

Introduced: 3/19/75
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 313

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to interference with or pollution
7 of water inhabited by fish or shellfish."

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

9 * Section 1. AS 16.10.010 is amended to read:

10 Sec. 16.10.010. INTERFERENCE WITH OR POLLUTION OF WATER CON-
11 STITUTING FISH OR SHELLFISH HABITAT [SALMON SPAWNING STREAMS AND
12 WATERS]. (a) It is unlawful for a person to

13 (1) obstruct, divert or pollute waters of the state, either
14 fresh or salt, utilized by fish or shellfish for migration, propagation
15 rearing, feeding, or otherwise inhabited by fish or shellfish during
16 part or all of the year [SALMON IN THE PROPAGATION OF THE SPECIES], by
17 felling trees or timber in those waters, casting, passing, throwing or
18 dumping any tree limbs, bark or foliage, underbrush, stumps, rubbish,
19 earth, stones, rock or other debris, or passing or dumping sawdust,
20 planer shavings, or other waste or refuse of any kind in those waters;
21 or to

22 (2) erect a dam, barricade or obstruction to retard,
23 conserve, impound or divert these waters to prevent, retard or interfere
24 with the free ingress or egress of fish or shellfish [SALMON] into these
25 waters for migration, propagation, rearing, feeding, or other purposes
26 associated with their life cycle. [IN THE NATURAL SPAWNING OR
27 PROPAGATION PROCESS;]

28 [(3) RENDER THE WATERS INACCESSIBLE OR UNINHABITABLE FOR
29 SALMON FOR THAT PURPOSE WITHOUT FIRST APPLYING FOR AND OBTAINING A

1 PERMIT OR LICENSE FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.
2 THE APPLICATION SHALL SET FORTH THE NAME AND STYLE OF THE PERSON OR
3 CONCERN, DESCRIBE THE WATERS AND LOCATION AND STATE IN PARTICULAR
4 THE PLANS, PURPOSE AND INTENTION FOR WHICH THE APPLICATION IS MADE.]

5 (b) It is not necessary, in the prosecution of a violation of
6 this section, for the state to demonstrate actual damage or the likeli-
7 hood of actual damage to fish or shellfish or to fish or shellfish
8 habitat.

9 * Sec. 2. AS 16.10 is amended by adding a new section to read:

10 Sec. 16.10.022. PERMITS. (a) Upon application by all parties
11 to an activity which would violate sec. 10 of this chapter, the
12 commissioner of environmental conservation, with the concurrence of
13 the commissioner of fish and game, may issue a permit authorizing
14 that activity if he finds by a preponderance of the evidence

15 (1) that the activity is for a beneficial public purpose,
16 such as providing water or energy, generating new employment,
17 developing natural resources, or improving public services; and

18 (2) that after detailed analysis, the benefits to the
19 public outweigh the risks of damage to fish and shellfish or their
20 habitats and to businesses, employment, or other economic or re-
21 creational interests dependent upon the fish or shellfish.

22 (b) The application shall set out the name and occupation or
23 business of the applicant, describe the waters and location, and state
24 in particular the proposed activity and the plans and purposes for
25 which the application is made. In issuing permits, the commissioner
26 of environmental conservation, with the advice of the commissioner
27 of fish and game, shall insure that adverse impact on fish and shell-
28 fish and their habitats is minimized to the fullest extent possible
29 by including in the permits such terms, conditions, and requirements

1 for prevention and amelioration (including construction of fishways,
2 fish ladders, or other facilities or improvements) as he deems
3 advisable.

4 * Sec. 3. AS 16.10.030 is amended to read:

5 Sec. 16.10.030. VIOLATION OF SECS. 10 - 40 [50] OF THIS CHAPTER
6 A MISDEMEANOR. (a) A person who violates secs. 10 - 40 [50] of this
7 chapter, or who violates the terms, conditions, or requirements of
8 any permit issued under sec. 22 of this chapter, is guilty of a
9 misdemeanor and, upon conviction, is punishable by a fine of not less
10 than \$100 nor more than \$25,000 [\$500], imprisonment of not more than
11 one year, or both. The penalty imposed shall depend on the severity of
12 the offense and on the amount of damage or likely damage to fish or
13 shellfish or their habitats. Each unlawful act constitutes a separate
14 violation of this section. Each day during which a violation of this
15 section continues constitutes a separate offense under this section.

16 (b) A person who intentionally, knowingly, or recklessly submits
17 false information on an application for a permit under sec. 22 of this
18 chapter is guilty of a misdemeanor and, upon conviction, is punishable
19 by a fine of not more than \$5,000, imprisonment of not more than one
20 year, or both.

21 (c) The provisions of AS 46.03.780 apply to violations of secs.
22 10 - 40 of this chapter.

23 (d) If there is reason to believe that a violation of secs. 10 -
24 40 of this chapter exists, and there is a significant likelihood that
25 serious damage to fish or shellfish or their habitats may result, the
26 attorney general shall or a citizen may bring an action to permanently
27 enjoin the violation and the party or parties maintaining it.

28 * Sec. 4. AS 16.10.020 and 16.10.050 are repealed.
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