

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON FISHERIES**

January 20, 2006

8:36 a.m.

**MEMBERS PRESENT**

Representative Gabrielle LeDoux, Co-Chair  
Representative Bill Thomas, Co-Chair  
Representative John Harris  
Representative Jim Elkins  
Representative Mary Kapsner  
Representative Woodie Salmon

**MEMBERS ABSENT**

Representative Peggy Wilson

**OTHER LEGISLATORS PRESENT**

Senator Gary Stevens  
Representative Kurt Olson

**COMMITTEE CALENDAR**

HOUSE BILL NO. 328

"An Act prohibiting mixing zones in freshwater spawning waters."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 328

SHORT TITLE: BAN MIXING ZONES IN SPAWNING AREAS

SPONSOR(S): REPRESENTATIVE(S) SEATON, OLSON, GATTO, LEDOUX

|          |     |                                 |
|----------|-----|---------------------------------|
| 01/09/06 | (H) | PREFILE RELEASED 12/30/05       |
| 01/09/06 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/09/06 | (H) | FSH, RES                        |
| 01/20/06 | (H) | FSH AT 8:30 AM CAPITOL 124      |

**WITNESS REGISTER**

LYNN TOMICH KENT, Director  
Division of Water  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB328.

MCKIE CAMPBELL, Commissioner  
Alaska Department of Fish & Game (ADF&G)  
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB328.

KERRY HOWARD, Director  
Office of Habitat Management and Permitting (OHM&P)  
Department of Natural Resources (DNR)  
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB328.

REPRESENTATIVE PAUL SEATON  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 328.

RICHARD HAHN  
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 328.

REBECCA ROBBINS, Policy Coordinator  
Yukon River Drainage Fisheries Association (YRDFA)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 328.

JOHN TOPPENBERG, Director  
Alaska Wildlife Alliance (AWA)  
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 328.

GEORGE MATZ, Representative  
Cook Inlet Alliance  
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 328.

NORMAN VAN VACTOR, Manager  
Peter Pan Seafoods, Inc.  
Bristol Bay, Alaska

POSITION STATEMENT: Testified in support of HB 328.

#### **ACTION NARRATIVE**

**CO-CHAIR BILL THOMAS** called the House Special Committee on Fisheries meeting to order at 8:36:00 AM. Representatives Thomas, LeDoux, Salmon, and Elkins, were present at the call to

order. Representatives Kapsner and Harris arrived as the meeting was in progress. Also present were Senator Gary Stevens and Representative Olson.

HB 328-BAN MIXING ZONES IN SPAWNING AREAS

8:36:17 AM

CO-CHAIR THOMAS announced that the only order of business today would be HOUSE BILL NO. 328 "An Act prohibiting mixing zones in freshwater spawning waters." He allowed that three state departments would open testimony, followed with a presentation by a prime sponsor of the bill, continuing with testimony from two fishing groups, and finally public witnesses, time permitting. He expressed his intention to hold the bill in committee for continued public testimony at next weeks scheduled meeting.

8:39:45 AM

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), began by stating that the current regulations provide a prohibition on mixing zones in spawning areas. She explained that these prohibitive regulations are "not fair" to facilities that invested in developing facility infrastructure, and that maintained a permit from DEC for which [effluent] discharge into an authorized mixing zone in an area fish subsequently inhabited such that the zone created a spawning area. She explained that under the current regulations, DEC is precluded from authorizing a continued use permit given this scenario. Ms. Kent related that mixing zones are important to communities across the state. There are over 400 authorized mixing zones in Alaska of which 157 serve municipal sewage treatment facilities.

8:41:09 AM

MS. KENT explained that DEC is charged with providing water quality standards that are designed to protect the multiple uses of Alaskan waters: drinking water; public health safety and welfare; growth and propagation of aquatic life; domestic, commercial and industrial uses; and recreational uses. The water quality standards are the regulatory criteria used to provide appropriate water purity to protect these multiple uses. She described a mixing zone as an area where treated wastewater is discharged and allowed to mix with a [non-treated] water body; the water quality standards may be exceeded within a

permitted mixing zone but have to be met at the edge of the mixing zone. She noted that DEC's goal is to protect all uses of the entire water body. She highlighted that mixing zones exist in accordance with the federal Clean Water Act and stated that the Environmental Protection Agency (EPA) has published guidance standards regarding methods to establish mixing zones.

[8:42:28 AM](#)

MS. KENT explained how mixing zones are engineered and the parameters that DEC employs to authorize them. She then explained that, once authorized, the permittee may be required to monitor their discharge and the surrounding waters of the mixing zone to ensure compliance to regulatory standards. In addition, DEC has an inspection and monitoring program under which it takes appropriate enforcement actions. Ms. Kent pointed out that mixing zones have been utilized in Alaska for the past 30 years, and are only managed by permitted wastewater facilities which are subject to public review and comment.

[8:43:14 AM](#)

MS. KENT directed the committee's attention to the DEC packet handout number 3 entitled, "Division of Water, Water Quality Standards, 2003-2006 Triennial Review." Ms. Kent proceeded by reading the following bulleted points:

***In determining whether to authorize a mixing zone, DEC must consider:***

- the characteristics of the receiving water
- the characteristics of the effluent
- the effects, including cumulative effects of multiple discharges, along with nonpoint sources of pollution on the uses of the water
- any measures that would mitigate potential adverse effects to aquatic resources
- any other relevant factors

***In order to authorize a mixing zone DEC must find that the:***

- effluent will be treated to remove, reduce and disperse the pollutants using the most effective methods that are technologically and economically feasible, at a minimum consistent with statutory and regulatory treatment requirements

- designated and existing uses of the waterbody as a whole will be maintained and protected
- overall biological integrity of the waterbody will not be impaired
- mixing zone is as small as practicable

***To obtain a mixing zone approval, the mixing zone can not***

- result in a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone
- create a public health hazard that would preclude or limit existing uses of the waterbody for water supply or contact recreation
- preclude or limit established processing activities, commercial, sport, personal-use, or subsistence fish and shellfish harvesting
- result in a reduction in fish or shellfish population levels
- result in permanent or irreparable displacement of indigenous organisms
- adversely affect threatened or endangered species except as authorized under the Endangered Species Act
- form a barrier to migratory species or fish passage
- contain pollutants that bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota
- present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects
- settle to form objectionable deposits
- produce floating debris, oil, scum and other material in concentrations that form nuisances
- result in undesirable or nuisance aquatic life
- produce objectionable color, taste, or odor in aquatic resources harvested from the area for human consumption
- cause lethality to passing organisms
- exceed acute aquatic life criteria beyond a smaller initial mixing zone near the outfall

[8:46:07 AM](#)

MS. KENT explained that mixing zones are integral to the operation of facilities such as sewage treatment plants or seafood processors, who discharge waste water to a surface water body. She directed the committee's attention to page 4 of the

DEC handout, which contains a pie chart of mixing zones in Alaska and names the six statewide usages in order of importance: Municipalities, seafood processing, placer mines, oil and gas related facilities, larger mines, and a fertilizer plant.

[8:46:50 AM](#)

MS. KENT proceeded to page 5, and provided examples of three types of mixing zones in current operation. She detailed the profiles of a general seafood processing facility; the Mendenhall Wastewater Treatment Plant, Juneau; and the Soldotna Wastewater Treatment Facility, Soldotna.

[8:48:36 AM](#)

MS. KENT pointed out that many types of wastewater, given today's technology, could meet water quality standards at the end of the pipe [eliminating the need for the mixing zone]. However, she noted, that this level of treatment can be prohibitively expensive for the permittee. She explained that mixing zones are considered a regulatory tool to keep treatment costs reasonable while protecting human health and the environment.

[8:49:06 AM](#)

MS. KENT stated that the department's federally required triennial review revealed, in part, the need for the proposed changes. She said that DEC's existing regulations contain a prohibition on mixing zones in spawning areas of streams and rivers with anadromous fish, and some specifically listed resident fish. Subsequent to the addition of the aforementioned prohibition being added to the DEC regulations in 1995, there were various attempts to provide for exceptions, although none were adopted. She pointed out that the review process, covering the potential changes to the mixing zone regulations, allowed 161 days for public comment.

MS. KENT stated three reasons that DEC has proposed these changes. First, the prohibition on mixing zones in spawning areas goes beyond what is scientifically necessary to protect fish, and many protections for fish already exist. Second, the existing regulations present an unfairness for permittees who have invested in a facility, received a mixing zone permit, and subsequently experienced the zone transforming into a spawning area, resulting in costly and lengthy re-permitting processes.

Third, the current regulations do not reflect the integrated process by which DEC synchronizes with Alaska Department of Fish & Game (ADF&G), and the Department of Natural Resources (DNR), utilizing combined authority to identify spawning areas and protect fish/habitat.

[8:50:43 AM](#)

MS. KENT, addressing the "unfairness" reference, described the Valdez sewage treatment facility, which now has salmon spawning in its manmade discharge ditch. She also described the Palmer sewage treatment plant that discharges into the Matanuska River, which now supports a salmon run in its mixing zone. She went on to discuss the Pogo mine, which discharges its domestic wastewater into the Goodpaster River and the challenges that mining officials faced in efforts to comply with the existing regulations. Ms. Kent explained the "convoluted and costly efforts" that each of these situations present and the difficulties involved for the named parties to receive and renew their mixing zone permits.

[8:52:48 AM](#)

MS. KENT directed the committee's attention to page 1 of the packet and explained that, for purposes of discussing the proposed regulations, she would use the term "non-salmon" for "other specifically listed fish." She stated that the revised regulations have retained the prohibition on mixing zones and spawning areas of all fresh waters for salmon, with the only change being the addition of lakes to the list. For non-salmon, she continued, the prohibition was also retained for all fresh waters, again adding lakes, but allowing for two potential exceptions.

MS. KENT explained that the first exception allows DEC to authorize a mixing zone in a non-spawning area, but only where all water quality standards for protection of aquatic life are met. Page 6, of the handout, she pointed out, provides a comparison of drinking water criteria to aquatic life criteria in order to illustrate how implementing this exception would not have an adverse effect on fish, but would allow DEC to authorize a mixing zone in a non-salmon spawning area.

[8:54:43 AM](#)

MS. KENT described the second exception in which DEC could authorize a mixing zone in a non-salmon spawning area provided

that ADF&G or DNR has approved a mitigation plan in accordance with the appropriate department's regulatory requirements. She explained that in cases where a non-spawning waterway subsequently becomes a spawning area, DEC would be allowed to reauthorize the mixing zone permit so long as all other provisions of the regulations are met. The aforementioned will allow the Valdez and Palmer sewage treatment facilities to continue to operate without costly facility reconstruction.

[8:55:40 AM](#)

MS. KENT reiterated DEC's position that by effecting the proposed regulations: mixing zones can be appropriately authorized in spawning areas; fish can be protected; and that protections may go beyond what science dictates as necessary. She maintained that HB 328 and DEC's regulations take similar approaches to prohibiting mixing zones in salmon spawning areas, however, for non-salmon species, the two differ. She explained that HB 328 proposes to prohibit mixing zones in non-salmon spawning areas, whereas DEC regulations rely on sound science and existing ADF&G and DNR protection policies [to allow appropriate water body usage]. She pointed out that HB 328 would allow a mixing zone only in new manmade waterways where fish have begun to spawn, but would disallow a mixing zone in natural waterways which later become spawning areas. The DEC's revised regulations provide the flexibility that would allow for resolution of both of these special situations. The situations being experienced, by the municipalities of Valdez and Palmer, she concluded, could be reasonably resolved utilizing the proposed regulations.

[8:57:31 AM](#)

COMMISSIONER CAMPBELL, Commissioner, Alaska Department of Fish & Game (ADF&G), stated that the proposed regulations provide fish all the necessary levels of protection without needlessly adding layers of regulation that impinge on other uses of the waterways. He conceded that the inclusion, in HB 328, of fish spawning in lakes is an addition that heretofore has been needed. He pointed out that as long as the state has been regulating activities in spawning areas, the identification of what is a spawning area has been done spatially and temporally. These practices focused on ascertaining where and when a given activity is occurring in a watershed and will remain unchanged in the proposed DEC regulations as well as under HB 328.

[9:02:32 AM](#)

COMMISSIONER CAMPBELL stated that it has always been past practice, but not regulation, to ensure that wastewater discharges do not adversely affect spawning areas. He noted that in the proposed regulations, no discharge will be allowed which can adversely effect the future capability of that area to be used for spawning. He opined that the revised regulations do not present a loophole, but are an improvement toward regulating usage and providing spawning area protection. Further, he charged the committee to closely review the new DEC regulations and discern that, through the process, the administration has done a responsible job in creating regulation that both protects fish and allows for appropriate other usage. He maintained that creating statute around this regulatory issue is unnecessary and may set a precedent for implementing regulations in the future.

[9:06:27 AM](#)

REPRESENTATIVE SALMON asked Commissioner Campbell if he is supporting HB 328 or the old DEC regulations.

COMMISSIONER CAMPBELL clarified that his testimony is in support of the new DEC regulations. He stated that he believes the mixing zone matter is "best and most fully addressed in regulation" and that "there are at least some considerable political risks to the fish" by pursuing it [implementing statute]. Responding to other questions, he stated that in recent years the Division of Habitat Protection was transferred to DNR, which established the previous long-term ADF&G personnel as DNR staff. He opined that this reorganization has proven a benefit to the departmental workings. He further answered that ADF&G is not staffed to patrol each mixing zone, but is adequately staffed to "pay attention to issues that seem to be of particular concern to us." He explained that it is ADF&G's area of interest, but not the department's jurisdiction, to implement case-by-case checks. He maintained that the departments work closely together to oversee areas of concern.

[9:10:24 AM](#)

KERRY HOWARD, Director, Office of Habitat Management and Permitting (OHM&P), Department of Natural Resources (DNR), stated that OHM&P has 37 biologists statewide, and described how the combined efforts of the involved departments multiply the effectiveness of the biologists' work. Given the synergistic relationship of the departments, she said she has not, nor does she expect to experience, oversight problems. The OHM&P staff

does significant "up front" reviews on applications, although the staff is not expansive enough to physically view each project that is permitted. For projects that "push the envelope", that is require regular monitoring, arrangements are made with the companies to provide data/reports to the department, or the department may dispatch staff to the site.

[9:13:25 AM](#)

REPRESENTATIVE KAPSNER inquired as to the number of mixing zone applicants prior to the regulations being changed, and if there has been any difference realized in the acceptance/denial level of applications following the change in regulations.

MS. HOWARD explained that wastewater discharge permits are renewed on a five-year basis, which translates to one fifth of the existing facilities [listed in the packet] coming due for permit renewal in any given year. Additionally, she added, every year realizes new project applications.

COMMISSIONER CAMPBELL clarified that the old regulations are in effect. He opined that he did not expect to see any [significant] increase in the number of applications approved as a result of adopting the proposed regulations. He stated that given the continued mitigation requirements and strict standards, applicants will not find it easier to receive permits; the process will remain stringent.

[9:16:26 AM](#)

REPRESENTATIVE KAPSNER asked if there might be potential for a single operation, with the possibility to cause "devastating [environmental] effects" to receive approval.

COMMISSIONER CAMPBELL assured the committee that such a scenario would not be a possibility. He pointed out that any exceptions require an adequate mitigation sequence, which has been in place, with ADF&G, for decades.

[9:18:38 AM](#)

REPRESENTATIVE SEATON asked how many freshwater mixing zones exist, the number that require constant monitoring, and the level of inspections conducted in the last year.

MS. HOWARD recollected that a few of the seafood processors, all of the placer mines, and the three large mines discharge to

fresh water. In further response, she stated that monitoring requirements are based on the potential risk to the environment and differ between permits. Also, DEC shares the permitting and inspection requirements with EPA. She offered to provide the exact numbers at a later time.

9:20:20 AM

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, as prime sponsor, explained the differences in the current versus the proposed DEC regulations, in regard to fish specifications and relating to spawning areas. He went on to explain that HB 328 disallows mixing zones in any spawning areas, and expands the number of fish species protected under DEC regulations. He pointed out the public concern for protecting the vitality of Alaska's fish species and marketability, and indicated the large packet of support accumulated for HB 328. He further explained that HB 328 allows that a settling pond, once constructed and subsequently inhabited by fish, would not involve reclassification requiring the permittees to apply for an exception, but instead allow the facility to continue seamless operation under their original mixing zone permit. He pointed out that, under the proposed regulations, temporal permits could present a problem. A company providing mixing zone information to DEC for permitting purposes might observe a stream mid-winter [non-spawning season] and note no fish spawning, resulting in a temporal permit being granted. This permit could potentially be extended and re-permitted ad infinitum under the proposed regulations. With the appropriate statutory definition, he said he expects to be able to eliminate this sort of scenario.

9:24:49 AM

REPRESENTATIVE SEATON declared that the intent of HB 328 is to ensure that Alaska's waters and fish species remain healthy and vibrant. He pointed out that the oil companies have stated that they do not want or need regulatory changes to the mixing zone requirements, and that the majority of the mines do not require mixing zones. However, he warned the committee to be aware of the different environmental impacts and concerns that placer mines create. Suspended solids are the main concern with these mines. He pointed out that a separate section of DEC regulates the site-specific criteria required to address the discharge from placer mines. However, he reminded the committee that for the purpose of HB 328, only freshwater and spawning areas, where currently there are no mixing zones, are being addressed.

9:27:42 AM

REPRESENTATIVE HARRIS asked if there is any on record opposition to HB 328.

REPRESENTATIVE SEATON acknowledged that a letter dated January 10, 2006, was received from the [Alaska Miners Association, Inc.]. He summarized that the letter expressed a general concern for mines to maintain the ability to apply for mixing zones in spawning areas. In addition, he stated that the Donlin Creek Mine has been the only mine to contact him and relate that working within the site-specific exemptions has proven difficult. He clarified that the only exemption for discharge of a mixing zone into a spawning area, which HB 328 allows, would be for a man-made ditch or a settling pond. These man-made waterways, as HB 328 provides, would never be reclassified as spawning areas, as is the current problem in the Valdez area. However, he professed the need to include language in HB 328 which would exempt municipalities even though they may represent discharge into a natural water system. He envisions that these situations can be handled within the bill.

REPRESENTATIVE SALMON questioned if larger watersheds [migratory routes versus spawning areas], such as the Kuskokwim and Yukon Rivers, would be protected from harmful discharge under HB 328.

REPRESENTATIVE SEATON responded that the current regulations allow for mixing zones to be applied for in non-spawning areas, and this bill does not go further than what is already in place for those [migratory] waterways. In response to further questions, he pointed out that establishing a time limit for municipalities to become compliant with water quality standards rather than issuing random waivers might be a point to review, as it is not part of what HB 328 currently proposes. Also, regarding deadlocked/stocked lakes, he said that introduced species would not necessarily profit from HB 328; the lake must represent a spawning area of fish species specifically listed for protection in the bill.

REPRESENTATIVE KAPSNER asked for a definition of the following terms in the proposed regulations: "technologically and economically feasible", "significantly adverse levels", and "spatially and temporally".

MS. KENT referenced the proposed DEC regulations and read number [18 AAC 70.] 240 (c) (1), [packet page 1]. She explained that minimum treatment requirements are established by both federal

and state regulations. Once these basic requirements have been met, this language provides DEC the ability to require treatment that may go beyond the minimum standards as long as it is technologically and economically "doable." The determination of what is technologically and economically feasible is based on the specific types of discharge and what has been employed elsewhere to treat similar contaminants. She explained that there are processes that, although proven in the laboratory, could not economically be employed in actual operations. For example:

We have the technological capability to treat sewage to drinking water levels but I don't think you or I want to pay the amount it would take to flush a toilet each time, to achieve that standard.

9:39:50 AM

MS. KENT addressed the regulatory language [18 AAC 70.240 (d)(1)] used to describe acceptable adverse levels of pollutants in a mixing zone. She explained that DEC has established a risk-based level for human health, and this regulation prohibits the pollutants exceeding that level.

9:41:49 AM

COMMISSIONER CAMPBELL explained that the terms spatially and temporally [18 AAC 70.240 (j)] were added to the proposed regulations to clarify what the process would be for determining a spawning area. To illustrate, he offered that placer mines operate under timing restrictions to avoid [disturbance of] spawning areas primarily for grayling. The areas are defined as spawning areas, disallowing discharge or physical disturbance, when spawning fish, eggs, or alevins are present. He stated that nearly all placer mines discharge, under this definition, save for the period of time, about one and one-half months, that grayling are spawning.

9:44:49 AM

REPRESENTATIVE SEATON requested that the administration provide him the correct and extensive definition of spawning, beyond what the administrative code supplies. He also requested written clarification that "temporally mixing zones in salmon ... spawning areas would not then be issued for the other times of the year." Additionally, he requested information on temporal permits that have been issued since 1995, and asked

that the report distinguish between a temporal permit that would provide access for logging type work [creating temporary stream disruption] versus a continuous pollutant discharge type mixing zone.

[9:46:34 AM](#)

RICHARD HAHN stated support for HB 328, but expressed concern about the temporal permit description in the proposed DEC regulations. He stated that spawning streams are year round hatcheries and that "no ... private hatchery would allow any kind of pollution dilution of its water." He said that statute, allowing for the possibility of court settlement, will better serve to protect spawning areas.

[9:51:46 AM](#)

REBECCA ROBBINS, Policy Coordinator, Yukon River Drainage Fisheries Association (YRDFA), stated opposition to the new DEC regulations and support for HB 328. She described the Yukon River fisheries, how the communities of the areas depend on those fisheries for personal and commercial use, and she expanded the scope to include all species of fish common to the Yukon River area. She said that mixing zones and water quality standards, as allowed in the proposed DEC regulations would: provide for levels of pollution otherwise prohibited; pose a threat to anadromous and freshwater fish; compromise Alaska salmon product marketing; impact the subsistence food supply for humans as well as sled dogs; impair departmental accountability; compromise protection for non salmon species; allow for spawning ground permits to be granted on a mitigation plan proviso; and tender placer mine impacts on grayling habitat. The YRDFA views HB 328 as a means for continued and expanded protection of the Yukon River fishery, she related.

[9:54:08 AM](#)

JOHN TOPPENBERG, Director, Alaska Wildlife Alliance, said that the current regulations are unclear. He asked what is meant by the regulatory reference to "they cannot represent an unacceptable risk to human health"; how is this risk defined and will that threshold change with new biomedical discoveries. Further, he asked should such a standard change occur, will those experiencing subsequent health consequences have civil recourse. He asked whether fisheries would be subject to similar potential problems. He also questioned the statement that the department does not have staff necessary [to conduct

inspections], which he said is cause for concern in regard to the potential abuse [of the system]. He opined that statute would clarify and take care of the current regulatory loopholes.

[9:56:07 AM](#)

GEORGE MATZ, Representative, Cook Inlet Alliance (CIA), stated support for HB 328, by paraphrasing from the following written remarks [original punctuation provided, with some formatting changes]:

The Cook Inlet Alliance wants to thank you for your attention to constituent concerns regarding mixing-zone regulations and for introducing HB 328 as a practical, no nonsense solution to this dilemma.

Even though the Department of Environmental Conservation (DEC) adopted modified mixing zone regulations earlier this week, we think HB 328 is still needed for two compelling reasons:

to eliminate ambiguity and possible loopholes that still exist with DEC's adopted regulations, and

to protect spawning areas for all species of anadromous fish as well as resident fish.

As you know, there have been a few instances where a wastewater discharge permit was issued that allowed a mixing zone and afterwards, salmon started spawning in the zone. While these situations obviously need attention, regulations proposed twice by DEC to correct the problem were essentially throwing the baby out with the bath. The regulations that DEC adopted on January 12<sup>th</sup> are less objectionable with respect only to salmon, but still allow open-ended questions that could turn into loopholes. This lack of certainty gives the impression that a wastewater discharge permit is a negotiated process, not one to meet a specified standard of water quality. Four problems we see are:

1. Who defines a spawning area? The adopted regulations say that DEC will defer to the Department of Natural Resources "or" the Department of Fish and Game. These two departments have different missions and often different perspectives on resource

development/conservation issues, which is the way it should be. Putting "or" in the regulations creates a situation where DEC could arbitrarily decide which to pick, thereby introducing bias into the permit process.

2. Spawning areas need year around protection. These areas are used throughout the year for incubation and rearing as well spawning. Nevertheless, the adopted regulations leave open to question the spatial and temporal definition of a spawning area. Any attempt at narrowly defining a spawning area might benefit a permit applicant, but not water quality or fish.

3. DEC's regulations do not describe what happens when a wastewater discharge permit is requested for a water body that is not in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*. As described on DF&G's web site, "The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.870. Water bodies that are not 'specified' within the Catalog and Atlas are not afforded that protection... Based upon thorough surveys of a few drainages it is believed that [specified water bodies] represents less than 50% of the streams, rivers and lakes actually used by anadromous species."

While large projects that need an Environmental Impact Statement may provide this information if it did not previously exist, our concern is more about the cumulative impacts from many smaller projects that need wastewater discharge permits but don't have the means or requirement to undertake expensive fish habitat studies. If mixing zones in spawning areas are to be allowed, the *Catalog* needs to be completed. Hence, the fiscal impact of allowing mixing zones for anadromous fish other than Pacific salmon should have been included in this regulation.

4. DEC's adopted regulations are unnecessarily convoluted. Section (f) says that "a mixing zone will not be authorized in a spawning area for" several species of fish, but then says in (g) that it "may authorize a mixing zone in a spawning area" for these

very same species, but certain conditions have to be met. But if they can't be met, a mitigation plan is acceptable "using the methods established in 11 AAC 195.010." When you read the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes* referred to in 11 AAC 195.010, you don't find any methods. The closest thing you find is a section that describes the information needed when applying for a Fish Habitat Permit. This falls short of being a method.

Because of its obvious importance, the mixing zone issue needs to be firmly resolved via legislative statute, not confusing administrative regulation. What you propose in HB 328 is a simple, straightforward resolution to this problem. It provides a clear policy statement that should become law.

Furthermore, HB 328 protects the spawning areas for all species of anadromous fish (not just Pacific salmon) as well as resident fish. Interest in this issue extends to those who sport and subsistence fish as well as those who commercially fish and are primarily interested in salmon. Sport and subsistence fishers want a sustainable harvest from clean, unpolluted water of all species of anadromous fish as well as resident fish. Without HB 328 that might be jeopardized in areas where mixing zones are allowed.

We thank you for this opportunity to testify.

[9:59:47 AM](#)

NORMAN VAN VACTOR, Manager, Peter Pan Seafoods, Inc., stated, echoed Ms. Robbins concerns, in his support of HB 328, and stated, "If it ain't broke, why are we trying to change something." He said he opposes the proposed DEC regulations, and expects that HB 328 will close some significant regulatory loopholes.

[HB 328 was held over.]

[10:01:13 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:01 a.m.