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Bullard  
4/2/18

**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 uncoded 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) diminish the stability of a river, lake, stream, or wetland bank or 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the proposed activity;

(2) the extent and duration of the effects the activity will have on anadromous fish habitat;

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

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

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

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



under AS 16.05.877(a), that the proposed activity

(A) may 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 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; or

(B) may not be permitted because

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) the anadromous fish habitat affected by the  
30 proposed activity, as authorized by the written permit determination,  
31 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

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

(h) Notwithstanding (g) of this section,

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

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

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

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

(1) the written approval of the commissioner; and

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

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

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

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

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

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

(1) prevent adverse effects of the activity on anadromous fish and 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

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

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

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

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

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

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

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

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

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

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

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

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

(1) order that the violation be stopped; or

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

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

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

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

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

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

**Sec. 16.05.899. Enforcement authority.** An employee of the department who is designated by the commissioner may issue a person a citation that complies with AS 12.25.175 - 12.25.230 for a violation that is not a misdemeanor of AS 16.05.871 - 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

AS 16.05.871 - 16.05.901.

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

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