HB 199 (FILE 1)

<TARGET><BILL>HB 199</BILL><SUBJECT>HB 199 (FILE 1)</SUBJECT><COMM>HFSH30</COMM></TARGET>

Alaska State Legislature

Leadership
Majority Whip

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Fisheries Committee
Transportation Committee

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Labor and Commerce Committee
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House Bill 199 - Sponsor Statement

HB 199 protects interests of subsistence, commercial, sport, and personal use fishermen while creating efficiency and predictability in permitting and enforcement.

House Bill 199, the "Wild Salmon Legacy Act," updates Title 16—Alaska's fish habitat protection and permitting law. This law guides how the State of Alaska permits activities and development projects that may impact wild salmon; however, the law has not been updated since Statehood.

The bill creates a balanced and efficient permitting system that protects Alaska's wild salmon runs, promotes responsible development and gives Alaskans a greater voice in major permitting decisions that impact wild salmon streams. HB 199 provides regulatory certainty for resource development companies while ensuring protection of salmon habitat.

This bill is drafted in response to a letter the Alaska Board of Fisheries sent to the Legislature in January 2017 recommending it modernize Title 16. The Board of Fisheries' action came at the request of a group of Alaskans comprised of commercial, sport, subsistence and personal use fishermen concerned about the future of the salmon they depend on.

Wild salmon are a major part of our culture, economy and identity in Alaska. Alaska is the last state with healthy populations of wild salmon and this bill protects the interests of Alaskans who rely on wild salmon for food, income and recreation."

Given the importance of Alaska's salmon fisheries, the state must ensure that related laws are balanced, predictable and fair in both protecting salmon habitat and encouraging responsible development. HB 199 will create enforceable standards, provide for public input and expand the Department of Fish and Game's authority to protect fish habitat and will safeguard Alaska's salmon fisheries into the future.

HB 199
Sectional Analysis

Section 1. Sec. 16.05.861. Penalty for violating fishway requirements.

Section 16.05.861 is a conforming amendment to reflect the repeal of AS 16.05.851 that allowed an exception to the fishway requirement.

Section 2. Sec. 16.05.871. Determination of anadromous fish habitat.

Section 16.05.871 creates a rebuttable presumption that all waters in Alaska are anadromous and included in the Anadromous Waters Catalog (AWC) until proven otherwise. Under current law, each anadromous waterbody must be field sampled and then nominated to be included in the AWC. The Department of Fish and Game (ADF&G) estimates that less than 50 percent of the anadromous waters in Alaska are listed in the AWC. The AWC catalog serves as the trigger for ADF&G's authority to manage fish habitat and issue permits. The rebuttable anadromous waters presumption maintains and fills the AWC and by doing so expands ADF&G jurisdiction and authority to protect fish habitat and issue permits in all anadromous waters.

Subsection (a) maintains the requirement that anadromous waters are specified and listed in the AWC, including the waters added as a result of the presumption created in subsection (c).

Subsection (b) creates a process where ADF&G may pursue, or any person may request, a site-specific determination to verify that a waterbody is *not* anadromous fish habitat. The provision does not require ADF&G to sample all anadromous waters in Alaska. Rather, if there is a potential dispute as to whether a fish habitat permit is required because a waterbody might not be anadromous, a person may request that ADF&G make a site-specific determination and provide a written finding.

Subsection (c) establishes a rebuttable anadromous waters presumption.

Subsection (d) defines "anadromous fish habitat" to mean a naturally occurring permanent or seasonal surface water body and its adjacent riparian areas that contribute, directly or indirectly, to the spawning, rearing, migration, or overwintering of anadromous fish.

Section 3. Sec. 16.05.873. General permit for fish and wildlife habitat protection.

Section 16.05.873 provides ADF&G with the authority to issue general permits for similar activities that pose little potential to significantly affect anadromous fish habitat. General permits can be issued on a regional or other geographic basis rather than requiring ADF&G to issue individual minor permits to each permittee. Under current law, ADF&G issues general permits for activities like stream crossings for light vehicles (i.e., ATV and snow machine) in areas frequented for recreational enjoyment and for geographies in rural Alaska where light vehicles are used as the main form of transportation. This section explicitly allows for that practice to continue but it also sets forth a public process so ADF&G can collect public input and create general permits to address regional concerns and needs.

Subsection (a) establishes five factors that must be met before an activity can be covered under a general permit;

Subsection (b) provides for public notice and comment before a general permit is issued. It also allows for a public hearing if requested and requires the renewal of general permits every 5 years;

Subsection (c) describes how individuals get authority to conduct an activity covered by a general permit . It requires ADF&G to approve or deny an authorization within 5 days and provide authorization through electronic means. Authorizations include all the conditions and stipulations required under the general permit to avoid adverse effects to fish and wildlife habitat;

Subsection (d) gives the commissioner authority to modify or rescind a general permit if the commissioner no longer determines that the general permit protects fish and wildlife habitat. If a general permit is changed or rescinded the commissioner must provide public notice and provide at least 30 days for public comment;

Subsection (e) provides additional details for public notice and comment for general permitting.

Section 3. Sec. 16.05.875. Anadromous fish habitat permit.

Section 16.05.875 creates the requirement that a fish habitat permit must be obtained before conducting activities that may impact anadromous fish habitat. The section creates a two tiered permit system – minor and major permits – based on the level of potential impact the activity may have on anadromous fish habitat. The minor permit process is streamlined to process applications quickly for activities that, with appropriate conditions and mitigation requirements, will not significantly adversely affect fish habitat. Conversely, the major permit process applies if the activity has the potential to significantly adversely affect anadromous fish habitat and the application requires more scrutiny. This section also requires public notice of minor permits and public notice and an opportunity to comment on major permits. The current law does not provide any public process.

Subsection (a) establishes that a fish habitat permit is required before proceeding with an activity that may "use, divert, obstruct, pollute or otherwise alter anadromous fish habitat." This preserves language from the current statute to avoid confusion about the types of activities that require a permit under the new permitting scheme. *See* AS 16.05.871(b).

Subsection (b) requires an applicant to complete an application and provide all necessary information that the Department of Fish and Game deems necessary to assess the proposed activity's effects on fish and wildlife habitat, the scope and duration of the activity and planned mitigation measures. The monetary burden to provide the information is shifted from ADF&G to the applicant.

Subsection (c) requires the commissioner to review a completed application accompanied by the required fees and make a determination about the proposed activity's effects on anadromous fish habitat to inform whether the application will be processed as a minor or major permit.

Subsection (d) establishes the minor permit classification for applications that will not significantly adversely affect anadromous fish habitat.

Subsection (e) establishes the major permit classification for applications that have the potential to significantly adversely affect anadromous fish habitat.

Subsection (f) requires public notice for both major and minor permit applications. A major permit determination also provides 30 days for public comment of the determination. The minor permit determination is streamlined to provide a permit at the same time that a permit determination is made.

Subsection (g) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

Section 3. Sec. 16.05.877. Significant adverse effects.

While most permit applications can be processed as minor permits, this section identifies criteria used to determine if the level of potential adverse effects to fish habitat could be significant, requiring the application to be processed as a major permit.

Subsection (a) sets out the factors for the commissioner to apply in determining whether a proposed activity has the potential to significantly adversely affect anadromous fish habitat.

Subsection (b) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter

Section 4. Sec. 16.05.881. Construction without approval prohibited.

Section 16.05.881 is amended to make reference to the new two-tiered permitting scheme and retain the requirement that a person or government entity can be found guilty of a misdemeanor for failing to comply with this chapter.

Section 5. Sec. 16.05.883. Minor anadromous fish habitat permit.

Section 16.05.883 establishes the commissioner's authority to issue a minor permit. The commissioner must give notice of the decision to issue a minor permit. The minor permit must include any permit conditions and mitigation measures necessary to protect fish habitat.

Section 5. Sec. 16.05.885. Major anadromous fish habitat permit.

Section 16.05.885 establishes the requirements for the major permit process. The major permit process under Sec. 16.05.885 provides for more scrutiny of proposed activities that have the potential to significantly adversely affect anadromous fish habitat. It requires the commissioner to prepare a fish habitat permit assessment that details the activity, the potential effects, possible alternatives or modification to the activity, proposed permit conditions, and the amount of bonding needed to perform required mitigation. This process allows the commissioner to gather the kind of information, at the applicant's expense, that can help inform the types of mitigation requirements and permit conditions that are necessary to protect fish habitat. It also provides opportunities for public involvement through notice and a public comment period on the draft assessment. The current law does not provide for any public notice or opportunity to participate in the process.

Subsection (a) requires the commissioner to prepare a draft anadromous fish habitat permit assessment and identifies the information that must be included in the assessment to help inform the decision-making process.

Subsection (b) shifts the administrative cost of preparing the assessment and the cost of collecting the information requested by the commissioner to the applicant.

Subsection (c) provides for public notice and an opportunity for the public to comment on the draft assessment.

Subsection (d) allows a major permit to be issued when significant adverse effects are minimized using permit conditions and mitigation measures if the habitat effects are not permanent and can be recovered or restored in a reasonable amount of time.

Subsection (e) establishes how the commissioner determines whether the proposed activity is likely to cause substantial damage to anadromous fish habitat under 16.05.887(a). If the significant adverse effects cannot be prevented or minimized to protect fish habitat in accordance with this chapter, the commissioner may not issue the permit.

Subsection (f) provides the scientifically based factors the commissioner uses in determining if anadromous fish habitat will be recovered or restored within a reasonable time.

Subsection (g) requires the commissioner to provide public notice of and publish a final assessment and a written permit determination after reviewing public comments. The final assessment and permit must include all permit conditions and required mitigation measures.

Subsection (h) imposes conditions that the commissioner must meet, and an applicant must comply with, before issuing a permit. The commissioner must find in a written determination that public notice was provided, the permit conditions and mitigation measures prevent or minimize significant adverse effects and are mandatory and enforceable, and that the activity will not cause substantial damage to anadromous fish habitat. To receive a permit the applicant must accept all permit conditions and mitigation measures and provide a bond to cover the mitigation plan.

Subsection (i) clarifies that if a request for reconsideration of the commissioner's determination is timely received, the permit cannot be issued until the commissioner denies the request or issues a new determination.

Subsection (j) describes the bond requirements for activities that require habitat restoration or reclamation as part of the permit mitigation plan. Project applicants provide a performance bond sufficient to cover the cost to complete the mitigation plan and fully comply with the permit. The bond must be a secured bond.

Subsection (k) exempts governmental entities from the bonding requirements of the section.

Subsection (l) requires the approval of the commissioner and, if required, a new performance bond, before a permit can be transferred or assigned.

Subsection (m) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

Section 5. Sec. 16.05.887. Permit conditions and mitigation measures.

Section 16.05.887 sets forth the requirements for permit conditions and mitigation measures for permits issued under this chapter. When issuing a permit, the commissioner must prevent or minimize adverse effects to fish habitat. The commissioner must establish in order of priority permit stipulations and mitigation measures that first avoid adverse effects through siting, timing or other project design stipulations. If effects cannot be avoided, impacts must be minimized by limiting the degree, magnitude, duration or implementation of the activity. And if effects cannot be avoided then the commissioner must require that impacted fish habitat is restored with appropriate mitigation measures. The commissioner may not approve a mitigation plan that uses offsite mitigation for to compensate for onsite damage to fish habitat resulting from the activity.

Under this chapter, no permit can be issued that will cause substantial damage to fish habitat or cannot ensure the proper protection of fish and game. In addition, no permit can be issued if it relies on a mitigation plan that requires water treatment in perpetuity, replaces a wild fish population with a hatchery dependent population, or dewaters anadromous fish habitat for more than 5 years.

Subsection (a) establishes that the commissioner will require the permittee to avoid or minimize adverse effects to anadromous fish habitat. The commissioner may not permit an activity that 1) will cause substantial damage to fish habitat, 2) requires water treatment or other means of human intervention in perpetuity, 3) cannot ensure the proper protection of fish and wildlife, 4) converts a wild fish population to a hatchery dependent population, or 5) dewaters or relocates an anadromous waterbody for more than 5 years.

Subsection (b) requires the commissioner, when developing a permit, to first try to avoid adverse effects by working with the applicant on project design and by imposing siting, timing and other stipulations and conditions. If adverse effects are not avoidable, the commissioner must minimize the adverse effects by limiting the degree, magnitude, duration or implementation of the activity. And finally, if adverse effects do occur, the commissioner must require mitigation measures that restore the impacted fish habitat.

Subsection (c) requires that all mitigation measures take place onsite where the activity is taking place. The commissioner may not agree to a mitigation plan that offsets onsite impacts by restoring habitat in an offsite location.

Subsection (d) provides that the department shall adopt regulations establishing permit conditions and mitigation measures applicable to activities.

Subsection (e) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

Section 5. Sec. 16.05.889. Reconsideration of determinations.

Section 16.05.889 sets forth the administrative review and appeal procedures for decisions made under this chapter.

Subsection (a) sets a 30-day time limit to request reconsideration of decisions made under this chapter. The request must be in writing.

Subsection (b) requires the Commissioner to respond to a request for reconsideration under within 30 days. The request is deemed denied in 30 days if the commissioner does not act. If the commissioner grants the request for reconsideration, the commissioner has an additional 30 days to make a final determination.

Subsection (c) establishes that the commissioner's determination on reconsideration is a final agency action under the Administrative Procedure Act. A person may appeal the final determination to the superior court within 30 days and may only appeal the points raised in the request for reconsideration.

Section 6. Sec. 16.05.891. Exemption for emergency situations.

Section 16.05.891 is a conforming amendment to reflect the new provisions in this chapter.

Section 7. AS 16.05.893. Fees.

Section 16.06.893 directs the commissioner to charge reasonable fees to process and administer the fish habitat permits.

Subsection (a) establishes the authority for the commissioner to set fees.

Subsection (b) allows the commissioner to adopt regulations governing fee waivers when it is in the public interest.

Subsection (c) allows the fees collected to be separately accounted for.

Section 7. Sec. 16.05.894. Notification of Violation

Section 16.05.894 requires the commissioner to provide notice to a permittee for permit violations and order the violation to be stopped. If a violation cannot be stopped, the commissioner is required to order the permittee to prevent or mitigate adverse effects of the violation on fish habitat.

Section 8. AS 16.05.901. Penalty for Violations.

Section 16.05.901(a) amends existing language to include new provisions under this chapter. It sets out provisions to address violations of the law, including a class A misdemeanor for knowing violations.

Section 9. AS 16.05.901. Penalty for Violations.

Section 16.05.901 is amended to provide ADF&G with additional authority to respond to violations of this chapter. Under current law, ADF&G can only pursue a misdemeanor charge for permit violations. This section provides additional options to pursue civil penalties and bailable citations when necessary to enforce the law.

Subsection (c) allows ADF&G to prosecute criminally negligent violations as a class A misdemeanor.

Subsection (d) establishes a class A misdemeanor for failure to notify the commissioner of activities for which a permit is required or for violations of permit requirements if the activity causes material damage to fish habitat.

Subsection (e) establishes that each day of violation is a separate violation.

Subsection (f) sets out the process and requirements for the commissioner to impose a civil penalty for violations of a fish habitat permit.

Subsection (g) allows the commissioner to ask the attorney general to seek an injunction to suspend an activity where a person has failed to comply with a notice of violation from the commissioner.

Subsection (h) gives the commissioner the authority, after notice, to repair damage caused by violations that have not been corrected and to hold the violator liable for the costs.

Subsection (i) applies fine amounts set by the Supreme Court for citations issued by ADF&G. This allows for ADF&G to write tickets for violations that can be handled without the involvement of a state prosecutor.

Subsection (j) clarifies that the definition of "anadromous fish habitat" is consistent with the meaning provided throughout the chapter.

Section 10. AS 16.05.925(a). Penalty for Violations.

This section is a clerical change to account for new sections.

Section 11. AS 16.20.070. Relationship to other laws.

This section is a clerical change to account for new sections and renumbering.

Section 12. AS 37.05.146(c). Definition of Program Receipts and Non-General Fund Program Receipts.

This section is a clerical change to account for new sections.

Section 13. AS 41.17.010. Declaration of Intent.

This section is a clerical change to account for new sections and renumbering.

Section 14. AS 44.62.330(a)(27). Application of AS 44.62.330.

This section is a clerical change to account for new sections and renumbering.

Section 15. AS 46.15.020(b). Authorities and Duties of the Commissioner.

This section is a clerical change to account for new sections and renumbering.

Section 16. Repeal of 16.05.851 and 16.05.896.

This section repeals 16.05.851 and 16.05.896. The new sections and permitting structure render the sections obsolete.

30-LS0438\O
Bullard
8/18/17

CS FOR HOUSE BILL NO. 199( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES STUTES, Josephson, Gara

A BILL

FOR AN ACT ENTITLED

"An Act establishing general fish and wildlife permits and major and minor anadromous fish habitat permits for certain activities; establishing related penalties; and relating to the protection of fish and game and fish and game habitat."

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

*** Section 1.** AS 16.05.861 is amended to read:

Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY] requirements. (a) The owner of a dam or obstruction who fails to comply with AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR 16.05.851] within a reasonable time specified by written notice from the commissioner is guilty of a misdemeanor, and is punishable by a fine of not more than $1,000. Each day the owner fails to comply constitutes a separate offense.

(b) In addition to the fine, the dam or other obstruction managed, controlled, or owned by a person violating AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR 16.05.851] is a public nuisance and is subject to abatement.

* **Sec. 2.** AS 16.05.871 is repealed and reenacted to read:

Sec. 16.05.871. Determination of anadromous fish habitat. (a) The commissioner shall specify in regulation all of the various water bodies, or portions of water bodies, that are anadromous fish habitat, including those water bodies, or portions of water bodies, that are presumed to be anadromous fish habitat under (c) of this section.

(b) The department may conduct a site-specific review and make a determination on whether a water body, or portion of a water body, is anadromous fish habitat. A determination that a water body is not anadromous fish habitat must be supported by the commissioner's written finding and verifiable data. Any person may request a site-specific determination. The department shall make the results of a site-specific determination conducted under this subsection available on the department's Internet website and post notice on the Alaska Online Public Notice System (AS 44.62.175). The commissioner shall adopt regulations specifying the procedure for conducting a site-specific review and making a determination.

(c) In the absence of a site-specific determination by the department under (b) of this section, for the purposes of AS 16.05.871 - 16.05.901, the commissioner shall presume that a naturally occurring permanent or intermittent seasonal water body, including any upstream tributaries and segments of the water body, is anadromous fish habitat if the water body is connected to marine waters or a water body, or portion of a water body, specified as anadromous fish habitat under (a) of this section.

(d) In this section, "anadromous fish habitat" means a naturally occurring permanent or intermittent seasonal water body, the subsurface land beneath the water body, and the riparian areas adjacent to the water body that contribute, directly or indirectly, to the spawning, rearing, migration, or overwintering of anadromous fish.

* **Sec. 3.** AS 16.05 is amended by adding new sections to read:

Sec. 16.05.873. General permit for fish and wildlife habitat protection. (a) The department may permit similar activities that do not have the potential to significantly affect anadromous fish habitat or other fish and wildlife habitat on a regional or other geographical basis through a general permit issued under this section, if the commissioner determines that

(1) the activity, singly or in combination with other factors, poses little potential to cause significant adverse effects on fish and wildlife habitat;

(2) the activity does not relate to large-scale development;

(3) the potential adverse effects of the activity may be prevented by requiring certain conditions and stipulations on the activity;

(4) permit conditions and stipulations are mandatory and enforceable; and

(5) a general permit for the activity is in the public interest.

(b) When the commissioner makes a determination to issue a general permit under this section, the commissioner shall provide public notice of the proposed permit and opportunity to comment under (e) of this section. Additionally, the commissioner shall hold at least one public hearing if requested by an interested person. If no request for reconsideration is timely received under AS 16.05.889, and the commissioner determines the general permit meets the requirements in (a) of this section, the commissioner may issue a general permit. A general permit issued under this section must be renewed every five years.

(c) The commissioner may issue a regional or geographical authorization for an activity subject to a general permit or may require a person to obtain written authorization from the department before conducting an activity subject to a general permit. Upon request, the department shall issue or deny an authorization within five days. The department may make general permit authorizations available through electronic means. The general permit authorization shall set out conditions and stipulations to avoid adverse effects to fish and wildlife habitat.

(d) The commissioner may amend a permit issued under this section at any time to include additional conditions and stipulations or may rescind the permit if the commissioner determines that the permit does not protect fish and wildlife habitat. The commissioner shall provide public notice under (e) of this section of

(1) changes proposed by the commissioner to a permit issued under this section; or

(2) a determination made by the commissioner to rescind a permit issued under this section.

(e) The department shall provide public notice of a determination made under this section. The department shall

(1) post notice of the permit decision or commissioner's determination on the Alaska Online Public Notice System (AS 44.62.175);

(2) make a copy of the respective permit or determination available on the department's Internet website; and

(3) provide at least 30 days for public comment.

Sec. 16.05.875. Anadromous fish habitat permit. (a) Except in an emergency under AS 16.05.891, a person must obtain an anadromous fish habitat permit under AS 16.05.883 or 16.05.885 before conducting an activity that may use, divert, obstruct, pollute, or otherwise affect a water body, or portion of a waterbody, that is specified as anadromous fish habitat under AS 16.05.871(a).

(b) An applicant shall complete an application on a form approved by the department for a permit under AS 16.05.883 or 16.05.885 and submit the application to the department. The commissioner may require additional information, including information from an applicant, before approving an application. An applicant shall provide all information requested by the commissioner to reasonably assess a proposed activity's effects on anadromous fish habitat, including

(1) the scope and duration of the proposed activity; and

(2) mitigation measures planned for areas of affected anadromous fish habitat.

(c) Upon receiving a complete fish habitat permit application, any fee required under AS 16.05.893, and any other information required by the commissioner under (b) of this section, the commissioner shall determine the proposed activity's potential effects on anadromous fish habitat under AS 16.05.877. Before making the determination, the commissioner may work with the applicant in planning the activity to avoid or minimize the activity's potential adverse effects on anadromous fish habitat under AS 16.05.877.

(d) If the commissioner determines that a proposed activity, as conditioned by permit requirements and mitigation measures that would likely be required of the activity by the department under AS 16.05.887, will not cause significant adverse

effects on anadromous fish habitat under AS 16.05.877, the commissioner shall classify the application for the activity as an application for a minor permit under AS 16.05.883.

(e) If the commissioner determines that a proposed activity has the potential to cause significant adverse effects on anadromous fish habitat under AS 16.05.877, the commissioner shall classify the application for the activity as an application for a major permit under AS 16.05.885.

(f) The department shall provide public notice of a determination made under this section. The department shall

(1) post notice of the determination on the Alaska Online Public Notice System (AS 44.62.175); and

(2) make a copy of the application available on the department's Internet website.

(g) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

Sec. 16.05.877. Significant adverse effects. (a) The commissioner shall find that a proposed activity has the potential to cause significant adverse effects on anadromous fish habitat under AS 16.05.871 - 16.05.901 if the proposed activity, singly or in combination with other factors, may

(1) impair the quality, quantity, or flow of water necessary for a water body to support anadromous fish habitat;

(2) impede or prevent the safe, timely, and efficient upstream and downstream passage of anadromous fish to areas of anadromous fish habitat;

(3) impair the quality or flow of a water body that is not anadromous fish habitat, but is necessary to preserve the quality or flow of a water body that is anadromous fish habitat;

(4) reduce aquatic habitat diversity, productivity, stability, or function;

(5) interfere with or prevent the spawning, rearing, or migration of anadromous fish at any life stage;

(6) result in conditions known to cause increased mortality of anadromous fish at any life stage;

(7) cause significant adverse effects on fish and wildlife that depend on the health and productivity of that anadromous fish habitat; or

(8) violate any additional criteria, consistent with the requirements of AS 16.05.871 - 16.05.901, adopted by the commissioner by regulation.

(b) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

*** Sec. 4.** AS 16.05.881 is amended to read:

Sec. 16.05.881. Construction without approval prohibited. If a person or governmental agency **conducts an activity** [BEGINS CONSTRUCTION ON A WORK OR PROJECT OR USE] for which **a permit** [NOTICE] is required by **AS 16.05.875(a)** [AS 16.05.871] without **the appropriate permit issued under AS 16.05.883 or 16.05.885** [FIRST PROVIDING PLANS AND SPECIFICATIONS SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE PROTECTION OF FISH AND GAME], the person or agency is guilty of a misdemeanor. If a person or governmental agency is convicted of violating **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] or continues **an activity** [A USE, WORK, OR PROJECT] without fully complying with **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896], the **activity** [USE, WORK, OR PROJECT] is a public nuisance and is subject to abatement. The cost of restoring a specified **water body, or portion of a waterbody,** [RIVER, LAKE, OR STREAM] to its original condition shall be borne by the violator and shall be in addition to the penalty imposed by the court **under AS 16.05.901**.

*** Sec. 5.** AS 16.05 is amended by adding new sections to read:

Sec. 16.05.883. Minor anadromous fish habitat permit. The commissioner may issue a minor permit for an activity after issuing public notice of the determination under AS 16.05.875(f). A minor permit issued under this section must include any necessary permit conditions or mitigation measures required of the permittee under AS 16.05.887.

Sec. 16.05.885. Major anadromous fish habitat permit. (a) Unless reconsideration is requested under AS 16.05.889, the commissioner shall, after providing notice under AS 16.05.875(f) of a determination under AS 16.05.875(e), prepare a draft major anadromous fish habitat permit assessment that identifies and describes

(1) the proposed activity;

(2) the extent and duration of the effects the activity will have on anadromous fish habitat;

(3) possible alternatives or modifications to the proposed activity that will avoid or minimize the activity's adverse effects on anadromous fish habitat;

(4) any permit conditions and mitigation measures that the department may require of the permittee under AS 16.05.887;

(5) if applicable, the amount of the performance bond necessary to restore anadromous fish habitat if the permittee does not meet the permit conditions and mitigation measures required under AS 16.05.887; and

(6) the commissioner's determination of whether the proposed activity's significant adverse effects, singly or in combination with other factors,

(A) can be prevented or minimized under (d) of this section; or

(B) are likely to cause substantial damage to anadromous fish habitat under (e) of this section.

(b) The commissioner may collect, or may require an applicant for a permit under this section to collect, information reasonably needed by the commissioner to determine whether a proposed activity should be permitted under this section. The commissioner may recover fees equal to the costs incurred by the department in collecting the necessary information and conducting the assessment under (a) of this section.

(c) Upon completion of the draft assessment under (a) of this section, the department shall

(1) post notice on the Alaska Online Public Notice System (AS 44.62.175);

(2) make a copy of the draft assessment available on the department's

Internet website; and

(3) provide at least 30 days for public comment.

(d) A proposed activity's significant adverse effects may be minimized under this section if the activity's potential significant adverse effects on anadromous fish habitat under AS 16.05.877, as conditioned by permit requirements and mitigation measures required of the activity under AS 16.05.887, are not permanent and that anadromous fish habitat affected by the activity will likely recover or be restored within a reasonable period to a level that sustains the water body's, or portion of the water body's, natural and historical levels of anadromous fish, other fish, and wildlife that depend on the health and productivity of the anadromous fish habitat.

(e) A proposed activity's significant adverse effects on anadromous fish habitat under AS 16.05.877 cannot be prevented or minimized if the commissioner determines that the proposed activity is likely to cause substantial damage to anadromous fish habitat. A proposed activity is likely to cause substantial damage if

(1) the proposed activity is likely to cause significant adverse effects on anadromous fish habitat under AS 16.05.877;

(2) the proposed activity's significant adverse effects cannot be minimized under (d) of this section or prevented; and

(3) the significant adverse effects of the proposed activity are likely to affect anadromous fish habitat in such a manner that the habitat will not likely recover or be restored within a reasonable period to a level that sustains the water body's, or portion of the water body's, natural and historical levels of anadromous fish, other fish, and wildlife that depend on the health and productivity of that anadromous fish habitat.

(f) In determining whether anadromous fish habitat will recover or be restored within a reasonable period under this section, the commissioner shall account for the life stage, life span, and reproductive behavior of the species of anadromous fish that depend on the habitat affected by the proposed activity using the best available scientific information.

(g) After the completion of the comment period established by (c)(3) of this section and evaluation of the comments received, the commissioner shall publish a

final assessment and a written permit determination on the department's Internet website. The final assessment and written permit determination must include any permit conditions and mitigation measures imposed on the proposed activity under AS 16.05.887. The department shall post public notice of the final assessment and permit determination on the Alaska Online Public Notice System (AS 44.62.175) and provide written or electronic notice to each person who commented on the commissioner's determination that the application for the permitted activity was an application for a major permit under AS 16.05.875(e) or the draft assessment prepared under (a) of this section for the activity.

(h) The commissioner may only issue a major permit to an applicant if

(1) the commissioner's written permit determination finds that

(A) the public notice period required under (c) of this section is complete;

(B) any permit conditions and mitigation measures under AS 16.05.887 are mandatory and enforceable; and

(C) the activity, as authorized by the written permit determination, will not cause substantial damage to anadromous fish habitat under (e) of this section;

(2) the applicant

(A) accepts any permit conditions and mitigation measures under AS 16.05.887; and

(B) if required, provides the bond required by (j) of this section; and

(3) a request for reconsideration of the commissioner's determination under (g) of this section is not timely received under AS 16.05.889.

(i) If a request for reconsideration of the commissioner's final assessment and written determination issued under (g) of this section is timely received under AS 16.05.889(a), the commissioner shall issue a major permit for the activity when the commissioner

(1) denies the request for reconsideration or issues a new determination under AS 16.05.889(c); and

(2) finds that the requirements of (h)(1) and (2) of this section have been met.

(j) After the commissioner approves an application for an activity in a written permit determination under (g) of this section, the applicant shall file with the commissioner, on a form furnished by the commissioner, a performance bond in an amount established by the commissioner payable to the State of Alaska and conditioned on faithful performance of the requirements of this chapter and the permit. Except as provided in (k) of this section, the commissioner may not issue a permit until an applicant files the bond in an amount sufficient to ensure the completion of the mitigation measures determined necessary by the commissioner under AS 16.05.887 and included in the written permit decision posted under (g) of this section. The performance bond may be a corporate surety bond issued by a corporation licensed to do business in the state or a personal bond secured by cash or its equivalent. However, the commissioner may not accept a bond executed by the applicant without separate surety.

(k) A governmental entity is exempt from the bonding requirements of this section.

(*l*) A permittee may not transfer or assign authority to conduct an activity that requires a permit under this section to another person without

(1) the written approval of the commissioner; and

(2) posting a performance bond for the transferee or assignee as required under (a)(5) of this section, unless the transferee or assignee is exempt under (k) of this section.

(m) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

Sec. 16.05.887. Permit conditions and mitigation measures. (a) The commissioner shall require a permittee under AS 16.05.883 or 16.05.885 to implement the permitted activity in a manner most likely to prevent or minimize the activity's significant adverse effects on anadromous fish habitat under AS 16.05.877. However, notwithstanding (b)(2) of this section, the commissioner may not issue a permit for an activity that the commissioner determines

(1) will cause substantial damage to anadromous fish habitat under AS 16.05.885(e);

(2) fails to ensure the proper protection of fish and wildlife;

(3) necessitates water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention in perpetuity;

(4) will replace or supplement, in full or in part, a wild fish population to a hatchery-dependent fish population; or

(5) will dewater or relocate a water body, or portion of a water body, specified as anadromous fish habitat under AS 16.05.871(a) for a period likely to cause permanent or long-lasting adverse effects on anadromous fish habitat, fish, or wildlife; or

(6) will permanently relocate a water body, or portion of a water body, if the relocation will disrupt the migration or passage of anadromous fish.

(b) When establishing permit conditions for an activity under this section, including permit stipulations and mitigation measures, the commissioner shall, in order of priority, require a permittee under AS 16.05.883 or 16.05.885 to take the following actions:

(1) limit significant adverse effects of the activity on anadromous fish habitat by changing the siting, timing, procedure, or other manageable qualities of the activity;

(2) if the significant adverse effects of the activity cannot be prevented under (1) of this subsection, minimize the significant adverse effects of the activity by limiting the degree, magnitude, duration, or implementation of the activity; and

(3) if the activity cannot be implemented in a manner that prevents significant adverse effects on anadromous fish habitat under this subsection, restore the affected anadromous fish habitat and take mitigation measures.

(c) Permit conditions and mitigation measures under this section may not offset the activity's significant adverse effects by restoring, establishing, enhancing, or preserving another water body, other portions of the water body, or land.

(d) The department shall adopt regulations consistent with AS 16.05.871 - 16.05.901 establishing appropriate permit conditions and mitigation measures

applicable to activities subject to permitting requirements under AS 16.05.883 or 16.05.885.

(e) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

Sec. 16.05.889. Reconsideration of determinations. (a) Within 30 days after the date of a determination of the commissioner under AS 16.05.871 - 16.05.901, an interested person may request that the commissioner reconsider the determination. A request for reconsideration must be in writing.

(b) Within 30 days after receiving a request for reconsideration, the commissioner shall issue a written determination granting or denying the request. If the commissioner does not act on the request for reconsideration within 30 days after receiving the request, the request is denied. If the commissioner grants the request for reconsideration, the commissioner shall issue a final determination within 30 days.

(c) The commissioner's determination upon reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560. A person shall initiate an appeal within 30 days after the date that the final determination is mailed or otherwise distributed, or the date that the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the request for reconsideration.

*** Sec. 6.** AS 16.05.891 is amended to read:

Sec. 16.05.891. Exemption for emergency situations. In an emergency arising from weather or stream flow conditions, the commissioner, through authorized representatives, shall issue oral permits to a riparian owner **or state agency** for removing obstructions or for repairing existing structures without the necessity of **a permit issued under AS 16.05.871 - 16.05.901** [SUBMITTING PREPARED PLANS AND SPECIFICATIONS AS REQUIRED BY AS 16.05.871].

*** Sec. 7.** AS 16.05 is amended by adding new sections to read:

Sec. 16.05.893. Fees. (a) The commissioner shall establish reasonable fees for

(1) reviewing permit applications, assessments performed by the department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -

16.05.901; and

(2) other services provided under AS 16.05.871 - 16.05.901.

(b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the commissioner finds that waiving the fee is in the public interest. The commissioner shall, in regulations adopted by the department, specify the circumstances under which a fee may be waived under this subsection.

(c) Fees collected under this section shall be separately accounted for under AS 37.05.142.

Sec. 16.05.894. Notification of violation. When the commissioner finds, after investigation, that a permittee or activity permitted under AS 16.05.871 - 16.05.901 is violating a provision of AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or stipulation imposed under AS 16.05.873, or a permit condition or mitigation measure imposed under AS 16.05.887, the commissioner shall notify the permittee of the nature of the violation and

(1) order that the violation be stopped; or

(2) if the violation cannot be stopped, order the permittee to prevent or mitigate the adverse effects of the violation on anadromous fish, other fish, and wildlife habitat in a manner consistent with AS 16.05.871 - 16.05.901.

*** Sec. 8.** AS 16.05.901(a) is amended to read:

(a) A person who violates **AS 16.05.871 - 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] is guilty of a **violation punishable as provided in AS 12.55. A person who knowingly violates AS 16.05.871 - 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901 is guilty of a** class A misdemeanor **and is punishable as provided in AS 12.55**.

*** Sec. 9.** AS 16.05.901 is amended by adding new subsections to read:

(c) A person that, with criminal negligence, violates or permits a violation of AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or stipulation imposed under AS 16.05.873, a permit condition or mitigation measure imposed under AS 16.05.887, or an order issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as provided in

AS 12.55. In this subsection, "criminal negligence" has the meaning given in AS 11.81.900(a).

(d) Notwithstanding (a) of this section, if a person or governmental agency fails to notify the commissioner of an activity for which a permit is required under AS 16.05.871 - 16.05.901 and the activity causes material damage to anadromous fish habitat or, by neglect or noncompliance with permit conditions and stipulations imposed under AS 16.05.873 or permit conditions or mitigation measures imposed under AS 16.05.883 or 16.05.885, causes material damage to anadromous fish habitat, the person or governmental agency is guilty of a class A misdemeanor and is punishable as provided in AS 12.55.

(e) Each day that a violation under this section occurs is a separate violation.

(f) A person who violates or permits a violation of AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or stipulation imposed under AS 16.05.873, a permit condition or mitigation measure imposed under AS 16.05.883 or 16.05.885, or an order issued under AS 16.05.894 is liable, after notice and hearing, for a civil penalty in an amount not to exceed $10,000 to be assessed by the commissioner. In determining the amount of the civil penalty, the commissioner shall consider

(1) the character and degree of injury to anadromous fish, other fish, and wildlife habitat;

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

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

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

(g) If a respondent violates an order issued under AS 16.05.894, the attorney general, upon the request of the commissioner, may seek an injunction requiring the respondent to suspend an activity, in whole or in part, until the respondent complies with the order.

(h) If a respondent violates an order issued under AS 16.05.894 that requires

the respondent to repair or correct damage, the commissioner may proceed to repair or correct the damage using state agency employees or contractors and the respondent is liable for the cost of the repair. The commissioner shall deliver to the respondent an itemized statement of expenses incurred.

(i) The supreme court shall establish by order or rule a schedule of bail amounts for violations under (a) of this section that allow the disposition of a citation without a court appearance. The bail amount for a violation must appear on the citation.

(j) In this section, "anadromous fish habitat" has the meaning given in AS 16.05.871.

*** Sec. 10.** AS 16.05.925(a) is amended to read:

(a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723, 16.05.783, 16.05.831, 16.05.861, **16.05.901,** and 16.05.905, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

*** Sec. 11.** AS 16.20.070 is amended to read:

Sec. 16.20.070. Relationship to other laws. AS 16.20.050 and 16.20.060 do not affect **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.891].

*** Sec. 12.** AS 37.05.146(c) is amended by adding a new paragraph to read:

(90) fees collected by the Department of Fish and Game under AS 16.05.871 - 16.05.901.

*** Sec. 13.** AS 41.17.010 is amended to read:

Sec. 41.17.010. Declaration of intent. The legislature declares that

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

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

(3) the state has a fundamental obligation to ensure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the

needs of all Alaska for the many products, benefits, and services obtained from them;

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

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

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

(7) except for activities subject to **AS 16.05.871 - 16.05.901** [AS 16.05.841 OR 16.05.871] and regulations authorized by those sections, this chapter and regulations adopted under this chapter establish the fish habitat protection standards, policies, and review processes under state law.

*** Sec. 14.** AS 44.62.330(a)(27) is amended to read:

(27) Department of Fish and Game as to functions relating to the protection of **anadromous fish, other fish, and wildlife habitat under AS 16.05.871 - 16.05.901 where procedures are not otherwise expressly provided in AS 16.05.871 - 16.05.901** [FISH AND GAME UNDER AS 16.05.871];

*** Sec. 15.** AS 46.15.020(b) is amended to read:

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this

chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of **AS 16.05.871 - 16.05.901** [AS 16.05.871]; and shall make the record of applications, including temporary water use applications under AS 46.15.155 that have been accepted as complete, authorizations, permits, certificates, amendments, and orders affecting them available to the public on the Internet;

(3) cooperate with, assist, advise, and coordinate plans with the federal, state, and local agencies, including local soil and water conservation districts, in matters relating to the appropriation, use, conservation, quality, disposal, or control of waters and activities related thereto;

(4) prescribe fees or service charges for any public service rendered consistent with AS 37.10.050 - 37.10.058, except that the department may charge under regulations adopted by the department an annual $50 administrative service fee to maintain the water management program and a water conservation fee under AS 46.15.035;

(5) before February 1 of each year, prepare a report describing the activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner shall notify the legislature that the report is available; the report must include

(A) information on the number of applications and appropriations for the removal of water from one hydrological unit to another that were requested and that were granted and on the amounts of water involved;

(B) information on the number and location of sales of water conducted by the commissioner and on the volume of water sold;

(C) recommendations of the commissioner for changes in state water law; and

(D) a description of state revenue and expenses related to

activities under AS 46.15.035 and 46.15.037.

*** Sec. 16.** AS 16.05.851 and 16.05.896 are repealed.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 199
Fiscal Note Number:
() Publish Date:

Identifier: HB199-DEC-WQ-04-06-17
Title: FISH/WILDLIFE HABITAT PROTECTION; PERMITS
Sponsor: STUTES
Requester: House Fisheries Commmittee

Department: Department of Environmental Conservation
Appropriation: Water
Allocation: Water Quality
OMB Component Number: 2062

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2018**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**
Personal Services	211.6		211.6	211.6	211.6	211.6	211.6
Travel	9.0		6.0	6.0	6.0	6.0	6.0
Services	32.7		12.7	12.7	12.7	12.7	12.7
Commodities	15.0		1.0	1.0	1.0	1.0	1.0
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**268.3**	**0.0**	**231.3**	**231.3**	**231.3**	**231.3**	**231.3**
Fund Source (Operating Only)							
1004 Gen Fund (UGF)	268.3		92.5	92.5	92.5	92.5	92.5
1005 GF/Prgm (DGF)			138.8	138.8	138.8	138.8	138.8
Total	**268.3**	**0.0**	**231.3**	**231.3**	**231.3**	**231.3**	**231.3**
Positions							
Full-time	2.0		2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							
Change in Revenues							
1005 GF/Prgm (DGF)			138.8	138.8	138.8	138.8	138.8
Total	**0.0**	**0.0**	**138.8**	**138.8**	**138.8**	**138.8**	**138.8**

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/18

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Michelle Hale — Phone: (907)465-5135
Division: Water — Date: 04/06/2017 10:52 AM
Approved By: Alice Edwards, Deputy Commissioner — Date: 04/07/17
Agency: Department of Environmental Conservation

FISCAL NOTE ANALYSIS

STATE OF ALASKA **BILL NO.** HB199
2017 LEGISLATIVE SESSION

Analysis

HB199 requires several changes to the permitting program in the Department of Fish and Game, Habitat Division. These changes will impact the Department of Environmental Conservation's permitting and engineering plan review of wastewater discharges to all fresh waters in Alaska.

The bill at Section 2. Section 16.05.871 creates a rebuttable presumption that all waters in Alaska are anadromous. Alaska's Water Quality Standards at 18 AAC 70.255(h)(1) states that mixing zones will not be allowed in an area of anadromous fish spawning. The presumption per the bill can be rebutted by the Department of Fish and Game, but unless and until this occurs, all discharges will be presumed to be ineligible for mixing zones and thus needing to meet water quality criteria at the "end-of-pipe," the point at which the discharge enters the receiving water.

Division of Water permit application reviews are expected to increase in complexity as industry and municipalities work within the changed model of all fresh waters being presumed anadromous. This presumption increases complexity for applicants as it is predicted that numerous facilities will be required to meet the end-of-pipe limits.

Existing fees cover approximately 60% of the cost of permitting and plan review activities. It will take a year to enact new regulations before the Department can begin collecting fees to cover this activity. FY2018 will be funded entirely by general funds while new staff are brought on and trained and new regulations are developed. Revenues reflect a proportional shift to general fund program receipts starting in FY2019 as new regulations are implemented and additional fees are collected.

Personal Services:
An Environmental Program Specialist III will be responsible for permit application reviews and will be required to address the additional workload without causing a backlog in the permitting. An Engineer I at DEC will be needed for review and approval of engineering plans for treatment system changes needed to meet the more stringent limits. Both positions will be located in Anchorage.

Travel:
The new Environmental Program Specialist will require permit writer training, which is only available out of state at this time. Limited in-state travel will be required to conduct compliance inspections annually.

Contractual:
Contractual costs reflect estimated RSAs with the Department of Law for consultation during the development of new regulations.

Supplies:
Supplies include new employee equipment for the first year, and normal office supply needs in subsequent years.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 199
Fiscal Note Number:
() Publish Date:

Identifier: HB199-LAW-CIV-04-07-17
Title: FISH/WILDLIFE HABITAT PROTECTION; PERMITS
Sponsor: STUTES
Requester: House Fisheries

Department: Department of Law
Appropriation: Civil Division
Allocation: Natural Resources
OMB Component Number: 2212

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2018**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**
Personal Services	376.4		376.4	376.4	376.4	376.4	376.4
Travel	1.7		1.7	1.7	1.7	1.7	1.7
Services	64.0		64.0	64.0	64.0	64.0	64.0
Commodities	6.8		6.8	6.8	6.8	6.8	6.8
Capital Outlay	1.1		1.1	1.1	1.1	1.1	1.1
Grants & Benefits							
Miscellaneous							
Total Operating	**450.0**	**0.0**	**450.0**	**450.0**	**450.0**	**450.0**	**450.0**
Fund Source (Operating Only)							
1004 Gen Fund (UGF)	450.0		450.0	450.0	450.0	450.0	450.0
Total	**450.0**	**0.0**	**450.0**	**450.0**	**450.0**	**450.0**	**450.0**
Positions							
Full-time	2.0		2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							
Change in Revenues							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Valerie Rose, Budget Analyst — Phone: (907)465-3674
Division: Administrative Services Division — Date: 04/07/2017 09:26 AM
Approved By: Jahna Lindemuth, Attorney General — Date: 04/07/17
Agency: Department of Law

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 199

Analysis

HB 199 would amend AS 16.05 (Fish and Game) by creating a new permitting system for activities that have the potential to affect anadromous fish habitat. Under HB 199, the commissioner of the Alaska Department of Fish & Game (ADF&G) is required to specify in regulation all the various water bodies, or portions of them, that are important anadromous fish habitat. The bill presumes that, absent a site-specific determination and written finding by ADF&G, all naturally occurring surface water bodies in the state are important anadromous fish habitat. A determination that a water body is not important anadromous fish habitat would be subject to reconsideration and appeal.

HB 199 would create a general permit and establishes mandatory criteria that must be met for issuance. The bill would also establish an anadromous fish habitat permit to conduct any activities that would affect the water body. The bill would establish classification standards, a public notice period, and requirements that a classification decision be supported by a written determination. The bill would provide an exemption to the permitting requirements in emergency situations.

HB 199 would provide for a process by which an applicant could request reconsideration of a determination of the commissioner. The commissioner's determination upon reconsideration would be the final administrative decision for purposes of appeal to the superior court.

The bill would also create civil penalties for certain violations. Notice and an adjudicatory hearing would first be afforded to an alleged offender. Pursuant to Section 14 of the bill, it appears that the notice and hearing associated with the civil penalty would be subject to AS 44.62.330 – 44.62.630 (the Administrative Procedures Act). It also appears that the OAH would not have jurisdiction for the hearing under proposed AS 16.05.901(f). In addition, it also appears that the notices and hearings provided for throughout the other sections of the bill would not be subject to the Administrative Procedures Act.

The bill also provides that if a respondent violates an order issued under AS 16.05.894, the attorney general, upon request of the commissioner, may seek an injunction requiring the respondent to suspend an activity.

The Department of Law provides legal counsel to the ADF&G. HB 199 would potentially significantly increase the current amount of ADF&G permitting and appeals because the bill would presume that all naturally occurring surface water bodies in the state are important anadromous fish habitat, expand the scope of activities that would require permits, create a detailed permit consideration process, and provide for reconsideration and appeal of all determinations of the commissioner under AS 16.05.871 – 16.05.901.

We anticipate that two additional full-time civil attorneys would be needed to perform the legal work this bill would create - one attorney primarily focused on permitting and appeals and one attorney primarily focused on enforcement, while providing support to permitting and appeals as needed. The ADF&G would be responsible for developing regulations to implement the bill's provisions, and the Department of Law would likely need to provide assitance with the regualtions.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 199
Fiscal Note Number:
() Publish Date:

Identifier: HB199-DFG-HAB-04-10-17
Title: FISH/WILDLIFE HABITAT PROTECTION; PERMITS
Sponsor: STUTES
Requester: House Special Committee on Fisheries

Department: Department of Fish and Game
Appropriation: Statewide Support Services
Allocation: Habitat
OMB Component Number: 486

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2018**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**
Personal Services			***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	***	***	***	***	***

Positions

Full-time			***	***	***	***	***
Part-time							
Temporary							

Change in Revenues

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/19

Why this fiscal note differs from previous version:

Initial version.

Prepared By: David Rogers, Director — Phone: (907)465-6436
Division: Habitat — Date: 04/10/2017 10:30 AM
Approved By: Carol Petraborg, Director of Administrative Services — Date: 04/10/17
Agency: Department of Fish and Game

Analysis

This bill would require the development of regulations to identify how various changes to Title 16.05.861, 16.05.871, 16.05.873, 16.05.875, 16.05.877, 16.05.881, 16.05.883, 16.05.885, 16.05.877, 16.05.889, 16.05.891, 16.05.893, 16.05.894, 16.05.901, and 16.05.925 would be implemented. HB 199 would require the following new actions by the division:

- Presume that naturally occuring water bodies are anadromous,
- Site specific determinations to determine if a waterbody is not important anadromous fish habitat;
- Public notice of proposed general permits with the possibility of a least one public hearing if requested by an interested person;
- Requirement to renew general permits every five years;
- Requirement to provide written authorization for an individual to operate under a general permit;
- Public notice for permit amendments; public notice to rescind a permit;
- Determine whether a fish habitat permit is minor or major;
- Public notice draft major anadromous fish habitat permit assessment and make copy of application available to the public;
- Determine whether a performance bond is necessary;
- Determine if the proposed activity is likely to cause substantial damage to anadromous fish habitat;
- Determine if anadromous fish habitat will recover or be restored within a reasonable period of time, respond to and address public input on major fish habitat permits, establish fee schedule for permits and collect fees, and respond to and address reconsideration requests on proposed major anadromous fish habitat permits.

The bill also identifies those cases where the Commissioner may not issue a permit for a proposed activity. Compliance with these new actions would require the hiring of habitat biologists, an analyst programmer, and program technicians to deal with public notices, postings, responses to public input, public hearings, draft anadromous fish habitats, etc. The division anticipates the regulation development could take at least two years and implementation of the new regulations and criteria would take additional years to develop and implement.

The commissioner will need assistance in the form of subject matter expertise (managers, biologists, analyst programmer) from staff and legal assistance in order to develop regulations, public notice the regulations, respond to public comments on proposed regulations, and finalize a regulation package. Implementation of the new regulation package would affect all managers, habitat biologists, and fish and game program technicians in all offices along with analyst programmer support to implement and comply with the new regulations as written. The total cost to the department is indeterminate at this time, as the number of affected permitees or future applicants is unknown. The costs are estimated as follows:

Fiscal Note for HB199	Personal Services	Other
Habitat Biologist III/IV*	$100.0	$70.0
Analyst Programmer III **	$100.0	$10.0
Regional Supervisors/Area Managers/Habitat Biologists/ Fish&Game Program Technicians***	$887.0	$152.0
	$1087.0	$232.0

*HBIII/IV reporting to the director and responsible for preparing regulations (drafting regulations, legal review, public notice, response to public comments, producing final regulation package, and implementing regulations across the state) with legal assistance drafting and implementing regulations and responding to reconsideration requests ($50.0 of the $70.0 in Other).

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 199

Analysis

**Analyst Programmer III to create and maintain an online geo-referenced database that will be to used handle public notice, posting of permits, posting of applications for permits, responding to public comments, and keeping track of all public notices, permits, changes to permits, and other actions, as appropriate.

***Regional Supervisors, Area Managers, Habitat Biologists, and Fish and Game Program Technicians dealing with all the changes made to the Title 16 permitting process including substantial expansion in authority, public notice component, site-specific determinations to determine stream is not anadromous, and fee infrastructure and collection. This bill will directly affect every office and every position that conducts permitting within the division. It has been determined that to carry out this additional workload it would require a 35% increase from the division's FY17 General Fund Permitting Budget plus an additional $75K to cover logistics for site-specific determinations for non-anadromy findings (these amounts are included in the totals above).

THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Fish and Game

ALASKA BOARD OF FISHERIES

1255 West 8th Street
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Juneau, Alaska 99811-5526
Main: 907.465.4110
Fax: 907.465.6094

January 19, 2017

Honorable Senator Pete Kelly, Senate President
State Capitol Building
Room 111
Juneau, Alaska 99801

Honorable Representative Bryce Edgmon, House Speaker
State Capitol Building
Room 208
Juneau, Alaska 99801

Subject: Alaska Board of Fisheries Habitat Permitting Recommendations

Dear Senator Kelly and Representative Edgmon:

The Alaska Board of Fisheries (board) was established by the Alaska Legislature, "For purposes of the conservation and development of the fishery resources of the state", (AS 16.05.221(a)), and has the authority to adopt regulations it considers important for "watershed and habitat improvement" (AS 16.05.251(a)(7)). Since inception, the board's working protocol evolved into a strong, open public process to carry out its duties. This public process allows Alaskans to bring forward proposals for consideration within its delegated authority.

For the 2016/2017 meeting cycle, the board received a request from a group of 13 individuals representing various fishing interests across Alaska. The request asked the board to recommend to the Legislature amendment of Title 16 to adhere to the habitat provisions contained in the board's Policy for the Management of Sustainable Salmon Fisheries established in regulation at 5 AAC 39.222. The board heard a significant amount of testimony in favor of this concept at the October work session held in Soldotna and scheduled an additional follow up committee meeting in Homer at the regular Lower Cook Inlet meeting.

The committee meeting allowed time for additional public testimony and an overview presentation on the permitting process from the Alaska Department of Fish & Game's (ADF&G) Division of Habitat staff. At the conclusion of this meeting, the board moved to submit the following points for the Legislature's consideration in amending Title 16:

- **Improve public notification and opportunities for public comment.**
  A common theme from public testimony was the lack of notification for activities that have the potential to impact salmon habitat. ADF&G Habitat staff tracks the average time for permit issuance after an application is received at 4 days. There are undoubtedly nuances to this efficient permitting that must be considered, and improved notification to the public for certain activities is in the public's best interest. Additionally, tracking permitted activities by geo-referenced location would facilitate better consideration of cumulative impacts.

- **Enforceable Standards**
  Under current law, the commissioner of ADF&G is directed to approve a fish habitat permit for a "proposed construction, work, or use…unless the commissioner finds the plans and specifications insufficient for the proper protection of fish and game." AS 16.05.871(d). Permits may be issued with little restriction because nothing in the statute or regulation defines what constitutes "the proper protection of fish and game."

Additional guidance is warranted for the protection of fish, to set clear expectations for permit applicants and to reduce uncertainty in predevelopment planning costs. To strengthen ADF&G's implementation and enforcement of the permitting program, the legislature may want to consider creating enforceable standards in statute to protect fish habitat, and to guide and create a more certain permitting system. The board recommends and supports the Legislature creating these enforceable standards by drawing on the concepts set forth in the portion of the sustainable salmon policy that expressly addresses habitat (5 AAC 39.222(c)(1)(A-F)).

Thank you for taking the opportunity to review these concerns. The board recognizes the broad responsibilities of the Legislature to promote economic development and the wise stewardship of resources for all Alaskans. The board finds that clear delineation of Alaska's unwavering promise to protect salmon and fisheries habitat establishes a consistent and predictable business environment that will help all individuals and corporations wishing to do business in Alaska.

The board remains at your service if you have any questions or comments regarding these recommendations.

Sincerely,

John Jensen
Chair
Alaska Board of Fisheries

Fish Protection Laws in Alaska
ADF&G Statutory Authority

Salmon Policy Forum
April 11, 2017
Juneau, AK

Ron Benkert
Habitat Biologist
ADF&G Division of Habitat
Mat-Su Area Office

Discussion Objectives

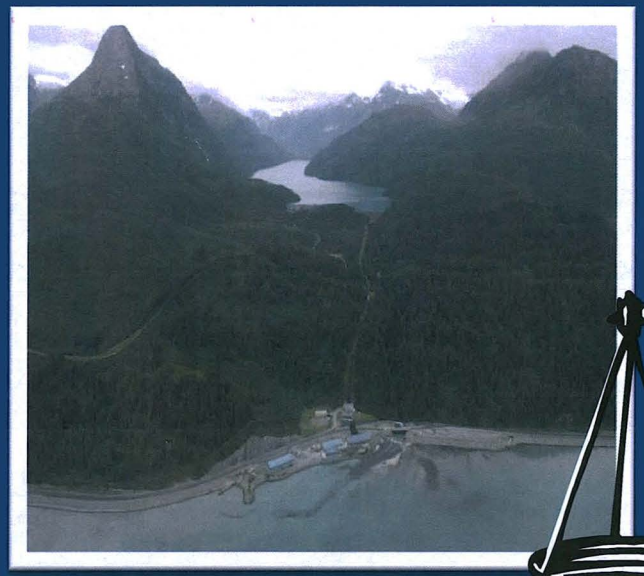
- Provide an overview of ADF&G Statutory Authority for fish and wildlife habitat protection
- Identify strengths and limitations of ADF&G Authority
- Practical application of ADF&G Authority – Fish Habitat Permits

Permits & Authorizations

Relevant to hydraulic projects in Alaska

Permit/Authorization	Regulatory Agency
Fish Habitat Permit	Alaska Department of Fish & Game
Special Area Permit	Alaska Department of Fish & Game
Fish Resource Permit	Alaska Department of Fish & Game
Section 10 / Section 404 Permit	US Army Corps of Engineers
Water Rights/Water Use Permit	Alaska Department of Natural Resources
Material Sale Permit	Alaska Department of Natural Resources
Flood Hazard/ other local permits	Borough/Municipality of project location
SWPPP review/approval	Alaska Dept. of Environmental Conservation (or muni/borough)
Right of Way/ Land Use Permit	Land manager for project area

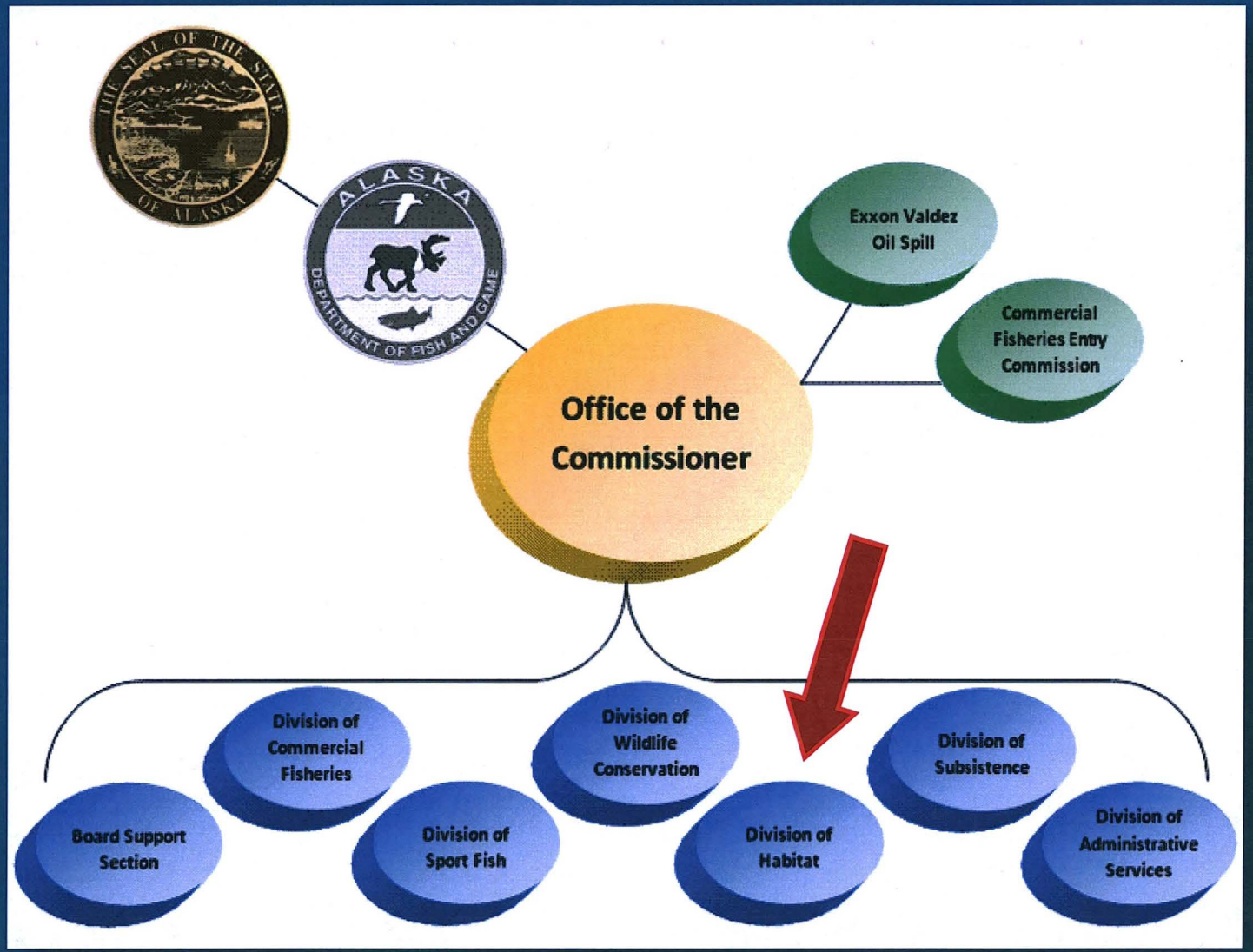
ADF&G's Role in Resource Development



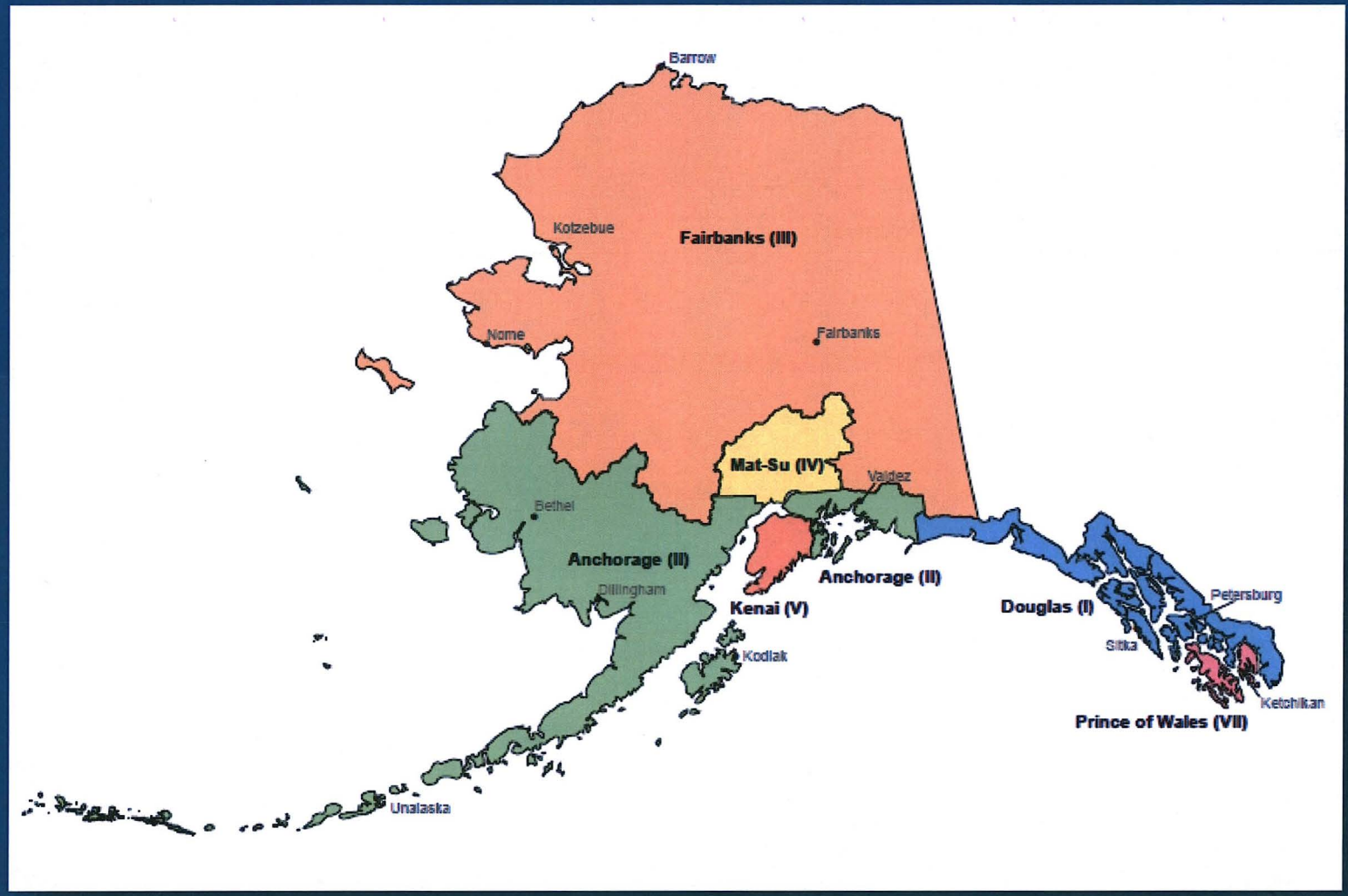
Solomon Gulch Hydro

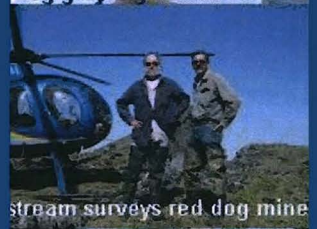
Balance Resource Development and Resource Protection

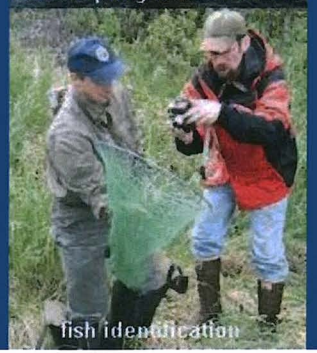
ADF&G Habitat Division



ADF&G Habitat Offices







Workload Priorities:

- Title 16 permitting and enforcement
- Field work – research, inspections, AWC surveys
- Large projects of importance to the State
- Forest Resources and Practices Act
- Special Area Planning

ADF&G Statutory Authority
Fish Protection

- THE FISHWAY ACT
  - AS 16.05.841
- ANADROMOUS FISH ACT
  - AS 16.05.871
- SPECIAL AREA PERMITTING
  - 5 AAC 95.700
- FISH RESOURCE PERMIT
  - Required for handling or transporting fish during dewatering or diversion (Division of Sport Fish)

Fishway Act

AS 16.05.841 requires that any obstruction built across fish-bearing waters will provide for fish passage

AS 16.05.851 – 3 options if fish passage is impractical:

- Pay a lump sum to the State fish and game fund
- Build operate, and maintain a hatchery in perpetuity
- Pay to expand, maintain, and operate existing hatcheries

Fishway Act (.841)

Strengths

- Applies to all fish bearing streams (resident and anadromous) and all fish species.
- Requires long-term commitment to operation & maintenance

Limitations

- Applies to fish passage only
- Archaic provisions for mitigation inappropriate

Anadromous Fish Act

AS 16.05.871

- (a) ADF&G must specify those waters that are important for the spawning, rearing, or migration of anadromous fish (AWC)
- (b-c) notification and plans required before conducting work in a specified waterbody (permit application)
- (d) ADF&G will approve or deny the proposed work

Anadromous Fish Act (.871)

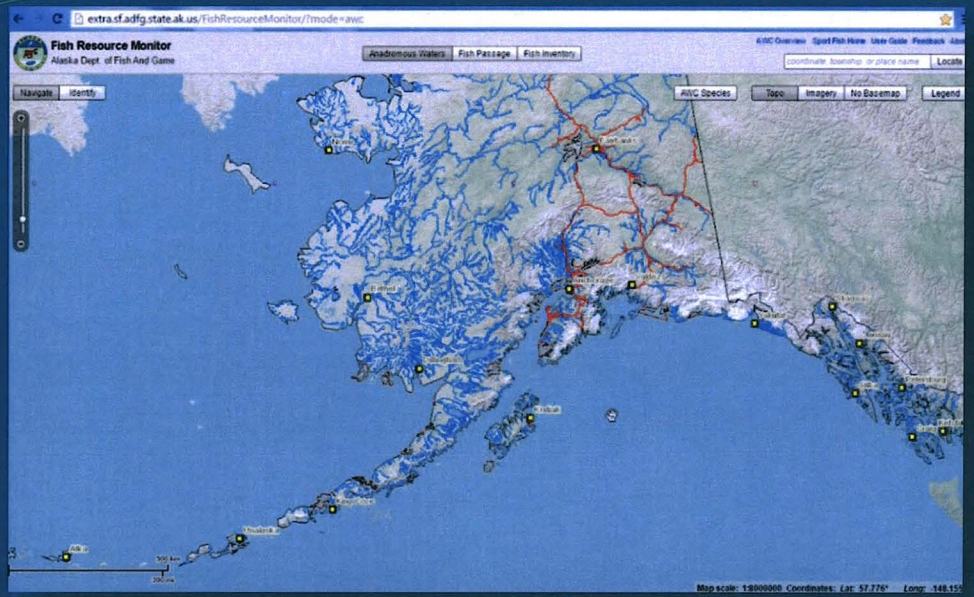
Strengths

- Applies to any activity
- Applies to any life stage

Limitations

- Jurisdiction limited to below OHW
- Waterbody must be in AWC
- Freshwater only

AWC Data



- Fish Resource Monitor
- GIS Data
- Google Earth (KMZ) Downloads
- Atlas Map Downloads (PDF)
- Updated annually

Fish Habitat Permits

- Applicant submits plans to ADF&G
- Habitat Biologist reviews and consults area staff
- May be permitted as proposed or modified during review process
- Timeline for review…4-6 weeks
- Emergency exemptions
  - AS 16.05.891
  - Verbal/email approval
  - Follow up with formal permit

- Typical Stipulations
  - Timing
  - Diversion/Bypass Pumping
  - Sediment Control
  - Reveg/Stabilization
  - Fish Passage
  - Notification

Questions?

Ron Benkert

ADF&G Habitat

Palmer Area Office

(907) 861-3204

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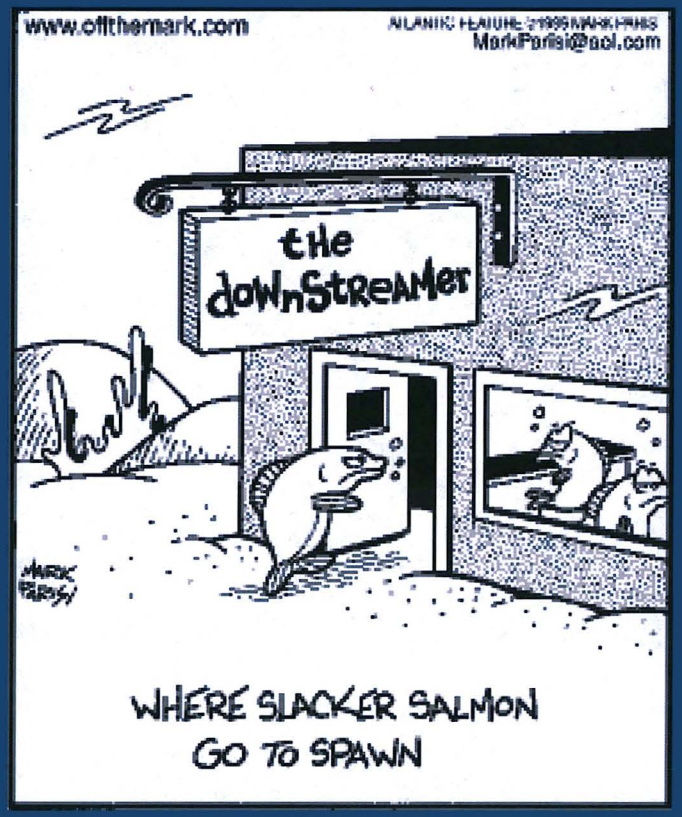


5 AAC 39.222. Policy for the management of sustainable salmon fisheries

(a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that

(1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;

(2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;

(3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.

(b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.

(c) Management of salmon fisheries by the state should be based on the following principles and criteria:

(1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:

(A) salmon spawning, rearing, and migratory habitats should be protected as follows:

(i) salmon habitats should not be perturbed beyond natural boundaries of variation;

(ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;

(iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;

(iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;

(v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;

(B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;

(C) degraded salmon productivity resulting from habitat loss should be assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;

(D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;

(E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;

(F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

(G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;

(2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:

(A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;

(B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;

(C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;

(D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;

(E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;

(F) salmon escapement and harvest management decisions should be made in a manner that protects non-target salmon stocks or species;

(G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;

(H) salmon abundance trends should be monitored and considered in harvest management decisions;

(3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:

(A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;

(B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;

(C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;

(D) management agencies should have clear authority in statute and regulation to

(i) control all sources of fishing mortality on salmon;

(ii) protect salmon habitats and control non-fishing sources of mortality;

(E) management programs should be effective in

(i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;

(G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;

(H) the board will work, within the limits of its authority, to assure that

(i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;

(ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;

(iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;

(I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;

(J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;

(K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon stocks;

(L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;

(M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;

(N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;

(O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;

(P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;

(4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:

(A) effective mechanisms for dispute resolution should be developed and used;

(B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;

(C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251 (e) and AS 16.05.258 ; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

(i) identification of a new fishery or expanding fishery;

(ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and

(iii) description of management and research options to address salmon stock or habitat concerns;

(2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will

(A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;

(B) minimize the adverse effects on salmon habitat caused by fishing;

(C) protect, restore, and promote the long-term health and sustainability of the salmon fishery and habitat;

(D) prevent overfishing; and

(E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;

(3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;

(4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including

(A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;

(B) identification of salmon stock or population rebuilding goals and objectives;

(C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;

(D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and

(E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;

(5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;

(6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) "allocation" means the granting of specific harvest privileges, usually by regulation, among or between various user groups; "allocation" includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

(2) "allocation criteria" means the factors set out in AS 16.05.251 (e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) "biological escapement goal" or "(BEG)" means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) "burden of conservation" means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) "chronic inability" means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately the generation time of most salmon species;

(6) "conservation concern" means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) "depleted salmon stock" means a salmon stock for which there is a conservation concern;

(8) "diversity", in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) "enhanced salmon stock" means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; "enhanced salmon stock" includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock's productivity to a higher natural level;

(10) "escapement" means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) "expanding fishery" means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) "expected yields" mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

(13) "genetic" means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;

(14) "habitat concern" means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;

(15) "harvestable surplus" means the number of salmon from a stock's annual run that is surplus to escapement needs and can reasonably be made available for harvest;

(16) "healthy salmon stock" means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;

(17) "incidental harvest" means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;

(18) "incidental mortality" means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;

(19) "inriver run goal" means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;

(20) "introduced stock" means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an "introduced salmon stock" includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;

(21) "management concern" means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;

(22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;

(23) "mixed stock fishery" means a fishery that harvests fish from a mixture of stocks;

(24) "new fishery" means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;

(25) "optimal escapement goal" or "(OEG)" means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;

(26) "optimum sustained yield" or "(OSY)" means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a non-consumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) "overfishing" means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) "phenotypic characteristics" means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) "rehabilitation" means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; "rehabilitation" does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) "return" means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock's spawning escapement; "return" does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) "run" means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) "salmon" means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus sp.*, except steelhead and cutthroat trout, native to Alaska as follows:

(A) chinook or king salmon (*O. tschawytscha*);

(B) sockeye or red salmon (*O. nerka*);

(C) coho or silver salmon (*O. kisutch*);

(D) pink or humpback salmon (*O. gorbuscha*); and

(E) chum or dog salmon (*O. keta*);

(33) "salmon population" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) "salmon stock" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit;

(35) "stock of concern" means a stock of salmon for which there is a yield, management, or conservation concern;

(36) "sustainable escapement goal" or "(SEG)" means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board, and will be developed from the best available biological information; the SEG will be determined by the department and will be stated as a range that takes into account data uncertainty; the department will seek to maintain escapements within the bounds of the SEG;

(37) "sustainable salmon fishery" means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) "sustained yield" means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) "sustained escapement threshold" or "(SET)" means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) "target species" or "target salmon stocks" means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) "yield" means the number or weight of salmon harvested in a particular year or season from a stock;

(42) "yield concern" means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) "wild salmon stock" means a stock of salmon that originates in a specific location under natural conditions; "wild salmon stock" may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; "wild salmon stock" does not include an introduced stock, except that some introduced salmon stocks may come to be considered "wild" if the stock is self-sustaining for a long period of time;

(44) "action point" means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

History: Eff. 9/30/2000, Register 155; am 11/16/2000, Register 156; am 6/22/2001, Register 158

Authority: AS 16.05.251

5 AAC 39.223. Policy for statewide salmon escapement goals

(a) The Department of Fish and Game (department) and the Board of Fisheries (board) are charged with the duty to conserve and develop Alaska's salmon fisheries on the sustained yield principle. Therefore, the establishment of salmon escapement goals is the responsibility of both the board and the department working collaboratively. The purpose of this policy is to establish the concepts, criteria, and procedures for establishing and modifying salmon escapement goals and to establish a process that facilitates public review of allocative issues associated with escapement goals.

(b) The board recognizes the department's responsibility to

(1) document existing salmon escapement goals for all salmon stocks that are currently managed for an escapement goal;

(2) establish biological escapement goals (BEG) for salmon stocks for which the department can reliably enumerate salmon escapement levels, as well as total annual returns;

(3) establish sustainable escapement goals (SEG) for salmon stocks for which the department can reliably estimate escapement levels when there is not sufficient information to enumerate total annual returns and the range of escapements that are used to develop a BEG;

(4) establish sustained escapement thresholds (SET) as provided in 5 AAC 39.222 (Policy for the Management of Sustainable Salmon Fisheries);

(5) establish escapement goals for aggregates of individual spawning populations with similar productivity and vulnerability to fisheries and for salmon stocks managed as units;

(6) review an existing, or propose a new, BEG, SEG and SET on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals;

(7) prepare a scientific analysis with supporting data whenever a new BEG, SEG, or SET, or a modification to an existing BEG, SEG, or SET is proposed and, in its discretion, to conduct independent peer reviews of its BEG, SEG, and SET analyses;

(8) notify the public whenever a new BEG, SEG, or SET is established or an existing BEG, SEG, or SET is modified;

(9) whenever allocative impacts arise from any management actions necessary to achieve a new or modified BEG, SEG or SET, report to the board on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals so that it can address allocation issues.

(c) In recognition of its joint responsibilities, and in consultation with the department, the board will

(1) take regulatory actions as may be necessary to address allocation issues arising from implementation of a new or modified BEG, SEG, and SET;

(2) during its regulatory process, review a BEG, SEG, or SET determined by the department and, with the assistance of the department, determine the appropriateness of establishing an optimal escapement goal (OEG); the board will provide an explanation of the reasons for establishing an OEG and provide, to the extent practicable, and with the assistance of the department, an estimate of expected differences in yield of any salmon stock, relative to maximum sustained yield, resulting from implementation of an OEG.

(d) Unless the context requires otherwise, the terms used in this section have the same meaning given those terms in 5 AAC 39.222(f).

History: Eff. 6/22/2001, Register 158

Authority: AS 16.05.251

DOT/PF Comments on HB199

How do Title 16 ADF&G Fish Habitat Permits Affect DOT&PF Projects?

Many DOT&PF projects affect creeks, streams, and rivers that support anadromous fish. Current AS 16.05.871-.901 specifies that all activities within or across a specified anadromous waterbody requires a permit from ADF&G before altering or affecting "the natural flow or bed" fish stream. This is commonly referred to as the "Title 16 Fish Habitat Permit".

DOT&PF environmental, engineering, and hydrologist staff work closely with ADF&G fish habitat biologists during the project development process and Title 16 fish habitat permitting process to create transportation projects that preserve or improve fish habitat while improving transportation infrastructure for Alaskans. For example, DOT&PF works with ADF&G to improve culverts to allow for anadromous fish passage at every opportunity; similarly, bridge abutments and piles are designed to allow for the natural meander of fish streams and to increase fish habitat.

DOT&PF staff value the input of the public and resource agencies throughout the project development process. Conversations early in project development allow for design modifications to be incorporated into the project, allows the environmental impacts to be accurately analyzed in the NEPA document, assures compliance with our federal funding partners, and gives the public and agencies more opportunities to voice their concerns and improve outcomes for anadromous fish habitat. In particular, discussions with ADF&G fish habitat biologist beginning at project scoping, continuing through the NEPA process, and concluding with Title 16 permitting allows DOT&PF to design and build projects that often improve fish habitat.

Overview of Public and Agency Involvement During DOT&PF Project Development

Project Development Step	Public and Agency Input
Planning / State Transportation Improvement Plan (STIP)	General project need, STIP review, public comment
Scoping	Agency scoping letter, environmental impact identification, public notice of beginning environmental and engineering
NEPA document development	Environmental impact analysis, alternative identification, public/agency comment, mitigation development
NEPA decision	Alternative selection, Public notice, appeal period
U.S. Army Corps of Engineers 404 Wetlands Permitting	Agency and public notice, consultation on mitigation measures, Corps NEPA
ADF&G Title 16 Fish Habitat Permit	Consultation with ADF&G habitat biologist, DOT&PF engineers and hydrologists, technical tweaks to in-water work

5 AAC 39.222. Policy for the management of sustainable salmon fisheries

(a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that

(1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;

(2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;

(3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.

(b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.

(c) Management of salmon fisheries by the state should be based on the following principles and criteria:

(1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:

(A) salmon spawning, rearing, and migratory habitats should be protected as follows:

(i) salmon habitats should not be perturbed beyond natural boundaries of variation;

(ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;

(iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;

(iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;

(v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;

(B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;

(C) degraded salmon productivity resulting from habitat loss should be assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;

(D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;

(E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;

(F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

(G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;

(2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:

(A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;

(B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;

(C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;

(D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;

(E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;

(F) salmon escapement and harvest management decisions should be made in a manner that protects non-target salmon stocks or species;

(G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;

(H) salmon abundance trends should be monitored and considered in harvest management decisions;

(3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:

(A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;

(B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;

(C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;

(D) management agencies should have clear authority in statute and regulation to

(i) control all sources of fishing mortality on salmon;

(ii) protect salmon habitats and control non-fishing sources of mortality;

(E) management programs should be effective in

(i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;

(G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;

(H) the board will work, within the limits of its authority, to assure that

(i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;

(ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;

(iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;

(I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;

(J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;

(K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon stocks;

(L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;

(M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;

(N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;

(O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;

(P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;

(4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:

(A) effective mechanisms for dispute resolution should be developed and used;

(B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;

(C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251 (e) and AS 16.05.258 ; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

(i) identification of a new fishery or expanding fishery;

(ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and

(iii) description of management and research options to address salmon stock or habitat concerns;

(2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will

(A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;

(B) minimize the adverse effects on salmon habitat caused by fishing;

(C) protect, restore, and promote the long-term health and sustainability of the salmon fishery and habitat;

(D) prevent overfishing; and

(E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;

(3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;

(4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including

(A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;

(B) identification of salmon stock or population rebuilding goals and objectives;

(C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;

(D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and

(E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;

(5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;

(6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) "allocation" means the granting of specific harvest privileges, usually by regulation, among or between various user groups; "allocation" includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

(2) "allocation criteria" means the factors set out in AS 16.05.251 (e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) "biological escapement goal" or "(BEG)" means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) "burden of conservation" means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) "chronic inability" means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately the generation time of most salmon species;

(6) "conservation concern" means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) "depleted salmon stock" means a salmon stock for which there is a conservation concern;

(8) "diversity", in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) "enhanced salmon stock" means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; "enhanced salmon stock" includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock's productivity to a higher natural level;

(10) "escapement" means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) "expanding fishery" means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) "expected yields" mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

(13) "genetic" means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;

(14) "habitat concern" means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;

(15) "harvestable surplus" means the number of salmon from a stock's annual run that is surplus to escapement needs and can reasonably be made available for harvest;

(16) "healthy salmon stock" means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;

(17) "incidental harvest" means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;

(18) "incidental mortality" means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;

(19) "inriver run goal" means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;

(20) "introduced stock" means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an "introduced salmon stock" includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;

(21) "management concern" means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;

(22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;

(23) "mixed stock fishery" means a fishery that harvests fish from a mixture of stocks;

(24) "new fishery" means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;

(25) "optimal escapement goal" or "(OEG)" means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;

(26) "optimum sustained yield" or "(OSY)" means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a non-consumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) "overfishing" means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) "phenotypic characteristics" means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) "rehabilitation" means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; "rehabilitation" does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) "return" means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock's spawning escapement; "return" does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) "run" means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) "salmon" means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus sp.*, except steelhead and cutthroat trout, native to Alaska as follows:

(A) chinook or king salmon (*O. tschawytscha*);

(B) sockeye or red salmon (*O. nerka*);

(C) coho or silver salmon (*O. kisutch*);

(D) pink or humpback salmon (*O. gorbuscha*); and

(E) chum or dog salmon (*O. keta*);

(33) "salmon population" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) "salmon stock" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit;

(35) "stock of concern" means a stock of salmon for which there is a yield, management, or conservation concern;

(36) "sustainable escapement goal" or "(SEG)" means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board, and will be developed from the best available biological information; the SEG will be determined by the department and will be stated as a range that takes into account data uncertainty; the department will seek to maintain escapements within the bounds of the SEG;

(37) "sustainable salmon fishery" means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) "sustained yield" means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) "sustained escapement threshold" or "(SET)" means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) "target species" or "target salmon stocks" means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) "yield" means the number or weight of salmon harvested in a particular year or season from a stock;

(42) "yield concern" means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) "wild salmon stock" means a stock of salmon that originates in a specific location under natural conditions; "wild salmon stock" may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; "wild salmon stock" does not include an introduced stock, except that some introduced salmon stocks may come to be considered "wild" if the stock is self-sustaining for a long period of time;

(44) "action point" means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

History: Eff. 9/30/2000, Register 155; am 11/16/2000, Register 156; am 6/22/2001, Register 158

Authority: AS 16.05.251

5 AAC 39.223. Policy for statewide salmon escapement goals

(a) The Department of Fish and Game (department) and the Board of Fisheries (board) are charged with the duty to conserve and develop Alaska's salmon fisheries on the sustained yield principle. Therefore, the establishment of salmon escapement goals is the responsibility of both the board and the department working collaboratively. The purpose of this policy is to establish the concepts, criteria, and procedures for establishing and modifying salmon escapement goals and to establish a process that facilitates public review of allocative issues associated with escapement goals.

(b) The board recognizes the department's responsibility to

(1) document existing salmon escapement goals for all salmon stocks that are currently managed for an escapement goal;

(2) establish biological escapement goals (BEG) for salmon stocks for which the department can reliably enumerate salmon escapement levels, as well as total annual returns;

(3) establish sustainable escapement goals (SEG) for salmon stocks for which the department can reliably estimate escapement levels when there is not sufficient information to enumerate total annual returns and the range of escapements that are used to develop a BEG;

(4) establish sustained escapement thresholds (SET) as provided in 5 AAC 39.222 (Policy for the Management of Sustainable Salmon Fisheries);

(5) establish escapement goals for aggregates of individual spawning populations with similar productivity and vulnerability to fisheries and for salmon stocks managed as units;

(6) review an existing, or propose a new, BEG, SEG and SET on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals;

(7) prepare a scientific analysis with supporting data whenever a new BEG, SEG, or SET, or a modification to an existing BEG, SEG, or SET is proposed and, in its discretion, to conduct independent peer reviews of its BEG, SEG, and SET analyses;

(8) notify the public whenever a new BEG, SEG, or SET is established or an existing BEG, SEG, or SET is modified;

(9) whenever allocative impacts arise from any management actions necessary to achieve a new or modified BEG, SEG or SET, report to the board on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals so that it can address allocation issues.

(c) In recognition of its joint responsibilities, and in consultation with the department, the board will

(1) take regulatory actions as may be necessary to address allocation issues arising from implementation of a new or modified BEG, SEG, and SET;

(2) during its regulatory process, review a BEG, SEG, or SET determined by the department and, with the assistance of the department, determine the appropriateness of establishing an optimal escapement goal (OEG); the board will provide an explanation of the reasons for establishing an OEG and provide, to the extent practicable, and with the assistance of the department, an estimate of expected differences in yield of any salmon stock, relative to maximum sustained yield, resulting from implementation of an OEG.

(d) Unless the context requires otherwise, the terms used in this section have the same meaning given those terms in 5 AAC 39.222(f) .

History: Eff. 6/22/2001, Register 158

Authority: AS 16.05.251

Overview: HB 199 and the Forest Resources and Practices Act

Alaska's Forest Resources and Practices Act (FRPA) applies to state, municipal and private forest lands and sets minimum standards for federal forest lands. AS 41.17.900(a), (b). The FRPA establishes the "standards, policies and review processes" for the protection of fish and wildlife habitat on forest land "*except* for activities subject to AS 16.05.841 or 16.05.871 and regulations authorized by those sections." AS 41.17.010(7). The Department of Fish and Game is responsible for protecting fish and wildlife habitat under AS 16.05.841 (Alaska Fishway Act) and AS 16.05.871 (Anadromous Fish Act, a.k.a the fish habitat permitting law). The Title 16 habitat laws apply throughout the state regardless of land designation or land ownership.

HB 199 updates Alaska's fish habitat protection and permitting law to establish enforceable standards to protect fish habitat. A person must apply for a fish habitat permit before conducting an activity that may "use, divert, obstruct, pollute, or otherwise affect" anadromous fish habitat. HB 199, Sec. 16.05.875(a). Some timber harvest activities (i.e. log dragging in fish habitat) and associated development activities (i.e. roads that cross fish habitat) require a fish habitat permit. The same activities that require a fish habitat permit under the current law also require a permit under HB199. In addition, the FRPA addresses the Department of Fish and Game's role and specifically defers to Fish and Game's authority under the fish habitat permitting law to set fish habitat protection standards and condition permits for specific activities that could adversely affect fish habitat. Therefore, in terms of how the two laws intersect, nothing has changed.

The FRPA does set forth specific habitat protection standards that are not currently specified under the fish habitat permitting law. For instance, the FRPA states that "significant adverse effects of soil erosion and mass wasting on water quality and fish habitat shall be prevented or minimized" (AS 41.17.060(5)), and on state and municipal forest lands "allowances shall be made for important fish and wildlife habitat." AS 14.17.060(c)(7). The FRPA also sets specific riparian protection standards for the various classifications of state, municipal and private forest lands. *See,* AS 41.17.116, AS 41.17.118. In managing riparian areas, "the commissioner shall protect riparian areas from the significant adverse effects of timber harvest activities on fish habitat and water quality. The management intent for riparian areas is the adequate preservation of fish habitat by maintaining a short- and long-term source of large woody debris, stream bank stability, channel morphology, water temperatures, stream flows, water quality, adequate nutrient cycling, food sources, clean spawning gravels, and sunlight." AS 41.17.115(a). None of these standards conflict with the fish habitat protection standards in HB 199. *See,* HB 199, Sec 16.05.877.

In terms of jurisdiction, HB 199 does expand the applicability of the fish habitat protection and permitting law to riparian areas adjacent to anadromous fish habitat. *See,* HB 199. Sec 16.05.871(d). However, it does not set forth specific riparian standards that would conflict with the FRPA nor does it

require Fish and Game to create duplicative regulations that set riparian standards. The FRPA clearly addresses interagency coordination and recognizes Fish and Game's expertise with fish and wildlife and instructs the commissioner to give "due deference regarding effects on fish habitat from timber operations including variations to riparian standards, designation of alternative site-specific riparian protection plans, and road location decision within riparian areas." AS 41.17.098(d). In essence, Fish and Game's authority to protect and guide development in riparian areas is already recognized in the FRPA. By expanding Fish and Game's authority to protect riparian areas, HB 199 ensures continued consistency across the two legal frameworks.

The one potential conflict between HB 199 and the FRPA is whether the anadromous waters presumption that appears in HB 199 would override the presumption in the FRPA as it applies to developing plans for state forest lands. The current presumption in HB 199 is very broad. It states, "the commissioner shall presume that a naturally occurring permanent or seasonal surface waterbody is important anadromous fish habitat." HB 199, Sec 16.05.871(c). In contrast, the FRPA creates a more narrow presumption where waters are presumed "anadromous if it is connected to anadromous waters that are without Department of Fish and Game documentation of a physical blockage and has a stream gradient of 8 percent or less." AS 41.17.118 (c). The FRPA presumption covers both waters listed in the AWC and nonlisted waters that have been determined "to exhibit evidence of anadromous fish." AS 41.17.950(1).

The FRPA presumption applies during land use planning to identify how the riparian standards should be applied on state forest land. AS 41.17.118. To avoid confusion and a potential conflict, the new version of HB 199 will refine the anadromous waters presumption and clarify that it applies exclusively to the fish habitat protection and permitting law. In sum, the relationship between the FRPA and the fish habitat protection and permitting law has already been established and will remain essentially the same. While HB 199 strengthens the fish habitat permitting law and expands Fish and Game's jurisdiction to issue fish habitat permits, it does not alter the existing interplay between the two laws.

How will the changes to Title 16 impact forestry practices and or forestry projects?

Generally, if a forestry operation required a fish habitat permit under the current law, it will also require a fish habitat permit under HB 199. The legislation however does set up a new two tier permitting system. The kind of fish habitat permit required (i.e., minor permit or major permit) depends on the level of impact that is likely to result from the forestry activities. If, based on the application, the Department of Fish and Game determines that the activity will not cause significant effects to anadromous fish habitat after the Fish and Game imposes conditions and stipulations, then it can be processed as a minor permit. The minor permit process is streamlined and requires only public notice but not a more detailed public review process. These permits are likely to be issued for regular forestry activities where the adverse effects can be controlled.

However, if the activity has the potential to significantly affect anadromous fish habitat then Fish and Game will process the permit as a major fish habitat permit. Fish and Game determines how to classify a permit (i.e., minor or major) by assessing whether the proposed activity has the potential to significantly affect important habitat characteristics that anadromous fish depend on. These include water quality, water quantity, the duration of flow, fish passage, aquatic habitat diversity, productivity, stability and function, and the potential adverse effects to other fish and wildlife that depend on anadromous fish habitat.

The major permit process requires Fish and Game to develop a Fish Habitat Impact Assessment and provide public notice and comment. The major permit process is designed to allow Fish and Game to work with the applicant to avoid or minimize significant adverse effects to anadromous fish habitat by providing a more in depth look at the project effects and by designing appropriate permit conditions and a mitigation plan that will protect fish habitat before proceeding.

Why was the Board of Forestry not consulted?

HB 199 contains several sections that provide conforming amendments to the Alaska Forest Resources and Practices Act (AFRPA). AS 41.17. The conforming amendments provide reference to the new section numbers that HB 199 adds to AS 16.05.871. It does not change how the AFRPA is implemented. The AFRPA establishes "fish habitat protection standards, policies and review processes under state law." *except* for activities subject to the Department of Fish and Game's authority under the Alaska Fishway Act (AS 16.05.841) and the Anadromous Fish Act (AS 16.05.871). Fish and Game has exclusive authority to implement the fish habitat permit process under state law. In addition, the AFRPA gives deference to Fish and Game for actions taken under the AFRPA if fish habitat is likely to be effected.

Improving Salmon Habitat Protection and Permitting in Alaska

PATINKIN RESEARCH STRATEGIES

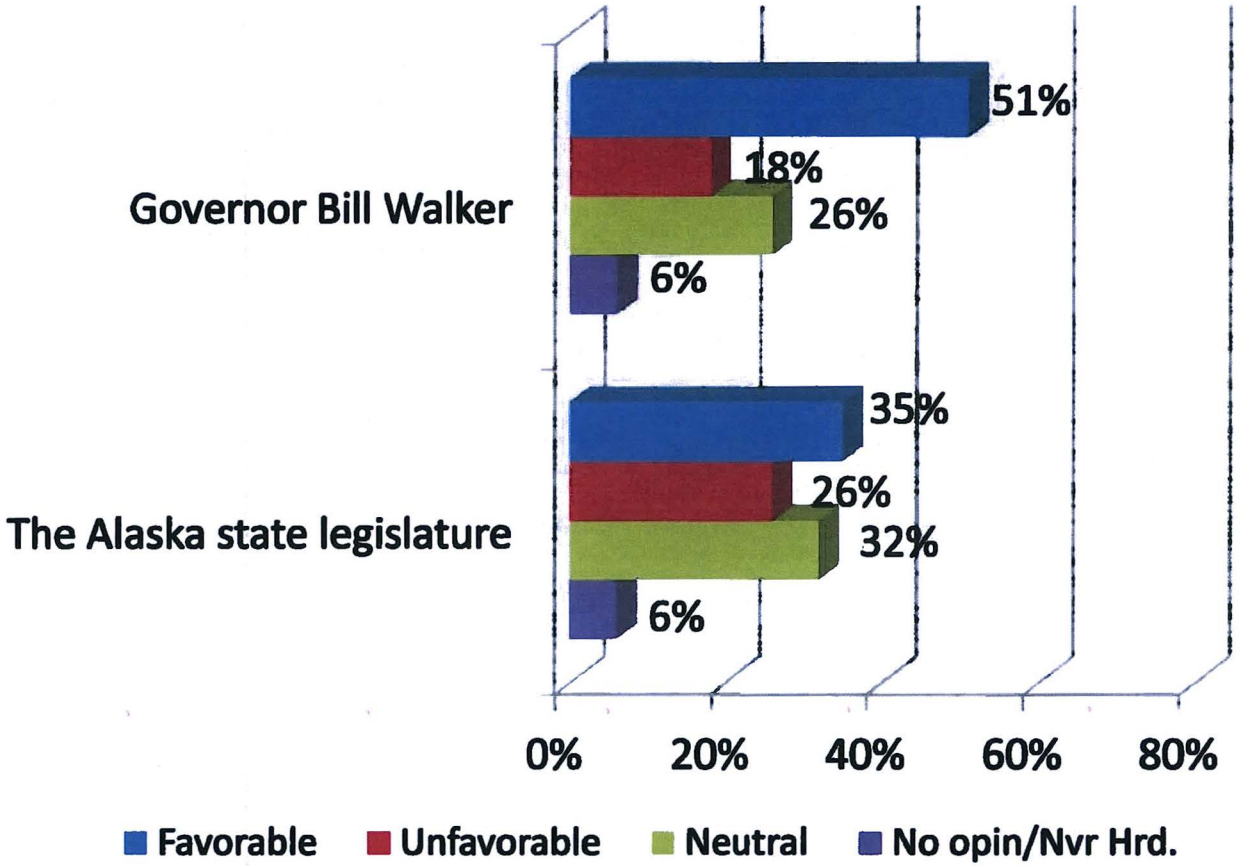
Methodology:

- **A survey of 600 registered voters in Alaska was conducted by telephone using professional interviewers.**
- **A voter file sample was used.**
- **Interviews were conducted November 28-30, 2016.**
- **The margin of error for the sample as a whole is plus or minus 4.0 percentage points at the 95% level of confidence. The margin of error for subgroups varies and is higher.**
- **Throughout this report we refer to "younger" and "older" voters. Younger voters are under age 50 and older voters are age 50 and up.**

The Lay of the Land

Governor Walker is popular—though the upcoming legislative may eat into his numbers

The state legislature is more divisive, though still garners lukewarm reviews.



Ratio:	2.8 to 1
Very favorable:	11%
Very unfavorable:	6%
Name ID:	94%

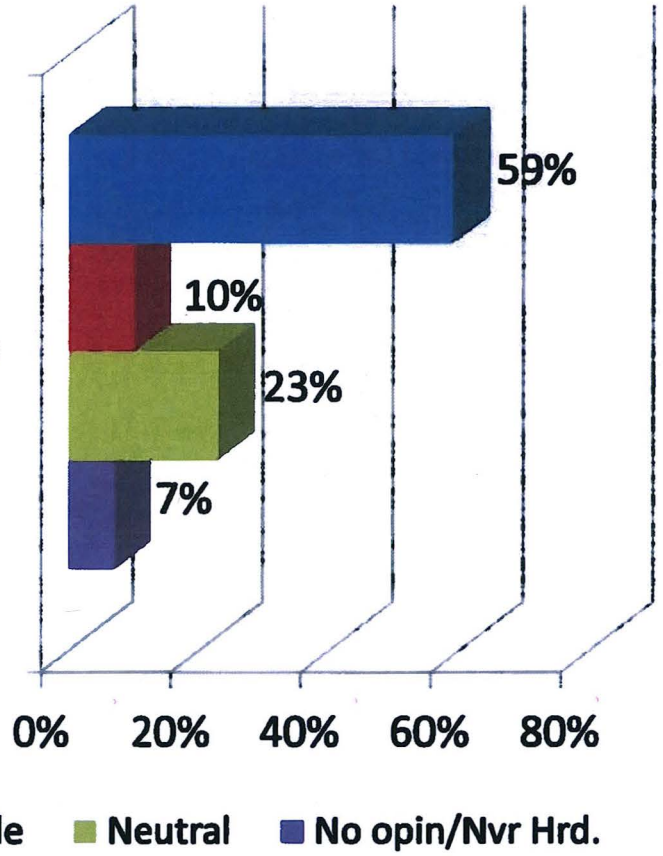
Ratio:	1.3 to 1
Very favorable:	6%
Very unfavorable:	8%
Name ID:	94%

Favorability ratings

The Department of Fish and Game is very well-liked

While majorities have positive reviews for the DFG in every region, rural and Juneau media market residents are FAR more positively disposed than those in Fairbanks or Anchorage.

The Alaska Department of Fish and Game

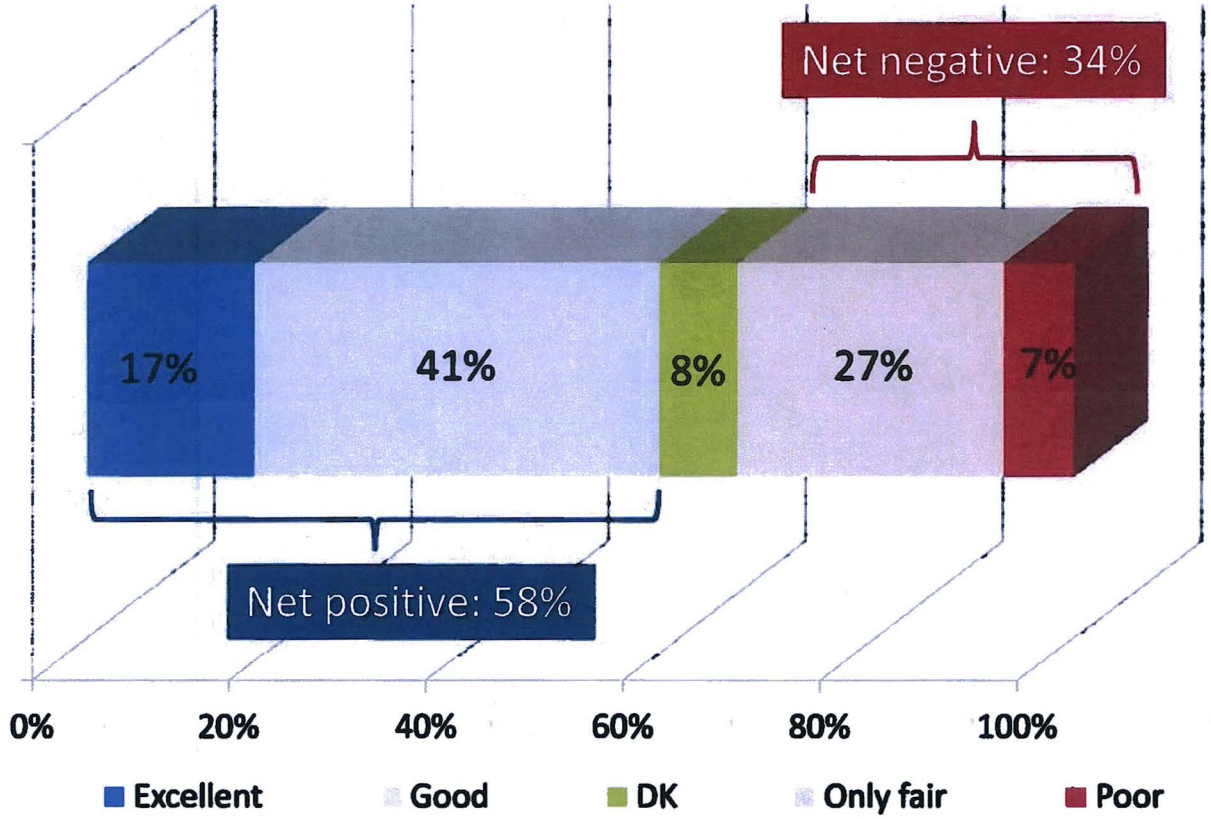


Ratio:	5.9 to 1
Very favorable:	23%
Very unfavorable:	2%
Name ID:	93%

Favorability ratings

Nearly six-in-10 provide net "positive" reviews for the DFG's work

Opinions are *very* lightly held. Three-quarters rate their performance as "good," "only fair" or are unsure – indicating we have our work cut out for us raising awareness.

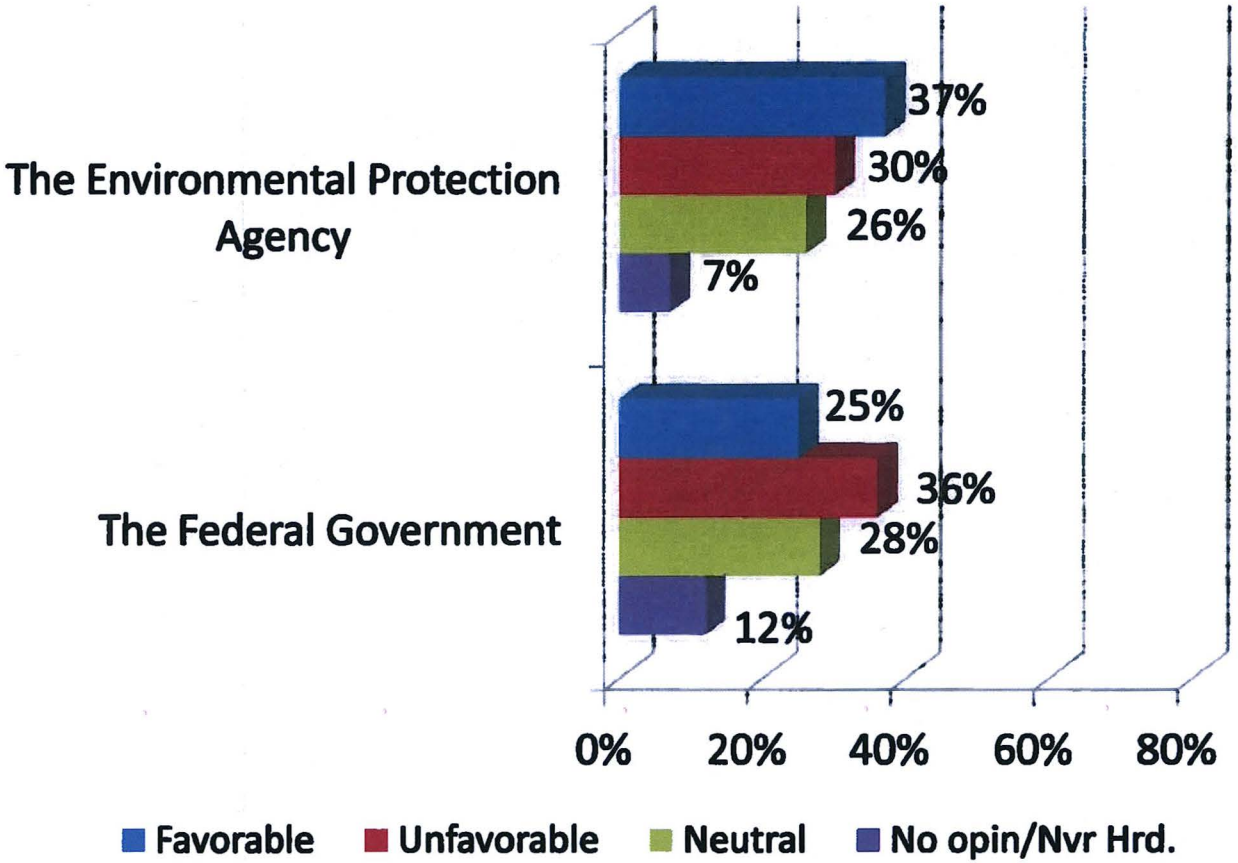


< It's worth noting that the Anchorage media market drags down overall numbers. Around two-thirds have positive views in every other market in the state.

What type of job do you think the Department of Fish and Game is doing when it comes to the protection of fish in Alaska – is it doing an excellent job, a good job, or a poor job?

Voters are divided in their impressions of the EPA—older, independent and urban voters are least supportive

The Feds are unpopular – we should consider leveraging their unpopularity throughout the course of the campaign.



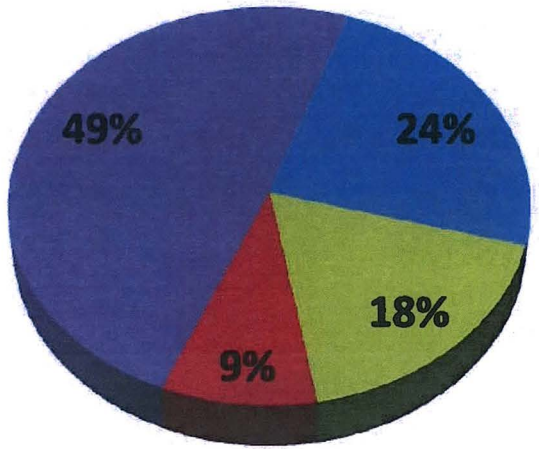
Ratio:	1.2 to 1
Very favorable:	16%
Very unfavorable:	13%
Name ID:	93%

Ratio:	0.7 to 1
Very favorable:	5%
Very unfavorable:	17%
Name ID:	88%

Favorability ratings

Nearly half believe existing regulations for projects impacting fish habitat are "about right"

This is our first indication that while voters are open to an "update," they're not looking for systemic reform.



Based on what you know, do you believe that the laws governing development projects impacting important Alaskan fish habitat are too strong, about right, or not strong enough?

Where voters land on development laws: even some Republicans lean "not strong enough"

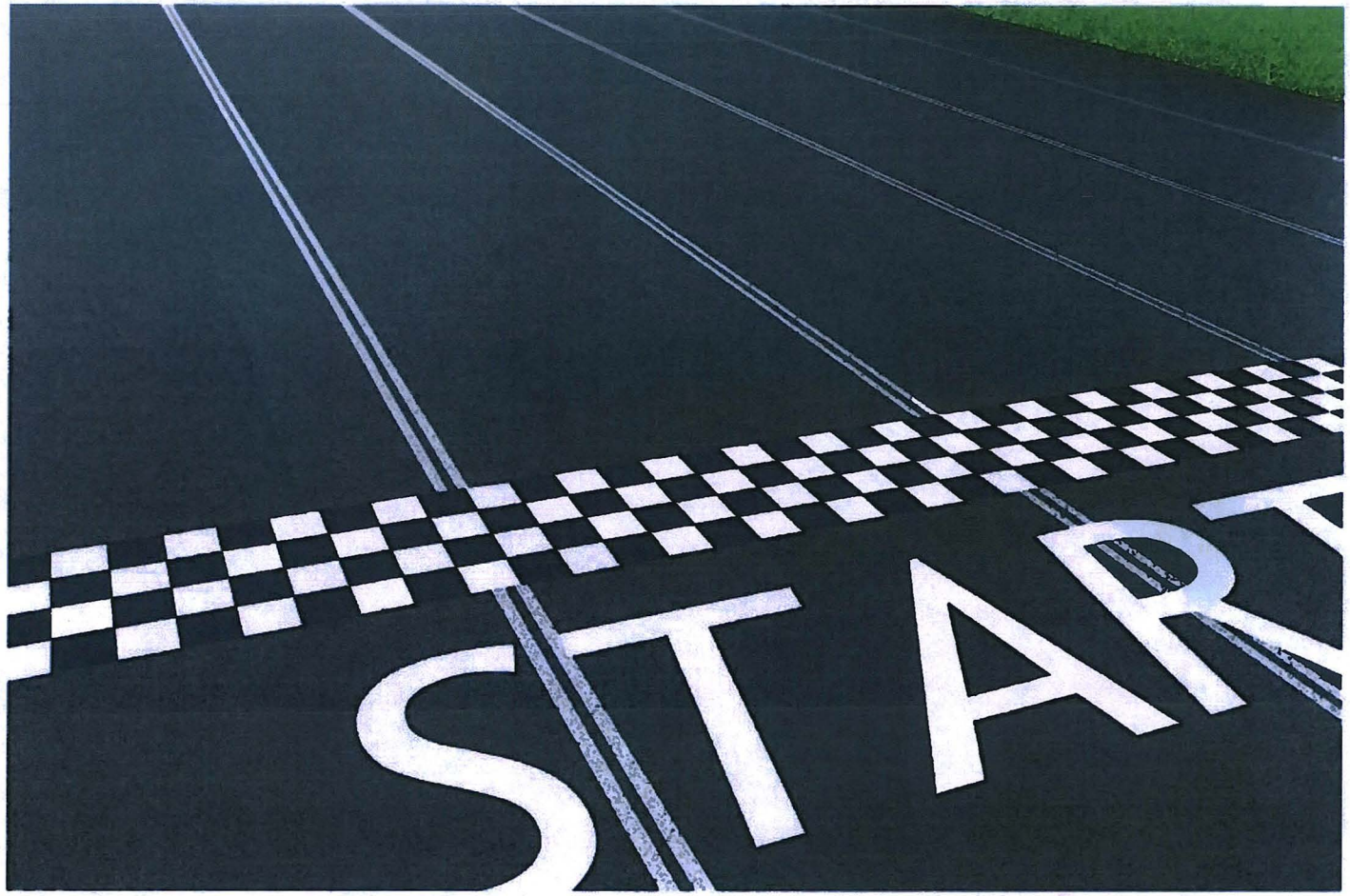
Note: Of subgroups who are most likely to say "too strong" a plurality indicate that existing laws are "about right."

Most likely to say "too strong"	
• Under 50, college+	18%
• Young men	16%
• Alaska Natives	16%
• All voters	9%

Most likely to say "about right"	
• Republicans	62%
• Ages 50-59	58%
• College grads	56%
• Independent men	54%
• All voters	49%

Most likely to say "not strong enough"	
• Post grads	39%
• Democrats	35%
• POC (non-AK Native)	31%
• Union HH	31%
• Older Republicans	31%
• Republican men	31%
• Over 50, college+	30%
• Independents	29%
• Older men	29%
• All voters	24%

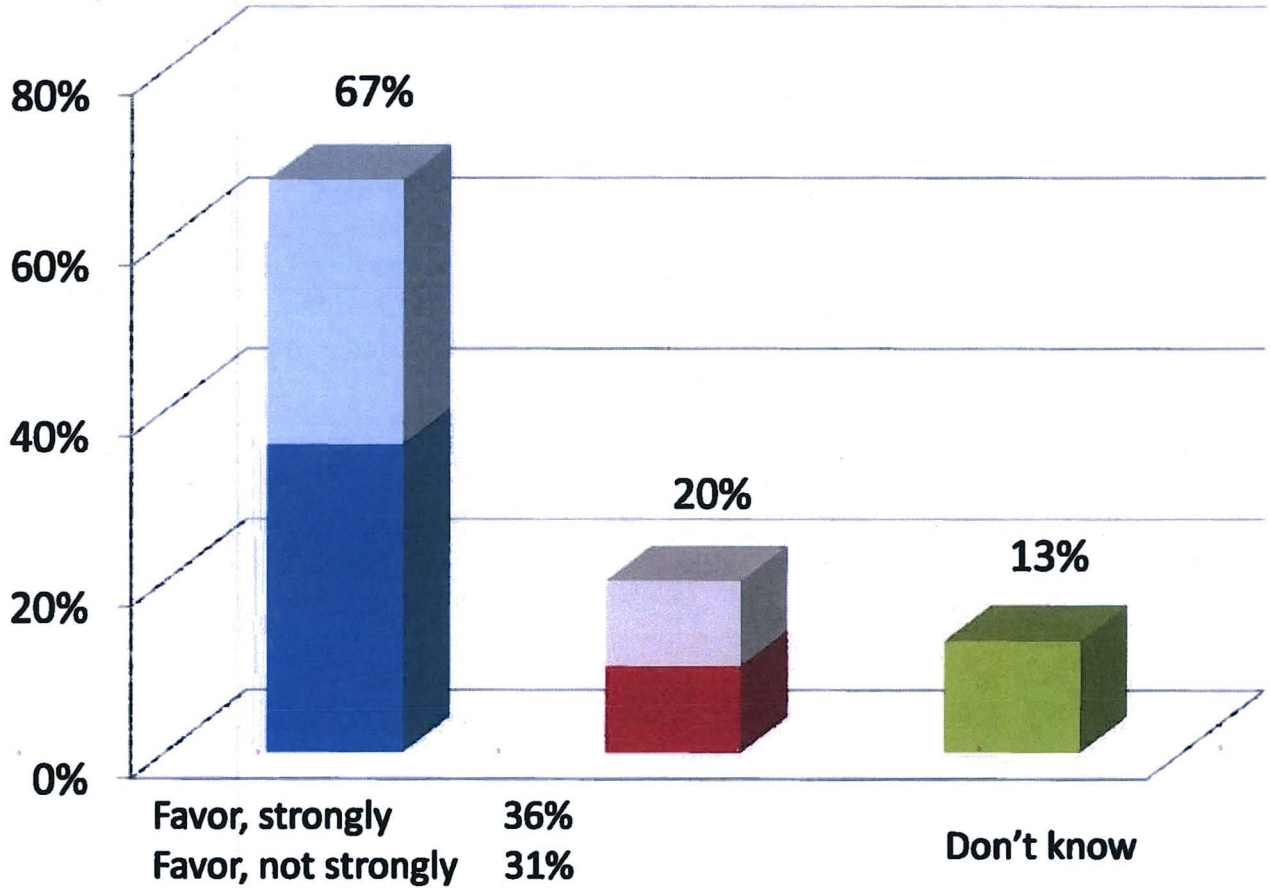
Based on what you know, do you believe that the laws governing development projects impacting important Alaskan fish habitat are too strong, about right, or not strong enough?



Where We Start

We start out with two-thirds supporting the proposed law

Over a third offer strong support for the proposal. It's worth noting that we will likely see a decline in support once the law is translated into "ballotese."



The Department of Fish and Game is responsible for approving development projects that could impact fish habitat in Alaska's streams and rivers. However, there are no specific rules in place limiting the amount of damage allowed to fish habitat during a development project. Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

Most likely to support and oppose the proposal:

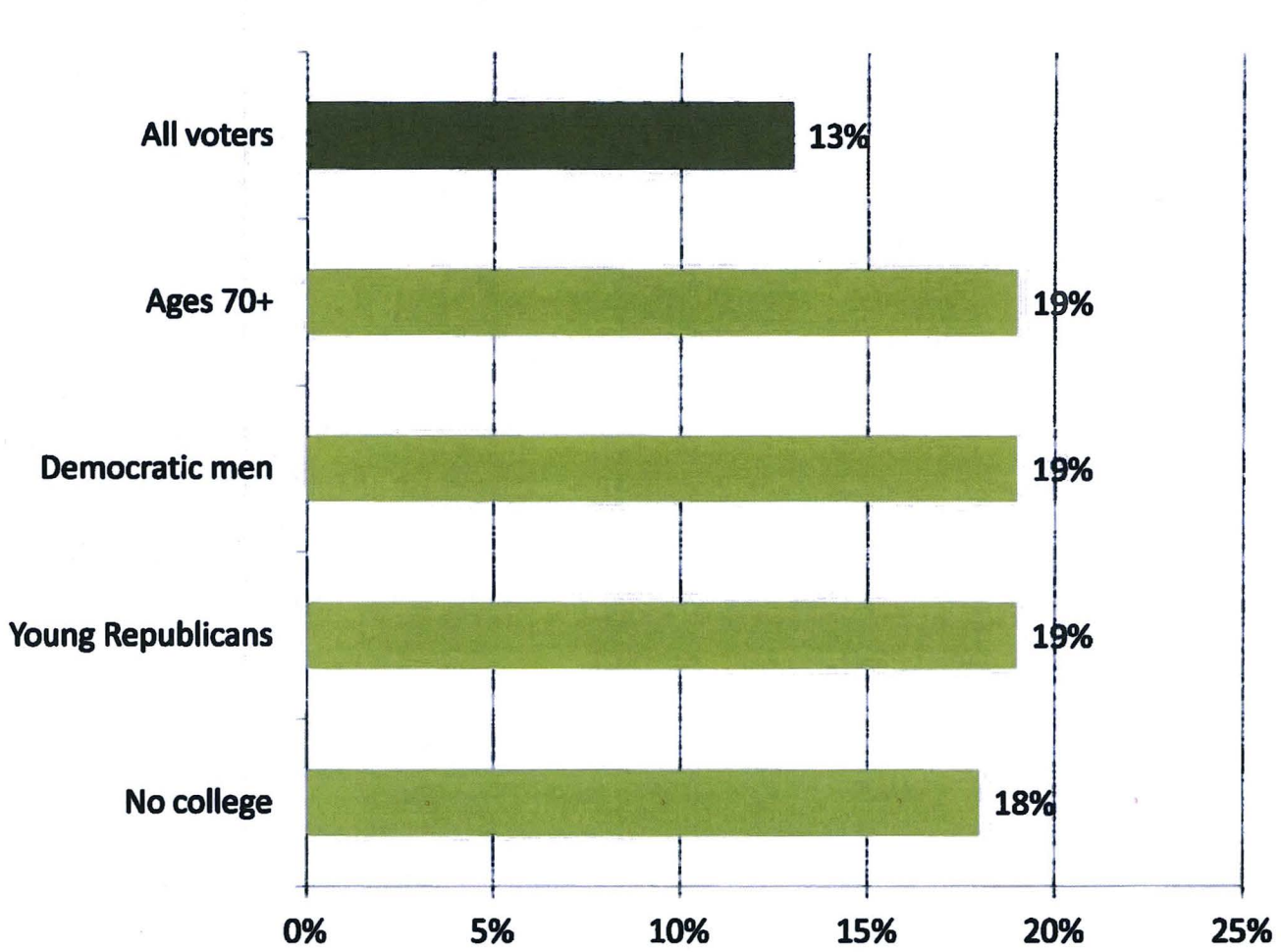
Most likely to support the proposal	
• Alaska Natives	80%
• Democrats	79%
• College+	77%
• Partisan Scores 21-53	75%
• Rural AK MM	75%
• Union HH	74%
• Younger voters	72%
• Rural AK Region	72%
• All voters	67%

Most likely to oppose the proposal	
• Republicans	31%
• Ages 50-59	29%
• Partisan Scores <5	28%
• Older women	27%
• Ages 60-69	25%
• No college	25%
• All voters	20%

Note: Every one of these subgroups offers a plurality in favor of the proposed law.

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

Undecideds tend to be:



	Yes	No
All voters	67%	20%
Ages 70+	67%	14%
Democratic men	61%	21%
Young Republicans	69%	12%
No college	57%	25%

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

All major subgroups offer a plurality in favor of the proposed law

	Favor	Oppose	Don't Know	Favor Margin
Men	**66%**	**21%**	**13%**	**+45**
Women	**68%**	**20%**	**12%**	**+48**
Under age 50	**72%**	**13%**	**15%**	**+59**
Over age 50	**64%**	**24%**	**12%**	**+40**
Over age 70	**67%**	**14%**	**19%**	**+53**
No college education	**57%**	**25%**	**18%**	**+32**
College+	**77%**	**16%**	**7%**	**+61**
Union HH	**74%**	**15%**	**12%**	**+59**
TOTAL	**67%**	**20%**	**13%**	**+47**

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

< There is a significant gap in support based on educational attainment. Those with a four-year degree or more are far more likely to support this proposal than their demographic counterparts.

There are gaps in the electorate based on partisanship

Though even Republicans offer a majority in favor of the proposed law.

	Favor	*Oppose*	*Don't Know*	*Favor Margin*
Democrats (ID)	**79%**	**11%**	**10%**	**+68**
Independents (ID)	**70%**	**16%**	**14%**	**+54**
Republicans (ID)	**55%**	**31%**	**14%**	**+24**
Partisan Scores 84+	**69%**	**19%**	**12%**	**+50**
Partisan Scores 53-84	**69%**	**16%**	**15%**	**+53**
Partisan Scores 21-53	**75%**	**16%**	**9%**	**+59**
Partisan Scores 5-21	**64%**	**23%**	**13%**	**+41**
Partisan Scores <5	**58%**	**28%**	**15%**	**+30**
TOTAL	**67%**	**20%**	**13%**	**+47**

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

Alaska Natives are particularly supportive of the proposal

	Favor	*Oppose*	*Don't Know*	*Favor Margin*
White voters	**64%**	**23%**	**13%**	**+41**
Alaska Natives	**80%**	**9%**	**11%**	**+71**
POC (non-Alaska Natives)	**67%**	**20%**	**13%**	**+47**
TOTAL	**67%**	**20%**	**13%**	**+47**

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

We see high levels of support across the state

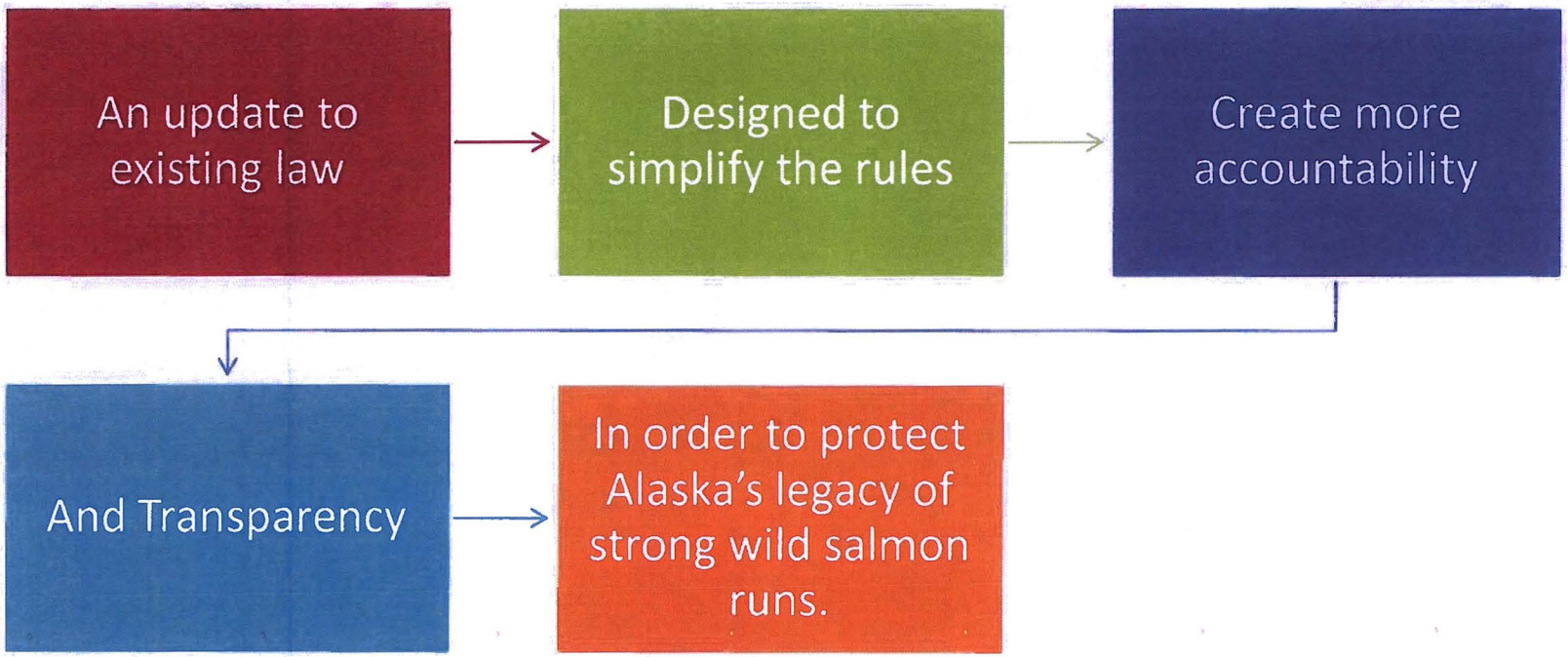
Every geographic region offers six-in-10 or more in favor of the proposed law.

	Favor	*Oppose*	*Don't Know*	*Favor Margin*
Rural AK MM	**75%**	**9%**	**16%**	**+66**
Juneau MM	**64%**	**19%**	**16%**	**+45**
Anchorage MM	**67%**	**23%**	**11%**	**+44**
Fairbanks MM	**64%**	**22%**	**14%**	**+42**
Rural AK	**72%**	**12%**	**16%**	**+60**
Mat-Su Valley	**70%**	**20%**	**10%**	**+50**
Fairbanks	**65%**	**20%**	**16%**	**+45**
Southeast	**64%**	**19%**	**16%**	**+45**
Anchorage	**66%**	**23%**	**11%**	**+43**
TOTAL	**67%**	**20%**	**13%**	**+47**

Would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

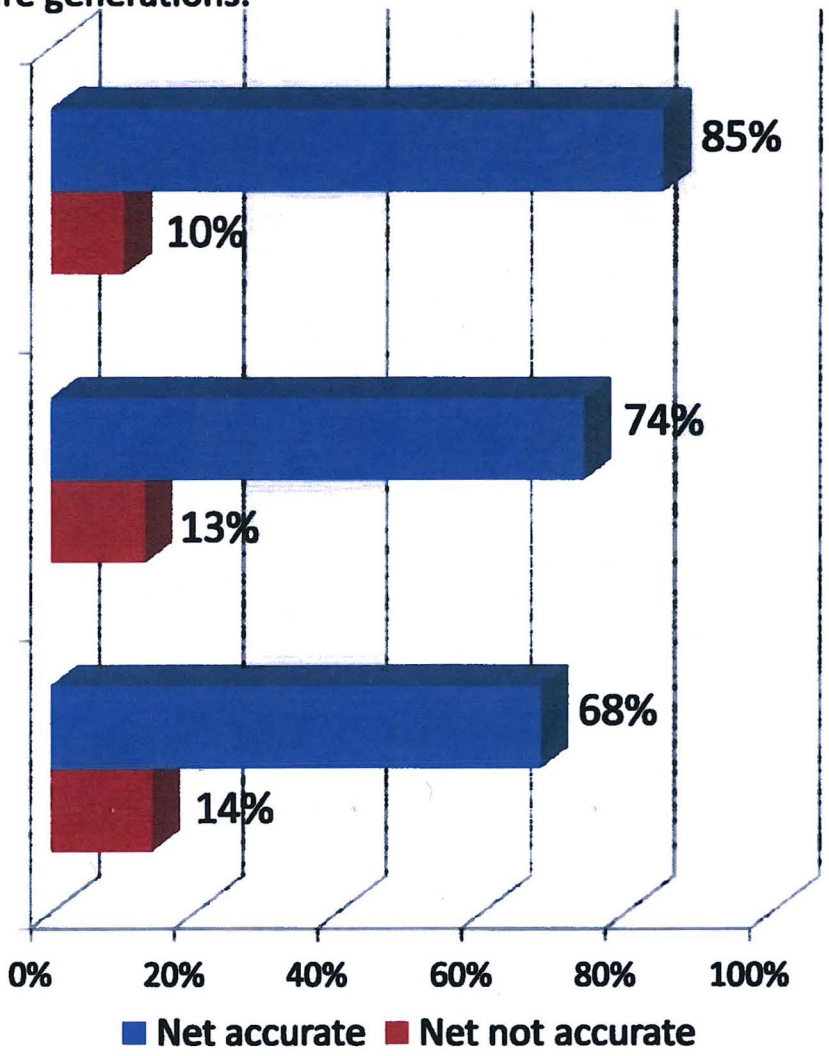
Building a stronger proposal and policy frame

Summing it up:



Alaska's wild salmon are seen as an essential part of voters' quality of life

Three-quarters indicate more should be done to protect the strong legacy of Alaskan salmon for future generations.

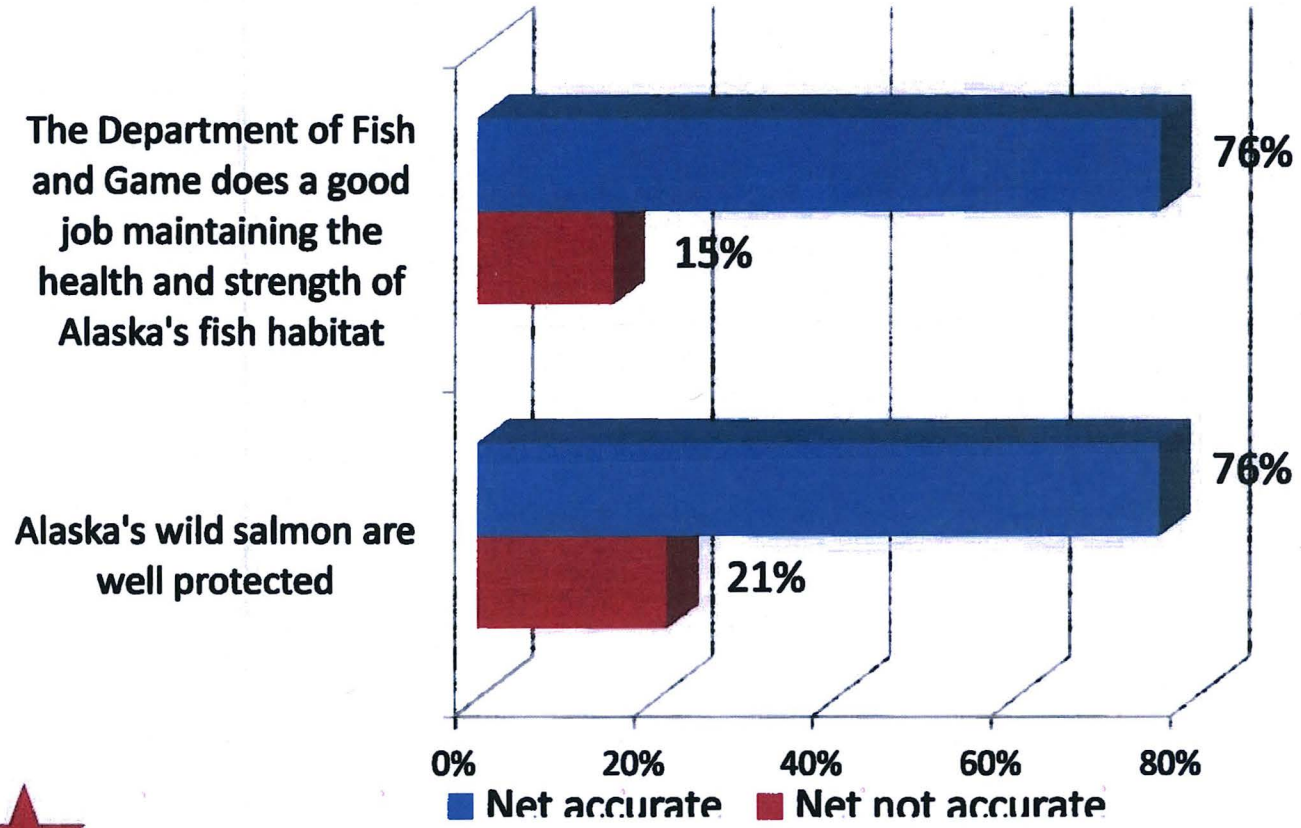


	Targets ***Net "accurate"*** Cons.	Moderate
An essential part of what makes Alaska such a great place to live, work, and raise a family	78%	90%
More should be done to protect a strong legacy of Alaskan wild salmon runs for future generations	61%	74%
The laws protecting fish habitat near construction and resource development projects needs to be updated	51%	63%

Note: explaining the need behind this law will be especially critical among our conservative target group.

One perception we will need to overcome: two-thirds or more believe fish and salmon are already well protected

We're going to have to be ready to outline the "why" behind the necessity of this update to the law.



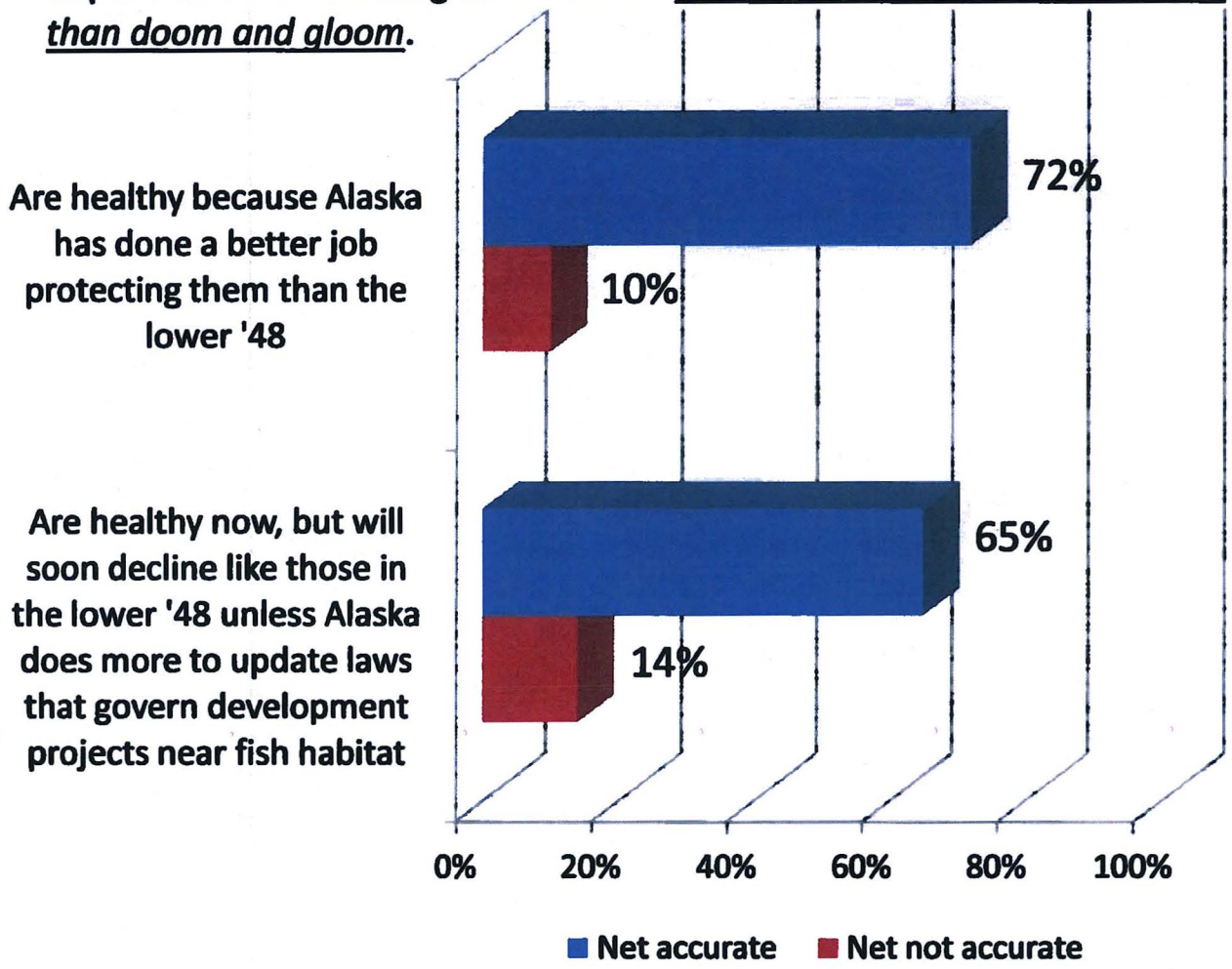
	Targets ***Net "accurate"*** Cons.	Moderate
The Department of Fish and Game does a good job maintaining the health and strength of Alaska's fish habitat	79%	84%
Alaska's wild salmon are well protected	79%	86%

Language nuance to consider:

Throughout the survey "fish" and "wild salmon" test equally well. We recommend picking one and sticking to it. Given that the cultural significance of salmon tests extremely well – we believe it's the better choice for messaging purposes.

We should draw on Alaska pride when it comes to their fish habitats

The "lower '48" comparison works better when we keep it positive – especially when looking at our conservative target subgroup. This is important when thinking about tone – *the "legacy" concept works better than doom and gloom*.



Targets
Net "accurate"

	Cons.	Moderate
Are healthy because Alaska has done a better job protecting them than the lower '48	72%	84%
Are healthy now, but will soon decline like those in the lower '48 unless Alaska does more to update laws that govern development projects near fish habitat	47%	66%

Top aspects emphasize accountability, protection, transparency and simplification

Every one of the aspects listed here garner support from at least six in 10 of our conservative target audience. Simply put: these are highly popular concepts.

	Favor	*Oppose*
Ensures that when a company becomes unable to complete or maintain an existing development project, they are held accountable for the clean-up	79%	16%
Require development companies to adequately protect wild salmon and fish habitat before a construction project is allowed to start	78%	16%
Creates more transparency by requiring public notice well before development projects impacting fish habitat can be approved	73%	19%
Simplifies development rules for individuals or small businesses but places higher levels of responsibility on large scale development projects like open pit mines that can have a significant impact on wild salmon and fish habitat	72%	19%
Updates existing law to prioritize the protection of wild salmon and fish habitat during a development project rather than harming habitat, and then building a salmon hatchery somewhere else	72%	18%

Accountability

Protection

Transparency

Simplification

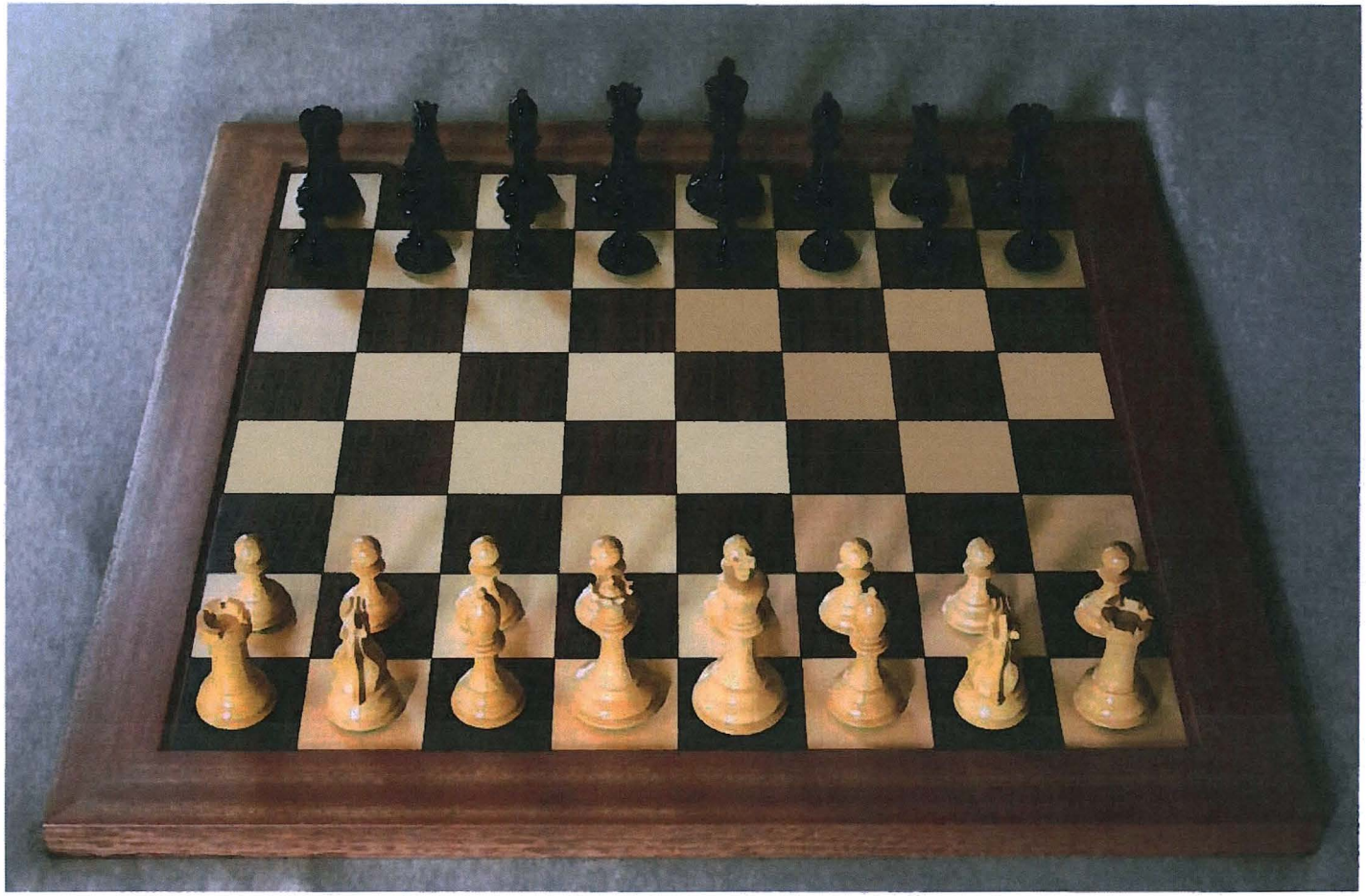
I'm going to read you a number of different aspects of a possible law that provides clear rules limiting the amount of damage to fish habitat during a development project. After each, please tell me whether you favor or oppose that aspect of the law.

Second tier aspects are slightly less popular—but still in good shape

Conservative targets skeptics of expanded DFG authority and salmon habitat and of fees for developers. Worth noting that these aspects are more nuanced in scope.

Net favor	*All voters*	*Con Targets*	*Mod Targets*
Updates existing law to establish clear science-based standards that must be met before the Department of Fish and Game can approve development projects impacting fish habitat	71%	65%	76%
Expands the Department of Fish and Game's authority to ensure they can require stronger protections for water and habitat important to wild salmon and other fish	69%	55%	69%
Currently less than 50 percent of streams and rivers in Alaska are listed as salmon habitat. This update expands that definition to include every stream and river in the state unless proven otherwise	64%	50%	63%
Establishes an application fee for larger development projects seeking approval for major construction impacting fish habitat. Depending on the size of their development project, most individuals and small businesses would be exempt from having to pay this application fee	64%	49%	63%

I'm going to read you a number of different aspects of a possible law that provides clear rules limiting the amount of damage to fish habitat during a development project. After each, please tell me whether you favor or oppose that aspect of the law.



Message Strategy

Our message frame

Wild salmon is an essential part of Alaska's quality of life.

This proposal protects that legacy. Providing a small, balanced update

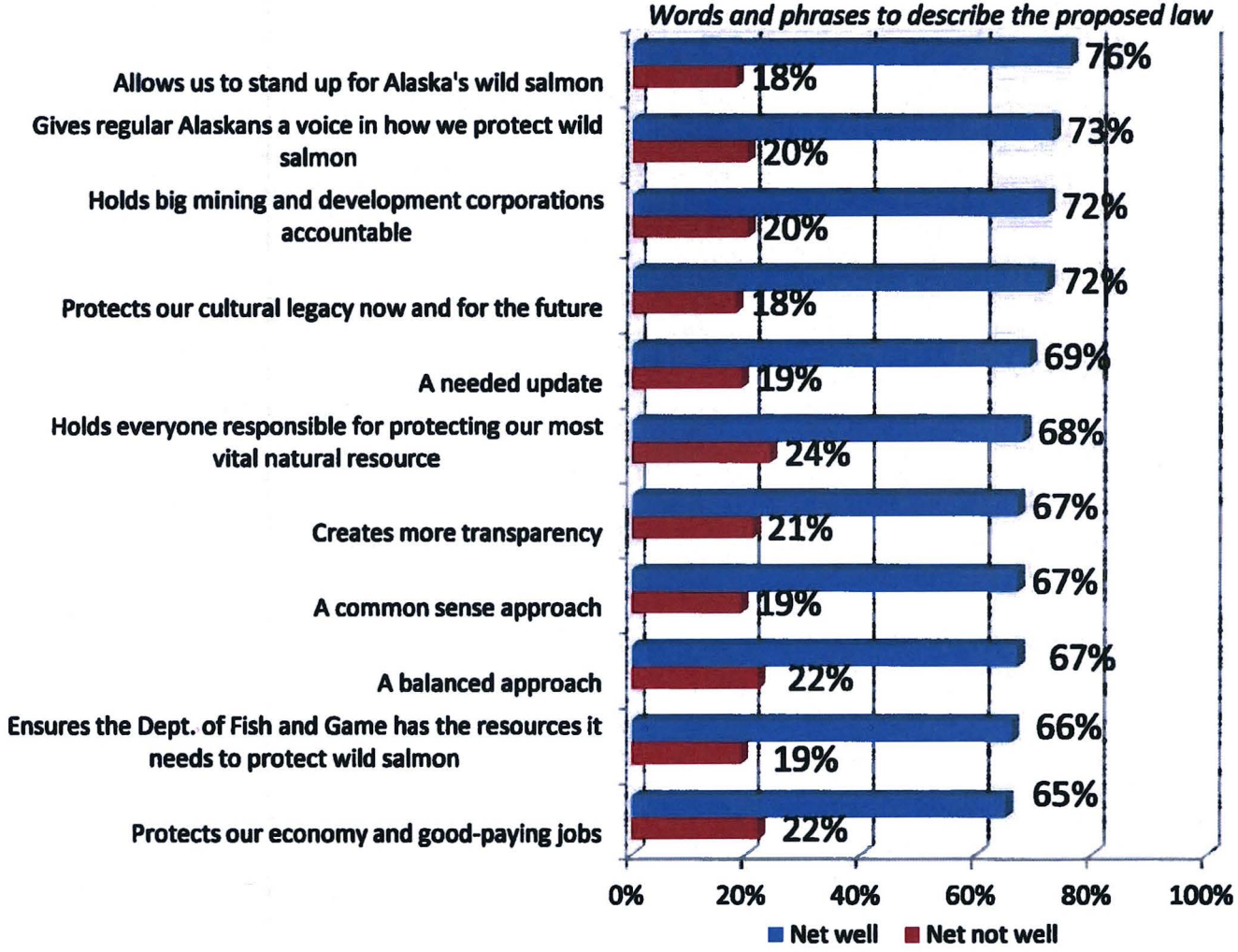
That ensures more transparency and gives regular Alaskans a voice in the process:

To hold foreign big developers accountable for fulfilling their shared responsibility to protect Alaska's legacy as the salmon state.

Note: this frame was arrived at through a combination of top tier messaging and regression analysis.

After messaging, voters see this proposal as giving them a voice to protect their legacy and hold corporations accountable

Note: the choice of "Stand for Salmon" as a campaign name was a good one.



	Targets Net "well"	
	Cons.	Moderate
Allows us to stand up for Alaska's wild salmon	68%	78%
Gives regular Alaskans a voice in how we protect wild salmon	64%	73%
Holds big mining and development corporations accountable	65%	72%
Protects our cultural legacy now and for the future	63%	76%
A needed update	58%	68%
Holds everyone responsible for protecting our most vital natural resource	56%	67%
Creates more transparency	58%	64%
A common sense approach	54%	66%
A balanced approach	57%	64%
Ensures the Dept. of Fish and Game has the resources it needs to protect wild salmon	61%	66%
Protects our economy and good-paying jobs	54%	61%

Descriptions that appear in regression modeling as drivers of support:

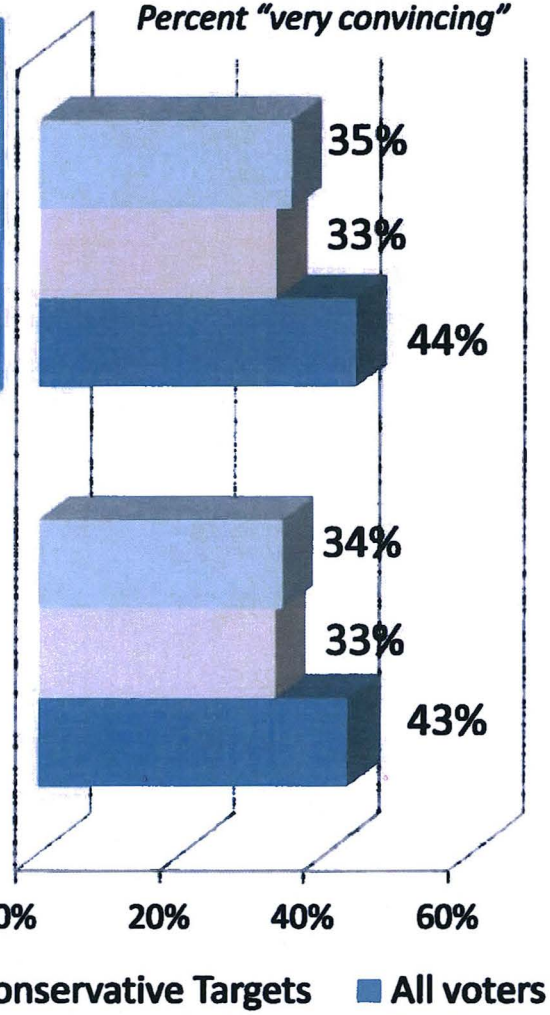
- Gives regular Alaskans a voice in how we protect wild salmon
- Protects our cultural legacy now and for the future
- A needed update
- A balanced approach

Message Flank #1: Salmon are part of Alaska's culture and we have a shared responsibility to protect them

Based on regression modeling we should emphasize that this law simply requires developers to take on their shared responsibility.

[RESPONSIBILITY] We all have a shared responsibility to protect Alaska's world renowned wild salmon runs and their habitat. This law simply requires that developers take on their shared responsibility to protect our wild salmon and their habitat when they embark on a major development project

[SALMON STATE] Alaska is the salmon state because it has the world's largest, healthiest and most abundant wild salmon population. Alaskan wild salmon provide food, jobs and income through commercial subsistence and recreational fishing. Salmon are part of Alaska's culture and we must protect them and their spawning streams to make sure Alaska remains the salmon state



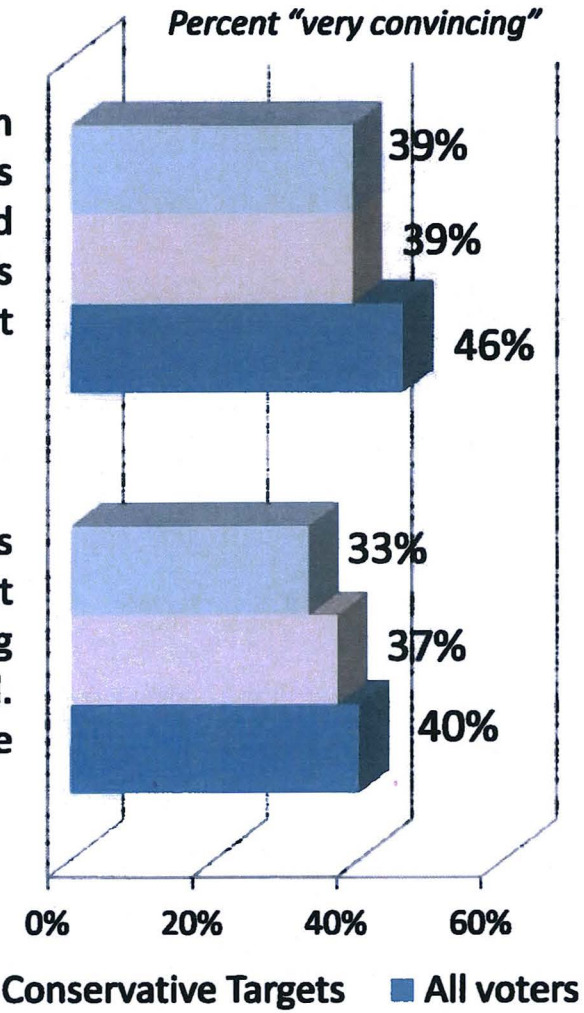
Note: Messages outlined in blue are drivers of support for the proposal based on regression modeling.

Message Flank #2: The law needs to be updated to hold developers accountable and give regular Alaskans a voice

This message flank is critical in order to provide the "why" behind the law and create urgency within the electorate.

[WHO'S BAG] When a development project on or near vital wild salmon habitat fails, taxpayers shouldn't be left paying for clean-up and restoration—that's the developer's responsibility. This law would ensure that developers clean up their mess

[VOICE/TRANSPARENCY] Current law provides regular Alaskans with a limited voice and almost no transparency in how permits allowing construction near fish habitat are approved. This proposal would update current law to give us all a voice in the process

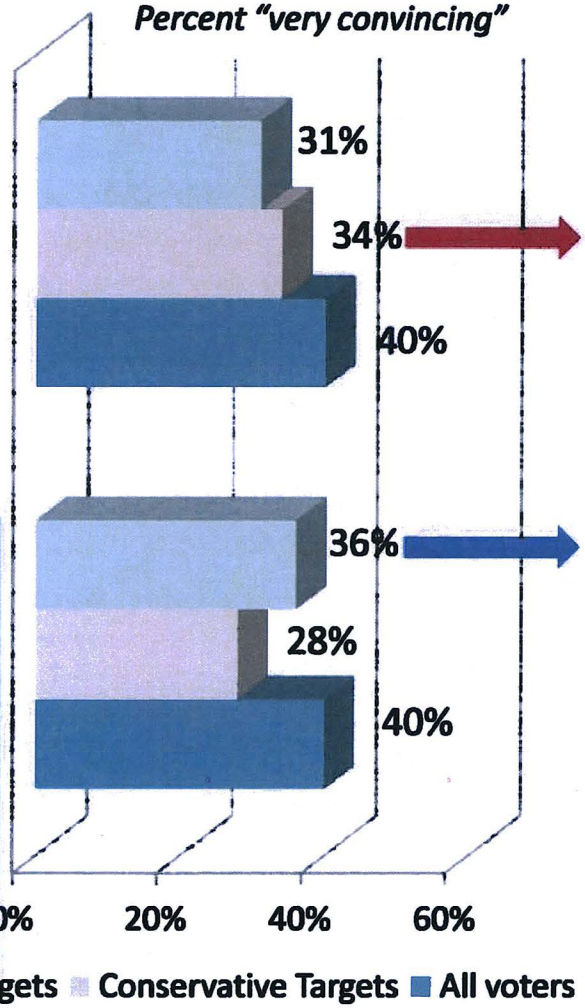


Message Flank #3: What happens if this law is not passed

For this message flank we recommend deploying the economic message with conservative voters (Partisan Scores <21) and the environmental message with Moderate voters (Partisan Scores 21+).

[BIG MINING—FISH 1st] While salmon fishing is a local industry that provides tens of thousands of local jobs and billions of dollars to Alaska's economy, most mining profits go to outside executives and corporations who don't care about the harm they are inflicting on Alaska's environment and economy. When it comes to choosing between mining and salmon, we must put healthy wild salmon runs first and not let mining companies put their profits before our best interests

[UPDATE-PEBBLE] Right now, there are practically no rules or standards development companies must meet before they are issued a permit allowing development activity near fish habitat. Without a clear set of rules, outside mining corporations like those responsible for the Pebble Mine can run amok, taking hundreds of millions of gallons of state water from salmon habitat, discharging chemicals that harm that habitat and destroying wild salmon spawning areas with little oversight or accountability



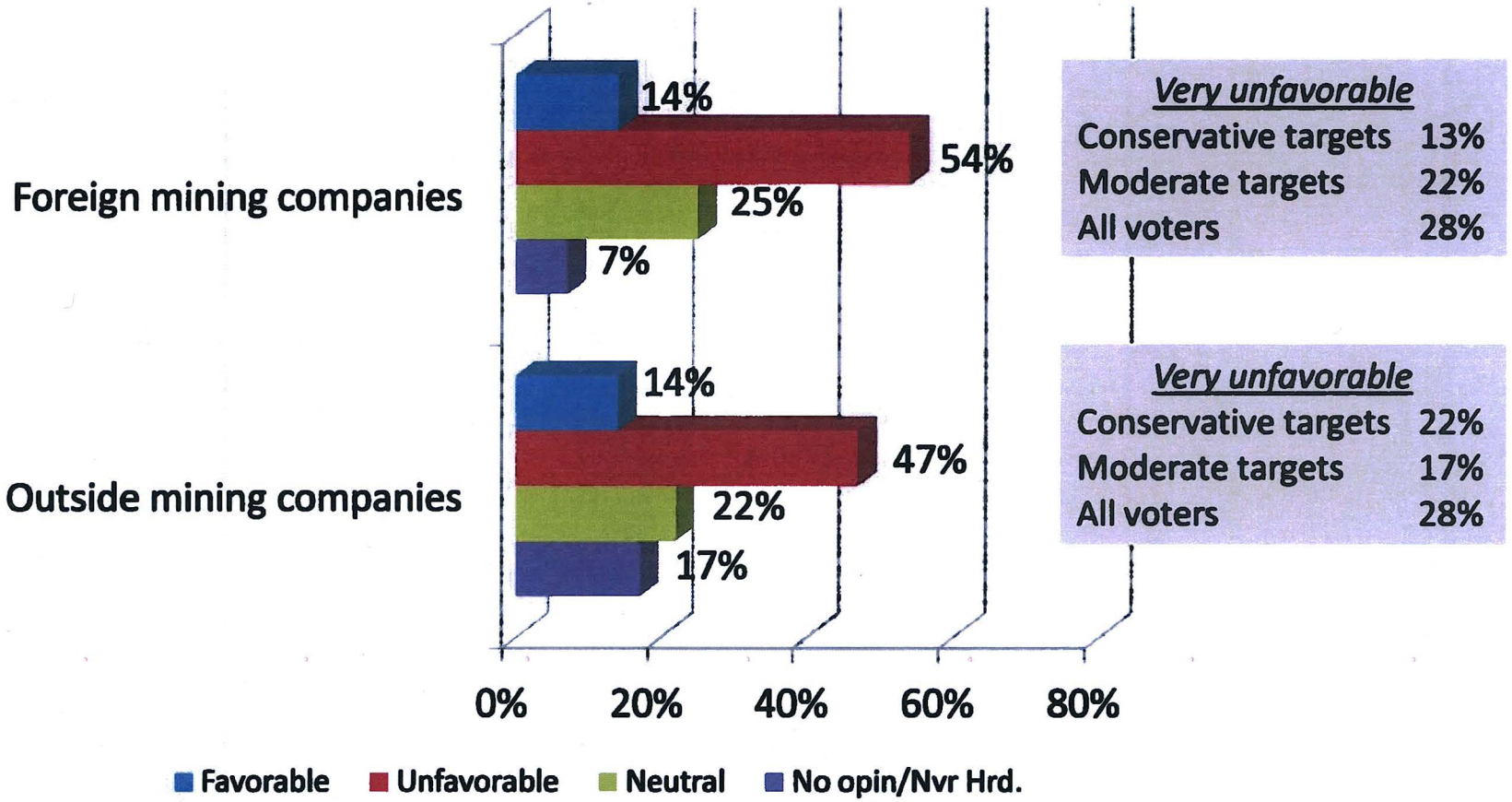
For conservative targets the message that focuses on the economic impact of mining vs. salmon is the most compelling "what if" example.

For more Moderate voters we should use the "bad" projects they're already accustomed to opposing as our example.

Note: Messages outlined in blue are drivers of support for the proposal based on regression modeling.

Both "foreign" and "outside" mining companies make good villains in this narrative

We suggest going with "foreign." Overall, unfavorable ratings are slightly higher with them.



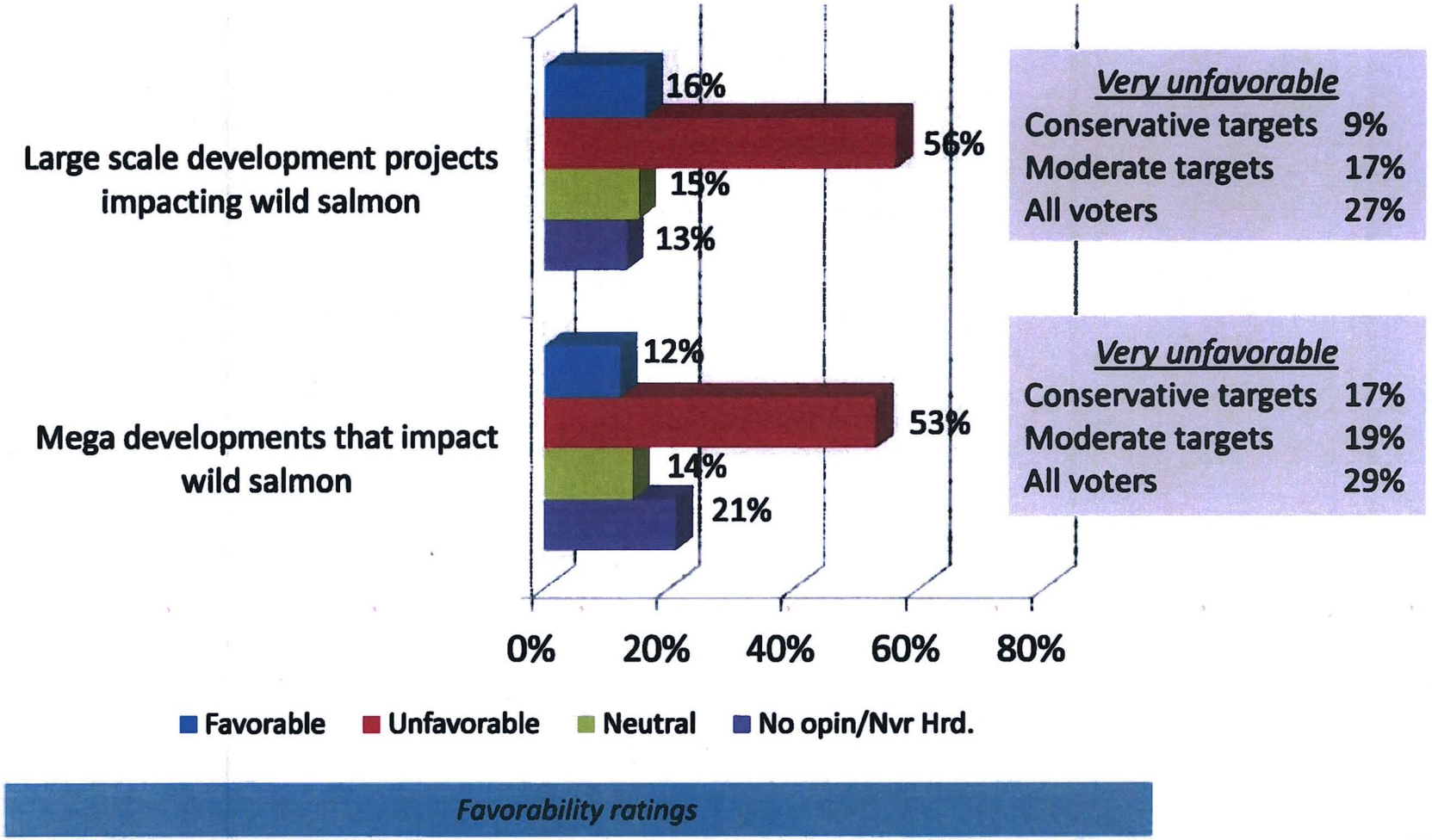
Very unfavorable	
Conservative targets	13%
Moderate targets	22%
All voters	28%

Very unfavorable	
Conservative targets	22%
Moderate targets	17%
All voters	28%

Favorability ratings

We should frame the danger as "mega developments that impact wild salmon

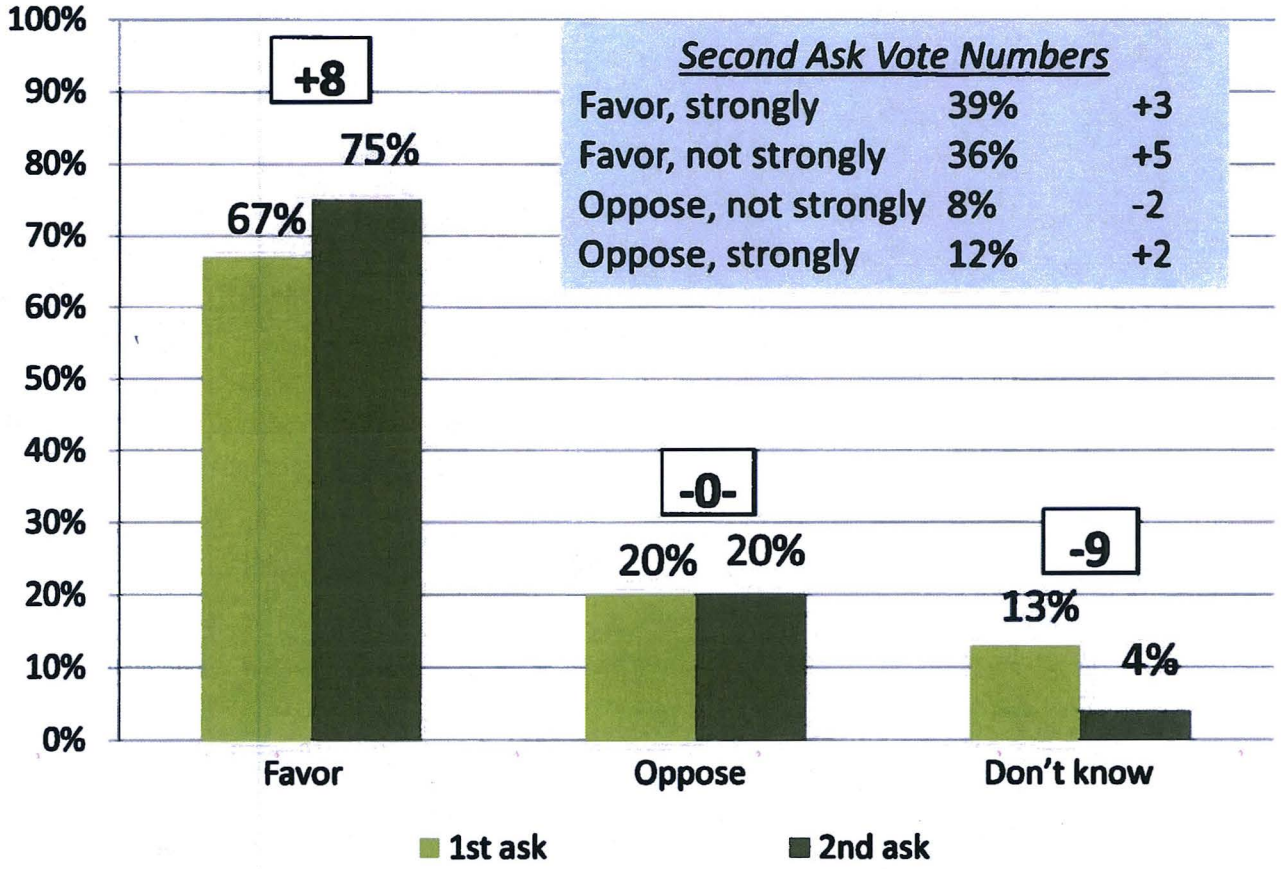
This description works well among both of our target subgroups.



Favorability ratings

After the first message section, support for the proposal increases

It's worth noting that the aspects of the proposed law alone lead to us better ground.

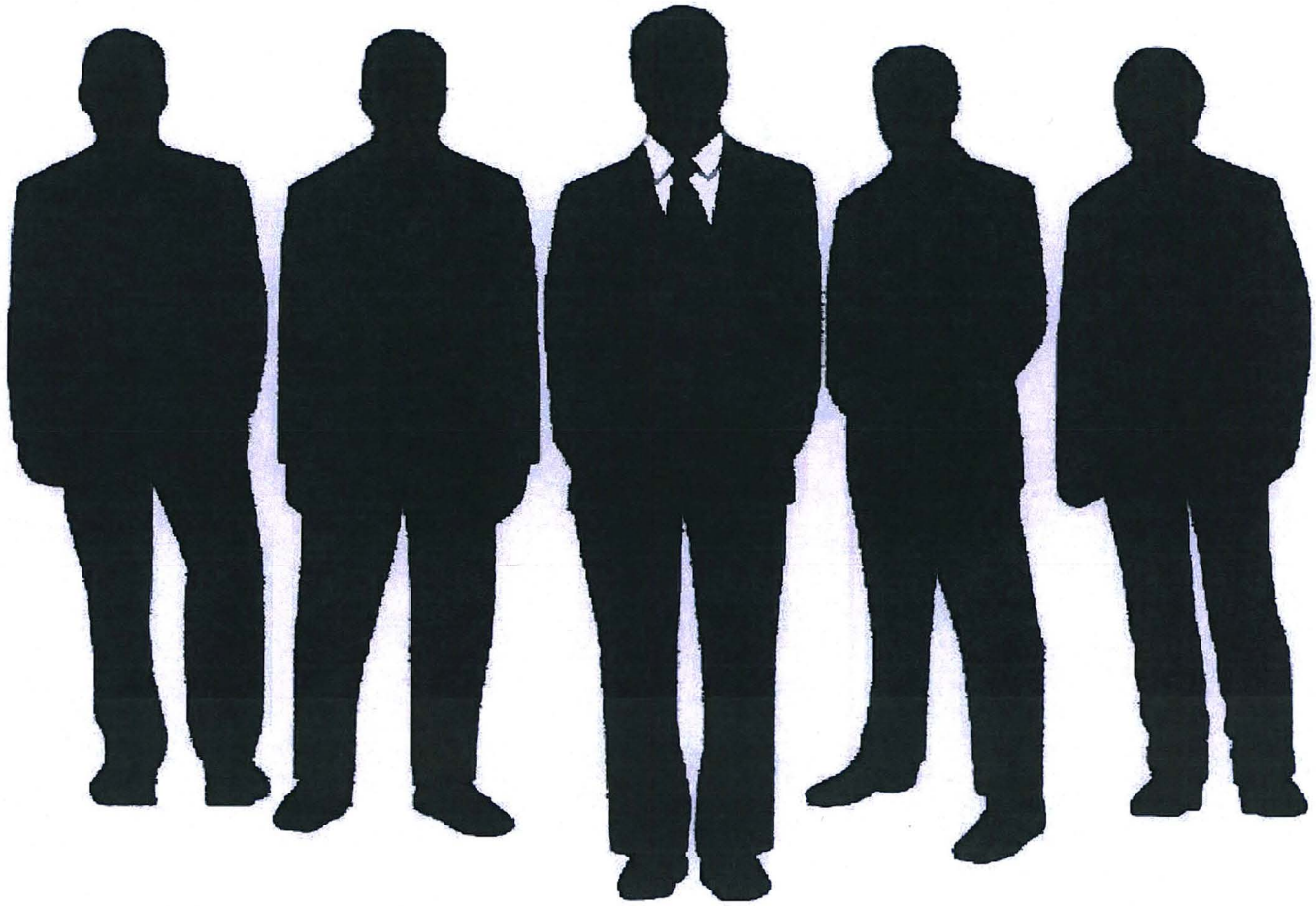


Second Ask Vote Numbers		
Favor, strongly	39%	+3
Favor, not strongly	36%	+5
Oppose, not strongly	8%	-2
Oppose, strongly	12%	+2

Aspects + Positive Messages	
Favor	+10
Oppose	-1
Don't know	-9

Aspects + Negative Messages	
Favor	+6
Oppose	-0-
Don't know	-7

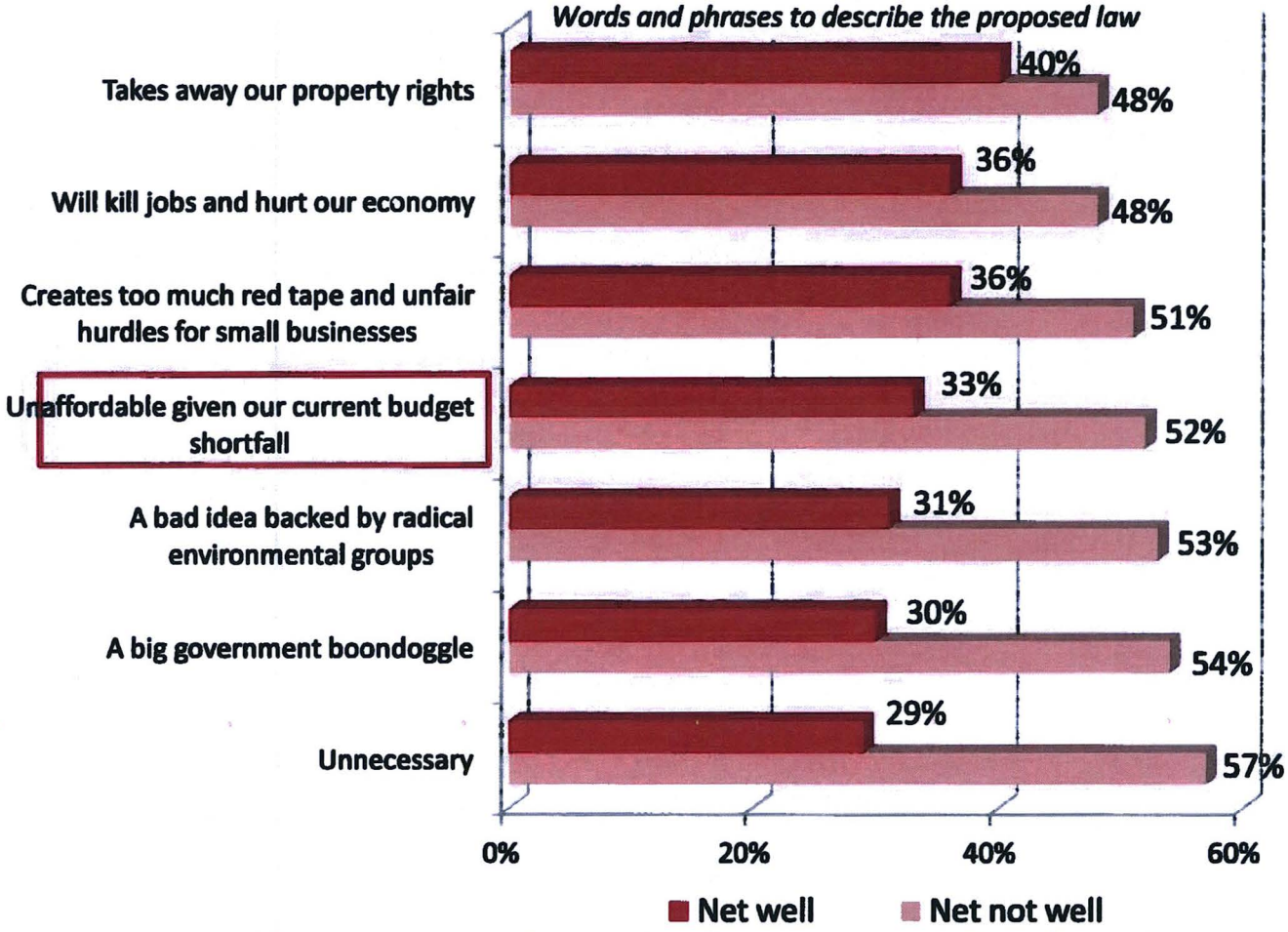
Sometimes over the course of a survey people change their minds. Let me ask you again: would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?



What Our Opposition Will Say

Our biggest liability: concerns about property rights – especially when it comes to our conservative targets

Concerns about the budget shortfall appear in regression modeling. That said, after messaging both for and against the proposed law, none of the negative traits tested are seen as descriptive.



	Targets Net "well"	
	Cons.	Moderate
Takes away our property rights	54%	40%
Will kill jobs and hurt our economy	46%	38%
Creates too much red tape and unfair hurdles for small businesses	45%	34%
Unaffordable given our current budget shortfall	42%	32%
A bad idea backed by radical environmental groups	40%	33%
A big government boondoggle	40%	30%
Unnecessary	38%	27%

Note: Traits outlined in red are drivers of opposition to the proposal based on regression modeling.

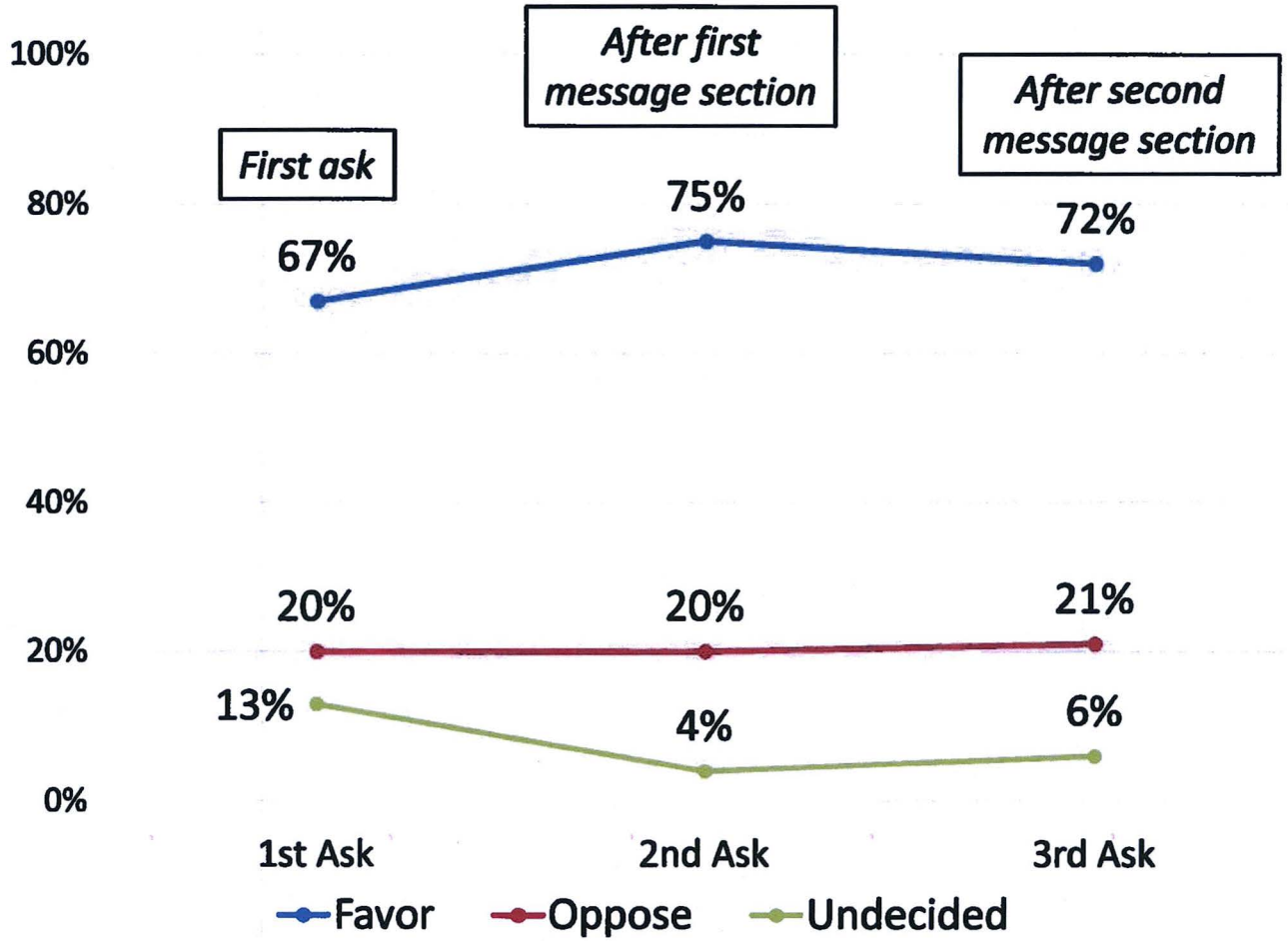
While all fall flat, the opposition's best messages touch on big government and unintended consequences

"Big government" and the contention that this law is unnecessary are drivers of opposition based on regression modeling.

"Very convincing"	All voters	Conservative Targets	Moderate Targets
[BUDGET CRISIS] Alaska is facing a multi-billion dollar budget shortfall. Yet this law would expand government and take needed resources away from our local schools, public safety and infrastructure like roads and bridges	**18%**	**20%**	**16%**
[BIG GOVERNMENT] More and bigger government never solves anything. Yet this law will expand big government, giving it too much power over private development projects that create thousands of good-paying jobs across Alaska* **	**18%**	**18%**	**16%**
[RED TAPE--FREEDOM] This proposal creates more red tape that unfairly limits the freedoms of regular Alaskan property owners to improve and develop their own land	**18%**	**18%**	**17%**
[FEE] Alaskans have never had to pay a fee when seeking permission to develop their land. We shouldn't force them to start paying one now	**17%**	**18%**	**14%**
[JOB KILLER] Alaskans are hurting right now. Our PFD has been slashed, the oil industry is in turmoil and too few good-paying jobs are being created. This law will make our problems even worse, creating unfair regulation that kills jobs and makes it almost impossible for more mining and development that can help turn our economy around	**17%**	**16%**	**15%**
[UNNECESSARY] This law is unnecessary. For nearly 60 years the Department of Fish and Games has done a great job ensuring the health of our wild salmon. All five wild salmon fish stocks are healthy and thriving. Why try to fix something that isn't broken?* **	**15%**	**14%**	**12%**

Note: Messages marked * are drivers of opposition for the proposal based on regression modeling.**

Seven-in-10 support the proposal by the end of the survey



Sometimes over the course of a survey people change their minds. Let me ask you again: would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

We see decline in support after negative messaging

This indicates that we can't leave the opposition unanswered. While our messaging results in us gaining ground, support erodes in a "negatives only" message environment.

Positive Messaging First	*First Ask*	*Second Ask (Pos)*	*Third Ask (Neg)*
Favor	**63%**	**73%**	**68%**
Oppose	**24%**	**23%**	**25%**
Undecided	**13%**	**4%**	**6%**

Negative Messaging First	*First Ask*	*Second Ask (Neg)*	*Third Ask (Pos)*
Favor	**72%**	**78%**	**77%**
Oppose	**17%**	**17%**	**17%**
Undecided	**12%**	**5%**	**6%**

Sometimes over the course of a survey people change their minds. Let me ask you again: would you favor or oppose an update to the law that provides clear rules limiting the amount of damage to fish habitat during a development project?

Our targets:

Persuasion Targets

- Rural AK MM
- Fairbanks MM
- Juneau MM
- Democratic men
- Alaska Natives
- No college (esp. under age 50 and women)
- Men under age 50
- Republicans
- Ages 18-39

Defined as voters who start out undecided or soft supporters (favor, not strongly) of the proposed law. For the purpose of messaging we divided these into two groups:
-Partisan Scores <21
-Partisan Scores 21+

Campaign recommendations:

Solidify our allies

- Governor Walker is very well-liked. We should aim to keep him in our camp.

Create "villains" for our narrative

- Foreign mining companies and "mega developments that impact wild salmon habitats" are our best villains.
- The Federal Government – while not a full blown villain – is not well-liked. We should emphasize the fact that this allows us to resolve these issues without bringing in the feds.
- Both of these contrast well with the "Alaskan pride" we need to tap into

Deploy our message frame

- Flank #1: Salmon are part of Alaska's culture and we have a shared responsibility to protect them.
  - *Note: we need to emphasize that this law simply makes corporations accountable for their shared responsibility.*
- Flank #2: The law needs to be updated to hold developers accountable and give regular Alaskans a voice.
- Flank #3: What happens if the law is not passed.
  - *Conservative targets: use the example that outlines the economic impacts of fishing vs. mining.*
  - *Moderate targets: use the example that outlines environmental impacts of "bad" projects like the pebble mine.*