



DRAFT

RC 43

October 25, 2016

Senate and House Majority Leaders

Subject: Alaska Board of Fisheries Habitat Permitting Recommendations

The Alaska Board of Fisheries (board) was established by the Alaska Legislature, “For purposes of the conservation and development of the fishery resources of the state”, (AS 16.05.221(a)), and has the authority to adopt regulations it considers important for “watershed and habitat improvement” (AS 16.05.251(a)(7)). Since inception, the board’s working protocol evolved into a strong, open public process to carry out its duties. This public process allows Alaskans to bring forward proposals for consideration within its delegated authority.

For the 2016/2017 meeting cycle, the board received a proposal from a group of 13 individuals representing various fishing interests across Alaska. The proposal requested the board recommend to the Legislature amendment of Title 16 to adhere to the habitat provisions contained in the Sustainable Salmon Policy provided for in 5 AAC 39.222. The board heard a significant amount of testimony in favor of this concept at the October work session held in Soldotna and scheduled an additional follow up committee meeting in Homer at the regular Lower Cook Inlet meeting.

The committee meeting allowed time for additional public testimony and an overview presentation on the permitting process from the Alaska Department of Fish & Game’s (ADF&G) Division of Habitat staff. At the conclusion of this meeting, the board decided to submit the following points for the Legislature’s consideration in amending Title 16:

- **Improve public notification and opportunities for public comment.**

A common theme from public testimony was the notification for activities that have the potential to impact salmon habitat was lacking. ADF&G Habitat staff tracks the average time for permit turn around at 4 days. There are undoubtedly nuances to this efficient permitting that must be considered, and improved notification to the public for certain activities is in the public’s best interest. Additionally, tracking permitted activities by geo-referenced location would facilitate better consideration of cumulative impacts.

- **Presumption of anadromous waters**

Existing protections afforded to salmon habitat under AS 16.05.871 is predicated on the previously documented presence of salmon recorded in the Anadromous Waters Catalog that is kept by the ADF&G. ADF&G estimates that fewer than 50% of the streams, rivers and lakes used by anadromous species in Alaska are currently subject to Title 16’s permitting requirements. The catalog is a great tool, but knowing a significant portion of Alaska’s waters that are currently supporting salmon are not

documented and thus not afforded the protections of AS. 16.05.871 requires attention. For the purposes of strengthening salmon habitat protections, the assumption should be waters with a marine connection are anadromous unless otherwise proven.

- **Enforceable Standards**

Under current law, the commissioner of ADF&G is directed to approve a fish habitat permit for a “proposed construction, work, or use...unless the commissioner finds the plans and specifications insufficient for the proper protection of fish and game.” AS 16.05.871(d). Permits may be issued with little restriction because nothing in the statute or regulation defines what constitutes “the proper protection of fish and game.”

Additional guidance is warranted for the protection of fish, to set clear expectations for permit applicants and to reduce uncertainty in predevelopment planning costs. To strengthen ADF&G’s implementation and enforcement of the permitting program, the legislature may want to consider creating enforceable standards in statute to protect fish habitat, and to guide and create a more certain permitting system. The board recommends and supports the Legislature creating these enforceable standards by drawing on the concepts set forth in the portion of the Sustainable Salmon Policy that expressly addresses habitat 5 AAC 39.222(c)(1)(A-F).

Thank you for taking the opportunity to review these concerns. The board recognizes the broad responsibilities of the Legislature to promote economic development and the wise stewardship of resources for all Alaskans. The board finds that clear delineation of Alaska’s unwavering promise to protect salmon and fisheries habitat establishes a consistent and predictable business environment that will help all individuals and corporations wishing to do business in Alaska.

The board remains at your service if you have any questions or comments regarding these recommendations.

Sincerely,

John Jensen
Chair
Alaska Board of Fisheries