

## MATANUSKA-SUSITNA BOROUGH Fish & Wildlife Commission

350 E Dahlia Ave., Palmer, Alaska 99645

### CHAIRPERSON

Mike Wood

### VICE CHAIR

Andy Couch

### MSB STAFF

Ted Eischeid



### BOARD MEMBERS

Howard Delo

Larry Engel

Tim Hale

Peter Probasco

Rob Yundt

Kendra Zamzow

Ex officio: Jim Sykes

# FISH AND WILDLIFE COMMISSION

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### **Special Meeting**

**02/02/2023**

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- 31 = Resolution FWC 23-XX (original) from 1/19/23 FWC meeting
- 35 = Citizen EP's Draft Waterbody Setback Resolution Suggestion
- 37 = Resolution FWC 23-01 Updated Resolution: Waterbody Setbacks
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- 53 = MSB Assembly State Legislative Priorities Public Facing Document
- 55 = Proposed BOF 24 Goals for FWC Consideration from AC

**Physical Location of Meeting:** LLCR, DSJ Bldg, 350 E. Dahlia Ave., Palmer.

**Remote Participation:** See attached agenda.

**Planning and Land Use Department - Planning Division**

**Cell Phone (907) 795-6281**

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**MATANUSKA-SUSITNA BOROUGH**  
**Fish and Wildlife Commission**  
**AGENDA**

Edna Devries, Mayor

Mike Wood – Chair  
Andy Couch – Vice Chair  
Howard Delo  
Larry Engel  
Tim Hale  
Peter Probasco  
Rob Yundt  
Kendra Zamzow  
Jim Sykes – Ex officio member

Ted Eischeid – Staff  
Maija DiSalvo – Staff



Michael Brown, Borough Manager

PLANNING & LAND USE DEPARTMENT  
Alex Strawn, Planning & Land Use Director  
Kim Sollien, Planning Services Manager  
Jason Ortiz, Development Services Manager  
Fred Wagner, Platting Officer

*MEETING LOCATION:*  
*Lower Level Conference Room*  
*Dorothy Swanda Jones Building*  
*350 E. Dahlia Avenue, Palmer*

**February 2, 2023**  
**SPECIAL MEETING**  
4:00 p.m.

Ways to participate in MSB Fish and Wildlife Commission meetings:

IN PERSON: Lower Level Conference Room, DSJ Building, 350 E. Dahlia Ave., Palmer

REMOTE PARTICIPATION:

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- I. CALL TO ORDER
- II. ROLL CALL – DETERMINATION OF QUORUM/LAND ACKNOWLEDGEMENT
- III. APPROVAL OF AGENDA
- IV. PLEDGE OF ALLEGIANCE

- V. APPROVAL OF MINUTES
  - 1. January 19, 2023 Regular Meeting Minutes
- VI. AUDIENCE PARTICIPATION (*three minutes per person, for items not scheduled for public hearing*)
- VII. STAFF/AGENCY REPORTS & PRESENTATIONS
- VIII. UNFINISHED BUSINESS
  - 1. Resolution FWC 23-01 on Draft Assembly OR 23-002, Waterbody Setbacks
  - 2. Board of Fisheries 2024 Meeting Goals and Proposals
- IX. NEW BUSINESS
- X. MEMBER COMMENTS
- XI. NEXT MEETING DATE: 4 PM, Thursday, February 16, 2023, LLCR, DSJ Building
- XII. ADJOURNMENT

**Disabled persons needing reasonable accommodation in order to participate at a MSB Fish and Wildlife Commission Meeting should contact the borough ADA Coordinator at 861-8432 at least one week in advance of the meeting.**



**MSB FISH AND WILDLIFE COMMISSION****Regular Meeting: January 19, 2023****Minutes**

DSJ Building, Lower Level Conference Room //TEAMS Remote Participation

*Minutes prepared by Ted Eischeid, Planner*

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## I. CALL TO ORDER

**Chair Mike Wood called the meeting to order at 4:03 PM.**

## II. ROLL CALL – DETERMINATION OF QUORUM/LAND ACKNOWLEDGEMENT

Present:

Mike Wood (MW)  
Andy Couch (AC)  
Howard Delo (HD)  
Larry Engel (LE)  
Tim Hale (TH)  
Peter Probasco (PP)  
Rob Yundt (RY)  
Kendra Zamzow (KZ)

Absent:

Jim Sykes

MW read the Land Acknowledgement:

*We acknowledge that we are meeting on traditional lands of the Ahtna and Dena'ina people, and we are grateful for their stewardship of the land, fish, and wildlife throughout time immemorial.*

## III. APPROVAL OF AGENDA

LE moved to approve the agenda as written with one change, switching the order of the order of the two presentations, putting Alex Strawn's before Michael Mazzacavallo; HD second.  
Motion to approve agenda as amended passed unanimously.

## IV. PLEDGE OF ALLEGIANCE

## V. APPROVAL OF MINUTES

A. December 15, 2022 Regular Meeting Minutes

**LE moved to approve; HD seconded.**

Correction: PP comment should be Merry Christmas.

**Motion passed as corrected.**

VI. AUDIENCE PARTICIPATION (*three minutes per person, for items not scheduled for public hearing*)

- *Eileen Probasco, to speak on OR 23-002*
- *Laura Pevan, Chickaloon Village Traditional Council*
- *Becky Long, Talkeetna, to speak on OR 23-002*
- *Melissa Heuer, SRC, to speak on OR 23-002*
- *Stephanie Nowers, Assembly*
- *Eric Booton, TU, to speak on OR 23-002*
- *Taylor Rounds*
- *Amber McDonough*
- *Neil Dewitt*
- *Stephen Braund, NDSNA*
- *Bill Stoltze – gave a report on happenings in the AK legislature.*

VII. STAFF/AGENCY REPORTS & PRESENTATIONS

**1. Staff Report - – Ted Eischeid**

**2. Alex Strawn, MSB Planning Department Director:** he will give a staff report on proposed waterbody setback ordinance 23-002.

**3. Michael Mazzacavallo, ADF&G,** will talk about waterbody setbacks as they pertain to fish habitat.

a. Request for Alex S. from Rob Y: How many of the noncompliant structures of the nearly 700 identified, how many are near Big Lake?

b. Tim Hale, tell me more about the Kenai River and/or Kenai Borough waterbody setback?

c. Larry, how are ordinance violations like setbacks enforced? AS: we don't have a mandatory land use permit process so many violations go unnoticed, and enforcement is complex.

VIII. UNFINISHED BUSINESS

**1. MSB Waterbody Setback draft OR 23-002**

a. Public Hearing – opened at 5:00 PM

**1. Eileen Probasco-**

- Referenced her public comment in the packet (see red p. 52+...).
- Referenced what a second class Borough is required to do: develop a land use plan, fund public education, and levy taxes to pay for such.
- Attachment A shows all the MSB plans; Title 17 was created to implement these plans.
- Reviewed MSB policies that support continuance of current setback code.
- This draft ordinance counteracts what these plans recommend.
- Attachment showing “Voluntary BMPs for Development Around Waterbodies”.
- Drafted her personal resolution on p. 56-57 of packet.

**2. Laura Pevin, Chickaloon Native Village (speaking on behalf of the Mat-Su Basin Salmon Habitat Partnership):**

- Discussed the SHP, history and why formed, significant work.
- Major goal is preserving wetlands and their functions for salmon.
- Any impacts to salmon habitat should be avoided, minimized, or avoided.
- Discussed ecosystem benefits of riparian habitat.
- Being proactive is better than reactive regarding ecosystem functions.
- Discussed negative impacts of hard impervious surface water runoff on aquatic ecosystems.
- Consider the SHP as a future resources.

### 3. Becky Long, Talkeetna

- MSB has spent a lot of money on fish passage and habitat, as well as requested additional monies from the SOA and federal government.
- Development in flood zones is costly due to flooding, and costly to ecosystems.
- I support the draft FWC 23-01 resolution.

### 4. Eric Booton, TU:

- TU members support maintaining a 75' waterbody setback.
- Referenced 2001 ADFG Landowner guide to fish habitat.
- Hopes MSB will protect setbacks.
- TU supports the draft FWC 23-01.
- Question about point 4.

### 5. Amber McDonough

- Removing our setbacks will negatively impact aquatic ecosystems.
- Would like to see a way for noncompliant properties to mitigate their impacts and become compliant through some pathway.
- Would like to see protection for active, natural shorelines.
- Would like to see the Kenai River setback applied to MSB.
- Supports FWC 23-01

Public Hearing – closed at 5:24 PM

b. RS FWC 23-01

**PP moved RS FWC 23-01, p. 125; HD second.**

LE: can we hear more about why OR 23-002 was written: .

RY: intent was to give a pathway for noncompliant structures; open to suggestions.  
OR 23-002 open to amendment; streams/rivers were not intended to be covered by the draft OR 23-002.

TH: referenced original riparian buffer proposal in about 2016 that didn't have the political support;

RY: I've been in Kenai and some of the newer homes seem closer than 50'?

TH: mostly deals with issues around Big Lake, and many violations there; Big Lake properties that are in violation of the setback can't be financed for sale, so that is the problem that is in front of us.

HD: I live in Big Lake, and am familiar with the issue there; enforcement seems to be a major problem; maybe we are trying to rush this a bit, maybe we need more information.

RY: not comfortable speaking for Mr. Tew, and I'm not a boater, but in my Wasilla district there are several old structures in violation of the current setback that are just sitting there; I supported the FWC having a say on this proposal.

PP: Glad that we see there needs to be work on this issue; granted, the current ordinance is not being enforced, but current growth means we should not relax our setbacks; the draft grandfather language does not include any engineering standards; my work on migratory habitats, showed me how protecting wetlands was critical for the wildlife and the people, so in our growing MSB I don't want us to get this wrong and negatively impact.

KZ: we need enforcement, so what is the best mechanism to address this?

AS: we have 4 code compliance officers with 800+ open cases, mostly junk and trash violations; to solve setback violations is implementing a mandatory landuse permit program; another strategy for violations would be to prosecute and when convicted, tag the title as having a setback violation;

AC: if I'm advising on fish and wildlife, I can't advise we relax any of our fish and wildlife regulations like waterbody setbacks; looking at Cottonwood Creek drainage it is an impacted waterway already, and the proposed ordinance change would not help that stream; this could also negatively impact Wasilla Lake; also could impact Big Lake, which is one of the largest sockeye systems in the MSB – and it is presently impacted by petroleum products; stream temperature is also a problem on many of our streams that relaxing setbacks would intensify; we have water quality issues on the Little Su River; we also have mitigation costs with buying out flood zone properties.

KZ: maybe we can explore ways for violators to get into compliance, and perhaps strengthen positive impact in these cases by requiring some mitigation.

HD: what KZ said, maybe we should scrap what we have and start with enforcement, new construction; Big Lake has not only petroleum problems but also septic issues;

RY: On illegal buildings on Big Lake, they were built a long time ago; for building built since then, we need something for violators; I will abstain on any FWC votes; I would look for substantive recommendations

PP: We have two resolutions; we should look at both. Maybe we should postpone to extend this to Feb. 16 FWC meeting.

TH: likes some of the resolution FWC 23-01, but would like to see some enforcement language, maybe a mandatory landuse permit, but the EP resolution on p. 56 is also good. It is important to find a solution for the noncompliant properties; the current owners may not have caused a violation.

KZ: We need to add some language to the present 75' setback to strengthen it.

Pete Imholff, has property on Kenai River; required to put in light penetrating docks if I want one; why not imitate what the Kenai setbacks are, but improve them. The Kenai as presently regulated is not working well.

**HD: Amendment – merge EP and FWC 23-01 and KZ's work and combine it into one document (NO SECOND).**

LE: This is a complex issue, with many issues to consider; we recommend that this issue be looked at more broadly, maybe a citizens taskforce; we would support a broader study.

MW: we need more time, so we meet again?

RY: A lot of things that need fixing. My intent was never to include rivers/streams in the draft OR 23-002.

**TH: Moved to extend the meeting by an hour; PP second. Approved.**

RY: LEFT meeting at 6:04 pm.

Eileen P: p. 57 does what you want.

AC: With the current regs, would a mandatory landuse permit solve this issue;

TH: wouldn't necessarily solve the issue. The solution: if your parcel abuts a water body, you need a mandatory landuse permit for development on these parcels.

AS: in 2011 we gutted the landuse permit; applying mandatory landuse permits only to waterbody parcels could be problematic unless we apply it to all.

TH: we should postpone this to a special meeting; Feb. 2.

PP: like Tim's suggestion; should set up a sp

**PP: Moves to set a special Feb. 2 meeting to discuss this and include information presented at today's meeting; from the public and the resolutions and set up a special two person committee to create a modified resolution using FWC 23-01 and input received during the public hearing; LE second.**

**TH: moves to amend motion by striking the word "committee"; PP seconds. Clarification that two members work with staff to develop straw dog. These members shall include: PP and KZ.**

**Amendment passes unanimously.**

**Back to main motion as amended: Passes unanimously.**

SN: look at the original sponsor legislation of the draft; maybe we need to add more intent language in the preamble for that. Perhaps tax incentives for those who do riparian buffers?

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***PP: Moves to move the other old business agenda action items to Feb. 16; HD second.***

***Passed unanimously.***

**2. Board Of Fisheries 2024 Meeting Goals & Proposals – tabled until the February 16, 2023 FWC meeting.**

**3. ADF&G Game Season Summary Meeting Planning – tabled until the February 16, 2023 FWC meeting.**

**4. North Pacific Fisheries Management Council – tabled until the February 16, 2023 FWC meeting.**

IX. NEW BUSINESS

**1. Chair & Vice-chair Officer elections for 2023**

Chair Mike Wood asked Ted to run the election process for FWC chair and vice-chair.

a. Ted opens the floor for Chair nominations.

Mike Wood- nominated by HD.

Andy Couch- self nominated.

b. Ted closes the floor for Chair nominations.

c. Ted recognizes each Chair candidate to make a statement.

d. Ted does a roll call vote for CHAIR.

Member	Vote
LE:	MW.
PP:	MW
TH:	MW
HD:	MW
KZ:	MW
AC:	AC
MW:	AC

MW: 5

AC: 2.

**MW is elected as chair.**

- a. Ted opens the floor for Vice-Chair nominations.

Andy Couch

- b. Ted closes the floor for Vice-Chair nominations.  
c. Ted recognizes each Vice-Chair candidate to make a statement.

**PP: asks for unanimous consent to elect Andy Couch as Vice-Chair; LE: second.**

**Motion passes unanimously.**

**AC elected as VC.**

Ted congratulates the elected chair and vice-chair and turns over the meeting to the elected Chair, Mike Wood.

X. MEMBER COMMENTS

- AC – discussed recent learnings from ADFG about fisheries; ADFG info also collected on moose in GMUs 16B and 14A. ADFG seems to be hurting for funds.
- KZ – CNV and others are putting together a climate fair on Feb. 18 at Turkey Red in Palmer.
- HD: excellent meeting, and thanks to MW and AC for attending the special January 5<sup>th</sup> meeting.
- PP: agrees with HD.
- LE: nothing.
- MD: nothing.
- TE: nothing.
- MW: AC did a good job.

XI. NEXT MEETING DATE:

1. February 16. 4 PM. Regular FWC Meeting, Lower Level Conference Room

XII. ADJOURNMENT

- **Motion to adjourn? LE, seconded by HD.**
- ***THE MOTION PASSES***

***Meeting stands adjourned at 6:39 PM.***

\_\_\_\_\_  
Mike Wood, Chair

\_\_\_\_\_  
Dated

ATTEST:

\_\_\_\_\_  
Ted Eischeid, Planning Division Staff

\_\_\_\_\_  
Dated





CHAPTER 21.18. - ANADROMOUS WATERS HABITAT PROTECTION - Kenai Borough Code of Ordinances: Waterbody Setback

Footnotes:

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**Editor's note**— Ord. No. 2000-08, § 1, adopted May 16, 2000, amended the title of Ch. 21.18. Subsequently Ord. No. 2013-18, § 1, adopted July 2, 2013, amended the title of Ch. 21.18.

## 21.18.010. - Findings.

- A. In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous waters within the Kenai Peninsula Borough. These include removal of near shore native vegetation, bank erosion, bank trampling, pollution, inadequate tourism infrastructure, unsuccessful attempts to remedy bank erosion or protect and restore habitat, inconsistent regulations and enforcement, logging, grazing, mining, wetland fill and drainage, excavation and fill of property, dredging, inappropriately installed culverts, fuel storage, and maintenance of existing structures.
- B. The assembly finds that fuel storage and significant removal of vegetation within the 100-year floodplain along the anadromous waters require regulation to protect the salmon habitat.
- C. The assembly finds that the uncontrolled use and pollution of shoreland and riparian areas adversely affects the prosperity of the Kenai Peninsula Borough, the public health, safety, convenience, and general welfare, and impairs the tax base.
- D. The assembly finds that the legislature of Alaska authorizes the borough to provide for planning, platting, and land use regulation. AS 29.40.010, Planning, platting, and land use regulation, states in subsection (a) that "[a] first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis."
- E. The assembly finds that the riparian ecosystem includes stream bank and floodplain areas and recognizes that impacts to anadromous waters may be due to activities and uses within the greater watershed.
- F. The assembly finds that the 1997 update of the Alaska Department of Natural Resources Kenai River comprehensive management plan recognized the increased use of the Kenai River resource and its associated impacts and recognized the deterioration of nearshore habitat for juvenile salmon and stated in section 2.2 that "[t]he importance of riparian (stream bank) vegetation to fish and wildlife values cannot be overestimated."
- G. The assembly finds that it is in the public interest to further public knowledge of, and the maintenance of safe and healthful conditions; prevent and control water pollution; protect anadromous fish spawning grounds, rearing waters, and migration corridors and aquatic life; control building sites, placement of structures, and land uses; and to preserve the riparian habitat and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

(Ord. No. 2021-15, § 1, 5-4-21; Ord. No. 2013-18, § 2, 7-2-13; Ord. No. 2010-16, § 2, 5-4-10; Ord. No. 2000-08, § 3, 5-16-00; Ord. No. 96-06, § 1(part), 1996)

**Editor's note**— Ord. No. 2010-16, § 2, adopted May 4, 2010, amended the Code by renumbering and amending former § 21.18.020 as a new § 21.18.010.

## 21.18.020. - Purpose.

For the purpose of promoting the public prosperity, public awareness, public health, safety, and welfare, this chapter has been established to:

- A. Protect and preserve the stability of anadromous fish through:
  - 1. Controlling shoreline alterations and disturbances;
  - 2. Preserving nearshore habitat and restricting the removal of native vegetation;
  - 3. Controlling pollution sources; and
  - 4. Prohibiting certain uses and structures detrimental to anadromous waters and habitat.
  - 5. Decreasing significant erosion, sedimentation, damage to the habitat protection district, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems.
- B. Provide a guide for growth and development along anadromous waters in accordance with the Kenai Peninsula Borough Comprehensive Plan and through:
  - 1. Minimizing the number and impacts of structures within the habitat protection district;
  - 2. Regulating improved access to and within the habitat protection district;
  - 3. Establishing minimum lot sizes and widths to provide adequate area for private sewage treatment and to control density;
  - 4. Regulating building setbacks from waterways and steep slopes;
  - 5. Separating conflicting land uses; and
  - 6. Prohibiting certain uses and structures detrimental to the shoreland area.
  - 7. Providing educational materials to the public outlining best management practices.
- C. Achieve the goals and implement the policies of the Kenai Peninsula Borough Comprehensive Plan.
- D. Protect and enhance real property values.
- E. Continuing to enjoy the prosperity and abundance provided by anadromous fish to the citizens of the Kenai Peninsula Borough.

(Ord. No. 2021-15, § 2, 5-4-21; Ord. No. 2013-18, § 3, 7-2-13; Ord. No. 2010-16, § 1, 5-4-10; Ord. No. 2000-08, § 2, 5-16-00; Ord. No. 96-06, § 1(part), 1996)

**Editor's note**— Ord. No. 2010-16, § 1, adopted May 4, 2010, amended the Code by renumbering and amending former § 21.18.010 as a new § 21.18.020.

## 21.18.025. - Application.

- A. The following anadromous waters, as identified in the "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" published by the Alaska Department of Fish and Game (ADF&G) and listed in the KPB 21.18 Appendix adopted by the assembly and incorporated herein

by reference, are subject to this chapter:

1. Kenai River District anadromous waters made subject to this chapter on May 15, 1996.
  2. Major Waters District anadromous waters made subject to this chapter on May 16, 2000.
  3. West District anadromous waters.
  4. North District anadromous waters made subject to this Chapter beginning January 1, 2014.
  5. South District anadromous waters made subject to this Chapter beginning January 1, 2014.
- B. The reach of streams subject to this Chapter shall be defined by the beginning points and end points of the anadromous waters as identified in the Catalog at the time they are approved by the assembly and as indicated by published borough GIS data, unless otherwise specified in KPB 21.18. To the extent the borough's mapping of the location of waters subject to this Chapter conflict with the location identified in the Catalog, the borough's published mapping data controls.
- C. The following waters are excluded from regulation by KPB 21.18:
1. All portions of waterways found within the Seward-Bear Creek Flood Service Area are exempt from KPB 21.18
  2. Braided Channels, Tide Dominated Deltas, Estuaries and Lagoons which are primarily seawater and are identified as anadromous in the State of Alaska Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish are exempt from KPB 21.18
- D. Lands within the habitat protection district adjacent to the anadromous waters set forth in KPB 21.18.025(A) and the KPB 21.18 Appendix are subject to KPB 21.18.090 governing prior existing uses and structures, as of the date the land becomes subject to this chapter.
- E. The KPB 21.18 Appendix shall be available at the clerk's office, on the borough web page, and other locations as determined by the mayor for ease of access by the public.

(Ord. No. 2021-15, § 3, 5-4-21; Ord. No. 2013-18, § 4, 7-2-13; Ord. No. 2012-06, § 1, 5-15-12; Ord. No. 2011-12, § 1, 6-21-11; Ord. No. 2000-08, § 4, 5-16-00)

21.18.027. - Updates to the Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish.

The State of Alaska Department of Fish and Game has jurisdiction over anadromous fish and pursuant to AS 16.05.871 and 5 AAC 95.011 maintains and updates the "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish." Updates to the "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" may be made on a nomination form provided by the Alaska Department of Fish and Game and made available on the Alaska Fish and Game website. Updates that may be nominated include adding new waters, adding species to a cataloged water, extending species distribution in cataloged waters, deleting waters or parts of them, updating survey data on cataloged streams, or revising stream channels, labeling errors, or identifying barriers to fish movement.

(Ord. No. 2013-18, § 5, 7-2-13)

## 21.18.030. - Periodic review.

- A. To assist in the assessment of the effectiveness of KPB Chapter 21.18, the planning department shall provide an annual permit and activity report to the planning commission. This report shall include a statistical analysis of permit activity and trends, commentary on river and land use issues and trends, and any other information that may assist in furthering the management of borough water resources and riparian habitat.
- B. A staff review of KPB 21.18 shall be presented to the planning commission and assembly every fifth year beginning in 2015. The review shall recommend whether it is advisable to amend the regulations to bring them in accord with the purpose and findings of this chapter and the comprehensive plan, to take advantage of new information and techniques, to correct deficiencies or difficulties which may have developed in administration, or for other reasons as staff may determine.
- C. For each annual permit and activity report and five-year review, the planning commission shall hold at least one public hearing.
- D. State of Alaska additions and deletions to the 2011 "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" shall be reviewed by the Planning Department River Center Division every three years and the additions to the catalog shall be presented to the Planning Commission and Assembly as proposed amendments to KPB 21.18. Any proposed additions to the KPB 21.18 Appendix shall be supported by data from the ADF&G nomination form including species and other available data such as life stage. ADF&G approved delisting from the "Catalog" shall be presented to the Planning Commission and Assembly as they occur.

(Ord. No. 2013-18, § 2, 7-2-13; Ord. No. 2012-37, § 4, 10-9-12; Ord. No. 2010-12, § 1, 4-6-10; Ord. No. 96-06, § 1(part), 1996)

## 21.18.035. - Reserved.

**Editor's note**— Ord. No. 2010-12, § 2, adopted April 6, 2010, amended the Code by repealing former 21.18.035 in its entirety. Former § 21.18.035 pertained to the Kenai River watershed district, and derived from Ord. No. 96-06.

## 21.18.040. - Habitat protection district established.

There is established an anadromous waters habitat protection district (habitat protection district). Except as otherwise provided in this section, this district includes all lands within 50 horizontal feet of the waters set forth in KPB 21.18.025. This shall be measured from the ordinary high water mark or mean high water line in tidal areas. Where the banks within this 50-foot district consist of a 60 degree or more cut bank the habitat protection district shall consist of the greater of 50 feet from the river or to a point 25 feet back from the top of the cut bank.

(Ord. No. 2013-18, § 7, 7-2-13; Ord. No. 2010-21, § 1, 6-8-10; Ord. No. 2000-08, § 5, 5-16-00; Ord. No. 96-06, § 1(part), 1996)

## 21.18.050. - Reserved.

**Editor's note—** Ord. No. 2010-12, § 3, adopted April 6, 2010, amended the Code by repealing former 21.18.050 in its entirety. Former § 21.18.050 pertained to flood plain restrictions for habitat protection, permits, fuel storage tanks and logging, and derived from Ord. No. 96-06, and Ord. No. 2000-08, adopted May 16, 2000.

21.18.060. - Reserved.

**Editor's note—** Ord. No. 2010-21, § 2, adopted June 8, 2010, amended the Code by repealing former § 21.18.060 in its entirety. Former § 21.18.060 pertained to prohibited activity within the protection area, and derived from Ord. No. 96-06 of 1996.

21.18.065. - Activities not requiring a permit.

A. Listed vegetation removal activities. Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the shoreland into the water.

Vegetation removal and land disturbing activities within the habitat protection district are prohibited, with the following exceptions:

1. Routine maintenance of existing legally established landscaping and landscape features developed prior to regulation by KPB 21.18, in the habitat protection district, may be continued without a permit. To be considered routine maintenance, activities must have been consistently carried out so that lawns or ornamental plants predominate over native or invasive species. Maintenance is performed with hand tools or light equipment only. Tree removal is not included. "Routine maintenance" activities include mowing; pruning; weeding; planting annuals, perennials, fruits and vegetables; and other activities associated with an ornamental landscape.
2. Pruning of trees and woody shrubs for the health and/or renewal of vegetation shall not result in removal of more than 25% of the living crown of a tree, nor jeopardize the health and natural shape of a tree or shrub.
3. The removal of trees downed by force of nature.
4. The planting of native vegetation does not require a permit provided runoff and erosion are controlled and do not enter the water body.

B. A single flagpole with a surface area footprint not to exceed 4 square feet and above ground height not to exceed 30 feet.

(Ord. No. 2021-15, § 4, 5-4-21; Ord. No. 2013-18, § 8, 7-2-13; Ord. No. 2010-14, § 1, 4-6-10)

21.18.070. - Reserved.

**Editor's note—** Ord. No. 2010-14, § 2, adopted April 6, 2010, amended the Code by repealing former § 21.18.070 in its entirety. Former § 21.18.070 pertained to activities not requiring a permit, and derived from Ord. No. 96-06, Ord. No. 97-26, and Ord. No. 2000-08, adopted May 16, 2000.

21.18.071. - Staff permits.

A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if

they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. Property owners are encouraged to contact the Kenai River Center staff to determine if these impacts are likely to occur before starting the project. An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

1. Tree and Shrub Management

a. A tree or shrub, or portion thereof, may be removed for one or more of the following reasons:

- (i) The tree or shrub, or portion thereof, is dead;
- (ii) The tree or shrub is a safety hazard to persons or property; or
- (iii) The tree or shrub removal is for the purpose of preventing the spread of disease to other trees.

Whenever a tree is removed, it shall be replaced with two seedlings less than 5.5 feet tall of a species native to the region.

2. Elevated light penetrating structures. These structures include structures that are not ancillary to another use but are constructed solely for purposes of accessing the river and may include but are not limited to boardwalks, gratewalks, stairs, ramps, platforms, and gangplanks. Elevated light penetrating structures must be constructed of wood, plastic, fiberglass, aluminum, steel, or other nontoxic material. If the wood is treated, it must be certified as nontoxic to plants and animals by an independent laboratory or other appropriate agency. The topography of the bank and habitat protection district may not be altered to provide for the installation of these structures.

- a. Elevated light penetrating structures with less than 60 percent but a minimum of 25 percent light penetration must not exceed six feet in width and must be constructed so that no part, other than the supporting posts, are less than 18 inches from the ground.
- b. Elevated light penetrating structures with at least 60 percent light penetration must not exceed eight feet in width and must be constructed so that no part, other than the supporting posts, is closer than four inches from the ground. To ensure safety or to aid access, one side or edge of the elevated light penetrating structure may be lowered, provided that the frame on the riverward edge of the structure, is not less than four inches from the ground. Lowering of the surface shall not result in erosion or damage to the bank or vegetation, and the remainder of the structure must still meet the requirements of this chapter.
- c. For elevated light penetrating structures under KPB 21.18.071(a) and (b), the total length of all elevated light penetrating structures that run along or parallel to the banks of the waters shall be limited in length to no more than one-third of the total lineal water frontage of the parcel on which it is constructed.
- d. For all elevated light penetrating structures under KPB 21.18.071(a) and (b), the open space must be uniformly distributed throughout the structure surface.
- e. Elevated light penetrating structures constructed prior to the effective date of this section may be brought into compliance with the standards of this section without obtaining a permit.

3. A single fish-cleaning station may be constructed, provided it has no enclosed sides or roof and that any shelf below the fish-cleaning surface must be at least 60 percent light penetrating and be elevated at least eight inches from the ground. Fish-cleaning stations shall not exceed 25 square feet, excluding the chute and drain pipes, if any.
4. Bank restoration and protection projects.
5. Within the habitat protection district adjacent to a lake, impervious coverage is allowed up to 10% of the habitat protection district, not to exceed a total of 500 square feet, provided that within 10' of the shoreline, no more than 25% of native vegetation is removed.

Allowable uses include structures for temporary use such as gazebos, barbecues, walkways, fire pits, decks and saunas.

Mitigation measures shall be provided to help offset the loss of vegetation. Mitigation measures include, but are not limited to, reserving uplands for native vegetation, or other measures which compensate by reserving equivalent footage of riparian area vegetation.

- B. Applicants for a permit issued pursuant to this chapter are responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project.

(Ord. No. 2013-18, § 9, 7-2-13; Ord. No. 2012-37, § 5, 10-9-12; Ord. No. 2010-14, § 3, 4-6-10)

21.18.072. - Limited commercial activity within habitat protection district.

Within the habitat protection district and subject to the requirements of this chapter, the planning commission may issue a permit for commercial activities to be conducted within a line parallel to and 900 feet west of the section line common to Section 4 and Section 5 of Township 5N, Range 11 W, Seward Meridian (approximately near river mile 1) to the north 1/16<sup>th</sup> aliquot division line of Section 17, T5N, R11W, Seward Meridian (approximately near river mile 3.5). Commercial activities are operations, uses, structures or other activities implemented for a private business purpose. Public parks, docks, and other public infrastructure are not considered commercial activities for purposes of this section.

- A. Activities not requiring permit. Commercial activities of the same nature as those allowed under KPB 21.18.065 do not require a permit under this section.
- B. Allowed Activities. The following commercial activities, uses or structures may be permitted under this section:
  1. Dock and boat launch.
  2. Stairs and pedestrian use boardwalks.
  3. Gas, electric, water or other utility connections, lines, or poles.
  4. Other activities, uses, or structures that either do not expand the applicant's surface area footprint within the habitat protection district or are necessary to the operation of the applicant's business and cannot be located outside of the habitat protection district due to conditions specific to the property. The burden is on the applicant, through a registered professional engineer, to show that conditions specific to the property exist.



- C. General standards. The following standards apply to permits issued under this section:
1. The use or structure will not damage the riparian ecosystem or riparian wetlands. If substantial evidence supports a finding that the use or structure will damage the riparian ecosystem or riparian wetlands, then mitigation shall be required.
  2. Granting of the permit shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  3. The development of the use or structure shall not physically damage the adjoining property;
  4. The proposed use or structure is water-dependent or does not expand the surface area footprint of the structure or use in the habitat protection district.
  5. Applicant or owner's compliance with other borough permits and ordinance requirements.
  6. If the use or structure expands the applicant's surface area footprint within the habitat protection district, then appropriate mitigation shall be required in order to offset impacts to the habitat protection district.
- D. General Conditions. The planning commission may impose permit conditions that it finds are necessary to meet the standards under this section and establish such conditions on the commercial activity, use or structure, for which the permit is granted as it determines necessary to prevent erosion, sedimentation, ground or surface water pollution, or damage to the habitat protection district, riparian wetlands, or riparian ecosystems. The planning commission may require the performance of appropriate mitigation to offset impacts that the planning commission finds may occur as a result of the proposed project or activity.
- E. Prohibited activity. A commercial activity, use or structure, that is not allowed under this section and does not qualify for prior existing status under KPB 21.18.090 is prohibited.
- F. Application procedure. A person seeking a permit under this section must complete the application and pay any applicable filing fee(s) to the river center on a form provided by the river center and receive planning commission approval prior to commencement of the project. An applicant's failure to abide by the terms and conditions of the planning commission's resolution approving the permit is grounds for revocation of the permit and removal of all non-compliant uses or structures.

(Ord. No. 2021-15, § 6, 5-4-21; Ord. No. 2013-18, § 10, 7-2-13; Ord. No. 96-06, § 1(part), 1996)

21.18.075. - Prohibited uses and structures.

Any use or structure within the habitat protection district that is not permitted or allowed under KPB 21.18.065, KPB 21.18.071, KPB 21.18.072, or KPB 21.18.081 is prohibited.

(Ord. No. 2021-15, § 7, 5-4-21; Ord. No. 2013-18, § 11, 7-2-13; Ord. No. 2010-21, § 3, 6-8-10)



21.18.080. - Reserved.

**Editor's note—** Ord. No. 2010-21, § 4, adopted June 8, 2010, amended the Code by repealing former § 21.18.080 in its entirety. Former § 21.18.080 pertained to conditional use permits, and derived from Ord. No. 96-06 of 1996; Ord. No. 97-26, adopted 1997; Ord. No. 2004-14, adopted June 1, 2004.

21.18.081. - Conditional use permit.

- A. Intent. The intent of this section is to allow special uses and structures which may be compatible with KPB 21.18.071 in the habitat protection district through the approval of a conditional use, if certain standards and conditions exist.
- B. Conditional uses and structures. The following conditional uses and structures may be approved in the habitat protection district:
  - 1. Fish-cleaning stations;
  - 2. Fences;
  - 3. Signs;
  - 4. Public owned facilities, parks, campgrounds, and their related uses and structures;
  - 5. Transportation and utility infrastructure;
  - 6. Structures compliant with the Americans With Disabilities Act and elevated light penetrating structures not meeting the standards of KPB 21.18.071;
  - 7. Wells and waterlines;
  - 8. Lifts.
  - 9. Private boat launches and related facilities that are established to serve the public provided the following standards are met:
    - a. A plan of operation is submitted that includes hours of operation, seasons of operation, daily boat launch capacity, parking plan, types of boats and clients to be served, fees charged, location of other public boat launches on the anadromous waters; ancillary facilities including but not limited to restrooms, storage sheds, waiting platforms or areas, a statement of need that the facility will serve, and other information requested to aid in the determination of habitat protection measures.
    - b. The boat launch must be open to the public and not have exclusive membership.
    - c. When no longer serving the public as defined in the plan of operation the boat launch must be removed and the area reclaimed, revegetated or otherwise subject to mitigation measures to restore habitat. A reclamation plan must be submitted with the application as part of the plan of operation.
    - d. The planning commission may establish additional conditions to protect and preserve the purposes of the habitat protection district.
    - e. A conditional use permit under this subsection expires two years after being granted, unless an application for renewal meeting the criteria of KPB 21.18.081(B)(9)(a) is approved by the planning commission which demonstrates that the applicant is in compliance with the original permit conditions and the provisions of this chapter.

10. A principal structure or an addition to a principal structure may be approved within the habitat protection district provided all the following standards are met:
  - a. The parcel boundaries were defined prior to January 1, 2012.
  - b. The parcel and is served by a public sewer system or sewage holding tank or septic system, provided the holding tank or septic system are located entirely outside the habitat protection district.
  - c. The parcel has an area of .3 acres or less and less than 4,000 square feet of total developed impervious coverage.
  - d. The parcel has less than 4,000 square feet of suitable development area outside the habitat protection district.
  - e. On the portion of the parcel within the habitat protection district, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation, or 3,000 square feet of area able to sustain native vegetation, whichever is less.
  - f. The standard for development is to first utilize suitable parcel areas outside the habitat protection district. Within the habitat protection district, it is preferred to minimize impact by preserving the nearshore areas which may sustain native vegetation.
11. Water dependent lakeshore related uses or structures specified in KPB 21.18.081(B)(11)(b) may be permitted within the habitat protection district.
  - a. In addition to meeting the general standards set forth in KPB 21.18.081(D) the permit shall be subject to the following conditions:
    1. Vegetation removal does not exceed the minimum required for the use or structure, and does not exceed 25 percent of the total parcel lakeshore frontage. For purposes of this section frontage means the horizontal distance between side lot lines along ordinary high water.
    2. Fifty (50) feet of native vegetative habitat buffer upland of the disturbed area or a mitigation plan consistent with KPB 21.18.091 approved by the planning commission.
    3. The planning commission may place additional conditions on the permit to protect and preserve the habitat protection district consistent with KPB 21.18.081(E).
  - b. The following uses or structures may be permitted in the anadromous habitat protection district if consistent with the criteria set forth in KPB 21.18.081(B)(11)(a):
    1. Watercraft landings
    2. Floatplane landings and haul-outs. Floatplane landings and haul outs may also be used as water craft landings and haul outs.
12. Boat launches restricted to private use may be permitted on anadromous lakes that have no public boat launch if the application meets the general standards set forth in KPB 21.18.081(D). The permit shall be subject to the following conditions:
  - a. Properties may not qualify for both a lakeshore activity or structure under KPB 21.18.081(B)(11) and a private use boat launch under this KPB 21.18.081(B)(12).
  - b. The launch approach may not exceed 12 feet in width.
  - c. Erosion and sediment control measures must be specified in the permit application and implemented both during construction and operation.

- d. The launch is used solely for the purpose of launching a boat. Vehicle parking and other uses that may have a detrimental impact on the habitat protection district are not allowed.
  - e. The planning commission may place additional conditions on the permit to preserve and protect the habitat protection district consistent with KPB 21.18.081(E).
- C. Application procedure. A person seeking a conditional use permit must make application to the river center on a form provided by the river center and receive approval prior to commencement of the project. The application shall provide information describing the proposed use or structure and demonstrate that the use or structure meets the general standards for a conditional use permit. The planning commission may approve, deny, or conditionally approve an application for a conditional use permit. The planning commission has no obligation to ascertain whether special conditions can be developed or imposed unless the applicant has submitted adequate information to demonstrate that the proposed methods or conditions will mitigate the impacts of the use or structure within the habitat protection district.
- D. General standards. All of the following standards shall be met before conditional use approval may be granted.
  - 1. The use or structure will not cause significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
  - 2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  - 3. The development of the use or structure shall not physically damage the adjoining property;
  - 4. The proposed use or structure is water-dependent.
  - 5. Applicant or owner's compliance with other borough permits and ordinance requirements.
- E. Conditions attached to conditional uses and structures. In granting a conditional use permit, the planning commission may establish such conditions on the development, use, or operation of the use or structure for which the conditional use permit is granted as it determines necessary to prevent significant erosion, sedimentation, damage within the habitat protection district, or result in or increase ground or surface water pollution. Such conditions may include specifications for type of vegetative shore cover, location of structures and uses, periods of operation, type of construction, and mitigation. Violation of any of these conditions shall be deemed a violation of this ordinance. To secure information upon which to base its determination, the planning commission may require the applicant to furnish the following information:
  - 1. A plan of the area showing surface contours, ordinary high water or mean high water marks, vegetative cover, slope measurements, soil conditions, wetlands, and drainages;
  - 2. Location of buildings, parking areas, access, walkways, and other manmade features on the landscape;
  - 3. Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
- F. If the planning commission denies a conditional use permit, a similar application for a conditional use permit may not be made within two years from the date of the denial unless there has been a substantial change in circumstances affecting the application.

- G. Applicants for a conditional use permit are responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project.
- H. The construction or installation phase of a use requiring a conditional use permit must be completed within one calendar year from the date of the permit's issuance, or the conditional use permit shall expire unless the planning commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. The planning commission shall adopt findings consistent with the purposes of this chapter to support the issuance of a permit, or an extension thereof, totaling more than two years from the date of issuance. Prior to its expiration date, a conditional use permit issued for up to one year may be extended for up to twelve (12) months by the director of planning upon written request.

(Ord. No. 2013-18, § 12—14, 7-2-13; Ord. No. 2012-37, § 6, 10-9-12; Ord. No. 2012-06, § 2, 5-15-12; Ord. No. 2010-21, § 5, 6-8-10)

21.18.082. - Permit revocation.

A conditional use permit issued pursuant to this chapter may be revoked pursuant to KPB Chapter 21.50 if the permittee fails to comply with the provisions of this chapter or the terms of a permit issued under this chapter. The borough clerk shall provide at least 15 days written notice to the permittee of a revocation hearing before the hearing officer. The notice shall provide specific grounds for the proposed revocation. If the permittee provides written evidence to the planning department staff demonstrating reasonable compliance with this chapter and the terms of his permit within the 15 day period then the revocation hearing may be canceled at the discretion of the director of planning.

(Ord. No. 2012-37, § 7, 10-9-12; Ord. No. 2011-34, § 5, 10-11-11; Ord. No. 2010-21, § 6, 6-8-10)

21.18.090. - Prior existing uses and structures.

- A. Intent. There are uses which were conducted, and structures which were under construction, or exist and were in use before the enactment of this ordinance which would be prohibited or restricted under the terms of this ordinance or future amendments. It is the intent of this section to allow these prior existing uses or structures to continue but not be increased, expanded, or intensified. Any prior existing uses or structures must still comply with other applicable laws.
- B. The burden of proof is on the applicant to show that a prior existing use or structure existed, when the use or structure was established, and the size, location, and level of use.
- C. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter, shall be allowed to continue, provided that a structure under construction must have been substantially completed by April 16, 1998 for the anadromous waters set forth in KPB 21.18 Appendix Kenai River District, May 16, 2002, for the anadromous waters set forth in KPB 21.18 Appendix Major Waters District, January 1, 2014 for the anadromous waters set forth in KPB 21.18 Appendix West District, and January 1, 2016 for the anadromous waters set forth in KPB 21.18 Appendix South District and North District.

1. Upon application and approval of a prior-existing structure/use permit by planning department staff principal structures may be replaced, repaired or reconstructed within three years after damage or destruction. If a principal structure is not substantially damaged and only a portion of the structure has been damaged or destroyed, only that portion may be repaired or replaced. The height of an original principal structure and area encompassed by the original structure cannot be increased, unless necessary to comply with the requirements of KPB 21.06. The structure must be similar in size and use to the structure being repaired or replaced. Repair, replacement, or reconstruction may only encompass the same square footage that the structure occupied prior to damage or destruction. The structure must be more compliant with this chapter which shall be determined by application of mitigation measures set forth in KPB 21.18.091 to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:
  - a. The structure will not increase significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
  - b. Permitting repair, reconstruction, or replacement shall be consistent with the purposes of this chapter as set forth in KPB 21.18.020, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  - c. The reconstruction, replacement, or repair will not physically damage the adjoining property;
  - d. Removal of materials or debris remaining from the damage or destruction; and
  - e. Owner's compliance with other borough permits and ordinance requirements.
2. The right to reconstruct in nonconformity with the chapter is forever lost if:
  - a. the application for reconstruction or repair is not made within 24 months after the date of accidental damage or destruction or within 6 months prior to the owner's intentional damage or destruction or
  - b. the application is approved but the structure is not substantially reconstructed within 36 months of the date of the approval of the application for reconstruction.
    - (i) For reasonable and sufficient cause shown for the delay, the director of planning may authorize an extension not to exceed 12 months to complete reconstruction.
    - (ii) To obtain an extension of time an applicant shall submit a written request for an extension to the planning department prior to the expiration of the 36 months reconstruction period. The applicant must show reasonable and sufficient cause for the extension.
3. Nothing in this section prohibits reconstruction at any time in compliance with this chapter.
4. The provisions applicable to principal prior existing structures set forth in KPB 21.18.090(C)(1), (2), (3) also apply to the replacement, repair or reconstruction of accessory structures within the habitat protection district. In addition to those provisions the following rules apply to accessory structures:
  - a. Accessory structures may be replaced or reconstructed outside of the habitat protection district without a KPB 21.18 permit.
  - b. The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the habitat protection district in order to be permitted to replace, or reconstruct the accessory structure within the habitat protection district.

5. Any prior existing structure which has been declared a public nuisance, health or fire hazard pursuant to KPB 21.16.010 shall thereafter not be conducted, used or occupied except in conformity with the provisions of this chapter. The Planning Department may require removal of structures which have been declared a public nuisance, health or fire hazard pursuant to KPB 21.16.010.
- D. Uses. This chapter shall not prohibit or restrict uses which were legally conducted before the effective date of this section, provided that, after the effective date, such uses are conducted in the same location and are not enlarged to include a greater number of participants or to occupy a greater area of land. Any prior existing use which has ceased to be used, for forty eight consecutive months or more, shall be considered abandoned and thereafter not be conducted, used or occupied except in conformity with the provisions of this chapter. Upon application and approval of a prior existing structure/use permit by planning department staff a change to the prior existing use may be allowed. No change shall be granted unless the change reduces the noncompliance, by use of mitigation procedures set forth in KPB 21.18.091, to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:
1. The use will not increase significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
  2. Permitting the use shall be consistent with the purposes of this chapter as set forth in KPB 21.18.020, the borough comprehensive plan, another applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  3. The use will not physically damage the adjoining property;
  4. Removal of materials or debris resulting from the prior-existing use; and
  5. Owner's compliance with other borough permits and ordinance requirements.
- E. Impervious materials placed in the habitat protection district which are not structures are not allowed as either prior existing uses or prior existing structures. The planning department may require removal of these materials.
- F. Planning department determinations regarding prior existing structures and prior existing uses may be appealed to the planning commission.
- G. Nothing in this chapter shall prevent any change of tenancy, ownership or management of any prior existing structure.
- (Ord. No. 2013-18, § 15, 7-2-13; Ord. No. 2012-37, § 8, 10-9-12; Ord. No. 2011-09, § 1, 5-17-11; Ord. No. 96-06, § 1(part), 1996)

#### 21.18.091. - Mitigation measures.

Mitigation measures may be required by planning department staff to address impacts to the habitat protection district from a proposed, ongoing, or completed project. These measures may include, but are not limited to:

- A. Standard erosion and storm water runoff control measures;
- B. Restoration and maintenance of native vegetation and water quality protection functions;
- C. Restoration and maintenance of native vegetation and water quality protection functions along areas that immediately abut the habitat protection



district;

- D. Removal of non-conforming accessory structures from the habitat protection district;
- E. Other measures as agreed upon by the planning department and applicant. Examples include removal of seawalls, riprap, jetties, and other structures that may be detrimental to fish habitat; installation of approved bank protection measures; professional evaluation of privately owned waste water treatment system; removal of materials, structures and other items that may be present in the habitat protection district or along the shore.

(Ord. No. 2012-37, § 9, 10-9-12; Ord. No. 2010-21, § 7, 6-8-10)

21.18.100. - Administration by cities—Delegation—Legal proceedings.

- A. The administration and enforcement of this ordinance may be undertaken by a city.
- B. A city may adopt the standards established in this chapter or prescribe standards more stringent than those established in this chapter for the areas of the city within the habitat protection district or other areas regulated by this chapter. A conditional use permit issued by a city planning commission may serve to satisfy the requirements of 21.18.072 and 21.18.080.
- C. A city wishing to administer and enforce this chapter shall enact an ordinance adopting the provisions of this chapter by reference, providing the city will undertake the administration in conjunction with the administration of land use regulations and building and health codes enacted by the city. Within 30 days of passage of the ordinance the mayor shall transfer the administration and enforcement to the city. The city may relinquish and transfer the administration and enforcement back to the borough by ordinance, however the transfer shall not take effect until 90 days after the city approves the transfer or the commencement of a new fiscal year for the borough, whichever is greater.
- D. If a city assumes administration of this chapter, conditional use permit determinations shall be made by the city planning commission, or by the city council, as provided by city ordinance. Appeals or legal proceedings taken from actions of the city in administering shall be the sole responsibility of the city.

(Ord. No. 2021-15, § 8, 5-4-21; Ord. No. 2000-08, § 9, 5-16-00; Ord. No. 97-26, § 3, 1997; Ord. No. 96-06, § 1(part), 1996)

21.18.110. - Violations—Enforcement.

Violations of this chapter are subject to the enforcement of remedies set forth in KPB 21.50. Each day a violation continues is a separate violation.

(Ord. No. 2011-34, § 6, 10-11-11; Ord. No. 97-55, § 4, 1997; Ord. No. 96-06, § 1(part), 1996)

21.18.120. - Conflict with city land use authority or other laws or regulations.

To the extent this chapter may conflict with any previous grant or delegation of land use regulation authority from the borough, such previous delegation of authority is modified or limited so as not to conflict with this chapter. Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority having authority to adopt those restrictions.

(Ord. No. 96-06, § 1(part), 1996)

21.18.130. - Administration and appeals.

Applications for permits, conditional use permits or determinations under this chapter will be administered in accordance with the provisions of KPB 21.20 governing application, notice and conduct of hearings. Appeals from action taken under this chapter will be handled in accordance with the appeal procedures set forth in KPB 21.20.

(Ord. No. 96-06, § 1(part), 1996)

21.18.135. - Exemption for emergency situations.

- A. In an emergency, the planning department, through its authorized representative, may issue temporary oral permits to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.
- B. An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation. An emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter. Work shall be conducted using best management practices to ensure that any adverse effect on the habitat protection district and anadromous waters is minimized.
- C. Conditions may be attached to emergency permits to comply with the purposes of this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the planning department within 60 days of the date of the emergency. The borough may require mitigation to repair damage to the habitat protection district.
- D. Emergency permits shall be valid until the date of expiration stated on the permit.
- E. This section is intended to provide for the immediate response to emergency situations for life and safety issues when time is not adequate to process permits in accordance with the other applicable permitting provisions of this chapter.

(Ord. No. 2012-37, § 10, 10-9-12; Ord. No. 2010-16, § 3, 5-4-10; Ord. No. 97-26, § 4, 1997)

21.18.137. - State regulation not superseded.



Nothing in this chapter supersedes the state authority to manage, regulate or authorize the extraction or development of its natural resources.

(Ord. No. 2011-12, § 2, 6-21-11)

#### 21.18.140. - Definitions.

As used in this chapter:

"100-year floodplain" means the land area susceptible to being inundated by water from any source during a 100-year flood, which is a flood event that has a 1 percent change of being equaled or exceeded in any year.

"Abandoned" means to cease a use for a specified time period, whether the cessation of use is intentional or unintentional, and whether or not the use is seasonal.

"Accessory structure" means a use or structure that is subordinate in size or purpose to the principal structure or use of the same lot or parcel of ground and serving a purpose customarily incidental to the use of the principal structure or use of land.

"Anadromous Waters" as used within KPB 21.18 means those fresh or predominately fresh waters of the Kenai Peninsula Borough which have been listed by the State of Alaska Department of Fish & Game in the "Atlas and Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish" and also listed within KPB 21.18 and the KPB 21.18 Appendix.

"Best management practices" means that combination of conservation measures, structures, or management practices that reduces or avoids adverse impacts of development on land, water or waterways, and water bodies.

"Braided Channels" means the intertwined branches or secondary channels of a river or stream and characterized by the separation and rejoining of two or more channels separated by bars or islands.

"Commercial use" shall mean an occupation, employment, or enterprise that is carried on for sale of goods or services or for profit.

"Conditional use" shall mean a use that would not be appropriate without restrictions throughout the habitat protection district but which, if controlled as to number, area, location, relation to the habitat or method of operation, would not cause or lead to significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface pollution and damage to riparian wetlands and riparian ecosystems.

"Cut bank" shall mean banks of anadromous waters with exposed soil surface that have occurred from natural or manmade causes whether the exposed surface extends to the high water mark or not.

"Elevated light penetrating structures" mean structures, including walkways, that are off the ground, allow for sunlight ingress, and constructed in such a manner that allow vegetation to grow up to prevent vegetation trampling and increased sedimentation caused by recreational use activities within the habitat protection district.

"Emergency" means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

"Erosion" shall mean significant sloughing, washout, or discharge of soil arising from manmade sources or causes.

"Estuary" means a semi-enclosed coastal body of water with a free connection to the sea and in which seawater is measurably diluted with freshwater derived from land drainage.

"Fuel storage tank" shall mean any vessel for the storage of petroleum based fuels including gasoline, diesel, kerosene and heating oil having a liquid volume of 200 gallons or more.

"Gratewalks" shall mean elevated light penetrating (ELP) walkways utilizing some variety of open grate material as a surface.

"Ground or water pollution" shall mean the discharge, application, spread or release of chemicals, toxic materials, fuels, pesticides, petroleum based fuels on or into the soil and waters within the habitat protection district.

"Habitat protection district" shall mean the anadromous waters habitat protection district land area as established in KPB 21.18.040.

"Higher high water" The higher of the two high waters of a tidal day where the tide is of the semidiurnal or mixed type. The single high water occurring daily during periods when the tide is diurnal is considered to be higher high water.

"Impervious Coverage" means an area of ground that, by reason of its physical characteristics or the characteristics of materials covering it, does not absorb rain or surface water. All parking areas, driveways, roads, sidewalks and walkways, whether paved or not, and any areas covered by buildings, structures, or water shedding material such as, but not limited to, concrete, asphalt, brick, stone, wood, ceramic tile, plastic sheeting or metal shall be considered to be or have impervious coverage. Elevated light penetrating structures meeting the requirements of KPB 21.18.071 A.2 shall not be counted as impervious coverage.

"Impervious Material" means material that impedes or prevents natural infiltration of water into soil.

"Kenai River" shall mean the main stem of the river from and including Kenai Lake to the mouth including Skilak Lake. The main stem shall include all sloughs, channels, boat basins, distributaries, and lagoons. For the purpose of this chapter, the mouth shall be described as the western most section line common to Section 5 and Section 8, T5N, R11W, Seward Meridian.

"Lagoon" means relatively shallow bodies of water, mostly-enclosed, with an oceanic source, separated by a low-lying swatch of land, such as a spit or barrier island. This oceanic source may be continual or episodic, such as storm-induced overwash, and generally has a different salinity as a result of its restricted access.

"Lift" means a structure which elevates and lowers boats, floatplanes, people, and cargo to and from the river or adjacent shoreland.

"Logging" shall mean removal or cutting down more than 50 trees per acre that have a breast diameter height of 6" or more.

"Mean Higher High Water" A tidal datum. The average of all the daily higher high water recorded over a 19-year period or a computed equivalent period.

"Mean high water line" or "ordinary high water line" shall have the definition given in 11 AAC 53.900(15) as it currently exists or as it may be renumbered or revised.

"Mile Zero" The downstream beginning point of the anadromous waters identified in 21.18, and the riparian zone defined as the habitat protection district. On riverine systems subject to tidal inundation, Mile Zero begins at the elevation of mean high tide, where not otherwise designated by KPB code or prior designations.

"Mitigation" means the reduction of adverse effects of a proposed project by considering:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
5. Compensating for the impact by replacing or providing a comparable substitute.

"Native vegetation" means the indigenous flora, to include all plant life, which naturally and historically occur in the Kenai Peninsula Borough region. A species shall be considered non-native if it is tracked and listed on the Alaska Center for Conservation Science's Non-Native Plant Species List.

"Ordinary high water mark" shall have the definition given in 11 AAC 53.900(23) as it currently exists or as it may be renumbered or revised.

"Principal structure" means a structure in which is conducted the principal use of the lot on which it is located.

"Public launch" means a facility accessible to the general public used to launch and retrieve trailered boats and is capable of launching such boats with a passenger vehicle and trailer in a safe manner.

"Riparian" means land abutting anadromous waters subject to this chapter.

"Riparian habitat" shall mean the areas within and adjacent to anadromous waters containing spawning and rearing habitat for salmon or that provide immediate cover or stability for salmon and eggs at all stages of development.

"River center" shall mean the Kenai Peninsula Borough Donald E. Gilman River Center.

"Shrub" means a woody perennial plant differing from a tree by its low stature and by generally producing several basal stems instead of a single bole and from a perennial herb by its persistent and woody stems.

"Soil erosion" shall mean the increased movement of soils that occurs as a result of human activities or development.

"Structure" shall mean anything which is constructed, erected or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Building materials including but not limited to doors, windows, carpet, roofing, posts, and beams which have not been assembled, incorporated, or erected into a structure do not alone or collectively constitute structures.

"Substantially complete" shall mean essentially completed and available for the owner's beneficial use for the purpose and in the manner intended for the structure.

"Substantially damaged" shall mean that the cost to repair the damage equals or exceeds 50% of the structures' assessed value prior to the damage.

"Substantially reconstructed" shall mean completed to a point where the structure is available for the owner's beneficial use or occupancy.

"Tide Dominated Delta" means a river delta subject to tidal inundation as well as tidal and storm erosion which may be mainly submarine with prominent bars or ridges.

"Watershed" means a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.

"Wetlands" means land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(Ord. No. 2021-15, § 9, 5-4-21; Ord. No. 2013-18, § 16, 7-2-13; Ord. No. 2012-06, § 3, 5-15-12; Ord. No. 2011-09, § 2, 5-17-11; Ord. No. 2010-21, §§ 8, 9, 6-8-10; Ord. No. 2010-16, § 4, 5-4-10; Ord. No. 2010-14, § 4, 4-6-10; Ord. No. 2000-08, § 10, 5-16-00; Ord. No. 97-26, §§ 5, 6, 1997; Ord. No. 96-06, § 1(part), 1996)

#### 21.18.145. - Variances.

Variances from the requirements of this chapter may be requested pursuant to KPB Chapter 21.05.

(Ord. No. 2010-16, § 5, 5-4-10)

**MATANUSKA-SUSITNA BOROUGH****FISH & WILDLIFE COMMISSION RESOLUTION SERIAL NO. FWC 23-XX**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH FISH AND WILDLIFE COMMISSION  
RECOMMENDATIONS TO THE PROPOSED WATERBODY SETBACK ORDINANCE 23-002.

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WHEREAS, the Matanuska-Susitna Borough has a vested interest in utilizing science-based standards and forward looking policies to help ensure a balance between the critical fish and wildlife resources of the region with other needs of the population, including responsible resource development; and

WHEREAS, the Matanuska-Susitna Borough is home to roughly 15% of the state's population and covers over 25,000 square miles, and continues to be the fastest growing region of Alaska with abundant aquatic resources encompassing two major river systems, all six of the Alaska-designated recreation rivers, and contains a multitude of lakes, rivers, and streams supporting fish and wildlife; and

WHEREAS, the Matanuska-Susitna Borough has spent over \$20 million on aquatic restoration projects in the borough, replacing more than 100 culverts that have restored over 67 stream miles and 6,224 lake acres of anadromous fish habitat; and

WHEREAS, healthy habitat not only supports our fish and wildlife, but ensures clean water for our communities and key economic opportunities for Alaskans; and

WHEREAS, economic studies in our region in 2007 and 2017 show the significant positive economic impact sport fishing has on the economy of the MSB, including \$56 million in direct spending benefits to the MSB

in 2017 alone, with additional economic benefits from healthy wildlife populations, both of which require adequate and quality habitat locally; and

WHEREAS, an intent of waterbody setbacks is to protect life and property that support a high quality of life while helping maintain clean water and quality fish and wildlife habitat.

NOW, THEREFORE, BE IT RESOLVED, that the MSB FWC submits the following comments regarding the proposed waterbody setback OR 23-002:

1. The FWC recognizes the importance of choosing development options that minimize impacts to critical fish and wildlife resources while appropriately managing the impacts from potential nonpoint source water pollution using best management practices whenever possible like bio-swales that help intercept polluted runoff from degrading water bodies.

2. The FWC believes impacts to critical fish and wildlife resources should be avoided when possible, and minimized and fully mitigated when not possible within the impacted watersheds.

3. The FWC recommends that the current 75' waterbody setback code be maintained for streams and rivers.

4. The FWC recommends that the proposed OR 23-002 be amended to only apply to lake setbacks.

5. For new development subject to this ordinance the FWC recommends that the proposed 23-002 be amended to incorporate the following nonpoint pollution mitigation options:

a. For new developments, design and construct a water management system that collects and directs storm water from the development into bio-swales that are no closer than 25' to the water body's high water mark, and that receives approval in the site plan approved by a licensed engineer; or

b. For new developments, design and construct a 25' riparian buffer of native vegetation (not lawn) from the water body's high water mark that will be developed and maintained by the developer while subject to this ordinance, and that receives approval in the site plan approved by a licensed engineer;

6. For previous development violating the current 75' waterbody setback subject to this ordinance the FWC recommends that the proposed OR 23-002 be amended to incorporate the following nonpoint pollution mitigation options that would be approved by a licensed engineer that it has been designed and built in a way that protects surface and subsurface water quality in order to attain their grandfathered status:

a. The FWC recommends that developments violating the current ordinance would have to design and construct a water management system that collects and directs storm water from the development into bio-swales that are no closer than 25' to the water body's high water mark; or

b. The FWC recommends that developments violating the current ordinance would have to institute a 25' riparian buffer of native vegetation (not lawn) from the water body's high water mark that will

be developed and maintained by the developer while subject to this ordinance.

7. The FWC recommends that any waterbody setback ordinance changes incorporate public education strategies and appropriate enforcement options for infractions.

ADOPTED by the Matanuska-Susitna Fish and Wildlife Commission this 19th day of January, 2023

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Mike Wood, FWC Chair

ATTEST:

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Ted Eischeid, MSB Staff



**DRAFT FWC RESOLUTION PROPOSED BY EILEEN PROBASCO**

January 2023

WHEREAS, the Matanuska Susitna Borough is charged by the State of Alaska with Land Use Planning and Implementation; and

WHEREAS, Title 15 of the Borough Code contains a multitude of plans containing statements, goals and objectives about the protection of water quality and shoreline habitat; and

WHEREAS, Title 17 of the Borough Code contains only two sections with minimal regulations concerning waterbody setbacks,

WHEREAS, the Borough has also conducted a multitude of studies and adopted or facilitated other documents concerning waterbody setbacks, protection of water quality and shoreline habitat, which this ordinance is inconsistent with, including:

1. Voluntary Best Management Practices for Development Around Waterbodies
2. Economic Benefits of Sport Fishing in the Mat-Su
3. Shoreland Setbacks Analysis and Recommendation, 1999
4. More
5. Etc...
- 6.

WHEREAS, proposed Assembly Ordinance 23-002 Setback Ordinance Change is inconsistent with the 2005 overall Mat-Su Borough Comprehensive plan and planning documents the borough has adopted or facilitated; and

WHEREAS, proposed Assembly Ordinance 23-002 and the associated IM do not contain justification for it's adoption; and

WHEREAS, the language in proposed Assembly Ordinance 23-002 concerning allowing structures to be built within the 75 foot waterbody setback as long as they are built and designed in accordance with plans developed by a structural engineer does nothing to protect potential runoff, sedimentation, loss of shoreline or land riparian values, and

WHEREAS, adoption of this ordinance is contrary to the intent of the Best Management Practices for Development around Waterbodies, adopted by assembly Ordinance 05-023, which are intended to minimize;

- Runoff from impervious surfaces,
- Sedimentation from land disturbances,
- Nutrient enrichment from septic systems and fertilizers,
- Loss of shoreline and land riparian values; and
- Pollution from gasoline or oil, or other substances harmful to waterbodies

WHEREAS, the Borough Assembly established the Matanuska-Susitna Borough Fish and Wildlife Commission to *...advise and make recommendations to the assembly, borough manager, and/or any state or federal agencies, departments, commissions, or boards possessing jurisdiction in the area of fish, wildlife, and habitat on the interests of the borough in the conservation and allocation of fish, wildlife, and habitat.*

NOW THEREFORE BE IT RESOLVED that the MSB Fish and Wildlife Commission hereby opposes the adoption of Ordinance 23-003; and

BE IT FURTHER RESOLVED that the commission recommends the Assembly fail the ordinance in its current format; and

BE IT FURTHER RESOLVED that the commission recommends if the Assembly wishes to proceed with amendments to the waterbody setback regulations, that staff be given clear direction to prepare an ordinance that will:

1. Keep the current required 75-foot waterbody setback
2. Add a section of code to include enforceable measures that can be used to mitigate shoreline degradation and water pollution and protect riparian habitat on properties in violation of the waterbody setback and wishing to obtain legal status, or wishing to obtain a waterbody setback variance
3. NOT grant legal nonconforming status or a setback variance to existing structures currently in violation of the waterbody setback requirements unless they are required to meet the shoreland mitigation measures
4. Only grant a variance to waterbody setbacks for future development if proper shoreland mitigation is required.

ADOPTED by the Matanuska-Susitna Borough Fish and Wildlife Commission this \_\_\_\_ day of \_\_\_\_\_, 2023.

**MATANUSKA-SUSITNA BOROUGH****FISH & WILDLIFE COMMISSION RESOLUTION SERIAL NO. FWC 23-01 UPDATE**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH FISH AND WILDLIFE COMMISSION MAKING RECOMMENDATIONS TO THE PROPOSED WATERBODY SETBACK ORDINANCE 23-002.

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WHEREAS, the Matanuska-Susitna Borough has a vested interest in utilizing science-based standards and forward-looking policies to help ensure a balance between the critical fish and wildlife resources of the region with other needs of the population, including responsible resource development; and

WHEREAS, the Matanuska Susitna Borough is charged by the State of Alaska with Land Use Planning and Implementation; and

WHEREAS, Title 15 of the Borough Code contains a multitude of plans containing statements, goals and objectives about the protection of water quality and shoreline habitat; and

WHEREAS, Title 17 of the Borough Code contains only two sections with minimal regulations concerning waterbody setbacks,

WHEREAS, the Borough has also conducted a multitude of studies and adopted or facilitated other documents and partnerships concerning waterbody setbacks, protection of water quality and shoreline habitat, which this ordinance is inconsistent with, including:

1. Voluntary Best Management Practices for Development Around Waterbodies
2. Economic Benefits of Sport Fishing in the Mat-Su
3. Shoreland Setbacks Analysis and Recommendation, 1999
4. It Takes Fish to Make Fish Board of Fisheries Booklets

5. Mat-Su Basin Salmon Habitat Partnership goals, plans and projects

6. Various other studies, publications and partnerships facilitated by the borough

WHEREAS, proposed Assembly Ordinance 23-002 Setback Ordinance Change is inconsistent with the 2005 overall Mat-Su Borough Comprehensive plan and planning documents the borough has adopted or facilitated; and

WHEREAS, proposed Assembly Ordinance 23-002 and the associated IM do not contain justification for its adoption; and

WHEREAS, the Matanuska-Susitna Borough has spent over \$20 million on aquatic restoration projects in the borough, replacing more than 100 culverts that have restored over 67 stream miles and 6,224 lake acres of anadromous fish habitat; and

WHEREAS, healthy shoreline habitat not only supports our fish and wildlife, but ensures clean water for our communities, key economic opportunities for Alaskans and an effective way of preventing and mitigating floods; and

WHEREAS, economic studies in our region in 2007 and 2017 show the significant positive economic impact sport fishing has on the economy of the MSB, including \$56 million in direct spending benefits to the MSB in 2017 alone, with additional economic benefits from healthy wildlife populations, both of which require adequate habitat locally; and

WHEREAS, an intent of waterbody setbacks is to protect life and property that support a high quality of life while helping maintain clean water and quality fish and wildlife habitat.

WHEREAS, the Matanuska-Susitna Borough is home to roughly 15% of the state's population and covers over 25,000 square miles, and continues to be the fastest growing region of Alaska with abundant aquatic resources encompassing two major river systems, all six of the Alaska-designated recreation rivers, and contains a multitude of lakes, rivers, and streams supporting fish and wildlife; and

WHEREAS, the Matanuska-Susitna Borough projected growth will increase by approximately 38% by 2050; and

WHEREAS, the Matanuska-Susitna Borough Planning Department estimates that approximately 700 lake shore structures are currently in violation; and

WHEREAS, the number of structures built in violation of the shoreline setback dropped dramatically between 2008 and 2010 when a land use permit was required through the Matanuska-Susitna Borough Planning Department; and

WHEREAS, the Borough Assembly established the Matanuska-Susitna Borough Fish and Wildlife Commission to *"advise and make recommendations to the assembly, borough manager, and/or any state or federal agencies, departments, commissions, or boards possessing jurisdiction in the area of fish, wildlife, and habitat on the interests of the borough in the conservation and allocation of fish,*

*wildlife, and habitat" and to "advise the assembly and the borough manager on any other... areas concerning fish, wildlife, habitat, administration, application, enforcement, or appointment... the borough should take on fish, wildlife, or habitat issues".*

NOW, THEREFORE, BE IT RESOLVED, that the MSB Fish and Wildlife Commission hereby opposes the adoption of Ordinance 23-002; and

BE IT FURTHER RESOLVED that the commission recommends the Assembly fail the ordinance in its current format; and

BE IT FURTHER RESOLVED that the commission recommends the Assembly direct staff to prepare an ordinance that will:

1. Keep the current required 75-foot waterbody setback for all water bodies
2. Recognize that the borough wishes to provide a reasonable option for resolution of previous and potential future waterbody setback violations
3. Recognize that the waterbody setback by itself does little to accomplish reasonable protection of surface and sub-surface water quality, waterbodies, shoreland habitat, and critical fish and wildlife resources
4. Recognize the importance of choosing development options that minimize impacts to critical fish and wildlife resources while appropriately managing the impacts from potential nonpoint source water pollution using best management practices whenever possible like bio-swales or buffers of natural vegetation that help intercept polluted runoff.

5. For existing structures, provide a path to compliance through adoption of shoreland and non-point source mitigation measures.
6. For new development, allow a variance to waterbody setbacks if proper shoreland and non-point source mitigation is required.
7. Re-institute the mandatory land use permit as a means to improve code compliance and inform and require all future development to be consistent with setbacks and other code requirements, particularly around waterbodies.
8. Incorporate public education strategies and appropriate enforcement options for infractions.

ADOPTED by the Matanuska-Susitna Borough Fish and Wildlife Commission this 2nd day of February, 2023

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Mike Wood, FWC Chair

ATTEST:

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Ted Eischeid, MSB Staff





**Possible Amendments to discuss adding to the draft resolution – Submitted by K.Z.****New “WHEREAS”**

These are proposed to support the draft resolution position to maintain the 75-foot setback and to have the Assembly adopt a requirement for a vegetated buffer.

WHEREAS the State of Alaska requires riparian setbacks for timber harvest to protect fish habitat and water quality at ponds, lakes, and streams with high value fish (AS 41.17.115a, AS 41.17.950, AAC 95.185a), and

WHEREAS this is accomplished by requiring a no-cut zone within 100 feet of the shoreline of lakes and ponds or 150 feet of the shoreline of streams with high-value fish (AS 41.17.116b, AS 41.17.950), and

**Background behind the proposed wording:** The Alaska Forest Resources and Practices Act (FRPA) (<https://forestry.alaska.gov/forestpractices>) addresses riparian management on private, state, and municipal land. Riparian management standards for our area (Region II) were updated in 2006 and 2017. They are written into Alaska Administrative Code (11 AAC 95.260) and Alaska Statute (Title 41, Chapter 17, sections 115-116) (<https://www.akleg.gov/basis/statutes.asp#41.17.115>). They “*Set standards for forest management along waterbodies, including buffers, and provides flexibility to harvest valuable trees within buffers when it can be done without harming fish habitat or water quality.*” The ordinance the Assembly proposed states that construction within 75 feet of a shoreline must be done in a way that does not harm surface or subsurface water quality, but they provide no mechanism for determining water quality. In the absence of this, a vegetated buffer should be required, to reduce water quality degradation.

The buffer widths in FRPA are based on the type of water body. All require at least 100-foot buffer. Type II-A waterbodies are non-glacial streams, more than 50 feet wide with high value fish and an “unconfined dynamic channel”. Type II-B is a glacial stream with high value fish. Type II-C is a lake or pond or a stream with high value fish that is non-glacial more than 3 feet wide (and less than 50 feet wide) in unconfined, dynamic channel, non-glacial more than 3 feet wide in a confined channel.

Region II Riparian Management on Private Land, showing the required buffers by stream type, powerpoint available through the Division of Forestry website <https://forestry.alaska.gov/forestpractices>

Definitions from AS 41.17.950 (35-37)	50'	100'	150'	200'	250'	300'	325'
II-A – large non-glacial streams	150' buffer			≤75' buffer on OBSE			
II-B – glacial streams	150' buffer			≤175' buffer on outer bends subject to erosion			
II-C – lakes, ponds, and small non-glacial streams	100' buffer						

Examples of Type II-A streams in the MSB: Willow Creek, Montana Creek, Clear Creek, Peters Creek

Examples of Type II-B streams in the MSB: Susitna River, Matanuska River, Knik River, Sheep Creek, Chulitna River, Kashwitna River, Talkeetna River, Yentna and Skwentna Rivers.

Examples of Type II-C water bodies in the MSB: Fish Creek, Lake Creek, Deshka River, Little Susitna.

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#### **Alternate option to a Land Use Permit recommendation**

The resolution supports a mandatory borough land use permit. The purpose of the permit is to educate people on the different types of setbacks and codes that could apply to them based on their general sketch of where they plan to build. Since the purpose is education, another option could be to:

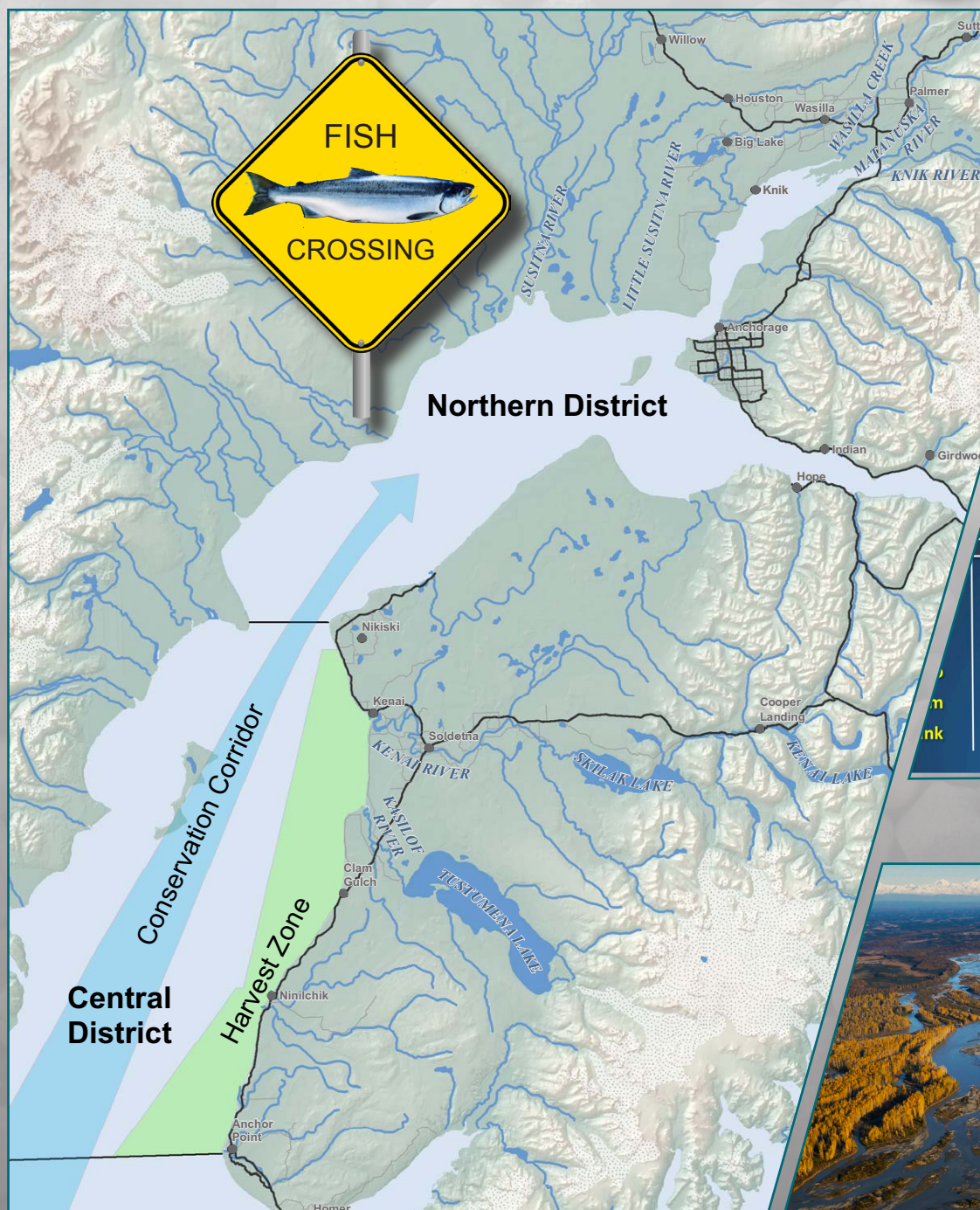
- Provide a short list of the setbacks, and contact information, on the postcard that goes out with every tax statement. This goes out every year and will reach every single land owner so they would be well aware before they started building anything. This removes the circular reasoning of people would have to be educated in order to know they need an LUP whose purpose is to educate land owners.



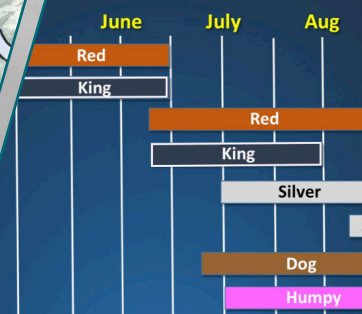
# It Takes Fish To Make Fish

## 2020

The Corridor is Working – Refine It



Timing of Salmon in UCI



Matanuska-Susitna Borough Fish and Wildlife Commission



# MSB Fish and Wildlife Commission



**Matanuska-Susitna Borough Fish & Wildlife Commission:** Left to right: front, Assembly Member Howard Delo, Larry Engel, Amber Allen, Assembly Member, Tamara Boeve. Assembly Member, Dan Mayfield, Chair: Mike Wood, Andy Couch

## Our Experience

- 8-member volunteer board, appointed by the Mayor, including two Borough Assembly Members
- 12 years of combined experience on the Alaska Board of Fisheries with three years as Chair, 70+ years of combined expertise as State biologists, 35+ years combined experience as fishing guides and nine years as a commercial setnetter
- Directed \$9.5 million in Borough, State, and Federal appropriations toward science, genetic research, and fish passage improvements

## Our Goals

- Enhance the Conservation Corridor in the Central District Drift Gillnet Fishery Management Plan in July and early August (Proposals 129, 133) with mandatory area restrictions to regular fishing periods.
- Continue protection for identified Stocks of Concern – particularly Susitna Sockeye.
- Increase inriver returns of coho salmon to Northern Cook Inlet river systems by establishing an orderly transition from sockeye management to coho management.
- Adopt Chinook (King Salmon) management plans and strategies that address early run King salmon in the Northern Cook Inlet (Proposals 199, 215, 217, 219)
- Personal Use Fishery: Maintain or extend personal use fishing opportunity for Alaskan residents of the Northern Cook Inlet who choose to harvest salmon with net gear. (Proposal 234-238)
- Establish inriver or OEG (Optimal Escapement Goals) for salmon escapement in the Northern Cook Inlet



# Recommendations

## The Commission recommendations to the 2020 Board of Fisheries

### **1. Enhance the Conservation Corridor in the Central District drift gillnet fishery—it is working as designed**

The Conservation Corridor provides strategic time and area closures in the center of Cook Inlet and expands use of terminal fishing areas based on abundance of the Kenai and Kasilof sockeye. Following corridor adoption, significant increases were observed in sockeye and coho salmon runs to the Mat-Su, local sport fisheries and escapements. The uptick in salmon numbers is part of what we, the Commission, were asking for when the 2014 Alaska Board of Fisheries adopted the current drift gillnet fishery management plan.

### **2. Continue to protect Stocks of Concern—particularly Susitna sockeye**

Susitna sockeye are currently a Stock of Yield Concern. Continuing declines and chronic escapement failures also qualify this stock for listing as a stock of management and conservation concern. Susitna sockeye are tremendously diverse but inherently less productive than Kenai and Kasilof populations which drive Upper Cook Inlet commercial fisheries. Freshwater productivity of Susitna sockeye also appears to be declining. The combination of declined productivity and continuing high harvest rates are a recipe for extinction. Freshwater production problems are imperative for limiting exploitation, not an excuse for continued over fishing in the mixed stock commercial fishery.

### **3. Limit commercial drift gillnet fishing in August to avoid excessive coho harvest**

Most of the commercial drift gillnet fishery is closed by regulation in August when less than 1% of the season's total sockeye harvest is caught on two consecutive fishery openers. This rule provides exhibitory to extend the commercial fishing season when the sockeye run is late and significant numbers continue to be available for harvest. The rule also ensures that commercial harvest of sport-priority coho and Kenai kings is limited after the sockeye run winds down. This closure rule, as adopted, was meant to be absolute except as otherwise provided under the commissioner's authority to manage to meet escapement goals as a first priority.

### **4. Continue to provide robust personal use opportunities where stocks permit**

Over 25,000 to 30,000 households now participate in the UCI personal use fishery, harvesting approximately 325,000 or more sockeye salmon for the period 2013 to 2018, primarily from Kenai or Kasilof rivers. The majority of participation comes from residents of areas outside the Kenai Peninsula including the Mat-Su as other regional personal use opportunities are quite limited. The Commission supports maintaining and enhancing personal use fishery opportunities wherever possible. Commercial fishery limitations including closure "windows" are essential for delivering fish to the rivers when sockeye are running. The Commission also supports proposals to increase inriver goals for Kenai late-run sockeye for consistency with current inriver harvest levels.

**Matanuska Susitna Borough  
Fish and Wildlife Commission**

**Alaska Board of Fisheries  
After Action Report**

**February 7 – February 17, 2020**

*Submitted by  
Mac Minard  
Northwestern Natural Resource Consultants*

**I. Meeting Outcome Goals**

There were five Matanuska Susitna Borough Fish Wildlife Commission (MSBFWC) outcome goals for the 2020 Board of Fish Meeting:

- 1) Expand protections for northern bound salmon while affording commercial fisheries opportunity to harvest surplus sockeye salmon.**
  - a. Strengthen the Conservation Corridor in the Central District Drift Gillnet Fishery Management Plan in July and early August (proposals 129, 133)
  - b. Establish a 2% rule move applicable date to July 31 (Proposal 195)
- 2) Maintain protections for identified Stocks of Concern – particularly Susitna Sockeye**
  - a. Continue the use of terminal stock fishery management using the expanded harvest corridor (proposals 129, 133)
  - b. Raise in river goals in Kenai late run sockeye (proposal 88)
- 3) Increase in-river returns of coho salmon to MT/SU river systems by establishing an orderly transition from sockeye management to coho management.**
  - a. Establish an end date for Central District Drift Gillnet Fishery by use of the 2% rule and with no provision for continued commercial fishing in areas 3 and 4. (Proposals 133,195) and move the effective date to July 31.
  - b. Strengthen coho preamble in draft plan and late run Kenai River sockeye salmon management plans (Proposal 127)
- 4) Adopt Chinook (King Salmon) management plans and strategies that address early run King salmon in the Northern District and provide predictable and transparent management action (proposals 199, 214, 215, 217, 219)**



- 5) **Personal Use Fishery:** Create a personal use fishery in the Susitna River to extend personal use fishing opportunity for Alaskan residents of the Northern District who choose to harvest salmon with net gear. Proposal 234 (amended)

## **II. Preparations and Coordination**

In the months prior to the Board of Fish meeting the Mat/Su Borough Fish and Wildlife Commission (MSBFWC) met frequently to develop and review regulatory proposals and to develop strategy for the upcoming meeting. Leadership provided by the Commission members which included very knowledgeable people and two former Board of Fisheries members made this effort very successful. Close coordination with Department staff and open discussions with Board of Fisheries members helped to inform the preparations by the MSBFWC.

The Mat Su Public Affairs office was called upon to retool the 2017 Fish Booklet for the 2020 meeting; changes included important sections describing differential productivities in the Mat Su and the Kenai drainages (pages 14 and 15) and updating and editing the conservation corridor and terminal harvest area discussions. Editorial support from commission members and continued refinement by staff resulted in a compelling work telling the Mat Su story in a highly effective and strategic manner.

### **Written Products and Social Media**

- 1) A report titled *It Takes Fish to Make Fish 2020 The “Corridor” is working – Enhance It* developed as a supporting document for the Mat Su by staff and Stefan Hinman.

The graphics, maps and easy to use format made the material highly effective and was used extensively in preparing Board members and Commission members concerning the issues and priorities. This report tells a compelling story that established a level of understanding and credibility necessary to gain Board of Fish member’s confidence. Public Affairs staff deserve a great deal of credit for their work. This booklet was distributed as part of the on-time comments and as PC 83.

- 2) Public Affairs created a strategic, compelling The half-page ad featured in the *Frontiersman* —“Fishzilla” by the Public Affairs office engaged disinterested readers and draw them to testify. That ad coupled with the web page story map <https://www.matsugov.us/bof> developed by Webmaster Jack Horner and GIS expert Kenny Kleewein can be credited with increasing the representation of the Mat Su to levels not seen before.
- 3) On social media, prior to the Board of Fisheries Meeting, Public Affairs staff posted an original post characterizing why residents should go and participate.

## **IX. Evaluation of Goals**

The MSBFWC team went into the Board meeting with five clearly stated goals for the outcome of the meeting.

The following is an assessment of those goals.

### **1) Expand protections for northern bound salmon while affording commercial fisheries opportunity to harvest surplus sockeye salmon.**

**This goal was met fully.** Passage of proposal MSBFWC proposal 133 (6 to 1) takes out one district wide commercial opening in July at middle tier and puts commercial drift fishermen in the expanded terminal harvest area for all of August as opposed to district wide coho fishery. Additionally, 133 eliminates drift gillnet fishing during the first week or two of August when the drift gillnet fishery is now restricted to the expanded terminal harvest area. Fishing may resume in this area (district 3) after the rest of the inlet is closed by the 1% rule.

Passage of Proposal 133 will keep the commercial drift fleet out of the conservation corridor and establishes a terminal fisheries management strategy that will provide immediate and significant protections for salmon destined to the Northern District.

- A subsequent vote brought forward in RC 112 to reconsider Proposal 133 failed 2 to 5.
- A request for emergency petition RC 192 filed the last hour of the last day of the meeting also failed 2 to 5.

In addition, MSBFWC proposal 195 amended (proposal 192 amended) the 1 percent rule becoming effective at July 31 instead of August 7<sup>th</sup> will have positive effects.

Additionally, and very significantly, was the Commissioners' clarification of how and when the Department will calculate the 1% rule; applied to any and all periods, regardless of where the fishery were permitted to take place. Action was passed 5 to 2.

Increasing the late-run sockeye goal as part of KRSA proposal 88, will also have positive benefits for Northern district stocks, in as much as it will necessarily reduce the need to aggressively commercially fish the sockeye run. Proposal 88 passed 5-2.

With the collective emphasis on terminal stock fisheries management for Kasilof and Kenai sockeye, it is fair to say that Northern bound salmon stocks now enjoy the most conservative set of regulations applied in decades.

### **2) Maintain protections for identified Stocks of Concern – particularly Susitna Sockeye**



**This goal was met.** Following robust discussion of the status of stocks of concern in the Northern District and the conclusion that the yield sock of concern for Susitna Sockeye was no longer applicable, there was agreement that the Board would maintain a conservative strategy and avoid any significant increases in directed harvest. This position was leveraged to help with passage of 133 and the increases to late run sockeye goals in the Kenai river and was used to defeat numerous commercial fishing expansion proposals, therefore maintaining protections.

**3) Increase in-river returns of coho salmon to MT/SU river systems by establishing an orderly transition from sockeye management to coho management.**

**This goal was met.** Perhaps the most noticeable thing coming out of this meeting will be the increase in coho that will be returning to the Mat Su. Proposals 133 and 195 (amended in 192), in combination, will result in measurable improvements to the coho salmon return to the Mat Su. Clarify the use of the one-percent rule as part of the orderly transition of the sockeye management to coho management. It is our expectation that sport fisheries that have previously been restricted will see improvement and provide for increased opportunity. The Commission efforts are to be credited for the significant increase in commerce that will be realized by an improved level of sport fishing opportunity.

**4) Adopt Chinook (King Salmon) management plans and strategies that address early run King salmon in the Northern District and provide predictable and transparent management action (proposals 199, 214, 215, 217, 219)**

**This goal was met.** The approach we used to meet this goal was to work with department staff to produce alternative language in the form of RC 156, as proposal 217, a combined proposal that melded multiple proposals into a concise action that addressed Susitna River and Little Susitna river king salmon and establishing a king salmon OEG from 16,000 to 22,000 for the Yentna River, passed 7 - 0.

[file:///C:/Users/MACMIN~1/AppData/Local/Temp/rc156\\_ADFG\\_Sub\\_Language\\_Proposals\\_215,217,219.pdf](file:///C:/Users/MACMIN~1/AppData/Local/Temp/rc156_ADFG_Sub_Language_Proposals_215,217,219.pdf)

**5) Personal Use Fishery: Create a personal use fishery in the Susitna River to extend personal use fishing opportunity for Alaskan residents of the Northern District who choose to harvest salmon with net gear. Proposal 234 (amended)**

**This goal was met fully.** The MSBFWC took a lead role in developing and refining proposal 234 to create a viable yet limited personal use fishery as seen by RC 132  
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# King and Silver Salmon are the economic drivers of Mat-Su sport fisheries

Direct spending on MSB sport fisheries fell from \$141 million in 2007 to \$57 million in 2017, a decrease of 59%

In 2014, a 7-0 vote at the Alaska State Board of Fisheries set in motion a sea of change in how the commercial fisheries are managed in Upper Cook Inlet under the Central Drift Gillnet Management Plan. Regulatory teeth were put in place that allow more northern bound fish to pass through a gauntlet of commercial fishing nets, into the Mat-Su Basin, where the shallow braided river channels and sloughs challenge even the toughest of returning salmon.



## Fish & Wildlife Priorities



Enhance the Conservation Corridor in the Central District.

**Increase State funding for fish weirs located in the MSB and increase genetic sampling to improve salmon management**

Hold State Board of Fish meetings at a neutral site, such as Anchorage, rather than in the MSB or Kenai Peninsula Borough

**Fully match Federal funds from license fees to maximize Federal dollars for Fish and Game**

Continued improvements to the MSB fish passage culvert program.

**Support collaboration between the State and Federal management to reduce bycatch.**



**Proposed BOF 24 FWC Goals for Consideration at 1/19/23**

From Member AC:

\*\*Utilizing regulations conservative enough to provide for established escapement goals, re-establish or rebuild reasonable common use coho and Chinook salmon harvest opportunities in Northern Cook Inlet freshwaters, more similar to harvest opportunities from 2000 -- 2009.

1. Provide protective / conservative management for former Stocks of Concern – particularly Susitna Sockeye and Northern Cook Inlet Chinook Salmon.
2. Increase inriver returns of coho salmon to Northern Cook Inlet streams by establishing an orderly transition from sockeye management to coho management.
3. Adopt Chinook (King Salmon) management plans and strategies that address early run king salmon in Northern Cook Inlet (Proposals 199, 215, 217, 219)
4. Personal Use Fishery: Maintain or extend personal use fishing opportunity for Alaskan residents in Northern Cook Inlet to harvest salmon with net gear. (Proposal 234-238)
5. Establish inriver or OEG (Optimal Escapement Goals) for salmon escapement in Northern Cook Inlet.