

Kevin Meyer
Lieutenant Governor
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Juneau, Alaska 99811
907.465.3520
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Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Scott Graziano
Department of Fish and Game

FROM: Kady Levale, Office of the Lieutenant Governor *KL*
465.3509

DATE: May 6, 2022

RE: Filed Permanent Regulations: Department of Fish and Game

Department of Fish and Game regulations re: Anadromous Waters Catalogue (5 AAC 95.011)

Attorney General File: 2021200467

Regulation Filed: 5/6/2022

Effective Date: 6/5/2022

Print: 242, July 2022

cc with enclosures: Joseph Felkl, Department of Law
Judy Herndon, LexisNexis

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

The attached 3 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 the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 4/28/2022



Doug Vincent-Lang
Commissioner

FILING CERTIFICATION

Kady Levante for
I, *K* Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on
May 6, 2022, at 2:18 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for Kady L

for Kevin Meyer, Lieutenant Governor

Effective: June 5, 2022.

Register: 242, July 2022

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



Kevin Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

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 2022 [2021], 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

Register 242, July 2022 FISH AND GAME

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; am 6/1/2018, Register 226; am 6/1/2019, Register 230; am 6/1/2020, Register 234; am 6/1/2021, Register 238; am 6/5 /2022, Register 242)

Authority: AS 16.05.020 AS 16.05.871

Editor's note: Copies of the *Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes* for a specified region may be obtained by writing to the Department of Fish and Game (ADF&G), Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518-1599. Electronic copies may also be viewed through the ADF&G website at <http://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=data.AWCdata>

Copies of the entire *An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes* are available for examination at the ADF&G offices in Anchorage and Fairbanks. Copies are also available for viewing at the Alaska State Library in Juneau and the ARLIS Library in Anchorage.

Copies of regional volumes of the atlas for the region of the state where they are located are available for examination at the ADF&G offices in Craig, Delta Junction, Homer, Juneau, Ketchikan, Nome, Soldotna, and Tok. An electronic equivalent may also be viewed through the ADF&G website at <http://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=maps.maps>

As of Register 166 (July 2003), and acting under AS 44.62.125(b)(6), until Register 186 (July 2008), the regulations attorney relocated former 5 AAC 95.010 to 11 AAC 195.010, and made conforming technical changes, to reflect Executive Order 107 (2003). Executive Order 107 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Fish and Game to the Department of Natural Resources.

As of Register 186 (July 2008), and acting under AS 44.62.125(b)(6), the regulations attorney relocated former 11 AAC 195.010 to 5 AAC 95.011, and made conforming technical changes, to reflect Executive Order 114 (2008). Executive Order 114 transferred functions related to protection of fish habitat in rivers, lakes, and streams from the Department of Natural

Register 242, July 2022 FISH AND GAME

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

Date: May 5, 2022

File No.: 2021200467

Tel. No.: 907-465-3600

From: Rebecca C. Polizzotto 
Chief Assistant Attorney General
and Regulations Attorney
Legislation, Regulations,
and Legislative Research Section

Re: Department of Fish and Game
regulations re: Anadromous Waters
Catalogue (5 AAC 95.011)

The Department of Law has reviewed the attached regulations of the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. Based upon our review, 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 regulations were adopted by the Department of Fish and Game after the close of the public comment period.

The regulations make the annual update to the adopted-by-reference *Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes*. Your office has confirmed receipt of the six volumes of catalogs. We expect that the accompanying atlases will arrive at your office shortly.

Because the agency has asked for a target effective date of June 15, 2022, we request that the regulations be filed *not later than May 16, 2022*.

The February 15, 2022 public notice and the April 28, 2022 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.

RCP:scw

Cc w/ enclosure: Scott Graziano, Regulations Contact
Department of Fish & Game

Aaron Peterson, Senior Assistant Attorney General
Department 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.

This is a NOTICE OF PROPOSED CHANGES concerning the regulations contained in the Department of Fish and Game file number 2021200467.

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 Scott Graziano, Alaska Department of Fish and Game – Habitat Section, 333 Raspberry Road, Anchorage, AK 99518. Additionally, the Alaska Department of Fish and Game will accept comments by facsimile at (907) 267-2499 or by e-mail to dfg.hab.anadromous@alaska.gov. The comments must be received no later than 5:00 p.m. AKST, March 16, 2022.

You may submit written questions relevant to the proposed action to Scott Graziano 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 Scott Graziano at (907) 267-2143 no later than Thursday, March 10, 2022 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 Scott Graziano, Alaska Department of Fish and Game – Habitat Section, 333 Raspberry Road, Anchorage, AK 99518, Phone: (907) 267-2143, email: scott.graziano@alaska.gov.

A copy of the materials proposed for adoption by reference for all six regions of Alaska (Arctic, Interior, Southcentral, Southeast, Southwest, and Western) are available for inspection and copying at the following locations: in the Anchorage ADF&G office at 333 Raspberry Rd.; at the Alaska Resources Library at 3211 Providence Dr.; in the Fairbanks ADF&G office at 1300 College Rd; and in Juneau at the Alaska State Library at 395 Whittier Street. The ADF&G offices in, Craig, Delta Junction, Douglas, Homer, Ketchikan, Nome, Soldotna, Tok, and have copies of the proposed changes and draft Atlas maps for their region only.

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.

The Alaska Department of Fish and Game keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all the Department of Fish and Game, Habitat Section, notices of proposed regulation changes. To be added or removed from the list, send a request to Habitat Section at dfg.hab.anadromous@alaska.gov, giving your name, and e-mail or mailing address, as you prefer for receiving notices.

Date: February 7, 2022

Ben Mulligan
Deputy Commissioner
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 to the Spawning, Rearing, or Migration of the Anadromous Fishes and its associated Atlas
3. Citation of regulation (may be grouped): 5 AAC 95.011
4. Department of Law file number, if any: 2021200467

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
- (x) Other (identify): Compliance with existing state statutes in AS 16.05.871

6. Appropriation/Allocation: Habitat Section

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>2022</u>	Subsequent Years
Operating Cost	<u>\$ 10.5</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 10.5</u>	<u>\$ 0</u>
1005 General fund/0 program	<u>\$ 0</u>	<u>\$ 0</u>
Other (identify)	<u>\$ 0</u>	<u>\$ 0</u>

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

Name: Scott Graziano
Title: Habitat Biologist 2
Address: 333 Raspberry Rd, Anchorage, AK 99518
Telephone: (907) 267-2143
E-mail address: scott.graziano@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 4, 2022 Prepared by: 

Name (printed): Scott Graziano
Title (printed): Habitat Biologist 2
Telephone: (907) 267-2143

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

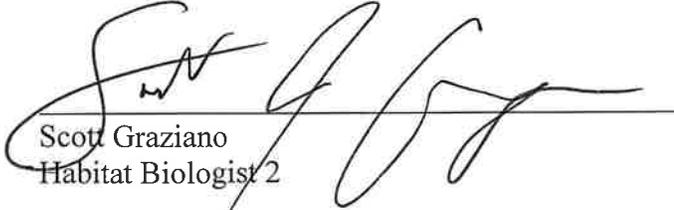
I, Scott Graziano, Habitat Biologist 2, of the Alaska Department of Fish and Game, being sworn, state the following:

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: 04/06/2022



Scott Graziano
Habitat Biologist 2

Subscribed and sworn to before me at Anchorage, AK on 4/6/2022





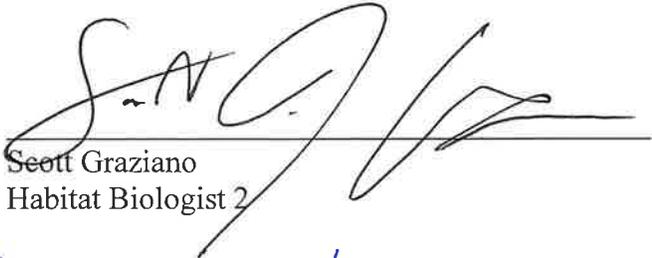
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Scott Graziano, Habitat Biologist 2 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.

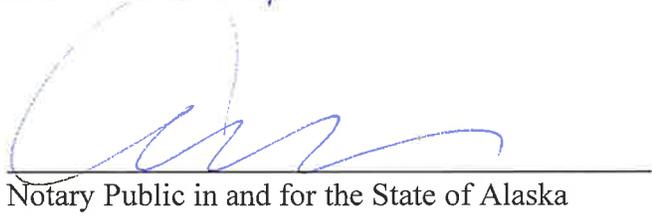
Date: 04/06/2022



Scott Graziano
Habitat Biologist 2

Subscribed and sworn to before me at Anchorage, AK on
4/6/2022

(date)



Notary Public in and for the State of Alaska



ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 100852 DEPT OF FISH AND GAME HABITAT DIVISION
333 RASPBERRY RD, ANCHORAGE, AK 99518

Order #: W0027782

Cost: \$572.74

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Adam Garrigus being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily 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

02/15/2022

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



Subscribed and sworn to before me
this 21st day of February 2022.

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

7/14/2024

JADA L. NOWLING
Notary Public
State of Alaska
My Commission Expires Jul 14, 2024

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Date: 2/8/2022
By: Jen Mulligan
Deputy Commissioner
Alaska Department of Fish and Game
Pub: Feb 15, 2022