

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

January 26, 2010

10:18 a.m.

MEMBERS PRESENT

Representative Bryce Edgmon, Chair
Representative Wes Keller, Vice Chair
Representative Craig Johnson
Representative Charisse Millett
Representative Cathy Engstrom Munoz
Representative Robert L. "Bob" Buch
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 227

"An Act establishing state fish and game reserves; creating the Holitna River Basin Hunting, Fishing, and Trapping Reserve; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 227

SHORT TITLE: HOLITNA BASIN RESERVE

SPONSOR(S): REPRESENTATIVE(S) HERRON

04/10/09	(H)	READ THE FIRST TIME - REFERRALS
04/10/09	(H)	FSH, RES
01/19/10	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	FSH, RES
01/26/10	(H)	FSH AT 10:15 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE BOB HERRON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 227, as prime sponsor.

ROB EARL, Staff
Representative Bob Herron
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 227 on behalf of Representative Herron, prime sponsor.

DICK MYLIUS, Director, Department of Natural Resources (DNR),
Division of Mining, Land and Water
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SSHB 227.

KEVIN SAXBY, Senior Assistant Attorney
Natural Resources Section
Civil Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions on SSHB 227.

DOUG CARNEY, Chairman
Stony/Holitna Fish and Game Advisory Committee
Owner, Sleetmute Lodge
Sleetmute, Alaska

POSITION STATEMENT: Testified in support of HB 227.

LISA FEYEREISEN, Coordinator
Sleetmute Traditional Council
[No address given]

POSITION STATEMENT: Testified in support of HB 227.

MIKE THALHAUSER, Fisheries Director
Fisheries Department
Kuskokwim Native Association
Aniak, Alaska

POSITION STATEMENT: Testified in support of HB 227

GRANT FAIRBANKS
Bethel, Alaska

POSITION STATEMENT: Testified in support of HB 227.

GREG ROCZICKA, Director
Natural Resource Program
Orutsaramuit Native Council
Bethel, Alaska

POSITION STATEMENT: Testified in supported of HB 227.

ACTION NARRATIVE

[10:18:36 AM](#)

CHAIR BRYCE EDGMON called the House Special Committee on Fisheries meeting to order at 10:18 a.m. Representatives Edgmon, Munoz, Buch, Keller, and Kawasaki were present at the call to order. Representatives Millet and Johnson arrived while the meeting was in progress.

HB 227-HOLITNA BASIN RESERVE

[10:18:47 AM](#)

CHAIR EDGMON announced that the only order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 227, "An Act relating to the establishment of state fish and game reserves; creating the Holitna River Basin Hunting, Fishing, and Trapping Reserve; and providing for an effective date."

[10:19:59 AM](#)

REPRESENTATIVE BOB HERRON, Alaska State Legislature, introduced HB 227, providing a history of the area and the development of the legislation. The intent is to provide a specific management plan for this remote area of the state.

[10:21:32 AM](#)

CHAIR EDGMON indicated that the bill before the committee is a Sponsor Substitute (SS) for House Bill 227.

[10:21:55 AM](#)

ROB EARL, Staff, to Representative Bob Herron, Alaska State Legislature, presented HB 227, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

First of all, we appreciate the Chairman's very timely scheduling of this bill because it turns out HB 227 is slated to be discussed in Board of Game and Board of Fisheries meetings this same week.

Residents have been requesting the Holitna drainage be established as a refuge since the mid-1980s. It is

the largest drainage feeding the Kuskokwim watershed and is prime habitat for moose, bear, caribou, and furbearers. It's also an important area for all species of salmon - ¼ of the Coho; 1/3 of the Chinook and Chum, and 2/3 of Sockeye running the Kuskokwim spawn in the Holitna drainage.

I'd like to move into a geographical overview. We have 3 maps, they should all be in your packets (and on BASIS). **Map One** shows the Holitna Watershed in red, the proposed Reserve boundary. This is mostly state owned land in here. Some big State Mining Claims in the west here - there has been some exploration and some limited mining activity. Wood Tikchik State Park abuts in the southwest here. There are some relatively small Native allotments sprinkled around. The northern part of the Reserve is generally low with extensive wetlands, while the central and southern portions some hilly areas, several lakes, and high points close to 4000 feet.

The 165-mile long Hoholitna River flows into the 110-mile Holitna which 20 miles farther empties into the Kuskokwim River. No villages lie within the proposed Reserve. Sleetmute (70) is just to the north here - 250 miles upriver from Bethel. Red Devil (48) is the next village down the Kuskokwim and Stony River (51) the next village upriver; Lime village (32) is on the Stony River in the next drainage to the east. All these villages have populations under 100. Historically, the area has been used by hunters and fishers from about 23 villages. Most access is by boat or by airplane to lakes or largely landing strips.

The total area of the proposed Reserve is about 4 million acres, or 6250 square miles, slightly less than the land area of the Hawaiian Islands (6,423 sq. miles). [According to the DNR Kuskokwim Area Plan, there are 165 private parcels in the area, mostly Native Allotments.]

The area lies entirely within Rep. Woodie Salmon's House District.

[10:26:18 AM](#)

MR. EARL directed attention to the game management unit map of the proposed area, and said that the bill does not infringe upon the existing use of the area, nor does it call for any alteration, or override, of current rules or management practices.

[10:28:02 AM](#)

REPRESENTATIVE JOHNSON inquired about the reason for the SS.

[10:28:22 AM](#)

REPRESENTATIVE HERRON said that the bill was introduced late in the first session of the 26th Legislature and remained in committee during the interim. The lack of movement provided him additional time to consult further with the departments and incorporate additional input, which resulted in the sponsor substitute (SS).

[10:29:38 AM](#)

MR. EARL presented the bill sectional, paraphrasing from a prepared document, which read as follows [original punctuation provided]:

Section 16.20.700. Purpose

States that the purpose of establishing a fish and game reserve is to promote sustainable levels of human consumption of fish and game.

Section 16.20.710. Regulations

Gives authority to the Board of Game or Board of Fish (whichever is more appropriate) to adopt regulations designed to conserve fish and game; and to carry out the purpose as set forth in sections 16.20.700 and 16.20.720.

Section 16.20.720 (a)

All present and future state-owned land and water within the Holitna and Hoholitna River watersheds is designated as part of the Reserve.

Section 16.20.720 (b)

The Reserve is established to ensure:

1. Management and protection of fish and game populations and habitat to perpetuate subsistence use, commercial use, and other consumptive uses;

2. Management techniques that promote maximum use with sustained yield to maintain historical harvest levels with human consumptive use as a priority;
3. Maintenance of fish and game populations to provide for high levels of human consumptive use (within limits set by Fish and Game Boards);
4. Allowance for scientific research elucidating the effectiveness of management activities in this section in providing for current and future human harvest needs.

Section 16.20.720 (c)

The Department of Fish and Game, the Board of Fisheries and the Board of Game shall manage fish and game resources within the Reserve to provide for high levels of human harvest and, subject to priorities among intensively managed areas for which these entities set policy, shall:

1. Control predation and adjust predator and prey population ratios thru appropriate means;
2. Conduct management actions designed to further the purposes of this section so long as the appropriate board has not found such actions to be ineffective at maintaining fish and game populations commonly harvested for food by humans;
3. Consider scientific evidence augmented by local environmental knowledge when evaluating management activities.

Section 16.20.720 (d)

The Department of Natural Resources may acquire privately owned land within the Reserve by purchase or exchange, but not thru eminent domain.

Section 16.20.720 (e)

Public access to the Reserve may be regulated by DNR, in consultation with DFG, as necessary to meet the purposes of this section and to protect access to, and development of, other resources within the Reserve.

Section 16.20.720 (f)

Access corridors established by DNR, in consultation with DFG and a private property owner, shall guarantee access to and from private property within the Reserve.

Section 16.20.720 (g)

Entry into the Reserve to explore or develop nonrenewable resources must be approved by DNR, in consultation with DFG, and such activities must be compatible with the purpose of this section.

Section 16.20.720 (h)

Except as otherwise provided in this section, DFG and DNR shall exercise their respective authority over the Reserve thru a management plan prepared by DFG in consultation with DNR.

Section 16.20.720 (i)

Reserve boundaries are defined as including all the sections (listed beneath their respective township and range designations) on the last eight pages of this bill.

[10:34:14 AM](#)

REPRESENTATIVE JOHNSON asked whether certain types of development could be found incompatible because of the bill, such as a mine.

[10:34:37 AM](#)

REPRESENTATIVE HERRON responded that the eastern boundary may preclude mining activity, but methane development could occur. There are no large-scale mines predicted for this area, he reported.

[10:36:18 AM](#)

REPRESENTATIVE KAWASAKI noted the compatibility determination, and asked if DNR would have the sole right of refusal for development. Would a mining claim in the area be subject to the terms of this bill, he queried.

[10:36:47 AM](#)

REPRESENTATIVE HERRON said that there is no trumping power, and deferred to the departments for a more detailed response.

[10:37:38 AM](#)

DICK MYLIUS, Director, Department of Natural Resources (DNR), Division of Mining, Land and Water, stated that the department does not hold a position on the bill, however, he expressed

concerns regarding future resource development and asked that the intent of the bill to be clearly identified, as well as the area boundaries.

[10:39:56 AM](#)

REPRESENTATIVE KAWASAKI referred to page 3, line 23, subsection (g), and noted the language which states, "Entry upon the ... Reserve for purposes of exploration and development ..." He asked what the intent of this language is, and what constraints might be put on exploration activities.

[10:40:34 AM](#)

MR. MYLIUS responded that this will not alter existing requirements in terms of permitting. Anyone is able to take rock samples, for instance, using hand implements, and mining claims are self initiated prior to permitting. Extensive exploration activities do require permits, but the process will not be affected by this bill. He pointed out that timber, a renewable resource, is handled differently than oil and gas or mining. Timber resources do exist in the lower part of the proposed basin.

[10:42:23 AM](#)

KEVIN SAXBY, Senior Assistant Attorney, Natural Resources Section, Civil Division, Department of Law (DOL), indicated that he was available for questions.

[10:42:37 AM](#)

REPRESENTATIVE KAWASAKI asked for a legal description of a reserve versus a refuge.

[10:42:50 AM](#)

MR. SAXBY said that one of the underlying purposes of a refuge is to preserve hunting and fishing opportunities. The bill before the committee would constitute the first time that the legislature will have created a fishing and hunting, or fish and game, reserve. It is before the committee to craft the precedent-setting language, however, as the bill reads, the difference will be to place "a greater emphasis on active management to produce high levels of human consumptive use." This reserve would not be just a place where hunting and fishing is allowed, but stipulates the administration to manage for high

levels of that activity. It is analogous to a state forest, where statute requires the production of timber as the primary identified purpose.

[10:44:08 AM](#)

CHAIR EDGMON opened public testimony.

[10:44:40 AM](#)

DOUG CARNEY, Chairman, Stony/Holitna Fish and Game Advisory Committee, Owner, Sleetmute Lodge, stated support for HB 227, and described the historical use of the area being the largest tributary and most productive spawning stream for the Kuskokwim River drainage. The importance of this area, as a spawning habitat, has become more evident through recent radio telemetry studies. He reported the high numbers of moose that have been harvested on an annual basis, and that the people of the area would appreciate having it managed as an area for high consumptive use. People up and down the Kuskokwim River rely on this productive area for annual harvests, particularly for fish.

[10:47:52 AM](#)

LISA FEYEREISEN, Coordinator, Sleetmute Traditional Council, stated support for HB 227, and underscored the statements of the previous speaker. She stressed the need to maintain the habitat for the benefit of the subsistence users, and livelihoods of the area.

[10:49:56 AM](#)

MIKE THALHAUSER, Fisheries Director, Fisheries Department, Kuskokwim Native Association, Aniak, Alaska, stated support for HB 227. The Native association has cooperated with the Alaska Department of Fish & Game (ADF&G), and the United States Fish and Wildlife Service, on fish studies and surveys of the area. He reported results of these studies, which underscore the importance of the Holitna River as an important habitat, and productive spawning ground, for various fish species. The Holitna supports fish populations that feed into the Kuskokwim River drainage system.

[10:52:24 AM](#)

GRANT FAIRBANKS, stated support for HB 227, and declared that, as the breadbasket of the area, the Holitna watershed is finally

getting the recognition that it deserves. At one point, in the 1970's, the federal government sought to designate the area as a scenic and wild watershed in recognition of its significance. He opined that the highest and best use of the Holitna area is its current purpose. It has been a long term project to have this area protected, and protecting the subsistence resources is imperative.

[10:55:17 AM](#)

GREG ROCZICKA, Director, Natural Resource Program, Orutsaramuit Native Council, stated support for HB 227, and said he has been assisting in the development of this bill during the last four years. Referring to the concerns expressed by the committee regarding the effects this bill may have on mining and minerals development, he said that it will still be allowed, but it elevates the level of consideration for DNR when issuing permits and evaluating how an activity will impact the primary purpose of the bill. He reported that in 2006, DNR denied a coal bed methane exploration permit application. On appeal the permit request was altered to allow for methane exploration only. In addition, within the Kuskokwim area plan, two riparian corridors have been closed for 20 years to future mining. The primary focus of the bill is to create a proactive management process to maintain wildlife levels in a 4 million acre area; part of the 17,000 square miles, or 11 million acres, of game management unit 19. Further, 30 square miles of unit 19 is private or ANSCA (Alaska Native Settlement Claims Act) land. He compared this area to others that ADF&G has identified for intensive management (IM), and suggested that the bill language may serve to support similar practices in other regions. The bill has been through a lengthy public vetting process, and widespread support has been demonstrated. Human harvest needs are important factors to be addressed as IM areas.

[11:03:09 AM](#)

CHAIR EDGMON asked whether the boards of fish or game have rendered an opinion on this bill.

[11:03:26 AM](#)

MR. ROCZICKA said that the Board of Game initially generated this bill, in January, 2006. At that time, the board had before it a proposal to designate the Holitna a separate game management unit. The support was spurred by an interest to recognize the productivity of the area, and the proposal was

amended to name Holitna a refuge. Eventually, it was proposed at the spring 2006 board meeting to have it named a reserve. Legislation was sought, and in the fall of 2006, draft legislation was introduced. However, a political impasse occurred in 2007, a protocol impropriety, and the bill foundered in committee. Additionally, in the spring of 2006, the Board of Fish also entertained a proposal, but it has been tabled to the habitat committee, for lack of legislation. With the introduction of new draft legislation, the topic is on the agenda for the BOF meeting scheduled to begin today in Fairbanks.

[11:08:23 AM](#)

REPRESENTATIVE MUNOZ inquired if there are any areas in the proposed regions that are actively managed, and what does that term mean.

[11:08:45 AM](#)

MR. EARL responded that since 2004, the area has been under on-going active management. He deferred to DOL for a definition of the term.

[11:09:24 AM](#)

MR. SAXBY explained that IM is defined, in statute, as active management designed to produce high population levels for human harvest. To accomplish this end, it specifically, statutorily, includes manipulation of habitat and predator control for game. In order to optimize populations of fish and game, as with state forests, he said, "You would probably expect to see some experimentation done, or other means, of active management in this area."

[11:10:27 AM](#)

REPRESENTATIVE MUNOZ asked if IM is currently occurring within the proposed area.

MR. SAXBY responded that all of the moose populations in this area have been identified as important for IM, and a temporary predator control program is ongoing.

[11:11:05 AM](#)

REPRESENTATIVE MUNOZ surmised that this legislation would make predator control a permanent program.

MR. SAXBY said that it would not necessarily mean that predator control would be made permanent, but that it could require other management methods, such as habitat, including forestry manipulation, to be deemed appropriate.

[11:11:43 AM](#)

REPRESENTATIVE MUNOZ asked if the demographic use of the area is known; how many users outside of the immediate residents benefit.

[11:12:04 AM](#)

MR. SAXBY reported that Unit 19B, the southern half of the area, is primarily used by fly-in, non-local use. The northern half of the area is the reverse of that, being accessed by small boats, from the local villages. He stressed that he is speaking on game use only.

[11:13:12 AM](#)

REPRESENTATIVE MUNOZ asked if this bill would establish a priority for any one user group or type of use.

MR. SAXBY replied no, it establishes production of fish and game resources as a priority, but no preference for a user group.

[11:13:39 AM](#)

REPRESENTATIVE JOHNSON turned to page 2, subsection (c), line 23, and read: "To fulfill the purposes of this section, the Department of Fish and Game, the Board of Fisheries, and the Board of Game shall manage the fish and game resources of the area to provide for high levels of human harvest and, ... shall (1) control predation ..." and asked if this is not stipulating that predator control must be practiced.

MR. SAXBY explained that "shall manage for abundance" is the stated purpose in the mandate, but it doesn't read as a requirement of permanent predator control, if it isn't going to do any good. If predators are in check, then female species may need to be harvested to maintain a population that is within a carrying capacity. Different techniques are utilized for various levels of abundance, he pointed out.

REPRESENTATIVE JOHNSON requested a response from ADF&.

REPRESENTATIVE HERRON pointed out that Mr. Saxby is essentially assigned to work on this bill by ADF&G.

[11:15:56 AM](#)

REPRESENTATIVE JOHNSON asked if this language is compatible with the state constitution that stipulates, "All uses should be equally protected."

[11:16:30 AM](#)

MR. SAXBY referred to the constitution to quote from Article 8, Section 4, "the management of all renewable resources is 'subject to preferences among beneficial uses.'" Thus, the legislature is authorized, as it has been in the past, to designate a beneficial use of one type of resource over another type of use. He provided an example where the legislature set the timber use in the state forests as the preferred use, or in the game sanctuaries by designating preservation of wildlife habitat as the preferred use and disallowing hunting. The constitution allows the legislature to define preferred uses.

[11:17:20 AM](#)

REPRESENTATIVE JOHNSON queried whether the constitution uses the term renewable or not.

MR. SAXBY, quoting a statute from memory said, "Fish, forest, wildlife, and other replenishable and natural resources, shall be maintained according to the sustained yield principal subject to preferences among beneficial uses."

[11:17:47 AM](#)

REPRESENTATIVE JOHNSON asked whether this bill will affect the proposed regulations that the Board of Game is contemplating for the designation of guided, big game hunting areas.

MR. SAXBY said that the game board is not making guide area designations. However, DNR is considering a program to lease state lands to big game guides. He indicated that it would not interfere, because hunting is still allowed in the area and the land is owned by the state.

[11:19:28 AM](#)

REPRESENTATIVE MILLETT referred to the 165 parcels of private land that are adjacent to Unit 19. Turning to page 3, line 19, she paraphrased from the language, which reads: "Access to and from private property ... shall be guaranteed through access corridors ... in consultation with the Department of Fish and Game and a private property owner." She asked what is the procedure for the private land owners to have access via the corridors.

MR. SAXBY suggested that DNR could provide the best response as far as the specific process, however, the language is nearly identical to other legislation that has been adopted for other reservations.

[11:20:44 AM](#)

MR. MYLIUS replied that if language stipulates one department is to consult with another, the action is handled by the agency initiating the consultation.

[11:21:22 AM](#)

REPRESENTATIVE KELLER said that the language appears to be restrictive, and access may only be allowed via a designated corridor.

MR. MYLIUS explained that access may be handled via two different means. When a statute requires that a management plan be prepared, the access may be included in that plan. For future access of a currently unknown parcel, such as a Native allotment, the owner would approach DNR. In response, DNR would consult with ADF&G, and an access route would be mapped that would have minimal impact on habitat and animal migrations. The bill does not restrict access, but ensures that it would be provided.

MR. SAXBY concurred.

[11:24:08 AM](#)

REPRESENTATIVE KAWASAKI referred to the previous testimony regarding the methane permit requests that were denied.

MR. MYLIUS stated he would provide that information to the committee.

REPRESENTATIVE KAWASAKI followed up, asking whether this bill would set the bar higher for permits to explore for coal bed methane.

MR. MYLIUS responded yes, the bar would be raised, as the wildlife management would be prioritized. Should a conflict arise, the department would be required to err on the side of fish and game management.

[11:26:03 AM](#)

CHAIR EDGMON inquired what would happen without the reserve being named; would DNR not err on the side of fish and game.

MR. MYLIUS replied that in that case both entities would be considered equal. The decision would be made at the time for what would be in the state's best interest, and he provided examples regarding how this might work.

[11:27:28 AM](#)

CHAIR EDGMON surmised that from a practical standpoint, and regarding the availability for non-renewable resources, this bill would essentially codify the natural order of how things exist today.

MR. MYLIUS agreed that it is a fair statement, because the management plan already calls for the area to be administered for historical use. The bill would solidify, or lend some permanence to the management plan, as land use plans are administrative actions that can be changed, he pointed out.

CHAIR EDGMON directed attention to the map titled: Proposed Location of the Holitna River Basin Hunting, Fishing and Trapping reserve. He asked what percent of the 4 million acres might be in play for mineral development.

MR. MYLIUS indicated that mining claims exist and may affect 5 percent of the area, but it is considered low potential. He cautioned that with more intensive, modern exploration methods mineral deposits may be discovered.

[11:30:49 AM](#)

CHAIR EDGMON asked if there is a means for the department to obtain a better understanding of what exists in the area, mineral wise.

MR. MYLIUS responded that aerial magnetic mapping is one means for gathering hard rock resource information. Oil and gas would require exploratory wells, but there has been no interest in oil and gas development of this area.

[11:31:57 AM](#)

REPRESENTATIVE JOHNSON queried if there is a possibility that the area might become a corridor for utilities or a natural gas line.

[11:32:24 AM](#)

MR. MYLIUS reported that it is out of the area for a natural gas line, however, electrical transmission lines would need to go through the area, particularly if the Pebble Mine were developed.

[11:33:32 AM](#)

REPRESENTATIVE HERRON interjected that there should be no conflict unless something were to tie Donlin and Pebble together.

[11:34:09 AM](#)

REPRESENTATIVE JOHNSON asked if anything in this legislation would prohibit that corridor.

[11:34:25 AM](#)

MR. MYLIUS responded that it would not prohibit, but may add some requirements and stipulations to minimize impacts.

[11:34:51 AM](#)

REPRESENTATIVE JOHNSON inquired about fiscal notes.

[11:35:23 AM](#)

MR. MYLIUS indicated that DNR would have a zero fiscal note. The department would not be required to take any action.

11:36:25 AM

CHAIR EDGMON announced that HB 227 would be held for further consideration.

11:36:55 AM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:37 a.m.