

CS FOR HOUSE BILL NO. 199()

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES STUTES, Josephson, Gara

A BILL**FOR AN ACT ENTITLED**

1 "An Act establishing major and minor anadromous fish habitat permits for certain
2 activities; establishing related penalties; and relating to fishways and the protection of
3 anadromous fish and anadromous fish habitat."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 FINDINGS AND POLICY. (a) The legislature finds that wild salmon are critically
8 important to the state's communities, economy, and culture. It is the policy of the state to
9 ensure

10 (1) sustainable anadromous fisheries for current and future generations by
11 maintaining and protecting anadromous fish and anadromous fish habitat;

12 (2) activities occurring in anadromous fish habitat are governed by standards
13 that protect anadromous fish and anadromous fish habitat;

14 (3) state standards for protecting anadromous fish and anadromous fish habitat

1 provide regulatory certainty and clear criteria, allowing for responsible resource development;
2 and

3 (4) that the Department of Fish and Game protects the state's anadromous
4 fishery resources in a manner consistent with art. VIII, Constitution of the State of Alaska.

5 (b) It is the policy of the state that anadromous fish spawning, rearing, and migratory
6 habitat in the state be protected as follows:

7 (1) anadromous fish habitat should not be perturbed beyond natural
8 boundaries of variation;

9 (2) scientific assessments of possible adverse ecological effects of proposed
10 activities on anadromous fish habitat and the effects of the proposed activities on anadromous
11 fish populations should be conducted before a proposed activity is approved;

12 (3) adverse environmental effects on anadromous fish stocks and habitat
13 should be assessed and all essential anadromous fish habitat in marine, estuarine, and
14 freshwater ecosystems and the access of anadromous fish to those habitat areas should be
15 protected; the areas of essential anadromous fish habitat that should be protected include
16 spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing
17 areas, offshore rearing areas, and migratory pathways;

18 (4) areas of freshwater anadromous fish habitat should be protected on a
19 watershed basis, including appropriate management of riparian zones, water quality, and
20 water quantity;

21 (5) when making conservation and allocation decisions, affected user groups,
22 regulatory agencies, and boards should assess, consider, and respond to instances of decreased
23 anadromous fish productivity resulting from loss of anadromous fish habitat;

24 (6) areas of degraded anadromous fish habitat areas should be restored to
25 former levels of productivity when the areas are known and restoration is desirable; and

26 (7) the current productivity and ecological health of areas of anadromous fish
27 habitat and the effectiveness of restoration activities on areas of degraded anadromous fish
28 habitat should be investigated and be the subject of continued monitoring.

29 * **Sec. 2.** AS 16.05.841 is amended to read:

30 **Sec. 16.05.841. Fishway required.** If the commissioner considers it necessary,
31 every dam or other obstruction built by any person across a stream frequented by

1 salmon or other fish shall be provided by that person with a durable and efficient
2 fishway and a device for efficient passage for upstream and downstream migrants.
3 The fishway or device or both shall be maintained in a practical and effective manner
4 in the place, form, and capacity the commissioner approves for which plans and
5 specifications shall be approved by the department upon application. The fishway or
6 device shall be kept open, unobstructed, and supplied with a sufficient quantity of
7 water to admit freely the passage of fish through it.

8 * **Sec. 3.** AS 16.05.861 is amended to read:

9 **Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY]**
10 **requirements.** (a) The owner of a dam or obstruction who fails to comply with
11 AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR
12 16.05.851] within a reasonable time specified by written notice from the commissioner
13 is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each
14 day the owner fails to comply constitutes a separate offense.

15 (b) In addition to the fine, the dam or other obstruction managed, controlled,
16 or owned by a person violating AS 16.05.841 [OR 16.05.851] or a regulation adopted
17 under AS 16.05.841 [OR 16.05.851] is a public nuisance and is subject to abatement.

18 * **Sec. 4.** AS 16.05.871 is repealed and reenacted to read:

19 **Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The
20 commissioner shall identify all or portions of each river, lake, stream, wetland, and
21 land beneath each river, lake, stream, and wetland, that are anadromous fish habitat.

22 (b) In this section,

23 (1) "anadromous fish habitat" means all or portions of a permanent or
24 intermittent river, lake, stream, or wetland, and the land beneath the river, lake,
25 stream, or wetland, that contribute directly to the spawning, rearing, migration, or
26 overwintering of anadromous fish;

27 (2) "river," "stream," or "wetland" includes the foreshore portion, if
28 any, of the river, stream, or wetland above the mean low tide line.

29 * **Sec. 5.** AS 16.05 is amended by adding new sections to read:

30 **Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency
31 under AS 16.05.891 or as authorized by a valid general minor permit under

1 AS 16.05.883(b), a person or governmental agency must obtain an anadromous fish
2 habitat permit under AS 16.05.883(a) or 16.05.885 before

3 (1) constructing a hydraulic project or using, diverting, obstructing,
4 polluting, or changing the natural flow or bed of a river, lake, stream, or wetland
5 identified as anadromous fish habitat under AS 16.05.871; or

6 (2) using wheeled, tracked, or excavating equipment or log-dragging
7 equipment in the bed of a river, lake, stream, or wetland identified as anadromous fish
8 habitat under AS 16.05.871.

9 (b) An applicant shall complete an application on a form approved by the
10 department for a permit under AS 16.05.883(a) or 16.05.885 and submit the
11 application to the department. The commissioner may require additional information,
12 including information from an applicant, before approving an application. An
13 applicant shall provide all information requested by the commissioner to reasonably
14 assess a proposed activity's effects on anadromous fish habitat, including

15 (1) the scope and duration of the proposed activity; and

16 (2) mitigation measures planned for areas of affected anadromous fish
17 habitat.

18 (c) Upon receiving a complete fish habitat permit application, any fee required
19 under AS 16.05.893, and any other information required by the commissioner under
20 (b) of this section, the commissioner shall determine the proposed activity's potential
21 effects on anadromous fish and anadromous fish habitat under AS 16.05.877. Before
22 making the determination, the commissioner may work with the applicant in planning
23 the activity to avoid or minimize the activity's potential adverse effects on anadromous
24 fish and anadromous fish habitat under AS 16.05.877.

25 (d) If the commissioner determines that a proposed activity, as conditioned by
26 permit requirements and mitigation measures that would likely be required of the
27 activity by the department under AS 16.05.887, will not adversely affect anadromous
28 fish and anadromous fish habitat under AS 16.05.877, the commissioner shall classify
29 the application for the activity as an application for a minor permit under
30 AS 16.05.883(a).

31 (e) If the commissioner determines that a proposed activity has the potential to

1 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.877,
2 the commissioner shall classify the application for the activity as an application for a
3 major permit under AS 16.05.885.

4 (f) The department shall provide public notice of a determination made under
5 this section. The department shall

6 (1) post notice of the determination on the Alaska Online Public
7 Notice System (AS 44.62.175); and

8 (2) make a copy of the application available on the department's
9 Internet website.

10 (g) In this section, "anadromous fish habitat" has the meaning given in
11 AS 16.05.871.

12 **Sec. 16.05.877. Consideration of effects of activity on anadromous fish and**
13 **anadromous fish habitat.** (a) In determining if a proposed activity has the potential to
14 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.871 -
15 16.05.901, the commissioner shall consider whether the proposed activity, singly or in
16 combination with other factors, could

17 (1) interfere with the spawning, rearing, or migration of anadromous
18 fish at any life stage;

19 (2) impede the safe and efficient upstream and downstream passage of
20 anadromous fish;

21 (3) impair water quality or water temperature necessary to support
22 anadromous fish;

23 (4) reduce instream flows or alter the natural flow regimes necessary to
24 support anadromous fish and anadromous fish habitat;

25 (5) diminish the overall aquatic habitat diversity, productivity,
26 stability, or function of all or portions of a river, lake, stream, or wetland that is
27 anadromous fish habitat;

28 (6) create conditions known to have adverse effects on, or cause
29 increased mortality of, anadromous fish at any life stage;

30 (7) diminish the stability of a river, lake, stream, or wetland bank or
31 bed; or

(8) violate additional criteria, consistent with the requirements of AS 16.05.871 - 16.05.901, adopted by the commissioner by regulation.

(b) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

* Sec. 6. AS 16.05.881 is amended to read:

Sec. 16.05.881. Construction without approval prohibited. If a person or governmental agency **conducts an activity** [BEGINS CONSTRUCTION ON A WORK OR PROJECT OR USE] for which **a permit** [NOTICE] is required by **AS 16.05.875(a)** [AS 16.05.871] without **the appropriate permit issued under AS 16.05.883 or 16.05.885** [FIRST PROVIDING PLANS AND SPECIFICATIONS SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE PROTECTION OF FISH AND GAME], the person or agency is guilty of a misdemeanor. If a person or governmental agency is convicted of violating **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] or continues **an activity** [A USE, WORK, OR PROJECT] without fully complying with **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896], the **activity** [USE, WORK, OR PROJECT] is a public nuisance and is subject to abatement. The cost of restoring **all or portions of** a [SPECIFIED] river, lake, or stream **identified as anadromous fish habitat under AS 16.05.871** to its original condition shall be borne by the violator and shall be in addition to the penalty imposed by the court **under AS 16.05.901**.

* Sec. 7. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.883. Minor anadromous fish habitat permits. (a) The commissioner may issue a minor permit for an activity after issuing public notice of the determination under AS 16.05.875(f). A minor permit issued under this section must include any necessary permit conditions or mitigation measures required of the permittee under AS 16.05.887.

(b) Notwithstanding (a) of this section, the commissioner may issue a general minor permit under this section without an application and determination under

1 AS 16.05.875 on a regional or other geographical basis for an activity or activities, if
2 the commissioner determines that

3 (1) the activity will not have adverse effects on anadromous fish or
4 anadromous fish habitat or, if the activity may have adverse effects on anadromous
5 fish and anadromous fish habitat, those effects may be prevented by requiring certain
6 conditions and stipulations on the activity;

7 (2) permit conditions and stipulations are mandatory and enforceable;
8 and

9 (3) a general minor permit for the activity is in the public interest.

10 (c) When the commissioner makes a determination to issue a general minor
11 permit under (b) of this section, the commissioner shall provide public notice of the
12 proposed permit and opportunity to comment under (f) of this section. Additionally,
13 the commissioner shall hold at least one public hearing if requested by an interested
14 person. If no request for reconsideration is timely received under AS 16.05.889, and
15 the commissioner determines the general minor permit meets the requirements in (b)
16 of this section, the commissioner may issue a general minor permit under this section.
17 A general minor permit issued for an activity under this section must be renewed
18 every five years.

19 (d) The commissioner may issue a regional or geographical authorization for
20 an activity subject to a general minor permit under this section or may require a person
21 to obtain written authorization from the department before conducting an activity
22 subject to a general minor permit under this section. Upon request, the department
23 shall issue or deny an authorization within five days. The department may make
24 general minor permit authorizations under this section available through electronic
25 means. If applicable, a general minor permit authorization under this section shall set
26 out conditions and stipulations to avoid adverse effects to anadromous fish and
27 anadromous fish habitat.

28 (e) The commissioner may amend a general minor permit issued under this
29 section at any time to include additional conditions and stipulations or may rescind a
30 general minor permit issued under this section if the commissioner determines that the
31 permit does not protect anadromous fish and anadromous fish habitat. The

1 commissioner shall provide public notice under (f) of this section of

2 (1) changes proposed by the commissioner to a general minor permit
3 issued under this section; and

4 (2) a determination made by the commissioner to rescind a general
5 minor permit issued under this section.

6 (f) The department shall provide public notice of a decision or determination
7 made under (a), (b), or (e) of this section. The department shall

8 (1) post notice of the general minor permit decision or commissioner's
9 determination on the Alaska Online Public Notice System (AS 44.62.175);

10 (2) make a copy of the respective general minor permit or
11 determination available on the department's Internet website; and

12 (3) for a general minor permit decision under (b) of this section,
13 provide at least 30 days for public comment.

14 (g) In this section, "anadromous fish habitat" has the meaning given in
15 AS 16.05.871.

16 **Sec. 16.05.885. Major anadromous fish habitat permit.** (a) Unless
17 reconsideration is requested under AS 16.05.889, the commissioner shall, after
18 providing notice under AS 16.05.875(f) of a determination under AS 16.05.875(e),
19 prepare a draft major anadromous fish habitat permit assessment that identifies and
20 describes

21 (1) the proposed activity;
22 (2) the extent and duration of the effects the activity will have on
23 anadromous fish habitat;

24 (3) possible alternatives or modifications to the proposed activity that
25 will avoid or minimize the activity's adverse effects on anadromous fish habitat;

26 (4) any permit conditions and mitigation measures that the department
27 may require of the permittee under AS 16.05.887;

28 (5) if applicable, the amount of the performance bond necessary to
29 restore anadromous fish habitat if the permittee does not meet the permit conditions
30 and mitigation measures required under AS 16.05.887; and

31 (6) the commissioner's determination, after considering the factors

1 under AS 16.05.877(a), that the proposed activity

2 (A) may be permitted because

3 (i) the adverse effects of the proposed activity, singly or
4 in combination with other factors, can be prevented or, if not
5 preventable, minimized under AS 16.05.887 to the extent necessary to
6 protect anadromous fish and anadromous fish habitat; or

7 (ii) the anadromous fish habitat affected by the
8 proposed activity can be restored or the adverse effects of the proposed
9 activity can be otherwise mitigated under AS 16.05.887 to the extent
10 necessary to protect anadromous fish and anadromous fish habitat; or

11 (B) may not be permitted because

12 (i) the adverse effects of the activity cannot be
13 prevented or minimized under AS 16.05.887 to the extent necessary to
14 protect anadromous fish and anadromous fish habitat; and

15 (ii) the anadromous fish habitat affected by the
16 proposed activity cannot be restored and the adverse effects of the
17 proposed activity cannot be otherwise mitigated under AS 16.05.887 to
18 the extent necessary to protect anadromous fish and anadromous fish
19 habitat.

20 (b) The commissioner shall collect, or shall require an applicant for a permit
21 under this section to collect, information reasonably needed by the commissioner to
22 determine whether a proposed activity should be permitted under this section. The
23 commissioner may recover fees equal to the costs incurred by the department in
24 collecting the necessary information and conducting the assessment under (a) of this
25 section.

26 (c) Upon completion of the draft assessment under (a) of this section, the
27 department shall

28 (1) post notice on the Alaska Online Public Notice System
29 (AS 44.62.175);

30 (2) make a copy of the draft assessment available on the department's
31 Internet website; and

(3) provide at least 30 days for public comment.

(d) After the completion of the comment period established by (c)(3) of this section and evaluation of the comments received, the commissioner shall publish a final assessment and a written permit determination on the department's Internet website. The final assessment and written permit determination must include any permit conditions, mitigation measures, and bonding imposed on the proposed activity under AS 16.05.887. The bond shall be the amount determined necessary by the commissioner to ensure restoration of anadromous fish habitat if the applicant does not meet the permit conditions and mitigation measures imposed on the activity under AS 16.05.887. The department shall post public notice of the final assessment and permit determination on the Alaska Online Public Notice System (AS 44.62.175) and provide written or electronic notice to each person who commented on the commissioner's determination that the application for the permitted activity was an application for a major permit under AS 16.05.875(e) or the draft assessment prepared under (a) of this section for the activity.

(e) The commissioner may issue a major permit to an applicant only if

(1) the commissioner's written permit determination finds that

(A) the public notice period required under (c) of this section is complete;

(B) any permit conditions and mitigation measures under AS 16.05.887 are mandatory and enforceable; and

(C) the commissioner has determined, after considering the factors under AS 16.05.877(a), that the proposed activity, as authorized by the written permit determination, shall be permitted because

(i) the adverse effects of the proposed activity, singly or in combination with other factors, can be prevented or, if not preventable, minimized under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat; or

(ii) the anadromous fish habitat affected by the proposed activity, as authorized by the written permit determination, can be restored or the adverse effects of the proposed activity can be

otherwise mitigated under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat;

(2) the applicant

(A) accepts all permit conditions and mitigation measures required under AS 16.05.887; and

(B) if required, provides the bond required under (g) of this section; and

(3) a request for reconsideration of the commissioner's determination under (d) of this section is not timely received under AS 16.05.889.

(f) If a request for reconsideration of the commissioner's final assessment and written determination issued under (d) of this section is timely received under AS 16.05.889(a), the commissioner shall issue a major permit for the activity when the commissioner

(1) denies the request for reconsideration or issues a new determination under AS 16.05.889(c); and

(2) finds that the requirements of (e)(1) and (2) of this section have been met.

(g) If the commissioner approves an application for an activity and determines that the activity requires a bond, the applicant shall file a performance bond in the amount established by the commissioner in the written permit determination for the activity under (d) of this section. Except as provided in (h) of this section, the commissioner may not issue a permit until an applicant files the bond. The bond must be payable to the State of Alaska and conditioned on faithful performance of the requirements of this chapter and the permit. The performance bond may be a corporate surety bond issued by a corporation licensed to do business in the state or a personal bond secured by cash or its equivalent. However, the commissioner may not accept a bond executed by the applicant without separate surety. If, at any time, the commissioner finds that the amount of the bond is more or less than what is necessary to ensure restoration of anadromous fish habitat, the commissioner may reduce the amount of bond required, eliminate the bond requirement for the activity, or require an applicant or permittee to file an additional bond. The department shall provide public

1 notice if the commissioner determines that the amount of a bond must be raised or
2 lowered or that a bond is no longer required for an activity under this section.

3 (h) Notwithstanding (g) of this section,

4 (1) a governmental agency is exempt from the bonding requirements of
5 this section;

6 (2) in lieu of the filing of a performance bond by an applicant, the
7 department may receive the amount of the bond from another state agency; and

8 (3) a bond required under AS 16.05.871 - 16.05.901 may be part of
9 another bond held or initiated by the department or another state agency.

10 (i) A permittee may not transfer or assign authority to
11 conduct an activity that requires a permit under this section to another
12 person without

13 (1) the written approval of the commissioner; and

14 (2) posting a performance bond for the transferee or assignee as
15 required under (g) of this section, unless the transferee or assignee is exempt under (h)
16 of this section.

17 (j) In this section, "anadromous fish habitat" has the meaning given in
18 AS 16.05.871.

19 **Sec. 16.05.887. Permit conditions and mitigation measures.** (a) The
20 commissioner shall require a permittee under AS 16.05.883(a) or 16.05.885 to
21 implement the permitted activity in a manner

22 (1) most likely to prevent or minimize the adverse effects of the
23 activity on anadromous fish and anadromous fish habitat under AS 16.05.877; and

24 (2) that the commissioner has determined will protect anadromous fish
25 and anadromous fish habitat.

26 (b) When establishing permit conditions for an activity under this section,
27 including permit stipulations and mitigation measures, the commissioner shall, in
28 order of priority, require a permittee under AS 16.05.883(a) or 16.05.885 to take the
29 following actions to protect anadromous fish and anadromous fish habitat:

30 (1) prevent adverse effects of the activity on anadromous fish and
31 anadromous fish habitat by changing the siting, timing, procedure, or other

manageable qualities of the activity;

(2) if the adverse effects of the activity cannot be prevented under (1) of this subsection, minimize the adverse effects of the activity by limiting or changing the degree, magnitude, duration, manner of implementation, or other manageable qualities of the activity; and

(3) if the activity cannot be implemented in a manner that prevents adverse effects on anadromous fish and anadromous fish habitat under this subsection, restore the affected anadromous fish habitat or take other mitigation measures that the commissioner determines are necessary to protect anadromous fish and anadromous fish habitat.

(c) The department shall adopt regulations consistent with AS 16.05.871 - 16.05.901 establishing appropriate permit conditions and mitigation measures applicable to activities subject to permitting requirements under AS 16.05.883 or 16.05.885.

(d) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

Sec. 16.05.889. Reconsideration of determinations. (a) An interested person may request the commissioner to reconsider

(1) whether an application for a proposed activity should be classified as an application for a minor or major permit under AS 16.05.875;

(2) a final written determination to issue or refuse to issue a permit under AS 16.05.883(a) or (b) or 16.05.885; or

(3) the amount of a bond

(A) determined necessary by the commissioner and posted in a written permit determination under AS 16.05.885(d); or

(B) raised, reduced, or eliminated by the commissioner under AS 16.05.885(g).

(b) A request for reconsideration under this section must be made in writing and not later than 30 days after the date of the determination.

(c) Within 30 days after receiving a request for reconsideration, the commissioner shall issue a written determination granting or denying the request. If

1 the commissioner does not act on the request for reconsideration within 30 days after
2 receiving the request, the request is denied. If the commissioner grants the request for
3 reconsideration, the commissioner shall issue a final determination within 30 days.

4 (d) The commissioner's determination upon reconsideration is the final
5 administrative decision for purposes of appeal to the superior court under
6 AS 44.62.560. A person shall initiate an appeal within 30 days after the date that the
7 final determination is mailed or otherwise distributed, or the date that the request for
8 reconsideration is considered denied by the commissioner's failure to act on the
9 request, whichever is earlier. The points on appeal are limited to those presented to the
10 commissioner in the request for reconsideration.

11 * **Sec. 8.** AS 16.05.891 is amended to read:

12 **Sec. 16.05.891. Exemption for emergency situations.** In an emergency
13 arising from weather or stream flow conditions, the commissioner, through authorized
14 representatives, shall issue oral permits to a riparian owner or state agency for
15 removing obstructions or for repairing existing structures without the necessity of a
16 permit issued under AS 16.05.871 - 16.05.901 [SUBMITTING PREPARED PLANS
17 AND SPECIFICATIONS AS REQUIRED BY AS 16.05.871].

18 * **Sec. 9.** AS 16.05 is amended by adding new sections to read:

19 **Sec. 16.05.893. Fees.** (a) The commissioner shall establish reasonable fees for

20 (1) reviewing permit applications, assessments performed by the
21 department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -
22 16.05.901; and

23 (2) other services provided under AS 16.05.871 - 16.05.901.

24 (b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the
25 applicant or permittee is a governmental agency or the commissioner finds that
26 waiving the fee is otherwise in the public interest. The commissioner shall, in
27 regulations adopted by the department, specify the circumstances under which a fee
28 may be waived under this subsection.

29 (c) Fees collected under this section shall be separately accounted for under
30 AS 37.05.142.

31 **Sec. 16.05.894. Notification of violation.** When the commissioner finds, after

1 investigation, that a permittee or activity permitted under AS 16.05.871 - 16.05.901 is
2 violating a provision of AS 16.05.871 - 16.05.901, a regulation adopted under
3 AS 16.05.871 - 16.05.901, or a permit condition or mitigation measure imposed under
4 AS 16.05.887, the commissioner shall notify the permittee of the nature of the
5 violation and

6 (1) order that the violation be stopped; or

7 (2) if the violation cannot be stopped, order the permittee to prevent or
8 mitigate the adverse effects of the violation on anadromous fish, other fish, and
9 wildlife habitat in a manner consistent with AS 16.05.871 - 16.05.901.

10 **Sec. 16.05.897. Applicability of permitting requirements.** (a)

11 Notwithstanding AS 16.05.875(a), and except as provided in (b) of this section, a
12 facility, activity, operation, or project that has in full force and effect, on the day
13 before the effective date of sec. 5 of this Act, all authorizations required by law
14 relating to the protection of anadromous fish and anadromous fish habitat

15 (1) shall continue to be authorized under AS 16.05.871 - 16.05.901 and
16 the regulations adopted under AS 16.05.871 - 16.05.901, as those sections and
17 regulations read on the day before the effective date of sec. 5 of this Act, and may
18 continue to renew those authorizations and obtain minor authorization modifications
19 under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 -
20 16.05.901, as those sections and regulations read on the day before the effective date
21 of sec. 5 of this Act; and

22 (2) is not required to obtain an anadromous fish habitat permit under
23 AS 16.05.883 or 16.05.885.

24 (b) The exemption provided by (a) of this section does not apply to a facility,
25 activity, operation, or project that significantly expands or increases in scope, area, or
26 frequency, or otherwise takes action outside, those actions for which it is authorized
27 on the day before the effective date of sec. 5 of this Act.

28 **Sec. 16.05.899. Enforcement authority.** An employee of the department who
29 is designated by the commissioner may issue a person a citation that complies with
30 AS 12.25.175 - 12.25.230 for a violation that is not a misdemeanor of AS 16.05.871 -
31 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901, if there is probable

1 cause to believe the person has violated AS 16.05.871 - 16.05.901 or a regulation
2 adopted under AS 16.05.871 - 16.05.901.

3 * **Sec. 10.** AS 16.05.901(a) is amended to read:

4 (a) A person who violates **AS 16.05.871 - 16.05.901 or a regulation adopted**
5 **under AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] is guilty of a **violation**
6 **punishable as provided in AS 12.55** [CLASS A MISDEMEANOR].

7 * **Sec. 11.** AS 16.05.901 is amended by adding new subsections to read:

8 (c) A person who knowingly violates AS 16.05.871 - 16.05.901 or a
9 regulation adopted under AS 16.05.871 - 16.05.901 is guilty of a class A misdemeanor
10 and is punishable as provided in AS 12.55.

11 (d) A person who, with criminal negligence, violates or permits a violation of
12 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a
13 permit condition or mitigation measure imposed under AS 16.05.887, or an order
14 issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as
15 provided in AS 12.55. In this subsection, "criminal negligence" has the meaning given
16 in AS 11.81.900(a).

17 (e) Notwithstanding (a) of this section, if a person or governmental agency
18 fails to notify the commissioner of an activity for which a permit is required under
19 AS 16.05.871 - 16.05.901 and the activity causes material damage to anadromous fish
20 habitat or, by neglect or noncompliance with permit conditions or mitigation measures
21 imposed under AS 16.05.883 or 16.05.885, causes material damage to anadromous
22 fish habitat, the person or governmental agency is guilty of a class A misdemeanor and
23 is punishable as provided in AS 12.55.

24 (f) Each day that a violation under this section occurs is a separate violation.

25 (g) A person who violates or permits a violation of AS 16.05.871 - 16.05.901,
26 a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or mitigation
27 measure imposed under AS 16.05.883 or 16.05.885, or an order issued under
28 AS 16.05.894 is liable, after notice and hearing, for a civil penalty in an amount not to
29 exceed \$10,000 to be assessed by the commissioner. In determining the amount of the
30 civil penalty, the commissioner shall consider

31 (1) the character and degree of injury to anadromous fish habitat;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent; and

(4) if the information is available, the net economic savings realized by the respondent through the violation.

(h) If a respondent violates an order issued under AS 16.05.894, the attorney general, upon the request of the commissioner, may seek an injunction requiring the respondent to suspend an activity, in whole or in part, until the respondent complies with the order.

(i) If a respondent violates an order issued under AS 16.05.894 that requires the respondent to repair or correct damage, the commissioner may proceed to repair or correct the damage using state agency employees or contractors and the respondent is liable for the cost of the repair. The commissioner shall deliver to the respondent an itemized statement of expenses incurred.

(j) The supreme court shall establish by order or rule a schedule of bail amounts for violations under (a) of this section that allow the disposition of a citation without a court appearance. The bail amount for a violation must appear on the citation.

(k) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

* **Sec. 12.** AS 16.05.925(a) is amended to read:

(a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723, 16.05.783, 16.05.831, 16.05.861, 16.05.901, and 16.05.905, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

* **Sec. 13.** AS 16.20.070 is amended to read:

Sec. 16.20.070. Relationship to other laws. AS 16.20.050 and 16.20.060 do not affect **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.891].

* **Sec. 14.** AS 37.05.146(c) is amended by adding a new paragraph to read:

(90) fees collected by the Department of Fish and Game under

1 AS 16.05.871 - 16.05.901.

2 * **Sec. 15.** AS 41.17.010 is amended to read:

3 **Sec. 41.17.010. Declaration of intent.** The legislature declares that

4 (1) the forest resources of Alaska are among the most valuable natural
5 resources of the state, and furnish timber and wood products, fish and wildlife,
6 tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

7 (2) economic enterprises and other activities and pursuits derived from
8 forest resources warrant the continuing recognition and support of the state;

9 (3) the state has a fundamental obligation to ensure that management
10 of forest resources guarantees perpetual supplies of renewable resources, provides
11 nonrenewable resources in a manner consistent with that obligation, and serves the
12 needs of all Alaska for the many products, benefits, and services obtained from them;

13 (4) government administration of forest resources should combine
14 professional management services, regulatory measures, and economic incentives in a
15 complementary fashion, and should draw upon the expertise of professional foresters
16 in conjunction with other disciplines;

17 (5) under the leadership of the Department of Environmental
18 Conservation as lead agency, the state should exercise its full responsibility and
19 authority for control of nonpoint source pollution with respect to the Federal Water
20 Pollution Control Act, as amended;

21 (6) subject to AS 41.17.098(c), the provisions of this chapter, and
22 regulations adopted under this chapter, with the approval of the Department of
23 Environmental Conservation, establish the nonpoint source pollution requirements
24 under state law and sec. 319 of the Clean Water Act for activities subject to this
25 chapter;

26 (7) except for activities subject to **AS 16.05.871 - 16.05.901**
27 [AS 16.05.841 OR 16.05.871] and regulations authorized by those sections, this
28 chapter and regulations adopted under this chapter establish the fish habitat protection
29 standards, policies, and review processes under state law.

30 * **Sec. 16.** AS 44.62.330(a)(27) is amended to read:

31 (27) Department of Fish and Game as to functions relating to the

1 protection of anadromous fish habitat under AS 16.05.871 - 16.05.901 where
2 procedures are not otherwise expressly provided in AS 16.05.871 - 16.05.901
3 [FISH AND GAME UNDER AS 16.05.871];

4 * **Sec. 17.** AS 46.15.020(b) is amended to read:

5 (b) The commissioner shall

6 (1) adopt procedural and substantive regulations to carry out the
7 provisions of this chapter, taking into consideration the responsibilities of the
8 Department of Environmental Conservation under AS 46.03 and the Department of
9 Fish and Game under AS 16;

10 (2) develop and maintain a standardized procedure for processing
11 applications and the issuance of authorizations, permits, and certifications under this
12 chapter; shall keep a public record of all applications for permits and certificates and
13 other documents filed in the commissioner's office; shall record all permits and
14 certificates and amendments and orders affecting them and shall index them in
15 accordance with the source of the water and the name of the applicant or appropriator;
16 shall require that temporary water use authorizations are valid only to the extent that
17 the water withdrawal and use complies with applicable requirements of AS 16.05.871
18 - 16.05.901 [AS 16.05.871]; and shall make the record of applications, including
19 temporary water use applications under AS 46.15.155 that have been accepted as
20 complete, authorizations, permits, certificates, amendments, and orders affecting them
21 available to the public on the Internet;

22 (3) cooperate with, assist, advise, and coordinate plans with the
23 federal, state, and local agencies, including local soil and water conservation districts,
24 in matters relating to the appropriation, use, conservation, quality, disposal, or control
25 of waters and activities related thereto;

26 (4) prescribe fees or service charges for any public service rendered
27 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
28 under regulations adopted by the department an annual \$50 administrative service fee
29 to maintain the water management program and a water conservation fee under
30 AS 46.15.035;

31 (5) before February 1 of each year, prepare a report describing the

1 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
2 shall notify the legislature that the report is available; the report must include

3 (A) information on the number of applications and
4 appropriations for the removal of water from one hydrological unit to another
5 that were requested and that were granted and on the amounts of water
6 involved;

7 (B) information on the number and location of sales of water
8 conducted by the commissioner and on the volume of water sold;

9 (C) recommendations of the commissioner for changes in state
10 water law; and

11 (D) a description of state revenue and expenses related to
12 activities under AS 46.15.035 and 46.15.037.

13 * **Sec. 18.** AS 16.05.851 and 16.05.896 are repealed.