

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 26, 2008

1:18 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Anna Fairclough
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg

MEMBERS ABSENT

Representative Scott Kawasaki

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.

- HEARD AND HELD

HOUSE BILL NO. 241

"An Act creating the Stampede State Recreation Area."

- 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 RPT 1DP 6NR
02/20/08	(H)	DP: SEATON
02/20/08	(H)	NR: JOHNSON, LEDOUX, WILSON, JOHANSEN, HOLMES, EDGMON

02/20/08 (H) FSH AT 8:30 AM BARNES 124
02/20/08 (H) Moved Out of Committee
02/20/08 (H) MINUTE(FSH)
03/26/08 (H) RES AT 1:00 PM BARNES 124

BILL: HB 241

SHORT TITLE: STAMPEDE STATE RECREATION AREA
SPONSOR(S): REPRESENTATIVE(S) GUTTENBERG

04/20/07 (H) READ THE FIRST TIME - REFERRALS
04/20/07 (H) RES, FIN
05/04/07 (H) RES AT 1:00 PM BARNES 124
05/04/07 (H) <Bill Hearing Canceled>
03/26/08 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HCR 22.

AL ANDERSON
Chignik Lagoon

POSITION STATEMENT: Testified that if the Board of Fisheries was going to get sued over the decisions it has made, the lawsuits would have been filed by now.

NORENE JONES, Secretary
Chignik Fishermen United
(No address provided)

POSITION STATEMENT: Testified that Chignik Fishermen United is taking a neutral position on HCR 22.

LANCE NELSON, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Testified [the Department of Law] does not oppose HCR 22 per se, but thinks it will not accomplish what is hoped for.

BOB THORSTENSON, Lobbyist
for Sitka Herring Group
Juneau, Alaska

POSITION STATEMENT: Testified that a bill, not a resolution, is what is needed.

JOE CHILDERS, President
United Fishermen of Alaska (UFA)
Juneau, Alaska

POSITION STATEMENT: Testified United Fishermen of Alaska does not have an official position on HCR 22, but unofficially the organization sees the resolution as a waste of time.

CLEM TILLION
Homer, Alaska

POSITION STATEMENT: During hearing on HCR 22, testified on behalf of the Aleut Corporation that a bill would be preferable to a resolution, but will take the resolution if that is all that can be gotten.

REPRESENTATIVE DAVID GUTTENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 241.

CHRISTIAN GOU-LEONHARDT, Staff
to Representative David Guttenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 241.

JAMES KING, Director
Central Office
Division of Parks & Outdoor Recreation
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 241.

DAVE TALERICO, Mayor
Denali Borough
Healy, Alaska

POSITION STATEMENT: Supported HB 241.

ARMEDA BULARD, Presiding Officer
Denali Borough
Cantwell, Alaska

POSITION STATEMENT: During hearing on HB 241, stated the Denali Borough has been working on the Stampede State Recreation Area through Representative Guttenberg and Senator Thomas.

ACTION NARRATIVE

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at [1:18:45 PM](#). Representatives Wilson, Seaton, Roses, Gatto, and Johnson were present at the call to order. Representatives Guttenberg, Edgmon, and Fairclough arrived as the meeting was in progress.

HCR 22-REGULATION OF FISHERIES

[1:18:54 PM](#)

CO-CHAIR JOHNSON 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.

[1:19:14 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, sponsor of HCR 22, paraphrased from the following written sponsor statement [original punctuation provided]:

HCR 22 affirms that legislative intent behind current law allows the Board of Fisheries to manage by allocation based on vessel size, gear type, trip limits, and different districts in an administrative area.

The resolution was introduced to provide the court with clear understanding of the Legislative intent utilized for current fisheries management statutes. This will be important if management regulations adopted over the past many years by the Board of Fisheries are challenged in court.

Following the Grunert decision by the Alaska Supreme Court regarding the Chignik co-operative fishery, attorneys for the Board of Fisheries have cautioned that any allocation within a fishery by the Board including long standing fundamental regulations could be in danger of being overturned.

This concern is highly speculative. The Grunert decision focused on a regulation allowing non-participants to benefit from the efforts of participants. This ran afoul of the Limited Entry Act, which requires the benefit of a fishery to go to active participants. The discussion in the Grunert is separate from the wide range of management tools adopted by the board that flow from current law.

This Department of Law interpretation of the effects of the Grunert decision has factored into recent Board of Fisheries decisions to not adopt a variety of proposals that would have allocated fisheries resources within a fishery based on the historic intent of our statutes.

HCR 22 encourages the Board of Fisheries to proceed with the management of public resources without speculative consideration of the Grunert decisions. It does not provide the board with any additional allocation authority. It simply provides reaffirmation of the legislative intent of current statutes.

REPRESENTATIVE SEATON drew attention to the 1/28/08 memo from legislative counsel Brian Kane of Legislative Legal and Research Services, along with other materials in the committee packets.

[1:22:54 PM](#)

CO-CHAIR GATTO inquired whether there is any connection to sport fishing in HCR 22.

REPRESENTATIVE SEATON responded no, a fishery is defined by a species, a gear, and an area. There is no intent in HCR 22 to say anything other than allowing the Board of Fisheries to continue to manage the fisheries of the state under the exact same principle the board has been using since statehood. It lets the board know that the legislature does not think the Grunert decision has these unintended consequences that have been raised speculatively that would not let the board make decisions based on the parameters it has been using for years.

[1:24:16 PM](#)

CO-CHAIR GATTO requested a synopsis of [Grunert v. State (Alaska 2005)] (Grunert I) and [State v. Grunert (Alaska 2006)] (Grunert II) as well as [State v. Herbert (Alaska 1990)] (Herbert).

REPRESENTATIVE SEATON explained that the 100-104 permit holders in the Chignik fishery on the Alaska Peninsula asked the Board of Fisheries to allow them to harvest the fish in a co-operative basis. But what they really asked for was an allocation of a percentage of the harvest based on how many permit holders signed up in the co-operative, so it would not be competitive anymore. Only a few boats participated, but checks were sent to all the permit holders in the co-operative. The supreme court ruled that the limited entry statute says permits have to be to natural persons and the person has to be a participant in the fishery; so a person could not gain revenue by the work of others by virtue of just owning a permit. The court did not go to the constitutionality, it only went as far as the limited entry law in the state of Alaska. In the Grunert II case, the supreme court ruled against allowing a scenario in which every permit holder would participate by making a few deliveries, but in which each permit holder would not necessarily participate equally or for the full amount of time. There was some wording in the Grunert II case that was interpreted to mean that the Board of Fisheries cannot allocate within a fishery and therefore allocation cannot be done on vessel sizes, districts, gear limits, or trip limits as was done in the past. Representative Seaton said he regards this as speculative, as do many other people. Based on the Department of Law's opinions, the Board of Fisheries has been holding back from doing its normal management regimes based on the idea that those might get overturned.

[1:28:13 PM](#)

CO-CHAIR GATTO asked who was representing the state and who was Grunert.

REPRESENTATIVE SEATON replied that Grunert was a Chignik fishery fisherman who disagreed that the Board of Fisheries had the legal and constitutional authority to allocate fish to someone who does not fish. The State of Alaska was defending in that lawsuit because the Board of Fish had passed the regulations. The case would be written as Grunert v. State [(Alaska 2005)]. In response to further questions from Co-Chair Gatto, Representative Seaton explained that the state lost the case and therefore could not allow two fisheries - one that was competitive and one that was an allocative co-operative in which

a permit holder could get fish by putting his or her permit into the co-operative. He clarified that Grunert I [Grunert v. State (Alaska 2005)] was the initial decision. The Board of Fisheries then went back and tried to tweak the regulation so that everyone in [the co-operative] had to make a certain number of deliveries in order to receive a share of the check. The court came back [in Grunert II] with the same reading that this is not allowed under the limited entry statute.

[1:30:58 PM](#)

CO-CHAIR GATTO inquired whether Herbert preceded the Grunert decision.

REPRESENTATIVE SEATON answered correct. He explained that Herbert was a challenge to the state regarding superexclusive registration areas. He said he believed it was based on a herring case in Bristol Bay. If a permit holder picked one area, then the permit holder could not use his or her permit to fish in another area in the herring fishery in the same year. In other words, a permit holder could fish only one administrative area in a particular year, but the permit holder is free to select whatever area he or she wants. In that case, the Supreme Court said that is a quota-setting mechanism for ensuring an orderly fishery and upheld that decision as a correct way of allocating fisheries. That was never overturned; it was never mentioned in the Grunert II case that the decision overturned the previous decision.

[1:32:46 PM](#)

REPRESENTATIVE ROSES asked how HCR 22 either strengthens or weakens the Board of Fisheries' management.

REPRESENTATIVE SEATON responded HCR 22 gives the Board of Fisheries the knowledge that the legislature understands that the statutes under which the board has been making allocations based on vessel size, trip limits, gear limitations, and registration areas are appropriate and still in place. There is no court decision that overturns this. There is simply a decision by the Department of Law's representatives for the Board of Fisheries that says Grunert II might have put those in jeopardy and maybe someone would challenge the regulations based on trip limits or gear limits or vessel size.

[1:34:52 PM](#)

REPRESENTATIVE ROSES surmised that Representative Seaton's opinion is that HCR 22 does not change the Board of Fisheries' position for management.

REPRESENTATIVE SEATON replied he does not think the Board of Fisheries' position has been weakened at all. It is simply the Department of Law speculating that possibly, if the board manages the way it has been managing under current statutes, somebody could take the board to court and the board might lose. The resolution just reaffirms that the legislature's understanding is that current statutes allow the Board of Fisheries to continue to function as it has unless the court rules that it is wrong. He said he thinks the court is not going to make the decision that the board does not have the authority because otherwise in Grunert II the court would have said it was overturning its Herbert ruling.

[1:36:27 PM](#)

REPRESENTATIVE ROSES inquired whether someone from the Board of Fisheries would be testifying.

CO-CHAIR JOHNSON said there is no one from the Board of Fisheries, but there is someone from the Department of Law.

REPRESENTATIVE SEATON noted that Legislative Legal and Research Services has taken a position contradictory to that of the assistant attorney general for the Board of Fisheries. He said HCR 22 reaffirms the position of Legislative Legal and Research Services.

REPRESENTATIVE ROSES commented he had noticed the dueling opinions, but that is something that happens with nearly every bill so he does not put a lot of stock in it. His concern is whether HCR 22 minimizes or maximizes the board's ability to do what the legislature has charged it to do. He said that while he does not understand the intricacies of what HCR 22 actually gets, his decision of yes or no on the resolution is whether it has a positive or negative impact on the Board of Fisheries' ability to manage itself the way the legislature expects it to.

[1:38:29 PM](#)

REPRESENTATIVE WILSON requested Representative Seaton to explain why he feels HCR 22 is better than [HB 188] that would do the very same thing.

CO-CHAIR JOHNSON explained there is a bill [HB 188] in the House Special Committee on Fisheries that addresses this issue directly and would put it into statute as opposed to a resolution.

REPRESENTATIVE SEATON answered that HCR 22, if passed by the legislature and signed by the governor, would express the opinion of two branches of government that the method in which the Board of Fisheries has been operating and the allocations it has made, other than Grunert I and Grunert II, are appropriate and are the statute. The bill [HB 188] would change state law and there are some implications in that. There are also proposals in the bill to overturn Grunert I and Grunert II. People have testified that overturning Grunert is what the bill will do, although the sponsor says that is not the intent. That will not happen with the resolution. The resolution lets the courts know that the legislature believes the Board of Fisheries has the statutory authority and is appropriately managing fisheries within the board's allocation schemes. The bill would change the statute and there are some people who would like to change the constitution in the same way.

[1:41:57 PM](#)

REPRESENTATIVE WILSON asked whether Representative Seaton feels a resolution will really have any weight with the court versus a bill that changes the words.

REPRESENTATIVE SEATON responded he does, and the legal opinion from Legislative Legal and Research Services also says the court would look at the resolution.

CO-CHAIR JOHNSON inquired whether Representative Seaton is referring to the Legislative Legal and Research Services legal opinion from Brian Kane dated 1/28/08.

REPRESENTATIVE SEATON replied correct. He drew attention to the last two sentences on page 2 which state: "A resolution stating the legislative intent could provide 'guidance,' but a resolution does not carry the power to obligate a court to defer to the intent stated in a resolution. A resolution of intent might be a factor a court looked at, but the court would be under no duty to do so."

[1:43:41 PM](#)

CO-CHAIR JOHNSON surmised the intent of HCR 22 is to send a signal as opposed to a direction.

REPRESENTATIVE SEATON answered correct.

REPRESENTATIVE GUTTENBERG asked if Representative Seaton has checked historically to see whether the courts have looked at resolutions as they pertain to cases about fish as well as cases about other topics.

REPRESENTATIVE SEATON responded he has not. He said he thinks this is an unusual situation because there is no court direction saying the Board of Fisheries cannot exercise its full authorities, it is simply an attorney general's interpretation that the state might lose if someone were to make a challenge.

[1:45:40 PM](#)

CO-CHAIR JOHNSON opened public testimony.

AL ANDERSON stated that if the Board of Fisheries was going to get sued over the decisions it has made, it seems the lawsuits would have been filed by now since the ruling happened several years ago.

CO-CHAIR JOHNSON stated the [Herbert] ruling was in 1990.

REPRESENTATIVE SEATON added there was a 2005 decision and a 2006 decision for Grunert I and Grunert II [respectively].

MR. ANDERSON said he does not understand the reason for doing this. Up until the Chignik decision the Board of Fisheries was within its bounds to do whatever it was doing. That decision is the only thing he thinks the board did wrong in regard to the limited entry. He said he thinks most other people feel the same way because the Board of Fisheries has not been slammed with a bunch of lawsuits.

[1:47:53 PM](#)

NORENE JONES, Secretary, Chignik Fishermen United, spoke on behalf of Mr. Morris Jones, president of the organization:

Chignik Fishermen United would like to inform the Alaska State Legislature that we are taking a neutral position on HCR 22 and we stand firmly behind the Grunert decision. We are also adamantly opposed to HB

188 and SB 184 as we believe these bills undermine the Alaska state Limited Entry Act.

[1:49:56 PM](#)

LANCE NELSON, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, stated he is one of the attorneys who advises the Board of Fisheries on a regular basis. He is the attorney who represented the Board of Fisheries in the two Grunert decisions. He said [the Department of Law] does not oppose HCR 22 per se, but [the department] thinks the resolution will not accomplish what is hoped for because it will not have any legal affect one way or the other.

MR. NELSON explained the case is called State v. Grunert because Grunert was the plaintiff below, but after losing at the superior court level the state appealed and became the appellant in the supreme court appeal. That case banned allocations within a single fishery and it defined single fishery broadly to include different sizes of the same type of basic fishing gear. The gist of that part of the decision was that just because a different size of gear is used, that does not mean it is a different fishery. It also held that use by one group of net pens and fixed leads, as well as purse seines, did not create a different fishery. So this part of the ruling is, legally speaking, separate from the flaws that the court found with the co-op aspect of the fishery. [The Department of Law] believes it would be interpreted by the courts independently of the co-op kind of circumstances. He said that is what explains [the department's] basis for supporting HB 188 which would put into statutory language the clarification of the board's authority to allocate within a fishery as it does in many situations right now under current regulations.

[1:52:39 PM](#)

MR. NELSON noted [the state] has been sued. A legal challenge was filed against the Prince William Sound sablefish fishery in 2006. [The state] was able to settle the case without going very far into the litigation process because the attorney and the fisherman challenging the regulation were not aware that there was a statute and regulation providing for late registration in certain circumstances and the fisherman was suing to invalidate the regulation because he had failed to register on time. [The state] was able to settle the case by allowing the fisherman to register late.

MR. NELSON said the key question for courts in interpreting statutes is to try to identify, What was the adopting legislature's intent? A concurrent resolution adopted by a subsequent legislature does not amend the law as interpreted by the court in the Grunert case. It does not constitute a legislative history or legislative intent as to the meaning of the law interpreted by the court because it is not an expression of intent by the adopting body. He said he has been able to find no example where a court considered a subsequent post-enactment legislative resolution to interpret the legislature's intent in adopting the original statute. On the other hand, there are many examples where the supreme court has said it will not consider post-enactment explanations even by a bill's prime sponsor to explain legislative intent. This case is an even more extenuated circumstance because the current legislature is largely composed of different people so a concurrent resolution is unlikely to be given any weight as guidance on the original intent of the legislation. While [the Department of Law] hopes that if challenged it can make an argument to defend some of those regulations that it believes are vulnerable, it does not believe this resolution will have any impact or lend any force to its arguments in future challenges.

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MR. NELSON stated there are not a lot of lawsuits yet on these issues because most fishermen are pretty happy with the way current regulations are set up and are not inclined to challenge them. [The Department of Law] has been pretty careful in its advice to the Board of Fisheries that future regulations, especially controversial ones, could be pretty vulnerable. He said he thinks the board believes that and understands [the department's] advice and is disinclined to take too many risks by putting out a regulation that is controversial and likely to be challenged. Regardless of whether HCR 22 passes, [the department's] advice to the board is going to stay the same and likely be followed.

REPRESENTATIVE ROSES surmised that Mr. Nelson feels HCR 22 has very little legal impact and would therefore have very little impact on the management ability of the Board of Fisheries.

MR. NELSON responded yes, that is true.

[1:56:58 PM](#)

BOB THORSTENSON, Lobbyist for Sitka Herring Group, noted he is a past officer of United Fishermen of Alaska (UFA), but on this particular matter he is representing the Sitka Herring Group. He said the Sitka Herring Group is comprised of herring purse seiners who have been looking to modify the fishery - not into any kind of a co-operative - but using existing state law to do an equal split fishery identical to what is occurring right now in Prince William Sound black cod, Clarence Strait black cod, and Chatham Strait black cod. A bill is needed and this is not a bill. A bill was introduced well over a year ago and has been held in the House Special Committee on Fisheries by the sponsor of this resolution. He said the Sitka Herring Group believes the sponsor of this resolution succumbed to local pressure in his area to come up with something that looks somewhat meaningful.

MR. THORSTENSON related that the Sitka Herring Group has been working on this with the Department of Law and Legislative Legal and Research Services. One of the problems between the Department of Law and Legislative Legal and Research Services is that the Board of Fisheries only relies upon legal counsel from the Department of Law. The Sitka Herring Group has heard from the Department of Law that the department is going to give caution to any issues that will be controversial in the future, not only for past issues like Clarence Strait and Chatham Strait black cod equal split, but potential future fisheries changes. Technically in law today those changes are allowed, but the Department of Law has been saying for nearly two years that statutory action is needed, not a resolution. While he has heard of other people supporting this resolution, he has not heard of any lawyers that believe this resolution takes care of the problem with the Board of Fisheries.

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MR. THORSTENSON argued that there will be a sport fishing impact. There are those in Cook Inlet who believe there could be a broader impact, so they are concerned about Native impact to commercial fishing from some kind of action taken. [The Sitka Herring Group] does not believe that to be the case. However, it does believe that the sport fish community could harvest more herring, salmon, and other species if a different system could be figured out so that fishermen could work, not in a co-operative system, but cooperatively. By only passing a resolution and not a bill like HB 188, the legislature is basically telling the Department of Law and the Board of Fisheries that it is not going to give them any help and to keep

things the way they are with no changes. So, if the legislature wants things to stay the way they are, then passing a worthless resolution is probably the way to go.

CO-CHAIR JOHNSON deduced that what Mr. Thorstenson is saying is that HCR 22 is not going to do any good and the legislature might as well do nothing.

MR. THORSTENSON replied pretty close. The resolution gets about one percent of the way there. A bill is needed.

REPRESENTATIVE ROSES surmised that in Mr. Thorstenson's opinion HCR 22 does very little and therefore has neither a positive nor a negative impact on the board's ability to manage the fishery.

MR. THORSTENSON answered he does not believe the resolution will have any real, logical, or legal impact, but it may have a psychological impact on the board.

REPRESENTATIVE ROSES inquired whether Mr. Thorstenson thinks the psychological impact would be positive or negative in terms of the board's ability to manage.

MR. THORSTENSON responded slightly positive.

[2:04:11 PM](#)

JOE CHILDERS, President, United Fishermen of Alaska (UFA), stated he has been actively involved in commercial fisheries around the state of Alaska since 1966. United Fishermen of Alaska does not have a position on this resolution, he testified, so it must be understood that his comments are not the official UFA position. However, UFA would foresee HCR 22 as being a waste of time. The Board of Fisheries might consider the resolution to have some value, but the operative word is might.

MR. CHILDERS pointed out that the Board of Fisheries is charged with managing fisheries in a dynamic world where conditions change constantly. It was because of that recognition that the Limited Entry Act was adopted, which was an extremely controversial thing to do. The Board of Fisheries needs to have the ability to manage as it sees fit. One of the things it needs to be able to do is to look at the fact that the tools at hand do not necessarily provide the board with the ability to have an economically efficient or environmentally sensitive management to fisheries. The ability to harvest fish in the

sport sector, charter sector, and the commercial sectors grows constantly with the advent of new gear types. So, the ability to close areas, close time, close gear, do vessel length, and do all these various things does not necessarily provide the board with the ability to achieve what the board needs which is a total control on the output from a fishery. "We need to know how much fish are going to come out of the water and when they are going to come out and how they are going to come out, and we need to control that if we are going to have long-term sustainability," he said. The resolution is a half-measure that does not say yes or no and will not have anything to do with actions that are taken by the Board of Fisheries.

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CO-CHAIR GATTO asked whether Mr. Childers is opposed to the free market.

MR. CHILDERS replied he has been actively involved as an entrepreneurial fisherman since he was 12 years old. He bought his very first fishing operation, a setnet in Cook Inlet, when he was 16. He owned a fishing vessel, a license, and a truck before he was old enough to drive. So, no, he has never been opposed to the free market system.

[2:07:54 PM](#)

CO-CHAIR GATTO said that seems to be in contrast to Mr. Childers' testimony. Is limited entry the free market, he asked.

MR. CHILDERS answered limited entry is similar to having liquor licenses, cab licenses, or any sort of franchises that are allocated by the state that are considered to be done for the public good. The reason limited entry went into effect is that from the early 1960s to the early 1970s Alaska's fisheries were in the toilet; 1969 was the lowest salmon harvest on state record at 21 million fish. The halibut fisheries were in the toilet as well. The off-shore fisheries were basically nonexistent; they were being wiped out sequentially by foreign fleets and the United States did not have a 200-mile limit. Coupled with that was the Bolt decision in the federal court in the state of Washington which determined that under a federal treaty with a sovereign nation, right to the fish was actually allocated to the Native fishermen in Washington. Thus, he related, the Native fishermen had a property right which basically was the supreme law in a system that operates with the

market system. Alaska was the only place for the dispossessed fishermen to come to. So, there was a very strong understanding that without limited entry the fisheries in Alaska were going to become uncontrollable. The effort that went into limited entry included optimum number studies, and a system was created that met the needs of the time for the coastal communities and the people who were dependent. Subsequent to that many things have changed in fisheries, including in the Chignik area.

[2:10:32 PM](#)

CO-CHAIR GATTO referenced the "combat fishing" on the Kenai River and inquired whether Mr. Childers believes there should be limited entry for sport fishermen.

MR. CHILDERS responded he thinks it will come to a point in Alaska, like it has in other places in the world and especially in the salmon fisheries, where there is enough pressure put on the resource that there will be no way to provide full unrestricted access to people. He said he does not believe there is going to be a way to do that if at the same time there is no protection for the resource that the fish require. In other words, if roads, access, and growth are allowed along the rivers, there is not enough possibility to actually provide everyone with all the sport fishing opportunity that is wanted. He said limited entry for sport fishermen is a complex thing, but he thinks where it will have to be done is in the charter sectors. He continued: "Right now, with this bill at issue, you would not have the ability. Even if you were to create limited entry in the charter sector you would not be able to allocate So this is an example of where this bill is actually hindering long-term management of the resource, in my opinion."

[2:12:22 PM](#)

CLEM TILLION stated he is representing the Aleut Corporation and the Natives in the Aleutian Islands. He said he was in the legislature in 1973 when the Limited Entry Act was passed and there were legislators who were pretty sure that Judge Bolt was going to win. Limited entry is no different than farm land - there is a limited amount of farm land and anybody can be a farmer, but he or she has to buy a farm. He said he thinks there will come a day on the Kenai River when a person will have to apply for a permit and there will only be so many permits. The banks of the river cannot be torn down endlessly and to prevent this boardwalks might have to be built along the edge.

This is not at all an objection to how many [fish] are given to the sport fishery, he said, he just wants to make sure the resource itself is in good shape. He agrees with Mr. Childers that HCR 22 does not accomplish everything he wants, but it is a step that maybe the Board of Fisheries will pay attention to.

MR. TILLION said he represents a people who were taken out of their homeland to internment camps in 1942 and never allowed back to the islands from which they were taken. Then someone had an attack of conscience and allowed them back into some of the areas. The people were offered the right to purchase Adak, it was not given as a gift from the federal government. They got the facilities, but they had to buy with other lands the island of Adak. The people moved back and were doing well packing two million pounds of crab a year for a Norwegian-American who built a plant out there. Then along came crab rationalization and the two million pounds was reduced to 67,000 pounds. The rest was given to Japanese owners in Dutch Harbor. The plant owner went to cod fish which was unlimited and the season went mostly all year long.

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MR. TILLION explained that the Aleut people involved in this fishery are also involved in the salmon fishery and the salmon fishery requires that they fish vessels of under 58 feet in length. Their investments are made in these small boats that are perfectly capable of catching the cod, the halibut, or the other fishery in the area, but they cannot go out in any kind of weather. The trouble with a quota is the competition for a finite resource - the boats get bigger and bigger and soon the boats are so big they cannot be taken care of in Alaska and this results in exporting the whole fishery to Seattle. Alaska's king crab fishery was a case in point - 96 percent of all of the crab fishermen of Alaska lived in Alaska when the state operated on size and sex management and the season went all year. Within four years of going to a quota system, only 40 percent of the fishermen still lived in Alaska because to compete the fishermen bought bigger and bigger vessels that could fish in any kind of weather, but the boats were too big for the yards in Alaska to take care of. The season got shorter. Mr. Tillion said he now is looking at going before the Board of Fisheries to ask that the state water fishery be made 60 foot or less. There is no problem taking all the fish. The problem is that if the community is going to live the fish must come in for a long enough period of time that the small work force in the community

can process these fish. This will provide in-town employment and the store can operate and the school has enough kids.

2:17:26 PM

MR. TILLION noted that when the price of cod went up a particular company decided it would like to take over Adak. The North Pacific Fishery Management Council made some amendments, called Amendment 80, that allowed the vessels a fixed percentage of the catch. But, nobody closed the Aleutian Islands west of "170" and so the company had all this idle time and used it as a catcher-processor or as just a processor buying from other vessels and moved in. This year a fleet moved in on Adak and took the quota very quickly. The people of Adak saw their state-of-the-art processing plant, where every part of the fish is used, reduced from last year's 27 million pounds to 8 million pounds. He related that the city of Adak is destitute because the raw fish tax is not coming in even though Trident said it would give Adak a share of what was packed in the area. So, he said, there is a need to go to the Board of Fisheries. He is interested in a solution, and would prefer a bill to a resolution, but he will accept a resolution if that is all he can get in hopes it will influence the board to say that for state waters west of "170", 50 percent of the catch shall be taken by vessels under 60 feet so Alaskan fishermen have a chance.

2:19:47 PM

MR. TILLION stated that two years ago a fleet of 40 small boats showed up and stayed there until the state water season opened. But the big boats moved in and the quota was taken in one week. Because the weather was calm, each one of the small boats got one load which was enough to pay for the trip back. This year those small boats did not even bother coming out because the Board of Fisheries would not allocate half of the catch to the smaller boats due to the attorney general's opinion. He said he wants to go before the board and say, "Let's have a share of it." This has already been done in Kodiak and Cook Inlet. There are small boats fishing Cook Inlet this winter. It is personal, he said, because he has a grandson with one of those boats. Those boats are getting over a dollar a pound for cod fish because of access to the Anchorage airport and Korean Airlines and the fish arrive in Frankfurt, Germany, in less than 48 hours. "Isn't this what we want our fisheries to be," he asked. He said he is asking the committee to give the tools that let the Board of Fisheries do it. He would be surprised if

the board could not be convinced that this is beneficial to Alaska.

[2:21:43 PM](#)

MR. TILLION acknowledged there will be complaints. Some of the groups in the Community Development Quota (CDQ) Program will not be happy because they have made deals with outside interests for floating processors and they do not want that to be closed out. But, somewhere, somebody is going to have to make the decision on whether to have the fisheries belong to Seattle and other places or to keep them in Alaska. To keep the fisheries in Alaska, then it must be ensured that the resource is harvested by vessels that can be overhauled, repaired, and maintained in Alaska. He urged the committee to give the Board of Fisheries the tools "so that then we can go to the governor and plead with her to kind of put the pressure on the department and the board to support us." The vessels are here and owned by Alaskans. It can be done and the money will stay in Alaska.

MR. TILLION added that the limited entry fight was bitter. His niece had her car tires slashed and his kids were beat up at school because he was in Juneau supporting limited entry. It is not always easy, but now nobody wants to go back to wide open, he said. Did some people get hurt? Yes. However, it is no different than homesteading - the guy that got there in time to homestead got the land and everybody thereafter has to buy a piece of it from that person. He does not know any other way; life is not always fair. According to Alaska Geographic, there are only three places in the world that manage their fisheries well - Iceland, New Zealand, and Alaska. Alaska has eight times more salmon today than it did in 1959 when he was in the fishermen's association fighting for control, he related, and he was in the gallery of the U.S. Congress when the Magnuson Act passed.

[2:25:05 PM](#)

CO-CHAIR GATTO asked whether Mr. Tillion sees a day when five people with sport fishing licenses will send one person to fish for all of five of them.

MR. TILLION responded he already does that, being over 60 years of age. When friends go out for king salmon he has them pick one up for him because they are allowed to do so under Alaska law. He said Mr. Childers is right about the sport fishery - there will come a day when there will have to be a limit on how

many people can fish on each stream because when there are 10,000 fish in the stream and 30,000 people that want to fish them, not everyone can be allowed to take one fish. The spawners must be taken care of, no matter how much pain is inflicted. He said he is not here to fight over whether a sport or commercial fisherman gets the fish - he gets short-tempered about overharvest. The whole prestige of Alaska is dependent on the fact that the state manages its fisheries well and who gets the fish has to be second to whether there is enough fish there.

[2:26:52 PM](#)

CO-CHAIR JOHNSON stated he is concerned about HCR 22 and may set it aside until Friday [3/28/08] to get more information. In response to Representative Fairclough, he said he is not closing public testimony as there may be additional testimony resulting from setting the resolution aside.

REPRESENTATIVE ROSES commented he does not feel comfortable spending time on legislation that does not seem to serve any purpose and that is only a band aide for a serious hemorrhage. At some point the cause of the problem must be faced. He said he does not know whether or not he likes the resolution because of not knowing whether it will have any positive impact. He is unsure whether holding the bill will provide further information and he may therefore be just as conflicted on Friday.

CO-CHAIR JOHNSON held HCR 22.

HB 241-STAMPEDE STATE RECREATION AREA

[2:29:28 PM](#)

CO-CHAIR JOHNSON announced that the next order of business would be HOUSE BILL NO. 241, "An Act creating the Stampede State Recreation Area."

The committee took an at-ease from 2:30 p.m. to [2:32:38 PM](#).

REPRESENTATIVE DAVID GUTTENBERG, Alaska State Legislature, prime sponsor of HB 241, testified that the bill would create the Stampede State Recreation Area. He noted that the area on the map with diagonal lines has historically been called the "Wolf Townships". He drew attention to an area on the map bordering the boundary of Denali National Park and Preserve and explained that many people over the years have had designs on this area: the National Park Service would like to add it to the park,

there have been proposals to put a railroad through the area, and Governor Murkowski wanted to put a road through it. The people of the Denali Borough recognized they needed to be proactive, he related. They have traditionally used this area for many years for many purposes and the bill is designed to turn this into a state recreation area without limiting any of these traditional uses. Representative Guttenberg said the Denali Borough came to him and Senator Thomas with the proposal, which came out of a long process. The Denali Borough rotates its assembly meetings among its four communities and everybody from four-wheelers to photographers has been involved. The result was a unanimous resolution to [establish this as a state recreation area] because the people want to preserve the traditional uses of the area such as hunting and recreation. Part of the process was ensuring that no interest groups were excluded. The purpose is to be able to plan and determine the area's future without excluding any of these traditional uses.

[2:36:24 PM](#)

CO-CHAIR JOHNSON inquired how much private property is within the boundary of the proposed recreation area.

REPRESENTATIVE GUTTENBERG responded it is all state land. In further response to Co-Chair Johnson, Representative Guttenberg confirmed there is no private property and the eminent domain provision is just in there. He said there is no active mining going on. In response to a member of the audience, he corrected himself and said there may be a couple of holdings, but the intent is not to take away any of those rights.

CO-CHAIR JOHNSON asked whether this is the area where the railroad that was once talked about would go through to the backside of Denali National Park and Preserve.

REPRESENTATIVE GUTTENBERG replied it could be. The Kantishna-holding folks would also go through here, he added.

CO-CHAIR JOHNSON inquired whether turning this into a recreation area would prohibit that.

REPRESENTATIVE GUTTENBERG answered no.

CO-CHAIR JOHNSON commented he does not see explicit language for motorized use and as "a roads guy" he does not want to see something that would not allow this to go through.

[2:38:33 PM](#)

REPRESENTATIVE ROSES asked whether there are folks with mining permits who have not yet exercised them.

CHRISTIAN GOU-LEONHARDT, Staff to Representative David Guttenberg, Alaska State Legislature, responded that, according to the Division of Mining, Land and Water, there are no active state or federal mining claims in the area. He also related that James King, Director of the Division of Parks & Outdoor Recreation, has been working with the Division of Mining, Land and Water as well as the Division of Oil & Gas to ensure that no resource development will be blocked in the area.

[2:39:34 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired who owns the subsurface rights.

REPRESENTATIVE GUTTENBERG replied it is all state land.

REPRESENTATIVE FAIRCLOUGH asked whether the subsurface is included.

REPRESENTATIVE GUTTENBERG nodded yes.

REPRESENTATIVE FAIRCLOUGH asked whether the property includes the famous bus from [the true story] Into the Wild.

REPRESENTATIVE GUTTENBERG answered yes; the bus is located along the Savage River.

[2:40:22 PM](#)

REPRESENTATIVE EDGMON inquired what the difference is between a recreation area and a park, and why is the bill for a recreation area as opposed to some other designation.

JAMES KING, Director, Central Office, Division of Parks & Outdoor Recreation, Department of Natural Resources, explained that a state recreation area is less restrictive than a state park and allows many different uses. For example, the Chena River State Recreation Area near Fairbanks allows hunting, fishing, and camping, and has all-terrain vehicle (ATV) trails, non-motorized trails, dog mushing, a rifle range, and roads. A legislatively designated state park usually has more restrictive language in regard to activities.

[2:42:05 PM](#)

CO-CHAIR GATTO observed that page 2, line 2, states, "continued motorized access for owners of private property".

MR. GOU-LEONHARDT responded there are a few inholdings. His office spoke with members of the public about that very sentence, he related, since "continued" implies that people who have not yet accessed their private property would not be able to do so. He understood this is not the intent - owners of private property inholdings should be able to have access. There has therefore been discussion to remove the word "continued".

CO-CHAIR GATTO asked whether these inholdings are large or cabins where someone owns the land or squatters.

MR. GOU-LEONHARDT understood there are a few cabin sites.

[2:43:54 PM](#)

CO-CHAIR GATTO inquired whether the cabin owners have rights or are they cabin sites that are not owned.

REPRESENTATIVE GUTTENBERG answered, "Our intent is not to change any of the conditions that anybody has out there currently, that if somebody has a cabin and there is an existing easement or access agreement, that that stays in place."

CO-CHAIR GATTO asked why not just leave it the way it is.

REPRESENTATIVE GUTTENBERG responded people in the Denali Borough came to him saying they wanted to be more proactive in the planning and the future of this area. These people are the majority members who are traditional users and they would like to be more active in the management than they are currently able to be, such as putting in turnouts or park benches.

REPRESENTATIVE FAIRCLOUGH stated she would like to know how many pieces of private property there are and the size of each property. She also still has the question about subsurface rights. Additionally, she wants to see the provision for resale as she does not want to see the state close off rights to the property if someone wishes to sell outside of their family.

[2:47:20 PM](#)

MR. KING, in response to Representative Roses, confirmed there are quite a few state recreation areas around the state that are managed by the Division of Parks & Outdoor Recreation.

REPRESENTATIVE ROSES asked whether the state charges user fees for its state recreation areas.

MR. KING answered it depends on the recreation area, there are charges for some areas. At public meetings in Healy there was a real mix of testimony, he related, but a couple of things came out very clearly. One was that the public loves that area and they love it for a variety of reasons - because they hunt, fish, drive off-road, dog sled, hike, ski, or watch the caribou. They said they really like it the way it is and want it to continue to be that way. But they felt that change is coming because the state's population is growing and they fear that this place will not be able to be used like it is. Mr. King said what was heard loud and clear was for the division to come in and do a public management plan in which the public dictates what goes on and what is allowed, and where restrictions, if any, are created. There would be local management through an advisory council and a local ranger living there. Fees would be a piece of that. Whether to collect fees is a legislative decision as far as whether to put a budget in the general fund, or collect fees, or a mix of funding mechanisms to support the area.

REPRESENTATIVE ROSES commented that according to HB 241, the people currently using the area will be able to continue using it in a manner to which they have become accustomed, but now they will have to pay a fee to do it. He recounted his personal experience when Kachemak Bay State Park was first established and how people who had not yet purchased their open-to-entry recreational sites within the park boundaries lost their land. Thus, even with the best of intentions of protecting what people have, there is no way of knowing that the protection will continue in the future. He said he is not opposing the bill at this point, but he has other questions and things he will be watching for.

[2:52:18 PM](#)

DAVE TALERICO, Mayor, Denali Borough, drew attention to the map and said the area being talked about is just below the red letters spelling "Denali Borough". This has been very contentious, he said. He has been the mayor for almost six years and this area of real estate has been on his desk all six

years. He pointed out the Stampede Trail on the map and noted there was a proposal for a rail line that would have gone all the way to Kantishna. There was also a proposal by the former administration to make a 12-foot-wide pioneer road to the Sushana River. The Stampede Trail is an R.S. 2477 all the way to the Stampede Mine on the Clearwater Fork of the Toklat River. He clarified that the R.S. 2477 does not go all the way to Kantishna; it goes to the Stampede Mine and from the mine the Moose Creek Trail goes over the top of the Kantishna Hills to Kantishna and that is an R.S.T. This is pertinent to the issue, he explained, because it shows that designation of this area does not eliminate the ability to have a transportation corridor and to have that corridor go beyond Denali National Park and Preserve and into western Alaska. The Denali Borough would prefer to see any future state transportation corridor go beyond a dead-end zone that would be controlled by another agency.

[2:55:11 PM](#)

CO-CHAIR JOHNSON inquired whether the state has actually settled with the federal government or is just claiming on the trail.

MR. TALERICO responded that to the best of his knowledge the state is still claiming that R.S. 2477 as a trail.

MR. TALERICO continued his testimony, noting that this area is very heavily used by Denali Borough residents as well as people from the North Star Borough. There is hunting, grayling fishing, ATV use, off-road vehicle use, snowmobiling, skijoring, and camping. There are Alaskan-owned businesses for dog sled tours, horseback riding, and jeep tours within the area. It is a great place for small businesses owned by Alaskans. Many Native Alaskans come down for the blueberries, he added. There is history in the area that is worth preserving, such as cable crossings over the Savage and Teklanika rivers that were installed by the U.S. Army Corps of Engineers. There are also old, carved Alaska Railroad stakes. The famous Into the Wild bus is receiving a lot of attention and [the borough] has concerns about what its search and rescue people will do and whether there will be a management plan to manage that.

[2:57:56 PM](#)

MR. TALERICO stated that a management plan is really what is being talked about. [The borough] wants to take the appropriate arm of state government and put it in place so that a management plan can be created. The land is managed by the Department of

Natural Resources, Division of Mining, Land and Water, and he said he thinks they have the responsibility for this right now. If this area is made into a state recreation area, then there is the ability to put a plan in place in order to keep the residents' traditional activities afloat. It also provides some economic opportunities near the area. This will be a completely different venue than the national park's management plan. There are things that are not allowed in Denali National Park and Preserve that will be allowed if this becomes a state recreation area. He said the borough would like to use its property adjacent to the east boundary [of Denali National Park and Preserve] near Eightmile Lake to generate revenue. He has used this area for 39 years, he noted, and he would like to have some kind of a plan that will ensure this area will be there for use by his grandchildren.

MR. TALERICO pointed out that along the Parks Highway there are no state recreation areas or campgrounds between the Chena River State Recreation Area in Fairbanks and Denali State Park - a distance of 194 miles and the largest gap in Alaska's highway system. [The proposed Stampede State Recreation Area] is right in the center of this gap. He said [the borough] appreciated that its representative and senator listened. The borough's biggest concern is the traditional uses, and that is why [the borough] specifically asked that hunting, trapping, fishing, and off-road use stay in place. If that changed, so would the support of the Denali Borough.

[3:02:24 PM](#)

REPRESENTATIVE ROSES asked whether having to pay a fee in the future to utilize the area would be bothersome.

MR. TALERICO replied he does not like to pay fees to use public property. However, if a management plan and fee schedule are not put in place, he foresees that this area will get stormed over in the future and possibly end up being taken out of use with closures as a result of abuse. He is not crazy about a fee, but at the same time the fees help support the facility [the borough] is recommending, as well as other facilities around the state.

REPRESENTATIVE ROSES expressed his concern about Alaskans who traditionally use this area for berry picking and their receptiveness to a fee. However, he is also concerned that the area could be lost.

[3:05:13 PM](#)

REPRESENTATIVE EDGMON inquired whether there is strong support for this throughout the Denali Borough.

MR. TALERICO answered the borough assembly passed its resolution unanimously, but he cannot say it is 100 percent support. A lot of people have a lot of different ideas and will monitor this closely. He said he thinks there are very strong feelings in support of some type of preservation and management plan in the area. He cannot say it is 100 percent support, but he does think there is very strong support throughout the borough.

REPRESENTATIVE EDGMON asked what communities are in the borough.

MR. TALERICO said the city of Anderson, the Healy area, McKinley Village, Cantwell, and the Ferry area are the large concentrations of residents.

[3:06:50 PM](#)

REPRESENTATIVE SEATON commented that it does not seem that the language on page 2, line 2, would provide for motorized use of the area other than for access by the owners of private property.

CO-CHAIR JOHNSON noted this was covered when the sponsor stated his intention to amend the provision by taking out the word "continued".

[3:08:26 PM](#)

ARMEDA BULARD, Presiding Officer, Denali Borough, stated the borough has been working on the Stampede State Recreation Area for some time now through Representative Guttenberg and Senator Thomas. Mayor Talerico has presented the general consensus of the community from Cantwell to Anderson, she said. The use being referred to is primarily local and local means all the way to Fairbanks. [The borough] would like to be able to have some concrete say-so in this area because of past proposals, which include the federal park taking that chunk of land and expansions such as the proposed road. She related that [the borough] feels any transportation would best be done by putting it on the north side of the north boundary of the national park and go all the way to the rivers.

[3:10:49 PM](#)

REPRESENTATIVE ROSES cited the provision on page 2, [lines 8-10] which states, "After adequate public hearings and in consultation with the Denali Borough Assembly, the commissioner may designate incompatible uses and shall adopt and may revise a management plan...." He said he would be pretty much against HB 241 if it were not for this public hearing process. He inquired whether Ms. Bulard is comfortable with the way this bill is worded in regard to the public hearing process because a public hearing does not necessarily mean that the advice of the people that testified will be taken.

MS. BULARD responded she thinks [the borough] is fairly comfortable with the way the bill is written. The activity level of the people within the borough is such that this would keep a door open for dialog with the state, and preferably through the Division of Parks & Outdoor Recreation.

REPRESENTATIVE ROSES asked whether the language "may revise a management plan" leads Ms. Bulard to believe that it is an ongoing fluid process that will continue and one plan will not be put in place and locked forever.

MS. BULARD replied yes, nothing in concrete, please.

[3:12:42 PM](#)

CO-CHAIR JOHNSON [held HB 241] and kept public testimony open.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:13 p.m.