



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

BOARD OF FORESTRY

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January 18, 2018

The Honorable Bill Walker, Governor
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Walker,

The Board of Forestry has reviewed HB 199, the fish habitat permitting bill, and has serious concerns about its relationship to the Alaska Forest Resources and Practices Act (FRPA), its impact to forestry and other natural resource sectors, and the process used to develop the bill.

Background. The Board of Forestry is established under the Alaska Forest Resources and Practices Act (FRPA, AS 41.17). The Board represents diverse interests, with members from commercial fishing, environmental, mining, and recreation organizations; an Alaska Native corporation, a forest industry trade association, a non-governmental professional forester, and a professional fish/wildlife biologist. The Board is charged with reviewing and reporting on the effectiveness of the FRPA, providing input to DNR on FRPA regulations, and serving as a forum to address forest practices issues. Because of these duties, the Board respectfully submits these comments.

FRPA governs how commercial timber harvesting and timber access occur on state, private, and municipal land. The Act protects fish habitat and water quality, ensures prompt reforestation, and helps the timber and fishing industries provide long-term jobs. FRPA processes and standards are designed to balance economic concerns for the timber industry with water quality and habitat protection needs. The FRPA includes mandatory buffers on anadromous waters that are tailored to the conditions in each region, regulatory best management practices (BMPs) that apply statewide, advance notifications and interagency review of proposed forest operations, monitoring, and enforcement authorities. These provisions provide certainty and credibility for landowners, operators, and the public.

The Act is effective and resilient because, for over 25 years, amendments to the Act have been developed through a science-based process followed by review with diverse stakeholders. Amendments have represented such a broad consensus that they have passed the legislature without opposition.

Board concerns with HB 199

1. Lack of evidence that existing statutes fail to protect fish habitat

HB 199 proposes a complete overhaul of Title 16 permitting for activities along anadromous waters and redefines anadromous waters to presume that all waters are important anadromous fish habitat. However, we have seen no analysis showing that existing statutes fail to adequately protect anadromous fish habitat and merit this extensive change. The sponsors have not provided any regionally-specific data that would justify this bill, nor have they demonstrated that recent fluctuations in fish populations reflect problems in instream, riparian, upland habitat management.

There is no evidence, for example, that the FRPA is ineffective in protecting fish habitat and water quality. On the contrary, systematic compliance monitoring and extensive road condition surveys demonstrate that forest operations have an excellent record of FRPA implementation,¹ and effectiveness monitoring studies document that the buffers and BMPs are protecting fish habitat and water quality from adverse impacts of forest operations.² There are no waterbodies on the DEC list of impaired waters under Section 303(d) of the Clean Water Act due to forestry activities on private, state, or other public lands regulated by the FRPA. The Board of Forestry reported in May 2017 that the FRPA is effective in protecting water quality and fish habitat, while providing for continued timber and fishing industry opportunities. The ADNDR Division of Forestry, ADF&G Division of Habitat, and ADEC Division of Water all reported to the Board that the Act was effective in protecting fish habitat and water quality from impacts of forest operations.³

We recognize that there have been declines in some salmon stocks. The causes of declines are complex and may include high seas conditions, climate change, predation, harvest, and other factors. However, the declines have not been tied to impacts of forestry operations or lack of protection of freshwater habitat for anadromous fish.

2. HB 199 undermines the consensus process used to develop and update the FRPA

This bill has the effect of an end-run on the process used to adopt and amend the FRPA. Since 1989, changes to the FRPA have been developed through a science-based process, stakeholder involvement, and Board of Forestry oversight. The Board first charges a science and technical committee to review the existing literature, the existing statutes and regulations, and recommend needed changes. A stakeholders group is then established to review the scientists' recommendations and determine how to implement them on the ground in a practical and effective manner. Final recommendations are reviewed and endorsed by the Board before proceeding to implementation through the legislative or regulatory processes and other agency actions. The process is widely publicized, all meetings are open to the public, and interested parties are kept informed throughout. HB199 has

¹ Briefing: Forest Practices Compliance Monitoring. DNR Division of Forestry. March 2017.

² Briefing: Forest Practices Effectiveness Monitoring. DNR Division of Forestry. February 2017.

³ Alaska Board of Forestry 2016 Annual Report to the Governor -- A Review of the Alaska Forest Resources and Practices Act: Its Implementation and Effectiveness. May 31, 2017. The report attachments include the reports from the three resource agencies.

not followed a similar process, and to date neither public nor private forestry stakeholders have been included in the process to develop or analyze this bill.

Other industries have also been overlooked. For example, the recreation industry is equally concerned about unintended consequences of this bill. For example, the anadromous stream definition also affects trails, campsites, and recreational facilities. Flipping the current definition to an assumption of anadromy will affect tourism, recreation, and quality of life for residents and visitors.

3. Proposed definitions of “anadromous waters” and “wildlife” and the proposed permitting system will have major impacts on forestry and other industries represented on the Board of Forestry.

Anadromous waters. The current Title 16 permitting systems relies on the Anadromous Waters Catalog (AWC) which is adopted in regulation and amended annually based on actual fish capture data. The AWC does not yet include many anadromous waters, and coverage is especially poor in more remote areas. However, this inadequacy does not merit changing the definition of an anadromous water to a presumption that all waters are anadromous unless proven otherwise.

Both cataloged and uncataloged anadromous waters are already protected under FRPA. The FRPA definition of anadromous waters includes uncataloged water bodies that ADF&G determines contain or exhibit evidence of anadromous fish, in which case the stream is considered anadromous up to the first point of physical blockage.⁴ The FRPA regulations provide guidance to determine where a blockage exists.⁵ This system protects all anadromous waters without having to wait for the catalog process, while providing certainty for landowners and operators in determining where BMPs for anadromous waters will apply. Operators notify the resource agencies in advance of proposed stream classifications in the operating area; if there is a question about whether a waterbody is correctly classified (e.g., whether it is anadromous), ADF&G may resolve the question, and if necessary an inspection can be required prior to the operation.⁶

Wildlife. Discussions of HB 199 have centered on rules regarding anadromous fish habitat. However, the bill goes far beyond protection of fish habitat. AS 16.05 .871 (d) currently addresses the proper protection of fish and game. The title and the sections of HB 199 on “General permit for fish and wildlife habitat protection” (Sec. 16.05.873), “Significant adverse effects,” (Sec. 16.05.877), “Major anadromous fish habitat permit,” (Sec. 16.05.885), and “Permit conditions and measures,” (Sec. 16.05.887) all refer to fish *and wildlife*. There is no definition of what is covered by wildlife, and therefore no sideboards on what might be encompassed. While the current statute is similarly non-definitive in terms of “game”, HB199 ties issuance of Fish Habitat Permits definitively to wildlife habitat without providing any additional definition or guidance. This results in enormous uncertainty about the reach of the proposed permit system. The proposal is tied not just to anadromous waters, but also to any wildlife using those waters, and the bill applies to both public and private land. We have seen no analysis of the need for this extension of the permitting system, nor of the impacts of the new measures.

⁴ AS 41.17.950(1)

⁵ 11 AAC 95.265

⁶ AS 41.17.090(e) and (f), 11 AAC 95.245

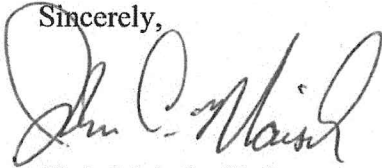
Conclusion

HB 199 is neither necessary nor desirable. It would add significantly to the regulatory burden on forestry and other resource-based industries without adding significantly to the protection of fish habitat. Two of the founding principles of FRPA are "Fairness" and "No Big Hit." That means,

- 1) Any successful system must be based on shared risk and incentives for both timber owners and regulators to make it work; and
- 2) Neither fish nor timber should bear an inordinate share of the burden; that a balance must be found. No private landowner should have to bear an unusually large burden.

This bill fails to meet either principle. Fisheries would bear none of the risk, while forestry and other industries would shoulder the full cost of delays, restrictions, or prohibitions to commercial operations on waters that may or may not actually be anadromous, without providing commensurate benefits for fish habitat. We ask you to oppose this bill.

Sincerely,



Chris Maisch, Chair
Alaska Board of Forestry

Board Members

Chris Beck, Recreation Organization Representative
Keith Coulter, Alaska Native Corporation Representative
Denise Herzog, Mining Organization Representative
Bill Morris, Non-governmental Fish or Wildlife Biologist
Eric Nichols, Forest Industry Trade Association Representative
Will Putman, Non-governmental Professional Forester
Chris Stark, Environmental Organization Representative
Mark Vinsel, Commercial Fishing Organization

Cc: Rep. Louise Stutes, chair House Special Committee on Fisheries
Rep. Andrew Josephson, co-chair House Resources Committee
Rep. Geran Tarr, co-chair House Resources Committee
Rep. Bryce Edgmon, Speaker of the House
Sen. Cathy Giessel, chair Senate Resources Committee
Sen. John Coghill, co-chair Senate Resources Committee
Sen. Pete Kelly, Senate President
Sam Cotten, ADF&G Commissioner
Larry Hartig, DEC Commissioner
Andrew T. Mack, DNR Commissioners
Ed King, DNR Legislative Liaison