

Originally Signed October 16, 2003
Amended January 15, 2004
Amended January 18, 2005
Amended January 26, 2006
Amended September 22, 2006

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 general policy guidelines and operational procedures. This MOU is limited solely to land and water use activities subject to project review, and does not alter or modify other statutory responsibilities of the parties. 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 information, expertise, 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

Pursuant to Executive Order 107, 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 ADF&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, and 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 and wildlife resources could result and where the 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.

TYPES OF REVIEWS

OHMP Lead

OHMP is the point of contact for the following permits and actions, including the associated Alaska Coastal Management Program (ACMP) consistency review:

- All Fishway Permits and Fish Habitat Permits (AS 41.14.840 and AS 41.14.870);
- *Other State Actions and Authorizations:*
 - DNR: Material Sales, Oil and Gas Lease Sales, Timber Sales, including Forest Land Use Plans, Five-Year Sale Schedules², Forest Resources and Practices Act (AS 41.17) reviews (OHMP implements certain responsibilities under this Act, including review of private Forest Practices notifications), Land Use Permits and Leases, Right-of-Way Authorizations, Water Use Permits, Lease Operations Permits for oil and gas, Mill Site Leases, Placer Mining and Hardrock Exploration Permits, and Parks Permits, unless the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G³;
 - Department of Environmental Conservation (DEC): Contaminated Site Clean-up, Solid Waste Permits, and Wastewater Permits/401 Certifications; Pesticide Permit;
 - Department of Transportation and Public Facilities (DOT&PF): Plan Reviews;
 - *Federal Action and Authorizations:* Federal Environmental Impact Statements (associated with major resource development projects), U.S. Forest Service Federal Timber Sales⁴ and other projects, Minerals Management Service actions, Corp of Engineers Civil projects and permits (404, Section 10), Natural Resource Conservation projects, Bureau of Land Management (BLM) projects, United States Fish and Wildlife Service projects, Federal Highway Administration projects, Federal Aviation Administration projects, Bureau of Indian Affairs projects, Department of Defense (Army, Navy, Air Force,

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.

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

³ "Parks Permits" includes "Park Use Permits" and "Non-competitive Commercial Use Permits"

⁴ The review of federal timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identified in the Forest Plan.

Marine Corps) projects⁵; Coast Guard projects, other federal agency projects, and Environmental Protection Agency Permits (e.g., NPDES, including TMDL evaluations);

- *Other Entities*: Plan review and/or EA scoping for Alaska Native Tribal Health Consortium, Alaska Village and Regional Corporation (including subsidiary profit and non-profit corporations), and local city, village, borough, and tribal government projects; Borrower's Electric Environmental Reports; and US/Canada transboundary mining projects.

Should any of the above actions be within or significantly affecting a legislatively designated state game refuge, sanctuary, critical habitat area, or range (collectively referred to as "Special Areas"), ADF&G would be the point of contact.⁶

ADF&G Lead

ADF&G is the point of contact for the following permits and actions, including the associated ACMP consistency review; ADF&G is also responsible for reviewing noted land management actions that affect the public's ability to access public lands and waters related to the use of fish and wildlife resources:

- Special Areas permits issued under AS 16.20;
- *Other State Actions and Authorizations*:
 - ADF&G: Mariculture Permits and Plans, Fish Resource Permits, Private Non-profit Salmon Hatchery permits and plans, and Hazing Permits;
 - DNR: Land Disposals (e.g., ILMAs, trade/exchange, mineral closures, agriculture, grazing, municipal entitlements and selections, etc.), State Land Management Plans (other than those related to timber)⁷; Instream Flow Reservations⁸, water rights and use permits pending or issued to ADF&G; Parks Permits where the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G.
 - DEC: Oil Spill Contingency Plans;
 - DOT&PF: Plan Reviews (inside or significantly affecting Special Areas);

⁵ DOD projects include, for example, Defense Environmental Restoration Projects and Formerly Used Defense Site Clean-ups.

⁶ Once notified of projects within or significantly affecting a Special Area, OHMP and ADF&G staff will confer to determine whether potentially significant effects to a Special Area are a primary project consideration. If so determined, ADF&G will be the point of contact and OHMP will have the lead for Title 41 permits only (e.g., Juneau Airport expansion project).

⁷ For these activities, DNR/DMLW has the lead and ADF&G provides comments directly to them for consideration.

⁸ ADF&G will continue to work with DNR/DMLW 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.

- *Federal Actions and Authorizations:* Federal Land Management Plans⁹, Federal Energy Regulatory Commission Licenses (ADF&G makes recommendations under the Federal Power Act directly to FERC)¹⁰, and Department of Defense (Army, Navy, Air Force, Marine Corps) Integrated Natural Resource Management Plans, which require Sikes Act consultation with ADF&G;
- *Municipal Actions:* Land and Water Use Plans¹¹, Comprehensive Plans and Classifications, Land Disposals; Municipal Planning and Zoning Actions (including Conditional Use Permits and Variance Reviews).
- *Access/Defense Reviews:* ADF&G also reviews proposed projects in the following categories that may affect the public's ability to access public lands and water, and monitors land use actions to assure that the public continues to have the ability to use and enjoy the fish and wildlife resources of the State. For these actions, ADF&G will provide advisory comments on access issues directly to the following entities for their consideration: DNR Division of Mining Land and Water (for the noted State Actions), the affected federal agency (for the noted Federal Actions), and the affected municipal agency (for the noted Municipal Actions):
 - State Actions: Land Use Permits and Land Leases; Rights-of-Way/Easement Authorizations (excluding those established under AS 38.35), Easement vacations and platting reviews within unorganized boroughs;
 - Federal Actions: Federal Land Conveyances under the Alaska Native Claims Settlement Act and the Native Allotment Act;
 - Municipal Actions: Platting review, creation or vacation of public Easements or Rights-of-Way.

Comments will be timely submitted in advance of the comment deadline.

- *Miscellaneous Actions:* Any actions or authorizations where OHMP would normally be the point of contact, but where a Legislatively Designated Special Area could be significantly affected.

ALASKA COASTAL MANAGEMENT PROGRAM

Both OHMP and ADF&G have responsibilities for participating in ACMP consistency reviews, as delineated under the "Lead" responsibilities, described previously. As such, both OHMP and ADF&G also review and comment directly to OPMP on new or revised ACMP Coastal District Management Plans.

⁹ For Federal Conservation System Unit (FCSU) Plans, ADF&G provides comments to the state's ANILCA coordinator, located within DNR/OPMP, or to staff in the Governor's Washington, D.C. office 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.

¹⁰ OHMP would comment only on AS 41.14.840/.870 permits associated with FERC hydroelectric projects.

¹¹ For municipal land use plans, ADF&G has the lead on both access and habitat issues, but ADF&G will seek input from OHMP on habitat issues when plans may affect AS 41.14 permits.

ANADROMOUS FISH WATERS

OHMP and ADF&G have agreed to jointly share the responsibilities for updates to the *Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Catalog) and its associated atlas, *An Atlas to the Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Atlas). The Catalog and Atlas are based upon data contained within ADF&G’s Fish Distribution Database (FDD). Nominations to the Atlas and Catalog will be reviewed and approved by both OHMP and ADF&G. Printing of the Atlas and Catalog will be done by ADF&G, with OHMP providing financial support. Specifically:

- OHMP is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to DNR area and field offices;
- ADF&G is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to ADF&G area and field offices; and
- OHMP and ADF&G jointly responsible for the duplication and distribution of all additional copies of the Atlas maps and Catalog that are produced, with costs prorated per copy required by each agency.

SPAWNING AREAS

Fish spawning areas are essential to maintain viable fish populations and must be properly protected. For purposes of permitting various types of activities, OHMP and ADF&G define “freshwater fish spawning areas” as areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas, the agencies consider the temporal and spatial aspects of spawning habitats and activity, the proposed activity, and potential impacts in such a manner that the continued long-term use and availability of spawning habitat is properly protected.

COORDINATION PROCESS AND REVIEW CATEGORIES¹²:

Both agencies continue to have a role in the review of land and water use activities based on the statutory authorities and review responsibilities described above. For both OHMP and ADF&G, it is the lead agency’s responsibility to incorporate or attach the comments received, as they deem appropriate, subject to the dispute resolution process. Each agency may continue to interact directly with applicants regarding their statutory permit authorities. To promote effective cooperation regarding habitat management and permitting in such a manner as to avoid duplicative activities, the ADF&G and DNR agree to consult and coordinate as follows:

¹² See Attachment 1 for additional explanation and examples.

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

1. OHMP need not coordinate with ADF&G on AS 41.14.840/.870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits;
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 division¹³. It is expected 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 significant 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.¹⁴

The OHMP Operations Manager will make the determination as to whether a project is a Category 3, seeking input from ADF&G, as needed, and will inform the ADF&G Program Manager of our decision. If ADF&G disagrees, the decision can be elevated under the Dispute Resolution procedures.

When ADF&G is the point of contact:

1. ADF&G need not coordinate with DNR/OHMP on AS 16.20 reviews or projects/activities in Special Areas requiring a permit covered by General Concurrences, Nationwide Permits, or other General Permits.
2. For all other activities, as detailed in the TYPES OF REVIEWS section of this MOU, ADF&G will coordinate directly with the affected State or Federal agency and, to ensure that the State has a coordinated response, with OHMP biologists, when AS 41.14.840/.870 permits are also required.

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

¹³ OHMP will notify the designated ADF&G contact when we plan to proceed under Category 2 for selected high interest projects if contacting more than one ADF&G division is anticipated.

¹⁴ The proposed Pebble Gold-Copper Project is the one exception to the Tier III project scheme delineation. For this project, both OHMP and ADF&G will fully participate in the review process and comment directly to the DNR Large Mine Project Team.

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 ADF&G Sport Fish Region V Regional Supervisor.
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: 

Mike Menge, Commissioner
Alaska Department of Natural Resources

10/27/06
Date

By: 

McKie Campbell, Commissioner
Alaska Department of Fish and Game

10/27/06
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.

2. Amended on January 18, 2005 to: 1) Clarify purpose language; 2) Clarify OHMP lead for the review of other State and Federal actions related to OHMP responsibilities; 3) Clarify that OHMP has the lead for the review of projects proposed by other named entities; 4) Clarify that ADF&G has the lead for the review of municipal land use plans and noted Access/Defense reviews; 5) Clarify that ADF&G has the lead for State or Federal actions or authorizations where a Legislatively Designated Special Area could be significantly affected; 6) Clarify ADF&G's Access/Defense responsibilities; 7) OHMP's and ADF&G's joint responsibilities regarding updates to the Catalog and Atlas; 8) Clarify ADF&G's coordination process for projects where they have the lead; 9) Clarify lead agency responsibility for addressing comments, 10) Clarify, in Attachment A, that some oil and gas projects could be handled as a Category 2 provided that impacts can be mitigated to an acceptable, feasible and prudent level; 11) Clarify, in Attachment A, that OHMP will not coordinate comments on changes to laws and regulations that provide protection for fish and wildlife habitats—instead, each agency will comment separately, to the proposing agency, as appropriate.

3. Amended on January 26, 2006 to: 1) Clarify the title of referenced Parks permits to ensure that both "Park Use Permits" and "Non-competitive Commercial Use Permits" are covered and clarify that ADF&G has the lead on these permits if the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G; 2) Clarify that the OHMP lead on the review of U.S. Forest Service timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identifies in the Forest Plan; 3) Clarify that the OHMP lead on the review of NPDES permits includes any associated TMDL evaluations; 4) Clarify that OHMP has the lead on US/Canada transboundary mining projects; 5) Clarify OHMP responsibilities on FERC hydroelectric projects; 6) Clarify that ADF&G has the lead on Department of Defense plans that require consultation under the Sikes Act; 7) Clarify that ADF&G has the lead on Municipal Planning and Zoning Actions; 8) Clarify that both OHMP and

ADF&G review and comment on new or revised District Coastal Management Plans; 9) Added a definition of “spawning area”; 10) Revise dispute resolution referral to reference new Region V Supervisor; and 11) Revise signatures to reflect current Commissioners.

4. Amended September 22, 2006 to: 1) Add the DEC Pesticide Permit to the list of Permits where OHMP has the lead; and 2) Clarify that the proposed Pebble Gold-Copper project is an exception to the normal project review delineation, with OHMP as the lead.