

Statehood Defense Overview

Senate Resources Committee
March 5, 2025



DEPARTMENT OF LAW, CIVIL DIVISION



DEPARTMENT OF ENVIRONMENTAL CONSERVATION



DEPARTMENT OF NATURAL RESOURCES



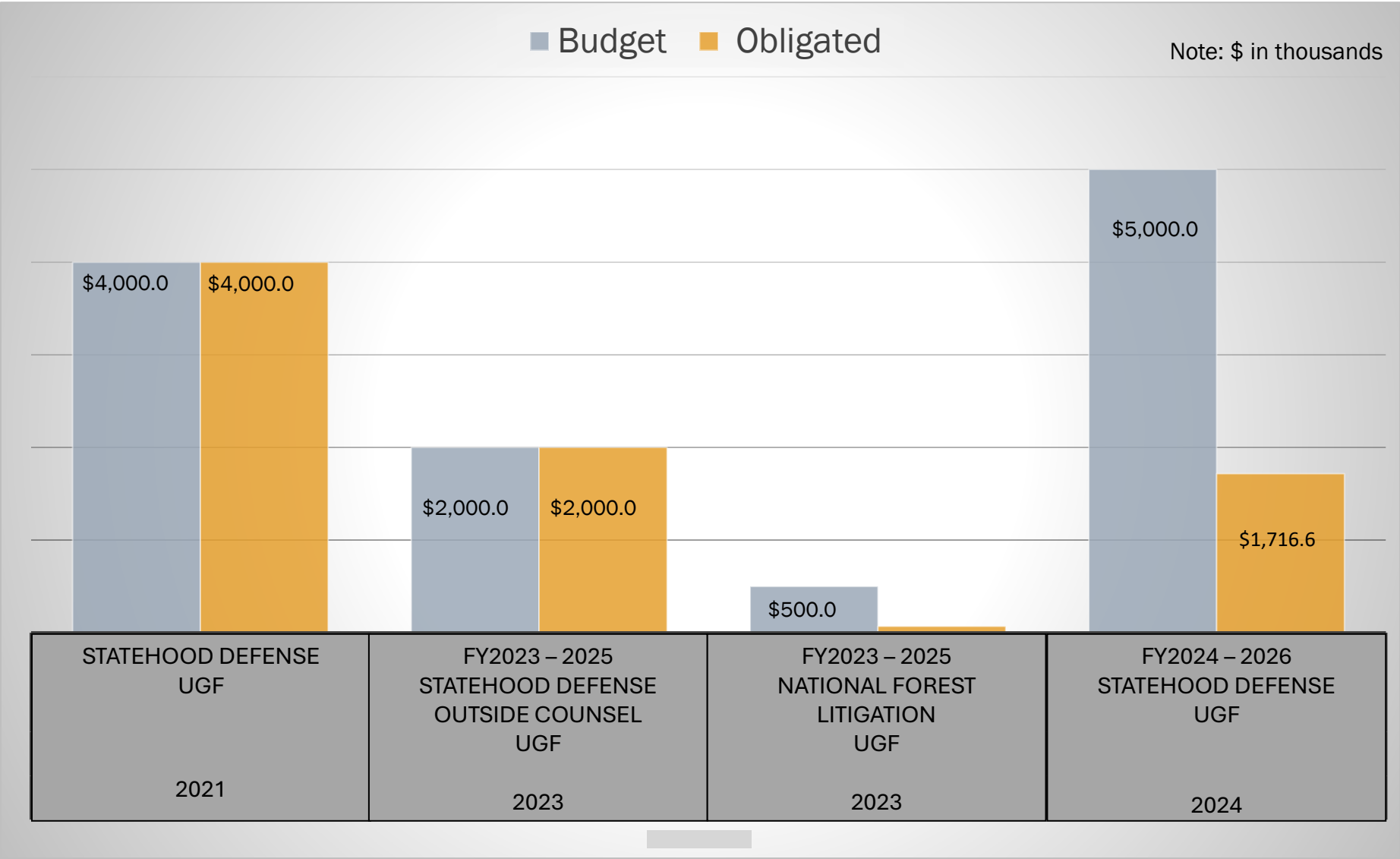
DEPARTMENT OF FISH & GAME



What is Statehood Defense?

Defending the rights and privileges promised to the citizens of the state of Alaska upon the state's admission into the Union, especially concerning the use, conservation, and management of the state's lands, waters, and natural resources.

MULTI-YEAR STATEHOOD DEFENSE APPROPRIATIONS



67 Executive Orders & Actions Targeting Alaska

- 01.20.2021** - President Biden is inaugurated and takes office.
- 01.20.2021** - EO 13990 on Day 1, reviewing the Willow Project EIS.
- 01.20.2021** - EO 13990 on Day 1, reviewing Bering Sea-Western Interior EIS.
- 01.20.2021** - EO 13990 on Day 1, reviewing hunting/trapping in National Preserves rule.
- 01.20.2021** - EO 13990 on Day 1, reviewing Roadless Rule exemption for Alaska.
- 01.20.2021** - EO 13990 on Day 1, moratorium on congressionally-mandated ANWR leasing.
- 01.20.2021** - EO 13990 on Day 1, reinstating Northern Bering Sea Climate Resilience Area.
- 02.01.2021** - U.S. Forest Service halts activities in Alaska Roadless Rule areas.
- 02.2021** - BLM conducts bad-faith permitting for KIC AK Native lands, blocking access.
- 04.16.2021** - DOI delays PLOs for AK Native Veteran allotments, tribes, resources.
- 04.16.2021** - DOI Secretary Order 3398, revoking DOI's previous NPR-A order.
- 05.24.2021** - Alaska delegation meeting at the White House.
- 06.01.2021** - DOI initiates new EIS process for 1002 Area, suspends ANWR leases.
- 06.07.2021** - BLM expands Mendenhall Glacier Recreation Area by 4,500 acres.
- 11.19.2021** - USDA intends to roll back Roadless Rule exemption for Alaska.
- 12.09.2021** - Alaska delegation meeting at the White House.
- 12.31.2021** - USFS fails to hold mandated Tongass timber sale.
- 2021** - BLM intends to review Central Yukon Resource Plan EIS.
- 01.10.2022** - BLM selects "No Action Alternative" for 2020 NPR-A IAP/EIS.
- 01.20.2022** - USDA & DOI publish federal subsistence policy notice.
- 02.2022** - Administration delays final supplemental EIS for Willow Project.
- 02.22.2022** - DOI files to reopen Ambler Road ROD.
- 03.09.2022** - BLM intends to establish recreational fees on Alaska public lands.
- 04.04.2022** - NOAA intends to designate critical habitat area for Beringia seals.
- 04.21.2022** - DOI further delays, complicates AK Native Veteran allotments.
- 04.26.2022** - BLM reverts the NPR-A to the 2013 Integrated Activity Plan.
- 05.12.2022** - DOI cancels planned oil & gas lease sale in Cook Inlet.
- 05.25.2022** - EPA proposes 404(c) pre-emptive veto of Pebble Mine site.
- 12.01.2022** - EPA recommends 404(c) preemptive veto of Pebble.
- 12.01.2022** - DOI delays release of draft SEIS for ANWR 1002 Area drilling.
- 12.06.2022** - DOI claims authority over state lands relevant to Ambler Road Project.
- 12.21.2022** - Alaska delegation meeting at the White House.
- 2023** - USFS/BLM fails to implement ANILCA-compliant cabin policy, limiting permits.
- 01.06.2023** - DOI proposes hunting restrictions on Alaska's National Preserves.
- 01.10.2023** - BLM publishes PLO with 20-year extension of Chugach Forest withdrawal.
- 01.24.2023** - BLM draft plans include access fees prohibited under ANILCA.
- 01.31.2023** - EPA publishes pre-emptive veto of Pebble Mine area.
- 03.03.2023** - Alaska delegation meeting at the White House.
- 03.13.2023** - DOI proposes additional restrictions on 13 million acres of NPR-A.
- 03.13.2023** - White House intends to block all oil & gas leasing in the Arctic Ocean.
- 03.14.2023** - DOI withdraws land exchange for life-saving King Cove Road.
- 04.04.2023** - EPA enables unachievable deadline for PM2.5 air standard for Fairbanks.
- 09.08.2023** - DOI proposes restricting development on millions of acres in NPR-A.
- 12.05.2023** - USFWS's new guiding proposal discriminates against long-term local guides.
- 12.15.2023** - DOI five-year oil & gas leasing proposal excludes Alaska.
- 12.15.2023** - BLM draft ANCSA 17(d)(1) withdrawal EIS delays required conveyances.
- 02.28.2024** - USFS intends to develop new Tongass management plan.
- 04.19.2024** - DOI finalizes NPR-A restrictions, defying federal law.
- 04.19.2024** - DOI FEIS denies re-approval of Ambler Access Project, defying federal law.
- 04.19.2024** - BLM Central Yukon Resource Plan restricts development, defying federal law.
- 06.28.2024** - DOI issues ROD blocking the Ambler Road Project.
- 06.28.2024** - DOI revokes 2021 PLOs, leaving 28 million acres of land in highly restricted status.
- 07.03.2024** - NPS implements rule prohibiting certain hunting methods in Alaska Preserves.
- 08.27.2024** - DOI issues ROD revoking 2021 PLOs, finalizing restrictions on 28 million acres.



Department of Environmental Conservation

ACTING COMMISSIONER CHRISTINA CARPENTER



Implementing Primacy Programs

DEC can find flexibility in federal laws to make these programs work better for Alaska and Alaskans.

Federal Programs Currently Implemented by DEC:

- Resource Conservation and Recovery Act, Solid Waste
- Safe Drinking Water Act
- Clean Air Act
- Clean Water Act section 402, Alaska Pollutant Discharge Elimination System (APDES) Program
- Federal Insecticide Rodenticide and Fungicide Act



Commenting on Federal Proposals

DEC experts evaluate federal proposals and push back where the federal agencies seek to expand federal authority or impose standards that don't make sense for our state.

WOTUS: U.S. Environmental Protection Agency (EPA) and the Army Corps continue to resist issuing clear Waters of the United States (WOTUS) rules that include wetlands only when they are indistinguishable from jurisdictional waters. The federal agencies have refused to clearly define the bounds of their authority. This has direct impact on Alaska's vast wetlands on the North Slope.

Fairbanks PM_{2.5} Non-Attainment Area: The EPA proposes to **approve** a stakeholder-driven plan for correcting air quality concerns; DEC will engage to address concerns raised in any anticipated legal challenge to this important approval.

Holding Federal Agencies Accountable

DEC works to ensure the federal government corrects its own failures.



Alaska Native Claims Settlement Act (ANCSA)

Contaminated Sites: DEC is pushing the Department of Interior to clean up contamination they left on properties the federal government transferred to Alaska Native Corporations under ANCSA.

EPA Woodstove Certification Program: LAW and DEC were successful in a lawsuit against the EPA to ensure an effective update to critical EPA-certified woodstove program. DEC discovered that the EPA certification program is fundamentally flawed and pushed the EPA to do its job to ensure the new stoves are actually cleaner. Without cleaner devices, the DEC plan to reach attainment and achieve clean air is severely harmed.



404(c) Determination

RON OPSAHL

ASSISTANT ATTORNEY GENERAL

EPA's 404(c) Determination

EPA's determination:

- **Prohibits** all “future proposals to construct and operate a mine to develop the Pebble deposit” that result in any “one” of the stream or wetland losses serving as a basis for the permit denial
- **Restricts** development in a specified 309 square-mile area of primarily state-owned land

- *Alaska v. EPA et al.*, case no. 3:-cv-00084 (D. Alaska)(matter consolidated with related cases)
- State seeks declaration that 404(c) determination was unlawful, violates Clean Water Act and Administrative Procedures Act by failing to engage in reasonable decision making, and failing to consider relevant factors
- In related claim before U.S. Federal Court of Claims, State alleges taking without just compensation (inverse condemnation) and breach of contract entitling Alaska to damages if US District Court does not set aside veto



Department of Natural Resources

COMMISSIONER JOHN BOYLE



Navigability

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State Submerged Lands

- North Fork of Fortymile River
 - *Alaska v. United States* (U.S. Dist. Alaska)
- Middle Fork of Koyukuk River, Dietrich River, and Bettles River
 - *Alaska v. United States* (U.S. Dist. Alaska)
- Mulchatna River, Chilikadrotna River, Twin Lakes, and Turquoise Lake
 - *Alaska v. United States* (U.S. Dist. Alaska)
- Mendenhall Lake and River
 - *Alaska v. United States* (U.S. Dist. Alaska)



Oil & Gas Development

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ASSISTANT ATTORNEY GENERAL



National Petroleum Reserve-Alaska (NPR-A)

Arctic National Wildlife Refuge (ANWR) Coastal Plain

Outer Continental Shelf (OCS)

- NPR-A
 - Defending Willow Project Approvals
 - *Center for Biological Diversity, et al. v. Bureau of Land Management* (9th Circuit)
 - Challenging 2024 NPR-A Regulations
 - *Alaska v. Bureau of Land Management* (U.S. Dist. Alaska)
 - Defending 2020 NPR-A Integrated Activity Plan (IAP) Environmental Impact Statement (EIS)
 - *National Audubon Society, et al. v. Haaland* (U.S. Dist. Alaska)
- ANWR
 - Supporting 1002 Area Leasing and Challenging Cancellations, Reduced Revenues, and Deficient Processes
 - *Alaska v. U.S.* (U.S. Court of Federal Claims)
 - *Alaska v. U.S. Dep't of Interior* (U.S. Dist. Alaska)
 - Setting the Proper ANWR Boundary and Asserting the State's Ownership
 - *Alaska v. U.S. Dep't of Interior* (U.S. Dist. Alaska)
- OCS
 - Challenging Continental Shelf Withdrawals
 - *Louisiana v. Biden* (U.S. Dist. W.D. La.)
 - Defending 2022 Cook Inlet OCS Lease Sale
 - *Cook Inletkeeper, et al. v. U.S., Dep't of Interior* (U.S. Dist. Alaska)



Tribal Territorial Jurisdiction

CHRISTOPHER ORMAN

ASSISTANT ATTORNEY GENERAL



Tribal Territorial Jurisdiction

Alaska v. Newland

3-23-CV-00007-SLG (District Court)

Nos. 24-5280, 24-5285, 24-5461 (Appeal)

Alaska v. Department of the Interior, et al.

1:25-cv-00330-PLF (District Court)

- **Lands-into-Trust**
 - The Federal Government changed its position on whether the Secretary has authority to take lands-into-trust and create new Indian country in Alaska.
 - The State seeks final resolution from the courts.
 - The State received a partially favorable decision from the district court, and all parties appealed. The appeal is pending.
- **Tribal Territorial Jurisdiction over Native Allotments**
 - For over 30 years, Interior's position was Alaska tribes did not have territorial jurisdiction over Alaska Native Allotments.
 - In 2021, a district court in D.C. held that interpretation was "correct."
 - In 2024, Interior changed its position, and its Solicitor concluded the district court was in error.
 - The State seeks final resolution from the courts.
 - The State filed its complaint and is waiting for the other parties to respond.



Department of Fish & Game

COMMISSIONER DOUG VINCENT-LANG



Right to Manage

- Protect Alaska's right to manage our state's fish and game resources and their uses
- Ensure the best available information is being used in federal permitting processes
- Challenge unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act



Right to Manage

- Fight for statehood was largely driven by federal fish and game mismanagement
- Alaska's statehood compact gave us control over fish and game
- On December 29, 1959, President Eisenhower formally recognized the transfer of authority over fish and game to Alaska (Executive Order 10857)
- These rights were re-affirmed with the passage of ANILCA

BOTTOMLINE

The State is the primary manager of fish and game on all lands throughout Alaska



Right to Manage

Why is this important?

- Alaskans must have the ability to access fish and game resources without being unnecessarily restricted by federal agencies

Best Available Science

- ADF&G collects and utilizes sound science to inform federal decision processes





State Science Initiatives

Inform Endangered Species Act decisions

- Gulf of Alaska Chinook listing
- Pacific walrus listing
- Other listings: small mammals, birds, insects, and plants
- Recovery planning: wood bison, ice seals, humpback whales
- North Pacific right whale critical habitat



State Science Initiatives (cont.)

Inform Marine Mammals Protection Act decisions

- Polar bear Incidental Take Regulations (AOGA) and Stock Assessment
- Harbor porpoise management
- Fur Seal Conservation Plan



State Science Initiatives (cont.)

In the last decade, avoided unnecessary ESA listings for:

- Wolves in Southeast Alaska
- Bull kelp
- Suckley's bumblebee
- Pacific walrus
- Lake Iliamna seals
- Tufted puffin
- Kittlitz's murrelet
- Yellow cedar
- Short-fin Mako shark



Informed Participation

Participate in the federal subsistence program

- Federal Subsistence Board
- Federal Subsistence Regional Advisory Councils
- Marine Mammals subsistence management

Participate in lawsuits to defend federal findings we support

- Intervention in the Polar Bear Incidental Take Regulations suit
- Cook Inlet Incidental Take Regulations suit



Challenging Decisions

Unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act

- GOA Chinook salmon – build a strong administrative record
- Ringed seal de-listing
- Ringed and Bearded seal critical habitat

Alaska National Interest Lands Conservation Act (ANILCA) Program

- Assert and defend State authority to manage fish and wildlife on all lands in Alaska and maintain public access and use of federal public lands
 - Actively engaged on issues to address federal overreach
 - Working with Federal agencies to ensure adherence to ANILCA and state management
 - Formally commenting on behalf of the State on land use plans and proposed federal rules



Current Litigation

Challenge Finding Regarding State's
Petition to Delist Arctic Ringed Seal

- *Alaska v. National Marine Fisheries Service*
(9th Circuit)

Challenge to Critical Habitat Designations
for Arctic Ringed Seal and Bearded Seal

- *Alaska v. National Marine Fisheries Service*
(9th Circuit)

Metlakatla Fishing Jurisdiction

- *Metlakatla Indian Community v. State*

Chinook Salmon & Southern Killer Whales

- *Wild Fish Conservancy v. Rumsey, et. al.*

Upper Cook Inlet Salmon Management

- *United Cook Inlet Drift Association v. NMFS*



SEAK Chinook Fishery Biological Opinion

AARON PETERSON

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Wild Fish Conservancy v. Rumsey, et. al.

No. 2:20-cv-00417

**Appeal Nos. 23-35322, 23-
35323, 23-35324, 23-
35354**

- In early 2020 the Wild Fish Conservancy sued the United States, arguing that the Southeast Alaska Chinook Biological Opinion related to Southern Resident Killer Whales was flawed and that take of their food (chinook salmon) was unlawful
- Alaska intervened to defend the Biological Opinion
- The court found violations of Endangered Species Act and National Environmental Policy Act, granted the plaintiff summary judgment, and vacated the Biological Opinion
- Alaska petitioned the Ninth Circuit for a stay pending appeal, which was granted, effectively keeping the fishery open while the matter was on appeal
- The Ninth Circuit ultimately agreed with Alaska and reversed the District Court's remedy order



Marine Mammal Litigation

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Marine Mammal Litigation

- Challenge to negative 90-day finding regarding State's petition to delist Arctic ringed seal
 - *Alaska v. National Marine Fisheries Service* (9th Circuit)
- Challenge to critical habitat designations for Arctic ringed seal and bearded seal
 - *Alaska v. National Marine Fisheries Service* (9th Circuit)



Off-Reservation Fishing Rights

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Metlakatla Indian Community v. State of Alaska

No. 5:20-cv-00008-SLG

- In early 2020, the Metlakatla Indian Community filed a complaint asserting that due to the 1891 Act creating the Annette Islands Reserve, their members hold an implied off-reservation fishing right in fishing districts 1 and 2. They further asserted the State of Alaska's limited entry permit program, in place since the 1970s, violates their fishermen's off-reservation fishing right.
- The State initially won a motion to dismiss before the trial court.
- On appeal, the Ninth Circuit reversed and remanded; instructing the trial court to determine whether the Metlakatlans "traditionally fished" throughout fishing districts 1 and 2.
- If the Metlakatla Indian Community is successful, their commercial fishermen will have an economic advantage over all other commercial fishermen in fishing districts 1 and 2.
- The parties recently exchanged expert reports. Trial, if needed, is scheduled for August 2025.



Questions?

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