

Overview of Existing ADF&G Fish Habitat Statutes and Short Summary of Ballot Measure 1

Make sure you are looking at the initiative as amended by the Supreme Court.

To make it an allowable subject for an initiative under the Alaska Constitution, the Supreme Court deleted Section AS 16.05.885(e)(3) on page 5 and portions of AS 16.05.887(a) on page 6.

ADF&G Existing Statutory Authority
For Fish Protection – require permits
for activities that impact fish
(often referred to as Title 16 or Fish
Habitat permits)

- The Fishway Act
 - AS 16.05.841- 861
- The Anadromous Fish Act
 - AS 16.05.871- 901

Existing Fishway Act (AS 16.05.841 - 861)

Requires that any obstruction built across fish-bearing waters will provide for fish passage

Jurisdiction

- Applies to all fish bearing streams (resident and anadromous) and all fish species.
- Requires long-term commitment to operation & maintenance
- Applies to fish passage only

Activities not covered by .841

Projects that don't have the potential to block passage: docks, streambank protection, motorized stream crossings, etc.

Under Ballot Measure 1 most of the existing Fishways Act remains in place.

The initiative repeals the provision in Fishways Act (AS 16.05.851) that requires (or allows for) hatcheries or related compensation “if fishway over a dam or obstruction is considered impracticable”.

What are Anadromous Fish ??

- NOAA definition: An anadromous fish, born in fresh water, spends most of its life in the sea and returns to fresh water to spawn.
- ADF&G Habitat web site lists examples of anadromous fish: species as salmon, trout, char, whitefish, sturgeon, etc.

Existing Anadromous Fish Act (AS 16.05.871 - 901)

Jurisdiction

- Applies to any activity in anadromous fish waters
- Applies to any life stage of anadromous fish

Application of .871

- Activity occurring below Ordinary High Water with some exceptions
- Waterbody must be in Anadromous Waters Catalog
- Freshwater only down to low tide in the marine environment

Existing Anadromous Fish Act

Key Language:

AS 16.05.871(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.

This language is repealed by Section 3 of the Initiative

Activities That Typically Require Fish Habitat (aka Title 16) Permits Under Existing Statute

- Culvert/bridge/ford installation, maintenance, and restoration
- Stream crossings –vehicles/pipelines/power lines
- Streambank repair/construction
- Stream diversions/removals
- Water withdrawals – road work/drilling/mining/ice roads
- Material Sites
- Dam construction/maintenance
- Run of the river hydro projects (no dam)
- Research projects –fish weir installation/operation
- Dock/Boat ramp construction
- Blasting

ADFG has issued between 1500 to over 4000 permits per year the past five years

An act providing for the protection of wild salmon and fish and wildlife habitat.

This act would amend Alaska's fish habitat permitting law. The act would require the Department of Fish and Game (ADF&G) to apply new standards to permitting activities and development projects that have the potential to harm fish habitat. The act would exempt existing projects, operations, or facilities that have received all state and federal permits until a new permit is needed. The act would create fish and wildlife habitat-protection standards. The standards would address water quality, temperature, streamflow, and more. The act defines "anadromous fish habitat." The act would allow ADF&G to apply the law to all habitat in Alaska that directly or indirectly supports salmon or other anadromous fish. The act would provide for three types of permits for development in anadromous fish habitat. ADF&G could issue a general permit—a single permit that applies to many people—for certain activities. For other activities that require a permit, the act would establish a two-track permitting system. Minor permits would be issued for activities that have little impact on fish habitat. Major permits would be issued for projects that have the potential to cause significant adverse effects on fish habitat. The act defines "significant adverse effects." The act would require ADF&G to avoid or minimize adverse effects through mitigation measures and permit conditions. It would provide public notice on all permits and a chance to comment on major permits. The act would create criteria, timeframes, and an appeals process for the permits by interested persons. The act would allow ADF&G to respond to specified conduct with tickets, civil fines, or criminal penalties. The act would repeal two current statutes. One is regarding mitigation from a dam. The other is regarding criminal penalties that are addressed elsewhere.

- The proposed act would require the Department of Fish and Game (ADF&G) to apply new standards to permitting activities and development projects that have the potential to harm fish habitat.
- The act would create fish and wildlife habitat-protection standards. The standards would address water quality, temperature, streamflow, and more.

The proposed act defines “anadromous fish habitat.” as: “anadromous fish habitat means a naturally occurring permanent or intermittent seasonal water body, and the bed beneath, including all sloughs, backwaters, portions of the floodplain covered by the mean annual flood, and adjacent riparian areas, that contribute directly or indirectly to the spawning, rearing, migration, or overwintering of anadromous fish” (proposed AS 16.05.871(f)).

The existing statute defines anadromous fish habitat as waters where anadromous fish have been documented and are included in the catalogue of anadromous waters.

The initiative requires ADF&G to “presume that a naturally occurring permanent or seasonal surface waterbody, including all upstream tributaries and segments, is anadromous fish habitat if it is connected to anadromous waters specified under (b) of this section or connected to marine waters”.

ADF&G “may conduct a site-specific review ... to determine whether to exclude a waterbody from the presumption”

The act defines “significant adverse effects.”

The act would require ADF&G to avoid or minimize adverse effects through mitigation measures and permit conditions.

- The initiative would provide public notice on all permits and a chance to comment on major permits. The act would create criteria, timeframes, and an appeals process for the permits by interested persons.
- Also provides for 30 day period for reconsideration of determinations and decisions (see AS 16.05.889)

The initiative would provide for three types of permits for development in anadromous fish habitat.

- 1) A general permit—a single permit that applies to many people—for certain activities.
- 2) Minor permits would be issued for activities that have little impact on anadromous fish habitat
- 3) Major permits would be issued for projects that have the potential to cause significant adverse effects on anadromous fish habitat.

Section 12 of the proposed act would exempt existing activities, operations, or facilities that have received all state and federal permits until a new permit, authorization, license or approval is needed.

New Duties and Functions the Initiative Would Require ADF&G to Implement:

- Presume that naturally occurring connected water bodies and adjacent riparian areas are anadromous, currently jurisdiction ends at the ordinary high water mark of documented anadromy
- Require process for site-specific determinations to determine a water body is not anadromous fish

New Duties and Functions the Initiative Would Require ADF&G to Implement

continued:

- Determine whether a fish habitat permit is a major or minor permit
- Respond to and address public input on major fish habitat permits
- Collect fees equal to the cost of service for major permits
- Determine if anadromous fish habitat will recover or be restored within a reasonable period of time
- Specify in regulation all de minimus activities that do not require a permit and require a permit for all activities not specified.

What Happens if Voters Approve the Initiative on November 6

- Initiative goes into effect 90 days after election is certified
- ADF&G must develop regulations and procedures for implementation
- Legislature can amend it but cannot repeal it for two years.