

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

3052 SCOMM 138: HOUSE SPECIAL COMMITTEE ON FISHERIES 2005-2006

**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;

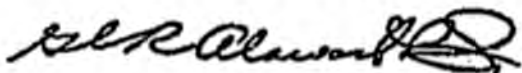
NOW THEREFORE BE IT RESOLVED, the Lake and Peninsula Borough strongly opposes the State's proposal to "take over" the existing EPA water quality Regulations; and,

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

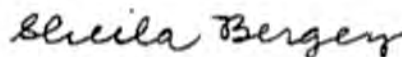
PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 21ST day of September, 2004.

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,

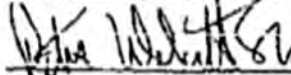
WHEREAS, The Ekwok Village Council is firmly against any regulations permitting any foreign substances, waste, tailings, or dirt and mud to be mixed in pristine habit that has provided life to the tribal members since the beginning of recorded history,

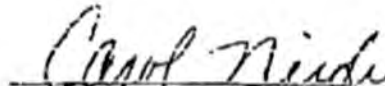
NOW THEREFORE BE IT RESOLVED, that the Ekwok Village Council hereby requests that the Department of Environmental Conservation (DEC), the State of Alaska, and the United States Government, and any other entity to prohibit mixing zones in our rivers and habitat, so that our way of life may not be put 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

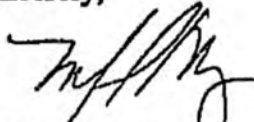
⁵ Personal communications, Tim Robertson and Nancy Sonafrank.

⁶ 18 AAC 70.240(b)(4).

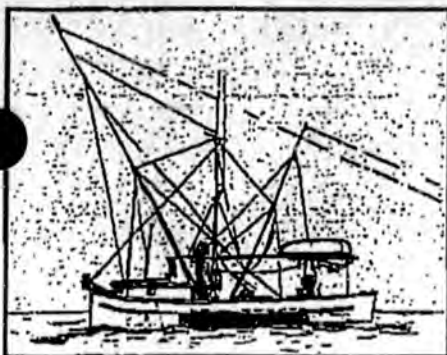
have been allowed to discharge at all. The requirement is vague and grants ADEC broad, unchecked discretion in interpreting what constitutes "consideration of additional measures." We cannot conceive of an acceptable mitigation measure that would fairly compensate our constituents for damages to anadromous 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.

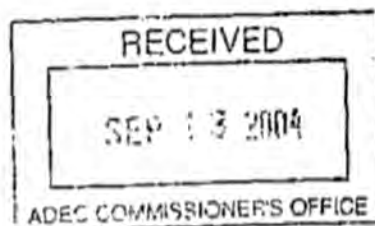
Thanks for considering ATA's point of view.

Best regards,

Dale Kelley

Dale Kelley
Executive Director

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SEAFOOD PRODUCERS COOPERATIVE

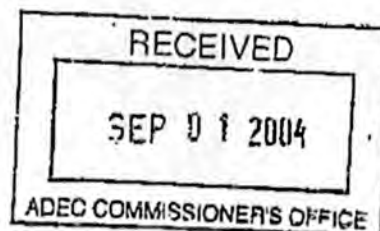
PRODUCERS, PROCESSORS & MARKETERS OF PREMIUM QUALITY SEAFOODS

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

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SEP 07 2004
DEPT. OF ENVIRONMENTAL
CONSERVATION

September 2, 2004

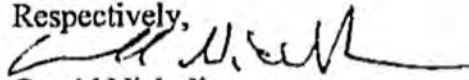
Attn: Nancy Sonafrank, DEC
Division of Water
610 University Drive
Fairbanks, Alaska 99709

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.

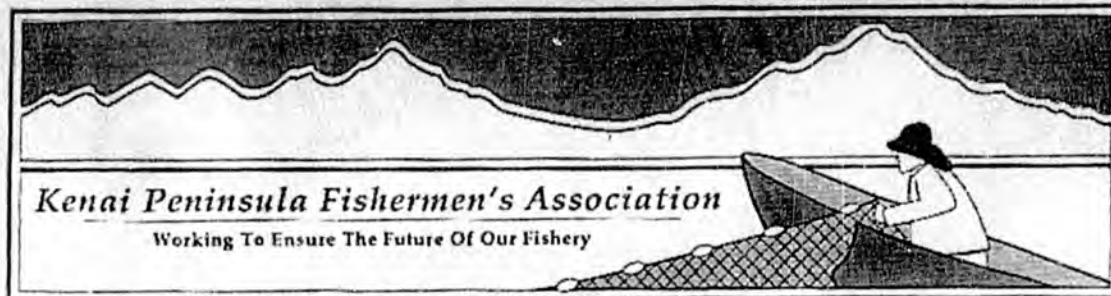
Yours truly,



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.

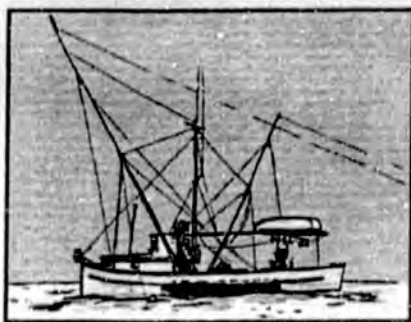
7. Mitigation. New proposed provision 18 AAC 70.240 (b) (4) says the "department will consider...any additional measures that would offset potential adverse effects to the aquatic resources present." This is essentially mitigation, for example, such as a hatchery. This is not really considered a viable 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

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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.*

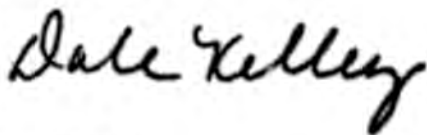
ATA is interested in what other options to deal with real issues. Can the state resolve any known problems in simple, less intrusive or inexpensive ways than mixing zones? For instance, could ADFG review the Valdez situation for potential re-cataloguing? Could rules be drafted that ensure that similar 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."

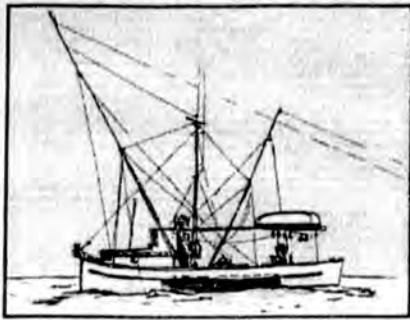
In conclusion, despite the fact that the general prohibition on mixing zones in spawning streams is retained, the DEC's proposed regulations seriously weaken the state's water quality standards and existing regulations, and fail to uphold the state and federal antidegradation policies. There is no compelling 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

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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:

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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.*

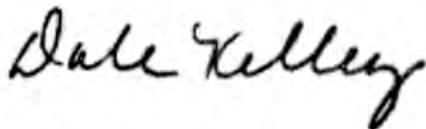
ATA is interested in what other options to deal with real issues. Can the state resolve any known problems in simple, less intrusive or inexpensive ways than mixing zones? For instance, could ADFG review the Valdez situation for potential re-cataloguing the stream in question? Could rules be drafted 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

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:

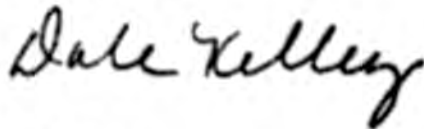
1. Is the language as written strong enough to prevent mixing zones in all spawning and rearing areas, except under the most extreme circumstances?

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,



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**

(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;

CORRECTION

THE FOLLOWING DOCUMENT(S)
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Central Microfilm Services
Department of Education & Early Development
State of Alaska

**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.

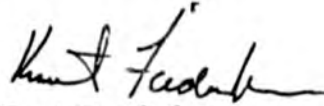
Dear Alaskan

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".

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

<http://www.state.ak.us/dec/water/wqsar/trireview/trireview.htm>

2003-2006 Triennial Review

Lynn Kent, Water Division Director (907) 269-3059

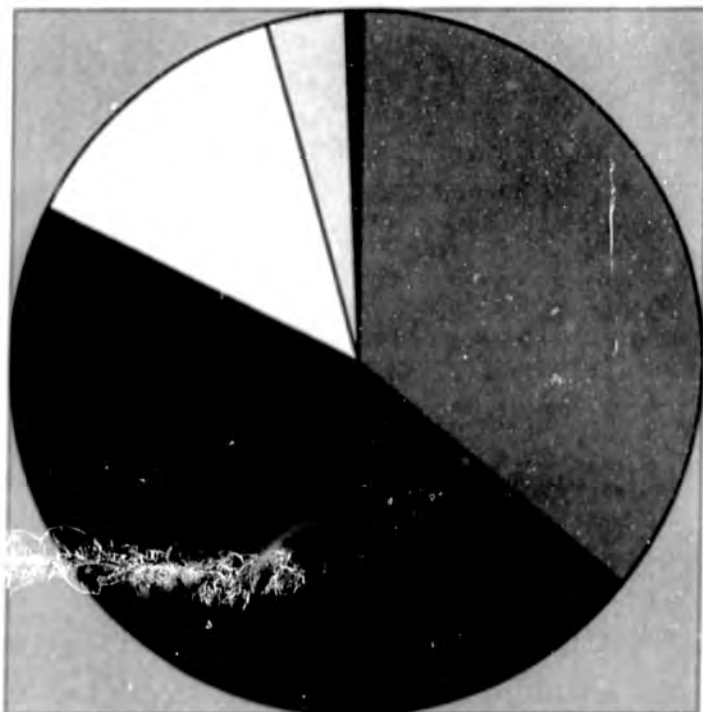
Nancy Sonafrank, Section Manager (907) 451-2726

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
Fax: (907) 334-2415

<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.

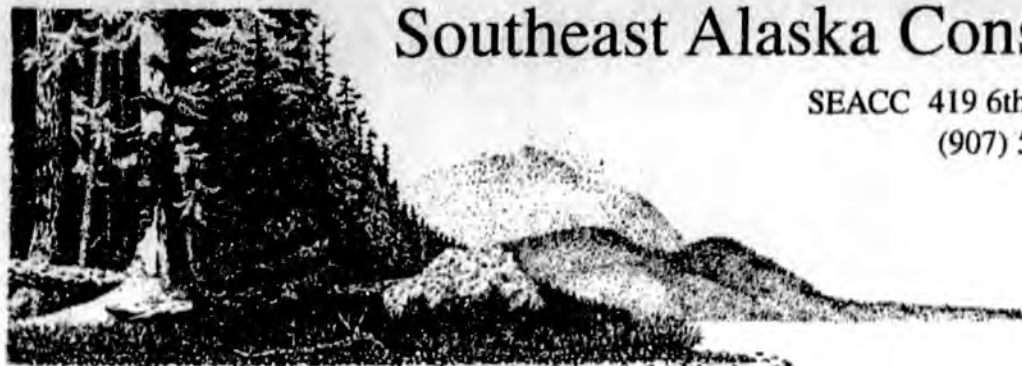
Thank you for your time and consideration.

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

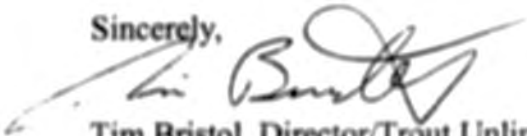
Dear Representative Seaton:

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

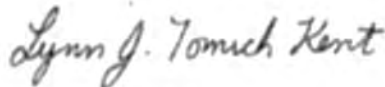
The Honorable Gabrielle LeDoux
Co-Chair, House Fisheries Committee
House of Representatives
Alaska State Capitol, Room 124
Juneau, Alaska 99801-1182

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