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

MEMORANDUM

TO: Shellene Hutter
Department of Fish and Game

FROM: April Simpson, Office of the Lieutenant Governor
465.4081

A handwritten signature in blue ink, appearing to read "April Simpson", is written over the "FROM:" line.

DATE: April 18, 2019

RE: Filed Permanent Regulations: Department of Fish and Game

Department of Fish and Game Regulations re: 2019 Anadromous Waters Catalog and Atlas (5 AAC 95.011(a))

Attorney General File:	2018200750
Regulation Filed:	4/18/2019
Effective Date:	6/1/2019
Print:	230, July 2019

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 three 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, 2019, as provided in AS 44.62.180.

Date: March 14, 2019



Doug Vincent-Lang
Commissioner
Alaska Department of Fish and Game

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

April 18, 2019, at 10:00 A.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Kevin Meyer, Lieutenant Governor

Effective: June 1, 2019.

Register: 230, July 2019.

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 2019 [2018], are adopted by reference. The six volume 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 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 atlas. The atlas and the 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

related to protection of fish habitat in rivers, lakes, and streams from the Department of Natural Resources to the Department of Fish and Game. The history note for 5 AAC 95.011 carries forward the history from former 5 AAC 95.010 and former 11 AAC 195.010.

MEMORANDUM


State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor
(hand delivery)

Date: April 12, 2019

File No.: 2018200750

Tel. No.: 465-3600

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

Re: Department of Fish and Game
Regulations re: 2019 Anadromous
Waters Catalog and Atlas
(5 AAC 95.011(a))

We have reviewed the attached regulations of the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. The regulations update the Anadromous Waters Catalog and Atlas to the 2019 version. Please note that the March 14, 2019 *adoption order sets out an effective date of June 1, 2019 for the regulations*. Therefore, the history note following 5 AAC 95.011 will need to reflect this date.

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.

The January 27, 2019 public notice and the March 14, 2019 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 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 Douglas Vincent-Lang, Commissioner, Dept. of Fish and Game
Alvin Ott, Director, Div. of Habitat, Dept. of Fish and Game
Brian Blossom, Habitat Biologist, Div. of Habitat, Dept. of Fish and Game
J Johnson, Habitat Biologist, Div. of Habitat, Dept. of Fish and Game
Lisa Olson, Director, Div. of Subsistence, Dept. of Fish and Game
Shellene Hutter, Fishery Regulations Program Coordinator, AAC Contact, Dept. of Fish and Game
Enforcement Commander, Div. of Alaska Wildlife Troopers, Dept. of Public Safety
Vanessa Lamantia, Assistant Attorney General, Natural Resources Section, Dept. of Law

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. 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 Road, 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 4, 2019.

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 responses 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 Wednesday, February 27, 2019 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx> or by contacting Brian Blossom, Alaska Department of Fish and Game, 514 Funny River Road, Soldotna, AK 99669, Phone: (907) 714 – 2481, email: brian.blossom@alaska.gov.

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, and Wrangell 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>

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:

1/7/2019



Al Ott, Acting Director
Division of Habitat
Alaska Department of Fish and Game

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

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: JU2018200750
5. Reason for the proposed action:

☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with federal or state court decision (identify): _____
☐ Development of program standards
☒ Other (identify): 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 FY <u>2019</u>	Subsequent Years
Operating Cost	\$ <u>10.5</u>	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$ _____	\$ _____
1003 General fund match	\$ _____	\$ _____
1004 General fund	\$ <u>10.5</u>	\$ _____
1005 General fund/ program	\$ _____	\$ _____
Other (identify)	\$ _____	\$ _____

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

Name: Brian Blossom

Title: Habitat Biologist IV

Address: 514 Funny River Road, Soldotna, AK 99669

Telephone: (907) 714-2481

E-mail address: brian.blossom@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency

☐ Federal government

☐ General public

☐ Petition for regulation change⁷

☐ Other (identify): _____

11. Date: February 1, 2019

Prepared by: Brian Blossom

Name (printed): Brian Blossom

Title (printed): Habitat Biologist IV

Telephone: (907) 714-2481

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION


I, Brian Blossom, Habitat Biologist IV, of the Alaska Department of Fish and Game, 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 every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

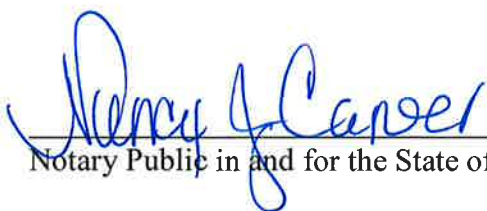
Date: 3/13/19



Brian Blossom
Habitat Biologist IV

Subscribed and sworn to before me at Seldotna, Alaska on
3/13/19

(date)



Notary Public in and for the State of Alaska

exp 7/28/2021



Received

APR 08 2019

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

Comm Fish

I, Brian Blossom, Habitat Biologist IV for the Alaska Department of Fish and Game, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alaska 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 regulation on waters important for spawning, rearing, or migration of anadromous fishes.

Date: 4/3/19

Brian Blossom
Brian Blossom
Habitat Biologist IV

Subscribed and sworn to before me at 514 Funny River Rd., Soldotna AK on

4/3/19
(date)

Nancy Carver
Notary Public in and for the State of Alaska

exp: 7/28/2021



The public hearing portion of the meeting will begin following staff reports and continue until everyone who has signed up and is present has been given the opportunity to be heard. Additional public hearings with board committee members may be held throughout the meeting before consideration and adoption of proposed changes in the regulations for the various topics. An agenda will be posted daily during the meeting. The joint board will take oral testimony only from those who register before the cut-off time announced by the board chair at the meeting. The length of oral statements may be limited to five minutes or less for private persons and 15 minutes or less for fish and game advisory committee and federal regional council representatives. Anyone interested in, or affected by, the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the joint board.