

Introduced: 3/10/75
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY MILLER AND GARDINER

2 HOUSE BILL NO. 278

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring fishery water protection reports."

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

8 * Section 1. AS 16.05.870 is amended to read:

9 Sec. 16.05.870. FISHERY WATER PROTECTION REPORT [PROTECTION OF FISH
10 AND GAME]. (a) The commissioner shall, in accordance with the Admini-
11 strative Procedure Act (AS 44.62) specify the various rivers, lakes, and
12 streams or parts of them that are used by [IMPORTANT FOR THE SPAWNING OR
13 MIGRATION OF] anadromous and freshwater fish for spawning, migration or
14 rearing. However, rivers, lakes, and streams or parts of them that
15 contain insignificant or negligible numbers of fish and that have little
16 or no potential for greater capacity, in the determination of the com-
17 missioner, are not required to be specified under this section. The list
18 required by this section shall be updated and revised annually. [BEFORE
19 DECEMBER 31, 1968, THE SPECIFICATION MAY BE MADE BY DESIGNATING AREAS
20 WITHIN WHICH ALL RIVERS, LAKES, AND STREAMS ARE CONSIDERED IMPORTANT FOR
21 THE SPAWNING OR MIGRATION OF ANADROMOUS FISH: PROVIDED, THAT THE AREAS
22 LIE WITHIN 50 MILES OF THE COASTLINE EXTENDING FROM DIXON ENTRANCE
23 THROUGH FALSE PASS TO CAPE MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE
24 PASS. A PERSON GIVING NOTICE UNDER (b) OF THIS SECTION BEFORE
25 DECEMBER 31, 1968, MAY, IF THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A
26 DESIGNATED AREA, REQUEST THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME
27 OR NUMBER, THE PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM
28 WITHIN THE AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE IMPORTANT
29 FOR THE SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON RECEIPT OF THE

1 REQUEST THE COMMISSIONER SHALL PROMPTLY MAKE THE DESIGNATION.]

2 (b) If a person or governmental agency desires to construct a
3 hydraulic project, or use, divert, obstruct, pollute, or change the
4 natural flow or bed of a specified river, lake, or stream, or to use
5 wheeled, tracked, or excavating equipment or log-dragging equipment in
6 the bed of a specified river, lake, or stream, or in any other way con-
7 struct a project or engage in an activity or action which, regardless of
8 location may have a significant effect on a specified river, lake,
9 stream, or part of it, the person or governmental agency shall notify
10 the commissioner of this intention in writing before [THE] beginning [OF]
11 the construction, [OR] use, activity, or action.

12 (c) The commissioner shall acknowledge receipt of the notice by
13 return air mail. The [IF THE] commissioner or his designee [DETERMINES
14 TO DO SO, HE] shall, in the letter of acknowledgement, require the
15 person or governmental agency to submit to him full plans and specifica-
16 tions of the proposed project, activity or action [CONSTRUCTION OR WORK],
17 complete plans and specifications for the proper protection of fish
18 and associated stream habitat [AND GAME] in connection with the construc-
19 tion, operation and termination of the project, activity or action
20 [CONSTRUCTION OR WORK, OR IN CONNECTION WITH THE USE], and the approxi-
21 mate date the project, activity or action [CONSTRUCTION, WORK, OR USE]
22 will begin, and shall require the person or governmental agency to obtain
23 written approval from him as to the sufficiency of the plans or specifi-
24 cations before the proposed project, activity or action [CONSTRUCTION OR
25 USE] is begun.

26 * Sec. 2. AS 16.05.870 is amended by adding new subsections to read:

27 (d) Before approval by the commissioner of a project, activity or
28 action specified in (b) of this section, the department, with the assis-
29 tance of any other state department it requests, shall prepare a detailed

1 fishery water protection report to include but not be limited to the
2 following:

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

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

7 (3) mitigation measures available to minimize the adverse
8 effects of the project, activity, or action;

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

10 (5) the relationship between the short-term use of the water,
11 and the maintenance of its long-term productivity; and

12 (6) the boundaries of the area which may be affected by the
13 proposed activity.

14 (e) If the commissioner, before preparation of the report deter-
15 mines that the project, activity, or action may have a significant
16 adverse effect on the river, lake, or stream and that it is likely to
17 disturb or destroy the spawning, migration, or rearing area for fish, he
18 shall, after adequate notice, hold a public hearing in the area of the
19 proposed project, activity, or action or in the nearest population
20 center to it, as appropriate. The notice shall give persons the oppor-
21 tunity to file with the commissioner written objections to the proposed
22 project, activity, or action, in addition to or in lieu of oral testi-
23 mony. Notice required in this section shall be by publication in the
24 newspaper of general distribution nearest the proposed project, activity
25 or action. After the hearing, the commissioner shall prepare the report
26 required under (d) of this section and include in it written response to
27 questions raised at the hearing. If the commissioner determines that
28 the project, activity or action is likely to significantly disturb or
29 destroy the spawning, migration, or rearing area for fish, he shall

1 refuse to approve it unless all of the following apply;

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

4 (2) the project, activity or action will be undertaken in
5 such a manner as to avoid or minimize its adverse effect; and

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

9 (f) If the project, activity or action will have an adverse effect
10 on the environment or resource involved but is approved under (e)(1) -
11 (3) of this section, the commissioner may require the person or agency
12 to take specific action to minimize the adverse effect, including but
13 not limited to the construction of facilities to allow the free ingress,
14 or egress of fish to or from the waters during spawning, migration or
15 rearing.

16 * Sec. 3. AS 16.05.880 is amended to read:

17 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER. If
18 a person or governmental agency begins construction on a work or project
19 or use or engages in an activity or action for which notice is required
20 by sec. 870 of this chapter without first providing plans and specifi-
21 cations subject to the approval of the commissioner for the proper pro-
22 tection of fish [AND GAME], and without first having obtained written
23 approval of the commissioner as to the adequacy of the plans and
24 specifications submitted for the protection of fish [AND GAME], he is
25 guilty of a misdemeanor. If a person or governmental agency is con-
26 victed of violating secs. 870 - 895 of this chapter or continues a use,
27 activity, action, work or project without fully complying with
28 secs. 870 - 895 of this chapter, the use, activity, action, work, or
29 project is a public nuisance and is subject to abatement. The cost of

1 restoring a specified river, lake, or stream to its original condition
2 shall be borne by the violator and shall be in addition to the penalty
3 imposed by the court.

4 * Sec. 4. AS 16.05.895 is amended to read:

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

14 * Sec. 5. AS 16.05 is amended by adding a new section to read:

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

22 * Sec. 6. AS 46.15 is amended by adding a new section to read:

23 Sec. 46.15.020. RESPONSIBILITY FOR FISH WATERS. The authority
24 to review and approve projects, activities, and actions affecting fish
25 granted to the commissioner of fish and game under AS 16.05.870 -
26 16.05.900 is not affected by this chapter. However, rights relating to
27 those waters may be determined under this chapter when not in conflict
28 with AS 16.05.870 - 16.05.900.

29 * Sec. 7. AS 16.10.010 - 16.10.050 are repealed.