

Bristol Bay Fishermen's Association

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Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol, Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov
cc: Fisheries Committee Members

Re: Opposition to HB 199 (Version M) until certain issues are remedied.

Dear Representative Stutes and Members of the House Fisheries Committee,

I am president of the Bristol Bay Fishermen's Association (BBFA). It is the largest and oldest voluntary association of commercial fishers in Bristol Bay.

BBFA opposes HB 199 version M. We do so for the following reasons.

1. HB 199 deletes the rule-making authority of the Administrative Procedure Act and is therefore worse than the current Anadromous Fish Act.

The current Anadromous Fish Act, at 16.05.871, provides that ADF&G implements the Act through the rule-making authority of the Administrative Procedure Act (APA), at AS 44.62. HB 199 would delete that APA authority. Doing so has three negative effects. First, it makes it more difficult, if not legally impossible, to adopt regulations to implement the Act. Second, it makes it impossible for the public, under the APA, to propose regulations and petition ADF&G to adopt them. That makes it impossible for BBFA and others who support conservation to salmon habitat to propose rules to do so. Third, because the APA currently applies, ADF&G adopts the Anadromous Waters Catalog into regulation. Doing so puts the public on notice as to which waters are anadromous and for which permits are necessary for activities which threaten habitat. Deleting the applicability of the APA means the Catalog might not be in regulation, and that would deprive the public of that notice. That would create a defense (i.e., lack of notice) to any criminal prosecution for engaging in an activity without a necessary permit.

Apparently the drafters believe that ADF&G has general rule-making authority in the absence of an express grant of such authority. ADF&G has taken the opposite view, and that is why the Joint Board of Fisheries and Game adopts ADF&G's land use plans for areas it manages into regulation, rather than ADF&G adopting them into regulation.

There is no reason to delete the current requirement and authority to adopt regulations to implement the Anadromous Fish Act. Until that problem is remedied and that rule-making authority is restored, BBFA will oppose HB 199.

2. The criminal provisions of HB 199 are still unworkable.

First, the criminal provisions classify the *same conduct* as both a *misdemeanor* and as a *violation* (less than a misdemeanor). For example, a person who engages in activities without a required permit violates the proposed AS 16.05.881. It would classify the conduct as a misdemeanor. However, the proposed AS 16.05.901(a) would classify the same conduct as a violation (less than a misdemeanor).

Second, the provisions regarding criminal intent are equally confusing. The proposed AS 16.05.901(c) provides that a person who “knowingly” violates AS 16.05.871-.901 or a regulation thereunder is guilty of a class A misdemeanor. However, the proposed AS 16.05.901(d) provides that a person who “with criminal negligence” violates AS 16.05.871-.901 or a regulation thereunder is guilty of a class A misdemeanor. In other words, because the same penalty provisions apply for different types of criminal intent, there is no justification for the different types of criminal intent. Furthermore, the proposed AS 16.05.881, which applies when a person engages in activities without a required permit, does not specify a type of criminal intent. Under current law such a lack of specification is construed to imply a standard of civil negligence – i.e., that a person is guilty if he or she knew or should have known the conduct was unlawful. In other words, a person is guilty of a misdemeanor by engaging in an activity for which a permit is required but without a permit, if the criminal intent is civil negligence under the proposed AS 16.05.881, or if it is “knowingly” under the proposed AS 16.05.901(c), or if it is “with criminal negligence” under the proposed AS 16.05.901(d). The same penalty occurs for different criminal intent.

3. The conservation standards of the current version of HB 199 are no better than current law.

HB 199 Version M has deleted all the tougher standards that were the justification for the bill at the outset. The uncodified (unenforceable) policy statements in Section 1 remain but are simply guidance. Then, the proposed AS 16.05.887(c) would require ADF&G to adopt regulations establishing permit conditions and mitigation measures. That can be done under current law.

Conclusion

We appreciate the work that has gone into HB 199, but it should not be advanced until the above problems are addressed.

Regards,



David Harsila,
BBFA President