

SB

225

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens
Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

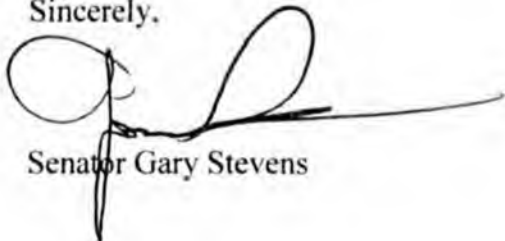
Memorandum

DT: April 13, 2006
TO: Senator Tom Wagoner, Chair
Senate Resources Committee
FR: Senator Gary Stevens
RE: SB 225

I respectfully request a Resources Committee hearing at your earliest convenience on Senate Bill 225, "An Act prohibiting mixing zones in freshwater spawning waters".

Thank you for your consideration of this request.

Sincerely,



Senator Gary Stevens

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens

Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

Sponsor Statement for SB 225

Alaska has a reputation for pure water and vibrant wild fish stocks. SB 225 seeks to maintain the long-standing prohibition on pollution mixing zones in Alaska's freshwater spawning areas. SB 225 transfers into statute a regulation that has governed wastewater discharges for many successful years of industrial and municipal expansion in Alaska.

SB 225 aids municipalities and industry by preventing man-made ditches or holding ponds that are invaded by spawning fish from being reclassified as freshwater spawning areas. This language solves the "Valdez Situation" cited by the Alaska Department of Environmental Conservation (ADEC) as a primary rationale for the regulation change. In that case, the city created a ditch from its wastewater treatment facility to saltwater, and the ditch was subsequently invaded by spawning pink salmon. This ditch was then classified as a spawning area requiring the wastewater discharge parameters to be reduced to a purity that the city's wastewater treatment plant would not be able to feasibly meet. SB 225 also allows other municipal wastewater facilities to have a mixing zone re-authorized if successful spawning occurs in the mixing zone after initial authorization, solving the concerns of many municipalities across the state.

SB 225 designates a spawning area to be a physical place in a river where fish spawning occurs. According to testimony from ADEC staff and the Commissioner of the Department of Fish and Game, the standard practice among regulators has been to determine where and when spawning occurs, and to employ seasonal restrictions on development activities in order to control impacts to the environment. However, in relation to the authorization of mixing zones in freshwater, there has never been explicit statutory or regulatory authorization for this practice. There was no reference to this practice in either of the previous Mixing Zone proposals.

In the summer of 2004 and again in 2005 ADEC released proposals to lift the prohibition on pollution mixing zones in freshwater spawning areas. These proposals were met with intense opposition from coastal municipalities, commercial and sport fishing industry groups, the federal government, state fish and game advisory committees, and hundreds of individuals, families, and businesses who testified that allowing pollution in freshwater spawning areas would have a detrimental effect on the physical environment where the largest freshwater spawning populations on earth occur. Additionally, commercial fishing

groups were unified in the concern that their recent successes in salmon marketing would be undermined if this important water quality safeguard was abolished.

Recently, ADEC adopted a version of the proposed regulations that both consolidate and modify the mixing zone regulations found at 18 AAC 70.240 through 18 AAC 70.270. The new regulations specifically exclude resident freshwater sport fish and resident subsistence fish spawning areas from the prohibition on mixing zones. Additionally, the new regulations allow any pollution mixing zone to be permitted year-round in freshwater salmon spawning areas if spawning salmon were not found in the area when the mixing zone was authorized, but were later found successfully spawning in the mixing zone. The new regulations also change the regulatory definition of a "spawning area" to mean a point in time. This allows regulators to authorize mixing zones in all spawning areas when it is determined that salmon spawning will not be occurring. All of these changes present significant departures from established public policy.

SB 225 does not negate other substantive changes ADEC has made in their attempt to streamline and consolidate the mixing zone regulations. SB 225 does not change regulations that allow for site-specific exemptions from state water quality standards and the granting of short-term variances from the standards, both of which can be applied to allow activities such as placer mining. Placer mines may also have a mixing zone in an area determined to not be an area where spawning occurs.

SB 225 protects municipalities and industry while maintaining the high standard of water quality and fisheries protection that has been a centerpiece of Alaska policy for years.

###

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

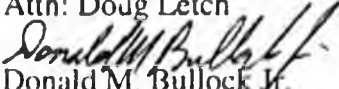
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 11, 2006

SUBJECT: Sectional analysis (SB 225)

TO: Senator Gary Stevens
Attn: Doug Letch

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds a new section to AS 46.03 that prohibits the Department of Environmental Conservation from authorizing a mixing zone for lakes, streams, rivers, or other flowing fresh water in an area where anadromous fish spawn or other listed fishes are resident. Defines "lakes, streams, rivers, or other flowing fresh water" and "mixing zone".

If I may be of further assistance, please advise.

DMB:med
06-018.med



"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."

Members

February 7, 2006

*Alaska State
Chamber of
Commerce*

Senator Thomas Wagoner, Chair
Alaska Senate Resources Committee
Alaska State Capital, Room 427
Juneau, Alaska 99801-1182

*Alaska Native
Groups*

Re: Support for Senate Bill 225, "An Act Prohibiting Mixing Zones in Freshwater Spawning Waters"

*Environmental
Groups*

Dear Senator Wagoner:

*Recreational
Groups*

Cook Inlet Regional Citizens' Advisory Council (CIRCAC) submits this letter in support of Senate Bill 225, "An Act Prohibiting Mixing Zones in Freshwater Spawning Waters" (SB 225), which was referred to the Senate Resources Committee on January 9, 2006.

*Aquaculture
Associations*

CIRCAC is a nonprofit corporation organized exclusively for the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of Section 5002 of the Oil Pollution Act of 1990. Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. CIRCAC consists of 13 member communities as well as Alaska Native groups, commercial fishing and aquaculture, tourism, recreational and environmental interest groups that have a significant stake in the environment and resources at risk from oil production and transportation in the region.

*Fishing
Organizations*

City of Kodiak

City of Kenai

City of Seldovia

City of Homer

*Kodiak Island
Borough*

*Kenai Peninsula
Borough*

*Municipality of
Anchorage*

On behalf of our member entities, CIRCAC participated in the public review and comment period during the Alaska Department of Environmental Conservation (ADEC) rulemaking to revise the state mixing zone regulations at 18 AAC § 70.240. We submitted written comments twice, in September 2004 and again in November 2005. In both sets of comments, we expressed strong opposition to ADEC's proposal to weaken existing state regulations governing mixing zones. The 2004 proposed changes, which would have removed the statewide ban on mixing zones in anadromous or resident fish or shellfish spawning or rearing areas, was in our estimation bad environmental policy. The 2005 proposed regulations contained some improvements, but maintained the loophole to allow mixing zone permits to be granted in anadromous fish spawning habitat. The adopted regulations published by ADEC on January 12, 2006 amount to a

*Cook Inlet Regional Citizens Advisory Council * 910 Highland Avenue, Kenai, AK 99611-8033*

*Phone: (907) 283-7222 * Fax (907) 283-6102*

reduction in overall pollution prevention when compared to the previously existing regulations at 18 AAC § 70.240 - 18 AAC § 70.270.

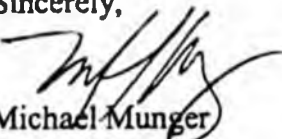
CIRCAC has a long history of working with stakeholder groups, state and federal agencies, spill responders, and oil companies to protect our precious natural resources from industrial pollutants. We have participated in efforts to improve oil spill prevention measures, enhance response capabilities, and develop site-specific Geographic Response Strategies (GRS) to prevent spilled oil from contaminating sensitive coastal environments, especially fish spawning habitat. We are concerned that the newly adopted regulations will undo this good work by allowing the intentional discharge of industrial effluents into streams, lakes, and other water bodies where salmon and other anadromous fish spawn.

The issue of anadromous fish spawning was CIRCAC's central concern throughout the ADEC mixing zone rulemaking process. The final, adopted regulations did not address CIRCAC's primary recommendation, which was for ADEC to maintain the previously existing ban on mixing zones in anadromous fish spawning areas without exception. SB 325 provides an opportunity to memorialize in Alaska Statute the ban on mixing zones in anadromous fish spawning areas, which would accomplish CIRCAC's primary objective to protect fish spawning habitat from industrial effluent pollution. CIRCAC has commented on numerous state and federal rulemakings, and we understand that there is always some measure of compromise involved in developing regulations. However, the overwhelmingly negative response to the new regulations indicates that they are out of step with the water quality standards expected by federal regulators and stakeholders alike. CIRCAC's member entities consider the environmental quality of our anadromous fish spawning habitat to be of critical importance. Protecting spawning streams from pollution is an issue that merits statutory consideration. CIRCAC supports SB 225 because it would provide certain protection to anadromous fish spawning in Cook Inlet's freshwater streams, lakes, and rivers.

We hope that the House Resources Committee will expedite the passage of this important legislation to ensure that the highest water quality standards apply to Alaska's anadromous fish freshwater spawning areas.

If you have any questions, please feel free to contact me at (907) 283-7222.

Sincerely,


Michael Munger
Executive Director

cc: Sen. Gary Stevens

Cook Inlet Regional Citizens Advisory Council • 910 Highland Avenue, Kenai, AK 99611-8033

Phone: (907) 283-7222 • Fax (907) 283-6102



KODIAK DAILY MIRROR

January 17, 2006
8:06:06

- Home
- Archive
- Classifieds
- Subscriptions
- Advertise
- Churches
- Contact Us

CURREN



COMMU

- Chamber o
- Conventio
- Bureau
- City of Kod
- Public rad
- Kodiak Col
- School dist
- Borough
- Weather ca
- Coast Guar
- Kodiak Fish
- Center
- UAF Fisher
- Technology

SPONS

AP STORY

Jan 16, 7:31 PM EST

State retains pollution mixing zone policy; fishermen skeptical

JUNEAU, Alaska (AP) -- Alaska will retain the state's ban on pollution mixing zones in spawning areas for salmon and other fish species, but fishermen and environmental groups say some aspects of new discharge regulations could harm young fish.

"Alaska's salmon-based economy is too important to risk any loss in consumer confidence," said Kurt Fredriksson, commissioner of the Department of Environmental Conservation, in announcing Friday that the state would retain the ban.

The new rule is a disappointment to the mining industry, which had supported lifting the ban, said Steve Borrell, executive director of the Alaska Miners Association.

Mixing zones are areas in a water body where wastewater discharge is allowed to exceed pollution limits while blending with uncontaminated water for dilution.

A proposed to replace the current ban on mixing zones in Alaska's freshwater spawning areas was protested by fishermen.

Advertisement

The fishing industry was not ready to claim victory with the announcement Friday. The United Fishermen of Alaska declined to comment, citing a need for more analysis.

Fishermen learned that Alaska regulators do not interpret the law to prevent mixing zones year-round in a salmon spawning streams.

Spawning areas are defined not just as a place but as a point in time by the Alaska Department of Fish and Game.

A mixing zone could be allowed when spawning salmon, eggs, or larvae are not present, state officials said. For example, a placer miner could "operate for a very small window of time" in some salmon spawning streams in Alaska, said Lynn Kent, director of the Environmental Conservation Department's Division of Water.

Environmental groups also said the new rule will not ban mixing zones in areas used by juvenile salmon.

Alaska Trollers Association Executive Director Dale Kelley said the new rule is inadequate if it does not protect juvenile fish.

According to the rule, a mixing zone will not be authorized if it harms "the present and future capability" of an area to support spawning, incubation or rearing" of fish.

The new rule will allow polluters to apply for exceptions to the mixing zone ban for 14 fish species, including Dolly Varden, trout and Arctic grayling.

Rep. Paul Seaton, R-Homer, said those exceptions "might be troublesome for subsistence users in the Interior."

Seaton and other legislators are sponsoring a bill that would prohibit mixing zones in freshwater spawning habitat, but allow them in artificially created fish habitat, such as wastewater ditches.

The House Fisheries Committee has scheduled a hearing on the bill for 8:30 a.m. Friday.

"We'll be studying the regulations between now and then," Seaton said.

Information from: Juneau Empire, <http://www.juneauempire.com>

© 2006 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten or redistributed. Learn more about our **Privacy Policy**.

Associated Press news, photos, graphics, video, audio and other multimedia material accessed through this service shall not be directly or indirectly reproduced, published, broadcast, sold, transferred, licensed, distributed in any manner or medium, used to prepare derivative works, or displayed publicly in any manner or medium now known or later developed. AP news material may not be stored in whole or in part in a computer except for personal and non-commercial use. The AP will not be held liable for any delays, inaccuracies, errors or omissions in the AP Service or in any AP Material including without limitation any third party content and any of the advertisements in the AP Service or in the transmission or delivery of all or any part thereof or for any damages whatsoever.

[top]

©2006, Kodiak Daily Mirror
Questions or comments? Contact the **webmaster**.

Doug Letch

From: Senator Gary Stevens [Senator_Gary_Stevens@legis.state.ak.us]
Sent: Thursday, January 19, 2006 9:58 AM
To: Doug Letch
Subject: [Fwd: HB 328]

Doug: For mixing zone file

----- Original Message -----

Subject: HB 328
From: "George Matz" <geomatz@alaska.net>
Date: Thu, January 19, 2006 9:39 am
To: <Rep_Paul_Seaton@legis.state.ak.us>

Cook Inlet Alliance
PO Box 2421
Homer, AK 99603

January 19, 2006

Representative Paul Seaton
State Capitol, Room 102
Juneau, Alaska 99801

Re: HB 328

Dear Representative Seaton:

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

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

. to eliminate ambiguity and possible loopholes that still exist with DEC's adopted regulations, and . to protect spawning areas for all species of anadromous fish as well as resident fish.

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

1. Who defines a spawning area? The adopted regulations say that DEC will defer to the Department of Natural Resources "or" the Department of Fish and Game. These two departments have different missions and often different perspectives on resource development/conservation issues, which is the way it should be. Putting "or" in the regulations creates a situation where DEC could arbitrarily decide which to pick, thereby introducing bias into the permit process.
2. Spawning areas need year around protection. These areas are used throughout the year for incubation and rearing as well spawning. Nevertheless, the adopted regulations leave open to question the spatial and temporal definition of a spawning area. Any attempt at narrowly defining a spawning area might benefit a permit applicant, but not water quality or fish.
3. DEC's regulations do not describe what happens when a wastewater discharge permit is requested for a water body that is not in the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes. As described on DF&G's web site, "The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.870. Water bodies that are not 'specified' within the Catalog and Atlas are not afforded that protection.. Based upon thorough surveys of a few drainages it is believed that [specified water bodies] represents less than 50% of the streams, rivers and lakes actually used by anadromous species."

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

4. DEC's adopted regulations are unnecessarily convoluted. Section (f) says that "a mixing zone will not be authorized in a spawning area for" several species of fish, but then says in (g) that it "may authorize a mixing zone in a spawning area" for these very same species, but certain conditions have to be met. But if they can't be met, a mitigation plan is acceptable "using the methods established in 11 AAC 195.010." When you read the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes referred to in 11 AAC 195.010, you don't find any methods. The closest thing you find is a section that describes the information needed when applying for a Fish Habitat Permit. This falls short of being a method.

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

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

We thank you for this opportunity to testify.

Sincerely,

George Matz

Attachments

<http://www.sf.adfg.state.ak.us/SARR/FishDistrib/anadcat.cfm>

The Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes and its associated Atlas (the Catalog and Atlas,

respectively) currently contain about 16,000 streams, rivers or lakes around the state which have been specified as being important for the spawning, rearing or migration of anadromous fish. Based upon thorough surveys of a few drainages it is believed that this number represents less than 50% of the streams, rivers and lakes actually used by anadromous species. It is estimated that at least an additional 20,000 or more anadromous water bodies have not been identified or specified under AS 41.14.870(a).

The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.870. Water bodies that are not "specified" within the Catalog and Atlas are not afforded that protection. To be protected under AS 41.14.870, water bodies must be documented as supporting some life function of an anadromous fish species (salmon, trout, char, whitefish, sturgeon, etc.) Anadromous fish must have been seen or collected and identified by a qualified observer. Most nominations come from Department of Fish and Game fisheries biologists. Others are received from private individuals, companies and biologists from other state and federal agencies.

11 AAC 195.010. Waters important to anadromous fish

(a) An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, and the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, as revised as of November 2004, are adopted by reference. The six volume atlas is a compilation of topographic maps upon which are specified, as provided in AS 41.14.870(a), the various rivers, lakes, or streams, or parts of them, that are important for the spawning, rearing, or migration of anadromous fish. The catalog is a listing of those water bodies. It sets out legal descriptions for the mouth and the known upper range of the fish of each stream, river, or lake designated on the maps in the atlas. The atlas and the catalog identify the water bodies for which a person or agency must first notify the deputy commissioner of natural resources, as required by AS 41.14.870 (b), before undertaking to construct a hydraulic project, or to use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream

(b) Permit application procedures, catalog and atlas updating procedures, definitions of terms, and other information or requirements to implement, interpret, or make specific the provisions of AS 41.14.870, included in the introduction attached to the catalog and the atlas described in (a) of this section, are also adopted by reference. The introduction also includes a user's guide to the atlas and

catalog, and limitations of the information in the atlas or the catalog.

**LAKE AND PENINSULA BOROUGH
RESOLUTION 05-22**

A RESOLUTION OPPOSING THE STATE OF ALASKA'S PROPOSAL TO ADOPT REGULATION CHANGES IN TITLE 18 OF THE ALASKA ADMINISTRATIVE CODE, DEALING WITH CHAPTER 70, WATER QUALITY STANDARDS - MIXING ZONES.

WHEREAS, the State of Alaska, Department of Environmental Conservation is proposing to repeal and adopt revisions that would (1) expand the prohibition on mixing zones to include lakes; (2) create exemptions to the prohibition on mixing zones in fish spawning habitat; (3) reorganize the mixing zone regulations to improve clarity and reduce redundancy; (4) simplify some technical provisions including ones dealing with risk assessment, flow calculations, and mixing zone models; and (5) update a reference to federal technology-based effluent limitations; and

WHEREAS, the proposed amendments would allow, for the first time, Industrial Mixing Zones in fresh water lakes and streams where existing regulations currently prohibit them; and

WHEREAS, much of the Lake and Peninsula Borough's economic well being is dependent upon a robust marine environment which will continue to provide for healthy, wild and organic salmon stocks in its lakes, rivers and streams; and

WHEREAS, wild salmon and other fresh water marine life support numerous jobs and subsistence resources for the residents of the Lake and Peninsula Borough; and

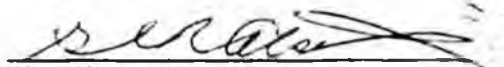
WHEREAS, allowing any industrial Mixing Zones in salmon lakes and streams may impair the efforts of commercial fishers in the borough, processors and sport fishing lodges to promote Alaska Wild Salmon as healthy, wild and organic; and,

WHEREAS, the Lake and Peninsula Borough is willing to support, in concept, non-industrial mixing zones as may be required for instance, for the proper treatment of municipal sewage with an effluent discharge into an anadromous lake and stream;

NOW THEREFORE BE IT RESOLVED, the Lake and Peninsula Borough strongly opposes the State of Alaska's proposal to adopt regulation changes in Title 18 of the Alaska Administrative Code, dealing with Chapter 70, Water Quality Standards.

PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 9th day of November, 2005.

IN WITNESS THERETO:


Glen Alsworth Sr., Mayor

ATTEST:


Sheila Bergey, Borough Clerk