

**HOUSE BILL NO. 199**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE STUTES

Introduced: 3/27/17

Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing general fish and wildlife permits and major and minor**  
2 **anadromous fish habitat permits for certain activities; establishing related penalties;**  
3 **and relating to the protection of fish and game and fish and game habitat."**

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

5 \* **Section 1.** AS 16.05.861 is amended to read:

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

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

1 \* **Sec. 2.** AS 16.05.871 is repealed and reenacted to read:

2 **Sec. 16.05.871. Determination of anadromous fish habitat.** (a) The  
3 commissioner shall specify in regulation all the various water bodies or portions of  
4 them that are important anadromous fish habitat, including those water bodies or  
5 portions of them that are presumed to be important anadromous fish habitat under (c)  
6 of this section.

7 (b) A determination that a water body is not important anadromous fish habitat  
8 must be supported by the commissioner's written finding. The department may  
9 conduct a site-specific determination to determine whether a water body, or portion  
10 thereof, is important anadromous fish habitat. Any person may request a site-specific  
11 determination. The commissioner shall adopt regulations specifying how the  
12 department shall conduct site-specific determinations.

13 (c) In the absence of a site-specific determination by the department under (b)  
14 of this section, the commissioner shall presume that a naturally occurring permanent  
15 or seasonal surface water body is important anadromous fish habitat.

16 (d) In this section, "anadromous fish habitat" means a naturally occurring  
17 permanent or seasonal surface water body and its adjacent riparian areas that  
18 contribute, directly or indirectly, to the spawning, rearing, migration, or overwintering  
19 of anadromous fish.

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

21 **Sec. 16.05.873. General permit for fish and wildlife habitat protection.** (a)  
22 The department may permit similar activities that do not have the potential to  
23 significantly affect anadromous fish habitat or other fish and wildlife habitat on a  
24 regional or other geographical basis through a general permit issued under this section,  
25 if the commissioner determines that

26 (1) the activity, singly or in combination with other factors, poses little  
27 potential to significantly affect fish and wildlife habitat;

28 (2) the activity does not relate to industrial development;

29 (3) the potential adverse effects of the activity may be prevented by  
30 requiring certain conditions and stipulations on the activity;

31 (4) permit conditions and stipulations are mandatory and enforceable;

1 and

2 (5) a general permit for the activity is in the public interest.

3 (b) When the commissioner makes a determination to issue a general permit  
4 under this section, the commissioner shall provide public notice of the proposed  
5 permit and opportunity to comment under (e) of this section. Additionally, the  
6 commissioner shall hold at least one public hearing if requested by an interested  
7 person. If no request for reconsideration is timely received under AS 16.05.889, and  
8 the commissioner determines the general permit meets the requirements in (a) of this  
9 section, the commissioner may issue a general permit. A general permit issued under  
10 this section must be renewed every five years.

11 (c) A person conducting an activity under a general permit shall first obtain a  
12 written authorization from the department. The department shall issue or deny a  
13 requested authorization within five days. The department may make general permit  
14 authorizations available through electronic means. The general permit authorization  
15 shall set out conditions and stipulations to avoid adverse effects to fish and wildlife  
16 habitat.

17 (d) The commissioner may amend a permit issued under this section at any  
18 time to include additional conditions and stipulations or may rescind the permit if the  
19 commissioner determines that the permit does not protect fish and wildlife habitat. The  
20 commissioner shall provide public notice under (e) of this section of

21 (1) changes proposed by the commissioner to a permit issued under  
22 this section; or

23 (2) a determination made by the commissioner to rescind a permit  
24 issued under this section.

25 (e) The department shall provide public notice of a determination made under  
26 this section. The department shall

27 (1) post notice of the permit decision or commissioner's determination  
28 on the Alaska Online Public Notice System (AS 44.62.175);

29 (2) make a copy of the respective permit or determination available on  
30 the department's Internet website; and

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

1           **Sec. 16.05.875. Anadromous fish habitat permit.** (a) Except in an emergency  
2 under AS 16.05.891, a person shall obtain an anadromous fish habitat permit under  
3 AS 16.05.883 or 16.05.885 before conducting an activity that may use, divert,  
4 obstruct, pollute, or otherwise affect a water body, or portion thereof, that is specified  
5 as an important anadromous fish habitat under AS 16.05.871(a).

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

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

13                   (2) mitigation measures planned for areas of affected anadromous fish  
14 habitat.

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

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

27           (e) If the commissioner determines that a proposed activity has the potential to  
28 significantly adversely affect anadromous fish habitat under AS 16.05.877, the  
29 commissioner shall classify the application for the activity as an application for a  
30 major permit under AS 16.05.885.

31           (f) The department shall provide public notice of a determination made under

1 this section. The department shall

2 (1) post notice of the determination on the Alaska Online Public  
3 Notice System (AS 44.62.175);

4 (2) make a copy of the application available on the department's  
5 Internet website; and

6 (3) for an activity that the commissioner has determined under (e) of  
7 this section to require a major permit, provide at least 30 days for public comment.

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

10 **Sec. 16.05.877. Significant adverse effects.** (a) A proposed activity has the  
11 potential to significantly adversely affect anadromous fish habitat under AS 16.05.871  
12 - 16.05.901 if the proposed activity, singly or in combination with other factors, will

13 (1) impair the quality, quantity, or flow of water necessary for a water  
14 body to support anadromous fish habitat;

15 (2) impede or prevent the safe, timely, and efficient upstream and  
16 downstream passage of anadromous fish to areas of anadromous fish habitat;

17 (3) impair the quality or flow of a water body that is not anadromous  
18 fish habitat, but is necessary to preserve the quality or flow of a water body that is  
19 anadromous fish habitat;

20 (4) reduce aquatic habitat diversity, productivity, stability, or function;

21 (5) adversely affect other fish and wildlife that depend on the health  
22 and productivity of that anadromous fish habitat; or

23 (6) violate any additional criteria, consistent with the requirements of  
24 AS 16.05.871 - 16.05.901, adopted by the commissioner by regulation.

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

27 \* **Sec. 4.** AS 16.05.881 is amended to read:

28 **Sec. 16.05.881. Construction without approval prohibited.** If a person or  
29 governmental agency conducts an activity [BEGINS CONSTRUCTION ON A  
30 WORK OR PROJECT OR USE] for which a permit [NOTICE] is required by  
31 AS 16.05.875(a) [AS 16.05.871] without the appropriate permit issued under

1        **AS 16.05.883 or 16.05.885** [FIRST PROVIDING PLANS AND SPECIFICATIONS  
 2        SUBJECT TO THE APPROVAL OF THE COMMISSIONER FOR THE PROPER  
 3        PROTECTION OF FISH AND GAME, AND WITHOUT FIRST HAVING  
 4        OBTAINED WRITTEN APPROVAL OF THE COMMISSIONER AS TO THE  
 5        ADEQUACY OF THE PLANS AND SPECIFICATIONS SUBMITTED FOR THE  
 6        PROTECTION OF FISH AND GAME], the person or agency is guilty of a  
 7        misdemeanor. If a person or governmental agency is convicted of violating  
 8        **AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] or continues **an activity** [A  
 9        USE, WORK, OR PROJECT] without fully complying with **AS 16.05.871 - 16.05.901**  
 10       [AS 16.05.871 - 16.05.896], the **activity** [USE, WORK, OR PROJECT] is a public  
 11       nuisance and is subject to abatement. The cost of restoring a specified **water body or**  
 12       **portion thereof** [RIVER, LAKE, OR STREAM] to its original condition shall be  
 13       borne by the violator and shall be in addition to the penalty imposed by the court  
 14       **under AS 16.05.901.**

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

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

21                **Sec. 16.05.885. Major anadromous fish habitat permit.** (a) Unless  
 22       reconsideration is requested under AS 16.05.889, the commissioner shall, after  
 23       providing notice under AS 16.05.875(f) of a determination under AS 16.05.875(e),  
 24       prepare a draft major anadromous fish habitat permit assessment that identifies and  
 25       describes

26                        (1) the proposed activity;

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

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

31                        (4) any permit conditions and mitigation measures that the department

1 may require of the permittee under AS 16.05.887;

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

5 (6) the commissioner's determination of whether the proposed  
6 activity's significant adverse effects, singly or in combination with other factors,

7 (A) can be prevented or minimized under (d) of this section; or

8 (B) are likely to cause substantial damage to anadromous fish  
9 habitat under (e) of this section.

10 (b) An applicant for a permit under this section shall collect information  
11 reasonably requested by the commissioner under AS 16.05.875.

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

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

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

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

19 (d) A proposed activity's significant adverse effects may be minimized under  
20 this section if the activity's potential significant adverse effects on anadromous fish  
21 habitat under AS 16.05.877, as conditioned by permit requirements and mitigation  
22 measures required of the activity under AS 16.05.887, are not permanent and that  
23 anadromous fish habitat affected by the activity will likely recover or be restored  
24 within a reasonable period to a level that sustains the water body's, or portion of the  
25 water body's, natural and historical levels of anadromous fish, other fish, and wildlife  
26 that depend on the health and productivity of the anadromous fish habitat.

27 (e) A proposed activity's significant adverse effects on anadromous fish  
28 habitat under AS 16.05.877 cannot be prevented or minimized if the commissioner  
29 determines that the proposed activity is likely to cause substantial damage to  
30 anadromous fish habitat. A proposed activity is likely to cause substantial damage if

31 (1) the proposed activity is likely to have significant adverse effects on

1 anadromous fish habitat under AS 16.05.877;

2 (2) the proposed activity's significant effects cannot be minimized  
3 under (d) of this section or prevented; and

4 (3) the significant adverse effects of the proposed activity are likely to  
5 affect anadromous fish habitat in such a manner that the habitat will not likely recover  
6 or be restored within a reasonable period to a level that sustains the water body's, or  
7 portion of the water body's, natural and historical levels of anadromous fish, other fish,  
8 and wildlife that depend on the health and productivity of that anadromous fish  
9 habitat.

10 (f) In determining whether anadromous fish habitat will recover or be restored  
11 within a reasonable period under this section, the commissioner shall account for the  
12 life stage, life span, and reproductive behavior of the species of anadromous fish that  
13 depend on the habitat affected by the proposed activity using the best available  
14 scientific information.

15 (g) After the completion of the comment period established by (c)(3) of this  
16 section and evaluation of the comments received, the commissioner shall publish a  
17 final assessment and a written permit determination on the department's Internet  
18 website. The final assessment and written permit determination must include any  
19 permit conditions and mitigation measures imposed on the proposed activity under  
20 AS 16.05.887. The department shall post public notice of the final assessment and  
21 permit determination on the Alaska Online Public Notice System (AS 44.62.175) and  
22 provide written or electronic notice to each person who commented on the  
23 commissioner's determination that the application for the permitted activity was an  
24 application for a major permit under AS 16.05.875(e) or the draft assessment prepared  
25 under (a) of this section for the activity.

26 (h) The commissioner may only issue a major permit to an applicant if

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

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

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



1 (C) the activity, as authorized by the written permit  
2 determination, will not cause substantial damage to anadromous fish habitat  
3 under (e) of this section;

4 (2) the applicant

5 (A) accepts any permit conditions and mitigation measures  
6 under AS 16.05.887; and

7 (B) if required, provides the bond required by (j) of this  
8 section; and

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

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

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

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

19 (j) After the commissioner approves an application for an activity in a written  
20 permit determination under (g) of this section, the applicant shall file with the  
21 commissioner, on a form furnished by the commissioner, a performance bond in an  
22 amount established by the commissioner payable to the State of Alaska and  
23 conditioned on faithful performance of the requirements of this chapter and the permit.  
24 Except as provided in (k) of this section, the commissioner may not issue a permit  
25 until an applicant files the bond in an amount sufficient to ensure the completion of the  
26 mitigation measures determined necessary by the commissioner under AS 16.05.887  
27 and included in the written permit decision posted under (g) of this section. The  
28 performance bond may be a corporate surety bond issued by a corporation licensed to  
29 do business in the state or a personal bond secured by cash or its equivalent. However,  
30 the commissioner may not accept a bond executed by the applicant without separate  
31 surety.

1 (k) A governmental entity is exempt from the bonding requirements of this  
2 section.

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

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

6 (2) posting a performance bond for the transferee or assignee as  
7 required under (a)(5) of this section, unless the transferee or assignee is exempt under  
8 (k) of this section.

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

11 **Sec. 16.05.887. Permit conditions and mitigation measures.** (a) The  
12 commissioner shall require a permittee under AS 16.05.883 or 16.05.885 to implement  
13 the permitted activity in a manner most likely to prevent or minimize the activity's  
14 adverse effects on anadromous fish habitat under AS 16.05.877. However,  
15 notwithstanding (b)(2) of this section, the commissioner may not issue a permit for an  
16 activity that the commissioner determines

17 (1) will cause substantial damage to anadromous fish habitat under  
18 AS 16.05.885(e);

19 (2) necessitates water treatment, groundwater pumping, or other means  
20 of mechanical, chemical, or human intervention in perpetuity;

21 (3) cannot be carried out in a manner that will ensure the protection of  
22 other fish and wildlife habitat;

23 (4) will convert a wild fish population to a hatchery-dependent fish  
24 population; or

25 (5) will dewater or relocate a water body or portion of a water body,  
26 for five or more years, that the commissioner has specified as important, or as  
27 presumed to be important, to anadromous fish habitat under AS 16.05.871(a).

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

1 (1) limit adverse effects of the activity on anadromous fish habitat by  
2 changing the siting, timing, procedure, or other manageable qualities of the activity;

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

6 (3) if the activity cannot be implemented in a manner that prevents  
7 significant adverse effects to anadromous fish habitat under this subsection, restore the  
8 affected anadromous fish habitat and take mitigation measures.

9 (c) Permit conditions and mitigation measures under this section may not  
10 offset the activity's adverse effects by restoring, establishing, enhancing, or preserving  
11 another water body, other portions of the water body, or land.

12 (d) The department shall adopt regulations consistent with AS 16.05.871 -  
13 16.05.901 establishing appropriate permit conditions and mitigation measures  
14 applicable to activities subject to permitting requirements under AS 16.05.883 or  
15 16.05.885.

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

18 **Sec. 16.05.889. Reconsideration of determinations.** (a) Within 30 days after  
19 the date of a determination of the commissioner under AS 16.05.871 - 16.05.901, a  
20 person adversely affected by the determination may request that the commissioner  
21 reconsider the determination. A request for reconsideration must be in writing.

22 (b) Within 30 days after receiving a request for reconsideration, the  
23 commissioner shall issue a written determination granting or denying the request. If  
24 the commissioner does not act on the request for reconsideration within 30 days after  
25 receiving the request, the request is denied. If the commissioner grants the request for  
26 reconsideration, the commissioner shall issue a final determination within 30 days.

27 (c) The commissioner's determination upon reconsideration is the final  
28 administrative decision for purposes of appeal to the superior court under  
29 AS 44.62.560. A person shall initiate an appeal within 30 days after the date that the  
30 final determination is mailed or otherwise distributed, or the date that the request for  
31 reconsideration is considered denied by the commissioner's failure to act on the

1 request, whichever is earlier. The points on appeal are limited to those presented to the  
2 commissioner in the request for reconsideration.

3 \* **Sec. 6.** AS 16.05.891 is amended to read:

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

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

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

12 (1) reviewing permit applications, assessments performed by the  
13 department under AS 16.05.885, and the issuance of permits under AS 16.05.871 -  
14 16.05.901; and

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

16 (b) The commissioner may waive a fee under AS 16.05.871 - 16.05.901 if the  
17 commissioner finds that waiving the fee is in the public interest. The commissioner  
18 shall, in regulations adopted by the department, specify the circumstances under which  
19 a fee may be waived under this subsection.

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

22 **Sec. 16.05.894. Notification of violation.** When the commissioner finds, after  
23 investigation, that a permittee or activity permitted under AS 16.05.871 - 16.05.901 is  
24 violating a provision of AS 16.05.871 - 16.05.901, a regulation adopted under  
25 AS 16.05.871 - 16.05.901, a permit condition or stipulation imposed under  
26 AS 16.05.873, or a permit condition or mitigation measure imposed under  
27 AS 16.05.887, the commissioner shall notify the permittee of the nature of the  
28 violation and

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

30 (2) if the violation cannot be stopped, order the permittee to prevent or  
31 mitigate the adverse effects of the violation on anadromous fish, other fish, and

1 wildlife habitat in a manner consistent with AS 16.05.871 - 16.05.901.

2 \* **Sec. 8.** AS 16.05.901(a) is amended to read:

3 (a) A person who violates **AS 16.05.871 - 16.05.901 or a regulation adopted**  
 4 **under AS 16.05.871 - 16.05.901** [AS 16.05.871 - 16.05.896] is guilty of a **violation**  
 5 **punishable as provided in AS 12.55. A person who knowingly violates**  
 6 **AS 16.05.871 - 16.05.901 or a regulation adopted under AS 16.05.871 - 16.05.901**  
 7 **is guilty of a** class A misdemeanor **and is punishable as provided in AS 12.55.**

8 \* **Sec. 9.** AS 16.05.901 is amended by adding new subsections to read:

9 (c) A person that, with criminal negligence, violates or permits a violation of  
 10 AS 16.05.871 - 16.05.901, a regulation adopted under AS 16.05.871 - 16.05.901, a  
 11 permit condition or stipulation imposed under AS 16.05.873, a permit condition or  
 12 mitigation measure imposed under AS 16.05.887, or an order issued under  
 13 AS 16.05.894 is guilty of a class A misdemeanor and is punishable as provided in  
 14 AS 12.55. In this subsection, "criminal negligence" has the meaning given in  
 15 AS 11.81.900(a).

16 (d) Notwithstanding (a) of this section, if a person or governmental agency  
 17 fails to notify the commissioner of an activity for which a permit is required under  
 18 AS 16.05.871 - 16.05.901 and the activity causes material damage to anadromous fish  
 19 habitat or, by neglect or noncompliance with permit conditions and stipulations  
 20 imposed under AS 16.05.873 or permit conditions or mitigation measures imposed  
 21 under AS 16.05.883 or 16.05.885, causes material damage to anadromous fish habitat,  
 22 the person or governmental agency is guilty of a class A misdemeanor and is  
 23 punishable as provided in AS 12.55.

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

25 (f) A person who violates or permits a violation of AS 16.05.871 - 16.05.901,  
 26 a regulation adopted under AS 16.05.871 - 16.05.901, a permit condition or stipulation  
 27 imposed under AS 16.05.873, a permit condition or mitigation measure imposed under  
 28 AS 16.05.883 or 16.05.885, or an order issued under AS 16.05.894 is liable, after  
 29 notice and hearing, for a civil penalty in an amount not to exceed \$10,000 to be  
 30 assessed by the commissioner. In determining the amount of the civil penalty, the  
 31 commissioner shall consider

1 (1) the character and degree of injury to anadromous fish, other fish,  
2 and wildlife habitat;

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

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

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

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

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

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

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

24 \* **Sec. 10.** AS 16.05.925(a) is amended to read:

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

29 \* **Sec. 11.** AS 16.20.070 is amended to read:

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

1 \* **Sec. 12.** AS 37.05.146(c) is amended by adding a new paragraph to read:

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

4 \* **Sec. 13.** AS 41.17.010 is amended to read:

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

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

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

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

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

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

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

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

1 \* **Sec. 14.** AS 44.62.330(a)(27) is amended to read:

2 (27) Department of Fish and Game as to functions relating to the  
3 protection of **anadromous fish, other fish, and wildlife habitat under AS 16.05.871**  
4 **- 16.05.901 where procedures are not otherwise expressly provided in**  
5 **AS 16.05.871 - 16.05.901** [FISH AND GAME UNDER AS 16.05.871];

6 \* **Sec. 15.** AS 46.15.020(b) is amended to read:

7 (b) The commissioner shall

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

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

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

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



1 AS 46.15.035;

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

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

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

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

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

15 \* **Sec. 16.** AS 16.05.851 and 16.05.896 are repealed.