

SCOMM

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25-LS0337M

Bullock

2/6/07

CS FOR HOUSE BILL NO. 74(FSH)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FIFTH LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES****Offered:****Referred:****Sponsor(s): REPRESENTATIVES SEATON, GARA AND LEDOUX****A BILL****FOR AN ACT ENTITLED**

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

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

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

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

- 8 (1) anadromous fish spawn; or
9 (2) resident fish redds are located for
10 (A) Arctic char;
11 (B) Arctic grayling;
12 (C) brook trout;
13 (D) burbot;
14 (E) cutthroat trout;
15 (F) Dolly Varden;

(G) lake trout;

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

(I) northern pike;

(J) rainbow trout;

(K) sheefish; or

(L) whitefish.

(b) The prohibition in (a) of this section does not apply to the renewal of a municipal or village 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) The prohibition in (a) of this section does not apply to a turbidity mixing zone for a suction dredge placer mine or a mechanical placer mine if

(1) the turbidity level of the mixing zone has been authorized by the Department of Environmental Conservation;

(2) the mixing zone extends not more than 500 feet downstream of the point of discharge;

(3) the mixing zone is at least 500 feet away from the closest mixing zone in the same body of water; and

(4) the Department of Environmental Conservation with the concurrence of the Department of Natural Resources, or, in an area designated under AS 16.20, with the concurrence of the Department of Fish and Game,

(A) restricts the discharge to periods when spawning is not occurring; and

(B) finds that the mixing zone will not adversely affect the present and future capability of the area for spawning, incubation, or rearing of fish included in (a) of this section.

(d) In this section,

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

(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

1 construction activities; the term does not include an artificially constructed facility for
2 water, wastewater, holding, or channeling, unless the artificial facility is constructed
3 for the purpose of facilitating fish spawning;

4 (3) "mixing zone" means an area in a water body surrounding or
5 downstream of a discharge where the effluent plume is diluted by the receiving water,
6 within which water quality standards specified by the department under AS 46.03.050
7 - 46.03.120 may be exceeded;

8 (4) "village" has the meaning given in AS 46.07.080.

9 * Sec. 2. The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. AS 46.03.065, enacted in sec. 1 of this Act, does not apply to a
12 suction dredge placer mine or a mechanical placer mine with a permit in effect on the
13 effective date of this Act until the operator applies for a reauthorization of that permit.

HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SEATON, GARA, AND LEDOUX

Introduced: 1/16/07

Referred: House Special Committee on Fisheries, Resources

A BILL

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7 (1) anadromous fish spawning; or

8 (2) resident fish redds for

9 (A) Arctic char;

10 (B) Arctic grayling;

11 (C) brook trout;

12 (D) burbot;

13 (E) cutthroat trout;

14 (F) Dolly Varden;

15 (G) lake trout;

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

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(c) The prohibition in (a) of this section does not apply to a mixing zone for a suction dredge placer mine or a mechanical placer mine if

(1) the turbidity level of the mixing zone has been authorized by the Department of Environmental Conservation;

(2) the mixing zone extends not more than 500 feet downstream of the point of discharge;

(3) the mixing zone is at least 500 feet away from the closest mixing zone in the same body of water; and

(4) the Department of Environmental Conservation with the concurrence of the Department of Natural Resources, or, in an area designated under AS 16.20, with the concurrence of the Department of Fish and Game,

(A) restricts the discharge to periods when spawning is not occurring; and

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(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

1 water, wastewater, holding, or channeling, unless the artificial facility is constructed
2 for the purpose of facilitating fish spawning;

3 (3) "mixing zone" means an area in a water body surrounding or
4 downstream of a discharge where the effluent plume is diluted by the receiving water,
5 within which water quality standards specified by the department under AS 46.03.050
6 - 46.03.120 may be exceeded;

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11 suction dredge placer mine or a mechanical placer mine with a permit in effect on the
12 effective date of this Act until the operator applies for a reauthorization of that permit.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE PAUL SEATON DISTRICT 35

Sponsor Statement HB 74

Alaska has a reputation for pure water and vibrant wild fish stocks. HB 74 seeks to maintain the long-standing prohibition on pollution mixing zones in Alaska's freshwater spawning areas. HB 74 transfers into statute a regulation that has governed wastewater discharges for many successful years of industrial and municipal expansion in Alaska.

HB 74 aids municipalities and industry by preventing man-made ditches or holding ponds that are invaded by spawning fish from being reclassified as freshwater spawning areas. This language solves the "Valdez Situation" cited by the Alaska Department of Environmental Conservation (ADEC) as a primary rationale for the regulation change. In that case, the city created a ditch from its wastewater treatment facility to saltwater, and the ditch was subsequently invaded by spawning pink salmon. This ditch was then classified as a spawning area requiring the wastewater discharge parameters to be reduced to a purity that the city's wastewater treatment plant would not be able to feasibly meet. HB 74 also allows other municipal wastewater facilities to have a mixing zone re-authorized if successful spawning occurs in the mixing zone after initial authorization, solving the concerns of many municipalities across the state.

HB 74 designates a spawning area to be a physical place in a river where fish spawning occurs. According to testimony from ADEC staff and the Commissioner of the Department of Fish and Game, the standard practice among regulators has been to determine where and when spawning occurs, and to employ seasonal restrictions on development activities in order to control impacts to the environment. However, in relation to the authorization of mixing zones in freshwater, there has never been explicit statutory or regulatory authorization for this practice. There was no reference to this practice in either of the previous Mixing Zone proposals.

In the summer of 2004 and again in 2005 ADEC released proposals to lift the prohibition on pollution mixing zones in freshwater spawning areas. These proposals were met with intense opposition from coastal municipalities, commercial and sport fishing industry groups, the federal government, state fish and game advisory committees, and hundreds of individuals, families, and businesses who testified that allowing pollution in freshwater spawning areas would have a detrimental effect on the physical environment where the largest freshwater spawning populations on earth occur. Additionally, commercial fishing groups were unified in the concern that their recent successes in salmon marketing would be undermined if this important water quality safeguard was abolished.

In 2006, ADEC adopted a version of the proposed regulations that both consolidate and modify the mixing zone regulations found at 18 AAC 70.240 through 18 AAC 70.020. The new regulations specifically exclude resident freshwater sport fish and resident subsistence fish spawning areas from the prohibition on mixing zones. Additionally, the new regulations allow any pollution mixing zone to be permitted year-round in freshwater salmon spawning areas if spawning salmon were not found in the area when the mixing zone was

authorized, but were later found successfully spawning in the mixing zone. The new regulations also change the regulatory definition of a "spawning area" to mean a point in time. This allows regulators to authorize mixing zones in all spawning areas when it is determined that salmon spawning will not be occurring. All of these changes present significant departures from established public policy.

HB 74 does not negate other substantive changes ADEC has made in their attempt to streamline and consolidate the mixing zone regulations. HB 74 does not change regulations that allow for site-specific exemptions from state water quality standards and the granting of short term variances from the standards, both of which can be applied to allow activities such as placer mining. Placer mines may also have a mixing zone in an area determined to not be an area where spawning occurs.

HB 74 protects municipalities and industry while maintaining the high standard of water quality and fisheries protection that has been a centerpiece of Alaska policy for years.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

HB 74

() Publish Date:

Revision Date/Time (Note if correction):

Dept. Affected: Dept of Environmental Conservation

Title Prohibiting mixing zones in freshwater spawning
waters

RDU Division of Water
Component Water Quality

Sponsor Seaton

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 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Materials						
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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact associated with this legislation.

Prepared by: Lynn J. Tomich Kent

Division Director

Phone 907 269-7599

Date/Time 2/2/07 9:30 AM

Approved by: Mike Maher - Acting Commissioner

Agency Department of Environmental Conservation

Date 2/2/2007

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.

Water Quality Standards

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

2003-2006 Triennial Review

Lynn Kent, Water Division Director (907) 269-6281

Nancy Sonafrank, Program Manager (907) 451-2726



Mixing Zone Requirements in Regulation (as of March 23, 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, technologically and economically feasible, and 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 an acute or chronic 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 surrounding the outfall

**Department of Environmental Conservation
CSHB 74(FSH) Testimony
House Special Committee on Fisheries
February 12, 2007**

The Department of Environmental Conservation appreciates the opportunity to provide its position and comments on the CS for HB 74(FSH).

The Department is opposed to CSHB 74(FSH) for the following reasons:

- 1. CSHB 74(FSH) 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 74(FSH) would put in statute the same protections for the five species of anadromous salmon that have been part of DEC's regulations since 1995.

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 current mixing zone prohibition designed to protect the salmon marketing effort to protect "non-salmon" fish species.**

CSHB 74(FSH) would prevent DEC from authorizing a mixing zone in a non-salmon fish spawning area 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, under their mitigation requirements, just as they do for other activities that occur in waterbodies.

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 74(FSH) 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 anadromous 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 74(FSH) would prohibit reauthorization of mixing zones that have become a fish spawning area unless the discharge was from a municipal wastewater facility, or the waterbody is an artificially constructed 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 at least partial 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 or artificially constructed 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 74(FSH) 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 dozens of 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. DEC's regulations also prohibit mixing zones that would adversely affect the capability of the area to support future spawning, incubation, and rearing activities. CSHB 74(FSH) would require the Department to cancel those permits (other than for placer mines) and limit future permitting in similar situations without any net environmental benefit to the fish.

6. **CSHB 74(FSH) will create a temporary inequity between existing placer miners and new placer miners.**

Placer mines with mixing zone authorizations under the current general permit do not have to comply with the proposed CSHB 74(FSH) restrictions of AS 46.03.065(c) until the general permit is reauthorized – currently scheduled for the fall of 2010. Any new placer mines seeking permit coverage would have to comply with the new restrictions of CSHB 74(FSH) immediately. This would set up a double-standard for existing vs. new placer mines during the next few mining seasons.

- 7. CSHB 74(FSH) would prohibit re-authorization of mixing zones for placer mines that cannot operate with a mixing zone limited to 500 feet.**

There are approximately 28 placer mines that have an authorized mixing zone greater than 500 feet in length – the proposed limitation in CSHB 74(FSH). These facilities, under current regulatory requirements, have already done everything they can do to ensure the mixing zone is as small as practicable. It is likely that many of these facilities could not be re-permitted under the proposed 500 foot mixing zone limitation, even though they are currently operating without an adverse impact to spawning.

- 8. CSHB 74(FSH) 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.” Introduction of the concept of a “useful life” raises questions about what constitutes a modification or upgrade to a facility vs. reconstruction at the end of 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.

- 9. CSHB 74(FSH) 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 74(FSH) prohibits all mixing zones in all anadromous fish and other specifically listed fish spawning areas. However, CSHB 74(FSH) 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 74(FSH) conflicts with current legislative policy not specifically amended or repealed by CSHB 74(FSH).

- 10. CSHB 74(FSH) will impact Alaska’s municipalities and villages.**

CSHB 74(FSH) provides for renewal of existing mixing zones for municipal or village treated sewage discharges when spawning begins to occur in the mixing zone after one is authorized. In all other cases, though, the bill prohibits mixing zones for discharges of treated municipal sewage to anadromous and other fish spawning areas. Some fish species, Arctic grayling for example, are ubiquitous and spawn throughout Alaska's river systems. CSHB 74(FSH) would preclude the use of mixing zones to authorize the discharge of treated sewage from a large number of village sewage treatment lagoons that discharge to interior river systems where Arctic grayling spawn. The alternative of treating sewage from villages to a level where no mixing zone would be required would involve exorbitant costs and is simply not feasible.

11. Mixing zones are already strictly regulated under existing regulations.

Before authorizing any mixing zone in any waters (fresh or marine, with or without spawning area considerations), the Department must consider 19 specific regulatory provisions. Many of them are designed specifically to protect aquatic life. For example, the Department must find that the designated and existing uses of the waterbody as a whole, including growth and propagation of aquatic life, will be maintained and protected, and that overall biological integrity of the waterbody will not be impaired. In addition, a mixing zone *cannot* be authorized if it will result in an acute or chronic toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone; 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; form a barrier to migratory species or fish passage; contain pollutants that bioaccumulate, bioconcentrate, or persist above natural levels in sediments, water, or biota; or cause lethality to passing organisms.

In summary, mixing zones are not a blanket approval to discharge pollutants into water. Their size and shape are calculated by engineers using mathematical models and site specific information including the concentration of pollutants, water volumes and flow rates.

Once authorized, many permits require the permittee to monitor the concentration of pollutants in the discharge and to monitor the waterbody at the edge of the mixing zone to ensure that all water quality standards are being met at the edge of the mixing zone. DEC also conducts independent inspections and independent monitoring of permittees.



Fact Sheet

NPDES Permit Number: AKG-37-5000

Date: January 16, 2007

Contact: Cindi Godsey

Alaska Operations Office/Anchorage

(907) 271-6561 or (800) 781-0983 (in Alaska only)

godsey.cindi@epa.gov

The U.S. Environmental Protection Agency (EPA) Plans To Issue A General Wastewater Discharge Permit To:

Alaskan Small Suction Dredge Miners

and

NOTICE OF STATE CERTIFICATION,

and

DETERMINATION OF CONSISTENCY
WITH THE

ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)

EPA Proposes NPDES Permit Issuance.

EPA proposes to reissue a National Pollutant Discharge Elimination System (NPDES) General Permit to Alaskan Small Suction Dredge Miners for gold placer mining operations in Alaska. The proposed permit sets conditions on the discharge - or release - of pollutants from the operation into waters of the United States.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures
- a description of the industry
- a description of proposed permit conditions.

The State of Alaska certification.

EPA has requested that the Alaska Department of Environmental Conservation (ADEC) certify the NPDES permit under section 401 of the Clean Water Act (CWA). A draft certification under § 401 of the Clean Water Act is included as Appendix B.



Fact Sheet

NPDES Permit Number: AKG-37-1000

Date: April 21, 2005

Contact: Cindi Godsey

Alaska Operations Office/Anchorage

(907) 271-6561 or (800) 781-0983 (in Alaska only)

godsey.cindi@epa.gov

The U.S. Environmental Protection Agency (EPA) Plans To Issue A General Wastewater Discharge Permit To:

Alaskan Suction Dredge Miners

and

NOTICE OF STATE CERTIFICATION,

and

provide information on the
ALASKA COASTAL MANAGEMENT PROGRAM

EPA Proposes NPDES Permit Issuance.

EPA proposes to re-issue a National Pollutant Discharge Elimination System (NPDES) General Permit to Alaskan Suction Dredge Miners for gold placer mining operations in Alaska. The draft permit sets conditions on the discharge - or release - of pollutants from operations into waters of the United States. EPA's goal is to have this permit become effective as the 2000 GP expires. If this occurs then EPA is proposing to automatically cover anyone who submitted a timely NOI for reapplication under the 2000 GP. If the GP does not go into effect in October, EPA would make a determination at the time of re-issuance whether a new NOI would be necessary for coverage.

This Fact Sheet includes:

- * information on public comment, public hearing, and appeal procedures
- * a description of the industry
- * a description of proposed effluent limitations, monitoring requirements, and other conditions

The general permit for mechanical operations authorizes discharges from facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore, open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season, and mechanical dredge gold placer mines except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters. The medium-size suction dredge permit authorizes discharges from suction dredges with intake nozzles less than or equal to 8 inches and greater than 4 inches, provided that hose size is not be greater than 2 inches larger than the nozzle size. Placer mining by suction dredges with intake nozzles equal to 10 inches for which Notices of Intent were approved by August 13, 1996 are also covered. The small suction dredge permit authorizes discharges from suction dredges with intake nozzles less than or equal to 4 inches, provided that hose size is not be greater than 2 inches larger than the nozzle size. None of the permits authorize discharges from facilities for which Notices of Intent (NOIs) were approved after August 13, 1996, which are proposed to be located in National Park System Units (i.e., Parks and Preserves), National Monuments, Sanctuaries, Wildlife Refuges, Conservation Areas, Wilderness Areas, Critical Habitat Areas, or waters within the boundaries of areas designated as wild under the Wild & Scenic Rivers Act.



Southwest Alaska Municipal Conference

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Alaska
Peninsula
Aleutian Chair
Bristol Bay
Kodiak Island
Pribilof
Islands

February 12, 2007

Representative Paul Seaton, Chairman
HOUSE FISHERIES COMMITTEE
Alaska State House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801

Re: Supporting HB 74

Dear House Fisheries Committee members,

The Southwest Alaska Municipal Conference (SWAMC) supports the intent of HB 74 to ban mixing zones in spawning areas. The SWAMC membership passed a resolution supporting the prohibition of mixing zones in spawning waters at our 2006 Annual Membership Meeting, and we would like to reiterate our position on this issue for the Fisheries Committee.

SWAMC opposes any purported water quality standards revisions that would allow mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occur. As a fisheries-dependent region, we believe the current ADEC regulations are technically deficient, contrary to the state's constitutional mandate for sustained yield fisheries management, and unmindful of the inherent market risks for Alaska seafood.

SWAMC appreciates your efforts to protect our pristine waters and wild seafood habitat from potentially contaminating sources. After investing immense amounts of time and money in the revitalization of the state's seafood industry, Alaska's fisheries stakeholders- sport and commercial fishermen, subsistence users, and coastal communities- cannot afford another environmental setback.

Sincerely,
Southwest Alaska Municipal Conference

Andy Varner
Acting Executive Director

pc: Southwest Legislative Delegation
Commissioner Larry Hartig

Resolution 06 - 05**A resolution of the Southwest Alaska Municipal Conference
in support of Prohibition of Mixing Zones in Spawning Waters.**

- WHEREAS,** allowing mixing zones in rivers, lakes and streams where the migration, spawning and rearing of anadromous fish occurs is inconsistent with the state's constitutional mandate for sustained yield fisheries management; and
- WHEREAS,** Alaska's subsistence fisheries and world renowned seafood industry may be threatened by pollutants and poor water quality standards caused by mixing zones; and
- WHEREAS,** Alaska's fishing industry and fish stocks have continuously met certified international and environmental standards, thus enhancing the marketability of the product; and
- WHEREAS,** a great deal of time, money, and effort has been invested in revitalizing Alaska's seafood industry; and
- WHEREAS,** compromising the quality of Alaska's fishing industry would jeopardize the livelihoods of many Alaskans, put the futures of many Southwest coastal communities at risk, and wreak economic havoc for the entire State,

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Southwest Alaska Municipal Conference support the Legislation Prohibiting Mixing Zones in Freshwater Spawning Areas; and

Section 1. Requests a thorough assessment of the current monitoring, auditing, and regulating policies of mixed zone permits to assure the highest quality standards of anadromous waters; and

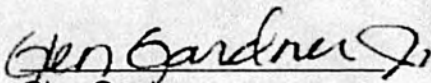
Section 2. Applauds the Legislature's decision to protest the Department of Environmental Conservation's proposal to allow for pollution mixing zones in spawning areas; and

Section 3. Encourages Southwest fishermen, communities, businesses, and organizations to support the prohibition of mixing zones in freshwater spawning areas, except for community wastewater systems that should be reviewed on a case by case basis; and

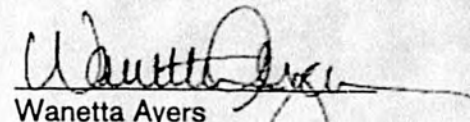
- m o r e -

PASSED AND ADOPTED by a duly constituted quorum of the members of
Southwest Alaska Municipal Conference this Third day of February
2006.

Signed:


Glen Gardner
President

Attest:


Wanetta Ayers
Executive Director

Review by Board: February 1, 2006

Referral(s): Fisheries Committee
Infrastructure Committee

Report from Fisheries Committee: Do Pass as amended

Report from Infrastructure Committee: Do Pass as amended

Membership Meeting:

Motion to Adopt: Linda Freed

Second: Mayor Chris Napoli

Motion Passed

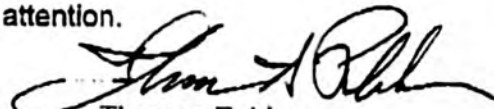
Ratified by Board: February 4, 2006

House Bill 41 Testimony - February 12, 2007

My name is Thomas Pebler. I am a concerned citizen and I offer my support to House Bill 41.

1. It is necessary and appropriate that the "Habitat Division" be returned to its proper place within the Alaska Department of Fish and Game. As we all know, the Board of Fisheries has given its unanimous support to this intention.
2. The Departments of Natural Resources and Fish and Game have previously performed separate roles for the sake of balancing the resource needs of Alaska. It is critically important that these separate roles maintain an equal status of integrity.
3. The consequences of Governor Murkowski's Executive Order 107 would only be realized after many years of cumulative effect. Evaluating a 3 ¾ year track record for permitting projects that are so typically long-term is an inadequate measure of confidence.
4. Governor Palin has stated that it is important to conduct stakeholder outreach in order to assure the public that departments are working cooperatively and effectively to manage Alaska's habitat resources and consistent with public interest. Having understood Governor Palin and knowing that the public's desire is to restore the Habitat Division to its proper place, we must do so by means of legislative action as necessary. The public could then be assured that the departments are correct without the effort of stakeholder outreach.
5. It is understandable that there is apprehension at the expense and effort of, again, moving this office. It is not convenient that we should have to fix the mistake of a previous administration however, long-term benefits would appreciate as resources could be accurately managed.
6. May the Governor and Officers and Employees of the State of Alaska be respectfully reminded that the foundations of our state and of our country have not been achieved by convenient means and this is our revered patriotic tradition.

Thank you very much for your attention.



Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515



Yukon River Inter-Tribal Watershed Council

815 2nd Ave., Suite 201
Fairbanks, Alaska 99701
(907) 451-2530
(907) 451-2534 fax

Mr. Michael Gearheard, Director
Office of Water and Watersheds
U.S. EPA Region 10
1200 6th Ave., OWW-130
Seattle, WA, 98101

Re: Proposed Changes and Revisions to Alaska's Mixing Zone Rule, 18AAC70.240

Dear Mr. Gearheard,

The following comments are submitted to you on behalf of the Yukon River Inter-Tribal Watershed Council. As Alaska Natives, and as citizens of the State of Alaska, we are deeply concerned by the recently adopted Mixing Zone rule changes (February 21, 2006,) the State's continued failure to adopt a legitimate Antidegradation Policy (ADP,) and the lack of meaningful consultation with Alaska Tribes on all relevant water quality matters.

The newly adopted Mixing Zone rule provides unreasonable discretionary power to the State's Department of Environmental Conservation (ADEC) to disregard significant impacts to public waters and ignore its own rules for water quality, while introducing significant ambiguity into the wastewater discharge permit process. Article 1 of Alaska's water quality standards (WQS) entitled *Statewide Standards*, describes the level of protections to be provided from wastewater contamination. Article 2 is entitled *Exceptions to Statewide Standards*: one would assume the implementation procedures listed under *Exceptions* to be rarely applied during the permitting process. In fact the opposite is true. The State has historically provided Mixing Zones (and Zones of Deposit) in virtually every circumstance where a discharger could not meet the WQS. This most recent adoption of Mixing Zone rules and the continued use of a legally flawed ADP further increase the latitude offered by your agency to the Department to circumvent its own regulatory standards.

The following points will serve to illustrate the concerns described above:

1. The new Mixing Zone rule states at §18AAC70.240(g)(1)(A) that the department may authorize a Mixing Zone in a spawning area of a lake, stream, river or other flowing fresh water if the discharge does not contain pollutants at levels that exceed the standards at §18AAC70.020(b)(1)-(12).

It is unclear what ADEC intends by this provision, since a discharge that doesn't exceed standards shouldn't need a Mixing Zone. Similarly, the next subsection (g)(1)(B) prohibits Mixing Zones if spawning and rearing would be adversely affected, yet by definition, if a discharge meets the standards, it would be presumed to not adversely impact the use of the water for fish growth and propagation.

This section of the new rule also ignores the fact that contaminants often have impacts on many interrelated components of the ecosystem. In some cases, for example when sediments are contaminated, impacts can be long lasting and harm fish in subsequent seasons regardless of whether the discharge took place precisely at the moment of spawning. By not describing how ADEC will determine the level of contamination presumed to lead to future harm, the rule is open to arbitrary application. Regardless of the department's intent, it does not have the expertise or necessary information to adequately evaluate contamination for long term impacts, and therefore cannot assure the health of the ecosystem or the protection of existing uses such as fish propagation.

2. Clearly the department's intent in this rule adoption is to allow Mixing Zones in waters used for spawning. Since the WQS will be exceeded in these Mixing Zones (setting aside for the moment the previous discussion) it must be assumed that some percentage of local fisheries resources will be harmed.

The rule does not limit the number of Mixing Zones that can be authorized in any given location. ADEC therefore has the latitude to authorize multiple Mixing Zones in multiple waters in a given area, simply upon application by a polluter who typically desires an exemption from the WQS to serve their own economic self-interest. The State's Mixing Zone allocations rarely if ever consider the economic or cultural impacts on anyone but the polluter requesting the exemption.

To offset this impact §18AAC70.240(g)(3)-(4) will require the Department of Natural Resources (ADNR) to approve a mitigation plan. However, a mitigation plan under ADNR rules will not guarantee the existence of a healthy, abundant, wild fishery on which a local community may depend.

3. The provisions attempting to demonstrate protection for salmon species are further compromised by §18AAC70.024(i). This section removes the protections for salmon if the original discharge authorization did not occur *during a spawning event*. The negative effect of this loophole will be compounded by the fact that thousands of potential fish bearing streams have never been identified or catalogued by the ADNR or the Department of Fish and Game (ADFG.)

Overall, the rule places too much responsibility and authority with the ADNR regarding determinations of existing uses and habitat protection. ADNR's mission is not to *protect* fishery resources, but to *manage* their development. As noted above, many fish-bearing streams have never been surveyed by the department, yet ADNR will be the sole source of data when a determination is made regarding the presence of fish, anadromous or otherwise. It is a serious omission that consultation with Alaska Natives will not be considered evidence for the purpose of identifying fish-bearing waters when applying this rule.

4. The new Mixing Zone rule specifically weakens protections for subsistence harvesters from contaminants that impact human health. Subsistence harvesters, primarily Alaska Natives, consume much higher quantities of potentially contaminated food. The federal guideline with respect to eating contaminated fish recommends consumption of one 6-ounce serving per week. Subsistence harvesters not only eat hundreds of times more pounds of fish per year than the "average American", we consume portions of the fish that often harbor higher percentages of contaminants than a typical fillet. This danger will be exaggerated further due to the regular consumption of non-fish aquatic life and other wildlife that may have fed on contaminated fish or aquatic plants.

The new rule specifically states that the human health risk will be determined by an evaluation consistent with 18AAC70.025, i.e., the chance of contracting cancer from an exposure. This is a significant weakening of human health protections from the previous Mixing Zone rule, since many contaminants causing mutations and other non-cancer diseases will not be counted as presenting a risk. The previous rule specifically noted the importance of considering all exposure pathways, including consumption patterns when considering Mixing Zone authorizations, and did not limit the risk evaluation to the potential for developing cancer. Even so, Alaska Natives already suffer with some of the highest cancer rates of any people in the world; increasing the level of contamination in our food supply, cancer-causing or otherwise, is unacceptable.

5. The State's ADP (18AAC70.015) is required by federal regulation (40CFR131.12) to be "consistent" with the federal ADP in terms of protecting existing uses and the adoption of implementation policies. It fails on both counts. The federal ADP does not allow for ADP exemptions through the discretionary application of Mixing Zones. Furthermore, the State has never adopted ADP implementation policies, and does not undertake a legitimate ADP review before allowing a lowering of water quality in a Mixing Zone. The State has no formal process for evaluating different treatment methods, economic and social impacts, the full protection of existing uses, etc., as required by federal and State regulation. Despite numerous references to this deficiency in previous Triennial Review submissions, EPA Region 10 has ignored the issue. We are aware that the agency has pursued and corrected the same problem in other locations around the country. Without a legal ADP, the State's submission of this new Mixing Zone rule should be rejected without further review, as required by 40CFR131.6.

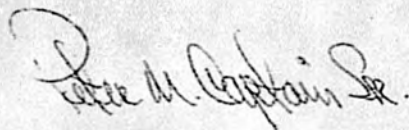
In conclusion, it is clear the new Mixing Zone rule is a significant step backward for Alaska, and that the State continues to lack the policies necessary to responsibly administer its WQS program. The new Mixing Zone rule is confusing and ambiguous, relies heavily on non-existent departmental expertise and data, and significantly weakens the protections for the public from the application of this "routine exception" to the WQS. The new Mixing Zone rule inadequately addresses issues of implementation, compounds the deficiencies in Alaska's ADP, and specifically denies the legitimate role for Alaska Natives in managing the resources on which our lives and culture depend. Frankly, it raises serious concerns regarding the State's interest and ability to assume authority of the Clean Water Act's National Pollution Discharge Elimination System program for permitting wastewater discharges throughout the State.

We urge you to reject this rule and order the required remedies to the State's WQS regulations. The State's rules are inconsistent with the goals and objectives of the Clean Water Act and your agency's mandate to regulate the implementation of the Act.

Allowing a broader application of Mixing Zones in Alaska and allowing the State to continue to ignore federally required ADP protections does not support the goals of restoring and maintaining the quality of the nation's waters, let alone the Act's long term goal of eliminating the discharge of pollutants into all public waters.

With regards to the Mixing Zone rule, the State has failed in numerous ways to adequately protect Alaska's fisheries resources, and by extension, all who depend upon them for their cultural, economic, physical, and spiritual survival.

Ana Basee':

A handwritten signature in dark ink, appearing to read "Peter M. Captain Sr." with a stylized flourish at the end.

Chief Peter M. Captain Sr. / Chairman of the YRITWC

From: Lou Brown and Jon Miller [mailto:loubrown@gci.net]
Sent: Friday, February 09, 2007 9:57 AM
To: Rep. Paul Seaton
Subject: Senate Bill 74

We are writing to support the passage of Senate Bill 74 to prohibit mixing zones in anadromous fish spawning waters.

As an Alaskans of 20 years we depend on subsistence- and sport-caught fish for much of our annual protein needs: we dipnet in the Copper River for red salmon, smoke and can silver salmon in Prince William Sound, trade locally for smoked Tanana and Yukon silver and king salmon, and during summer travels consume a variety of fresh and marine fish from South East to the North Slope. The ability to experience and rely on this bountiful resource is, indeed, one of the most priceless and cherished aspects of living in Alaska.

We were dismayed by DEC's intention to relax pollution regulations by permitting mixing zones in anadromous fish supporting waters under Governor Murkowski, and would add our voices to those calling for a speedy end to this policy. We urge you to adhere to the highest possible standards of protection when it comes to protecting Alaska's fish, wildlife, and habitat.

This month's publicity that every marine fish species tested in Alaska contains significant mercury levels, and some--such as halibut--are sufficiently contaminated to warrant warnings and restricting personal consumption, causes us concern for our own and other Alaskans' health, as well as for the public perception that Alaska is no longer a pristine environment and that Alaskan's do not take environmental protection seriously.

Again, we urge you to take steps to ensure the health and safety of Alaska's wild fish stocks. Please work for the passage of SB 74 to prohibit mixing zones in anadromous fish supporting waters.

Sincerely,

Jon Miller and Lou Brown
2630 Home Run
Fairbanks, AK 99709

Lance Trasky
3941 Truro Drive
Anchorage, Alaska 99507
907 344-4220

February 10, 2007

Representative Les Gara
House Fisheries Committee
State Capital, Room 102
Juneau, Alaska 99801-1182

Subject: Support for HB41

Dear Representative Seaton and Committee Members:

My name is Lance Trasky and I am a fisheries biologist, a small business owner, and for 31 years was a fisheries research biologist, habitat biologist and Regional Supervisor for the Habitat Division of the Alaska Department of Fish and Game (ADF&G). I am testifying today to voice my strong support for House Bill 41 which would reverse former Governor Murkowski's Executive Order 107 and return the responsibility to protect salmon streams and prevent blockages of fish streams to the Department of Fish and Game where it rightfully belongs.

Such an action will accomplish two things. First, it will help to restore public confidence in the states' regulatory system which was badly eroded during the Murkowski administration. Secondly, it will place the authority to protect our socially, economically, and culturally valuable fisheries resources back in the hands of Department of Fish and Game fisheries biologists with a statutory mandate and the expertise to protect, preserve, maintain and where possible extend the fish and wildlife resources in the interest of the economy and well being of the state, as the founding fathers of this state intended.

Alaska's founders witnessed decades of fisheries and fisheries habitat mismanagement when other interests trumped conservation. The founders also witnessed the final demise of the once great salmon fisheries of the Pacific Northwest in the 1950's and predicted that the loss of habitat as a result would be the biggest long-term threat facing Alaska's fisheries as well as the subsistence, commercial and sport fishers who depend upon them. As the framework of state government was taking shape, a heated debate ensued between Alaskan fishermen and those involved in mining, logging, and hydropower development regarding how state government would be organized in addition to deciding what functions various agencies would have. Miners and loggers wanted a traditional system with a Department of Natural Resources and a simple fish and game management division having no authority in critical habitat decisions. Fish interests wanted a separate Department of Fish and Game. They also wanted this department to have an equal voice in state resource management decisions, a constitutional mandate for sustained yield, and the statutory authority to prevent the destruction of anadromous fish habitat on public and

private lands, as well as to prevent blockage of fish passage from dams and other obstructions. Fisheries interest won out and for 43 years this was the law of the land.

Unfortunately in 2003, Governor Murkowski was able to do what our founding fathers feared most. By transferring the Anadromous Fish Act and the Fish Ways Act to the Alaska Department of Natural Resources (ADNR) and implementing a Memorandum of Agreement granting ADNR oversight of the Federal Fish and Wildlife Coordination Act, and radically changing the Alaska Coastal Management Program; Governor Murkowski was able to funnel all of the authority to approve development projects into the ADNR. He also appointed managers who shared his views to implement his vision. He set Alaska on the same dead-end road that the former salmon producing western states followed.

The transfer of these statutory authorities and programs has directly affected the consideration that fish habitat and subsistence, commercial, and sport fishermen receive in state resource development and permitting decisions in several ways:

1. ADF&G and ADNR have very different missions. ADF&G has the statutory mandate to protect and maintain fish resources, while ADNR has the mandate to develop the states' renewable and non-renewable resources. Removing the responsibility to protect fish habitat from ADF&G makes it much easier for ADNR to inappropriately sacrifice fish habitat to facilitate non-renewable resource development.
2. The balance that state founders sought in resource development decisions has been lost. Some people have tried to make the argument that ADNR employees would protect fish as diligently as they did at ADF&G. These people must not have heard of corporate culture. The transfer of staff and authorities is akin to moving the Mercedes design team to Hyundai and then expecting that they will still be building Mercedes.
3. Over my career I was involved with many different development projects where the Department of Fish and Game and ADNR had very different positions on ADNR projects and activities affecting fish, wildlife and public use. Examples include:
 - One example was the issue of requiring logging operations on state and private lands to follow the law and submit plans for stream crossing structures to ADF&G for review for adequacy before construction. Loggers and ADNR did not want ADF&G's Habitat Division to require loggers to obtain permits from ADF&G to build roads across fish streams. ADF&G asserted its authority under the Anadromous Fish Act and Fish Ways Acts and continued to require loggers to get permits.
 - A second example is mixing zones in spawning areas. The Alaska Department of Environmental Conservation (ADEC) proposed to change their regulation's to allow mixing zones for harmful substances in fish spawning areas during both the Hickel and Knowles Administrations. Habitat Division led the ADF&G's opposition to the change and it was withdrawn both times. After the Habitat and Restoration (H&R) Division was transferred to ADNR

ADEC change to allow mixing zones in fish spawning areas was supported by ADNR, and no one in ADF&G fought it.

- A third example was the attempt by an ADNR Commissioner and the Division of Forestry in the 1990's to transfer management of all of the state-owned forest land in the Matanuska Valley to a Finnish timber company under a 50-year Forest Management Agreement developed by the ADNR Commissioner's ex-husband. After reviewing the ADNR proposal, Habitat Division found the agreement to be inconsistent with the Alaska Coastal Management Program and with ADF&G statutes because it would not protect fish habitat or public access to this heavily used public recreation area. There was a heated internal debate between ADF&G and ADNR over the agreement until the public became aware of the terms of the agreement and the public outcry ended ADNR's attempts to sign the agreement.
4. One question which comes up often is how has permitting changed now that it is administered by ADNR? Because there is no public notice requirement for the thousands of ADNR fish habitat permits issued annually, the only people who know if these permits effectively protect fish habitat are the ADNR person issuing the permit and the applicant. The same is true for violations of these permits. I do not have access to these permits but asked this question of a number of state, federal, and private biologists who have experience in ADF&G fish habitat permitting and are knowledgeable about fish habitat permitting before and after the transfer of ADF&G's permit authority to ADNR. I won't disclose their names or positions because of concerns about retaliation. However, here is what I was told about the differences:

A. Comments from Federal Biologists:

1. I review federal projects affecting fish and wildlife and do not see ADF&G or ADNR-Office of Habitat Management and Permitting (OHMP) as a player in projects any more. Often no one from ADF&G or OHMP even attends project meetings.
2. My agency has no relationship with ADF&G or ADNR-OHMP any more. Staff at one OHMP office does not even return calls.
3. The policy at OHMP seems to be to narrowly interpret their responsibilities to permitting within the banks of anadromous streams and stream blockages. Overshadowing issues such as activities which may impact a watershed seem to be ignored. There is little interest in wildlife issues.
4. The few former ADF&G H&R staff that remains at OHMP seems to be trying to do a good job. The new hires that attend project meetings rarely open their mouths. Most of them do not seem to know much about the issues that they are dealing with.
5. Consultants have asked me why ADF&G and OHMP no longer asks any tough questions related to environmental documents for the road, oil and gas, and mining projects they are working on.

6. Some of the best biologists have left OHMP when they had an opportunity to return to ADF&G or retire.

B. Comments from State Biologists:

1. OHMP staff has lost the close working relationship with ADF&G staff and the information that they provided on projects. There is no priority in OHMP to solicit ADF&G input on projects, particularly projects that that ADF&G may not like.
2. Regional OHMP staff does not receive any support on enforcement actions.
3. The permits that the OHMP leadership wants us to write do not contain project specific conditions and are largely unenforceable. The emphasis is on reducing review time and increasing permit numbers, not a high level of fish habitat protection.
4. For a fisheries or wildlife biologist, working at ADNR is a dead end. For career advancement they will need to go elsewhere.
5. A number of experienced habitat biologists left ADNR when the opportunity arose. They were replaced with people with little or no experience.
6. ADNR-OHMP biologists are discouraged from participating in multi-agency working groups which are working on means to avoid impacts on fish and wildlife and from attending project meetings. Biologists don't do coastal reviews, or review subdivision plats that the Borough sends over even though the development would affect a salmon stream.
7. Biologists are told to act as facilitators for applicants, not regulators protecting the public's interest in fish or wildlife habitat.
8. Biologists are told not to put stipulations such as timing windows on permits, and to accept damage from projects which would cause sedimentation and/or water pollution that only lasts a few days or weeks.
9. OHMP ignored a violation on Wasilla Creek where a developer worked in an anadromous stream without a permit.
10. The close coordination and exchange of information that existed between the fisheries, wildlife, and subsistence divisions and the project reviewers in the Habitat and Restoration Division when they worked in the same building for the same Department is largely gone.
11. ADF&G does not have the staff or the expertise to review the fish and wildlife impacts of large mines. ADNR is now by law the states expert on fish habitat protection and restoration. ADNR won't fund ADF&G to hire staff with expertise that ADNR has, or review decisions that ADNR makes.
12. All ADF&G has now is management biologists who have information on harvest and escapement. This information has little value in determining if projects such as a large mine should be permitted.

13. ADF&G isn't a real player in the large mines process. These are very complex project's which requires very technical analyses that can't be done by a fisheries management biologist.

In summary I believe that the changes that former Governor Murkowski made during his administration substantially reduced the protection that fish habitat receives both at the policy level and the issuance of permits for individual projects. It also increases the risk that large projects will be approved. Projects that will have very significant short and long-term impacts on fish and wildlife resources as well as commercial, subsistence and sport fishermen who depend on these resources. I urge you to restore the balance in state resource decisions and pass HB 41. Thank you.

Sincerely,

Lance Trasky

Louie Flora

From: Mary Jane Shows
nt: Friday, February 09, 2007 11:21 AM
to: Louie Flora
Subject: FW: New Pom:HB 74 Ban Mixing Zones In Spawning Areas

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

From: POMS@legis.state.ak.us [mailto:POMS@legis.state.ak.us]
Sent: Friday, February 09, 2007 11:10 AM
To: Mary Jane Shows
Subject: New Pom:HB 74 Ban Mixing Zones In Spawning Areas

Dewey Youngerman Iii
35050 Lowbush St

Homer 99603,

Please support HB74. So much is at stake between this bill and the Peggle Mine Project. We should continue to be proactive and avoid being reactive after an unforeseen release. Thank you for your work and preserving, for my sons, what my father shared with me.

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

From: Eike Smith [mailto:eikemagda@yahoo.com]
Sent: Thursday, February 08, 2007 3:44 PM
To: Louie Flora
Subject: Please Don't Allow Mixing Zones

I would like to contribute my written testimony regarding the proposed ban on mixing zones in Alaskan fish-bearing streams:

My father started set net fishing in the Kvichak district back in the 1940's and we have been fishing there as family ever since. My brothers and I currently run two permits. We were all born and raised in Dillingham, AK, and grew up fishing on the Kvichak River.

Our family has relied on fishing as a major source of income for years, and we consider it a valuable treasure that we hope to take advantage of for years to come.

Please do not allow pollution (mixed or not mixed) to be contributed to the lakes

and streams that support our salmon.

As Alaskan Natives and Alaskan residents my family and I ask that pollution (both

mixed and unmixed) not be allowed in the lakes and streams that support our salmon

and our life style.

Thank you for keeping this area a pristine environment,
Eike Smith
Box 224
Dillingham, AK 99576
Cell: 503.929.9635
Alaska: 907.842.5426

The fish are biting.

Get more visitors on your site using Yahoo! Search Marketing.

http://searchmarketing.yahoo.com/arp/sponsoredsearch_v2.php

Louie Flora

From: reid@redsalmon.com
At: Thursday, February 08, 2007 9:11 AM
To: Louie Flora
Subject: mixing zones- please don't allow them

Dear Louie,

I would like to offer the following written testimony regarding the proposed ban on mixing zones in Alaskan fish-bearing streams:

My family pioneered the set net fishery in the Kvichak district back in the 1940's and we have been a fishing family ever since. I am 28 years old and currently run my permit and manage the other 6 permits that we fish. My cousins and I recently started a business called Iliamna Fish Company to process and market our pristine fish in the U.S.

Our main competitive advantage selling our fish is that our product comes from the crystal clear waters of the Iliamna watershed, that our family has relied on to provide us unfiltered drinking water over the past 60 years. Please see the "our watershed" section of our webpage: www.redsalmon.com

Please do not allow pollution (mixed or not mixed) to be discharged into the streams and lakes that support one of the most healthy and clean areas of the world.

thank you so much for championing my family's cause-!

Sincerely,

Reid Ten Kley, CPA
907.880.9170

thank you so much for championing my family's cause-!

Sincerely,

Reid Ten Kley, CPA

Louie Flora

From: claudia anderson [claudiaa.ak@hotmail.com]
Sent: Wednesday, February 07, 2007 4:26 PM
To: Rep. Paul Seaton
Subject: mixing zone

Thank you for HB 74! I support the ban on mixing zones. claudia anderson

Search for grocery stores. Find gratitude. Turn a simple search into something more.

Louie Flora

From: Sheila Ring [rings99633@yahoo.com]
Sent: Wednesday, February 07, 2007 9:31 AM
To: Louie Flora
Cc: rings99633@yahoo.com
Subject: *****SPAM***** MIXING ZONES

I am a bristol bay fisherman **I OPPOSE** ALLOWING A MIXING ZONE POLLUTION IN SALMON AND OTHER FRESHWATER STREAMS. Thank you Al Ring

It's here! Your new message!
Get [new email alerts](#) with the free [Yahoo! Toolbar](#).

House Fisheries
Rep. Seaton

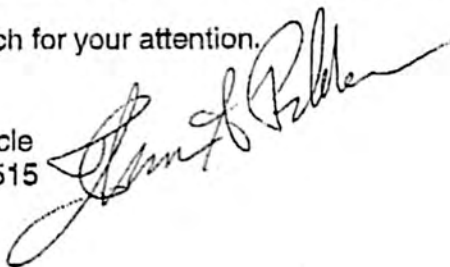
HB 74 MIXING ZONES - FEBRUARY 7, 2007

My name is Thomas Pebler. I am a concerned citizen who sportfishes and has studied Wildlife Biology. I support Representative Seaton's HB 74. I wish to make several respectful points regarding mixing zones.

1. Alaska's fisheries are invaluable! The finest in the world. They should not be compromised for the sake of waste discharge. They are so invaluable, precisely because of the laws and labor that have, until recently, maintained this standard of quality.
2. Allowing additional mixing zones in these priceless fisheries completely defeats and reverses the intention of the original laws.
3. Mitigation and exemption from the prohibition on mixing zones in fish spawning habitat should be rejected. It is not possible to adequately compensate for invaluable renewable resources.
4. Rainbow Trout, Grayling, Whitefish, Stickleback, Char and the rest are equally and individually as important as the Salmon as are all of the interdependent resident organisms that are integral to the aquatic ecosystem. Plant, Animal, Fungus, Bacterium and Protist considered, fish survive by these!
5. Timing the mixing to correspond to periods between spawning would be futile and destructive as fish remain continually in the rivers in one life-stage or another. Egg, Fry, Smolt or spawning adult, anadromous or not, they would be susceptible. Just one spill or excessive event is enough to kill an entire generation or do further damage. Last year a fish kill in Campbell Creek, apparently caused by excessive muddy run-off, demonstrated the fragility of these streams even without the increased hazard of mixing zones.
6. Fish and Game and the DEC have previously admitted that they lack the funding and staff to monitor mixing zones. Under the Murkowski administration regulations, we would have eventual disaster. These laws must be changed and loopholes are unacceptable.

Thank you very much for your attention.

Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515



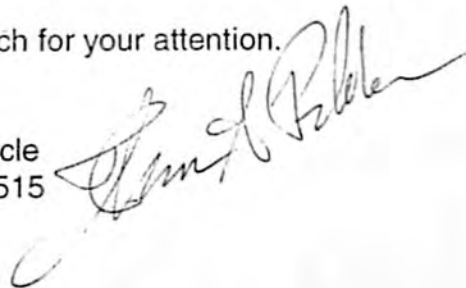
HB 74 MIXING ZONES – FEBRUARY 7, 2007

My name is Thomas Pebler. I am a concerned citizen who sportfishes and has studied Wildlife Biology. I support Representative Seaton's HB 74. I wish to make several respectful points regarding mixing zones.

1. Alaska's fisheries are invaluable! The finest in the world. They should not be compromised for the sake of waste discharge. They are so invaluable, precisely because of the laws and labor that have, until recently, maintained this standard of quality.
2. Allowing additional mixing zones in these priceless fisheries completely defeats and reverses the intention of the original laws.
3. Mitigation and exemption from the prohibition on mixing zones in fish spawning habitat should be rejected. It is not possible to adequately compensate for invaluable renewable resources.
4. Rainbow Trout, Grayling, Whitefish, Stickleback, Char and the rest are equally and individually as important as the Salmon as are all of the interdependent resident organisms that are integral to the aquatic ecosystem. Plant, Animal, Fungus, Bacterium and Protist considered, fish survive by these!
5. Timing the mixing to correspond to periods between spawning would be futile and destructive as fish remain continually in the rivers in one life-stage or another. Egg, Fry, Smolt or spawning adult, anadromous or not, they would be susceptible. Just one spill or excessive event is enough to kill an entire generation or do further damage. Last year a fish kill in Campbell Creek, apparently caused by excessive muddy run-off, demonstrated the fragility of these streams even without the increased hazard of mixing zones.
6. Fish and Game and the DEC have previously admitted that they lack the funding and staff to monitor mixing zones. Under the Murkowski administration regulations, we would have eventual disaster. These laws must be changed and loopholes are unacceptable.

Thank you very much for your attention.

Thomas Pebler
1903 Stonegate Circle
Anchorage, AK 99515



Louie Flora

From: david blount [dkblount@hotmail.com]
ent: Tuesday, February 06, 2007 12:19 AM
to: Louie Flora
Subject: I support HB 74

I pray this committee pass through HB 74 which bans mixing zones. My livelihood as a commercial fisherman as well as the livelihoods of the town of Cordova depend on this legislation. We can not afford to let the bottom lines of a few big companies destroy the lives of thousands of people who rely on this well managed resource. Please listen to all of the small voices who do not have the financial clout of these few large companies. We are the ones who's lives will be destroyed along with this valuable resource. Thank you for considering my strong support of HB 74 banning mixing zones.

David Blount
F/V Salmon Shark
Box 1912
Cordova AK 99574

Invite your Hotmail contacts to join your friends list with Windows Live Spaces
[http://clk.atdmt.com/MSN/go/msnnkwsp0070000001msn/direct/01/?](http://clk.atdmt.com/MSN/go/msnnkwsp0070000001msn/direct/01/?href=http://spaces.live.com/spacesapi.aspx?wx_action=create&wx_url=/friends.aspx&mkt=en-us)
[href=http://spaces.live.com/spacesapi.aspx?wx_action=create&wx_url=/friends.aspx&mkt=en-us](http://spaces.live.com/spacesapi.aspx?wx_action=create&wx_url=/friends.aspx&mkt=en-us)

Louie Flora

From: Leif K. Mjos [lmjos@care2.com]
ent: Tuesday, February 06, 2007 9:57 AM
ro: Rep. Paul Seaton
Subject: Re:Mixing Zone legislation hearing

Dear Rep. Seaton,

I would like to submit my support for HB 74. Though ideally, mixing zones would not be allowed because of the inherent and pervasive effects to water quality, strong regulation is the next-best alternative. I do not believe that we can continue to claim to benefit from 'clean and pristine' waters when said mixing zone practices still occur. To me, this mode of thinking panders to the notion that pollution is inevitable and we are powerless to address the root causes of it. That said, perhaps HB 74 is a step toward legitimate control, and I therefore support it.

Thank you for considering my comments. I hope you might find them useful.

Leif Mjos
1725 E 24
Anchorage, AK 99508

Stop the Forest Service from killing more wolves, bears, cougars, and other animals in the wild:
<http://go.care2.com/99055>

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

From: David C. Wartinbee [mailto:ifdcw@uaa.alaska.edu]
Sent: Tuesday, February 06, 2007 9:14 AM
To: Rep. Paul Seaton
Subject: RE: Mixing Zone legislation hearing

Ladies and Gentlemen:

I am writing to support the legislation banning all pollution mixing zones within salmon spawning areas. It is inconceivable that the State of Alaska or any agency of the state would even consider allowing mixing zones in any salmon, anadromous fish, and resident fish spawning areas. Common knowledge of salmonid life cycles tells us that the young alevins and fry remain in the spawning area long after the spawning activity is complete. Water in those spawning areas must remain clean and oxygen rich in order for vulnerable alevins and fry to survive the many months they are in the area. We have known for years that the young fish(alevins and fry) are the most vulnerable to pollution. Thus, attempts at allowing seasonal mixing zones in spawning areas is foolish and contrary to scientific knowledge.

Resolving problem situations, such as where fish start spawning in mixing zones after the mixing zone is created, can be handled by "grandfather" provisions in those rare occasions. A general allowance of mixing zones in spawning areas is unacceptable and irrational.

Again, I support the legislation to ban all pollution mixing zones in fish spawning areas. Thanks for the opportunity to comment on this legislation.

David Wartinbee PhD, JD
Professor of Biology - Stream Ecologist
Kenai Peninsula College
34820 College Drive
Soldotna, AK 99669

**United Southeast Alaska Gillnetters**

P.O. Box 23378, Ketchikan, AK 99901

Phone & Fax (907) 247-2471

Email: usag@kpnunet.net

February 6, 2007

The Honorable Paul Seaton, Chairman
House Fisheries Committee
State Capitol, Room 102
Juneau, AK 99801

Sent Via Fax to: 907 465-3472

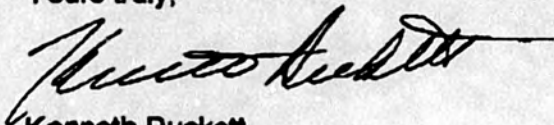
Dear Representative Seaton,

The United Southeast Alaska Gillnetters (USAG) is an association of about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska and market salmon throughout the United States. Many of our members also participate in other fisheries such as crab, shrimp, dive and longline. During the past two years we steadfastly opposed the Department of Environmental Conservation's (DEC) efforts to change the ban on mixing zones in salmon spawning and rearing streams. While some progress was made with DEC toward minimizing the weakening of mixing zone regulations, we do not believe current regulations adequately protect our fresh water fisheries resources. The concept that a mixing zone is not acceptable when salmon are spawning but that it is acceptable to dump pollutants in the system while the eggs and/or fry are in the system is unacceptable. Even waters that do not support fish populations but feed into systems that do will have an adverse effect on fish populations or flesh quality if they are polluted with mixing zones. We strongly support HB 328 that will prohibit mixing zones in freshwater spawning and rearing waters. We believe that under the current regulations as revised last year, the use of these zones will become a license to pollute the fresh water systems of Alaska. USAG is not opposed to economic development. But we do believe that responsible economic development will not use Alaska's fresh water systems for disposal of its waste products. We also believe that it is much better to protect our fresh water resources with legislation rather than administrative regulation.

A good example of what happens when mixing zones are allowed is DEC's own survey of the status of mixing zones in other states. Of those responding, 21 of 23 allowed mixing zones of some kind. Every one of the 21 that had responded that they permitted mixing zones had issued fish consumption warnings to their citizens for fish caught in some of their local waters. Of the 2 that did not permit mixing zones, neither had issued such warnings. From this experience it is clear that mixing zones are a license to pollute and they harm fish populations and can result in harm to humans. If mixing zones were permitted in Alaska, they could cause grave harm to Alaska's efforts to market our salmon to the rest of the world and attract tourists to the "pristine environment" of our great land.

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

Yours truly,

A handwritten signature in dark ink, appearing to read "Kenneth Duckett", with a long horizontal flourish extending to the right.

Kenneth Duckett
Executive Director



UNITED FISHERMEN OF ALASKA

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

February 5, 2007

Representative Paul Seaton
Chairman, Special Committee on Fisheries
Alaska House of Representatives
State Capitol, Mail Stop 3100

Dear Representative Seaton,

United Fishermen of Alaska (UFA) supports House Bill 74, which would prohibit mixing zones in freshwater spawning waters.

Alaska's salmon and freshwater fishery resources are the economic backbone of Alaska's coastal communities, the foundation of rural residents' subsistence, and a primary attraction for many of Alaska visitors. Alaska's salmon waters require permanent protection from pollutants and disturbance of natural systems. Alaska's water resources need to be protected for future generations to continue to provide sustainable world class fisheries for all users.

UFA represents 34 Alaska commercial fishing organizations from fisheries throughout the state and its offshore waters. We appreciate your attention to this important matter.

Sincerely,

Mark Vinsel
Executive Director

MEMBER ORGANIZATIONS

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



COOK INLET AQUACULTURE ASSOCIATION

40610 KALIFORNSKY BEACH ROAD
KENAI, AK 99611
(907) 283-5761
FAX: (907) 283-9433
email: info@ciaaet.org
<http://www.ciaaet.org>
February 5, 2007

The Honorable Paul Seaton, Chair
House Fisheries Committee
State Capitol, Room 102
Juneau, AK 99801-1182

Re: Mixing Zones in Anadromous Streams

Dear Representative Seaton,

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

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

We support legislation, such as HB 74, that protects our salmon resources.

Sincerely,

Gary Fandrei, Executive Director

Faxed: 2/5/07

SALMON ENHANCEMENT TODAY MEANS BETTER SALMON FISHING TOMORROW

Louie Flora

From: Bill or Renee Lindow [lindow@ctcak.net]
Sent: Monday, February 05, 2007 6:06 PM
To: Louie Flora
Subject: HB 74

I support HB 74. It is a well written bill that will help maintain Alaska's productive freshwaters for fish and other freshwater organisms, as well as keep the public's perception of the pristine nature of these waters intact.
Thank you, William Lindow P. O. Box 1612 Cordova, AK 99574

2/6/2007

Louie Flora

From: MSandberg@aol.com
Sent: Monday, February 05, 2007 1:25 PM
To: Louie Flora
Subject: Support for HB 74

I support HB 74 to maintain the specific prohibition of mixing zones in freshwater spawning areas. As an Alaska resident, eater of wild salmon, and fisherwoman, this bill is essential to Alaska's protection of the fishing commercial and sport industries. Please add my name to the list of supporters.

Kate Sandberg, Girdwood, AK

2/5/2007

From: Izetta Chambers [mailto:izetta@naknefish.com]
Sent: Monday, February 05, 2007 6:45 AM
To: Louie Flora
Subject: mixing zones

I would like to offer the following written testimony regarding the proposed ban on mixing zones in Alaskan fish-bearing streams:

Greetings Lawmakers and Fellow Alaskans:

My name is Izetta Chambers and I am an Alaska resident from Naknek. My family has fished the waters of Bristol Bay for many generations, and my siblings and I are now carrying on this family tradition with our children. My brother, Everett Thompson, had his best season ever last year. In fact, fishing has been so good for us that we have decided to organize our own LLC, called Naknek Family Fisheries. We are in the process of constructing a small fish plant in Naknek in order to produce value-added salmon product and help other fishermen market their products by providing custom processing services for them.

What I am trying to convey to you is that the fishing economy in Bristol Bay is not broken. We don't need industrial hard-rock mining or other non-sustainable development to "save us". If people want industrial development and masses of people competing for the same fish and game resources, they can move to any city in the United States for that. We are so lucky to have what we have in Naknek - pure waters, an unpolluted groundwater table, pristine water flowing out of both the Naknek and Kvichak Rivers. If DNR is allowed to permit a mining development that will discharge pollution in the form of acid mine drainage, heavy metals, and toxic chemicals such as cyanide, xanthene, or other xanthates, we can all say goodbye to this natural bounty.

I have had the opportunity to listen to DNR repeatedly state that DEC's loosening of the regulations regarding polluting in salmon-bearing streams is not related to any mining developments. This statement came at a UAF class entitled "Mining and Fish: Can they Co-Exist?". This course was overwhelmingly biased in favor of Northern Dynasty's proposed Pebble Mine, a very controversial topic in the Bristol Bay area and throughout the state of Alaska. However, I find it a little more than coincidental that this loosening of the regulations came only prior to Northern Dynasty's permitting process. Let's not forget that a NPDES (National Pollution Discharge Elimination System) permit is essentially a permit to pollute. Now, why would the State of Alaska have to loosen their regulations if Northern Dynasty is planning a "zero discharge" mine? It just seems a bit odd to me.

Last week, I saw a lovely ad on the television here in Tucson, Arizona, where I am now attending my second year of law school. The ad displayed beautiful scenes of Alaskan rivers, streams, mountains and lakes. The people were fishing, boating, and doing other outdoor

recreational activities. One thing that the ad didn't depict was any of Alaska's large mines. Why? Because these large mines are a blight on the landscape and a detraction from Alaska's natural beauty. People do not come to Alaska to witness the nation's largest sources of toxic pollution. They come for the fish, the abundant game, the natural beauty, and the world's last great wild place. At some point, our collective values need to materialize into laws that protect not only our beautiful and pristine wild lands of Alaska, these same values need to speak to lawmakers in a way that induces them to protect Alaska's fisheries and the families that depend upon them.

Dilution is not the solution to pollution. The pollution will end up somewhere, and that somewhere just happens to be the rivers that have sustained my family for generations. Please help protect Alaska sustainable fisheries and the families that depend on them.

Thank you for considering my plea.

Sincerely,

Izetta M. Chambers, Manager
Naknek Family Fisheries, LLC

www.naknefish.com

from ship to shore, right to your door

Louie Flora

From: POMS@legis.state.ak.us
nt: Monday, February 05, 2007 1:52 PM
o: Louie Flora
Subject: New Pom:HB 74 Ban Mixing Zones In Spawning Areas

Paul Mccollum
Po Box 2790

Homer 99603-2790,paulamfish

My name is Paul McCollum and I am a long time fisheries biologist who has worked for over thirty years in salmon research, management and production (ADFG, NMFS, Private and Consulting). I urge you all to support House Bill 74 as being introduced and sponsored by Paul Seaton.

Louie Flora

From: Eatwildfish@aol.com
Sent: Monday, February 05, 2007 2:49 PM
To: Louie Flora
Subject: support for HB 74 from a salmon marketer

Dear House Special Committee on Fisheries,

As a long time marketer of Alaska wild salmon and researcher on marine and fisheries issues, I urge your committee to support HB 74, and continue the prohibition on pollution mixing zones in freshwater spawning areas. This legislation protects Alaska's wild salmon habitat and also ensures the public will not turn away from Alaska seafoods because of apprehension that the products could be tainted by industrial runoff.

As an increasing number of consumers have shown, they are very sensitive to information about artificial colorants and chemicals in their foods. Thus far, Alaska's seafood products have become widely identified as wholesome and natural, commanding a higher price in grocery stores and restaurants.

The price paid to the fishing industry for wild fish is also improving and coastal communities and fishing dependent businesses are becoming economically stable. It would be a shame to toss away all the lessons learned over the years about how to protect wild fish habitat, and maybe more importantly, WHY we need to protect Nature's gift of a sustainable resource.

My father was a gold miner for a decade in Alaska, and then fished for more than 50 years. When three generations in our family - my father, myself and my son, fished together for four summers, there was 70 years between the oldest and youngest on our boat. I knew that providing food for the public and having fishing revenues shared among thousands of other fishing families was far more satisfying and admirable than being involved in a corporately owned, polluting and earth scarring mining activity.

I hope that you will protect Alaska's reputation for producing the finest protein on the planet and pass HB 74.

With regards,

Anne Mosness
Owner, Fisher's Choice Wild Salmon and Gifts
1081 Sudden Valley
Bellingham, Washington
360-671-6478, cell 360-224-4100

Louie Flora

From: Dan Bilderback [danbilderback@gmail.com]
nt: Monday, February 05, 2007 2:54 PM
to: Louie Flora
Cc: cdfu@ak.net
Subject: HB 74

Dear sirs;

My name is Dan Bilderback. I have been a commercial salmon fisherman for the last 35 years fishing out of Cordova, Alaska.

I feel that one of the successful components to the health a Alaska's salmon fisheries has been "CLEAN" water in their habitat. I support

HB74 wholeheartedly and urge the fishery committee members to endorse this legislation to help sustain our Commercial Salmon fisheries.

Thank you, Dan Bilderback, 4623 Campus Circle, Anchorage, AK 99507

ph#907-632-0079

Dear Representative:

I am writing you in reference to House Bill 74, An Act prohibiting mixing zones in freshwater spawning grounds, which is vital and necessary for Alaska. Passing this bill into law would create increased levels of protection that is needed for Alaska's wild fish stocks.

I support the banning of mixing zones and the personal impacts it would have on me as an Alaskan fishermen and ask for your support on this issue.

Alaska has a reputation for pure water and vibrant wild fish stocks... Lets Keep it that way!

Sponsor Statement HB 74!

Thank you,
Craig Scola

Louie Flora

From: Nina Faust [fausbail@horizonsatellite.com]
Sent: Sunday, February 04 2007 8:21 AM
To: Rep. Paul Seaton
Cc: Rep. John Harris; Rep. Kyle Johansen; Rep. Gabrielle LeDoux; Rep. Peggy Wilson; Rep. Bryce Edgmon; Rep. Lindsey Holmes
Subject: HB 74

P.O. Box 2994
Homer, AK 99603

February 4, 2005

House Fisheries Committee
Alaska State House
Juneau, AK 99811

Dear Committee Members:

We have reread HB 74 and thought some more about section (C) *The prohibition in (a) of this section does not apply to a mixing zone for a suction dredge placer mine or a mechanical placer mine.* Cumulative impacts to a spawning stream from many such activities in the same stream could collectively impact spawning fish. An exemption as broad as this one leaves too much to interpretation and too much dependency on the overseeing agency's ability to monitor these activities and assess impacts. With the current system of reduced oversight and limited funds for enforcement of pollution regulations, this exemption would leave many of our spawning areas vulnerable to degraded water quality.

We urge the committee to strike this exemption.

One other consideration is to make sure that a mechanism is in place to determine whether a water body has salmon or other indigenous fish spawning in its waters since the State's catalog of these water bodies is not complete. Thank you for the opportunity to comment.

Sincerely,

Nina Faust

Edgar Bailey

P.O. Box 2994
Homer, AK 99603

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

From: Sammy Crawford [mailto:scrawfor@alaska.net]

Sent: Sunday, February 04, 2007 10:53 AM

To: Louie Flora

Subject: Mixing Zones

I am in strong of HB 74 concerning MIXING ZONE legislation.

Warren Crawford

36615 Chinulna Dr.

Kenai, Alaska 99611

907-283-9271

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

From: Sammy Crawford [mailto:scrawfor@alaska.net]

Sent: Sunday, February 04, 2007 10:45 AM

To: Louie Flora

Subject: Mixing Zones

My name is Warren Crawford and I have been a resident of the Kenai Peninsula for 31 years. I have been a commercial fisherman, sportfish guide, sportfisherman, and worker on the Kenai River for the Kenai Watershed Forum. I am in strong support of HB 74. I feel it is very important to pass this legislation!!!!

Warren Crawford
36615 Chinulna Dr.
Kenai, AK. 99611
(907-283-9271)

From: Ward Grant [mailto:wards19thhole@yahoo.com]
Sent: Sunday, February 04, 2007 11:04 AM
To: Louie Flora
Subject: HB74 & Chuitna Coal Project

I am writing in support of HB74. I am a commercial fishing with commercial fishing sites located on Three Mile Beach on the west side of Cook Inlet. A geographical reference would be the Beluga Area.

As you may be aware, Beluga area is the area where the Pac Rim Coal Company proposes to locate a massive open pit coal mine, the Chuitna Coal Project. The primary market for this coal is the Asian market. The specifics of this project are spelled out in the Chuitna SEIS Report, www.chuitna.seis.com

If you review the data surrounding this project you realize the huge environmental impact that will take place on drainage areas leading into the Chuitna River and other rivers and lakes. The dewatering of this mining project will certainly damage one of the most important spawning areas for Salmon, especially Chinook salmon, and other sports and commercial fish in the northern Cook Inlet.

The commercial & sports fishermen need all the help they can get from heavily financed outside coal concerns and local government officials, Kenai Borough who seem intent on sacrificing the local community and its commerce for Coal Monies. HB 74 alone will not protect us but it would be a big help in preserving a pristine area and the valuable renewable resource of wild fish in our area.

Ward Grant

It's here! Your new message!
Get [new email alerts](#) with the free [Yahoo! Toolbar](#).

Louie Flora

From: Jim Chumbley [chumbley@gci.net]
Sent: Sunday, February 04, 2007 1:51 PM
To: Rep. Paul Seaton
Subject: HB 74

Hi Representative Seaton,
I support HB 74. For many people Alaska is defined by its affiliation with salmon, so protecting the spawning grounds of the salmon is not just important for the commercial and recreational economics, but also for the very identity of Alaska. I applaud your efforts.
Thanks,
Jim Chumbley

2/5/2007

Louie Flora

From: Duane Howe [duhowe@alaska.net]
Sent: Sunday, February 04, 2007 7:43 PM
To: Rep. Paul Seaton
Subject: HB 74

Dear Representative Seaton:

Thank you for introducing HB 74. Your bill sets out to clarify that we, the people of Alaska, do not want our fishery resource compromised by allowing some of its spawning streams to become even temporarily polluted or mildly polluted by anything that could be viewed as harmful to our fishery product, let alone to the fish themselves. As I and others have already pointed out more than once, it would be short-sighted to allow any development or deliberate discharge into spawning streams that could even have the appearance of compromising the quality of our fish products.

It appears that the mining industry is the only supporter of the mixing zone idea, while a long list of organizations and related industries are opposed. With this kind of support HB 74 should have no trouble passing both houses of the legislature and being signed by the governor. I wish you success.

Duane Howe
41640 Gladys Ct
Homer, AK 99603

2/5/2007

February 3, 2005

House Fisheries Committee
Alaska State House
Juneau, AK 99811

Dear Committee Members:

We are writing in support of HB 74, "An Act prohibiting mixing zones in freshwater spawning streams." We wrote last year in support of HB 328 and would very much like to see HB 74 passed to close the loophole that allows discharges into spawning streams most of the year except when actual spawning is occurring.

With proposals for huge new mines and other new industrial development, protecting our salmon and other native fish spawning streams from pollution discharges is essential to maintain Alaska's fisheries. Relaxing this important water quality standard will eventually lead to degraded water quality that will have an effect on fish.

Alaska has always been proud of its pristine waters and healthy, abundant fish. If we start allowing pollution discharges into our fish streams under that mythical guise of mixing zones make it okay, it is only a matter of time before our fisheries like those in the Lower 48 states will also slip away. Please pass HB 74.

Sincerely,

Nina Faust

Edgar Bailey

Louie Flora

From: Dave Lacey [drdixon20022000@yahoo.com]
ant: Saturday, February 03, 2007 11:46 AM
o: Louie Flora
Subject: Mixing Zones

I support the banning of Mixing Zones. I believe we need to err on the conservative side in doing this.

We do not need to endanger our health and fisheries and more by gambling with this. I have seen grayling fishing ruined on the Chatanika River in the late 70's when a miner upstream dumped a bunch of mud in the river. Dave Lacey, PO Box 81765, Fairbanks, AK 99708

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Louie Flora

From: amy bollenbach [amybollenbach@gci.net]

Sent: Saturday, February 03, 2007 9:05 PM

To: Rep. Paul Seaton

Subject: mixing zones

I think you're on this, but HB 74 prohibiting mixing zones in fresh water spawning waters sounds important. Please seriously consider.

2/4/2007

From: Marjorie & Dan Dunaway [mailto:mwdnt@nushtel.com]

Sent: Friday, February 02, 2007 6:22 PM

To: Rep. Paul Seaton

Subject: Re: Mixing Zone legislation hearing

Thank you very much for remembering my concerns and interest in this issue. I hope Palin and the Legislature is more sympathetic to this issue. I'll review and hope to submit my support.

Dan Dunaway

|

Louie Flora

From: John Lyle [kayak@gci.net]
nt: Friday, February 02, 2007 7:07 PM
o: Louie Flora
Subject: Mixing Zone Legislation

Dear Folks, I support the mixing zone legislation. It's about time this subject has been addressed. Great damage has been done from years of neglect in this area, and if this legislation does not pass, I will be extremely upset. Thanks for listening. Sincerely,
John D. Lyle Box 83715 Fairbanks, Alaska 99708

Louie Flora

From: Marion Nelson [mmkn@ptialaska.net]
Sent: Friday, February 02, 2007 10:15 PM
To: Louie Flora
Subject: I support HB74

To all Legislators,

There is no reason to mess up our clean water.
Support HB 74.

Marion Nelson

Marion K. Nelson
P.O. Box 3612
Kenai AK 99611
Phone (907) 283-4632

COMMITTEE: House Special
Committee on Fisheries
February 14, 2007

SUBJECT: HB 74-BAN MIXING ZONES IN
SPAWNING AREAS



PLEASE SIGN IN

PLEASE PRINT:
NAME & TITLE

ADDRESS

PHONE

REPRESENTING
(No acronyms unless for a state agency,
please)

DO YOU
WANT TO
TESTIFY ?

Don Bremner	P.O. Box 20161	463-7124	S. E. Alaska Inter-Tribal Fish & Wildlife Comm.	yes
E-mail address:	dbremner@ci.net			
MARK KAEKE	419 S. 6th Juneau	321-4464	TROUT UNLIMITED	YES (on HB 41 only)
E-mail address:	mkaelke@ta.org			
E-mail address:				
E-mail address:				
E-mail address:				

SITE: CORDOVA

COMMITTEE: HFSH

DATE: 2/12/07

SUBJECT OF MEETING:

BILL # HB74 Ban Mixing
Zones Spawning Areas

UPDATE #: 1

PRINT YOUR NAME

COMMUNITY

REPRESENTING/AFFILIATION

DO YOU WANT
TO TESTIFY?

Y OR N

Kristin Smith	Cordova	Copper River Watershed Project	Y

add "Review" and "add"

SITE: Kenai LIO

COMMITTEE: House Fisheries

DATE: 2-12-07

AGENDA:

HB 74 BAN MIXING ZONES IN SPAWNING AREAS

UPDATE #:

DO YOU WANT TO TESTIFY?

Y or N

PRINT YOUR NAME

COMMUNITY

REPRESENTING / AFFILIATION

[illegible]

DATE:

UPDATE #: 1

Testify Yes/No

[illegible]

DATE:**UPDATE #:**

REPRESENTING/AFFILIATION

Testify Yes/No[illegible]

COMMITTEE: HFSH
Date: 02-07-07

HB74
UPDATE #:

TESTIFY
Y or N

COMMUNITY

REPRESENTING/AFFILIATION

[illegible]

**COMMITTEE: House Special
Committee on Fisheries
February 5, 2007**

**SUBJECT: MIXING ZONES IN
SPAWNING AREAS**



PLEASE SIGN IN

**PLEASE PRINT:
NAME & TITLE**

ADDRESS

PHONE

REPRESENTING

(No acronyms unless for a state agency,
please)

**DO YOU
WANT TO
TESTIFY?**

Linda Behnken ALFA alfafish@pt.alaska.net E-mail address:	903 Lincoln SITKA	7-3400	AK Longline fishermen's ASSOC.	NO
DICK CURRAN	608 Eldin St SITKA	747-6094	SPC	NO
Lindsey Bloom AKlindsey@immanentblam.net E-mail address:		463-3327	Trout Unlimited AK	NO
Lauren Oakes Alaska Program's officer loakes@TV.org E-mail address:	414 Sixth St. Suite 200 THOUT UNLIMITED	321-3725	TU	NO
E-mail address:				
E-mail address:				

COMMITTEE: House Special
Committee on Fisheries
February 7, 2007

SUBJECT: ~~REDACTED~~ ~~SPAWNING AREAS~~



PLEASE SIGN IN

PLEASE PRINT:
NAME & TITLE

ADDRESS

PHONE

REPRESENTING

(No acronyms unless for a state agency,
please)

DO YOU
WANT TO
TESTIFY ?

Lynn Kent	Dir. Dwy Water DEC online.		DEC	Y
E-mail address:				
Tyler Dann	PO Box 211576 ^{Anchorage} 99821	230-3964	Myself	Y
E-mail address:	tylerdann@gmail.com			
E-mail address:				
E-mail address:				
E-mail address:				

SITE: **Juneau**

COMMITTEE: House Fish

DATE: 02-07-07

SUBJECT OF MEETING:

BILL #HB74

UPDATE 8:3

PRINT YOUR NAME

COMMUNITY

REPRESENTING/AFFILIATION

DO YOU WANT

TESTIFY

Y or N

✓ Lynn Kent		DEC	Y
✓ Ken Duckert		U S E AK gillnetters	Y
✓ Cameron Leonard		Attn Gen Office	Y
✓ Richard King		Citizen	Y
✓ Izetta Chambers		Citizen <i>Northway</i>	Y
<i>Tyler</i>			

DATE : 2/7/2006 8:30am

SUBJECT OF MEETING:

BILL #HB 74

UPDATE: 1

PRINT YOUR NAME

COMMUNITY

REPRESENTING/AFFILIATION

DO YOU WANT TO

TESTIFY

Y or N

[illegible]

SITE: CORDOVA

COMMITTEE: HFSH

DATE: 02/07/07

DATE: 02/07/07

SUBJECT OF MEETING:
BILL # HB 74
UPDATE #: 1

UPDATE #: 1

DO YOU WANT
TO TESTIFY?
Y OR N

TO TESTIFY?

Y O R N

[illegible]

DATE: 2-7-07

Update #**Y or N**

George Matz

Fritz Creek

Cook Inlet Alliance

Y HB74

[illegible]

DATE: 02/05/07

UPDATE: Final

[illegible]

SITE: Tundra

COMMITTEE: House Fish

DATE: 02-07-07

SUBJECT OF MEETING:

BILL #HB74

UPDATES 8:2

PRINT YOUR NAME

COMMUNITY

REPRESENTING/AFFILIATION

DO YOU WANT

TESTIFY

Y or N

✓ Lynn Kent

DEC

Y

✓ Ken Duckett

U S E AK gillnetters

Y

Cameron Leonard ✓

Attn Gen Office

Y

Richard King

Citizen Kluckwan

Y

Comparison of Provisions in the old and new Mixing Zone Regulations and in HB 74

Prepared by the office of Rep. Seaton

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 74	COMPARISON
SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	SPAWNING AREA PROHIBITION	
18 AAC 70.255. Mixing zones: In-zone quality and size specifications	18 AAC 70.240	The department may not authorize a mixing zone for lakes, streams, rivers, or other flowing fresh water in an area of	The language of HB 74 is taken from the old regulatory language. HB 74 also adds "lakes" to the spawning area mixing zone prohibition.
(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	(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.	(1) anadromous fish spawning; or	In both the old regulation and HB 74 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.
(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.		(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.	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 74	COMPARISON
SPATIAL AND TEMPORAL SPAWNING AREAS	SPATIAL AND TEMPORAL SPAWNING AREAS	SPATIAL AND TEMPORAL SPAWNING AREAS	
No reference found	(j) For purposes of this section, the department will defer to the Department of Natural Resources, Office of Habitat Management and Permitting or the Department of Fish and Game to determine spawning areas, both spatially and temporally.	(c) In this section (1) "area" means the physical location where spawning occurs	HB 74 specifies that, for the purpose of the bill, a spawning area is strictly a physical location and is not to be interpreted temporally. 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."* *<i>"Mixing Zone Change Fuzzy for Fishermen"</i> Elizabeth Bluemink, Juneau Empire, January 15, 2006

OLD MIXING ZONE REGULATIONS	NEW MIXING ZONE REGULATIONS	HB 74	COMPARISON
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 or village 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) The prohibition in (a) of this section does not apply to a mixing zone for a suction dredge placer mine or a mechanical placer mine if (1) the turbidity level of the mixing zone has been authorized by the Department of Environmental Conservation; (2) the mixing zone extends not more than 500 feet downstream of the point of discharge; (3) the mixing zone is at least 500 feet away from the closest mixing zone in the same body of water; and	HB 74 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 74 allows municipal and village wastewater discharges to be re-authorized for the useful life of a facility if spawning occurs in the mixing zone after initial authorization. HB 74 allows a placer mine operation to be authorized for a turbidity mixing zone up to 500 feet from the point of discharge during periods when fish are not actively spawning. In comparison, the old mixing zone regulations did not contain any exemptions to the spawning area prohibition. The new ADEC mixing zone regulations allow any mixing zone in flowing fresh water to be re-permitted if spawning, incubation, or rearing occurs within the active

	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.	(4) the Department of Environmental Conservation with the concurrence of the Department of Natural Resources, or, in an area designated under AS 16.20, with the concurrence of the Department of Fish and Game, (A) restricts the discharge to periods when spawning is not occurring; and (B) finds that the mixing zone will not adversely affect the present and future capability of the area for spawning, incubation, or rearing of fish included in (a) of this section. (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.	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 trout, Arctic char, Dolly Varden, whitefish or cutthroat trout.
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PREVIOUS REGULATIONS PROHIBITING MIXING
ZONES IN FRESHWATER SPAWNING AREAS.
SPAWNING AREA PROHIBITION AT 70.255(h).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

be expected to occur.

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

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

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

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

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

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

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

(1) anadromous fish spawning; or

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

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

Authority: AS 46.03.020

AS 46.03.030

AS 46.03.070

AS 46.03.080

AS 46.03.100

AS 46.03.110

AS 46.03.710



✦ 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 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 comply with this section. The department will 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, and 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 the department finds that available evidence reasonably demonstrates that

(1) an effluent or substance will be treated to remove, reduce, and disperse pollutants, using methods that the department finds to be the most effective, 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. 122.29 and 40 C.F.R. 125.3, as revised as of 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 statute or regulation 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 16 U.S.C. 1531 - 1544 (Endangered Species Act); 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

(1) authorized in a spawning area of any of the five species of anadromous Pacific salmon found in the state; or

(2) 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 anadromous Pacific salmon found in the state.

(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

- (1) Arctic grayling;
- (2) northern pike;
- (3) lake trout;
- (4) brook trout;
- (5) sheefish
- (6) burbot;
- (7) landlocked coho salmon, chinook salmon, or sockeye salmon; or
- (8) 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 (f) of this section if

(1) after consultation with the Department of Natural Resources, or with the Department of Fish and Game if the spawning area is within a special area, the department finds that the applicant has demonstrated that the discharge

(A) does not contain pollutants at concentrations that exceed the criteria for growth and propagation of fish, shellfish, other aquatic life, and wildlife established in 18 AAC 70.020(b) (1) - (12); and

(B) will not adversely affect the capability of the area to support future spawning, incubation, and rearing activities;

(2) the applicant has submitted to the department a mitigation plan approved by the Department of Fish and Game under 5 AAC 95.900 if the spawning area is within a special area;

(3) the applicant has submitted to the department a mitigation plan approved by the Department of Natural Resources under AS 41.14, if the spawning area is within waters included in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*, adopted by reference in 11 AAC 195.010; the department will incorporate the mitigation plan as part of the discharge authorization; or

(4) the applicant has submitted to the department a mitigation plan approved by the department, after consultation with the Department of Natural Resources, if the spawning area is not within waters described in (2) or (3) of this subsection; the mitigation plan must use measures described in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*, adopted by reference in 11 AAC 195.010; the department will incorporate the mitigation plan as part of the discharge authorization.

(h) In a mixing zone authorization under (g) of this section, the department may require the applicant to monitor effluent, ambient water quality, and biological conditions to determine whether unanticipated adverse effects on spawning, incubation, and rearing of species identified in (f) of this section 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 initial authorization, but successful spawning, incubation, and rearing has occurred within the mixing zone after the initial authorization of that mixing zone.

(j) When determining whether to authorize a mixing zone under (e), (f), or (g) of this section, the department will make that determination

(1) in conformance with the determination of the Department of Fish and Game, acting under AS 16.20, of the location and time of a spawning area within a special area;

(2) in conformance with the determination of the Department of Natural Resources, acting under AS 41.14, of the location and time of a spawning area within waters included in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes*, adopted by reference in 11 AAC 195.010; or

(3) after consultation with the Department of Natural Resources, as to what the Department of Natural Resources considers the location and time of a spawning area not within waters described in (1) or (2) of this subsection.

(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 10-year, 7-day low flow (7Q10) as the chronic criteria design flow and the 10-year, 1-day low flow (1Q10) as the acute criteria design flow; and for the protection of human health, the 5-year, 30-day low flow (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.

(n) When consulting with an agency under (g) or (j) of this section, the department will give appropriate weight to any information received from the agency, considering the agency's expertise.

(o) For purposes of this section, the five species of anadromous Pacific salmon found in the state are chinook salmon, coho salmon, sockeye salmon, pink salmon, and chum salmon.

(p) In this section, "special area" means a state game refuge, a state game sanctuary, or a state fish and game critical habitat area, established under AS 16.20.

✪ History: Eff. 11/1/97, Register 143; am 3/23/2006, Register 177

✪ Authority: AS 46.03.010

AS 46.03.020

AS 46.03.050

AS 46.03.070

AS 46.03.080

AS 46.03.100

AS 46.03.110

AS 46.03.710

AS 46.03.720

