

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6508 SENATE RESOURCES

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1 Sec. 41.17.136. DIRECTIVES. (a) Upon a determination that a
2 planned or ongoing activity violates or would violate this chapter or
3 a regulation adopted under it, the state forester shall notify the
4 respondent in writing and direct the respondent to halt or avoid the
5 violation or to repair or correct any damage resulting from the viola-
6 tion. The written notification must include a summary of the basis
7 for the directive.

8 (b) The respondent may either comply with the directive or
9 request a hearing under AS 41.17.139 within 15 days of receipt of the
10 notification. If a hearing is requested, the respondent may continue
11 with the activity unless the state forester issues a stop work order
12 under AS 41.17.138. If the directive is affirmed by the hearing
13 officer, the respondent shall cease the activity unless a stay is
14 issued under AS 41.17.143(c) or by the superior court.

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

16 Sec. 41.17.138. STOP WORK ORDERS. (a) Upon a determination
17 that a violation of this chapter or a regulation adopted under it is
18 occurring or is likely to occur and that significant harm to public
19 resources is likely to occur if work is not halted before a hearing
20 can be held, the state forester may issue a stop work order requiring
21 the respondent to stop the violation or otherwise halt the threatened
22 harm. A stop work order must be in writing and must state the facts
23 on which it is based.

24 (b) The state forester shall immediately refer the matter to a
25 hearing officer for determination of the validity of the stop work
26 order under AS 41.17.139. The hearing officer shall consider any
27 arguments and evidence presented by the respondent within five work-
28 days after receipt of the stop work order and shall then make an imme-
29 diate decision sustaining or reversing the stop work order. The stop

1 work order is of no further effect if it is not sustained by the
2 hearing officer within the five-workday period. A stop work order may
3 be sustained only upon the same grounds on which it was originally
4 issued.

5 * Sec. 19. AS 41.17.139 is amended to read:

6 Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise
7 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject
8 to the Administrative Procedure Act (AS 44.62). A hearing under
9 AS 41.17.136 or 41.17.138 [AS 41.17.131 - 41.17.139] shall be held
10 before the state forester, a regional forester, or another employee of
11 the division with similar qualifications acting as a hearing officer.
12 A hearing on an appeal under AS 41.17.087 and a hearing under AS 41.-
13 17.082(b) shall be held before the commissioner or the commissioner's
14 designee [, APPOINTED BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF
15 THE ALASKA BAR ASSOCIATION WHO HAVE BEEN NOMINATED BY THE BOARD OF
16 FORESTRY AND WHO ARE KNOWLEDGEABLE AND EXPERIENCED IN THE SUBJECT
17 MATTER]. A person who has assisted in the preparation of the di-
18 vision's [STATE'S] case [OR WHO IS A STATE EMPLOYEE] is ineligible.
19 Hearings are not limited by common law, statutory, or judicial rules
20 of evidence; however, the hearing officer may admit only that evidence
21 that [WHICH] appears to be reliable and trustworthy. All hearings
22 shall be open to the public. Written or oral testimony may be submit-
23 ted. A party to a hearing may make written or oral argument, secure
24 the issuance of a subpoena under AS 44.62.430, offer testimony or
25 other evidence, and cross-examine witnesses. The hearing officer
26 shall endeavor, in conducting any hearing, to ensure that the respon-
27 dent understands the proceedings and that the facts supporting the
28 position of each party have been adequately presented. [HEARINGS
29 SHALL BE HELD AS CLOSE AS PRACTICABLE TO THE LOCATION OF THE ALLEGED

1 VIOLATION. TESTIMONY GIVEN AT THE HEARING SHALL BE RECORDED.]

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

5 (1) the hearing shall be a nonadversary proceeding, with
6 the hearing officer fully and impartially representing the interests
7 of the state and the respondent;

8 (2) the hearing officer shall thoroughly investigate the
9 facts and circumstances relating to the alleged violation, including
10 taking testimony from appropriate persons, collecting and examining
11 documents and other evidence, and performing other actions consistent
12 with due process of law; and

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

15 * Sec. 20. AS 41.17.139 is amended by adding a new subsection to read:

16 (c) The hearing officer shall select the location of the hear-
17 ing, giving consideration to the convenience of the parties and wit-
18 nesses. The hearing officer may permit witnesses to testify through
19 teleconferencing.

20 * Sec. 21. AS 41.17.143 is repealed and reenacted to read:

21 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by
22 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-
23 sioner under AS 41.17.082(b), 41.17.087, or 41.17.131(a) constitutes
24 final agency action that may be appealed to the superior court within
25 30 days after it is issued. Judicial review shall be as provided in
26 AS 44.62.560 and 44.62.570.

27 (b) An operator, forest landowner, or timber owner may request
28 the commissioner to reconsider the decision of a hearing officer
29 within 30 days after it is issued. Reconsideration is not a precondi-

1 tion of judicial review under (a) of this section. If reconsideration
2 is requested, the final agency action for purposes of judicial review
3 is a decision by the commissioner to affirm, modify, or reverse the
4 hearing officer or to deny the request for reconsideration.

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

8 (d) A person, except the aggrieved forest landowner, timber
9 owner, or operator, may not maintain an administrative or judicial ap-
10 peal, or other action or proceeding of any kind, challenging a deci-
11 sion or failure to act by the department with respect to the compli-
12 ance of a timber operation on private forest land with this chapter or
13 a regulation, standard, directive, or order issued under this chapter.
14 This subsection does not prohibit the maintenance of an action

15 (1) for an alleged violation of a constitutional right; or

16 (2) against the department regarding a regulation, stan-
17 dard, or systematic course of conduct that does not involve a chal-
18 lenge to, or attempt to enjoin, stay, modify, or otherwise affect a
19 timber operation on private forest land subject to this chapter.

20 * Sec. 22. AS 41.17.210(a) is amended to read:

21 (a) The governor may propose to the legislature the establish-
22 ment of state forests consisting primarily of commercially valuable
23 forest land determined by the governor to be necessary for retention
24 in state ownership for management under the principles of multiple use
25 and sustained yield and consistent with AS 38.04.005. The proposal of
26 the governor shall include a report and recommendations of the commis-
27 sioner including

28 (1) a preliminary forest inventory;

29 (2) a summary of the testimony offered at public hearings

1 held on the management of the proposed state forest in communities
2 proximately located to a proposed state forest;

3 (3) the findings of the commissioner on anticipated incom-
4 p. abilities of uses described in AS 38.05.112(c) [AS 41.17.230(e)]
5 under AS 38.05.112(d) [AS 41.17.230(f)];

6 (4) written comments from appropriate state agencies on the
7 compatibility of the uses described in AS 38.05.112(c) [AS 41.17.-
8 230(e)] within the proposed state forest;

9 (5) an estimate of the cost of a full implementation of an
10 operational level forest inventory and the management plan.

11 * Sec. 23. AS 41.17.400(c) is amended to read:

12 (c) In addition to the uses described in AS 38.05.112(c)
13 [AS 41.17.230(e)], the commissioner may establish transportation
14 corridors within the Tanana Valley State Forest.

15 * Sec. 24. AS 41.17.900(b) is repealed and reenacted to read:

16 (b) For federal land,

17 (1) the degree of resource protection may not be less than
18 that established by this chapter for state land except that AS 41.17.-
19 119 establishes the minimum riparian standard;

20 (2) a timber harvest activity subject to this chapter shall
21 satisfy the requirement to be consistent to the maximum extent practi-
22 cable with the Alaska coastal zone management program if the federal
23 land management plans, guidelines, and standards applicable to that
24 timber harvest activity provide no less resource protection than the
25 standards that are established in this chapter provide for state land
26 except that

27 (A) AS 41.17.119 establishes the minimum riparian
28 standards; and

29 (B) this paragraph does not apply to a timber harvest

1 activity that requires a state or federal authorization under a
2 provision of law other than this chapter.

3 * Sec. 25. AS 41.17.900 is amended by adding new subsections to read:

4 (e) Subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coastal
5 Zone Management Act of 1972, P.L. 92-583) as to private land, this
6 chapter and the regulations adopted under this chapter establish the
7 forest management standards, policies, and review processes under
8 AS 46.40 (Alaska Coastal Management Act). This subsection does not
9 apply to timber harvest activity that requires a state or federal
10 authorization under a provision of law other than this chapter.

11 (f) This chapter does not diminish the rights, privileges, or
12 immunities of Alaska Natives or Alaska Native corporations with re-
13 spect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native
14 Claims Settlement Act), and does not alter or diminish the authority
15 of the Department of Fish and Game under AS 16, of the Department of
16 Environmental Conservation under AS 46, or of a state agency under
17 other law.

18 * Sec. 26. AS 41.17 is amended by adding a new section to read:

19 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The
20 Department of Fish and Game and the commissioner shall work coopera-
21 tively with private forest landowners and timber owners to protect,
22 maintain, and enhance wildlife habitat to the maximum extent practica-
23 ble, consistent with the interests of the owners in the use of their
24 timber resources.

25 (b) The Department of Fish and Game shall provide educational
26 and technical assistance and extension services to owners of private
27 forest land or timber to assist in identifying important wildlife
28 habitat and to assist in designing voluntary management techniques
29 that minimize adverse effects on wildlife habitat.

1 (c) The Department of Fish and Game and the landowner shall
2 cooperate in identifying areas of important wildlife habitat on
3 private forest land and in developing methods for their protection.
4 Methods of protection for wildlife habitat may include, with the
5 agreement of the landowner, the purchase of fee title, purchase of
6 conservation easements, and land exchanges.

7 (d) This section does not alter or diminish the authority and
8 responsibility of the state over wildlife on private land.

9 * Sec. 27. AS 41.17.950 is repealed and reenacted to read:

10 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the con-
11 text otherwise requires,

12 (1) "anadromous water body" means the portion of a fresh
13 water body or estuarine area that

14 (A) is cataloged under AS 16.05.870 as important for
15 anadromous fish; or

16 (B) is not cataloged under AS 16.05.870 as important
17 for anadromous fish but has been determined by the Department of
18 Fish and Game to contain or exhibit evidence of anadromous fish
19 in which event the anadromous portion of the stream or waterway
20 extends up to the first point of physical blockage;

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

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

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

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

(C) having a foreseeable adverse impact on the welfare

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 (c) The Department of Fish and Game and the landowner shall
2 cooperate in identifying areas of important wildlife habitat on
3 private forest land and in developing methods for their protection.
4 Methods of protection for wildlife habitat may include, with the
5 agreement of the landowner, the purchase of fee title, purchase of
6 conservation easements, and land exchanges.

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15 anadromous fish; or

16 (B) is not cataloged under AS 16.05.870 as important
17 for anadromous fish but has been determined by the Department of
18 Fish and Game to contain or exhibit evidence of anadromous fish
19 in which event the anadromous portion of the stream or waterway
20 extends up to the first point of physical blockage;

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

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

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

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

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

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

3 (4) "division" means the division of forestry;

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

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

11 (7) "high value resident fish" means resident fish popu-
12 lations that are used for recreational, personal use, commercial, or
13 subsistence purposes;

14 (8) "multiple use" means

5 (A) the management of all the various resources of
6 forest land so that they are used in the combination that will
7 best meet the needs of the citizens of the state, making the most
8 judicious use of the land for some or all of these resources or
9 related values, benefits, and services over areas large enough to
0 provide sufficient latitude for periodic adjustments in use to
1 conform to changing needs and conditions;

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

4 (C) harmonious and coordinated management of the
5 various resources, each with the other, without significant
6 impairment of the productivity of the land and water, with con-
7 sideration being given to the relative values of the various
8 resources, and not necessarily the combination of uses that will
9 give the greatest dollar return or the greatest unit output;

1 (9) "operations" means timber harvesting or activities
2 associated with timber harvesting or forest development unless
3 exempted under AS 41.17.900(a) - (c);

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

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

12 (12) "person" has the meaning given in AS 01.10.060 and also
13 includes a joint venture;

14 (13) "riparian area" means

15 (A) the areas specified in AS 41.17.116(a) on private
16 land in the coastal forest of spruce or hemlock;

17 (B) the areas specified in regulations adopted by the
18 commissioner under AS 41.17.116(b) on private land outside the
19 coastal forest of spruce or hemlock;

20 (C) the area 100 feet from the shore or bank or an
21 anadromous or high value resident fish water body on state land
22 managed by the department and on other public land;

23 (14) "significant impairment of the productivity of the land
24 and water" means an activity that may foreseeably result in prolonged
25 or substantial damage to renewable resources or prolonged or substan-
26 tial reduction of the continuing capability of the land or water to
27 produce renewable resources at their natural or historic levels;

28 (15) "silviculture" means the art of producing and tending a
29 forest, the application of the knowledge of silvics in the treatment

1 of a forest, and the theory and practice of controlling and managing
2 forest establishment, composition, and growth;

3 (16) "state forest" means an area designated by the legis-
4 lature and retained in state ownership in order to

5 (A) provide a base for sustained yield management of
6 renewable resources; and

7 (B) permit a variety of beneficial uses;

8 (17) "sustained yield" means the achievement and maintenance
9 in perpetuity of a high level annual or regular periodic output of the
10 various renewable resources of forest land and water without signifi-
11 cant impairment of the productivity of the land and water, but does
12 not require that timber be harvested in a non-declining yield basis
13 over a rotation period;

14 (18) "timber owner" means a person who owns timber on forest
15 land or who has the rights to timber, but does not own the land it-
16 self;

17 (19) "Type A water body" means an anadromous water body that
18 is

19 (A) a stream or river of any size having an average
20 gradient of eight percent or less, with banks held in place by
21 vegetation, channels that are not incised, and a substrate com-
22 posed of rubble, gravel, sand or silt;

23 (B) wetlands and lakes, including their outlets; and

24 (C) an estuarine area delimited by the presence of
25 salt-tolerant vegetation;

26 (20) "Type B water body" means an anadromous water body that
27 is a fish stream or river of any size having an average gradient of
28 eight percent or less, a channel that is incised and contained by the
29 geomorphology and not by vegetation, and a substrate that ranges from

1 rubble to bedrock; and

2 (21) "Type C water body" means a stream that is tributary to
3 anadromous waters and that is incised greater than 28 degrees, has an
4 average gradient of greater than eight percent, is narrower than 20
5 feet between ordinary high water marks, has a substrate of rubble and
6 bedrock, and is a mountain slope stream at the upper end of the water-
7 shed.

8 * Sec. 28. LEGISLATIVE REVIEW. The legislature acknowledges and recog-
9 nizes that this Act is adopted on an interim basis because it involves a
10 significant increase in agency responsibility, is based on many untested
11 assumptions, and depends for its efficacy on many factors beyond the con-
12 trol of the state. Therefore, it is the intent of the legislature that the
13 operation of this Act and regulations adopted under this Act be fully
14 reviewed and the Act amended as necessary after the second full field
15 season ends in 1992. This period is intended to allow for further research
16 and to gain experience implementing the Act and its regulations. It is the
17 intent of the legislature that a representative group be convened for the
18 review or that it be conducted by the Board of Forestry. It is the intent
19 of the legislature that the review occur with full public input and parti-
20 cipation. No later than January 1, 1993, the Board of Forestry, the De-
21 partment of Natural Resources, the Department of Environmental Conserva-
22 tion, and the Department of Fish and Game shall submit, along with the
23 reports required by AS 41.17.047(d), any proposed amendments to this chap-
24 ter. The legislature may hold hearings to consider these or other amend-
25 ments and may take whatever action is required to accomplish the intent and
26 purposes of this Act.

27 * Sec. 29. INITIAL TERMS OF MEMBERS OF BOARD OF FORESTRY. The initial
28 terms of the members of the Board of Forestry appointed under AS 41.17.041,
29 as enacted by sec. 3 of this Act, are for two members, one year; for three

1 members, two years; and for three members, three years.

2 * Sec. 30. INTERIM RIPARIAN PROTECTION FOR THE COASTAL FOREST. A
3 notification for timber harvest activities within the coastal forest of
4 spruce or hemlock filed under AS 41.17.090 before the effective date of
5 this section shall be reviewed by the commissioner of natural resources to
6 determine if the proposed operations provide protection that is substan-
7 tially equivalent to the fish habitat protection that is provided by
8 AS 41.17.116, as enacted by sec. 14 of this Act. If the commissioner
9 determines that protection that is substantially equivalent to that provid-
10 ed by AS 41.17.116 has been offered or if the forest landowner, timber
11 owner, or operator complies with an alternate protection plan proposed by
12 the commissioner, operations covered by the notification are not subject to
13 AS 41.17.116. If the commissioner determines that the notification does
14 not provide protection that is substantially equivalent to that provided by
15 AS 41.17.116, the operator must either resubmit the notification in confor-
16 mance with this standard or comply with AS 41.17.116. The failure by the
17 commissioner to make a determination on a notification within 30 days from
18 the effective date of this section constitutes a determination that the
19 notification provides protection that is substantially equivalent to the
20 fish habitat protection that is provided by AS 41.17.116.

21 * Sec. 31. INTERIM RIPARIAN PROTECTION OUTSIDE THE COASTAL FOREST.
22 Until regulations are adopted by the commissioner of natural resources
23 under AS 41.17.116(b), as enacted by sec. 14 of this Act, timber harvest
24 operations on forest land within 100 feet from the shore or bank of an
25 anadromous or high value resident fish water body must be sited and de-
26 signed primarily to protect fish habitat and water quality.

27 * Sec. 32. AS 41.17.118, as enacted by sec. 14 of this Act, does not
28 alter the terms of an existing contract or the outcome of litigation pend-
29 ing on the effective date of this Act. An amendment to or renewal of an

new

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Bradley
3/17/90

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 317 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest resources and practices
7 and to the management of forest lands; and providing
8 for an effective date."

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

10 * Section 1. AS 38.05 is amended by adding new sections to read:

11 Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may
12 not sell or harvest timber, except for isolated personal use timber
13 harvest, until a site-specific forest land use plan has been adopted.
14 A forest land use plan is required whether or not a regional or area
15 land use plan under AS 38.04.065(a) or a forest management plan under
16 AS 41.17.230 has been adopted.

17 (b) The commissioner shall base a forest land use plan on the
18 best available data, including information provided by other agencies
19 describing the immediate and long-term effects of individual and
20 collective forest activities on the timber base and on other resources
21 and uses.

22 (c) In addition to the requirements of AS 38.04.065(b), a forest
23 land use plan shall consider

24 (1) commercial timber harvesting, including related activ-
25 ities;

26 (2) harvesting of forest products for personal use;

27 (3) fish and wildlife habitat, including

28 (A) identification and protection of important wild-
29 life habitat;

1 (B) retention of riparian, wetland, and ocean-shore-
2 line vegetation critical for fish and wildlife habitat; and

3 (C) classification of water bodies according to phys-
4 ical characteristics;

5 (4) uses of forest land for nontimber purposes, including

6 (A) recreation, tourism, and related activities;

7 (B) mining, mining claims, mineral leaseholds, and
8 material extraction;

9 (C) uses of fish and wildlife;

10 (D) agriculture, including grazing; and

11 (E) other resources and uses appropriate to the area,
12 including compatible traditional uses;

13 (5) soil characteristics and productivity;

14 (6) water quality; and

15 (7) watershed management.

16 (d) A management plan prepared by the commissioner must consider
17 and permit the uses described in (c) of this section. If the commis-
18 sioner finds that a permitted use is incompatible with one or more
19 other uses in a portion of a state forest, the commissioner shall
20 affirmatively state in the management plan that finding of incom-
21 patibility for the specific area where the incompatibility is antic-
22 ipated to exist and the time period when the incompatibility is antic-
23 ipated to exist together with the reasons for each finding.

24 Sec. 38.05.113. FIVE-YEAR SALE SCHEDULE. (a) The department
25 shall annually prepare a five-year schedule of timber sales planned on
26 all lands managed by the department. The schedule must be of suffi-
27 cient specificity that it provides a basis for the department to
28 allocate its resources in considering and designing sales and in
29 conducting economic and environmental analyses. The schedule must

1 inform the public and the timber products industry of long-term plans
2 and provide a basis for public comment.

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

8 (c) The department may adopt regulations exempting small and
9 emergency sales from the requirements of this section.

10 * Sec. 2. AS 41.17.010 is amended to read:

11 Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares
12 that

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

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

20 (3) the state has a fundamental obligation to ensure that
21 management of forest resources guarantees perpetual supplies of renew-
22 able resources, provides nonrenewable resources in a manner consistent
23 with that obligation, and serves the needs of all Alaska for the many
24 products, benefits, and services obtained from them;

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

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

5 *sec 2* (6) subject to AS 41.17.098(c), the provisions of this
6 chapter, and regulations adopted under this chapter, with the approval
7 of the Department of Environmental Conservation the commissioner shall
8 establish the nonpoint source pollution requirements under state law
9 and sec. 319 of the Clean Water Act for activities subject to this
10 chapter;

11 (7) except for activities subject to AS 16.05.840 or
12 16.05.870 and regulations authorized by those sections, this chapter
13 and regulations adopted under this chapter establish the fish habitat
14 protection standards, policies, and review processes under state law
15 [SUBJECT TO 16 U.S.C. 1456(f) (SEC. 307(f) OF THE COASTAL ZONE MANAGE-
16 MENT ACT OF 1972, P.L. 92-583), THE PROVISIONS OF THIS CHAPTER SHALL
17 BE THE BASIS FOR FOREST MANAGEMENT STANDARDS, POLICIES, AND GUIDELINES
18 DEVELOPED UNDER THE ALASKA COASTAL MANAGEMENT ACT].

19 * Sec. 3. AS 41.17.041 is repealed and reenacted to read:

20 *sec 5* Sec. 41.17.041. BOARD OF FORESTRY. (a) The Board of Forestry
21 is established in the Department of Natural Resources, division of
22 forestry.

23 (b) The board is composed of nine members appointed by the
24 governor:

25 (1) a representative of a statewide commercial fishermen's
26 organization;

27 (2) a representative of a Native corporation established
28 under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act);

29 (3) a representative of an environmental organization;

1 (4) a representative of a forest industry trade associa-
2 tion;

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

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

9 (7) a representative of a statewide mining organization;

10 (8) a representative of a statewide tourism organization;

11 and

12 (9) the state forester, who serves ex officio and without a
13 vote.

14 (c) The state forester is the presiding officer of the board and
15 shall, in consultation with the board, establish procedures for sched-
16 uling and organizing board meetings. Seven voting members of the
17 board constitute a quorum. Each decision of the board requires the
18 affirmative vote of each voting member present less one.

19 (d) A board member who is unable to attend a meeting may desig-
20 nate an alternate who possesses the same qualifications as the board
21 member.

22 (e) The division shall serve as staff to the board. The depart-
23 ment, the Department of Fish and Game, and the Department of Environ-
24 mental Conservation shall provide technical staffing and information
25 as needed by the board.

26 * Sec. 4. AS 41.17.047 is repealed and reenacted to read:

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

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

4 (c) The board, working with the department, the Department of
5 Environmental Conservation, the Department of Fish and Game, other
6 affected agencies and parties, and the forest-dependent industries,
7 shall conduct an annual survey of research needs related to forest
8 practices. The board shall review research proposals and shall make
9 recommendations to promote research projects that would address these
10 needs to the governor and the legislature.

11 (d) The board shall coordinate the implementation and effective-
12 ness of this chapter, the regulations, and best management practices
13 adopted under this chapter in meeting state water quality standards,
14 fish and wildlife habitat requirements, and other forestry objectives.
15 The board shall report annually to the legislature and the governor on
16 the effectiveness of this chapter and regulations adopted under it,
17 with its recommendations for changes and for needed research and
18 monitoring. The state forester, the Department of Fish and Game, and
19 the Department of Environmental Conservation shall each present an
20 annual report, independently, to the board on the effectiveness of
21 this chapter, the regulations, and best management practices adopted
22 under this chapter that protect the resources for which they have
23 statutory responsibility, and shall make recommendations for changes
24 to correct procedural or substantive problems. The board shall for-
25 ward the reports to the legislature as part of its annual report. The
26 board shall hold hearings at least once annually in southeast, south-
27 central, and interior Alaska for purposes of taking public testimony
28 on the subjects.

29 * Sec. 5. AS 41.17.055(d) is repealed and reenacted to read:

1 ^{sec 8} (d) The Department of Environmental Conservation is the lead
2 agency for water quality and control of nonpoint source pollution
3 under the Federal Water Pollution Control Act and the regulations
4 adopted by the commissioner under this chapter as part of the state
5 program for control of nonpoint source pollution under the Federal
6 Water Pollution Control Act, as amended, are subject to the approval
7 of the commissioner of environmental conservation.

8 * Sec. 6. AS 41.17.060(b) is amended to read:

9 (b) With respect to state, municipal, and private forest land,
10 the following standards apply:

11 (1) to the maximum extent possible, all applicable data and
12 information of applicable disciplines shall be updated and used in
13 making decisions relative to the management of forest resources;

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

19 (3) administration of forest land shall consider marketing
20 conditions and other economic constraints affecting the forest land-
21 owner, timber owner, or the operator;

22 (4) to the fullest extent practicable, harvested forest
23 land shall be reforested, naturally or artificially, so as to result
24 in a sustained yield of merchantable timber from that land; if artifi-
25 cial planting is required, silviculturally acceptable seedlings must
26 first be available for planting at an economically fair price in the
27 state; and

28 (5) significant adverse effects of soil erosion and mass
29 wasting on water quality and fish habitat shall be prevented or

1 minimized.

2 * Sec. 7. AS 41.17.060(c) is amended to read:

3 (c) With respect to state and municipal forest land only, the
4 *Sec 11* following standards also apply:

5 (1) forest land shall be administered for the multiple use
6 of the renewable and nonrenewable resources and for the sustained
7 yield of the renewable resources of the land in the manner that
8 [WHICH] best provides for the present needs and preserves the future
9 options of the people of the state;

10 (2) a [ANY] system of allocating predominant uses or values
11 to particular units within a contiguous area of land shall reflect in
12 reasonable proportion the various resources and values present in that
13 area;

14 (3) to the extent its capacity permits, forest land shall
15 be administered so as to provide for the continuation of businesses,
16 activities, and lifestyles that [WHICH] are dependent upon or derived
17 from forest resources;

18 (4) timber harvesting is limited to areas where data and
19 information demonstrate that natural or artificial reforestation
20 techniques will result in the production of a sustained yield of
21 merchantable timber from that area;

22 (5) there may not be [ANY] significant impairment of the
23 productivity of the land and water with respect to renewable re-
24 sources; [AND]

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

28 (7) allowance shall be made for important fish and wildlife
29 habitat.

1 * Sec. 8. AS 41.17.070(b) is repealed and reenacted to read:

2 (b) To maintain a record of division decision making for public
3 *Sec 12* and agency review, the commissioner shall compile and index each de-
4 cision made under this chapter regarding directives, stop work orders,
5 waivers from requirements, decisions of hearing officers, and deci-
6 sions on appeals. The commissioner shall submit a summary of this
7 record annually to the board.

8 * Sec. 9. AS 41.17.080 is repealed and reenacted to read:

9 *Sec 14* Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt
10 regulations necessary to accomplish the purposes of this chapter under
11 AS 44.62 (Administrative Procedure Act) regarding forest practices
12 such as

13 (1) road construction and maintenance, including

14 (A) road location, construction, maintenance, and
15 post-operation management and removal;

16 (B) landing location and construction;

17 (C) drainage structures;

18 (D) material sources and spoil disposal sites;

19 (2) timber harvesting, including

20 (A) timber harvest unit planning and design;

21 (B) felling and bucking;

22 (C) cable yarding, shovel, tractor, and wheeled skid-
23 der systems;

24 (D) landing clean-up;

25 (E) slash disposal;

26 (3) log transfer, sort yards, and storage facilities,
27 including

28 (A) location, design, and construction;

29 (B) maintenance;

- 1 (C) closure;
- 2 (D) log storage, rafting, and identification;
- 3 (4) reforestation, including
- 4 (A) site preparation and rehabilitation;
- 5 (B) prescribed burning;
- 6 (C) exemptions from reforestation requirements;
- 7 (5) prevention and suppression of forest insects and dis-
- 8 eases;
- 9 (6) salvage logging;
- 10 (7) vegetative management; and
- 11 (8) fire and flood hazard management.

12 (b) The commissioner shall adopt regulations specifying the

13 information to be submitted under AS 41.17.090(c) in the detailed plan

14 of operations to enable the division to determine whether the activ-

15 ities comply with the requirements of this chapter.

16 (c) The commissioner may establish regions, districts, or other

17 subdivisions of forest land in the state in which different regu-

18 lations apply to reflect varying conditions in the state or to facil-

19 itate administration. In adopting regulations, the commissioner shall

20 make appropriate distinctions between public and private land.

21 (d) The commissioner shall adopt only those regulations neces-

22 sary to accomplish the purposes of this chapter and shall avoid regu-

23 lations that increase operating costs without yielding significant

24 benefits to public resources.

25 * Sec. 10. AS 41.17 is amended by adding new sections to read:

26 *100 15* Sec. 41.17.082. CONTROL OF INFESTATIONS AND DISEASE. (a) All

27 forest clearing operations and silvicultural systems must be designed

28 to reduce the likelihood of increased insect infestation and disease

29 infections that threaten forest resources.

1 (b) A forest landowner may not conduct or approve timber clear-
2 ing activities that create conditions fostering outbreaks of infesta-
3 tion or infection that threaten forest resources on forest lands
4 belonging to another person. If the commissioner finds, after notice
5 and hearing, that there has been a violation of this subsection, the
6 commissioner may

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

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

14 (c) If a forest landowner does not comply with a final order of
15 the commissioner under (b)(1) or (b)(2) of this section, the commis-
16 sioner may enter onto the land and undertake the actions ordered and
17 the landowner is liable for the cost of the actions. The commissioner
18 shall deliver to the landowner an itemized statement of expenses
19 incurred.

20 (d) The commissioner may undertake surveys and appraisals to
21 obtain data on regional insect infestations and disease conditions.
22 Upon a determination that an area is infested with forest insects or
23 infected with diseases injurious to forest resources and that the
24 infestation or infection threatens the forest land or timber of adja-
25 cent owners, the commissioner may establish the boundaries of an
26 infestation or infection zone. The commissioner may enter into an
27 agreement with an owner or with a governmental agency to control or
28 suppress infestation or infection within the zone. Upon a determina-
29 tion by the commissioner that insect and disease control work within

1 the zone is no longer necessary or feasible, the commissioner shall
2 terminate the zone.

3 Sec. 41.17.083. CLEARING OF FOREST LAND FOR NON-TIMBER PURPOSES.
4 A state agency, municipality, or public utility shall determine wheth-
5 er the timber to be removed has significant salvage value before
6 approving or conducting clearing of forest land for purposes other
7 than timber harvest. If the timber has significant salvage value, the
8 agency or utility shall salvage the timber as part of the clearing
9 process.

10 * Sec. 11. AS 41.17 is amended by adding a new section to read:

11 Sec. 41.17.087. VARIATION FROM REQUIREMENTS. (a) A forest
12 landowner, timber owner, or operator may propose for a particular
13 activity a variation from a requirement imposed by this chapter or the
14 regulations adopted under this chapter. *Consistent with 41.17.098*
15 If the state forester deter-
16 mines that the harm intended to be avoided by the requirement is not
17 likely to occur because of site-specific circumstances relating to the
18 particular activity and is not likely to cause significant harm to
19 fish habitat or water quality, the state forester shall agree to the
20 proposed variation. If the state forester does not agree to the
21 proposed variation, a forest landowner, timber owner, or operator may
22 appeal to the commissioner. The appellants shall conform to the
23 requirement during the pendency of the appeal.

24 (b) The commissioner shall adopt regulations that specify the
25 standards under which a variation will be granted for harvesting
26 timber within the riparian area of appropriate water body types.

27 (c) A determination by the state forester under (a) of this
28 section and regulations by the commissioner under (b) of this section
29 shall give due deference under AS 41.17.098.

30 * Sec. 12. AS 41.17.090 is repealed and reenacted to read:

1 Sec. 41.17.090. NOTIFICATION OF PLANS TO HARVEST TIMBER. (a)

2 Operations on forest land shall be reviewed under this section for
3 consistency with the policies and provisions of this chapter and
4 regulations adopted under this chapter.

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

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

15 (1) a description of the proposed operations, identifying
16 the land involved and the action proposed in sufficient detail to
17 inform the public of the nature and location of the proposed opera-
18 tions; the description must include a map and must be in a form suit-
19 able for duplication;

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

22 (3) other information required in the regulations adopted
23 under this chapter.

24 (d) Within five days after receipt of a detailed plan of opera-
25 tions under (c) of this section, the state forester shall distribute
26 the information received under (c) of this section to affected state
27 agencies and coastal districts, and shall distribute the information
28 received under (c)(1) of this section to each member of the public who
29 has asked to receive copies of notifications for the affected area.

1 (e) Within 30 days after receipt of a detailed plan of opera-
2 tions, the state forester shall review the plan to determine if the
3 operations are consistent with this chapter and regulations adopted
4 under this chapter. Operations may begin under the plan upon the
5 expiration of the 30-day period or upon notice from the state forester
6 that the review has been completed, whichever occurs first, unless the
7 division has issued a stop work order for a particular portion of the
8 plan or has notified the operator that a one-time, 10-day extension is
9 necessary for agency review under AS 41.17.098(f). The operator may
10 proceed with operations not covered by the stop work order, notice of
11 field inspection, or the agency review. During the review of a de-
12 tailed plan of operations, if a question arises concerning the proper
13 classification of water body type for purposes of the standards in
14 AS 41.17.116(a), the Department of Fish and Game may resolve the
15 question.

16 (f) If the state forester determines that a field inspection is
17 necessary to determine consistency of the detailed plan of operations
18 or a portion of the plan with applicable standards, the state forester
19 shall notify the operator. The notice of field inspection may not
20 cover more than the minimum area necessary to determine compliance
21 with this chapter and applicable regulations. The operator shall
22 inform the state forester when the site will be available for an
23 inspection. The state forester shall conduct the field inspection
24 within 21 days after the date that the site will be available unless
25 the operator otherwise agrees, and the operator may begin operations
26 at the conclusion of the 21-day period unless the state forester has
27 issued a stop work order under AS 41.17.138.

28 (g) During the review of a detailed plan of operations, modi-
29 fications to accommodate comments may be made without requiring the

1 operator to resubmit the plan. After the review of the detailed plan
2 of operations made under (e) and (f) of this section, an operator
3 shall notify the state forester of a proposed substantial change in
4 operations by following the procedures specified in (c) - (f) of this
5 section.

6 (h) Information and paperwork required of the operator under
7 this section is limited to that necessary to accomplish the purposes
8 of this section.

9 (i) An operator shall renew a detailed plan of operations annu-
10 ally.

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

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

16 (b) In a review or implementation of a detailed plan of opera-
17 tions under AS 41.17.090 and in a decision on a proposed variation
18 from requirements under AS 41.17.087, the commissioner shall consider
19 the comments of each affected state agency and, where applicable,
20 coastal districts.

21 (c) The commissioner shall give due deference to the Department
22 of Environmental Conservation in decisions concerning water quality.
23 The commissioner of environmental conservation retains the authority
24 to adopt nonpoint source pollution regulations for activities subject
25 to this chapter to the extent that regulations are not adopted by the
26 commissioner of natural resources and approved by the commissioner of
27 environmental conservation under this chapter. The commissioner of
28 environmental conservation may withdraw approval of regulations adopt-
29 ed by the commissioner of natural resources under this chapter by

1 following the procedure for the adoption, amendment, and repeal of
2 regulations under AS 44.62.180 - 44.62.290.

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

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

22 (f) Any agency may require the review by a superior officer of a
23 decision.

24 * Sec. 14. AS 41.17 is amended by adding new sections to read:

25 ARTICLE 1A. RIPARIAN MANAGEMENT.

26 *Sec 19*
27 Sec. 41.17.115. INTENT FOR RIPARIAN AREAS. The commissioner
28 shall protect riparian areas from the significant adverse effects of
29 timber harvest activities on fish habitat and water quality. The
management intent for riparian areas is the adequate preservation of

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

11 Sec. 41.17.116. RIPARIAN STANDARDS FOR PRIVATE LAND. (a)
12 Private forest land adjacent to the following types of waters and
13 located in a coastal forest of spruce or hemlock is subject to the
14 riparian protection standards established in this section:

15 (1) along a Type A water body, harvest of timber may not be
16 undertaken within 66 feet of the water body;

17 (2) along a Type B water body, timber harvest operations
18 within 100 feet of the stream or to the break of the slope, whichever
19 *amend* area is smaller, must be conducted in compliance with slope stability
20 standards established in regulations adopted under this chapter;

21 (3) along a Type C water body, timber harvest operations in
22 the area within 50 feet of the stream or to the break of the slope,
23 whichever area is smaller, must be conducted in compliance with slope
24 stability standards established in regulations adopted under this
25 chapter.

26 (b) The commissioner shall adopt regulations for private land
27 outside of the coastal forest of spruce or hemlock that designate the
28 riparian areas to be protected and the restrictions on timber harvest-
29 ing operations within the areas that are necessary for their

1 protection under the management goals established in AS 41.17.115.

2 Sec. 41.17.118. RIPARIAN STANDARDS FOR STATE LAND. (a) The
3 riparian standards for state land are as follows:

4 (1) on state forest land managed by the department that is
5 located north of the Alaska Range, harvest of timber may not be under-
6 taken within 100 feet immediately adjacent to an anadromous or high
7 value resident fish water body unless the division determines that
8 adequate protection remains for the fish habitat;

9 (2) on state forest land managed by the department that is
10 located south of the Alaska Range,

11 (A) harvest of timber may not be undertaken within 100
12 feet immediately adjacent to an anadromous or high value resident
13 fish water body;

14 (B) between 100 and 300 feet from the water body,
15 timber harvest may occur but must be consistent with the mainte-
16 nance of important fish and wildlife habitat.

17 (b) The commissioner may impose additional riparian protection
18 standards for timber harvest operations through the adoption of land
19 use plans under AS 38.04.065 and under forest management plans and
20 reports under AS 38.05.112 and AS 41.17.230.

21 Sec. 41.17.119. MINIMUM RIPARIAN STANDARDS FOR OTHER PUBLIC
22 LAND. On public land other than state land, harvest of timber may not
23 occur

24 (1) within 100 feet from the shore or bank of an anadromous
25 or high value resident fish water body that is located south of the
26 Alaska Range;

27 (2) within 100 feet immediately adjacent to an anadromous
28 or high value resident fish water body north of the Alaska Range
29 unless the commissioner determines that adequate protection remains

1 for the fish habitat.

2 * Sec. 15. AS 41.17 is amended by adding a new section to read:

3 *opc 20* Sec. 41.17.125. ENFORCEMENT COORDINATION. Each state agency
4 with enforcement authority over an activity subject to regulation
5 under this chapter shall establish a uniform enforcement strategy that
6 avoids duplication and inconsistencies. Each participating agency
7 shall agree to and comply with the contents of the uniform strategy.
8 In developing and implementing the uniform strategy, each state agency
9 retains its authority to determine the appropriate remedies under the
10 statutes and regulations it administers.

11 * Sec. 16. AS 41.17.131 is repealed and reenacted to read:

12 *opc 21* Sec. 41.17.131. PENALTIES FOR VIOLATIONS. (a) An operator,
13 forest landowner, or timber owner who violates or permits a violation
14 of this chapter, a regulation adopted under this chapter, a directive
15 issued under AS 41.17.136, or a stop work order issued under AS 41.-
16 17.138 is liable, after notice and hearing, for a civil fine in an
17 amount not to exceed \$10,000 to be assessed by the commissioner. In
18 determining the amount of civil fine, the commissioner shall consider

19 (1) the character and degree of injury to forest resources
20 and values;

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

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

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

27 (b) An operator, forest landowner, or timber owner that, with
28 criminal negligence, violates or permits a violation of this chapter,
29 a regulation adopted under this chapter, a directive issued under

1 AS 41.17.136, or a stop work order issued under AS 41.17.138 is guilty
2 of a class A misdemeanor. In this subsection, "criminal negligence"
3 has the meaning given in AS 11.81.900(a).

4 (c) Each day that a violation described in this section occurs
5 is a separate violation.

6 (d) If a respondent violates a directive issued under AS 41.-
7 17.136 or a stop work order issued under AS 41.17.138, the attorney
8 general, at the request of the commissioner, may seek an injunction
9 requiring the respondent to suspend all or part of the operations
10 until the respondent complies with the directive or stop work order,
11 and requiring the respondent to repair or correct damage resulting
12 from the violation.

13 (e) If a respondent violates a directive issued under AS 41.-
14 17.136 that requires the respondent to repair or correct damage, the
15 commissioner may proceed to repair or correct the damage using state
16 agency employees or contractors and the respondent is liable for the
17 cost of the repair. The commissioner shall deliver to the respondent
18 an itemized statement of expenses incurred.

19 * Sec. 17. AS 41.17 is amended by adding a new section to read:

20 *Sec 22* Sec. 41.17.136. DIRECTIVES. (a) Upon a determination that a
21 planned or ongoing activity violates or would violate this chapter or
22 a regulation adopted under it, the state forester shall notify the
23 respondent in writing and direct the respondent to halt or avoid the
24 violation or to repair or correct any damage resulting from the viola-
25 tion. The written notification must include a summary of the basis
26 for the directive.

27 (b) The respondent may either comply with the directive or
28 request a hearing under AS 41.17.139 within 15 days of receipt of the
29 notification. If a hearing is requested, the respondent may continue

1 with the activity unless the state forester issues a stop work order
2 under AS 41.17.138. If the directive is affirmed by the hearing
3 officer, the respondent shall cease the activity unless a stay is
4 issued under AS 41.17.143(c) or by the superior court.

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

6 *Sec 23* Sec. 41.17.138. STOP WORK ORDERS. (a) Upon a determination
7 that a violation of this chapter or a regulation adopted under it is
8 occurring or is likely to occur and that significant harm to public
9 resources is likely to occur if work is not halted before a hearing
10 can be held, the state forester may issue a stop work order requiring
11 the respondent to stop the violation or otherwise halt the threatened
12 harm. A stop work order must be in writing and must state the facts
13 on which it is based.

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

24 * Sec. 19. AS 41.17.139 is amended to read:

25 *2077d* Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise
26 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject
27 to the Administrative Procedure Act (AS 44.62). A hearing under
28 AS 41.17.136 or 41.17.138, [AS 41.17.131 - 41.17.139] shall be held
29 before the state forester, a regional forester, or another employee of

1 the division with similar qualifications acting as a hearing officer.
2 A hearing on an appeal under AS 41.17.037 and a hearing under AS 41.-
3 17.082(b) shall be held before the commissioner or the commissioner's
4 designee [, APPOINTED BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF
5 THE ALASKA BAR ASSOCIATION WHO HAVE BEEN NOMINATED BY THE BOARD OF
6 FORESTRY AND WHO ARE KNOWLEDGEABLE AND EXPERIENCED IN THE SUBJECT
7 MATTER]. A person who has assisted in the preparation of the di-
8 vision's [STATE'S] case [OR WHO IS A STATE EMPLOYEE] is ineligible.
9 Hearings are not limited by common law, statutory, or judicial rules
10 of evidence; however, the hearing officer may admit only that evidence
11 that [WHICH] appears to be reliable and trustworthy. All hearings
12 shall be open to the public. Written or oral testimony may be submit-
13 ted. A party to a hearing may make written or oral argument, secure
14 the issuance of a subpoena under AS 44.62.430, offer testimony or
15 other evidence, and cross-examine witnesses. The hearing officer
16 shall endeavor, in conducting any hearing, to ensure that the respon-
17 dent understands the proceedings and that the facts supporting the
18 position of each party have been adequately presented. [HEARINGS
19 SHALL BE HELD AS CLOSE AS PRACTICABLE TO THE LOCATION OF THE ALLEGED
20 VIOLATION. TESTIMONY GIVEN AT THE HEARING SHALL BE RECORDED.]

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

24 (1) the hearing shall be a nonadversary proceeding, with
25 the hearing officer fully and impartially representing the interests
26 of the state and the respondent;

27 (2) the hearing officer shall thoroughly investigate the
28 facts and circumstances relating to the alleged violation, including
29 taking testimony from appropriate persons, collecting and examining

1 documents and other evidence, and performing other actions consistent
2 with due process of law; and

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

5 * Sec. 20. AS 41.17.139 is amended by adding a new subsection to read:

6 (c) The hearing officer shall select the location of the hear-
7 ing, giving consideration to the convenience of the parties and wit-
8 nesses. The hearing officer may permit witnesses to testify through
9 teleconferencing.

10 * Sec. 21. AS 41.17.143 is repealed and reenacted to read:

11 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by
12 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-
13 sioner under AS 41.17.082(b), 41.17.087, or 41.17.131(a) constitutes
14 final agency action that may be appealed to the superior court within
15 30 days after it is issued. Judicial review shall be as provided in
16 AS 44.62.560 and 44.62.570.

17 (b) An operator, forest landowner, or timber owner may request
18 the commissioner to reconsider the decision of a hearing officer
19 within 30 days after it is issued. Reconsideration is not a precondi-
20 tion of judicial review under (a) of this section. If reconsideration
21 is requested, the final agency action for purposes of judicial review
22 is a decision by the commissioner to affirm, modify, or reverse the
23 hearing officer or to deny the request for reconsideration.

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

27 (d) A person, except the aggrieved forest landowner, timber
28 owner, or operator, may not maintain an administrative or judicial ap-
29 peal, or other action or proceeding of any kind, challenging a

1 decision or failure to act by the department with respect to the
2 compliance of a timber operation on private forest land with this
3 chapter or a regulation, standard, directive, or order issued under
4 this chapter. This subsection does not prohibit the maintenance of an
5 action

6 (1) for an alleged violation of a constitutional right; or

7 (2) against the department regarding a regulation, stan-
8 dard, or systematic course of conduct that does not involve a chal-
9 lenge to, or attempt to enjoin, stay, modify, or otherwise affect a
10 timber operation on private forest land subject to this chapter.

11 * Sec. 22. AS 41.17.210(a) is amended to read:

12 (a) The governor may propose to the legislature the establish-
13 ment of state forests consisting primarily of commercially valuable
14 forest land determined by the governor to be necessary for retention
15 in state ownership for management under the principles of multiple use
16 and sustained yield and consistent with AS 38.04.005. The proposal of
17 the governor shall include a report and recommendations of the commis-
18 sioner including

19 (1) a preliminary forest inventory;

20 (2) a summary of the testimony offered at public hearings
21 held on the management of the proposed state forest in communities
22 proximately located to a proposed state forest;

23 (3) the findings of the commissioner on anticipated incom-
24 patibilities of uses described in AS 38.05.112(c) [AS 41.17.230(e)]
25 under AS 38.05.112(d) [AS 41.17.230(f)];

26 (4) written comments from appropriate state agencies on the
27 compatibility of the uses described in AS 38.05.112(c) [AS 41.17.-
28 230(e)] within the proposed state forest;

29 (5) an estimate of the cost of a full implementation of an

1 operational level forest inventory and the management plan.

2 * Sec. 23. AS 41.17.400(c) is amended to read:

3 (c) In addition to the uses described in AS 38.05.112(c)
4 [AS 41.17.230(e)], the commissioner may establish transportation
5 corridors within the Tanana Valley State Forest.

6 * Sec. 24. AS 41.17.900(b) is repealed and reenacted to read:

7 (b) For federal land,

8 (1) the degree of resource protection may not be less than
9 that established by this chapter for state land except that AS 41.17.-
10 119 establishes the minimum riparian standard;

11 (2) a timber harvest activity shall satisfy the requirement
12 to be consistent to the maximum extent practicable with the Alaska
13 coastal zone management program if the federal land management plans,
14 guidelines, and standards applicable to a timber harvest activity
15 establish no less resource protection than the standards established
16 under this chapter for state land except that

17 (A) AS 41.17.119 establishes the minimum riparian
18 standards; and

19 (B) this paragraph does not apply to a timber harvest
20 activity that requires a state or federal authorization under a
21 provision of law other than this chapter.

22 * Sec. 25. AS 41.17.900 is amended by adding new subsections to read:

23 (e) Subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coastal
24 Zone Management Act of 1972, P.L. 92-583) as to private land, this
25 chapter and the regulations adopted under this chapter establish the
26 forest management standards, policies, and review processes under
27 AS 46.40 (Alaska Coastal Management Act). This subsection does not
28 apply to timber harvest that requires a federal authorization under a
29 provision of law not within this chapter.

1 (f) This chapter does not diminish the rights, privileges, or
2 immunities of Alaska Natives or Alaska Native corporations with re-
3 spect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native
4 Claims Settlement Act), and does not alter or diminish the authority
5 of the Department of Fish and Game under AS 16, of the Department of
6 Environmental Conservation under AS 46, or of a state agency under
7 other law.

8 * Sec. 26. AS 41.17 is amended by adding a new section to read:

9 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The
10 Department of Fish and Game and the commissioner shall work coopera-
11 tively with private forest landowners and timber owners to protect,
12 maintain, and enhance wildlife habitat to the maximum extent practica-
13 ble, consistent with the interests of the owners in the use of their
14 timber resources.

15 (b) The Department of Fish and Game shall provide educational
16 and technical assistance and extension services to owners of private
17 forest land or timber to assist in identifying important wildlife
18 habitat and to assist in designing voluntary management techniques
19 that minimize adverse effects on wildlife habitat.

20 (c) The Department of Fish and Game and the landowner shall
21 cooperate in identifying areas of important wildlife habitat on pri-
22 vate forest land and in developing methods for their protection.
23 Methods of protection for wildlife habitat may include, with the
24 agreement of the landowner, the purchase of fee title, purchase of
25 conservation easements, and land exchanges.

26 (d) This section does not alter or diminish the authority and
27 responsibility of the state over wildlife on private land.

28 * Sec. 27. AS 41.17.950 is repealed and reenacted to read:

29 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the

1 context otherwise requires,

2 (1) "anadromous water body" means the portion of a fresh
3 water body or estuarine area that

4 (A) is cataloged under AS 16.05.870 as important for
5 anadromous fish; or

6 (B) is not cataloged under AS 16.05.870 as important
7 for anadromous fish but has been determined by the Department of
8 Fish and Game to contain or exhibit evidence of anadromous fish
9 in which event the anadromous portion of the stream or waterway
10 extends up to the first point of physical blockage;

11 (2) "board" means the Board of Forestry established in
12 AS 41.17.041;

13 (3) "broadcast chemicals" includes pesticides, herbicides,
14 fungicides, fertilizers, poisons, and any other substances

15 (A) used for silvicultural management or related
16 purposes;

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

19 (C) having a foreseeable adverse impact on the welfare
20 of renewable resources, as determined by the commissioner of
21 environmental conservation;

22 (4) "division" means the division of forestry;

23 (5) "forest land" means land stocked or having been stocked
24 with forest trees of any size and not currently developed for nonfor-
25 est use, regardless of whether presently available or accessible for
26 commercial purposes, and includes any such land under state, municipi-
27 pal, or private ownership;

28 (6) "forest landowner" means a person who owns forest land,
29 but does not include the owner of mineral or subsurface rights only;

1 (7) "high value resident fish" means resident fish popu-
2 lations that are used for recreational, personal use, commercial, or
3 subsistence purposes;

4 (8) "multiple use" means

5 (A) the management of all the various resources of
6 forest land so that they are used in the combination that will
7 best meet the needs of the citizens of the state, making the most
8 judicious use of the land for some or all of these resources or
9 related values, benefits, and services over areas large enough to
10 provide sufficient latitude for periodic adjustments in use to
11 conform to changing needs and conditions;

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

14 (C) harmonious and coordinated management of the
15 various resources, each with the other, without significant
16 impairment of the productivity of the land and water, with con-
17 sideration being given to the relative values of the various
18 resources, and not necessarily the combination of uses that will
19 give the greatest dollar return or the greatest unit output;

20 (9) "operations" means timber harvesting or activities
21 associated with timber harvesting or forest development unless exempt-
22 ed under AS 41.17.900(a) - (c);

23 (10) "operator" means a person who is engaged in timber
24 harvesting or activities associated with timber harvesting or forest
25 development, or who contracts with others to conduct operations for
26 that person, except a person who is engaged in an operation as an
27 employe with wages or piecework as the sole compensation;

28 (11) "other public land" means state land managed by state
29 agencies other than the department, land owned by a municipality, and

1 land owned by the University of Alaska;

2 (12) "person" has the meaning given in AS 01.10.060 and also
3 includes a joint venture;

4 (13) "riparian area" means

5 (A) the areas specified in AS 41.17.116(a) on private
6 land in the coastal forest of spruce or hemlock;

7 (B) the areas specified in regulations adopted by the
8 commissioner under AS 41.17.116(b) on private land outside the
9 coastal forest of spruce or hemlock;

10 (C) the area 100 feet from the shore or bank or an
11 anadromous or high value resident fish water body on state land
12 managed by the department and on other public land;

13 (14) "significant impairment of the productivity of the land
14 and water" means an activity that may foreseeably result in prolonged
15 or substantial damage to renewable resources or prolonged or substan-
16 tial reduction of the continuing capability of the land or water to
17 produce renewable resources at their natural or historic levels;

18 (15) "silviculture" means the art of producing and tending a
19 forest, the application of the knowledge of silvics in the treatment
20 of a forest, and the theory and practice of controlling and managing
21 forest establishment, composition, and growth;

22 (16) "state forest" means an area designated by the legis-
23 lature and retained in state ownership in order to

24 (A) provide a base for sustained yield management of
25 renewable resources; and

26 (B) permit a variety of beneficial uses;

27 (17) "sustained yield" means the achievement and maintenance
28 in perpetuity of a high level annual or regular periodic output of the
29 various renewable resources of forest land and water without

1 significant impairment of the productivity of the land and water, but
2 does not require that timber be harvested in a non-declining yield
3 basis over a rotation period;

4 (18) "timber owner" means a person who owns timber on forest
5 land or who has the rights to timber, but does not own the land it-
6 self;

7 (19) "Type A water body" means an anadromous water body that
8 is

9 (A) a stream or river of any size having an average
10 gradient of eight percent or less, with banks held in place by
11 vegetation, channels that are not incised, and a substrate com-
12 posed of rubble, gravel, sand or silt;

13 (B) wetlands and lakes, including their outlets; and

14 (C) an estuarine area delimited by the presence of
15 salt-tolerant vegetation;

16 (20) "Type B water body" means an anadromous water body that
17 is a fish stream or river of any size having an average gradient of
18 eight percent or less, a channel that is incised and contained by the
19 geomorphology and not by vegetation, and a substrate that ranges from
20 rubble to bedrock; and

21 (21) "Type C water body" means a stream that is tributary to
22 anadromous waters and that is incised greater than 28 degrees, has an
23 average gradient of greater than eight percent, is narrower than 20
24 feet between ordinary high water marks, has a substrate of rubble and
25 bedrock, and is a mountain slope stream at the upper end of the water-
26 shed.

27 *Sec 31* * Sec. 28. LEGISLATIVE REVIEW. The legislature acknowledges and recog-
28 nizes that this Act is adopted on an interim basis because it involves a
29 significant increase in agency responsibility, is based on many untested

1 assumptions, and depends for its efficacy on many factors beyond the con-
2 trol of the state. Therefore, it is the intent of the legislature that the
3 operation of this Act and regulations adopted under this Act be fully
4 reviewed and the Act amended as necessary after the second full field
5 season ends in 1992. This period is intended to allow for further research
6 and to gain experience implementing the Act and its regulations. It is the
7 intent of the legislature that a representative group be convened for the
8 review or that it be conducted by the Board of Forestry. It is the intent
9 of the legislature that the review occur with full public input and parti-
10 cipation. No later than January 1, 1993, the Board of Forestry, the De-
11 partment of Natural Resources, the Department of Environmental Conserva-
12 tion, and the Department of Fish and Game shall submit, along with the
13 reports required by AS 41.17.047(d), any proposed amendments to this chap-
14 ter. The legislature may hold hearings to consider these or other amend-
15 ments and may take whatever action is required to accomplish the intent and
16 purposes of this Act.

17 *Such* * Sec. 29. INITIAL TERMS OF MEMBERS OF BOARD OF FORESTRY. The initial
18 terms of the members of the Board of Forestry appointed under AS 41.17.041,
19 as enacted by sec. 3 of this Act, are for two members, one year; for three
20 members, two years; and for three members, three years.

21 * Sec. 30. INTERIM RIPARIAN PROTECTION FOR THE COASTAL FOREST. A
22 notification for timber harvest activities within the coastal forest of
23 spruce or hemlock filed under AS 41.17.090 before the effective date of
24 this section shall be reviewed by the commissioner of natural resources to
25 determine if the proposed operations provide protection that is substan-
26 tially equivalent to the fish habitat protection that is provided by
27 AS 41.17.116, as enacted by sec. 14 of this Act. If the commissioner
28 determines that protection that is substantially equivalent to that provid-
29 ed by AS 41.17.116 has been offered or if the forest landowner, timber

1 owner, or operator complies with an alternate protection plan proposed by
2 the commissioner, operations covered by the notification are not subject to
3 AS 41.17.116. If the commissioner determines that the notification does
4 not provide protection that is substantially equivalent to that provided by
5 AS 41.17.116, the operator shall comply with AS 41.17.116. The failure by
6 the commissioner to make a determination on a notification within 30 days
7 from the effective date of this section constitutes a determination that
8 the notification provides protection that is substantially equivalent to
9 the fish habitat protection that is provided by AS 41.17.116.

10 * Sec. 31. INTERIM RIPARIAN PROTECTION OUTSIDE THE COASTAL FOREST.
11 Until regulations are adopted by the commissioner of natural resources
12 under AS 41.17.116(b), as enacted by sec. 14 of this Act, timber harvest
13 operations on forest land within 100 feet from the shore or bank of an
14 anadromous or high value resident fish water body must be sited and de-
15 signed primarily to protect fish habitat and water quality.

16 * Sec. 32. AS 41.17.118, as enacted by sec. 14 of this Act, does not
17 alter the terms of an existing contract or the outcome of litigation pend-
18 ing on the effective date of this Act. An amendment to or renewal of an
19 existing state timber contract must be consistent with AS 38.05 and
20 AS 41.17.

1 * Sec. 33. AS 41.17.133, 41.17.135, 41.17.137, and 41.17.141 are re-
2 pealed.

3 * Sec. 34. AS 41.17.230(e) and 41.17.230(f) are repealed.

1 * Sec. 35. AS 41.17.010(5), as amended in sec. 2 of this Act, takes
effect immediately under AS 01.10.070(c).

* Sec. 36. Sections 1, 3 - 4, 6 - 8, 10 - 11, 13 - 14, 22 - 23, 27,
29 - 32, and 34 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 37. Except as provided in secs. 34 and 35 of this Act, this Act
takes effect October 1, 1990.

go0529hE
Bradley
3/15/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 331 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest resources and practices
7 and to the management of forest lands; and providing
8 for an effective date."

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

10 * Section 1. AS 38.05 is amended by adding new sections to read:

11 Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may
12 not sell or harvest timber, except for isolated personal use timber
13 harvest, until a site-specific forest land use plan has been adopted.
14 A forest land use plan is required whether or not a regional or area
15 land use plan under AS 38.04.065(a) or a forest management plan under
16 AS 41.17.230 has been adopted.

17 (b) The commissioner shall base a forest land use plan on the
18 best available data, including information provided by other agencies
19 describing the immediate and long-term effects of individual and
20 collective forest activities on the timber base and on other resources
21 and uses.

22 (c) In addition to the requirements of AS 38.04.065(b), a forest
23 land use plan shall consider

24 (1) commercial timber harvesting, including related activ-
25 ities;

26 (2) harvesting of forest products for personal use;

27 (3) fish and wildlife habitat, including

28 (A) identification and protection of important wild-
29 life habitat;

1 (B) retention of riparian, wetland, and ocean-shore-
2 line vegetation critical for fish and wildlife habitat; and

3 (C) classification of waterbodies according to phys-
4 ical characteristics;

5 (4) uses of forest land for nontimber purposes, including

6 (A) recreation, tourism, and related activities;

7 (B) mining, mining claims, mineral leaseholds, and
8 material extraction;

9 (C) uses of fish and wildlife;

10 (D) agriculture, including grazing; and

11 (E) other resources and uses appropriate to the area,
12 including compatible traditional uses;

13 (5) soil characteristics and productivity;

14 (6) water quality; and

15 (7) watershed management.

16 Sec. 38.05.113. ^{(d) — 41.17.230(f)} FIVE-YEAR SALE SCHEDULE. (a) The department
17 shall annually prepare a five-year schedule of timber sales planned on
18 all lands managed by the department. The schedule must be of suffi-
19 cient specificity that it provides a basis for the department to
20 allocate its resources in considering and designing sales and in
21 conducting economic and environmental analyses. The schedule must
22 inform the public and the timber products industry of long-term plans
23 and provide a basis for public comment.

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

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

1 emergency sales from the requirements of this section.

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

3 Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares
4 that

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

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

12 (3) the state has a fundamental obligation to ensure that
13 management of forest resources guarantees perpetual supplies of renew-
14 able resources, provides nonrenewable resources in a manner consistent
15 with that obligation, and serves the needs of all Alaska for the many
16 products, benefits, and services obtained from them;

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

22 (5) under the leadership of the Department of Environmental
23 Conservation as lead agency, the state should exercise its full re-
24 sponsibility and authority for control of nonpoint source pollution
25 with respect to the Federal Water Pollution Control Act, as amended
26 and, subject to AS 41.17.098(c), the provisions of this chapter and
27 regulations adopted under this chapter, with the approval of the
28 Department of Environmental Conservation, the commissioner shall
29 establish the nonpoint source pollution requirements under state law

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

3 *become*
 4 *900(c)* (6) subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coast-
 5 al Zone Management Act of 1972, P.L. 92-583), for private land, the
 6 provisions of this chapter and regulations adopted under this chapter
 7 establish the [SHALL BE THE BASIS FOR] forest management standards,
 8 policies, and review processes for purposes of [GUIDELINES DEVELOPED
 9 UNDER] the Alaska Coastal Management Act;

10 (7) except for activities subject to AS 16.05.840 or
 11 16.05.870 and regulations authorized by those sections, this chapter
 12 and regulations adopted under this chapter establish the fish habitat
 13 protection standards, policies, and review processes under state law.

14 * Sec. 3. AS 41.17.041 is repealed and reenacted to read:

15 Sec. 41.17.041. BOARD OF FORESTRY. (a) The Board of Forestry
 16 is established in the Department of Natural Resources, division of
 17 forestry.

18 (b) The board is composed of ⁹~~seven~~ members appointed by the
 19 governor:

20 (1) a representative of a statewide commercial fishermen's
 21 organization;

22 (2) a representative of a Native corporation established
 23 under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act);

24 (3) a representative of an environmental organization;

25 (4) a representative of a forest industry trade associa-
 26 tion;

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

(6) a professional forester who is not employed in that

1 capacity by a state, municipal, or federal government agency, except
2 for university employment;

3 (7) a representative of the mining industry;

4 (8) a representative of the tourism industry; and

5 (9) the state forester, who serves ex officio and without a
6 vote.

7 (c) The state forester is the presiding officer of the board and
8 shall, in consultation with the board, establish procedures for sched-
9 uling and organizing board meetings. Five voting members of the board
10 constitute a quorum. Each decision of the board requires the affirma-
11 tive vote of each voting member present less one.

12 (d) A board member who is unable to attend a meeting may desig-
13 nate an alternate who possesses the same qualifications as the board
14 member.

15 (e) The division shall serve as staff to the board. The depart-
16 ment, the Department of Fish and Game, and the Department of Environ-
17 mental Conservation shall provide technical staffing and information
18 as needed by the board.

19 * Sec. 4. AS 41.17.047 is repealed and reenacted to read:

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

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

26 (c) The board, working with the department, the Department of
27 Environmental Conservation, the Department of Fish and Game, other
28 affected agencies and parties, and the forest-dependent industries,
29 shall conduct an annual survey of research needs related to forest

1 practices. The board shall review research proposals and shall make
2 recommendations to promote research projects that would address these
3 needs to the governor and the legislature.

4 (d) The board shall coordinate the implementation and effective-
5 ness of this chapter, the regulations, and best management practices
6 adopted under this chapter in meeting state water quality standards,
7 fish and wildlife habitat requirements, and other forestry objectives.
8 The board shall report annually to the legislature and the governor on
9 the effectiveness of this chapter and regulations adopted under it,
10 with its recommendations for changes and for needed research and
11 monitoring. The state forester, the Department of Fish and Game, and
12 the Department of Environmental Conservation shall each present an
13 annual report, independently, to the board on the effectiveness of
14 this chapter, the regulations, and best management practices adopted
15 under this chapter that protect the resources for which they have
16 statutory responsibility, and shall make recommendations for changes
17 to correct procedural or substantive problems. The board shall for-
18 ward the reports to the legislature as part of its annual report. The
19 board shall hold hearings at least once annually in southeast, south-
20 central, and interior Alaska for purposes of taking public testimony
21 on the subjects.

22 * Sec. 5. AS 41.17.055(d) is repealed and reenacted to read:

23 (d) The Department of Environmental Conservation is the lead
24 agency for water quality and control of nonpoint source pollution
25 under the Federal Water Pollution Control Act and the regulations
26 adopted by the commissioner under this chapter as part of the state
27 program for control of nonpoint source pollution under the Federal
28 Water Pollution Control Act, as amended, are subject to the approval
29 of the commissioner of environmental conservation.

1 * Sec. 6. AS 41.17.060(b) is amended to read:

2 (b) With respect to state, municipal, and private forest land,
3 the following standards apply:

4 (1) to the maximum extent possible, all applicable data and
5 information of applicable disciplines shall be updated and used in
6 making decisions relative to the management of forest resources;

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

12 (3) administration of forest land shall consider marketing
13 conditions and other economic constraints affecting the forest land-
14 owner, timber owner, or the operator;

15 (4) to the fullest extent practicable, harvested forest
16 land shall be reforested, naturally or artificially, so as to result
17 in a sustained yield of merchantable timber from that land; if artifi-
18 cial planting is required, silviculturally acceptable seedlings must
19 first be available for planting at an economically fair price in the
20 state; and

21 (5) significant adverse effects of soil erosion and mass
22 wasting on water quality and fish habitat shall be prevented or min-
23 imized.

24 * Sec. 7. AS 41.17.060(c) is amended to read:

25 (c) With respect to state and municipal forest land only, the
26 following standards also apply:

27 (1) forest land shall be administered for the multiple use
28 of the renewable and nonrenewable resources and for the sustained
29 yield of the renewable resources of the land in the manner that

1 [WHICH] best provides for the present needs and preserves the future
2 options of the people of the state;

3 (2) a [ANY] system of allocating predominant uses or values
4 to particular units within a contiguous area of land shall reflect in
5 reasonable proportion the various resources and values present in that
6 area;

7 (3) to the extent its capacity permits, forest land shall
8 be administered so as to provide for the continuation of businesses,
9 activities, and lifestyles that [WHICH] are dependent upon or derived
10 from forest resources;

11 (4) timber harvesting is limited to areas where data and
12 information demonstrate that natural or artificial reforestation
13 techniques will result in the production of a sustained yield of
14 merchantable timber from that area;

15 (5) there may not be [ANY] significant impairment of the
16 productivity of the land and water with respect to renewable re-
17 sources; [AND]

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

21 (7) allowance shall be made for important fish and wildlife
22 habitat.

23 * Sec. 8. AS 41.17.070(b) is repealed and reenacted to read:

24 (b) To maintain a record of division decision making for public
25 and agency review, the commissioner shall compile and index each de-
26 cision made under this chapter regarding directives, stop work orders,
27 waivers from requirements, decisions of hearing officers, and deci-
28 sions on appeals. The commissioner shall submit a summary of this
29 record annually to the board.

1 * Sec. 9. AS 41.17.080 is repealed and reenacted to read:

2 Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt
3 regulations necessary to accomplish the purposes of this chapter under
4 AS 44.62 (Administrative Procedure Act) regarding forest practices
5 such as

- 6 (1) road construction and maintenance, including
7 (A) road location, construction, maintenance, and
8 post-operation management or removal;
9 (B) landing location and construction;
10 (C) drainage structures;
11 (D) material sources and spoil disposal sites;
- 12 (2) timber harvesting, including
13 (A) timber harvest unit planning and design;
14 (B) felling and bucking;
15 (C) cable yarding, shovel, tractor, and wheeled skid-
16 der systems;
17 (D) landing clean-up;
18 (E) slash disposal;
- 19 (3) log transfer, sort yards, and storage facilities,
20 including
21 (A) location, design, and construction;
22 (B) maintenance;
23 (C) closure;
24 (D) log storage, rafting, and identification;
- 25 (4) reforestation, including
26 (A) site preparation and rehabilitation;
27 (B) prescribed burning;
28 (C) exemptions from reforestation requirements;
- 29 (5) prevention and suppression of forest insects and

1 diseases;

2 (6) salvage logging;

3 (7) vegetative management; and

4 (8) fire and flood hazard management.

5 (b) The commissioner shall adopt regulations specifying the
6 information to be submitted under AS 41.17.090(c) in the detailed plan
7 of operations to enable the division to determine whether the activ-
8 ities comply with the requirements of this chapter.

9 (c) The commissioner may establish regions, districts, or other
10 subdivisions of forest land in the state in which different regu-
11 lations apply to reflect varying conditions in the state or to facil-
12 itate administration. In adopting regulations, the commissioner shall
13 make appropriate distinctions between public and private land.

14 (d) The commissioner shall adopt only those regulations neces-
15 sary to accomplish the purposes of this chapter and shall avoid regu-
16 lations that increase operating costs without yielding significant
17 benefits to public resources.

18 * Sec. 10. AS 41.17 is amended by adding new sections to read:

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

23 (b) A forest landowner may not conduct or approve timber clear-
24 ing activities that create conditions fostering outbreaks of infesta-
25 tion or infection that threaten forest resources on forest lands
26 belonging to another person. If the commissioner finds, after notice
27 and hearing, that there has been a violation of this subsection, the
28 commissioner may

29 (1) require the forest landowner, at that person's expense,

1 to remove promptly or cure the conditions fostering outbreaks of
2 infestation or infection; and

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

7 (c) If a forest landowner does not comply with a final order of
8 the commissioner under (b)(1) or (b)(2) of this section, the commis-
9 sioner may enter onto the land and undertake the actions ordered and
10 the landowner is liable for the cost of the actions. The commissioner
11 shall deliver to the landowner an itemized statement of expenses
12 incurred.

13 (d) The commissioner may undertake surveys and appraisals to
14 obtain data on regional insect infestations and disease conditions.
15 Upon a determination that an area is infested with forest insects or
16 infected with diseases injurious to forest resources and that the
17 infestation or infection threatens the forest land or timber of adja-
18 cent owners, the commissioner may establish the boundaries of an
19 infestation or infection zone. The commissioner may enter into an
20 agreement with an owner or with a governmental agency to control or
21 suppress infestation or infection within the zone. Upon a determina-
22 tion by the commissioner that insect and disease control work within
23 the zone is no longer necessary or feasible, the commissioner shall
24 terminate the zone.

25 Sec. 41.17.083. CLEARING OF FOREST LAND FOR NON-TIMBER PURPOSES.
26 A state agency, municipality, or public utility shall determine wheth-
27 er the timber to be removed has significant salvage value before
28 approving or conducting clearing of forest land for purposes other
29 than timber harvest. If the timber has significant salvage value, the

agency or utility shall salvage the timber as part of the clearing process.

* Sec. 11. AS 41.17 is amended by adding a new section to read:

Sec. 41.17.087. VARIATION FROM REQUIREMENTS. (a) A forest landowner, timber owner, or operator may propose for a particular activity a variation from a requirement imposed by this chapter or the regulations adopted under this chapter. If the state forester determines, consistently with AS 41.17.098, that the harm intended to be avoided by the requirement is not likely to occur because of site-specific circumstances relating to the particular activity and is not likely to cause significant harm to fish habitat or water quality, the state forester shall agree to the proposed variation. If the state forester does not agree to the proposed variation, a forest landowner, timber owner, or operator may appeal to the commissioner. The appellants shall conform to the requirement during the pendency of the appeal.

(b) The commissioner shall adopt regulations that are consistent with AS 41.17.098 and that specify the standards under which variations under (a) of this section will be granted for

(1) harvesting timber within the riparian area of a Type A water body;

(2) low gradient streams with a width of five feet or less;

and

(3) other appropriate water body types.

* Sec. 12. AS 41.17.090 is repealed and reenacted to read:

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

1 (b) A forest landowner, timber owner, or operator may provide to
2 the commissioner a voluntary plan of operations that describes the
3 long-term plans for timber harvesting. The purpose of a voluntary
4 plan is to give the division and the public an early opportunity to
5 review plans, to identify areas of concern, and to allow the agencies
6 and the public to provide local knowledge and early notice of poten-
7 tial problems to the forest landowner, timber owner, or operator.

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

11 (1) a description of the proposed operations, identifying
12 the land involved and the action proposed in sufficient detail to
13 inform the public of the nature and location of the proposed opera-
14 tions; the description must include a map and must be in a form it-
15 able for duplication;

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

18 (3) other information required in the regulations adopted
19 under this chapter.

20 (d) Within five days after receipt of a detailed plan of opera-
21 tions under (c) of this section, the state forester shall distribute
22 the information received under (c) of this section to affected state
23 agencies and coastal districts, and shall distribute the information
24 received under (c)(1) of this section to each member of the public who
25 has asked to receive copies of notifications for the affected area.

26 (e) Within 30 days after receipt of a detailed plan of opera-
27 tions, the state forester shall review the plan to determine if the
28 operations are consistent with this chapter and regulations adopted
29 under this chapter. Operations may begin under the plan upon the

1 expiration of the 30-day period or upon notice from the state forester
2 that the review has been completed, whichever occurs first, unless the
3 division has issued a stop work order for a particular portion of the
4 plan or has notified the operator that a one-time, 10-day extension is
5 necessary for agency review under AS 41.17.098(f). The operator may
6 proceed with operations not covered by the stop work order, notice of
7 field inspection, or the agency review. During the review of a
8 detailed plan of operations, if a question arises concerning the
9 proper classification of water body type for purposes of the standards
10 in AS 41.17.116(a), the Department of Fish and Game may resolve the
11 question.

12 (f) If the state forester determines that a field inspection is
13 necessary to determine consistency of the detailed plan of operations
14 or a portion of the plan with applicable standards, the state forester
15 shall notify the operator. The notice of field inspection may not
16 cover more than the minimum area necessary to determine compliance
17 with this chapter and applicable regulations. The operator shall
18 inform the state forester when the site will be available for an
19 inspection. The state forester shall conduct the field inspection
20 within 21 days after the date that the site will be available unless
21 the operator otherwise agrees, and the operator may begin operations
22 at the conclusion of the 21-day period unless the state forester has
23 issued a stop work order under AS 41.17.138.

24 (g) During the review of a detailed plan of operations, modi-
25 fications to accommodate comments may be made without requiring the
26 operator to resubmit the plan. After the review of the detailed plan
27 of operations made under (e) and (f) of this section, an operator
28 shall notify the state forester of a proposed substantial change in
29 operations by following the procedures specified in (c) - (f) of this

1 section.

2 (h) Information and paperwork required of the operator under
3 this section is limited to that necessary to accomplish the purposes
4 of this section.

5 (i) An operator shall renew a detailed plan of operations annu-
6 ally.

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

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

12 (b) In a review or implementation of a detailed plan of opera-
13 tions under AS 41.17.090 and in a decision on a proposed variation
14 from requirements under AS 41.17.087, the commissioner shall consider
15 the comments of each affected state agency and, where applicable,
16 coastal districts.

17 (c) The commissioner shall give due deference to the Department
18 of Environmental Conservation in decisions concerning water quality.
19 The commissioner of environmental conservation retains the authority
20 to adopt nonpoint source pollution regulations for activities subject
21 to this chapter to the extent that regulations are not adopted by the
22 commissioner of natural resources and approved by the commissioner of
23 environmental conservation under this chapter. The commissioner of
24 environmental conservation may withdraw approval of regulations
25 adopted by the commissioner of natural resources under this chapter by
26 following the procedure for the adoption, amendment, and repeal of
27 regulations under AS 44.62.180 - 44.62.290.

28 (d) The commissioner shall recognize the expertise of the De-
29 partment of Fish and Game with regard to fish and wildlife habitat.

1 On private land, the commissioner shall give due deference to the
2 Department of Fish and Game regarding impacts to fish habitat from
3 timber operations including variations to riparian standards, desig-
4 nation of alternative site-specific riparian protection plans, and
5 road location decision within riparian areas. On public land, the
6 commissioner shall give due deference to the Department of Fish and
7 Game regarding impacts to fish and wildlife habitat from timber op-
8 erations including timber harvest in riparian areas, variations to
9 riparian standards, and road location decisions within riparian areas.
10 In making decisions under under AS 41.17.087, the commissioner shall
11 recognize fish habitat as the primary value in riparian areas.

12 (e) In this section, "due deference" means that deference that
13 is appropriate in the context of the agency's expertise and area of
14 responsibility and all the evidence available to support a factual
15 assertion. Where due deference is given, if the commissioner does not
16 agree with a commenting agency, the commissioner shall prepare a
17 written statement of the reasons for the disagreement.

18 (f) Any agency may require the review by a superior officer of a
19 decision.

20 * Sec. 14. AS 41.17 is amended by adding new sections to read:

21 ARTICLE 1A. RIPARIAN MANAGEMENT.

22 Sec. 41.17.115. INTENT FOR RIPARIAN AREAS. The commissioner
23 shall protect riparian areas from the significant adverse effects of
24 timber harvest activities on fish habitat and water quality. The
25 management intent for riparian areas is the adequate preservation of
26 fish habitat by maintaining a short- and long-term source of large
27 woody debris, stream bank stability, channel morphology, water temper-
28 atures, stream flows, water quality, adequate nutrient cycling, food
29 sources, clean spawning gravels, and sunlight. The commissioner shall

1 adopt regulations for the protection of riparian areas; the regu-
 2 lations may include higher standards of protection for fish and other
 3 public resources on land managed by the department than on other
 4 public land or private land. The regulations may vary by region of
 5 the state and must take into consideration reasonable classification
 6 of water bodies and the economic feasibility of timber operations.

7 Sec. 41.17.116. RIPARIAN STANDARDS FOR PRIVATE LAND. (a)
 8 Private forest land adjacent to the following types of waters and
 9 located in a coastal forest of spruce or hemlock is subject to the
 10 riparian protection standards established in this section:

11 (1) along a Type A water body, harvest of timber may not be
 12 undertaken within 66 feet of the water body;

13 (2) along a Type B water body, timber harvest operations
 14 within 100 feet of the stream or to the break of the slope, whichever
 15 area is smaller, must be conducted in compliance with slope stability
 16 standards established in regulations adopted under this chapter;

17 (3) along a Type C water body, timber harvest operations in
 18 the area within 50 feet of the stream or to the break of the slope,
 19 whichever area is smaller, must be conducted in compliance with slope
 20 stability standards established in regulations adopted under this
 21 chapter.

22 (b) The commissioner shall adopt regulations for private land
 23 outside of the coastal forest ^{N.C.B.R. Range} of spruce or hemlock that designate the
 24 riparian areas to be protected and the restrictions on timber harvest-
 25 ing operations within the areas that are necessary for their pro-
 26 tection under the management goals established in AS 41.17.115. [Until
 27 regulations are adopted, the standards established in AS 41.17.119
 28 apply. P 119, p 115, timber harvest 4-21-2015 see 41.17.118] end of [unclear]

29 *Other private land*

Sec. 41.17.118. RIPARIAN STANDARDS FOR STATE LAND. (a) The

1 riparian standards for state land are as follows:

2 (1) on state forest land managed by the department that is
3 located north of the Alaska Range, harvest of timber may not be under-
4 taken within 100 feet immediately adjacent to an anadromous or high
5 value resident fish water body unless the division determines that
6 adequate protection remains for the fish habitat;

No
100'
cont.
water

7 (2) on state forest land managed by the department that is
8 located south of the Alaska Range, harvest of timber may not be under-
9 taken within 100 feet immediately adjacent to an anadromous or high
10 value resident fish water body;

50
100 no
cont.

11 ~~(1)~~ between 100 and 300 feet from the water body, timber
12 harvest may occur but must be consistent with the maintenance of
13 important fish and wildlife habitat.

200 ft
cont.

14 (b) The commissioner may impose additional riparian protection
15 standards for timber harvest operations through the adoption of land
16 use plans under AS 38.04.065 and under forest management plans and
17 reports under AS 38.05.112 and AS 41.17.230.

18 ^{(c) move from def.}
19 Sec. 41.17.119. MINIMUM RIPARIAN STANDARDS FOR OTHER PUBLIC
20 LAND. On other public land, harvest of timber may not occur

21 (1) within 100 feet from the shore or bank of an anadromous
22 or high value resident fish water body that is located south of the
23 Alaska Range;

24 (2) within 100 feet immediately adjacent to an anadromous
25 or high value resident fish water body north of the Alaska Range
26 unless the commissioner determines that adequate protection remains
27 for the fish habitat.

28 * Sec. 15. AS 41.17 is amended by adding a new section to read:

29 Sec. 41.17.125. ENFORCEMENT COORDINATION. Each state agency
with enforcement authority over an activity subject to regulation

1 under this chapter shall establish a uniform enforcement strategy that
2 avoids duplication and inconsistencies. Each participating agency
3 shall agree to and comply with the contents of the uniform strategy.
4 In developing and implementing the uniform strategy, each state agency
5 retains its authority to determine the appropriate remedies under the
6 statutes and regulations it administers.

7 * Sec. 16. AS 41.17.131 is repealed and reenacted to read:

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

15 (1) the character and degree of injury to forest resources
16 and values;

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

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

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

23 (b) An operator, forest landowner, or timber owner that, with
24 criminal negligence, violates or permits a violation of this chapter,
25 a regulation adopted under this chapter, a directive issued under
26 AS 41.17.136, or a stop work order issued under AS 41.17.138 is guilty
27 of a class A misdemeanor. In this subsection, "criminal negligence"
28 has the meaning given in AS 11.81.900(a).

29 (c) Each day that a violation described in this section occurs

1 is a separate violation.

2 (d) If a respondent violates a directive issued under AS 41.-
3 17.136 or a stop work order issued under AS 41.17.138, the attorney
4 general, at the request of the commissioner, may seek an injunction
5 requiring the respondent to suspend all or part of the operations
6 until the respondent complies with the directive or stop work order,
7 and requiring the respondent to repair or correct damage resulting
8 from the violation.

9 (e) If a respondent violates a directive issued under AS 41.-
10 17.136 that requires the respondent to repair or correct damage, the
11 commissioner may proceed to repair or correct the damage using state
12 agency employees or contractors and the respondent is liable for the
13 cost of the repair. The commissioner shall deliver to the respondent
14 an itemized statement of expenses incurred.

15 * Sec. 17. AS 41.17 is amended by adding a new section to read:

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

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

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

2 Sec. 41.17.138. STOP WORK ORDERS. (a) Upon a determination
3 that a violation of this chapter or a regulation adopted under it is
4 occurring or is likely to occur and that significant harm to public
5 resources is likely to occur if work is not halted before a hearing
6 can be held, the state forester may issue a stop work order requiring
7 the respondent to stop the violation or otherwise halt the threatened
8 harm. A stop work order must be in writing and must state the facts
9 on which it is based.

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

20 * Sec. 19. AS 41.17.139 is amended to read:

21 Sec. 41.17.139. HEARING PROCEDURES. (a) Unless otherwise
22 specified, proceedings under AS 41.17.131 - 41.17.139 are not subject
23 to the Administrative Procedure Act (AS 44.62). A hearing under
24 AS 41.17.136 or 41.17.138 [AS 41.17.131 - 41.17.139] shall be held
25 before the state forester, a regional forester, or another employee of
26 the division with similar qualifications acting as a hearing officer.
27 A hearing on an appeal under AS 41.17.087 and a hearing under AS 41.-
28 17.082(b) shall be held before the commissioner or the commissioner's
29 designee [, APPOINTED BY THE ATTORNEY GENERAL FROM AMONG MEMBERS OF

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

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

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

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

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

1 * Sec. 20. AS 41.17.139 is amended by adding a new subsection to read:

2 (c) The hearing officer shall select the location of the hear-
3 ing, giving consideration to the convenience of the parties and wit-
4 nesses. The hearing officer may permit witnesses to testify through
5 teleconferencing.

6 * Sec. 21. AS 41.17.143 is repealed and reenacted to read:

7 Sec. 41.17.143. APPEALS AND JUDICIAL REVIEW. (a) A decision by
8 a hearing officer under AS 41.17.136 or 41.17.138 or by the commis-
9 sioner under AS 41.17.082(b), 41.17.087, or 41.17.131(a) constitutes
10 final agency action that may be appealed to the superior court within
11 30 days after it is issued. Judicial review shall be as provided in
12 AS 44.62.560 and 44.62.570.

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

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

23 (d) A person, except the aggrieved forest landowner, timber
24 owner, or operator, may not maintain an administrative or judicial ap-
25 peal, or other action or proceeding of any kind, challenging a deci-
26 sion or failure to act by the department with respect to the compli-
27 ance of a timber operation on private forest land with this chapter or
28 a regulation, standard, directive, or order issued under this chapter.
29 This subsection does not prohibit the maintenance of an action

1 (1) for an alleged violation of a constitutional right; or
2 (2) against the department regarding a regulation, stan-
3 dard, or systematic course of conduct that does not involve a chal-
4 lenge to, or attempt to enjoin, stay, modify, or otherwise affect a
5 timber operation on private forest land subject to this chapter.

6 * Sec. 22. AS 41.17.230(f) is repealed and reenacted to read:

7 (f) A management plan prepared by the commissioner must consider
8 and permit the uses described in AS 38.05.112(c). If the commissioner
9 finds that a permitted use is incompatible with one or more other uses
10 in a portion of a state forest, the commissioner shall affirmatively
11 state in the management plan that finding of incompatibility for the
12 specific area where and the time period when the incompatibility is
13 anticipated to exist together with the reasons for each finding.

14 * Sec. 23. AS 41.17.900(b) is repealed and reenacted to read:

15 (b) The degree of resource protection on federal land may not be
16 less than that provided for by this chapter on state land. The spe-
17 cific provisions of this chapter and its implementing regulations are
18 not applicable to federal land either directly or for purposes of
19 compliance with the Coastal Zone Management Act.

20 * Sec. 24. AS 41.17.900 is amended by adding a new subsection to read:

21 (e) This chapter does not diminish the rights, privileges, or
22 immunities of Alaska Natives or Alaska Native corporations with re-
23 spect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native
24 Claims Settlement Act), and does not alter or diminish the authority
25 of the Department of Fish and Game under AS 16, of the Department of
26 Environmental Conservation under AS 46, or of a state agency under
27 other law.

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

29 Sec. 41.17.910. WILDLIFE HABITAT ON PRIVATE LAND. (a) The

1 Department of Fish and Game and the commissioner shall work coopera-
 2 tively with private forest landowners and timber owners to protect,
 3 maintain, and enhance wildlife habitat to the maximum extent practica-
 4 ble, consistent with the interests of the owners in the use of their
 5 timber resources.

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

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

17 (d) This section does not alter or diminish the authority and
 18 responsibility of the state over wildlife on private land.

19 * Sec. 26. AS 41.17.950 is repealed and reenacted to read:

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

22 (1) "anadromous water body" means the portion of a fresh
 23 water body or estuarine area ^{that} up to the first point of physical block-
 24 age that)

25 (A) is cataloged under AS 16.05.870 as important for
 26 anadromous fish;

27 (B) is not cataloged under AS 16.05.870 as important
 28 for anadromous fish but has been determined by the Department of
 29 Fish and Game to contain or exhibit evidence of anadromous fish;

then add lang fr def. -25-
 in which event → + blockage

1 or

2 (C) in the absence of a cataloging under AS 16.05.870
3 or a determination under (B) of this paragraph, is state land and
4 is connected to an anadromous water body that is without documen-
5 tation by the Department of Fish and Game of a stream gradient of
6 more than eight percent;

7 (2) "board" means the Board of Forestry established in
8 AS 41.17.041;

9 (3) "broadcast chemicals" includes pesticides, herbicides,
10 fungicides, fertilizers, poisons, and any other substances

11 (A) used for silvicultural management or related
12 purposes;

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

15 (C) having a foreseeable adverse impact on the welfare
16 of renewable resources, as determined by the commissioner of
17 environmental conservation;

18 (4) "division" means the division of forestry;

19 (5) "forest land" means land stocked or having been stocked
20 with forest trees of any size and not currently developed for nonfor-
21 est use, regardless of whether presently available or accessible for
22 commercial purposes, and includes any such land under state, municipi-
23 pal, or private ownership;

24 (6) "forest landowner" means a person who owns forest land,
25 but does not include the owner of mineral or subsurface rights only;

26 (7) "multiple use" means *high value resident fish def.*

27 (A) the management of all the various resources of
28 forest land so that they are used in the combination that will
29 best meet the needs of the citizens of the state, making the most

1 judicious use of the land for some or all of these resources or
2 related values, benefits, and services over areas large enough to
3 provide sufficient latitude for periodic adjustments in use to
4 conform to changing needs and conditions;

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

7 (C) harmonious and coordinated management of the
8 various resources, each with the other, without significant
9 impairment of the productivity of the land and water, with con-
10 sideration being given to the relative values of the various
11 resources, and not necessarily the combination of uses that will
12 give the greatest dollar return or the greatest unit output;

13 (8) "operations" means timber harvesting or activities
14 associated with timber harvesting or forest development unless exempt-
15 ed under AS 41.17.900(a) - (c);

16 (9) "operator" means a person who is engaged in timber
17 harvesting or activities associated with timber harvesting or forest
18 development, or who contracts with others to conduct operations for
19 that person, except a person who is engaged in an operation as an
20 employee with wages or piecework as the sole compensation;

21 (10) "other public land" means state land managed by state
22 agencies other than the department, land owned by a municipality, and
23 land owned by the University of Alaska;

24 (11) "person" has the meaning given in AS 01.10.060 and also
25 includes a joint venture;

26 (12) "riparian area" means

27 (A) the areas specified in AS 41.17.116(a) on private
28 land in the coastal forest of spruce or hemlock;

29 (B) the areas specified in regulations adopted by the

1 commissioner under AS 41.17.116(b) on private land outside the
2 coastal forest of spruce or hemlock;

3 (C) the area 100 feet from the shore or bank or an
4 anadromous or high value resident fish water body on state land
5 managed by the department and on other public land;

6 (13) "significant impairment of the productivity of the land
7 and water" means an activity that may foreseeably result in prolonged
8 or substantial damage to renewable resources or prolonged or substan-
9 tial reduction of the continuing capability of the land or water to
10 produce renewable resources at their natural or historic levels;

11 (14) "silviculture" means the art of producing and tending a
12 forest, the application of the knowledge of silvics in the treatment
13 of a forest, and the theory and practice of controlling and managing
14 forest establishment, composition, and growth;

15 (15) "state forest" means an area designated by the legis-
16 lature and retained in state ownership in order to

17 (A) provide a base for sustained yield management of
18 renewable resources; and

19 (B) permit a variety of beneficial uses;

20 (16) "sustained yield" means the achievement and maintenance
21 in perpetuity of a high level annual or regular periodic output of the
22 various renewable resources of forest land and water without signifi-
23 cant impairment of the productivity of the land and water, but does
24 not require that timber be harvested in a non-declining yield basis
25 over a rotation period;

26 (17) "timber owner" means a person who owns timber on forest
27 land or who has the rights to timber, but does not own the land it-
28 self;

29 (18) "Type A water body" means an anadromous water body

1 that is

2 (A) a stream or river of any size having an average
3 gradient of eight percent or less, with banks held in place by
4 vegetation, channels that are not incised, and a substrate com-
5 posed of rubble, gravel, sand or silt;

6 (B) wetlands and lakes, including their outlets; and

7 (C) an estuarine area delimited by the presence of
8 salt-tolerant vegetation;

9 (19) "Type B water body" means an anadromous water body that
10 is a fish stream or river of any size having an average gradient of
11 eight percent or less, a channel that is incised and contained by the
12 geomorphology and not by vegetation, and a substrate that ranges from
13 rubble to bedrock; and

14 (20) "Type C water body" means a stream that is tributary to
15 anadromous waters and that is incised greater than 28 degrees, has an
16 average gradient of greater than eight percent, is narrower than 20
17 feet between ordinary high water marks, has a substrate of rubble and
18 bedrock, and is a mountain slope stream at the upper end of the water-
19 shed.

20 * Sec. 27. LEGISLATIVE REVIEW. The legislature acknowledges and recog-
21 nizes that this Act is adopted on an interim basis because it involves a
22 significant increase in agency responsibility, is based on many untested
23 assumptions, and depends for its efficacy on many factors beyond the con-
24 trol of the state. Therefore, it is the intent of the legislature that the
25 operation of this Act and regulations adopted under this Act be fully
26 reviewed and the Act amended as necessary after the second full field
27 season ends in 199²~~1~~. This period is intended to allow for further research
28 and to gain experience implementing the Act and its regulations. It is the
29 intent of the legislature that a representative group be convened for the

1 review or that it be conducted by the Board of Forestry. It is the intent
 2 of the legislature that the review occur with full public input and parti-
 3 cipation. No later than January 1, 199³/₂, the Board of Forestry, the
 4 Department of Natural Resources, the Department of Environmental Conserva-
 5 tion, and the Department of Fish and Game shall submit, along with the
 6 reports required by AS 41.17.047(d), any proposed amendments to this chap-
 7 ter. The legislature may hold hearings to consider these or other amend-
 8 ments and may take whatever action is required to accomplish the intent and
 9 purposes of this Act.

10 * Sec. 28. INITIAL TERMS OF MEMBERS OF BOARD OF FORESTRY. The initial
 11 terms of the members of the Board of Forestry appointed under AS 41.17.041,
 12 as enacted by sec. 3 of this Act, are for two members, one year; for three
 13 members, two years; and for three members, three years.

14 * Sec. 29. INTERIM RIPARIAN PROTECTION. *For Coastal Spruce forest*
 15 AS 41.17.090 before the effective date of this Act ^{section} shall be reviewed by the
 16 commissioner of natural resources to determine if the proposed operations
 17 provide protection that is substantially equivalent to the fish habitat
 18 protection that is provided by AS 41.17.116, as enacted by sec. 14 of this
 19 Act. If the commissioner determines that protection that is substantially
 20 equivalent to that provided by AS 41.17.116 has been offered or if the
 21 forest landowner, timber owner, or operator complies with an alternate
 22 protection plan proposed by the commissioner, operations covered by the
 23 notification are not subject to AS 41.17.116. If the commissioner deter-
 24 mines that the notification does not provide protection that is substanti-
 25 ally equivalent to that provided by AS 41.17.116, the operator shall comply
 26 with AS 41.17.116. The failure by the commissioner to make a determination
 27 on a notification within 30 days from the effective date of this Act con-
 28 stitutes a determination that the notification ^{provides substantially equivalent protection to} ~~complies with~~ AS 41.17.116.
 29 *protection that is substantially equivalent protection to*

* Sec. 30. AS 41.17.118, as enacted by sec. 14 of this Act, does not

new section 30 - Inter Rip Prot for outside the coastal forest.

Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman
Senator Jay Kerttula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Halford
Senator Arliss Sturgulewski
Senator Fred Zharoff



P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

To: Senate Resources Committee
From: Staff, Senate Resources Committee
Re: CS SB 317 (Resources) draft 3/21/90 go0529sE

CS SB 317 (Res)	SB 317
Sec. 1	was Sec 1 and Sec 26 1 (d)
Sec. 2	was Sec 2 and Sec 4
Sec 3	was Sec 5
Sec 4	was Sec 7
Sec 5	was Sec 8
Sec 6	was Sec 9 and 10
Sec 7	was Sec 11 and 12
Sec 8	was Sec 13
Sec 9	was Sec 14
Sec 10	was Sec 15
Sec 11	was Sec 16
Sec 12	was Sec 17
Sec 13	was Sec 18
Sec 14	was Sec 19
Sec 15	was Sec 20
Sec 16	was Sec 21
Sec 17	was Sec 22
Sec 18	was Sec 23
Sec 19	was Sec 24
Sec 20	was Sec 24 (c)
Sec 21	was Sec 25
Sec 22	is new

Sec 23	is new
Sec 24 CS SB 317 (Res)	was Sec 27 SB 317
Sec 25 (e) (f)	was Sec 3 was Sec 28
Sec 26	was Sec 29
Sec 27	was Sec 30
Sec 28	was Sec 31
Sec 29	was Sec 6
Sec 30	is new
Sec 31	was Sec 19 41.17.116 (b) (in part)
Sec 32	was Sec 19 41.17.118 (3)
Sec 33	was Sec 32
Sec 34 - 37	are new

Alaska State Legislature

Senate Resources Committee

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Senator Jay Kerttula, Vice Chairman
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Senator Rick Halford
Senator Arliss Sturgulewski
Senator Fred Zharoff



P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

To: Senate Resources Committee

From: Nancy Petersen
Staff, Senate Resources Committee

Date: March 21, 1990 900529SE

Re: SB 317, Forest Practices Act Sectional Analysis

Sec. 1. 38.05.112, Forest Land Use Plans, 5 Year Schedule
This section requires additional planning prior to state timber sales. The division of forestry must prepare a site-specific plan before all state timber sales that fully integrates appropriate resource protection measures into the sale design. This site-specific design would also improve public review of individual timber sales.

This section requires the department to annually prepare a five-year timber schedule of the proposed state timber sales. Except for small and emergency sales such as salvage, a proposed sale would be required to be on the five-year schedules for two years preceding the sale.

Sec. 2. 41.17.010, Declaration of Intent

This section coordinates overlapping agency jurisdiction regulating timber harvest activities. Regulations of the amended forest practices act will serve as timber harvest standards for non-point source pollution, with DEC as lead agency. Regulations of the amended forest practices act provide the fish and habitat protection standards except for those activities subject to AS 16.06.840 and 16.05.870.

Sec. 3 41.17.041, Board of Forestry

This section restructures and reduces the current board from a 14 member to a 9 member board. Drops U.S. Forest Service member, Society of American Foresters member, and adds a professional forester not employed by government, except the university. Drops the Alaska Logger Assn. member. The new board would consist of:

- 1) a representative of a statewide commercial fishermen's organization;
- 2) a representative of a Native corporation established under ANCSA;
- 3) a member of an environmental organization;
- 4) a representative of a forest industry trade association;
- 5) a professional fish or wildlife biologist not employed in that capacity, by government, except the university;
- 6) a professional forester not employed in that capacity by government, except the university;

- 7) a representative of a statewide mining organization;
- 8) a member of a statewide recreational organization; and
- 9) the state forester, who serves ex officio and without a vote.

Sec. 4 41.17.047, Duties of the Board

This section expands the existing duties to include providing a forum for resolving forestry issues; coordinating an annual survey of research needs; monitoring the implementation, taking public testimony statewide, reviewing and making recommendations for changes to the forest practices act. Current duties include commenting on regulations. It is intended to be a consensus decision making body.

Sec. 5 41.17.055 (d)

Establishes DEC as lead agency for water quality and control of nonpoint source pollution and the regulations adopted become the state program for control of nonpoint source pollution, subject to approval of the DEC commissioner.

Sec. 6 41.17.060 (b), State, municipal, and private forest land standards. Subsection (2) is a technical change to clarify existing law regarding environmentally sensitive areas in non-point pollution control measures. Subsection (5) Adds to the list of standards established for forest practices to include: significant adverse effects of soil erosion and mass wasting on water quality and fish habitat.

Sec. 7 41.17.060 (c) Additional standards for state and municipal forest land: Under (6) Changes the standard for scenic quality by requiring that allowance shall be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry, and under (7) Adds new language that an allowance shall be made for important fish and wildlife habitat.

Sec. 8 41.17.070 (b) Changes the reporting requirement to the legislature from 2 years to annually. Requires the department to record decisions made under the act for use by the public and state agencies in assessing the effectiveness of implementation of the act.

Section 9 41.17.080

Expands the list of regulations the commissioner may adopt regarding forest practices to include all phases of timber harvest and to make appropriate distinctions between public and private land; and directs the commissioner to only adopt those regulations that yield significant benefits to public resources.

Section 10 41.17.082, Control of Infestations and Disease.

Adds a new section to require the commissioner to take action to control forest infestation and disease outbreaks that threaten forest resources. It establishes the procedures for remedy of creating such conditions to include requirements for removing the conditions at the owner's expense. It establishes authority, under non-compliance, for the commissioner to enter onto the land and

take necessary action. And authority to undertake surveys to obtain data on regional insect infestation.

Section 11 41.17.087, Variation from requirements.

Adds a new section that allows a landowner or operator variation from requirements or regulations under this chapter on a site-specific basis. The commissioner shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area.

Sec. 12 41.17.090 Notification of Plans to Harvest Timber.

This section provides an improved process for efficient and detailed review of timber harvest plans which allows the timber industry to respond to changing timber markets but ensures that harvest operations conform to forest practices standards and regulations. It allows forest landowners and operators to file a voluntary plan of operations for long term plans for timber harvesting in order to give the public an opportunity to review plans and establishes that unless a stop work order is issued, the operations may begin under the plan after 30 days, or within the time period upon notice that the review is completed. It allows for a onetime 10 day extension for the agency review.

Subsection (f) establishes a field inspection when necessary to determine consistency of the detailed plan of operations upon notification to the operator and that the scope shall be limited to the minimum area necessary to determine compliance with this chapter. The operator shall inform the state forester when the site is available for inspection. If not conducted within 21 days, or unless otherwise agreed upon by the operator and state forester, operations may begin. Subsection (g) allows for modifications to accommodate comments without requiring the operator to resubmit the plan.

Sec. 13 41.17.098, Inter-agency Coordination.

Since there is an overlapping agency expertise for issues concerning timber harvest, this section provides coordination mechanisms for DNR, F&G, and DEC. It retains DNR as the lead agency but ensures that the appropriate agency expertise from F&G and DEC is included for issues that directly are within their expertise. Adds a new section which requires the DNR commissioner to coordinate with other agencies that have jurisdiction over activities subject to forest practices and affected coastal districts.

Sec. 14 41.17.115, Intent for Riparian Areas.

Private Lands:

Along Type A water body, 66 feet no cut zone

Along Type B water body, 100 foot conditional harvest zone, in compliance with slope stability standards

Along Type C water body, 50 foot conditional harvest in compliance with slope stability standards

State Land: North of the Alaska Range:

On anadromous or high value resident fish water body:

100 foot no cut zone, unless the division determines adequate protection for the fish habitat remains.

State Land: South of the Alaska Range:

On anadromous or high value resident fish water body:

100 foot no cut zone

100 - 300 foot conditional harvest zone, consistent with the maintenance of important fish and wildlife habitat.

Other Public Land: North of the Alaska Range::

On anadromous or high value resident fish water body:

100 foot no cut zone, unless the commissioner determines that adequate protection remains for fish habitat.

Other Public Land: South of the Alaska Range:

100 foot no cut zone subject to variance procedures.

Sec. 16:, 41.17.131, Penalties

This section streamlines existing procedures for levying civil penalties of up to \$10,000 per violation and adds additional authority to allow the state to issue citations for a class A misdemeanor for violations of this act.

Sec. 17, Directives

This section provides that DNR may issue enforceable, written orders directing that timber operations that violate or would violate this act or its regulations be changed. These directives may be written as part of the DNR office or field review of private timber operations as provided under Section 12 of the act. Directives may be appealed and operations may continue pending the outcome of the appeal.

Sec. 18, Stop Work Orders

This section provides that DNR may issue Stop Work orders if the forester determines a violation of the act or its regulation is occurring, or is likely to occur, and that significant harm to public resources will result if work is not halted. A stop-work order may be written as part of the DNR office or field review of private timber operations as provided under Section 12 of this act. Stop-work orders may be appealed, but the operation must stop pending the outcome of the appeal.

Section 19, and 20 Hearing Procedures. This section amends the hearing process by deleting the requirement that hearings be held before a lawyer appointed by the attorney general. Under the new process hearing officers may be an employee of the department. The new process should be less costly for the department and more efficient for both the landowner and the department.

Sec. 21, Appeals and Judicial Review

This section provides appeal procedures from DNR department decisions. It also provides that parties other than an aggrieved forest landowner, timber owner, or operator may not receive judicial review of individual timber harvest decisions. Third parties may, however, seek judicial review of regulations or of a systematic error in DNR decisions.

Sec. 22, 41.17.210 (a), and Sec. 23, 41.17.400 (c):

Technical amendments which cite title 38. Sections 41.17.230 (e) and (f) were moved under AS 38.05.112 (c). These sections were more appropriate to public lands.

Sec. 24 41.17.900 (b) Federal lands standard.

This section would require that the degree of resource protection may not be less than that established for state lands, and be consistent with the Alaska Coastal Management Program, except that minimum riparian standards are established under 41.17.119 (other public lands). Activities that require state or federal authorization under other laws are subject to the routine Alaska Coastal Management Program (ACMP) standards and procedures.

Sec. 25 41.17.900 (e) Private lands standard.

This section establishes that the amended forest practices act will serve as the Alaska Coastal Management Program for harvest activities on private lands.

Sec. 26

This section provides that state agencies and private landowners will establish cooperative, voluntary processes for protection of wildlife habitat on private land.

Sec. 27

This section provides definitions.

Sec. 28

This section provides for legislative review.

Sec. 29

This section provides for the initial terms of members of the Board of Forestry.

Sec. 30

This section provides for interim riparian protection for the coastal forest. Notification filed prior to the effective date of this section shall be reviewed by the commissioner to determine if the proposed operations provide protection that is substantially equivalent to the fish habitat protection that is provided under 41.17.116 (private lands). If not, the operator shall comply. If the operator has not received notification within 30 days, the plan is considered substantially equivalent to the fish habitat protection under 41.17.116.

Sec. 31

Provides interim protection for riparian protection outside the coastal forest. Timber harvest within 100 feet from the shore or bank of an anadromous or high value resident fish water body must be sited and designed to protect fish habitat and water quality.

Sec. 32

Provides that existing contracts or pending litigation are not altered by the act.

Sec. 33

Repeals 41.17.133, 41.17.135, 41.17.137, and 41.17.141.

Sec. 34. Repeals 41.17.230 (e) and 41.17.230 (f) as those sections were moved to Title 38.

Sec. 35. 41.17.010 (5) becomes effective immediately.

Sec. 36. Provides an immediate effective date for those sections affected.

Sec. 37. Provides for an immediate effective date for all other sections.

Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman
Senator Jay Kertula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Hallford
Senator Arliss Sturgulewski
Senator Fred Zharoff



P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

To: Senate Resources Committee members
From: Nancy Petersen
Staff, Senate Resources Committee
Re: CS SB 317 (Res) 90 0529 s E
Date: March 21, 1990

Changes to the bill:

Throughout the bill meters are converted to feet.

Section 2

(6) technical change, replace [SET OUT] with establish.

Section 3

Increased the board membership to add two members:

a representative of a statewide mining organization

a representative of a statewide recreational organization

The quorum changed from five to seven.

Section 11

AS 41.17.087

(a) technical [CONSISTENT WITH AS 41.17.098]

(b) The commissioner shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area of

(1) a low gradient Type A water body with a width of five feet or less; and

(2) other appropriate water body types.

(c) A determination by the state forester under (a) of this section and regulations by the commissioner under (b) of this section shall give due deference under AS 41.17.098.

Section 13 Interagency Coordination.

(f) If a disagreement referenced in (e) exists an officer of the agency may require reevaluation of the disagreement at a higher level within the agencies, or by the Governor, if necessary, before a decision is rendered by the commissioner.

Section 14

Riparian Standards for Private Land

Previously buffers were designed on a formula which requires a 50 foot no cut zone, allowed 50 % of the next 50 foot zone to be harvested with a maximum buffer volume not exceeding 5% of the commercial timber in the watershed. The formula was dropped and a 66 foot buffer was established as follows:

1) along a Type A water body, harvest of timber may not be undertaken within 66 feet of the water body

Riparian Standards for State Land:

(c) In the absence of a site-specific determination by the Department of Fish and Game, the commissioner shall presume for planning purposes that a stream is anadromous if it is connected to anadromous waters that are without Department of Fish and Game documentation of a physical blockage and has a stream gradient of 8 percent or less.

Riparian standards for other public land:

On public land other than state land, harvest of timber may not occur

(1) within 100 feet from the shore or bank of an anadromous or high value resident fish water body that is located south of the Alaska Range;

(2) within 100 feet immediately adjacent to an anadromous or high value resident fish water body north of the Alaska Range unless the commissioner determines that adequate protection remains for the fish habitat.

Section 16

Technical correction. New language reads:

(c) Each day that a violation described in this section occurs is a separate violation. The sentence is rewritten to be consistent with other penalty provisions in current law.

Section 21

Technical change:

(d) [NO] A person, except the aggrieved forest landowner, timber owner, or operator, may [NOT] not maintain an administrative or judicial appeal, or other action or proceeding of any kind, challenging a decision or failure to act by the department with respect to the compliance of a timber operation on private forest land with this chapter or a regulation, standard, directive or order issued under this chapter.

Section 22 Technical change.

This section is added to cross reference language moved to Title 38.

a) The governor may propose to the legislature the establishment of state forests consisting primarily of commercially valuable forest land determined by the governor to be necessary for retention in state ownership for management under the principles of multiple use and sustained yield and consistent with AS 38.04.005. The proposal of the governor shall include a report and recommendations of the commissioner including

(1) a preliminary forest inventory;

(2) a summary of the testimony offered at public hearings held on the management of the proposed state forest in communities proximately located to a proposed state forest;

(3) the findings of the commissioner on anticipated incompatibilities of uses described in AS 38.05.112 (c) [AS 41.17.230 (e)] under AS 38.05.112 (d) [AS 41.17.230 (f)];

(4) written comments from appropriate state agencies on the compatibility of the uses described in AS 38.05.112 (d) [AS 41.17.230(e)] within the proposed state forest;

(5) an estimate of the cost of a full implementation of an operational level forest inventory and the management plan.

Section 23

This section is added to cross reference language moved to Title 38.

(c) In addition to the uses described in AS 38.05.112 (c) [AS 41.17.230(e)], the commissioner may establish transportation corridors within the Tanana Valley State Forest.

Section 24

(b) For federal land,

(1) the degree of resource protection may not be less than that established by this chapter for state land except that AS 41.17.119 establishes the minimum riparian standard;

(2) a timber harvest activity subject to this chapter shall satisfy the requirement to be consistent to the maximum extent practicable with the Alaska coastal zone management program if the federal land management plans, guidelines, and standards applicable to that timber harvest activity provide no less resource protection than the standards that are established in this chapter provide for state land except that

(A) AS 41.17.119 establishes the minimum riparian standards;
and

(B) this paragraph does not apply to a timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

Section 25

(e) Subject to 16 U.S.C. 1456 (f) (Sec. 307 (f) of the Coastal Zone Management Act of 1972, P.L. 92-583) as to private land, this chapter and the regulations adopted under this chapter establish the forest management standards, policies, and review processes under AS 46.40 (Alaska Coastal Management Act). This subsection does not apply to timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

Section 27 Definitions:

Definitions were added:

(1) "Anadromous" waterbody means that portion of any freshwater body, or estuarine area, that:

(A) is catalogued under AS 16.05.870 as important for anadromous fish; or

(b) is not catalogued under AS 16.05.870 as important for anadromous fish but has been determined by the Department of Fish and Game to contain or exhibit evidence of anadromous fish in which event the anadromous portion of the stream or waterway extends up to the first point of physical blockage;

(7) "high value resident fish" means resident fish populations that are used for recreational, personal use, commercial, or subsistence purposes;

Section 28 The dates were changed to add one year to reflect a two year review which was originally intended.

Section 30 Interim Riparian Protection for the Coastal Forest.

This is a new section to provide for interim riparian protection.

Section 35

Originally the bill had an effective date of January 1, 1990. Under the CS, under section 2, AS 41.17.010 (5) has an immediate effective date.

Section 36

Sections 1, 3 -4, 6 -8, 10 -11, 13 -14, 22 -23, 27, 29 -32, and 34 take effect immediately .

Section 37

And the CS provides that except for those sections listed in Sec. 35 and Sec. 36, the bill takes effect October 1, 1990.

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1990

SUBJECT: Proposed amendment relating to assignments of
use area permits (6-1718Aaa)

TO: Senator Bettye Fahrenkamp
Chair Senate Resources Committee

FROM: George Utermohle *GU*
Legislative Counsel

Amendment 6-1718Aaa to SB 422 proposes the deletion of sub-
section (b) from AS 08.54.670 (Page 9, line 27 through page
10, line 3).

The material to be deleted prevents a guide-outfitter from
selling lodges, cabins, boats, aircraft, and other equipment
to another guide-outfitter who is the assignee of a use area
permit formerly held by the seller of the property and equip-
ment at a price that exceeded the replacement value of the
property.

One of the objections that the Alaska Supreme Court had to
the former exclusive guiding area system in the Owsichek
decision was that the guides could treat an exclusive guid-
ing area as personal property and sell it to other guides.
The ability of a guide to sell an exclusive guiding area was
one of those attributes of an exclusive franchise to use
game that the court found to violate the common use clause
of the Alaska Constitution. The Task Force on Guiding and
Game addressed this issue in its proposal for guide-outfit-
ter use areas by allowing guide-outfitters to assign their
use areas to other guide-outfitters but prohibited them from
selling the permit or otherwise receiving anything of value
in exchange for the assignment of the permit. In order to
prevent a guide-outfitter from receiving a payment for the
assignment of the permit under the guise of selling other
property to the assignee, the Task Force prohibited the
guide-outfitter from receiving more than the replacement
value for the property. The assumption was that if the as-
signee of the permit paid more than the replacement value of