

SENATE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS SEEKINS, Wilken, Taylor, Dyson, Wagoner, Elton, Cowdery, Ben Stevens, Therriault

Introduced: 2/28/03

Referred: 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 [A] water body with a width of five feet or
8 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10 * **Sec. 2.** AS 41.17.116 is repealed and reenacted to read: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 an anadromous
12 or high value resident fish water body on state land managed by the department
13 and on other public land;

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

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

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

20 (B) **consists of** wetlands and lakes, including their outlets; and

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

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

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

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

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

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

31 (22) "Type **I-D** [D] water body" means, **in Region I**, a water body that

1 is not anadromous, that is tributary to a Type **I-A** [A] or Type **I-B** [B] water body, and
 2 that has a gradient greater than 12 percent.

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

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

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

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

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

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

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

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

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

1 Aleutian Range, plus all islands in the Gulf of Alaska north of 56 degrees 23 minutes
2 North latitude;

3 (28) "Region II" means all land in the state south of the Nutzotin
4 Mountains and Mentasta Mountains, south of the Alaska Range, and east of the
5 Aleutian Range, except for the area within Region I and peninsular and island land
6 south of Cape 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) nonglacial high value resident fish water body greater than
11 three feet in width at the ordinary high water mark;

12 (B) nonglacial 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 a glacial backwater slough;

17 (32) "Type III-C water body" means, in Region III, a nonglacial 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 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 2003.