

Introduced by:	Scalzi, Brown, Popp, Navarre
Date:	02/15/00
Hearing:	03/21/00, 04/18/00, 05/02/00
Amended:	03/21/00
Action:	Amended & Postponed
Date:	05/02/00
Action:	Enacted as Amended
Date:	05/16/00
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2000-08**

**AN ORDINANCE AMENDING THE KENAI RIVER HABITAT  
PROTECTION ORDINANCE TO INCLUDE OTHER ANADROMOUS  
STREAMS WITHIN THE KENAI PENINSULA BOROUGH**

**WHEREAS,** in 1996 the assembly adopted KPB 21.18 in order to protect important Kenai River salmon habitat; and

**WHEREAS,** at the time of adoption of KPB 21.18, the assembly stated its intent to extend application of the ordinance to tributaries to the Kenai River within one year; and

**WHEREAS,** there are a number of anadromous streams within the Kenai Peninsula Borough according to the Alaska Department of Fish & Game atlas and catalog of anadromous fish which would benefit from the habitat protection provisions of KPB 21.18; and

**WHEREAS,** salmon streams are vital to the economy of the Kenai Peninsula Borough and the enjoyment of borough residents;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the title to Chapter KPB 21.18 is amended as follows:

**CHAPTER 21.18.**

**[KENAI RIVER] ANADROMOUS STREAMS HABITAT PROTECTION**

**SECTION 2.** That KPB 21.18.010 is amended to read as follows:

**21.18.010. Purpose.**

The purpose of this chapter is to ensure [ESTABLISH] measures for the protection within the Kenai Peninsula Borough of [KENAI RIVER] [S]salmon spawning and rearing habitat are applied in a consistent manner while recognizing private property rights and providing cities the option to administer the ordinance within their boundaries. It is the intent of this ordinance to avoid duplicating regulations of state, federal, or municipal agencies and to minimize conflicts between those regulations and this ordinance.

**SECTION 3.** That KPB 21.18.020 is amended to read as follows:

**21.18.020. Findings.**

In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous [KENAI RIVER] streams within the Kenai Peninsula Borough. Among others these include bank erosion, bank trampling, pollution, inadequate tourism infrastructure, unsuccessful attempts to remedy bank erosion or protect and restore habitat, inconsistent regulations, logging, grazing, mining, wetland fill and drainage, excavation and fill of property, dredging, inappropriately installed culverts, fuel storage, and maintenance of existing structures. The assembly finds that the sensitivity of the river area requires general prohibition of activities within an area immediately adjacent to the [KENAI RIVER] anadromous streams and only activities which do not damage the habitat should be allowed. The assembly finds that certain activities [HAVING] have minor impact and that existing state, federal and local laws and regulations contain sufficient controls on these activities that further regulation is not currently needed. The assembly further finds that fuel storage and significant removal of vegetation within the 100-year flood plain along the [KENAI RIVER] anadromous streams [AND ITS TRIBUTARIES] need regulation to protect the [KENAI RIVER] salmon habitat.

**SECTION 4.** That KPB 21.18.025 is enacted to read as follows:

**21.18.025. Application.**

The following anadromous streams, as identified in the "Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" published by the Alaska Department of Fish and Game, are subject to this chapter:

- A. Within the east side of Cook Inlet as follows:
  - 1. Kenai River, Stream No. 244-30-10010, and its following tributaries:
    - (a) Beaver Creek, Stream No. 24430-10010-2025
    - (b) Slikok Creek, Stream No. 24430-10010-2030
    - (c) Soldotna Creek, Stream No. 24430-10010-2039
    - (d) Funny River, Stream No. 24430-10010-2050
    - (e) Moose River, Stream No. 24430-10010-2063
    - (f) Killey River, Stream No. 24430-10010-2076
    - (g) Upper Killey River, Stream No. 24430-10010-2110
    - (h) Russian River, Stream No. 24430-10010-2158
    - (i) Quartz River, Stream No. 24430-10010-2177
    - (j) Trail River, Stream No. 24430-10010-2225
  - 2. Swanson River, Stream No. 247-90-10020
  - 3. Kasilof River, Stream No. 244-30-10050
  - 4. Ninilchik River, Stream No. 244-20-10090
  - 5. Deep Creek, Stream No. 244-20-10100
  - 6. Stariski Creek, Stream No. 244-10-10050
  - 7. Anchor River, Stream No. 244-10-10010
  - 8. Fox River, Stream No. 241-14-10645

9. Seldovia River, Stream No. 241-11-10730
10. English Bay River, Stream No. 241-30-10500
11. Bradley River, Stream No. 241-1410625-2010
12. Bishop Creek, Stream No. 246-90-10030
13. Chickaloon Creek, Stream No. 247-60-10110
14. North Fork of Anchor River, Stream No. 24410-10010-2011
15. Seven Egg Creek, Stream No. 24780-10010

**SECTION 5.** That KPB 21.18.040 is amended to read as follows:

**21.18.040. Habitat protection area established.**

There is established [A KENAI RIVER] an anadromous stream habitat protection area [ WITHIN THE KENAI RIVER WATERSHED DISTRICT]. Except as otherwise provided in this section, this area includes all lands within 50 horizontal feet of the [KENAI RIVER] streams 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 fifty-foot area consist of a 60 degree or more cut bank the habitat protection area 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.

**SECTION 6.** That KPB 21.18.050A is amended to read as follows:

**21.18.050. Flood plain--Restrictions within for habitat protection--Permit required--Fuel storage tanks and logging--Conditions.**

A. No person shall install or replace a fuel storage tank or conduct logging activities as defined in this section within any flood hazard area bordering the Kenai River or any of its tributaries or other anadromous streams set forth in KPB 21.18.025 without first obtaining a permit from the borough planning director. In this section "flood hazard area" means any area designated as such pursuant to KPB 21.06 and shown on the most recent flood insurance rate maps published by the Federal Emergency Management Agency.

**SECTION 7.** That KPB 21.18.050C is amended to read as follows:

C. Fuel storage tanks must be attached or anchored solidly to a structure or to the ground. Cables may be used for anchoring that are of sufficient strength to prevent the tank from tearing loose if it were to float while empty. [t]The tank must also be installed within an impervious containment basin of a size sufficient to contain 110% of storage capacity plus 12 inches of free board.

**SECTION 8.** That KPB 21.18.070(A)(4) is amended to read as follows:

**21.18.070. Activities not requiring a permit.**

4. Boardwalks and gatewalks with less than 75 percent but a minimum of 25 percent light penetration must be constructed so that no part, other than the supporting posts, are less than 18 inches off the ground. Gatewalks with at least 75 percent light penetration must be constructed so that no part, other than the supporting posts, are within 8 inches off the ground. Boardwalks and gatewalks are not to exceed eight (8)

feet in width, and those boardwalks and gratewalks running along or parallel to the banks of the [KENAI RIVER] streams shall be limited in length to no more than one third (1/3) the total lineal river frontage of the parcel on which it is constructed. Boardwalks and gratewalks must be constructed of wood, plastic, fiberglass, aluminum, steel, or other non-toxic material. If the wood is treated, it must be certified as non-toxic to plants and animals by an independent laboratory or other appropriate agency. Boardwalks and gratewalks not meeting the above requirements shall require a conditional use permit.

**SECTION 9.** That KPB 21.18.100C is amended to read as follows:

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

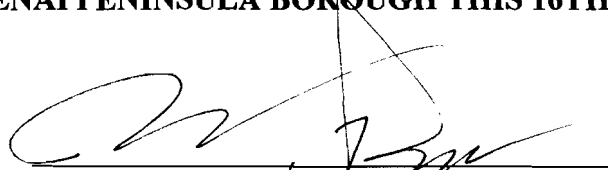
C. A city wishing to administer and enforce this chapter shall enact an ordinance adopting the provisions of this chapter by reference, providing the city will undertake the administration in conjunction with the administration of land use regulations and building and health codes enacted by the city. 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.

**SECTION 10.** That KPB 21.18.140C is amended as follows:

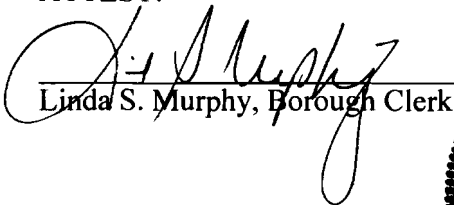
C. "Cut bank" shall mean banks of [THE KENAI RIVER] anadromous streams with exposed soil surface that have occurred from natural or manmade causes whether the exposed surface extends to the high water mark or not.

**SECTION 11.** That this ordinance shall take effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF MAY, 2000.**

  
William Popp, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

