

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON FISHERIES**

February 9, 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**

CS FOR SENATE JOINT RESOLUTION NO. 22(RES)  
Opposing litigation that seeks to eliminate the Kenai, Kasilof,  
and Chitina sockeye salmon personal use dip net fisheries.

- MOVED HCS CSSJR 22(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 266

"An Act providing for a priority for a fishery that is  
restricted to residents when fishing restrictions are  
implemented to achieve an escapement goal."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 22

SHORT TITLE: FEDERAL PREEMPTION OF SALMON MANAGEMENT

SPONSOR(s): SENATOR(s) HUGGINS

04/09/09	(S)	READ THE FIRST TIME - REFERRALS
04/09/09	(S)	RES, JUD
04/15/09	(S)	RES AT 3:30 PM BUTROVICH 205
04/15/09	(S)	Moved CSSJR 22(RES) Out of Committee
04/15/09	(S)	MINUTE(RES)
04/16/09	(S)	RES RPT CS 3DP 2NR NEW TITLE
04/16/09	(S)	DP: MCGUIRE, WIELECHOWSKI, HUGGINS

04/16/09 (S) NR: STEVENS, WAGONER  
04/16/09 (S) JUD REFERRAL WAIVED  
04/17/09 (S) TRANSMITTED TO (H)  
04/17/09 (S) VERSION: CSSJR 22(RES)  
04/17/09 (H) RES AT 8:30 AM BARNES 124  
04/17/09 (H) <Bill Hearing Canceled>  
04/18/09 (H) READ THE FIRST TIME - REFERRALS  
04/18/09 (H) FSH, RES  
02/09/10 (H) FSH AT 10:15 AM BARNES 124

BILL: HB 266

SHORT TITLE: PERSONAL USE FISHING PRIORITY

SPONSOR(s): REPRESENTATIVE(s) STOLTZE, KELLER, NEUMAN

01/08/10 (H) PREFILE RELEASED 1/8/10  
01/19/10 (H) READ THE FIRST TIME - REFERRALS  
01/19/10 (H) FSH, RES  
02/09/10 (H) FSH AT 10:15 AM BARNES 124

**WITNESS REGISTER**

SENATOR CHARLIE HUGGINS  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented CSSJR 22(RES), as prime sponsor.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the HCS for CSSJR 22(RES), as co-sponsor.

ROD ARNO, Executive Director  
Alaska Outdoor Council (AOC)  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 22, and HB 266.

MELVIN GROVE, Member  
Mat-Su Fish and Game Advisory Council  
Board Member

Alaska Outdoor Access Alliance  
Big Lake, Alaska

**POSITION STATEMENT:** Testified in support of SJR 22, and HB 266.

BYRON HALEY, President  
Chitina Dip Netters Association  
Board Member

Alaska Fish and Wildlife Conservation Fund  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SJR 22, and HB 266.

KEN LARSON, Representative  
Prince William Sound Charter Boat Association  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of SJR 22, and HB 266.

RICKY GEASE, Executive Director  
Kenai River Sport Fishing Association  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of SJR 22, and HB 266.

SHARON LONG, Staff  
Senator Charlie Huggins  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions, during the hearing on SJR 22.

BRIAN KANE, Attorney  
Legislative Legal Counsel  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during the hearing on SJR 22.

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

**POSITION STATEMENT:** Presented HB 266, on behalf of Representative Stoltze, prime sponsor.

JENNIFER YUHAS, Public Communications Director  
Legislative Liaison  
Office of the Commissioner  
Alaska Department of Fish & Game (ADF&G)

**POSITION STATEMENT:** Responded to questions, during the hearing on HB 266.

LANCE NELSON, Senior Assistant Attorney General  
Natural Resources Section  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions, during the hearing on HB 266.

MATTHEW DONOHOE  
Sitka, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 266.

JOHN MURRAY  
Sitka, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 266.

STEPHEN RUNYAN, Chairman  
Susitna Valley Fish and Game Advisory Committee  
Willow, Alaska

**POSITION STATEMENT:** Testified in Support of HB 266.

GERALD McCUNE, President  
Cordova District Fishermen United  
Cordova, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 266.

CHERYL SUTTON  
Ninilchik, Alaska

**POSITION STATEMENT:** Testified on HB 266.

#### **ACTION NARRATIVE**

[10:18:27 AM](#)

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

#### **SJR 22-FEDERAL PREEMPTION OF SALMON MANAGEMENT**

[10:18:38 AM](#)

CHAIR EDGMON announced that the first order of business would be SENATE JOINT RESOLUTION NO. 22, "Opposing litigation that seeks to eliminate the Kenai, Kasilof, and Chitina sockeye salmon personal use dip net fisheries; and requesting the governor to re-examine the disproportional influence of the commercial fisheries industries on fisheries management in the state."

[10:19:25 AM](#)

SENATOR CHARLIE HUGGINS, Alaska State Legislature, presented SJR 22, and explained the importance, and necessity, of the dip netting tradition in Alaska. The resolution seeks to maintain, and restrict dip netting as a resident-only fishery. A suit is being brought by the United Cook Inlet Drift Association (UCIDA), and an individual, Herbert T. Jensen, to have the federal government find this traditional use fishery unconstitutional. He pointed out that other commercial fishing associations have kept a distance from the issue. The areas involved directly are Kenai, Kasilof, and Chitina, where the nonresident commercial fishing permit holders insist on being granted the right to dip net. There is not an argument to allow other nonresidents to dip net, however. He stressed that as a state's rights advocate, this fishery belongs under state management and should not be placed under the purview of a federal department. He deferred to the House co-sponsor for further comment.

[10:23:36 AM](#)

REPRESENTATIVE KELLER moved to adopt the HCS for CSSJR 22, Version 26-LS0866\S, Kane, 2/5/10.

[10:23:41 AM](#)

REPRESENTATIVE BUCH objected for discussion.

[10:24:46 AM](#)

REPRESENTATIVE JOHNSON observed that the changes in the House Committee Substitute (HCS) are nonsubstantive.

[10:25:08 AM](#)

REPRESENTATIVE BUCH removed his objection.

CHAIR EDGMON, hearing no further objection, announced that Version S was before the committee.

[10:25:23 AM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, presented the HCS and said the lawsuit arose as an attempt to engage federal courts for the purpose of overthrowing the establishment of personal use fisheries, originated under the Magnuson-Stevens

Fishery Conservation and Management Act (MSFCMA). Although defendants are seeking suit against the U.S. Secretary of Commerce, he maintained this is a state's rights issue. If any other Alaska fishery was being subverted in federal courts, he opined that the state attorney general would become involved. He stated his belief that the most important fish is the one that feeds an Alaskan family, and residents should not be restricted from the use of Alaskan salmon. Although it does not affect fisheries in every part of the state, dip netting is an important, duly established fishery.

[10:28:30 AM](#)

REPRESENTATIVE JOHNSON declared a conflict of interest, indicating that he is a permitted participant in the Chitina dip netting fishery.

[10:28:57 AM](#)

SENATOR HUGGINS added that the tradition being challenged extends back to the 1980's. In one area the volume of permits issued ranges up to 2,300, which indicates that it is a popular fishery.

REPRESENTATIVE STOLTZE interjected that he supports more people everywhere eating wild Alaskan salmon.

[10:30:08 AM](#)

REPRESENTATIVE MILLETT stated a conflict of interest as a permitted fishery participant, and stated support for the resolution.

[10:30:48 AM](#)

CHAIR EDGMON opened public testimony.

[10:31:23 AM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), stated support for SJR 22, and said the Alaska Outdoor Council (AOC) is a strong advocate for state's rights. He opined that there is no justification for these suits to be filed.

[10:32:08 AM](#)

MELVIN GROVE, Member, Mat-Su Fish and Game Advisory Council, Board Member, Alaska Outdoor Access Alliance, stated support for SJR 22, and reminded committee members that fish resources are held under the public trust doctrine. Further, he said:

The citizens are entitled to catch their own, and cook it fresh. I would have thought that it was common practice to manage our fish resources to favor the citizens of the state. ... I have nothing against [the] commercial fishing industry; they should be allowed to take the harvestable surplus after the citizens have harvested their own.

[10:33:54 AM](#)

BYRON HALEY, President, Chitina Dip Netters Association, Board Member, Alaska Fish and Wildlife Conservation Fund, stated support for SJR 22. He then related that the recent board meeting voted unanimously in favor of the resolution.

[10:34:24 AM](#)

KEN LARSON, Representative, Prince William Sound Charter Boat Association, stated support for SJR 22, and said:

We have been living through the disenfranchisement of the Alaska sports fishermen, subsistence fishermen, and the halibut arena, for the last many years. We've seen the results of federal takeover of the [halibut] fishery, and we would not like to see the same thing happen to the dip netting and salmon industry. The passage of this joint resolution, and the house bill, will certainly set a precedent on other fisheries.

[10:36:12 AM](#)

RICKY GEASE, Executive Director, Kenai River Sport Fishing Association, stated support for SJR 22, and said:

We think it's important ... when issues of fisheries management [arise] between the federal government and the state government who's managing the salmon fisheries, and a case goes to federal court, ... that the State of Alaska be represented ... through the [Office of the] Attorney General.

[10:37:03 AM](#)

REPRESENTATIVE BUCH inquired about departmental direction, or administrative support, for the resolution.

[10:37:45 AM](#)

REPRESENTATIVE STOLTZE reported that the point of the resolution is to bring attention and involvement. The attorney general has been made aware of the situation through the resolution process. Officials at ADF&G are aware of the situation and the commissioner has had legal papers filed in conjunction with the issue.

REPRESENTATIVE BUCH maintained interest in hearing comment from ADF&G.

[10:39:01 AM](#)

CHAIR EDGMON closed public testimony.

[10:39:09 AM](#)

REPRESENTATIVE KAWASAKI asked about the title of the bill, and why it is restricted specifically to sockeye salmon.

SHARON LONG, Staff, Senator Charlie Huggins, Alaska State Legislature, deferred.

[10:39:54 AM](#)

BRIAN KANE, Attorney, Legislative Legal Counsel, Legislative Affairs Agency, indicated that there is no specific reason for stipulating sockeye. He noted that the BE IT RESOLVED statement, page 3, line 25, does not reflect similar language, which is unusual.

CHAIR EDGMON surmised that sockeye salmon are specified as the species targeted by dip netters.

MS. LONG confirmed the chairman's understanding.

[10:40:47 AM](#)

REPRESENTATIVE KAWASAKI offered that dip netting in the Chitina has included king salmon. He then asked why this species is not included in the resolution.



MS. LONG refrained from commenting on the king salmon question. She said:

Remarkably the UCIDA are able to keep, for their personal use, an unlimited number of fish from their commercial catch .... The case is viable. The parties have been very active, filing motions and briefs. Just last week the plaintiffs moved to go forward to oral arguments. So this is a live wire.

MS LONG directed attention to a response letter from the United States Department of Commerce, National Marine Fisheries Service [not dated], and paraphrased from page 11, paragraph 4, which read:

Therefore, NMFS lacks authority to regulate the State's personal use fishery conducted within State waters and the requirements of the Magnuson-Stevens Act do not apply to the personal use fishery.

[10:43:22 AM](#)

REPRESENTATIVE MUNOZ asked if the case involves more than one species of salmon.

MS. LONG responded that it speaks to the fishery in general. She deferred to Legislative Legal Services for further comment, adding that there is some difficulty getting documents from the court.

MR. KANE agreed that documents have been sparse, and lacking the briefs he could not speak to the question. He said he would provide the committee with the information when the paperwork becomes available from the courts.

[10:44:32 AM](#)

REPRESENTATIVE STOLTZE said the basis of the suit is contained in one statement, which he read:

Members of UCIDA consist of resident/nonresident commercial fishermen who rely predominately upon the harvest of sockeye salmon to earn their livelihood.

REPRESENTATIVE STOLTZE said the point made, regarding king salmon, is valid. Kings are not allowed in many of the dip net fisheries, although it is a big part of the Fairbanks culture.

The litigants have referred specifically to sockeye in the law suit.

[10:46:26 AM](#)

REPRESENTATIVE JOHNSON recalled the statement that a commercial fisherman can keep an unlimited amount of their catch for personal use, and asked if that is correct.

REPRESENTATIVE STOLTZE deferred to the department.

MS. LONG responded affirmatively.

[10:47:18 AM](#)

REPRESENTATIVE JOHNSON asked if it would be appropriate to refer to dip net salmon, rather than specifying sockeye salmon.

MR. KANE answered that the goal of SJR is to directly impact a particular lawsuit, which specifies sockeye salmon. He opined that it would not be of benefit.

[10:48:44 AM](#)

REPRESENTATIVE KELLER moved to report HCS for CSSJR 22(RES), out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, HCS CSSJR 22(FSH) was moved from the House Special Committee on Fisheries.

The committee took an at-ease from 10:49 a.m. to 10:52 a.m.

**HB 266-PERSONAL USE FISHING PRIORITY**

[10:51:57 AM](#)

CHAIR EDGMON announced that the final order of business would be HOUSE BILL NO. 266 "An Act providing for a priority for a fishery that is restricted to residents when fishing restrictions are implemented to achieve an escapement goal."

[10:52:14 AM](#)

BEN MULLIGAN, Staff, Representative Bill Stoltze, Alaska State Legislature, speaking on behalf of the sponsor, Representative Stoltze, paraphrased from the sponsor statement, which read:

Insuring that residents have access to Alaska's fisheries resources is vitally important as we continue to grow as a state. Right now, user groups are growing both in size and number, splitting the allocation of our resources into smaller and smaller percentages. However, one thing all Alaskans can agree on is that we should have a priority over people coming from elsewhere in the country and the world to utilize and harvest our fisheries resources.

Fisheries that are restricted to residents only are meant to enable Alaskans to access their fisheries resources for their personal use and consumption. Currently, there are many personal use fisheries throughout the state. Excluding the priority that is already contained within statute for subsistence, HB 266 directs the Board of Fisheries to place restrictions on sport and commercial fisheries before putting restrictions on personal use fisheries when the harvest of a stock or species is limited to achieve an escapement goal.

I ask for your consideration and support of HB 266 so Alaskans can be assured that they will continue to have access to their fisheries resources to the benefit of themselves and their families.

[10:53:23 AM](#)

REPRESENTATIVE JOHNSON referred to the sponsor statement, and asked which fisheries the term personal use includes.

MR. MULLIGAN said he would defer to Alaska Department of Fish & Game (ADF&G) for a definitive answer, but it would include dip netting, crab pots, shrimp pots, but not hook and line fisheries.

[10:54:43 AM](#)

REPRESENTATIVE KELLER moved to adopt CSHB 266, 26-LS1199\S, Kane, 2/22/10, as the working document.

CHAIR EDGMON, hearing no objection, announced that Version S was before the committee.

[10:55:28 AM](#)

JENNIFER YUHAS, Public Communications Director, Legislative Liaison, Office of the Commissioner, stated that the department does not take official positions on allocative issues.

[10:56:13 AM](#)

REPRESENTATIVE MUNOZ asked how personal use is determined.

[10:56:22 AM](#)

MS. YUHAS said that a proposal is brought to the Board of Fisheries (BOF), followed by public testimony, and eight specific criteria are taken into account. Board action may then result in the naming of an area for personal use. She deferred to legal counsel for further comment.

[10:57:24 AM](#)

LANCE NELSON, Senior Assistant Attorney General, Natural Resources Section, Department of Law, pointed out that personal use only applies to fishing and said there is not a statutory standard that the board considers prior to declaring a personal use fishery. The BOF makes the determination without consideration for tradition, culture, or other findings. Historically, however, the board has created personal use fisheries in areas designated as nonsubsistence. There have been occasion when an area has not met the criteria to be named for subsistence use, and the board has designated it for personal use.

[10:59:09 AM](#)

CHAIR EDGMON opened public testimony.

[10:59:19 AM](#)

MATTHEW DONOHOE stated opposition to HB 266 and expressed concern that the bill may represent a reallocation of, or a grab for, a resource. He questioned the necessity for the legislation.

[11:01:04 AM](#)

JOHN MURRAY stated opposition to HB 266 and reported that the BOF prioritizes personal use fisheries in the Southeast area, when it's deemed necessary. He speculated that the issue may represent localized conflicts, which should be addressed through

the board process. Legislation does not appear to be necessary, he said.

[11:02:35 AM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), stated support for HB 266. He informed the committee that the AOC is currently in litigation with the BOF because of the board's inability to comply with Article 8, Section 3, regarding common use, of the Alaska State Constitution. He pointed out that the bill will affect nonsubsistence areas as well.

[11:03:36 AM](#)

MELVIN GROVE, Member, Mat-Su Fish and Game Advisory Council, Board Member, Alaska Outdoor Access Alliance, stated support for HB 266 and said residents should have a prioritized opportunity to catch fish. Under the Public Trust Doctrine, fish are not a commercial resource. "The public should have every right to catch their own over having to buy it at the store," he said.

[11:05:01 AM](#)

STEPHEN RUNYAN, Chairman, Susitna Valley Fish and Game Advisory Committee, stated support for HB 266, reporting that personal use fisheries are important in the Mat-Su Valley. He opined that there should be fishing priority given to residents over nonresidents and nonconsumptive uses.

[11:07:17 AM](#)

BYRON HALEY, President, Chitina Dip Netters Association, Board Member, Alaska Fish and Wildlife Conservation Fund, stated support for HB 266 and said that recently the Conservation Fund Board voted unanimously in favor of the bill.

[11:07:32 AM](#)

KEN LARSON, Representative, Prince William Sound Charter Boat Association, stated support for HB 266. He said, "The king salmon fishery and the halibut fishery are treaty fish and [are] federally managed." Referring to previous testimony, he opined that Alaska has already experienced a resource grab with the commercial fishery controlling 85 percent of the annual halibut harvest, including the by-catch. Suggesting that HB 266 should include a prioritization on fishing restrictions, from first to last, he stated:

When the resource dictates that restrictions be imposed, that we first restrict commercial fishery access, then sport guide fishing secondly, then we restrict nonguided sport fishing thirdly, personal use fourthly, and subsistence would be the last priority.

[11:09:08 AM](#)

RICKY GEASE, Executive Director, Kenai River Sport Fishing Association, stated support for HB 266 and said it is consistent with other state policies regarding subsistence. Subsistence is open to all state residents, and priority does exist for designated subsistence areas. The bill follows the current policy for prioritization based on conservation needs. There are personal use fisheries for crab and shrimp as well, which would benefit from this bill. He reported that over 95 percent of all harvested fish are for commercial purposes.

[11:11:55 AM](#)

GERALD McCUNE, President, Cordova District Fishermen United, stated opposition to HB 266 and reported that there are 350 resident commercial fishermen permitted for the Copper River. The Copper River hosts personal use, commercial, subsistence, and sport fisheries. [He held up a hand drawn map and indicated the user areas.] He read from HB 266, page 1: "...to achieve escapement goals, the BOF shall place restrictions on all other fisheries before restricting personal use fisheries." Although there is not currently a priority for personal use, he said the first fishery shut down is the commercial fishery. He continued to report on how the fishery is conducted, the run, run timing, and allocations. Last year was a poor king return, for the Copper River, and commercial fishing was limited to the ocean area outside of a barrier at the mouth of the river. The personal use fishery was not closed last year, despite the weak run. He said there have been few restrictions on personal use.

[11:16:05 AM](#)

REPRESENTATIVE MILLETT asked whether this legislation might have affected the Copper River had it been previously instituted.

MR. McCUNE responded yes it may have, particularly during the low runs of the 1970's.

[11:18:44 AM](#)

REPRESENTATIVE MILLETT asked for a description of how the escapement goals are established, and whether the Copper River commercial fleet is confident with the numbers produced.

MR. McCUNE said the fleet is comfortable with how the fishery management is handled. The Copper River is not very wide, hence two sonar stations are utilized, and the escapement goal is established following the initial two, twelve hour commercial fishing periods, and extrapolating the number based on the 20 year history of the run.

[11:20:55 AM](#)

REPRESENTATIVE MILLETT surmised that some areas have developed fisheries, appropriate technology, and historic data to make confident projections. She asked how sophisticated the system is in the Mat-Su area.

MR. NELSON suggested the fisheries managers may need to be questioned on how this is handled. Index streams are used, and sonar has been questionable regarding what type is most effective. Many areas of the state do not have the capacity for sophisticated monitoring, he said, and deferred to the department for further comment.

MR. MULLIGAN reported that ADF&G has indicated that the sonar system does not work well in the Mat-Su, and thus weir systems have been utilized to provide a check.

[11:26:04 AM](#)

CHAIR EDGMON indicated that the department would be invited to respond to these specific questions.

[11:26:27 AM](#)

CHERYL SUTTON reported on the management of the Cook Inlet harvest, where she fishes. The commercial fishery must provide enough escapement for personal and subsistence usage, not just for spawning purposes. Additionally, personal use fishery enforcement is an issue, due to the lack of manpower. She said the commercial fishermen support the personal use fishery as a resident fishery.

[11:30:22 AM](#)

MR. NELSON indicated that the sponsor's intent is to have personal use be the second priority behind subsistence fishing. However, the language of the available bill version does not carry out that purpose, but rather creates a super priority for personal use above all other uses, including subsistence. Additionally, he said that the priority kicks in based on escapement goals. There are many state fisheries that have guideline harvest levels and other management policies, but not escapement goals. Thus, the sponsor may choose to consider different language and include species other than salmon. He confirmed that the BOF currently has the authority to prefer personal use over all uses, save subsistence. To the extent that HB 266 would create a priority over sport, guided sport, and commercial fishing, he said it would be helpful to have legislative findings as to why that would be appropriate and necessary. The bill does not contain reasons and justifications for preferring the personal use fishery, which would be helpful if the law needed to be defended in a constitutional challenge.

[11:33:37 AM](#)

CHAIR EDGMON stated that HB 266 would be held over and public testimony would remain open.

[11:34:11 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:34 a.m.