

30-LS0438\N  
Bullard  
1/19/18

**CS FOR HOUSE BILL NO. 199( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**THIRTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES STUTES, Josephson, Gara**

**A BILL**

**FOR AN ACT ENTITLED**

**"An Act establishing major and minor anadromous fish habitat permits for certain activities; establishing related penalties; and relating to fishways and the protection of anadromous and other fish habitat."**

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

**\* Section 1.** AS 16.05.861 is amended to read:

**Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY] requirements.** (a) The owner of a dam or obstruction who fails to comply with AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR 16.05.851] within a reasonable time specified by written notice from the commissioner is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the owner fails to comply constitutes a separate offense.

(b) In addition to the fine, the dam or other obstruction managed, controlled, or owned by a person violating AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR 16.05.851] is a public nuisance and is subject to abatement.

\* **Sec. 2.** AS 16.05.871 is repealed and reenacted to read:

**Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The commissioner shall identify all or portions of each river, lake, and stream, lands beneath, and adjacent riparian areas that are anadromous fish habitat.

(b) The department may conduct a site-specific review and make a determination on whether all or portions of a river, lake, or stream, lands beneath, and adjacent riparian areas are anadromous fish habitat. A determination that all or portions of a river, lake, or stream, lands beneath, or adjacent riparian areas are not anadromous fish habitat must be supported by the commissioner's written finding and verifiable data. An applicant under AS 16.05.875 may request a site-specific determination. The department shall make the results of a determination conducted under this subsection available on the department's Internet website and post notice on the Alaska Online Public Notice System (AS 44.62.175).

(c) In the absence of an identification under (a) of this section or a site-specific determination by the department under (b) of this section, the commissioner shall presume that a naturally occurring permanent or intermittent river, lake, or stream, lands beneath, and adjacent riparian areas are anadromous fish habitat if all or portions of the river, lake, or stream are connected to a river, lake, or stream identified as anadromous fish habitat under (a) of this section. Under this subsection, all or portions of a river, lake, or stream are not connected to all or portions of a river, lake, or stream identified as anadromous fish habitat under (a) of this section if there is a permanent physical barrier between them that prohibits the upstream or downstream migration of anadromous fish.

(d) The presumption established under (c) of this section that certain rivers, lakes, and streams, lands beneath, and adjacent riparian areas are anadromous fish habitat is applicable only to AS 16.05.871 - 16.05.901.

(e) Under this section, the commissioner shall specify in regulation

(1) all or portions of each river, lake, and stream, lands beneath, and adjacent riparian areas identified as anadromous fish habitat under (a) of this section;

(2) the procedure for conducting a site-specific review and making a determination under (b) of this section; and

(3) the scope of a riparian area adjacent to all or portions of a river, lake, or stream that will be considered anadromous fish habitat for the purposes of AS 16.05.871 - 16.05.901.

(f) In this section,

(1) "anadromous fish habitat" means all or portions of a naturally occurring permanent or intermittent river, lake, or stream, the land beneath the river, lake, or stream, and the riparian areas adjacent to the river, lake, or stream, that contribute directly to the spawning, rearing, migration, or overwintering of anadromous fish;

(2) "river" or "stream" includes the foreshore portion, if any, of the river or stream above the mean low tide line.

\* **Sec. 3.** AS 16.05 is amended by adding new sections to read:

**Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency under AS 16.05.891 or as authorized by a valid general minor permit under AS 16.05.883(b), a person must obtain an anadromous fish habitat permit under AS 16.05.883(a) or 16.05.885 before

(1) constructing a hydraulic project that uses wheeled, tracked, excavating, or log-dragging equipment in the bed of a river, lake, or stream

(A) identified as anadromous fish habitat under AS 16.05.871(a) or (b); or

(B) presumed to be anadromous fish habitat under AS 16.05.871(c);

(2) conducting an activity that has the potential to use, divert, obstruct, pollute, or change the natural flow or bed of all or portions of a river, lake, or stream that is

(A) identified as anadromous fish habitat under AS 16.05.871(a) or (b); or

(B) presumed to be anadromous fish habitat under AS 16.05.871(c).

(b) An applicant shall complete an application on a form approved by the department for a permit under AS 16.05.883(a) or 16.05.885 and submit the

1 application to the department. The commissioner may require additional information,  
2 including information from an applicant, before approving an application. An  
3 applicant shall provide all information requested by the commissioner to reasonably  
4 assess a proposed activity's effects on anadromous fish habitat, including

5 (1) the scope and duration of the proposed activity; and

6 (2) mitigation measures planned for areas of affected anadromous fish  
7 habitat.

8 (c) Upon receiving a complete fish habitat permit application, any fee required  
9 under AS 16.05.893, and any other information required by the commissioner under  
10 (b) of this section, the commissioner shall determine the proposed activity's potential  
11 effects on anadromous fish habitat under AS 16.05.877. Before making the  
12 determination, the commissioner may work with the applicant in planning the activity  
13 to avoid or minimize the activity's potential adverse effects on anadromous fish habitat  
14 under AS 16.05.877.

15 (d) If the commissioner determines that a proposed activity, as conditioned by  
16 permit requirements and mitigation measures that would likely be required of the  
17 activity by the department under AS 16.05.887, will not cause significant adverse  
18 effects on anadromous fish habitat under AS 16.05.877, the commissioner shall  
19 classify the application for the activity as an application for a minor permit under  
20 AS 16.05.883(a).

21 (e) If the commissioner determines that a proposed activity has the potential to  
22 cause significant adverse effects on anadromous fish habitat under AS 16.05.877, the  
23 commissioner shall classify the application for the activity as an application for a  
24 major permit under AS 16.05.885.

25 (f) The department shall provide public notice of a determination made under  
26 this section. The department shall

27 (1) post notice of the determination on the Alaska Online Public  
28 Notice System (AS 44.62.175); and

29 (2) make a copy of the application available on the department's  
30 Internet website.

31 (g) In this section, "anadromous fish habitat" has the meaning given in

AS 16.05.871.

**Sec. 16.05.877. Significant adverse effects.** (a) The commissioner shall find that a proposed activity has the potential to cause significant adverse effects on anadromous fish habitat under AS 16.05.871 - 16.05.901 if the proposed activity, singly or in combination with other factors, could

(1) interfere with the spawning, rearing, or migration of anadromous fish at any life stage;

(2) impede the safe and efficient upstream and downstream passage of anadromous fish;

(3) significantly

(A) impair water quality or water temperature necessary to support anadromous fish;

(B) reduce instream flows or alter the natural flow regimes necessary to support anadromous fish and anadromous fish habitat; or

(C) diminish the overall aquatic habitat diversity, productivity, stability, or function of all or portions of a river, lake, or stream that is anadromous fish habitat;

(4) create conditions known to have adverse effects on, or cause increased mortality of, anadromous fish at any life stage; or

(5) violate additional criteria, consistent with the requirements of AS 16.05.871 - 16.05.901, adopted by the commissioner by regulation.

(b) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

\* **Sec. 4.** AS 16.05.881 is amended to read:

**Sec. 16.05.881. Construction without approval prohibited.** If a person or governmental agency conducts an activity [BEGINS CONSTRUCTION ON A WORK OR PROJECT OR USE] for which a permit [NOTICE] is required by AS 16.05.875(a) [AS 16.05.871] without the appropriate permit issued under AS 16.05.883 or 16.05.885 [FIRST PROVIDING PLANS AND SPECIFICATIONS SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING

OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE PROTECTION OF FISH AND GAME], the person or agency is guilty of a misdemeanor. If a person or governmental agency is convicted of violating AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896] or continues an activity [A USE, WORK, OR PROJECT] without fully complying with AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896], the activity [USE, WORK, OR PROJECT] is a public nuisance and is subject to abatement. The cost of restoring all or portions of a [SPECIFIED] river, lake, or stream identified as anadromous fish habitat under AS 16.05.871 to its original condition shall be borne by the violator and shall be in addition to the penalty imposed by the court under AS 16.05.901.

\* **Sec. 5.** AS 16.05 is amended by adding new sections to read:

**Sec. 16.05.883. Minor anadromous fish habitat permits.** (a) The commissioner may issue a minor permit for an activity after issuing public notice of the determination under AS 16.05.875(f). A minor permit issued under this section must include any necessary permit conditions or mitigation measures required of the permittee under AS 16.05.887.

(b) Notwithstanding (a) of this section, the commissioner may issue a general minor permit under this section without an application and determination under AS 16.05.875 for activities that do not have the potential to significantly affect anadromous fish habitat on a regional or other geographical basis if the commissioner determines that

(1) the activity will not cause significant adverse effects to anadromous fish habitat;

(2) the potential adverse effects of the activity may be prevented by requiring certain conditions and stipulations on the activity;

(3) permit conditions and stipulations are mandatory and enforceable; and

(4) a general minor permit for the activity is in the public interest.

(c) When the commissioner makes a determination to issue a general minor permit under (b) of this section, the commissioner shall provide public notice of the

1 proposed permit and opportunity to comment under (f) of this section. Additionally,  
2 the commissioner shall hold at least one public hearing if requested by an interested  
3 person. If no request for reconsideration is timely received under AS 16.05.889, and  
4 the commissioner determines the general minor permit meets the requirements in (b)  
5 of this section, the commissioner may issue a general minor permit under this section.  
6 A general minor permit issued for an activity under this section must be renewed  
7 every five years.

8 (d) The commissioner may issue a regional or geographical authorization for  
9 an activity subject to a general minor permit under this section or may require a person  
10 to obtain written authorization from the department before conducting an activity  
11 subject to a general minor permit under this section. Upon request, the department  
12 shall issue or deny an authorization within five days. The department may make  
13 general minor permit authorizations under this section available through electronic  
14 means. A general minor permit authorization under this section shall set out conditions  
15 and stipulations to avoid adverse effects to anadromous fish habitat.

16 (e) The commissioner may amend a general minor permit issued under this  
17 section at any time to include additional conditions and stipulations or may rescind a  
18 general minor permit issued under this section if the commissioner determines that the  
19 permit does not protect anadromous fish habitat. The commissioner shall provide  
20 public notice under (f) of this section of

21 (1) changes proposed by the commissioner to a general minor permit  
22 issued under this section; and

23 (2) a determination made by the commissioner to rescind a general  
24 minor permit issued under this section.

25 (f) The department shall provide public notice of a determination made under  
26 (b) of this section. The department shall

27 (1) post notice of the general minor permit decision or commissioner's  
28 determination on the Alaska Online Public Notice System (AS 44.62.175);

29 (2) make a copy of the respective general minor permit or  
30 determination available on the department's Internet website; and

31 (3) provide at least 30 days for public comment.

(g) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

**Sec. 16.05.885. Major anadromous fish habitat permit.** (a) Unless reconsideration is requested under AS 16.05.889, the commissioner shall, after providing notice under AS 16.05.875(f) of a determination under AS 16.05.875(e), prepare a draft major anadromous fish habitat permit assessment that identifies and describes

(1) the proposed activity;

(2) the extent and duration of the effects the activity will have on anadromous fish habitat;

(3) possible alternatives or modifications to the proposed activity that will avoid or minimize the activity's adverse effects on anadromous fish habitat;

(4) any permit conditions and mitigation measures that the department may require of the permittee under AS 16.05.887;

(5) if applicable, the amount of the performance bond necessary to restore anadromous fish habitat if the permittee does not meet the permit conditions and mitigation measures required under AS 16.05.887; and

(6) the commissioner's determination of whether the proposed activity's significant adverse effects, singly or in combination with other factors,

(A) can be prevented or minimized under (d) of this section; or

(B) are likely to cause substantial damage to anadromous fish habitat under (e) of this section.

(b) The commissioner shall collect, or shall require an applicant for a permit under this section to collect, information reasonably needed by the commissioner to determine whether a proposed activity should be permitted under this section. The commissioner may recover fees equal to the costs incurred by the department in collecting the necessary information and conducting the assessment under (a) of this section.

(c) Upon completion of the draft assessment under (a) of this section, the department shall

(1) post notice on the Alaska Online Public Notice System



(AS 44.62.175);

(2) make a copy of the draft assessment available on the department's Internet website; and

(3) provide at least 30 days for public comment.

(d) A proposed activity's significant adverse effects can be minimized under this section if the activity's potential significant adverse effects on anadromous fish habitat under AS 16.05.877, as conditioned by permit requirements and mitigation measures required of the activity under AS 16.05.887, are not permanent and that anadromous fish habitat affected by the activity will likely recover or be restored within a reasonable period to a level that sustains the natural and historical levels of anadromous fish in all or portions of the affected river, lake, or stream.

(e) A proposed activity's significant adverse effects on anadromous fish habitat under AS 16.05.877 cannot be prevented or minimized if the commissioner determines that the proposed activity is likely to cause substantial damage to anadromous fish habitat. A proposed activity is likely to cause substantial damage if the

(1) proposed activity is likely to cause significant adverse effects on anadromous fish habitat under AS 16.05.877;

(2) proposed activity's significant adverse effects cannot be minimized under (d) of this section or prevented; and

(3) significant adverse effects of the proposed activity are likely to affect anadromous fish habitat in such a manner that the habitat will not likely recover or be restored within a reasonable period to a level that sustains the natural and historical levels of anadromous fish in all or portions of the affected river, lake, or stream.

(f) In determining whether anadromous fish habitat will recover or be restored

(1) within a reasonable period under this section, the commissioner shall account for the life stage, life span, and reproductive behavior of the species of anadromous fish that depend on the habitat affected by the proposed activity using the best available scientific information; and

(2) to a condition that will sustain the natural and historical levels of

1        anadromous fish in all or portions of an affected river, lake, or stream under this  
2        section, the commissioner shall, using the best scientific information, consider likely  
3        post-activity conditions known to

4                    (A) result in the mortality of anadromous fish at any life stage;

5                    or

6                    (B) interfere with, or prevent, the spawning, rearing, or  
7                    migration of anadromous fish.

8                    (g) After the completion of the comment period established by (c)(3) of this  
9        section and evaluation of the comments received, the commissioner shall publish a  
10       final assessment and a written permit determination on the department's Internet  
11       website. The final assessment and written permit determination must include any  
12       permit conditions and mitigation measures imposed on the proposed activity under  
13       AS 16.05.887. The department shall post public notice of the final assessment and  
14       permit determination on the Alaska Online Public Notice System (AS 44.62.175) and  
15       provide written or electronic notice to each person who commented on the  
16       commissioner's determination that the application for the permitted activity was an  
17       application for a major permit under AS 16.05.875(e) or the draft assessment prepared  
18       under (a) of this section for the activity.

19                    (h) The commissioner may issue a major permit to an applicant only if

20                    (1) the commissioner's written permit determination finds that

21                    (A) the public notice period required under (c) of this section is  
22                    complete;

23                    (B) any permit conditions and mitigation measures under  
24                    AS 16.05.887 are mandatory and enforceable; and

25                    (C) the activity, as authorized by the written permit  
26                    determination, will not cause substantial damage to anadromous fish habitat  
27                    under (e) of this section;

28                    (2) the applicant

29                    (A) accepts any permit conditions and mitigation measures  
30                    under AS 16.05.887; and

31                    (B) if required, provides the bond required by (j) of this

section; and

(3) a request for reconsideration of the commissioner's determination under (g) of this section is not timely received under AS 16.05.889.

(i) If a request for reconsideration of the commissioner's final assessment and written determination issued under (g) of this section is timely received under AS 16.05.889(a), the commissioner shall issue a major permit for the activity when the commissioner (1) denies the request for reconsideration or issues a new determination under AS 16.05.889(c); and

(2) finds that the requirements of (h)(1) and (2) of this section have been met.

(j) After the commissioner approves an application for an activity in a written permit determination under (g) of this section, the applicant shall file with the commissioner, on a form furnished by the commissioner, a performance bond in an amount established by the commissioner payable to the State of Alaska and conditioned on faithful performance of the requirements of this chapter and the permit. Except as provided in (k) of this section, the commissioner may not issue a permit until an applicant files the bond in an amount sufficient to ensure the completion of the mitigation measures determined necessary by the commissioner under AS 16.05.887 and included in the written permit decision posted under (g) of this section. The performance bond may be a corporate surety bond issued by a corporation licensed to do business in the state or a personal bond secured by cash or its equivalent. However, the commissioner may not accept a bond executed by the applicant without separate surety.

(k) A governmental entity is exempt from the bonding requirements of this section.

(l) A permittee may not transfer or assign authority to conduct an activity that requires a permit under this section to another person without

(1) the written approval of the commissioner; and

(2) posting a performance bond for the transferee or assignee as required under (a)(5) of this section, unless the transferee or assignee is exempt under

(k) of this section.

(m) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

**Sec. 16.05.887. Permit conditions and mitigation measures.** (a) The commissioner shall require a permittee under AS 16.05.883(a) or 16.05.885 to implement the permitted activity in a manner most likely to prevent or minimize the activity's significant adverse effects on anadromous fish habitat under AS 16.05.877. However, notwithstanding (b)(2) of this section, the commissioner may not issue a permit for an activity that the commissioner determines

(1) will cause substantial damage to anadromous fish habitat under AS 16.05.885(e);

(2) necessitates water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention in perpetuity;

(3) will replace or supplement a wild fish population with a hatchery-dependent fish population;

(4) will dewater anadromous fish habitat for a period likely to cause permanent or long-lasting adverse effects to that habitat; or

(5) will permanently relocate all or portions of a river, lake, or stream if the relocation will disrupt the migration or passage of anadromous fish.

(b) When establishing permit conditions for an activity under this section, including permit stipulations and mitigation measures, the commissioner shall, in order of priority, require a permittee under AS 16.05.883(a) or 16.05.885 to take the following actions:

(1) limit significant adverse effects of the activity on anadromous fish habitat by changing the siting, timing, procedure, or other manageable qualities of the activity;

(2) if the significant adverse effects of the activity cannot be prevented under (1) of this subsection, minimize the significant adverse effects of the activity by limiting the degree, magnitude, duration, or implementation of the activity; and

(3) if the activity cannot be implemented in a manner that prevents significant adverse effects on anadromous fish habitat under this subsection, restore

the affected anadromous fish habitat and take mitigation measures.

(c) Permit conditions and mitigation measures under this section may not offset the activity's significant adverse effects by restoring, establishing, enhancing, or preserving all or portions of another river, lake, or stream or other land.

(d) The department shall adopt regulations consistent with AS 16.05.871 - 16.05.901 establishing appropriate permit conditions and mitigation measures applicable to activities subject to permitting requirements under AS 16.05.883 or 16.05.885.

(e) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

**Sec. 16.05.889. Reconsideration of determinations.** (a) Within 30 days after the date of a determination of the commissioner under AS 16.05.871 - 16.05.901, an interested person may request that the commissioner reconsider the determination. A request for reconsideration must be in writing.

(b) Within 30 days after receiving a request for reconsideration, the commissioner shall issue a written determination granting or denying the request. If the commissioner does not act on the request for reconsideration within 30 days after receiving the request, the request is denied. If the commissioner grants the request for reconsideration, the commissioner shall issue a final determination within 30 days.

(c) The commissioner's determination upon reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560. A person shall initiate an appeal within 30 days after the date that the final determination is mailed or otherwise distributed, or the date that the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the request for reconsideration.

\* **Sec. 6.** AS 16.05.891 is amended to read:

**Sec. 16.05.891. Exemption for emergency situations.** In an emergency arising from weather or stream flow conditions, the commissioner, through authorized representatives, shall issue oral permits to a riparian owner or state agency for removing obstructions or for repairing existing structures without the necessity of a

**permit issued under AS 16.05.871 - 16.05.901** [SUBMITTING PREPARED PLANS AND SPECIFICATIONS AS REQUIRED BY AS 16.05.871].

\* **Sec. 7.** AS 16.05 is amended by adding new sections to read:

**Sec. 16.05.893. Fees.** (a) The commissioner shall establish reasonable fees for

(1) reviewing permit applications, assessments performed by the department under AS 16.05.885, and the issuance of permits under AS 16.05.871 - 16.05.901; and

(2) other services provided under AS 16.05.871 - 16.05.901.

(b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the commissioner finds that waiving the fee is in the public interest. The commissioner shall, in regulations adopted by the department, specify the circumstances under which a fee may be waived under this subsection.

(c) Fees collected under this section shall be separately accounted for under AS 37.05.142.

**Sec. 16.05.894. Notification of violation.** When the commissioner finds, after investigation, that a permittee or activity permitted under AS 16.05.871 - 16.05.901 is violating a provision of AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, or a permit condition or mitigation measure imposed under AS 16.05.887, the commissioner shall notify the permittee of the nature of the violation and

(1) order that the violation be stopped; or

(2) if the violation cannot be stopped, order the permittee to prevent or mitigate the adverse effects of the violation on anadromous fish, other fish, and wildlife habitat in a manner consistent with AS 16.05.871 - 16.05.901.

**Sec. 16.05.899. Applicability of permitting requirements.** (a) Notwithstanding AS 16.05.875(a), and except as provided in (b) of this section, a facility, activity, operation, or project that has in full force and effect, on the day before the effective date of sec. 3 of this Act, all required state authorizations relating to the protection of anadromous fish and anadromous fish habitat

(1) shall continue to be authorized under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 - 16.05.901, as those sections and

1 regulations read on the day before the effective date of sec. 3 of this Act, and may  
2 continue to renew those authorizations and obtain minor authorization modifications  
3 under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 -  
4 16.05.901, as those sections and regulations read on the day before the effective date  
5 of sec. 3 of this Act; and

6 (2) is not required to obtain an anadromous fish habitat permit under  
7 AS 16.05.883 or 16.05.885.

8 (b) The exemption provided by (a) of this section does not apply to a facility,  
9 activity, operation, or project that significantly expands or increases in scope, area, or  
10 frequency, or otherwise takes action outside, those actions for which it is authorized  
11 on the day before the effective date of sec. 3 of this Act.

12 \* **Sec. 8.** AS 16.05.901(a) is amended to read:

13 (a) A person who violates **AS 16.05.871 - 16.05.901 or a regulation adopted**  
14 **under AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] is guilty of a **violation**  
15 **punishable as provided in AS 12.55. A person who knowingly violates**  
16 **AS 16.05.871 - 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901**  
17 **is guilty of a** class A misdemeanor **and is punishable as provided in AS 12.55.**

18 \* **Sec. 9.** AS 16.05.901 is amended by adding new subsections to read:

19 (c) A person who, with criminal negligence, violates or permits a violation of  
20 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a  
21 permit condition or mitigation measure imposed under AS 16.05.887, or an order  
22 issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as  
23 provided in AS 12.55. In this subsection, "criminal negligence" has the meaning given  
24 in AS 11.81.900(a).

25 (d) Notwithstanding (a) of this section, if a person or governmental agency  
26 fails to notify the commissioner of an activity for which a permit is required under  
27 AS 16.05.871 - 16.05.901 and the activity causes material damage to anadromous fish  
28 habitat or, by neglect or noncompliance with permit conditions or mitigation measures  
29 imposed under AS 16.05.883 or 16.05.885, causes material damage to anadromous  
30 fish habitat, the person or governmental agency is guilty of a class A misdemeanor and  
31 is punishable as provided in AS 12.55.

(e) Each day that a violation under this section occurs is a separate violation.

(f) A person who violates or permits a violation of AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or mitigation measure imposed under AS 16.05.883 or 16.05.885, or an order issued under AS 16.05.894 is liable, after notice and hearing, for a civil penalty in an amount not to exceed \$10,000 to be assessed by the commissioner. In determining the amount of the civil penalty, the commissioner shall consider

(1) the character and degree of injury to anadromous fish habitat;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent; and

(4) if the information is available, the net economic savings realized by the respondent through the violation.

(g) If a respondent violates an order issued under AS 16.05.894, the attorney general, upon the request of the commissioner, may seek an injunction requiring the respondent to suspend an activity, in whole or in part, until the respondent complies with the order.

(h) If a respondent violates an order issued under AS 16.05.894 that requires the respondent to repair or correct damage, the commissioner may proceed to repair or correct the damage using state agency employees or contractors and the respondent is liable for the cost of the repair. The commissioner shall deliver to the respondent an itemized statement of expenses incurred.

(i) The supreme court shall establish by order or rule a schedule of bail amounts for violations under (a) of this section that allow the disposition of a citation without a court appearance. The bail amount for a violation must appear on the citation.

(j) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

\* **Sec. 10.** AS 16.05.925(a) is amended to read:

(a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,



16.05.783, 16.05.831, 16.05.861, 16.05.901, and 16.05.905, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

\* **Sec. 11.** AS 16.20.070 is amended to read:

**Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.20.060 do not affect AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.891].

\* **Sec. 12.** AS 37.05.146(c) is amended by adding a new paragraph to read:

(90) fees collected by the Department of Fish and Game under AS 16.05.871 - 16.05.901.

\* **Sec. 13.** AS 41.17.010 is amended to read:

**Sec. 41.17.010. Declaration of intent.** The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to ensure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;

(4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon the expertise of professional foresters in conjunction with other disciplines;

(5) under the leadership of the Department of Environmental Conservation as lead agency, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;

(6) subject to AS 41.17.098(c), the provisions of this chapter, and regulations adopted under this chapter, with the approval of the Department of Environmental Conservation, establish the nonpoint source pollution requirements

under state law and sec. 319 of the Clean Water Act for activities subject to this chapter;

(7) except for activities subject to AS 16.05.871 - 16.05.901 [AS 16.05.841 OR 16.05.871] and regulations authorized by those sections, this chapter and regulations adopted under this chapter establish the fish habitat protection standards, policies, and review processes under state law.

\* **Sec. 14.** AS 44.62.330(a)(27) is amended to read:

(27) Department of Fish and Game as to functions relating to the protection of anadromous fish habitat under AS 16.05.871 - 16.05.901 where procedures are not otherwise expressly provided in AS 16.05.871 - 16.05.901 [FISH AND GAME UNDER AS 16.05.871];

\* **Sec. 15.** AS 46.15.020(b) is amended to read:

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of AS 16.05.871 - 16.05.901 [AS 16.05.871]; and shall make the record of applications, including temporary water use applications under AS 46.15.155 that have been accepted as complete, authorizations, permits, certificates, amendments, and orders affecting them available to the public on the Internet;

(3) cooperate with, assist, advise, and coordinate plans with the federal, state, and local agencies, including local soil and water conservation districts,

1 in matters relating to the appropriation, use, conservation, quality, disposal, or control  
2 of waters and activities related thereto;

3 (4) prescribe fees or service charges for any public service rendered  
4 consistent with AS 37.10.050 - 37.10.058, except that the department may charge  
5 under regulations adopted by the department an annual \$50 administrative service fee  
6 to maintain the water management program and a water conservation fee under  
7 AS 46.15.035;

8 (5) before February 1 of each year, prepare a report describing the  
9 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner  
10 shall notify the legislature that the report is available; the report must include

11 (A) information on the number of applications and  
12 appropriations for the removal of water from one hydrological unit to another  
13 that were requested and that were granted and on the amounts of water  
14 involved;

15 (B) information on the number and location of sales of water  
16 conducted by the commissioner and on the volume of water sold;

17 (C) recommendations of the commissioner for changes in state  
18 water law; and

19 (D) a description of state revenue and expenses related to  
20 activities under AS 46.15.035 and 46.15.037.

21 \* **Sec. 16.** AS 16.05.851 and 16.05.896 are repealed.