

**Long-Term Challenges to Alaska's Salmon Dependent Communities
Workshop
Habitat Protection and Salmon-friendly Development**

BREAKOUT SESSION NOTES – Thursday, November 3, 2016

SUMMARY OF WORK SESSION

TAKE HOME MESSAGES

- **Broad collective goal of many stakeholder groups across Alaska is to maintain healthy salmon populations across the state**
- **Need venues like these to examine what is working well and what may need to be fixed**
- **Federal, state and municipal regulations and policies need to be examined more closely, fine-tuning may be necessary to maintain intact and functioning habitat into the future**
- **Specific to Alaska statutes and policies, examination of habitat permitting is needed (key examples of problem areas include: misunderstanding role ADFG Habitat Division plays and overall lack of resources state has to address habitat needs for salmon, interagency communication/coordination challenges, burden of proof for the Anadromous Fish Act is on the fish, not on development interests, state authority is limited to ordinary high water and limits ability to address needs at a watershed scale, habitat violation enforcement problems)**
- **Patchwork of land ownership across Alaska complicates protection efforts to maintain intact and healthy fish habitat**
- **Education of the public is needed so all can better understand habitat needs for salmon and strengthen the fish habitat protection measures needed to sustain healthy salmon populations into the future**

NEXT STEPS

1. Each individual can make a contribution: communicating information on importance of stream habitat and needs for fish is something we can all do (share examples of why protecting salmon habitat is important, provide context of salmon life cycle, etc... specific example: tell people that driving their ATV across streams can damage developing salmon even if they don't see adults in there)
2. Need a comprehensive review and assessment of Alaska's current regulatory and legal framework as it pertains to fish habitat related statutes, regulations and enforcement (Title 16, Fish Way Act, Anadromous Fish Act).
 - Focus for review and identification of statutes and regulations that need to be further defined or re-defined.
 - Explore legal definition and interpretations more clearly.
 - Look at what other states have done for ideas. California does not distinguish between anadromous and resident fish for regulatory purposes.

- Consider producing a publication on the evolution of the legal framework for fish protection in Alaska.
 - Need to incorporate a watershed level approach versus just focusing on the stream miles identified as containing anadromous fish. We understand as scientists that what happens upstream has a large effect downstream. Not everyone understands this. State's authority currently does not apply on watershed level.
 - NGOs may be good source for who could perform review of statutes. Current BOF Habitat Proposal could address also.
3. Need to identify a vision of what Alaskans want for the future of their salmon populations?
- Need to identify who should be making the decisions and who should be involved?
 - Does Alaska know what it wants for its future? Is what we want incorporated in the sustainable yield policy?
 - The Salmon Project may be a resource for this? We also want to know what the governor and elected officials envision on this topic.
4. Need to revisit the Coastal Zone Management Program to identify benefits of local input and coordination. Currently there are communication challenges and fragmentation throughout the permitting and land management process - including limited public notice. There needs to be progress on how people and agencies are notified of actions.
5. Need review of broad scale geographic changes in land use happening across Alaska and an assessment of how ownership impacts habitat use and may impact salmon. Many lands adjacent to anadromous waters in western Alaska are privately owned, including by tribes and native corporations. As a result, effective conservation requires an interest by these land owners in protecting and maintaining salmon habitat in their area. A mechanism or process for dialog on this topic is needed. Tribal partners, Fish Habitat Partnerships and the university may play a role here.
6. Need to educate the public on the importance of the watershed and role floodplains play on the function of the aquatic ecosystem to help protect and maintain fish habitat in the future. Land trusts, soil and watershed conservation districts, The Salmon Project and others are making good efforts here. The Center for Salmon and Society may play a role here as well.

HABITAT PROTECTION THEMES NOTED

- Habitat provides the magic – don't mess it up
- Patchwork of habitats and portfolio effect provide resilient fish habitat
- Floodplains are the arteries and need unique attention; floods and channel movements renew essential habitat features
- General sentiment that current regulations are not enough
 - Policies are important and need review
 - Many regulatory tools, need to review: mineral closures, reservations of water, Anadromous Waters Catalog, special use areas, land use economic incentives, conservation easements, role of tribal governance, etc...
 - Title 16: needs ability to comment on activities above ordinary high water

- Permitting process is designed to get to a yes, we need a no option
- Permitting transparency – what is efficiency and what is cutting corners?
- Limitations of AWC (many waters not protected, need fish in hand/part of defensible requirements for court proceedings, expensive program, state has the burden of proof)
- Complications of federal and state management authorities
- Challenges of reduced state budgets
- Concern with the ACOE not requiring wetlands mitigation
- Is there a pathway for Coastal Zone Management in Alaska?
- Restoration is more expensive than conservation in the long run
- Hatcheries do not mitigate lost habitat
- Enforcement of habitat protection violations needs to be reviewed
 - Enforcement limitations: local of legal support, citations lead to court cases/need bondable option, ATV crossings are not taken seriously,
 - Solutions: apply a fee to habitat permits, education, citizen involvement, redefine where 871 applies (look to extend beyond OHW), identify other opportunities (borough/municipal examples)
- Challenges in understanding and mitigating climate change
 - Forest fires are blocking fish passage
 - Invasive species (example Pike in the Mat-Su)
- Large scale impacts
- Small scale impacts (death by a 1000 cuts)
- Complex land ownership patterns
- Importance of landscape watershed connectivity (importance of landscape elements beyond the riparian)
- Alaska's pristine habitat is what is used to market Alaska's wild salmon

FISH-FRIENDLY DEVELOPMENT IDEAS NOTED

- To ensure policy implementation, charge the developer cost for observers to monitor project 24/7, for life of project (i.e. mining)
- Salt is still used on roads/deicer on planes – what is being done to treat these so they do not impair fish habitat?
- Need salmon habitat manual to support best management practices
- Need to update the ADOT/ADFG MOU

OTHER THEMES CAPTURED

- Salmon = life
- Bravery and new creative thinking are needed
- Need more people to be better informed
- Concern about water quality near gold mine operations occurring across Alaska
- Salmon habitat needs – The 4 Cs: cool, clean, complex and connected
- Need for platform opportunities for transparency in permitting and delivering science-based information
- What would a “Fish First” policy look like?
- How can local and NGO groups help?

RAW NOTES FROM THE GROUP DISCUSSION:

Group expressed appreciation for the workshop - a lot of ideas shared of things that are working well and that are not working well regarding habitat protection and salmon-friendly development.

Group noted goal for the work session – eliminate misunderstandings regarding process

- role of ADFG
- difficulty in understanding who outside of ADF&G actually makes important management decisions
- many layers of administration affecting salmon habitat
- Salmon do not care about the social interactions among people. Idea presented that our ways of dealing with social issues create complexities in dealing with salmon management. Many layers in management resulting from complexity of human interactions have effects on salmon management.

Group made a list of who are habitat protection decision makers?

- Habitat Division and ADF&G – Under constraints in their ability to manage alone. Decision makers also include Sport Fish, Subsistence and Comm. Fish ADF&G divisions. Coordinate review of NEPA permits with other departments within ADF&G to record concerns and opinions.
- Land owners are decision makers (State, feds, individuals but also many corporations and other entities with different concerns). Private landowners can make decisions that degrade or improve habitat.
 - Landowners – business affected by management processes. Different priorities than we have here in this room. Important to create dialogue because they usually are not involved in the discussions that we have. Salmon habitat conservation is usually considered a threat to business interests. Need to bridge this gap.
- Water appropriation rights owners.
- Mineral rights owners.
- Corporate entities (for profit), environmental focus – both positive and negative impacts to habitat
- Fossil fuel lobby. Large scale effects in limiting the scope to address climate change. Impacting large scale decisions.
- Municipalities and bureaus
- ADEC – Water division (Alaska Department of Environmental Quality)
- Board of Fish – has more authority to make habitat related decisions than it has ever exercised.
- Alaska Department of Natural Resources
- Government and legislature. Decisions on large scale projects to pursue.
- Presidential administrations can have dramatic effects on Alaskan habitat.
- Fed. Entities (USFWS –refuges and coastal program, BLM, USFS, NPS, EPA, NOAA, etc...; Nation considers Alaska's resources to be a national resource, national interest in Alaska's resources and wild lands)

- Tribal involvement in decision making (Native corporations, Tribal councils and elders, Regional corporations, Tribes – Tribe to government direct relationship)
- non-profit entities – Landtrusts
- International Treaties (PST, Others)

Group discussions:

- **Legacy Habitat Impacts** (Conservation is cheaper than restoration)
- **ADF&G Habitat Division – Description of role and permitting process.**
 - Guided by 871 anadromous fish act, 841 fish act. Old statutes. Cover only a few pages. Not much to go off of, pretty much just a framework that is open to interpretation. Policy outside of statutes developed by technical papers guided by research. Stand-alone guidelines which are incorporated in project description or stand as stipulations for approval of project. Technical reports form backbone of policy guidelines.
 - Offsetting habitat loss (from 1959 statute) can be mitigated by supporting a fish hatchery. On the books but not talked about much due to the understanding that fish hatcheries do not mitigate for the loss of natural spawning populations. Statutes are highly antiquated!
 - Work with DNR to decide amount of water that needs to be left in waterways.
 - DEC handles enforcement for water quality issues.
 - Interagency coordination can be challenging.
 - Placermines don't need a SWPP (Storm Water Prevention Plan).
 - Equity in regulations? Regulated by 1800's mining law. Escaped modern regulatory framework.
 - Jurisdiction ends at high-water line.
 - Limitations of 841. Can only limit permits on projects that actually block fish. Stream-bank and land cover affects are not covered.
 - 871 – more robust – can apply above high waterline but not common that authority exerted above high water line. E.G blasting next to anadromous streams can affect eggs in gravel. Class A misdemeanor, has to appear in court. Too big of a stick at times for things like illegal ATV crossings. Need an option for a smaller penalty. Tried to change regulations but has not worked so far. Tickets have educational value.
 - Some fines more egregious mining operation citations can just be incorporated as a cost of doing business. Not effective.
 - Enforcement a problem for the habitat division. Most people want to do the right thing even if they don't know what the right thing is. 3%ers that do what they want irrespective of regulations. Enforcement is very difficult, this is a reality. Has to go through courts and be resolved before enforcement can be applied.
 - Can be thrown out. Can take time (habitat suffers in the meantime).
 - ATV and stream crossings a major problem. Massive number of crossings.
 - Fee schedule might be important for permits. Permits are free. Hard to get judges to impose penalties on people who don't get required permits when permits are free to get. Disconnect with public and ATV and other

uses and effects on salmon. Many of these people are also fishermen that care about fish.

- Lack of awareness exists that many streams are rearing habitat when adults are not present.
 - Opportunities for continual communication can be helpful. Limited in ability to do education due to the small size of the department with no dedicated education staff.
 - Other offices within ADF&G have stronger educational components built into their structure. Frustrations within Habitat Division due to limited time to conduct education.
 - Many people don't believe that they need permits for things such as shoreline alterations. Education....
- **Limitations of state resources creates challenges** - Budget cuts will create further challenges.
 - Discussion about Fish First policy for state when governor was elected.
 - Some policies working their way through
 - Contemplating implementing salmon policy into statutes, current BOF Habitat Proposal
 - Sustainable Salmon Initiative
 - Requires legislature – has been shown to be a big bottleneck recently
 - Private entities and trusts (NGOs) can be instrumental in habitat protection and education. Can't directly work on enforcement.
 - **Future Protection. Title 16**
 - Lucky that pressures on habitat have been minimal in the past due to small population. Likely not the case going forward. Do we have enough to protect the environment going forward with further pressures? Opinion: the answer is no. AS 871 might not be enough.
 - Chuitna and Susitna Dam type challenges may become more frequent.
 - Discussion of interpretation of AS 871 might be needed. Need to tighten up flexibility of interpretation.
 - AS 871 mandates ADF&G to protect fish and habitat but ADF&G does not have the authority to regulate all things effecting fish and habitat (e.g. water removals, must be in anadromous catalogues for action).
 - Are there new tools that can be implemented to better understand habitat?
 - Maps are outdated and streams are dynamic! Working to update but limited by staff and time.
 - **Alaska Anadromous Waters Catalogue**
 - Habitat division directed to add maps to list of anadromous streams in 1983. Needs to be defensible from the point of scientific sampling to add to catalogue. Encourages community cooperation but costs a lot of money to sample in isolated areas. A large

- number that should be in the catalogue that have not been sampled due to the costs. Not much money causes reliance on people in the community.
- The point that streams should be assumed anadromous until proven otherwise is hard to defend in legal system. Courts likely to throw out cases.
- Wouldn't we save the cost of sampling to but the burden of fish documentation on the resource users versus the state?
- Catalogue used to determine Essential Fish Habitat under federal designations.

After lunch the group reconvened.

Group recognition that we are lacking developers in the conservation. Moving forward future discussions need to incorporate the opinions of developers.

NEXT STEPS

Identify 5 actions to discuss for moving forward. We want to come out of the workgroup with ideas of what we should do next.

1. Communicating information on importance of stream habitat on a person by person basis can make a difference. (share examples of why protecting salmon habitat is important, provide context of salmon life cycle, etc...)
2. Review and assess current regulatory and legal framework of existing Fish Habitat related statutes, regulations and enforcement (Title 16, Fish Way Act, Anadromous Fish Act). Review and identification of statutes and regulations that need to be further defined or re-defined. Or maybe just define interpretation more clearly.

Need changes to be legally defensible, don't want to have to revisit.

Look at what other states have done for ideas. California does not distinguish between anadromous and resident fish for regulatory purposes.

Consider publication on the evolution of the legal framework for fish protection on Alaska? Accessible book format. Inspired by 'The Northwest Salmon Crisis: A Documentary History', ed. J. Cone and S. Ridlington, 2000, OSU Press.

NGOs may be good source for who could perform review of statutes. Current BOF Habitat Proposal could address also.

We have awareness of the value of our resources and how to protect them. This awareness does not necessarily translate to effective action.

Want to incorporate a watershed level approach versus just focusing on the stream miles identified as containing anadromous fish. We understand as scientists that what happens upstream has a large effect downstream. Not everyone understands this. Habitat division's authority currently does not apply on watershed level.

3. Identify a vision of what Alaskans want for the future of their Salmon populations?

Need to identify who should be making the decisions and who should be involved?

Does Alaska know what it wants for its future? Is what we want incorporated in the sustainable yield policy?

The Salmon Project may be a resource for this?

We also want to know what the governor and elected officials envision on this topic.

4. Revisit the Coastal Zone Management Program to identify benefits of local input and coordination.

Currently there are communication challenges and fragmentation - including limited public notice.

There needs to be progress on how people and agencies are notified of actions.

5. Review broad scale geographic changes in land use and ownership effects and the effects on salmon habitat.

Many lands in western Alaska have moved from private or tribal ownership to native corporations. Change in motivations.

6. Educate the public on the importance of the watershed/floodplains on the function of the aquatic ecosystem.

Reach out to community councils.

Land trusts, soil and watershed conservation districts.

Work with the Salmon Project to reach out to audiences who aren't necessarily seeking out info about salmon habitat.