

# Kenai Peninsula Borough

## Anadromous Fish Habitat Protection Task Force

### August 9, 2012 Meeting Summary

6:00 p.m.

Borough Building, Assembly Chambers

Committee Members: Fred Braun, Jim Isham, Ginny Litchfield, Stacy Oliva, Paul Ostrander, Bill Smith, Ray Tauriainen, Ken Tarbox, and Dave Wartinbee

Facilitator: Paul Ostrander

Staff Support: John Czarneski, Holly Montague and Johni Blankenship

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#### CALL TO ORDER

A Regular Meeting of the Anadromous Fish Habitat Protection (AFHP) Task Force was held on August 9, 2012, in the Borough Assembly Chambers, Soldotna, Alaska. Facilitator Ostrander called the meeting to order at 6:14 p.m.

#### There were present:

Paul Ostrander, Facilitator  
Jim Isham  
Stacy Oliva  
Ray Tauriainen

Fred Braun  
Ginny Litchfield  
Bill Smith  
Ken Tarbox

Comprising a quorum of the task force.

#### Absent:

Dave Wartinbee (excused)

#### Also in attendance were:

Holly Montague, Deputy Borough Attorney  
Johni Blankenship, Borough Clerk  
John Czarneski, River Center

## INTRODUCTIONS AND OVERVIEW

Mayor Navarre addressed the committee and gave a brief synopsis of how and why the task force was formed and the issue at hand. He indicated the task force was not only supported by the Assembly but also recommended by many Assembly members as well. He further indicated the Assembly gave the Administration the option to delay implementation of Ordinance 2011-12 for three years. He stated the task force was made up of people who represented all sides of the issue. He indicated that the task force was balanced and should address the issue of the inclusion of the lakes as well as other issues that may come up. Mayor Navarre thanked each of the members for their participation and wished them well in their endeavors.

Each of the members and staff introduced themselves and gave a brief history of their experience with habitat protection Ordinance 2011-12 and KPB 21.18.

Facilitator Ostrander gave a brief overview of the goals and mission of the task force and indicated it would be best to focus on the question regarding the lakes first, and then address any additional questions or issues afterwards. He stated the first couple of meetings would be focused on education and on gaining an understanding of Ordinance 2011-12, KPB 21.18 and anadromous fish habitats. He asked that everyone be respectful of the each other's opinions.

Braun introduced a letter to Mr. Ostrander and a sample resolution for Assembly consideration; he provided copies of both to all members.

Facilitator Ostrander asked the members of the task force for their thoughts on the issue resolution presented by Mr. Braun.

Smith indicated he had approached the Mayor to establish the task force and he indicated there was no resistance to an Assembly Resolution; however, task force established by the Mayor held as much weight as an Assembly formed task force and in his opinion a resolution was not necessary at this time.

Facilitator Ostrander stated that a resolution adopted by the assembly would not provide the task force with any additional power than they currently had.

## RULES OF PROCEDURE

Facilitator Ostrander indicated the task force would be following Robert's Rules of Order and Clerk Blankenship would act as parliamentarian. He indicated all members would have voting rights.

## NEW BUSINESS

*Legal Review of the following questions:*

*Does KPB 21.18 violate either the US and/or Alaska Constitutions?*

*Is KPB 21.18 legal under Alaska State Statutes?*

*Does the Borough have the authority to enact this type of land use ordinance?*

*Do the land use restrictions of KPB 21.18 constitute a taking?*

Deputy Borough Attorney Montague gave a brief review of her written opinion on the questions stated above and answered questions from the task force members regarding that legal review.

She stated given the specific delegation by the legislature to the borough to adopt and implement land use regulations, including zoning districts and provisions both discouraging and encouraging certain uses and structures, KPB 21.18 was authorized by state statute. It would further survive a due process constitutional challenge because it was reasonably related to the highly important role anadromous fish play in the borough culture and economy. KPB 21.18 could reasonably be said to protect the public health, safety, and welfare. KPB 21.18 further did not in and of itself deprive anyone of the reasonable economic use of their property. However, the ordinance as applied to an individual property could be unconstitutional if it deprived a property owner of all reasonable economic value or if the diminution in value caused by the restrictions in the ordinance was not outweighed by the important community concerns the anadromous habitat protection ordinance was meant to protect as outlined in the Sandberg factors.

#### Question:

*Are the provisions of the Kenai Peninsula Borough's anadromous fish habitat protection code appropriate for some or all of the lakes that are included in the Alaska Department of Fish and Game's "Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish?"*

*If the answer is yes for some or all of the lakes, list the lakes, and explain why the Kenai Peninsula Borough's anadromous fish habitat protection code is appropriate for those lakes?*

*If the answer is no for some or all of the lakes, list the lakes, and explain what steps need to be taken to ensure that the spawning, rearing, or migration of anadromous fish are adequately protected in those lakes?*

Facilitator Ostrander explained that the question above was the question the task force had been asked to answer and reiterated that there would, more than likely, be additional questions for the task force to address in the future.

Braun asked for an explanation as to how lakes were added to the "Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish." He further asked about the public notice process.

Litchfield explained the basics of process and recommended that the task force hear from the individual that had oversight of that process for the Alaska Department of Fish and Game (ADF&G).

Smith indicated the “*Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish*” was submitted to the State Legislature for approval.

### Information regarding the KPB’s Habitat Protection Code:

- a. *An overview of the history of KPB 21.18 and the amendments placed in a timeline*
- b. *Factual and statistical information provided to the public, Planning Commission and Assembly during the 2010 – 2011 Phased re-write of KPB 21.18.*
- c. *Internet links to Fish Games Anadromous Waters Catalog*  
<http://www.adfg.alaska.gov/sf/SARR/AWC/>
- d. *List of lakes that are currently managed and that will be managed when Ordinance 2011-12 is implemented.*
- e. *Maps showing the lakes that will be managed upon implementation of Ordinance 2011-12.*
- f. *A list of agencies and their regulatory authority as it pertains to waters important to anadromous fish.*
- g. *Definitions.*

John Czarnezki, River Center, gave an overview and answered questions regarding the items above; in addition he introduced and explained the KPB Flex Viewer program on the River Center’s website which allowed for the viewing of anadromous waters in the borough.

Oliva asked about the grant that funded the study on KPB 21.18.

Czarnezki indicated it was a Coastal Impact Assistance Program (CIAP) grant from the United States Department of the Interior.

Smith and Tarbox gave additional information regarding the history of KPB 21.18, and the 50-foot buffer.

### Identification of Anadromous Fish Habitat Experts

- a. Jay Carlon – Retired ADF&G Biologist
- b. Rob Massengill – ADF&G Biologist
- c. Gary Fandrei – Cook Inlet Aquaculture

The task force addressed the need for presentations from experts in related fields to provide additional critical information.

Litchfield recommended contacting Jay Johnson from the ADF&G regarding the “*Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish*” and the process for adding water bodies to the catalog.

Tarbox recommended contacting Mark Wipfli from the University of Alaska Fairbanks. He also gave a brief biography on Gary Fandrei.

MOTION: Smith moved to authorize Facilitator Ostrander to contact Gary Fandrei to give a presentation to the task force and in addition arrange for one other presenter, that they may be available to give a presentation at the next scheduled meeting.

SECOND: Braun seconded the motion.

The motion passed by unanimous consent.

## PUBLIC COMMENT

Facilitator Ostrander called for public comment.

The following members of the public address the committee:

**Christine Hutchison**, 281 Juliussen St., Kenai

**Wayne Ogle**, 50160 Birch Grove, Kenai

**Bill Stevens**, P. O. Box 8598, Nikiski

**Kelly Wolf**, P. O. Box 2416, Kenai

**Jim Harpring**, 35001 Waterfront Way, Soldotna

There being no one else who wished to comment, the public comment period was closed.

## OTHER

Smith requested that long term the task force address vegetation management. He requested an overview of the last few years and the overall effectiveness of the habitat protection zone. Further, he wanted to know how ADF&G treated water bodies that were not considered anadromous.

Litchfield indicated that ADF&G jurisdiction to other water bodies related to fish passage for resident fish.

Isham noted he had talked to fish and wildlife experts and they indicated that rivers and streams were more dynamic than lakes in fish habitats and suggested the task force consider review changes to the setbacks.

Litchfield indicated in her experience lakes were just as critical and welcomed the conversation regarding their importance to anadromous fish.

Tarbox agreed with Litchfield. Further, he asked that all hand outs be handled through a more clear process and requested that everything go through Facilitator Ostrander for dissemination. He further indicated that the task force members need to be totally transparent.

Facilitator Ostrander agreed and asked that he be given a minimum of 24 hours prior to a meeting, to disseminate any additional information to the other members.

Litchfield asked about the process moving forward.

Facilitator Ostrander indicated the task force could draft an ordinance through the legal staff, for Assembly and or Administration's consideration.

Smith indicated the recommendations would be taken to the public prior to bringing them forward to the Assembly for consideration.

Oliva asked Smith to explain the process of how he came to introducing Ordinance 2011-12.

Smith indicated that it was a project that former Assembly Member Drew Scalzi had started. Smith believed the issue was important and he decided to move forward with the amendments in order to ensure that any future development in those areas was done with the habitat protection zone in place in order to mitigate any further damage to the habitat. Smith gave additional history and background on the formation and development of KP 21.18.

Oliva asked if the River Center was the policy writer, and if not, how Ordinance 2011-12 was drafted.

Smith stated that the River Center staff, Robert Ruffner, outside counsel, internal counsel, members of the public and the Planning Commission all had opportunities to weigh in on the amendments prior to them being forward to the governing body.

Czarnecki indicated that the attorney who reviewed KP 21.18, did so in 2009, prior to any of the most recent amendments and most of the amendments were brought forward as a direct result of that review.

## SET NEXT MEETING DATE AND TIME

Facilitator Ostrander agreed to set out recommendations for the next meeting date and time.

Additional Documentation:

1. KPB 21.18
2. Step by Step guide to the KPB Flex Viewer to view anadromous waters