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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Frances Leach
Department of Fish & Game

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: April 20, 2017

RE: Filed Permanent Regulations: Department of Fish & Game

Department of Fish and Game Regulation re: 2017 Anadromous Waters Catalog and Atlas (5 AAC 95.011(a))

Attorney General File:	JU2016201016
Regulation Filed:	4/19/2017
Effective Date:	6/1/2017
Print:	222, July 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF FISH AND GAME


The attached two pages of regulations, dealing with waters important for spawning, rearing, or migration of anadromous fishes, are adopted and certified to be a correct copy of the regulation changes that the Department of Fish and Game adopts under the authority of AS 16.05.020 and AS 16.05.871 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Fish and Game paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on June 1, 2017, as provided in AS 44.62.180.

DATE: 3-21-2017
Juneau, Alaska



Sam Cotten
Commissioner
Alaska Department of Fish and Game

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on April 19, 2017, at 1530M filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: June 1, 2017.

Register: 222, July 2017.

Title 5. Fish and Game.

Part 5. Protection of Fish and Game Habitat.

Chapter 95. Fish and Game Habitat.

Article 1. Fish Habitat.

5 AAC 95.011(a) is amended to read:

(a) The *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*, as revised as of March 2017 [2016], are adopted by reference. The six volume ^{lc}Atlas is a compilation of topographic maps upon which are specified, as provided in (AS

16.05.871(a), the various rivers, lakes, or streams, or parts of them, that are important for the spawning, rearing, or migration of anadromous fish. The ^{lc}Catalog is a listing of those water bodies. It sets out legal descriptions for the mouth and the known upper range of the fish of each stream, river, or lake designated on the maps in the ^{lc}Atlas. The ^{lc}Atlas and the ^{lc}Catalog identify the water bodies for which a person or agency must first notify the department, as required by AS 16.05.871(b), before undertaking to construct a hydraulic project, or to use, divert, obstruct, pollute, or change the natural 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.

(Eff. 3/1/75, Register 53; am 7/31/82, Register 83; am 10/14/83, Register 88; am 7/27/84, Register 91; am 5/19/85, Register 94; am 5/8/86, Register 98; am 5/1/87, Register 102; am 5/8/88, Register 106; am 6/7/89, Register 110; am 9/29/90, Register 115; am 4/1/92, Register

121; am 8/30/92, Register 123; am 10/20/93, Register 128; am 4/28/95, Register 134; am 6/22/97, Register 142; am 2/6/99, Register 149; am 1/15/2005, Register 172; am 3/1/2006, Register 177; am 9/15/2006, Register 179; am 6/1/2007, Register 182; am 6/2/2008, Register 186; am 6/1/2009, Register 190; am 6/1/2010, Register 194; am 6/1/2011, Register 198; am 6/1/2012, Register 202; am 7/1/2013, Register 206; am 6/1/2014, Register 210; am 6/1/2015, Register 214; am 6/1/2016, Register 218; am 6 / 1 /2017, Register 222)

Authority: AS 16.05.020

AS 16.05.871

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Byron Mallott
Lieutenant Governor
(hand delivery)

Date: April 18, 2017

File No.: JU2016201016

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Fish and Game
Regulation re: 2017 Anadromous
Waters Catalog and Atlas
(5 AAC 95.011(a))

We have reviewed the attached regulations from the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. The regulations concern revisions to the 2017 Anadromous Water Catalog and Atlas.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Please note that the March 21, 2017 adoption order sets out an effective date of June 1, 2017 for the regulations. Therefore, the history note following 5 AAC 95.011 will need to reflect this date.

The January 29, 2017 public notice and the March 21, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some minor technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:ljm
cc w/enc: (via email)

Honorable Sam Cotten, Commissioner, Dept. of Fish and Game
David Rogers, Director, Div. of Habitat, Dept. of Fish and Game
Brian Blossom, Habitat Biologist, Div. of Habitat, Dept. of Fish and Game
Ginny Litchfield, Habitat Biologist, Div. of Habitat, Dept. of Fish and Game
J Johnson, Habitat Biologist, Div. of Sport Fish, Dept. of Fish and Game
Lisa Olson, Deputy Director, Div. of Subsistence, Dept. of Fish and Game
Frances Leach, Fishery Regulations Program Coordinator, AAC Contact, Dept. of Fish and Game
Adam Smith, Natural Resource Manager, Div. of Mining, Land & Water, Dept. of Natural Resources
Enforcement Commander, Div. of Alaska Wildlife Troopers, Dept. of Public Safety
Vanessa Lamantia, Assistant Attorney General, Natural Resources Section

NOTICE OF PROPOSED CHANGES ON SPECIFIED ANADROMOUS WATERS
IN THE REGULATIONS OF THE DEPARTMENT OF FISH AND GAME

BRIEF DESCRIPTION

The Alaska Department of Fish and Game proposes to change regulations dealing with waters important for the spawning, rearing, or migration of anadromous fish, as required by AS 16.05.871.

The Alaska Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with waters important for the spawning, rearing, or migration of anadromous fish, including the following:

5 AAC 95.011 is proposed to be changed as follows:

The Atlas to the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes (Atlas and Catalog), which are adopted by reference in 5 AAC 95.011, will be revised and updated.

Several revisions are proposed to be made to the Atlas and Catalog. The list of rivers, lakes, and streams will be updated, including additions, deletions, and changes to the legal descriptions of many of these waters. Minor revisions will be made to the introduction of the Catalog and Atlas. Species-specific information will be used in place of undifferentiated species information wherever possible.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Brian Blossom, Alaska Department of Fish and Game, River Center 514 Funny River Rd., Soldotna, AK 99669. Additionally, the Alaska Department of Fish and Game will accept comments by facsimile at (907) 260-5992 or by e-mail to dfg.hab.anadromous@alaska.gov. The comments must be received no later than 5:00 p.m. AKST, March 3, 2017.

You may submit written questions relevant to the proposed action to Brian Blossom by email or at the physical address above. The questions must be received at least 10 days before the end of the public comment period. The Alaska Department of Fish and Game will aggregate its response to substantially similar questions and make the questions and response available on <http://awc.adfg.alaska.gov>. The Alaska Department of Fish and Game may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Brian Blossom at (907) 714-2481 no later than February 24, 2017 to ensure that any necessary accommodations can be provided.

A copy of the materials proposed for adoption by reference for all six regions of Alaska (Southeastern, Southcentral, Southwestern, Western, Arctic, and Interior) are available for inspection and copying at: the ADF&G offices in Anchorage at 333 Raspberry Rd. and in Fairbanks at 1300 College Rd.; the Alaska Resources Library in Anchorage; and the State Library in Juneau. The ADF&G offices in Bethel, Cordova, Craig, Delta Junction, Dillingham, Douglas, Dutch Harbor, Glennallen, Haines, Homer, Ketchikan, King Salmon, Kodiak, Nome, Palmer, Sand Point, Sitka, Soldotna, Tok, Wrangell, and Yakutat have copies of the proposed changes for their local region.

Electronic equivalents of the review documents and the Atlas maps are also available through the ADF&G website at: <http://awc.adfg.alaska.gov>

For a copy of the proposed regulation changes, contact Brian Blossom at the telephone number or address above.

After the public comment period ends, the Alaska Department of Fish and Game will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

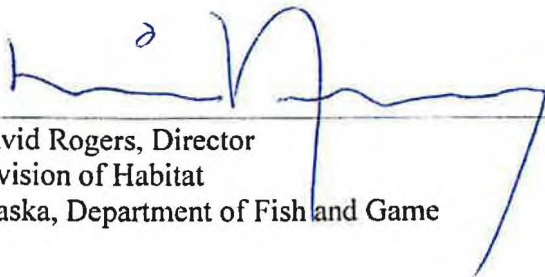
Statutory Authority: AS 16.05.020; AS 16.05.871

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.871

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

Date: _____

1/4/17



David Rogers, Director
Division of Habitat
Alaska, Department of Fish and Game

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Alaska Department of Fish and Game
2. General subject of regulation: Revisions to 5 AAC 95 and the Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes and its associated Atlas
3. Citation of regulation: 5 AAC 95.011
4. Department of Law file number, if any: JU2016201016
5. Reason for the proposed action: Compliance with existing state statutes in AS 16.05.871
6. Appropriation/Allocation: Division of Habitat
7. Estimated annual cost to comply with the proposed action to:
A private person: \$0
Another state agency: \$0
A municipality: \$0
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year	Subsequent
	FY 17	Years
Operating Cost	\$10.5	\$ 0
Capital Cost	\$ 0	\$ 0
1002 Federal receipts	\$ 0	\$ 0
1003 General fund match	\$ 0	\$ 0
1004 General fund	\$10.5	\$ 0
1005 General fund/ program	\$ 0	\$ 0
Other	\$ 0	\$ 0

9. The name of the contact person for the regulation:

Brian Blossom
Habitat Biologist III
Alaska Department of Fish and Game
514 Funny River Road
Soldotna, AK 99669
(907) 714-2481
brian.blossom@alaska.gov

10. The origin of the proposed action: Staff of state agency

11. Date: February 1, 2017

Prepared by:


Brian Blossom
Habitat Biologist III
(907) 714-2481

STATE OF ALASKA)
) ss.
3rd JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION

I, Brian Blossom, Habitat Biologist III with the Department of Fish and Game, Division of Habitat, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 5 AAC 95.011 regarding waters important for spawning, rearing, or migration of anadromous fishes has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Legislative Library;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulations, to the Legislative Affairs Agency, the chair of the Resource Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190(d), additional regulations notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: 3/13/2017
 Soldotna, Alaska

Brian Blossom
Brian Blossom
Habitat Biologist III

SUBSCRIBED AND SWORN TO before me this 13th day of March, 2017.



Nancy J. Carver
Notary Public in and for the
State of Alaska
My commission expires: 7-28-17


STATE OF ALASKA)
) ss.
3rd JUDICIAL DISTRICT)

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Brian Blossom, Habitat Biologist III with the Department of Fish and Game, Division of Habitat, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Fish and Game has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Fish and Game regulations on waters important for spawning, rearing, or migration of anadromous fishes.

Date: 3/13/2017
Soldotna, Alaska


Brian Blossom
Habitat Biologist III

SUBSCRIBED AND SWORN TO before me this 13th day of March, 2017



Notary Public in and for the
State of Alaska
My commission expires: 7-28-17

383136
#1398650
\$443.24

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath
deposes and says that she is
a representative of the
Alaska Dispatch News, a
daily newspaper. That said
newspaper has been approved
by the Third Judicial Court,
Anchorage, Alaska, and it now
and has been published in the
English language continually as a
daily newspaper in Anchorage,
Alaska, and it is now and during
all said time was printed in an
office maintained at the aforesaid
place of publication of said
newspaper. That the annexed is
a copy of an advertisement as it
was published in regular issues
(and not in supplemental form)
of said newspaper on

January 29, 2017

and that such newspaper was
regularly distributed to its
subscribers during all of said
period. That the full amount of
the fee charged for the foregoing
publication is not in excess of
the rate charged private individuals.

Signed Emma Dunlap

Subscribed and sworn to before

me this 30 day of MARCH

20 Britney Thompson

Notary Public in and for
The State of Alaska,
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

Notary Public 2/23/2019

BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

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