

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

3053 SCOMM 128: HOUSE SPECIAL COMMITTEE ON FISHERIES 2005-2006 738

Louie Flora

From: Emilie Otis [emmy@xyz.net]
Sent: Thursday, January 19, 2006 10:06 PM
To: Louie Flora
Subject: Written Comments to HB 328 and SB 225

To whom it may concern:

As I will be at work and unable to testify to the Alaska House Fisheries Committee on HB 328 Friday morning, I am submitting the following written comments, which I hope you will consider. I also hope you will consider accepting public comments on this important legislation in the future.

I fully support Rep. Paul Seaton's HB 328. It's heartening to know that we have a forward-thinking legislator who realizes that pristine waters and healthy fishery resources are the cornerstones of Alaska's sustainable fishing and tourism industries, and that without these renewable resources, our state will have nothing to rely on after our non-renewable resources are gone.

The only way to assure the continuation of Alaska's enviable situation of maintaining strong, healthy fish stocks, is to maintain stringent water quality and habitat protection regulations. Every state that has decided to weaken their water quality regulations (e.g., allowing mixing zones in fish spawning, incubation, and rearing areas) to make it easier for extractive industries to conduct business, have paid the price. Many of these states now have health advisories warning against consumption of their fish. Others face constant litigation against their failures to protect the public's resource and they struggle with funding for expensive mitigation projects that rarely provide full restoration of lost resources. It is inconceivable to me that Alaska is considering following in their footsteps and risking the long-term health of its most valuable renewable resource by weakening the water quality regulations that have done such an outstanding job of protecting fisheries so far.

The Alaska Department of Environmental Conservation's (ADEC) new regulations regarding mixing zones do NOT ensure adequate protection to our state's valuable fishery resources. Instead, the new regulations introduce loopholes that would lead to mixing zones in salmon, trout, and char spawning, incubation, and rearing areas. Unfortunately, the new regulations do NOT require comprehensive baseline studies prior to permitting mixing zones so that effects from the mixing zone can be readily compared to pre-permitted conditions. Nor do the new regulations require unbiased follow-up monitoring of permitted mixing zones to assure compliance with the requirement that they do not "adversely affect the present and future capacity of an area to support spawning, incubation, and rearing of the five species of Pacific salmon". Without these requirements in regulation, and adequate funding for staff to conduct monitoring and enforcement activities, there is no way to assure compliance with the new regulations.

Furthermore, DEC's new regulations do NOT require that professional fishery biologists from the Department of Fish and Game be involved in mixing zone permitting decisions that affect the state's fishery resources, except in rare cases where special, legislatively designated areas are involved (e.g., State Refuges, Critical Habitat Areas, etc.). Instead, DEC's regs require

only that the Department of Natural Resources (who's mission is development, not conservation) be consulted on permitting matters and mitigation plans. They also leave Fish and Game out of monitoring activities and instead leave it up to the permittee (i.e., polluter) to determine whether or not their mixing zone is negatively affecting the future capacity of the area to support spawning, incubation, and rearing.

Rep. Seaton's HB 328 nips these problems in the bud by establishing an outright ban on mixing zones in the spawning areas of Alaska's five Pacific salmon species, as well as other important resident species (e.g., trout, char, burbot, sheefish, etc). While Rep. Seaton's bill provides strong protection for our state's salmon spawning areas, it also provides a sensible solution to the rare situations where salmon colonize and begin spawning in artificially constructed wastewater channels (e.g., Valdez Sewage Treatment Center), thereby solving one of the main reasons DEC cited for drafting new regulations in the first place.

Our elected representatives are supposed to conduct state business in a manner that is in the **long-term** best interest of all Alaskans. I expect you to do just that, by supporting Rep. Seaton's forward-thinking bill to provide the protection our state's most valuable resource needs to assure it's continued health for generations of Alaskans to come. Please don't be the legislature that future generations of Alaskans will look back on with disdain for opening the door to pollution of our salmon producing waters. Do the right thing, and pass HB 328.

Thank you for this opportunity to comment.

Sincerely,

Edward O. Otis
PO Box 1402
Homer, AK 99603

Comparison of Provisions in the old and new Mixing Zone Regulations and in HB 328 Work Draft Version L

Prepared by the office of Rep. Seaton

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	
18 AAC 70.255. Mixing zones: In-zone quality and size specifications (h) For streams, rivers, or other flowing fresh waters subject to (e)(3) of this section, a mixing zone will not be authorized in an area of (1) anadromous fish spawning; or (2) resident fish spawning redds for Arctic grayling, northern pike, rainbow trout, lake trout, brook trout, cutthroat trout, whitefish, sheefish, Arctic char (Dolly Varden), burbot, and landlocked coho, king, and sockeye salmon.	18 AAC 70.240 (e) In lakes, streams, rivers, or other flowing fresh waters, a mixing zone will not be authorized in a spawning area or allowed to adversely affect the present and future capability of an area to support spawning, incubation, or rearing of any of the five species of Pacific salmon.	The department may not authorize a mixing zone for lakes, streams, rivers, or other flowing fresh water in an area of (1) anadromous fish spawning; or (2) resident fish redds for (A) Arctic char; (B) Arctic grayling; (C) brook trout; (D) burbot; (E) cutthroat trout; (F) Dolly Varden; (G) lake trout; (H) landlocked coho, king, and sockeye salmon; (I) northern pike; (J) rainbow trout; (K) sheefish; or (L) whitefish.	The language of HB 328 Version L is taken from the old regulatory language. HB 328 also adds "lakes" to the spawning area mixing zone prohibition. In both the old regulation and HB 328 Version L there is a flat prohibition on mixing zones applying to all anadromous fish spawning areas, and in the egg redds or nests of numerous different freshwater resident species. In contrast, the newly adopted ADEC Mixing Zone regulations contain a prohibition only on mixing zones in the spawning areas of any of the five species of Pacific salmon. Mixing zones may be authorized in a spawning area for resident freshwater and non-salmon anadromous species. Mixing zones may also be authorized in areas that may support spawning, incubation, or rearing of any of the five species of Pacific salmon, as long as the pollutant will not adversely affect the present and future capability of the area to support these activities.

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
SPATIAL AND TEMPORAL SPAWNING AREAS No reference found	SPATIAL AND TEMPORAL SPAWNING AREAS (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.	SPATIAL AND TEMPORAL SPAWNING AREAS (c) In this section (1) "area" means the physical location where spawning occurs	HB 328 Version L specifies that, for the purpose of the bill, a spawning area is strictly a physical location and is not to be interpreted temporally. This does not limit the permitting of activities (aside from discharging into a mixing zone) in spawning areas when it is determined that spawning and incubation is not occurring. The old Mixing Zone regulations do not make reference to spatial and temporal spawning areas. Neither of the two previously proposed mixing zone regulations made reference to spawning areas as spatial and temporal entities. The new ADEC Mixing Zone regulations contain this language, implying that mixing zones will be allowed in stream areas used for spawning during some portion of the year. "A mixing zone could be allowed when spawning salmon, eggs, or larvae are not present, state officials said. For example, a placer miner could "operate for a very small window of time" in some salmon spawning streams in Alaska, said Lynn Kent, director of the Environmental Conservation Department's Division of Water."* *"Mixing Zone Change Fuzzy for Fishermen" Elizabeth Bluemink, Juneau Empire, January 15, 2006

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 328 Work Draft Version L	DIFFERENCES
EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	EXCEPTIONS TO THE SPAWNING AREA PROHIBITION	
No exceptions found	(i) The provisions of (e),(f) and (g) of this section do not apply to the renewal of a mixing zone authorization where spawning was not occurring at the time of the previous authorization, but successful spawning, incubation and rearing has occurred within the mixing zone subsequent to the previous authorization of that mixing zone. (f) In lakes, streams, or other flowing fresh waters, except as provided in (g) of this section, a mixing zone will not be authorized in a spawning area for Arctic Grayling; northern pike; lake trout; brook trout; sheefish; burbot; landlocked coho salmon, king salmon, or sockeye salmon; or anadromous or resident rainbow trout, Arctic char, Dolly Varden, whitefish or cutthroat trout. (g) The Department may authorize a mixing zone in a spawning area of a lake, stream, river or other flowing fresh water for the species listed in subsection (f) if, after consultation with the Department of Natural Resources, Office of	(b) The prohibition in (a) of this section does not apply to the renewal of a municipal wastewater facility's mixing zone authorization during the useful life of the wastewater facility for an area where spawning was not ongoing at the time of the initial authorization and the mixing zone became a spawning area after the date of the initial authorization. (c) (2) "lakes, streams, rivers, or other flowing fresh water" includes lakes, streams, rivers, or other flowing fresh water that have been altered by remediation or construction activities; the term does not include an artificially constructed facility for water, wastewater, holding, or channeling, unless the artificial facility is constructed for the purpose of facilitating fish spawning.	HB 328 Version L allows for mixing zones in man-made ditches and holding ponds by prohibiting reclassification of these areas as freshwater spawning areas if they are subsequently colonized by spawning fish. HB 328 Version L also allows municipal wastewater discharges to be re-authorized for the useful life of a facility if spawning occurs in the mixing zone after initial authorization. The new ADEC Mixing Zone regulations contain a clause that allows any mixing zone in flowing fresh water to be re-permitted if spawning, incubation, or rearing occurs within the active mixing zone. The new ADEC Mixing Zone regulations allow mixing zones in the spawning areas of Arctic Grayling; northern pike; lake trout; brook trout; sheefish; burbot; landlocked coho salmon, king salmon, or sockeye salmon; or anadromous or resident rainbow

	Habitat Management and Permitting, or the Department of Fish and Game if with a legislatively designated special area under AS 16.20, the department finds the applicant has (1) demonstrated that the discharge does not contain pollutants at concentrations that exceed the criteria for growth and propagation of fish, shellfish, and other aquatic life, and wildlife established in 18 AAC 70.020(b) and that the discharge will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities; (2) submitted a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if within a legislatively designated special area under AS 16.20; or (3) submitted a mitigation plan approved by the Department of Natural Resources, Office of Habitat Management and Permitting, and incorporating as part of the discharge authorization, using the methods established in 11 AAC 195.010.		trout, Arctic char, Dolly Varden, whitefish or cutthroat trout if the permit applicant can either prove that the discharge into the mixing zone will not exceed the water quality criteria for growth and propagation of fish, shellfish and other aquatic life and wildlife OR if the permit applicant has submitted an approved mitigation plan. Section (g) (3) of the new ADEC Mixing Zone regulations refers to the submission of a mitigation plan that uses methods established in 11 AAC 195.010, the section of DNR regulation where the Anadromous Stream Catalog is adopted by reference. Mitigation language in the Anadromous Stream Catalog is currently under revision.
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ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

January 19, 2006

Honorable Bill Thomas
Honorable Gabrielle LeDoux
House Fisheries Committee
Capitol Building
Juneau, AK 99801

RE: House Bill 328, Prohibiting Mixing Zones in Freshwater Spawning Waters

Dear Representatives Thomas and LeDoux,

The Alaska Miners Association opposes House Bill 328 which would prohibit the use of mixing zones in freshwater spawning waters. Mixing zones are an important tool for the State to use when managing water discharges, be it from municipalities, fish processing plants, or other industrial activities, including mining.

Since passage of the federal Clean Water Act (in about 1972), water quality standards have been extremely restrictive. This fact was recognized and mixing zones were therefore allowed under state law where the scientific evidence would justify use of mixing zones for defined portions of streams, rivers or lakes. The promise to mining and all potential dischargers has been that, yes the standards are very restrictive, but mixing zones would be available.

Alaska has just promulgated new mixing zone regulations. These regulations contain an absolute prohibition which will not allow mixing zones in salmon spawning areas. These regulations also provide numerous controls to ensure that mixing zones will not adversely impact other fisheries and other spawning areas. Not all mining operations will need to utilize these regulations but for some operations they will be absolutely essential. These regulations provide protection for fisheries and only when the science can support use of a mixing zone will one be allowed.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Paul Seaton



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

January 19, 2006

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

Representative Seaton,

The Kenai Peninsula Fishermen's Association is a Cook Inlet Fisheries Association. We have operated as a voice for the industry for over 50 years. Primarily a set-net organization we do represent members who are drift fishermen, crewmembers and other local businessmen.

In regards to the adoption by the Alaska Department of Environmental Conservation of 18 AAC 70, we continue to disagree with the language at this time. We have included our comments dated December 19, 2005 to support our requested changes.

Our Association has reviewed House Bill 328. We support the bill as written although we believe that this step would not have been necessary had the comments and suggestions been taken seriously by the ADEC or the Alaska Department of Natural Resources. We would have preferred as we had requested a period of reconciliation and poignant discussion with affected user groups before the final adoption.

The continuance of the departments to exclude the vital role of ADF&G by using the conjunction "or" is still unacceptable. The DF is the only agency that is constitutional mandated to sustain and to develop the aquatic resources within the state. Restrictions that apply to Special Harvest Areas for review is to limited to protect the public's interest.

We realize that Anandromous Fisheries Catalogue is a very labor intensive "map" of our fisheries resources. We are alarmed at it's incomplete status. The annual review of the map and the

election process is not clear to many. In question is the recent deletions from the catalogue. Does this mean there is no resident or anadromous fish at present yet in the past aquatic life was documented?

In our previous comments we requested a consistency review with ADF&G, Board of Fisheries Sustainable Fisheries Policy regulations. In addition, 18 AAC 70.015 (a)(2)(A) Antidegradation policy, which states... "allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located." leaves the public with questions over precedence.

We highly support the actions of Representatives Paul Seaton, Representative Kurt Olson, Representative Carl Gatto and Representative Gabrielle LeDoux. We urge other legislators to take notice and support their fellow representatives in protecting our states renewable treasures.

Respectfully,

A handwritten signature in cursive script that reads "Paul A. Shadura II". The signature is written in dark ink and includes a stylized flourish at the end.

Paul A. Shadura II
Executive Director



Alaska State Legislature

Please enter into the record my testimony to the House Special Committee on Fisheries Resou.
Committee name

Committee on HB No 328 Prohibiting mixing zones in Freshwater Spawning waters, dated Jan 27, 2006
Bill/Subject

I strongly support passage of HB No 328 with these additional considerations.

1. include intertidal among the category of waters where mixing zones are not allowed.
2. Similarly upwelling zones also need protection.
3. Protection of the water supply that is the source of Lotic, and Lentic waters ~~as the sources~~ is essential. Resource extraction must not adversely affect state waters.
4. Rearing areas for juvenile resident and anadromous fish must also receive protection from potentially damaging releases of toxic materials into Alaskan waters
5. ADF&G has ^{generally} been excluded from participation in habitat related issues, since the administration reorganized to shift Habitat Division from ADF&G to DNR. Now many of these staff are intimidated by political influences from higher administration officials. Critical ADF&G staff are limited to consult ^{with DEC} on State Refuges and habitat areas. ADF&G staff need involvement on waters statewide in order to properly determine what constitutes spawning and rearing waters. Please include these modifications in BAAC 70, 840 mixing zones.

Signed:

Testifier

Representing (Optional)

Address

Phone number

Concerned citizen

P.O. Box 870298

Wasilla, AK 99687



Madam Chairman, Mister Chairman, Members of the Committee

My name is Richard Hahn; I reside in Soldotna, Alaska, and I testified last week on House Bill 328.

Subsequently, I have reviewed Version L of HB328 and find it improved over the previous version and believe it should be acceptable to the Legislature. Having said that, I have a serious concern and a few comments.

My concern is: If the Legislature is successful in passing HB328 and its companion Senate Bill 225, would there be enough votes to override Governor Murkowski's possible veto? I attribute my concern to McKie Campbell's testimony last week, when he said (paraphrased), "what would happen if these bills were not successful?"

My comments are: 1) Alaskans should be learning lessons from industrial companies contaminating, as I speak, major rivers in China, and who pays the bills to clean them up, if cleanup is even possible? 2) Alaskans should be learning lessons from the Board of Game's action this week of voiding, in a one day meeting, a 30+ page court ruling from a Judge's protracted review, which stopped the aerial killing of wolves because the BOG was knowingly violating its own regulations; ergo, what would prevent the DEC from similarly violating its own promulgated pollution mixing zone regulations? And 3) Alaskans should be learning lessons from the recent tragedies in the West Virginia coal mines where the mining companies simply paid the small fines for safety violations and continued to operate; ergo, I would hope HB328 and SB225 have sufficient penalties to discourage violations of banned pollution mixing zones by unscrupulous developers.

Respectfully Submitted, January 26, 2006

1
GZ**Kimberly Wallace**

From: Rep. Gabrielle LeDoux
Sent: Thursday, January 26, 2006 10:49 AM
To: Kimberly_Wallace@legis.state.ak.us
Subject: FW: L&P Borough Resolution on Mixing Zone Regulation Changes (HB 328)
Attachments: Letter to DEC on Mixing Zones 9-28-04.pdf; Resolution on Mixing Zones 09-21-04.pdf; L&P Borough Resolution 05-22 Opposing Mixing Zone Regulation Changes Dated November 9 2005.pdf

For file and print out everything for her.

Suzanne Hancock, Chief of Staff
Representative Gabrielle LeDoux
State Capitol
District 36
Juneau, AK 99801-1121
phone: (907) 465-2487 (office)
(907) 465-4230 (direct)
fax: (907) 465-4956

From: Marv Smith [mailto:marvsmith.lpboro@starband.net]
Sent: Thursday, January 26, 2006 10:22 AM
To: Sen. Gary Stevens; Sen. Lyman Hoffman; Rep. Carl Moses; Rep. Gabrielle LeDoux
Cc: Mark Hickey
Subject: L&P Borough Resolution on Mixing Zone Regulation Changes (HB 328)

Dear Senator Stevens, Senator Hoffman, Representative Moses and Representative LeDoux:

I write this email in reference to new legislation, IE, HB 328 concerning Mixing Zones. Attached are resolutions that demonstrate the L&P Borough has opposed the State, beginning in 2004 with a letter to DEC and Resolution 04-17 (both attached). Also, please find attached, Resolution 05-22, passed in November of 2005, restating the Borough's position concerning "mixing zones".

As indicated by resolution, the L&P Borough is willing to support in concept, non-industrial mixing zones as may be required for instance, for the proper treatment of municipal sewage requiring an effluent discharge into an anadromous lake or stream.

The Borough is very supportive of economic diversification and welcomes new development that will stimulate our local economy. However, we will not trade the Borough's environmental well being for this new development and growth. Simply put, "It must be done right"!

If you have any questions please feel free to contact me or Marv Smith 907-246-3421

Sincerely,

Jeff Currier, Borough Manager



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602



September 28, 2004

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

Subject: Resolution Opposing the Proposed Changes to Regulation 18 AAC. 70.240 dealing with Mixing Zones

Dear Ms. Sonafrank:

The purpose of this letter is to provide comment and present you with the attached resolution from the Lake and Peninsula Borough Assembly concerning the proposed changes to the Mixing zone regulation 18 AAC. 70.240. The Lake and Peninsula Borough opposes this new regulation change as we contend it will have a long-term affect on the citizens of the Borough and the resources within our boundaries.

These changes have the potential to have a dramatic affect on the lakes and streams within the Borough as well as water quality in the future. There are a large number of unanswered questions that make supporting this regulation very difficult. If the State of Alaska is willing to take on the responsibility for this new regulation and take over control from the Environmental Protection Agency (EPA), where will the State get the funds and personnel to enforce this new regulation? There have been estimates this new program could cost the State of Alaska two million annually to monitor and enforce. It is very difficult to understand how the State would take on this additional expense and at the same time require applicants to pay for application for mixing zone approval, which do not cost local governments anything under the EPA. Most communities within rural Alaska do not have the additional resources for this type expense.

The Borough is very supportive of economic diversification and welcomes new development that will stimulate our local economy. However, we will not trade the Borough's environmental well being for this new development and growth. Simply put, it must be done right.

The Borough is willing to support, in concept, non-industrial mixing zones as may be required for the proper treatment of municipal sewage with an effluent discharge into an anadromous lake or stream. However, we cannot support the new regulation as proposed.

Thank you for the opportunity to comment. If you have any questions please contact me at 907-246-3421.

Sincerely,

Marvin R. Smith
Community Development Coordinator

**LAKE AND PENINSULA BOROUGH
RESOLUTION 04-17**

A RESOLUTION OPPOSING THE STATE OF ALASKA'S PROPOSED TAKE OVER OF WATER QUALITY REGULATIONS FROM EPA WHICH REGULATE WASTE FROM MINES, SEAFOOD PROCESSORS, OIL AND GAS RIGS, LOG DUMPS AND MUNICIPAL SEWER PLANTS, AND, TO THE PROPOSED REVISIONS TO THE ALASKA WATER QUALITY STANDARDS ALLOWING INDUSTRIAL MIXING ZONES IN FRESH WATER STREAMS AND LAKES.

WHEREAS, the State of Alaska, Department of Environmental Conservation in a effort to "streamline the permitting process" is proposing to take over EPA Water Quality Regulations and incorporate several changes to the current Mixing Zone Regulations which govern permit requirements for areas where treated wastewater mixes within a water body; and,

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

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

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

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

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

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

BE IT FURTHER RESOLVED, the Lake and Peninsula Borough is opposed to revisions to the water quality regulations that would provide for Industrial Mixing Zone discharge into fresh waters in the State of Alaska

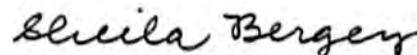
PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 21ST day of September, 2004.

IN WITNESS THERETO:

ATTEST:



Glen Alsworth Sr., Mavor



Sheila Bergev, Borough Clerk

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: HB 328

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Dept of Environmental Conservation

Title Prohibiting mixing zones in freshwater spawning areas

RDU Division of Water

Component Water Quality

Sponsor Seaton, Olson, Gatto, Ledoux, Kerttula, and Gara

Requester House Special Committee on Fisheries

Component No. 2062

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no effect on DEC resources.

Prepared by: Lynn J. Tomich Kent

Division Director

Approved by: Kurt Fredriksson

Agency Department of Environmental Conservation

Phone 907 269-7599

Date/Time 1/18/06 3:15 PM

Date 1/18/2006

HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 9, 2006

FURTHER REFERRALS: Resources

Date of Committee Action: _____

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HB 328

HOUSE BILL NO. 328

BAN MIXING ZONES IN SPAWNING AREAS

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

Recommends it be replaced with ☐ HCS or ☒ CS for HB 328 ()

For Senate Bills with new title: ☐ **Technical Title** ☐ **New Title:** HCR _____ ☐ **Same Title** ☐ **New Title**

☐ attach amendments

☐ add new referral to _____ Committee

[] Letter of Intent Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
Mary Kapsner Heidi Johnson Gabriella H. of Johns	KAPSNER	✓				
	Salman	✓				
	LoDoux	✓				
	ELICINIS				✓	
Chair: Will Bill	THOMAS				✓	
Chair:						



State of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
(907) 283-2030

Date: 1-27-06

Please accept the enclosed original(s) of written testimony for the
House Fisheries teleconference hearing that was
scheduled on 1-27-06.

A copy of this testimony was transmitted to your committee via fax on
1-27-06.

Thank you,

Kathleen Guerson

Madam Chairman, Mister Chairman, Members of the Committee

My name is Richard Hahn; I reside in Soldotna, Alaska, and I testified last week on House Bill 328.

Subsequently, I have reviewed Version L of HB328 and find it improved over the previous version and believe it should be acceptable to the Legislature. Having said that, I have a serious concern and a few comments.

My concern is: If the Legislature is successful in passing HB328 and its companion Senate Bill 225, would there be enough votes to override Governor Murkowski's possible veto? I attribute my concern to McKie Campbell's testimony last week, when he said (paraphrased), "what would happen if these bills were not successful?"

My comments are: 1) Alaskans should be learning lessons from industrial companies contaminating, as I speak, major rivers in China, and who pays the bills to clean them up, if cleanup is even possible? 2) Alaskans should be learning lessons from the Board of Game's action this week of voiding, in a one day meeting, a 30+ page court ruling from a Judge's protracted review, which stopped the aerial killing of wolves because the BOG was knowingly violating its own regulations; ergo, what would prevent the DEC from similarly violating its own promulgated pollution mixing zone regulations? And 3) Alaskans should be learning lessons from the recent tragedies in the West Virginia coal mines where the mining companies simply paid the small fines for safety violations and continued to operate; ergo, I would hope HB328 and SB225 have sufficient penalties to discourage violations of banned pollution mixing zones by unscrupulous developers.

Respectfully Submitted, January 26, 2006



Alaska Marine Conservation Council

Box 101145, Anchorage Alaska 99510
(907) 277-5357 • (fax) 277-5975
amcc@akmarine.org • www.akmarine.org

January 6, 2006

The Honorable Frank Murkowski
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski,

On behalf of the Alaska Marine Conservation Council and our members throughout the state, we wish you a Happy New Year. This letter is to offer our perspective on several issues of concern regarding the long-term sustainability of Alaska's unparalleled natural marine and coastal heritage. We send this in the spirit of working with you to solve problems in ways that meet the needs of marine ecosystems and communities who rely on them for their local economies and ways of life.

Alaska's marine and coastal resources and our ability to sustain them for future generations are immensely important on every scale, from the smallest community to the state, the nation and, indeed, the globe. The issues presented here are a sample of concerns we share with our members and colleagues. We want to work with the State to advance appropriate and innovative solutions in 2006.

1. Offshore oil and gas drilling in Bristol Bay

The marine and coastal ecosystems of Bristol Bay and the Bering Sea are among the richest in the world and support a robust fishery-based economy in western Alaska. The area being considered for offshore oil and gas drilling overlaps with some of the most productive commercial fishing grounds, including cod, pollock and the prized red king crab. The world's greatest salmon runs migrate through the area of concern and other fisheries, such as herring, occur in nearby waters. Bristol Bay is an important juvenile halibut nursery for the Pacific halibut population, one of Alaska's most valuable seafood products. Our communities rely on salmon, halibut, herring, sea mammals and other ocean and coastal resources for subsistence. They are integral to cultural practices that have been ongoing for thousands of years.

AMCC's program, Friends of Bristol Bay, was established to share information and concerns about offshore drilling. The concerns of coastal communities are expressed in the many resolutions that have passed either opposing offshore drilling or supporting

AMCC's concerns about the State's proposal to allow mixing zones in spawning streams reflect those of an Alaskan bi-partisan voice including local governments, the fishing industry, businesses and conservation advocates who have urged the State to maintain current regulations that prohibit mixing zones in spawning streams.

We strongly believe the system is not broken and any changes that might be desirable should be surgical corrections and not a sweeping relaxation of current regulations. We urge the State to recognize the interests and concerns of the overwhelming majority of Alaskans by retaining the prohibition on mixing zones in spawning streams.

4. *Offshore fish farming*

In 2005, Senator Stevens introduced the federal administration's National Offshore Aquaculture Act to authorize leases and operating permits for fish farms in the EEZ. AMCC has been working collaboratively with many diverse organizations, from commercial fishing and conservation groups to local government officials and the Woods Hole-sponsored national Marine Aquaculture Task Force to address the social and environmental costs of potential offshore fish farming. We believe offshore fish farming presents tremendous environmental risks for which there is very little mitigation experience and allowing it would contribute to market competition against Alaska's successful wild fish products.

We very much appreciate your Administration's commitment to coastal communities by calling for a five-year moratorium on any offshore aquaculture authorization or permitting and requiring more rigorous scientific and socio-economic assessment. We anticipate more opportunity to discuss the legislation and look forward to working with the State and the Legislature to promote a constructive outcome.

5. *Climate change*

Alaska, as part of the circumpolar Arctic, is on the frontlines of climate change and its mounting impacts. Coastal erosion and flooding, melting glaciers, thawing permafrost, insect outbreaks, and wildfires are all contributing to a rapid transformation of Alaska's natural, cultural, and economic character.

Though there will continue to be debate over the pace of climate change and the amount of change that may be natural in geologic terms, there is consensus among the majority of scientists that the build-up of carbon dioxide in the earth's atmosphere is a human-induced effect. It is essential that systematic research and monitoring proceed to ensure that the Alaska experience can help guide the national and international dialogue on curbing the global warming trajectory.

With a respected system of scientific resource management, close ties to the land and sea, and coastal communities suffering effects firsthand, AMCC believes that Alaska must also be on the frontlines of promoting progressive solutions to climate change.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska



Alaska Marine Conservation Council

Box 101145, Anchorage Alaska 99510

(907) 277-5357 • (fax) 277-5975

amcc@akmarine.org • www.akmarine.org

January 6, 2006

The Honorable Frank Murkowski
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski,

On behalf of the Alaska Marine Conservation Council and our members throughout the state, we wish you a Happy New Year. This letter is to offer our perspective on several issues of concern regarding the long-term sustainability of Alaska's unparalleled natural marine and coastal heritage. We send this in the spirit of working with you to solve problems in ways that meet the needs of marine ecosystems and communities who rely on them for their local economies and ways of life.

Alaska's marine and coastal resources and our ability to sustain them for future generations are immensely important on every scale, from the smallest community to the state, the nation and, indeed, the globe. The issues presented here are a sample of concerns we share with our members and colleagues. We want to work with the State to advance appropriate and innovative solutions in 2006.

1. Offshore oil and gas drilling in Bristol Bay

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AMCC's program, Friends of Bristol Bay, was established to share information and concerns about offshore drilling. The concerns of coastal communities are expressed in the many resolutions that have passed either opposing offshore drilling or supporting

onshore-only development. In general, residents of Bristol Bay are concerned about the risk of oil spills, contaminated byproducts of offshore operations and impact from seismic testing on fish and wildlife. We believe that the value of our vital commercial fisheries, subsistence traditions and unique, abundant marine life of the region is too high to justify the risk inherent in offshore oil and gas operations.

AMCC very much appreciates your Administration's open ears to the concerns of local communities on this issue. We urge the State to follow in the footsteps of every governor since the early 1980s in supporting continued protection for Bristol Bay. We believe the appropriate focus for the State's pursuit of natural gas development in Alaska should remain on production at Prudhoe Bay where vast resources are known and infrastructure exists.

2. *Magnuson-Stevens Act reauthorization*

AMCC's keen interest in the outcome of the Magnuson-Stevens Act reauthorization is twofold: It provides for conservation standards that have served North Pacific fisheries well. Alaska's fisheries are nationally recognized as a model for other regions. The legislation also contains new policies for limiting access to our fisheries that significantly affect coastal communities. It is our view that conservation of the resource and opportunities for our communities are the foundation of sustainability.

The North Pacific Fishery Management Council is establishing individual quota programs limiting access to the federally managed fisheries off Alaska. Individual quota programs offer positive management tools but only if they are done in ways that serve conservation effectively, protect access to our fisheries for community-based fishermen and enable the diverse fleets and businesses that comprise our working waterfronts.

We appreciate the State's commitment to maintaining affordable access to fishery resources for coastal communities and future generations of Alaskan fishing families. AMCC vigorously supports this vision for limited access programs and we urge the State to continue promoting guidelines in the Magnuson-Stevens Act necessary to implement it at the regional level.

3. *Mixing zones*

The current prohibition on mixing zones protects the water quality needed to sustain Alaska's magnificent salmon heritage. The regulation is one of the features of Alaska resource management that raises the quality and value of our salmon above other regions of the nation and the world. It contributes to the value of our healthy wild fish in the increasingly competitive global marketplace and in so doing supports the livelihoods of Alaskan fishermen.

AMCC's concerns about the State's proposal to allow mixing zones in spawning streams reflect those of an Alaskan bi-partisan voice including local governments, the fishing industry, businesses and conservation advocates who have urged the State to maintain current regulations that prohibit mixing zones in spawning streams.

We strongly believe the system is not broken and any changes that might be desirable should be surgical corrections and not a sweeping relaxation of current regulations. We urge the State to recognize the interests and concerns of the overwhelming majority of Alaskans by retaining the prohibition on mixing zones in spawning streams.

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We very much appreciate your Administration's commitment to coastal communities by calling for a five-year moratorium on any offshore aquaculture authorization or permitting and requiring more rigorous scientific and socio-economic assessment. We anticipate more opportunity to discuss the legislation and look forward to working with the State and the Legislature to promote a constructive outcome.

5. Climate change

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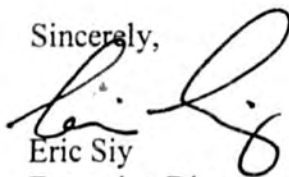
Though there will continue to be debate over the pace of climate change and the amount of change that may be natural in geologic terms, there is consensus among the majority of scientists that the build-up of carbon dioxide in the earth's atmosphere is a human-induced effect. It is essential that systematic research and monitoring proceed to ensure that the Alaska experience can help guide the national and international dialogue on curbing the global warming trajectory.

With a respected system of scientific resource management, close ties to the land and sea, and coastal communities suffering effects firsthand, AMCC believes that Alaska must also be on the frontlines of promoting progressive solutions to climate change.

The stakes of the problem require a deliberate response that has communities working with state and national leaders to raise public awareness and prompt actions that lead to better protection of people and the resources that make Alaska unique. We are eager to work with you and your staff in this vitally important effort.

Governor Murkowski, we look forward to the coming year and opportunities to share our ongoing concerns and ideas with you and your Administration.

Sincerely,



Eric Siy
Executive Director

cc: Alaska State Legislature



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

January 19, 2006

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

Representative Seaton,

The Kenai Peninsula Fishermen's Association is a Cook Inlet Fisheries Association. We have operated as a voice for the industry for over 50 years. Primarily a set-net organization we do represent members who are drift fishermen, crewmembers and other local businessmen.

In regards to the adoption by the Alaska Department of Environmental Conservation of 18 AAC 70, we continue to disagree with the language at this time. We have included our comments dated December 19, 2005 to support our requested changes.

Our Association has reviewed House Bill 328. We support the bill as written although we believe that this step would not have been necessary had the comments and suggestions been taken seriously by the ADEC or the Alaska Department of Natural Resources. We would have preferred as we had requested a period of reconciliation and poignant discussion with affected user groups before the final adoption.

The continuance of the departments to exclude the vital role of ADF&G by using the conjunction "or" is still unacceptable. The DF is the only agency that is constitutional mandated to sustain and to develop the aquatic resources within the state. Restrictions that apply to Special Harvest Areas for review is to limited to protect the public's interest.

We realize that Anandromous Fisheries Catalogue is a very labor intensive "map" of our fisheries resources. We are alarmed at it's incomplete status. The annual review of the map and the

election process is not clear to many. In question is the recent deletions from the catalogue. Does this mean there is no resident or anadromous fish at present yet in the past aquatic life was documented?

In our previous comments we requested a consistency review with ADF&G, Board of Fisheries Sustainable Fisheries Policy regulations. In addition, 18 AAC 70.015 (a)(2)(A) Antidegradation policy, which states... "allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located." leaves the public with questions over precedence.

We highly support the actions of Representatives Paul Seaton, Representative Kurt Olson, Representative Carl Gatto and Representative Gabrielle LeDoux. We urge other legislators to take notice and support their fellow representatives in protecting our states renewable treasures.

Respectfully,

A handwritten signature in cursive script that reads "Paul A. Shadura II". The signature is written in dark ink and includes a small flourish at the end.

Paul A. Shadura II
Executive Director



43961 Kalifornsky Beach Road • Suite F • Soldotna, Alaska 99669
(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

December 19, 2005

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

Ms. Sonafrank,

The Kenai Peninsula Fishermen's Association represents a predominate portion of the 745 commercial salmon set-net permit holders between Kachemak Bay and the Susitna River drainages. Membership also includes area businesses and crewmembers and others within Cook Inlet community.

Our mission, "*Working to Ensure the Future of Our Fishery*". We are participants in many organizations that address resource issues with the Cook Inlet. We are in agreement with the majority opinion that this regulation is flawed as written and oppose implementation at this time.

The agencies and administration should allow more time to develop consensus. Language should be clear, complete and acceptable to the public.

We are extremely concerned that the "*mitigation*" language is vague, misleading and restrictive when it comes to public participation. Restrictions that hinder the professional views and the information valuable to the public from the Alaska Department of Fish and Game (ADF&G) should not be in regulation.

Restrictions to ADF&G and the Commissioner should not be in place. No restrictions of review should be included. Alaska Statutes 16.20 should not be the only authorized review authority. ADF&G should have equal authority (*concurrence*) as the ADNR and ADEC. Public should have a period to comment on ADF&G's findings before the permit process continues. This would not preclude the final public review process for final tri-agency permitting.

Our Association has reviewed the Legislative Affairs Agencies legal review authored by Mr. Bullock and agrees that the terminology is misleading and confusing. The knowledge that the ADEC staff knows what the intent is but that the public does not, is not an improvement to the current knowledge or the strength of an enforceable regulation.

Delete the use of "or" in 18 AAC 70.240(f).

The Departments, Environmental Conservation and the Natural Resources have stated their desire to streamline and strengthen current regulations enforcing Mixing Zones. This would mean reviewing other bodies of statutes and regulations. The lack of consideration for DFG rules need to be addressed.

The adherence to rules promulgated in 5 AAC 39.222 Policy for the management of sustainable fisheries should enforced. Agencies should agree to (c) (3) (G) and (c) (1) (A) – (G).

KPFA agrees that special conditions for existing permits should be given discretionary overview with complete disclosure. We also agree that technologies that would improve the water quality of discharges should be encouraged. The advancement through mutual studies funded by the permittee and with co-operation of State agencies, educational institutes and research organizations is a positive note and should be incorporated within the body of the regulations. A complete comprehensive procedure of testing should be independent of the permittees.

Self monitoring should be limited and only with strict review by State or Federal random and frequent monitoring.

We appreciate the opportunity to comment on these proposed changes. We look forward to advising the agencies and the administration and our State elected official on how we can improve this submitted language.

We respectfully request the state to amend the language, to pause and build consensus to ensure the future of our salmon fisheries from the aspects of quality and quantity.

Thank you,



Paul A. Shadura II, Executive Director

Juneau Douglas Fish and Game Advisory Committee
Kathy Hansen, Chair
9369 North Douglas Hwy
Juneau, AK 99801
907-586-6652

January 13, 2006

House Fish Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

RE: HB #328 - Support

Dear Representative LeDoux, & Representative Thomas, Co-chairs,

The Juneau Douglas Fish and Game Advisory Committee met on January 12, 2006 on Board of Fish proposals. At the end of the meeting the Advisory committee passed a motion in support of HB #328 and SB #225 regarding mixing zones in spawning areas. We sent a resolution to DEC during the comment period on the proposed regulations opposing the changes and have attached that resolution to this letter of support for protecting salmon and fishery resources by prohibiting mixing zones in spawning and rearing areas.

Sincerely,



Kathy Hansen, Chair

CC: Rep. Seaton & Senator Stevens

Resolution of the Juneau-Douglas Fish & Game Advisory Committee

A Resolution Regarding the Alaska Department of Environmental Conservation's Proposed Regulations Relating to Water Quality Standards – Mixing Zones.

WHEREAS, the Alaska Department of Environmental Conservation (ADEC) has proposed new regulations that retain the existing general prohibition on mixing zones in fish spawning areas, but allow for exemptions from the prohibition; and

WHEREAS, a mixing zone area occurs where wastewater discharge mixes with a water body; and

WHEREAS, mixing zones may create pollution levels that fail to meet the goals of the Clean Water Act; and

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

WHEREAS, mixing zones are allowed under state regulations as the exception rather than the rule; and

WHEREAS, the current state water quality regulations, which became effective in November 1997, contain a prohibition on mixing zones in anadromous (migrating) or resident fish spawning areas; and

WHEREAS, there was extensive public comment in 2004 in opposition to a previous draft of ADEC regulations which would have lifted the state's prohibition on mixing zones in spawning streams; and

WHEREAS, this new 2005 proposal on mixing zones is open for public comment until December 19th; and

WHEREAS ADEC has held only one public hearing in Anchorage on December 5 on these controversial proposed mixing zone regulations; and

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

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

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

WHEREAS, many Alaska salmon marketing efforts hinge on consumer preference for fish raised in pure mountain streams and harvested in pristine waters isolated from human impact; and

WHEREAS, allowing industrial mixing zones in salmon lakes and streams may impair the efforts of commercial, sports and charter fishing business to promote Alaska wild salmon as healthy, wild, and organic; and

WHEREAS, farmed salmon have created significant social and economic dislocation for Alaska's fishing families; and

WHEREAS, the ADEC has not identified any issues that can't be dealt with under the current mixing zone regulations, or which warrant a wholesale shift in this policy; and

WHEREAS, under the 2005 proposed regulations, ADEC may authorize a mixing zone in a spawning area if an applicant merely has an approved mitigation plan; and

WHEREAS, this approved mitigation plan may be as simple as substituting one stream for another; and

WHEREAS, the Juneau Douglas Fish and Game Advisory Committee represents all fishing user groups, conservation perspectives and the general public; and

WHEREAS, the JDAC is concerned that that ADEC's 2005 proposed mixing zone regulations, combined with ADEC's policy statements on this subject, will result in an increase in pollution in spawning streams; and

WHEREAS, the JDAC believes that salmon health, salmon habitat and salmon marketing may suffer under ADEC's 2005 proposal.

NOW THEREFORE, BE IT RESOLVED BY THE JUNEAU DOUGLAS FISH AND GAME ADVISORY COMMITTEE:

Section 1. That the JDAC hereby expresses its opposition to the Alaska Department of Environmental Conservation's proposed 2005 water quality-mixing zone regulations because implementation of the regulations would allow for increased pollution in fish spawning areas;

Section 2. That the JDAC requests that the Alaska Department of Environmental Conservation extend the public comment period until January 31, 2006.

Copies of this resolution shall be provided to Governor Frank Murkowski; Kurt Fredriksson, Commissioner of the Alaska Department of Environmental Conservation; Senator Kim Elton; Representatives Beth Kerttula and Bruce Weyhrauch.

Adopted this 12th day of December 2005

Kathy Hansen Chair
Kathy Hansen, Chair, JDAC

FAX COVER SHEET

Homer Legislative Information Office

345 W. Sterling Hwy, #102A

Homer, AK 99603

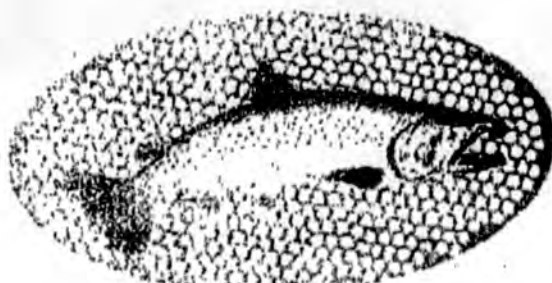
(907) 235-7878 FAX: (907) 235-4008

Date: Jan 20, 2006

No. of pages including this one: 5

To: House Special Cmt on Fisheries
Fax No. 465 -- 4956

Comments: Testimony from George Maty
on Jan 20 to Cmt.



Cook Inlet Alliance

Promoting the Responsible Use
of Public Resources

January 19, 2006

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

Re: HB 328

Dear Representative Seaton:

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

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

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

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

1. Who defines a spawning area? The adopted regulations say that DEC will defer to the Department of Natural Resources "or" the Department of Fish and Game. These two departments have different missions and often different perspectives on resource development/conservation issues, which is the way it should be. Putting "or" in the regulations creates a situation where DEC could arbitrarily decide which to pick, thereby introducing bias into the permit process.

2. Spawning areas need year around protection. These areas are used throughout the year for incubation and rearing as well spawning. Nevertheless, the adopted regulations leave open to question the spatial and temporal definition of a spawning area. Any attempt at narrowly defining a spawning area might benefit a permit applicant, but not water quality or fish.

3. DEC's regulations do not describe what happens when a wastewater discharge permit is requested for a water body that is not in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*. As described on DF&G's web site, "The Catalog and Atlas are important because they specify which streams, rivers and lakes are important to anadromous fish species and therefore afforded protection under AS 41.14.070. Water bodies that are not 'specified' within the Catalog and Atlas are not afforded that protection.... Based upon thorough surveys of a few drainages it is believed that [specified water bodies] represents less than 50% of the streams, rivers and lakes actually used by anadromous species."

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

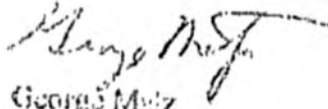
4. DEC's adopted regulations are unnecessarily convoluted. Section (f) says that "a mixing zone will not be authorized in a spawning area for" several species of fish, but then says in (g) that it "may authorize a mixing zone in a spawning area" for these very same species, but certain conditions have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

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

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

We thank you for this opportunity to testify.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Melz".

George Melz

PO Box 15182

Fritz Creek, AK. 99603

Attachments

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

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

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

11 AAC 195.010. Waters important to anadromous fish

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

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

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

James Kvasnikoff
P.O. Box 8006
141 Blue Berry St.
Nanwalek, AK 99603-6606

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future. I have been a resident since 1960; and have a continuing interest in wild Alaska. Thank you for your time & effort in this matter.

Kevin Shaffer
34265 Seward Hwy Mi 28
PO Box 123
Moose Pass, AK 99631-0123

Dear Representative Ledoux,

As a longtime subsistence fisher (and sometimes deckhand), I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 this month.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Jay Stange
PO Box 82266
Fairbanks, AK 99708

Dear Representative Ledoux,

I have been amazed with the Governor's proposals concerning mixing zones in Alaska streams and rivers. Alaska has a well deserved reputation for pristine waters and some of the best fish in the world. Why would the state consider risking that? Please do what you can to maintain what we have by supporting HB 328 and SB 225.

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Molly & David Brann & Josh Brann
P.O. Box 1901
Homer, AK 99603-1901

Dear Representative Ledoux,

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Durelle Smith
712 W 18th Ave
Anchorage, AK 99503-1890

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Kerry Shakarjian
PO Box 813

Petersburg, AK 99833

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Rhonda Foster-Staber
Po Box 4105
Soldotna, AK 99669

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Susan Bright
201 N. Flower St.
Anchorage, AK 99508-1343

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Heather Coletti
3111 W 42nd Pl
Anchorage, AK 99517

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Katherine McLaughlin
PO Box 8043
Chenega Bay, AK 99574-8043

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Jan Yaeger
115 Leibrock Circle
Soldotna, AK 99669

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Kathryn Linn
16813 Yellowstone
Eagle River, ak 99577

Dear Representative Ledoux,

I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

This important legislation will ban mixing zone pollution in areas where Alaska wild salmon and other fish spawn.

The Murkowski Administration has ignored the calls of thousands of Alaskans to protect our fish streams. The ignorance of the Murkowskis towards the Environment and it's ecosystems is appalling and this issue is a prime example. People, let's wake up before the fish are gone! ADEC's recently adopted mixing zone rule is riddled with legal loopholes that will allow pollution dumping in areas used by salmon and other fish to spawn.

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Jeffrey Gussin
PO Box 298215
Wasilla, AK 99629

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Steven Bergt
2124 McKenzie Drive
Anchorage, AK 99517-1135

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Verner Wilson
P.O. Box 905
Dillingham, AK 99576

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Alan Colter
1102 W. 30th Ave.
Anchorage, AK 99503-3725

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

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Franklin Gwartney
P.O. Box 90227
Anchorage, AK 99509-0227

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Laura & Joseph Crapanzano
1445 Virginia Ct.
Anchorage, AK 99501

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Peggy Finnegan
2400 W. Marston Dr.
Anchorage, AK 99517-1116

Dear Representative Ledoux,

Please register my strong support for HB 328, which bans pollution-dumping ("mixing-zones") in fish spawning areas.

I hope you will take public testimony on this bill in the near future.

Dan Chay
37306 Cetacea Lane
Kenai, AK 99611

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LeAnn Ronsse
230 Pacific View Drive
Anchorage, AK 99515

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Joseph Belcastro
54664 Newell Court
Homer, AK 99603

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Nina Faust
P.O. Box 2994
Homer, AK 99603

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Dennis Adamson
9255 Endicott Street
Anchorage, AK 99502-1300

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Marie McCarty
PO Box 15295
Fritz Creek, AK 99603-6295

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Mark Luttrell
Box 511
Seward, AK 99664-0511

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margaret coleman
PO BOX 788
Homer, AK 99603

Dear Representative Ledoux,

As someone who dipnets salmon for personal use and who cares about the economic importance of salmon to our state economy I was disappointed to learn the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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Diana Redwood
1747 Aleutian St
Anchorage , AK 99508

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Derek Nelson
4005 Arkansas Dr.
Anchorage, AK 99517

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Karen McDermott
3934 Harca St
Eagle River, AK 99577-9709

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g bakeman
17138 santa maria
Eagle River, AK 99577-7528

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denise lassaw
65330 Knob Hill Rd
Anchor Point, AK 99556-9115

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Marla McPherson
PO Box 3585
Homer, AK 99603-3585

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I can not believe the House Fisheries Committee will not be taking public testimony on HB 328 on January 20.

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I support HB 328, and I hope you will take public testimony on this important bill in the near future.

Karen Miernyk
3507 McKenzie Dr.
Anchorage, AK 99517

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Sandra Stout
2943 Simpson Avenue
Juneau, AK 99801

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Joan Diamond
5700 Rabbit Creek Rd.
Anchorage, AK 99516-4943

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Clean and healthy Alaska salmon are important to combat farmed salmon on world markets, and sport, commercial and subsistence fishermen depend on fresh, healthy fish. Wholesome Alaska salmon support countless families and communities across the state. And there is a steadily growing market outside for wild, as opposed to farmed, salmon with all that means for those employed in the business as well as the image of our state, which could do with some boosting.

Please register my strong support for HB 328, and I hope you will take public testimony on this important bill in the near future.

Brian Goodman
6821 East Tudor
Anchorage, AK 99507

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Sandra Christopherson
2400 Ingra St
Anchorage, AK 99508

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Alice Wright
8233 Loganberry St.
99502, AK 99502

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Tim Seaver
421 West 1st Ave
Suite 250
Anchorage, AK 99501-1675