

Board of Fish Proposal Summary: Proposed Update to Alaska's Fish Habitat Permitting Process

Overview

The Department of Fish and Game (ADF&G) was created to manage Alaska's wildlife and fisheries and protect habitat. ADF&G derives its authority from the Alaska Constitution, management directives from the Board of Fish and Title 16. After statehood, the fish habitat provisions of Title 16 were quickly passed by the legislature and exist to this day as one of our oldest laws. Title 16 contains two main sections on fish habitat: the Alaska Fishway Act (AS 16.05.841) and the Protection of Fish and Game, a.k.a. Fish Habitat Permits (AS 16.05.871). Both sections of Title 16 aim to maintain fish habitat, with a special emphasis on anadromous species like wild salmon, to ensure the protection of and access to important spawning, rearing, migratory and overwintering habitat.

The History

In recent years, decisions by previous administrations and the legislature and limitations under Title 16 have weakened the ability of ADF&G to protect fish habitat. In 2003, former Governor Murkowski moved the Habitat Division from ADF&G to the Department of Natural Resources (DNR) in an attempt to streamline the permitting process for development projects. Although Governor Palin moved the Habitat Division back to ADF&G in 2006, the fish habitat permitting process remained streamlined. The ability to protect fish habitat was further eroded in 2011 when the Legislature repealed the Alaska Coastal Zone Management Program (ACMP). The ACMP set up a framework that made agencies work together to ensure that development projects were consistent with a variety of laws including Title 16 and local standards, many of which were geared to protect fish habitat and water quality before being approved. After the elimination of the ACMP, ADF&G's authority to protect fish habitat is now limited by the relatively weak language contained in Title 16.

The Problem with Title 16

Title 16 as currently written directs the commissioner of ADF&G 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). Nothing in Title 16 or ADF&G regulations defines what constitutes the "proper protection of fish and game." For that reason, the language creates a presumption that a permit will be issued with few restrictions.

The Fix

The Sustainable Salmon Policy was created by the Board of Fish in consultation with many stakeholders and outlines a series of science-based criteria that should be considered when making permitting decisions that have the potential to impact fish habitat. Currently, these habitat focused criteria do not influence how ADF&G issues permits under Title 16. The Board of Fish has the authority "where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board" to describe the problem to the legislature and recommend an appropriate action. 5 AAC 39.222(d)(6). The BOF can recommend that the legislature strengthen Title 16 and use the habitat criteria in the Sustainable Salmon Policy to define what constitutes the "proper protection of fish and game."