



LAWS OF ALASKA

1980

Source

CSHB 118 am S

Chapter No.

84

AN ACT

Relating to rivers, lakes, streams and other bodies of water in the state; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 18, 1980
Actual Effective Date: June 19, 1980

AN ACT

Relating to rivers, lakes, streams and other bodies of water in the state; and providing for an effective date.

* Section 1. AS 16.05.870(a) is amended to read:

(a) The commissioner shall, in accordance with the Administrative Procedure Act (AS 44.62), specify the various rivers, lakes and streams or parts of them that are important for the spawning, rearing or migration of anadromous fish. [BEFORE DECEMBER 31, 1968, THE SPECIFICATION MAY BE MADE BY DESIGNATING AREAS WITHIN WHICH ALL RIVERS, LAKES, AND STREAMS ARE CONSIDERED IMPORTANT FOR THE SPAWNING OR MIGRATION OF ANADROMOUS FISH; PROVIDED, THAT THE AREAS LIE WITHIN 50 MILES OF THE COASTLINE EXTENDING FROM DIXON ENTRANCE THROUGH FALSE PASS TO CAPE MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE PASS. A PERSON GIVING NOTICE UNDER (b) OF THIS SECTION BEFORE DECEMBER 31, 1968, MAY, IF THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A DESIGNATED AREA, REQUEST THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME OR NUMBER, THE PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM WITHIN THE AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE IMPORTANT FOR THE SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON RECEIPT OF THE REQUEST THE COMMISSIONER SHALL PROMPTLY MAKE THE DESIGNATION.]

* Sec. 2. AS 16.05.870(c) is amended to read:

(c) The commissioner shall acknowledge receipt of the notice by return first class [AIR] mail. If the commissioner determines to do so,

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1 he shall, in the letter of acknowledgement, require the person or
2 governmental agency to submit to him full plans and specifications of
3 the proposed construction or work, complete plans and specifications for
4 the proper protection of fish and game in connection with the construc-
5 tion or work, or in connection with the use, and the approximate date
6 the construction, work or use will begin. The commissioner shall ap-
7 prove the proposed construction, work or use in writing unless he finds
8 the plans and specifications insufficient for the proper protection of
9 fish and game. If the commissioner finds the plans and specifications
10 insufficient for the proper protection of fish and game, he shall notify
11 the person or governmental agency which submitted the plans and specifi-
12 cations of his finding by first class mail. The person or governmental
13 agency may, within 90 days of receipt of the notice, initiate a hearing
14 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630
15 [, AND SHALL REQUIRE THE PERSON OR GOVERNMENTAL AGENCY TO OBTAIN WRITTEN
16 APPROVAL FROM HIM AS TO THE SUFFICIENCY OF THE PLANS OR SPECIFICATIONS
17 BEFORE THE PROPOSED CONSTRUCTION OR USE IS BEGUN].

18 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

19 (47) the Department of Fish and Game as to functions relating
20 to the protection of fish and game under AS 16.05.870.

21 * Sec. 4. AS 46.15.030 is amended to read:

22 Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE. Wherever occurring
23 in a natural state, the waters are reserved to the people for common use
24 and are subject to appropriation and beneficial use and to reservation
25 of instream flows and levels of water, as provided in this chapter.

26 * Sec. 5. AS 46.15.070(c) is amended to read:

27 (c) Within 15 days of publication or service of notice, an in-
28 terested person may file an objection. The commissioner may hold
29 hearings upon giving due notice and shall grant, deny, or condition the

1 application in whole or in part within 30 days of receipt of the last
2 objection or, if the commissioner elects to hold hearings, within 180
3 days of receipt of the last objection [AT THE CONCLUSION OF THE HEARING].
4 Notice of the order or decision shall be served personally or mailed to
5 any person who has filed an objection.

6 * Sec. 6. AS 46.15.070(e) is amended to read:

7 (e) A person aggrieved by the action of the commissioner or by the
8 failure of the commissioner to grant, deny, or condition an application
9 in accordance with (c) of this section may appeal to the superior court.

0 * Sec. 7. AS 46.15 is amended by adding a new section to read:

1 Sec. 46.15.145. RESERVATION OF WATER. (a) The state, an agency
2 or a political subdivision of the state, an agency of the United States
3 or a person may apply to the commissioner to reserve sufficient water to
4 maintain a specified instream flow or level of water at a specified
5 point on a stream or body of water, or in a specified part of a stream,
6 throughout a year or for specified times, for

7 (1) protection of fish and wildlife habitat, migration, and
8 propagation;

9 (2) recreation and park purposes;

10 (3) navigation and transportation purposes; and

11 (4) sanitary and water quality purposes.

12 (b) Upon receiving an application for a reservation under this
13 section, the commissioner shall proceed in accordance with AS 46.15.070.

14 (c) The commissioner shall issue a certificate reserving the water
15 applied for under this section if he finds that

16 (1) the rights of prior appropriators will not be affected by
17 the reservation;

18 (2) the applicant has demonstrated that a need exists for the
19 reservation;

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(3) there is unappropriated water in the stream or body of water sufficient for the reservation; and

(4) the proposed reservation is in the public interest.

(d) After the issuance of a certificate reserving water, the water specified in the certificate shall be withdrawn from appropriation and the commissioner shall reject an application for a permit to appropriate the reserved water.

(e) A reservation under this section does not affect rights in existence on the date the certificate reserving water is issued.

(f) At least once each 10 years the commissioner shall review each reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose or part or all of the findings no longer apply to the reservation, he may revoke or modify the certificate reserving the water in accordance with AS 46.15.140(b).

* Sec. 8. AS 46.15.260(1) is amended to read:

(1) "appropriate" means to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use or to reserve water in accordance with AS 46.15.145;

* Sec. 9. AS 46.15.260(2) is amended to read:

(2) "appropriation" means the diversion, impounding or withdrawal of a quantity of water from a source of water for a beneficial use or the reservation of water in accordance with AS 46.15.145;

* Sec. 10. AS 46.15.260(3) is amended to read:

(3) "beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, that is reasonable and consistent with the public interest, including, but not limited to,

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1 domestic, agricultural, irrigation, industrial, manufacturing, fish and
2 shellfish processing, navigation and transportation, mining, power,
3 public, sanitary, fish and wildlife, [AND] recreational uses, and main-
4 tenance of water quality;

5 * Sec. 11. A specification made under AS 16.05.870(a) before the effec-
6 tive date of this Act expires July 31, 1982, unless the commissioner of fish
7 and game reevaluates the specification and determines that the river, lake,
8 stream or part of a river, lake or stream to which the specification applies
9 is important for the spawning, rearing or migration of anadromous fish.

10 * Sec. 12. This Act takes effect immediately in accordance with AS 01.10.-
11 070(c).