

HOUSE CONCURRENT RESOLUTION NO. 22
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES SEATON, Wilson

Introduced: 2/19/08

Referred: House Special Committee on Fisheries, Resources

A RESOLUTION

1 **Affirming the legislative intent of state law that the Alaska Board of Fisheries currently**
2 **has the tools and authority to allocate fishery resources within a fishery based on vessel**
3 **size class, gear limits, trip limits, and registration areas.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** art. VIII, Constitution of the State of Alaska, gives the legislature the
6 authority to manage the state's fish and game resources for the maximum benefit of the people
7 of Alaska, and the legislature has delegated this authority to the Board of Fisheries and Board
8 of Game and established statutory framework giving the boards necessary tools to manage
9 resources and satisfy the constitutional mandate of maximum benefit to Alaskans; and

10 **WHEREAS** the management tools provided to the Board of Fisheries originate under
11 AS 16.05.251, which allows regulations for fishing in different districts in a single
12 administrative area and regulation by vessel size and gear type; and

13 **WHEREAS** the Board of Fisheries has approved a broad spectrum of management
14 regimes based on an implicit authority to allocate among different fisheries; and

15 **WHEREAS** there has been discussion in the legislature and in the fishing community

1 questioning whether the Alaska Supreme Court decisions set out in Grunert v. State, 109 P.3d
2 934, 930-932 (Alaska 2005), and State v. Grunert, 139 P.3d 1226, 1235-1239 (Alaska 2006),
3 could be used to overturn a wide range of regulations adopted by the Board of Fisheries; and

4 **WHEREAS** the Grunert decisions focused on a regulation that allocated within a
5 fishery a cooperative allocation that allowed nonparticipants to benefit from the efforts of
6 participants, which is a distinct issue and does not correlate to other existing state fisheries
7 management schemes; and

8 **WHEREAS**, before the Grunert decisions, the Alaska Supreme Court, in State v.
9 Hebert, 803 P.2d 863 (Alaska 1990), upheld the use of superexclusive use areas, and this case
10 was not mentioned as being overturned in the Grunert decisions; and

11 **WHEREAS** the regulations limiting catch based on harvest objectives, such as Prince
12 William Sound and Chatham Strait black cod, do not create a cooperative fishery but rather
13 limit the total amount a fisherman can harvest, and hence do not fall under the purview of the
14 Grunert decisions; and

15 **WHEREAS** existing statutory language allows the Board of Fisheries to adopt
16 regulations to set quotas, has been interpreted to allow quotas based on vessel size class, and
17 provides the board a solid statutory base for making allocation decisions; and

18 **WHEREAS** existing state fishery management plans for state waters allocate portions
19 of a fishery based on vessel size class, gear limits, trip limits, and registration areas;

20 **BE IT RESOLVED** that the Alaska State Legislature affirms the legislative intent of
21 state law that the Board of Fisheries currently has the tools and authority to allocate fishery
22 resources within a fishery based on vessel size class, gear limits, trip limits, and registration
23 areas; and be it

24 **FURTHER RESOLVED** that the Board of Fisheries is encouraged to proceed with
25 the management of public resources based on the legislative intent of the Alaska Statutes
26 without speculative consideration of the Grunert decisions.