

**Estimate of Costs to the State of Alaska for Implementation of the Voter Initiative:  
Providing Protection of Wild Salmon and Fish and Wildlife Habitat (17FSH2)**

**Multi Agency Cost Summary**

<b>Agency</b>	<b>Cost</b>
Department of Fish and Game – Habitat Component	\$1,319,000
Department of Environmental Conservation – Water Quality Component	\$268,300
Department of Law – Civil Division, Natural Resources Component	\$450,000
Office of the Lieutenant Governor	\$9,000
Office of the Lieutenant Governor – Division of Elections	\$49,685
<b>TOTAL</b>	<b>\$2,095,985</b>

**Estimate of Costs to the Departments of Fish and Game, Environmental Conservation, and Law to Implement the Ballot Initiative**

**Estimate of Costs to the Department of Fish and Game – Statewide Support Services, Habitat Component**

As required by AS 15.45.090(a)(4), the Alaska Department of Fish and Game has prepared the following statement of costs to implement the proposed ballot initiative. If approved, the initiative would take effect 90 days following election certification.

**Estimate by Category**

Personal Services	\$1,087,000
<u>Other Costs</u>	<u>\$232,000</u>
<b>TOTAL</b>	<b>\$1,319,000</b>

The initiative would require the development of regulations to identify how various changes to Title 16.05.867, 16.05.871, 16.05.875, 16.05.877, 16.05.883, 16.05.884, 16.05.885, 16.05.887, 16.05.889, 16.05.894, and 16.05.901 would be implemented.

The standards under which the Department of Fish and Game would operate when issuing a permit to ensure proper protection of anadromous fish habitat include maintaining water quality and water temperature; instream flows; efficient upstream and downstream passage of fish; habitat dependent connections between anadromous fish habitat including surface groundwater connections; stream, river, and lake bank and bed stability; aquatic habitat diversity, productivity, stability, and function; riparian areas that support fish and wildlife habitat; and any additional criteria adopted by regulation.

The initiative would require the following new actions by the division: presume that all naturally occurring connected water bodies and adjacent riparian areas are anadromous and therefore jurisdictional, site specific written determinations to determine if a waterbody is not important anadromous fish habitat; specify in regulation all de minimus activities that do not require a permit

and require anadromous fish habitat permits for all activities not specified, public notice of proposed general permits with the possibility of a least one public hearing if requested by an interested person; requirement to renew general permits every five years; requirement to provide written authorization for an individual to operate under a general permit; public notice for permit amendments; public notice to rescind a permit; conduct an assessment and determination on whether a fish habitat permit is minor or major; collect fees equal to the cost of service for major fish habitat permit assessments<sup>1</sup>; public notice draft major anadromous fish habitat permit assessment and make copy of application available to the public; determine the amount of the performance bond if the permittee is not in compliance; determine if the proposed activity is likely to cause substantial damage to anadromous fish habitat; determine if anadromous fish habitat will recover or be restored within a reasonable period of time, respond to and address public input on major fish habitat permits, and respond to and address reconsideration requests on proposed major anadromous fish habitat permits; and in some cases repair habitat damage and bill respondents as the result of violations using state agency employees.

The initiative also identifies those cases where the Commissioner may not issue a permit for a proposed activity. Compliance with these new actions would require the hiring of habitat biologists, an analyst programmer, and program technicians to implement public notices, postings, responses to public input, public hearings, draft anadromous fish habitats, etc. A public education component should be considered to inform the public of the Department's new and expanded jurisdictional authorities as well as newly expanded potential penalties (daily separate Class A misdemeanors) for non-compliance. The division anticipates the regulation development could take at least two years and implementation of the new regulations and criteria would take additional years to develop and implement.

The Commissioner will need assistance in the form of subject matter expertise (managers, biologists, analyst programmer) from staff and legal assistance in order to develop regulations, public notice the regulations, respond to public comments on proposed regulations, and finalize a regulation package. Implementation of the new regulation package would affect all managers, habitat biologists, and fish and game program technicians in all offices along with analyst programmer support to implement and comply with the new regulations as written.

<sup>1</sup> Allows Habitat Division to collect fees for major fish habitat permit applications, but those monies would go into the general fund.

### **Estimate of Costs to the Department of Environmental Conservation – Division of Water, Water Quality Component**

As required by AS 15.45.090(a)(4), the Alaska Department of Environmental Conservation has prepared the following statement of costs to implement the proposed ballot initiative. If approved, the initiative would take effect 90 days following election certification.

### Estimate by Category

Personal Services	\$211,600
Other Costs	\$56,700
<b>TOTAL</b>	<b>\$268,300</b>

The initiative requires several changes to the permitting program in the Department of Fish and Game, Habitat Division. These changes will impact the Department of Environmental Conservation's permitting and engineering plan review of wastewater discharges to all fresh waters in Alaska.

The initiative creates a rebuttable presumption that all waters in Alaska are anadromous. Alaska's Water Quality Standards at 18 AAC 70.255(h)(1) states that mixing zones will not be allowed in an area of anadromous fish spawning. The presumption per the initiative can be rebutted by the Department of Fish and Game, but unless and until this occurs, all discharges will be presumed to be ineligible for mixing zones and thus needing to meet water quality criteria at the "end-of-pipe," the point at which the discharge enters the receiving water.

Division of Water permit application reviews are expected to increase in complexity as industry and municipalities work within the changed model of all fresh waters being presumed anadromous. This presumption increases complexity for applicants as it is predicted that numerous facilities will be required to meet the end-of-pipe limits.

Existing fees cover approximately 60 percent of the cost of permitting and plan review activities. It will take a year to enact new regulations before the Department can begin collecting fees to cover this activity. FY2018 will be funded entirely by general funds while new staff are brought on and trained and new regulations are developed. Revenues reflect a proportional shift to general fund program receipts starting in FY2019 as new regulations are implemented and additional fees are collected.

**Personal Services:** An Environmental Program Specialist III will be responsible for permit application reviews and will be required to address the additional workload without causing a backlog in the permitting. An Engineer I at DEC will be needed for review and approval of engineering plans for treatment system changes needed to meet the more stringent limits. Both positions will be located in Anchorage.

**Other Costs:** The new Environmental Program Specialist will require permit writer training, which is only available out-of-state at this time. Limited in-state travel will be required to conduct compliance inspections annually. DEC will require assistance from the Department of Law for consultation during the development of new regulations. The new employees will require equipment for the first year, and normal office supply needs in subsequent years.

### Estimate of Costs to the Department of Law – Civil Division, Natural Resources Component

As required by AS 15.45.090(a)(4), the Alaska Department of Law has prepared the following statement of costs to implement the proposed ballot initiative. If approved, the initiative would take effect 90 days following election certification.

### Estimate by Category

Personal Services	\$376,400
Other Costs	\$73,600
<b>TOTAL</b>	<b>\$450,000</b>

The initiative would amend AS 16.05 (Fish and Game) by creating a new permitting system for activities that have the potential to affect anadromous fish habitat. The initiative would establish fish and wildlife protection standards that would guide permit issuance. Under the initiative, the Commissioner of the Alaska Department of Fish & Game (ADF&G) would be required to specify anadromous fish habitat in regulation. The initiative would presume that, absent a regulation to the contrary or a site-specific determination and written finding by ADF&G, a naturally occurring surface water body, including all upstream tributaries, is anadromous fish habitat if it is connected to anadromous waters specified as such in regulation or connected to marine waters.

The initiative would require a person to obtain an anadromous fish habitat permit to conduct certain activities in anadromous fish habitat. The initiative would establish classification standards for minor and major anadromous fish habitat permits and provide for public notice periods. For major anadromous fish habitat permits, the initiative would also require ADF&G to prepare a draft and final assessment. The initiative would also create a general permit for minor activities and establish mandatory criteria that must be met for issuance. In addition, the initiative would specify criteria that, if met, would preclude the issuance of a permit.

The initiative would provide for a process by which an applicant could request reconsideration of a determination of the commissioner. The Commissioner's determination upon reconsideration would be the final administrative decision for purposes of appeal to the superior court.

The initiative would also create civil penalties for certain violations. Notice and an adjudicatory hearing would first be afforded to an alleged offender. The initiative also provides that if a respondent violates an order issued under AS 16.05.894, the Attorney General, upon request of the Commissioner, may seek an injunction requiring the respondent to suspend an activity.

The Department of Law provides legal counsel to ADF&G. The initiative would potentially significantly increase the current amount of ADF&G permitting and appeals because it would broaden the expanse of water bodies in the state deemed to be anadromous fish habitat, expand the scope of activities that would require permits, create a detailed permit consideration process, and provide for reconsideration and appeal of a determination of the Commissioner under AS 16.05.871(e), AS 16.05.875(c) or (d), AS 16.05.883, AS 16.05.884(d) or (f), or AS 16.05.885(d).

The Department of Law anticipates that two additional full-time civil attorneys would be needed to perform the legal work this initiative would create -- one attorney primarily focused on permitting and appeals and one attorney primarily focused on enforcement, while providing support to permitting and appeals as needed. ADF&G would be responsible for developing regulations to implement the initiative's provisions, and the Department of Law would likely need to provide assistance with the regulations.

**Estimate of Costs to the Office of the Lieutenant Governor and the Division of Elections for the Ballot Initiative**

As required by AS 15.45.090(a)(3), the Alaska Office of the Lieutenant Governor has prepared the following statement of minimum costs associated with the proposed ballot initiative. If approved, the initiative would take effect 90 days following election certification.

**Office of the Lieutenant Governor**

Assuming the initiative is placed on the ballot, the minimum cost to conduct public hearings concerning the initiative in two communities in each of four judicial districts is estimated to be \$9,000.

**Estimate by Category**

Travel	\$ 9,000
TOTAL	\$ 9,000

Travel: Estimated travel expenses include round-trip air transportation, per diem and other associated travel costs for the Lieutenant Governor and staff to travel to seven communities in Alaska. It is assumed one of the hearings would be in Anchorage which would not involve travel costs.

**Division of Elections**

As required by AS 15.45.090(a)(3), the Division of Elections has prepared the following statement of costs to implement the proposed ballot initiative.

The minimum cost to the Division of Elections associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition, is estimated to be \$49,685.

**Estimate by Category**

Personal Services	\$48,385
Printing Services	\$1,300
TOTAL	\$49,685

Personal Services: Six temporary employees to review signatures for 2,520 hours.  
Estimated cost: \$30,618

Certification of the initiative application and review of the initiative petition estimated for 546 hours  
Estimated cost: \$17,767

Printing Services: Printing service expenses associated with certification of the initiative application and review of initiative petition. Printing of voter booklets: \$1,300