

CS FOR HOUSE BILL NO. 41(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 2/6/08

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVES GARA, Crawford, Kerttula, LeDoux, Buch

A BILL

FOR AN ACT ENTITLED

1 **"An Act returning certain duties regarding habitat management from the Department**
2 **of Natural Resources to the Department of Fish and Game; and providing for an**
3 **effective date."**

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

5 *** Section 1.** AS 16.05 is amended by adding new sections to read:

6 **Sec. 16.05.871. Fishway required.** If the commissioner considers it necessary,
7 every dam or other obstruction built by any person across a stream frequented by
8 salmon or other fish shall be provided by that person with a durable and efficient
9 fishway and a device for efficient passage for downstream migrants. The fishway or
10 device or both shall be maintained in a practical and effective manner in the place,
11 form, and capacity the commissioner approves, for which plans and specifications
12 shall be approved by the department on application. The fishway or device shall be
13 kept open, unobstructed, and supplied with a sufficient quantity of water to admit
14 freely the passage of fish through it.

1 **Sec. 16.05.873. Hatchery required.** If a fishway over a dam or obstruction is
 2 considered impracticable by the commissioner because of cost, the owner of the dam
 3 or obstruction, to compensate for the loss resulting from the dam or obstruction shall,
 4 at the owner's option

5 (1) pay a lump sum acceptable to the commissioner to the state fish
 6 and game fund;

7 (2) convey to the state a site of a size satisfactory to the commissioner
 8 at a place mutually satisfactory to both parties, and erect on it a fish hatchery, rearing
 9 ponds, necessary buildings, and other facilities according to plans and specifications
 10 furnished by the commissioner, and give a good and sufficient bond to furnish water,
 11 lights, and necessary money to operate and maintain the hatchery and rearing ponds;
 12 or

13 (3) enter into an agreement with the commissioner, secured by good
 14 and sufficient bond, to pay to the fish and game fund the initial amount of money and
 15 annual payments thereafter that the commissioner considers necessary to expand,
 16 maintain, and operate additional facilities at existing hatcheries within a reasonable
 17 distance of the dam or obstruction.

18 **Sec. 16.05.875. Penalty for violating fishway and hatchery requirements.**

19 (a) The owner of a dam or obstruction who fails to comply with AS 16.05.871 or
 20 16.05.873 or a regulation adopted under AS 16.05.871 or 16.05.873 within a
 21 reasonable time specified by written notice from the commissioner is guilty of a
 22 misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the
 23 owner fails to comply constitutes a separate offense.

24 (b) In addition to the fine, the dam or other obstruction managed, controlled,
 25 or owned by a person violating AS 16.05.871 or 16.05.873 or a regulation adopted
 26 under AS 16.05.871 or 16.05.873 is a public nuisance and is subject to abatement.

27 **Sec. 16.05.877. Protection of fish and game.** (a) The commissioner shall, in
 28 accordance with AS 44.62 (Administrative Procedure Act), specify the various rivers,
 29 lakes, and streams or parts of them that are important for the spawning, rearing, or
 30 migration of anadromous fish.

31 (b) If a person or governmental agency desires to construct a hydraulic

1 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a
 2 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or
 3 log-dragging equipment in the bed of a specified river, lake, or stream, the person or
 4 governmental agency shall notify the commissioner of this intention before the
 5 beginning of the construction or use.

6 (c) The commissioner shall acknowledge receiving the notice by return first
 7 class mail. If the commissioner determines that the following information is required,
 8 the letter of acknowledgment shall require the person or governmental agency to
 9 submit to the commissioner

10 (1) full plans and specifications of the proposed construction or work;

11 (2) complete plans and specifications for the proper protection of fish
 12 and game in connection with the construction or work, or in connection with the use;
 13 and

14 (3) the approximate date the construction, work, or use will begin.

15 (d) The commissioner shall approve the proposed construction, work, or use in
 16 writing unless the commissioner finds the plans and specifications insufficient for the
 17 proper protection of fish and game. On a finding that the plans and specifications are
 18 insufficient for the proper protection of fish and game, the commissioner shall notify
 19 the person or governmental agency that submitted the plans and specifications of that
 20 finding by first class mail. The person or governmental agency may, within 90 days
 21 after receiving the notice, initiate a hearing under AS 44.62.370. The hearing is subject
 22 to AS 44.62.330 - 44.62.630.

23 **Sec. 16.05.879. Construction without approval prohibited.** If a person or
 24 governmental agency begins construction on a use, work, or project for which notice is
 25 required by AS 16.05.877 without first providing plans and specifications subject to
 26 the approval of the commissioner for the proper protection of fish and game, and
 27 without first having obtained written approval of the commissioner as to the adequacy
 28 of the plans and specifications submitted for the protection of fish and game, the
 29 person or agency is guilty of a misdemeanor. If a person or governmental agency is
 30 convicted of violating AS 16.05.871 - 16.05.883 or continues a use, work, or project
 31 without fully complying with AS 16.05.871 - 16.05.883, the use, work, or project is a

1 public nuisance and is subject to abatement. The cost of restoring a specified river,
 2 lake, or stream to its original condition shall be borne by the violator and shall be in
 3 addition to the penalty imposed by the court.

4 * **Sec. 2.** AS 16.05 is amended by adding new sections to read:

5 **Sec. 16.05.881. Exemption for emergency situations.** In an emergency
 6 arising from weather or stream flow conditions, the commissioner, through authorized
 7 representatives, shall issue oral permits to a riparian owner for removing obstructions
 8 or for repairing existing structures without the necessity of submitting prepared plans
 9 and specifications as required by AS 16.05.877.

10 **Sec. 16.05.883. Penalty for causing material damage.** If a person or
 11 governmental agency fails to notify the commissioner of any construction or use that
 12 causes material damage to the spawning beds or prevents or interferes with the
 13 migration of anadromous fish, or by neglect or noncompliance with plans and
 14 specifications required and approved by the commissioner causes material damage to
 15 the spawning beds or prevents or interferes with the migration of anadromous fish, the
 16 person or governmental agency is guilty of a misdemeanor.

17 **Sec. 16.05.885. Penalty for violations of AS 16.05.871 - 16.05.883.** (a) A
 18 person who violates AS 16.05.871 - 16.05.883 is guilty of a class A misdemeanor.

19 (b) The court shall transmit the proceeds of all fines to the proper state officer
 20 for deposit in the general fund of the state.

21 * **Sec. 3.** AS 16.05.920(a) is amended to read:

22 (a) Unless permitted by AS 16.05 - AS 16.40 [, BY AS 41.14,] or by
 23 regulation adopted under AS 16.05 - AS 16.40 [OR AS 41.14], a person may not take,
 24 possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game, or
 25 marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of
 26 fish or game.

27 * **Sec. 4.** AS 16.05.925(a) is amended to read:

28 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,
 29 16.05.783, 16.05.831, **16.05.875, and** 16.05.905, [AND AS 41.14.860,] a person who
 30 violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or
 31 AS 16.20, is guilty of a class A misdemeanor.

1 * **Sec. 5.** AS 16.20.070 is amended to read:

2 **Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.20.060 do
3 not affect **AS 16.05.877 - 16.05.881** [AS 41.14.870 - 41.14.890].

4 * **Sec. 6.** AS 41.17.010 is amended to read:

5 **Sec. 41.17.010. Declaration of intent.** The legislature declares that

6 (1) the forest resources of Alaska are among the most valuable natural
7 resources of the state, and furnish timber and wood products, fish and wildlife,
8 tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

9 (2) economic enterprises and other activities and pursuits derived from
10 forest resources warrant the continuing recognition and support of the state;

11 (3) the state has a fundamental obligation to ensure that management
12 of forest resources guarantees perpetual supplies of renewable resources, provides
13 nonrenewable resources in a manner consistent with that obligation, and serves the
14 needs of all Alaska for the many products, benefits, and services obtained from them;

15 (4) government administration of forest resources should combine
16 professional management services, regulatory measures, and economic incentives in a
17 complementary fashion, and should draw upon the expertise of professional foresters
18 in conjunction with other disciplines;

19 (5) under the leadership of the Department of Environmental
20 Conservation as lead agency, the state should exercise its full responsibility and
21 authority for control of nonpoint source pollution with respect to the Federal Water
22 Pollution Control Act, as amended;

23 (6) subject to AS 41.17.098(c), the provisions of this chapter, and
24 regulations adopted under this chapter, with the approval of the Department of
25 Environmental Conservation, establish the nonpoint source pollution requirements
26 under state law and sec. 319 of the Clean Water Act for activities subject to this
27 chapter;

28 (7) except for activities subject to **AS 16.05.871 or 16.05.877**
29 [AS 41.14.840 OR 41.14.870] and regulations authorized by those sections, this
30 chapter and regulations adopted under this chapter establish the fish habitat protection
31 standards, policies, and review processes under state law.

1 * **Sec. 7.** AS 41.17.041(e) is amended to read:

2 (e) The division shall serve as staff to the board. The department, **Department**
3 **of Fish and Game** [THE DEPUTY COMMISSIONER], and the Department of
4 Environmental Conservation shall provide technical staffing and information as
5 needed by the board.

6 * **Sec. 8.** AS 41.17.047(c) is amended to read:

7 (c) The board, working with the **department** [DIVISION], the Department of
8 Environmental Conservation, the **Department of Fish and Game** [DEPUTY
9 COMMISSIONER], other affected agencies and parties, and the forest-dependent
10 industries, shall conduct an annual survey of research needs related to forest practices.
11 The board shall review research proposals and shall make recommendations to
12 promote research projects that would address these needs to the governor and the
13 legislature.

14 * **Sec. 9.** AS 41.17.047(d) is amended to read:

15 (d) The board shall coordinate the monitoring of the implementation and
16 effectiveness of this chapter, the regulations, and best management practices adopted
17 under this chapter in meeting state water quality standards, fish and wildlife habitat
18 requirements, and other forestry objectives. The board shall report annually to the
19 governor on the effectiveness of this chapter and regulations adopted under it, with its
20 recommendations for changes and for needed research and monitoring. The board
21 shall notify the legislature that the annual report is available. The state forester, the
22 **Department of Fish and Game** [DEPUTY COMMISSIONER], and the Department
23 of Environmental Conservation shall each present an annual report, independently, to
24 the board on the effectiveness of this chapter, the regulations, and best management
25 practices adopted under this chapter that protect the resources for which they have
26 statutory responsibility, and shall make recommendations for changes to correct
27 procedural or substantive problems. The board shall include the reports as part of its
28 annual report. The board shall hold hearings at least once annually in southeast,
29 southcentral, and interior Alaska for purposes of taking public testimony on the
30 subjects.

31 * **Sec. 10.** AS 41.17.090(e) is amended to read:

1 (e) Within 30 days after receipt of a detailed plan of operations, the state
2 forester shall review the plan to determine if the operations are consistent with this
3 chapter and regulations adopted under this chapter. Operations may begin under the
4 plan upon the expiration of the 30-day period or upon notice from the state forester
5 that the review has been completed, whichever occurs first, unless the division has
6 issued a stop work order for a particular portion of the plan or has notified the operator
7 that a one-time, 10-day extension is necessary for agency review under
8 AS 41.17.098(f). The operator may proceed with operations not covered by the stop
9 work order, notice of field inspection, or the agency review. During the review of a
10 detailed plan of operations, if a question arises concerning the proper classification of
11 water body type for purposes of the standards in AS 41.17.116(a), the **Department of**
12 **Fish and Game** [DEPUTY COMMISSIONER] may resolve the question.

13 * **Sec. 11.** AS 41.17.098(a) is amended to read:

14 (a) In administering this chapter, the state forester shall coordinate with **the**
15 **Department of Fish and Game**, other agencies, [THE DEPUTY COMMISSIONER,]
16 and affected coastal districts that have jurisdiction over activities subject to regulation
17 under this chapter.

18 * **Sec. 12.** AS 41.17.098(b) is amended to read:

19 (b) In a review or implementation of a detailed plan of operations under
20 AS 41.17.090 and in a decision on a proposed variation from requirements under
21 AS 41.17.087, the state forester shall consider the comments of [THE DEPUTY
22 COMMISSIONER,] each affected state agency and, where applicable, coastal
23 districts.

24 * **Sec. 13.** AS 41.17.098(d) is amended to read:

25 (d) The state forester shall recognize the expertise of the **Department of Fish**
26 **and Game** [DEPUTY COMMISSIONER] with regard to fish and wildlife habitat. On
27 private land, the state forester shall give due deference to the **Department of Fish and**
28 **Game** [DEPUTY COMMISSIONER] regarding effects on fish habitat from timber
29 operations including variations to riparian standards, designation of alternative site-
30 specific riparian protection plans, and road location decisions within riparian areas. On
31 public land, the state forester shall give due deference to the **Department of Fish and**

1 **Game** [DEPUTY COMMISSIONER] regarding effects on fish and wildlife habitat
2 from timber operations including timber harvest in riparian areas, variations to riparian
3 standards, and road location decisions within riparian areas. In making decisions under
4 AS 41.17.087, the state forester shall recognize fish habitat as the primary value in
5 riparian areas.

6 * **Sec. 14.** AS 41.17.118(c) is amended to read:

7 (c) In the absence of a site-specific determination by the **Department of Fish**
8 **and Game** [DEPUTY COMMISSIONER], the state forester shall presume for
9 planning purposes that a stream is anadromous if it is connected to anadromous waters
10 that are without **Department of Fish and Game** [DEPARTMENT] documentation of
11 a physical blockage and has a stream gradient of **eight** [8] percent or less.

12 * **Sec. 15.** AS 41.17.910(a) is amended to read:

13 (a) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and
14 the state forester shall work cooperatively with private forest landowners and timber
15 owners to protect, maintain, and enhance wildlife habitat to the maximum extent
16 practicable, consistent with the interests of the owners in the use of their timber
17 resources.

18 * **Sec. 16.** AS 41.17.910(b) is amended to read:

19 (b) The **Department of Fish and Game** [DEPUTY COMMISSIONER] shall
20 provide educational and technical assistance and extension services to owners of
21 private forest land or timber to assist in identifying important wildlife habitat and to
22 assist in designing voluntary management techniques that minimize adverse effects on
23 wildlife habitat.

24 * **Sec. 17.** AS 41.17.910(c) is amended to read:

25 (c) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and
26 the landowner shall cooperate in identifying areas of important wildlife habitat on
27 private forest land and in developing methods for their protection. Methods of
28 protection for wildlife habitat may include, with the agreement of the landowner, the
29 purchase of fee title, purchase of conservation easements, and land exchanges.

30 * **Sec. 18.** AS 41.17.950(1) is amended to read:

31 (1) "anadromous water body" means the portion of a fresh water body

1 or estuarine area that

2 (A) is cataloged under AS 16.05.877 [AS 41.14.870] as
3 important for anadromous fish; or

4 (B) is not cataloged under AS 16.05.877 [AS 41.14.870] as
5 important for anadromous fish but has been determined by the Department of
6 Fish and Game [DEPUTY COMMISSIONER] to contain or exhibit evidence
7 of anadromous fish in which event the anadromous portion of the stream or
8 waterway extends up to the first point of physical blockage;

9 * **Sec. 19.** AS 44.37.060 is repealed and reenacted to read:

10 **Sec. 44.37.060. Certain powers and duties of the deputy commissioner.** The
11 duties of the deputy commissioner of natural resources appointed under AS 44.37.055
12 include those assigned under AS 41.17.

13 * **Sec. 20.** AS 44.62.330(a)(30) is amended to read:

14 (30) the Department of Fish and Game [NATURAL RESOURCES]
15 as to functions relating to the protection of fish and game under AS 16.05.877
16 [AS 41.14.870];

17 * **Sec. 21.** AS 46.15.020(b) is amended to read:

18 (b) The commissioner shall

19 (1) adopt procedural and substantive regulations to carry out the
20 provisions of this chapter, taking into consideration the responsibilities of the
21 Department of Environmental Conservation under AS 46.03 and the Department of
22 Fish and Game under AS 16;

23 (2) develop and maintain a standardized procedure for processing
24 applications and the issuance of authorizations, permits, and certifications under this
25 chapter; shall keep a public record of all applications for permits and certificates and
26 other documents filed in the commissioner's office; shall record all permits and
27 certificates and amendments and orders affecting them and shall index them in
28 accordance with the source of the water and the name of the applicant or appropriator;
29 shall require that temporary water use authorizations are valid only to the extent that
30 the water withdrawal and use complies with applicable requirements of AS 16.05.877
31 [AS 41.14.870]; and shall make the record of applications, including temporary water

1 use applications under AS 46.15.155 that have been accepted as complete,
 2 authorizations, permits, certificates, amendments, and orders affecting them available
 3 to the public on the Internet;

4 (3) cooperate with, assist, advise, and coordinate plans with the
 5 federal, state, and local agencies, including local soil and water conservation districts,
 6 in matters relating to the appropriation, use, conservation, quality, disposal, or control
 7 of waters and activities related thereto;

8 (4) prescribe fees or service charges for any public service rendered
 9 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
 10 under regulations adopted by the department an annual \$50 administrative service fee
 11 to maintain the water management program and a water conservation fee under
 12 AS 46.15.035;

13 (5) before February 1 of each year, prepare a report describing the
 14 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
 15 shall notify the legislature that the report is available; the report must include

16 (A) information on the number of applications and
 17 appropriations for the removal of water from one hydrological unit to another
 18 that were requested and that were granted and on the amounts of water
 19 involved;

20 (B) information on the number and location of sales of water
 21 conducted by the commissioner and on the volume of water sold;

22 (C) recommendations of the commissioner for changes in state
 23 water law; and

24 (D) a description of state revenue and expenses related to
 25 activities under AS 46.15.035 and 46.15.037.

26 * **Sec. 22.** AS 41.14.150, 41.14.160, 41.14.165, 41.14.170, 41.14.180, 41.14.190, 41.14.195,
 27 41.14.200, 41.14.840, 41.14.850, 41.14.860, 41.14.870, 41.14.880, 41.14.890, 41.14.895,
 28 41.14.900, and 41.14.990 are repealed.

29 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 **TRANSITION.** Litigation, hearings, investigations, and other proceedings pending

1 under a law repealed by this Act, or in connection with functions transferred by this Act,
2 continue in effect and may be continued and completed notwithstanding a transfer or
3 amendment or repeal provided for in this Act. Certificates, orders, and regulations issued or
4 adopted under authority of a law amended or repealed by this Act remain in effect for the term
5 issued, or until revoked, vacated, or otherwise modified under this Act. Contracts, rights,
6 liabilities, and obligations created by or under a law amended or repealed by this Act, and in
7 effect on the effective date of this Act, remain in effect notwithstanding this Act's taking
8 effect. Records, equipment, appropriations, and other property of agencies of the state whose
9 functions are transferred under this Act shall be transferred to implement the provisions of
10 this Act.

11 * **Sec. 24.** This Act takes effect January 1, 2009.