

FRPA Training Note #04-01
FRPA and ADF&G Permitting
2004; revised 2018

What is the relationship between the Forest Resources and Practices Act (FRPA) and ADF&G's permitting authority under AS 16.05?

This question comes up frequently when administering the FRPA. The state forester is directed to coordinate with other agencies that have jurisdiction over activities that are also subject to regulation under the Act (AS 41.17.098). The state forester is further directed not to employ the authority of the FRPA to duplicate or preempt the statutory authority of other state agencies (AS 41.17.900(d)). This includes altering or diminishing the authority granted ADF&G under AS 16 (AS 41.17.900(f)). The agencies are required to coordinate their actions (AS 41.17.120), and establish a uniform enforcement strategy (AS 41.17.125), although each agency retains its own authority and discretion to administer and enforce their respective statutes and regulations. This means an operator must comply with the FRPA and with the authority granted ADF&G under AS 16. If required by AS 16.05.871 or deemed necessary by ADF&G under AS 16.05.841, this can include the requirement to obtain a permit from them before commencing certain harvest activities identified in the forest practices regulations. The role due deference (AS 41.17.098) plays in interagency relationships will be the subject of a future training note.

Under AS 41.17.010(7), except for activities subject to AS 16.05.841 or AS 16.05.871, the FRPA and regulations adopted under it are the fish habitat protection standards, policies, and review procedures under state law. The Best Management Practices (BMPs) contained in the regulations apply to fish bearing waters and other surface waters in accordance with their respective applicability. Fish bearing waters include streams containing anadromous or high-value resident fish at any time of the year. Other surface waters include non-fish streams, and streams containing fish not classified as anadromous or high-value resident fish under the Act.

Some forest practices regulations state that an operator must obtain prior written approval from ADF&G under AS 16.05.871 before conducting certain harvest activities between the ordinary high water marks on cataloged anadromous fish streams. A listing of streams subject to AS 16.05.871 is contained in ADF&G's "Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes". Issuance of a permit under AS 16.05.871 does not exempt an operator from complying with BMPs applicable to fish bearing waters. Under AS 41.17.125, ADF&G is required to coordinate their regulation of harvest activities under AS 16.05.871 with DOF in a manner that avoids duplication and inconsistencies. Sections in the regulations covering harvest activities requiring prior written approval from ADF&G include:

11 AAC 95.290(e)(1), (k)(1)

11 AAC 95.300(b)

11 AAC 95.305(a)(5), (b)

11 AAC 95.355(a)

11 AAC 95.360(b)(1)

11 AAC 95.365(a)

Other sections of the forest practices regulations address harvest activities conducted within or along non-cataloged anadromous or high value residential fish streams, and other surface waters. They state that an operator must notify DOF before commencing specified harvest activities that

impinge on a stream between the ordinary high water marks. DOF is the agency responsible for administering and enforcing these regulations, and ensuring that the applicable BMPs are followed. Sections in the regulations covering harvest activities requiring prior notice to DOF include:

11 AAC 95.290(k)(2)
11 AAC 95.305(a)(5)
11 AAC 95.305(b)

11 AAC 95.355(a)
11 AAC 95.360(b)(1)
11 AAC 95.365(a)

Under AS 16.05.841, activities that will block the passage of fish must provide for fish passage. Before commencing an activity that blocks fish passage, an operator is required by ADF&G to contact them regarding a permit containing provisions to ensure efficient fish passage both upstream and downstream. Some forest practice regulations contain the requirement that an activity comply or be conducted in accordance with AS 16.05.841 or AS 16.05.871. Others refer to assuring fish passage, or that the activity may be subject to AS 16. These references in the regulations that an activity comply or be conducted in conformance with requirements under AS 16 permit DOF to require compliance with provisions required by ADF&G to conduct the activity. However, under AS 41.17.125 the agencies are required to coordinate enforcement of their respective provisions and regulations in a manner that avoids duplication and inconsistencies. Sections of the regulations referenced include:

11 AAC 95.300(a)(6)
11 AAC 95.305(b)
11 AAC 95.315(c)(1)

11 AAC 95.320(c)(4)
11 AAC 95.325(a)(6)
11 AAC 95.355(a)

ADF&G previously issued a General Permit for culverts installed in conjunction with commercial timber harvesting activities, requiring only that operators request coverage and follow the standard conditions. The General Permit was rarely used, and has expired. ADF&G retains their authority for administering and enforcing AS 16.05.841 and AS 16.05.871 and they work with DOF to coordinate their permitting under AS 16 with DOF when reviewing DPOs, FLUPs, and other harvest planning documents, and when conducting forest practices inspections.

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Relevant citations:

AS 16.05.841
AS 16.05.871

AS 41.17.010(7)
AS 41.17.098
AS 41.17.120
AS 41.17.125
AS 41.17.900(d), (f)

11 AAC 95.305 (a), (b)
11 AAC 95.315 (c)
11 AAC 95.320 (c)
11 AAC 95.325 (a)
11 AAC 95.355 (a)
11 AAC 95.360 (b)
11 AAC 95.365 (a)

11 AAC 95.290 (e), (k)
11 AAC 95.300 (b)