

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 14, 2016

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Bert Stedman
Senator Bill Stoltze

MEMBERS ABSENT

Senator Peter Micciche
Senator Bill Wielechowski

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 216(RES)

"An Act relating to obstruction or interference with a person's free passage on or use of navigable water; and amending the definition of 'navigable water' under the Alaska Land Act."

- MOVED SCS CSHB 216(RES) OUT OF COMMITTEE

SENATE BILL NO. 42

"An Act providing priority to personal use fisheries when fishing restrictions are implemented to achieve a management goal."

- MOVED SB 42 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 42

SHORT TITLE: PERSONAL USE FISHING PRIORITY

SPONSOR(s): SENATOR(s) STOLTZE

02/04/15	(S)	READ THE FIRST TIME - REFERRALS
02/04/15	(S)	STA, RES
03/10/15	(S)	STA AT 8:30 AM BUTROVICH 205
03/10/15	(S)	Heard & Held
03/10/15	(S)	MINUTE(STA)
03/17/15	(S)	STA AT 9:00 AM BUTROVICH 205
03/17/15	(S)	Moved SB 42 Out of Committee

03/17/15 (S) MINUTE(STA)
 03/18/15 (S) STA RPT 4DP
 03/18/15 (S) DP: STOLTZE, COGHILL, HUGGINS,
 WIELECHOWSKI
 04/01/15 (S) RES AT 3:30 PM BUTROVICH 205
 04/01/15 (S) Heard & Held
 04/01/15 (S) MINUTE(RES)
 04/14/16 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HB 216

SHORT TITLE: NAVIGABLE WATER; INTERFERENCE, DEFINITION
 SPONSOR(S): REPRESENTATIVE(S) TALERICO

01/19/16 (H) PREFILE RELEASED 1/8/16
 01/19/16 (H) READ THE FIRST TIME - REFERRALS
 01/19/16 (H) RES
 03/16/16 (H) RES AT 1:00 PM BARNES 124
 03/16/16 (H) Heard & Held
 03/16/16 (H) MINUTE(RES)
 03/18/16 (H) RES AT 1:00 PM BARNES 124
 03/18/16 (H) Moved CSHB 216(RES) Out of Committee
 03/18/16 (H) MINUTE(RES)
 03/21/16 (H) RES RPT CS(RES) 8DP 1NR
 03/21/16 (H) DP: JOHNSON, HERRON, CHENAULT, OLSON,
 TARR, SEATON, TALERICO, NAGEAK
 03/21/16 (H) NR: JOSEPHSON
 03/23/16 (H) TRANSMITTED TO (S)
 03/23/16 (H) VERSION: CSHB 216(RES)
 03/25/16 (S) READ THE FIRST TIME - REFERRALS
 03/25/16 (S) RES
 03/28/16 (S) RES AT 3:30 PM BUTROVICH 205
 03/28/16 (S) Scheduled but Not Heard
 04/11/16 (S) RES AT 3:30 PM BUTROVICH 205
 04/11/16 (S) Scheduled but Not Heard
 04/13/16 (S) RES AT 3:30 PM BUTROVICH 205
 04/13/16 (S) Heard & Held
 04/13/16 (S) MINUTE(RES)
 04/14/16 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

CHAD HUTCHISON, Staff to Senator John Coghill
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Commented on HB 216.

RANDY RUARO, staff to Senator Bert Stedman

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on HB 216

WES HUMBYRD, representing himself
Homer, Alaska

POSITION STATEMENT: Opposed SB 42.

JOHN MCCOMBS, representing himself
Ninilchik, Alaska

POSITION STATEMENT: Opposed SB 42.

ED MARTIN, representing himself and his wife
Cooper Landing, Alaska

POSITION STATEMENT: Supported SB 42.

AL BARRETTE, representing himself and his family
Fairbanks, Alaska

POSITION STATEMENT: Supported SB 42.

DAVID MARTIN, President
United Cook Inlet Drift Association
Homer, Alaska

POSITION STATEMENT: Opposed SB 42.

STEVEN VANEK, representing himself
Ninilchik, Alaska

POSITION STATEMENT: Opposed SB 42.

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

POSITION STATEMENT: Supported SB 42.

CRISTY FRY, representing herself
Homer, Alaska

POSITION STATEMENT: Opposed SB 42.

ERIK HEUBSCH, representing himself
Kasilof, Alaska

POSITION STATEMENT: Opposed SB 42.

GEORGE PIERCE, representing himself
Kasilof, Alaska

POSITION STATEMENT: Supported SB 42.

DAN ANDERSON, representing himself

Homer, Alaska

POSITION STATEMENT: Opposed SB 42.

CATHERINE CASSIDAY, representing herself
Kasilof, Alaska

POSITION STATEMENT: Opposed SB 42.

ROSS MULLINS, representing himself
Cordova, Alaska

POSITION STATEMENT: Opposed SB 42.

ACTION NARRATIVE

[3:30:24 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Stedman, Coghill, Costello, Stoltze, and Chair Giessel.

HB 216-NAVIGABLE WATER; INTERFERENCE, DEFINITION

[3:31:15 PM](#)

CHAIR GIESSEL announced consideration of HB 216. [CSHB 216(RES), 29-LS0995\N, is the working document and the committee adopted Amendment 1 during the previous hearing.]

[3:31:18 PM](#)

SENATOR COGHILL moved Amendment 2.

AMENDMENT 2

OFFERED IN THE SENATE
TO: CSHB 216(RES)

Page 1, line 9:
Delete "federal or [AGENCY"
Insert "[FEDERAL AGENCY"

CHAIR GIESSEL objected for purposes of discussion. She welcomed Mr. Hutchison from Senator Coghill's office and Mr. Ruaro from Senator Stedman's office, who both worked on this amendment along with the Department of Natural Resources (DNR).

[3:31:38 PM](#)

CHAD HUTCHISON, Staff to Senator Coghill, Alaska State Legislature, explained that this amendment came out of a point Mr. Bishop made yesterday about a state statute involving a state Public Trust Doctrine ceding regulatory authority to the federal government. The amendment eliminates the reference to federal authority or the federal government as it relates to state navigable waters.

[3:32:46 PM](#)

CHAIR GIESSEL asked him to read lines 8-9 on page 1 as they will read if Amendment 2 is adopted.

[3:32:59 PM](#)

MR. HUTCHISON read: (1) "authorized by law or regulation or by a permit issued by a state agency;" He said that lines 10-11 - (2) "[AUTHORIZED UNDER A FEDERAL OR STATE LAW OR PERMIT]" - remain deleted. In essence, all references to the federal government have been eliminated from the statute.

[3:33:39 PM](#)

RANDY RUARO, staff to Senator Bert Stedman, Alaska State Legislature, said he didn't have anything to add, but this is a good amendment that clarifies a point that would allow the federal government to say a state statute authorizes obstruction of access because it was done pursuant to a federal regulation as in the Sturgeon case.

CHAIR GIESSEL removed her objection.

SENATOR COGHILL stated that the sponsor of the bill has been working with him and is agreeable to the amendment.

CHAIR GIESSEL, finding no further objection, said Amendment 2 was adopted. She found no further discussion on the bill.

SENATOR COSTELLO moved to report HB 216, version 29-LS0995\N, as amended, from committee with individual recommendations and attached zero fiscal note. There were no objections and SCS CSHB 216(RES) was reported from the Senate Resources Standing Committee.

[3:35:01 PM](#)

At ease

SB 42-PERSONAL USE FISHING PRIORITY

[3:36:10 PM](#)

CHAIR GIESSEL announced consideration of SB 42.

SENATOR STOLTZE, sponsor of SB 42, explained that this is called the "Alaskans First Fisheries Act" in times of shortages when allocation decisions are made to meet management goals. Priority fisheries are those that are Alaskan resident-only fisheries: subsistence and personal use (PU). He said the department has a neutral position on it, but during his confirmation ADF&G Commissioner Cotten got himself into trouble with the United Fishermen of Alaska (UFA) and all the other constituencies by acknowledging that looking at "Alaskans First" was not a bad idea. Senator Stoltze said he appreciated his candor and that he had "to take a little bit of a beating" on it.

SENATOR STOLTZE said he is talking about a small percentage of the fisheries that are allocated. During presentation of the bill in the State Affairs Committee on April 1, 2015, an industry individual testified that Alaska has an allocation system: "The commercial fishing industry catches it and we can buy it." While that ideology might work well in some regions of the state, it would cause rebellion if it became more of an official state policy than it already is.

SENATOR STOLTZE said there are about 80 personal use fisheries of different species and shellfish, but the ones that are most popular are on three major rivers: the Kasilof, the Kenai, and the Copper River that has the Chitina Dipnet Fishery where almost 50,000 Alaskan households fish. And that cuts out the "middle man."

[3:40:26 PM](#)

SENATOR STOLTZE said Alaska residents should be able to get fish for their families and that subsistence and personal use fisheries are the only two fisheries that are Alaska resident-only fisheries.

CHAIR GIESSEL asked if all other fisheries would be restricted before the PU fishery is restricted.

SENATOR STOLTZE said that is correct. That includes sportfishing and commercial fishing.

[3:42:08 PM](#)

CHAIR GIESSEL opened public testimony.

WES HUMBYRD, representing himself, Homer, Alaska, opposed SB 42. He said he had been a commercial fisherman in Cook Inlet since

1966 and an Alaska resident since 1971. The commercial fisheries in Cook Inlet have been drastically curtailed by the allocation corridor that the Board of Fisheries put up two years ago. "There's plenty of fish around for all these people that want to go get them."

He said all politicians swear to uphold the constitution, but most of them must not read it, because he sees violations of Article 8, Section 15, that says no exclusive right or special privilege of a fishery shall be created or authorized in the natural waters in the state.

[3:45:19 PM](#)

JOHN MCCOMBS, representing himself, Ninilchik, Alaska, opposed SB 42. He said he had been a commercial fisherman in Cook Inlet for 40 years. The PU fishery began in the 1980s when there were large surpluses of fish. These fish were already 100 percent allocated and there was a commercial priority at that time for sockeyes. He said the PU fishery is unlimited now and over 600,000 sockeyes were harvested in 2015.

The PU fishery is expensive and "rhetoric about cheap protein couldn't be more false," Mr. McCombs said. Because SB 42 pits Alaskans against Alaskans and recreational fishermen against commercial fishermen and advances existing antagonisms, he couldn't support it.

[3:46:28 PM](#)

ED MARTIN, representing himself and his wife, Cooper Landing, Alaska, supported SB 42. He said he feels sympathy for the commercial fishermen. One of the first jobs he had in high school was fishing across the Inlet for the Bunker family, and he learned a valuable lesson there: that Cook Inlet had a lot of fish. In those days, it was quite different from today.

He believes that there is no reason for Alaskans to be pitting themselves against each other for this resource. If it is a common use, then the most important part is to be certain that everyone has access to the fish and they shouldn't need a license to do it. Commercial fishermen get a privilege in the form of a license or a permit. He thought this issue would always be contentious.

[3:49:20 PM](#)

AL BARRETTE, representing himself and his family, Fairbanks, Alaska, supported SB 42. The intent of the bill is about prioritizing the resource in times of shortage: subsistence gets

priority and then next in line should be the PU and then commercial and sport. His family will depend on the Chitina PU fishery to help them make it through these financially rough times.

[3:51:22 PM](#)

DAVID MARTIN, President, United Cook Inlet Drift Association, Homer, Alaska, opposed SB 42. People should be able to either catch or buy their fish, he said. Further this bill violates Article 8, Sections 1, 3, 4, and 15 of the Alaska Constitution. The dipnet fishery is one of the most unorganized and unenforced fisheries in the state, but there is plenty of opportunity to get fish as indicated by South Central's catch of over 650,000 salmon last year. Every fishery needs to be a good steward of the resource and share in the harvest of the surplus, but also share in the conservation of it when needed. Probably more Alaskans buy their salmon than fish for it, so there is ample opportunity for everybody to have fish, and that opportunity needs to be shared on an equal basis.

[3:53:51 PM](#)

STEVEN VANEK, representing himself, Ninilchik, Alaska, opposed SB 42. He said he is a retired commercial fisherman and had lived in Alaska since 1964. It costs a lot to travel to go dipnet fishing, so don't be telling him that it's for poor people to feed themselves. Fishing is the number one industry in Alaska and this bill opposes the commercial industry that built Alaska. "It's a slap in the face to the processors who provide thousands of jobs in Alaska. It's foolishness."

MR. VANEK said friends have told him that a lot of the fish are given away to friends and relatives who visit; they are not used for personal use. The dipnet fishery gets used for Christmas gifts!

[3:56:23 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), Palmer, Alaska, supported SB 42. He said the PU fishery was codified in 1978, and at a time the state was trying to stop takeover of federal management by agreeing to a rural priority. Individuals who lived in Fairbanks, the Valley, and Anchorage were excluded from the Chitina fishery, and the Board of Fisheries had to come up with a way of providing them with personal use on an equal footing with subsistence. Since that time, a number of PU fisheries have grown across the state and the AOC believes that conservation continues because individuals who gather a wild food source from a public resource have

interest in its preservation. He thanked Senator Stoltze for this bill.

CRISTY FRY, representing herself, Homer, Alaska, opposed SB 42. This bill is blatantly political, she said, and inserts the legislature into fisheries management, which should be solely the purview of the Alaska Board of Fisheries and the Alaska Department of Fish and Game (ADF&G). Considering the bill's sponsor, it is obviously aimed at prioritizing dipnetters in the Kenai and Kasilof Rivers over commercial fishermen.

[4:00:12 PM](#)

ERIK HEUBSCH, representing himself, Kasilof, Alaska, opposed SB 42. He said he participates in sport, commercial and personal use fisheries. All Alaskans have an opportunity to share Alaska's bountiful fishery resource, and at times when they are not as bountiful, all Alaskans must share in the burden of conservation. He stated, "Senate Bill 42 is divisive and reckless." It would upset the balance among user groups that is the result of an actual process of decision-making. The bill's language is so vague that if it is passed, the unintended consequences could threaten every fishery across the state.

For instance, the bill states: "When the harvest of a stock or species is limited to achieve a management goal, the Board of Fisheries shall place restrictions on all other fisheries before restricting personal use fisheries." He asked what "all other fisheries" means and who that would affect. Are the restrictions limited to only that particular stock and how would that apply in mixed-stock fisheries like Cook Inlet and most areas across the state have? The bill also uses the term "management goal" and then offers a constrained definition for that term. How would that affect existing management plans?

MR. HEUBSCH concluded that SB 42 creates many problems and solves none.

[4:02:06 PM](#)

GEORGE PIERCE, representing himself, Kasilof, Alaska, supported SB 42. This bill is not unconstitutional, he said. In fact, in the mid-90s this situation went to court and it was ruled that the personal use and subsistence fisheries were the same thing. These fish belong to him; they're not commercial fishermen's fish and not sportfishing fish. There is enough fish to go around.

SENATOR STOLTZE thanked him for his consistent involvement in the public process.

4:04:48 PM

DAN ANDERSON, representing himself, Homer, Alaska, opposed SB 42. Having personally witnessed the degradation of the habitat and the chaos in the mouth of the Kasilof and Kenai Rivers and watching the communities around them deal with all the carnage from this type of activity he didn't know how anyone could encourage this behavior. This is not the Alaska he moved his family here to experience. "If you don't put the fish first, what have we got? And if you degrade the habitat the fish won't return."

4:06:37 PM

CATHERINE CASSIDAY, representing herself, Kasilof, Alaska, opposed SB 42. She supported Cristy Fry's comments and wouldn't repeat them. Senator Stoltze said this is a simple bill, but it isn't. The unintended consequences for messing with the 80 PU fisheries around the state are clearly beyond the author's knowledge or understanding. This is why fishing regulations should not be set by the legislature or by ballot initiative. "Let the ADF&G and Board of Fisheries manage our fisheries."

4:08:17 PM

ROSS MULLINS, representing himself, Cordova, Alaska, opposed SB 42. He had been a commercial fisherman in Prince William Sound since 1963. He is currently retired and living in poverty due to the Exxon Valdez oil spill. He stated that the intent of the personal use fishery is a noble one, but it needs to be highly regulated, because these fish, at least in the Copper River, are several hundred miles above the commercial fisheries. The commercial fishermen are restricted in the early weeks in order to ensure that a sufficient amount of fish get through the fishery to provide adequate fish for the dipnetters in Chitina.

He was on the board of the Prince William Sound (PWS) Aquaculture Corporation in its early days when the idea of salmon enhancement was promoted through the hatchery programs, which have become a fairly sustaining component of PWS fisheries. PWS commercial fishermen fund a large portion of the subsistence and dipnet fishery production by funding the Gulkana Hatchery that produces red salmon. They did not want to see their own efforts restricted due to the personal use upstream fisheries.

He explained that the PU fisheries take fish that come through after the commercial fishermen have had their opportunity. It is highly regulated to get enough escapement into the high upstream lakes and streams that produce the offspring that return in later years. By giving the PU fishery priority there is no way the ADF&G could manage these fisheries in an effective manner and that will penalize sport and commercial fishermen to an inordinate degree. Without the ability to maintain sufficient escapement, the fisheries will ultimately be destroyed.

[4:13:07 PM](#)

CHAIR GIESSEL, finding no further comments, closed public testimony.

SENATOR STEDMAN moved Amendment 1.

AMENDMENT 1

OFFERED IN THE SENATE

TO: SB 42

Page 1, line 1:

Delete "to personal use fisheries when fishing restrictions are"

Insert "for the imposition of fishing restrictions"

Page 1, lines 5 - 6:

Delete "Except as provided for subsistence uses of fish stocks in AS 16.05.258, when the harvest of a stock or species is limited to achieve a management goal, the Board of Fisheries shall place restrictions on all other fisheries"

Insert "When the harvest of a stock or species is limited to achieve a management goal, the Board of Fisheries may not place restrictions on commercial fisheries"

CHAIR GIESSEL objected for discussion purposes.

SENATOR STEDMAN explained that this amendment makes a bill that had a pretty good intention better. This language puts the prioritization of use to commercial fisheries. He pointed out that the fishing industry will exceed the gross value of the state's oil industry by \$1 billion this year (oil is \$7 billion and fishing is \$8 billion). Coming into 2017 it is by far the

biggest employer in the state and is active throughout all of coastal Alaska, hugely active in Anchorage based on number of permits.

[4:15:54 PM](#)

CHAIR GIESSEL reread the new language and then removed her objection.

SENATOR STOLTZE objected to it, because it changes the nature of the bill. He thinks there is already a defacto preference for commercial fishing within the department. If Senator Stedman would add some revenue to bump up that \$22 million the general fund already gets from fisheries a notch, he might go for the amendment.

[4:19:31 PM](#)

SENATOR STEDMAN commented that taxation would not fit under the title.

SENATOR COSTELLO quipped that every bill seems taxing these days.

CHAIR GIESSEL asked for a roll call vote: Senator Stedman voted yea; Senators Costello, Coghill, Stoltze, and Chair Giessel voted nay; therefore Amendment 1 failed.

SENATOR STOLTZE said he would rather have this issue go through the deliberative process than go through a voter initiative, and this is the appropriate place for the legislature to advise the Board of Fisheries. He moved to report SB 42, version 29-LS0096\H, from committee with individual recommendations and attached fiscal note(s).

SENATOR STEDMAN objected.

CHAIR GIESSEL asked for a roll call vote: Senators Coghill, Stoltze, Costello, and Chair Giessel voted yea; Senator Stedman voted nay. Therefore SB 42 moved from committee.

[4:26:00 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 4:26 p.m.

