

Section 8.4 - Sustained Yield.

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

AG Opinions -

Area licensing regulations have relation to the subject of fish conservation in that they are designed to enable the Department of Fish and Game to control the extent of fishing in various areas of Alaska, and thereby to meet the mandate of Alaska Const., art. VIII, Sec. 4, to maintain our fish resources on the sustained yield principle. 1959 Op. Att'y Gen. No. 28.

Decisions -

Accordance with statutory definitions. - The "sustained yield principle" as used in the constitution accords with the definition set forth in AS 38.04.910; and the added language in former AS 41.17.950(15) [now AS 41.17.950(25)] that it "does not require that timber be harvested in a nondeclining yield basis over a rotation period" should be read as permitting timber cutting at a level that cannot be sustained over a forest rotation period only in unusual circumstances. *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544 (Alaska 1983).

Construction of common use clause. - The common use clause of Article VIII does not grant the legislature exclusive power to make laws dealing with natural resources management. *Brooks v. Wright*, 971 P.2d 1025 (Alaska 1998).

Scope of public trust analogy - Article VIII does not explicitly create a public trust; rather, the analogy of a public trust has been used to describe the nature of the state's duties with respect to wildlife and other natural resources meant for common use. *Brooks v. Wright*, 971 P.2d 1025 (Alaska 1998).

Prohibiting use of wolf trap snares. - Since the legislature does not have exclusive law-making powers over natural resources issues merely because of the state's management role over wildlife set forth in Article VIII of the Alaska Constitution, the issue of prohibiting the use of snares to trap wolves is not clearly inapplicable to the initiative process under Article XII. *Brooks v. Wright*, 971 P.2d 1025 (Alaska 1998).

Allocation regulation upheld. - A superexclusive use regulation prohibiting fishermen who operate in one of the superexclusive fisheries from participating in any other superexclusive fishery reflects an allocation decision which is both necessary and authorized under this section, and does not violate any of the Article VIII clauses prohibiting exclusive or special privileges to take fish and wildlife. *State v. Herbert*, 803 P.2d 863 (Alaska 1990).

A regulation allocating harvest levels of sockeye salmon did not violate either Article VIII, Sec. 3 or Article VIII, Sec. 17 of the Alaska Constitution, as the regulation was not arbitrary and capricious, did not create an exclusive right, and the affected fisheries were not "similarly situated". The regulation reflected an allocation decision authorized under this section, which the Board of Fisheries must necessarily make between users involved in different fisheries. *Gilbert v. Department of Fish & Game*, 803 P.2d 391 (Alaska 1990).

Regulation promulgated by the Alaska Board of Fisheries allocating the number of chinook (king) salmon that may be harvested by commercial seiners and gillnetters, commercial trollers, and sport fishers in southeast Alaska, did not violate any of the policies contained in Article VIII of the Alaska Constitution. *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314 (Alaska 1994).

Moose management regulation upheld. - In affirming the grant of summary judgment to the state in a management team's challenge to 5 AAC 85.045, the court determined that the regulation violated neither the sustained yield principle of Alaska Const. art. VIII, Sec. 4, nor AS 16.05.255 and 16.05.258; the Board of Game acted within its discretion in adopting the regulation that allowed for the issuance of "up to" 400 hunting permits in a controlled use area because creating a controlled use area did not necessarily amount to designating a relevant animal population for management purposes, and it was reasonable not to manage moose in the region as a distinct game population. *Koyukuk River Basin Moose Co-Management v. Bd. of Game*, 76 P.3d 383 (Alaska 2003).

No requirement for predetermined formula. - The plain language of the sustained yield clause requires resource managers to apply sustained yield principles but does not mandate the use of a predetermined formula, whether quantitative or qualitative. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

To require the use of a predetermined formula under the sustained yield clause would consume an amount of time, money, and energy wholly disproportionate to potential benefits, and would be a counterproductive use of resources,

limiting the in-season flexibility that fisheries management requires. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

Standard of review. - Because the Board of Fisheries and Peninsula Marketing Association must balance economic, ecological, cultural, international, and other policy concerns when it makes decisions about the state's fisheries and must accommodate all those legitimate interests in the face of substantial scientific uncertainty, the courts will not substitute their judgment for that of the board. *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999).

Applied in *Brady v. State*, 965 P.2d 1 (Alaska 1998).

Quoted in *Pullen v. Ulmer*, 923 P.2d 54 (Alaska 1996).

Cited in *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962); *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978); *Frank v. State*, 604 P.2d 1068 (Alaska 1979).