

ALASKA BOARD OF FISHERIES
A Resolution Regarding Authority of the Board of Fisheries to
Allocate Within Fisheries
2007-252-FB

WHEREAS, Alaska Statute 16.05.251(e) provides that the Board of Fisheries may allocate fishery resources among personal use, sport, and commercial fisheries;

WHEREAS, Alaska Statute 16.05.251(e) has, prior to the Alaska Supreme Court's ruling in *Grunert v. State*, 109 P.3d 924, 330-32 (Alaska 2005) always been interpreted by the Board and its legal advisors to allow the Board to allocate fishery resources within a fishery;

WHEREAS, the Alaska Supreme Court, in *Grunert v. State*, 109 P.3d 924, 330-32 (Alaska 2005) and *State v. Grunert*, 139 P.3d 1226, 1235 (Alaska 2006), held that despite the provisions of AS 16.05.251(e) the Board does not have the authority to allocate fishery resources within a fishery;

WHEREAS, the Alaska Supreme Court in *State v. Grunert*, 139 P.3d 1226, 1236-37 (Alaska 2006); greatly limited the Board's ability to define what constitutes a fishery;

WHEREAS, there are numerous existing regulations that could be determined to directly or indirectly allocate within a fishery;

WHEREAS, among other regulations at risk are time honored and traditional regulatory tools such as allocating between subdistricts in a larger fishery; establishment of exclusive and superexclusive registration areas, and establishment of restrictive transfer requirements between subdistricts;

WHEREAS, other authorities of the Board, including the ability to establish quotas, trip limits, and daily, weekly or annual individual harvest limits in sport and commercial fisheries could be subject to attack on the basis that they may have the effect of allocating within fisheries;

WHEREAS, the authority to allocate within fisheries has always been bounded by the Board's statutory purposes, by a statutory requirement to consider allocation criteria, and by constitutional equal protection requirements;

WHEREAS, the authority to allocate within fisheries has been used responsibly by the Board for decades;

WHEREAS, reaffirmation of the Board's authority to allocate within fisheries would not authorize the Board of Fisheries to allocate fishery resources to a cooperative fishery without separate express statutory authorization;


WHEREAS, reaffirmation of the Board's authority to allocate within fisheries would not authorize the Board of Fisheries to allocate to individual fishermen based on catch history without separate express statutory authorization;

WHEREAS, the ability to allocate within a fishery is vital to the Board's ability to fairly and effectively manage and allocate fishery resources and to prevention of undue economic hardship among subsections of a fishery;

NOW THEREFORE BE IT RESOLVED, that the Board of Fisheries respectfully requests that the 25th Alaska Legislature consider and adopt legislation such as that found in HB 188 reaffirming the ability of the Board of Fisheries to allocate within fisheries; and

BE IT FURTHER RESOLVED, that the Board of Fisheries respectfully requests that the 25th Alaska Legislature consider the reaffirmation of the ability of the Board of Fisheries to allocate within fisheries separately from any effort to grant the Board the ability to allocate to commercial fishing cooperatives or to allocate to individual fishermen based on catch history.

Adopted: April 16, 2007



Mel Morris, Chairman
Alaska Board of Fisheries

VOTE: 7/0