

**HOUSE BILL NO. 131**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/16/01

Referred: House Special Committee on Fisheries, Resources

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to standards for forest resources and practices; and providing for an**  
2 **effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 41.17.087(b) is amended to read:

5 (b) The commissioner shall adopt regulations that specify the standards under  
6 which a variation will be granted for harvesting timber within the riparian area of

7 (1) a low gradient **Type I-A** [TYPE A] water body with a width of five  
8 feet or less; and

9 (2) other appropriate water body types.

10 \* **Sec. 2.** AS 41.17.116 is repealed and reenacted to read:

11 **Sec. 41.17.116. Riparian standards for private land.** (a) Private forest land  
12 adjacent to the following types of waters and located in Region I is subject to the  
13 riparian protection standards established in this subsection:

14 (1) along a Type I-A water body,

1 (A) operations within 100 feet of the water body or to the break  
2 of the slope, whichever area is smaller, shall be conducted in compliance with  
3 slope stability standards established in regulations adopted under this chapter;  
4 and

5 (B) harvest of timber may not be undertaken within 66 feet of  
6 the water body;

7 (2) along a Type I-B water body,

8 (A) operations within 100 feet of the water body or to the break  
9 of the slope, whichever area is smaller, shall be conducted in compliance with  
10 slope stability standards established in regulations adopted under this chapter;  
11 and

12 (B) harvest of timber may not be undertaken within 66 feet of  
13 the water body or to the break of the slope, whichever area is smaller;

14 (3) along a Type I-C water body,

15 (A) operations within 100 feet of the water body or to the break  
16 of the slope, whichever area is smaller, shall be conducted in compliance with  
17 slope stability standards established in regulations adopted under this chapter;  
18 and

19 (B) the operator shall, where prudent, retain low value timber  
20 within 25 feet of the water body or to the limit of the area described in (A) of  
21 this paragraph, whichever area is greater, where the width of the water body is

22 (i) greater than 13 feet at the ordinary high water mark;

23 or

24 (ii) greater than eight feet at the ordinary high water  
25 mark if the channel is incised;

26 (4) along a Type I-D water body,

27 (A) operations within 50 feet of the water body or to the break  
28 of the slope, whichever area is smaller, shall be conducted in compliance with  
29 slope stability standards established in regulations adopted under this chapter;  
30 and

31 (B) the operator shall, where prudent, retain low value timber

1 within 25 feet of the water body or to the limit of the area described in (A) of  
 2 this paragraph, whichever area is greater, where the width of the water body is

3 (i) greater than 13 feet at the ordinary high water mark;

4 or

5 (ii) greater than eight feet at the ordinary high water  
 6 mark if the channel is incised.

7 (b) Private forest land adjacent to the following types of waters and located in  
 8 Region III is subject to the riparian protection standards established in this subsection:

9 (1) along a Type III-A water body, harvest of timber may not be  
 10 undertaken within 66 feet of the water body;

11 (2) along a Type III-B water body, harvest of timber may not be  
 12 undertaken within 33 feet of the water body; between 33 feet and 66 feet from the  
 13 water body, up to 50 percent of standing white spruce trees having at least a nine-inch  
 14 diameter at breast height may be harvested without requiring a variation;

15 (3) along a Type III-C water body, harvest of timber within 100 feet of  
 16 the water body must be located and designed primarily to protect fish habitat and  
 17 surface water quality as determined by the department with due deference to the  
 18 Department of Fish and Game.

19 (c) The commissioner shall adopt regulations for private land in Region II that  
 20 designate the areas that are subject to riparian protection standards, and the restrictions  
 21 on timber harvesting operations within those areas that are necessary for their  
 22 protection under the management goals established in AS 41.17.115.

23 (d) In this section,

24 (1) "low value timber" means timber that the owner or operator  
 25 determines, at the time of harvest, to be uneconomic to harvest and market;

26 (2) "prudent" means that the requirement can be met using reasonably  
 27 available means or technology, that complying with the requirement is not likely to  
 28 create significant impairment of the productivity of the land and water, and that the  
 29 cost of achieving the requirement is not out of proportion to the benefits that can  
 30 reasonably be expected to be achieved in the particular situation.

31 \* **Sec. 3.** AS 41.17.118(a) is repealed and reenacted to read:

1 (a) The riparian standards for state land are as follows:

2 (1) on state forest land managed by the department that is located in  
3 Region III,

4 (A) along a Type III-A water body, harvest of timber may not  
5 be undertaken within 100 feet of the water body, except that between 66 feet  
6 and 100 feet from the water body harvest of timber may be undertaken where  
7 consistent with the maintenance of important fish and wildlife habitat as  
8 determined by the department with the concurrence of the Department of Fish  
9 and Game;

10 (B) along a Type III-B water body, harvest of timber may not  
11 be undertaken within 50 feet of the water body; between 50 feet and 100 feet  
12 from the water body, up to 50 percent of standing white spruce trees having at  
13 least a nine-inch diameter at breast height may be harvested;

14 (C) along a Type III-C water body, harvest of timber within  
15 100 feet of the water body must be consistent with the maintenance of  
16 important fish and wildlife habitat as determined by the department with due  
17 deference to the Department of Fish and Game.

18 (2) on state forest land managed by the department that is in Region I  
19 or Region II,

20 (A) harvest of timber may not be undertaken within 100 feet  
21 immediately adjacent to an anadromous or high value resident fish water body;

22 (B) between 100 and 300 feet from the water body, harvest of  
23 timber may occur but must be consistent with the maintenance of important  
24 fish and wildlife habitat as determined by the department with due deference to  
25 the Department of Fish and Game.

26 \* **Sec. 4.** AS 41.17.119 is repealed and reenacted to read:

27 **Sec. 41.17.119. Minimum riparian standards for other public land.** The  
28 riparian standards for other public land are as follows:

29 (1) in Regions I and II, harvest of timber may not be undertaken within  
30 100 feet of an anadromous or high value resident fish water body;

31 (2) in Region III, the standards are the same as for state land under

1 AS 41.17.118 and regulations adopted under this chapter.

2 \* **Sec. 5.** AS 41.17.950(13) is amended to read:

3 (13) "riparian area" means

4 (A) the areas subject to riparian protection standards  
5 [SPECIFIED] in AS 41.17.116(a) **and (b)** on private land in Regions I and III  
6 [THE COASTAL FOREST OF SPRUCE OR HEMLOCK];

7 (B) the areas subject to riparian protection standards  
8 [SPECIFIED] in regulations adopted by the commissioner under  
9 AS 41.17.116(c) [AS 41.17.116(b)] on private land in Region II [OUTSIDE  
10 THE COASTAL FOREST OF SPRUCE OR HEMLOCK];

11 (C) the area 100 feet from the shore or bank **of** [OR] an  
12 anadromous or high value resident fish water body on state land managed by  
13 the department and on other public land;

14 \* **Sec. 6.** AS 41.17.950(19) is amended to read:

15 (19) "Type I-A [TYPE A] water body" means in Region I, an  
16 anadromous water body that is

17 (A) a stream or river of any size having an average gradient of  
18 eight percent or less, with banks held in place by vegetation, channels that are  
19 not incised, and a substrate composed of rubble, gravel, sand, or silt;

20 (B) wetlands and lakes, including their outlets; [AND]

21 (C) an estuarine area delimited by the presence of salt-tolerant  
22 vegetation;

23 \* **Sec. 7.** AS 41.17.950(20) is amended to read:

24 (20) "Type I-B [TYPE B] water body" means in Region I, an  
25 anadromous water body that does not meet the definition of a Type I-A [TYPE A]  
26 water body; [AND]

27 \* **Sec. 8.** AS 41.17.950(21) is amended to read:

28 (21) "Type I-C [TYPE C] water body" means in Region I, a water  
29 body that is not anadromous, that is a tributary to a Type I-A [TYPE A] or Type I-B  
30 [TYPE B] water body, and that has a gradient of 12 percent or less;

31 \* **Sec. 9.** AS 41.17.950(22) is amended to read:

1                   (22) "**Type I-D** [TYPE D] water body" means **in Region I**, a water  
 2 body that is not anadromous, that is tributary to a **Type I-A** [TYPE A] or **Type I-B**  
 3 [TYPE B] water body, and that has a gradient greater than 12 percent.

4 \* **Sec. 10.** AS 41.17.950 is amended by adding new paragraphs to read:

5                   (23) "backwater slough" means a water body that

6                                 (A) has sluggish flow, is warm in summer, and is typically only  
 7 connected to the main stem or a side channel at one end of the water body;

8                                 (B) carries river current only under high water conditions; and

9                                 (C) may have only a seasonal connection to the main stem or  
 10 side channel;

11                   (24) "glacial water body," as used in the phrases "glacial high value  
 12 resident fish water body" and "glacial anadromous water body," means a water body  
 13 that, under normal conditions, receives significant surface flow from a glacier; "glacial  
 14 water body" includes water bodies that receive a mix of glacial water and water from  
 15 other sources;

16                   (25) "non-glacial water body," as used in the phrases "non-glacial high  
 17 value resident fish water body" and "non-glacial anadromous water body," means a  
 18 water body that, under normal conditions, does not receive significant surface flow  
 19 from a glacier;

20                   (26) "ordinary high water mark" or "OHWM" means the mark along  
 21 the bank or shore up to which the presence and action of the tidal or nontidal water are  
 22 so common and usual, and so long continued in all ordinary years, as to leave a natural  
 23 line impressed on the bank or shore and indicated by erosion, shelving, changes in soil  
 24 characteristics, destruction of terrestrial vegetation, or other distinctive physical  
 25 characteristics;

26                   (27) "Region I" means all land in Southeast Alaska, plus all land that is  
 27 south of the crest of the Chugach and St. Elias Mountains and east of a line running  
 28 from the crest of the Chugach Mountains to O'Malley Peak, then southerly to Gull  
 29 Rock, then southwesterly to the eastern junction of Skilak Lake Road and the Sterling  
 30 Highway, then southwesterly to the mouth of the Fox River, then southwesterly  
 31 through Kachemak Bay to Mt. Douglas, plus all land on the Alaska Peninsula between

1 Mt. Douglas and Cape Kumliun that is east of the crest of the Aleutian Range, plus all  
2 islands in the Gulf of Alaska north of 56° 23" North latitude;

3 (28) "Region II" means all land in the state south of the Nutzotin and  
4 Mentasta Mountains, south of the Alaska Range, and east of the Aleutian Range,  
5 except for the area within Region I and peninsular and island land south of Cape  
6 Kumliun;

7 (29) "Region III" means all land in the state outside of Regions I and  
8 II;

9 (30) "Type III-A water body" means in Region III, a

10 (A) non-glacial high value resident fish water body greater than  
11 three feet in width at the ordinary high water mark;

12 (B) non-glacial anadromous water body; or

13 (C) backwater slough;

14 (31) "Type III-B water body" means in Region III, a glacial high value  
15 resident fish water body or a glacial anadromous water body; "Type III-B water body"  
16 does not include glacial backwater sloughs;

17 (32) "Type III-C water body" means in Region III, a non-glacial high  
18 value resident fish water body that is less than or equal to three feet in width at the  
19 ordinary high water mark (OHWM) and that does not contain anadromous fish.

20 \* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 TRANSITION: REGULATIONS. (a) To the extent that the regulations are not  
23 inconsistent with the language and purposes of this Act, regulations relating to forest  
24 resources and practices adopted by the Department of Natural Resources under AS 41.17 and  
25 in effect before the effective date of secs. 1 - 10 of this Act remain in effect and may be  
26 administered and enforced by the Department of Natural Resources.

27 (b) Notwithstanding sec. 13 of this Act, the Department of Natural Resources may  
28 proceed to adopt regulations to implement this Act. The regulations take effect under  
29 AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory  
30 change.

31 \* **Sec. 12.** Section 11(b) of this Act takes effect immediately under AS 01.10.070(c).

1     \* **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect September 1,  
2     2001.