

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

March 28, 2007

8:41 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 189

"An Act relating to the policy for management of sustainable salmon fisheries."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 189

SHORT TITLE: MGMT OF SUSTAINABLE SALMON FISHERIES

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

03/12/07	(H)	READ THE FIRST TIME - REFERRALS
03/12/07	(H)	FSH, RES
03/26/07	(H)	FSH AT 8:30 AM BARNES 124
03/26/07	(H)	-- MEETING CANCELED --
03/28/07	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 189.

BEN MULLIGAN, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 189.

RICKY GEASE, Executive Director
Kenai River Sportfishing Association
Kenai, Alaska

POSITION STATEMENT: Testified on HB 189.

VIRGIL UMPHENOUR, Member
Fairbanks Advisory Council
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 189.

LARRY INGLE, Fishery Biologist
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 189.

ACTION NARRATIVE

[Due to technical difficulties, the initial recording was stopped and restarted. No loss of testimony resulted.]

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:41:00 AM](#). Representatives Seaton, Johnson, LeDoux, and Edgmon were present at the call to order. Representatives Wilson, Johansen, and Holmes arrived as the meeting was in progress.

HB 189-MGMT OF SUSTAINABLE SALMON FISHERIES

[8:41:09 AM](#)

CHAIR SEATON announced that the only order of business would be HOUSE BILL NO. 189, "An Act relating to the policy for management of sustainable salmon fisheries."

[8:41:16 AM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, offered a brief background on the adoption of the sustainable fisheries policy, by the Board of Fisheries (BOF) in 2000. This policy, he stated, has proved to garner major support as well as opposition since its inception. He opined that it is important to maintain sustainable fisheries in this state, and said that

his bias to this measure stems from living at the terminus of a fishery. He expressed concern that the terminus fishermen have been neglected, considering the emphasis that is provided to other use groups.

CHAIR SEATON agreed that sustainability is important to the salmon fisheries.

[8:46:25 AM](#)

REPRESENTATIVE LEDOUX asked how this bill differs from present policy.

REPRESENTATIVE STOLTZE deferred to his staff member.

[8:46:59 AM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, stated that by placing the policy in statute the department is held "a little more accountable" than the leeway that is allowed by departmental regulation.

REPRESENTATIVE LEDOUX inquired what accountability this bill would effect.

MR. MULLIGAN responded that a blatant infraction could be challenged through statute by a citizen. It would also allow a constituent to appeal to their legislator for support.

[8:48:50 AM](#)

REPRESENTATIVE JOHANSEN inquired whether the policy has been amended since 2000.

MR. MULLIGAN stressed the need for an underlying statutory structure to the board policy and departmental regulation.

REPRESENTATIVE STOLTZE said that putting statute forward is in response to public pressure regarding sustainable fisheries from regions across the state. The initiative method is an option, but, he opined, not necessarily the best means. He stated that he respects the resource more than the user.

[8:51:41 AM](#)

REPRESENTATIVE LEDOUX inquired what effects this law would have had on specific situations of the last five years, had it been in place.

MR. MULLIGAN stated that that question cannot be answered until the law is enacted and applied.

REPRESENTATIVE LEDOUX asked what problem is needing to be fixed by implementing this bill.

MR. MULLIGAN provided an example of the Upper Cook Inlet escapement goals for sockeye salmon, which have not been met in the last four out of five years. He stressed that the this issue has not been appropriately addressed by the department.

[8:53:34 AM](#)

REPRESENTATIVE JOHNSON observed that this bill would put into statute current BOF policies.

MR. MULLIGAN stated that the core principals of the BOF policies were identified to come under statute, upon which the departmental regulation could then be based.

REPRESENTATIVE JOHNSON asked what impacts will the bill have on current regulation.

MR. MULLIGAN responded that regulations would require modification and adoption of additional regulations. However, he said the policy is "already fleshed out in regulation."

[8:55:01 AM](#)

CHAIR SEATON offered his understanding of the impact this bill would have on the example provided: Given a weak stock return to the far reaches of the Upper Cook Inlet, citizens could legally challenge the lower fisheries, possibly closing down all commercial fishing, to allow for escapement goals.

MR. MULLIGAN directed attention to page 2 section 3 of the bill, and stated than an option could be to develop an action plan for stocks of concern to better understand the reason for the depletion. It would not necessarily require an immediate shutdown of a fishery, but it may create "windows" or time restrictions on some fisheries. Without taking these measures a stock could be depleted further up the waterway.

[8:57:11 AM](#)

CHAIR SEATON stressed that what has been described is currently being implemented, based on the board's existing policy. By putting the policy into statute, he opined, the public will be allowed an additional layer of citizen "complaint, or override."

MR. MULLIGAN stated that it would allow the citizenry an opportunity to redress the government. He pointed out that the low escapement in the Upper Cook Inlet has been an ongoing issue; however, getting ADF&G to recognize this as a concern "took years."

[8:58:57 AM](#)

REPRESENTATIVE JOHANSEN asked:

Is this new ground ... [has] any policy by the BOF or Board of Game, for management of any fishery or game stock, ... been codified in any other place in the state?

MR. MULLIGAN stated that he could provide that information to the committee.

[8:59:31 AM](#)

CHAIR SEATON said that the legislature has been working to give the BOF managerial flexibility. Providing some examples of those efforts, he suggested that this bill appears to be counter to that tact.

MR. MULLIGAN assured the committee that citizens have considered pursuing the petition process. Because these issues are not being addressed by the board, the constituents have asked for the possibility of addressing it at the statutory level.

CHAIR SEATON related that this may effect the commissioner's ability to act as the designated emergency order authority to manage in-season fisheries and asked what consequences have been considered in that regard.

MR. MULLIGAN agreed to provide the committee with that information.

[9:03:10 AM](#)

REPRESENTATIVE WILSON requested more in-depth information regarding how this bill may change current practices and thus impact the entire state.

CHAIR SEATON reminded the committee that his intention is to take public testimony, and hold the bill in committee for further consideration.

[9:04:21 AM](#)

CHAIR SEATON opened public testimony.

[9:04:36 AM](#)

RICKY GEASE, Executive Director, Kenai River Sportfishing Association, stated that the sustainable salmon policy is "great" for Alaska, given the goals of: insuring the conservation of salmon and the required marine aquatic habitat; protection of customary, traditional, and other fishery uses; and sustaining the health of fishing communities. Outlining the policy he stated that it took "a long time" to get this into regulation. He reported that there have been board level discussions, involving the Department of Law (DOL), of how other policies are put into regulation. It is incumbent on the legislature to provide authority to the BOF to have this type of policy placed into regulation; the current trout policy provides a precedent case. He pointed out that, at the most recent BOF meeting, discussion indicated that there are other regulations tied to the sustainable salmon fishery policy as well. These discussions led to the legal question of whether policies can be put into regulation, or need to stand alone to guide regulations established by the board. The importance of "locking-in" this policy, he said, is to qualify commercial fisheries as certifiably sustainable by the Marine Stewardship Council (MSC), for this emerging market. The diligence of regulating a sustainable harvest vs. having "an ignored" policy is scrutinized by the MSC. He emphasized the need to provide the BOF with the "tools and security" that this regulation will stay in place, and that the legal ground is firm in this regard.

[9:08:17 AM](#)

CHAIR SEATON asked Mr. Gease to clarify his position on HB 189.

MR. GEASE declined to take a stance on the bill but underscored the need for the legal question to be answered. Following the satisfaction of the legal question and depending on the outcome,

he recommended that the board's authority to regulate the policy be emphasized, or the issue be placed into statute.

9:09:15 AM

VIRGIL UMPHENOUR, Member Fairbanks Advisory Council, stated that he was a BOF member who worked on developing, and placing into regulation, the sustainable salmon policy. The need for this policy was prompted due to the way in which departmental management policies were being interpreted in the different regions regarding management and conservation concerns. Thus the sustainable policy was developed over a four year period, which included public meetings and committee input. He opined that this regulation should be entered into statute, as a policy can be ignored by the BOF. He cited the Yukon River king salmon concern of 2001, as an example of how this can happen and result in the miss-management of a fishery. From HB 189, page two (c)(3), he read, "diversity shall be maintained to the maximum extent possible at the genetic, population, species, and ecosystem levels." The genetics of the eight year old king salmon are extinct in the Yukon River today, because, he opined, this language was not in statute to afford the necessary protection. If this bill passes, genetic diversity would need to be managed, possibly saving the Yukon River seven year old king salmon from extinction.

9:14:01 AM

REPRESENTATIVE LEDOUX requested clarity regarding the concept of genetic diversity and the difference between salmon aged at six, seven, or eight years.

MR. UMPHENOUR explained that the genetic make-up is what brings fish back to the spawning grounds at different years of age. To a follow-up question, he said that king salmon return between the ages of three and eight. He outlined the spawning process which leads to the further gene propagation leading to the age return of the offspring.

9:15:30 AM

CHAIR SEATON stated his concern that implementing this bill could result in a citizenry closing of a fishery, and questioned whether that would be beneficial from a BOF perspective.

MR. UMPHENOUR directed attention to the bill, page 2 (d)(3), which states that an action plans shall be developed for stocks

of concern. Further, he said, these types of plans would include options for a targeted fishery, and may be as simple as requiring the fishnet web size be altered; not necessarily closing a fishery.

CHAIR SEATON maintained his concern that the language contained in the bill may leave the state open to a law suit.

[9:18:27 AM](#)

REPRESENTATIVE WILSON observed that, in the example provided, every precaution could be taken, and the Yukon River eight year salmon may still not improve in numbers.

MR. UMPHENOUR stressed that recovery is based on controlling which fish escape back to the spawning ground, and a plausible good fishing practices plan of methods and means, could be devised to ensure proper escapement.

[9:19:16 AM](#)

LARRY INGLE, Fishery Biologist, as a three term past BOF member, provided incites into the development of the existing subsistence policy; reiterating the thorough, statewide review that resulted in the policies that were adopted in 2000. Following the policy adoption, regulations were written to Title V, of the ADF&G code; an additional three year process. Shortly after adoption, acclaim was received at the federal level with an award from the Western Association of Fish and Wildlife Agencies. He opined that the most important aspect of the current policy is that it requires both the BOF and ADF&G to follow a systematic process in evaluating the health of salmon throughout the state; he read the requirements of the policy to that respect. It has been his experience, as a board member and retired biologist, that the policy works well. Until recently, with the rise of concerns by various stakeholders and threats of legal actions, it has not been important to have this policy written in statute. However, he opined, given these attacks, it would be appropriate to place it in statute, and not leave the policies fate entrusted to four BOF members.

[9:26:57 AM](#)

CHAIR SEATON summarized his understanding of the testimony to be that the BOF should not be able to modify management plan details, in the future, and the legislature should remove the board's authority to address elements of these policies.

MR. INGLE stated not at all. The existing policy in regulation should be subject to change and adjustment by the BOF. That is the practice and it works well. However, if the entire policy, the implementation, and the statewide systematic approach of evaluating the salmon stocks, was in jeopardy of retraction by the BOF, then he would support a statutory approach to preserve the policy.

[9:28:42 AM](#)

CHAIR SEATON clarified that this bill would take the current workable model out of the hands of the BOF, removing the board's flexibility of management.

[9:29:05 AM](#)

CHAIR SEATON announced that the bill would be taken up again to allow for further public testimony.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:30 a.m.