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"Strange Things and the Attempted Cremation of Salmon McGee"

There are strange things done in the midnight sun
By the men who moil for gold;
To us and legislators they tell tall tales
That would make your blood run cold;
The Capitol Lights have seen queer sights,
But the queerest they ever did see
Was that night those men tried to set ablaze a good law
To cremate our anadromous friend, Salmon McGee;
So, praise to legislators, fishermen, and the ravens who decree:
"OO-EE, CAW, CAW; OO-EE, CAW, CAW;
You won't do that to our good law."

Sort of Robert Service

April 10, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov

Re: HB 199, my own comments.

Dear Representative Stutes and Members of the House Fisheries Committee,

I intend to be critical so I started with a poem to soften the blow. Because I do not believe HB 199 will pass, my chief objective is to point out its flaws so that it has no chance of becoming the basis of an enacted initiative, which when revised by the legislature will weaken the Anadromous Fish Act even more than HB 199 does. I have spent forty years in efforts to conserve anadromous fish in Alaska, for the US Fish and Wildlife Service, and as a lawyer serving the legislature, environmental, sport, commercial and tribal interests, and as a member of several ADF&G and DNR planning teams, various boards, and the Anchorage Fish and Game Advisory Committee. This will show that HB 199, or an enacted initiative modeled upon it, would help Pebble mine and similar interests in eleven ways. HB 199 should not proceed.

A. Section 2 of HB 199 establishes a method by which Pebble mine and others can evade permitting under the bill.

The proposed AS 16.05.871(b) would require ADF&G to adopt regulations specifying how it will conduct site-specific determinations that anadromous water, or a portion of it –

regardless of whether it is documented or presumed anadromous – is "not important" so as to remove it from coverage by the Act. The proposed AS 16.05.871(b) would allow any person to request such a site-specific determination. That allows Pebble mine to request a determination that a headwater stream documented to be anadromous and which Pebble would like to dam for tailings disposal is "not important." That is how HB 199 would establish a method for Pebble mine and others to evade permitting.

The "Sectional Analysis" creates a misimpression about this. It states that Section 2 creates a process by which "any person may request, a site-specific determination to verify that a waterbody is *not* anadromous fish habitat," and that "if there is a potential dispute as to whether a fish habitat permit is required because a waterbody might *not* be anadromous, a person may request that ADF&G make a site-specific determination and provide a written finding."[1] True but incomplete and misleading, because these statements ignore that, in Section 2, the proposed AS 16.05.871(b) would allow any person to request a site-specific determination that any water body, **including a documented anadromous water body**, not just water presumed to be anadromous under the proposed AS 16.05.871(c), is **"not important"** anadromous fish habitat. In other words, the "Sectional Analysis" omits that such a request can (1) be directed at documented anadromous water, and (2) can seek a determination that such water is "not important." That creates a way to evade permitting regarding documented anadromous waters.

If the drafters of HB 199 had actually intended that it would allow a person to request such a determination only with respect to water presumed to be anadromous, then they would have placed the language authorizing such requests in subsection (c) of the proposed AS 16.05.871 because it creates the presumption. Instead, they placed the language in subsection (b) so as to authorize any person to request "[a] determination that a water body," regardless of whether it is documented or presumed anadromous, is "not important" anadromous fish habitat.

Moreover, because 5 AAC 95.011 incorporates the Anadromous Waters Catalog and Atlas into regulation, any person or agency *already* can submit a petition under Alaska's Administrative Procedure Act (APA) at AS 44.62.220 to ADF&G stating why a documented anadromous river, lake or stream, or portion of it, should be declared "not important" and removed from the Catalog and Atlas so as to evade permitting. Under AS 44.62.230, ADF&G then either denies the petition within 30 days or provides public notice and comment on the proposed removal. Thus, under current law, if Pebble mine hopes to dam a *documented* anadromous headwater stream for tailings disposal, then the burden is on Pebble mine to justify removing the stream from the Catalog, Atlas and permitting process.

Because the APA already allows petitions to amend the Catalog and Atlas, one wonders why HB 199 proposes an *additional system*. I'll speculate. HB 199 requires ADF&G to adopt regulations specifying how it will conduct site-specific determinations. So, the regulations may provide grounds for Pebble mine or others to overturn ADF&G decisions which find that an anadromous water body is important and should remain in the Catalog and Atlas. And the regulations may also shift the burden of proof to ADF&G. On that subject, Representative Stutes, a radio station recently quoted you as saying that under HB 199 "the applicant is going to

[1] "HB 199 Sectional Analysis" (italics partly original), available at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=15737.

be required to substantiate the fact that it's not an anadromous stream and bear the cost of doing so as opposed to the state bearing those costs."[2] I do not see where HB 199 says so.

B. Section 2 of HB 199 does not protect the beds of anadromous waters, and thereby creates another way for some projects, including Pebble mine, to evade permitting.

The scope of the current statute includes activities which would (1) "change the . . . bed" of anadromous water, and (2) "use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed."[3] However, HB 199 drops all this to narrow the scope. It defines "anadromous fish habitat" in terms of a "*surface* water body" and "adjacent riparian areas."[4] That excludes the bed. Accordingly, HB 199 would require a permit only for activities which "use, divert, obstruct, pollute, or otherwise affect a *water body*, or portion thereof, that is specified as important anadromous fish habitat."[5] That discards existing language which requires a permit for activities which change the bed or use heavy equipment in the bed.

If a project needs to excavate the bed of anadromous waters, then excluding the bed helps the project. For example, if Pebble mine digs an open pit mine in a manner that initially avoids needing a fish habitat permit, and puts water extraction wells as anticipated around the pit so as to extract contaminated groundwater for treatment, and those wells over time cause a headwater anadromous stream to disappear into the ground, dry up, and no longer be surface water, then PLP could argue that it should not need a Anadromous Fish Act permit to expand the pit to excavate and mine the bed and ground under it with heavy equipment, because it could do so without having to "use, divert, obstruct, pollute, or otherwise affect" surface water that no longer exists. That would enable Pebble to evade the requirements for a fish habitat permit. Such a situation could arise if groundwater flow, which is difficult to understand correctly, is misunderstood at the outset. Implicit throughout HB 199 is an assumption that what ADF&G understands to be correct is in fact always correct. Legislation should not depend on such assumptions. That is why the Policy for the Management of Sustainable Salmon Fisheries (5 AAC 39.222), adopted by the Board of Fisheries, uses the "precautionary principle" (5 AAC 39.222(c)(5)) to err on the side of conservation when uncertainty arises, so as to avoid risks.

Removing the beds from the scope of the Act was intentional. The drafters of HB 199 intentionally limited anadromous waters to "surface" waters, and they could hardly have unintentionally stricken from existing law the words "change the . . . bed," and "to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed." Yet, the Sectional Analysis hides that fact from the public. Like HB 166, the Sectional Analysis never mentions the beds. Given that salmon spawn and dig deep into the beds, no can defend omitting the beds.

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[2] See http://kbbi.org/post/rep-stutes-introduces-bill-strengthen-protections-salmon-habitat.
[3] AS 16.05.871(b).
[4] HB 199, p. 2, line 17 (italics added).
[5] HB 199, p. 4, lines 3-5 (italics added).

C. HB 199 focuses on anadromous fish habitat but ignores the fish themselves, thereby creating situations in which blasting near anadromous waters, which can kill fish embryos in the beds but leave habitat intact, can evade permitting.

The current Anadromous Fish Act requires ADF&G to approve or deny permits based on whether they assure "proper protection of fish and game."[6] That standard includes the fish as well as their habitats in the water and in the beds.

HB 199 would instead require ADF&G and permittees to "prevent or minimize the activity's adverse effects on anadromous fish habitat,"[7] and then "restore the affected anadromous fish habitat and take mitigation measures."[8] That standard addresses the habitat but ignores the fish themselves.

ADF&G has long required Anadromous Fish Act permits for blasting near streams because pressure waves from the blasts can cause injury and mortality to fish in the water and embryos in the bed,[9] even though the pressure waves can leave those habitats intact. The existing standard (protection of fish and game and their habitats) is both broader and stronger than HB 199's proposed standard (minimize, restore and mitigate harms to anadromous fish habitat). Although HB 199 refers to preventing adverse effects, its core standard is to minimize, restore and mitigate, because easy prevention occurs, difficult prevention may not, and many projects can be designed to avoid avoidable affects and minimize unavoidable effects. HB 199's standard is narrower and weaker because it addresses habitat in the water and ignores the fish themselves and embryos in the beds. All that helps large scale mining, such as Pebble mine, which will require a lot of blasting to excavate ore, and the oil and gas industry, which uses seismic blasting to explore for oil and gas.

D. The Forest Practices Act offers a better model for presuming that undocumented water is important anadromous fish habitat.

Alaska has many thousands of undocumented anadromous waters and many thousands of non-anadromous waters. HB 199 presumes, "in the absence of site-specific determination," that every "naturally occurring permanent or seasonal surface water body and its adjacent riparian areas is important anadromous fish habitat."[10]

The Forest Practices Act deals differently with the same issue. It provides, at AS 41.17.118(c), that "[i]n the absence of a site-specific determination by [ADF&G], the commissioner [of natural resources] shall presume . . . that a stream is anadromous if it is

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[6] AS 16.05.871(c), (d).
[7] HB 199, p. 10, lines 13-14; see also p. 11, lines 1-2 (requiring a permittee to "limit adverse effects").
[8] HB 199, p. 11, lines 7-8.
[9] See Permit Application form and instructions, available at http://www.adfg.alaska.gov/index.cfm?adfg=uselicense.main, and see also ADF&G, "Use of Explosives In or Near Stream Corridors," requiring permits under Anadromous Fish Act, available at http://www.adfg.alaska.gov/index.cfm?adfg=uselicense.explosives.
[10] HB 199, p. 2, lines 13-15.

connected to anadromous waters that are without [ADF&G] documentation of a physical blockage and has a stream gradient of 8 percent or less." In other words, under the Forest Practices Act, a stream is presumed anadromous if (a) no documented physical blockage, such as an insurmountable water fall, separates the undocumented stream from anadromous waters, and (b) if the undocumented stream has a gradient of 8 percent or less.

An initiative modeled on HB 199 and which contains the overbroad presumption in HB 199 will virtually beg the legislature to revise such an enacted initiative because the legislature has already enacted the Forest Practices Act for dealing with the same issue. That will give interests who would like to weaken the Act further a chance to do so, including repealing anything that advocates of salmon think is good in HB 199, such as the provision barring permits for activities requiring water treatment in perpetuity or hatcheries as mitigation. So, an enacted initiative that includes an overbroad presumption invites the legislature to weaken the Act.

E. For major permits, HB 199 puts the applicant in charge of gathering field information; current law allows ADF&G to charge the applicant for that service; therefore HB 199 puts an applicant for a major permit in greater control of the information used in permitting.

The existing statute allows ADF&G to require an applicant to submit "full plans and specifications of the proposed construction or work" and "complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use."[11] In practice, applicants fill out a form and provide additional information requested. HB 199 would also require an applicant to fill out a form. [12] For minor and major permits, the applicant must provide "all information requested by [ADF&G] to reasonably assess the 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." [13]

However, with respect to major permits, HB 199 also provides that an applicant "shall collect information *reasonably* requested" by ADF&G. [14] This language, which may refer to field work which can be costly, should be clarified. It creates a basis for disputes over costs.

The "powers and duties" of the Commissioner of Fish Game, at AS 16.05.050(15), include "to establish and charge fees equal to the cost of services provided by the department." Currently, ADF&G could inform an applicant that field work or data collection is necessary, and offer to perform the service so long as the applicant pays the cost. HB 199 would change this. It would require ADF&G to establish "reasonable fees" [15] instead of "fees equal to the cost." Because ADF&G is not a profit-making enterprise, reasonable fees may be less than full cost. These changes put the applicant for a major permit in a better position to control the information used in permitting.

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[11] AS 16.05.871(c).
[12] HB 199, p. 4, line 6.
[13] HB 199, p. 4, lines 9-11 (curiously, restoration is not mentioned here).
[14] HB 199, p. 7, lines 10-11 (italics added).
[15] HB 199, p. 12, lines 11-15.

F. HB 199's provisions on reconsideration restrict current administrative and judicial review, and help industry, not salmon or the general public.

The current Act provides that an applicant denied a permit due to insufficient protection of fish and game may, within 90 days of receiving the notice of denial, initiate a hearing under the Administrative Procedure Act, at AS 44.62.370, and that the hearing is subject to AS 44.62.330 – 44.62.630.[16] ADF&G habitat regulations at 5 AAC 95.920 state, even more broadly, that "[a]n interested person may initiate an appeal of a decision made under [5 AAC Chap. 95] in accordance with the provisions of AS 44.62.330 - 44.62.630 by requesting a hearing under AS 44.62.370." That apparently includes any decision made under 5 AAC Chap. 95, not just a permit denial. In other words, under current law, an "interested person" can appeal a determination that an anadromous river, lake or stream, or portion thereof, is "not important."

However, HB 199 would restrict all this. It would allow only a "person adversely affected" by a determination to request reconsideration and then appeal to Superior Court.[17]

First, the difference between the "interested person" standard and the "person adversely affected" standard is significant. Under the "interested person" standard, any person with a material interest in the matter, such as protection of fish and game, can obtain review, but under the "person adversely affected" standard, a person can only obtain review upon a showing that he or she is in fact adversely affected.[18] In other words, HB 199 restricts access to review.

Second, under the APA at AS 44.62.300, an interested person files an original action in Superior Court to challenge the validity of a regulation. The parties get the benefits of a trail court: discovery, production of evidence, cross examination use of expert witnesses, etc., and the record is created in the court. However, under HB 199, a person adversely affected would not file an original court action challenging the changed regulation. Instead, the person would request reconsideration, and then if dissatisfied with the result, appeal to Superior Court sitting as an appellate court. When the Superior Court sits as an appellate court and hears an appeal from a final agency action, the record under judicial review is limited to that established by the agency, so generally no discovery, production of evidence, use of experts, or ability to otherwise supplement the record occurs. These changes, to be made by HB 199, restrict the public's current access to judicial review and help industry, including Pebble mine, not salmon.

Third, HB 199 would restrict the use of currently available procedures designed to assure that administrative hearings on determinations involving habitat and permitting are fair. For many types of administrative adjudications, the Administrative Procedure Act at AS 44.62.330 currently affords court-like procedures set out in AS 44.62.330 -- .630 (e.g., accusations and statements of issues, service of documents on parties, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing,

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[16] AS 16.05.871(d).

[17] HB 199, p. 11, lines 18-29.

[18] See *Johns v. Com. Fisheries Entry Comm.*, 699 P.2d 334, 336-337 (Alaska 1985)(comparing more liberal "interested person" standard to more restrictive standard sought by CFEC and would require a showing that a person's interests are injured or adversely affected).

obtaining judicial review and scope of judicial review, oaths, impartiality, etc.). Currently AS 44.62.330(a)(27) applies these court-like procedures to the "Department of Fish and Game as to *functions relating to the protection of fish and game under AS 16.05.871*." (Italics added) However, HB 199 amends AS 44.62.330(a)(27) to provide such court-like procedures to "Department of Fish and Game as to *functions relating to the protection of anadromous fish, other fish, and wildlife habitat under AS 16.05.871 - 16.05.901 where procedures are not otherwise expressly provided in AS 16.05.871 - 16.05.901*."[19] (Italics and underscoring added) Because HB 199 expressly provides procedures for reconsideration,[20] the APA procedures set out in AS 44.62.330 -- .630 to assure fair proceedings would no longer apply. In other words, HB 199 is drafted to make reconsideration and any hearing less fair. That helps industry, not salmon, not the public.

G. If ADF&G erroneously finds that an activity will not have significant adverse effects and issues a permit, but in fact such effects occur and cannot be prevented or restored, then the mitigation provisions of HB 199 will not operate.

For minor and major permits, HB 199 provides in the proposed AS 16.05.887:

> (b) When establishing permit conditions . . . , including permit stipulations and mitigation measures, the commissioner shall, in order of priority, require a permittee . . . to take the following actions: (1) limit adverse effects of the activity on anadromous fish habitat by changing the siting, timing, procedure, or other manageable qualities of the activity; (2) if the significant adverse effects of the activity cannot be prevented . . . , minimize the significant adverse effects of the activity by limiting the degree, magnitude, duration, or implementation of the activity; and (3) if the activity cannot be implemented in a manner that prevents significant adverse effects to anadromous fish habitat . . . , restore the affected anadromous fish habitat and take mitigation measures.
> (c) Permit conditions and mitigation measures under this section may not offset the activity's adverse effects by restoring, establishing, enhancing, or preserving another water body, other portions of the water body, or land. [21]

This precludes mitigation whenever ADF&G erroneously finds that significant adverse

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[19] HB 199, p. 16, lines 2-5.

[20] HB 199, p. 11, line 18 – p. 12, line 2, provides that an adversely affected person must request reconsideration with 30 days of the determination at issue; that the commissioner must issue a written decision granting or denying reconsideration within 30 days; that if the commissioner fails to do so, then the request is deemed denied; that if the request is granted, the commissioner shall issue a final determination within 30 days; that the commissioner's determination upon reconsideration is final agency action for purposes of judicial review by appeal to Superior Court under the APA at AS 44.62.560 which establishes the record before the agency as the record under appellate review; that the person must appeal within 30 days of the date the final agency determination is mailed or otherwise distributed, or the date the request for reconsideration is deemed denied by the commissioner's failure to act; and that the appeal to Superior Court is limited to the issues presented to the commissioner in the request for reconsideration.

[21] HB 199, p. 10, line 28 -- p. 11, line 11.

effects will not occur, but in fact do occur, and cannot be limited, minimized or the habitat restored. HB 199 assumes naively (1) that ADF&G will always be correct in anticipating significant adverse effects, (2) that data and science will always be certain, (3) that permittees will always comply with permit conditions, stipulations and mitigation measures, and (4) that all efforts to limit, minimize, restore and mitigate will be successful. Sometimes the wrong stuff happens. If ADF&G errs, if data is uncertain, if a permittee does not comply, or if efforts to limit, minimize, restore and mitigate fail or are uncertain, then the mitigation provisions of HB 199 will not operate. They will not operate because in HB 199 the proposed AS 16.05.887(c) does not allow mitigation to offset adverse effects by restoring even other damaged portions of the water body. In pristine environments, such as the Bristol Bay drainages, virtually no damaged habitat exists to restore as mitigation. There, it makes sense to preclude such efforts because they destroy the natural environment in order to "mitigate" something. But, in places where ample damaged habitat exists, such efforts may make sense. In fact, fishery conservation groups routinely undertake stream restoration projects, and many seem fairly successful.

HB 199 lets a project escape mitigation costs whenever it obtains a permit based on an erroneous finding that it will not cause significant adverse effects, or operators do not comply, or the conditions and stipulations fail, such that significant adverse effects occur. For major projects, that is huge benefit and departure from current regulations which require a permittee to "mitigate *any adverse effect upon fish or wildlife, or their habitat*, which the commissioner determines . . . actually results from . . . the permittee's activity, or which was a direct result of the permittee's *failure* to (1) comply with a permit condition or [the regulations]; or (2) correct a condition or change a method foreseeably detrimental to fish or wildlife, or their habitat,"[22] and "*to compensate fully for damage to fish and wildlife populations and their habitat.*"[23]

It should not escape attention that these current regulations and HB 199 differ on mitigating impacts to wildlife and wildlife habitat. The current regulations require a permittee to mitigate impact on wildlife, wildlife habitat, fish, and fish habitat. HB 199 is narrower. It addresses only "anadromous fish habitat." It then prohibits mitigation that would offset the activity's adverse effects on anadromous fish habitat by restoring even other damaged portions of the water body. On some major permits, that helps industry avoid major costs for mitigation.

H. Although HB 199 would weaken the Anadromous Fish Act in many respects, if HB 199 forms the basis of an initiative, it will risk weakening the Act further.

HB 199 addresses matters involving agency expertise, which should be in regulation, not statute. Legislative bodies establish agencies to marshal expertise, and therefore give them authority to adopt regulations based on expertise in order to make decisions. Attempting to put "supposed" expertise in statute, by bill or initiative, invites legislators lacking expertise to weaken inadvertently or deliberately the Anadromous Fish Act.

HB 199 may not pass, but it may be the groundwork for an initiative that, if enacted, will invite legislation to revise the initiative. For example, in about 2000, the voters enacted an initiative which regulated discharges by cruise ships into Alaska waters. The legislature repealed

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[22] 5 AAC 95.900(a) (italics added).
[23] 5 AAC 95.990(4) (italics added).

the initiative. A somewhat similar situation occurred in about the 1980s and 1990s, when the legislature enacted several laws which substantively and procedurally weakened AS 38.05.035. It is a chief permitting statute of the Alaska Department of Natural Resources (DNR), just as the Anadromous Fish Act is for ADF&G. The legislature did so because it perceived that AS 38.05.035 afforded a means for environmental groups to overturn DNR decisions. So, people should consider that risk that an initiative will lead to gutting the Anadromous Fish Act.

ADF&G's regulations which implement the Act could be improved. There are several ways to do so. ADF&G can do so, and HB 199 might help pressure ADF&G to do so. People can put pressure on the Board of Fisheries to urge ADF&G to do so. Citizens can draft regulations and file a petition with ADF&G under the Administrative Procedure Act at AS 44.62.220 to adopt the regulations, and ADF&G must then under AS 44.62.230 either deny the petition within thirty days or schedule the matter for a public hearing. Or, if all else fails, the legislature could enact a less risky, shorter bill that requires ADF&G to enact regulations to address certain topics currently unaddressed, such as notice and comment. But an initiative that invites wholesale weakening of the Act will not help salmon or those who depend on them.

CONCLUSION

HB 199 contains so much that is counterproductive to protecting salmon that it cannot be attributed to careless drafting. To summarize the eleven ways HB 199 would help Pebble mine and similar interests, the bill –

(1) removes the beds of anadromous waters from the jurisdiction of the Act so as to reduce the scope of protection and permitting;

(2) requires regulations to create a method of evading permitting by determining that anadromous waters are "not important," when a method already exists under the Administrative Procedure Act;

(3) allows excavation and mining of the beds of anadromous streams to evade permitting, whenever ADF&G was unable to anticipate that previous activities, such as water extraction wells around a mine pit, would result in dewatering anadromous water;

(4) eliminates the fish themselves from the jurisdiction of the Act so as to allow blasting near documented anadromous waters, including by Pebble and the mining and oil and gas industries, to evade permitting whenever pressure waves would harm fish embryos but leave the habitat intact;

(5) presumes unnecessarily that all surface waters are anadromous when modeling after the Forest Practices Act offers a more rational presumption;

(6) limits existing administrative and judicial review by replacing the "interested person" standard with the "person adversely affected" standard;

(7) limits existing judicial review by replacing the right to file an original court action in the Superior Court sitting as a trial court, which has all the advantages of discovery, production of evidence, cross-examination, use of expert witnesses, etc., with an administrative appeal to the Superior Court sitting as an appellate court reviewing an established agency record with no opportunity in an appellate court for discovery, production of evidence, cross-examination, use of experts, etc.;

(8) amends the Administrative Procedure Act to extinguish the applicability of numerous provisions designed to assure a fair hearing before ADF&G hearing officers on matters involving reconsideration of decisions made under HB 199;

(9) replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to "reasonable requests" for an applicant to do field work, all of which puts the applicant in greater control of the information that goes into decision-making;
(10) bars mitigation of unforeseen significant adverse effects whenever prior damages to the same water body already exist; and
(11) invites further erosion of the current Act if the bill becomes an enacted initiative.

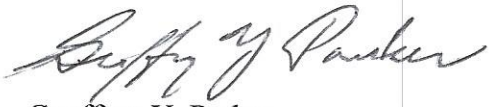
All this helps industry, not salmon, not the general public.

Overall, HB 199 entices advocates of salmon with what sounds nice but they really don't need, repeals what they need to keep and improve, and burdens them with what they need to avoid. For example: HB 199 gives advocates of salmon an unnecessarily overbroad presumption that all surface waters including mountain rivulets, glaciers and isolated wetlands are anadromous, but repeals authority to protect the beds of documented anadromous waters and the fish themselves, and then creates multiple means for developers to evade permitting when their activities adversely affect documented anadromous waters, beds or the fish themselves. The state does not need to presume that mountain top waters and glaciers are anadromous while it loses the advantages of a stable Catalog and Atlas of documented anadromous waters. The Catalog and Atlas are the most fundamental jurisdictional regulations for enforcing the Act. Another example: HB 199 creates public notice and comment on major permits, but then reduces access to reconsideration and judicial review which follow from that process, and converts replaces original litigation in the courts with administrative appeals, and eliminates procedures that assure fair administrative hearings. All that lets salmon advocates speak but reduces their ability to challenge an agency decision. All that is counterproductive to allowing citizens to be good citizens and requiring the government be good government.

Moreover, if HB 199 becomes the basis of an enacted initiative, then all bets are off. The presumption that all surface waters are anadromous, when compared to the Forest Practices Act, is tantamount to a gold-plated invitation to the legislature to rewrite the enacted initiative at the first opportunity, as are other provisions in the bill. Then, those who supported such an initiative will have only themselves to blame for all the defects listed above which survive a legislative re-write. When the legislature re-writes a counterproductive initiative, those who supported it will be in a poor position to retrieve what they unknowingly gave up, such as ADF&G's jurisdiction over the beds of anadromous waters, and they will be unable to regurgitate the poison pills they unknowingly swallowed, such as the methods and means to evade permitting and the more limited access to courts. Then, the legislature may further restrict the Act.

I am sure the sponsors have good intentions. I am equally sure this bill should be held and never move to a next committee. With regret, I hope that the sponsors of HB 199 will repudiate it so that it does not become the basis of an initiative.

Sincerely yours,



Geoffrey Y. Parker