

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 5, 2018

11:56 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Jonathan Kreiss-Tomkins
Representative Mike Chenault
Representative Mark Neuman
Representative David Eastman
Representative Bryce Edgmon

MEMBERS ABSENT

Representative Geran Tarr

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Board of Fisheries (BOF)

Al Cain - Anchorage

Orville Huntington - Fairbanks

- CONFIRMATION(S) ADVANCED

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
04/12/17	(H)	-- Delayed from 4/11/17 --
01/18/18	(H)	FSH AT 10:00 AM GRUENBERG 120
01/18/18	(H)	-- MEETING CANCELED --
01/23/18	(H)	FSH AT 10:00 AM GRUENBERG 120
01/23/18	(H)	Heard & Held
01/23/18	(H)	MINUTE(FSH)
04/03/18	(H)	FSH AT 10:00 AM GRUENBERG 120
04/03/18	(H)	Heard & Held
04/03/18	(H)	MINUTE(FSH)
04/05/18	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

ALAN CAIN, Appointee

Board of Fisheries (BOF)

Alaska Department of Fish & Game (ADF&G)

Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Board of Fisheries (BOF).

ORVILLE HUNTINGTON, Appointee

Board of Fisheries (BOF)

Alaska Department of Fish & Game

Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Board of Fisheries (BOF).

MATT GRUENING, Staff

Representative Louise Stutes

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented changes in HB 199 from Version I to Version M, on behalf of the joint prime sponsor, Representative Louise Stutes on HB 199.

ACTION NARRATIVE

[11:56:59 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 11:56 a.m. Representatives Stutes, Neuman, Kreiss-Tomkins, and Chenault were present at the

call to order. Representative Eastman and Edgmon arrived as the meeting was in progress.

BOARD OF FISHERIES (BOF)

Board of Fisheries (BOF)

11:58:06 AM

CHAIR STUTES announced that the first order of business would be Confirmation Hearings for the Board of Fisheries. She welcomed Mr. Al Cain, Appointee, Board of Fisheries (BOF) and Mr. Orville Huntington, Appointee, Board of Fisheries (BOF).

11:58:38 AM

ALAN CAIN, Appointee, Board of Fisheries (BOF), Alaska Department of Fish & Game (ADF&G), stated that he spent 25 years as an Alaska Wildlife Trooper serving in communities throughout Alaska. He has observed most of the fisheries and various harvest methodologies. He served as a criminal justice planner for the ADF&G for approximately 10 years. He also worked as a contractor helping state and federal agencies manage and protect fish and game resources. In addition, he served as an enforcement advisor for the Board of Fisheries (BOF). He said he attended all of the BOF's meetings over a period of ten years. Two years ago, the governor appointed him to the Board of Fisheries, he said. He emphasized that he has an abiding interest in the health of Alaska's fisheries. His biggest goal would be to have his great-grandchildren have an abundance of fish to catch during their lifetimes, just as we have today, he said.

11:59:59 AM

REPRESENTATIVE NEUMAN welcomed Mr. Cain. He pointed out that Cook Inlet has numerous concerns over seven or eight of the 12 stocks in the Northern Cook Inlet [Management Area (NCIMA)]. He asked how the board should address these issues.

12:00:24 PM

MR. CAIN answered that there are numerous approaches that have been suggested. He related that his job on the Board of Fisheries (BOF) was to listen very carefully to testimony by the ADF&G, the various user groups, and take careful actions that try to find the best solution. He said the BOF has various tools in place. He offered examples of tools that the BOF can

use and refine, including which corridor to use during periods of time and carefully considered management plans. He emphasized the importance of getting enough fish passage into the northern streams while allowing the harvestable surplus to be taken in an orderly manner further down the Cook Inlet. He acknowledged that this has been a long-standing issue that he did not think would diminish anytime soon. He related that invasive species, habitat changes, ocean conditions and other factors affecting fisheries decisions. He emphasized that board members must carefully listen to the scientists, user groups, and then make wise and conservative to build up stocks. He most enjoyed being able to de-list a stock of concern, he said.

[12:01:53 PM](#)

CHAIR STUTES asked whether the BOF has addressed any of the pike issues and the relationship of pike [to stocks] in the Susitna River area.

MR. CAIN responded yes; that the board has taken several actions to eradicate pike. He said that the board has issued orders to kill pike as well as authorizing the ADF&G to participate in rotenone [a plant-based piscicide] that has been very successful. Several projects have been conducted on the Kenai Peninsula, he said. The board has also encouraged the department to work on other eradication programs. He offered his belief that there has been significant progress in that area but much more would need to be done although funding can be a challenging.

[12:03:02 PM](#)

CHAIR STUTES asked whether there was a connection between the lack of salmon and the abundance of pike.

MR. CAIN said he was certain that there has been. He offered his belief that was one of the factors. He was unsure of where it fell on the spectrum of significance for reduced salmon populations; however, it certainly is a factor and the issue should be focused on by the board.

[12:03:35 PM](#)

CHAIR STUTES identified Shell Lake as a place of concern. She said the 2016 return of salmon was scarce compared to 68,000 in 2005.

MR. CAIN acknowledged that it was a critical issue and one that the board wants to address.

[12:04:13 PM](#)

REPRESENTATIVE EASTMAN asked if the Department of Fish and Game (ADF&G) had enough data on the stocks of concern in Northern Cook Inlet. He further asked whether he would support pursuing additional data.

MR. CAIN answered in his view it was not possible to have sufficient data; however, the state can always do a better job. He suggested that the board has some pretty good data. He thought additional studies needed to be done in Northern Cook Inlet as well as in other parts of the state. The genetic work and the return sampling have been wonderful and provide valuable information to the board. Still, he would support funding for even better studies.

[12:05:17 PM](#)

REPRESENTATIVE EASTMAN pointed out that escapement was often focused on stocks. He asked whether the BOF's focus would be solely on escapement or if it would be balanced on the timing and availability of fish. He pointed out that from a user perspective, accessibility to fish by families was a concern to some of his constituents.

MR. CAIN agreed and said that a balanced approach was a better one. He acknowledged that timing was important. He related he was familiar with the issues generated this past season. He offered his belief that the board needed to consider fisheries statewide to give user groups the best opportunity to harvest based on careful management to achieve escapement. He highlighted this as a very difficult balancing act to allow harvest availability and still maintain healthy stocks and necessary escapement. He related that tools and information vary statewide. He suggested that as the information on the returns in the Northern Cook Inlet Management Area (NCIMA) increases, the board can do a better job. He added that the board must stay clearly-focused on it and make it the best it can.

[12:07:16 PM](#)

REPRESENTATIVE NEUMAN brought up the [Upper Cook Inlet] conservation corridor, which was established by the board in

2014] because of issues in the northern district. He asked whether Mr. Cain supported the current salmon management plan and the current northern escape corridor.

MR. CAIN answered that he certainly would support the plans. He explained that the conservation corridor was one of the tools the ADF&G and BOF uses to manage fisheries and ensure escapement in the northern Cook Inlet. There are quite a few others, he said. The current management plan that contains that corridor as one of the tools has been carefully considered, reviewed, and modified numerous times. He offered his belief that the BOF was at a reasonably good place. He supported the current plan but felt that refinements could be made.

[12:03:33 PM](#)

CHAIR STUTES stated that there has been some movement to encourage the federal government to be involved in management of salmon, which she viewed as a federal overreach. She asked for his viewpoint and his willingness to steer the state away from that federal overreach.

MR. CAIN said that he has been involved in federal agencies for nearly 40 years as a state employee. His observation has been that state employees and state managers can do an excellent job. He expressed concern that involving a federal agency can be more complex, more difficult and can take more time. He noted some pros to federal management, but there was a lengthy list of cons to federal or co-management. He was not personally excited about federal management, he said. He agreed that federal overreach has occurred in certain areas. His clearest support goes to the state management officials who have done an excellent job over time and have a vested interest in this, he said.

CHAIR STUTES said she was happy to hear it.

[12:10:39 PM](#)

CHAIR STUTES opened public testimony and after first determining no one wished to testify, closed public testimony on the confirmation hearing for Mr. Al Cain.

[12:11:28 PM](#)

ORVILLE HUNTINGTON, Appointee, Board of Fisheries (BOF), Alaska Department of Fish & Game, stated he grew up in Huslia. He

currently works as a wildlife and parks director for Tanana Chiefs Conference. He holds a Bachelor of Science (BS) degree in Wildlife Biology. He related that he also holds a traditional knowledge degree acquired from many in his Native community.

MR. HUNTINGTON said he has served two years on the Board of Fisheries (BOF). He has been a subsistence fisherman and hunter his entire life. Some of his family members participate in a personal use fishery and provide him with fish. He previously held an area Y-4 commercial fisheries permit on the Yukon River, but he no longer holds it. He said he understands the commercial fish interests. His uncle served on the Board of Game for about 18 years. His father, James Huntington served on the Board of Fisheries for three years and served in the legislature.

[12:12:40 PM](#)

REPRESENTATIVE NEUMAN remarked that the book about his uncle was fantastic. He said he would like to pose the same questions as he did for Mr. Cain. He pointed out that his region has some concerns about stocks in the Northern Cook Inlet Management Area. He acknowledged that the BOF has a statewide perspective. He related that the biggest concern for fisheries in the state are the eight stocks in NCIMA. He said he often has wondered whether sufficient escapement occurred into these rivers and whether the rivers had enough fertilizer [from spawned salmon] to provide for a healthy stream.

MR. HUNTINGTON responded agreed that the stocks and concerns were largely related to escapement. He related that one solution on the Yukon River required the groups to work together, in fact, the BOF limited the subsistence harvest for two years to let the stocks repopulate. He characterized it as a big success story in which all the user groups worked together. He said he would like to help achieve that in Southeast Alaska and in Cook Inlet. He recalled user groups limited themselves to address fishery issues in the Kenai River. He summarized that sometimes it simply was necessary to limit fisheries to let the stocks rebuild.

[12:15:00 PM](#)

REPRESENTATIVE NEUMAN referred to the [Upper Cook Inlet] conservation corridor and asked whether Mr. Huntington supported maintaining the management plan to address the stock concerns.

MR. HUNTINGTON answered yes, but that it was difficult due to the large numbers of users of the stocks. He offered his belief that if the users could reach an agreement to protect the stocks it would help. He further stated that the best plan was in place and the BOF always hopes for more help from the legislature. He thought the BOF was doing the best it could with the current scenario.

REPRESENTATIVE NEUMAN said it was hard to achieve more fish in these rivers without sufficient spawning fish and all user groups lose, whether it was sport, subsistence, or commercial fishermen. He re-emphasized the need for adequate escapement of spawning fish.

[12:16:23 PM](#)

CHAIR STUTES asked about the relationship between sockeye escapement and invasive Elodia and invasive pike and whether these invasive species could be a key factor.

MR. HUNTINGTON responded he was supportive since invasive pike have migrated to Southcentral Alaska and have done irreparable harm. He recalled Mr. Cain previously mentioned the projects and efforts to remove invasive pike and he urged the public to remove as many as they could.

[12:17:46 PM](#)

CHAIR STUTES hoped that this was focus of the Board of Fisheries. She offered her belief that it could make a difference in any fishery in the NCIMA. She also asked about the potential federal overreach of salmon in rivers and salt water. She asked whether he would be instrumental in protecting Alaska against federal overreach.

MR. HUNTINGTON answered absolutely. He said his uncle and father both felt that federal management in oceans could occur but not in Alaska's rivers and streams. The state has every right to manage its fisheries and it has been doing a good job, he said.

[12:18:50 PM](#)

REPRESENTATIVE EASTMAN asked if the ADF&G has sufficient data on the stocks of concern in the Northern Cook Inlet Management Area (NCIMA)] or whether the state needs additional data.

MR. HUNTINGTON advocated for always needing additional data. The scientists usually never provide enough data to make informed decisions, he said. He acknowledged that it costs money to obtain data and the state needed additional funding to provide it.

[12:19:28 PM](#)

REPRESENTATIVE EASTMAN asked if Mr. Huntington was to continue to serve on the Board of Fisheries, how he would personally weight the balance between the goal of escapement and access for user groups throughout the season. He said he has constituents who can only make it to the river once or twice a summer and they are adversely impacted if closures on the river coincide with their fishing time. It does not help them to learn that there was adequate escapement later on in the season.

MR. HUNTINGTON responded that balance needed to be added. He stated his personal preference was to have people fishing whenever possible. He acknowledged it was difficult, relating the fishing on the Yukon River currently functions well but reviewing the data he can see it will not last. He reiterated that fishermen have every right to fish in Alaska, yet he also wants salmon fisheries to be there for his grandchildren.

[12:20:52 PM](#)

REPRESENTATIVE NEUMAN recalled a BOF fish member complained once that the BOF does not always obtain sufficient research data, although he acknowledged that the ADF&G did its best. He said he has been working on intent language that would allow the board to develop the methodology for research into crab or other fisheries. The methodology would give the board an opportunity to identify research based on the scope and goals of the project, which would ultimately result in a recommendation to the legislature. He asked whether he supported this concept.

MR. HUNTINGTON answered that the BOF members have a lot to offer and should be able to use the expertise. He agreed that scientists cannot always predict the information that will be needed ten years from now.

[12:22:32 PM](#)

CHAIR STUTES asked whether he thought board members who have a conflict-of-interest should be allowed to participate in the discussions but not be allowed to vote.

MR. HUNTINGTON agreed. He offered his belief that each board member brings expertise to the discussions that he finds very valuable. He explained that the BOF makes its decisions based on the best science, information from fishermen's experiences, and board member expertise. In closing, he said it has been an honor to serve and he hoped for the opportunity to serve on the BOF for three more years.

[12:23:39 PM](#)

CHAIR STUTES opened public testimony and after first determining no one wished to testify, closed public testimony on the confirmation hearing for Mr. Orville Huntington.

[12:24:01 PM](#)

REPRESENTATIVE KREISS-TOMKINS thanked both members for their service on the board.

[12:24:43 PM](#)

CHAIR STUTES stated the committee's gratitude for their service and willingness to serve. She offered her belief that their service was valuable to the people and the fisheries of the state.

[12:24:46 PM](#)

CHAIR STUTES stated that the House Special Committee on Fisheries has reviewed the qualifications of the governor's appointees to the Board of Fisheries.

CHAIR STUTES reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR STUTES moved to advance the confirmations of Al Cain and Orville Huntington, appointees to the Board of Fisheries, to a joint session of the House and Senate for consideration. There being no objection, the confirmations were advanced.

[12:25:54 PM](#)

The House Special Committee on Fisheries recessed to the call of the chair.

[1:37:56 PM](#)

CHAIR STUTES called the House Special Committee on Fisheries meeting back to order at 1:37 p.m. Present at the call back to order were Representatives Stutes, Kreiss-Tomkins, Neuman, and Chenault. Representatives Eastman and Edgmon arrived as the meeting was in progress.

HB 199-FISH/WILDLIFE HABITAT PROTECTION; PERMITS

[1:38:27 PM](#)

CHAIR STUTES announced that the final 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."

[1:39:14 PM](#)

REPRESENTATIVE CHENAULT moved to adopt the proposed committee substitute (CS) for HB 199, Version 30-LS0438\M, Bullard, 4/2/18, as a working document. There being no objections, Version M was before the committee.

[1:40:02 PM](#)

MATT GRUENING, Staff, Representative Louise Stutes, Alaska State Legislature, stated he would be using a document titled, "HB 199 Explanation of Changes Version I to M." He directed attention to the changes in subsection (f) on page 8, lines 6 through 13, which read as follows [original punctuation provided]:

Added language to clarify that 30 days of public comment is required for the issuance of a general minor permit, but not for amending or rescinding a general minor permit. For amending or rescinding, only public notification is required. As has always been the case, the minor permit only requires public notification but not 30 days of public comment. This change was made so that the commissioner can amend or

rescind a general permit immediately without 30 days of public comment if it is determined that the permit does not protect anadromous fish and anadromous fish habitat.

MR. GRUENING commented on the changes in subsection (f), by reminding members that a general permit is one that would be issued for ATV stream crossings and represents a blanket authorization. It did not make sense to wait 30 days to amend or rescind permits for ATV stream crossings if the ATVs were causing irreparable harm.

[1:42:02 PM](#)

MR. GRUENING referred to the next change in subsection (d) on page 10, lines 7-10 of the document titled, "HB 199 Explanation of Changes Version I to M," which read as follows [original punctuation provided]:

Following "AS 16.05.887." inserted "The bond shall be the amount determined necessary by the commissioner to ensure restoration of anadromous fish habitat if the applicant does not meet the permit conditions and mitigation measures imposed on the activity under AS 16.05.887." This is a clarification that conforms the language in (d) to the language (a)(5) on page 8, which is the first reference to the bond. The bond is for the restoration of habitat if the permit conditions and mitigation measures are not complied with and not the to ensure the completion of mitigation measures. This conforming change was made throughout the bill. In the previous version I, the first reference to the bond in (a)(5) accurately stated its purpose. However, subsequent references on Page 11, lines 20 through 21 and Page 11, line 27 incorrectly identified the bond as being for the completion of mitigation measures. As identified in (a)(5), the bond was always meant for the restoration of habitat if the permit conditions and mitigations measures are not complied with.

[1:43:37 PM](#)

MR. GRUENING referred to the next change in subsection (g), on page 11, lines 18 and 19 of the document titled, "HB 199 Explanation of Changes Version I to M," which read as follows [original punctuation provided]:

Following "activity" inserted "and determines that the activity requires a bond," This change clarifies that the commissioner can determine that a bond is not necessary for a certain activity. Although this was possible in the previous version if the commissioner determined that the amount of the bond was \$0, this language is more concise and avoids potential confusion regarding interpreting the statute. An interested person can request reconsideration of whether a bond is required or not.

MR. GRUENING commented that the changes in subsection (g) somewhat answered Representative Tarr's question at a previous hearing. This language was more precise, he added, noting it was a cleaner way than to require a bond and set it at "\$0."

[1:44:30 PM](#)

MR. GRUENING referred to the next change in subsection (a)(3)(B), on page 13, line 26, in the document titled, "HB 199 Explanation of Changes Version I to M," which read as follows [original punctuation provided]:

In the previous version, only the reduction or the elimination of a bond could be challenged, and one could not request reconsideration of the increase of the amount. This was an oversight and was corrected.

MR. GRUENING said that this would allow an avenue for those who believe the bond is set too high; in all fairness for everyone. He said that concludes the changes in the bill.

[1:44:53 PM](#)

CHAIR STUTES asked Mr. Gruening to provide a brief sectional analysis for HB 199, Version M.

[1:45:04 PM](#)

MR. GRUENING agreed to do so, explaining that he would not review changes previously covered in the "HB 199 Explanation of Changes Version I to M." He then skipped over Sections 1, 2, and 3, which were previously discussed in a prior committee meeting.

MR. GRUENING referred to Section 4, on page 3, lines 19-28 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (a) specifies that the commissioner of ADF&G must identify all or portions of each river, lake, stream, or wetlands, and the lands beneath that are anadromous fish habitat. Under current law, each anadromous waterbody must be field sampled and then nominated to be included in the Anadromous Waters Catalogue (AWC). This maintains that requirement.

Subsection (b) defines:

(1) anadromous fish habitat to mean all or portions of a permanent or intermittent river, lake, stream, or wetland, and the lands beneath that contribute directly to the spawning, rearing, migration, or overwintering of anadromous fish.

(2) a "river", "stream", or "wetland" to include the foreshore portion of the river, stream, or wetland above the mean low tide line.

[1:46:41 PM](#)

MR. GRUENING referred to Section 5, on page 3, line 29 through page 6, line 4 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Sec. 16.05.875. Anadromous fish habitat permit.

Subsection (a) creates the requirement that, except in an emergency or as authorized by a general minor permit, an anadromous fish habitat permit must be obtained before constructing a hydraulic project or using wheeled, tracked, excavating, or log-dragging equipment, or before conducting an activity that has the potential to use, divert, obstruct, pollute, or change the natural flow or bed of a river, lake, stream, or wetland that is identified as anadromous fish habitat. This maintains the wording in current statute regarding the types of activities that would be required to be permitted.

Subsection (b) requires an applicant to complete an application and provide all necessary information that ADF&G deems necessary to assess the proposed activity's effects on anadromous fish habitat.

Subsection (c) requires the commissioner to review a completed application accompanied by the required fees and make a determination about the proposed activity's effects on anadromous fish and anadromous fish habitat. It also specifies that before making a determination, the commissioner may work with the applicant to plan the activity to avoid or minimize the potential effects.

Subsection (d) establishes the minor permit classification for applications that will not adversely affect anadromous fish and anadromous fish habitat.

Subsection (e) establishes the major permit classification for applications that have the potential to adversely affect anadromous fish and anadromous fish habitat.

Subsection (f) requires public notice for the commissioner's determination for classification of major and minor permits.

Subsection (g) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

[1:48:37 PM](#)

MR. GRUENING turned to page 3 of the sectional analysis. He referred to page 5, line 12 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Sec. 16.05.877. Consideration of effects of activity on anadromous fish and anadromous fish habitat.

While most permit applications can be processed as minor permits, this section identifies criteria used to determine if an activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat. If the commissioner determines that the

potential exists, the application will be processed as a major permit.

Subsection (a) sets out the factors for the commissioner to consider in determining whether a proposed activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat.

Subsection (b) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

[1:49:09 PM](#)

MR. GRUENING referred to Section 6, on page 6, line 5-23 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Sec. 16.05.881. Construction without approval prohibited.

This section is amended to make reference to the new two-tiered permitting scheme and retain the requirement that a person or government entity can be found guilty of a misdemeanor for failing to comply with this chapter.

MR. GRUENING characterized this as minor wordsmithing to conform to the bill and make changes in the bill with respect to the two-tier permitting system.

[1:49:25 PM](#)

MR. GRUENING referred to Section 7 on page 6, line 24 through page 14, line 10, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Sec. 16.05.883. Minor anadromous fish habitat permits.

Subsection (a) establishes the commissioner's authority to issue a minor permit. The commissioner must give public notice of the decision to issue a minor permit. The minor permit must include any permit conditions and mitigation measures necessary to protect anadromous fish and anadromous fish habitat.

Subsection (b) establishes the general minor permit. This allows the issuance of a blanket permit for minor activities on a regional or geographical basis without an application by a determination by the commissioner for activities that will not cause significant adverse effects on anadromous fish habitat if certain conditions are met. This provision allows ADF&G to issue blanket permits for similar activities. E.g. ATV stream crossings. (1), (2), and (3), set the conditions that must be met for the issuance of a general permit.

Subsection (c) specifies that when the commissioner makes a determination to issue a general minor permit, they must provide notice, a public comment period, and, if requested, hold one public hearing. It also stipulates that the general permits must be renewed every 5 years.

[1:50:17 PM](#)

MR. GRUENING stated that there was a little confusion on whether all permits would need to be renewed every five years. This renewal referred to a general minor permit, he said. He continued reviewing Section 7, which read as follows [original punctuation provided]:

Subsection (d) clarifies that the commissioner may issue a regional or geographical authorization for a general permit or may require a person to obtain written authorization. The department must approve or deny the request within 5 days. It further allows general permit authorizations to be issued electronically. It clarifies that, if applicable, authorizations for general permits shall set out conditions and stipulations to avoid adverse effects to anadromous fish and anadromous fish habitat.

Subsection (e) gives the commissioner authority to modify or rescind a general permit if the commissioner determines that the general permit does not protect anadromous fish and anadromous fish habitat. If a general permit is amended or rescinded the commissioner must provide public notice. (1) and (2) provide additional details for public notice for general permitting.

Subsection (f) stipulates the public notice and comment requirements for issuing a general minor permit.

Subsection (g) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

[1:51:33 PM](#)

MR. GRUENING referred to page 8, line 16 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.05.885 establishes the requirements for the major permit process. The major permit process under Sec. 16.05.885 provides for more scrutiny of proposed activities that have the potential to cause adverse effects on anadromous fish and anadromous fish habitat. It requires the commissioner to prepare a fish habitat permit assessment that details the activity, the potential effects, possible alternatives or modification to the activity, the proposed permit conditions, the amount of bonding needed to restore habitat if the permit conditions and mitigations are not complied with, and if a permit may or may not be issued based on whether the plans and specifications are sufficient to protect anadromous fish and anadromous fish habitat. This process allows the commissioner to gather the kind of information, at the applicant's expense, that can help inform the types of mitigation requirements and permit conditions that are necessary to protect fish habitat. Most notably, it also provides opportunities for public involvement through notice and a public comment period on the draft assessment. The current law does not provide for any public notice or opportunity to participate in the process.

[1:52:43 PM](#)

MR. GRUENING referred to subsection (a) of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (a) requires the commissioner to prepare a draft anadromous fish habitat permit assessment and identifies the information that must be included in the assessment to help inform the decision-making process. Of note is (6)(A) and (6)(B) which contain the commissioner's initial determination that a permit may or not be issued based on whether the activity's adverse effects can be prevented or if the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat.

[1:53:13 PM](#)

MR. GRUENING referred to subsection (b) of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (b) specifies that the commissioner shall collect or shall require the applicant to collect information to determine whether a proposed activity should be permitted under this section. It further allows the costs of preparing the assessment and collecting the information requested by the commissioner to be shifted to the applicant.

Subsection (c) provides for public notice and an opportunity for the public to comment on the draft assessment.

[1:53:37 PM](#)

MR. GRUENING referred to page 10, line 2, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (d) requires the commissioner to provide public notice of and publish a final assessment and a written permit determination after reviewing public comments. The final assessment and permit must include all permit conditions, required mitigation measures, and imposed bonding.

[1:54:00 PM](#)

MR. GRUENING referred to subsection (e), of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (e) imposes conditions that the commissioner must meet, and an applicant must comply with, before issuing a permit. The commissioner must find in a written determination that public notice was provided, the permit conditions and mitigation measures are mandatory and enforceable, and that the activity shall be permitted because the activity's adverse effects can be prevented or the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat. To receive a permit, the applicant must accept all permit conditions and mitigation measures and provide a bond to cover the restoration of habitat if the permit conditions and mitigation measures are not complied with; additionally, a permit may only be issued if a request for reconsideration was not timely received.

MR. GRUENING said this would happen if the commissioner determined that a bond was required, which is challengeable.

[1:55:03 PM](#)

MR. GRUENING referred to subsection (f), of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (f) specifies that if a request for reconsideration of the commissioner's final assessment and written determination is timely received, a major permit shall be issued when the commissioner denies the request for reconsideration or issues a new determination and the requirements in (e) have been met.

[1:55:31 PM](#)

MR. GRUENING referred to subsections (g) (h) and (j), on page 11, line 18, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (g) describes the bond requirements to pay for the restoration of anadromous habitat. If the commissioner determines that a bond is required, applicants must provide a performance bond sufficient to cover the cost of restoring anadromous fish habitat if permit conditions and mitigation measures are not complied with. The bond must be a secured bond. This section further allows the commissioner to raise, lower, or eliminate the bond if conditions change, but they must provide public notice of the change. Any changes to the bond are subject to a request for reconsideration.

Subsection (h) exempts governmental agencies from the bonding requirements of the section, allows the department to receive the bond from another government agency, and clarifies that the bond may be initiated and held by the department or by another state agency.

Subsection (i) requires the approval of the commissioner and, if required, a new performance bond, before a permit can be transferred or assigned.

Subsection (j) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

[1:56:09 PM](#)

MR. GRUENING referred to Section 16.05.887 on page 12, line 19, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.05.887 sets forth the requirements for permit conditions and mitigation measures for permits issued under this chapter. When issuing a permit, the commissioner must prevent or minimize adverse effects on anadromous fish and anadromous fish habitat. The commissioner must establish, in order of priority, permit stipulations and mitigation measures that first avoid adverse effects through siting, timing or other project design stipulations. If effects cannot be

avoided, impacts of the activity must be minimized by limiting the degree, magnitude, duration, implementation, or other design stipulations. If effects cannot be avoided, the commissioner must require that impacted fish habitat is restored or that other appropriate mitigation measures be taken that are determined to be necessary to protect anadromous fish and anadromous fish habitat.

[1:56:55 PM](#)

MR. GRUENING referred to subsection (a) and (b), of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (a) requires that activities be implemented in a manner most likely to avoid or minimize adverse effects on anadromous fish and anadromous fish habitat and that the commissioner has determined will protect anadromous fish and anadromous fish habitat.

Subsection (b) requires the commissioner, when developing a permit, to first try to avoid adverse effects by working with the applicant on project design and by imposing siting, timing and other stipulations and conditions. If adverse effects are not avoidable, the commissioner must minimize the adverse effects of the activity by limiting the degree, magnitude, duration, implementation, or other design stipulations. And finally, if adverse effects do occur, the commissioner must restore the impacted fish habitat or take other appropriate mitigation measures that are necessary to protect anadromous fish and anadromous fish habitat.

[1:57:31 PM](#)

MR. GRUENING referred to subsection (c) and (d), of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (c) provides that the department shall adopt regulations establishing permit conditions and mitigation measures applicable to activities subject to permitting requirements.

Subsection (d) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

[1:57:47 PM](#)

MR. GRUENING referred to page 13, line 17 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.05.889 sets forth the administrative review and appeal procedures for decisions made under this chapter.

Subsection (a) allows an interested person to request a reconsideration of a determination to classify a permit as a minor or major, a final determination to issue or refuse to issue a permit, as well as the amount of the bond or a reduction, increase, or the elimination of the bond requirement.

Subsection (b) sets a 30-day time limit to request reconsideration of decisions made under this chapter. The request must be in writing.

Subsection (c) requires the commissioner to respond to a request for reconsideration within 30 days. The request is deemed denied in 30 days if the commissioner does not act. If the commissioner grants the request for reconsideration, the commissioner has an additional 30 days to make a final determination.

Subsection (d) establishes that the commissioner's determination on reconsideration is a final agency action under the Administrative Procedure Act. A person may appeal the final determination to the superior court within 30 days and may only appeal the points raised in the request for reconsideration.

MR. GRUENING said he thought this section had been covered at the last meeting. The basic idea was that instead of being able to challenge all the determinations at any point, the statute would limit when the challenges could be made, but it still maintains those avenues for challenges. He said this streamlines the process.

MR. GRUENING referred to Section 8 on page 14, lines 11-17, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Sec. 16.05.891. Exemption for emergency situations.

Section 16.05.891 adds "state agency" to the exemption for emergency arising from weather or stream flow conditions. It also contains a conforming language to reflect the new provisions in this chapter.

MR. GRUENING added that currently the bill provided the "riparian owner" has the ability under emergency situations to make changes to a river bank without a permit. The Department of Transportation & Public Facilities pointed out that it was important to add "state agency" to the exemption.

[1:59:03 PM](#)

MR. GRUENING referred to Section 9 on page 14, line 18 through page 16, line 2, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.06.893. Fees. This section directs the commissioner to charge reasonable fees to process and administer the fish habitat permits. Subsection (a) establishes the authority for the commissioner to set fees.

Subsection (b) allows the commissioner to adopt regulations governing fee waivers when it is in the public interest.

Subsection (c) requires the fees collected to be separately accounted for.

Sec. 16.05.894. Notification of Violation Section 16.05.894 requires the commissioner to provide notice to a permittee for permit violations and order the violation to be stopped. If a violation cannot be stopped, the commissioner is required to order the permittee to prevent or mitigate adverse effects of the violation on fish habitat.

MR. GRUENING clarified that the department currently does not charge any fees for fish habitat permits. He noted in

subsection (b) that the commissioner can also waive a fee for another government agency.

[2:00:05 PM](#)

MR. GRUENING referred to page 15, line 10, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.05.897 specifies that an existing facility, activity, operation, or project that has in full force and effect all authorizations required by law relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act will remain under the permitting regime as it existed the day before the effective day of this act, including renewals and minor authorizations in perpetuity, until that existing facility, activity, operation, or project significantly expands or increases in scope, area, or frequency, or otherwise takes action outside of, those actions for which it was authorized on the day before the effective date of sec. 3 of this Act.

[2:01:05 PM](#)

MR. GRUENING referred to proposed Sec. 16.05.899 Enforcement Authority, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Section 16.05.899 gives authority for departmental employees designated by the commissioner to directly issue citations for a violation of AS 16.05.871-16.05.901 or a regulation adopted under those statutes if it is not a misdemeanor and there are is probable cause to believe a violation has occurred.

MR. GRUENING recalled this had previously been discussed. This proposed section would allow ADF&G to directly issue citations instead of arranging for a Fish and Wildlife Trooper to issue the citation.

[2:01:15 PM](#)

MR. GRUENING referred to Section 10 on page 16, lines 3-6 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

AS. 16.05.901(a). Penalty for Violations.

Section 16.05.901(a) is amended to provide ADF&G with additional authority to respond to violations of this chapter. Under current law, ADF&G can only pursue a misdemeanor charge for permit violations.

2:01:25 PM

MR. GRUENING referred to Section 11 on page 16, line 7 through page 17, line 21, of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (c) allows ADF&G to prosecute knowing violations of AS 16.05.871-16.05.901 or a regulation adopted under those statutes as a class A misdemeanor.

Subsection (d) allows ADF&G to prosecute criminally negligent violations of AS 16.05.871-16.05.901, a regulation adopted under those statutes, a permit condition and mitigation measure imposed, or an order issued under 16.05.894 as a class A misdemeanor.

MR. GRUENING, referring to subsection (d), said that the commissioner might order a party to cease and desist an activity and if the activity continued, with criminal negligence, the party would be held liable. He related that criminal negligence means a gross deviation from the standard of care that a reasonable person would observe in perceiving a risk. It would not be a strict liability offense, he said.

2:02:26 PM

MR. GRUENING referred to Section 11 on page 16, line 7 through page 17, line 21, to subsection (e), of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (e) provides that if someone fails to notify the commissioner of an activity for which a permit is required and causes damage to anadromous fish habitat or by neglect or noncompliance with permit conditions and mitigation measures causes

damage to anadromous fish habitat, a person is guilty of a class A misdemeanor.

MR. GRUENING noted the wording was slightly different from the current law in AS 16.05.896.

[2:03:01 PM](#)

MR. GRUENING referred to Section 11 on page 16, line 7 through page 17, line 21, to subsection (f)-(j) of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (f) establishes that each day of violation is a separate violation.

Subsection (g) sets out the process and requirements for the commissioner to impose a civil penalty for violations of a fish habitat permit.

Subsection (h) allows the commissioner to ask the attorney general to seek an injunction to suspend an activity where a person has failed to comply with a notice of violation from the commissioner.

Subsection (i) gives the commissioner the authority, after notice, to repair damage caused by violations that have not been corrected and to hold the violator liable for the costs.

Subsection (j) applies fine amounts set by the Supreme Court for citations issued by ADF&G. This allows for ADF&G to write tickets for violations that can be handled without the involvement of a state prosecutor.

MR. GRUENING stated that subsection (j) went hand-in-hand with the previous section that gave them the authority to issue the citation. This would give the court the authority to set the fine amounts for citations, he said.

[2:04:04 PM](#)

MR. GRUENING referred to Section 11 on page 16, line 7 through page 17, line 21, to subsection (k) in the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Subsection (k) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

MR. GRUENING stated that the rest of the changes in Sections 12-17 of the bill were technical changes in order to account for clerical changes, renumbering, inserting the new statutes, and references, which do not have any substantive effect.

[2:04:24 PM](#)

MR. GRUENING referred to Section 18, page 20, line 13 of the document titled, "HB 199 Sectional Analysis version M," which read as follows [original punctuation provided]:

Repeal of 16.05.851 and 16.05.896.

This section repeals 16.05.851 and 16.05.896. The new sections and permitting structure render the sections obsolete.

MR. GRUENING clarified that AS 16.05.851 is the exemption of the Fishway Act that allows a person to instead of providing passage to establish an onsite hatchery below the blockage, enhance and offsite hatchery, or start an offsite hatchery, which was previously discussed.

[2:04:45 PM](#)

MR. GRUENING stated that AS 16.05.896 was just referenced. It provided that if someone failed to notify the commissioner and caused material damage on anadromous fish habitat, which would be a Class A misdemeanor. He indicated this provision is still in the bill in another section.

[2:05:20 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to proposed AS 16.05.897 [page 15, line 10] to applicability of permitting requirements. He asked for further clarification on when the grandfathering provision appeared and if it has changed in substance from Version M to Version I. He understood the bill has gone through many iterations.

MR. GRUENING responded that this language first appeared in Version [N], but the language has remained unchanged since

Version I, which referenced all authorizations required by law. Previously in Version N, it referenced on "state" authorizations.

[2:06:18 PM](#)

MR. GRUENING provided a brief history. He explained that the original grandfather clause [in Version N] did not include renewals or minor authorizations in perpetuity. The original version of the grandfather clause [Version N] referenced required "state" authorizations, but the language was changed to "all" authorizations. During a meeting with the Alaska Power Association, it was pointed out that some hydroelectric projects have authorizations that pre-dated statehood, such as the Snettisham hydroelectric project in Juneau. He reiterated that the grandfather language has remained unchanged since Version I.

[2:06:50 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the proposed language in AS 16.05.901(f), which establishes that each day of violation is a separate violation. He wondered if that concept presently exists in current law for permit violations.

MR. GRUENING responded that he would need to check the statutes. He said his inclination was that language in [AS.16.05].871 stipulated it; however, he was unsure. He offered to research it further and provide it to the committee.

REPRESENTATIVE KREISS-TOMKINS thanked him for the reference. He was curious because the House State Affairs Committee has been considering violations for fire-life safety issues.

[2:08:44 PM](#)

CHAIR STUTES announced HB 199 would be held over.

[2:08:58 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 2:08 p.m.