02/04/15 OVERVIEW: ALASKA STATEHOOD COMPACT AND THE ALASKA NATIONAL INTEREST LANDS ACT (ANILCA)

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RESOLVES
of the
ALASKA LEGISLATURE
1979

Legislative Resolves

LEGISLATIVE RESOLVE NO. 1

(HJR 9)

Be It Resolved that the Alaska State Legislature urges United States withdrawal from the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea and assumption of exclusive management authority over the halibut fisheries within 200 nautical miles of the seaward boundaries of the coastal states in accordance with the Fisheries Management and Conservation Act of 1976; and be it

Further Resolved that Congress enact legislation which will permit retention of the present research staff and other research capability for support of management plan development by the North Pacific Fisheries Management Council.

LEGISLATIVE RESOLVE NO. 2

(FCCS SJR 13)

Whereas section 17(d)(2) of the Alaska Native Claims Settlement Act of 1971 directed the Secretary of the Interior "to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act . . . up to, but not to exceed, 80 million acres of unreserved public lands in the State of Alaska . . . which the Secretary deems suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic River systems"; and

Whereas the same 1971 Act required Congress to act upon the Secretary's recommendations within seven years; and

Whereas both the United States House of Representatives and the United States Senate have had under consideration legislation responding to the recommendations of the Secretary entered in accordance with the mandate of the 1971 Act, but Congress has failed to agree on a single version of Alaska national interest lands legislation; and

Whereas the President, Secretary of the Interior, and Secretary of Agriculture, acting in accordance with authority purportedly granted by the Antiquities Act (16 U.S.C. 431), the Federal Land Policy and Management Act (43 U.S.C. 1701), and other statutory bases for land withdrawals and reclassifications, have reserved or reclassified more than 110 million acres of Alaska land, compromising Statehood Act selection rights and threatening or severely restricting, if not altogether precluding, both traditional land and resource use activities and opportunities for resource development through out much of Alaska;

Be It Resolved that the Alaska State Legislature adopts the following seven points as the position of the State of Alaska in its attempts to secure Congressional review and disposition of issues involving Alaska national interest lands in keeping with the spirit of the 1971 Congressional legislation:

(1) Congress should revoke each and all of the 1978 executive or administrative orders withdrawing lands in Alaska;

(2) by legislation, Congress should convey to the State its full entitlement of federal lands authorized by the Alaska Statehood Act, and to Alaska Natives the full entitlement of public lands authorized to Alaska Natives by the Alaska Native Allotment Act, 48 U.S.C. 357 (Act of May 17, 1906), as amended, and by the Alaska Native Claims Settlement Act, as amended;

(3) Congress should provide for a rational means of providing access to state and private lands across any federal enclaves created;

(4) State management of fish and game on all lands in Alaska should be continued;

(5) Congress should exempt highly valuable mineral deposits and other commodity resources from inclusion in federal systems which obviate development;

(6) traditional land uses on all lands in Alaska should continue; and

(7) The President and the Secretary of the Interior should be precluded from establishing or adding to any conservation system unit within Alaska by means of any executive or administrative authority; and be it

Further Resolved that Alaska's Congressional delegation support the passage of Alaska lands legislation this year as long as that legislation basically conforms to the policy statements enumerated in this resolution and is an improvement over conditions which would otherwise prevail under the Antiquities Act and other executive and administrative actions should no Alaska land legislation be enacted.

Testimony of Doug Vincent-Lang to the Senate Resources Committee
February 4, 2015

Senator Geisel, other committee members, thank you for the opportunity to provide some insights on federal overreach in Alaska. Up until recently I had been the Director of Wildlife within the Alaska Department of Fish and Game. In this capacity I was in charge of the state Endangered Species Team and ADF&G's ANICLA team. As a result I have first hand experience on these issues.

This afternoon I will speak about a range of federal intrusions into our state wildlife management programs. Irrespective of whether you are Democrat, Independent or Republican, the issues I will be speaking of today should concern you since the issues and federal actions I will discuss today are and will forever impact our state and our ability to determine both our sovereignty and our future as promised under terms of our statehood compact, ANICLA and other federal laws.

Let me begin by saying that despite what some are saying, Alaska has a rich and excellent history of successfully managing our fish and game resources and their habitats. We restored many once depleted fishery stocks that we received from the federal government at the time of our statehood. Alaskans have the experience, using the efforts of people ranging from highly professional scientists to the wisdom of our Native Elders, to manage our fish and game resources and our lands for their sustained yields and benefits. And yes, Alaskans manage our resources for sustainability and human benefit and use and not just for their natural diversity and existence. This is part of our constitution.

Let me also say that Alaska routinely tries to seek common ground with our federal partners. At times, these efforts succeed and we are able to work cooperatively. However, we have recently begun to experience increased federal intrusions on a wide range of fronts into our sovereign authorities and responsibilities to sustain and manage wildlife populations that are seemingly unresolvable given differing management and

conservation philosophies and goals. Unfortunately what we once saw as rare occurrences are now becoming more commonplace and the norm.

Let me demonstrate the nature of these federal intrusions by starting with a discussion of the Endangered Species Act, or ESA for short, as a species and landscape control mechanism. Alaska has been assaulted with precautionary listings of species irrespective of their current or near term heath or abundance based solely on untested models speculating possible extinction sometime in the far distant future. This began with the listing of the polar bear, which despite our scientist's concerns with the untested models that speculated extinction by 2050, remain today at all time record numbers, and for the Chukchi Sea population which has experienced some of the greatest sea ice loss over the past decade, vital rates remain the same as they were 30 years ago. We have now seen this strategy being employed by federal agencies and NGOs to list or attempt to list additional species. For example the NMFS listed the ringed seal based on speculative climate impacts 100 years in the future, despite their being over 3 million of these seals in the world today and, this is important, their own information that suggests that there will be no measurable impacts for the next 50 years. Similar proposals are pending for other species based solely on speculated impacts in the far distant future rather than observed or documented declines now or in the near future.

This concerns me for many reasons; however, my greatest concern is that once a species is listed all forms of take, including hunting and fishing, or incidental through development of our resources, comes under federal oversight. I view this as an unprecedented and unjustified federalization of state trust species and their habitats, and more significantly, of their management. It will not be long before a raft of state managed species are petitioned for listing and federalization, many of which are managed sustainably under state management. For example, what would happen if sockeye salmon were listed due to speculated impacts from ocean acidification, or caribou from global warming? Both species are currently well managed by the state but if listed would become federally managed.

Alaska has begun to fight back on these unwarranted listings. For example the state challenged the listing of the bearded seal and successfully reversed it with the judge calling the listing a gross misuse of federal discretion and authority.

We are also seeing this Act used as a landscape control mechanism through overly expansive designations of critical habitat that encompass any area potentially occupied by a species, rather than those areas truly critical to a species survival. As an example, for the polar bear, an area of Alaska larger than California was designated as critical habitat despite acknowledgment in the rule that the designation would not significantly benefit the species or that much of the area did not contain the primary constituent elements defining the habitat as critical. I believe this needlessly federalizes broad areas of land/seascapes. I also fear that such designations allow federal agencies to unnecessarily exert their management goals and authorities onto the designated lands and waters, including state and private lands. Such designations have opened a Pandora's Box regarding federal intrusion into state management authority. Again, Alaska fought back by successfully challenging the polar bear critical habitat designation. This rule was found so faulty the judge threw out the entire rule. It is currently under appeal by the USFWS. Recently, the NMFS has proposed to list an area twice the size of California to protect those ringed seals that number in the millions. I wonder what our position will be as we did not state one at the recent public hearing held in Anchorage.

Alaska's concerns that the use of ESA listings has gone too far came to fruition near the small island of Adak. Here the NMFS determined that commercial fishing was causing nutritional stress to Steller sea lions and closed commercial fishing resulting in significant economic impacts to local Aleut communities dependent upon these fisheries. This occurred despite there being over 70,000 endangered SSLs at the time of this action and data showing that the population was increasing at a rate of 1.5% per year and nearing federally determined down-listing objectives. State scientists challenged the foundational science associated with the nutritional stress hypothesis and challenged the fishery closures as unwarranted. Seven subsequent independent reviews, 3 contracted by the NMFS itself, verified the state concerns. Despite this, the NMFS stood by their action

citing that amorphous cloud, federal discretion. Alaska challenged NMFS in court, succeeding in a partial victory and restoring fishing to our western Alaskan communities. Again, a legal challenge proved successful in overturning unjustified federal action and intrusion.

Speaking of federal influence on state lands and waters, the Department of Interior has recently initiated an expansive program called Landscape Conservation Cooperatives, or LCCs. LCCs were initially established to coordinate science at a landscape scale to study the effects of a changing climate. On the surface this sounds good as climate is having an impact on our landscapes. Unfortunately this program has morphed into something much broader and controlling. The USFWS has now directed these entities to establish conservation goals and objectives for all lands and waters and species occupying them within the boundaries of these cooperatives. Included in the boundaries of these LCCs are millions of acres of state and private lands and waters, including lands owned by Native Corporations. As such, federal conservation goals and objectives would apply to those lands and waters, state and private. When I was Wildlife Director we quit participation in two LCCs because they chose to vote by majority, allowing numerically dominant federal partners to establish conservation goals and objectives that apply on state lands and waters or over state trust species all over our objection. This approach causes me great concern as federal agencies often have quite differing conservation and management philosophies, as I will discuss shortly.

On yet another front, the National Ocean Council is implementing a National Ocean Policy under administrative order of the President. Alaska has voiced significant concerns with the proposed national ocean policy and its associated planning bodies. In short, the concerns of the state related to the level of federal authority associated with these policies and how they may be applied to state trust resources, lands and waters. Alaska also expressed concern regarding the extent of these planning boards jurisdiction cover state territorial seas as well as adjacent uplands and waterways. Alaska also expressed concern that these planning bodies, again dominated by a federal voting

decision and appeal process, could stipulate sanctuaries or other closed areas where resource use and development would be restricted.

On yet another front, Alaska continues to implement intensive management programs to meet our constitutional responsibilities for sustained yield management. Overall, many of these programs have shown success and are providing additional hunting opportunities for Alaskans, particularly rural Alaskans wholly dependent upon wild foods for their food security and livelihood. Despite this sound management approach Alaska has been criticized by our federal partners as overly focusing on and managing our wildlife for human benefits and that our wildlife management is nothing more than running a game farm. They also oppose such an approach on federal lands despite its demonstrated success, but interestingly usurp the subsequent benefits for federally qualified users when these animals move onto federal lands, then claim that IM is not compatible with undefined federal management objectives or values. I am grateful that you see the value of our IM programs and continue to fund and support them despite the expressed federal opposition.

Alaska is also seeing impacts caused by federal wilderness management. In response to declining abundance of caribou on Unimak Island, Alaska attempted to work with the USFWS to reduce predation and improve calf recruitment through a very limited and selective wolf reduction program. Our hope was to restore caribou hunting and food security to people that live in this remote area. Alaska was warned in a letter from the USFWS that if we took action we would be arrested and charged in federal court. The Service determined that under provisions of the Wilderness Act and their Biological Diversity Policy that caribou could be allowed to be extirpated from the island, or as their leadership described it – blink out of existence. Alaska cannot under its constitutional responsibilities allow a species to simply blink out of existence. This makes one wonder what is in store for ANWR which was recently proposed for increased wilderness designations by the USFWS. Will the Porcupine Caribou herd someday be allowed to become extirpated under their wilderness and biological diversity policies? You need to be aware that the USFWS in Alaska is currently seeking a federal regulation that will

forever prohibit management of wildlife that has the intent or even potential to alter or manipulate populations to provide for harvest opportunities in any way for any reason, including for subsistence use.

We are also seeing intrusions into our sovereign jurisdiction of state waters. The NPS recently authorized themselves the authority to regulate uses on all water bodies within their Park units, including state navigable waterways. This is a direct violation of the Submerged Lands Act and ANICLA. Alaska challenged this action with John Sturgeon and should consider appealing the recent court 9th Circuit Court decision upholding the federal action. This is impacting state authorized hunting and fishing and research, as well as public use and access to state lands and waters

While I could continue with many other examples, let me close with a real example. The NPS recently preempted state subsistence hunting regulations for the documented customary and traditional harvest of bears at den sites in two Alaska national parks. The Park Service also preempted state wolf seasons in two other Alaska national park units despite there being no conservation concerns and acknowledgement that the preempted practice would not impact other park users. The Park Service told the state the action was necessary given that the preempted state regulations impacted undefined park values and biological integrity, whatever they may be. Alaska repeatedly asked for measurable metrics on how such impacts could be assessed, but none were ever provided. In short, state hunting regulations adopted under an open public process can be preempted if they are perceived by a federal manager to have some undefined impact on park values or natural diveristy. Both the NPS and USFWS are now proposing to adopt their own set of hunting regulations on federal lands that are based on their undefined values and natural diversity conservation goals; goals that do not take into account the needs and desires of Alaskans, including those Alaskans living a subsistence lifestyle, a lifestyle ANILCA was intended to protect.

In sum, we are seeing an unprecedented administrative intrusion on a wide range of fronts by federal agencies into our traditional role as the primary manager of fish and

wildlife. In my 30 plus years I have never seen such a siege on so many fronts. This is occurring despite our statehood compact, ANICLA and other Congressional assurances to the contrary that were intended to protect Alaska's ability to fulfill our constitutional sustained yield mandates. It is directly impacting management of fish and game given that federal management agencies often have quite differing philosophical management objectives, objectives that do not have the interests of Alaskans as a part of their development.

I urge you to remain vigilant given the impacts this is having on Alaska and our future. While no one likes to sue, we should not rule this out as it allows us a seat at the settlement table. The NGO community has successfully employed this strategy. The future of Alaska, its resources and the people who depend on it rest on the ability of Alaskans to manage, use and conserve all our resources for the benefit of its people. That is the mandate Alaska's Constitution requires. It is our future and we must protect it.

Thank you.

Alaska Professional Hunters Association

Federal Issues: Alaska's Hunting Guide Industry

Senate Resource Committee 2/4/1015

Alaska Professional Hunters Association

Presentation Overview:

1. Introduction
2. Alaska's Hunting Guide Industry
    a. Demographics
    b. Economics
3. Current Federal Issues-
    a. Intro: Concessions/Land Use Permits-Park Service, USFWS, Forrest Service, BLM,
    b. Government Shutdown/Refuge Closure Lawsuit
    c. USFWS Proposed Rule
    d. Park Service Proposed Regulations
    e. "Less is Best"-Concession Awards
    f. Park Service Sheep Management Plan
    g. BLM Concessions
    h. Transporter Programs
4. Historical- How the Federal Government Got Control of **Alaska's** Guide Industry
    a. "Weight of History Discussion"
    b. Bill Horn's historical timeline
5. Path Forward-
    a. APHA's Continuing Commitment
    b. Executive Branch Responsibilities/Commitments
    c. With permission: Recommendations for the Legislative Body

Introduction

1. Personal

2. APHA

Alaska's Hunting Guide Industry

1. Historical Context
    a. Industry existed Pre-Statehood
    b. Game is itemized as a resource in Alaska's Constitution
    c. Resource dependant-value added visitor industry
2. Significance-
    a. Game is important to all Alaskan's
    b. Alaska's Game is enjoyed by American and foreigners alike/worldwide resource
3. Demographics-
    a. 89% Alaska Residents
    b. Communities of residence include-Kenai, Girdwood, Nikisksi, Cantwell, King Salmon, Ekwok, Aniak, Salcha, Hoonah, Elfin Cove, Haines, Unalakleet, Mekoruk
4. Economics-
    a. Significant Statewide Economic Impact-78$ Million
    b. Significant Employment/espc. Rural-1,620 direct
    c. Non-monetary support-meat/transportation/neighbor activities

ECONorthwest

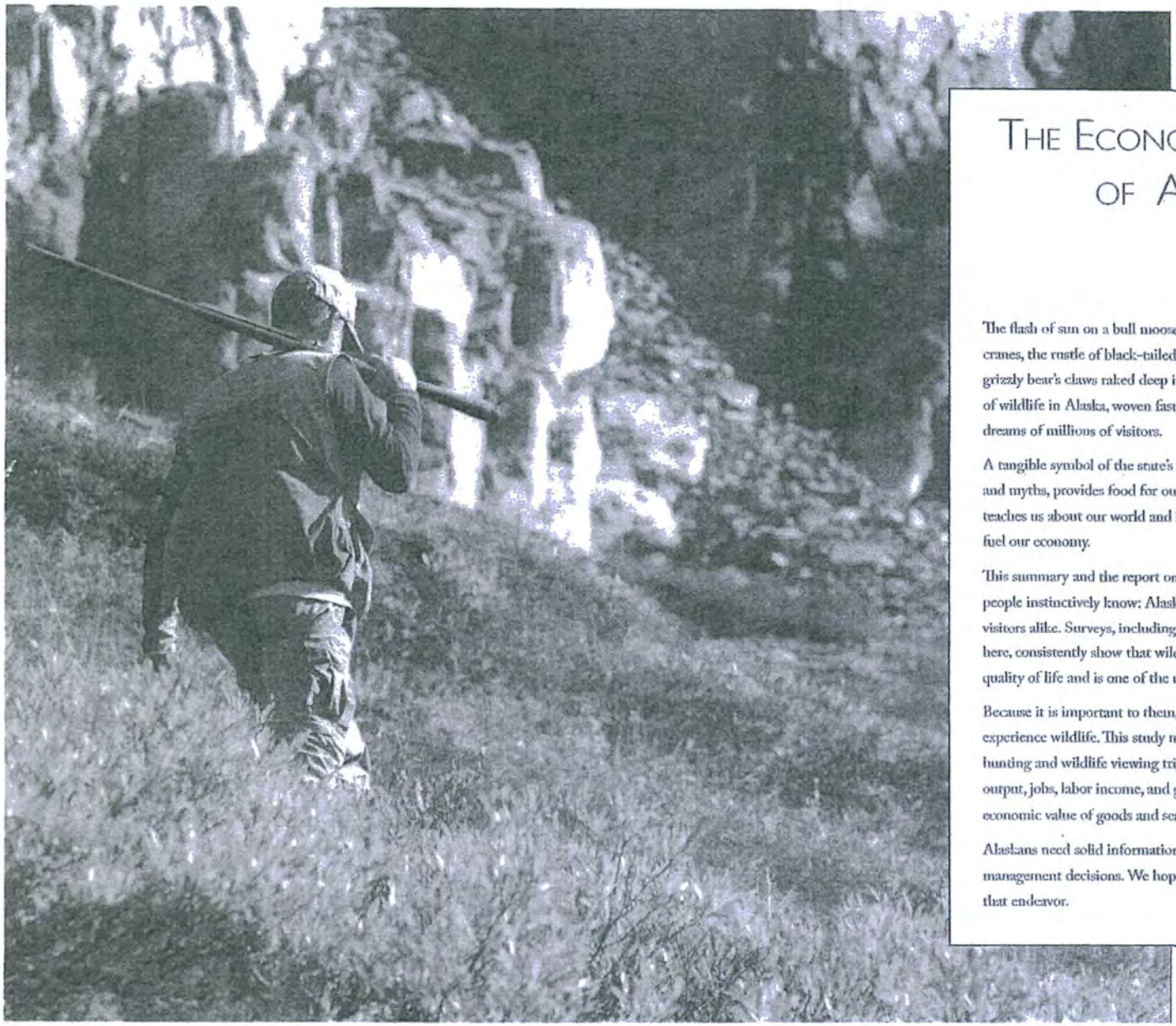
Natural Resource Economics

dhm research

The Economic Importance of Alaska's Wildlife in 2011

Summary Report

March 2014



The Economic Importance of Alaska's Wildlife in 2011

The flash of sun on a bull moose's rack, the bugling of passing sandhill cranes, the rustle of black-tailed deer in a dripping forest, scars from a grizzly bear's claws raked deep into the bark of an aspen. Such are scenes of wildlife in Alaska, woven fast into the fabric of Alaskans' lives and the dreams of millions of visitors.

A tangible symbol of the state's natural wealth, wildlife inhabits our legends and myths, provides food for our table, recreation for our leisure, and teaches us about our world and its workings. Furthermore, wildlife helps fuel our economy.

This summary and the report on which it's based demonstrate what most people instinctively know: Alaska's wildlife is important to Alaskans and visitors alike. Surveys, including those conducted in the research reported here, consistently show that wildlife contributes significantly to residents' quality of life and is one of the main reasons people visit Alaska.

Because it is important to them, people spend money to hunt, view, and experience wildlife. This study measures resident and visitor spending on hunting and wildlife viewing trips; analyzes the impacts on economic output, jobs, labor income, and governmental revenue; and estimates the economic value of goods and services in the state.

Alaskans need solid information to make the best possible wildlife management decisions. We hope this report is an important contribution to that endeavor.

Participation in Hunting and Wildlife Viewing Activities

Almost 1 million households—residents and visitors—took at least one trip in 2011 to hunt or view wildlife in Alaska. Of those, more than 110,000 households, 86 percent of them Alaska residents, went hunting. More than 868,000 households, 77 percent of them visitors, went wildlife viewing.

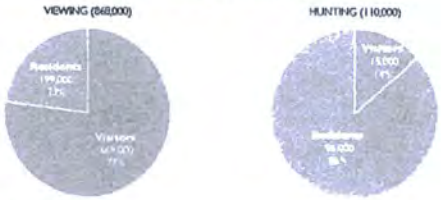
About 37 percent of all resident households took at least one hunting trip, and they averaged 11 trips during the year. About 2 percent of the visitor households hunted, with most taking only one trip.

About 77 percent of all resident households took at least one trip to view wildlife, and they averaged 30 trips during the year. About 86 percent of visitors participated in wildlife viewing and averaged 1.4 trips per household.

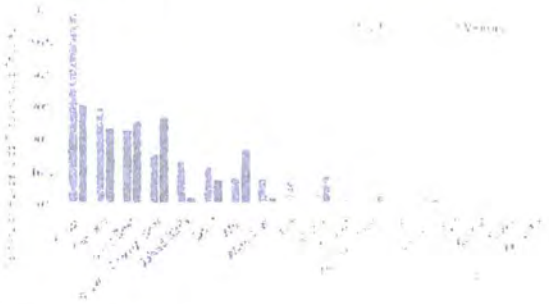
Hunters most commonly targeted moose, caribou, black bear, and brown bear. Wildlife viewers, especially visitors, also wanted to see those species. Seabirds, birds of prey, and marine mammals were also popular.

> Definition of a Trip – Each survey respondent was asked to provide information about a hunting or wildlife viewing trip, defined as an "outing that begins from home or from another place of lodging, such as a vacation home, hotel, or a relative's home. A trip may last an hour, a day, or multiple days." The analysis of economic activity supported by hunting and viewing-related spending excluded trips that respondents would have taken even if they had not planned to hunt or view wildlife.

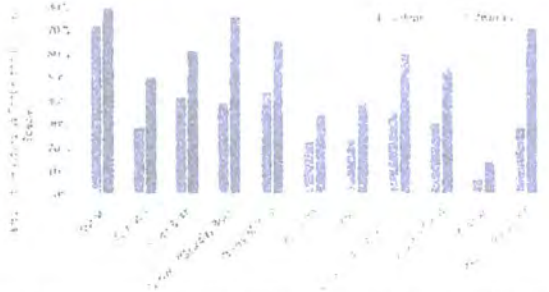
Households that Participated in Hunting or Viewing Trips



Species Sought by Hunters



Species Sought by Viewers

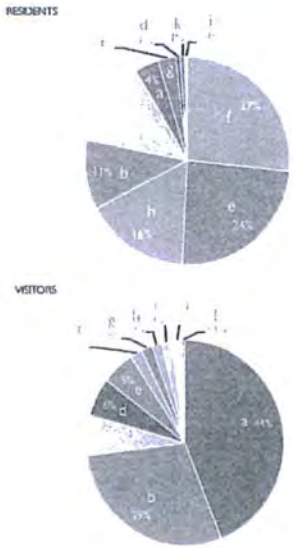


Spending on Hunting and Wildlife Viewing

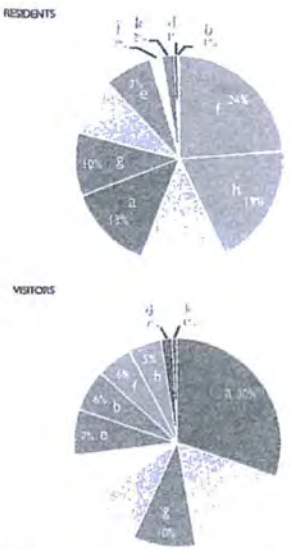
Residents and visitors spent $3.4 billion in Alaska on hunting and viewing activities in 2011, supporting the economic activity described on pages 4 and 5. Resident households spent about $2 billion of that, spread equally between hunting and viewing. Visitor households spent about $150 million on hunting and $1.2 billion on wildlife viewing.

Spending by Residents and Visitors

Hunting-Related Spending, by Category



Viewing-Related Spending, by Category



a Trip Package Spending
b Guide, Outfitter, Charter, and Transporter Fees
c Transportation Fees or Tickets
d Licenses, Tags, and Fees
e Gear and Equipment Purchases
f Fuel for Vehicles
g Lodging
h Groceries, Food, Liquor Purchased at Stores
i Meals Purchased at Restaurants and Bars
j Souvenirs and Gifts
k Equipment Rental

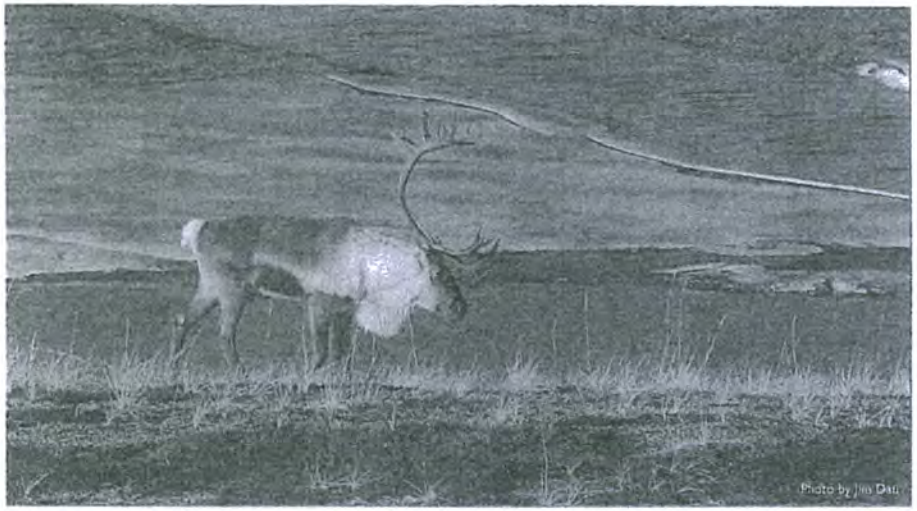


Photo by Jim Dau

Economic Activity Supported by Spending on Hunting and Wildlife Viewing

Spending on wildlife, whether by individuals, businesses, organizations, or government agencies, supports in-state economic activity and can be measured four ways:

1. **Economic output** – the total economic activity generated by spending on wildlife-related activities. This is equivalent to wildlife's share of Alaska's Gross Domestic Product (GDP).

2. **Jobs** – the total number of full-time and part-time jobs supported by spending on wildlife-related activities.

3. **Labor income (earnings)** – salaries, wages, employee benefits, and proprietors' profits stimulated by spending on wildlife-related activities.

4. **Governmental revenue** – the total personal and business tax revenues earned by local, state, and federal governments that are generated by spending on wildlife-related activities.

Spending on hunting and viewing in 2011 supported about 8 percent of Alaska's total economic output, 6 percent of its total employment, and 5 percent of the earnings of all workers. It supported about $343 million in revenue for local and state governments.

Economic activity associated with hunting and wildlife viewing occurred primarily in the service sector (guides, lodging, etc.), followed by the trade sector (shops selling groceries, binoculars, etc.) and transportation (gas stations, car dealers, etc.). Manufacturing, construction, and government also experienced hunting- and viewing-related economic activity.

Residents and visitors, like hunters and wildlife viewers, all have distinct spending patterns that affect the patterns of economic activity in Alaska differently. Residents, who took more hunting and wildlife viewing trips than visitors, spent less per trip than visitors and directed a greater proportion of that spending to goods, such as gear and equipment. Visitors, who took more viewing than hunting trips, tended to spend more on services provided by Alaskans. Consequently, visitor spending had a big impact on Alaska's economy since a dollar spent in the labor-intensive service sector typically generates more in-state jobs and labor income than a dollar spent in the trade sector, which often involves the sale of goods produced outside the state.

Economic Activity in Alaska Supported by Spending on Hunting and Wildlife Viewing

	Hunting	Viewing	Total	Percent of State Total[2]
Output (millions)	$1,326	$2,780	$4,077	8%
Jobs	8,400	18,800	27,200	6%
Labor Income (millions)	$457	$976	$1,434	5%
Government Revenue (millions)	$112	$231	$343	3%

[1] Dollars are rounded to the nearest million, and jobs are rounded to the nearest ten.
[2] Totals for Alaska's Gross Domestic Product, employment and earnings of Alaska's labor force from www.bea.gov.

The amounts in these tables come from taking the spending reported by survey respondents, extrapolating to estimate total spending by hunters and viewers, then inserting those total estimates into a model that traces how money circulates through the state's economy.

Average Spending per Trip and per Household

	Residents		Visitors	
	Hunting	Viewing	Hunting	Viewing
Trip Package Expenditures (per trip)	$52	$137	$3,491	$2,014
Guide, Outfitter, Charter, and Transporter Fees (per trip)	$108	N/A	$2,943	N/A
Other Trip Expenditures (per trip)	$840	$819	$1,911	$2,052
Licenses and Fees (per household)	$81	$28	$34	$29
Gear and Equipment (per household)	$2,686	$382	$527	$128

[1] N/A means spending is included in other categories.

How Spending on Hunting and Wildlife Viewing Generates Economic Activity and Jobs

Spending on hunting and viewing totaled $3.4 billion in 2011 but generated $4.1 billion in economic activity in the state, over 27,000 jobs, and $1.4 billion in labor income. How does that work?

Two moose hunters leave their homes in Fairbanks and head to the local sporting goods store where they buy hunting licenses, ammunition, new hunting boot insoles, a spotting scope, and some game bags. They grab sandwiches and sodas at the local grocery store and fill their trucks and 4-wheeler tanks with gas. Early the next morning, they put their 4-wheelers in their truck beds and drive to their secret spot to begin their search for moose.

A couple visiting from Ohio decide to go brown bear viewing on a remote river near Juneau. After securing seats on a float plane, they buy a pack lunch from the hotel and new rain hats and a waterproof camera bag from a local sporting goods store. After a great day viewing bears, they leave a generous tip with their pilot guide.

The money the hunters and wildlife viewers spend goes to work almost immediately. It goes to pay the wages of the sporting goods store sales clerk, for example, who in turn spends some of those wages at a local restaurant and some more to pay his utility bill. The pilot pays her rent and buys a new parka for the upcoming ski season.

Spending by the clerk and the pilot helps support still other jobs as the money our hunters and wildlife viewers spent ripples outward in many directions through the local economy, even to sectors not directly related to hunting or viewing. The cycle continues until all the initial hunting and viewing spending eventually leaks out of the economy.

Total Economic Value of Wildlife-Related Trips

One measure of the economic value of wildlife is the amount of money, or the market price, a person pays for a hunting or viewing trip. While we know that a person who buys the trip is willing to pay at least the market price, his or her willingness to pay could be greater. That amount added to the market price constitutes the total value of the trip for that person.

For some survey respondents, the amount spent on a hunting or wildlife viewing trip in 2011 adequately measured the trip's full value. Many people, however, were actually willing to pay more than the market price. In fact, most respondents said the trip's value exceeded what they spent on it. The additional amount a person would have been willing to pay, above what he or she actually paid, represents a net benefit to the person.

The charts on the right illustrate that resident households receive a fairly large net benefit when hunting or viewing in Alaska. That is, residents report being willing to pay, on average, 34 percent more than they actually paid for a hunting trip and 25 percent more for a viewing trip; so that the net benefit was 26 percent and 20 percent of the total value for hunting and viewing trips respectively.

Visitors, who already paid quite a bit more than residents to hunt or view in the state (including the cost of traveling from out-of-state), report being willing to pay 7 percent more than they actually spent for a hunting trip and 14 percent more for a viewing trip.

Contingent Valuation

This study used a method called contingent valuation to estimate the amounts households would have been willing to pay for wildlife-related goods and services, beyond what they actually paid. This method has been employed for decades and natural resource economists generally agree that contingent valuation can yield a reliable estimate of what the public is willing to pay for wildlife-related goods and services. This study employed techniques that comply with widely accepted recommendations and guidelines for this type of research.

Respondents were asked if they still would have made the hunting or viewing trip if the cost of the trip had been higher. The extent to which respondents were willing to pay more than they actually paid for the trip reflects the net economic benefit of the trip. Adding this additional amount to the actual spending for the trip reflects the trip's total value to the person.

Net Economic Benefit of Hunting and Viewing Trips

Visitor households, on average, realized a per-trip net economic benefit of $765 for hunting trips and $858 for viewing trips. Resident households, on average, enjoyed somewhat smaller per-trip net economic benefits: $438 for hunting trips and $268 for viewing trips. These values, multiplied by the number of trips taken in 2011, yield the total net economic benefit, shown in the table below. Accounting for the number of hunting and viewing trips taken per household in 2011 yields the average net benefit households received from hunting and wildlife viewing trips in 2011, also shown in the table below.

Net Benefit of Hunting Trips

Net Benefit of Viewing Trips

Net Economic Benefit of Hunting and Viewing Trips

	Residents		Visitors	
	Hunting	Viewing	Hunting	Viewing
Total Net Benefit (Millions)	$461	$1,603	$12	$373
Average Net Benefit per Household	$4,828	$8,050	$765	$1,034
Average Net Benefit per Trip	$438	$268	$765	$858

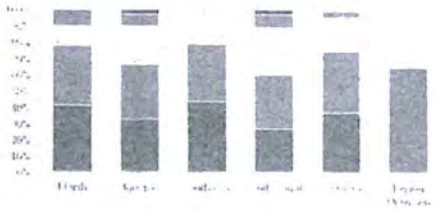
Wildlife's Contributions to Alaskans' Quality of Life and Decision to Live in Alaska

Wildlife makes an essential contribution to the quality of life for most Alaskans:

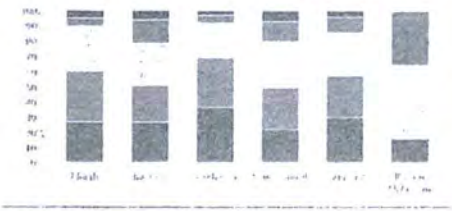
- For 65 percent of Alaskans, wildlife's contribution to their quality of life is either "extremely important" or "very important."
- Nearly 98 percent of Alaskans who participated in wildlife viewing activities in 2011 enjoyed seeing wildlife near their homes and in their daily lives.

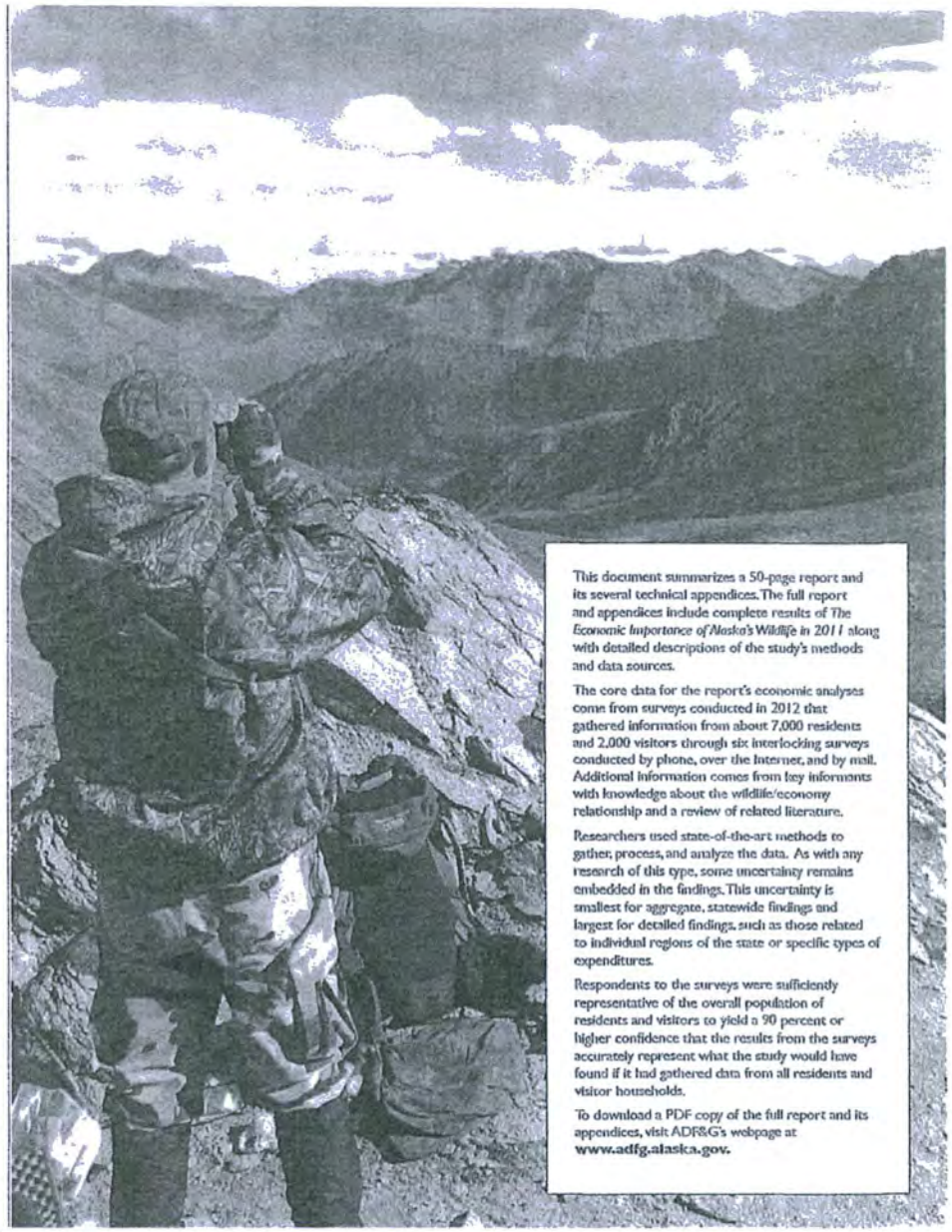
Some of this contribution comes from the net economic benefit Alaskans enjoy from hunting and viewing activities, and from the jobs, income, and other aspects of economic activity supported by expenditures associated with these activities. Other parts of the contribution occur outside the monetary sector of the economy. These include the cultural or non-material goods and services Alaskans obtain from wildlife and their habitats through spiritual enrichment, cognitive development, knowledge systems, social relations, and perceptions of aesthetic pleasure.

Importance of Wildlife to Alaskans' Quality of Life



Importance of Wildlife to Alaskans' Reasons for Living in Alaska





This document summarizes a 50-page report and its several technical appendices. The full report and appendices include complete results of *The Economic Importance of Alaska's Wildlife in 2011* along with detailed descriptions of the study's methods and data sources.

The core data for the report's economic analyses come from surveys conducted in 2012 that gathered information from about 7,000 residents and 2,000 visitors through six interlocking surveys conducted by phone, over the Internet, and by mail. Additional information comes from key informants with knowledge about the wildlife/economy relationship and a review of related literature.

Researchers used state-of-the-art methods to gather, process, and analyze the data. As with any research of this type, some uncertainty remains embedded in the findings. This uncertainty is smallest for aggregate, statewide findings and largest for detailed findings, such as those related to individual regions of the state or specific types of expenditures.

Respondents to the surveys were sufficiently representative of the overall population of residents and visitors to yield a 90 percent or higher confidence that the results from the surveys accurately represent what the study would have found if it had gathered data from all residents and visitor households.

To download a PDF copy of the full report and its appendices, visit ADF&G's webpage at **www.adfg.alaska.gov.**

A Message From The Director

We have long known that wildlife is important to Alaskans and to people who visit our state. But quantifying wildlife's economic importance in our vast state—including direct and indirect spending, jobs, and associated economic activity—is not a trivial task. We contracted with ECONorthwest to provide these data and are pleased to see the summary findings presented in this publication.

The Division of Wildlife Conservation is proud to do its part in ensuring that wildlife populations remain healthy and strong for present and future generations. We are proud that our work helps sustain the wildlife populations on which hunters and viewers depend. In 2011, they spent over $3.4 billion in Alaska to hunt and view wildlife here plus additional dollars out-of-state on gear and other goods supporting those activities. Visitors reported that wildlife is indeed one of the main reasons they visited Alaska, and residents articulated how wildlife contributes to their quality of life and reasons for living here.

By improving the quality of life, wildlife also attracts talented workers. The increase in workforce and in households' spending attracts businesses to the state and creates jobs and income for other workers. Through its contribution to Alaskans' quality of life, wildlife shapes the industrial composition of Alaska's economy and the geographical pattern of development.

We hope you find this report a useful addition to understanding the many ways wildlife contributes to the economy and enriches our lives. On behalf of the department, I want to express my deep appreciation to everyone who completed the survey and took the time to tell us about their hunting and viewing experiences in Alaska.

Doug Vincent-Lang, Director, Division of Wildlife Conservation

Acknowledgments

The research team gratefully thanks each of the many Alaskans and others who patiently provided information to assist this research. We particularly appreciate the patience, knowledge, and insights provided by staff of the Alaska Department of Fish and Game, Division of Wildlife Conservation, especially Maria Gladziszewski, Assistant Director, Division of Wildlife Conservation, who served as Project Manager. Other staff who contributed to the project include Scott Brainerd, Mark Burch, Bruce Dale, Kristen Romanoff, and Anne Sutton.

Citation: ECONorthwest. 2014. *The Economic Importance of Alaska's Wildlife in 2011*. Summary report to the Alaska Department of Fish and Game, Division of Wildlife Conservation, contract IHP-12-052, Portland, Oregon.

For more information about this study, please contact:

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Current Federal Issues

1. Federal Oversight=Land Manager/Concession Permits and Land Use Authorizations
2. Government shutdown/USFWS Proposed Rule
    a. Background/personal
    b. Highlighted flow
3. Park Service Proposed Regs/Concession Reauthorization
    a. State sovereignty
    b. Real Threat to Alaska Guide Businesses
4. "Less is Best"
    a. brief reference to "less is best" awards
5. Park Service Sheep Management Plan
    a. Issue of preempting State Sheep Management
    b. Allude to the plan in the packet
6. BLM Concessions
7. Transporters/ANWR CCP

2013 Lawsuit re: Closure of Alaska's Refuges During Federal Government Shutdown

During the Federal appropriations lapse (shutdown) in October 2013, the State of Alaska and APHA filed a federal lawsuit in the U.S. District Court for the District of Alaska against the U.S. Fish and Wildlife Service after the FWS Director ordered that all refuges be closed (Case No. 4:13-cv-00034-SLG). Along with the State, we sought an injunction prohibiting from closing Alaska's vast national wildlife refuges merely because the lapse of appropriations limited the number of federal personnel available to staff visitor centers and some other facilities within the refuges (federal law enforcement personnel remained on the job throughout). APHA's guides hold permits from FWS to guide on the Refuges and have the equipment and training needed to conduct long-planned hunting trips in the remote areas of the Refuges without the Refuges being fully staffed by federal personnel. At least for a time, FWS also limited access by State of Alaska personnel to the Refuge, although FWS eventually lifted that restriction.

FWS Director Daniel Ashe's October 4, 2013 Closure Notice specifically provided that the closure would "expire automatically at the end of the shutdown period except that the provisions applicable to Alaska will expire no later than October 31, 2013." This addition was presumably because FWS regulations pertaining to Alaska's refuges require that, "No emergency closure or restriction shall be for a period exceeding 30 days." 50 CFR 36.42(c)(4).

However, the issue of whether or not FWS could close Alaska's refuges during the federal government shutdown was never decided by the court. The lawsuit was ultimately dismissed for mootness, because Congress passed the Continuing Appropriations Act the day after the lawsuit was filed, which restored funding to all federal agencies, and thereby reopened the refuges, although by then trips led by APHA members had been disrupted. The State and APHA contended that the case was not moot because the dispute was "capable of repetition, yet evading review," because it would likely occur again at the time of the next lapse of

appropriations. However, Judge Sharon Gleason held that, because this was the first federal lapse of appropriations in which FWS closed the Alaska refuges, it was too uncertain whether FWS would order another closure at the time of the next lapse of appropriations, and so the "capable of repetition" exception to mootness did not apply. Order dated July 29, 2014, p. 9 (copy attached). The State of Alaska and APHA did not appeal this mootness dismissal.

Current FWS Efforts to Amend Closure Regulations

FWS has announced that it proposes to change its regulations regarding closures and restrictions on Alaska's refuges. Current regulations allow a refuge manager to close an area or to restrict an activity on a refuge on an emergency, temporary, or permanent basis. 50 CFR 36.42(a). However, emergency closures may not last longer than 30 days. 50 CFR 36.42(c)(4). This is the provision I mentioned above that apparently caused FWS to limit the closure of Alaska Refuges to just under 30 days. Temporary closures are limited to one year, but require an advance hearing before they can be ordered. 50 CFR 36.42(d)(3). Temporary closures or restrictions "shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate," (50 CFR 36.42(d)(1)). "Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register." 50 CFR 36.42(e). Even emergency closures or restrictions related to taking fish and wildlife require notice with a hearing after the closure begins. 50 CFR 36.42(c)(2).

Based on documents released by FWS, FWS is expected to issue a proposed rule under which the allowable length of an emergency closure would expand from 30 days to 60 days. This presumably would result in a longer period in which FWS could order a closure without a hearing in the event of another shutdown. The same delay before a hearing is held would apply to an emergency shutdown ordered by FWS for some other reason.. Additionally, the maximum length of temporary closures and

restrictions(which do not require as much protections for the public as permanent closures) would be dramatically increased from one year to 5 years. Once a temporary closure is ordered, it could remain in effect for the full 5 years, without further review of whether it was needed.

How Amendments Could Affect Future Government Shutdown Procedures

User groups are concerned that any extension for the allowable length of emergency closures of Alaska's refuges could harm user groups in an even more significant fashion than occurred in October 2013. Because emergency closures do not require prior hearings or meeting with affected users, Alaska's refuges will now be subject to emergency closures that could last up to two months without any input from affected groups. This would be especially troubling in the event of a lengthy federal government shutdown. The State of Alaska and affected user groups should continue to be entitled to prior notice and public hearing regarding refuge closures in excess of 30 days.

U.S. Fish & Wildlife Service

National Wildlife Refuge

Search

Proposed Regulatory Changes

The U.S. Fish and Wildlife Service is considering amending regulations (under 50 CFR 36) to ensure that we are managing National Wildlife Refuges (refuges) in Alaska consistent with our mandates to conserve fish, wildlife and habitats in their natural diversity, and to ensure that biological integrity, biological diversity, and environmental health are maintained.

Over the last decade, the State of Alaska has allowed particular practices for the harvest of wildlife that are inconsistent with our Federal mandates for th administration of refuges in Alaska. Predator reduction activities that alter or manipulate the natural diversity of the landscape (e.g., artificially increasing decreasing wildlife populations to provide for more harvest opportunity) on refuges in Alaska, conflict with laws and policies that the USFWS is required t implement. The proposed regulatory changes we are considering would clarify allowable practices for the take of wildlife and closures and restrictions procedures on refuges in Alaska to ensure consistency with existing Federal law and to more effectively engage the public.

These proposed regulatory changes would not change Federal subsistence regulations (36 CFR 242 and 50 CFR § 100) or restrict taking of fish or wildlife under Federal subsistence regulations. Under ANILCA, all refuges in Alaska (except the Kenai refuge) have a purpose to provide the opportunity for continued subsistence use by local rural residents, as long as this use is not in conflict with the conservation of fish and wildlife populations and habitats their natural diversity or in conflict with fulfilling the international treaty obligations of the United States with respect to fish and wildlife and their habitats. We continue to recognize subsistence uses of fish and wildlife and other renewable resources as priority consumptive uses on Refuges in Alaska.

The changes we are considering would:

- **Prohibit predator reduction activities that alter or manipulate the natural diversity of species populations or habitats (e.g., artificially increasing or decreasing wildlife populations to provide for more harvest opportunity) on refuges in Alaska**
- **Prohibit the following methods and means for hunting and trapping on National Wildlife Refuges in Alaska under state regulations:**
  - take of bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary an traditional use activities at a den site October 15 – April 30 in specific game management units in accordance with State law)
  - take of brown bears over bait;
  - take of bears using traps or snares;

- take of wolves and coyotes during the spring and summer denning season;
- engaging in trapping activities as the employee of another person, and
- taking bears, wolves, or wolverines from an aircraft or on the same day as air travel has occurred.

- **Update the procedures for closures and restrictions on refuges in Alaska to make them more consistent with other Federal regulations a more effectively engage the public.**

Current Procedures	Proposed Procedures
Criteria used to determine whether to close an area or restrict an activity	
50 CFR 36.42(b) sets forth the criteria the Refuge Manager uses to determine whether to close an area or restrict an activity otherwise allowed.	Proposed 50 CFR 36.42(b) retains the current list of criteria and adds that protecting the biological integrity, biological diversity, and environmental health of the refuge is an appropriate reason for a closure or restriction.
Public notice	
Newspaper, radio, and signs are the primary methods of notifying the public of closures or restrictions.	Any combination of the following may be used: the Internet, newspaper, radio, signs or other methods to notify the public of closures or restrictio
Emergency closures or restrictions	
Duration: 30 days; no extensions. **Fish- and wildlife-related:** The emergency closure is effective upon notice and subsequent hearing.	**Duration:** 60 days; extensions beyond 60 days subject to nonemergenc procedures. **Fish- and wildlife-related:** The emergency closure would be effective upon notice posted on the Internet, published in the newspaper, broadca on the radio, and/or posted on local signs.
Other closures and restrictions	
Duration: Temporary closures cannot exceed 12 months (no extensions). Permanent closures do not expire. **Fish- and wildlife-related:** Prior to adopting a temporary closure or restriction, we require: • Consultation with the State and representatives of affected user groups, and • Notice and hearing in the vicinity of the area directly affected. A permanent closure or restriction requires the steps outlined above for a temporary closure or restriction, as well as publication in the Federal Register.	**Duration:** Non-emergency temporary closures would last for the minimu time necessary, not to exceed 5 years. Closures lasting for a period of 5 years or more are subject to permanent closure requirements and will be published in the Federal Register and Code of Federal Regulations at 50 CFR 36. **Fish- and wildlife-related:** Prior to adopting a nonemergency closure or restriction, we would require: • Consultation with the State and affected Tribes and Native Corporations, and • Opportunity for public comment or meeting in area directly affected.

Questions and Answers on Proposed Regulatory Changes for Sport Hunting and Trapping, Public Use, and Closures and Restrictions on Alaska Nation Wildlife Refuges.

For more information, contact Heather Abbey Tonneson with the National Wildlife Refuge System at 907-786-3872.

Last updated: December 19. 2014

Proposed Regulatory Changes

Brown bear sow with cub at sunrise in Kodiak
Photo Credit Lisa Hupp/USFWS

National Wildlife Refuges (refuges) in Alaska are mandated to conserve species and habitats in their natural diversity and ensure that the biological integrity, diversity, and environmental health of the National Wildlife Refuge System are maintained for the continuing benefit of present and future generations of Americans. The U.S. Fish and Wildlife Service (USFWS) is considering amending regulations governing administration of Alaska refuges (under 50 CFR 36) to ensure that we are managing Alaska refuges in accordance with our mandates; to increase consistency with other Federal laws, regulations, and policies; and to more effectively engage the public.

Over the last decade, the State of Alaska has allowed particular practices for the harvest of predators that are inconsistent with our Federal mandates fo the administration of refuges in Alaska. Predator reduction activities with the intent or potential to alter or manipulate natural diversity, biological integrity, environmental health on refuges in Alaska conflict with laws and policies that the USFWS is required to follow. The proposed regulatory changes we are considering would clarify allowable practices for the take of wildlife on refuges in Alaska, as well as update existing Alaska refuge regulations for closure and restrictions.

We recognize the importance of the fish, wildlife and other natural resources in the lives and cultures of Alaska Native peoples and in the lives of all rural Alaskans. These proposed regulatory changes would not change Federal subsistence regulations (36 CFR 242 and 50 CFR§ 100) or restrict taking of fish wildlife under Federal subsistence regulations. The Alaska National Interest Lands Conservation Act (ANILCA) provides a priority to rural Alaskans for th nonwasteful taking of fish and wildlife for subsistence uses on refuges in Alaska. Under ANILCA all refuges in Alaska (except the Kenai Refuge) also ha a purpose to provide the opportunity for continued subsistence use by rural residents, as long as this use is not in conflict with refuge purposes to conse fish and wildlife populations and habitats in their natural diversity or fulfill international treaty obligations of the United States.

The changes we are considering would:

- Clarify existing Federal mandates for conserving the natural diversity, biological integrity, and environmental health on refuges in Alaska in relatio predator harvest. Predator reduction activities with the intent or potential to alter or manipulate the natural diversity of species populations or habit (e.g., artificially increasing or decreasing wildlife populations to provide for more harvest opportunity) would be prohibited on refuges in Alaska.

- Prohibit the following methods and means for predator harvest on refuges in Alaska (would not apply to the taking of fish or wildlife under Federal subsistence regulations):
    - take of bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary an traditional use activities at a den site October 15 – April 30 in specific game management units in ccordance with State law)
    - take of brown bears over bait;
    - take of bears using traps or snares;
    - take of wolves and coyotes during the spring and summer denning season;
    - engagement in trapping activities as the employee of another person, and
    - take of bears from an aircraft or on the same day as air travel has occurred. Note: take of wolves or wolverines from an aircraft or on the same day as air travel has occurred is already prohibited under current refuge regulations.
- Update the Public Participation and Closure Procedures to make them more consistent with other Federal regulations and more effectively engage the public. The following table summarizes portions of the current regulations and potential updates we are considering.

Public Participation and Closure Procedures

Current	Potential Updates
Authority	
Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.	No updates being considered
Criteria (50 CFR 36.42(b))	
Criteria includes: public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with refuge purposes.	Add conserving the natural diversity, biological integrity, and environmental health of the refuge to the current list of criteria.
Emergency closures or restrictions (50 CFR 36.42(c))	
Emergency closure may not exceed 30 days.	Increase the period from 30 to 60 days, with extensions beyond 60 days being subject to nonemergency closure procedures (i.e. temporary or permanent).
Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing.	Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see bel for details).
Temporary closures or restrictions (50 CFR 36.42(d))	
May extend only for as long as necessary to achieve the purpose of the closure or restriction, not to exceed or be extended beyond 12 months.	May extend only for as long as necessary to achieve the purpose of the closure or restriction, May not exceed or be extended beyond 5 years; In most cases, extensions beyond 5 years would be subject to revised permanent closure requirements, including publication in the Federal Register and Code of Federal Regulations at 5 CFR 36.
Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife effective upon notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate	Closure subject to notice procedures as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment or a public meeting in the affected area.

	Permanent closures or restrictions (50 CFR 36.42(e)) No time
Permanent closures or restrictions (50 CFR 36.42(e))	
No time limit. Closure effective after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.	No time limit. Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment or a public meeting in the affected area. Closures would continue to be published in the Federal Register. Permanent closures that will result in a significant alteration in the public use pattern; adversely affect the natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area would be published in the Code of Federal Regulations under 50 CFR 36.
Notice (50 CFR 36.42(f))	
Notice is to be provided through newspapers, signs, and radio.	Add the use of the Internet or other available methods, in addition to continuing to use the more traditional methods of newspapers, signs, and radio.

Questions and Answers on Proposed Regulatory Changes for Sport Hunting and Trapping, Public Use, and Closures and Restrictions on Alaska Nation Wildlife Refuges.

For more information, contact Heather Abbey Tonneson with the National Wildlife Refuge System at 907-786-3872.

Last updated: January 13, 2015

Code of Federal Regulations
Title 50. Wildlife and Fisheries
Chapter I. United States Fish and Wildlife Service, Department of the Interior
Subchapter C. The National Wildlife Refuge System
Part 36. Alaska National Wildlife Refuges (Refs & Annos)
Subpart F. Permits and Public Participation and Closure Procedures (Refs & Annos)

50 C.F.R. § 36.42

§ 36.42 Public participation and closure procedures.

Currentness

(a) Authority. The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) Criteria. In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(c) Emergency closures or restrictions.

(1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing;

(2) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing;

(3) Other emergency closures or restrictions shall become effective upon notice as prescribed in § 36.42(f); and

(4) No emergency closure or restriction shall be for a period exceeding 30 days.

(d) Temporary closures or restrictions.

(1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or nonmotorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate:

(2) Other temporary closures shall be effective upon notice as prescribed in § 36.42(f);

(3) Temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) Permanent closures or restrictions. Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

(f) Notice. Emergency, temporary or permanent closures or restrictions shall be

(1) Published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or

(2) Designated by the posting of appropriate signs; or

(3) Both.

(g) Openings. In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provision of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

SOURCE: 46 FR 31827, June 17, 1981; 51 FR 31629, Sept. 4, 1986; 51 FR 32332, Sept. 11, 1986; 64 FR 14151, March 24, 1999; 75 FR 16639, April 1, 2010, unless otherwise noted.

AUTHORITY: 16 U.S.C. 460(k) et seq., 668dd–668ee, 3101 et seq.

Current through Jan. 22, 2015; 80 FR 3181.

End of Document

Code of Federal Regulations
Title 50. Wildlife and Fisheries
Chapter I. United States Fish and Wildlife Service, Department of the Interior
Subchapter C. The National Wildlife Refuge System
Part 36. Alaska National Wildlife Refuges (Refs & Annos)
Subpart B. Subsistence Uses

50 C.F.R. § 36.16

§ 36.16 Closure to subsistence uses of fish and wildlife.

Currentness

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall means only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall not exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

SOURCE: 46 FR 31827, June 17, 1981; 51 FR 31629, Sept. 4, 1986; 51 FR 32332, Sept. 11, 1986; 64 FR 14151, March 24, 1999; 75 FR 16639, April 1, 2010, unless otherwise noted.

AUTHORITY: 16 U.S.C. 460(k) et seq., 668dd–668ee, 3101 et seq.

Current through Jan. 22, 2015; 80 FR 3181.

End of Document

ALASKA
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Joel Hard
Deputy Regional Director
National Park Service
Alaska Regional Office
240 West 5th Avenue
Anchorage, AK 99501

November 25, 2014

Dear Mr. Hard:

I am writing to express the Alaska Professional Hunters Association's (APHA's) opposition to the National Park Service rule proposed September 4, 2014 regarding hunting on national preserves in Alaska. 79 Fed.Reg. 52595, RIN 1024-AE21.

I have enclosed detailed objections prepared by APHA's attorneys at the firm Birch, Horton, Bittner, and Cherot.

Thank you for your consideration.

Sincerely,

Sam Rohrer

Sam Rohrer
President,
Alaska Professional Hunters Association

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November 25, 2014

Submitted electronically to www.regulations.gov

Joel Hard
Deputy Regional Director
National Park Service
Alaska Regional Office
240 West 5th Avenue
Anchorage, AK 99501

Re: Comments on Proposed Rule – Hunting on National Preserves
79 Fed.Reg. 52595; RIN 1024-AE21

Dear Mr. Hard:

On behalf of this law firm's client Alaska Professional Hunters Association (APHA), I am writing to detail the reasons for APHA's opposition to the rule the National Park Service proposed on September 4, 2014 regarding hunting on national preserves in Alaska. 79 Fed.Reg. 52595. APHA members are among the world's most experienced hunting guides. They provide a public service by assisting the public in attaining a safe and enjoyable experience hunting in the wilds of Alaska, including on public lands where allowed by applicable law.

1. Objection to NPS Proposal to Eliminate User Groups from Consultation Process

APHA strongly objects to your proposal to remove user groups from the consultation that must accompany any closures or restrictions. The proposed rule explains that NPS will be reducing in-person meetings in favor of increased internet outreach. APHA certainly supports the attempt to adopt modern practices. APHA is concerned, however, that an overreliance on internet outreach will lead to the voices of Alaskans who actually hunt or guide hunts on the National Preserves in Alaska being drowned out by special interest groups outside Alaska.

More alarmingly, the proposed rule inexplicably proposes striking consultation with affected user groups from the procedures that must precede imposition of closures or restrictions. It appears from the rule that you intend to eliminate the existing requirement in 36 C.F.R. § 13.40(e) that says closures and restrictions can take effect only after NPS has consulted with "representatives of affected users." There is no justification for eliminating this consultation requirement. Closures can have enormous negative consequences for APHA members, and a pre-closure consultation can have value for both NPS and those who frequent the preserves.

In short, NPS should not make the existing inclusive consultation process less inclusive. NPS should adhere to its current rule in which users groups are consulted, and should not modify its rules to exclude user groups from the consultation process.

2. Objection to Proposed Preemption of State Wildlife Regulation

Your proposal would illogically and quite possibly illegally preempt state authority under the Alaska National Interest Lands Conservation Act (ANILCA) to regulate the taking of resident wildlife. We urge you to rescind the portions of the rule that encroach on Alaska's state rights and reduce public participation.

APHA is committed to hunting in accordance with ethical fair chase and conservation of wildlife principles. To these ends, we have a long history of effective cooperation with both the National Park Service (NPS) and the Alaska Department of Fish and Game (ADFG). We believe in the state's primacy regarding the management of resident fish and wildlife, including the promulgation of hunting-related regulations. We also recognize the land-management authorities conferred to NPS.

Your proposed rule represents a departure from settled law on state primacy. Since the founding of our country, states have been vested with the primary authority over resident species of fish and wildlife. This authority has been a critical element of state sovereignty in our federal system. State primacy over resident species extends onto federal land, with a few limited exceptions, such as federal reserves created before statehood.

This delineation of the respective spheres of authority was carefully preserved in Alaska by two federal statutory enactments. First, the 1958 Alaska Statehood Act provided for transfer of authority over fish and wildlife from the federal territory to the new State.[1] The State acquired authority for "the administration, management, and conservation" of the "fish and wildlife resources of Alaska."[2] This is the same sovereign authority over resident fish and wildlife enjoyed by the other states that preceded Alaska into the Union.

Congress later exercised care to protect State the "status quo" state authority when creating a vast network of federal reserves with passage in 1980 of Alaska National Interest Lands Conservation Act (ANILCA).[3] ANILCA specifically provided that "the taking of fish and wildlife for sport purposes....shall be allowed in a national preserve under applicable State and Federal law and regulation."[4] ANILCA limited the scope of federal involvement to protecting habitat.[5] More specifically, the law grants NPS the authority to designate zones and periods where no hunting or

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[1] P.L. 85-509 § 6(e).
[2] *Id.*
[3] Senate Report No. 96-413 § 1314 (saying ANILCA "preserves the status quo with regard to the responsibility and authority of the State to manage fish and wildlife").
[4] P.L. 96-487 § 1313. The Senate report confirms our reading of this language by saying that § 1313 intends to protect "all forms of hunting," including "guided hunting."
[5] Senate Report § 1314 (saying ANILCA "confirms the status quo with regard to the authority of the Secretary to manage the wildlife habitat on Federal lands.").

fishing may occur, but these NPS restrictions are only allowed for "public safety, administration, floral and faunal protection, or public use and enjoyment."[6] It is doubtful that any of these reasons would support the current proposal. State regulation of the means and manner of hunting (the topic of this rulemaking) may implicate different competing views on what is ethical hunting and fair chase, but such state regulations do not generally implicate the areas of public safety, administration, floral and faunal protection, or public use and enjoyment in which there is a federal role under ANICLA, and so cannot be preempted by the NPS on National Preserves.

Thus, NPS does not have authorization to regulate particular means, methods, and seasons for the take of particular species. Further, because ANILCA specifies that hunting must occur under "applicable State and Federal law," and there is no generally applicable federal law regulating the means and manner of hunting, NPS must allow state law to apply, except in the limited circumstances where ANICLA allows federal administrative action under ANILCA to take precedence. By banning specific practices in your proposed rule that are expressly authorized by State law, the NPS would diminish Alaska's rights that were protected in the Statehood Act and ANILCA. The proposed rule is incorrect in arguing that various Congressional statements and reports support the proposed action. The role of state law is preserved in the statutory text, which governs.

APHA is particularly concerned about your proposed restrictions regarding the taking of wolves and coyotes at certain times. These specific proposed restrictions would be an unauthorized encroachment on Alaska's primary authority to set species-particular methods, means, and seasons for the taking of resident wildlife. The proposed rule calls year-round wolf and coyote hunting "predator harvest," but offers no justification for this classification. Surely you are aware that the ADFG disagrees with this characterization.[7] By overruling Alaska's determination, NPS is second guessing the State in a way that is not permitted by law.

3. Conclusion

APHA asks NPS to rescind the portions of the proposed rule that encroach on Alaska's primacy over wildlife and block stakeholder involvement. Thank you for your consideration.

Regards,

BIRCH HORTON BITTNER AND CHEROT, P.C.

James H. Lister
Zachary D. Olson

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[6] P.L. 96-487 § 1314.

[7] *Vincent-Lang: Pre-empted Alaska hunting regulations are not 'predator control,'* Alaska Dispatch News, September 20, 2014. Available online at http://www.adn.com/article/20140920/vincent-lang-pre-empted-alaska-hunting-regulations-are-not-predator-control.

cc:

The Honorable Lisa Murkowski
The Honorable Mark Begich
The Honorable Don Young
Sam Rohrer (President, APHA)
William P. Horn (BHBC)

Objectives

These specific objectives are intended to help meet the broad management goals of this plan listed in the previous section. It is understood that some objectives conflict and must be considered simultaneously.

1. Minimize the influence of harvest on Dall's sheep population trends.
2. Minimize the effects of harvest on the sex/age structure of the population.
3. Minimize the effects of harvest on the long-term genetic structure and diversity of the population.
4. Maximize subsistence harvest opportunity over the long-term.
5. Minimize complexity of hunting regulations.
6. Maximize sport hunting opportunity over the long-term, so long as it conforms to the other objectives.
7. Maximize opportunity for solitude.

Current State of Knowledge

Population Overview

Dall's sheep populations in the Brooks Range are at the northernmost limit of their range. The highest recorded sheep numbers in GAAR were from the earliest comprehensive surveys in the early 1980's. Helicopter minimum counts were conducted from 1982-1984 across most available sheep habitat in GAAR. Those data, plus count data from fixed-wing aircraft in 1974 and 1976 in southern GAAR, indicated that there were 10,939 Dall's sheep in GAAR in the early 1980s (Singer 1984). Although no formal large-scale surveys were conducted in the late 1980s and early 1990s, population declines were observed across the region following winters with icing events and higher than average snowfall (Whitten 1997, Shults 2004). Two localized areas were surveyed using minimum count methods in 1987 near Anaktuvuk Pass (Adams 1988). In 1996, a larger area around Anaktuvuk Pass, including the Itkillik subarea (referred to here collectively as the 'Anaktuvuk-Itkillik area', FIGURE 1), was surveyed using double sampling methods (Whitten 1997, Brubaker and Whitten 1998). From 1998-2002 surveys were conducted directly west and south of Anaktuvuk Pass as part of a sheep collaring project (Lawler 2004). In 2005 the Dall's sheep vital sign was established as part of the Arctic Network Inventory and Monitoring Network Program (ARCN; Lawler et al. 2009). From 2005-2007, stratified random sampling using minimum count methods were attempted in GAAR (NPS unpublished data). In 2008 the Itkillik subarea was surveyed using minimum count methods (Rattenbury and Lawler 2010). Surveys conducted between 2000 and 2009 in GAAR and the western Baird Mountains of Noatak National Preserve (NOAT; Shults 2004, NPS unpublished data) showed recovery of

How the Federal Government Got Control of **Alaska's** Guide Industry

1. Weight of History-freedom to move forward
2. Bill Horn's Timeline

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Outline of Comments/Statement Regarding Guide Regulations History
January 31, 2015

By: William P. Horn, Esq.

1. The State of Alaska regulated the establishment of guide area thru the 60's, 70's, and 80's.

2. Congress deferred to this State regulatory scheme when ANILCA was enacted in 1980. Specifically section 1307, which set forth various preferences for visitor services in the Park and Refuge units, exempted State regulated fishing and hunting guide services.

3. During the first 8 years of ANILCA implementation, the federal agencies deferred to the State guide area program and honored those State authorizations/permits to guide on federal land units.

4. In 1988, the Alaska Supreme Court declared unconstitutional the State guide area system as inconsistent with the Equal Use provisions. However, the decision outlined features, which if added to the guide area system, would make a guide area program constitutional. These included competition, reasonable time limits on permits, and State oversight of permit transfers.

5. New State legislation was drafted in 1989-1990 per the Court ruling but the legislation was not passed.

6. For three years there was a regulatory hiatus during which the State had no program and the federal agencies continued to wait for the State to act to fill the regulatory gap created by the 1988 ruling.

7. When it became evident that State action was not likely, the National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS) took regulatory steps to create a federally administered guide area program on NPS Preserve lands and FWS Refuge lands. These two federal programs were first implemented in 1993-94 and have been in force and effect over the subsequent 20 years to fill the regulatory gap created by State inaction.

8. During this 20 year period, BLM accepted the regulatory gap and took no steps to create a program comparable to those set up by NPS and FWS. That hiatus is likely to end as BLM now indicates it intends to set up a similar federal program absent action by the State to do likewise.

9. The expansion of federal authority over guide services in Alaska is the direct result of State inaction. Passage of a State program will likely stop BLM from setting another federal guide program. Passage of a State program will also enable the State to go to NPS and FWS and seek to re-establish the State primacy on federal lands that existed until 1993-94.

10. Continued inaction by the State will lead to yet another expansion of federal authority and likely cement the guide programs of NPS and FWS.

Owsichek v. State, Guide Licensing and Control Bd.
763 P.2d 488
Alaska,1988.
Oct 21, 1988

Term

763 P.2d 488

Supreme Court of Alaska.
Kenneth D. **OWSICHEK,** Appellant,
v.
STATE of Alaska, GUIDE LICENSING AND CONTROL BOARD, Appellee.
No. S-1650.
Oct. 21, 1988.
Rehearing Denied Dec. 5, 1988.

Charles E. Tulin, Anchorage, for appellant.
Michael G. Hotchkin and Sarah E. McCracken, Asst. Attys. Gen., Anchorage, Ronald W. Lorensen, Acting Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

We are called upon to decide whether two statutes, AS 08.54.040(a)(7) & .195, comport with article VIII, section 3 of the Alaska Constitution. These statutes authorize the Guide Licensing and Control Board to grant hunting guides "exclusive guide areas," geographic areas in which only the designated guide may lead hunts and from which all other guides are excluded. Licensed hunters, including other guides, may hunt recreationally in these areas, but only the holder of the exclusive guide area may lead hunts professionally.

I.

In 1973 the legislature created the Guide Licensing and Control Board ("GLCB" or "the Board"). Ch. 17, § 1, SLA 1973. This act set forth the composition, powers and duties of the Board, established guidelines for different classes of guide licenses, defined unlawful acts, and provided for the disciplining of guides. *Id.* It also authorized the Board generally to "regulate activity" of guides, AS 08.54.040(a)(3), and to adopt regulations "required by this chapter or reasonably necessary for its administration." *Id.* at 08.54.050. The legislative history reveals that the purposes of the act were "to protect fish and game management" and "to get competent people as guides in Alaska." Alaska Legislative Committee Minutes Microfiche No. 37, House Judiciary Committee, H.B. 1, at 20 (Feb. 2, 1973).

One of the first activities of the Board was to establish a scheme of "exclusive guide areas" (EGAs) and "joint use areas." Under this system, a guide would be able to register his camp and be entitled to exclusive guiding privileges in a designated area surrounding it. "Joint use areas" would be assigned where the areas used by two or more guides overlapped. [FN1] The Board first voted in April 1974 to implement this scheme for Game Management Units 16 and 20. [FN2] Shortly thereafter, in July 1974, the Board voted to extend the program to Unit 8 (Kodiak Island).

FN1. EGAs and joint use areas will be referred to collectively as EGAs.

FN2. The Board of Game has divided the state into twenty-six Game Management Units, primarily for purposes of establishing hunting seasons

and bag limits for different species. For these purposes, many Units are divided into several subunits with different applicable regulations. *See* AS 16.05.255; 5 AAC 78.001-.600, 80.001-.600, 83.001-.600, 86.001-.910, 88.001-.910. The Guide Licensing and Control Board has adopted these Units for purposes of licensing hunting guides. 12 AAC 38.200(b) (Eff. 6/28/74). Each licensed guide may be

certified to practice in up to three Units. 12 AAC 38.200(d) (Eff. 6/28/74). Unit 16 is in South Central Alaska, near Anchorage, and Unit 20 occupies a large part of Interior Alaska, including Fairbanks.

For the following year, the Board considered applications for EGAs but took no action. In July 1975, the Board granted dozens of exclusive and joint use areas in the three Units for which the regulation was passed. The Board further resolved at that time to extend the program to eleven more Units, including Unit 19. In January 1976, the Board voted to grant EGAs to qualified guides anywhere in the state. Applications were to be based on "occupancy, use, financial value, and such other qualifications as the Board may prescribe." The Board set a deadline of November 1, 1976, for receipt of applications for EGAs. The Board began granting EGAs in Units other than 8, 16 and 20 in December 1976, starting with Units 23-26. EGAs for other Units were granted gradually over the following months.

The Board conducted all of this activity without specific statutory authorization, relying only on the general grant of regulatory power in the 1973 legislation. In 1976 the legislature enacted AS 08.54.040(a)(8) (now AS 08.54.040(a)(7)), which authorized the Board to:

establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

Ch. 133, § 1, SLA 1976. This provision took effect January 1, 1977. *Id.* at § 5. The legislative history reveals that the intent of this section was to ratify the Board's EGA program. Transcript of Senate Resources Committee Hearing on S.B. 661, at 1, 14-15 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661, at 33-34 (April 27, 1976).

Finally, in 1986 the legislature enacted AS 08.54.195. [FN3] This statute for the first time imposed procedures and criteria on the Board with respect to the EGA program. This reform was enacted in response to a "sunset report" on the GLCB by the Division of Legislative Audit, which was harshly critical of the Board's implementation of the EGA program. [FN4] *See* Division of Legislative Audit, *A Performance Report on the Department of Commerce and Economic Development Guide Licensing and Control Board,* Audit Control No. 08.01253-86-R (Nov. 21, 1985).

FN3. Alaska Statute 08.54.195 provides:

Restricted guide areas. (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game populations in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract

for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value.

FN4. The 1986 legislation also modified AS 08.54.040(a)(8) in response to the sunset report. Specifically, the legislation (1) renumbered it subsection .040(a)(7), (2) required "an equitable, reasonable, *and consistent* procedure" (emphasized language added in 1986), and (3) provided that "preference *may* be given" to local resident guides (instead of *shall*). Ch. 71, § 6, SLA 1986.

II.

Kenneth D. Owsichek is a registered guide who was licensed to lead hunts in Game Management Units 17, 18 and 19 in February 1976. [FN5] He alleges that he had worked as an assistant guide in this area from 1972 to 1976. He claims that in January 1976, upon passing his guide license examination, he invested $300,000 to build a lodge and several cabins together with other facilities for a full-scale guiding operation on Lake Clark. He also claims to have spent $150,000 on four aircraft to fly in clients.

FN5. Units 17, 18 and 19 occupy a large area overlapping parts of Southwest, Western and Interior Alaska. *See* 5 AAC 83.005(d) (Eff. 7/5/85), 86.005(a) (Eff. 7/5/85), 88.005(b) (Eff. 7/5/85).

Owsichek's licensing and concurrent investments occurred at approximately the same time the GLCB decided to extend the EGA program on a statewide basis. [FN6] Accordingly, Owsichek submitted an application for EGAs in Units 17 and 19 before the November 1, 1976, deadline established by the Board. The Board considered applications for EGAs in Units 17 and 19 in its December 1977 meeting. Owsichek's application was denied on the ground that he had not submitted "evidence of contracts for guided hunts in the area for two of the five years preceding the application."

FN6. As discussed above, the Board had decided to grant EGAs in Unit 19 in July 1975, but did not vote to extend the program to the remainder of the state, including Units 17 and 18, until January 1976, the month Owsichek passed his guide licensing exam and allegedly began building his improvements.

Owsichek petitioned for review of this decision. In November 1978, the Attorney General's office found that, based on contracts submitted for hunts in 1976, 1977 and 1978, he was qualified to receive an EGA in Units 17 and 19, and recommended that the Board adopt this decision. In its December 1978 meeting, the Board resolved "that the portion of Mr. Owsichek's application that is not in conflict with presently granted gide [sic] areas be allowed. That no portion of the application that overlaps or is presently in joint use be granted." By letter dated February 5, 1979, the Board informed Owsichek of its decision and assigned him area 19:33, in Unit 19. Owsichek objected to this decision because he was unable to land his planes within the areas granted to him, rendering them "unhuntable."

On April 6, 1979, Owsichek filed a complaint in superior court challenging the Board's actions. His

amended complaint alleged that: (1) prior to January 1, 1977, the Board lacked authority to promulgate regulations creating EGAs; (2) the actions of the Board violated due process and equal protection under the federal and state constitutions; (3) the actions of the Board were an unconstitutional taking of property; (4) AS 08.54.040(a)(8) was an unconstitutional delegation of authority because of the lack of standards; (5) the statutes and regulations constituted an unlawful impairment of contracts under the Alaska Constitution; (6) the regulations did not comply with what standards existed in the statute; and (7) he suffered damages. By way of relief Owsichek sought a declaration that the Board's assigning of EGAs is unconstitutional and that he is entitled to recover damages against the state in an amount in excess of $100,000 as a consequence of the state's illegal and unconstitutional actions.

After considering the briefs and hearing oral arguments, [FN7] the superior court affirmed the actions of the Board, holding "that the Board did not commit any error or abuse of discretion, that its regulations comport with the governing statutes, and that no constitutional infirmity exists in the statutes, regulations or Board decision."

FN7. Before considering the case on the merits, the superior court had dismissed the action as an untimely appeal. This court reversed and remanded, holding that the claim for declaratory relief should have been treated as an independent action rather than an appeal, and that due to surprise and excusable neglect the time limit for appeals should have been relaxed as to the claims for damages and an injunction. *Owsichek v. State, Guide Licensing and Control Board*, 627 P.2d 616 (Alaska 1981).

This appeal followed. [FN8]

FN8. After the parties filed their initial briefs, we requested supplemental briefing on the question of whether AS 08.54.040(a)(7) and AS 08.54.195 violated article VIII, section 3, of the Alaska Constitution.

III.

A.

Owsichek argues that the EGA statutes and regulations violate the common use clause of the Alaska Constitution, which provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Const., art. VIII, § 3. The state argues that this clause is a broad grant of authority to the state to manage these resources, and that it places no limitations on this authority greater than those contained in other constitutional provisions, such as equal protection. [FN9]

FN9. The state also argues that Owsichek has no standing to challenge the system as it existed before January 1, 1977, when AS 08.54.040(a)(1)(7) went into effect, because the Board did not establish any EGAs in Owsichek's Units before that date. In light of our holding that Owsichek is not entitled to damages, *see infra* Part IV, we need not address this issue. The declaratory relief to which he is currently entitled is unaffected by the date on which he attained standing.

The state does not argue that Owsichek lacks standing under the common use clause. We note that we would reject such an argument. We believe that a professional hunting guide's "use" of the wildlife resource is sufficiently direct that he falls within the protection of the common use clause. *See infra* note 15.

We observe initially that, in guaranteeing people "common use" of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserving the resources that were respected by delegates to the constitutional convention. Questions presented by this case concern the type and extent of permissible regulation consistent with common use

This court has never considered these questions before. However, in four cases, we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public." [FN10] *Wernberg v. State,* 516 P.2d 1191, 1198-99 (Alaska 1973). Given the text of the common use clause, the same policy should apply to wildlife as well.

> FN10. Similarly, it has been stated:
>
> The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.
>
> *State v. Ostrosky,* 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

In *CWC Fisheries v. Bunker,* 755 P.2d 1115 (Alaska 1988), we addressed the question of whether a state tidelands grant included an exclusive right of fishery, or whether it was subject to a public trust easement. In holding the latter, we relied in part on the common use clause. While specifically declining to determine whether this clause imposed a higher duty than that imposed by common law public trust principles, *id.* at 1120 n. 10, we stated, "At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take an action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate." *Id.* at 1120.

In *State v. Ostrosky,* 667 P.2d 1184 (Alaska 1983), *appeal dismissed,* 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984), we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In *Ostrosky* we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

Id. at 1189. In *Ostrosky* we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. *Id.* at 1190.

In a subsequent limited entry fishing case, *Johns v. Commercial Fisheries Entry Comm'n,* 758 P.2d 1256 (Alaska 1988), we stated:

In *State v. Ostrosky,* 667 P.2d 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing sections 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Id. at 1266.

Since there is no constitutional amendment authorizing EGAs, we must in this case address a common use question similar to that which was not addressed in *Ostrosky.* We do so, however, in light of our observations in *Wernberg, CWC Fisheries, Ostrosky,* and *Johns* that the common use clause was intended to guarantee broad public access to natural resources.

B.

We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters. [FN11]

> FN11. Responding to a question about this provision on the floor of the convention, a member of the Resources Committee explained, "The language here has a lot of history behind it.... The language in this section harks back to the old tradition whereby wildlife in its natural state was in the presumed

ownership of the sovereign until reduced to possession." 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan. 18, 1956).

The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege [s]."

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. 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.* Rather rights to use are secured by the general laws of the state. In all English and American legal systems ownership of water cannot be asserted, rights acquire only to the *use* of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms" (emphasis added, except to "use"). Because an EGA is clearly a type of monopoly, "exclusive grant," or at least a "special privilege," this history strongly suggests that the statutes at issue here are unconstitutional. However, this history also states that "rights to use are secured by the general laws of the state," clearly giving the legislature some leeway in regulating use of the resources.

The state finds support for its position in a debate that occurred at the convention over registered trap lines. This debate is significant because, like EGAs, registered trap lines would allow a prior existing user to exclude newcomers from the privilege of harvesting the wildlife resource. On the floor of the convention, a delegate asked whether the common use clause would prohibit registered trap lines, and the spokesman for the Resources Committee responded that it would be "arguable." 4 Proceedings of the Alaska Constitutional Convention 2462-63 (Jan. 17, 1956). In response to this concern, the Resources Committee inserted language in the commentary to the common use clause authorizing registered trap lines: "This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, *or to registered trap lines if authorized by law.*" 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasized language added after first draft; *cf. id.* at 83 (Dec. 16, 1955)).

Resolution of the trap line issue begs the question in the instant case. One might argue that addition of the language excluding registered trap lines from the effect of the common use clause was intended to authorize the legislature to enact this type of regulation generally, and that the reasoning should extend to EGAs. However, the language in the commentary is highly specific, which more likely suggests that the common use clause would prohibit all similar regulation, with registered trap lines as a narrow exception in response to the political pressures of the moment.

[1] In a discussion about fishing in lakes, the Constitutional Convention underscored its intent that the public retain broad access to fish, wildlife and water resources, and that these resources not be the subject of private grants. In floor debates, a question arose about the status of a natural lake falling within the boundaries of someone's private property. The delegates agreed that the common use clause guaranteed the public's right to use the lake for fishing, although it did not authorize a trespass across the landowner's property to get to the lake. 4 Proceedings of the Alaska Constitutional Convention 2460 (Jan. 17, 1956). The Convention made it clear that only fish in small private ponds may be owned free of the public's right of access. *See id.* at 2460-61; 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956). This confirms the view of the common use clause and the public trust expressed in CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), holding that a grant of a fee interest in tidelands remains impressed with a public trust easement. It also reinforces our conclusion that grants of exclusive rights to harvest natural resources listed in the common use clause should be subjected to close scrutiny.

C.

[2] As we have noted, the drafters of the common use clause apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. A review of the history of wildlife law will therefore shed further light on the central issue in this case.

The Supreme Court traced the history of wildlife law from its roots in ancient Rome through its English common law development and transfer to this country in *Geer v. Connecticut*, 161 U.S. 519, 522-29, 16 S.Ct. 600, 601-04, 40 L.Ed. 793, 794-97 (1896). In that case, the Court affirmed the defendant's conviction, upholding a state statute forbidding transportation of certain game birds killed in Connecticut across state lines. The Court noted that in England, the right to hunt and fish "[was] vested in the King alone and from him derived to such of his subjects as [had] received the grants of a chase, a park, a free warren, or free fishery." *Id.* at 527, 16 S.Ct. at 603, 40 L.Ed. at 796 (quoting 2 W. Blackstone, *Commentaries* * 410). As a recent authority explains:

Stripped of its many formalities, the essential core of English wildlife law on the eve of the American Revolution was the complete authority of the king and Parliament to determine what rights others might have with respect to the taking of wildlife.

M. Bean, *The Evolution of National Wildlife Law* 12 (rev. ed. 1983).

The *Geer* court asserted that this authority to regulate taking of wildlife passed to the states upon separation from England. 161 U.S. at 528, 16 S.Ct. at 604, 40 L.Ed. at 796. However, unlike the authority vested in the King, the authority of the states, with their guarantees of democratic government, was not plenary.

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government *as a trust for the benefit of the people,* and not as a prerogative for the advantage of the government as distinct from the people, *or for the benefit of private individuals as distinguished from the public good.*

Id. at 529, 16 S.Ct. at 604, 40 L.Ed. at 797 (emphasis added). The Court held that the 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. [FN12] We have twice recognized this duty in our prior decisions. In *Metlakatla 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:

> FN12. 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 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 Steuart 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.

These migrating schools of fish, while in inland waters, are the property of the state, *held in trust for the benefit of all 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, 1003 (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 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 intended 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 public's [illegible]

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. 08-1305-88-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) (eff. 5/12/78, am. 10/15/82), the Board bases its decisions on use, occupancy and investment. [FN13] *See* 1987 Report at 9-10. Thus, the EGA program cannot be justified as a wildlife management tool like other restrictions on common use, such as hunting seasons and bag limits. [FN14]

FN13. Both the statute and the regulations require the Board also to consider "big game populations in the area." AS 08.54.195(b)(4); *see* 12 AAC 38.220(d)(1). The regulations make it clear that this is a secondary consideration. *Id.* Moreover, the context of this requirement in both the statute and the regulation suggests that it was enacted only to determine how many guides the game would support economically, not to benefit the game resource directly. Finally, it is clear that the Board simply does not pay much attention to this criterion. A recent legislative report concluded, "Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process." 1987 Report at 10.

FN14. We acknowledge that the EGA program may facilitate wildlife management by giving each guide having an EGA an incentive to conserve wildlife. However, without a specific constitutional provision allowing EGAs, mere usefulness in wildlife management does not suffice to save the EGA program from unconstitutionality under the anti-monopolistic common use clause. In the analogous area of limited entry in commercial fisheries, one purpose of limited entry has always been conservation related. However, this was not sufficient to save precursors to the present limited entry system from findings of unconstitutionality prior to the constitutional amendment allowing limited entry. This history is detailed in *State v. Ostrosky*, 667 P.2d 1184, 1188, 1189 (Alaska 1983).

The state argues that EGAs do not deny Owsichek common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1121 n. 14 (Alaska 1988), we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use clause. [FN15] The common use clause makes no distinction between use for personal purposes and use for professional purposes. [FN16]

FN15. Admittedly, there is a difference between commercial fishermen and professional guides: a commercial fisherman takes his catch himself before selling it to others for consumption, while a hunting guide does not actually take the game, a privilege reserved for the client. We view this as an insignificant distinction that does not remove professional hunting guides from protection under the common use clause. The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause.

FN16. The right to lead hunts professionally is a significant one. Nonresidents of Alaska are required to hire a guide in order to hunt brown bear, polar bear, and sheep, AS 16.05.407, and nonresident aliens must hire a guide to hunt any big game. AS 16.05.408. Thus, the holder of an EGA has a monopoly over

this market, which is a substantial one in Alaska, for his geographic area.

Nothing in this opinion is intended to suggest that leases and exclusive concessions on state lands are unconstitutional. The statutes and regulations of the Department of Natural Resources authorize leases and concession contracts of limited duration, subject to competitive bidding procedures and valuable consideration. *See* AS 38.05.070-.075 (authorizing leases and setting forth procedures); AS 41.21.027 (authorizing concession contracts in state parks); 11 AAC 14.200-.260; 14:010-.130 (establishing procedures for awarding concession contracts); *see also Alyeska Ski Corp. v. Holdsworth*, 426 P.2d 1006, 1009-11 (Alaska 1967) (discussing procedures required by law for leasing of state lands); *CWC Fisheries v. Bunker*, 755 P.2d 1115, 1120-21 (Alaska 1988) (stating in dictum that shore fisheries leasing program would not violate public trust, in part because leases were of finite duration and required annual rental). In contrast, EGAs are not subject to competitive bidding, provide no remuneration to the state, are of unlimited duration, and are not subject to any other contractual terms or restrictions. Rather, as discussed above, they are granted essentially on the basis of seniority, with no rental or usage fee, for an unlimited duration, and are administered in such a way that guides may transfer them for a profit as if they owned them. In these respects the EGAs resemble the types of royal grants the common use clause expressly intended to prohibit. Leases and concession contracts do not share these characteristics.
For these reasons, we hold that AS 08.54.040(a)(7), AS 08.54.195, and the regulations of the Board permitting the assignment of exclusive guide areas are in contravention of article VIII, section 3 of the Alaska Constitution. [FN17] Accordingly, Owsichek is entitled to relief declaring the EGAs that have been granted by the Board to be without legal force. [FN18]

FN17. We note that EGAs may also violate article VIII, section 17. This section of Alaska's constitution provides:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

In *Gilman v. Martin*, 662 P.2d 120, 126 (Alaska 1983), we noted that this provision may require "more stringent review" of a statute than does the equal protection clause in cases involving natural resources. There is much less constitutional history of this clause than of the common use clause. The commentary states in full, "This section is intended to exclude any *especially privileged status* for any person in the use of natural resources subject to disposition by the state." 6 Proceedings of the Alaska Constitutional Convention app. V, at 99 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasis added). Because the parties have not briefed the issue and since we are able to decide the case on other grounds, we need not decide this question.

FN18. Our resolution of this issue makes it unnecessary for us to decide Owsichek's other challenges to the statutes and to the actions of the Board.

IV.

[3] In addition to declaratory relief, Owsichek seeks damages against the state. Because the superior court did not reach this issue, we would ordinarily remand for further proceedings. However, when an issue is raised in the trial court and is adequately briefed by all concerned parties on appeal, this court may consider it. *Mullen v. Christiansen*, 642 P.2d 1345, 1350-51 (Alaska 1982).
Owsichek bases his claim for damages on allegations that the Board acted without authority in enacting the EGA regulations initially and that the regulations failed to comply with the legislation that was later passed. [FN19] We need not decide whether these allegations are true. Even if the Board acted without authority or failed to comply with statutory standards, it is immune from suit under the discretionary function exception provided for in the Tort Claims Act, [FN20] as interpreted by our prior decisions.

FN19. Owsichek does not base his claim for damages on the legislature's enactment of an unconstitutional statute. We note that such a claim would fail under our holding in *Vest v. Schafer*, 757 P.2d 588, 598 (Alaska 1988), where we wrote, "[W]e do not believe it proper for the judiciary to assess damages against the State on the ground that the legislature enacted a law later held unconstitutional, in the absence of a statute allowing or requiring such damages."

FN20. Alaska Statute 09.50.250 provides in part:

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court.... However, no action may be brought under this section if the claim

(1) ... is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the
discretion involved is abused....

In at least two cases, we have held that acts of public officials who in good faith misinterpret the law and act in excess of their authority are immune from suit. *Earth Movers of Fairbanks, Inc. v. State*, 691 P.2d 281, 283-84 (Alaska 1984) (police officer lacked authority to temporarily reduce speed limit); *Bridges v. Alaska Housing Authority*, 375 P.2d 696, 698, 702 (Alaska 1962) (housing authority lacked power to use declaration of taking). We have also held that decisions involving the formulation of basic policy are entitled to immunity. *See Industrial Indemnity Co. v. State*, 669 P.2d 561, 563 (Alaska 1983).
The EGA program was a major policy initiative of the GLCB. Therefore, even if the Board acted in excess of its authority or failed to comply with the requirements of the statute, it is immune from suit under the discretionary function exception provided for in AS 09.50.250. Furthermore, there is no evidence that the Board acted in bad faith.

V.

[4] Owsichek argues that it was improper for the superior court to assess attorney's fees against him, on the ground that he is a public interest litigant. *See Southeast Alaska Conservation Council v. State*, 665 P.2d 544, 553-54 (Alaska 1983). Because the state is no longer the prevailing party, the fee award must be vacated and remanded for redetermination.
We note, however, that successful public interest litigants may be entitled to full attorney's fees. *City of Anchorage v. McCabe*, 568 P.2d 986, 993-94 (Alaska 1977). Thus, the question of whether Owsichek is a public interest litigant may be relevant on remand. Since the parties have fully briefed the issue, we will address it here. [FN21]

FN21. The parties' briefing assumes that the state was the prevailing party, which is no longer true. However, we have never distinguished between successful and unsuccessful parties in applying our standards for determining whether a party is a public interest litigant, and we see no reason to make such a distinction. Thus, the public interest analysis does not change if Owsichek, rather than the state, is viewed as the prevailing party.

We have consistently held that a party will not be deemed a public interest litigant where the party had sufficient economic incentive to bring the lawsuit without regard to the public interest. *E.g.*, *Rosen v. State Board of Public Accountancy*, 689 P.2d 478, 480 (Alaska 1984). As discussed above, Owsichek claims that the EGAs in his Units jeopardized the $450,000 he had invested in his guiding operation, and that he suffered over $100,000 in damages. This was clearly sufficient economic incentive to bring the suit. Therefore, we conclude that he is not a public interest litigant.
REVERSED AND REMANDED.
Alaska,1988.
Owsichek v. State, Guide Licensing and Control Bd.
763 P.2d 488

END OF DOCUMENT

Perspective-A Path Forward

1. APHA's continuing commitment
    a. What ever tools are available
2. Executive Branch
    a. Clarity of Commitment to the issue
3. With Permission-Recommendations for the Legislative body
    a. Finish Bill Horn's Timeline
    b. Step One: answer the question: Does the State have the legal authority to limit the number and type of guide operations on its land?

Alaska Statehood Act; July 7, 1958

An act to provide for the admission of the State of Alaska into the Union

SEC. 1.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, **"An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date"**, approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held an April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

SEC. 2.
The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

SEC. 3.
The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

SEC. 4.
As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is sub ject to disposition by the United States, and to any lands or other property, (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute juris diction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation.

SEC. 5.
The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

SEC. 6.
(a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose

whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: And provided further, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U. S. C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U. S. C., secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U. S. C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: Provided, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: Provided, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937, as amended (16 U. S. C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U. S. C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U. S. C., secs. 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U. S. C., sec. 772 et seq.).

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181 and following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U. S. C., sec. 432 and following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless such lease, permit, license, or contract is in effect on the date of appproval of this Act, and unless an application to select such lands is filed with the Secretary of the Interior within a period of five years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act, and shall include the entire area that is subject to each lease, permit, license, or contract involved in the selections. Any patent for lands so selected shall vest in the State of Alaska all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract: Provided, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings

instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C, sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U. S. C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U. S. C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U. S. C., secs. 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eightythird Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

SEC. 7.
Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers so elected shall in any event include two Senators and one Representative in Congress.

SEC. 8.
(a) The proclamation of the Governor of Alaska required by section 7 shall provide for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: Provided, That the general election shall not be held later than December 1, 1958, and at such elections the officers required to be elected as provided in section 7 shall be, and officers for other elective offices provided for in the constitution of the proposed State of Alaska may be, chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Alaska for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Alaska may prescribe. The Governor of Alaska shall certify the results of said elections to the President of the United States.

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions: "(1) Shall Alaska immediately be admitted into the Union as a State? "(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved _____ (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States. "(3) All provisions of the Act of Congress approved _____ (date of approval) reserving rights or powers to the United States, as well as of this Act those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people." In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective. The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said propositions to the people. The return of the votes cast on said propositions shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act. Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are

not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

SEC. 9.
The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law: Provided, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U. S. C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

SEC. 10.
(a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: Provided, however, That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: And provided further, That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law: (1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals. (2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States. (3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: Provided, however, That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States. (4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners. (5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the State or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section. (6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize. (7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

SEC. 11.
(a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State, but outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set

forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: Provided, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

SEC. 12.
Effective upon the admission of Alaska into the Union
(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows: "81A Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows: "(section) 81A. Alaska "Alaska constitutes one judicial district. "Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,": Provided, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

(i) Section 3241 of title 18, United States Code, is amended by striking out the words: "District Court for the Territory of Alaska, the";

(j) Subsection (e) of section 3401 of title 18, United States Code, is amended by striking out the words: "for Alaska or";

(k) Section 3771 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(l) Section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska," ;

(m) Section 2072 of title 28, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "and of the District Court for the Territory of Alaska";

(n) Subsection (q) of section 376 of title 28, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska,": Provided, That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

(o) The last paragraph of section 1963 of title 28, United States Code, is repealed;

(p) Section 2201 of title 28, United States Code, is amended by striking out the words: "and the District Court for the Territory of Alaska"; and

(q) Section 4 of the Act of July 28, 1950 (64 Stat. 380; 5 U. S. C., sec. 341b) is amended by striking out the word: "Alaska,".

SEC. 13.
No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided. All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses

as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

SEC. 14.
All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: Provided, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

SEC. 15.
All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

SEC. 16.
Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

SEC. 17.
All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

SEC. 18.
The provisions of the preceding sections with respect to the termination of the Jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

SEC. 19.
The first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) is amended by striking out the last sentence thereof and inserting in lieu of such sentence the following: "When the State of Alaska is hereafter admitted to the Union the Federal Reserve districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this Act and shall thereupon be an insured bank under the Federal Deposit Insurance Act, and failure to do so shall subject such bank to the penalty provided by the sixth paragraph of this section."

SEC. 20.
Section 2 of the Act of October 20, 1914 (38 Stat. 742; 48 U. S. C., sec. 433), is hereby repealed.

SEC. 21.
Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law of the United States or under any treaty to which the United States may have been a party.

SEC. 22.
Section 101 (a) (36) of the Immigration and Nationality Act (66 Stat. 170, 8 U. S. C., sec. 1101 (a) (36)) is amended by deleting the word "Alaska,".

SEC. 23.
The first sentence of section 212 (d) (7) of the Immigration and Nationality Act (66 Stat. 188, 8 U. S. C., sec. 1182 (d) (7)) is amended by deleting the word "Alaska,".

SEC. 24.
Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 304 of the Immigration and Nationality Act (66 Stat. 237, 8 U. S. C., sec. 1404).

SEC. 25.
The first sentence of section 310 (a) of the Immigration and Nationality Act (66 Stat. 239, 8 U. S. C., sec. 1421 (a)) is amended by deleting the words "District Courts of the United States for the Territories of Hawaii and Alaska" and substituting therefor the words "District Court of the United States for the Territory of Hawaii".

SEC. 26.
Section 344 (d) of the Immigration and Nationality Act. (66 Stat. 265, 8 U. S. C., sec. 1455 (d)) is amended by deleting the words "in Alaska and".

SEC. 27.
(a) The third proviso in section 27 of the Merchant Marine Act, 1920, as amended (46 U. S. C., sec. 883), is further amended by striking out the word "excluding" and inserting in lieu thereof the word "including".

(b) Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

SEC. 28.
(a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U. S. C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

SEC. 29.
If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby.

SEC. 30.
All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved July 7, 1958.

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