

Legislative History of Alaska Statutes  
Pertaining to the Protection of Anadromous Fish

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December 2023

## Preface to August 2000 version:

In response to requests for legislative histories of the anadromous fish protection statutes (formerly, Alaska Statute §§ 16.05.870 – 16.05.900), by the Division of Habitat in 2000, this report compiles two legislative histories authored by Mike Frank and Celia Rozen, respectively, with contributions by Ed Weiss. This report also compiles copies of the superseded statutes that address the protection of anadromous fish from the pre-statehood period to 2000.

## Updated preface to December 2023 version including Addendum:

A letter dated December 13, 2023, from Alaska Department of Fish and Game, Habitat Section, added Addendum No. 1 to this publication to update the legislative history. The letter states:

Pursuant to Executive Order on February 10, 2003 by Governor Frank Murkowski, the Division of Habitat and Restoration in the Alaska Department of Fish and Game (ADF&G) was transferred to the Department of Natural Resources (DNR) as the Office of Habitat Management and Permitting. The Title 16 statutes changed from AS 16.05.840 – 16.05.900 to AS 41.14.840 – as 41.14.900. The consultative role of the ADF&G under the Forest Resources and Practices Act (AS 41.17) was also moved to the DNR. On February 13, 2008, pursuant to Executive Order 114 by Governor Sarah Palin, the office was transferred back to the ADF&G as the Division of Habitat and AS 16.05 amended to include the current statutes as AS 16.05.841 – as 16.05.901. No changes to the actual wording in the statutes occurred during the time Division of Habitat was under DNR.

In addition, on August 26, 2019, the Deputy Commissioner, Ben Mulligan confirmed that with the elimination of the Director position in the Division of Habitat, that Division would henceforth be the Habitat Section.

## Contents:

1. Table by Mike Frank summarizing passed legislation: 1889-2000
2. Legislative History by Mike Frank in narrative format
3. The Anadromous Fish Act historical perspective by Mike Frank
4. History of Alaska Statutes 15.05.840 and 16.05.870 by Celia Rozen
5. Supplement: Copies of superseded anadromous fish protection laws compiled by Celia Rozen
6. Addendum:
  - a. Introductory memo from ADF&G Habitat Section staff, dated December 13, 2023, compiling both Executive Order Nos. 107 and 114
  - b. Addendum 1, part 1: Transmittal letter from Governor Frank Murkowski to Speaker of the House Pete Kott, dated February 10, 2003, authorizing Executive Order No. 107 including copy of the Order
  - c. Addendum 1, part 2: Executive Order No. 114 introduced to the House and Senate, February 13, 2008





YEAR	SESSION LAWS	Copy	STATUTE	Copy	REGULATION	Copy	COMMENTS	Pertinence
1889			25 Stat. L., 1009. R.S. 1st Supp., p. 701 (3/2/1889)	R			Prohibits erection of dams or other obstructions, penalties, provides for research into distribution and habits.	870
1890								
1891								
1892								
1893								
1894								
1895								
1896			25 Stat. L., 316. R.S. 2nd Supp., p. 510 (6/9/1896)	R			Prohibits erection of dams or other obstructions, spawning grounds, violations, penalties.	870
1897								
1898								
1899								
1900								
1901								
1902								
1903								
1904								
1905								
1906								
1907								
1908								
1909								
1910								
1911								
1912								
1913								
1914								
1915								
1916								
1917								
1918								
1919	Chapter 58 § 1 thru 6. (HB 28)	F	§ 39-2-31	F			See also 39-2-16. And 22 Am Jur 700.	870 - 900
1920								
1921								
1922								
1923								
1924								
1925								
1926								

YEAR	SESSION LAWS	Copy	STATUTE	Copy	REGULATION	Copy	COMMENTS	Pertinence
1927								
1928								
1929								
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949	Chapter 117 § 1 thru 13. (SB 61)	F	§ 39-2-31	P			Water Pollution Control Act, placed salmon stream leg. Under Water Pollution Control Board. Definitions of waters, etc. for Water Pollution statutes.	870
1950								
1951								
1952								
1953								
1954								
1955								
1956								
1957								
1958								
1959	§ 31, Art. I, Ch. 94, SLA 1959. Protection of Fish and Game. (HB 201)	F	§ 39-10-31. Protection of fish and game.	F				870
1960	§ 1, Ch. 180 SLA 1960. Protection of Fish and Game. (HCSCSSB 201)	F						870
1961								

YEAR	SESSION LAWS	Copy	STATUTE	Copy	REGULATION	Copy	COMMENTS	Pertinence
1962	§ 1, Ch. 132 SLA 1962. Protection of Fish and Game. (HB 405)	F	AS 16.05.870. Protection of fish and game.	P			need copy of 840 & 900	870
1963					5 AAC 6.610	F	First regulation? Promulgated 4/5/63, eff. 5/5/63.	95.010
1964								
1965								
1966	§ 1, Ch. 89 SLA 1966. (SCSHB 255)	F						870
1967								
1968			AS 16.05.870. Protection of fish and game.	P			Statute amended 1966. Need notes 840, 880-900	870
1969								
1970								
1971								
1972								
1973			AS 16.05.870. Protection of fish and game.	P			Statute amended 1966. Need notes 840, 880-900	870
1974					5 AAC 95.010.	F	5 AAC 95.010 adopted eff. 3/1/1975	95.010
1975	§ 11, Ch. 208 SLA 1975. (HCSSB 384 am H)	F					Amended 16.05.900 penalties.	900
1976								
1977			AS 16.05.870. Protection of fish and game.	P			need 840, 880 -900	870
1978								
1979					5 AAC 95.010.	F		95.010
1980	§ 1 - 2, Ch. 84 SLA 1980. (CSHB 118 am S)	F					Also instream flow legislation.	870
1981								
1982					5 AAC 95.010.	F	First regulation under Atlas and Catalog system.	95.010
1983			AS 16.05.870. Protection of fish and game.	P			Statute last amended 1980. Need 840, 880 - 900	870
1984	§ 19, Ch. 132 SLA 1984. (SCS CSSHB 404)	F					Amended 16.05.900 penalties.	900
1985								
1986								

YEAR	SESSION LAWS	Copy	STATUTE	Copy	REGULATION	Copy	COMMENTS	Pertinence
1987			AS 16.05.870. Protection of fish and game.	P			Last amended 1980. Need 840, 880 - 900	870
1988								
1989								
1990								
1991								
1992								
1993								
1994								
1995								
1996								
1997								
1998								
1999								
2000								



## SECTION I - HISTORY

The following is a brief history of AS 16.05.870 - 16.05.900, 5AAC 95.010 and their predecessors as they pertain to protection of anadromous fish habitat, the ADF&G's permitting authority and the development of the AWC. Legislative history of AS 16.05.870 - 16.05.900 was excerpted from a summarized history by Assistant Attorney General Mike Frank (1993). History of 5AAC 95.010 was compiled by Ed Weiss from review of H&R Division files pertaining to the adoption and amendments of 5 AAC 95.010.

Government efforts to protect Alaska's anadromous fish bearing streams date back as far as 1917, when the territorial government passed a bill for the construction of fish hatcheries, for the creation of a board of fish commissioners, and for the protection of salmon streams. Defects in the passage of the bill prevented it from taking immediate effect, but when these defects were cured in 1919, the following law became effective in the Territory of Alaska:

CITE...

*Section 1. That it shall be unlawful for any person, firm, company, or corporation to obstruct, divert, or pollute any of the waters of this Territory, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber therein, casting, passing, throwing or dumping therein, any tree limbs or foliage thereof, under-brush, stumps, rubbish, earth, stones, rock, or other debris, or passing or dumping therein any sawdust, planer shavings, or other waste or refuse of any kind whatsoever, or to erect any dam, barricade or obstruction of any kind to retard, conserve, impound or divert any such waters, so as to prevent, retard or interfere with the free ingress or egress of salmon into such waters in the natural spawning or propagation process, or to render such waters inaccessible or uninhabitable for such fish for that purpose without first making application therefor and obtaining a permit or license from the Territorial Fish Commissioners. The application shall set forth the name and style of the person or concern, describe the waters and location of same, and state in particular the plans, purpose, and intention for which the application is made.*

In 1949, the territorial Legislature considered a bill to control water pollution. The traditional tension between the concerns of Alaska mining and fishing industry interests was evident in the

bill's consideration. During a floor debate, the territorial Senate rejected a proposal which would have allowed that "Any sand, mud, silt, or gravel added to any stream by placer mining operations shall not be considered pollution within the meaning of this Act." ( 1949 Journal of the Territorial Senate, p. 626). Water pollution control legislation was eventually enacted. See ch. 117, 1949 Laws of Alaska. In enacting it, the territorial Legislature also amended section 1 of the 1919 act which protected salmon streams. The amendment provided that the newly created Water Pollution Control Board would take the place of the Territorial Fish Commissioners as the permitting agency for operations impacting salmon streams. Alaska Comp. Laws Ann., § 39-3-31 (am. Aug. 4, 1949, Laws of Alaska, ch. 393, §§1, 20, 63, Stat 496, 501, codified at now repealed 48 U.S.C. § 246).

Shortly after statehood, the new state Legislature enacted the Fish and Game Code of Alaska. (See chapter 94, Session Laws of Alaska ("SLA") 1959). The code's Article IV repealed the territorial laws applicable to fish and game which had been codified in 48 U.S.C., including those provisions applicable to the obstruction, etc., of salmon streams which were quoted above. The 1959 Legislature replaced these provisions with new ones in the fish and game code. These new provisions substantially broadened the protection afforded the state's anadromous fish bearing waters, as follows:

*Sec. 31. Protection of Fish and Game. In the event that any person or governmental agency desires to construct any form of hydraulic project or to use any equipment that will use, divert, obstruct, pollute, or change the natural flow or bed of any river, lake, or stream or that will utilize any of the waters of the State or materials from any river, lake, or stream beds, such person or governmental agency shall notify the Commissioner of such intention prior to the commencement of construction, and the Commissioner shall acknowledge receipt of such notice by return mail. If the Commissioner so determines, he shall, in said letter of acknowledgement, require such person or governmental agency or (sic) submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith, and the approximate date when such construction or work is to commence, and shall require such person or governmental agency to obtain the written approval of the Commissioner as to the sufficiency of such plans or specifications before construction is commenced. If any person or governmental agency commences construction on any such works or projects without first*

*providing plans and specifications subject to the approval of the Commissioner for the proper protection of fish and game in connection therewith and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such work or subjects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.....*

[Art. I, §§ 31 and 33, and Art. III, § 12, ch. 94, SLA 1959.]

The 1959 enactment retained the permitting requirement established in 1919. However, it substantially increased the penalty for a violation from ..... to .... by raising the potential fine to a maximum of \$5,000.00 and the potential imprisonment of not more than one year.

In 1960, the first sentence of section 31 of Article I of the fish and game code was amended to create an exemption to the permitting requirements "for the purpose of crossing a river or stream at an established crossing,....

Section 1, ch. 180, SLA 1960. The exemption from the permitting requirement enacted for an "established crossing" lasted less than two years; for in 1962 section 31 was amended again, to rescind the exemption. The 1962 amendment also added a new third paragraph to section 31, declaring unpermitted anadromous water body obstructions, etc., public nuisances, and subjecting them to abatement. An equally significant amendment required the Commissioner of Fish and Game to specify, by regulation adopted in conformity with the Alaska Administrative Procedure Act at AS 44.62, which water bodies were important for the spawning or migration of anadromous fish. The applicability of the restrictions in section 31 was thereafter limited to the specified water bodies.<sup>1</sup> After the 1962 amendment section 31 read as follows (underlined material added):

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<sup>1</sup> Consideration of the 1962 amendments generated controversy in the Legislature, and "All through the debate intense conflict was indicated between mining and fishing interests." Inf. Op. Atty. Gen. (Jan. 3, 1963), p. 1.



The commissioner shall, in accordance with the Administrative Procedure Act, specify the various rivers, lakes, and streams, or parts thereof that are important for the spawning or migration of anadromous fish. In the event that any person or governmental agency desires to construct any form of hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of any such specified river, lake or stream, or to use any wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of any such specified river, lake, or stream, such person or governmental agency shall notify the commissioner of such intention prior to the commencement of construction or act, and the Commissioner shall acknowledge receipt of such notice by return air mail. If the commissioner so determines, he shall, in said letter of acknowledgement, require such person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith or in connection with such act, and the approximate date when such construction, work, or act is to commence, and in such case, shall require such person or governmental agency to obtain the written approval of the commissioner as to the sufficiency of such plans or specifications before the proposed construction or act is commenced. If, in such case, any person or governmental agency commences construction on any such works or projects or commence any such act without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game in connection therewith, and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any person or government agency be convicted of violating any of the provisions of this section or continues any act, work, or projects without fully complying with the provisions hereof, such act, works, or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any such specified river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.

Provided, that in case of any emergency arising from weather or stream flow conditions, the department, through its authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications.

Should a person or governmental agency fail to notify the commissioner of any construction or act that causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, or who, by neglect or noncompliance with plans and specifications required and approved by the commissioner, causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, such person or governmental agency shall be guilty of a misdemeanor.

Section 1, ch. 32, SLA 1962.

The next amendment to the anadromous fish act did not occur until 1966. By 1966, a new Legislative Council had undertaken adoption of the revised Alaska Statutes under the code revisor's authority in AS 01.05.031.<sup>2</sup> The code revisor broke section 31 into subsections. What is now AS

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<sup>2</sup> The code revisor has authority to, among other things, divide long sections into two or more sections or rearrange the order of sections into more logical arrangement. AS 01.05.031(9). In doing so, however, the code revisor lacks

16.05.880 was separated from AS 16.05.870. See section 1, ch. 89, SLA 1966. The codification also resulted in the creation of a new AS 16.05.900, containing the misdemeanor language quoted above.

In 1975, the Legislature again amended the anadromous fish act, this time amending AS 16.05.900(a) to read:

*(a) A person who violates secs. 870 - 895 or 920 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$1,000 or upon by imprisonment for not more than six months, or both. A person who violates a regulation promulgated under this chapter for the regulation of commercial fisheries shall be punished as provided in sec. 720 of this chapter.*

Section 11, ch. 208, SLA 1975. The effect of the amendment was to reduce the penalty for a violation from the potential of a \$5,000 fine and one year in prison to not more than a \$1,000 fine and six months in prison. The reduced penalty lasted only until 1984, however, when the Legislature amended AS 16.05.900(a) to raise the penalty<sup>3</sup> as follows (bracketed and capitalized material deleted, underlined material added):

*(a) A person who violates AS 16.05.870 - 16.05.895 [OR 15.05.920 OR ANY REGULATION ADOPTED UNDER THIS CHAPTER] is guilty of a class A misdemeanor [AND UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000 OR BY*

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authority to "change(e) the meaning of any law..." AS 01.05.031(b).

<sup>3</sup> The increase in penalties may have been the result of a 1983 study performed for the Alaska Judicial Council. See N. Maroules and F.N. Troxell, "Statistical Analyses of Major Fish and Game Sentencing Outcomes in Alaska (1981 - 82)," Alaska Judicial Council (April 6, 1983). The study looked at sentences imposed for commercial fish, game, and subsistence law violations, although apparently not anadromous fish act violations. In any event, the study concluded in part that "The Judicial Council's sentencing study on major fish and game offense convictions identified disparity in sentencing, and also strongly indicated that many sentences have been far too lenient to serve as a deterrent." Id., p.8.

*IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH. A PERSON WHO VIOLATES A REGULATION ADOPTED UNDER THIS CHAPTER FOR THE REGULATION OF COMMERCIAL FISHERIES SHALL BE PUNISHED AS PROVIDED IN AS 16.05.720].*

Section 19, ch. 132, SLA 1984. A "Class A" misdemeanor is punishable under AS 12.55.035 and AS 12.55.135 by not more than a \$5,000 fine and one year imprisonment. A "Class B" misdemeanor is punishable under the same statutes by not more than a \$1,000 fine and ninety days imprisonment.

In 1980, the Legislature amended AS 16.05.870(a) to make it clear that the anadromous water bodies to be protected were those important to *any* life cycle of an anadromous fish species (underlined material added):

*(a) The commissioner shall, in accordance with the Administrative Procedures 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....*

Section 1, ch. 84, SLA 1980.<sup>4</sup> A 1980 amendment also deleted language which had required the applicant to obtain written approval from the commissioner as to the sufficiency of the plans or specifications before the proposed construction or use was begun<sup>5</sup>

In 1983, subsection (c) was redrafted and reorganized by the code revisor into the present

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<sup>4</sup> The 1980 Legislature also deleted language in AS 16.05.870(a) which referred to the Commissioner's specification of anadromous water bodies before 1968, although it posed a deadline for renewal of any specification made before June 19, 1980. Section 11, ch. 84, SLA 1980. It further amended AS 16.05.870(c) to require the Commissioner to acknowledge receipt of the permit applicant's notice by first class mail, deleting the work "air" proceeding "mail". Section 2, ch. 84, SLA 1980.

<sup>5</sup> The language read: "and shall require the person or governmental agency to obtain written approval from him as to the sufficiency of the plans or specifications before the proposed construction or use is begun."

subsections (c) and (d). At this time subsection (d) was also rewritten, apparently for clarity, so that it read as follows:

*The commissioner shall approve the proposed construction, work, or use in writing unless the commissioner finds the plans and specifications insufficient for the proper protection of fish and game. Upon finding that the plans and specifications are insufficient for the proper protection of fish and game, the commissioner shall notify the person or governmental agency which submitted the plans and specifications of that finding by first class mail. The person or governmental agency may, within 90 days of receiving the notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.*

#### Summary of Current AS 16.05.870 - 16.05.900. (as of 1993)

To summarize, the current version of the anadromous fish act is now codified at AS 16.05.870 - 16.05.900. It requires the Commissioner, in accordance with the Alaska Administrative Procedure Act, AS 44.62, to specify the water bodies important to the life cycle of anadromous fish. AS 16.05.870(a)<sup>6</sup> If a person<sup>7</sup> or governmental agency desires to use, etc., the natural flow or bed of the water body in any way, the Commissioner must be notified *before* the use occurs. AS 16.05.870(b).<sup>8</sup> Once the Commissioner receives the notice, the Commissioner is to acknowledge its receipt by first class mail. The Commissioner in the letter of acknowledgement may deny permission, or may require submission of plans and specifications and identification of the date of the activity will begin, assuming all this information has not already been submitted. AS

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<sup>6</sup> The Commissioner has done so by adopting and annually updating the six volume 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. See 5 AAC 95.010. Permit application procedures are set out in the Catalog. 5 AAC 95.010(b).

<sup>7</sup> "Person" is defined very broadly in AS 1.10.060(a) to include both natural persons and any type of entity, including corporations, unions, partnerships, businesses, etc.

<sup>8</sup> A decade ago the Attorney General construed AS 16.05.870 - 16.05.880 together as constituting a licensing requirement. March 4, 1982 Op. Atty Gen.

16.05.870(c)(1) - (3). If the plans and specifications are sufficient, the commissioner is to say so in writing; if insufficient, the commissioner is also to say so in writing, notifying the applicant by first class mail. AS 16.05.870(d).

The department also has authority to give *oral* permission to a riparian owner for emergency removal of obstructions or for emergency repairs, without the need for prior approval of plans and specifications. AS 16.05.890.

A permit applicant may seek a hearing under the Administrative Procedure Act, AS 44.62.370, 44.62.330 - 44.62.630, challenging an adverse Commissioner decision. *Id.*

In addition to the advance notification requirement of AS 16.05.870, a person or governmental agency must notify the Commissioner of any construction or use that causes material damage to spawning beds or prevents or interferes with the migration of anadromous fish, whether this happens by neglect or noncompliance with approved plans and specifications or otherwise. AS 16.05.895.

All violations of AS 16.05.70 - 16.05.895 are Class A misdemeanors punishable by not more than one year imprisonment and a \$5,000 fine. AS 16.05.900(a); AS 12.55.035, AS 12.55.135.

An approved use, work or project is a public nuisance and is subject to abatement, AS 16.05.880. If damage is caused to an anadromous water body, the cost of the water body's restoration to its original condition is to be borne by the violator and is in addition to any criminal penalty. *Id.*

Finally, AS 16.05.195 allows for the forfeiture to the state of equipment used in an AS 16.05.870 - 16.05.895 violation.



## I. THE ANADROMOUS FISH ACT.

### A. Initial Enactment and Subsequent Amendment.

Government efforts to protect Alaska's anadromous fish streams date as far back as 1917, when the territorial government passed a bill for the construction of fish hatcheries, for the creation of a board of fish commissioners, and for the protection of salmon streams. Defects in the passage of the bill prevented it from taking immediate effect, but when these defects were cured in 1919, the following law became effective in the Territory of Alaska:

**Section 1.** That it shall be unlawful for any person, firm, company, or corporation to obstruct, divert, or pollute any of the waters of this Territory, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber therein, casting, passing, throwing or dumping therein, any tree limbs or foliage thereof, under-brush, stumps, rubbish, earth, stones, rock, or other debris, or passing or dumping therein any sawdust, planer shavings, or other waste or refuse of any kind whatsoever, or to erect any dam, barricade or obstruction of any kind to retard, conserve, impound or divert any such waters, so as to prevent, retard or interfere with the free ingress or egress of salmon into such waters in the natural spawning or propagation process, or to render such waters inaccessible or uninhabitable for such fish for that purpose without first making application therefor and obtaining a permit or license from the Territorial Fish Commissioners. The application shall set forth the name and style of the person or concern, describe the waters and location of same, and state in particular the plans, purpose, and intention for which the application is made.

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**Section 3.** Any person, firm, company, or corporation doing an act or thing prohibited by this Act shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00) dollars and not more than five hundred (\$500.00) dollars.

(Emphasis added.) Chapter 58, Territorial Session Laws, 1919 (approved May 5). A portion of sections 1 and 3 have been underscored to highlight three points. First, before a salmon stream could be used, a permit was required. Second, it was a "misdemeanor" to violate the



act. Third, in a prosecution for violation of the act, the government did not have to prove that the violator had any specific intent or knowledge, or acted recklessly, in contravening the law.

In 1949, the territorial Legislature considered a bill to control water pollution. The traditional tension between the concerns of Alaska mining and fishing industry interests was evident in the bill's consideration. During a floor debate, the territorial Senate rejected a proposal which would have allowed that "Any sand, mud, silt, or gravel added to any stream by placer mining operations shall not be considered pollution within the meaning of this Act." 1949 Journal of the Territorial Senate, p. 626. Water pollution control legislation was eventually enacted. See ch. 117, 1949 Laws of Alaska. In enacting it, the territorial Legislature also amended section 1 of the 1919 act which protected salmon streams. The amendment provided that the newly created Water Pollution Control Board would take the place of the Territorial Fish Commissioners as the permitting agency for operations impacting salmon streams. Alaska Comp. Laws Ann., § 39-3-31 (am. Aug. 4, 1949, Laws of Alaska, ch. 393, §§1, 20, 63, Stat 496, 501, codified at now repealed 48 U.S.C. § 246).

Shortly after statehood, the new state Legislature enacted the Fish and Game Code of Alaska. See chapter 94, Session Laws of Alaska ("SLA") 1959. The code's Article IV repealed the territorial laws applicable to fish and game which had been codified in 48 U.S.C., including those provisions applicable to the obstruction, etc., of salmon streams which were quoted above. The 1959 Legislature replaced these provisions with new ones in the fish and game code. These new provisions substantially broadened the protection afforded the state's anadromous waters, as follows:

**Sec. 31. Protection of Fish and Game.** In the event that any person or governmental agency desires to construct any form of hydraulic project or to use any equipment that will use, divert, obstruct, pollute, or change the natural flow or bed of any river, lake, or stream or that will utilize any of the waters of the State or materials from any river, lake, or stream beds, such person or governmental agency shall notify the Commissioner of such intention prior to the commencement of construction, and the Commissioner shall acknowledge receipt of such notice by return mail. If the Commissioner so determines, he shall, in said letter of acknowledgement, require such person or governmental agency or (sic) submit to him full plans and specifications of the proposed

construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith, and the approximate date when such construction or work is to commence, and shall require such person or governmental agency to obtain the written approval of the Commissioner as to the sufficiency of such plans or specifications before construction is commenced. If any person or governmental agency commences construction on any such works or projects without first providing plans and specifications subject to the approval of the Commissioner for the proper protection of fish and game in connection therewith and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such work or subjects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.....

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**Sec. 33. Violations: Misdemeanor: Penalty.** Any person violating any of the provisions of this Act or any rule of regulation promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Article II or Article III of the Act, whichever is applicable as determined by the nature of the offense.

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### Article III

**Sec. 12 Penalties.** Any person who violated any provision of this Article or the rules and regulations pertaining to commercial fisheries, is guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not exceeding \$5,000.00 or imprisonment not to exceed one year or both such fine and imprisonment....

Art. I, §§ 31 and 33, and Art. III, § 12, ch. 94, SLA 1959. The 1959 enactment retained the permitting

requirement established in 1919. However, it substantially increased the penalty for a violation by raising the potential fine to a maximum of \$5,000.00 and the potential imprisonment of not more than one year.

In 1960, the first sentence of section 31 of Article I of the fish and game code was amended (underlining indicates new material):

In the event that any person or governmental agency desires to construct any form of hydraulic project or to use any equipment that will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or to use, except for the purpose of crossing a river or stream at an established crossing, any wheeled, tracked, or excavating equipment or log dragging equipment in the bed of any river, lake or stream containing anadromous fish or that will utilize any of the waters of the State or materials from any river, lake or stream beds, such person or governmental agency shall notify the Commissioner of such intention prior to the commencement of construction, and the Commissioner shall acknowledge receipt of such notice by return mail....

Section 1, ch. 180, SLA 1960. The exemption from the permitting requirement enacted for an "established crossing" lasted less than two years; for in 1962 section 31 was amended again, to rescind the exemption. The 1962 amendment also added a new third paragraph to section 31, declaring unpermitted anadromous water body obstructions, etc., public nuisances, and subjecting them to abatement. An equally significant amendment required the Commissioner of Fish and Game to specify, by regulation adopted in conformity with the Alaska Administrative Procedure Act at AS 44.62, which water bodies were important for the spawning or migration of anadromous fish. The applicability of the restrictions in section 31 was thereafter limited to the specified water bodies.<sup>1</sup> After the 1962 amendment section 31 read as follows (underlined material added):

The commissioner shall, in accordance with the Administrative Procedure Act, specify the various rivers, lakes, and streams, or parts thereof that are important for the spawning or migration of

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<sup>1</sup> Consideration of the 1962 amendments generated controversy in the Legislature, and "All through the debate intense conflict was indicated between mining and fishing interests." Inf. Op. Atty. Gen. (Jan. 3, 1963), p. 1.

anadromous fish. In the event that any person or governmental agency desires to construct any form of hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of any such specified river, lake or stream, or to use any wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of any such specified river, lake, or stream, such person or governmental agency shall notify the commissioner of such intention prior to the commencement of construction or act, and the Commissioner shall acknowledge receipt of such notice by return air mail. If the commissioner so determines, he shall, in said letter of acknowledgement, require such person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith or in connection with such act, and the approximate date when such construction, work, or act is to commence, and in such case, shall require such person or governmental agency to obtain the written approval of the commissioner as to the sufficiency of such plans or specifications before the proposed construction or act is commenced. If, in such case, any person or governmental agency commences construction on any such works or projects or commence any such act without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game in connection therewith, and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any person or government agency be convicted of violating any of the provisions of this section or continues any act, work, or projects without fully complying with the provisions hereof, such act, works, or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any such specified river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.

Provided, that in case of any emergency arising from weather or stream flow conditions, the department, through its authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications.

Should a person or governmental agency fail to notify the commissioner of any construction or act that causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, or who, by neglect or noncompliance with plans and specifications required and approved by the commissioner, causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, such person or governmental agency shall be guilty of a misdemeanor.

Section 1, ch. 32, SLA 1962.

The next amendment to the anadromous fish act did not occur until 1966. By 1966, a new Legislative Council had undertaken adoption of the revised Alaska Statutes under the code revisor's authority in AS 01.05.031.<sup>2</sup> The code revisor broke section 31 into subsections. What is now AS 16.05.880 was separated from AS 16.05.870. See section 1, ch. 89, SLA 1966. The codification also resulted in the creation of a new AS 16.05.900, containing the misdemeanor language quoted above.

In 1975, the Legislature again amended the anadromous fish act, this time amending AS 16.05.900(a) to read:

(a) A person who violates secs. 870 - 895 or 920 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$1,000 or upon by imprisonment for not more than six months, or both. A person who violates a regulation promulgated under this chapter for the regulation of commercial fisheries shall be punished as provided in sec. 720 of this chapter.

(Emphasis added.) Section 11, ch. 208, SLA 1975. The effect of the amendment was to reduce the penalty for a violation from the potential of a \$5,000 fine and one year in prison to not more than a \$1,000 fine and six months in prison. The reduced penalty lasted only until 1984, however, when the Legislature amended AS 16.05.900(a) to raise the penalty<sup>3</sup> as follows

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<sup>2</sup> The code revisor has authority to, among other things, divide long sections into two or more sections or rearrange the order of sections into more logical arrangement. AS 01.05.031(9). In doing so, however, the code revisor lacks authority to "change(e) the meaning of any law..." AS 01.05.031(b).

(bracketed and capitalized material deleted, underlined material added):

(a) A person who violates AS 16.05.870 - 16.05.895 [OR 15.05.920 OR ANY REGULATION ADOPTED UNDER THIS CHAPTER] is guilty of a class A misdemeanor [AND UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000 OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH. A PERSON WHO VIOLATES A REGULATION ADOPTED UNDER THIS CHAPTER FOR THE REGULATION OF COMMERCIAL FISHERIES SHALL BE PUNISHED AS PROVIDED IN AS 16.05.720].

Section 19, ch. 132, SLA 1984. A "Class A" misdemeanor is punishable under AS 12.55.035 and AS 12.55.135 by not more than a \$5,000 fine and one year imprisonment. A "Class B" misdemeanor is punishable under the same statutes by not more than a \$1,000 fine and ninety days imprisonment.

In 1980, the Legislature amended AS 16.05.870(a) to make it clear that the anadromous water bodies to be protected were those important to any life cycle of an anadromous fish species (underlined material added):

(a) The commissioner shall, in accordance with the Administrative Procedures 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....

Section 1, ch. 84, SLA 1980.<sup>4</sup> A 1980 amendment also deleted language which had required the applicant to obtain written approval from the commissioner as to the

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<sup>3</sup> The increase in penalties may have been the result of a 1983 study performed for the Alaska Judicial Council. See N. Maroules and F.N. Troxell, "Statistical Analyses of Major Fish and Game Sentencing Outcomes in Alaska (1981 - 82)," Alaska Judicial Council (April 6, 1983). The study looked at sentences imposed for commercial fish, game, and subsistence law violations, although apparently not anadromous fish act violations. In any event, the study concluded in part that "The Judicial Council's sentencing study on major fish and game offense convictions identified disparity in sentencing, and also strongly indicated that many sentences have been far too lenient to serve as a deterrent." Id., p.8.

<sup>4</sup> The 1980 Legislature also deleted language in AS 16.05.870(a) which referred to the Commissioner's specification of anadromous water bodies before 1968, although it posed a deadline for renewal of any specification made before June 19, 1980. Section 11, ch. 84, SLA 1980. It further amended AS 16.05.870(c) to require the Commissioner to acknowledge receipt of the permit applicant's notice by first class mail, deleting the work "air" proceeding "mail". Section 2, ch. 84, SLA 1980.

sufficiency of the plans or specifications before the proposed construction or use was begun<sup>5</sup>

In 1983, subsection (c) was redrafted and reorganized by the code revisor into the present subsections (c) and (d). At this time subsection (d) was also rewritten, apparently for clarity, so that it read as follows:

The commissioner shall approve the proposed construction, work, or use in writing unless the commissioner finds the plans and specifications insufficient for the proper protection of fish and game. Upon finding that the plans and specifications are insufficient for the proper protection of fish and game, the commissioner shall notify the person or governmental agency which submitted the plans and specifications of that finding by first class mail. The person or governmental agency may, within 90 days of receiving the notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.

B. Current Status of AS 16.05.870 - 16.05.900.

To summarize, the current version of the anadromous fish act is now codified at AS 16.05.870 - 16.05.900. It requires the Commissioner, in accordance with the Alaska Administrative Procedure Act, AS 44.62, to specify the water bodies important in the life cycle of anadromous fish. AS 16.05.870(a)<sup>6</sup> If a person<sup>7</sup> or governmental agency desires to use, etc., the natural flow or bed of the water body in any way, the Commissioner must be notified before the use occurs. AS 16.05.870(b).<sup>8</sup> Once the Commissioner receives the notice, the Commissioner is to acknowledge its receipt by first class mail. The Commissioner in the letter of acknowledgement may deny permission, or may require submission of plans and

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<sup>5</sup> The language read: "and shall require the person or governmental agency to obtain written approval from him as to the sufficiency of the plans or specifications before the proposed construction or use is begun."

<sup>6</sup> The Commissioner has done so by adopting and annually updating the six volume 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. See 5 AAC 95.010. Permit application procedures are set out in the Catalog. 5 AAC 95.010(b).

<sup>7</sup> "Person" is defined very broadly in AS 1.10.060(a) to include both natural persons and any type of entity, including corporations, unions, partnerships, businesses, etc.

<sup>8</sup> A decade ago the Attorney General construed AS 16.05.870 - 16.05.880 together as constituting a licensing requirement. March 4, 1982 Op. Atty Gen.

specifications and identification of the date of the activity will begin, assuming all this information has not already been submitted. AS 16.05.870(c)(1) - (3). If the plans and specifications are sufficient, the commissioner is to say so in writing; if insufficient, the commissioner is also to say so in writing, notifying the applicant by first class mail. AS 16.05.870(d).

The department also has authority to give oral permission to a riparian owner for emergency removal of obstructions or for emergency repairs, without the need for prior approval of plans and specifications. AS 16.05.890.

A permit applicant may seek a hearing under the Administrative Procedure Act, AS 44.62.370, 44.62.330 - 44.62.630, challenging an adverse Commissioner decision. Id.

In addition to the advance notification requirement of AS 16.05.870, a person or governmental agency must notify the Commissioner of any construction or use that causes material damage to spawning beds or prevents or interferes with the migration of anadromous fish, whether this happens by neglect or noncompliance with approved plans and specifications or otherwise. AS 16.05.895.

All violations of AS 16.05.70 - 16.05.895 are Class A misdemeanors punishable by not more than one year imprisonment and a \$5,000 fine. AS 16.05.900(a); AS 12.55.035, AS 12.55.135.

An approved use, work or project is a public nuisance and is subject to abatement, AS 16.05.880. If damage is caused to an anadromous water body, the cost of the water body's restoration to its original condition is to be borne by the violator and is in addition to any criminal penalty. Id. Finally, AS 16.05.195 allows for the forfeiture to the state of equipment used in an AS 16.05.870 - 16.05.895 violation.

A more detailed explanation of the civil and criminal options available to ADF&G for the enforcement of AS 16.05.870 - 16.05.900 is set out in Informal Attorney General Opinions (July 26, 1982; #166-505-82) (full range of civil and criminal options discussed); (May 1, 1984; #166-346-83) (searches, inspections, and seizures of equipment used in violations discussed); and (Feb. 15, 1989; #66-89-0346) (civil abatement actions discussed).





# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 267-2314  
FAX: (907) 267-2464

### MEMORANDUM

TO: (name)  
(title)

FROM:

DATE:

SUBJECT: History of Alaska Statutes 16.05.840 and 16.05.870

Since 1889, statutory laws protecting salmon streams in Alaska have been continuously enacted. These predecessors to the modern Alaska Statutes 16.05.840 and 16.05.870 contain similar elements that illustrate the intent of pre-statehood governments to protect salmon streams.

Specifically, the prohibition against dams and obstructions impeding the ascent of fish to spawning grounds has existed in various forms since 1889. The provision requiring fishways has existed in some form since 1919. The need for a permit for projects that affect salmon streams has also existed since 1919.

The three elements that currently make up Alaska Statute 16.05.840 are the prohibition of dams or obstructions, the need for an efficient fishway, and the concept of a permit process requiring plans and specifications for fishway projects.

The pertinent parts of 16.05.870 are the existence of a project that will alter the natural flow or bed of a specified waterbody and a required permit process for the project affecting the specified waterbody.

The table below explains the changes to these laws as they evolved. Copies of the laws are attached.

Year enacted	Citation	Similarities to 840 or 870	Comments	Summary of law and changes	Fines/penalties
1889	25 Stat. 1009	Includes the 16.05.840 element of prohibition of barriers.	First version of "an act to provide for the protection of salmon fisheries of Alaska."	The erection of dams, barricades or obstructions which impede the ascent of salmon or other	Imposes fine of \$250 per day.

				anadromous species in the rivers of Alaska found to be unlawful.	
1896	29 Stat. 316	Same.	Broadens the law re: what is prohibited and the waters protected.	Adds fish wheels, fences or "any such fixed or stationary obstructions" to items prohibited from erection in Alaskan rivers or streams. Gives the Secretary of Interior the right to remove these barriers.	Penalty remains the same.
1913	ACLA § 261(1913)	Same.	Restates the history of the acts enacted in 1889 and 1896. Broadens the law re: what is prohibited and the waters protected.	Add "erect or maintain" to prohibited actions. Adds traps to the prohibited items, but explicitly excludes items meant for fish culture.	Penalty remains the same.
1919	§1 ch. 58 SLA 1919	The first 16.05.870-type statute.	The emphasis is away from 840-type protection of spawning areas. Prohibits obstruction in all salmon-bearing waters resulting from projects relating to timber and other industries.	Concept of a permit process is introduced. Plans are required for projects. A separate section gives Commissioner power to require fish ladders or fishways.	Violators are guilty of a misdemeanor and may be fined not less than \$100 nor more than \$500.
1933	ACLA § 67 (1933)	The only codification of the law since 1913. Apparently the reviser of statutes never accounted for the 1919	The 840-type federal statute that was similar to the one codified in the 1913 codification is included. The 870-type statute that was passed by the territorial	Streams to be protected are 500' shore to shore (1933) rather than 100' (1913) or within 500 yards of red salmon streams (1933) rather than any creek, stream, or	Fine not exceeding \$5,000 or imprisonment for not more than 90 days, plus a further fine not exceeding \$250 per day for

		law.	government was omitted.	river into which salmon run (1913). Gives Secretary of Commerce authority to remove obstructions.	obstructions.
1949	ACLA § 39-2-16 (1949) and ACLA § 39-2-31 (1949)	This codification includes the same 870-type statute passed in 1919, but modifies the 840-type statute.	Weakens the 840-type statute somewhat by excluding certain rivers and allowing certain activities to natives and permanent white inhabitants living near these rivers.	Waterbodies to be protected are now 1000' shore to shore or within 500 yards of any creek, stream or river into which salmon run (no longer just red salmon streams as in 1933).	Misdemeanor with fine between \$100-500.
1959 and later	ACLA § 39-10-30 (1959) and ACLA § 39-10-31 (1959).  Also called House Bill 201 or § 30 art I ch 94 SLA 1959.	All elements of current 840 and 870 are now included, but statutes were later reworded for clarity.  ACLA 39-10-30 was split between 16.05.840 and 16.05.850	Laws passed by the new state government.	When originally passed, anadromous streams were not yet regulated. Wording in 870 was later changed to require the state to specify which waters required protection.	Misdemeanor is imposed for both 840 and 870 violations. Failure to provide plans results in cost of restoring rivers to be borne by the violator.

#### Glossary:

Stat.: Statutes at Large (legislation passed by Congress).

ACLA: Alaska Compiled Laws Annotated (Territorial statutes passed under the auspices of Congress).

SLA: Session Laws of Alaska (legislation passed by the Territorial Legislature, interim phase between passing the bill and publishing the law in statute format).

ch.: chapter.

§: section.

Codification: the compilation of all existing laws in a systematic and unified order.



CHAP. 415.—An act to provide for the protection of the salmon fisheries of Alaska. March 2, 1889.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the erection of dams, barricades, or other obstructions in any of the rivers of Alaska, with the purpose or result of preventing or impeding the ascent of salmon or other anadromous species to their spawning grounds, is hereby declared to be unlawful, and the Secretary of the Treasury is hereby authorized and directed to establish such regulations and surveillance as may be necessary to insure that this prohibition is strictly enforced and to otherwise protect the salmon fisheries of Alaska; and every person who shall be found guilty of a violation of the provisions of this section shall be fined not less than two hundred and fifty dollars for each day of the continuance of such obstruction.

Salmon fisheries,  
Alaska.  
Erection of dams,  
etc., in rivers unlaw-  
ful.

Punishment.

SEC 2. That the Commissioner of Fish and Fisheries is hereby empowered and directed to institute an investigation into the habits, abundance, and distribution of the salmon of Alaska, as well as the present conditions and methods of the fisheries, with a view of recommending to Congress such additional legislation as may be necessary to prevent the impairment or exhaustion of these valuable fisheries, and placing them under regular and permanent conditions of production.

Investigation into  
habits, etc., of salmon.

SEC 3. That section nineteen hundred and fifty-six of the Revised Statutes of the United States is hereby declared to include and apply to all the dominion of the United States in the waters of Behring Sea; and it shall be the duty of the President, at a timely season in each year, to issue his proclamation and cause the same to be published

Behring Sea.  
Killing of fur-bearing  
animals in the do-  
minion of the United  
States in, prohibited.  
R. S., sec. 1956, p. 343.  
Proclamation.

for one month in at least one newspaper if any such there be published at each United States port of entry on the Pacific coast, warning all persons against entering said waters for the purpose of violating the provisions of said section; and he shall also cause one or more vessels of the United States to diligently cruise said waters and arrest all persons, and seize all vessels found to be, or to have been, engaged in any violation of the laws of the United States therein.

Arrest of violators.

Approved, March 2, 1889.

June 9, 1896.

CHAP. 387.—An Act To amend an Act entitled "An Act to provide for the protection of the salmon fisheries of Alaska."

Salmon fisheries,  
Alaska.  
Vol. 25, p. 1009,  
amended.

Obstructions in  
streams preventing  
ascent of salmon pro-  
hibited.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act approved March second, eighteen hundred and eighty-nine, and entitled "An Act to provide for the protection of the salmon fisheries of Alaska," is hereby amended and reenacted as follows:

"That the erection of dams, barricades, fish wheels, fences, or any such fixed or stationary obstructions in any part of the rivers or streams of Alaska, or to fish for or catch salmon or salmon trout in any manner or by any means with the purpose or result of preventing or impeding the ascent of salmon to their spawning ground, is declared to be unlawful, and the Secretary of the Treasury is hereby authorized and directed to remove such obstructions and to establish and enforce such regulations and surveillance as may be necessary to insure that this prohibition and all other provisions of law relating to the salmon fisheries of Alaska are strictly complied with.

"SEC. 2. That it shall be unlawful to fish, catch, or kill any salmon of any variety, except with rod or spear, above the tide waters of any of the creeks or rivers of less than five hundred feet width in the Territory of Alaska, except only for purposes of propagation; or to lay or set any drift net, set net, trap, pound net, or seine for any purpose across the tide waters of any river or stream for a distance of more than one-third of the width of such river, stream, or channel, or lay or set any seine or net within one hundred yards of any other net or seine which is being laid or set in said stream or channel, or to take, kill, or fish for salmon in any manner, or by any means in any of the waters of the Territory of Alaska, either in the streams or tide waters, except Cook Inlet, Prince William Sound, Bering Sea, and the waters tributary thereto, from midnight on Friday of each week until six o'clock ante-meridian of the Sunday following; or to fish for or catch or kill in any manner or by any appliances, except by rod or spear, any salmon in any stream of less than one hundred yards in width in the said Territory of Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week.

"SEC. 3. That the Secretary of the Treasury may, at his discretion, set aside any streams as spawning grounds, in which no fishing will be permitted; and when, in his judgment, the results of fishing operations on any stream indicate that the number of salmon taken is larger than the capacity of the stream to produce, he is authorized to establish weekly close seasons, to limit the duration of the fishing season, or to prohibit fishing entirely for one year or more, so as to permit salmon to increase: *Provided, however,* That such power shall be exercised only after all persons interested shall have been given a hearing, of which hearing due notice must be given by publication: *And provided further,* That it shall have been ascertained that the persons engaged in catching salmon do not maintain fish hatcheries of sufficient magnitude to keep such streams fully stocked.

"SEC. 4. That to enforce the provisions of law herein, and such regulations as the Secretary of the Treasury may establish in pursuance thereof, he is authorized and directed to appoint one inspector of fisheries, at a salary of one thousand eight hundred dollars per annum, and two assistant inspectors, at a salary of one thousand six hundred dollars each per annum, and he will annually submit to Congress estimates to cover the salaries and actual traveling expenses of the officers hereby authorized and for such other expenditures as may be necessary to carry out the provisions of the law herein.

"SEC. 5. That any person violating the provisions of this Act or the regulations established in pursuance thereof shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term of ninety days, or both such fine and imprisonment, at the discretion of the court; and, further, in case of the violation of any of the provisions of section one of this Act and conviction thereof a further fine of two hundred and fifty dollars per diem will be imposed for each day that the obstruction or obstructions therein are maintained."

Approved, June 9, 1896.

Fishing prohibited  
above tide waters, ex-  
cept with rod or spear.

Nets, etc., in tide  
waters.

Total prohibition  
Saturdays.

No fishing at night  
except by rod or spear.

Spawning grounds.

Close seasons.

Provisos.  
Notice.

Hatcheries.

Inspectors author-  
ized.

Punishment for vio-  
lations.

Stationary ob-  
structions for taking  
salmon in waters,  
unlawful.  
Ibid.

SEC. 261. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than five hundred feet, or within five hundred yards of the mouth of any red-salmon stream where the same is less than five hundred feet in width, with the purpose or result of capturing salmon or preventing or impeding their ascent to their spawning grounds, and the Secretary of Commerce and Labor is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed.

#### HISTORY OF LAWS PROTECTING SALMON FISHERIES.

This is an act to provide for the protection of salmon fisheries of Alaska, consisting of three sections. It prohibits the erection of dams impeding the ascent of fish, and provides for punishment. It also provides that the Commissioner of Fish and Fisheries shall institute an investigation into the habits, abundance, and distribution of salmon of Alaska.

Mar. 2, 1889.

25 Stat. L., 1009.  
R. S., 1st Supp.,  
p. 701.

Section 1 provides that the act approved March 2, 1889, and entitled "An act to provide for the protection of salmon fisheries of Alaska," is hereby amended and reenacted as follows: "This act consists of five sections, prohibits the erection of dams or other obstruction preventing the ascent of salmon, fishing prohibited above tidewaters except with rod and spear. It also provides for spawning grounds, close seasons, hatcheries, inspectors, and punishment for violation." This act would seem to repeal the act of March 2, 1889. (The foregoing section also provides that there shall be total prohibition Saturdays, and no fishing at night except by rod or spear.)

June 9, 1896.

29 Stat. L., 316.  
R. S., 2d Supp.,  
p. 510.

That in lieu of the three inspectors whose employment is authorized by the act of June 9, 1896, there shall be appointed by the President, by and with the advice and consent of the Senate, one agent at a salary of \$2,500 per annum, one assistant agent at a salary of \$2,000 per annum.

June 4, 1897.

30 Stat. L., 29.

For the establishment of one or more fish hatcheries in Alaska for the propagation of salmon and other food fishes at points to be selected by the Secretary of Commerce and Labor, including purchase of sites, the construction of necessary buildings and ponds, purchase and hire of boats and equipment, and such temporary help as may be required for construction and operation of the hatcheries—to be immediately available, \$50,000.

Mar. 3, 1905.

33 Stat. L., 1181.



CHAPTER 58.

AN ACT

(H. B. 28)

For the protection of the salmon spawning streams and water of the Territory of Alaska, and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Unlawful to obstruct salmon spawning waters

Section 1. That it shall be unlawful for any person, firm, company or corporation to obstruct, divert or pollute any of the waters of this Territory, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber therein, casting, passing, throwing or dumping therein, any tree limbs or foliage thereof, under-brush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping therein any sawdust, planer shavings, or other waste or refuse of any kind whatsoever, or to erect any dam, barricade or obstruction of any kind to retard, conserve, impound or divert any such waters, so as to prevent, retard or interfere with the free ingress or egress of salmon into such waters in the natural spawning or propagation process, or to render such waters inaccessible or uninhabitable for such fish for that purpose without first making application therefor and obtaining a permit or license from the Territorial Fish Commissioners. The application shall set forth the name and style of the person or concern, describe the waters and location of same and state in particular the plans, purpose and intention for which the application is made.

Permit for obstruction to be granted by Territorial Fish Commissioners

Section 3. Any person, firm, company or corporation doing any act or thing prohibited by this Act shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars.

Penalties for violation of the act

Sec. 67. Obstructions in waters for capturing salmon unlawful. It shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream, or river into which salmon run, excepting the Karluk and Ugashik rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds; and the Secretary of Commerce is authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream, or river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance. (233-48 USC)

§ 39-2-16. Obstructions in waters for capturing salmon. It shall be unlawful to erect or maintain any dam, barricade, fence, trap, fishwheel, or other fixed or stationary obstruction except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream, or river into which salmon run, except the Karluk, Ugashik, Kuskokwim, and Yukon Rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds, and the Secretary of the Interior is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed: Provided, however, That the exception hereinabove contained with reference to the Kuskokwim and Yukon Rivers shall be solely for the purpose of enabling native Indians and bona fide ~~permanent white inhabitants along the said rivers to take from said~~

rivers for commercial purposes and for export from the Territory of Alaska king salmon in such manner and such quantities, and at such times as the Secretary of the Interior may, by suitable regulations, from time to time permit: Provided further, That no person shall be deemed to be a bona fide permanent inhabitant of the said rivers who has not resided thereon, or within fifty miles thereof for a period of over one year, and that the term "native Indians" as used herein shall be taken to mean members of the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood. For the purposes of this section, the mouth of such creek, stream, or river shall be taken to be the point determined as such mouth by the Secretary of the Interior and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance. [34 Stat 47; 43 Stat 465; CLA 1933, § 67; am 48 Stat 594; 53 Stat 1433; 48 USC § 233.]

~~§ 39-2-31. Interference with salmon-spawning streams and waters.~~  
That it shall be unlawful for any person, firm, company or corporation to obstruct, divert or pollute any of the waters of this Territory, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber therein, casting, passing, throwing

or dumping therein, any tree limbs or foliage thereof, under-brush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping therein any sawdust, planer shavings, or other waste or refuse of any kind whatsoever, or to erect any dam, barricade or obstruction of any kind to retard, conserve, impound or divert any such waters, so as to prevent, retard or interfere with the free ingress or egress of salmon into such waters in the natural spawning or propagation process, or to render such waters inaccessible or uninhabitable for such fish for that purpose without first making application therefor and obtaining a permit or license from the Territorial Fish Commissioners. The application shall set forth the name and style of the person or concern, describe the waters and location of same and state in particular the plans, purpose and intention for which the application is made. [L 1919, ch 58, § 1, p 176, effective May 5, 1919.]

§ 39-2-32. — Grounds for permit or license. If in the judgment of the Fish Commissioners, the purpose of the applicant for the permit or license, is to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining or other purposes tending toward the development of the natural resources of the Territory, such permit or license may be granted and the Commissioners may require the applicant to construct and maintain adequate fish ladders, fishways or other means by which fish may pass over, around or through such dams, obstructions or diversions in the pursuit of the propagation or spawning process. [L 1919, ch 58, § 2, p 176, effective May 5, 1919.]

§ 39-2-33. — Violation of Act a misdemeanor. Any person, firm, company or corporation doing any act or thing prohibited by this Act [§§ 39-2-31-39-2-35 herein] shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars. [L 1919, ch 58, § 3, p 177, effective May 5, 1919.]

§ 39-2-34. — Disposition of moneys received for fines and penalties. All moneys received by the several courts for fines and penalties imposed under this Act [§§ 39-2-31-39-2-35 herein], shall be paid into the Territorial Treasury and the same shall be immediately available for expenditure by the Territorial Fish Commissioners upon warrants drawn in the usual manner. [L 1919, ch 58, § 4, p 177, effective May 5, 1919.]

§ 39-10-30. Fishways or hatcheries required. Every dam or other obstruction built by any person across any stream frequented by salmon or other fish shall be provided by such person with a durable and efficient fishway and a device for efficient passage for downstream migrants if deemed necessary by the Commissioner, which fishway or device or both shall be maintained in a practical and effective manner in such place, form and capacity as the Commissioner may approve, for which plans and specifications shall be approved by the Department upon application to it, and which shall be kept open, unobstructed, and supplied with a sufficient quantity of water to freely admit the passage of fish through same.

In the event that a fishway over any dam or obstruction is considered by the Commissioner to be impracticable because of cost, then the owner of such dam or obstruction, in order to compensate for the loss resulting from such dam or obstruction shall, at his option: (1) pay a lump sum acceptable to the Commissioner to the State Fish and Game Fund; (2) convey to the State a site of a size satisfactory to the Commissioner at such place as may be mutually satisfactory to both parties, and erect thereon a fish hatchery, rearing ponds, necessary buildings and other facilities

according to plans and specifications to be furnished by the Commissioner, secured by good and sufficient bond, to furnish all water and lights and necessary sums of money to operate and maintain said hatchery and rearing ponds; or (3) enter into an agreement with the Commissioner, secured by good and sufficient bond, to pay to the Alaska Fish and Game Fund such initial money and make such annual payments of additional money as the Commissioner may determine are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of such dam or obstruction.

The owner of any dam or obstruction who shall fail to comply with the provisions of this section within a reasonable time as specified by written notice from the Commissioner shall be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000.00, and each day that the owner fails to comply shall constitute a separate offense.

In addition to the penalty above provided, if any such person be convicted of violating any of the provisions of this section, the dam or other obstruction managed, controlled or owned by such person is hereby declared a public nuisance and shall be subject to abatement as such. [L 1959, ch 94, Art I, § 30, p 96, app Apr. 17, 1959.]

Effective date. Effective date of this section, see notes under § 39-10-1.

§ 39-10-31. Protection of fish and game. In the event that any person or governmental agency desires to construct any form of hydraulic project or to use any equipment that will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the State or materials from any river, lake or stream beds, such person or governmental agency shall notify the Commissioner of such intention prior to the commencement of construction, and the Commissioner shall acknowledge receipt of such notice by return mail. If the Commissioner so determines, he shall, in said letter of acknowledgment, require such person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith, and the approximate date when such construction or work is to commence, and shall require such person or governmental agency to obtain the written approval of the Commissioner as to the sufficiency of such

plans or specifications before construction is commenced. If any person or governmental agency commences construction on any such works or projects without first providing plans and specifications subject to the approval of the Commissioner for the proper protection of fish and game in connection therewith and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such work or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any river, lake or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.

Provided, that in case of an emergency arising from weather or stream flow conditions, the Department, through its authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications. [L 1959, ch 94, Art I, § 31, p 96, app Apr. 17, 1959.]

§ 39-10-32. Assumption of administration and management by Alaska. Upon assumption of administration and management of the fish and game resources of Alaska by the State, the Commissioner and Board shall assume their respective controls on behalf of the State of Alaska. [L 1959, ch 94, Art I, § 32, p 97, app Apr. 17, 1959.]

Effective date. Effective date of this section, see notes under § 39-10-1.

§ 39-10-33. Violations: Misdemeanor: Penalty. Any person violating any of the provisions of this Act [this chapter] or any rule or regulation promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Article II or Article III of this Act [Art 2 or Art 3 herein], whichever is applicable as determined by the nature of the offense. [L 1959, ch 94, Art I, § 33, p 97, app Apr. 17, 1959.]

Effective date. Effective date of this section, see notes under § 39-10-1.



Sec. 9. Sec. 10, Ch. 145, SLA 1955 is amended to read as follows:

Section 10. Contributions by the State for Arrearages. The state shall annually appropriate to the Retirement Fund from the general fund of the state, an amount equal to: (a) the arrearage payments made by teachers

as provided in Section 7 herein; and/or (b) the arrearage outstanding under option (2) of Section 13 herein.

Sec. 10. Secs. 37-4-8 through and including 37-4-12, ACLA 1949 are repealed.

Sec. 11. This Act shall take effect January 1, 1961.

Approved April 25, 1960

## CHAPTER 180

### AN ACT

Amending the Fish and Game Code of Alaska, particularly Sec. 31, Art. I, Ch. 94, SLA 1959, dealing with use of streams, rivers and lakes; and providing for an effective date.

(H.C.S.C.S.S.B. 249)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 31, Art. I, Ch. 94, SLA 1959, is amended to read as follows:

#### Sec. 31. Protection of Fish and Game.

In the event that any person or governmental agency desires to construct any form of hydraulic project or to use any equipment that will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or to use, except for the purpose of crossing a river or stream at an established crossing, any wheeled, tracked or excavating equipment or log dragging equipment in the bed of any river, lake or stream containing anadromous fish or that will utilize any of the waters of the State or materials from any river, lake or stream beds, such person or governmental agency shall notify the Commissioner of such intention prior to the commencement of construction, and the Commissioner shall acknowledge receipt of such notice by return mail. If the Commissioner so determines, he shall, in said letter of acknowledgment, require such person or governmental agency or submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith, and the approximate date when such construction or work is to commence, and shall require such

person or governmental agency to obtain the written approval of the Commissioner as to the sufficiency of such plans or specifications before construction is commenced. If any person or governmental agency commences construction on any such works or projects without first providing plans and specifications subject to the approval of the Commissioner for the proper protection of fish and game in connection therewith and without first having obtained written approval of the Commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such work or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any river, lake or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.

Provided, that in case of an emergency arising from weather or stream flow conditions, the Department, through its authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared

plans and specifications.

day after its passage and approval or on the day it becomes law without such approval.

Sec. 2. This Act takes effect on the

Approved April 25, 1960

## CHAPTER 181

### AN ACT

Authorizing the Governor to contract for an economic development program for the state; authorizing an appropriation; and providing for an effective date.

(H.B. 459)

Be it enacted by the Legislature of the State of Alaska:

**Section 1. Development Program.** The governor is authorized and directed to contract with Arthur D. Little, Inc., Cambridge, Massachusetts, for the accomplishment of a program to activate an economic development program for the state. The program is to include the identification of specific opportunities and the stimulation of productive investment in the industrial, agricultural, commercial and tourism segments of the Alaskan economy. The governor or his designee is authorized to take all appropriate action in accomplishing an agree-

ment and program with the consulting firm. The initial agreement is to cover one year and will provide for the submission of monthly activity and progress reports to the governor. The governor shall make a full report on the economic development program provided for herein to the Second State Legislature in 1961.

**Sec. 2. Appropriation Authorized.** Funds for carrying out the provisions of this Act shall be provided for in the general appropriation bill.

**Sec. 3. Effective Date.** This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 25, 1960

## CHAPTER 182

### AN ACT

Appropriating from the general fund; appropriating from the highway fuel tax account in the general fund; appropriating from the aviation fuel tax account in the general fund; appropriating from federal transitional grants in the general fund; appropriating from the water and harbor facilities fund and certain other special funds of the state for operating and capital expenses beginning July 1, 1960; and providing for an effective date.

(C.S.H.B. 267)

Be it enacted by the Legislature of the State of Alaska:

**Section 1.** The sum of \$26,909,272 is hereby appropriated from the general fund

of the State of Alaska for the fiscal year beginning July 1, 1960, and ending June 30, 1961 to be apportioned according to the following schedules:

	Office of the Governor
General Administration	\$ 126,910
Governor's Mansion	31,210
Planning Commission	15,000
Special Counsel; Fish Traps	20,000
Freight Rate Hearings	20,000

tax collected during each calendar month of each year to the commissioner of revenue by the last day of each succeeding month; and every user as above defined shall likewise remit the tax accrued on motor fuel actually used by him during each month, and, at the time such remittances are made, each dealer or user as herein defined shall submit a statement to the commissioner of revenue showing all motor fuel which he has distributed or used, as the case may be, during the month.

Sec. 2. Sec. 48-5-2 (f), ACLA 1949, as added by Ch. 47, SLA 1955, and amended by Ch. 152, SLA 1957, is amended to read:

(f) The monies herein collected from the taxes on motor fuel used in boats and watercraft of all descriptions shall be covered into a special "watercraft fuel tax" account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

Sec. 3. Sec. 48-5-2 (h), as last amended by Ch. 27, SLA 1957, is repealed and re-enacted to read:

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the "highway fuel tax" account in the general fund.

Sec. 4. Sec. 3, Ch. 47, SLA 1955, is amended to read:

Section 3. Any person desiring to claim a refund shall obtain an annual permit from the commissioner of revenue by application therefor on such form as the commissioner shall prescribe, which application shall contain among other things the name, address, and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the motor fuel is to be used and for which refund may be claimed under the permit. Such permit shall be obtained before or at the time that the first application for refund is made under the provisions of this Act. All permits shall expire at midnight of June 30 following the date of their issue.

Sec. 5. Sec. 7, Ch. 47, SLA 1955, is amended to read:

Section 7. Upon approval of any refund claim by the commissioner of revenue, a warrant shall be drawn on the "highway fuel tax" account in the general fund in favor of the applicant in the amount of the claim.

Sec. 6. Sec. 3, Ch. 63, SLA 1960, is amended to read:

Sec. 3. The tax levied by this Act shall be administered and collected in the same manner as the tax levied in Sec. 48-5-2, ACLA 1949, as amended, and the receipts from said tax shall be paid into the "watercraft fuel tax" account in the general fund of the state.

Sec. 7. This Act takes effect on July 1, 1962.

Approved April 18, 1962

## CHAPTER 132

### AN ACT

Amending the Fish and Game Code regarding use of streams, rivers, and lakes; and providing for an effective date.

(H.B. 405)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 31, Art. I, Ch. 94, SLA 1959, as amended by Sec. 1, Ch. 180, SLA 1960, is amended to read:

Sec. 31. **Protection of Fish and Game.** The commissioner shall, in accordance

with the Administrative Procedure Act, specify the various rivers, lakes, and streams or parts thereof that are important for the spawning or migration of anadromous fish. In the event that any person or governmental agency desires to construct any form of hydraulic project, or use, divert, obstruct, pollute, or

change the natural flow or bed of any such specified river, lake, or stream, or to use any wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of any such specified river, lake, or stream, such person or governmental agency shall notify the commissioner of such intention prior to the commencement of construction or act, and the commissioner shall acknowledge receipt of such notice by return air mail. If the commissioner so determines, he shall, in said letter of acknowledgement, require such person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection therewith or in connection with such act, and the approximate date when such construction, work, or act is to commence, and, in such case, shall require such person or governmental agency to obtain the written approval of the commissioner as to the sufficiency of such plans or specifications before the proposed construction or act is commenced. If, in such case, any person or governmental agency commences construction on any such works or projects or commences any such act without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game in connection therewith, and without first having obtained written approval of the commissioner as to the adequacy of such plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If any person

or governmental agency be convicted of violating any of the provisions of this section or continues any act, work, or projects without fully complying with the provisions hereof, such act, works, or projects are hereby declared a public nuisance and shall be subject to abatement as such. The cost of restoring any such specified river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to any penalty imposed by the court.

Provided, that in case of an emergency arising from weather or stream flow conditions, the department, through its authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications.

Should a person or governmental agency fail to notify the commissioner of any construction or act that causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, or who, by neglect or noncompliance with plans and specifications required and approved by the commissioner, causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, such person or governmental agency shall be guilty of a misdemeanor.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 18, 1962

## CHAPTER 133

### AN ACT

Appropriating \$50,000 for the rebuilding of the dock at Angoon; and providing for an effective date.

(C.S.H.B. 443)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The sum of \$50,000 is appropriated from the general fund of the state

to the Department of Public Works for the rebuilding of the dock at Angoon.

Sec. 2. This Act takes effect on July 1, 1962.

Approved April 18, 1962





# LAWS OF ALASKA

1966

Source:

SCSHB 255 (State Affairs)

Chapter No.:

89

## AN ACT

Relating to the protection of anadromous fish; and providing for an effective date.

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

\* 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 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 Menchikof, 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 16.05.820 is amended to read:

Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER. If a person or governmental agency begins construction on a work or project or use for which notice is required by sec. 870 of this chapter without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game, and without first having obtained written approval of the commissioner as to the adequacy of the plans and specifications submitted for the protection of fish and game, he is guilty of a misdemeanor. If a person or governmental agency is convicted of violating secs. 870 - 895 of this chapter or continues a use, work or project without fully complying with secs. 870 - 895 of this chapter, the use, work, or project is a public nuisance and is subject to abatement. The cost of restoring a specified river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to the penalty imposed by the court.

\* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.



## LAWS OF ALASKA

1980

Source

Chapter No.

CSHB 118 am S

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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he shall, in the letter of acknowledgement, require the person or governmental agency to submit to him full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use, and the approximate date the construction; work or use will begin. The commissioner shall approve the proposed construction, work or use in writing unless he finds the plans and specifications insufficient for the proper protection of fish and game. If the commissioner finds the plans and specifications insufficient for the proper protection of fish and game, he shall notify the person or governmental agency which submitted the plans and specifications of his finding by first class mail. The person or governmental agency may, within 90 days of receipt of the notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630 [ , AND SHALL REQUIRE THE PERSON OR GOVERNMENTAL AGENCY TO OBTAIN WRITTEN APPROVAL FROM HIM AS TO THE SUFFICIENCY OF THE PLANS OR SPECIFICATIONS BEFORE THE PROPOSED CONSTRUCTION OR USE IS BEGUN].

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

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

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

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

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

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

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

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

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

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

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

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

(2) recreation and park purposes;

(3) navigation and transportation purposes; and

(4) sanitary and water quality purposes.

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

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

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

(2) the applicant has demonstrated that a need exists for the 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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domestic, agricultural, irrigation, industrial, manufacturing, fish and shellfish processing, navigation and transportation, mining, power, public, sanitary, fish and wildlife, [AND] recreational uses, and maintenance of water quality;

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

\* Sec. 12. This Act takes effect immediately in accordance with AS 01.10.070(c).

**Sec. 16.05.831. Waste of salmon.** (a) A person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences. In this section, "waste" means the failure to utilize the majority of the carcass, excluding viscera and sex parts, of salmon which are to be

- (1) sold to a commercial buyer or processor;
- (2) utilized for consumption by humans or domesticated animals; or
- (3) utilized for scientific, educational, or display purposes.

(b) The commissioner, upon request, may authorize other uses of salmon that would be consistent with maximum and wise use of the resource.

(c) A person who violates this section or a regulation adopted under it is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. In addition, a person who violates this section is subject to a civil action by the state for the cost of replacing the salmon wasted. (§ 3 ch 99 SLA 1975)

**Revisor's notes.** — This section was enacted in section 3 of both ch. 89 and ch. 99, SLA 1975. Chapter 99 had an immediate effective date (May 30, 1975), so the section was already in effect when ch. 89,

enacting identical language, took effect on August 20, 1975.

**Collateral references.** — 35 Am. Jur. 2d, Fish and Game, § 51.

**Sec. 16.05.835. Maximum length of salmon seine vessels.** A salmon seine vessel may not be longer than 50 feet, official Coast Guard register length, and 58 feet overall length except vessels that have fished for salmon with seines in waters of the state before January 1, 1962; as 50-foot, official Coast Guard register length vessels. (§ 1 ch 252 SLA 1970)

**Sec. 16.05.840. Fishway required.** If the commissioner considers it necessary, every dam or other obstruction built by any person across a stream frequented by salmon or other fish shall be provided by that person with a durable and efficient fishway and a device for efficient passage for downstream migrants. The fishway or device or both shall be maintained in a practical and effective manner in the place, form and capacity the commissioner approves, for which plans and specifications shall be approved by the department upon application to it. The fishway or device shall be kept open, unobstructed, and supplied with a sufficient quantity of water to admit freely the passage of fish through it. (§ 30 art I ch 94 SLA 1959)

#### NOTES TO DECISIONS

Stated in Southeast Alaska Conservation Council, Inc. v. State, Sup. Ct. Op. No.

2662 (File No. 5855),

P.2d

(1983)

**Sec. 16.05.850. Hatchery required.** If a fishway over a dam or obstruction is considered impracticable by the commissioner because of cost, the owner of the dam or obstruction, in order to compensate for the loss resulting from the dam or obstruction shall, at the owner's option (1) pay a lump sum acceptable to the commissioner to the state fish and game fund; (2) convey to the state a site of a size satisfactory to the commissioner at a place mutually satisfactory to both parties, and erect on it a fish hatchery, rearing ponds, necessary buildings and other facilities according to plans and specifications furnished by the commissioner, and give a good and sufficient bond to furnish water, lights and necessary money to operate and maintain the hatchery and rearing ponds; or (3) enter into an agreement with the commissioner, secured by good and sufficient bond, to pay to the fish and game fund such an initial amount of money and annual payments thereafter as the commissioner considers necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or obstruction. (§ 30 art I ch 94 SLA 1959)

**Sec. 16.05.860. Penalty for violating fishway and hatchery requirements.** (a) The owner of a dam or obstruction who fails to comply with AS 16.05.840 or 16.05.850 within a reasonable time specified by written notice from the commissioner is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the owner fails to comply constitutes a separate offense.

(b) In addition to the fine the dam or other obstruction managed, controlled or owned by a person violating AS 16.05.840 or 16.05.850 is a public nuisance and is subject to abatement. (§ 30 art I ch 94 SLA 1959)

**Sec. 16.05.865. Transplanting of musk oxen.** The board may transplant surplus musk oxen from Nunivak Island to appropriate areas on the mainland of the state, when good management practices dictate the action. The board shall determine which transplant sites are appropriate and whether a surplus of animals exists. (§ 1 ch 220 SLA 1975)

**Sec. 16.05.863. Fish health inspections.** Fish health inspections determined to be necessary by the department shall be performed by a professional fish health specialist certified by the fish health section of the American Fisheries Society. (§ 3 ch 110 SLA 1980)

**Sec. 16.05.870. Protection of fish and game.** (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.

(b) If a person or governmental agency desires to construct a hydraulic project, or use, divert, obstruct, pollute, or change the nat-

ural 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, the person or governmental agency shall notify the commissioner of this intention before the beginning of the construction or use.

(c) The commissioner shall acknowledge receiving the notice by return first class mail. If the commissioner determines that the following information is required, the letter of acknowledgement shall require the person or governmental agency to submit to the commissioner:

- (1) full plans and specifications of the proposed construction or work;
- (2) complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use; and
- (3) the approximate date the construction, work, or use will begin.

(d) The commissioner shall approve the proposed construction, work, or use in writing unless the commissioner finds the plans and specifications insufficient for the proper protection of fish and game. Upon a finding that the plans and specifications are insufficient for the proper protection of fish and game, the commissioner shall notify the person or governmental agency which submitted the plans and specifications of that finding by first class mail. The person or governmental agency may, within 90 days of receiving the notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330 — 44.62.630: (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962; am § 1 ch 89 SLA 1966; am §§ 1, 2 ch 84 SLA 1980)

**Revisor's notes.** — Former subsection (c) of this section was redrafted and reorganized into present subsections (c) and (d) in 1983.

**Effect of amendments.** — The 1980 amendment inserted a comma between "(AS 44.62.010 — 44.62.650)," and "specify" near the beginning of subsection (a), inserted "rearing" following "the spawning" near the end of subsection (a), and deleted the former remaining provisions of subsection (a), which read: "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 Menchikof, 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," substituted "first class" for "air" preceding "mail" at the end of the first sentence of subsection (c), substituted the last four sentences in subsection (c) [which were rewritten and redesignated as subsection (d) in 1983 by the revisor] for the former material which followed "work or use will begin" at the end of the former second sentence, and which read: "and shall require the person or governmental agency to obtain written approval from him as to the sufficiency of the plans or specifications before the proposed construction or use is begun."

**Editor's notes.** — Section 11, ch. 84, SLA 1980 provides: "A specification made under AS 16.05.870(a) before June 19, 1980 expires July 31, 1982, unless the

commissioner of fish and game reevaluates the specification and determines that the river, lake, stream or part of a river, lake or stream to which the specification applies is important for the spawning, rearing or migration of anadromous fish."

**Opinions of attorney general.** — The purpose of this section is to protect and conserve fish and game and other natural resources. 1964 Op. Att'y Gen., No. 10.

Alaska has jurisdiction to enforce its fish and game laws in national forests. 1964 Op. Att'y Gen., No. 10.

Alaska's protective fish and game laws, especially this section, complement rather than conflict with federal government functions in national forests and should be enforced by both federal and state officials. 1964 Op. Att'y Gen., No. 10.

The Department of Fish and Game has permit jurisdiction over activities affecting anadromous streams, over activities in streams "frequented by fish" if those latter activities will result in the physical obstruction of that stream, and over all land use activities within the state refuge system. March 4, 1982, Op. Att'y Gen.

This section gives the Department of Fish and Game jurisdiction over nonpoint pollutant sources adjacent to classified anadromous streams or their tributaries which, absent sufficient mitigating measures, would create a direct and substantial threat to pollution of the anadromous stream itself. March 4, 1982, Op. Att'y Gen.

The commissioner of the department of fish and game has the power to adopt procedural rules to implement this section and to establish by regulation the standards under which permits will be issued under this section. March 4, 1982, Op. Att'y Gen.

When the Department of Fish and Game or Boards of Fisheries and Game have established a general policy of requiring plans and specifications in all instances involving specific types of activities, that

policy can and perhaps must be codified by regulation. March 4, 1982, Op. Att'y Gen.

The Department of Natural Resources, under the authority of AS 41.17.900(d), cannot preempt the regulatory authority of the commissioner of fish and game under this section over nonpoint source pollution of anadromous streams caused by logging activities. March 4, 1982, Op. Att'y Gen.

There is no statutory basis in either AS 46.03 or AS 41.17 for implying that the Department of Fish and Game's authority over "non-point source pollution" under this section is limited by the sec. 208 program of the 1972 Federal Water Pollution Control Act (PL 92-500). March 4, 1982, Op. Att'y Gen.

This section would seem to allow that the applicant submit, essentially, two permit applications — the first to determine whether a more detailed inquiry will be made, and the second to obtain the needed authorization. March 4, 1982, Op. Att'y Gen.

The phrase "pollution" in subsection (b) should be viewed as a jurisdictional incident distinct from the other listed results or activities in that subsection and not as a specific enumeration which is to be construed to modify and limit the more general phrases. March 4, 1982, Op. Att'y Gen.

The fundamental question concerning when a permit is required is whether the nature of the construction or work is such as to constitute a "desire to pollute," and not what the individual hopes will or will not happen. March 4, 1982, Op. Att'y Gen.

When read together, this section and AS 16.05.880 are a licensing statute. March 4, 1982, Op. Att'y Gen.

There is no conflict between this section and AS 16.10.010. March 4, 1982, Op. Att'y Gen.

This section has not been impliedly repealed by anything in Title 46, AS 41.17 or AS 16.10.010. March 4, 1982, Op. Att'y Gen.

## NOTES TO DECISIONS

**Procedure for gaining permission to ford controlled river or stream.** — A person seeking to ford a controlled river or stream must first give notice to the commissioner and include in his notice sufficient "plans and specification" so that the commissioner will know what he intends to do, when he intends to do it, what risk

he foresees from his activities to fish in the vicinity, and what steps he intends to undertake for their protection. The commissioner will then review the notification and either grant the request, reject the application, or request "full" plans and specifications requiring the actor to go into greater detail and answer specific ques-



tions. Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

**Rejection of a request to ford need not be preceded by a request for full plans and specifications unless the commissioner lacks sufficient information to**

make a determination on the application. Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

**Stated in Southeast Alaska Conservation Council, Inc. v. State, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983)**

**Sec. 16.05.880. Construction without approval prohibited.** If a person or governmental agency begins construction on a work or project or use for which notice is required by AS 16.05.870 without first providing plans and specifications subject to the approval of the commissioner for the proper protection of fish and game, and without first having obtained written approval of the commissioner as to the adequacy of the plans and specifications submitted for the protection of fish and game, the person or agency is guilty of a misdemeanor. If a person or governmental agency is convicted of violating AS 16.05.870 — 16.05.895 or continues a use, work or project without fully complying with AS 16.05.870 — 16.05.895, the use, work, or project is a public nuisance and is subject to abatement. The cost of restoring a specified river, lake, or stream to its original condition shall be borne by the violator and shall be in addition to the penalty imposed by the court. (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962; am § 2 ch 89 SLA 1966)

**Cross references.** — For criminal penalties, see AS 16.05.900.

**Opinions of attorney general.** —

When read together, AS 16.05.870 and this section are a licensing statute. March 4, 1982, Op. Att'y Gen.

#### NOTES TO DECISIONS

**Procedure for gaining permission to ford controlled river or stream.** — A person seeking to ford a controlled river or stream must first give notice to the commissioner and include in his notice sufficient "plans and specification" so that the commissioner will know what he intends to do, when he intends to do it, what risk he foresees from his activities to fish in the vicinity, and what steps he intends to undertake for their protection. The commissioner will then review the notification and either grant the request, reject the

application, or request "full" plans and specifications requiring the actor to go into greater detail and answer specific questions. Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

**Rejection of a request to ford need not be preceded by a request for full plans and specifications unless the commissioner lacks sufficient information to make a determination on the application.** Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

**Sec. 16.05.890. Exemption for emergency situations.** In an emergency arising from weather or stream flow conditions, the department, through its authorized representatives, shall issue oral permits to a riparian owner for removing obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications as required by AS 16.05.870. (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962)





THE STATE  
*of* **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Fish and Game

HABITAT SECTION  
Matanuska-Susitna Area Office

1801 South Margaret Drive, Suite 6  
Palmer, Alaska 99645-6736  
Main: 907.861.3200  
Fax: 907.861.3232

December 13, 2023

**RE:** Addendum No 1 (of 1) to the Legislative History of Alaska Statutes Pertaining to the Proper Protection of Anadromous Fish and to the free passage of both anadromous and resident fish

Pursuant to Executive Order 107 on February 10, 2003 by Governor Frank Murkowski, the Division of Habitat and Restoration in the Alaska Department of Fish and Game (ADF&G) was transferred to the Department of Natural Resources (DNR) as the Office of Habitat Management and Permitting. The Title 16 statutes changed from AS 16.05.840 – 16.05.900 to AS 41.14.840 – AS 41.14.900. The consultive role of the ADF&G under the Forest Resources and Practices Act (AS 41.17) was also moved to the DNR. On February 13, 2008, pursuant to Executive Order 114 by Governor Sarah Palin, the office was transferred back to the ADF&G as the Division of Habitat and AS 16.05 amended to include the current statutes as AS 16.05.841 – AS 16.05.901. No changes to the actual wording in the statutes occurred during the time Habitat was at DNR.

In addition, on August 26, 2019, the Deputy Commissioner, Ben Mulligan confirmed that with the elimination of the Director position in the Division of Habitat, that Habitat would henceforth be the Habitat Section.

Compiled by:

Al Ott  
Ron Benkert  
Sarah Myers  
Alaska Department of Fish and Game  
Habitat Section

Enclosures: Executive Order No 107  
Executive Order No 114

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



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February 10, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order transferring certain functions relating to the protection of fish habitat from the Department of Fish and Game to the Department of Natural Resources (DNR).

Currently, the division of habitat and restoration in the Department of Fish and Game oversees the requirements of AS 16.05.840, relating to maintaining fish passage whenever a stream frequented by fish is obstructed. The same division oversees the permitting function laid out in AS 16.05.870, which ensures the protection of water bodies important for anadromous fish. To better coordinate these complex and important functions with the management of our state's resources, it makes sense to transfer them to the DNR under the supervision of a deputy commissioner of that department. I envision that the expert staff needed to carry out these functions will join the DNR.

Because this function now will reside in the DNR, the important consultative role of the Department of Fish and Game under the Forest Resources and Practices Act (AS 41.17) (Act) also must be moved to the DNR; the Executive Order assigns that role to the same DNR deputy commissioner. At the same time, the role currently assigned to the commissioner of natural resources in the Act is transferred to the state forester in the division of forestry, preserving the balance between forest stewardship and stream preservation that the legislature envisioned.

To	H&RD	INIT	DATE
1	Director		
1	Deputy Dir.		
	Admin. Mgr.		
	Admin. Asst.		
	Reg. Sup 1		
	Reg. Sup 2		
	Reg. Sup 3		
	SPCO		
	HB IV		
	EVOS		
	HB III		

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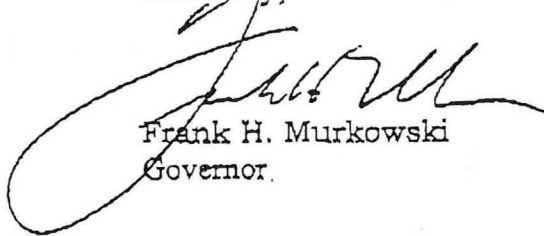
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The Honorable Pete Kott  
February 10, 2003  
Page 2

These changes will help us achieve efficient, fair, and balanced review of projects that seek to tap our state's natural resources.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Frank M.', is written over the typed name and title.

Frank H. Murkowski  
Governor.

## EXECUTIVE ORDER NO. 107

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, I order the following:

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

4 FINDINGS. As governor, I find that the transfer of certain functions relating to the  
5 protection of fish habitat in rivers, lakes, and streams of the state, and related functions  
6 regarding fish and game protection, from the Department of Fish and Game to a deputy  
7 commissioner of natural resources would be in the best interests of efficient administration.  
8 To preserve the existing statutory balance between stream preservation and forest  
9 stewardship, the role currently assigned to the commissioner of natural resources under the  
10 Forest Resources and Practices Act is transferred to the state forester in the division of  
11 forestry, Department of Natural Resources. These transfers will permit closer and more  
12 balanced coordination, improving the planning process for projects affecting these bodies of  
13 water.

14 \* Sec. 2. AS 16.05.920(a) is amended to read:

15 (a) Unless permitted by AS 16.05 - AS 16.40, by AS 41.14, or by regulation  
16 adopted under AS 16.05 - AS 16.40 or AS 41.14, a person may not take, possess,  
17 transport, sell, offer to sell, purchase, or offer to purchase fish, game, or marine  
18 aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of fish or  
19 game.

20 \* Sec. 3. AS 16.05.925(a) is amended to read:

21 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,  
22 16.05.783, 16.05.831, [16.05.860, AND] 16.05.905, and AS 41.14.860, a person who  
23 violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or

1 AS 16.20, is guilty of a class A misdemeanor.

2 \* Sec. 4. AS 16.20.070 is amended to read:

3 Sec. 16.20.070. Relationship to other laws. AS 16.20.050 and 16.20.060 do  
4 not affect AS 41.14.870 - 41.14.890 [AS 16.05.870 - 16.05.890].

5 \* Sec. 5. AS 41 is amended by adding a new chapter to read:

6 Chapter 14. Rivers, Lakes, and Streams.

7 Sec. 41.14.150. Enforcement authority. The following persons are peace  
8 officers of the state and they shall enforce this chapter:

9 (1) an employee of the department authorized by the deputy  
10 commissioner;

11 (2) a police officer in the state;

12 (3) any other person authorized by the deputy commissioner.

13 Sec. 41.14.160. Duty to arrest. Each peace officer designated in  
14 AS 41.14.150 shall arrest a person violating a provision of this chapter, or any  
15 regulation adopted under this chapter, in the peace officer's presence or view, and shall  
16 take the person for examination or trial before an officer or court of competent  
17 jurisdiction unless in the judgment of the peace officer it would be in the state's best  
18 interest to issue a warning or a citation under AS 41.14.165.

19 Sec. 41.14.165. Form and issuance of citation. (a) When a peace officer  
20 stops or contacts a person concerning a violation of this chapter or of a regulation  
21 adopted under this chapter that is a misdemeanor, the peace officer may, in the  
22 officer's discretion, issue a citation to the person as provided in AS 12.25.180.

23 (b) The supreme court shall specify by rule or order those misdemeanors that  
24 are appropriate for disposition without court appearance, and shall establish a schedule  
25 of bail amounts. Before establishing or amending the schedule of bail amounts  
26 required by this subsection, the supreme court shall appoint and consult with an  
27 advisory committee consisting of two officers of the division of fish and wildlife  
28 protection of the Department of Public Safety, two representatives of the department,  
29 two district court judges, and the chairpersons of the House and Senate Judiciary  
30 Committees of the legislature. The maximum bail amount for an offense may not  
31 exceed the maximum fine specified by law for that offense. If the misdemeanor for

1 which the citation is issued may be disposed of without court appearance, the issuing  
2 peace officer shall write on the citation the amount of bail applicable to the violation.

3 (c) A person cited for a misdemeanor for which a bail amount has been  
4 established under (b) of this section may, within 15 days after the date of the citation,  
5 mail or personally deliver to the clerk of the court in which the citation is filed by the  
6 peace officer

7 (1) the amount of bail indicated on the citation for that offense; and

8 (2) a copy of the citation indicating that the right to an appearance is  
9 waived, a plea of no contest is entered and the bail is forfeited.

10 (d) When bail has been forfeited under (c) of this section, a judgment of  
11 conviction shall be entered. Forfeiture of bail and all seized items is a complete  
12 satisfaction for the misdemeanor. The clerk of the court accepting the bail shall  
13 provide the offender with a receipt stating that fact if requested.

14 (e) If the person cited fails to pay the bail amount established under (b) of this  
15 section or to appear in court as required, the citation is considered a summons for a  
16 misdemeanor.

17 (f) Notwithstanding other provisions of law, if a person cited for a  
18 misdemeanor for which a bail amount has been established under (b) of this section  
19 appears in court and is found guilty, the penalty that is imposed for the offense may  
20 not exceed the bail amount for that offense established under (b) of this section.

21 **Sec. 41.14.170. Power to execute warrant.** Each peace officer designated in  
22 AS 41.14.150 may execute a warrant or other process issued by an officer or court of  
23 competent jurisdiction for the enforcement of this chapter, and may, with a search  
24 warrant, search any place at any time. The judge of a court having jurisdiction may,  
25 upon proper oath or affirmation showing probable cause, issue a warrant in all cases.

26 **Sec. 41.14.180. Power to search without warrant.** Each peace officer  
27 designated in AS 41.14.150 may without a warrant search any thing or place if the  
28 search is reasonable or is not protected from searches and seizures without warrant  
29 within the meaning of art. I, sec. 14, Alaska Constitution, which specifically  
30 enumerates "persons, houses and other property, papers, and effects." However,  
31 before a search without warrant is made a signed written statement by the person



1 making the search shall be submitted to the person in control of the property or object  
2 to be searched, stating the reason the search is being conducted. A written receipt  
3 shall be given by the person conducting the search for property which is taken as a  
4 result of the search. The enumeration of specific things does not limit the meaning of  
5 words of a general nature.

6 Sec. 41.14.190. Seizure and disposition of equipment. Boats, aircraft,  
7 automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a  
8 violation of this chapter or a regulation adopted under this chapter may be seized  
9 under a valid search, and all fish and game, or parts of fish and game, or nests or eggs  
10 of birds, taken, transported, or possessed contrary to the provisions of this chapter or a  
11 regulation adopted under this chapter shall be seized by any peace officer designated  
12 in AS 41.14.150. Upon conviction of the offender or upon judgment of the court  
13 having jurisdiction that the item was taken, transported, or possessed in violation of  
14 this chapter or a regulation adopted under this chapter, all fish and game, or parts of  
15 them are forfeited to the state and shall be disposed of as directed by the court. If sold,  
16 the proceeds of the sale shall be transmitted to the proper state officer for deposit in  
17 the general fund. Boats, aircraft, or other vehicles, sleds, and other paraphernalia  
18 seized under the provisions of this chapter or a regulation adopted under this chapter,  
19 unless forfeited by order of the court, shall be returned, after completion of the case  
20 and payment of the fine, if any.

21 Sec. 41.14.195. Forfeiture of equipment. (a) Vessels, aircraft, other motor  
22 vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this  
23 chapter, or regulations adopted under this chapter, and all fish and game or parts of  
24 fish and game or nests or eggs of birds taken, transported, or possessed contrary to the  
25 provisions of this chapter, or regulations adopted under this chapter, may be forfeited  
26 to the state

27 (1) upon conviction of the offender in a criminal proceeding of a  
28 violation of this chapter in a court of competent jurisdiction; or

29 (2) upon judgment of a court of competent jurisdiction in a proceeding  
30 in rem that an item specified above was used in or in aid of a violation of this chapter  
31 or a regulation adopted under this chapter.

1 (b) Items specified in (a) of this section may be forfeited under this section  
2 regardless of whether they were seized before instituting the forfeiture action.

3 (c) An action for forfeiture under this section may be joined with an  
4 alternative action for damages brought by the state to recover damages for the value of  
5 fish and game or parts of them or nests or eggs of birds taken, transported, or  
6 possessed contrary to the provisions of this chapter or a regulation adopted under it.

7 (d) It is no defense that the person who had the item specified in (a) of this  
8 section in possession at the time of its use and seizure has not been convicted or  
9 acquitted in a criminal proceeding resulting from or arising out of its use.

10 (e) Forfeiture may not be made of an item subsequently sold to an innocent  
11 purchaser in good faith. The burden of proof as to whether the purchaser purchased  
12 the item innocently and in good faith shall be on the purchaser.

13 (f) An item forfeited under this section shall be disposed of at the discretion of  
14 the department. Before the department disposes of an aircraft it shall consider transfer  
15 of ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

16 Sec. 41.14.200. Power to administer oaths. Each peace officer designated in  
17 AS 41.14.150 may administer to or take from any person, an oath, affirmation, or  
18 affidavit when it is for use in a prosecution or proceeding under or in the enforcement  
19 of this chapter.

20 Sec. 41.14.340. Fishway required. If the deputy commissioner considers it  
21 necessary, every dam or other obstruction built by any person across a stream  
22 frequented by salmon or other fish shall be provided by that person with a durable and  
23 efficient fishway and a device for efficient passage for downstream migrants. The  
24 fishway or device or both shall be maintained in a practical and effective manner in  
25 the place, form, and capacity the deputy commissioner approves, for which plans and  
26 specifications shall be approved by the deputy commissioner upon application. The  
27 fishway or device shall be kept open, unobstructed, and supplied with a sufficient  
28 quantity of water to admit freely the passage of fish through it.

29 Sec. 41.14.350. Hatchery required. If a fishway over a dam or obstruction is  
30 considered impracticable by the deputy commissioner because of cost, the owner of  
31 the dam or obstruction, in order to compensate for the loss resulting from the dam or

1 obstruction shall, at the owner's option

2 (1) pay a lump sum acceptable to the deputy commissioner to the state  
3 fish and game fund;

4 (2) convey to the state a site of a size satisfactory to the deputy  
5 commissioner at a place mutually satisfactory to both parties, and erect on it a fish  
6 hatchery, rearing ponds, necessary buildings, and other facilities according to plans  
7 and specifications furnished by the commissioner of fish and game, and give a good  
8 and sufficient bond to furnish water, lights, and necessary money to operate and  
9 maintain the hatchery and rearing ponds; or

10 (3) enter into an agreement with the deputy commissioner, secured by  
11 good and sufficient bond, to pay to the fish and game fund the initial amount of money  
12 and annual payments thereafter that the commissioner of fish and game considers  
13 necessary to expand, maintain, and operate additional facilities at existing hatcheries  
14 within a reasonable distance of the dam or obstruction.

15 **Sec. 41.14.860. Penalty for violating fishway and hatchery requirements.**

16 (a) The owner of a dam or obstruction who fails to comply with AS 41.14.840 or  
17 41.14.850 or a regulation adopted under AS 41.14.840 or 41.14.850 within a  
18 reasonable time specified by written notice from the deputy commissioner is guilty of  
19 a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the  
20 owner fails to comply constitutes a separate offense.

21 (b) In addition to the fine, the dam or other obstruction managed, controlled,  
22 or owned by a person violating AS 41.14.840 or 41.14.850 or a regulation adopted  
23 under AS 41.14.840 or 41.14.850 is a public nuisance and is subject to abatement.

24 **Sec. 41.14.870. Protection of fish and game.** (a) The deputy commissioner  
25 shall, in accordance with AS 44.62 (Administrative Procedure Act), specify the  
26 various rivers, lakes, and streams or parts of them that are important for the spawning,  
27 rearing, or migration of anadromous fish.

28 (b) If a person or governmental agency desires to construct a hydraulic  
29 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a  
30 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or  
31 log-dragging equipment in the bed of a specified river, lake, or stream, the person or

1 governmental agency shall notify the deputy commissioner of this intention before the  
2 beginning of the construction or use.

3 (c) The deputy commissioner shall acknowledge receiving the notice by return  
4 first class mail. If the deputy commissioner determines that the following information  
5 is required, the letter of acknowledgement shall require the person or governmental  
6 agency to submit to the deputy commissioner:

7 (1) full plans and specifications of the proposed construction or work;

8 (2) complete plans and specifications for the proper protection of fish  
9 and game in connection with the construction or work, or in connection with the use;  
10 and

11 (3) the approximate date the construction, work, or use will begin.

12 (d) The deputy commissioner shall approve the proposed construction, work,  
13 or use in writing unless the deputy commissioner finds the plans and specifications  
14 insufficient for the proper protection of fish and game. Upon a finding that the plans  
15 and specifications are insufficient for the proper protection of fish and game, the  
16 deputy commissioner shall notify the person or governmental agency that submitted  
17 the plans and specifications of that finding by first class mail. The person or  
18 governmental agency may, within 90 days of receiving the notice, initiate a hearing  
19 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.

20 **Sec. 41.14.380. Construction without approval prohibited.** If a person or  
21 governmental agency begins construction on a work or project or use for which notice  
22 is required by AS 41.14.870 without first providing plans and specifications subject to  
23 the approval of the deputy commissioner for the proper protection of fish and game,  
24 and without first having obtained written approval of the deputy commissioner as to  
25 the adequacy of the plans and specifications submitted for the protection of fish and  
26 game, the person or agency is guilty of a misdemeanor. If a person or governmental  
27 agency is convicted of violating AS 41.14.870 - 41.14.895 or continues a use, work, or  
28 project without fully complying with AS 41.14.870 - 41.14.895, the use, work, or  
29 project is a public nuisance and is subject to abatement. The cost of restoring a  
30 specified river, lake, or stream to its original condition shall be borne by the violator  
31 and shall be in addition to the penalty imposed by the court.

1           Sec. 41.14.890. Exemption for emergency situations. In an emergency  
2 arising from weather or stream flow conditions, the deputy commissioner, through  
3 authorized representatives, shall issue oral permits to a riparian owner for removing  
4 obstructions or for repairing existing structures without the necessity of submitting  
5 prepared plans and specifications as required by AS 41.14.870.

6           Sec. 41.14.895. Penalty for causing material damage. If a person or  
7 governmental agency fails to notify the deputy commissioner of any construction or  
8 use that causes material damage to the spawning beds or prevents or interferes with  
9 the migration of anadromous fish, or by neglect or noncompliance with plans and  
10 specifications required and approved by the deputy commissioner causes material  
11 damage to the spawning beds or prevents or interferes with the migration of  
12 anadromous fish, the person or governmental agency shall be guilty of a misdemeanor.

13           Sec. 41.14.900. Penalty for violations of AS 41.14.870 - 41.14.895. (a) A  
14 person who violates AS 41.14.870 - 41.14.895 is guilty of a class A misdemeanor.

15           (b) The court shall transmit the proceeds of all fines to the proper state officer  
16 for deposit in the general fund of the state.

17           Sec. 41.14.990. Definitions. In this chapter, unless the context otherwise  
18 requires,

- 19                   (1) "commissioner" means the commissioner of natural resources;
- 20                   (2) "department" means the Department of Natural Resources;
- 21                   (3) "deputy commissioner" means the deputy commissioner of natural  
22 resources appointed under AS 44.37.055;
- 23                   (4) "fish" has the meaning given in AS 16.05.940;
- 24                   (5) "game" has the meaning given in AS 16.05.940; . . .
- 25                   (6) "take" has the meaning given in AS 16.05.940.

26           \* Sec. 6. AS 41.17.010 is amended to read:

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

- 28                   (1) the forest resources of Alaska are among the most valuable natural  
29 resources of the state, and furnish timber and wood products, fish and wildlife,  
30 tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;
- 31                   (2) economic enterprises and other activities and pursuits derived from

1 forest resources warrant the continuing recognition and support of the state;

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

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

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

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

19 (7) except for activities subject to AS 41.14.840 or 41.14.870  
20 [AS 16.05.840 OR 16.05.870] and regulations authorized by those sections, this  
21 chapter and regulations adopted under this chapter establish the fish habitat protection  
22 standards, policies, and review processes under state law.

23 \* Sec. 7. AS 41.17.041(e) is amended to read:

24 (e) The division shall serve as staff to the board. The department, the deputy  
25 commissioner [DEPARTMENT OF FISH AND GAME], and the Department of  
26 Environmental Conservation shall provide technical staffing and information as  
27 needed by the board.

28 \* Sec. 8. AS 41.17.047(c) is amended to read:

29 (c) The board, working with the division [DEPARTMENT], the Department  
30 of Environmental Conservation, the deputy commissioner [DEPARTMENT OF  
31 FISH AND GAME], other affected agencies and parties, and the forest-dependent



1 industries, shall conduct an annual survey of research needs related to forest practices.  
2 The board shall review research proposals and shall make recommendations to  
3 promote research projects that would address these needs to the governor and the  
4 legislature.

5 \* Sec. 9. AS 41.17.047(d) is amended to read:

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

22 \* Sec. 10. AS 41.17.055 is amended to read:

23 Sec. 41.17.055. Powers and duties of the state forester  
24 [COMMISSIONER]. (a) The state forester [COMMISSIONER] may designate  
25 and operate experimental and research forests on state land consistent with the  
26 limitations of AS 38.05.300. Laboratories and other facilities may be employed in  
27 conjunction with those forests.

28 (b) The state forester [COMMISSIONER] may establish and maintain forest  
29 vegetation nurseries and greenhouses for planting stock to be made available, with or  
30 without charge, to organizations, institutions, government agencies, individuals, and  
31 businesses for reforestation, afforestation, and related purposes.

1 (c) The state forester [COMMISSIONER] is authorized to undertake  
2 cooperative forestry programs, extension services, and education programs, and to  
3 otherwise offer a full range of professional management services to the interested  
4 public. When the state forester [COMMISSIONER] considers it beneficial, the state  
5 forester [COMMISSIONER] may participate in federal assistance programs by  
6 accepting assistance in whatever form offered.

7 (d) The state forester [COMMISSIONER] may develop regulations under  
8 this chapter as part of the state program for control of nonpoint source pollution under  
9 the Federal Water Pollution Control Act, as amended. However, the Department of  
10 Environmental Conservation is the lead agency for water quality and control of  
11 nonpoint source pollution under that Act, and the regulations are therefore subject to  
12 the approval of the commissioner of environmental conservation.

13 (e) In the administration of this chapter, the state forester  
14 [COMMISSIONER] shall consult with and draw upon the expertise of interested  
15 organizations, enterprises, individuals, government agencies, educational institutions,  
16 and landowners. The state forester [COMMISSIONER] may enter into cooperative  
17 agreements and contracts with them to carry out this chapter.

18 (f) The state forester [COMMISSIONER] shall locate department personnel  
19 with forestry expertise throughout the state to facilitate public access to professional  
20 management services and other forest resources programs.

21 (g) The state forester [COMMISSIONER] may take other actions necessary  
22 and proper for the administration of this chapter, including the adoption of regulations  
23 under AS 44.62 (Administrative Procedure Act) and AS 41.17.047.

24 \* Sec. 11. AS 41.17.070(a) is amended to read:

25 (a) The state forester [COMMISSIONER] shall develop and continually  
26 maintain a long-range plan for the administration of this chapter that demonstrates that  
27 the provisions of AS 41.17.010 are being recognized and that the standards of  
28 AS 41.17.060 are being met. The state forester [COMMISSIONER] shall maintain a  
29 current inventory or assessment of timber on forest land to assist in meeting the  
30 requirements of this section.

31 \* Sec. 12. AS 41.17.070(b) is amended to read:



(b) To maintain a record of division decision making for public and agency review, the state forester [COMMISSIONER] 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 [COMMISSIONER] shall submit a summary of this record annually to the board.

\* Sec. 13. AS 41.17.080 is amended to read:

Sec. 41.17.080. Regulations. (a) The state forester [COMMISSIONER] 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;

(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 [COMMISSIONER] shall adopt regulations specifying the information to be submitted under AS 41.17.090(c) 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 [COMMISSIONER] 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 [COMMISSIONER] shall make appropriate distinctions between public and private land.

(d) The state forester [COMMISSIONER] 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.

\* Sec. 14. AS 41.17.085(a) is amended to read:

(a) An operator may apply through the state forester [COMMISSIONER] 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 [COMMISSIONER] shall notify the operator of the action taken.

\* Sec. 15. AS 41.17.087(b) is amended to read:

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

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

and

(2) other appropriate water body types.

\* Sec. 16. AS 41.17.087(c) is amended to read:

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

\* Sec. 17. AS 41.17.090(b) is amended to read:

(b) A forest landowner, timber owner, or operator may provide to the state forester [COMMISSIONER] 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.

\* Sec. 18. AS 41.17.090(d) is amended to read:

(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.

\* Sec. 19. AS 41.17.090(e) is amended to read:

(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 [DEPARTMENT OF FISH AND GAME] may resolve the question.

\* Sec. 20. AS 41.17.098(a) is amended to read:

(a) In administering this chapter, the state forester [COMMISSIONER] shall

1 coordinate with other agencies, the deputy commissioner, and affected coastal  
2 districts that have jurisdiction over activities subject to regulation under this chapter.

3 \* Sec. 21. AS 41.17.098(b) is amended to read:

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

9 \* Sec. 22. AS 41.17.098(c) is amended to read:

10 (c) The state forester [COMMISSIONER] shall give due deference to the  
11 Department of Environmental Conservation in decisions concerning water quality.  
12 The commissioner of environmental conservation retains the authority to adopt  
13 nonpoint source pollution regulations for activities subject to this chapter to the extent  
14 that regulations are not adopted by the state forester [COMMISSIONER OF  
15 NATURAL RESOURCES] and approved by the commissioner of environmental  
16 conservation under this chapter. The commissioner of environmental conservation  
17 may withdraw approval of regulations adopted by the state forester  
18 [COMMISSIONER OF NATURAL RESOURCES] under this chapter by following  
19 the procedure for the adoption, amendment, and repeal of regulations under  
20 AS 44.62.180 - 44.62.290.

21 \* Sec. 23. AS 41.17.098(d) is amended to read:

22 (d) The state forester [COMMISSIONER] shall recognize the expertise of the  
23 deputy commissioner [DEPARTMENT OF FISH AND GAME] with regard to fish  
24 and wildlife habitat. On private land, the state forester [COMMISSIONER] shall  
25 give due deference to the deputy commissioner [DEPARTMENT OF FISH AND  
26 GAME] regarding effects on fish habitat from timber operations including variations  
27 to riparian standards, designation of alternative site-specific riparian protection plans,  
28 and road location decisions within riparian areas. On public land, the state forester  
29 [COMMISSIONER] shall give due deference to the deputy commissioner  
30 [DEPARTMENT OF FISH AND GAME] regarding effects on fish and wildlife  
31 habitat from timber operations including timber harvest in riparian areas, variations to

1 riparian standards, and road location decisions within riparian areas. In making  
 2 decisions under AS 41.17.087, the state forester [COMMISSIONER] shall recognize  
 3 fish habitat as the primary value in riparian areas.

4 \* Sec. 24. AS 41.17.098(e) is amended to read:

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

12 \* Sec. 25. AS 41.17.110 is amended to read:

13 Sec. 41.17.110. Conversion of forest land to other uses. An intention to  
 14 convert forest land to other uses after timber harvesting may be stated in the  
 15 notification submitted under AS 41.17.090. In that event, reforestation requirements  
 16 adopted under this chapter do not apply, except that conversion shall be completed  
 17 during the time set by regulation for minimum reforestation of the land, and other  
 18 requirements for revegetation may be imposed to the extent permitted by law. If the  
 19 state forester [COMMISSIONER] finds at any time that the responsible party has  
 20 failed to conform to the intent to convert as stated in the notification, the state  
 21 forester [COMMISSIONER] shall revoke approval of the conversion and require full  
 22 compliance with reforestation requirements.

23 \* Sec. 26. AS 41.17.115 is amended to read:

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

31 (b) The state forester [COMMISSIONER] shall adopt regulations for the

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

6 \* Sec. 27. AS 41.17.116(b) is amended to read:

7 (b) The state forester [COMMISSIONER] shall adopt regulations for private  
8 land outside of the coastal forest of spruce or hemlock that designate the riparian areas  
9 to be protected and the restrictions on timber harvesting operations within the areas  
10 that are necessary for their protection under the management goals established in  
11 AS 41.17.115.

12 \* Sec. 28. AS 41.17.118(b) is amended to read:

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

17 \* Sec. 29. AS 41.17.118(c) is amended to read:

18 (c) In the absence of a site-specific determination by the deputy  
19 commissioner [DEPARTMENT OF FISH AND GAME], the state forester  
20 [COMMISSIONER] shall presume for planning purposes that a stream is anadromous  
21 if it is connected to anadromous waters that are without department [DEPARTMENT  
22 OF FISH AND GAME] documentation of a physical blockage and has a stream  
23 gradient of 8 percent or less.

24 \* Sec. 30. AS 41.17.119 is amended to read:

25 Sec. 41.17.119. Minimum riparian standards for other public land. On  
26 other public land, harvest of timber may not occur

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

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



1 \* Sec. 31. AS 41.17.120 is amended to read:

2       Sec. 41.17.120. Inspections and investigations. The state forester  
3       [COMMISSIONER] may inspect and investigate forest land and activities on it and  
4       may enter upon it in conjunction with any operations as necessary to ensure  
5       compliance with applicable regulations and requirements and to otherwise enforce the  
6       provisions of this chapter. Other state agencies and the deputy commissioner have  
7       this same authority to the extent necessary to enforce their own laws and regulations  
8       on forest land. Those agencies, the deputy commissioner, and the state forester  
9       [COMMISSIONER] shall coordinate their actions under this section.

10 \* Sec. 32. AS 41.17.900(c) is amended to read:

11       (c) The state forester [COMMISSIONER] shall exempt by regulation from  
12       the provisions of this chapter

13               (1) minor, small scale, or incidental commercial operations of little  
14       significance with respect to the purposes of this chapter; and

15               (2) operations for primarily noncommercial purposes, including but  
16       not limited to the harvesting of timber for personal use.

17 \* Sec. 33. AS 41.17.900(d) is amended to read:

18       (d) Notwithstanding any other provision of this chapter, the state forester and  
19       the commissioner may not employ the authority vested by this chapter so as to  
20       duplicate or preempt the statutory authority of other state agencies to adopt regulations  
21       or undertake other administrative actions governing resources, values, or activities on  
22       forest land except for

23               (1) regulations under the Coastal Management Act; and

24               (2) regulations, if authorized by the commissioner of environmental  
25       conservation, relating to control of nonpoint source pollution.

26 \* Sec. 34. AS 41.17 is amended by adding a new section to read:

27       Sec. 41.17.905. Independent authority. With respect to matters governed by  
28       this chapter, the deputy commissioner does not have supervisory authority over the  
29       state forester.

30 \* Sec. 35. AS 41.17.910(a) is amended to read:

31       (a) The deputy commissioner [DEPARTMENT OF FISH AND GAME] and

1 the state forester [COMMISSIONER] shall work cooperatively with private forest  
2 landowners and timber owners to protect, maintain, and enhance wildlife habitat to the  
3 maximum extent practicable, consistent with the interests of the owners in the use of  
4 their timber resources.

5 \* Sec. 36. AS 41.17.910(b) is amended to read:

6 (b) The deputy commissioner [DEPARTMENT OF FISH AND GAME]  
7 shall provide educational and technical assistance and extension services to owners of  
8 private forest land or timber to assist in identifying important wildlife habitat and to  
9 assist in designing voluntary management techniques that minimize adverse effects on  
10 wildlife habitat.

11 \* Sec. 37. AS 41.17.910(c) is amended to read:

12 (c) The deputy commissioner [DEPARTMENT OF FISH AND GAME] and  
13 the landowner shall cooperate in identifying areas of important wildlife habitat on  
14 private forest land and in developing methods for their protection. Methods of  
15 protection for wildlife habitat may include, with the agreement of the landowner, the  
16 purchase of fee title, purchase of conservation easements, and land exchanges.

17 \* Sec. 38. AS 41.17.950(1) is amended to read:

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

20 (A) is cataloged under AS 41.14.870 [AS 16.05.870] as  
21 important for anadromous fish; or

22 (B) is not cataloged under AS 41.14.870 [AS 16.05.870] as  
23 important for anadromous fish but has been determined by the deputy  
24 commissioner [DEPARTMENT OF FISH AND GAME] to contain or exhibit  
25 evidence of anadromous fish in which event the anadromous portion of the  
26 stream or waterway extends up to the first point of physical blockage;

27 \* Sec. 39. AS 41.17.950 is amended by adding a new paragraph to read:

28 (23) "deputy commissioner" means the deputy commissioner of natural  
29 resources appointed under AS 44.37.055.

30 \* Sec. 40. AS 44.37 is amended by adding new sections to read:

31 Sec. 44.37.055. Deputy commissioner. The commissioner of natural



resources shall appoint a deputy commissioner of natural resources.

Sec. 44.37.060. Certain powers and duties of the deputy commissioner.

The deputy commissioner of natural resources appointed under AS 44.37.055 has, but not by way of limitation, the following powers and duties regarding functions under AS 41.14 and AS 41.17:

(1) to adopt regulations to carry out the purposes of AS 41.14.840 - 41.14.900;

(2) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of AS 41.14.840 - 41.14.900;

(3) to initiate or conduct research necessary or advisable to carry out the purposes of AS 41.14.840 - 41.14.900;

(4) to perform the functions assigned in AS 41.17.

\* Sec. 41. AS 44.62.330(a)(48) is amended to read:

(48) the Department of Natural Resources [FISH AND GAME] as to functions relating to the protection of fish and game under AS 41.14.870 [AS 16.05.870];

\* Sec. 42. AS 46.15.020(b) is amended to read:

(b) The commissioner shall

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

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of AS 41.14.870

1 [AS 16.05.870]; and shall make the record of applications, including temporary water  
2 use applications under AS 46.15.155 that have been accepted as complete,  
3 authorizations, permits, certificates, amendments, and orders affecting them available  
4 to the public on the Internet;

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

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

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

17 (A) information on the number of applications and  
18 appropriations for the removal of water from one hydrological unit to another  
19 that were requested and that were granted and on the amounts of water  
20 involved;

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

23 (C) recommendations of the commissioner for changes in state  
24 water law; and

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

27 \* Sec. 43. AS 46.35.200(4) is amended to read:

28 (4) "permit" means each of the following licenses, permits or  
29 authorizations required to be obtained from a state agency before constructing or  
30 operating a project in the state, or any other license, permit or authorization which  
31 may be designated by the commissioner;

- 1 (A) emission control permit - AS 46.14, 18 AAC 50.120;  
 2 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;  
 3 (C) burning permit during fire season - AS 41.15.050, 11 AAC  
 4 92.010;  
 5 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;  
 6 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;  
 7 (F) brine or other salt water waste disposal permit -  
 8 AS 31.05.030, 11 AAC 22.250;  
 9 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;  
 10 (H) tidelands right-of-way or easement permit - AS 38.05.820,  
 11 11 AAC 62.810;  
 12 (I) authorization for tidelands transportation - AS 38.05.110,  
 13 11 AAC 76.205;  
 14 (J) tide and submerged lands prospecting permit -  
 15 AS 38.05.250;  
 16 (K) mineral and geothermal prospecting permits -  
 17 AS 38.05.145;  
 18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;  
 19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;  
 20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;  
 21 (O) permit to appropriate water - AS 46.15.040, 11 AAC  
 22 72.050;  
 23 (P) permit for use of timber or materials - AS 38.05.110,  
 24 11 AAC 76.185;  
 25 (Q) special material use permit - AS 38.05.115, 11 AAC  
 26 76.540;  
 27 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;  
 28 (S) limited personal use permit - AS 38.05.820, 11 AAC  
 29 62.820;  
 30 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;  
 31 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;

(V) miscellaneous state land use permit - AS 38.05.035,  
11 AAC 96.010;

(W) anadromous fish protection permit - former AS 16.05.870,  
5 AAC 95.100, AS 41.14.870. and regulations adopted under those  
statutes;

(X) critical habitat area permit - AS 16.20.520 - 16.20.530;

(Y) state game refuge land permit - AS 16.20.050 - 16.20.060;

(Z) state park incompatible use permit - AS 41.21.020, 11 AAC  
18.010;

(AA) pesticides permit - AS 46.03.320, 18 AAC 90;

(BB) surface oiling permit - AS 46.03.740, 18 AAC 75;

(CC) encroachment permit - AS 19.25.200;

(DD) utility permit - AS 19.25.010;

(EE) driveway permit - AS 19.05.020, 17 AAC 10.020;

(FF) access roads permit - AS 41.21.020, 11 AAC 18.020;

(GG) right-of-way and easement permits - AS 38.05.850,  
11 AAC 58.200;

(HH) right-of-way permit - AS 38.05.850;

\* Sec. 44. AS 16.05.840, 16.05.850, 16.05.860, 16.05.870, 16.05.880, 16.05.890,  
16.05.895, and 16.05.900 are repealed.

\* Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to  
read:

#### RETIREMENT SYSTEM STATUS OF CERTAIN TRANSFERRED EMPLOYEES.

(a) Notwithstanding sec. 4, ch. 27, SLA 1983, an employee of the Department of Fish and  
Game who, on the day before the effective date of this Order, as authorized by sec. 4, ch. 27,  
SLA 1983 is accruing service credit as a peace officer under AS 39.35 by virtue of having  
been, on June 23, 1983, in a position as a "qualified employee of the Department of Fish and  
Game," and whose position is transferred to the Department of Natural Resources as a result  
of this Order, continues to accrue service credit as a peace officer under AS 39.35 after the  
transfer as long as the employee remains in a position described in this subsection, in the  
Department of Natural Resources.

1 (b) Nothing in this section may be construed as guaranteeing continued employment  
2 rights to any state employee.

3 (c) In this section, "qualified employee of the Department of Fish and Game" has the  
4 meaning given in AS 39.35.680 as that statute existed on June 22, 1983.

5 \* Sec. 46. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

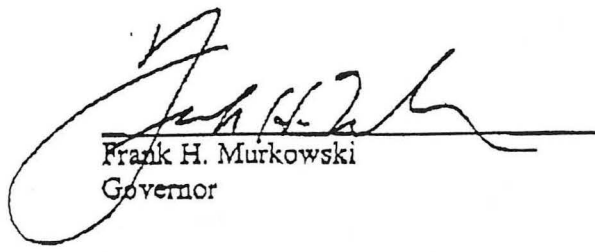
7 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings  
8 pending under a law repealed by this Order, or in connection with functions transferred by  
9 this Order, continue in effect and may be continued and completed notwithstanding a transfer  
10 or repeal provided in this Order.

11 (b) Regulations adopted to implement former AS 16.05.840 - 16.05.860 and former  
12 AS 16.05.870 - 16.05.895 and to implement AS 41.17 and in effect on April 14, 2003, remain  
13 in effect and may continue to be implemented and enforced, consistent with the changes made  
14 by this Order, until amended or repealed.

15 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by  
16 this Order, and in effect on April 14, 2003, remain in effect notwithstanding this Order's  
17 taking effect. Records, equipment, appropriations, and other property of an agency of the  
18 state whose functions are transferred under this Order shall be transferred to implement the  
19 provisions of this Order.

20 \* Sec. 47. This Order takes effect April 15, 2003.

DATED: 2-11-03



Frank H. Murkowski  
Governor



Introduced in the House: 2/13/08  
Referred: Resources

Introduced in the Senate: 2/13/08  
Referred: Resources

### EXECUTIVE ORDER NO. 114

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, I order the following:

2 \* **Section 1.** The uncoded law of the State of Alaska is amended by adding a new  
3 section to read:

4 FINDINGS. As governor, I find that the transfer back of certain functions relating to  
5 the protection of fish habitat in rivers, lakes, and streams of the state, and related functions  
6 regarding fish and game protection, from a deputy commissioner of natural resources to the  
7 Department of Fish and Game, would be in the best interests of efficient administration. To  
8 restore the statutory balance between stream preservation and forest stewardship, the role  
9 currently assigned to the state forester in the division of forestry, Department of Natural  
10 Resources, is transferred back to the commissioner of natural resources under AS 41.17  
11 (Forest Resources and Practices Act).

12 \* **Sec. 2.** AS 16.05 is amended by adding new sections to read:

13 **Sec. 16.05.841. Fishway required.** If the commissioner considers it  
14 necessary, every dam or other obstruction built by any person across a stream  
15 frequented by salmon or other fish shall be provided by that person with a durable  
16 and efficient fishway and a device for efficient passage for downstream migrants.  
17 The fishway or device or both shall be maintained in a practical and effective manner  
18 in the place, form, and capacity the commissioner approves for which plans and  
19 specifications shall be approved by the department upon application. The fishway or  
20 device shall be kept open, unobstructed, and supplied with a sufficient quantity of  
21 water to admit freely the passage of fish through it.

22 **Sec. 16.05.851. Hatchery required.** If a fishway over a dam or obstruction is  
23 considered impracticable by the commissioner because of cost, the owner of the dam

1 or obstruction, in order to compensate for the loss resulting from the dam or  
2 obstruction shall, at the owner's option

3 (1) pay a lump sum acceptable to the commissioner to the state fish  
4 and game fund;

5 (2) convey to the state a site of a size satisfactory to the  
6 commissioner at a place mutually satisfactory to both parties, and erect on it a fish  
7 hatchery, rearing ponds, necessary buildings, and other facilities according to plans  
8 and specifications furnished by the commissioner, and give a good and sufficient  
9 bond to furnish water, lights, and necessary money to operate and maintain the  
10 hatchery and rearing ponds; or

11 (3) enter into an agreement with the commissioner, secured by good  
12 and sufficient bond, to pay to the fish and game fund the initial amount of money and  
13 annual payments thereafter that the commissioner considers necessary to expand,  
14 maintain, and operate additional facilities at existing hatcheries within a reasonable  
15 distance of the dam or obstruction.

16 **Sec. 16.05.861. Penalty for violating fishway and hatchery requirements.**

17 (a) The owner of a dam or obstruction who fails to comply with AS 16.05.841 or  
18 16.05.851 or a regulation adopted under AS 16.05.841 or 16.05.851 within a  
19 reasonable time specified by written notice from the commissioner is guilty of a  
20 misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the  
21 owner fails to comply constitutes a separate offense.

22 (b) In addition to the fine, the dam or other obstruction managed, controlled,  
23 or owned by a person violating AS 16.05.841 or 16.05.851 or a regulation adopted  
24 under AS 16.05.841 or 16.05.851 is a public nuisance and is subject to abatement.

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

26 **Sec. 16.05.871. Protection of fish and game.** (a) The commissioner shall, in  
27 accordance with AS 44.62 (Administrative Procedure Act), specify the various  
28 rivers, lakes, and streams or parts of them that are important for the spawning,  
29 rearing, or migration of anadromous fish.

30 (b) If a person or governmental agency desires to construct a hydraulic  
31 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a



1 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment  
 2 or log-dragging equipment in the bed of a specified river, lake, or stream, the person  
 3 or governmental agency shall notify the commissioner of this intention before the  
 4 beginning of the construction or use.

5 (c) The commissioner shall acknowledge receiving the notice by return first  
 6 class mail. If the commissioner determines that the following information is required,  
 7 the letter of acknowledgement shall require the person or governmental agency to  
 8 submit to the commissioner:

9 (1) full plans and specifications of the proposed construction or work;

10 (2) complete plans and specifications for the proper protection of fish  
 11 and game in connection with the construction or work, or in connection with the use;  
 12 and

13 (3) the approximate date the construction, work, or use will begin.

14 (d) The commissioner shall approve the proposed construction, work, or use  
 15 in writing unless the commissioner finds the plans and specifications insufficient for  
 16 the proper protection of fish and game. Upon a finding that the plans and  
 17 specifications are insufficient for the proper protection of fish and game, the  
 18 commissioner shall notify the person or governmental agency that submitted the  
 19 plans and specifications of that finding by first class mail. The person or  
 20 governmental agency may, within 90 days of receiving the notice, initiate a hearing  
 21 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.

22 **Sec. 16.05.881. Construction without approval prohibited.** If a person or  
 23 governmental agency begins construction on a work or project or use for which  
 24 notice is required by AS 16.05.871 without first providing plans and specifications  
 25 subject to the approval of the commissioner for the proper protection of fish and  
 26 game, and without first having obtained written approval of the commissioner as to  
 27 the adequacy of the plans and specifications submitted for the protection of fish and  
 28 game, the person or agency is guilty of a misdemeanor. If a person or governmental  
 29 agency is convicted of violating AS 16.05.871 - 16.05.896 or continues a use, work,  
 30 or project without fully complying with AS 16.05.871 - 16.05.896, the use, work, or  
 31 project is a public nuisance and is subject to abatement. The cost of restoring a

1 specified river, lake, or stream to its original condition shall be borne by the violator  
 2 and shall be in addition to the penalty imposed by the court.

3 **Sec. 16.05.891. Exemption for emergency situations.** In an emergency  
 4 arising from weather or stream flow conditions, the commissioner, through  
 5 authorized representatives, shall issue oral permits to a riparian owner for removing  
 6 obstructions or for repairing existing structures without the necessity of submitting  
 7 prepared plans and specifications as required by AS 16.05.871.

8 **Sec. 16.05.896. Penalty for causing material damage.** If a person or  
 9 governmental agency fails to notify the commissioner of any construction or use that  
 10 causes material damage to the spawning beds or prevents or interferes with the  
 11 migration of anadromous fish, or by neglect or noncompliance with plans and  
 12 specifications required and approved by the commissioner causes material damage to  
 13 the spawning beds or prevents or interferes with the migration of anadromous fish,  
 14 the person or governmental agency shall be guilty of a misdemeanor.

15 **Sec. 16.05.901. Penalty for violations of AS 16.05.871 - 16.05.896.** (a) A  
 16 person who violates AS 16.05.871 - 16.05.896 is guilty of a class A misdemeanor.

17 (b) The court shall transmit the proceeds of all fines to the proper state  
 18 officer for deposit in the general fund of the state.

19 \* **Sec. 4.** AS 16.05.920(a) is amended to read:

20 (a) Unless permitted by AS 16.05 - AS 16.40 [, BY AS 41.14,] or by  
 21 regulation adopted under AS 16.05 - AS 16.40 [OR AS 41.14], a person may not  
 22 take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game,  
 23 or marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg  
 24 of fish or game.

25 \* **Sec. 5.** AS 16.05.925(a) is amended to read:

26 (a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723,  
 27 16.05.783, 16.05.831, 16.05.861, and 16.05.905, [AND AS 41.14.860,] a person  
 28 who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter  
 29 or AS 16.20, is guilty of a class A misdemeanor.

30 \* **Sec. 6.** AS 16.20.070 is amended to read:

31 **Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.05.060 do

1 not affect AS 16.05.871 - 16.05.891 [AS 41.14.870 - 41.14.890].

2 \* **Sec. 7.** AS 41.17.010 is amended to read:

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

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

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

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

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

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

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

27 (7) except for activities subject to AS 16.05.841 or 16.05.871  
28 [AS 41.14.840 OR 41.14.870] and regulations authorized by those sections, this  
29 chapter and regulations adopted under this chapter establish the fish habitat  
30 protection standards, policies, and review processes under state law.

31 \* **Sec. 8.** AS 41.17.041(e) is amended to read:

(e) The division shall serve as staff to the board. The department, the **Department of Fish and Game** [DEPUTY COMMISSIONER], and the Department of Environmental Conservation shall provide technical staffing and information as needed by the board.

\* **Sec. 9.** AS 41.17.047(c) is amended to read:

(c) The board, working with the **department** [DIVISION], the Department of Environmental Conservation, the **Department of Fish and Game** [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.

\* **Sec. 10.** AS 41.17.047(d) is amended to read:

(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 **Department of Fish and Game** [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.

\* **Sec. 11.** AS 41.17.055 is amended to read:

**Sec. 41.17.055. Powers and duties of the commissioner** [STATE

1 FORESTER]. (a) The commissioner [STATE FORESTER] may designate and  
2 operate experimental and research forests on state land consistent with the limitations  
3 of AS 38.05.300. Laboratories and other facilities may be employed in conjunction  
4 with those forests.

5 (b) The commissioner [STATE FORESTER] may establish and maintain  
6 forest vegetation nurseries and greenhouses for planting stock to be made available,  
7 with or without charge, to organizations, institutions, government agencies,  
8 individuals, and businesses for reforestation, afforestation, and related purposes.

9 (c) The commissioner [STATE FORESTER] is authorized to undertake  
10 cooperative forestry programs, extension services, and education programs, and to  
11 otherwise offer a full range of professional management services to the interested  
12 public. When the commissioner [STATE FORESTER] considers it beneficial, the  
13 commissioner [STATE FORESTER] may participate in federal assistance programs  
14 by accepting assistance in whatever form offered.

15 (d) The commissioner [STATE FORESTER] may develop regulations  
16 under this chapter as part of the state program for control of nonpoint source  
17 pollution under the Federal Water Pollution Control Act, as amended. However, the  
18 Department of Environmental Conservation is the lead agency for water quality and  
19 control of nonpoint source pollution under that Act, and the regulations are therefore  
20 subject to the approval of the commissioner of environmental conservation.

21 (e) In the administration of this chapter, the commissioner [STATE  
22 FORESTER] shall consult with and draw upon the expertise of interested  
23 organizations, enterprises, individuals, government agencies, educational institutions,  
24 and landowners. The commissioner [STATE FORESTER] may enter into  
25 cooperative agreements and contracts with them to carry out this chapter.

26 (f) The commissioner [STATE FORESTER] shall locate department  
27 personnel with forestry expertise throughout the state to facilitate public access to  
28 professional management services and other forest resources programs.

29 (g) The commissioner [STATE FORESTER] may take other actions  
30 necessary and proper for the administration of this chapter, including the adoption of  
31 regulations under AS 44.62 (Administrative Procedure Act) and AS 41.17.047.

1 \* **Sec. 12.** AS 41.17.070(a) is amended to read:

2 (a) The **commissioner** [STATE FORESTER] shall develop and continually  
3 maintain a long-range plan for the administration of this chapter that demonstrates  
4 that the provisions of AS 41.17.010 are being recognized and that the standards of  
5 AS 41.17.060 are being met. The **commissioner** [STATE FORESTER] shall  
6 maintain a current inventory or assessment of timber on forest land to assist in  
7 meeting the requirements of this section.

8 \* **Sec. 13.** AS 41.17.070(b) is amended to read:

9 (b) To maintain a record of division decision making for public and agency  
10 review, the **commissioner** [STATE FORESTER] shall compile and index each  
11 decision made under this chapter regarding directives, stop work orders, waivers  
12 from requirements, decisions of hearing officers, and decisions on appeals. The  
13 **commissioner** [STATE FORESTER] shall submit a summary of this record  
14 annually to the board.

15 \* **Sec. 14.** AS 41.17.080 is amended to read:

16 **Sec. 41.17.080. Regulations.** (a) The **commissioner** [STATE FORESTER]  
17 may adopt regulations necessary to accomplish the purposes of this chapter under  
18 AS 44.62 (Administrative Procedure Act) regarding forest practices such as

19 (1) road construction and maintenance, including

20 (A) road location, construction, maintenance, and post-  
21 operation management or removal;

22 (B) landing location and construction;

23 (C) drainage structures;

24 (D) material sources and spoil disposal sites;

25 (2) timber harvesting, including

26 (A) timber harvest unit planning and design;

27 (B) felling and bucking;

28 (C) cable yarding, shovel, tractor, and wheeled skidder  
29 systems;

30 (D) landing clean-up;

31 (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 commissioner [STATE FORESTER] shall adopt regulations specifying the information to be submitted under AS 41.17.090(c) in the detailed plan of operations to enable the division to determine whether the activities comply with the requirements of this chapter.

(c) The commissioner [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 commissioner [STATE FORESTER] shall make appropriate distinctions between public and private land.

(d) The commissioner [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.

\* **Sec. 15.** AS 41.17.087(b) is amended to read:

(b) The commissioner [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



1 less; and

2 (2) other appropriate water body types.

3 \* **Sec. 16.** AS 41.17.087(c) is amended to read:

4 (c) A determination by the state forester under (a) of this section and  
5 regulations by the commissioner [STATE FORESTER] under (b) of this section  
6 shall give due deference under AS 41.17.098.

7 \* **Sec. 17.** AS 41.17.090(b) is amended to read:

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

14 \* **Sec. 18.** AS 41.17.090(d) is amended to read:

15 (d) Within five days after receipt of a detailed plan of operations under (c) of  
16 this section, the state forester shall distribute the information received under (c) of  
17 this section to [THE DEPUTY COMMISSIONER,] affected state agencies[,] and  
18 coastal districts, and shall distribute the information received under (c)(1) of this  
19 section to each member of the public who has asked to receive copies of notifications  
20 for the affected area.

21 \* **Sec. 19.** AS 41.17.090(e) is amended to read:

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



1 of water body type for purposes of the standards in AS 41.17.116(a), the  
 2 **Department of Fish and Game** [DEPUTY COMMISSIONER] may resolve the  
 3 question.

4 \* **Sec. 20.** AS 41.17.098(a) is amended to read:

5 (a) In administering this chapter, the **commissioner** [STATE FORESTER]  
 6 shall coordinate with other agencies [, THE DEPUTY COMMISSIONER,] and  
 7 affected coastal districts that have jurisdiction over activities subject to regulation  
 8 under this chapter.

9 \* **Sec. 21.** AS 41.17.098(b) is amended to read:

10 (b) In a review or implementation of a detailed plan of operations under  
 11 AS 41.17.090 and in a decision on a proposed variation from requirements under  
 12 AS 41.17.087, the **commissioner** [STATE FORESTER] shall consider the  
 13 comments of [THE DEPUTY COMMISSIONER,] each affected state agency and,  
 14 where applicable, coastal districts.

15 \* **Sec. 22.** AS 41.17.098(c) is amended to read:

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

26 \* **Sec. 23.** AS 41.17.098(d) is amended to read:

27 (d) The **commissioner** [STATE FORESTER] shall recognize the expertise  
 28 of the **Department of Fish and Game** [DEPUTY COMMISSIONER] with regard to  
 29 fish and wildlife habitat. On private land, the **commissioner** [STATE FORESTER]  
 30 shall give due deference to the **Department of Fish and Game** [DEPUTY  
 31 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 decisions within riparian areas. On public land, the commissioner [STATE FORESTER] shall give due deference to the Department of Fish and Game [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 commissioner [STATE FORESTER] shall recognize fish habitat as the primary value in riparian areas.

\* **Sec. 24.** AS 41.17.098(e) is amended to read:

(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 commissioner [STATE FORESTER] does not agree with a commenting agency [OR THE DEPUTY COMMISSIONER], the commissioner [STATE FORESTER] shall prepare a written statement of the reasons for the disagreement.

\* **Sec. 25.** AS 41.17.110 is amended to read:

**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 commissioner [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 commissioner [STATE FORESTER] shall revoke approval of the conversion and require full compliance with reforestation requirements.

\* **Sec. 26.** AS 41.17.115 is amended to read:

**Sec. 41.17.115. Management of riparian areas; regulations.** (a) The commissioner [STATE FORESTER] shall protect riparian areas from the significant adverse effects of timber harvest activities on fish habitat and water quality. The

1 management intent for riparian areas is the adequate preservation of fish habitat by  
 2 maintaining a short- and long-term source of large woody debris, stream bank  
 3 stability, channel morphology, water temperatures, stream flows, water quality,  
 4 adequate nutrient cycling, food sources, clean spawning gravels, and sunlight.

5 (b) The commissioner [STATE FORESTER] shall adopt regulations for the  
 6 protection of riparian areas; the regulations may include higher standards of  
 7 protection for fish and other public resources on land managed by the department  
 8 than on other public land or private land. The regulations may vary by region of the  
 9 state and must take into consideration reasonable classification of water bodies and  
 10 the economic feasibility of timber operations.

11 \* **Sec. 27.** AS 41.17.116(c) is amended to read:

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

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

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

21 (3) along a Type III-C water body, harvest of timber within 100 feet  
 22 of the water body must be located and designed primarily to protect fish habitat and  
 23 surface water quality as determined by the commissioner [STATE FORESTER]  
 24 with due deference to the Department of Fish and Game [DEPUTY  
 25 COMMISSIONER].

26 \* **Sec. 28.** AS 41.17.118 is amended to read:

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

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

31 (A) harvest of timber may not be undertaken within 100 feet

1 immediately adjacent to an anadromous or high value resident fish water  
2 body;

3 (B) between 100 and 300 feet from the water body, harvest of  
4 timber may occur but must be consistent with the maintenance of important  
5 fish and wildlife habitat as determined by the commissioner [STATE  
6 FORESTER] with due deference to the Department of Fish and Game  
7 [DEPUTY COMMISSIONER];

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

10 (A) along a Type II-A water body, harvest of timber may not  
11 be undertaken within 150 feet of the water body; additionally, harvest of  
12 timber may not be undertaken along outer bends subject to erosion within  
13 225 feet of the water body or to the terrace top break, whichever is smaller;

14 (B) along a Type II-B water body, harvest of timber may not  
15 be undertaken within 150 feet of the water body; additionally, harvest of  
16 timber may not be undertaken along outer bends subject to erosion within  
17 325 feet of the water body or to the terrace top break, whichever is smaller;

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

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

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

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

(G) along Type II-A, II-B, II-C, and II-D water bodies, harvest of timber may occur between the landward extent of the riparian retention area and 300 feet from the water body, consistent with the maintenance or enhancement of important wildlife habitat as determined by the commissioner [STATE FORESTER] with due deference to the Department of Fish and Game [DEPUTY COMMISSIONER];

(3) on state forest land managed by the department that is 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; however, 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 commissioner [STATE FORESTER] with the concurrence of the Department of Fish and Game [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 commissioner [STATE FORESTER] with due deference to the Department of Fish and Game [DEPUTY COMMISSIONER].

(b) The commissioner [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 Department of

1        **Fish and Game** [DEPUTY COMMISSIONER], the **commissioner** [STATE  
2        FORESTER] shall presume for planning purposes that a stream is anadromous if it is  
3        connected to anadromous waters that are without **Department of Fish and Game**  
4        [DEPARTMENT] documentation of a physical blockage and has a stream gradient  
5        of 8 percent or less.

6        \* **Sec. 29.** AS 41.17.120 is amended to read:

7                **Sec. 41.17.120. Inspections and investigations.** The **commissioner** [STATE  
8        FORESTER] may inspect and investigate forest land and activities on it and may  
9        enter upon it in conjunction with any operations as necessary to ensure compliance  
10       with applicable regulations and requirements and to otherwise enforce the provisions  
11       of this chapter. Other state agencies [AND THE DEPUTY COMMISSIONER] have  
12       this same authority to the extent necessary to enforce their own laws and regulations  
13       on forest land. Those agencies [, THE DEPUTY COMMISSIONER,] and the  
14       **commissioner** [STATE FORESTER] shall coordinate their actions under this  
15       section.

16       \* **Sec. 30.** AS 41.17.900(c) is amended to read:

17                (c) The **commissioner** [STATE FORESTER] shall exempt by regulation  
18       from the provisions of this chapter

19                        (1) minor, small scale, or incidental commercial operations of little  
20       significance with respect to the purposes of this chapter; and

21                        (2) operations for primarily noncommercial purposes, including but  
22       not limited to the harvesting of timber for personal use.

23       \* **Sec. 31.** AS 41.17.900(d) is amended to read:

24                (d) Notwithstanding any other provision of this chapter, the [STATE  
25       FORESTER AND THE] commissioner may not employ the authority vested by this  
26       chapter so as to duplicate or preempt the statutory authority of other state agencies to  
27       adopt regulations or undertake other administrative actions governing resources,  
28       values, or activities on forest land except for

29                        (1) regulations under the Coastal Management Act; and

30                        (2) regulations, if authorized by the commissioner of environmental  
31       conservation, relating to control of nonpoint source pollution.

1 \* **Sec. 32.** AS 41.17.910(a) is amended to read:

2 (a) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and  
 3 the **commissioner** [STATE FORESTER] shall work cooperatively with private  
 4 forest landowners and timber owners to protect, maintain, and enhance wildlife  
 5 habitat to the maximum extent practicable, consistent with the interests of the owners  
 6 in the use of their timber resources.

7 \* **Sec. 33.** AS 41.17.910(b) is amended to read:

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

13 \* **Sec. 34.** AS 41.17.910(c) is amended to read:

14 (c) The **Department of Fish and Game** [DEPUTY COMMISSIONER] and  
 15 the landowner shall cooperate in identifying areas of important wildlife habitat on  
 16 private forest land and in developing methods for their protection. Methods of  
 17 protection for wildlife habitat may include, with the agreement of the landowner, the  
 18 purchase of fee title, purchase of conservation easements, and land exchanges.

19 \* **Sec. 35.** AS 41.17.950(1) is amended to read:

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

22 (A) is cataloged under **AS 16.05.871** [AS 41.14.870] as  
 23 important for anadromous fish; or

24 (B) is not cataloged under **AS 16.05.871** [AS 41.14.870] as  
 25 important for anadromous fish but has been determined by the **Department**  
 26 **of Fish and Game** [DEPUTY COMMISSIONER] to contain or exhibit  
 27 evidence of anadromous fish in which event the anadromous portion of the  
 28 stream or waterway extends up to the first point of physical blockage;

29 \* **Sec. 36.** AS 44.62.330(a)(30) is amended to read:

30 (30) the Department of **Fish and Game** [NATURAL RESOURCES]  
 31 as to functions relating to the protection of fish and game under **AS 16.05.871**



1 [AS 41.14.870];

2 \* **Sec. 37.** AS 46.15.020(b) is amended to read:

3 (b) The commissioner shall

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

8 (2) develop and maintain a standardized procedure for processing  
9 applications and the issuance of authorizations, permits, and certifications under this  
10 chapter; shall keep a public record of all applications for permits and certificates and  
11 other documents filed in the commissioner's office; shall record all permits and  
12 certificates and amendments and orders affecting them and shall index them in  
13 accordance with the source of the water and the name of the applicant or  
14 appropriator; shall require that temporary water use authorizations are valid only to  
15 the extent that the water withdrawal and use complies with applicable requirements  
16 of AS 16.05.871 [AS 41.14.870]; and shall make the record of applications,  
17 including temporary water use applications under AS 46.15.155 that have been  
18 accepted as complete, authorizations, permits, certificates, amendments, and orders  
19 affecting them available to the public on the Internet;

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

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

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



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

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

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

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

\* **Sec. 38.** AS 41.14.150, 41.14.160, 41.14.165, 41.14.170, 41.14.180, 41.14.190, 41.14.195, 41.14.200, 41.14.840, 41.14.850, 41.14.860, 41.14.870, 41.14.880, 41.14.890, 41.14.895, 41.14.900, 41.14.990; AS 41.17.905, 41.17.950(5); AS 44.37.055, and 44.37.060 are repealed.

\* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETIREMENT SYSTEM STATUS OF CERTAIN TRANSFERRED EMPLOYEES. (a) Notwithstanding sec. 4, ch. 27, SLA 1983, an employee of the Department of Fish and Game who, on the day before the effective date of this Order, as authorized by sec. 4, ch. 27, SLA 1983 is accruing service credit as a peace officer under AS 39.35 by virtue of having been, on June 23, 1983, in a position as a "qualified employee of the Department of Fish and Game," whose position was transferred to the Department of Natural Resources as a result of Executive Order 107 and whose position is transferred back to the Department of Fish and Game as a result of this Order, continues to accrue service credit as a peace officer under AS 39.35 after the transfer as long as the employee remains in a position described in this subsection, in the Department of Fish and Game.

(b) Nothing in this section may be construed as guaranteeing continued employment rights to any state employee.

(c) In this section, "qualified employee of the Department of Fish and Game" has the meaning given in AS 39.35.680 as that statute existed on June 22, 1983.

\* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2       TRANSITION. (a) Litigation, hearings, investigations, and other proceedings  
3 pending under a law repealed by this Order, or in connection with functions transferred by  
4 this Order, continue in effect and may be continued and completed notwithstanding a  
5 transfer or repeal provided in this Order.

6       (b) Regulations adopted to implement former AS 16.05.840 - 16.05.860, former  
7 AS 16.05.870 - 16.05.895, and former AS 44.37.055 and 44.37.060, and to implement  
8 AS 41.14 and AS 41.17 and in effect on July 1, 2008, remain in effect and may continue to  
9 be implemented and enforced, consistent with the changes made by this Order, until  
10 amended or repealed.

11       (c) Contracts, rights, liabilities, and obligations created by or under a law repealed  
12 by this Order, and in effect on June 30, 2008, remain in effect notwithstanding this Order's  
13 taking effect. Records, equipment, appropriations, and other property of an agency of the  
14 state whose functions are transferred under this Order shall be transferred to implement the  
15 provisions of this Order.

16       \* **Sec. 41.** This Order takes effect July 1, 2008.

17  
18 DATED: \_\_\_\_\_  
19  
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22

\_\_\_\_\_  
23 Sarah Palin  
24 Governor