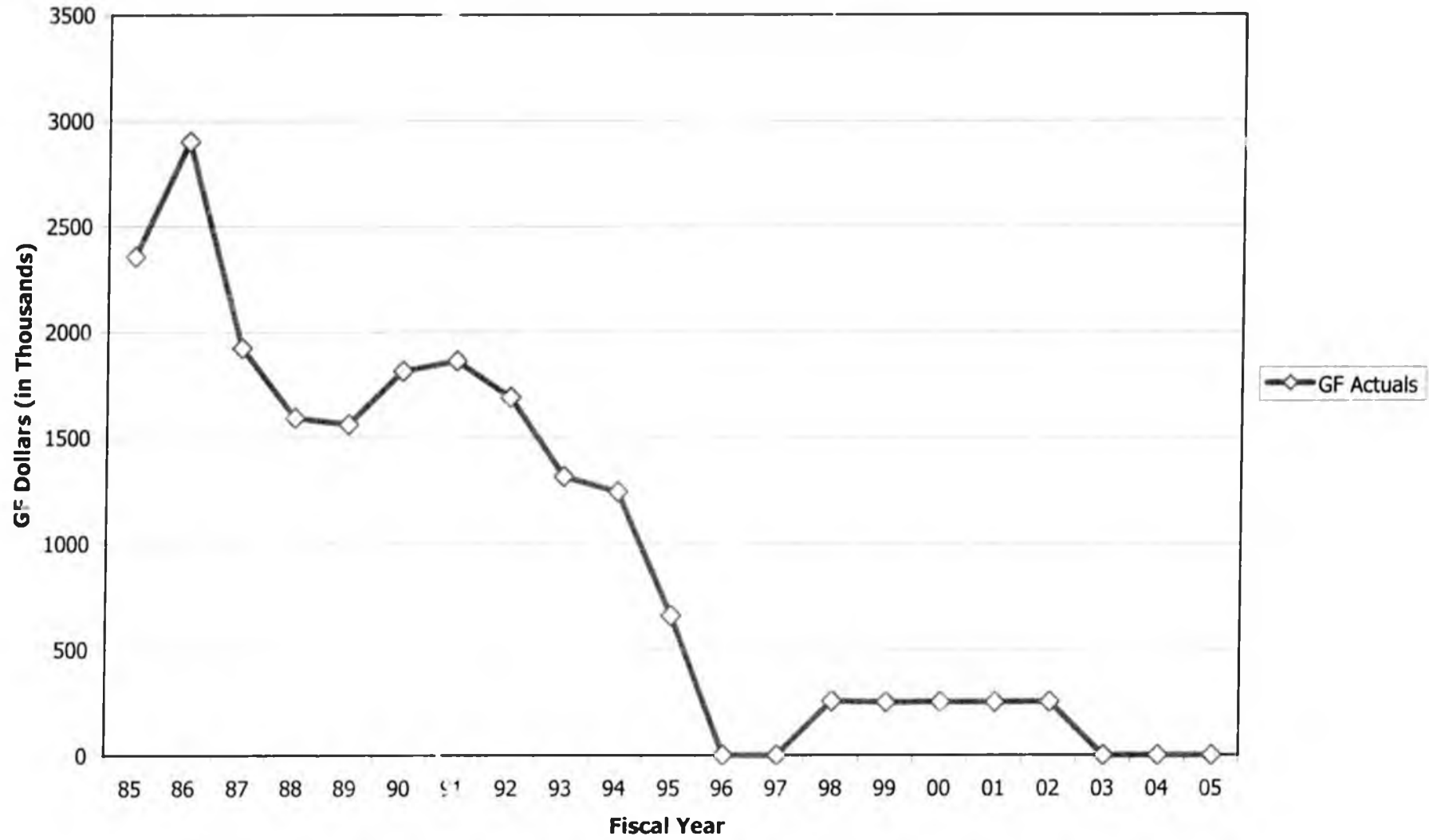


SB

85/170

(FILE 5)

General Funds - Division of Wildlife Conservation/ADFG
Actual Expenditures by Fiscal Year (Operating Appropriation)



10/15/2005

The Alaska State Legislature
Senate Resource Committee

Mr. Chairmen, members of the committee.

My name is Warren E. Olson. I'm a 47 year resident. I am the Secretary-Treasurer of "The Alaska Constitutional Legal Defense Conservation Fund, registered with the State of Alaska, 1995.

I've worked on outdoor issues for 30 years, including Alaskans for Equal Hunting and Fishing Rights (1978-1982) (which was an illegal issue for the ballot box), the McDowell I case, state court (1983-1989), the Gulkana River case, federal district court (1981-1986) which changed ANILCA (1989), Bondurant vs. Governor Knowles, 2001 (abandonment of Katie John) and TACLDCF, Bondurant vs. Secretary of The Interior, Gale Norton, A00-167CV currently before the 9th Ckt Court of Appeals (2000- September, 2005).

I've recently concluded a Civil Rights complaint (filed October, 2004) with the U.S. Wildlife Civil Rights Section, representing Mr. Ian Ives against the Department of Fish and Game on age discrimination concerning TIER II. The Civil Rights complaint has been dismissed by the federal government because of ANILCA. I've also appealed the Administrative Procedure Act application before the Board of Game, (2003-2004) due to discrimination among users applying the APA act.

In my opinion there are interests against seeking finality on the question of fair and equitable use of fish, water and wildlife in Alaska. The State Statute (Sec. 16.05.258) Subsistence use and allocation of fish and game stands in Title only.

I'm sure an independent council after reviewing the (state cases) Madison case 1985, the Owsichek case 1988, the McDowell case 1989 and the Payton case 1997 would recommend removing this statute from the books. Please consider this request.

Both the Department of Fish and Game and the Department of Law have no regard for decisions by the Supreme Court of Alaska

regarding residences of Alaska and fish, water and wildlife. For proof review the Totemoff case, 1996.

In my opinion there are interest against hands on management of fish and wildlife for quantity and quality for the 'Alaska Lifestyle'.

In my opinion the Board of Game and the Board of Fish have no concept of being an extenuation of the true trustees, the Alaska Legislature. Article VIII, Section 1-17 note the word legislature '11' times versus '0' for the administration.

In my opinion the Board of Game and the Board of Fish have no concept of Trust Property, Untitled Property, Beneficiaries or Public Trust Doctrine regarding a legal sense.

In my opinion the State Attorney General should be vote' into office and not appointed by the Governor. The Boards of Game and Fish should have independent legal council representing the public (beneficiary), not the department nor the administration.

In my opinion, the State of Alaska and or the Legislative Council should join A00-167CV (TACLDCF, Bondurant vs. Sec. of The Interior, Gale Norton. 9th Ckt. Court) represented by Mr. Robert Erwin, former Supreme Court Justice, Alaska, with an AMICUS, for finality of WHO is going to manage users (Police Powers) and promote quantity and quality of Alaska resources for the 'Alaska Lifestyle'.

Sincerely,



Warren E. Olson
Sec.-Treas. TACLDCF

5961 Orth Circle
Anchorage, Ak 99507
Tel. 346-4440
Fax. 346-2409

State Capitol
Terry Miller Building
Reviser of Statute
Ms. Pam Finley
Juneau, Alaska 99801-1182

RE: Sec. 16.05.258. Subsistence use and allocation of fish and game.

Dear Ms. Finley,

The State Statute Sec. 16.05.258. Subsistence use and allocation of fish and game. remains the most contentious statute ever written within Alaska. In 1978, the Legislature passed the original subsistence bill believing Alaska would retain management of fish, water and wildlife before the onslaught of ANILCA, 1980. They were badly mistaken. Not only did they abandoned the finest State Constitution in regards to common use of resources they abandoned Sovereignty to this day.

The State Statute, written in 1978 has been amended twice, 1986 and 1992. 1986 occurred because of Madison v. State, 1985 and 1992 was the result of McDowell v. State, 1989. I had a great deal to do with McDowell, filed in 1983, determined 1989. Unfortunately, because of lack of experience and other political circumstances, severability was not challenged in 1990, therefore the law remains, being manipulated today.

It is my firm belief the statute should have been removed in 1988 Owsichek v. State, (Cite as 763 P.2d 488). Page 495 - 496 is the most impressive definition of Article VIII versus Article I of the Alaska Constitution in regards to Inherent Rights and Common Use. The State Supreme Court elevated Article VIII above Article I where as Article I can be bent and bowed depending upon the needs of our society. Article VIII Common Use cannot be bent or bowed because of Jealing with a Public Trust called fish, wildlife and water. All Natural Resources are to be handled in an equitable manner and not to be dedicated to "monopolistic grants or special privileges." The uniqueness of Article VIII removes fish, wildlife and waters from consideration of special needs by our society other than common use of these resources. Quoting the Alaska Supreme Court, Owsichek, Page 496 "we are compelled to strike down any statute or regulations that violate this principle."

Because fish, wildlife and water is of such extreme importance to all Alaskans ongoing government proceedings by the Board of Game and Board of Fisheries meet twice a year for the constituent participation. Operating under Title 16 under direction of the Administrative Procedure Act, very extensive meetings occur, up to 5 weeks duration.

Sec. 16.05.258 Subsistence use and allocation of fish and game is under constant scrutiny. Sec. 16.05.258 (4)(B)(II) is removed by revision note (McDowell) yet remains in statute. Sec. 16.05.258 (4)(B)(I) has been removed by Payton v. State, 1997, Supreme Court No. S-7557. "Accordingly, we consistently have interpreted 'customary and traditional' to refer to 'uses' rather than 'users'." Sec 16.05.258 (4)(B) "distinguish among subsistence users" is illegal per Payton. Your revision note is correct but not the exact quote on use and user from the Supreme Court is quoted, therefore the illegal sentence remaining in statute creates great confusion and hardship. Sec. 16.05.258 (4)(B)(III) is illegal because of Owsichuk v. State, Supreme Court of Alaska, elevating Article VIII over Article I in regards to common use of fish, wildlife and water being a trust property therefore not being subject to extreme demands of society. Quoting Owsichuk "this court has stated in at least four cases that the common use clause is intended to provide independent protection of the public's access to natural resources." Sec. 16.05.258(4)(C) 1 - 13 reference to individual characteristics of users and domicile. All are illegal per the Supreme Court of Alaska, referencing the above named cases.

This type of legal documentation has caused harm before the courts as well as board operation related to the public. The state should not place the public in harms way. Your assistance on this matter would be appreciated.

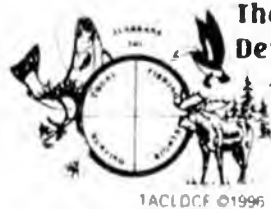
Sincerely,



Warren E. Olson

5961 Orth Circle
Anchorage, Alaska 99507

907 346-4440



**The Alaska Constitutional Legal
Defense Conservation Fund, Inc.**
A 501(c)(3) Non-Profit Alaska Corp

Warren Olson
Secretary-Treasurer

Access to Lands and Waters in Alaska

(907) 346-4440

Fax: (907) 346-2409

P.O. Box 110551 • Anchorage, Alaska 99511-0551

state's "ownership" of wildlife in trust for the people, authorized the statute at issue in that case. *Id.*

The framers of the common use clause probably relied heavily on *Geer*. The following statement from the constitutional papers, as quoted above, closely tracks the reasoning of *Geer*:

The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms."

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people.¹² We have twice recognized this duty in our prior decisions. In *Mettlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901, 915 (Alaska 1961), *aff'd*, 369 U.S. 45, 82 S.Ct. 552, 7 L.Ed.2d 562 (1962), we stated:

These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all

12. The Court overruled *Geer's* state ownership doctrine in *Hughes v. Oklahoma*, 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979). That case involved facts almost identical to *Geer*: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See *id.* at 323, 99 S.Ct. at 1729, 60 L.Ed.2d at 254. The Court struck down the statute as violative of the commerce clause. *Id.* at 338, 99 S.Ct. at 1737, 60 L.Ed.2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." *Id.* at 335, 99 S.Ct. at 1735, 60 L.Ed.2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in *Geer*. Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals

the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state.

(Emphasis added.) Similarly, in *Herscher v. State, Department of Commerce*, 568 P.2d 996, 1008 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined. The state argues that it imposes no limit at all. While acknowledging that the common use clause constitutionalizes the state's trust duty the state asserts, "The sovereign's power to allow and control use of the resources is broad, and restricted only by other constitutional limitations such as equal protection." This assertion clearly overstates the extent of the state's authority under the public trust duty and the common use clause.

First, as noted above, this court has stated in at least four cases that the common use clause is intended to provide independent protection of the public's access to natural resources. See *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1266 & n. 12 (Alaska 1988); *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1120 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1189, 1191 (Alaska 1983), *appeal dismissed*, 467 U.S. 1201, 104 S.Ct. 2379, 81

underlying the 19th century legal fiction of state ownership." *Id.* at 335-36, 99 S.Ct. at 1735-36, 60 L.Ed.2d at 261. As one U.S. District Court noted in a post-*Hughes* case:

Under the public trust doctrine, the State of Virginia and the United States have the right and the duty to protect and preserve the public's interest in natural wildlife resources. Such right does not derive from ownership of the resources but from a duty owing to the people.

In re Stuart Transp. Co., 495 F.Supp. 38, 40 (E.D.Va.1980) (allowing federal and state governments to recover damages for migratory waterfowl killed in oil spill).

After *Hughes*, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted *supra*, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains.

ALASKA STATE LAW LIBRARY

L.Ed.2d 339 (1984); *Werberg v. State*, 516 P.2d 1191, 1198-99 (Alaska 1973); see also *Ostrosky*, 667 P.2d at 1196 (Rabinowitz, J., dissenting).

Second, under the state's interpretation, the common use clause would be a nullity. "It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized." *Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974). To give meaning and effect to the common use clause, it must provide protection of the public's use of natural resources distinct from that provided by other constitutional provisions.

Third, the history of the common use clause, as noted above, reveals an anti-monopoly intent to prohibit "exclusive grants" and "special privilege[s]," wholly apart from the limits imposed by other constitutional provisions.

Finally, cases applying the public trust doctrine in navigable waters have frequently struck down state actions in violation of the trust without any reference to either federal or state constitutions. A good example is the lodestar of American public trust law, *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). In that case, the Illinois legislature purported to grant to a railroad more than 1,000 acres of land underlying Lake Michigan in the harbor of Chicago. The Court applied the doctrine of the public trust in navigable waters to uphold the legislature's later revocation of the grant:

A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.

Id. at 453, 13 S.Ct. at 118, 36 L.Ed. at 1043.

In light of this historical review we conclude that the common use clause was in-

tended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes or regulations that violate this principle.

D.

We conclude that exclusive guide areas and joint use areas fall within the category of grants prohibited by the common use clause. These areas allow one guide to exclude all other guides from leading hunts professionally in "his" area. These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market, such as Owsichek. To grant such a special privilege based primarily on seniority runs counter to the notion of "common use."

Moreover, the grants are not limited in duration. The statutes allow holders of EGAs to sell their "improvements," and the GLCB routinely transfers the EGA to the purchaser of the improvements or to the guide's designated successor. This practice allows a guide to effectively sell his EGA as if it were a property interest. See Division of Legislative Audit, *A Performance Report on the Department of Commerce and Economic Development Guide Board* 10-11, Audit Control No. 08-1805-88-R (Dec. 11, 1987) [hereinafter "1987 Report"].

Although the Board justified the program to the legislature as a means of improving wildlife management, see Transcript of Senate Resources Committee Hearing on S.B. 661 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661 (April 27, 1976), it is apparent that area assignments are not based primarily on wildlife management concerns. Rather, as authorized by AS 08.564.195(b) and 12 AAC 38.220(c) & (d)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE (907) 269-5100
FAX (907) 276-3697

October 11, 2005

Robert C. Erwin
Law Offices of Robert C. Erwin, I.L.C.
733 West 4th Ave., Suite 400
Anchorage, AK 99501

Re: *Alaska Constitutional Legal Defense Fund v. Norton*, A00-167-CV (HRH)

Dear Mr. Erwin:

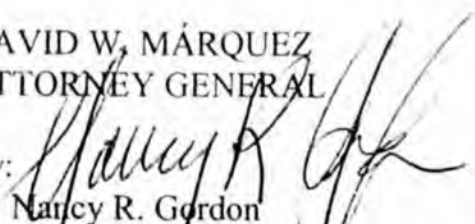
Thank you for your invitation for State amicus participation in the above referenced case. However, after reviewing Judge Holland's recent order and prior analysis from when we considered intervening in this case in 2003, we continue to believe that State participation would not provide any meaningful benefit in this case. The State would be barred from presenting the most important claims involved in the case by *res judicata* and the statute of limitations, and on some issues involving non-resident Plaintiffs, the State might find itself more closely aligned with the Federal Government than with the Plaintiffs.

Problems caused by the Federal Subsistence Program remain of vital importance to the State, and we are continuing to devote considerable legal resources to subsistence issues including elimination of confusing regulations and elimination of unwarranted closures and restrictions on hunting and fishing. However, we believe that our resources are better spent on more discrete issues where we have a greater chance of success on the merits and where we do not face such significant *res judicata* and statute of limitation issues.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:


Nancy R. Gordon

Acting Deputy Attorney General

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

October 11, 2005

Robert C. Erwin
Law Offices of Robert C. Erwin, LLC
733 West 4th Ave., Suite 400
Anchorage, AK 99501

RECEIVED 12/12/2005

Re: *Alaska Constitutional Legal Defense Fund v. Nerton*, A00-167-CV (HRH)

Dear Mr. Erwin:

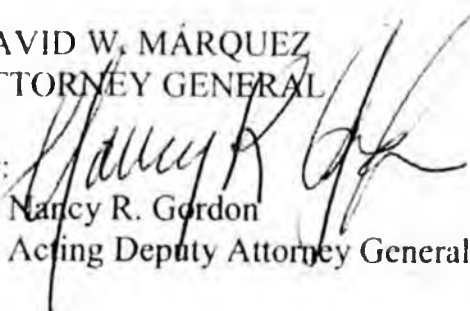
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Sincerely,

DAVID W. MARQUEZ
ATTORNEY GENERAL

By:


Nancy R. Gordon

Acting Deputy Attorney General

ALASKAN LIFETIME HUNTING LICENSE

\$1000.00 FEE

- Resident-only
- Issued by special form
- Allows lifetime hunting of big game
- If residency changes, still allows lifetime hunting of big game without a guide.
- If no longer a resident, all other fees apply.
(i.e. Non-resident locking tags and trophy fees)



Alaska Outdoor Council

PO Box 73902

Fairbanks, AK 99707-3902

Ph: (907) 455-4262 / FAX: 455-6447

aoc@alaska.net

www.alaskaoutdoorcouncil.org

THE ALASKA STATE LEGISLATURE SENATE RESOURCES COMMITTEE INTERIM PUBLIC HEARINGS

ON:

1. **SB 170 – A bill that would change the way the Alaska Department of Fish & Game currently manages fish and game resources, and would create mechanisms to provide additional funding for ADF&G,**

and

2. **SB 85 – A bill to repeal the ban on the use of certain off-road vehicles within 5 miles of the Dalton Highway right-of-way. The intent of the bill sponsor is to delay enactment for 1 year, in order for state and federal land managers to design and implement plans that have gone through the necessary public process.**

SB 170 (fish and game statute revisions):

If you feel there are deficiencies in the current ADF&G process, the Senate Resources Committee wants to know. If you have any suggestions to assure sustainable funding for ADF&G, they want to hear this, also.

The Alaska Outdoor Council recommends that the following underlying principles be used as basic guidelines for development of legislation affecting our state fish and game laws:

- 1) **Financial accountability and transparency** – which encompasses the notion that not only do we want to see where the money is going, but we want it to be *easy to see* where the money is going.
- 2) **Enforceability** – which encompasses the notion that the current statute has allowed regulations and rules that are not enforceable, and could not possibly be enforced? This leads to inconsistency and confusion among hunters, fishers and trappers, as well as some ADF&G employees. The new bill language should be clear in this regard.

3) Efficient organizational structure – which encompasses the notion that because license fees pay for fish and game programs, license holders deserve an organizational structure that provides the most bang for the buck.

4) Increased hunter harvest – which encompasses the notion that we want more game available to harvest – not simply more opportunity, but more production.

5) Attract qualified management biologists – A number of experienced biologists have left the department in recent years and another large group is nearing retirement. This principle encompasses the notion that we would like to see a statutory framework that gives managers the tools needed to make a positive difference in the field, which we believe will make ADF&G a more attractive place to work.

6) Provide greater recognition and empowerment of the advisory committees and boards – which encompasses the notion that management goals and objectives are developed from the ground up, adopted through a fair and open public process, and respected and implemented by managers and enforcement personnel.

2. SB 85 (lift ban on ORV use in Dalton Highway corridor):

If you want to participate in a planning process to open areas along the Dalton Highway to ORV access, please express your support for repeal of the ban.

For those of you not located near one of the interim hearing locations, or could not attend the scheduled Senate Resource Committee Interim Hearings, send your comments to the chair of the Senate Resources Committee:

email: Senator.Thomas.Wagoner@legis.state.ak.us

fax: 907-283-8127

write: Senator Tom Wagoner, Chair
Senate Resources Committee
145 Main Street Loop, Suite 226
Kenai, Alaska 99611

Hunting License Fee Schedule

	Present	2007	2009	2011
Hunt	\$25	\$35	\$40	\$50
Trap	\$15	\$20	\$30	\$30
Hunt/Trap	\$39	\$55	\$65	\$75
Hunt/Fish	\$39	\$45	\$55	\$65
Hunt/Fish/ Trap	\$53	\$73	\$83	\$95

Resident License Fees

Fish	\$15	\$20	\$25	\$35
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Non-Resident License Fees

	Present	2007	2009	2011
Hunt	\$ 085	\$200	\$200	\$0300
Trap	\$165	\$500	\$500	\$1000
Hunt/Fish	\$185	\$300	\$300	\$0350
Hunt/Trap	\$250	\$700	\$700	\$1200
Alien Hunt	\$300	\$600	\$600	\$0750

Waterfowl Stamps and Non-Resident Small Game License

	Present	2007	2009	2011
Resident	\$05	\$10	\$10	\$015
Non-resident	\$05	\$20	\$20	\$035
Non-Resident Small game	\$20	\$65	\$65	\$100

Drawing and Registration Hunt Application Fees

	Present	2007
Drawing Resident	\$05-\$10	\$05-\$10
Drawing	\$10-\$20	\$25

Non-Resident		
Registration Permit Stamp Resident	\$0	\$10 per hunt, including renewals of the same hunt.
Registration Hunt Permit Stamp Non-Resident	\$0	\$15 per year/stamp \$15 per hunt

Non-Resident Tag Fee Schedule

	Present	2007	2011
Black Bear	\$0225	\$0300	\$0350
Brown Bear	\$0500	\$1500	\$2500
Bison	\$0450	\$1500	\$2000
Caribou	\$0325	\$0450	\$0500
Sheep	\$0425	\$0750	\$0850
Deer	\$0150	\$0250	\$0300
Elk	\$0300	\$0500	\$0500
Moose	\$0400	\$0750	\$0850
Goat	\$0300	\$0750	\$0850
Musk Ox	\$1100	\$2000	\$2500
Wolf	\$0030	\$0050	\$0050
Wolverine	\$0175	\$0250	\$0300

Non-resident Alien Tag Fees

All tags are \$300 more than non-residents.

Non-Resident Trophy Fee Schedule

Black Bear Skull size	All greater than 20 inches	+\$0500
Brown Bear Skull size	Under 24 inches	+\$0500
	24 inches-25 15/16 inches	+\$0750
	26 inches-28 inches	\$1000
	greater than 28 inches	\$1500
Musk Ox	Bull	\$1000
	Cow	\$0750

Bison	Bull	\$1000
	Cow	\$0750
Moose	50-65	\$0200
	65 +	\$0500
Sheep	36 inches-38 inches	\$0200
	38 inches-40 inches	\$0400
	40 inches +	\$0600
Goat	Billy	\$0750
	Nanny	\$1000
Wolf		\$0100

Non-Resident Alien Trophy Fees are 35% more.