

Dear Alaska Board of Fisheries,

Thank you for your thoughtful consideration of our proposal asking the Board to recommend that the Legislature strengthen the fish habitat permitting process under Title 16 of the Alaska Statutes to best protect Alaska's sustainable fisheries.

The fish habitat protection sections of Title 16 - the Alaska Fishway Act (AS 16.05.841) and the Protection of Fish and Game, aka Fish Habitat Permits (AS 16.05.871), have remained largely unchanged since they were passed shortly after statehood. The Alaska Department of Fish and Game (ADF&G) derives its authority from the Alaska Constitution and management directives from the Board of Fisheries and Title 16. While the directives of the Alaska Constitution remain strong and the Board of Fish process democratic, the fish habitat permitting process under Title 16 would better benefit the resource if updated to expand ADF&G's authority and provide clear and enforceable standards to protect fish habitat for future generations.

The Board asked for input on what elements of the Sustainable Salmon Policy should be added to Title 16. This letter provides a response to that request as it relates to our proposal. In addition, the Board asked for specific situations where the state's current permitting system may not protect salmon habitat and what other means are available to implement the proposal request. We can provide examples at the Board's request where the current permitting system has not adequately protected salmon habitat. We believe that those examples are directly related to the limitations of the current law which is also why we seek a statutory change as the best recourse to improve the system. For that reason, our proposal seeks Board action to update the fish habitat permitting process and put ADF&G in the best possible position to protect our sustainable fisheries.

The following recommendations stem from the habitat protection principles established in the Board's Sustainable Salmon Policy (5 AAC 39.222).

- I. **The Board should recommend that the fish habitat permitting process (AS 16.05.871) be updated to expand ADG&G's authority and jurisdiction to issue fish habitat permits.**

The Board recognized in the Sustainable Salmon Policy that to protect salmon habitat, "[m]anagement agencies should have clear authority in statute and regulation." 5 AAC 39.222 (c)(3)(D)(ii). Under current law, ADF&G's permitting authority is limited because only waterbodies that are specifically listed in the Anadromous Waters Catalog and Atlas are subject to ADF&G habitat management through fish habitat permits. ADF&G has no authority to regulate potential impacts to salmon habitat in waters that are not yet listed in the catalog. AS 16.05.871(a). Habitat biologists at ADG&G estimate that fewer than 50 percent of the rivers, streams and lakes used by anadromous species in Alaska are currently subject to ADF&G permitting jurisdiction. To improve protection for fish habitat, the legislature should amend Title 16 to address the limitations of the law and expand ADF&G's authority.

II. The Board should recommend the addition of express enforceable standards to the fish habitat permitting process to guide ADF&G's decision-making and to provide more certainty in the permitting process.

Under current law, the commissioner of ADF&G is directed 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). This creates a that a permit will be issued with little restriction because nothing in the statute or regulation defines what constitutes "the proper protection of fish and game."

The Sustainable Salmon Policy identifies a number of ways to maintain sustainable fisheries by using a combination of habitat protection standards and balanced science-based decision principles. For example, the policy identifies standards related to the protection of essential habitats (marine, estuarine and freshwater), access to habitats important for spawning, rearing and migration, and the protection of the ecological factors that contribute to the quality of fish habitat. 5 AAC 39.222(c). These broad themes provide a framework for establishing specific, enforceable standards that should be incorporated into the permitting process. The Board also recognized that permitting decisions should include scientific assessments of potential impacts so adverse impacts could be controlled and unavoidable impacts could be properly mitigated. 5 AAC 39.222(c)(1)(A-F). Nothing in the current law or regulation requires an assessment of the impacts before a permit is issued regardless of the severity, extent or duration of the proposed activity. To strengthen ADF&G's implementation and enforcement of the permitting program, the legislature should create enforceable standards in statute to protect fish habitat, and to guide and create a more certain permitting system.

III. The Board should recommend that the legislature amend the fish habitat permitting process to include public participation.

Article VIII of the Alaska Constitution reserves fish, wildlife and water for the people of Alaska. It also directs the state to sustainably manage and maintain our fisheries resources and directs the legislature to co-equally prioritize and balance the conservation of natural resources with the state's interest in the utilization and development of them. Simply put, Alaska is an owner state and the people of Alaska have the right to participate in important decisions where the state must balance competing resource priorities. The current fish habitat permitting process (AS 16.05.871) does not require any public notice or provide an opportunity for public participation in fish habitat permit decisions.

In contrast, the Board of Fish process is one of the most inclusive and democratic processes we have in the State of Alaska. As the Board of Fish has stated in the Sustainable Salmon Policy, "[p]ublic support and involvement for sustained use and protection of salmon resources should be sought and encouraged." 5 AAC 39.222(c)(4). Alaska is increasingly faced with decisions that jeopardize our fisheries resources. The public must have a voice in these important decisions and should be allowed to participate in fish habitat permit decisions. To strengthen fish habitat protections and support enforcement of the law, the Board should recommend that the legislature amend Title 16 (AS 16.05.871) to allow for public participation.

Thank you for your consideration of these recommendations. If you have any additional questions please feel free to contact me at (907) 723-3662.

Sincerely,

Lindsey Bloom