

## **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](mailto:Representative.Louise.Stutes@akleg.gov)

Re: HB 199

Dear Representative Stutes and Members of the House Fisheries Committee,

This and the attached memo from our attorney are the comments of the Bristol Bay Fishermen's Association on HB 199. It would repeal and replace the Anadromous Fish Act, at AS 16.05.871, and make other changes to existing law.

I am president of the Bristol Bay Fishermen's Association. It represents the interests of a substantial portion of those who fish commercially in Bristol Bay. It was incorporated in 1966 under Alaska law, and you may know our association by its former name, the Alaska Independent Fishermen's Marketing Association.

We recommend that the House Fisheries Committee hold and not advance HB 199. We cannot support it. Although it makes some improvements, the attached memorandum concludes that HB 199 has at least the following nine major defects:

- (1) HB 199 focuses only on surface waters and removes the beds of anadromous waters from current coverage by the Act. This reduces the scope of protection and permitting.
- (2) HB 199 would establish in regulation a method to determine that documented anadromous waters are "not important." This amounts to a method to evade permitting. This new method is unnecessary because the Administrative Procedure Act already provides a statutory process for citizens to petition agencies to amend regulations, including the Anadromous Waters Catalog and Atlas which are adopted into regulation.
- (3) HB 199 creates an additional avenue for projects to evade permitting whenever agencies do not foresee that other events, such as water extraction wells around a mine pit, will dewater the beds of anadromous waters.
- (4) HB 199 focuses on habitat and deletes the fish themselves from current coverage by the Act. Doing so appears to allow blasting near anadromous streams to evade the Act.
- (5) HB 199 presumes all surface waters are anadromous, when it could track the Forest Practices Act which presumes that a stream is anadromous if no documented physical blockage separates an undocumented stream from anadromous waters, and if the undocumented stream has a gradient of 8 percent or less. If HB 199 becomes the basis of an enacted initiative, this overbroad presumption will

probably prompt the legislature to repeal or amend the presumption and then may consider further changes that erode the current scope of the Act.

- (6) HB 199 replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to “reasonable requests” for an applicant to do field work, all of which puts the applicant in a better position to control the information that goes into decision-making.
- (7) HB 199 limits public access to the courts by replacing the liberal “interested person” standard with the more restrictive “adversely affected” standard, for purposes of reconsideration and appeals to courts thereafter.
- (8) HB 199 limits public access to the courts by replacing the original actions against ADF&G, which have all the benefits of discovery and trial, with appeal to Superior Court based on the record before the agency.
- (9) HB 199 bars mitigation of unforeseen significant adverse effects under major permits whenever prior damages to the same water body already exist.

Overall, HB 199 gives advocates of salmon what sounds nice but they really don’t need, repeals what they need to keep and improve, and burdens them with what they need to avoid. For example: HB 199 (1) gives advocates of salmon an unnecessarily overbroad presumption that all surface waters are anadromous even though the overwhelming majority face no threats and most probably are not anadromous if measured by miles or acreage, but (2) repeals the authority to protect the beds anadromous waters and the fish themselves, and then (3) creates multiple means for developers to evade permitting when their activities adversely affect documented anadromous waters, beds or the fish themselves. The state does not need to presume that mountain top rivulets and glaciers are anadromous and lose the advantages of a stable Catalog and Atlas of documented anadromous waters, when the Catalog and Atlas are the most fundamental jurisdictional regulations for enforcing the Act. Another example: HB 199 creates public notice and comment on major permits, but then reduces access to reconsideration and judicial review which follow from that process, and converts original litigation in the courts to administrative appeals upon a fixed record. That lets salmon advocates speak but reduces their ability to challenge an agency decision. That is counterproductive.

Moreover, if HB 199 becomes the basis of an enacted initiative, then additional problems will arise. Several provisions, for reasons discussed in the attached memorandum, would invite the legislature to rewrite an enacted initiative at the first opportunity. Then, those who supported such an initiative will be in a poor position to regain what they unknowingly have given up in HB 199 or any initiative to parallels it.

Please at least skim and ask your staff to review the attached memorandum. Thank you.

Regards,



David Harsila, President  
Bristol Bay Fishermen’s Association

Attachment: memo on HB 199