

Introduced: 3/6/74  
Referred: Resources

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST

2 SENATE BILL NO. 462

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring anadromous water impact reports."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 16.05.870 is repealed and re-enacted to read:

9 Sec. 16.05.870. ANADROMOUS WATER IMPACT REPORT. (a) The commis-  
10 sioner shall, in accordance with the Administrative Procedure Act  
11 (AS 44.62) specify the various rivers, lakes, and streams or parts of  
12 them that are important for the spawning, rearing or migration of  
13 anadromous fish.

14 (b) If a person or governmental agency desires to construct a  
15 hydraulic project, or use, divert, obstruct, pollute, or change the  
16 natural flow or bed of a specified river, lake, or stream, or to use  
17 wheeled, tracked, or excavating equipment or log-dragging equipment in  
18 the bed of a specified river, lake, or stream, or in any other way  
19 construct a project or engage in an activity or action which may have  
20 a significant effect on a specified river, lake, stream, or part of  
21 it, the person or governmental agency shall notify the commissioner of  
22 this intention before the beginning of the construction, use, activity,  
23 or action.

24 (c) The commissioner shall acknowledge receipt of the notice by  
25 return air mail. The commissioner or his designee shall, in the letter  
26 of acknowledgement, require the person or governmental agency to submit  
27 to him full plans and specifications of the proposed project, activity  
28 or action, complete plans and specifications for the proper protection  
29 of fish in connection with the project, activity or action, and the

1 approximate date the project, activity or action will begin, and shall  
2 require the person or governmental agency to obtain written approval  
3 from him as to the sufficiency of the plans or specifications before  
4 the proposed project, activity or action is begun.

5 (d) Before approval by the commissioner of a project, activity  
6 or action specified in (b) of this section, the department, with the  
7 assistance of any other state department it requests, shall prepare a  
8 detailed anadromous water impact report to include but not be limited  
9 to the following:

10 (1) the physical, biological, and hydrological effect of  
11 the proposed project, activity or action;

12 (2) any adverse or irreversible environmental effects which  
13 cannot be avoided if the project, activity or action is undertaken;

14 (3) mitigation measures available to minimize the impact of  
15 the project, activity or action;

16 (4) alternatives to the proposed project, activity or action;

17 (5) the specific relationship between the local short-term  
18 use of the specified water, and the maintenance and enhancement of its  
19 long-term productivity; and

20 (6) the boundaries of the area which may be affected by the  
21 proposed activity.

22 (e) If the commissioner, after reviewing the report, determines  
23 that the project, activity or action will have a significant adverse  
24 impact on the river, lake, or stream and that it is likely to disturb  
25 or destroy the spawning, rearing, or migration of anadromous fish, he  
26 shall refuse to approve it, unless the following apply:

27 (1) there is no more prudent and feasible alternative to the  
28 project, activity or action;

29 (2) the project, activity or action will be undertaken in

1 such a manner as to avoid or minimize its adverse effect; and

2 (3) the public benefit to be derived from the project,  
3 activity or action substantially outweighs its adverse effect on the  
4 environment or resource involved.

5 (f) If the project, activity or action will have an adverse effect  
6 on the environment or resource involved but is approved under (e)(1) -  
7 (3) of this section, the commissioner may require the person or agency  
8 to take reasonable means to minimize the adverse effect, including but  
9 not limited to the construction of facilities to allow the free ingress  
10 or egress of anadromous fish into the waters during the spawning, rear-  
11 ing, or propagation process.

12 \* Sec. 2. AS 16.05.880 is amended to read:

13 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER.  
14 If a person or governmental agency begins construction on a work or  
15 project or use or engages in an activity or action for which notice is  
16 required by sec. 870 of this chapter without first providing plans and  
17 specifications subject to the approval of the commissioner for the  
18 proper protection of anadromous fish [AND GAME], and without first  
19 having obtained written approval of the commissioner as to the adequacy  
20 of the plans and specifications submitted for the protection of  
21 anadromous fish [AND GAME], he is guilty of a misdemeanor. If a person  
22 or governmental agency is convicted of violating secs. 870 - 895 of  
23 this chapter or continues a use, activity, action, work or project  
24 without fully complying with secs. 870 - 895 of this chapter, the use,  
25 activity, action, work, or project is a public nuisance and is subject  
26 to abatement. The cost of restoring a specified river, lake, or stream  
27 to its original condition shall be borne by the violator and shall be  
28 in addition to the penalty imposed by the court.

29 \* Sec. 3. AS 16.05.895 is amended to read:

1           Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a person  
2 or governmental agency fails to notify the commissioner of any construc-  
3 tion, [OR] use, project, activity or action that causes material damage  
4 to the spawning beds or prevents or interferes with the migration or  
5 rearing of anadromous fish, or by neglect or noncompliance with plans  
6 and specifications required and approved by the commissioner causes  
7 material damage to the spawning beds or prevents or interferes with the  
8 migration or rearing of anadromous fish, the person or governmental  
9 agency shall be guilty of a misdemeanor.

10 \* Sec. 4. AS 16.05 is amended by adding a new section to read:

11           Sec. 16.05.897. COMMON INTERFERENCE. It is unlawful for a person  
12 or governmental agency to obstruct, divert or pollute a river, lake, or  
13 stream, or part of it, used by anadromous fish for spawning, rearing or  
14 migration, by felling trees or timber in those waters, casting, passing,  
15 throwing or dumping any tree limbs or foliage, underbrush, stumps,  
16 rubbish, earth, stones, rock or other debris, or passing or dumping saw-  
17 dust, plane shavings, or other waste or refuse of any kind in those  
18 waters.

19 \* Sec. 5. AS 46.15 is amended by adding a new section to read:

20           Sec. 46.15.020. RESPONSIBILITY FOR ANADROMOUS WATERS. The  
21 authority to review and approve projects, activities, and actions  
22 affecting anadromous fish granted to the commissioner of fish and game  
23 under AS 16.05.870 - 16.05.900 is not affected by this chapter. How-  
24 ever, rights relating to those waters may be determined under this  
25 chapter when not in conflict with AS 16.05.870 - 16.05.900.

26 \* Sec. 6. AS 16.10.010 - 16.10.050 are repealed.  
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