

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 7, 2007

8:36 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Kyle Johansen
Representative Gabrielle LeDoux
Representative Peggy Wilson
Representative Bryce Edgmon
Representative Lindsey Holmes

MEMBERS ABSENT

Representative John Harris

COMMITTEE CALENDAR

HOUSE BILL NO. 26

"An Act relating to aquatic farm permitting involving geoducks and to geoduck seed transfers between certified hatcheries and aquatic farms."

- MOVED CSHB 26(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 74

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

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 26

SHORT TITLE: GEODUCK AQUATIC FARMING EXEMPTION

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	FSH, RES
02/02/07	(H)	FSH AT 8:30 AM CAPITOL 124
02/02/07	(H)	Heard & Held
02/02/07	(H)	MINUTE(FSH)
02/05/07	(H)	FSH AT 8:30 AM CAPITOL 124
02/05/07	(H)	Heard & Held
02/05/07	(H)	MINUTE(FSH)

02/07/07 (H) FSH AT 8:30 AM CAPITOL 124

BILL: HB 74

SHORT TITLE: BAN MIXING ZONES IN SPAWNING AREAS

SPONSOR(S): REPRESENTATIVE(S) SEATON, GARA, LEDOUX

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) FSH, RES
02/05/07 (H) FSH AT 8:30 AM CAPITOL 124
02/05/07 (H) Scheduled But Not Heard
02/07/07 (H) FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

CYNTHIA PRING-HAM, Fisheries Biologist III

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Answered questions during hearing on HB 26.

THOMAS PEBBLER

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 74.

LYNN TOMICH KENT, Director

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during hearing on HB 74.

KEN DUCKETT, Executive Director

United Southeast Alaska Gillnetters Association (USAG)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 74.

RICHARD KING, Village Administrator

Ekwok Village Council

Ekwok, Alaska

POSITION STATEMENT: Testified in support of HB 74.

BRIAN KRAFT, Owner

Alaska Sportsman's Lodge

Kodiak Sportsman's Lodge

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 74.

GARVAN BUKARIA

Wasilla, Alaska

POSITION STATEMENT: Testified during hearing on HB 74.

GEORGE MATZ, Issues Coordinator

Cook Inlet Alliance (CIA)

Homer, Alaska

POSITION STATEMENT: Testified in support of HB 74.

CATHY CRAWFORD, Executive Director

Cordova District Fishermen United (CDFU)

Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 74.

RALPH GUTHRIE

Sitka, Alaska

POSITION STATEMENT: Testified during hearing on HB 74.

IZETTA CHAMBERS, Manager

Naknek Family Fisheries, LLC,

Naknek, Alaska

POSITION STATEMENT: Testified during hearing on HB 74.

TYLER DANN

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 74.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:36:18 AM](#). Representatives, Seaton Johansen, LeDoux, Edgmon, and Edgmon were present at the call to order. Representatives Wilson and Holmes arrived as the meeting was in progress.

HB 26-GEODUCK AQUATIC FARMING EXEMPTION

[8:36:33 AM](#)

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 26, "An Act relating to aquatic farm permitting involving geoducks and to geoduck seed transfers between certified hatcheries and aquatic farms."

[8:38:41 AM](#)

CHAIR SEATON opened discussion on HB 26, pointing out that public discussion is closed. He called attention to incoming

information from legal services and other additions to the packet.

[8:39:38 AM](#)

CHAIR SEATON paraphrased from a Legislative Legal and Research Services memorandum dated February 6, 2007, the subject of which was "Aquatic Farming Permits (HB 26; Work Order No. 25-LS0179\K). This memorandum addresses four issues brought up by the Alaska Department of Fish & Game. He opined how the opinion, related to the fourth issue, is "backwards."

[8:44:42 AM](#)

CHAIR SEATON stated that the Governor has indicated a wish to support mariculture. Referring to an excerpt from the Governor's campaign materials, he read a quote as follows:

I will work with our shellfish growers to make sure state permitting is not a hindrance to their business. We will grow our mariculture business in a way that does not interfere with the established dive fisheries, but that will produce quality products for the marketplace, and jobs for our coastal communities.

[8:46:27 AM](#)

CHAIR SEATON reiterated that there are no geoduck or dive fisheries in the areas that will be affected by HB 26. The intent of the bill is to provide jobs in coastal communities. He then offered Amendment 1 as follows:

Page 1, line 7, following "section.":

Insert "If, under this section, the commissioner issues a permit for an aquatic farm to culture geoducks in a management area that does not have wild geoduck stocks when the permit is issued, the permit may not allow operations for that purpose in the intertidal habitat or environment."

[8:46:57 AM](#)

REPRESENTATIVE JOHANSEN objected for discussion purposes.

CHAIR SEATON explained that Amendment 1 would address concerns regarding intertidal areas in the northern parts of the state.

This would alleviate concerns regarding interference with recreational use of habitat, as this would be a subtidal or dive fishery.

REPRESENTATIVE JOHANSEN removed his objection. There being no further objection, Amendment 1 was adopted.

CHAIR SEATON, referring to a statement from the Alaska Department of Fish & Game (ADF&G), explained that ADF&G does not have adequate funding for shellfish research.

REPRESENTATIVE LEDOUX said:

I listened to that statement, and ... was concerned [that] maybe they do need the money before this can be done safely. And then I listened to the other statement ... that there's absolutely no study they could do, that would make them feel comfortable. So, it almost seems like we could throw all of the money in the world at this, and they'd never feel comfortable.

[8:50:37 AM](#)

CHAIR SEATON stated that he shares this concern. He said "I got the feeling, when we were talking about genetics, and the offer to look at sterile stocks. The quote was that they would ... look at it, but not that if they were sterile they would agree to those." However, there is no wild stock in these areas; therefore genetic problems and solutions are not an issue. This is an issue of ecological considerations in regard to introduction of geoducks into an area where there is no wild stock population. The problem, he said, is stated in the ADF&G handout titled "Attachment 4, Selected Fish and Game Laws, Regulations and Guidelines Related to Shellfish Transport and Aquaculture." He pointed out that the "Northern Exchange" is Tenakee Springs; however, an intertidal geoduck farm has been permitted 35 miles North of Juneau. This is in conflict with ADF&G statements regarding ecological effects, as it is outside of the natural range.

[8:53:20 AM](#)

REPRESENTATIVE LEDOUX asked whether ADF&G was questioned regarding this.

CHAIR SEATON replied no, as the information regarding the aforementioned farm was received later.

REPRESENTATIVE LEDOUX stated that she would like to hear an explanation.

[8:53:43 AM](#)

CYNTHIA PRING-HAM, Fisheries Biologist III, Alaska Department of Fish & Game (ADF&G), explained that there is an intertidal aquatic farm site at Bridget Cove. The larval drift zone is a result of currents. The aforementioned site is allowed because it is within the larval drift zone.

[8:55:09 AM](#)

CHAIR SEATON stated that the larval drift zone is intended to prevent the contamination of stocks across genetic lines. He pointed out that Attachment 4 states that the "natural range" is south of Tenakee Springs. He inquired as to why a site that is above the natural range has been permitted, given the previous concerns regarding the ecological interaction beyond the natural range.

[8:56:26 AM](#)

MS. PRING-HAM replied that anything within Zone 1, which is southeast, may have geoducks due to currents. The natural range is what the ADF&G is currently aware of. She reiterated that geoducks are not typically found in intertidal areas; however, they are found in the aforementioned zone, which is why the site was permitted.

CHAIR SEATON asked for clarification that geoducks are not naturally in the intertidal range.

MS. PRING-HAM replied that they are typically in the lower intertidal range.

CHAIR SEATON inquired as to whether those found in Tenakee Springs or in the Northern part of the range are intertidal.

MS. PRING-HAM replied that she is unable to answer this question. There is not enough information regarding the full distribution of geoducks in southeast Alaska; however, the currents may carry larvae into the northern area.

[8:59:34 AM](#)

CHAIR SEATON questioned whether surveys have been done in Northern Lynn Canal, Glacier Bay National Park and Preserve, or Pelican.

MS. PRING-HAM replied that she is not aware of any. However, it is feasible for viable populations to be in these areas.

CHAIR SEATON said:

It seems that when you are talking about an ecological interaction, and ... in your own paperwork, you say that their range is south of Tenakee Springs, and you are permitting farms north of Tenakee Springs, it's [obvious] that you haven't worried about an ecological interaction in the northern end, which was beyond your established range ... for the species. So, we'll go on to further questions. I think we've found that we don't know a lot of information.

[9:01:27 AM](#)

REPRESENTATIVE JOHANSEN opined that the intent of HB 26 is "going in the right direction." However, this process is "piece meal." He offered his understanding that the Governor is interested in building this industry. Lack of funding is a concern of ADF&G. He expressed concern regarding the science behind it, and opined that many concerns have been brought up.

[9:03:22 AM](#)

REPRESENTATIVE JOHANSEN moved to report HB 26, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 26(FSH) was reported from the House Special Committee on Fisheries.

HB 74-BAN MIXING ZONES IN SPAWNING AREAS

[9:04:41 AM](#)

CHAIR SEATON announced that the final order of business would be HOUSE BILL NO. 74, "An Act prohibiting mixing zones in freshwater spawning waters."

CHAIR SEATON passed the gavel to Representative Johansen.

9:05:32 AM

REPRESENTATIVE SEATON, speaking as a joint prime sponsor of HB 74, explained that HB 74 would reinstate the previous prohibition on pollution mixing zones in Alaska's freshwater spawning areas. This prohibition was in effect for over ten years, and was reversed two years ago. He gave a brief history of the statute, along with current concerns regarding mixing zones and spawning areas. He stated that HB 74 prevents artificially dug channels or lakes from being reclassified as "spawning areas," thus offering security to mining interests and municipalities.

9:11:00 AM

REPRESENTATIVE HOLMES moved to adopt CSHB 74, Version 25-LS0337\M, Bullock, 2/6/07, as the working document. There being no objection, Version M was before the committee.

REPRESENTATIVE SEATON explained that Version M clarifies that mixing zones are not authorized at any time, in addition to clarifying that the prohibition does not apply to turbidity mixing zones. He noted that his office has received a large amount of testimony in favor of the bill. He brought attention to a letter from Joe Faith, of Dillingham, Alaska, requesting a definition of "suction dredge" and "mechanical dredge." Additionally, there are letters from individuals with mining interests, which resulted in the turbidity mixing zone exemption.

9:13:36 AM

REPRESENTATIVE EDGMON, in regard to the definition of "suction dredge" and "mechanical dredge," asked if further information is available.

REPRESENTATIVE SEATON replied that information is not available at this time.

9:14:17 AM

REPRESENTATIVE WILSON asked if the sponsor would like a conceptual amendment to address this issue.

REPRESENTATIVE SEATON replied that it would be helpful to hear public testimony regarding this issue. Additionally, other concerns may be raised.

REPRESENTATIVE JOHANSEN opined that there will be additional changes.

[9:15:03 AM](#)

REPRESENTATIVE JOHANSEN returned the gavel to Chair Seaton.

[9:15:23 AM](#)

THOMAS PEBBLER stated that he is in support of HB 74. In regard to mixing zones, he stated that Alaska's fisheries should not be compromised for the sake of waste discharge. The fisheries are "invaluable," due to the laws which have, until recently, maintained the standard of quality. He opined that allowing mixing zones in the fisheries would defeat and reverse the intention of the original law. It is not possible, he said, to compensate for "invaluable, renewable resources." Timing the mixing so that it corresponds to periods between spawning would be "futile." He opined that the current regulations will eventually lead to disaster, and must be changed.

[9:18:00 AM](#)

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), explained that she would cover three issues: background on water quality standards and mixing zones, recent regulatory changes regarding spawning areas, regulatory protections in place for mixing zones. DEC, she said, is responsible for adopting water quality standards that will protect multiple uses of Alaska's waters. This includes drinking water, contact recreation, and growth and propagation of aquatic life, and domestic, commercial, and industrial use. The water quality standards include numerical and narrative criteria that are established in regulation. The mixing zone provisions are included in the water quality regulations.

MS. KENT offered the definition of "mixing zone." She explained that mixing zones are not unique to Alaska, and are allowed under the Federal Clean Water Act. The Environmental Protection Agency (EPA) has developed guidelines on how to establish mixing zones. The mixing zones are highly regulated by the department, and are not a "blanket approval" to discharge pollutants into the water. Mathematical models are used to determine the size

and shape, using site-specific information. Many permits require that the permittee monitor the concentration of pollutants and discharge, in addition to monitoring to ensure that water quality standards are met at the edge of the mixing zone. DEC conducts independent inspections and monitoring of permittees.

MS. KENT went on to say that mixing zones have been allowed in Alaska for the past 30 years, as a part of a wastewater discharge permit, which must go through a public notice and review period. Mixing zones are a tool used to keep treatment costs reasonable, while ensuring protection of human and environmental health. She then gave examples of mixing zones.

[9:24:50 AM](#)

MS. KENT moved on to discuss the recent changes in mixing zone regulations. Previously, there was a prohibition on mixing zones in streams and rivers, and spawning areas for anadromous fish, along with specific resident fish. The DEC felt that in certain circumstances, the prohibition was excessive. Additionally, the regulations were not fair to those who had invested in facility infrastructure and received authorization for a mixing zone which later became a spawning area. Finally, she said that the old regulations were not synchronized with the permitting practices. The current mixing zone regulations were adopted by DEC one year ago. These regulations continue the prohibition on mixing zones and spawning areas for anadromous salmon. The only exception to this is for renewal of mixing zone authorizations in areas where spawning was not occurring at the time of the initial authorization. This applies to both domestic and industrial discharges. The mixing zones are prohibited from having any adverse affect on the present or future spawning, incubation, and rearing capability of an area. These regulations also continue the prohibition of mixing zones in spawning areas for other specifically identified species, and allow for a few exceptions which were not previously allowed. The new regulations require DEC to work closely with the Department of Natural Resources (DNR) and ADF&G. She noted that the new regulations also include lakes.

MS. KENT then explained the exceptions for spawning areas. The first is in regard to spawning that occurs after the mixing zone has been authorized. The second exception is for the discharge of a substance that does not adversely effect aquatic life. Finally, an exception is made if DNR or ADF&G has approved a mitigation plan under its regulations. In regard to spatial and

temporal nature of mixing zones, she stated that DNR and ADF&G consider all mixing zones to have both aspects, which is reflected in the new regulations. However, the treatment of mixing zones and spawning areas remains the same.

9:29:05 AM

MS. KENT then discussed the regulations which are in place for all mixing zones. Individuals who meet the aforementioned requirements must meet additional regulatory standards. She paraphrased from a handout titled "Division of Water Quality Standards, 2003-2006 Triennial Review, Mixing Zone Requirements in Regulation (as of March 23, 2006) and explained that this applies to all mixing zones. These requirements are designed to protect aquatic life, human health, and multiple uses of the water.

9:32:38 AM

CHAIR SEATON inquired as to the fiscal impact of certifying that the biological impact of the water-body will not be impaired.

MS. KENT replied that the applicant is obligated to self-monitor for this. The departments then review the reports and conduct independent monitoring.

9:34:05 AM

CHAIR SEATON inquired as to how an individual might apply to mitigate the biological integrity of the water-body.

MS. KENT replied that both DNR and ADF&G have regulations regarding mitigation. In response to an additional question, she explained that the regulations require that the aforementioned departments review and approve the mitigation plans for waters they are statutorily responsible for.

CHAIR SEATON offered his understanding that under a temporal application, the mixing zone could not be used while fish were spawning. However, the mixing zone may be approved for when the fish are not spawning.

MS. KENT replied that this is correct. She explained that the new regulations are specific regarding this issue. This is intended to prevent mixing zones in areas that would have a down stream effect, or an effect on the area when fish are spawning, incubating, or rearing.

9:37:44 AM

CHAIR SEATON offered his understanding that a mixing zone may be allowed in a spawning area when spawning is not occurring, as long as this would not diminish the long-term integrity of the area in regard to supporting fish.

MS. KENT agreed that this is correct.

9:38:16 AM

REPRESENTATIVE HOLMES inquired as to how many current mixing zone permits would not be allowed if HB 74 were to pass.

MS. KENT stated that she does not have this information but will research this.

REPRESENTATIVE EDGMON, in regard to the inspections done by the department, inquired as to what is done. Additionally, he asked whether the department has the ability to monitor on a "real-time" basis.

MS. KENT replied that the inspections determine whether a facility is operating as was indicated, in addition to ensuring that outfalls are located appropriately. For around 25 percent of inspections, samples are taken to ensure that the discharge is the same as is being reported. She explained that most facilities are continuous discharge facilities, which gives a "pretty good picture" of what is being discharged.

REPRESENTATIVE EDGMON inquired as to how many inspectors are employed during the summer months.

MS. KENT offered her understanding that there are 12 full-time inspectors and two seasonal inspectors.

REPRESENTATIVE EDGMON asked whether additional inspectors would be needed if HB 74 were to pass.

MS. KENT replied that the number of inspectors would not change. In response to a question from Chair Seaton, she explained that during the previous year, 90 facilities were inspected. She reiterated that on average, water samples are taken at around 25 percent of the facilities. This is in addition to the self-monitoring that is required of most permittees. Daily

monitoring may be required, and reports are turned in on a monthly basis.

[9:42:38 AM](#)

CHAIR SEATON requested additional information regarding the water quality samples.

REPRESENTATIVE WILSON inquired as to whether the inspections are announced or unannounced.

MS. KENT replied that generally, rural area inspections are announced to ensure that facility operators are available. However, not all inspections are announced.

CHAIR SEATON requested additional information regarding how many inspections are municipal waste-water facilities versus industrial facilities.

[9:44:05 AM](#)

KEN DUCKETT, Executive Director, United Southeast Alaska Gillnetters Association (USAG), stated that USAG is in support of HB 74. He opined that it is difficult to prove that a fish population has been adversely effected by an action. Various factors may effect the productivity of a system. The way to avoid this is "to not have ... discharge to begin with." He stated that he recently purchased a fishing license in Oregon, where warnings are given regarding the fish caught in a particular system. He opined that Oregon is a good environmental state; however, he does not want to see this happen in Alaska.

[9:47:04 AM](#)

RICHARD KING, Village Administrator, Ekwok Village Council, stated that the Ekwok Village Council is in support of banning mixing zones. He explained that villagers use the area for subsistence, and opined that adding pollution to the food supply "is not right."

[9:48:13 AM](#)

BRIAN KRAFT, Owner, Alaska Sportsman's Lodge, Kodiak Sportsman's Lodge, expressed concern with allowing mixing zones. He opined that self-monitoring may result in mistakes, and common sense should be used. In addition, it "does not make sense" to spend

millions of dollars to market fresh, wild, salmon and allow mixing zones. The commercial fishing industry "depends heavily on a strong perception of clean water and clean habitat for these renewable resources." He encouraged the passage of HB 74.

[9:51:11 AM](#)

GARVAN BUKARIA stated that he is in support of HB 74. He stated that allowing mixing zones "at any time" can adversely impact the fishery resources. The addition of toxins to water bodies is not helpful "in any shape or form."

CHAIR SEATON clarified that "at any time" means that mixing zones could not be allowed during one time of year and not another.

[9:53:13 AM](#)

GEORGE MATZ, Issues Coordinator, Cook Inlet Alliance (CIA), stated that CIA is in support of HB 74. The prohibition of mixing zones should be at a statutory level.

[9:54:17 AM](#)

CATHY CRAWFORD, Executive Director, Cordova District Fishermen United (CDFU), stated that CDFU is in support of HB 74. The CDFU is committed to ensuring the sustainability of wild Alaskan salmon, which is recognized in the world-wide market as a healthy product. It is imperative that the fish remain free of pollutants throughout all phases of the life cycle.

[9:56:33 AM](#)

RALPH GUTHRIE stated that while he supports HB 74, he is concerned with the discharge of salmon waste in closed waters.

CHAIR SEATON clarified that HB 74 applied to fresh-water, and does not include any marine mixing zones.

[9:58:17 AM](#)

IZETTA CHAMBERS, Manager, Naknek Family Fisheries, LLC, stated that she is in support of HB 74. She stressed the importance of maintaining clean waters for Alaska's fisheries.

[10:01:11 AM](#)

TYLER DANN stated that he is in support of HB 74. He pointed out that fisheries are important to the state of Alaska. In contrast to this, the mining industry does not appear to support the state. Finally, the state of Alaska has a "great opportunity to get it right."

CHAIR SEATON noted that public testimony would continue at the next committee hearing.

[10:03:31 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:03 a.m.