

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

March 31, 2009  
10:19 a.m.

**MEMBERS PRESENT**

Representative Bryce Edgmon, Chair  
Representative Craig Johnson  
Representative Wes Keller  
Representative Charisse Millett  
Representative Cathy Engstrom Munoz  
Representative Robert L. "Bob" Buch

**MEMBERS ABSENT**

Representative Scott Kawasaki

**COMMITTEE CALENDAR**

**SENATE BILL NO. 3**

"An Act authorizing an Alaska regional development organization to use the Alaska Commercial Fisheries Entry Commission as an informational resource."

- MOVED SB 3 OUT OF COMMITTEE

**HOUSE BILL NO. 46**

"An Act requiring the Department of Environmental Conservation to collect and make available to the public certain information relating to water pollution; prohibiting certain mixing zones in freshwater spawning waters; and requiring a public comment period for certain sewage system or treatment works modifications."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 3

SHORT TITLE: CFEC AS INFORMATION RESOURCE

SPONSOR(S): SENATOR(S) OLSON

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	CRA, RES
02/05/09	(S)	CRA AT 3:30 PM BELTZ 211

02/05/09 (S) Moved SB 3 Out of Committee  
02/05/09 (S) MINUTE(CRA)  
02/06/09 (S) CRA RPT 3DP 2NR  
02/06/09 (S) DP: FRENCH, THOMAS, MENARD  
02/06/09 (S) NR: OLSON, KOOKESH  
03/02/09 (S) RES AT 4:30 PM BUTROVICH 205  
03/02/09 (S) Moved SB 3 Out of Committee  
03/02/09 (S) MINUTE(RES)  
03/03/09 (S) RES RPT 5DP  
03/03/09 (S) DP: MCGUIRE, WIELECHOWSKI, STEVENS,  
STEDMAN, FRENCH  
03/18/09 (S) OLSON CHANGED NR TO DP ON 2/6 CRA  
REPORT  
03/18/09 (S) TRANSMITTED TO (H)  
03/18/09 (S) VERSION: SB 3  
03/23/09 (H) READ THE FIRST TIME - REFERRALS  
03/23/09 (H) FSH, CRA, FIN  
03/31/09 (H) FSH AT 10:15 AM BARNES 124

BILL: HB 46

SHORT TITLE: MIXING ZONES/SEWAGE SYSTEMS

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/20/09 (H) PREFILE RELEASED 1/9/09  
01/20/09 (H) READ THE FIRST TIME - REFERRALS  
01/20/09 (H) FSH, RES  
03/31/09 (H) FSH AT 10:15 AM BARNES 124

**WITNESS REGISTER**

TIM BENINTENDI, Staff  
Senator Donald Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 3 on behalf of Senator Olson,  
prime sponsor.

FRANK HOMAN, Chairman  
Commercial Fisheries Entry Commission  
Alaska Department of Fish & Game (ADF&G)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 3.

REPRESENTATIVE PAUL SEATON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the prime sponsor, presented HB 46.

LOUIE FLORA, Staff  
Representative Seaton  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 46, answered questions on behalf of the sponsor, Representative Seaton.

LYNN TOMICH KENT, Director  
Division of Water  
Department of Environmental Conservation  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on HB 46.

KIMBROUGH MAUNEY, AmeriCorps Volunteer  
Alaska Center for the Environment  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 46.

#### **ACTION NARRATIVE**

[10:19:50 AM](#)

**CHAIR BRYCE EDGMON** called the House Special Committee on Fisheries meeting to order at 10:19 a.m. Representatives Edgmon, Johnson, Keller, Munoz, and Buch were present at the call to order. Representative Millet arrived as the meeting was in progress.

^#sb3

SB 3-CFEC AS INFORMATION RESOURCE

[10:20:05 AM](#)

CHAIR EDGMON announced that the first order of business would be SENATE BILL NO. 3, "An Act authorizing an Alaska regional development organization to use the Alaska Commercial Fisheries Entry Commission as an informational resource."

[10:20:59 AM](#)

TIM BENINTENDI, Staff, Senator Donald Olson, Alaska State Legislature, speaking on behalf of Senator Olson, prime sponsor, explained that SB 3 would simply allow the Alaska Regional Development Organizations (ARDORs) to obtain public information from the Commercial Fisheries Entry Commission (CFEC) at no

cost. This public information won't include any confidential information. The objective of SB 3 is to help with the ARDORs modest budget. He noted that the CFEC supports SB 3 and has characterized the loss of revenue as minor and of no concern. He then pointed out that the legislation has a zero fiscal note and no known opposition at this point.

[10:22:28 AM](#)

REPRESENTATIVE JOHNSON inquired as to which ARDORs qualify for SB 3.

MR. BENINTENDI answered that there are about 18-20 ARDORs that would qualify, of which 8 are heavily involved in the seafood industry and more likely the target of this legislation. The legislation would help in terms of planning and anticipating economic trends. However, he specified that all 18-20 ARDORs could take advantage of what's proposed in SB 3.

[10:23:03 AM](#)

REPRESENTATIVE JOHNSON asked if this legislation would apply to the Fairbanks Economic Development Council, the Juneau Economic Development Council, as well as some of the rural [organizations].

MR. BENINTENDI replied yes.

[10:23:19 AM](#)

CHAIR EDGMON inquired as to why this service, which he anticipated is already being provided to the ARDORs, needs to be specified in statute.

MR. BENINTENDI related his understanding that the CFEC is currently providing this free service, although not universally. However, agencies are mandated to charge for certain services, such as public documents. The desire with the legislation, he explained, is to ensure that everything is being done "by the book" and thus the matter needs to be addressed in statute rather than regulation.

[10:24:14 AM](#)

CHAIR EDGMON disclosed that he and Mr. Benintendi were staffers when the legislation creating the ARDORs was passed in 1992. The ARDORs have always received a small amount of funds, about

\$50,000, from the state. Although this legislation doesn't represent a significant amount of revenue for some of the ARDORs, for the smaller ARDORs this legislation will likely have a meaningful impact.

[10:25:08 AM](#)

FRANK HOMAN, Chairman, Commercial Fisheries Entry Commission, Alaska Department of Fish & Game (ADF&G), stated support for SB 3, which he said isn't a significant revenue loss. He reiterated Mr. Benintendi's assurance that no confidential information will be disclosed based on the passage of SB 3. The CFEC, even with the passage of SB 3, will still fall under AS 16.05.815 and thus individual information from fish tickets will continue to be held confidential. Basically, SB 3 removes the charge for the data preparation. He noted that he, too, was a legislative staffer when the ARDORs were created. Of the at least a dozen ARDORs, about eight are considered coastal areas.

[10:27:06 AM](#)

REPRESENTATIVE BUCH requested examples of the kinds of requests the CFEC receives beyond those that are data.

MR. HOMAN informed the committee that generally the type of information requested has to do with regional fish catch levels, participation, and other specific data. In further response to Representative Buch, Mr. Homan said that the CFEC maintains an extensive web site that has information for every community in which a fish is landed. A bit more effort is required to narrow the information to regions.

[10:29:03 AM](#)

CHAIR EDGMON, upon determining no one else wished to testify, closed public testimony.

[10:29:38 AM](#)

REPRESENTATIVE KELLER moved to report SB 3 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

[10:30:07 AM](#)

The committee took an at-ease from 10:30 a.m. to 10:33 a.m.

^#hb46

HB 46-MIXING ZONES/SEWAGE SYSTEMS

10:33:56 AM

CHAIR EDGMON announced that the final order of business would be HOUSE BILL NO. 46, "An Act requiring the Department of Environmental Conservation to collect and make available to the public certain information relating to water pollution; prohibiting certain mixing zones in freshwater spawning waters; and requiring a public comment period for certain sewage system or treatment works modifications."

10:34:09 AM

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as the prime sponsor of HB 46, informed the committee that for many years there has been a prohibition against having a pollution mixing zone in a spawning area. A spawning area, he explained, is an area in which anadromous fish or redds exist. A redd is a nest. The previous prohibition didn't apply to broadcast spawners and that would remain in HB 46. Most of the freshwater fish, subsistence reliance fish, and salmon species reproduce using redds. He noted that under a previous administration ADF&G changed the definition of "spawning area" from an area and a place to a place and a time. Therefore, there was the notion of a temporal spawning area, such that so long as the fish weren't laying eggs at the time the area wasn't considered a spawning area. The aforementioned is problematic due to the delicateness of the eggs. This legislation attempts to reestablish the protection that existed prior to Governor Murkowski's Administration. Therefore, mixing zones in a spawning area wouldn't be allowed.

REPRESENTATIVE SEATON explained that a mixing zone is an area in a water body that's allowed to be polluted to a level above the state water quality limits. He noted that a mixing zone permit has to be obtained from the Department of Environmental Conservation (DEC). The permit specifies the size of the area in the fresh water body where the water quality standards can be exceeded. The measurement of the standards occurs at the outside of the [discharge] area. He noted that some zones are a mile long from the point of discharge to the point at which the concentration is measured. At this point, the public doesn't have a way of translating the concentration reported to DEC in terms of how much of each contaminant is being dumped in a year. Therefore, HB 46 would require new or renewed permits to report

the estimated amount of contaminant as well as the already required reporting of the concentration and the volume.

REPRESENTATIVE SEATON explained that HB 46 requires a public comment period when the size of a sewage treatment facility is expanded by 50 percent or greater. He pointed out that the committee packet includes documentation of a situation in which there was a sewage disposal area that grew from 1,500 gallons per day to 6,000 gallons per day 20 years later. In this case, the residents weren't allowed to comment on this administrative change to the permit. Therefore, HB 46 protects the public when expansion is greater than 50 percent by providing for a public comment period. This legislation, he opined, is consumer protection legislation.

[10:42:04 AM](#)

REPRESENTATIVE SEATON then informed the committee of a proposed amendment that would insert the language "commercially operated" on page 3, line 24, following the language "for a". The aforementioned change clarifies that the sewage treatment facility is commercially operated. He characterized the aforementioned as a drafting error. With regard to the fiscal note, Representative Seaton explained that the legislation was drafted so that it wouldn't have to apply to all the permits in existence. Therefore, the fiscal note is somewhat confusing. He clarified that no existing permits will have to apply until the permit has to be reissued or modified, at which point the permittee would be provided the instructions regarding what is required to be reported. He presumed that DEC would utilize a spreadsheet with the calculations, which could be easily posted on the department's web site. This isn't something that will have to be supervised, he further clarified.

[10:45:50 AM](#)

CHAIR EDGMON noted that the committee packet includes some conceptual amendments that the committee will address at the next hearing on SB 46.

[10:46:14 AM](#)

REPRESENTATIVE SEATON noted that one of the amendments provides a definition of the language "useful life" in order to be clear as to the specific statutory reference to "useful life" that would be used. The specific definition of "useful life" is as

follows: "the anticipated time in which a facility can continue to be operated without replacement or major renovation."

10:46:50 AM

REPRESENTATIVE MILLETT asked if DEC or ADF&G reviews the area for spawning grounds prior to issuing or granting a permit

REPRESENTATIVE SEATON answered that the department has a registry for anadromous fish. Furthermore, [ADF&G] is consulted when there's a mixing zone permit in order to review the area or require the permittee to provide certain information regarding what is present in the area.

10:48:04 AM

REPRESENTATIVE BUCH asked if the registry is upgraded as requirements change.

REPRESENTATIVE SEATON replied yes, the anadromous registry is updated as reports are submitted. He related his understanding that there isn't an all-Alaska survey every year, but the anadromous stream designations are updated. This legislation, he clarified, only addresses fresh water, not marine water. Furthermore, HB 46 specifies that artificially constructed ponds or channels that are later invaded by fish species cannot be declared a spawning area. He posed an example in which a fish species invades the settling pond of a mine as one in which the aforementioned would apply.

10:50:46 AM

REPRESENTATIVE MUNOZ related her understanding that currently mixing zones have been issued for seafood processing, placer mines, oil and gas related facilities, large mines, fertilizer plants, et cetera. She inquired as to how many business or municipal entities will be affected by HB 46.

REPRESENTATIVE SEATON pointed out that HB 46 includes a grandfather clause, and therefore any area that was invaded after the permit would be classified as an artificially constructed pond or channel. Therefore, such areas wouldn't be classified as a spawning area. He highlighted that fish do move around. He noted that another proposed amendment to page 3, line 5, would insert the following language: ", or for an area where spawning was ongoing at the time of initial authorization, if that authorization occurred more than five years prior to the

effective date of the bill." The aforementioned addresses those village wastewater facilities that weren't permitted or authorized.

[10:52:39 AM](#)

REPRESENTATIVE MUNOZ inquired as to how many businesses or municipal entities will be impacted.

[10:53:09 AM](#)

LOUIE FLORA, Staff, Representative Seaton, Alaska State Legislature, related his understanding that the existing DEC regulations for the spawning area allowance haven't yet been certified by the Environmental Protection Agency (EPA). Therefore, there would be no businesses impacted by the changes proposed in HB 46 because no mixing zone permits in spawning areas have been granted. He noted that the committee packet includes a list of the authorized mixing zones in 2006. A number of those listed are for salt water and this legislation only addresses fresh water.

[10:54:37 AM](#)

REPRESENTATIVE SEATON reiterated that the legislation returns the mixing zone language that was in place prior to the Murkowski Administration. He emphasized that every mine in the state was permitted under the conditions in place prior to the Murkowski Administration, save the POGO Mine. The question, he stated, is whether to have criteria to protect the state's renewable resources. The bill contains no language that will prevent any operation from being permitted, if the operation meets the state's water quality standards. The only time a mixing zone is required is when the discharge into the stream doesn't meet the state's water quality standards. The question then is how far downstream will the area of water that doesn't meet the state's water quality standards be located, he noted.

[10:57:06 AM](#)

REPRESENTATIVE MUNOZ inquired as to how the fish processing facilities on the Nushagak River, a major spawning area, would be impacted by HB 46.

CHAIR EDGMON clarified that the seafood processing facilities are located in the salt water portion of the river, and HB 46 only addresses fresh water.

REPRESENTATIVE SEATON interjected that HB 46 only addresses spawning areas, not migration routes. He reminded the committee that there was a certified initiative that had language similar to that in HB 46 except that the definition of "spawning area" referred to anywhere that fish spawned, reared, or migrated through. That initiative wasn't forwarded, he noted. The initiative would've resulted in no mixing zones in any of the waters in the state.

[10:58:36 AM](#)

REPRESENTATIVE MILLETT inquired as to how many mixing zones currently exist in spawning waters.

MR. FLORA recalled that he has information regarding placer mines that were authorized with timing restrictions in spawning areas. Although he offered to provide that information to the committee, he suggested that perhaps it would be more appropriate for the department to update its materials. He noted that currently 59 placer mines are operating under a general permit, with site specific fresh water mixing zones. Whether those are authorized for spawning areas would have to be detailed by the department. He mentioned that HB 46 does include a blanket exemption for placer mine turbidity mixing zones, which has been a bone of contention for previous versions of the legislation. Therefore, the sponsor wanted to "take that off the table" and protect all the mom and pop businesses and the placer mines in order to allow a turbidity mixing zone so long as DEC approves such, in consultation with ADF&G.

[11:00:12 AM](#)

REPRESENTATIVE MILLETT surmised then that placer mines are exempt, and therefore the sponsor must trust that DEC can recognize a spawning area for placer mines.

MR. FLORA clarified that's the case for turbidity mixing zones.

REPRESENTATIVE SEATON explained that often in placer mine operations, turbidity has been used as a replacement for arsenic. This turbidity would be from stirring the water, not putting anything in the water, he clarified. This legislation exempts the turbidity requirement. However, if ADF&G and DEC find that there is a placer mine that will put out enough silt that it will bury a spawning ground, ADF&G would object to the permit. Although there are turbidity zones that are 1.5 miles

in length, settling ponds are often used rather than turbidity zones. The intention, he specified, is to protect, on an ongoing basis, the environment that is necessary for the state's sustainable resources without placing unreasonable restrictions on the mining industry.

[11:03:11 AM](#)

REPRESENTATIVE MILLETT asked whether current statutes don't protect spawning beds. She also asked whether DEC is currently accomplishing levels of sustainability with the state's spawning areas.

REPRESENTATIVE SEATON answered that to date the EPA hasn't implemented the regulations allowing DEC to grant pollution mixing zones in spawning areas. This legislation is a proactive step to reestablish the language that existed [prior to the Murkowski Administration] when all of the large mines were operating. He opined that it's important for the legislature to take a stance on the best means for allowing mixing zones in relation to spawning areas.

[11:06:03 AM](#)

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation, began by relating that the division is a bit confused regarding the reasons for HB 46 or the problems it intends to solve. She related that the division isn't aware of any water quality damage or concerns with the existing policy or with DEC's existing water quality regulations. Currently, a very rigorous permitting program is in place, a program that includes water quality monitoring and reporting. In fact, many provisions in HB 46 seem to duplicate already existing protections. For example, regulations already prohibit mixing zones in anadromous salmon spawning areas. The aforementioned is a special protection that has been DEC's regulations since 1975. Furthermore, the requirement in Section 3 of HB 46 for public notice of specific permit modifications of domestic wastewater discharges duplicates existing state law and regulation in AS 46.03.110 and 18 AAC 15 respectively. The aforementioned laws already require public notice for permits as well as for any significant permit modifications. Moreover, existing law applies to all permitted facilities not just domestic wastewater and sewage facilities.

MS. KENT then opined:

In our view, the details of protecting water quality really ought to be left to the agencies where we can look at very site specific issues, the conditions associated with a discharge and the water body where we can consult with the biologists at Fish & Game and make those decisions based on sound science. We already have a duty under state statute to set and enforce standards for prevention of pollution and for protection of Alaska's environment, including water quality. The legislature has directed us, in past statutes, under AS 46.03.070: ... "to determine what qualities and properties of water indicate a polluted condition, actually or potentially deleterious, harmful, detrimental, or injurious to aquatic life or their growth and propagation." We think it's entirely appropriate that the legislature hold us accountable for setting and enforcing standards for water quality. However, HB 46 seems to delve into some very specific types of facilities, very specific permittee monitoring and reporting requirements, and even into specific contaminants. Finally, we don't believe that the new data collection and reporting requirements that the bill places on permittees really provides important value. The bill requires permittees to collect new data, including the amount of pollutant and to submit a new annual report to the department. By way of background, for most pollutants our water quality standards, which are set in regulation, are based on a concentration of the pollutant that can be present in the water body without having an adverse impact on fish or other aquatic life. The wastewater discharge permit limits, in the permits that we issue, are also generally expressive of the concentration of the pollutant in the district. And that data is already required to be collected by the permittee, reported to DEC, and is available to the public. And this is very important because it's the concentration of the contaminant in the water body that has the potential effect on fish or other aquatic life; it's really not the pounds or the amount of a pollutant discharge. So, we are thinking that this new permitting requirement for reporting on amount of pollution doesn't provide valuable information to the public because it can't be compared with any regulatory standards. And it really can't be used to determine if there's any impact or potential impact on aquatic life.

MS. KENT then turned to the fiscal note and opined that there is a fiscal impact associated with HB 46. The DEC will need to revise its regulations to implement the new permittee reporting requirements, upgrade the permit data system, and produce on an ongoing basis a new annual report to be posted on the web.

[11:11:11 AM](#)

REPRESENTATIVE SEATON related his understanding that for many years there were provisions that didn't allow a mixing zone in a spawning area. In fact, he further related his understanding that the aforementioned statutory language was the framework under which most mining operations and municipal wastewater operations were permitted.

MS. KENT confirmed that DEC's old and existing regulations prohibit mixing zones in salmon spawning areas, with one exception. She explained that the exception is one in which a facility with a permitted discharge that's invaded by a spawning area can retain its authorized mixing zone so long as it meets all the other permit conditions for mixing zones. The old and existing DEC regulations continue to prohibit mixing zones in spawning areas for other listed fish, the same fish that are listed in HB 46. However, the following exceptions exist: a mixing zone that is authorized when no fish spawn in the area but do so later and if the discharged substance doesn't impact aquatic life.

[11:13:07 AM](#)

REPRESENTATIVE SEATON asked if the language in HB 46 regarding mixing zones in resident spawning areas is the language that existed prior to the Murkowski Administration

MS. KENT responded that the language is similar; however, HB 46 defines spawning area in a manner that's very different from the long-standing practice by the Division of Habitat. The division has defined spawning areas to include a temporal aspect, and therefore ADF&G considers when spawning is occurring when it evaluates projects that might impact a water body. The aforementioned is considered in order to determine whether a mixing zone permit could be authorized in those areas where there is intermittent discharge by having permit restrictions that avoid spawning areas and times and have no impact on present or future spawning. In fact, under the old regulations permits for mixing zones have been authorized with timing

restrictions that avoid spawning times and impacts to spawning, incubation, and rearing.

[11:15:29 AM](#)

REPRESENTATIVE SEATON returned to the issue of the public process and public notice. He directed attention to an October 23, 2007, e-mail to Louie Flora from Renee Evans. Ms. Evans says, "The public process occurs at the time the State permit is first issued. A public notice is not required to administratively continue a permit or to renew or amend the permit. The process for renewing a permit is found in regulation at 18 AAC 15.100." He then pointed out that 18 AAC 15.100 (d) says, "An application for a renewal of a permit, or amendment to a permit or variance, will be treated in the same manner as the initial application, except that public notice or hearing will not be provided for applications for renewal or amendment." Representative Seaton asked if Ms. Kent is saying that the department is no longer operating under those regulations.

MS. KENT directed attention to 18 AAC 15.100 (c), which in part read: "A permit or variance authorizes only that operation specified in the permit or variance. Any expansion, modification, or other change in a facility process or operation which might result in an increase in emissions or discharges, or might cause other detrimental environmental impacts from the permittee's facility, requires a new permit or variance." That new permit would have to go through a new public process per 18 AAC 15.100(d).

[11:17:41 AM](#)

REPRESENTATIVE SEATON said that he finds that interesting because he has shared with DEC the problems that have resulted in the expansion of DEC's permit, such as with the [Homer Honey Bear Septage Disposal Facility]. Furthermore, the aforementioned e-mail specifies that there won't be a hearing on the application for renewal or amendment, citing 18 AAC 15.100(d).

MS. KENT said that although she isn't familiar with the particulars of the [Homer Honey Bear Septage Disposal Facility], it is possible that a facility has increased its discharge volume under a general permit and DEC didn't make it to public notice on the renewal of that permit. However, generally if

there is a significant change in the discharge, that permit would go out to public review when the permit is reissued.

REPRESENTATIVE SEATON noted that in this case there have been public objections due to the expansion of the facility without public notice. Therefore, there was the need for statute to address the public notice.

MS. KENT remarked that Representative Seaton may be referring to a situation in which the general permit has an upper limit on the amount of discharge and a facility that is covered under the general permit with a smaller discharge subsequently increases its volume, but remains within the limits of the general permit. The aforementioned situation could result in the facility increasing its discharge, remaining covered under the same permit conditions, and not having a separate public notice during the life of the general permit. However, once the general permit is renewed, public comment would be taken. She noted that [general permits] are under a five-year rotation basis.

[11:21:01 AM](#)

CHAIR EDGMON inquired as to the normal circumstances for development when DEC authorizes a mixing zone permit [with the temporal aspect]. He asked if the development would be a placer mine or Title 16 activity.

MS. KENT explained that when a facility applies for a permit, the permittee is required to report whether they believe their discharge may be in a spawning area. The permittee's claim is not all that's relied upon, she noted. If there's a chance that the discharge will be into a fresh water spawning area, the application and permit information are provided to ADF&G for input. The practice of DEC is to have the Division of Habitat biologist review whether or not the area is a spawning area and provide times when the area is a spawning, incubation, or rearing area. Therefore, if the discharge can be made intermittently to avoid spawning, incubation, and rearing, the facility may still be permitted under current law. If there is not a window of opportunity during which the discharge could avoid impacts to spawning or future spawning, then the permit is denied.

[11:23:24 AM](#)

CHAIR EDGMON related his understanding that all of the major mines, save the POGO mine, were permitted under the language proposed in HB 46. Therefore, he questioned what type of development would occur today that would allow mixing zones to occur in spawning areas.

MS. KENT answered that placer mines is development for which timing restrictions have been utilized to avoid spawning. The state also has sewage lagoons throughout the state that retain the water and have an occasional discharge, which are often timed to avoid impacts to spawning. There are also drinking water systems with filter backwash that allow discharges at times when there wouldn't be an impact to spawning. She noted that the mines have been permitted largely because they discharge in areas that aren't spawning areas.

[11:24:51 AM](#)

CHAIR EDGMON inquired as to the occurrence level of issuing permits for mixing zones in spawning areas.

MS. KENT noted that DEC's data base doesn't have a field to allow a mixing zone search. However, a review of the database in 2006 found that there are about 450 mixing zones authorized in the state. Many of those mixing zones are in marine waters, which HB 46 would not impact. The facilities with mixing zone permits include oil and gas, seafood processing, mining, construction, and timber facilities. In further response to Chair Edgmon, Ms. Kent specified that there are no [commercial] wastewater discharge permits at the Pebble Mine at this point as the mine is still in the exploration phase.

[11:26:13 AM](#)

REPRESENTATIVE BUCH requested a report regarding the process with the [Homer Honey Bear Septage Disposal Facility].

MS. KENT agreed to do so.

[11:27:39 AM](#)

KIMBROUGH MAUNEY, AmeriCorps Volunteer, Alaska Center for the Environment, spoke in favor of HB 46. She then opined that agencies need to be strict and serious about protecting spawning grounds and fresh water habitats. This pro active legislation will help secure the state's future fish populations. Ms. Mauney opined that factoring in time of spawning seems dangerous

due to climate changes that can alter life cycle patterns. Furthermore, the agencies seem to need clarity on defining spawning grounds and their location, which HB 46 appears to address. Recalling her work on a small cruising vessel in Southeast Alaska in the summer and noting that she holds a degree in oceanography, Ms. Mauney said that tourists recognize the fragility of contaminants to the flora and fauna along fresh water streams. In response to the earlier question regarding how many businesses would be impacted, she said that it doesn't matter because it would be all the better for businesses to pay more attention to their discharge and perhaps develop more innovative ways to address discharge. In conclusion, Ms. Mauney encouraged the committee to protect fish, spawning grounds, and migration routes whenever possible in order to maintain a stable and prosperous fish population.

[11:31:05 AM](#)

CHAIR EDGMON announced that public testimony would be kept open and HB 46 would be held over.

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[11:31:39 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:31 a.m.