

Originally Signed October 16, 2003
Amended January 15, 2004

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ALASKA DEPARTMENT OF NATURAL RESOURCES
AND THE
ALASKA DEPARTMENT OF FISH AND GAME
REGARDING REVIEWS OF LAND AND WATER USE ACTIVITIES

This Memorandum of Understanding (MOU) is established and entered into by and between the Alaska Department of Natural Resources, hereinafter referred to as DNR, and the Alaska Department of Fish and Game, hereinafter referred to as ADF&G.

PURPOSE

This MOU is intended to establish a coordinated relationship between DNR and ADF&G to address continued protection of fish and wildlife and their habitats during the review of land and water use activities and outlines the roles and responsibilities of both departments with respect to the general policy guidelines and operational procedures which DNR and ADF&G agree to follow in implementing and operating under Executive Order (EO) 107 and other land and water project review authorities. This cooperation serves the mutual interest of DNR, ADF&G and the public.

DNR and ADF&G commit to work together to the fullest extent possible to share and use fish and wildlife resource data bases and files that are essential for evaluating project impacts and ensuring the proper protection of fish and wildlife resources in Alaska (e.g., anadromous catalog and atlas, GIS mapped data sets, fish escapement/survey data, etc.).

AUTHORITIES

The Office of Habitat Management and Permitting (OHMP) within the DNR is responsible for issuance of Fishway Permits and Fish Habitat Permits under AS 41.14.840 and AS 41.14.870, respectively and certain responsibilities under the Forest Resources and Practices Act (AS 41.17). The DF&G is responsible for issuance of Special Areas permits under AS 16.20 and project review under the Fish and Wildlife Coordination Act, the Endangered Species Act, other related acts of the U.S. Congress. Both agencies have responsibilities under other applicable state laws and regulations.

With regard to the Fish and Wildlife Coordination Act, ADF&G agrees that this comment authority will be exercised only for projects where direct and significant impacts¹ to fish

¹ "Direct and significant" means a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

and wildlife resources could result and DNR and ADF&G Deputy Commissioners have been unable to reach concurrence. If concurrence on final comments cannot be reached, the ADF&G Commissioner will determine whether ADF&G will submit comments directly, under his signature, to the relevant federal agency under the Fish and Wildlife Coordination Act.

Based on these statutory authorities and review responsibilities, OHMP is the point of contact for:

All Fishway Permits and Fish Habitat Permits (AS 41.14.840 and AS 41.14.870) and certain responsibilities under the Forest Resources and Practices Act (AS 41.17) reviews;

- *State Actions:* DNR Material Sales, DNR Oil and Gas Lease Sales, and DNR Timber Sales, including Forest Land Use Plans and Five-Year Sale Schedules²; Department of Transportation and Public Facilities (DOT&PF) Plan Reviews (outside Special Areas);
- *Other State Authorizations:* DNR Water Use Permits, DNR Land Use Permits and Leases, DNR Lease Operations Permits, DNR Mill Site Leases, DNR Placer Mining and Hardrock Exploration Permits, DNR Right-of-Way Authorizations, and DNR Park Use Permits; Department of Environmental Conservation (DEC) Contaminated Site Clean-up, DEC Solid Waste Permits, and DEC Wastewater Permits/401 Certifications;
- *Federal Actions:* Federal Timber Sales, Federal Environmental Impact Statements (associated with major resource development projects), Minerals Management Service actions, Corp of Engineers (COE) Civil Projects, NRCS Projects, United States Forest Service Projects, Bureau of Land Management (BLM) Projects, United States Fish and Wildlife Service Projects, BLM Projects, Federal Aviation Administration Projects, Bureau of Indian Affairs Projects, and other federal agency projects;
- *Federal Permits:* COE Permits, Environmental Protection Agency Permits; and,
- *Projects Requiring Multi-Agency Permits:* Alaska Coastal Management Program (ACMP) Consistency Reviews (outside of Special Areas).

Similarly, ADF&G is the point of contact for:

- Special Areas permits issued under AS 16.20;
- *State Actions:* Mariculture Permits and Plans, Fish Resource Permits, Private Non-profit Salmon Hatchery permits and plans; DNR and Municipal Land Disposals (e.g., ILMAs, trade/exchange, mineral closures, agriculture, grazing, etc.), State Land Management Plans (other than those related to timber)³; DNR

² For these activities, other divisions at DNR have the lead and OHMP provides comments directly to them for consideration.

³ For these activities, DNR has the lead and ADF&G provides comments directly to them for consideration.

- Instream Flow Reservations⁴; Department of Transportation and Public Facilities (DOT&PF) Plan Reviews (inside Special Areas);
- *Other State Authorizations*: DF&G Hazing Permits; DEC Oil Spill Contingency Plans;
 - *Federal Actions*: BLM Easements, Access and Allotments; Federal Land Management Plans⁵;
 - *Federal Permits*: Federal Energy Regulatory Commission (FERC) Licenses. ADF&G makes recommendations under the Federal Power Act directly to FERC, and participates in developing State comments under the ACMP consistency review.⁶
 - *Projects Requiring Multi-Agency Permits*: ACMP Consistency Reviews for projects occurring within Special Areas; and,
 - *Miscellaneous Actions*: Access/Defense Reviews⁷

COORDINATION AND REVIEW PROCESS⁸:

Both agencies continue to have a role in the review of land and water use activities based on the statutory and review authorities described above. To promote effective cooperation regarding habitat management and permitting in such a manner as to avoid duplicative activities, the agencies agree to consult and interact as follows:

When OHMP is the point of contact, the following three categories apply:

1. OHMP need not coordinate with ADF&G on routine AS 41.14.840/870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits that have been previously reviewed by ADF&G;
2. OHMP will coordinate directly with area biologists and other staff within ADF&G divisions to determine if significant impacts to fish and wildlife habitat exist when there is a need for area or resource specific information or when there is a known interest in a particular project by an affected division⁹. We expect that most resource development activities will be in categories 1 and 2; and,
3. OHMP will coordinate through the designated ADF&G contact when there is a need for an ADF&G coordinated response because a proposed land or water use activity will have a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

⁴ ADF&G will continue to work with DNR under an existing MOU to collect and analyze fisheries, wildlife, and hydrologic data to quantify the amount of water needed for fish and wildlife and their uses.

⁵ For Federal Conservation System Unit (FCSU) Plans, ADF&G provides comments to the state's ANILCA coordinator, located in DNR, for consideration in development of a state position; for non-FCSU USFS plans, ADF&G provides comments to the DNR Office of Project Management and Permitting, for consideration in development of a state position.

⁶ OHMP would comment only on .840/.870 permits associated with hydroelectric projects.

⁷ ADF&G coordinates, as needed, with the DNR Division of Land and Water Management.

⁸ See Attachment 1 for additional explanation and examples.

⁹ OHMP will notify the designated SF contact when we plan to proceed under Category 2 for selected high interest projects where we anticipate contacting more than one ADF&G division.

When ADF&G is the point of contact:

1. ADF&G need not coordinate on routine projects/activities in Special Areas requiring a permit covered by General Concurrences, Nationwide Permits, or other General Permits.


DISPUTE RESOLUTION


After receipt and evaluation of agency comments for projects/activities that could have a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest, each agency will provide the other agency's contact with its draft-consolidated comments. If the commenting agency disagrees with the review agency's draft comments, and staff cannot resolve differences, management staff will consider and resolve concerns in the following order:

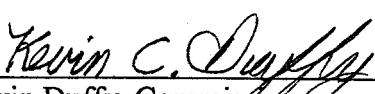
1. OHMP Operations Manager and appropriate ADF&G Sport Fish Assistant Director
2. OHMP Executive Director and appropriate ADF&G Director
3. DNR Deputy Commissioner and ADF&G Deputy Commissioner.


The intent of the section allowing projects/activities to be elevated is to ensure that major issues of significant impact to fish and wildlife resources and their habitat receive policy-level attention. It is envisioned, by both DNR and ADF&G, that every effort will be made to minimize the number of projects/activities that are elevated.

This MOU shall become effective on the date when last signed and shall remain in force until terminated by mutual agreement, by amendment, or by either commissioner, upon 30 days notice in writing to the other commissioner, of his/her intention to terminate upon a date indicated. Amendments to or modification of this MOU may be proposed by DNR or ADF&G at any time and shall become effective upon written approval by the commissioners of DNR & ADF&G.

By: 
Tom Irwin, Commissioner
Alaska Department of Natural Resources


Date

By: 
Kevin Duffy, Commissioner
Alaska Department of Fish and Game


Date

AMENDMENTS

1. Amended on January 15, 2004 to: 1) Clarify that OHMP's point of contact authority for DNR timber sales includes Forest Land use Plans and Five-Year Sale Schedules; 2) Provide that ADF&G's comments to DNR on State Land Management Plans are not limited to access issues; and 3) Clarify that DNR, via the Office of Project Management and Permitting and the state's ANILCA Coordinator, are the contact for all Federal Land Management Plans and provide that ADF&G's comments on these plans are not limited to access issues. ADF&G will provide comments to DNR, for consideration, during the development of the state position.