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REPRESENTATIVE DAVE TALERICO

MEMORANDUM

Date: March 18, 2016

To: Representative Benjamin Nageak, Co-Chair
House Resources Committee

From: Representative Dave Talerico 

Re: Response to Questions Raised – March 16, 2016

Response to House Resources Questions – March 16, 2016

During the hearing for House Bill 216 on March 16, there were a few questions that were brought up that required additional research to answer. Below is my response to these questions.

Protection of Sensitive Areas

Representatives Seaton and Herron brought forward the concern that the inclusion of certain activities on navigable waters could cause harm to certain sensitive areas, such as salmon spawning ground. There are a number of areas in Alaska Statute that prohibit specific activities in or around certain bodies of water, including:

AS 16.05.871 Protection of fish and game – Requires a person to obtain a permit to conduct certain activities around anadromous waters to ensure that there is adequate protection of fish and game.

AS 16.05.896 Penalty for causing material damage – Makes it a misdemeanor offense to cause material damage to salmon spawning grounds or to interfere with the salmon migration.

There are also a number of laws that allow the Department of Natural Resources to restrict or manage the use of waters through regulation, such as determining what uses are incompatible within a certain area. In addition to these laws, the State may obstruct the free passage of a person on navigable water under AS 38.05.128(a) if they are conducting these activities.

Gibbons v. Ogden

Representative Josephson brought forward a concern that the 1824 U.S. Supreme Court case *Gibbons v. Ogden* may cause a problem for the state's definition of navigable water. This case deals with the power that Congress has over navigation in regards to commerce. While the Supreme Court ruled that the Federal government has authority over interstate commerce and that Federal law supersedes state law regarding this issue. This case did not discuss the matter of navigability of a body of water, unless it was closely associated with interstate commerce. HB 216 deals with accessibility of navigable waters and not commerce that is conducted on a body of water, therefore *Gibbons v. Ogden* likely does not apply to this bill.

Deleting “but not limited to”

There was a concern raised by a number of testifiers that taking the words “but not limited to” would put a limitation on the activities that are allowed on a navigable body of water. The attorney that has drafted this bill explained to us that by taking the words “but not limited to” and leaving in “including” allows this definition of navigable water to not be confined to the activities that are specified. He also explained that there is a trend in Alaska legislative drafting to move away from using the words “including but not limited to” in statute to just say “including” as it has the same legal meaning and is more concise.