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go0529hH

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 331 (Resources) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest resources and practices
7 and to the management of forest lands; and providing
8 for an effective date."

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

10 * Section 1. AS 38.05 is amended by adding new sections to read:

11 Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may
12 not sell or harvest timber, except for isolated personal use timber
13 harvest, until a site-specific forest land use plan has been adopted.
14 A forest land use plan is required whether or not a regional or area
15 land use plan under AS 38.04.065(a) or a forest management plan under
16 AS 41.17.230 has been adopted.

17 (b) The commissioner shall base a forest land use plan on the
18 best available data, including information provided by other agencies
19 describing the immediate and long-term effects of individual and
20 collective forest activities on the timber base and on other resources
21 and uses.

22 (c) In addition to the requirements of AS 38.04.065(b), a forest
23 land use plan shall consider

24 (1) commercial timber harvesting, including related activ-
25 ities;

26 (2) harvesting of forest products for personal use;

27 (3) fish and wildlife habitat, including

28 (A) identification and protection of important wild-
29 life habitat;

1 (B) retention of riparian, wetland, and ocean-shore-
2 line vegetation critical for fish and wildlife habitat; and

3 (C) classification of water bodies according to phys-
4 ical characteristics;

5 (4) uses of forest land for nontimber purposes, including

6 (A) recreation, tourism, and related activities;

7 (B) mining, mining claims, mineral leaseholds, and
8 material extraction;

9 (C) uses of fish and wildlife;

10 (D) agriculture, including grazing; and

11 (E) other resources and uses appropriate to the area,
12 including compatible traditional uses;

13 (5) soil characteristics and productivity;

14 (6) water quality; and

15 (7) watershed management.

16 (d) A management plan prepared by the commissioner must consider
17 and permit the uses described in (c) of this section. If the commis-
18 sioner finds that a permitted use is incompatible with one or more
19 other uses in a portion of a state forest, the commissioner shall
20 affirmatively state in the management plan that finding of incom-
21 patibility for the specific area where the incompatibility is antic-
22 ipated to exist and the time period when the incompatibility is antic-
23 ipated to exist together with the reasons for each finding.

24 Sec. 38.05.113. FIVE-YEAR SALE SCHEDULE. (a) The department
25 shall annually prepare a five-year schedule of timber sales planned on
26 all lands managed by the department. The schedule must be of suffi-
27 cient specificity that it provides a basis for the department to
28 allocate its resources in considering and designing sales and in
29 conducting economic and environmental analyses. The schedule must

1 inform the public and the timber products industry of long-term plans
2 and provide a basis for public comment.

3 (b) Except as provided in (c) of this section, a proposed sale
4 may not be held unless it has been included in the two five-year
5 schedules preceding the sale. This requirement does not apply until
6 one year after the first five-year schedule is prepared under this
7 section.

8 (c) The department may adopt regulations exempting small and
9 emergency sales from the requirements of this section.

10 * Sec. 2. AS 41.17.010 is amended to read:

11 Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares
12 that

13 (1) the forest resources of Alaska are among the most
14 valuable natural resources of the state, and furnish timber and wood
15 products, fish and wildlife, tourism, outdoor recreation, water, soil,
16 air, minerals, and general health and welfare;

17 (2) economic enterprises and other activities and pursuits
18 derived from forest resources warrant the continuing recognition and
19 support of the state;

20 (3) the state has a fundamental obligation to ensure that
21 management of forest resources guarantees perpetual supplies of renew-
22 able resources, provides nonrenewable resources in a manner consistent
23 with that obligation, and serves the needs of all Alaska for the many
24 products, benefits, and services obtained from them;

25 (4) government administration of forest resources should
26 combine professional management services, regulatory measures, and
27 economic incentives in a complementary fashion, and should draw upon
28 the expertise of professional foresters in conjunction with other
29 disciplines;

1 (5) under the leadership of the Department of Environmental
2 Conservation as lead agency, the state should exercise its full re-
3 sponsibility and authority for control of nonpoint source pollution
4 with respect to the Federal Water Pollution Control Act, as amended;

5 (6) subject to AS 41.17.098(c), the provisions of this
6 chapter, and regulations adopted under this chapter, with the approval
7 of the Department of Environmental Conservation, establish the non-
8 point source pollution requirements under state law and sec. 319 of
9 the Clean Water Act for activities subject to this chapter;

10 (7) except for activities subject to AS 16.05.840 or 16.-
11 05.870 and regulations authorized by those sections, this chapter and
12 regulations adopted under this chapter establish the fish habitat
13 protection standards, policies, and review processes under state law
14 [SUBJECT TO 16 U.S.C. 1456(f) (SEC. 307(f) OF THE COASTAL ZONE MANAGE-
15 MENT ACT OF 1972, P.L. 92-583), THE PROVISIONS OF THIS CHAPTER SHALL
16 BE THE BASIS FOR FOREST MANAGEMENT STANDARDS, POLICIES, AND GUIDELINES
17 DEVELOPED UNDER THE ALASKA COASTAL MANAGEMENT ACT].

18 * Sec. 3. AS 41.17.041 is repealed and reenacted to read:

19 Sec. 41.17.041. BOARD OF FORESTRY. (a) The Board of Forestry
20 is established in the Department of Natural Resources, division of
21 forestry.

22 (b) The board is composed of nine members appointed by the
23 governor:

24 (1) a representative of a statewide commercial fishermen's
25 organization;

26 (2) a representative of a Native corporation established
27 under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act);

28 (3) a representative of an environmental organization;

29 (4) a representative of a forest industry trade

1 association;

2 (5) a professional fish or wildlife biologist who is not
3 employed in that capacity by a state, municipal, or federal government
4 agency, except for university employment;

5 (6) a professional forester who is not employed in that
6 capacity by a state, municipal, or federal government agency, except
7 for university employment;

8 (7) a representative of a statewide mining organization;

9 (8) a representative of a statewide recreational organi-
10 zation; and

11 (9) the state forester, who serves ex officio and without a
12 vote.

13 (c) The state forester is the presiding officer of the board and
14 shall, in consultation with the board, establish procedures for sched-
15 uling and organizing board meetings. Seven voting members of the
16 board constitute a quorum. Each decision of the board requires the
17 affirmative vote of each voting member present less one.

18 (d) A board member who is unable to attend a meeting may desig-
19 nate an alternate who possesses the same qualifications as the board
20 member.

21 (e) The division shall serve as staff to the board. The depart-
22 ment, the Department of Fish and Game, and the Department of Environ-
23 mental Conservation shall provide technical staffing and information
24 as needed by the board.

25 * Sec. 4. AS 41.17.047 is repealed and reenacted to read:

26 Sec. 41.17.047. POWERS AND DUTIES OF BOARD. (a) The board
27 shall review and comment to the commissioner on regulations proposed
28 for adoption under this chapter.

29 (b) The board shall provide a forum for representatives of

1 affected interests to discuss and attempt to resolve issues relevant
2 to this chapter and to the forest resources of the state.

3 (c) The board, working with the department, the Department of
4 Environmental Conservation, the Department of Fish and Game, other
5 affected agencies and parties, and the forest-dependent industries,
6 shall conduct an annual survey of research needs related to forest
7 practices. The board shall review research proposals and shall make
8 recommendations to promote research projects that would address these
9 needs to the governor and the legislature.

10 (d) The board shall coordinate the monitoring of the implementa-
11 tion and effectiveness of this chapter, the regulations, and best
12 management practices adopted under this chapter in meeting state water
13 quality standards, fish and wildlife habitat requirements, and other
14 forestry objectives. The board shall report annually to the legisla-
15 ture and the governor on the effectiveness of this chapter and regu-
16 lations adopted under it, with its recommendations for changes and for
17 needed research and monitoring. The state forester, the Department of
18 Fish and Game, and the Department of Environmental Conservation shall
19 each present an annual report, independently, to the board on the
20 effectiveness of this chapter, the regulations, and best management
21 practices adopted under this chapter that protect the resources for
22 which they have statutory responsibility, and shall make recommenda-
23 tions for changes to correct procedural or substantive problems. The
24 board shall forward the reports to the legislature as part of its
25 annual report. The board shall hold hearings at least once annually
26 in southeast, southcentral, and interior Alaska for purposes of taking
27 public testimony on the subjects.

28 * Sec. 5. AS 41.17.055(d) is repealed and reenacted to read:

29 (d) The commissioner may develop regulations under this chapter

1 as part of the state program for control of nonpoint source pollution
2 under the Federal Water Pollution Control Act, as amended. However,
3 the Department of Environmental Conservation is the lead agency for
4 water quality and control of nonpoint source pollution under that Act,
5 and the regulations are therefore subject to the approval of the
6 commissioner of environmental conservation.

7 * Sec. 6. AS 41.17.060(b) is amended to read:

8 (b) With respect to state, municipal, and private forest land,
9 the following standards apply:

10 (1) to the maximum extent possible, all applicable data and
11 information of applicable disciplines shall be updated and used in
12 making decisions relative to the management of forest resources;

13 (2) environmentally sensitive areas [AND BEST MANAGEMENT
14 PRACTICES] shall be recognized in the development of regulations and
15 best management practices that are designed to implement [IMPLEMENTA-
16 TION OF ANY] nonpoint source pollution control measures authorized
17 under this chapter;

18 (3) administration of forest land shall consider marketing
19 conditions and other economic constraints affecting the forest land-
20 owner, timber owner, or the operator;

21 (4) to the fullest extent practicable, harvested forest
22 land shall be reforested, naturally or artificially, so as to result
23 in a sustained yield of merchantable timber from that land; if artifi-
24 cial planting is required, silviculturally acceptable seedlings must
25 first be available for planting at an economically fair price in the
26 state; and

27 (5) significant adverse effects of soil erosion and mass
28 wasting on water quality and fish habitat shall be prevented or min-
29 imized.

1 * Sec. 7. AS 41.17.060(c) is amended to read:

2 (c) With respect to state and municipal forest land only, the
3 following standards also apply:

4 (1) forest land shall be administered for the multiple use
5 of the renewable and nonrenewable resources and for the sustained
6 yield of the renewable resources of the land in the manner that
7 [WHICH] best provides for the present needs and preserves the future
8 options of the people of the state;

9 (2) a [ANY] system of allocating predominant uses or values
10 to particular units within a contiguous area of land shall reflect in
11 reasonable proportion the various resources and values present in that
12 area;

13 (3) to the extent its capacity permits, forest land shall
14 be administered so as to provide for the continuation of businesses,
15 activities, and lifestyles that [WHICH] are dependent upon or derived
16 from forest resources;

17 (4) timber harvesting is limited to areas where data and
18 information demonstrate that natural or artificial reforestation
19 techniques will result in the production of a sustained yield of
20 merchantable timber from that area;

21 (5) there may not be [ANY] significant impairment of the
22 productivity of the land and water with respect to renewable re-
23 sources; [AND]

24 (6) [WHERE ECONOMICALLY PRACTICABLE,] allowance shall [MAY]
25 be made for scenic quality in or adjacent to areas of substantial
26 importance to the tourism and recreation industry; and

27 (7) allowance shall be made for important fish and wildlif
28 habitat.

29 * Sec. 8. AS 41.17.070(b) is repealed and reenacted to read:

1 (b) To maintain a record of division decision making for public
2 and agency review, the commissioner shall compile and index each de-
3 cision made under this chapter regarding directives, stop work orders,
4 waivers from requirements, decisions of hearing officers, and deci-
5 sions on appeals. The commissioner shall submit a summary of this
6 record annually to the board.

7 * Sec. 9. AS 41.17.080 is repealed and reenacted to read:

8 Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt
9 regulations necessary to accomplish the purposes of this chapter under
10 AS 44.62 (Administrative Procedure Act) regarding forest practices
11 such as

- 12 (1) road construction and maintenance, including
13 (A) road location, construction, maintenance, and
14 post-operation management or removal;
15 (B) landing location and construction;
16 (C) drainage structures;
17 (D) material sources and spoil disposal sites;
18 (2) timber harvesting, including
19 (A) timber harvest unit planning and design;
20 (B) felling and bucking;
21 (C) cable yarding, shovel, tractor, and wheeled skid-
22 der systems;
23 (D) landing clean-up;
24 (E) slash disposal;
25 (3) log transfer, sort yards, and storage facilities,
26 including
27 (A) location, design, and construction;
28 (B) maintenance;
29 (C) closure;

- 1 (D) log storage, rafting, and identification;
2 (4) reforestation, including
3 (A) site preparation and rehabilitation;
4 (B) prescribed burning;
5 (C) exemptions from reforestation requirements;
6 (5) prevention and suppression of forest insects and dis-
7 eases;
8 (6) salvage logging;
9 (7) vegetative management; and
10 (8) fire and flood hazard management.

11 (b) The commissioner shall adopt regulations specifying the
12 information to be submitted under AS 41.17.090(c) in the detailed plan
13 of operations to enable the division to determine whether the activ-
14 ities comply with the requirements of this chapter.

15 (c) The commissioner may establish regions, districts, or other
16 subdivisions of forest land in the state in which different regu-
17 lations apply to reflect varying conditions in the state or to facil-
18 itate administration. In adopting regulations, the commissioner shall
19 make appropriate distinctions between public and private land.

20 (d) The commissioner shall adopt only those regulations neces-
21 sary to accomplish the purposes of this chapter and shall avoid regu-
22 lations that increase operating costs without yielding significant
23 benefits to public resources.

24 * Sec. 10. AS 41.17 is amended by adding new sections to read:

25 Sec. 41.17.082. CONTROL OF INFESTATIONS AND DISEASE. (a) All
26 forest clearing operations and silvicultural systems must be designed
27 to reduce the likelihood of increased insect infestation and disease
28 infections that threaten forest resources.

29 (b) A forest landowner may not conduct or approve timber

1 clearing activities that create conditions fostering outbreaks of
2 infestation or infection that threaten forest resources on forest
3 lands belonging to another person. If the commissioner finds, after
4 notice and hearing, that there has been a violation of this subsec-
5 tion, the commissioner may

6 (1) require the forest landowner, at that person's expense,
7 to remove promptly or cure the conditions fostering outbreaks of
8 infestation or infection; and

9 (2) require the forest landowner, at that person's expense,
10 to undertake environmentally sound, effective, and cost-efficient
11 actions to control the infestation or infection in the immediate
12 vicinity of the improper timber clearing activity.

13 (c) If a forest landowner does not comply with a final order of
14 the commissioner under (b)(1) or (b)(2) of this section, the commis-
15 sioner may enter onto the land and undertake the actions ordered and
16 the landowner is liable for the cost of the actions. The commissioner
17 shall deliver to the landowner an itemized statement of expenses
18 incurred.

19 (d) The commissioner may undertake surveys and appraisals to
20 obtain data on regional insect infestations and disease conditions.
21 Upon a determination that an area is infested with forest insects or
22 infected with diseases injurious to forest resources and that the
23 infestation or infection threatens the forest land or timber of adja-
24 cent owners, the commissioner may establish the boundaries of an
25 infestation or infection zone. The commissioner may enter into an
26 agreement with an owner or with a governmental agency to control or
27 suppress infestation or infection within the zone. Upon a determina-
28 tion by the commissioner that insect and disease control work within
29 the zone is no longer necessary or feasible, the commissioner shall

1 terminate the zone.

2 Sec. 41.17.083. CLEARING OF FOREST LAND FOR NON-TIMBER PURPOSES.

3 A state agency, municipality, or public utility shall determine wheth-
4 er the timber to be removed has significant salvage value before
5 approving or conducting clearing of forest land for purposes other
6 than timber harvest. If the timber has significant salvage value, the
7 agency or utility shall salvage the timber as part of the clearing
8 process.

9 * Sec. 11. AS 41.17 is amended by adding a new section to read:

10 Sec. 41.17.087. VARIANCE FROM REQUIREMENTS. (a) A forest land-
11 owner, timber owner, or operator may propose for a particular activity
12 a variance from a requirement imposed by this chapter or the regu-
13 lations adopted under this chapter. If the state forester determines
14 that the harm intended to be avoided by the requirement is not likely
15 to occur because of site-specific circumstances relating to the par-
16 ticular activity and is not likely to cause significant harm to fish
17 habitat or water quality, the state forester shall agree to the
18 proposed variance. If the state forester does not agree to the
19 proposed variance, a forest landowner, timber owner, or operator may
20 appeal to the commissioner. The appellants shall conform to the
21 requirement during the pendency of the appeal.

22 (b) The commissioner shall adopt regulations that specify the
23 standards under which a variance will be granted for harvesting timber
24 within the riparian area of

25 (1) a low gradient Type A water body with a width of five
26 feet or less; and

27 (2) other appropriate water body types.

28 (c) A determination by the state forester under (a) of this
29 section and regulations by the commissioner under (b) of this section

1 shall give due deference under AS 41.17.098.

2 * Sec. 12. AS 41.17.090 is repealed and reenacted to read:

3 Sec. 41.17.090. NOTIFICATION OF PLANS TO HARVEST TIMBER. (a)

4 Operations on forest land shall be reviewed under this section for
5 consistency with the policies and provisions of this chapter and
6 regulations adopted under this chapter.

7 (b) A forest landowner, timber owner, or operator may provide to
8 the commissioner a voluntary plan of operations that describes the
9 long-term plans for timber harvesting. The purpose of a voluntary
10 plan is to give the division and the public an early opportunity to
11 review plans, to identify areas of concern, and to allow the agencies
12 and the public to provide local knowledge and early notice of poten-
13 tial problems to the forest landowner, timber owner, or operator.

14 (c) Before beginning operations on forest land, the operator
15 shall provide the state forester with a detailed plan of operations.
16 The detailed plan of operations must include

17 (1) a description of the proposed operations, identifying
18 the land involved and the action proposed in sufficient detail to
19 inform the public of the nature and location of the proposed opera-
20 tions; the description must include a map and must be in a form suit-
21 able for duplication;

22 (2) the name, address, and approving signature of the
23 forest landowner, timber owner, and operator; and

24 (3) other information required in the regulations adopted
25 under this chapter.

26 (d) Within five days after receipt of a detailed plan of opera-
27 tions under (c) of this section, the state forester shall distribute
28 the information received under (c) of this section to affected state
29 agencies and coastal districts, and shall distribute the information

1 received under (c)(1) of this section to each member of the public who
2 has asked to receive copies of notifications for the affected area.

3 (e) Within 30 days after receipt of a detailed plan of opera-
4 tions, the state forester shall review the plan to determine if the
5 operations are consistent with this chapter and regulations adopted
6 under this chapter. Operations may begin under the plan upon the
7 expiration of the 30-day period or upon notice from the state forester
8 that the review has been completed, whichever occurs first, unless the
9 division has issued a stop-work order for a particular portion of the
10 plan or has notified the operator that a one-time, 10-day extension is
11 necessary for agency review under AS 41.17.098(f). The operator may
12 proceed with operations not covered by the stop work order, notice of
13 field inspection, or the agency review. During the review of a de-
14 tailed plan of operations, if a question arises concerning the proper
15 classification of water body type for purposes of the standards in
16 AS 41.17.116(a), the Department of Fish and Game may resolve the
17 question.

18 (f) If the state forester determines that a field inspection is
19 necessary to determine consistency of the detailed plan of operations
20 or a portion of the plan with applicable standards, the state forester
21 shall notify the operator. The notice of field inspection may not
22 cover more than the minimum area necessary to determine compliance
23 with this chapter and applicable regulations. The operator shall
24 inform the state forester when the site will be available for an
25 inspection. The state forester shall conduct the field inspection
26 within 21 days after the date that the site will be accessible and
27 available unless the operator otherwise agrees, and the operator may
28 begin operations at the conclusion of the 21-day period unless the
29 state forester has issued a stop work order under AS 41.17.138.

1 (g) During the review of a detailed plan of operations, modi-
2 fications to accommodate comments may be made without requiring the
3 operator to resubmit the plan. After the review of the detailed plan
4 of operations made under (e) and (f) of this section, an operator
5 shall notify the state forester of a proposed substantial change in
6 operations by following the procedures specified in (c) - (f) of this
7 section.

8 (h) Information and paperwork required of the operator under
9 this section is limited to that necessary to accomplish the purposes
10 of this section.

11 (i) An operator shall renew a detailed plan of operations annu-
12 ally.

13 * Sec. 13. AS 41.17 is amended by adding a new section to read:

14 Sec. 41.17.098. INTERAGENCY COORDINATION AND REEVALUATION. (a)
15 In administering this chapter, the commissioner shall coordinate with
16 other agencies and affected coastal districts that have jurisdiction
17 over activities subject to regulation under this chapter.

18 (b) In a review or implementation of a detailed plan of opera-
19 tions under AS 41.17.090 and in a decision on a proposed variation
20 from requirements under AS 41.17.087, the commissioner shall consider
21 the comments of each affected state agency and, where applicable,
22 coastal districts.

23 (c) The commissioner shall give due deference to the Department
24 of Environmental Conservation in decisions concerning water quality.
25 The commissioner of environmental conservation retains the authority
26 to adopt nonpoint source pollution regulations for activities subject
27 to this chapter to the extent that regulations are not adopted by the
28 commissioner of natural resources and approved by the commissioner of
29 environmental conservation under this chapter. The commissioner of

1 environmental conservation may withdraw approval of regulations adopt-
2 ed by the commissioner of natural resources under this chapter by
3 following the procedure for the adoption, amendment, and repeal of
4 regulations under AS 44.62.180 - 44.62.290.

5 (d) The commissioner shall recognize the expertise of the De-
6 partment of Fish and Game with regard to fish and wildlife habitat.
7 On private land, the commissioner shall give due deference to the
8 Department of Fish and Game regarding effects on fish habitat from
9 timber operations including variations to riparian standards, desig-
10 nation of alternative site-specific riparian protection plans, and
11 road location decision within riparian areas. On public land, the
12 commissioner shall give due deference to the Department of Fish and
13 Game regarding effects on fish and wildlife habitat from timber op-
14 erations including timber harvest in riparian areas, variations to
15 riparian standards, and road location decisions within riparian areas.
16 In making decisions under under AS 41.17.087, the commissioner shall
17 recognize fish habitat as the primary value in riparian areas.

18 (e) In this section, "due deference" means that deference that
19 is appropriate in the context of the agency's expertise and area of
20 responsibility and all the evidence available to support a factual
21 assertion. Where due deference is given, if the commissioner does not
22 agree with a commenting agency, the commissioner shall prepare a
23 written statement of the reasons for the disagreement.

24 (f) If a disagreement described in (e) of this section exists,
25 an officer of an agency may require reevaluation of the disagreement
26 at a higher level within the agencies, or by the governor if neces-
27 sary, before a decision is made by the commissioner.

28 * Sec. 14. AS 41.17 is amended by adding new sections to read:

29 ARTICLE 1A. RIPARIAN MANAGEMENT.

1 Sec. 41.17.115. INTENT FOR RIPARIAN AREAS. The commissioner
2 shall protect riparian areas from the significant adverse effects of
3 timber harvest activities on fish habitat and water quality. The
4 management intent for riparian areas is the adequate preservation of
5 fish habitat by maintaining a short- and long-term source of large
6 woody debris, stream bank stability, channel morphology, water temper-
7 atures, stream flows, water quality, adequate nutrient cycling, food
8 sources, clean spawning gravels, and sunlight. The commissioner shall
9 adopt regulations for the protection of riparian areas; the regu-
10 lations may include higher standards of protection for fish and other
11 public resources on land managed by the department than on other
12 public land or private land. The regulations may vary by region of
13 the state and must take into consideration reasonable classification
14 of water bodies and the economic feasibility of timber operations.

15 Sec. 41.17.116. RIPARIAN STANDARDS FOR PRIVATE LAND. (a)
16 Private forest land adjacent to the following types of waters and
17 located in a coastal forest of spruce or hemlock is subject to the
18 riparian protection standards established in this section:

19 (1) along a Type A water body, harvest of timber may not be
20 undertaken within 66 feet of the water body;

21 (2) along a Type B water body, timber harvest operations
22 within 100 feet of the stream or to the break of the slope, whichever
23 area is smaller, must be conducted in compliance with slope stability
24 standards established in regulations adopted under this chapter;

25 (3) along a Type C water body, timber harvest operations in
26 the area within 50 feet of the stream or to the break of the slope,
27 whichever area is smaller, must be conducted in compliance with slope
28 stability standards established in regulations adopted under this
29 chapter.

1 (b) The commissioner shall adopt regulations for private land
2 outside of the coastal forest of spruce or hemlock that designate the
3 riparian areas to be protected and the restrictions on timber harvest-
4 ing operations within the areas that are necessary for their pro-
5 tection under the management goals established in AS 41.17.115.

6 Sec. 41.17.118. RIPARIAN STANDARDS FOR STATE LAND. (a) The
7 riparian standards for state land are as follows:

8 (1) on state forest land managed by the department that is
9 located north of the Alaska Range, harvest of timber may not be under-
10 taken within 100 feet immediately adjacent to an anadromous or high
11 value resident fish water body unless the division determines that
12 adequate protection remains for the fish habitat;

13 (2) on state forest land managed by the department that is
14 located south of the Alaska Range,

15 (A) harvest of timber may not be undertaken within 100
16 feet immediately adjacent to an anadromous or high value resident
17 fish water body;

18 (B) between 100 and 300 feet from the water body,
19 timber harvest may occur but must be consistent with the mainte-
20 nance of important fish and wildlife habitat.

21 (b) The commissioner may impose additional riparian protection
22 standards for timber harvest operations through the adoption of land
23 use plans under AS 38.04.065 and under forest management plans and
24 reports under AS 38.05.112 and AS 41.17.230.

25 (c) In the absence of a site-specific determination by the
26 Department of Fish and Game, the commissioner shall presume for plan-
27 ning purposes that a stream is anadromous if it is connected to ana-
28 dromous waters that are without Department of Fish and Game documenta-
29 tion of a physical blockage and has a stream gradient of 8 percent or

1 less.

2 Sec. 41.17.119. MINIMUM RIPARIAN STANDARDS FOR OTHER PUBLIC
3 LAND. On other public land, harvest of timber may not occur

4 (1) within 100 feet from the shore or bank of an anadromous
5 or high value resident fish water body that is located south of the
6 Alaska Range;

7 (2) within 100 feet immediately adjacent to an anadromous
8 or high value resident fish water body north of the Alaska Range
9 unless the commissioner determines that adequate protection remains
10 for the fish habitat.

11 * Sec. 15. AS 41.17 is amended by adding a new section to read:

12 Sec. 41.17.125. ENFORCEMENT COORDINATION. All state agencies
13 with enforcement authority over an activity subject to regulation
14 under this chapter shall establish a uniform enforcement strategy that
15 avoids duplication and inconsistencies. All participating agencies
16 shall agree to and comply with the contents of the uniform strategy.
17 In developing and implementing the uniform strategy, each state agency
18 retains its authority to determine the appropriate remedies under the
19 statutes and regulations it administers.

20 * Sec. 16. AS 41.17.131 is repealed and reenacted to read:

21 Sec. 41.17.131. PENALTIES FOR VIOLATIONS. (a) An operator,
22 forest landowner, or timber owner who violates or permits a violation
23 of this chapter, a regulation adopted under this chapter, a directive
24 issued under AS 41.17.136, or a stop work order issued under AS 41.-
25 17.138 is liable, after notice and hearing, for a civil fine in an
26 amount not to exceed \$10,000 to be assessed by the commissioner. In
27 determining the amount of civil fine, the commissioner shall consider
28 (1) the character and degree of injury to forest resources
29 and values;

1 (2) the degree of intent or negligence of the respondent in
2 causing or permitting the violation;

3 (3) the character and number of past violations caused or
4 permitted by the respondent; and

5 (4) if the information is available, the net economic
6 savings realized by the respondent through the violation.

7 (b) An operator, forest landowner, or timber owner that, with
8 criminal negligence, violates or permits a violation of this chapter,
9 a regulation adopted under this chapter, a directive issued under
10 AS 41.17.136, or a stop work order issued under AS 41.17.138 is guilty
11 of a class A misdemeanor. In this subsection, "criminal negligence"
12 has the meaning given in AS 11.81.900(a).

13 (c) Each day that a violation described in this section occurs
14 is a separate violation.

15 (d) If a respondent violates a directive issued under AS 41.-
16 17.136 or a stop work order issued under AS 41.17.138, the attorney
17 general, at the request of the commissioner, may seek an injunction
18 requiring the respondent to suspend all or part of the operations
19 until the respondent complies with the directive or stop work order,
20 and requiring the respondent to repair or correct damage resulting
21 from the violation.

22 (e) If a respondent violates a directive issued under AS 41.-
23 17.136 that requires the respondent to repair or correct damage, the
24 commissioner may proceed to repair or correct the damage using state
25 agency employees or contractors and the respondent is liable for the
26 cost of the repair. The commissioner shall deliver to the respondent
27 an itemized statement of expenses incurred.

28 * Sec. 17. AS 41.17 is amended by adding a new section to read:

29 Sec. 41.17.136. DIRECTIVES. (a) Upon a determination that a

1 planned or ongoing activity violates or would violate this chapter or
2 a regulation adopted under it, the state forester shall notify the
3 respondent in writing and direct the respondent to halt or avoid the
4 violation or to repair or correct any damage resulting from the viola-
5 tion. The written notification must include a summary of the basis
6 for the directive.

7 (b) The respondent may either comply with the directive or
8 request a hearing under AS 41.17.139 within 15 days of receipt of the
9 notification. If a hearing is requested, the respondent may continue
10 with the activity unless the state forester issues a stop work order
11 under AS 41.17.138. If the directive is affirmed by the hearing
12 officer, the respondent shall cease the activity unless a stay is
13 issued under AS 41.17.143(c) or by the superior court.

14 * Sec. 18. AS 41.17 is amended by adding a new section to read:

15 Sec. 41.17.138. STOP WORK ORDERS. (a) Upon a determination
16 that a violation of this chapter or a regulation adopted under it is
17 occurring or is likely to occur and that significant harm to public
18 resources is likely to occur if work is not halted before a hearing
19 can be held, the state forester may issue a stop work order requiring
20 the respondent to stop the violation or otherwise halt the threatened
21 harm. A stop work order must be in writing and must state the facts
22 on which it is based.

23 (b) The state forester shall immediately refer the matter to a
24 hearing officer for determination of the validity of the stop work
25 order under AS 41.17.139. The hearing officer shall consider any
26 arguments and evidence presented by the respondent within five work-
27 days after receipt of the stop work order and shall then make an imme-
28 diate decision sustaining or reversing the stop work order. The stop
29 work order is of no further effect if it is not sustained by the

1 hearing officer within the five-workday period. A stop work order may
2 be sustained only upon the same grounds on which it was originally
3 issued.

4 * Sec. 19. AS 41.17.139 is amended to read:

5 Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise
6 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject
7 to the Administrative Procedure Act (AS 44.62). A hearing under
8 AS 41.17.136 or 41.17.138 [AS 41.17.131 - 41.17.139] shall be held
9 before the state forester, a regional forester, or another employee of
10 the division with similar qualifications acting as a hearing officer.
11 A hearing on an appeal under AS 41.17.087 and a hearing under AS 41.-
12 17.082(b) shall be held before the commissioner or the commissioner's
13 designee [, APPOINTED BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF
14 THE ALASKA BAR ASSOCIATION WHO HAVE BEEN NOMINATED BY THE BOARD OF
15 FORESTRY AND WHO ARE KNOWLEDGEABLE AND EXPERIENCED IN THE SUBJECT
16 MATTER]. A person who has assisted in the preparation of the di-
17 vision's [STATE'S] case [OR WHO IS A STATE EMPLOYEE] is ineligible.
18 Hearings are not limited by common law, statutory, or judicial rules
19 of evidence; however, the hearing officer may admit only that evidence
20 that [WHICH] appears to be reliable and trustworthy. All hearings
21 shall be open to the public. Written or oral testimony may be submit-
22 ted. A party to a hearing may make written or oral argument, secure
23 the issuance of a subpoena under AS 44.62.430, offer testimony or
24 other evidence, and cross-examine witnesses. The hearing officer
25 shall endeavor, in conducting any hearing, to ensure that the respon-
26 dent understands the proceedings and that the facts supporting the
27 position of each party have been adequately presented. [HEARINGS
28 SHALL BE HELD AS CLOSE AS PRACTICABLE TO THE LOCATION OF THE ALLEGED
29 VIOLATION. TESTIMONY GIVEN AT THE HEARING SHALL BE RECORDED.]

1 (b) If the respondent notifies the commissioner within five days
2 before the hearing provided for in (a) of this section, the following
3 rules and procedures apply to the hearing:

4 (1) the hearing shall be a nonadversary proceeding, with
5 the hearing officer fully and impartially representing the interests
6 of the state and the respondent;

7 (2) the hearing officer shall thoroughly investigate the
8 facts and circumstances relating to the alleged violation, including
9 taking testimony from appropriate persons, collecting and examining
10 documents and other evidence, and performing other actions consistent
11 with due process of law; and

12 (3) the hearing officer shall issue a decision in accor-
13 dance with the applicable procedures of (a) of this section.

14 * Sec. 20. AS 41.17.139 is amended by adding a new subsection to read:

15 (c) The hearing officer shall select the location of the hear-
16 ing, giving consideration to the convenience of the parties and wit-
17 nesses. The hearing officer may permit witnesses to testify through
18 teleconferencing.

19 * Sec. 21. AS 41.17.143 is repealed and reenacted to read:

20 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by
21 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-
22 sioner under AS 41.17.082(b), 41.17.087, or 41.17.131(a) constitutes
23 final agency action that may be appealed to the superior court within
24 30 days after it is issued. Judicial review shall be as provided in
25 AS 44.62.560 and 44.62.570.

26 (b) An operator, forest landowner, or timber owner may request
27 the commissioner to reconsider the decision of a hearing officer
28 within 30 days after it is issued. Reconsideration is not a precondi-
29 tion of judicial review under (a) of this section. If reconsideration

1 is requested, the final agency action for purposes of judicial review
2 is a decision by the commissioner to affirm, modify, or reverse the
3 hearing officer or to deny the request for reconsideration.

4 (c) The commissioner may stay or modify a directive or order
5 pending administrative or judicial review. A stay or modification may
6 not be appealed separately from an appeal of the substantive decision.

7 (d) A person, except the aggrieved forest landowner, timber
8 owner, or operator, may not maintain an administrative or judicial ap-
9 peal, or other action or proceeding of any kind, challenging a deci-
10 sion or failure to act by the department with respect to the compli-
11 ance of a timber operation on private forest land with this chapter or
12 a regulation, standard, directive, or order issued under this chapter.
13 This subsection does not prohibit the maintenance of an action

14 (1) for an alleged violation of a constitutional right; or
15 (2) against the department regarding a regulation, stan-
16 dard, or systematic course of conduct that does not involve a chal-
17 lenge to, or attempt to enjoin, stay, modify, or otherwise affect a
18 timber operation on private forest land subject to this chapter.

19 * Sec. 22. AS 41.17.210(a) is amended to read:

20 (a) The governor may propose to the legislature the establish-
21 ment of state forests consisting primarily of commercially valuable
22 forest land determined by the governor to be necessary for retention
23 in state ownership for management under the principles of multiple use
24 and sustained yield and consistent with AS 38.04.005. The proposal of
25 the governor shall include a report and recommendations of the commis-
26 sioner including

27 (1) a preliminary forest inventory;
28 (2) a summary of the testimony offered at public hearings
29 held on the management of the proposed state forest in communities

1 proximately located to a proposed state forest;

2 (3) the findings of the commissioner on anticipated incom-
3 patibilities of uses described in AS 38.05.112(c) [AS 41.17.230(e)]
4 under AS 38.05.112(d) [AS 41.17.230(f)];

5 (4) written comments from appropriate state agencies on the
6 compatibility of the uses described in AS 38.05.112(c) [AS 41.17.-
7 230(e)] within the proposed state forest;

8 (5) an estimate of the cost of a full implementation of an
9 operational level forest inventory and the management plan.

10 * Sec. 23. AS 41.17.400(c) is amended to read:

11 (c) In addition to the uses described in AS 38.05.112(c)
12 [AS 41.17.230(e)], the commissioner may establish transportation
13 corridors within the Tanana Valley State Forest.

14 * Sec. 24. AS 41.17.900(b) is repealed and reenacted to read:

15 (b) For federal land,

16 (1) the degree of resource protection may not be less than
17 that established by this chapter for state land except that AS 41.17.-
18 119 establishes the minimum riparian standard;

19 (2) a timber harvest activity subject to this chapter shall
20 satisfy the requirement to be consistent to the maximum extent practi-
21 cable with the Alaska coastal zone management program if the federal
22 land management plans, guidelines, and standards applicable to that
23 timber harvest activity provide no less resource protection than the
24 standards that are established in this chapter provide for state land
25 except that

26 (A) AS 41.17.119 establishes the minimum riparian
27 standards; and

28 (B) this paragraph does not apply to a timber harvest
29 activity that requires a state or federal authorization under a

1 provision of law other than this chapter.

2 * Sec. 25. AS 41.17.900 is amended by adding new subsections to read:

3 (e) Subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coastal
4 Zone Management Act of 1972, P.L. 92-583) as to private land, this
5 chapter and the regulations adopted under this chapter establish the
6 forest management standards, policies, and review processes under
7 AS 46.40 (Alaska Coastal Management Act). This subsection does not
8 apply to timber harvest activity that requires a state or federal
9 authorization under a provision of law other than this chapter.

10 (f) This chapter does not diminish the rights, privileges, or
11 immunities of Alaska Natives or Alaska Native corporations with re-
12 spect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native
13 Claims Settlement Act), and does not alter or diminish the authority
14 of the Department of Fish and Game under AS 16, of the Department of
15 Environmental Conservation under AS 46, or of a state agency under
16 other law.

17 * Sec. 26. AS 41.17 is amended by adding a new section to read:

18 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The
19 Department of Fish and Game and the commissioner shall work coopera-
20 tively with private forest landowners and timber owners to protect,
21 maintain, and enhance wildlife habitat to the maximum extent practica-
22 ble, consistent with the interests of the owners in the use of their
23 timber resources.

24 (b) The Department of Fish and Game shall provide educational
25 and technical assistance and extension services to owners of private
26 forest land or timber to assist in identifying important wildlife
27 habitat and to assist in designing voluntary management techniques
28 that minimize adverse effects on wildlife habitat.

29 (c) The Department of Fish and Game and the landowner shall

1 cooperate in identifying areas of important wildlife habitat on pri-
2 vate forest land and in developing methods for their protection.
3 Methods of protection for wildlife habitat may include, with the
4 agreement of the landowner, the purchase of fee title, purchase of
5 conservation easements, and land exchanges.

6 (d) This section does not alter or diminish the authority and
7 responsibility of the state over wildlife on private land.

8 * Sec. 27. AS 41.17.950 is repealed and reenacted to read:

9 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the con-
10 text otherwise requires,

11 (1) "anadromous water body" means the portion of a fresh
12 water body or estuarine area that

13 (A) is cataloged under AS 16.05.870 as important for
14 anadromous fish; or

15 (B) is not cataloged under AS 16.05.870 as important
16 for anadromous fish but has been determined by the Department of
17 Fish and Game to contain or exhibit evidence of anadromous fish
18 in which event the anadromous portion of the stream or waterway
19 extends up to the first point of physical blockage;

20 (2) "board" means the Board of Forestry established in
21 AS 41.17.041;

22 (3) "broadcast chemicals" includes pesticides, herbicides,
23 fungicides, fertilizers, poisons, and any other substances

24 (A) used for silvicultural management or related
25 purposes;

26 (B) not native to the ecosystem in which they are
27 being applied; and

28 (C) having a foreseeable adverse impact on the welfare
29 of renewable resources, as determined by the commissioner of

1 environmental conservation;

2 (4) "division" means the division of forestry;

3 (5) "forest land" means land stocked or having been stocked
4 with forest trees of any size and not currently developed for nonfor-
5 est use, regardless of whether presently available or accessible for
6 commercial purposes, and includes any such land under state, municipi-
7 pal, or private ownership;

8 (6) "forest landowner" means a person who owns forest land,
9 but does not include the owner of mineral or subsurface rights only;

10 (7) "high value resident fish" means resident fish popu-
11 lations that are used for recreational, personal use, commercial, or
12 subsistence purposes;

13 (8) "multiple use" means

14 (A) the management of all the various resources of
15 forest land so that they are used in the combination that will
16 best meet the needs of the citizens of the state, making the most
17 judicious use of the land for some or all of these resources or
18 related values, benefits, and services over areas large enough to
19 provide sufficient latitude for periodic adjustments in use to
20 conform to changing needs and conditions;

21 (B) that some land will be used for less than all of
22 the resources; and

23 (C) harmonious and coordinated management of the
24 various resources, each with the other, without significant
25 impairment of the productivity of the land and water, with con-
26 sideration being given to the relative values of the various
27 resources, and not necessarily the combination of uses that will
28 give the greatest dollar return or the greatest unit output;

29 (9) "operations" means timber harvesting or activities

1 associated with timber harvesting or forest development unless exempt-
2 ed under AS 41.17.900(a) - (c);

3 (10) "operator" means a person who is engaged in timber
4 harvesting or activities associated with timber harvesting or forest
5 development, or who contracts with others to conduct operations for
6 that person, except a person who is engaged in an operation as an
7 employee with wages or piecework as the sole compensation;

8 (11) "other public land" means state land managed by state
9 agencies other than the department, land owned by a municipality, and
10 land owned by the University of Alaska;

11 (12) "person" has the meaning given in AS 01.10.060 and also
12 includes a joint venture;

13 (13) "riparian area" means

14 (A) the areas specified in AS 41.17.116(a) on private
15 land in the coastal forest of spruce or hemlock;

16 (B) the areas specified in regulations adopted by the
17 commissioner under AS 41.17.116(b) on private land outside the
18 coastal forest of spruce or hemlock;

19 (C) the area 100 feet from the shore or bank or an
20 anadromous or high value resident fish water body on state land
21 managed by the department and on other public land;

22 (14) "significant impairment of the productivity of the land
23 and water" means an activity that may foreseeably result in prolonged
24 or substantial damage to renewable resources or prolonged or substan-
25 tial reduction of the continuing capability of the land or water to
26 produce renewable resources at their natural or historic levels;

27 (15) "silviculture" means the art of producing and tending a
28 forest, the application of the knowledge of silvics in the treatment
29 of a forest, and the theory and practice of controlling and managing

1 forest establishment, composition, and growth;

2 (16) "state forest" means an area designated by the legis-
3 lature and retained in state ownership in order to

4 (A) provide a base for sustained yield management of
5 renewable resources; and

6 (B) permit a variety of beneficial uses;

7 (17) "sustained yield" means the achievement and maintenance
8 in perpetuity of a high level annual or regular periodic output of the
9 various renewable resources of forest land and water without signifi-
10 cant impairment of the productivity of the land and water, but does
11 not require that timber be harvested in a non-declining yield basis
12 over a rotation period;

13 (18) "timber owner" means a person who owns timber on forest
14 land or who has the rights to timber, but does not own the land it-
15 self;

16 (19) "Type A water body" means an anadromous water body that
17 is

18 (A) a stream or river of any size having an average
19 gradient of eight percent or less, with banks held in place by
20 vegetation, channels that are not incised, and a substrate com-
21 posed of rubble, gravel, sand or silt;

22 (B) wetlands and lakes, including their outlets; and

23 (C) an estuarine area delimited by the presence of
24 salt-tolerant vegetation;

25 (20) "Type B water body" means an anadromous water body that
26 is a fish stream or river of any size having an average gradient of
27 eight percent or less, a channel that is incised and contained by the
28 geomorphology and not by vegetation, and a substrate that ranges from
29 rubble to bedrock; and

1 (21) "Type C water body" means a stream that is tributary to
2 anadromous waters and that is incised greater than 28 degrees, has an
3 average gradient of greater than eight percent, is narrower than 20
4 feet between ordinary high water marks, has a substrate of rubble and
5 bedrock, and is a mountain slope stream at the upper end of the water-
6 shed.

7 * Sec. 28. LEGISLATIVE REVIEW. The legislature acknowledges and recog-
8 nizes that this Act is adopted on an interim basis because it involves a
9 significant increase in agency responsibility, is based on many untested
10 assumptions, and depends for its efficacy on many factors beyond the con-
11 trol of the state. Therefore, it is the intent of the legislature that the
12 operation of this Act and regulations adopted under this Act be fully
13 reviewed and the Act amended as necessary after the second full field
14 season ends in 1992. This period is intended to allow for further research
15 and to gain experience implementing the Act and its regulations. It is the
16 intent of the legislature that a representative group be convened for the
17 review or that it be conducted by the Board of Forestry. It is the intent
18 of the legislature that the review occur with full public input and parti-
19 cipation. No later than January 1, 1993, the Board of Forestry, the De-
20 partment of Natural Resources, the Department of Environmental Conserva-
21 tion, and the Department of Fish and Game shall submit, along with the
22 reports required by AS 41.17.047(d), any proposed amendments to this chap-
23 ter. The legislature may hold hearings to consider these or other amend-
24 ments and may take whatever action is required to accomplish the intent and
25 purposes of this Act.

26 * Sec. 29. INITIAL TERMS OF MEMBERS OF BOARD OF FORESTRY. The initial
27 terms of the members of the Board of Forestry appointed under AS 41.17.041,
28 as enacted by sec. 3 of this Act, are for two members, one year; for three
29 members, two years; and for three members, three years.

1 * Sec. 30. INTERIM RIPARIAN PROTECTION FOR THE COASTAL FOREST. A
2 notification for timber harvest activities within the coastal forest of
3 spruce or hemlock filed under AS 41.17.090 before the effective date of
4 this section shall be reviewed by the commissioner of natural resources to
5 determine if the proposed operations provide protection that is substan-
6 tially equivalent to the fish habitat protection that is provided by
7 AS 41.17.116, as enacted by sec. 14 of this Act. If the commissioner
8 determines that protection that is substantially equivalent to that provid-
9 ed by AS 41.17.116 has been offered or if the forest landowner, timber
10 owner, or operator complies with an alternate protection plan proposed by
11 the commissioner, operations covered by the notification are not subject to
12 AS 41.17.116. If the commissioner determines that the notification does
13 not provide protection that is substantially equivalent to that provided by
14 AS 41.17.116, the operator must either resubmit the notification in confor-
15 mance with this standard or comply with AS 41.17.116. The failure by the
16 commissioner to make a determination on a notification within 30 days from
17 the effective date of this section constitutes a determination that the
18 notification provides protection that is substantially equivalent to the
19 fish habitat protection that is provided by AS 41.17.116.

20 * Sec. 31. INTERIM RIPARIAN PROTECTION OUTSIDE THE COASTAL FOREST.
21 Until regulations are adopted by the commissioner of natural resources
22 under AS 41.17.116(b), as enacted by sec. 14 of this Act, timber harvest
23 operations on forest land within 100 feet from the shore or bank of an
24 anadromous or high value resident fish water body must be sited and de-
25 signed primarily to protect fish habitat and water quality.

26 * Sec. 32. AS 41.17.118, as enacted by sec. 14 of this Act, does not
27 alter the terms of an existing contract or the outcome of litigation pend-
28 ing on the effective date of this Act. An amendment to or renewal of an
29 existing state timber contract must be consistent with AS 38.05 and

1 AS 41.17.
2 * Sec. 33. AS 41.17.133, 41.17.135, 41.17.137, and 41.17.141 are re-
3 pealed.
4 * Sec. 34. AS 41.17.230(e) and 41.17.230(f) are repealed.
5 * Sec. 35. AS 41.17.010(5), as amended in sec. 2 of this Act, takes
6 effect immediately under AS 01.10.070(c).
7 * Sec. 36. Sections 1, 3 - 4, 6 - 8, 10 - 11, 13 - 14, 22 - 23, 27,
8 29 - 32, and 34 of this Act take effect immediately under AS 01.10.070(c).
9 * Sec. 37. Except as provided in secs. 35 and 36 of this Act, this Act
10 takes effect October 1, 1990.