

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

March 29, 2011

5:06 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Chair
Representative Craig Johnson, Vice Chair
Representative Alan Austerman
Representative Bob Herron
Representative Lance Pruitt
Representative Scott Kawasaki
Representative Bob Miller

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION(S):

Alaska Board of Fisheries

Susan Jeffrey - Kodiak
John Jensen - Petersburg
Dr. William Brown - Juneau

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 85

"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 & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 85

SHORT TITLE: MIXING ZONES/SEWAGE SYSTEMS

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/18/11 (H) PREFILE RELEASED 1/14/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) FSH, RES
03/29/11 (H) FSH AT 5:00 PM CAPITOL 120

WITNESS REGISTER

SUSAN JEFFREY, Appointee
Alaska Board of Fisheries (BOF)
Kodiak, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries (BOF).

JOHN FOX, Member
Fish and Game Advisory Committee
Kodiak, Alaska

POSITION STATEMENT: Testified in support of the three appointee elects: Susan Jeffrey, John Jensen, and Dr. William Brown.

JOHN JENSEN, Appointee
Alaska Board of Fisheries (BOF)
Petersburg, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries (BOF).

MAX WORHATCH, IV
Petersburg, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

JULIANNE CURRY, Executive Director
Petersburg Vessel Owners Association
Petersburg, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

ROBIN SAMUELSON, Fisherman
Bristol Bay, Alaska

POSITION STATEMENT: Testified in opposition to the appointment of John Jensen to the Alaska Board of Fisheries (BOF).

GERALD McCUNE, Lobbyist
United Fishermen of Alaska (UFA)
Cordova, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

RICK GEASE, Executive Director
Kenai River Sportfishing Association (KRSA)
Kenai, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

STEVE BROWN, President
Concerned Area "M" Fishermen
Homer, Alaska

POSITION STATEMENT: Testified in support of the three appointee elects: Susan Jeffrey, John Jensen, and Dr. William Brown.

REUBEN HANKE
Soldotna, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

MIKE CRAWFORD, Chairman
Fish and Game Advisory Committee
Soldotna, Alaska

POSITION STATEMENT: Testified in support of John Jensen, as appointee to the Alaskan Board of Fisheries (BOF).

DR. WILLIAM S. "BILL" BROWN, PhD, Appointee
Appointee, Alaska Board of Fisheries (BOF)
Kodiak, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries (BOF).

RICK GEASE, Executive Director
Kenai River Sportfishing Association (KRSA)
Kenai, Alaska

POSITION STATEMENT: Testified in support of Dr. William Brown, as appointee to the Alaskan Board of Fisheries (BOF).

REUBEN HANKE
Soldotna, Alaska

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Bristol Bay, Alaska

POSITION STATEMENT: Testified in opposition to the appointment of Dr. William Brown to the Alaska Board of Fisheries (BOF).

KARL JOHNSTONE, Vice Chair

Alaska Board of Fisheries (BOF)

POSITION STATEMENT: Testified in support of the three appointee elects: Susan Jeffrey, John Jensen, and Dr. William Brown.

REPRESENTATIVE PAUL SEATON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 85, as prime sponsor.

LYNN KENT, Director

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition for HB 85.

BRIAN KRAFT, Lodge Owner

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 85.

BRENDA DOLMA

Homer, Alaska

POSITION STATEMENT: Testified in support of HB 85.

MICHAEL SATRE, Executive Director

Council of Alaska Producers

Juneau, Alaska

POSITION STATEMENT: Testified in opposition of HB 85.

ACTION NARRATIVE

[5:06:03 PM](#)

CHAIR STEVE THOMPSON called the House Special Committee on Fisheries meeting to order at 5:06 p.m. Present at the call to order were Representatives Thompson, Austerman, Kawasaki, and Miller. Representatives Johnson, Pruitt, and Herron, arrived as the meeting was in progress.

CONFIRMATION(S):
Alaska Board of Fisheries (BOF)

[5:06:37 PM](#)

CHAIR THOMPSON announced that the first order of business would be confirmation hearings for appointees to the Alaska Board of Fisheries (BOF).

5:07:15 PM

SUSAN JEFFREY, Appointee, Alaska Board of Fisheries (BOF), stated her interest for serving on the Board of Fisheries (BOF), and reported that she is currently serving a second term as an elected official in Kodiak, which provides her a seat on the joint City and Borough/Kodiak fishery advisory committee. She described her history in the fishery industry, beginning as a cannery worker. Commercial salmon fishing is a family business, and she is a past co-owner of a crabbing boat. Fishing topics have long been on her plate as a fisheries reporter for the local newspaper and as a free lance writer. She said she has respect, appreciation, and understanding of the public process.

CHAIR THOMPSON opened public testimony.

5:10:23 PM

JOHN FOX, Member, Fish and Game Advisory Committee, testified in favor of the three BOF appointees, and specified that Susan Jeffrey is an outstanding candidate and knows the issues. He said she is well prepared, is approachable, and sorely missed as a well informed fisheries correspondent for the local newspaper.

CHAIR THOMPSON closed public testimony.

5:12:03 PM

JOHN JENSEN, Appointee, Alaska Board of Fisheries (BOF), introduced himself paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I was born in Petersburg, Alaska, February 16, 1951. I am a lifetime resident of Petersburg. I graduated from Petersburg High School in 1969. I attended Yakima Valley College for one year before purchasing my first fishing vessel and beginning my fishing career. I am a third generation Alaska fisherman. I have fished commercially since 1965. I have owned and operated four fishing vessels from 1972-1993. I have participated in fisheries in SE Alaska, Bristol Bay, Gulf of Alaska, Bering Sea/Aleutians, Alaska

Peninsula, Cook Inlet, Prince William Sound, and Western Alaska. I have attended Merchant Marine Training Services in Seattle, WA and acquired my Master 100 G and Assistance Towing license.

MR. JENSEN finished, stating that he is interested in assisting to preserve the fisheries through serving on the BOF.

[5:13:07 PM](#)

REPRESENTATIVE HERRON asked:

What has been your approach, as a member of the BOF, in dealing with the allocation of fish between subsistence, sport, and commercial fisheries.

MR. JENSEN said it is important to keep it fair and balanced, and referred to the allocation criteria and the eight established points for consideration, which include the history and participation of the user groups.

[5:13:56 PM](#)

REPRESENTATIVE HERRON inquired:

How have you supported actions, with your time on the board, to address the low salmon runs on the Yukon [River].

MR. JENSEN replied that last season net size was altered to allow escapement, but, despite these efforts, the fishery continues to decline. Another factor being addressed is the ocean mortality of the Yukon River Chinook salmon.

[5:15:07 PM](#)

REPRESENTATIVE AUSTERMAN asked whether the appointee serves on the protocol committee of the North Pacific Fisheries Management Council (NPFMC), and, if so, to make comment on the by-catch situation in the Bering Sea.

MR. JENSEN indicated that a comprehensive plan exists for the Bering Sea, and the council is on the verge of implementing strategies specific to the Chinook by-catch. A recent development is for the observer program to include vessels under 60 feet.

REPRESENTATIVE AUSTERMAN continued to query whether the board has taken a position to request the protocol committee to take specific action, such as a cap limit on the by-catch.

MR. JENSEN answered that the BOF has discussed by-catch options, but a position statement has not been issued by the board to the council.

REPRESENTATIVE AUSTERMAN asked whether the appointee has a priority in mind, regarding sustainability of the resources, when considering subsistence/personal use, sport, and commercial fisheries.

MR. JENSEN responded that he considers the priority order to be: sustainability, subsistence, and finally equal division between other users.

CHAIR THOMPSON opened public testimony.

[5:18:45 PM](#)

MAX WORHATCH, IV, stated support for the appointee, and said Mr. Jensen takes his work seriously, does the research involved, and is fair minded as a commercial fisherman who also sport fishes.

[5:19:38 PM](#)

JULIANNE CURRY, Executive Director, Petersburg Vessel Owners Association, expressed support for the appointee, and stated her belief that Mr. Jensen's goal is to do what is best for the state fishery resources. Further, she said he understands the issues, the user groups, is respected by the public, and puts science at the forefront when making decisions.

[5:21:30 PM](#)

ROBIN SAMUELSON, Fisherman, stated opposition to the appointee and said that Mr. Jensen has done a marvelous job sustaining the resources, but maintained that support for the coastal communities of Alaska has not been a priority. He reported that, as a board member, Mr. Jensen voted against every recommendation from the local advisory committees and local fishermen.

[5:22:43 PM](#)

GERALD McCUNE, Lobbyist, United Fishermen of Alaska (UFA), stated support for the appointee, and said Mr. Jensen has extensive experience from previous service on the board. Further, he stated his belief that Mr. Jensen has a full understanding of the issues.

[5:23:30 PM](#)

RICK GEASE, Executive Director, Kenai River Sportfishing Association (KRSA), stated support for the appointee. He opined that Mr. Jensen is experienced, courteous, thorough in his deliberations, and has been around the state three times, as a board member and gained a working knowledge of the issues.

[5:24:26 PM](#)

STEVE BROWN, President, Concerned Area "M" Fishermen, testified in favor of the three BOF appointees. Specifically he reported: that Sue Jeffrey has support from the central Gulf of Alaska (GOA) area fishermen, echoed the comments of support for John Jensen as an approachable, knowledgeable, experienced board member, who gives appropriate consideration to decisions, and said that Dr. William Brown, is a board member who brings a unique, valuable, background in economy.

[5:27:12 PM](#)

REUBEN HANKE, stated support for the appointee, and said Mr. Jensen has served the board well for the last nine years, and, having commercially fished many areas of the state, brings a wealth of firsthand knowledge.

[5:27:55 PM](#)

MIKE CRAWFORD, Chairman, Fish and Game Advisory Committee, stated support for the appointee, and said he is valuable, qualified, and willing to explain any issues.

CHAIR THOMPSON closed public testimony.

[5:29:05 PM](#)

DR. WILLIAM S. "BILL" BROWN, PhD, Appointee, Alaska Board of Fisheries (BOF), introduced himself paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I have served on the Board of Fish for one three year term. The main reason I would like to be confirmed for a second term is the same reason I applied in the first place: I want to help preserve our fishery resources for our children, grandchildren, and their children. Managed correctly, our fish will last forever; but only if managed correctly.

I think I bring two things to the Board of Fish. First, my degree in economics - I hold a doctorate in economics and spent over 20 years teaching college before I retired in 2000 - provided training in statistical methods, population dynamics, and the economic rationale for fishery regulation. My background in statistics proved especially valuable in my first term on the Board because it enabled me to understand and analyze the models used to estimate optimal sustained yield and other key parameters important in designing regulations. Second, my training in economics also helps me understand and calculate the economic impact of various fisheries around the state. Biology matters and social issues matter. But so does economic impact.

My first term on the Board was not uneventful, not by a long shot. I didn't have a clue as to how much work was involved; for example, we had 8,000 pages of reading material for the Upper Cook Inlet meeting. And as a member of the Board, I had to make tough decisions, many of which were unpopular in some circles. And while few were bashful in telling me just how much they disliked a particular decision, I know that my votes were the product of logic and careful consideration. I take the Board seriously, I recognized the importance, and I want to improve our fisheries.

[5:31:05 PM](#)

REPRESENTATIVE AUSTERMAN repeated the question he posed to the previous candidate, asking whether the appointee has a priority in mind, regarding sustainability of the resources, when considering subsistence/personal use, sport, and commercial fisheries.

DR. BROWN said he agreed with the response of the previous appointee and said it would be hard to improve on Mr. Jensen's

answer; sustainability is by far the most important issue. However, if any fish can be harvested, subsistence is the priority, followed by a review of the allocation criteria to reach a fair distribution among the other user groups.

5:32:32 PM

REPRESENTATIVE AUSTERMAN asked whether Dr. Brown serves on the protocol committee of the NPFMC, and queried whether the BOF should be interactive in making recommendations regarding sustainability and the by-catch issues, not only regarding salmon, but halibut as well.

DR. BROWN answered that he does not sit on the protocol committee. However, he opined that the board should be more interactive, and noted that letters have been written. He said that letters are nice, but it would be good if the BOF had more authority. When the council makes decisions regarding the halibut catch, it affects fisheries which the BOF are responsible for, such as the ancient rock fish, which will now become a target as the halibut charter fleet refocuses fishing effort. He said, "So far, we're sort of the tail behind the whole process."

5:34:13 PM

REPRESENTATIVE HERRON referred to Dr. Brown's statement that the BOF should have an effect on the council, and asked how that might be accomplished.

DR. BROWN said the Chinook salmon by-catch needs to be dramatically reduced, salmon excluders should be included throughout the trawl fleet, and hard caps need to be instituted to close primary fisheries when bi-catch occurs. Chinook salmon runs are in peril throughout the state, he opined, and the BOF has attempted a variety of measures to improve the Yukon River Chinook run, to no avail. The NPFMC needs to be more serious about stopping the by-catch.

REPRESENTATIVE HERRON asked for an opinion on whether the BOF needs to improve its relationship with Alaska subsistence users.

DR. BROWN stated that there is a set of criteria to follow, and that subsistence is taken seriously. A new member on the board, Michael Smith, is a subsistence advocate, bringing a better understanding to the members. Relations with all constituents should be improved, he opined.

5:37:28 PM

REPRESENTATIVE HERRON asked for an example of how Dr. Brown's background in economics has helped with his service on the BOF.

DR. BROWN indicated that mathematical models on optimal yield studies are used and he has been able to identify errors due to his background in economics. Additionally, he gave an example of his help in establishing the black cod fishery, in the southeast region. He said he was a leading force to place a sport limit on the fishery. Black cod is a high value catch, and the board received resistance, but the data analysis for the economic value of the catch share has proven valuable in decisions regarding the fishery.

CHAIR THOMPSON opened public testimony

5:41:18 PM

RICK GEASE, Executive Director, Kenai River Sportfishing Association (KRSA), stated support for the appointee and said Dr. Brown's background in economics has been valuable given the statistical models that the BOF relies upon.

5:43:00 PM

REUBEN HANKE, stated support for the appointee, echoed the comments of the previous witness, and added that Dr. Brown comes to the meetings well prepared, understands the statistical models, and helps others to understand the numbers.

5:43:56 PM

MIKE CRAWFORD, Chairman, Fish and Game Advisory Committee, stated support for the appointee, and said Dr. Brown is approachable, runs an effective committee, and understands the statistics.

5:45:05 PM

ROBIN SAMUELSON, Fisherman, stated opposition to the reappointment of Dr. Brown, and said that when five advisory committees are met with opposition by the board, something is wrong.

CHAIR THOMPSON closed public testimony.

[5:46:50 PM](#)

KARL JOHNSTONE, Vice Chair, Alaska Board of Fisheries (BOF), testified in favor of the three BOF appointees, and said specifically that John Jensen's experience is valuable to the board, and Dr. William Brown has benefited the board particularly due to his background in economics.

[5:49:05 PM](#)

CHAIR THOMPSON reminded members that signing the reports, regarding appointments to boards and commissions, in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection. There being no objection, Chair Thompson announced that the names of Susan Jeffrey, John Jensen, and Dr. William Brown would be forwarded to the joint session of the House and Senate for confirmation.

The committee took an at-ease at 5:49 p.m.

HB 85-MIXING ZONES/SEWAGE SYSTEMS

[5:49:56 PM](#)

CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 85, "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."

[5:52:28 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, presented HB 85, paraphrasing from the sponsor statement, which read as follows [original punctuation provided]:

A water discharge permit is a privilege to use our public water. Alaska waters receive varying amounts of pollution under the parameters of discharge permits as specified by the Department of Environmental Conservation. Mixing zones are areas permitted in a water body surrounding or downstream of a discharge where state water quality standards may be exceeded

while the effluent plume is diluted by the receiving water.

Current regulations allow freshwater spawning areas to be designated as mixing zones if salmon are not actively spawning (laying eggs) at the time of wastewater discharge and allows a mixing zone in the area even while other species are laying eggs. HB 85 would change that regulation to prevent discharge of pollutants into any freshwater spawning area of the species identified on the statutory list if they spawn in nests.

HB 85 is also a public right-to-know bill. It seeks to create accountability by allowing the public to have clear and easy access to information regarding the amount and nature of pollutants that are discharged under permit into Alaska water.

HB 85 allows the public to be involved if a commercial sewage lagoon is expanded by more than 50 percent of its originally permitted size. Current law doesn't adequately provide opportunity for public awareness and involvement in a comment process for the expansion of commercial sewage containment facilities.

[5:57:03 PM](#)

REPRESENTATIVE HERRON queried whether HB 85 will, or may, grandfather in existing waste water facilities that have mixing zones, such as an unpermitted village wastewater mixing zone.

REPRESENTATIVE SEATON responded that existing facilities will be grandfathered in.

[5:58:05 PM](#)

REPRESENTATIVE MILLER questioned whether statute exists regarding what constitutes water pollution, or if HB 85 establishes a definition.

REPRESENTATIVE SEATON said that the water quality standards, established by the state, are used for determining amounts and levels of discharges that can be permitted. He noted that the bill specifies exceptions for streambed disturbance, water turbidity, and private sewage systems. The mixing zone permit

designates discharge concentrations and identifies the areas of a discharge plume where water quality standards must be met.

5:59:10 PM

REPRESENTATIVE AUSTERMAN recalled a situation where a permitted discharge was allowed into a stream that did not initially host a salmon run but later became a spawning area.

REPRESENTATIVE SEATON acknowledged that this concern arose when a manmade wastewater canal, in Valdez, had a pink salmon run establish a spawning area, jeopardizing the facilities ability to continue discharging, under an early version of the bill. However, HB 85 addresses freshwater discharges only, and exempts artificial channels, or settling ponds invaded by a listed spawning species.

6:01:58 PM

LYNN KENT, Director, Division of Water, Department of Environmental Conservation (DEC), stated official opposition to HB 85, and said the bill goes beyond what is necessary to protect fish. She directed attention to the committee packet and the written testimony provided by DEC [dated March 29, 2011].

6:02:55 PM

REPRESENTATIVE HERRON referred to the DEC testimony, page 2, paragraph 2, and read:

While these protections are not necessary from a scientific perspective ...

REPRESENTATIVE HERRON surmised and asked:

It's not scientifically necessary to protect anadromous salmon spawning streams from mixing zones. So, what is your scientific evidence that supports this statement.

6:03:30 PM

MS. KENT answered:

You don't need a flat out prohibition on mixing zones in spawning areas for any fish, including salmon,

although DEC regulations do prohibit mixing zones in salmon spawning areas. We say that because there are certain contaminants that don't have a negative effect on fish; fecal coliform is a good example of that. ... A fecal coliform mixing zone ... wouldn't have any impact on salmon or spawning salmon. ... We did, in our DEC regulation revisions for mixing zones, go ahead and retain the prohibition on mixing zones for salmon spawning areas more for the public perception issue than because there was a risk to salmon from authorized mixing zones.

[6:04:34 PM](#)

REPRESENTATIVE MILLER directed attention to the DEC written testimony, page 1, and read:

Some pollutants cannot be reported in terms of "amount", such as fecal coliform, radioactivity, and turbidity.

REPRESENTATIVE MILLER asked how these pollutants are measured.

MS. KENT responded that the water quality standards are usually based on a concentration of contaminant in the water body. It is not the measure of discharge, but the resultant concentration, which is considered. The water quality standards are based on micrograms per liter often referred to as parts per million or trillion.

[6:06:16 PM](#)

REPRESENTATIVE AUSTERMAN stated his understanding that DEC prefers internal regulation to statutory law to govern this issue.

MS. KENT explained that regulations, adopted in 1975, prohibited mixing zones in anadromous fish spawning areas. The regulations were changed in 2006 to allow mixing zones in non-salmon spawning areas.

REPRESENTATIVE AUSTERMAN argued that if DEC is already following the parameters under regulation why would the department object to having statute reflect the same language.

MS. KENT said that the bill goes beyond what is in current regulation.

REPRESENTATIVE AUSTERMAN referred to the DEC written testimony, statement 5, and asked whether satisfactory, departmental action has been taken on this point. [Statement 5 reads: HB 85 would prohibit mixing zones that have become a fish spawning area unless the discharge was from a public or private domestic wastewater facility.]

MS. KENT answered yes.

[6:09:48 PM](#)

REPRESENTATIVE HERRON referred to the DEC testimony document, statement 4, which states that it is not necessary to protect non-salmon species, from mixing zones, because they aren't economically important. He said:

You don't recognize subsistence [use] as an economically important activity. And smelt are a major food/prey species for salmon, and ... help support healthy salmon stocks. They aren't economically important from that perspective.

MS. KENT maintained that a flat out prohibition on mixing zones in non-salmon spawning areas is not necessary. A nineteen part requirement check list is necessary to obtain a permit, which considers all of the aquatic life in a stream.

[6:11:37 PM](#)

REPRESENTATIVE AUSTERMAN queried whether documented cases exist regarding domestic or industrialized discharge, which this bill might help.

MS. KENT said that there are mixing zones that are authorized on a temporal basis, allowing discharge into a stream as long as fish are not present, and the bill would restrict these discharges.

CHAIR THOMPSON opened public testimony

[6:14:18 PM](#)

BRIAN KRAFT, Lodge Owner, stated support for HB 85, and said visitors expect to fish in unpolluted waters. Because of this expectation, he said, charter operators are altering the type of motors used on the river boats to minimize oil discharge. The

waterways should be kept as pristine as possible, as fishery economics depends on the perception held by the public. Additionally, there is a continuous cycle that needs to be supported for the incubation of spawning fish.

[6:16:57 PM](#)

BRENDA DOLMA, stated support for HB 85, and said it is important to protect the water and the perception that Alaskan salmon have clean rearing conditions; an important image to maintain in perpetuity.

[6:18:55 PM](#)

MICHAEL SATRE, Executive Director, Council of Alaska Producers, testified in opposition to HB 85, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

The Council of Alaska Producers is a non-profit trade association representing the producing large metal mines and developmental projects in the state of Alaska.

One of the many challenges of developing communities and projects within our great state is managing the impacts that we have on our aquatic resources. Every community and camp generates some sort of wastewater and most, if not all, projects have some sort of process or contact water. If this water is to be discharged back into the environment, there are very strict water quality standards that must be met in order to avoid impacting our surface waters.

Unfortunately, even with the best available treatment technologies, it is still possible that treated water may not meet our very stringent standards at the point of discharge. This is why the State of Alaska, with authority granted by the Clean Water Act and the EPA, allows for the permitting of mixing zones in order for wastewater that is slightly out of compliance to be diluted into a permissible discharge.

These zones, whether they are in fresh or saltwater, are permitted through a rigorous scientific process and are truly a method of last resort to allow

communities and projects to meet water quality standards.

In freshwater, the requirements for a mixing zone are even stricter. Most importantly, if a proposed mixing zone contains a spawning area for any of the five Pacific Salmon species ... it cannot be permitted!

Mixing zones in freshwater spawning areas of other fish must:

Meet statewide water quality standards plus other conditions imposed by ADF&G and DEC.

Have an approved mitigation plan.

Not adversely affect the capability of an area to support future spawning, incubation and rearing activities.

Existing mixing zone regulations allow our communities and our projects to meet our strict water quality standards and ensure that we can strike a balance between developing our state and protecting our environment.

HB85 will disrupt this balance by introducing a blanket prohibition on allowing mixing zones where any anadromous fish spawn or where the resident fish redds are located for the long list of fish species listed in the proposed AS.46.03.065(2). This lack of flexibility will place additional, possibly insurmountable, hindrances on the development of our state. CAP urges you to not pass the bill out of committee.

[6:24:20 PM](#)

REPRESENTATIVE SEATON clarified that the bill only applies to freshwater, and excludes saltwater zones. Neither does it apply to turbidity mixing zones, and referred to the bill, page 3, line 6, to paraphrase from the language, which read:

(c) The prohibition in (a) of this section does not apply to a turbidity mixing zone for a suction dredge placer mine or a mechanical placer mine that the department finds, with the concurrence of the division

of the Department of Fish and Game that has responsibility for fish habitat, will not adversely affect the present or future spawning, incubation, or rearing of fish included under (a) of this section.

REPRESENTATIVE SEATON pointed out that mixing zones are allowed, during spawning times for a list of species, which includes: Arctic char, Dolly Varden, lake trout, landlocked coho, king, and sockeye salmon, rainbow trout, sheefish and whitefish. These are important subsistence species in Alaska's inland waters. He said:

I think that DEC's comments that, "yes we have an allowance, or grandfathering, for the wastewater discharge," but they would like the ability to do industrial pollutants, or industrial discharges that are above the level on those spawning areas, that's what I wish to say no to. ... Development should occur in a way that protects our renewable resources, and our fish species are important to all Alaskan residents.

REPRESENTATIVE SEATON directed attention to the committee packet and the chart in the DEC handout titled, "Mixing Zones & Spawning Areas," to point out that the "old" 2003 regulations are what the department currently enforces, and align with the provisions proposed in HB 85. The 2006 regulations have not been approved by the EPA (Environmental Protection Agency), and the chart should be read bearing this in mind. He explained that, since the original adoption in 1975 and through lack of regulatory or statutory action, interpretation of the term "spawning area" has changed. The department has written policy and adopted regulations allowing higher levels of pollution, based on the reinterpretation. The idea that pollution discharges will not have future effects on an area where fish spawn is dubious, he cautioned. He asked the committee to focus attention on particular discharges, such as copper. The meaning of concentration and the scope of a mixing zone are also important to understand. He stressed:

I know DEC says ... "our [regulations] say we're not going to influence future [conditions]." But unless we know what those amounts are that are going out there over time, then we're not going to really be able to understand what the potential impact is. That's what this bill is trying to get to: to make sure that our renewable resources ... are protected.

[6:29:56 PM](#)

REPRESENTATIVE HERRON asked for comment on the testimony statement that, "No problem has been identified that this bill is meant to correct."

REPRESENTATIVE SEATON replied that it is difficult to determine to which part of the bill the statement refers. However, he said, HB 85 corrects the public having no knowledge of what chemicals are being discharged and concentrating over time in a particular system, by requiring understandable disclosure. Also, DEC has allowed a vastly increased sewage lagoon discharge, in a residential area without public notice or a right to comment. Thirdly, he said mixing zones in areas of subsistence fish populations are a problem. He said:

Can I go out and show you a fish kill? I want to prevent that from ever happening, just like the regulations were before 2003, that that was not allowed, and I don't think it should be allowed now. I think that development should go forward, but we want responsible development ... done in a way that we never have those problems where I can come to you and say, 'Here's a picture of a big fish kill.' We never want to see that, and that's what this bill is hoping to accomplish.

[6:31:56 PM](#)

CHAIR THOMPSON announced that HB 85 would be held.

[6:32:31 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 6:32 p.m.