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Referred: Resources and Finance

go00529s

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 317

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST 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 waterbodies according to phys-  
4 ical characteristics;  
5 (4) uses of forest land for non-timber 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 Sec. 38.05.113. FIVE-YEAR SALE SCHEDULE. (a) The department  
17 shall annually prepare a five-year schedule of timber sales planned on  
18 all lands managed by the department. The schedule must be of suffi-  
19 cient specificity that it provides a basis for the department to  
20 allocate its resources in considering and designing sales and in  
21 conducting economic and environmental analyses. The schedule must  
22 inform the public and the timber products industry of long-term plans  
23 and provide a basis for public comment.

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

29 (c) The department may adopt regulations exempting small and

1 emergency sales from the requirements of this section.

2 \* Sec. 2. AS 41.17.010(5) is repealed and reenacted to read:

3 (5) under the leadership of the Department of Environmental  
4 Conservation as lead agency, the state should exercise its full re-  
5 sponsibility and authority for control of nonpoint source pollution  
6 with respect to the Federal Water Pollution Control Act, as amended;  
7 and, subject to AS 41.17.098(c), the provisions of this chapter and  
8 the regulations adopted under this chapter, with the approval of the  
9 Department of Environmental Conservation, set out the nonpoint source  
10 pollution requirements under state law and sec. 319 of the Clean Water  
11 Act, for activities subject to this chapter;

12 \* Sec. 3. AS 41.17.010(6) is amended to read:

13 (6) subject to 16 U.S.C. 1456(f) (sec. 307(f) of the  
14 Coastal Zone Management Act of 1972, P.L. 92-583), for private land,  
15 the provisions of this chapter and the regulations adopted under this  
16 chapter set out the [SHALL BE THE BASIS FOR] forest management stan-  
17 dards, policies, and review processes for purposes of [GUIDELINES  
18 DEVELOPED UNDER] the Alaska Coastal Management Act; [.]

19 \* Sec. 4. AS 41.17.010 is amended by adding a new paragraph to read:

20 (7) except for activities subject to the requirements of  
21 AS 16.05.840 or AS 16.05.870 and the regulations authorized by those  
22 sections, the provisions of this chapter and the regulations adopted  
23 under this chapter set out the fish habitat protection standards,  
24 policies and review processes under state law.

25 \* Sec. 5. AS 41.17.041 is repealed and reenacted to read:

26 Sec. 41.17.041. BOARD OF FORESTRY. (a) The Board of Forestry  
27 is established in the Department of Natural Resources, division of  
28 forestry.

29 (b) The board is composed of seven members appointed by the

1 governor, as follows:

2 (1) a member or representative of a statewide commercial  
3 fishermen's organization;

4 (2) a member or representative of a Native corporation  
5 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement  
6 Act);

7 (3) a member or representative of an environmental orga-  
8 nization;

9 (4) a member or representative of a forest industry trade  
10 association;

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

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

17 (7) the state forester, who shall serve ex officio and  
18 without vote.

19 (c) The state forester shall serve as chair of the board and  
20 shall, in consultation with the board, establish procedures for  
21 scheduling and organizing board meetings. Five voting members of the  
22 board constitute a quorum. No less than one fewer vote than the  
23 number of voting members present is necessary for all decisions of the  
24 board.

25 (d) A board member who is unable to attend a meeting may desig-  
26 nate an alternate, who possesses the same qualifications as the board  
27 member.

28 (e) The division shall serve as staff to the board. The depart-  
29 ment, the Department of Fish and Game, and the Department of

1 Environmental Conservation shall provide technical staffing and  
2 information as needed by the board.

3 \* Sec. 6. AS 41.17.043 is amended to read:

4 Sec. 41.17.043. TERMS OF OFFICE. The initial terms of board  
5 members are: for two members, one year; for two members, two years;  
6 and for two members, three years. After the initial terms, the [THE]  
7 term of office of a member of the board is three years. The state  
8 forester serves an indefinite term, ex officio.

9 \* Sec. 7. AS 41.17.047 is repealed and reenacted to read:

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

13 (b) The board shall provide a forum for representatives of  
14 affected interests to discuss and attempt to resolve issues relevant  
15 to this chapter and to the forest resources of the state.

16 (c) The board, working with the department, the Department of  
17 Environmental Conservation, the Department of Fish and Game, other  
18 affected agencies and parties, and the forest-dependent industries,  
19 shall conduct an annual survey of research needs related to forest  
20 practices. The board shall review research proposals and shall make  
21 recommendations to the governor and the legislature to promote re-  
22 search projects that would address these needs.

23 (d) The board shall coordinate the monitoring of the implementa-  
24 tion and effectiveness of this chapter, and the regulations and best  
25 management practices adopted under this chapter, in meeting state  
26 water quality standards, in meeting fish and wildlife habitat require-  
27 ments, and in meeting other forestry objectives. The board shall  
28 report annually to the legislature and the governor on the effective-  
29 ness of this chapter and regulations adopted under it, with its

1 recommendations for changes and for needed research and monitoring.  
2 The state forester, the Department of Fish and Game, and the  
3 Department of Environmental Conservation shall each present an annual  
4 report, independently, to the board on the effectiveness of this  
5 chapter and the regulations and best management practices adopted  
6 under this chapter that protect the resources for which they have  
7 statutory responsibility, and shall make recommendations for changes  
8 to correct procedural or substantive problems. The board shall  
9 forward these reports to the legislature as part of its annual report.  
10 The board shall hold hearings at least once annually in southeast,  
11 southcentral, and interior Alaska for purposes of taking public  
12 testimony on those subjects.

13 \* Sec. 8. AS 41.17.055(d) is repealed and reenacted to read:

14 (d) The commissioner may develop regulations under this chapter  
15 as part of the state program for control of nonpoint source pollution  
16 under the Federal Water Pollution Control Act, as amended. However,  
17 the Department of Environmental Conservation is the lead agency for  
18 water quality and control of nonpoint source pollution under that Act,  
19 and the regulations are therefore subject to the approval of the  
20 commissioner of environmental conservation.

21 \* Sec. 9. AS 41.17.060(b)(2) is amended to read:

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

27 \* Sec. 10. AS 41.17.060(b) is amended by adding a new paragraph to  
28 read:

29 (5) significant adverse effects of soil erosion and mass

1       wasting on water quality and fish habitat shall be prevented or min-  
2       imized.

3       \* Sec. 11. AS 41.17.060(c)(6) is amended to read:

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

7       \* Sec. 12. AS 41.17.060(c) is amended by adding a new paragraph to  
8       read:

9               (7) allowance shall be made for important fish and wildlife  
10       habitat.

11       \* Sec. 13. AS 41.17.070(b) is repealed and reenacted to read:

12               (b) To maintain a record of division decision-making for public  
13       and agency review, the commissioner shall compile and index all de-  
14       cisions made under this chapter regarding directives, stop-work or-  
15       ders, waivers from requirements, decisions of hearing officers, and  
16       decisions on appeals. The commissioner shall submit a summary of this  
17       record annually to the Board of Forestry.

18       \* Sec. 14. AS 41.17.080 is repealed and reenacted to read:

19               Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt  
20       regulations necessary to accomplish the purposes of this chapter under  
21       the Administrative Procedure Act (AS 44.62) regarding forest practices  
22       such as the following:

23               (1) road construction and maintenance, including

24                       (A) road location, construction, maintenance, and  
25       post-operation management or removal;

26                       (B) landing location and construction;

27                       (C) drainage structures;

28                       (D) material sources and spoil disposal sites;

29               (2) timber harvesting, including

- 1 (A) timber harvest unit planning and design;  
2 (B) felling and bucking;  
3 (C) cable yarding, shovel, tractor, and wheeled  
4 skidder systems;  
5 (D) landing clean-up;  
6 (E) slash disposal;  
7 (3) log transfer, sort yards, and storage facilities,  
8 including  
9 (A) location, design, and construction;  
10 (B) maintenance;  
11 (C) closure;  
12 (D) log storage, rafting, and identification;  
13 (4) reforestation, including  
14 (A) site preparation and rehabilitation;  
15 (B) prescribed burning;  
16 (C) exemptions from reforestation requirements;  
17 (5) prevention and suppression of forest insects and dis-  
18 eases;  
19 (6) salvage logging;  
20 (7) vegetative management; and  
21 (8) fire and flood hazard management.

22 (b) The commissioner shall adopt regulations specifying the  
23 information to be submitted under AS 41.17.090(c) in the detailed plan  
24 of operations for the division to adequately assess whether the activ-  
25 ities will comply with the requirements set out in this chapter.

26 (c) The commissioner may establish regions, districts, or other  
27 subdivisions of forest land in the state in which different regu-  
28 lations apply to reflect varying conditions in the state, or to facil-  
29 itate administration. In adopting regulations, the commissioner shall

1 make appropriate distinctions between public and private land.

2 (d) The commissioner shall adopt only those regulations neces-  
3 sary to accomplish the purposes of this chapter, and shall avoid those  
4 that increase operation costs without yielding significant benefits to  
5 public resources.

6 \* Sec. 15. AS 41.17 is amended by adding new sections to read:

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

11 (b) A forest landowner may not conduct or approve timber clear-  
12 ing activities that create conditions fostering outbreaks of  
13 infestation or infection that threaten forest resources on forest  
14 lands belonging to another person. If the commissioner finds, after  
15 notice and hearing, that there has been a violation of this sub-  
16 section, the commissioner may

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

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

24 (c) If a forest landowner does not comply with a final order of  
25 the commissioner under (b)(1) or (b)(2) of this section, the commis-  
26 sioner may enter onto the land and undertake the actions so ordered  
27 and the landowner is liable for the cost of the actions after delivery  
28 by the commissioner of an itemized statement of expenses incurred.

29 (d) The commissioner may undertake surveys and appraisals to

1 obtain data on regional insect infestations and disease conditions.  
2 Upon a determination that there exists an area that is infested with  
3 forest insects or infected with diseases injurious to forest resources  
4 and that the infestation or infection threatens the forest land or  
5 timber of adjacent owners, the commissioner may establish and set the  
6 boundaries of an infestation or infection zone. The commissioner may  
7 enter into agreements with any owner and with any governmental agency  
8 for the purpose of controlling or suppressing infestation or infection  
9 within the zone. Upon a determination by the commissioner that insect  
10 and disease control work within the zone is no longer necessary or  
11 feasible, the commissioner shall terminate the zone.

12 Sec. 41.17.083. CLEARING OF FOREST LAND FOR NON-TIMBER PURPOSES.  
13 A state agency, municipality, or public utility shall, before approv-  
14 ing or conducting clearing of forest land for purposes other than  
15 timber harvest, determine whether the timber to be removed has signif-  
16 icant salvage value. If the timber has significant salvage value, the  
17 agency or utility shall salvage the timber as part of the clearing  
18 process.

19 \* Sec. 16. AS 41.17 is amended by adding a new section to read:

20 Sec. 41.17.087. VARIATION FROM REQUIREMENTS. A forest land-  
21 owner, timber owner, or operator may propose for a particular activity  
22 a variation from a requirement imposed by this chapter or the regu-  
23 lations adopted under this chapter. Consistent with AS 41.17.098, if  
24 the state forester determines that the harm intended to be avoided by  
25 the requirement is not likely to occur because of site-specific cir-  
26 cumstances relating to the particular activity and is not likely to  
27 cause significant harm to fish habitat or water quality, the state  
28 forester shall agree to the proposed variation. If the state forester  
29 does not agree to the proposed variation, a forest landowner, timber

1 owner, or operator may appeal to the commissioner. The appellants  
2 shall conform to the requirement during the pendency of the appeal.

3 \* Sec. 17. AS 41.17.090 is repealed and reenacted to read:

4 Sec. 41.17.090. NOTIFICATION OF PLANS TO HARVEST TIMBER. (a)  
5 Operations on forest land shall be reviewed under this section for  
6 consistency with the policies and provisions of this chapter and  
7 regulations adopted under this chapter.

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

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

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

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

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

27 (d) Within five days after receipt of a plan of operations under  
28 (c) of this section, the state forester shall distribute the informa-  
29 tion received under (c) of this section to affected state agencies and

1 coastal districts, and shall distribute the information received under  
2 (c)(1) of this section to all members of the public who have asked to  
3 receive copies of notifications for the affected area.

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

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

1 unless the state forester has issued a stop-work order under AS 41.-  
2 17.138.

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

10 (h) Information and paperwork required of the operator under  
11 this section shall be limited to that necessary to accomplish the  
12 purposes of this section.

13 (i) An operator shall renew a plan of operations annually and  
14 the state forester shall review any decision under AS 41.17.117 with  
15 respect to that plan of operations during each renewal.

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

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

21 (b) In any review or implementation of a plan of operations  
22 under AS 41.17.090 and in any decision on a proposed variation from  
23 requirements under AS 41.17.087, the commissioner shall consider the  
24 comments of all affected state agencies, and, where applicable,  
25 coastal districts.

26 (c) The commissioner shall give due deference to the Department  
27 of Environmental Conservation in decisions concerning water quality.  
28 The commissioner of environmental conservation retains the authority  
29 to adopt nonpoint source pollution regulations for activities subject

1 to this chapter to the extent that regulations are not adopted by the  
2 commissioner of natural resources and approved by the commissioner of  
3 environmental conservation under this chapter. The commissioner of  
4 environmental conservation retains the authority to withdraw approval  
5 of regulations adopted by the commissioner under this chapter.

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

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

25 (f) Any agency may require an elevation of a decision to a  
26 higher level of the agencies.

27 \* Sec. 19. AS 41.17 is amended by adding new sections to read:

28 ARTICLE 1A. RIPARIAN MANAGEMENT.

29 Sec. 41.17.115. INTENT FOR RIPARIAN AREAS. The commissioner

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

14 Sec. 41.17.116. RIPARIAN STANDARDS FOR PRIVATE LAND. (a)  
15 Except as provided in AS 41.17.117, private forest land adjacent to  
16 the following types of waters as defined in AS 41.17.950 and located  
17 in the coastal spruce-hemlock forest is subject to the riparian pro-  
18 tection standards set out in this section:

19 (1) Along all Type A waterbodies,

20 (A) harvest of timber may not be undertaken within 15  
21 meters of the waterbody;

22 (B) no more than 50 percent of the timber, calculated  
23 by basal area, located between 15 and 30 meters from the  
24 waterbody may be harvested; and

25 (C) the remaining 50 percent of the timber located  
26 between 15 and 30 meters from the waterbody must be alive, with-  
27 out significant damage from harvest operations, and generally  
28 representative of the original size distribution of the stand in  
29 order to provide for sufficient large woody debris and other fish

1 habitat components; to the extent consistent with habitat needs,  
2 the operator may harvest high value trees and retain lower value  
3 trees;

4 (D) the commissioner may agree to a modification of  
5 the timber retention requirements in (A) - (C) of this paragraph  
6 if adequate protection remains for the fish habitat and compa-  
7 rably sized substitute timber is retained in another area; it is  
8 preferable, but not mandatory, that the substitute timber be left  
9 in another part of the riparian area.

10 (2) Along all Type B waterbodies, timber harvest operations  
11 within 30 meters of the stream or to the slope-break, whichever area  
12 is smaller, must be conducted in compliance with slope stability  
13 standards set out in regulations adopted under this chapter.

14 (3) Along all Type C waterbodies, timber harvest operations  
15 in the area within 15 meters of the stream or to the slope-break,  
16 whichever area is smaller, must be conducted in compliance with slope  
17 stability standards set forth in regulations adopted under this chap-  
18 ter.

19 (b) The commissioner shall adopt regulations for private land  
20 outside of the coastal spruce-hemlock forest that designate the  
21 riparian areas to be protected and the restrictions on timber harvest-  
22 ing operations within those areas which are necessary for their pro-  
23 tection in accordance with the management goals set out in AS 41.-  
24 17.115. Until regulations are adopted, the standards set out in  
25 AS 41.17.119 apply.

26 Sec. 41.17.117. PROCEDURES FOR PRIVATE LAND IN COASTAL FORESTS.

27 (a) If a plan of operations required by AS 41.17.090 includes private  
28 land in the coastal spruce-hemlock forest that is located within 30  
29 meters of an anadromous fish waterbody, the plan of operations must

1 identify

2 (1) a planning area consisting of all contiguous land  
3 within an entire drainage, subdrainage within a large drainage, or  
4 major reach of a larger river, that is owned by a person or a group of  
5 persons under common control; and

6 (2) an operating area that includes all current and future  
7 harvest areas within the planning area and all trees that could be cut  
8 within the harvest areas using conventional logging methods regardless  
9 of whether the application of the riparian standards set out in  
10 AS 41.17.116(a) would preclude cutting.

11 (b) Once an operating area is designated, timber located in a  
12 new operating area within the planning area may not be harvested until  
13 the next rotation period, except as provided in (d) of this section.

14 (c) A plan of operations submitted under AS 41.17.090(c) may  
15 include timber retention requirements different from those set out in  
16 AS 41.17.116(a)(1) only if the timber to be retained in the riparian  
17 area pursuant to AS 41.17.116(a)(1), the timber made inoperable by  
18 application of AS 41.17.116(a)(1), and the timber left in addition to  
19 requirements of AS 41.17.116(a) to protect fish habitat under an  
20 agreement with the state forester, would result in retention of more  
21 than five percent of the basal area in the operating area. If the  
22 state forester determines that those three factors would result in  
23 retention of more than five percent of the basal area in the operating  
24 area, the state forester shall, within the period specified in  
25 AS 41.17.090(e) for reviewing the plan, (1) issue a written decision  
26 designating an alternate site specific riparian protection plan that  
27 does not require the retention of more than five percent of the basal  
28 area and that does not require the retention of timber unnecessary for  
29 adequate protection of fish habitat and water quality; (2) agree to

1 the timber retention proposed in the plan of operations; or (3)  
2 tender compensation for the timber in excess of five percent of the  
3 basal area at the current market value of the trees to be harvested  
4 from the operating area. The operator may appeal to the commissioner  
5 from a decision designating an alternate site specific riparian pro-  
6 tection plan. If different timber retention requirements under this  
7 subsection are not included in the plan of operations, the operator  
8 shall comply with the timber retention requirements of  
9 AS 41.17.116(a)(1).

10 (d) During the same rotation period, an operator may harvest  
11 timber from a new operating area within a planning area designated in  
12 (a) of this section, regardless of any changes in ownership, only as  
13 authorized as follows:

14 (1) If the riparian standards of AS 41.17.116(a) have been  
15 met in the original operating area without compensation under (c)(3)  
16 of this section, the operator may harvest timber from the new operat-  
17 ing area. Timber harvest in the new operating area must comply with  
18 AS 41.17.116(a).

19 (2) If the riparian standards of AS 41.17.116(a) have not  
20 been met in the original operating area or if compensation has been  
21 provided under (c)(3) of this section, the operator may harvest timber  
22 from a new operating area only if the operator complies with addition-  
23 al timber retention requirements adopted by the commissioner in regu-  
24 lation. In the regulations, the commissioner shall require that  
25 between seven and one-half percent and ten percent of the basal area  
26 of the new operating area must be dedicated to habitat protection or  
27 enhancement.

28 Sec. 41.17.118. RIPARIAN STANDARDS FOR STATE LAND. The riparian  
29 standards for state land are as follows:

1           (1) On state forest land managed by the department that is  
2 located north of the Alaska Range, harvest of timber may not be under-  
3 taken within 30 meters immediately adjacent to an anadromous or high  
4 value resident fish waterbody unless the division determines that  
5 adequate protection remains for the fish habitat. On state forest  
6 land managed by the department that is located south of the Alaska  
7 Range, harvest of timber may not be undertaken within 30 meters imme-  
8 diately adjacent to an anadromous or high value resident fish  
9 waterbody; between 30 and 90 meters from the waterbody, any timber  
10 harvest must be consistent with the maintenance of important fish and  
11 wildlife habitat.

12           (2) The commissioner may impose additional riparian pro-  
13 tection standards for timber harvest operations through the adoption  
14 of land use plans under AS 38.04.065 and forest management plans and  
15 reports under AS 38.05.112 and AS 41.17.230.

16           (3) Nothing in this section alters the terms of any exist-  
17 ing contract or the outcome of any pending litigation. An amendment  
18 to or renewal of an existing state timber contract must be consistent  
19 with this chapter and AS 38.05, as amended by this Act.

20           Sec. 41.17.119. RIPARIAN STANDARDS FOR OTHER PUBLIC LAND. On  
21 other public land, timber harvest operations on forest land within 30  
22 meters from the shore or bank of any anadromous or high value resident  
23 fish waterbody must be sited and designed primarily to protect fish  
24 habitat and water quality.

25 \* Sec. 20. AS 41.17 is amended by adding a new section to read:

26           Sec. 41.17.125. ENFORCEMENT COORDINATION. All state agencies  
27 with enforcement authority over activities subject to regulation under  
28 this chapter shall establish a uniform enforcement strategy that  
29 avoids duplication and inconsistencies. All participating agencies

1 shall agree to and comply with the contents of that strategy. In  
2 developing and implementing the uniform strategy, each state agency  
3 retains its authority to determine the appropriate remedies under the  
4 statutes and regulations it administers.

5 \* Sec. 21. AS 41.17.131 is repealed and reenacted to read:

6 Sec. 41.17.131. PENALTIES FOR VIOLATIONS. (a) An operator,  
7 forest landowner, or timber owner who violates or permits a violation  
8 of this chapter, a regulation adopted under this chapter, a directive  
9 issued under AS 41.17.136, or a stop-work order issued under AS 41.-  
10 17.138 is liable, after notice and hearing, for a civil fine in an  
11 amount not to exceed \$10,000 to be assessed by the commissioner. In  
12 determining the amount of civil fine, the commissioner shall consider:

13 (1) the character and degree of injury to forest resources  
14 and values;

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

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

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

21 (b) An operator, forest landowner, or timber owner who, with  
22 criminal negligence, violates or permits a violation of this chapter,  
23 a regulation adopted under this chapter, a directive issued under  
24 AS 41.17.136, or a stop-work order issued under AS 41.17.138 is guilty  
25 of a class A misdemeanor. As used in this section, "criminal negli-  
26 gence" has the meaning given in AS 11.81.900(a).

27 (c) Each day on which a continuing violation occurs constitutes  
28 a separate violation for purposes of (a) and (b) of this section.

29 (d) If a respondent violates a directive issued under

1 AS 41.17.136 or a stop-work order issued under AS 41.17.138, the  
2 attorney general, at the request of the commissioner, may seek an  
3 injunction requiring the respondent to suspend all or part of the  
4 operations until the respondent complies with the directive or  
5 stop-work order, and requiring the respondent to repair or correct any  
6 damage resulting from the violation.

7 (e) If a respondent violates a directive issued under AS 41.-  
8 17.136 which requires the respondent to repair or correct damage, the  
9 commissioner may proceed to repair or correct the damage using state  
10 agency employees or contractors, and the respondent is liable for the  
11 cost of the repair after delivery by the commissioner of an itemized  
12 statement of expenses incurred.

13 \* Sec. 22. AS 41.17 is amended by adding a new section to read:

14 Sec. 41.17.136. DIRECTIVES. (a) Upon a determination that a  
15 planned or ongoing activity violates or would violate this chapter or  
16 a regulation adopted under it, the state forester shall notify the  
17 respondent in writing and direct the respondent to halt or avoid the  
18 violation, or to repair or correct any damage resulting from the  
19 violation. The written notification must include a summary of the  
20 basis for the directive.

21 (b) The respondent either may comply with the directive or may  
22 request a hearing under AS 41.17.139 within 15 days. If a hearing is  
23 requested, the respondent may continue with the activity unless the  
24 state forester also issues a stop-work order under AS 41.17.138. If  
25 the directive is affirmed by the hearing officer, the respondent shall  
26 cease the activity unless a stay is issued under AS 41.17.143(c) or by  
27 the superior court.

28 \* Sec. 23. AS 41.17 is amended by adding a new section to read:

29 Sec. 41.17.138. STOP-WORK ORDERS. (a) Upon a determination

1 that a violation of this chapter or a regulation adopted under it is  
2 occurring or is likely to occur and that significant harm to public  
3 resources is likely to occur if work is not halted before a hearing  
4 can be held, the state forester may issue a stop-work order requiring  
5 the respondent to stop the violation or otherwise halt the threatened  
6 harm. A stop-work order must be in writing and must state the facts  
7 on which it is based.

8 (b) The state forester shall immediately refer the matter to a  
9 hearing officer for determination of the validity of the stop-work  
10 order under AS 41.17.139. The hearing officer shall consider any  
11 arguments and evidence presented by the respondent within five work-  
12 days after receipt of the stop-work order and shall then make an  
13 immediate decision sustaining or reversing the stop-work order. The  
14 stop-work order is of no further effect if it is not sustained by the  
15 hearing officer within the five-workday period. A stop-work order may  
16 be sustained only upon the same grounds on which it was originally  
17 issued.

18 \* Sec. 24. AS 41.17.139 is amended to read:

19 Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise  
20 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject  
21 to the Administrative Procedure Act (AS 44.62). A hearing under  
22 AS 41.17.136 or AS 41.17.138 [AS 41.17.131 - 41.17.139] shall be held  
23 before the state forester, a regional forester, or another employee of  
24 the division with similar qualifications [A HEARING OFFICER, APPOINTED  
25 BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF THE ALASKA BAR ASSO-  
26 CIATION WHO HAVE BEEN NOMINATED BY THE BOARD OF FORESTRY AND WHO ARE  
27 KNOWLEDGEABLE AND EXPERIENCED IN THE SUBJECT MATTER]. A hearing on an  
28 appeal under AS 41.17.087 or AS 41.17.117(c) and a hearing under  
29 AS 41.17.082(b) shall be held before the commissioner or the

1 commissioner's designee. A person who has assisted in the preparation  
2 of the division's [STATE'S] case [OR WHO IS A STATE EMPLOYEE] is  
3 ineligible. Hearings are not limited by common law, statutory, or  
4 judicial rules of evidence; however, the hearing officer may admit  
5 only that evidence which appears to be reliable and trustworthy. All  
6 hearings shall be open to the public. Written or oral testimony may  
7 be submitted. A party to a hearing may make written or oral argument,  
8 secure the issuance of a subpoena under AS 44.62.430, offer testimony  
9 or other evidence, and cross-examine witnesses. The hearing officer  
10 shall endeavor, in conducting any hearing, to ensure that the respon-  
11 dent understands the proceedings and that the facts supporting the  
12 position of each party have been adequately presented. [HEARINGS  
13 SHALL BE HELD AS CLOSE AS PRACTICABLE TO THE LOCATION OF THE ALLEGED  
14 VIOLATION. TESTIMONY GIVEN AT THE HEARING SHALL BE RECORDED.]

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

18 (1) the hearing shall be a nonadversary proceeding, with  
19 the hearing officer fully and impartially representing the interests  
20 of the state and the respondent;

21 (2) the hearing officer shall thoroughly investigate the  
22 facts and circumstances relating to the alleged violation, including  
23 taking testimony from appropriate persons, collecting and examining  
24 documents and other evidence, and performing other actions consistent  
25 with due process of law; and

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

28 (c) The hearing officer shall select the location of the hear-  
29 ing, giving consideration to the convenience of the parties and

1 witnesses. The hearing officer may permit witnesses to testify  
2 through teleconferencing.

3 \* Sec. 25. AS 41.17.143 is repealed and reenacted to read:

4 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by  
5 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-  
6 sioner under AS 41.17.082(b), 41.17.087, 41.17.117(c), or 41.17.131(a)  
7 constitutes final agency action which may be appealed to the superior  
8 court within 30 days after it is issued. Judicial review shall be as  
9 provided in AS 44.62.560 and AS 44.62.570.

10 (b) An operator, forest landowner, or timber owner may request  
11 the commissioner to reconsider the decision of a hearing officer  
12 within 30 days after it is issued. Reconsideration is not a precondi-  
13 tion of judicial review under (a) of this section. If reconsideration  
14 is requested, the final agency action for purposes of judicial review  
15 is a decision by the commissioner to affirm, modify, or reverse the  
16 hearing officer or to deny the request for reconsideration.

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

20 (d) No person, except the aggrieved forest landowner, timber  
21 owner, or operator, may maintain any administrative or judicial ap-  
22 peal, or other action or proceeding of any kind, challenging any  
23 decision or failure to act by the department with respect to the  
24 compliance of a timber operation on private forest land with this  
25 chapter or a regulation, standard, directive, or order issued under  
26 this chapter. Nothing in this subsection prohibits the maintenance of  
27 an action

28 (1) for an alleged violation of a constitutional right; or  
29 (2) against the department regarding any regulation,

1 standard, or systematic course of conduct that does not involve a  
2 challenge to, or attempt to enjoin, stay, modify, or otherwise affect  
3 a timber operation on private forest land subject to this chapter.

4 \* Sec. 26. AS 41.17.230(f) is repealed and reenacted to read:

5 (f) A management plan prepared by the commissioner shall con-  
6 sider and permit the uses described in AS 38.05.112(c). If the com-  
7 missioner finds that a permitted use is incompatible with one or more  
8 other uses in a portion of a state forest, the commissioner shall  
9 affirmatively state in the management plan that finding of incom-  
10 patibility for the specific area where the incompatibility is antic-  
11 ipated to exist and the time period when the incompatibility is antic-  
12 ipated to exist, together with the reasons for each finding.

13 \* Sec. 27. AS 41.17.900(b) is repealed and reenacted to read:

14 (b) The degree of resource protection on federal land shall be  
15 no less than that provided for by this chapter for state land. How-  
16 ever, the specific provisions of this chapter and its implementing  
17 regulations are not applicable to federal land either directly or for  
18 purposes of compliance with the Coastal Zone Management Act.

19 \* Sec. 28. AS 41.17.900 is amended by adding a new subsection to read:

20 (e) Nothing in this chapter diminishes the rights, privileges,  
21 or immunities of Alaska Natives or Alaska Native corporations with  
22 respect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native  
23 Claims Settlement Act), or to alter or diminish the authority of the  
24 Department of Fish and Game under AS 16 or of the Department of En-  
25 vironmental Conservation under AS 46 or of any state agency under  
26 other laws.

27 \* Sec. 29. AS 41.17 is amended by adding a new section to read:

28 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The  
29 Department of Fish and Game and the commissioner shall work

1 cooperatively with private forest landowners and timber owners to  
2 protect, maintain, and enhance wildlife habitat to the maximum extent  
3 practicable, consistent with the interests of the owners in the use of  
4 their timber resources.

5 (b) The Department of Fish and Game shall provide educational  
6 and technical assistance and extension services to owners of private  
7 forest land or timber to assist in identifying important wildlife  
8 habitat and to assist in designing voluntary management techniques  
9 that minimize adverse effects on wildlife habitat.

10 (c) The Department of Fish and Game and the landowner shall  
11 cooperate in identifying areas of important wildlife habitat on pri-  
12 vate forest land and in developing methods for their protection.  
13 Methods of protection for wildlife habitat may include, with the  
14 agreement of the landowner, the purchase of fee title, purchase of  
15 conservation easements, and land exchanges.

16 (d) Nothing in this section alters or diminishes the state's  
17 authority and responsibility over wildlife on private land.

18 \* Sec. 30. AS 41.17.950 is amended to read:

19 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the con-  
20 text otherwise requires,

21 (1) "board" means the Board of Forestry established in  
22 AS 41.17.041;

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

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

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

29 (C) having a foreseeable adverse impact on the welfare

1 of renewable resources, as determined by the commissioner of  
2 environmental conservation;

3 (3) [(5)] "division" means the division of forestry;

4 (4) [(6)] "forest land" means land stocked or having been  
5 stocked with forest trees of any size and not currently developed for  
6 nonforest use, regardless of whether presently available or accessible  
7 for commercial purposes, and includes any such land under state,  
8 municipal, or private ownership;

9 (5) [(7)] "forest landowner" means a person who owns forest  
10 land, but does not include the owner of mineral or subsurface rights  
11 only;

12 (6) [(8)] "multiple use" means

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

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

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

28 (7) [(9)] "operations" means timber harvesting or activ-  
29 ities associated with timber harvesting or forest development unless

1       exempted under AS 41.17.900(a) - (c);

2               (8) [(10)] "operator" means a person who is engaged in  
3 timber harvesting or activities associated with timber harvesting or  
4 forest development, or who contracts with others to conduct operations  
5 for that person, except a person who is engaged in an operation as an  
6 employee with wages or piecework as the sole compensation;

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

10              (10) [(11)] "person" has the meaning given in AS 01.10.060  
11 and also includes a joint venture;

12              (11) "riparian area" means:

13                      (A) on private land in the coastal spruce-hemlock  
14 forest, the areas specified in AS 41.17.116(a);

15                      (B) on private land outside the coastal spruce-hemlock  
16 forest, the areas specified in regulations adopted by the commis-  
17 sioner under AS 41.17.116(b);

18                      (C) on state land managed by the department and on  
19 other public land, the area 30 meters from the shore or bank or  
20 any anadromous or high value resident fish waterbody;

21              (12) "significant impairment of the productivity of the land  
22 and water" means any activity that [WHICH] may foreseeably result in  
23 prolonged or substantial damage to renewable resources or prolonged or  
24 substantial reduction of the continuing capability of the land or  
25 water to produce renewable resources at their natural or historic  
26 levels;

27              (13) "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 (14) "state forest" means an area designated by the legis-  
3 lature and [WHICH IS] 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 (15) "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; [AND]

13 (16) "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 (17) "Type A waterbodies" means the following anadromous  
17 fish waters:

18 (A) streams or rivers of any size having an average  
19 gradient of eight percent or less, banks held in place by vege-  
20 tation, channels that are not incised, and a substrate composed  
21 of rubble, gravel, sand or silt;

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

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

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

1           (19) "Type C waterbodies" means streams that are tributary  
2           to anadromous waters that are incised greater than 28 degrees, have an  
3           average gradient of greater than eight percent, are narrower than 20  
4           feet between ordinary high water marks, have a substrate of rubble and  
5           bedrock, and are mountain slope streams at the upper end of the  
6           watershed.

7           \* Sec. 31. 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 1991. This period is intended to allow for further re-  
15 search, and to gain experience implementing the Act and its regulations.  
16 It is the intent of this legislature that a representative group be con-  
17 vened for the review, or that it be conducted by the Board of Forestry. In  
18 either event, it is the legislature's intent that the review occur with  
19 full public input and participation, and its recommendations be forwarded  
20 for legislative review, and for any needed changes in legislation. No  
21 later than January 1, 1992, the Board of Forestry, the Department of Natu-  
22 ral Resources, the Department of Environmental Conservation, and the De-  
23 partment of Fish and Game shall submit along with the reports required by  
24 AS 41.17.047(d), any proposed amendments to this chapter. The legislature  
25 shall hold hearings to consider these or any other amendments and shall  
26 take whatever action is required to accomplish the intent and purposes of  
27 this Act.

28           \* Sec. 32. AS 41.17.133, 41.17.135, 41.17.137, 41.17.141, 41.17.230(e),  
29 and 41.17.900(d) are repealed.

1 \* Sec. 33. This Act takes effect January 1, 1990.