

**HB 199**

**(FILE**

**4)**

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

**City of Seldovia  
Resolution 18-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELDOVIA, ALASKA  
SUPPORTING AN UPDATE TO THE ALASKA STATUTES TITLE 16 HABITAT  
PERMITTING LAWS THROUGH HOUSE BILL 199**

**WHEREAS**, the salmon runs are an intricate and vital part of the Alaskan and Seldovian economy, culture and overall way of life; and

**WHEREAS**, the Alaska Constitution requires that we reserve fish and wildlife for the people for common use and that they are sustainably managed; and

**WHEREAS**, Seldovia as a whole is a fishing community and the families and community of Seldovia depend greatly on the fishing habitat being preserved for commercial, sports, and subsistence use; and

**WHEREAS**, the current law directs the Alaska Department of Fish and Game to approve any resource extraction proposal near salmon stream unless the plans are, "insufficient for the proper protection of fish and game" and does not define "proper protection of fish and game"; and

**WHEREAS**, the current law for protecting salmon habitat has not been updated since its inception over half a century ago; and

**WHEREAS**, the City of Seldovia supports Title 16 be updated to clarify the important habitat characteristics needed to support salmon runs, make sure rivers with salmon receive protection, and give Alaskans a voice in order to protect this vital asset; and

**WHEREAS**, Seldovia would be best served to have HB199 "rivers, lakes, and streams" to exclude any saltwater lagoon together with the tidal channel connecting it to the ocean where the channel is constrained by bedrock at least one point along their length. ['Constrained by bedrock' means that bedrock is limiting erosion on both banks of the channel at or above mean higher high water. For this purpose a saltwater lagoon is defined as a mostly confined water body into which ocean water (salt water) flows during a mean higher high water tide.]

**NOW THEREFORE: BE IT RESOLVED THAT:** the City Council of the City of Seldovia, Alaska; requests updating Alaska's Fish Habitat Permitting Laws to ensure that the habitats that support wild salmon continue to sustain all of the cultural and economic benefits that Alaskans have benefited from year after year since time immemorial.

**PASSED AND APPROVED** by a duly constituted quorum of the City Council of the City of Seldovia, on this 29 day of February, 2018.

**ATTEST:**

  
Heidi Geagel, City Clerk

**APPROVED:**

  
Dean Lent, Mayor



# News

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## **BBNC Urges Legislature To Review And Update Alaska Laws Protecting Salmon And Salmon Habitat**

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Posted on | January 5, 2018

The Alaska legislature has not updated the state's anadromous fish habitat protection laws (Title 16) since statehood. Bristol Bay Native Corporation (BBNC) understands there are ongoing and parallel efforts both in the legislature and through other public processes to revise these laws. Without choosing sides regarding the merit of these efforts, BBNC agrees it is time to review and update Title 16. During the coming year, BBNC will work with the Walker administration, the legislature and other stakeholders to identify improvements to these statutes and collaboratively make appropriate updates so that salmon and salmon habitat are better protected but responsible resource development is not unduly hampered.

BBNC's positions on Title 16 and other resource issues are grounded in our belief that decisions about how Alaska balances the uses of competing resources should always put "Fish First". Nowhere is this more true than in Bristol Bay which is home to the world's greatest remaining wild sockeye salmon fisheries. This past year, more than 60 million sockeye returned to Bristol Bay. These fish rear in the region's headwaters and their harvest this past summer supported thousands of jobs, millions in wages, and billions in total economic output. These salmon also provide subsistence for

Nushagak and Kvichak river systems. Despite the fact that the Pebble Limited Partnership (PLP) has now proposed a smaller mine footprint, our Directors and shareholders still believe it is the wrong mine in the wrong place.

BBNC also believes that responsible resource development can and should take place in Bristol Bay and throughout Alaska. To BBNC, responsible resource development entails projects that align with local opinion and do not threaten fisheries and fish habitat. The protections in Title 16 help ensure that development projects do not threaten Alaska's anadromous fisheries. It is imperative that Alaska periodically review and update those statutes. This has not been done in nearly 60 years. It is time for the state legislature to do so.

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# ORGANIZED VILLAGE OF KASAAN

P. O. Box 26-Kasaan \* Ketchikan, Alaska 99950-0340  
(907) 542-2230 \* (fax) 907-542-3006

## RESOLUTION OVK 17-12-001

### **A Resolution of the Organized Village of Kasaan in Support of Updating Alaska Habitat Laws to Adequately Protect Salmon Spawning and Rearing Areas**

**WHEREAS**, the Organized Village of Kasaan is a federally recognized Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) and May 1, 1936 (49 Stat. 1250); and

**WHEREAS**, the Corporate Charter of the Organized Village of Kasaan (Ratified October 15, 1938) states in its Purpose and Existence, "In order to further the economic development of the Indians residing in the neighborhood of Kasaan, Alaska, by conferring upon the Organized Village of Kasaan corporate rights and powers; and to enable this Village and its members to undertake enterprises designed to secure for the members of the corporation an assured economic independence..." and

**WHEREAS**, the Organized Village of Kasaan (hereinafter "OVK") is governed by a Council of elected representatives composed of a President and six members who act in accordance with the powers granted to it by its Constitution and By-Laws (Ratified on October 15, 1938); and

**WHEREAS**, the Kasaan Haida people have depended on salmon to sustain their cultural, traditional, spiritual, and economic well-being and way of life; and

**WHEREAS**, salmon are a critical and irreplaceable food source for the Organized Village of Kasaan where traditionally harvested foods account for up to 33% of their caloric intake and up to 60% of the protein consumed in rural Alaska is salmon; and

**WHEREAS**, the OVK believes that current habitat laws, as written in Title 16, are too vague and open to different interpretation with changing administrations, creating uncertainty in the permit process and do not adequately and consistently safeguard against harmful impacts to salmon; do not currently allow for a public input process, leading to a lack of transparency; and place the burden of proving salmon use the waterways proposed for development, which can be expensive and often falls to local communities, Tribes, and non-profits; and

**WHEREAS**, the OVK seeks to reaffirm its support for habitat protections that would ensure the sustainability of river salmon and other species to provide for healthy populations for generations to come; and

**WHEREAS**, the OVK recognizes that economic and community development are needed in rural Alaska, but believe development must be balanced with adequate protections that would reduce or mitigate negative and harmful impacts salmon resources; and

**WHEREAS**, OVK Tribal Citizens have already experienced tremendous hardship from declines in salmon populations due to unknown factors, but are undoubtedly impacted by changes in climate in both the freshwater and marine environments; and

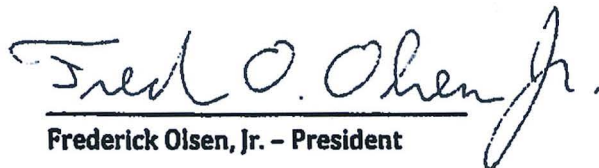
**NOW THEREFORE BE IT RESOLVED**, the Organized Village of Kasaan Tribal Council unanimously supports the Stand for Salmon ballot initiative, which amends the State of Alaska Title 16 habitat laws; and

**FURTHER BE IT RESOLVED**, the OVK preferentially supports the ballot initiative over the current house bill (HB 199), as the house bill could change significantly through the legislative committee process before being passed in to law and be influenced by industry lobbyists, while the ballot initiative would give the voters of Alaska a voice; and

**FURTHER BE IT RESOLVED**, the OVK, in particular, supports the ballot initiative because it would clearly define "the proper protection of fish and game" and clarify important habitat characteristics to support salmon runs, such as water quality, flow levels, and fish passage; would include a public process for commenting on permits so that Tribes can bring local and traditional knowledge to the table; and would assume all waterways are capable of supporting salmon and would place the burden of proving that a waterway does not get used by salmon on the developer, who, generally, has the monetary resources to conduct such studies.

#### **CERTIFICATION**

**APPROVED, PASSED AND ADOPTED** by a duly constituted quorum of the OVK Tribal Council on this 21 day of December 2017; by a "Telephone Poll, Roll Call Vote: Della Coburn: yes, Audrey Escoffon: yes, Glenn Hamar: yes, Ronald Leighton: yes, And Marina Anderson: yes.

  
Frederick Olsen, Jr. - President

ATTESTED:

  
Audrey Escoffon -Secretary

**Levelock Village Council**  
**RESOLUTION # 02-06-18C**

**Support for Updating Alaska Habitat Laws to Adequately Protect Salmon Spawning and Rearing Areas**

**WHEREAS**, the *Levelock Village Council* is committed to act with a unified voice for the conservation of *Kvichak & Alagnak Rivers* inside the *Bristol Bay watershed* salmon fisheries to protect our traditional way of life and well-being, and establish a comprehensive management plan and program based upon indigenous knowledge systems and scientific principles; and

**WHEREAS**, the *Levelock Village Council* has demonstrated commitment and sacrifice for the conservation and protection of *Kvichak River* salmon, to provide for healthy and sustainable populations; and

**WHEREAS**, the community of *Levelock* depends on salmon to sustain their cultural, traditional, spiritual, and economic well-being and way of life; and

**WHEREAS**, salmon are a critical and irreplaceable food source for *the Levelock village* where traditionally harvested foods account for up to 33% of their caloric intake and up to 60% of the protein consumed in rural Alaska is salmon; and

**WHEREAS**, *The Bristol Bay Tribes* have joined together since 2013, to make informed decisions to conserve and protect *Bristol Bay* salmon, and its watershed.

**WHEREAS**, the *Levelock Village Council* unanimously supports all resolutions of "Protection of Critical Salmon Spawning & Rearing Habitat" which opposes all mining and dam development projects within the entire *Bristol Bay Watershed*; and

**WHEREAS**, the *Levelock Village Council* seeks to reaffirm its support for habitat protections that would ensure the sustainability of the *Bristol Bay Watershed Red* salmon and other salmon species to provide for healthy populations for generations to come; and

**WHEREAS**, *Levelock Village Community members* have considerable and valuable local and traditional knowledge on salmon spawning and rearing areas; and

**WHEREAS**, the *Levelock Village Council* recognizes that economic and community development are needed in rural Alaska for *Levelock and surrounding villages* to thrive, but believe development must be balanced with adequate protections that would reduce or mitigate negative and harmful impacts salmon resources; and

**WHEREAS**, the *Levelock Village Council* believes that current habitat laws, as written in Title 16, are too vague and open to different interpretation with changing

administrations, creating uncertainty in the permit process and do not adequately and consistently safeguard against harmful impacts to salmon, do not currently allow for a public input process, leading to a lack of transparency; and place the burden of proving salmon use the waterways proposed for development, which can be expensive and often falls to local communities, Tribes, and non-profits; and

**WHEREAS**, *Levelock Village Council* is undoubtedly impacted by changes in climate in both the freshwater and marine environments; and

**WHEREAS**, development projects that do not adequately protect salmon spawning and rearing areas could exacerbate the Bristol Bay Watersheds great fishery that we thrive on, impacts from climate change, and/or impede the preservation efforts made possible through the years of sacrifices from *Levelock Village Council*; and

**NOW THEREFORE BE IT RESOLVED**, the *Levelock Village Council* unanimously supports the Stand for Salmon ballot initiative, which amends the State of Alaska Title 16 habitat laws; and

**FURTHER BE IT RESOLVED**, the *Levelock Village Council* preferentially supports the ballot initiative over the current house bill (HB 199), as the house bill could change significantly through the legislative committee process before being passed in to law and be influenced by industry lobbyists, while the ballot initiative would give the voters of Alaska a voice, and

**FURTHER BE IT RESOLVED**, the *Levelock Village Council*, in particular, supports the ballot initiative because it would clearly define "the proper protection of fish and game" and clarify important habitat characteristics to support salmon runs, such as water quality, flow levels, and fish passage; would include a public process for commenting on permits so that *the Levelock community members* can bring local and traditional knowledge to the table; and would assume all waterways are capable of supporting salmon and would place the burden of proving that a waterway does not get used by salmon on the developer, who, generally, has the monetary resources to conduct such studies.

#### CERTIFICATION

I hereby certify that all *Levelock Village Council members* passed this resolution in a unanimous vote of, (5 yes) and (0 no.) on January 6<sup>th</sup>, 2018 in Levelock, Alaska.

  
\_\_\_\_\_  
President - Alexander Tallekpalek

  
\_\_\_\_\_  
Secretary - Hans Apokedak

Tribal Village of Levelock Official Members are, President - Alexander Tallekpalek, Vice President - Raymond Apokedak, Secretary - Hans Apokedak, Member - Sergie Chukwak, Member - Greg Andrew Jr

**Levelock Village Council**  
**RESOLUTION # 02-06-18C**

**Support for Updating Alaska Habitat Laws to Adequately Protect Salmon Spawning and Rearing Areas**

**WHEREAS**, the *Levelock Village Council* is committed to act with a unified voice for the conservation of *Kvichak & Alagnak Rivers* inside the *Bristol Bay watershed* salmon fisheries to protect our traditional way of life and well-being, and establish a comprehensive management plan and program based upon indigenous knowledge systems and scientific principles; and

**WHEREAS**, the *Levelock Village Council* has demonstrated commitment and sacrifice for the conservation and protection of *Kvichak River* salmon, to provide for healthy and sustainable populations; and

**WHEREAS**, the community of *Levelock* depends on salmon to sustain their cultural, traditional, spiritual, and economic well-being and way of life, and

**WHEREAS**, salmon are a critical and irreplaceable food source for *the Levelock village* where traditionally harvested foods account for up to 33% of their caloric intake and up to 60% of the protein consumed in rural Alaska is salmon; and

**WHEREAS**, *The Bristol Bay Tribes* have joined together since 2013, to make informed decisions to conserve and protect *Bristol Bay* salmon, and its watershed.

**WHEREAS**, the *Levelock Village Council* unanimously supports all resolutions of "Protection of Critical Salmon Spawning & Rearing Habitat" which opposes all mining and dam development projects within the entire *Bristol Bay Watershed*; and

**WHEREAS**, the *Levelock Village Council* seeks to reaffirm its support for habitat protections that would ensure the sustainability of the *Bristol Bay Watershed Red* salmon and other salmon species to provide for healthy populations for generations to come; and

**WHEREAS**, *Levelock Village Community members* have considerable and valuable local and traditional knowledge on salmon spawning and rearing areas; and

**WHEREAS**, the *Levelock Village Council* recognizes that economic and community development are needed in rural Alaska for *Levelock and surrounding villages* to thrive, but believe development must be balanced with adequate protections that would reduce or mitigate negative and harmful impacts salmon resources; and

**WHEREAS**, the *Levelock Village Council* believes that current habitat laws, as written in Title 16, are too vague and open to different interpretation with changing

administrations, creating uncertainty in the permit process and do not adequately and consistently safeguard against harmful impacts to salmon; do not currently allow for a public input process, leading to a lack of transparency; and place the burden of proving salmon use the waterways proposed for development, which can be expensive and often falls to local communities, Tribes, and non-profits; and

**WHEREAS**, *Levelock Village Council* is undoubtedly impacted by changes in climate in both the freshwater and marine environments; and

**WHEREAS**, development projects that do not adequately protect salmon spawning and rearing areas could exacerbate the Bristol Bay Watersheds great fishery that we thrive on, impacts from climate change, and/or impede the preservation efforts made possible through the years of sacrifices from *Levelock Village Council*; and

**NOW THEREFORE BE IT RESOLVED**, the *Levelock Village Council* unanimously supports the Stand for Salmon ballot initiative, which amends the State of Alaska Title 16 habitat laws; and

**FURTHER BE IT RESOLVED**, the *Levelock Village Council* preferentially supports the ballot initiative over the current house bill (HB 199), as the house bill could change significantly through the legislative committee process before being passed in to law and be influenced by industry lobbyists, while the ballot initiative would give the voters of Alaska a voice, and

**FURTHER BE IT RESOLVED**, the *Levelock Village Council*, in particular, supports the ballot initiative because it would clearly define "the proper protection of fish and game" and clarify important habitat characteristics to support salmon runs, such as water quality, flow levels, and fish passage; would include a public process for commenting on permits so that *the Levelock community members* can bring local and traditional knowledge to the table; and would assume all waterways are capable of supporting salmon and would place the burden of proving that a waterway does not get used by salmon on the developer, who, generally, has the monetary resources to conduct such studies.

#### CERTIFICATION

I hereby certify that all *Levelock Village Council members* passed this resolution in a unanimous vote of, (5 yes) and (0 no.) on January 6<sup>th</sup>, 2018 in Levelock, Alaska.

  
\_\_\_\_\_  
President - Alexander Tallekpalek

  
\_\_\_\_\_  
Secretary - Hans Apokedak

Tribal Village of Levelock Official Members are, President - Alexander Tallekpalek, Vice President - Raymond Apokedak, Secretary - Hans Apokedak, Member - Sergie Chukwak, Member - Greg Andrew Jr

**YUKON RIVER INTER-TRIBAL FISH COMMISSION  
RESOLUTION 2017-4**

**Support for Updating Alaska Habitat Laws to Adequately Protect Salmon Spawning and Rearing Areas**

**WHEREAS**, the Yukon River Inter-Tribal Fish Commission is committed to act with a unified voice for the conservation and restoration of Yukon River salmon fisheries to protect our traditional way of life and well-being, and establish a comprehensive management plan and program based upon indigenous knowledge systems and scientific principles; and

**WHEREAS**, the Yukon River Tribes have demonstrated commitment and sacrifice for the conservation and restoration of Yukon River salmon, to provide for healthy and sustainable populations; and

**WHEREAS**, the Yukon River Tribes depend on salmon to sustain their cultural, traditional, spiritual, and economic well-being and way of life; and

**WHEREAS**, salmon are a critical and irreplaceable food source for Yukon River Tribes where traditionally harvested foods account for up to 33% of their caloric intake and up to 60% of the protein consumed in rural Alaska is salmon; and

**WHEREAS**, the Yukon River Tribes have come together in the past four years, 2014 – 2017, to make informed decisions to conserve and protect Yukon River king salmon, supporting conservative management measures and voluntary harvest reductions. Because of these tribal efforts to conserve king salmon, the escapement goal at the Canadian border was met three years in a row for the first time since 2007 and nearly all escapement goals in Alaska were met each of the three years; and

**WHEREAS**, the Yukon River Inter-Tribal Fish Commission unanimously supported resolution 2016-2: "Protection of Critical Salmon Spawning & Rearing Habitat" at the annual meeting in Fairbanks in 2016, which opposed all mining and dam development projects within the entire Yukon River Watershed; and

**WHEREAS**, the Yukon River Inter-Tribal Fish Commission seeks to reaffirm its support for habitat protections that would ensure the sustainability of the Yukon River king salmon and other salmon species to provide for healthy populations for generations to come; and

**WHEREAS**, Yukon River Tribes have considerable and valuable local and traditional knowledge on salmon spawning and rearing areas; and

**WHEREAS**, the Yukon River Inter-Tribal Fish Commission recognizes that economic and community development are needed in rural Alaska for Yukon River Tribes to thrive, but believe development must be balanced with adequate protections that would reduce or mitigate negative and harmful impacts salmon resources; and

**WHEREAS**, the Yukon River Inter-Tribal Fish Commission believes that current habitat laws, as written in Title 16, are too vague and open to different interpretation with changing

administrations, creating uncertainty in the permit process and do not adequately and consistently safeguard against harmful impacts to salmon; do not currently allow for a public input process, leading to a lack of transparency; and place the burden of proving salmon use the waterways proposed for development, which can be expensive and often falls to local communities, Tribes, and non-profits; and

**WHEREAS**, Yukon River Tribes have already experienced tremendous hardship from declines in salmon populations due to unknown factors, but are undoubtedly impacted by changes in climate in both the freshwater and marine environments; and

**WHEREAS**, development projects that do not adequately protect salmon spawning and rearing areas could exacerbate these population declines, impacts from climate change, and/or impede the recovery efforts made possible through the years of sacrifices from Yukon River Tribes.

**NOW THEREFORE BE IT RESOLVED**, the Yukon River Inter-Tribal Fish Commission unanimously supports the Stand for Salmon ballot initiative, which amends the State of Alaska Title 16 habitat laws; and

**FURTHER BE IT RESOLVED**, the Yukon River Inter-Tribal Fish Commission preferentially supports the ballot initiative over the current house bill (HB 199), as the house bill could change significantly through the legislative committee process before being passed in to law and be influenced by industry lobbyists, while the ballot initiative would give the voters of Alaska a voice; and

**FURTHER BE IT RESOLVED**, the Yukon River Inter-Tribal Fish Commission, in particular, supports the ballot initiative because it would clearly define "the proper protection of fish and game" and clarify important habitat characteristics to support salmon runs, such as water quality, flow levels, and fish passage; would include a public process for commenting on permits so that Yukon River Tribes can bring local and traditional knowledge to the table; and would assume all waterways are capable of supporting salmon and would place the burden of proving that a waterway does not get used by salmon on the developer, who, generally, has the monetary resources to conduct such studies.

#### CERTIFICATION

I hereby certify that all Commissioners present unanimously passed this resolution, October 23, 2017, Fairbanks, Alaska.

  
Interim Chair

March 14, 2018

Representative Louise Stutes  
State Capitol Room 406  
Juneau, Alaska 99801



RE: House Bill 199 Fish Habitat Permitting Bill

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

The Alaska Society of American Foresters (SAF), which is the professional forestry organization in Alaska, is writing you today to express our concern with HB 199, which we believe as written (version N) will place an undue burden on forest operations and silvicultural treatments in Alaska.

SAF's core values are that forests are fundamental for human welfare, can be sustained through meeting environmental and economic needs, and that Foresters serve society by providing sound knowledge and professional management of forested landscapes. In Alaska there are 102 professional members of SAF representing the forest products industry, forestry consultants, municipal, state and federal government, tribal forestry, and academia.

Alaska SAF has concerns with House Bill 199 and its relationship to existing protections for fish habitat such as the Alaska Forest Resources Protection Act (FRPA). We feel that FRPA has been developed using scientifically rigorous methods and field tested with professionals on the ground. It appears that HB 199 has not met the same rigorous development process that FRPA has undergone and there has been no collaborative effort to draft this bill.

The Alaska Board of Forestry (BOF) advises the State of Alaska on the effectiveness of FRPA. We encourage you to talk to the BOF and review the record which substantiates the effectiveness and success of FRPA. The Best Management Practices (BMP's) under FRPA were created in a collaborative effort with foresters, habitat biologists, and water quality experts. In addition, annual reports by regulatory agencies show that FRPA is successful at both protecting fish habitat and water quality.

Alaska SAF recognizes the importance of fish as a subsistence, sport, and commercial resource for Alaska. However, it is not clear how HB 199 will improve on this critical resource. There does not appear to be any scientific analysis behind this legislation. It appears to assume that recent decreases in anadromous fish populations are a result of reductions in habitat suitability caused by surface resource development projects. However, there are many potential contributing factors such as off shore harvest, predation, or changes in ocean conditions.

As previously stated, this bill as written (version N) would place an undue burden on forest operations and silvicultural treatments in Alaska including treatments for improving wildlife habitat. This burden is especially unwarranted given there is no evidence that by following FRPA, fish habitat is not being adequately protected. The effectiveness of FRPA is a testament to state and private land owner's commitment to protecting fish habitat and water quality given the large number of inspections that have happened statewide. Also, the State of Alaska is in need of a diversified economy and market

conditions for Alaskan forest resources are such that additional operational costs can make the sale of timber and silvicultural treatments cost prohibitive.

Alaska SAF feels that the Anadromous Waters Catalog (AWC) is a tool that should continue to be developed to identify which waterbodies are to be regulated as anadromous waters. We recognize that the AWC is not complete but as new waterbodies are identified or if waterbodies were incorrectly classified they should be included or updated in the catalog. This makes for more accurate planning of forest operations. Also, FRPA already protects both cataloged and non-cataloged waters with riparian buffer strips and effective drainage on forest infrastructure. There is a very successful collaborative process under FRPA between public and private land owners and the Alaska Department of Fish and Game (ADF&G) to jointly identify and protect fish bearing streams. SAF feels strongly that this kind of state and private partnership is in the best public interest and should be upheld as a model for governing in an environment of limited public funding.

Under the section on determination of Anadromous Fish Habitat, this bill states that ADF&G will define the scope of the adjacent riparian areas that are considered anadromous fish habitat. FRPA already defines those adjacent riparian areas and it is unclear why a change is needed. Alaska SAF believes that because regulatory agencies are stating in annual reports that FRPA is working that there is no need to alter the buffer widths of surface waterbodies. Any change, if implemented, should be developed through a collaborative and scientifically driven method.

Alaska SAF feels that FRPA should be the basis for forest operations in Alaska. It is an Act that has been scientifically developed to protect non-timber resources while still allowing for economic activity and development of the resource. Alaska SAF feels that any changes to regulatory requirements of forest operations on state, municipal, private or trust lands in Alaska should be made through the FRPA effectiveness monitoring program which is part of the adaptive management strategy of the Alaska Division of Forestry.

We appreciate your time in reviewing our concerns on this bill and we make ourselves available to answer any questions if needed. We also hope to be part of the solution in protecting both fisheries resources as well as forestry operations in Alaska.

Sincerely,



Jeremy Douse  
Chair, Alaska SAF  
[alaskasaf@gmail.com](mailto:alaskasaf@gmail.com)

cc: Members of the House Special Committee on Fisheries

Representative Edgmon  
Representative Tarr  
Representative Eastman

Representative Kreiss-Tomkins  
Representative Chenault  
Representative Neuman

# Alaska State Legislature



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Majority Whip

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Fisheries Committee  
Transportation Committee

**Member**  
Rules Committee  
Labor and Commerce Committee  
Legislative Council

**REPRESENTATIVE LOUISE STUTES**

**District 32**

**Kodiak-Cordova-Yakutat-Seldovia**

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Alaska State Capitol, #406  
Juneau, AK 99801

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Kodiak, AK 99615  
Phone: (907) 486-8872  
Fax: (907) 486-5264

## HB 199 Explanation of Changes Version N to I

### Page 1, lines 2 and 3:

- The bill's title was slightly altered. It had previously read "and relating to fishways and the protection of anadromous and **other fish** habitat." It now reads "and relating to fishways and the protection of anadromous **fish** and **anadromous fish** habitat." The major difference being that the protection of the anadromous fish was included instead of only referencing habitat. Other fish habitat was also removed.

### Page 1 line 5 through Page 2, line 28:

- **Added a new Section 1** that adds legislative findings and policy language to the uncodified law of the State of Alaska:
- **Subsection (a)** on Page 1, line 7 through Page 2, line 4 contains language stating the legislature's policy to ensure sustainable fisheries by protecting anadromous fish and habitat, having standards governing activities that protect anadromous fish and habitat, providing regulatory certainty and clear criteria that allows for responsible resource development, and that the Alaska Department of Fish and Game (ADF&G) protect anadromous fishery resources in a manner consistent with Article VIII of the Constitution of the State of Alaska.
- **Subsection (b)** on Page 2, lines 5 through 28 provides additional language containing guidelines for protecting anadromous fish spawning, rearing, and migratory habitat. This language was pulled directly from (c)(1)(A)(i), (ii), (iii), (iv), (v), (1)(C), (1)(D), (1)(E), and (1)(F) of 5 AAC 39.222, Policy for the Management of Sustainable Salmon Fisheries, which is part of a regulation package passed by the Alaska Board of Fisheries that provides guidelines for the protection of salmon habitat.

### Page 2, line 29 through Page 3, line 7:

#### **AS 16.05.841. Fishway required.**

- **Added a new Section 2** that amends the Fishway Act to require that the passage of upstream and downstream fish is provided for. Currently, AS 16.05.841 only requires fish passage for downstream migrants.

Section 4 on Page 3, lines 18 through 28, formerly Section 2 on Page 2, line 1 through Page 3, line 11:

**Subsection (a)** on Page 3, lines 19 through 21, formerly Page 2, lines 2 through 4:

- Deleted “adjacent riparian areas” and inserted “wetland” on line 21.

**Former subsection (b) was deleted** (Page 2, lines 5 through 13). This subsection contained the process by which the department may conduct a site-specific analysis to determine anadromy.

**Former subsection (c) was deleted** (Page 2, lines 14 through 23). This subsection contained the anadromous waters presumption.

**Former subsection (d) was deleted** (Page 2, lines 24 through 26). This subsection contained a clarification regarding what area of law the deleted presumption applied to.

**Former subsection (e) was deleted** (Page 2, line 27 through Page 3, line 3). This subsection contained requirements for the department to adopt regulations that are no longer necessary as the corresponding bill sections have been deleted.

**Subsection (b)** on Page 3, lines 22 through 28, formerly subsection (f) on Page 3, lines 4 through 11:

- Deleted “naturally occurring” in front of “permanent” on line 23. This conforming change was made throughout the bill.
- Deleted “adjacent riparian areas” and inserted “wetland” on line 24. This conforming change was made throughout the bill.
- Inserted “wetland” on line 27. This conforming change was made throughout the bill.

**Subsection (a)** on Page 3, line 29 through Page 4, line 8, formerly Page 3, lines 13 through 29:

- Inserted “or governmental agency” after “person” on line 3.
- An error was corrected from the previous draft. On page 3, line 17 of the previous draft, it stated that a person must obtain a permit “before constructing a hydraulic project **that uses** wheeled, tracked, excavating, or log dragging equipment...” This was supposed to read “before constructing a hydraulic project **or using** wheeled, tracked, excavating, or log-dragging equipment...” The error was corrected on Page 4, line 3 of the current version to align with the sponsor’s intent and mirror current statute.
- Deleted references to the anadromous waters presumption.

**Subsection (a)** on Page 5, line 12 through Page 6, line 2: **“Consideration of effects of activity on anadromous fish and anadromous fish habitat.” Formerly Subsection (a) on Page 5, lines 2 through 23: “Significant adverse effects,”**

- The subsection was renamed as shown above.
- Inserted “anadromous fish” as a factor to be considered along with “anadromous fish habitat” on line 14. This resulted in a conforming change throughout the bill.
- The wording in (a) on lines 13 through 16 was altered. Instead of the more prescriptive language of “the commissioner shall find that a proposed activity has the potential to cause significant adverse effects on anadromous fish habitat under AS. 16.05.871-16.05.901 if the proposed activity...”, it now reads “in

determining if a proposed activity has the potential to adversely affect anadromous fish and anadromous fish habitat under AS 16.05.871-16.05.901, the commissioner shall consider whether the proposed activity...”

- Deleted the term “significant” in front of “adverse effects.” This aligns the terminology in the bill with other regulatory agencies and avoids confusion regarding determining what “significant” is. This conforming change was made throughout the bill.
- Deleted “significantly”, which was formerly on Page 5, line 10.
- Inserted a new (a)(7) on Page 5, lines 30 through 31. It states that the commissioner must consider if an activity will “diminish the stability of a river, lake, stream, or wetland bank or bed” in making the determination under (a).

**Subsection (a)(6)** on Page 8, line 30 through Page 9, line 18, formerly on Page 8, lines 18 through 22:

- **Former Subsection (a)(6)(A) and (B) were deleted.** These subsections specified that the commissioner must provide in the major anadromous permit draft assessment a determination of whether an activity’s adverse effects could be prevented or minimized under (d) of this section or were likely to cause substantial damage under (e) of this section. Both (d) and (e) were deleted in the current draft.
- **New subsections (a)(6)(A)(i)(ii) and (6)(B)(i)(ii) were inserted** on Page 9, lines 1 through 18 in place of the deleted (a)(6)(A) and (B). These new subsections contain the commissioner’s initial determination that a permit may or may not be issued based on whether the activity’s adverse effects can be prevented or if the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat.

**Former Subsection (d) was deleted** (Page 9, lines 5 through 11). This subsection contained the conditions under which adverse effects can be considered minimized under the bill.

**Former Subsections (e)(1), (2), and (3) were deleted** (Page 9, lines 12 through 16). Subsection (e) stated that adverse effects could not be prevented or minimized if they were likely to cause substantial damage. Subsections (1), (2), and (3) defined substantial damage.

**Former Subsections (f)(1) and (f)(2)(A) and (B) were deleted** (Page 9, line 26 through Page 10, line 7). These subsections contained the factors the commissioner shall consider when determining if fish habitat will recover or be restored within a reasonable period of time and to a condition that will sustain the natural and historic levels of fish.

**Page 10, line 5:**

- Inserted a requirement that the amount of the bond imposed by the department is to be included in the final assessment and written permit determination.

**Subsection (e)(1)(C)(i) and (ii) on Page 10, lines 18 through 29, formerly (h)(1)(c) on Page 10, lines 25 through 27:**

- **Former (h)(1)(c) was deleted.** This specified that a permit may only be issued if it will not cause substantial damage under the now deleted (e).

- In its place, **new subsections (e)(1)(C)(i) and (ii) were inserted.** These new subsections specify that the commissioner may only issue a major permit if it is determined that an activity's adverse effects can be prevented or if the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat. This determination is subject to a request for reconsideration.

**Subsection (g)** on Page 11, line 14 through Page 12, line 1, **formerly Subsection (j)** on Page 11, lines 12 through 24:

- Clarified that the bond may be initiated and held by the department or another state agency on Page 11, line 18.
- Added language on Page 11, line 26 through Page 12, line 1 to specify that the commissioner may at any time raise, lower, or eliminate the bond if they find that it is more or less than what is necessary to complete the mitigation measures. Furthermore, the department must provide public notice of such a change. These actions are subject to a request of reconsideration by an interested person or the applicant.

**Subsection (h)** on Page 12, lines 2 through 8:

- **Added a new subsection (h)(2)** on lines 5 through 6 specifying that the department may receive the amount of the bond from another state agency in lieu of a separate bond from the applicant.
- **Added a new subsection (h)(3)** on lines 7 through 8 specifying that a bond required in this chapter may be part of another bond held or initiated by the department or another state agency.

**Subsection (a)** on Page 12, line 17 through Page 13, line 14, formerly Page 12, line 4 through Page 13, line 10.

**Sec. 16.05.887 Permit conditions and mitigation measures.**

- **Deleted lines 8 through 9** from the previous version of the bill, which stated that the “commissioner may not issue a permit for an activity that the commissioner determines.” These two lines prefaced the deleted subsections (a)(1), (2), (3), (4), and (5).
- **Former Subsection (a)(1) was deleted** (Page 12, lines 10 through 11). This subsection had stated that a permit may not be issued if it will cause substantial damage under the now deleted AS 16.05.885(e).
  - **In its place, new subsection (a)(1) was inserted** on Page 12, lines 20 through 21. This language was in the in previous subsection (a) and was moved down to (a)(1) for structural purposes.
- **Former Subsection (a)(2) was deleted** (Page 12, lines 12 through 13). This subsection had stated that a permit may not be issued if it necessitates water treatment, groundwater pumping, or other means of mechanical, chemical, or human intervention in perpetuity.
  - **In its place, new subsection (a)(2) was inserted** on Page 12, lines 22 through 23. This subsection specifies that the commissioner must require a permittee to implement the activity in a manner that the commissioner has determined will protect anadromous fish and anadromous fish habitat.
- **Former Subsection (a)(3) was deleted** (Page 12, lines 14 through 15). This subsection specified that a permit may not be issued if it will replace or supplement a wild fish population with a hatchery dependent fish population.
- **Former Subsection (a)(4) was deleted** (Page 12, lines 16 through 17). This subsection specified that a permit may not be issued if it will dewater anadromous fish habitat for a period likely to cause permanent or long-lasting adverse effects to that habitat.

- **Former Subsection (a)(5) was deleted** (Page 12, lines 18 through 19). This subsection specified that a permit may not be issued if it will permanently relocate all or portions of a river, lake, or stream if the relocation will disrupt the passage of anadromous fish.

**Subsection (b)** on Page 12, line 24, formerly page 12, line 2:

- **Subsection (b) on page 12, line 27. Inserted** “to protect anadromous fish and anadromous fish habitat” after “actions.” This simply clarifies the purpose behind the mitigation measures.
- **Subsection (b)(1) on Page 12, line 28. Deleted** “limit” and inserted “prevent.” This aligns with (b)(2) that references effects being “prevented” under (b)(1). It also aligns with the current process of mitigation, which first tries to prevent effects, then minimize, and then restore habitat or take other mitigation measures.
- **Subsection (b)(2) on Page 13, lines 1 through 3. Inserted** “or changing” after “limiting” on line 1. Inserted “or other manageable qualities” after “implementation” on lines 2 through 3. This addition adds more flexibility regarding how the department can minimize effects.
- **Subsection (b)(3) on Page 13, line 6. Deleted** “and” and inserted “or.” It made more sense to require the department to restore habitat or take other mitigation measures, rather than restore habitat and take mitigation measures. Sometimes, restoring is the mitigation measure that needs to be taken whereas in some instances, other mitigation measures may be more appropriate.
- **Subsection (b)(3) on Page 13, lines 6 through 7. Inserted** “that the commissioner determines are necessary to protect anadromous fish and anadromous fish habitat” after “measures.”

**Subsection (a)** on Page 13, lines 15 through 23, formerly on Page 13, lines 11 through 26:

**Sec. 16.05.889 Reconsideration of determinations.**

- Added new subsections (a)(1), (2), and (3) that specify that requests for reconsideration are limited to whether a proposed activity should be classified as a minor or major permit, a final determination to issue or refuse to issue a permit, the amount of a required bond, the reduction of the amount of the bond, or the elimination of a bond requirement for an activity. An interested person can request reconsideration of any determination that is part of the final determination. Previously, an interested person could request a reconsideration of any determination at any point along the process, leaving room for abuse.

**Subsection (b)** on Page 14, line 20:

- Added language to specify that the commissioner may wave fees if the applicant or permittee is a governmental agency.

**Subsection (a)** on page 15, line 9:

- Changed the wording so that the grandfather clause applies to facilities, activities, operations, or projects that have in full force and effect “all authorizations required by law” instead of simply “all required state authorizations.”

**Page 15, lines 24 through 29:**

**Sec. 16.05.899 Enforcement Authority.**

This is a new section that gives authority for departmental employees designated by the commissioner to directly issue citations for a violation of AS 16.05.871-16.05.901 or a regulation adopted under those statutes if it is not a misdemeanor and there are is probable cause to believe a violation has occurred.

**Section 10 on Page 15, line 30 through Page 16, line 2:**

- Former Section 8 (Page 15, lines 13 through 17) was split into two parts at the request of the Alaska Court System so that the violation and the misdemeanor were not housed in the same subsection.

# Alaska State Legislature



**Leadership**  
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## HB 199 Sectional Analysis version I

### **Section 1: Page 1, line 5 through Page 2, line 28:**

This section adds legislative findings and policy language to the uncodified law of the State of Alaska:

**Subsection (a)** on Page 1, line 7 through Page 2, line 4 contains language stating the legislature's policy to ensure sustainable fisheries by protecting anadromous fish and habitat, having standards governing activities that protect anadromous fish and habitat, providing regulatory certainty and clear criteria that allows for responsible resource development, and that the Alaska Department of Fish and Game (ADF&G) protect anadromous fishery resources in a manner consistent with Article VIII of the Constitution of the State of Alaska.

**Subsection (b)** on Page 2, lines 5 through 28 provides additional language containing guidelines for protecting anadromous fish spawning, rearing, and migratory habitat. This language was pulled directly from (c)(1)(A)(i), (ii), (iii), (iv), (v), (1)(C), (1)(D), (1)(E), and (1)(F) of 5 AAC 39.222, Policy for the Management of Sustainable Salmon Fisheries, which is part of a regulation package passed by the Alaska Board of Fisheries that provides guidelines for the protection of salmon habitat.

### **Section 2: Page 2, line 29 through Page 3, line 7:**

#### **AS 16.05.841. Fishway required.**

This section amends the Fishway Act to require that the passage of upstream and downstream fish is provided for. Currently, AS 16.05.841 only requires fish passage for downstream migrants.

### **Section 3: Page 3, lines 8 through 17:**

#### **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 4: Page 3, lines 19 through 28:**

**Subsection (a)** specifies that the commissioner of ADF&G must identify all or portions of each river, lake, stream, or wetlands, and the lands beneath that 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). This maintains that requirement.

**Subsection (b)** defines:

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

**Section 5: Page 3, line 29 through Page 6, line 4:**

**Sec. 16.05.875. Anadromous fish habitat permit.**

**Subsection (a)** creates the requirement that, except in an emergency or as authorized by a general minor permit, an anadromous fish habitat permit must be obtained before constructing a hydraulic project or using 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, stream, or wetland that is 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 effects on anadromous fish habitat.

**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 and anadromous fish habitat. It also specifies that before making a determination, the commissioner may work with the applicant to plan the activity to avoid or minimize the potential effects.

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

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

**Page 5, line 12: Sec. 16.05.877. Consideration of effects of activity on anadromous fish and anadromous fish habitat.**

While most permit applications can be processed as minor permits, this section identifies criteria used to determine if an activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat. If the commissioner determines that the potential exists, the application will be processed as a major permit.

**Subsection (a)** sets out the factors for the commissioner to consider in determining whether a proposed activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat.

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

**Section 6: Page 6, lines 5 through 23**

**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 7: Page 6, line 24 through Page 14, Line 6:**

**Sec. 16.05.883. Minor anadromous fish habitat permits.**

**Subsection (a)** establishes the commissioner’s authority to issue a minor permit. The commissioner must give public notice of the decision to issue a minor permit. The minor permit must include any permit conditions and mitigation measures necessary to protect anadromous fish and anadromous 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), and (3), 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 one 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, if applicable, authorizations for general permits shall set out conditions and stipulations to avoid adverse effects to anadromous fish and anadromous fish habitat.

**Subsection (e)** gives the commissioner authority to modify or rescind a general permit if the commissioner determines that the general permit does not protect anadromous fish and anadromous fish habitat. If a general permit is amended or rescinded the commissioner must provide public notice. (1) and (2) provide additional details for public notice for general permitting.

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

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

**Page 8, line 15: 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 adverse effects on anadromous fish and 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, the proposed permit conditions, the amount of bonding needed to restore habitat if the permit conditions and mitigations are not complied with, and if a permit may or may not be issued based on whether the plans and specifications are sufficient to protect anadromous fish and anadromous fish habitat. 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. Most notably, 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. Of note is (6)(A) and (6)(B) which contain the commissioner’s initial determination that a permit may or not be issued based on whether the activity’s adverse effects can be prevented or if the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat.

**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.

**Page 10, line 1:**

**Subsection (d)** 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, required mitigation measures, and imposed bonding.

**Subsection (e)** 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 are mandatory and enforceable, and that the activity shall be permitted because the activity's adverse effects can be prevented or the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat. To receive a permit, the applicant must accept all permit conditions and mitigation measures and provide a bond to cover the restoration of habitat if the permit conditions and mitigation measures are not complied with; additionally, a permit may only be issued if a request for reconsideration was not timely received.

**Subsection (f)** specifies that if a request for reconsideration of the commissioner's final assessment and written determination is timely received, a major permit shall be issued when the commissioner denies the request for reconsideration or issues a new determination and the requirements in (e) have been met.

**Page 11, line 14:**

**Subsection (g)** describes the bond requirements to pay for the restoration of anadromous habitat. Project applicants must provide a performance bond sufficient to cover the cost of restoring anadromous fish habitat if permit conditions and mitigation measures are not complied with. The bond may be initiated and held by the department or another state agency and must be a secured bond. This section further allows the commissioner to raise, lower, or eliminate the bond if conditions change, but they must provide public notice of the change. Any changes to the bond are subject to a request for reconsideration.

**Subsection (h)** exempts governmental entities from the bonding requirements of the section, allows the department to receive the bond from another government agency, and clarifies that the bond may be initiated and held by the department or by another state agency.

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

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

**Page 12, line 17: 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 on anadromous fish and anadromous 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 of the activity must be minimized by limiting the degree, magnitude, duration, implementation, or other design stipulations. If effects cannot be avoided, the commissioner must require that impacted fish habitat is restored or that other appropriate mitigation measures be taken that are determined to be necessary to protect anadromous fish and anadromous fish habitat.

**Subsection (a)** requires that activities be implemented in a manner most likely to avoid or minimize adverse effects on anadromous fish and anadromous fish habitat and that the commissioner has determined will protect anadromous fish and anadromous fish habitat.

**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 of the activity by limiting the degree, magnitude, duration, implementation, or other design stipulations. And finally, if adverse effects do occur, the commissioner must restore the impacted fish habitat or take other appropriate mitigation measures that are necessary to protect anadromous fish and anadromous fish habitat.

**Subsection (c)** provides that the department shall adopt regulations establishing permit conditions and mitigation measures applicable to activities subject to permitting requirements.

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

**Page 13, line 15: 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)** allows an interested person to request a reconsideration of a determination to classify a permit as a minor or major, a final determination to issue or refuse to issue a permit, as well as the amount of the bond required, a reduction or increase to that bond, or the elimination of a bond requirement.

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

**Subsection (c)** 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 (d)** 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 8: Page 14, lines 7 through 13: 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 9: Page 14, lines 14 through 26: 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.

**Page 15, line 6: Sec. 16.05.897. Applicability of permitting requirements**

Section 16.05.897 specifies that an existing facility, activity, operation, or project that has in full force and effect all authorizations required by law relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act will 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.

**Sec. 16.05.899. Enforcement authority.**

Section 16.05.899 gives authority for departmental employees designated by the commissioner to directly issue citations for a violation of AS 16.05.871-16.05.901 or a regulation adopted under those statutes if it is not a misdemeanor and there is probable cause to believe a violation has occurred.

**Section 10: Page 15, line 30 through Page 16, line 2:**

**AS. 16.05.901(a). Penalty for Violations.**

Section 16.05.901(a) 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.

**Section 11: Page 16, line 3 through Page 17, line 17:**

**AS 16.05.901. Penalty for Violations.**

**Subsection (c)** allows ADF&G to prosecute knowing violations of AS 16.05.871-16.05.901 or a regulation adopted under those statutes as a class A misdemeanor.

**Subsection (d)** allows ADF&G to prosecute criminally negligent violations of AS 16.05.871-16.05.901, a regulation adopted under those statutes, a permit condition and mitigation measure imposed, or an order issued under 16.05.894 as a class A misdemeanor.

**Subsection (e)** provides that if someone fails to notify the commissioner of an activity for which a permit is required and causes damage to anadromous fish habitat or by neglect or noncompliance with permit conditions and mitigation measures causes damage to anadromous fish habitat, a person is guilty of a class A misdemeanor.

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

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

**Subsection (h)** 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 (i)** 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 (j)** 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 (k)** clarifies that the definition of “anadromous fish habitat” is consistent with the meaning provided throughout the chapter.

**Section 12: Page 17, lines 18 through 22:**

**AS 16.05.925(a). Penalty for Violations.**

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

**Section 13 Page 17, lines 23 through 25:**

**AS 16.20.070. Relationship to other laws.**

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

**Section 14: Page 17, lines 26 through 28:**

**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 15: Page 17, line 29 through Page 18, line 25:**

**AS 41.17.010. Declaration of Intent.**

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

**Section 16: Page 18, lines 26 through 30:**

**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 17: Page 18, line 31 through Page 20, line 8:**

**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 18: Page 20, line 9:**

**Repeal of 16.05.851 and 16.05.896.**

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

30-LS0438I  
Bullard  
3/29/18

**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 fish and anadromous fish habitat."**

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

5 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 **FINDINGS AND POLICY.** (a) The legislature finds that wild salmon are critically  
8 important to the state's communities, economy, and culture. It is the policy of the state to  
9 ensure

10 (1) sustainable anadromous fisheries for current and future generations by  
11 maintaining and protecting anadromous fish and anadromous fish habitat;

12 (2) activities occurring in anadromous fish habitat are governed by standards  
13 that protect anadromous fish and anadromous fish habitat;

14 (3) state standards for protecting anadromous fish and anadromous fish habitat

1 provide regulatory certainty and clear criteria, allowing for responsible resource development;  
2 and

3 (4) that the Department of Fish and Game protects the state's anadromous  
4 fishery resources in a manner consistent with art. VIII, Constitution of the State of Alaska.

5 (b) It is the policy of the state that anadromous fish spawning, rearing, and migratory  
6 habitat in the state be protected as follows:

7 (1) anadromous fish habitat should not be perturbed beyond natural  
8 boundaries of variation;

9 (2) scientific assessments of possible adverse ecological effects of proposed  
10 activities on anadromous fish habitat and the effects of the proposed activities on anadromous  
11 fish populations should be conducted before a proposed activity is approved;

12 (3) adverse environmental effects on anadromous fish stocks and habitat  
13 should be assessed and all essential anadromous fish habitat in marine, estuarine, and  
14 freshwater ecosystems and the access of anadromous fish to those habitat areas should be  
15 protected; the areas of essential anadromous fish habitat that should be protected include  
16 spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing  
17 areas, offshore rearing areas, and migratory pathways;

18 (4) areas of freshwater anadromous fish habitat should be protected on a  
19 watershed basis, including appropriate management of riparian zones, water quality, and  
20 water quantity;

21 (5) when making conservation and allocation decisions, affected user groups,  
22 regulatory agencies, and boards should assess, consider, and respond to instances of decreased  
23 anadromous fish productivity resulting from loss of anadromous fish habitat;

24 (6) areas of degraded anadromous fish habitat areas should be restored to  
25 former levels of productivity when the areas are known and restoration is desirable; and

26 (7) the current productivity and ecological health of areas of anadromous fish  
27 habitat and the effectiveness of restoration activities on areas of degraded anadromous fish  
28 habitat should be investigated and be the subject of continued monitoring.

29 \* **Sec. 2.** AS 16.05.841 is amended to read:

30 **Sec. 16.05.841. Fishway required.** If the commissioner considers it necessary,  
31 every dam or other obstruction built by any person across a stream frequented by

1 salmon or other fish shall be provided by that person with a durable and efficient  
2 fishway and a device for efficient passage for upstream and downstream migrants.  
3 The fishway or device or both shall be maintained in a practical and effective manner  
4 in the place, form, and capacity the commissioner approves for which plans and  
5 specifications shall be approved by the department upon application. The fishway or  
6 device shall be kept open, unobstructed, and supplied with a sufficient quantity of  
7 water to admit freely the passage of fish through it.

8 \* **Sec. 3.** AS 16.05.861 is amended to read:

9 **Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY]**  
10 **requirements.** (a) The owner of a dam or obstruction who fails to comply with  
11 AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR  
12 16.05.851] within a reasonable time specified by written notice from the commissioner  
13 is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each  
14 day the owner fails to comply constitutes a separate offense.

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

18 \* **Sec. 4.** AS 16.05.871 is repealed and reenacted to read:

19 **Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The  
20 commissioner shall identify all or portions of each river, lake, stream, wetland, and  
21 land beneath each river, lake, stream, and wetland, that are anadromous fish habitat.

22 (b) In this section,

23 (1) "anadromous fish habitat" means all or portions of a permanent or  
24 intermittent river, lake, stream, or wetland, and the land beneath the river, lake,  
25 stream, or wetland, that contribute directly to the spawning, rearing, migration, or  
26 overwintering of anadromous fish;

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

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

30 **Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency  
31 under AS 16.05.891 or as authorized by a valid general minor permit under

1 AS 16.05.883(b), a person or governmental agency must obtain an anadromous fish  
2 habitat permit under AS 16.05.883(a) or 16.05.885 before

3 (1) constructing a hydraulic project or using, diverting, obstructing,  
4 polluting, or changing the natural flow or bed of a river, lake, stream, or wetland  
5 identified as anadromous fish habitat under AS 16.05.871; or

6 (2) using wheeled, tracked, or excavating equipment or log-dragging  
7 equipment in the bed of a river, lake, stream, or wetland identified as anadromous fish  
8 habitat under AS 16.05.871.

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

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

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

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

25 (d) If the commissioner determines that a proposed activity, as conditioned by  
26 permit requirements and mitigation measures that would likely be required of the  
27 activity by the department under AS 16.05.887, will not adversely affect anadromous  
28 fish and anadromous fish habitat under AS 16.05.877, the commissioner shall classify  
29 the application for the activity as an application for a minor permit under  
30 AS 16.05.883(a).

31 (e) If the commissioner determines that a proposed activity has the potential to

1 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.877,  
2 the commissioner shall classify the application for the activity as an application for a  
3 major permit under AS 16.05.885.

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

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

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

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

12 **Sec. 16.05.877. Consideration of effects of activity on anadromous fish and**  
13 **anadromous fish habitat.** (a) In determining if a proposed activity has the potential to  
14 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.871 -  
15 16.05.901, the commissioner shall consider whether the proposed activity, singly or in  
16 combination with other factors, could

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

19 (2) impede the safe and efficient upstream and downstream passage of  
20 anadromous fish;

21 (3) impair water quality or water temperature necessary to support  
22 anadromous fish;

23 (4) reduce instream flows or alter the natural flow regimes necessary to  
24 support anadromous fish and anadromous fish habitat;

25 (5) diminish the overall aquatic habitat diversity, productivity,  
26 stability, or function of all or portions of a river, lake, stream, or wetland that is  
27 anadromous fish habitat;

28 (6) create conditions known to have adverse effects on, or cause  
29 increased mortality of, anadromous fish at any life stage;

30 (7) diminish the stability of a river, lake, stream, or wetland bank or  
31 bed; or

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

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

5 \* **Sec. 6.** AS 16.05.881 is amended to read:

6 **Sec. 16.05.881. Construction without approval prohibited.** If a person or  
7 governmental agency conducts an activity [BEGINS CONSTRUCTION ON A  
8 WORK OR PROJECT OR USE] for which a permit [NOTICE] is required by  
9 AS 16.05.875(a) [AS 16.05.871] without the appropriate permit issued under  
10 AS 16.05.883 or 16.05.885 [FIRST PROVIDING PLANS AND SPECIFICATIONS  
11 SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER  
12 PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING  
13 OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE  
14 ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE  
15 PROTECTION OF FISH AND GAME], the person or agency is guilty of a  
16 misdemeanor. If a person or governmental agency is convicted of violating  
17 AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896] or continues an activity [A  
18 USE, WORK, OR PROJECT] without fully complying with AS 16.05.871 - 16.05.901  
19 [AS 16.05.871 - 16.05.896], the activity [USE, WORK, OR PROJECT] is a public  
20 nuisance and is subject to abatement. The cost of restoring all or portions of a  
21 [SPECIFIED] river, lake, or stream identified as anadromous fish habitat under  
22 AS 16.05.871 to its original condition shall be borne by the violator and shall be in  
23 addition to the penalty imposed by the court under AS 16.05.901.

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

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

30 (b) Notwithstanding (a) of this section, the commissioner may issue a general  
31 minor permit under this section without an application and determination under

1 AS 16.05.875 on a regional or other geographical basis for an activity or activities, if  
2 the commissioner determines that

3 (1) the activity will not have adverse effects on anadromous fish or  
4 anadromous fish habitat or, if the activity may have adverse effects on anadromous  
5 fish and anadromous fish habitat, those effects may be prevented by requiring certain  
6 conditions and stipulations on the activity;

7 (2) permit conditions and stipulations are mandatory and enforceable;  
8 and

9 (3) a general minor permit for the activity is in the public interest.

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

19 (d) The commissioner may issue a regional or geographical authorization for  
20 an activity subject to a general minor permit under this section or may require a person  
21 to obtain written authorization from the department before conducting an activity  
22 subject to a general minor permit under this section. Upon request, the department  
23 shall issue or deny an authorization within five days. The department may make  
24 general minor permit authorizations under this section available through electronic  
25 means. If applicable, a general minor permit authorization under this section shall set  
26 out conditions and stipulations to avoid adverse effects to anadromous fish and  
27 anadromous fish habitat.

28 (e) The commissioner may amend a general minor permit issued under this  
29 section at any time to include additional conditions and stipulations or may rescind a  
30 general minor permit issued under this section if the commissioner determines that the  
31 permit does not protect anadromous fish and anadromous fish habitat. The

1 commissioner shall provide public notice under (f) of this section of

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

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

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

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

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

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

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

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

20 (1) the proposed activity;

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

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

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

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

30 (6) the commissioner's determination, after considering the factors  
31 under AS 16.05.877(a), that the proposed activity

(A) may be permitted because

(i) the adverse effects of the proposed activity, singly or in combination with other factors, can be prevented or, if not preventable, minimized under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat; or

(ii) the anadromous fish habitat affected by the proposed activity can be restored or the adverse effects of the proposed activity can be otherwise mitigated under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat; or

(B) may not be permitted because

(i) the adverse effects of the activity cannot be prevented or minimized under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat; and

(ii) the anadromous fish habitat affected by the proposed activity cannot be restored and the adverse effects of the proposed activity cannot be otherwise mitigated under AS 16.05.887 to the extent necessary to protect anadromous fish and anadromous fish habitat.

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

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

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

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

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

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

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

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

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

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

18 (C) the commissioner has determined, after considering the  
19 factors under AS 16.05.877(a), that the proposed activity, as authorized by the  
20 written permit determination, shall be permitted because

21 (i) the adverse effects of the proposed activity, singly or  
22 in combination with other factors, can be prevented or, if not  
23 preventable, minimized under AS 16.05.887 to the extent necessary to  
24 protect anadromous fish and anadromous fish habitat; or

25 (ii) the anadromous fish habitat affected by the  
26 proposed activity, as authorized by the written permit determination,  
27 can be restored or the adverse effects of the proposed activity can be  
28 otherwise mitigated under AS 16.05.887 to the extent necessary to  
29 protect anadromous fish and anadromous fish habitat;

30 (2) the applicant

31 (A) accepts all permit conditions and mitigation measures

1 required under AS 16.05.887; and

2 (B) if required, provides the bond required under (g) of this  
3 section; and

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

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

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

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

14 (g) After the commissioner approves an application for an activity in a written  
15 permit determination under (d) of this section, the applicant shall file a performance  
16 bond in an amount established by the commissioner payable to the State of Alaska and  
17 conditioned on faithful performance of the requirements of this chapter and the permit.  
18 The bond may be initiated and held by the department or by another state agency.  
19 Except as provided in (h) of this section, the commissioner may not issue a permit  
20 until an applicant files the bond in an amount sufficient to ensure the completion of the  
21 mitigation measures determined necessary by the commissioner under AS 16.05.887  
22 and included in the written permit decision posted under (d) of this section. The  
23 performance bond may be a corporate surety bond issued by a corporation licensed to  
24 do business in the state or a personal bond secured by cash or its equivalent. However,  
25 the commissioner may not accept a bond executed by the applicant without separate  
26 surety. If, at any time, the commissioner finds that the amount of the bond is more or  
27 less than what is necessary to complete mitigation measures, the commissioner may  
28 reduce the amount of bond required, eliminate the bond requirement for the activity, or  
29 require an applicant or permittee to file an additional bond. The department shall  
30 provide public notice if the commissioner determines that the amount of a bond must  
31 be raised or lowered or that a bond is no longer required for an activity under this

1 section.

2 (h) Notwithstanding (g) of this section,

3 (1) a governmental agency is exempt from the bonding requirements of  
4 this section;

5 (2) in lieu of the filing of a performance bond by an applicant, the  
6 department may receive the amount of the bond from another state agency; and

7 (3) a bond required under AS 16.05.871 - 16.05.901 may be part of  
8 another bond held or initiated by the department or another state agency.

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

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

12 (2) posting a performance bond for the transferee or assignee as  
13 required under (g) of this section, unless the transferee or assignee is exempt under (h)  
14 of this section.

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

17 **Sec. 16.05.887. Permit conditions and mitigation measures.** (a) The  
18 commissioner shall require a permittee under AS 16.05.883(a) or 16.05.885 to  
19 implement the permitted activity in a manner

20 (1) most likely to prevent or minimize the adverse effects of the  
21 activity on anadromous fish and anadromous fish habitat under AS 16.05.877; and

22 (2) that the commissioner has determined will protect anadromous fish  
23 and anadromous fish habitat.

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

28 (1) prevent adverse effects of the activity on anadromous fish and  
29 anadromous fish habitat by changing the siting, timing, procedure, or other  
30 manageable qualities of the activity;

31 (2) if the adverse effects of the activity cannot be prevented under (1)

1 of this subsection, minimize the adverse effects of the activity by limiting or changing  
2 the degree, magnitude, duration, manner of implementation, or other manageable  
3 qualities of the activity; and

4 (3) if the activity cannot be implemented in a manner that prevents  
5 adverse effects on anadromous fish and anadromous fish habitat under this subsection,  
6 restore the affected anadromous fish habitat or take other mitigation measures that the  
7 commissioner determines are necessary to protect anadromous fish and anadromous  
8 fish habitat.

9 (c) The department shall adopt regulations consistent with AS 16.05.871 -  
10 16.05.901 establishing appropriate permit conditions and mitigation measures  
11 applicable to activities subject to permitting requirements under AS 16.05.883 or  
12 16.05.885.

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

15 **Sec. 16.05.889. Reconsideration of determinations.** (a) An interested person  
16 may request the commissioner to reconsider

17 (1) whether an application for a proposed activity should be classified  
18 as an application for a minor or major permit under AS 16.05.875;

19 (2) a final written determination to issue or refuse to issue a permit  
20 under AS 16.05.883(a) or (b) or 16.05.885; or

21 (3) the amount of a bond determined necessary by the commissioner to  
22 complete mitigation measures for a proposed activity, the reduction of the amount of a  
23 bond, or the elimination of a bond requirement for an activity.

24 (b) A request for reconsideration under this section must be made in writing  
25 and not later than 30 days after the date of the determination.

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

31 (d) The commissioner's determination upon reconsideration is the final

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

7 \* **Sec. 8.** AS 16.05.891 is amended to read:

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

14 \* **Sec. 9.** AS 16.05 is amended by adding new sections to read:

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

16 (1) reviewing permit applications, assessments performed by the  
17 department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -  
18 16.05.901; and

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

20 (b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the  
21 applicant or permittee is a governmental agency or the commissioner finds that  
22 waiving the fee is otherwise in the public interest. The commissioner shall, in  
23 regulations adopted by the department, specify the circumstances under which a fee  
24 may be waived under this subsection.

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

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

1 violation and

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

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

6 **Sec. 16.05.897. Applicability of permitting requirements.** (a)

7 Notwithstanding AS 16.05.875(a), and except as provided in (b) of this section, a  
8 facility, activity, operation, or project that has in full force and effect, on the day  
9 before the effective date of sec. 5 of this Act, all authorizations required by law  
10 relating to the protection of anadromous fish and anadromous fish habitat

11 (1) shall continue to be authorized under AS 16.05.871 - 16.05.901 and  
12 the regulations adopted under AS 16.05.871 - 16.05.901, as those sections and  
13 regulations read on the day before the effective date of sec. 5 of this Act, and may  
14 continue to renew those authorizations and obtain minor authorization modifications  
15 under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 -  
16 16.05.901, as those sections and regulations read on the day before the effective date  
17 of sec. 5 of this Act; and

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

20 (b) The exemption provided by (a) of this section does not apply to a facility,  
21 activity, operation, or project that significantly expands or increases in scope, area, or  
22 frequency, or otherwise takes action outside, those actions for which it is authorized  
23 on the day before the effective date of sec. 5 of this Act.

24 **Sec. 16.05.899. Enforcement authority.** An employee of the department who

25 is designated by the commissioner may issue a person a citation that complies with  
26 AS 12.25.175 - 12.25.230 for a violation that is not a misdemeanor of AS 16.05.871 -  
27 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901, if there is probable  
28 cause to believe the person has violated AS 16.05.871 - 16.05.901 or a regulation  
29 adopted under AS 16.05.871 - 16.05.901.

30 \* **Sec. 10.** AS 16.05.901(a) is amended to read:

31 (a) A person who violates AS 16.05.871 - 16.05.901 or a regulation adopted

1 **under AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] is guilty of a **violation**  
2 **punishable as provided in AS 12.55** [CLASS A MISDEMEANOR].

3 \* **Sec. 11.** AS 16.05.901 is amended by adding new subsections to read:

4 (c) A person who knowingly violates AS 16.05.871 - 16.05.901 or a  
5 regulation adopted under AS 16.05.871 - 16.05.901 is guilty of a class A misdemeanor  
6 and is punishable as provided in AS 12.55.

7 (d) A person who, with criminal negligence, violates or permits a violation of  
8 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a  
9 permit condition or mitigation measure imposed under AS 16.05.887, or an order  
10 issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as  
11 provided in AS 12.55. In this subsection, "criminal negligence" has the meaning given  
12 in AS 11.81.900(a).

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

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

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

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

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

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

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

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

7 (i) If a respondent violates an order issued under AS 16.05.894 that requires  
8 the respondent to repair or correct damage, the commissioner may proceed to repair or  
9 correct the damage using state agency employees or contractors and the respondent is  
10 liable for the cost of the repair. The commissioner shall deliver to the respondent an  
11 itemized statement of expenses incurred.

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

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

18 \* **Sec. 12.** AS 16.05.925(a) is amended to read:

19 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,  
20 16.05.783, 16.05.831, 16.05.861, 16.05.901, and 16.05.905, a person who violates  
21 AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is  
22 guilty of a class A misdemeanor.

23 \* **Sec. 13.** AS 16.20.070 is amended to read:

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

26 \* **Sec. 14.** AS 37.05.146(c) is amended by adding a new paragraph to read:

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

29 \* **Sec. 15.** AS 41.17.010 is amended to read:

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

31 (1) the forest resources of Alaska are among the most valuable natural

1 resources of the state, and furnish timber and wood products, fish and wildlife,  
2 tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

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

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

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

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

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

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

26 \* **Sec. 16.** AS 44.62.330(a)(27) is amended to read:

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

31 \* **Sec. 17.** AS 46.15.020(b) is amended to read:

1 (b) The commissioner shall

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

6 (2) develop and maintain a standardized procedure for processing  
7 applications and the issuance of authorizations, permits, and certifications under this  
8 chapter; shall keep a public record of all applications for permits and certificates and  
9 other documents filed in the commissioner's office; shall record all permits and  
10 certificates and amendments and orders affecting them and shall index them in  
11 accordance with the source of the water and the name of the applicant or appropriator;  
12 shall require that temporary water use authorizations are valid only to the extent that  
13 the water withdrawal and use complies with applicable requirements of AS 16.05.871  
14 - 16.05.901 [AS 16.05.871]; and shall make the record of applications, including  
15 temporary water use applications under AS 46.15.155 that have been accepted as  
16 complete, authorizations, permits, certificates, amendments, and orders affecting them  
17 available to the public on the Internet;

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

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

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

30 (A) information on the number of applications and  
31 appropriations for the removal of water from one hydrological unit to another

1           that were requested and that were granted and on the amounts of water  
2           involved;

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

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

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

9    \* **Sec. 18.** AS 16.05.851 and 16.05.896 are repealed.

# Alaska State Legislature



**Leadership**  
Majority Whip

**Chair**  
Fisheries Committee  
Transportation Committee

**Member**  
Rules Committee  
Labor and Commerce Committee  
Legislative Council

**REPRESENTATIVE LOUISE STUTES**

**District 32**

**Kodiak-Cordova-Yakutat-Seldovia**

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## HB 199 Sectional Analysis version M

### **Section 1: Page 1, line 5 through Page 2, line 28:**

This section adds legislative findings and policy language to the uncodified law of the State of Alaska:

**Subsection (a)** on Page 1, line 7 through Page 2, line 4 contains language stating the legislature's policy to ensure sustainable fisheries by protecting anadromous fish and habitat, having standards governing activities that protect anadromous fish and habitat, providing regulatory certainty and clear criteria that allows for responsible resource development, and that the Alaska Department of Fish and Game (ADF&G) protect anadromous fishery resources in a manner consistent with Article VIII of the Constitution of the State of Alaska.

**Subsection (b)** on Page 2, lines 5 through 28 provides additional language containing guidelines for protecting anadromous fish spawning, rearing, and migratory habitat. This language was pulled directly from (c)(1)(A)(i), (ii), (iii), (iv), (v), (1)(C), (1)(D), (1)(E), and (1)(F) of 5 AAC 39.222, Policy for the Management of Sustainable Salmon Fisheries, which is part of a regulation package passed by the Alaska Board of Fisheries that provides guidelines for the protection of salmon habitat.

### **Section 2: Page 2, line 29 through Page 3, line 7:**

#### **AS 16.05.841. Fishway required.**

This section amends the Fishway Act to require that the passage of upstream and downstream fish is provided for. Currently, AS 16.05.841 only requires fish passage for downstream migrants.

### **Section 3: Page 3, lines 8 through 17:**

#### **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 4: Page 3, lines 19 through 28:**

**Subsection (a)** specifies that the commissioner of ADF&G must identify all or portions of each river, lake, stream, or wetlands, and the lands beneath that 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). This maintains that requirement.

**Subsection (b)** defines:

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

**Section 5: Page 3, line 29 through Page 6, line 4:**

**Sec. 16.05.875. Anadromous fish habitat permit.**

**Subsection (a)** creates the requirement that, except in an emergency or as authorized by a general minor permit, an anadromous fish habitat permit must be obtained before constructing a hydraulic project or using 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, stream, or wetland that is 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 effects on anadromous fish habitat.

**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 and anadromous fish habitat. It also specifies that before making a determination, the commissioner may work with the applicant to plan the activity to avoid or minimize the potential effects.

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

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

**Page 5, line 12: Sec. 16.05.877. Consideration of effects of activity on anadromous fish and anadromous fish habitat.**

While most permit applications can be processed as minor permits, this section identifies criteria used to determine if an activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat. If the commissioner determines that the potential exists, the application will be processed as a major permit.

**Subsection (a)** sets out the factors for the commissioner to consider in determining whether a proposed activity has the potential to cause adverse effects on anadromous fish and anadromous fish habitat.

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

**Section 6: Page 6, lines 5 through 23**

**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 7: Page 6, line 24 through Page 14, Line 10:**

**Sec. 16.05.883. Minor anadromous fish habitat permits.**

**Subsection (a)** establishes the commissioner’s authority to issue a minor permit. The commissioner must give public notice of the decision to issue a minor permit. The minor permit must include any permit conditions and mitigation measures necessary to protect anadromous fish and anadromous 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), and (3), 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 one 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, if applicable, authorizations for general permits shall set out conditions and stipulations to avoid adverse effects to anadromous fish and anadromous fish habitat.

**Subsection (e)** gives the commissioner authority to modify or rescind a general permit if the commissioner determines that the general permit does not protect anadromous fish and anadromous fish habitat. If a general permit is amended or rescinded the commissioner must provide public notice. (1) and (2) provide additional details for public notice for general permitting.

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

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

**Page 8, line 16: 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 adverse effects on anadromous fish and 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, the proposed permit conditions, the amount of bonding needed to restore habitat if the permit conditions and mitigations are not complied with, and if a permit may or may not be issued based on whether the plans and specifications are sufficient to protect anadromous fish and anadromous fish habitat. 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. Most notably, 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. Of note is (6)(A) and (6)(B) which contain the commissioner’s initial determination that a permit may or not be issued based on whether the activity’s adverse effects can be prevented or if the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat.

**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.

**Page 10, line 2:**

**Subsection (d)** 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, required mitigation measures, and imposed bonding.

**Subsection (e)** 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 are mandatory and enforceable, and that the activity shall be permitted because the activity's adverse effects can be prevented or the effects can be minimized to the extent necessary to protect anadromous fish and anadromous fish habitat, the affected habitat can be restored to the extent necessary to protect anadromous fish and anadromous fish habitat, or the effects of the activity can be otherwise mitigated to the extent necessary to protect anadromous fish and anadromous fish habitat. To receive a permit, the applicant must accept all permit conditions and mitigation measures and provide a bond to cover the restoration of habitat if the permit conditions and mitigation measures are not complied with; additionally, a permit may only be issued if a request for reconsideration was not timely received.

**Subsection (f)** specifies that if a request for reconsideration of the commissioner's final assessment and written determination is timely received, a major permit shall be issued when the commissioner denies the request for reconsideration or issues a new determination and the requirements in (e) have been met.

**Page 11, line 18:**

**Subsection (g)** describes the bond requirements to pay for the restoration of anadromous habitat. If the commissioner determines that a bond is required, applicants must provide a performance bond sufficient to cover the cost of restoring anadromous fish habitat if permit conditions and mitigation measures are not complied with. The bond must be a secured bond. This section further allows the commissioner to raise, lower, or eliminate the bond if conditions change, but they must provide public notice of the change. Any changes to the bond are subject to a request for reconsideration.

**Subsection (h)** exempts governmental agencies from the bonding requirements of the section, allows the department to receive the bond from another government agency, and clarifies that the bond may be initiated and held by the department or by another state agency.

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

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

**Page 12, line 19: 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 on anadromous fish and anadromous 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 of the activity must be minimized by limiting the degree, magnitude, duration, implementation, or other design stipulations. If effects cannot be avoided, the commissioner must require that impacted fish habitat is restored or that other appropriate mitigation measures be taken that are determined to be necessary to protect anadromous fish and anadromous fish habitat.

**Subsection (a)** requires that activities be implemented in a manner most likely to avoid or minimize adverse effects on anadromous fish and anadromous fish habitat and that the commissioner has determined will protect anadromous fish and anadromous fish habitat.

**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 of the activity by limiting the degree, magnitude, duration, implementation, or other design stipulations. And finally, if adverse effects do occur, the commissioner must restore the impacted fish habitat or take other appropriate mitigation measures that are necessary to protect anadromous fish and anadromous fish habitat.

**Subsection (c)** provides that the department shall adopt regulations establishing permit conditions and mitigation measures applicable to activities subject to permitting requirements.

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

**Page 13, line 17: 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)** allows an interested person to request a reconsideration of a determination to classify a permit as a minor or major, a final determination to issue or refuse to issue a permit, as well as the amount of the bond or a reduction, increase, or the elimination of the bond requirement.

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

**Subsection (c)** 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 (d)** 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 8: Page 14, lines 11 through 17: 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 9: Page 14, line 18 through Page 16, line 2:**

**Section 16.06.893. Fees.** This section 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.

#### **Page 15, line 10: Sec. 16.05.897. Applicability of permitting requirements**

Section 16.05.897 specifies that an existing facility, activity, operation, or project that has in full force and effect all authorizations required by law relating to the protection of anadromous fish and anadromous fish habitat on the effective day of this act will 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.

#### **Sec. 16.05.899. Enforcement authority.**

Section 16.05.899 gives authority for departmental employees designated by the commissioner to directly issue citations for a violation of AS 16.05.871-16.05.901 or a regulation adopted under those statutes if it is not a misdemeanor and there are is probable cause to believe a violation has occurred.

#### **Section 10: Page 16, lines 3 through 6:**

##### **AS. 16.05.901(a). Penalty for Violations.**

Section 16.05.901(a) 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.

#### **Section 11: Page 16, line 7 through Page 17, line 21:**

##### **AS 16.05.901. Penalty for Violations.**

**Subsection (c)** allows ADF&G to prosecute knowing violations of AS 16.05.871-16.05.901 or a regulation adopted under those statutes as a class A misdemeanor.

**Subsection (d)** allows ADF&G to prosecute criminally negligent violations of AS 16.05.871-16.05.901, a regulation adopted under those statutes, a permit condition and mitigation measure imposed, or an order issued under 16.05.894 as a class A misdemeanor.

**Subsection (e)** provides that if someone fails to notify the commissioner of an activity for which a permit is required and causes damage to anadromous fish habitat or by neglect or noncompliance with permit conditions and mitigation measures causes damage to anadromous fish habitat, a person is guilty of a class A misdemeanor.

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

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

**Subsection (h)** 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 (i)** 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 (j)** 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 (k)** clarifies that the definition of “anadromous fish habitat” is consistent with the meaning provided throughout the chapter.

**Section 12: Page 17, lines 22 through 26:**

**AS 16.05.925(a). Penalty for Violations.**

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

**Section 13 Page 17, lines 27 through 29:**

**AS 16.20.070. Relationship to other laws.**

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

**Section 14: Page 17, line 30 through Page 18, line 1:**

**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 15: Page 18, lines 2 through 29:**

**AS 41.17.010. Declaration of Intent.**

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

**Section 16: Page 18, line 30 through Page 19, line 3:**

**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 17: Page 19, line 4 through Page 20, line 12:**

**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 18: Page 20, line 13:**

**Repeal of 16.05.851 and 16.05.896.**

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

30-LS0438\M  
Bullard  
4/2/18

**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 fish and anadromous fish habitat."**

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

5 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
6 to read:

7 FINDINGS AND POLICY. (a) The legislature finds that wild salmon are critically  
8 important to the state's communities, economy, and culture. It is the policy of the state to  
9 ensure

10 (1) sustainable anadromous fisheries for current and future generations by  
11 maintaining and protecting anadromous fish and anadromous fish habitat;

12 (2) activities occurring in anadromous fish habitat are governed by standards  
13 that protect anadromous fish and anadromous fish habitat;

14 (3) state standards for protecting anadromous fish and anadromous fish habitat

1 provide regulatory certainty and clear criteria, allowing for responsible resource development;  
2 and

3 (4) that the Department of Fish and Game protects the state's anadromous  
4 fishery resources in a manner consistent with art. VIII, Constitution of the State of Alaska.

5 (b) It is the policy of the state that anadromous fish spawning, rearing, and migratory  
6 habitat in the state be protected as follows:

7 (1) anadromous fish habitat should not be perturbed beyond natural  
8 boundaries of variation;

9 (2) scientific assessments of possible adverse ecological effects of proposed  
10 activities on anadromous fish habitat and the effects of the proposed activities on anadromous  
11 fish populations should be conducted before a proposed activity is approved;

12 (3) adverse environmental effects on anadromous fish stocks and habitat  
13 should be assessed and all essential anadromous fish habitat in marine, estuarine, and  
14 freshwater ecosystems and the access of anadromous fish to those habitat areas should be  
15 protected; the areas of essential anadromous fish habitat that should be protected include  
16 spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing  
17 areas, offshore rearing areas, and migratory pathways;

18 (4) areas of freshwater anadromous fish habitat should be protected on a  
19 watershed basis, including appropriate management of riparian zones, water quality, and  
20 water quantity;

21 (5) when making conservation and allocation decisions, affected user groups,  
22 regulatory agencies, and boards should assess, consider, and respond to instances of decreased  
23 anadromous fish productivity resulting from loss of anadromous fish habitat;

24 (6) areas of degraded anadromous fish habitat areas should be restored to  
25 former levels of productivity when the areas are known and restoration is desirable; and

26 (7) the current productivity and ecological health of areas of anadromous fish  
27 habitat and the effectiveness of restoration activities on areas of degraded anadromous fish  
28 habitat should be investigated and be the subject of continued monitoring.

29 \* **Sec. 2.** AS 16.05.841 is amended to read:

30 **Sec. 16.05.841. Fishway required.** If the commissioner considers it necessary,  
31 every dam or other obstruction built by any person across a stream frequented by

1 salmon or other fish shall be provided by that person with a durable and efficient  
2 fishway and a device for efficient passage for upstream and downstream migrants.  
3 The fishway or device or both shall be maintained in a practical and effective manner  
4 in the place, form, and capacity the commissioner approves for which plans and  
5 specifications shall be approved by the department upon application. The fishway or  
6 device shall be kept open, unobstructed, and supplied with a sufficient quantity of  
7 water to admit freely the passage of fish through it.

8 \* **Sec. 3.** AS 16.05.861 is amended to read:

9 **Sec. 16.05.861. Penalty for violating fishway [AND HATCHERY]**  
10 **requirements.** (a) The owner of a dam or obstruction who fails to comply with  
11 AS 16.05.841 [OR 16.05.851] or a regulation adopted under AS 16.05.841 [OR  
12 16.05.851] within a reasonable time specified by written notice from the commissioner  
13 is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each  
14 day the owner fails to comply constitutes a separate offense.

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

18 \* **Sec. 4.** AS 16.05.871 is repealed and reenacted to read:

19 **Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The  
20 commissioner shall identify all or portions of each river, lake, stream, wetland, and  
21 land beneath each river, lake, stream, and wetland, that are anadromous fish habitat.

22 (b) In this section,

23 (1) "anadromous fish habitat" means all or portions of a permanent or  
24 intermittent river, lake, stream, or wetland, and the land beneath the river, lake,  
25 stream, or wetland, that contribute directly to the spawning, rearing, migration, or  
26 overwintering of anadromous fish;

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

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

30 **Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency  
31 under AS 16.05.891 or as authorized by a valid general minor permit under

1 AS 16.05.883(b), a person or governmental agency must obtain an anadromous fish  
2 habitat permit under AS 16.05.883(a) or 16.05.885 before

3 (1) constructing a hydraulic project or using, diverting, obstructing,  
4 polluting, or changing the natural flow or bed of a river, lake, stream, or wetland  
5 identified as anadromous fish habitat under AS 16.05.871; or

6 (2) using wheeled, tracked, or excavating equipment or log-dragging  
7 equipment in the bed of a river, lake, stream, or wetland identified as anadromous fish  
8 habitat under AS 16.05.871.

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

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

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

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

25 (d) If the commissioner determines that a proposed activity, as conditioned by  
26 permit requirements and mitigation measures that would likely be required of the  
27 activity by the department under AS 16.05.887, will not adversely affect anadromous  
28 fish and anadromous fish habitat under AS 16.05.877, the commissioner shall classify  
29 the application for the activity as an application for a minor permit under  
30 AS 16.05.883(a).

31 (e) If the commissioner determines that a proposed activity has the potential to

1 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.877,  
2 the commissioner shall classify the application for the activity as an application for a  
3 major permit under AS 16.05.885.

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

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

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

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

12 **Sec. 16.05.877. Consideration of effects of activity on anadromous fish and**  
13 **anadromous fish habitat.** (a) In determining if a proposed activity has the potential to  
14 adversely affect anadromous fish and anadromous fish habitat under AS 16.05.871 -  
15 16.05.901, the commissioner shall consider whether the proposed activity, singly or in  
16 combination with other factors, could

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

19 (2) impede the safe and efficient upstream and downstream passage of  
20 anadromous fish;

21 (3) impair water quality or water temperature necessary to support  
22 anadromous fish;

23 (4) reduce instream flows or alter the natural flow regimes necessary to  
24 support anadromous fish and anadromous fish habitat;

25 (5) diminish the overall aquatic habitat diversity, productivity,  
26 stability, or function of all or portions of a river, lake, stream, or wetland that is  
27 anadromous fish habitat;

28 (6) create conditions known to have adverse effects on, or cause  
29 increased mortality of, anadromous fish at any life stage;

30 (7) diminish the stability of a river, lake, stream, or wetland bank or  
31 bed; or

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

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

5 \* **Sec. 6.** AS 16.05.881 is amended to read:

6 **Sec. 16.05.881. Construction without approval prohibited.** If a person or  
7 governmental agency conducts an activity [BEGINS CONSTRUCTION ON A  
8 WORK OR PROJECT OR USE] for which a permit [NOTICE] is required by  
9 AS 16.05.875(a) [AS 16.05.871] without the appropriate permit issued under  
10 AS 16.05.883 or 16.05.885 [FIRST PROVIDING PLANS AND SPECIFICATIONS  
11 SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER  
12 PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING  
13 OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE  
14 ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE  
15 PROTECTION OF FISH AND GAME], the person or agency is guilty of a  
16 misdemeanor. If a person or governmental agency is convicted of violating  
17 AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896] or continues an activity [A  
18 USE, WORK, OR PROJECT] without fully complying with AS 16.05.871 - 16.05.901  
19 [AS 16.05.871 - 16.05.896], the activity [USE, WORK, OR PROJECT] is a public  
20 nuisance and is subject to abatement. The cost of restoring all or portions of a  
21 [SPECIFIED] river, lake, or stream identified as anadromous fish habitat under  
22 AS 16.05.871 to its original condition shall be borne by the violator and shall be in  
23 addition to the penalty imposed by the court under AS 16.05.901.

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

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

30 (b) Notwithstanding (a) of this section, the commissioner may issue a general  
31 minor permit under this section without an application and determination under

1 AS 16.05.875 on a regional or other geographical basis for an activity or activities, if  
2 the commissioner determines that

3 (1) the activity will not have adverse effects on anadromous fish or  
4 anadromous fish habitat or, if the activity may have adverse effects on anadromous  
5 fish and anadromous fish habitat, those effects may be prevented by requiring certain  
6 conditions and stipulations on the activity;

7 (2) permit conditions and stipulations are mandatory and enforceable;  
8 and

9 (3) a general minor permit for the activity is in the public interest.

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

19 (d) The commissioner may issue a regional or geographical authorization for  
20 an activity subject to a general minor permit under this section or may require a person  
21 to obtain written authorization from the department before conducting an activity  
22 subject to a general minor permit under this section. Upon request, the department  
23 shall issue or deny an authorization within five days. The department may make  
24 general minor permit authorizations under this section available through electronic  
25 means. If applicable, a general minor permit authorization under this section shall set  
26 out conditions and stipulations to avoid adverse effects to anadromous fish and  
27 anadromous fish habitat.

28 (e) The commissioner may amend a general minor permit issued under this  
29 section at any time to include additional conditions and stipulations or may rescind a  
30 general minor permit issued under this section if the commissioner determines that the  
31 permit does not protect anadromous fish and anadromous fish habitat. The

1 commissioner shall provide public notice under (f) of this section of

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

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

6 (f) The department shall provide public notice of a decision or determination  
7 made under (a), (b), or (e) of this section. The department shall

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

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

12 (3) for a general minor permit decision under (b) of this section,  
13 provide at least 30 days for public comment.

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

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

21 (1) the proposed activity;

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

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

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

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

31 (6) the commissioner's determination, after considering the factors

1 under AS 16.05.877(a), that the proposed activity

2 (A) may be permitted because

3 (i) the adverse effects of the proposed activity, singly or  
4 in combination with other factors, can be prevented or, if not  
5 preventable, minimized under AS 16.05.887 to the extent necessary to  
6 protect anadromous fish and anadromous fish habitat; or

7 (ii) the anadromous fish habitat affected by the  
8 proposed activity can be restored or the adverse effects of the proposed  
9 activity can be otherwise mitigated under AS 16.05.887 to the extent  
10 necessary to protect anadromous fish and anadromous fish habitat; or

11 (B) may not be permitted because

12 (i) the adverse effects of the activity cannot be  
13 prevented or minimized under AS 16.05.887 to the extent necessary to  
14 protect anadromous fish and anadromous fish habitat; and

15 (ii) the anadromous fish habitat affected by the  
16 proposed activity cannot be restored and the adverse effects of the  
17 proposed activity cannot be otherwise mitigated under AS 16.05.887 to  
18 the extent necessary to protect anadromous fish and anadromous fish  
19 habitat.

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

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

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

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

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

2 (d) After the completion of the comment period established by (c)(3) of this  
3 section and evaluation of the comments received, the commissioner shall publish a  
4 final assessment and a written permit determination on the department's Internet  
5 website. The final assessment and written permit determination must include any  
6 permit conditions, mitigation measures, and bonding imposed on the proposed activity  
7 under AS 16.05.887. The bond shall be the amount determined necessary by the  
8 commissioner to ensure restoration of anadromous fish habitat if the applicant does  
9 not meet the permit conditions and mitigation measures imposed on the activity under  
10 AS 16.05.887. The department shall post public notice of the final assessment and  
11 permit determination on the Alaska Online Public Notice System (AS 44.62.175) and  
12 provide written or electronic notice to each person who commented on the  
13 commissioner's determination that the application for the permitted activity was an  
14 application for a major permit under AS 16.05.875(e) or the draft assessment prepared  
15 under (a) of this section for the activity.

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

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

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

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

22 (C) the commissioner has determined, after considering the  
23 factors under AS 16.05.877(a), that the proposed activity, as authorized by the  
24 written permit determination, shall be permitted because

25 (i) the adverse effects of the proposed activity, singly or  
26 in combination with other factors, can be prevented or, if not  
27 preventable, minimized under AS 16.05.887 to the extent necessary to  
28 protect anadromous fish and anadromous fish habitat; or

29 (ii) the anadromous fish habitat affected by the  
30 proposed activity, as authorized by the written permit determination,  
31 can be restored or the adverse effects of the proposed activity can be

1 otherwise mitigated under AS 16.05.887 to the extent necessary to  
2 protect anadromous fish and anadromous fish habitat;

3 (2) the applicant

4 (A) accepts all permit conditions and mitigation measures  
5 required under AS 16.05.887; and

6 (B) if required, provides the bond required under (g) of this  
7 section; and

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

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

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

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

18 (g) If the commissioner approves an application for an activity and determines  
19 that the activity requires a bond, the applicant shall file a performance bond in the  
20 amount established by the commissioner in the written permit determination for the  
21 activity under (d) of this section. Except as provided in (h) of this section, the  
22 commissioner may not issue a permit until an applicant files the bond. The bond must  
23 be payable to the State of Alaska and conditioned on faithful performance of the  
24 requirements of this chapter and the permit. The performance bond may be a corporate  
25 surety bond issued by a corporation licensed to do business in the state or a personal  
26 bond secured by cash or its equivalent. However, the commissioner may not accept a  
27 bond executed by the applicant without separate surety. If, at any time, the  
28 commissioner finds that the amount of the bond is more or less than what is necessary  
29 to ensure restoration of anadromous fish habitat, the commissioner may reduce the  
30 amount of bond required, eliminate the bond requirement for the activity, or require an  
31 applicant or permittee to file an additional bond. The department shall provide public

1 notice if the commissioner determines that the amount of a bond must be raised or  
2 lowered or that a bond is no longer required for an activity under this section.

3 (h) Notwithstanding (g) of this section,

4 (1) a governmental agency is exempt from the bonding requirements of  
5 this section;

6 (2) in lieu of the filing of a performance bond by an applicant, the  
7 department may receive the amount of the bond from another state agency; and

8 (3) a bond required under AS 16.05.871 - 16.05.901 may be part of  
9 another bond held or initiated by the department or another state agency.

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

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

14 (2) posting a performance bond for the transferee or assignee as  
15 required under (g) of this section, unless the transferee or assignee is exempt under (h)  
16 of this section.

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

19 **Sec. 16.05.887. Permit conditions and mitigation measures.** (a) The  
20 commissioner shall require a permittee under AS 16.05.883(a) or 16.05.885 to  
21 implement the permitted activity in a manner

22 (1) most likely to prevent or minimize the adverse effects of the  
23 activity on anadromous fish and anadromous fish habitat under AS 16.05.877; and

24 (2) that the commissioner has determined will protect anadromous fish  
25 and anadromous fish habitat.

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

30 (1) prevent adverse effects of the activity on anadromous fish and  
31 anadromous fish habitat by changing the siting, timing, procedure, or other

1 manageable qualities of the activity;

2 (2) if the adverse effects of the activity cannot be prevented under (1)  
3 of this subsection, minimize the adverse effects of the activity by limiting or changing  
4 the degree, magnitude, duration, manner of implementation, or other manageable  
5 qualities of the activity; and

6 (3) if the activity cannot be implemented in a manner that prevents  
7 adverse effects on anadromous fish and anadromous fish habitat under this subsection,  
8 restore the affected anadromous fish habitat or take other mitigation measures that the  
9 commissioner determines are necessary to protect anadromous fish and anadromous  
10 fish habitat.

11 (c) The department shall adopt regulations consistent with AS 16.05.871 -  
12 16.05.901 establishing appropriate permit conditions and mitigation measures  
13 applicable to activities subject to permitting requirements under AS 16.05.883 or  
14 16.05.885.

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

17 **Sec. 16.05.889. Reconsideration of determinations.** (a) An interested person  
18 may request the commissioner to reconsider

19 (1) whether an application for a proposed activity should be classified  
20 as an application for a minor or major permit under AS 16.05.875;

21 (2) a final written determination to issue or refuse to issue a permit  
22 under AS 16.05.883(a) or (b) or 16.05.885; or

23 (3) the amount of a bond

24 (A) determined necessary by the commissioner and posted in a  
25 written permit determination under AS 16.05.885(d); or

26 (B) raised, reduced, or eliminated by the commissioner under  
27 AS 16.05.885(g).

28 (b) A request for reconsideration under this section must be made in writing  
29 and not later than 30 days after the date of the determination.

30 (c) Within 30 days after receiving a request for reconsideration, the  
31 commissioner shall issue a written determination granting or denying the request. If

1 the commissioner does not act on the request for reconsideration within 30 days after  
2 receiving the request, the request is denied. If the commissioner grants the request for  
3 reconsideration, the commissioner shall issue a final determination within 30 days.

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

11 \* **Sec. 8.** AS 16.05.891 is amended to read:

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

18 \* **Sec. 9.** AS 16.05 is amended by adding new sections to read:

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

20 (1) reviewing permit applications, assessments performed by the  
21 department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -  
22 16.05.901; and

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

24 (b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the  
25 applicant or permittee is a governmental agency or the commissioner finds that  
26 waiving the fee is otherwise in the public interest. The commissioner shall, in  
27 regulations adopted by the department, specify the circumstances under which a fee  
28 may be waived under this subsection.

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

31 **Sec. 16.05.894. Notification of violation.** When the commissioner finds, after

1 investigation, that a permittee or activity permitted under AS 16.05.871 - 16.05.901 is  
2 violating a provision of AS 16.05.871 - 16.05.901, a regulation adopted under  
3 AS 16.05.871 - 16.05.901, or a permit condition or mitigation measure imposed under  
4 AS 16.05.887, the commissioner shall notify the permittee of the nature of the  
5 violation and

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

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

10 **Sec. 16.05.897. Applicability of permitting requirements.** (a)  
11 Notwithstanding AS 16.05.875(a), and except as provided in (b) of this section, a  
12 facility, activity, operation, or project that has in full force and effect, on the day  
13 before the effective date of sec. 5 of this Act, all authorizations required by law  
14 relating to the protection of anadromous fish and anadromous fish habitat

15 (1) shall continue to be authorized under AS 16.05.871 - 16.05.901 and  
16 the regulations adopted under AS 16.05.871 - 16.05.901, as those sections and  
17 regulations read on the day before the effective date of sec. 5 of this Act, and may  
18 continue to renew those authorizations and obtain minor authorization modifications  
19 under AS 16.05.871 - 16.05.901 and the regulations adopted under AS 16.05.871 -  
20 16.05.901, as those sections and regulations read on the day before the effective date  
21 of sec. 5 of this Act; and

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

24 (b) The exemption provided by (a) of this section does not apply to a facility,  
25 activity, operation, or project that significantly expands or increases in scope, area, or  
26 frequency, or otherwise takes action outside, those actions for which it is authorized  
27 on the day before the effective date of sec. 5 of this Act.

28 **Sec. 16.05.899. Enforcement authority.** An employee of the department who  
29 is designated by the commissioner may issue a person a citation that complies with  
30 AS 12.25.175 - 12.25.230 for a violation that is not a misdemeanor of AS 16.05.871 -  
31 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901, if there is probable

1 cause to believe the person has violated AS 16.05.871 - 16.05.901 or a regulation  
2 adopted under AS 16.05.871 - 16.05.901.

3 \* **Sec. 10.** AS 16.05.901(a) is amended to read:

4 (a) A person who violates AS 16.05.871 - 16.05.901 or a regulation adopted  
5 under AS 16.05.871 - 16.05.901 [AS 16.05.871 - 16.05.896] is guilty of a violation  
6 punishable as provided in AS 12.55 [CLASS A MISDEMEANOR].

7 \* **Sec. 11.** AS 16.05.901 is amended by adding new subsections to read:

8 (c) A person who knowingly violates AS 16.05.871 - 16.05.901 or a  
9 regulation adopted under AS 16.05.871 - 16.05.901 is guilty of a class A misdemeanor  
10 and is punishable as provided in AS 12.55.

11 (d) A person who, with criminal negligence, violates or permits a violation of  
12 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a  
13 permit condition or mitigation measure imposed under AS 16.05.887, or an order  
14 issued under AS 16.05.894 is guilty of a class A misdemeanor and is punishable as  
15 provided in AS 12.55. In this subsection, "criminal negligence" has the meaning given  
16 in AS 11.81.900(a).

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

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

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

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

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

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

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

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

11 (i) If a respondent violates an order issued under AS 16.05.894 that requires  
12 the respondent to repair or correct damage, the commissioner may proceed to repair or  
13 correct the damage using state agency employees or contractors and the respondent is  
14 liable for the cost of the repair. The commissioner shall deliver to the respondent an  
15 itemized statement of expenses incurred.

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

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

22 \* **Sec. 12.** AS 16.05.925(a) is amended to read:

23 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,  
24 16.05.783, 16.05.831, 16.05.861, 16.05.901, and 16.05.905, a person who violates  
25 AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is  
26 guilty of a class A misdemeanor.

27 \* **Sec. 13.** AS 16.20.070 is amended to read:

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

30 \* **Sec. 14.** AS 37.05.146(c) is amended by adding a new paragraph to read:

31 (90) fees collected by the Department of Fish and Game under

1 AS 16.05.871 - 16.05.901.

2 \* **Sec. 15.** AS 41.17.010 is amended to read:

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

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

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

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

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

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

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

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

30 \* **Sec. 16.** AS 44.62.330(a)(27) is amended to read:

31 (27) Department of Fish and Game as to functions relating to the

1 protection of anadromous fish habitat under AS 16.05.871 - 16.05.901 where  
2 procedures are not otherwise expressly provided in AS 16.05.871 - 16.05.901  
3 [FISH AND GAME UNDER AS 16.05.871];

4 \* **Sec. 17.** AS 46.15.020(b) is amended to read:

5 (b) The commissioner shall

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

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

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

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

31 (5) before February 1 of each year, prepare a report describing the

1 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner  
2 shall notify the legislature that the report is available; the report must include

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

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

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

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

13 \* **Sec. 18.** AS 16.05.851 and 16.05.896 are repealed.

# Alaska State Legislature



**Leadership**  
Majority Whip

**Chair**  
Fisheries Committee  
Transportation Committee

**Member**  
Rules Committee  
Labor and Commerce Committee  
Legislative Council

**REPRESENTATIVE LOUISE STUTES**

**District 32**

**Kodiak-Cordova-Yakutat-Seldovia**

**Session:**  
Alaska State Capitol, #406  
Juneau, AK 99801

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**Interim:**  
305 Center Avenue, Suite 1  
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Fax: (907) 486-5264

## HB 199 Explanation of Changes Version I to M

### **Subsection (f) on Page 8, lines 6 through 13:**

Added language to clarify that 30 days of public comment is required for the issuance of a general minor permit, but not for amending or rescinding a general minor permit. For amending or rescinding, only public notification is required. As has always been the case, the minor permit only requires public notification but not 30 days of public comment. This change was made so that the commissioner can amend or rescind a general permit immediately without 30 days of public comment if it is determined that the permit does not protect anadromous fish and anadromous fish habitat.

### **Subsection (d) on Page 10, lines 7 through 10:**

Following "AS 16.05.887." inserted "The bond shall be the amount determined necessary by the commissioner to ensure restoration of anadromous fish habitat if the applicant does not meet the permit conditions and mitigation measures imposed on the activity under AS 16.05.887." This is a clarification that conforms the language in (d) to the language (a)(5) on page 8, which is the first reference to the bond. The bond is for the restoration of habitat if the permit conditions and mitigation measures are not complied with and not the to ensure the completion of mitigation measures. This conforming change was made throughout the bill. In the previous version I, the first reference to the bond in (a)(5) accurately stated its purpose. However, subsequent references on Page 11, lines 20 through 21 and Page 11, line 27 incorrectly identified the bond as being for the completion of mitigation measures. As identified in (a)(5), the bond was always meant for the restoration of habitat if the permit conditions and mitigations measures are not complied with.

**Subsection (g) on Page 11, lines 18 through 19:**

Following “activity” inserted “and determines that the activity requires a bond,” This change clarifies that the commissioner can determine that a bond is not necessary for a certain activity. Although this was possible in the previous version if the commissioner determined that the amount of the bond was \$0, this language is more concise and avoids potential confusion regarding interpreting the statute. An interested person can request reconsideration of whether a bond is required or not.

**Subsection (a)(3)(B) on Page 13, line 26:**

In the previous version, only the reduction or the elimination of a bond could be challenged, and one could not request reconsideration of the increase of the amount. This was an oversight and was corrected.

**Nondalton Tribal Council**  
**P.O. Box 49**  
**Nondalton, A.K. 99640**  
**Ph.(907) 294-2257**  
**Fax (907) 294-2271**  
[nondaltontribe@yahoo.com](mailto:nondaltontribe@yahoo.com)

**Resolution # 03-05-2018-1**  
**2018 Resolution in Support of HB 199**

**Changing State Law to Protect our Salmon and Way of Life**

- Whereas,** Nondalton Tribal Council is the governing body of Nondalton, Alaska;
- Whereas,** Alaska Native Tribes depend upon salmon as a fundamental part of our social, cultural, economic, and spiritual wellbeing;
- Whereas,** Access to sustainable healthy resources for our families and our people is critical to preserving our way of life;
- Whereas,** Nondalton Tribal Council has made it a priority to protect our hunting and fishing resources for our people;
- Whereas,** Nondalton Tribal Council also acknowledges there exist multiple threats to critical salmon spawning and rearing habitat within Alaska;
- Whereas,** Nondalton Tribal Council finds protection of critical salmon spawning and rearing habitat necessary to provide for healthy salmon populations for future generations to come;
- Whereas,** Alaska's Fish Habitat Permitting Law (Title 16) does not have strong or clear enough language to protect salmon spawning and rearing grounds;
- Whereas,** The current law allows the Alaska Department of Fish and Game (ADF&G) to approve proposals near salmon streams unless the plans are "insufficient for the proper protection of fish and game" AS 16.05.871(d);
- Whereas,** This law needs to be updated to better define what constitutes the "proper protection of fish and game;"

- Whereas,** Without wild salmon, our well-being, economic security, and food sovereignty are threatened;
- 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.
- Whereas,** On March 27, Representative Louise Stutes introduced House Bill 199 to address these shortcomings and provide the updates requested by Alaskans and Alaska's Board of Fisheries.
- 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;
- 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 well-being of the people that rely on them;
- 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 Nondalton Tribal Council support House Bill 199 to change Title 16, Alaska's Fish Habitat Permitting Law, to proactively protect salmon habitat, preserve our cultures, and sustain our way of life.

**Now Therefore Be It Further Resolved** that this shall be the policy of the Nondalton Tribal Council until it is rescinded or amended.

**CERTIFICATION:**

The foregoing resolution was passed by the Nondalton Tribal Council on the 5th day of March 2018 and that a quorum 7 was present.

  
\_\_\_\_\_  
William Evanoff,  
President

  
\_\_\_\_\_  
Kristy Jeffries,  
Secretary

## **Matt Gruening**

---

**From:** Hickman, Steve <shickman@polarsupply.com>  
**Sent:** Monday, April 09, 2018 11:55 AM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

I oppose HB 199. What we have now is working well. We love our fish, but this is unnecessary.

P. S. Please focus on getting us a balanced budget. Until that is solved everything else should be on hold.



**POLAR SUPPLY COMPANY**  
A Division of Spenard Builders Supply

**Steve Hickman**  
**Sales**  
300 E 54th Ave  
Anchorage, AK 99518  
Cell: 907-244-1959  
[shickman@polarsupply.com](mailto:shickman@polarsupply.com)

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## **Matt Gruening**

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**From:** Rep. Louise Stutes  
**Sent:** Saturday, April 07, 2018 1:51 PM  
**To:** Matt Gruening  
**Subject:** FW: HB 199 Comments 4.7.2018

**From:** Macky Cassidy  
**Sent:** Saturday, April 7, 2018 12:15 PM  
**To:** Rep. Louise Stutes  
**Subject:** HB 199 Comments 4.7.2018

Dear Representative Stutes & Fisheries Committee Members,

I was on the phone during today's public testimony and didn't have the opportunity to speak before having to go to work. Thank you for hearing so many voices today, and thank you for all your work on HB 199, and working to protect Alaska salmon for future generations.

My name is Macky Cassidy. Last summer I bought a southeast region commercial gill netting permit and salmon is the main staple of my family's diet.

I support the Stand for Salmon Ballot Initiative and a strong version of HB 199. Please continue to work on the original language of this bill, and put forth something that creates real accountability to ensure that salmon habitat is not compromised when large scale projects are developed in the state. Please restore presumption of anadromy.

Because I recently made this investment into the commercial fishing industry and am in it for the long haul, I would like to see more work on HB 199 and have stronger protections for Alaska salmon be written into law.

To Quote Lane Welch from Fish Factor *Alaska fishermen and processors provide 97 percent of our nation's wild salmon. The seafood industry puts more people to work than oil/gas, mining, timber and tourism combined.*"

Thank you for your time and thank you for considering my comments.

Macky Cassidy

# Bristol Bay Fishermen's Association

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



April 6, 2018

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

Via email to: Representative.Louise.Stutes@akleg.gov  
cc: Fisheries Committee Members

**Re: Opposition to HB 199 (Version M) until certain issues are remedied.**

Dear Representative Stutes and Members of the House Fisheries Committee,

I am president of the Bristol Bay Fishermen's Association (BBFA). It is the largest and oldest voluntary association of commercial fishers in Bristol Bay.

BBFA opposes HB 199 version M. We do so for the following reasons.

- 1. HB 199 deletes the rule-making authority of the Administrative Procedure Act and is therefore worse than the current Anadromous Fish Act.**

The current Anadromous Fish Act, at 16.05.871, provides that ADF&G implements the Act through the rule-making authority of the Administrative Procedure Act (APA), at AS 44.62. HB 199 would delete that APA authority. Doing so has three negative effects. First, it makes it more difficult, if not legally impossible, to adopt regulations to implement the Act. Second, it makes it impossible for the public, under the APA, to propose regulations and petition ADF&G to adopt them. That makes it impossible for BBFA and others who support conservation to salmon habitat to propose rules to do so. Third, because the APA currently applies, ADF&G adopts the Anadromous Waters Catalog into regulation. Doing so puts the public on notice as to which waters are anadromous and for which permits are necessary for activities which threaten habitat. Deleting the applicability of the APA means the Catalog might not be in regulation, and that would deprive the public of that notice. That would create a defense (i.e., lack of notice) to any criminal prosecution for engaging in an activity without a necessary permit.

Apparently the drafters believe that ADF&G has general rule-making authority in the absence of an express grant of such authority. ADF&G has taken the opposite view, and that is why the Joint Board of Fisheries and Game adopts ADF&G's land use plans for areas it manages into regulation, rather than ADF&G adopting them into regulation.

There is no reason to delete the current requirement and authority to adopt regulations to implement the Anadromous Fish Act. Until that problem is remedied and that rule-making authority is restored, BBFA will oppose HB 199.

**2. The criminal provisions of HB 199 are still unworkable.**

First, the criminal provisions classify the *same conduct* as both a *misdemeanor* and as a *violation* (less than a misdemeanor). For example, a person who engages in activities without a required permit violates the proposed AS 16.05.881. It would classify the conduct as a misdemeanor. However, the proposed AS 16.05.901(a) would classify the same conduct as a violation (less than a misdemeanor).

Second, the provisions regarding criminal intent are equally confusing. The proposed AS 16.05.901(c) provides that a person who “knowingly” violates AS 16.05.871-.901 or a regulation thereunder is guilty of a class A misdemeanor. However, the proposed AS 16.05.901(d) provides that a person who “with criminal negligence” violates AS 16.05.871-.901 or a regulation thereunder is guilty of a class A misdemeanor. In other words, because the same penalty provisions apply for different types of criminal intent, there is no justification for the different types of criminal intent. Furthermore, the proposed AS 16.05.881, which applies when a person engages in activities without a required permit, does not specify a type of criminal intent. Under current law such a lack of specification is construed to imply a standard of civil negligence – i.e., that a person is guilty if he or she knew or should have known the conduct was unlawful. In other words, a person is guilty of a misdemeanor by engaging in an activity for which a permit is required but without a permit, if the criminal intent is civil negligence under the proposed AS 16.05.881, or if it is “knowingly” under the proposed AS 16.05.901(c), or if it is “with criminal negligence” under the proposed AS 16.05.901(d). The same penalty occurs for different criminal intent.

**3. The conservation standards of the current version of HB 199 are no better than current law.**

HB 199 Version M has deleted all the tougher standards that were the justification for the bill at the outset. The uncodified (unenforceable) policy statements in Section 1 remain but are simply guidance. Then, the proposed AS 16.05.887(c) would require ADF&G to adopt regulations establishing permit conditions and mitigation measures. That can be done under current law.

**Conclusion**

We appreciate the work that has gone into HB 199, but it should not be advanced until the above problems are addressed.

Regards,



David Harsila,  
BBFA President



# International Union of Operating Engineers

LOCAL 302 • Washington • Alaska • Idaho • AFL-CIO

Daren Konopaski, *Business Manager & General Vice President*

April 10, 2018

House Fisheries  
Submitted via email

Dear Representatives of House Fisheries Committee:

The Operating Engineers, Local 302 are writing this letter as a statement of opposition to HB 199. Local 302 represents over three thousand Operating Engineers in Alaska, mostly in the construction industry. With Construction being the 3<sup>rd</sup> largest industry in the State, we feel this bill would only add costs and delays for work already scheduled to start. In some cases, projects may even be terminated altogether at a time when the economy needs all the support it can get.

While Local 302 supports the responsible development of this great State, we feel this bill goes too far to fix a problem that doesn't exist. We feel that the State already has a sound structure for their permitting process and Fish habitat is already protected. Infrastructure improvement and development is crucial for the State as a whole and our membership depends on the work for their livelihood.

In summary, please do not support this legislation as it would further pose an even greater threat to our Alaskan economy.

Sincerely,

Corey Baxter  
Operating Engineers  
Local 302

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Sean Jeffries, *President* • Jason Alward, *Vice President*

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## **Matt Gruening**

---

**From:** Joe Warchola <Joe.Warchola@peakalaska.com>  
**Sent:** Monday, April 09, 2018 12:15 PM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

I oppose HB 199 for the following reasons:

- The current permitting system is working to protect fish - what is this trying to fix? Where is the problem?
- The proposed bill creates additional uncertainty, which is especially concerning during a difficult fiscal time for our state and our economy.
- This will add costs and delays to community infrastructure projects, especially in rural Alaska where many of these projects are already challenging.
- CSHB 199 is a non-starter, the bill goes too far.
- Alaska already has an established structure for issuing permits and it is working.
- Fish habitat is already protected and this bill goes too far.
- Alaska has one of, if not the best, managed fisheries in the world.
- Every Alaskan wants to safeguard our fisheries, but this bill is unnecessary, goes too far and will negatively impact our communities.
- This legislation poses a threat to much needed infrastructure development and improvement.
- This legislation poses a threat to Alaska's economy and grows government at a time when the state faces a fiscal challenge.

Thanks,

Joe Warchola  
Peak Oilfield Service Company  
Project Manager  
907-776-3882 office  
907-398-9315 cell  
Joe.Warchola@peakalaska.com

## **Matt Gruening**

---

**From:** P M Walsh <nwconsulting.walsh@gmail.com>  
**Sent:** Monday, April 09, 2018 1:33 PM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

I am writing this email in an effort to state my opposition to HB199. The State of Alaska currently has a permitting system in place that provides for ample review and protection of our anadromous rivers and steams. This bill adds additional layers of bureaucracy which in turn will increase cost for essential infrastructure in both rural and urban areas.

Patrick Walsh, PE  
NW Consulting LLC  
(907) 441-7019



Alaska Power Association  
703 West Tudor Road, Suite 200  
Anchorage, Alaska 99503-6650  
(907) 771-5700  
Fax: (907) 561-5547  
[www.alaskapower.org](http://www.alaskapower.org)

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April 9, 2018

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

Dear Representative Stutes:

Thank you for inviting Alaska Power Association (APA) to comment on House Bill 199. APA is the statewide trade association for electric utilities in Alaska. Our members provide power for a half million Alaskans from Utqiagvik to Unalaska, through the Interior and Southcentral, and down the Inside Passage.

First, we would like to thank you and your staff for meeting with APA on specific issues we've had with HB 199. We recognize the changes that have been made in the bill to several items with which we had concerns.

Recognizing the work that has gone into HB 199, APA remains opposed to the bill. Our opposition to the bill is based on the increased permitting time and expense HB 199 will impose on electric utilities in the state that own or are pursuing hydroelectric projects.

Unfortunately, APA hasn't had sufficient time for our subject matter experts to conduct the usual technical review we have applied to past versions of HB 199. With that in mind, our comments focus on the overall impact of the bill.

It is important to point out that hydroelectric projects are already subject to rigorous oversight at the federal level. The Federal Energy Regulatory Commission (FERC) process, and even the FERC non-jurisdictional process, require years of field work, studies and other activities and can cost millions of dollars.

As an example, under existing FERC requirements to license a hydroelectric project, the project owner must coordinate with the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the National Oceanic and Atmospheric Administration, and multiple other state and federal agencies before a license approval can be considered. Each state and federal agency must indicate they have no objection to the project before regulators allow a project to move forward. This can take multiple years, and would be largely duplicated by the provisions of HB 199.

If HB 199 or the Stand for Salmon initiative pass, electric utilities in Alaska could face additional requirements that either make a hydroelectric project infeasible or pass the additional costs onto ratepayers. This is a losing outcome on all sides.

APA would support a carve-out in HB 199 for hydropower projects that must already undertake an environmental process required by a federal or state agency. That way, electric utilities in Alaska would not have a duplicative permitting regime for hydroelectric projects.

Hydropower is a clean, renewable, and stable source of power for Alaskans. Many utilities utilize hydropower to insulate themselves from fluctuations in the cost of fossil fuel-based generation. There are communities in the state that have significantly decreased their diesel generation in favor of stable hydropower.

APA urges the Legislature not to pass HB 199. If the bill sponsor continues work on the legislation over the interim, APA will be happy to weigh in on matters pertaining to the Alaska electric utility industry.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Crystal Enkvist', with a stylized flourish at the end.

Crystal Enkvist  
Executive Director

04/09/2018

HED: An Open Letter to the Legislature in Juneau

SUBHED: Will Alaska Learn from Salmon's History?

By David R. Montgomery

Fifteen years ago when I researched and wrote the book "*King of Fish: The Thousand Year Run of Salmon*," I spent a lot of time looking at where societies got it wrong on salmon. That has made it all the more refreshing every time I have come to Alaska to enjoy a place that has gotten it right—so far. More than anywhere else in the world, Alaska has enabled its people to enjoy the rich and varied benefits that come with healthy salmon runs.

But it's also clear to me that Alaska is at a crossroads in its salmon history. While many Alaskans can still depend on strong fisheries, the first serious signs of decline in locales across the state raise critical questions about the long-term health of Alaskan salmon. And if there's anything to learn from the history of places where people have lived with salmon, it is to beware another "death by a thousand cuts" playing out in a blind march toward degraded habitat and dwindling runs.

Over the last 1,000 years, humans inadvertently conducted several full-scale experiments on how salmon fare when people make big changes to rivers, streams, lakes and ponds. The takeaway? A slow-motion train wreck with grim results for salmon in Great Britain and across Europe, then New England, and finally California and the Pacific Northwest.

In all three instances, we've learned that a lot of little changes across the land can add up to big changes that undermine the natural systems salmon depend on. And these small, incremental losses that seem so harmless one-by-one – here a tributary stream blocked by a culvert, there a pond filled in to make way for

some other use – are insidious because each domino falls with little notice. Yet add them all up and they become difficult to remedy.

The sad, ongoing story of Pacific Northwest salmon is all too familiar. Salmon remain central to the region's identity, but most salmon served up in Seattle restaurants comes from Alaskan waters. Declining habitat for spawning and rearing was and remains one of the most important factors depressing runs in the Pacific Northwest. While a few are coming back from the brink at great taxpayer expense, many teeter on the edge of extinction. We're a long way from the days captured in old black-and-white photographs of boats and docks loaded with giant kings.

It makes you wonder why earlier generations in Great Britain, New England and the Pacific Northwest chose to throw it all away, doesn't it? Except they didn't. No one set out to destroy once mighty salmon runs. Nor were the fish unappreciated. Salmon were revered much as Alaskans love them today. But good intentions were never enough to save salmon as the damage unfolded project by project, one river at a time.

As for Alaska, what will your future hold? How will the state cope with the pressure to permit gradual losses of lake, river and wetland habitat across the landscape from adding up to large impacts? It would be tragic to lose salmon anywhere in Alaska because we failed to learn the lessons of history.

Fortunately, there's a chance for Alaska to get it right on habitat and address some unfinished business. While it adopted one of the most progressive fisheries management approaches in the world and reserved fish, game and waterways for the people at statehood, Alaska has never fully articulated the methods of protecting wild fish habitat. Meanwhile, foreign mining companies rushing to use the legal vacuum and subsume habitat with open-pit mines illustrate the importance of a pro-active habitat protection movement now taking hold in Alaska.

Given salmon's history, it's not a moment too soon. What started out as conversations among fishermen and the state Board of Fish has materialized in the state house in a proposed law.

Given how fundamental salmon are to Alaska, state leaders need to pass meaningful salmon habitat protections. By defining proper protections for salmon habitat now, Alaska will live up to its legacy as the last and greatest bastion for wild salmon. Seize the chance to break the sorry cycle of historical loss for the king of fish. The people of Alaska—and their descendants—will not regret it.

David R. Montgomery is a professor at the University of Washington and the author of *King of Fish: The Thousand-Year Run of Salmon* and, most recently, *Growing A Revolution: Bringing Our Soil Back to Life*.

## Matt Gruening

---

**From:** Scott Stewart <sstewart@arcticcontrols.com>  
**Sent:** Monday, April 09, 2018 1:48 PM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

- The current permitting system is working to protect fish - what is this trying to fix? Where is the problem?
- The proposed bill creates additional uncertainty, which is especially concerning during a difficult fiscal time for our state and our economy.
- This will add costs and delays to community infrastructure projects, especially in rural Alaska where many of these projects are already challenging.
- CSHB 199 is a non-starter, the bill goes too far.
- Alaska already has an established structure for issuing permits and it is working.
- Fish habitat is already protected and this bill goes too far.
- Alaska has one of, if not the best, managed fisheries in the world.
- Every Alaskan wants to safeguard our fisheries, but this bill is unnecessary, goes too far and will negatively impact our communities.
- This legislation poses a threat to much needed infrastructure development and improvement.
- This legislation poses a threat to Alaska's economy and grows government at a time when the state faces a fiscal challenge.

Best Regards,

 **Arctic Controls, Inc.**

*Scott A. Stewart*

Scott A. Stewart  
President

Phone: (907) 277-7555

Fax: (907) 277-9295

URL: [www.arcticcontrols.com](http://www.arcticcontrols.com)



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## **Matt Gruening**

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**From:** Chad Schaefer <schaefer.chad.r@gmail.com>  
**Sent:** Monday, April 09, 2018 1:43 PM  
**To:** House Fisheries  
**Subject:** HB 199 Oppose

To Whom it May Concern,

I am an Alaska resident of Soldotna, father and business owner and I want to voice my strong opposition to HB199. We currently already have permitting processes in place and if it needs to revamped then that should be look at first. The huge push by commercial fishing industry in support of this bill is unfounded, and I am anxious for the day they go back to wood boats and sails. If this is truly about protecting fish then I would advise an observer be placed aboard every commercial fishing vessel to record actual by-catch at the cost of the operator of the boat. I have seen no one present proof of the current system in Alaska failing which makes me wonder why this is even needed. In closing this is a huge waste of time and resources and should be thrown out the window as it does nothing to actually protect fish just a few vested interests.

Regards,

Chad Schaefer

## **Matt Gruening**

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**From:** David Hopkinson <DHopkinson@deltaconstructors.net>  
**Sent:** Monday, April 09, 2018 11:18 PM  
**To:** House Fisheries  
**Subject:** FW: I oppose HB 199!

HB-199 Bill throws a blanket regulation over the State of Alaska in an attempt to solve a problem that we do not have. The State regulators, infrastructure and resource development contractors should be proud of how we care for our fish habitats. I am an Alaska General Contractor. After working in the L-48 and International locations I know firsthand that the Alaska regulations work and the developers desire to do the right things are second to none. There is plenty of evidence to support this for those that care to look. Look at the level of effort taken to protect the fish habitat when building a small bridge over Campbell Creek in Anchorage. Take another look at the multimillion dollar causeway built to ensure the fish could migrate along the shore line. HB 199 is not a fit for purpose Bill. It would limit the progress that our Good State deserves. If there are projects that need special attention, then address that project accordingly.

Those that really care for the fish habitats, should hold Alaska up on a pedestal, as a standard for others to follow.

Thank You

*David Hopkinson*

*Delta Constructors LLC  
VP / Alaska Regional Manager  
907-830-4649 Cell  
907-771-5800 Office*



April 11, 2018

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

Dear Representative Stutes and the House Fisheries Committee:

Please accept this letter of opposition to HB 199 for your consideration, on behalf of Fairweather, LLC. Fairweather is an Alaskan company that was established in 1976. We provide support services to the diverse Alaska Natural Resource Industry, Government agencies, Engineering firms and even the Aviation Industry. We depend on the success of our clients and a strong Alaskan economy, to ensure the longevity of our company.

Fairweather respectfully opposes HB 199 as we believe it will create additional, unnecessary permitting burden including financial resources and delays to community infrastructure projects. This will be especially burdensome to rural Alaska where these projects are already challenging and expensive. This legislation will pose a threat to much needed infrastructure development and improvement. Additionally, we believe this legislation will challenge Alaska's economy at a time when we are already in a state of fiscal crisis.

Alaska has in place an established structure for issuing permits that is backed by scientific research and is succeeding in protecting fish habitat. The majority of the employees here at Fairweather are avid Alaskan fishermen and women. We all wish to protect our fisheries and fish habitat, but we believe this bill is excessive and unreasonable.

Please reconsider HB 199 as the current rigorous permitting system works and there would be no benefit to advance this bill. We would like to see the growth of Alaskan communities and the Alaskan economy, and we do not believe this legislation would be conducive to that end.

Respectfully,

Rick Fox  
CEO



April 10, 2018

Honorable Members of House Special Committee on Fisheries  
*Submitted via email*

Dear Chair Stutes and members of the House Fisheries Committee:

The undersigned broad coalition of entities, with very diverse interests, write to share comments with regard to Committee Substitute House Bill 199 Version M (CSHB 199), "An Act establishing major and minor anadromous fish habitat permits for certain activities; establishing related penalties; and relating to the protection of anadromous fish and anadromous fish habitat."

We appreciate your efforts to respond to the concerns generated by the first version of HB 199; however, we continue to question the necessity of this bill and have concerns surrounding several portions of the committee substitute.

Alaska's world-class management of its fisheries is the envy of many other states and nations. This has been reinforced through testimony in your committee by regulatory experts from the Department of Fish and Game, the Department of Environmental Conservation, and the Department of Natural Resources. In fact, the strong collaboration between these departments and the continuous improvements through modernizing standards has been a consistent theme of the testimony on the existing regulatory process.

Like you and all Alaskans, we value Alaska's fisheries. The work of our regulatory agencies has been proven effective at managing and balancing all of our natural resources for the benefit of Alaskans. So why disrupt that balance? We are deeply concerned that this latest version of the proposed legislation will still result in uncertainty, delays, and additional costs for a wide range of activities in Alaska, including community and resource development, with no added benefit to the environment.

We all agree on one point: the current system is working to protect fish habitat.

As a reminder, this coalition includes urban and rural stakeholders, and businesses and associations representing tens of thousands of Alaskans. We all depend on effective and consistent regulatory processes. So at a time when Alaska's small and large businesses have been hit hard by the

recession and our state struggles to manage its fiscal challenges and high unemployment, it does not make sense to grow government with a complex new regulatory scheme with no added benefits.

Alaska has an excellent track record of permitting large and small community and development projects using proven state and federal environmental laws that already protect fish habitat, so for that reason and because the bill still has several problematic sections, we urge this committee to reject the bill.

Sincerely,

Curtis Thayer, President & CEO  
Alaska Chamber

Owen Graham, Executive Director  
Alaska Forest Association

Deantha Crockett, Executive Director  
Alaska Miners Association

Kara Moriarty, President & CEO  
Alaska Oil and Gas Association

Rebecca Logan, President  
Alaska Support Industry Alliance

Aves Thompson, Executive Director  
Alaska Trucking Association

Jeremy Price, State Director  
Americans for Prosperity, Alaska

John MacKinnon, Executive Director  
Associated General Contractors of Alaska

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

Karen Matthias, Executive Director  
Council of Alaska Producers

John Binkley, President  
Cruise Lines International Association Alaska

Aaron Schutt, President and  
Doyon Limited

Marisa Sharrah, President & CEO  
Greater Fairbanks Chamber of Commerce

Neil MacKinnon, President  
First Things First Alaska Foundation

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

Denny DeWitt, Alaska State Director  
The National Federation of Independent Business

## **Matt Gruening**

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**From:** Fred Braun <brauncom@ptialaska.net>  
**Sent:** Monday, April 09, 2018 3:50 PM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

On July 2, 2013 the Kenai Peninsula Borough Assembly passed an already in place and overregulated Ordinance that greatly expanded the existing habitat protection district to include ALL DOCUMENTED SALMON BEARING WATERS within the Kenai Peninsula Borough with very few exceptions. This added hundreds of additional miles of protection to lakes and streams. With the passage of this Ordinance hundreds of landowners of both lakefront properties as well as dozens of smaller streams also gave up their rights to their own private properties within a 50' buffer of the shoreline.

We as Realtor's voiced our opposition through our Local, our Statewide and even the National Association Of Realtor's with all organizations contributing funds to oppose this unfair and unjustified Ordinance.

There were already many very adequate and worthwhile regulations protecting the habitat in place prior to the passage of that Ordinance and we as Realtor's feel that the burden has already been felt without expanding or allowing MORE overprotection of water bodies under the passage of HOUSE BILL 199.

Fish habitat is already very well protected with Alaska having one of, if not the best managed fisheries in the world. If passed, HB 199 will add costs and delays to community infrastructure projects especially in the rural communities. This bill poses a threat to Alaska's economy with a negative impact. It is an unnecessary and a unjustified reason for more restrictions on an already over regulated protection of our anadromous fish and fish habitat.

Please listen to concerns from those of us that feel we currently have more than adequate prospection in place for fish habitat and join us in OPPOSING HOUSE Bill 199.

Fred Braun  
ASSOCIATE BROKER IN CHARGE



10419 Kenai Spur Hwy Ste. B  
Kenai, AK 99611  
Between Edward Jones & GCI  
907-252-8375 Cell  
907-395-0655 Office

## **Matt Gruening**

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**From:** Rick Fox <[rick.fox@chouest.com](mailto:rick.fox@chouest.com)>  
**Sent:** Wednesday, April 11, 2018 10:30 AM  
**To:** Sally Marinucci  
**Cc:** House Fisheries  
**Subject:** Re: Letter of Opposition to HB 199

For the record, we would do better to make the permitting system we have less onerous, more efficient and effective. Adding layers and ambiguity, such as is in this bill would not help anything except lawyers. It would certainly discourage responsible developers.

Rick

Rick Fox  
Sr. Vice President and General Manager  
Edison Chouest Offshore Alaska  
Office 907.562.2111 | Mobile 907.360.4816  
Internal 53054

301 Calista Court  
Anchorage, Alaska 99518  
Email: [rick.fox@chouest.com](mailto:rick.fox@chouest.com)

On Wed, Apr 11, 2018 at 9:13 AM, Sally Marinucci <[sally.marinucci@fairweather.com](mailto:sally.marinucci@fairweather.com)> wrote:  
Dear Representative Stutes & the House Fisheries Committee,

Please accept this letter of opposition to HB 199 on behalf of Fairweather, LLC. As an Alaskan company, we appreciate the opportunity to provide our opinion.

Kind Regards,

*Sally V. Marinucci*

Office Manager  
Fairweather, LLC  
301 Calista Court, Anchorage, AK 99518  
[sally.marinucci@fairweather.com](mailto:sally.marinucci@fairweather.com)  
Office: 907-267-4605 / Cell: 907-306-8602

## **Matt Gruening**

---

**From:** Sally Marinucci <sally.marinucci@fairweather.com>  
**Sent:** Wednesday, April 11, 2018 9:13 AM  
**To:** House Fisheries  
**Cc:** Rick Fox  
**Subject:** Letter of Opposition to HB 199  
**Attachments:** Letter of Opposition to HB 199.pdf

Dear Representative Stutes & the House Fisheries Committee,

Please accept this letter of opposition to HB 199 on behalf of Fairweather, LLC. As an Alaskan company, we appreciate the opportunity to provide our opinion.

Kind Regards,

*Sally V. Marinucci*

Office Manager  
Fairweather, LLC  
301 Calista Court, Anchorage, AK 99518  
[sally.marinucci@fairweather.com](mailto:sally.marinucci@fairweather.com)  
Office: 907-267-4605 / Cell: 907-306-8602

## **Matt Gruening**

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**From:** LIO Kodiak  
**Sent:** Wednesday, April 11, 2018 9:21 AM  
**To:** Matt Gruening  
**Subject:** FW: HB 199 written testimony

**From:** Harvey Goodell  
**Sent:** Wednesday, April 11, 2018 7:44 AM  
**To:** House-Fisheries@akleg.gov  
**Subject:** HB 199

Dear Rep. Stutes and Fisheries Committee members:

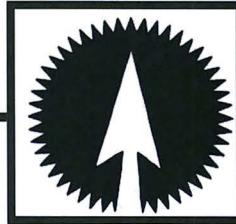
Thank you for offering this opportunity to show support for House Bill 199. The importance of protecting habitat for Salmon and clean water for all is vital for all Alaskans.

The importance of strengthening Title 16, giving timely public notice, for public comment. Using local knowledge so we do not compromise renewable resources.

As a 37 year resident of Kodiak I strongly support HB 199.

Thank you Harvey Goodell

# Alaska Forest Association



111 Stedman Street  
Ketchikan, AK 99901  
Phone: 907-225-6114  
Fax: 907-225-5920

April 11, 2018

Representative Louise Stutes  
Alaska State Capitol, #406  
Juneau, Alaska 99801

Dear Chair Stutes and members of the House Fisheries Committee,

HB 199 version I and the Explanation of Changes Version N to I still fail to provide any rational reason for the State to adopt costly changes to Alaska's fish habitat permitting regulations. In Southeast Alaska for instance, the salmon populations have more than doubled since Statehood despite decades of timber, mining and other development. The State Department of Fish and Game records indicate that even salmon escapements in the Stoney Creek and Harris River watersheds on Prince of Wales Island are much higher now than before Statehood, and these are two of the most heavily logged watershed in Alaska. Further, most of the harvesting in these two watersheds was done prior to 1990, at a time when the stream protection measures were less stringent than today.

Granted, the latest version of HB 199 has eliminated the anadromous waters presumption and the site-specific analysis requirement to determine anadromy. However, the cost of implementing the proposed new regulations are not justified nor are the negative impacts on other industries and development projects in the State. Is this legislation intended to elevate all fish resources above any other resources in the State? Is any thought given to a cost-benefit analysis or an analysis of the opportunity cost of not preventing or limiting future development projects?

Here are some more specific concerns:

1. Sec 16.05.871. The addition of wetlands to the list of waters that "contribute directly to spawning, rearing, migration, or overwintering of anadromous fish" makes this version of HB

199 more expansive than the original version, which was already unnecessarily burdensome. The issue of permitting activities in wetlands generally falls to the US Army Corps of Engineers. The State already has opportunity to participate in the Corps permit process and there is no need for a costly, redundant State process.

2. Sec 16.05.877 (a). The requirement to consider whether a development project might impact not only anadromous fish habitat, but also individual "anadromous fish" is an example of regulating minutia rather than addressing costs and benefits of a proposed activity. How is any regulator capable of making this kind of finding, particularly given that anadromous fish populations in every stream vary widely from year to year?
3. Sec 16.05.877 (a) (7). The requirement to consider the potential impacts to "the stability of a river, lake, stream, or wetland bank or bed" is an overly broad expansion of the concern for stream habitat protection. Stream banks, gravel bars, etc. are dynamic in nature and changes in these features are common, ongoing and often beneficial. Development projects that cause minor or short-term impacts to these features do not necessarily threaten stream productivity. For instance, modifying a streambank in order to install a bridge might result in impacts to an existing gravel bed, but these gravel beds are impacted constantly through natural processes; they are ephemeral features of the streams. These impacts can be addressed by the "Commissioner" without elevating the importance of the features by noting them individually in regulation.
4. Sec 16.05.887 and 16.05.889. These sections require mitigation and bonding, but there is no way to analyze the economic impact of the mitigation or bonding on future projects. Further, these sections enable antidevelopment individuals and groups to add costs and delay to projects through a reconsideration process.
5. Section Sec 16.05.894-901. These new provisions creating department enforcement authority and enabling the department employees to issue criminal citations for subjective decisions about perceived violations is unnecessary, costly to implement and will likely lead to abuse by zealous individuals within the department.

In summary, HB 199 will increase the cost of Alaska's government without any demonstrated need and at the same time, will almost certainly lead to delaying or preventing responsible resource development. Increasing the cost of government while decreasing potential revenue sources is a very bad idea and we recommend that you drop this legislative proposal and instead rely on the existing regulations which have worked successfully for many years.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Owen Graham".

Owen Graham  
Executive Director  
Alaska Forest Association  
111 Stedman Suite 200  
Ketchikan, AK 99901

Phone 907-225-6114  
Email [ojgraham@aol.com](mailto:ojgraham@aol.com)

## **Matt Gruening**

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**From:** Resler, Christine <resler@asrcenergy.com>  
**Sent:** Monday, April 09, 2018 10:58 PM  
**To:** House Fisheries  
**Subject:** I oppose HB 199!

**HB 199 should not be passed. It risks the future economic viability of AK. This bill limits development it does not aid in protecting fish habitats.**

**Sincerely,**

**Christine Resler  
907 351 7345**

**Christine Resler  
SVP, Chief Operating Officer | Executive ASRC Energy Services, LLC  
3900 C Street, Suite 701  
Anchorage, AK 99503  
Desk: 907-339-6318 | Cell: 907-351-7345  
One Crew, One Journey  
Honoring the values of our founders as we develop the future.**

## **Matt Gruening**

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**From:** Rep. Louise Stutes  
**Sent:** Tuesday, April 10, 2018 6:44 AM  
**To:** Matt Gruening  
**Subject:** FW: Public Testimony for the House Fisheries Committee on HB199

**From:** LIO Sitka  
**Sent:** Monday, April 9, 2018 5:57 PM  
**To:** Rep. Louise Stutes  
**Cc:** Matt Gruening  
**Subject:** Public Testimony for the House Fisheries Committee on HB199

Please accept this Public Testimony for HB199 as submitted via the Sitka Legislative Information Office. Thank you!  
Ken

Hi my name is Keith Nyitray and I'm representing myself today. I've lived in Alaska for almost 40 years now... during that time I was a commercial fisherman of several years and the health of our fisheries are very important to me. That said, I support HB 199.

I'd like to thanks Rep. Stutes and the fisheries committee for working to protect or salmon for future generations. To begin with, I extremely worried about the impacts of mining on our fisheries

Time and time again we've seen across almost every state and country in the world where the mining industry has reaped the resources, devastated the land (despite all assurances they would never do so), then declare bankruptcy only to leave the local, regional, and national governments to deal with and pay for the clean-up... if and when even possible. It's time to stop privatizing a companies profits but socializing the risks associated with mining.

A legislators job to is represent and do what's best for Alaskans... not what's best for trans national corporations and their non-alaskan shareholders.

Our fisheries and fishery related jobs in any one region are sustainable... mining jobs, by their very nature are not. Once the resource is extracted... it's gone forever... coal seams don't spawn new ones and zinc deposits don't beget baby zinclets. The choice before you is what future for Alaska do you want to promote and protect... our fisheries... which are renewable and sustainable for generations to come... or something that is not.

Again... I support HB 199 and hope you will too.

Thank you for your time.

Keith Nyitray  
PO Box 6531, Sitka AK 99835  
907-752-2335

**Matt Gruening**

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**From:** Rob Lund <summersong@alaska.net>  
**Sent:** Tuesday, April 10, 2018 10:34 AM  
**To:** House Fisheries  
**Subject:** HB 199

The protections in the original bill should be restored.

Rob Lund,  
Homer



April 4, 2018

**RE: Protecting habitat protects Alaska business; support reforms to fish and game habitat permit laws.**

Dear Alaska decision makers and voters,

As Alaskan business owners, anglers and hunters, we depend on robust populations of fish and game to feed our families, pay our employees, and help give visitors and residents alike the sporting experiences Alaska is well known for delivering. Maintaining our wild salmon runs and abundant wildlife populations will ensure Alaskan businesses, our lucrative recreational fishing and hunting industry and Alaskan lifestyle continue to thrive. We support efforts to update our laws and regulations to safeguard important habitat, and we urge our elected officials and fellow Alaskans to do the same.

Healthy ecosystems and abundant fish and wildlife populations bring tourists from around the world to fish, hunt and view wildlife, creating more than 43,000 jobs and contributing \$4.8 billion annually to Alaska's economy. The sport-fishing industry in Alaska supports more than 1,150 businesses, licenses nearly 2,500 Alaskan-resident fishing guides, and hosts more than 450,000 participants annually. Our businesses play an important and growing part of our state economy and help buoy Alaska during turbulent economic times by providing a diverse and resilient economic base. Clarifying our laws and regulations for protecting fish and wildlife habitat isn't just the right choice for natural resources, but it is the right choice for our economy and for the long-term interests of Alaska.

Reforming our fish and game laws and regulations will create predictability and the confidence to know that when a permit is issued to develop in important fish and game habitat, the development will occur in a way that protects the natural resources that form the foundation of our businesses. These protections will allow us to continue to invest with confidence.

Alaska is at a crossroads. A look at formerly resource-abundant states in the Lower 48, now depleted or devoid of wild salmon, makes clear what Alaskans must expect if we fail to implement strong protections for our fish and wildlife habitat. This threat compels us to support measures that will

safeguard our abundant fish and game resources while allowing truly responsible projects to move forward.

Therefore, the undersigned businesses and organizations support strengthening the laws and regulations that guide development in fish and game habitat and encourage Alaska lawmakers and voters to also support such measures. Our laws and regulations must do more to protect habitat, promote responsible development through decisions that are based on clear scientific standards, and ensure Alaskans have a voice in decisions impacting the future of our salmon streams and wildlife habitat.

Sincerely,

Nelli Williams  
Alaska Director, Trout Unlimited  
Anchorage, AK  
[nwilliams@tu.org](mailto:nwilliams@tu.org)

Christopher Tobias, Owner  
Roe Hard Guide Service LLC  
Wasilla, AK  
[chris@roehard.com](mailto:chris@roehard.com)

David Lisi, Owner  
Cooper Landing Fishing Guide LLC  
Cooper Landing, AK  
[Cooperlandingfishingguide@gmail.com](mailto:Cooperlandingfishingguide@gmail.com)

Dave Bachrach, Owner  
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Brad Kirr, Owner  
Alaska Kenai Fishing For Fun  
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[akkenaifishingforfun@gmail.com](mailto:akkenaifishingforfun@gmail.com)

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[mbrown@mossysflyshop.com](mailto:mbrown@mossysflyshop.com)

Dave Atcheson, Board Member  
Kenai Peninsula Trout Unlimited Chapter  
Kenai, AK  
[Kptroutunlimited@gmail.com](mailto:Kptroutunlimited@gmail.com)

Karl Schultz, President  
Southcentral Alaska Trout Unlimited Chapter  
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Kevin Maier, President  
Juneau Alaska Chapter of Trout Unlimited  
Juneau, AK  
[info@tujuneau.org](mailto:info@tujuneau.org)

Lee Kuepper, Owner  
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Jason Lesmeister, Owner  
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Brian Kaferstein, Co-owner & Guide  
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[brian@keeneyeanglers.com](mailto:brian@keeneyeanglers.com)

Richard Jameson, Owner  
Alaska Internet Marketing, Inc  
Anchorage, AK  
[Richard@alaskaoutdoors.com](mailto:Richard@alaskaoutdoors.com)

Dave Lisi, President/Director  
Peninsula Rivers Conservancy  
Kenai Peninsula, AK  
[Cooperlandingfishingguide@gmail.com](mailto:Cooperlandingfishingguide@gmail.com)

Ed Schmitt, Chairman  
Kenai Area Fisherman's Coalition  
Soldotna, AK  
[Schmitt.edward@gmail.com](mailto:Schmitt.edward@gmail.com)

Travis & Lori Price, Owners  
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Heidi Wild, Owner  
Wild on the Fly  
Wasilla, AK  
[Wildontheflyak@gmail.com](mailto:Wildontheflyak@gmail.com)

Heather Kelly, Owner  
Heather's Choice  
Anchorage, AK  
[Heather@heatherschoice.com](mailto:Heather@heatherschoice.com)

Zack Walters, Owner  
Alaska Clear Water Sportfishing  
Cooper Landing, AK  
[Zwa55@hotmail.com](mailto:Zwa55@hotmail.com)

## **Matt Gruening**

---

**From:** Ken Fate  
**Sent:** Wednesday, April 11, 2018 4:38 PM  
**To:** Rep. Louise Stutes  
**Cc:** Matt Gruening  
**Subject:** Public testimony from Sitka for HB199

Dear Representative Stutes,

Please accept, and distribute to the House Fisheries Committee, this public testimony from two individuals below for HB199 as submitted to the Sitka Legislative Information Office.

Thank you.

**HB 199 Wild Salmon Legacy Act:** Dear Committee members, I very strongly support this bill's update of Title 16, which hasn't been updated since Statehood. Much has changed since then. Wild salmon runs are fundamental to the lives of Alaskans culture, a major food source, economy and identity. This bill insures that Alaskans have a greater voice in major permitting decisions that impact wild salmon streams. The update would ensure responsible development with enforceable standard while providing public input and expansion of Fish and Game's authority to protect fish habitat.

Thank you for taking my comments.

Sincerely,

Libby Stortz,

Sitka, Alaska

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Thank you for the opportunity to comment on H199.

Sitka is being hit hard this spring with almost no herring spawning and salmon fishing closed. Both of these events impact my life. I eat herring eggs and depend upon salmon as an important part of my diet. We know that the environment is changing rapidly so, really, doesn't it just make sense to manage our fisheries very conservatively? Managing our fisheries also includes managing the environments that they depend upon. Without that piece, we will not sustain our fish populations. I am glad that the legislature sees a need to address this problem. The situation for me, specifically, and for Sitkans speaks loudly to this need. Thank you opening this discussion.

However, H199 does not go far enough in protecting our lifestyle and the economy of SE Alaska. I will speak here only to the measures that need to be added to the legislation, not the good elements you already have.

We need enforceable rules that protect the sustainability of our fisheries; all the jobs that depend upon the health of our fish. Those rules need to address water quality, address maintaining fish

passage to spawning grounds and returning to the sea, healthy flow levels of streams, and healthy lands that contribute to a healthy habitat for fish rearing. These are missing from H199 at this time. Another need for enforcement needs to be giving ADF&G the power to protect fish habitat as well as permitting authority over all bodies of water in the state. Currently, they have jurisdiction for permitting in less than 50% of salmon streams in the state. They need to be able to manage the waters of the state.

Very importantly, the law must require development projects to create no adverse impacts on fish or their habitat before any permit is issued. Companies need to show us that they can work within our requirements prior to permitting. Salmon are fundamental to the economy and lifestyle of SE Alaska. We cannot afford to have any sloppy development in a changing climate. Companies wanting access to our resources already have access to effective technology that can help them be responsible developers, helping Alaska grow a sustainable economy, so why not hold them to the high standards they are capable of meeting? Having strong enforceable regulations is the only way to achieve this. It is a way that any company we want to operate in our state will want to comply with. It also is a way to weed out any company that might want to cut corners and, though we might get a revenue boost in the short term, we lose in the long term more than we gained in that short term. Managing our resources conservatively is absolutely essential in this time of rapid climate change.

If you can incorporate these requirements into H199, I can support it, but without them, the bill is too weak and vague to be effective enough to protect our fish dependent lifestyle and economy and the future health of our state.

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Thank you for this opportunity to comment today. My name is Daniel Schindler; I am a professor of fisheries and aquatic sciences at the University of Washington. I have worked extensively on salmon fisheries in western Alaska for over 20 years, and our research program at UW has performed research on Alaskan salmon and their habitat since the late 1940s. My comments today derive from this collective experience which sheds light on what is unique about Alaskan fisheries and fish habitat, compared to the situation we have here in the lower 48 states.

It is gratifying to see that Alaska is finally having a serious conversation about the adequacy of its current laws to protect habitat for fish and wildlife throughout the state. There are few places left in the world where the connections between people and the land-and-water are as real as they are in Alaska. Commercial, subsistence, and sport fisheries have been sustained for decades to millennia, and there is no reason to believe that these activities and the economies and cultures they support will not continue into the future – but only if we provide adequate habitat protection and maintain responsible management.

The primary reason that Alaska's rivers and lakes are so productive is because the habitat is largely undeveloped, vast, and diverse. Current regulations are intended to protect the most important habitat for fish and wildlife, but what we have learned after decades of study in western Alaska, is that it is extremely difficult to identify what is critical habitat and what isn't. Some tributaries may be unproductive for decades while other tributaries produce most of the fish, and then suddenly the importance of these tributaries can switch. Tributaries can flip back and forth between being important and sitting somewhat dormant, and then back again. So what makes Alaska's rivers so productive and reliable is that the full complement of habitat remains present. The diversity of habitat stabilizes the overall productivity and reliability of these systems. Eroding this diversity of habitat, that could happen with inadequate protection, runs the distinct risk of making fisheries much less productive and reliable in the future.

I could go on at length about the ecological and environmental reasons for strengthening protection for fish and wildlife in Alaska. However I am sure that many of the voices you have heard from with serious reservations about this bill have made their arguments in economic terms. Thus, it is important to reflect on what the economic value of intact habitat might be.

Using Bristol Bay sockeye salmon as an example, the economic value of this fishery has been estimated at over \$1.5 Billion per year. A large fraction of this revenue remains in-state. What is not widely appreciated is that the total amount of expenditures supporting research and management is less than a couple million dollars per year. So, hundreds-of-thousands of dollars of revenue are generated for every dollar spent on research and management. This is a remarkable return-on-investment by any standard, and it is only possible because of the quality of the habitat that produces fish. Sustainable management of fisheries in Alaska by the Alaska Dept of Fish and Game is the envy of the world in many regards – but productive and intact habitat is what makes this sustainable management even possible!

For comparison, let's look at the Columbia River here in the Pacific Northwest. More than 500 million dollars are spent every year on research, management, restoration, mitigation, compensation, etc. These funds are spent to make up for lost or degraded fish habitat, particularly for salmon.

The value of fisheries in the Columbia is generously estimated at a fraction of this investment; for every dollar spent on research and management, less than a single dollar of economic revenue is generated. That giant sucking sound you may hear from the Pacific Northwest is from all of the dollars being spent by citizens and tax payers to try and prop up the fisheries and habitat that we have turned our backs on here.

So how did we end up in this predicament here in the Pacific Northwest? We made some assumptions about how we could develop rivers for hydropower, agriculture, urbanization, mining, forestry, etc., that have turned out to be massive mistakes from which we are not likely to recover from any time soon.

In particular, we assumed that:

- Fish habitat needs minimal protection

We also assumed that

- large-scale restoration is possible in places where habitat is degraded

And that

- hatcheries can make up for destroyed habitat.

And last:

- We didn't sufficiently protect habitat simply because we assumed that we knew what we were doing.

Of course, we couldn't have been more wrong on all accounts.

There are many scientific, environmental, social, and economic reasons to improve protection for fish and wildlife habitat in Alaska. This is a remarkably wise investment. It does not come at an economic cost as so many tend to argue. Restoring and mitigating for lost and degraded habitat is unfathomably expensive and largely ineffective. Alaska is in the driver's seat here to make decisions that the rest of the US made dreadfully wrong. You have the opportunity to do it right!

Thank you.

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Daniel Schindler, April 10, 2018 invited testimony on Alaska HB 199. By phone.