

HB

283

<TARGET><BILL>HB 283</BILL><SUBJECT>HB
283</SUBJECT><COMM>HFSH29</COMM></TARGET>

MEMORANDUM

State of Alaska

Department of Environmental Conservation
Office of the Commissioner

TO: Rep. Louise Stutes, Chair
House Fisheries Committee

DATE: February 8, 2016

FROM: 
Larry Hartig
Commissioner

SUBJECT: HB283 Bill hearing request

I respectfully request a hearing in the House Fisheries Committee of House Bill 283, "An act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date."

Attachments:

- Current version of the bill
- Fiscal note
- Sponsor statement
- Sectional analysis for long or complicated legislation – N/A
- A brief explanation of changes – N/A
- Request for teleconferencing, including a list of witnesses and sites
- Request for any audio/visual equipment for presentations if needed – N/A
- Name and direct line of staff member assigned to the legislation
- Background documentation:
 - Governor's transmittal letter
 - FAQ's
 - KHNS Article

Name and contact information of witness to testify on HB283

Michelle Hale

Director

Division of Water

Department of Environmental Conservation

Michelle.Hale@alaska.gov

Office: (907) 465-5135

To testify in person in Juneau

HB283 Name and direct line of staff member assigned to the legislation

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Governor Bill Walker
STATE OF ALASKA

January 28, 2016

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill relating to the nomination of state water as "outstanding national resource water," also known as "Tier 3" water. Once a water body is designated as a Tier 3 water, the only additional pollutants from wastewater discharges that can be added to that water are temporary and limited. There is currently no Tier 3 water in Alaska.

The bill would add a new section, AS 46.03.085, authorizing the Department of Environmental Conservation (DEC) to collect nominations of state water for Tier 3 status and compile a list of nominated water for transmittal to the Legislature. The bill also would clarify that legislative action would be required to formally designate a body of water as a Tier 3 water.

The Clean Water Act requires states to implement a procedure for Tier 3 designation. DEC does have the authority to set quality and purity standards under AS 46.03.080 and has the technical expertise to analyze whether or not a water body meets the criteria for extra protection under Tier 3 status. However, currently there is no provision in the Clean Water Act for reversing a Tier 3 designation. Thus, such a designation has the potential to permanently limit development. Given the far-reaching consequences, the final authority for designation should rest with the Legislature and not with DEC.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker".

Bill Walker
Governor

Enclosure



HB283 – Natl. Res. Water Nomination/Designation Sponsor Statement

HB283 “An act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date.”

House Bill 283 (HB283) creates a process for water in Alaska to be designated as an Outstanding National Resource Water (ONRW). The purpose of an ONRW – or Tier 3 – designation is to offer special protection for waters of "exceptional recreational or ecological significance." Once a water is designated as an ONRW, the only additional pollutants from wastewater discharges that can be added to that water are temporary and limited.

The state is required to establish a process for ONRW designation under the federal Clean Water Act. Current statute and the Constitution are not clear regarding the Department of Environmental Conservation (DEC)'s authority to designate ONRWs. ONRWs are afforded special protection: because only temporary and limited pollutants are allowed to be added to ONRWs, an ONRW designation effectively becomes a land use decision with the possibility of impacting or barring further development on lands near ONRWs. Given the far-reaching consequences of designation, ONRW designation is more appropriately the Legislature's decision.

This bill clarifies that the final designation decision is made by the Legislature. It also establishes a process by which nominations can be submitted to and compiled by DEC for submittal to the Legislature for consideration.

There is no anticipated increased cost to implement this bill. DEC will be able to establish regulations and collect nominations with current staffing levels.

There are currently no ONRWs in the State of Alaska; however, DEC has received three requests for ONRW designations, which DEC is holding until a final process for designation is established.

It is important to the protection of Alaska's human and environmental health to have a clear process for designation of Outstanding National Resource Waters or Tier 3 waters in the state.

29-GH2916H
Nauman
4/6/16

CS FOR HOUSE BILL NO. 283()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the nomination and designation of water as outstanding state**
2 **resource water; and establishing an Advisory Board of Protected Waters."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 46.03 is amended by adding new sections to read:

5 **Sec. 46.03.085. Outstanding state resource water.** (a) Water of the state may
6 be designated as an outstanding state resource as specified in 40 C.F.R. Part 131.12 by
7 an act of the legislature.

8 (b) The Advisory Board of Protected Waters established under AS 46.03.087
9 shall accept nominations of water for designation as outstanding state resource water.

10 (c) Any resident of the state may provide a nomination.

11 **Sec. 46.03.087. Advisory Board of Protected Waters.** (a) The Advisory
12 Board of Protected Waters is established in the department for the purpose of
13 accepting and reviewing nominations for an outstanding state resource water.

14 (b) The board shall consist of nine voting members as follows:

1 (1) three permanent members:

2 (A) the commissioner of environmental conservation, who shall
3 chair the board;

4 (B) one environmental specialist from the Department of
5 Environmental Conservation, appointed by the commissioner;

6 (C) one biologist from the Department of Natural Resources,
7 appointed by the commissioner of natural resources; and

8 (2) six rotating members, representing the region or regions in which
9 the nominated water is located, appointed by the commissioner:

10 (A) two representatives from a regional fishing organization;

11 (B) two representatives from a regional mining organization;

12 (C) two representatives from a regional tribal entity.

13 (c) The commissioner shall appoint rotating members of the board as soon as
14 practicable after the board receives a nomination that meets the nomination criteria
15 established under (g) of this section. The term of a rotating board member expires on
16 the date the board makes a final recommendation on a nomination under (f) of this
17 section. The applicable commissioner shall fill a vacancy on the board within 30 days.

18 (d) Members of the board do not receive a salary and are not entitled to per
19 diem and travel expenses authorized for boards and commissions under AS 39.20.180.

20 (e) Five members of the board constitute a quorum for the conduct of
21 business. A majority of the membership of the board must approve a final
22 recommendation on a nomination under (f) of this section.

23 (f) Within 60 days of receipt of a nomination, the commissioner shall
24 determine whether a nomination meets the criteria established under (g) of this section
25 and appoint the rotating members of the board. The board shall create a report to the
26 legislature describing the nominated water and providing a final recommendation for
27 or against designation of the nominated water within four months after the
28 appointment of a majority of the rotating members of the board. The board shall
29 consider nominations one at a time in the order that they are received.

30 (g) The department, in consultation with the permanent members of the board,
31 shall propose and adopt regulations that establish

1 (1) the process for the submittal of a nomination and for the submittal
2 of additional information related to a nomination;

3 (2) nomination acceptance criteria; regulations adopted under this
4 paragraph must include a requirement that a nomination demonstrate that the
5 nominated water is

6 (A) in relatively pristine condition, largely absent of human
7 sources of degradation, and of exceptional value to the state in its current
8 condition;

9 (B) of exceptional ecological, economic, or recreational
10 significance;

11 (C) an exceptional and rare example of its type, regardless of
12 its water quality; or

13 (D) proximate to, adjacent to, or within existing protected
14 waters;

15 (3) public notice and public hearings for all nominations meeting
16 qualifications under (2) of this subsection;

17 (4) a method to provide individual notice to known owners of land
18 adjacent to the nominated water; and

19 (5) scientific and other requirements that must be met before water can
20 be designated outstanding state resource water;

21 (6) guidelines and criteria that must be provided in a report to the
22 legislature under (f) of this section.

23 (h) The department shall provide staff for administrative support for the board.

24 (i) The board shall transmit to the commissioner the final recommendation and
25 report prepared under (f) of this section for each nomination for which a board was
26 appointed. Within 10 days after the convening of each regular legislative session, the
27 commissioner shall deliver each report and final recommendation received before
28 January 1 by the commissioner under this section to the senate secretary and the chief
29 clerk of the house of representatives and notify the legislature that the report is
30 available.

31 * **Sec. 2.** AS 46.03.900 is amended by adding a new paragraph to read:

1 (38) "outstanding state resource water" means water that is designated
2 by the commissioner under AS 46.03.085.

3 * **Sec. 3.** AS 46.03.085, 46.03.087, and 46.03.900(38) are repealed 11 days after the
4 convening of the Second Regular Session of the Thirtieth Alaska State Legislature.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	HB 283
Fiscal Note Number:	1
(H) Publish Date:	1/29/2016

Identifier: DEC-WQ-12-30-15
 Title: NATL. RES. WATER
 NOMINATION/DESIGNATION
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Environmental Conservation
 Appropriation: Water
 Allocation: Water Quality
 OMB Component Number: 2062

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
 If yes, by what date are the regulations to be adopted, amended or repealed? 06/30/17

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Michelle Hale, Division Director	Phone:	(907)465-5135
Division:	Water	Date:	12/30/2015 02:00 PM
Approved By:	Alice Edwards, Deputy Commissioner	Date:	01/08/16
Agency:	Department of Environmental Conservation		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

Analysis

Analysis/Assumptions:

The purpose of the legislation is to provide a process by which waters can be designated Outstanding National Resource Waters, or Tier 3 waters, by the Legislature. A process is required by the Clean Water Act, but has not yet been defined in Alaska. There are currently no Tier 3 waters in the state.

Work will be done by existing staff in the Division of Water. These staff already work extensively with the water quality standards that provide the framework for the required Tier 3 designation process. In addition, nominations for Tier 3 waters have already been received by the Division and are being tracked by water quality standards staff. The additional workload associated with forwarding the nominations to the Legislature will be incorporated by prioritizing the existing work.

Regulations may be promulgated to describe the process for nomination and the process for the interested or affected public to submit additional information. The Division has already done extensive work on draft regulations. After additional outreach and public notice, it is expected that regulations would be adopted by June 30, 2017.

Alaska Department of Environmental Conservation

Outstanding National Resource Waters

Frequently Asked Questions



What is an Outstanding National Resource Water (ONRW), or Tier 3 water?

ONRWs or Tier 3 waters are provided the highest level of protection under the antidegradation policy of the State of Alaska, which is required by the Clean Water Act. The purpose of an ONRW designation is to offer special protection for waters of "exceptional recreational or ecological significance."¹ ONRWs are often regarded as the highest quality waters of a state, though that is not a prerequisite characteristic.

What are the effects of an ONRW designation?

No new or increased discharges to an ONRW or its tributaries are permitted if the discharges would result in permanent lowering of water quality in the water (i.e., cause degradation). There are exceptions to allow activities that result only in a temporary, short-term, and limited change in the water quality of an ONRW; for example, for construction activities.

What type of discharges would not be allowed if there was an ONRW designation?

Discharges that would not be permitted into an ONRW include municipal storm water runoff, domestic wastewater (i.e., treated sewage) discharges, and any wastewater discharges from industrial operations such as mining projects.

How are land-use activities affected by an ONRW designation?

Projects that result in a long term lowering of ONRW water quality, through a discharge or other activity, would not be allowable. There are potential long-term, if not permanent, land-use consequences to designating ONRWs.

How are ONRWs designated?

There currently exists ambiguity in whether the Department of Environmental Conservation (DEC) or the Legislature has the authority to designate an ONRW. The Constitution says the Legislature makes land use designations (Article VIII Sect. VII), while Alaska Statute gives DEC general authority to set water quality standards (AS 46.03.080). The bill clarifies that authority. The bill creates a process by which nominations can be submitted to and compiled by DEC, then transmitted to the Legislature, with the Legislature making the final designation of ONRWs.

Why doesn't the bill direct DEC to designate ONRWs?

DEC already has tools for protecting water quality: Water quality standards, effluent limits in permits, methods for identifying and cleaning up impaired waters. An ONRW designation bypasses all of those tools. Given the far-reaching consequences of an ONRW designation, DEC believes the final authority should rest with the Legislature. The Legislature already has the authority to make other types of land use designations, including designation of state parks, marine protected areas, or special management areas.

Who can nominate or propose an ONRW?

Any resident of the state may nominate a water for ONRW designation.

¹ 18 AAC 70.015(a)(3)

Alaska Department of Environmental Conservation Outstanding National Resource Waters Frequently Asked Questions

What Alaska waters are currently designated as ONRWs?

Currently, there are no designated ONRWs in Alaska.

What waters in Alaska have been nominated for ONRW designation?

The Chilkat River, Kaktuli River, and the Bristol Bay Watershed have been nominated for ONRW designation.

What are the processes used by other states to designate ONRWs?

The process for ONRW designation is left to the states to define. Methods used by other states range from legislative designation to designation by a board or commission, to designation by a state agency.

What are examples of ONRW designations in other states?

Examples from other states include waters that are part of national or state parks, wildlife refuge or wilderness areas, special trout waters, federal Wild and Scenic Rivers or other unique. States including Washington, Oregon, Idaho, and Nevada have not designated any ONRWs; California has designated two, Lake Tahoe and Mono Lake; all waters in national parks are ONRWs in Montana, and Arizona has designated 22 waters as ONRWs.

What is “antidegradation?”

Antidegradation is a tool used to protect the water quality in the State of Alaska, determining whether and to what extent water quality may be lowered. The federal Clean Water Act requires states to have an antidegradation policy and implementation methods that:

- Protect existing uses
- Authorize the lowering of water quality in high quality waters, where necessary for social or economic importance
- Provide a mechanism to provide additional protection for water of exceptional ecological or recreational significance (ONRWs)

Alaska adopted an antidegradation policy in 1997, but has not yet established final accompanying implementation procedures. This bill will fulfill that requirement for ONRWs and with regulations scheduled for public notice in the summer of 2016 for the remaining implementation procedure requirements, bring Alaska into compliance with federal law.

For more information on Alaska’s antidegradation policy, visit:
<http://dec.alaska.gov/water/wqsar/Antidegradation/index.html>.

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Bill would put top water protection decisions in lawmakers' hands

Posted On Feb 02 2016 By : Emily Files Comments: 2



The Chilkat River in 2009. (Dave Bezaire/Flickr Creative Commons)

The Chilkat Indian Village in Klukwan is trying to preserve its main salmon resource – the Chilkat River — with the highest environmental protection available.

00:00

00:00

If the river is named an Outstanding National Resource Water, it would be protected from activities that degrade water quality. But there is no system in place in Alaska to evaluate this kind of water protection request. That could change with a bill in the State Legislature that would place these types of decisions in the hands of lawmakers.

The Chilkat River borders Haines and Klukwan, extending 50 miles in Southeast Alaska and Canada. For generations, it's provided salmon to the people in the Upper Lynn Canal.

"That's like our Fred Meyer, our Safeway, stores like that. That's where we get our food from," said Chilkat Indian Village tribal council president Jones Hotch Jr.

Hotch says this past summer was the worst subsistence harvest he's seen.

"I believe this is like a shot across our bow. Like a warning to us, a signal that we should do something."

That's why the village nominated the river as an Outstanding National Resource Water. The purpose of the designation is to give waters of 'exceptional recreational or ecological significance' the highest protection under federal law.

But right now, the law is in limbo. The Federal Clean Water Act requires states to put a method in place to evaluate these water nominations. But Alaska hasn't figured out a method yet. For years, the state Department of Environmental Conservation has worked toward regulations. They put out draft rules in 2014, but then decided to make revisions, which they are still developing.



Jones Hotch Jr. is the tribal council president of the Chilkat Indian Village in Klukwan. (Emily Files)

"The consequences of this protection level are that the water quality must be maintained and protected, which means that there would not be any allowable discharges to the water unless it was deemed to temporary in nature," said Earl Crapps, an environmental program manager with DEC.

In most Alaska waters, the state can allow activities that degrade water quality to a certain extent. With the Outstanding Resource status, also called a 'tier 3 designation,' no degradation is allowed, unless it is temporary and has limited impact.

Because of the strict limitations of that protection, some Haines residents are pushing back against the Chilkat River nomination.

"The economics of this town does not depend just on fish," Gary Hess said at a local Fish and Game Advisory Council meeting in January.

Some at the meeting wondered how the water protection would impact mining, logging and other industries. Right now, Constantine Metal Resources is conducting exploration in the Chilkat Valley for a potential mine.

"The mine, that's gonna be a big boom for Haines," Hess said. "I don't see any reason in the world that we have to go to the extreme limits of going to a tier 3."

The tribal council consulted with Haines water quality specialist Gershon Cohen on the nomination. He responded to the concerns:

"Would it preclude the mine being able to develop? The answer is no," Cohen said. "Would it make their bar high? Yes, it would. They would have to come up with a mine plan that demonstrated that they're not gonna degrade water quality. If they do that, DEC is allowed to let them go forward."

DEC's Crapps says because of the 'significant ramifications' of the protection, his department thinks it should be up to lawmakers to decide the fate of the Outstanding Resource proposals.

"The tier 3 designation goes beyond water quality," Crapps said. "It would have impacts in other areas. For example, land use may be restricted because any sort of degradation to the water wouldn't be allowable. And so because of that, it needed a higher level of approval authority."

Senate Bill 163 and House Bill 283 were introduced by request from the Governor in the legislature on January 29. If approved, DEC would submit Outstanding Resource nominations to the legislature once every year for a decision.

Right now, there are three nominations sitting on DEC's lap, waiting for a process to be decided. They are the Chilkat River, Kaktuli River and the Bristol Bay Watershed.

Hotch, from the Chilkat Indian Village, says he is not discouraged by the long wait or the resistance from other locals.

"Our resolve is strong," Hotch said. "This is not just for us, it's for our children's children's children. Down the line, the generations that are yet to come. And we want to do this to also honor the past members of the Chilkat Indian Village."

In the meantime, the bills that would give the legislature power to decide on the nominations have been referred to the house and senate resources committees.

Previous Story
KHNS News - Feb. 1, 2016

Next Story
Public input sought for new police chief, borough manager

2 Comments

Gary E. Hess *February 3, 2016 at 9:04 am* Reply

This issue was put forth to Klukwan by a member of LCC. The restrictions already put forth by the EPA are very stringent in regards to pollution of any stream or river. The old adage "be careful what you wish for" applies in this instance. In my opinion because of the initial involvement of LCC this is a thinly disguised effort to curtail any Mining, Logging & maybe even trying to get rid of River Adventures, as LCC have been trying to do for years! The populace should demand seeing what the proposal includes. We do not have to approve the proposal before we know the full extent of it. As I have said before, the Haines economy is in dire straits. We need jobs & the afore mentioned projects would & do bring jobs here. There already safeguards on the books to protect the environment. In closing I would like to ask. What has LCC ever done for the economic welfare of Haines?

Guy Archibald *February 3, 2016 at 8:32 am* Reply

This should be an administrative process by ADEC based on sound science and not turned into a political football by the legislature. What happened to the work group process? Why after almost 30 years since antidegradation went on the books does Walker want to do this now? Answer: Alaska does not want these rivers and communities protected.

Leave a Reply

Name *



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

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March 17, 2016

The Honorable Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 416
Juneau, AK 99801

Dear Representative Stutes,

Thank you for hearing House Bill 283: National Resource Water Nomination/Designation on March 15th. Below, I have provided supplemental responses to some of the questions that came up during that hearing.

When were the EPA regulations put forth requiring states to have a process to designate Tier 3 water? (Rep. Kreiss-Tomkins)

The Clean Water Act was first passed in 1972 (was amended and actually renamed the Clean Water Act in 1977). The Federal Register citation for 40 CFR 131.12 is 48 FR 51405 published on Nov. 8, 1983. The federal Clean Water Act requires states to adopt water quality standards that include an antidegradation policy and implementation methods.¹ Alaska adopted its antidegradation policy, which mirrors requirements in federal regulations, in 1997.² The policy establishes requirements that must be met to authorize a reduction in existing water quality. The process outlined in the policy was used for years, but in response to case law in other jurisdictions – and on a general APDES permit for Cook Inlet – the Department of Environmental Conservation (DEC) developed interim antidegradation implementation methods that were adopted in 2010.³ At that time, EPA recommended that the state establish a stand-alone Tier 3 designation process, outside the permit process.⁴ Alaska has so far not promulgated a standard that has been submitted to EPA for approval.

Do you have a legal opinion describing the ambiguity in authority over who designates a water as an Outstanding National Resource Water (ONRW)? (Rep. Kreiss-Tomkins)

DEC obtained the following response from the Department of Law:

¹ 40 C.F.R. 131.12.

² 18 AAC 70.015.

³ Interim Antidegradation Implementations Methods, State of Alaska, Dept. of Env'tl Cons., Policy and Procedure Number 05.03.103, July 14, 2010.

⁴ *Id.*, at 5.

EPA's regulations directing each state to develop and adopt a statewide antidegradation policy and implementation methods includes a requirement (40 C.F.R. § 131.12(a)(3)) that:

“Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.”

These “Outstanding National Resources Waters” are also referred to as “ONRWs” and “Tier 3” waters. There are three levels of water quality protection described in EPA's regulations with Tier 3 being the water getting the highest level of protection. No new pollution may be discharged into a Tier 3 water with very limited and temporary exceptions. Tier 3 waters are essentially preserved in their existing state much like land that is being managed as a park or refuge.

The argument that DEC does have statutory authority to designate Tier 3 waters stems from DEC's water quality and purity standards authority, AS 46.03.080, and its general authority under AS 46.03.020(9) to act as the official agency to deal with federal environmental laws. Under that authority, DEC is arguably the agency that complies with the EPA regulatory requirement for the state to have the equivalent of a Tier 3 protected waters category (40 C.F.R. § 131.12(a)(3)), and therefore to develop an implementation process for designating Tier 3 waters. This is the position the state's Legislative Affairs Agency took in 2014.⁵

The argument that DEC does not have statutory authority stems from two sections of Article VIII of the Alaska Constitution. First, Article VIII, § 7, holds that, “the legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”⁶ Second, Article VIII, §2, holds that “the Legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of the people.”⁷ As the highest level of protection afforded a water of the state and in conjunction with the language of 40 CFR 131.12(a)(3), the Department of Law has advised DEC that a Tier 3 water could be a “state natural resource.” As such, Article VIII § 7 would seem to apply to the designation of a Tier 3 water. Similarly, since development and utilization of a water is significantly restrained once a Tier 3 designation is applied, Article VIII §2 would seem to apply as well. Supporting this interpretation is the fact the Legislature, not any state agency, has designated parks, refuges and other protected areas in the state in other instances.

In summary, the uncertainty stems from whether a Tier 3 designation is more appropriately classified as a reservation of a public area for preservation purposes, or is simply a water quality and purity standard. The Legislature has delegated a general authority to DEC under AS 46.03.080 and AS 46.03.020(9) to establish water quality and purity standards. However, it is arguable that this

⁵ Proposed Regulations Relating to State Water Quality Antidegradation Policy (18 AAC 70.015), State of Alaska Legislative Affairs Agency, Div. of Legal and Research Services, March 3, 2014.

⁶ Alaska Const. art. VIII, §7.

⁷ Alaska Const. art. VIII, §2.

designation would extend to the irrevocable reservation of a water body from essentially all development.

This uncertainty is partly related to public policy as well as legal authority. Since a Tier 3 designation has far reaching consequences, and is possibly irreversible, it may make for better public policy to put such a decision in the hands of the elected representatives rather than appointed officials. Doing this would also provide the opportunity for the Legislature to craft specific measures to protect special waters of the state without having to necessarily limit other activity or uses that would be precluded under a Tier 3 designation by DEC.

How many states don't have a defined process outside the default legislative process (Rep. Kreiss-Tomkins)

See the enclosed '50 States ONRW Policies and Implementation Methods Table' that was published by the Idaho Department of Environmental Quality in 2010. It would take DEC staff some time to update this information, but because it gives the citations to other state antidegradation provisions, we felt it would be helpful in more quickly researching options.

How do water bodies get classified or move between Tiers 1 and 2?

See the enclosed 'Tier Descriptions and Movement between Tiers.'

How is Lake Tahoe managed across state boundaries when it's designated Tier 3 in California but not in Nevada? (Rep. Johnson)

Lake Tahoe was designated as an ONRW by California in 1980 and a "water of extraordinary ecological or aesthetic value" in Nevada (Nevada doesn't have a Tier 3 process). On both sides of the boundary, the lake is managed under a Total Maximum Daily Load (TMDL) program – a method to reduce pollution over time – to restore the lake's water clarity.

Could you provide clarification on whether department's intentions are that the appropriation envisioned gives the department the authority to designate a water body, or is an appropriation plus another action (i.e., a bill) necessary? (Rep. Johnson)

Given the current budget situation, DEC would not have sufficient funds in its operating budget to analyze and vet nominations it receives. One funding option (as is described in the bill), would have the public bring nominations to DEC, who would gather them and periodically (at the start of a new Legislature, e.g.), transmit a list to the Legislature along with information received from the nominator or other member of the public. At this point, the department would not have started analyzing the material or have had public hearings. If the Legislature wanted DEC to dig deeper, look at science, economics, policies, talk with other agencies, adjoining land owners, the public, etc., the Legislature would provide an appropriation and direction for DEC (working with the other resource agencies) to do that. The department could come back to the Legislature by a given deadline (the start of the next session e.g.) with a report or recommendation.

An appropriation to DEC to do an analysis of a Tier 3 nomination would not be a de facto designation of that waterbody.

An alternative funding option would be to have the DEC process Tier 3 nominations similar to how it processes a permit request, where the cost of the processing is largely borne by the applicant and the applicant is responsible for contributing reliable data and supporting analyses, maps, etc. For example, DEC would receive the nomination and initial supporting material; DEC (with DNR and DF&G) would estimate the cost of performing the necessary agency analyses and preparing the required reports and enters into a funding agreement with the applicant to pay for that work; DEC submits a capital budget request to the Legislature for sufficient program receipts to cover the estimated cost of the work. The bill would also need provisions that allow DEC not to proceed with work on a nomination unless and until it had the needed funding to do this work.

We hope these responses prove useful to the Committee. If there are further questions or follow up on these issues, please feel free to contact us.

Sincerely,



Larry Hartig
Commissioner

Enclosures: '50 States ONRW Policies and Implementation Methods Table'
'Tier Descriptions and Movement between Tiers'

The following table has been compiled as a reference guide for finding antidegradation policy and implementation methods for other states and territories in the nation. The date of rule and date of implementation method refer to the date that individual states identify as the most current version of either rule or implementation method. The submittal date is when the state submitted the rule for approval to EPA. The effective data for Clean Water Act purposes refers to the date that EPA sent the letter approving the rule or in some cases implementation methods. Every effort was made to find the most current version available online, however due to the dynamic nature of the internet, some links may have changed. This document will be updated as more information becomes available regarding EPA approval status.

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Alabama	<u>335-6-10-.04 Antidegradation Policy</u>	Jan. 19, 2010				<u>335-6-10-.12 Implementation of the Antidegradation Policy</u>				
Alaska	<u>18 AAC 700.015 Antidegradation Policy</u>	Nov. 1, 1997				<u>Implementation</u>	In development			
Arizona	<u>A.A.C. R18-11-107 Antidegradation Policy</u>	Apr. 24, 1996				<u>Implementation</u>	Draft Apr 2008		Y	Jan. 21, 2009
Arkansas	<u>Regulation No. 2</u>	Oct. 26, 2007								
California	<u>Policy</u>	1968		Y	1990	<u>Memo</u>	1987			
Colorado	<u>5 CCR 1002-31.8 Antidegradation Policy</u>	Nov. 30, 2009				<u>Implementation</u>	Dec. 2001			
Connecticut	<u>Policy</u>	2002				<u>Implementation (Appendix E)</u>	Dec. 17 2002			
Delaware	<u>DAC Title 7.7401 Antidegradation Policy Section 5</u>	July 11, 2004		Y		<u>Implementation (Section 5)</u>	July 11, 2004			

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Florida	<u>FAC 62-302.300 Antidegradation Policy</u>	May 11, 2006				Not Found				
Georgia	<u>Chapter 391-3-6-.03 (2)</u>	July 2000				Not Found				
Hawaii	<u>HAR 11-54-01.1</u>	April 17, 2000		Y	April 2000	Not Found				
Illinois	<u>35-C-1.302.105</u>	Aug. 9, 2006	9/17/02	Y	8/2/05	<u>35-C-1.302.105 & 35-C-1.302.521</u>	Aug. 9, 2006	9/17/02	Y	8/2/05
Indiana	<u>327 IAC 2-1-2 Maintenance of Surface Water Quality Standards</u>	Jan. 14, 1997	1/14/97	Y	8/4/00	<u>Draft Rule</u> <u>More info</u>	Jun. 19, 2009	NA	NA	NA
Iowa	<u>567 Chapter 61, Section 61.2(2) Antidegradation Policy</u>	Jan 13, 2010	Not yet submitted			<u>Implementation</u>	Feb. 17, 2010	Not yet submitted		
Kansas	<u>KAR 28-16-28c General Provisions (a) Antidegradation</u>	Apr. 27, 2005				<u>Implementation</u>	Aug. 6, 2001			
Kentucky	<u>Title 401 Chapter 5:029 General Provisions Section 1. Antidegradation Policy</u>	Dec. 17, 2004				<u>401 KAR 10:030. Antidegradation policy implementation methodology</u>	June 16, 2008	Nov. 13, 2009	N	

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Louisiana	<u>LAC33.IX.1109 A. Antidegradation Policy</u>	May 12, 2000				<u>Draft Implementation Procedures</u>	Aug. 2009			
Maine	<u>38 MRSA 464(4)(F)</u>	June 13, 2001				<u>Memo</u>	June 13, 2001			
Maryland	<u>COMAR 26.08.02.04: Antidegradation Policy</u>	May 24, 2005		Y		<u>COMAR 26.08.02.04-1 Antidegradation Policy Implementation Procedures & COMAR 26.08.02.04-2 Outstanding National Resource Water</u>	May 24, 2005			
Massachusetts	<u>314 CMR 4.00 Section 4.04 Antidegradation Provisions</u>	Feb 23, 1996				<u>314 CMR 4.00 Implementation Procedures for the Antidegradation Provisions</u>	Oct. 21, 2009			
Michigan	<u>MAC: Water Resources Protection Part 4. Water Quality Standards, R 323.1098</u>	Apr. 2, 1999		Y	8/4/00	<u>Implementation</u>	Apr 12, 2005	NA	NA	NA

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Minnesota	<u>MAR 7050:0185 Nondegradation for all waters</u>	Oct. 11, 2000		Y	1984 OSRW 1988 all other waters	<u>Implementation</u> <u>More Info</u>	Jan 2007	NA	Y	1984, 1988
Mississippi	<u>Water Quality Criteria for Intrastate, Interstate, and Coastal Waters Section I.1</u>	Aug. 23, 2007				<u>Implementation</u>	Jan. 28, 2010			
Missouri	<u>10 CSR 20-7.031(2) Antidegradation</u>	Oct. 31, 1999				<u>Implementation</u>	May 7, 2008			
Montana	<u>Montana Code Annotated 2009 75-5-303 Nondegradation Policy</u>	June 30, 2008		Y	Feb. 13, 2001 2003 and 2008 approvals vacated by court decision	<u>17.60.706 through 17.30.716</u>	June 30, 2008		Y	Feb. 13, 2001 2003 and 2008 approvals vacated by court decision
Nebraska	<u>Title 117, Chapter 3: Antidegradation Clause</u>	March 22, 2009				<u>Antidegradation Implementation Procedures for Title 117</u>	May 23, 2001			
Nevada	<u>NRS 445A.565</u>	1995				Not Found				
New Hampshire	<u>PART Env-Wq 1708</u>	Dec. 10, 1999				<u>Vol I. Stormwater and Antidegradation</u>	Dec. 2008			

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
New Jersey	<u>NJAC 7:9B-1.5(d) Antidegradation</u>	Jan. 4, 2010	March 30, 2010	Y	originally approved in 1985	<u>More Info</u> <u>Category 1 Implementation</u>				
New Mexico	<u>NMAC 20.6.4.8</u>	Aug. 1, 2007				<u>Implementation in CPP</u>	Dec. 14, 2004			
New York	<u>Policy Memo</u>	Sept. 9, 1985	Sept. 11, 1985	Y	Sept. 26, 1985	<u>Implementation</u>	Sept. 9, 1985	Sept. 11, 1985 Feb 26, 1998	Y Y	Sept. 26, 1985 Oct. 6, 2000
North Carolina	<u>NCAC 15A.02B.0201</u>	Oct. 1, 1996				Not Found				
North Dakota	<u>NDAC Chapter 33-16-02.1 Purpose</u>	June 1, 2001				Not Found				
Ohio	<u>OAC 3745-1-05</u>	Dec. 15, 2009	4/13/03	Y	6/27/03	<u>Guide to Ohio EPAs Antideg</u>	July 1, 2003			
Oklahoma	<u>OAC 785:45-3-1 and -2 Antidegradation</u>	Nov 14, 2006				<u>Implementation Plan</u>	Nov 14, 2006			
Oregon	<u>OAR 340-041-0004</u>	March 2, 2004				<u>Internal Management Directive</u>	March 2001			

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Pennsylvania	<u>PC 25.93.4a Antidegradation</u>	July 17, 1999		Y	March 17, 2000 except Section 93.4b. Full approval Mar. 7, 2007	<u>Implementation Plan</u>	Nov. 29, 2003		Y	Mar. 7, 2007
Puerto Rico	<u>40CFR131.42 (Impl. Proc.)</u>	Dec. 12, 2007	N/A	N/A	Jan. 11, 2008	<u>40CFR131.42</u>	July 1, 2009			
	PRWQSR (Policy)	March 28, 2003	March 28, 2003	Yes	June 26, 2003					
Rhode Island	<u>EVM 112-88.97-1 Rule 18</u>	Jan. 4, 2007				<u>EVM 112-88.97-1 Rule 18 (Appendix C)</u>	Dec. 2009			
South Carolina	<u>R.61-68 Section D. Antidegradation Rules</u>	April 25, 2008				<u>Implementation</u>	July 1998			
South Dakota	<u>ARSD 74:51:01:34 through 74:51:01:39</u>	July 20, 1997				<u>Implementation</u>	Oct. 1998			
Tennessee	<u>TCA 1200-4-3.06</u>	Oct. 24, 3006	July 20, 2007	Y	March 27,2008	<u>Implementation in rule</u>	Oct 24, 2006	July 20, 2007	Y	March 27,2008
Texas	<u>30 TAC 307.5</u>	Aug. 17, 2000				<u>Implementation</u>	Jan 2003			
Utah	<u>R317-2-3</u>	March 1, 2010				<u>Implementation in rule More info</u>	March 1, 2010	March 22, 2010	Y/N	April 26, 2010

State	Rule	Date of Rule	Submittal Date	Approved (Y/N)	Effective Date for CWA	Implementation Method	Date of Method	Submittal Date	Approved (Y/N)	Effective Date for CWA
Vermont	<u>Vt. Code R 12-004-052 Section 1-03</u>	Jan. 1, 2008				<u>Implementation in progress</u>	Apr. 2010			
Virginia	<u>9VAC25-260-30</u>	Feb. 1, 2010		Y		<u>Implementation in rule</u> <u>More info</u>	Feb 1, 2010			
Virgin Islands	VIWQSR Sec.186-7	October 8, 2004	April 7, 2005	Y	May 26, 2005	none				
Washington	<u>WAC 173-201A Part III Antidegradation</u>	Nov. 20 2006		Y	May 2, 2007	<u>Tier 2 Implementation</u> <u>More info</u>	July 18, 2005	NA		
West Virginia	<u>47-2-4 Antidegradation Policy</u>	2008		Y		<u>Title 60 Series 5</u>	2008			
Wisconsin	<u>NR 207.03</u>	Apr. 2010	1988	Y	1988(?)	<u>More info</u>	2010	1988(?)	Y	1988
Wyoming	<u>Chapter 1 Section 8</u>	Apr. 25, 2007		Y	Jan. 25, 2002	<u>Implementation</u>	Feb. 2007			

Classification of Water: A Description of Tiers 1-3

Per the Clean Water Act, Alaska's water quality antidegradation policy¹ creates three classifications, or "tiers," of waters.²

Tier 1 waters are waters for which not all water quality criteria are met. This can be due to naturally occurring constituents in the water, or can be due to pollutants introduced by humans.

Example of a naturally-occurring Tier 1 water: Red Dog Creek runs through an area that contains natural ore bodies, resulting in naturally (pre-mining) high concentrations of cadmium, lead, zinc, aluminum, and other metals in the creek.

Example of a human-caused Tier 1 water: The Chester Creek watershed in the urban area of Anchorage is impaired by fecal coliform bacteria. Human activities in the area, such as dog walking and bird feeding, contribute to this pollution.

Permitting in a Tier 1 water: The Tier 1 permitting process is largely the same process as for Tier 2 (below) because water quality criteria are normally met for *some* constituents.

Tier 2 waters are "high-quality waters," which include the vast majority of waters in Alaska. In these waters, all water quality criteria are met.

Example of a Tier 2 water: Gastineau Channel near Juneau is an example of a high quality water into which discharge from the Juneau-Douglas Wastewater Treatment Plant is permitted.

Permitting in a Tier 2 water: For a Tier 2 water, the water quality must be maintained or protected unless DEC authorizes a reduction in water quality following prescribed and rigorous permitting methods. In the permit, DEC must conclude and demonstrate that:

- Allowing the lowering of water quality is necessary to accommodate important economic or social development,
- Water quality criteria will not be violated, except in an authorized mixing zone,
- Existing uses of the water will be fully protected (under the Clean Water Act, these uses include drinking water, swimming, and aquatic life, e.g.)
- Effective and reasonable treatment methods will be used, and
- Statutory and regulatory requirements are met.

Tier 3 waters are waters found by a State process to be of exceptional significance or unique.

Example of a Tier 3 water: There are no Tier 3 waters in the State of Alaska. In California, one of two Tier 3 waters is Mono Lake. Mono Lake is 2-3 times saltier than the ocean and is an alkaline lake with a pH of 10 (designated for its uniqueness rather than water purity).

Permitting in a Tier 3 water: The quality of water in a Tier 3 water must be maintained and protected. Discharges that add any additional pollutants to a water can only be temporary or limited; for example, runoff from a construction project.

¹ For more on Alaska's Antidegradation Policy, visit: <http://dec.alaska.gov/wqsar/Antidegradation/index.html>.

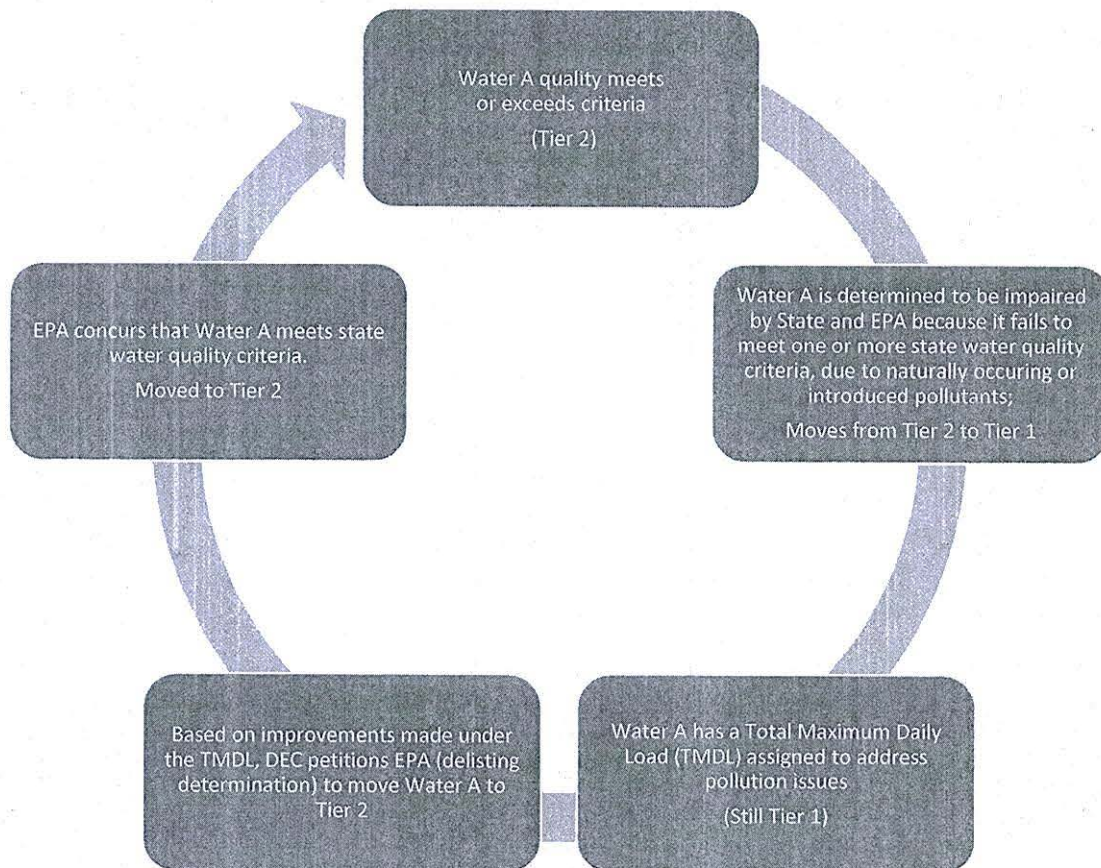
² 18 AAC 70.015

Movement between Tiers of Water

It is important to note that Tiers 1 and 2 are based strictly on science-driven water quality parameters, while Tier 3 is a designation independent of the process for Tier 1 and 2, and allows for consideration of social values, e.g. Thus, a Tier 1 (polluted or impaired) water could be designated as a Tier 3 water.

Under the Clean Water Act, each state is required to provide a comprehensive integrated report of water quality to the EPA. The report documents a comprehensive evaluation of the status and health of each water body in the State of Alaska and describes state programs for maintaining or improving the quality of Alaska's waters.

In addition, this report describes the process for evaluating whether waterbodies attain water quality standards (Tier 2) or are impaired (polluted or Tier 1). The reporting process includes classifying each waterbody depending on its health; determining which waterbodies need further action; scheduling when each impaired water body will be addressed; involving the public in determining how water quality will be addressed; and determining how waterbodies are removed from the impaired water body list, thus returning them to Tier 2. EPA is ultimately responsible for the approval/disapproval of the Integrated Report which includes impaired water determinations (Tier 1), Total Maximum Daily Load (TMDL) development to mitigate impairment, and delisting determinations for waters that meet all water quality criteria (Tier 2).



Note that this is a very simplified version of the process



UNITED FISHERMEN OF ALASKA

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March 9, 2016

Representative Louise Stutes, Chair
House Special Committee on Fisheries
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: Opposition for HB 283 as written regarding Outstanding Natural Resource Waters

Dear Chairman Stutes and Committee Members,

United Fishermen of Alaska (UFA) is the statewide commercial fishing trade association, representing 34 commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters. Fifteen of our 36 member organizations represent salmon fisheries that are dependent on Alaska's outstanding water quality and habitat for continued production, and another eight are salmon aquaculture associations that are subject to APDES permitting for discharges.

In 2014 UFA submitted comments to DEC regarding proposed implementation methods for Alaska's water quality antidegradation policy regulations (attached). In our 2014 comments we expressed concern about the legislature's ability to approve or deny applications for Tier 3 Outstanding Natural Resource Waters (ONRW) within the very short time frame of a legislative session. We also suggested a process within DEC or a multi-agency effort to adjudicate ONRW applications.

On that note, we are opposed to HB 283 as it is currently written. We believe that Tier 3 water quality designation decisions should be made by the professional water quality managers at DEC and other state agencies. This process should not be forced into the political arena. UFA believes a multi-agency process that includes DEC, DNR and ADF&G should be implemented to determine which Alaska waters should be designated for Tier 3 protection with a public hearing as part of the process.

We thank you for the opportunity to provide testimony.

Sincerely,

Jerry McCune
President

Mark Vinsel
Executive Administrator

MEMBER ORGANIZATIONS

Alaska Bering Sea Crabbers • Alaska Independent Fishermen's Marketing Association
Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association • Alaska Scallop Association • Alaska Trollers Association
Alaska Whitefish Trawlers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve • Cape Barnabas Inc.
Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United • Douglas Island Pink and Chum
Freezer Longline Coalition • Golden King Crab Coalition • Groundfish Forum • Kenai Peninsula Fishermen's Association
Kodiak Regional Aquaculture Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owner Association
Seafood Producers Cooperative • Southeast Alaska Herring Conservation Alliance • Southeast Alaska Fisherman's Alliance
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association



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April 16, 2014

Earl Crapps
ADEC Division of Water
555 Cordova St
Anchorage, AK 99501
By Email: earl.crapps@alaska.gov

RE: Proposed implementation methods for water quality antidegradation policy

Dear Mr. Crapps,

United Fishermen of Alaska is the statewide commercial fishing trade association, representing 36 commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters. Fifteen of our 36 member organizations represent salmon fisheries that are dependent on Alaska's outstanding water quality and habitat for continued production, and another eight are salmon aquaculture associations that are subject to APDES permitting for discharges. Commercial fishing vessels currently do not require NPDES permits for discharges incidental to normal operation. However, unless Congress takes additional action, the moratorium from the requirement to obtain permit coverage for incidental discharges from these vessels under a vessel general permit expires December 18, 2014.

We appreciate the opportunity to comment on the proposed regulation changes 18 AAC 70.016 and 70.017 establishing implementation methods for water quality antidegradation policy, and we thank the department for extension of the public comment period. The State's salmon bearing waters are protected by ADF&G Habitat Division permitting on activities including discharges if they are listed in the State's Catalog of Anadromous Waters, but the catalog is far from complete, so we see antidegradation regulations as another essential tool in protecting salmon and the habitat they require.

We commend the department on the implementation approach of a public workgroup process including stakeholders and representatives of affected state agencies and concerned organizations.

Below are our comments on the proposed regulations, first with general comments and then by section, in the order in which they appear:

In general, we support regulations that are clear and unambiguous. We note recurring usage of the phrase "in its discretion" and ask that these be eliminated where necessary to clarify the role of the department as required steps or considerations, not subject to discretion as to whether these steps or requirements are carried out. The final selection of the permitted alternative at the

end of the process may involve the discretion of the department, but tasks in the process should not be bypassed discretionarily.

We do not support that in implementing these regulations it is necessary to repeal **18 AAC 70.016(a)(2)(D)**, which reads:

“(D) the methods of pollution prevention, control, and treatment found by the department to be the most effective and reasonable will be applied to all wastes and other substances to be discharged; and”

We believe that this section is consistent with the federal antidegradation statutes and is appropriate to retain in the overriding policy, as it is important in conveying that alternatives shall be included for consideration by DEC in an antidegradation analysis, and is clear that DEC select the most effective and reasonable option. The removal of this implies that DEC might permit an option that is less effective and reasonable than alternatives, which seems contrary to common sense and prudent policy.

18 AAC 70.016 (a) (4) We support that an antidegradation analysis is subject to the public participation and intergovernmental review procedures under 18 AAC 70.015(c).

18 AAC 70.016 (a) (5) (A through H) We ask that information be included on any salmon species known to use the waterbody, including the noting of any waterbodies included in the Catalog of Anadromous Waters, within or downstream of the proposed activity. In **(G)**, we are unclear on why the determination of the highest applicable antidegradation tier level for each pollutant or parameter of concern would be submitted by the applicant, and suggest that the determination of applicable tier for a given pollutant is the department’s responsibility, not the applicants, as conveyed in 18 AAC 70.016 (c) (1).

18 AAC 70.016 (a) (6) We have concern with:

*“the applicant **may** submit sufficient credible baseline water quality information, measured or modeled, for the receiving water in order for the department to determine the applicable tier level.”*

We are concerned that this language is vague and that modeling is not necessarily sufficient, considering that each waterbody is unique and an application for discharge is site specific. We understand that some applicants may not have the ability to obtain thorough measurement of water quality and volume through different seasons over a period that would provide the necessary information for a tier 2 determination. The regulations are not clear as to what the department will do if the applicant chooses not to submit baseline water quality information. We suggest that “may” be changed to “shall” in this passage, or further clarification given to the process the department would use to conduct the tier 2 analysis if not provided with necessary information. We recommend not permitting discharges without adequate site specific water quality and quantity information.

18 AAC 70.016 (b) and (c) Tier 1 & 2

We support the pollutant by pollutant, parameter by parameter approach, as salmon are particularly sensitive to specific pollutants. This best protects water quality and allows the appropriate classification in cases where a specific pollutant might pose a risk. In supporting this approach we also note, however, that little is known about the synergistic or biomagnifying

effects on salmon or aquatic life from a combination of different toxins at levels that individually may not pose harm (see comment below on 18 AAC 70.016 (c) (3)).

18 AAC 70.016 (c) (2)

We have general concern with de-minimis exemptions, and feel they would only be appropriate in cases where the degradation activity is of very short duration in waters of high flushing, such as incidental discharge in the normal operation of commercial fishing vessels, and temporary net pens that hatchery operations use temporarily to imprint salmon to return to approved locations. Alaska's salmon hatcheries are subject to NPDES permitting for raceways but "*net pens rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries*" are exempted from permitting in the EPA Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category (Federal Register August 23, 2004, online at <http://www.epa.gov/fedrgstr/EPA-WATER/2004/August/Day-23/w15530.htm>).

We ask that de minimis exemptions in Tier 2 applications be very limited and closely defined, and not be allowed for pollutants that are known or become known to "biomagnify" in their effects on salmon and aquatic life (see comment below on 18 AAC 70.016 (c) (3)).

We have concerns with the arbitrary 5% threshold over the existing, permitted or allowable discharge level, because it would become problematic in situations with successive "de minimis" applications for discharge in the same waterbody.

18 AAC 70.016 (c) (2) (B) & (C)

In this section it appears that the word "and" is incorrectly placed in the line below where it belongs, as the passage does not seem to make grammatical sense. We suggest placing it as it appears in brackets and removing it from where we show it in strikethrough below:

*"The proposed discharge will not cumulatively decrease the available assimilative capacity of the receiving water by more than five percent from the conditions as of the initial date of this section; the cumulative lowering of water quality must take into account all sources in the receiving water, [and]
(C) the following conditions are met; ~~and~~
(i through iv)"*

18 AAC 70.016 (c) (3)

In general we have concerns with this section because it allows for categorical exemptions. Discharges allowed without antidegradation analysis under general permits and de minimis exceptions may benefit from being reviewed at some time to be analyzed based on new information – especially the synergistic effects of different contaminants that are currently not well understood. A 2008 Pacific Northwest study noted:

"Although the effects of individual anticholin-esterase insecticides on aquatic species have been studied for decades, the neurotoxicity of mixtures is still poorly understood...

"We observed addition and synergism, with a greater degree of synergism at higher exposure concentrations. Several combinations of organophosphates were lethal at concentrations that were sublethal in single-chemical trials..."

The Synergistic Toxicity of Pesticide Mixtures: Implications for Risk Assessment and the Conservation of Endangered Pacific Salmon
Cathy A. Laetz,¹ David H. Baldwin,¹ Tracy K. Collier,¹ Vincent Hebert,² John D. Stark,³ and Nathaniel L. Scholz¹
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661902/>

In addition, new technologies may be developed or new market opportunities for discharged matter may become cost-effective to provide a practicable “no discharge” alternative to an ongoing discharge. The antidegradation review would provide a mechanism to promote adoption of new technologies or practices that could reduce degradation, which otherwise might not become apparent to the permittee.

We are especially concerned with (C) in this section which seems to mean that a rogue operation that “required but did not apply or receive a permit”, would be categorically exempted from antidegradation analysis.

All in all, we feel that the only appropriate categorical exemption, if any, would be renewal of discharges that had previously undergone antidegradation analysis in some reasonable time frame such as ten years, and are not proposing an increase in discharge.

18AAC 70.015 (c) (5) (B) Requirements of a Tier 2 application:

We are concerned with the use of “*such as*” preceding the list of practicable alternatives for the proposed discharge, as ask that (i), the non-discharge alternative analysis, be required rather than suggested as inferred by the phrase, “*such as*”. In this passage we also recommend that analysis of (iv) *seasonal discharges to avoid critical ecological time periods* be required in any waters included in the Catalog of Anadromous Waters, so that consideration of the various life stages of salmon in a system is assured.

18AAC 70.015 (c) (5) (E) We have concern that the applicant would identify the least degrading practicable alternative in their application. While they may have a preferred alternative, the determination of the least degrading practicable alternative is the responsibility of the department in its analysis, and this alternative should be required in the permit.

18AAC 70.015 (c) (6) (A & B) We have concerns that the requirement for either a social or economic importance analysis seems to only require description of the positive benefits of a degradation proposal. These analyses should also include consideration of negative effects. In (B), the economic importance analysis should also consider if there are economic effects outside the area where the receiving water is located – which is often the case with salmon bearing waters that provide resource for commercial, subsistence, personal use and sport activity far beyond the local area.

18 AAC 70.016 (e) - General permit antidegradation analysis

We have concerns that this section is very loosely defined and is not clear on the potential range of waterbodies and activities that might be included or allowed in a general permit, as the effects of discharges are cumulative and site specific. We also have concerns with the interplay of de minimis exemptions in applications under a general permit, and would support clear language that defines parameters for general permits, limits on the geographical extent, and analysis of combined effects of proposed activities. Similarly to de minimis exemptions, we suggest that general permits be very limited and closely defined.

18 AAC 70.017 Tier 3 Outstanding National Resource Water

In (a) of this section, “Tier 3 water shall be designated in statute.” We interpret that this would require approval from the legislature, but we are not confident in the practical ability of a legislature to accomplish this in one or two 90 day regular sessions. We suggest that language

should clarify a process within DEC and/or a multi-agency board that would allow the legislature the practicable opportunity to approve a designation in a single 90-day session.

18 AAC 70.017 (a)(3) We have concerns with the requirement for Tier 3, Outstanding National Resource Waters: *“the water must have exceptional characteristics relative to other state of Alaska water”* and (3) *“the water is an exceptional and rare example of its type regardless of whether the water is considered high quality.”* We note the wording “National” rather than “State” resource waters. We feel that waters of exceptional characteristics may well be situated near others that may also be exceptional, and the fact that Alaska has more waters of outstanding quality than the other states does not diminish their value or the justification for protection at the highest tier. Waterbodies should not be precluded from Tier 3 classification based on presence of other nearby exceptional quality waterbodies, if they would otherwise qualify.

18 AAC 70.017 (b) We support the proposed regulations allowing that nomination for Tier 3 classification may be submitted by any resident of Alaska, but nominations should also be allowed to be made by organizations, corporations, tribes, or State agencies.

In summary, we thank you for the opportunity to provide these comments under the extended deadline, and for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julianne Curry', written in a cursive style.

Julianne Curry
Executive Director

March 17, 2016

Governor Bill Walker
Alaska State Capital Building
Third Floor

Darwin Peterson
Legislative Director for the Office of the Governor
Alaska State Capital Building

Dear Governor Walker and Mr. Peterson,

The Alaskans in the following letter attempted to email testimony to the Governors office regarding SB 163 and HB 283 and received an auto-response redirecting them to the Governor's website. Thank you for your attention to the important perspective of the nearly 500 Alaskans signed on to this letter.

Please do not hesitate to contact me with any questions or concerns that you may have.

Sincerely,

Melanie Brown
Bristol Bay Commercial Fisher and
Independent Contractor
(907) 244-1169

Cc: Senator Cathy Giessel, Chair, Senate Resources Committee
Cc: Representative Louise Stutes, Chair, House Fisheries Committee

3/17/16

Governor Bill Walker
Alaska State Capitol Building
Third Floor

Subject: Withdraw your support for SB 163 and HB 283

Dear Governor Walker,
CC: Sen. Cathy Giessel, Chairwoman, Senate Resources Committee
CC: Rep. Louise Stutes, Chairwoman, House Fisheries Committee

You were elected by Alaskans who wanted to have a greater voice in public process, resource permitting and habitat protection, please withdraw your support for SB 163 and HB 283. This legislation seeks to cut out the public from having a voice in fish protection and is a waste of time and energy. Majority legislative approval is virtually an impossible hurdle given the nature of the legislative process. The decision to designate a waterbody for specific protection should be science-based and informed by the resource protection agencies.

You can stop this bill in its tracks by simply withdrawing your support. It is time to show Alaskans what it means to be a leader who put our people and our fish first.

Sincerely,

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