

Kachemak Bay Conservation Society
3734 Ben Walters Lane
Homer, Alaska 99603
907 235 -2062

December 6, 2005

RE: Resolution 2005-106

Attention : Ron Long, KPB Assembly President & Members of the Assembly

Kachemak Bay Conservation Society is a non-profit organization dedicated to protecting the environment and encouraging sustainable use and stewardship of the natural resources in the Kachemak Bay region.

KBCS strongly supports Resolution 2005-106. The state administrations proposed regulation changes for mixing zones would allow increased pollution in anadromous streams which is counterproductive to our very important fishing industry. The industry has spent a great deal time and dollars securing the Marine Stewardship Council's Label which promises healthy, wild salmon.

Again, KBCS supports Resolution 2005-106 and oppose any changes to a already lenient mixing zone regulations. We do not wish to jeopardize the health of our fisheries or waters.

The state should not enact any regulation changes that would jeopardize the health of our fisheries or waters.

Sincerely,



Roberta Highland, Board member KBCS

Agenda Item P.2.e
Committee Legislative
Page Number 85
R2005-106

Coal Point Seafoods
4306 Homer Spit
Homer, Alaska 99603

Agenda Item P.S.#2.
Committee Legislative
Page Number 85

Dear President Ron Long,

RE: **SUPPORT 2005-160** to prohibit mixing zones in river systems

We are a fish processing plant and seafood market that fully **Supports Resolution 2005-106** opposing mixing zones in our river systems.

If we support our salmon stocks we must not allow toxins from entering the nursery, rearing and returning areas that sustain them.. Salmon fry can stay up in these tributaries for up to three years before they smolt and head out to sea. It is a critical salmon life stage.

Our pristine waters are a secret key that allows the macro invertebrates that they feed on to be sustained in such high numbers. These tiny organisms as well as the young salmon themselves cannot withstand physical and chemical changes that these mixing will introduce.

We on the Kenai are reknowned for our Salmon. People come from around the world to witness these rare wild runs. We need to conscientiously maintain the life blood that sustains these incredible salmon runs which serve us.

Thank-you for this resolution

Sincerely,
Nancy Hillstrand
Coal Point Seafoods
Welovefish.com



"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."

Members

Alaska State
Chamber of
Commerce

Alaska Native
Groups

Environmental
Groups

Recreational
Groups

Aquaculture
Associations

Fishing
Organizations

City of Kodiak

City of Kenai

City of Seldovia

City of Homer

Kodiak Island
Borough

Kenai Peninsula
Borough

Municipality of
Anchorage

November 23, 2005

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

Agenda Item P. 2. e

Committee Legislative

Page Number 85
R 2005-106

Re: Comments on Proposed Changes and Revisions to Title 18, Chapter 70 of the Alaska Administrative Code, on Mixing Zones and Water Quality Standards

Dear Ms. Sonafrank,

Cook Inlet Regional Citizens Advisory Council (CIRCAC) submits the following comments regarding the 2005 proposed revisions to the Mixing Zone provisions of the Alaska Water Quality Standards in 18 AAC § 70.240 on behalf of our member organizations.

CIRCAC is a nonprofit corporation organized exclusively for the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of Section 5002 of the Oil Pollution Act of 1990. Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. CIRCAC consists of 13 members representing boroughs, cities and municipalities in the Cook Inlet region, as well as Alaska Native groups, commercial fishing, and aquaculture, tourism, recreational and environmental interest groups.

In September 2004, CIRCAC submitted comments on the 2004 proposed regulatory changes to 18 AAC § 70.240, in which we expressed strong opposition to the Alaska Department of Environmental Conservation (ADEC) proposal to weaken existing state regulations governing mixing zones. The 2004 proposed changes, which would have removed the statewide ban on mixing zones in anadromous or resident fish or shellfish spawning or rearing areas, was in our estimation bad environmental policy. CIRCAC has reviewed the 2005 draft mixing zone regulations, and we are pleased to note that ADEC has strengthened the regulatory language, compared to the 2004 draft regulations. However, the 2005 draft regulations still present a reduction in overall pollution prevention when compared to the existing regulations at 18 AAC § 70.240 - 18 AAC § 70.270. We continue to oppose the state's efforts to develop regulations which would permit exceptions to the mixing zone prohibition in spawning areas, and we reiterate our recommendation that ADEC maintain the existing prohibition.

However, if the Department is determined to proceed with this rulemaking, we ask that you consider our input in crafting the final regulatory language.

Comments on Regulatory Changes

ADEC proposes to change the regulations at 18 AAC § 70 by repealing Sections 245, 250, 255, 260, and 270 of Title 18 of the Alaska Administrative Code, and creating 18 AAC § 70.240, to consolidate and reorganize elements of the previous regulations. The 2005 proposed regulations include several improvements compared to the 2004 regulations, however they still provide for exemptions to the mixing zone prohibition in fish and shellfish spawning areas, and CIRCAC strongly opposes this proposal.

CIRCAC supports language protecting fish and shellfish and extending protection to lakes.

Proposed language at 18 AAC § 70.240(c)(4) prohibits mixing zones that would result in a reduction to fish or shellfish population levels in all water bodies, and language at 18 AAC § 70.240(e) extends the mixing zone requirements for spawning area protection to lakes. CIRCAC supports ADEC's proposal to retain the language "fish and shellfish," which exists in the current regulations but was removed in the 2004 draft language. CIRCAC also supports ADEC's proposal to include lakes among the water bodies where mixing zones limitations apply.

CIRCAC opposes draft language at 18 AAC § 70.240(f). The existing ban on mixing zones in anadromous or resident fish or shellfish spawning or rearing areas should be retained, without exceptions.

Opening the door to potential degradation of Alaska's anadromous fish spawning habitat is bad environmental policy. The 2005 proposed regulations at 18 AAC § 70.240(f) give ADEC the discretion to approve mixing zones in spawning areas if certain conditions are met. These include: demonstrating that the timing of the discharge will not interfere with spawning activities; demonstrating that the discharged pollutants will not adversely effect present and future spawning; and submitting a mitigation plan for approval by either Fish and Game or DNR. While these provisions are an improvement on the 2004 draft regulations, they are still a step backward from the existing regulations, which do not provide for exceptions to the mixing zone prohibition in fish spawning areas.

CIRCAC appreciates ADEC's attempt to develop a more definitive criteria process for allowing mixing zone exceptions, and we believe that the draft regulatory language, in combination with the information in the guidance document, provide fairly sound standards for mixing zone exceptions. However, on principal we oppose the concept of exceptions to mixing zone prohibition in fish spawning habitat. While ADEC originally described a need for exceptions to allow for situations where existing mixing zone effluents have actually created spawning habitat, neither the draft regulations nor the guidance document address that specific scenario. Instead, the regulations provide an opportunity for a mixing zone to be established in an area known to support fish or

shellfish spawning, absent any clear proof that the pollutants will harm the fishery resources. CIRCAC cannot conceive of a reason to open the door to potential degradation of our fragile shellfish rearing and fish spawning habitat, when so many state and federal agencies, recreational and commercial fishing groups, and oil companies, to name a few, have gone to such great lengths to protect these resources.

The proposed regulations requiring outside agency consultation should be strengthened and should allow for a public process.

CIRCAC recognizes that changes to the 2005 proposed regulations provide for intergovernmental review by Department of Natural Resources (DNR) Office of Habitat Management and Permitting and Department of Fish and Game when an exception to the mixing zone prohibition in fish spawning areas is considered. However, the draft regulations require only a "consultation" from these outside agencies; ADEC maintains sole discretion to approve an exception. CIRCAC recommends that ADEC revise the draft regulations at 18 AAC § 70.240(f) to require the concurrence of DNR or Fish and Game before ADEC may approve an exception to the mixing zone prohibition. In considering the application, Fish and Game should allow for public comment so that stakeholders may input into the review process.

The proposed mitigation provisions confirm that the proposed exception to mixing zone prohibition in fish spawning areas may cause harm to fishery resources.

The proposed regulations at 18 AAC § 70.240(f)(4) outline mitigation actions that must be undertaken in cases where an exception to the mixing zone prohibition in fish spawning habitat is allowed. Throughout this section of the proposed regulations, there are references to "rectify[ing] the impact" or "compensate[ing] for the impact" to fishery resources. These requirements reflect an implicit recognition that even if the conditions in 18 AAC § 70.240(f)(1) and (2) are met, there will still be impacts to the resource. There is no need for ADEC to allow any activity that has even the potential to imperil the health of fish spawning habitats or fishery resources.

Thank you for your consideration of these comments. The health and balance of Alaska's anadromous fish habitat is of vital importance to each and every one of CIRCAC's member organizations.

If you have any questions, please feel free to contact me at (907) 283-7222.

Sincerely,

Michael L. Munger
Executive Director