

Summary of Changes HB 199 Version J to N

Page 1, lines 1 through 3:

Title Change: The changes between version J to N resulted in a title change.

Previously, on lines 1 through 2, the title read “An Act establishing general fish and wildlife permits and major and minor anadromous permits for certain activities.”; “general fish and wildlife permits” have been deleted from the current title for two reasons:

Firstly, the former “general fish and wildlife permit” has been moved to be a subset of the minor anadromous fish habitat permit and has been renamed the “general minor anadromous fish habitat permit.”

Secondly, the terms “other fish” and “wildlife” were removed throughout the bill.

In the previous version “other fish” was removed from:

- Page 2, line 23, Page 5 line 21, Page 7, line 25, Page 8, line 7, Page 10, line 22, Page 12, line 31, Page 14, line 1, and Page 16, line 3. There is one instance where “other fish” was not removed. That is on Page 14, line 23 of the current version; that is an oversight and will be corrected in the next draft.

In the previous version “wildlife” was removed from:

- Page 2, lines 21, 23, and 27, Page 3, lines 15 and 19, Page 5, line 21, Page 7, line 25, Page 8, line 8, Page 10, line 22, Page 13, line 1, Page 14, line 2, and page 16, line 3. There is one instance where “wildlife” was not removed. That is on Page 14, lines 23 through 24 of the current version; that is an oversight and will be corrected in the next draft.

Additionally, in the current version, on line 3, “relating to fishways” was added. This is a clarifying title change to reflect the repeal of 16.05.851 on Page 1, lines 8 through 9 and lines 13 through 14 in both versions of the bill. The repeal is in both versions and the addition to the title was for housekeeping purposes.

Finally, on Page 1, line 3 of the previous title “relating to the protection of fish and game and fish and game habitat” was removed and replaced with “relating to the protection of anadromous and other fish habitat” on lines 2 through 3 of the current version. This again was a result of the removal of the terms listed above.

Sec. 16.05.871. Determination of Anadromous Fish Habitat

Subsection 2(a) on Page 2, lines 2 through 4, formerly Page 2, lines 2 through 6:

The previous version of the bill required the commissioner to specify in regulation the water bodies or portions of them that are important anadromous fish habitat, including the waters that are covered under the presumption in (c).

In the new version, the existing language in 16.05.871(a) was used regarding the types of waters the commissioner must “identify.” Instead of “water bodies or portions of them,” it now reads “rivers, lakes, and streams.” Conforming changes were made throughout the bill to reflect this change.

Additionally, the term “important” was removed. The placement of “important” in front of “anadromous fish habitat” created a potential loophole in the permitting system that could allow individuals to avoid the permit requirement. Conforming changes were made throughout the bill to reflect this change.

The requirement to specify presumed waters in regulation was moved to subsection (e).

Subsection 2(b) on Page 2, lines 5 through 13, formerly Page 2, lines 7 through 12:

The previous subsection (b) was deleted and a new subsection was inserted to clarify when the department should conduct a site-specific determination to resolve whether a river, lake, or stream is anadromous and therefore determine if a permit is required. In addition, it was not clear in the previous draft who makes the request, what type of information is required to support the department’s determination, or how the site-specific determination relates to the anadromous waters presumption.

Additionally, the new wording also requires the department’s determination to be posted on the State’s online public notice system.

Subsection 2(c) on Page 2, lines 14 through 23, formerly Page 2, lines 13 through 15:

The anadromous waters presumption was narrowed in comparison to the previous version of the bill. Previously, the presumption applied to all “naturally occurring permanent or seasonal waters bodies” in the state.

The current presumption now only applies to “rivers, lakes, and streams” that are connected to rivers, lakes, and streams that are already specified in the Anadromous Waters Catalogue, unless the waterbodies have a permanent barrier that is insurmountable to anadromous fish. Anything upstream of that barrier would be excluded from the presumption, while anything below would be included.

The new presumption is mirrored off the presumption that currently exists in the Forest Resources and Practices Act, the difference being it does not contain a stream gradient

exception and the term “permanent” clarifies that the blockage cannot be something temporary.

The new version of the presumption also specifies that the bed, or the “lands beneath” anadromous rivers, lakes, and streams are anadromous fish habitat.

Subsection 2(d) on Page 2, lines 24 through 26:

This new subsection states that the presumption “established under (c) of this section that certain rivers, lakes, and streams, lands beneath, and adjacent riparian areas are anadromous fish habitat is applicable only to AS 16.05.871-16.05.901.”

This was added to clarify that the presumption only applies to the fish habitat permitting law.

Subsection 2(e)(1), (2), & (3) on Page 2, line 28 through Page 3, line 3:

These are new subsections.

Subsection (1) maintains the requirement that all waters identified under (a) will continue to be listed in the Anadromous Waters Catalogue.

Subsection (2) requires the department to develop regulations for conducting site-specific reviews and making a determination under (b) of this section.

Subsection (3) allows ADF&G to define in regulation the scope of adjacent riparian areas that are considered anadromous fish habitat under the bill. This is authority that the department does not currently have.

Subsection 2:(f) (1) & (2) on Page 3, lines 4 through 9:

Subsection (1), formerly on Page 2, lines 16 through 19

The definition of anadromous fish habitat has been narrowed to reflect the change in subsection (a).

Anadromous fish habitat is now changed from “water bodies or portions of them,” to “rivers, lakes, streams” This conforming change was made throughout the bill.

Additionally, the previous definition of anadromous fish habitat did not include the bed of, or “lands beneath” anadromous rivers, lakes, and streams. That was added. The word “indirectly” was also removed from Page 2, line 18 of the previous definition.

Subsection (2):

This is a new subsection that defines the extent of a river or stream that is anadromous fish habitat. It states that a “river or stream includes the foreshore portion, if any, of the river or stream above the mean low tide line.” Foreshore means the part of a seashore between high-water and low-water marks.

Sec. 16.05.875. Anadromous Fish Habitat Permit

Section 3 on Page 3, line 12 through Page 5, line 1, formerly Page 4, line 1 through Page 5, line 9

Subsection 3(a) on Page 3, lines 13 through 16, formerly Page 4, lines 1 through 5:

There have been a number of changes to this subsection. There is a new reference on line 14 relating to an exemption to the requirements in subsections (a)(1) through (a)(2) for the new general minor anadromous fish habitat permit, which allows the issuance of a blanket permit for certain types of activities. The exemption is there because the general minor anadromous permit has a separate set of the standards regarding the types of activities that it can be permitted under.

3 (a) (1)(A)(B) & (2) (A)(B): Previously under the bill, a person would be required to obtain an anadromous fish habitat permit before conducting an activity that “may use, divert, obstruct, pollute, or otherwise affect” a “water body or portion”, that was specified as “important” anadromous fish habitat under AS. 16.05.871(a).

Instead, the new version of this section mirrors wording in current law in 16.05.871(b) regarding what types of activities would require a permit. The bill now requires a person to obtain an anadromous fish habitat permit before “constructing a hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a river, lake, or stream” that is presumed or specified as anadromous fish habitat. This language is consistent with current law.

Subsection 3(b) on Page 3, line 30 through Page 4, line 7, formerly Page 4, lines 6 through 14:

Previously, this section referenced in AS 16.05.883 in relation to requirements for an application. The new version references 16.05.883(a) on line 31 because the new general minor anadromous fish habitat permit established under 16.05.883(b) on does not require an application or a permit, and has a separate set of conditions for issuance. Conforming changes were made throughout the bill to reflect this.

Subsection 3 (f) on Page 4, lines 25 through 30:

In the previous version of the bill, there was a requirement for a 30-day public comment period on Page 5, lines 6 through 7 regarding the commissioner’s determination that an activity requires a major anadromous fish habitat permit. That comment period was removed.

Sec. 16.05.877. Significant adverse effects

Subsection 3 (a) on Page 5, lines 2 through 23, formerly Page 5, lines 10 through 26:

Previous subsection (a)(1) on lines 13-14 “Impair the quality, quantity, or flow of water necessary for a waterbody to support anadromous fish habitat” was deleted. Similar, more refined language now appears in (a)(3)(A) and (a)(3)(B).

Previous subsection (a)(3) on Page 5, lines 17 through 19 was deleted.

That subsection had defined a significant adverse effect as “impairing the quality or flow of a water body that is not anadromous fish habitat, but is necessary to preserve the quality or flow of a water body that is anadromous fish habitat.”

Previous subsection (a)(5) on lines 21 through 22 was deleted.

That subsection had defined a significant adverse effect as “adversely affecting other fish and wildlife that depend on the health and productivity of that anadromous fish habitat.”

Subsection (a)(1) on Page 5, lines 6 through 7:

This is a new subsection that defines a significant adverse effect as “interfering with the spawning, rearing, or migration of anadromous fish at any life stage.”

Subsection (a)(2) on Page 5, lines 8 through 9, formerly on Page 5, lines 15 through 16:

The previous version of this subsection defined a significant adverse effect to be “impeding or preventing the safe, timely, and efficient upstream and downstream passage of fish to anadromous fish habitat.” This has been narrowed in the current version to “impede the safe and efficient upstream and downstream passage of anadromous fish.”

Subsection (a)(3)

In the current version, the word “significantly” was added on line 10 to apply to (3)(A), (B), and (C). “Significantly” adds a higher threshold.

Subsection (a)(3)(A) on Page 5, lines 11 through 12.

This is a new subsection that defines a significant adverse effect as “significantly impairing water quality or water temperature necessary to support anadromous fish.”

Subsection (a)(3)(B) on Page 5, lines 13 through 14:

This is a new subsection that defines a significant adverse effect as “significantly reducing instream flows or altering the natural flow regimes necessary to support anadromous fish and anadromous fish habitat.”

Subsection (a)(3)(C) On Page 5, lines 15 through 17, formerly on Page 5, line 20:

It previously read “reduce aquatic diversity, productivity, stability, or function.” It now reads “significantly diminish the overall aquatic diversity, productivity, stability, or function of all or portions of a river, lake, or stream that is anadromous fish habitat.” “Significantly” adds a higher threshold.

Subsection (a)(4) on lines 18 through 19:

This is a new subsection that defines a significant adverse effect as “creating conditions known to have adverse effects on, or cause increased mortality of, anadromous fish at any life stage;”

Sec. 16.05.883. Minor Anadromous fish habitat permit

Subsection (b) through (g) on Page 6, line 18 through Page 8, line 2, formerly Page 2, line 20 through Page 3, line 31

These subsections give the commissioner the authority to issue a general minor anadromous fish habitat permit for minor activities under certain conditions. Most of the language existed in the previous version, but the section has been moved and renamed. It was previously the “general permit for fish and wildlife habitat protection” section and is being renamed the “general minor anadromous fish habitat permit.”

As referenced in the title change section above, the terms “other fish” and “wildlife” were removed, leaving only references to anadromous fish.

There were also several changes to the conditions under which the commissioner may issue a general minor anadromous fish habitat permit. See changes below:

Section 5(b) (1) on Page 6, lines 23 through 24, formerly on Page 2, lines 26 through 27:

The previous (b)(1) read “the activity, singly or in combination with other factors, poses little potential to significantly affect fish and wildlife habitat.” The current (b) (1) now reads “the activity will not cause significant adverse effects to anadromous fish habitat.”

Subsection (2) on Page 2, line 28 of the previous version:

This subsection specified that a general permit could only be issued if “the activity does not relate to industrial development.” This was deleted from the current version.

Subsection (d) on Page 7, lines 8 through 15, formerly subsection (c) on Page 3, lines 11 through 16:

Language on lines 8 through 9 was added to allow the commissioner to issue a “regional or geographical authorization for an activity subject to a general minor anadromous fish habitat permit” or require a person to obtain written authorization. The previous version of this section only allowed for written authorization.

Subsection (g) on Page 8, lines 1 through 2:

This is a new subsection that was added to clarify that the definition of “anadromous fish habitat” is consistent with the rest of the bill.

Sec. 16.05.885. Major Anadromous Fish Habitat Permit

Subsection (b) on Page 8, lines 23 through 28, formerly on Page 7, lines 10 through 11:

The previous subsection was deleted and a new one was inserted. It now requires the commissioner or an applicant to collect the needed information for the commissioner to make a determination of whether a proposed activity should be permitted as a major anadromous permit. Additionally, it provides the commissioner, at his discretion, with the ability to recover fees equal to the cost incurred by the department in collecting the necessary information to make a determination under (a) of this section. Previously, the section had simply required the applicant to collect the information.

Subsection (f)(2)(A) and (B) on Page 9, line 31 through page 10, line 7:

These are new subsections that clarify how ADF&G will measure whether a project will cause “substantial damage.” Specifically, they clarify how the department will assess whether anadromous fish will “recover to natural or historic levels” after the project is complete.

Sec. 16.05.887. Permit Conditions and Mitigation Measures

Subsection (a) through (e) on Page 12, line 4 through Page 13, line 10, formerly Page 10, line 11 through Page 13, line 17

Subsection (a)(3) on Page 10, lines 21 through 22 of the previous version:

This subsection was deleted. It had stated that the commissioner may not permit an activity if it “cannot be carried out in a manner that will ensure the proper protection of other fish and wildlife habitat.” This is consistent with changes to the rest of the bill regarding the removal of “other fish” and “wildlife.”

Subsection (a) on Page 12, lines 14 through 15, formerly on Page 10, lines 23 through 24:

Previously, this subsection read that an activity cannot be permitted if it would “convert a wild fish population to a hatchery-dependent fish population.” That language has been altered in the

current version to “will replace or supplement a wild fish population with a hatchery dependent fish population.”

Subsection (a)(4) on Page 12, lines 16 through 17, formerly Page 10, lines 25 through 27:

Previously, this subsection read that an activity cannot be permitted if it would “dewater or relocate a water body or a portion of a water body, for 5 or more years, that the commissioner has specified as important, or as presumed to be important, to anadromous fish habitat under AS 16.05.871(a).” The current subsection now reads “will dewater anadromous fish habitat for a period likely to cause permanent or long-lasting adverse effects to that habitat” This change was made to allow ADF&G more flexibility in determining what period of time is appropriate; in some cases, that period may be more than 5 years and in some, it may be less.

Subsection (a)(5) on Page 12, lines 18 and 19:

This is a new subsection that specifies that a permit may not be issued for an activity if it “will permanently relocate all or portions of a river, lake, or stream if the relocation will disrupt the migration or passage of anadromous fish.”

Sec. 16.05.889. Reconsideration of determinations

Section (a) on Page 13, line 13, formerly Page 11, line 20:

“person adversely affected” was changed to “interested person.” In the previous draft, on Page 3, line 6, “interested person” was used in relation to determinations and the replacement in this section was made to remain consistent regarding reconsideration of determinations.

Section 6 on Page 13, line 27, formerly on Page 12, line 4

Sec. 16.05.891. Exemption for emergency situations.

Page 13, line 30:

“or state agency” was added. In some situations, the state is not the riparian owner and therefore not able to get an emergency permit.

Sec. 16.05.889 Applicability of permitting requirements

Subsections (a) through (b) on Page 14, line 25 through Page 15, line 11:

These are new subsections that contain the existing facility, activity, operation, or project exemption.

The effect of these sections is that an existing facility, activity, operation, or project that has in full force and effect all required state authorizations relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act would remain under the permitting

regime as it existed the day before the effective day of this act, including renewals and minor authorizations in perpetuity, until that existing facility, activity, operation, or project significantly expands or increases in scope, area, or frequency, or otherwise takes action out, those actions for which it was authorized on the day before the effective date of sec. 3 of this Act.

In laymen's terms, those permitted under the current law would stay under the current law, including renewals, in perpetuity, unless they significantly expanded the scope of their permit.