

SENATE RESOURCES

12005 SENATE RESOURCES

**One-Stop Internet Permitting System and Expedited Permitting Program**

- 181 (a) [environmental protection],
- 182 (b) [community affairs],
- 183 (c) [transportation and its district offices],
- 184 (d) [agriculture and consumer services],
- 185 (e) [game and fresh water fish commission],
- 186 (f) appropriate regional planning councils,
- 187 (g) appropriate water management districts, and
- 188 (h) voluntarily participating municipalities and counties. The memoranda of agreement should
- 189 also accommodate participation in this expedited process by other local governments and federal agencies as
- 190 circumstances warrant.

191 (6) In order to facilitate local government's option to participate in this expedited review process, the  
192 [office] shall, in cooperation with local governments and participating state agencies, create a standard form  
193 memorandum of agreement. A local government shall hold a duly noticed public workshop to review and  
194 explain to the public the expedited permitting process and the terms and conditions of the standard form  
195 memorandum of agreement.

196 (7) The local government shall hold a duly noticed public hearing to execute a memorandum of agree-  
197 ment for each qualified project. The memorandum of agreement that a local government signs shall include a  
198 provision identifying necessary local government procedures and time limits that will be modified to allow for  
199 the local government decision on the project within [ninety (90)] days. The memorandum of agreement ap-  
200 plies to projects, on a case-by-case basis, that qualify for special review and approval as specified in this section.  
201 The memorandum of agreement must make it clear that this expedited permitting and review process does not  
202 modify, qualify, or otherwise alter existing local government nonprocedural standards for permit applications,  
203 unless expressly authorized by law.

204 (8) At the option of the participating local government, appeals of its final approval for a project may be  
205 pursuant to the summary hearing provisions of [insert citation], pursuant to subsection (15) of this Section, or  
206 pursuant to other appellate processes available to the local government. The local government's decision to  
207 enter into a summary hearing must be made as provided in [insert citation] or in the memorandum of agree-  
208 ment.

209 (9) Each memorandum of agreement shall include a process for final agency action on permit applica-  
210 tions and local comprehensive plan amendment approvals within [ninety (90)] days after receipt of a completed  
211 application, unless the applicant agrees to a longer time period or the [office] determines that unforeseen or  
212 uncontrollable circumstances preclude final agency action within the [ninety (90)] day timeframe. Permit  
213 applications governed by federally delegated or approved permitting programs whose requirements would  
214 prohibit or be inconsistent with the [ninety (90)] day timeframe are exempt from this provision, but must be  
215 processed by the agency with federally delegated or approved program responsibility as expeditiously as pos-  
216 sible.

217 (10) The [office] shall inform the [Legislature] by [October 1] of each year, which agencies have not  
218 entered into or implemented an agreement, and identify any barriers to achieving success of the program.

219 (11) The memoranda of agreement may provide for the waiver or modification of procedural rules  
220 prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the  
221 jurisdiction of those agencies that are party to the memoranda of agreement. Notwithstanding any other  
222 provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceed-  
223 ings and hearings otherwise held separately by the parties to the memorandum of agreement to be combined  
224 into [one (1)] proceeding or held jointly and at [one (1)] location. Such waivers or modifications shall not be  
225 available for permit applications governed by federally delegated or approved permitting programs, the re-  
226 quirements of which would prohibit, or be inconsistent with, such a waiver or modification.

227 (12) The memoranda of agreement shall include guidelines to be used in working with state, regional,  
228 and local permitting authorities. Guidelines may include, but are not limited to, the following:

- 229 (a) A central contact point for filing permit applications and local comprehensive plan amend-  
230 ments and for obtaining information on permit and local comprehensive plan amendment requirements.

- 231 (b) Identification of the individual or people within each respective agency who will be responsible  
232 for processing the expedited permit application or local comprehensive plan amendment for that agency;
- 233 (c) A mandatory pre-application review process to reduce permitting conflicts by providing guid-  
234 ance to applicants regarding the permits needed from each agency and governmental entity, site planning and  
235 development, site suitability and limitations, facility design, and steps the applicant can take to ensure expedi-  
236 tious permit application and local comprehensive plan amendment review. As a part of this process, the first  
237 interagency meeting to discuss a project shall be held within [fourteen (14)] days after the [office]'s determina-  
238 tion that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to  
239 accommodate the needs of participating local governments that are unable to meet public notice requirements  
240 for executing a memorandum of agreement within this timeframe. This accommodation may not exceed [forty-  
241 five (45)] days from the [office]'s determination that the project is eligible for expedited review;
- 242 (d) The preparation of a single coordinated project description form and checklist and an agree-  
243 ment by state and regional agencies to reduce the burden on an applicant to provide duplicate information to  
244 multiple agencies;
- 245 (e) Establishment of a process for the adoption and review of any comprehensive plan amendment  
246 needed by any certified project within [ninety (90)] days after the submission of an application for a compre-  
247 hensive plan amendment. However, the memorandum of agreement may not prevent affected parties from  
248 appealing or participating in this expedited plan amendment process and any review or appeals of decisions  
249 made under this paragraph; and
- 250 (f) Additional incentives for an applicant who proposes a project that provides a net ecosystem  
251 benefit
- 252 (13) The applicant, the regional permit action team, and participating local governments may agree to  
253 incorporate into a single document the permits, licenses, and approvals that are obtained through the exped-  
254 ited permit process. This consolidated permit is subject to the summary hearing provisions set forth in sub-  
255 section (17).
- 256 (14) Notwithstanding any other provisions of law:
- 257 (a) Local comprehensive plan amendments for projects qualified under this section are exempt  
258 from the twice-a-year limits provision in [insert citation]; and
- 259 (b) Projects qualified under this section are not subject to interstate highway level of service stan-  
260 dards adopted by the [department of transportation] for concurrency purposes. The memorandum of agree-  
261 ment must include a process by which the applicant will be assessed a fair share of the cost of mitigating the  
262 project's significant traffic impacts. The agreement must also specify whether the significant traffic impacts on  
263 the interstate system will be mitigated through the implementation of a project or payment of funds to the  
264 [department of transportation]. Where funds are paid, the [department of transportation] must include in the  
265 [five (5)] year work program transportation projects or project phases, in an amount equal to the funds re-  
266 ceived, to mitigate the traffic impacts associated with the proposed project.
- 267 (15) Challenges to state agency action in the expedited permitting process for projects processed under  
268 this section are subject to the summary hearing provisions of [insert citation], except that the [administrative  
269 law judge]'s decision shall be in the form of recommended order and shall not constitute the final action of the  
270 state agency. In those proceedings where the action of only [one (1)] agency of the state is challenged, the  
271 agency of the state shall issue the final order within [ten (10)] working days of receipt of the [administrative law  
272 judge]'s recommended order. In those proceedings where the actions of more than [one (1)] agency of the state  
273 are challenged, the [governor] shall issue the final order within [ten (10)] working days of receipt of the [ad-  
274 ministrative law judge]'s recommended order. The participating agencies of the state may opt at the prelimi-  
275 nary hearing conference to allow the [administrative law judge]'s decision to constitute the final agency action.  
276 If a participating local government agrees to participate in the summary hearing provisions for purposes of  
277 review of local government comprehensive plan amendments, [insert citation] apply.
- 278 (16) This expedited permitting process shall not modify, qualify, or otherwise alter existing agency  
279 nonprocedural standards for permit applications or local comprehensive plan amendments, unless expressly  
280 authorized by law. If it is determined that the applicant is not eligible to use this process, the applicant may

**One-Stop Internet Permitting System and Expedited Permitting Program**

281 apply for permitting of the project through the normal permitting processes.

282 (17) The [office] shall be responsible for certifying a business as eligible for undergoing expedited  
283 review under this section. A county or municipal government may recommend to the [office of tourism, trade,  
284 and economic development] that a project meeting the minimum job creation threshold undergo expedited  
285 review.

286 (18) The [office], working with the agencies participating in the memoranda of agreement, shall pro-  
287 vide technical assistance in preparing permit applications and local comprehensive plan amendments for counties  
288 having a population of less than [seventy-five thousand (75,000)] residents, or counties having fewer than [one  
289 hundred thousand (100,000)] residents which are contiguous to counties having fewer than [seventy-five thou-  
290 sand (75,000)] residents. Additional assistance may include, but not be limited to, guidance in land develop-  
291 ment regulations and permitting processes, working cooperatively with state, regional, and local entities to  
292 identify areas within these counties which may be suitable and adaptable for pre-clearance review of specified  
293 types of land uses and other activities requiring permits.

294 (19) The following projects are ineligible for review under this part:

295 (a) A project funded and operated by a local government, as defined in [insert citation], and located  
296 within that government's jurisdiction.

297 (b) A project, the primary purpose of which is to:

- 298 (i) Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.  
299 (ii) Produce electrical power, unless the production of electricity is incidental and not the  
300 primary function of the project.  
301 (iii) Extract natural resources.  
302 (iv) Produce oil.  
303 (v) Construct, maintain, or operate an oil, petroleum, natural gas, or sewage pipeline.

304

305 Section 8. [Administrative Costs]. The sum of [one hundred thousand (100,000)] dollars is appropri-  
306 ated from the [General Revenue Fund] to the [department of management services] to fund the administrative  
307 costs to establish and implement an Internet site for the [One-Stop Permitting System].

308

309 Section 9. [Revenue Offset]. Effective [insert date], the sum of [three million (3,000,000)] dollars is  
310 appropriated from nonrecurring general revenue to the [Executive Branch Administered Funds] to be used to  
311 offset the potential decline in revenues as a result of the expedited [One-Stop Permitting System]. The funds  
312 shall be held in reserve by the [executive office of the governor] until the principals of the [revenue estimating  
313 conference] have determined the amount of loss of permit fees associated with applications submitted pursu-  
314 ant to the one-stop permitting process.

315

316 Section 10. [Severability]. [Insert severability clause.]

317

318 Section 11. [Repealer]. [Insert repealer clause.]

319

320 Section 12. [Effective Date]. [Insert effective date.]

**SB**

**213**



# ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • [www.alaskaminers.org](http://www.alaskaminers.org)

February 13, 2006

Honorable Tom Wagoner  
Chairman, Senate Resources Committee  
Alaska State Senate  
Capitol Building  
Juneau, AK 99801

RE: Senate Bill 213, Airborne Geophysical Mapping

Dear Senator Wagoner,

Thank you for the opportunity to comment on Senate Bill 213 which would provide funding for airborne geophysical surveys. **We support this bill and urge its passage at the earliest possible time to allow the planning and actual surveys to begin as early this summer.**

The State of Alaska is now in, as I recall, the 13<sup>th</sup> consecutive year of airborne geophysical surveys. This program has been a resounding success. The DNR Division of Geophysical & Geophysical Surveys (DGGs) has done an excellent job of maximizing the benefit of past funding. DGGs has focused on small areas with the highest probability of success for promoting exploration investment in the State. In many instances, DGGs has been able to obtain data from private companies and then incorporate it with the State's new geophysical data. This has resulted in both electronic and hard copies of maps that maximize the benefit of the State investment.

Airborne geophysical surveys are an ideal tool for use in Alaska. Such surveys do not disturb the surface of the ground but rather indicate locations where samples should be taken, ridge tops where fault lines can be confirmed, locations where alteration may be identified, etc. This program has resulted in significant investments in Alaska and the surveys already completed continue to be used whenever companies begin looking for minerals.

Funding in the past has varied from a low of about \$250,000 in some years to a high, if my memory serves me, of about \$800,000. At that rate it will require many decades to cover the entire state. SB-213 will provide \$5,000,000 and this will greatly increase the amount of land that can be surveyed in the near term.

**I would reiterate that we support this bill and urge passage at the earliest possible time.**

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Senator Gene Theriault

SENATE RESOURCES PACKET

FEB. 13, 2006

SB 213 Packet<sup>†</sup> –Sponsor Materials

- Cover Sheet \_\_\_\_\_ 1 page
- Fact Sheet \_\_\_\_\_ 1 page
- SB 213 \_\_\_\_\_ 1 page
- Alaska Minerals Commission Findings \_\_\_\_\_ 1 page

NOTE: this is an appropriations bill.

- Total Pages \_\_\_\_\_ 4 pages



## Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

Sponsor: Senator Gene Theriault  
Current Version: SB 213  
Contact: Joe Balash, 465-4797

### Fact Sheet for: Senate Bill 213

**Short Title:** APPROPRIATION FOR MINERAL INVENTORY

**Summary:**

- Appropriates \$5 million to the Department of Natural Resources for an airborne geological and geophysical mineral inventory.
- Appropriation lapses June 30, 2011.

**Benefits:**

- Encourages exploration and investment in Alaska's mineral industry.
- Provides vital information for State management of mineral and other natural resources.
- Helps attract mineral resource companies to Alaska and steer them toward areas of high potential.

**Background:**

- According to the 2006 Report of the Alaska Minerals Commission, Alaska is one of the most poorly mapped regions of the world and ranks far behind many third world countries in spending for geologic data acquisition. Alaska loses many potential investors who choose to invest in areas with more public data. In addition, companies that have actually identified worthy prospects discover they are expected to fully define the baseline data of the whole area surrounding their find because no such database exists. Since 1993, Alaska has spent an average of \$400,000 per year on airborne surveys and "ground truth" geologic mapping necessary for interpretation. As of 2005, less than 6 percent of the State's land entitlement has been mapped. The Minerals Commission recommends increasing the annual rate of investment in geophysical surveys at a level greater than \$1 million per year.

**SB**

**225**

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4925  
Fax: (907) 465-3517  
Toll Free: 1-800-821-4925

*Senator Gary Stevens*  
*Alaska State Legislature*

INTERIM ADDRESS:  
112 Mill Bay Road  
Kodiak, Alaska 99615  
(907) 486-4925  
Fax: (907) 486-5264


**Memorandum**

DT: April 13, 2006  
TO: Senator Tom Wagoner, Chair  
Senate Resources Committee  
FR: Senator Gary Stevens  
RE: SB 225

I respectfully request a Resources Committee hearing at your earliest convenience on Senate Bill 225, "An Act prohibiting mixing zones in freshwater spawning waters".

Thank you for your consideration of this request.

Sincerely,



Senator Gary Stevens

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4925  
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Toll Free: 1-800-821-4925

# Senator Gary Stevens

## Alaska State Legislature

INTERIM ADDRESS:  
112 Mill Bay Road  
Kodiak, Alaska 99615  
(907) 486-4925  
Fax: (907) 486-5264

### Sponsor Statement for SB 225

Alaska has a reputation for pure water and vibrant wild fish stocks. SB 225 seeks to maintain the long-standing prohibition on pollution mixing zones in Alaska's freshwater spawning areas. SB 225 transfers into statute a regulation that has governed wastewater discharges for many successful years of industrial and municipal expansion in Alaska.

SB 225 aids municipalities and industry by preventing man-made ditches or holding ponds that are invaded by spawning fish from being reclassified as freshwater spawning areas. This language solves the "Valdez Situation" cited by the Alaska Department of Environmental Conservation (ADEC) as a primary rationale for the regulation change. In that case, the city created a ditch from its wastewater treatment facility to saltwater, and the ditch was subsequently invaded by spawning pink salmon. This ditch was then classified as a spawning area requiring the wastewater discharge parameters to be reduced to a purity that the city's wastewater treatment plant would not be able to feasibly meet. SB 225 also allows other municipal wastewater facilities to have a mixing zone re-authorized if successful spawning occurs in the mixing zone after initial authorization, solving the concerns of many municipalities across the state.

SB 225 designates a spawning area to be a physical place in a river where fish spawning occurs. According to testimony from ADEC staff and the Commissioner of the Department of Fish and Game, the standard practice among regulators has been to determine where and when spawning occurs, and to employ seasonal restrictions on development activities in order to control impacts to the environment. However, in relation to the authorization of mixing zones in freshwater, there has never been explicit statutory or regulatory authorization for this practice. There was no reference to this practice in either of the previous Mixing Zone proposals.

In the summer of 2004 and again in 2005 ADEC released proposals to lift the prohibition on pollution mixing zones in freshwater spawning areas. These proposals were met with intense opposition from coastal municipalities, commercial and sport fishing industry groups, the federal government, state fish and game advisory committees, and hundreds of individuals, families, and businesses who testified that allowing pollution in freshwater spawning areas would have a detrimental effect on the physical environment where the largest freshwater spawning populations on earth occur. Additionally, commercial fishing

groups were unified in the concern that their recent successes in salmon marketing would be undermined if this important water quality safeguard was abolished.

Recently, ADEC adopted a version of the proposed regulations that both consolidate and modify the mixing zone regulations found at 18 AAC 70.240 through 18 AAC 70.270. The new regulations specifically exclude resident freshwater sport fish and resident subsistence fish spawning areas from the prohibition on mixing zones. Additionally, the new regulations allow any pollution mixing zone to be permitted year-round in freshwater salmon spawning areas if spawning salmon were not found in the area when the mixing zone was authorized, but were later found successfully spawning in the mixing zone. The new regulations also change the regulatory definition of a "spawning area" to mean a point in time. This allows regulators to authorize mixing zones in all spawning areas when it is determined that salmon spawning will not be occurring. All of these changes present significant departures from established public policy.

SB 225 does not negate other substantive changes ADEC has made in their attempt to streamline and consolidate the mixing zone regulations. SB 225 does not change regulations that allow for site-specific exemptions from state water quality standards and the granting of short-term variances from the standards, both of which can be applied to allow activities such as placer mining. Placer mines may also have a mixing zone in an area determined to not be an area where spawning occurs.

SB 225 protects municipalities and industry while maintaining the high standard of water quality and fisheries protection that has been a centerpiece of Alaska policy for years.

###

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

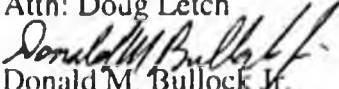
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 11, 2006

**SUBJECT:** Sectional analysis (SB 225)

**TO:** Senator Gary Stevens  
Attn: Doug Letch

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Adds a new section to AS 46.03 that prohibits the Department of Environmental Conservation from authorizing a mixing zone for lakes, streams, rivers, or other flowing fresh water in an area where anadromous fish spawn or other listed fishes are resident. Defines "lakes, streams, rivers, or other flowing fresh water" and "mixing zone".

If I may be of further assistance, please advise.

DMB:med  
06-018.med



*"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."*

*Members*

February 7, 2006

*Alaska State  
Chamber of  
Commerce*

Senator Thomas Wagoner, Chair  
Alaska Senate Resources Committee  
Alaska State Capital, Room 427  
Juneau, Alaska 99801-1182

*Alaska Native  
Groups*

Re: Support for Senate Bill 225, "An Act Prohibiting Mixing Zones in Freshwater Spawning Waters"

*Environmental  
Groups*

Dear Senator Wagoner:

*Recreational  
Groups*

Cook Inlet Regional Citizens' Advisory Council (CIRCAC) submits this letter in support of Senate Bill 225, "An Act Prohibiting Mixing Zones in Freshwater Spawning Waters" (SB 225), which was referred to the Senate Resources Committee on January 9, 2006.

*Aquaculture  
Associations*

CIRCAC is a nonprofit corporation organized exclusively for the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of Section 5002 of the Oil Pollution Act of 1990. Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. CIRCAC consists of 13 member communities as well as Alaska Native groups, commercial fishing and aquaculture, tourism, recreational and environmental interest groups that have a significant stake in the environment and resources at risk from oil production and transportation in the region.

*Fishing  
Organizations*

*City of Kodiak*

*City of Kenai*

*City of Seldovia*

*City of Homer*

*Kodiak Island  
Borough*

*Kenai Peninsula  
Borough*

*Municipality of  
Anchorage*

On behalf of our member entities, CIRCAC participated in the public review and comment period during the Alaska Department of Environmental Conservation (ADEC) rulemaking to revise the state mixing zone regulations at 18 AAC § 70.240. We submitted written comments twice, in September 2004 and again in November 2005. In both sets of comments, we expressed strong opposition to ADEC's proposal to weaken existing state regulations governing mixing zones. The 2004 proposed changes, which would have removed the statewide ban on mixing zones in anadromous or resident fish or shellfish spawning or rearing areas, was in our estimation bad environmental policy. The 2005 proposed regulations contained some improvements, but maintained the loophole to allow mixing zone permits to be granted in anadromous fish spawning habitat. The adopted regulations published by ADEC on January 12, 2006 amount to a

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Cook Inlet Regional Citizens Advisory Council \* 910 Highland Avenue, Kenai, AK 99611-8033

Phone: (907) 283-7222 \* Fax (907) 283-6102

reduction in overall pollution prevention when compared to the previously existing regulations at 18 AAC § 70.240 - 18 AAC § 70.270.

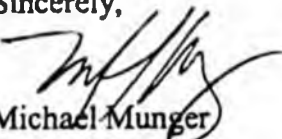
CIRCAC has a long history of working with stakeholder groups, state and federal agencies, spill responders, and oil companies to protect our precious natural resources from industrial pollutants. We have participated in efforts to improve oil spill prevention measures, enhance response capabilities, and develop site-specific Geographic Response Strategies (GRS) to prevent spilled oil from contaminating sensitive coastal environments, especially fish spawning habitat. We are concerned that the newly adopted regulations will undo this good work by allowing the intentional discharge of industrial effluents into streams, lakes, and other water bodies where salmon and other anadromous fish spawn.

The issue of anadromous fish spawning was CIRCAC's central concern throughout the ADEC mixing zone rulemaking process. The final, adopted regulations did not address CIRCAC's primary recommendation, which was for ADEC to maintain the previously existing ban on mixing zones in anadromous fish spawning areas without exception. SB 325 provides an opportunity to memorialize in Alaska Statute the ban on mixing zones in anadromous fish spawning areas, which would accomplish CIRCAC's primary objective to protect fish spawning habitat from industrial effluent pollution. CIRCAC has commented on numerous state and federal rulemakings, and we understand that there is always some measure of compromise involved in developing regulations. However, the overwhelmingly negative response to the new regulations indicates that they are out of step with the water quality standards expected by federal regulators and stakeholders alike. CIRCAC's member entities consider the environmental quality of our anadromous fish spawning habitat to be of critical importance. Protecting spawning streams from pollution is an issue that merits statutory consideration. CIRCAC supports SB 225 because it would provide certain protection to anadromous fish spawning in Cook Inlet's freshwater streams, lakes, and rivers.

We hope that the House Resources Committee will expedite the passage of this important legislation to ensure that the highest water quality standards apply to Alaska's anadromous fish freshwater spawning areas.

If you have any questions, please feel free to contact me at (907) 283-7222.

Sincerely,

  
Michael Munger  
Executive Director

cc: Sen. Gary Stevens

---

*Cook Inlet Regional Citizens Advisory Council • 910 Highland Avenue, Kenai, AK 99611-8033*

*Phone: (907) 283-7222 • Fax (907) 283-6102*



# KODIAK DAILY MIRROR

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8:06:06

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## AP STORY

Jan 16, 7:31 PM EST

### State retains pollution mixing zone policy; fishermen skeptical

JUNEAU, Alaska (AP) -- Alaska will retain the state's ban on pollution mixing zones in spawning areas for salmon and other fish species, but fishermen and environmental groups say some aspects of new discharge regulations could harm young fish.

"Alaska's salmon-based economy is too important to risk any loss in consumer confidence," said Kurt Fredriksson, commissioner of the Department of Environmental Conservation, in announcing Friday that the state would retain the ban.

The new rule is a disappointment to the mining industry, which had supported lifting the ban, said Steve Borrell, executive director of the Alaska Miners Association.

Mixing zones are areas in a water body where wastewater discharge is allowed to exceed pollution limits while blending with uncontaminated water for dilution.

A proposed to replace the current ban on mixing zones in Alaska's freshwater spawning areas was protested by fishermen.

Advertisement

The fishing industry was not ready to claim victory with the announcement Friday. The United Fishermen of Alaska declined to comment, citing a need for more analysis.

Fishermen learned that Alaska regulators do not interpret the law to prevent mixing zones year-round in a salmon spawning streams.

Spawning areas are defined not just as a place but as a point in time by the Alaska Department of Fish and Game.

A mixing zone could be allowed when spawning salmon, eggs, or larvae are not present, state officials said. For example, a placer miner could "operate for a very small window of time" in some salmon spawning streams in Alaska, said Lynn Kent, director of the Environmental Conservation Department's Division of Water.

Environmental groups also said the new rule will not ban mixing zones in areas used by juvenile salmon.

Alaska Trollers Association Executive Director Dale Kelley said the new rule is inadequate if it does not protect juvenile fish.

According to the rule, a mixing zone will not be authorized if it harms "the present and future capability" of an area to support spawning, incubation or rearing" of fish.

The new rule will allow polluters to apply for exceptions to the mixing zone ban for 14 fish species, including Dolly Varden, trout and Arctic grayling.

Rep. Paul Seaton, R-Homer, said those exceptions "might be troublesome for subsistence users in the Interior."

Seaton and other legislators are sponsoring a bill that would prohibit mixing zones in freshwater spawning habitat, but allow them in artificially created fish habitat, such as wastewater ditches.

The House Fisheries Committee has scheduled a hearing on the bill for 8:30 a.m. Friday.

"We'll be studying the regulations between now and then," Seaton said.

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Information from: Juneau Empire, <http://www.juneauempire.com>

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Questions or comments? Contact the **webmaster**.

## Doug Letch

---

**From:** Senator Gary Stevens [Senator\_Gary\_Stevens@legis.state.ak.us]  
**Sent:** Thursday, January 19, 2006 9:58 AM  
**To:** Doug Letch  
**Subject:** [Fwd: HB 328]

Doug: For mixing zone file

----- Original Message -----

**Subject:** HB 328  
**From:** "George Matz" <geomatz@alaska.net>  
**Date:** Thu, January 19, 2006 9:39 am  
**To:** <Rep\_Paul\_Seaton@legis.state.ak.us>

Cook Inlet Alliance  
PO Box 2421  
Homer, AK 99603

January 19, 2006

Representative Paul Seaton  
State Capitol, Room 102  
Juneau, Alaska 99801

Re: HB 328

Dear Representative Seaton:

The Cook Inlet Alliance wants to thank you for your attention to constituent concerns regarding mixing-zone regulations and for introducing HB 328 as a practical, no nonsense solution to this dilemma.

Even though the Department of Environmental Conservation (DEC) adopted modified mixing zone regulations earlier this week, we think HB 328 is still needed for two compelling reasons:

. to eliminate ambiguity and possible loopholes that still exist with DEC's adopted regulations, and . to protect spawning areas for all species of anadromous fish as well as resident fish.

As you know, there have been a few instances where a wastewater discharge permit was issued that allowed a mixing zone and afterwards, salmon started spawning in the zone. While these situations obviously need attention, regulations proposed twice by DEC to correct the problem were essentially throwing the baby out with the bath. The regulations that DEC adopted on January 12th are less objectionable with respect only to salmon, but still allow open-ended questions that could turn into loopholes. This lack of certainty gives the impression that a wastewater discharge permit is a negotiated process, not one to meet a specified standard of water quality. Four problems we see are:

1. Who defines a spawning area? The adopted regulations say that DEC will defer to the Department of Natural Resources "or" the Department of Fish and Game. These two departments have different missions and often different perspectives on resource development/conservation issues, which is the way it should be. Putting "or" in the regulations creates a situation where DEC could arbitrarily decide which to pick, thereby introducing bias into the permit process.
2. Spawning areas need year around protection. These areas are used throughout the year for incubation and rearing as well spawning. Nevertheless, the adopted regulations leave open to question the spatial and temporal definition of a spawning area. Any attempt at narrowly defining a spawning area might benefit a permit applicant, but not water quality or fish.
3. DEC's regulations do not describe what happens when a wastewater discharge permit is requested for a water body that is not in the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes. As described on DF&G's web site, "The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.870. Water bodies that are not 'specified' within the Catalog and Atlas are not afforded that protection.. Based upon thorough surveys of a few drainages it is believed that [specified water bodies] represents less than 50% of the streams, rivers and lakes actually used by anadromous species."

While large projects that need an Environmental Impact Statement may provide this information if it did not previously exist, our concern is more about the cumulative impacts from many smaller projects that need wastewater discharge permits but don't have the means or requirement to undertake expensive fish habitat studies. If mixing zones in spawning areas are to be allowed, the Catalog needs to be completed. Hence, the fiscal impact of allowing mixing zones for anadromous fish other than Pacific salmon should have been included in this regulation.

4. DEC's adopted regulations are unnecessarily convoluted. Section (f) says that "a mixing zone will not be authorized in a spawning area for" several species of fish, but then says in (g) that it "may authorize a mixing zone in a spawning area" for these very same species, but certain conditions have to be met. But if they can't be met, a mitigation plan is acceptable "using the methods established in 11 AAC 195.010." When you read the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes referred to in 11 AAC 195.010, you don't find any methods. The closest thing you find is a section that describes the information needed when applying for a Fish Habitat Permit. This falls short of being a method.

Because of its obvious importance, the mixing zone issue needs to be firmly resolved via legislative statute, not confusing administrative regulation. What you propose in HB 328 is a simple, straight-forward resolution to this problem. It provides a clear policy statement that should become law.

Furthermore, HB 328 protects the spawning areas for all species of anadromous fish (not just Pacific salmon) as well as resident fish. Interest in this issue extends to those who sport and subsistence fish as well as those who commercially fish and are primarily interested in salmon. Sport and subsistence fishers want a sustainable harvest from clean, unpolluted water of all species of anadromous fish as well as resident fish. Without HB 328 that might be jeopardized in areas where mixing zones are allowed.

We thank you for this opportunity to testify.

Sincerely,

George Matz

#### Attachments

<http://www.sf.adfg.state.ak.us/SARR/FishDistrib/anadcat.cfm>

The Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes and its associated Atlas (the Catalog and Atlas,

respectively) currently contain about 16,000 streams, rivers or lakes around the state which have been specified as being important for the spawning, rearing or migration of anadromous fish. Based upon thorough surveys of a few drainages it is believed that this number represents less than 50% of the streams, rivers and lakes actually used by anadromous species. It is estimated that at least an additional 20,000 or more anadromous water bodies have not been identified or specified under AS 41.14.870(a).

The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.870. Water bodies that are not "specified" within the Catalog and Atlas are not afforded that protection. To be protected under AS 41.14.870, water bodies must be documented as supporting some life function of an anadromous fish species (salmon, trout, char, whitefish, sturgeon, etc.) Anadromous fish must have been seen or collected and identified by a qualified observer. Most nominations come from Department of Fish and Game fisheries biologists. Others are received from private individuals, companies and biologists from other state and federal agencies.

#### 11 AAC 195.010. Waters important to anadromous fish

(a) An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, and the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, as revised as of November 2004, are adopted by reference. The six volume atlas is a compilation of topographic maps upon which are specified, as provided in AS 41.14.870(a), the various rivers, lakes, or streams, or parts of them, that are important for the spawning, rearing, or migration of anadromous fish. The catalog is a listing of those water bodies. It sets out legal descriptions for the mouth and the known upper range of the fish of each stream, river, or lake designated on the maps in the atlas. The atlas and the catalog identify the water bodies for which a person or agency must first notify the deputy commissioner of natural resources, as required by AS 41.14.870 (b), before undertaking to construct a hydraulic project, or to use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream

(b) Permit application procedures, catalog and atlas updating procedures, definitions of terms, and other information or requirements to implement, interpret, or make specific the provisions of AS 41.14.870, included in the introduction attached to the catalog and the atlas described in (a) of this section, are also adopted by reference. The introduction also includes a user's guide to the atlas and

catalog, and limitations of the information in the atlas or the catalog.

**LAKE AND PENINSULA BOROUGH  
RESOLUTION 05-22**

**A RESOLUTION OPPOSING THE STATE OF ALASKA'S PROPOSAL TO ADOPT REGULATION CHANGES IN TITLE 18 OF THE ALASKA ADMINISTRATIVE CODE, DEALING WITH CHAPTER 70, WATER QUALITY STANDARDS - MIXING ZONES.**

**WHEREAS**, the State of Alaska, Department of Environmental Conservation is proposing to repeal and adopt revisions that would (1) expand the prohibition on mixing zones to include lakes; (2) create exemptions to the prohibition on mixing zones in fish spawning habitat; (3) reorganize the mixing zone regulations to improve clarity and reduce redundancy; (4) simplify some technical provisions including ones dealing with risk assessment, flow calculations, and mixing zone models; and (5) update a reference to federal technology-based effluent limitations; and

**WHEREAS**, the proposed amendments would allow, for the first time, Industrial Mixing Zones in fresh water lakes and streams where existing regulations currently prohibit them; and

**WHEREAS**, much of the Lake and Peninsula Borough's economic well being is dependent upon a robust marine environment which will continue to provide for healthy, wild and organic salmon stocks in its lakes, rivers and streams; and

**WHEREAS**, wild salmon and other fresh water marine life support numerous jobs and subsistence resources for the residents of the Lake and Peninsula Borough; and

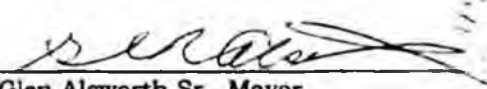
**WHEREAS**, allowing any industrial Mixing Zones in salmon lakes and streams may impair the efforts of commercial fishers in the borough, processors and sport fishing lodges to promote Alaska Wild Salmon as healthy, wild and organic; and,

**WHEREAS**, the Lake and Peninsula Borough is willing to support, in concept, non-industrial mixing zones as may be required for instance, for the proper treatment of municipal sewage with an effluent discharge into an anadromous lake and stream;

**NOW THEREFORE BE IT RESOLVED**, the Lake and Peninsula Borough strongly opposes the State of Alaska's proposal to adopt regulation changes in Title 18 of the Alaska Administrative Code, dealing with Chapter 70, Water Quality Standards.

**PASSED AND APPROVED** by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 9<sup>th</sup> day of November, 2005.

**IN WITNESS THERETO:**

  
Glen Alsworth Sr., Mayor

**ATTEST:**

  
Sheila Bergey, Borough Clerk

**SB**

**239**

**Senator Hollis French**


Capitol Room 504  
465-3892  
465-6595 fax



**MEMORANDUM**

Date: February 1, 2006

To: Senator Thomas Wagoner, Chair  
Resources Committee

From: Senator Hollis French 

RE: Request for Hearing – SB 239 – “An Act establishing minimum rates of tax under the oil and gas properties production (severance) tax for certain oil produced from North Slope reservoirs; and providing for an effective date.”

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This is a request that you schedule a hearing on SB 239 – “An Act establishing minimum rates of tax under the oil and gas properties production (severance) tax for certain oil produced from North Slope reservoirs; and providing for an effective date” at the earliest possible date.

I have attached a copy of the bill, a sponsor statement and backup material. Please let me know if I can provide any other information.

Attachments

# ALASKA STATE LEGISLATURE

SENATOR HOLLIS FRENCH

## **SB 239 Windfall Profits Tax**

### **Sponsor Statement**

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SB 239 requires an upward adjustment to the production tax when the price of oil reaches \$35 per barrel. The production tax formula will change to ensure that Alaska receives a minimum production tax of 10 per cent from North Slope oil fields normally exempted under the Economic Limit Factor (ELF).

Under the present tax structure, Alaska receives no production tax from most North Slope oil fields, even when prices – and profits – are high. This bill, while leaving ELF provisions in place, simply requires that, starting at \$35 per barrel/ANS wellhead average price for the month, ELF provisions will not work to reduce the first 10% of current production tax. Further, if fields currently pay more than 10% (at this point, only the Prudhoe Bay unit does so), the production tax increases to the statutory 15% maximum.

Heavy oil is exempted from these increases, and the bill provides for an appeal to the Commissioner of Revenue if companies can show that field operation would be adversely impacted by the increased tax.

If adopted, this bill would raise almost \$500 million in FY2007 at projected prices, according to the Alaska Department of Revenue.

## Windfall Tax Legislation Impact on ANS Oil Severance Tax Collections Heavy Oil Exempt, Windfall above \$35/bbl ANS WC

1. What would be the change in revenue if the Windfall Tax Legislation had been in place the first 4 months of FY2006?

| Crude Oil Price of ANS WC<br>in Dollars per Barrel | Severance Tax Collections |          |        |          | Effective Tax Rate |          |        |
|--|---------------------------|----------|--------|----------|--------------------|----------|--------|
|  | Millions of Dollars       |          |        |          |                    |          |        |
|  | Status Quo                | Windfall | Change | % Change | Status Quo         | Windfall | Change |
| Actual Price First 4 Months                        | 390.2                     | 580.9    | 190.7  | 49%      | 8.4%               | 12.6%    | 4.2%   |
| \$25   | 143.9                     | 143.9    | 0.0    | 0%       | 8.4%               | 8.4%     | 0.0%   |
| \$35   | 215.9                     | 319.5    | 103.5  | 48%      | 8.4%               | 12.6%    | 4.2%   |
| \$45   | 288.0                     | 427.7    | 139.7  | 49%      | 8.4%               | 12.6%    | 4.2%   |
| \$55   | 360.0                     | 535.9    | 175.9  | 49%      | 8.4%               | 12.6%    | 4.2%   |
| \$65   | 432.1                     | 644.1    | 212.0  | 49%      | 8.4%               | 12.6%    | 4.2%   |

<sup>1</sup> June 2005 thru September 2005

The Department of Revenue is in the process of reviewing and updating the data on which this analysis is based. As a result, future analysis could have different results.

2. What would be the change in revenue if the Windfall Tax Legislation were in place for all of FY2007?

| Crude Oil Price of ANS WC<br>in Dollars per Barrel | Severance Tax Collections |          |        |         | Effective Tax Rate |          |        |
|--|---------------------------|----------|--------|---------|--------------------|----------|--------|
|  | Millions of Dollars       |          |        |         |                    |          |        |
|  | Status Quo                | Windfall | Change | %Change | Status Quo         | Windfall | Change |
| Forecast Price for FY2007                          | 892.5                     | 1,388.2  | 495.7  | 56%     | 7.8%               | 12.3%    | 4.5%   |
| \$25   | 401.1                     | 401.1    | 0.0    | 0%      | 7.8%               | 7.8%     | 0.0%   |
| \$35   | 604.1                     | 935.1    | 331.0  | 55%     | 7.8%               | 12.3%    | 4.5%   |
| \$45   | 807.2                     | 1254.2   | 447.0  | 55%     | 7.8%               | 12.3%    | 4.5%   |
| \$55   | 1010.2                    | 1573.2   | 563.0  | 56%     | 7.8%               | 12.3%    | 4.5%   |
| \$65   | 1213.3                    | 1892.3   | 679.0  | 56%     | 7.8%               | 12.3%    | 4.5%   |

The Department of Revenue is in the process of reviewing and updating the data on which this analysis is based. As a result, future analysis could have different results.

washingtonpost.com

## Exxon Makes U.S. Corporate History With High Profits

Advertisement

By Justin Blum  
Washington Post Staff Writer  
Monday, January 30, 2006; 12:57 PM

Exxon Mobil Corp. reported today that its 2005 earnings totaled \$36.13 billion, the largest annual profit ever for a U.S. company.

The company's annual profit was up 43 percent from the year before.

Exxon Mobil, the world's largest publicly traded oil company, also reported \$10.71 billion profit for the last quarter, an increase of 27 percent from the year before.

Those are the largest reported net income numbers in U.S. history, according to Howard Silverblatt, an analyst for Standard & Poor's in New York. He said the previous records were set by Exxon in the third quarter of last year and in 2004.

Exxon and other oil companies have benefited from unusually high prices for crude oil, gasoline and natural gas -- the result of tight supplies and heavy demand. Hurricanes Katrina and Rita, which disrupted domestic production and refining, contributed to those conditions and pushed prices higher.

Chevron Corp. last week reported that its fourth quarter profit was up 20 percent from the year before. ConocoPhillips reported a 51 percent increase in fourth-quarter profit. Marathon Oil Corp. reported that its fourth quarter profit nearly tripled. Oil giants BP PLC and Royal Dutch Shell PLC have not yet reported their profits.

Oil companies are trying to downplay their profits, partly because some members of Congress have been calling for new taxes on oil companies. Exxon and the American Petroleum Institute, an industry trade group, ran newspaper ads today saying oil companies' earnings per dollar of sales are below, or in line with, those of other industries.

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## NEWS RELEASE

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www.conocophillips.com

### ConocoPhillips Reports Fourth-Quarter Net Income of \$3.7 Billion Income from continuing operations of \$3.8 billion, or \$2.69 per diluted share Effectively reinvested 86 percent of 2005 net income

#### Earnings at a glance

|   | Fourth Quarter  |               | Twelve Months    |               |
|---|-----------------|---------------|------------------|---------------|
|   | 2005            | 2004          | 2005             | 2004          |
| Income from continuing operations                     | \$3,782 million | 2,480 million | \$13,640 million | 8,107 million |
| Income (loss) from discontinued operations            | \$ (15)         | (48)          | \$ (23)          | 22            |
| Cumulative effect of changes in accounting principles | \$ (88)         |               | \$ (88)          |               |
| Net income  | \$3,679         | 2,432         | \$13,529         | 8,129         |
| Diluted income per share                              |                 |               |                  |               |
| Income from continuing operations*                    | \$ 2.69         | 1.76          | \$ 9.63          | 5.79          |
| Net income*   | \$ 2.61         | 1.72          | \$ 9.55          | 5.80          |
| Revenues  | \$ 52.2 billion | 40.1 billion  | \$ 183.4 billion | 136.9 billion |

\*Per-share amounts in all periods reflect the impact of a 2-for-1 stock split on June 1, 2005.

HOUSTON, Jan. 25, 2006 --- ConocoPhillips [NYSE:COP] today reported fourth-quarter net income of \$3,679 million, or \$2.61 per share, compared to \$2,432 million, or \$1.72 per share, for the same quarter in 2004. Total revenues were \$52.2 billion, versus \$40.1 billion a year ago.

Income from continuing operations for the fourth quarter was \$3,782 million, or \$2.69 per share, compared to \$2,480 million, or \$1.76 per share, for the same period a year ago.

"During the fourth quarter, our Gulf Coast operations continued to be impacted due to effects from the hurricanes. Otherwise, our operations ran well," said Jim Mulva, chairman and chief executive officer. "We produced 1.88 million BOE per day, including 1.59 million BOE per day from our Exploration and Production segment and an estimated 0.29 million BOE per day from our LUKOIL Investment segment. Our worldwide refining crude oil capacity utilization rate was 88 percent, as the Alliance refinery remained shut down due to Hurricane Katrina and the Lake Charles refinery returned to normal operations following Hurricane Rita.

"Our financial position continues to steadily improve, and our return on capital employed remains strong and competitive. We ended the quarter with a debt-to-capital ratio of 19 percent. During the quarter, we generated \$4.7 billion in cash from operations, spent \$3.0 billion in capital projects and investments, paid \$429 million in dividends, reduced debt by \$981 million, and repurchased \$759 million of ConocoPhillips common stock.

"For the year, we spent \$11,620 million on capital expenditures and investments, which effectively reflects an 86 percent reinvestment of 2005 net income. This represents a

significant reinvestment into the growth and development of our businesses. In addition, we paid \$1,639 million in dividends, reduced debt by \$2,486 million and repurchased \$1,924 million of ConocoPhillips common stock."

For the twelve months of 2005, net income was \$13,529 million, or \$9.55 per share, versus \$8,129 million, or \$5.80 per share, for 2004. Income from continuing operations was \$13,640 million, or \$9.63 per share, compared with \$8,107 million, or \$5.79 per share, for the same period a year ago. Total revenues were \$183.4 billion, versus \$136.9 billion a year ago.

The results for ConocoPhillips' business segments follow.

### **Exploration & Production (E&P)**

**Fourth-quarter financial results:** E&P income from continuing operations was \$2,430 million, up from \$2,288 million in the third quarter of 2005 and \$1,671 million in the fourth quarter of 2004. The increase from the third quarter of 2005 primarily was the result of higher realized natural gas prices and higher volumes, partially offset by lower realized crude oil prices; higher exploration expenses; higher depreciation, depletion and amortization; and higher operating expenses. Improved results from the fourth quarter of 2004 primarily were due to higher crude oil and natural gas prices, partially offset by the negative impact of mark-to-market valuation on certain natural gas contracts in the United Kingdom; higher depreciation, depletion and amortization; higher exploration expenses; and the impact of higher commodity prices on production taxes.

As expected, ConocoPhillips' E&P daily production, including Canadian Syncrude and excluding LUKOIL, averaged 1.59 million barrels of oil equivalent (BOE) per day, up from 1.52 million BOE per day in the prior quarter. Compared with the previous quarter, output from the United Kingdom and Alaska was approximately 66,000 BOE per day greater, primarily due to less maintenance and seasonality. Production in the fourth quarter of 2005 was relatively flat compared to the fourth quarter of 2004.

**Twelve-months financial results:** E&P income from continuing operations in 2005 was \$8,434 million, up from \$5,702 million in 2004. This primarily was due to higher realized prices, partially offset by higher operating expenses; higher depreciation, depletion and amortization; the negative impact of mark-to-market valuation on certain natural gas contracts in the United Kingdom; and reduced income tax benefits.

### **Midstream**

**Fourth-quarter financial results:** Midstream income from continuing operations was \$147 million, up from \$88 million in the prior quarter and up from \$100 million in the fourth quarter of 2004. The primary reasons for the improvement over the previous quarter were higher natural gas liquids prices and the associated impact on inventory. Operating expenses also were lower for the quarter. The increase over the fourth quarter of 2004 primarily was due to higher natural gas liquids prices and increased ownership in DEFS, partially offset by the impact of the disposition of the Canadian Empress system.

**Twelve-months financial results:** Midstream income from continuing operations in 2005 increased to \$688 million, from \$235 million in 2004. The increase primarily was due to a net

gain of \$300 million to ConocoPhillips in the first quarter of 2005 associated with the DEFS restructuring, as well as the company's increased ownership in DEFS and higher natural gas prices. This increase was partially offset by the impact of the disposition of the Canadian Empress system.

### **Refining and Marketing (R&M)**

***Fourth-quarter financial results:*** R&M income from continuing operations was \$1,056 million, down from \$1,390 million in the previous quarter and up from \$753 million in the fourth quarter of 2004. The decrease from the third quarter of 2005 primarily was the result of lower worldwide refining margins; continued hurricane-related volume and cost impacts; higher utility and turnaround costs; and increased taxes, partially offset by higher worldwide marketing results. The increase from the fourth quarter of 2004 primarily was a result of improved refining margins and marketing results, partially offset by ongoing hurricane-related volume and cost impacts, as well as higher utility costs.

Domestic fourth-quarter refining market crack spreads decreased relative to the third quarter, moderated by the company's refining configuration, which is more heavily weighted toward distillates. U.S. refineries operated at 85 percent of crude oil capacity utilization as hurricane-related downtime impaired fourth-quarter throughputs. Excluding the Alliance and Lake Charles refineries in Louisiana, the company's domestic crude oil capacity utilization rate improved 2 percent. Compared with the prior quarter, U.S. marketing results improved. U.S. marketing margins for the quarter were slightly higher than pre-hurricane levels.

International fourth-quarter realized refining margins were lower, while crude oil capacity utilization was slightly improved from the prior quarter.

Worldwide, R&M's refining crude oil capacity utilization rate averaged 88 percent, compared with 95 percent in the previous quarter and 94 percent in the fourth quarter of 2004. Before-tax turnaround costs were \$86 million in the fourth quarter of 2005, versus \$53 million in the previous quarter and \$73 million in the fourth quarter of 2004. Fourth-quarter hurricane-related maintenance expenditures were \$90 million, before-tax, reduced for accrued insurance recoveries.

The 247,000-barrel-per-day Alliance refinery has restored partial operations, with full operations expected around the end of the first quarter.

***Twelve-months financial results:*** R&M income from continuing operations in 2005 increased to \$4,256 million, compared with \$2,743 million in 2004. The increased earnings were driven by higher worldwide refining margins, partially offset by hurricane-related volume and cost impacts, higher utility costs, and foreign exchange losses.

### **LUKOIL Investment**

***Fourth-quarter financial results:*** Income from continuing operations in the fourth quarter of 2005 was \$189 million, down from \$267 million in the prior quarter. This represents ConocoPhillips' estimate of the company's 15.5 percent weighted average equity share of LUKOIL's income for the fourth quarter, based on market indicators and historical production trends for LUKOIL. The decrease from the prior quarter was attributable to lower realized

price estimates, partially offset by an increased equity ownership position. At the end of the fourth quarter, the company's equity ownership in LUKOIL was 16.1 percent.

For the fourth quarter of 2005, ConocoPhillips estimates its equity share of LUKOIL production was 293,000 BOE per day and its share of LUKOIL daily refining crude oil throughput was 156,000 barrels per day.

### **Chemicals**

***Fourth-quarter financial results:*** The Chemicals segment, which includes the company's 50 percent interest in Chevron Phillips Chemical Company LLC (CPChem), reported income from continuing operations of \$114 million, compared with \$13 million in the third quarter of 2005 and \$83 million in the fourth quarter of 2004. Improved results in the fourth quarter largely were due to higher margins, primarily from olefins and polyolefins, as well as recovery from hurricane-related impacts in the third quarter. All CPChem hurricane-affected facilities resumed normal operations during the quarter, with all but two of the facilities fully operational in the first week of October. The increase from the fourth quarter of 2004 also reflects higher margins, mainly from olefins and polyolefins, partially offset by higher utility costs and higher maintenance costs.

***Twelve-months financial results:*** During 2005, the Chemicals segment had income from continuing operations of \$323 million, compared with \$249 million for the same period a year ago. The improvement primarily was due to higher margins, primarily from olefins and polyolefins, partially offset by higher utility costs, higher maintenance costs and lower overall volumes.

### **Emerging Businesses**

The Emerging Businesses segment incurred a loss from continuing operations of \$4 million in the fourth quarter of 2005, compared with slightly positive results in the third quarter of 2005 and a loss of \$24 million in the fourth quarter of 2004.

### **Corporate and Other**

Fourth-quarter after-tax Corporate expenses from continuing operations were \$150 million, compared with \$242 million in the previous quarter and \$177 million in the fourth quarter of 2004. The decreased charges in the fourth quarter primarily were driven by reduced benefit-related charges, lower net interest expense and positive foreign exchange impacts. The decrease from the fourth quarter of 2004 primarily was the result of reduced benefit-related charges, partially offset by negative foreign exchange impacts.

Total debt at the end of the fourth quarter was \$12.5 billion, down approximately \$1.0 billion from the previous quarter and \$2.5 billion below the year-end 2004 level. At the end of the fourth quarter, the company's debt-to-capital ratio was 19 percent, down from 21 percent at the end of the third quarter.

The company's tax provision for the fourth quarter of 2005 was \$2.8 billion, resulting in an effective tax rate of 42.9 percent. This is compared with 42.0 percent in the previous quarter and fourth quarter of 2004.

### **Discontinued Operations**

**Fourth-quarter financial results:** Fourth-quarter losses from discontinued operations were \$15 million, compared with losses of \$4 million in the third quarter and \$48 million in the fourth quarter of 2004.

**Twelve-months financial results:** During 2005, discontinued operations had a loss of \$23 million, compared with income of \$22 million for the same period a year ago. The decrease is attributable primarily to 2004 asset sales.

### **Cumulative Effect of Change in Accounting Principle**

Net income in the fourth quarter of 2005 includes a \$88 million charge related to the cumulative effect of a change in accounting principle associated with the adoption of Financial Accounting Standards Board (FASB) Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations, an interpretation of FASB Statement No. 143."

### **Outlook**

Mr. Mulva concluded:

"We had another good quarter, which contributed to a solid year in terms of operating performance. This performance, combined with favorable commodity prices and margins, enabled us to achieve strong financial results.

"We are very pleased to have reached an agreement with Burlington Resources and are confident in the opportunities it provides our respective companies and shareholders. Integration teams composed of employees from both companies currently are working transition details, and we anticipate completing the transaction in the first half of 2006. With this transaction, ConocoPhillips will expand its portfolio of high-quality, low-risk, long-lived gas reserves and become a leading producer of natural gas in North America. Additionally, the transaction enhances ConocoPhillips' North American natural gas supply position in projects involving conventional and unconventional resources, as well as long-term LNG and Arctic gas projects.

"We also are pleased to resume our productive partnership with the people and state of Libya. This relationship provides a strong basis for us to invest in our aligned goals for increased reserves and production, and in the training and development of our Libyan work force.

"In December, we announced our participation in the Qatargate LNG project. When fully operational, this 7.8-million-gross-tons-per-annum facility will help us meet the growing global energy demand. This project comprises upstream production facilities to produce approximately 1.4 billion gross cubic feet per day of natural gas, containing an average of approximately 70,000 gross barrels per day of liquids.

*ConocoPhillips Reports Fourth-Quarter Net Income of \$3.7 Billion*

"The Darwin LNG plant has commenced production and is on target for its initial LNG delivery in the first quarter of 2006. This facility is anticipated to meet gross contracted sales of approximately 3 million tons of LNG per year for a period of 17 years.

"In downstream, we expect worldwide utilization rates in the first quarter to be consistent with the previous quarter due to scheduled turnaround activity. Our incremental U.S. investment program of \$4 billion to \$5 billion over the next five to six years will result in expanded capacity and increased refining flexibility. In addition, the recently announced acquisition of the Wilhelmshaven refinery in Germany, which is anticipated to close in the first quarter, provides a unique opportunity to further enhance our strategic position in Europe and strengthens the company's ability to supply products to key export markets.

"We continue to grow and develop the business lines of our company with plans to invest approximately \$14 billion in 2006, including the investment necessary to bring our ownership in LUKOIL to 20 percent. We have positioned ourselves to provide long-term value for our shareholders."

ConocoPhillips is an integrated petroleum company with interests around the world. Headquartered in Houston, the company had approximately 35,600 employees, \$107 billion of assets, and \$183 billion of revenues as of Dec. 31, 2005. For more information, go to [www.conocophillips.com](http://www.conocophillips.com).

- # # # -

ConocoPhillips' quarterly conference call is scheduled for 11 a.m. Eastern today. To listen to the conference call and to view related presentation materials, go to [www.conocophillips.com](http://www.conocophillips.com) and click on the "Investor Information" link.

For financial and operational tables and detailed supplemental information, go to <http://www.conocophillips.com/investor/reports/index.htm>

**CONTACTS:**

|                          |              |
|--------------------------|--------------|
| Laura Hopkins (media)    | 281-293-6030 |
| Gary Russell (investors) | 212-207-1996 |

**CAUTIONARY STATEMENT FOR THE PURPOSES OF THE "SAFE HARBOR" PROVISIONS  
OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

*This update contains forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements including statements as to the expected benefits of the Burlington Resources acquisition such as efficiencies, cost savings, market profile and financial strength, and the competitive ability and position of the combined company, and other statements identified by words such as "estimates," "expects," "projects," "plans," and similar statements, such as "The 247,000-barrel-per-day Alliance refinery has restored partial operations, with full operations expected around the end of the first quarter"; "we anticipate completing the [Burlington Resources] transaction in the first half of 2006"; "when fully operational, this 7.8-million-gross-tons-per-annum facility will help us meet the growing global energy demand"; "This project comprises upstream production facilities to produce approximately 1.4 billion gross cubic feet per day of natural gas, containing an average of approximately 70,000 gross barrels per day of liquids"; "The Darwin LNG plant has commenced production and is on target for its initial LNG delivery in the first quarter of 2006"; "This facility is anticipated to meet gross contracted sales of approximately 3 million tons of LNG per year for a period of 17 years"; "In downstream, we expect worldwide utilization rates in the first quarter to be consistent with the previous quarter due to scheduled turnaround activity"; "the recently announced acquisition of the Wilhelmshaven refinery in Germany, which is anticipated to close in the first quarter"; "We continue to grow and develop the business lines of*

## ConocoPhillips Reports Fourth-Quarter Net Income of \$3.7 Billion

our company with plans to invest approximately \$14 billion in 2006, including the investment necessary to bring our ownership in LUKOIL to 20 percent", involve certain risks, uncertainties and assumptions that are difficult to predict. Further, certain forward-looking statements are based on assumptions as to future events that may not prove to be accurate. Therefore, actual outcomes and results may differ materially from what is expressed or forecast in such forward-looking statements. Economic, business, competitive and regulatory factors that may affect ConocoPhillips' business are generally as set forth in ConocoPhillips' filings with the Securities and Exchange Commission (SEC). Unless legally required, ConocoPhillips undertakes no obligation (and expressly disclaims any such obligation) to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

**Cautionary Note to U.S. Investors** – The SEC permits oil and gas companies, in their filings with the SEC, to disclose only proved reserves that a company has demonstrated by actual production or conclusive formation tests to be economically and legally producible under existing economic and operating conditions. Production is distinguished from oil and gas production because SEC regulations define Syncrude as mining-related and not part of conventional oil and natural gas reserves. We use certain terms in this release, such as "including Canadian Syncrude" that the SEC's guidelines strictly prohibit us from including in filings with the SEC. U.S. investors are urged to consider closely the disclosure in the company's periodic filings with the SEC, available from the company at 600 North Dairy Ashford Road, Houston, Texas 77079 and the company's Web site at [www.conocophillips.com/investor/sec](http://www.conocophillips.com/investor/sec). This information also can be obtained from the SEC by calling 1-800-SEC-0330.

### ADDITIONAL INFORMATION AND WHERE TO FIND IT

ConocoPhillips will file a Form S-4, Burlington Resources will file a proxy statement and both companies will file other relevant documents concerning the proposed merger transaction with the Securities and Exchange Commission (SEC). **INVESTORS ARE URGED TO READ THE FORM S-4 AND PROXY STATEMENT WHEN THEY BECOME AVAILABLE AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** You will be able to obtain the documents free of charge at the Web site maintained by the SEC at [www.sec.gov](http://www.sec.gov). In addition, you may obtain documents filed with the SEC by ConocoPhillips free of charge by contacting ConocoPhillips Shareholder Relations Department at (281) 293-6800, P.O. Box 2197, Houston, Texas, 77079-2197. You may obtain documents filed with the SEC by Burlington Resources free of charge by contacting Burlington Resources Investor Relations Department at (800) 262-3456, 717 Texas Avenue, Suite 2100, Houston, Texas 77002, e-mail: [IR@br-inc.com](mailto:IR@br-inc.com).

ConocoPhillips, Burlington Resources and their respective directors and executive officers, may be deemed to be participants in the solicitation of proxies from Burlington Resources' stockholders in connection with the merger. Information about the directors and executive officers of ConocoPhillips and their ownership of ConocoPhillips stock will be set forth in the proxy statement for ConocoPhillips' 2006 Annual Shareholders Meeting. Information about the directors and executive officers of Burlington Resources and their ownership of Burlington Resources stock is set forth in the proxy statement for Burlington Resources' 2005 Annual Meeting of Stockholders. Investors may obtain additional information regarding the interests of such participants by reading the Form S-4 and proxy statement for the merger when they become available.

Investors should read the Form S-4 and proxy statement carefully when they become available before making any voting or investment decisions.

washingtonpost.com

## Oil Doesn't Want Focus on Big Profit

Companies Stepping Up Advertising

By Frank Ahrens  
Washington Post Staff Writer  
Wednesday, October 26, 2005; D01

Gigantic oil companies generally do not enjoy the best PR.

Pick your poison: Oil companies have caused tanker spills, proposed drilling into the Arctic wildlife ranges, crafted ties to shady nations and meddled in the affairs of others, and produced products that pollute.

Now, even as high gasoline prices continue to anger motorists and aggravate financial problems at General Motors Corp. and Ford Motor Co., the oil companies have begun to report record quarterly profit. Yesterday, British energy giant BP PLC reported a \$6.53 billion third-quarter profit, up from \$4.87 billion in the same period last year. And tomorrow, analysts expect Exxon Mobil Corp. to show that it earned nearly \$9 billion over the past three months -- the largest corporate quarterly profit ever.

Grumbling already has begun on Capitol Hill: Last month, one senator proposed a windfall-profit tax on oil conglomerates, and yesterday, House Republicans warned energy companies against price gouging.

To deflect the damage, the energy industry is relying on an ad campaign that was escalating even before hurricanes Katrina and Rita blitzed Gulf Coast petroleum refineries. The print and television ads are designed to educate consumers and lawmakers with a "we're all in this together" tone.

In the pages of The Washington Post, for example, according to the paper's ad executives, BP has taken out seven large issue ads so far this year, compared with zero through the same time last year. Exxon Mobil has had 19 so far this year, compared with 12 last year. For Chevron Corp., it's 17 ads so far this year, compared with six last year. And the industry's trade group, the American Petroleum Institute, has purchased seven ads in The Post so far this year, compared with none last year.

Chevron and Exxon Mobil increased their ad spending in the third quarter of this year at the New York Times, the newspaper company reported in its earnings call last week.

"You still have 100 hours of press time on any oil spill versus a tiny blurb or nothing at all if a company spends hundreds of millions on pollution control," said Lyle Brinker, an analyst for the John S. Herold Inc. energy research firm. "Sometimes, they just throw up their hands. The best thing they can do is keep the debate focused on educating the public."

Red Cavaney, president of the American Petroleum Institute, said the ads partially are designed to correct no-longer-true misperceptions about his industry. For instance, he said, even though 90 percent of the Gulf Coast drilling platforms and refineries were hit by either Katrina or Rita, there were no oil spills.

The industry's ads range from simple conservation messages to those that attempt to re-brand the oil

Advertisement



companies as something else.

An American Petroleum Institute ad implores consumers to turn down thermostats, clean furnace filters, and weatherstrip windows and doors.

Full-page ads from Chevron ominously warn: "It took us 125 years to use the first trillion barrels of oil. We'll use the next trillion in 30."

The most conspicuously non-oil oil ads come from the former British Petroleum, which removed the oil from its name and became BP. Now, the company advertises itself as "Beyond Petroleum." The company's logo resembles a sun with leaves.

Stumble onto a BP television ad and it is easy to assume it is a commercial for a company that makes solar panels. Or that BP is an environmental organization of some sort.

"Solar is but a tiny, tiny, tiny part of their business," Brinker said. "They make 99.9 percent of their money in the oil business."

But oil companies may have nowhere to hide as their third-quarter earnings roll in this week.

"They should be record earnings," said Jacques Rousseau, an oil analyst at Friedman Billings Ramsey Group Inc. in Arlington.

In the third quarter of 2004, for instance, Exxon Mobil earned \$6.2 billion. When the company reports its third-quarter results tomorrow, David Dropsey, an analyst with Thomson First Call research, expects profit of about \$8.8 billion.

Chevron made \$3.2 billion in last year's third quarter; Dropsey predicts the company will hit about \$4.3 billion for this year's third quarter. ConocoPhillips Co. is expecting a \$3.5 billion quarterly profit when it reports today, Dropsey said, up from \$2 billion last year.

"Yes, our numbers are large, but when you figure the size of the companies, we are at an all-industry average," Cavaney said. "We are half the size of the returns of the financials and pharmaceuticals."

Yesterday, House Speaker J. Dennis Hastert (R-Ill.) called it "fine" that energy companies are reaping record profit. "However, there have been allegations of price gouging in the wake of the hurricanes. This is unacceptable, and any company who does it will be prosecuted," he said.

Cavaney said industry research showed that most consumers and lawmakers do not fully grasp how the energy industry works and why prices go up and down at the pumps. (He pointed out that average gas prices are back within 10 cents of their pre-Katrina level.)

This led his organization and many of the big oil companies to step up their hearts-and-minds media campaign. This is partially to help educate the consumers, but also to try to dissuade lawmakers from reinstituting a windfall-profit tax -- the last one stretched from 1980 to 1987 -- which oil companies fear. They say the tax drives up gasoline prices by reducing crude supply.

Last month, Sen. Byron L. Dorgan (D-N.D.) introduced a bill that would establish a windfall-profit tax on energy companies that would return some of the companies' earnings to consumers in the form of a rebate, exempting the percentage of profit the companies use for exploration.

Oil price hikes and corporate profit spikes are caused by supply and demand, Cavaney said. And the annual 5 to 10 percent decrease in the world's oil supply, combined with government resistance to allow drilling in places such as Alaska's wildlife refuge and the emergence of China as a major oil user has tipped the needle to the demand side of the equation, he said. The oil company ads seek to explain the complicated energy industry math to consumers, Cavaney said.

"We started back in the year 2000, trying to warn people that we were in a position that increases in demand were exceeding capacity," but no one listened, Cavaney said. "What we took too much for granted was that people understood our business."

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**SB**

**262**



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

February 15, 2006

Senator Tom Wagoner  
Chair, Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Re: Senate Bill 262 — Forest Resources & Practices Standards

Dear Senator Wagoner:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our support for Senate Bill 262. SB 262 amends the Alaska Forest Resources and Practices Act (FRPA) in order to update the state standards for forestry activities in riparian areas. The bill is the product of a two-year consensus process managed by the Board of Forestry and it completes a statewide review of the FRPA riparian standards that began in 1995.

RDC is a private, non-profit business association comprised of individuals and leading companies from Alaska's oil and gas, mining, forest products, fisheries and tourism industries. The association's membership also includes construction companies, local communities, Native corporations, organized labor and a wide range of industry-support firms. RDC works to grow Alaska's economy through the responsible development of the state's natural resources.

SB 262 creates standards for forestry activities in the riparian areas of southcentral Alaska (Region II) that protect water quality and fish habitat while supporting healthy timber and fishing industries. The bill incorporates the best available science and maintains the state's compliance with relevant federal statutes. Most importantly, it has been vetted by government, university and private sector scientists, as well as affected stakeholders, including local governments, private forest owners, timber and fishing industry representatives, environmental groups and the state resource agencies.

SB 262 assigns distinct riparian standards for four different types of water bodies with anadromous or high-value resident fish. The no-cut buffers defined for Region II differ from the other regions in that they are wider on large, dynamic rivers and narrower on small streams. The Board of Forestry's Science & Technical Committee and Implementation Group identified a number of sound reasons for these differences, including the fact that within Region II there are significantly more large rivers that overlap with areas where harvesting is likely to take place.

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The Board of Forestry has a proven track record in developing consensus language to amend the FRPA, having successfully crafted the riparian standards for Region I in 1999 and for Region III in 2003. RDC strongly supports the Board of Forestry's work on these issues and we believe they warrant the endorsement of the Legislature. Please move SB 262 forward without amendment.

Thank you for considering RDC's position on this important piece of legislation.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
For Alaska, Inc.

A handwritten signature in cursive script that reads "Tadd Owens". The signature is written in black ink and is positioned above the typed name and title.

Tadd Owens  
Executive Director

## Bill Text

**BILL ID: HB 420**

00

**HOUSE BILL NO. 420**

01 "An Act relating to riparian protection standards for forest resources and practices;  
02 and providing for an effective date."

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

04 • **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
05 to read:

06 **FINDINGS AND PURPOSE.** (a) The legislature finds that

07 (1) the Forest Resources and Practices Act (AS 41.17)

08 (A) establishes a policy of protecting riparian areas from significant  
09 adverse effects on fish habitat and water quality from timber harvest activities; and

10 (B) divides the state into three forested regions for riparian area  
11 protection purposes, in recognition of the fact that standards necessary to adequately  
12 protect fish habitat and water quality may vary according to the different  
13 characteristics of each of these three regions;

14 (2) the Forest Resources and Practices Act has already established detailed  
01 riparian protection standards for the southern coast (Region I) and interior (Region III)  
02 of the  
03 state, which all available evidence continues to indicate adequately protect riparian areas  
04 in

05 these regions; however, the legislature has not previously established similarly detailed  
06 standards for inland southcentral Alaska (Region II), because of the need for additional  
07 research and scientific collaboration specific to that region;

08 (3) an intensive analysis of riparian habitat characteristics in Region II has  
09 been completed, and proposed detailed standards for riparian protection in Region II that  
10 are

11 based upon the unique nature of Region II's riparian ecosystems have been developed; these  
12 proposed standards have been endorsed by the Board of Forestry and the Department of  
13 Natural Resources;

14 (4) the proposed standards for Region II recognize that certain distinctive  
15 features of riparian areas in Region II exist that warrant special protection standards  
16 that differ

17 significantly from the standards applicable to either Region I or Region III; these  
18 distinctive

19 features include

20 (A) a relative abundance of wide, unconfined, and dynamic river  
21 channels in forested areas; the falling of trees into these rivers as a result of the  
22 frequent shifting of river banks is a major contributor of beneficial large woody debris  
23 to these channels; trees along these rivers can therefore become an important source of  
24 large woody debris even though they are currently located relatively far from the river;

25 (B) a greater diversity and wider distribution of fish species, including  
26 high value resident fish species, than in other regions of the state;

27 (C) more intensive use of Region II's fresh waters for sport fishing  
28 than in other regions of the state; and

29 (D) a relatively low volume per acre of riparian timber, and a relatively  
30 high proportion of hardwoods that have a shorter residence time as large woody  
31 debris; as a result, a wider no-harvest area is necessary along dynamic river channels  
01 in Region II in order to provide a volume of large woody debris equivalent to that  
02 yielded by a smaller buffer in other regions;

03 (5) the proposed standards for Region II are responsive to the distinctive  
04 features listed in (4) of this subsection.

05 (b) The purpose of this Act is to further the Forest Resources and Practices Act's goal  
06 of region-specific riparian protection standards in this state by adopting standards that  
07 have

08 been tailored to the unique conditions of the inland southcentral area of the state.

03 \* Sec. 2. AS 41.17.116 is repealed and reenacted to read:

04 **Sec. 41.17.116. Riparian standards for private land.** (a) Private forest land  
05 adjacent to the following types of waters and located in Region I is subject to the  
06 riparian protection standards established in this subsection:

07 (1) along a Type I-A water body,

08 (A) operations within 100 feet of the water body or to the break  
09 of the slope, whichever area is smaller, shall be conducted in compliance with  
10 slope stability standards established in regulations adopted under this chapter;  
11 and

12 (B) harvest of timber may not be undertaken within 66 feet of  
13 the water body;

14 (2) along a Type I-B water body,

15 (A) operations within 100 feet of the water body or to the break  
16 of the slope, whichever area is smaller, shall be conducted in compliance with  
17 slope stability standards established in regulations adopted under this chapter;  
18 and

19 (B) harvest of timber may not be undertaken within 66 feet of  
20 the water body or to the break of the slope, whichever area is smaller;

21 (3) along a Type I-C water body,

22 (A) operations within 100 feet of the water body or to the break  
23 of the slope whichever area is smaller, shall be conducted in compliance with  
24 slope stability standards established in regulations adopted under this chapter;  
25 and

26 (B) where prudent, the operator shall retain low value timber  
27 within 25 feet of the water body or to the limit of the area described in (A) of  
28 this paragraph, whichever area is greater, where the width of the water body is

29 (i) greater than 13 feet at the ordinary high water mark;

30 or

31 (ii) greater than eight feet at the ordinary high water  
01 mark if the channel is incised;

02 (4) along a Type I-D water body,

03 (A) operations within 50 feet of the water body or to the break  
04 of the slope, whichever area is smaller, shall be conducted in compliance with  
05 slope stability standards established in regulations adopted under this chapter;  
06 and

07 (B) where prudent, the operator shall retain low value timber  
08 within 25 feet of the water body or to the limit of the area described in (A) of  
09 this paragraph, whichever area is greater, where the width of the water body is

10 (i) greater than 13 feet at the ordinary high water mark;

11 or

12 (ii) greater than eight feet at the ordinary high water  
13 mark if the channel is incised.

14 (b) Private forest land adjacent to the following types of waters and located in  
15 Region II is subject to the riparian protection standards established in this subsection:

16 (1) along a Type II-A water body, harvest of timber may not be  
17 undertaken within 150 feet of the water body; additionally, harvest of timber may not  
18 be undertaken along outer bends subject to erosion within 225 feet of the water body  
19 or to the terrace top break, whichever is smaller;

20 (2) along a Type II-B water body, harvest of timber may not be  
21 undertaken within 150 feet of the water body; additionally, harvest of timber may not  
22 be undertaken along outer bends subject to erosion within 325 feet of the water body  
23 or to the terrace top break, whichever is smaller;

24 (3) along a Type II-C water body, harvest of timber may not be  
25 undertaken within 100 feet of the water body;

26 (4) along a Type II-D water body, there is a 100-foot riparian area;  
27 harvest of timber may not be undertaken within 50 feet of the water body;

28 (5) the length of the augmented buffer along an outer bend subject to  
29 erosion in (1) or (2) of this subsection must be equal to a distance eight times the  
30 stream width measured on a reach between bends at a point not widened by a point bar  
31 or channel movement; the augmented buffer must be located so that three stream  
01 widths are upstream and five stream widths are downstream of the point opposite the  
02 apex of the point bar;

03 (6) where an estuarine area is adjacent to an anadromous or high value

04 resident fish water body, the riparian retention area for the adjacent water body applies  
05 to the estuarine area.

06 (c) Private forest land adjacent to the following types of waters and located in  
07 Region III is subject to the riparian protection standards established in this subsection:

08 (1) along a Type III-A water body, harvest of timber may not be  
09 undertaken within 66 feet of the water body;

10 (2) along a Type III-B water body, harvest of timber may not be  
11 undertaken within 33 feet of the water body; between 33 feet and 66 feet from the  
12 water body, up to 50 percent of standing white spruce trees having at least a nine-inch  
13 diameter at breast height may be harvested without requiring a variation;

14 (3) along a Type III-C water body, harvest of timber within 100 feet of  
15 the water body must be located and designed primarily to protect fish habitat and  
16 surface water quality as determined by the state forester with due deference to the  
17 deputy commissioner.

18 (d) In this section,

19 (1) "low value timber" means timber that the owner or operator  
20 determines, at the time of harvest, to be uneconomic to harvest and market;

21 (2) "prudent" means that the requirement can be met using reasonably  
22 available means or technology, that complying with the requirement is not likely to  
23 create significant impairment of the productivity of the land and water, and that the  
24 cost of achieving the requirement is not out of proportion to the benefits that can  
25 reasonably be expected to be achieved in the particular situation.

26 \* Sec. 3. AS 41.17.118 is repealed and reenacted to read:

27 **Sec. 41.17.118. Riparian standards for state land.** The riparian standards for  
28 state land are as follows:

29 (1) on state forest land managed by the department that is in Region I,

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

01 (B) between 100 and 300 feet from the water body, harvest of  
02 timber may occur but must be consistent with the maintenance of important  
03 fish and wildlife habitat as determined by the state forester with due deference  
04 to the deputy commissioner;

05 (2) on state forest land managed by the department that is in Region II,

06 (A) along a Type II-A water body, harvest of timber may not  
07 be undertaken within 150 feet of the water body; additionally, harvest of  
08 timber may not be undertaken along outer bends subject to erosion within 225  
09 feet of the water body or to the terrace top break, whichever is smaller;

10 (B) along a Type II-B water body, harvest of timber may not be  
11 undertaken within 150 feet of the water body; additionally, harvest of timber  
12 may not be undertaken along outer bends subject to erosion within 325 feet of  
13 the water body or to the terrace top break, whichever is smaller;

14 (C) along a Type II-C water body, harvest of timber may not be  
15 undertaken within 100 feet of the water body;

16 (D) along a Type II-D water body, there is a 100-foot riparian  
17 area; harvest of timber may not be undertaken within 50 feet of the water body;

18 (E) the length of the augmented buffer along an outer bend  
19 subject to erosion in (A) or (B) of this paragraph must be equal to a distance  
20 eight times the stream width measured on a reach between bends at a point not  
21 widened by a point bar or channel movement; the augmented buffer must be  
22 located so that three stream widths are upstream and five stream widths are  
23 downstream of the point opposite the apex of the point bar;

24 (F) where an estuarine area is adjacent to an anadromous or  
25 high value resident fish water body, the riparian retention area for the adjacent  
26 water body applies to the estuarine area;

27 (G) along Type II-A, II-B, II-C, and II-D water bodies, harvest  
28 of timber may occur between the landward extent of the riparian retention area  
29 and 300 feet from the water body consistent with the maintenance or  
30 enhancement of important wildlife habitat as determined by the state forester  
31 with due deference to the deputy commissioner;

01 (3) on state forest land managed by the department that is in Region

02 III,

03 (A) along a Type III-A water body, harvest of timber may not

04 be undertaken within 100 feet of the water body; however, between 66 feet and  
05 100 feet from the water body, harvest of timber may be undertaken where  
06 consistent with the maintenance of important fish and wildlife habitat as  
07 determined by the state forester with the concurrence of the deputy  
08 commissioner;

09 (B) along a Type III-B water body, harvest of timber may not  
10 be undertaken within 50 feet of the water body; between 50 feet and 100 feet  
11 from the water body, up to 50 percent of standing white spruce trees having at  
12 least a nine-inch diameter at breast height may be harvested;

13 (C) along a Type III-C water body, harvest of timber within  
14 100 feet of the water body must be consistent with the maintenance of  
15 important fish and wildlife habitat as determined by the state forester with due  
16 deference to the deputy commissioner.

17 • **Sec. 4.** AS 41.17.119 is repealed and reenacted to read:  
18 **Sec. 41.17.119. Minimum riparian standards for other public land.** The  
19 riparian standards for other public land are as follows:  
20 (1) in Region I, harvest of timber may not be undertaken within 100  
21 feet of an anadromous or high value resident fish water body;  
22 (2) in Region II, the standards are the same as for state land under  
23 AS 41.17.118(2)(A) - (F) and regulations adopted under this chapter;  
24 (3) in Region III, the standards are the same as for state land under  
25 AS 41.17.118(3) and regulations adopted under this chapter.

26 • **Sec. 5.** AS 41.17.950(21) is amended to read:  
27 (21) "riparian area" means  
28 (A) the areas subject to riparian protection standards in  
29 AS 41.17.116(a) and (c) [AS 41.17.116(a) AND (b)] on private land in  
30 Regions I and III;  
31 (B) the area 150 feet from the shore or bank of a Type II-A  
01 or II-B water body, and 100 feet from the shore or bank of a Type II-C or  
02 II-D water body [AREAS SUBJECT TO RIPARIAN PROTECTION  
03 STANDARDS IN REGULATIONS ADOPTED BY THE STATE  
04 FORESTER UNDER AS 41.17.116(c) ON PRIVATE LAND] in Region II;  
05 (C) the area 100 feet from the shore or bank of an anadromous  
06 or high value resident fish water body on state land managed by the department  
07 and on other public land in Regions I and III;

08 • **Sec. 6.** AS 41.17.950 is amended by adding new paragraphs to read:  
09 (34) "outer bend subject to erosion" means, in Region II, a stream bend  
10 that has a cut-bank and is opposite a point bar on the inner bend;  
11 (35) "point bar" means, in Region II, a ridge or low mound of  
12 sediment, often sand or gravel, that has been deposited on the inside of a curve in a  
13 stream, where the water velocity is lower;  
14 (36) "terrace" means, in Region II, a change in elevation greater than  
15 10 feet for Type II-A waters or greater than 20 feet for Type II-B waters, and that has  
16 a slope greater than 30 percent;  
17 (37) "terrace top break" means, in Region II, the point at which the  
18 terrace slope changes to the lower angle slope of the adjacent upland; for purposes of  
19 measurement, the terrace top break is where the degree of slope is reduced by 20  
20 percent or more when measured away from the stream;  
21 (38) "Type II-A water body" means, in Region II,  
22 (A) a nonglacial stream greater than 50 feet wide that has  
23 anadromous or high value resident fish and that has an unconfined and  
24 dynamic channel; and  
25 (B) typically has point bars, islands, scour planes, active or  
26 recent side channels, and areas of obvious bank erosion;  
27 (39) "Type II-B water body" means, in Region II, a glacial stream that  
28 has anadromous or high value resident fish and that is not a glacial Type II-C water  
29 body;  
30 (40) "Type II-C water body" means, in Region II, a water body that  
31 has anadromous or high value resident fish that  
01 (A) is a nonglacial water body greater than three feet wide and

02 less than or equal to 50 feet wide at ordinary high water mark that has an  
03 unconfined and dynamic channel;  
04 (B) is a nonglacial water body greater than three feet wide at  
05 ordinary high water mark that has a confined channel;  
06 (C) is a reach of the Kenai River, Kasilof River, or Lake Fork  
07 Crescent River greater than three feet wide at ordinary high water mark, or  
08 (D) is a lake or pond;  
09 (41) "Type II-D water body" means, in Region II, a nonglacial stream  
10 or a reach of the Kenai River, Kasilof River, or Lake Fork Crescent River that is less  
11 than or equal to three feet wide at ordinary high water mark that has anadromous or  
12 high value resident fish.

13 \* Sec. 7. This Act takes effect July 1, 2006

# ALASKA FOREST RESOURCES & PRACTICES ACT

Effective September 1, 2003



DIVISION OF FORESTRY  
DEPARTMENT OF NATURAL RESOURCES

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This booklet compiles the 1978 Forest Resources and Practices with amendments passed in 1981, 1982, 1983, 1984, 1988, 1990, 1995, 1996, 1998, 1999, and 2003. It does not include the attorney general's notes nor the history notes that are given in the official compilation. The Department of Natural Resources provides this booklet as a public courtesy. The department cannot guarantee the absolute accuracy of this reproduction of the Forest Resources and Practices Act (AS 41.17). For the official published version of the Act, please refer to the Alaska Statutes.

# FOREST RESOURCES AND PRACTICES ACT

## September 2003

### Chapter 17. Forest Resources and Practices Article I. Administration And Management

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

- (1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;
- (2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;
- (3) the state has a fundamental obligation to ensure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;
- (4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon the expertise of professional foresters in conjunction with other disciplines;
- (5) under the leadership of the Department of Environmental Conservation as lead agency, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;
- (6) subject to AS 41.17.098(e), the provisions of this chapter, and regulations adopted under this chapter, with the approval of the Department of Environmental Conservation, establish the nonpoint source pollution requirements under state law and sec. 319 of the Clean Water Act for activities subject to this chapter;
- (7) except for activities subject to AS 41.14.840 or 41.14.870 and regulations authorized by those sections, this chapter and regulations adopted under this chapter establish the fish habitat protection standards, policies, and review processes under state law. (§1 ch 108 SLA 1978; am §2 ch 34 SLA 1990; am E.O. No. 107 §6 (2003))

**Sec. 41.17.020. Division of Forestry established.** (a) The governor may establish, within the department, a division of forestry to carry out this chapter and other appropriate duties designated by the governor.

(b) The division shall be headed by a director who shall be the state forester, appointed to the partially exempt service in accordance with law by the commissioner, from a list of two or more candidates submitted by the board. The commissioner shall solicit and consider recommendation of the Alaska Fire Chiefs Association or successor organization when reviewing the candidates submitted by

the board. The commissioner may reject all candidates, in which case the board shall submit a new list. The state forester shall have

(1) a bachelor's or higher degree in forest management and at least three years of field experience in forestry; or

(2) at least eight years of professional work experience as a forester.

(c) The commissioner shall administer this chapter and is authorized and encouraged to delegate responsibilities for carrying out this chapter to the state forester. (§1 ch 108 SLA 1978; am §42 ch 113 SLA 1981; am §5 ch 91 SLA 1983; am §1 ch 113 SLA 1988).

**Sec. 41.17.030. Responsibilities of division.** (a) The division shall manage state forests and, as directed by the commissioner, provide technical advice to the division of lands on sound forest practices necessary to ensure the continuous growing and harvesting of commercial forest species on other state land.

(b) The division shall regulate operations on private forest land as authorized by the provisions of this chapter or state law.

(c) The division shall provide public information and assistance regarding forest practices and timber management generally. (§1 ch 108 SLA 1978)

**Sec. 41.17.041. Board of Forestry.** (a) The Board of Forestry is established in the Department of Natural Resources, division of forestry.

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

(1) a representative of a commercial fisherman's organization;

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

(3) a representative of an environmental organization;

(4) a representative of a forest industry trade association;

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

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

(7) a representative of a mining organization;

(8) a representative of a recreational organization; and

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

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

(d) A board member who is unable to attend a meeting may designate an alternate who possesses the same qualifications as the board member.

(e) The division shall serve as staff to the board. The department, the deputy commissioner, and the Department of Environmental Conservation shall provide technical staffing and information as needed by the board. (§1 ch 108 SLA 1978; am §87 ch 59 SLA 1982; am §2 ch 34 SLA 1990; am E.O. No. 107 §7 (2003))

**Sec. 41.17.043. Terms of office.** The term of office of a member of the board is three years. The state forester serves an indefinite term, *ex officio*. (§1 ch 108 SLA 1978; am §32 ch 85 SLA 1988)

**Sec. 41.17.045. Removal of members.** (a) The governor may initiate the removal of a board member for inefficiency, neglect of duty, or misconduct in office by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or by counsel at a public hearing before the governor or the governor's designee on at least 10 days' notice by registered mail. The member has a right of confrontation and cross-examination of witnesses testifying.

(b) The removal is effective 15 days after the governor files a complete statement of all charges made against the member and the findings on those charges, in the main office of the board, except that a member may appeal the findings to the superior court. The court shall limit its review to a determination of whether the findings on the charges are substantiated by the evidence presented. The removal is suspended for any period of time during which an appeal on the findings of the governor or the governor's designee is pending. (§1 ch 108 SLA 1978)

**Sec. 41.17.047. Powers and duties of board.** (a) The board shall review and comment to the commissioner on regulations proposed for adoption under this chapter.

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

(c) The board, working with the division, the Department of Environmental Conservation, the deputy commissioner, other affected agencies and parties, and the forest-dependent industries, shall conduct an annual survey of research needs related to forest practices. The board shall review research proposals and shall make recommendations to promote research projects that would address these needs to the governor and the legislature.

(d) The board shall coordinate the monitoring of the implementation and effectiveness of this chapter, the regulations, and best management practices adopted under this chapter in meeting state water quality standards, fish and wildlife habitat requirements, and other forestry objectives. The board shall report annually to the governor on the effectiveness of this chapter and regulations adopted under it, with its recommendations for changes and for needed research and monitoring. The board shall notify the legislature that the annual report is available. The state forester, the deputy commissioner, and the Department of Environmental Conservation shall each present an annual report, independently, to the board on the effectiveness of this chapter, the regulations, and best management practices adopted under this chapter that protect the resources for which they have statutory responsibility, and shall make recommendations for changes to correct procedural or substantive problems. The board shall include the reports as part of its annual report. The board shall hold hearings at least once annually in southeast,

southcentral, and interior Alaska for purposes of taking public testimony on the subjects. (§1 ch 108 SLA 1978; am §2 ch 34 SLA 1990; am §75 ch 21 SLA 1995; am E.O. No. 107 §8,9 (2003))

- Sec. 41.17.055. Powers and duties of the state forester.** (a) The state forester may designate and operate experimental and research forests on state land consistent with the limitations of AS 38.05.300. Laboratories and other facilities may be employed in conjunction with those forests.
- (b) The state forester may establish and maintain forest vegetation nurseries and greenhouses for planting stock to be made available, with or without charge, to organizations, institutions, government agencies, individuals, and businesses for reforestation, afforestation, and related purposes.
- (c) The state forester is authorized to undertake cooperative forestry programs, extension services and education programs, and to otherwise offer a full range of professional management services to the interested public. When the state forester considers it beneficial, the state forester may participate in federal assistance programs by accepting assistance in whatever form offered.
- (d) The state forester may develop regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations are therefore subject to the approval of the commissioner of environmental conservation.
- (e) In the administration of this chapter, the state forester shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The state forester may enter into cooperative agreements and contracts with them to carry out this chapter.
- (f) The state forester shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.
- (g) The state forester may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under the Administrative Procedure Act (AS 44.62) and AS 41.17.047. (§1 ch 108 SLA 1978; am §5 ch 34 SLA 1990; am E.O. No. 107 §10 (2003))

- Sec. 41.17.060. Regulatory and administrative standards.** (a) All regulations, administrative actions, and other activities and duties undertaken under this chapter shall be in full accordance with the standards set out in this section.
- (b) With respect to state, municipal, and private forest land, the following standards apply:
- (1) to the maximum extent possible, all applicable data and information of applicable disciplines shall be updated and used in making decisions relative to the management of forest resources;

- (2) environmentally sensitive areas shall be recognized in the development of regulations and best management practices that are designed to implement nonpoint source pollution control measures authorized under this chapter;
  - (3) administration of forest land shall consider marketing conditions and other economic constraints affecting the forest land owner, timber owner, or the operator;
  - (4) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land; if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price in the state; and
  - (5) significant adverse effects of soil erosion and mass wasting on water quality and fish habitat shall be prevented or minimized.
- (c) With respect to state and municipal forest land only, the following standards also apply:
- (1) forest land shall be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner that best provides for the present needs and preserves the future options of the people of the state;
  - (2) a system of allocating predominant uses or values to particular units within a contiguous area of land shall reflect in reasonable proportion the various resources and values present in that area;
  - (3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, activities, and lifestyles that are dependent upon or derived from forest resources;
  - (4) timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;
  - (5) there may not be significant impairment of the productivity of the land and water with respect to renewable resources;
  - (6) allowance shall be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry; and
  - (7) allowance shall be made for important fish and wildlife habitat. (§1 ch 108 SLA 1978; am §6,7 ch 34 SLA 1990)

**Sec. 41.17.070. Administrative plan and report.** (a) The state forester shall develop and continually maintain a long-range plan for the administration of this chapter which demonstrates that the provisions of AS 41.17.010 are being recognized and that the standards of AS 41.17.060 are being met. The state forester shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

(b) To maintain a record of division decision making for public and agency review, the state forester shall compile and index each decision made under this chapter regarding directives, stop work orders, waivers from requirements, decisions of hearing officers, and decisions on appeals. The state forester shall submit a

summary of this record annually to the board. (§1 ch 108 SLA 1978; am §108 ch 6 SLA 1984; am §8 ch 34 SLA 1990; am E.O. No. 107 §11,12 (2003))

**Sec. 41.17.080. Regulations.** (a) The state forester may adopt regulations necessary to accomplish the purposes of this chapter under AS 44 62 (Administrative Procedure Act) regarding forest practices such as

- (1) road construction and maintenance, including
  - (A) road location, construction, maintenance, and post-operation management or removal; or removal;
  - (B) landing location and construction;
  - (C) drainage structures;
  - (D) material sources and spoil disposal sites;
- (2) timber harvesting, including
  - (A) timber harvest unit planning and design;
  - (B) felling and bucking;
  - (C) cable yarding, shovel, tractor, and wheeled skidder systems;
  - (D) landing clean-up;
  - (E) slash disposal;
- (3) log transfer, sort yards, and storage facilities, including
  - (A) location, design, and construction;
  - (B) maintenance;
  - (C) closure;
  - (D) log storage, rafting, and identification;
- (4) reforestation, including
  - (A) site preparation and rehabilitation;
  - (B) prescribed burning;
  - (C) exemptions from reforestation requirements;
- (5) prevention and suppression of forest insects and diseases;
- (6) salvage logging;
- (7) vegetative management; and
- (8) fire and flood hazard management.

(b) The state forester shall adopt regulations specifying the information to be submitted under AS 41.17.090(e) in the detailed plan of operations to enable the division to determine whether the activities comply with the requirements of this chapter.

(c) The state forester may establish regions, districts, or other subdivisions of forest land in the state in which different regulations apply to reflect varying conditions in the state or to facilitate administration. In adopting regulations, the state forester shall make appropriate distinctions between public and private land.

(d) The state forester shall adopt only those regulations necessary to accomplish the purposes of this chapter and shall avoid regulations that increase operating costs without yielding significant benefits to public resources. (§1 ch 108 SLA 1978; am §9 ch 34 SLA 1990; am E.O. No. 107 §13 (2003))

**Sec. 41.17.082. Control of infestations and disease.** (a) All forest clearing operations and silvicultural systems must be designed to reduce the likelihood of increased insect infestation and disease infections that threaten forest resources. (b) A forest landowner may not conduct or approve timber clearing activities that create conditions fostering outbreaks of infestation or infection that threaten forest resources on forest lands belonging to another person. If the commissioner finds, after notice and hearing, that there has been a violation of this subsection, the commissioner may

- (1) require the forest landowner, at that person's expense, to remove promptly or cure the conditions fostering outbreaks of infestation or infection; and
- (2) require the forest landowner, at that person's expense, to undertake environmentally sound, effective, and cost-efficient actions to control the infestation or infection in the immediate vicinity of the improper timber clearing activity.

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

(d) The commissioner may undertake surveys and appraisals to obtain data on regional insect infestations and disease conditions. Upon a determination that an area is infested with forest insects or infected with diseases injurious to forest resources and that the infestation or infection threatens the forest land or timber of adjacent owners, the commissioner may establish the boundaries of an infestation or infection zone. The commissioner may enter into an agreement with an owner or with a governmental agency to control or suppress infestation or infection within the zone. Upon a determination by the commissioner that insect and disease control work within the zone is no longer necessary or feasible, the commissioner shall terminate the zone. (§10 ch 34 SLA 1990)

**Sec. 41.17.083. Clearing of forest land for non-timber purposes.** A state agency, municipality, or public utility shall determine whether the timber to be removed has significant salvage value before approving or conducting clearing of forest land for purposes other than timber harvest. If the timber has significant salvage value, the agency or utility shall salvage the timber as part of the clearing process. (§10 ch 34 SLA 1990)

**Sec. 41.17.085. Permit applications.** (a) An operator may apply through the state forester for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures under AS 46.35. The state forester shall notify the operator of the action taken.

(b) Where practicable and desirable, the commissioner may enter into cooperative agreements with federal agencies authorizing the department to serve as a collection point for federal permit applications. (§1 ch 108 SLA 1978; am E.O. No. 107 §14)

(2003))

**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 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 state forester 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 I-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 state forester under (b) of this section shall give due deference under AS 41.17.098. (§11 ch 34 SLA 1990; am E.O. No. 107 §15,16 (2003); am §1 ch 123 SLA 2003)

**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.

(b) A forest landowner, timber owner, or operator may provide to the state forester a voluntary plan of operations that describes the long-term plans for timber harvesting. The purpose of a voluntary plan is to give the division and the public an early opportunity to review plans, to identify areas of concern, and to allow the agencies and the public to provide local knowledge and early notice of potential problems to the forest landowner, timber owner, or operator.

(c) Before beginning operations on municipal or private forest land or on state land not managed by the division, the operator shall provide the state forester with a detailed plan of operations. The detailed plan of operations must include

- (1) a description of the proposed operations, identifying the land involved and the action proposed in sufficient detail to inform the public of the nature and location of the proposed operations; the description must include a map and must be in a form suitable for duplication;
- (2) the name, address, and approving signature of the forest landowner, timber owner, and operator; and
- (3) other information required in the regulations adopted under this chapter.

(d) Within five days after receipt of a detailed plan of operations under (c) of this section, the state forester shall distribute the information received under (c) of this section to the deputy commissioner, affected state agencies and coastal districts, and shall distribute the information received under (c)(1) of this section to each

member of the public who has asked to receive copies of notifications for the affected area.

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

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

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

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

(i) An operator shall renew a detailed plan of operations annually. (§1 ch 108 SLA 1978; am §109 ch 6 SLA 1984; am §12 ch 34 SLA 1990; am §6 ch 122 SLA 1996; am E.O. No. 107 §17-19 (2003))

**Sec. 41.17.098. Interagency coordination and reevaluation.** (a) In administering this chapter, the state forester shall coordinate with other agencies, the deputy commissioner, and affected coastal districts that have jurisdiction over activities subject to regulation under this chapter.

(b) In a review or implementation of a detailed plan of operations under AS 41.17.090 and in a decision on a proposed variation from requirements under AS 41.17.087, the state forester shall consider the comments of the deputy commissioner, each affected state agency and, where applicable, coastal districts.

(c) The state forester shall give due deference to the Department of Environmental Conservation in decisions concerning water quality. The commissioner of environmental conservation retains the authority to adopt nonpoint source pollution regulations for activities subject to this chapter to the extent that regulations are not adopted by the state forester and approved by the commissioner of environmental conservation under this chapter. The commissioner of environmental conservation may withdraw approval of regulations adopted by the state forester under this chapter by following the procedure for the adoption, amendment, and repeal of regulations under AS 44.62.180 - 44.62.290.

(d) The state forester shall recognize the expertise of the deputy commissioner with regard to fish and wildlife habitat. On private land, the state forester shall give due deference to the deputy commissioner regarding effects on fish habitat from timber operations including variations to riparian standards, designation of alternative site-specific riparian protection plans, and road location decision within riparian areas. On public land, the state forester shall give due deference to the deputy commissioner regarding effects on fish and wildlife habitat from timber operations including timber harvest in riparian areas, variations to riparian standards, and road location decisions within riparian areas. In making decisions under AS 41.17.087, the state forester shall recognize fish habitat as the primary value in riparian areas.

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

(f) If a disagreement described in (e) of this section exists, an officer of an agency may require reevaluation of the disagreement at a higher level within the agencies, or by the governor if necessary, before a decision is made by the commissioner. (§13 ch 34 SLA 1990; am E.O. No. 107 §20-24 (2003))

**Sec. 41.17.100. Deployment of broadcast chemicals.** The commissioner of environmental conservation, in consultation with the commissioner, shall formulate necessary plans and measures to ensure that application of broadcast chemicals and other substances foreign to the state's forest ecosystem do not lead to results contrary to the objectives and provisions of this chapter and other applicable laws and regulations relating to renewable resources. Regulations adopted by the commissioner of environmental conservation may include requirements for advance testing, posting of security, written reports, and other matters. (§1 ch 108 SLA 1978)

**Sec. 41.17.110. Conversion of forest land to other uses.** An intention to convert forest land to other uses after timber harvesting may be stated in the notification submitted under AS 41.17.090. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion shall be completed during the time set by regulation for minimum reforestation of the land, and other

requirements for revegetation may be imposed to the extent permitted by law. If the state forester finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the state forester shall revoke approval of the conversion and require full compliance with reforestation requirements. (§1 ch 108 SLA 1978; am E.O. No. 107 §25 (2003))

## Article 2. Riparian Management

**Sec. 41.17.115. Management of riparian areas; regulations.** (a) The state forester shall protect riparian areas from the significant adverse effects of timber harvest activities on fish habitat and water quality. The management intent for riparian areas is the adequate preservation of fish habitat by maintaining a short- and long-term source of large woody debris, stream bank stability, channel morphology, water temperatures, stream flows, water quality, adequate nutrient cycling, food sources, clean spawning gravels, and sunlight.

(b) The state forester shall adopt regulations for the protection of riparian areas; the regulations may include higher standards of protection for fish and other public resources on land managed by the department than on other public land or private land. The regulations may vary by region of the state and must take into consideration reasonable classification of water bodies and the economic feasibility of timber operations. (§14 ch 34 SLA 1990; am E.O. No. 107 §26 (2003))

**Sec. 41.17.116. Riparian standards for private land.** [Repealed and reenacted to read:] (a) Private forest land adjacent to the following types of waters and located in Region I is subject to the riparian protection standards established in this subsection:

(1) along a Type I-A water body,

- (A) operations within 100 feet of the water body or to the break of the slope, whichever area is smaller, shall be conducted in compliance with slope stability standards established in regulations adopted under this chapter; and
- (B) harvest of timber may not be undertaken within 66 feet of the water body;

(2) along a Type I-B water body,

- (A) operations within 100 feet of the water body or to the break of the slope, whichever area is smaller, shall be conducted in compliance with slope stability standards established in regulations adopted under this chapter; and
- (B) harvest of timber may not be undertaken within 66 feet of the water body or to the break of the slope, whichever area is smaller;

(3) along a Type I-C water body,

- (A) operations within 100 feet of the water body or to the break of the slope, whichever area is smaller, shall be conducted in compliance with slope stability standards established in regulations adopted under this chapter; and
- (B) the operator shall, where prudent, retain low value timber within 25 feet

of the water body or to the limit of the area described in (A) of this paragraph, whichever area is greater, where the width of the water body is

- (i) greater than 13 feet at the ordinary high water mark; or
- (ii) greater than eight feet at the ordinary high water mark if the channel is incised;

(4) along a Type I-D water body,

- (A) operations within 50 feet of the water body or to the break of the slope, whichever area is smaller, shall be conducted in compliance with slope stability standards established in regulations adopted under this chapter; and
- (B) the operator shall, where prudent, retain low value timber within 25 feet of the water body or to the limit of the area described in (A) of this paragraph, whichever area is greater, where the width of the water body is
  - (i) greater than 13 feet at the ordinary high water mark; or
  - (ii) greater than eight feet at the ordinary high water mark if the channel is incised.

(b) Private forest land adjacent to the following types of waters and located in Region III is subject to the riparian protection standards established in this subsection:

- (1) along a Type III-A water body, harvest of timber may not be undertaken within 66 feet of the water body;
- (2) along a Type III-B water body, harvest of timber may not be undertaken within 33 feet of the water body; between 33 feet and 66 feet from the water body, up to 50 percent of standing white spruce trees having at least a nine-inch diameter at breast height may be harvested without requiring a variation;
- (3) along a Type III-C water body, harvest of timber within 100 feet of the water body must be located and designed primarily to protect fish habitat and surface water quality as determined by the state forester with due deference to the deputy commissioner.

(c) The state forester shall adopt regulations for private land in Region II that designate the areas that are subject to riparian protection standards and the restrictions on timber harvesting operations within those areas that are necessary for their protection under the management goals established in AS 41.17.115.

(d) In this section,

- (1) "low value timber" means timber that the owner or operator determines, at the time of harvest, to be uneconomic to harvest and market;
- (2) "prudent" means that the requirement can be met using reasonably available means or technology, that complying with the requirement is not likely to create significant impairment of the productivity of the land and water, and that the cost of achieving the requirement is not out of proportion to the benefits that can reasonably be expected to be achieved in the particular situation.

(§14 ch 34 SLA 1990, am § 1-2 ch 3 SLA 1999; am §2 ch 123 SLA 2003)

**Sec. 41.17.118. Riparian standards for state land.** (a) [Repealed and reenacted to read:] (a) The riparian standards for state land are as follows:

- (1) on state forest land managed by the department that is located in Region III,

(A) along a Type III-A water body, harvest of timber may not be undertaken within 100 feet of the water body, except that, between 66 feet and 100 feet from the water body, harvest of timber may be undertaken where consistent with the maintenance of important fish and wildlife habitat as determined by the state forester with the concurrence of the deputy commissioner;

(B) along a Type III-B water body, harvest of timber may not be undertaken within 50 feet of the water body; between 50 feet and 100 feet from the water body, up to 50 percent of standing white spruce trees having at least a nine-inch diameter at breast height may be harvested;

(C) along a Type III-C water body, harvest of timber within 100 feet of the water body must be consistent with the maintenance of important fish and wildlife habitat as determined by the state forester with due deference to the deputy commissioner;

(2) on state forest land managed by the department that is in Region I or Region II,

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

(B) between 100 and 300 feet from the water body, harvest of timber may occur but must be consistent with the maintenance of important fish and wildlife habitat as determined by the state forester with due deference to the deputy commissioner.

(b) The department may impose additional riparian protection standards for timber harvest operations through the adoption of land use plans under AS 38.04.065.

Within a state forest established under AS 41.17.200 - 41.17.230, riparian standards adopted by the commissioner under this subsection may not exceed the standards established under (a) of this section unless the commissioner makes a finding of compelling state interest.

(c) In the absence of a site-specific determination by the deputy commissioner, the state forester shall presume for planning purposes that a stream is anadromous if it is connected to anadromous waters that are without department documentation of a physical blockage and has a stream gradient of 8 percent or less. (§14 ch 34 SLA 1990, am E.O. No. 107 §28,29 (2003); am §3 ch 123 SLA 2003; am §10 ch 153 SLA 2003)

**Sec. 41.17.119. Minimum riparian standards for other public land.** [Repealed and reenacted to read:] The riparian standards for other public land are as follows:

(1) in Regions I and II, harvest of timber may not be undertaken within 100 feet of an anadromous or high value resident fish water body;

(2) in Region III, the standards are the same as for state land under AS 41.17.118 and regulations adopted under this chapter.

(§14 ch 34 SLA 1990, am §4 ch 123 SLA 2003)

### Article 3. Enforcement

**Sec. 41.17.120. Inspections and investigations.** The state forester may inspect and investigate forest land and activities on it and may enter upon it in conjunction with any operations as necessary to ensure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies and the deputy commissioner have this same authority to the extent necessary to enforce their own laws and regulations on forest land. Those agencies, the deputy commissioner, and the state forester shall coordinate their actions under this section. (§1 ch 108 SLA 1978; am E.O. No. 107 §31 (2003))

**Sec. 41.17.125. Enforcement coordination.** All state agencies with enforcement authority over an activity subject to regulation under this chapter shall establish a uniform enforcement strategy that avoids duplication and inconsistencies. All participating agencies shall agree to and comply with the contents of the uniform strategy. In developing and implementing the uniform strategy, each state agency retains its authority to determine the appropriate remedies under the statutes and regulations it administers. (§15 ch 34 SLA 1990)

**Sec. 41.17.131. Penalties for violations.** (a) An operator, forest landowner, or timber owner who violates or permits a violation of this chapter, a regulation adopted under this chapter, a directive issued under AS 41.17.136, or a stop work order issued under AS 41.17.138 is liable, after notice and hearing, for a civil fine in an amount not to exceed \$10,000 to be assessed by the commissioner. In determining the amount of civil fine, the commissioner shall consider

- (1) the character and degree of injury to forest resources and values;
- (2) the degree of intent or negligence of the respondent in causing or permitting the violation;
- (3) the character and number of past violations caused or permitted by the respondent; and
- (4) if the information is available, the net economic savings realized by the respondent through the violation.

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

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

(d) If a respondent violates a directive issued under AS 41.17.136 or a stop work order issued under AS 41.17.138, the attorney general, at the request of the commissioner, may seek an injunction requiring the respondent to suspend all or part of the operations until the respondent complies with the directive or stop work order, and requiring the respondent to repair or correct damage resulting from the violation.

(c) If a respondent violates a directive issued under AS 41.17.136 that requires the respondent to repair or correct damage, the commissioner may proceed to repair or correct the damage using state agency employees or contractors and the respondent is liable for the cost of the repair. The commissioner shall deliver to the respondent an itemized statement of expenses incurred. (§1 ch 108 SLA 1978; am §16 ch 34 SLA 1990)

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

(b) The respondent may either comply with the directive or request a hearing under AS 41.17.139 within 15 days of receipt of the notification. If a hearing is requested, the respondent may continue with the activity unless the state forester issues a stop work order under AS 41.17.138. If the directive is affirmed by the hearing officer, the respondent shall cease the activity unless a stay is issued under AS 41.17.143(e) or by the superior court. (§17 ch 34 SLA 1990)

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

(b) The state forester shall immediately refer the matter to a hearing officer for determination of the validity of the stop work order under AS 41.17.139. The hearing officer shall consider any arguments and evidence presented by the respondent within five workdays after receipt of the stop work order and shall then make an immediate decision sustaining or reversing the stop work order. The stop work order is of no further effect if it is not sustained by the hearing officer within the five workday period. A stop work order may be sustained only upon the same grounds on which it was originally issued. (§18 ch 34 SLA 1990)

**Sec. 41.17.139. Hearing procedures.** (a) Unless otherwise specified, proceedings under AS 41.17.131 - 41.17.139 are not subject to the Administrative Procedure Act (AS 44.62). A hearing under AS 41.17.136 or 41.17.138 shall be held before the state forester, a regional forester, or another employee of the division with similar qualifications acting as a hearing officer. A hearing on an appeal under AS 41.17.087 and a hearing under AS 41.17.082(b) shall be held before the commissioner or the commissioner's designee. A person who has assisted in the preparation of the division's case is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence that appears to be reliable and trustworthy. All hearings shall be

open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to ensure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented.

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

- (1) the hearing shall be a nonadversary proceeding, with the hearing officer fully and impartially representing the interests of the state and the respondent;
- (2) the hearing officer shall thoroughly investigate the facts and circumstances relating to the alleged violation, including taking testimony from appropriate persons, collecting and examining documents and other evidence, and performing other actions consistent with due process of law; and
- (3) the hearing officer shall issue a decision in accordance with the applicable procedures of (a) of this section.

(c) The hearing officer shall select the location of the hearing, giving consideration to the convenience of the parties and witnesses. The hearing officer may permit witnesses to testify through teleconferencing. (§1 ch 108 SLA 1978; am §§19, 20 ch 34 SLA 1990)

#### **Sec. 41.17.143. Appeals and judicial review.**

(a) A decision by a hearing officer under AS 41.17.136 or 41.17.138 or by the commissioner under AS 41.17.082(j), 41.17.087, or 41.17.131(a) constitutes final agency action that may be appealed to the superior court within 30 days after it is issued. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

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

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

(d) A person, except the aggrieved forest landowner, timber owner, or operator, may 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. This subsection does not prohibit the maintenance of an action

- (1) for an alleged violation of a constitutional right; or
- (2) against the department regarding a regulation, standard, or systematic course of conduct that does not involve a challenge to, or attempt to enjoin,

stay, modify, or otherwise affect a timber operation on private forest land subject to this chapter. (§1 ch 108 SLA 1978; am §21 ch 34 SLA 1990)

#### Article 4. State Forest System

**Sec. 41.17.200. State forest purposes.** (a) The purpose of AS 41.17.200 - 41.17.230 is to permit the establishment of designated state-owned or acquired land and water areas as state forests. The primary purpose in the establishment of state forests is timber management that provides for the production, utilization, and replenishment of timber resources while allowing other beneficial uses of public land and resources.

(b) In managing a state forest, the commissioner shall, consistent with the primary purpose of a state forest under (a) of this section, restrict the public use of the land and its resources, including timber, fish and wildlife, and minerals, only when necessary to carry out the purposes of this chapter. (§5 ch 91 SLA 1983; am §§7.8 ch 122 SLA 1996; am §11 ch 153 SLA 2003)

**Sec. 41.17.210. State forests.** (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) [Repealed]
- (4) [Repealed]
- (5) an estimate of the cost of a full implementation of an operational level forest inventory and the management plan. (§1 ch 91 SLA 1983; am §22 ch 34 SLA 1990; am §9 ch 122 SLA 1996; am §16 ch 153 SLA 2003)

**Sec. 41.17.220. Management of state forests.** Land within a state forest or within a unit of a state forest shall be managed under

- (1) the sustained yield principle;
- (2) this chapter; and
- (3) a forest management plan prepared by the department. (§1 ch 91 SLA 1983; am §12 ch 153 SLA 2003)

**Sec. 41.17.230. Management plans.** (a) The commissioner shall prepare a forest management plan consistent with AS 38.04.005 and this chapter for each state forest and for each unit of a state forest to assist in meeting the requirements of this chapter. An operational level forest inventory shall be completed before a forest

management plan for the state forest or the unit of a state forest is adopted. The forest management plan shall be adopted, implemented and maintained within three years of the establishment of a state forest by the legislature. To the extent they are found to be compatible with the primary purpose of state forests under AS 41.17.200, the forest management plan must consider and permit uses of forest land for non-forestry purposes, including recreation, tourism, mining, mineral exploration, mineral leasing, material extraction, consumptive and nonconsumptive uses of wildlife and fish, grazing and other agricultural activities, and other traditional uses.

If the commissioner finds that a permitted use is incompatible with one or more other uses in a portion of a state forest, the commissioner shall affirmatively state in the management plan that finding of incompatibility for the specific area where the incompatibility is anticipated to exist and the time period when the incompatibility is anticipated to exist together with the reasons and benefits for each finding.

(b) The commissioner shall review and revise a forest management plan when necessary.

(c) A management plan may not be adopted or revised after the establishment of the state forest without prior review by the Board of Forestry and by other appropriate state agencies or without prior public hearings held in a community proximately located to the state forest or to a unit of a state forest.

(d) [Repealed] (§1 ch 91 SLA 1983; am §34 ch 34 SLA 1990; am §10 ch 122 SLA 1996; am §13,14,16 ch 153 SLA 2003)

#### **Article 5. State Land Reforestation**

**Sec. 41.17.300. State land reforestation fund.** A state land reforestation fund is established in the department. The money in the state land reforestation fund may be used only for the reforestation of state land, including site preparation, seed and seedling acquisition and cultivation, planting, and other reforestation measures, timber stand improvement, and the development of materials and techniques for the reforestation of state land. (§2 ch 91 SLA 1983)

**Sec. 41.17.310. Appropriations to state land reforestation fund.** (a) The state land reforestation fund consists of money appropriated by the legislature and contributions from private donors. It is the intent of the legislature that the appropriations made to the fund equal no less than 25 percent of the revenues from the sale of timber and other forest products from state land as well as the total revenues from

- (1) compensation for loss or damage to land within a state forest; and
- (2) the federal government and other governmental units for reforestation

(b) Money appropriated to or paid into the state land reforestation fund does not lapse. (§2 ch 91 SLA 1983)

**Sec. 41.17.320. Report.** The commissioner shall make an annual report to the legislature within the first 10 days of each session of the legislature on the uses of

the money in the state land reforestation fund, the proposed uses of the fund in the following fiscal year, and the balance in the fund. (See 2 ch 91 SLA 1983, am §75 ch 21 SLA 1995)

#### Article 6. Tanana Valley State Forest

**Sec. 41.17.400. Tanana Valley State Forest.** (a) Subject to valid existing rights and except for land owned by or transferred to the University of Alaska under a settlement agreement between the state and the university, the state-owned or acquired land and water lying within the parcels described in (d) of this section is designated as the Tanana Valley State Forest.

(b) The commissioner shall prepare a management plan for the Tanana Valley State Forest under AS 41.17.230.

(c) The commissioner may establish transportation corridors within the Tanana Valley State Forest.

(d) The Tanana Valley State Forest includes the state-owned or acquired land and water lying within the following described parcels:

(e) The wildlife management objective of the Tanana Valley State Forest is the production of wildlife for a high level of sustained yield for human use through habitat improvement techniques to the extent consistent with the primary purpose of a state forest under AS 41.17.200. (§3 ch 91 SLA 1983; am §§33,34 ch 85 SLA 1988; am §23 ch 34 SLA 1990; am §11 ch 122 SLA 1996; am §15 ch 153 SLA 2003)

#### Article 7. General Provisions

*[Note: legal descriptions have been deleted.]*

**Sec. 41.17.900. Applicability.** (a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(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 standard, 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.

- (c) The state forester shall exempt by regulation from the provisions of this chapter
  - (1) minor, small scale, or incidental commercial operations of little significance with respect to the purposes of this chapter; and
  - (2) operations for primarily noncommercial purposes, including but not limited to the harvesting of timber for personal use.
- (d) Notwithstanding any other provision of this chapter, the state forester and the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for
  - (1) regulations under the Coastal Management Act; and
  - (2) regulations, if authorized by the commissioner of environmental conservation, relating to control of nonpoint source pollution.
- (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.
- (f) This chapter does not diminish the rights, privileges, or immunities of Alaska Natives or Alaska Native corporations with respect to land conveyed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act), and does not alter or diminish the authority of the Department of Fish and Game under AS 16, of the Department of Environmental Conservation under AS 46, or of a state agency under other law. (§1 ch 108 SLA 1978; am §§24, 25, 34 ch 34 SLA 1990; am E.O. No. 107 §32,33 (2003))

**Sec. 41.17.905. Independent authority.** With respect to matters governed by this chapter, the deputy commissioner does not have supervisory authority over the state forester. (E.O. No. 107 §34 (2003))

**Sec. 41.17.910. Wildlife habitat on private land.** (a) The deputy commissioner and the state forester shall work cooperatively with private forest landowners and timber owners to protect, maintain, and enhance wildlife habitat to the maximum extent practicable, consistent with the interests of the owners in the use of their timber resources.

(b) The deputy commissioner shall provide educational and technical assistance and extension services to owners of private forest land or timber to assist in identifying important wildlife habitat and to assist in designing voluntary management techniques that minimize adverse effects on wildlife habitat.

(c) The deputy commissioner and the landowner shall cooperate in identifying areas of important wildlife habitat on private forest land and in developing methods for their protection. Methods of protection for wildlife habitat may include, with the agreement of the landowner, the purchase of fee title, purchase of conservation easements, and land exchanges.

(d) This section does not alter or diminish the authority and responsibility of the state over wildlife on private land. (§26 ch 34 SLA 1990; am E.O. No. 107 §35-37 (2003))

**Sec. 41.17.950. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "anadromous water body" means the portion of a fresh water body or estuarine area that
  - (A) is cataloged under AS 41.14.040 as important for anadromous fish; or
  - (B) is not cataloged under AS 41.14.870 as important for anadromous fish but has been determined by the deputy commissioner 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;
- (2) "backwater slough" means a water body that
  - (A) has sluggish flow, is warm in summer, and is typically only connected to the main stem or a side channel at one end of the water body;
  - (B) carries river current only under high water conditions; and
  - (C) may have only a seasonal connection to the main stem or side channel;
- (3) "board" means the Board of Forestry established in AS 41.17.041;
- (4) "broadcast chemicals" includes pesticides, herbicides, fungicides, fertilizers, poisons, and any other substances
  - (A) used for silvicultural management or related purposes;
  - (B) not native to the ecosystem in which they are being applied; and
  - (C) having a foreseeable adverse impact on the welfare of renewable resources, as determined by the commissioner of environmental conservation;
- (5) "deputy commissioner" means the deputy commissioner of natural resources appointed under AS 44.37.055.
- (6) "division" means the division of forestry;
- (7) "forest land" means land stocked or having been stocked with forest trees of any size and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;
- (8) "forest landowner" means a person who owns forest land, but does not include the owner of mineral or subsurface rights only;
- (9) "glacial," with respect to a water body, as used in the phrases "glacial high value resident fish water body" and "glacial anadromous water body," means that, under normal conditions, a water body receives significant surface flow from a glacier, "glacial," with respect to a water body, includes a water body that receives a mix of glacial water and water from other sources;
- (10) "high value resident fish" means resident fish populations that are used for recreational, personal use, commercial, or subsistence purposes.
- (11) "multiple use" means
  - (A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of the state, making the most judicious use of the land for some or all of these

resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

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

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

(12) "nonglacial," with respect to a water body, as used in the phrases "nonglacial high value resident fish water body" and "nonglacial anadromous water body," means that, under normal conditions, a water body does not receive significant surface flow from a glacier;

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

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

(15) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the tidal or nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;

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

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

(18) "Region I" means all land in Southeast Alaska, plus all land that is south of the crest of the Chugach Mountains and Saint Elias Mountains and east of a line running from the crest of the Chugach Mountains to O'Malley Peak, then southerly to Gull Rock, then southwesterly to the eastern junction of Skilak Lake Road and the Sterling Highway, then southwesterly to the mouth of the Fox River, then southwesterly through Kachemak Bay to Mt. Douglas, plus all land on the Alaska Peninsula between Mt. Douglas and Cape Kumliun that is east of the crest of the Aleutian Range, plus all islands in the Gulf of Alaska north of 56 degrees 23 minutes North latitude;

(19) "Region II" means all land in the state south of the Nutzotin Mountains and Mentasta Mountains, south of the Alaska Range, and east of the Aleutian Range, except for the area within Region I and peninsular and island land south of Cape Kumliun;

(20) "Region III" means all land in the state outside of Regions I and II;

(21) "riparian area" means

(A) the areas subject to riparian protection standards in AS 41.17.116(a) and (b) on private land in Regions I and III;

(B) the areas subject to riparian protection standards in regulations adopted by the state forester under AS 41.17.116(c) on private land in Region II;

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

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

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

(24) "state forest" means an area designated by the legislature and retained in state ownership in order to

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

(B) permit a variety of beneficial uses;

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

(26) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself;

(27) "Type I-A water body" means, in Region I, an anadromous water body that

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

(B) consists of wetlands and lakes, including their outlets; and

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

(28) "Type I-B water body" means, in Region I, an anadromous water body that does not meet the definition of a Type I-A water body;

(29) "Type I-C water body" means, in Region I, a water body that is not anadromous, that is a tributary to a Type I-A or Type I-B water body, and that has a gradient of 12 percent or less.

(30) "Type I-D water body" means, in Region I, a water body that is not anadromous, that is tributary to a Type I-A or Type I-B water body, and that has a gradient greater than 12 percent

(31) "Type III-A water body" means, in Region III, a

(A) nonglacial high value resident fish water body greater than three feet in width at the ordinary high water mark;

(B) nonglacial anadromous water body; or

(C) backwater slough;

(32) "Type III-B water body" means, in Region III, a glacial high value resident fish water body or a glacial anadromous water body; "Type III-B water body" does not include a glacial backwater slough;


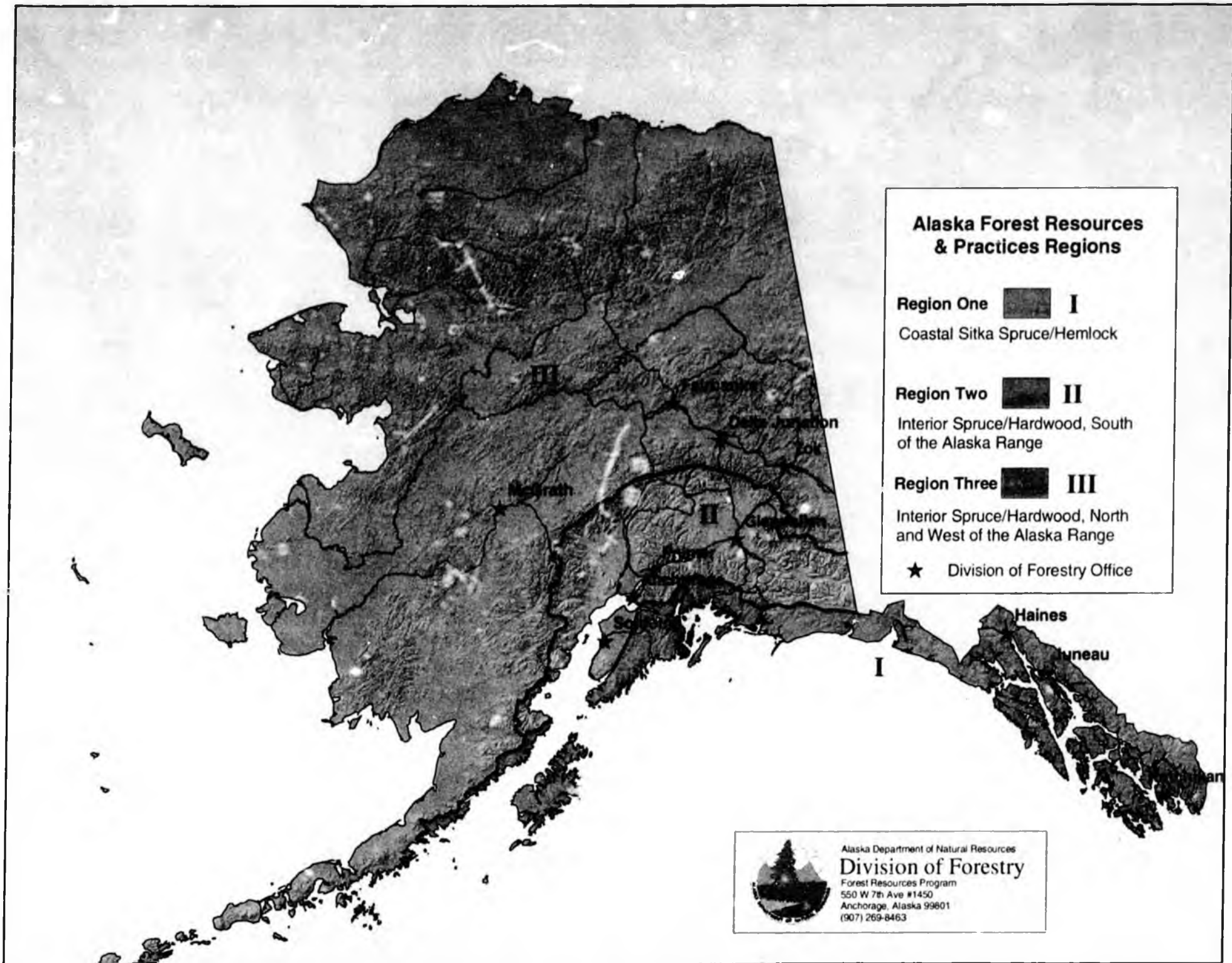
(33) "Type III-C water body" means, in Region III, a nonglacial high value resident fish water body that is less than or equal to three feet in width at the ordinary high water mark and that does not contain anadromous fish. (§1 ch 108 SLA 1978; am §88 ch 59 SLA 1982; am §43 ch 85 SLA 1988; am §27 ch 34 SLA 1990; am § 3-5 ch 3 SLA 1999; am E.O. No. 107 §38,39 (2003); am §5-10 ch 123 SLA 2003)

Revisor's note: Paragraphs (2) and (5) were both enacted as (23); paragraph (9) was enacted as (24); paragraph (12) was enacted as (25); paragraph (15) was enacted as (26); paragraphs (18) – (20) were enacted as (27) – (29); paragraphs (31) – (33) were enacted as (30) – (32); renumbered in 2003, at which time the remaining paragraphs were renumbered accordingly.

**Topic Guide**  
**Forest Resources And Practices Act**  
**September 2003**

Note: This guide is presented as an aid and is not all inclusive

| TOPIC                                       | Section in AS 41.17  |
|---|--|
| Agency coordination                         | .098; also .010(5-6), .047(c), .055(d-e), .070(b), .085, .090(d), .125, .900(f)                        |
| Appeals                                     | .143; also .070(b)   |
| Applicability                               | .900; also .110 for reforestation  |
| Backwater slough                            | .950(2)  |
| Board of Forestry                           | .020(b), .041-.047, .070(b), .230(c), .950(3)  |
| Change in operations                        | .090(g)  |
| Chemicals                                   | .100, .950(4)  |
| Clean Water Act                             | .010(6)  |
| Clearing of spruce trees                    | .082-.083  |
| Coastal zone management                     | .090(d), .098(a)(b), .900(d), (e)  |
| Definitions                                 | .950; also .098(e), .116(e)  |
| Detailed plan of operations                 | .080(b), .090, .098-.110   |
| Due deference                               | .087(c), .098(c)-(e)   |
| Enforcement procedures                      | .125-.138  |
| Estuarine areas                             | .950(1), (19)  |
| Fish habitat protection                     | .010(7), .060(b)(5), .087(a), .098(d), .115, .118(a)(1), .119(2)                                       |
| Glacial and nonglacial                      | .950(9) and (12)   |
| Hearings                                    | .139; also .070(b), .082(b), .131(a), .136(b), .138(a)(b), (state forest plans) .143                   |
| Independent authority                       | .905   |
| Insects and diseases                        | .082   |
| Inspections                                 | .120; also .090(e)(1)  |
| Land use conversion                         | .083, .110   |
| Monitoring (implementation & effectiveness) | .047(d)  |
| Multiple use                                | .060(c)(1), .210, .950(11)   |
| Nonpoint source pollution                   | .010(5), .055(d), .060(b)(2), .098(c), .900(d)   |
| Notification of operations                  | see detailed plan of operations  |
| Reforestation                               | .055(b), .060(b)(4), .060(c)(4), .110, .300-.320   |
| Regions                                     | .080(c), .950(18 - 20)   |
| Regulations (authorities and standards)     | .047(a), (d), .055(d), (g), .060(a), (b)(2), .080, .087(b), .098(c), .100, .115, .116(a), (b), .900(c) |
| Riparian areas                              | .087(b), .098(d), .115-.119, .950(21)  |
| Road construction                           | .080(a)(1), .098(d)  |
| Stream and waterbody classification         | .118(c), .950(1), (27)-(33)  |
| State forests                               | .200-.230, .400  |
| Sustained yield                             | .060(b)(4), (c)(1), (c)(4), .210, .220, .400(c), .950(24)(25)  |
| Timber harvest                              | .060(c)(4), .080, .082(b), .090(b), .900(b)(2); see also riparian areas                                |
| Variations from requirements                | .087, .098(b)-(d)  |
| Water quality protection                    | .047(d), .055(d), .060(b)(5), .087(a), (c), .115   |
| Wildlife habitat                            | .060(c)(7), .910   |

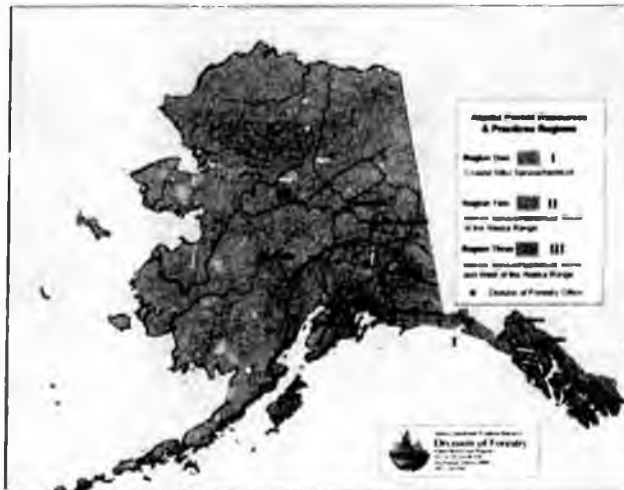


Alaska Department of Natural Resources  
**Division of Forestry**  
Forest Resources Program  
550 W 7th Ave #1450  
Anchorage, Alaska 99601  
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DRAFT – February 2, 2006

**HB 420/SB 262 – Forest practices riparian standards in Region II  
Sectional Analysis**

This bill would complete the task of setting statewide riparian protection standards -- stream buffers -- for commercial forest operations. This process began with the 1990 changes to the Forest Resources and Practices Act ("FRPA", AS 41.17), and included updates to the riparian



standards for Region I (coastal forests) in 1999, and for Region III (interior forests) in 2003.

The existing FRPA standards for Region II (southcentral forests, see blue on map) were adopted in 1990 as interim standards pending scientific review. That review was completed in 2004. The recommendations were reviewed by the Board of Forestry and affected interests in 2005, and incorporated into the FRPA amendments in this bill.

**Section 1 – Findings.** Section 1 comprises legislative findings clarifying the intent to protect fish habitat and water quality during forest operations, and emphasizing the unique characteristics of the forests and fisheries of Southcentral Alaska. The standards in this bill are tailored specifically to conditions in Region II. Compared to other regions, Region II has an abundance of both large, dynamic rivers and narrow anadromous streams in forested areas, high fisheries values, low timber volumes per acre, and a higher proportion of hardwood timber (cottonwood, birch, and aspen).

**Section 2: AS 41.17.116 – Private land.** Section 2 sets riparian standards for commercial forest operations on private land along water bodies with anadromous or high-value resident fish in Region II. For large, nonglacial, and most glacial rivers, no-harvest buffers would extend 150 feet from the water body, with a widened buffer along outer bends subject to erosion. Most nonglacial waters, lakes, and glacial rivers with relatively stable banks would have 100-foot no-harvest buffers, similar to the existing interim standard. Small streams would have 50-foot no-harvest buffers. Buffers are designed to prevent erosion and sedimentation and provide large woody debris for fish habitat. Buffers also apply to estuarine areas along anadromous or high-value resident fish streams, using the same width that applies to the adjacent stream type. Forested estuaries are rare in Region II.

**Section 3: AS 41.17.118 – State land.** Section 3 sets riparian standards for state land along water bodies with anadromous or high-value resident fish in Region II. The no-harvest buffers would be the same as those set for private land. In addition, on state land only, harvesting from the landward boundary of the no-harvest buffer to 300 feet from the water body may occur but must be consistent with the maintenance or enhancement of wildlife habitat.

**Section 4: AS 41.17.119 – Other public land.** Section 4 sets riparian standards for other public land along water bodies with anadromous or high-value resident fish in Region II. The no-harvest buffers are the same as those applicable to state and private land.

**Section 5: AS 41.17.950 (21) – “Riparian area” definition.** This section amends the definition of "riparian area" to be consistent with the riparian standards set forth in sections 2, 3, and 4.

**Section 6: AS 41.17.950 (34) – (41) – Other definitions.** This section adds definitions for new terms used in the riparian standards in sections 3, 4, and 5. The definitions cover the four new stream categories (Types II-A, II-B, II-C, and II-D), and clarify the terms "outer bend subject to erosion," "point bar," "terrace," and "terrace top break".

**Section 7 – Effective date.** This section sets the effective date as July 1, 2006.



**MARTHA WELBOURN FREEMAN**

FOREST RESOURCES PROGRAM MANAGER

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Division of Natural Resources  
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**SB 262 Sponsor Materials**

- Cove. Sheet \_\_\_\_\_ 1 page
- Request for Hearing Memo \_\_\_\_\_ 1 page
- Fact Sheet – dated 12-8-05 \_\_\_\_\_ 1 page
- Briefing – dated November 2005 \_\_\_\_\_ 2 pages
- SB 262a \_\_\_\_\_ 9 pages
  
- **Total Pages** \_\_\_\_\_ **14 pages**

NOTE: fiscal notes will be distributed at the meeting.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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February 2, 2006

The Honorable Tom Wagoner, Chair  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99802

RE: SB 262 - Relating to riparian protection standards for forest resources and practices; and providing for an effective date.

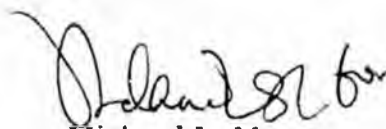
Dear Senator Wagoner:

This letter serves as the department's formal request to hear SB 262 in the Senate Resources Committee at your earliest convenience. For your information, I have attached a copy of the Governor's transmittal letter and an information packet for each bill.

SB 262 would complete the task of setting statewide riparian protection standards that began with the 1990 changes to the Forest Resources and Practices Act (AS 41.17). Standards for Region I, the coastal forest, and Region III, the Interior, have already been established. Now, the work has been finished to set standards for Region II, Southcentral, Alaska.

Thank you for scheduling this bill. Please contact Melanie Lesh at 465-4730 if you have any questions regarding the bill or hearing details and arrangements for teleconferencing staff to speak to and support the bill. You may also contact Marty Freeman, the Forest Resources Program Manager at 269-8473.

Sincerely,



Michael L. Menge  
Commissioner

cc: Melanie Lesh, Legislative Liaison  
Marty Freeman, DOF

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*



## *Fact Sheet:*

# **Alaska Forest Resources and Practices Act**

December 8, 2005

**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF FORESTRY**

**Background.** The Alaska Forest Resources and Practices Act (FRPA, AS 41.17) governs how timber harvesting, reforestation, and timber access occur on state, private, and municipal land. Forest management standards on federal land must also meet or exceed the standards for state land established by the Act. The FRPA was originally adopted in 1978. Major revisions were adopted in 1990 to address riparian management on private land, enhance notification procedures for timber operations, reorganize the Board of Forestry, and establish enforcement procedures. Additional changes to the stream classification system and riparian management standards were adopted in 1999 for Region I (coastal Alaska) and in 2003 for Region III (interior Alaska). Review of the standards for Region II (southcentral Alaska) is in progress.

**Purpose.** The Act balances economic concerns for the timber industry with water quality and habitat protection needs. It protects fish habitat and water quality, ensures prompt reforestation, and helps the timber and fishing industries provide long-term jobs. This framework provides certainty and credibility for landowners, operators, and the public.

### **Key provisions. The Act**

- Establishes a process for landowners to notify the state before beginning commercial timber operations. This is not a permit process. Tight timeframes are set for agency review of notifications, and timber operations can proceed if the agencies do not respond within the set time frame.
- Sets standards for forest management along waterbodies, including buffers (see attached chart), and provides flexibility to harvest valuable trees within buffers when it can be done without harming fish habitat or water quality. Harvest within buffers requires agency approval. Buffers are tailored to the conditions in each region.
- Sets standards to prevent erosion from roads and harvest areas into waterbodies.
- Requires reforestation except where land will be converted to another use, or where the harvest area is significantly composed of dead or dying trees.
- Provides one-stop shopping for forest operation compliance with state and federal clean water and coastal management standards.

**Best management practices (BMPs).** Regulations adopted under 11 AAC 95 also establish BMPs for road construction and maintenance, and for timber harvesting. These standards are designed to prevent adverse impacts to fish habitat and water quality from timber operations.

**Regions and applicability.** Alaska is divided into three forest practices regions. Region I covers coastal forests from Southeast Alaska through Prince William Sound, the eastern Kenai Peninsula, the Kodiak Archipelago, and parts of the Alaska Peninsula. Region II is the boreal forest south of the Alaska Range. Region III is the boreal forest in Interior Alaska.

The FRPA applies to commercial timber operations on forestland, including harvesting, roading, site preparation, thinning, and slash treatment operations on forestland. Operations must comply with the FRPA if they are larger than 10 acres in Region I or larger than 40 acres in Region II. In Region III, it applies to operations larger than 40 acres for forest landowners that own more than 160 acres in total. All commercial harvest operations that encompass or border surface waters or a riparian area also must comply with the Act, regardless of their size.



## Briefing:

### Region II Forest Practices amendments

DEPARTMENT OF NATURAL RESOURCES

November 2005

DIVISION OF FORESTRY

**Overview.** A bill to amend the Alaska Forest Resources and Practices Act (FRPA) for the boreal forest in southcentral Alaska (Region II) has been drafted for introduction in the 2006 session. The bill sets standards for forestry activities in riparian areas. The bill ensures that Region II standards

- support healthy timber and fishing industries,
- protect fish habitat and water quality,
- incorporate the best available science,
- maintain "one-stop shopping" for compliance with federal laws.

The bill is the product of two years of work by an array of interests. There is broad support for the consensus in the bill. This process was convened at the request of the Board of Forestry, and completes a statewide review of the FRPA riparian standards that was begun in 1996. Updates to the standards for Region I were adopted in 1999, and for Region III in 2003.

**Applicability.** FRPA Region II covers the boreal forest in southcentral Alaska. This includes the Mat-Su valley, the interior part of the Copper River Basin, the west side of the Kenai Peninsula, and the upper Cook Inlet area (see map). In Region II, FRPA applies to commercial forestry operations on all land ownerships where the operation borders surface waters or a riparian area, or where the operation is more than 40 acres.

**Background.** This bill is based on work by an interdisciplinary Science & Technical Committee. The Committee reviewed relevant research and published an annotated bibliography of the results, drafted a stream classification system, and recommended changes to current standards. Committee members had expertise in fisheries, forestry, hydrology, and soils. Members included scientists and experienced field staff from state and federal resource agencies, the University of Alaska, and the private sector.

An Implementation Group then discussed how to implement the recommendations of the Science and Technical Committee in a manner that works on the ground, and drafted language for changes to the FRPA and regulations. Group members represented affected interests, including municipalities, trust land managers, private forest owners, the timber and fishing industries, environmental groups, and the departments of Natural Resources, Fish and Game, and Environmental Conservation.

The Board of Forestry reviewed and concurred with the recommendations from the Implementation Group. The Board added findings to emphasize that this proposal is tailored specifically to the conditions in Region II, and does not revise the standards for Regions I and III. With this addition, the Board endorsed the bill recommended by the Implementation Group. All recommendations from the Science & Technical Committee, the Implementation Group, and the Board of Forestry were consensus recommendations.

**Summary of key provisions.** The bill defines four types of water bodies that have anadromous or high-value resident fish, and sets riparian standards for each type as follows:

- **Type II-A and II-B.** On large, dynamic, non-glacial rivers and dynamic, glacial rivers: a no-cut buffer of 150'. The buffer widens to 225' on actively eroding outer bends not constrained by terraces on Type II-A rivers, and to 325' on such bends on Type II-B rivers.
- **Type II-C.** On smaller dynamic, non-glacial streams, streams and rivers with stable channels, and lakes: a 100' no-cut buffer.
- **Type II-D.** On small streams (<3' wide): a no-cut buffer of 50'.

Compared to the other regions, these buffers are wider on the big, dynamic rivers and narrower on small streams. The Science & Technical Committee and Implementation Group identified several reasons for the differences in Region II.

- 1) In Region II, there are many more large, dynamic rivers that overlap with areas where harvesting is likely to occur.
- 2) The fisheries values in Region II are very high, and the timber values relatively low. A disproportionate share of sport fishing occurs in Region II, and it takes place primarily in freshwater areas that are adjacent to forested areas.
- 3) The volume of timber per acre in Region II is lower than in Regions I or III, and more of the timber is in hardwoods. This means that it takes a bigger area to get the same amount of large woody debris into the river system, and the wood that gets into the river decays faster.
- 4) There are many small, anadromous streams in forested areas of Region II. Buffers are needed to keep sediment out of these streams, but sediment can be controlled with narrower buffers.

**Relation to federal laws.** FRPA provides the timber industry with "one-stop shopping" for compliance with federal Clean Water Act and Coastal Zone Management Act compliance. Forest operations that are consistent with FRPA are deemed consistent with these laws. However, final approval of FRPA as the state's forestry management measures for the Coastal Zone Reauthorization Act depends on adoption of buffer standards on private land in Region II. This bill accomplishes that in a manner that is workable for the timber industry.

**Public review.** Public review to date include input from the Implementation Group, public hearings at the Board of Forestry, and contacts with major forest landowners, including Native corporations, the University and Mental Health trusts, and the Mat-Su and Kenai Boroughs.

Minutes of all Science & Technical Committee and Implementation Group meetings, and the recommendations from these groups were also sent to a mailing list that included 158 names of Native corporations and tribal groups, municipalities, timber businesses, resource agencies, trust land managers, groups representing environmental, recreation, fishing and development interests, and individuals.

Comments from landowners indicated that impacts from the proposed standards are limited due to the Region II topography and existing vegetation patterns, relatively low timber values, and current harvesting practices which typically incorporate voluntary buffers.

For more information, contact:

Marty Freeman  
 DNR Division of Forestry  
 550 W. 7th Avenue  
 Anchorage, AK 99501  
 907-269-8473

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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February 6, 2006

Sen. Thomas Wagoner, Chair, and Sen. Ralph Seekins, Vice-Chair  
Senate Resources Committee

Dear Sen. Wagoner and Sen. Seekins:

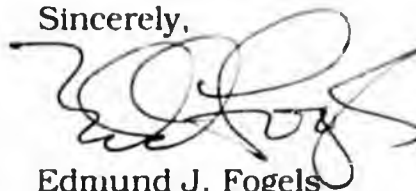
Re: ADNR/OHMP Support for SB 262—Forest Resources & Practices Standards

This letter is in support of Senate Bill 262—*An Act relating to riparian protection standards for forest resources and practices and providing for an effective date.* SB 262/HB 420, currently in your committee, amends the Alaska Forest Resources and Practices Act (FRPA) for southcentral Alaska by setting region-specific standards for commercial forestry activities in riparian areas that protect fish habitat and water quality, support healthy timber and fishing industries, and incorporate the best available science.

The Department of Natural Resources, Office of Habitat Management and Permitting (OHMP) was an active participant in the interdisciplinary Science & Technical Committee that recommended changes to current riparian management standards, and in the Implementation Group that drafted language for changes to the FRPA regulations. We were pleased when the Board of Forestry reviewed and concurred with the recommendations from the Implementation Group. The entire history of SB 262 now before you has occurred by consensus among a diverse group of Alaskans, from a variety of affected interests, seeking balance among potentially competing uses of state resources.

The OHMP remains firmly in support of SB 262, and we urge this committee to pass the bill on without amendment in a timely manner.

Sincerely,



Edmund J. Fogels  
Acting Deputy Commissioner

cc: Melanie Lesh, ADNR Legislative Liaison

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

LAW OFFICES OF  
SIMPSON, TILLINGHAST & SORENSEN, P.C.

ONE SEALASKA PLAZA, SUITE 300  
TELEPHONE: 907-586-1400

JUNEAU, ALASKA 99801  
FAX: 907-586-3065

February 23, 2006

The Honorable Thomas Wagoner  
Alaska State Senate  
Alaska State Capitol, Room 427  
Juneau, Alaska 99801-1182

Re: Findings Section of SB 262

Dear Senator Wagoner:

This firm represents Sealaska Corporation, and the purpose of this letter is to respectfully request that the Senate Resources Committee retain the findings section of SB 262, relating to forest riparian standards. Sealaska believes that SB 262 represents one of those circumstances where a statement of findings and purpose is necessary.

We appreciate that the *Manual of Legislative Drafting* warns against using legislative findings simply to fill holes in legislation that ought to be cured in the substance of the bill. The *Manual*, however, also recognizes that findings can be helpful in a variety of circumstances, and this is one such circumstance.

SB 262 would impose no-cut buffer zones along many waterways in Southcentral Alaska that substantially exceed the width of these buffer zones in other regions of the state. The bill reflects a consensus reached by the affected industry, and private and government groups. That consensus was based on a recognition that these new standards were not suitable for other regions of the state, but were justified only because of the unique characteristics of Southcentral waterbodies. Even so, industry justifiably feared that its opponents would later cite these new standards as evidence of the Alaska Legislature's endorsement of these expanded buffer zones *generally*, and industry therefore asked that the region-specific rationale for these standards be made explicit in the legislation.

Without this explicit limitation, there would resolutely have been no consensus at the time, and there would be none now. And, like any consensus legislation, all of the fundamental


elements of the agreement warrant equal dignity in the legislation itself. Otherwise, the element of the consensus most important to industry risks being lost in the bill's legislative history.<sup>1/</sup>

The purpose to be served by the findings here (*i.e.*, to prevent the legislation from being misappropriated by those hostile to our industry) cannot be cured by simply improving the body of the bill. Thus, to quote the *Manual*, these findings "[are] not be[ing] used to make up for poor drafting." This is therefore not a situation where the *Manual* would discourage their use. To the contrary, the findings here are the only feasible way to ensure that the legislature's limited intent in SB 262 is not used as a precedent to cause our already beleaguered industry even more unwarranted harm.

Thank you for the consideration that I know you will give our request.

Sincerely,

SIMPSON, TILLINGHAST, SORENSEN  
& LONGENBAUGH



Jon K. Tillinghast

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<sup>1/</sup> Stripping the bill of its findings, and then hoping that both houses of the legislature might eventually adopt identical committee letters of intent, means that industry would have to watch its portion of the consensus package being discarded now, trusting that the whole package might be put back together at a later date. Moreover, a letter of intent would not carry the same weight in any subsequent dispute over the bill's meaning as would a provision in the session law itself. This is why findings are still inserted in legislation when there is an important, independent reason for using them. *See, e.g.*, Section 1, ch. 104, SLA 1998 (Stranded Gas Development Act); *Manual*, p. 14.