

SCOMM

138:17

ALASKA STATE LEGISLATURE

Chair
STATE AFFAIRS

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RESOURCES

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HEALTH, EDUCATION AND SOCIAL SERVICES

Member
WAYS AND MEANS



REPRESENTATIVE PAUL SEATON
House District 35

Session:
State Capitol Building
Juneau, Alaska 99801
Phone 907-465-2689
Fax 907-465-3472
1-800-665-2689
Rep.Paul.Seaton@legis.state.ak.us

Interim:
345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
Phone 907-235-2921
Fax 907-235-4008

MEMORANDUM

From: Representative Paul Seaton
To: House Fisheries Co-Chair Representative Bill Thomas
House Fisheries Co-Chair Representative Gabrielle LeDoux
Date: 1/12/2006
Re: HB 328 Bill Hearing Request

I would like to respectfully request that HB 328 be scheduled in House Fisheries at your earliest possible convenience. HB 328 transfers the prohibition on pollution mixing zones in freshwater spawning areas from regulation to statute.

Please find the following attachments:

1. HB 328
2. Sponsor Statement
3. Sectional Analysis
4. HB 328 Support
5. Current regulations prohibiting mixing zones in freshwater spawning areas
6. Proposed 2004 and 2005 regulation change lifting the prohibition
7. Legal opinion on 2005 regulatory proposal language
8. Opposition to proposed lifting of the prohibition on mixing zones in freshwater spawning areas
9. Current regulations allowing for site-specific water quality determinations and short term variances from water quality standards



24-LS1273\L
Bullock
1/23/06

CS FOR HOUSE BILL NO. 328()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES SEATON, OLSON, GATTO AND LEDOUX, Kerttula, Gara

A BILL

FOR AN ACT ENTITLED

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

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

3 *** Section 1.** AS 46.03 is amended by adding a new section to read:

4 **Sec. 46.03.065. Prohibition of mixing zones in spawning waters.** (a) Except
5 as provided in (b) of this section, the department may not authorize a mixing zone for
6 lakes, streams, rivers, or other flowing fresh water in an area of

7 (1) anadromous fish spawning; or

8 (2) resident fish redds for

9 (A) Arctic char;

10 (B) Arctic grayling;

11 (C) brook trout;

12 (D) burbot;

13 (E) cutthroat trout;

14 (F) Dolly Varden;

15 (G) lake trout;

1 (H) landlocked coho, king, and sockeye salmon;

2 (I) northern pike;

3 (J) rainbow trout;

4 (K) sheefish; or

5 (L) whitefish.

6 (b) The prohibition in (a) of this section does not apply to the renewal of a
7 municipal wastewater facility's mixing zone authorization during the useful life of the
8 wastewater facility for an area where spawning was not ongoing at the time of the
9 initial authorization and the mixing zone became a spawning area after the date of the
10 initial authorization.

11 (c) In this section,

12 (1) "area" means the physical location where spawning occurs;

13 (2) "lakes, streams, rivers, or other flowing fresh water" includes lakes,
14 streams, rivers, or other flowing fresh water that have been altered by remediation or
15 construction activities; the term does not include an artificially constructed facility for
16 water, wastewater, holding, or channeling, unless the artificial facility is constructed
17 for the purpose of facilitating fish spawning;

18 (3) "mixing zone" means an area in a water body surrounding or
19 downstream of a discharge where the effluent plume is diluted by the receiving water,
20 within which water quality standards specified by the department under AS 46.03.050
21 - 46.03.120 may be exceeded.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE PAUL SEATON
DISTRICT 35

Sponsor Statement HB 328

Alaska has a reputation for pure water and vibrant wild salmon stocks. HB 328 seeks to maintain the long-standing prohibition on pollution mixing zones in Alaska's freshwater spawning areas. HB 328 transfers into statute a regulation that has governed wastewater discharges for many successful years of industrial and municipal expansion in Alaska.

In the summer of 2004 the Alaska Department of Environmental Conservation (ADEC) released a proposal to consolidate and modify the mixing zone regulations found at 18 AAC 70.240 through 18 AAC 70.270. One of the changes was lifting of the prohibition on pollution mixing zones in freshwater spawning areas. This change was 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.

The opposition to this change 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. In response to public reaction ADEC withdrew their proposal.

In 2005 a new mixing zone proposal was put forward by ADEC. This proposed regulation would allow pollution mixing zones in freshwater spawning areas if an applicant has met only one of four conditions. One of these options is to submit a mitigation plan. Under the proposed regulation, legal protection to thoroughly pollute a spawning area could be granted as long as the applicant plans to provide an undefined "substitute resource" as compensation. This proposal also met with a high level of opposition.

HB 328 retains the prohibition on pollution mixing zones in freshwater spawning areas, but it does not negate many other substantive changes ADEC has made in their attempt to streamline and consolidate the mixing zone regulations, nor does it change regulations that allow for river wide site-specific exemption from state water quality standards and the granting of short term variances from the standards.

HB 328 aids municipalities and industry by preventing mixing zones in man-made ditches or holding ponds invaded by fish after construction to be reclassified as spawning areas. This language solves the "Valdez Situation" cited by ADEC as a primary rationale for the regulation change. In that situation, 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 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.

HB 328 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.

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REPRESENTATIVE PAUL SEATON
DISTRICT 35

HB 328 Sectional Analysis

Section 1 (a)

Prohibits the Alaska Department of Environmental Conservation from authorizing a mixing zone in an area of a lake, stream, river or other flowing fresh water body where anadromous or resident fish are spawning or have existing redds or nests. With the exception of "lake" this language is taken directly from the current regulations at 18 AAC 70.255(h). The 2005 ADEC mixing zone proposed regulation includes lakes along with streams, rivers and other flowing fresh waters. HB 328 includes lakes, mirroring this proposed regulatory language.

Section 1 (b)

Clarifies that the prohibition applies to spawning areas of naturally occurring lakes, streams, rivers, or other flowing fresh water even if these waters have been modified or altered by construction or remediation. It further clarifies that the prohibition on mixing zones in spawning areas does not apply when spawning occurs in the water of an entirely man-made holding pond or channel. However, if these holding ponds and channels have been created for the purpose of facilitating fish spawning, mixing zones are prohibited in them.

Section 1 (c)

Defines "mixing zone".

Rep. Paul Seaton

From: Robbie Stell [robbiestell@gci.net]
Sent: Monday, January 09, 2006 9:26 PM
To: Rep. Paul Seaton
Subject: HB 328

Representative Seaton: I have read your bill and support passage of this important legislation. Put my count into the support side for this bill.
Roberta Stell
Juneau, Alaska

Gustavus, Alaska
Jan. 9, 2006

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

Dear Senator Seaton:

I fully support your bill to prohibit mixing zones in fish spawning waters. I am one of the many people who commented (twice) on the Dept. of Environmental Conservation proposals to allow mixing zones. Like the overwhelming majority, I oppose allowing mixing zones in spawning streams and lakes. It has been disheartening to see the Administration forge ahead with this proposal against the clear disapproval of Alaska residents. In addition to raising concerns for fish habitat and for the marketing of Alaska's fish, this situation suggests that the citizen participation in a democracy has become irrelevant. Thank you, Rep. Seaton, for rescuing democratic representative government in this instance!

Salmon streams in Alaska ought to be as protected and cherished as anything we have. They are the source of immense productivity, not just of salmon, but also of the surrounding ecosystems, terrestrial, coastal and marine.

A reduction in water quality standards for spawning streams could threaten the sustainability certification of Alaska salmon. It can result in loss of the market advantage of wild Alaska salmon and cause a deep reduction in price. It has been a struggle to educate consumers on the health advantages and environmental soundness of eating wild salmon instead of farmed fish. These efforts are paying off, rescuing the fishing industry from a terrible price situation. It is amazing that the Administration would consider tossing this market recovery aside.

The safeguards claimed for the DEC proposal would require monitoring far-flung streams beyond anything the state is prepared to do. The mining industry, for example, is notorious for spotty compliance with environmental regulations. When the A.J. Mine was preparing to reopen, despite all the scrutiny on this mine in the center of Juneau, it released illegal effluent into a stream that flows right through town, released it secretly only at night! This deceit was discovered not by state regulators, but by local citizens.

In theory, under the DEC proposal, mixing of pollutants in spawning streams would be allowed only when there are no fish spawning in the streams. It's pretty hard to find that little window when there are no eggs, alevins or spawners. An old-time Southeast Alaska fisherman - Jack O'Donnell - told me a funny true story about some logging operators and Forest Service representatives meeting with Petersburg fishermen. Tired of hearing fishermen complain about the mess that logging made of spawning streams (this was before buffer strips), the timber men came to talk about a new piece of heavy equipment that promised to clean it all up: the Riffle Sifter. They showed a film of the Riffle Sifter tracking up a stream, processing the gravel and spewing the unwanted mud and debris out on the stream banks. After the film, some fishermen asked "When do you plan to use this - in what season?" The presenters said "Oh, that's where your expertise comes in. You tell us when is the best time." So the fishermen began to explain the life cycle of salmon. The presenters left and nothing was ever heard again about the Riffle Sifter. May the same fate befall the DEC mixing zone proposal.

Yours truly,

Judy Brakel
Box 94, Gustavus, Alaska 99826 e-mail at grigori@gustavus.ak.us

**United Southeast Alaska Gillnetters**

P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email: usa_gillnetters@att.net

January 11, 2006

The Honorable Paul Seaton
House of Representatives
State Capitol, Room 102
Juneau, AK 99801

Sent Via Fax to: 907 465-3472

Dear Representative Seaton,

The United Southeast Alaska Gillnetters (USAG) is an association of about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska and market salmon throughout the United States. Many of our members also participate in other fisheries such as crab, shrimp, dive and longline. We have steadfastly opposed the Department of Environmental Conservation's (DEC) efforts to change the current ban on mixing zones in salmon spawning and rearing streams. We strongly support HB 328 which will prohibit mixing zones in freshwater spawning waters. We believe that if the current ban was lifted, regardless of the restraints placed in new regulations controlling future mixing zones, the use of these zones will become a license to pollute the fresh water systems of Alaska. The best example of this is in DEC's own survey of the status of mixing zones in other states. Of those responding, 21 of 23 allowed mixing zones of some kind. Every one of the 21 that had responded that they permitted mixing zones had issued fish consumption warnings to their citizens for fish caught in their local waters. Of the 2 that did not permit mixing zones, neither had issued such warnings. From this experience it is clear that mixing zones are a license to pollute and they harm fish populations and can result in harm to humans. If mixing zones were permitted in Alaska, they could cause grave harm to Alaska's efforts to market our salmon to the rest of the world and attract tourists to the "pristine environment" of our great land. Attached to this letter is a copy of our earlier letters to DEC expressing our opposition to lifting the ban on mixing zones and more detailed reasons for that opposition.

USAG wishes to thank you, Representative Seaton and the other legislators who have joined with you to introduce this legislation. The economic health and future of our state depends on our maintaining a healthy environment and our reputation for resource protection. Two of Alaska's largest industries, commercial fishing and tourism, depend in part on us maintaining our commitment to protect our environment and to use our resources wisely.

Yours truly,

Kenneth Duckett
Executive Director

Adam Bauer
4734 Sabrina Rd
Homer, AK 99603
(907) 235 6994
(907) 235 9779 FAX
abauer@bauerhaus.ws

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

Dear Representative Paul Seaton,

I fully support your bill - HOUSE BILL NO. 328 "An Act
prohibiting mixing zones in freshwater spawning waters."

Thank you for taking action to protect Alaska's Natural Resources
and the quality of our environment for or fisheries and our future.

Adam Bauer

Rep. Paul Seaton

From: alaskakayakschool [info@alaskakayakschool.com]
Sent: Thursday, January 12, 2006 10:20 AM
To: Rep. Paul Seaton
Subject: Mixing Zone Legislation: HB 328

Dear Paul -

I am a Homer resident, owner and operator of the AlaskaKayakSchool.com here in Homer. I was involved in the first mixing zone hearing under the EPA's public participation process of the Clean Water Act, in 1973: Weyerhaeuser's Springfield, Oregon, pulp mill. They had been granted half the river!!! as a mixing zone. We fixed that all right. Times seem not to change.

Honorable Governor Murkowski and his staff are pretty misguided to dismantle mixing zone regulations "IN SALMON SPAWNING AREAS" no less.

Please OPPOSE any effort to reduce protection for salmon streams. I support the efforts of HB 328 to counter the governor and his staff's misguided policy. Lack of protection for Salmon streams from industrial effluent would seem to be in violation of "sustained yield" in the State of Alaska's Constitution.

We should be affording more protection for Salmon and their habitats, not less. As we all know, Salmon eggs and fry are very sensitive to the negative effects of deteriorating water quality, and require clean, cold and well aerated water to spawn, hatch and grow. This is a no-brainer.

I offer my sincere thanks for your efforts to pass HB 328.

Best,

Tom Pogson

--

Alaska Kayak School
P.O. Box 3547
Homer, Alaska 99603
(907) 235-2090
www.alaskakayakschool.com

Rep. Paul Seaton

From: Doug Fine [fine@well.com]
Sent: Thursday, January 12, 2006 10:01 AM
To: Rep. Paul Seaton
Subject: In Support on House Bill #328

Dear Rep. Seaton and all Legislators and the Governor:

I support House Bill # 328, An Act Prohibiting Mixing Zones in Freshwater Spawning Areas. Alaska salmon literally keeps me and many of those I love alive. This is what it's all about in Alaska and what makes Alaska different from other places. We should be treasuring the salmon runs, treating them carefully and managing them for what they are: worth more than gold, literally and in other senses, like nutritionally and culturally. Please support this bill and do not weaken it. Mixing zones are a bad idea and this bill is a good idea.

Thank you.

Best,

Doug Fine

--

"Half the Story Has Never Been Told": Bob Marley

"Not Really An Alaskan Mountain Man": <http://www.dougfine.com>

Recent National Public Radio Work: www.npr.org, search under "Doug Fine Alaska" for Alaska work and "Doug Fine New Mexico" for work elsewhere.

Rep. Paul Seaton

From: Ellen Wolf [ellenmwolf@yahoo.com]
Sent: Thursday, January 12, 2006 9:21 AM
To: Rep. Paul Seaton
Subject: House Bill 328

January 12, 2006

Dear Representative Seaton:

Please share my strong support for House Bill 328, prohibiting mixing zones in freshwater spawning areas, with your colleagues in the legislature.

This kind of legislation is essential to protect the spawning waters of our state's wild salmon population. Alaska's wild salmon are a valuable economic commodity in terms of both commercial and sport fishing. As salmon farms degrade wild salmon populations in Canada and other parts of the U.S., Alaska's wild salmon become even more precious. Furthermore, and perhaps more importantly, salmon and other fish are an essential part of a healthy ecosystem, providing food for bears, eagles, marine mammals and others.

Thank you for sponsoring this forward-thinking bill.

Sincerely,
Ellen Wolf
P.O. Box 371
Talkeetna, AK 99676

Yahoo! Photos – Showcase holiday pictures in hardcover
Photo Books. You design it and we'll bind it!

Rep. Paul Seaton

From: Duane Howe [duhowe@alaska.net]
Sent: Thursday, January 12, 2006 9:01 AM
To: Rep. Paul Seaton
Subject: HB 328

Dear Representative Seaton,

I commend you for pre-filing HB 328 to codify current mixing zone regulations for salmon streams into state law. I have written letters twice to DEC opposing their proposals to allow pollution into salmon streams and am in complete support of HB 328 to add the prohibition of polluting these streams into statute. Please add this note into the record in support of your proposal.

Duane Howe
41640 Gladys Ct
Homer, AK 99603
235-9477

1/12/2006

Rep. Paul Seaton

From: clardy [clardy@acsalaska.net]
Sent: Thursday, January 12, 2006 8:32 AM
To: Rep. Paul Seaton
Subject: mixing zones.

I support any effort to stop the increased pollution of our salmon streams.
susan clardy

1/12/2006

Rep. Paul Seaton

Subject: FW: Mixing zones

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

From: Will Files [mailto:will@wfiles.us]
Sent: Thursday, January 12, 2006 8:30 AM
To: Rep. Paul Seaton; Katie Shows
Subject: Mixing zones

Hi Paul and Katie,
Happy New Year to all of you there in the Juneau office.
If I recall some of our conversations, Paul is not in favor of
"mixing zones". I would like to lend support to that position.
Let's not take any chances at all on our precious waters and valuable fish resources,
particularly when we are playing with such dangerous things as mercury and arsenic and
whatever nasty things come from mining, including a lot of sediment which can change the
nature of the ecosystem dramatically.
Thanks for your efforts to protect our resources.
We support HB 328.

Will and Martha Ellen
59835 Tern Court
Homer

Rep. Paul Seaton

From: Nina Faust [fausbail@xyz.net]
Sent: Thursday, January 12, 2006 8:07 AM
To: Rep. Paul Seaton
Subject: HB 328

P.O. Box 2994
Homer, AK 99603

January 12, 2006

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

Dear Paul:

We support HOUSE BILL NO. 328, "An Act prohibiting mixing zones in freshwater spawning waters." A legislative fix is needed to prevent looser State regulations that would allow pollution in our streams and rivers. No matter how the state has tried to present its new regulations on mixing zones, it still comes back to the bottom line, which is that the new rules relax water quality standards in Alaska. The state appears to be scrambling to loosen controls on water quality to benefit pending big, new mines and timber operations. Alaska is the only state in the U.S. that can boast about its amazingly clean streams and lakes, but this will not last if the state allows relaxed mixing zone standards. We are adamantly opposed to doing this!

Our fisheries are the envy of the nation and comprise a vital and sustainable part of Alaska's economy. Allowing mixing zones threatens commercial, subsistence, and sport fisheries, all-important components of many Alaskan communities. How can the state promote fresh, wild salmon through a marketing campaign emphasizing the clean, healthy, organic qualities of Alaskan salmon if we relax mixing zone regulations? Mixing zones are just pollution zones that allow higher pollution levels. The state can try to dress it up anyway it wants but it is still an outmoded and discredited method of handling waste and should not be allowed.

Alaskans have been very clear on this topic—they do not support mixing zones! We still oppose mixing zones and urge the State to keep high water quality standards to protect our fisheries and the health of Alaskans. Please pass House Bill 328!

Sincerely,

Nina Faust and Edgar Bailey

Rep. Paul Seaton

Subject: FW: Legislation Prohibiting Mixing Zones in freshwater Spawning Areas

From: John Lyle [mailto:kayak@gci.net]

Sent: Wednesday, January 11, 2006 8:19 PM

To: Louie Flora

Subject: Re: Legislation Prohibiting Mixing Zones in freshwater Spawning Areas

To whom it may concern: Please add my voice to those who support enacting a statute prohibiting the practice of mixing zones, especially in freshwater spawning areas. As I have said in written testimony on the subject over the past several years, this practice is damaging and needs to be made illegal. Thank you. Sincerely, John D. Lyle Box 83715 Fairbanks, Alaska 99708.

1/12/2006

Rep. Paul Seaton

From: Alfa Fish [alfafish@ptialaska.net]

Sent: Wednesday, January 11, 2006 2:14 PM

To: Rep. Paul Seaton

Dear Paul-

I recently learned of the legislation on which you are working to place in law the prohibition on mixing zones. Please know that your efforts are supported by our organization.

Sincerely,

Linda Behnken, Director
Alaska Longline Fishermen's Association

1/12/2006

Rep. Paul Seaton

From: David Swingley [swingdad_2000@yahoo.com]
Sent: Wednesday, January 11, 2006 10:56 AM
To: Rep. Paul Seaton
Subject: freshwater mixing zones

I feel the people of Alaska have overwhelmingly spoken out against freshwater mixing zones. The potential to do irreparable harm freshwater spawning areas and downstream habitat is obvious. There is a giveaway to business, mining, and logging interests with deep pockets by the Murkowski administration. Stop the assault on the clean water act and ban ALL freshwater mixing zones. Thank you. David and Rachel Swingley Eagle River, Ak.

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Tired of spam? Yahoo! Mail has the best spam protection around <http://mail.yahoo.com>

Rep. Paul Seaton

From: Richard Hahn [rdhahn@eagle.ptialaska.net]
Sent: Tuesday, January 10, 2006 2:32 PM
To: Rep. Paul Seaton; Rep. Kurt Olson; Sen. Gary Stevens
Subject: Mixing Zones

Dear Mssrs. Olson, Seaton, and Stevens, I cannot tell you how appreciative I am, along with a myriad other Alaskan commercial and sports fishers, for your collective initiative to ban pollution mixing zones in salmon spawning streams! I have written many letters to DEC staff, the commissioners of DEC, DNR, and DF&G, and to various Alaska newspapers objecting to DEC's proposal. The "yes sir!" administration of Murkowski simply ignores public comment and do Murky's bidding--pick a subject! I only get one 225 word letter in the Anchorage Daily News each month so, if someone will tell me what the corresponding House Bill number is to Senator Stevens' Bill 255, I will make your action known to as many as read the major Alaska newspapers. This is great news for Alaska streams, habitat, the anadromous fish, and all who fish for salmon in Alaska, as well as the people who consume them.

Having said all that, I must tell you that your bills do not alleviate my concerns for the proposed Pebble Gold Mine, and others like it, which threaten much more than just the fish in the Bristol Bay watershed. No matter what the mine developers may say, it is highly unlikely the cyanide, heavy metal and aqueous sulfuric acid contamination of the environs and ground waters, as a result of such a mining operation, can be contained. If there is an accidental or intentional release of these materials to any aquifer, stream or lake, it cannot be cleaned up--ever! This would not be like an oil spill. I have an eleven(11) page NY Times article, which details horrific incidents from modern gold mining around the world, which I will send you on request. I have personally visited Kellogg, Idaho and Queenstown, Tasmania, both of which look like "moonscapes". Their rivers have been sterile for many years and their surroundings grow no plants. This is just one of the many risks "development at any cost" Murkowski brings to Alaska. He does not require any accountability, bonding, monetary or otherwise, of any developer. They have no responsibility for any mess they may create during the time they operate, and none are self-policing. The profit margin is their only care. Pardon my soapbox.

Thanx again for your action on mixing zones. If you are successful, a next very positive step for Alaska would be to make all developers accountable--up front! Large, depending on the proposed development, liability bonds and precisely worded contracts come to mind. Sincerely,

Richard Hahn
P.O. Box 2754
Soldotna, Alaska, 99669
907-262-8575
rdhahn@eagle.ptialaska.net

Rep. Paul Seaton

Subject: FW: Legislation Prohibiting Mixing Zones in freshwater Spawning Areas

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

From: Alaska Passages [mailto:info@alaskapassages.com]

Sent: Tuesday, January 10, 2006 1:21 PM

To: Louie Flora

Subject: Re: Legislation Prohibiting Mixing Zones in freshwater Spawning Areas

I am writing in support of House Bill 328 which is an act prohibiting mixing zones in freshwater spawning areas. I support this legislation as a way to maintain water quality in Alaska waters. Discharging wastewater and pollutants into spawning habitat is destructive to fish populations and habitat. There is no time of year when fish in these areas would be safe from the discharge of pollutants. Fish spawn in the summer months, but the resulting egg and fry remain in the gravel of the spawning area for the rest of the year.

Alaska has invested time and money protecting its salmon stocks and also promoting "Wild Caught salmon from Pristine Alaska waters". This kind of marketing has helped the salmon industry tremendously. We need to maintain the high water quality standards to protect our reputation for our wild caught salmon.

Thanks to Representatives Seaton, Gatto, LeDoux, and Olson for introducing this legislation and for their efforts to safeguard Alaska's salmon resource and maintain our high water quality standards.

Julie Hursey
Petersburg, Alaska

Rep. Paul Seaton

From: Sally McGuire [chilkootmcguire@yahoo.com]

Sent: Tuesday, January 10, 2006 12:31 PM

To: Rep. Paul Seaton

Subject: freshwater mixing zones

Dear Rep. Seaton,

Thank you very much for introducing the bill to ban mixing zones in freshwater spawning habitat. I live in Haines, Alaska, and care very much about this issue. Also, many members of my family work in the fishing industry and are also affected. Our fisheries need to stay healthy and unpolluted, both for our own sakes as Alaskans, and in order to continue marketing them as fresh, wild, and unpolluted. It has certainly become very clear that this law is very important to prevent the recent attempts to put the wishes of a few industries over the rights of many Alaskans. Thank you very much. Sally McGuire

1/12/2006

Rep. Paul Seaton

From: Marc Lamoreaux [Lemarc@pobox.mtaonline.net]
Sent: Tuesday, January 10, 2006 10:57 AM
To: Rep. Paul Seaton
Subject: Support for HB 328

January 9, 2006

Dear Honorable Representative Seaton,

Native Village of Eklutna, a federally recognized Alaska Tribe enthusiastically supports the legislation -

HOUSE BILL NO. 328

introduced by yourself, along with Representative Kurt Olson (R-Kenai), Representative Carl Gatto (R-Palmer) and Representative Gabrielle LeDoux (R-Kodiak) that would place in statute the prohibition on pollution mixing zones in Alaska freshwater spawning waters.

We agree that this bill is needed to protect the habitat of Alaska's world famous salmon and trout and to protect Alaska salmon marketing efforts, and the subsistence people and cultures that rely on them.

Thank You,

Marc Lamoreaux
Land and Environment Director
Native Village of Eklutna

Rep. Paul Seaton

From: Kathy Wartinbee [kbwart@alaska.net]
Ser.t: Monday, January 09, 2006 8:11 PM
To: Rep. Paul Seaton
Subject: Mixing zone legislation
Follow Up Flag: Follow up
Flag Status: Red

Representative Seaton:

I am writing this letter to indicate my whole-hearted support for your bill that will prohibit mixing zones in waters with anadromous fish spawning in them. I thank you for taking on this important issue in the legislature.

We must do what ever it takes to preserve the pristine streams and waters of all Alaska. Considering that the state's oil and minerals will eventually be depleted, if we protect the aquatic habitats of the state, fishing and tourism will always be here. However, if we allow our streams to be impacted, no one will want to come and look at where we used to have good fishing nor will consumers be interested in buying fish that used to be untainted.

Again, we must protect our water resources and the industries they support. Your bill is a great step in the right direction.

Sincerely,

David C. Wartinbee PhD, JD
Stream Ecologist
Biology Professor
(UAA - Kenai Peninsula College)

P.O. Box 157
Soldotna, Alaska 99669
907 260-1935

Rep. Paul Seaton

From: Charles Michael Herndon [mherndon@pobox.alaska.net]
Sent: Monday, January 09, 2006 7:29 PM
To: Rep. Paul Seaton
Subject: Strong support for House Bill 328
Follow Up Flag: Follow up
Flag Status: Red

I strongly support passage of House Bill 328, "An Act prohibiting mixing zones in freshwater spawning waters". This bill is necessary to prevent the state Department of Environmental Conservation from lifting the prohibition on pollution mixing zones in freshwater spawning areas.

Charles M. Herndon
10421 Lone Tree Dr.
Anchorage, AK 99507

Rep. Paul Seaton

From: Gerald R. Brookman [brookman@alaska.net]
Sent: Monday, January 09, 2006 3:46 PM
To: Rep. Paul Seaton
Subject: HB 328

Dear Representative Seaton:

First, I want to thank you for introducing HB 328. Second, I'd like to state that I strongly support its passage.

I would appreciate it very much if you could keep me informed, via e-mail, of this bill's committee referrals, and amendments that may be made to it as it goes through the legislative process, etc. Thank you

Gerald R. Brookman (Jerry Brookman)
715 Muir Avenue
Kenai, Alaska 99611-8816
e-mail: brookman@alaska.net

Rep. Paul Seaton

From: claire leclair [northsister@acsalaska.net]
Sent: Monday, January 09, 2006 2:29 PM
To: Rep. Paul Seaton
Subject: HB 328 Legislation prohibiting mixing zones in freshwater spawning areas

Representative Seaton-

Thank you for taking the initiative to find co-sponsors for and introduce legislation prohibiting mixing zones in freshwater spawning areas. I hope this legislation passes easily and quickly, thus allowing our state's fisheries resources to continue to sustain our bodies and our economy well into the future.

Sincerely,

Claire Holland LeClair
Anchorage, Alaska

Rep. Paul Seaton

From: Leif K. Mjos [lmjos@care2.com]
Sent: Monday, January 09, 2006 2:29 PM
To: Louie Flora
Subject: Re: Legislation Prohibiting Mixing Zones in freshwater Spawning Areas

Dear Mr. Seaton,

In general, I am in support of this new legislation regarding mixing zones. However, I have one concern after reading an initial press release.

My concern is over the language used in regards to man-made streams/ditches. If this bill is intended to protect the resource and maintain the viability of the fishing industry, I think that fish populations should be treated as populations, regardless of their chosen route of passage to spawning grounds. If there are fish passing through man-made streams on their way to further natural spawning grounds, they are still members of the same population that is fished by commercial fishermen. If this bill is trying to ensure that fishermen can guarantee consumers healthy, clean fish, then it shouldn't matter how the fish are reaching their spawning grounds, because the fishermen won't know the difference between a fish that swam through the natural stream or one that passed through a man-made stream. If you want the fish to be clean and natural, then they should ALL be clean and natural.

If I am misunderstanding the language in this bill, then I stand corrected. Otherwise, this seems like a huge loophole that will be manipulated by industry and municipalities long after this bill is passed. And that does nothing for the fishermen and their livelihoods, to mention nothing of the resource itself.

I look forward to hearing your response,

Leif Mjos
1725 E 24
Anch., AK 99508

So I end the day as I started it, trying to fathom the abundance of living things. --
Richard Nelson

Trophy hunters can write off canned hunts and big game safaris at taxpayers' expense - help end this cruelty loophole: <http://go.care2.com/66836>

<http://www.Care2.com> Free e-mail. 100MB storage. Helps nonprofits.

Rep. Paul Seaton

From: KmKm/Crystal Images [ci@akmk.com]
Sent: Monday, January 09, 2006 2:16 PM
To: Rep. Paul Seaton
Subject: HB 328

Hi. I am writing in support of HB 328 to prohibit the use of mixing zones in state spawning waters as defined here. Regards, Kathleen Menke, Haines

00 HOUSE BILL NO.

328

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

02 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

03 * Section 1. AS 46.03 is amended by adding a new section to read:

04 Sec. 46.03.065. Prohibition of mixing zones in spawning waters. (a)

The

05 department may not authorize a mixing zone for lakes, streams, rivers, or other

06 flowing fresh water in an area

of

07 (1) anadromous fish spawning;

or

08 (2) resident fish redds

for

09 (A) Arctic

char;

10 (B) Arctic

grayling;

11 (C) brook

trout;

12 (D)

burbot;

13 (E) cutthroat

trout;

14 (F) Dolly

Varden;

15 (G) lake

trout;

01 (H) landlocked coho, king, and sockeye

salmon;

02 (I) northern

pike;

03 (J) rainbow

trout;

04 (K) sheefish;

or

05 (L)

whitefish.

06 (b) In this

section,

07 (1) "lakes, streams, rivers, or other flowing fresh water"

includes lakes,

08 streams, rivers, or other flowing fresh water that have been altered by
remediation or
09 construction activities; the term does not include an artificially
constructed facility for
10 water, wastewater, holding, or channeling, unless the artificial facility
is constructed
11 for the purpose of facilitating fish
spawning.
12 (2) "mixing zone" means an area in a water body surrounding
or
13 downstream of a discharge where the effluent plume is diluted by
the
14 receiving water, within which water quality standards specified by
the
15 department under AS 46.03.050 - 46.03.120 may be exceeded.

--

Kathleen M.K. Menke
Crystal Images Photography and Publishing
<http://www.akmk.com>

Rep. Paul Seaton

From: Marjorie & Dan Dunaway [mwdnt@nushtel.com]
Sent: Monday, January 09, 2006 1:32 PM
To: Rep. Paul Seaton
Cc: Sen. Lyman Hoffman; Rep. Carl Moses
Subject: regarding BILL ID: HB 328
Attachments: AFS_Mixing_Zone_Letter_of_Concern.pdf

Dear Representatives Seaton, LeDoux, Gatto, and Olson, and the Alaska House of Representatives as whole:

I am very glad to see the proposal HOUSE BILL NO. 328 "An Act prohibiting mixing zones in freshwater spawning waters." It is tiresome to see the current administration continually attempting to diminish the excellent protections we have for Alaskan waters and the fish that inhabit them. I am VERY pleased that this bill addresses the deficiencies of current law that overlook the critical lake spawning areas used by sockeye salmon and other important species.

One suggestion would be to include some accommodation to situations where fish colonize a previously never used area, such as a man made ditch. I'm not sure exactly what the proper wording should be or how to address it. There should be some language however that doesn't allow a ditch or pond to be created just for the purpose of circumventing this proposed or existing laws.

I also think that the current regulations allowing 10% of a lake surface area to be mixing zone could be much too large in some of the larger lakes. I don't know what an appropriate level should be, but I cannot believe that it would be acceptable to have 10% of the surface area of L. Iliamna, Becharof, Skilak, Tustumena or similar to be a mixing zone. There should be some absolute upper limit.

Would this bill address intertidal spawning areas? Pink and chum salmon are known to spawning in waters that might not be considered completely "flowing fresh water" yet are very important species to subsistence, commercial and sport fisheries. I think it would be worth considering these waters as well.

For additional guidance regarding mixing zone regulations, I encourage you to review in careful detail, the contents of the "Letter of Concern" submitted by the Alaska Chapter of the American Fisheries Society. I have attached it here for your review.

Additionally, I encourage you to consider in this bill or separately, a "Bad Actor" clause for chronic offenders of these laws. Penalties should be very stringent to assure chronic offenses are discouraged and stopped in a timely manner.

Thank you for your consideration and opportunity to comment.

Dan Dunaway
PO Box 1490
Dillingham, Alaska 99576

907-842-2636

Fisheries Biologist
Retired from approx 24 yrs with ADFG
Life long Alaskan

1/12/2006

Rep. Paul Seaton

From: Richard E. Kanner [richard.kanner@hsc.utah.edu]
Sent: Monday, January 09, 2006 10:20 AM
To: Rep. Paul Seaton
Subject: Bill to legislate current regulations to prevent pollution in mixing zones.

Dear Re. Seaton:

Thank you for your work in preventing the mining industry from polluting areas where fish spawn in the State of Alaska. Although I am not a resident of Alaska I do visit your state approximately every other or third year and have good friends living there. I strongly support the legislation you have proposed in this matter.

Sincerely,

Richard E. Kanner, M.D.

--

Richard E. Kanner, MD
University of Utah Health Sciences Center
26 North 1900 East
701 Wintrobe Building
Salt Lake City, Utah 84132-4701
Tel: (801)581-7806
Fax: (801)585-3355
Beeper: (801)339-5592
Email: richard.kanner@hsc.utah.edu, kanner@med.utah.edu

Rep. Paul Seaton

From: Demian A. Schane [dschane@gmail.com]
Sent: Monday, January 09, 2006 9:45 AM
To: Rep. Paul Seaton
Subject: Support for legislation prohibiting mixing zones in salmon streams

I write to support Representative Seaton's efforts and legislation to prevent the State from authorizing mixing zones in streams that support salmon and their fry. I cannot understand the reasons the Murkowski Administration has proferred for modifying the existing regulations.

Keep up the good work.

Demian Schane
350 Irwin St. #510
Juneau, AK 99801

Rep. Paul Seaton

From: Linda Johnson [ljohn@ptialaska.net]
Sent: Monday, January 09, 2006 9:37 AM
To: Rep. Paul Seaton
Subject: Mixing zones bill - thank you!

Dear Mr. Seaton:

Thank you so much for introducing the bill to ban the pollution of spawning streams in Alaska.

The changes that DEC made – that pollution could not occur when fish are spawning – does not help, as I am sure you realize. There are numerous streams in the Juneau area that people can easily visit (there is a great trail in the Lemon Creek area, for example) which could be used to show any doubters that fish are in these streams year – round and polluting them at any time would be detrimental.

Thank you again!

Linda Johnson

Juneau, AK

--

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.1.371 / Virus Database: 267.14.16/225 - Release Date: 1/9/2006

1/12/2006

Rep. Paul Seaton

From: grenebrid@aol.com
Sent: Monday, January 09, 2006 9:20 AM
To: Rep. Paul Seaton
Subject: *****SPAM***** Mixing Zone Legislation

Dear Representative Seaton,

I fully support the Legislation (HB 328) for prohibiting pollution mixing zones in spawning habitat. Thank you, and to the other supporting Representatives for introducing this bill.

Mrs. Katherine McLaughlin
Chenga Bay, Alaska 99574

January 12, 2006

Dear Honorable Representative Seaton,

Seldovia Village Tribe, a federally recognized Alaska Tribe supports the legislation -

HOUSE BILL NO. 328

introduced by yourself, along with Representative Kurt Olson (R-Kenai), Representative Carl Gatto (R-Palmer) and Representative Gabrielle LeDoux (R-Kodiak) that would place in statute the prohibition on pollution mixing zones in Alaska freshwater spawning waters.

We agree that House Bill No. 328 is needed to protect the habitat of Alaska's world famous salmon and trout and to protect Alaska salmon marketing efforts, and the subsistence people and cultures that rely on them.

Thank You,

SELDOVIA VILLAGE TRIBE

Michael Opheim
Environmental Coordinator

**18 AAC 70.255. Mixing zones: In-zone quality and size specifications**

(a) The size, location, or other limits of a mixing zone set by or under this chapter will be established in a discharge permit, certification, or order issued by the department under the appropriate chapter in this title.

(b) Water quality criteria must be met at the boundary of the mixing zone. A discharge may not cause or reasonably be expected to cause

(1) lethality to passing organisms in the mixing zone; or

(2) a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone.

(c) Human health and chronic aquatic life criteria apply at and beyond the boundaries of the mixing zone.

(d) Acute aquatic life criteria apply at and beyond the boundaries of a smaller initial mixing zone surrounding the outfall. The smaller initial mixing zone for application of acute criteria must be sized to prevent lethality to passing organisms. Methods for calculating the boundaries of the smaller initial mixing zone for application of acute criteria, unless otherwise specified by the department, must follow procedures under Alternatives 2, 3, or 4 in Section 5.1.2 of the United States Environmental Protection Agency's Water Quality Standards Handbook, Second Edition, August 1994, EPA-823-B-94-005a.

(e) Unless the department finds that evidence is sufficient to reasonably demonstrate, in accordance with this section, that the size limitations of a mixing zone can be safely increased, a mixing zone must comply with the following size restrictions:

(1) for estuarine and marine waters, measured at mean lower low water,

(A) the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water may not exceed 10 percent of the total length of that cross section; and

(B) the total horizontal area allocated to mixing zones may not exceed 10 percent of the surface area;

(2) for lakes, the total horizontal area allocated to all mixing zones may not exceed 10 percent of the lake's surface area; and

(3) for streams, rivers, or other flowing fresh waters, subject to (f), (g), and (h) of this section, the length of a mixing zone may not extend downstream beyond the limits described in (A) or (B) of this paragraph, whichever is closer to the point of discharge, as follows:

(A) beyond the computed point where the variation in the concentration of a water quality parameter across a stream, river, or other flowing fresh water is predicted to be less than five percent, as determined using a standard river flow mixing model accepted by the department; or

(B) beyond the location where the department determines that a public health hazard reasonably could

be expected to occur.

(f) For streams, rivers, or other flowing fresh waters subject to (e)(3) of this section, in calculating the maximum pollutant discharge limitations, the volume of flow available for dilution must be determined using

(1) the actual flow as determined by gauging data collected concurrent with the discharge; or

(2) for conventional or nontoxic substances, the default 2-year, 3-day low flow (3Q2) appropriate to the period of discharge; for toxic substances, the 10-year, 7-day low flow (7Q10) as the chronic criteria design flow and the 10-year, 1-day (1Q10) as the acute criteria design flow for protection of aquatic life; for carcinogens, the harmonic mean flow as the design flow for the protection of human health; these low flows must be calculated using methods of Ashton and Carlson, *Determination of Seasonal, Frequency and Durational Aspects of Streamflow with Regard to Fish Passage Through Roadway Drainage Structures*(1984), Carlson, *Seasonal, Frequency and Durational Aspects of Streamflow in Southeast and Coastal Alaska*(1987), or another appropriate regional regression flow model approved by the department; numeric water quality criteria apply at all design flows that are equal to or greater than these critical low flows.

(g) For streams, rivers, or other flowing fresh waters subject to (e)(3) of this section, a mixing zone may not result in

(1) permanent or irreparable displacement of indigenous organisms; or

(2) a reduction in fish or shellfish population levels.

(h) For streams, rivers, or other flowing fresh waters subject to (e)(3) of this section, a mixing zone will not be authorized in an area of

(1) anadromous fish spawning; or

(2) resident fish spawning redds for Arctic grayling, northern pike, rainbow trout, lake trout, brook trout, cutthroat trout, whitefish, sheefish, Arctic char (Dolly Varden), burbot, and landlocked coho, king, and sockeye salmon.

History: Eff. 11/1/97, Register 143

Authority: AS 46.03.020

AS 46.03.030

AS 46.03.070

AS 46.03.080

AS 46.03.100

AS 46.03.110

AS 46.03.710

**Current regulations allowing for site-specific water
quality determinations**



18 AAC 70.235. Site-specific criteria

(a) The department will, in its discretion, establish a site-specific water quality criterion that modifies a water quality criterion set out in 18 AAC 70.020(b)

(1) in a permit, certification, or approval as described in (b) of this section; or

(2) in regulation as described in (c) of this section.

(b) If the department finds that the natural condition of a waterbody is demonstrated to be of lower quality than a water quality criterion set out in 18 AAC 70.020(b), the natural condition constitutes the applicable water quality criterion. Upon application or on its own initiative, the department will determine whether a natural condition of a waterbody should be approved as a site-specific water quality criterion in a permit, certification, or approval issued by the department. Before making the determination, the department will issue public notice of a proposed approval under this subsection and provide opportunity for public comment. If a natural condition of a waterbody varies with time, the natural condition will be determined to be the prevailing highest quality natural condition of the waterbody measured during an annual, seasonal, or shorter time period before discharge or operation, or as the actual natural condition of the waterbody measured concurrent with discharge or operation. The department will, if necessary to adequately protect water quality,

(1) determine a natural condition for one or more seasonal or shorter time periods to reflect variable ambient conditions; and

(2) require additional or continuing monitoring of natural conditions as a condition of a permit, certification, or approval.

(c) Upon application, or on its own initiative, the department will, in its discretion, set site-specific criteria in regulation if the department finds that the evidence reasonably demonstrates that the site-specific criterion will fully protect designated uses in 18 AAC 70.020(b) and that

(1) for reasons specific to a certain site, a criterion in 18 AAC 70.020(b) is more stringent or less stringent than necessary to ensure full protection of the corresponding use class; or

(2) a criterion would be better expressed in terms different from those used in 18 AAC 70.020(b).

(d) The department will set a site-specific criterion under (c) of this section for the "growth and propagation of fish, shellfish, other aquatic life, and wildlife" use classes in 18 AAC 70.020(a) (1)(C) and 18 AAC 70.020(a) (2)(C) only if the department finds that the evidence is sufficient to reasonably demonstrate that

(1) the species or habitats present, or expected to be present under natural conditions, are more sensitive or less sensitive to a substance than indicated by the criterion, and a site-specific criterion is required to prevent adverse effects or to alleviate an unnecessarily restrictive general criterion; or

(2) the natural characteristics of the receiving environment would increase or reduce the biological availability or the toxicity of a substance, or otherwise alter the substance, and a site-specific criterion is

required to prevent adverse effects or to alleviate unnecessarily restrictive general criterion.

(e) An applicant seeking a site-specific criterion under this section shall provide all information that the department determines is necessary to modify an existing criterion. The department will, in a timely manner, request and review for completeness, information submitted under this subsection. In all cases, the burden of proof is on the applicant seeking a site-specific criterion.

History: Eff. 11/1/97, Register 143; am 4/29/99, Register 150

Authority: AS 46.03.010

AS 46.03.020

AS 46.03.050

AS 46.03.070

AS 46.03.080

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.710

AS 46.03.720

Editor's note: The development documents for site-specific criteria established under 18 AAC 70.235 (b) in a permit, certification, or approval may be reviewed in or requested from the department's Juneau office.

18 AAC 70.236. Waterbodies subject to site-specific criteria

(a) Under 18 AAC 70.235, the department has established site-specific criteria that modify certain general criteria set out in 18 AAC 70.020(b) for the waterbodies listed in (b) of this section. The site-specific criteria apply only to the affected designated use class indicated in (b) of this section. All other criteria set out in 18 AAC 70.020(b) continue to apply to the waterbodies listed in (b) of this section.

(b) Waterbodies subject to site-specific criteria, and the applicable site-specific criteria, are:

Environmental Conservation

CLICK TO VIEW TABLE

* Watershed numbers refer to watersheds established by the United States Department of Interior, Geological Survey, "Hydrologic Unit Map - 1987 State of Alaska," adopted by reference in 18 AAC

18 AAC 70.236(b)		LATITUDE LONGITUDE**	LOCATION	REACH OF WATER AFFECTED	WATER QUALITY PARAMETER	DESIGNATED USE CLASS AFFECTED	SITE-SPECIFIC CRITERIA
WATERSHED TYPE/NAME	NUMBER*						
(1) Camp Creek	19010301*	58°51'150" N 135°08'30" W Set at the downstream end of the affected river reach.	45 miles north of Juneau on Lynn Canal	Camp Creek below dis- charge from Kensington Mine dry tailings facility to tidewater (approximately 1,000 feet)	Dissolved inorganic sub- stances	(1)(A)(i) (1)(A)(iii) (1)(C)	Total dissolved solids (TDS) from all sources may not exceed 1,000 mg/l. Chlorides may not exceed 200 mg/l. Sulfates associated with magnesium and sodium may not exceed 200 mg/l. TDS may not exceed 1,000 mg/l. TDS may not exceed 1,000 mg/l.
(2) Gold Creek	15049900*	Beginning at: 58°18'26" N 134°22'43" W Ending at: 58°17'57" N 134°25'05" W	Juneau	Downstream from Gold Creek drain- age tunnel to Gastineau Channel	Dissolved inorganic substances	(1)(A)(iii) (1)(C)	TDS may not exceed 300 mg/l. TDS may not exceed 300 mg/l.

18 AAC 70.236(b)

WATERSHED		LATITUDE LONGITUDE**	LOCATION	REACH OF WATER AFFECTED	WATER QUALITY PARAMETER	DESIGNATED USE CLASS AFFECTED	SITE-SPECIFIC CRITERIA
TYPE/NAME	NUMBER*						
(3) Sherman Creek	19010301*	58°52'08" N 135°08'22" W Set at the downstream end of the affected river reach	45 miles north of Juneau on Lynn Canal	Sherman Creek below discharge of Kensington Mine adit drainage to tidewater (approximately 1.5 miles)	Dissolved inorganic substances	(1)(A)(i) (1)(A)(iii) (1)(C)	Total dissolved solids (TDS) from all sources may not exceed 1,000 mg/l. Chlorides may not exceed 200 mg/l. Sulfates associated with magnesium and sodium may not exceed 200 mg/l. TDS may not exceed 1,000 mg/l. TDS may not exceed 1,000 mg/l.
(4) Cook Inlet	19020401*	61°12'22.5" N 150°01'8.7" W (end of outfall pipe for Municipality of Anchorage wastewater treatment plant)	Vicinity of Point Woronzof, Anchorage	see footnote***	Arsenic**** Cadmium**** Chromium VI**** 	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D) (2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D) (2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	36 µ l (chronic) 69 µ l (acute) measured as dissolved metal 9.3 µ l (chronic) 42 µ l (acute) solved metal measured as dissolved metal 50 µ l (chronic) 1100 µ l (acute) measured as dissolved metal

18 AAC 70.236(b)		LATITUDE LONGITUDE**	LOCATION	REACH OF WATER AFFECTED	WATER QUALITY PARAMETER	DESIGNATED USE CLASS AFFECTED	SITE-SPECIFIC CRITERIA
WATERSHED TYPE/NAME	NUMBER*						
					Copper****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	3.1 µ / l (chronic) 4.8 µ / l (acute) measured as dissolved metal
					Lead****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	8.1 µ / l (chronic) 210 µ / l (acute) measured as dissolved metal
					Mercury****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	0.025 µ / l (chronic) 1.8 µ / l (acute) measured as dissolved metal
					Nickel****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	8.2 µ / l (chronic) 74 µ / l (acute) measured as dissolved metal
					Selenium****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	71 µ / l (chronic) 290 µ / l (acute) measured as dissolved metal
					Silver****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	1.9 µ / l (acute) measured as dissolved metal 81 µ / l (chronic)

18 AAC 70.236(b)		LATITUDE LONGITUDE**	LOCATION	REACH OF WATER AFFECTED	WATER QUALITY PARAMETER	DESIGNATED USE CLASS AFFECTED	SITE-SPECIFIC CRITERIA
WATERSHED TYPE/NAME	NUMBER*						
					Zinc****	(2)(A)(i), (2)(A)(ii) (2)(B)(i) (2)(C) & (2)(D)	90 µ /l (acute) measured as dissolved metal
					Turbidity	(2)(A)(i), (2)(B)(i) (2)(B)(ii) (2)(C) & (2)(D)	May not exceed the natural condition

**Current regulations allowing for short term
variances from state water quality standards**

✚ 18 AAC 70.200. Short-term variance

✚ (a) In its discretion, the department will grant a short-term variance from the antidegradation policy standard of 18 AAC 70.015 or the water quality criteria of 18 AAC 70.020(b) for

(1) a one-time, temporary activity that is a nonpoint source of water pollution; and

(2) a temporary activity associated with the placement of dredged or fill material affecting a specific waterbody.

(b) The department will grant a short-term variance only if an applicant shows to the department's satisfaction that

(1) wastes or substances that might adversely affect water quality are controlled, using methods the department finds most effective;

(2) the activity will be conducted in a manner to mitigate water quality impacts, using methods the department finds most effective; and

(3) the activity, when completed, will not cause a long-term, chronic, or recurring violation of the water quality standards.

(c) The department will, in its discretion, grant a short-term variance by geographic area or project, or for a specific event. The term of a variance will be as short as practicable, and will, at the latest, expire when the projects is completed.

(d) A person seeking a short-term variance shall submit a written request and proceed in accordance with 18 AAC 15.020 - 18 AAC 15.100. The request must state the

(1) location, time, duration, and type of activity for which the variance is sought;

(2) reasons why the activity is required;

(3) a real extent and quantified degree of variance from the applicable criteria;

(4) detailed construction and operating plans, including water pollution control and mitigation measures; and

(5) activity's estimated impact on the uses of the water involved, including recreation and use for habitat, rearing, growth, or migration by fish, shellfish, other aquatic life, and wildlife.

(e) The department will, in its discretion, treat an application for a permit under Sec. 404 of the Clean Water Act as an application for a short-term variance.

✚ **History:** Eff. 11/1/97, Register 143

✚ **Authority:** AS 46.03.020

2004 proposed mixing zone regulation change

Register ___, _____ 200__ ENVIRONMENTAL CONSERVATION

18 AAC 70 is amended by adding a new section to read:

18 AAC 70.240. Mixing zones. (a) Upon application, the department may authorize in a discharge permit, certification, or order, a mixing zone or multiple mixing zones in which the water quality criteria and any limit set by or under this chapter may be exceeded. The applicant shall provide to the department all available evidence reasonably necessary to demonstrate that a mixing zone will satisfy this section and shall provide information in a form and using methods approved by the department. The department may approve, approve with conditions, or deny a mixing zone application.

(b) In determining whether to authorize a mixing zone under this section, the department will consider

(1) the characteristics of the receiving water, including biological, chemical, and physical characteristics such as volume, flow rate, flushing and mixing characteristics;

(2) the characteristics of the effluent, including volume, flow rate, dispersion, and quality after treatment;

(3) the effects, if any, including cumulative effects of multiple discharges and diffuse, nonpoint source inputs, that the discharge will have on the uses of the receiving water;

(4) any additional measures that would offset potential adverse effects to the aquatic resources present; and

(5) any other factors the department finds must be considered to determine whether a mixing zone will comply with this section.

(c) The department will approve a mixing zone, as proposed or with conditions, only if it finds that available evidence reasonably demonstrates that

(1) an effluent or substance will be treated to remove, reduce, and disperse pollutants, using methods found by the department to be the most effective and technologically and economically feasible, consistent with the highest statutory and regulatory treatment requirements;

(2) existing uses of the waterbody outside the mixing zone will be maintained and protected;

and (3) the overall biological integrity of the waterbody will not be impaired;

(4) the mixing zone will not

(A) result in a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone;

(B) create a public health hazard through encroachment on existing uses of the waterbody for water supply or contact recreation;

(C) preclude or limit established processing activities or commercial, sport, personal-use, or subsistence fish and shellfish harvesting;

(D) in streams, rivers, or other flowing fresh waters, result in a reduction in fish population levels;

(E) in streams, rivers, or other flowing fresh waters, adversely affect the capability of an area to support spawning, incubation or rearing of anadromous or resident fish;

(F) in streams, rivers, or other flowing fresh waters, result in permanent or irreparable displacement of indigenous organisms;

(G) adversely affect threatened or endangered species under the Endangered Species Act (16 U.S.C. 1531-1544); or

(H) form a barrier to migratory species or fish passage.

(d) The department will approve a mixing zone, as proposed or with conditions, only if the department finds that available evidence reasonably demonstrates that within the mixing zone the pollutants discharged will not

(1) bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota to significantly adverse levels, based on consideration of bioaccumulation and bioconcentration factors, toxicity, and exposure;

(2) present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects;

(3) settle to form objectionable deposits, except as authorized under 18 AAC 70.210;

(4) produce floating debris, oil, scum and other material in concentrations that form nuisances;

(5) result in undesirable or nuisance aquatic life;

(6) produce objectionable color, taste, or odor in aquatic resources harvested for human consumption;

(7) cause lethality to passing organisms;

(8) exceed acute aquatic life criteria at and beyond the boundaries of a smaller initial mixing zone surrounding the outfall, the size of which shall be determined using methods approved by the department.

(e) The department will approve a mixing zone, as proposed or with conditions, only if it finds that the mixing zone is as small as practicable and will comply with the following size restrictions, unless the department finds that evidence is sufficient to reasonably demonstrate that these size limitations can be safely increased:

(1) for estuarine and marine waters, measured at mean lower low water,

(A) the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water may not exceed 10 percent of the total length of that cross section; and

(B) the total horizontal area allocated to mixing zones may not exceed 10 percent of the surface area;

(2) for lakes, the total horizontal area allocated to all mixing zones may not exceed 10 percent of the lake's surface area;

(3) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend beyond the computed point of complete mixing, as determined using a standard river flow mixing model or other methods accepted by the department;

(4) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend downstream beyond the location where the department determines that a public health hazard will occur.

(f) For streams, rivers, or other flowing fresh waters, in calculating the maximum pollutant discharge limitation, the volume of flow available for dilution must be determined using the actual flow data collected concurrent with the discharge or using other methods approved by the department.

(g) If the department finds that available evidence reasonably demonstrates that a mixing zone authorized by the department has had or is having a significant unforeseen adverse environmental effect, the department will terminate, modify, or deny renewal of the permit, certification, or order authorizing the mixing zone. (Eff. 11/1/97, Register 143; am __/__/__, Register __)

Authority:	AS 46.03.010	AS 46.03.080	AS 46.03.110
	AS 46.03.020	AS 46.03.090	AS 46.03.710
	AS 46.03.050	AS 46.03.100	AS 46.03.720
	AS 46.03.070		

18 AAC 70.245 is repealed:

18 AAC 70.245. Mixing zones: appropriateness and size determination.
Repealed. (Eff. 11/1/97, Register 143; repealed __/__/__, Register __)

18 AAC 70.250 is repealed:

18 AAC 70.250. Mixing zones: general conditions. Repealed. (Eff. 11/1/97, Register 143; repealed __/__/__, Register __)

18 AAC 70.255 is repealed:

18 AAC 70.255. Mixing zones: in-zone quality and size specifications.
Repealed. (Eff. 11/1/97, Register 143; repealed __/__/__, Register __)

18 AAC 70.260 is repealed:

18 AAC 70.260. Mixing zones: application requirements. Repealed. (Eff. 11/1/97, Register 143; repealed __/__/__, Register __)

Register ___, _____ 200__ ENVIRONMENTAL CONSERVATION

18 AAC 70.270 is repealed:

18 AAC 70.270. Mixing zones: termination, modification, or denial of renewal. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

Register ____, _____ 2006 ENVIRONMENTAL CONSERVATION

18 AAC 70.240 is repealed and readopted to read:

18 AAC 70.240. Mixing zones. (a) Upon application, the department may authorize in a discharge permit or certification, a mixing zone or multiple mixing zones in which the water quality criteria and any limit set by or under this chapter may be exceeded. The applicant shall provide to the department all available evidence reasonably necessary to demonstrate that a mixing zone will satisfy this section and shall provide information in a form and using methods approved by the department. The department may approve, approve with conditions, or deny a mixing zone application.

(b) In determining whether to authorize a mixing zone under this section, the department will consider

(1) the characteristics of the receiving water, including biological, chemical, and physical characteristics such as volume, flow rate, flushing and mixing characteristics;

(2) the characteristics of the effluent, including volume, flow rate, dispersion, and quality after treatment;

(3) the effects, if any, including cumulative effects of multiple discharges and diffuse, nonpoint source inputs, that the discharge will have on the uses of the receiving water;

(4) any additional measures that would mitigate potential adverse effects to the aquatic resources present; and

(5) any other factors the department finds must be considered to determine whether a mixing zone will comply with this section.

(c) The department will approve a mixing zone, as proposed or with conditions, only if it finds that available evidence reasonably demonstrates that

(1) an effluent or substance will be treated to remove, reduce, and disperse pollutants, using methods found by the department to be the most effective and technologically and economically feasible, consistent with the highest statutory and regulatory treatment requirements including

(A) any federal technology-based effluent limitation identified in 40 C.F.R. 125.3 and 40 C.F.R. 122.29, as amended through July 1, 2005 and adopted by reference;

(B) minimum treatment standards in 18 AAC 72.050; and

(C) any treatment requirement imposed under another state law that is more stringent than a requirement of this chapter;

(2) existing uses of the waterbody outside the mixing zone will be maintained and protected;

(3) the overall biological integrity of the waterbody will not be impaired; and

(4) the mixing zone will not

(A) result in a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone;

(B) create a public health hazard that would preclude or limit existing uses of the waterbody for water supply or contact recreation;

(C) preclude or limit established processing activities or established commercial, sport, personal-use, or subsistence fish and shellfish harvesting;

(D) result in a reduction in fish or shellfish population levels;

(E) result in permanent or irreparable displacement of indigenous organisms;

(F) adversely affect threatened or endangered species under the Endangered Species Act (16 U.S.C. 1531-1544); or

(G) form a barrier to migratory species or fish passage.

(d) The department will approve a mixing zone, as proposed or with conditions, only if the department finds that available evidence reasonably demonstrates that within the mixing zone the pollutants discharged will not

(1) bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota to significantly adverse levels, based on consideration of bioaccumulation and bioconcentration factors, toxicity, and exposure;

(2) present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects using risk assessment methods approved by the department and consistent with 18 AAC 70.025;

(3) settle to form objectionable deposits, except as authorized under 18 AAC 70.210;

(4) produce floating debris, oil, scum and other material in concentrations that form nuisances;

(5) result in undesirable or nuisance aquatic life;

(6) produce objectionable color, taste, or odor in aquatic resources harvested for human consumption;

(7) cause lethality to passing organisms; or

(8) exceed acute aquatic life criteria at and beyond the boundaries of a smaller initial mixing zone surrounding the outfall, the size of which shall be determined using methods approved by the department.

(e) In lakes, streams, rivers, or other flowing fresh waters, except as authorized in (f) of this subsection, a mixing zone will not be located in a spawning area of

(1) anadromous fish; or

(2) Arctic Grayling, northern pike, rainbow trout, lake trout, brook trout, cutthroat trout, whitefish, sheefish, Arctic char (Dolly Varden), burbot, and landlocked coho, king, and sockeye salmon.

(f) Notwithstanding subsection (e), the Department may authorize a mixing zone in a spawning area of a lake, stream, river or other flowing fresh water if, after consultation with the Department of Natural Resources, Office of Habitat Management and Permitting, or the Department of Fish and Game if within a legislatively designated special area under AS 16.20, the department finds that the applicant has

(1) demonstrated that spawning fish, fish eggs, or alevins are not physically present within the mixing zone when the discharge will occur and the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities;

(2) demonstrated the discharge does not contain pollutants that will adversely affect the capability of the area to support present and future spawning, incubation, and rearing;

(3) submitted a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if within a legislatively designated special area under AS 16.20; or

(4) submitted a mitigation plan approved by the Department of Natural Resources, Office of Habitat Management and Permitting, and incorporated as part of the Department of Environmental Conservation permit, that includes one or more of the following mitigation actions:

(A) avoid the impact altogether by not taking a certain action or parts of an action;

(B) minimize the impact by limiting the degree or magnitude of the action and its implementation;

(C) rectify the impact by repairing, rehabilitating, or restoring the impacted environment;

(D) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the proposed use or activity;

(E) compensate for the impact by replacing or providing substitute resources or environments.

(g) The department will approve a mixing zone, as proposed or with conditions, only if it finds that the mixing zone is as small as practicable and will comply with the following size restrictions, unless the department finds that evidence is sufficient to reasonably demonstrate that these size restrictions can be safely increased:

(1) for estuarine and marine waters, measured at mean lower low water,

(A) the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water may not exceed 10 percent of the total length of that cross section; and

(B) the total horizontal area allocated to all mixing zones at any depth may not exceed 10 percent of the surface area;

(2) for lakes, the total horizontal area allocated to all mixing zones at any depth may not exceed 10 percent of the lake's surface area;

(3) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend beyond the computed point of complete mixing, as determined using a standard river flow mixing model or other methods accepted by the department;

(4) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend downstream beyond the location where the department determines that a public health hazard reasonably could be expected to occur.

(h) For streams, rivers, or other flowing fresh waters, in calculating the maximum pollutant discharge limitation, the volume of flow available for dilution must be determined using

(1) the actual flow data collected concurrent with the discharge; or

(2) for conventional and nontoxic substances, the 10-year, 7-day low flow (7Q10) as the criteria design flow; for the protection of aquatic life, the 7Q10 as the chronic criteria design flow and the 10-year, 1-day (1Q10) as the acute criteria design flow; and for the protection of human health, the 5-year, 30-day (30Q5) as the noncarcinogenic criteria design flow and the harmonic mean flow as the carcinogenic criteria design flow; these low flows must be calculated using methods approved by the department.

(i) If the department finds that available evidence reasonably demonstrates that a mixing zone authorized by the department has had or is having a significant unforeseen adverse environmental effect, the department will terminate, modify, or deny renewal of the permit or certification authorizing the mixing zone. (Eff. 11/1/97, Register 143; am ___/___/___, Register ___)

Authority:	AS 46.03.010	AS 46.03.080	AS 46.03.720
	AS 46.03.020	AS 46.03.100	
	AS 46.03.050	AS 46.03.110	
	AS 46.03.070	AS 46.03.710	

18 AAC 70.245 is repealed:

18 AAC 70.245. Mixing zones: appropriateness and size determination. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.250 is repealed:

18 AAC 70.250. Mixing zones: general conditions. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

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18 AAC 70.255. Mixing zones: in-zone quality and size specifications. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.260 is repealed:

18 AAC 70.260. Mixing zones: application requirements. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.270 is repealed:

18 AAC 70.270. Mixing zones: termination, modification, or denial of renewal. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.990 (30) is repealed:

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(30) repealed __/__/____.

18 AAC 70.990 is amended by adding a new paragraph to read:

(72) "shellfish" means any species of crustacean, mollusk, or other invertebrate, in any stage of its life cycle.

LEGAL SER

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MEMORANDUM

December 13, 2005

SUBJECT: The use of "or" in 18 AAC 70.240(f), proposed to be adopted by
DEC (Work Order No. 24-LS1381)

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: *Donald M. Bullock Jr.*
Donald M. Bullock Jr.
Legislative Counsel

The Department of Environmental Conservation (DEC) proposes to adopt 18 AAC 70.240(f). That subsection reads as follows:

(f) Notwithstanding subsection (c), the Department may authorize a mixing zone in a spawning area of a lake, stream, river or other flowing fresh water if, after consultation with the Department of Natural Resources, Office of Habitat Management and Permitting, or the Department of Fish and Game if within a legislatively designated special area under AS 16.20, the department finds that the applicant has

(1) demonstrated that spawning fish, fish eggs, or alevins are not physically present within the mixing zone when the discharge will occur and the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities;

(2) demonstrated the discharge does not contain pollutants that will adversely affect the capability of the area to support present and future spawning, incubation, and rearing;

(3) submitted a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if within a legislatively designated special area under AS 16.20; *or*

(4) submitted a mitigation plan approved by the Department of Natural Resources, Office of Habitat Management and Permitting, and incorporated as part of the Department of Environmental Conservation permit, that includes one or more of the following mitigation actions:

(A) avoid the impact altogether by not taking a certain action or parts of an action;

(B) minimize the impact by limiting the degree or magnitude of the action and its implementation;

Representative Paul Seaton
December 13, 2005
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(C) rectify the impact by repairing, rehabilitating, or restoring the impacted environment;

(D) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the proposed use or activity;

(E) compensate for the impact by replacing or providing substitute resources or environments. [Emphasis added.]

According to your request, Nancy Sonafrank of DEC wrote that subsections (1) through (4) in the proposed subsection "are meant to be (1) or (2) or (3) or (4)."¹ You asked whether the proposed subsection, as written, expressed a preference for any of the four paragraphs and whether only the requirements in any one paragraph need be met for a mixing zone to be authorized.

The quick answer to your questions are that we agree with Sonafrank's statement that each of the four paragraphs offers an alternative for authorizing a mixing zone. Also, based on the manner in which subsection (f) is drafted, there is no preference or any hierarchy inferred among the four alternatives.

I emphasized the word "or" at the end of 18 AAC 70.240(f)(3) that is set out above. The use of "or" in the list tells the reader that a mixing zone may be authorized if the department finds that the applicant has taken any of the four actions listed in paragraphs (1) through (4). It follows that an applicant may also take more than one of the listed actions.

The use of the words "and" and "or" and the problems of possible ambiguity are discussed in Dickerson, *The Fundamentals of Legal Drafting*, 2d ed. (1986), sec. 6.2, pp. 104 - 14. The introduction to the discussion in Dickerson is as follows:

Problems of multiple modifications or reference are perhaps best approached through the peculiar uncertainties involved in the use of "and" and "or." The difference between "and" and "or" is usually explained by saying that "and" stands for the conjunctive, connective, or additive and "or" for the disjunctive or alternative. The former connotes "togetherness" and the latter tells you to "take your pick." So much is clear.

Dickerson at 104.²

¹ E-mail from Nancy Sonafrank, Department of Environmental Conservation, to Louie Flora (Oct. 19, 2005, 10:26 a.m.).

² Dickerson is referenced numerous times in the *Manual of Legislative Drafting* (2005). See, e.g. pages 60, 68, and 72.

Representative Paul Seaton
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In the case of the proposed regulation, the "or" tells the reader to "take your pick."³

There is nothing in the proposed subsection (f) that says or implies that, "if an applicant takes more than one of the four actions, the department may not authorize a mixing zone." Dickerson notes that an ambiguity may arise, "if the writer intends the *inclusive* "or" (A or B, or both) or the *exclusive* "or" (A or B, but not both)."⁴ In the case of the proposed regulation, any one of the four may be the linchpin for authorizing a mixing zone; meeting more than one of the criteria would only be redundant.

There is nothing in subsection (f) that favors any one of the four alternatives or establishes any sort of hierarchy among the four. The use of "or" in the listed paragraphs, as stated above, implies "take your pick." Had the drafter intended a preference, the drafter regulation could have written, for example, that if an applicant was unable to make the demonstration required in the first paragraph, then one of the other alternatives could be taken. Similarly, the drafter could have inserted additional language to express the order in which an action was to be preferred.

In the case of ambiguous language, the intent of the department may be considered. The court gives deference to a department's interpretation of its own regulations.⁵ Depending on the role of Nancy Sonafrank in developing the proposed regulation, including the policy behind it, her e-mail to Louie Flora may be considered in interpreting the portion of the regulation discussed in this memo.

If I may be of further assistance, please advise.

DMB:lmb
05-275.lmb

³ The use of "or" in the regulation as drafted is also consistent with the use of "or" described in the *Drafting Manual for Administrative Regulations* (2005).

⁴ Dickerson at 122.

⁵ *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) ("Where an agency interprets its own regulation . . . a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue.").

**Opposition to 2004 and 2005 regulatory proposal
lifting the prohibition on mixing zones in freshwater
spawning areas**



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

November 1, 2004

Nancy Sonafrank
Water Quality Standards Section Manager
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonafrank:

The National Marine Fisheries Service (NMFS) has reviewed proposed revisions to the Mixing Zone sections of the Alaska Water Quality Standards. The Alaska Department of Environmental Conservation (DEC) is proposing several changes to the Mixing Zones sections of the Water Quality Standards in 18 AAC 70.240 through 70.270 to:

- Improve clarity and reduce redundancy;
- Allow mixing zones in certain fish spawning areas where there will be no adverse effect on the capability of an area to support fish spawning, rearing, or incubation (the proposed regulations provide for consideration of measures that would offset the potential adverse effects of mixing zones on aquatic resource); and
- Simplify some technical provisions including those dealing with risk assessment, flow calculations, and mixing zone models.

NMFS supports efforts by DEC to improve clarity and reduce redundancy in regulation, and many of the proposed amendments to the Alaska Water Quality Standards appear to yield no substantive change. However, NMFS opposes the proposed regulation to allow for mixing zones in certain fish spawning areas. This proposed revision is a significant change from the existing prohibition on mixing zones in spawning and rearing habitat of resident and anadromous fish. Water quality standards are premised on levels that do not adversely affect fish and/or their habitat, and any mixing zone (i.e., an allowable variance from water quality standards) could adversely affect fish and their habitat. The proposed change allows for the interpretation of data that are weak (based on acute toxicity information) and the interpretation or extrapolation of that data may be flawed. Applying acute toxicity data to a situation where chronic impacts occur (as in a mixing zone) and fish embryos and larvae are present may adversely affect living marine resources including Essential Fish Habitat (EFH). Our specific comments on the amendment to the Water Quality Standards at 18 AAC 70 are enclosed and include comments from our research scientists at the Auke Bay Laboratory.



National Marine Fisheries Service (NMFS)

Comments on the Draft Revision of Mixing Zone Regulations, 18 AAC 70.240-270

NMFS opposes the proposal to allow mixing zones in areas of spawning and rearing habitat. Scientific research, including research conducted by NMFS, increasingly indicates that these habitats are critical to the survival of numerous fish species, including prey species, and that the early life stages that utilize these habitats are extremely sensitive to chronic pollution. Chronic pollution over time in spawning and rearing habitats will place those populations at risk over the long term, leading to a diminishing of the stock and possibly to localized extinction.

Allowing mixing zones for pollutants in water generally is based on two assumptions: (1) exposure to fish will be transient, and (2) short exposures to toxicant levels will be below acute toxicity levels. These assumptions might be met with adult transient fish moving through an area, but are not likely to be met if there are resident fish, a rearing area, and most importantly, a spawning area. Developing salmon eggs and larvae will be in spawning gravels for months, and any exposure they receive from elevated levels in a mixing zone would be chronic. Predicting impacts of chronic toxicity using acute toxicity information is fundamentally flawed because the mechanisms of toxicity are intrinsically different between acute toxicity (narcosis) and chronic toxicity. In other words, simply applying a dilution safety factor of 100 or some other value does not have relevance when calculating the potential chronic impacts to embryos and developing larvae.

The preponderance of recent scientific evidence to emerge from toxicological studies suggests that concentrations as low as one part per billion of PAH (polynuclear hydrocarbons) can adversely impact developing fish embryos. As our understanding of toxic effects of contaminants increases, the evidence suggests that the goal of most fisheries pollution mitigation should be to avoid exposing spawning areas to environmentally persistent contaminants, especially in situations such as mixing zones where fish eggs and larvae are exposed chronically.

Streams and estuaries sustain the vulnerable early developmental life stages of many fish species. Salmon eggs, larvae, and juveniles use both stream and estuary for much of the first year of life, and the juveniles of many marine species use the estuaries for nursery grounds. The principal threat to these species is not from acutely toxic concentrations that can result in mortality, but in the more subtle effects of low-level contaminant exposures to these sensitive life stages. Incubating eggs are very sensitive to long-term exposures to those pollutants such as hydrocarbons, pesticides, and PCBs that sequester onto lipid molecules in the developing embryos. These environmentally persistent organic pollutants remain in the eggs as they develop. The result is that fewer juveniles survive, so that recruitment from the early life stages is reduced and adult populations may not be replaced at sustainable levels.

Most of the toxicity models currently in use for fish assume a disruption of the nervous system leading to narcosis and eventual death. Water quality standards for mixing zones are predicated on this model of how toxic chemicals work. Recent research indicates that pollutants such as polycyclic aromatic hydrocarbons (PAHs) are unlikely to act as narcotic agents in early life stages of fish that have been chronically exposed as embryos. Instead embryonic exposures result in edema of the yolk sac,

hemorrhaging, disruption of cardiac function, binding of aryl hydrocarbon receptors, enzyme induction, mutation and heritable changes in progeny, craniofacial and spinal deformities, neuronal cell death, anemia, reduced growth, and impaired swimming (White et al. 1999, Barron et al. 2003, Billiard et al. 1999, 2002, Brinkworth et al. 2003, Marty et al. 1997, Incardona et al. in press). Exposure to sunlight results in a 48 fold increase in toxicity of PAH to fish larvae (Barron et al. 2002) and resulted in 2 ppb becoming toxic to the calanoid copepods that form much of the diet of developing juvenile fishes (Duesterloh et al. 2002).

Early life stages are more vulnerable to both the chemical effects of toxicants, and to the ecological consequences. In a developing embryo, cellular damage may be replicated many times as tissues develop and enlarge, resulting in a tissue that is severely compromised in function at later life stages. The embryo may develop normally for some time, as it may not need this tissue until a later life stage, thus the consequences of damage may not be apparent immediately. This concept was demonstrated eloquently when salmon embryos were exposed in controlled laboratory conditions to low levels of crude oil, and then tagged and released to the marine environment. A variety of symptoms were evident in many of the resulting larvae, from mortalities to deformities, to even the more subtle effects on growth from very normal appearing animals. Delayed impacts on growth were evident at 19 parts per billion total PAH, and the ecological consequence (suffering increased levels of predation) was evident when fewer adults returned from the oil exposed groups (Heintz 2000). Exposure of developing embryos to 5 and 19 ppb total PAH resulted in a subsequent 20% and 40% reduction in marine survival among the returning adults. Exposure of incubating herring eggs to weathered oil caused significant morphological defects at 9 ppb, and effects of more weathered oil were significant at concentrations as low as 0.2 ppb PAH; chromosomal aberrations were observed at 0.7 parts per billion (ppb) (Carls et al. 1999). Over time, reductions in adult recruitment will slowly and subtly result in lower populations, eventually leading to extinction of the stock. This situation has probably been the primary mechanism leading to missing populations in urban estuaries.

Allowing persistent organic pollutants into the environment also results in creating long-term reservoirs of pollution that are available to organisms. Hydrocarbons, pesticides, and PCBs tend to adsorb to organic tissue, and can be transferred up the food chain, or can be adsorbed to inorganic matter in sediments, where they can remain bioavailable for years. There is a substantial uptake of these compounds, especially in many invertebrate species that do not have the biochemical mechanisms to purge their systems of the pollutants (Varanasi et al. 1989, 1992; Meador et al. 1995). There is a growing body of evidence of accumulations of persistent organic pollutants in the cold sink of the arctic, and Alaskan waters with many lipid rich compartments (copepods, forage fish, target species, marine mammals) is becoming more contaminated each year from pollutants originating in other major geographic areas. We would not want to accelerate this problem with local releases with more direct routes to Alaskan fish resources.

The concern regarding chronic pollution to embryos applies to non-organic pollutants as well, because the concepts are the same, although the literature is sparse. In this case, the contaminant is not necessarily trapped in the tissues for long periods of time because of the high affinity of large organic molecules in lipids, but remains in tissues because of the continuous replacement by the chronic mixing zone source. In other words, in both cases a tissue load is present. The second major principle is that chronic exposure to embryos and larvae are special biological situations. Because of the long

incubation time, the exposure to embryos and larvae is chronic, and any extrapolation from acute toxicity tests and mechanisms does not apply. Small and seemingly innocuous interruptions or interferences with the embryo development process can have lethal effects, whether they are immediately obvious or delayed, and are very subtle to detect. Chronic studies with embryos and subsequent wild releases are the only concrete way to detect sublethal effects that will affect returning adult numbers. NMFS is concerned that the proposed changes to the water quality standards would shift the burden of proof – meaning that non-harmful acute tests could be used inappropriately to judge the potential harm of chronic exposures to embryos and larvae, thereby underestimating actual effects.

Based on research conducted by NMFS and others, we recommend that DEC not approve mixing zones for areas of fish spawning and rearing. Using acute toxicity data and toxicity models is inappropriate for the protection of fish embryos and larvae in a chronic exposure situation. The populations exposed will be at considerable risk over time, and those exposed stocks can be expected to diminish over time to levels that may not support subsistence, sport, or commercial harvests.

Specific Comments

18 AAC 70.240 (c)(4)(B) As written this section states that DEC will approve a mixing zone as proposed or with conditions, only if it finds that available evidence reasonably demonstrates that an effluent or substance will "... be treated to remove, reduce, and disperse pollutants, using methods found by the department to be the most effective and technologically and economically feasible, consistent with the highest statutory and regulatory treatment requirements."

The regulations should be more specific. Statutory and regulatory treatment requirements differ around the country, and for certain discharges there are areas in the country with higher treatment requirements than Alaska. What standard will be used to assess whether a mixing zone is "consistent with the highest statutory and regulatory treatment requirements"?

18 AAC 70.240 (c)(4)(B) This section states that mixing zones will not "create a public health hazard through encroachment on existing uses of the waterbody for water supply or contact recreation."

How is encroachment on existing use defined? Should this be cross referenced to statutes that cover water rights?

18 AAC 70.240 (c)(4)(D) "the mixing zone will not in streams, rivers, or other flowing fresh waters, result in a reduction in fish population levels;"

Are individual fish kills acceptable? How will the population be tracked to insure that there will not be a reduction in fish populations?

18 AAC 70.240 (c)(4)(E) "the mixing zone will not in streams, rivers, or other flowing fresh waters, adversely affect the capability of an area to support spawning, incubation or rearing of anadromous or resident fish;"

Water quality standards are premised on levels that do not adversely affect fish and/or their habitat, and any mixing zone (i.e., an allowable variance above water quality standards) could adversely affect fish and their habitat.

18 AAC 70.240 (c)(4)(F) "the mixing zone will not in streams, rivers, or other flowing fresh waters, result in permanent or irreparable displacement of indigenous organisms;"

Again, if a mixing zone is a variance to water quality standards, indigenous organisms may find areas where the levels of pollutants exceed water quality standards to be inhospitable.

18 AAC 70.240 (d)(8) DEC will approve a mixing zone, as proposed or with conditions, only if the DEC finds that available evidence reasonably demonstrates that within the mixing zone the pollutants discharged will not "exceed acute aquatic life criteria at and beyond the boundaries of a smaller initial mixing zone surrounding the outfall, the size of which shall be determined using methods approved by the department."

With no spatial limits on the size of the smaller initial mixing zone, a very large initial mixing zone could be permitted, allowing large areas to exceed acute aquatic life criteria. We recommend specifying that the initial mixing zone must not extend beyond the immediate vicinity of the outfall. Also, this section needs to clarify what is meant by "... methods approved by the department." Some examples of the types of those methods would be helpful. In addition, NMFS suggests that the sentence read "... aquatic life criteria *to* and beyond.

18 AAC 70.240 (e)(1)(A) DEC will approve a mixing zone, as proposed or with conditions, only if it finds that the mixing zone is as small as practicable and will comply with the following size restrictions, unless DEC finds that evidence is sufficient to reasonably demonstrate that these size limitations can be safely increased: "(1) for estuarine and marine waters, measured at mean lower low water, (A) the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water may not exceed 10 percent of the total length of that cross section;"

Does the cumulative linear length refer to the perimeter of the waterbody?

18 AAC 70.240 (f) "For streams, rivers, or other flowing fresh waters, in calculating the maximum pollutant discharge limitation, the volume of flow available for dilution must be determined using the actual flow data collected concurrent with the discharge or using other methods approved by the department."

If the discharge can occur 24 hours a day seven days a week, year round, what part of the annual flow would be used?

References

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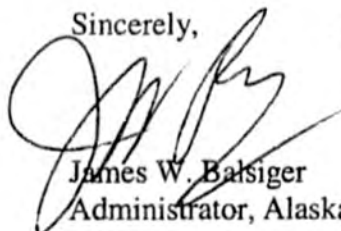
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Should you have any questions regarding these comments please contact Ms. Jeanne Hanson at (907) 271-3029.

Sincerely,



James W. Balsiger
Administrator, Alaska Region

Enclosure

cc: NMFS HCD – Susan Walker
NMFS Auke Bay Lab – Jeep Rice
Records – Lori Durall

USFWS, ADNR-OHMP, ADEC – Anchorage

Lisa McGuire
U.S. EPA, Region 10
Water Quality Standards and Planning Unit
1200 Sixth Avenue
Seattle, Washington 98101



United Cook Inlet Drift Association

43961 K-Beach Road, Suite E • Soldotna, Alaska 99669 • (907) 260-9436 • fax (907) 260-9438 • ucida@acsalaska.net

December 5, 2005

Attn: Lynn J. Tomich Kent, Director
Alaska Department of Environmental Conservation
Division of Water
555 Cordova Street
Anchorage, AK 99501

Dear Ms. Kent:

On November 11, 2005, the United Cook Inlet Drift Association (UCIDA) passed the attached *RESOLUTION TO OPPOSED INCREASED POLLUTION IN ALASKA SALMON STREAMS*.

If you have any questions, please call the UCIDA office at (907) 260-9436.

Sincerely,

Steve Tvenstrup
by Cindy Hall, UCIDA office manager
Steve Tvenstrup
UCIDA President

cjh

cc: Governor Frank Murkowski
Senator Gary Stevens
Senator Tom Wagoner
Representative Mike Chenault
Representative Kurt Olson
Representative Paul Seaton
Kenai Peninsula Mayor John Williams



United Cook Inlet Drift Association

43961 K-Beach Road, Suite E • Soldotna, Alaska 99669 • (907) 260-9436 • fax (907) 260-9438 • ucida@acsalaska.net

UCIDA RESOLUTION TO OPPOSE INCREASED POLLUTION IN ALASKA SALMON STREAMS

WHEREAS, the Alaska Department of Environment Conservation recently proposed new rules to allow "mixing zones" in Alaska fish streams;

WHEREAS, mixing zones allow pollution at levels that violate water quality standards designed to protect fish and fish consumers;

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh, and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce;

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state and form part of the cultural fabric which makes Alaska unique;

WHEREAS, salmon health, salmon habitat, and salmon marketing will suffer under a broad new rule allowing increased pollution into Alaska's salmon streams;

WHEREAS, the state of Alaska has limited technical and financial resources to assess the consequences of allowing increased pollution into Alaska's salmon streams;

WHEREAS, Alaskans resoundingly opposed a similar proposal last year;

NOW, THEREFORE, the United Cook Inlet Drift Association does hereby oppose Governor Murkowski's /Alaska Department of Environmental Conservation's proposal to allow increased pollution (mixing zones) in salmon streams.

Date: 11/30/05

Steve Tvenstrup
Steve Tvenstrup, President

by Cindy Hall, UCIDA Office Manager

Introduced by:

Martin

Date:

12/06/05

Action:

Adopted

Vote:

9 Yes, 0 No

**KENAI PENINSULA BOROUGH
RESOLUTION 2005-106**

**A RESOLUTION OPPOSING THE ALASKA DEPARTMENT OF ENVIRONMENTAL
CONSERVATION'S PROPOSAL TO ALLOW INCREASED MIXING ZONES IN
SPAWNING AREAS AND SUPPORTING AN ALTERNATIVE AS SUPPORTED BY
THE CITY OF SOLDOTNA IN ITS RESOLUTION 2005-074**

WHEREAS, the Alaska Department of Environmental Conservation recently proposed new rules to allow "mixing zones" in Alaska fish streams and freshwater lakes where existing regulations currently prohibit them; and

WHEREAS, mixing zones allow pollution at levels that violate water quality standards designed to protect fish and fish consumers; and

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh, and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce; and

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state and form part of the cultural fabric which makes Alaska unique; and

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

WHEREAS, allowing 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, in some cases National Pollutant Discharge Elimination System ("NPDES") permits have been issued and infrastructure established in areas shown not to support salmon spawning, but where salmon are later found to have developed spawning beds within the previously spawning-free areas; and

WHEREAS, prohibiting the renewal of NPDES permits in such areas would not necessarily further the goal of protecting fish and could be detrimental to the salmon spawning areas as it could cause the stream to dry up; and

**CITY OF HOMER
HOMER, ALASKA**

Mayor

RESOLUTION 05-133

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA OPPOSING THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S PROPOSAL TO AMEND 18 AAC 70.240 TO ALLOW INCREASED POLLUTION - THROUGH USE OF MIXING ZONES IN ALASKA SALMON STREAMS.

WHEREAS, The Alaska Department of Environment Conservation recently proposed new rules to allow "mixing zones" in Alaska fish streams; and

WHEREAS, Mixing zones allow pollution at levels that violate standards designed to protect fish and fish consumers; and

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh and healthy; and

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the Homer area, and form part of the cultural fabric that makes Alaska unique; and

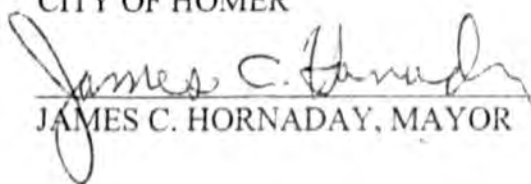
WHEREAS, Salmon health, salmon habitat and salmon marketing will suffer under a broad new rule allowing increased pollution into Alaska's salmon streams; and

WHEREAS, The state of Alaska has limited technical and financial resources to assess the consequences of increased pollution into Alaska's salmon streams; and

WHEREAS, Alaskans resoundingly opposed a similar proposal from the Murkowski Administration last year, and vital local and state government resources are being spent to undermine fish stream and salmon marketing protections.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Homer hereby opposes the Alaska Department of Environmental Conservation's proposal to amend 18 AAC 70.240 to allow increased pollution through the use of mixing zones in Alaska salmon streams.

CITY OF HOMER


JAMES C. HORNADAY, MAYOR

ATTEST:


MARY L. CALHOUN, CMC, CITY CLERK
Fiscal Note: NA

A PETITION OPPOSING POLLUTING MIXING ZONES IN ALASKA SALMON STREAMS

WHEREAS, the Alaska Department of Environment Conservation recently proposed new rules to allow "mixing zones" in Alaska fish streams;

WHEREAS, mixing zones allow pollution at levels that violate standards designed to protect fish and fish consumers;

WHEREAS, Alaska salmon require clean water and healthy habitats to thrive and reproduce;

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh and healthy;

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state, and form part of the cultural fabric which makes Alaska unique;

WHEREAS, salmon health, salmon habitat and salmon marketing will suffer under a broad new rule allowing increased pollution into Alaska's salmon streams;

WHEREAS, the state of Alaska has limited technical and financial resources to assess the consequences of allowing increased pollution into Alaska's salmon streams; and

WHEREAS, Alaskans resoundingly opposed a similar proposal from the Murkowski Administration last year, and vital local and state government resources are being diverted to undermine fish stream and salmon marketing protections;

NOW, THEREFORE, the undersigned do hereby oppose the Murkowski Administration's proposal to amend 18 AAC 70.240 to allow increased pollution - through the use of mixing zones - Alaska's salmon streams.

Dated this 19th day of 2005.

Sincerely,

<u>Name</u>	<u>City, State</u>	<u>Profession/Comment</u>
201. Kathy Wells	Palmer, Alaska	
I can't believe the administration is ignoring the public when they said NO quite clearly the first time.		
200. Justin Massey	Anchorage, AK	I oppose mixing zones.

199. Marla McPherson Homer, Alaska
198. Holly Kent Anchorage, Alaska
197. Varsha Mathrani Anchorage, AK.
196. Lorraine Guyer Anchorage, Alaska
195. Martha Smith Petersburg, AK Registered Nurse
I would again ask that ADEC resume its role as protector of public resources and desist in its role as collaborator in the destruction of habitat and resources.
194. Kristi Schneider Eagle River, AK Communications
Perception is Reality-protect the image of Wild Alaska Salmon
193. David Beebe P Petersburg, AK Commercial fisherman
192. Stacey Marz Anchorage, AK Attorney
Mixing zones should be phased out under federal law, not continued under state regulation. Permitting mixing zones in salmon streams and other waterways important to ecosystems (all of them) is unacceptable in a state that prides itself on healthy WILD and organic salmon runs.
191. Violet Yeaton Port Graham, AK Environmental Planner
I believe that the recommended changes to the Mixing Zone will have an impact on my Traditional foods and natural resources that we collect from our waters. I believe that the degradation the State's water quality standards is a violation of Clean Water Act. I do not support the proposed changes and revisions to the mixing zones and water quality standards. Sincerely, Violet Yeaton Port Graham, Alaska
190. Joel Cooper Homer, Alaska Research Coordinator
What a waste of people's time and resources to have to comment on such an absurd proposal not once, but twice!
189. Marilyn Sigman Homer, AK
This is bad public policy. Alaska's salmon resource is too precious to risk through any "plan to pollute" scheme subject to political and economic pressure.
188. Michael Opheim Seldovia, AK Environmental Coordinator
If people want things like they are in the US then they should go back there and leave us alone. Our resources are important to us to keep our traditions and ourselves alive.
187. Edan Badajos Homer, AK
186. Karen Cornelius Petersburg, AK
185. David Mitchell Anchorage, AK

184. Katya Kirsch Haines, Alaska
183. William A. Johnson Dillingham, AK Commercial Fishermen
Send the mixing zones to Canada where they belong
182. Val Schach Wasilla, AK
181. Richard Traylor Eagle River, AK
180. Paul Zimmerman Kasilof, AK
I cannot begin to express my disappointment that you would resubmit this regulation change again.... no way do I want mixing zones in our streams, lakes, or rivers.
179. Larry Edwards Sitka, Ak
178. Don Cornelius Petersburg, AK Retired Biologist
Increasingly we are reading about the effects of endocrine disruptors on fish and wildlife and even humans. Our collective knowledge base is still in it's infancy, but the more we know, the worse the problem is proven to be. From birth deformities to intermediate sexed individuals to skewed sex ratios, the effects are significant and scary. The causes of these abnormalities are just the kinds of activities DEC is proposing to allow in salmon spawning habitat. Sewer outfalls, mine wastes, industrial wastes have no place in our waters. Now is the time to make tougher standards, not weaker. And once you allow the activity it will be too late to turn back. Don't make that mistake. Thank you.
177. Melissa Senac Gustavus, Alaska
176. Ray Cauldwell Big Lake, Ak.
175. Christi Cauldwell Big Lake, Alaska
No way!
174. Michael A LeMay Homer , AK Innkeeper
173. Edith Davis Homer, Alaska
172. Roger Davis Homer, Alaska Retired
Poison a food source for greed?
170. Benjamin Jackinsky Kasilof, Alaska Commercial fisherman
Keep Alaska's waters as clean as possible
169. Rachel James Girdwood, Alaska
168. Joe Kelso Seattle WA Fish Processor

- | | | | |
|------|---|-------------------|---------------------------|
| 167. | Bill Black
Alaska needs pure water! | Cordova, AK | Fishing |
| 166. | Benjamin J. Golodoff | Unalaska, Alaska | Retired fisherman |
| 165. | Walter B. Parker
Who really benefits from this unnecessary action? | Anchorage, AK | Consultant |
| 164. | Paula Terrel
It ain't broke; don't fix it! | Juneau, AK | Fisherman |
| 163. | Suzi Golodoff | Unalaska, Alaska | |
| 162. | Mike Byerly | Homer, AK | |
| 161. | Patty Gray
This is a no-brainer. NO. Do not allow mixing zones. NO. Do not pollute Alaska's streams. NO. Do not endanger the purity of Alaska's most visible and beloved resource: SALMON. No. No. No. | Fairbanks, AK | Anthropologist |
| 160. | Sue Mauger | Homer, AK | Stream Ecologist |
| 159. | Victoria Clark | Anchorage, AK | Attorney |
| 158. | Lee Schmidt
Please heed the voices of fishermen who depend on clean water. | Sitka, Alaska | Retired |
| 157. | Charles B. Gordon
Finest Kind Seafoods | Vashon Island, WA | Direct Marketer AK Salmon |
| 156. | Susan Steinacher
communications, art, writing26 year Alaskan resident | Nome, AK | Cross-cultural |
| 155. | Laura Vidic
Our fish and their waters are too valuable to pollute. | Juneau, Alaska | Alaskan sportfisher |
| 154. | Rebecca Knight
Fisherman/Fisheries Tech - Keep toxics out of salmon streams/ Promote our clean waters for marketing pure wild salmon and seafood | AK | Commercial Halibut |
| 153. | Thomas Ely | Haines, AK | |
| 152. | David M. Belton
Natural Resources Another shameful example of what we have come to expect from the Murkowski Administration. Shameful! | Hoonah, Alaska | Director of Cultural and |
| 151. | Glenda Lillard | Wasilla, AK | |

150. Emil Berikoff Jr. Unalaska, Alaska business owner
148. William J. Marx, Jr. Sitka, AK
146. MaryAnn Rosenbruch Gustavus, Alaska
145. Jimmie C Rosenbruch Gustavus, Alaska
144. Sarah Schoen Anchorage, AK Research Technician
143. Kathy Ingallinera Sitka, AK Nurse Practitioner
It only makes sense for the health of the people and the fish to not allow mixing zones here.
142. Lee Hammarstrom Homer, Alaska
This administration just doesn't get it - the public has already spoken once and "just said NO" to mixing zones. Exactly what is it about NO that the administration doesn't understand here? Changing the current regulations regarding mixing zones is absolutely NOT in the best interests of our state nor will it help the long-term health of our renewable natural resources. Wake up!
141. Mary Marx Sitka, AK Student
140. Gregory Wong Sitka, Alaska
139. Christalyn E. Gaffney Haines, AK
I strongly oppose mixing zones and increased pollution in Alaskas salmon streams.
138. Marcel LaPerriere Sitka, AK
Fishing is the longest lasting industry in Alaska. Don't screw it up.
137. Connie LaPerriere Sitka, AK
How can we market fish raised in a "Pristine" environment when we are polluting the water.
136. Jeff Sloss Juneau, Alaska
135. Alice Johnstone Sitka, Alaska Retired
134. Susan Sloss Juneau, AK
133. Emily Ferry Juneau, AK
132. Mim McConnell Sitka, Alaska Web designer/photographer
131. Delbert Carnes Juneau, AK Small business owner

130. Nicole J. Szarzi Homer, Alaska
129. Karen Dillman Petersburg AK Ecologist
128. John Staub Juneau, Alaska Carpenter
127. Elizabeth Carter Haines, AK
126. TODD ALWIN ANCHORAGE, AK SALES MGR
125. Chris Hackbarth Haines, AK Carpenter
124. Mark Sandberg Girdwood, AK Lawyer
Let's not follow the Northwest and B.C. down the wrong road. Keep Alaska water clean and Alaska fisheries healthy.
123. Jennifer Amy Robinson Haines, Ak
122. Marlene Clarke Wrangell, AK Retired
Please keep our streams safe for spawning fish.
121. Aalexandra Feit Haines, AK
120. Bruce Baker Juneau, Alaska
The Murkowski administration needs to adopt a longer term vision than it has in protecting wild salmon habitat. The Governor's decisions to date have put Alaska's salmon runs in serious jeopardy. This is an opportunity to at least partially rectify this ill informed and damaging record of decisions.
119. MICHAEL SALLEE KETCHIKAN,AK FISHERMAN,SAWMILL
OWNER/OPERATOR I'm growing very weary of an administration that repeatedly attempts to cram something people don't want down their throats!
118. Dawn Brown Anchorage, Alaska Accountant
117. Mike Brown Anchorage, AK Business owner
115. A. Munro Juneau, AK Artist/fisher/hunter
Keep the industrial poisons out of our clean, clear Alaskan waters!
114. Michael H Schoder Anchorage, Alaska
This is a really bad idea. The protection of streams and fish and wildlife are required by constitution to be protected. Mixing zones is adverse to this obligation.
113. Walter L. Miller Palmer, AK Retired
Why do we have to always follow the lower 48...

- | | | | |
|------|--|------------------|------------------------|
| 112. | Jennifer Potratz | Haines, AK | Health Educator |
| 111. | Jack Ozment | Sitka, AK | |
| 110. | Darsie Culbeck
Don't ruin our fish! | Haines, AK | Tourism |
| 109. | Shireen Soltani | Auke Bay, AK | Student |
| 108. | Janis Krukoff | Unalaska, Alaska | Mother of two children |
| 107. | Bert Lewis | Cordova, AK | Fish biologist |
| 106. | April Smith | Soldotna, AK | Fisheries Biologist |
| 105. | Carl Reese | Juneau, AK | Fisheries Biologist |
| 104. | Carrie Hoover | Juneau, AK | Fishery Biologist |
| 103. | Emilie Otis | Homer, Alaska | |
| 102. | Ted Otis | Homer, Alaska | |
- Alaska salmon represent our greatest RENEWABLE resource, one that will help drive the state's economy long after oil and minerals are gone, IF we protect their habitat. The proposed mixing zone regulations do NOT ensure the kind of water quality protection that Alaska needs to guarantee salmon remain a source of social and economic prosperity for generations of Alaskans to come.
- | | | | |
|------|--------------|-------------|---------------|
| 101. | Robin McLean | Sutton, Ak. | Self employed |
|------|--------------|-------------|---------------|
- Our Salmon streams are too valuable to risk with poor management practices. No mixing zones.
- | | | | |
|------|----------------|----------|---------------------|
| 100. | Dave Westerman | Soldotna | Fisheries Biologist |
|------|----------------|----------|---------------------|
- Just say NO!
- | | | | |
|-----|----------------|-------------|--|
| 99. | Larry E. Marsh | Kasilof, AK | |
|-----|----------------|-------------|--|
- I am strongly opposed to your efforts to undermine State statutes that protect our most important long-term resource -- fish.
- | | | | |
|-----|--------------|-----------------|---------------|
| 98. | James James | Tununak, Alaska | Administrator |
| 97. | Michael Illg | Homer, AK | |
- Please do want is in the best interest of protecting our waters. We just can't live without it.
- | | | | |
|-----|-----------------|-------------|--|
| 96. | Catherine Ellis | Chugiak, AK | |
|-----|-----------------|-------------|--|

95. Steven Ellis Chugiak, AK
94. Sally Schlichting Juneau, AK Environmental Consultant
This must not be permitted.
93. John L. Finley Kodiak, AK Commercial fisherman
92. Iris Korhonen-Penn Juneau, Alaska Legal Assistant
91. Robert DeCino Homer, AK Fishery Biologist
90. Dr Ronald E. Dick Pelican, AK Commercial fisherman/charter
Fresh, uncontaminated fish are our most valuable Alaskan economic resource and they are renewable. Please, do not risk killing the goose that lays the golden egg for a short term non-renewable profit.
89. Sophie Chaliak Nunapitchuk, Alaska Environmental Assistant
88. Jacob O. Tobeluk, Sr. Nunapitchuk, Alaska Environmental Coordinator
I am 100 % against the proposed on Mixing Zones, because it will surely mess up our subsistence resources.
87. Glenda Denny Girdwood, AK
86. Hans Tschersich Kodiak
Our economy depends on a clean environment
85. Geoff York Anchorage Biologist
84. Katherine Ellanak Ouzinkie, Alaska Env'l Programs Assistant
Don't puncture or cut up Mother Earth, her wrath is far more scarier than what man does to it.
82. Mikhail Blikshteyn Juneau, Alaska Fisheries biologist
81. Daniel Ellanak Ouzinkie, Alaska Environmental Coordinator
Don't trade salmon for gold. Gold is not a renewable resource. Salmon don't encroach on the environment. What is more valuable Salmon or Gold? You decide.
80. David J Cannon Aniak, AK
79. Cathy Lieser Cantwell, AK Community organizer
78. Jan Konigsberg Anchorage, Alaska
I like my salmon fresh and non-toxic

77. Amy LaHaie Bird Creek, AK Sales
Please protect our rivers and salmon from mixed zone use!
76. John Oscar Mekoryuk, Alaska Artist
This is the "bull dozing monster" let loose to make way his sweeping hand to hurry up and destroy what ever is left of Alaska, to enact laws to satisfy his appetite and his friends; discard humans, nature, the fish and wildlife as impediments to his vicious greed.
75. Catherine McDermott Girdwood, AK Program Development
74. Allison Kelliher Nome, AK Physician
73. Alan Parks Homer, AK Commercial fisherman
NO mixing zones
72. Christina May Anchorage, AK Student/Human Resources
71. Stacy Studebaker Kodiak AK Biologist
Allowing for mixing zones will undo all the hard work we've done to promote and market the purity of Wild Alaska Salmon. Absolutely no mixing zones!
70. Patricia L. Dick Sitka, AK Teacher
NO MIXING ZONES!!!!
69. Jessica Dryden Palmer, Alaska Biologist
It is abhorable to allow mixing zones in salmon streams. The salmon from these streams feed people and wildlife in Alaska. If these mixing zones are allowed it will be comparable to the administration knowingly poisoning the state's people, wildlife, and ecosystems. It is clear that corporate business has huge control of the legislation in Alaska as this legislation will benefit no one else. The mixing zone legislation threatens to pollute our land. I strongly oppose mixing zones in salmon streams.
68. Jon Warrenchuk Juneau, Alaska Marine Biologist
Compromising our salmon across the state is not worth it!
67. Marv Smith King Salmon, AK Planner
I completely oppose this regulation change!
66. Walter Tellman Unalaska, AK
65. Raymond D Fowler MD Homer AKM.D.NO MIXING ZONES.
PERIOD!!!64.Barbara Mahoney Anchorage, AK
63. Stacy Smith Eagle River, Alaska Editor
62. George Taylor Wasilla, AK Program Coordinator

For years Alaska has given up market share in the salmon sales business by not allowing fin-fish farming in our state. The reasoning in large part was to continue to promote our "wild" and "natural" product. That marketing is beginning to pay off in real dollar terms to our fishermen and processors. To discredit all that time, effort and sacrifice and allow increased discharge into our waters would directly undermine the progress we're making in marketing wild/healthful salmon. Don't do it!

61. Lynn Allen Anchorage, AK Organizer

60. Dorothy Lazar Anchorage, Alaska

59. Dean W Davidson Willow, AK Retired

Any value gained by allowing mixing zones in salmon streams cannot compare to the value of maintaining a healthy salmon resource.

58. Claudia Anderson Kodiak, Alaska Setnetter, adult educator

57. Mark Luttrell Seward AK

56. Nancy J. Hillstrand Homer, Alaska Fish Processor

Companies who are asking for mixing zones will just have to charge the true cost of doing business in a conscientious manner that protects the life blood of our Salmon and the fishing industry that relies on them. One company does not need to jeopardize another simply for the bottom line. It is time for businesses to work for the common good and provide the safeguards needed for clean pure foods that sustain us. Mixing zones are literally throwing the salmon babies out with the bath water that has toxic chemicals that do not support life. Emergent and Rearing salmon and the macro invertebrates that they eat, can not withstand foreign physical and chemical fluctuations such as temperature changes or toxins. Lets get real about the true cost of doing business right and stop trying to get away with the cheap way out that damages our future.

55. Jennifer Edwards Homer, Alaska Occupational Therapist

54. Larry Vander Lind Ashland OR Commercial Fisherman

30yrs AK resident. Over time salmon will payoff far more than mining and other polluting industries. Activities that risk salmon are not worth the risk. Once lost salmon runs are gone forever. Do what's right for the people by doing what's right for the salmon.

53. Norman Wakeman Willow, AK

52. Molly Kennedy Anchor Point, Alaska

Do not sell out our natural resources to the highest bidder. Thanks molly

51. Brandy Moore Wasilla Ak

50. Karen Lester Chugiak, Alaska

49. Sue Bailey Anchorage, AK Therapist
48. Riki Ott, PhD Cordova, AK Author/Scientist
NOAA scientists at the Auke Bay Lab have found that extremely low levels of pollutants, including oil, can kill salmon eggs and embryos, and reduce fitness of survivors, and decrease localized populations. Alaskans must keep chemicals OUT of salmon spawning streams if we want healthy fisheries in the future.
47. Joe Pottinger Anchorage, Alaska
46. Debra Dubac Anchorage, Alaska
45. Shawn C. Dochtermann Kodiak, AK COMMERCIAL FISHERMAN
I OWN AND OPERATE A DRIFTGILLNET VESSEL IN BRISTOL BAY. YOU MUST STOP ANY CHANCE OF HARMING OUR FISHERIES IN ALASKA. THAT MEANS NO MINING WHERE THERE IS EVEN THE SLIGHTEST CHANCE OF POLLUTING OUR FISHERIES HABITAT. I EXPECT THAT AS GOVERNOR OF THIS STATE THAT YOU WOULD EXCLUDE ANY TYPE OF WASTE BEING DUMPED IN OUR SALMON STREAMS, ESPECIALLY MINING DEBRIS. THAT MEANS "NO MIXING ZONES IN ALASKA SALMON STREAMS"! WITH A WATCHFUL EYE, SHAWN C. DOCHTERMANN
44. Steven Polson Kodiak, AK Commercial Fisherman
43. Ed Schollenberg Modesto, Ca Alaska Commercial Fisherman
We have worked hard to market the pure Wild Alaska Salmon -- Mixing zones will destroy pure wild stocks and alot of hard work. No mixing zones!!!!
42. Chris White Anchorage, AK Fisherman
41. Victor Smith Friday Harbor, WA Fisherman
UNBELIEVABLE!
40. Gerald R. Brookman Kenai, Alaska
39. Rudy Wittshirk Willow, AK
38. Lanny Carpenter Olympia, WA commercial fisherman (Bristol Bay)
37. M.E Thompson Sr. Wasilla, Alaska Retired
36. Constance Fredenberg Palmer, Alaska Natural Resources Coordinator
What are you thinking?
35. Brandon Seth Moore Wasilla, Alaska US Army

34. Maxine Thompson Wasilla, AK

33. Laura Coleman Wasilla, Ak

32. Brody Coleman Wasilla. AK

31. Lorraine Eckstein Anchorage, AK

Governor Murkowski, I am outraged at the attempt to allow pollution into salmon streams!

30. Peggy E. Belcastro Fritz Creek, AK self-employed
This is a no-brainer!

29. Joseph M. Belcastro Fritz Creek, Ak

28. Dick Palmatier Willow, Ak retired

27. Katie Aspen Gavenus Homer, AK student

I am a member of a fishing family and a fishing community, so I know firsthand the importance of strong salmon fisheries. Now going to college on the East Coast, I am seeing firsthand how important it is that Wild Alaska Salmon be perceived as "pure" and "clean." Not only will mixing zones directly threaten the health of the salmon stocks, they will also harm this perception and hurt Alaskan efforts to market its salmon.

26. Nina Faust and Edgar Bailey Homer, AK

25. Julius Rockwell, Jr, PhD. Anchorage AK Fisheries Biologist

It is very difficult to enforce existing stream protection statutes. Putting these on a sliding scale (i.e. adjusting allowable hourly pollution introduction to accommodate hourly fluctuations in stream flow) would make after the fact prosecutions for violations unfeasible. Some pollutants, such as silt, are already limiting fish production in streams. State dollars are being spent to reduce erosion. Any addition will further reduce productivity. Any introduction of chemical pollution, including pesticides, herbicides, and more dangerous chemicals, flies in the face of our claims that wild salmon is better than cultivated salmon, that we produce inorganic salmon, etc., and thus make a key factor in marketing a sophistry. Having spent 12 years in stream protection during TAPS construction has taught me enforcement of even the existing laws is very difficult for the states understaffed teams.

24. George Pletnikoff Unalaska, AK

23. Myrl Thompson Wasilla, AK

22. Larry Rundquist, PhD Anchorage, Alaska Hydrologist

21. Chris Price Unalaska

20. Deborah L. Williams Anchorage, AK
19. Dotti Harness Homer, AK
Protect our wild salmon!
18. Ervin Dedeker Willow, Alaska Retired
17. Virginia Pierce Willow, AK
16. Bob Shavelson Homer, Alaska
15. Scott Peters Fairbanks, Alaska
14. Patti Lightcap Homer, AK Accounting clerk
12. Patricia Wade Palmer, Alaska
11. Leslie Slater Homer, Alaska wildlife biologist
10. Gershon Cohen Ph.D. Haines, AK
9. Jack Dean Sterling, Alaska Retired
No mixing zones - save our fish
8. Will Files Homer, AK Retired
We are trying to market WILD Alaskan fish. We cannot compromise these efforts by allowing pollution or even the suspicion of pollution.
7. Vern Halter Willow, Alaska Kennel owner
I strongly urge that our salmon streams and regulations protecting them be strengthened not watered down as this mixing zone policy does. 6. Bob Shavelson Homer, Alaska
5. Steve Charles AK Retired
4. Anne E. Gore Anchorage, Alaska
3. Brian Winnestaffer Palmer, Alaska Fisheries Biologist
The people have spoken.
2. Whit Sheard Bird Creek, AK
salmon fisheries and clean water are renewable resources--don't ruin habitat in favor of short-term extractive industries
1. Chris Whittington-Evans Palmer



"Village with a Past, City with a Future"

210 Fidalgo Avenue, Kenai, Alaska 99611-7794

Telephone: 907-283-7535 / FAX: 907-283-3014

www.ci.kenai.ak.us

November 17, 2005

Commissioner Kurt Fredriksson
State of Alaska
Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, AK 99801-1795

RE: **PROPOSED MIXING ZONE REVISIONS TO THE ALASKA WATER QUALITY STANDARDS**

Dear Commissioner Fredriksson:

In response to the proposed mixing zone revisions to the Alaska Water Quality Standards, the Kenai City Council, at its November 16, 2005 meeting, unanimously passed its Resolution No. 2005-50 (copy enclosed).

As noted in Section 1 of the resolution, the City of Kenai Council opposes amending the State water quality standards to allow wastewater to be discharged into areas of anadromous fish spawning in Alaska and urges the Department of Environmental Conservation to not adopt any such proposed changes except to allow the renewal of permits in areas where salmon started spawning in the previously approved mixing zone effluent.

If you have any questions with regard to our Resolution No. 2005-50, please contact our Public Works Manager Keith Kornelis (283-8232).

CITY OF KENAI

Carol L. Freas
City Clerk

clf

Enclosure

Cc: Governor Frank Murkowski
Senator Tom Wagoner
Senator Gary Stevens
Representative Mike Chenault
Representative Paul Seaton ✓
Representative Kurt Olson

CITY OF KENAI

RESOLUTION NO. 2005-50

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, OPPOSING THE PROPOSED MIXING ZONE REVISIONS TO THE ALASKA WATER QUALITY STANDARDS.

WHEREAS, the State of Alaska Department of Environmental Conservation is proposing several current Mixing Zone regulations, which govern the permit requirements for areas where treated wastewater mixes with a water body; and,

WHEREAS, the proposed amendments would allow Mixing Zones in "an area of anadromous fish spawning" where the existing rules prohibit Mixing Zones in such areas due to concerns that industrial effluent may have a negative impact on fish habitat; and,

WHEREAS, the entire Kenai Peninsula Borough is interested in maintaining high water quality and is highly dependent on the growth and propagation of fish and other aquatic life; and,

WHEREAS, the healthy wild salmon and other marine life industries support many jobs and subsistence resources to the people and communities throughout the state; and,

WHEREAS, allowing Mixing Zones in anadromous fish spawning areas would impair the efforts of Cook Inlet sport and commercial fishers and processors to promote Cook Inlet wild salmon as clean, fresh, and healthy; and,

WHEREAS, in some cases existing municipal mixing zone permit holders have faced permit revocation or costly upgrades when seeking a renewal because salmon have started spawning in the area delineated as the wastewater treatment plant's approved Mixing Zone; and,

WHEREAS, revoking a permit in such cases could be detrimental to the salmon spawning area as it could cause the stream to dry up or otherwise damage the habitat; and,

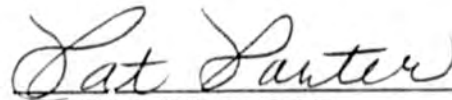
WHEREAS, a provision authorizing existing mixing zone permits to be grandfathered in if salmon start spawning in the previously approved Mixing Zone area would address these concerns.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1: The City of Kenai Council opposes amending the State water quality standards to allow wastewater to be discharged into areas of anadromous fish spawning in Alaska and urges the Department of Environmental Conservation to not adopt any such proposed changes except to allow the renewal of permits in areas where salmon started spawning in the previously approved mixing zone effluent; and,

Section 2: Copies of this resolution shall be provided to the Commissioner of Department of Environmental Conservation, Governor Frank Murkowski, Senators Thomas Wagoner, Gary Stevens and Representatives Mike Chenault, Paul Seaton and Kurt Olson.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of November, 2005.



PAT PORTER, MAYOR

ATTEST:



Carol L. Freas, City Clerk

**KENAI RIVER**
Special Management Area*"Working together...for the river"***ADVISORY BOARD**

October 28, 2004

Ms. Nancy Sonafrank
Environmental Specialist
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Re: Comments on Proposed Changes and Revisions to Title 18, Chapt. 70 of the
Alaska Administrative Code Regarding Establishment of Mixing Zones and an
Anadromous or Resident Fish Spawning or Rearing Areas

Dear Ms. Sonafrank:

This letter is written to express the concerns of the Kenai River Special Management Area (KRSMA) Advisory Board regarding the proposed changes to water quality regulations. The KRSMA Board wishes to thank you for attending our meeting on October 14, 2004 and making a presentation on the above-referenced changes. Based on your presentation, our review of the proposed regulation changes and in consideration of the input from the public, the KRSMA Board strongly opposes the suggested changes.

Fundamentally, the KRSMA Board sees no persuasive need for the change. During your presentation, you explained the changes were required by infrequent and unlikely conflicts between current regulations, which prohibit discharge into streams involving anadromous or resident fish spawning and habitat areas. The two examples provided were Chena River near Fairbanks, where a discharge into the Chena River had been occurring for years without any adverse effects on the resident grayling population. The other example was the sewer drainage ditch at Valdez where the discharge was occurring into a body of water that was not previously considered to be spawning habitat for salmon, but subsequently salmon have begun to spawn in that habitat.

The KRSMA Board feels that these are isolated examples, and do not justify regulations establishing wholesale mixing zones throughout the state to the detriment of fish habitat. In particular, the KRSMA Board is concerned about the Kenai River and its tributaries. Under the proposed regulations, an industrial polluter would simply have to request and be granted DEC approval for establishing mixing zones in the most productive fishery in the state of Alaska. This unacceptable risk is not justified by the cited examples.

000583

Kenai Area Office, Box 1247, Soldotna, AK 99669, Soldotna 262-5581
Kenai Peninsula Borough, Box 850, Soldotna, AK 99669, Soldotna 262-4441

Alaska Division of Parks and Outdoor Recreation, Department of Natural Resources, in cooperation with the Kenai Peninsula Borough.



Ms. Nancy Sonafrank
October 28, 2004
Page 2

The KRSMA Board is concerned about the lack of standards contained in the new regulations which invites political manipulation.

Specifically, the KRSMA Board is concerned because in addition to lack of meaningful standards, the decision as to whether issue a permit or not is consigned to the unfettered discretion of DEC representatives subject only to advice from the Alaska Department of Fish & Game and the Office of Habitat and Management of the Department of Natural Resources. In other words, neither ADF&G nor DNR could veto the grant of a mixing zones permit.

The KRSMA Board is uncertain as to the motive behind these regulation changes; however, it sees no justification for these changes under the current circumstances and substantial risk to Alaska's fisheries. The KRSMA Board strongly recommends that these changes not be instituted.

Very truly yours,


Ken Lancaster
KRSMA Advisory Board President

000584



Southeast Conference



P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

November 1, 2004

OFFICIAL TESTIMONY – MIXING ZONE REGULATION CHANGES

Ms. Nancy Sonafrank
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, AK 99709

Dear Ms. Sonafrank:

Southeast Conference submits this as official testimony to the Regulation Changes proposed by the Alaska Department of Environmental Conservation (ADEC) on Mixing Zones. Three of our committees have reviewed this issue over the past few weeks.

Our role in the region is to promote economic development, healthy communities and a healthy environment. We feel that they are not mutually exclusive. We take our role very seriously. Southeast Conference is a state designated ARDOR (Alaska Regional Development Organization), a state-designated Regional Council for the Workforce Investment Board and a federally-designated EDD (Economic Development District). Our organization has over 120 members, including all towns and cities in our region, and many businesses and non-profits.

First of all, we want to thank you for attending the Southeast Conference Fisheries Committee teleconference on October 19 and our Environment Committee teleconference on October 13. Your explanation helped us to better understand why the ADEC is attempting to change the regulations.

Our position on these regulations is neither an endorsement nor an outright rejection. Our message is, however, cautionary. Communities and industries around our region (and around our state) that depend heavily on our fisheries resource will reject any changes that they fear could send a negative message to the markets that depend on high quality fish. They are, understandably, protective of their livelihoods, much the same way Juneau is protective of its status as the state's Capital.

In general, we agree with two areas of regulation changes that ADEC is proposing:

- 1) We encourage ADEC and other state agencies to change regulations when there is duplication, vagueness or uncertainty.
- 2) To keep pace with changing scientific methods, models and standards, we encourage ADEC to use guidance documents, rather than to place these in regulations.

The third area of change – allowing mixing zones in freshwater bodies where fish rear and spawn – needs further work. Although we would prefer to retain the existing regulations which prohibit any effluent discharge into spawning habitat, and we encourage ADEC to find alternative solutions to existing problems, we acknowledge there could be situations where such allowances may be allowed. The examples that the department cites as the reason for the regulation changes (Valdez wastewater and Golden Heart Utilities) do not appear sufficient to warrant the change.

Solutions for existing mixing zones in freshwater could include exceptions for areas where spawning occurs in an established mixing zone or by reclassifying waters where discharge has already been permitted. ADEC's ability to monitor and enforce discharge mixing zones is also a concern. If the State adopts regulations to allow mixing zones in spawning habitat, we request that monitoring safeguards and permit requirements be made so not to erode the quality of spawning grounds, or the market reputation Alaska has secured for its wild salmon.

The state devotes a vast amount of money, staff time and energy toward our fisheries; therefore the state has a vested interest in a strong fisheries industry and in a healthy environment for its fishery. The present State administration, the Alaska Congressional delegation and our seafood industry is working jointly on revitalizing our fishing industry, with over \$50 million allocated to develop and sustain our fisheries and to promote high-quality seafood products.

If ADEC continues to pursue regulations to allow mixing zones in freshwater fish habitat, we suggest using actual hydrologic data to determine low-flow regimes rather than relying solely on topographic maps and rainfall to estimate the background flow. Where hydrologic data is lacking, obtaining actual stream flow data over an extended period of time is preferred.

When economic and environmental issues - such as public health and resource health - overlap, or when economic sectors cross paths on issues such as mixing zones, there needs to be sufficient safeguards and collaboration to ensure that reason and prudence prevail and that public trust is maintained. We suggest ADEC collaborate with the Department of Commerce, Community and Economic Development as the regulation changes may impact fishery markets.

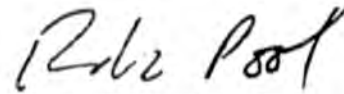
Finally, we would like to make a couple of points about the public process. SEC spent about two weeks trying to gain approval for a DEC representative to attend teleconference meetings so we could get information about mixing zones. The reason cited for not meeting was "ex parte" communication rules imposed upon ADEC by state attorneys. Attorneys, by nature, are fiercely protective of their clients' rights, but in this case they have undercut the public's trust in state government. State agencies need to be able to present their issues in public forums - whether at public meetings, with individuals or with groups such as ours. Agency officials who are proposing regulation changes must be allowed to speak about the facts of existing and proposed changes. Lastly, on these kinds of issues, ADEC should direct more agency effort toward reaching local elected officials.

We would be happy to work further with your agency on these regulations changes.

Sincerely,



Murray Walsh
President Southeast Conference



Rollo Pool
Executive Director

Bristol Bay Driftnetters Association
2408 Nob Hill Ave. N
Seattle, WA 98109-2048
Ph. (206) 285-1111, Fax (206) 284-1110
BBDA1980@yahoo.com



December 16, 2005

BBDA Resolution Opposing Alaska Department of Environmental Conservation's Proposal to Allow Increased Pollution (Mixing Zones) in Alaska Salmon Spawning Waterways

WHEREAS, The Alaska Department of Environment Conservation recently proposed new regulations to overturn established state policy that prohibits mixing zones in spawning areas of Alaska fish streams;

WHEREAS, mixing zones allow aquatic pollution at levels that violate water quality standards intended to protect fish and fish consumers;

WHEREAS, Alaska wild salmon are renowned worldwide for being pristine, fresh, and healthy, and Alaska salmon necessitate clean waters and healthy habitats to flourish and reproduce;

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state and nation, and contribute to the cultural composition which makes Alaska unique,

WHEREAS, The Bristol Bay Driftnetters' Association (BBDA) is the only organization in the Bristol Bay watershed entirely devoted to improving the fishery for all of the 1,861 Bristol Bay driftnet permit holders and their crews, and mixing zones in spawning areas pose a certain threat to the salmon fishery and its livelihood.

WHEREAS, the Bristol Bay salmon industry relies on clean, healthy, and sustainable species of salmon, and increased pollution in fish spawning streams threatens the integrity of the product;

WHEREAS, salmon health, salmon habitat, and salmon marketing will suffer under a broad new regulation allowing increased pollution into Alaska's salmon streams;

WHEREAS, Alaska's salmon fisheries are healthy and sustainable chiefly because of abundant pristine habitat and the use of reliable, precautionary, conservation management practices, and contamination in spawning streams conflicts with Department of Fish and Game's sustainable salmon policy;

WHEREAS, the state of Alaska has limited technical and financial resources to assess and monitor the consequences of allowing effluent or waste material into Alaska's salmon streams;

WHEREAS, Alaskan's resoundingly opposed a similar proposal this past year;

NOW, THEREFORE, The Bristol Bay Driftnetters' Association does hereby oppose Alaska Department of Environmental Conservation's / Governor Murkowski's proposal to amend 18 AAC 70.240 to allow increased pollution (mixing zones) in Alaska salmon streams.

Adopted: December 16, 2005

Dan F. Barr President

Warren B. Johnson Vice President

RESOLUTION # 1755

Offered by: Bracken

Supported by: Hickman

**A RESOLUTION OPPOSING PROPOSED REGULATION CHANGES WHICH
WOULD ALLOW DISCHARGE MIXING ZONES IN FRESHWATER
SALMON HABITAT**

WHEREAS, the Alaska Department of Environmental Conservation is soliciting comments on proposed regulation changes which would allow discharge mixing zones in freshwater habitat including anadromous fish streams, and

WHEREAS, salmonids are present in their freshwater habitat in one or more life history stages during all times of the year, and

WHEREAS, unlike saltwater mixing zones, the area of freshwater mixing zones necessary to assure clean water downstream changes constantly depending on natural fluctuations in stream flows, and

WHEREAS, the City of Petersburg depends on salmon harvest and sales for a large portion of its revenue, and

WHEREAS, the salmon fishing industry is one of Southeast Alaska's biggest employers, and

WHEREAS, Alaska's wild salmon are receiving continued market pressure from farmed salmon resulting in reduced prices to our salmon fishermen, and

WHEREAS, being able to market Alaskan salmon as originating in pristine waters is one of its greatest marketing attributes, and

WHEREAS, the State of Alaska and the salmon fishing industry have spent considerable effort and money to promote the image of pure and healthy wild Alaskan seafood, and

WHEREAS, even the perception that Alaska's wild fish habitat may be contaminated greatly diminishes this image, and

WHEREAS, technology is currently available to adequately treat sewage and industrial waste to allow discharge to meet clean waters standards prior to being released.

THEREFORE BE IT RESOLVED, the City of Petersburg would like to go on record opposing regulatory changes which allow mixing zones or any discharge of effluent, which does not meet clean water standards, into anadromous fish habitat.

Passed and Approved by the Petersburg City Council on October 19, 2004.

ATTEST:

Kathy O'Rear, City Clerk

Theodore M. Smith, Mayor



Kenai
Watershed
Forum

44539 Sterling Hwy
Suite #202
Soldotna, AK 99669
(907) 260-5449
(907) 260-5412 fax

Working together for healthy watersheds on the Kenai Peninsula

12/19/05

Nancy Sonafrank, Section Manager
Division of Water
Department of Environmental Conservation
610 University Ave.
Fairbanks, AK 99709

Ms. Sonafrank,

RE: Mixing Zone Proposed Regulations Changes

The Kenai Watershed Forum is a citizens' based group whose mission is to work together for healthy watersheds on the Kenai Peninsula. The Alaska Department of Environmental Conservation's Division of Water's mission is to improve and protect water quality. This proposal is not consistent with your mission; it is very disappointing but very clear that the division needs to be reminded of its' mission. This proposal does not improve nor protect water quality, it does the opposite for some of the most sensitive waters of the State.

We are opposed to the Alaska Department of Environmental Conservation's (ADEC) proposed changes and revisions to mixing zone and water quality standards. In our opposition, we are joined by the local government bodies of the Kenai Peninsula. The cities of Kenai, Soldotna, Homer and the Kenai Peninsula Borough have all passed resolutions in opposition to the 2005 version of this proposal.

In 2004, ADEC proposed a similar rule change under the guise of assisting municipal governments' need to renew mixing zone permits in waters that became spawning grounds for salmon after a previous authorization was granted. In response to the 2004 proposal many comments were submitted that suggested this issue could and should be dealt with more narrowly, case by case and site specific invoking some form of a grandfather clause in association with 18 AAC 70.235.

Rather than following the wishes of the public and common sense, ADEC is stubbornly proceeding with a proposal that is not wanted by the public.

Again we would be happy to work together with the ADEC to craft language to deal with real concerns of water quality in the State of Alaska, but this proposal should be scrapped in its entirety.

Thank you,

Robert Ruffner
Executive Director
Kenai Watershed Forum

Cc:

Governor Frank Murkowski
ADEC Commissioner Kurt Fredriksson
ADFG Commissioner McKie Cambell
ADNR Commissioner Michael Menge
ADEC Deputy Commissioner: Dan Easton
ADEC Water Division Director: Lynn Kent
Senator Tom Wagoner
Senator Gary Stevens
Senator Con Bunde
Senator Albert Kookesh
Representative Mike Chenault
Representative Kurt Olson
Representative Paul Seaton
Representative Mike Hawker
Representative Woodie Salmon

Louie Flora

From: Dianne [florete@ptialaska.net]
Sent: Friday, December 16, 2005 8:41 PM
To: kurt_fredriksson@dec.state.ak.us
Cc: mckie_campbell@fishgame.state.ak.us; james_clark@gov.state.ak.us; Sen. Ben Stevens; Rep. Paul Seaton
Subject: Seward Fish and Game Advisory Committee comments concerning Mixing Zones

THE SEWARD FISH AND GAME ADVISORY COMMITTEE OPPOSES 18 AAC 70.240, THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S PROPOSAL TO ALLOW INCREASED MIXING ZONES IN SPAWNING AREAS AND CREATING NEW REGULATIONS FOR MIXING ZONES IN THE STATE OF ALASKA.

The Seward Fish & Game Advisory Committee opposes 18 AAC 70.240 the new DEC regulation for mixing zones in the State of Alaska. Three parts are most troubling to the Seward AC. These are: chapter (c), subchapter (1), part (A) which supports using federal effluent limitations as amended through July 1, 2005, chapter (f), subchapter (1) which allows the applicant to demonstrate that spawning fish, fish eggs, or alevins are not physically present within the mixing zone being applied for, and chapter (f), subchapter (4), part (E) which allows for compensation of impact by replacing or providing substitute resources or environments.

Alaska's wild salmon are renowned worldwide for being clean, fresh, and healthy. Alaska salmon require clean water and healthy habitats to thrive and reproduce. Allowing industrial mixing zones in salmon lakes and streams may impair the efforts of commercial fishers, processors and sport fishing lodges in our area to promote Alaska wild salmon as healthy, wild, and organic. Alaska salmon fisheries support countless families and communities throughout the state at many levels and form part of the cultural fabric which makes Alaska unique. Because of these concerns, Alaska should be held to standard above that which is set at the federal level.

The Seward AC is not comfortable with chapter (f), subchapter (1) which would allow the applicant to demonstrate that spawning fish, fish eggs, or alevins are not physically present within the mixing zone when the discharge will occur and the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities. We feel strongly that this should be function of the state. There are trained scientists on staff of various state departments that may be more impartial in rendering these decisions.

Most troubling to the Seward Fish & Game Advisory Committee is chapter (f), subchapter (4), part (E) which will allow for compensation of impact by replacement or providing substitute resources or environments. If the Resurrection River Watershed was adversely impacted by a mixing zone violation, replacement of an environment in another location would not negate the damage done locally.

In some cases National Pollutant Discharge Elimination System ("NPDES") permits have been issued and infrastructure established in areas shown not to support salmon spawning, but where salmon are later found to have developed spawning beds within the previously spawning free areas. Prohibiting the renewal of NPDES permits in such areas would not necessarily further the goal of protecting fish and could be detrimental to the salmon spawning areas as it could cause the stream to dry up. In some cases existing municipal mixing zone permit holders have faced permit revocation or costly upgrades when seeking a renewal because salmon have started spawning in the area delineated as the wastewater treatment plant's approved mixing zone. We support the renewal of mixing zone permits in

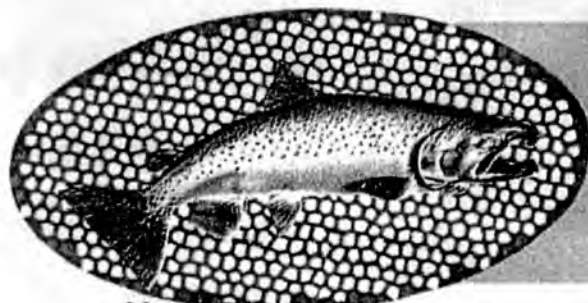
areas for which mixing zone permits have already been issued and where spawning beds have developed after issuance of the initial permit.

We appreciate your time and consideration in this matter.

Sincerely,

Dianne M. Dubuc

Vice-Chairman, Seward Fish and Game Advisory Committee



Cook Inlet Alliance

Promoting the Responsible Use
of Public Resources

Nancy Sonafrank
Division of Water
Department of Environmental Conservation
610 University Avenue
Fairbanks, AK 99709

December 15, 2005

Dear Ms. Sonafrank:

The purpose of this letter is for the Cook Inlet Alliance to comment on the most recent "mixing zone" regulations proposed by the Department of Environmental Conservation (DEC). The Cook Inlet Alliance is a Homer based group of citizens dedicated to gathering and sharing reliable information about the proposed Pebble open pit mine and related projects, and its potential effects on Cook Inlet communities and resources.

As you well know, DEC's new "mixing zone" regulations have created as much controversy as the overwhelming opposition that erupted when regulations were first proposed last year. Local governments, fishing organizations, conservation organizations, and many individuals still do not understand why relatively minor problems with a few wastewater discharge permits are being used by DEC to overturn established state policy that prohibits mixing zones in spawning areas for anadromous and resident fish. This amounts to a sacrilege to Alaska's coastal residents, many who depend on having a sustainable harvest of wild salmon from clean, unpolluted waters.

At the recent mixing zone workshop/hearing, there were many who questioned DEC's motives for these regulations. Staff was not able to offer a convincing explanation as to why the agency is investing so much effort on these regulations and forsaking easier and less controversial fixes to the few problems that do exist. Needless to say, the situation lends itself to suspicion.

The open-ended nature of the proposed regulations essentially requires the public to trust that DEC will "protect the use of all waters for the growth and propagation of fish." But, it seems, trust is not there. In fact, DEC's October 17th cover letter for the regulations essentially says that protecting fish habitat may be a tradeoff with other water uses. (We suspect these other uses to be primarily mining, which considers mixing zone regulations an industry priority.) The letter says, "These new proposed mixing zone regulations better reflect the Department of Environmental Conservation's duty to adopt and enforce

water quality standards that protect all uses of Alaska's waters [emphasis added], including the growth and propagation of fish." In our view, DEC's role is to simply protect water quality, making it available for various uses and users, not to aid certain uses of water by allowing mixing zones or other approaches that might compromise water quality.

Because of concern about DEC's intent to rigorously protect water quality in salmon spawning habitat, several Cook Inlet boroughs and cities have approved resolutions that oppose the mixing zone regulations. We support these resolutions, but will not bother to reiterate the reasons in this letter. Instead, we would like to discuss two issues that have not received much attention. These issues are fatal flaws, in our opinion, to the proposed regulations. The issues are: 1) fiscal responsibility, and 2) contradictions with Department of Fish and Game's (DFG) sustainable salmon policy.

FISCAL RESPONSIBILITY - DEC's mixing zone web pages provide a lot of detail about the initial and current mixing zone regulations. Totally lacking however is any information that pertains to the fiscal implications of these regulations. There is no equivalent of a fiscal note that explains how much effort DEC will need to expend in order to professionally review and validate mixing zone permit applications or to monitor permit compliance. The material does make clear that the burden of proof lies with the applicant, but, unless DEC plans to just rubberstamp the permits, there needs to be independent review by the agency. Consequently, DEC gives no assurance that they are up for the task, if these regulations are adopted. This is fiscally irresponsible. No agency should propose a significant change in policy without presenting at least some idea regarding its fiscal implications.

At the recent workshop/hearing there was a question regarding the need for a fiscal note that includes sources of funds as well as expenses. DEC replied that more permit applications will provide more funding via permit fees and implied that therefore, funding should not be a problem. This was an irresponsible answer. First of all, it is not clear that permit fees will cover all of the expenses needed to process a permit, including review expenses by other agencies such as the DFG or Department of Natural Resources (DNR). Secondly, the staff and equipment need to be on hand before the permit application and fee is filed, not months afterwards. DEC's answer emphasized all the more that a fiscal note is needed to assure that it is prepared for this work if these regulations are promulgated.

Although DEC seems to have no idea as to how many mixing zone permit applications to expect, it was stated that there would not be many. If so, this either smacks of special interest legislation or that something that is not broke is being fixed, neither being acceptable. It was also stated that there might be few permits, but they would be demanding. If that is so, then here again, where is the budget to pay for a professional level of review?

Doubts about DEC's fiscal responsibility arise not only over lack of fiscal data on the proposed regulations, but the possibility that it may be misusing funds. We know that

last spring Representative Paul Seaton cut \$75,000 in subcommittee from DEC's FY2006 budget request. This request was intended to be used for a position to work on revised mixing zone regulations. Representative Seaton's message was to do no further work on the issue. The cuts were sustained in the final budget. Nevertheless, it is obvious that DEC has expended a lot of effort during the first half of FY 2006 in revising the proposed regulations, essentially violating the will of the legislature. This does not build the trust that these regulations require.

SALMON POLICY – DEC's October 17th cover letter states that it "may authorize a mixing zone in a spawning area if a permit applicant can demonstrate that the timing of the discharge or the types of pollutants will not affect present and future spawning, incubation and rearing OR [emphasis added] submits a mitigation plan which demonstrates that discharge effects will be mitigated subject to approval by DNR or DFG." The OR is the most troubling part of these regulations. As we read it, if a permit application doesn't pass the first set of tests, which at least have some credible criteria, then it can still be approved if the applicant submits a mitigation plan. The problem with this is that the proposed regulations give virtually no criteria to determine what is or is not an acceptable mitigation plan. Because of the Murkowski Administration "one voice" policy, we assume that DEC is speaking for DFG and DNR in not offering any criteria.

Furthermore, the proposed regulations give no mention of the DFG's regulations for sustainable management of Alaska's salmon stocks or that the mixing zone regulations may be in conflict with this existing law. We illustrate select portions of these regulations.

5 AAC 39.222. POLICY FOR THE MANAGEMENT IS SUSTAINABLE SALMON FISHERIES.

(a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that

(1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;

(c) Management of salmon fisheries by the state should be based on the following principles and criteria:

(1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:

(A) salmon spawning, rearing, and migratory habitats should be protected as follows:

(i) salmon habitats should not be perturbed beyond natural boundaries of variation;

(iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater

rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;

(B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;

These regulations clearly emphasize the need to protect the existing habitat of Alaska's wild salmon stocks. Since there are no apparent criteria for mitigation plans, it is impossible to determine if and how these regulations might be on a collision course with the State's existing sustainable salmon policy. For instance, would DEC allow the destruction of salmon spawning habitat if an equivalent number of fish were produced elsewhere with a hatchery? If so, does the hatchery have to be in the same watershed? Would a hatchery have to produce the same species of fish as those that are displaced?

As you can see, the loosely defined mitigation plans will become a Pandora's Box of issues once the lid is opened. But then, it may be too late to address some of the issues and there could be irreversible loss of salmon spawning habitat.

DEC is not at all prepared to adopt the proposed mixing zone regulations until it can describe how mitigation plan criteria mesh with 5 AAC 39.222.

SUMMARY - To summarize, it appears to us that the proposed mixing zone regulations have the potential of turning the technically oriented wastewater discharge permit process that currently exists into a subjective political process. The ambiguous terms and the ability to substitute a mitigation plan (for which there are no standards) as a substitute for meeting a reasonable list of water quality criteria, strikes us as creating an opportunity to legally exempt an administration-favored resource development project from meeting water quality standards that protect salmon spawning habitat. This is unacceptable and not good conservation of either Alaska's clean waters or healthy salmon stocks.

Sincerely,

Brian Hirsch, Co-director

Michael O'Meara, Co-director

cc. Governor Murkowski
Commissioner Fredrikkson, DEC
Commissioner Campbell, DFG
Commissioner Menge, DNR
Senator Gary Stevens
Representative Paul Seaton

STATE OF ALASKA

Kenai/Soldotna Fish & Game Advisory Committee

Gary Dawkins, Chair
44800 K-Beach Road
Soldotna, AK 99669
Phone: (907)262-3993
Email:
garysauto.electric@acsalaska.net

December 15, 2005

Subject: Changes and revisions to Title 18, Chapter 70 of the Alaska Administrative Code;
Mixing Zones and Water Quality Standards

From: Chairman Gary Dawkins

To: Nancy Sonafrank
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, AK 99709

Ms. Sonafrank,

On behalf of the Kenai/Soldotna Fish and Game Advisory Committee (KSF&GAC) we respectfully submit this letter of opposition to the proposed changes in the States Water Quality Standards for fresh water Mixing Zones.

Our Advisory Committee is comprised of local resident resource users such as; subsistence, personal use, wildlife viewers, sport anglers, guided anglers, hunting guides, general hunters and commercial fishermen. The Kenai/Soldotna Fish and Game Advisory Committee's authority is defined, and the management and administration detailed, in AS 16.05 -- 16.40 and specifically in 16.05.260. Primary and official rules are defined in 5 AAC 96, 5 AAC 97 and 5 AAC 99.

We would like you to refer our letter dated November 1, 2004 which commented on the first notice of alterations to Title 18, Chapter 70 on Mixing Zones. Please note that we are extremely concerned about the water quality of our lakes and streams within the Cook Inlet watershed and the affects on the quality of our lives in the future.

The current revised version dated October 17, 2005 attempts to correct blatant deficiencies to protect aquatic life yet it continues to exclude the Department of Fish and Game a meaningful dialogue within the process. The term "consultation" does not bring comfort to many of us who feel that the ADF&G is the first sentinel to inform the public of aquatic risks. We feel that the terminology should be "in concurrence".

The AC's around the State are built on the ideals of public participation and consensus building through sharing ideas to develop workable compromises within the community. We see no discussion of where the public process would be of any significance within this regulation. We would propose that the ADF&G would hold hearings on any plans for exceeding water quality standards with the use of mixing zones and after conclusion of an adequate time to respond, a workshop to develop a public document that defines the ADF&G concerns and the concerns of the residents of the State.

Serving the Alaska Board of Fisheries and Alaska Board of Game
Boards Support Section, 333 Raspberry Road, Anchorage, Alaska 99518-1599

We are disturbed by the restrictions placed on the ADF&G to oversee and control mitigation plans only when they are on a AS 16.20 designated Special Use Area. This restriction should not be applied.

The regulations require the mitigation plan to include one of the following: avoiding impact, minimizing impact, rectifying the impact by repairing or rehabilitating, reducing or eliminating impacts over time, or compensating for impact by replacing or providing substitute resources or environments. The key word is "impact". It appears that the State is willing to risk the damages these discharges will have to Alaska's fish producing streams.

In 5 AAC 95.900 Mitigation of damages leaves the citizen with the understanding that mitigation is allowable and sets a bond that is reasonable to ensure compliance. Given the track record of some industries on mitigation and the long range effects that may not be determined for several years, how much security is enough to protect the long range effects on those that rely on fishery resources for their significance?

The current regulations have been in existence for at least ten years. Taking the time to get them "right" can only preserve the quality of our water which controls the quality of our salmon.

We oppose the rule as written and would respectfully request that the Department of Environmental Conservation, Department of Natural Resources, Department of Fish and Game and the State Administration revise this regulation again to satisfy the concerns of so many.

Respectfully,



Gary Dawkins Chairman,

Committee Members: Joe Connors, Mel Erickson, Joe Hardy, Dr. Roland Maw, Paul A. Shadura II, Dyer Van Devere, Bill West, Robert Crowell, Jim Kuhnsman, Bill Tappan, Gary Turner, Rollin Braden, and Larry Schweigert

cc Governor Frank Murkowski, Lt. Governor Loren Leman, Senate President Ben Stevens, Senator Tom Wagoner, Senator Gary Stevens, Representative John Harris Speaker of the House, Representative Mike Chenault, Representative Kurt Olson, Representative Paul Seaton, Commissioner of Environmental Conservation Kurt Fredriksson, Commissioner of Natural Resources Michael Menge, Commissioner Fish & Game McKie Campbell, Board Support Sherry Wright

STATE OF ALASKA

Kenai/Soldotna Fish & Game Advisory Committee

Dwight Kramer, Chair
47083 Belmont Ct.
Kenai, AK 99511
Phone: (907)283-1054
Email: dwkramer@gci.net

November 1, 2004

Subject: Changes and Revisions to Title 18, Chapter 70 of the Alaska Administrative Code; Mixing Zones and Water Quality Standards

From: Chairman Dwight Kramer

To: Nancy Sonafrank
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, Alaska 99709

Ms. Sonafrank,

Fish and Game Advisory committees were created in Alaska during 1959. The Kenai/Soldotna Fish and Game Advisory Boards authority is detailed in *AS 16.05 - 16.40*. Within the recommendations for representation, our board is comprised of; subsistence, personal use, trappers, sport fishing guides, commercial fishermen, recreationalists, hunters and others. In *5 AAC 96.050* we also are instructed to consider six responsibilities. (3) provide a local forum for fish and wildlife conservation and use, including any matter related to fish and wildlife habitat; and (6) cooperate and consult with interested persons and organizations, including government agencies to accomplish (1) - (5) of this section.

Our group voted unanimously to oppose these proposed changes to the "Mixing Zone" criteria currently in place. Many of us are concerned that the changes would be detrimental to the future of the our *World Class Kenai River* runs and our other anadromous and resident fish species within the drainages within Cook Inlet.

We are also very disturbed by the memorandum of August 31, 2004 that would allow a *MOU* that would hold interagency meetings (DNR, DEC, ADF&G), behind closed doors. We believe that this would subvert the public process and reduce the necessary checks and balance system that ensures public acceptance and understanding.

Finally, we are extremely concerned over the acceptance of mitigation factors that would allow the introduction of high levels of toxicants within a permitted mixing zone. We are not interested in allowing the experimentation of our clean waters with other known and unknown pollutants that would affect our families, their use, and needs of our valuable natural resources.

Sincerely,

Dwight Kramer, for the Board of the
Kenai/Soldotna Fish and Game Advisory Committee



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
 Juneau, Alaska 99801-1172
 (907) 586-7870
 (907) 463-2545 Fax
 E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

December 19, 2005

Alaska Department of Environmental Conservation
 Attn: Nancy Sonafrank
 610 University Drive
 Fairbanks, AK 99709
 Fax(907) 451-2187
Nancy_Sonafrank@dec.state.ak.us

RE: 2005 Proposed Mixing Zone Regulations

Dear Ms. Sonafrank,

While we have worked with your agency as well as Alaska Department of Fish and Game and Alaska Department of Natural Resources, and appreciate that a number of our suggestions have been incorporated as the proposed mixing zones regulations language has progressed, through a public process which we firmly support, we have decided that the final draft language is not supportable by United Fishermen of Alaska (UFA). Therefore, because of the extreme importance water quality and rearing habitat have for anadromous fish, UFA opposes the proposed mixing zone regulations.

In the broad context we continue to question why any change from the current regulations is necessary. Our primary concern is for the overall quality and protection of the sustaining environment of salmon throughout their life cycle. In light of the legal opinion from Donald Bullock Jr., at the Legislative Affairs Agency, which significantly modifies the status of, and protections for, anadromous fish, the current language fails that protection.

There are two specific issues that drive our view:

First is the use of the word "or" in part 18 ACC 70.240 (f) which Mr. Bullock's memorandum speaks to specifically and alone requires UFA to revisit our conditioned support that was developed at our Cordova Board meeting. UFA put a good deal of

MEMBER ORGANIZATIONS

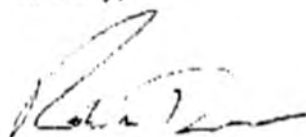
Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • Alsea Processors Association
 Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
 Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
 North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Old Harbor Fishermen's Association
 Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owner Association
 Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association • Southeast Alaska Fisherman's Alliance
 Southeast Alaska Regional Diver Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
 United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association
 Western Gulf of Alaska Fishermen

weight on part 70.240(f) and expected that it gave primacy to salmon whenever and wherever their presence was identified. Clearly, with the use of "or" as a modifier, that is not the case. UFA views "mitigation" as an action of last resort, not as a statutory equal of protection.

Secondly, the language generally lacks sufficient specifics as it relates to many operational and implemental objectives. This lack of clarity, in conjunction with the above opinion on section (f), is a more troubling issue regarding correction, and additional language to narrow the latitude with which the lead agency may operate and fulfill their responsibilities for healthy salmon habitat, within the mixing zones authority that is being proposed.

Realizing that December 19, 2005 is only the close of public comment, UFA acknowledges the work done by the various departments concerned with this proposed change. While we oppose the proposal we commit to continue to work with these agencies to create full protection of anadromous fish with the clearest language within the process.

Sincerely,



Bob Thorstenson, Jr.
President

Attachment: Bullock Legal Opinion

October 29, 2004

Department of Environmental Conservation
Division of Water
Ms. Nancy Sonafrank
610 University Drive
Fairbanks, AK 99709

Dear Ms. Sonafrank:

The Aleutians West Coastal Resource Service Area (AWCRSA) opposes the proposed water quality standards revision that would allow mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occur. The communities of the CRSA are fisheries-dependent and we are writing this letter to express our concerns regarding the inherent market risks for Alaska seafood related to the proposed change.

The Murkowski Administration, the Alaska Congressional Delegation, the Southwest Alaska Municipal Conference (SWAMC), and the Alaska seafood industry have been working in concert to revitalize our flagging salmon fisheries. There are numerous regional branding efforts currently underway across coastal Alaska and the Marine Stewardship Council has certified Alaska's salmon fisheries according to its environmental standard for sustainable fishing. Any change with that could result in having that certification rescinded would be devastating to all stakeholders. Overall there has been more than \$50 million allocated to these efforts. These millions of dollars would pale in comparison to the effort that would be necessary to attempt to counteract even one small incident or adverse finding that is picked up by the media and carried around the world. We concur with SWAMC that is a risk that our communities cannot afford and one that the State of Alaska should not be willing to assume.

We find that the proposed changes do not take into account the volatile nature of worldwide seafood markets. The impact of an adverse incident would not be confined to one stream, drainage, community or fishery. Alaska's reputation as a pristine habitat for wild seafood could potentially be compromised by this change. Even if all affected fish were removed from the supply chain, the perception will be that all Alaska seafood is risky or degraded resulting in detrimental consequences to one of our most vital resource areas. Business is based on expectations and the world expects nothing but the best from Alaska's seafood. Given worldwide seafood market forces, the quality of Alaska seafood is the only unique selling proposition we have left. Any action by the State of Alaska that might compromise this positioning is unacceptable. The future of our coastal

communities and millions of dollars in State and local seafood generated tax revenues are at risk.

For the concerns we have outlined above, we oppose the proposed water quality standards revision that would allow mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occur. We appreciate your attention to our comments.

Sincerely,

Karol Kolehmainen
Program Coordinator

Cc: AWCRSA Board members



American Fisheries Society

ALASKA CHAPTER

17 December 2005

Nancy Sonafrank
Division of Water - Section Manager
Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonafrank,

The American Fisheries Society (AFS) is the oldest and largest international scientific organization of fisheries professionals, with nearly 8,000 members. The Alaska Chapter of AFS (AFS-AK) represents over 400 fishery scientists, biologists and managers employed in government, academia and the private sector throughout Alaska. AFS is not an advocacy group but we do provide science-based opinions on policy matters that we believe affect the conservation and sustainability of fishery resources and aquatic ecosystems.

The AFS-AK strongly opposes the Department of Environmental Conservation's (DEC) proposed amendments to the mixing zone provisions of the state's Water Quality Standards regulations codified in 18 AAC 70. Of greatest concern is DEC's proposal to allow exemptions from the current absolute prohibition on mixing zones in streams, rivers, and other flowing fresh waters where anadromous or select resident fish spawn. This proposal's justification is questionable. Weakening the state's water quality standards compromises the long-term health and sustainability of its fishery resources, as well as the subsistence, sport, and commercial fisheries that depend on them. The authors of the State Constitution recognized the fundamental importance of protecting Alaska's rich fishery resources against the avoidable problems plaguing other states. That forward-thinking commitment to a renewable natural resource has paid large dividends to Alaska's people, communities, and industries that rely on strong, healthy fish stocks.

Positive attributes of DEC's 2005 proposal are overshadowed by allowing exemptions.

Given the present health of Alaska's water quality and fish stocks, the proposed amendment to Alaska's water quality regulations is unjustified. DEC's current water quality standards, with their absolute prohibition on mixing zones in spawning areas, were created to protect Alaska's fishery resources. The AFS-AK would endorse DEC's proposed amendments if they were limited to merging the regulations from six sections into one, expanding protected spawning areas to include lakes, and adding protections for shellfish. However, these select positive attributes of DEC's 2005 proposal are strongly overshadowed by the provision to allow exemptions from the current absolute prohibition on mixing zones in fish spawning areas.

We strongly caution DEC against relying upon mitigation plans [18AAC 70.240.(f).3-4] to minimize, repair, rehabilitate, restore, replace, or compensate for lost/impacted environments caused by permitted mixing zones in fish spawning areas. The effectiveness of various proposed mitigation measures cannot be assumed and must be shown by an objective analysis of the actual long term benefits. This is especially true in light of the many examples of failed mitigation measures, particularly in regards to maintaining healthy fish populations (e.g., Pacific Northwest salmon/bull trout declines despite multi-million dollar mitigation efforts). Using human engineered mitigation projects to replace naturally evolved, complex systems that are not fully understood is a tenuous, failure-prone approach. History has made clear that it is much easier and far less expensive in the long-term to simply maintain clean water and healthy habitats for fish than to attempt to restore them. Alaska should learn from others mistakes, not repeat them.

We have reviewed DEC's proposed regulatory changes, including those purporting to ensure that approved mixing zones will not adversely affect an area's ability to support present and future spawning, incubation and rearing [18 AAC 70.240(c-f)]. **The proposed regulations neither assure sufficient knowledge of pre-permit conditions (baseline data) nor assure effective, unbiased monitoring during permitted activities, both of which are essential to identifying non-compliance.** Experience has shown that even the best-intentioned and well-written regulations are ineffective without unbiased monitoring and timely and consistent enforcement in the face of non-compliance.

DEC intends to base its permitting decision on "practicable" available evidence provided by the applicant and "other credible sources." **"Credible sources" remain undefined, nor is it clear whether or not DEC considers comprehensive baseline studies "practicable."** Baseline data on pre-activity water quality, sediment, and biotic conditions (e.g., species diversity and productivity, population structure, incidence of disease, background levels of key pollutants, etc.) are essential for ensuring compliance with the proposed regulations. However, DEC repudiates this responsibility and asserts that the "burden of proof" is on the applicant to provide all available evidence with their permit application, implying that DEC has no intention of conducting baseline studies itself. Indeed, with the current administration's emphasis on reduced government, DEC does not have the resources to ensure consistent monitoring and enforcement. DEC further maintains that termination of an approved permit for non-compliance will normally rely upon evidence provided by the permittee ["Burden of Proof" link on www.state.ak.us/dec/water/wqsar/trireview/trireview.htm]. **This creates a clear conflict of interest and an opportunity for unethical permittee to mis-report monitoring data that would demonstrate non-compliance.** The responsibility for ensuring compliance with DEC regulations clearly lies with the state, and that responsibility requires unbiased and consistent state-sponsored monitoring oversight and enforcement.

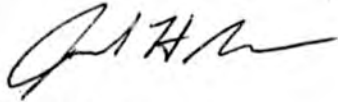
Except in the rare case of mixing zones occurring in legislatively designated special areas (e.g., critical habitat areas), the proposed water quality standards do not require DEC to consult with ADF&G on mixing zone applications or proposed mitigation plans. Only DNR is required to be involved in permit application and mitigation plan review. It is incongruous and ill-advised for the state to exclude its own fishery professionals from permit decisions with the potential to affect the health of the state's fishery resources.

Collectively, these proposals demonstrate a dramatic and fundamentally short-sighted policy shift away from Alaska's heretofore forward-thinking commitment to maintaining its strong and healthy

renewable fisheries resources. **We strongly urge DEC to apply a precautionary principle approach and reconsider "opening the door" to aquatic resource degradation by eliminating the current prohibition on mixing zones.** We do not believe the proposed amendments to DEC's mixing zone regulations are in the long-term best interest of the fishery resources of the State of Alaska.

Thank you for the opportunity to comment. The AFS-AK is committed to the conservation and sustainable use of Alaska's fishery resources. Please let us know if our membership of fisheries professionals can aid you in crafting regulations that ensure the long-term health and sustainability of Alaska's fishery resources (CarolW@AlaskaLife.net).

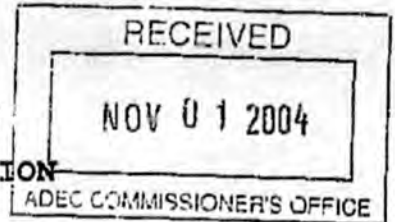
Sincerely,



Jamal Moss
President-Elect, AFS-AK
NOAA Fisheries
Auke Bay Laboratory
11305 Glacier Hwy.
Juneau, AK 99801

cc: Kurt Fredriksson, Commissioner DEC
McKie Campbell, Commissioner ADF&G
Michael L. Menge, Commissioner DNR

NORTH PACIFIC FISHERIES ASSOCIATION
RESOLUTION TO OPPOSE INCREASED POLLUTION
IN ALASKA SALMON STREAMS



WHEREAS, the Alaska Department of Environment Conservation recently proposed new rules to allow "mixing zones" in Alaska salmon streams;

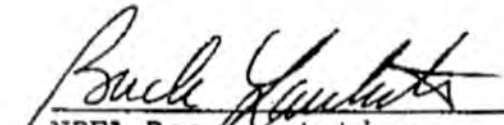
WHEREAS, Mixing zones allow pollution at levels which violate water quality standards designed to protect fish and fish consumers;

WHEREAS, Alaska wild salmon are known worldwide for being clean, fresh and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce;

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state, and form part of the cultural fabric which makes Alaska unique.

WHEREAS, salmon health, salmon habitat and salmon marketing will invariably suffer under a broad new rule allowing increased pollution levels in Alaska salmon streams;

NOW, THEREFORE, BE IT RESOLVED, the North Pacific Fisheries Association does hereby support the continued prohibition on mixing zones in salmon spawning areas.


NPFA Representative

10-18-04
Date

A copy of this RESOLUTION shall be sent to:

Governor Frank Murkowski
State of Alaska
P.O. Box 110001
Juneau, AK 99811

Ernesta Ballard, Commissioner
Alaska Department of
Environmental Conservation
410 Willoughby Avenue
Suite 303
Juneau, AK 99801-1795

000652



United States Department of the Interior

ALASKA REGION
NATIONAL PARK SERVICE
240 W. 5th Avenue, Rm 114
Anchorage, Alaska 99501



IN REPLY REFER TO:

L76 (AKRO-RER)

NOV 1 2004

Ms. Nancy Sonafrank
Environmental Specialist
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Re: Comments on the Proposed Changes in the Regulations dealing with Mixing Zones.

Dear Ms. Sonafrank:

While the National Park Service (NPS) is very supportive of the goal of clarity and reduced redundancy in regulations, we are concerned about the proposed changes to Title 18, Chapter 70 of the Alaska Administrative Code, for mixing zones in fish spawning, rearing, and incubation areas.

The NPS areas in Alaska were set aside in part to preserve and protect fisheries habitat (16 U.S.C. 3101). The fundamental purpose for all NPS areas is to not cause impairment to natural resources and wildlife from allowable activities (16 U.S.C. 1). Creation of mixing zones in waters that flow through NPS lands, even if these mixing zones are outside NPS areas, has the potential to degrade NPS lands and waters.

The most productive fish habitat (for both resident and anadromous species) occur in pristine environments. Alaska, and NPS areas in particular, are most fortunate to have a high percentage of waters in their natural state. Adoption of regulations permitting mixing zones, where some water quality criteria may be exceeded, will reduce pristine aquatic habitat with a very real probability of reducing production of anadromous and/or resident fish.

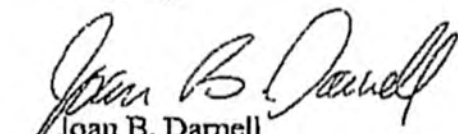
Anadromous and resident fish are of tremendous economic and cultural importance to the people of Alaska. These fish support Federal subsistence fisheries; and State subsistence, commercial, sport and personal use fisheries. In many areas of the State, e.g. Kenai Peninsula, Copper River Basin, Yukon River and other areas, these fishery resources are fully allocated. Any reduction in productivity resulting from the establishment of mixing zones, will negatively affect all users of the fishery resource, to include negative affects to Alaska's cultural and economic viability.

000657

We appreciate the opportunity to comment on this important proposed regulatory change. It is our belief that through a management process involving the appropriate Federal and State agencies as well as the affected users of the resource, Alaska's fishery resources will be perpetuated for the use and enjoyment of all user groups for this and future generations.

If you have any follow-up questions our wish to discuss this matter further you may contact Dave Nelson at 644-3529.

Sincerely,



Joan B. Darnell
Team Manager
Environmental Resources

000658



IN REPLY REFER TO:

AFES

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1011 E. Tudor Rd.

Anchorage, Alaska 99508-6199

NOV 1: 2004

Ms. Nancy Sonafrank, Section Manager
Division of Water
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, Alaska 99709

Dear Ms. Sonafrank:

The Alaska Region of the U.S. Fish and Wildlife Service has reviewed proposed changes to the mixing zone regulations (18 AAC 70.240-270) within the State of Alaska Water Quality Standards (WQS).

After careful review we believe that some of the proposed changes have the potential to affect resources managed by the Fish and Wildlife Service (Service). The most significant change is the proposal to allow mixing zones in fish spawning areas. Currently the State WQS prohibits establishing mixing zones in anadromous and resident fish spawning areas in flowing waters. By definition, mixing zones are areas of initial mixing where discharged pollutants can (and will) legally exceed acute or chronic criteria concentrations. Organisms residing in or passing through mixing zones will encounter concentrated plumes of contaminants that exceed established toxicity thresholds. Such an allowance within fish spawning habitat would be detrimental to maintaining resident and anadromous fish populations and therefore would be contrary to specific sections of these proposed regulations.

Several justifications are given by the Alaska Department of Environmental Conservation (ADEC) supporting this proposed regulatory change. These include the existence of mixing zone provisions in Federal guidance, the use of mixing zones by other states, and the existence of mixing zones in non-spawning areas of Alaska. None of these lines of reasoning address potential adverse affects that may occur by allowing mixing zones in fish spawning areas. Given the cultural and economic importance of Alaska's subsistence, recreational and commercial fisheries, we urge using caution in Alaska when applying mixing zones provisions employed elsewhere, and therefore recommend that the existing prohibition of mixing zones in fish spawning and rearing areas be retained.

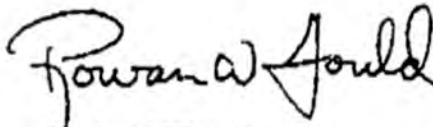
In many instances, specific and detailed methods for conducting risk assessments, mixing and flow models, and other technical details have been removed from the new regulations. In their place are general statements that methods need to be acceptable to the department or

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determined using departmental guidance which is unspecified. This lack of specificity increases our uncertainty regarding the effects of these regulatory changes and how they might affect aquatic resources in Alaska. We appreciate that the ADEC does not want to have to amend the regulation every time a new methodology is adopted. But currently, it appears that many key decisions would be made using professional judgment rather than established protocols. A workable compromise solution might be to reference specific guidance and methods that would be promulgated by ADEC, after being subjected to public review and comment.

Enclosed are specific technical comments. These comments primarily address new or revised sections of the proposed regulations, but some of the comments would also apply to existing regulations. We appreciate that the Alaska Department of Environmental Conservation extended the public comment period, since these changes have the potential to affect aquatic resources throughout the State. We trust you will carefully consider the issues we raise in this letter. Should you have questions regarding this review, please contact Philip Johnson, Environmental Contaminants Coordinator, at (907) 786-3483.

Sincerely,


Regional Director

Enclosure

cc: Commissioner, Alaska Department of Fish and Game-Juneau

000704

City of Tenakee Springs

RESOLUTION 2005-13

In the Council
October 28, 2004

Introduced by
Bruce Ware

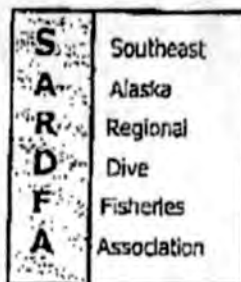
A RESOLUTION FOR THE CITY OF TENAKEE SPRINGS, ALASKA,
SUPPORTING THE EXISTING DEPARTMENT OF
ENVIRONMENTAL CONSERVATION (DEC) PROHIBITION ON
MIXING ZONES IN SALMON STREAMS

- WHEREAS, the Alaska Department of Environmental Conservation is soliciting comments on proposed regulation changes which would allow discharge mixing zones in freshwater habitat including anadromous fish streams; and
- WHEREAS, salmonids are present in their freshwater habitat in one or more life history stages during all times of the year; and
- WHEREAS, unlike saltwater mixing zones, the area of freshwater mixing zones necessary to assure clean water downstream changes constantly depending on natural fluctuations in stream flow; and
- WHEREAS, the City of Tenakee Springs has many residents whose livelihoods depend on salmon harvest and its revenues; and
- WHEREAS, the salmon fishing industry is one of Southeast Alaska's biggest employers; and
- WHEREAS, Alaska's wild salmon are receiving continued market pressure from farmed salmon resulting in reduced prices to our salmon fishermen; and
- WHEREAS, being able to market Alaskan salmon as originating in pristine waters is one of its greatest marketing attributes; and
- WHEREAS, the State of Alaska and the salmon fishing industry have spent considerable effort and money to promote the image of pure and healthy wild Alaskan seafood; and
- WHEREAS, even the perception that Alaska's wild fish habitat may be contaminated greatly diminishes this image; and
- WHEREAS, technology is currently available to adequately treat sewage and industrial waste to allow discharge to meet clean water standards prior to being released.

THEREFORE BE IT RESOLVED by the Common Council of the City of Tenakee Springs, Alaska, supporting the existing DEC prohibition on mixing zones in salmon streams.

Post-It® Fax Note	7671	Date	11-1-04	# of pages	2
NANCY SONAERANK		From	MARY ALMY		
Co./Dept.		Co.	CITY OF TENAKEE SPR.		
Phone #		Phone #	907-736-2207		
Fax #		Fax #	SAME		

000662



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
Box 2128, Wrangell, AK 99929
Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Ms. Nancy Sonafrank, ADEC
610 University Drive
Fairbanks, AK 99709

November 1, 2004

Dear Ms. Sonafrank,

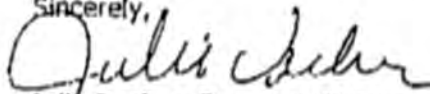
I am writing on behalf of the Southeast Alaska Regional Dive Fisheries Association (SARDFA). We are concerned that even the perception of diminished water quality could negatively impact marketing of Alaska's wild seafood products. Other states which allow mixing zones have subsequently issued fish consumption advisories. Such advisories could undermine the pure and natural image that Alaska has worked hard to secure for its wild salmon and other seafood products.

SARDFA members recognize that clarification and streamlining of the regulations may be viewed as necessary. However, we would prefer to retain the existing regulations which prohibit any effluent discharge into spawning habitat. We encourage ADEC to find alternative solutions before changing the regulations to allow discharge permits. Such solutions could include exceptions for areas where spawning occurs in an established discharge zone or reclassifying waters where discharge has already been permitted. If the State adopts regulations to allow mixing zones in spawning habitat, we request that stringent safeguards be maintained throughout or developed for the permitting process in an effort to not erode the quality of spawning grounds, or the market reputation Alaska has secured for its wild seafood products.

In the event that ADEC does change the regulations to allow discharge mixing zones in freshwater spawning habitat, we suggest requiring actual hydrologic data to determine low flow regimes rather than relying solely on topographic maps and rainfall to estimate the background flow. There are too many variables for this method to provide accurate flow levels. Where hydrologic data is lacking, obtaining actual stream flow data over an extended period of time is encouraged.

ADEC's ability to monitor and enforce discharge mixing zones is also a concern. We would encourage ADEC to carefully consider your ability to assure total compliance and adequate monitoring before any permits are issued.

Sincerely,


Julie Decker, Executive Director

Members of:
Southeast Conference
United Fishermen of Alaska
Pacific Coast Shellfish Growers' Assoc.
Interstate Shellfish Sanitation Conference

Cc: Mark Vinsel, Executive Director, United Fishermen of Alaska
Rollo Pool, Executive Director, Southeast Conference

000689



UNITED FISHERMEN OF ALASKA

November 1, 2004

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

Alaska Department of Environmental Conservation
Attn: Nancy Sonafrank
610 University Drive
Fairbanks, AK 99709
Fax (907) 451-2187
Nancy_Sonafrank@dec.state.ak.us

Dear Ms. Sonafrank,

United Fishermen of Alaska (UFA) represents 33 Alaska commercial fishing organizations. The UFA Board of Directors recently met and discussed the proposed regulation changes in Title 18 of the Alaska Administrative Code, dealing with Chapter 70, Water Quality Standards.

UFA supports the existing prohibition of mixing zones in freshwater salmon streams.

We appreciate your extension of the comment period to allow fishermen a chance to discuss and comment.

Sincerely,

Mark Vinsel
Executive Director

000692

MEMBER ORGANIZATIONS

Alaska Crab Council • Alaska Druggists Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Amertong Keta • Alsea Producers Association • Bristol Bay Regional Area "M" Fishermen • Cordova District Fishermen United • Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Fishing Vessel Owners Association • Groundfish Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Salmon Association • North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association • Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Puro Sea Vessel Owners Association • Seafood Producers Cooperative • Southeast Alaska Herring Salmon Marketing Association • Southeast Alaska Regional Diving Fisheries Association • Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Salmon Association • United Southeast Alaska Grainers • Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

FROM : >00000000000000000000

PHONE NO. : 0

Nov. 01 2004 03:55PM P1

BEAR CREEK OUTFITTERS**FLY FISHING GUIDE SERVICE**

9723 Trappers Lane Juneau, Alaska 99801
(907) 789-3914 phone/fax info@flyfishsoutheast.com



October 30, 2004

465-5070

465-3532

Nancy Sonafrank
Alaska DEC
610 University Drive
Fairbanks, AK 99709

RE: Mixing Zones

As I stated in my public testimony in Juneau this summer, the proposed mixing zone ruling is a bad idea and could potentially have negative impacts on businesses like ours.

Our family fly fishing business depends on intact watersheds and clean water in order to provide healthy streams for returning salmon and resident trout. One stream we regularly take clients to is Greens Creek. If the mine is allowed a mixing zone for their tailings pile or other mining activities in Greens Creek, this would be devastating to the health of the creek, thus negatively impacting our business.

As you may know, the marketing of Alaska "wild" salmon has become more and more successful. The salmon market is very fragile and aggressive in competing against farmed salmon. If the consumer's perception of Alaska salmon is tainted by the possibility of mixing zone pollutions, the State of Alaska will be to blame for this statewide loss.

We support the City of Juneau's recent resolution to not allow mixing zones in our waters and hope DEC drops this bad idea.

Mark and Michelle Kaelke
Owners

000693

To: Nancy S
Fr: Molly
@ 451-2187

RECEIVED

NOV 01 2004



Coal Point Seafood Company
4306 Homer Spit
Homer, Alaska 99603

Dear Governor Murkowski,

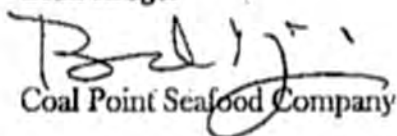
We strongly and absolutely oppose the Murkowski proposal to promote "mixing zones" in salmon spawning and rearing river systems. These areas are where the most critical and sensitive life stage of the salmon takes place. They are the Salmon generators.

Salmon management does not end with escapement of adult salmon. River systems are alive with salmon all year long. Eggs are laid, alevins are hatched and hold over winter. When these tiny hatched fish button up their tender yolk sac, they swim up and start to feed on macro invertebrates which can only survive in clean clear pollution free running waters. These tender life stages of our important salmon resource cannot withstand "zones" of toxic runoff.

To increase pollution in Alaska's rich wild salmon streams runs contrary to the administrations intent of economic development of our Salmon marketing goals. Mixing zones of foreign chemicals sewage, oils, or mine tailing must remain strictly prohibited from entering these bountiful areas that support our economy.

Thank-you for not putting our salmon at risk

Brad Kruger



Coal Point Seafood Company

Cc: Ernesta Ballard, Commissioner DEC
Nancy Sonafrank, DEC

000715

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Manager - 344 Front Street - Ketchikan, Alaska 99901

Roy Eckert

Borough Manager

(907) 228-6825

Fax: (907) 247-6625

mgr@borough.ketchikan.ak.us

November 1, 2004

RECEIVED

NOV - 9 2004

GOVERNOR'S OFFICE

Senator Bert Stedman
50 Front Street # 203
Ketchikan, AK 99901

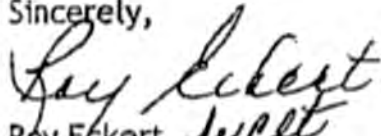
Dear Senator Stedman

The Ketchikan Gateway Borough Assembly has passed a Resolution opposing the mixing zones in salmon and other fish-bearing streams. The Assembly did not have any supporting evidence as to why the change in policy should be allowed, including the effect of run-off from mining areas.

Southeast Alaska, including the Ketchikan Gateway Borough, has worked hard to keep water quality standards a high priority in support of our fishing industry, and we are opposed to any change in policy that is unsubstantiated and without adequate evidence which proves beyond doubt that there will be no adverse effect on the fish quality, or even changes that while may seem to be conclusive would still taint the perception of high-quality fish from Alaska.

The Assembly requests copies of any and all supporting documents that have been submitted to your office that would have led to this proposed change in policy. We would also request an extension of time for additional comments, as most of the fishing fleet has not been able to be informed as to the proposed changes due to being at sea and fishing. Such a major proposed change needs adequate notification and time for response before any decision is made. Thank you for your cooperation.

Sincerely,


Roy Eckert

Borough Manager
Ketchikan Gateway Borough

cc:

~~Governor Frank Murkowski~~
Representative Bill Williams
Alan Austerman

000804

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 1849

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, OPPOSING THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION [ADEC] PROPOSAL TO ALLOW MIXING ZONES IN SALMON AND OTHER FISH-BEARING STREAMS; AND PROVIDING FOR AN EFFECTIVE DATE

RECITALS

- A. WHEREAS, Alaska wild salmon are renowned worldwide for being pure and wholesome;
and
- B. WHEREAS, Alaska salmon require clean water and healthy habitats to thrive and reproduce; and
- C. WHEREAS, many Alaska salmon marketing efforts hinge on consumer preference for fish raised and harvested in clean, pristine waters; and
- D. WHEREAS, Alaska salmon support countless families and communities throughout the state and form part of the cultural fabric that makes Alaska unique; and
- E. WHEREAS, the state has proposed rule changes which shall increase pollution in salmon streams; and
- F. WHEREAS, salmon health, salmon habitat and salmon marketing shall suffer under the ADEC proposal.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA as follows:

Section 1. The Ketchikan Gateway Borough Assembly hereby supports the existing prohibition on mixing zones in salmon and other fish-bearing streams.

Section 2. This resolution is effective immediately.

ADOPTED this 1st day of November, 2004.

000805

RECEIVED

OCT 29 2004

GOVERNOR'S OFFICE

Presented by: The Manager

Introduced: 10/25/2004

Drafted by: J.W. Hartle

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2287

A Resolution Expressing Assembly Opposition to an Alaska Department of Environmental Conservation Proposal to Allow Mixing Zones in Salmon and Other Fish-bearing Streams.

WHEREAS, the Alaska Department of Environmental Conservation (ADEC) has proposed new regulations that will allow mixing zones in salmon and other fish-bearing streams; and

WHEREAS, a mixing zone occurs when wastewater mixes with a water body and may create pollution levels that fail to meet the goals of the Clean Water Act; and

WHEREAS, current state water quality regulation 18 AAC 70 became effective in November, 1997, and contains a prohibition against mixing zones in anadromous (migrating) or resident fish spawning areas; and

WHEREAS, in an ADEC survey, 20 of 21 states that allow mixing zones responded that fish consumption warnings were issued following routine monitoring; and

WHEREAS, Alaska wild salmon are renowned worldwide for being pure and wholesome; and

WHEREAS, farmed salmon have created significant social and economic dislocation for Alaska fishermen; and

WHEREAS, many Alaska salmon marketing efforts hinge on consumer preference for fish raised and harvested in clean, pristine waters; and

WHEREAS, Alaska salmon fishing supports families and communities throughout the state, and forms part of the cultural fabric that makes Alaska unique; and

WHEREAS, ADEC has proposed rule changes which will increase pollution in salmon streams; and

000776

WHEREAS, salmon health, salmon habitat, and salmon marketing may suffer under the ADEC proposal; and

WHEREAS, the Assembly of the Kenai Peninsula Borough, City Council of the City of Soldotna, City Council of the City of Petersburg, and the City Council of the City of Homer, have adopted resolutions expressing their opposition to the proposed regulatory change; and

WHEREAS, the public commenting period to the ADEC has been extended until November 1, 2004.

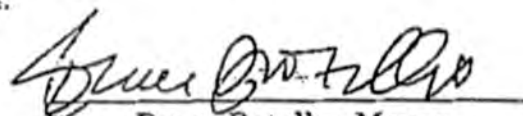
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. That the Assembly hereby expresses its opposition to the Alaska Department of Environmental Conservation's proposal to allow increased pollution in salmon streams by implementing its proposed mixing zone regulations.

Section 2. That copies of this resolution shall be provided to Governor Frank Murkowski; Ernesta Ballard, Commissioner of the Alaska Department of Environmental Conservation; Senator Kim Elton; and Representatives Beth Kertula and Bruce Weyhrauch.

Section 3. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 25th day of October, 2004.


Bruce Botelho, Mayor

Attest:


Laurie J. Sica, Clerk

000777



Yukon Delta Fisheries Development Association

301 Calista Court • Suite C • Anchorage AK 99518

Tel: (907) 644-0326 Fax: (907) 644-0327

October 29, 2004

Ernesta Ballard
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801-1795

Ernesta Ballard,

I am writing to express my opposition to the relaxation of Mixing Zone regulations (Proposed 18 AAC 70). Mixing zones adopt the long discounted notion that dilution is the solution to pollution and, in practice, they create sacrifice zones where water and habitat quality fail to meet the fish protection goals of the federal Clean Water Act. Mixing zone standards affect receiving water users such as drinking water users; commercial, sport and subsistence fish and seafood users; and water recreation users. Alaskans are all of the above.

Please act on behalf of the people of Alaska and protect the safeguards we have in place. Thank you for your time and attention.

Sincerely,

William Charles
Yukon Delta Fisheries Development Association
301 Calista Ct. Suite C
Anchorage, Alaska 99518
(907) 644-0326

000770

CENTER for SCIENCE in PUBLIC PARTICIPATION

Amy Crook, P.O. Box 8105, Victoria, British Columbia Canada V8W 3R8
Phone/Fax: (250) 642-7836 web: www.csp2.org / e-mail: acrook@csp2.org

"Technical Support for Grassroots Public Interest Groups"

CSP²

RECEIVED

October 28, 2004

Nancy Sonafrank
Department of Environmental Conservation
Division of Water
610 University Drive
Fairbanks, Alaska 99709

NOV 01 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

Follow e-mail sent 10/28/04

Re: comments on mixing zone regulation changes and water quality standards 18 AAC 70.240

Dear Ms. Sonafrank:

Dr. Dave Chambers and I have reviewed DEC's proposed changes to the mixing zone regulations and offer the following comments.

Overall, the proposed regulation changes permit wide regulatory discretion to the Department in key mixing zone determinations; the size of the lethal portion of the mixing zone, the assessment of effects from mixing zones, length of the mixing zone in flowing freshwaters, and the volume of water allowed for dilution of pollutants. The draft regulations introduce vague requirements and propose no specific guidance or performance standards that must be met when determining whether to allow a mixing zone. The proposed language changes result in ambiguity, confusion, and interpretation disputes and beg litigation. The overall effect of the proposed changes result in reduced protection for Alaska's waterbodies, and places fish, wildlife and human health at risk.

It is important that all waters of the US and Alaska be managed to support healthy fish and wildlife populations. The proposed regulations only talk about mixing zones in spawning areas. However, spawning areas also provide incubation, rearing, and over wintering habitat. All which are critical to maintaining healthy, viable fish and wildlife populations and individuals. All of these uses must be protected by proactive, stringent, clear, well-enforced mixing zone regulations. The proposed draft directly reduces protection of critical habitats and fundamentally increases risks to Alaska's subsistence foods and multi-million dollar commercial fisheries.

Alaska's fish habitat is unparalleled in the world. If, after careful well-founded scientific deliberation and a full public process, a mixing zone is granted, then compensation for the impacts to our public trust resources (all life stages of aquatic organisms and their supporting habitats) must be required. We request inclusion of specific provisions requiring full mitigation for all harms and impacts incurring to public trust resources from granted mixing zones.

Specific Comments by section:

18 AAC 70.245. Mixing zones: appropriateness and size determination.

18 AAC 70.245 (b)

The existing regulations require a minimum level of effluent treatment before disposal. The proposed language eliminates the wording that effluent treatment technology requirements must meet federal or state law (existing 18 AAC 70.245 (b) (4)). The proposed regulations decrease the standards for effluent treatment. The proposed regulations state "(2) the characteristics of the effluent, including volume, flow rate, dispersion, and quality after treatment;...". This will allow dischargers to reduce levels of effluent

000752

health must be the highest priority for ADEC. The public has repeatedly ranked the protection of our children's health as the most compelling environmental issue.

The current regulations give very specific direction to applicants on how to calculate risks by spelling out what type of analysis and level of proof is required. The current regulations state 18 AAC 70.250 "(B) when evaluating a discharge under this paragraph, the department will, in its discretion, require the applicant to perform a department-approved, site-specific analysis based on exposure pathways, including exposure duration of affected aquatic organisms in the proposed mixing zone and patterns of fisheries use and consumption of water, fish, or shellfish in the area; in the absence of a site-specific analysis, the evaluation of a discharge under this paragraph will be based on the most protective assumptions, as determined by the department, regarding exposure pathways, including exposure duration of affected aquatic organisms in the proposed mixing zone and patterns of fisheries use and consumption of water, fish, or shellfish in the area;").

ADEC has proposed to remove most of the protection from this section of the mixing zone regulations, replacing it with vague, unquantifiable language that could result in an increase of cancer risk to Alaskans. The proposed language in 18 AAC 70.250 (d) states "The department will approve a mixing zone, as proposed or with conditions, only if the department finds that available evidence reasonably demonstrates that within the mixing zone the pollutants discharged will not (2) present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects;...".

The proposed language contains two large ambiguities "available evidence" and "unacceptable risk". See my comments on the term "available evidence" further on in this letter. The term "unacceptable risk" is fraught with uncertainty and controversy. Who will define unacceptable risk levels? How and whom will determine what level of risk is unacceptable? Are different levels of risk acceptable for different areas or communities in Alaska? If specificity is removed from the regulations, how can the public be assured that ADEC will require a consistent analytical approach and a uniform level of risk in all waterbodies? Risk estimation and management is a challenging and evolving science that balances the public's right to clean air and water, and industry's desire to discharge pollutants for economic relief. ADEC has muddied the water (so to speak) with this proposed language change because it removes all the protective specificity included in the current regulations describing how risks will be calculated.

The science of risk calculation is complex and uses many models to predict effects. I won't go into a specific discussion of the failings of risk estimation modeling. My point is that the proposed language provides no guidance on how risk will be determined, resulting in confusion, uncertainty, and increased costs to the public and permittees, increased health risks to the public and ultimately a degradation of Alaska's water quality. It must be soundly rejected.

18 AAC 70.250

The term "available evidence" should be eliminated from all locations in the proposed regulations. This term limits the Department's authority to ask for additional information to support mixing zone applications. The word "available" can be interpreted to mean the permittee is responsible for providing only evidence that already exists. This places the responsibility and expense for collecting and analyzing any additional needed information on DEC since the applicant is under no obligation to provide anything more than "available evidence."

Throughout the proposed regulations the "available evidence" standard is being changed from "reasonably necessary for a decision" to "reasonably necessary to ... satisfy this section". Since the

invertebrate in any stage of its life cycle, that is indigenous to state water or is grown commercially in an approved facility".

The proposed regulations read "(a)..... If the department finds that available evidence reasonably demonstrates that a mixing zone authorized by the department has had or is having a significant unforeseen adverse environmental effect, the department will terminate, modify, or deny renewal of the permit, certification, or order authorizing the mixing zone." This proposed language leaves the burden on ADEC to determine if a mixing zone is causing "a significant unforeseen adverse environmental effect". It is more appropriate for the applicant and permittee to have to demonstrate that they are in compliance with all regulations on an on-going basis.

As written, this clause is very broad and without guidance about what constitutes "a significant unforeseen adverse environmental effect". There needs to be a clear definition of this clause. The proposed language sets up an un-winnable and costly debate between agency staff, industry hired consulting scientific specialists and the public to argue the definition of each word in this clause.

The proposed language promotes an uneven playing field and Alaska's fish and wildlife resources and communities will be the losers. The proposed language sets up a situation where DEC will rarely be able to make a case to terminate, modify, or deny renewal of a permit because they do not, and never will have, the amount of resources and specialist available to them at a level equal to industrial and municipal permittees. ADEC does not have the staff, resources, or fortitude to make controversial decisions in the face of industrial applicants with large resources to hire high-powered consultants to plead their case. It is absurd that ADEC is proposing regulation changes that set up a system where political pressure and deep pockets can unduly influence permit decisions. The proposed language must not be adopted.

18 AAC 70.255. Mixing zones: in-zone quality and size specifications.

18 AAC 70.255 (a)

This regulation currently states "The size, location, or other limits of a mixing zone set by or under this chapter will be established in a discharge permit, certification, or order issued by the department under the appropriate chapter in this title." The proposed language states, "Upon application, the department may authorize in a discharge permit, certification, or order, a mixing zone or multiple mixing zones in which the water quality criteria and any limit set by or under this chapter may be exceeded. The applicant shall provide to the department all available evidence reasonably necessary to demonstrate that a mixing zone will satisfy this section and shall provide information in a form and using methods approved by the department."

The requirement for the applicant to supply all information needed to justify their request for a mixing zone should be placed at the beginning of the regulations so that this responsibility is clear right from the start. By using language like "... department will approve a mixing zone..." throughout the regulations it could be interpreted that the Department has the onus to provide the information for the mixing zone analysis.

18 AAC 70.255 (c)

The current regulations state, "Human health and chronic aquatic life criteria apply at and beyond the boundaries of the mixing zone". This protection is mandatory under the Clean Water Act, and is a critical aspect of adequately protecting all users and aquatic life from risks associated with chronic toxicity.

18 AAC 70.255 (e) (3) (B)

The proposed language in this section greatly increases the level of proof required to establish that a public health hazard exists. By changing one small word, could to will, ADEC has completely changed the meaning of this regulation. The existing language in this section states, "beyond the location where the department determines that a public health hazard reasonably *could* be expected to occur (emphasis added)." The proposed regulation language states "(4) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend downstream beyond the location where the department determines that a public health hazard *will* occur (emphasis added)."

By inserting the word "will" ADEC sets a standard that requires definitive causal proof that a specific discharge causes a public health threat. This wording change greatly affects the public's level of protection from health threats. It delays any preventative action from ADEC to reduce or eliminate a possibly harmful discharge until they have proven that it causes a public health hazard. It places the burden of proof on ADEC or the affected community. This is a horrible precedence for reasons already stated. It may relieve dischargers from responsibility for the effects from their discharges on the environment. This wording change may have legal implications and lead to litigation. The proposed wording changes must be rejected.

18 AAC 70.255 (f)

The proposed language in this section gives ADEC more discretion on the input into effluent dilution modeling. Instead of requiring the 7Q10 for chronic criteria, and 1Q10 for acute criteria, ADEC is given complete discretion to choose whatever flow standard it likes to set chronic and acute aquatic, and human health, low flows for mixing zone calculations. The proposed regulations state "18 AAC 70.255 (f) For streams, rivers, or other flowing fresh waters, in calculating the maximum pollutant discharge limitation, the volume of flow available for dilution must be determined using the actual flow data collected concurrent with the discharge *or using other methods approved by the department* (emphasis added). Again, the proposed language introduces subjectivity into how dilution is calculated and sets the stage for differing levels of demonstration between permittees. The existing language should be retained.

18 AAC 70.260. Mixing zones: application requirements.

The proposed language in this section transfers the burden of proof from the applicant to ADEC. The existing regulations clearly state that it is the responsibility of the applicant to provide all necessary information, "An applicant requesting a mixing zone shall provide to the department all available evidence reasonably necessary for a decision, including the information and demonstrations required by 18 AAC 70.240 - 18 AAC 70.270 and other information the department determines is necessary to meet the requirements of 18 AAC 70.240 - 18 AAC 70.270. The burden of proof for justifying a mixing zone through demonstrating compliance with the requirements of 18 AAC 70.240 - 18 AAC 70.270 rests with the applicant."

The proposed language creates uncertainty and will result in arguments between ADEC, applicants and the public about what type and amount of information is necessary to make a well reasoned, scientifically defensible decision on a mixing zone application. It is important that the original language be retained.

TALKEETNA COMMUNITY COUNCIL, INC.
P. O. BOX 608
TALKEETNA, ALASKA 99676

October 28

Follow's e-mail dated 10/29/04
RECEIVED

NOV 03 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

Nancy Sonafrank
610 University Drive
Fairbanks, Alaska 99709

RE: Comments on DEC's proposed changes to the Mixing Zones sections of the Water Quality Standards in 18 AAC 70.240 through .270

Dear Ms. Sonafrank:

The Talkeetna Community Council took comment and discussed the DEC's proposed changes to the Mixing Zones sections of the Water Quality Standards and unanimously passed a resolution to write a letter strongly opposing the proposed changes to the mixing zones. Under no circumstances should mixing zones be allowed in fish spawning, rearing, or incubation areas.

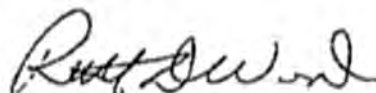
Talkeetna's economy is tourism based, and sports fishing makes up a large portion of our visitor base. Additionally, most of the people who live here have at least a partial subsistence existence. We depend on the health of the wild fish we and our visitors catch. We find it incomprehensible that the State would consider adopting regulations that would put our health and our economy at risk.

We could find nothing in the State's proposal or at the website to assure us that the State has any data or method of determining that allowing mixing zones would have no adverse effect on the capability of an area to support fish spawning, rearing, or incubation. Furthermore, we see no mandatory provision for acquiring base line data and for monitoring our lakes and streams.

Alaska is going to great efforts to market our wild salmon as organic and pure. Our fish are not contaminated with mercury and other dangerous substances. We have good regulations that are protecting our valuable fish resource. Please do not implement the proposed changes to the Water Quality Standards - our health and livelihood depends on it.

We appreciate this opportunity to comment.

Sincerely,



Ruth D. Wood
Chair

000746



Pioneer Alaskan Fisheries
P.O. Box 674
Homer Alaska 99603
October 24, 2004

Governor Murkowski and Commissioner Ballard,

Absolutely NO mixing zones in our salmon streams!

Our business, a forty year Alaskan corporation has provided many hundreds of jobs all reliant on the health and sustainability of fish. The basic building block that allows so many families to make a living... is clean clear habitats for all salmon species life histories.

Our salmon streams are not septic tanks for industries to dilute pollution into. Entertaining the notion of relaxing our water quality standards by allowing mixing zones is unreasonable, obsolete and dangerous to the fish and fisheries.

Mixing zones are irresponsible and puts our lucrative Salmon Industry and the salmon marketing campaign we as a state are trying to promote directly at risk.

The cost to repair and rehabilitate salmon streams from the human folly of special favor lax regulation, far exceeds the cost of safely preventing damage to these generators of our economy.

All industries, including ours, must be responsible and fiscally accountable for their own actions. Regulation is the cost of doing business. It keeps us from stepping on each other.

Protective measures must remain in place to assure the health of our salmon.
Thank-you for your understanding.

Sincerely,
Nancy Hillstrand, secy/tres
Pioneer Alaskan Fisheries

000729



RECEIVED

OCT 25 2004

United Cook Inlet Drift Association

43961 K-Beach Road, Suite E • Soldotna, Alaska 99669 • (907) 260-9436 • fax (907) 260-9438 • ucida@acsalaska.net

October 20, 2004

Nancy Sonafrank
Water Quality Standards Section
Alaska Dept. of Environmental conservation
410 Willoughby Avenue, Suite 303
Juneau, AK 99801-1795

RECEIVED

OCT 28 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

RE: Mixing Zones Proposed Regulations

Dear Ms. Sonafrank:

In the most strenuous terms, UCIDA objects to any proposed changes to the current water quality regulations. Mixing zones are a horrible idea and the proposed regulatory changes must not go forward. As a group of over 450 commercial fishing families that are marketing quality, chemical free wild salmon, these mixing zones are a direct threat to our industry.

Rescind these proposed mixing zone regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roland R. Maw".

Roland R. Maw
UCIDA Executive Director

cjh

000586

**KENAI RIVER**
Special Management Area*"Working together...for the river"***ADVISORY BOARD**

October 28, 2004

Ms. Nancy Sonafrank
Environmental Specialist
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Re: Comments on Proposed Changes and Revisions to Title 18, Chapt. 70 of the
Alaska Administrative Code Regarding Establishment of Mixing Zones and an
Anadromous or Resident Fish Spawning or Rearing Areas

Dear Ms. Sonafrank:

This letter is written to express the concerns of the Kenai River Special Management Area (KRSMA) Advisory Board regarding the proposed changes to water quality regulations. The KRSMA Board wishes to thank you for attending our meeting on October 14, 2004 and making a presentation on the above-referenced changes. Based on your presentation, our review of the proposed regulation changes and in consideration of the input from the public, the KRSMA Board strongly opposes the suggested changes.

Fundamentally, the KRSMA Board sees no persuasive need for the change. During your presentation, you explained the changes were required by infrequent and unlikely conflicts between current regulations, which prohibit discharge into streams involving anadromous or resident fish spawning and habitat areas. The two examples provided were Chena River near Fairbanks, where a discharge into the Chena River had been occurring for years without any adverse effects on the resident grayling population. The other example was the sewer drainage ditch at Valdez where the discharge was occurring into a body of water that was not previously considered to be spawning habitat for salmon, but subsequently salmon have begun to spawn in that habitat.

The KRSMA Board feels that these are isolated examples, and do not justify regulations establishing wholesale mixing zones throughout the state to the detriment of fish habitat. In particular, the KRSMA Board is concerned about the Kenai River and its tributaries. Under the proposed regulations, an industrial polluter would simply have to request and be granted DEC approval for establishing mixing zones in the most productive fishery in the state of Alaska. This unacceptable risk is not justified by the cited examples.

000583

Kenai Area Office, Box 1247, Soldotna, AK 99669, Soldotna 262-5531
Kenai Peninsula Borough, Box 650, Soldotna, AK 99669, Soldotna 262-4441

Alaska Division of Parks and Outdoor Recreation, Department of Natural Resources, in cooperation with the Kenai Peninsula Borough.



Ms. Nancy Sonafrank
October 28, 2004
Page 2

The KRSMA Board is concerned about the lack of standards contained in the new regulations which invites political manipulation.

Specifically, the KRSMA Board is concerned because in addition to lack of meaningful standards, the decision as to whether issue a permit or not is consigned to the unfettered discretion of DEC representatives subject only to advice from the Alaska Department of Fish & Game and the Office of Habitat and Management of the Department of Natural Resources. In other words, neither ADF&G nor DNR could veto the grant of a mixing zones permit.

The KRSMA Board is uncertain as to the motive behind these regulation changes; however, it sees no justification for these changes under the current circumstances and substantial risk to Alaska's fisheries. The KRSMA Board strongly recommends that these changes not be instituted.

Very truly yours,


Ken Lancaster
KRSMA Advisory Board President

000584

October 21, 2004

RECEIVED10/26/04
OCT-28-2004Nancy Sonafrank
Environmental Specialist

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

610 University Drive

Fairbanks, AK 99709

DEPT. OF ENVIRONMENTAL
CONSERVATION

Dear Ms. Sonafrank:

The Southwest Alaska Municipal Conference (SWAMC) opposes the proposed water quality standards revision that would allow mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occur. As a fisheries-dependent region, we believe the proposed change is technically deficient, contrary to the state's constitutional mandate for sustained yield fisheries management, and unmindful of the inherent market risks for Alaska seafood.

Technical Deficiencies

First, we applaud DEC's efforts to consolidate water quality standards and make them more coherent for local government and industry. However, we find that there are a number of technical deficiencies in the amended language to 18 AAC 70.240 and its proposed implementation.

References throughout the amendment use the terms "waterbody" or "streams, rivers, or other flowing fresh waters" are inconsistent in that the former includes lakes and the latter does not. Lakes are important rearing habitat for sockeye salmon. Juvenile sockeye can spend up to four years in fresh water before migrating to sea, making the water quality of these lakes and the drainages that feed them of the utmost importance.

The Alaska Department of Fish & Game lists 3,174 entries for Southwest Alaska in the *Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes*. However, it is estimated that only half of all anadromous waters are currently listed in the catalog. As we understand the implementation of the proposed change, there is no assurance that surveys of waters where mixing zones may occur will be required prior to the issuance of a permit, in cases where those surveys have not already been done. Without sufficient baseline data and no attempt to do a neutral third-party assessment prior to issuance of a permit, this margin for error is unacceptable.

- more -

000577

Additionally, SWAMC has been compiling available environmental indicators for publication in our regional Quality of Life Index. Our staff has been corresponding with DEC staff on baseline water quality information for our region. According to Ron Klein, DEC does not have this data. Absent this information, it is not clear to us that DEC has the requisite tools to evaluate permit applications or ensure compliance based on permittees' reporting.

Under the proposed change, permittees would conduct their own monitoring and reporting. This self-policing process may be adequate under the existing standards and regulations, but with the proposed change it is wholly inadequate. Given the staffing and resources available to DEC, even a selective auditing process would not be sufficient to ensure regulatory compliance and safeguarding of anadromous fish resources.

We understand that no permit would be issued without DEC seeking public comment. However, many interested stakeholders are not able to comment on matters such as this because their livelihoods fully occupy their time during the fishing season. Without some specific assurance that no permits would be issued between May and October, those with the most at risk would be unable to participate in the comment process.

Constitutional Mandate

Article VIII, Section 4 of the Constitution of the State of Alaska, states that, "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."

We believe the proposed change countermands this constitutional provision by allowing replenishable resources to be depleted through the action of a permittee as approved by the State. Enforcement of the standards and reporting of permitted discharges would be left up to the permittees. Under these circumstances, we believe irreparable resource depletion could occur before corrective measures could be taken. Systemically, there are few, if any, appropriate checks and balances with the proposed change to ensure the State's sustained yield mandate.

Market Risks

We find that the proposed changes do not take into account the inherent market risks posed to Alaska seafood as a fungible commodity or the numerous regional branding efforts currently underway across coastal Alaska. Alaska's reputation as a pristine habitat for wild seafood could potentially be compromised by this change.

The impact of an adverse incident would not be confined to one stream, drainage, community or fishery. Consumers would not be able to distinguish between one

contaminated Alaska fish and another. Even if all affected fish were removed from the supply chain, the perception will be that all Alaska seafood is risky or degraded.

The Murkowski Administration, the Alaska Congressional Delegation, and the Alaska seafood industry have been working in concert to revitalize our flagging salmon fisheries; allocating more than \$50 million to this effort. It would take many millions of dollars more to attempt to counteract even one small incident or adverse finding that is picked up by the media and carried around the world. That is a risk we cannot afford and one that the State of Alaska should not be willing to assume.

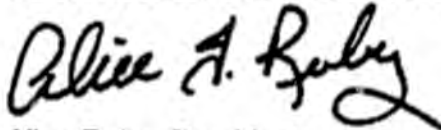
One possibility that concerns us is that the Marine Stewardship Council has certified Alaska's salmon fisheries according to its environmental standard for sustainable fishing. Would this change potentially impact that certification? We don't know the answer, but the potential impact of having that certification rescinded would be devastating to all stakeholders.

Given worldwide seafood market forces, the quality of Alaska seafood is the only unique selling proposition we have left. Any action by the State of Alaska that might compromise this positioning is unacceptable. Perception is reality. The livelihoods of thousands of Alaskans, the viability of hundreds of Alaskan businesses, the future of numerous coastal Alaska communities, and millions of dollars in tax revenues to the State of Alaska are at risk.

For the reasons we have outlined above, we oppose the proposed water quality standards revision that would allow mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occur.

Sincerely,

SOUTHWEST ALASKA MUNICIPAL CONFERENCE



Alice Ruby, President
Board of Directors

pc: Southwest Legislative Delegation
Southwest Communities
Kurt Fredriksson, Acting Commissioner

000579



COOK INLET
AQUACULTURE ASSOCIATION

4051C KALIFORNSKY BEACH ROAD
KENAI, AK 99611
(907) 283-5761
FAX: (907) 283-9433
email: ciaa@ptialaska.net

RECEIVED

OCT 26 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

October 18, 2004

Nancy Sonafrank
Alaska DEC
610 University Drive
Fairbanks, AK 99709

Re: Mixing Zones in Anadromous Streams

Dear Nancy:

It has been brought to our attention that new rules have been proposed that could increase pollution within anadromous salmon streams. We strongly oppose any action that degrades, potentially degrades or is perceived by the public to degrade the environment upon which Alaska's salmon resource depends.

It is the mission of the Cook Inlet Aquaculture Association to "*protect self-perpetuating salmon stocks and the habitat upon which they depend.*" Salmon spawning areas are very sensitive to changes such as alterations to the riparian surroundings, changes to the stream substrate, or degradations to the quality of the water. To maintain healthy anadromous fish populations, spawning areas must be protected.

Additionally, CIAA strives to maximize the value of Cook Inlet's salmon resource. We feel that an increase of pollutants or the perception of an increase in pollutants within salmon streams may decrease the value of Alaska's salmon in the marketplace.

Therefore, we do not support proposals that may generate adverse affects to salmonid spawning areas or disrupt the health and value of the Cook Inlet's salmon resource.

Sincerely,

Drew Sparlin, President
Cook Inlet Aquaculture Association

000575

Xcopy: Governor Frank Murkowski
Kurt Fredriksson, Acting Commissioner, ADEC



Kenai Peninsula College
UNIVERSITY of ALASKA ANCHORAGE

RECEIVED

OCT 25 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

Ms. Nancy Sonafrank
Alaska Dept. of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonafrank:

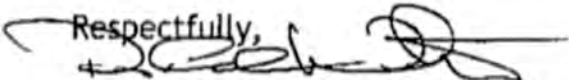
I am writing to protest the DEC's foolish proposal to allow mixing zones in salmon spawning streams. The word foolish means "the acts of one lacking judgment". That is the kindest thing I can say about your newest folly. Stronger words are appropriate but supposedly not to be used in polite company.

Mixing zones in streams simply must not be allowed. By definition, there will be areas of polluted waters in otherwise pristine streams. This pollution will then contaminate the fish throughout the stream. On the East Coast and Great Lakes regions, salmon from their streams should only be eaten once a month and pregnant women are advised not to eat the salmon at all. That should be a lesson for Alaska; do not pollute your streams!

Alaska has been trying to compete with farmed fish production by claiming Alaska salmon are "wild" and "pollution free". Allowing mixing zones in salmon streams will completely undermine and negate that claim and further undermine the fishing industry in Alaska. Again, allowing these mixing zones shows lack of judgment.

Perhaps the name of your organization should be changed to the Alaska Department of Environmental Contamination since that is closer to what you are proposing.

Respectfully,


David C. Wartinbee PhD, JD
Biology Professor, Stream Ecologist
University of Alaska, Anchorage
Kenai Peninsula College
34820 College Drive
Soldotna, Alaska 99669

000520

Lynn Canal Conservation, Inc.
Box 964 • Haines, Alaska 99827

October 14, 2004

Nancy Sonafrank
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonafrank:

Lynn Canal Conservation (LCC) is a grassroots conservation organization located in Haines. We oppose the proposed new regulations to allow mixing zones in salmon streams. Healthy salmon runs are very important to our members who rely on subsistence foods, who commercially fish, and who run businesses that rely on showing visitors wildlife that depend on healthy salmon populations.

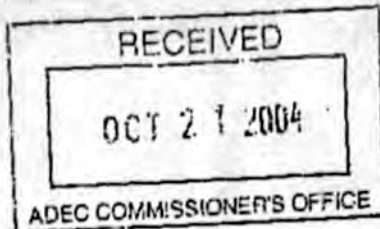
Increased levels of pollution in salmon streams will harm marketing efforts for wild Alaska salmon. The timing for this regulation change could not be worse, as there is a growing recognition that wild salmon are healthier than farmed fish, and therefore can command a higher price. Wild Alaska salmon are beginning to reclaim some of the market share taken away by farmed fish. Why jeopardize this market recovery with a regulation to allow pollutants to be put in salmon streams?

Thank you for the opportunity to comment.



Nancy Berland
Issues Coordinator

000497



Introduced by:
 Date:
 Action:
 Action:
 Vote:

Martin
 09/07/04
 Postponed until 10/12/04
 Adopted as Amended
 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
 RESOLUTION 2004-087(MARTIN) SUBSTITUTE**

**A RESOLUTION OPPOSING THE PROPOSED MIXING ZONE REVISIONS TO THE
 ALASKA WATER QUALITY STANDARDS**

- WHEREAS,** the State of Alaska Department of Environmental Conservation is proposing several current Mixing Zone regulation changes, which govern the permit requirements for areas where treated wastewater mixes with a water body; and
- WHEREAS,** the proposed amendments would allow Mixing Zones in "an area of anadromous fish spawning" where the existing rules prohibit Mixing Zones in such areas due to concerns that industrial effluent may have a negative impact on fish habitat; and
- WHEREAS,** the entire Kenai Peninsula Borough is interested in maintaining high water quality and is highly dependent on the growth and propagation of fish and other aquatic life; and
- WHEREAS,** a large part of the Kenai Peninsula Borough's economy stems from healthy salmon and other marine life stocks residing in the waterways that could be affected by these proposed regulations; and
- WHEREAS,** the healthy wild salmon and other marine life industries support many jobs and subsistence resources to the people and communities throughout the state; and
- WHEREAS,** the Kenai Peninsula Borough has provided significant support to the Cook Inlet Salmon Branding program, which is largely dependent upon the ability to market Cook Inlet wild salmon; and
- WHEREAS,** allowing Mixing Zones in anadromous fish spawning areas would impair the efforts of Cook Inlet sport and commercial fishers and processors to promote Cook Inlet wild salmon as clean, fresh, and healthy; and
- WHEREAS,** in some cases existing municipal mixing zone permit holders have faced permit revocation or costly upgrades when seeking a renewal because salmon have started spawning in the area delineated as the wastewater treatment plant's approved Mixing Zone; and
- WHEREAS,** revoking a permit in such cases could be detrimental to the salmon spawning area as it could cause the stream to dry up or otherwise damage the habitat; and

WHEREAS, a provision authorizing existing mixing zone permits to be grandfathered in if salmon start spawning in the previously approved Mixing Zone area would address these concerns; and

WHEREAS, the comment period for the proposed regulations ends on November 1, 2004;

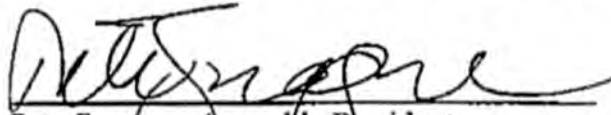
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough Assembly opposes amending the state water quality standards to allow wastewater to be discharged into areas of anadromous fish spawning in Alaska, and urges the Department of Environmental Conservation to not adopt any such proposed changes except to allow the renewal of permits in areas where salmon started spawning in the previously approved mixing zone effluent.

SECTION 2. That copies of this resolution shall be provided to Ernesta Ballard, Commissioner of Department of Environmental Conservation, Governor Frank Murkowski, and Senators Thomas Wagoner, Gary Stevens, Georgianna Lincoln, and Con Bunde, Representatives Kelly Wolf, Mike Chenault, Paul Seaton, Mike Hawker, and Carl Morgan.

SECTION 3. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 12TH DAY OF OCTOBER, 2004.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk





United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

FWS/OSM/04-11

OCT -5 2004

Commissioner Ernesta Ballard
State of Alaska, Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801-1795

Dear Commissioner Ballard:

Enclosed with this letter is Resolution 04-11 from the Southeast Alaska Subsistence Regional Advisory Council concerning water quality standards and mixing zones in fish spawning habitat. The Southeast Alaska Subsistence Regional Advisory Council developed the resolution during its September 27 through 30, 2004, public meeting in Juneau, Alaska.

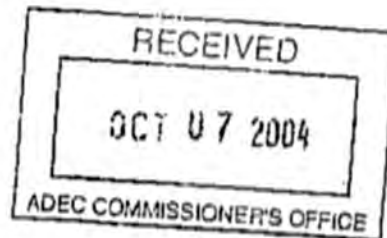
The Alaska National Interest Lands Conservation Act established the Subsistence Regional Advisory Councils. These Councils advise the Federal Subsistence Board regarding any subsistence matter in their respective regions, and are administered by the Office of Subsistence Management.

Sincerely,

Thomas H. Boyd
Assistant Regional Director

Enclosure

000474



RESOLUTION 04-11: Concerning Water Quality Standards and Mixing Zones in Fish Spawning Habitat.

Whereas, the Alaska Department of Environmental Conservation recently proposed new rules to allow "mixing zones" in Alaska salmon streams;

Whereas, mixing zones allow pollution at levels which violate water quality standards designed to protect fish and fish consumers;

Whereas, Alaska wild salmon are renowned worldwide for being clean, fresh and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce;

Whereas, salmon health, salmon habitat, and salmon marketing will suffer under a broad new rule allowing increased pollution levels in Alaska salmon streams;

Whereas, salmon are an important and integral food item used for subsistence in Southeast Alaska,

Now, therefore, the Southeast Regional Advisory Council does hereby oppose the State of Alaska Department of Environmental Conservation's proposal to allow increased pollution (mixing zones) in salmon streams.

John Littlefield, Chair /s/
Southeast Alaska Subsistence Regional Advisory Council
September 30, 2004

000472

CITY OF PORT ALEXANDER
P.O. Box 8068 Port Alexander, AK 99836-8068 907/568-2211 Fax 907/568-2207

RESOLUTION 04-06

Whereas, the City of Port Alexander recognizes that sport and commercial salmon fishing is the mainstay of the local economy and,

Whereas, Alaskan fishermen rely on the marketing of our wild salmon as coming from pristine waters, and nationwide education has improved the promotion of our wild salmon and,

Whereas, Department of Environmental Conservation's proposed regulations allowing for mixing zones in salmon streams has the potential to cause the degradation of fish spawning habitat which could harm the salmon industry and,

Whereas, laws weakening pollution regulations that impact Alaska's clean, healthy waters will send a message to consumers counterproductive to state and individual marketing efforts and,

Whereas, Alaskans face tough times in the fisheries due to the cheaper abundance of farmed fishing which has seriously impacted the price of Alaskan salmon and,

Whereas, current standards explicitly prohibit mixing zones in fish spawning waters and,

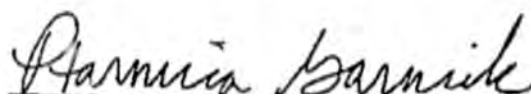
Whereas, mixing zones allow industrial and municipal polluters to exceed water quality standards and,

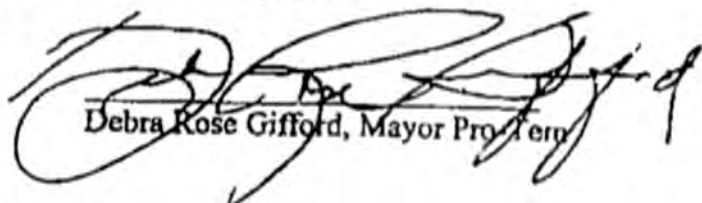
Whereas, DEC's proposed changes run counter to the precautionary principle long advocated by our Alaska Department of Fish and Game (ADF&G) and,

Whereas, DEC's proposed changes will benefit the mining and oil and gas industries at the expense of the fishing industry and Alaskans who rely on healthy fisheries,

Therefore be it resolved, the City of Port Alexander opposes the DEC's changes to allow mixing zones in fish spawning waters.

Adopted this 11th day of October, 2004 by the Port Alexander City Council


Parnica Garnick, City Clerk


Debra Rose Gifford, Mayor Pro Tem

000465

Native Village of Port Graham

PORT GRAHAM VILLAGE COUNCIL
P.O. BOX 5510 • PORT GRAHAM • ALASKA 99603-5510
907-284-2227 FAX 907-284-2222

RECEIVED

September 30, 2004

OCT 6 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

State of Alaska
Department of Environmental Conservation
Division of Water
Nancy Sonafrank
Water Quality Standards Section Manager
610 University Drive
Fairbanks, AK 99709

Submitted by email to:
Nancy_sonafrank@dec.state.ak.us

Re: Native Village of Port Graham opposition to proposed relaxation of the Alaska
Water Quality Standards allowing mixing zones in certain fish spawning water bodies

Dear Ms. Sonafrank,

On behalf of the Native Village of Port Graham, the Port Graham Village Council is taking this opportunity to comment on the regulation changes in Title 18 of the Alaska Administrative Code, dealing with water quality standards, from the State of Alaska, Department of Environmental Conservation (ADEC). The Native Village of Port Graham is a traditional Alaska Native community located on the southern Kenai Peninsula whose families have subsisted on Cook Inlet marine resources for centuries. Port Graham has been actively working to address potential impacts to our traditional foods, because our lives, our families and our culture depend on the health of our traditional subsistence resources.

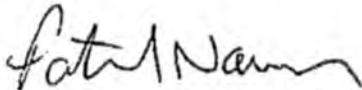
In our research and closely looking at ADEC mission statement, it reads; "It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being." The Port Graham Village Council does not believe that it is in the best interest of the resources or the protection of the people of the state to allow mixing zones in certain fish spawning areas.

000461

Alaska law currently prohibits mixing zones in salmon streams because mixing zones allow pollution at levels above state standards designed to protect fish. The new rule would allow toxic pollution discharges in Alaska salmon streams where none now occur, rolling back current safeguards, and allow mining, sewage, oil and gas and other pollution to be dumped into our fish streams. This is new rule is unacceptable because these toxic mixing zones in salmon streams would fail to meet the fish protection goals, and certainly the zero discharge promise of the Clean Water Act.

The Native Village of Port Graham opposes these regulation changes relaxing restrictions on mixing zones in fish spawning water bodies. These changes would reduce protections for human users of the water and the subsistence resources it supports. Fish constitute a much higher proportion of the diet of our Native peoples than for others, so effects of increased toxin in fish are magnified. These proposed mixing zones will impact and reduce numbers of native fish stocks upon which our people have relied on since time immemorial.

Sincerely,



Patrick Norman/Chief
Port Graham Village Council

000462



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602



September 28, 2004

Nancy Sonafrank
Department of Environmental Conservation
610 University Drive
Fairbanks, AK 99709

Subject: Resolution Opposing the Proposed Changes to Regulation 18 AAC. 70.240 dealing with Mixing Zones

Dear Ms. Sonafrank:

The purpose of this letter is to provide comment and present you with the attached resolution from the Lake and Peninsula Borough Assembly concerning the proposed changes to the Mixing zone regulation 18 AAC. 70.240. The Lake and Peninsula Borough opposes this new regulation change as we contend it will have a long-term affect on the citizens of the Borough and the resources within our boundaries.

These changes have the potential to have a dramatic affect on the lakes and streams within the Borough as well as water quality in the future. There are a large number of unanswered questions that make supporting this regulation very difficult. If the State of Alaska is willing to take on the responsibility for this new regulation and take over control from the Environmental Protection Agency (EPA), where will the State get the funds and personnel to enforce this new regulation? There have been estimates this new program could cost the State of Alaska two million annually to monitor and enforce. It is very difficult to understand how the State would take on this additional expense and at the same time require applicants to pay for application for mixing zone approval, which do not cost local governments anything under the EPA. Most communities within rural Alaska do not have the additional resources for this type expense.

The Borough is very supportive of economic diversification and welcomes new development that will stimulate our local economy. However, we will not trade the Borough's environmental well being for this new development and growth. Simply put, it must be done right.

The Borough is willing to support, in concept, non-industrial mixing zones as may be required for the proper treatment of municipal sewage with an effluent discharge into an anadromous lake or stream. However, we cannot support the new regulation as proposed.

Thank you for the opportunity to comment. If you have any questions please contact me at 907-246-3421.

Sincerely,

Marvin R. Smith
Community Development Coordinator

000427

**LAKE AND PENINSULA BOROUGH
RESOLUTION 04-17**

A RESOLUTION OPPOSING THE STATE OF ALASKA'S PROPOSED TAKE OVER OF WATER QUALITY REGULATIONS FROM EPA WHICH REGULATE WASTE FROM MINES, SEAFOOD PROCESSORS, OIL AND GAS RIGS, LOG DUMPS AND MUNICIPAL SEWER PLANTS, AND, TO THE PROPOSED REVISIONS TO THE ALASKA WATER QUALITY STANDARDS ALLOWING INDUSTRIAL MIXING ZONES IN FRESH WATER STREAMS AND LAKES.

WHEREAS, the State of Alaska, Department of Environmental Conservation in a effort to "streamline the permitting process" is proposing to take over EPA Water Quality Regulations and incorporate several changes to the current Mixing Zone Regulations which govern permit requirements for areas where treated wastewater mixes within a water body; 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 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;

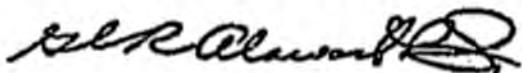
NOW THEREFORE BE IT RESOLVED, the Lake and Peninsula Borough strongly opposes the State's proposal to "take over" the existing EPA water quality Regulations; and,

BE IT FURTHER RESOLVED, the Lake and Peninsula Borough is opposed to revisions to the water quality regulation that would provide for Industrial Mixing Zone discharge into fresh waters in the State of Alaska

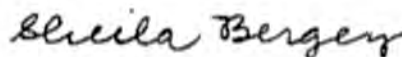
PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 21ST day of September, 2004.

IN WITNESS THERETO:

ATTEST:



Glen Alsworth Sr., Mayor



Sheila Bergey, Borough Clerk

000428

Ekwok Village Council
P.O. Box 70
Ekwok, AK 99580
(907) 464-3336
Fax: (907) 464-3378

Resolution: 04-23

Title: Spawning Grounds Water Quality -- Subsistence and Commercial Fishing and Wildlife Protection for the Native People of Ekwok, Alaska and the Nushagak River.

WHEREAS, the Ekwok Village council is a federally recognized tribal government, and is the oldest community on the Nushagak River Drainage System,

WHEREAS, the Ekwok Village Council and its Tribal members sole existence is relied upon by the quality of the Water in the spawning grounds of the Nushagak River drainage system including the Koktuli river which drains into the Nushagak River,

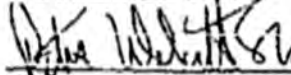
WHEREAS, The Ekwok Village Council is firmly against any regulations permitting any foreign substances, waste, tailings, or dirt and mud to be mixed in pristine habit that has provided life to the tribal members since the beginning of recorded history,

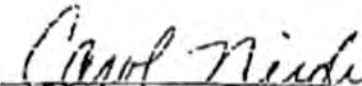
NOW THEREFORE BE IT RESOLVED, that the Ekwok Village Council hereby requests that the Department of Environmental Conservation (DEC), the State of Alaska, and the United States Government, and any other entity to prohibit mixing zones in our rivers and habitat, so that our way of life may not be put at risk by harming our environment by outside firms seeking to take minerals and such from our area and harming our way of life,

THEREFORE BE IT FURTHER RESOVLED, that the Ekwok Village Council is against any and all regulations and proposed changes to any rules, laws, ordinances, or any other written authority that may effect the water quality of our traditional spawning grounds so that it may stay in a pristine state,

It is hereby certified that on the 11th day of September 2004, a quorum of the Ekwok Village Council was formed, and did pass and adopt the preceding resolution by 6 Affirmative and 0 negative votes.

ATTESTED BY:


Council President


Council Secretary

000422



"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."

RECEIVED

SEP 23 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

Members

Alaska State
Chamber of
Commerce

Alaska Native
Groups

Environmental
Groups

Recreational
Groups

Aquaculture
Associations

Fishing
Organizations

City of Kodiak

City of Kenai

City of Seldovia

City of Homer

Kodiak Island
Borough

Kenai Peninsula
Borough

Municipality of
Anchorage

September 20, 2004

Ms. Nancy Sonafrank
Environmental Specialist
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, AK 99709

Re: Comments on Proposed Changes and Revisions to Title 18, Chapter 70 of the
Alaska Administrative Code, on Mixing Zones and Water Quality Standards

Dear Ms. Sonafrank,

Cook Inlet Regional Citizens Advisory Council (CIRCAC) submits the following comments regarding the proposed revisions to the Mixing Zone provisions of the Alaska Water Quality Standards in 18 AAC § 70.240 on behalf of our member organizations.

The Cook Inlet Regional Citizens Advisory Council (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, (OPA 90). 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 members representing boroughs, cities and municipalities in the Cook Inlet region, as well as Alaska Native groups, commercial fishing, and aquaculture, tourism, recreational and environmental interest groups.

As an oversight group charged with protecting the environment from the impact of oil pollution, we are pleased to have observed major improvements in pollution prevention and response planning in Cook Inlet. CIRCAC has spent years 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 response strategies to prevent spilled oil from contaminating sensitive coastal environments, especially fish spawning habitat. The revisions to state mixing zone regulations currently proposed by the Alaska Department of Environmental Conservation (ADEC) has the potential to nullify years' worth of diligent work by allowing for the intentional pollution of our priceless salmon streams by industrial effluents. Not only does this proposal violate provisions of the Clean

Water and US EPA Guidance, it creates a dangerous and unnecessary precedent by giving ADEC the discretion to allow for intentional discharges of pollutants into anadromous fish streams. CIRCAC strongly opposes the proposed regulations as written.

Comments on Regulatory Changes

ADEC proposes to change the regulations at 18 AAC 70 by repealing Sections 245, 250, 255, 260, and 270 of Title 18 of the Alaska Administrative Code. The changes have been offered by ADEC in an attempt to "improve clarity and reduce redundancy." The new regulations contain a provision to allow mixing zones in certain fish spawning areas, and provide consideration for mitigating measures to offset the "potential adverse impacts of mixing zones on aquatic resources."¹

Removal of statewide ban on mixing zones in anadromous or resident fish or shellfish spawning or rearing areas is bad environmental policy

Opening the door to potential degradation of Alaska's anadromous fish spawning habitat is bad environmental policy. The proposed revisions give ADEC the sole discretion to approve mixing zones in streams, rivers, or other flowing fresh water areas if "available evidence reasonably demonstrates that the mixing zone will not...adversely affect the capability of an area to support spawning, incubation or rearing of anadromous or resident fish."² The new language modifies the legality of mixing zones in spawning areas with the language, "only if it finds that available evidence reasonably demonstrates that the mixing zone will not ...adversely affect..." spawning areas.³

In its summary of the proposed changes, ADEC explained its rationale for relaxing the mixing zone regulations in spawning areas and presented three situations in which it envisioned allowing mixing zones in fish spawning waters.⁴ However, the regulatory language provides no comparable level of guidance, essentially allowing ADEC to unilaterally approve a mixing zone for any pollutant at any time.

CIRCAC cannot conceive of a reason to open the door to potential degradation of our fragile shellfish rearing and fish spawning habitat, when so many state and federal agencies, recreational and commercial fishing groups, and oil companies, to name a few, have gone to such great lengths to protect these resources. The proposed regulations are ambiguous and assign broad discretionary authority to ADEC to make decisions regarding fisheries biology and aquatic ecology that are beyond the agency purview.

¹ Notice of Proposed Regulations issued by ADEC July 26, 2004 accessed online at <http://notes3.state.ak.us/pn/pubnotic.nsf>.

² Proposed 18 AAC 70.240(c)(4)(E).

³ Proposed 18 AAC 70.240(c).

⁴ See Sonnafrank, Nancy, 2003-2005 Triennial Review, Proposed Water Quality Standards Revision Summary: Mixing Zones at <http://www.state.ak.us.dec.water.wqsar/trireview/trireview.htm> (last visited August 13, 2004)

The proposed regulatory changes create a loophole for polluters

Through discussions with ADEC staff, on August 17, 2004⁵ CIRCAC understands that ADEC's rationale for proposing changes to the mixing zone regulations stems in part from specific cases where existing mixing zone permits have faced renewal challenges because the permitted activity had presumably modified the environment to the effect of creating spawning habitat where none existed before. We can only presume that such cases are a rare exception, as experience in the Lower 48 has demonstrated that the net effect of industrial effluents on the coastal environment has generally been one of negative impacts to fish habitat, rather than creation of new anadromous streams. But if ADEC's goal is to address such aberrant cases, we recommend that the Department craft a regulatory provision that maintains the ban on mixing zones in fish spawning habitat and instead allows for an appeal process to address such specific, unusual cases. The appeal process should provide for outside agency review and unanimous concurrence from the Alaska Department of Fish and Game and the Alaska Department of Natural Resources to win the appeal. ADEC does not have the expertise in fisheries biology and aquatic ecology to be the sole arbiter of such a decision.

Exceptions to the mixing zone ban in anadromous streams should be allowed only in the narrow instance where a previously permitted mixing zone can be proven to have created new spawning habitat. CIRCAC fears that, once ADEC begins to grant exceptions that impact water quality in anadromous streams, the door will be open for increased pollution from regulated facilities, including the oil industry in Cook Inlet.

The proposed regulations do not include a process for public participation and interagency review

Because there is such an enormous public stake in protecting our aquatic resources in general and specifically our fish habitat, we recommend that ADEC revise the proposed regulations to describe the procedures for intergovernmental consultation and public participation as required under 18 AAC 70.015(c).

The proposed mitigation provision suggests that the health of Alaska's anadromous fish spawning habitat can be bartered

The health and balance of Alaska's anadromous fish habitat is of vital importance to each and every one of CIRCAC's member organizations. Healthy fish runs are a primary concern of Alaska Natives, commercial and sports fishers, aquaculture groups, tourism interests, recreational users, and environmental stakeholder groups. The proposed regulations add the following mitigation requirement: "In determining whether to authorize a mixing zone under this section, the department will consider...any additional measures that would offset potential adverse effects to the aquatic resources present."⁶ This provision may allow a permit holder to undertake mitigation practices regarding mixing zones in instances where it otherwise would not

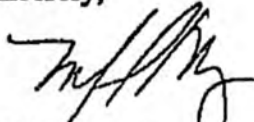
⁵ Personal communications, Tim Robertson and Nancy Sonafrank.

⁶ 18 AAC 70.240(b)(4).

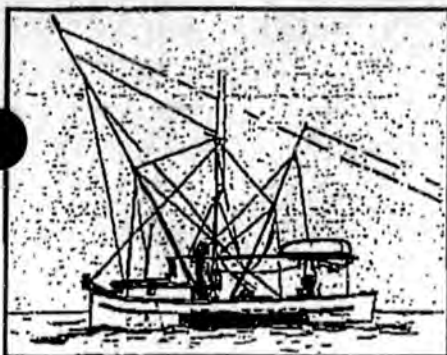
have been allowed to discharge at all. The requirement is vague and grants ADEC broad, unchecked discretion in interpreting what constitutes "consideration of additional measures." We cannot conceive of an acceptable mitigation measure that would fairly compensate our constituents for damages to anadromous fish habitat.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me at (907) 283-7222.

Sincerely,



Michael L. Munger
Executive Director



September 9, 2004

Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

RECEIVED

SEP 16 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION

Ernesta Ballard, Commissioner
Department of Environmental Conservation
410 Willoughby Ave., Suite 303
Juneau, AK 99801

Dear Commissioner Ballard:

I am writing regarding DEC's proposed regulations allowing mixing zones in salmon streams. I had an opportunity to testify at the Juneau hearing and want to thank you for responding positively to our request for a 90 day extension to the comment period. The seafood industry simply had no time to review and comment on this matter during the height of the salmon season.

Our organization has always been supportive of jobs and cost savings for businesses and municipalities in the region and state, but not at the expense of salmon and their habitat. ATA represents salmon fishermen who are concerned about new regulations that could degrade fisheries habitat, whether real or perceived. The commercial fishing industry is the largest employer and second largest revenue generator for the state and its citizens. Salmon is the cornerstone of Alaska's seafood industry. Healthy salmon populations are essential to our business. The salmon industry has confronted a significant marketing challenge from farmed fish. In the marketplace, the public's perception of wild, wholesome products born, raised, and harvested in pristine waters - and our ability to back up such claims - is Alaska's ace in the hole. Allowing mixing zones and potentially hazardous chemicals to make their way into our waterways could be devastating for both salmon and the marketing of our product.

We ask that you reconsider the mixing zone provision of DEC's proposed regulations and hold hearings throughout the state.

And, in the coming weeks if there is an opportunity for the various interests to discuss the need for mixing zones and the costs/benefits of changing Alaska's law, we stand willing to do so.

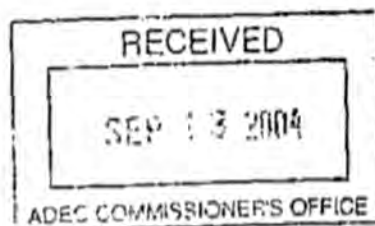
Thanks for considering ATA's point of view.

Best regards,

Dale Kelley

Dale Kelley
Executive Director

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SEAFOOD PRODUCERS COOPERATIVE

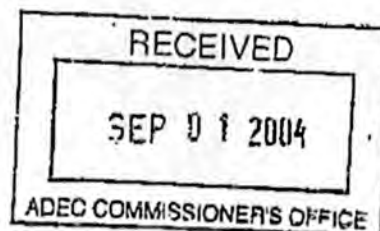
PRODUCERS, PROCESSORS & MARKETERS OF PREMIUM QUALITY SEAFOODS

RECEIVED

August 30, 2004

SEP 07 2004

DEPT. OF ENVIRONMENTAL
CONSERVATION



Ms. Nancy Sonofrank
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonofrank:

Seafood Producers Cooperative is the largest and oldest fisherman owned processor in the seafood industry. We have over 500 members and 150 employees at our state of the art processing plant here in Sitka. Our sales of Alaska seafood exceed \$30 million per year. Approximately one half of our revenue is generated by troll salmon. This represents the major source of income for our trollers individually.

We have spent considerable time, effort and money to regain our market share. Alaskan salmon has increased in popularity across Europe and the U.S. because it comes from pristine waters, producing fish absent of harmful pesticides and chemical residue. Alaskan salmon is recognized as a sustainable resource by customers. Wild Alaskan salmon has started regaining its leadership role by providing the highest quality, clean products and sustainability.

Any change in the mixing zone regulations will severely impact Alaska's best known product in the eyes of consumers and would negatively impact revenues for tens of thousands of fishermen and seafood industry employees.

Seafood Producers Cooperative opposes the allowance of mixing zones to salmon spawning streams. Adding toxic chemicals to these streams could create an environmental and economic nightmare.

Surely, a sustainable and consumer accepted product will contribute more to Alaska's overall economic growth than a depletable resource that poisons our salmon streams. Seafood Producers Cooperative would expect and hope that the Alaska Department of Environmental Conservation would not support degradation of the environment. Mining operations are not a sustainable resource and are proven polluters of the environment.

If one were a skeptic, one would view the comment period provided as being done to reduce input from the fishing sector. Our members and other industry people are at the height of fishing season. However, our experience in the past has been that you seek

input from all affected parties. In an effort to gain as much input as possible from your constituents, we would request a ninety day extension of the comment period. This would ensure you receive maximum public input and information.

Thank you. Seafood Producers Cooperative hopes you will continue to recognize the value of Alaska's greatest resource and will continue to defend this resource against degradation.

Sincerely,



Thomas M. McLaughlin
President/CEO
Seafood Producers Cooperative
Sitka, Alaska

pc: Commissioner Ernesta Ballard
Governor Frank Murkowski
Senator Bert K. Stedman

000309

Tanana Tribal Council
PO Box 130
Tanana, AK 99777
Ph: (907) 366-7170
Fax: (907) 366-7195
Email: gnicholia@yahoo.com

RECEIVED
SEP 07 2004
DEPT. OF ENVIRONMENTAL
CONSERVATION

September 2, 2004

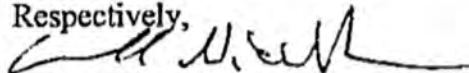
Attn: Nancy Sonafrank, DEC
Division of Water
610 University Drive
Fairbanks, Alaska 99709

Re: proposed changes to mixing zone regulations

Dear Ms. Sonafrank

On behalf of the Tanana Tribal Council and the tribal membership I am thanking you for this opportunity to comment on the resources we rely upon from the Yukon River and how changing these regulations can harm an already diminishing fishery. Our people living along this portion of the Yukon River depend on good runs of Salmon for sustaining ourselves year round. These stocks from the Yukon River are in a rebuilding stage and every little thing helps when you are in a rebuilding cycle of any sort. To put more toxins in the river along with the already existing pollutants (sewer, old military sites (Galena, Porcupine River) and dumps) is not recommendable by me or the people I represent. I am totally oppose to this change of regulations for relaxing the protection of the river. Everything is related to the river, moose, bear, fish and man, it is the ecosystem we rely upon and these proposed changes are not warranted for further destruction of the river we rely upon. You can direct your response to me at the above address or number, thank you for requesting comments.

Respectively,



Gerald Nicholia
Fish & Game/Subsistence

Cc: TTC Executive Director
Public

000296



United Southeast Alaska Gillnetters ^{DEPT. OF ENVIRONMENTAL}
P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email: ^{CONSERVATION} usa_gillnetters@att.net

August 29, 2004

Nancy Sonafrank
610 University Drive
Fairbanks, Alaska 99709

Dear Ms. Sonafrank,

The United Southeast Alaska Gillnetters (USAG) is an association of about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska and market salmon throughout the United States. Many of our members also participate in other fisheries such as crab, shrimp, longline, and dive fisheries.

USAG is opposed to the proposed changes in the regulations dealing with the current mixing zone regulations. USAG has a policy of supporting development projects unless those projects will harm the salmon resource on which we depend for our livelihood. We believe the proposed changes allowing mixing zones in spawning streams will harm our salmon resource in several ways:

- It will degrade the reputation of the pristine habitat that Alaska has used to successfully market its wild salmon around the world;
- It will allow marginal operations to discharge pollutants into freshwater systems in the name of efficient economics and economic development;
- It places the burden of proof on those who do not want pollutants introduced into freshwater systems rather than requiring those who want to add the pollutants to the system to prove that such action will not have any adverse impact on fish during their life cycle or that the pollutants will not bioaccumulate in our fish. If some form of this regulation change is approved, it should require that the applicant perform extensive baseline studies prior to a mixing zone being established and continuing studies after the zone is in effect proving that there is no impact on fishery habitat and fish populations;
- The proposed regulations are unenforceable as they require that the mixing zone when approved will result in no reduction in fish population levels. In fact this is a variable that is affected by many environmental factors that would make it difficult to show specific cause and effect from the introduction of pollutants into the freshwater systems;
- The affect of potential cumulative mixing zones is not addressed. If one is approved on a given system, would the next one be easier or harder to become permitted?

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- In fisheries enhancement, the State of Alaska and other organizations have invested large sums of money to improve and increase the amount of spawning habitat in our fresh water salmon systems. The creation of mixing zones in spawning systems will reduce the spawning area, thereby negating some of these efforts.

USAG supports the idea put forth by some during previously reported public testimony that the best answer may be to keep the current regulations and allow for exemptions under strict pre mixing zone baseline studies and post mixing zone impact studies. You are reported to have stated in public meetings that mixing zones in freshwater spawning streams would only be allowed in discrete circumstances where no other alternatives made sense. If this is so, any regulation change should specifically reflect this perspective and indicate that mixing zones in spawning systems will be rare and then only when absolutely required. The fact that necessary treatment is expensive should not be a primary decision factor, but equal to all other factors, especially the potential impact on the spawning system of the proposed discharge.

USAG joins with many others in requesting a 60 or 90 day extension on the comment period so that more individuals and groups involved in fishing can give this issue the time and attention it deserves.

In conclusion, USAG opposes the proposed changes in the mixing zone regulations and requests a time extension for comments. Thank you for considering our comments.

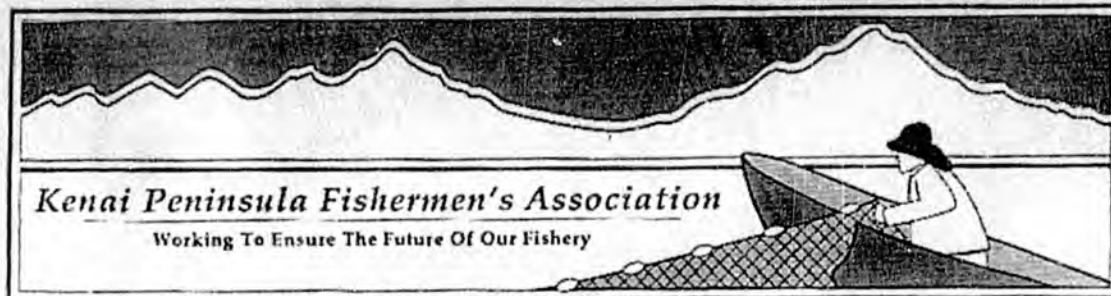
Yours truly,



Kenneth Duckett
Executive Director

cc: United Fishermen of Alaska
Commissioner, ADF&G

000255



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

December 19, 2005

State of Alaska
Department of Environmental Conservation
Nancy Sonafrank
610 University Avenue
Fairbanks, AK 99709

Ms. Sonafrank,

The Kenai Peninsula Fishermen's Association represents a predominate portion of the 745 commercial salmon set-net permit holders between Kachemak Bay and the Susitna River drainages. Membership also includes area businesses and crewmembers and others within Cook Inlet community.

Our mission, "*Working to Ensure the Future of Our Fishery*". We are participants in many organizations that address resource issues with the Cook Inlet. We are in agreement with the majority opinion that this regulation is flawed as written and oppose implementation at this time.

The agencies and administration should allow more time to develop consensus. Language should be clear, complete and acceptable to the public.

We are extremely concerned that the "*mitigation*" language is vague, misleading and restrictive when it comes to public participation. Restrictions that hinder the professional views and the information valuable to the public from the Alaska Department of Fish and Game (ADF&G) should not be in regulation.

Restrictions to ADF&G and the Commissioner should not be in place. No restrictions of review should be included. Alaska Statutes 16.20 should not be the only authorized review authority. ADF&G should have equal authority (*concurrence*) as the ADNR and ADEC. Public should have a period to comment on ADF&G's findings before the permit process continues. This would not preclude the final public review process for final tri-agency permitting.

Our Association has reviewed the Legislative Affairs Agencies legal review authored by Mr. Bullock and agrees that the terminology is misleading and confusing. The knowledge that the ADEC staff knows what the intent is but that the public does not, is not an improvement to the current knowledge or the strength of an enforceable regulation.

Delete the use of "or" in 18 AAC 70.240(f).

The Departments, Environmental Conservation and the Natural Resources have stated their desire to streamline and strengthen current regulations enforcing Mixing Zones. This would mean reviewing other bodies of statutes and regulations. The lack of consideration for DFG rules need to be addressed.

The adherence to rules promulgated in 5 AAC 39.222 Policy for the management of sustainable fisheries should enforced. Agencies should agree to (c) (3) (G) and (c) (1) (A) - (G).

KPFA agrees that special conditions for existing permits should be given discretionary overview with complete disclosure. We also agree that technologies that would improve the water quality of discharges should be encouraged. The advancement through mutual studies funded by the permittee and with co-operation of State agencies, educational institutes and research organizations is a positive note and should be incorporated within the body of the regulations. A complete comprehensive procedure of testing should be independent of the permittees.

Self monitoring should be limited and only with strict review by State or Federal random and frequent monitoring.

We appreciate the opportunity to comment on these proposed changes. We look forward to advising the agencies and the administration and our State elected official on how we can improve this submitted language.

We respectfully request the state to amend the language, to pause and build consensus to ensure the future of our salmon fisheries from the aspects of quality and quantity.

Thank you.



Paul A. Shadura II, Executive Director

43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net



Yukon River Inter-Tribal Watershed Council

136 Dunkel Street, Suite 2
Fairbanks, Alaska 99701
(907) 451-2530
(907) 451-2534 fax

September 03, 2004

Nancy Sonafrank
Alaska Dept. of Environmental Conservation
Division of Water
Water Quality Assessment and Monitoring Program
610 University Drive
Fairbanks, AK 99709

Dear Ms. Sonafrank:

RE: Proposed Changes to Mixing Zone Regulations (18 ACC 70.240-270)

The Yukon River Inter-Tribal Watershed Council is a non-profit organization representing 60 indigenous governments within the Yukon River International Watershed. Our focus is ensuring clean water for future generations and for the Yukon River salmon to remain a fundamental renewable resource and part of the environment for many generations to come. We conduct water quality monitoring and remediation projects as well as work on landfill and sewage systems improvements. The ADEC's proposed changes to mixing zones related to water quality regulations may impact our mission and we appreciate the opportunity to comment on them.

First, since the YRITWC is a water and salmon focused organization, we would naturally oppose anything that puts that resource at risk. Mixing zones certainly do that; introducing toxins into a salmon-bearing stream cannot be done without some adverse consequences. Nevertheless, it is the need to balance competing interests for water resources that led to the current mixing zone regulations and we realize that. It would be difficult to exist or certainly less profitable for some mining ventures if no release of toxic materials were allowed. We appreciate the restrictions that are currently in place that minimize exposure of aquatic organisms to discharge pollutants.

Further, our overall impression is that ADEC is attempting to simplify the regulations, eliminating redundancy and what appears to have been a negative prior attitude. That should be applauded. Nevertheless, we do have some concerns and they follow.

1. ADEC Discretion versus Standards. The proposed regulatory changes appear to put a lot more discretion into the hands of the ADEC regulators and I am not altogether sure that this is an entirely good thing. I understand that better decisions can be made with some discretion, but at what point is that discretion too large? We do have a copy of the ADEC "Draft Guidance for Proposed Mixing Zone Regulations" and these do mention some standards, but this document does not have the force of law and may only reflect the thinking of the current Division of Water Director. Frankly, I am afraid that without some standards in the regulations themselves, too much unguided power will rest in the hands of an individual regulator and subject to their personal point of view, or that decisions may become too vulnerable to the political winds of the moment. Or both. At that point both developers and salmon advocates will be uncertain that their interests will be seriously considered.

Each of the proposed sections 18 AAC 70.240 (a) through (f) replace sections from the current code that do clearly reference specific standards and methods. YRITWC requests that these standards and methods or scientifically supported better ones be re-inserted into the proposed

regulations. To the extent possible and practical, ADEC may wish to tie the state standards to federal Environmental Protection Agency standards. A discharger should not be mistakenly lulled into thinking that if they meet state standards they also meet federal standards which are often more clearly defined.

2. Mixing Zones in Lakes. Another issue is the use of mixing zones in lakes. Alaska has some very, very large lakes and making 10% of their area uninhabitable by salmon would seriously reduce the rearing habitat for juvenile salmon and spawning habitat for adults. Further any miscalculation in effluent outflow could easily kill every fish in the lake. Recovering from such a spill could take a very long time. Additionally, there are portions of any lake that are more or less sensitive to pollutants because not all parts of salmonid life history occur in all parts of a lake. Thus it is important to know what occurs in the portion of the lake targeted for a mixing zone or, if possible, place the effluent in a location not important for the lake's fish. This section (old 18 AAC 70.255 (e) (2) and (3), proposed 18 AAC 70.240 (e) (2) through (4)) need very careful wording to not allow unintentionally and unnecessarily large mixing zones simply because the lake is large nor to site the mixing zones in critical areas of the lake.
3. "Could Be Expected to Occur" versus "Will Occur". A subtle language change relative to public health hazards from the current 18 AAC 70.240 (e) (3) (B) of "could be expected to occur" to that of proposed 18 AAC 70.240 (e) (4) of "will occur" is important. The proposed change requires a certainty of public health hazard while the former only requires a strong possibility. The current, not proposed, language is in the best interest of the public.
4. Shellfish/Invertebrates. Throughout the document, "fish and shellfish" is replaced with simply "fish". While invertebrates typically do recover from toxic events faster than fish, it must be remembered that these form the food web on which salmon depend. Killing the salmon's food base ultimately will have an adverse effect on them as well.
5. Mixing Zones in Spawning Areas. The current 18 AAC 70.255 (h) (1) forbids this while proposed 18 AAC 70.240 (c) (4) (E) allows it if "available evidence reasonably demonstrates" that spawning, incubating or rearing fish will not be impacted. The bar would have to be set very high to successfully demonstrate that would be the case. We would prefer that the stricture against mixing zones in spawning areas remain in place, perhaps subject to exemptions if and only if significant, credible scientific evidence demonstrated that there would be no impact. Judgment of such evidence should be delegated to experts at the Alaska Department of Fish and Game (ADFG). Once again, the Guidance Document does reference ADFG as consultants and also the Alaska Department of Natural Resources (ADNR), Office of Habitat Management and Permitting. But without mention in regulation, such consultations are arbitrary and those relationships may be summarily and unilaterally cancelled by ADEC at any time.

In many, many cases, salmon stock population sizes are limited by available spawning habitat. This is particularly true for summer and fall chum salmon stocks. In the Yukon drainage, several stocks are listed as stocks of concern by ADFG. There is not a lot of discretion for salmon as to where they can spawn. Mistakes in predicting the impact of toxic effluent will not simply drive the fish to spawn elsewhere. The overall carrying capacity of the stream will be impacted. In the recent past few years, some returns have not been sufficient to meet both escapement and subsistence needs and commercial fisheries have been closed for years at a time. Thus any surplus to escapement needs is fully allocated and any activities that reduce carrying capacity of a tributary to the Yukon takes fish away from subsistence and commercial fishers.

6. "Burden of Proof" versus "All Available Evidence". There is a subtle language change between that of current 18 AAC 70.260 and proposed 18 AAC 70.240 (a). In the former, the "burden of proof" justifying a mixing zone is a requirement on the discharge permit applicant. In the proposed regulation, this becomes "the applicant shall provide to the department all available evidence" of this. Under the current regulations, if an applicant cannot prove their case with available information, it would be incumbent upon them to conduct whatever research was necessary to obtain that information. Under the proposed guidelines, a decision by ADEC would have to be reached based only on what is currently known or "available". Thus a regulator must make a decision without requiring additional information. Without examining outstanding questions, the environment may be at unwarranted risk and the discharger may find their permit

revoked at a later date. A reasonable effort should be required to answer unaddressed questions in advance of issuing a permit.

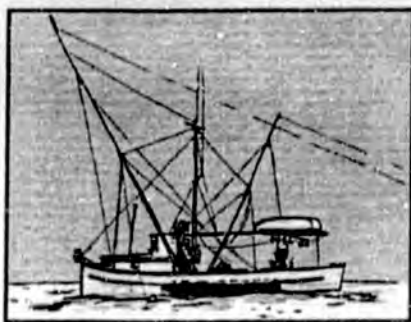
7. Mitigation. New proposed provision 18 AAC 70.240 (b) (4) says the "department will consider...any additional measures that would offset potential adverse effects to the aquatic resources present." This is essentially mitigation, for example, such as a hatchery. This is not really considered a viable option for Yukon River stocks by most of the residents of the area nor by the natural resource agencies that manage the salmon stocks. Habitat improvement might be an option, but in any case, it is more the role of the Alaska Dept. of Fish and Game and those with local salmon interests such as YRDFA to determine the feasibility and potential effectiveness of such proposed measures than the Alaska Department of Environmental Conservation. We would find this proposal more acceptable if ADFG were given the authority for evaluating this and it were left open for public comment.
8. Pollutants within Mixing Zones. New provision 18 AAC 70.240 (d) focuses on accumulation of deposits (3) and floating debris, oil, and scum (4) within the mixing zone only. While other effects outside the mixing zone are addressed, these are not. Please include them among prohibited effects outside the zone.
9. No Provisions for Monitoring. We don't see any provisions for a monitoring program, voluntary or required by either the discharger or ADEC. This particular summer, South-central and Interior Alaska have had very little rainfall. Stream flows may be at near record lows. Pollutants sufficiently dispersed and diluted in normal times may not be neutralized under these conditions. Without monitoring and provisions for low flows in the permits, inadvertent damage to fish and shellfish resources could occur.

As noted above, to the extent practical that things can be simplified (and as ADEC appears to be trying to do here), the more easily natural resource protection happens because it is clearer what is harmful and what is not. Nevertheless, oversimplification at the regulatory level may leave important areas of environmental concern unaddressed or shift the burden of responsibility for environmental protection to individual regulators who may have no restraints on inserting their personal biases or political expediencies into their decisions. To the greatest extent possible, consistency between regulators and between political administrations best serves both the dischargers and those concerned with possible adverse effects to the salmon. Please reconsider and recraft the proposed regulations with safeguards to ensure that this happens.

Sincerely,



Rob Rosenfeld, MA
Alaska Region Director



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

December 18, 2005

Ms. Nancy Sonafrank
Environmental Specialist
610 University Drive
Fairbanks, AK 99709

Re: Comments on Proposed Changes and Revisions to Mixing Zones and Water Quality Standards, 18 AAC 70.240

Dear Ms. Sonafrank:

The Alaska Trollers Association (ATA) remains opposed to mixing zones in fish bearing streams and ask that the state withdraw its proposed regulations, except for the section that adds protection to lakes, which we heartily endorse.

While we appreciate that DEC modified its first offering and extended comment period, ATA remains convinced that a wholesale change in this important habitat provision will put at risk fish, wildlife, and seafood marketing efforts that are underway on behalf of Alaska's fishing industry.

Our organization has long been supportive of a diverse jobs base and reasonable cost savings for businesses and municipalities in the region and state, but not at the expense of salmon and their habitat or existing industries. ATA represents salmon fishermen who are concerned about new regulations or activities that could degrade fisheries habitat, whether real or perceived. The commercial fishing industry is the largest employer and second biggest revenue contributor to the state and its citizens. Salmon is the cornerstone of Alaska's seafood industry. Healthy salmon populations are essential to our business. The salmon industry has confronted a significant marketing challenge from farmed fish. In the marketplace, the public's perception of wild, wholesome products born, raised, and harvested in pristine waters - and the ability to back up such claims - is Alaska's ace in the hole. Allowing mixing zones and potentially hazardous chemicals to make their way into our waterways could be devastating for both salmon and the marketing of our product.

The current prohibition on mixing zones in spawning streams was put in place specifically to protect Alaska's fisheries and helps implement the state's constitutional mandate to protect and conserve fish and game resources in a sustainable manner for all Alaskans. Such commitment by Alaskans to protect habitat and wildlife underpins the

success of the Alaska Department of Fish and Game's (ADFG) precautionary approach to management.

Further, Alaska is obligated to uphold the terms of the Clean Water Act and its associated anti-degradation policy, which is intended to, "...*restore and maintain the chemical, physical and biological integrity of the Nation's waters*" 33 U.S.C. § 1251(a). It is difficult to see how Alaska will achieve such goals by removing one of the simplest and most important tools for safeguarding the biological integrity of freshwater systems.

DEC hopes to alleviate problems by allowing mixing zones only during periods when fish aren't spawning. The trouble is that salmon and other freshwater dwelling residents have a variety of in-river needs that have nothing to do with spawning. And, we have very little information about what various chemicals or pathogens can do to fish at different stages of growth. It stands to reason that eggs in redds are as susceptible as juveniles and their food sources, all of which are certainly more vulnerable than adults who have come to spawn and die. Some species of salmon go out to sea as juveniles several months after they are spawned. Others, like coho, are found living in Southeast streams for years before outmigrating. There are also other fishes and important flora and fauna that never leave freshwater. Therefore, with an array of different stream-dwellers and a variety of lifecycles, it is unclear how we can adequately safeguard them all from industrial pollutants by merely timing the release; especially without a significantly expanded program of research, data collection, sampling, monitoring, and enforcement.

Many of the proposed regulations are ambiguous. DEC claims that it will only approve mixing zones in streams, rivers, or other flowing fresh water areas if "*available evidence reasonably demonstrates*" that the mixing zone will not "*adversely affect the capability of an area to support spawning, incubation or rearing of anadromous or resident fish.*" While the intent is likely good, many questions are raised as to the meaning, cost, and practical implementation of the new regulations.

Key words and processes remain undefined. Where will 'reasonable evidence' come from? How will we know when 'adverse affect(s)' have occurred? Do 'adverse affects' include those on other industries? Where are the criteria to assess the efficacy of mixing zones for various purposes? What kind of public process and cost: benefit analyses will be required before permits are approved? Who will establish performance standards to ensure no harm? What about cumulative impacts?

While DEC staff claims that these regulations will streamline and create efficiencies in the regulatory process, it appears to ATA that just the opposite could happen. How much data exists versus that which will need to be gathered – before and after permitting? Who will be responsible for providing that data? Will the state rely on industry hired consultants, or will it insist that all relevant data come from state professionals constitutionally charged with protecting fish and game values? What about monitoring and enforcement after a mixing zone is permitted? What is the price tag for these new regulations? How much flexibility is there in agency budgets to accommodate the new rules?

The regulations are problematic in numerous ways including, but not limited to, these items:

- The regulations allow easily secured permission to erode Alaska's water quality standards.
- The rules lack sufficient statutory and regulatory requirements to hold the applicant responsible for maintaining water quality.
- The regulations create a low threshold for securing mixing zones and put too much responsibility for protection of our public resources into the hands of applicants who most likely have no experience in such matters.
- No firm rules, or process to develop them, is established regarding what must be implemented, and when, if an applicant is to achieve and sustain a mixing zone.
- There is no meaningful framework of criteria and monitoring established for the state to evaluate an applicants stated conclusions about a projects impact on local resources that may be negatively affected.
- The rules allow applicants to effectively write off a fish bearing stream by submitting a mitigation plan, yet fails to establish standards for appropriate mitigation. Just what is an acceptable replacement for a spawning stream?
- ADFG is limited authority to approve mitigation plans, and only in a few special areas around the state.

In sum, the regulations are long on promises of protection but short on details for how that protection is achieved and sustained. Importantly, the regulations are not supported by a reasonable problem statement.

Despite questions from numerous groups and individuals, there have been very few examples given as to specific problems around the state in need of this sweeping change. Of those outlined by DEC, none appear to warrant elimination of the statewide ban on mixing zones in fish bearing streams and can apparently be dealt with under our current regulatory structure. The public is not crying out for these regulations. Only a few interests have commented in support and many businesses and city governments have outright opposed them.

The fact is, even in the face of the mixing zone prohibition, mining, timber, and oil have thrived in this state and most municipalities have found solutions to dealing with waste water. On the other hand, if the state enacts these regulations, it may be harmful to the seafood industry with regard to both degraded fisheries habitat and raising concerns with the buying public that Alaska has dropped its high habitat standards. This in itself could greatly harm communities and could even pit industries and citizens against each other, which would be unfortunate and unnecessary.

ATA is concerned that mixing zones could degrade water quality and threaten salmon and public perception of Alaska's seafood. Those fears are not unfounded. Of note is the fact that of the 21 states responding to an ADEC survey, twenty allow mixing zones in fish bearing waters - *fish consumption warnings have been issued in each of those states following routine monitoring.*

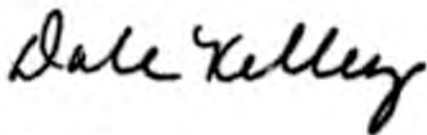
ATA is interested in what other options to deal with real issues. Can the state resolve any known problems in simple, less intrusive or inexpensive ways than mixing zones? For instance, could ADFG review the Valdez situation for potential re-cataloguing? Could rules be drafted that ensure that similar manmade structures are not catalogued as spawning streams? Or, can some narrowly defined situations be dealt with through proposed regulations relating to site-specific criteria under 18 AAC 70.235 or short-term variances at 18 AAC 70.200?

Public involvement is an important part of this equation. If additional regulation is necessary to provide for mixing zone exceptions/variances, perhaps a cross-section of the public could be engaged to help the state develop the process and regulatory framework necessary to provide assurance that mixing zones would still be an exception to the rule, and that securing habitat values will be job one. Any such effort must be coordinated between all appropriate agencies and put out for substantial public review and comment.

ATA very much appreciates that DEC accommodated our industry and extended the public comment period on these proposed regulations. Hopefully you have received some useful perspectives from Alaskans throughout the state. It is interesting to see the communities weighing in, and many here in Southeast are on record as unanimously in favor of the current prohibition on mixing zones in spawning streams. Obviously, this is a matter of importance to people from various walks of life.

As you deliberate on your mixing zone decision, please do not hesitate to contact me if ATA can be of assistance in any way.

Sincerely yours,

A handwritten signature in cursive script that reads "Dale Kelley". The signature is written in dark ink and is positioned above the typed name and title.

Dale Kelley
Executive Director



Alaska Marine Conservation Council

Box 101145, Anchorage Alaska 99510

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amcc@akmarine.org • www.akmarine.org

January 15, 2006

The Honorable Bill Thomas
The Honorable Gabrielle LeDoux
Co-Chairs, House Fish Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Thomas and LeDoux:

These comments are submitted to the House Fish Committee on behalf of the approximately 900 members of the Alaska Marine Conservation Council (AMCC).

AMCC is a community-based organization of people working to protect the health and diversity of Alaska's marine ecosystems. Our members are fishermen, subsistence harvesters, marine scientists, conservationists, small business owners and families.

The Alaska Marine Conservation Council appreciates your scheduling of House Bill 328, relating to the prohibition on mixing zones in spawning streams" for Friday, January 20, 2006.

Despite the Department of Environmental Conservation's recent adoption of regulations retaining the current prohibition on mixing zones in salmon spawning areas, I think you will find that fishing and conservation groups, as well as members of the general public, continue to have some serious concerns and also, need some clarification on these regulations.

One major concern is that, despite the regulatory language that "a mixing zone will not be authorized in a spawning area or allowed to adversely affect the present and future capability of an area to support spawning, incubation, or rearing..." of salmon, the Department of Environmental Conservation has alluded to a "temporal" interpretation which would allow these mixing zones at certain times.

In the Juneau Empire, the statement was attributed to state officials that "a mixing zone could be allowed when spawning salmon eggs or larva are not present."

The Alaska Trollers Association's comments to DEC (December 18, 2005) clearly voices the rationale for this concern:

"The trouble is that salmon and other freshwater dwelling residents have a variety of in-river needs that have nothing to do with spawning. And, we have very little information about what various chemicals or pathogens can do to fish at different stages of growth.

It stands to reason that eggs in redds are as susceptible as juveniles and their food sources, all of which are certainly more vulnerable than adults who have come to spawn and die. Some species of salmon go out to sea as juveniles several months after they are spawned. Others, like coho, are found living in Southeast streams for years before outmigrating. There are also other fishes and important flora and fauna that never leave freshwater. Therefore, with an array of different stream-dwellers and a variety of lifecycles, it is unclear how we can adequately safeguard them all from industrial pollutants by merely timing the release; especially without a significantly expanded program of research, data collection, sampling, monitoring, and enforcement because timing is not always identifiable in any case but especially in a stream with more than one species of salmon with different cycles."

While there are other concerns with the adopted regulations, the above is of utmost importance.

For your information, I am attaching a copy of AMCC's detailed comments to the Department of Conservation during the public comment period that ended on December 19, 2005.

Again, thank you for your attention to this critical issue.

Sincerely,

Paula Terrel
Water Quality Issues Coordinator

Cc: Representative Paul Seaton
Attachment: AMCC 2005 comments



Alaska Marine Conservation Council

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December 19, 2005

Ms. Nancy Sonafrank
Alaska Department of Environmental Conservation
610 University Drive
Fairbanks, Alaska 99709

Re: Comments on Proposed Revisions to Mixing Zone Regulations (18AAC 70.240)

Dear Ms. Sonafrank:

These comments are submitted on behalf of the approximately 900 members of the Alaska Marine Conservation Council (AMCC).

AMCC is a community-based organization of people working to protect the health and diversity of Alaska's marine ecosystems. Our members are fishermen, subsistence harvesters, marine scientists, conservationists, small business owners and families.

AMCC requests the Department of Environmental Conservation (DEC) to uphold the current prohibition on mixing zones in fish spawning streams and opposes DEC's proposed regulatory changes. AMCC bases this position on its concern for the consequences of such changes to the health of Alaska's rivers and streams, the fish and wildlife dependent on clean water, and the subsistence, sport and commercial fishermen and coastal communities. We rely on Alaska's vibrant resources to support our way of life and our livelihoods.

A. There are several overarching policy arguments for why DEC's proposed regulation should not be adopted:

1. DEC's proposed regulations violate and contradict Alaska's and EPA's antidegradation policy (ADP).¹

The federal government has adopted an antidegradation policy, whose requirements and methods for implementation "are minimum conditions to be included in a state's water quality standards." The purpose of the antidegradation policy is to maintain and protect water quality and not allow for degradation of water quality. Specifically, the ADP "requires that existing uses are to be maintained."

Each state must "develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation." DEC has accomplished this by adopting the federal policy but has not promulgated an

¹ See EPA's Water Quality Standards Handbook: Second Edition, 1994 for references and citations relating to the Antidegradation Policy.

implementation plan. However, DEC's proposed regulation flies in the face of the following federal ADP requirements:

- "No activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use whether or not that use is designated in a State's water quality standards."

DEC's proposed regulation does not protect existing uses.

- Furthermore, water quality may "not be lowered to less than the level necessary to fully protect the 'fishable/swimmable' uses and other existing uses. This provision is intended to provide relief only in a few extraordinary circumstances where the economic and social need for the activity clearly outweighs the benefit of maintaining water quality above that required for 'fishable/swimmable' water and both cannot be achieved. The burden of demonstration on the individual proposing such activity will be very high."

DEC's proposed regulation lowers rather than raises the bar for lowering water quality.

- Each state is required to establish procedures for the implementation of the antidegradation policy. The antidegradation implementation procedures "specify how the State will determine on a case-by-case basis whether, and to what extent, water quality may be lowered while continuing to protect existing uses."

Alaska has not established any implementation procedures, as required by the Environmental Protection Agency. Not only is this in violation of the ADP but also it means that the tools and procedures to evaluate whether or not these proposed mixing zone regulations, and any applications for exceptions, comply with the ADP.

2. DEC's proposed regulations fail to consider the potential social and economic consequences for an existing industry as required under the antidegradation policy.

Alaska's seafood industry is now enjoying a significant marketing edge because Alaska salmon are born, raised, and harvested in, unpolluted waters. Alaska's salmon fishermen have been significantly harmed in the marketplace by a fast growing farmed fish industry. The state and industry have spent millions of dollars securing the Marine Stewardship Council certification and fishermen have developed new, niche marketing efforts, boasting of the purity and sustainability of Alaska salmon as the healthy alternative to farmed fish. Any **perception** that the state is reducing its world-renowned level of salmon protection or polluting its waters, could seriously jeopardize these marketing efforts.

DEC has stated that they do not need to consider the economic impacts of the proposed regulation. AMCC disagrees. The federal antidegradation policy clearly states that, before consideration of lowering water quality standards, there must be a finding that it is necessary to accommodate important economic or social development in the area in which the waters are located. Clearly, this means that there must be a balanced consideration of the social and economic impacts on existing as well as proposed uses.

3. **There is no compelling need for the weakening of the general prohibition on mixing zones in spawning streams.**

For the past year, DEC has maintained that Alaskan communities requested these changes and that some municipalities that were granted permits prior to the 1997 general prohibition would be impacted when they attempted to renew their permits. When queried to identify the specific communities or problems, only Valdez and Golden Heart Utilities in Fairbanks have been cited as examples. However, DEC recently acknowledged that Valdez's problem can be addressed by building a pipeline to discharge directly into the marine environment instead of (as they are presently doing) discharging in the ditch where salmon are presently spawning. Golden Heart Utilities have also resolved their problem. In point of fact, DEC now acknowledges that it is DEC staff that has requested this proposed regulation because they think there may be problems in the future.

Thus, DEC has not demonstrated a compelling public need for weakening the general prohibition for mixing zones in spawning streams.

4. **Options exist in present DEC regulations, such as 18AAC 70.200 & 235, and in ADF&G regulations for addressing specific, narrow problems** with reclassification, site-specific criteria or short-term variances. At the same time, DEC should place a priority on developing tools for phasing out mixing zones that are not allowed under the Clean Water Act. In short, there is no need for such broad sweeping regulatory change.
5. **Adoption of DEC's proposed regulations would necessitate an increase in the monitoring of Alaska's approximately 15,000 fish-spawning streams.**

At present, DEC does not routinely monitor salmon streams. The adoption of this proposed regulation will mean an increase in the number of water bodies that the DEC will need to monitor to fully protect fisheries resources and human health. The DEC lacks the staffing and resources to independently monitor and test all fish-bearing waters where mixing zones may be proposed and allowed under these proposed regulations, let alone determine if a problem arises.

6. **DEC's proposed regulation fails to consider human consumption risks** that would be extremely relevant for subsistence uses.

While the present regulation prohibits mixing zones if there is "any risk" to human health, the proposed rule only refers to "unacceptable" risks—a vague term, subject to broad interpretation.

Note: This concern is not without foundation. Of the 21 states responding to an ADEC survey, 20 allow mixing zones in fish bearing waters - *fish consumption warnings have been issued in each of those states following routine monitoring.*

- B. In addition to the general policy arguments discussed above, AMCC has the following comments on the specific language of the proposed regulation:

1. **The proposed regulation will seriously weaken the State's water quality standards.**

Although the proposed regulations appear to be an improvement over the first round of regulatory changes submitted last year, in actuality, this is not the case; the devil is in the details. True, the prohibition against mixing zones in spawning streams remains, and mixing zones in spawning streams are allowed as exceptions to the general rule. However, the resulting language is so broadly crafted as to essentially result in the lifting of the prohibition itself.

The proposed regulation opens the door wide for increased pollution in our fish bearing streams and, similar to the 2004 proposed regulations, the result is a relaxation of standards and provision for broad administrative discretion and weakened accountability when approving exceptions to the prohibition of mixing zones in spawning streams.

2. As written, the requirements for obtaining an exception to the mixing zone prohibition, are misleading and extremely lax:

The language of subsection (f) would appear to require an applicant to jump through some major hoops in order to develop a mixing zone in a spawning stream, e.g. the applicant must have:

- (1) demonstrated that spawning fish, fish eggs, or alevins are not physically present within the mixing zone when the discharge will occur and the discharge will not adversely affect the capability of the area to support future spawning, incubation and rearing activities;
- (2) demonstrated the discharge does not contain pollutants that will adversely affect the capability of the area to support present and future spawning, incubation, and rearing; or
- (3) submitted a mitigation plan approved by the Department of Fish and Game under 5AAC 95.900 if within a legislatively designated special area under AS 16.20; **or** (emphasis added)
- (4) submitted a mitigation plan approved by the Department of Natural Resources..."

In fact, the proposed regulation makes it too easy for an applicant to be granted an exception. The fact is that:

- An applicant does not have to go through **any** of the steps in (1) and (2) to ensure the protection of the resource. Rather, an applicant can simply get an approved mitigation plan from either DNR or ADF&G (depending on where the authority lies). DEC has confirmed that this is not a language drafting "gliche" but rather, accurately reflects the department's intent;
- While the applicant may decide to demonstrate the requirements of subsection (f) (1) or (2), there are **no standards for how the applicant will demonstrate these requirements and thus, no guidelines for what data an applicant must provide;**
- This concern is exacerbated by the inclusion of the words "adversely affect," and "demonstrate." These terms are so broad as to allow either department unfettered discretion to approve an exception;
- As anyone involved in fisheries is aware, the timing of salmon spawning varies from one species to another, and from one stream to another and it would be nearly impossible to accurately "time" a discharge in a stream where salmon are spawning, especially when there are several species involved.

3. The mitigation provisions of subsection (f) even further weaken fisheries and resource protection.

The proposed regulation not only allows DEC to grant an applicant an exception to the current prohibition by simply having an approved mitigation plan but the mitigation plan itself need **only** "compensate for the impact by replacing or providing substitute resources or environments" – on-site or off-site. In other words, pollute one salmon stream and replace with another.

Furthermore, under the federal ADP, "no activity is allowable...which would partially or completely eliminate any existing use whether or not that use is designated in a State's water quality standards." Thus, the mitigation provisions become meaningless and a contradiction to the federal and state ADP.

As Dr. Ted Merrill, Sr., former biologist with the National Marine Fisheries Service, testified in a City and Borough of Juneau public meeting, mitigation measures are fraught with problems and loopholes and are inadequate to protect fisheries resources.

4. AMCC does support the expansion of the general prohibition to include "lakes."

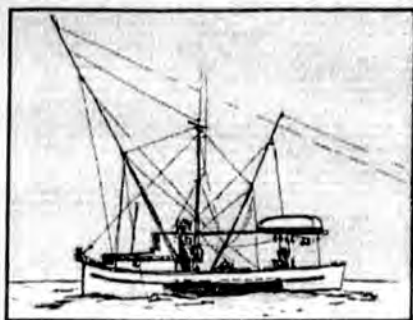
In conclusion, despite the fact that the general prohibition on mixing zones in spawning streams is retained, the DEC's proposed regulations seriously weaken the state's water quality standards and existing regulations, and fail to uphold the state and federal antidegradation policies. There is no compelling need for these proposed changes to the mixing zone regulations and regulatory tools presently exist to deal with specific situations.

The current regulations prohibiting mixing zones in fish spawning and rearing habitat have served Alaska well. The State should continue to uphold high standards for protecting fish spawning and rearing habitat from pollutants since clean water and vibrant fish resources are the heart and soul of many coastal and river communities and their local economies.

Thank you for this opportunity to comment.

Sincerely,

/Paula Terrel/
Water Quality Issues Coordinator



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

December 18, 2005

Ms. Nancy Sonafrank
Environmental Specialist
610 University Drive
Fairbanks, AK 99709

Re: Comments on Proposed Changes and Revisions to Mixing Zones and Water Quality Standards, 18 AAC 70.240

Dear Ms. Sonafrank:

The Alaska Trollers Association (ATA) remains opposed to mixing zones in fish bearing streams and ask that the state withdraw its proposed regulations, except for the section that adds protection to lakes, which we heartily endorse.

While we appreciate that DEC modified its first offering and extended comment period, ATA remains convinced that a wholesale change in this important habitat provision will put at risk fish, wildlife, and seafood marketing efforts that are underway on behalf of Alaska's fishing industry.

Our organization has long been supportive of a diverse jobs base and reasonable cost savings for businesses and municipalities in the region and state, but not at the expense of salmon and their habitat or existing industries. ATA represents salmon fishermen who are concerned about new regulations or activities that could degrade fisheries habitat, whether real or perceived. The commercial fishing industry is the largest employer and second biggest revenue contributor to the state and its citizens. Salmon is the cornerstone of Alaska's seafood industry. Healthy salmon populations are essential to our business. The salmon industry has confronted a significant marketing challenge from farmed fish. In the marketplace, the public's perception of wild, wholesome products born, raised, and harvested in pristine waters - and the ability to back up such claims - is Alaska's ace in the hole. Allowing mixing zones and potentially hazardous chemicals to make their way into our waterways could be devastating for both salmon and the marketing of our product.

The current prohibition on mixing zones in spawning streams was put in place specifically to protect Alaska's fisheries and helps implement the state's constitutional mandate to protect and conserve fish and game resources in a sustainable manner for all Alaskans. Such commitment by Alaskans to protect habitat and wildlife underpins the

success of the Alaska Department of Fish and Game's (ADFG) precautionary approach to management.

Further, Alaska is obligated to uphold the terms of the Clean Water Act and its associated anti-degradation policy, which is intended to, "...restore and maintain the chemical, physical and biological integrity of the Nation's waters" 33 U.S.C. § 1251(a). It is difficult to see how Alaska will achieve such goals by removing one of the simplest and most important tools for safeguarding the biological integrity of freshwater systems.

DEC hopes to alleviate problems by allowing mixing zones only during periods when fish aren't spawning. The trouble is that salmon and other freshwater dwelling residents have a variety of in-river needs that have nothing to do with spawning. And, we have very little information about what various chemicals or pathogens can do to fish at different stages of growth. It stands to reason that eggs in redds are as susceptible as juveniles and their food sources, all of which are certainly more vulnerable than adults who have come to spawn and die. Some species of salmon go out to sea as juveniles several months after they are spawned. Others, like coho, are found living in Southeast streams for years before outmigrating. There are also other fishes and important flora and fauna that never leave freshwater. Therefore, with an array of different stream-dwellers and a variety of lifecycles, it is unclear how we can adequately safeguard them all from industrial pollutants by merely timing the release; especially without a significantly expanded program of research, data collection, sampling, monitoring, and enforcement.

Many of the proposed regulations are ambiguous. DEC claims that it will only approve mixing zones in streams, rivers, or other flowing fresh water areas if "*available evidence reasonably demonstrates*" that the mixing zone will not "*adversely affect the capability of an area to support spawning, incubation or rearing of anadromous or resident fish.*" While the intent is likely good, many questions are raised as to the meaning, cost, and practical implementation of the new regulations.

Key words and processes remain undefined. Where will 'reasonable evidence' come from? How will we know when 'adverse affect(s)' have occurred? Do 'adverse affects' include those on other industries? Where are the criteria to assess the efficacy of mixing zones for various purposes? What kind of public process and cost: benefit analyses will be required before permits are approved? Who will establish performance standards to ensure no harm? What about cumulative impacts?

While DEC staff claims that these regulations will streamline and create efficiencies in the regulatory process, it appears to ATA that just the opposite could happen. How much data exists versus that which will need to be gathered - before and after permitting? Who will be responsible for providing that data? Will the state rely on industry hired consultants, or will it insist that all relevant data come from state professionals constitutionally charged with protecting fish and game values? What about monitoring and enforcement after a mixing zone is permitted? What is the price tag for these new regulations? How much flexibility is there in agency budgets to accommodate the new rules?

The regulations are problematic in numerous ways including, but not limited to, these items:

- The regulations allow easily secured permission to erode Alaska's water quality standards.
- The rules lack sufficient statutory and regulatory requirements to hold the applicant responsible for maintaining water quality.
- The regulations create a low threshold for securing mixing zones and put too much responsibility for protection of our public resources into the hands of applicants who most likely have no experience in such matters.
- No firm rules, or process to develop them, is established regarding what must be implemented, and when, if an applicant is to achieve and sustain a mixing zone.
- There is no meaningful framework of criteria and monitoring established for the state to evaluate an applicants stated conclusions about a projects impact on local resources that may be negatively affected.
- The rules allow applicants to effectively write off a fish bearing stream by submitting a mitigation plan, yet fails to establish standards for appropriate mitigation. Just what is an acceptable replacement for a spawning stream?
- ADFG is limited authority to approve mitigation plans, and only in a few special areas around the state.

In sum, the regulations are long on promises of protection but short on details for how that protection is achieved and sustained. Importantly, the regulations are not supported by a reasonable problem statement.

Despite questions from numerous groups and individuals, there have been very few examples given as to specific problems around the state in need of this sweeping change. Of those outlined by DEC, none appear to warrant elimination of the statewide ban on mixing zones in fish bearing streams and can apparently be dealt with under our current regulatory structure. The public is not crying out for these regulations. Only a few interests have commented in support and many businesses and city governments have outright opposed them.

The fact is, even in the face of the mixing zone prohibition, mining, timber, and oil have thrived in this state and most municipalities have found solutions to dealing with waste water. On the other hand, if the state enacts these regulations, it may be harmful to the seafood industry with regard to both degraded fisheries habitat and raising concerns with the buying public that Alaska has dropped its high habitat standards. This in itself could greatly harm communities and could even pit industries and citizens against each other, which would be unfortunate and unnecessary.

ATA is concerned that mixing zones could degrade water quality and threaten salmon and public perception of Alaska's seafood. Those fears are not unfounded. Of note is the fact that of the 21 states responding to an ADEC survey, twenty allow mixing zones in fish bearing waters - *fish consumption warnings have been issued in each of those states following routine monitoring.*

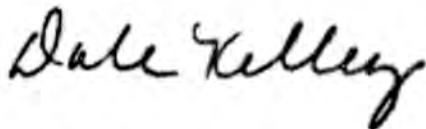
ATA is interested in what other options to deal with real issues. Can the state resolve any known problems in simple, less intrusive or inexpensive ways than mixing zones? For instance, could ADFG review the Valdez situation for potential re-cataloguing the stream in question? Could rules be drafted to ensure that similar manmade structures are not catalogued as spawning streams? Or, can some narrowly defined situations be dealt with through proposed regulations relating to site-specific criteria under 18 AAC 70.235 or short-term variances at 18 AAC 70.200?

Public involvement is an important part of this equation. If additional regulation is necessary to provide for mixing zone exceptions/variances, perhaps a cross-section of the public could be engaged to help the state develop the process and regulatory framework necessary to provide assurance that mixing zones would still be an exception to the rule, and that securing habitat values will be job one. Any such effort must be coordinated between all appropriate agencies and put out for substantial public review and comment.

ATA very much appreciates that DEC accommodated our industry and extended the public comment period on these proposed regulations. Hopefully you have received some useful perspectives from Alaskans throughout the state. It is interesting to see the communities weighing in, and many here in Southeast are on record as unanimously in favor of the current prohibition on mixing zones in spawning streams. Obviously, this is a matter of importance to people from various walks of life.

As you deliberate on your mixing zone decision, please do not hesitate to contact me if ATA can be of assistance in any way.

Sincerely yours,

A handwritten signature in cursive script that reads "Dale Kelley".

Dale Kelley
Executive Director



Alaska Trollers Association

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January 13, 2006

Representative Bill Thomas
Representative Gabrielle LeDoux
Co-Chairs, House Fish Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Thomas and LeDoux:

I write on behalf of the Alaska Trollers Association (ATA) with regard to HB 328, which seeks to put in place a statutory prohibition on mixing zones in spawning streams. ATA supports prohibition of mixing zones, in both spawning and rearing areas, but at this time needs more information before encouraging a statute over regulations.

For your information and background, I will attach the comments ATA submitted on DEC's proposed mixing zone regulations. A key concern to ATA is defining ADFG's roll in mixing zone decisions. It just makes sense that the agency with the highest level responsibility for maintaining sustainable populations of fish and wildlife should be also bear key responsibility and authority for securing the habitat necessary to support them. We don't have to look too far south to see what happens when fishery scientists and managers are removed from decisions governing the use of land and water.

Yesterday, DEC published regulations pertaining to mixing zones. I did have a chance to read the regulations and believe there are some good features. That said, because there has been no specific examples given as to why new regulations are needed, it's hard to envision how they will be implemented. Due to preparations for the Southeast Board of Fisheries meeting, which begins next week in Ketchikan, I have been unable to closely study the new regulations and how they mesh with other law. So for now, I offer these initial questions:

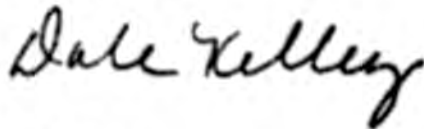
1. Is the language as written strong enough to prevent mixing zones in all spawning and rearing areas, except under the most extreme circumstances?

2. ADFG appears to have some chance of being given deference with respect to identifying spawning areas, but they are not the lead agency for this purpose, nor are they given deference for denying mixing zones in either spawning or rearing habitat – ADFG will merely be one of two agencies that may be consulted. Is that correct?
3. Why is ADFG only allowed to approve mitigation plans designed for "legislatively designated special areas"? And, under what circumstances would we allow mixing zones in such places?
4. Will the regulations protect fish that live in the outfall of a landlocked lake? For instance, if a lake has a waterfall flowing into a stream?
5. Mention is made in the regulations about permit reauthorization in an area where spawning didn't occur previous to securing a mixing zone, but has developed since. Does this item resolve the problem in Valdez? And, does ADFG also intend to re-catalogue that specific area?

There are likely many more questions that will be posed and discussed during this weeks hearing. I appreciate the time you are devoting to clarifying the bill and possibly moving it forward. I'm sorry to miss the hearing and hope that there will be follow up at a time that SE fishing groups are better able to participate.

Please feel free to contact me via email or cell if I can help or if you have additional information you think would assist ATA as it considers a position on HB 328. We will take up this legislation during our spring board meeting, which will run concurrent with the Board of Fisheries meeting.

Best regards,



Dale Kelley
Executive Director

**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 70

**WATER QUALITY STANDARDS
MIXING ZONE REGULATION CHANGES**

ADOPTED JANUARY 12, 2006

**Frank Murkowski
Governor**

**Kurt Fredriksson
Commissioner**

18 AAC 70.240 is repealed and readopted to read:

18 AAC 70.240. Mixing zones. (a) Upon application, the department may authorize in a discharge permit or certification, a mixing zone or multiple mixing zones in which the water quality criteria and any limit set by or under this chapter may be exceeded. The applicant shall provide to the department all available evidence reasonably necessary to demonstrate that a mixing zone will satisfy this section and shall provide information in a form and using methods approved by the department. The department may approve, approve with conditions, or deny a mixing zone application.

(b) In determining whether to authorize a mixing zone under this section, the department will consider

(1) the characteristics of the receiving water, including biological, chemical, and physical characteristics such as volume, flow rate, flushing and mixing characteristics;

(2) the characteristics of the effluent, including volume, flow rate, dispersion, and quality after treatment;

(3) the effects, if any, including cumulative effects of multiple discharges and diffuse, nonpoint source inputs, that the discharge will have on the uses of the receiving water;

(4) any additional measures that would mitigate potential adverse effects to the aquatic resources present; and

(5) any other factors the department finds must be considered to determine whether a mixing zone will comply with this section.

(c) The department will approve a mixing zone, as proposed or with conditions, only if it finds that available evidence reasonably demonstrates that

(1) an effluent or substance will be treated to remove, reduce, and disperse pollutants, using methods found by the department to be the most effective that are technologically and economically feasible, and at a minimum consistent with statutory and regulatory treatment requirements including

(A) any federal technology-based effluent limitation identified in 40 C.F.R. 125.3 and 40 C.F.R. 122.29, as amended through July 1, 2005 and adopted by reference;

(B) minimum treatment standards in 18 AAC 72.050; and

(C) any treatment requirement imposed under another state law that is more stringent than a requirement of this chapter;

(2) designated and existing uses of the waterbody as a whole will be maintained and protected;

(3) the overall biological integrity of the waterbody will not be impaired; and

(4) the mixing zone will not

(A) result in an acute or chronic toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone;

(B) create a public health hazard that would preclude or limit existing uses of the waterbody for water supply or contact recreation;

(C) preclude or limit established processing activities or established commercial, sport, personal-use, or subsistence fish and shellfish harvesting;

(D) result in a reduction in fish or shellfish population levels;

(E) result in permanent or irreparable displacement of indigenous organisms;

(F) adversely affect threatened or endangered species except as authorized under the Endangered Species Act (16 U.S.C. 1531-1544); or

(G) form a barrier to migratory species or fish passage.

(d) The department will approve a mixing zone, as proposed or with conditions, only if the department finds that available evidence reasonably demonstrates that within the mixing zone the pollutants discharged will not

(1) bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota to significantly adverse levels, based on consideration of bioaccumulation and bioconcentration factors, toxicity, and exposure;

(2) present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects as determined using risk assessment methods approved by the department and consistent with 18 AAC 70.025;

(3) settle to form objectionable deposits, except as authorized under 18 AAC 70.210;

(4) produce floating debris, oil, scum and other material in concentrations that form nuisances;

(5) result in undesirable or nuisance aquatic life;

(6) produce objectionable color, taste, or odor in aquatic resources harvested from the area for human consumption;

(7) cause lethality to passing organisms; or

(8) exceed acute aquatic life criteria at and beyond the boundaries of a smaller initial mixing zone surrounding the outfall, the size of which shall be determined using methods approved by the department.

(e) In lakes, streams, rivers, or other flowing fresh waters, a mixing zone will not be authorized in a spawning area or allowed to adversely affect the present and future capability of an area to support spawning, incubation, or rearing of any of the five species of Pacific salmon.

(f) In lakes, streams, rivers, or other flowing fresh waters, except as provided in (g) of this section, a mixing zone will not be authorized in a spawning area for Arctic Grayling; northern pike; lake trout; brook trout; sheefish; burbot; landlocked coho salmon, king salmon, or sockeye salmon; or anadromous or resident rainbow trout, Arctic char, Dolly Varden, whitefish, or cutthroat trout.

(g) The Department may authorize a mixing zone in a spawning area of a lake, stream, river or other flowing fresh water for the species listed in subsection (f) if, after consultation with the Department of Natural Resources, Office of Habitat Management and Permitting, or the Department of Fish and Game if within a legislatively designated special area under AS 16.20, the department finds that the applicant has

(1) demonstrated that the discharge does not contain pollutants at concentrations that exceed the criteria for growth and propagation of fish, shellfish, and other aquatic life, and wildlife established in 18 AAC 70.020(b) and that the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities;

(2) submitted a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if within a legislatively designated special area under AS 16.20; or

(3) submitted a mitigation plan approved by the Department of Natural Resources, Office of Habitat Management and Permitting, and incorporated as part of the discharge authorization, using the methods established in 11 AAC 195.010.

(h) The Department may require the applicant, in a mixing zone authorization under (g) of this section, to monitor effluent, ambient water quality, and biological conditions to determine whether unanticipated adverse effects on spawning, incubation and rearing of species identified in subsection (f) are occurring.

(i) The provisions of (e), (f) and (g) of this section do not apply to the renewal of a mixing zone authorization where spawning was not occurring at the time of the previous authorization, but successful spawning, incubation and rearing has occurred within the mixing zone subsequent to the previous authorization of that mixing zone.

(j) For purposes of this section, the department will defer to the Department of Natural Resources, Office of Habitat Management and Permitting or the Department of Fish and Game to determine spawning areas, both spatially and temporally.

(k) The department will approve a mixing zone, as proposed or with conditions, only if it finds that the mixing zone is as small as practicable and will comply with the following size restrictions, unless the department finds that evidence is sufficient to reasonably demonstrate that these size restrictions can be safely increased:

(1) for estuarine and marine waters, measured at mean lower low water,

(A) the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water may not exceed 10 percent of the total length of that cross section; and

(B) the total horizontal area allocated to all mixing zones at any depth may not exceed 10 percent of the surface area;

(2) for lakes, the total horizontal area allocated to all mixing zones at any depth may not exceed 10 percent of the lake's surface area;

(3) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend beyond the computed point of complete mixing, as determined using a standard river flow mixing model or other methods accepted by the department;

(4) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend downstream beyond the location where the department determines that a public health hazard reasonably could be expected to occur.

(l) For streams, rivers, or other flowing fresh waters, in calculating the maximum pollutant discharge limitation, the volume of flow available for dilution must be determined using

(1) the actual flow data collected concurrent with the discharge; or

(2) for conventional and nontoxic substances, the 10-year, 7-day low flow (7Q10) as the criteria design flow; for the protection of aquatic life, the 7Q10 as the chronic criteria design flow and the 10-year, 1-day (1Q10) as the acute criteria design flow; and for the protection of human health, the 5-year, 30-day (30Q5) as the noncarcinogenic criteria design flow and the harmonic mean flow as the carcinogenic criteria design flow; these low flows must be calculated using methods approved by the department.

(m) If the department finds that available evidence reasonably demonstrates that a mixing zone authorized by the department has had or is having a significant unforeseen adverse environmental effect, the department will terminate, modify, or deny renewal of the permit or certification authorizing the mixing zone. (Eff. 11/1/97, Register 143; am ___/___/___, Register ___)

Authority:	AS 46.03.010	AS 46.03.080	AS 46.03.720
	AS 46.03.020	AS 46.03.100	
	AS 46.03.050	AS 46.03.110	
	AS 46.03.070	AS 46.03.710	

18 AAC 70.245 is repealed:

18 AAC 70.245. Mixing zones: appropriateness and size determination. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.250 is repealed:

18 AAC 70.250. Mixing zones: general conditions. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.255 is repealed:

18 AAC 70.255. Mixing zones: in-zone quality and size specifications. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.260 is repealed:

18 AAC 70.260. Mixing zones: application requirements. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.270 is repealed:

18 AAC 70.270. Mixing zones: termination, modification, or denial of renewal. Repealed. (Eff. 11/1/97, Register 143; repealed ___/___/___, Register ___)

18 AAC 70.990 (30) is repealed:

(30) repealed __/__/____.

18 AAC 70.990 is amended by adding a new paragraph to read:

(72) "shellfish" means any species of crustacean, mollusk, or other invertebrate, in any stage of its life cycle. (Eff. 11/1/97, Register 143; am 4/29/99, Register 150; am 6/22/2003, Register 166; am __/__/____, Register ____)

Authority:	AS 46.03.010	AS 46.03.080	AS 46.03.110
	AS 46.03.020	AS 46.03.090	AS 46.03.710
	AS 46.03.050	AS 46.03.100	AS 46.03.720
	AS 46.03.070		

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

②
FRANK H. MURKOWSKI, GOVERNOR

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5066
FAX: (907) 465-5070
<http://www.dec.state.ak.us>

January 12, 2006

Dear Alaskan:

Today I adopted changes to the mixing zone provision of the Alaska water quality standards regulation (enclosed). Thank you for taking the time to review and comment on the draft proposed by the Department of Environmental Conservation (DEC) in October 2005. Your comments and suggested improvements made a difference and are reflected in the adopted regulations.

DEC received hundreds of comments on the draft regulations. Most expressed the need to protect Alaska's salmon resources, the need to rely on the State's habitat biologists for decisions affecting fish spawning areas, and the need for a rational regulatory approach. The basis for my decision on each of these three topics follows.

Protect Alaska's Salmon

The majority of comments stemmed from a fear that the proposed regulations could hurt Alaska's salmon resources by allowing a mixing zone in a spawning area. "Do not remove the current prohibition on mixing zones in salmon spawning areas" was the message I heard loud and clear.

The draft regulations released in October 2005 were written to provide a narrow range of exceptions to the prohibition on mixing zones only when any adverse effects to fish spawning areas would be prevented or mitigated. While I believe the proposal was scientifically sound and consistent with state statute, many commented that the value of Alaska's salmon depends not only on the reality of clean water, but the "perception" of clean water.

There is no question that salmon make a major contribution to Alaska's economy and public wellbeing. Consumer perception that Alaska's salmon are clean, fresh, and healthy is critical. Alaska's salmon-based economy is too important to risk any loss in consumer confidence. The adopted regulations retain the prohibition currently in place for mixing zones in salmon spawning areas (18 AAC 70.240 (e)).

The adopted regulations allow a single, very narrow exception to the prohibition to address situations like that found in Valdez where salmon started spawning in a mixing zone that was authorized in what was previously a non-spawning area. An absolute prohibition on mixing zones in spawning areas prevents DEC from reauthorizing a mixing zone for the community sewage treatment facility because salmon started spawning in the treated effluent after the mixing zone was previously established. Without an approved mixing zone, the City of Valdez is faced with a \$1.5 million project to bypass the ditch where the salmon had started spawning.

Communities like Valdez shouldn't lose their mixing zones because fish began successfully spawning in them. Prohibiting the renewal of authorized mixing zones in such areas would not further the goal of protecting fish and, at least in the Valdez case, could be detrimental to future fish spawning by reducing water flow. For that reason, the adopted regulation allows for renewal of mixing zones in spawning areas when fish start successfully spawning in the mixing zone after it is authorized (18 AAC 70.240(i)).

Rely on Habitat Biologists for Spawning Areas Decisions

Some who commented wanted DEC to rely on state habitat biologists to identify fish spawning areas and to prevent any adverse effects on current or future spawning, incubation, and rearing. Alaska's Anadromous Fish Act (AS 41.14.870) has guided the salmon habitat protection programs for nearly half a century, requiring the State's habitat biologists to identify parts of rivers, streams and lakes that are important to the spawning, rearing, or migration of anadromous fish. The Department of Natural Resources, Office of Habitat Management and Permitting (OHMP), and the Department of Fish and Game (DFG), are authorized by the legislature to approve proposed construction in, or use of, anadromous waters to ensure the proper protection of spawning, rearing and migration (AS 41.14 and AS 16.20). Both agencies have established regulatory mitigation methods to implement these statutory requirements.

It has been standard operating practice for DEC to seek the professional expertise and advice of both OHMP and DFG habitat biologists when evaluating the impact of wastewater discharges on fish habitat. I have codified this long standing practice in the adopted regulations. DEC will defer to the state's habitat biologists on identifying fish spawning areas (18 AAC 70.240 (j)), and approving fish impact mitigation plans (18 AAC 70.240 (g)(2) and (3)).

Rational Regulatory Approach

Some comments supported the draft mixing zone regulations as they provide greater flexibility for permitting responsible development. DEC has a duty to pursue a rational regulatory approach based on clear statutory authority and

sound science. Mixing zones that will not harm the growth and propagation of fish should be permitted, not prohibited.

As I explained previously, based on salmon's unique importance in Alaska law and to Alaskans, I have decided to continue prohibiting mixing zones in salmon spawning areas. The adopted regulation also prohibits mixing zones in spawning areas for specific non-salmon species; however for these species a narrow range of exceptions is allowed. An absolute prohibition on mixing zones in non-salmon spawning areas would unnecessarily restrict responsible development that can demonstrate a discharge will not harm the growth and propagation of fish, or where impacts can be appropriately mitigated.

The first exception allows mixing zones that comply with the scientific standards proven to protect fish and fish spawning. DEC may authorize a mixing zone in a spawning area when the quality of the wastewater discharge complies with the specific water quality criteria for protecting the growth and propagation of fish (18 AAC 70.240 (g)(1)). In other words, a mixing zone can be authorized in a non-salmon spawning area as long as the actual water quality will protect present and future spawning, incubation, and rearing. For example, under this exception, the quality of the water in a mixing zone may be lower than what is required for drinking water purposes, but it must comply with scientifically based standards for growth and propagation of fish.

The second exception relies on the authorities, rules and practices of OHMP and DFG which protect fish from many in-stream activities (e.g., dams, water withdrawal, stream diversion, stream crossings, gravel removal, blasting, etc.) using mitigation methods established in state regulation (5 AAC 95.900, 11 AAC 195.010). Potential mixing zone impacts to the growth and propagation of fish are no different than the impacts that can occur from other in-stream activities subject to the mitigation methods applied by DFG and OHMP. Therefore, I have decided to allow mixing zones in non-salmon fish spawning areas when DFG or OHMP have approved a mitigation plan for the mixing zone pursuant to their regulations.

The October 2005 draft regulations included the seasonal timing of a mixing zone as a possible mitigation measure to prevent adverse impacts to fish. However, both DFG and OHMP evaluate where fish spawn and when spawning fish, eggs or alevins are present to identify fish spawning areas. Since timing is one of the factors considered by DFG and OHMP in assessing and identifying spawning areas, I decided it was unnecessary to duplicate that responsibility in the mixing zone regulations.

In addition to the three major issues of greater public concern described in this letter, there were a number of comments made to DEC on other parts of the mixing zone regulations. The final regulations reflect changes as a result of these comments as well.

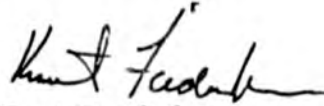
Dear Alaskan

4

January 12, 2006

I am confident the adopted mixing zone regulations provide the necessary protections to ensure Alaska's water quality will serve many different uses by current and future Alaskans. I appreciate your input and thank you for sharing your views on these important regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Fredriksson", with a stylized flourish at the end.

Kurt Fredriksson
Commissioner

cc: Commissioner McKie Campbell, Department of Fish & Game
Commissioner Mike Menge, Department of Natural Resources

Division of Water

Water Quality Standards

<http://www.state.ak.us/dec/water/wqsar/trireview/trireview.htm>

2003-2006 Triennial Review

Lynn Kent, Water Division Director (907) 269-3059

Nancy Sonafrank, Section Manager (907) 451-2726



Mixing Zone Requirements in New Regulations (January, 2006)

In determining whether to authorize a mixing zone, DEC must consider:

- the characteristics of the receiving water
- the characteristics of the effluent
- the effects, including cumulative effects of multiple discharges, along with nonpoint sources of pollution on the uses of the water
- any measures that would mitigate potential adverse effects to aquatic resources
- any other relevant factors

In order to authorize a mixing zone DEC must find that the:

- effluent will be treated to remove, reduce and disperse the pollutants using the most effective methods that are technologically and economically feasible, at a minimum consistent with statutory and regulatory treatment requirements
- designated and existing uses of the waterbody as a whole will be maintained and protected
- overall biological integrity of the waterbody will not be impaired
- mixing zone is as small as practicable

To obtain a mixing zone approval, the mixing zone can not

- result in a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone
- create a public health hazard that would preclude or limit existing uses of the waterbody for water supply or contact recreation
- preclude or limit established processing activities, commercial, sport, personal-use, or subsistence fish and shellfish harvesting
- result in a reduction in fish or shellfish population levels
- result in permanent or irreparable displacement of indigenous organisms
- adversely affect threatened or endangered species except as authorized under the Endangered Species Act
- form a barrier to migratory species or fish passage
- contain pollutants that bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota
- present an unacceptable risk to human health from carcinogenic, mutagenic, teratogenic, or other effects
- settle to form objectionable deposits
- produce floating debris, oil, scum and other material in concentrations that form nuisances
- result in undesirable or nuisance aquatic life
- produce objectionable color, taste, or odor in aquatic resources harvested from the area for human consumption
- cause lethality to passing organisms
- exceed acute aquatic life criteria beyond a smaller initial mixing zone near the outfall

Division of Water

Water Quality Standards

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2003-2006 Triennial Review

Lynn Kent, Water Division Director (907) 269-3059

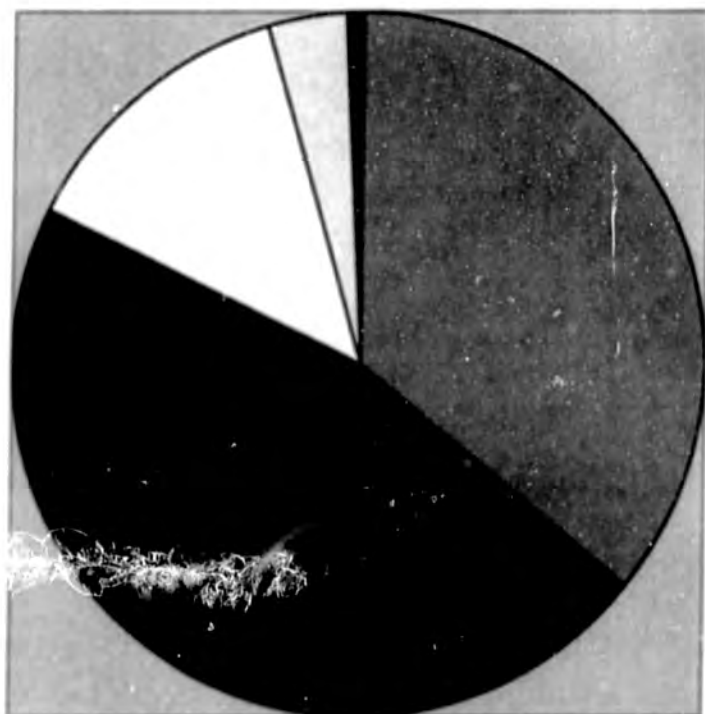
Nancy Sonafrank, Section Manager (907) 451-2726

January 17, 2006

Active and authorized mixing zones in Alaska

There are 439 active mixing zones authorized in fresh and marine waters in Alaska, comprised of:

- 157 Municipal Wastewater Treatment Plants
- 204 Seafood Processors
- 59 Placer Mines
- 15 Oil and Gas Related Facilities
- 3 Large Mines (all others meet WQS at end of pipe or do not discharge to water)
- 1 Fertilizer Plant



Division of Water

Water Quality Standards

<http://www.state.ak.us/dec/water/wqsar/trireview/trireview.htm>

2003-2005 Triennial Review

Section Manager, Nancy Sonafrank
(907) 451-2726



Examples of Mixing Zones in Alaska Today

Nearly every wastewater discharge to Alaska's surface waters has a permit that includes provisions for a mixing zone. The most common are for municipal wastewater treatment systems. Under current regulations mixing zones may be authorized in streams and rivers that contain salmon, but may not be authorized in spawning areas for salmon and specified resident fish in these waters. Mixing zones are also commonly authorized in marine waters. Below are some examples of mixing zones authorized in Alaska today.

General Permit for Shore-based Seafood Processing Facilities

The large majority of seafood processing facilities operate under a general permit. The mixing zone is for residues, dissolved gas, oil and grease, pH, color, turbidity, fecal coliform, total residual chlorine and temperature. The mixing zone is defined as a cylindrical volume with a horizontal radius of 100 feet from the diffuser and the full depth of the waterbody.

Mendenhall Wastewater Treatment Plant – Juneau

A mixing zone for municipal wastewater is allowed in the Mendenhall River for fecal coliform bacteria, dissolved oxygen, pH, metals, nutrients, and whole effluent toxicity (WET). The mixing zone for this discharge is defined as the area within a rectangle centered over the diffuser with a width of 30 meters and extending both upstream and downstream from the diffuser a distance of 150 meters, and to the full depth of the river. The mixing zone size is based on a 10-year, 7-day low river flow. The mixing zone provides a dilution of 10:1.

Soldotna Wastewater Treatment Facility – Soldotna

A mixing zone for municipal wastewater is allowed in the Kenai River for fecal coliform bacteria, dissolved oxygen, temperature, total chlorine residual, pH, metals, nutrients, and whole effluent toxicity (WET). The mixing zone for this discharge is defined as the area extending downstream from the diffuser a distance of 47 meters and having a width of 5 meters. The mixing zone provides a dilution of 30:1.

Division of Water

Water Quality Standards

<http://www.state.ak.us/dec/water/wqsar/trireview/trireview.htm>

2003-2005 Triennial Review

Section Manager, Nancy Sonafrank
(907) 451-2726



Comparison of Drinking Water Criteria to Aquatic Life Criteria for Selected Commonly Used Criteria

Drinking water or human health criteria are **more stringent** than aquatic life criterion

Drinking water or human health criteria are **about the same** as aquatic life criterion

Drinking water or human health criteria are **less stringent** than aquatic life criterion

Parameter	Drinking Water or Human Health Criteria	Aquatic Life Criterion
Arsenic	50 µg/L (soon to be 10 µg/L)	150 µg/L
Fecal Coliform	20 fecal coliform/100 ml	Not applicable
Total dissolved solids	500 mg/L (250 mg/L chlorides and sulfates)	500-1000 mg/L (110 mg/L potassium ion)
Temperature	15°C	13°C for spawning, eggs and fry; 15°C for rearing and migration
Copper	1300 µg/L	2.7-29 µg/L (hardness dependent)
Zinc	9100 µg/L	36-380 µg/L (hardness dependent)
Dissolved Oxygen	At least 4mg/L	Greater than 7 mg/L At least 5 mg/L in interstitial waters of gravel for fish spawning areas
Petroleum Hydrocarbons	No visible sheen 5 µg/L benzene 700 µg/L ethylbenzene 1000 µg/L toluene 10,000 µg/L xylenes	10 µg/L total aromatic hydrocarbon (sum of benzene, ethylbenzene, toluene, and xylenes concentrations); 15 µg/L total aqueous hydrocarbons (polyaromatic hydrocarbons)

From: Nina Faust [mailto:fausbail@xyz.net]

Sent: Thursday, January 26, 2006 4:28 PM

To: Rep. Gabrielle LeDoux

Subject: HB 328

P.O. Box 2460
Homer AK 99603
235-8215

January 26, 2006

House Fisheries Committee Members

Dear Representative LeDoux:

I strongly support HB 328. It is time to legislatively protect our waters from regulatory rewrites. Most Alaskans value our state's clean water and fisheries and don't want the regulations watered down.

I support HB 328's definition of "spawning area" as the physical location where spawning occurs. Pollution should not be allowed in spawning streams at any time. In my book, pollution should not be placed in Alaskan waters for any reason.

I do see the merits in the compromise allowing renewal of a municipal wastewater facility's mixing zone authorization during the useful life of the facility if spawning occurs in the mixing zone after it was initially authorized. However, I do have concerns about it and want to be sure that there is adequate oversight of these waivers.

I also want to be sure that this bill protects salmon and other fish in streams that are not in the "Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes." Please consider including a section that would require an assessment of a water body for anadromous fish as well as other resident fish listed in the bill before a permit is granted. Requiring assessments of

uncatalogued water bodies before permitting will assure the protection of important streams.

Please pass HB 328 as soon as possible to protect our fisheries and water resources.

Sincerely,

Roberta Highland

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF WATER OFFICE OF THE DIRECTOR

555 Cordova Street
Anchorage, AK 99501
Phone: (907) 269-7599
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<http://www.state.ak.us/dec/>

January 26, 2006

Representative Gabrielle Ledoux
Co-Chair, House Special Committee on Fisheries
State Capitol, Room 403
Juneau, AK 99801-1182

Representative William Thomas, Jr.
Co-Chair, House Special Committee on Fisheries
State Capitol, Room 428
Juneau, AK 99801-1182

Dear Representatives Ledoux and Thomas,

Thank you for providing an opportunity for the Department of Environmental Conservation and other members of the administration to testify on House Bill 328 at the January 20 hearing of the House Special Committee on Fisheries. Several questions came up during the hearing (paraphrased below) and some additional information may help to put the administration's position in context.

Is there a comprehensive list of all currently authorized mixing zones?

The Department's current permit tracking data system does not specifically track the details of authorized mixing zones, however, the Department can provide general information on authorized mixing zones (see Enclosure 1).

How many wastewater discharge authorizations are issued each year?

In FY 2005, the State issued 155 wastewater discharge authorizations; 72 of those included an authorized mixing zone (21 of them in freshwater).

How does the Department track compliance with authorized mixing zones and how many inspections does the Department conduct?

Many permitted facilities (with and without authorized mixing zones) are required to conduct self-monitoring and to report the results of that monitoring to the Department and to the Environmental Protection Agency (EPA). These "discharge monitoring reports" are reviewed by the Department for compliance with permit conditions.

During FY 2005, the Department conducted 128 compliance inspections. Facilities chosen for inspection are based on a risk-based ranking system. Samples were collected at a quarter of the inspections to independently verify facility monitoring reports. Since the state currently shares permitting and compliance authority with EPA, they also conducted facility inspections in Alaska. EPA conducted 71 inspections at facilities with wastewater permits during the same State FY 2005 time period. Not all of the State or EPA inspections involve facilities with authorized mixing zones.

Are there facilities that have a mixing zone authorization with timing restrictions on their discharge to avoid spawning areas?

Enclosure 2 is a list of authorized mixing zones where there are timing restrictions on the discharge to avoid spawning areas. Many facilities that have authorized mixing zones in waters identified in the anadromous waters catalog, the state list of waters important to the spawning, rearing and migration of anadromous fish. However, these mixing zones are not in spawning areas of listed waterbodies.

The Committee requested clarification from the Departments of Fish and Game (F&G) and Natural Resources (DNR) regarding the definition of spawning area.

Fish spawning areas are essential to maintain viable fish populations and must be properly protected. For purposes of permitting various types of activities, the Office of Habitat, Management and Permitting at DNR and DF&G define "freshwater fish spawning areas" as areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas, the agencies consider the temporal and spatial aspects of spawning habitats and activity, the proposed activity, and potential impacts in such a manner that the continued long-term use and availability of spawning habitat is properly protected.

Does the permit applicant determine if their proposed discharge will be to a spawning area?

No. Past and current practice (and now codified in the Department's new regulations) require the Department to defer to the best professional judgment of F&G or DNR to determine whether a proposed mixing zone will affect salmon or resident fish spawning areas. Enclosure 3 is an example of a document used by the Department when gathering information about potential mixing zones. This document includes a section completed with information from DNR or F&G regarding spawning areas (highlighted in the enclosure).

Does the Department have the discretion to choose which agency (F&G or DNR) provides fish protection input into mixing zone authorization decisions?

No. The Department consults with the resource agency that has jurisdiction over the waterbody where the proposed discharge will occur. F&G has authority over waters in

legislatively designated special areas (AS 16.20.050) and DNR has authority over all other waters (AS 41.14.870).

I would be happy to provide any other information requested by the committee.

Sincerely,

Lynn J. Tomich Kent

Lynn J. Tomich Kent
Director

Enclosures

cc: House Special Committee on Fisheries members
Representative Paul Seaton

Enclosure 1

Currently Authorized Mixing Zones

157 Municipal Wastewater Treatment Plants

Municipal Wastewater (Sewage) Treatment plants discharge to both fresh and marine water. Their mixing zones vary in size.

204 Seafood Processors

Most of the seafood processors discharge to marine waters under several general and individual permits, the bulk of them under general permits. The mixing zone under these general permits is described as a cylindrical volume of water, with a horizontal radius of 100 feet from the diffuser and the full depth of the waterbody.

59 Placer Mines

Placer mines operate under a general permit, with site-specific, freshwater mixing zones.

15 Oil and Gas Related Facilities

All oil and gas related facilities with authorized mixing zones discharge to marine waters.

3 Large Mines (all others meet WQS at end of pipe or do not discharge to surface water)

Greens Creek Mine has domestic and industrial discharges to marine waters of Hawk Inlet. Red Dog Mine has an industrial discharge to Ikalukrok and Red Dog Creeks. Usibelli Coal mine is in the process of collecting data that will support future mixing zone authorizations for their multiple discharges into Hoseanna Creek.

1 Fertilizer Plant

Agrium has an industrial discharge to Cook Inlet.

Mine	Waterbody	Marine/ Fresh	Fish Species	Timing Restrictions to avoid spawning areas.
Merrill Placer Mine	Falls creek	Fresh	Salmon	No discharge from 7/16 to 5/14
Tiaga Placer Mine	Dry Creek	Fresh	Salmon	No discharge 6/16 to 4/30
Tiaga Placer Mine	Aloha Creek	Fresh	Salmon	No discharge from 6/16 to 4/30
Tiaga Placer Mine	Comeback Creek	Fresh	Salmon	Timing restriction of discharge 6/16 to 4/30
Tweet Placer Mine	Kougrok River	Fresh	Salmon and Non-Salmon	No discharge from 9/1 to 6/15
Lohman Placer Mine	Lower Coffee Creek	Fresh	Non-Salmon	No discharge from 7/10 to 6/15
Wolff Placer Mine	Walker Fork 40- Mile River	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Read Placer Mine	Vault Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Smith Placer Mine	Deadwood Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Stout and Lanager Placer Mine	Quartz Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Polar Mining Placer Mine	Goldstream Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Willis Placer Mine	Crooked Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Earth Movers of Fairbanks Placer Mine	Fairbanks Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Mayo Placer Mine	Deadwood Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
McCloskey Placer Mine	Deadwood Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Arctic Gold Placer Mine	Garfield Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/16
Bras Placer Mine	Canyon Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Cogdon Placer Mine	Quail Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Frantz Placer Mine	Linda Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Clack-Wiltz Placer Mine	Ganes Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Loud Placer Mine	Harrison creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Newby Placer Mine	Little Boulder Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Wicken Placer Mine	Gold Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15

Dawn and Lines Placer Mine	North Fork Harrison Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Nordeen Placer Mine	Emma Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Wiese Placer Mine	Hammond River	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Rosander Placer Mine	Colorado Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Great Divide Placer Mine	Little Boulder Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Pacific Mining	Porcupine Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Tainter Placer Mine	Prospect Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Koppenberg Mining Placer Mine	Faith Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15
Sather Placer Mine	Fairbanks Creek	Fresh	Non-Salmon	No discharge from 5/1 to 6/15

Note: 3 placer mine mixing zones in waterbodies with both anadromous and resident fish denied where timing restrictions cannot avoid spawning areas.

Nyac Placer Mine	Tuluksak River	Fresh	Anadromous and Resident	No MZ granted. Habitat said no time when wastewater can be discharged. Applicant must meet WQS at end of pipe.
Nyac Placer Mine	Bear Creek	Fresh	Anadromous and Resident	No MZ granted. Habitat said no time when wastewater can be discharged. Applicant must meet WQS at end of pipe.
Nyac Placer Mine	California Creek	Fresh	Anadromous and Resident	No MZ granted. Habitat said no time when wastewater can be discharged. Applicant must meet WQS at end of pipe.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

18 AAC 70.250 -- 70.260 Mixing Zone Calculations

Region:

NON-YUKON, NON-SE TRIB.

OPERATOR
APMA #
Effluent Disch. (gpm)
Receiving Waterbody

QUAD:
NPDES:

HYDROLOGY

Upstream Drainage Area
Annual Precipitation (in.)
% Watershed Forested
Channel Slope (ft./ft.)

DATA INPUT

Calculated By:

Agency: ADEC

square miles
from USGS Water Resources Investigations Report 93-4179
digitized from 1:63,360 USGS Quadrangle
digitized from 1:63,360 USGS Quadrangle

RECEIVING WATERBODY CHARACTERISTICS

Response Type:

AS 41.14.840

AS 41.14.870

5 AAC 95.060 (Special Areas)

No Known Fish / No Permit Required

No Survey / No Permit Required At This Time

Source: OHMP/DNR

Reviewer:

Anadromous Fish Spawning (Y/N)

Resident Fish Spawning Redds (Y/N)

Fish Migratory Corridor (Y/N)

Spawning/Incubation Window:

Escapement Index/Weir/Tower (Y/N)

MZs Allowed? (Y/N/Conditioned)

Authorized Period: Year-round

Fish Species Present /
OHMP Decision
Rationale

STREAM DISCHARGE REGRESSION (cfs)

(Ashton and Carlson)

7Q10 low flow

July - Aug.

-1.00

July - Aug

1Q2 high flow

0

CALC. END-OF-PIPE NTU LIMIT

(Calculate using 7Q10 Low Flow)

#DIV/0! NTU

Is Calculated Limit >1,500 NTU?

####

APPROVED END-OF-PIPE NTU LIMIT

#DIV/0! NTU

GENERALIZED HYDRAULIC CHANNEL MORPHOLOGY (Bray 1982) - 1Q2 BANKFULL

Channel Width (feet)

0.00

 $r^2=0.962$ Width = $2.38 * \text{discharge (cfs)} ^{0.53}$

Channel Depth (feet)

0.00

 $r^2=0.871$ Depth = $0.266 * \text{discharge (cfs)} ^{0.33}$

Mean Channel Vel. (fps)

0.00

 $r^2=0.499$ Velocity = $1.58 * \text{discharge (cfs)} ^{0.14}$

GENERALIZED HYDRAULIC CHANNEL MORPHOLOGY (Bray 1982) - 7Q10 LOW FLOW

Channel Width (feet)

#NUM!

 $r^2=0.962$ Width = $2.38 * \text{discharge (cfs)} ^{0.53}$

Channel Depth (feet)

#NUM!

 $r^2=0.871$ Depth = $0.266 * \text{discharge (cfs)} ^{0.33}$

Mean Channel Vel. (fps)

#NUM!

 $r^2=0.499$ Velocity = $1.58 * \text{discharge (cfs)} ^{0.14}$

CALC. DOWNSTREAM LOCATION OF 95% COMPLETE MIXING (1Q2 High Flow)

(from Yearsley, EPA)

 $(0.45 * \text{Width}^2 * \text{Mean Vel.}) / 0.6 * \text{Depth} * (32 * \text{Depth} * \text{Slope}) ^{0.5}$

#DIV/0! feet

Std. Dev. = +/- 30%

CALC. DOWNSTREAM LOCATION OF 95% COMPLETE MIXING (7Q10 Low Flow)

(from Yearsley, EPA)

 $(0.45 * \text{Width}^2 * \text{Mean Vel.}) / 0.6 * \text{Depth} * (32 * \text{Depth} * \text{Slope}) ^{0.5}$

#NUM! feet

Std. Dev. = +/- 30%

EXPLANATIONS/COMMENTS

1. End-of-pipe limit (C2) = $((\text{stream discharge} / \text{effluent discharge}) + 1) * 5$ NTU; assumes 0 NTU background.
2. Std. Error of the 7Q10 Low Flow Discharge Estimate: +32% / -24%.
3. Std. Error of the 1Q2 High Flow Discharge Estimate: +21% / -17%.
4. Regional hydrograph regressions may generate negative numbers. In those cases assume zero flow and set end-of-pipe limits at AK WQS.
5. When calc. downstream location of 95% complete mixing is greater than 1 mile the mixing zone is truncated to 1 mile.



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
Box 2138, Wrangell, AK 99929
Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Representative Bill Thomas, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
House Fisheries Committee

January 26, 2006

RE: Support for HB 328

Dear Representatives Thomas and LeDoux,

The Southeast Alaska Regional Dive Fisheries Association (SARDFA) is a strong supporter of regional economic development and also recognizes the importance of clean waters for the health of Alaska's fishing resources. However, SARDFA does not believe that economic development of Alaska's natural resources and having a healthy, clean environment are mutually exclusive. SARDFA believe CS HB 328 strikes a balance between the resource development and a clean environment.

There is also some discussion amongst our group whether the latest version of DEC's regulations regarding mixing zones may also strike this balance. This is not clear to us yet, but we will be pursuing a clear interpretation of it.

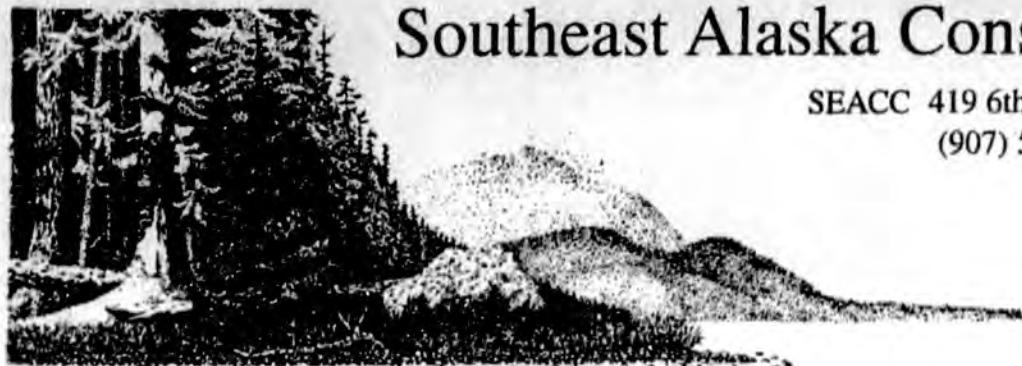
Thank you for your time and consideration.

Sincerely,

Julie Decker, Executive Director

Members of:
Southeast Conference
United Fishermen of Alaska
Pacific Coast Shellfish Growers' Assoc.
Interstate Shellfish Sanitation Conference

Cc: Representative Paul Seaton
Mark Vinsel, Executive Director, UFA
SARDFA Board of Directors



Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 200, Juneau, AK 99801

(907) 586-6942 phone • (907) 463-3312 fax

www.seacc.org • info@seacc.org

To: Rep. Bill Thomas, House Fisheries Committee Co-Chair
Rep. Gabrielle LeDoux, House Fisheries Committee Co-Chair
CC: Rep. Paul Seaton
From: Jeffery S. Brubaker, State Legislative Issues Coordinator, SEACC
Date: January 25, 2006
RE: Comments on Draft CS for HB 328

The Southeast Alaska Conservation Council (SEACC) has reviewed the draft committee substitute for House Bill No. 328, "An Act prohibiting mixing zones in freshwater spawning waters." In its original form, this legislation contained clear and concise language offering strong protections for the spawning waters of salmon and other fish important to Alaskan communities.

The draft committee substitute (24-LS1273\L) contains a physical definition for a spawning area. This is a welcome improvement that closes the dangerous loophole in the Department of Environmental Conservation's (DEC) new regulations. It is important for the health of Alaska's wild salmon and other fish that spawning waters are not polluted, even when spawning is not occurring at the time of pollution. Clean water is important for eggs and young fish in those same waters throughout the year.

The bill retains the prohibition on mixing zones in the spawning areas for other species of fish, such as trout, char, grayling, and others. This subsection is important for sport and subsistence fishermen across the state, and addresses another loophole in DEC's new regulations that makes the regulations even weaker when it comes to protecting the spawning of these species.

So far this legislation is the most common sense way to safeguard our state's unsurpassed stocks of wild salmon and other fish and maintain the reputation for high quality upon which our fishermen depend to market their catches. The bill could further support Alaska's commercial, subsistence, and sport fishermen by extending the protection to rearing areas, which are also of utmost importance to strong, healthy fish populations. However, overall SEACC supports a clear prohibition on mixing zones in the spawning areas of salmon and other fish.

Sincerely,

Jeffery S. Brubaker
State Legislative Issues Coordinator
Southeast Alaska Conservation Council

ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • ALASKANS FOR JUNEAU • CHICHAGOF CONSERVATION COUNCIL, Tenakee
• FRIENDS OF BERNERS BAY, Juneau • FRIENDS OF GLACIER BAY, Gustavus • JUNEAU AUDUBON SOCIETY • JUNEAU GROUP SERRA CLUB • LOWER
CHATHAM CONSERVATION SOCIETY, Port Alexander • LYNN CANAL CONSERVATION, Haines • NARROWS CONSERVATION COALITION, Petersburg • LISIANSKI
INLET RESOURCE COUNCIL, Pelican • PRINCE OF WALES CONSERVATION LEAGUE, Craig • SITKA CONSERVATION SOCIETY • TONGASS CONSERVATION
SOCIETY, Ketchikan • TAKU CONSERVATION SOCIETY, Juneau • WRANGELL RESOURCE COUNCIL • YAKUTAT RESOURCE CONSERVATION COUNCIL

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Laughing Raven

From: RenewableResourcesCoalition [info@renewableresourcescoalition.org]
Sent: Tuesday, January 17, 2006 10:58 AM
To: Richard Jameson
Subject: Alaska fish still in danger



Important House Fisheries Committee Meeting

Mixing Zones - Special Action Alert

The House Fisheries Committee has scheduled a hearing on Rep Paul Seaton's legislation to ban mixing zones (HB 328) this Friday, January 20th, 2006 from appr. 8:30 - 10:00 a.m.

The bill will be teleconferenced as well for those who would like to testify by telephone. If passed, the bill would overrule the state's misguided new rules permitting the pollution of our salmon and trout streams (see below).

The committee is co-chaired by Rep. Gabrielle LeDoux and Re. Bill Thomas. Rep LeDoux seems to be the friendliest of the two since she represents many of the impacted Pebble Mine villages. Rep. Thomas' leanings are unknown.

Because of this, we should attempt to get letters to the committee in support of this legislation asap. To insure timely receipt, we suggest that they be faxed. Rep. LeDoux's fax number is 907.465.4956. and Rep. Thomas' fax is 907.465.2652.

Let's show our support loudly by faxing correspondence and by having folks testify in favor of the bill.

1/19/2006

We need your help Now by faxing your support of HB 328 to:

★ **Rep. Gabrielle LeDoux - Fax No. - (907) 465-4956**
(Email if no fax - Rep_Gabrielle_LeDoux@legis.state.ak.us)

★ **Rep. Bill Thomas - Fax No. - (907) 465-2652**
(Email if no fax - Rep_Bill_Thomas@legis.state.ak.us)

FOOTNOTES:

-- Anchorage Daily News Editorial Opposing Mixing Zones - December 1, 2005

-- Cook Inlet Keeper Press Release of January 13, 2006

Mixing Zone Changes Won't Ensure Healthy Salmon, Cook Inlet Keeper Says -
AK Salmon and Other Fish in Danger...

Anchorage, AK -- Responding to a strong public outcry, Governor Frank Murkowski backed off -- but only in part -- from his much-maligned proposal to remove the current state prohibition on mixing zones in salmon and other fish-bearing streams. The new Department of Environmental Conservation (DEC) rule adopted on January 12, 2006 and announced at a press conference today does not prohibit mixing zones in salmon rearing and migration areas (only in spawning areas) and opens a new regulatory loophole allowing mixing zones in spawning areas for fish such as grayling and trout.

"Allowing mixing zones is bad policy which only benefits dischargers," stated Cook Inlet Keeper Senior Engineer Lois Epstein. "If we want to produce and market healthy, wild Alaska salmon, we need to prevent contamination of their habitat during spawning, rearing, and migration. The legislature needs to continue its plan to hold hearings on mixing zones, which are only one part of the Murkowski Administration's extremist, anti-salmon agenda."

Hundreds of comments from communities, fishing organizations, scientists, and the public opposed the Governor's first mixing zone proposal, issued in summer 2004. DEC's second mixing zone proposal, issued in fall 2005, contained minimal changes from the previous version and likewise was widely opposed. HB 328, prefiled before the legislative session began by Representative Paul Seaton and three other Republican legislators, includes a ban on mixing zones in salmon and other fish spawning areas and is scheduled for a hearing on January 20 in the House Fisheries

Committee.

According to Epstein, "Governor Murkowski has pursued an extreme, anti-fish agenda while in office. In addition to attempting to revoke the current mixing zone prohibition, Governor Murkowski muzzled state fisheries biologists by moving them into the natural resource development agency, through bureaucratic changes greatly undermined the state's Coastal Management Program, and proposed allowing aerial spraying of pesticides near salmon streams in Southeast Alaska."

-- Thursday, 12 January 2005, DEC Commissioner Kurt Fredricksson announced his adoption of new mixing zone regulations. These new regulations which permit polluting our waterways can be seen at the Department of Environmental Conservation's mixing zones website.

For More Information, please visit our website:

Renewable Resources Coalition, Inc.
500 L Street, Suite 502
Anchorage, AK 99501
Tel: (907) 632-9933
Fax: (907) 272-9319

Email: info@renewableresourcescoalition.org

Website: www.renewableresourcescoalition.org

If you do not wish to be included in this mailing list, please reply to this email with "Remove" in the subject line.

1/19/2006



January 11, 2005

Representative Paul Seaton
State Capitol, Room 102
Juneau, AK. 99801

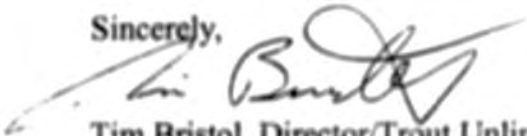
Dear Representative Seaton:

On behalf of Trout Unlimited, America's largest cold water fisheries conservation organization with 158,000 members, I would like to voice our strong support for HB 328, which would prohibit mixing zones on all naturally created waterways used by spawning salmon in Alaska.

Not only is this legislation good for fish, it's good for fishing, and what's good for fishing is good for Alaska and Alaskans. The world-wide reputation and notoriety of Alaska salmon and trout stocks are simply too great an asset to be compromised. Anything less than the highest and best protections for salmon and trout is unacceptable. We believe HB 328 will insure that Alaska remains the world leader when it comes to salmon stewardship.

Please feel free to contact me if I can provide further information on our position with regard to this bill and thank you for introducing it.

Sincerely,



Tim Bristol, Director/Trout Unlimited's Alaska Program

419 Sixth Street, Suite 200

Juneau, AK 99801

907-321-3291 tbristol@tu.org www.tu.org

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
OFFICE OF THE DIRECTOR

FRANK H. MURKOWSKI, GOVERNOR

555 Cordova Street
Anchorage, AK 99501-2617
PHONE: (907) 269-7599
FAX: (907) 334-2415
<http://www.dec.state.ak.us>

January 26, 2006

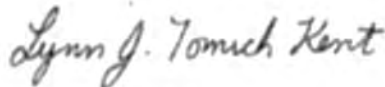
The Honorable Gabrielle LeDoux
Co-Chair, House Fisheries Committee
House of Representatives
Alaska State Capitol, Room 124
Juneau, Alaska 99801-1182

The Honorable William Thomas, Jr.
Co-Chair, House Fisheries Committee
House of Representatives
Alaska State Capitol, Room 124
Juneau, Alaska 99801-1182

Dear Representatives LeDoux and Thomas:

The Department of Environmental Conservation appreciates the opportunity to provide its position and comments on the CS for HB 328. Enclosed is my written testimony for your consideration. Should you have additional questions or prefer further detail, please let me know.

Sincerely,



Lynn J. Tomich Kent
Director

Enclosure: DEC CSHB 328 Testimony

cc: The Honorable Representative Harris
The Honorable Representative Elkins
The Honorable Representative Wilson
The Honorable Representative Kapsner
The Honorable Representative Salmon

**Department of Environmental Conservation
CSHB 328 Testimony
House Special Committee on Fisheries
January 27, 2006**

The Department of Environmental Conservation appreciates the opportunity to provide its position and comments on the CS for HB 328.

The Department is opposed to CSHB 328 for the following reasons:

- 1. CSHB 328 is not necessary to protect anadromous salmon from either a scientific or a perception basis.**

The Department of Environmental Conservation's regulations prohibit mixing zones in anadromous salmon spawning areas. CSHB 328 would put in statute the same protections for the five species of anadromous salmon that have been part of DEC's regulations since 1975.

While these protections are not necessary from a scientific perspective, they go beyond science to address the need to protect salmon marketing and the public perception that Alaska's salmon are clean and healthy.

- 2. There is no justification for extending the mixing zone prohibition to protect the salmon marketing effort to protect "non-salmon" fish species.**

CSHB 328 would prevent DEC from authorizing a mixing zone in a non-salmon fish spawning area (Sec. 46.03.063(b)(2)) even in cases where science can show the mixing zone will have no adverse effect on spawning. There is no justification for extending the mixing zone prohibition which is intended to protect salmon marketing efforts to non-salmon fish species. Alaska needs to encourage and support responsible community growth and development of its natural resources.

DEC's regulations allow exceptions to the prohibition of a mixing zone in "non-salmon" spawning areas when site specific conditions show that the fish species will be protected or any adverse impacts will be mitigated as determined by habitat and fisheries biologists with the Departments of Fish and Game, and Natural Resources.

Alaska's communities and businesses should be allowed to use mixing zones if fish are protected. There is no justification for restricting responsible community growth and resource development that can comply with the state's requirements for the growth and propagation of fish.

3. CSHB 328 would prohibit mixing zones in spawning areas for lampreys and smelts.

DEC would be prevented from authorizing a mixing zone in all anadromous fish spawning areas. Lampreys and smelts are fish species included in the definition of anadromous fish. Unlike the importance of salmon to Alaska's social and economic wellbeing, DEC does not believe non-salmon fish species justify an absolute prohibition on mixing zones that can comply with the scientifically based water quality standards for growth and propagation of fish.

4. CSHB 328 would prohibit mixing zones that have become a fish spawning area unless the discharge was from a municipal wastewater facility.

It is possible for mixing zones to become spawning areas even though spawning was not occurring when the mixing zone was first authorized. DFG has discovered fish spawning in a mixing zone previously authorized for a drinking water utility, and in some cases for domestic wastewater facilities. Successful fish spawning in a mixing zone is evidence that the water quality in the mixing zone is not harmful to fish. Allowing mixing zones in areas that have become successful spawning areas should be allowed for any facility type, not just municipal wastewater facilities. Businesses and communities should not lose their mixing zones just because they are doing such a good job treating their wastewater that fish start spawning in them.

5. CSHB 328 includes a definition of "area" that is counter to both past and current practices by the Departments of Fish and Game and Natural Resources when determining spawning areas on both a spatial and temporal basis.

The relative sensitivity of Alaska's fish resources is seasonal. Impacts from responsible community and resource development can be avoided by limiting uses and activities to times of the year when the fish resources are not there or other seasonal conditions eliminate adverse impacts to the fish resources. Alaska's resource agencies have traditionally employed "seasonal restrictions" to control development impacts to the environment.

There are 32 currently permitted facilities with discharges that do not have an adverse effect on fish, in part due to timing restrictions imposed on their discharge via permit conditions. CSHB 328 would require the Department to cancel those permits and limit future permitting in similar situations without any net environmental benefit to the fish.

6. CSHB 328 relies upon a new undefined term, "useful life" when referring to renewal of a mixing zone authorization for a municipal wastewater facility.

As many facilities age, they are upgraded to varying degrees from minor modifications to almost complete reconstruction. DEC knows of no standard or criteria for determining a facility's "useful life."

The "useful life" of a facility is also irrelevant to the properties and effects of a mixing zone or the methods necessary to protect fish.

7. **CSHB 328 is inconsistent with the current statute for protection of fish and game (AS 41.14.870), interference with salmon spawning streams and waters (AS 16.10.010), or submission of plans and specifications (AS 16.20.060).**

Alaska's legislature has enacted a protective legal framework for all waters important to fish with additional protections for rivers, lakes and streams that are important for salmon spawning, rearing, or migration. State approval must be received from DEC, DNR, or DFG prior to the construction in, or use of waters important to fish spawning, rearing or migration.

CSHB 328 prohibits all mixing zones in all anadromous fish and other specifically listed fish spawning areas. However, CSHB 328 does not amend or repeal the provisions in other state law that permit the use of fish spawning areas if there are no adverse impacts from that use. CSHB 328 conflicts with current legislative policy not specifically amended or repealed by CSHB 328.

8. **DEC is responsible for, and must be accountable for, setting and enforcing standards for environmental protection.**

DEC has a duty under state statute to set and enforce standards for the prevention of pollution and protection of Alaska's environment (AS 44.46.020). The legislature has also directed DEC to "determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental, or injurious to . . . aquatic life or their growth and propagation" (AS 46.03.070).

It is appropriate that the legislature hold DEC accountable for carrying out the duties and responsibilities spelled out in statute. However, we do not believe it is appropriate for the legislature to assume responsibility for carrying out the duties and responsibilities assigned to the executive branch by statute.



"Alaska at its Best!"

CITY OF PALMER

231 West Evergreen Avenue
Palmer, Alaska 99645

Phone (907) 745-3271 • Fax (907) 745-0930
www.cityofpalmer.org

January 26, 2006

Representative Carl Gatto
State Capital, Room 411
Juneau, AK 99801-1182

Re: CS HB 328

Dear Representative Gatto:

The City of Palmer supports the addition of language in the committee substitute for HB 328 regarding mixing zones in freshwater spawning areas.

The addition of section (b) addresses a concern involving the Palmer municipal wastewater treatment facility mixing zone. Subsection (b) reads:

- (b) The prohibition in (a) of this section does not apply to the renewal of a municipal wastewater facility's mixing zone authorization during the useful life of the wastewater facility for an area where spawning was not ongoing at the time of the initial authorization and the mixing zone became a spawning area after the date of the initial authorization.

This language removes Palmer's concern that the legislation as initially proposed might prevent the renewal of Palmer's wastewater discharge permit.

Thank you for your attention to this issue. If you require additional information, please contact me at 761-1304.

Sincerely,

Thomas Healy
City Manager

22. Will the tailings be capped after processing is complete? What will be used?

Yes, the tailings will be capped although the specific materials to be used will not be known until Northern Dynasty completes its Reclamation Plan.

In general, capping may be carried out using water, soils or mine rock. Sometimes, capping is achieved by applying 'soil amendments' and planting in order to get a self-sustaining plant community established. In such cases, capping with other materials is not necessary.

Northern Dynasty's Reclamation Plan, which must be in place before mine permits are issued, will specify what capping techniques will be employed and the nature of the medium to be used.

23. What will the tailings impoundment look like after reclamation?

Northern Dynasty is still developing its mine plan for the Pebble Project, including its Reclamation Plan. The steps taken to reclaim disturbed areas following mine closure will be fully defined within the mine planning materials to be submitted for permit application sometime next.

In general, reclamation will include land contouring, establishing native plant cover, wetland creation and the development of surface water drainage channels. Embankments will likely be visible as gently sloping earthen landforms with level crests and generally straight alignments.

In the area of the tailings pond where 'potentially reactive' materials are stored, water cover will be maintained to avoid acidic conditions. This could be accomplished by building a flooded porous rock fill with a revegetated cap along the perimeter, along with a shallow pond over the remainder of the surface.

The rest of the tailings facility will contain non-reactive sand and silt-size rock particles. It may be reclaimed through a combination of methods, including re-vegetation and surface ponds.

✱ → *24. What exactly is a Mixing Zone? Will Northern Dynasty use a Mixing Zone?* ✱

A 'Mixing Zone' is a three-dimensional area in a surface water body specified in a discharge permit, within which Aquatic Life Standards do not have to be met.

These zones are generally specified where an 'end-of-pipe' discharge does not meet Aquatic Life Standards, but where mixing with receiving water will result in those standards being met further downstream. Some discharges do not need 'Mixing Zones' because they already meet Aquatic Life Standards, while others do because they do not meet these standards.

There are no current plans for a 'Mixing Zone' at the proposed Pebble mine.



Kachemak Bay Conservation Society

3734 Ben Walters Lane, Suite 202

Homer, AK 99603

Phone: (907)235-2062 • Fax: (907)235-4069 • kbcbs@xyz.net

January 26, 2006

Dear Representative Seaton,

The Kachemak Bay Conservation Society's mission is to protect the environment of the Kachemak Bay region and encourage sustainable use and stewardship of local natural resources through advocacy, education/information, and collaboration. Current state law prohibits mixing zones in salmon spawning areas, and we still see absolutely no reason to relax this law.

We are in support of HB 328. The Conservation Society would like to suggest an amendment to further strengthen HB 328. We feel the Bill should require that if a permit is requested for an uncatalogued water body, an assessment of that water body should be made before a permit is granted to see if it has anadromous fish or any of the other resident fish listed in the Bill.

Local and statewide fisheries are a vital and sustainable part of Alaska's economy. Allowing mixing zones threatens efforts by the fishing community to promote fresh, wild salmon through a marketing campaign emphasizing the clean, healthy, organic qualities of Alaskan salmon. Mixing zones are nothing more than pollution zones because they would allow higher pollution levels, a move that will damage Alaska's reputation as a state with unpolluted waterways. This outmoded and discredited method of handling waste should not be allowed.

Alaska is fortunate to still be able to claim rivers and streams free of health warnings about toxic fish. While other states are scrambling to clean up their streams, Alaska's current administration is considering implementation of a monumental mistake—a relaxation of our water quality standards! Many of our streams and rivers are not part of a regular sampling program to test for toxic pollution, nor will they be in the future. A very low level of hydrocarbon pollution, as low as one part per billion, can harm fish eggs and smolt. Alaskans consume large quantities of salmon. Toxins in fish can bioaccumulate in human fat cells, contributing to health concerns, particularly for pregnant women and children.

Alaskans are clear on this topic—they do not support mixing zones! KBCS opposes mixing zones and urges the State to maintain its high water quality standards in the interest of protecting our fisheries and the health of Alaskans.

Sincerely,

A handwritten signature in black ink, appearing to read "Dylan Weiser".

Dylan Weiser
President

CITY OF VALDEZ, ALASKA

RESOLUTION 06-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA
SUPPORTING HOUSE BILL 328 PROHIBITING MIXING ZONES IN
FRESHWATER SPAWNING WATERS TO INCLUDE LANGUAGE REGARDING
ARTIFICIALLY CONSTRUCTED WASTEWATER FACILITIES

WHEREAS, the City of Valdez operates the Valdez Sewer Treatment Plant; and

WHEREAS, the existing Valdez Sewer Treatment Plant and outfall line have been in
place since the mid 1980's; and

WHEREAS, Alaska Statute 46.03 prohibits mixing zones in spawning waters; and ?

WHEREAS, House Bill 328 has been introduced amending the Alaska Statutes to
indicate that freshwater does not include an artificially constructed facility for water, wastewater,
holding, or channeling, unless the artificial facility is constructed for the purpose of facilitating
fish spawning; and

WHEREAS, the Valdez Sewer Treatment Plant outfall was constructed for wastewater
discharge purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF
VALDEZ, ALASKA that:

The City Council of the City of Valdez Alaska supports House Bill 328 prohibiting mixing
zones in freshwater spawning waters including language regarding artificially constructed
wastewater facilities.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ,
ALASKA this 17th Day of January, 2006.

CITY OF VALDEZ, ALASKA


Bert L. Cottle Mayor

ATTEST:


Teri L. Pierce, CMC/AEE, City Clerk

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/NC 190\

Resolution of the Juneau-Douglas Fish & Game Advisory Committee**A Resolution Regarding the Alaska Department of Environmental Conservation's Proposed Regulations Relating to Water Quality Standards – Mixing Zones.**

WHEREAS, the Alaska Department of Environmental Conservation (ADEC) has proposed new regulations that retain the existing general prohibition on mixing zones in fish spawning areas, but allow for exemptions from the prohibition; and

WHEREAS, a mixing zone area occurs where wastewater discharge mixes with a water body; and

WHEREAS, mixing zones may create pollution levels that fail to meet the goals of the Clean Water Act; and

WHEREAS, mixing zones allow pollution at levels that violate water quality standards designed to protect fish and fish consumers; and

WHEREAS, mixing zones are allowed under state regulations as the exception rather than the rule; and

WHEREAS, the current state water quality regulations, which became effective in November 1997, contain a prohibition on mixing zones in anadromous (migrating) or resident fish spawning areas; and

WHEREAS, there was extensive public comment in 2004 in opposition to a previous draft of ADEC regulations which would have lifted the state's prohibition on mixing zones in spawning streams; and

WHEREAS, this new 2005 proposal on mixing zones is open for public comment until December 19th; and

WHEREAS ADEC has held only one public hearing in Anchorage on December 5 on these controversial proposed mixing zone regulations; and

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh, and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce; and

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state and form part of the cultural fabric which makes Alaska unique; and

WHEREAS, wild salmon and other freshwater marine life support numerous jobs and subsistence resources for the residents City and Borough of Juneau; and

WHEREAS, many Alaska salmon marketing efforts hinge on consumer preference for fish raised in pure mountain streams and harvested in pristine waters isolated from human impact; and

WHEREAS, allowing industrial mixing zones in salmon lakes and streams may impair the efforts of commercial, sports and charter fishing business to promote Alaska wild salmon as healthy, wild, and organic; and

WHEREAS, farmed salmon have created significant social and economic dislocation for Alaska's fishing families; and

WHEREAS, the ADEC has not identified any issues that can't be dealt with under the current mixing zone regulations, or which warrant a wholesale shift in this policy; and

WHEREAS, under the 2005 proposed regulations, ADEC may authorize a mixing zone in a spawning area if an applicant merely has an approved mitigation plan; and

WHEREAS, this approved mitigation plan may be as simple as substituting one stream for another; and

WHEREAS, the Juneau Douglas Fish and Game Advisory Committee represents all fishing user groups, conservation perspectives and the general public; and

WHEREAS, the JDAC is concerned that that ADEC's 2005 proposed mixing zone regulations, combined with ADEC's policy statements on this subject, will result in an increase in pollution in spawning streams; and

WHEREAS, the JDAC believes that salmon health, salmon habitat and salmon marketing may suffer under ADEC's 2005 proposal.

NOW THEREFORE, BE IT RESOLVED BY THE JUNEAU DOUGLAS FISH AND GAME ADVISORY COMMITTEE:

Section 1. That the JDAC hereby expresses its opposition to the Alaska Department of Environmental Conservation's proposed 2005 water quality-mixing zone regulations because implementation of the regulations would allow for increased pollution in fish spawning areas;

Section 2. That the JDAC requests that the Alaska Department of Environmental Conservation extend the public comment period until January 31, 2006.

Copies of this resolution shall be provided to Governor Frank Murkowski; Kurt Fredriksson, Commissioner of the Alaska Department of Environmental Conservation; Senator Kim Elton; Representatives Beth Kerttula and Bruce Weyhrauch.

Adopted this 12th day of December 2005

Kathryn L. Hansen Chair
Kathy Hansen, Chair, JDAC

Louie Flora

From: Rep. Paul Seaton
Sent: Sunday, January 22, 2006 12:10 PM
To: Louie Flora
Subject: FW: Letter of Support prohibiting pollution mixing zones

Ian Laing
Rep. Paul Seaton Staff
Capitol Building, Rm. 102
Juneau, AK 99801
907-465-2689

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

From: marilyn@chickaloon.org [mailto:marilyn@chickaloon.org]
Sent: Sunday, January 22, 2006 9:28 AM
To: Rep. Paul Seaton
Cc: jennifer@chickaloon.org
Subject: Letter of Support prohibiting pollution mixing zones

January 21, 2006

Representative Paul Seaton
Alaska Legislature
Juneau, Alaska

Dear Representative Seaton:

Please accept this e-mail as a letter of support for prohibition on pollution mixing zones. The Chickaloon Village Traditional Council has written and signed a resolution stating the Tribe's opposition to changed regulations allowing pollution mixing zones in spawning areas. The Council has requested I write or e-mail you regarding our opposition to the pollution mixing zones in spawning areas.

This prohibition of pollution mixing zones in spawning areas is particularly important for our wild salmon. Letting mixing zones into these areas will effectively eliminate our wild salmon runs because the salmon are an indicator species of clean water - the salmon runs would die out for lack of clean water - and thus much of fishing industry will die out, also. And, at this time, the demand for wild salmon in Europe is increasing dramatically according to the international news media!

Please use this e-mail to help assure success in prohibiting mixing zones in spawning areas. Mixing zones do not eliminate pollution, they only dilute it.

Sincerely,

Marilyn Staggs
Executive Secretary for
Chickaloon Village Traditional Council
Telephone: (907) 745-0707
Fax: (907) 745-7154

(If you would like a copy of our Resolution opposing pollution mixing zones, please call or fax us. Thank you.)

mail2web - Check your email from the web at <http://mail2web.com/> .

Seldovia Village Tribe



January 12, 2006

Dear Honorable Representative Seaton,

Seldovia Village Tribe, a federally recognized Alaska Tribe supports the legislation -

HOUSE BILL NO. 328

introduced by yourself, along with Representative Kurt Olson (R-Kenai), Representative Carl Gatto (R-Palmer) and Representative Gabrielle LeDoux (R-Kodiak) that would place in statute the prohibition on pollution mixing zones in Alaska freshwater spawning waters.

We agree that House Bill No. 328 is needed to protect the habitat of Alaska's world famous salmon and trout and to protect Alaska salmon marketing efforts, and the subsistence people and cultures that rely on them.

Thank You,

SELDOVIA VILLAGE TRIBE

Michael Opheim
Environmental Coordinator



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

January 13, 2006

Representative Bill Thomas
Representative Gabrielle LeDoux
Co-Chairs, House Fish Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Thomas and LeDoux:

I write on behalf of the Alaska Trollers Association (ATA) with regard to HB 328, which seeks to put in place a statutory prohibition on mixing zones in spawning streams. ATA supports prohibition of mixing zones, in both spawning and rearing areas, but at this time needs more information before encouraging a statute over regulations.

For your information and background, I will attach the comments ATA submitted on DEC's proposed mixing zone regulations. A key concern to ATA is defining ADFG's roll in mixing zone decisions. It just makes sense that the agency with the highest level responsibility for maintaining sustainable populations of fish and wildlife should be also bear key responsibility and authority for securing the habitat necessary to support them. We don't have to look too far south to see what happens when fishery scientists and managers are removed from decisions governing the use of land and water.

Yesterday, DEC published regulations pertaining to mixing zones. I did have a chance to read the regulations and believe there are some good features. That said, because there has been no specific examples given as to why new regulations are needed, it's hard to envision how they will be implemented. Due to preparations for the Southeast Board of Fisheries meeting, which begins next week in Ketchikan, I have been unable to closely study the new regulations and how they mesh with other law. So for now, I offer these initial questions:

1. Is the language as written strong enough to prevent mixing zones in all spawning and rearing areas, except under the most extreme circumstances?

2. ADFG appears to have some chance of being given deference with respect to identifying spawning areas, but they are not the lead agency for this purpose, nor are they given deference for denying mixing zones in either spawning or rearing habitat – ADFG will merely be one of two agencies that may be consulted. Is that correct?
3. Why is ADFG only allowed to approve mitigation plans designed for "legislatively designated special areas"? And, under what circumstances would we allow mixing zones in such places?
4. Will the regulations protect fish that live in the outfall of a landlocked lake? For instance, if a lake has a waterfall flowing into a stream?
5. Mention is made in the regulations about permit reauthorization in an area where spawning didn't occur previous to securing a mixing zone, but has developed since. Does this item resolve the problem in Valdez? And, does ADFG also intend to re-catalogue that specific area?

There are likely many more questions that will be posed and discussed during this weeks hearing. I appreciate the time you are devoting to clarifying the bill and possibly moving it forward. I'm sorry to miss the hearing and hope that there will be follow up at a time that SE fishing groups are better able to participate.

Please feel free to contact me via email or cell if I can help or if you have additional information you think would assist ATA as it considers a position on HB 328. We will take up this legislation during our spring board meeting, which will run concurrent with the Board of Fisheries meeting.

Best regards,

A handwritten signature in cursive script that reads "Dale Kelley". The signature is written in dark ink and is positioned above the typed name and title.

Dale Kelley
Executive Director

Louie Flora

From: Emilie Otis [emmy@xyz.net]
Sent: Thursday, January 19, 2006 10:06 PM
To: Louie Flora
Subject: Written Comments to HB 328 and SB 225

To whom it may concern:

As I will be at work and unable to testify to the Alaska House Fisheries Committee on HB 328 Friday morning, I am submitting the following written comments, which I hope you will consider. I also hope you will consider accepting public comments on this important legislation in the future.

I fully support Rep. Paul Seaton's HB 328. It's heartening to know that we have a forward-thinking legislator who realizes that pristine waters and healthy fishery resources are the cornerstones of Alaska's sustainable fishing and tourism industries, and that without these renewable resources, our state will have nothing to rely on after our non-renewable resources are gone.

The only way to assure the continuation of Alaska's enviable situation of maintaining strong, healthy fish stocks, is to maintain stringent water quality and habitat protection regulations. Every state that has decided to weaken their water quality regulations (e.g., allowing mixing zones in fish spawning, incubation, and rearing areas) to make it easier for extractive industries to conduct business, have paid the price. Many of these states now have health advisories warning against consumption of their fish. Others face constant litigation against their failures to protect the public's resource and they struggle with funding for expensive mitigation projects that rarely provide full restoration of lost resources. It is inconceivable to me that Alaska is considering following in their footsteps and risking the long-term health of its most valuable renewable resource by weakening the water quality regulations that have done such an outstanding job of protecting fisheries so far.

The Alaska Department of Environmental Conservation's (ADEC) new regulations regarding mixing zones do NOT ensure adequate protection to our state's valuable fishery resources. Instead, the new regulations introduce loopholes that would lead to mixing zones in salmon, trout, and char spawning, incubation, and rearing areas. Unfortunately, the new regulations do NOT require comprehensive baseline studies prior to permitting mixing zones so that effects from the mixing zone can be readily compared to pre-permitted conditions. Nor do the new regulations require unbiased follow-up monitoring of permitted mixing zones to assure compliance with the requirement that they do not "adversely affect the present and future capacity of an area to support spawning, incubation, and rearing of the five species of Pacific salmon". Without these requirements in regulation, and adequate funding for staff to conduct monitoring and enforcement activities, there is no way to assure compliance with the new regulations.

Furthermore, DEC's new regulations do NOT require that professional fishery biologists from the Department of Fish and Game be involved in mixing zone permitting decisions that affect the state's fishery resources, except in rare cases where special, legislatively designated areas are involved (e.g., State Refuges, Critical Habitat Areas, etc.). Instead, DEC's regs require

only that the Department of Natural Resources (who's mission is development, not conservation) be consulted on permitting matters and mitigation plans. They also leave Fish and Game out of monitoring activities and instead leave it up to the permittee (i.e., polluter) to determine whether or not their mixing zone is negatively affecting the future capacity of the area to support spawning, incubation, and rearing.

Rep. Seaton's HB 328 nips these problems in the bud by establishing an outright ban on mixing zones in the spawning areas of Alaska's five Pacific salmon species, as well as other important resident species (e.g., trout, char, burbot, sheefish, etc). While Rep. Seaton's bill provides strong protection for our state's salmon spawning areas, it also provides a sensible solution to the rare situations where salmon colonize and begin spawning in artificially constructed wastewater channels (e.g., Valdez Sewage Treatment Center), thereby solving one of the main reasons DEC cited for drafting new regulations in the first place.

Our elected representatives are supposed to conduct state business in a manner that is in the **long-term** best interest of all Alaskans. I expect you to do just that, by supporting Rep. Seaton's forward-thinking bill to provide the protection our state's most valuable resource needs to assure it's continued health for generations of Alaskans to come. Please don't be the legislature that future generations of Alaskans will look back on with disdain for opening the door to pollution of our salmon producing waters. Do the right thing, and pass HB 328.

Thank you for this opportunity to comment.

Sincerely,

Edward O. Otis
PO Box 1402
Homer, AK 99603

Comparison of Provisions in the old and new Mixing Zone Regulations and in HB 328 Work Draft Version L

Prepared by the office of Rep. Seaton

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	
18 AAC 70.255. Mixing zones: In-zone quality and size specifications (h) For streams, rivers, or other flowing fresh waters subject to (e)(3) of this section, a mixing zone will not be authorized in an area of (1) anadromous fish spawning; or (2) resident fish spawning redds for Arctic grayling, northern pike, rainbow trout, lake trout, brook trout, cutthroat trout, whitefish, sheefish, Arctic char (Dolly Varden), burbot, and landlocked coho, king, and sockeye salmon.	18 AAC 70.240 (e) In lakes, streams, rivers, or other flowing fresh waters, a mixing zone will not be authorized in a spawning area or allowed to adversely affect the present and future capability of an area to support spawning, incubation, or rearing of any of the five species of Pacific salmon.	The department may not authorize a mixing zone for lakes, streams, rivers, or other flowing fresh water in an area of (1) anadromous fish spawning; or (2) resident fish redds for (A) Arctic char; (B) Arctic grayling; (C) brook trout; (D) burbot; (E) cutthroat trout; (F) Dolly Varden; (G) lake trout; (H) landlocked coho, king, and sockeye salmon; (I) northern pike; (J) rainbow trout; (K) sheefish; or (L) whitefish.	The language of HB 328 Version L is taken from the old regulatory language. HB 328 also adds "lakes" to the spawning area mixing zone prohibition. In both the old regulation and HB 328 Version L there is a flat prohibition on mixing zones applying to all anadromous fish spawning areas, and in the egg redds or nests of numerous different freshwater resident species. In contrast, the newly adopted ADEC Mixing Zone regulations contain a prohibition only on mixing zones in the spawning areas of any of the five species of Pacific salmon. Mixing zones may be authorized in a spawning area for resident freshwater and non-salmon anadromous species. Mixing zones may also be authorized in areas that may support spawning, incubation, or rearing of any of the five species of Pacific salmon, as long as the pollutant will not adversely affect the present and future capability of the area to support these activities.

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
SPATIAL AND TEMPORAL SPAWNING AREAS	SPATIAL AND TEMPORAL SPAWNING AREAS	SPATIAL AND TEMPORAL SPAWNING AREAS	
No reference found	(j) For purposes of this section, the department will defer to the Department of Natural Resources, Office of Habitat Management and Permitting or the Department of Fish and Game to determine spawning areas, both spatially and temporally.	(c) In this section (1) "area" means the physical location where spawning occurs	HB 328 Version L specifies that, for the purpose of the bill, a spawning area is strictly a physical location and is not to be interpreted temporally. This does not limit the permitting of activities (aside from discharging into a mixing zone) in spawning areas when it is determined that spawning and incubation is not occurring. The old Mixing Zone regulations do not make reference to spatial and temporal spawning areas. Neither of the two previously proposed mixing zone regulations made reference to spawning areas as spatial and temporal entities. The new ADEC Mixing Zone regulations contain this language, implying that mixing zones will be allowed in stream areas used for spawning during some portion of the year. "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."*
			*"Mixing Zone Change Fuzzy for Fishermen" Elizabeth Bluemink, Juneau Empire, January 15, 2006

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	
No exceptions found	(i) The provisions of (e),(f) and (g) of this section do not apply to the renewal of a mixing zone authorization where spawning was not occurring at the time of the previous authorization, but successful spawning, incubation and rearing has occurred within the mixing zone subsequent to the previous authorization of that mixing zone. (f) In lakes, streams, or other flowing fresh waters, except as provided in (g) of this section, a mixing zone will not be authorized in a spawning area for Arctic Grayling; northern pike; lake trout; brook trout; sheefish; burbot; landlocked coho salmon, king salmon, or sockeye salmon; or anadromous or resident rainbow trout, Arctic char, Dolly Varden, whitefish or cutthroat trout. (g) The Department may authorize a mixing zone in a spawning area of a lake, stream, river or other flowing fresh water for the species listed in subsection (f) if, after consultation with the Department of Natural Resources, Office of	(b) The prohibition in (a) of this section does not apply to the renewal of a municipal wastewater facility's mixing zone authorization during the useful life of the wastewater facility for an area where spawning was not ongoing at the time of the initial authorization and the mixing zone became a spawning area after the date of the initial authorization. (c) (2) "lakes, streams, rivers, or other flowing fresh water" includes lakes, streams, rivers, or other flowing fresh water that have been altered by remediation or construction activities; the term does not include an artificially constructed facility for water, wastewater, holding, or channeling, unless the artificial facility is constructed for the purpose of facilitating fish spawning.	HB 328 Version L allows for mixing zones in man-made ditches and holding ponds by prohibiting reclassification of these areas as freshwater spawning areas if they are subsequently colonized by spawning fish. HB 328 Version L also allows municipal wastewater discharges to be re-authorized for the useful life of a facility if spawning occurs in the mixing zone after initial authorization. The new ADEC Mixing Zone regulations contain a clause that allows any mixing zone in flowing fresh water to be re-permitted if spawning, incubation, or rearing occurs within the active mixing zone. The new ADEC Mixing Zone regulations allow mixing zones in the spawning areas of Arctic Grayling; northern pike; lake trout; brook trout; sheefish; burbot; landlocked coho salmon, king salmon, or sockeye salmon; or anadromous or resident rainbow

	Habitat Management and Permitting, or the Department of Fish and Game if with a legislatively designated special area under AS 16.20, the department finds the applicant has (1) demonstrated that the discharge does not contain pollutants at concentrations that exceed the criteria for growth and propagation of fish, shellfish, and other aquatic life, and wildlife established in 18 AAC 70.020(b) and that the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities; (2) submitted a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if within a legislatively designated special area under AS 16.20; or (3) submitted a mitigation plan approved by the Department of Natural Resources, Office of Habitat Management and Permitting, and incorporating as part of the discharge authorization, using the methods established in 11 AAC 195.010.		trout, Arctic char, Dolly Varden, whitefish or cutthroat trout if the permit applicant can either prove that the discharge into the mixing zone will not exceed the water quality criteria for growth and propagation of fish, shellfish and other aquatic life and wildlife OR if the permit applicant has submitted an approved mitigation plan. Section (g) (3) of the new ADEC Mixing Zone regulations refers to the submission of a mitigation plan that uses methods established in 11 AAC 195.010, the section of DNR regulation where the Anadromous Stream Catalog is adopted by reference. Mitigation language in the Anadromous Stream Catalog is currently under revision.
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ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

January 19, 2006

Honorable Bill Thomas
Honorable Gabrielle LeDoux
House Fisheries Committee
Capitol Building
Juneau, AK 99801

RE: House Bill 328, Prohibiting Mixing Zones in Freshwater Spawning Waters

Dear Representatives Thomas and LeDoux,

The Alaska Miners Association opposes House Bill 328 which would prohibit the use of mixing zones in freshwater spawning waters. Mixing zones are an important tool for the State to use when managing water discharges, be it from municipalities, fish processing plants, or other industrial activities, including mining.

Since passage of the federal Clean Water Act (in about 1972), water quality standards have been extremely restrictive. This fact was recognized and mixing zones were therefore allowed under state law where the scientific evidence would justify use of mixing zones for defined portions of streams, rivers or lakes. The promise to mining and all potential dischargers has been that, yes the standards are very restrictive, but mixing zones would be available.

Alaska has just promulgated new mixing zone regulations. These regulations contain an absolute prohibition which will not allow mixing zones in salmon spawning areas. These regulations also provide numerous controls to ensure that mixing zones will not adversely impact other fisheries and other spawning areas. Not all mining operations will need to utilize these regulations but for some operations they will be absolutely essential. These regulations provide protection for fisheries and only when the science can support use of a mixing zone will one be allowed.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Paul Seaton



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

January 19, 2006

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

Representative Seaton,

The Kenai Peninsula Fishermen's Association is a Cook Inlet Fisheries Association. We have operated as a voice for the industry for over 50 years. Primarily a set-net organization we do represent members who are drift fishermen, crewmembers and other local businessmen.

In regards to the adoption by the Alaska Department of Environmental Conservation of 18 AAC 70, we continue to disagree with the language at this time. We have included our comments dated December 19, 2005 to support our requested changes.

Our Association has reviewed House Bill 328. We support the bill as written although we believe that this step would not have been necessary had the comments and suggestions been taken seriously by the ADEC or the Alaska Department of Natural Resources. We would have preferred as we had requested a period of reconciliation and poignant discussion with affected user groups before the final adoption.

The continuance of the departments to exclude the vital role of ADF&G by using the conjunction "or" is still unacceptable. The DF is the only agency that is constitutional mandated to sustain and to develop the aquatic resources within the state. Restrictions that apply to Special Harvest Areas for review is to limited to protect the public's interest.

We realize that Anandromous Fisheries Catalogue is a very labor intensive "map" of our fisheries resources. We are alarmed at it's incomplete status. The annual review of the map and the

election process is not clear to many. In question is the recent deletions from the catalogue. Does this mean there is no resident or anadromous fish at present yet in the past aquatic life was documented?

In our previous comments we requested a consistency review with ADF&G, Board of Fisheries Sustainable Fisheries Policy regulations. In addition, 18 AAC 70.015 (a)(2)(A) Antidegradation policy, which states... "allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located." leaves the public with questions over precedence.

We highly support the actions of Representatives Paul Seaton, Representative Kurt Olson, Representative Carl Gatto and Representative Gabrielle LeDoux. We urge other legislators to take notice and support their fellow representatives in protecting our states renewable treasures.

Respectfully,

A handwritten signature in cursive script that reads "Paul A. Shadura II". The signature is written in dark ink and includes a stylized flourish at the end.

Paul A. Shadura II
Executive Director



Alaska State Legislature

Please enter into the record my testimony to the House Special Committee on Fisheries Resou.
Committee name

Committee on HB No 328 Prohibiting mixing zones in Freshwater Spawning waters, dated Jan 27, 2006
Bill/Subject

I strongly support passage of HB No 328 with these additional considerations.

1. include intertidal among the category of waters where mixing zones are not allowed.
2. Similarly upwelling zones also need protection.
3. Protection of the water supply that is the source of Lotic, and Lentic waters ~~as the sources~~ is essential. Resource extraction must not adversely affect state waters.
4. Rearing areas for juvenile resident and anadromous fish must also receive protection from potentially damaging releases of toxic materials into Alaskan waters
5. ADF&G has ^{generally} been excluded from participation in habitat related issues, since the administration reorganized to shift Habitat Division from ADF&G to DNR. Now many of these staff are intimidated by political influences from higher administration officials. Critical ADF&G staff are limited to consult ^{with DEC} on State Refuges and habitat areas. ADF&G staff need involvement on waters statewide in order to properly determine what constitutes spawning and rearing waters. Please include these modifications in BAAC 70, 840 mixing zones.

Signed:

Testifier

Representing (Optional)

Address

Phone number

Concerned citizen

P.O. Box 870298

Wasilla, AK 99687



Madam Chairman, Mister Chairman, Members of the Committee

My name is Richard Hahn; I reside in Soldotna, Alaska, and I testified last week on House Bill 328.

Subsequently, I have reviewed Version L of HB328 and find it improved over the previous version and believe it should be acceptable to the Legislature. Having said that, I have a serious concern and a few comments.

My concern is: If the Legislature is successful in passing HB328 and its companion Senate Bill 225, would there be enough votes to override Governor Murkowski's possible veto? I attribute my concern to McKie Campbell's testimony last week, when he said (paraphrased), "what would happen if these bills were not successful?"

My comments are: 1) Alaskans should be learning lessons from industrial companies contaminating, as I speak, major rivers in China, and who pays the bills to clean them up, if cleanup is even possible? 2) Alaskans should be learning lessons from the Board of Game's action this week of voiding, in a one day meeting, a 30+ page court ruling from a Judge's protracted review, which stopped the aerial killing of wolves because the BOG was knowingly violating its own regulations; ergo, what would prevent the DEC from similarly violating its own promulgated pollution mixing zone regulations? And 3) Alaskans should be learning lessons from the recent tragedies in the West Virginia coal mines where the mining companies simply paid the small fines for safety violations and continued to operate; ergo, I would hope HB328 and SB225 have sufficient penalties to discourage violations of banned pollution mixing zones by unscrupulous developers.

Respectfully Submitted, January 26, 2006

Kimberly Wallace

From: Rep. Gabrielle LeDoux
Sent: Thursday, January 26, 2006 10:49 AM
To: Kimberly_Wallace@legis.state.ak.us
Subject: FW: L&P Borough Resolution on Mixing Zone Regulation Changes (HB 328)
Attachments: Letter to DEC on Mixing Zones 9-28-04.pdf; Resolution on Mixing Zones 09-21-04.pdf; L&P Borough Resolution 05-22 Opposing Mixing Zone Regulation Changes Dated November 9 2005.pdf

For file and print out everything for her.

Suzanne Hancock, Chief of Staff
Representative Gabrielle LeDoux
State Capitol
District 36
Juneau, AK 99801-1121
phone: (907) 465-2487 (office)
(907) 465-4230 (direct)
fax: (907) 465-4956

From: Marv Smith [mailto:marvsmith.lpboro@starband.net]
Sent: Thursday, January 26, 2006 10:22 AM
To: Sen. Gary Stevens; Sen. Lyman Hoffman; Rep. Carl Moses; Rep. Gabrielle LeDoux
Cc: Mark Hickey
Subject: L&P Borough Resolution on Mixing Zone Regulation Changes (HB 328)

Dear Senator Stevens, Senator Hoffman, Representative Moses and Representative LeDoux:

I write this email in reference to new legislation, IE, HB 328 concerning Mixing Zones. Attached are resolutions that demonstrate the L&P Borough has opposed the State, beginning in 2004 with a letter to DEC and Resolution 04-17 (both attached). Also, please find attached, Resolution 05-22, passed in November of 2005, restating the Borough's position concerning "mixing zones".

As indicated by resolution, the L&P Borough is willing to support in concept, non-industrial mixing zones as may be required for instance, for the proper treatment of municipal sewage requiring an effluent discharge into an anadromous lake or stream.

The Borough is very supportive of economic diversification and welcomes new development that will stimulate our local economy. However, we will not trade the Borough's environmental well being for this new development and growth. Simply put, "It must be done right"!

If you have any questions please feel free to contact me or Marv Smith 907-246-3421

Sincerely,

Jeff Currier, Borough Manager



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602



September 28, 2004

Nancy Sonafrank
Department of Environmental Conservation
610 University Drive
Fairbanks, AK 99709

Subject: Resolution Opposing the Proposed Changes to Regulation 18 AAC. 70.240 dealing with Mixing Zones

Dear Ms. Sonafrank:

The purpose of this letter is to provide comment and present you with the attached resolution from the Lake and Peninsula Borough Assembly concerning the proposed changes to the Mixing zone regulation 18 AAC. 70.240. The Lake and Peninsula Borough opposes this new regulation change as we contend it will have a long-term affect on the citizens of the Borough and the resources within our boundaries.

These changes have the potential to have a dramatic affect on the lakes and streams within the Borough as well as water quality in the future. There are a large number of unanswered questions that make supporting this regulation very difficult. If the State of Alaska is willing to take on the responsibility for this new regulation and take over control from the Environmental Protection Agency (EPA), where will the State get the funds and personnel to enforce this new regulation? There have been estimates this new program could cost the State of Alaska two million annually to monitor and enforce. It is very difficult to understand how the State would take on this additional expense and at the same time require applicants to pay for application for mixing zone approval, which do not cost local governments anything under the EPA. Most communities within rural Alaska do not have the additional resources for this type expense.

The Borough is very supportive of economic diversification and welcomes new development that will stimulate our local economy. However, we will not trade the Borough's environmental well being for this new development and growth. Simply put, it must be done right.

The Borough is willing to support, in concept, non-industrial mixing zones as may be required for the proper treatment of municipal sewage with an effluent discharge into an anadromous lake or stream. However, we cannot support the new regulation as proposed.

Thank you for the opportunity to comment. If you have any questions please contact me at 907-246-3421.

Sincerely,

Marvin R. Smith
Community Development Coordinator

**LAKE AND PENINSULA BOROUGH
RESOLUTION 04-17**

A RESOLUTION OPPOSING THE STATE OF ALASKA'S PROPOSED TAKE OVER OF WATER QUALITY REGULATIONS FROM EPA WHICH REGULATE WASTE FROM MINES, SEAFOOD PROCESSORS, OIL AND GAS RIGS, LOG DUMPS AND MUNICIPAL SEWER PLANTS, AND, TO THE PROPOSED REVISIONS TO THE ALASKA WATER QUALITY STANDARDS ALLOWING INDUSTRIAL MIXING ZONES IN FRESH WATER STREAMS AND LAKES.

WHEREAS, the State of Alaska, Department of Environmental Conservation in a effort to "streamline the permitting process" is proposing to take over EPA Water Quality Regulations and incorporate several changes to the current Mixing Zone Regulations which govern permit requirements for areas where treated wastewater mixes within a water body; 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 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's proposal to "take over" the existing EPA water quality Regulations; and,

BE IT FURTHER RESOLVED, the Lake and Peninsula Borough is opposed to revisions to the water quality regulations that would provide for Industrial Mixing Zone discharge into fresh waters in the State of Alaska

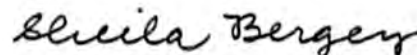
PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 21ST day of September, 2004.

IN WITNESS THERETO:

ATTEST:



Glen Alsworth Sr., Mavor



Sheila Bergev, Borough Clerk

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: HB 328

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Dept of Environmental Conservation

Title Prohibiting mixing zones in freshwater spawning areas

RDU Division of Water

Component Water Quality

Sponsor Seaton, Olson, Gatto, Ledoux, Kerttula, and Gara

Requester House Special Committee on Fisheries

Component No. 2062

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no effect on DEC resources.

Prepared by: Lynn J. Tomich Kent

Division Director

Approved by: Kurt Fredriksson

Agency Department of Environmental Conservation

Phone 907 269-7599

Date/Time 1/18/06 3:15 PM

Date 1/18/2006

HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 9, 2006

FURTHER REFERRALS: Resources

Date of Committee Action: _____

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HB 328

HOUSE BILL NO. 328

BAN MIXING ZONES IN SPAWNING AREAS

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

Recommends it be replaced with ☐ HCS or ☒ CS for HB 328 ()

For Senate Bills with new title: ☐ **Technical Title** ☐ **New Title:** HCR ☐ **Same Title** ☐ **New Title**

☐ attach amendments

☐ add new referral to _____ Committee

[] Letter of Intent Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
Mary Kapsner	KAPSNER	✓			
Hopi Wilson	Salmn	✓			
Gabrielle H. O'Connell	LoDoux	✓			
J. J. Jones	ELICINIS			✓	
Chair: Will Billings	THOMAS			✓	
Chair:					



State of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
(907) 283-2030

Date: 1-27-06

Please accept the enclosed original(s) of written testimony for the
House Fisheries teleconference hearing that was
scheduled on 1-27-06.

A copy of this testimony was transmitted to your committee via fax on
1-27-06.

Thank you,

Kathleen Guerson

Madam Chairman, Mister Chairman, Members of the Committee

My name is Richard Hahn; I reside in Soldotna, Alaska, and I testified last week on House Bill 328.

Subsequently, I have reviewed Version L of HB328 and find it improved over the previous version and believe it should be acceptable to the Legislature. Having said that, I have a serious concern and a few comments.

My concern is: If the Legislature is successful in passing HB328 and its companion Senate Bill 225, would there be enough votes to override Governor Murkowski's possible veto? I attribute my concern to McKie Campbell's testimony last week, when he said (paraphrased), "what would happen if these bills were not successful?"

My comments are: 1) Alaskans should be learning lessons from industrial companies contaminating, as I speak, major rivers in China, and who pays the bills to clean them up, if cleanup is even possible? 2) Alaskans should be learning lessons from the Board of Game's action this week of voiding, in a one day meeting, a 30+ page court ruling from a Judge's protracted review, which stopped the aerial killing of wolves because the BOG was knowingly violating its own regulations; ergo, what would prevent the DEC from similarly violating its own promulgated pollution mixing zone regulations? And 3) Alaskans should be learning lessons from the recent tragedies in the West Virginia coal mines where the mining companies simply paid the small fines for safety violations and continued to operate; ergo, I would hope HB328 and SB225 have sufficient penalties to discourage violations of banned pollution mixing zones by unscrupulous developers.

Respectfully Submitted, January 26, 2006



Alaska Marine Conservation Council

Box 101145, Anchorage Alaska 99510

(907) 277-5357 • (fax) 277-5975

amcc@akmarine.org • www.akmarine.org

January 6, 2006

The Honorable Frank Murkowski
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski,

On behalf of the Alaska Marine Conservation Council and our members throughout the state, we wish you a Happy New Year. This letter is to offer our perspective on several issues of concern regarding the long-term sustainability of Alaska's unparalleled natural marine and coastal heritage. We send this in the spirit of working with you to solve problems in ways that meet the needs of marine ecosystems and communities who rely on them for their local economies and ways of life.

Alaska's marine and coastal resources and our ability to sustain them for future generations are immensely important on every scale, from the smallest community to the state, the nation and, indeed, the globe. The issues presented here are a sample of concerns we share with our members and colleagues. We want to work with the State to advance appropriate and innovative solutions in 2006.

1. Offshore oil and gas drilling in Bristol Bay

The marine and coastal ecosystems of Bristol Bay and the Bering Sea are among the richest in the world and support a robust fishery-based economy in western Alaska. The area being considered for offshore oil and gas drilling overlaps with some of the most productive commercial fishing grounds, including cod, pollock and the prized red king crab. The world's greatest salmon runs migrate through the area of concern and other fisheries, such as herring, occur in nearby waters. Bristol Bay is an important juvenile halibut nursery for the Pacific halibut population, one of Alaska's most valuable seafood products. Our communities rely on salmon, halibut, herring, sea mammals and other ocean and coastal resources for subsistence. They are integral to cultural practices that have been ongoing for thousands of years.

AMCC's program, Friends of Bristol Bay, was established to share information and concerns about offshore drilling. The concerns of coastal communities are expressed in the many resolutions that have passed either opposing offshore drilling or supporting

onshore-only development. In general, residents of Bristol Bay are concerned about the risk of oil spills, contaminated byproducts of offshore operations and impact from seismic testing on fish and wildlife. We believe that the value of our vital commercial fisheries, subsistence traditions and unique, abundant marine life of the region is too high to justify the risk inherent in offshore oil and gas operations.

AMCC very much appreciates your Administration's open ears to the concerns of local communities on this issue. We urge the State to follow in the footsteps of every governor since the early 1980s in supporting continued protection for Bristol Bay. We believe the appropriate focus for the State's pursuit of natural gas development in Alaska should remain on production at Prudhoe Bay where vast resources are known and infrastructure exists.

2. *Magnuson-Stevens Act reauthorization*

AMCC's keen interest in the outcome of the Magnuson-Stevens Act reauthorization is twofold: It provides for conservation standards that have served North Pacific fisheries well. Alaska's fisheries are nationally recognized as a model for other regions. The legislation also contains new policies for limiting access to our fisheries that significantly affect coastal communities. It is our view that conservation of the resource and opportunities for our communities are the foundation of sustainability.

The North Pacific Fishery Management Council is establishing individual quota programs limiting access to the federally managed fisheries off Alaska. Individual quota programs offer positive management tools but only if they are done in ways that serve conservation effectively, protect access to our fisheries for community-based fishermen and enable the diverse fleets and businesses that comprise our working waterfronts.

We appreciate the State's commitment to maintaining affordable access to fishery resources for coastal communities and future generations of Alaskan fishing families. AMCC vigorously supports this vision for limited access programs and we urge the State to continue promoting guidelines in the Magnuson-Stevens Act necessary to implement it at the regional level.

3. *Mixing zones*

The current prohibition on mixing zones protects the water quality needed to sustain Alaska's magnificent salmon heritage. The regulation is one of the features of Alaska resource management that raises the quality and value of our salmon above other regions of the nation and the world. It contributes to the value of our healthy wild fish in the increasingly competitive global marketplace and in so doing supports the livelihoods of Alaskan fishermen.

AMCC's concerns about the State's proposal to allow mixing zones in spawning streams reflect those of an Alaskan bi-partisan voice including local governments, the fishing industry, businesses and conservation advocates who have urged the State to maintain current regulations that prohibit mixing zones in spawning streams.

We strongly believe the system is not broken and any changes that might be desirable should be surgical corrections and not a sweeping relaxation of current regulations. We urge the State to recognize the interests and concerns of the overwhelming majority of Alaskans by retaining the prohibition on mixing zones in spawning streams.

4. Offshore fish farming

In 2005, Senator Stevens introduced the federal administration's National Offshore Aquaculture Act to authorize leases and operating permits for fish farms in the EEZ. AMCC has been working collaboratively with many diverse organizations, from commercial fishing and conservation groups to local government officials and the Woods Hole-sponsored national Marine Aquaculture Task Force to address the social and environmental costs of potential offshore fish farming. We believe offshore fish farming presents tremendous environmental risks for which there is very little mitigation experience and allowing it would contribute to market competition against Alaska's successful wild fish products.

We very much appreciate your Administration's commitment to coastal communities by calling for a five-year moratorium on any offshore aquaculture authorization or permitting and requiring more rigorous scientific and socio-economic assessment. We anticipate more opportunity to discuss the legislation and look forward to working with the State and the Legislature to promote a constructive outcome.

5. Climate change

Alaska, as part of the circumpolar Arctic, is on the frontlines of climate change and its mounting impacts. Coastal erosion and flooding, melting glaciers, thawing permafrost, insect outbreaks, and wildfires are all contributing to a rapid transformation of Alaska's natural, cultural, and economic character.

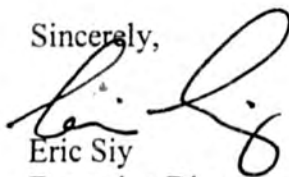
Though there will continue to be debate over the pace of climate change and the amount of change that may be natural in geologic terms, there is consensus among the majority of scientists that the build-up of carbon dioxide in the earth's atmosphere is a human-induced effect. It is essential that systematic research and monitoring proceed to ensure that the Alaska experience can help guide the national and international dialogue on curbing the global warming trajectory.

With a respected system of scientific resource management, close ties to the land and sea, and coastal communities suffering effects firsthand, AMCC believes that Alaska must also be on the frontlines of promoting progressive solutions to climate change.

The stakes of the problem require a deliberate response that has communities working with state and national leaders to raise public awareness and prompt actions that lead to better protection of people and the resources that make Alaska unique. We are eager to work with you and your staff in this vitally important effort.

Governor Murkowski, we look forward to the coming year and opportunities to share our ongoing concerns and ideas with you and your Administration.

Sincerely,



Eric Siy
Executive Director

cc: Alaska State Legislature



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

January 19, 2006

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

Representative Seaton,

The Kenai Peninsula Fishermen's Association is a Cook Inlet Fisheries Association. We have operated as a voice for the industry for over 50 years. Primarily a set-net organization we do represent members who are drift fishermen, crewmembers and other local businessmen.

In regards to the adoption by the Alaska Department of Environmental Conservation of 18 AAC 70, we continue to disagree with the language at this time. We have included our comments dated December 19, 2005 to support our requested changes.

Our Association has reviewed House Bill 328. We support the bill as written although we believe that this step would not have been necessary had the comments and suggestions been taken seriously by the ADEC or the Alaska Department of Natural Resources. We would have preferred as we had requested a period of reconciliation and poignant discussion with affected user groups before the final adoption.

The continuance of the departments to exclude the vital role of ADF&G by using the conjunction "or" is still unacceptable. The DF is the only agency that is constitutional mandated to sustain and to develop the aquatic resources within the state. Restrictions that apply to Special Harvest Areas for review is to limited to protect the public's interest.

We realize that Anandromous Fisheries Catalogue is a very labor intensive "map" of our fisheries resources. We are alarmed at it's incomplete status. The annual review of the map and the

election process is not clear to many. In question is the recent deletions from the catalogue. Does this mean there is no resident or anadromous fish at present yet in the past aquatic life was documented?

In our previous comments we requested a consistency review with ADF&G, Board of Fisheries Sustainable Fisheries Policy regulations. In addition, 18 AAC 70.015 (a)(2)(A) Antidegradation policy, which states... "allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located." leaves the public with questions over precedence.

We highly support the actions of Representatives Paul Seaton, Representative Kurt Olson, Representative Carl Gatto and Representative Gabrielle LeDoux. We urge other legislators to take notice and support their fellow representatives in protecting our states renewable treasures.

Respectfully,

A handwritten signature in dark ink, reading "Paul A. Shadura II" with a stylized flourish at the end.

Paul A. Shadura II
Executive Director



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

December 19, 2005

State of Alaska
Department of Environmental Conservation
Nancy Sonafrank
610 University Avenue
Fairbanks, AK 99709

Ms. Sonafrank,

The Kenai Peninsula Fishermen's Association represents a predominate portion of the 745 commercial salmon set-net permit holders between Kachemak Bay and the Susitna River drainages. Membership also includes area businesses and crewmembers and others within Cook Inlet community.

Our mission, "*Working to Ensure the Future of Our Fishery*". We are participants in many organizations that address resource issues with the Cook Inlet. We are in agreement with the majority opinion that this regulation is flawed as written and oppose implementation at this time.

The agencies and administration should allow more time to develop consensus. Language should be clear, complete and acceptable to the public.

We are extremely concerned that the "*mitigation*" language is vague, misleading and restrictive when it comes to public participation. Restrictions that hinder the professional views and the information valuable to the public from the Alaska Department of Fish and Game (ADF&G) should not be in regulation.

Restrictions to ADF&G and the Commissioner should not be in place. No restrictions of review should be included. Alaska Statutes 16.20 should not be the only authorized review authority. ADF&G should have equal authority (*concurrence*) as the ADNR and ADEC. Public should have a period to comment on ADF&G's findings before the permit process continues. This would not preclude the final public review process for final tri-agency permitting.

Our Association has reviewed the Legislative Affairs Agencies legal review authored by Mr. Bullock and agrees that the terminology is misleading and confusing. The knowledge that the ADEC staff knows what the intent is but that the public does not, is not an improvement to the current knowledge or the strength of an enforceable regulation.

Delete the use of "or" in 18 AAC 70.240(f).

The Departments, Environmental Conservation and the Natural Resources have stated their desire to streamline and strengthen current regulations enforcing Mixing Zones. This would mean reviewing other bodies of statutes and regulations. The lack of consideration for DFG rules need to be addressed.

The adherence to rules promulgated in 5 AAC 39.222 Policy for the management of sustainable fisheries should enforced. Agencies should agree to (c) (3) (G) and (c) (1) (A) – (G).

KPFA agrees that special conditions for existing permits should be given discretionary overview with complete disclosure. We also agree that technologies that would improve the water quality of discharges should be encouraged. The advancement through mutual studies funded by the permittee and with co-operation of State agencies, educational institutes and research organizations is a positive note and should be incorporated within the body of the regulations. A complete comprehensive procedure of testing should be independent of the permittees.

Self monitoring should be limited and only with strict review by State or Federal random and frequent monitoring.

We appreciate the opportunity to comment on these proposed changes. We look forward to advising the agencies and the administration and our State elected official on how we can improve this submitted language.

We respectfully request the state to amend the language, to pause and build consensus to ensure the future of our salmon fisheries from the aspects of quality and quantity.

Thank you,



Paul A. Shadura II, Executive Director

Juneau Douglas Fish and Game Advisory Committee
Kathy Hansen, Chair
9369 North Douglas Hwy
Juneau, AK 99801
907-586-6652

January 13, 2006

House Fish Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

RE: HB #328 - Support

Dear Representative LeDoux, & Representative Thomas, Co-chairs,

The Juneau Douglas Fish and Game Advisory Committee met on January 12, 2006 on Board of Fish proposals. At the end of the meeting the Advisory committee passed a motion in support of HB #328 and SB #225 regarding mixing zones in spawning areas. We sent a resolution to DEC during the comment period on the proposed regulations opposing the changes and have attached that resolution to this letter of support for protecting salmon and fishery resources by prohibiting mixing zones in spawning and rearing areas.

Sincerely,



Kathy Hansen, Chair

CC: Rep. Seaton & Senator Stevens

Resolution of the Juneau-Douglas Fish & Game Advisory Committee

A Resolution Regarding the Alaska Department of Environmental Conservation's Proposed Regulations Relating to Water Quality Standards – Mixing Zones.

WHEREAS, the Alaska Department of Environmental Conservation (ADEC) has proposed new regulations that retain the existing general prohibition on mixing zones in fish spawning areas, but allow for exemptions from the prohibition; and

WHEREAS, a mixing zone area occurs where wastewater discharge mixes with a water body; and

WHEREAS, mixing zones may create pollution levels that fail to meet the goals of the Clean Water Act; and

WHEREAS, mixing zones allow pollution at levels that violate water quality standards designed to protect fish and fish consumers; and

WHEREAS, mixing zones are allowed under state regulations as the exception rather than the rule; and

WHEREAS, the current state water quality regulations, which became effective in November 1997, contain a prohibition on mixing zones in anadromous (migrating) or resident fish spawning areas; and

WHEREAS, there was extensive public comment in 2004 in opposition to a previous draft of ADEC regulations which would have lifted the state's prohibition on mixing zones in spawning streams; and

WHEREAS, this new 2005 proposal on mixing zones is open for public comment until December 19th; and

WHEREAS ADEC has held only one public hearing in Anchorage on December 5 on these controversial proposed mixing zone regulations; and

WHEREAS, Alaska's wild salmon are renowned worldwide for being clean, fresh, and healthy, and Alaska salmon require clean water and healthy habitats to thrive and reproduce; and

WHEREAS, Alaska salmon fisheries support countless families and communities throughout the state and form part of the cultural fabric which makes Alaska unique; and

WHEREAS, wild salmon and other freshwater marine life support numerous jobs and subsistence resources for the residents City and Borough of Juneau; and

WHEREAS, many Alaska salmon marketing efforts hinge on consumer preference for fish raised in pure mountain streams and harvested in pristine waters isolated from human impact; and

WHEREAS, allowing industrial mixing zones in salmon lakes and streams may impair the efforts of commercial, sports and charter fishing business to promote Alaska wild salmon as healthy, wild, and organic; and

WHEREAS, farmed salmon have created significant social and economic dislocation for Alaska's fishing families; and

WHEREAS, the ADEC has not identified any issues that can't be dealt with under the current mixing zone regulations, or which warrant a wholesale shift in this policy; and

WHEREAS, under the 2005 proposed regulations, ADEC may authorize a mixing zone in a spawning area if an applicant merely has an approved mitigation plan; and

WHEREAS, this approved mitigation plan may be as simple as substituting one stream for another; and

WHEREAS, the Juneau Douglas Fish and Game Advisory Committee represents all fishing user groups, conservation perspectives and the general public; and

WHEREAS, the JDAC is concerned that that ADEC's 2005 proposed mixing zone regulations, combined with ADEC's policy statements on this subject, will result in an increase in pollution in spawning streams; and

WHEREAS, the JDAC believes that salmon health, salmon habitat and salmon marketing may suffer under ADEC's 2005 proposal.

NOW THEREFORE, BE IT RESOLVED BY THE JUNEAU DOUGLAS FISH AND GAME ADVISORY COMMITTEE:

Section 1. That the JDAC hereby expresses its opposition to the Alaska Department of Environmental Conservation's proposed 2005 water quality-mixing zone regulations because implementation of the regulations would allow for increased pollution in fish spawning areas;

Section 2. That the JDAC requests that the Alaska Department of Environmental Conservation extend the public comment period until January 31, 2006.

Copies of this resolution shall be provided to Governor Frank Murkowski; Kurt Fredriksson, Commissioner of the Alaska Department of Environmental Conservation; Senator Kim Elton; Representatives Beth Kerttula and Bruce Weyhrauch.

Adopted this 12th day of December 2005

Kathy Hansen Chair
Kathy Hansen, Chair, JDAC

FAX COVER SHEET

Homer Legislative Information Office

345 W. Sterling Hwy, #102A

Homer, AK 99603

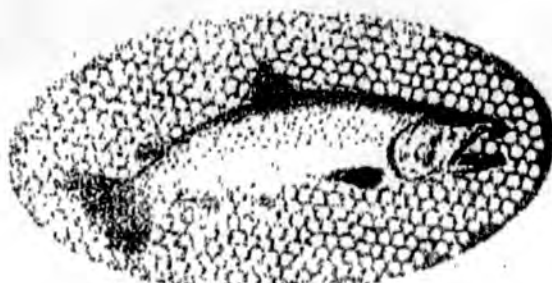
(907) 235-7878 FAX: (907) 235-4008

Date: Jan 20, 2006

No. of pages including this one: 5

To: House Special Cmt on Fisheries
Fax No. 465 -- 4956

Comments: Testimony from George Maty
on Jan 20 to Cmt.



Cook Inlet Alliance

Promoting the Responsible Use
of Public Resources

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 41.14.070. 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.

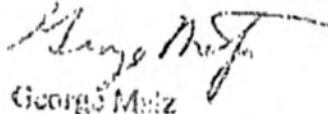
4. DEC's adopted regulations are unnecessarily convoluted. Section (f) says that "a mixing zone will not be authorized in a spawning area for" several species of fish, but then says in (g) that it "may authorize a mixing zone in a spawning area" for these very same species, but certain conditions have 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 Melz

PO Box 15182

Fritz Creek, AK. 99603

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.

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

James Kvasnikoff
P.O. Box 8006
141 Blue Berry St.
Nanwalek, AK 99603-6606

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future. I have been a resident since 1960; and have a continuing interest in wild Alaska. Thank you for your time & effort in this matter.

Kevin Shaffer
34265 Seward Hwy Mi 28
PO Box 123
Moose Pass, AK 99631-0123

Dear Representative Ledoux,

As a longtime subsistence fisher (and sometimes deckhand), I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 this month.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Jay Stange
PO Box 82266
Fairbanks, AK 99708

Dear Representative Ledoux,

I have been amazed with the Governor's proposals concerning mixing zones in Alaska streams and rivers. Alaska has a well deserved reputation for pristine waters and some of the best fish in the world. Why would the state consider risking that? Please do what you can to maintain what we have by supporting HB 328 and SB 225.

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Molly & David Brann & Josh Brann
P.O. Box 1901
Homer, AK 99603-1901

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Durelle Smith
712 W 18th Ave
Anchorage, AK 99503-1890

Dear Representative Ledoux,

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Kerry Shakarjian
PO Box 813

Petersburg, AK 99833

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Rhonda Foster-Staber
Po Box 4105
Soldotna, AK 99669

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Susan Bright
201 N. Flower St.
Anchorage, AK 99508-1343

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Heather Coletti
3111 W 42nd Pl
Anchorage, AK 99517

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Katherine McLaughlin
PO Box 8043
Chenega Bay, AK 99574-8043

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Jan Yaeger
115 Leibrock Circle
Soldotna, AK 99669

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Kathryn Linn
16813 Yellowstone
Eagle River, ak 99577

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. The ignorance of the Murkowskis towards the Environment and it's ecosystems is appalling and this issue is a prime example. People, let's wake up before the fish are gone! ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Jeffrey Gussin
PO Box 298215
Wasilla, AK 99629

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Steven Bergt
2124 McKenzie Drive
Anchorage, AK 99517-1135

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Verner Wilson
P.O. Box 905
Dillingham, AK 99576

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Alan Colter
1102 W. 30th Ave.
Anchorage, AK 99503-3725

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Franklin Gwartney
P.O. Box 90227
Anchorage, AK 99509-0227

Dear Representative Ledoux,

I was very disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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Laura & Joseph Crapanzano
1445 Virginia Ct.
Anchorage, AK 99501

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Peggy Finnegan
2400 W. Marston Dr.
Anchorage, AK 99517-1116

Dear Representative Ledoux,

Please register my strong support for HB 328, which bans pollution-dumping ("mixing-zones") in fish spawning areas.

I hope you will take public testimony on this bill in the near future.

Dan Chay
37306 Cetacea Lane
Kenai, AK 99611

Dear Representative Ledoux,

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

LeAnn Ronsse
230 Pacific View Drive
Anchorage, AK 99515

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Joseph Belcastro
54664 Newell Court
Homer, AK 99603

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Nina Faust
P.O. Box 2994
Homer, AK 99603

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Dennis Adamson
9255 Endicott Street
Anchorage, AK 99502-1300

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Marie McCarty
PO Box 15295
Fritz Creek, AK 99603-6295

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Mark Luttrell
Box 511
Seward, AK 99664-0511

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

margaret coleman
PO BOX 788
Homer, AK 99603

Dear Representative Ledoux,

As someone who dipnets salmon for personal use and who cares about the economic importance of salmon to our state economy I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

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Diana Redwood
1747 Aleutian St
Anchorage , AK 99508

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Derek Nelson
4005 Arkansas Dr.
Anchorage, AK 99517

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Karen McDermott
3934 Harca St
Eagle River, AK 99577-9709

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g bakeman
17138 santa maria
Eagle River, AK 99577-7528

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denise lassaw
65330 Knob Hill Rd
Anchor Point, AK 99556-9115

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Marla McPherson
PO Box 3585
Homer, AK 99603-3585

Dear Representative Ledoux,

I can not believe the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon suport countless families and communities across the state.

I support HB 328, and I hope you will take public testimony on this important bill in the near future.

Karen Miernyk
3507 McKenzie Dr.
Anchorage, AK 99517

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Sandra Stout
2943 Simpson Avenue
Juneau, AK 99801

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Joan Diamond
5700 Rabbit Creek Rd.
Anchorage, AK 99516-4943

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state. And there is a steadily growing market outside for wild, as opposed to farmed, salmon with all that means for those employed in the business as well as the image of our state, which could do with some boosting.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Brian Goodman
6821 East Tudor
Anchorage, AK 99507

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Sandra Christopherson
2400 Ingra St
Anchorage, AK 99508

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Alice Wright
8233 Loganberry St.
99502, AK 99502

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Tim Seaver
421 West 1st Ave
Suite 250
Anchorage, AK 99501-1675

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

P.S. I am pro-development. It is my hope that we can find another way to promote business and development other than polluting our waters.

Clifford Smith
319 Rogers Rd.
Kenai, AK 99611

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Emily Chenel
64900 Berry Pail Drive
Homer, AK 99603

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

varsha mathrani
2224 d street
Anchorage , AK 99503

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Dave Lacey
PO Box 81765
Fairbanks, AK 99708-1765

Dear Representative Ledoux,

The Murkowski Mixing Zone regulations do too little to protect Alaska's waterways and the fish that rely on them. I urge the Fisheries Committee to advance legislation that will ensure the health and cleanliness of our waters and our fish. Thank you.

Justin Massey
106 F Street
Anchorage, AK 99501

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee did not contact Federally Recognized Indian Tribes in Alaska for their comments or concerns, and will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

In addition, there are plants growing in and along these streams, which we use for subsistence food and traditional medicines. Mixing zones in the streams will have a direct and negative impact on human health to people using these resources, especially in rural Alaska.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Brenda Trefon
P.O. Box 1248
Sterling, AK 99672

Dear Representative Ledoux,

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish.

I was disappointed that the House Fisheries Committee will not take public testimony on HB 328 on January 20. This legislation will ban mixing zone pollution where Alaska wild salmon and other fish spawn.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Emily Creely
619 E. Ship Creek #319
Anchorage, AK 99501-1677

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Dora Coen
PO Box 1099
Homer, AK 99603-1099

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Joel Cooper
P.O. Box 3585
Homer, AK 99603-3585

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Robin Lund
4178 Hohe St.
Homer, AK 99603-7007

Dear Representative Ledoux,

I and all of my friends and associates were offended ed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn. This is a "no brainer", toxins and fish don't mix. Period. Why won't this administration listen to its private constituents for a change and quit listening to the highest paying lobbyists. Enough is enough. Please support this important legislation!

The Murkowski Adminstration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are integral to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish and waters. Wholesome Alaska salmon suport countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future. Please listen to the people of Alaska who depend on these waters and fish for sustenance.

Russ Maddox
3385 Nash Rd
Seward, AK 99664

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Chris Whittington-Evans
2305 N. Alsek Circle
Palmer, AK 99645

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

BLAINE STABER
202 Hoyt
ANCHORAGE, AK 99508

Dear Representative Ledoux,

Don't give the Finn's more reason to sell their farm salmon to the world. Don't allow our rivers to be polluted by mining companies interested in profits over a few decades leaving Alaskans and our local government to spend many more decades trying to recover what you gave freely away. Value our wilderness, don't exploit it for short term gain. Don't do it. Just say no to this. Say yes to Wilderness.

One third of all American wilderness is in Alaska. This is our true long term economic value to the rest of the country, and certainly to the way of life which attracted us to the wilds of Alaska in the first place. One hundred years from now what legacy will you leave? I gave away Alaska's pristine waters to the miners? Or I protected our rivers and lakes and fish from pollution? I trust you would be far more proud to announce the latter than the former to your progeny's grandchildren. Be brave, bold, and brilliant in defending the natural gifts of Alaska's waters.

Kathryn Haber & Steve Haber
P.O. Box 2429
Homer, AK 99603-2429

Dear Representative Ledoux,

I am disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Christine Wilcox
10001 Hampcon Circle
Anchorage, AK 99507

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20. As you are well aware of, this important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

I am a fisheries biologist residing in Homer Alaska. I have been a professional fisheries biologist and researcher for over 30 years. In more recent years, I have conducted or been a part of research connected to pollution and contaminants in our salmon and marine species. I was also a board member of the Prince William Sound RCAC for about 5 years representing Homer and also the Cook Inlet RCAC also representing Homer for about a year. There is a large amount of factual data showing significant contaminants and pollutants in our salmon and other marine fish tissues as well as marine water and sediments. If there was ever a time to stop thinking about oceans and rivers as garbage dumps, its right now!

The ignorance, denial and greed connected with inexcusably soft and unprotective regulations from agencies that are supposed to protect both us as citizens and our important marine resources from pollution has gone on far too long. It is now catching up to us rapidly and will take the next several decades to work hard to minize all pollution in order to start cleaning up our rivers, oceans, fish and ultimately ourselves since may of us love to eat fish.

The Murkowski Adminstration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon suport countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Paul McCollum
P.O. Box 2790
Homer, AK 99603-2790

Dear Representative Ledoux,

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This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Maryellen Oman
12951 Summer Circle
Anchorage, AK 995162629

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Carrie Gray Wolfe
Box 7686-J
Palmer, AK 99645

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone contamination in areas where Alaska wild salmon and other fish spawn.

While, Murkowski Administration started to listen to thousands of Alaskans and pulled back some of the mixing zone regulations, I feel that ADEC's recently adopted mixing zone rule is still open to legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Roberta Rinehart
16461 Saint James Circle
Anchorage, AK 99516

Dear Representative Ledoux,

I live in Juneau and I was dismayed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20. It is important that the public be heard on this issue as it is clear this administration is not listening to us.

This is important legislation. What could be more important than protecting Alaska's pristine streams where Alaska wild salmon and other fish spawn?

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Barbara Kelly
PO Box 21873
Juneau, AK 99802

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

It makes absolutely no sense to jeopardize the reputation of Alaska's wild salmon which mixing zones will do.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Susan Olsen
8601 Sultana Drive
Anchorage, AK 99516-2563

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Sheryl Salasky
POB 196
Talkeetna, AK 99676

Dear Representative Ledoux,

My family is extremely disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

Our 10-year old daughter has previously testified against mixing zones. Her children and grandchildren are affected by the actions you take today! Protect their rights to clean water!

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register our strong support for HB 328, and we hope you will take public testimony on this important bill in the near future.

David, Julie & Adi Jo Davis PO Box 114
567 Waddell St.
Homer, AK 99603

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Leslie Slater
P.O. Box 2316
Homer, AK 99603

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Art Kolter
P.O. Box 20414
Juneau, AK 99802-0414

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Michael Parks
PO Box 4332
Homer, AK 99603-4332

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Mark Masteller
P. O. Box 965
Palmer, AK 99645

Dear Representative Ledoux,

I was dismayed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This is a critically important piece of legislation as it will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration for unknown reasons chooses to be short sighted and has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets; and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Jennifer Edwards
POB 2296
Homer, AK 99603-2296

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Lilly Ryterski
42414 Old Sterling Hwy
Anchor Poing, AK 99556

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Douglas Franklin
1600 Birchwood Street
Anchorage, AK 99508

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Rebecca Cook
1034 West 20th Avenue
#4
Anchorage, AK 99503

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Martha Hutchison
4401 O'Malley Rd.
Anchorage, AK 99507

Dear Representative Ledoux,

As I will be at work and unable to testify to the Alaska House Fisheries Committee on HB 328 Friday morning, I am submitting the following written comments, which I hope you will consider. I also hope you will consider accepting public comments on this important legislation in the future.

I fully support Rep. Paul Seaton's HB 328. It's heartening to know that we have a forward-thinking legislator who realizes that pristine waters and healthy fishery resources are the cornerstones of Alaska's sustainable fishing and tourism industries, and that without these renewable resources, our state will have nothing to rely on after our non-renewable resources are gone.

The only way to assure the continuation of Alaska's enviable situation of maintaining strong, healthy fish stocks, is to maintain stringent water quality and habitat protection regulations. Every state that has decided to weaken their water quality regulations (e.g., allowing mixing zones in fish spawning, incubation, and rearing areas) to make it easier for extractive industries to conduct business, have paid the price. Many of these states now have health advisories warning against consumption of their fish. Others face constant litigation against their failures to protect the public's resource and they struggle with funding for expensive mitigation projects that rarely provide full restoration of lost resources. It is inconceivable to me that Alaska is considering following in their footsteps and risking the long-term health of its most valuable renewable resource by weakening the water quality regulations that have done such an outstanding job of protecting fisheries so far.

The Alaska Department of Environmental Conservation's (ADEC) new regulations regarding mixing zones do NOT ensure adequate protection to our state's valuable fishery resources. Instead, the new regulations introduce loopholes that would lead to mixing zones in salmon, trout, and char spawning, incubation, and rearing areas. Unfortunately, the new regulations do NOT require comprehensive baseline studies prior to permitting mixing zones so that effects from the mixing zone can be readily compared to pre-permitted conditions. Nor do the new regulations require unbiased follow-up monitoring of permitted mixing zones to assure compliance with the requirement that they do not "adversely affect the present and future capacity of an area to support spawning, incubation, and rearing of the five species of Pacific salmon". Without these requirements in regulation, and adequate funding for staff to conduct monitoring and enforcement activities, there is no way to assure compliance with the new regulations.

Furthermore, DEC's new regulations do NOT require that professional fishery biologists from the Department of Fish and Game be involved in mixing zone permitting decisions that affect the state's fishery

resources, except in rare cases where special, legislatively designated areas are involved (e.g., State Refuges, Critical Habitat Areas, etc.). Instead, DEC's regs require only that the Department of Natural Resources (who's mission is development, not conservation) be consulted on permitting matters and mitigation plans. They also leave Fish and Game out of monitoring activities and instead leave it up to the permittee (i.e., polluter) to determine whether or not their mixing zone is negatively affecting the future capacity of the area to support spawning, incubation, and rearing.

Rep. Seaton's HB 328 nips these problems in the bud by establishing an outright ban on mixing zones in the spawning areas of Alaska's five Pacific salmon species, as well as other important resident species (e.g., trout, char, burbot, sheefish, etc). While Rep. Seaton's bill provides strong protection for our state's salmon spawning areas, it also provides a sensible solution to the rare situations where salmon colonize and begin spawning in artificially constructed wastewater channels (e.g., Valdez Sewage Treatment Center), thereby solving one of the main reasons DEC cited for drafting new regulations in the first place.

Our elected representatives are supposed to conduct state business in a manner that is in the long-term best interest of all Alaskans. I expect you to do just that, by supporting Rep. Seaton's forward-thinking bill to provide the protection our state's most valuable resource needs to assure it's continued health for generations of Alaskans to come. Please don't be the legislature that future generations of Alaskans will look back on with disdain for opening the door to pollution of our salmon producing waters. Do the right thing, and pass HB 328.

Thank you for this opportunity to comment.

Emilie Otis & Ted Otis
P.O. Box 1402
Homer, AK 99603-1402

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Janine Lehman
PO Box 1163
Dillingham, AK 99576

Dear Representative Ledoux,

Please support Representative Seaton's HB 328. This bill provides needed comprehensive protection to our present thriving fish resource. We are blessed with clean fish in Alaska. A food source of this magnitude must take priority.

I am waiting in sincere hopes that I will be allowed to testify at a House Fisheries Committee meeting soon.

We are a forty-two year old Alaskan corporation that hires over 70 employees in the fish processing business. Our corporation relies on the quality of our water. This main priority of clean pristine Alaskan water and the heavy metal free fish that thrive there is key to our marketing success. Alaska is known for clean fish unknown in most other parts of the world.

In addition to my fifteen years as a fish processor, my twenty-two years of experience as a fish culturist gives me insight into the biology of the life stages of fish in river systems. Each stage has a fragile complexity from the time of

1. fertilization
2. tender egg stage
3. eyed egg stage,
4. hatch
5. alevin
6. fry
7. rearing fry
8. smolt
9. Osmoregulation
10. feeder
11. Spawner

I had planned to testify Friday but will wait for the next meeting when you will take public comments. I feel confident that our legislators will do everything in their power to uphold the needed quality legislation that protects such an important food source as our fish.

Nancy Hillstrand
P.O. Box 170
Homer, AK 99603-0170

To: Representative Gabrielle Ledoux FROM: Nancy H (19074614956)

02:36 01/20/06 EST Pg 2-2

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Mark Luttrell
Box 511
Box 511
Seward, AK 99664

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Larry Casey
12428 Winter Park Circle
Eagle River, AK 99577-7645

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Helena Spector
4780 Mills Drive
Anchorage, AK 99508-4733

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brian smith
p.o. box 4171
p.o. box 4171
palmer, AK 99645

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Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state. The news that Alaska will allow pollution of spawning beds to subsidize mining and other polluting industries will drive away consumers, and discourage sport fishermen from coming to fish our streams

Please register my strong support for HB 328, and I hope you will and take public testimony on this important bill in the near future.

lance trasky
3941 Truro Dr.
Anchorage, ak 99507

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Jeri Byers
5731 College Dr.
Anchorage, AK 99504-3010

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Elizabeth Begert
7847 Jewel Lake Rd #2
Anchorage, AK 99502

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Meredith Domurat
P.O. Box 112749
Anchorage, AK 99511-2749

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Marika Mannerstrom
Lokkikuja 6 e
Helsinki, AK 00200

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Nancy Eyraud
PO Box 887914
Wasilla, AK 99687

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Sara Petty
259 Zappa Pl. #B
Anchorage, AK 99504

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This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn. Considering how many fisheries in the world have collapsed because of lack of care of spawning areas, this is extremely important. We should not be endangering our very important renewable resource - our fish.

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Paula Williams and David George
4841 Kent Street
Anchorage, AK 99503-7032

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Alysha Mathewson
4556 Early Spring St.
Homer, AK 99603-7323