



Council of
Alaska Producers

**Comments on HB199:
FISH/WILDLIFE HABITAT PROTECTION; PERMITS**

February 5, 2018

Representative Louise Stutes
Chair, House Special Committee on Fisheries
State Capitol
Juneau, 99801

Dear Representative Stutes and Members of the House Special Committee on Fisheries:

The Council of Alaska Producers (CAP) appreciates the opportunity to provide comments on HB199 "An Act establishing general fish and wildlife permits and major and minor anadromous fish habitat permits for certain activities; establishing related penalties; and relating to the protection of fish and game and fish and game habitat."

CAP is a non-profit trade association formed in 1992 to represent the interests of large metal mines and mine developmental projects in Alaska. CAP informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

Thank you for inviting state regulators to testify before your committee. We hope that you will also add the Alaska Department of Natural Resources (ADNR) to the list given their responsibility for regulating water. We have attached technical questions that should be considered as you review this bill.

CAP remains concerned that mining projects could not be developed under HB199 and that it would also jeopardize the continuation or expansion of existing mines. The operating mines in Alaska were built under modern environmental laws and their operations are strictly monitored by state and federal agencies. Their excellent track records are testament to both their commitment to responsible development and to Alaska's world class permitting system. This vital industry directly and indirectly provides almost 9,000 jobs in Alaska, revenue to state and local governments, and benefits to Alaska Natives through the ANCSA revenue sharing requirements.

We are equally concerned that HB199 would endanger Alaska jobs and threaten any expansion of our state's limited transportation infrastructure, pipelines, and hydroelectric projects. It would also restrict opportunities for Alaska communities to grow and prosper.

Thank you for considering the true regulatory impact of this bill.

Sincerely,

Karen Matthias
Executive Director

HB 199

Alaska Department of Fish and Game (ADF&G)

1. Title 16
 - a. Fish habitat permits contain conditions that must be met for compliance. Are these currently enforceable?
 - b. Can you give an example where the current state system has failed to protect anadromous fish habitat?
2. Proponents of this bill have used the avoidance of “death by a 1000 cuts” to justify support for habitat protections.
 - a. Can you explain how habitat degradation occurs in communities and near population centers?
 - b. How will this new permitting scheme impact the general public, i.e. those accessing anadromous habitat for hunting, fishing and recreation? How will it impact the local homebuilder? Are there activities that are currently unpermitted that will now require a permit? Examples?
3. The current fish habitat permit for the latest tailings expansion at the Greens Creek Mine acknowledges that Greens Creek will have impacts on anadromous fish habitat, however it recognizes that the project has gone through a federal EIS process and that impacts will be mitigated.
 - a. Under HB199, would a major anadromous permit be issued for an expansion like this since the Environmental Impact Statement (EIS) for the tailings expansion requires water monitoring and treatment in perpetuity?
4. Project impacts to wetlands and waters of the US are analyzed and permitted through the US Army Corps of Engineers (USACOE) 404 permitting process. Can you explain how ADF&G currently works with the USACOE to protect anadromous fish habitat?
 - a. What is the difference between USACOE jurisdictional waters and the anadromous fish habitat definition in this bill?
 - b. Can you compare and contrast the mitigation policies of the USACOE and the scheme outlined in this bill? What would be considered off-site or on-site mitigation?
 - c. Would this proposed permitting scheme work in conjunction with the USACOE process or would it be completely separate process?
 - d. Would this add time and delays? Would it be possible for the USACOE 404 permit and the new fish habitat permit to have conflicting requirements?
5. The Alaska Department of Natural Resources (ADNR) has permitting authority for water rights, Temporary Water Use Permits (TWUP), and in-stream flow reservations. How does ADF&G work with ADNR to ensure these permits protect fish habitat?

Alaska Department of Transportation (ADOT)

1. In April 2017, Taylor Horn of DOT testified to this committee that there was already a well-defined public process. He expressed concern that the bill would add delays, duplication and increase costs.
 - a. Is this still DOT’s position?
 - b. Are there some road construction projects that would need a major anadromous fish habitat permit?
 - c. Is it possible that some road construction projects would not be able to obtain a major permit?
 - d. What in particular would add delays, duplication and increase costs?

- e. How will the removal of the ability to use off-site mitigation impact ADOT?

Alaska Department of Environmental Conservation (ADEC)

1. In April 2017, Wade Strickland of ADEC testified to this committee that HB199 could impact several hundreds of permitted facilities that have mixing zones in freshwater throughout the state from local communities to small industry and large industry. The Committee Substitute grandfathers existing facilities unless the facility significantly expands or increases in scope, area, or frequency.
 - a. Is facility expansion often required when a community grows?
 - b. If that facility has a mixing zone, what would they need to do to come into compliance with HB199 in order to get an anadromous fish habitat permit?
2. ADEC permits and regulates over 215 municipal landfills in communities throughout the state through its solid waste management program. How would the proposed scheme in HB199 impact this program?
 - a. Are landfills permanent in nature? Would any existing landfills be prohibited from acquiring permits under proposed S.16.05.887 as they would necessitate “water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention in perpetuity”?

Alaska Department of Natural Resources (ADNR)

1. ADNR has permitting authority for water rights, Temporary Water Use Permits (TWUP), and in-stream flow reservations. How does ADNR ensure these permits protect fish habitat?
2. The Committee Substitute grandfathers existing facilities unless the facility significantly expands or increases in scope, area, or frequency.
 - a. Once a mine is permitted and starts production, is it common for it to significantly expand or increase in scope, area, or frequency?
 - b. Would any of the five existing large metal mines be impacted by this?
 - c. In your opinion, would they be able to obtain a major anadromous fish habitat permit or would they be shut down?
 - d. Would the large metal mining projects that are currently in permitting or close to permitting be able to obtain a major anadromous fish habitat permit?
3. S.16.05.887(c) Prohibition of offsite mitigation
 - a. In your view, can unavoidable impact in a project area be addressed through mitigation in other areas?
4. S.16.05.885 indicates that a performance bond would be required for an activity in a written permit determination. This would be in addition to the existing bonding process.
 - a. Does this new requirement duplicate the ADNR’s existing bonding process for reclamation and closure costs for the site?