

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

May 9, 2007

8:40 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. 134

"An Act relating to conservation and protection of wild salmon production in drainages affecting the Bristol Bay Fisheries Reserve; and providing for an effective date."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 188

"An Act relating to the authority of the Board of Fisheries to allocate within fisheries; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 134

SHORT TITLE: PROTECTION OF SALMON SPAWNING WATER

SPONSOR(S): REPRESENTATIVE(S) EDGMON

02/14/07	(H)	READ THE FIRST TIME - REFERRALS
02/14/07	(H)	FSH, RES
02/28/07	(H)	FSH AT 8:30 AM BARNES 124
02/28/07	(H)	Heard & Held
02/28/07	(H)	MINUTE(FSH)
03/02/07	(H)	FSH AT 8:30 AM BARNES 124
03/02/07	(H)	Heard & Held

03/02/07 (H) MINUTE(FSH)
03/05/07 (H) FSH AT 8:30 AM BARNES 124
03/05/07 (H) Heard & Held
03/05/07 (H) MINUTE(FSH)
05/09/07 (H) FSH AT 8:30 AM BARNES 124

BILL: HB 188

SHORT TITLE: BOARD OF FISHERIES' AUTHORITY

SPONSOR(s): REPRESENTATIVE(s) WILSON

03/12/07 (H) READ THE FIRST TIME - REFERRALS
03/12/07 (H) FSH, RES, JUD
04/27/07 (H) SPONSOR SUBSTITUTE INTRODUCED
04/27/07 (H) READ THE FIRST TIME - REFERRALS
04/27/07 (H) FSH, RES, JUD
05/02/07 (H) FSH AT 8:30 AM BARNES 124
05/02/07 (H) Heard & Held
05/02/07 (H) MINUTE(FSH)
05/04/07 (H) FSH AT 8:30 AM BARNES 124
05/04/07 (H) Heard & Held
05/04/07 (H) MINUTE(FSH)
05/09/07 (H) FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

STEVEN DAUGHERTY, Assistant Attorney General

Natural Resources Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 188.

BRUCE TWOMLEY, Commissioner

Commercial Fisheries Entry Commission (CFEC)

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska'

POSITION STATEMENT: Testified in support of HB 188.

JOHN JONES

Chignik, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

CLEM [CLEMENS] GRUNERT, President

Chignik Lagoon Village Council

Representative, Chignik Lagoon Power Utility

Member, Chignik Lagoon Native Corporation Board

Chignik Lagoon, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

NORMAN ANDERSON

Dillingham, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

STEVE TAUFEN, Public Advocate

Founder, Groundswell Fisheries Movement

Seattle, Washington

POSITION STATEMENT: Testified in opposition to HB 188.

CALVIN SKONBERG

Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 188.

ALEXUS KWACHKA

Kodiak, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

JOHN RANTZ, Secretary

Chignik Fishermen United

Chignik, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

MOREY JONES, President

Chignik Fishermen United

Chignik, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

SCOTT MCALLISTER, Member

Sitka Sac Roe Group

Southeast Seiners

Marketing Chair, United Fishermen of Alaska (UFA)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 188.

FRANK GRUNERT

Chignik Lagoon, Alaska

POSITION STATEMENT: Testified in opposition to HB 188, and offered modifications.

BOB THORSTENSON, President

United Fishermen of Alaska (UFA)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 188.

BRUCE WALLACE

Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 188.

SHAWN DOCHTERMANN, Vice President

Alaska Jig Association

Kodiak, Alaska

POSITION STATEMENT: Testified in opposition to HB 188.

JULIE KAVANAUGH

Kodiak, Alaska

POSITION STATEMENT: Testified on HB 188.

JIM ROCKOM,

(No address provided)

POSITION STATEMENT: Testified in opposition to HB 188.

CHARLES "CHIP" TREINEN

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 188.

JIM PETERSEN

(No address provided)

POSITION STATEMENT: Testified in opposition to HB 188.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:40:17 AM](#). Representatives Wilson, Johnson, LeDoux, and Edgmon were present at the call to order. Representatives Johansen and Holmes arrived as the meeting was in progress.

HB 134-PROTECTION OF SALMON SPAWNING WATER

[8:40:34 AM](#)

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 134, "An Act relating to conservation and protection of wild salmon production in drainages affecting the Bristol Bay Fisheries Reserve; and providing for an effective date."

CHAIR SEATON explained that permission has been received to hear HB 134, during the interim in conjunction with the House Resources Committee. This will allow both committees to collaborate during the planned field hearings, and have the benefit of receiving the information together.

8:42:06 AM

REPRESENTATIVE EDGMON said it would be helpful to have as many members of both committees as possible attend the area meetings to gain a full perspective of the situation.

8:42:22 AM

REPRESENTATIVE LEDOUX expressed her support for the field meetings, asked where the hearings would be held, and how much of the area the committee members could expect to visit.

CHAIR SEATON stated that, thus far, the expectation is to hold hearings in more than one community, spend several days in the area, and tour the effected areas of the region. Arrangements are still being made, he said.

REPRESENTATIVE LEDOUX suggested including a visit to the village of Nondalton.

CHAIR SEATON asked that committee members submit written agenda suggestions to his office.

[HB 134 was held over.]

HB 188-BOARD OF FISHERIES' AUTHORITY

8:43:59 AM

CHAIR SEATON announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 188, "An Act relating to the authority of the Board of Fisheries to allocate within fisheries; and providing for an effective date."

8:44:22 AM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, presented HB 188, as prime sponsor, and stated that this bill was drafted by request of the Department of Law (DOL) and the Alaska Department of Fish & Game (ADF&G); both departments find need for this legislation. Since the bill was first introduced, concerns have been addressed and included in the [sponsor] substitute (SS). Further, she emphatically disclaimed:

I have no intention of doing anything with a co-op, I have no intention about dealing with any kind of IFQ's

[individual fishery quotas], ... and I want that to be made very clear.

[8:46:55 AM](#)

REPRESENTATIVE LEDOUX noted that the bill appears to have "a relatively loose title." If it is not the intent to allow for IFQ's, or for co-ops, would the sponsor consider an amendment to the title, she asked.

REPRESENTATIVE WILSON responded that, as sponsor, she would have no problem with a title change. The DOL may need to weigh in on the question, however.

[8:47:48 AM](#)

STEVEN DAUGHERTY, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), provided official departmental support for HB 188, as a bill necessary to preserve and allocate fishery resources. This bill became necessary due to Supreme Court opinions in Grunert v. State. The decisions opinion redefined what constitutes a fishery administrative area. He provided examples of sub district management areas that regularly occur in Bristol Bay and on the Yukon River, to illustrate how this ruling effects every area of the state. Additionally, allocations for kelp, as well as sport fishing interests, could be effected. He pointed out that it has always been assumed that the board is not restricted in it's authority to allocate within fisheries. There is a significant risk of litigation, if this is not addressed. This bill is important to preserve existing regulation, and to continue to allow the board's ability to allocate resources. The board has been cautioned to minimize allocative measures, while this is being addressed.

[8:54:01 AM](#)

REPRESENTATIVE LEDOUX asked how many cases are pending, and how many letters have been received by DOL regarding suit considerations.

MR. DAUGHERTY replied none. He offered that there have been "mutterings," and speculated that it is probably a matter of time before another suit arises.

REPRESENTATIVE LEDOUX noted that this decision occurred in March 17, 2005. It appears that if there were a flood gate of

mitigation suits, there would have been some indication of that by now.

[8:55:26 AM](#)

MR. DAUGHERTY clarified that the main problem did not arise until 2006. He opined that people may not challenge this until they see a benefit to their user group. In most cases the regulations that the board has adopted are beneficial to all user groups. Someone on the outside, who is not benefiting from a user group, will be the person who makes a challenge, he opined.

[8:56:16 AM](#)

REPRESENTATIVE LEDOUX asked if the bill could not address the specific regulations of concern, rather than take such an open approach.

MR. DAUGHERTY responded that there is no way to address the issue completely. It may not be possible to identify all of the regulations. There is a possibility that this could affect hundreds of regulations. Additionally, it will serve to protect future regulations.

[8:57:47 AM](#)

CHAIR SEATON referred to legal letters in the packet, and directing attention to the March 26, 2007, Brian Kane, Legislative Counsel, memorandum. He read Mr. Kane's response to questions regarding the ability to overturn a direct supreme court decision, which states on page 2 [original punctuation provided]:

The Hebert and the Grunert decisions, together, proceed from different starting points. Hebert unquestionably involved active participation by individual fishermen; in Grunert II, the court noted: "The cooperative scheme addressed in Grunert I differed from the cooperative scheme we consider here, but our conclusion is the same: The legislature must give the board statutory authority to create a fishery scheme in which permit holders profit from the harvests of other permit holders."

Because of the factual circumstances and differing principles between the two sets of decisions, and

because the regulatory system sustained in Hebert contemplated expanded opportunity for active fishermen within the entirety of a fishery administrative area, I don't see the court's Hebert decision as being put "at risk" either by the Grunert decisions or by legislative action, or inaction, on the amendment proposed by House Bill 188.

CHAIR SEATON said that this has been addressed in statute in the Korean hair crab, and scallop industries, and the effects have been experienced. He said:

Would you please address why you think that the general language of Grunert II is going to overturn a specific supreme court decision, based on the facts and the conditions of the administrative area, and breaking the administrative area, and allowing those choices to be made for super exclusive areas.

[9:01:44 AM](#)

MR. DAUGHERTY noted that the supreme court, in the Grunert case, went far beyond what it would have to do in order to overturn a cooperative fishery, and he discussed the language that established this ability. Further, the court held that the BOF does not have the authority to allocate within fisheries, or to define a fishery. These two actions together create the problem. He maintained that the board does have the ability to maintain super exclusive areas under the authority allowing them to set quotas, bag limits, harvest levels, and other methods and means restrictions. However, there is a strong argument that the reasoning of the court in Grunert, would apply and that a super exclusive area is an allocation within a fishery, and could be challenged on that ground. This point was not raised in the Hebert case.

CHAIR SEATON queried that, if the court had intended to overturn Hebert, would they have taken this action without specifying that they were, in fact, overturning an existing case.

MR. DAUGHERTY suggested that they may not have been overturning an existing case, at the time, but the point to consider is that the court's reasoning could be used in the future if specific facts were raised to the court that could serve as a basis for overturning Hebert. The outcome of such litigation cannot be predicted.

[9:04:44 AM](#)

REPRESENTATIVE LEDOUX observed that, thus far, the state has had one case based on Grunert, and asked if it was settled.

MR. DAUGHERTY replied, "Yes."

REPRESENTATIVE LEDOUX suggested that it be used as a test case.

MR. DAUGHERTY explained why the single case was easily settled, but not worth the risk of litigation. The decision was made to solicit a solution through the legislature instead.

[9:06:45 AM](#)

BRUCE TWOMLEY, Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game (ADF&G), stated departmental support for HB 188, citing this as a critical issue. He explained why the limited entry system works best on a system that is managed for escapement goals vs. the quota system. An example of this is the Southeast, Chatham Strait, sablefish industry, and he proceeded to detail how this fishery devolved to the point that the managers were afraid to open the fishery. The BOF finally allocated within the fishery, allotting shares of the quota to individual permit holders. This equated to a bag limit, which improved conservation, and provided confidence to the participants and managers for the success of the fishery. Because of this action, this fishery is viable today. However, in 2005 and 2006, when the supreme court held that the board lacks statutory authority to allocate within a fishery, doubt ensued regarding the board's authority to sustain this type of management effort.

[9:12:13 AM](#)

REPRESENTATIVE LEDOUX suggested that these arguments could be used to support IFQ's, which has been done by the department regarding the ground fish harvest. She recalled past efforts to have such a bill put before the legislature.

COMMISSIONER TWOMLEY said that had occurred, however that is not why this bill is being requested; it is precipitated directly from the Grunert decision.

[9:13:27 AM](#)

REPRESENTATIVE LEDOUX queried how the passage of this bill would effect the sable fish industry. Further, she offered that this could be challenged on constitutional as well as statutory grounds. She asked if the legislature is really avoiding anything here, given that the constitutional aspect has not been tested.

COMMISSIONER TWOMLEY replied, "I think not. ... I don't think there could be a realistic challenge."

REPRESENTATIVE LEDOUX asked what is the difference between an IFQ, and how the sablefish fishery was managed. She recalled that the Chatham Strait quotas were considered unconstitutional when they were implemented, but no one challenged the point.

COMMISSIONER TWOMLEY agreed that there is a possibility for a challenge, however, strong arguments exist for taking such a measure.

[9:17:23 AM](#)

CHAIR SEATON suggested that the CFEC would not have an issue if only one boat actively fished, never landed on shore, served conservation efforts, and presented a well managed system; similar to the current scallop fishery. However, the legislature views this from a different policy perspective. He directed attention to the Legal Services memorandum, dated March 26, pages 3 and 4, and read:

Since, independently of the amendment proposed by House Bill 188, the board has adopted in regulation a quota based, at least in part, on vessel size class, there is no reason to believe that legislative inaction on the bill would call that regulation into question.

CHAIR SEATON question whether this isn't a fundamental difference from Mr. Twomley's opinion.

COMMISSIONER TWOMLEY responded, "No." He said it appears that Mr. Kane is invoking the same theory as Mr. Daugherty. Due to the unpredictability of a decision, why condemn people to a four year litigation process and risk their livelihood, he asked. The legislature could provide the clarification with this legislation, and do no harm.

[9:20:35 AM](#)

REPRESENTATIVE LEDOUX observed that the primary concern for this decision is coming from the CFEC and the attorney general's office. She offered that it is not standard practice in the legislative halls to be in anticipation of a supreme court decision.

COMMISSIONER TWOMLEY suggested that perhaps the constituents do not know how this may directly effect them.

9:22:04 AM

REPRESENTATIVE JOHANSEN asked that the use of the term "we" be used conscientiously by committee members, and suggested that they restrict their comments to personal opinion. Further, he expressed support for HB 188.

9:23:26 AM

JOHN JONES stated opposition to HB 188, citing how past allocations have not worked. He described the Chignik "single fishery," and his concerns for the board managing within such fisheries. He said that the board does not need to have further allocation authority, but should focus on regulations, with the department managing the resource.

9:27:28 AM

CLEM [CLEMENS] GRUNERT, President, Chignik Lagoon Village Council, Representative Chignik Lagoon Power Utility, Member, Chignik Lagoon Native Corporation Board, stated opposition for HB 188. He paraphrased from a prepared statement, which read as follows [original punctuation provided]:

Currently I run a family fish operation. I invest my time in this village and the fishery so that it can be a good place to live and make a living for the younger generations.

House Bill No. 188 worries me not only for the elimination of checks and balances for the fishing industry in Alaska, if it were to pass, but also for the disrespect it shows the judiciary system for the State of Alaska.

I was one of the very few that did not join the cooperative fishery at all for its duration in our

fishery. Even though my income and fishing time was stripped from me and my family, I could not put aside my stand against the co-op. Besides that I don't think there were any guarantees that you would make more in the co-op because you had to be a catcher boat or a tender to do that and not everyone got selected for those jobs.

This bill needs more than one week's consideration, not like the co-ops three days, to put it in place. Residents of villages and the earnings as fishermen are at stake and it goes without saying that those are important and need a lot of time and public comment first. The high cost of fuel has raised the cost of living in the village so much that it would not take much to turn most fishing villages into ghost towns.

So I ask that all of these necessary things are considered and to move slowly on Bill No. 188.

[9:29:41 AM](#)

NORMAN ANDERSON stated opposition to HB 188, and expressed concerns for the Naknek fishery.

[9:31:02 AM](#)

STEVE TAUFEN, Public Advocate, Founder, Groundswell Fisheries Movement, stated opposition to HB 188. He said, "I take umbrage with this role of the BOF, and others, in economic allocation" This is a power shift from the legislature to the agencies, he opined, and a classic case of the attorney general office's not adhering to putting the public first. He agreed with the legal opinion of Brian Kane, Legal Counsel, and praised his work. Because there is so much more surrounding this issue, it is premature to advance this bill, he stressed.

[9:34:20 AM](#)

CALVIN SKONBERG stated support for HB 188. He provided a brief history of his 54 year fishing experience, working with the board, and as a member of an IFQ.

[9:35:40 AM](#)

ALEXUS KWACHKA stated adamant opposition to HB 188, arguing that IFQ's have been detrimental. The Chignik co-op allowed

fishermen to remain at home rather than fish. He expressed concern that the state fisheries management is paralleling the federal system. He said, "I do not want one more tool in the tool box to allow [BOF] to go there."

9:37:04 AM

JOHN RANTZ, Secretary, Chignik Fishermen United (CFU), stated opposition to HB 188. He described the extreme, negative, socioeconomic impacts, caused by the cooperative in Chignik. He expressed concern for, and cautioned against, repeating this error.

9:39:37 AM

MOREY JONES, President, Chignik Fishermen United (CFU), stated opposition to HB 188, on behalf of CFU. He cited the abuse of power exercised by the BOF, and the board's refusal to respond to the local interests. The board was also unwilling to accept the decision of the Alaska Supreme Court. Due to these historic actions by the board, CFU members harbor a fear of expanding the board's authority. He said:

After our previous experience, through the Chignik allocated co-op, we know that the BOF will do, and can do, whatever they want. ... If the BOF is given the power of HB 188, then we don't need a state constitution, and we don't need a legislative body of government. ... Expanding [BOF] authority is to supersede that which is set forth by the legislature.

9:42:23 AM

CHAIR SEATON reminded witnesses that the committee is working with the sponsor substitute, Version K, which should be available to everyone.

9:43:02 AM

SCOTT MCALLISTER, Member, Sitka Sac Roe Group, Southeast Seiners, Marketing Chair, United Fishermen of Alaska (UFA), stated support for HB 188, and said he believes in the system, and that the BOF needs to have this authority. He acknowledged that the Chignik co-op was a BOF error, however, this bill does not give the BOF the ability to create co-ops or IFQ's. If the board is not provided this authority, issues may need to be

brought to the legislature, which creates a lengthy, costly, arduous process.

[9:45:38 AM](#)

CHAIR SEATON read again from the Grunert case [original punctuation provided]:

The legislature must give the board statutory authority to create a fishery scheme in which permit holders profit from the harvests of other permit holders.

MR. MCALLISTER clarified that the court is requiring that the legislature provide this authority to the board, hence the necessity of HB 188.

[9:46:59 AM](#)

FRANK GRUNERT stated opposition to HB 188. He suggested including wording about processors not receiving an allocation. He said that the situation with the Chignik co-op has been devastating to many fishermen, and this bill may create similar situations in other areas.

[9:48:49 AM](#)

BOB THORSTENSON, President, United Fishermen of Alaska (UFA), stated support for HB 188, on behalf of an overwhelming nod from UFA, and pointed out that the sponsor substitute does contain a Chignik prohibition. He elaborated on the fisheries that will be effected by the bill, and provided examples of what may happen if the board is not provided this authority. He opined that this is an important, official, housekeeping measure, that has been thoroughly vetted by the UFA.

[9:52:22 AM](#)

BRUCE WALLACE stated support for HB 188, and said that he trusts the legislative necessity for this action, and for the board to have appropriate authority.

[9:53:53 AM](#)

SHAWN DOCHTERMANN, Vice President, Alaska Jig Association, stated opposition to HB 188, opining that this bill is a clean up measure "for all of the mess that the BOF has brought before

us with allocation measures; they have ... gone outside of their rights to allocate." The issues need to be sorted out on an individual basis, rather than attempting to correct it with one bill. He suggested that many of the stakeholders are currently fishing, and unable to participate in the hearings.

[9:55:59 AM](#)

REPRESENTATIVE WILSON directed attention to the bill, page 2, line 28 and read:

Sec. 3. AS 16.05.251 is amended by adding a new subsection to read:

(j) Nothing in (e) of this section authorizes the Board of Fisheries, without separate express statutory authorization, to allocate to

(1) a cooperative fishery; or

(2) an individual fisherman based on individual catch history.

[9:57:20 AM](#)

JULIE KAVANAUGH stated that there is a significant difference in using language in the bill to specify "among" vs. "within." She elaborated on her point that these two words are not interchangeable and alters the meaning of the legislation. Further, she said that the bill could be interpreted to imply that the BOF has been operating in a constrained manner, and opined that it has not.

[9:59:10 AM](#)

JIM ROCKOM stated opposition to HB 188, and stressed that BOF members should be elected, not appointed, to minimize the politicalization of the board process.

[10:00:07 AM](#)

CHARLES "CHIP" TREINEN stated support for HB 188, citing the supportive restrictions that have been included in the SSHB 188, and suggested that some people may be missing that aspect of the bill. With the ever changing aspects of the fishing industry the BOF needs to have the ability to manage the fisheries; adapting to the ever changing methods, means, and marketing

advances. He opined that this bill does not effect a radical change.

[10:02:56 AM](#)

JIM PETERSEN stated opposition to HB 188, and opined that inserting the language "within" would further empower the BOF beyond what is necessary.

[10:04:01 AM](#)

CHAIR SEATON closed public testimony.

[HB 188 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:04.