

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

March 23, 2007

8:52 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Craig Johnson
Representative Gabrielle LeDoux
Representative Peggy Wilson
Representative Bryce Edgmon
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Kyle Johansen

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."

- MOVED CSHB (FSH) OUT OF COMMITTEE

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
03/14/07	(H)	Heard & Held
03/14/07	(H)	MINUTE(FSH)
03/19/07	(H)	FSH AT 8:30 AM BARNES 124
03/19/07	(H)	Heard & Held
03/19/07	(H)	MINUTE(FSH)
03/21/07	(H)	FSH AT 8:30 AM BARNES 124
03/21/07	(H)	Heard & Held
03/21/07	(H)	MINUTE(FSH)
03/23/07	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

CHRISTINE KOSKI
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 15.

ALAN AUSTERMAN
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 15.

JIM MARCOTTE, Executive Director
Board of Fisheries (BOF)
Boards Support Section
Division of Administration
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 15, provided information on the Board of Fisheries' recusals.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:52:36 AM](#). Representatives Edgmon, Johnson, Holmes, and LeDoux were present at the call to order. Representative Wilson arrived as the meeting was in progress.

HB 15-BOARD OF FISHERIES CONFLICTS OF INTEREST

[8:52:47 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."

[8:53:44 AM](#)

CHAIR SEATON directed the committee's attention to the written testimony of John Jensen, member of the Board of Fisheries (BOF), which is included in the committee packet.

[8:54:18 AM](#)

CHRISTINE KOSKI paraphrased from a prepared statement, included in the committee packet, which read as follows [original punctuation provided]:

I represent myself. I have held a Cook Inlet salmon set net permit for 15 years and have actively fished in Cook Inlet for over 25 years. I am a single mom with 4 children. The majority of my income comes from commercial fishing. I currently live in the Kenai/Soldotna area. My children are also actively involved in commercial set net fishing and have been since they were born.

Approximately 35% of women are permit holders involved in Cook Inlet salmon set net commercial fishing as well as being involved in other commercial fisheries in the entire state.

I have attended BOF regulatory meetings for decades and in the last 5 years I have been active in the process. My involvement is to ensure that there is an opportunity for my children to continue commercial fishing as their parents and grandparents have.

It is impossible to express my concerns or to suggest changes to improve my capability to harvest salmon when I feel that there is no way to communicate with representation from the current members of the BOF.

Since I have been involved in the process there has been no set net commercial fishing person. To make matters worse it is difficult to converse with the gender bias on the Board. I can appreciate that there is a 14% representation for my gender currently, it still leaves me with a significant impediment with communicating and making changes relative to my situation. I want active participants from my area so that not only will I be able to communicate but so will other similarly situated stakeholders.

HB 15 moves to open up more representation for individuals like myself. Please consider the changes that will give more fair and equitable representation to the commercial fisher women in the State. Committee members please realize that Cook Inlet set net fisher women are hard working individuals who do not wish entitlements but want to make our own way and to instill in our children the lessons of hard work and just rewards. The majority of my livelihood is derived and supplemented with part time employment.

We are not wealthy, we do not make 10,s of thousands of dollars. Please support HB 15 as presented.

8:56:56 AM

REPRESENTATIVE LEDOUX inquired as to how HB 15 addresses gender bias.

MS. KOSKI related her understanding that there has never been a woman on the BOF. She indicated the need to have a woman on the BOF so that she can communicate [with her own gender] regarding the needs of fisher women who set net. In further response to Representative LeDoux, Ms. Koski confirmed that there is no woman who is a set net fisher on the BOF and there is only one woman on the board.

REPRESENTATIVE EDGMON clarified that there have been two women who have served on the BOF.

8:59:08 AM

ALAN AUSTERMAN stated that he is speaking on his own behalf. He noted that he spent eight years in the legislature and four years with the last administration addressing the issues before the committee. He opined that 12 years watching the BOF has led him to believe that the Department of Law (DOL) should be instructed not to conflict out those who have a conflict. As long as it's a layman's board, a layman has to be involved in the industry and able to participate in the discussions and the voting of the board and full disclosure should continue to occur. The DOL has interpreted the conflicts of interest and have suggested that the board conflict the person out. "I think that's not right," he opined. He pointed out that the legislature has given the BOF its authority to address allocation issues and legislators aren't conflicted out. Therefore, he opined that the same should be the case for the BOF. Although the number of conflicts isn't that great, those who are conflicted out are often the most knowledgeable on the topics.

9:01:49 AM

REPRESENTATIVE LEDOUX inquired as to Mr. Austerman's view as to the difference in allowing a board member with a financial interest to vote versus allowing a board member who represents an organization whose membership may have a financial interest.

MR. AUSTERMAN related that BOF members usually want to serve on the BOF because they feel they can contribute to the statewide interest with regard to the fisheries. He couldn't recall a BOF member who wanted to serve with the thought of serving his/her own or someone else's financial interest. Mr. Austerman opined that there's a difference between the normal BOF members and the [NPFMC members].

REPRESENTATIVE LEDOUX commented that the situation as it exists now is that BOF members aren't able to vote on items that impact an individual's fishery [and therefore financial interest]. She inquired as to the possibility of that changing, if BOF members were actually allowed to vote on issues that had a financial impact for the member.

MR. AUSTERMAN acknowledged that it may be possible, but he doubted that would happen, given the nature of the BOF.

[9:04:22 AM](#)

REPRESENTATIVE EDGMON inquired as to Mr. Austerman's characterization of HB 15 relative to the current ethics package moving through the legislature.

MR. AUSTERMAN reiterated the need for full disclosure and opined that he didn't foresee a big change in the ethics aspect.

[9:05:20 AM](#)

REPRESENTATIVE LEDOUX inquired as to how one would view a scenario in which a board member is able to participate in the discussions and contribute information, but is prohibited from voting. She related her understanding that most of the testimony has seemed to revolve around the BOF's need to obtain information.

MR. AUSTERMAN said, "It would be better than what we have today because most of the guys that end up with a conflict ... have to sit out of the discussion as well as the vote." However, he reiterated that the legislature has delegated its authority to address allocation issues to the BOF. He also reiterated that legislators, even when disclosing a conflict, are expected to vote. Since the BOF has been given that authority, he related his hope that the legislature would have enough confidence in the BOF to do so.

[9:07:16 AM](#)

CHAIR SEATON posed the following scenario:

If you had somebody from the executive department of the Department of Fish & Game that was also on the board. So, that then you would have this conflict because it could be controlling what was happening on an ongoing basis whereas on the BOF not only is it just proposals that come from the public but it's also the fact that they're only going to be considering proposals for their area once every four years, in the cycle.

MR. AUSTERMAN indicated that he wasn't quite sure how to respond. However, the legislature's intent was to have a lay board with active fishermen on the board from throughout the state, he said.

[9:09:47 AM](#)

CHAIR SEATON, upon determining no one else wished to testify, closed public testimony. He then directed attention to the committee packet and the document with bulleted information related to the differences in the BOF as compared to many of the 122 board regulations, particularly due to the creation of the BOF through the legislature rather than the executive branch. He then directed attention to an e-mail from Leslie Gallant, State Medical Board, in which she clarified that a member of the State Medical Board who is a heart surgeon wouldn't be precluded from discussion and voting when a regulation about heart surgery is before the board. He noted that the committee packet also includes a number of analyses.

[9:11:30 AM](#)

REPRESENTATIVE LEDOUX related her continued discomfort with HB 15, which allows board members the ability to vote on items before the BOF in which they have a financial interest. Therefore, she [moved that the committee adopt] Conceptual Amendment 1, which would allow board members to participate in discussions, but not vote.

REPRESENTATIVE EDGMON objected. He opined that Conceptual Amendment 1 would return the BOF to its current status, such that board members with a particular expertise and knowledge of a region wouldn't be allowed to deliberate or fully participate relative to other state boards and commissions as well as the

legislature. Representative Edgmon said that he supports the intent of HB 15 as written, and thus won't support Conceptual Amendment 1.

REPRESENTATIVE JOHNSON related his support for Conceptual Amendment 1 as it would allow board members to provide their expertise while maintaining the public confidence that board members aren't casting votes based on their financial interest.

[9:13:48 AM](#)

REPRESENTATIVE LEDOUX turned to the charges that legislators vote on matters in which they have a conflict of interest. She said she wasn't sure that the solution to the aforementioned is to allow the BOF members to vote on matters in which they have a conflict of interest. She opined that perhaps the solution is to preclude legislators from voting on matters in which they have a conflict of interest.

[9:14:20 AM](#)

CHAIR SEATON highlighted the process by which members of the BOF are appointed from various regions of the state and the devastating impact on a region when a member is conflicted out, particularly in rural Alaska where entire economies are based on the fishing industry. Furthermore, the broad [definition of family] by which a member can be conflicted out can result in a region not having a vote and go beyond the fishery in which the member participates because he/she may have a family member that participates in another fishery. This effect has been created over time as the conflicts of interest weren't originally treated in the manner in which they are today, he related.

[9:18:02 AM](#)

REPRESENTATIVE LEDOUX suggested that perhaps the regulations could be limited such that they don't apply to such an extended family.

[9:18:27 AM](#)

REPRESENTATIVE HOLMES pointed out that statute contains other narrower definitions of "immediate family," such as AS 24.60.990(6), as follows:

Sec. 24.60.990. Definitions.

- (6) "immediate family" means
- (A) the spouse or domestic partner of the person;
- or
- (B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

[9:20:05 AM](#)

REPRESENTATIVE JOHNSON inquired as to the body of law that definition falls.

REPRESENTATIVE HOLMES specified that it's the legislative branch, Title 24, definition of "immediate family." She reiterated that throughout statute there are a variety of definitions.

REPRESENTATIVE JOHNSON commented that using such a definition may be appropriate since the committee has discussed the BOF as a quasi-legislative body.

[9:21:03 AM](#)

CHAIR SEATON opined that "the addition of these two things together" seems to avoid disenfranchising regions of the state nearly as much as the current regulation. He asked whether Representative LeDoux would consider incorporating the definition of "immediate family" in AS 24.60.990(6) in Conceptual Amendment 1.

REPRESENTATIVE LEDOUX replied yes.

[9:22:05 AM](#)

REPRESENTATIVE HOLMES moved that the committee adopt a conceptual amendment to Conceptual Amendment 1 such that on page 1, line 13, the definition of "immediate family member" would be defined as in AS 24.60.990(6).

There being no objection, the conceptual amendment to Conceptual Amendment 1 was adopted.

[9:23:01 AM](#)

REPRESENTATIVE LEDOUX related her understanding that Conceptual Amendment 1, as amended, will allow a BOF member who doesn't have a conflict falling within the just adopted definition of "immediate family" to participate and vote. However, if the BOF member does have a conflict of interest within the newly adopted definition of "immediate family", that member can only participate in the discussion.

[9:23:34 AM](#)

REPRESENTATIVE EDGMON requested a response from the ADF&G representative regarding what this amendment actually accomplishes. He questioned whether the amendment is taking the legislation a step back.

[9:25:07 AM](#)

JIM MARCOTTE, Executive Director, Board of Fisheries (BOF), Boards Support Section, Division of Administration, Alaska Department of Fish & Game (ADF&G), stated that both of these changes would make a significant practical difference in how the board deals with [conflicts of interest]. He said that participation in the discussions without allowing voting would allow a member's regional expertise to be brought into the discussions, which isn't the current interpretation. However, it may be a fine line as to whether a member with a conflict participating in discussions would be trying to persuade board members. He then turned to the proposal to narrow the definition of family. He echoed Chair Seaton's earlier comments that in rural Alaska, there is a pattern of broader family connections [in the fishing industry]. Changing the definition of immediate family would change the number of proposals that would be subject to a conflict of interest.

[9:27:13 AM](#)

CHAIR SEATON clarified that Conceptual Amendment 1, as amended, is before the committee.

[9:27:28 AM](#)

REPRESENTATIVE WILSON, referring to Mr. Jensen's letter, highlighted that Mr. Jensen, was prohibited from participating in the discussion on 61 proposals last year during the Southeast Alaska portion of the yearly cycle. She further highlighted that Mr. Jensen's letter relates that on many issues he could've provided clarification. She surmised that the BOF is making

decisions when its members don't always have all of the facts. Therefore, she characterized Conceptual Amendment 1, as amended, as an improvement over the current situation.

[9:29:45 AM](#)

REPRESENTATIVE EDGMON related his understanding that adoption of [Conceptual Amendment 1, as amended] would continue to disqualify someone like Mr. Jensen on the 61 proposals that come before the Southeast Region every three years.

[9:30:04 AM](#)

CHAIR SEATON clarified that [Conceptual Amendment 1, as amended] would allow Mr. Jensen to participate in all of the discussions, but Mr. Jensen wouldn't be allowed to vote on those proposals on matters for which he or any family member living in the same household holds a permit.

[9:30:25 AM](#)

REPRESENTATIVE EDGMON highlighted that Mr. Jensen's letter relates his desire to fully participate in the matters before the board, which would mean having the ability to vote.

[9:30:45 AM](#)

REPRESENTATIVE JOHNSON inquired as to what percentage of votes Mr. Jensen was conflicted out on due to his own situation versus that of his family. He suggested that perhaps Mr. Jensen may be able to participate more due to the new definition of immediate family.

[9:31:54 AM](#)

CHAIR SEATON noted his agreement that this amendment is an advancement and should be helpful for rural Alaska and allow greater participation.

REPRESENTATIVE LEDOUX said that she certainly doesn't want to do anything to hurt rural Alaska. However, she said that she didn't want the BOF to become similar to NPFMC in terms of conflicts of interest.

[9:32:59 AM](#)

REPRESENTATIVE HOLMES noted her support of Conceptual Amendment 1, as amended, and said that she wouldn't be able to support the legislation, as written, without the amendment. She, too, commented on avoiding the BOF becoming [similar to NPFMC in terms of conflicts of interest].

[9:33:51 AM](#)

REPRESENTATIVE WILSON commented that this as a difficult issue that folks have tried to address over many years. She related that she will probably vote for the [amendment] as it makes the situation better.

[9:35:07 AM](#)

REPRESENTATIVE EDGMON, acknowledging the historical context of this issue and the original intent of the legislation, removed his objection to the Conceptual Amendment 1, as amended.

[9:36:07 AM](#)

There being no further objection, Conceptual Amendment 1, as amended, was adopted.

[9:36:23 AM](#)

The committee took a brief at-ease from 9:36 a.m. to 9:37 a.m.

[9:38:10 AM](#)

REPRESENTATIVE JOHNSON stated support for CSHB 15, Version C, as amended. He then announced his intention to apply the same standard to the legislature, which he would attempt in an amendment [to the ethics legislation] on the floor. The amendment would allow legislators to recuse themselves if they have a personal conflict. He emphasized the importance of restoring the public's confidence in government.

[9:40:04 AM](#)

CHAIR SEATON pointed out that the BOF's process doesn't have the same parameters as requiring someone to vote because a board member can recuse himself/herself if he/she feels the situation warrants.

[9:41:06 AM](#)

REPRESENTATIVE WILSON moved to report CSHB 15, Version 25-LS0114\C, Kane, 3/13/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 15(FSH) was reported out of the House Special Committee on Fisheries.

[9:42:09 AM](#)

CHAIR SEATON reminded the committee of its upcoming field trips to the King Crab Hatchery and Sea Life Center in Seward as well as the Douglas Island Pink and Chum (DIPAC) facility in Juneau.

[9:43:35 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:43 a.m.