

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 12, 2017

6:02 p.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Zach Fansler
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative David Eastman
Representative Mark Neuman

MEMBERS ABSENT

Representative Mike Chenault

OTHER LEGISLATIVE MEMBERS PRESENT

Representative Andy Josephson

COMMITTEE CALENDAR

HOUSE BILL NO. 199

"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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 199

SHORT TITLE: FISH/WILDLIFE HABITAT PROTECTION; PERMITS

SPONSOR(S): REPRESENTATIVE(S) STUTES

03/27/17	(H)	READ THE FIRST TIME - REFERRALS
03/27/17	(H)	FSH, RES
04/11/17	(H)	FSH AT 10:00 AM GRUENBERG 120
04/11/17	(H)	-- Delayed to 4/12/17 at 6:00 PM --
04/12/17	(H)	FSH AT 6:00 PM GRUENBERG 120

WITNESS REGISTER

REID HARRIS, Staff

Representative Louise Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 199, on behalf of
Representative Stutes, prime sponsor.

EMILY ANDERSON, Attorney
Alaska Director
Wild Salmon Center
Juneau, Alaska

POSITION STATEMENT: Testified by invitation on HB 199.

MIKE WOOD, Board President
Susitna River Coalition
Chase, Alaska

POSITION STATEMENT: Testified by invitation on HB 199.

GLENN HAIGHT, Executive Director
Board of Fisheries (BOF)
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified by invitation on HB 199.

RON BENKERT, Acting Manager
Habitat Division
Alaska Department of Fish & Game (ADF&G)

POSITION STATEMENT: Palmer, Testified by invitation on HB 199

TAYLOR HORNE, Environmental Program Manager
Department of Transportation & Public Facilities (DOTPF)
Juneau, Alaska

POSITION STATEMENT: Testified by invitation on HB 199.

WADE STRICKLAND, Program Manager
Waste Water Division
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Testified by invitation on HB 199.

MARLEANNA HALL, Executive Director
Resource Development Council
Juneau, Alaska

POSITION STATEMENT: Testified with opposition to HB 199.

LINDSEY BLOOM
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 199.

MIKE SATRE, Manager
Government and Community Relations
Hecla Mining
Juneau, Alaska

POSITION STATEMENT: Testified with opposition to HB 199.

KRISTIN CARPENTER, Executive Director
Copper River Watershed Project
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 199.

GEOFFREY PARKER, Attorney
Bristol Bay Fishermen's Association (BBFA)
Anchorage, Alaska

POSITION STATEMENT: Testified with opposition to HB 199.

KAREN MATTHIAS, Executive Director
Council of Alaska Producers
Anchorage, Alaska

POSITION STATEMENT: Testified with opposition to HB 199.

DEANTHA CROCKETT, Executive Director
Alaska Miners Association (AMA)
Anchorage, Alaska

POSITION STATEMENT: Testified with opposition to HB 199.

LOUIE FLORA, Lobbyist
Alaska Center
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 199.

ACTION NARRATIVE

[6:02:26 PM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 6:02 p.m. Representatives Stutes, Neuman, and Fansler were present at the call to order. Representatives Tarr, Eastman, and Kreiss-Tomkins arrived as the meeting was in progress.

HB 199-FISH/WILDLIFE HABITAT PROTECTION; PERMITS

[6:03:05 PM](#)

CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 199, "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."

[6:03:31 PM](#)

CHAIR STUTES offered an opening statement, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I am the prime sponsor of this legislation and I want to state my clear intention on the record— I am putting this bill forth in order to begin the public process so that this concept can be vetted over the interim, I do not intend to move this legislation from the House Fisheries Committee this session.

[6:04:49 PM](#)

REID HARRIS, Staff, Representative Louise Stutes, Alaska State Legislature, presented HB 199, paraphrasing from the sponsor statement, which read as follows [original punctuation provided]:

House Bill 199, the "Wild Salmon Legacy Act," updates Title 16—Alaska's fish habitat protection and permitting law. This law guides how the State of Alaska permits activities and development projects that may impact wild salmon; however, the law has not been updated since Statehood.

The bill creates a balanced and efficient permitting system that protects Alaska's wild salmon runs, promotes responsible development and gives Alaskans a greater voice in major permitting decisions that impact wild salmon streams. HB 199 provides regulatory certainty for resource development companies while ensuring protection of salmon habitat.

This bill is drafted in response to a letter the Alaska Board of Fisheries sent to the Legislature in January 2017 recommending it modernize Title 16. The Board of Fisheries' action came at the request of a group of Alaskans comprised of commercial, sport,

subsistence and personal use fishermen concerned about the future of the salmon they depend on.

Wild salmon are a major part of our culture, economy and identity in Alaska. Alaska is the last state with healthy populations of wild salmon and this bill protects the interests of Alaskans who rely on wild salmon for food, income and recreation."

Given the importance of Alaska's salmon fisheries, the state must ensure that related laws are balanced, predictable and fair in both protecting salmon habitat and encouraging responsible development. HB 199 will create enforceable standards, provide for public input and expand the Department of Fish and Game's authority to protect fish habitat and will safeguard Alaska's salmon fisheries into the future.

MR. HARRIS added that the definition of anadromous water includes all waters of the state.

[6:09:35 PM](#)

EMILY ANDERSON, Attorney, Alaska Director, Wild Salmon Center, said there are five primary limitations/deficiencies with the current Title 16 statutes, which HB 199 addresses. First it expands the jurisdiction of the Alaska Department of Fish & Game (ADF&G). Current law requires ADF&G to specify the water bodies in the state that are important for the spawning, rearing and migration of anadromous fish. The directive has resulted in the creation of the Anadromous Waters Catalog (AWC). The agency estimates that less than 50 percent of anadromous waters are listed in the AWC, which creates a jurisdictional problem because the AWC functions as the trigger for the requirement of a fish habitat permit. The proposed bill creates a rebuttable, approach for identifying anadromous waters. Rather than the agency identifying and generating a list of anadromous waters, the presumption is made that all waters are anadromous and provides a means for a water way to be removed/exempted; a more efficient approach considering that the majority of Alaska's waters are anadromous. The proposed measure does three things: 1) expands agency jurisdiction and triggers the fish habitat permit requirement without forcing ADF&G to sample every river, lake, and stream in Alaska; 2) allows an applicant to request a site-specific determination that a water is not anadromous if they do not believe a permit should be required; and 3) regardless of how the presumption is created, it provides a more

efficient system and saves costs. She explained that sometimes, private organizations receive grants and sample waterways, which can then be nominated for inclusion in the AWC, at a cost of approximately \$1,000 per stream mile. With over 20,000 waterways in the state, costs can mount quickly. The state usually assumes the liability, and in 2015 paid for sampling in the Bristol Bay region to survey 450 miles of streams, at a cost of \$550,000. A change in statute to create an anadromous waters presumption would eliminate this level of cost. Second, HB 199 creates certainty in the permitting process by creating guidance for how significant adverse effects to fish habitat will be analyzed and mitigated. Under current law, the commissioner shall issue a permit unless the plans and specifications of the proposed project are insufficient for the proper protection of fish and game. The "proper protection of fish and game" is used as a general standard, with no guidance or definition provided in statute or regulation. In addition, there is no requirement that projects should be treated differently based on the level of potential adverse effects to fish habitat. Fundamentally, it creates uncertainty regarding how the agency might choose to impose protective measures, as well as how proposed permits will be analyzed and whether there will be restrictions attached. The fix proposed is HB 199, is to create a two tier permit application system to identify whether there could/could not be adverse effects to fish habitat. If ADF&G determines that habitat degradation can be avoided or minimized through specific conditions the application becomes a minor permit, and if potential is significant, it becomes a major permit requiring further scrutiny and a detailed, impact assessment, for which the applicant will be responsible to pay. Third, HB 199 requires public notice for all permits and creates a public process during the review of major permits. Current law does not require public notice or opportunity for participation in the permit review process. Generally, permitting processes are designed to strike a balance between administrative efficiency and transparency in government, but currently such a balance is absent. Further, all permits, whether for large or small projects, are treated the same regardless of the potential for significant adverse effects to fish habitat and the sustainability of fisheries. The proposed bill requires public notice for the minor permits and public notice as well as an opportunity for public comment, during the review of major project permits; inserting balance and transparency into the process.

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MS. ANDERSON said the fourth point HB 199 rectifies, is providing a definite limit to the adverse effects that can be imposed on state waters, and thus creating a clear, unambiguous standard for permit denial. The current law, stipulating that a permit will be issued pending the commissioner's decision on whether there is proper protection of fish and game, is nebulous, as previously mentioned, and does not provide appropriate certainty to the process. The proposed legislation establishes a clear, upper limit of allowable damage to fish habitat. In concept, this will open the door to development while providing a backstop to damage that can be incurred on anadromous fish habitat (AFH). The commissioner shall determine that substantial damage will occur if: the activity will cause significant adverse effects; the adverse effects cannot be minimized using allowed mitigation measures; and the significant adverse effects are such that the habitat will not likely recover in a reasonable period of time based on the life history of anadromous species, or recover to a level that sustains natural and historic levels of fish populations. In addition, HB 199 bans certain types of mitigation that pose risks to the recovery of AFH after the project is complete. Thus, the commissioner shall not issue a permit if recovery requires any of the following: necessitates water treatment in perpetuity, replaces a wild run fish population with a hatchery dependent population, or causes dewater or relocation of a stream for more than five years. The establishment of these parameters are expected to result in the promotion of responsible development while ensuring the protection of anadromous fish habitat. The fifth and final element, is that HB 199 adds tools to enforce permit violations. The current law provides ADF&G with the option of pursuing a misdemeanor penalty for permit violations, which requires the involvement of the Department of Law and can be difficult to pursue if not a major offense. The fix in HB 199 authorizes ADF&G to assess civil penalties and citations, providing the agency flexibility for enforcement of permits, she finished.

[6:24:53 PM](#)

MIKE WOOD, Board President, Susitna River Coalition, said the Susitna hydro dam project has been actively opposed by over 10,000 residents because of the impact it would have on the fisheries. The Susitna dam proposal provided no type of fish passage, he reported. The creators of the state constitution placed weight on the need to protect the fisheries and habitat on an equal basis with mineral extraction, which should never become overshadowed by potential developments such as the

Susitna hydro dam or the Chuitna coal mine. A balance needs to be struck that provides assurances and certainty to those on both sides of the permitting process; resource conservation and industrial development. The bill would also span changes of administration, ensuring that a given political groups policy could not hold sway. He ended with a quote from Governor Jay Hammond, which states: "Alaskans should be aware that some economic growth can be malignant unless development is environmentally sound, desired by most Alaskans, and can pay its own way without burdening the state and the tax payer, I'll oppose that."

[6:31:25 PM](#)

GLENN HAIGHT, Executive Director, Board of Fisheries (BOF), Alaska Department of Fish & Game (ADF&G), directed attention to the committee packet and the BOF letter addressed to Senate President, Pete Kelly, and Speaker of the House, Bryce Edgmon, 1/19/17, and explained that it was written in response to a non-regulatory proposal requesting that the board recommend legislative action to have elements of the sustainable salmon fisheries policy included under the Title 16 statutes. The board responded, and during the October meeting in Soldotna, Alaska, heard comments and received written testimony on the topic. The outcome was that the board found sufficient cause, which triggered special committee meetings, and resulted in the letter before the committee.

[6:32:56 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked if the letter sets a precedent for the board weighing in on habitat permitting matters, or is it a frequent occurrence.

MR. HAIGHT responded that there are statutory duties allowing for this type of action, and in 2009 the BOF provided a similar letter regarding the Bristol Bay refuge area.

[6:34:35 PM](#)

RON BENKERT, Acting Manager, Habitat Division, referred to the committee packet handout titled, "Fish Protection Laws in Alaska ADF&G Statutory Authority; Salmon Policy Forum," 4/11/17 to review the authority held by Alaska Department of Fish & Game (ADF&G) for fish and wildlife habitat protection, identify the strengths and limitations of that authority, and explain how the authority is applied regarding fish habitat permits. He said

several agencies, in addition to ADF&G, provide permits for any project that involves fish bearing streams, including: Alaska Department of Natural Resources (DNR), Alaska Department of Environmental Conservation (DEC), US Army Corps of Engineers, boroughs and municipalities, and land managers. A delicate balance must be struck by the habitat division, to allow for resource development while protecting the resource, he said, and pointed out that permitting today is very different than it was 20 years ago. The agency conducts and gathers research to compile technical reports, which are used to update guidance manuals for use in evaluating projects. Examples he offered are the new blasting standards that were recently field tested and issued. Additionally, the division maintains a memorandum of agreement (MOA) with the Department of Transportation (DOT) to ensure fish passes are appropriately installed that will not restrict migration, such as culverts which must now be installed with simulated substrate in the bottom. The agencies effective negotiation process results in the majority of permits being approved; however, the original application may look very different than what is eventually permitted. An applicant often withdraws their paperwork rather than be denied, when they understand how the regulations apply to their project. Turning to the committee handout, page 6, he provided a state map of the six regions where ADF&G, Habitat Division offices are located. The workload priorities include: Title 16 permitting and enforcement; field work that includes research, site inspections, and AWC [anadromous waters catalog] surveys; large projects that are of importance to the state; Alaska Forest Resources and Practices Act [Title 41, 2013] enforcement; and special area planning for critical habitat areas.

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MR. BENKERT said there are two primary statutes that Habitat works under, which are the Fishway Act [or Fish Passage Act], AS 16.05.841, 1959, and the Anadromous Fish Act, AS 16.05.871. The Fishway Act was instituted at the time of statehood and applies to anadromous as well as resident fish. It requires that any obstruction built across fish-bearing waters will provide a means for fish to pass. The options for mitigation are archaic, he opined, and include: a lump sum payment to the state for the fish and game fund; build, operate, and maintain a hatchery in perpetuity, or pay to expand, maintain, and operate an existing hatchery. Today, it is understood that production fish hatcheries are not an acceptable surrogate for wild run fish. The positive aspect of this act is that it applies to all fish bearing streams and all fish species and requires a long-term

commitment to operate and maintain any structures. These measures apply to culverts, as well as dams and other large projects. The limitations are that it only applies to fish passage, and the mitigation provisions are inappropriate/archaic. Mr. Benkert referred to the Anadromous Fish Act, stating that it requires that the waterbody be included in the AWC, specifying that the waters are important for the spawning, rearing, or migration of anadromous fish. He reported that agency biologist spend about six weeks every year in the field, updating and adding waterbodies to the AWC. When projects are proposed, data is often collected from areas that otherwise may not have been a focus. Project notification and plan submissions are required before work can begin, via the permit application, and the permit can then be approved or denied. Strengths of the act include that it applies to any hydro activity and to any life stage of the fish. The limitations are that jurisdiction only applies to the areas below the ordinary high waterline, the waterbodies that are included in the AWC, and only freshwaters.

[6:47:21 PM](#)

MR. BENKERT said the AWC is online and anyone has access to view the information. It's updated annually, and signed off-on by the lieutenant governor. He reviewed the complete permitting process, to wit: applicant submits plans to ADF&G; habitat biologist reviews and consults area staff; the project may be permitted as proposed or modified during the review process. The review timeline may be two days but is generally 4-6 weeks, and in some instances years; however, emergency exemptions are available under AS 16.05.891 via verbal/email approval and are followed-up with a formal permit. Permit stipulations may include: timing windows to minimize effects on fish; stream diversion/bypass pumping to allow fish to pass during construction; sediment control; revegetation and bank stabilization; and fish passage provisions in perpetuity.

[6:52:47 PM](#)

CHAIR STUTES asked for an estimation on the percentage of the waterways included in the AWC.

MR. BENKERT answered that it may be 60 percent of Alaska waters. The surveyors are focusing primarily on accessing the larger watersheds, as helicopters are inevitably involved and expenses run high. The road system has, understandably, been well covered.

CHAIR STUTES asked when the cataloging was started.

MR. BENKERT conjectured that it may have begun in the 1980's.

6:55:31 PM

REPRESENTATIVE TARR assumed that some projects may require a National Pollutant Discharge Elimination System (NPDES) permit and a Stormwater Pollution Prevention Plan (SWPPP), as well as an ADF&G permit and asked if a chronological order must be followed during the application process or whether overlap occurs.

MR. BENKERT responded that DEC issues the SWPPP permits and deferral is made to them for water quality issues.

REPRESENTATIVE TARR noted that the permitting process is reportedly slow, but it appears that there may be good reason given all of the moving parts.

MR. BENKERT agreed that there are many aspects that must be worked with, prior to a permit being issued, as the evaluations often require collaboration between multiple agencies.

7:00:01 PM

TAYLOR HORNE, Environmental Program Manager, Department of Transportation & Public Facilities (DOTPF), directed attention to the committee packet document titled, "DOT/PF Comments on HB199; How do Title 16 ADF&G Fish Habitat Permits Affect DOT&PF Projects?," 4/7/17, and paraphrased the contents, which read as follows [original punctuation provided]:

Many DOT&PF projects affect creeks, streams, and rivers that support anadromous fish. Current AS 6.05.871-.901 specifies that all activities within or across a specified anadromous waterbody requires a permit from ADF&G before altering or affecting "the natural flow or bed" fish stream. This is commonly referred to as the "Title 16 Fish Habitat Permit".

DOT&PF environmental, engineering, and hydrologist staff work closely with ADF&G fish habitat biologists during the project development process and Title 16 fish habitat permitting process to create transportation projects that preserve or improve fish

habitat while improving transportation infrastructure for Alaskans. For example, DOT&PF works with ADF&G to improve culverts to allow for anadromous fish passage at every opportunity; similarly, bridge abutments and piles are designed to allow for the natural meander of fish streams and to increase fish habitat.

DOT&PF staff value the input of the public and resource agencies throughout the project development process. Conversations early in project development allow for design modifications to be incorporated in the project, allows the environmental impacts to be accurately analyzed in the NEPA document, assures compliance with our federal funding partners, and gives the public and agencies more opportunities to voice their concerns and improve outcomes for anadromous fish habitat. In particular discussions with ADF&G fish habitat biologist beginning at project scoping, continuing through the NEPA process, and concluding with the Title 16 permitting allows DOT&PF to design and build projects that often improve fish habitat.

The department of transportation would value you to consider whether it would be appropriate to have an exception for major fish habitat permits of major DOT projects that have already undergone the NEPA process.

[7:09:24 PM](#)

REPRESENTATIVE TARR referred to the final suggestion asking that an exception be allowed for major projects that have undergone the NEPA process and asked whether such action would be applied based on a particular point in time.

MR. HORNE clarified that the majority of DOT construction projects have a well-defined public process that must be followed. It would helpful to consider a means for current, active projects to be exempted from revisiting any of the processes and conversations that have already been moved through.

[7:10:55 PM](#)

WADE STRICKLAND, Program Manager, Waste Water Division, Department of Environmental Conservation (DEC), testified on HB

199, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

My commentary is brief and is meant to bring awareness of how this act will interact with certain DEC regulations.

The bill (HB 199) creates a rebuttable presumption that all fresh waters in Alaska are anadromous. Current Alaska Water Quality Standards found in regulations (18 AAC 70) state that DEC may not authorize mixing zones in an area of anadromous fish spawning. Mixing zones are authorized by DEC in wastewater permits and are areas in surface water where treated wastewater undergoes initial dilution and mixing. Under the proposal, all existing DEC permitted wastewater discharges to freshwater with authorized mixing zones will be out of compliance unless a site-specific determination is completed and rebutted by Fish and Game or additional treatment is added to the wastewater facility. Accordingly, many communities and industry statewide that discharge treated wastewater to freshwater will likely need to engineer and fund improvements to their wastewater treatment facility to comply with the requirements. In addition, DEC permit application reviews are expected to increase in complexity as communities and industry work within the legal framework.

[7:12:32 PM](#)

REPRESENTATIVE TARR asked whether the 50 existing mixing zone permits would be grandfathered in.

MR. STRICKLAND responded that grandfathering in the permits could be an option and clarified that there are about 100 existing mixing zones that would need to be considered for such action.

CHAIR STUTES opened public testimony.

[7:14:38 PM](#)

MARLEANNA HALL, Executive Director, Resource Development Council, stated opposition to HB 199, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

In brief, RDC is a statewide trade association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, fisheries and tourism industries, as well as the 12 ANCs. RDC members are truly the life-blood of Alaska's economy. We believe the best approach to expand the economy and generate new revenues for the state is to produce more oil, attract more tourists, harvest more fish and timber, and mine more minerals.

With regard to House bill 199, increasing uncertainty and adding additional, unnecessary regulatory burdens to community and resource development projects across Alaska with little to no added benefit to salmon habitat is not sound policy. This bill will likely delay, or even halt, these projects and increase costs for our communities and private sector and would send Alaska further down on the regulatory-certainty scale.

On Monday, I worked with 17 other Alaskan entities to develop a letter with some initial concerns:

The coalition agreed that concerns with HB 199 start with simple questions: Why is this bill necessary? What is it trying to fix? What is the real fiscal impact?

The letter expressed initial overlying areas of concern that this bill would seriously impact:

--Community development - including upgrades to infrastructure, such as airports and roads, construction of wastewater treatment plants, natural community growth, and more.

--Economic development - including fish processing, timber harvests, mineral extraction, and oil and gas development.

--A future gas pipeline to transport Alaska's natural gas from the North Slope to markets.

The intent to safeguard Alaska's salmon fisheries is an objective we share and it is why we support Alaska's existing rigorous and science-based regulatory system. Shutting down economic and

community development is a disproportionate response to a problem that doesn't exist.

Those are just a few lines from the letter I spoke of. I have a copy of the letter, but it has already been submitted for the record and is on BASIS. It lists all 18 signatories, from RDC to other trade organizations, as well as Native corporations, and others who wanted to join after I submitted it on Monday are not listed.

In conclusion, my members are not asking for less burdensome regulatory processes, but we do request that as the state considers changes, it do no harm to Alaskan communities and responsible resource development projects.

Members of the HFSH committee, I urge you to reject this legislation, as it is fundamentally flawed and poses a grave threat to Alaska's economy.

[7:18:29 PM](#)

LINDSEY BLOOM stated support for HB 199 and said entry into statehood was spurred on by the interest to control the fishing resources. The Constitution of the State of Alaska provides a powerful framework for fisheries, which, she opined, "is probably why we continue to be the last state in the country with robust, economically viable salmon fisheries." Title 16, provides the Alaska Department of Fish & Game (ADF&G) its authorities, and one sentence guides the permitting process regarding habitat, which she paraphrased as: "You shall issue a permit so long as that permit provides for the proper protection of fish and game." Searching statute, policy, and regulations, she reported that the definition of "proper protection," does not exist, and suggested that this may be the overriding problem. Industry may have a knee jerk reaction to the proposed legislation and insist that no problem exists; however, if your culture or economic way of life depends on the fisheries, not having proper protection defined does pose a problem and needs to be fixed.

[7:22:53 PM](#)

REPRESENTATIVE EASTMAN asked for further reasons that the bill should be considered necessary.

MS. BLOOM pointed out that the multi-agency coordination work and complexity involved for permitting large projects creates several problems. Also, requirements are not in place for public notices involving the issuance of permits related to fish habitat. Thus, parties/entities interested in what permits are being issued in a given area can only receive information by filing a request for public information with the department. The technology exists to easily remedy this situation, she said and cited the possible use of geo-locator mapping. Another issue is enforcement of fish habitat permits, which reportedly poses challenges to the department.

[7:25:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the lack of transparency around issuance of permits that requires the public to forage for information, and asked whether law prohibits an agency from instituting regulation to rectify the situation.

MS. BLOOM replied, "To my knowledge, there is nothing in law that would prevent that." She added that many of the concepts proposed in the bill are currently at the discretion of the commissioner. Placing the concepts into law will establish a non-arguable certainty for the maintenance of fish habitat quality.

[7:27:32 PM](#)

REPRESENTATIVE EASTMAN referred to the Susitna Dam project, which was permitted without allowing passage for fish, and asked whether it's possible for a dam to be permitted, under Title 16, without provisions for a fishway.

MS. BLOOM explained that the Susitna Dam project has been put on hold, and a Title 16 permit was not issued. The Fishway Act [or Fish Passage Act AS 16.05.841] includes a mitigation option allowing for hatchery replacement of natural-run fish.

[7:29:15 PM](#)

MIKE SATRE, Manager, Government and Community Relations, Hecla Mining, stated opposition to HB 199, directing attention to the committee packet and the coalition letter submitted by the trade association. The stance held by the coalition is that the bill is fundamentally flawed and should not proceed through the process. The Board of Fish (BOF) has requested enhanced public comment, and enforceable standards. He opined that regulation

could be promulgated to satisfy the needs, as an easy fix, and enforceable standards are already in place. Many of the concerns appear to focus on changing the law primarily because it hasn't been visited in 60 years; however, there is nothing compelling such a review other than fear. Sweeping reforms should only happen if there are documented examples of problems in the existing law, and targeted solutions. He said the bill will create significant delays to any development within the state, and a one size fits all approach will preclude site specific criteria from being appropriately addressed; salmon habitat is unique in each region as are the projects. He urged the bill be placed in the "circular file," and not run through the legislative process.

[7:32:19 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the Fishway Act [or Fish Passage Act AS 16.05.841] and Anadromous Fish Act [AS 16.05.871-.901] are considered a one size fits all approach. If the proposed legislation replaces portions of the existing acts, what makes HB 199 outstandingly different, he posed.

MR. SATRE answered that the acts establish broad overarching goals that serve to protect the environment and yet allow for resource development. The largest impact of the proposed legislation may not be on projects requesting permits, but on community development.

[7:34:45 PM](#)

KRISTIN CARPENTER, Executive Director, Copper River Watershed Project, stated support for HB 199, and said the project promotes sustainable economic development, within the region of the Copper River drainage, by ensuring fish passage ways for all species. She pointed out that a construct is often posed around jobs versus the environment. However, the environment does represent jobs, including: guiding services, tourism, lodging, canneries, boat manufacturing and repair, as well as the commercial fishing industry that has been reported as providing 3,280 full time jobs, and \$162 million in annual labor income to Southcentral Alaska residents. Salmon are a renewable resource, generating economic and recreational opportunities for thousands of people. Title 16 will be improved by placing into statute upper limits on habitat degradation, she opined. The broad statements by the opposition seem to take the stance that permits would be disallowed, and projects shut down across the state, however, based on ADF&G testimony, the process won't be

significantly changed. She urged the committee to take into account all the opportunities for jobs that ecosystem services support and the intangible, as well as tangible, values realized from cultivating the natural resources.

[7:39:42 PM](#)

GEOFFREY PARKER, Bristol Bay Fishermen's Association (BBFA), stated opposition to HB 199, pointing out that the positive parts of the proposed legislation could be handled via regulation. He opined that there are eleven negative points being proposed, which could prove harmful to salmon. Directing attention to the committee packet and the previously submitted letter dated 4/10/17, he paraphrased from the "CONCLUSION," pages 9-10, which read as follows [original punctuation provided]:

(1) removes the beds of anadromous waters from the jurisdiction of the Act so as to reduce the scope of protection and permitting;

(2) requires regulations to create a method of evading permitting by determining that anadromous waters are "not important," when a method already exists under the Administrative Procedure Act;

(3) allows excavation and mining of the beds of anadromous streams to evade permitting, whenever ADF&G was unable to anticipate that previous activities, such as water extraction wells around a mine pit, would result in dewatering anadromous water;

(4) eliminates the fish themselves from the jurisdiction of the Act so as to allow blasting near documented anadromous waters, including by Pebble and the mining and oil and gas industries, to evade permitting whenever pressure waves would harm fish embryos but leave the habitat intact;

(5) presumes unnecessarily that all surface waters are anadromous when modeling after the Forest Practices Act offers a more rational presumption;

(6) limits existing administrative and judicial review by replacing the "interested person" standard with the "person adversely affected" standard;

(7) limits existing judicial review by replacing the right to file an original court action in the Superior Court sitting as a trial court, which has all the advantages of discovery, production of evidence, cross-examination, use of expert witnesses, etc., with an administrative appeal to the Superior Court sitting as an appellate court reviewing an established agency record with no opportunity in an appellate court for discover, production of evidence, cross-examination, use of experts, etc.;

(8) amends the Administrative Procedure Act to extinguish the applicability of numerous provisions designed to assure a fair hearing before ADF&G hearing officers on matters involving reconsideration of decisions made under HB 199;

(9) replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to "reasonable requests" for an applicant to do field work, all of which puts the applicant in greater control of the information that goes in decision-making;

(10) bars mitigation of unforeseen significant adverse effects under major permits whenever prior damages to the same water body already exist; and

(11) invites further erosion of the current Act if the bill becomes an enacted initiative.

[7:42:55 PM](#)

REPRESENTATIVE TARR asked whether the BBFA is a group that supports the Pebble Mine.

MR. PARKER responded, "Not in the least."

[7:44:11 PM](#)

KAREN MATTHIAS, Executive Director, Council of Alaska Producers, stated opposition to HB 199, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

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 and serves as a spokesperson for the large metal mines and major metal developmental projects in the state. Bringing together mining companies with interest in Alaska, the Council represents and 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.

CAP opposes HB199 because it would shut down responsible resource development projects across the state, jeopardize the continuation or expansion of existing operations, delay and add costs to road construction and other state infrastructure projects, and it would inhibit community development. The real fiscal impact of this bill would be staggering.

HB199 is the wrong solution to a problem that doesn't exist. Alaska already has a world class permitting system that is based on science and applied consistently. This bill creates a new permitting program that is more stringent than the applicable federal laws without giving any reason why the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act are deemed insufficient to protect fish habitat and wildlife in Alaska.

HB 199 cannot be fixed. Please recognize that the current, rigorous permitting system works and do not move this bill any further. Doing otherwise would endanger Alaska jobs as well as threaten any expansion of our state's limited transportation infrastructure. It would also restrict opportunities for Alaska communities to grow and prosper.

[7:46:13 PM](#)

DEANTHA CROCKETT, Executive Director, Alaska Miners Association (AMA), stated opposition to HB 199, paraphrasing from a prepared

statement, which read as follows [original punctuation provided]:

AMA has approximately 1,500 members and we're represented in eight statewide branches, from Nome to Ketchikan.

Earlier this week, this Committee received a letter signed by eighteen statewide business organizations, including AMA, opposing HB 199. This is the letter Ms. Hall referenced earlier. Ranging from community development to tourism, oil to mining, this diverse group of entities represents the broadness of the negative impacts that would result of passage of HB 199.

As to Alaska's mining industry in particular: all of AMA's members operate within the State's rigorous, science-based regulatory process. This is not a rubber-stamp "easy," or superficial process. It is lengthy, rigorous, and stringent. A key component of this process is the protection of Alaska's fisheries, and not just fish habitat protection, but fish habitat enhancement.

The safeguarding of fish species at Alaska's mining projects is a success story. The bill we are hearing today, HB 199, suggests significant regulatory problems that simply do not exist. HB 199 proposes a massive rewrite of fish habitat regulation that is not only a solution in search of a problem, but is an all-out shut down of community and economic development. I appreciate that the sponsor has indicated she does not wish to shut down any development, therefore, I encourage thorough review of the impacts of each and every provision suggested in the bill. The provisions in HB 199 would ensure that development of new mines, oilfields, wastewater plants, highways, you name it, would not be built. At a time of billion dollar deficits, these are not the kinds of bills Alaskans should be pursuing.

Because the protection of fish is a high priority for Alaska's mining industry, AMA is and always has been a willing participant for workgroups to review the current process and find improvement. However, HB 199 is severely flawed, and should be abandoned in favor

of productive discussion that enhances our regulatory process while continuing to grow the State economy.

We do have a letter on the record reflecting our position of NO on HB 199.

[7:49:05 PM](#)

LOUIE FLORA, Lobbyist, Alaska Center, stated tentative support for HB 199, acknowledging the industry concerns. However, he said, citizen participation and involvement in the habitat protection process is timely, as the pendulum has swung far to the other side during the last 20-30 years. The proposed legislation could serve to help move the needle back to a more moderate level of participation on behalf of the public. An important aspect are the requirements for public notice, as an average of 3,000 habitat permits are issued per year, and none are public noticed despite being for major developments. He said he looks forward to continued work on the issue and future hearings.

[7:51:19 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the committee packet and the BBFA legal memorandum, 4/10/17, paraphrased by Mr. Parker, and expressed interest in hearing comments from user groups who have had direct experience with the permitting process.

CHAIR STUTES closed public testimony, and announced HB 199 as held.

[7:53:18 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 7:53 p.m.