

H B 613

HOUSE RESOURCES COMMITTEE WORK SHEET

HB 613 2-11-74  
BILL NO. DATE PAGE 5  
310

Anadromous  
TITLE Water Impact + SPONSOR M. Miller FURTHER REFERRALS  
Report

This Bill If Enacted Would:

Present - Parker  
Gardner  
McGill  
Union  
J. Miller  
Lakewood  
Harty  
Elwood  
Huber  
Randolph

When Bill Considered by RA Committee: 2-26-74

Action Taken by Committee:

Amendments: Amended to Provide That: Line 22

Witnesses Testifying Before Committee: (summary of testimony)

Mike Miller - allow citizen participation - public hasn't had anything to do with what happens to the streams

Jim King  
Director of Sport Fish  
Regulations - 1968 restricted to area within 50 mi of coast

Alaska Miners Association  
Carl F. Heflinger  
Chairman Water Use Committee  
409 Clara Street  
Fairbanks, Alaska 99701

March 10, 1974

Honorable Joseph E. McGill  
Chairman Resource Committee  
Alaska State House of Representatives  
Juneau, Alaska 99801

Re: House Bill No. 613

Dear Sir:

I am writing to let you know how the Miners feel about H.B. 613 entitled: "An act requiring anadromous water impact reports." The bill amends AS 46.05.870 so as to give the Department of Fish and Game absolute power over all waters of the State, if they see fit, merely by the recommendations of field biologists or enforcement officers. We are opposed to H.B. 613 and recommend the State Legislators consider it carefully before acting on it. Please find the enclosed copy of H.B. 613 with our comments. A number of our particular objections are as follows:

Section 16.05.870

Line 12 - They want to substitute the words "used by" instead of (important). This means they will no longer be obliged to consider the relative economic values of any project other than fish, i.e., one fish could conceivably hold up a \$100,000,000 project that could give employment to 2,000 people.

Lines 13 through 25 - These lines to be removed from the present law. This would leave the Department free to use the whole State for the fish, without any restriction as to place or time. Hallelujah! The Miners will never know where they are if this passes.

Part (b) - Page 2, Line 2 - They would insert the words "activity or action which may have a significant effect on specified lake, river, stream, or part of it." This means everybody, home builders, sport fishermen, scuba divers, all forms of activity that may (but not shall) effect the fish. This means that if the Fish & Game even think you might be harmful to the fish, they can stop you from proceeding.

Page 2

Joseph E. McGill  
Re: H.B. No. 613  
March 10, 1974

Part (c) - This section forces one to submit plans and specs to Fish & Game. This already is done through the Water Section of Natural Resources, who have the overall proprietary management function, while Fish & Game have only habitat management function.

Part (d) & (e) - Constitute an environmental impact statement (few people can afford this).

Part (f) - Environment is not Fish & Game's responsibility.

Section 5, AS 16.05

New section. This refers to abatement of pollution and is already law administered by Department of Environmental Conservation. Standards are set by Environmental Conservation and not by Fish & Game.

Section 6, AS 46.15 (new section added)

46.15.020 - Quote page 5, line 11: "However, rights relating to those waters may be determined under this chapter when not in conflict with AS 16.05.870 - 16.05.900." AS 46.15 relates to the rights of people to appropriate water, therefore, the rights to people. If there is a conflict, the rights of people to appropriate water is denied. Fish are more important than people!?

In conclusion, the Alaska Miners recognize that the State needs adequate laws to protect people and industry. However, we must not have vague laws that overlap other laws, give clear direction to only one item or industry, and leave laws pertaining to other industries grey and vague. This type of lawmaking will stop progress in the State and cause distress to the people.

Respectfully submitted,

ALASKA MINERS ASSOCIATION

*CF Heflinger*

Carl F. Heflinger  
Water Use Chairman

CFH/mh

Enclosure

cc: All State Legislators

pet club

Introduced: 2/11/74  
Referred: Resources and  
Judiciary

Miller

BY M. MILLER

1 IN THE HOUSE

2 HOUSE BILL NO. 613

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE -- SECOND SESSION

5 A BILL

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

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

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

9 Sec. 16.05.870. ANADROMOUS WATER IMPACT REPORT. [PROTECTION OF  
 10 FISH AND GAME.] (a) The commissioner shall, in accordance with the  
 11 Administrative Procedure Act (AS 44.62) specify the various rivers, lakes,  
 12 and streams or parts of them that are used by <sup>VS</sup> important for the spawning  
 13 or migration of] anadromous fish for spawning and migration. [BEFORE  
 14 DECEMBER 31, 1968, THE SPECIFICATION MAY BE MADE BY DESIGNATING AREAS  
 15 WITHIN WHICH ALL RIVERS, LAKES, AND STREAMS ARE CONSIDERED IMPORTANT FOR  
 16 THE SPAWNING OR MIGRATION OF ANADROMOUS FISH; PROVIDED, THAT THE AREAS  
 17 LIE WITHIN 50 MILES OF THE COASTLINE EXTENDING FROM DIXON ENTRANCE  
 18 THROUGH FALSE PASS TO CAPE MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE  
 19 PASS. A PERSON GIVING NOTICE UNDER (b) OF THIS SECTION BEFORE DECEMBER  
 20 31, 1968, MAY, IF THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A DESIGNATED  
 21 AREA, REQUEST THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME OR NUMBER  
 22 THE PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM WITHIN THE  
 23 AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE IMPORTANT FOR THE  
 24 SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON RECEIPT OF THE REQUEST  
 25 THE COMMISSIONER SHALL PROMPTLY MAKE THE DESIGNATION.]

26 (b) If a person or governmental agency desires to construct a  
 27 hydraulic project, or use, divert, obstruct, pollute, or change the  
 28 natural flow or bed of a specified river, lake, or stream, or to use  
 29 wheeled, tracked, or excavating equipment or log-dragging equipment in

ed  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29

NOTE  
 Molly Varden  
 or  
 salmon  
 institutes  
 e but  
 may not  
 important.  
 inside the  
 ce o  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29

used

4

When?  
 Take this  
 out  
 ?  
 out  
 ?

Among other things, roads, logging  
+ mining etc. this also includes homes!  
See memo Dec 22, 1972

1 the bed of a specified river, lake, or stream, or in any other way (con-  
2 struct a project or engage in an activity or action) which may have a  
3 significant effect on a specified river, lake, stream, or part of it,  
4 the person or governmental agency shall notify the commissioner of this  
5 intention before the beginning of the construction, [OR] use, activity,  
6 or action.

7 (c) The commissioner shall acknowledge receipt of the notice by  
8 return air mail. The [If the] commissioner or his designee [DETERMINES  
9 TO DO SO, HE] shall, in the letter of acknowledgement, require the per-  
10 son or governmental agency to submit to him full plans and specifica-  
11 tions of the proposed project, activity or action [CONSTRUCTION OR WORK],  
12 complete plans and specifications for the proper protection of fish  
13 [AND GAME] in connection with the project, activity or action [CONSTRUC-  
14 TION OR WORK, OR IN CONNECTION WITH THE USE], and the approximate date  
15 the project, activity or action [CONSTRUCTION, WORK, OR USE] will begin,  
16 and shall require the person or governmental agency to obtain written  
17 approval from him as to the sufficiency of the plans or specifications  
18 before the proposed project, activity or action [CONSTRUCTION OR USE]  
19 is begun.

Please note that only habitat management is a function  
of F&G. Overall - proprietary management is D&NR's responsibility

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

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

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

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

NOTE: This is  
not will or shall  
but may

who says  
for it? where  
do the people  
come from to  
accomplish same?

Paragraphs (d) and (e) effectively constitute an  
Environmental Impact statement. Can you afford it?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

- (3) mitigation measures available to minimize the impact of the project, activity, or action;
- (4) alternatives to the proposed project, activity or action;
- (5) the specific relationship between the local short-term use of the specified water, and the maintenance and enhancement of its long-term productivity; and *who says so?*
- (6) the boundaries of the area which may be affected by the proposed activity.

*what are significant adverse impacts? note the and*

(c) If the commissioner, after reviewing the report, determines that the project, activity or action will have a significant adverse impact on the river, lake, or stream and that it is likely to disturb or destroy the spawning or migration of anadromous fish, he shall refuse to approve it. However, he may approve it if all of the following apply:

- (1) there is no more prudent and feasible alternative to the project, activity or action;
- (2) the project, activity or action will be undertaken in such a manner as to avoid or minimize its adverse effect; and
- (3) the public benefit to be derived from the project, activity or action substantially outweighs its adverse effect on the environment or resource involved.

(f) If the project, activity or action will have an adverse effect on the environment or resource involved but is approved under (c)(1) ..

(3) of this section, the commissioner may require the person or agency to take reasonable means to minimize the adverse effect, including but not limited to the construction of facilities to allow the free ingress or egress of anadromous fish into the waters during the spawning or propagation process.

\* Sec. 3. AS 16.15.880 is amended to read:

*Environment was not and is not Fish & Game's responsibility even though they may think so.*

1           Sec. 16.05.830. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER.

2     If a person or governmental agency begins construction on a work or  
3     project or use or engages in an activity or action for which notice is  
4     required by sec. 870 of this chapter without first providing plans and  
5     specifications subject to the approval of the commissioner for the pro-  
6     per protection of anadromous fish [AND GAME], and without first having  
7     obtained written approval of the commissioner as to the adequacy of  
8     the plans and specifications submitted for the protection of anadromous  
9     fish [AND GAME] he is guilty of a misdemeanor. If a person or govern-  
10    mental agency is convicted of violating secs. 870 - 895 of this chapter  
11    or continues a use, activity, action, work or project without fully  
12    complying with secs. 870 - 895 of this chapter, the use, activity,  
13    action, work or project is a public nuisance and is subject to abate-  
14    ment. The cost of restoring a specified river, lake, or stream to its  
15    original condition shall be borne by the violator and shall be in addi-  
16    tion to the penalty imposed by the court.

17    \* Sec. 4. AS 16.05.851 amended to read:

18           Sec. 16.05.851. PENALTY FOR CAUSING MATERIAL DAMAGE. If a person  
19    or governmental agency fails to notify the commissioner of any construc-  
20    tion, [OR] use, project, activity or action that causes material damage  
21    to the spawning beds or prevents or interferes with the migration of  
22    anadromous fish, or by neglect or noncompliance with plans and speci-  
23    fications required and approved by the commissioner causes material  
24    damage to the spawning beds or prevents or interferes with the migration  
25    of anadromous fish, the person or governmental agency shall be guilty of  
26    a misdemeanor.

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

28           Sec. 16.05.857. COMMON INTERFERENCE. It is unlawful for a person  
29    or governmental agency to obstruct, divert or pollute a river, lake, or

Prevention and abatement of POLLUTION  
by regulations setting standards is  
a function of Envir. Conservtn. not  
Fish and Game.

stream, or part of it, used by anadromous fish for spawning and migration, by felling trees or timber in those waters, casting, passing, throwing or dumping any tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping sawdust, plane shavings, or other waste or refuse of any kind in those waters.

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

Sec. 46.15.020. RESPONSIBILITY FOR ANADROMOUS WATERS. The authority to review and approve projects, activities, and actions affecting anadromous fish granted to the commissioner of fish and game under AS 16.05.870 - 16.05.900 is not affected by this chapter. [However, rights relating to those waters may be determined under this chapter when not in conflict with AS <sup>fish</sup> 16.05.870 - 16.05.900.]

Sec. 7. AS 16.10.010 - 16.10.050 are repealed.

46.15 relates to the rights of people to appropriate water; therefore rights to people.

→ IF there is a conflict, the right of people to appropriate water IS DENIED. Fish are more important than people!?

AMENDMENT

OFFERED IN THE HOUSE:

By: \_\_\_\_\_

To: C.S for HOUSE BILL No. 613

SENATE BILL No. \_\_\_\_\_

PAGE: 2

LINE: 22

Delete: "the department, with the assistance of any other state department it requests,"

Add: the person or government agency proposing the project

Line 24

~~PERSON "proposed" and "to include that not be limited to the following"~~

~~AND~~ Add: after "report," if in the view of the commissioner, the project or activity will have significant fisheries impact. If the person or government agency proposing to engage in activities listed in Section 1, (b) is incapable or incompetent to prepare a detailed anadromous water impact report as required in this subsection, the Department shall prepare the report with the cost in total being borne by the person or government agency making the application request.