



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 18, 2008

Janine Jennings
Water Quality Standards Unit
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: EFH Consultation on Alaska's
Revised Mixing Zone Policy

Dear Ms. Jennings:

This letter is in regards to on-going discussions between NOAA's National Marine Fisheries Service (NMFS) and the Environmental Protection Agency (EPA) on the Alaska Department of Environmental Conservation's (ADEC) proposed revisions to Alaska Water Quality Standards in 18 AAC 70.240 through 18 AAC 70.270 (mixing zones). On December 21, 2006, NMFS provided a letter (copy enclosed) to EPA in response to EPA's determination that their proposed approval to the revisions to the State's mixing zone policy may adversely affect Essential Fish Habitat (EFH). We concurred with EPA that there may be instances where the approval of a mixing zone by the State may adversely affect EFH and provided EFH Conservation Recommendations to moderate potential adverse effects of the proposed action on EFH as follows:

- 1) The mixing zone regulations approved by EPA should include the mitigative measures proposed by the State, including:
 - a) 18 AAC 70.240(c)(1), which establishes that prior to approving a mixing zone, effluents will be treated to remove, reduce, and disperse pollutants using methods that meet certain minimum requirements,
 - b) 18 AAC 70.240(e)-(g), which establish that in fresh waters, mixing zones will not be authorized in areas of Pacific salmon spawning during times of spawning; for other species, mixing zones may be authorized in spawning areas if the discharger has submitted an approved mitigation plan,
 - c) 18 AAC 70.240(d)(1), which establishes that within mixing zones, "pollutants discharged will not 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) EPA should still complete site-specific EFH consultation on individual NPDES permit actions that may adversely affect EFH

On August 8, 2008, NMFS received EPA's response to our EFH Conservation Recommendations as required under section 305(b) (4) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). EPA agreed to Conservation Recommendation #1 stating that these provisions are in the regulation that was adopted by the State and submitted to EPA for review and approval, and thus are included in the action. With



regard to Conservation Recommendation #2, EPA stated that it will, to the extent required by EFH regulations, continue to complete site-specific EFH consultations on individual NPDES permit actions in Alaska. EPA concluded the response by acknowledging EPA's obligation under the Magnuson-Stevens Act to consult separately on the upcoming decision on delegating the National Pollutant Discharge Elimination System permit program to the State of Alaska.

It is this last aspect that we wish to address. As you are aware, NMFS has been participating on an interagency work group with EPA, ADEC and the U.S. Fish and Wildlife Service regarding specific language to address our concerns on Threatened and Endangered Species and EFH in ADEC's Implementation Guidance for the revisions to mixing zone regulations. Concurrently EPA is seeking comments on the State's request for approval to administer the proposed Alaska Pollutant Discharge Elimination System program. NMFS wishes to insure that our work in this interagency group is recognized by EPA personnel working on the delegation of the NPDES program to the State. Specifically, the latest draft language for the Implementation Guidance reviewed by the interagency group on EFH states:

Essential Fish Habitat has been designated for all marine waters and brackish waters, and fresh water habitats of anadromous Pacific salmon. NOAA Fisheries administers EFH and may recommend conservation measures for these areas.

The applicant will make an initial determination as to whether there is any potential for an adverse effect from a mixing zone proposed within EFH. This determination should be done using procedures specified in DEC's Permit Writer's Handbook or consistent with those in EFH regulations. DEC will provide any draft permit, with the applicant's EFH determination, to NOAA prior to or during the public comment period. For any mixing zone applied for in EFH, DEC will solicit conservation recommendations from NOAA at the time that DEC provides the draft permit to NOAA.

While we have yet to meet with the group to discuss this language, we acknowledge that such a process would enhance our ability to work cooperatively with ADEC in conserving EFH. Therefore, we recommend that such a process be adopted by ADEC as part of its responsibilities in administering the APDES program.

We look forward to hearing from you on this matter. Should you have any additional questions regarding EFH please contact Ms. Jeanne Hanson of my staff at (907) 271-3029. Questions regarding Threatened or Endangered species should be addressed to Mr. Brad Smith at (907) 271-3023.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

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Q: EPA Mixing Zone JH BS 8-18-08