

February 14, 2007

Alaska Legislature House Committee minutes on House Bill 41:

"An Act returning certain duties regarding habitat management from the Department of Natural Resources to the Department of Fish and Game; and providing for an effective date."

Testimony of Matthew LaCroix

http://www.legis.state.ak.us/BASIS/get_single_minute.asp?session=25&beg_line=00236&end_line=02338&time=0832&date=20070214&comm=FSH&house=H

MATTHEW LACROIX, Fisheries Biologist, Alaska Department of Fish & Game (ADF&G), stated support for HB 41, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

For the past five years I have worked as a permitter and project reviewer for both the Departments of Fish and Game (ADF&G) and Department of Natural Resources (DNR). I am here on my own time providing this testimony as a private citizen. It is based on my personal experiences and opinions. In no way does what I say reflect the official position of any office or division within either the Department of Fish and Game or Natural Resources.

I strongly support returning Fish Habitat permitting authority to the ADF&G.

I was working for the ADF&G within the former Habitat

and Restoration Division as a permitter when Governor Murkowski issued Executive Order 107. As a result of the Executive Order the Habitat Division was eliminated along with thirty percent of its positions.

The remaining positions were split between ADF&G's Sport Fish Division and the new Office of Habitat Management and Permitting (OHM&P) at DNR. I was one of those that received a layoff notice.

But I was not laid off. Instead, I was offered a position within the new OHM&P area office in Palmer. I accepted the position, and began work to open the new office. I was the only biologist in the office for the first several months, and I received a director's commendation from Kerry Howard for the work that I did during that time. In total, I spent two and one-half years with the OHM&P. I have been back with ADF&G as a permitter in the Sport Fish Division for the past eighteen months.

I relate my personal history so that you know that I am not presenting innuendo or hearsay. I have been issuing permits and coordinating per the ADF&G/DNR Memorandum of Understanding (MOU) ever since it was originally written. This has been almost four years,

and I can say that the arguments put forward by those who support keeping Fish Habitat permitting within DNR are disingenuous to the extreme.

The mantra from these supporters seems to be: "it is the same statutes, same biologists, same protections," but this is far from the truth. If there truly is no difference in protection, why did our former governor feel so strongly that creating OHM&P was necessary? I will tell you why. Because there is such a thing as corporate culture, because concentrating permitting and project review authorities within DNR was essential to sending the message and creating the reality that was central to the Murkowski administration's goals.

That message and reality was that the State of Alaska was "open for business." That the state was pro-development, and that facilitating development was a priority within all state agencies. The governor publicly stated time and again that he was moving permitting to DNR because ADF&G had stalled or blocked development projects. The governor's sole purpose for creating OHM&P was to grease the skids for

development.

I saw first-hand the differences in perspective between ADF&G and DNR. At ADF&G, the focus was on doing a complete, in-depth review of proposed projects. In-depth reviews do occur at OHM&P, but there is a greater focus on short review times. At ADF&G, we take a broad view when reviewing projects, considering potential impacts to all fish and wildlife, as well as users of the resource. The OHM&P focuses much more closely on anadromous fish.

At ADF&G, we address likely impacts and recommend conservative management measures to maintain the existing high quality and productivity of our resources. At OHM&P, applicants are given all reasonable doubt. The burden is on the biologists to demonstrate "significant" and direct impacts to "important" or "high value" fish or wildlife populations before activities can be conditioned. In some cases, such as impacts to spawning habitats the full scope of the problem may not be apparent for years; and no one is out looking for or documenting them. But even documented impacts may be ignored if avoiding them would add costs to a project.

At ADF&G, detailed permits are written with a focus on their clarity and enforceability. This is much less of a concern at OHM&P. And there were sideboards placed on my work at OHM&P. If at all possible, permits were to be three pages or less, with five or fewer stipulations. Detailed project descriptions were discouraged. If they didn't like the focus of your review, they simply took the project away and gave it to someone less inclined to "rock the boat."

Or just changed your work. Proposed projects that were inconsistent with coastal standards became consistent, eight alternative measures became one, and ten stipulations became three.

This is significant because violations of the Fish Habitat permitting statutes are criminal rather than civil offenses. While other state agencies may also issue permits for a given project, generally the OHM&P permit is the only one that can be effectively enforced. Violators can be cited by commissioned OHM&P staff or by the state troopers. Vague permits are difficult to enforce. The Division of Mining,

Land and Water within DNR might issue a twenty-page permit with twenty conditions, while the OHM&P permit (the one that actually could be enforced) might be two pages with two stipulations.

Kerry Howard testified on Monday about the close working relationship that exists between OHM&P and ADF&G. About how OHM&P routinely consults with ADF&G biologists on every project "bigger than a bread box," and how seventy-nine percent of OHM&P biologists once worked for ADF&G. If this is the case, then why not send the OHM&P biologists back to ADF&G were they came from?

If so many of the OHM&P staff really are co-located with ADF&G, why would it be so "disruptive" to return permitting to ADF&G? By the way, ADF&G does not have permanent staff based in the Kenai River Center. We did have permitting staff there - those individuals now work for DNR.

If ADF&G really has the expertise that OHM&P personnel need to do their jobs; and if OHM&P permitters really do rely on and incorporate the input they receive from ADF&G staff, how does it possibly make sense for DNR

to have that permitting authority instead of ADF&G?

It makes sense if you want DNR to have editing and veto power over ADF&G's comments and concerns. And that is how things are now. ADF&G provides "input" that can be disregarded by DNR. If DNR does not agree with ADF&G's comments, those comments simply do not get passed on to the coastal program or to project proponents and do not become part of the public record. The silencing of dissent was a major factor in concentrating review and permitting authorities within DNR.

In her testimony, Ms. Howard pointed out that ADF&G was granted a "full seat at the table" regarding review of the prospective Pebble mine. This seat at the table was only granted after the ADF&G protested that the OHM&P was editing its comments to the Large Mine Team. In fact, OHM&P refused to pass on a memorandum regarding wildlife baseline study needs.

ADF&G may have a seat at the table, but no authority, and we still had to submit comments through OHM&P for the recent coastal review of exploration activities.

And this seat at the Large Mine Team table is only for

Pebble, not for any other mines.

Although Executive Director Howard pointed out the common responsibilities of all state agencies under our constitution, the departments of Fish and Game and Natural Resources are not interchangeable, and neither are their respective biologists. If they were, there would be no need for an MOU between the two departments. There would be no need for OHM&P to consult with ADF&G, or for ADF&G to review projects at all.

We know that the idea of "same statutes, same, biologists, same protections" is false. That is why there is an MOU, and why even the current governor acknowledges that it is necessary.

About that MOU. If there is such a close relationship between the two departments, why is this MOU eleven pages long, and why has it been amended four times in less than four years? Even if I didn't already know how convoluted and unworkable this document is, Governor Palin's letter to the boards and Ms. Howard's testimony would give me pause.

If the MOU is the key to coordination between the two departments, why should we accept that a "new and improved" version would be any more effective than the previous five versions? If the MOU is about coordination, and if OHM&P really does contact the ADF&G on all projects "bigger than a breadbox," why didn't they contact ADF&G about the Rock Creek mine? Or about coal exploration activities within the Matanuska Valley Moose Range? The MOU identifies ADF&G as the lead for review of activities within the Moose Range. Perhaps these projects are smaller than a breadbox.

And if the working relationship between DNR and ADF&G is so congenial, why is it that virtually the only permit denial issued by the Palmer OHM&P office in the last eighteen months was issued to ADF&G? This is in referral to the beaver dam removal project brought up by Ms. Howard during her testimony. Why is it that OHM&P couldn't work with the ADF&G to modify the project instead of issuing a denial? And why exactly did the OHM&P deny this application when they have issued permits to the Forest Service and other

applicants for the same activity?

In conclusion, I need to say that I have nothing against OHM&P biologists. They did not create the situation and for the most part are conscientiously doing the best they can under difficult circumstances.

These are good biologists who do good work, but the reality is that neither department currently has the necessary staff to adequately protect the state's valuable fish and wildlife resources.

I do object to the message that is being given to this committee, to the legislature as a whole, to the governor, and to the public. That message is that there are no issues here, that the protection provided to our resources is the same as it was prior to EO 107. It is not. The state lost many of its most experienced permittees and project reviewers as a result of that Order. Review responsibilities are fragmented and uncoordinated. There is more duplication, not less, and the work is being done by fewer, less experienced biologists. It will take years for either ADF&G or DNR to rebuild the capacity lost as a result of EO 107.

The big loser here are the resources, and of course the public that utilizes and depends on them. If we truly focused on protecting and maintaining the resources for the public in accordance with the constitution it wouldn't matter who issued the permits. Unfortunately, however, we are not there yet, and so it does matter. The OHM&P has demonstrated a willingness to defend developers and industry, but have they shown they are willing to defend our fish and wildlife? If Executive Director Kerry Howard had given one example of when OHM&P had stood up in opposition to a position taken by DNR, we could give them the benefit of some doubt that they were first and foremost looking out for the resource. But she did not. The OHM&P is 37 people in a very large and powerful department, and frankly, I don't think that they are willing to fight their own commissioner.

The ADF&G, on the other hand, has a proven track record of being willing to fight to protect the state's fish and wildlife resources. If the legislature recognizes the true value of these resources, it will realize that they are worth

fighting for, and it will give the ability to do so
back to ADF&G.

I urge you to return Fish Habitat permitting to ADF&G.

9:16:15 AM

REPRESENTATIVE JOHNSON referred to previously discussed
corporate culture differences of the two departments, and asked:

Since you've worked in that department, ... [did] you
ever feel pressured or felt like anything you brought
forward would have jeopardized your position, or your
standing; did you feel threatened in any way when you
were at OHM&P.

MR. LACROIX responded:

I never felt threatened, no. Did I feel pressured to
change my analysis of projects, yes. Was analysis
that I conducted changed, yes. Everything goes up
through a review process that's typical in all
agencies, ... but there is a definite difference in
corporate perspective, corporate culture, within fish
and game and DNR. ... The benefit of the doubt is
given to project proponents and developers, as opposed

to the resource, in the case of OHM&P. ... It's typical for results of analysis to be modified, changed, or for projects to be taken away from review biologist, if certain individuals don't agree with the conclusions that are reached, and given to another biologist to finish the review; [one] who is less likely to rock the boat.

REPRESENTATIVE LEDOUX inquired about Mr. LaCroix's comfort level in bringing this testimony forward.

MR. LACROIX responded that he is not comfortable providing this testimony, as a state employee, but more so being at ADF&G than DNR.

9:19:00 AM

REPRESENTATIVE EDGMON acknowledged the compelling testimony received, and stated that his district's future existence

depends on the protection of the habitat. He referred to A

CITIZENS GUIDE TO THE ALASKA CONSTITUTION (Alaska legislative
rd

describes how the Alaska Constitution is deeply rooted in the principles of conservation for sustained yield and multiple use.

He advised:

[These are] doctrines that have guided not only our resource management policies, over the many years [of statehood], but also have guided the Department of Fish and Game, and the Division of Habitat up until 2003. ... I haven't had anyone tell me that the Habitat Division was broken before it was moved over to DNR. We [have] many years on the record to show that the Division of Habitat was doing its job effectively.

REPRESENTATIVE EDGMON said that, having heard from the many involved and distinguished witnesses, and with respect to the governor's decision process and fellow committee members, he would urge support to move OHM&P back to ADF&G.