



UNITED FISHERMEN OF ALASKA

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April 16, 2014

Earl Crapps
ADEC Division of Water
555 Cordova St
Anchorage, AK 99501
By Email: earl.crapps@alaska.gov

RE: Proposed implementation methods for water quality antidegradation policy

Dear Mr. Crapps,

United Fishermen of Alaska is the statewide commercial fishing trade association, representing 36 commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters. Fifteen of our 36 member organizations represent salmon fisheries that are dependent on Alaska's outstanding water quality and habitat for continued production, and another eight are salmon aquaculture associations that are subject to APDES permitting for discharges. Commercial fishing vessels currently do not require NPDES permits for discharges incidental to normal operation. However, unless Congress takes additional action, the moratorium from the requirement to obtain permit coverage for incidental discharges from these vessels under a vessel general permit expires December 18, 2014.

We appreciate the opportunity to comment on the proposed regulation changes 18 AAC 70.016 and 70.017 establishing implementation methods for water quality antidegradation policy, and we thank the department for extension of the public comment period. The State's salmon bearing waters are protected by ADF&G Habitat Division permitting on activities including discharges if they are listed in the State's Catalog of Anadromous Waters, but the catalog is far from complete, so we see antidegradation regulations as another essential tool in protecting salmon and the habitat they require.

We commend the department on the implementation approach of a public workgroup process including stakeholders and representatives of affected state agencies and concerned organizations.

Below are our comments on the proposed regulations, first with general comments and then by section, in the order in which they appear:

In general, we support regulations that are clear and unambiguous. We note recurring usage of the phrase "in its discretion" and ask that these be eliminated where necessary to clarify the role of the department as required steps or considerations, not subject to discretion as to whether these steps or requirements are carried out. The final selection of the permitted alternative at the

end of the process may involve the discretion of the department, but tasks in the process should not be bypassed discretionarily.

We do not support that in implementing these regulations it is necessary to repeal **18 AAC 70.016(a)(2)(D)**, which reads:

“(D) the methods of pollution prevention, control, and treatment found by the department to be the most effective and reasonable will be applied to all wastes and other substances to be discharged; and”

We believe that this section is consistent with the federal antidegradation statutes and is appropriate to retain in the overriding policy, as it is important in conveying that alternatives shall be included for consideration by DEC in an antidegradation analysis, and is clear that DEC select the most effective and reasonable option. The removal of this implies that DEC might permit an option that is less effective and reasonable than alternatives, which seems contrary to common sense and prudent policy.

18 AAC 70.016 (a) (4) We support that an antidegradation analysis is subject to the public participation and intergovernmental review procedures under 18 AAC 70.015(c).

18 AAC 70.016 (a) (5) (A through H) We ask that information be included on any salmon species known to use the waterbody, including the noting of any waterbodies included in the Catalog of Anadromous Waters, within or downstream of the proposed activity. In **(G)**, we are unclear on why the determination of the highest applicable antidegradation tier level for each pollutant or parameter of concern would be submitted by the applicant, and suggest that the determination of applicable tier for a given pollutant is the department’s responsibility, not the applicants, as conveyed in 18 AAC 70.016 (c) (1).

18 AAC 70.016 (a) (6) We have concern with:

*“the applicant **may** submit sufficient credible baseline water quality information, measured or modeled, for the receiving water in order for the department to determine the applicable tier level.”*

We are concerned that this language is vague and that modeling is not necessarily sufficient, considering that each waterbody is unique and an application for discharge is site specific. We understand that some applicants may not have the ability to obtain thorough measurement of water quality and volume through different seasons over a period that would provide the necessary information for a tier 2 determination. The regulations are not clear as to what the department will do if the applicant chooses not to submit baseline water quality information. We suggest that “may” be changed to “shall” in this passage, or further clarification given to the process the department would use to conduct the tier 2 analysis if not provided with necessary information. We recommend not permitting discharges without adequate site specific water quality and quantity information.

18 AAC 70.016 (b) and (c) Tier 1 & 2

We support the pollutant by pollutant, parameter by parameter approach, as salmon are particularly sensitive to specific pollutants. This best protects water quality and allows the appropriate classification in cases where a specific pollutant might pose a risk. In supporting this approach we also note, however, that little is known about the synergistic or biomagnifying

effects on salmon or aquatic life from a combination of different toxins at levels that individually may not pose harm (see comment below on 18 AAC 70.016 (c) (3)).

18 AAC 70.016 (c) (2)

We have general concern with de-minimis exemptions, and feel they would only be appropriate in cases where the degradation activity is of very short duration in waters of high flushing, such as incidental discharge in the normal operation of commercial fishing vessels, and temporary net pens that hatchery operations use temporarily to imprint salmon to return to approved locations. Alaska's salmon hatcheries are subject to NPDES permitting for raceways but "*net pens rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries*" are exempted from permitting in the EPA Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category (Federal Register August 23, 2004, online at <http://www.epa.gov/fedrgstr/EPA-WATER/2004/August/Day-23/w15530.htm>).

We ask that de minimis exemptions in Tier 2 applications be very limited and closely defined, and not be allowed for pollutants that are known or become known to "biomagnify" in their effects on salmon and aquatic life (see comment below on 18 AAC 70.016 (c) (3)).

We have concerns with the arbitrary 5% threshold over the existing, permitted or allowable discharge level, because it would become problematic in situations with successive "de minimis" applications for discharge in the same waterbody.

18 AAC 70.016 (c) (2) (B) & (C)

In this section it appears that the word "and" is incorrectly placed in the line below where it belongs, as the passage does not seem to make grammatical sense. We suggest placing it as it appears in brackets and removing it from where we show it in strikethrough below:

*"The proposed discharge will not cumulatively decrease the available assimilative capacity of the receiving water by more than five percent from the conditions as of the initial date of this section; the cumulative lowering of water quality must take into account all sources in the receiving water, [and]
(C) the following conditions are met; ~~and~~
(i through iv)"*

18 AAC 70.016 (c) (3)

In general we have concerns with this section because it allows for categorical exemptions. Discharges allowed without antidegradation analysis under general permits and de minimis exceptions may benefit from being reviewed at some time to be analyzed based on new information – especially the synergistic effects of different contaminants that are currently not well understood. A 2008 Pacific Northwest study noted:

"Although the effects of individual anticholin-esterase insecticides on aquatic species have been studied for decades, the neurotoxicity of mixtures is still poorly understood..."

"We observed addition and synergism, with a greater degree of synergism at higher exposure concentrations. Several combinations of organophosphates were lethal at concentrations that were sublethal in single-chemical trials..."

The Synergistic Toxicity of Pesticide Mixtures: Implications for Risk Assessment and the Conservation of Endangered Pacific Salmon
Cathy A. Laetz,¹ David H. Baldwin,¹ Tracy K. Collier,¹ Vincent Hebert,² John D. Stark,³ and Nathaniel L. Scholz¹
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661902/>

In addition, new technologies may be developed or new market opportunities for discharged matter may become cost-effective to provide a practicable “no discharge” alternative to an ongoing discharge. The antidegradation review would provide a mechanism to promote adoption of new technologies or practices that could reduce degradation, which otherwise might not become apparent to the permittee.

We are especially concerned with (C) in this section which seems to mean that a rogue operation that “required but did not apply or receive a permit”, would be categorically exempted from antidegradation analysis.

All in all, we feel that the only appropriate categorical exemption, if any, would be renewal of discharges that had previously undergone antidegradation analysis in some reasonable time frame such as ten years, and are not proposing an increase in discharge.

18AAC 70.015 (c) (5) (B) Requirements of a Tier 2 application:

We are concerned with the use of “*such as*” preceding the list of practicable alternatives for the proposed discharge, as ask that (i), the non-discharge alternative analysis, be required rather than suggested as inferred by the phrase, “*such as*”. In this passage we also recommend that analysis of (iv) *seasonal discharges to avoid critical ecological time periods* be required in any waters included in the Catalog of Anadromous Waters, so that consideration of the various life stages of salmon in a system is assured.

18AAC 70.015 (c) (5) (E) We have concern that the applicant would identify the least degrading practicable alternative in their application. While they may have a preferred alternative, the determination of the least degrading practicable alternative is the responsibility of the department in its analysis, and this alternative should be required in the permit.

18AAC 70.015 (c) (6) (A & B) We have concerns that the requirement for either a social or economic importance analysis seems to only require description of the positive benefits of a degradation proposal. These analyses should also include consideration of negative effects. In (B), the economic importance analysis should also consider if there are economic effects outside the area where the receiving water is located – which is often the case with salmon bearing waters that provide resource for commercial, subsistence, personal use and sport activity far beyond the local area.

18 AAC 70.016 (e) - General permit antidegradation analysis

We have concerns that this section is very loosely defined and is not clear on the potential range of waterbodies and activities that might be included or allowed in a general permit, as the effects of discharges are cumulative and site specific. We also have concerns with the interplay of de minimis exemptions in applications under a general permit, and would support clear language that defines parameters for general permits, limits on the geographical extent, and analysis of combined effects of proposed activities. Similarly to de minimis exemptions, we suggest that general permits be very limited and closely defined.

18 AAC 70.017 Tier 3 Outstanding National Resource Water

In (a) of this section, “Tier 3 water shall be designated in statute.” We interpret that this would require approval from the legislature, but we are not confident in the practical ability of a legislature to accomplish this in one or two 90 day regular sessions. We suggest that language

should clarify a process within DEC and/or a multi-agency board that would allow the legislature the practicable opportunity to approve a designation in a single 90-day session.

18 AAC 70.017 (a)(3) We have concerns with the requirement for Tier 3, Outstanding National Resource Waters: “*the water must have exceptional characteristics relative to other state of Alaska water*” and (3)“*the water is an exceptional and rare example of its type regardless of whether the water is considered high quality.*” We note the wording “National” rather than “State” resource waters . We feel that waters of exceptional characteristics may well be situated near others that may also be exceptional, and the fact that Alaska has more waters of outstanding quality than the other states does not diminish their value or the justification for protection at the highest tier. Waterbodies should not be precluded from Tier 3 classification based on presence of other nearby exceptional quality waterbodies, if they would otherwise qualify.

18 AAC 70.017 (b) We support the proposed regulations allowing that nomination for Tier 3 classification may be submitted by any resident of Alaska, but nominations should also be allowed to be made by organizations, corporations, tribes, or State agencies.

In summary, we thank you for the opportunity to provide these comments under the extended deadline, and for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julianne Curry', written in a cursive style.

Julianne Curry
Executive Director