

# How state agencies manage and protect fish and wildlife habitat in Alaska

Senate Resources Committee

**Alaska Department of Fish & Game**

Sam Cotten, Commissioner

**Alaska Department of Environmental Conservation**

Larry Hartig, Commissioner

**Alaska Department of Natural Resources**

Andy Mack, Commissioner

March 28, 2018



# ADF&G Statutory Authority

Senate Resources Committee  
March 28, 2018  
Juneau, AK



# ADF&G's Role in Resource Development



Solomon Gulch Hydro



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, AWC surveys
- Large projects of importance to the State
- Forest Resources and Practices Act
- Special Area 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
- FISH RESOURCE PERMIT
  - Required for handling or transporting fish during dewatering or diversion



# 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

# Fish Habitat Permits

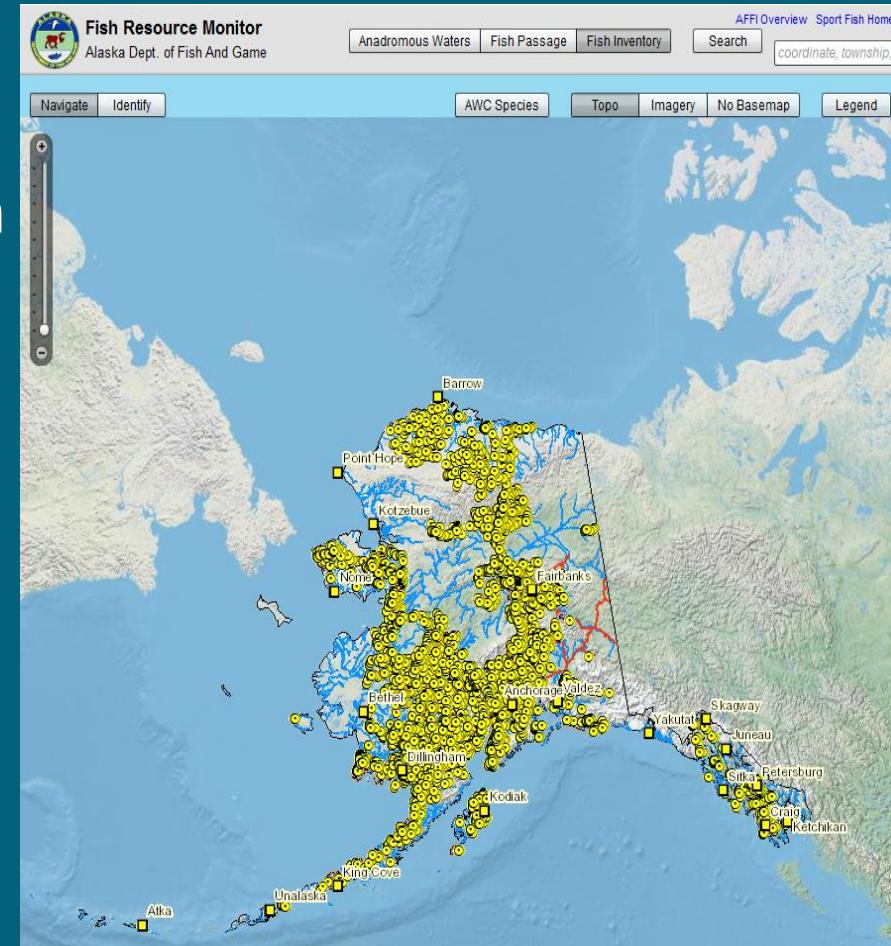
- Applicant submits plans to ADF&G
- Habitat Biologist reviews and consults area staff
- May be permitted as proposed or modified during review process
- Timeline for review...2-6 weeks
- Emergency exemptions
  - AS 16.05.891
  - Verbal/email approval
  - Follow up with formal permit

➤ Typical Stipulations

- Timing Windows
- Diversion/Bypass Pumping
- Sediment Control
- Reveg/Stabilization
- Fish Passage
- Notification

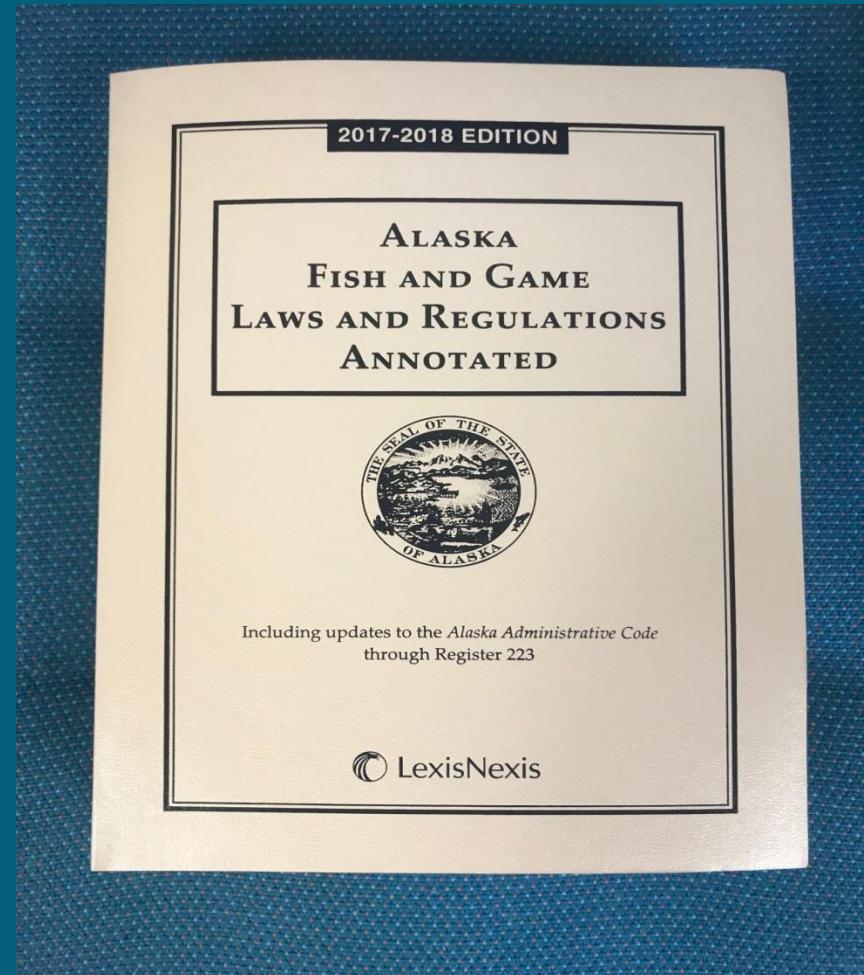
# New Duties and Functions the Initiative Would Require Habitat to Implement

- Presume that naturally occurring connected water bodies and adjacent riparian areas are anadromous, currently jurisdiction ends at the OHW mark;
- Require site-specific determinations to determine if a water body is not important to anadromous fish habitat;



# New Duties and Functions, Cont.

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



# New Duties and Functions, Cont.

- 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 whether a performance bond is necessary;
- 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.

# 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; and
  - The division anticipates that any regulation development could take at least two years and implementation of the new regulations and criteria would take additional years to develop and implement



## DEC Statutory Authority

Senate Resources Committee

Larry Hartig, Commissioner

Wade Strickland, APDES Program Manager

March 28, 2018



# Alaska Water Quality Standards (WQS)

- Protect public health and the environment through:
  - Designation and protection of water uses, such as growth and propagation of aquatic life;
  - Establishing acceptable levels of pollutants (known as water quality criteria); and
  - Enhanced review for high quality waters
- Set through a public process with review by EPA
- EPA leads consultation on endangered species, Magnuson-Stevens Act, and with tribes
- Used to prevent polluted water, identify polluted waters, and recognize clean water
- Identified at 18 AAC 70



# National Pollutant Discharge Elimination System (NPDES) Framework

- Clean Water Act & Amendments
  - Established the NPDES Program (Section 402)
    - Point sources of wastewater discharging pollutants into waters of the United States require a NPDES permit
  - Authorization of State Programs





# Primacy Transfer and APDES Framework

- The State's wastewater discharge program is called the Alaska Pollutant Discharge Elimination System (APDES) Program, which started in October 2008
- Statutory authority is provided in Alaska Statute 46.03
- Implementing regulations are provided in 18 AAC 83





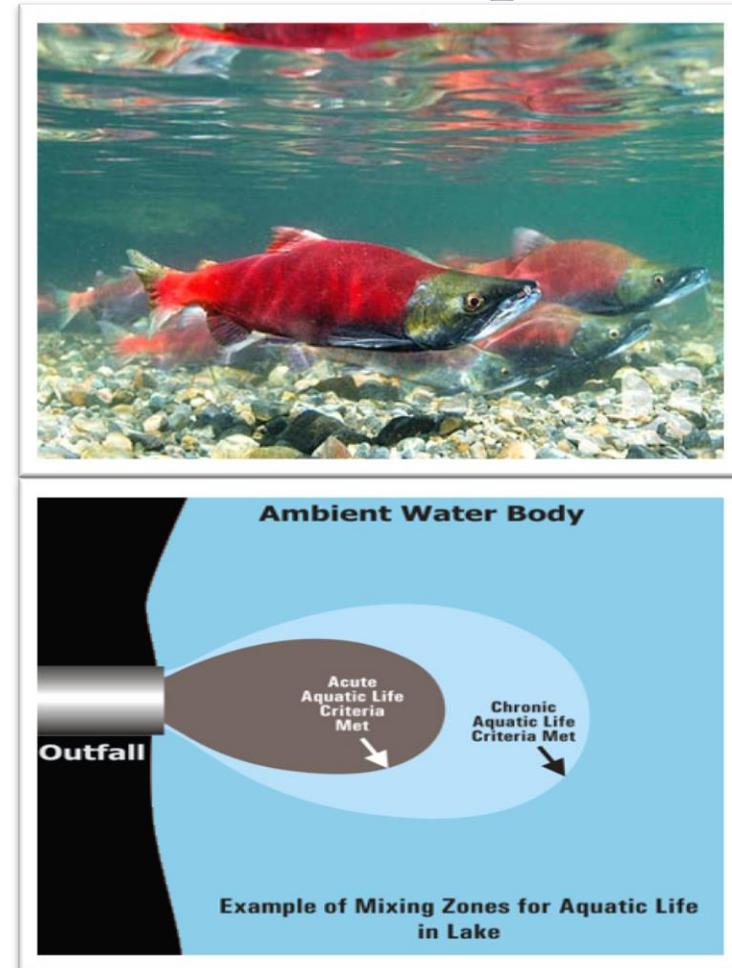
# APDES Permit Development Process

- Receive complete permit application
- Evaluate potential impacts to receiving water quality from the proposed wastewater discharge
  - Consider pollutants, flow, seasonality, and fish presence
  - For discharges to freshwater, review Fish and Game's (ADF&G) Anadromous Waters Catalog to determine if the waterbody is listed
    - Consult with ADF&G and applicant on spawning determination if discharge is to an anadromous waterbody



# Fish Spawning Determination - Impacts

- In fish spawning areas, wastewater discharge not eligible for mixing zone per Alaska water quality standards
  - Mixing zone is a limited area in the waterbody where wastewater is allowed to mix with the ambient water before meeting water quality criteria
- State water quality criteria must be met at end of pipe





# Standard Provisions in an APDES Permit

- Permit is a legal document like a contract
- Limitations (numeric and narrative) on discharge
- Best management practices or operational plans
- Monitoring and record keeping requirements
- Reporting under penalty of perjury
- Standard conditions
  - Duty to comply
  - Duty to allow DEC on-site for inspections



# APDES Permit Document Reviews

- Preliminary draft permit shared with permittee and state & federal agencies for 10-day review period
- Draft permit and supporting documents are public noticed for a minimum of 30-days
  - Major permits are public noticed in a newspaper of local circulation.
  - Public meetings and hearings may occur
- Proposed final permit shared with permittee and state & federal agencies for 5-day review prior to issuance



# APDES Permit Issuance and Administrative Appeal

- Wastewater discharge permit issued for a term up to five years
- Upon issuance, permits may be administratively or judicially appealed





# Compliance with APDES Permits

- During the permit term, DEC will periodically
  - Inspect the treatment facility and discharge site
  - Review on-site records and submitted monitoring reports
- Permittees are required to timely notify DEC of non-compliance events that potentially threatens public health or the environment
- DEC can reopen, modify or terminate a permit





# Impacts to DEC Relating to the Potential Passage of 17FSH<sub>2</sub>

- Rebuttable presumption that all waters in Alaska are anadromous, and therefore no mixing zone per State WQS
- DEC statutorily required to review all existing permits with mixing zones in freshwater
- Upgraded/changed systems would need to meet water quality standards at the end of the discharge pipe
  - Increased complexity for engineering plan review
  - More stringent permit limits
- Would require hiring a new permit writer and engineer

# DNR Statutory Authority

## Senate Resources Committee

*Presented by:*

Andy Mack, Commissioner

Alaska Department of Natural Resources

March 28, 2018



# DEPARTMENT OF NATURAL RESOURCES

**Our mission:** Develop, conserve, and maximize the use of Alaska's natural resources consistent with the public interest.

**What we do:** Manage all state-owned land, water, and natural resources, except for fish and game, on behalf of Alaskans.

# DEPARTMENT OF NATURAL RESOURCES

## How does DNR contribute to the protection of fish and wildlife resources?

- Land use planning
  - General state lands
  - State parks
  - Forest lands
- Land and water authorizations
  - Large project coordination

DNR works with ADF&G and DEC throughout the planning and permitting processes

# LAND USE PLANNING

- AS 38.04.065 requires the Alaska Department of Natural Resources (DNR) Commissioner to prepare and revise regional land use plans “that provide for the use and management of state owned land.”
- DNR uses **Area Plans, Management Plans and Site Specific Plans** to manage state lands and resources within a given area and to guide DNR regulatory decisions.

# LAND USE PLANNING

## - GENERAL STATE LANDS -

Fish and wildlife habitat protections are achieved by DNR on General State Lands by:

- Working with ADF&G to identify important habitat areas and management issues
- Defining areawide goals, objectives, and management guidelines related to state resources, including fish and wildlife habitats
- Directing DNR decisions regarding written authorizations

# LAND USE PLANNING

## - STATE PARKS -

- The Division of State Parks and Outdoor Recreation conserves parks' natural resources, which includes habitat for fish and wildlife.
- DPOR accomplishes this through collaboration and consultation with ADF&G in the development and construction of DPOR facilities, enforcement of related regulations, and cooperative habitat conservation projects.

# LAND USE PLANNING

## - FOREST LANDS -

### Forest Resources and Practices Act (FRPA)

- Applies to all non-federal land
- Intent:
  - Protect riparian areas from the significant adverse effects of timber harvest activities on fish habitat and water quality.
  - Provide adequate preservation of fish habitat.
  - Support economic activities derived from forest resources.
- The Board of Forestry oversees FRPA

# LAND USE PLANNING

## - FOREST LANDS -

### Interagency Coordination

- FRPA relies on interagency participation in plan reviews, field inspections, stream classification, and enforcement.
- By statute, DNR gives due deference to ADF&G regarding effects of forest operations on fish habitat and to DEC regarding effects on water quality.
- In the event of a disagreement, DEC or ADF&G can elevate an issue to the agency directors, the commissioners, and the governor before a decision is final.



# LAND AND WATER AUTHORIZATIONS

## Generally Allowed Uses

- As provided in 11 AAC 96.020
- Travel across state lands
- Aircraft landing
- Use of watercraft
- Anchoring mooring buoy
- Hunting, fishing, trapping, gathering
- Recreational gold panning/prospecting/suction dredging
- **Must minimize disturbance to fish and wildlife resources**

## Permit/Authorization/Approval

- Mineral exploration & mining
- Placer mining
- Temporary water withdrawal
- Commercial recreation activities
- Weir
- Floating dock
- Use of water resources
- Notice of application routinely provided

## Easement & Leases

- Rights-of-way
- Utility easement
- Boat launch
- Aquatic farm site
- Marine access facility (commercial dock)
- Public notice required
- Best Interest Finding required

**In consultation with ADF&G and DEC, may include enforceable conditions related to protection of fish and wildlife resources**

# LAND AND WATER AUTHORIZATIONS

- Water use authorizations
  - Reservation of Water:
    - Used for the purpose of protection of fish and wildlife habitat, migration, and propagation (AS 46.15.145)
  - Traditional Water Rights
    - AS 46.15.080 Public Interest Criteria includes:
      - The effect on fish and game resources and on public recreational opportunities
      - Permit and certificate can include conditions requiring fish protection
  - Temporary Water Use:
    - Must consult with ADF&G and ADEC prior to issuance.
    - Includes conditions consistent with fish protection

# LARGE PROJECT COORDINATION

- The DNR Office of Project Management and Permitting (OPMP) may coordinate the review of larger scale projects in the state, such as transportation, oil and gas, mining, and alternative energy projects.
- OPMP facilitates multidisciplinary agency teams to review project plans and inform individual agency decisions.



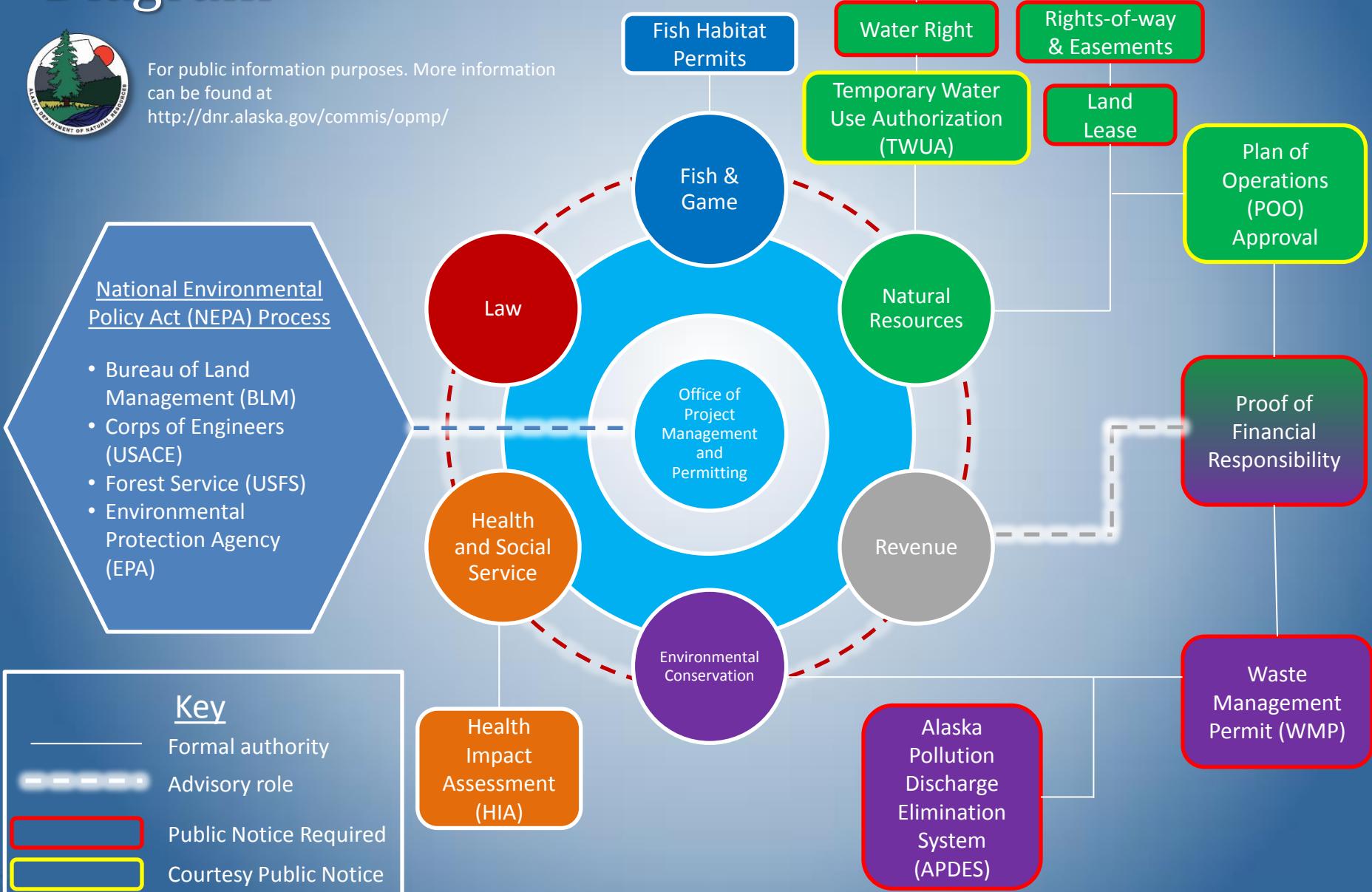
# SUMMARY

- DNR manages state-owned land, water, and natural resources, except for fish and game, on behalf of Alaskans.
- DNR contributes to the protection of fish and wildlife through its land use management planning and permitting processes.
- DNR coordinates with ADF&G and DEC on specific management plan guidelines and authorization/permit conditions related to fish and wildlife resources.

# Inter-Agency Coordination Diagram



For public information purposes. More information can be found at <http://dnr.alaska.gov/commis/opmp/>



# CONCLUSION

Thank you.

Questions?