

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 14, 2007

8:56 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Kyle Johansen
Representative Craig Johnson
Representative Gabrielle LeDoux
Representative Peggy Wilson
Representative Bryce Edgmon

MEMBERS ABSENT

Representative Lindsey Holmes

COMMITTEE CALENDAR

HOUSE BILL NO. 15

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 15

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	FSH, RES
03/14/07	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor of HB 15, introduced the bill and responded to questions.

STEVEN DAUGHERTY, Assistant Attorney General

Natural Resources Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Responded to questions regarding HB 15.

ROBERT HEYANO
Dillingham, Alaska

POSITION STATEMENT: Testified in support of HB 15.

ROBIN SAMUELSEN
Dillingham, Alaska

POSITION STATEMENT: Testified on HB 15.

PAUL SHADURA, Executive Director
Kenai Peninsula Fisherman's Association
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 15.

JERRY MCCUNE, Lobbyist
United Fisherman of Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 15.

BYRON CHARLES
(No address provided)

POSITION STATEMENT: Testified with concerns on HB 15.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:54:39 AM](#). Representatives LeDoux, Wilson, Johnson, and Edgmon were present at the call to order. Representative Johansen arrived as the meeting was in progress.

HB 15-BOARD OF FISHERIES CONFLICTS OF INTEREST

[8:55:05 AM](#)

CHAIR SEATON announced that the only order of business would be HOUSE BILL NO. 15, "An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

[8:55:17 AM](#)

REPRESENTATIVE WILSON moved that the committee adopt CSHB 15, Version 25-LS0114\C, Kane, 3/13/07, as the working document. There being no objection, Version C was before the committee.

[Chair Seaton passed the gavel to Representative Wilson.]

The committee took an at-ease from 8:56 a.m. to 8:57 a.m.

8:57:08 AM

CHAIR SEATON, speaking as the prime sponsor, explained that HB 15 seeks to allow better participation and voting by those on the Board of Fisheries (BOF) who are knowledgeable about the subjects [before BOF]. Currently, those who know the most about a fishery have to declare a conflict and recuse themselves from the discussion and voting. This legislation specifies that those participating on the BOF who are participants in a fishery will declare the conflict but be allowed to participate in the deliberations and vote. However, those with a financial conflict such as board members with a paid financial interest as a consultant, lobbyist, or executive director [of an organization] wouldn't be able to deliberate or vote. He highlighted that under Version C everyone will have to declare all their conflicts of interest, as is the case currently. He noted that Version C also adds a requirement for a report, which he suggested the committee may want to review because it may generate a fiscal note. In conclusion, Chair Seaton reiterated that the purpose of HB 15 is to allow the most qualified people to participate on the board without having to conflict out regarding issues of prime concern.

9:00:21 AM

REPRESENTATIVE LEDOUX inquired as to why it's acceptable for someone to vote on an issue if they stand to make substantial money [from a particular decision] as opposed to an executive director of a fisheries organization who's making \$75,000.

CHAIR SEATON opined that there is an inherent moral/ethical conflict if, for instance, a charter boat fisherman is taking action that could reward him in terms of income. However, there's no moral conflict for someone who is paid for doing a job.

9:03:03 AM

REPRESENTATIVE LEDOUX opined that it seems that the sponsor is saying that a lobbyist may vote for something on behalf of a client and may not feel guilty about it. However, an individual may vote for an issue from which he/she may benefit and feel guilty about it.

CHAIR SEATON remarked that it's an interesting situation when a lobbyist is paid to be present and do his/her job for which there should be no conflict or guilt. However, if an individual would be voting on a matter that would influence the industry in which he/she participates, there's an inherent moral conflict.

REPRESENTATIVE LEDOUX, referring to the North Pacific Fisheries Management Council (NPFMC), remarked that she hasn't observed any better public decisions from those who are voting based on the benefit to their financial interests as opposed to an individual voting on behalf of a client's financial interests.

[9:05:18 AM](#)

REPRESENTATIVE JOHNSON turned attention to the sponsor statement, which relates that individual board members were required to recuse themselves 10 percent of the time during. Considering the lengthy board cycle, he asked if that should be taken as significant.

CHAIR SEATON opined that it's a significant amount of time to recuse some of the most knowledgeable people on what are sometimes very controversial issues. He noted that the board believes it's a significant amount of time as well. He directed attention to testimony from Art Johnson [given during the April 13, 2005, House Special Committee on Fisheries on House Bill 241] in the packet, which read:

What's also problematic ... is the potential for losing a board member due to a conflict of interest. We're a seven-member board, and regardless of how many board members are present and participating. So whether there [are] absences and/or conflicts, we always still have to have four votes to carry any motion. And so especially if it's compounded with an absence by another board member, a lot of times it becomes very difficult for us to take regulatory action.

CHAIR SEATON indicated that the committee packet should also include testimony from another previous board member, who also

found it difficult for the board to move forward on issues when there are recusals. The aforementioned was especially the case when the issue involved a fishery that had more than one board member having a conflict.

REPRESENTATIVE EDGMON provided an example of recusal by a board member, whose family member was a fisherman.

REPRESENTATIVE WILSON emphasized that recusing those people with the most expertise on an issue can be detrimental to the discussion.

REPRESENTATIVE LEDOUX opined that it's a conundrum because a board could consist of people with no interest in or information on the issues before it or it can consist of people with a financial interest in the issues who then vote on that basis. She questioned which is worse.

[9:10:02 AM](#)

CHAIR SEATON pointed out that the sunset date in the legislation was chosen to allow for review after the completion of a full board cycle in a region of the state.

[9:10:40 AM](#)

REPRESENTATIVE JOHNSON expressed concern that the sunset will set up a situation in which those more qualified members who were participating and didn't have to recuse themselves could be lost when it sunsets.

CHAIR SEATON referred to it is a balancing act. This is a significant change and the legislature should review it, he opined. He pointed out that the legislature could change it at any time.

[9:12:19 AM](#)

REPRESENTATIVE JOHNSON, speaking as a member of the House State Affairs Standing Committee, related that he and its members have spent many hours crafting an ethics package, which specifically attempts to build transparency into government. Therefore, he said he is reluctant to move in a direction counter to that philosophy.

[9:14:50 AM](#)

REPRESENTATIVE WILSON asked whether under this legislation, board members would still be required to disclose [any potential conflicts of interest].

CHAIR SEATON explained that Version C requires that board members continue to report all the disclosures and declarations they are currently required to report. The only difference is that the chairman will determine if someone is conflicted out per the specifications of the legislation. He opined that the BOF's process is very transparent and there's no intention with HB 15 to make the process less transparent. In further response to Representative Wilson, Chair Seaton reviewed the new subsection that would allow the participation of a member of the BOF if that member or his/her immediate family member had a permit or license issued under AS 16.50, sport fishing and crew members' license, AS 16.40.270, sport guided charter licenses, and AS 16.43, Commercial Fisheries Entry Commission (CFEC).

[9:17:41 AM](#)

REPRESENTATIVE EDGMON, referring to Section 3 of Version C, pointed out that AS 39.52.120(f) doesn't already exist.

[9:18:21 AM](#)

STEVEN DAUGHERTY, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, specified that subsection (f), the sunset provision, is a new provision that's added in Section 2.

CHAIR SEATON interjected that when the sunset date is reached, this new exemption section would be repealed in 2011 and return to the requirements of current law.

[Representative Wilson returned the gavel to Chair Seaton.]

[9:19:26 AM](#)

ROBERT HEYANO, clarified that although he is a member of the Board of Fisheries, he is testifying on his own behalf in support of HB 15. He related his belief that changing the conflict of interest law would allow more participation from those BOF members who are actively participating in the fishery and have extended family members participating in the fishery as well. Should HB 15 pass, he predicted that there will be more interest from the public to serve on the BOF. Furthermore, passage of this legislation will greatly enhance the concept of

a lay board by providing the board with the personal experience and knowledge those board members have in relation to a particular fishery issue. Drawing upon his membership on the BOF, Mr. Heyano has a great impact on those BOF members who are long-time Alaskans with extensive family history in the fishing industry. He recalled that at the last board meeting he, as a driftnet permit holder for Bristol Bay, was conflicted out on approximately 30 percent of the Bristol Bay proposals. He noted that there are 1,800 driftnet permit holders and he found it difficult "to find where any of the proposals would actually give me a financial benefit, being 1 of 1,800 drift permit holders." Having the board members disclose potential conflicts should alleviate concerns, he opined. He pointed out that there is an extensive confirmation process for potential board members, which should address unethical applicants.

[9:23:18 AM](#)

REPRESENTATIVE EDGMON requested that Mr. Heyano discuss how the board process works better with members who have knowledge of a certain area or fishery.

MR. HEYANO highlighted that the Cook Inlet fishery is very complex, and therefore it was helpful to have members with knowledge of that fishery. The existing conflict of interest laws and the notion of a lay board consisting of members with expertise of the issues before the board seem to be at odds.

[9:25:29 AM](#)

REPRESENTATIVE WILSON related her understanding that the [goal] is to make the board well-rounded with members from the various sectors of the fishing industry. However, when debate arises a member with specific knowledge may be conflicted out.

MR. HEYANO noted his agreement, adding that the situation is very frustrating. He related that he has not been able to deliberate on the areas in which he had great expertise. Mr. Heyano, speaking as a board member, opined that it's very helpful for those lacking expertise in a certain area to have members who do have that expertise.

[9:27:20 AM](#)

ROBIN SAMUELSEN, informed the committee that although he is a past member of the Board of Fisheries and for nine years has sat on NPFMC, he is testifying on his own behalf. He said that when

he was a BOF member the members didn't have to deal with the conflict of interest statement imposed today. He related that NPFMC has went through various iterations in order to make the recusal as transparent as possible. He recounted his experience on the BOF when an issue pertaining to crab resulted in the member from Kodiak with crabbing knowledge to recuse himself from the meeting. Mr. Samuelson, as a non-crabber, had to seek information from the public, which turned out to be false information. The recused BOF member informed Mr. Samuelson of the erroneous information after the vote was taken. Mr. Samuelson opined that the best BOF members need to make the decisions, which are those who participate in the fishery and have knowledge of it. However, today those who are knowledgeable have to recuse themselves and aren't allowed to participate. He opined that the full board needs to vote on the conflict of interests. He further opined that HB 15 enhances the public process as it allows the best information to come forward and allows the board to make well-rounded decisions.

CHAIR SEATON clarified that HB 15 doesn't mandate that all members have to vote. However, it precludes a member from being conflicted out due to a participatory interest. He posed a situation in which a member is faced with a decision on a matter that would benefit that member, and asked if Mr. Samuelson felt that the member would recuse himself/herself because of the conflict.

MR. SAMUELSEN related that board members build trust with each other and a member who lies to other members will quickly be tainted and ostracized by the board. Depending upon the severity of a conflict, an individual would recuse himself/herself. He related that under the existing guidelines, he would be conflicted out from "here to the Yukon River" due to the participation of family members in the fishing industry. Therefore, he opined that the existing guidelines are too restrictive and the best decisions aren't coming from the BOF.

[9:34:02 AM](#)

PAUL SHADURA, Executive Director, Kenai Peninsula Fisherman's Association, provided the following testimony:

We come before you, today, in total support for HB 15, Board of Fisheries participation legislation to improve the public process of the board. We find it incredulous that it is acceptable to have active, effected positions on position boards, teachers on

teacher's boards, beauticians on beautician's boards, but here we have limitations on active commercial fishermen on a fisheries board. AS 16.05.221 references qualifications for Board of Fisheries members: knowledge and ability in the field of action of the board. Doesn't this, by definition, mean that the participants should have intimate knowledge of the business beforehand. We have a graying of the fleet; is this ... board's members relegated to those who no longer have vested interest? Who do active, youthful commercial fishermen relate concerns to? How can vital revitalization concepts be given new insight. Many of you may be aware of the current issue of the firing of federal attorneys for political reasons. This is perfectly within authority to the administration, because these individuals serve at the pleasure of the president. In Alaska, the attorney general ... also serves at the pleasure of the governor's office and is subject to the same political prejudices. The attorney general's representative sits on the Board of Fish and reviews and recommends to the chair of the board an issue of conflict of interest. Twenty years ago you would see many exuberant commercial fishermen on the board and very little challenges to their participation. Under the last two administrations, there has been advice given by the board's counsel that has systematically rendered commercial fishing voices moot. A biased opinion of ethics construction that has rendered the board's current commercial fishing area expertise useless. There is a conflict of interest here, it is the interest of those that want to destabilize commercial fishing in the state. A slippery bias that may end in the collapse of our state's most sustainable industry.

[9:36:46 AM](#)

JERRY MCCUNE, Representative, United Fisherman of Alaska, began by stating support for HB 15. He said that there's no question that a commercial fisherman serving on the BOF will be conflicted out. However, a lodge owner or part owner in a lodge that might have a direct conflict likely won't be conflicted out, he opined. He provided an example in which a processor processed sport caught personal use fish and sold those fish in a particular magazine. In that instance, the conflict was declared and deemed not to be a conflict of interest, and thus

the member could participate. Mr. McCune opined that the [decisions related to conflicts of interest] have gone too far on the commercial fishermen's side, but not far enough for the lodge, charter, and other interests that could have a direct benefit. However, per the statute the direct benefit has to be proven, which is problematic. Mr. McCune related the desire to have full disclosure on paper with the attorney general's office and in the public. He expressed the need to move forward with some form of HB 15 so that those with the expertise [in fisheries] seek membership on the Board of Fisheries.

9:39:07 AM

REPRESENTATIVE LEDOUX noted her agreement with Mr. McCune that the treatment of commercial fishermen versus lodge owners doesn't sound fair. However, she suggested that perhaps the solution may be to tighten [the conflict of interest requirements] for the lodge owners rather than to loosen them for the commercial fishermen.

9:40:04 AM

MR. MCCUNE pointed out that the direct conflict statute applies closely to those with a permit or interest in a particular fishery. He reiterated that it's difficult to prove that a lodge owner may receive a direct benefit from a BOF decision. He related that those with whom he has talked with want full disclosure and the chair could determine that those with real problems can deliberate, but not vote. He related his understanding that the intent is to move in a direction so that everyone can participate and the chair determines, under disclosure rules, whether the member can vote or merely deliberate on a particular issue.

9:41:48 AM

CHAIR SEATON indicated that part of the problem is that there is the potential of conflicting out enough board members that no decisions could be made.

MR. MCCUNE confirmed that [such a situation] happened once before when there almost weren't enough members to make a quorum. He added that a relative's involvement can cause a member to be conflicted out. There have been situations in which members have been sick and not in attendance and others are conflicted out such that only four members were making decisions on very important issues. The desire, he opined, is

for all members, if possible, to be part of the discussion and making the decisions.

[9:43:14 AM](#)

REPRESENTATIVE JOHANSEN inquired as to how an average citizen can discover information about members of the BOF.

MR. MCCUNE related his understanding that BOF members have to disclose permits, licenses, and ownership [in the fishing industry] with the attorney general's office and the public as well as conflicts of interest that arise prior to the BOF convening.

CHAIR SEATON reminded the committee that staff of the attorney general's office is online and could answer that question.

[9:44:19 AM](#)

BYRON CHARLES, expressed concern that folks are focusing on the quantity of fish rather than the quality of the fish being taken.

CHAIR SEATON offered to provide Mr. Charles with information on the matter.

[9:46:54 AM](#)

MR. DAUGHERTY, in response to Representative Johansen's earlier question, explained that at each meeting each board member is required to make an oral disclosure of any interest in the fishery by the member or his/her family. All the board meetings are recorded and available to the public. Additionally, an Alaska Public Offices Commission (APOC) disclosure is required.

[9:48:42 AM](#)

REPRESENTATIVE JOHNSON asked if the statute relating to disclosures refers to family or immediate family.

MR. DAUGHERTY clarified that the statute refers to immediate family, which read: "the spouse of the person; another person cohabitating with the person in a conjugal relationship that is not a legal marriage; a child including a stepchild and adopted child of the person; a parent, sibling, grandparent, aunt or uncle of the person; and a parent or sibling of the person's spouse."

9:50:24 AM

REPRESENTATIVE EDGMON requested further information on the level of disclosure and the strength of conflict of interest of the BOF in comparison to other lay boards.

MR. DAUGHERTY suggested that the ethics attorney at the Department of Law could respond to that question, although he noted that the same statute applies to all state boards and commissions.

9:53:39 AM

CHAIR SEATON announced that the bill would be held, and solicited further comments be sent to his office.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on fisheries meeting was adjourned at 9:53 a.m.