

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

January 27, 2006
8:24 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

COMMITTEE CALENDAR

HOUSE BILL NO. 328

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

- MOVED CSHB 328(FSH) OUT OF COMMITTEE

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
01/20/06	(H)	Heard & Held
01/20/06	(H)	MINUTE(FSH)
01/27/06	(H)	FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 328.

LYNN TOMICH KENT, Director

Division of Water
Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 328.

NORMAN KROENING, Owner
Alaska Digestive Technology, Limited Liability Company (LLC)
Palmer, Alaska
POSITION STATEMENT: Testified on HB 328.

PAUL BARNES
Gustavus, Alaska
POSITION STATEMENT: Testified in support of HB 328.

RUSS MADDOX
Seward, Alaska
POSITION STATEMENT: Testified in support of HB 328.

RAY SENSMEIER, Tribal Council Member
Yakutat Tlingit Tribe;
First Grand Vice President
Alaska Native Brotherhood (ANB)
Yakutat, Alaska
POSITION STATEMENT: Testified in support of HB 328.

KRISTEN SMITH, Executive Director
Copper River Watershed Project
Cordova, Alaska
POSITION STATEMENT: Testified in support of HB 328.

ROBERT RUFFNER, Executive Director
Kenai Watershed Forum
Soldotna, Alaska
POSITION STATEMENT: Testified in support of HB 328.

RICHARD HAHN
Soldotna, Alaska
POSITION STATEMENT: Testified in support of HB 328.

THOMAS BOEDEKER, Manager
City of Soldotna
Soldotna, Alaska
POSITION STATEMENT: Testified in support of HB 328.

BENJAMIN JACKINSKY
Kasilof, Alaska
POSITION STATEMENT: Testified in support of HB 328.

KURT HERSCHLEB, Member
Cordova District Fishermen United
Cordova, Alaska
POSITION STATEMENT: Testified in support of HB 328.

CATHERINE CASSIDY
Kasilof, Alaska
POSITION STATEMENT: Testified in support of HB 328.

ERIK HUEBSCH
Kasilof, Alaska
POSITION STATEMENT: Testified in support of HB 328.

PAUL SHADURA, II, Executive Director
Kenai Peninsula Fishermen's Association;
Member, Kenai/Soldotna Fish & Game Advisory Committee
Soldotna, Alaska
POSITION STATEMENT: Testified in support of HB 328.

MERLE THOMPSON
Wasilla, Alaska
POSITION STATEMENT: Testified in support of HB 328.

PAULA TERREL, Water Quality Issues Coordinator
Alaska Marine Conservation Council
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 328.

MATT SHADLE, Member
Homer City Council
POSITION STATEMENT: Testified in support of HB 328.

DONALD BREMNER, Natural Resources Coordinator
Southeast Inter-Tribal Fish and Wildlife Commission
Juneau, Alaska
POSITION STATEMENT: Testified on HB 328.

ACTION NARRATIVE

CO-CHAIR BILL THOMAS called the House Special Committee on Fisheries meeting to order at [8:24:24 AM](#). Representatives Elkins, Salmon, Harris LeDoux, and Thomas were present at the call to order. Representative Kapsner arrived as the meeting was in progress.

HB 328-BAN MIXING ZONES IN SPAWNING AREAS

[Contains discussion of SB 225, the companion bill]

8:34:20 AM

CO-CHAIR THOMAS announced that the only order of business would be HOUSE BILL NO. 328, "An Act prohibiting mixing zones in freshwater spawning waters."

REPRESENTATIVE HARRIS moved to adopt CSHB 328, Version 24-LS1273\L, Bullock, 1/23/06, as the working document. There being no objection, Version L was before the committee.

REPRESENTATIVE PAUL SEATON, Alaska State Legislature testifying as prime sponsor of HB 328, called the committee's attention to the new language on page 2, lines 6-10, which allows for a municipal wastewater mixing zone once authorized to continue throughout the useful life of the facility, invasive fish species not precluding; and page 2, line 12 which provides a revised definition of [spawning] "area". He explained that in current departmental regulations spawning area is defined as "the time when the fish are depositing eggs," and in Version L it's defined as a "physical area [which is] protected for all the time" that the fish are spawning, eggs are incubating in the gravel, and through the early stages of development. Responding to a question he said that the bill defines the physical spawning area to include the entire time that the fish, eggs, or young are present. He also pointed out the recently arrived letters of support, in the committee packet, from the cities of Palmer and Valdez, the Kachemak Bay Conservation Society, and the Southeast Dive Fisheries Association.

8:39:17 AM

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), directed the committee's attention to DEC's additional written comments in the bill packet, including a letter of response to the committee's questions from the previous hearing [January 20, 2006]. In response to a question, she clarified that DEC opposes HB 328, and pointed out that the packet contains the department's specifically listed reasons for that opposition.

8:40:55 AM

CO-CHAIR LEDOUX asked:

Would it be fair to say that, while [DEC] feels that the bill is not necessary, in light of the recent regulations, that the department sees nothing in the bill which would actually hurt either sports fishing, subsistence fishing or commercial fishing.

MS. KENT stated:

The department is opposed to the bill for multiple reasons, in part because the bill goes beyond what we [DEC] feel is necessary in order to protect fish. We think that there is sound science available ... that allows us to, in certain circumstances, authorize mixing zones without having a negative impact upon fish, and that the bill goes beyond what is necessary; to the point where it can actually harm economic and social development in communities.

CO-CHAIR LEDOUX asked again, "Is it fair to say that the department sees nothing in the bill which would harm" the fishing industries.

MS. KENT responded, "I don't believe so."

[8:42:14 AM](#)

REPRESENTATIVE KAPSNER asserted that this bill focuses heavily on salmon and commercial users, and reminded the committee that federal law mandates subsistence use to be the highest priority. As a policy making group, she questioned whether the legislature should reflect the federal priority for compliance purposes. She said that she is "wondering [that] if, by this regulation, we're [Alaska Legislature] trying to subvert federal intent for prioritization of resources."

MS. KENT responded that the regulations adopted by DEC are protective of all fish species. She conceded that the regulations may appear to focus on salmon, due to their economic benefit to the state, but maintained that the regulations "do meet our mandate to protect all species of fish."

REPRESENTATIVE KAPSNER commented that, while salmon are of a huge economic benefit to the state, the other fish species represent a parallel importance to Alaska's subsistence users and should be equally protected.

[8:44:15 AM](#)

REPRESENTATIVE ELKINS inquired whether this bill would have an impact on the Alaskan mining industry.

MS. KENT replied that with the passage of HB 328, 32 placer mines currently operating under temporal mixing zone permits would not receive re-authorization by DEC. To a further question, she stated that the bill should not be considered a "one industry" bill as it also affects domestic wastewater dischargers, and drinking water facilities that have a wastewater discharge, as well as placer mines and future industries.

8:45:34 AM

NORMAN KROENING, Owner, Alaska Digestive Technology, Limited Liability Company (LLC), described the sewage treatment project that his company initiated in Kotzebue three years ago, funded by a grant from Village Safe Water. He explained how, four months after the introduction of non-pathogenic organisms into the cities discharge system, Kotzebue was able to minimize its municipal sewage concerns by effectively eliminating 80 percent of the waste solids along with 100 percent of the associated odors, grease, and oil in its sewage lagoon. Based on the success of the Kotzebue project, this patented process has been implemented in villages across Canada, and he questioned why the technology is being overlooked as a means to mitigate the Valdez and Palmer mixing zone issues. Although DEC has received full disclosure from Alaska Digestive Technology LLC, regarding the Kotzebue project, he maintained that the department officials have withheld the information from the committee, and have remained unwilling to acknowledge his company's technology as a more cost effective, and environmentally sound alternative to the status quo of mixing zones.

8:53:30 AM

PAUL BARNES, commercial salmon fisherman, stated his support of HB 328, and he pointed out that the Alaskan Constitution provides a mandate for protection and conservation of fish resources in a sustainable manner for current and future generations. He recalled that when the administration proposed regulatory changes in 2004, over 2,000 Alaskans responded, of which 95 percent opposed the rule changes. Also, under the latest DEC proposal, over 450 citizens responded, with the same percentage opposed. Additionally, he reported that, to his knowledge, industrial development has not been hindered under

the existing DEC regulations. With the salmon fisheries currently on the rebound, he expressed concern for imposing regulatory changes that could have a negative impact on the salmon industry. Finally, he noted the importance of protecting other species of fish as provided for in HB 328.

8:55:28 AM

RUSS MADDOX stated his support for HB 328, and said:

The DEC approving of [mixing zones] and allowing pollution in the streams [is] similar to the health department allowing [the use of] your favorite stew pot for a honey bucket ... as long as you rinse it out.

8:56:14 AM

RAY SENSMEIER, Tribal Council Member, Yakutat Tlingit Tribe; First Grand Vice President, Alaska Native Brotherhood (ANB), stated his support for HB 328, and he said that the Native entities he represents have submitted resolutions opposing mixing zones. He pointed out that over half of Alaska's streams have yet to be documented as anadromous, which raises the concern that once a permit is allocated [on a non-documented watershed], revocation may not be possible and the "damage would already have been done." He opined that with the price of precious metals on the rise and given the extensive activities of the oil industry in Alaska, significant impacts will be incurred [on Alaskan watersheds] without the protection of this bill.

8:58:10 AM

KRISTEN SMITH, Executive Director, Copper River Watershed Project, stated support for HB 328, and he reported that the salmon industry generates a per annum average of \$20 million to the economic base of the Cordova area. She noted that the fish are a public resource that should be managed for the benefit of the public, and allowing mixing zone pollution in public waters does not satisfy a public benefit. Also, she pointed out that, under temporal use management, residual hydrocarbon pollutants would be present and harmful in a stream throughout the year, proving a detriment to the health of the developing salmonids. She highlighted the overwhelming public opposition to the proposed DEC regulations.

9:01:40 AM

ROBERT RUFFNER, Executive Director, Kenai Watershed Forum, stated support for HB 328, and he asserted: the municipalities have passed resolutions in opposition to mixing zones, and adopted appropriate regulations; the public have expressed widespread opposition; and the governor has indicated, in his 2006 State of the State Address, that the people have been heard. He begged to understand why these [DEC] regulations have gone forward.

9:03:31 AM

RICHARD HAHN stated support for HB 328, and he expressed concern whether, given the passage of HB 328, and SB 225, there would be enough votes to override a possible veto by the governor. Referencing Commissioner McKie Campbell's testimony [January 20, 2006], he restated the commissioner's question, "What would happen if these bills were not successful?" He pointed out that Alaskans should learn lessons from around the globe where industrial companies are contaminating major rivers, and also to take note of who pays the bills for watershed restoration. He also referenced the recent court case in which the Board of Fish and Game knowingly violated their own regulations regarding wolf control, and asked, "What would prevent DEC from similarly violating its own promulgated pollution mixing zone regulations?" Finally, he noted the recent West Virginia coal mining tragedy stating:

The mining companies simply paid the small fines for safety violations, and continued to operate, killing people. Ergo, I would hope that HB 328 and SB 225 have sufficient penalties to discourage violations of banned pollution mixing zones by unscrupulous developers.

9:05:59 AM

THOMAS BOEDEKER, Manager, City of Soldotna, stated support for HB 328, and he pointed out that the City of Soldotna has adopted a resolution opposing mixing zones in anadromous fish spawning areas. Furthermore, the bill is in accord with the needs of the municipality.

9:06:59 AM

BENJAMIN JACKINSKY, set-net fisherman, stated support for HB 328, and he noted that the public has made it clear that mixing zones should be limited. He said that this bill supports the public's wishes by providing a permanent statute. He pointed out that each year he pays a two percent tax on his fishing income to aid in fishing enhancement, and to that end, it is in his best interest to see that mixing zones are well regulated. Furthermore, the wild Alaskan salmon market would be discredited if the rearing waters for the salmon are compromised by the use of mixing zones. He stressed that clean water is essential to protect the fish and ensure their continued marketability.

[9:08:13 AM](#)

KURT HERSCHLEB, Member, Cordova District Fishermen United, stated support for HB 328, and he pointed out that it would be foolish and shortsighted not to protect the environmental interests, as the purity of Alaska's environment will become more valuable by virtue of scarcity and rarity.

[9:09:24 AM](#)

CATHERINE CASSIDY stated support for HB 328, and she stressed that mixing zones "tend to turn into a public subsidy of industry." She highlighted how tax dollars are used routinely to cleanup, mitigate, or restore the downstream results of industrial mixing zones. Further, she said that mixing zones in freshwater fishing streams would jeopardize subsistence, personal use, tourism, and commercial fishing industries. She urged the committee to move the bill forward.

[9:10:27 AM](#)

ERIK HUEBSCH, commercial fisherman, stated support for HB 328, and SB 225, and he reported that, in 2004, the Environmental Protection Agency (EPA) issued over 3,000 fish consumption advisories, across 48 states, alerting residents of the potential health risks associated with eating contaminated fish. He maintained that the numbers of fish advisories issued are on the rise, and expressed concern that watersheds in Alaska may one day receive similar postings. He recommended that the language in both bills be strengthened to protect vital fish rearing habitat. In closing he stated:

I think this administration is so beholding to big industry that if the Exxon Valdez spill happened today

you could bet ... [Governor] Murkowski would declare Prince William Sound a 'mixing zone.'

[9:12:19 AM](#)

PAUL SHADURA, II, Executive Director, Kenai Peninsula Fishermen's Association, Member, Kenai/Soldotna Fish & Game Advisory Committee, stated support for HB 328 and he paraphrased from a statement, which read as follows [original punctuation provided]:

The Kenai Peninsula Fishermen's Association is a Cook Inlet Fisheries Association. We have operated as a voice for the industry for over 50 years. Primarily a set-net organization, we do represent members who are drift fishermen, crewmembers, and other local businessmen.

We do support HB 328 and SB 225 at this time, though we feel the regulatory process is the preferred way, unfortunately DEC and DNR remains uncooperative in responding and working with the public on refining current regulations.

We have requested a consistency review for other statutory and regulatory language that contradicts current mixing zone regulations, and question such regulations and statutes that might supersede.

We still remain confused to the role ADF&G has in protecting the aquatic resources for sustainability or development, and we believe the department has a limited role. We believe that this violates the public trust provisions and we would prefer a primary or equal role by the department to ensure access by the aquatic resource users.

[9:14:06 AM](#)

MERLE THOMPSON, fisherman, stated support for HB 328, and he explained that, in dealing with state agencies, it is important to understand the "law of diminishing reality," to wit:

It's like an upside down bottle of good wine with the cork in it. You've got your scientists and your biologists in the body of the wine bottle, which we haven't heard very much from; you've got the bottle

neck, which [represents the] department heads at DEC and Habitat [OHM&P]...; you've got your cork in the bottle, which [represents] the commissioners; and then you've got the placer of the cork, which is the governor. You're not going to get any of the good science out of the bottle as long as the cork is in it.

MR. THOMPSON stated that he has consulted with a number of fisheries biologists recently, including one of the leading specialists on chemical toxins related to mining and oil industries, and each agreed that the proposed DEC regulations are a bad idea. Relating the life cycle of various fish species, he explained that the pollutants run downstream and will affect the developing fish. He maintained that relevant scientific information has not been brought forward and offered statistics from the EPA, which holds hard rock mining companies as the top producers of industrial toxic waste. The cost to cleanup mining sights is very high, and he said:

The Government Accounting Office (GAO) has actually chastised recently the EPA for "weak federal oversight, illegal loopholes, and corporate shills, that compound the [cleanup] cost, and increase the chances that mining companies can walk away from cleaning up these messes.

MR. THOMPSON explained how the cyanide process, used by placer miners, creates a myriad of toxic and radioactive substances, particularly in wet or cold climates, which require difficult if not impossible containment measures. He cited several mining companies which have caused significant environmental damage due to toxic waste discharge or containment failure. In closing, he described the failure of the DEC approved tests and standards used to detect and mitigate coal bed methane's (CBM's), thus creating a recent crash in the trout populations of the Rocky Mountain States.

[9:21:31 AM](#)

PAULA TERREL, Water Quality Issues Coordinator, Alaska Marine Conservation Council (AMCC), stated support for HB 328, and she said that there is a need for this legislation due to the long running controversy over the use of mixing zones in spawning streams. She opined that enacting statute is the best option.

[9:23:32 AM](#)

MATT SHADLE, Member, Homer City Council, stated support for HB 328, and SB 225, and he said that Homer also has passed a city resolution to deal with mixing zone issues. He offered applause for the politicians who support these bills.

[9:25:15 AM](#)

DONALD BREMNER, Natural Resources Coordinator, Southeast Inter-Tribal Fish and Wildlife Commission, noted that hooligan [smelt] were not specified in HB 328. He stated that, although DEC's testimony purports that: "This bill, if passed, would affect streams, and rivers, and lakes that don't have any of these species present. But [he said] I don't see where that is in the [proposed] regulations." He stressed the need to expand this bill for increased water quality protection in anticipation of utilizing Alaska's pristine, non-anadromous freshwater streams as supply sources for the world market, bulk-water supply industry; a heretofore unrealized prime resource.

[9:27:14 AM](#)

CO-CHAIR THOMAS pointed out the recent arrival of a letter from Southeast Alaska Conservation Council (SEACC) supporting HB 328, and also a letter of opposition from the Council of Alaska Producers.

[9:27:46 AM](#)

CO-CHAIR LEDOUX moved to report CSHB 328, Version 24-LS1273\L, Bullock, 1/23/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 328(FSH) was reported out of the House Special Committee on Fisheries.

[9:28:16 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:28 a.m.