

HB 199

(FILE

2)

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

**ALASKA STATEWIDE #338-A
Topline Results
600 Registered Voters**

Hello, I'm _____ from Western Opinion Research, a public opinion research company. We're conducting a survey about issues that concern people in your state. I'm not selling anything and won't ask you for a donation. May I please speak with _____? **(MUST SPEAK WITH VOTER LISTED. VERIFY THAT THE VOTER LIVES AT THE ADDRESS LISTED--OTHERWISE TERMINATE.)**

(PHONE) Did I reach you on a landline or a cell phone?

Land line..... 74%
Cell phone 26%
(DON'T KNOW/NA) 0%

1. First, are you registered to vote at this address?

Yes..... 100%
No **TERMINATE**
(DON'T KNOW/NA) TERMINATE

2. In your opinion, how important is each of the following to Alaska - extremely important, very important, somewhat important, not too important or not at all important?

(RANDOMIZE)	EXT IMPT	VERY IMPT	S.W. IMPT	NOT TOO IMPT	NOT AT ALL	(DK/ REF)	EXT/ VERY IMPT
_a. Salmon	55%	38%	6%	0%	0%	1%	93%
_b. Commercial fishing	40%	43%	14%	2%	1%	0%	83%
_c. (SPLIT A) Subsistence fishing and hunting	43%	37%	15%	3%	2%	0%	80%
_d. (SPLIT B) Sport fishing and hunting	31%	43%	21%	4%	1%	1%	73%
_e. (SPLIT A) Mining for gold, copper and other minerals.....	21%	29%	32%	12%	6%	1%	50%
_f. (SPLIT B) Coal mining.....	12%	27%	36%	13%	9%	3%	39%
_g. (SPLIT A) Tourism.....	36%	43%	19%	1%	0%	0%	79%
_h. (SPLIT B) Freedom from federal overreach	26%	26%	23%	10%	6%	9%	52%
_i. (SPLIT A) Onshore oil and gas drilling.....	34%	38%	20%	4%	3%	1%	73%
_j. (SPLIT B) Offshore oil and gas drilling.....	31%	37%	23%	5%	2%	1%	68%

3. I'd like to read you a list of some of issues in Alaska and ask you to tell me if you support or oppose each one. (READ AND RANDOMIZE)

(IF SUPPORT/OPOSE) Do you strongly (SUPPORT/OPOSE) or somewhat (SUPPORT/OPOSE) that?

(RANDOMIZE)	STR SUPP	SW SUPP	SW OPP	STR OPP	(DK/NA)	TOTL SUPP	TOTL OPP	SUPP-OPP
_a. (SUSITNA) Construction of the dam on the Susitna River.	12%	20%	19%	22%	26%	32%	41%	-9
_b. (CHUITNA) The proposed Chuitna coal strip mine near the Cook Inlet... ..	10%	17%	18%	30%	26%	26%	48%	-22
_c. (PEBBLE) The proposed Pebble mine at the headwaters of Bristol Bay.	14%	13%	15%	50%	7%	27%	65%	-38
_d. (TRANSBOUNDARY) Allowing gold mining on the Canadian side of the Alaska-Canada border.....	19%	32%	16%	13%	20%	51%	29%	+22
_e. (ANWR) Drilling for oil and gas in ANWR, the Arctic National Wildlife Refuge.....	45%	20%	11%	20%	3%	65%	31%	+34
_f. (SPLIT A) (SALMON) Efforts to protect salmon and the salmon industry in Alaska.	78%	16%	2%	0%	3%	94%	3%	+92
_g. (SPLIT B) (CLIMATE) Efforts to address climate change.....	46%	21%	11%	16%	7%	66%	27%	+40
_h. (FISH FIRST) Governor Walker's fish first policy efforts.....	20%	21%	7%	3%	49%	41%	10%	+31

4. If there is a conflict between a mining project and salmon in Alaska, which should we prioritize?

Mining.....	7%
Salmon.....	75%
(BOTH).....	14%
(NEITHER).....	1%
(DON'T KNOW/NA).....	3%

SALMON - MINING..... +68

(RANDOMIZE IN PAIRS 5-6, 7-8 AND 9-10)

5. Now I would like to read you some statements made by OPPONENTS of the proposed Susitna (Soo-sit-na) River dam project. For each one, please tell me whether the statement raises very serious doubts, serious doubts, minor doubts, or no real doubts in your mind about the proposed project. (READ AND RANDOMIZE)

(RANDOMIZE)	VERY SER DOUBTS	SERIOUS DOUBTS	MINOR DOUBTS	NO REAL DOUBTS	(DON'T KNOW)	TOTAL SER DOUBTS
_a. This project will cost taxpayers 8 billion dollars and state government has already wasted hundreds of millions of dollars trying to pursue this project.....	26%	32%	16%	20%	7%	58%
_b. (SPLIT A) Instead of spending billions on this dam, the state should instead invest in meeting more pressing local needs.....	18%	21%	17%	34%	10%	39%
_c. (SPLIT B) The dam would be the second tallest in the U.S.	18%	20%	16%	35%	10%	38%
_d. (SPLIT A) The Susitna River is the fourth largest undammed river in North America and the fourth largest producer of king salmon in Alaska.	23%	26%	15%	27%	9%	49%
_e. (SPLIT B) The dam would put at risk a local fishing and recreation-based economy valued at over 200 million dollars.....	23%	31%	20%	20%	6%	54%
_f. (SPLIT A) Instead of building a huge new dam that would destroy the salmon industry, the state should explore doing smaller projects that have less impact and still meet our energy needs.....	19%	22%	19%	33%	8%	40%
_g. (SPLIT B) Dams have ruined salmon runs across the lower 48. We shouldn't repeat these mistakes in Alaska.	23%	32%	16%	25%	4%	55%

(SUSITNA)

6. Do you support or oppose the construction of the dam on the Susitna? (FOLLOW-UP) And do you strongly or just somewhat (SUPPORT/OPPOSE) it?

Strongly support	14%
Somewhat support.....	12%
Somewhat oppose.....	20%
Strongly oppose	39%
(DON'T KNOW/NA)	15%
TOTAL SUPPORT	26%
TOTAL OPPOSE	59%
SUPPORT - OPPOSE.....	-33

7. Now I would like to read you some statements made by OPPONENTS of the proposed Chuitna (Choo-it-na) coal strip mine near the Cook Inlet. For each one, please tell me whether the statement raises very serious doubts, serious doubts, minor doubts, or no real doubts in your mind about the proposed project. (READ AND RANDOMIZE)

(RANDOMIZE)	VERY SER DOUBTS	SERIOUS DOUBTS	MINOR DOUBTS	NO REAL DOUBTS	(DON'T KNOW)	TOTAL SER DOUBTS
_a. (SPLIT A) Will be the largest coal strip-mine in Alaska.	21%	21%	16%	31%	12%	41%
_b. (SPLIT B) Will be the first mine of any kind to mine through a salmon stream.	35%	30%	15%	14%	5%	65%
_c. (SPLIT A) Will remove nearly 14 miles of wild salmon spawning and rearing habitat.....	35%	27%	17%	15%	7%	61%
_d. (SPLIT B) The mine is next to the other coal-bearing leases held by Barrack Gold and this project could lead to opening additional areas to more coal mining, turning wetlands and salmon-rich area into massive industrial-scale strip mines.....	37%	26%	16%	17%	4%	63%
_e. (SPLIT A) World coal markets are in decline as they turn from this heavily polluting fossil fuel to other cleaner energy sources. Coal exports from Alaska are down nearly 60 percent since 2011, making this project financially risky and economically not viable.	22%	25%	23%	22%	9%	47%
_f. (SPLIT B) Pacrim Coal is an outside company sending 100 percent of coal overseas	21%	27%	18%	24%	10%	48%

(CHUITNA)

8. Do you support or oppose the Chuitna Coal Project in Upper Cook Inlet? (FOLLOW-UP) And do you strongly or just somewhat (SUPPORT/OPPOSE) it?

Strongly support	10%
Somewhat support.....	16%
Somewhat oppose.....	20%
Strongly oppose	40%
(DON'T KNOW/NA)	15%
TOTAL SUPPORT	25%
TOTAL OPPOSE	60%
SUPPORT - OPPOSE.....	-34

9. Now I would like to read you some statements made by OPPONENTS of allowing gold mining on the Canadian side of the Alaska-Canada border. For each one, please tell me whether the statement raises very serious doubts, serious doubts, minor doubts, or no real doubts in your mind about the proposed project. (READ AND RANDOMIZE)

(RANDOMIZE)	VERY SER DOUBTS	SERIOUS DOUBTS	MINOR DOUBTS	NO REAL DOUBTS	(DON'T KNOW)	TOTAL SER DOUBTS
_a. (ALWAYS ASK FIRST) Due to weakened environmental and fishery regulations, a modern day gold rush is happening in British Columbia with over a dozen industrial mines underway that could threaten Southeast Alaska's salmon, rivers, fishing and tourism jobs.	22%	29%	24%	19%	6%	51%
_b. A catastrophic dam failure at nearby Mount Polley mine in B.C.'s Fraser River watershed proves the risk is real.	27%	28%	21%	17%	8%	55%
_c. (SPLIT A) The massive size of the mines and their location at the headwaters of major salmon rivers that flow across the border into Alaska has Alaskans concerned over pollution risks to the multi-billion-dollar fishing and tourism industries.	29%	24%	22%	20%	5%	53%
_d. (SPLIT B) Alaska bears the burden and risk of these mines but receives no financial reward or compensation if something goes wrong	32%	29%	15%	18%	6%	62%
_e. (SPLIT A) Alaskans currently do not have a seat at the table to ensure there is full consideration of our interests.	32%	28%	14%	18%	8%	60%
_f. (SPLIT B) These mines put at risk the health of watersheds and salmon fisheries that Alaska Natives and First Nations depend on.	28%	34%	18%	16%	4%	62%

10. (TRANSBOUNDARY MINING) Do you support or oppose allowing gold mining on the Canadian side of the Alaska-Canada border? (FOLLOW-UP) And do you strongly or just somewhat (SUPPORT/OPPOSE) it?

Strongly support	12%
Somewhat support.....	24%
Somewhat oppose.....	19%
Strongly oppose	31%
(DON'T KNOW/NA)	14%
TOTAL SUPPORT	36%
TOTAL OPPOSE	50%
SUPPORT - OPPOSE	-14

11. Now I'd like to read you some statements that SUPPORTERS of salmon conservation have made regarding the threat that mining, dams and other development may present. For each one, please tell me whether you find the statement to be a very convincing, somewhat convincing, a little convincing, or not at all convincing reason to support salmon conservation. (READ AND RANDOMIZE)

(FOLLOW UP) Is that a very convincing, somewhat convincing, a little convincing, or not at all convincing reason to support salmon conservation?

(RANDOMIZE)	<u>VERY CONV</u>	<u>SMWT CONV</u>	<u>A LTTL CONV</u>	<u>NOT AT ALL CONV</u>	<u>DK/NA</u>	<u>TOTAL CONV</u>
<p>_a. (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.....</p>	58%	29%	6%	5%	1%	87%
<p>_b. (SPLIT A) (HERITAGE) We owe it to our children and grandchildren to be good stewards of our environment and leave a legacy of protecting our salmon streams. Salmon are an important part of Alaska's history and culture and we must protect salmon for future generations.....</p>	55%	27%	9%	7%	2%	82%
<p>_c. (SPLIT B) (ECONOMY) Salmon are an essential part of the Alaskan economy. Salmon fishing provides jobs for nearly 50 thousand Alaskans – double the number of jobs provided by the rest of the entire seafood industry. Salmon fishing generates 2 billion dollars in economic activity and also brings tourists from around the world to Alaska. We should do as much as we can to protect this industry.</p>	57%	24%	8%	10%	1%	81%

(Q11 CONTINUED)

_d. (SPLIT A) (OVERSEAS) While salmon fishing is a local industry that provides thousands of local jobs and billions of dollars to Alaska's economy, most mining company profits go to executives in other countries and states. These out-of-state corporations often 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 Alaska's interests first and choose salmon - not let mining companies put their profits before our best interests.....

VERY CONV SMWT CONV A L TTL CONV NOT AT ALL CONV DK/NA
 50% 21% 8% 18% 3%

TOTAL CONV

71%

_e. (SPLIT B) (POLLUTION) Salmon are a much better and more sustainable way for Alaska to create jobs while protecting our air, land and water. Salmon are the source of a clean and sustainable industry that provides jobs and economic benefit. Mines, on the other hand, are the source of toxic pollution such as mercury in our rivers and bays and they pollute drinking water and kill salmon.....

43% 26% 9% 20% 1%

70%

12. Do you support or oppose the efforts to protect salmon and the salmon industry in Alaska? (FOLLOW-UP) And do you strongly or just somewhat (SUPPORT/OPPOSE) it?

Strongly support 73%
 Somewhat support..... 22%
 Somewhat oppose..... 2%
 Strongly oppose 1%
 (DON'T KNOW/NA) 2%

TOTAL SUPPORT 95%
TOTAL OPPOSE 3%
SUPPORT - OPPOSE..... +92

13. Now, I'm going to read a list of groups who might take a position on salmon conservation issues. For each, please tell me if you would trust a lot, trust somewhat, trust a little or not trust at all their take on this issue. (RANDOMIZE)

(RANDOMIZE)	TRUST A LOT	TRUST SMWT	TRUST A LITTLE	NOT AT ALL TRUST	(DON'T KNOW)	TRUST A LOT/ SMWT
_a. (SPLIT A) Governor Bill Walker	23%	42%	13%	13%	9%	65%
_b. (SPLIT B) Lieutenant Governor Byron Mallott	19%	31%	14%	13%	23%	50%
_c. (SPLIT A) Senator Lisa Murkowski	20%	41%	14%	21%	4%	61%
_d. (SPLIT B) Secretary of State John Kerry	9%	23%	18%	36%	14%	32%
_e. (SPLIT A) Alaska Legislature	8%	36%	25%	27%	4%	44%
_f. (SPLIT B) Alaska Department of Fish and Game	43%	37%	12%	7%	1%	80%
_g. (SPLIT A) Alaska Center for the Environment	28%	30%	8%	14%	20%	58%
_h. (SPLIT B) Alaskans First Campaign	7%	30%	11%	8%	43%	37%
_i. (SPLIT A) Save Bristol Bay	28%	22%	15%	14%	21%	50%
_j. (SPLIT B) Cook Inletkeeper	13%	20%	12%	8%	47%	33%
_k. (SPLIT A) Southeast Alaska Conservation Council (SEACC)	26%	26%	11%	10%	28%	52%
_l. (SPLIT B) Trout Unlimited	15%	31%	15%	11%	28%	46%
_m. (SPLIT A) Susitna River Coalition	18%	26%	14%	10%	32%	44%
_n. (SPLIT B) Alaska Energy Authority	7%	34%	26%	15%	18%	41%
_o. (SPLIT A) United Fishermen of Alaska (UFA)	27%	39%	12%	5%	17%	66%
_p. (SPLIT B) Alaska Department of Natural Resources	25%	46%	16%	10%	4%	71%
_q. (SPLIT A) Chuitna Citizens Coalition	17%	18%	15%	11%	40%	35%
_r. (SPLIT B) PacRim Coal	1%	13%	20%	38%	28%	14%
_s. (SPLIT A) Pebble Limited Partnership	5%	19%	12%	50%	14%	24%
_t. (SPLIT B) United Tribes of Bristol Bay	35%	34%	9%	11%	11%	69%
_u. (SPLIT A) Bristol Bay Native Corporation	32%	35%	17%	9%	7%	67%
_v. (SPLIT B) Sport fishermen	27%	38%	22%	9%	3%	65%
_w. (SPLIT A) Commercial fishermen	36%	39%	11%	11%	3%	75%
_x. (SPLIT B) Subsistence Fishermen	46%	37%	9%	6%	3%	83%
_y. (SPLIT A) Sierra Club	10%	23%	15%	31%	21%	34%
_z. (SPLIT B) The National Resources Defense Council or NRDC	8%	29%	16%	16%	31%	37%

These final questions are for statistical purposes only.

(IDEO) Do you consider yourself to be (**ROTATE LIBERAL AND CONSERVATIVE, KEEPING MODERATE IN THE MIDDLE**), very liberal, somewhat liberal, moderate, somewhat conservative or very conservative?

Very Liberal 9%
 Somewhat Liberal 17%
 Moderate 25%
 Somewhat Conservative 28%
 Very Conservative 15%
 (**DON'T KNOW/NA**) 6%

TOTAL LIBERAL 26%
TOTAL CONSERVATIVE 43%

(PID) Generally speaking, do you think of yourself as a Democrat, a Republican, an independent or what? (**IF DEMOCRAT/REPUBLICAN, PROMPT:**) Would you call yourself a strong or not so strong (**DEMOCRAT/REPUBLICAN**)? (**IF INDEPENDENT, ASK:**) Do you lean more toward Democrats or toward Republicans?

Strong Democrat 12%
 Not so strong Democrat 7%
 Independent/ lean Democrat 12%
 Independent/ no lean 23%
 Independent/ lean Republican 13%
 Not so strong Republican 10%
 Strong Republican 16%
 (**DON'T KNOW/NA**) 8%

(3-1-3) DEMOCRAT 31%
(3-1-3) INDEPENDENT 23%
(3-1-3) REPUBLICAN 39%

(2-3-2) DEMOCRAT 18%
(2-3-2) INDEPENDENT 48%
(2-3-2) REPUBLICAN 26%

(ETH1/ETH2) What is your race? (**DO NOT READ PUNCHES**)

White 75%
 Black 1%
 Hispanic/Latino 4%
 Asian 2%
 Native Alaskan 7%
 (Mixed Race) 6%
 (Other) 2%
 (**DON'T KNOW/NA**) 3%

(EDU) What was the last year of school you completed?

Grades 1-11	2%
High school graduate.....	17%
Some college/vocational school.....	33%
College graduate	29%
Post Graduate work/Prof school	18%
(DON'T KNOW/NA).....	1%

(AGE) In what year were you born? _____ (Don't know/NA = 12)

18 - 24	6%
25 - 29	10%
30 - 34	7%
35 - 39	12%
40 - 44	9%
45 - 49	11%
50 - 54	6%
55 - 59	9%
60 - 64	12%
65-74	12%
75+	6%
(DON'T KNOW/NA)	0%

THANK AND TERMINATE

SEX (BY OBSERVATION):

Male	50%
Female	50%

FROM VOTER FILE:

PARTY REG

Democrat	14%
Republican	29%
Independent/Other	57%

REGION

Anchorage.....	42%
Fairbanks	16%
Kenai.....	8%
Mat-Su	14%
North	4%
Southeast.....	12%
Southwest	4%
Unorganized.....	0%

FLAGS

P08	55%
G08	78%
S09	0%
P10	52%
G10	74%
P12	48%
G12	84%
P14	38%
G14	92%

VOTE BY MAIL

1.....	22%
2.....	7%
3.....	4%
4.....	3%
5.....	1%
6+.....	1%
BLANK	62%

GEOFFREY Y. PARKER
Attorney at Law

Phone: (907) 222-6859
Fax: (907) 277-2242

E-mail: gparker@alaska.net

7431 Huckleberry Circle
Anchorage, Alaska 99502

TO: David Harsila, President, Bristol Bay Fishermen's Association
FROM: Geoffrey Y. Parker *GYP*
RE: Analysis of HB 199
DATE: April 6, 2017

Part I of this memorandum summarizes the current Anadromous Fish Act and HB 199 which would repeal and replace it. Part II discusses HB 199, often in relation to current law, and provides questions for legislators and others to consider.

I. Summary of the Current Anadromous Fish Act and of HB 199

A. Summary of the current Anadromous Fish Act.

The Anadromous Fish Act requires ADF&G to specify in regulation under the Administrative Procedure Act (APA) the "various rivers, lakes and streams or parts of them that are important for the spawning, rearing, or migration of anadromous fish."¹ The Act requires anyone who "desires to construct a hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed"² to notify ADF&G and if requested to provide "full plans and specifications" of the proposed construction, work, or use, and "complete plans and specifications" for the "proper protection of fish and game in connection with the construction or work, or in connection with the use."³ If the project provides "proper protection of fish and game," then ADF&G approves the project, and if it does not, then ADF&G cannot approve the project.⁴ This approval process makes the Act a permitting statute.

ADF&G implements the Act by publishing and annually updating the Anadromous Waters Catalog and Atlas, which identifies that portion of the rivers, lakes, and streams used by anadromous fish. ADF&G's habitat regulations, at 5 AAC Chap. 95, include those which implement the Act. They incorporate the Catalog and Atlas into regulation (5 AAC 95.011) and deem the mapped anadromous portions "important" for permitting purposes. The regulations identify the types of permit conditions which may be included to protect fish, wildlife and habitat⁵ and require a permittee to mitigate fully any damages to fish, wildlife and habitats.⁶

¹ AS 16.05.871(a).

² AS 16.05.871(b).

³ AS 16.05.871(c).

⁴ AS 16.05.871(d).

⁵ 5 AAC 95.720(a) provides as follows:

(a) To provide for the proper protection and management of fish and wildlife, and their habitats, the commissioner may include as conditions of the permit (1) the

They also (1) allow creation of general permits for routine matters,⁷ (2) require performance bonds to secure performance of the conditions of a permit,⁸ and (3) establish an appeal process for applicants to appeal denials. ADF&G uses forms and policy guidance to assist applicants for permits.⁹ ADF&G does not afford notice and comment on the permits themselves. However, these functions sometimes occur indirectly when a project requires others permits and agencies work together so that they are considering the same project based on the same information.

duration of the proposed activity, including any provision for changing the time period during which the permit is valid and any provision for changing the effective time period of the permit; (2) any other seasonal use restrictions on a specific activity; (3) limitation of the a real extent [sic, probably "areal" meaning flood extent] of the activity; (4) any provision for the mitigation of damage to fish or wildlife, or their habitats; (5) any provision to facilitate periodic monitoring of the proposed land or water use or activity by an authorized representative of the state, including inspection and sampling; (6) reporting requirements; (7) any provision for the posting of a performance bond or other surety as authorized in 5 AAC 95.950, necessary to ensure compliance with the provisions of this chapter or conditions of the permit; and (8) any other necessary condition.

⁶ 5 AAC 95.900 provides as follows:

(a) Each permittee shall mitigate any adverse effect upon fish or wildlife, or their habitat, which the commissioner determines may be expected to result from, or which actually results from, the permittee's activity, or which was a direct result of the permittee's failure to (1) comply with a permit condition or a provision of this chapter; or (2) correct a condition or change a method foreseeably detrimental to fish or wildlife, or their habitat.

(b) Mitigation techniques must be employed in the following order of priority: (1) avoid an impact altogether by not taking a certain action or parts of an action; (2) minimize an impact by limiting the degree of magnitude of the action; (3) rectify the impact by repairing, rehabilitating, or restoring the affected environment; (4) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; (5) compensate for the impact by replacing or providing substitute resources or environments.

(c) The duty to mitigate in (a) of this section does not apply to unavoidable adverse effects upon fish or wildlife populations, or their habitat, arising from an overwhelming force of nature with consequences not preventable by due and reasonable precautions.

(d) The commissioner will, in his or her discretion, specify, by permit amendment, additional provisions for mitigating damage to fish and wildlife populations, and their habitat.

(e) Notwithstanding the expiration or revocation of a permit, a permittee is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.

5 AAC 95.990(4) defines "mitigate" as meaning "to compensate fully for damage to fish and wildlife populations and their habitat by employing the most appropriate techniques."

⁷ 5 AAC 95.770.

⁸ 5 AAC 95.950.

⁹ See 5 AAC 95.700, see also <http://www.adfg.alaska.gov/index.cfm?adfg=uselicense.main>.

Because the Catalog and Atlas are regulation, any person or agency seeking to remove a documented anadromous river, lake or stream from the Catalog and Atlas (so that a permit will not be required) can do so under the APA, at AS 44.62.220, by submitting a petition to ADF&G and stating the reasons. Under AS 44.62.230, ADF&G then either denies the petition within 30 days or provides public notice and comment on the proposed removal. Thus, if Pebble mine hopes to dam a *documented* anadromous headwater stream for tailings disposal, then the burden is on Pebble mine to justify removing the stream from the Catalog, Atlas and permitting process.

B. Summary of HB 199.

In 2016, several individuals asked the Board of Fisheries to recommend legislation to revise the Act. The Board wrote to the legislature urging it to enact legislation to improve (1) public involvement in the permitting process, and (2) standards for permitting.

HB 199 would repeal and replace the Anadromous Fish Act at AS 16.05.871. HB 199 would presume all permanent and seasonal surface waters (every river, stream, creek, rivulet, glacier, lake, pond, and wetland) are anadromous fish habitat regardless of whether they support anadromous fish or not. HB 199 would create two types of permits other than general permits: (1) minor permits for activities which “will not significantly adversely affect anadromous fish habitat,”¹⁰ for which there would be notice but no comment;¹¹ and (2) major permits for activities which have “the potential to significantly adversely affect anadromous fish habitat,”¹² for which there would be an assessment process with notice and comment.¹³ Much of HB 199 focuses on major permits because they involve activities which could cause significant adverse effects. HB 199 bars major permits in certain situations.¹⁴ Thus, notice and comment on major permits, and situations in which when major permits would not be issued, are key changes that would be made by HB 199.

However, as shown further below, many other provisions would weaken current law and regulations. Two provisions deserve mention at the outset. First, HB 199 eliminates coverage of the beds of anadromous waters. Second, HB 199 allows any person to request a site-specific determination that any documented or presumed anadromous water body, or portion of it, is “not important” anadromous fish habitat (so a permit would no longer be required), and the bill requires ADF&G to adopt regulations specifying how it will conduct such site-specific determinations.¹⁵ Thus, if Pebble mine hopes to dam an anadromous headwater stream for tailings disposal, then Pebble would simply submit whatever is required under future regulations and ask ADF&G to conduct a site-specific determination. This may shift the burden to ADF&G.

¹⁰ HB 199, p. 4, lines 24-25.

¹¹ HB 199, p. 6, lines 16-20.

¹² HB 199, p. 4, lines 27-28.

¹³ HB 199, p. 7, lines 12-18.

¹⁴ HB 199, p. 10, lines 15-27.

¹⁵ HB 199, p. 2, lines 7-12.

II. Discussion of HB 199, often in Relation to Current Law, and Questions for Legislators and Others to Consider

A. Introductory Topic and Questions.

1. What are the problems HB 199 is trying to solve, and are there recent examples of ADF&G permits which should not have been granted?

These are fundamental questions for drafting legislation. The process needs to be improved, but those who advocate HB 199 need to identify the problems they seek to address and why the revisions they propose are better than alternatives or even existing law and regulations. I am unaware that proponents of HB 199 have offered examples of permits that should not have been granted.

Questions for legislators and others to consider:

- (1) What are the problems HB 199 is trying to solve?
- (2) Are there recent examples of ADF&G permits which should not have been granted?

B. HB 199 creates three ways by which industry and others can evade permitting.

1. HB 199 establishes a method to evade permitting.

As said, HB 199 would require ADF&G to adopt regulations specifying how it will conduct site-specific determinations that anadromous water is "not important," so as to remove it from coverage by the Act, and would allow any person to request a site-specific determination. That allows Pebble mine to request a determination that a headwater anadromous stream it might dam for tailings disposal is "not important." That amounts to a method to evade permitting.

Under the current law, ADF&G occasionally has removed water from the Catalog and Atlas when field work shows a continuous absence of previously present anadromous fish. However, HB 199 does not require field work to determine that anadromous waters are "not important" even though ADF&G requires field work to document anadromous waters as "important." Once a previously "important" anadromous water body, or portion of it, is re-determined "not important," it will be virtually impossible to declare it again "important." Once someone is allowed to undertake an activity without a permit, others will expect (and often deserve) the same treatment, and legal issues will arise if they are treated differently. Moreover, ample documentation from the Pacific Northwest and Alaska, including from Exxon Valdez studies, shows that salmon production depends on genetic diversity, that smaller stocks are critical to diversity, that a "portfolio effect" exists by which stocks in some watersheds, and even within streams or portions of streams, produce well under certain freshwater or marine conditions while others do well under other freshwater or marine conditions, and that loss of production occurs by erosion of smaller stocks first. Losing genetically distinct smaller stocks risks triggering the Endangered Species Act, which can affect mixed stock fisheries. So, given that the APA already allows anyone to petition to amend the Atlas and Catalog, creating an unnecessary additional system for determining anadromous water to be "not important" is a one-way street down which ADF&G, the public, and salmon should never go. That is, unless you're Pebble mine trying to foist HB 199 on the legislature.

Questions for legislators and others to consider:

- (1) Allowing applicants to request headwaters to be determined “not important” anadromous water helps projects like Pebble mine, wouldn’t it?
- (2) Have anadromous waters blocked important projects?

2. HB 199 does not protect the beds of anadromous waters, and thereby creates another way for some projects to evade permitting.

The scope of the current statute includes activities which would (1) “change the . . . bed” of anadromous water, and (2) “use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed.”¹⁶ However, HB 199 narrows the scope. It defines “anadromous fish habitat” as a “*surface* water body” and “adjacent riparian areas.”¹⁷ That excludes the bed. Accordingly, HB 199 would require a permit for only activities which “use, divert, obstruct, pollute, or otherwise affect a *water body*, or portion thereof, that is specified as important anadromous fish habitat.”¹⁸ That repeals existing language which requires a permit for activities which change the bed or use heavy equipment in the bed.

If a project needs to excavate the bed of anadromous waters, then excluding the bed helps the project. For example, if Pebble mine digs an open pit mine in a manner that initially avoids needing a fish habitat permit, and puts water extraction wells anticipated around the pit so as to extract contaminated groundwater for treatment, and those wells over time cause a headwater anadromous stream to disappear into the ground because of gravity, dry up, and no longer be surface water, then PLP could argue that it should be able to expand the pit to excavate and mine the bed with heavy equipment, and do so without having to “use, divert, obstruct, pollute, or otherwise affect” surface water that no longer exists. That would enable Pebble to evade the requirements for a fish habitat permit. Such a situation could arise if groundwater flow, which is difficult to understand correctly, is misunderstood at the outset. Implicit throughout HB 199 is an assumption that what ADF&G understands to be correct is in fact always correct. Legislation should not depend on such assumptions. That is why the Policy for the Management of Sustainable Salmon Fisheries (5 AAC 39.222), adopted by the Board of Fisheries, uses the “precautionary principle” (5 AAC 39.222(c)(5)) to err on the side of conservation when uncertainty arises, so as to avoid risks.

Questions for legislators and others to consider:

- (1) Do you think excluding the beds could help projects like Pebble mine?
- (2) Do you think that the “precautionary principle” should be incorporated into the statutory or regulatory regime for Anadromous Fish Act permits?

3. By focusing on anadromous fish habitat while ignoring the fish themselves, HB 199 creates situations where some activities, such as blasting which can effect fish embryos and alevin in the beds, could evade permitting.

The current statute requires ADF&G to approve or deny permits based on whether they

¹⁶ AS 16.05.871(b).

¹⁷ HB 199, p. 2, line 17 (italics added).

¹⁸ HB 199, p. 4, lines 3-5 (italics added).

assure “proper protection of fish and game.”¹⁹ That includes the fish as well as their habitat in the water and in the beds. HB 199 would instead require ADF&G and permittees to “prevent or minimize the activity’s adverse effects on anadromous fish habitat,”²⁰ and then “restore the affected anadromous fish habitat and take mitigation measures.”²¹ That addresses the habitat but not the fish themselves.

For example, ADF&G has a long history of requiring Anadromous Fish Act permits for seismic blasting near streams because pressure waves from the blasts can cause injury and mortality to fish in the water and embryos in the bed,²² even though the pressure waves can leave those habitats intact. Although HB 199 refers to preventing adverse effects, its core standard is to minimize, restore and mitigate, because easy prevention occurs, difficult prevention may not, and many projects can be designed to avoid avoidable affects and minimize unavoidable effects. So, the existing standard (protection of fish and game and their habitats) is both broader and stronger than HB 199’s proposed standard (minimize, restore and mitigate harms to anadromous fish habitat). HB 199’s standard is narrower and weaker because it addresses habitat but ignores the fish themselves. That helps large scale mining, which requires a lot of blasting to excavate ore, and the oil and gas industry, which uses seismic blasting to explore for oil and gas.

Question for legislators and others to consider:

(1) Focusing only on habitat and ignoring the fish themselves allows mining and oil and gas operations, which currently need Anadromous Fish Act permits for blasting close to anadromous waters, to evade the permits, doesn’t it?

C. Other Topics and Questions.

1. Does the Forest Practices Act offer a better model for presuming that undocumented water is important anadromous fish habitat?

There are many thousands of undocumented anadromous waters and many thousands of non-anadromous waters in Alaska. HB 199 presumes, absent a site-specific determination, that every “naturally occurring permanent or seasonal surface water body and its adjacent riparian areas is important anadromous fish habitat.”²³ The Forest Practices Act deals differently with the same issue. It provides, at AS 41.17.118(c), that “[i]n the absence of a site-specific determination by [ADF&G], the commissioner [of natural resources] shall presume . . . that a stream is anadromous if it is connected to anadromous waters that are without [ADF&G] documentation of a physical blockage and has a stream gradient of 8 percent or less.” In other words, under the Forest Practices Act, a stream is presumed anadromous if (a) no documented physical blockage separates the undocumented stream from anadromous waters, and (b) if the undocumented stream has a gradient of 8 percent or less.

¹⁹ AS 16.05.871(c), (d).

²⁰ HB 199, p. 10, lines 13-14; see also p. 11, lines 1-2 (requiring a permittee to “limit adverse effects”).

²¹ HB 199, p. 11, lines 7-8.

²² ADF&G, “Use of Explosives In or Near Stream Corridors,” requiring permits under Anadromous Fish Act, <http://www.adfg.alaska.gov/index.cfm?adfg=uselicense.explosives> .

²³ HB 199, p. 2, lines 13-15.

An initiative modeled on HB 199 and which contains the overbroad presumption in HB 199 will virtually beg the legislature to revise such an enacted initiative.

Questions for legislators and others to consider:

- (1) Is the approach of the Forest Practices Act a better approach?
- (2) If not, why not?

2. **For major permits, HB 199 puts the applicant in charge of gathering field information; current law allows ADF&G to charge the applicant for that service.**

The existing statute allows ADF&G to require an applicant to submit “full plans and specifications of the proposed construction or work” and “complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use.”²⁴ In practice, applicants fill out a form and provide additional information requested. HB 199 would also require an applicant to fill out a form.²⁵ For minor and major permits, the applicant must provide “all information requested by [ADF&G] to reasonably assess the 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.”²⁶

However, HB 199 also provides that an applicant for a major permit “shall collect information *reasonably* requested” by ADF&G.²⁷ This language, which may refer to field work which can be costly, should be clarified. It creates a basis for disputes over costs.

The “powers and duties” of the Commissioner of Fish Game, at AS 16.05.050(15), include “to establish and charge fees equal to the cost of services provided by the department.” Currently, ADF&G could inform an applicant that field work or data collection is necessary, and offer to perform the service so long as the applicant pays the cost. HB 199 would change this. It requires ADF&G to establish “reasonable fees”²⁸ instead of “fees equal to the cost.” Because ADF&G is not a profit-making enterprise, reasonable fees may be less than full cost.

On a related matter, a radio station recently quoted Rep. Stutes as claiming that under HB 199 “the applicant is going to be required to substantiate the fact that it’s not an anadromous stream and bear the cost of doing so as opposed to the state bearing those costs.”²⁹

Questions for legislators and others to consider:

- (1) Why should legislation, such as HB 199, invite disputes over whether an ADF&G request is reasonable when under current law ADF&G can simply inform an applicant

²⁴ AS 16.05.871(c).

²⁵ HB 199, p. 4, line 6.

²⁶ HB 199, p. 4, lines 9-11 (curiously, restoration is not mentioned here).

²⁷ HB 199, p. 7, lines 10-11 (italics added).

²⁸ HB 199, p. 12, lines 11-15.

²⁹ See <http://kbbi.org/post/rep-stutes-introduces-bill-strengthen-protections-salmon-habitat>.

that costly field work is necessary and offer to perform the service it so long as the applicant pays a fee equal to the cost?

(2) Doesn't it make more sense if regulations simply direct that no permits will be issued until all costs for "reasonably necessary" field work are paid, and then use the current administrative appeal process to settle disputes over whether a particular cost is "reasonably necessary"?

(3) Where does HB 199 say that it requires an applicant to substantiate that a waterbody or portion of it is not anadromous, and bear the cost of doing so as opposed to the state bearing those costs?

(4) Why does HB 199 charge "reasonable fees" instead of full fees for services performed by ADF&G?

(5) Does requiring an applicant to perform costly field work to prove that some portion of a water body is not anadromous, and that therefore a permit is required, put the fox in charge of the hen house?

3. HB 199's provisions on reconsideration restrict current administrative and judicial review, and help industry, not salmon.

The current Act provides that a person or governmental agency denied a permit due to insufficient protection of fish and game may, within 90 days of receiving the notice of denial, initiate a hearing under the Administrative Procedure Act, at AS 44.62.370, and that the hearing is subject to AS 44.62.330-44.62.630.³⁰ ADF&G habitat regulations at 5 AAC 95.920 state that "[a]n interested person may initiate an appeal of a decision made under this chapter [5 AAC Chap. 95] in accordance with the provisions of AS 44.62.330 - 44.62.630 by requesting a hearing under AS 44.62.370." In other words, under current law, an "interested person" can appeal a determination that an anadromous river, lake or stream, or portion thereof, is "not important."

However, HB 199 would restrict all this. It would allow only a "person adversely affected" by a determination to request reconsideration and then appeal to Superior Court.³¹

First, the difference between the "interested person" standard and the "person adversely affected" standard is legally significant. Under the "interested person" standard, any person with a material interest in the matter, such as protection of fish and game, can obtain review. Under the "person adversely affected" standard, a person can only obtain review upon a showing that he or she is in fact adversely affected.³² For example, the APA at AS 44.62.300 allows "[a]n interested person" to file an original action in court to challenge the validity of a regulation. Therefore, if Pebble mine wants to dam an anadromous stream in the Catalog and Atlas, and therefore seeks and obtains a site-specific determination that the stream is "not important" anadromous water, then an interested person can sue under the APA at AS 44.62.300 to challenge that determination because it amends the Catalog and Atlas which are regulation. However, under HB 199, a person would not file an original court action challenging the

³⁰ AS 16.05.871(d).

³¹ HB 199, p. 11, lines 18-29.

³² See *Johns v. Com. Fisheries Entry Comm.*, 699 P.2d 334, 336-337 (Alaska 1985) (comparing more liberal "interested person" standard to more restrictive standard sought by CFEC and would require a showing that a person's interests are injured or adversely affected).

changed regulation. Instead, the person would request reconsideration and would have to show that he or she is adversely affected by the determination in order to proceed, and then if dissatisfied with the result, appeal to Superior Court sitting as an appellate court rather than a court of original jurisdiction. When the Superior Court sits as a court of original jurisdiction, the parties get the benefits of discovery, production of evidence, use of expert witnesses, etc., and the record is created in the court. When the Superior Court sits as an appellate court and hears an appeal from a final agency action, the record under judicial review is already established by the agency, so generally there is no discovery, production of evidence, use of experts, or ability to otherwise supplement the record. These changes, to be made by HB 199 regarding who can obtain judicial review, and how that review occurs, restrict the public's current access to judicial review and help industry, including Pebble mine, not salmon.

Second, during the administrative reconsideration, HB 199 restricts the use of currently available procedures designed to assure that administrative hearings on determinations involving habitat and permitting are fair. For many types of administrative adjudications, the Administrative Procedure Act at AS 44.62.330 currently affords court-like procedures set out in AS 44.62.330 -- .630 (e.g., accusations and statements of issues, service of documents on parties, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, obtaining judicial review and scope of judicial review, oaths, impartiality, etc.). Currently AS 44.62.330(a)(27) applies these court-like procedures to the "Department of Fish and Game as to *functions relating to the protection of fish and game under AS 16.05.871.*" (italics added) However, HB 199 amends AS 44.62.330(a)(27) to provide such court-like procedures to "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.*"³³ (italics and underscoring added) Because HB 199 expressly provides procedures for reconsideration,³⁴ the APA procedures set out in AS 44.62.330 -- .630 to assure fair proceedings would not apply.

Questions for legislators and others to consider:

- (1) Why does HB 199 use the more restrictive "person adversely affected" standard instead of the current "interested person" standard?
- (2) If Pebble mine requests and obtains a determination under HB 199 that an anadromous headwater stream is "not important" and can be dammed for tailings storage

³³ HB 199, p. 16, lines 2-5.

³⁴ HB 199, p. 11, line 18 – p. 12, line 2, provides that an adversely affected person must request reconsideration with 30 days of the determination at issue; that the commissioner must issue a written decision granting or denying the requested reconsideration within 30 days; that if the commission fails to do so, then the request is deemed denied; that if the request is granted, then the commissioner shall issue a final determination within 30 days; that the commissioner's determination upon reconsideration is the final agency decision for purposes of obtaining judicial review by appeal to Superior Court under the APA at AS 44.62.560 which establishes the record before the agency as the record under appellate review; that the person must appeal within 30 days of date the final agency determination is mailed or otherwise distributed, or the date the request for reconsideration is deemed denied by the commissioner's failure to act on the request; and that the appeal to Superior Court is limited to the issues presented to the commissioner in the request for reconsideration.

without an Anadromous Fish Act permit, then do you think a commercial fisher should be able to request reconsideration of that determination only if he or she can show that it adversely affects him or her?

4. **If ADF&G erroneously finds that an activity will not have significant adverse effects and issues a permit, but in fact such effects occur and cannot be prevented or restored, then the mitigation provisions of HB 199 will not operate.**

For minor and major permits, HB 199 provides:

(b) When establishing permit conditions . . . , including permit stipulations and mitigation measures, the commissioner shall, in order of priority, require a permittee . . . to take the following actions: (1) limit 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 . . . , 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 to anadromous fish habitat . . . , 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 adverse effects by restoring, establishing, enhancing, or preserving another water body, other portions of the water body, or land.³⁵

This precludes mitigation whenever ADF&G erroneously finds that significant adverse effects will not occur, but in fact do occur, and cannot be limited, minimized or the habitat restored. HB 199 assumes naively (1) that ADF&G will always be correct in anticipating significant adverse effects, (2) that data and science will always be certain, (3) that permittees will always comply with permit conditions, stipulations and mitigation measures, and (4) that all efforts to limit, minimize, restore and mitigate will be successful. Sometimes the wrong stuff happens. If ADF&G errs, if data is uncertain, if a permittee does not comply, or if efforts to limit, minimize, restore and mitigate fail or are uncertain, then the mitigation provisions of HB 199 will not operate. They will not operate because HB 199 does not allow mitigation to offset the adverse effects by restoring even other damaged portions of the water body. In pristine environments, such as the Bristol Bay drainages, virtually no damaged habitat exists to restore as mitigation. There, it makes sense to preclude such efforts because they destroy the natural environment in order to "mitigate" something. But, in places where ample damaged habitat exists, such efforts may make sense. In such areas, fishery conservation groups routinely undertake stream restoration projects, and many seem fairly successful.

So, if a project obtains a permit based on an erroneous finding that it will not cause significant adverse effects, but if ADF&G is wrong, or project operators do not comply, or the conditions and stipulations fail, such that significant adverse effects occur, then HB 199 lets the project escape costs of mitigation. For major projects, that is huge benefit and departure from

³⁵ HB 199, p. 10, line 28 -- p. 11, line 11.

current regulations. As said in footnotes at the outset, current regulations require a permittee to “mitigate *any adverse effect upon fish or wildlife, or their habitat*, which the commissioner determines . . . actually results from . . . the permittee’s activity, or which was a direct result of the permittee’s *failure* to (1) comply with a permit condition or [the regulations]; or (2) correct a condition or change a method foreseeably detrimental to fish or wildlife, or their habitat,”³⁶ and “*to compensate fully for damage to fish and wildlife populations and their habitat.*”³⁷

It should not escape attention that these current regulations and HB 199 differ on wildlife and wildlife habitat in the context of mitigation. The current regulations require a permittee to mitigate effects on wildlife and wildlife habitat as well as fish and fish habitat. HB 199 is narrower. It addresses only “anadromous fish habitat.” And it then prohibits mitigation that would offset the activity’s adverse effects on anadromous fish habitat by restoring even other damaged portions of the water body. On some major permits, that helps industry avoid major costs for mitigation.

Questions for legislators and others to consider:

- (1) Does HB 199 assume that ADF&G will never err, that data will always be certain, that permittees will always comply, and that all conditions and stipulations will work as hoped? Isn’t that wishful thinking?
- (2) The Sustainable Salmon Management Policy, 5 AAC 39.222, uses the “precautionary principle” (5 AAC 39.222(c)(5)) essentially to err on the side of conservation when uncertainty arises, so as to avoid risks. Do you think that the “precautionary principle” should be incorporated into the statutory or regulatory regime for Anadromous Fish Act permits?
- (3) Why do these provisions in HB 199 abandon current requirements for mitigation of effects on wildlife and wildlife habitat?

5. Performance Bonds.

HB 199 requires performance bonds for mitigation but not for restoration.³⁸

Question for legislators and others to consider:

- (1) Is this an oversight?

D. Although HB 199 weakens the Anadromous Fish Act in many respects, if HB 199 forms the basis of an initiative, it will risk weakening the Act further.

HB 199 addresses matters involving agency expertise, which should be in regulation, not statute. Legislative bodies establish agencies to marshal expertise, and therefore give them authority to adopt, or require them to adopt, regulations based on expertise in order make decisions. Attempting to put “supposed” expertise in statute, either by bill or initiative, invites legislators lacking expertise to inadvertently or deliberately weaken the Anadromous Fish Act.

³⁶ 5 AAC 95.900(a).

³⁷ 5 AAC 95.990(4).

³⁸ HB 199, p. 9, lines 19-31.

HB 199 may not pass, so it may be the groundwork for an initiative that, if enacted, will invite legislation to revise the initiative. For example, in about 2000, the voters enacted an initiative which regulated discharges by cruise ships into Alaska waters. The legislature repealed the initiative. A somewhat similar situation occurred in about the 1980s and 1990s, when the legislature enacted several laws which substantively and procedurally weakened AS 38.05.035. It is a chief permitting statute of the Alaska Department of Natural Resources (DNR), just as the Anadromous Fish Act is for ADF&G. The legislature did so because it perceived that AS 38.05.035 afforded a means for environmental groups to overturn DNR decisions.

ADF&G's regulations which implement the Anadromous Fish Act could be improved. There are several ways to do so. ADF&G can do so, and HB 199 might help pressure ADF&G to do so. People can put pressure on the Board of Fisheries to urge ADF&G to do so. Citizens can draft regulations and file a petition with ADF&G under the Administrative Procedure Act to adopt the regulations,³⁹ and ADF&G must then either deny the petition within thirty days or schedule the matter for a public hearing.⁴⁰ Or, if all else fails, the legislature could enact a less risky, shorter bill that requires ADF&G to enact regulations to address certain topics currently unaddressed, such as notice and comment.

Questions for legislators and others to consider:

- (1) Should the issues in HB 199 be addressed through regulations?
- (2) After the Board of Fisheries wrote the legislature urging legislation, did you consider writing a letter to the Board asking why it did not send a letter to ADF&G asking for regulations?
- (3) Do you think an initiative modeled on HB 199 risks the legislature responding by weakening the Anadromous Fish Act further?

F. Drafting Issues.

1. **Language regarding "significant adverse effects" and "substantial damage" is circular. It is also unclear whether it is declaratory or prohibitive.**

A key but confusing provision of HB 199 regarding major permits is the following:

(e) A proposed activity's significant adverse effects on anadromous fish habitat . . . 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 have significant adverse effects on anadromous fish habitat . . . ;
- (2) the proposed activity's significant effects cannot be minimized . . . 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

³⁹ Administrative Procedure Act at AS 44.62.220.

⁴⁰ AS 44.62.230.

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.⁴¹

Some of this is twice circular. First, it says that "significant adverse effects" cause "substantial damage," and "substantial damage" occurs "if . . . significant adverse effects" occur. Second, it says that "significant adverse effects" which "cannot be prevented or minimized . . . cause substantial damage if . . . significant adverse effects cannot be minimized . . . or prevented." Statutes have to say something meaningful, and that does not!

This subsection is also unclear whether it is (a) declaratory and definitional, or (b) prohibitive. That is, does it *declare* that "significant adverse effects . . . cannot be prevented or minimized if the commissioner determines that the proposed activity is likely to cause substantial damage," and if so, then toward what end, or does it prohibit a person from preventing or minimizing such effects "if the commissioner determines that the proposed activity is likely to cause substantial damage." It needs clarification.

2. The proposed Sec. 16.05.877(a) is a definition, but other parts of HB 199 treat it as if it were operational.

The proposed Sec. 16.05.877(a)⁴² is not framed as a definition but in fact defines the term "significant adverse effect." It is not operational because it does not direct anyone to do or not do something. However, other parts of HB 199 treat it as if it were operational. For example, HB 199 says: "the commissioner shall determine the proposed activity's potential effects on anadromous fish habitat under AS 16.05.877."⁴³ HB 199 repeatedly refers to a determination or decision "under AS 16.05.877." The section should be converted to a definition of "significant adverse effect." That will simplify matters because all instances of "under AS 16.05.877" can be deleted once the term "significant adverse effect" is converted to a definition.

⁴¹ HB 199, p. 7, line 27 – p. 8, line 9.

⁴² HB 199, p. 5, lines 10-24. Sec. 16.05.877(a) would provide:

(a) A proposed activity has the potential to significantly adversely affect anadromous fish habitat under AS 16.05.871 - 16.05.901 if the proposed activity, singly or in combination with other factors, will (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) adversely affect other fish and wildlife that depend on the health and productivity of that anadromous fish habitat; or (6) violate any additional criteria, consistent with the requirements of AS 16.05.871 - 16.05.901, adopted by the commissioner by regulation.

⁴³ HB 199, p. 4, lines 17-18.

3. Other Definitional Matters.

HB 199 needs a definitional section to avoid the repeated statements that “In this section, ‘anadromous fish habitat’ has the meaning given in AS 16.05.871.” Regarding “anadromous fish habitat,” HB 199 needs to clarify the meaning of “adjacent riparian areas that contribute, directly or indirectly, to the spawning, rearing, migration, or overwintering of anadromous fish.”⁴⁴ If that language appears in an initiative, the legislature is likely to revise it, because requiring ADF&G to map in the regulatory Atlas the riparian and wetland areas of all surface waters presumed to be anadromous is a substantially irrelevant exercise. Once the legislature decides to re-write the initiative, it may weaken the Act further.

Whereas the current statute refers to “rivers, lakes and streams,” HB 199 use the term “water body.”⁴⁵ Why this change was made is not apparent, but it raise the question of whether HB 199 means to include the ocean, which is also surface water used for migration and rearing. That, again, is drafting that if it appears in an enacted initiative cries out for the legislature revise the initiative and erode the Act further.

HB 199 bars use of a general permit if it relates to “industrial development.” The term needs to be defined. It is raises issues. First, I wondered why industrial development gets the prohibition but not roads or timber harvest, which have a substantial history of harming salmonid habitat. Second, again, if HB 199 becomes the basis of an enacted initiative, then the preclusion is another likely target for legislative revision that may threaten the entire Act.

CONCLUSION

The factual, legal, and political dimensions in this matter are broad, complicated, intertwined, and deserve careful analysis. Appearances can be deceiving. It is easy to think that something is good when it is not. HB 199 has at least the following nine major defects:

- (1) HB 199 focuses only on surface waters and removes the beds of anadromous waters from coverage by the Act. This reduces the scope of protection and permitting.
- (2) HB 199 would establish in regulation a method to determine that documented anadromous waters are “not important.” This amounts to a method to evade permitting. This new method is unnecessary because the Administrative Procedure Act already provides a statutory process for citizens to petition agencies to amend regulations, including the Anadromous Waters Catalog and Atlas which are adopted into regulation.
- (3) HB 199 creates an additional avenue for projects to evade permitting whenever agencies do not foresee that other events, such as water extraction wells around a mine pit, will dewater the beds of anadromous waters.
- (4) HB 199 focuses on habitat and deletes the fish themselves from coverage by the Act. Doing so appears to allow blasting near anadromous streams to evade the Act.
- (5) HB 199 presumes all surface waters are anadromous, when it could track the Forest Practices Act which presumes that a stream is anadromous if no documented physical blockage separates an undocumented stream from anadromous waters, and if the

⁴⁴ HB 199, p. 2, lines 17-19.

⁴⁵ HB 199, p. 2, line 28.

undocumented stream has a gradient of 8 percent or less. If HB 199 becomes the basis of an enacted initiative, this overbroad presumption will probably prompt the legislature to repeal or amend the presumption and then consider further eroding the scope of the Act.

- (6) HB 199 replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to "reasonable requests" for an applicant to do field work, all of which puts the applicant in a better position to control the information that goes into decision-making.
- (7) HB 199 limits access to administrative and judicial review by replacing the liberal "interested person" standard with the more restrictive "adversely affected" standard, and limits reconsideration procedures by amending the APA to eliminate those which assure fair hearings related to protection of fish and game under the Anadromous Fish Act.
- (8) HB 199 limits access to the courts by replacing original court actions against ADF&G, which have all the benefits of discovery, production of evidence, expert witnesses and trial, with appeal to Superior Court based on the record before the agency.
- (9) HB 199 bars mitigation of unforeseen significant adverse effects whenever prior damages to the same water body already exist.

Overall, HB 199 gives advocates of salmon what sounds nice but they really don't need, repeals what they need to keep and improve, and burdens them with what they need to avoid. For example: HB 199 gives advocates of salmon an unnecessarily overbroad presumption that all surface waters including mountain rivulets, glaciers and isolated wetlands are anadromous, but repeals authority to protect the beds documented anadromous waters and the fish themselves, and then creates multiple means for developers to evade permitting when their activities adversely affect documented anadromous waters, beds or the fish themselves. That lets the demons loose. The state does not need to presume that mountain top waters and glaciers are anadromous while it loses the advantages of a stable Catalog and Atlas of documented anadromous waters, when the Catalog and Atlas are the most fundamental jurisdictional regulations for enforcing the Act. Another example: HB 199 creates public notice and comment on major permits, but then reduces access to reconsideration and judicial review which follow from that process, and converts original litigation in the courts to administrative appeals. That lets salmon advocates speak but reduces their ability to challenge an agency decision. That is counterproductive to allowing citizens to be good citizens and requiring the government be good government.

Moreover, if HB 199 becomes the basis of an enacted initiative, then all demons will break loose. The presumption that all surface waters are anadromous, when compared to the Forest Practices Act, is tantamount to a gold-plated invitation to the legislature to rewrite the enacted initiative at the first opportunity. Then, those who supported such an initiative will have only themselves to blame for all the defects listed above which survive a legislative re-write. When the legislature re-writes a counterproductive initiative, those who supported it will be in a poor position to retrieve what they unknowingly gave up, such as ADF&G's jurisdiction over the beds of anadromous waters, and they will be unable to regurgitate the poison pills they unknowingly swallowed, such as the methods and means to evade permitting and the more limited access to courts. Then, the legislature may further restrict the Act.

I am sure the sponsors have good intentions, and I am equally sure this bill should not be further advanced.

I hope this analysis is helpful.



April 10, 2017

Representative Stutes
State Capital Room 102
Juneau AK, 99801
representative.louise.stutes@akleg.gov

Representative Josephson
State Capital Room 102
Juneau AK, 99801
representative.andy.josephson@akleg.gov

RE: Committee Meeting on H.B. 199, Fish/Wildlife Habitat Protection Permits

Dear Representative Stutes, Representative Josephson, and Committee Members,

Please accept this letter on behalf of Trout Unlimited (TU) in support of strengthening protections for our fish and game and important water resources. TU is grateful for the Committee's attention to these important issues and for its work to strengthen our anadromous fish habitat permit system.

TU is the nation's largest sportsman's organization dedicated to coldwater conservation with more than 1,000 members in Alaska. TU members own and operate businesses—including sport-fishing lodges, air taxi services and commercial fishing operations—that depend on clean water, natural flows and healthy wild salmon and resident fish populations. In addition to our members in more remote parts of the state, TU has active chapters in Fairbanks, Anchorage and the Mat-Su, on the Kenai Peninsula, and in Southeast Alaska.

Alaskans from all walks of life overwhelmingly recognize the great importance of our wild salmon fisheries, the habitat that supports these fisheries, and the unique opportunities these fish, wildlife and water resources afford us. Whether referring to sockeye salmon in Bristol Bay, rainbow trout in the Kenai, Southeast Alaska's numerous and varied runs, or any of the many other important salmon, steelhead or trout populations throughout the state, our fisheries are central to Alaska's identity and to the well-being of its residents. Our fisheries provide a robust economic foundation for many Alaska communities, provide once-in-a-lifetime recreational opportunities for residents and visitors, are an important food source for many, and have been an irreplaceable part of Alaska Native culture for millennia.

Existing statutory and regulatory protections for fish, wildlife and habitat resources are inadequate. AS 16.05.871, which forms the basis for our anadromous fish habitat permit scheme, is overly vague and fails to provide meaningful direction to ensure protection of our valuable fish and game resources. In particular, our existing fish habitat scheme falls short in four main ways: (1) it establishes an anadromous waters catalog that cannot keep up with newly available information and has been interpreted so narrowly as to exclude many important waters, such as headwaters, wetlands and even some waters actually inhabited by salmon or resident fish; (2) it lacks meaningful and

predictable standards for determining whether a project properly protects important fish and game resources and habitat; (3) it lacks the opportunity for public notice or participation; and (4) it fails to provide adequate guidance for how and when appropriate mitigation measures can be employed.

We know from observing how fisheries and fish and wildlife habitat was managed in the Pacific Northwest that it is essential to care for our habitat if we want to ensure robust populations of wild salmon for future generations. It is much easier and less expensive to avoid deleterious impacts to our salmon habitat than to allow destructive activities that rely on expensive, long-term measures to make up for habitat loss or degradation. TU is excited that this committee is taking on these complex issues and recognizes the irreplaceable value of our fisheries and fish and wildlife habitat.

TU enthusiastically supports the Committee's efforts to achieve more robust protections for important fish, wildlife and water resources through H.B. 199. As is the case with any complex piece of legislation, we also have two specific suggestions that we hope can help strengthen H.B. 199 and help it better work for the many Alaskans that rely on our fisheries and fish habitat:


First, TU encourages the Committee to strengthen the protections by clarifying what waters are, and by implication are not, important anadromous fish habitat. Under § 2, H.B. 199 creates a presumption that any naturally occurring permanent or seasonal surface water body is important anadromous fish habitat and, therefore, subject to the requirements to obtain a permit. While creating this presumption goes a long ways toward fixing one of the main inadequacies with the current anadromous waters catalog, H.B. 199 then leaves it up to the discretion of the Commissioner to exempt waters it determines are not important without meaningful direction. Additionally, H.B. 199 doesn't require public notice or the opportunity for review of site-specific determinations. Together, this means there is little to no meaningful oversight to ensure critical water bodies, or portions of them, are not improperly excluded from the protections afforded by this legislation.

Second, TU encourages the Committee to consider ways to reduce the burden of permitting on individuals undertaking activities with negligible or no impact on anadromous fish habitat. While we appreciate and support the inclusion of separate requirements for minor activities and for the inclusion of provisions allowing general permits, we encourage the Committee to include an additional provision to exclude activities with negligible or no impact. As currently written, § 3 (16.05.875(a)) requires a permit for any "activity that may use . . . important anadromous fish habitat." This requirement could be interpreted to be incredibly broad and encompass all manner of relatively benign uses that have little to no effect on important anadromous fish habitat, including sport fishing, launching a boat, etc. To alleviate this potential result, TU suggests including a short provision narrowly exempting activities that have no or negligible adverse effect on important anadromous fish habitat. The specific activities exempted could be identified within the legislation or delegated to the Commissioner to identify through regulation.

Alaska is one of the last places on the earth, and the last place in the United States, where widespread untamed rivers still support wild salmon runs at or near historic population levels. These salmon runs exist because our rivers, streams, wetlands, lakes and ponds remain largely in-tact. If we care for these areas and protect them from the impacts of short-sighted projects that benefit the few at the expense of many, our fisheries will continue to support Alaska's economy, communities and cultures indefinitely into the future.

TU commends Representatives Stutes and Josephson for their leadership in fisheries conservation, and for taking on the weighty task of revamping our fish habitat permit scheme to safeguard our important natural resources against the risk of degradation and adverse impacts. We would welcome the opportunity to assist in this process and please do not hesitate to contact us if you have any additional questions.

Sincerely,



Austin Williams
Alaska Director of Law and Policy
awilliams@tu.org



Kevin Maier, President
Southeast Alaska Chapter of Trout Unlimited



Karl Schultz, President
Southcentral Alaska Chapter of Trout Unlimited



UNITED FISHERMEN OF ALASKA

Mailing Address: PO Box 20229, Juneau AK 99802-0229

Physical Address: 410 Calhoun Ave Ste 101, Juneau AK 99801

Phone: (907) 586-2820 Fax: (907) 463-2545

Email: ufa@ufafish.org Website: www.ufafish.org

March 14, 2017

Senate President Pete Kelly
Alaska State Legislature
State Capitol Room 111
Juneau, Alaska 99801

House Speaker Bryce Edgmon
Alaska State Legislature
State Capitol Room 208
Juneau, Alaska 99801

RE: Title 16 Fisheries Habitat Protections

Dear Senate President Kelly and House Speaker Edgmon,

United Fishermen of Alaska (UFA) is a statewide commercial fishing trade association representing 34 commercial fishing organizations and over 400 individuals participating in fisheries throughout the state and its offshore federal waters. Sixteen of our 34 member organizations represent salmon fisheries that are dependent on Alaska's freshwater and near-shore fish habitat.

UFA supports Alaska Board of Fisheries (BOF) recommendations for improved public notice and clarification of standards Alaska's Fish Habitat Permitting law as specified in Alaska Statutes Title 16, the Fish and Game Code. Since it is in the interest of commercial fishermen to have statutes and permitting processes that are clear and unambiguous with regard to protection of salmon habitat, UFA agrees with the BOF that, "additional guidance is warranted for the protection of fish, to set clear expectations for permit applicants and to reduce uncertainty in predevelopment planning costs". Given that habitat permitting statutes have not been revised since statehood, we support the recommendation that the Legislature create enforceable standards in statute to protect fish habitat 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))."

UFA looks forward to working with your body as well as other state decision makers in addressing public notice on fish habitat permits, definitional changes, clarifications and amendments to Title 16 regarding issues related to protection of the state's fish habitat.

Thank you for your consideration.

Sincerely,

Jerry McCune
President

Mark Vinsel
Executive Administrator

GEOFFREY Y. PARKER
Attorney at Law

Phone: (907) 222-6859

E-mail: gparker@alaska.net

7431 Huckleberry Circle
Anchorage, Alaska 99502

“Strange Things and the Attempted Cremation of Salmon McGee”

*There are strange things done in the midnight sun
By the men who toil for gold;
To us and legislators they tell tall tales
That would make your blood run cold;
The Capitol Lights have seen queer sights,
But the queerest they ever did see
Was that night those men tried to set ablaze a good law
To cremate our anadromous friend, Salmon McGee;
So, praise to legislators, fishermen, and the ravens who decree:
“OO-EE, CAW, CAW; OO-EE, CAW, CAW;
You won't do that to our good law.”*

Sort of Robert Service

April 10, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov

Re: HB 199, my own comments.

Dear Representative Stutes and Members of the House Fisheries Committee,

I intend to be critical so I started with a poem to soften the blow. Because I do not believe HB 199 will pass, my chief objective is to point out its flaws so that it has no chance of becoming the basis of an enacted initiative, which when revised by the legislature will weaken the Anadromous Fish Act even more than HB 199 does. I have spent forty years in efforts to conserve anadromous fish in Alaska, for the US Fish and Wildlife Service, and as a lawyer serving the legislature, environmental, sport, commercial and tribal interests, and as a member of several ADF&G and DNR planning teams, various boards, and the Anchorage Fish and Game Advisory Committee. This will show that HB 199, or an enacted initiative modeled upon it, would help Pebble mine and similar interests in eleven ways. HB 199 should not proceed.

A. Section 2 of HB 199 establishes a method by which Pebble mine and others can evade permitting under the bill.

The proposed AS 16.05.871(b) would require ADF&G to adopt regulations specifying how it will conduct site-specific determinations that anadromous water, or a portion of it –

regardless of whether it is documented or presumed anadromous – is “not important” so as to remove it from coverage by the Act. The proposed AS 16.05.871(b) would allow any person to request such a site-specific determination. That allows Pebble mine to request a determination that a headwater stream documented to be anadromous and which Pebble would like to dam for tailings disposal is “not important.” That is how HB 199 would establish a method for Pebble mine and others to evade permitting.

The “Sectional Analysis” creates a misimpression about this. It states that Section 2 creates a process by which “any person may request, a site-specific determination to verify that a waterbody is *not* anadromous fish habitat,” and that “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.”¹ True but incomplete and misleading, because these statements ignore that, in Section 2, the proposed AS 16.05.871(b) would allow any person to request a site-specific determination that any water body, **including a documented anadromous water body**, not just water presumed to be anadromous under the proposed AS 16.05.871(c), is “**not important**” anadromous fish habitat. In other words, the “Sectional Analysis” omits that such a request can (1) be directed at documented anadromous water, and (2) can seek a determination that such water is “not important.” That creates a way to evade permitting regarding documented anadromous waters.

If the drafters of HB 199 had actually intended that it would allow a person to request such a determination only with respect to water presumed to be anadromous, then they would have placed the language authorizing such requests in subsection (c) of the proposed AS 16.05.871 because it creates the presumption. Instead, they placed the language in subsection (b) so as to authorize any person to request “[a] determination that a water body,” regardless of whether it is documented or presumed anadromous, is “not important” anadromous fish habitat.

Moreover, because 5 AAC 95.011 incorporates the Anadromous Waters Catalog and Atlas into regulation, any person or agency *already* can submit a petition under Alaska’s Administrative Procedure Act (APA) at AS 44.62.220 to ADF&G stating why a documented anadromous river, lake or stream, or portion of it, should be declared “not important” and removed from the Catalog and Atlas so as to evade permitting. Under AS 44.62.230, ADF&G then either denies the petition within 30 days or provides public notice and comment on the proposed removal. Thus, under current law, if Pebble mine hopes to dam a *documented* anadromous headwater stream for tailings disposal, then the burden is on Pebble mine to justify removing the stream from the Catalog, Atlas and permitting process.

Because the APA already allows petitions to amend the Catalog and Atlas, one wonders why HB 199 proposes an *additional system*. I’ll speculate. HB 199 requires ADF&G to adopt regulations specifying how it will conduct site-specific determinations. So, the regulations may provide grounds for Pebble mine or others to overturn ADF&G decisions which find that an anadromous water body is important and should remain in the Catalog and Atlas. And the regulations may also shift the burden of proof to ADF&G. On that subject, Representative Stutes, a radio station recently quoted you as saying that under HB 199 “the applicant is going to

¹ “HB 199 Sectional Analysis” (italics partly original), available at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=15737.

be required to substantiate the fact that it's not an anadromous stream and bear the cost of doing so as opposed to the state bearing those costs."² I do not see where HB 199 says so.

B. Section 2 of HB 199 does not protect the beds of anadromous waters, and thereby creates another way for some projects, including Pebble mine, to evade permitting.

The scope of the current statute includes activities which would (1) "change the . . . bed" of anadromous water, and (2) "use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed."³ However, HB 199 drops all this to narrow the scope. It defines "anadromous fish habitat" in terms of a "*surface* water body" and "adjacent riparian areas."⁴ That excludes the bed. Accordingly, HB 199 would require a permit only for activities which "use, divert, obstruct, pollute, or otherwise affect a *water body*, or portion thereof, that is specified as important anadromous fish habitat."⁵ That discards existing language which requires a permit for activities which change the bed or use heavy equipment in the bed.

If a project needs to excavate the bed of anadromous waters, then excluding the bed helps the project. For example, if Pebble mine digs an open pit mine in a manner that initially avoids needing a fish habitat permit, and puts water extraction wells as anticipated around the pit so as to extract contaminated groundwater for treatment, and those wells over time cause a headwater anadromous stream to disappear into the ground, dry up, and no longer be surface water, then PLP could argue that it should not need a Anadromous Fish Act permit to expand the pit to excavate and mine the bed and ground under it with heavy equipment, because it could do so without having to "use, divert, obstruct, pollute, or otherwise affect" surface water that no longer exists. That would enable Pebble to evade the requirements for a fish habitat permit. Such a situation could arise if groundwater flow, which is difficult to understand correctly, is misunderstood at the outset. Implicit throughout HB 199 is an assumption that what ADF&G understands to be correct is in fact always correct. Legislation should not depend on such assumptions. That is why the Policy for the Management of Sustainable Salmon Fisheries (5 AAC 39.222), adopted by the Board of Fisheries, uses the "precautionary principle" (5 AAC 39.222(c)(5)) to err on the side of conservation when uncertainty arises, so as to avoid risks.

Removing the beds from the scope of the Act was intentional. The drafters of HB 199 intentionally limited anadromous waters to "surface" waters, and they could hardly have unintentionally stricken from existing law the words "change the . . . bed," and "to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed." Yet, the Sectional Analysis hides that fact from the public. Like HB 166, the Sectional Analysis never mentions the beds. Given that salmon spawn and dig deep into the beds, no can defend omitting the beds.

² See <http://kbbi.org/post/rep-stutes-introduces-bill-strengthen-protections-salmon-habitat>.

³ AS 16.05.871(b).

⁴ HB 199, p. 2, line 17 (italics added).

⁵ HB 199, p. 4, lines 3-5 (italics added).

C. HB 199 focuses on anadromous fish habitat but ignores the fish themselves, thereby creating situations in which blasting near anadromous waters, which can kill fish embryos in the beds but leave habitat intact, can evade permitting.

The current Anadromous Fish Act requires ADF&G to approve or deny permits based on whether they assure “proper protection of fish and game.”⁶ That standard includes the fish as well as their habitats in the water and in the beds.

HB 199 would instead require ADF&G and permittees to “prevent or minimize the activity’s adverse effects on anadromous fish habitat,”⁷ and then “restore the affected anadromous fish habitat and take mitigation measures.”⁸ That standard addresses the habitat but ignores the fish themselves.

ADF&G has long required Anadromous Fish Act permits for blasting near streams because pressure waves from the blasts can cause injury and mortality to fish in the water and embryos in the bed,⁹ even though the pressure waves can leave those habitats intact. The existing standard (protection of fish and game and their habitats) is both broader and stronger than HB 199’s proposed standard (minimize, restore and mitigate harms to anadromous fish habitat). Although HB 199 refers to preventing adverse effects, its core standard is to minimize, restore and mitigate, because easy prevention occurs, difficult prevention may not, and many projects can be designed to avoid avoidable affects and minimize unavoidable effects. HB 199’s standard is narrower and weaker because it addresses habitat in the water and ignores the fish themselves and embryos in the beds. All that helps large scale mining, such as Pebble mine, which will require a lot of blasting to excavate ore, and the oil and gas industry, which uses seismic blasting to explore for oil and gas.

D. The Forest Practices Act offers a better model for presuming that undocumented water is important anadromous fish habitat.

Alaska has many thousands of undocumented anadromous waters and many thousands of non-anadromous waters. HB 199 presumes, “in the absence of site-specific determination,” that every “naturally occurring permanent or seasonal surface water body and its adjacent riparian areas is important anadromous fish habitat.”¹⁰

The Forest Practices Act deals differently with the same issue. It provides, at AS 41.17.118(c), that “[i]n the absence of a site-specific determination by [ADF&G], the commissioner [of natural resources] shall presume . . . that a stream is anadromous if it is

⁶ AS 16.05.871(c), (d).

⁷ HB 199, p. 10, lines 13-14; see also p. 11, lines 1-2 (requiring a permittee to “limit adverse effects”).

⁸ HB 199, p. 11, lines 7-8.

⁹ See Permit Application form and instructions, available at <http://www.adfg.alaska.gov/index.cfm?adfg=uselicence.main>, and see also ADF&G, “Use of Explosives In or Near Stream Corridors,” requiring permits under Anadromous Fish Act, available at <http://www.adfg.alaska.gov/index.cfm?adfg=uselicence.explosives>.

¹⁰ HB 199, p. 2, lines 13-15.

connected to anadromous waters that are without [ADF&G] documentation of a physical blockage and has a stream gradient of 8 percent or less.” In other words, under the Forest Practices Act, a stream is presumed anadromous if (a) no documented physical blockage, such as an insurmountable water fall, separates the undocumented stream from anadromous waters, and (b) if the undocumented stream has a gradient of 8 percent or less.

An initiative modeled on HB 199 and which contains the overbroad presumption in HB 199 will virtually beg the legislature to revise such an enacted initiative because the legislature has already enacted the Forest Practices Act for dealing with the same issue. That will give interests who would like to weaken the Act further a chance to do so, including repealing anything that advocates of salmon think is good in HB 199, such as the provision barring permits for activities requiring water treatment in perpetuity or hatcheries as mitigation. So, an enacted initiative that includes an overbroad presumption invites the legislature to weaken the Act.

E. For major permits, HB 199 puts the applicant in charge of gathering field information; current law allows ADF&G to charge the applicant for that service; therefore HB 199 puts an applicant for a major permit in greater control of the information used in permitting.

The existing statute allows ADF&G to require an applicant to submit “full plans and specifications of the proposed construction or work” and “complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use.”¹¹ In practice, applicants fill out a form and provide additional information requested. HB 199 would also require an applicant to fill out a form.¹² For minor and major permits, the applicant must provide “all information requested by [ADF&G] to reasonably assess the 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.”¹³

However, with respect to major permits, HB 199 also provides that an applicant “shall collect information *reasonably* requested” by ADF&G.¹⁴ This language, which may refer to field work which can be costly, should be clarified. It creates a basis for disputes over costs.

The “powers and duties” of the Commissioner of Fish Game, at AS 16.05.050(15), include “to establish and charge fees equal to the cost of services provided by the department.” Currently, ADF&G could inform an applicant that field work or data collection is necessary, and offer to perform the service so long as the applicant pays the cost. HB 199 would change this. It would require ADF&G to establish “reasonable fees”¹⁵ instead of “fees equal to the cost.” Because ADF&G is not a profit-making enterprise, reasonable fees may be less than full cost. These changes put the applicant for a major permit in a better position to control the information used in permitting.

¹¹ AS 16.05.871(c).

¹² HB 199, p. 4, line 6.

¹³ HB 199, p. 4, lines 9-11 (curiously, restoration is not mentioned here).

¹⁴ HB 199, p. 7, lines 10-11 (italics added).

¹⁵ HB 199, p. 12, lines 11-15.

F. HB 199's provisions on reconsideration restrict current administrative and judicial review, and help industry, not salmon or the general public.

The current Act provides that an applicant denied a permit due to insufficient protection of fish and game may, within 90 days of receiving the notice of denial, initiate a hearing under the Administrative Procedure Act, at AS 44.62.370, and that the hearing is subject to AS 44.62.330 – 44.62.630.¹⁶ ADF&G habitat regulations at 5 AAC 95.920 state, even more broadly, that “[a]n interested person may initiate an appeal of a decision made under [5 AAC Chap. 95] in accordance with the provisions of AS 44.62.330 - 44.62.630 by requesting a hearing under AS 44.62.370.” That apparently includes any decision made under 5 AAC Chap. 95, not just a permit denial. In other words, under current law, an “interested person” can appeal a determination that an anadromous river, lake or stream, or portion thereof, is “not important.”

However, HB 199 would restrict all this. It would allow only a “person adversely affected” by a determination to request reconsideration and then appeal to Superior Court.¹⁷

First, the difference between the “interested person” standard and the “person adversely affected” standard is significant. Under the “interested person” standard, any person with a material interest in the matter, such as protection of fish and game, can obtain review, but under the “person adversely affected” standard, a person can only obtain review upon a showing that he or she is in fact adversely affected.¹⁸ In other words, HB 199 restricts access to review.

Second, under the APA at AS 44.62.300, an interested person files an original action in Superior Court to challenge the validity of a regulation. The parties get the benefits of a trial court: discovery, production of evidence, cross examination use of expert witnesses, etc., and the record is created in the court. However, under HB 199, a person adversely affected would not file an original court action challenging the changed regulation. Instead, the person would request reconsideration, and then if dissatisfied with the result, appeal to Superior Court sitting as an appellate court. When the Superior Court sits as an appellate court and hears an appeal from a final agency action, the record under judicial review is limited to that established by the agency, so generally no discovery, production of evidence, use of experts, or ability to otherwise supplement the record occurs. These changes, to be made by HB 199, restrict the public’s current access to judicial review and help industry, including Pebble mine, not salmon.

Third, HB 199 would restrict the use of currently available procedures designed to assure that administrative hearings on determinations involving habitat and permitting are fair. For many types of administrative adjudications, the Administrative Procedure Act at AS 44.62.330 currently affords court-like procedures set out in AS 44.62.330 -- .630 (e.g., accusations and statements of issues, service of documents on parties, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing,

¹⁶ AS 16.05.871(d).

¹⁷ HB 199, p. 11, lines 18-29.

¹⁸ See *Johns v. Com. Fisheries Entry Comm.*, 699 P.2d 334, 336-337 (Alaska 1985)(comparing more liberal “interested person” standard to more restrictive standard sought by CFEC and would require a showing that a person’s interests are injured or adversely affected).

obtaining judicial review and scope of judicial review, oaths, impartiality, etc.). Currently AS 44.62.330(a)(27) applies these court-like procedures to the “Department of Fish and Game as to *functions relating to the protection of fish and game under AS 16.05.871.*” (Italics added) However, HB 199 amends AS 44.62.330(a)(27) to provide such court-like procedures to “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.*”¹⁹ (Italics and underscoring added) Because HB 199 expressly provides procedures for reconsideration,²⁰ the APA procedures set out in AS 44.62.330 -- .630 to assure fair proceedings would no longer apply. In other words, HB 199 is drafted to make reconsideration and any hearing less fair. That helps industry, not salmon, not the public.

G. If ADF&G erroneously finds that an activity will not have significant adverse effects and issues a permit, but in fact such effects occur and cannot be prevented or restored, then the mitigation provisions of HB 199 will not operate.

For minor and major permits, HB 199 provides in the proposed AS 16.05.887:

(b) When establishing permit conditions . . . , including permit stipulations and mitigation measures, the commissioner shall, in order of priority, require a permittee . . . to take the following actions: (1) limit 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 . . . , 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 to anadromous fish habitat . . . , 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 adverse effects by restoring, establishing, enhancing, or preserving another water body, other portions of the water body, or land.²¹

This precludes mitigation whenever ADF&G erroneously finds that significant adverse

¹⁹ HB 199, p. 16, lines 2-5.

²⁰ HB 199, p. 11, line 18 – p. 12, line 2, provides that an adversely affected person must request reconsideration with 30 days of the determination at issue; that the commissioner must issue a written decision granting or denying reconsideration within 30 days; that if the commissioner fails to do so, then the request is deemed denied; that if the request is granted, the commissioner shall issue a final determination within 30 days; that the commissioner’s determination upon reconsideration is final agency action for purposes of judicial review by appeal to Superior Court under the APA at AS 44.62.560 which establishes the record before the agency as the record under appellate review; that the person must appeal within 30 days of the date the final agency determination is mailed or otherwise distributed, or the date the request for reconsideration is deemed denied by the commissioner’s failure to act; and that the appeal to Superior Court is limited to the issues presented to the commissioner in the request for reconsideration.

²¹ HB 199, p. 10, line 28 -- p. 11, line 11.

effects will not occur, but in fact do occur, and cannot be limited, minimized or the habitat restored. HB 199 assumes naively (1) that ADF&G will always be correct in anticipating significant adverse effects, (2) that data and science will always be certain, (3) that permittees will always comply with permit conditions, stipulations and mitigation measures, and (4) that all efforts to limit, minimize, restore and mitigate will be successful. Sometimes the wrong stuff happens. If ADF&G errs, if data is uncertain, if a permittee does not comply, or if efforts to limit, minimize, restore and mitigate fail or are uncertain, then the mitigation provisions of HB 199 will not operate. They will not operate because in HB 199 the proposed AS 16.05.887(c) does not allow mitigation to offset adverse effects by restoring even other damaged portions of the water body. In pristine environments, such as the Bristol Bay drainages, virtually no damaged habitat exists to restore as mitigation. There, it makes sense to preclude such efforts because they destroy the natural environment in order to "mitigate" something. But, in places where ample damaged habitat exists, such efforts may make sense. In fact, fishery conservation groups routinely undertake stream restoration projects, and many seem fairly successful.

HB 199 lets a project escape mitigation costs whenever it obtains a permit based on an erroneous finding that it will not cause significant adverse effects, or operators do not comply, or the conditions and stipulations fail, such that significant adverse effects occur. For major projects, that is huge benefit and departure from current regulations which require a permittee to "*mitigate any adverse effect upon fish or wildlife, or their habitat, which the commissioner determines . . . actually results from . . . the permittee's activity, or which was a direct result of the permittee's failure to (1) comply with a permit condition or [the regulations]; or (2) correct a condition or change a method foreseeably detrimental to fish or wildlife, or their habitat,*"²² and "*to compensate fully for damage to fish and wildlife populations and their habitat.*"²³

It should not escape attention that these current regulations and HB 199 differ on mitigating impacts to wildlife and wildlife habitat. The current regulations require a permittee to mitigate impact on wildlife, wildlife habitat, fish, and fish habitat. HB 199 is narrower. It addresses only "anadromous fish habitat." It then prohibits mitigation that would offset the activity's adverse effects on anadromous fish habitat by restoring even other damaged portions of the water body. On some major permits, that helps industry avoid major costs for mitigation.

H. Although HB 199 would weaken the Anadromous Fish Act in many respects, if HB 199 forms the basis of an initiative, it will risk weakening the Act further.

HB 199 addresses matters involving agency expertise, which should be in regulation, not statute. Legislative bodies establish agencies to marshal expertise, and therefore give them authority to adopt regulations based on expertise in order to make decisions. Attempting to put "supposed" expertise in statute, by bill or initiative, invites legislators lacking expertise to weaken inadvertently or deliberately the Anadromous Fish Act.

HB 199 may not pass, but it may be the groundwork for an initiative that, if enacted, will invite legislation to revise the initiative. For example, in about 2000, the voters enacted an initiative which regulated discharges by cruise ships into Alaska waters. The legislature repealed

²² 5 AAC 95.900(a) (italics added).

²³ 5 AAC 95.990(4) (italics added).

the initiative. A somewhat similar situation occurred in about the 1980s and 1990s, when the legislature enacted several laws which substantively and procedurally weakened AS 38.05.035. It is a chief permitting statute of the Alaska Department of Natural Resources (DNR), just as the Anadromous Fish Act is for ADF&G. The legislature did so because it perceived that AS 38.05.035 afforded a means for environmental groups to overturn DNR decisions. So, people should consider that risk that an initiative will lead to gutting the Anadromous Fish Act.

ADF&G's regulations which implement the Act could be improved. There are several ways to do so. ADF&G can do so, and HB 199 might help pressure ADF&G to do so. People can put pressure on the Board of Fisheries to urge ADF&G to do so. Citizens can draft regulations and file a petition with ADF&G under the Administrative Procedure Act at AS 44.62.220 to adopt the regulations, and ADF&G must then under AS 44.62.230 either deny the petition within thirty days or schedule the matter for a public hearing. Or, if all else fails, the legislature could enact a less risky, shorter bill that requires ADF&G to enact regulations to address certain topics currently unaddressed, such as notice and comment. But an initiative that invites wholesale weakening of the Act will not help salmon or those who depend on them.

CONCLUSION

HB 199 contains so much that is counterproductive to protecting salmon that it cannot be attributed to careless drafting. To summarize the eleven ways HB 199 would help Pebble mine and similar interests, the bill –

- (1) removes the beds of anadromous waters from the jurisdiction of the Act so as to reduce the scope of protection and permitting;
- (2) requires regulations to create a method of evading permitting by determining that anadromous waters are “not important,” when a method already exists under the Administrative Procedure Act;
- (3) allows excavation and mining of the beds of anadromous streams to evade permitting, whenever ADF&G was unable to anticipate that previous activities, such as water extraction wells around a mine pit, would result in dewatering anadromous water;
- (4) eliminates the fish themselves from the jurisdiction of the Act so as to allow blasting near documented anadromous waters, including by Pebble and the mining and oil and gas industries, to evade permitting whenever pressure waves would harm fish embryos but leave the habitat intact;
- (5) presumes unnecessarily that all surface waters are anadromous when modeling after the Forest Practices Act offers a more rational presumption;
- (6) limits existing administrative and judicial review by replacing the “interested person” standard with the “person adversely affected” standard;
- (7) limits existing judicial review by replacing the right to file an original court action in the Superior Court sitting as a trial court, which has all the advantages of discovery, production of evidence, cross-examination, use of expert witnesses, etc., with an administrative appeal to the Superior Court sitting as an appellate court reviewing an established agency record with no opportunity in an appellate court for discovery, production of evidence, cross-examination, use of experts, etc.;
- (8) amends the Administrative Procedure Act to extinguish the applicability of numerous provisions designed to assure a fair hearing before ADF&G hearing officers on matters involving reconsideration of decisions made under HB 199;

- (9) replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to "reasonable requests" for an applicant to do field work, all of which puts the applicant in greater control of the information that goes into decision-making;
- (10) bars mitigation of unforeseen significant adverse effects whenever prior damages to the same water body already exist; and
- (11) invites further erosion of the current Act if the bill becomes an enacted initiative.

All this helps industry, not salmon, not the general public.

Overall, HB 199 entices advocates of salmon with what sounds nice but they really don't need, repeals what they need to keep and improve, and burdens them with what they need to avoid. For example: HB 199 gives advocates of salmon an unnecessarily overbroad presumption that all surface waters including mountain rivulets, glaciers and isolated wetlands are anadromous, but repeals authority to protect the beds of documented anadromous waters and the fish themselves, and then creates multiple means for developers to evade permitting when their activities adversely affect documented anadromous waters, beds or the fish themselves. The state does not need to presume that mountain top waters and glaciers are anadromous while it loses the advantages of a stable Catalog and Atlas of documented anadromous waters. The Catalog and Atlas are the most fundamental jurisdictional regulations for enforcing the Act. Another example: HB 199 creates public notice and comment on major permits, but then reduces access to reconsideration and judicial review which follow from that process, and converts replaces original litigation in the courts with administrative appeals, and eliminates procedures that assure fair administrative hearings. All that lets salmon advocates speak but reduces their ability to challenge an agency decision. All that is counterproductive to allowing citizens to be good citizens and requiring the government be good government.

Moreover, if HB 199 becomes the basis of an enacted initiative, then all bets are off. The presumption that all surface waters are anadromous, when compared to the Forest Practices Act, is tantamount to a gold-plated invitation to the legislature to rewrite the enacted initiative at the first opportunity, as are other provisions in the bill. Then, those who supported such an initiative will have only themselves to blame for all the defects listed above which survive a legislative re-write. When the legislature re-writes a counterproductive initiative, those who supported it will be in a poor position to retrieve what they unknowingly gave up, such as ADF&G's jurisdiction over the beds of anadromous waters, and they will be unable to regurgitate the poison pills they unknowingly swallowed, such as the methods and means to evade permitting and the more limited access to courts. Then, the legislature may further restrict the Act.

I am sure the sponsors have good intentions. I am equally sure this bill should be held and never move to a next committee. With regret, I hope that the sponsors of HB 199 will repudiate it so that it does not become the basis of an initiative.

Sincerely yours,



Geoffrey Y. Parker

Bristol Bay Fishermen's Association

P.O. Box 60131
Seattle, WA 98160
Phone/Fax (206) 542-3930



April 8, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov

Re: HB 199

Dear Representative Stutes and Members of the House Fisheries Committee,

This and the attached memo from our attorney are the comments of the Bristol Bay Fishermen's Association on HB 199. It would repeal and replace the Anadromous Fish Act, at AS 16.05.871, and make other changes to existing law.

I am president of the Bristol Bay Fishermen's Association. It represents the interests of a substantial portion of those who fish commercially in Bristol Bay. It was incorporated in 1966 under Alaska law, and you may know our association by its former name, the Alaska Independent Fishermen's Marketing Association.

We recommend that the House Fisheries Committee hold and not advance HB 199. We cannot support it. Although it makes some improvements, the attached memorandum concludes that HB 199 has at least the following nine major defects:

- (1) HB 199 focuses only on surface waters and removes the beds of anadromous waters from current coverage by the Act. This reduces the scope of protection and permitting.
- (2) HB 199 would establish in regulation a method to determine that documented anadromous waters are "not important." This amounts to a method to evade permitting. This new method is unnecessary because the Administrative Procedure Act already provides a statutory process for citizens to petition agencies to amend regulations, including the Anadromous Waters Catalog and Atlas which are adopted into regulation.
- (3) HB 199 creates an additional avenue for projects to evade permitting whenever agencies do not foresee that other events, such as water extraction wells around a mine pit, will dewater the beds of anadromous waters.
- (4) HB 199 focuses on habitat and deletes the fish themselves from current coverage by the Act. Doing so appears to allow blasting near anadromous streams to evade the Act.
- (5) HB 199 presumes all surface waters are anadromous, when it could track the Forest Practices Act which presumes that a stream is anadromous if no documented physical blockage separates an undocumented stream from anadromous waters, and if the undocumented stream has a gradient of 8 percent or less. If HB 199 becomes the basis of an enacted initiative, this overbroad presumption will

probably prompt the legislature to repeal or amend the presumption and then may consider further changes that erode the current scope of the Act.

- (6) HB 199 replaces full fees for ADF&G doing field work with reasonable fees, and limits ADF&G to "reasonable requests" for an applicant to do field work, all of which puts the applicant in a better position to control the information that goes into decision-making.
- (7) HB 199 limits public access to the courts by replacing the liberal "interested person" standard with the more restrictive "adversely affected" standard, for purposes of reconsideration and appeals to courts thereafter.
- (8) HB 199 limits public access to the courts by replacing the original actions against ADF&G, which have all the benefits of discovery and trial, with appeal to Superior Court based on the record before the agency.
- (9) HB 199 bars mitigation of unforeseen significant adverse effects under major permits whenever prior damages to the same water body already exist.

Overall, HB 199 gives advocates of salmon what sounds nice but they really don't need, repeals what they need to keep and improve, and burdens them with what they need to avoid. For example: HB 199 (1) gives advocates of salmon an unnecessarily overbroad presumption that all surface waters are anadromous even though the overwhelming majority face no threats and most probably are not anadromous if measured by miles or acreage, but (2) repeals the authority to protect the beds anadromous waters and the fish themselves, and then (3) creates multiple means for developers to evade permitting when their activities adversely affect documented anadromous waters, beds or the fish themselves. The state does not need to presume that mountain top rivulets and glaciers are anadromous and lose the advantages of a stable Catalog and Atlas of documented anadromous waters, when the Catalog and Atlas are the most fundamental jurisdictional regulations for enforcing the Act. Another example: HB 199 creates public notice and comment on major permits, but then reduces access to reconsideration and judicial review which follow from that process, and converts original litigation in the courts to administrative appeals upon a fixed record. That lets salmon advocates speak but reduces their ability to challenge an agency decision. That is counterproductive.

Moreover, if HB 199 becomes the basis of an enacted initiative, then additional problems will arise. Several provisions, for reasons discussed in the attached memorandum, would invite the legislature to rewrite an enacted initiative at the first opportunity. Then, those who supported such an initiative will be in a poor position to regain what they unknowingly have given up in HB 199 or any initiative to parallels it.

Please at least skim and ask your staff to review the attached memorandum. Thank you.

Regards,



David Harsila, President
Bristol Bay Fishermen's Association

Attachment: memo on HB 199



The Honorable Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801
Phone: 907-465-2487

Representative.louise.stutes@akleg.gov
Reid.harris@akleg.gov

Subject: Support for House Bill 199

Dear Representative Stutes and Members of the House Fisheries Committee,

I own and run Alaska Alpine Adventures, one of the many Alaskan owned, family operated businesses critically contributing to the state's economy. This summer will mark our 18th year in operation, taking Alaskans and visitors on guided trips around the state from the Brooks Range to Bristol Bay. Nothing gives me greater pleasure than sharing the diverse opportunities of Alaska with residents and visitors alike. We truly live in a unique and special state, teeming with mountain ranges, long free flowing rivers, and healthy, strong, and vibrant salmon runs.

Having worked in the outdoor travel industry, I have kept my eye close to the opportunities to protect our heritage and future, especially salmon. As I have watched and engaged the long winding battle to protect Bristol Bay over the past decade, I have long believed that Alaska's salmon resources need clear, protective measures at the state level.

I was delighted, then, to read that you had introduced House Bill 199. This is a powerful step forward to create those lasting and clear standards on the state level that can help Alaskans protect Alaska's renewable resources.

As the state's fish habitat permitting laws have not been updated since statehood, HB 199 provides simple, yet critical updates that ensure that not only can the Alaska Department of Fish and Game truly stand up for our fisheries, but that Alaskans have a clear opportunity to comment and engage in the permitting process.

What I love about the Stand for Salmon bill is that it seeks to protect Alaskan opportunities to do Alaskan things - namely rely on salmon in the many ways we do. The notion of doing Alaskan things while celebrating the majesty and bounty of this incredible place is precisely what draws 2+ million people to Alaska each year. Simple changes to existing law will assure that the cultural, ecological, recreational, and subsistence opportunities we so enjoy continue to be nourished by salmon.

Extraordinary Adventure Vacations in Alaska's National Parks

email: info@alaskaalpineadventures.com • phone: 877-525-2577



Sincerely,

Dan

Dan Oberlatz
Owner - Alaska Alpine Adventures, LLC

Extraordinary Adventure Vacations in Alaska's National Parks

email: info@alaskaalpineadventures.com • phone: 877-525-2577

ALASKA SURVIVAL
TALKEETNA ALASKA 99676
ALASKASURVIVAL101@GMAIL.COM

4/7/17

Representative Louise Stutes
Chair of House Special Committee on Fisheries
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Stutes:

On behalf of the Board of Directors of Alaska Survival (AS), I take this opportunity to thank you for introducing HB 199 which is a response to the Alaska Board of Fisheries letter. AS is a southcentral Alaska based public interest group that focuses on pollution and land management issues. Our members are dependent on healthy fisheries for jobs, regional economies and quality of life.

The current fish habitat permitting has been inadequate to protect our valuable anadromous streams. Alaska's salmon fisheries are without a doubt one of the world's few remaining truly sustainable anadromous fisheries. Where else can a fishery supply food for all residents who desire it, a viable commercial fishery, and thousands of residents and non-residents jobs?

Two aspects of HB 199 that we particularly focus on:

1. HB 199 legislates a transparent public process for both major and minor permits. With this legislative mandate, the Department will gain a mechanism for valuable local knowledge of the waterway and the area involved in the permit. Our Board particularly likes the requirement posting notice and Commission decisions on the Alaska Online Public Notice which people such as myself depend on to keep up with regulatory actions.

Currently, there is no public notice of applicants for Fish Habitat (FH) permits. Thus, there is no way for the public to even know about the existence of the permit application or even commenting on these permits. Many times the public finds out about the existence of a FH permit only when the applicant applies for a state Land Use Permit.

2. HB 199 legislates the science-based and habitat criteria of the Sustainable Salmon Policy.

Alaska's Sustainable Salmon Policy's is currently not being implemented in the Alaska Department of Fish and Game's Fish Habitat permits. Permitting practices for heavy equipment moves, construction projects, mining and other potentially habitat and waterway damaging activities are very loose. Oversight inspections and penalties for infractions are rare. Waivers of requirements are commonly allowed. All these problems endanger our world class fisheries, and many long-held livelihoods. I have witnessed these situations in my home neighborhood, and I am aware of other situations.

Becky Long, Secretary-Treasurer
Board of Directors-Alaska Survival



Alaska Longline

FISHERMEN'S ASSOCIATION

Post Office Box 1229 / Sitka, Alaska 99835 / 907.747.3400 / FAX 907.747.3462

Dear Members of the House Fisheries Committee,

I am writing on behalf of the Alaska Longline Fishermen's Association (ALFA) to express my support for House Bill 199. HB 199 proposes important changes to Alaska's fish habitat permitting law and will help ensure that the salmon stocks upon which many of our small boat fishermen and coastal economies depend are protected throughout their life.

In Alaska, most commercial fishing permit holders are small and family-owned businesses that support dozens of other service businesses. The salmon industry alone creates tens of thousands of jobs for Alaskans each year and generates hundreds of millions of dollars in economic activity.

Because our members value the sustainability of our fisheries for both ourselves and the next generation, we work hard as fishermen (in conjunction with the Alaska Department of Fish and Game) to manage the extraction of fish. This involves reporting our catch, participating in the management process, and carefully following bycatch, catch, size and other limits and regulations while fishing. This level of care and protection should be taken at every step of the salmon life cycle to ensure Alaska's salmon runs remain productive for decades to come.

ALFA is concerned that the law as written does not provide the agency with scientific clarity or certainty to stand up to development efforts that put Alaska's fish habitats at risk. HB 199 not only sets clear standards for ADF&G to protect Alaska's fisheries, but will give Alaskans a chance to weigh in on decisions impacting our salmon rivers. HB 199 expands ADF&G's authority to protect fish habitat, creates enforceable protection standards, and gives Alaskans a voice in the permitting process.

HB 199 will set clear standards to protect Alaska's wild salmon for generations to come, and will provide ongoing benefits to Alaska's fisheries, coastal communities, and the state's economy. With respect, we ask that you support HB 199.

Sincerely,



Linda Behnken (Director, ALFA)



Chickaloon Village Traditional Council (Nay'dini'aa Na')

April 7, 2017

Gary Harrison,
Traditional Chief

Representative Stutes
representative.louise.stutes@akleg.gov

Doug Wade,
Chairman/Elder

reid.harris@akleg.gov

Rick Harrison,
Vice-Chairman

Re: Support for HB 199: Changing State Law to Protect our Salmon and Lifeways

Penny Westing,
Secretary/Elder

Dear Representative Stutes,

Albert Harrison,
Treasurer/Elder

Thank you Representative Stutes for introducing HB 199. Chickaloon Native Village is a federally-recognized Ahtna Athabascan Tribe in southcentral Alaska governed by the Chickaloon Village Traditional Council (CVTC). We are writing to express our support for HB 199.

Shawna Larson,
Member

Kari Shaginoff,
Member

Since time immemorial our people have depended upon salmon as a fundamental part of our social, cultural, economic and spiritual wellbeing. Access to sustainable, healthy resources for our families and our people is crucial to preserving our lifeways and we have made it a priority to protect our hunting and fishing resources for our people. There are multiple threats to critical salmon spawning and rearing habitats in Alaska and protection of these critical locations is necessary to ensure healthy salmon populations continue into the future. HB 199 will help to ensure protection for critical salmon spawning and rearing habitats.

Lisa Wade,
Member

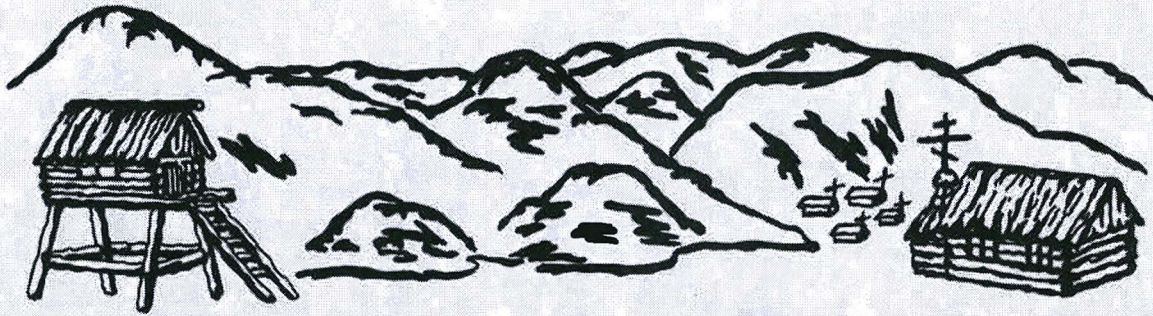
Gary Hay,
Executive Director

Alaska's Fish Habitat Permitting Law (Title 16) does protect salmon spawning and rearing grounds enough, due to weak and ambiguous language. The current law needs to be updated and HB 199 will update the laws to provide clear scientific and enforceable standards for ADF&G to identify important habitat characteristics, like water quality, in-stream flow levels, fish passage, and riparian areas that need to be maintained to protect and support the sustainability of Alaska's salmon. HB 199 gives Alaskans a much needed voice in the permitting process, where Title 16 does not currently mandate public input and involvement. HB 199 creates commonsense standards for mitigation that a developer must meet to protect wild salmon before a project can move forward and be permitted.

Without wild salmon our well-being, economic security and food sovereignty are threatened. Thank you for your support of HB 199!

May Creator Guide Our Footsteps,

Doug Wade
Chairman



NATIVE VILLAGE OF EKLUTNA

DRAFT RESOLUTION 2016 –23
Fish Habitat Permitting Proposal

Native Village of Eklutna Traditional Tribal Council support for the Alaska Board of Fisheries to recommend the Alaska State Legislature clarify criteria for protective fish habitat permitting.

WHEREAS, Native Village of Eklutna is a distinct, independent political community, and as such is qualified and exercises powers of self-government by reason of its original tribal sovereignty as passed down from its ancestors since time immemorial; and

WHEREAS, Native Village of Eklutna's Traditional Tribal Council is the governing body of Eklutna as recognized by the Eklutna Tribe and the Federal Government of the United States; and

WHEREAS, salmon have provided nutritional and cultural benefit to the Upper Inlet Dena'ina throughout time immemorial; and

WHEREAS, Eklutna people suffer from diminution of a traditional diet rich in salmon that helps protect against increasing levels of diabetes, heart disease and gastrointestinal disorders; and

WHEREAS, Native Village of Eklutna strives to protect and restore native fish populations and habitat for inherent values, including subsistence, without unnecessarily impeding sustainable development; and

WHEREAS, Alaska's fish habitat permitting process (AS 16.05.871) lacks specific criteria to determine whether permitting decisions that allow development activities will adequately protect fish habitat; and

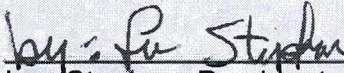
WHEREAS; The Board of Fish Sustainable Salmon Policy recognizes the importance of conserving fish habitat to maintain healthy salmon populations and protect customary and traditional subsistence uses; and

WHEREAS, The Sustainable Salmon Policy contains specific habitat protection criteria that Fish and Game should consider when making fish habitat permitting decisions; and

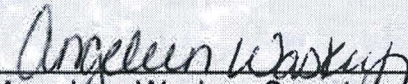
WHEREAS; a pending proposal requests that the Board of Fish recommend that the Alaska Legislature take action to amend the fish habitat permitting law in Title 16 to accord with the principles and habitat protection criteria in the Board of Fish Sustainable Salmon Policy, to direct Alaska Department of Fish and Game Fish Habitat Permitting decisions under AS 16.05.871.

NOW THEREFORE BE IT RESOLVED, Native Village of Eklutna Traditional Tribal Council endorses the intent of said pending proposal that the Alaska Board of Fisheries recommend that the Alaska Legislature incorporate elements of the Alaska Board of Fisheries Sustainable Salmon Policy fish habitat protection criteria, or similarly effective criteria, into Alaska Statutes Title 16 to be applied by Alaska Department of Fish and Game in development permitting decisions.

By a vote of 10 for, 0 against, 0 abstained, and absent, this resolution was duly approved on this 28th day of September, 2016, by phone and e-mail poll.



Lee Stephan, President



Angeleen Waskey, Secretary



NATIVE VILLAGE OF EKLUTNA

4/5/2017

Representative Louise Stutes
State Capitol Room 406
Juneau AK, 99801

Dear Representative Stutes,

Thank you for introducing HB 199. This bill responds both to the letter from the Alaska Board of Fisheries, and to a request to the Board of Fisheries that many Alaskans, including Native Village of Eklutna with Resolution 2016-23 (attached), commercial, sport, personal use, and subsistence fish harvesters and more weighed in on to the Board. The importance of salmon to our tribe's cultural and physical health cannot be overstated. Salmon is our primary traditional food source and provides a metabolically healthy diet. Protecting salmon habitat assures this resource will be available to our people for generations to come.

Native Village of Eklutna is concerned that Title 16 has not been updated since statehood and these updates are critical. We see that House Bill 199 updates Title 16 by:

- Creating clear scientific and enforceable standards for ADF&G to identify important habitat characteristics, like water quality, instream flow levels, fish passage, and riparian areas that need to be maintained to protect and support the sustainability of Alaska's fisheries.
- Giving Alaskans a much needed voice in the permitting process, where Title 16 does not currently mandate public input and involvement.
- Mandating updating the state's Anadromous Catalogue to include any waterways that produce salmon. This update ensures that we're not leaving important salmon waters unprotected.
- Creating commonsense standards for mitigation that a developer must meet to protect wild salmon before the project can move forward.

In total, HB199 updates empower Alaska Department of Fish and Game to objectively evaluate and mitigate projects that could unduly impact Alaska's salmon habitat and ensure that Alaskans have a clear voice to stand up for the future of our fisheries.

Sincerely,

by: Lee Stephan

Lee Stephan
President and First Chief

4/7/17

Dear Representative Stutes,

I am writing to thank you for your desire to protect wild salmon and the rivers and waterways they need to survive. I live in Arizona and enjoy eating wild caught salmon a lot! My daughter lives in Homer, and we have visited her a couple of times. Your state is one of the most beautiful in this country, and, as a long time Sierra Club member and back packer, I support HB 199 and any other legislation that attempts to protect wild habitat.

Sincerely,

Rob Findlay

2167 Greasewood Dr
Kingman, AZ 86409

Dear House Fisheries Committee,

Wild salmon put food on the table, provide recreation, and create tens of thousands of jobs for Alaskans. Our truly unique Alaskan way of life depends on wild salmon, which also generate hundreds of millions of dollars in economic activity each year.

While Alaska's constitution outlines strong protections for our state's unmatched fish and game resources, our current system fails to provide clear and reliable protections for our fisheries and often leaves Alaskans out of the process. HB 199 updates Alaska's fish habitat permitting law by expanding Alaska Department of Fish and Game's authority to protect fish habitat; creating enforceable protection standards; and giving Alaskans a voice in the permitting process.

Please support HB 199 for the future of Alaska's fisheries. Our economies and heritage depend on it.

Sincerely,

610 Alaskans:

First Name	Last Name	City
Lori	Johnson	Soldotna
Rebecca	Goodrich	Anchorage
Nancy	Cuddeback	Anchorage
Karen	Hopp	Palmer
Ronald	Stanek	Anchorage
Jessica	Winnestaffer	Palmer
Michael	Queen	Thorne Bay
Jill	Wittenbrader	Kodiak
Diane	Kendrick-Adey	Nenana
Trish	Roderick	Kenai
Sophie	Littee	Anchorage
Bruce	White	Sitka
Shelley	Gill	Homer
Kathleen	Dunning	Anchorage
Kevin	Garza	Anchorage
Cristina	Bieber	Kodiak
Sonja	Tobiessen	Anchorage
Renee	Blake	Wasilla
Richard	Koskovich	Homer
Michael	Adams	Cooper Landing
Theodore	Bryant	Wasilla
Lorrie	Horning	Anchorage
Zachary	Brown	Gustavus
Mary Ellen	Ashton	Anchorage
George	Matz	Fritz Creek
Deirdre	Downey	Fairbanks
Mary	Griffith	Seward

Louis	Dupree	Homer
Michael	Reidell	Anchorage
Kevin	Shaffer	Moose Pass
Carol	Ford	Kenai
Betsy	Webb	Homer
Aimee	Chartrand	Palmer
John	Breiby	Wasilla
Kalene	Chartrand	Palmer
Brian	Nelson	Anchorage
Susan	Rennolds	Homer
Scott6	Miller	Homer
Robert	Archibald	Homer
Roberta	Highland	Homer
Charles	Bingham	Sitka
Sheila	Tamayo	Anchorage
Stanley	Kaneshiro	Kenai
Rosemary	Watabe	Fairbanks
Gail	Roust	Juneau
Ricky	Bashore Ii	Anchorage
Jill	Chadbourne	Palmer
Laurie	Daniel	Homer
John	Tribuzio	Juneau
Mark	Dicksonj	Homer
Duane	Howe	Homer
Kevin	Walker	Homer
Roslyn	Goodman	Pedro Bay
Brenda	Dolma	Homer
Sharon	Stockard	Anchorage
Rhonda	Grove	Anchorage
Benjamin	Gray	Glennallen
Katherine	Mclaughlin	Cordova
Rick	James	Wasilla
Alexander	Gudschinsky	Fairbanks
Patricia	Delate	Kodiak
Anna	Deal	Palmer
Michael	Raffaeli	Denali Nat'l Park
Darlene	Holmberg	Aniak
William	Wuttke	Anchorage
Virginia	Hudson	Anchorage
Ward	Person	Anchor Point
Richard	Gustin	Fritz Creek
Joel	Reynolds	Anchorage
Cheryl	Lovegreen	Anchorage
Mariah	Thomas-Wolf	Ninilchik
Carolyn	Nickles	Anchorage
Nicole	Arevalo	Homer
Cody	Wise	Homer
Christopher	Wilcox	Port Alsworth
Kay	Underwood	Anchorage

Barbara	Reilly	Anchorage
Mark	Schollenberger	Anchor Point
Amy	Post	Eagle River
Paula	Muschinske	Eagle River
Janet	Barton	Anchorage
Ruth	Fitzpatrick	Anchorage
Valerie	Delaune	Palmer
Marjorie	Newman	Eagle River
George	Menard	Trapper Creek
Gordon	Howell	Anchorage
Warren	Keogh	Chickaloon
Jourdan	Shapiro	Anchorage
Susan	Ruddy	Anchorage
Morgan	Macconaugha-Snyder	Anchorage
Gary	Wesolowski	Eagle River
Gerald	Grappi	Homer
Ryan	Schryver	Anchorage
Larry	Rundquist	Anchorage
Bryan	Arnold	Eagle River
Gary	Fournier	Juneau
Bonnie	Dupree	Homer
Allayne	Dinkel	Wasilla
Paul	Janke	Anchorage
Martha	Siebe	Anchorage
Anne	Hurley	Anchorage
Marie	Pedraza	Palmer
Krista	Justice	Soldotna
Lorra	Meier	Anchorage
Deirdre	Coval	Soldotna
Brad	Kirr	Palmer
Abe	Duke	Anchorage
Julia	Plotnik	Palmer
Ryan	Thompson	Anchorage
Peter	Melde	Anchorage
Colleen	Herning	Fairbanks
Cher	Ward	Willow
Joyanne	Bloom	Juneau
Oscar	Perez	Wasilla
Bruce	Service	Anchorage
Herbert	Harrison	Willow
Rachel	Harrison	Willow
Chanell	Jenkins	Jber
William	Dougherty	Anchorage
Kaytlyn	Kelly	Palmer
Linda	Branham	Anchorage
Peggy	Finnegan	Anchorage
Don	Meierhoff	Anchorage
Johnse	Ostman	Anchorage
John	Willingham	Anchorage

Tuluax
David
Rosemary
Christian
Laura
Linda
Diane
Barbara
Greg
Esther
Shelly
Leroy
Brian
Taylor
Susan
Cynthia
Kitty
W.
Rebecca
Nicholas
Sarah
Richard
Regis
Stephen
Deborah
Rochelle
Hope
Alli
Parry
Patricia
Sherri
Russell
Willi
Sheryl
Chung
Terry
Suraj
Janie
Amanda
Nicholas
Karl
Sandra C
Camilla
Paula
David
Ashley
Mike
Paul
Barbara

Afa
Atcheson
Mcguire
Mchenry
Mcindoe
Brown
Okonek
O'Donnell
Campbell
Babcock
Campbell
Buell
Okonek
Bracher
Baker
Decker
Greene
Anderson
Beanmullan
Cassara
Hiler
Palmatier
Pappert
Stone
Naspinsky
Harrison
Meyn
Harvey
Nelson
Haugom
Hayden
Miller
Prittie
Salasky
Ha
Cummings
Holzwarth
Taylor
Piatt
D'Alessio
Slingerland
Slon
Dalton
Williams
Plant
Plante
Wilson
Reichardt
Mannix

Anchorage
Sterling
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Anchorage
Girdwood
Girdwood
Fairbanks
Wasilla
Anchorage
Anchorage
Palmer
Anchorage
Wasilla
Fairbanks
Talkeetna

James	Proch	Anchorage
Peggy	Marsh	Trapper Creek
Marjorie	Belieu	Homer
Marc	Lewis	Anchorage
Michael	Chartrand	Palmer
Anne	Coady	Talkeetna
Dora	Coen	Homer
Athena	Lamarche-Wehling	Nenana
C.	Elliott	Anchorage
Zach	Laperriere	Sitka
Nancy	Larson	Talkeetna
Kevin	Tierney	Anchorage
Mark	Donachy	Chignik Lake
Irene	Douthit	Anchorage
Robin	Song	Talkeetna
Helena	Spector	Anchorage
Amanda	Erickson	Talkeetna
Steve	Turner	Anchorage
Jeff	Fair	Palmer
Michael	Jones	Sutton
Iris	Vandenham	Talkeetna
Constance	Fredenberg	Palmer
Brittany	Mackeys	Wasilla
Kit	Kennedy	Wasilla
Staci	Genet	Talkeetna
Taras	Genet	Talkeetna
Stuart	Felberg	Seldovia
Marsha	Fernandez	Petersburg
Monica	Gilpin	Wasilla
Nicole	Kovacs	Skagway
Ed	Tompkins	Palmer
T.R.	Foechterle	Wasilla
Sarah	Traiger	Fairbanks
James	Mackovjak	Gustavus
Richard	Huth	Eagle River
Robert	Winckler	Wasilla
Karen	Rode	Anchorage
Greg	Demers	Anchor Point
Kimberly	Vannostrand	Skagway
Dave	Nuetzel	Sitka
Clyde	Vicary	Anchorage
Marcia	Denison	Anchorage
Vicky	Gordon	Homer
Jeff	Dean	Homer
Charlie J	Johnson	Anchorage
Kevin	Miller	Juneau
Dolores	Farrell	Sitka
Beth	Short-Rhoads	Sitka
Michelle	Kaelke	Juneau

Frank
Alexander
Bob
Malena
Hannah
Charles
Bradly
Timothy
Anja
Danielle
Peter
Jenny
Karen
Padraig
Evelyn
Nikki
Alison
James
Reba
Nancy
Darlene
Pat
Debra
Melissa
Robert F
Marjorie
Roger
Michael
Betsy
Susan
Sylvester
Sharon
Byron
Phil
Tracie
Adam
Stephen
Celeste
Csilla
Marcia
Susan
Dawn
Xantha
Steve
Jim
Randy
Carole
Darlene
Benjamin

Thrower
Tallekpalek
Sylvester
Marvin
Pratt
Borbridge
Wheeler
Bristol
Phenix
Stickman
Branson
Weis
Wilson
New
Miller
Love
Hedberg
Seegraves
Temple
Hillstrand
Otten-Carl
Irwin
Bolles
Riordan
Jensen
Patrawke
Clyne
Thompson
Nixon
Jabal
Mazen
Clark
Mccord
Shoemaker
Brown
Cuthriell
Lawrie
Beck-Goodell
Polgardi-Thomas
Holt
Jones
Morse
Bruso
Cannon
Plymire
Vandyke
Demers
Turner
Kramer

Juneau
Levelock
Juneau
Petersburg
Anchorage
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Sitka
Homer
Healy
Eagle River
Wrangell
Anchorage
Juneau
Juneau
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Homer
Homer
Palmer
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Anchorage
Fairbanks
Sterling
Anchorage
Homer
Yakutat
Soldotna
Juneau
Homer
Clarks Point
Seldovia
King Salmon
Homer
Girdwood
Sitka
Kodiak
Anchorage
North Pole
Sitka
Anchorage
Pedro Bay
Ketchikan
Homer
Fort Yukon
Homer
Kodiak
Copper Center

Betty
Andrew
Tom
Carl
Linda
Susan
William
Scott
Gail
Karen
Sheryl
Clyde
Suzette
Michele
Charles
Dillon
Jim
Denise
Debbie
Jennifer
Dustin
Jp
Larry
Jennifer
Keith
Molly
Miriam
Betty
Mary Jean
Jef
N.
Pat
Emily
Robert
Marty
Chris
Rhonda
Robin
Martha
Deanna
Joyce
Nicholas
Mark
Benjmain
Tony
Tracy
Brandon
Emily
Kristen

Dean
Bennison
Missel
Adams
Rabideau
Bury
Baechler
Cunfer
Sieberts
Ussher
Baechler
Drew
Mashburn
Handy
Ash
Bennett
Hansen
Hansen
Mckay
Eubank
Gridley
Goforth
Casey
Edwards-Fahl
Muschinske
Keyse
Dunbar
Bonin
Ivy
Harvey
Burrows
Abney
Tiller
Betancourt
Arnoldy
Carroll
Matthews
Deason
Morris
Kozak
Huffer
Hamming
Casey
Borchert
Moran
Holmberg
Mclean
Lints
Davis

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King Salmon
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Moose Pass
Sitka
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Eagle River
Girdwood
Cordova
Anchorage
Petersburg
Willow
Homer
Homer
Fairbanks

Rebecca	Lane	Anchorage
David	Crownhart	Anchorage
Sylvia	Maiellaro	Anchorage
Sara	Stoops	Anchorage
Joni	Wilm	Anchorage
Judith	Judge	Anchorage
Evan	Anderson	Anchorage
Richard	Rothstein	Anchorage
Arthur	Sowls	Homer
Ronald	Thompson	Kodiak
Chas	Dense	Juneau
Dave	Bachrach	Homer
Myrna	Hammond	Anchorage
Deborah	Mclean	Dillingham
Diana	Rossmiller	Juneau
Alizka	Czimmerman	Anchorage
Karen	Christopher	Homer
Joan	Franz	Fairbanks
Jonathan	Osborn	Anchorage
Kathleen	Dinius	Soldotna
Mark	Lisac	Dillingham
Gail	Miller	Eagle River
Shannon	Wileman	Anchorage
Tess	Nott	Anchorage
Christopher	Evanoff	Eagle River
Deborah	Tennyson	Anchorage
Shata	Kompkoff	Juneau
Erik	Adey	Nenana
Brandon	Ruckel	Indian
Kerry	Clark	Anchorage
Kevin	Young	Anchorage
James	Schramek	Petersburg
Andrew	Nitchman	Anchorage
Dan	Busch	Kodiak
Harmony	Wayner	Naknek
James	Kerr	Anchorage
Ramon	Gonzalez	Seward
Elizabeth	Jurgeleit	Haines
Michael	Schuster	Ninilchik
George	Bennett	North Pole
James	Walker	Cooper Landing
John	Dickerson	Anchorage
Wayne	Pichon	Anchorage
Garrett	Hooker	Homer
Jill	Bohr Jacob	Ward Cove
James	Warren	Fairbanks
Tom	Rollman	Eagle River
Lynn	Wilbur	Sitka
Amy	Schaub	Ketchikan

Art
Jason
Mark
Ivan R.
Gerald
Brita
Kristine
Laura
Carolyn
Maureen
Tim
V.
Darlene
Everett
Mackensey
Michele
John
Christine
Nathaniel
Judy
Nancy
Amanda
Kate
Melissa
Williamr
T.
Edie
Ray
Kathleen
Rodney
Jill
Matt
Mary Ann
Sarah
Joclyn
Shannon
Jan
Myra
Suzette
Terence
Becky
Teresa
Shirley
Jasmine
Jacqueline
Alexandria
Letty
Glenn
Jennifer

Kolter
Rupp
Mcnamara
Vail
Brookman
Mjos
Hutchin
Baldwin
Weishahn
Knutsen
Covell
Hykes Steere
Coyle
Thompson
Cassidy
Cornelius
Nagel
Niemi
Connolly
Brakel
Keen
Makar
Nilsson
Presler
Bartee
Patton
Crowe
Bulson
Sarns-Irwin
Mccord
O'Brien
Kandrick
Ghosn
Peck
Reamey
Mcbride Morin
Conitz
Scholze
Mizelle
Bartee
Hutchinson
Frier
Fraser
Taylor-Bryant
Horner
Mullan
Swanson
Olson
Carr

Juneau
Douglas
Haines
Fairbanks
Kenai
Anchorage
Eagle River
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Healy
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Kasilof
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Juneau
Douglas
Craig
Gustavus
Juneau
Ketchikan
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Mike
Elizabeth
Ann
Larry
Charlotte
Peter
Bob
Mark
Nicole
Loreen
Ed
Lila
R Mike
Gregory
Chris
Thomas
Anna
Tyler
Laura
Karen
Tina
Diana
Brent
Mark
Robert
Benjamin
Dr Marius
Sylvia
Ed
Elizabeth
Carolyn
Leah
Karlán
Rika
Megan
Cindy
Christine
Sarah
Ingrid
Gerald
William
Michael
Mark
Franco
William
Tammy
Margie
Anne
Jimmy

Wallin
Allen
Wyatt
Christensen
Tanner
Kramer
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Riga
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Flannery
Johnson
Sparks
Morgan
Leeseberg
Otterman
Fleming
Goodnight
Drexhage
Vorís
Cohen
Boyd
Watkins
West
Shafer
Jackinsky
Panzarella
Panzarella
Berg
Blankenship
Boehle
Cloud
Bachman
Mouw
Murphy
Nelson
Wilcox
Robertson
Johnson
Johnson
Ross
Kliemann
Masteller
Venuti
Ledoux
Moser
Schwartz
Yoshino
Fox

Eagle River
Fairbanks
Klawock
Naknek
Ketchikan
Copper Center
Anchorage
Wasilla
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Copper Center
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Dillingham
Bethel
Sitka
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Girdwood
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Salcha
Willow
Fairbanks

Fenra
Michelle
Karin
James
John M
Aurburn
Michele
Rachel
Marilyn
Jacob
Mike
Dustin
Dana
Nathan
Myrtle M.
William
Walter
Jordan
Adolph
Margo
Laurie
Kate
Chelsea
Laura
Ben
Mark
Gari
Elizabeth
Roger
Mark
Caitlin
Thomas
Stephanie
Melanie
Tracy
Saundra
Rita
Graham
Stephanie
Tracy
Alan
Jacquelynn
Madison
Gretchen
Lisa
James M
Jerry
Capt Peter
Richard

Bondarenko
Harrington
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Sagerser
Kennish
Nunnery
Bowen
White
Zaleski
Robertson
Mueller
Connor
Williams
Peterson
Chambers
Eggimann
Ruark
Buetow
Roehl
Magnuson
Millane
Swanson
Johns
Bartholomae
Griess
Munro
Bystedt
Wolf
Nilsson
Williams
Engwis
Mader
Sanderlin
Coar
Went
Middleton
Herrmann
Otten
Stout
Simeon
Haines
Bowman
Halloran
Nelson
Peckham
Carson
Holt
Waddington
Andrews

Anchorage
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Eagle River
Juneau
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Homer
Petersburg
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Seward
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Soldotna
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Fairbanks
Fritz Creek
Anchorage
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Talkeetna
Cooper Landing
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Kenai
Anchorage
Big Lake
Aniak
Haines
Cooper Landing
Anchorage
Anchorage
Anchorage
Glennallen
Kodiak
Homer
Anchorage

Charlotte	Town	Anchorage
Kevin	Town	Anchorage
Paula	Niedermeyer	King Salmon
Tom	Kouremetis	Kodiak
Kristi	Baker	Fairbanks
Lois	Booth	Kotzebue
Lloyd	Palmer	Sterling
Brent	Lannen	Anchorage
Mary	Olson	Palmer
Sam	Christman	Willow
Victoria	Durazo	Anchorage
Michelle	Mcafee	Glennallen
Hosanna	Tolman	Fairbanks
Gary	Sheridan	Anchor Point
Eileen	Sheridan	Anchor Point
Jessica	Lewis-Nicori	Fairbanks
Margarete	Wisner	Anchor Point
Christine	Volk	Eagle River
Lisa	Olsen	Homer
Deborah	Gravel	Haines
Aspen	Daigle	Juneau
Annie	Mackovjak	Gustavus
David	Lisi	Cooper Landing
Laura	Bartholomae	Anchorage
Kent	Hart	Douglas
Kathryn	Haas	Anchorage
Stephen	Rhoads	Sitka
Benjamin	Foss	Pedro Bay
Denise	Piatt	Wasilla
Morgan	Michels	Douglas
Joseph	Hunter	Aniak
Laura	Selden	Sterling
Weedman	Lucy A.	New Stuyahok
Irene	Squire	Anchorage
Brian	Kraft	Anchorage
Tiffany	Webb	Dillingham
Vickie	Alto	Anchorage
Merlyn	Schelske	Hope
Mannfried	Funk	Homer
Frances	Talbott	Anchorage
Lisa	Confer	Palmer
Jonathan	Ross	Anchorage
Deborah	Broneske	Palmer
Ronald	Oberhauser	Soldotna
Jess	b	Edmonton
Bill	Andresen	Big Lake
Nicholas	Mazzolini	Anchorage
O. Kay	Barnum	Anchorage
Miles	Wiebe	Homer

Emily	Fehrenbacher	Anchorage
Robert	Magnuson	Dillingham
Anne	Kahn	Port Alsworth
Molly	Mccarthy	Anchorage
Clinton	Mullins	Cordova
Simon	Marks	Douglas
Brenda	Lannen	Anchorage
Max	Treinen	Anchorage
Lori	Rothstein	Anchorage
Robert	Peckham	Anchorage
Mike	Wallin	Eagle River
Toni	Roberts	Anchorage
Ardath	Piston	Ketchikan
Robyn	Cassara	Palmer
Patricia	Blank	Haines
Jack	West	Talkeetna
Kathy	Cannone	Fairbanks
Rebecca	Plymire	Homer
Leanna	Stern	Douglas
Gus	Gustafson	Eagle River
Dawn	Christy-Stiver	Soldotna
Steve	Overstreet	Soldotna
Marissa	Myrick	Eagle River
Deb	Rhoades	Homer
D G	Smith	Ninilchik
Terence	Bartee	Wasilla
Stephanie	Haxton	Anchorage
Billy	Callaway	Wasilla
Kc	Chickalusion	Tyonek
Dylan	Fournier	Juneau
Skye	Nilsson	Anchorage
Kristen	Peters	Anchorage
Linda	Hopp	Anchorage
Justin	Burrows	Dutch Harbor
Heidi	Hooker	Homer
Gene	Harrison	Anchorage
Melissa	Callaway	Wasilla
Brenda	Johnson	Juneau
Holly	Carpenter	Anchorage
Jacqueline	Bunn	Ketchikan
Cynthia	Fyfe	Dillingham
Richard	Johnson	Anchorage
Shannon	Stone	Anchorage
Rachel	Lawler	Anchorage

March 31, 2017

Dear Fisheries Committee Members,

I'm very much in support of HB199. My family came to Alaska in 1959, and salmon has always been important to us. We grew up as children playing and fishing on the Russian River, our catch making up a big part of our diet throughout the year. As an adult I've lived and worked on the Yukon River and on Kachemak Bay where salmon has continued to be a mainstay of my family's diet. I believe that our wild salmon is one of the world's premier foods. Salmon are a true blessing to all Alaskan's who rely on them for food and for livelihood. We are the last state in the nation with healthy and abundant runs of wild salmon, and their protection should be very high priority.

I believe that Alaska must act now to protect the future of our state's precious salmon resources in perpetuity. With the ongoing weakening of national environmental regulations, our salmon fisheries are certain to be increasingly threatened by development pressures which are adverse to the health of salmon habitats. The provisions in HB199, which expand the Alaska Department of Fish and Game's authority to regulate and enforce protection of salmon habitat through the permitting process, and its provisions for Alaskan input on habitat protection are essential.

For health, for livelihood, for tradition, for lifestyle, so many Alaskans depend on maintaining the vibrant health of our salmon runs and salmon habitats. I urge you to support HB 199 for the future of Alaska's fisheries!

Sincerely,

Ann Agosti-Hackett

Fritz Creek, AK 99603

Introduced by: Dunne
Date: 09/20/16
Action: Adopted as Amended
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2016-052**

**A RESOLUTION REQUESTING THE ALASKA BOARD OF FISHERIES PURSUE AN
UPDATE OF FISH HABITAT PERMITTING STATUTES**

- WHEREAS,** Alaska boasts 3,000 rivers, 3 million lakes and 6,640 miles of coastline and stands alone as the last state in the United States with robust salmon runs and habitat; and
- WHEREAS,** Alaska's fishing industries remain a reliable economic engine for countless Alaskan families and communities driving billions of dollars in economic activity and revenue for the State of Alaska; and
- WHEREAS,** Alaska's fisheries support tens of thousands of Alaskan families, communities, and businesses as fishing guides, tourism operators, commercial fishers, seafood processors, and a variety of marine trade industries; and
- WHEREAS,** commercial, sport, and personal use fisheries are major economic drivers in the Kenai Peninsula Borough; and
- WHEREAS,** Article VIII of the Alaska Constitution defines our water and salmon resources as public resources belonging to all Alaskans to be managed by the state for the maximum benefit of current and future generations; and
- WHEREAS,** the State of Alaska issues several thousand permits annually to develop projects in fish habitat; and
- WHEREAS,** Alaska's Title 16 contains the Alaska statutes that guide how the State of Alaska permits development in important salmon habitats; and
- WHEREAS,** Alaska's fish habitat permitting law, currently in AS 16.05.871, has not been updated since statehood and lacks specificity about how Alaska Department of Fish and Game should determine whether habitat permit applications should be approved or denied; and
- WHEREAS,** Alaska's Sustainable Salmon Policy in 5 AAC 39.222 states that to maintain sustained yield in Alaska fisheries, "salmon habitats should not be perturbed beyond natural boundaries of variation; . . . all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats

should be protected; ... [and] salmon habitat in fresh water should be protected on a watershed basis ..."; and

WHEREAS, the Alaska Resource Development Council states "The vast fishery resources of Alaska are of tremendous importance to the economies of the state and the nation. These resources are self-renewing if properly managed, and it is the mission of both state and federal fishery management agencies to sustainably manage and maximize the economic benefits from these resources for generations to come"; and

WHEREAS, at their October 18, 2016 work session in Soldotna, the Alaska Board of Fisheries will consider recommending that the Legislature implement the habitat provisions from the Board of Fishes Sustainable Salmon Policy in Title 16; and

WHEREAS, the Alaska Board of Fisheries has a statutory duty to conserve and develop fish and game resources and assure that their use continues to be available on a sustained yield basis; and

WHEREAS, a reliable and certain fish habitat permitting process is highly important to protecting the salmon stocks of Alaska in general, and the Kenai Peninsula;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Assembly supports the Alaska Board of Fisheries using its authority to recommend to the Alaska Legislature that Title 16 be updated to incorporate principles and criteria from Alaska's Sustainable Salmon Policy that refer to habitat protection.

SECTION 2. That copies of this resolution shall be provided to all members of the Alaska Board of Fisheries.

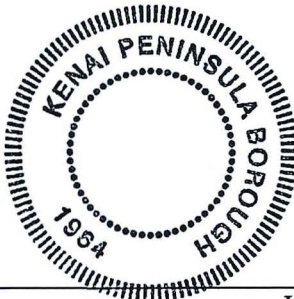
SECTION 3. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2016.


Blaine Gilman, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Gilman

No: None

Absent: Welles

Dear Representative Stutes,

I urge you to support House Bill 199. I am a 44 year old life long Alaska resident; a second generation commercial fisherman born in Anchorage who lives in Unalaska.

Salmon have been an integral part of my life for as long as I can remember. My father has commercially fished in Bristol Bay since before I was born. I started fishing with him at the age of 11 and have fished there every year since, owning and operating my own boat and drift permit for the last 17 years. I also enjoy sports fishing. I have spent many springs with a pole in my hands trying to catch king salmon on the Kenai Peninsula and many falls on the rivers around Unalaska Island in pursuit of silvers. The lessons I learned during these adventures, both while working and playing, played a large role in shaping who I am today. They fueled my successes and gave me the strength to overcome many obstacles.

Alaska's salmon runs are facing an increasing number of threats. It scares me to think about how much will be lost if these runs are destroyed. It is important that Alaskans have the opportunity to weigh in on any decisions that might impact our salmon and the fragile ecosystems they depend on. Please support HB 199 because Alaska will no longer be the place we know and love without salmon.

Thank You,

Zachary Nehus
nehuster@yahoo.com

4/7/16

I am writing in support of HB 199, Fish Habitat Permit regulations.

I first visited Alaska in 2007, floating and fishing its rivers, and was overcome by its abundant salmon fisheries. 40 years ago I was privileged to catch a wild Atlantic Salmon in the Penobscot River in Maine. Wild Atlantic Salmon runs are now extirpated there, dead by a thousand cuts.

Inspired by an Alaskan landscape that still supports wild salmon I chose to move here. Since then I have worked at fish hatcheries in Prince William Sound, as a deckhand on a charter boat out of Seward, and have now settled back into my long standing career as a professional land surveyor. I've bought a house, bring friends and family up to visit, and remain here under the grasp of our wondrous landscape. I like to view myself as a contributing member of the Alaskan community and economy, working in a profession that thrives on development and still recognize the importance of, even attribute my being here, to the salmon teeming in our rivers.

I believe I can safely say that we all share the integrity of our wild salmon runs as an important value. So important that their sustainability is enshrined in our Alaskan constitution. I think I can also say that we all value the importance of a participatory democracy.

Unfortunately, our current state law, particularly AS 16.05, has no specific criteria to protect salmon habitat or involve the citizens of Alaska in the detailed decisions about protecting salmon habitat.

HB 199 improves upon this unsatisfactory state of affairs by:

- 1) Creating objective and enforceable habitat protection standards like water quality, in stream flow, fish passage and fry rearing riparian habitat.
- 2) Expands ADF&G's authority to protect fish habitat to all salmon streams in the state by a rebuttable assumption that all waters are salmon streams. Aren't they?
- 3) Streamlines permitting for minor activities via a two-tiered system.
- 4) Creates an efficient general permit for landscape scale but minor activities.
- 5) Gives me personally a voice in the process by providing public notice and comment periods.
- 6) Puts some teeth in the protection by giving ADF&G enforcement authority.

Without HB 199 every salmon habitat permit issued will have no criteria, no public participation and no enforcement teeth. Each permit will be more likely to diminish the salmon habitat, a cut a a time. What we do today will affect our wild salmon for generations to come. Please value our wild salmon by protecting their habitat via HB 199.

Please do not let wild salmon in Alaska die a death by a thousand cuts as they have on the east coast.

Thank you,

Doug Stephens Anchorage, AK 99518



Sun'aq Tribe of Kodiak

April 5, 2017

The Honorable Louise Stutes
Alaska State Legislature
State Capitol Room 406
Juneau AK, 99801

via email: Representative.Louise.Stutes@akleg.gov
cc: reid.harris@akleg.gov

RE: Support for HB 199

Dear Representative Stutes:

With over 1,750 members, Sun'aq Tribe of Kodiak represents the largest Native community in the western Gulf of Alaska. We are very concerned about natural resources that helped sustain our ancestors, and now for the people of today, who continue to rely on the same resources for economic support, sustenance, and cultural identity.

Salmon and other fish and wildlife helped build Alaska, and are still indicators of the healthy ecosystems found here. With this in mind, we are pleased to provide our letter to you, in support of the "Stand for Salmon Bill" (House Bill 199) which proposes important changes to Alaska's fish habitat permitting laws. Most importantly, House Bill 199 ensures that Alaskans will have a voice in decisions that could impact the future of our wild salmon.

There has been a need to update Alaska's fish habitat laws. For example, with the loss of Alaska's coastal zone management program in 2011, our State has been slow to replace some of the important elements of that program with new or updated standards which help sustain our fish and wildlife. Alaska's fish habitat laws under Title 16 gave the Department of Fish and Game its authority to issue permits for projects that might impact fish habitat, but it lacked specific criteria that defined acceptable levels of development activity within Alaska's anadromous fish habitat.

House Bill 199 will give Alaskans a new voice on decisions impacting our salmon rivers, and if passed, could finally set clear standards for protection of our foundation fish species.

Please accept this letter of support for House Bill 199.

Sincerely,

Frank Peterson, Jr.
Tribal Chair
Sun'aq Tribe of Kodiak

312 West Marine Way
Kodiak, Alaska 99615
Phone: 907.486.4449
www.sunaq.org

CHANGING STATE LAW TO PROTECT OUR SALMON AND WAY OF LIFE

- WHEREAS,** Alaska Native Tribes depend upon salmon as a fundamental part of our social, cultural, economic, and spiritual wellbeing; and
- WHEREAS,** Access to sustainable healthy resources for our families and our people is critical to preserving our way of life; and
- WHEREAS,** Tanana Chiefs Conference has made it a priority to protect our hunting and fishing resources for our people; and
- WHEREAS,** Tanana Chiefs Conference also acknowledges there exist multiple threats to critical salmon spawning and rearing habitat within Alaska; and
- WHEREAS,** Tanana Chiefs Conference finds protection of critical salmon spawning and rearing habitat necessary to provide for healthy salmon populations for future generations to come; and
- WHEREAS,** Alaska's Fish Habitat Permitting Law (Title 16) does not have strong or clear enough language to protect salmon spawning and rearing grounds; and
- WHEREAS,** The current law allows the Alaska Department of Fish & Game (ADF&G) to approve proposals near salmon streams unless the plans are "insufficient for the proper protection of fish and game." AS16.05.871(d); and
- WHEREAS,** This law needs to be updated to better define what constitutes the, "proper protection of fish and game;" and
- WHEREAS,** Without wild salmon, our well-being, economic security, and food sovereignty are threatened; and
- WHEREAS,** Alaska's Board of Fisheries submitted a letter to the State Legislature in January 2017, asking for an update to Title 16: Alaska's Fish Habitat Permit Law; and
- WHEREAS,** Over 300 individuals from our Interior Tribal communities have signed a petition during this Convention supporting changing state law to protect our salmon resources; and

WHEREAS, We have the opportunity to strengthen the state fish habitat permitting law (Title 16) to ensure that future large-scale development projects in Alaska do not compromise the sustainability and health of Alaska's wild salmon and the social, cultural, economic, and spiritual wellbeing of the people that rely on them; and

WHEREAS, The voice of Alaska Native Tribes is powerful and critical to changing the systems that threaten our way of life, and we must act.

NOW THEREFORE BE IT RESOLVED that the 42 Tribes of the Tanana Chiefs Conference Full Board of Directors support the Board of Fish recommendations to change Title 16, Alaska's Fish Habitat Permitting Law, to proactively protect salmon habitat, preserve our cultures, and sustain our way of life; and

BE IT FURTHER RESOLVED that this shall be the policy of the Tanana Chiefs Conference until it is rescinded or amended.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference Full Board of Directors on March 16, 2017 at Fairbanks, Alaska and a quorum was duly established.



PJ Simon
Secretary/Treasurer



Members of the committee,

The ADF&G Goals:

- *Optimize economic benefits from fish and wildlife resources.*
- *Optimize public participation in fish and wildlife pursuits.*
- *Increase public knowledge and confidence that wild populations of fish and wildlife are responsibly managed.*

Thank you for taking the time to fully assess the need of reforming the ADF&G Fish Habitat Permitting process. I would like to briefly share my perspective and recommend an approval of House Bill 199. I was born and raised in Anchorage, recently graduated in 2016 with a degree in Civil Engineering from UAF, and am working as an Engineer in Training with a small, native owned, civil firm in Anchorage. I also serve on the board of the Anchorage Waterways Council. Since my career commencement, I have researched and filled out multiple infrastructural development permits (including a Fish Habitat Permit) for projects in both urban and rural settings. My own personal and work life are affected by your decision today but, more importantly, so is the fate of many future generations.

As an engineer, I am ethically obligated to the health, safety, and welfare of the public. Because of this, the work that I perform with my coworkers (Alaska-licensed Professional Engineers) requires a regulation agency committed to protection and conservation of our Alaska land. We are focused on providing sustainable solutions to our people and need to trust that the State's agencies hold their ethical obligations to the same standards while working parallel with one another. Approval of House Bill 199 will provide this needed assurance that you and the ADF&G committee are fully committed to the preservation of our resources.

Amending Title 16 and reforming the permitting procedure would ensure that infrastructure projects that put our environment at tremendous risk, such as the Susitna Dam and Chuitna Mine, do not pass through the planning and permitting phase. These projects were both shut down primarily due to economic infeasibilities. If private funding had been readily available, I fear that the permitting process would not have properly served as its necessary stop-or-go measure.

House Bill 199 helps ADF&G serve its mission and above-stated goals by providing clear definitions of healthy rivers and mitigation standards for a vital at-risk resource: anadromous fish. The bill provides greater access for public participation and communication. Most importantly, this bill provides the time and place for a much needed reassessment on the effectiveness of the current Title 16. I hope that you choose to amend Title 16 to properly reflect the mission and standards of my state. Please take the time to reevaluate your role to the state.

***Thank You,
Sophia Tidler***

907-351-5986
sophiatidler@gmail.com

Dear Members of the House Fisheries Committee,

More than ever before, it is time for people to speak out. Our country has suffered so many natural resource disasters. It is only a matter of time for Alaska unless we proactively take a stance now. I want my family and their future families to know the Alaska that I know, far into the future. I support HB199 for this very reason.

I want Alaskans to have a say in how we protect our precious resources. We must update current language in our laws so we can avoid mismanagement that may lead to destructive salmon runs. If we don't protect our fish now, it will only become more difficult in the future.

Please support HB199.

Regards,

Johanna Grasso

Dear Representative Stutes,

I wanted to write to voice my support for HB 199 and updates that protect our rivers and waterways.

Thank you for your hard work

Sincerely,

Marc Lewis
Anchorage, AK 99502

Dear Representative Stutes,

Thanks for the courage you show in introducing HB 199.

I totally support needed updates to Title 16 and am hopeful it will pass.

Thanks again.

Sincerely,

Terry Cummings
Anchorage, AK 99504

Dear Representative Stutes,

Protection of our wild salmon habitat and our water resources is vital to all the people of the upper Susitna valley. I homesteaded, raised my children on wild foods and had no access to grocery stores on a regular basis. The river brought our dinner and we carefully preserved it for the long winter months. We must preserve that for the future generations. Clean water will become more and more precious.

Sincerely,

Nancy Larson
Talkeetna, AK 99676

Dear Representative Stutes,

Dear Representative Stutes

I support your bill which will protect the rivers and waterways in your beautiful state. I have visited Alaska and the Mat-su valley but as you see, I am not a resident. I do hope that my not being Alaskan will not be held against me. However, I do support Greenpeace in that organization's endeavor to save our environment in different parts of the world.

Sincerely,

Elaine Olsson
Helsingborg, Skane 25655

HB 199 updates Alaska's fish habitat permitting law by expanding Alaska Department of Fish and Game's authority to protect fish habitat; creating enforceable protection standards; and giving Alaskans a voice in the permitting process.

Please support HB 199 for the future of Alaska's fisheries. Our economies and heritage depend on it. I have fished all my working life, I am now retired.

Thank you for your support.

Sincerely,

Charlotte Tanner
Ketchikan, Alaska 99901

Rep. Stutes:

I am writing in support of HB 199 and wish to thank Louise Stutes for introducing it. Since a foundation of our Alaska constitution is that the resources of the state belong to the people, defining more clearly the permitting for development in fish habitat areas is an excellent idea. Presently, the wording in the law is vague and we, the people of Alaska, do not have a say in the granting of permits. Wild salmon are central to all Alaskans. They are a major source of protein for me, are the source of income to many of my friends and are important culturally. One could even say that we are a salmon state.

I am grateful for the work ADF&G does managing and protecting Alaska's fisheries, but the law as written does not provide them with scientific clarity or certainty in determining whether or not to grant a particular permit. HB 199 not only sets clear standards for ADF&G to protect Alaska's fisheries, but will give Alaskans a chance to weigh in on decisions impacting our salmon rivers. I urge you to support HB 199.

Sincerely,

Marian Allen

Sitka, AK 99835

Dear Members of the House Fisheries Committee,

My name is Eric Jordan and I've been fishing in Southeast Alaska since 1950. I have been trolling salmon on my own vessels since 1974. I have been involved in conserving salmon since I read "Return To The River" by Roderick Haig-Brown when I was 10 years old. I have been involved in salmon conservation, enhancement, and sustainability ever since. I have served on our local fish & game advisory committee for decades now. I have helped found several groups involved in salmon conservation or enhancement including the Northern SE Regional Aquaculture Association (NSRAA), the Alaska Marine Conservation Council, and the Chum Trollers Association. I have served on numerous Boards involved in Salmon and Salmon Habitat Conservation including the Alaska Board of Fisheries, the Alaska Trollers Association, and the Sitka Conservation Society (20 years). I am presently elected to represent Trollers on the NSRAA Board.

I am writing to express my personal support for House Bill 199 which proposes important changes to Alaska's fish habitat permitting law and ensures greater public participation in decisions that could impact the future of our wild salmon.

I appreciate the work ADF&G does to manage and protect Alaska's fisheries. Nevertheless I concerned that the law as written does not provide scientific clarity or certainty to stand up to development efforts that often put Alaska's salmon fisheries in jeopardy. HB 199 sets clear standards for protection of Alaska's fisheries. It provides the public necessary opportunity to weigh in on decisions affecting Alaska's wild salmon.

I am a third generation Alaska fisherman and my sons are both fishermen. I am optimistic my grandchildren and their grandchildren will want to continue the legacy. Please pass HB 199 to protect our salmon for generations to come.

Sincerely,

Eric Jordan

Sitka, AK 99835

F/V I Gotta

Dear Representative Stutes,

Thank you for your attention to HB 199. As a commercial fisherman vessel owner who has been fishing Alaska since 1985 I am very glad to see you folks getting some clarity on managing salmon and resource development together without mutual harm. The vague references to protecting salmon in the existing statutes leave much too much room for foul play or accidental damage to Alaska's most reliable and long term employment and subsistence resource, our salmon.

I hope you and your colleagues will usher this legislation through the processes and we will have clear guidelines for developers and safe passage for our food and the food of future generations.

Thank you.

Spencer Severson

Sitka, Alaska, 99835

To Members of the House Fisheries Committee —

The future belongs to renewable and sustainable resources, not only in the field of energy, but our natural bounty, of prime unspoiled habitat for world class runs of salmon. If we do not take measures to protect these priceless resources against reckless destruction by extractive industries such as massive fossil fuel companies and mega mine developers we will wake up one day to find our salmon runs decimated. Let's not turn salmon habitat into sterile wastelands left behind when the money interests move on once the non-renewable resources play out.

An enlightened government would clarify and define more precisely what constitutes "proper protection of fish and game" and engage and allow the people of Alaska a voice in any decisions involving impacts to any salmon stream or river threatened by destructive exploitation.

Respectfully,

George Menard
P.O. Box 13168
TRAPPER CREEK, AK 99683
907-733-2515/250-3618
geom73@juno.com

Dear Members of the House Fisheries Committee,

I am in support of HB 199 and want you to support this Bill.

The bill enforces standards of enforceable fish habitat and gives Alaskans a voice in the permitting process.

The bill will update the Anadromous Catalogue to include waterways that produce salmon and create commonsense standards for mitigation.

Sincerely,

Geri & Kevin McCann

P.O. Box 546

Talkeetna, AK 99676

Diane Calaman Okonuk
P.O. Box 583
Tahketa, Alaska
99676

April 10, 2017

Dear House Fisheries Committee,

I am a resident of Tahketa and am writing in support of H.B. 199. I think it is high time to pass a law that reflects the importance of salmon to our economy, our recreation and our way of life. Salmon habitat protection hasn't been updated for decades and it is critical to upgrade what is considered "protection of fish and game."

Please do everything you can to assure that our rivers and streams will remain healthy and support wild salmon for amending generations. Salmon sustain us!!

Please support this bill!

Sincerely,

Diane Calaman Okonuk

4/10/17

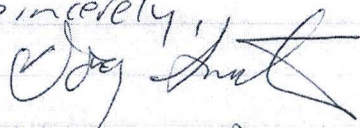
Dear members of the House Fisheries Committee,

I have spent the last 40 years living in the Mat-Su Borough, and spending my summers fishing in S.E. Alaska out of Petersburg. I am writing you to ask that you support House Bill 199.

Salmon have been here, and will be here, long after oil has come and gone - if we adopt some science-based, common-sense protections for our anadromous fish-bearing waterways. We have watched salmon stocks collapse almost everywhere else in the world, and the runs in Mat-Su are in decline. It is not too late to get smart about protecting this valuable resource, giving Alaskans an opportunity to participate in decisions that affect their livelihoods, ~~and~~ and promote responsible development with clear guidelines.

Thank you for your efforts on the Fisheries Committee. I hope you'll support HB 199.

Sincerely,



Doug Smith

Box 371

Talkeetna AK 99676

dougseabird@gmail.com

April 10, 2017

Dear Members of the House Fisheries Committee,
My name is Billy Fitzgerald, I am a licensed Master Guide
("166) in Alaska and high quality habitat is extremely important
to my livelihood. I have maintained my business out of
Talkeetna Alaska continuously since 1989.

I want to go on record as being in full Support
of House Bill 199.

Sincerely
Willy J. "Billy" Fitzgerald
PO Box 93
Talkeetna AK
99676

P.O. Box 827
TALKEETNA, AK 99676
AKWILDIMAGES@GMAIL.COM

DEAR MEMBERS OF THE HOUSE FISHERIES COMMITTEE:

I AM A RESIDENT OF TALKEETNA
AND HAVE LIVED IN ALASKA FOR OVER
45 YEARS. I OWN A WILDLIFE
PHOTOGRAPHY AND PUBLISHING
BUSINESS "ALASKA WILD IMAGES."

I SUPPORT HOUSE BILL 199
AND HOPE AND ENCOURAGE YOUR
SUPPORT. SALMON ARE EXTREMELY
IMPORTANT TO THE PEOPLE OF
~~ALASKA~~ ALASKA AND FOR A BALANCED
ECOSYSTEM.

THE BILL CREATES SCIENTIFIC
AND ENFORCEABLE STANDARDS FOR
ADFTG TO IDENTIFY IMPORTANT
HABITAT CHARACTERISTICS. IT ALSO
GIVES ALASKANS A VOICE IN THE
PERMITTING PROCESS, WHICH DOES NOT
CURRENTLY MANDATE PUBLIC INPUT
OR INVOLVEMENT.

THANK YOU FOR YOUR INVOLVEMENT
IN THIS IMPORTANT PROCESS.

SINCERELY

Rollie Ostermick

Dear Members of the House Fisheries Com.

My name is Rachel Harrison from Willow AK 99688. I live on the bank of the Susitna River.

Sport fishing is a major event for our family and also setnet fishing in ^mupper Cook Inlet.

I support HOUSE BILL 199. I feel that the state needs to update the anadromous catalogue to include streams and creeks that support and produce salmon for future generations.

THANKS FOR READING

Rachel Harris

HC89 Box 326

WILLOW, ALASKA 99688

rachel@mtaonline.net

907-495-2416

The Honorable Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801
Phone: 907-465-2487

Representative.louise.stutes@akleg.gov
Reid.harris@akleg.gov

Subject: Support for House Bill 199

Dear Representative Stutes and Members of the House Fisheries Committee,

We the 7,432 undersigned names have, over the course of the past year, added our names to the growing list of Alaskans who believe that it imperative that Alaska take steps now to update Alaska's fish habitat permitting laws.

A simple update to an old law is needed to limit damage to salmon habitat so that our wild salmon runs remain strong for future generations. Wild salmon are our legacy, and clearer protections are needed to keep our salmon runs strong for future generations.

Sincerely,

April 2, 2017

Dear Chairman Stutes and Members of the House Fisheries Committee,

I write in support of HB199, "The Wild Salmon Legacy Act."

I have been involved in Alaska's fisheries for 40 years --- as a participant in commercial, sport, and personal use fisheries and in my professional work for the legislative and administrative branches of state government and the seafood industry. And, like most Alaskans, I am connected to and sustained by Alaska's salmon and other fish resources at my core.

The drafters of our State Constitution wisely included the mandate for sustained yield of fish and game resources in our constitution. Over the subsequent decades, the state's laws and management of fish, game, land, and waters, along with some favorable conditions and good luck, have kept most of our salmon and other fish and game resources healthy. *However, we have continued to rely on a statutory framework for protecting fish habitat that was designed decades ago and is now, I believe, outdated and inadequate.* This leaves us at risk of making many of the same mistakes that have wiped out the wild salmon resources in nearly every other state and country that originally had them.

Since the time Alaska's habitat protection laws were written, an incredible amount has been learned about the biology of fish, what they need, and what puts them at risk; about the ways various kinds of development can affect the habitat that fish, wildlife, and humans need to stay healthy; how some potential impacts can be avoided; and the value of public input in decision-making processes. Additionally, the context in which our fish and game resources exist has changed considerably since those laws were written. Alaska itself is different - our population, urban areas, and transportation systems have all grown considerably; we are seeing development projects of far greater size, magnitude, and potential impacts than were contemplated back then; and, now, we humans and our fish and wildlife resources face the vast potential impacts of climate change. Our laws must keep pace with what we have learned and the risks and challenges we can anticipate.

Alaska needs continued growth, stability, and responsible development of our communities and resources. But that comes with an enormous responsibility to ensure that it occurs within a statutory framework that is up-to-date and capable of effectively protecting the habitat upon which our fish and game (and, thus, all of us) depend. I believe passage of HB199 is a critical step in our living up to that responsibility.

Sincerely,



Mary McDowell
PO Box 20763
Juneau, AK 99802

April 9, 2017

Dear Members of the House Fisheries Committee,

We are writing to you on behalf of the Peninsula Rivers Conservancy, a non-profit organization dedicated to the conservation and protection of all rivers and fish therein but specifically those of the Kenai Peninsula and Southcentral Alaska. Our purpose for reaching out to you today is to express our organization's support for House Bill 199, which proposes important changes to Alaska's fish habitat permitting law. There is a growing need to update this law, and HB 199 could finally set clear standards to protect one of Alaska's most valuable resources: our salmon.

First and foremost, we would like to thank Louise Stutes for introducing House Bill 199, which seeks to update Title 16. Alaskans across the board, from commercial to sport fishing, have weighed in to the Board regarding this matter, and the updates provided through HB 199 take those into consideration, as well as responding to the letter from the Alaska Board of Fisheries. As Title 16 has not been updated since statehood, it is long overdue and necessary to update the current protections surrounding our salmon and fisheries, to ensure it responds to contemporary issues.

Significant concern has been raised over the past ten years or so regarding development projects that could impact salmon habitat. While the Alaska Department of Fish & Game has the authority under Title 16 to issue permits for development projects that may impact fish habitat, the law lacks specific criteria that defines what is or isn't an acceptable level of development activity within anadromous fish habitat. It is because of this that there is little to no faith in the permitting process, from the public point of view, and ensuring that all points are considered and potential significant impacts explored prior to development occurring. HB 199 seeks to strengthen and clearly define the habitat considerations.

We wholeheartedly support and are grateful for the work of the Alaska Department of Fish & Game. However, at this time, Title 16 does not currently mandate public input and involvement in the permitting process, nor does the law as written provide the ADF&G with scientific clarity or certainty to stand up to development efforts that put Alaska's fisheries at risk. The updates within HB 199 would allow the Alaska Department of Fish & Game to deny projects that would cause too much harm to Alaska's salmon rivers and waterways, by creating commonsense standards for mitigation that a developer must meet to protect wild salmon before a project can move forward. In doing so, Alaskans are given a clear voice and opportunity to stand up for the future of our fisheries. As salmon are the lifeblood of Alaska and Alaskans, it is imperative that we be given the chance to weigh in on decisions regarding any potential impact to this.

Additionally, House Bill 199 would create clear scientific and enforceable standards for ADF&G to identify important habitat characteristics, like water quality, instream flow levels, fish passage, and riparian areas that need to be maintained to protect and support the sustainability of Alaska's fisheries, which our current system fails to provide. It will also update the state's anadromous catalogue to include any waterways that produce salmon, which ensures we are not leaving important salmon waters unprotected.

The salmon of Alaska provide food, recreation, tens of thousands of jobs for Alaskans, and hundreds of millions of dollars in economic activity each year. It is essential that we take this opportunity to protect our wild salmon, and in doing so, provide a healthy fishery for many generations of Alaskans to come.

It is for these reasons that the Peninsula Rivers Conservancy fully and strongly supports House Bill 199.

Thank you for your time and attention to this matter,.

Sincerely,

David Lisi

Brad Kirr

Jacquelynn Bowman

Michael Evans

James Walker

Peninsula Rivers Conservancy

board@peninsulariversconservancy.org



Representative Louise Stutes
Chair, House Special Committee on Fisheries
Alaska State Capitol Rm. 406
Juneau, AK 99801
Re: House Bill 199

April 10, 2017

Representative Stutes,

The Southeast Alaska Guides Organization (SEAGO) represents sportfishing guides, charter captains, and lodge owners throughout Southeast Alaska. SEAGO advocates for reasonable laws, regulations, and policies which ensure the long-term sustainability of our businesses and fishery resources. We write today in support of House Bill 199, the Wild Salmon Legacy Act, and thank Rep. Stutes for introducing this bill. As written, H.B. 199 is a comprehensive response to the January 2017 letter to the Legislature from the Board of Fish, and the requests raised by multiple user groups to strengthen Title 16.

Alaska is synonymous with fishing and outdoor adventures. Our tourism opportunities join private and public entities together to host millions of visitors annually, creating thousands of jobs and bringing hundreds of millions of dollars into our economy. In these times of economic uncertainty, we should look at our existing tourism industries to provide increased stability, and recognize the importance of fish and habitat as providing stable, long-term benefits through recreational opportunities.

The State has maintained Alaska's spirit of adventure since statehood; however, there exists room for improvement when it comes to managing in the name of protecting and enhancing the habitat of our fishery resources. The applicable section of Title 16 is clarified here for the first time since statehood, creating habitat protection measures in permitting, which support sportfishing and other tourism opportunities. These measures include creating enforceable, science-based adverse effects standards using habitat characteristics, such as water quality and instream flow levels. Furthermore, the bill updates the Anadromous Fish Habitat catalogue to include important salmon waters and create a presumption of inclusion and protection. These pre-permitting measures, combined with an improved notice and comment opportunity, are significant steps towards maintaining our State resources. Post-activity changes, including mitigation and bond requirements, further safeguard our fish habitat.

H.B. 199 takes important steps to protect our wild fish for generations to come, while safeguarding our existing recreational opportunities, businesses, and coastal communities. Thank you for your support in these efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Samantha Weinstein", is written over a horizontal line.

Samantha Weinstein
Executive Director
Samantha@seagoalaska.org

Dear Members of the House Fisheries Committee,

To many, the Kenai Peninsula is meaningless without fish. I live here, so the Peninsula means a little bit more than that to me, but I understand the importance of salmon in my community. My name is Jode Sparks. I live in Sterling, and I am the Junior Class President at Soldotna High School. Salmon play a vital economic and cultural role in Soldotna, and on the Peninsula as a whole. The Kenai River flows through downtown Soldotna, providing recreation and jobs to the community. I have friends who live to fish in the summer; I have other friends who live through fish, friends who work as commercial and subsistence fishermen. Salmon benefit my community indirectly as well.

Salmon fuel one of the biggest pillars of Alaska's economy. In the summer, the salmon run brings with it tourists from across the globe. They flood our town with liveliness and needed financial stimulus. They come for our clear waters and our incredible fishing. Tourists don't come to our state to see empty mines.

In my town, like towns across Alaska, salmon mean economic and cultural vitality.

I support HB 199 because it ensures that Alaskan's have a voice in the future of their salmon. HB 199 will provide the Alaska Department of Fish and Game with the tools they need to prevent unsustainable development. This bill would require developers to follow a science-based approach that would ensure healthy salmon for future generations. HB 199 would make Alaska's habitat permitting laws work for the people and for the land.

Salmon streams are the lifeblood of my city, my region, and my state. If you support a sustainable Alaska, I urge you to support HB 199.

Thank you for your consideration of my testimony.

Jode Sparks

A handwritten signature in black ink that reads "Jode Sparks". The signature is written in a cursive, flowing style.



Representative Stutes
State Capital Room 102
Juneau AK 99801
Representative.louise.stutes@akleg.gov

Re: Letter of Support of House Bill 199, Fish/Wildlife Habitat Protection Permits

Dear Representative Stutes and House Fisheries Committee Members,

Please accept this letter on behalf of the Susitna River Coalition (SRC). SRC supports updates to Title 16 that will strengthen protections for our fish and game and valuable water resources.

The Susitna River Coalition is based in Talkeetna, Alaska and has a broad membership of over 23,000 individuals, groups, and businesses. SRC works to protect the sustainable natural resources of the Susitna River Watershed and advocates for the protection and integrity of the healthy communities it sustains. Our members are dependent on the \$200 million dollars annually generated through tourism and recreation in the Susitna Watershed and support updates to our laws that ensure vibrant salmon runs and pristine habitat long into the future.

SRC supports HB 199. We understand the need for clean water, healthy salmon runs, and high-quality habitat. We also recognize the need to use our snow machines and four wheelers, and to support small-scale, community-driven development. It is time to update Title 16 to reflect the intent of our state constitution and ensure that our laws and regulations meet the high standards needed to protect our resources. SRC believes this is a proactive bill that will strengthen habitat protections and guide responsible development decisions as our population continues to grow.

SRC is grateful to Representative Stutes for advocating on behalf of Alaskans who depend on the robust salmon runs and healthy habitat that support our livelihoods, provide food for our families and protect our fisheries that nurture our communities. We welcome the opportunity to assist in this process. Please do not hesitate to contact me if you have any additional questions.

Sincerely,

Melissa Heuer

Melissa Heuer
Executive Director
Susitna River Coalition
Melissa@SusitnaRiverCoalition.org

Dear Members of the House Fisheries Committee

I am writing to express my support for HB199.

My name is Steve Fish. My wife Kari and I live in Sitka now, and have lived in southeast for almost 43 years and have raised 3 children here, two of whom have returned to find their own place here in salmon country. I have been a fisherman here for all of that time, and now our older daughter and her husband rely on the salmon fishery to provide for their own family. Our younger adult children still rely on fisheries for part of their income.

We are grateful for the work ADF&G does to manage and protect Alaska's fisheries. However, we are concerned that the law as written does not provide the agency with scientific clarity or certainty to stand up to development efforts that put Alaska's fisheries at risk. HB199 not only sets clear standards for ADF&G to protect Alaska's fisheries, but will give Alaskans a chance to weigh in on decisions impacting our salmon rivers and streams.

Current law is antiquated and insufficient to protect salmon habitat from the destruction of thoughtless development and needs to be updated. Alaska now has the opportunity and responsibility to protect our wild salmon by updating our fish habitat law which was written when we lived in a different world. Please stand up to the destructive anti-regulation wave and continue to work toward reasonable regulation which is necessary to protect valuable, sensitive habitat from incrementally diminishing the ability of our rainforest ecosystem to support our renewable resources and to renew us in turn.

Thank You for the opportunity to comment.

Steve Fish and Kari Johnson
email: zfish@mac.com

It's time to update Alaska's fish habitat permitting laws

Victor Joseph, Tanana Chiefs Conference

Apr 16, 2017

Fairbanks Daily News-Miner community perspective:

More than a century ago, chiefs from Alaska's Interior tribes came together in response to threats to our cultural values and ways of life. In 1962, Tanana Chiefs Conference was established by a group of energized Native leaders to protect the lands and waters that sustained hunting and fishing. By coming together in unity and advocating effectively about matters essential to our pasts and critical to our futures, we have been able to shape development across our landscapes while being proactive in protecting a way of life that many Alaskans enjoy today.

Access to sustainable healthy resources for our families and our people is critical to preserving our way of life and the way of life that all Alaskans hold dear. Salmon are a perpetual source of our well-being. For tribal people, salmon provide nutritious meals and form a cultural and spiritual tie that extends back to the beginning of time.

Multiple threats exist to critical salmon spawning and rearing grounds within Alaska. The Yukon River tribes are not the only ones concerned about Alaska wild salmon. King salmon populations have declined throughout Alaska, from the Unalakleet River in the Northwest to the Unuk in the Southeast and on to the Copper River in the Interior. This decline has impacted all Alaskans that depend on salmon for food or income. Whether it's climate change, bycatch, overfishing or development projects that bears the ultimate responsibility, the strain on the economy and health and prosperity of our river and coastal communities cannot be ignored.

Resource extraction and development form a critical component of Alaska's history and economy.

However, oil and gold will come and go. Sustainable fisheries are the true bedrock of our identity and lifestyle in Alaska. Whether large or small in scale, extractive industry must make sure that at the end of the day we protect healthy salmon populations for future generations. Without our wild salmon, our well-being, food sovereignty and economic security are threatened. This is the resource that has the ability to last forever if protected adequately today.

Alaska's fish habitat permitting law, Title 16, allows development proposals near salmon streams unless the proposals are "insufficient for the proper protection of fish and game." The Alaska Department of Fish and Game has no further guidance from the law on what constitutes proper protection of this valuable resource. Title 16 does not have strong, clear language designed to protect salmon spawning and rearing grounds from development, especially large-scale development.

This is why TCC is joining a large and growing number of Alaskans in publicly supporting the recommendations by the Alaska Board of Fisheries to the Legislature to update the law governing resource development around salmon streams. Alaskans deserve a transparent process that allows us to weigh in on how and when salmon habitat can be altered by development. Title 16 needs to be updated to create a fair and balanced public process.

These recommendations have a chance to transform into law, thanks to a new bill by Rep. Louise Stutes, R-Kodiak, introduced on March 27. House Bill 199 is a positive step forward in updating these critical laws.

In doing so, HB199 creates clear scientific standards through which proposals should be evaluated so that our agencies can make defensible decisions on permits and their impacts to wild salmon. HB199 also clarifies and ensures that Alaskans will have a voice on the select permitting decisions that could have significant impact on our wild

salmon populations. In creating clear mitigation guidelines, HB199 ensures that we won't simply trade one resource for another or allow a company to offset impacts through practices that don't help local communities impacted by those resource development projects.

Updating fish habitat permitting laws will provide certainty and long-term stability for all of us. Alaskans should not have to choose between protecting our way of life and growing the economy. If we're smart and foresighted, we can have both.

At the recent TCC annual convention, leaders from Interior tribes again came together to give voice to the issues and opportunities facing our communities and ways of life. Delegates from our 42 member communities voted unanimously in support of a resolution advocating for these changes to state law protecting salmon spawning and rearing grounds.

We now have the opportunity to strengthen Title 16 to ensure that large-scale development projects in Alaska do not compromise the sustainability and health of Alaska's wild salmon and the social, cultural, economic and spiritual well-being of the people that rely on them. By changing Title 16, we can proactively protect salmon habitat, preserve our cultures, and sustain our way of life.

Ana Bassee'.

Victor Joseph is chief and chairman of Fairbanks-based Tanana Chiefs Conference.



The Nature Conservancy in Alaska
715 L Street, Suite 100
Anchorage, AK 99501

tel [907] 276-3133
fax [907] 276-2584

nature.org/alaska

April 12, 2017

Louise Stutes
Representative District 32
Alaska State House of Representatives
State Capitol Room 406
Juneau, AK 99801

Dear Representative Stutes and House Fisheries Committee members:

I am writing on behalf of the Nature Conservancy Alaska Chapter to show our support for an update to Title 16 - Alaska's fish habitat protection and permitting law, and appreciation for the legislature's initiative in working to modernize the law through refinement of House Bill 199.

The Nature Conservancy in Alaska has been working to address conservation of fish habitat throughout Alaska for several decades. This has included leadership and participation in Alaska's four fish habitat partnerships, surveying streams for inclusion in the Anadromous Waters Catalogue (AWC), seeking to secure instream flow for high value streams, and mapping and quantifying the extent and quality of freshwater salmon habitat in Bristol Bay, the Mat-Su Basin, and Southeast Alaska. This extensive experience informs our support for an update to Title 16.

We are pleased to see language in the bill that takes a precautionary approach to the AWC by presuming all streams are important for anadromous fish. Currently, the fundamental conservation tool to protect salmon and their habitats in Alaska is the Anadromous Fish Act (16.05.871), and in order to receive this protection streams must be surveyed and nominated to the AWC. Alaska Department of Fish and Game has estimated that less than 50% of Alaska's anadromous water bodies are currently listed in the AWC. According to the Mat-Su Basin Salmon Habitat Partnership's Strategic Action Plan, as of 2013 only 4,500 miles of the known 23,900 miles of streams mapped in the Mat-Su basin are in the catalogue. This is less than 20% of the streams in the region. Over the last 7 years, an average of 63 stream miles have been added to the catalogue annually in the Mat-Su; at that rate it will take many years to survey all the potentially anadromous waters. Efforts that we undertook in Bristol Bay to catalogue anadromous habitat demonstrated how expensive this work can be in remote areas; in 2014 and 2015, we helped add 110 miles of stream to the catalogue, at a price tag of near \$550,000.

Salmon are critical to Alaska's economy, ecology and cultures, and if managed properly are an invaluable sustainable resource. The future of our salmon depends upon what happens to them during each life stage, and it is well-known that freshwater habitat loss and fragmentation have been some of the primary drivers in the decline of anadromous fish. Billions of dollars are spent each year in the lower 48 restoring salmon runs that are still intact in Alaska. Here, we still have an opportunity to get it right the first time utilizing responsible development practices to balance the people's needs for salmon with other uses of Alaska's lands and waters.

We appreciate the challenging balance this legislation seeks to achieve between near-term economic growth and sustaining the long-term productivity of Alaska's salmon resources. HB-199 strikes this balance in a way that provides both protections for our fishery resources and clarity for resource developers. Thank you again for taking on the great task of working with stakeholders in updating Title 16 after nearly 60 years, ensuring it will continue to support a healthy Alaskan economy and wild salmon runs for generations to come. Please feel free to contact us if we can assist in this work.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall H. Hagenstein", with a long, sweeping horizontal line extending to the right.

Randall H. Hagenstein
State Director, The Nature Conservancy Alaska Chapter

UTBB Headquarters
P.O. Box 1252
Dillingham, AK 99576
Telephone: 907- 842-1687
Fax: 907- 842-1853

UTBB Member Tribes:
Nondalton Tribal Council
P.O. Box 49
Nondalton, Alaska 99640
Telephone: 907-294-2257
Fax: 907-294-2271

New Stuyahok Traditional Council
P.O. Box 49
New Stuyahok, Alaska 99636
Telephone: 907-693-3173
Fax: 907-693-3179

Levelock Village Council
P.O. Box 70
Levelock, Alaska 99625
Telephone: 907-596-3434
Fax: 907-596-3462

Curyung Tribal Council
P.O. Box 216
Dillingham, Alaska 99576
Telephone: 907-842-2384
Fax: 907-842-4510

Ekuk Village Council
P.O. Box 530
Dillingham, Alaska 99576
Phone: 907-842-3842
Fax: 907-842-3843

Manokotak Village Council
P.O. Box 169
Manokotak, Alaska 99628
Telephone: 907-289-2067
Fax: 907-289-1235

New Koliganek Village Council
P.O. Box 5057
Koliganek, Alaska 99576
Telephone: 907-596-3434
Fax: 907-596-3462

Traditional Council of Togiak
P.O. Box 310
Togiak, Alaska 99678
Telephone: 907-493-5003
Fax: 907-493-5005

Clarks Point Village Council
P.O. Box 90
Clark's Point, Alaska 99569
Telephone: 907-236-1427
Fax: 907-236-1428

Twin Hills Village Council
P.O. Box TWA
Twin Hills, Alaska 99576
Telephone: 907-525-4821
Fax: 907-525-4822

Aleknagik Traditional Council
P.O. Box 115
Aleknagik, AK 99555
Telephone: 907-842-2080
Fax: 907-842-2081

Portage Creek Village Council
1327 E. 72nd Unit B
Anchorage, AK 99518
Telephone: 907-277-1105
Fax: 907-277-1104

Chignik Lake Traditional Council
P.O. Box 33
Chignik Lake, AK 99548
Telephone: 907-845-2212
Fax: 907-8452217

Pilot Point Tribal Council
PO BOX 449
Pilot Point, AK 99649
Telephone: 907-797-2208
Fax: 907-797-2258



united
TRIBES OF BRISTOL BAY

April 10, 2017

House Fisheries Committee
Representative Louise Stutes
State Capitol Room 406
Juneau AK, 99801

Dear Chairwoman Stutes and the House Fisheries Committee,

United Tribes of Bristol Bay Applauds Introduction of House Bill 199: An Act relating to the protection of fish and game and fish and game habitat.

A new bill introduced today by Representative Stutes, Chairwoman of the House Fisheries Committee, takes a fresh look at Alaska's laws protecting and defining fish habitat. Alaska's salmon habitat laws have not been updated since 1959, the year Alaska became a state, and as such UTBB applauds this effort by Chairwoman Stutes to modernize how our state manages the habitat that makes our world class salmon runs possible.

Quyana,

Alannah Hurley
Executive Director



April 10, 2017

Honorable Members of the 30th Alaska Legislature
Submitted via email

Dear Alaska Policy Maker:

The undersigned broad coalition of entities, with very diverse interests, write to share our deep concern with House Bill 199 (HB 199), "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."

This coalition has agreed that concerns with HB 199 start with simple questions: Why is this bill necessary? What is it trying to fix? What is the real fiscal impact?

As each entity further examines HB 199, we wish to express our initial overlying areas of concern that this bill would seriously impact:

- Community development – including upgrades to infrastructure, such as airports and roads, construction of wastewater treatment plants, natural community growth, and more.
- Economic development – including fish processing, timber harvests, mineral extraction, and oil and gas development.
- A future gas pipeline to transport Alaska's natural gas from the North Slope to markets.

The intent to safeguard Alaska's salmon fisheries is an objective we share and it is why we support Alaska's existing rigorous and science-based regulatory system. Shutting down economic and community development is a disproportionate response to a problem that doesn't exist.

As a coalition that includes urban and rural Alaskans, and businesses and associations representing tens of thousands of jobs for our state's citizens, we cannot overstate how important it is to have consistent regulatory and permitting processes.

This coalition knows community and resource development projects in Alaska can be and are done responsibly, with a strong focus on protecting the environment, cultural activities, and wildlife, while providing good-paying jobs, quality of life, and opportunities for people to remain in their communities. Instead, HB 199 would likely cause costly delays for community projects like airport expansions and village wastewater facility upgrades. It could ultimately halt even the smallest of projects.

Further, the added costs of the bill, while still unknown, will likely deepen our State's fiscal crisis. The added time to resource agencies, as well as permit applicants, would increase uncertainty and cost for development opportunities without a corresponding benefit to fish habitat.

Many of the groups will contact you directly with detailed concerns, but given the issues we have raised above, we urge you not to move this bill forward. It is fundamentally flawed and poses a grave threat to Alaska's economy.

Thank you,

Shelly Wright, Executive Director
Southeast Conference

Marleanna Hall, Executive Director
Resource Development Council for Alaska, Inc.

Marisa Sharrah, President & CEO
Greater Fairbanks Chamber of Commerce

Neil MacKinnon, President
First Things First Alaska Foundation

Jim Dodson, President & CEO
Fairbanks Economic Development Corporation

Sarah Obed, VP of External Affairs
Doyon Limited

John Binkley, President
Cruise Lines International Association Alaska

Karen Matthias, Executive Director
Council of Alaska Producers

Sophie Minich, President & CEO
Cook Inlet Region, Inc.

John MacKinnon, Executive Director
Associated General Contractors of Alaska

Bill Popp, President
Anchorage Economic Development Corporation

Jeremy Price, State Director
Americans for Prosperity, Alaska

Aves Thompson, Executive Director
Alaska Trucking Association

Rebecca Logan, General Manager
Alaska Support Industry Alliance

Kara Moriarty, President & CEO
Alaska Oil and Gas Association

Deantha Crockett, Executive Director
Alaska Miners Association

Owen Graham, Executive Director
Alaska Forest Association

Curtis Thayer, President & CEO
Alaska Chamber



Council of
Alaska Producers

**Comments on HB199:
FISH/WILDLIFE HABITAT PROTECTION; PERMITS**

April 10, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol
Juneau, 99801

Dear Representative Stutes,

The Council of Alaska Producers (CAP) appreciates the opportunity to provide comments on HB199 "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."

CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large metal mines and major metal developmental projects in the state. Bringing together mining companies with interest in Alaska, the Council represents and informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

CAP opposes HB199 because it would shut down responsible resource development projects across the state, jeopardize the continuation or expansion of existing operations, delay and add costs to road construction and other state infrastructure projects, and it would inhibit community development. The real fiscal impact of this bill would be staggering.

HB199 is the wrong solution to a problem that doesn't exist. Alaska already has a world class permitting system that is based on science and applied consistently. This bill creates a new permitting program that is more stringent than the applicable federal laws without giving any reason why the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act are deemed insufficient to protect fish habitat and wildlife in Alaska.

HB 199 cannot be fixed. Please recognize that the current, rigorous permitting system works and do not move this bill any further. Doing otherwise would endanger Alaska jobs as well as threaten any expansion of our state's limited transportation infrastructure. It would also restrict opportunities for Alaska communities to grow and prosper.

Sincerely,

Karen Matthias
Executive Director



ALASKA MINERS ASSOCIATION

121 W. FIREWEED SUITE 120 | ANCHORAGE, ALASKA | 99503 | 907.563.9229 | ALASKAMINERS.ORG

April 12, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol
Juneau, AK 99801

Dear Representative Stutes:

The Alaska Miners Association (AMA) appreciates the opportunity to submit comments on HB199, "An Act establishing general fish and wildlife permits and major and minor anadromous fish habitat permits for certain activities; establishing related penalties; and relation to the protection of fish and game and fish and game habitat."

AMA is a non-profit membership organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. We look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

All of AMA's members operate within the State's rigorous, science-based regulatory process. This is not a rubber-stamp, "easy," or superficial process. It is lengthy, rigorous, and stringent. A key component of this process is the protection of Alaska's fisheries, and not just fish habitat protection, but fish habitat enhancement.

The safeguarding of fish species at Alaska's mining projects is a success story. HB199 suggests significant regulatory problems that simply do not exist. HB199 proposes a massive rewrite of fish habitat regulation that is not only a solution in search of a problem, but is an all-out shut down of community and economic development. The provisions in HB199 would ensure that development of new mines, oilfields, wastewater plants, highways, and more would not be built. At a time of billion dollar deficits, these are not the kinds of bills Alaskans should be pursuing.

Because the protection of fish is a high priority of Alaska's mining industry, AMA is and always has been a willing participant for workgroups to review the current process and find improvement. However, HB199 is severely flawed, and should be abandoned in favor of productive discussion that enhances our regulatory process while continuing to grow the State economy.

Thank you for the opportunity to comment.

Sincerely,

Deantha Crockett
Executive Director



April 7, 2017

Alaska House of Representatives
House Fisheries Committee
State Capitol
Juneau, AK 99801

submitted via electronic mail

RE: House Bill 199

Dear Chair Stutes and Members of the Special House Committee on Fisheries,

On behalf of The Kuskokwim Corporation, please accept the following comments regarding our opposition to House Bill 199. Your consideration of our unique position is appreciated.

The Kuskokwim Corporation (TKC) was formed on April 25, 1977, when the following Alaska Native Claim Settlement Act (ANCSA) village corporations located along the middle part of the Kuskokwim River merged: Aniak, Chuathbaluk, Georgetown, Crooked Creek, Lower Kalskag, Napaimute, Red Devil, Sleetmute, Stony River and Upper Kalskag. TKC is the largest village corporation within the Calista region, and the surface estate owner of more than 950,000 acres of land on the middle Kuskokwim River. Our more than 3800 shareholders are connected not only by the River, but also by our culture, land and values. Our corporation values our land and resources, additionally we are committed to being good stewards for our future generations. Often, being a good steward means finding a balanced approach for development and use of our natural resources.

House Bill 199 appears to be an effort to fix something, which is not currently broken. The permitting process as outlined in Title 16 is efficient, allows for public comment and provides a sensible approach to for the Commissioner of Alaska Department of Fish & Game (ADF&G) and staff to evaluate permit applications with adequate consideration of fish habitat.

The overreaching regulation and processes proposed in House Bill 199 will not only have a detrimental impact on proposed economic activities in the Middle Kuskokwim region, but may have negative impacts on our much need community infrastructure projects along the Kuskokwim River and its seasonal tributaries.

TKC's Shareholders know better than anyone how vital salmon runs are for the health and well-being of our communities, but so is the opportunity for responsible development. Rural Alaska needs both economic activity and community infrastructure. We respectfully request that you do not create an undue burden for improving the viability of our communities.

Thank you in advance for consideration of our interests in maintaining the current permitting process and protection of fish habitat defined in Title 16 and opposing House Bill 199. If you have any questions regarding our comments contact TKC's Vice President of Corporate Affairs, Andrea Gusty, in our Anchorage office at ajb@kuskokwim.com or call 1(800)478-2171.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maver Carey', with a long, sweeping flourish extending to the right.

Maver Carey, President/CEO
THE KUSKOKWIM CORPORATION

CC: HB 199 Sponsor Rep. Josephson



CALISTA CORPORATION
www.calistacorp.com

April 13, 2017

Alaska House of Representatives
House Fisheries Committee
State Capitol
Juneau AK 99801

Re: House Bill 199

Dear Chair Stutes and Members of the Special House Committee on Fisheries:

On behalf of the Calista Corporation, please accept the following comments regarding our opposition to House Bill 199.

Calista Corporation is an Alaska Native regional corporation established under the Alaska Claims Settlement Act of 1971. The Calista Region includes 45 village corporations in 56 villages in southwest Alaska. Calista's enrolled 13,300 original shareholders and is currently enrolling descendants of original shareholders who are expected to double Calista's shareholder rolls.

Many of Calista's rural residents depend on subsistence resources, including both anadromous fish and resident fish. We are mindful of the importance of fishery resources to our shareholders and their families, but we are also acutely aware of the significant percentage of our region's people who live below the National poverty level and without energy and transportation infrastructure present in other areas of the State. Our communities need airport upgrades, village roads, water and sewer projects and the ability to grow. Our residents need jobs and business opportunities that resource development brings to rural Alaska.

Calista believes that the Title 16 permitting process works well to protect fish habitat and does not need to be fixed. Title 16 allows for public comment and ADF&G evaluation of permit applications. Changes to Title 16 will require additional effort and time to apply for and obtain, and more State agency time to review permits. Calista is also concerned that HB 199 presumes every stream in Alaska is anadromous, a reversal of current policy without basis in good science.

HP 199 will seriously impact Calista's efforts to bring economic and community development to Calista region, a region without access to and opportunity to benefit from Alaska's road, railroad and electrical intertie systems that are available to residents living in other parts of the state. We ask that Calista region and other parts of rural Alaska that are struggling economically not be hindered in their efforts to facilitate community and economic development by an excessive and unwarranted permitting process.

Sincerely,

CALISTA CORPORATION

Andrew Guy
President & CEO

Cc: Representative Josephson

30-LS0438\N
Bullard
1/19/18

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

1 **"An Act establishing major and minor anadromous fish habitat permits for certain**
2 **activities; establishing related penalties; and relating to fishways and the protection of**
3 **anadromous and other fish habitat."**

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

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

6 **Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY]**
7 **requirements.** (a) The owner of a dam or obstruction who fails to comply with
8 AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR
9 16.05.851] within a reasonable time specified by written notice from the commissioner
10 is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each
11 day the owner fails to comply constitutes a separate offense.

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

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

2 **Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The
3 commissioner shall identify all or portions of each river, lake, and stream, lands
4 beneath, and adjacent riparian areas that are anadromous fish habitat.

5 (b) The department may conduct a site-specific review and make a
6 determination on whether all or portions of a river, lake, or stream, lands beneath, and
7 adjacent riparian areas are anadromous fish habitat. A determination that all or
8 portions of a river, lake, or stream, lands beneath, or adjacent riparian areas are not
9 anadromous fish habitat must be supported by the commissioner's written finding and
10 verifiable data. An applicant under AS 16.05.875 may request a site-specific
11 determination. The department shall make the results of a determination conducted
12 under this subsection available on the department's Internet website and post notice on
13 the Alaska Online Public Notice System (AS 44.62.175).

14 (c) In the absence of an identification under (a) of this section or a site-specific
15 determination by the department under (b) of this section, the commissioner shall
16 presume that a naturally occurring permanent or intermittent river, lake, or stream,
17 lands beneath, and adjacent riparian areas are anadromous fish habitat if all or portions
18 of the river, lake, or stream are connected to a river, lake, or stream identified as
19 anadromous fish habitat under (a) of this section. Under this subsection, all or portions
20 of a river, lake, or stream are not connected to all or portions of a river, lake, or stream
21 identified as anadromous fish habitat under (a) of this section if there is a permanent
22 physical barrier between them that prohibits the upstream or downstream migration of
23 anadromous fish.

24 (d) The presumption established under (c) of this section that certain rivers,
25 lakes, and streams, lands beneath, and adjacent riparian areas are anadromous fish
26 habitat is applicable only to AS 16.05.871 - 16.05.901.

27 (e) Under this section, the commissioner shall specify in regulation

28 (1) all or portions of each river, lake, and stream, lands beneath, and
29 adjacent riparian areas identified as anadromous fish habitat under (a) of this section;

30 (2) the procedure for conducting a site-specific review and making a
31 determination under (b) of this section; and

1 (3) the scope of a riparian area adjacent to all or portions of a river,
2 lake, or stream that will be considered anadromous fish habitat for the purposes of
3 AS 16.05.871 - 16.05.901.

4 (f) In this section,

5 (1) "anadromous fish habitat" means all or portions of a naturally
6 occurring permanent or intermittent river, lake, or stream, the land beneath the river,
7 lake, or stream, and the riparian areas adjacent to the river, lake, or stream, that
8 contribute directly to the spawning, rearing, migration, or overwintering of
9 anadromous fish;

10 (2) "river" or "stream" includes the foreshore portion, if any, of the
11 river or stream above the mean low tide line.

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

13 **Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency
14 under AS 16.05.891 or as authorized by a valid general minor permit under
15 AS 16.05.883(b), a person must obtain an anadromous fish habitat permit under
16 AS 16.05.883(a) or 16.05.885 before

17 (1) constructing a hydraulic project that uses wheeled, tracked,
18 excavating, or log-dragging equipment in the bed of a river, lake, or stream

19 (A) identified as anadromous fish habitat under
20 AS 16.05.871(a) or (b); or

21 (B) presumed to be anadromous fish habitat under
22 AS 16.05.871(c);

23 (2) conducting an activity that has the potential to use, divert, obstruct,
24 pollute, or change the natural flow or bed of all or portions of a river, lake, or stream
25 that is

26 (A) identified as anadromous fish habitat under
27 AS 16.05.871(a) or (b); or

28 (B) presumed to be anadromous fish habitat under
29 AS 16.05.871(c).

30 (b) An applicant shall complete an application on a form approved by the
31 department for a permit under AS 16.05.883(a) or 16.05.885 and submit the

1 application to the department. The commissioner may require additional information,
2 including information from an applicant, before approving an application. An
3 applicant shall provide all information requested by the commissioner to reasonably
4 assess a proposed activity's effects on anadromous fish habitat, including

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

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

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

15 (d) If the commissioner determines that a proposed activity, as conditioned by
16 permit requirements and mitigation measures that would likely be required of the
17 activity by the department under AS 16.05.887, will not cause significant adverse
18 effects on anadromous fish habitat under AS 16.05.877, the commissioner shall
19 classify the application for the activity as an application for a minor permit under
20 AS 16.05.883(a).

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

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

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

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

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

1 AS 16.05.871.

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

6 (1) interfere with the spawning, rearing, or migration of anadromous
7 fish at any life stage;

8 (2) impede the safe and efficient upstream and downstream passage of
9 anadromous fish;

10 (3) significantly

11 (A) impair water quality or water temperature necessary to
12 support anadromous fish;

13 (B) reduce instream flows or alter the natural flow regimes
14 necessary to support anadromous fish and anadromous fish habitat; or

15 (C) diminish the overall aquatic habitat diversity, productivity,
16 stability, or function of all or portions of a river, lake, or stream that is
17 anadromous fish habitat;

18 (4) create conditions known to have adverse effects on, or cause
19 increased mortality of, anadromous fish at any life stage; or

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

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

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

25 **Sec. 16.05.881. Construction without approval prohibited.** If a person or
26 governmental agency conducts an activity [BEGINS CONSTRUCTION ON A
27 WORK OR PROJECT OR USE] for which a permit [NOTICE] is required by
28 AS 16.05.875(a) [AS 16.05.871] without the appropriate permit issued under
29 AS 16.05.883 or 16.05.885 [FIRST PROVIDING PLANS AND SPECIFICATIONS
30 SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER
31 PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING

1 OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE
 2 ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE
 3 PROTECTION OF FISH AND GAME], the person or agency is guilty of a
 4 misdemeanor. If a person or governmental agency is convicted of violating
 5 AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896] or continues **an activity** [A
 6 USE, WORK, OR PROJECT] without fully complying with AS 16.05.871 - 16.05.901
 7 [AS 16.05.871 - 16.05.896], the **activity** [USE, WORK, OR PROJECT] is a public
 8 nuisance and is subject to abatement. The cost of restoring **all or portions of** a
 9 [SPECIFIED] river, lake, or stream **identified as anadromous fish habitat under**
 10 AS 16.05.871 to its original condition shall be borne by the violator and shall be in
 11 addition to the penalty imposed by the court under AS 16.05.901.

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

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

18 (b) Notwithstanding (a) of this section, the commissioner may issue a general
 19 minor permit under this section without an application and determination under
 20 AS 16.05.875 for activities that do not have the potential to significantly affect
 21 anadromous fish habitat on a regional or other geographical basis if the commissioner
 22 determines that

- 23 (1) the activity will not cause significant adverse effects to anadromous
- 24 fish habitat;
- 25 (2) the potential adverse effects of the activity may be prevented by
- 26 requiring certain conditions and stipulations on the activity;
- 27 (3) permit conditions and stipulations are mandatory and enforceable;
- 28 and
- 29 (4) a general minor permit for the activity is in the public interest.

30 (c) When the commissioner makes a determination to issue a general minor
 31 permit under (b) of this section, the commissioner shall provide public notice of the

1 proposed permit and opportunity to comment under (f) of this section. Additionally,
 2 the commissioner shall hold at least one public hearing if requested by an interested
 3 person. If no request for reconsideration is timely received under AS 16.05.889, and
 4 the commissioner determines the general minor permit meets the requirements in (b)
 5 of this section, the commissioner may issue a general minor permit under this section.
 6 A general minor permit issued for an activity under this section must be renewed
 7 every five years.

8 (d) The commissioner may issue a regional or geographical authorization for
 9 an activity subject to a general minor permit under this section or may require a person
 10 to obtain written authorization from the department before conducting an activity
 11 subject to a general minor permit under this section. Upon request, the department
 12 shall issue or deny an authorization within five days. The department may make
 13 general minor permit authorizations under this section available through electronic
 14 means. A general minor permit authorization under this section shall set out conditions
 15 and stipulations to avoid adverse effects to anadromous fish habitat.

16 (e) The commissioner may amend a general minor permit issued under this
 17 section at any time to include additional conditions and stipulations or may rescind a
 18 general minor permit issued under this section if the commissioner determines that the
 19 permit does not protect anadromous fish habitat. The commissioner shall provide
 20 public notice under (f) of this section of

21 (1) changes proposed by the commissioner to a general minor permit
 22 issued under this section; and

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

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

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

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

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

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

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

8 (1) the proposed activity;

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

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

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

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

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

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

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

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

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

31 (1) post notice on the Alaska Online Public Notice System

1 (AS 44.62.175);

2 (2) make a copy of the draft assessment available on the department's
3 Internet website; and

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

5 (d) A proposed activity's significant adverse effects can be minimized under
6 this section if the activity's potential significant adverse effects on anadromous fish
7 habitat under AS 16.05.877, as conditioned by permit requirements and mitigation
8 measures required of the activity under AS 16.05.887, are not permanent and that
9 anadromous fish habitat affected by the activity will likely recover or be restored
10 within a reasonable period to a level that sustains the natural and historical levels of
11 anadromous fish in all or portions of the affected river, lake, or stream.

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

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

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

21 (3) significant adverse effects of the proposed activity are likely to
22 affect anadromous fish habitat in such a manner that the habitat will not likely recover
23 or be restored within a reasonable period to a level that sustains the natural and
24 historical levels of anadromous fish in all or portions of the affected river, lake, or
25 stream.

26 (f) In determining whether anadromous fish habitat will recover or be restored

27 (1) within a reasonable period under this section, the commissioner
28 shall account for the life stage, life span, and reproductive behavior of the species of
29 anadromous fish that depend on the habitat affected by the proposed activity using the
30 best available scientific information; and

31 (2) to a condition that will sustain the natural and historical levels of

1 anadromous fish in all or portions of an affected river, lake, or stream under this
2 section, the commissioner shall, using the best scientific information, consider likely
3 post-activity conditions known to

4 (A) result in the mortality of anadromous fish at any life stage;

5 or

6 (B) interfere with, or prevent, the spawning, rearing, or
7 migration of anadromous fish.

8 (g) After the completion of the comment period established by (c)(3) of this
9 section and evaluation of the comments received, the commissioner shall publish a
10 final assessment and a written permit determination on the department's Internet
11 website. The final assessment and written permit determination must include any
12 permit conditions and mitigation measures imposed on the proposed activity under
13 AS 16.05.887. The department shall post public notice of the final assessment and
14 permit determination on the Alaska Online Public Notice System (AS 44.62.175) and
15 provide written or electronic notice to each person who commented on the
16 commissioner's determination that the application for the permitted activity was an
17 application for a major permit under AS 16.05.875(e) or the draft assessment prepared
18 under (a) of this section for the activity.

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

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

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

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

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

28 (2) the applicant

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

31 (B) if required, provides the bond required by (j) of this

1 section; and

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

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

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

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

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

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

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

29 (1) the written approval of the commissioner; and

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

1 (k) of this section.

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

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

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

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

14 (3) will replace or supplement a wild fish population with a hatchery-
15 dependent fish population;

16 (4) will dewater anadromous fish habitat for a period likely to cause
17 permanent or long-lasting adverse effects to that habitat; or

18 (5) will permanently relocate all or portions of a river, lake, or stream
19 if the relocation will disrupt the migration or passage of anadromous fish.

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

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

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

30 (3) if the activity cannot be implemented in a manner that prevents
31 significant adverse effects on anadromous fish habitat under this subsection, restore

1 the affected anadromous fish habitat and take mitigation measures.

2 (c) Permit conditions and mitigation measures under this section may not
3 offset the activity's significant adverse effects by restoring, establishing, enhancing, or
4 preserving all or portions of another river, lake, or stream or other land.

5 (d) The department shall adopt regulations consistent with AS 16.05.871 -
6 16.05.901 establishing appropriate permit conditions and mitigation measures
7 applicable to activities subject to permitting requirements under AS 16.05.883 or
8 16.05.885.

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

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

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

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

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

28 **Sec. 16.05.891. Exemption for emergency situations.** In an emergency
29 arising from weather or stream flow conditions, the commissioner, through authorized
30 representatives, shall issue oral permits to a riparian owner or state agency for
31 removing obstructions or for repairing existing structures without the necessity of a

1 **permit issued under AS 16.05.871 - 16.05.901** [SUBMITTING PREPARED PLANS
2 AND SPECIFICATIONS AS REQUIRED BY AS 16.05.871].

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

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

5 (1) reviewing permit applications, assessments performed by the
6 department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -
7 16.05.901; and

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

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

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

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

21 (1) order that the violation be stopped; or

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

25 **Sec. 16.05.899. Applicability of permitting requirements.** (a)
26 Notwithstanding AS 16.05.875(a), and except as provided in (b) of this section, a
27 facility, activity, operation, or project that has in full force and effect, on the day
28 before the effective date of sec. 3 of this Act, all required state authorizations relating
29 to the protection of anadromous fish and anadromous fish habitat

30 (1) shall continue to be authorized under AS 16.05.871 - 16.05.901 and
31 the regulations adopted under AS 16.05.871 - 16.05.901, as those sections and

1 regulations read on the day before the effective date of sec. 3 of this Act, and may
2 continue to renew those authorizations and obtain minor authorization modifications
3 under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 -
4 16.05.901, as those sections and regulations read on the day before the effective date
5 of sec. 3 of this Act; and

6 (2) is not required to obtain an anadromous fish habitat permit under
7 AS 16.05.883 or 16.05.885.

8 (b) The exemption provided by (a) of this section does not apply to a facility,
9 activity, operation, or project that significantly expands or increases in scope, area, or
10 frequency, or otherwise takes action outside, those actions for which it is authorized
11 on the day before the effective date of sec. 3 of this Act.

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

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

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

19 (c) A person who, with criminal negligence, violates or permits a violation of
20 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a
21 permit condition or mitigation measure imposed under AS 16.05.887, or an order
22 issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as
23 provided in AS 12.55. In this subsection, "criminal negligence" has the meaning given
24 in AS 11.81.900(a).

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

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

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

8 (1) the character and degree of injury to anadromous fish habitat;

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

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

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

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

19 (h) If a respondent violates an order issued under AS 16.05.894 that requires
20 the respondent to repair or correct damage, the commissioner may proceed to repair or
21 correct the damage using state agency employees or contractors and the respondent is
22 liable for the cost of the repair. The commissioner shall deliver to the respondent an
23 itemized statement of expenses incurred.

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

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

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

31 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,

1 16.05.783, 16.05.831, 16.05.861, 16.05.901, and 16.05.905, a person who violates
2 AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is
3 guilty of a class A misdemeanor.

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

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

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

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

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

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

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

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

17 (3) the state has a fundamental obligation to ensure that management
18 of forest resources guarantees perpetual supplies of renewable resources, provides
19 nonrenewable resources in a manner consistent with that obligation, and serves the
20 needs of all Alaska for the many products, benefits, and services obtained from them;

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

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

29 (6) subject to AS 41.17.098(c), the provisions of this chapter, and
30 regulations adopted under this chapter, with the approval of the Department of
31 Environmental Conservation, establish the nonpoint source pollution requirements

1 under state law and sec. 319 of the Clean Water Act for activities subject to this
2 chapter;

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

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

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

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

13 (b) The commissioner shall

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

18 (2) develop and maintain a standardized procedure for processing
19 applications and the issuance of authorizations, permits, and certifications under this
20 chapter; shall keep a public record of all applications for permits and certificates and
21 other documents filed in the commissioner's office; shall record all permits and
22 certificates and amendments and orders affecting them and shall index them in
23 accordance with the source of the water and the name of the applicant or appropriator;
24 shall require that temporary water use authorizations are valid only to the extent that
25 the water withdrawal and use complies with applicable requirements of AS 16.05.871
26 - 16.05.901 [AS 16.05.871]; and shall make the record of applications, including
27 temporary water use applications under AS 46.15.155 that have been accepted as
28 complete, authorizations, permits, certificates, amendments, and orders affecting them
29 available to the public on the Internet;

30 (3) cooperate with, assist, advise, and coordinate plans with the
31 federal, state, and local agencies, including local soil and water conservation districts,

1 in matters relating to the appropriation, use, conservation, quality, disposal, or control
2 of waters and activities related thereto;

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

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

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

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

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

19 (D) a description of state revenue and expenses related to
20 activities under AS 46.15.035 and 46.15.037.

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

CSHB 199/N Sectional Analysis

Section 1: Page 1, Lines 5-14

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: Page 2, Line 1-Page 3, line 11

Sec. 16.05.871. Determination of anadromous fish habitat.

Section 16.05.871 expands the Department of Fish and Game's (ADF&G) authority to trigger the new law and require a fish habitat permit by creating a rebuttable presumption that naturally occurring permanent and intermittent rivers, lakes, and streams, including the lands beneath and adjacent riparian areas, that are connected to rivers, lakes, and streams that are specified as anadromous fish habitat and are without a physical barrier that is insurmountable to fish are anadromous fish habitat.

Under current law, each anadromous waterbody must be field sampled and then nominated to be included in the Anadromous Waters Catalogue (AWC). ADF&G estimates that less than 50 percent of the anadromous waters in Alaska are listed in the AWC. The AWC serves as the trigger for ADF&G's authority to manage fish habitat and issue permits.

Subsection (a) specifies that the commissioner of ADF&G must identify all or portions of each river, lake, or stream, the lands beneath, and adjacent riparian areas that are anadromous fish habitat. This maintains the requirement that anadromous waters are specified.

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 the rebuttable anadromous waters presumption.

Subsection (d) specifies that the presumption under (c) is only applicable to the statutes governing anadromous fish habitat permitting.

Subsection (e) specifies that the commissioner shall specify in regulation:

- (1) each river, lake, or stream, lands beneath, and adjacent riparian areas that are anadromous fish habitat under the bill. This clarifies that specified anadromous fish habitat will be listed in the AWC.
- (2) the procedure for conducting a site-specific review and determination.
- (3) the scope of riparian area that will be considered anadromous fish habitat under the bill.

Subsection (f) defines:

- (1) anadromous fish habitat to mean all or portions of a river, lake, or stream, the lands beneath, and the adjacent riparian areas that contribute directly to the spawning, rearing, migration, or overwintering of anadromous fish.
- (2) a “river” or “stream” to include the foreshore portion of the river or stream above the mean low tide line.

Section 3: Page 3, Line 12-Page 5, Line 23

Sec. 16.05.875. Anadromous fish habitat permit.

Subsection (a) creates the requirement that, except in an emergency, an anadromous fish habitat permit must be obtained before constructing a hydraulic project that uses wheeled, tracked, excavating, or log-dragging equipment, or before conducting an activity that has the potential to use, divert, obstruct, pollute, or change the natural flow or bed of a river, lake, or stream that is presumed or identified as anadromous fish habitat. This maintains the wording in current statute regarding the types of activities that would be required to be permitted.

Subsection (b) requires an applicant to complete an application and provide all necessary information that ADF&G deems necessary to assess the proposed activity’s.

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.

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 the commissioner’s determination for classification of major and minor permits.

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 cause significant adverse effects on anadromous fish habitat.

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

Section 4: Page 5, Line 24-Page 6, Line 111

Sec. 16.05.881. Construction without approval prohibited.

This section 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: Page 6, Line 12-Page 13, Line 26:

Sec. 16.05.883. Minor anadromous fish habitat permit.

Subsection (a) 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.

Subsection (b) establishes the general minor permit. This allows the issuance of a blanket permit for minor activities on a regional or geographical basis without an application by a determination by the commissioner for activities that will not cause significant adverse effects on anadromous fish habitat if certain conditions are met. This provision allows ADF&G to issue blanket permits for similar activities. E.g. ATV stream crossings.

(1), (2), (3), and (4) set the conditions that must be met for the issuance of a general permit.

Subsection (c) specifies that when the commissioner makes a determination to issue a general minor permit they must provide notice, a public comment period, and, if requested, hold 1 public hearing. It also stipulates that the general permits must be renewed every 5 years.

Subsection (d) clarifies that the commissioner may issue a regional or geographical authorization for a general permit or may require a person to obtain written authorization. The department must approve or deny the request within 5 days. It further allows general permit authorizations to be issued electronically. It clarifies that authorizations for general permits shall set out conditions and stipulations to avoid adverse effects to anadromous fish habitat.

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

(1) and (2) provide additional details for public notice and comment for general permitting.

Subsection (f) stipulates the public notice and comment requirements for issuing a general minor permit.

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 cause significant adverse effects on 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) specifies that the commissioner shall collect or shall require the applicant to collect information to determine whether a proposed activity should be permitted under this section. It further allows the costs of preparing the assessment and collecting the information requested by the commissioner to be shifted 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 to conditions that can sustain anadromous fish.

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 (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, 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 to compensate for onsite damage to fish habitat resulting from the activity.

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 anadromous fish habitat (2) requires water treatment or other means of human intervention in perpetuity, (3) converts a wild fish population to a hatchery dependent population, (4) will dewater anadromous fish habitat for period likely to cause permanent or long lasting adverse effects on said habitat or (5) or will permanently relocate all or portions of a river lake or stream if it will disrupt the migration or passage of anadromous fish.

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 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: Page 13, Line 27- Page 14, Line 2:

Sec. 16.05.891. Exemption for emergency situations.

Section 16.05.891 adds "state agency" to the exemption for emergency arising from weather or stream flow conditions. It also contains a conforming language to reflect the new provisions in this chapter.

Section 7: Page 14, Line 3-Page 15, Line 11

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) requires the fees collected to be separately accounted for.

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.

Sec. 16.05.899. Applicability of permitting requirements

Section 16.05.899 specifies that an existing facility, activity, operation, or project that has in full force and effect all required state authorizations relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act would remain under the permitting regime as it existed the day before the effective day of this act, including renewals and minor authorizations in perpetuity, until that existing facility, activity, operation, or project significantly

expands or increases in scope, area, or frequency, or otherwise takes action outside of, those actions for which it was authorized on the day before the effective date of sec. 3 of this Act

Section 8: Page 15, Line 12-17

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. It specifies that person must “knowingly” be in violation to be guilty of a class A misdemeanor for knowing violations.

Section 9: Page 15, Line 18-Page 16, Line 29

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: Page 16, Line 30-Page 17, Line 3

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: Page 17, Line 10-Page 18, Line 6:

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: Page 18, Line 12-Page 19, Line 20:

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.

Summary of Changes HB 199 Version J to N

Page 1, lines 1 through 3:

Title Change: The changes between version J to N resulted in a title change.

Previously, on lines 1 through 2, the title read “An Act establishing general fish and wildlife permits and major and minor anadromous permits for certain activities.”; “general fish and wildlife permits” have been deleted from the current title for two reasons:

Firstly, the former “general fish and wildlife permit” has been moved to be a subset of the minor anadromous fish habitat permit and has been renamed the “general minor anadromous fish habitat permit.”

Secondly, the terms “other fish” and “wildlife” were removed throughout the bill.

In the previous version “other fish” was removed from:

- Page 2, line 23, Page 5 line 21, Page 7, line 25, Page 8, line 7, Page 10, line 22, Page 12, line 31, Page 14, line 1, and Page 16, line 3. There is one instance where “other fish” was not removed. That is on Page 14, line 23 of the current version; that is an oversight and will be corrected in the next draft.

In the previous version “wildlife” was removed from:

- Page 2, lines 21, 23, and 27, Page 3, lines 15 and 19, Page 5, line 21, Page 7, line 25, Page 8, line 8, Page 10, line 22, Page 13, line 1, Page 14, line 2, and page 16, line 3. There is one instance where “wildlife” was not removed. That is on Page 14, lines 23 through 24 of the current version; that is an oversight and will be corrected in the next draft.

Additionally, in the current version, on line 3, “relating to fishways” was added. This is a clarifying title change to reflect the repeal of 16.05.851 on Page 1, lines 8 through 9 and lines 13 through 14 in both versions of the bill. The repeal is in both versions and the addition to the title was for housekeeping purposes.

Finally, on Page 1, line 3 of the previous title “relating to the protection of fish and game and fish and game habitat” was removed and replaced with “relating to the protection of anadromous and other fish habitat” on lines 2 through 3 of the current version. This again was a result of the removal of the terms listed above.

Sec. 16.05.871. Determination of Anadromous Fish Habitat

Subsection 2(a) on Page 2, lines 2 through 4, formerly Page 2, lines 2 through 6:

The previous version of the bill required the commissioner to specify in regulation the water bodies or portions of them that are important anadromous fish habitat, including the waters that are covered under the presumption in (c).

In the new version, the existing language in 16.05.871(a) was used regarding the types of waters the commissioner must “identify.” Instead of “water bodies or portions of them,” it now reads “rivers, lakes, and streams.” Conforming changes were made throughout the bill to reflect this change.

Additionally, the term “important” was removed. The placement of “important” in front of “anadromous fish habitat” created a potential loophole in the permitting system that could allow individuals to avoid the permit requirement. Conforming changes were made throughout the bill to reflect this change.

The requirement to specify presumed waters in regulation was moved to subsection (e).

Subsection 2(b) on Page 2, lines 5 through 13, formerly Page 2, lines 7 through 12:

The previous subsection (b) was deleted and a new subsection was inserted to clarify when the department should conduct a site-specific determination to resolve whether a river, lake, or stream is anadromous and therefore determine if a permit is required. In addition, it was not clear in the previous draft who makes the request, what type of information is required to support the department’s determination, or how the site-specific determination relates to the anadromous waters presumption.

Additionally, the new wording also requires the department’s determination to be posted on the State’s online public notice system.

Subsection 2(c) on Page 2, lines 14 through 23, formerly Page 2, lines 13 through 15:

The anadromous waters presumption was narrowed in comparison to the previous version of the bill. Previously, the presumption applied to all “naturally occurring permanent or seasonal waters bodies” in the state.

The current presumption now only applies to “rivers, lakes, and streams” that are connected to rivers, lakes, and streams that are already specified in the Anadromous Waters Catalogue, unless the waterbodies have a permanent barrier that is insurmountable to anadromous fish. Anything upstream of that barrier would be excluded from the presumption, while anything below would be included.

The new presumption is mirrored off the presumption that currently exists in the Forest Resources and Practices Act, the difference being it does not contain a stream gradient

exception and the term “permanent” clarifies that the blockage cannot be something temporary.

The new version of the presumption also specifies that the bed, or the “lands beneath” anadromous rivers, lakes, and streams are anadromous fish habitat.

Subsection 2(d) on Page 2, lines 24 through 26:

This new subsection states that the presumption “established under (c) of this section that certain rivers, lakes, and streams, lands beneath, and adjacent riparian areas are anadromous fish habitat is applicable only to AS 16.05.871-16.05.901.”

This was added to clarify that the presumption only applies to the fish habitat permitting law.

Subsection 2(e)(1), (2), & (3) on Page 2, line 28 through Page 3, line 3:

These are new subsections.

Subsection (1) maintains the requirement that all waters identified under (a) will continue to be listed in the Anadromous Waters Catalogue.

Subsection (2) requires the department to develop regulations for conducting site-specific reviews and making a determination under (b) of this section.

Subsection (3) allows ADF&G to define in regulation the scope of adjacent riparian areas that are considered anadromous fish habitat under the bill. This is authority that the department does not currently have.

Subsection 2:(f) (1) & (2) on Page 3, lines 4 through 9:

Subsection (1), formerly on Page 2, lines 16 through 19

The definition of anadromous fish habitat has been narrowed to reflect the change in subsection (a).

Anadromous fish habitat is now changed from “water bodies or portions of them,” to “rivers, lakes, streams” This conforming change was made throughout the bill.

Additionally, the previous definition of anadromous fish habitat did not include the bed of, or “lands beneath” anadromous rivers, lakes, and streams. That was added. The word “indirectly” was also removed from Page 2, line 18 of the previous definition.

Subsection (2):

This is a new subsection that defines the extent of a river or stream that is anadromous fish habitat. It states that a “river or stream includes the foreshore portion, if any, of the river or stream above the mean low tide line.” Foreshore means the part of a seashore between high-water and low-water marks.

Sec. 16.05.875. Anadromous Fish Habitat Permit

Section 3 on Page 3, line 12 through Page 5, line 1, formerly Page 4, line 1 through Page 5, line 9

Subsection 3(a) on Page 3, lines 13 through 16, formerly Page 4, lines 1 through 5:

There have been a number of changes to this subsection. There is a new reference on line 14 relating to an exemption to the requirements in subsections (a)(1) through (a)(2) for the new general minor anadromous fish habitat permit, which allows the issuance of a blanket permit for certain types of activities. The exemption is there because the general minor anadromous permit has a separate set of the standards regarding the types of activities that it can be permitted under.

3 (a) (1)(A)(B) & (2) (A)(B): Previously under the bill, a person would be required to obtain an anadromous fish habitat permit before conducting an activity that “may use, divert, obstruct, pollute, or otherwise affect” a “water body or portion”, that was specified as “important” anadromous fish habitat under AS. 16.05.871(a).

Instead, the new version of this section mirrors wording in current law in 16.05.871(b) regarding what types of activities would require a permit. The bill now requires a person to obtain an anadromous fish habitat permit before “constructing a hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a river, lake, or stream” that is presumed or specified as anadromous fish habitat. This language is consistent with current law.

Subsection 3(b) on Page 3, line 30 through Page 4, line 7, formerly Page 4, lines 6 through 14:

Previously, this section referenced in AS 16.05.883 in relation to requirements for an application. The new version references 16.05.883(a) on line 31 because the new general minor anadromous fish habitat permit established under 16.05.883(b) on does not require an application or a permit, and has a separate set of conditions for issuance. Conforming changes were made throughout the bill to reflect this.

Subsection 3 (f) on Page 4, lines 25 through 30:

In the previous version of the bill, there was a requirement for a 30-day public comment period on Page 5, lines 6 through 7 regarding the commissioner’s determination that an activity requires a major anadromous fish habitat permit. That comment period was removed.

Sec. 16.05.877. Significant adverse effects

Subsection 3 (a) on Page 5, lines 2 through 23, formerly Page 5, lines 10 through 26:

Previous subsection (a)(1) on lines 13-14 “Impair the quality, quantity, or flow of water necessary for a waterbody to support anadromous fish habitat” was deleted. Similar, more refined language now appears in (a)(3)(A) and (a)(3)(B).

Previous subsection (a)(3) on Page 5, lines 17 through 19 was deleted.

That subsection had defined a significant adverse effect as “impairing 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.”

Previous subsection (a)(5) on lines 21 through 22 was deleted.

That subsection had defined a significant adverse effect as “adversely affecting other fish and wildlife that depend on the health and productivity of that anadromous fish habitat.”

Subsection (a)(1) on Page 5, lines 6 through 7:

This is a new subsection that defines a significant adverse effect as “interfering with the spawning, rearing, or migration of anadromous fish at any life stage.”

Subsection (a)(2) on Page 5, lines 8 through 9, formerly on Page 5, lines 15 through 16:

The previous version of this subsection defined a significant adverse effect to be “impeding or preventing the safe, timely, and efficient upstream and downstream passage of fish to anadromous fish habitat.” This has been narrowed in the current version to “impede the safe and efficient upstream and downstream passage of anadromous fish.”

Subsection (a)(3)

In the current version, the word “significantly” was added on line 10 to apply to (3)(A), (B), and (C). “Significantly” adds a higher threshold.

Subsection (a)(3)(A) on Page 5, lines 11 through 12.

This is a new subsection that defines a significant adverse effect as “significantly impairing water quality or water temperature necessary to support anadromous fish.”

Subsection (a)(3)(B) on Page 5, lines 13 through 14:

This is a new subsection that defines a significant adverse effect as “significantly reducing instream flows or altering the natural flow regimes necessary to support anadromous fish and anadromous fish habitat.”

Subsection (a)(3)(C) On Page 5, lines 15 through 17, formerly on Page 5, line 20:

It previously read “reduce aquatic diversity, productivity, stability, or function.” It now reads “significantly diminish the overall aquatic diversity, productivity, stability, or function of all or portions of a river, lake, or stream that is anadromous fish habitat.” “Significantly” adds a higher threshold.

Subsection (a)(4) on lines 18 through 19:

This is a new subsection that defines a significant adverse effect as “creating conditions known to have adverse effects on, or cause increased mortality of, anadromous fish at any life stage;”

Sec. 16.05.883. Minor Anadromous fish habitat permit

Subsection (b) through (g) on Page 6, line 18 through Page 8, line 2, formerly Page 2, line 20 through Page 3, line 31

These subsections give the commissioner the authority to issue a general minor anadromous fish habitat permit for minor activities under certain conditions. Most of the language existed in the previous version, but the section has been moved and renamed. It was previously the “general permit for fish and wildlife habitat protection” section and is being renamed the “general minor anadromous fish habitat permit.”

As referenced in the title change section above, the terms “other fish” and “wildlife” were removed, leaving only references to anadromous fish.

There were also several changes to the conditions under which the commissioner may issue a general minor anadromous fish habitat permit. See changes below:

Section 5(b) (1) on Page 6, lines 23 through 24, formerly on Page 2, lines 26 through 27:

The previous (b)(1) read “the activity, singly or in combination with other factors, poses little potential to significantly affect fish and wildlife habitat.” The current (b) (1) now reads “the activity will not cause significant adverse effects to anadromous fish habitat.”

Subsection (2) on Page 2, line 28 of the previous version:

This subsection specified that a general permit could only be issued if “the activity does not relate to industrial development.” This was deleted from the current version.

Subsection (d) on Page 7, lines 8 through 15, formerly subsection (c) on Page 3, lines 11 through 16:

Language on lines 8 through 9 was added to allow the commissioner to issue a “regional or geographical authorization for an activity subject to a general minor anadromous fish habitat permit” or require a person to obtain written authorization. The previous version of this section only allowed for written authorization.

Subsection (g) on Page 8, lines 1 through 2:

This is a new subsection that was added to clarify that the definition of “anadromous fish habitat” is consistent with the rest of the bill.

Sec. 16.05.885. Major Anadromous Fish Habitat Permit

Subsection (b) on Page 8, lines 23 through 28, formerly on Page 7, lines 10 through 11:

The previous subsection was deleted and a new one was inserted. It now requires the commissioner or an applicant to collect the needed information for the commissioner to make a determination of whether a proposed activity should be permitted as a major anadromous permit. Additionally, it provides the commissioner, at his discretion, with the ability to recover fees equal to the cost incurred by the department in collecting the necessary information to make a determination under (a) of this section. Previously, the section had simply required the applicant to collect the information.

Subsection (f)(2)(A) and (B) on Page 9, line 31 through page 10, line 7:

These are new subsections that clarify how ADF&G will measure whether a project will cause “substantial damage.” Specifically, they clarify how the department will assess whether anadromous fish will “recover to natural or historic levels” after the project is complete.

Sec. 16.05.887. Permit Conditions and Mitigation Measures

Subsection (a) through (e) on Page 12, line 4 through Page 13, line 10, formerly Page 10, line 11 through Page 13, line 17

Subsection (a)(3) on Page 10, lines 21 through 22 of the previous version:

This subsection was deleted. It had stated that the commissioner may not permit an activity if it “cannot be carried out in a manner that will ensure the proper protection of other fish and wildlife habitat.” This is consistent with changes to the rest of the bill regarding the removal of “other fish” and “wildlife.”

Subsection (a) on Page 12, lines 14 through 15, formerly on Page 10, lines 23 through 24:

Previously, this subsection read that an activity cannot be permitted if it would “convert a wild fish population to a hatchery-dependent fish population.” That language has been altered in the

current version to “will replace or supplement a wild fish population with a hatchery dependent fish population.”

Subsection (a)(4) on Page 12, lines 16 through 17, formerly Page 10, lines 25 through 27:

Previously, this subsection read that an activity cannot be permitted if it would “dewater or relocate a water body or a portion of a water body, for 5 or more years, that the commissioner has specified as important, or as presumed to be important, to anadromous fish habitat under AS 16.05.871(a).” The current subsection now reads “will dewater anadromous fish habitat for a period likely to cause permanent or long-lasting adverse effects to that habitat” This change was made to allow ADF&G more flexibility in determining what period of time is appropriate; in some cases, that period may be more than 5 years and in some, it may be less.

Subsection (a)(5) on Page 12, lines 18 and 19:

This is a new subsection that specifies that a permit may not be issued for an activity if it “will permanently relocate all or portions of a river, lake, or stream if the relocation will disrupt the migration or passage of anadromous fish.”

Sec. 16.05.889. Reconsideration of determinations

Section (a) on Page 13, line 13, formerly Page 11, line 20:

“person adversely affected” was changed to “interested person.” In the previous draft, on Page 3, line 6, “interested person” was used in relation to determinations and the replacement in this section was made to remain consistent regarding reconsideration of determinations.

Section 6 on Page 13, line 27, formerly on Page 12, line 4

Sec. 16.05.891. Exemption for emergency situations.

Page 13, line 30:

“or state agency” was added. In some situations, the state is not the riparian owner and therefore not able to get an emergency permit.

Sec. 16.05.889 Applicability of permitting requirements

Subsections (a) through (b) on Page 14, line 25 through Page 15, line 11:

These are new subsections that contain the existing facility, activity, operation, or project exemption.

The effect of these sections is that an existing facility, activity, operation, or project that has in full force and effect all required state authorizations relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act would remain under the permitting

regime as it existed the day before the effective day of this act, including renewals and minor authorizations in perpetuity, until that existing facility, activity, operation, or project significantly expands or increases in scope, area, or frequency, or otherwise takes action out, those actions for which it was authorized on the day before the effective date of sec. 3 of this Act.

In laymen's terms, those permitted under the current law would stay under the current law, including renewals, in perpetuity, unless they significantly expanded the scope of their permit.



USIBELLI COAL MINE, INC.

P.O. Box 1000 ■ Healy, AK 99743
(907) 683-2226 ■ fax (907) 683-2253

January 26, 2018

Representative Louise Stutes
State Capitol #406
Juneau, Alaska 99801

Sent Via Email: Representative.Louise.Stutes@akleg.gov

RE: House Bill 199 Fish/Wildlife Protection; Permits (HB 199)

Dear Representative Stutes:

Thank you for taking time to meet with members of the Resource Development Council's board of directors in Juneau earlier this week. I appreciated your statement that you do not intend HB 199 to be the cause of stopping community and resource development projects in Alaska. I believe, however, that you heard from many involved in development activities that HB 199 would do just that.

Usibelli Coal Mine, Inc. (UCM) is the only operating coal mine in Alaska. UCM has mined coal in Healy, Alaska since 1943, and remains a family owned and operated company. The six coal-fired power plants in Interior Alaska rely on Usibelli Coal Mine for a stable supply of fuel. Nearly 30 percent of the Interior's energy needs are met by the coal fleet. With approximately 100 year-round employees, UCM is the largest, private, year-round employer in the Denali Borough.

In 2015, the Obama administration undertook a rulemaking process to redefine Waters of the United States (WOTUS) under the Clean Water Act (CWA). That rule, much like HB 199, attempted to create a solution to an unknown problem. Rather than provide clarity and guidance, WOTUS re-wrote the Clean Water Act (CWA). Similarly, HB 199 does not provide simple guidance on the protection of fish habitat - it completely rewrites Title 16 and creates a new and ambiguous regulatory scheme with unattainable standards.

Shortly after the WOTUS rule was finalized in 2015, a very diverse group of farmers, road and transportation builders, forest owners, home builders, manufacturers, cattlemen, public land councils, as well as oil and gas and mining organizations filed suit against WOTUS stating that it redefined the scope of federal jurisdiction as unlawful under the Clean Water Act, Administrative Procedure Act, and United States Constitution. The U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay of the rule shortly after it had gone into effect. As of today, the EPA has proposed a two year delay of the WOTUS implementation while at the same time the agency undertakes a re-write of the 2015 WOTUS rule.

Earlier this week, the US Supreme Court upheld the decision that federal district courts, not courts of appeals, have the ability to initially review legal challenges to the 2015 WOTUS rule. The decision provides clarity with respect to the proper venue for WOTUS litigation. The Environmental Protection Agency and the Army Corps of Engineers have announced their intention to finalize their proposed rule adding a new applicability date to the 2015 rule which will effectively delay implementation of the rule nationwide by two years.

I believe your understanding of WOTUS as well as the implementation and litigation process is warranted as many of the components in HB 199 parallel the rejected WOTUS rule.

Alaska's permitting system already sets high standards for the protection of public health and the environment, including fish habitat. By definition, a permitting process is intended to *permit* an activity. The opposite of permitting an activity would be *denial* of an activity. Alaska does not have a *denial system* – it has a *permitting system*. However, HB 199 creates a denial system.

When the argument is made that “very few, if any, projects have been denied through the current permitting process,” I argue that the permitting process is designed to provide clear expectations and standards. Therefore, if a project cannot meet the expectations and standards included in existing law and regulation, then the project should not be permitted to advance. In practice in Alaska, many projects never get to the decision stage because the project proponents drop out along the way. This is due to market factors as well as the fact that Alaska's rigorous permitting standards weed out projects that will not ultimately pass muster.

In summary, Usibelli Coal Mine is concerned with many aspects of HB 199 including many of the similarities in WOTUS, such as jurisdictional reach, the expansion of regulatory oversight, and ambiguity over the definition of a water body, untenable agency discretion in interpretation, and increased uncertainty for community and resource development projects.

Sincerely,



Lorali M. Simon
Vice President, External Affairs

CC: Members of the House Special Committee on Fisheries
Representative Tarr
Representative Fansler
Representative Kreiss-Tomkins
Representative Eastman
Representative Neuman
Representative Chenault



Council of
Alaska Producers

**Comments on HB199:
FISH/WILDLIFE HABITAT PROTECTION; PERMITS**

February 5, 2018

Representative Louise Stutes
Chair, House Special Committee on Fisheries
State Capitol
Juneau, 99801

Dear Representative Stutes and Members of the House Special Committee on Fisheries:

The Council of Alaska Producers (CAP) appreciates the opportunity to provide comments on HB199 "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."

CAP is a non-profit trade association formed in 1992 to represent the interests of large metal mines and mine developmental projects in Alaska. CAP informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

Thank you for inviting state regulators to testify before your committee. We hope that you will also add the Alaska Department of Natural Resources (ADNR) to the list given their responsibility for regulating water. We have attached technical questions that should be considered as you review this bill.

CAP remains concerned that mining projects could not be developed under HB199 and that it would also jeopardize the continuation or expansion of existing mines. The operating mines in Alaska were built under modern environmental laws and their operations are strictly monitored by state and federal agencies. Their excellent track records are testament to both their commitment to responsible development and to Alaska's world class permitting system. This vital industry directly and indirectly provides almost 9,000 jobs in Alaska, revenue to state and local governments, and benefits to Alaska Natives through the ANCSA revenue sharing requirements.

We are equally concerned that HB199 would endanger Alaska jobs and threaten any expansion of our state's limited transportation infrastructure, pipelines, and hydroelectric projects. It would also restrict opportunities for Alaska communities to grow and prosper.

Thank you for considering the true regulatory impact of this bill.

Sincerely,

Karen Matthias
Executive Director

HB 199

Alaska Department of Fish and Game (ADF&G)

1. Title 16
 - a. Fish habitat permits contain conditions that must be met for compliance. Are these currently enforceable?
 - b. Can you give an example where the current state system has failed to protect anadromous fish habitat?
2. Proponents of this bill have used the avoidance of "death by a 1000 cuts" to justify support for habitat protections.
 - a. Can you explain how habitat degradation occurs in communities and near population centers?
 - b. How will this new permitting scheme impact the general public, i.e. those accessing anadromous habitat for hunting, fishing and recreation? How will it impact the local homebuilder? Are there activities that are currently unpermitted that will now require a permit? Examples?
3. The current fish habitat permit for the latest tailings expansion at the Greens Creek Mine acknowledges that Greens Creek will have impacts on anadromous fish habitat, however it recognizes that the project has gone through a federal EIS process and that impacts will be mitigated.
 - a. Under HB199, would a major anadromous permit be issued for an expansion like this since the Environmental Impact Statement (EIS) for the tailings expansion requires water monitoring and treatment in perpetuity?
4. Project impacts to wetlands and waters of the US are analyzed and permitted through the US Army Corps of Engineers (USACOE) 404 permitting process. Can you explain how ADF&G currently works with the USACOE to protect anadromous fish habitat?
 - a. What is the difference between USACOE jurisdictional waters and the anadromous fish habitat definition in this bill?
 - b. Can you compare and contrast the mitigation policies of the USACOE and the scheme outlined in this bill? What would be considered off-site or on-site mitigation?
 - c. Would this proposed permitting scheme work in conjunction with the USACOE process or would it be completely separate process?
 - d. Would this add time and delays? Would it be possible for the USACOE 404 permit and the new fish habitat permit to have conflicting requirements?
5. The Alaska Department of Natural Resources (ADNR) has permitting authority for water rights, Temporary Water Use Permits (TWUP), and in-stream flow reservations. How does ADF&G work with ADNR to ensure these permits protect fish habitat?

Alaska Department of Transportation (ADOT)

1. In April 2017, Taylor Horn of DOT testified to this committee that there was already a well-defined public process. He expressed concern that the bill would add delays, duplication and increase costs.
 - a. Is this still DOT's position?
 - b. Are there some road construction projects that would need a major anadromous fish habitat permit?
 - c. Is it possible that some road construction projects would not be able to obtain a major permit?
 - d. What in particular would add delays, duplication and increase costs?

- e. How will the removal of the ability to use off-site mitigation impact ADOT?

Alaska Department of Environmental Conservation (ADEC)

1. In April 2017, Wade Strickland of ADEC testified to this committee that HB199 could impact several hundreds of permitted facilities that have mixing zones in freshwater throughout the state from local communities to small industry and large industry. The Committee Substitute grandfathers existing facilities unless the facility significantly expands or increases in scope, area, or frequency.
 - a. Is facility expansion often required when a community grows?
 - b. If that facility has a mixing zone, what would they need to do to come into compliance with HB199 in order to get an anadromous fish habitat permit?
2. ADEC permits and regulates over 215 municipal landfills in communities throughout the state through its solid waste management program. How would the proposed scheme in HB199 impact this program?
 - a. Are landfills permanent in nature? Would any existing landfills be prohibited from acquiring permits under proposed S.16.05.887 as they would necessitate "water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention in perpetuity"?

Alaska Department of Natural Resources (ADNR)

1. ADNR has permitting authority for water rights, Temporary Water Use Permits (TWUP), and in-stream flow reservations. How does ADNR ensure these permits protect fish habitat?
2. The Committee Substitute grandfathers existing facilities unless the facility significantly expands or increases in scope, area, or frequency.
 - a. Once a mine is permitted and starts production, is it common for it to significantly expand or increase in scope, area, or frequency?
 - b. Would any of the five existing large metal mines be impacted by this?
 - c. In your opinion, would they be able to obtain a major anadromous fish habitat permit or would they be shut down?
 - d. Would the large metal mining projects that are currently in permitting or close to permitting be able to obtain a major anadromous fish habitat permit?
3. S.16.05.887(c) Prohibition of offsite mitigation
 - a. In your view, can unavoidable impact in a project area be addressed through mitigation in other areas?
4. S.16.05.885 indicates that a performance bond would be required for an activity in a written permit determination. This would be in addition to the existing bonding process.
 - a. Does this new requirement duplicate the ADNR's existing bonding process for reclamation and closure costs for the site?

Dear Rep. Stutes and members of the House Fisheries Committee,

Thank you for introducing HB 199, proactive legislation which modernizes Alaska's fish habitat permitting law, as outlined by the Alaska Board of Fisheries in a recent letter to your committee. We are writing to express our support for this long-due update to Alaska's salmon habitat protection law.

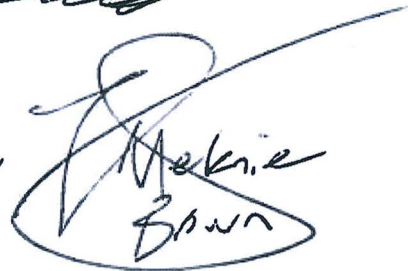


Salmon are integral to Alaska's economy and quality of life. As fishermen our incomes are directly impacted by water quality, in-stream flow levels, fish passage and other components of healthy salmon habitat. We need science-based standards to protect salmon habitat and encourage responsible development.

Currently the permitting law only applies to waters listed in the Anadromous Waters Catalogue, which ADF&G estimates to include less than 50% of the salmon-bearing waterbodies in our state and in places like the MatSu, less than 30%. **We need better assurance that ADF&G has the authority it needs to protect salmon habitat.**

Furthermore, there is no current requirement for fishermen, or any of the public, to be notified when development permits are issued. If we want to find out what is happening near one of our fisheries we have to file an information request with the department.

The economic value of Alaska's commercial fishing industry extends far beyond our individual incomes; we contribute significantly to support services in addition to our daily costs of living in Alaska's fishing communities. If our fisheries are well-managed we will continue to contribute to Alaska's economy in perpetuity. Providing adequate protection to fish habitat is part of sound management, and is the single most effective way to ensure that this enduring cornerstone of the State's sustainable economy is not eroded as we seek fiscal solutions in difficult economic times. **Please ensure that Alaska's salmon resources retain their value for generations to come by passing HB 199.**

Sincerely,



Oliver Lonkin

Makie Brown



First Name	Last Name
Carl	Adams
Cynthia	Adams
Cesar	Alvarado
Brad	Alzi
Claudia	Anderson
Brooks	Areson
Corey	Arnold
Jennifer	Aspelund
Tracy	Asselin
Everett	Athorp
Todd	Bailey
Boris	Basargin
Patrick	Baum
Anneke	Beach-Garcia
Eric	Beamer
Samantha	Becker
Celeste	Beck-Godell
Nancy	Behnken
Brian	Bennett
David	Berhardt
Ron	Blake
Iris	Blakeslee
Rich	Blanc
Lindsey	Bloom
Zenia	Borenin
Dylan	Braund
Melanie	Brown
Keith	Brown
Maggie	Bursch
Olcay	Caf
Alex	Carleton
Lanny	Carpenter
Charles	Clement
Sommers	Cole
Jolene	Cox
Keith	Cox
Ben	Crew
Richard	Curran
Cameron	Currie
Kevin	Currier

Woody	Cyr
Dugan	Daniels
John Paul	Davies
Anne Marie	DeCollibus
Anna Maria	Dewing
Maria	Dosal
David	Driscoll
Heidi	Dunlap
Taylor	Dyer
Morgan	Edminster
Fred	Erofeeff
Sean	Fansler
Johnny	Fishmonger
Louie	Flora
Marcus	Fox
Sarah	Frances
Michael	Friccero
John	Glotfelty
Kevin	Graham
Tyler	Green
Ronn	Griffin
Glenn	Gustafson
Travis	Hall
Jacob	Hand
Cole	Hansen
Heather	Hardcastle
Kirk	Hardcastle
Kelsey	Hawley
Darren	Heath
Karen	Hebert
Hannah	Heimbuch
Sierra	Henry
Jay	Herring
Tara	Hines
Douglas	hogen
Ryan	Horwath
Mike	Houston
Joe	Huddleston
Brad	Jensen
Martin	Johnson
Forrest	Johnson

Michael	Johnson
Ken	Jones
Peri	Jordan
Sarah	Jordan
Joel	Kawahara
Misty	Kean
Ben	Kerwin
Kerry	Kirkpatrick
Peter	Kling
Cathryn	Klusmeier
Chris	Knight
Dave	Koester
Heather	Koponen
Rowan	Kurtz
Alexus	Kwachka
Taylor	Landrud
Zach	LaPerriere
Scott	Lesh
Cliff	Lewis
Ann	Linville
John	Little
Barbara	Loutrel
Evan	Love
Matthew	Luck
Keith	Lutz
Ilia	M.
Westin	Mackenzie
Carie	Mackenzie
Tanner	Mackiewicz
Eugene	Maltzeff
Matt	Marinkovich
Donald	Martinson
Stacy	Mayovsky
Dane	McFadden
Stu	McTaggart
Brianne	Mecum
Robert	Meyer
Andy	Mezirow
Jordan	Miller
Tim	Miller
Nora	Miller

Lorna	Mills
Cale	Montrone
Elizabeth	Moore
Marisa	Morgan
Howard	Mozen
Lucas	Mullen
Hillary	Mullen
Kathleen	Murphy
Glen	Nash
Russell	Novak
Eric	Olsen
Todd	Paryman
Eric	Patton
Dean	Peper
Duane	Petersen
Brandt	Petersen
Rebecca	Platt
Charles	Piecuch
	Pietron
Tim	Pine
Lance	Preston
Joseph	Princen
Jamison	Ramsey
David	Ranney
Serena	Ranney
Tyone	Raymond
chad	Reel
armin	reimnitz
Chris	Rhoads
Chuck	Ridley
Nicole	Riga
James	Riggle
Katie	Rinyland
Pete	Roddy
Trevor	Rollman
Tom	Rollman
Levi	Rollman
Sonja	Rootvik
Laurie	Rootvik
Konrad	Schaad
Ian	Seward

Nira	Skeele
Nora	Skeele
Tasha	Skolnick
Dave	Somerville
Nick	Sotiropoulos
Amy	Sprenger
Lucy	Squibb
Sammy	Steen
Kirstyn	Sterling
Kelly	Stier
Torey	Stout
Lillian	Sundt
John	Sutton
Reba	Temple
Reed	Tennyson
Allison	Tennyson
Ronald	Thompson
Peter	Thompson
Charles	Treinen
Kay	Underwood
Michael	Utt
Malcolm	Vance
Ian	Vincent
Anthony	Vlahovich
Mazwell	Vukas
Steven	Vukelich
William	Walker
Kaleb	Westfall
Christopher	White
Bruce	Whiting
Kelley	Whitson
Marissa	Wilson
Zack	Worrell