

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 20, 2008

8:38 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 CONCURRENT RESOLUTION NO. 22

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

- MOVED HCR 22 OUT OF COMMITTEE

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

PREVIOUS COMMITTEE ACTION

BILL: HCR 22

SHORT TITLE: REGULATION OF FISHERIES

SPONSOR(S): REPRESENTATIVE(S) SEATON

02/19/08	(H)	READ THE FIRST TIME - REFERRALS
02/19/08	(H)	FSH, RES
02/20/08	(H)	FSH AT 8:30 AM BARNES 124

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
05/09/07	(H)	Heard & Held
05/09/07	(H)	MINUTE(FSH)
09/24/07	(H)	FSH AT 4:30 PM Newhalen
09/24/07	(H)	Heard & Held
09/24/07	(H)	MINUTE(FSH)
09/25/07	(H)	FSH AT 2:00 PM Naknek
09/25/07	(H)	Heard & Held
09/25/07	(H)	MINUTE(FSH)
09/26/07	(H)	FSH AT 8:30 AM Dillingham
09/26/07	(H)	Heard & Held
09/26/07	(H)	MINUTE(FSH)
02/18/08	(H)	FSH AT 8:30 AM BARNES 124
02/18/08	(H)	Heard & Held
02/18/08	(H)	MINUTE(FSH)
02/20/08	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

BRIAN KANE, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Responded to questions on HCR 22.

KIP [KEVIN] THOMET
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

ALEXUS KWACHA
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

JULIE KAVANAUGH

Kodiak, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

CLEM TILLION

Aleut Enterprise Corporation

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

JAMIE ROSS

Chignik Seafood Producers Alliance

Chignik, Alaska

POSITION STATEMENT: Testified in opposition to HCR 22.

GREG COOK, Attorney

Chignik Seiners Association;

Chignik Seafood Producers Alliance

Chignik, Alaska

POSITION STATEMENT: Testified in opposition to HCR 22.

JOHN HILSINGER, Director

Division of Commercial Fisheries

Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

TERESA PETERSON

Kodiak, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

BILLY MAINES

Dillingham, Alaska

POSITION STATEMENT: Spoke in support of HB 134.

RON BOWERS

Dillingham, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

SAM FORTIER

Pedro Bay Corporation

Pedro Bay, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

PATRICK FLATLEY

Bristol Bay Alliance

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 134.

HEATH HILYARD, Business Development Manager
Alaska Supply Chain Integrators
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

SHARON ANDERSON
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

GAIL PHILLIPS, Co-Chair
Truth About Pebble
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

JASON BRUNE, Executive Director
Resource Development Council for Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

NORMAN VAN VACTOR
Sno Pac Products
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 134.

WASSILLIE ILUTSIK
Aleknagik, Alaska

POSITION STATEMENT: Testified in opposition to HB 134.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:38:37 AM](#). Representatives Seaton, Edgmon, LeDoux, Johansen, Johnson, and Wilson were present at the call to order. Representative Holmes arrived as the meeting was in progress.

HCR 22-REGULATION OF FISHERIES
[Contains discussion of HB 188.]

[8:38:51 AM](#)

CHAIR SEATON announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 22, Affirming the legislative intent of state law that the Alaska Board of Fisheries currently has the tools and authority to allocate fishery resources within

a fishery based on vessel size class, gear limits, trip limits, and registration areas.

[Chair Seaton turned the gavel over to Representative Johansen.]

[8:40:01 AM](#)

CHAIR SEATON reported that HCR 22 is seeking to clarify the legislative intent of the statutes which are currently used for management guidelines by the Board of Fisheries. He opined that questions will arise as a result of Dean Anderson and Michael Grunert v. State, Board of Fisheries and Chignik Seiners Association (Alaska Supreme Court No. S-10481). He explained that when making a determination, the courts will first review the statutes, and if these are unclear, they will refer to the legislative intent. He stated that HCR 22 addresses the fisheries history. He presented examples of the guidelines the Board of Fisheries uses to determine allocations: time and area closures, vessel size, gear limits, trip limits, and different district and administrative areas. He pointed out that this resolution is attempting to resolve future guideline questions through interpretation of the existing statutes.

[8:46:49 AM](#)

REPRESENTATIVE JOHANSEN inquired as to the reason a nonbinding resolution is being presented in lieu of HB 188 which has already been passed out of the committee.

CHAIR SEATON explained that HB 188 has had numerous proposed amendments and alterations, so he decided to hold the bill in the House Special Committee on Fisheries. He stated that a resolution which addresses the interpretation of current regulations cannot have more pieces added to it. He offered his belief that interpretation of the regulations is the basis for the determinations by the Board of Fisheries. These interpretations have come into question in Grunert. He expressed his belief that identifying the legislative intent of those statutes which are used for the determination basis, will clarify those statutes for the courts.

[8:49:15 AM](#)

REPRESENTATIVE JOHANSEN commented that he did not remember any discussions of HB 188.

REPRESENTATIVE WILSON, sponsor of HB 188, said that the only change was a clarification. She expressed concern with a resolution rather than a bill, although she allowed that a resolution was better than nothing.

REPRESENTATIVE EDGMON asked if this concurrent resolution, which is nonbinding and advisory, would be more effective as a joint resolution.

REPRESENTATIVE JOHNSON opined that it is no more difficult to amend a resolution than a bill.

CHAIR SEATON explained that both a house concurrent resolution (HCR) and a house joint resolution (HJR) pass through both bodies: a joint resolution is used to address advice to the federal government, and a concurrent resolution is used to address state policies. He opined that although a resolution cannot change a judicial decision, it can explain the legislative intent, which the courts may consider. He expressed his belief that the courts have clarified statutory authority in Grunert.

REPRESENTATIVE JOHNSON pointed out that a resolution can also be amended, and thus ultimately reflects a legislative intent that is counter to the sponsor's desires.

REPRESENTATIVE LEDOUX questioned the possibility of changing a resolution to a bill on the floor of the House, the Senate, or in a committee.

[8:56:02 AM](#)

BRIAN KANE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, relayed that a resolution cannot be changed into a bill, although it can be the basis for a bill.

REPRESENTATIVE LEDOUX noted that a court usually examines committee records and debates on the floor to determine legislative intent. She asked whether a court would look for the legislative intent from a resolution passed by a legislature that had not enacted the bill.

MR. KANE replied that a court is not required to look at any intent unless it determines this would help with the interpretation. He offered his belief that a court could take

into account a resolution which states that it is an interpretation of an earlier bill's history.

REPRESENTATIVE EDGMON questioned the effect of a house concurrent resolution versus a house joint resolution as an advisory statement.

MR. KANE cited a concurrent resolution is an advisory from one body urging action and a joint resolution is a statement from both bodies, though neither is binding.

REPRESENTATIVE WILSON asked Mr. Kane for his view on the effectiveness of a resolution reflecting the current House's opinion, as opposed to the legislative intent when the statute was passed.

MR. KANE responded that he would need to review the court responses to resolutions. He expressed his belief that the Grunert decision has reflected a different interpretation of the statute, so this legislature's opinion, which speaks more to the statute, might be more influential.

REPRESENTATIVE LEDOUX asked if a legislature has ever passed a resolution summarizing legislative intent, and has the court ever considered it.

[9:02:41 AM](#)

MR. KANE said that he would have to research this.

REPRESENTATIVE EDGMON asked if time and area closures were intentionally withheld from HCR 22.

MR. KANE responded that he had drafted the resolution as it was requested. He suggested asking the Alaska Department of Fish & Game (ADF&G) or the sponsor for the basis of the choice of categories.

REPRESENTATIVE WILSON offered her belief that it will be difficult for the committee to make a decision on HCR 22 until it knows why the resolution is in the committee. She questioned why HB 188 was scheduled but not discussed and suggested hearing it to compare with HCR 22.

[9:05:14 AM](#)

CHAIR SEATON said that the resolution is in response to both the Grunert decision and the possibility of a legal challenge to the historical determinations for fisheries. He said he would include time and area closures if the Department of Law (DOL) believes it will be helpful. He allowed this was not meant to be a definitive list for all the types of management tools for the ADF&G or the Board of Fisheries.

REPRESENTATIVE JOHANSEN asked if HB 188 was ever discussed by the committee.

CHAIR SEATON expressed his belief that the committee did discuss the bill.

REPRESENTATIVE EDGMON commented that HB 188 engendered a lot of controversy within his constituency.

[9:09:52 AM](#)

CHAIR SEATON opined that there were three hearings on HB 188, and a sponsor substitute was later offered.

KIP [KEVIN] THOMET said that he supports HCR 22. He expressed his concern with giving more tools to the Board of Fisheries.

ALEXUS KWACHA allowed that he supports HCR 22, but not HB 188, as he feels there needs to be a clear direction. He said that he favors giving tools to the Board of Fisheries, but not loopholes of interpretation for the board to go in another direction. He noted that he also supports HB 134.

JULIE KAVANAUGH reported that she supports HCR 22 because it affirms the intent of the state law to provide the Board of Fisheries the necessary tools and authority to allocate fishery resources. She noted that fishery resources are managed for all Alaskans and for conservation. She asked that the Board of Fisheries only implement and extend those management regimes consistent with active participation and individual access rights. She said that she supports the Board of Fisheries ability to manage these allocations. She suggested that the committee add language to HCR 22 supporting "active participation access" and "access only be granted to an individual."

CLEM TILLION, Aleut Enterprise Corporation, related his understanding that HCR 22 would allocate 50 percent of the state water fishery to vessels under 60 feet, because he believes that

without this allocation Alaska will no longer have a local resident fleet.

CHAIR SEATON pointed out that page 2, line 18, states that it is not necessary that 100 percent of the allocation be for one specific vessel size class.

[9:19:03 AM](#)

MR. TILLION confirmed that he will support HCR 22 if it will protect the Alaska-based small boat fleet.

JAMIE ROSS, Chignik Seafood Producers Alliance, conveyed his belief that this resolution will do nothing to solve the problems in the state fisheries.

[9:26:06 AM](#)

GREG COOK, Attorney, Chignik Seiners Association; Chignik Seafood Producers Alliance, testified that in 30 years of practicing fisheries law in Alaska, he does not recall a case in which a court has looked to subsequent legislation for interpretation of a pre-existing statute. He opined that the effect of this resolution on any court action will be "virtually nil;" for there to be any influence on the court, the committee would need to adopt a statute, not a retrospective resolution.

REPRESENTATIVE LEDOUX expressed concern that HB 188 would become a vehicle for the addition of the Chignik associations. She asked if Mr. Cook would commit for his clients that they would not be added to HB 188.

MR. COOK said that there was nothing he "could say or do that would effectively shackle any member of the legislature in exercising their legislative duties." He said he could not commit this for his clients.

REPRESENTATIVE LEDOUX posed a scenario in which a legislator requested adding the Chignik associations to HB 188. She asked if Mr. Cook would go to the legislator and ask for the Chignik associations not to be added to the bill.

MR. COOK said that he cannot say what a client is going to ask.

[9:32:06 AM](#)

JOHN HILSINGER, Director, Division of Commercial Fisheries, Department of Fish & Game (ADF&G), relayed that ADF&G supports HCR 22.

REPRESENTATIVE LEDOUX asked Mr. Hilsinger whether ADF&G believes HCR 22 will have any effect.

MR. HILSINGER responded that ADF&G has also questioned as to whether a court will place stock in a retroactive resolution but regardless, ADF&G does support the intent of the resolution.

REPRESENTATIVE WILSON asked if a legal representative for ADF&G would conclude that the resolution accomplishes what is necessary.

MR. HILSINGER replied that the ADF&G legal representatives believe that HB 188 would be more effective, but they support HCR 22 in lieu of the bill.

TERESA PETERSON said that HCR 22 clarifies the intent, but that she opposes HB 188 as it leaves open the possibility for management policies that are contrary to the limited entry system. She offered her belief that HB 188 allows the possibility of absentee ownership and benefits to non-participants of the fishery. She strongly advocated that active participation be a requirement for coastal fishing permits.

[9:37:19 AM](#)

REPRESENTATIVE JOHANSEN closed public testimony.

REPRESENTATIVE LEDOUX said that she supports HCR 22. She offered her belief that the need for this resolution highlights an endemic structural problem in the legislature. She observed that all too often when a bill arrives on the House floor, an addition is made that was not discussed in the committee.

[9:39:26 AM](#)

CHAIR SEATON expressed his belief that when things are unclear in a statute, the interpretation of broad general powers is meaningful. He opined that HCR 22 provides meaningful interpretation to the legislature and to the Board of Fisheries. He offered his belief that the courts will take notice and this resolution "can get us to where we want to go."

[9:41:26 AM](#)

REPRESENTATIVE WILSON reported that HB 188 was scheduled three times, but only heard once. She offered her belief that HCR 22 will be meaningless.

[9:42:25 AM](#)

REPRESENTATIVE LEDOUX moved to report HCR 22 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCR 22 was moved out of committee.

HB 134-PROTECTION OF SALMON SPAWNING WATER

[Representative Johansen returned the gavel to Chair Seaton.]

[9:42:56 AM](#)

CHAIR SEATON announced that the next 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." [The motion to adopt CSHB 134, Version 25-LS0381\M, Kane, 2/22/07, was left pending at the 2/28/07 meeting.] [The motion to adopt CSHB 134, Version 25-LS0381\O, Kane, 1/22/08, was left pending at the February 18, 2008 meeting.]

CHAIR SEATON reminded the committee that public testimony is being offered on CSHB 134, Version O.

[9:44:22 AM](#)

BILLY MAINES offered his support of HB 134. He expressed his belief that the penalties should be stronger, that incarceration for a violation should be included in Version O.

[9:46:23 AM](#)

RON BOWERS said that he supports subsistence and the commercial fisheries, but that he is against HB 134 because it will violate the rights of private property owners and deprive Alaskans and Americans of the revenue from state and federal lands in Bristol Bay. He asked for an inventory of private land owners, including Native corporations, in the Bristol Bay region that would be affected by Version O. He then requested the creation of a funding source for reimbursement to those private landowners for the loss of revenue.

[9:47:50 AM](#)

REPRESENTATIVE JOHNSON posed a scenario in which this is determined to be a "takings" issue and the landowners are allowed to go to court. Would this be adequate to recover any loss, he asked.

MR. BOWERS responded that this would put the burden on the landowner. He said that he preferred a large reimbursement fund because many private individuals would not have the resources to pursue the legal process.

REPRESENTATIVE JOHNSON offered his belief that the landowners would have a right to a portion of the permanent fund if land is taken inappropriately.

CHAIR SEATON asked that Mr. Bowers clarify whether he was referring to private or corporate loss of land development revenue.

MR. BOWERS responded that he was referring to Native corporations and individuals, but that he did not want to draw on the permanent fund for these payouts.

SAM FORTIER, Pedro Bay Corporation, said that Pedro Bay Corporation is neutral on the development of Pebble Mine, but that the corporation strongly opposes HB 134. He said that Pedro Bay Corporation is a private landowner with investment expectations for its lands, which include the most favorable transportation route from Pebble Mine to Cook Inlet. He explained that even if the Pebble Mine is never built, this road will allow easier access and reduce the costs for goods and services to Pedro Bay. He expressed his belief that the bill does not address some of the inclusions to sulfide mining operations identified in AS 27.20.060, namely the transportation, communication, and utility routes that go along with the mine development. With the adoption of HB 134, these opportunities for development would no longer exist.

REPRESENTATIVE LEDOUX asked if any other entities in Pedro Bay, specifically the local village council, have offered an opinion on HB 134.

MR. FORTIER responded that the Pedro Bay Village Council is opposed to the construction of the mine, but that Pedro Bay

Corporation is united with other Native corporations against HB 134.

[9:54:53 AM](#)

PATRICK FLATLEY, Bristol Bay Alliance, communicated that his group will provide information on hard rock mining to any of the stakeholders in the Bristol Bay watershed, and that the Bristol Bay Alliance is urging the committee to vote in support of HB 134.

[9:56:09 AM](#)

HEATH HILYARD, Business Development Manager, Alaska Supply Chain Integrators, conveyed that his company is opposed to all of the versions of HB 134. He said that he will submit written testimony at a later time.

[9:57:02 AM](#)

SHARON ANDERSON reported that she is opposed to HB 134. She offered her belief that Version 0 is slanted more toward closing the mining industry in Alaska than protecting and conserving the anadromous fish resources. She expressed that the mining industry is closely monitored and that mining regulations require state of the art technology and monitoring.

[9:58:51 AM](#)

GAIL PHILLIPS, Co-Chair, Truth About Pebble, mentioned that her written testimony will be submitted, and she reminded that the legislature is sworn to protect Alaska from unwarranted lawsuits and unlawful "takings" of lands and resources. She expressed her opposition to HB 134.

[9:59:58 AM](#)

JASON BRUNE, Executive Director, Resource Development Council for Alaska, Inc., announced that Version 0 will have an economic impact on all Native corporations as defined by the revenue sharing section of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1606 (ANCSA § 7) (i)(1)(A). He offered his belief that the state and federal permitting process is already extremely rigorous and said that he is opposed to HB 134.

[10:01:52 AM](#)

NORMAN VAN VACTOR, Sno Pac Products, observed that HB 134 will protect renewable resources and that he will forward his written comments.

[10:03:50 AM](#)

WASSILLIE ILUTSIK stated that HB 134 will block economic development for Native corporations.

[HB 134 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:06 a.m.