, the reputation for delay, a reputation for inflexibility, and an input based on protection on the basis of personal viewpoint." We reviewed the examples cited in the governor's speech and found that there were significant errors and omissions that he was probably not aware of when he gave the speech. For example, it did not take 16 months before ADF&G issued a permit. The coastal consistency determination for the Glenn Parks Interchange was issued on March 19, 2002, not 2001 as stated by the governor. The examples the governor cited that are applicable to H&R Region II include (1) Tok Highway reconstruction projects, (2) Glenn Parks Highway interchange, (3) Sterling Highway stabilization project, and (4) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A summary of our response to each of the topics raised by the governor is provided below with more details of each project provided as attachments to this memorandum:

TOK HIGHWAY – The governor said, *“On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and mitigation measures. Habitat's foot-dragging has caused a delay in obtaining the needed permits from the Corps of Engineers.”*

H&R Region II Response - Summary

Tok East 30 is an Alaska Department of Transportation and Public Facilities (ADOT&PF) project to upgrade the Tok Cutoff. The project includes replacement of bridges over the Chistochina River and Sinona Creek, filling approximately 28 acres of wetlands, and diverting a clear water tributary of the Copper River.

The ADF&G, in scoping comments provided on March 3, 2000, had no objection to the project concept, however, ADF&G's comments noted that Fish Habitat Permits would be required for the Chistochina River and Sinona Creek bridges. In ADOT&PF's project description there was no mention of a stream diversion, 28 acres of wetland fill, or placement of material below the ordinary high water line of fish bearing waters.

The ADF&G scoping response was provided initially to note resources of concern based on a general project concept, not specific details. ADF&G didn't change its mind, ADOT&PF changed the project. When, over a year later during July 2001, the ADF&G learned that the project would require a stream diversion and 28 acres of wetland fill, we requested plans and specifications for the stream diversion, a copy of ADOT&PF's alternatives analysis, their sediment and erosion control plan, and the mitigation plan.

On July 3, 2000, ADF&G received Fish Habitat Permit applications based on preliminary plans from ADOT&PF for bridge replacements on the Chistochina River and Sinona Creek. ADF&G issued a permit for the Chistochina River bridge on August 4, 2000 (ADF&G response time 32 days) and requested more information of the Sinona Creek crossing. On August 24, 2000, ADOT&PF provided the additional information and a permit was issued on November 13, 2000 (ADF&G response time 81 days). To date the work has not been completed

The project delays mentioned by the governor do not pertain the ADF&G. The U.S. Army Corps of Engineers (USACE) permit was not issued until April 15, 2002, and it does not go into effect until the applicant (i.e., ADOT&PF) signs the permit. However, as of February 10, 2003, ADOT&PF had not signed it. Instead, we are told, ADOT&PF is now in the process of upgrading their plans and will be submitting a revised proposal at some time in the future. In addition, final plans and specifications for the proposed stream diversion that were requested by ADF&G on August 30, 2001, and December 5, 2001, are being cooperatively developed.

A more detailed timeline of the above summary is found in Attachment 1.

Glenn Parks Highway interchange – The governor said, *“On the Glenn Parks Highway interchange, we saw another example of the Habitat division ignoring the DGC consistency*

process. The state DOT sought Title 16 permits to allow this vital infrastructure to be constructed. The final consistency determination was issued March 2001, but Habitat did not issue a permit until 2002, 16 months after the deadline for issuing permits after a consistency review becomes final. Furthermore, some of the needed Title 16 permits were held up until January 2003, nearly two years after the consistency review was finalized."

H&R Region II Response - Summary

1. The ACMP Final Consistency Determination was issued on March 19, 2002 (not 2001). The project was scheduled to begin construction in the fall of 2002 (it began in August 2002).
2. All ADF&G permits have been issued in a timely manner. The Governor implied that ADF&G permits were to be issued concurrently with the Consistency Determination, however, that document specifically states that ADF&G permits would be issued within 30 days of our receipt of detailed plans for those specific portions of the project that required our authorization. Because this is a design-build project, the plans and specifications are not available until the contractor completes them and is ready to go to work. The design build contract was awarded to CH2M Hill/ Kiewit Pacific August 1, 2002. Habitat and Restoration worked with the contractors to modify the conceptual design to both reduce impacts on fish habitat and reduce costs. The first permit application was received by ADF&G on September 19, 2002. To date, seven Fish Habitat Permits have been issued for the project in a very timely manner with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 2.

Sterling Highway stabilization project – The governor said, *"Another example is the stabilization project on the Sterling Highway, where Anchor River scouring has been threatening the stability of the highway for several years. The Habitat Division has contributed to the delays in addressing this major safety issue because it would not agree to several proposals to install riprap. DOT was told that the Department of Fish and Game would deny any permits that proposed riprap despite assertions by DOT hydrologists that vegetated stabilization would be less effective and more expensive. Last October's flooding, however, proved the vegetation stabilization would have been much more effective. The Habitat Division has been unwilling to work with experienced highway engineers to develop alternatives that balance the interest of the traveling and public and instream habitat. I think we all agree that Alaska is entitled to safe highways."*

H&R Region II Response - Summary

The Sterling Highway Mile 161.4 project included armoring the Anchor River bank adjacent to the highway. On April 30, 2001, the Alaska Department of Transportation proposed to armor 1,000 linear feet of Anchor River streambank with riprap to protect the area from erosion. A week later resource agencies (i.e., ADF&G, EPA, USFWS) and the Kenai Peninsula Borough inspected the site with ADOT&PF representatives. In June 2001, resource agencies suggested changes to the plan that would better protect/enhance the nearshore fish habitat and simultaneously retain the riprap foundation desired by ADOT&PF. Six months later, during January 2002, ADOT&PF requested a meeting to discuss the hybrid designs. The final designs were being completed by ADOT&PF and USFWS when on April 29, 2002, high waters created by an undersized culvert on an Anchor River tributary stream caused water to overtop the road and weaken the road embankment. Under an ADF&G emergency authorization, issued immediately upon notification of the situation during the evening of April 29, 2002, the riverbank was armored on April 30, 2002, to protect the highway embankment.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 3.

1996 Board of Forestry Report – The governor said, *"In 1996 the Habitat Division delivered a report to the Board of Forestry alleging dozens of problems of implementing the forest resources and practices act, and after more than a years of scientific reviews and investigations, that consumed vast amounts of state time and state money, virtually all of the allegations were proven to be unfounded."*

H&R Region II Response - Summary

The Forest Resources and Practices Act (FRPA) requires that ADF&G submit an annual report to the Board of Forestry (BOF) on the effectiveness of the FRPA statutes and regulations in protecting fish and wildlife resources. The law also requires that the department offer recommendations to correct any procedural or substantive problems. On January 16, 1996, ADF&G submitted its annual report pursuant to AS 41.17.047. The report was titled *1995 Report to the Board of Forestry*. The report discussed ADF&G frustrations and concerns about (1) inadequate funding, (2) interagency coordination, and (3) administration of FRPA. The report also identified a number of technical, biological, and economic issues that related to the implementation and effectiveness of FRPA. The department was simply fulfilling its responsibilities according to the statute.

The BOF then requested the formation of a Science/Technical Committee (S/TC) to review all of the concerns and issues and make recommendations to the BOF for statutory and regulatory changes. The S/TC consisted of approximately 25 state and federal scientists, state field personnel, and scientist-representatives of the fishing and timber industries. As a result of work completed during the S/TC review process, a bill (HB 373) amending parts of FRPA based upon S/TC recommendations was crafted and submitted to the state legislature. The bill was adopted and the FRPA statutes and regulations were improved.

A more detailed description of the work completed and issues addressed, as well as forest industry and agencies comments concerning the process that resulted from ADF&G's original report is provided in Attachment 4.

Should you have any questions or if I can provide addition information please do not hesitate to let me know.

cc: A. Ott, ADF&G
B. Hanson, ADF&G
E. Fritts, ADF&G

Tok Cut Off Milepost 30-38

Timeline:

- 1) January 26, 2000, ADF&G received a request for scoping comments from the ADOT&PF for Tok Cut Off MP 30-38. The request was based on the project concept, not specific details. It did not include mention of 28 acres of wetland fill or a stream diversion. On March 3, 2000, the ADF&G responded to the request for scoping comments with a letter of non objection stating that permits would be required for the new bridge at Sinona Creek, and the replacement bridge at the Chistochina River. (ADF&G review time 36 days)
- 2) On July 3, 2000 the ADF&G received permit applications for the Chistochina River and Sinona Creek bridge replacements based on preliminary plans and specifications. (see 4, 5, and 6 below for response information).
- 3) On July 17, 2001, the ADF&G received a notice from the Corps of Engineers that the project would involve the placement of fill in 28 acres of wetlands adjacent to the Copper River and would divert an unnamed tributary stream of the Copper River. This information had not been previously provided to the ADF&G. (see 7 below for response information)
- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (ADF&G response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. (ADF&G response time 32 days) To date no construction work has been done.
- 6) On August 24, 2000, the ADF&G received the additional information requested about the Sinona Creek Bridge. On November 13, 2000, the ADF&G issued the Fish Habitat Permit. (ADF&G response time 81 days) To date no construction work has been done.
- 7) On August 30, 2001 the ADF&G provided comments to the Corps of Engineers, with a copy to the ADOT&PF, expressing concerns about the wetland fill, stream diversion, the lack of plans for the stream diversion, and the lack of mitigation. This was not a change of ADF&G's previous position, but a revision based on new project information (approximately 28 acres of wetland fill and a stream diversion). (ADF&G response time 44 days)
- 8) On September 21, 2001 the ADOT&PF provided additional information regarding sediment and erosion control and wetland impacts. Plans and specifications for the stream diversion were not included.

- 9) On November 30, 2001, requests for a permit amendments were received from DOT&PF for the Sinona Creek and Chistochina River bridges. (see 10 and 11 below for response information)
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (ADF&G response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (ADF&G response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion because the September 21, 2001 information was not sufficient (ADF&G response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion. (ADOT&PF response time 172 days)
- 14) On August 13, 2002, the ADF&G conducted site inspections of the Chistochina River Bridge and the unnamed stream that the ADOT&PF plans to divert. Fish (i.e., burbot and salmonids) were found in the unnamed stream.

The Corps of Engineers permit for the project was issued on April 15, 2002. According to Jan Stuart (personal communication on February 7, 2003), of the U. S. Army Corps of Engineers Regulatory Branch, the ADOT&PF has not yet signed that permit.

According to ADOT&PF, Melissa Parker (personal communication on February 7, 2003) the ADOT&PF is upgrading plans and specifications for the entire project and will be submitting those plans in the near future.

Glenn Park Highway Interchange

Resource Concerns

The project affects approximately 30 acres of high value wetlands within the boundary of the Palmer Hay Flats State Game Refuge and two anadromous fish streams – Spring Creek and Liepitz Creek. Both these streams and their connected wetlands support very high densities of rearing and overwintering coho salmon. Spring Creek has been documented to support over 600 juvenile coho salmon per acre. Cook Inlet coho salmon stocks have been declining for many years. During the regular meeting cycle in a 1999 and then during in a special meeting in 2000, the Board of Fish (BOF) implemented changes to the commercial fishery and reduced the bag limit for coho salmon in the sport fishery in an attempt to increase escapement to Upper Cook Inlet spawning areas. The BOF reaffirmed its actions during meetings in 2002 when proposals were reviewed that would have relaxed the changes made in 1999 and 2000. Because young coho salmon spend a year or more in freshwater systems before going to the sea, it is critically important to maintain their freshwater habitat, particularly streams and wetlands like Spring Creek and Liepitz Creek that are so extremely productive.

Project Information

The Glenn Parks Interchange is a Department of Transportation and Public Facilities (ADOT&PF) “design-build” project. “Design-build” means that the ADOT&PF provides the project concept and the “design-build” team subsequently develops the specific construction plans. The ADOT&PF project concept was reviewed for consistency with the ACMP, and found consistent, with alternative measures, on March 19, 2002, not March 2001 as the Governor stated. The “Design-Build” team (CH2M Hill/Kiewitt Pacific) was selected in June 2002.

Chronology

1. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
2. March 19, 2002: The ACMP Final Consistency Determination was issued.
 - The Determination included Alternative Measure number 10, which reads as follows: *“Sufficient construction installation plans and specifications for all work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 shall be provided to the ADF&G for review and approval at least 30 days prior to beginning construction. All work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 (including springs, seeps, backwaters, sloughs, distributaries, or surface waters connected to these creeks) is prohibited without the prior written approval of the ADF&G.”* Since, at that time the “design-build” team had not been selected, and plans had not been submitted, the ADF&G could not issue a permit.

3. April 16, 2002: The US Army Corps of Engineers issued its Department of the Army Permit. This permit was later modified with an effective date of September 16, 2002 to accommodate design changes made by the contractor.
4. June 24, 2002: Anticipated date of ADOT&PF's announcement of Notice of Intent to Award the primary contract for the project.
5. August 2002: Anticipated date of award of primary contract for the project.

ADF&G Permits

Note: Project designs and specifications often changed after the design materials had been submitted to the ADF&G for review. The dates provided below refer to the dates that final plans were received.

6. On Thursday, September 19, 2002, the ADF&G received an application for the placement of temporary and permanent fill below the OHW mark of Spring Creek. On Wednesday, September 25, 2002, the contractor notified the ADF&G of their desire to begin placing fill materials the following morning. A Habitat Biologist drove to the project site and a field permit was issued to allow the work. **Time to issuance: 2 hours.**
7. On Thursday September 26, 2002, Fish Habitat Permit FG 02-II-0617 was issued authorizing and addressing all aspects of the placement of temporary and permanent fill below the OHW mark of Spring Creek. **Time to issuance: 4 business days.**
8. On Thursday September 19, 2002, the ADF&G received an application for initial construction activities associated with the replacement of the undersized 4-foot culvert. Work begins before the permit was issued. On Tuesday October 1, 2002, Fish Habitat Permit FG 01-II-0458 was issued. **Time to issuance: 8 business days.**
9. On Monday, September 30, 2002, the ADF&G received an application to place permanent fill below OHW of Spring Creek. On Monday, October 14, 2002, Fish Habitat Permit FG 02-II-0624 was issued. **Time to issuance: 10 business days.**
10. On Tuesday, November 5, 2002: ADF&G receives application for the placement of temporary fill below OHW of Spring Creek. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Monday, November 25, 2002, the Field Permit FG 02-II-0658 was issued (Later changed and recorded as FG 02-II-0692). **Time to issuance: less than 1 business day.**
11. On Thursday, November 7, 2002, the ADF&G received an application for final construction activities associated with replacement of undersized 4-foot culvert. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review

details of construction. On Wednesday, November 27, 2002, Fish Habitat Permit FG 02-II-0622 issued. **Time to issuance: 3 business days.**

12. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**

13. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**

STERLING HIGHWAY MILE 161.4

1. Resource and Statutory Concern:
 - A. High value salmon, steelhead, and Dolly Varden rearing habitat and salmon spawning habitat within this section of the Anchor River.
 - B. Anchor River chinook salmon is presently a "stock of management concern" based on chronic inability to meet escapement goals.
 - C. Anchor River supports a very popular sport fishery for chinook salmon, coho salmon, Dolly Varden, and steelhead. This sport fishery is extremely important to the local economy.

2. Was the project delayed by Title 16 permitting actions delay the project? NO
 - a. The ADF&G received a request from ADOT&PF for scoping comments in April 30, 2001.
 - b. The ADF&G, US Fish and Wildlife Service (USFWS), Kenai Peninsula Borough (KPB) and EPA conducted a site inspection with ADOT&PF on May 8, 2001.
 - c. ADOT&PF sent revised plans to ADF&G on May 23, 2001.
 - d. ADF&G sent formal recommendations on June 8, 2001, prior to ADOT&PF's comment deadline. ADF&G recommended the addition of bioengineering components to the riprap along the streambank.
 - e. ADOT&PF formally responded to ADF&G recommendations: "We (ADOT&PF) expect to have firm design drawings during winter 2001/02."
 - f. January 7, 2002, ADOT&PF requested a meeting with EPA, KPB, USFWS and ADF&G to discuss new proposal. Agencies and ADOT&PF conceptually agreed to new "hybrid" design incorporating bioengineering into riprap above the ordinary high water level.
 - g. March 28, 2002, USFWS provided ADOT&PF with a sketch of what they believed was agreed to at the January 7th meeting.
 - h. During late April 2002, spring meltwater caused a small tributary to the Anchor River to inundate an undersized culvert, overtop the Sterling Highway and damaged the road embankment. ADOT&PF placed riprap armor to stabilize roadway after consultation with ADF&G.

3. If the project was delayed, why? Our files indicate that the ADF&G responded to ADOT&PF inquiries prior to their deadlines. We were also available to meet with ADOT&PF on several occasions. The ADF&G, KPB, USFWS, NMFS and EPA all recommended ADOT&PF incorporate habitat components to the original design during initial project scoping.

4. Did the issuance of Anadromous Fish Act (AS 16.05.870) or Fishway Act (AS 16.05.840) delay the project? NO

On Monday April 29, 2002, an ADOT&PF representative contacted the ADF&G representative at home at approximately 7:00 pm concerning the flow across the road. Emergency authorization was immediately given to complete the work necessary to protect the Sterling Highway from damaged resulted from an undersized culvert causing water to flow across the highway. The riverbank was stabilized on April 30, 2002 with riprap armor.

1996 Board of Forestry Report

Issues from the ADF&G report ultimately were addressed by the Science/Technical Committee (S/TC) through the following actions:

1. Approximately 12 issues addressed by the S/TC recommendation to the Board of Forestry (BOF) were that staff training, monitoring, or informational pamphlets to timber operators would be a more appropriate actions to take, rather than changing the FRPA statutes or regulations.
2. The 'yarding corridors through riparian buffers' issue was remanded back to the three resource agencies by the ST/C for resolution.
3. The S/TC and S/TC Implementation Group ultimately addressed the remaining (approx. 20) issues. The three resource agencies (i.e., ADNR, ADEC, and ADF&G) concurred with the recommendations reached by the S/TC and the S/TC Implementation Group and the BOF. A sample of the more important recommendations for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources include:

- requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- recommendations for road construction in unstable or steep areas (Issue 3)
- requiring a variation to remove trees within fish streams
- new definition of blockage to fish passage (Issues 6 and 16)
- stream classification system and unclassified streams (Issue 17a)
- improved slope stability standards encouraging retention of low-value and non-merchantable trees

The Governor's statement that "*almost all of the allegations were proven to be unfounded*" is incorrect. As a result of the work done by the S/TC and the S/TC Implementation Group, amendments to improve the FRPA were promulgated in the form of HB 373 that was passed by the legislature in 1999. If the ADF&G had not fulfilled its agency responsibility under FRPA, the bill amending parts of FRPA based upon S/TC recommendations (i.e., HB 373) would never have occurred.

The updates to the FRPA and the process used to evaluate the issues and make changes were supported by the timber industry. In testimony before the BOF on January 13, 1998, the then Executive Director of the Alaska Forest Association (AFA), Jack Phelps (currently Environment/Natural Resources Advisor to Governor Murkowski) pointed out that "*The cooperative effort between the agencies and affected industries has led to refinements in the way forest practices are performed in Alaska, and will help ensure that Alaska continues to lead the nation in both fisheries and forest management*" (see <http://www.akforest.org/fishpro.htm>). During testimony concerning HB 373 (a bill amending parts of FRPA and based upon S/TC

recommendations) on February 19, 1998, before the House Resources Committee, Mr. Phelps reaffirmed that position and stated "*In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This bill can and should enjoy full, bi-partisan support. I urge its speedy passage.*" (see <http://www.akforest.org/2-19-98.htm>). On March 6, 1998, the Alaska State House of Representatives passed HB 373 and Mr. Phelps on behalf of AFA issued a press release stating, "*This legislation, which has the strong support of the timber industry, is good for fish, it is good for the industry, and it is good for all Alaskans.*" (see <http://www.akforest.org/3-6-98.htm>) In the Final Report on Resolution of S/TC Issues (June 17, 1998), ADNR, ADF&G, ADEC, and the BOF concluded that, "the S/TC review was a positive, constructive process."

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SENATE COMMITTEE REPORT

DATE: 3/31/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4-24-03

Resources Committee considered SENATE BILL NO. 31

SB 31 RAILROAD UTILITY CORRIDOR TO & IN CANADA

"An Act relating to a railroad utility corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

and recommends:

- be replaced with _____ CS SB 31 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DCED	2/7/03		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Joseph DeBruin</i>	✓			
<i>Ben Stevens</i>	✓			
<i>Tommy H. Johnson</i>	✓			
<i>Paul Johnson</i>	✓			
<i> </i>				
<i> </i>				
<i>CHAIR: Scott Olsen</i>				



SENATOR SCOTT OGAN Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek
Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: Leglegal
COMPANY:

FROM: Linda Hay - Senate Res

DATE: 4-23-03

FAX NUMBER:

TOTAL NO. OF PAGES INCLUDING COVER:
1

PHONE NUMBER:

RE: final

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Please send over a final of SB 31 which moved out of Senate Resources late this afternoon

The correct version is:

23 LS0336 \ S
Utermohle 4/23/03

Please deliver to Room 103

Thank you

23-LS0336S
Utermohle
4/23/03

CS FOR SENATE BILL NO. 31()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS COWDERY, Wilken

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to a transportation corridor for extension of the Alaska Railroad to
2 Canada and to extension of the Alaska Railroad to connect with the North American
3 railroad system."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 42.40 is amended by adding new sections to article 5 to read:

6 Sec. 42.40.460. Extension of the Alaska Railroad. (a) The corporation may
7 delineate a proposed transportation corridor between the existing railroad utility
8 corridor of the Alaska Railroad and the border of Alaska and Canada. The
9 transportation corridor shall be 500 feet wide except where, in the corporation's
10 discretion, physical obstacles or private land ownership patterns make a narrower
11 transportation corridor appropriate. The transportation corridor may be designated for
12 a use identified under AS 38.35.020(a) or AS 42.40.350(b), and, subject to this
13 section, other transportation and utility uses. The corporation may also identify land
14 for use as rail land that can be developed for terminal, station, and maintenance

1 facilities, switching yards, and other purposes associated with the transportation
2 corridor. The corporation shall prepare a complete legal description of the proposed
3 transportation corridor and the rail land identified under this subsection.

4 (b) In performing the work authorized by (a) of this section, the corporation in
5 consultation with interested parties shall consider the following factors:

- 6 (1) safety;
- 7 (2) grade and alignment standards that are commensurate with rail and
8 utility construction standards and that minimize the prospect of at-grade railroad and
9 highway crossings;
- 10 (3) availability of construction materials;
- 11 (4) effects on and service to adjacent communities and potential
12 intermodal transportation connections;
- 13 (5) environmental concerns;
- 14 (6) use of public land to the maximum degree possible;
- 15 (7) minimization of probable construction costs;
- 16 (8) the location of and the opportunity to obtain access to identified
17 natural resources that could contribute significantly to the economic development of
18 the state and Canada;
- 19 (9) avoidance of possibly unstable ground due to thawing of frozen
20 soils; and
- 21 (10) prior and established traditional uses.

22 (c) If the corporation identifies all or a portion of the proposed transportation
23 corridor or associated rail land and if the Department of Natural Resources, after
24 consultation with the corporation and potentially affected parties, finds that the
25 location of the proposed transportation corridor and associated rail land minimizes
26 adverse effects on existing and potential rights-of-way and land uses associated with
27 the location, construction, and operation of a gas pipeline in a manner that is in the
28 best interest of the state,

29 (1) the Department of Natural Resources shall reserve the
30 transportation corridor and associated rail land across state land identified by the
31 corporation, subject to valid existing rights and provisions of this section;

1 (2) the department shall continue to manage the land reserved under
2 (1) of this subsection; the department shall consult with the corporation before
3 disposing of an interest in land within the transportation corridor and associated rail
4 land; the department shall condition authorizations for activities on the reserved land
5 to protect the right of the corporation to construct the railroad or other uses identified
6 for the land;

7 (3) the department and the corporation shall cooperate to identify, on a
8 continuing basis and to the extent practicable, the potential crossings for economic
9 development and public access along the land reserved for the transportation corridor
10 and associated rail land; and

11 (4) while the land is reserved for the transportation corridor and
12 associated rail land under this subsection, the department may retain moncy received
13 from disposal or third-party use of the land.

14 (d) If the corporation notifies the Department of Natural Resources that the
15 corporation will begin construction of a railroad improvement on a segment of the
16 transportation corridor or associated rail land and the corporation has identified a
17 source of funding for the construction, then, as of the beginning of construction of that
18 segment, the department shall delegate authority to manage land within that segment
19 of the transportation corridor and associated rail land to the corporation, including the
20 authority to authorize or permit use of the land by third parties under the provisions of
21 this chapter, subject to

22 (1) valid existing rights; and

23 (2) the authority of the department to

24 (A) identify and reserve rights-of-way for potential future
25 crossings under (g) of this section; and

26 (B) after consultation with the corporation, identify, reserve,
27 authorize, and manage land within the transportation corridor and associated
28 rail land for future right-of-way leases and uses under AS 38.35.

29 (e) Upon completion of construction of the railroad improvement on all or a
30 portion of the reserved transportation corridor or associated rail land,

31 (1) the corporation shall, without cost to the Department of Natural

1 Resources, provide the department with a survey of the state land within a 200-foot
2 corridor, 100 feet on each side of the as-built centerline of track, and the associated
3 rail land;

4 (2) the Department of Natural Resources shall convey the state's entire
5 interest in the land within the boundaries of the survey to the corporation, subject to
6 valid existing rights, and reserving to the state (A) the interests required by
7 AS 38.05.125; (B) the right of the department to identify and reserve rights-of-way for
8 potential future crossings under (g) of this section; and (C) the authority of the
9 department to identify, reserve, authorize, and manage land within the transportation
10 corridor and associated rail land for future right-of-way leases and uses under
11 AS 38.35; the conveyance of land under this paragraph shall be without cost to the
12 corporation except for the direct administrative costs of the department;

13 (3) the Department of Natural Resources shall assign any existing
14 contracts within that segment of the transportation corridor and associated rail land to
15 the corporation; the corporation may thereafter retain the revenue from the conveyed
16 land; the department shall prorate revenue from contracts affecting both conveyed and
17 unconveyed land;

18 (4) the remaining state land in a segment of the transportation corridor
19 in which the corporation has received a conveyance under this section shall be
20 managed by the Department of Natural Resources as a transportation corridor unless
21 the department determines the land is no longer needed for that purpose; and

22 (5) the remaining segments of the transportation corridor in which the
23 corporation has not completed construction and any associated state land designated as
24 rail land shall continue to be managed by the Department of Natural Resources as a
25 transportation corridor and associated rail land under (c) and (d) of this section.

26 (f) Notwithstanding other provisions of this section, before the Department of
27 Natural Resources grants a gas pipeline right-of-way lease under AS 38.35.020(a)
28 across a transportation corridor or associated rail land delineated, identified, reserved,
29 or conveyed under this section, the department shall consult with the corporation; if a
30 railroad improvement has not been constructed on a segment of the transportation
31 corridor or associated rail land that is crossed by the proposed gas pipeline right-of-

1 way, the department may adjust the location of the transportation corridor or
2 associated rail land if the department finds that relocation of the transportation
3 corridor or associated rail land to accommodate the proposed gas pipeline right-of-way
4 is in the best interest of the state.

5 (g) In delegating management authority over or conveying all or a portion of
6 state land to the corporation, the Department of Natural Resources shall reserve the
7 right to authorize, by lease, permit, or other method, a person to cross or construct
8 access across the transportation corridor and associated rail land; however, before
9 authorizing a crossing or construction of access, the department shall obtain
10 concurrence from the corporation that the proposed crossing or construction is
11 consistent with applicable safety standards and, to the extent practical, minimizes
12 effects on railroad operating efficiency. Neither the corporation nor the state is liable
13 for claims arising from public use of the transportation corridor and associated rail
14 land, except to the extent the claims arise from the gross negligence of the state, the
15 corporation, their employees, or their contractors, respectively. The department shall
16 indemnify the corporation consistent with AS 42.40.420(1) - (3) for claims or related
17 litigation arising from an authorization issued by the department under this section,
18 except to the extent the claims arise from the gross negligence of the corporation, its
19 employees, or its contractors.

20 (h) The corporation shall,

21 (1) as the corporation considers appropriate, exercise its authority
22 under this chapter to acquire rights-of-way across land within the transportation
23 corridor and associated rail land that is subject to the corporation's power of eminent
24 domain;

25 (2) upon delineation of the transportation corridor and identification of
26 associated rail land, expeditiously work with federal officials to secure reclassification
27 and withdrawal of federal land for reservations and rights-of-way across the federal
28 land for use as transportation corridor and rail land; and

29 (3) before undertaking acquisition of federal land or expending federal
30 funds, prepare a report evaluating the effects of construction of an extension of the
31 Alaska Railroad across federal land; the statement must satisfy the requirements for an