

# ADF&G Statutory Authority

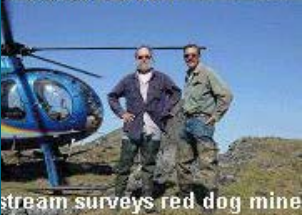
Senate State Affairs Committee  
July 20, 2018  
Anchorage, AK



Habitat's mission is to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.

## Workload Priorities:

- Title 16 permitting and enforcement
- Field work – research, inspections, fish surveys
- Large projects of importance to the State
- Forest Resources and Practices Act
- Special Area permitting and planning



# ADF&G Statutory Authority

## Fish Protection

- THE FISHWAY ACT
  - AS 16.05.841
- ANADROMOUS FISH ACT
  - AS 16.05.871
- SPECIAL AREA PLANNING & PERMITTING
  - 5 AAC 95.700





# Fishway Act (.841)

Requires that any obstruction built across fish-bearing waters will provide for fish passage

## Jurisdiction

- Applies to all fish bearing streams (resident and anadromous) and all fish species.
- Requires long-term commitment to operation & maintenance
- Applies to fish passage only



## Activities not covered by .841

- Projects that don't have the potential to block passage
  - Docks, streambank protection, motorized stream crossings, etc.

# Anadromous Fish Act (.871)

## Jurisdiction

- Applies to any activity
- Applies to any life stage



## Application of .871

- Activity occurring below OHW with some exceptions
- Waterbody must be in AWC
- Freshwater only down to low tide in the marine environment

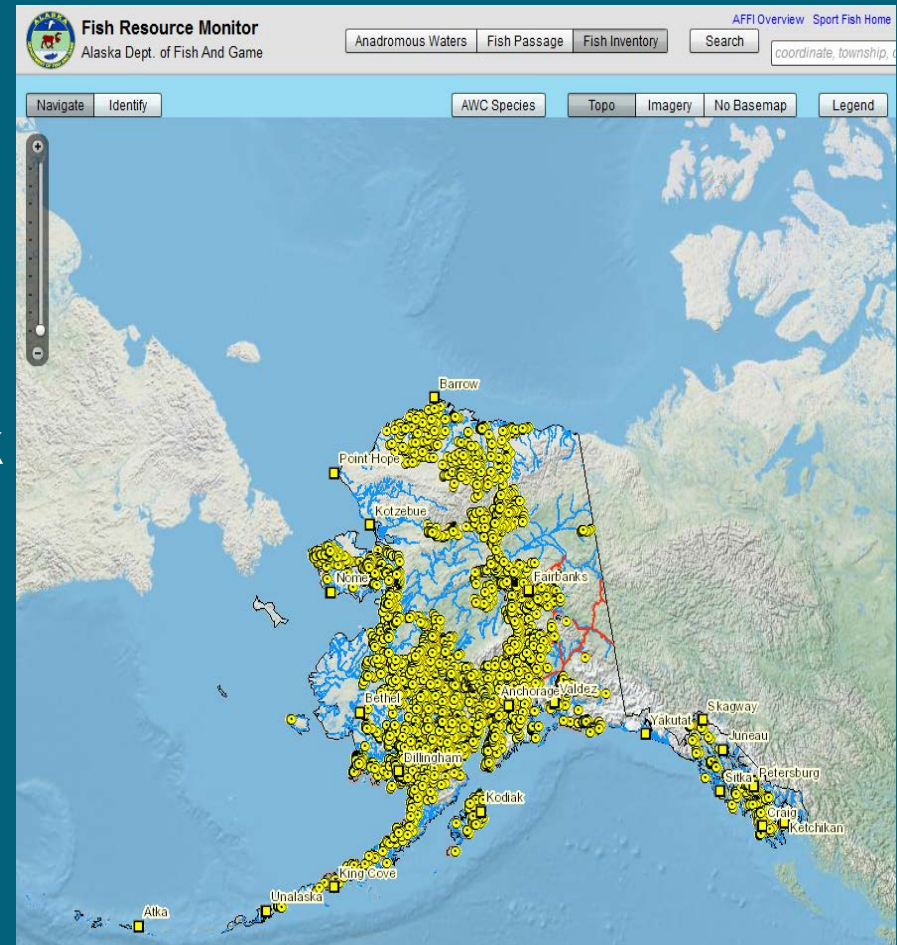
# Activities That Typically Require Fish Habitat Permits

- Culvert/Bridge/Ford installation, maintenance, and restoration
- Stream crossings – vehicles/pipelines/power lines
- Streambank repair/construction
- Stream diversions/removals
- Water withdrawals – road work/drilling/mining/ice roads
- Material Sites
- Dam construction/maintenance
- Run of the river hydro projects (no dam)
- Research projects – fish weir installation/operation
- Dock/Boat ramp construction
- Blasting



# New Duties and Functions the Initiative Would Require Habitat to Implement

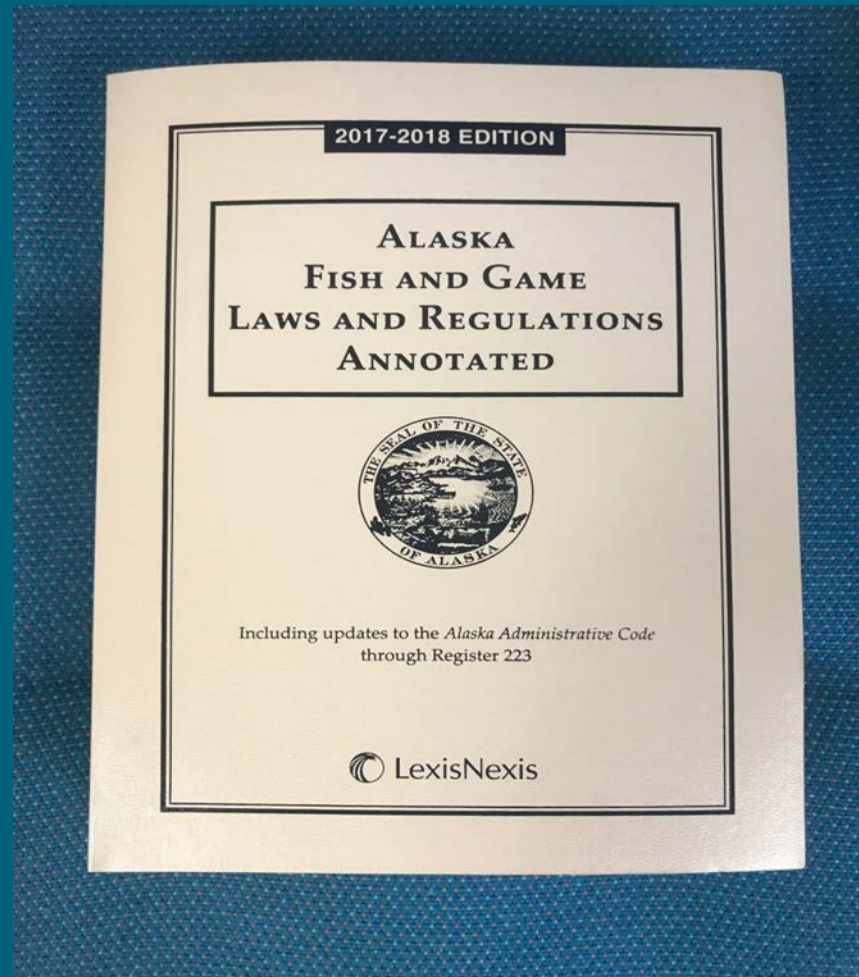
- Presume that naturally occurring connected water bodies and adjacent riparian areas are anadromous, currently jurisdiction ends at the ordinary high water mark of documented anadromy
- Require site-specific determinations to determine a water body is not anadromous fish



- Develop bonding structure and requirements
- Develop regulations
- Develop a bail schedule for bailable citations
- Implement civil penalties in addition to criminal penalties
- Extend jurisdiction into the riparian areas adjacent to anadromous streams
- Respond to appeals on permit decisions
- Restrict project mitigation to on-site only



- Develop public notices for:
  - Permits, applications and amendments
  - General permits
  - Rescinding a permit
  - Any draft major anadromous fish habitat permit assessment; and
  - Major fish habitat applications
- May require written authorization for an individual to operate under a general permit





- Determine whether a fish habitat permit is a major or minor permit
- Respond to and address public input on major fish habitat permits
- Collect fees equal to the cost of service for major permits
- Determine if the proposed activity is likely to cause substantial damage to anadromous fish habitat
- Determine if anadromous fish habitat will recover or be restored within a reasonable period of time; and
- Specify in regulation all de minimus activities that do not require a permit and require a permit for all activities not specified.

# Initiative Impacts on Stakeholders

- Increased time and cost
- Public input into permitting process
- Prohibitions contained in the initiative that would modify or preclude the issuance of permits for certain activities
- Determine if bonding is required on major permits
- Expense of conducting site specific determinations and extensive data needs to prove anadromous fish are not present

# Specific Examples of Initiative Implementation



- New Sec. 16.05.867(a) states that an anadromous fish habitat permit may not be granted for an activity that will cause “substantial damage” to anadromous fish habitat
- “Substantial damage” is defined as an activity inconsistent with restoring the habitat within a reasonable time to support anadromous fish
- Under this provision, larger hydro projects/dams such as the Susitna Hydro Project which, by definition, change flows and alter natural and seasonal flow regimes, may not be permissible.





# Additional Examples

- New Sec. 16.05.887(a)(1) may prevent us from issuing permits for the proposed Donlin Prospect mine because two anadromous streams would be eliminated permanently, causing substantial permanent damage to anadromous fish habitat
- New Sec. 16.05.877(a)(6) states that an anadromous fish habitat permit may not be granted for an activity that will dewater and relocate a stream or river if the relocation does not provide for fish passage or will “adversely affect” anadromous habitat, fish, or wildlife
- Major highway projects often parallel streams and rivers and often require extensive erosion control and/or relocation to keep the highway intact and passable
- These types of projects have an adverse effect on anadromous fish habitat and could potentially not be permitted.

# Conclusion

- Passage of the initiative would require, but is not limited to:
  - Hiring additional staff including habitat biologists, an analyst programmer, and program technicians to implement initiative components and handle additional workloads
  - A public education component may need to be developed to inform the public of our new and expanded jurisdictional authority
  - The division anticipates that development of regulations could take a significant effort
  - Implementation of any new regulations and criteria would also take significant time and effort