

ALASKA LEGISLATIVE COMMITTEE FILES 1983-1984 86 / 2

2847 SRES SB 280 - SB 289

has issued its decision in Zobel III, ____ U.S. ____, 72 L. Ed. 2d 672 (1982). Zobel III so obviously calls into question the constitutionality of reducing the price in the sale of government lands based on length of residence, we have chosen to address the issue in this case. See Wright v. Vickaryous, 598 P.2d 490, 499 (Alaska 1979) ("This court . . . may notice a claim not raised below to prevent a miscarriage of justice."). Accordingly, we requested the parties to file supplemental briefs discussing the impact of Zobel III on this case. We also invited the state to file a brief as amicus curiae because the Alaska Land Act, AS 38.05.005 - .370, contains a similar provision granting discounts based on length of residency.⁹

9. AS 38.05.058(a) provides:

The commissioner shall grant to eligible persons a discount on the purchase price of land sold which is classified for any use other than commercial or industrial under AS 38.05.005 -- 38.05.270 at the rate of five per cent of the purchase price of the land purchased for each full year that the purchaser is a resident of the state. A discount granted under this section may not exceed 50 per cent of the total purchase price of the land or a value of \$25,000, whichever amount is less, except that an eligible veteran is entitled to receive a discount under this section which may not exceed 75 per cent of the total purchase price of the land or \$37,500, whichever amount is less. A discount may be used by an eligible veteran to purchase land offered at a restricted sale under AS 38.05.067.

In Zobel III, the United States Supreme Court held that the initial distribution plan for the permanent fund dividend program, AS 43.23.010, violated the equal protection clause of the fourteenth amendment because it did not rationally further any legitimate state purpose. We believe the same infirmity exists in the discount provisions of Ordinance 79-53.

The state correctly notes that the majority opinion in Zobel III only held that the retrospective award of payments, based on number of years of residence since statehood in 1959, was unconstitutional. The Court specifically stated, "We need not consider whether the State could enact the dividend program prospectively only." ____ U.S. at ____, 72 L. Ed. 2d at 680. The dicta in that opinion, however, and the concurring opinions of Justice Brennan (with whom three other justices joined) and Justice O'Connor strongly suggest that the Court would hold such a program unconstitutional if it were to decide the issue. In his concurring opinion, Justice Brennan states, "A scheme of the sort adopted by Alaska is inconsistent with the Federal structure even in its prospective operation." ____ U.S. at ____, 72 L. Ed. 2d at 682 (Brennan, J., concurring) (emphasis added). Justice O'Connor indicated that she believed the entire dividend program was unconstitutional because it violated the privileges and immunities clause of article IV

of the United States Constitution. ____ U.S. at ____, 72 L. Ed. 2d at 689, 691. (O'Connor, J., concurring). Thus, five justices -- a majority of the court -- indicated that they would hold even a prospective program unconstitutional.

The state contends that price discount programs are distinguishable from the permanent fund dividend disbursement program struck down in Zobel III because the discount programs do rationally further a legitimate government purpose; namely, inducing residents to remain in their communities and/or Alaska. The state suggests that there were initially two purposes sought to be fulfilled by price discount programs: first, rewarding residents for past contributions, and second, providing an incentive for residents to remain. The state concedes that in view of the holding in Zobel III -- that residents cannot be rewarded for past contributions measured simply by length of residence in the state -- the first purpose cannot be relied upon to justify the price discount programs. The state argues, however, that the second purpose -- inducing residents to remain -- is a legitimate government purpose and the price discount programs rationally further it. We cannot agree with this analysis.

It is undoubtedly true that some persons may remain in their community or in the state to take advantage

of the increasing discounts available to them in the purchase of government lands and thus the price discount programs do further the purpose of inducing residents to remain. This incentive, however, is produced by creating various classes of concededly bona fide residents, based on how long they have been in the state or in their community. We read Zobel III as prohibiting this.

As the state indicates, the Court in Zobel III struck down a program that created "fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." ____ U.S. at ____, 72 L. Ed. 2d at 677. There are only ten classes of residents created by the price discount provision of Ordinance 79-53, inasmuch as the maximum discount of fifty percent, granted at five percent per year, is reached upon ten years of residency in the Borough. Furthermore, the classes are not fixed or permanent because, after ten years, all residents receive the fifty percent discount and are thus treated equally. Ten years, however, is a substantial period of time for "some citizens [to be] more equal than others." ____ U.S. at ____, 72 L. Ed. 2d at 685 (Brennan, J., concurring). "[T]he Citizenship Clause of the Fourteenth Amendment expressly equates citizenship only with simple residence. That Clause does not provide for, and does not allow for,

degrees of citizenship based on length of residence. And the Equal Protection Clause would not tolerate such distinctions." ____ U.S. at ____, 72 L. Ed. 2d at 683-84 (footnotes omitted).

To the extent that discounts are granted for years of residence completed prior to the enactment of the ordinance, it is not even a close question that Ordinance 79-53 is unconstitutional. Paraphrasing the Court in Zobel III, "Assuming arguendo that granting [five percent discounts] for each year of continued [Borough] residence might give some residents an incentive to stay in the [Borough] in order to reap increased [five percent discounts] in the future, the [Borough's] interest is not in any way served by granting greater [discounts] to persons for their residence during the [ten] years prior to the enactment." ____ U.S. at ____, 72 L. Ed. 2d at 678-79 (footnote omitted). Thus, the avowed purpose of inducing residents to remain in the Kenai Peninsula Borough is not rationally furthered by granting price discounts to persons for their years of residence antedating the enactment of the ordinance.

We further hold that it is impermissible for the Borough to apply its price discount program prospectively, as well, because the program cannot be implemented without creating a multitude of classes of residents that receive a benefit correlating to their length of residence. With

respect to the purchase price of government lands, no legitimate interest justifies the disparate treatment of bona fide residents based solely upon the length of their residence.¹⁰ We accordingly hold that the provision of Ordinance 79-53 granting reductions in the purchase price of Borough lands based upon length of residence is unconstitutional as violating the equal protection clauses of the United States and Alaska Constitutions.¹¹

AFFIRMED in part and MODIFIED in part.

10. Even if discounts were granted for a shorter period of time than ten years, which would result in less than a "multitude of classes of residents," we would closely scrutinize the discount program to determine that it was not in fact created for the impermissible purpose of granting residents a reward, albeit in the future, for their past contributions to Alaska. See Zobel III, ___ U.S. at ___, 72 L. Ed. 2d at 679.

11. The constitutionality of AS 38.05.058(a), supra note 9, is not before this court and we thus cannot directly consider the issue. The fact that the state discount program has been in operation since 1978 may or may not raise special considerations that are not before the court in this case.

RABINOWITZ, Justice, concurring.

I disagree with that portion of the court's opinion which holds that the Kenai land lottery ordinance is not "unlawful gambling" in violation of AS 11.66.200.

First, I think it clear that the Kenai lottery falls within the definition of "gambling" supplied in AS 11.66.280(2).¹ In State v. Pinball Machines, 404 P.2d 923, 925 (Alaska 1965), we held that "the essential elements of gambling are price, chance, and prize. Thus, one gambles when he pays a price for a chance to obtain a prize." (Footnote omitted.) There is no requirement that the value placed at risk be refundable, as the majority suggests in footnote 1 of the opinion. The interpretation offered by the majority would allow any form of gambling where the initial stake is not returned to the winner.

Second, I construe AS 11.66.200 as precluding municipal governments from legalizing gambling within their jurisdictions. The court correctly notes that this statute does not reach forms of gambling "specifically authorized by law." See AS 11.66.280(11). The purpose of this exception

1. AS 11.66.280(2) provides in part that

"gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome . . .

was to avoid conflicts between the anti-gambling law and other state statutes authorizing certain games of chance which otherwise would fall within the gambling prohibition.² See AS 05.15.100. There is simply no trace within the legislative history of an intent to delegate to municipalities the power to authorize gambling.

2. This view is supported by the legislatively adopted commentary to the criminal code:

The definition of "unlawful" [§ 11.66.280 (11)] provides that no gambling practice is lawful unless it is specifically authorized by statute. See generally, AS 05.15 (Bingo, Raffles and Ice Pools).

1978 Alaska Senate Journal Supp. No. 47 at 114 (June 12, 1978), reprinted in Alaska Criminal Code Manual 3-266 (1980).

In addition to other statutes, the "authorized by law" language seems directed toward the gambling statute itself. AS 11.66.200(b) exempts "social game[s]," defined in AS 11.66.280(9), from prohibition. The official commentary notes that the exception for social games was one of the few significant reforms in gambling law made by the new code. 1978 Alaska Senate Journal Supp. No. 47 at 112, reprinted in Alaska Criminal Code Manual 3-265. Thus, even though the "friendly poker game" falls within the statutory definition of gambling, it is not "unlawful gambling" under 11.66.200(a), because it is authorized by law.



Official Business

Alaska State Legislature

Senate

Office of the President

MAY 4 - 1983

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: May 3, 1983

TO: Senator Bettye Fahrenkamp
Chair
Senate Resources Committee

FROM: Senator Jay Kerttula
Senate President

SUBJECT: Senate Bills 279 and 280

A handwritten signature in cursive script, appearing to read "Kerttula", is written over the "FROM" field of the memorandum.

Senate Bills 279 and 280, though introduced late in this session are very important pieces of legislation which should be dealt with before we adjourn.

SB 279 is a major priority of the United Fishermen of Alaska (UFA). It provides for the computing of the statewide average wholesale price paid for canned salmon. This bill was prepared in cooperation with representatives of the Pacific Seafood Processors Association and the UFA. All interests have made considerable compromise to reach this version that has been referred to the Senate Resources Committee.

SB 280 would restructure the discounts on the purchase price for land obtained in state land disposals. The discount program in the Statutes has been suspended by the Commissioner of the Department of Natural Resources because of a recent court challenge and striking of a similar program in the Kenai Peninsula Borough. It is hoped that this legislation will move quickly enough to enable recipients in the land disposals this year to take advantage of the new program.

I would greatly appreciate the Resources committee holding hearings on these important pieces of legislation so that the Senate might consider them before we adjourn.

Thank you very much.

JMK:rjr

Attachments

SB 280: BACKGROUND

This bill is envisioned to compensate for the suspension of the current discount program for state land disposals by the Commissioner of Natural Resources on April 1, 1983. The program was suspended based upon an Alaska Supreme Court decision, Gilman v. Martin, which held that retrospective residency requirements for land payment discounts in a Kenai Peninsula Borough Disposal were unconstitutional. The suspended state discount program is very similar to the program struck in Gilman. The striking of the plan by the court is similar to the permanent fund dividend distribution decision (Zobel III) by the U.S. Supreme Court.

There is a social benefit and a public interest in encouraging land holders to remain in the state. The discount program in SB 280 will serve this purpose. The new program which is neither a retrospective program as the suspended state discount was, nor a prospective one which the court also indicated they would strike down, sets the eligibility for discounts on the purchase price of land on year to year residence in the state during the payment period. Only the principle of the payments would be discounted, and only if the payment for that year is less than 10% of the total purchase price.

This is a difficult concept to put in words, so to clarify matters an example is given. If after signing a purchase contract for land under the state land disposal program, the purchaser remains in state for the year preceding an annual payment, he/she will be granted a 50% discount on the principle for that payment. If the following year the purchaser leaves the state, the payment for that year will have to be made in full. However, anytime upon returning to the State for the year preceding a payment, the payment of the principal is once again reduced by half. The discount in no way accumulates for each year of residence. If one is a resident in a given year, one's payment is discounted. If not, the payment is due in full.

People would have an incentive to pay off the land within ten years so the residency requirements would be met as soon as possible. It would, however, allow people who need to extend the payments out over 20 years, the means to do so, while continuing 50% per year on discounts, still giving them a total of a 50% discount if they were in the state for the full repayment period. In order to not preclude early payment (payments of more than 10% of the purchase price), a provision was included to allow a purchaser to expedite payments receiving the discount on only 10% of the purchase price initially, and then applying to the Department 11 years after the contract was signed for the annual 50% discount for each year of residence since the contract was signed. The 11 year requirement gives the purchaser one year after the minimum ten year residency has been fulfilled to claim the discount on the prepaid payments. This provision serves as a "statute of limitations" to streamline the bookkeeping in the Department of Natural Resources.

The bill retains the previous requirements for participation in the land disposal program that the participant be at least 18 years old and a one year resident of the state to participate. The bill also continues to limit the discount to once in a lifetime.

INTRODUCTION OF BILLS (Senate)

Waterfowl
Conservation
Stamps

SENATE BILL NO. 278, by Senators Rodey, Kerttula and Josephson. See HB 351, page 528, identical, with the exception of the effective date clause. The Senate version does not contain an effective date clause, and would become effective 90 days after the Governor signs it, whereas the House version provides for an immediate effective date.

Introduced April 26 and referred to Resources, Finance.

Wholesale
Canned Salmon
Prices
(reporting of)

SENATE BILL NO. 279, by Senators Kerttula, Eliason, Mulcahy and Rodey. See House Bill No. 381, page 644, identical.

Introduced April 26 and referred to Resources, Finance.

State Land
(discount
program)

SENATE BILL NO. 280, by Senator Kerttula. Proposes to rewrite the Land Discount Program (AS 38.05.058). Note: under current law persons are granted a discount on the purchase of land sold by the state that is classified for any use other than commercial or industrial, at the rate of five per cent of the purchase price of the land purchased for each full year that the purchaser is a resident of the state (i.e., five year residents would receive a discount of 25%). Discounts may not exceed 50% of the total purchase price of the land, or \$25,000, whichever amount is less, except that an eligible veteran is entitled to receive a discount which may not exceed 75% of the total purchase price or \$37,500, whichever amount is less. This program has been discontinued by regulation of the Dept. of Natural Resources, due to the residency question raised in the recent U.S. Supreme Court decision over the Permanent Fund dividends.

Under Senator Kerttula's bill the payment procedure for land discounts would be restructured. In order to be eligible for a discount of 50 percent on each payment a person must be a resident of the state for the year preceding the payment. Annual payments that exceed 10 percent of the purchase price are eligible for a discount within 11 years after the purchase (a person could therefore pay 10% a year over 10 years and receive the full 50% discount--if a person elected to pay 100% of the purchase price in one year, the discount would only be given on 10% of the purchase price, and the purchaser would receive the discount on the portion of the payment exceeding 10% upon request within 11 years after the purchase).

Rewrites subsection on residency requirements (AS 38.05.058(b)).
"(b) To be eligible for . . . discounted payments . . . , a person shall (1) have been physically present in the state for the 12-month period before the . . . date payment is due for the year . . . , except for brief intervals, military service, attendance at an educational or training institution or for absence for good cause; (2) maintain a proof residence in the state; . . . (4) not have claimed residence in any other state for any purpose during the 12-month period immediately before the date payment is due for the year . . . ; (5) show by all attending circumstance an intent to maintain residence in the state . . . ; and (6) have attained the age of 18 at the date of the sale." (deletes "(3) be registered to vote in the state;").

SB 280, (cont'd)

Amends AS 38.05.055 (Auction Sale Procedures) by deleting language allowing a purchaser to deposit five percent of the amount bid after deduction of the discount (see revision of discount program, above).

Amends AS 38.05.057 (Disposal of Land by Lottery) by adding language that states: "The commissioner shall consult with the assessor of a municipality before determining the purchase price for land that is located in the municipality and that is to be sold under this section." (current language provides: "Before the commissioner determines the purchase price for land which is located in a municipality and which is to be sold under this section, he shall consult with the assessor of the municipality.") Also deletes language from that section referring to the land discount program.

Introduced April 27 and referred to Resources, Finance

Energy
Development &
Conservation
(departmental
functions)

SENATE BILL NO. 281, by the Finance Committee. Relates to energy development and conservation functions of the Department of Commerce and Economic Development and the Department of Community and Regional Affairs. Under this bill:

Amends AS 44.47.050 (Department of Community and Regional Affairs. General Powers and Duties) by adding language stating the Department may "(1) plan, study, implement, and assist programs for energy development and energy conservation, including weatherization, to meet community and regional needs.

AS 44.33.030 - 44.33.060 is repealed (Section of Power Development in the Department of Commerce and Economic Development). Sections amended that relate to this repeal are:

--AS 43.20.037(d)(2)(K) (Alaska Net Income Tax Act. Trade or Business Energy Conservation Credit). As rewritten, "(d) In this section (2) 'energy conservation improvement' means (K) any other energy conservation device approved by the commissioner of community and regional affairs." (currently " . . . (K) any other energy-saving device approved by the commissioner of commerce and economic development under AS 44.33.040(12).") --subsection (12) states: "The section of power development shall. . . (12) by regulation (A) adopt or revise thermal and lighting energy standards applicable to buildings and structures, except for public facilities; (B) determine whether a device qualifies as an alternative energy system or an energy conservation improvement;"

--repeals AS 45.88.500(2)(C) (Alternative Technology and Energy Revolving Loan Fund. Definition. "In this chapter, 'alternative energy system' . . . (2) includes. . . (C) any other device approved by the commissioner of commerce and economic development under AS 44.33.040(12);")

--repeals AS 46.11.900(1)(B)(iii) (Conservation of Energy and Materials. Definitions. "In this chapter (1) 'alternative energy system' means. . . (B) includes . . . (iii) any other device approved by the commissioner of commerce and economic development

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Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
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DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, April 25.

DATE: April 23, 1984

On Wednesday, April 25th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

HCSSB 269 (2d Finance), An Act relating to the sale of royalty oil by the State of Alaska to Chevron, U.S.A., Inc.

The Senate Resources Committee has been asked to review and make recommendations to the full Senate on the contract between the State and Chevron, U.S.A. for the sale of royalty oil. The Senate Resources Committee held hearings on similar proposals submitted during the 1983 session.

The Department of Natural Resources has renegotiated this contract during the interim. The Chevron contract differs from the previous contract in that it now contains a provision for a price reopener every two years.

Please refer to a complete royalty oil contract information notebook distributed by the Department of Natural Resources earlier this session for more detailed backup information.

SB 288, An Act relating to the Board of Fisheries.

SB 288 would require that future appointments to the Board of Fisheries represent specific geographical locations. The proposed committee substitute references judicial districts, which are inclusive of all areas of the state.



Official Business

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

MESSAGE TO THE SENATE

May 25, 1984

MR. PRESIDENT:

The House has passed CSSB 288(Res) (Board of Fisheries)
with the following amendment:

HCS CSSB 288(Res)amH (same title)

and it is transmitted for consideration.

Senate version:

2 members = participants in sports fisheries

House version:

Concur²

*2 members = participation in + working knowledge
of sports fishing*

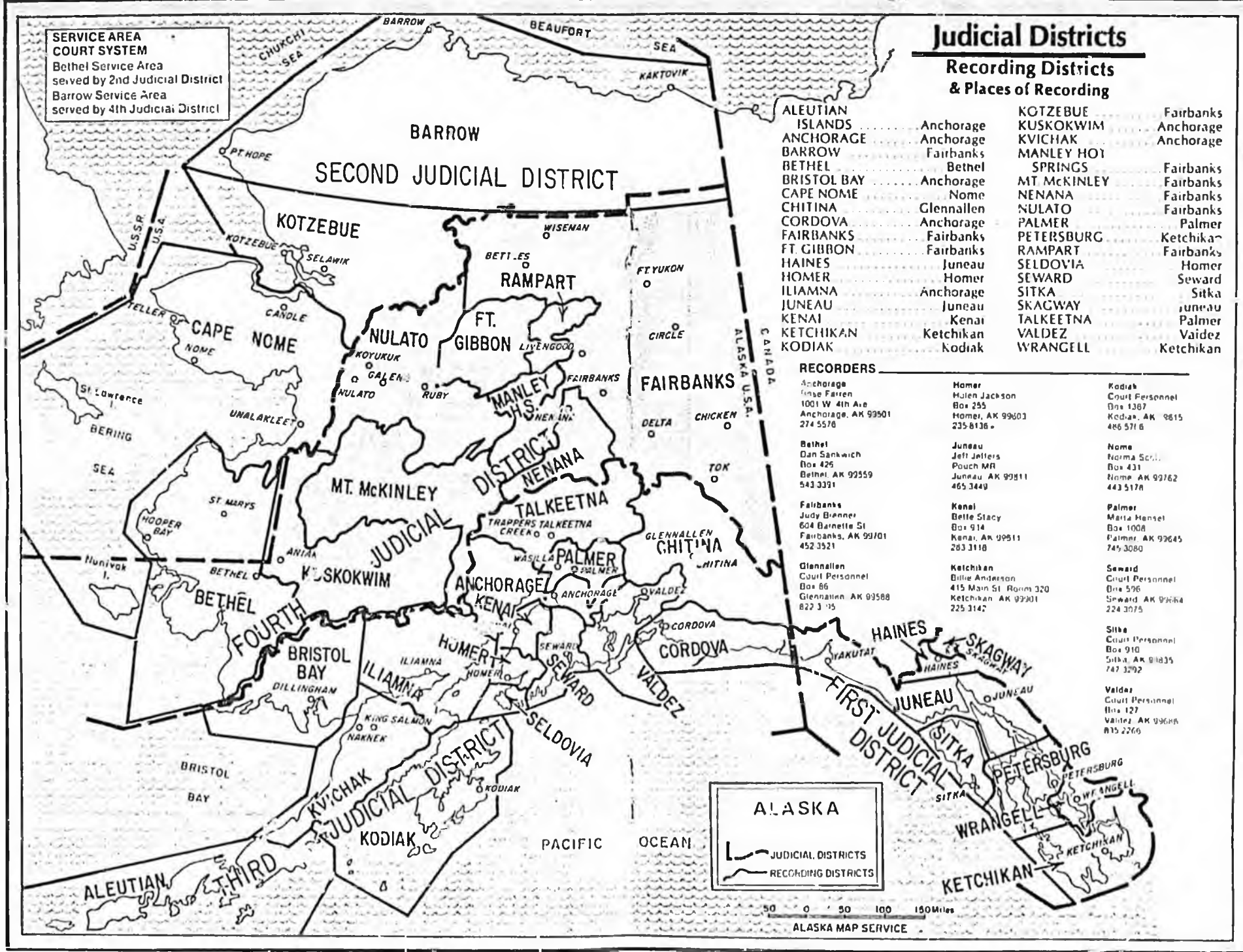
*1 member = history of participation + working
knowledge of subsistence fishing*

not more than 4 members = commercial fishermen

MAY 26 1984

Israel Berman

Chief Clerk of the House



SERVICE AREA COURT SYSTEM
 Bethel Service Area served by 2nd Judicial District
 Barrow Service Area served by 4th Judicial District

Judicial Districts

Recording Districts & Places of Recording

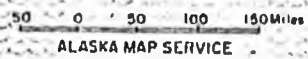
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| ALEUTIAN ISLANDS | Anchorage | KOTZEBUE | Fairbanks |
| ANCHORAGE | Anchorage | KUSKOKWIM | Anchorage |
| BARROW | Fairbanks | KVICHAK | Anchorage |
| BETHEL | Bethel | MANLEY HOT SPRINGS | Fairbanks |
| BRISTOL BAY | Anchorage | MT MCKINLEY | Fairbanks |
| CAPE NOME | Nome | NENANA | Fairbanks |
| CHITINA | Glennallen | NULATO | Fairbanks |
| CORDOVA | Anchorage | PALMER | Palmer |
| FAIRBANKS | Fairbanks | PETERSBURG | Ketchikan |
| FT GIBBON | Fairbanks | RAMPART | Fairbanks |
| HAINES | Juneau | SELDOVIA | Homer |
| HOMER | Homer | SEWARD | Seward |
| ILIAMNA | Anchorage | SITKA | Sitka |
| JUNEAU | Juneau | SKAGWAY | Juneau |
| KENAI | Kenai | TALKEETNA | Palmer |
| KETCHIKAN | Ketchikan | VALDEZ | Vaidez |
| KODIAK | Kodiak | WRANGELL | Ketchikan |

RECORDERS

| | | |
|--|---|---|
| Anchorage Inge Fahren 1001 W 4th Ave Anchorage, AK 99501 274 5576 | Homer Muel Jackson Box 255 Homer, AK 99603 235 8136 | Kodiak Court Personnel Box 1387 Kodiak, AK 9815 486 5716 |
| Bethel Dan Sankovich Box 425 Bethel, AK 99559 543 3391 | Juneau Jett Jellers Pouch MR Juneau, AK 99811 465 3449 | Nome Norma Scribner Box 431 Nome, AK 99762 443 5176 |
| Fairbanks Judy Brenner 604 Barnette St Fairbanks, AK 99701 452 3521 | Kenai Bette Stacy Box 914 Kenai, AK 99511 283 3118 | Palmer Maria Hansen Box 1008 Palmer, AK 99645 745 3080 |
| Glennallen Court Personnel Box 86 Glennallen, AK 99588 822 3 715 | Ketchikan Dillie Anderson 415 Main St. Room 320 Ketchikan, AK 99901 225 3142 | Seward Court Personnel Box 506 Seward, AK 99684 224 3075 |
| | | Sitka Court Personnel Box 910 Sitka, AK 99835 747 3292 |
| | | Valdez Court Personnel Box 127 Valdez, AK 99686 815 2266 |

ALASKA

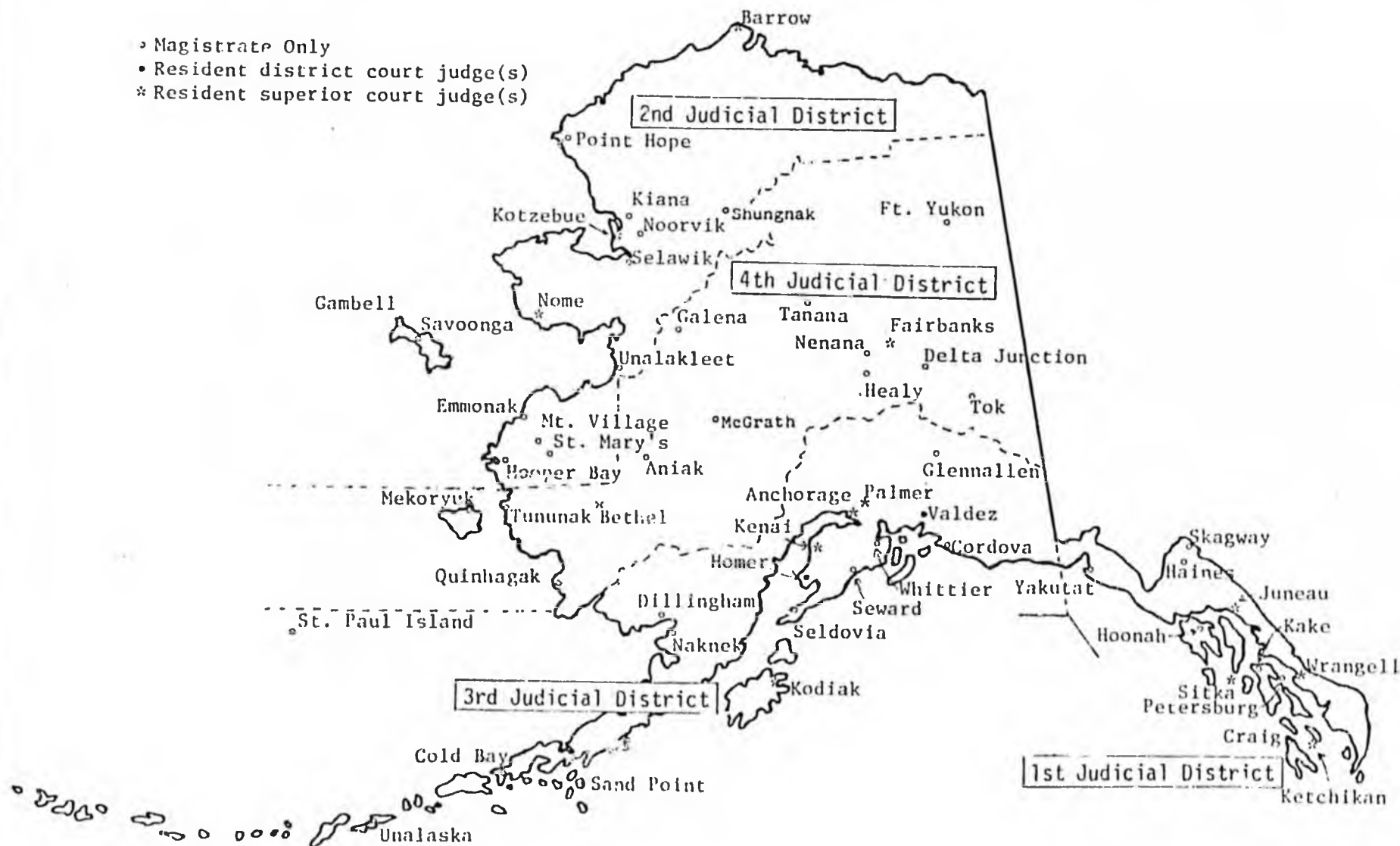
— JUDICIAL DISTRICTS
 - RECORDING DISTRICTS



ALASKA MAP SERVICE

ALASKA COURT LOCATIONS

- Magistrate Only
- Resident district court judge(s)
- * Resident superior court judge(s)



Anch Daily News
6-22-84

Sheffield vetoes fisheries board member limits

By JOHN LINDBACK
Daily News reporter

JUNEAU — A bill that would require the governor to keep at least two sportfishing representatives and one subsistence fisherman on the seven-member state Board of Fisheries was vetoed Thursday by Gov. Bill Sheffield.

Sheffield, in a letter to House Speaker Joe Hayes, R-Anchorage, said goals of the bill have "already been accomplished through traditional appointment practices of past governors and myself."

The legislation would have created "substantial problems, which on balance outweigh any benefits," the governor said. Finding responsible board members is a tough job that would be hampered even further by the restraints included in the bill, he said.

Sponsored by Sen. Don Bennett, R-Fairbanks, the bill required that at least two of the board members "have a history of participation in and a working knowledge of sportfishing." It also demanded one board member have such experience and knowledge of subsistence fishing.

In addition, the legislation required:

- Representation from each of the state's four judicial districts on the board, an attempt by the legislature to

guarantee that the governor's appointees represent all regions of the state.

- That not more than four of the board members be commercial fishermen.

Board of Fisheries appointments have proven to be a persistent political problem for Sheffield since his 1982 election.

Sportfishing interests and their allies in the legislature have been unable to convince the governor that commercial fishermen's control of the board gives the fish-for-profit industry an unfair advantage each year in the allocation of salmon stocks.

This year the governor was forced by the legislature to appoint a second sportfishing representative to the board in order to save the rest of his appointments. Legislators had warned that for the second year in a row they would refuse to confirm Sheffield's appointments to the board unless he made the appointment.

Bob Hunter, president of the 1,000-member Alaska Sportfish Association, said Thursday he was not surprised that the governor vetoed the bill.

"It's just obvious to me that he still fails to recognize

See Page B-3, SHEFFIELD

Sheffield vetoes bill limiting members of fisheries board

Continued from Page B-1

that we have a sportfishing industry in this state. It's high time that he start thinking about it," Hunter said.

The state has issued about 270,000 sportfishing licenses this year, according to Hunter.

The governor argued in his letter to Hayes that geographic

ic considerations and the interests of commercial and sportfishing groups are not distinct enough to justify the demands included in the bill.

The knowledge and experience of prospective appointees, Sheffield said, "do not divide easily into the categories of commercial, sport and subsistence" fishing. "Alaskans have diverse in-

terests and involvements, and it is not unusual for an individual to fit well into more than one of the categories of use. The strict requirements that the bill would specify with regard to user group identification do not accurately reflect the way Alaskans participate in our fisheries," he said.

Fishermen in the different

interest groups often harvest one species at one place during a particular season and move to other, sometimes distant, areas to harvest other species during different seasons, Sheffield said.

"Thus, knowledge of and experience with our state's fishery resources do not come in simple geographic packages," he said.

Anch Daily News
6-22-84

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JUNEAU, ALASKA

Tubertson

Alaska State Legislature House

MESSAGE TO THE SENATE

Date May 29, 1984

MR. PRESIDENT:

The House has passed CSSB 289(R1a) am (relating to discharge of firearms, and hunting and fishing in state parks, marine parks, wildlife preserves, and recreation areas; eff date) with the following amendment:

HOUSE CS FOR CS FOR SENATE BILL NO. 289 (Resources) am H
(same title)

and it is transmitted herewith for consideration.

(25-14-0-1)

ef date
(39-0-01)

concern 20-0 ya

See attached.

*Senate version opened all "large acreage" parks
House version excludes - Chilkat Bald Eagle Preserve,
Capt Cook Rec. Area, Chilkat "State Park"*

Debra Pastern

Chief Clerk of the House

Offered: 5/22/84
Referred: Rules

Original sponsors: Bennett, Rodey
and Fahrenkamp

Final Version

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 289 (Resources) am H

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to discharge of firearms, and hunt-

7

ing and fishing in state parks, marine parks, wild-

8

life preserves, and recreation areas; and providing

9

for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 41.21 is amended by adding a new section to read:

12

Sec. 41.21.022. DISCHARGE OF FIREARMS. The discharge of fire-

13

arms during lawful hunting, trapping, and fishing is permitted within

14

the boundaries of: ^[Alaska Chilkat Bald Eagle Preserve] (1) Caines Head State Recreation Area; (2) Chena

15

River State Recreation Area; ^[Captain Cook State Recreation Area] (3) Chugach State Park; (4) Denali State

16

Park; ^[Chilkat State Park] (5) Kachemak Bay State Park; (6) Kachemak Bay State Wilderness

17

Park; (7) Marine Parks established in AS 41.21.300 - 41.21.306; (8)

18

Quartz Lake State Recreation Area; and (9) Wood-Tikchik State Park,

19

except that all or part of a state park, marine park, wildlife pre-

20

serve, or recreation area may be closed to the discharge of firearms

21

by regulations adopted by the department for purposes of public safety

22

or, with the concurrence of the Board of Game, for limited areas of

23

Chugach State Park for public display of local wildlife under AS 41.-

24

21.121.

25

* Sec. 2. AS 41.21.124, 41.21.133, 41.21.143, and 41.21.306(b) are

26

repealed.

27

* Sec. 3. This Act takes effect August 1, 1984.

senate version also allowed closures in Chugach Park for public display of local wildlife. This is one of the purposes of the park per its enabling legislation. House version would essentially require Board of Game approval for any such closures.

HCS CSSB 289(Res)am H

Hunting in parks bill:

Substitute language to SB 289:

(b) The discharge of weapons pursuant to lawful hunting and trapping is allowed within the boundaries of:

Alaska Chilkat Bald Eagle Preserve;
Caines Head State Recreation Area;
Captain Cook State Recreation Area;
Chena River State Recreation Area;
Chilkat State Park;
Chugach State Park;
Denali State Park;
Kachemak Bay State Park;
Kachemak Bay State Wilderness Park;
Marine Parks established under AS 41.21.300 through 306;
Quartz Lake State Recreation area; and
Wood-Tikchik State Park.

To protect public safety within these state park units, the discharge of weapons is prohibited within one-quarter mile of campgrounds, picnic areas, trailheads, parking areas, boat ramps and other developed recreation facilities, ranger and park maintenance stations.

(c) The Eklutna River drainage excluding the east fork of Eklutna River and Thunderbird Creek above the waterfalls and Eagle River drainage in Chugach State Park are closed to the discharge of weapons in order to provide for the public display of local wildlife as outlined in AS 41.21.121.

Opens 99.2% of State Park System

Offered by Neal Johanssen - Division of Parks

Would need to replace body of bill with this language. Puts into statute what is ^{proposed} in regulations.

Alaska State Legislature

BETTYE FAHRENKAMP
CHAIRMAN
ROBERT H. ZIEGLER, SR.
VICE-CHAIRMAN
DICK ELIASON - PAUL FISCHER
VIC FISCHER - BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3234
(907) 465-3835

Senate

Committee on Resources

May 17, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Hearing on SB 289, Discharge of Firearms in Denali State Park

In 1981 the confiscation of a moose shot within Denali State Park brought to light problems with the regulation of hunting by the Department of Fish and Game and the Game Board vis a vis the regulation of the discharge of firearms by the Division of Parks, Department of Natural Resources. Although Denali State Park was legally open to hunting by the park enacting legislation and by the Game Board regulations, the entire park (320,000 acres) was closed to the discharge of firearms by DNR regulations under broad park management statute authorization. Furthermore, the public hunting reg brochures failed to adequately show the nature of this "closed" area.

In 1982 the Fairbanks Ombdsman, John Chenoweth, found a complaint by the hunter justified and among other things directed the ADF&G to identify this closure in future public brochures and directed the Division of Parks to properly codify its hunting and firearm discharge regulations and advertise its rules.

SB 289 was introduced to clarify that where hunting and fishing were authorized under fish and game regulations in park areas, the DNR could not restrict such use or restrict lawful discharge of firearms in such use.

However, several problems could occur with SB 289 as originally drafted: 1) there are many small waysides and park units which are currently closed to hunting and the discharge of firearms by regulation. Passage of this bill might involve having to go back and close all such areas at considerable time and expense; and 2) there are areas within state parks such as picnic sites and campgrounds where closures to discharge of firearms are needed for public safety purposes which may not be permitted by this legislation.

Thus, attached is a proposed committee substitute which attempts to solve these problems by 1) limiting the scope of the bill to the one large park unit which is currently entirely closed to the discharge of firearms, Denali State Park; and 2) authorizing firearms discharge closures for public safety reasons.

Any closures for hunting purposes for such uses as wildlife viewing would be made through the Board of Game as has occurred in other park areas like Chugach.

Introduced: 5/4/83
 Referred: Resources

May 17, 1983

1 IN THE SENATE DRAFT CS FOR BY BENNETT AND RODEY
 2 SENATE BILL NO. 289
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 THIRTEENTH LEGISLATURE - FIRST SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to discharge of firearms, and hunt-
 7 ing and fishing in ^{Denali State Park.} ~~state park and recreation areas.~~"

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.20 ~~[020]~~ is amended by adding a new ~~[sub]~~section to
 10 read:

11 ~~[(b)]~~ (b) The department may not designate hunting and fishing autho-
 12 rized under AS 16.05 or the lawful discharge of a firearm as incom-
 13 patible uses within the boundaries of state park and recreation areas.

Sec. 41.20.330. HUNTING, FISHING, TRAPPING AND DISCHARGE OF FIREARMS
PERMITTED. (a) The commissioner of natural resources may not restrict
fishing, hunting, or trapping permitted under law or under a regulation of
the Board of Fisheries or the Board of Game within Denali State Park except
as may occur under subsection (b).

(b) Discharge of a firearm is permitted in state-owned land and water
described in AS 41.20.310 unless the land or waters are closed to the dis-
charge of firearms by regulation of the commissioner of natural resources
for public safety purposes.



Ombudsman

John B. Chenoweth

State of Alaska

February 8, 1982

Darryl Sanford
S.R. 30318
Fairbanks, Alaska 99701

Reply to:

340 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

Pouch W0
Juneau, Alaska 99811
(907) 465-4970

P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

Re: Ombudsman Complaint F81-1046

Dear Mr. Sanford:

On September 29, you filed this complaint in the Fairbanks Ombudsman's Office against the Division of Game. You alleged incomplete public information contributed to the confiscation of the moose and bear that you had shot. Specifically, there was no indication in the Alaska Hunting Regulations booklet or game management unit map that Denali State Park was a restricted area.

This complaint has been investigated by the Office of the Ombudsman. For investigative details, please see the attached memorandum to me from the Fairbanks office.

Finding: This complaint is justified.

You lost the moose and bear because you and a Fish and Wildlife Protection Officer thought that the discharge of firearms was prohibited in Denali State Park. The investigation conducted by this office has concluded that there was no authoritative prohibition against the discharge of a firearm in Denali State Park at the time. While there is statutory reference to other parks in AS 41.20, there is no statute or regulation addressing hunting or the discharge of firearms in Denali State Park. In this respect, the hunting regulations manual and map were correct in not showing the Denali State Park as a restricted area. Apparently this was an oversight on the part of the Division of Parks, since division personnel understood there to be such a restriction.

It is apparent that there is no adequate reference to inform hunters which areas in Alaska have hunting and firearm discharge restrictions. Several Department of Fish and Game employees, including Game Director Ron Somerville, said it is not practical to include all current information for all jurisdictions (federal, state, and local) on one map or in one regulations manual. There are, however, steps that the Department of Fish and Game can take to make the hunting regulations booklet and map more helpful to conscientious hunters.

I have made the following recommendations to the Department of Fish and Game:

1. Future editions of the Alaska Hunting Regulations booklet should include an explanation of the multiple jurisdiction problem in the "general information" section. This section should explain that the department cannot keep track of changing rules and regulations in the federal and municipal areas and that hunters are responsible for checking with the appropriate authorities when hunting in these areas. The division should list the jurisdictions in the booklet. The areas should then be identified or referred to on the game management unit map (either on the map itself or in bold face type in a corner or margin).

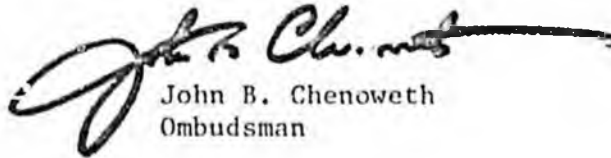
2. The Fish and Game Regulations booklet and map should refer hunters to State Parks included in AS 41.20.

I have also recommended that the Division of Parks take the following steps.

1. Properly codify its hunting and firearms discharge regulations.
2. Adequately advertise its rules regarding firearm discharge and insure that park rules are adequately posted.
3. Work cooperatively with the Division of Game to provide Alaska's hunters with a coordinated and current guide to hunting regulations.

I am requesting that the agency respond to my recommendations within thirty days. Thank you for your patience and cooperation during the course of this investigation.

Sincerely,



John B. Chenoweth
Ombudsman

JBC/RW:jb

Enclosure

MEMORANDUM

State of Alaska *file*

TO Judith E. Marquez, Director
Division of Parks
DNR - Anchorage

DATE November 19, 1982

FILE NO A66-379-82

Division of Parks

TELEPHONE NO

NOV 29 1982

FROM Wilson L. Condon
Attorney General

SUBJECT Regulation of
Firearms Discharge in
State Parks

By: *Claire Steffens*
Claire Steffens
Assistant Attorney General
AGO-Anchorage

The Division of Parks has requested our advice respecting its authority to regulate the discharge of firearms in state parks.

QUESTIONS PRESENTED

To what extent may the Division of Parks regulate the discharge of firearms within areas under its jurisdiction? Subsumed in this inquiry are the additional questions of whether legislative repeal of AS 11.55.050 invalidated regulation 11 AAC 12.190 1/ which prohibits the discharge of "mechanical or air-operated guns" in all state parks; and whether the term "firearms" is included within the meaning of "mechanical or air-operated guns" in 11 AAC 12.190.

CONCLUSIONS

The State legislature has delegated to the Department of Natural Resources the authority to regulate the discharge of firearms within all areas under the jurisdiction of the division of parks to the extent necessary to accomplish the purposes for

1/ It has been brought to our attention that a staff member of the Office of the Ombudsman has suggested, in connection with certain hunting incidents in Denali State Park, that 11 AAC 12.190 is invalid as lacking statutory foundation and, in any event, as not applying to the discharge of "firearms". For the reasons set forth in this memorandum of advice, we disagree with these views.

which state parks and recreational areas have been created. AS 41.20.010 - .040.

Legislative repeal of AS 11.55.050 did not invalidate 11 AAC 12.190. The statutory foundation for 11 AAC 12.190 exists in AS 41.20.010-.020 which mandates the creation and development of a system of parks fostered, inter alia, for the general health, welfare and enjoyment of Alaskans and for the attraction of visitors to the state.

The prohibition against discharging "mechanical or air-operated guns" in 11 AAC 12.190 includes the discharge of "firearms".

ANALYSIS

A. Authority of the Division of Parks to Regulate the Discharge of Firearms in State Parks

The general provisions granting authority to the Department of Natural Resources 2/ to acquire, develop and maintain state parks and recreational areas are contained in AS 41, Chapter 20. 3/

2/ AS 41.20.040 authorizes the Department of Natural Resources to establish a separate division to perform functions related to parks and recreational facilities, thus giving rise to the division of parks.

3/ Article VIII, Section 7 of the Constitution of Alaska provides:

Special Purpose Sites. The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

1. Legislative Authority.

The legislatively declared purpose of the provisions of Chapter 20 is:

[t]o foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education and welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state.

AS 41.20.010.

In pertinent part, AS 41.20.020 provides:

The Department of Natural Resources shall ...

(2) plan for and develop a system of state parks and recreational facilities, to be established as the Legislature authorizes and directs; ...

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, and control, supervision, improvement, development, extension and maintenance of public recreational lands, and make necessary arrangements, contracts or commitments for the improvement and development of lands acquired under §§10-40 of this chapter;

The broad language of these provisions supplies the division of parks with ample authority to regulate the discharge of firearms on lands and waters under its jurisdiction.^{4/} Moreover, the expressly stated purpose of establishing state parks and recreational facilities "for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state" compels this conclusion as the purpose of establishing state parks and recreational areas would be thwarted were the authority to regulate firearms discharge absent. In addition to the statutory provisions cited, there exists implied authority to do what is reasonably necessary to achieve the general purposes for which these areas are reserved.^{5/}

Except where limited by other statutes dealing with specific state parks or recreational areas, the legislative mandates of AS 41.20.020 apply to all areas within the jurisdiction of the division of parks. Where the legislature has enacted statutes concerning specific state parks or recreational areas, the further purposes and authority expressed within those statutes also may authorize the division to regulate the discharge of firearms within those parks or recreational areas.

2. Some Limitations on the Division's Authority.

It is important to note that the division of parks does not have authority directly to prohibit hunting in areas within its jurisdiction. However, the division does have the authority to prohibit all discharge of firearms or to restrict the circumstances of their discharge, whether the discharge of the

^{4/} Additional authority for the regulation of the discharge of firearms in state parks and recreational areas may be contained in AS 41.20.020(1), (7) and (11).

^{5/} See generally 3 Sands, Sutherland Statutory Construction §55.03, §55.02-.03 (4th ed. 1973).

firearms is related to hunting or to any other activity,^{6/} provided that the prohibition or restriction is reasonably necessary to accomplish the purposes^{7/} for which the park or recreational area was created. Similarly, the division may regulate indirectly other aspects of hunting in state parks such as vehicle or airplane access.

B. Repeal of AS 11.55.050

The legislature repealed AS 11.55.050 as part of a general criminal code revision in 1980. This former statutory provision provided:

(a) Unless specifically permitted by law or ordinance, a person who flourishes, points, or discharges a firearms in a city of any class, or on a railway coach, steamboat or steamship, or in or near a park or public grounds, or at a public place, whether public in itself, or made public at the time by an assemblage of persons, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than 6 months, or by both.

(b) Notwithstanding the provisions in (a) of this section, firearms may be used in those state parks which are by statute, or by lawful regulation, open to shooting. (§65-12-5 ACLA 1949; am §1 ch 2 SLA 1972; am §1 ch 47 SLA 1972; repealed §21 ch 166 SLA 1978, effective January 1, 1980).

This provision was cited as one of three statutory authorities supporting the adoption of regulation 11 AAC 12.190.

^{6/} Accord Informal Op. Att'y. Gen. (May 25, 1980).

^{7/} The purposes for which a state park or recreational area was created may be expressly stated or necessarily implied from the expressly stated purposes. See Sutherland, supra, fn 5.

The repeal of AS 11.55.050 had no effect on the validity of 11 AAC 12.190. Sufficient and independent statutory foundation for this regulation exists in AS 41.20.020. The citation of AS 11.55.050 in support of the regulation was, at best, additional authority and, at worst, no authority at all.^{8/} The legislative history of the repeal of AS 11.55.050 evidences no intent to invalidate 11 AAC 12.190. If the legislature had desired to allow unrestricted discharge of firearms in state parks, we believe it would have expressly amended AS 41.20.020.

C. A Firearm is a "Mechanical or Air-Operated Gun".

11 AAC 12.190 prohibits the discharge of "mechanical or air-operated guns" in state parks:

Discharge of explosives, mechanical or air-operated guns, gas-operated explosive devices, fireworks or similar devices in a state park is prohibited except that the Director may authorize use of such items when required for construction or maintenance purposes or for the general public safety or welfare. (Emphasis added.)^{9/}

Apparently, in some quarters it is argued that this prohibition against the discharge of mechanical or air-operated guns does not apply to firearms. We disagree.

8/ AS 11.55.050(a) was a general criminal law provision prohibiting flourishing, pointing, or discharging of a firearm in a public place. The division of parks was not charged with the affirmative duty to adopt regulations to make this statutory provision operative. If anything, 11.55.050(b) was an express acknowledgement by the Legislature of the authority it granted the division of parks to prohibit the discharge of firearms in state parks.

9/ The rules and regulations of administrative bodies have the force and effect of law. Pearce v. Director, Office of Workers Comp. Program, U.S. Dep't. of Labor, 647 F.2d 716, 726 (7th Cir. 1981); LA Sands Sutherland Statutory Construction §23.19 (4th ed. 1973).

The regulation clearly intended to encompass the discharge of firearms within the meaning of the terms "mechanical guns".^{10/} Words in regulations, as in statutes, should be construed as having their commonly understood meanings unless judicial construction or statutory definition has clad them with other meanings. See Lynch v. McCann, 478 P.2d 835, 837 (Alaska 1970).

The proper test to determine if the words of a statute or regulation are impermissibly vague is whether persons of common intelligence must necessarily guess at its meaning and differ as to its application. Stock v. State, 526 P.2d 3, 8 (Alaska 1974).

It is our view that persons of common intelligence need not necessarily guess at the meaning of 11 AAC 12.190 nor differ as to its application. In common usage, the terms "mechanical guns" clearly includes the mechanism called a "firearm".

^{10/} In Webster's Third New International Dictionary, Unabridged (1971 ed.), "gun" is defined as "a piece of ordnance ... throwing projectiles by the force of some explosive (as gunpowder) usu. with high muzzle velocity and with comparatively flat trajectory a portable firearm (as a rifle, shotgun, carbine, pistol)"; "firearm" is defined as a weapon from which shot is discharged by gunpowder; "mechanical" is defined as "of, relative to, or concerned with machinery or tools ... relating to, governed by or in accordance with mechanics"; "air-operated" is not defined. Since a "mechanical gun" clearly includes "firearm", we need not determine whether an "air-operated gun" also includes a "firearm".

SB 289

RELATING TO DISCHARGE OF FIREARMS AND HUNTING AND
FISHING IN STATE PARKS.

BENNETT SPONSORED. HE IS OUT OF TOWN TODAY.

CLARIFIES THAT WHERE HUNTING AND FISHING ARE AUTHORIZED UNDER
FISH AND GAME REGULATIONS IN PARK AREAS, DNR CANNOT RESTRICT
SUCH USE OR RESTRICT LAWFUL DISCHARGE OF FIREARMS IN SUCH
USE.

RESOURCES C.S.

ALLOWS CLOSURES FOR PUBLIC SAFETY PURPOSES.

DRAFT REGULATIONS ARE OUT. PUBLIC HEARINGS WILL BE OUT IN JUNE.

AT MAY 1983 HEARING, DNR REQUESTED POSTPONEMENT OF ACTION
ON SB 289 SO THEY COULD REWRITE REGULATIONS TO ALLOW HUNTING.
NEW REGULATIONS WERE TO BE COMPLETE BY JANUARY 1984.

DID ADOPT EMERGENCY REGULATION PRIOR TO THIS YEAR'S HUNTING
SEASON TO OPEN DENALI STATE PARK.

DEPARTMENT'S CONCERN IS THAT MAJORITY OF STATE PARKS ARE
SMALL WAYSIDES AND PICNIC AREAS WHERE HUNTING IS NOT APPROPRIATE.
THEY PREFER A BLANKET CLOSURE, WITH SPECIFIC PARKS BEING
OPENED BY REGULATION. PROPOSED REGULATIONS OPEN ALL OF THE
FOLLOWING PARKS TO HUNTING EXCEPT WITHIN 1/4 MILE OF FACILITIES:

WOOD TIKCHIK, DENALI, CHENA REC., QUARTZ LAKE, MARINE
PARKS, CHILKAT, SPECIFIC DRAINAGES IN CHUGACH.

NANCY LAKE AND CAPTAIN COOK ARE OPEN TO BOW AND ARROW.

SB 289, An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

In 1981 the confiscation of a moose shot within Denali State Park brought to light problems with the regulation of hunting by the Department of Fish and Game and the Game Board vis a vis the regulation of the discharge of firearms by the Division of Parks, Department of Natural Resources. Although Denali State Park was legally open to hunting by the park enacting legislation and by Game Board regulations, the entire park (320 000 acres) was closed to the discharge of firearms by DNR regulations under broad park management authority. Furthermore, the public hunting regulation booklet failed to adequately show the nature of this "closed" area. Although the Fairbanks Ombudsman directed that more complete public notification of this situation be given, the conflicting management policies of DNR and ADF&G remained.

SB 289 was introduced to clarify that where hunting and fishing are authorized under fish and game regulations in park areas, DNR could not restrict such use or restrict lawful discharge of firearms in such use. A draft committee substitute that would allow closures for public safety purposes has been prepared.

In testimony provided at the public hearing on SB 289 in May 1983, DNR requested postponement of action on the bill so that they could initiate regulations addressing the situation. A first step was taken prior to this year's hunting season, when regulations were amended to open the western half of Denali State Park to the discharge of firearms. Further, general park regulations, including those affecting firearms discharge, are undergoing revision. Expected to be complete by January, 1984, these regulations are just now in the final hearing process.

CS SB 407 (Resources), An Act relating to the prevention and abatement of water pollution.

CS SB 407 (Resources) addresses the longstanding concerns of placer miners, environmentalists, and governmental agencies relative to the use of water in placer mining. The draft Committee Substitute would establish specific classification categories for waters of the state, and provide criteria for establishing water quality standards for each classification. In addition, a statewide inventory of state waters would be conducted and basinwide management plans would be developed.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

HB 479 would allow the Supreme Court to set a bail forfeiture schedule for violations of State laws and regulations that apply to parks. The offender would be given the option of not contesting the citation and merely sending in the fee, or challenging the violation and asking for a court appearance.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

May 18, 1983

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Yesterday I discussed SB 289 (firearms discharge in state parks) with Senator Bennett and advised him that the Department can and will address his concerns, and he informed me that such a commitment would obviate the need for hearings on his bill.

We recognize the authority of the Boards of Fish and Game to manage fish and wildlife resources in state parks. We also recognize that our existing regulations regarding firearms discharge in parks (11 AAC 12.190, attached) have created a confusing situation for hunters. Hunting is permitted, but firearms discharge in most units has been restricted.

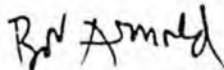
This is appropriate due to the need for public safety closures in most state recreation areas, waysides, and parks. Opening all units would be dangerous and a burden to the park staff. However, acknowledging the intent of Senator Bennett's proposed legislation, Commissioner Wunnicke has directed the Director of the Parks Division, Neil Johannsen, to immediately prepare and promulgate regulations opening parts of Denali State Park to firearms discharge. Public safety concerns will be considered in the regulations. We hope to have these regulations in effect by September 1.

The Parks Division is currently undergoing a general revision of all park regulations, including those affecting firearms discharge in state parks. These should be complete by January 1, 1984 and will not conflict with the regulations for Denali State Park.

The Honorable Bettye Fahrenkamp
Page 2
May 18, 1983

The Department asks for postponement of action on SB 289 until Neil Johannsen, with the Department of Fish and Game, has an opportunity to resolve the problems that have led to the introduction of this legislation. In the meantime, the Department is moving as quickly as possible to accommodate valid concerns about the regulations governing firearms discharge in the state parks.

Sincerely,



Robert D. Arnold
Deputy Commissioner

cc: The Honorable Don Bennett
The Honorable Pat Rodey

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

BILL SHEFFIELD, GOVERNOR

619 WAREHOUSE AVE., SUITE 210
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-2653

JUN 21 1983

June 8, 1983

The Honorable Bettye M. Fahrenkamp, Chairperson
Resources Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator *Bettye*,
Fahrenkamp,

To fulfill my commitment to you and the Resources Committee to clarify the firearm regulation in Denali State Park by September 1, 1983, I have put my staff to work. The change can come about only through a revision of the regulations. I will keep you abreast of our progress through each step of the procedure.

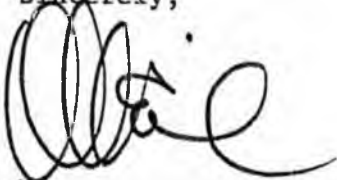
My goal is to open approximately 210,000 acres, one-half of Denali State Park, to the use of firearms. This will be the western half of the park bounded by the west bank of the Chulitna River. The area east of the Chulitna's west bank will remain closed to the discharge of firearms as the Parks Highway, campgrounds, trailheads, trails, restrooms, highway pull-offs, and a new memorial to veterans are located on this side.

The Department of Fish & Game acknowledges that the largest population of moose is located in the western area of the park, often along the accessible Tokositna River. Public hearings will be scheduled in both Anchorage and Talkeetna prior to the amendment of the pertinent regulations. I plan to rely

The Honorable Bettye M. Fahrenkamp, Chairperson
June 8, 1983
Page 2 -

heavily on input from these forums to guide the final wording in the amended regulations. Please be in touch with me personally should you have any questions at this time.

Sincerely,



Neil C. Johannsen
Director

cc: Senator Robert Ziegler, Sr.
Senator Richard Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Bob Mulcahy
Senator Arliss Sturgulewski
Senator Pat Rodey
Senator Don Bennett
Esther C. Wannicke, Commissioner, DNR

We've now published the proposed regulation in a number of papers, have scheduled hearings and are on schedule for the change. I've reviewed all park regulations and have found them restrictive antiquies and therefore plan additional changes between now and 1 January 84.



STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/23/84

REQUEST

Bill/Resolution No.: CS SB 239
Title: Firearms in State Parks

Sponsor: Sen. Bennett
Requestor: Senate Resources Comm.
Date of Request: 4/23/84

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRM
Parks and Recreation
BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|-----------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | -0- | -0- | -0- | -0- | -0- | -0- |

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No impact.

ANALYSIS: Attach a separate page for analysis

Prepared By: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 4/23/84

MH Approved by Commissioner: William D. Arnold, Jr. Date: 4/23/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

December 6, 1983

COMMENTS ON PROPOSED CHANGES IN DNR REGULATIONS

I'd like to start by thanking you for the opportunity to testify on these proposed regulations. My name is Sandra Schubert, and I'm speaking on behalf of Senator Bettye Fahrenkamp, chairman of the Senate Resources Committee, who is unable to be here tonight. The portion of the regulations that governs hunting in state parks is of particular interest to the Senator.

In 1981 the confiscation of a moose shot within Denali State Park brought to light problems with the regulation of hunting by the Department of Fish and Game and Game Board versus the regulation of the discharge of firearms by the Division of Parks, Department of Natural Resources. Although Denali State Park was legally opened to hunting in its enacting legislation and by Game Board regulations, the entire park was closed to the discharge of firearms by DNR regulations under management authority provided by statute. Furthermore, the public hunting regulation booklet failed to adequately show the nature of this "closed" area. Though the Fairbanks Ombudsman directed that more complete public notification of this situation be given, the conflicting management policies of DNR and ADF&G remained.

In May of this year Senator Fahrenkamp co-sponsored legislation (SB 289) to clarify that where hunting and fishing were authorized by law or under fish and game regulations in park areas, the Department of Natural Resources could not restrict such hunting and fishing, or restrict lawful discharge of firearms in such hunting, except for public safety purposes.

In testimony provided at the public hearing on SB 289 in May, DNR requested postponement of action on the bill so that they could initiate regulations addressing the situation. A first step was taken prior to this year's hunting season, when the regulations were amended to open the western half of Denali State Park to the discharge of firearms.

In the regulations under discussion tonight, we had hoped to see some more general solutions to the hunting/firearm discharge question, and instead have several

Johansen says 85% of state parks land now open to hunting. Easier to close all & specifically open a few, as most state parks are small - mostly a 1 ac. campground, House of Wickersham etc.

concerns about the proposed changes. Although the proposed regulations clarify that certain park areas would be opened to weapon use, "weapon" is so inclusively defined that types of hunting currently allowed -- such as bow and arrow -- would be prohibited. Specifically:

11 AAC 12.190 clarifies that all units of the state park system are closed to discharge of weapons (including firearms, bows and arrows, slingshots) and to discharge of explosives except as provided by statute or by 11 AAC 20. In general, this closure appears broad and restrictive. The opposite approach, to open all park units with authorization to close specific areas, is one that is often followed in statute.

In addition, we would suggest that firearms and weapons discharge should be separated from "explosive devices, fireworks, or similar devices" as these involve much different uses.

It also seems that different, more restrictive provisions should be made for the discharge of weapons for non-hunting uses (such as indiscriminate shooting, target practice).

11 AAC 12.340 defines "weapon" as "anything capable of causing physical injury or death", whereas 11 AAC 20.990 defines "weapon" as "firearms, bows and arrows, crossbows or slingshots". The definitions should be consistent. "Anything capable of causing physical injury or death" is too broad: Does it mean breadknives, heavy boots, a rock?

11 AAC 20 opens certain state parks and state park areas for the use and discharge of weapons for lawful hunting. This is a good, clarifying approach, except that some areas not opened here to the discharge of weapons, are open to hunting by Board of Game regulation. This is particularly true with the new definition of "weapon" in 11 AAC 12.340, for it includes bow and arrow. All of Denali State Park, for example, is open to bow and arrow hunting under current regulations. 11 AAC 20.200 would close a large part of it to all weapon discharge, including bow and arrow.

11 AAC 20.010 closes several drainages within Chugach State Park to use and discharge of weapons. Again, some of these drainages are open to bow and arrow hunting under the current regulations.

The point here is that there are park areas which should be closed to firearm discharge for public safety reasons, but that might be suitable for bow and arrow hunting, especially if this distinction is made by Game Board regulation. 11 AAC 20.010(b) does include this type of distinction for shotgun hunting (but, interestingly enough, not bow and arrow hunting) for certain drainages in Chugach Park.

Some state park areas have not been included in the list of open areas, such as Caines Head Recreation Area, Chilkat State Park, and the Marine Park System. In SB 128, the Marine Park System is specifically open to hunting under Board of Game regulation, and to the discharge of firearms except for public safety reasons. Pursuant to 11 AAC 12.190, it appears that non-inclusion of a state park on this list of open areas means it is closed to the use and discharge of weapons. This is contrary to what is provided in statute for the Marine Park System (AS 41.20.536). Although what is in statute would take precedence over what is in regulation, it would be good policy to repeat this information in the regulations.

11 AAC 20.900 would authorize the Director to immediately close open areas to weapons use if such use is found to be a threat to public safety or welfare, or "contrary to the purposes for which the park unit was established". After much debate the Marine Park Bill was amended to delete all but public safety reasons for closure to firearm discharge in areas where hunting was permitted. Not only was the legislature clear on this sole reason for the marine parks, but it represents the feeling of Senator Fahrenkamp on other park units as well.

Thus, this regulation (11 AAC 20.900) should not be applied to the marine park system, and probably not to most state park areas, unless the authorizing statutes speak otherwise.

11 AAC 20.990 defines "weapons" as "firearms, bows and arrows, crossbows or slingshots", and should be consistent with the earlier definition in 11 AAC 12.340.

That completes our remarks on the proposed regulations. If you have questions or comments, I will gladly forward them to Senator Fahrenkamp. Thank you, and I trust you'll keep us apprised as your work continues.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MINUTES

April 25, 1984
3:12 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HCSSB 269 (2d Finance), An Act relating to the sale of royalty oil by the State of Alaska to Chevron, U.S.A., Inc.

SB 288, An Act relating to the Board of Fisheries.

SB 289, An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

CSSB 407 (Resources), An Act relating to the prevention and abatement of water pollution.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

SB 289

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, reviewed the status of current regulations governing the discharge of firearms in state parks, specifically those for Denali State Park. Draft regulations that reflect a restructuring of all park regulations, including provisions for allowing lawful discharge of firearms in most areas, will be out for public review within three weeks. He testified that the Department did not support this bill.

Ron Sommerville, Alaska Outdoor Council, spoke in support of CSSB 289.

Senator Mulcahy moved to adopt the committee substitute for SB 289 and report it out of committee with individual recommendations. There was no objection.

HB 479

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, explained that HB 479 would save the Department of Law, the Department of Natural Resources, and the public a significant amount of time and money by allowing the Supreme Court to establish a bail schedule for park violations.

Lisa Nelson, Criminal Division, Department of Law, spoke in support of the bill.

Senator Mulcahy requested a list of those park violations that would have a bail schedule set.

HCS SB 269 (2d Finance)

Kay Brown, Director, Division of Oil and Gas, Department of Natural Resources, reviewed the changes in the royalty oil contracts that had been negotiated over the interim. The major change in the Chevron contract is a 2-year price reopener.

George Day, Public Affairs Officer, Chevron, U.S.A., Inc., spoke in support of the bill.

Senator Fahrenkamp moved that the committee recommend that the Senate concur with the House amendments to the bill. There was no objection.

SB 288

Senator Vic Fischer moved an amendment to SB 288 that would require that at least two members of the Board be participants in sport fisheries.

Senator Bettye Fahrenkamp moved to adopt CSSB 288 and report it from committee with individual recommendations. There was no objection.

CSSB 407

Randy Bayliss, Department of Environmental Conservation, spoke in support of the committee substitute, explaining that it would direct the Department to inventory significant streams, set standards for a "placer mining use" classification, and plan for resource use in basin-wide areas.

Senator Vic Fischer proposed amending Section 1, Subsection 1, to read "...adequately inventoried and properly classified..."

Phil Holdsworth, Alaska Miners Association, proposed two amendments and a letter of intent to CSSB 407. They would urge the commissioner to utilize all information and the expertise of other agencies in stream classification.

Senator Mulcahy moved to adopt CSSB 407 and the letter of intent for CSSB 407 and report it from committee with individual recommendations. There was no objection.

The meeting adjourned at 4:25 pm.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

May 18, 1983

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Yesterday I discussed SB 289 (firearms discharge in state parks) with Senator Bennett and advised him that the Department can and will address his concerns, and he informed me that such a commitment would obviate the need for hearings on his bill.

We recognize the authority of the Boards of Fish and Game to manage fish and wildlife resources in state parks. We also recognize that our existing regulations regarding firearms discharge in parks (11 AAC 12.190, attached) have created a confusing situation for hunters. Hunting is permitted, but firearms discharge in most units has been restricted.

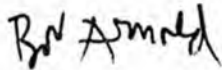
This is appropriate due to the need for public safety closures in most state recreation areas, waysides, and parks. Opening all units would be dangerous and a burden to the park staff. However, acknowledging the intent of Senator Bennett's proposed legislation, Commissioner Wunnicke has directed the Director of the Parks Division, Neil Johannsen, to immediately prepare and promulgate regulations opening parts of Denali State Park to firearms discharge. Public safety concerns will be considered in the regulations. We hope to have these regulations in effect by September 1.

The Parks Division is currently undergoing a general revision of all park regulations, including those affecting firearms discharge in state parks. These should be complete by January 1, 1984 and will not conflict with the regulations for Denali State Park.

The Honorable Bettye Fahrenkamp
Page 2
May 18, 1983

The Department asks for postponement of action on SB 289 until Neil Johannsen, with the Department of Fish and Game, has an opportunity to resolve the problems that have led to the introduction of this legislation. In the meantime, the Department is moving as quickly as possible to accommodate valid concerns about the regulations governing firearms discharge in the state parks.

Sincerely,



Robert D. Arnold
Deputy Commissioner

cc: The Honorable Don Bennett
The Honorable Pat Rodey



Ombudsman

John B. Chenoweth

State of Alaska

MEMORANDUM

January 29, 1982

TO: Jack Chenoweth
Ombudsman

THROUGH: Sheila K. Gottehrer *Sheila Gottehrer*
Regional Representative

FROM: Robert Walton *RW*
Ombudsman Assistant *RW*

RE: Ombudsman Complaint F81-1046

- Reply to:
- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
 - Pouch W0
Juneau, Alaska 99811
(907) 465-4970
 - P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

On September 29, 1981, this complaint was received in the Fairbanks office. The complainant, Darryl Sanford, described how he shot a moose and a bear above the Susitna River after checking the Alaska Hunting Regulations booklet and the corresponding map to make sure he was in a legal hunting area. He had entered the area by river and said he saw no signs to indicate the area was restricted. He determined he was in Game Management Unit 13 and saw no reason why he shouldn't shoot the moose. He also shot the bear, which came after the moose. When Mr. Sanford's partner tried to arrange to have the animals flown out by airplane, the pilot told him the animals were in Denali State Park, which was open only to bow hunting.

Mr. Sanford then called the Division of Fish and Wildlife Protection and asked Officer Stewart Felberg about the situation. I heard two versions of the conversation between the two, one from Mr. Sanford and the other from Officer Felberg (on January 8, 1982) and his supervisor, Sgt. Leon Steele (on October 7). It is unclear to me whether Officer Felberg informed Mr. Sanford he had violated a park law prohibiting the discharge of firearms or Mr. Sanford volunteered the information to the officer that he had acted illegally, or both. In any case, Mr. Sanford and Officer Felberg discussed several alternatives including a written warning to Sanford, and they agreed that Mr. Sanford should give up the meat since he had illegally discharged a firearm in Denali State Park. Mr. Sanford was not given a citation or warning but Officer Felberg did contact a third party and arrange for that person to recover the meat.

In his complaint, Mr. Sanford suggests the confiscation of the meat was unjustified, the hunting regulations should be updated, and the

January 29, 1982

State Parks Division should mark the park boundaries and post the regulations.

In a series of telephone conversations, I discussed the issue of hunting area information with several fish and game officials including Jim Faro, Southeast Management Coordinator, Bob Hinman (Editor of the hunting regulations booklet) and Ron Sommerville, Director of Game. Generally, all thought that the Department of Fish and Game could not be responsible for publishing information on hunting and firearm discharge rules established by other jurisdictions. They pointed out that federal agencies, other state divisions (i.e. Parks), and municipalities all have rules concerning hunting and firearms. They believed it is impractical to try to list information on all areas in the Hunting Regulations booklet and map because of space limitations, the difficulty of keeping current information about all jurisdictions in the booklet, and the expense involved. We noted that the Denali State Park was shown on the 1980 map but not the 1981 map. The 1980-81 Hunting Regulations booklet contains this single reference to the State Park System (on page 7):

HUNTING IN STATE PARKS. Portions of the State Park System are open to lawful hunting; HOWEVER, the laws pertaining to discharge of firearms vary from park to park. Many State parks, recreation areas and other areas closed to the discharge of firearms are open to hunting by other means, such as bow and arrow. For specific information, call the offices of the State Division of Parks, Department of Natural Resources.

On January 7, you and I reviewed this case and you raised the question of what authority prohibits the discharge of firearms in Denali State Park. On January 8, Dave Snarski of the Fairbanks Division of Parks Office told me that as far as he could tell, 11 AAC 12.190 was the authority used. This, however, concerns explosives and fireworks and does not pertain to firearms. AS 11.55.050 prohibited the discharging of firearms in a park, but it was repealed by ch 166, SLA 1978, effective in January, 1980. I then called Bob Baker, Deputy Director of Parks. He said there is a regulation against hunting in the park but it is a park regulation that needs legal foundation. He said he would check with the attorney general's office and call me back.

I subsequently talked to Colonel Robert Stickles, Director of the Division of Fish and Wildlife Protection, Assistant Attorney General Tom Meacham, and Mr. Baker again. All agreed there is no statute or regulation prohibiting hunting or the discharge of firearms in Denali State Park. Other parks are addressed (i.e. AS 4.20.230 for Chugach State Park), but not Denali Park. On January 8, Colonel Stickles told me he would inform the protection officers that the division would no longer be involved with the Division of Park rules. He also said he would see that Mr. Sanford received a road-killed moose.

Finding: This complaint is justified.

January 29, 1982

The Departments of Natural Resources, Fish and Game, and Public Safety all contributed to the problems encountered by Mr. Sanford. Although the Department of Fish and Game may have legitimate reasons for not attempting to include all available information from every jurisdiction in the hunting regulations booklet, it remains a fact that hunters do not have one adequate reference to determine legal hunting areas.

The Division of Parks improperly prohibited the discharge of firearms in the Denali State Park. This prohibition, lacking proper authority, was only partially implemented through the use of some signs and an imperfect understanding on the part of Fish and Wildlife Protection Officers.

Compensation to the complainant, in the form of a road-killed moose, has not been provided as of this date.

September 23, 1981

Ombudsman's Office
P.O. Box 74358
Fairbanks, Alaska 99707

Dear Sir:

While moose hunting this past week an incident happened to me that I feel is an injustice and should be brought to your attention. I made more than an honest attempt to familiarize myself with Alaska's hunting regulations and yet without knowing I was in a restricted area, killed a bull moose and a black bear and ended up losing both to the state. I feel that the state of Alaska has allowed me to suffer the consequences of one of its own blunders.

On the evening of September 16, I spotted several moose on a ridge above the Susitna River. To make sure we were in a legal area I looked through the Alaska Hunting Regulations booklet and corresponding map. The color coded map lists in pink those areas having "special state restrictions" with a disclaimer that some areas are too small to show on the map so refer to Articles 6, 7, and 8 of the Hunting Regulations. No indications were found in either case of any restrictions in the area where the moose were. As it turned out, the moose were in the Denali State Park yet the park was not even identified or mentioned. Neither was it listed under the section "Summary of areas closed to all or some hunting by state regulations" even though such areas as the Chugach State Park were listed. The boundary description for Game Management Unit 13 clearly described the area in question as part of area 13E which was legally open at the time according to the section titled "Hunting Seasons and Bag Limits".

Assuming there were no restrictions in the area, I hiked into the area the next morning, found a large bull, and shot it. While packing it 1/2 mile to a lake where it could be flown out, a 6 foot black bear started getting after the meat and when I couldn't make it leave, I shot it also.

The next day I went back up to continue packing meat while my partner was to arrange for a float plane to pick it up. No plane arrived and as I found out that night, the pilot felt my moose was in the edge of the Denali State Park and thought it was open only for bow hunting. I felt that the right thing to do was to call a Protection Officer to find out for sure. I reached Mr. Stu Pelburg and he informed me that even though there's no regulation against hunting in the park, there's a park law against discharge of firearms; so I had, in fact, broken the law. He explained that since it was an honest mistake, he'd issue me a warning only, send a float plane, and I should go show the pilot where the meat was. So, we flew in, I packed the bear and remaining moose meat to the lake, and they took them from me. Quite a way to end a hunt!

While I realize that my penalty could have been worse, under the circumstances, I'm not sure confiscation of approximately \$2000 worth of meat is unjustified. I feel I made every reasonable attempt I could to determine the legality of what I was doing and could find no reason to believe I was anything but legal! I had no way of knowing I was even in the park, let alone breaking a park law. (I challenge you to look at a copy of the Alaska hunting regulations and map to see what I'm saying.)

While I believe the omission is either an oversight or a trick, the Fish and Game Department in Fairbanks tells me that I broke a "Public Safety Law" and not a hunting regulation so that's possibly why it's not in the regulations. I wonder, then, where I can get a copy of our "Public Safety Laws"? It would seem to me that as detailed, complicated, and cumbersome as our hunting regulations are, a restricted area many hundreds of square miles in size could at least warrant a footnote or boundary outline; especially when other smaller areas with similar restrictions are included several times each. Additionally, I'm not sure a law against shooting in an area which is 99% wilderness (I was miles from the nearest-and-only-road in the park) could be legitimately termed a "Public Safety Law". If it's the public safety which justifies the law, why not restrict the area within a mile or so of the road and leave the rest alone? This looks to me like the very thing our state is fighting with the Federal Government over with their land withdrawals and unnecessary regulations.

In essence, I feel like I've been dealt a low blow. When an honest citizen can make the attempt I made to do what's right and end up breaking the law and going through the nightmare I have, something's wrong with our system. I realize that I can never recover my vacation time lost through this experience but the trip cost me a considerable amount, especially when one considers the lost meat. I'd like to hear your feelings concerning this problem and do I have any means of recovering my losses? Perhaps small claims court? Or should I feel lucky things weren't worse and keep quiet?

In the meantime, I suggest someone get the Game Department to update it's hunting regulations and the State Park to mark it's boundaries and post its regulations somewhere. I'm certain there are other people hunting in that park year after year without any hint they might be doing something illegal. (If you don't think so, just check along some of the rivers in the park during the hunting season.)

Sincerely



Darryl Sanford

SR 30318

Fairbanks, Ak 99701

cc: Office of the Governor
Samuel J. Harbo, Alaska Board of Game
Ronald O. Skood, Commissioner, Dept. Fish & Game
William R. Nix, Commissioner of Public Safety

FEB 22 1983

Dick
AD

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

BILL SHEFFIELD, GOVERNOR

619 WAREHOUSE DR., SUITE 210
ANCHORAGE, ALASKA 99501

PHONE: 274-4676

February 17, 1983

Re: January 15 letter

Mr. Daryl Sanford
SR 30318
Fairbanks, AK 99701

Dear Mr. Sanford,

As you know, the Division of Parks is well acquainted with the case you reference in your January 15, 1983, letter. There are, however, some inaccuracies in your factual statements.

Denali State Park was established by AS 41.20.300, a Legislative Act, in 1970. Nowhere in that legislation is there any reference to hunting, or the management of game. Consistent with other legislation, the Department of Fish and Game manages fish and wildlife resources. The Division of Parks manages land, water and other resources.

In your letter you refer to an "understanding" between (unidentified) persons and the Tanana Valley Sportsmens Association, regarding hunting in Denali State Park. The Division of Parks is not aware of such an agreement, and has no record of one. We are, however, requesting a search of the record for any legislative intent that may be in the state legislative records. Should we find anything, we will keep you informed. We hope that if you have any documentation on the matter, that you could send it to us.

We agree that there is a lack of information about park regulations in the Department of Fish & Game hunting booklet, though ignorance is never an "excuse" to violate law. Your case, however, has heightened interest to the point that the Department of Fish and Game is now interested in the information, and we forwarded our recommendations to Deputy Director Hinman of the Game Division on January 17, 1983. We can jointly share the hope that sufficient information will get into the booklet to better serve the public.

As to the Department of Natural Resources regulations for state park areas, there has never been any secret or hidden interests regarding the management of Denali State Park. Like all departments, we follow the state administrative procedures act which requires lengthy review of regulations, those proposed, or those changed. Public meetings are a mandatory part of that process. The firearm regulation that you suggest was slipped into place after the park was established, was first formally placed onto the Alaska Administrative Code in August 1968; it was amended in 1973. It has always carried the citation of 11 AAC 12.190. In simple terms, secrecy is simply not possible.

Mr. Daryl Sanford
February 17, 1983
Page 2


Continuing on the subject of this regulation, you suggest that the regulation is not valid. The Division of Parks has always held that it is valid. Your case raised sufficient difference of opinion between state agencies that the Division of Parks requested reconfirmation of that regulation. A legal opinion by the Attorney General's Office was formally issued on November 19, 1982, and it stated that the regulation is valid.

The last point you raise focuses on the agencies meeting to resolve the issues at hand, and terming those meetings a failure. In fact, agencies have met approximately once every six weeks to discuss the issues since October 1982. We have attempted to clarify each position and have worked in earnest to better serve and more clearly inform the public. As of our last meeting on January 14, 1983, the Department of Fish and Game returned to the Division of Parks several alternative proposals that would affect changes in the use of firearms, modes of access and open periods for hunting. These are presently being reviewed by our staff.

I have enclosed several attachments that I hope you find useful in the future. Should you have any questions or wish additional information, please feel free to contact me at any time.

Sincerely,

Neil C. Johannsen
Director


By: Sanford P. Rabinowitch
Chief of Operations

cc: ✓ Senator Don Bennett
Representative Bob Bettisworth
Commissioner Ester Wunnicke, Department of Natural Resources
Larry Wilde, Mat-Su District Park Ranger
Dan Timm, Department of Fish and Game
Tanana Valley Sportsman's Association, c/o Glenn Despain

SPR:ces

Offered: 3/30/83
Referred: Rules

Original sponsors: V.Fischer, Bennett,
Eliason, et al

p.2 - hunting

p.9 - firearm discharge

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 128 (Resources) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA -

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing certain areas as marine park
7 units of the Alaska state park system; and providing
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 41.20 is amended by adding new sections to read:

11 ARTICLE 17. ALASKA MARINE PARKS.

12 Sec. 41.20.530. DECLARATION OF PURPOSE. (a) The purpose of
13 AS 41.20.530 - 41.20.536 is to establish, subject to valid existing
14 rights, the state-owned or acquired land and water described in
15 AS 41.20.534 as marine park units of the Alaska state park system.
16 The primary purposes in establishing the land and water areas de-
17 scribed in AS 41.20.534 as marine park units of the Alaska state park
18 system are to

19 (1) maintain natural, cultural, and scenic values;
20 (2) maintain fish and wildlife resources;
21 (3) promote and support recreation and tourism in the
22 state.

23 (b) The land and water described in AS 41.20.534 is dedicated as
24 special purpose sites under art. VIII, sec. 7 of the state constitu-
25 tion.

26 Sec. 41.20.532. DESIGNATION OF MANAGEMENT RESPONSIBILITY. (a)
27 The state land and water described in AS 41.20.534 is assigned to the
28 Department of Natural Resources for control, maintenance, and develop-
29 ment consistent with the purposes and provisions of AS 41.20.530 -

1 41.20.536.

2 (b) The Department of Fish and Game is responsible for the
3 management of fish and game resources on the state land and water
4 described in AS 41.20.534 consistent with the purposes of AS 41.20.-
5 530 - 41.20.536. The Department of Fish and Game shall give written
6 notice to and consult with the Department of Natural Resources before
7 adoption of regulations governing fish and game management in a marine
8 park unit of the Alaska state park system.

9 (c) The Department of Natural Resources shall develop a manage-
10 ment plan for each marine park unit of the Alaska state park system to
11 determine the specific purposes and uses for the unit. The commis-
12 sioner of natural resources shall give written notice and consult with
13 the Department of Fish and Game, proximately located municipalities of
14 the state, proximately located private landowners, the United States
15 Forest Service, organizations concerned with conservation, recreation,
16 and tourism, and other interested parties during the preparation of a
17 management plan for a marine park unit of the Alaska state park
18 system.

19 (d) The commissioner of natural resources may not restrict the
20 exercise of fishing, hunting, or trapping rights permitted under law
21 or under a regulation of the Board of Fisheries or the Board of Game
22 within a marine park unit of the Alaska state park system.

23 (e) The commissioner of natural resources shall allow the devel-
24 opment of aquaculture facilities within a marine park unit of the
25 Alaska state park system under terms and conditions that ensure that
26 the development is compatible with AS 41.20.530 - 41.20.536.

27 (f) The commissioner of natural resources may enter into a co-
28 operative agreement for

29 (1) the management of a marine park unit of the Alaska

1 state park system with a federal agency, a municipality of the state,
2 or a proximately located private landowner for a purpose stated under
3 AS 41.20.020(7); or

4 (2) the management of proximately located federal, municipi-
5 pal, or private land as part of a marine park unit of the Alaska state
6 park system.

7 (g) In the management of a marine park unit of the Alaska state
8 park system the commissioner of natural resources shall consult and
9 cooperate with a Native corporation that owns an historical or cul-
10 tural site granted under sec. 14(h)(1) of the Alaska Native Claims
11 Settlement Act (43 U.S.C. sec. 1613(h)(1)) and that is proximately
12 located to a marine park unit of the Alaska state park system. In the
13 management of a marine park unit of the Alaska state park system, the
14 commissioner of natural resources shall address the potential con-
15 flicts with the cultural and historical values of land granted to a
16 Native corporation under sec. 14(h)(1) of the Alaska Native Claims
17 Settlement Act and shall provide for appropriate protection to these
18 values.

19 (h) Nothing in AS 41.20.530 - 41.20.536 precludes the use of or
20 access to privately owned land or mineral claims and leases. The
21 commissioner of natural resources shall permit adequate and feasible
22 access across state land within a marine park unit of the Alaska state
23 park system to and from private land within or outside a unit. In the
24 granting of such access the commissioner of natural resources may
25 adopt reasonable regulations to protect the natural and other values
26 of the marine park unit lands and water.

27 Sec. 41.20.534. DESIGNATED LAND AND WATER. The state-owned land
28 and water and that land and water acquired by the state in the future
29 lying within the following described parcels is designated as marine

1 park units of the Alaska state park system:

2 (1) Bettles Bay

3 Township 10 North, Range 6 East, Seward Meridian

4 Section 12: S1/2SW1/4, SW1/4SE1/4

5 Section 13: NW1/4, W1/2NE1/4, N1/2SW1/4, NW1/4SE1/4

6 Section 14: N1/2SE1/4, S1/2NE1/4, NE1/4NE1/4

7 (2) Decision Point

8 Township 8 North, Range 5 East, Seward Meridian

9 Section 1: All

10 Section 11: NE1/4, N1/2SE1/4

11 Section 12: N1/2, N1/2S1/2

12 Township 8 North, Range 6 East, Seward Meridian

13 Section 5: SW1/4

14 Section 6: All

15 Section 7: N1/2, N1/2S1/2

16 Section 8: N1/2, N1/2S1/2

17 (3) Entry Cove

18 Township 8 North, Range 6 East, Seward Meridian

19 Section 2: S1/2

20 Section 3: SE1/4, S1/2SW1/4

21 Section 10: N1/2

22 Section 11: N1/2

23 (4) Oliver Inlet

24 Township 43 South, Range 68 East, Copper River Meridian

25 Section 28: SW1/4

26 Section 32: E1/2E1/2

27 Section 33: NW1/4, W1/2SW1/4

28 (5) Sawmill Bay

29 Township 9 South, Range 9 West, Copper River Meridian

1 Section 22: E1/2SE1/4, SW1/4SE1/4

2 Section 23: SW1/4, S1/2NW1/4, NE1/4NW1/4, W1/2NE1/4

3 Section 26: W1/2

4 Section 27: E1/2, S1/2SW1/4

5 Section 28: E1/2SE1/4

6 Section 33: NE1/4NE1/4

7 Section 34: N1/2, SE1/4, N1/2SW1/4, SE1/4SW1/4

8 Section 35: W1/2

9 Township 10 South, Range 9 West, Copper River Meridian

10 Section 3: N1/2NE1/4

11 (6) Shoup Bay

12 Township 8 South, Range 7 West, Copper River Meridian

13 Section 30: W1/2W1/2

14 Section 31: W1/2W1/2

15 Township 8 South, Range 8 West, Copper River Meridian

16 Section 25: All

17 Section 26: All

18 Section 27: E1/2

19 Section 34: E1/2

20 Section 35: All

21 Section 35: All

22 Township 9 South, Range 8 West, Copper River Meridian

23 Section 1: N1/2NW1/4

24 Section 2: N1/2

25 Section 2: All

26 (7) South Esther Island

27 Township 8 North, Range 8 East, Seward Meridian

28 Section 3: W1/2, W1/2SE1/4, SW1/4NE1/4

29 Section 4: E1/2E1/2, SW1/4SE1/4

1 Section 5: E1/2SW1/4, SW1/4SW1/4, SE1/4NW1/4
2 Section 6: E1/2SW1/4, S1/2SE1/4, NW1/4SE1/4
3 Section 7: N1/2NE1/4, SE1/4NE1/4
4 Section 8: E1/2, NW1/4, N1/2SW1/4, SE1/4SW1/4
5 Section 9: All
6 Section 10: N1/2NW1/4, SW1/4NW1/4
7 Section 16: N1/2
8 Section 17: NE1/4, E1/2NW1/4
9 Township 9 North, Range 8 East, Seward Meridian
10 Section 33: SW1/2NW1/4, SW1/4NE1/4, E1/2SW1/4, W1/2-
11 SE1/4
12 (8) Surprise Cove
13 Township 8 North, Range 6 East, Seward Meridian
14 Section 21: SE1/4, E1/2SW1/4
15 Section 22: SE1/4, S1/2SW1/4, SE1/4NE1/4
16 Section 23: W1/2SW1/4, SW1/4NW1/4
17 Section 26: W1/2W1/2
18 Section 27: All
19 Section 28: S1/2, NE1/4, E1/2NW1/4
20 Section 29: SE1/4SE1/4
21 Section 34: N1/2N1/2
22 Section 35: NW1/4NW1/4
23 (9) Chilkat Islands
24 Township 32 South, Range 60 East, Copper River Meridian
25 Section 22: SE1/4
26 Section 23: All
27 Section 26: All
28 Section 27: All
29 Section 34: All

1 Section 35: All
2 Township 33 South, Range 61 East, Copper River Meridian
3 Section 4: All
4 Section 5: All
5 Section 8: All
6 Section 9: All
7 Section 16: All
8 (10) Ziegler Cove
9 Township 9 North, Range 6 East, Seward Meridian
10 Section 25: SW1/4, W1/2SE1/4
11 Section 26: E1/2
12 Section 36: N1/2N1/2
13 (11) Horseshoe Bay
14 Township 1 South, Range 9 East, Seward Meridian
15 Section 32: SE1/4
16 Township 2 South, Range 9 East, Seward Meridian
17 Section 4: S1/2SW1/4 excluding amended Iron Mountain
18 Lode No. 2 and Iron Mountain Lode
19 Section 5: All
20 Section 8: N1/2 excluding Iron Mountain Lode No. 11
21 and Iron Mountain Lode No. 10
22 Section 9: NW1/4NW1/4 excluding amended Iron Mountain
23 Lode No. 2 and Iron Mountain Lode
24 (12) Sullivan Island
25 Township 34 South, Range 60 East, Copper River Meridian
26 Section 12: SE1/4
27 Township 34 South, Range 61 East, Copper River Meridian
28 Section 7: All
29 Section 18: All

1 Section 19: All
 2 Section 30: All
 3 (13) Shelter Island
 4 Township 39 South, Range 64 East, Copper River Meridian
 5 Section 29: All
 6 Section 31: All
 7 Section 32: All
 8 Section 33: All
 9 (14) Saint James Bay
 10 Township 37, Range 62 East, Copper River Meridian
 11 Section 27: All
 12 Section 28: All
 13 Section 29: All
 14 Section 30: SE1/4, SE1/4SW1/4
 15 Section 31: E1/2NW1/4, NE1/4SW1/4, E1/2
 16 Section 32: All
 17 Section 33: All
 18 Section 34: All
 19 Section 35: W1/2
 20 Township 38 South, Range 62 East, Copper River Meridian
 21 Section 2: W1/2
 22 Section 3: All
 23 Section 4: All
 24 Section 5: All
 25 Section 6: NE1/4, E1/2SE1/4
 26 Section 8: N1/2, NE1/4SW1/4, SE1/4
 27 Section 9: All
 28 Section 10: All
 29 Section 11: W1/2

1 Section 14: NW1/4
2 Section 15: N1/2
3 Section 16: N1/2
4 Section 17: N1/2NE1/4, SE1/4NE1/4

5 Sec. 41.20.536. COMPATIBILITY OF USES. (a) The commissioner
6 of natural resources may prohibit or restrict by regulation incompati-
7 ble uses within the state-owned land and water described in
8 AS 41.20.534.

9 (b) Discharge of a firearm is permitted in state-owned land and
10 water described in AS 41.20.534 unless the land or waters are closed
11 by regulation of the commissioner of natural resources for public
12 safety purposes.

13 (c) Nothing in AS 41.20.530 - 41.20.536 prohibits the Department
14 of Fish and Game from engaging in rehabilitation, enhancement, and
15 development under AS 16.05.092 within an area described in AS 41.20.-
16 534.

17 (d) Reasonable access shall be permitted to and across a marine
18 park unit of the Alaska state park system for lawful hunting, fishing,
19 trapping and recreational purposes.

20 (e) The Department of Public Safety and the Department of Fish
21 and Game shall be allowed reasonable access for fish and game manage-
22 ment, research, and enforcement purposes.

23 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
24 10.070(c).

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

55289
BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 465-2400

June 10, 1983

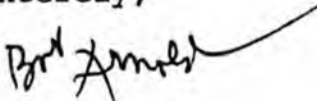
JUN 14 1983

Mr. Joe Nava
SR Box 30202
Fairbanks, AK 99701

Dear Mr. Nava:

Thank you for your letter about the discharge of firearms in state parks. I appreciated hearing your position on the legislation proposed by Senator Bennett, and I am pleased that we are moving toward solving the problem administratively. Thank you for your offer to help.

Sincerely,



Robert D. Arnold
Deputy Commissioner

cc: The Honorable Don Bennett
The Honorable Bettye Fahrenkamp
The Honorable Patrick Rodey
Neil Johannsen, Div. of Parks

Introduced: 5/4/83
Referred: Resources

May 17, 1983

1 IN THE SENATE DRAFT CS FOR BY BENNETT AND RODEY
 2 SENATE BILL NO. 289
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 THIRTEENTH LEGISLATURE - FIRST SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to discharge of firearms, and hunt-
 7 ing and fishing in ^{Denali State Park.} ~~state park and recreation areas.~~"

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*renumbered
when title
pamphlet
rewritten
10/83*

9 * Section 1. AS 41.20²¹[020] is amended by adding a new [sub]section to
 10 read:

11 [(b) The department may not designate hunting and fishing autho-
 12 rized under AS 16.05 or the lawful discharge of a firearm as incom-
 13 patible uses within the boundaries of state park and recreation areas.]

Sec. 41.21.330, HUNTING, FISHING, TRAPPING AND DISCHARGE OF FIREARMS PERMITTED. (a) The commissioner of natural resources may not restrict fishing, hunting, or trapping permitted under law or under a regulation of the Board of Fisheries or the Board of Game within Denali State Park except as may occur under subsection (b).

(b) Discharge of a firearm is permitted in state-owned land and water described in AS 41.21.151 unless the land or waters are closed to the discharge of firearms by regulation of the commissioner of natural resources for public safety purposes.

*this is
Denali
State Park*



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

DEC 12 1983

December 9, 1983

James K. Barnett, Deputy Commissioner
State of Alaska - Department of Natural Resources
Division of Parks
619 Warehouse Avenue, Suite 210
Anchorage, Alaska 99501

Dear Commissioner Barnett:

I am writing in response to proposed regulations in Title 11 of the Alaska Administrative Code dealing with state park land and water, specifically the use of firearms in state park units.

Under proposed regulation 11 AAC 20.900, the Director of the Division of Parks is granted authority to immediately close state park units to the use of weapons if a finding is made that continued use of weapons constitutes a threat to the public safety or welfare or is contrary to the purposes for which the park unit was established.

This proposed regulation violates provisions in recently passed legislation creating the Alaska Marine Park system, AS 41.20.534 [HCS CSSⁿ 128(Res)].

AS 41.20.534(d) states: "The commissioner of natural resources may not restrict the exercise of fishing, hunting, or trapping rights permitted under law or under a regulation of the Board of Fisheries or the Board of Game within a marine park unit of the Alaska state park system."

Further, AS 41.20.536(b) permits the discharge of a firearm in state-owned land and water described in AS 41.20.534 unless the land or water is closed by regulation of the commissioner of natural resources for public safety purposes.

AS 41.20.536(b) originally contained language that included "other management purposes" under reasons the commissioner could close a unit to the discharge of firearms. That language was removed by a specific amendment to the bill in the House Resources Committee with the clear understanding and knowledge of Neil Johannsen, Division of Parks Director, who was present at that committee hearing along with Ned Farquar of DNR.

I am convinced that the bill would not have passed the legislature without the "other management purposes" language removed. The legislature, both House and Senate, clearly intended to limit the directors authority to prohibit or restrict the legal use of firearms in park units to instances where public safety was a consideration.

Because of this, I suggest changing the proposed 11 AAC 20.900 by ending the sentence after "public safety" and dropping the "or welfare or is contrary to the purposes for which the park unit was established" language.

Short of that, I request that your final regulations include language exempting park units where specific statutory provisions exist limiting the authority of the director to restrict the lawful use of firearms, as in marine park units.

Best regards,

Vic Fischer
Senator Vic Fischer (4B)

cc: Senator Fahrenkamp, Chair
Senate Resources Committee

Representative Ringstad, Chair
House Resources Committee

people using the facility or area and the environment. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020
AS 41.20.040

11 AAC 12.170. DISTURBANCE OF NATURAL MATERIAL. (a) Disturbing, damaging, defacing, or removing natural objects including plants, minerals, or fossils is prohibited except that a permit may be obtained from the director to remove certain materials for collection, preservation for study and interpretation purposes.

(b) A person may gather berries, fruits, mushrooms and similar edibles for personal consumption, but not for sale or distribution. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020
AS 41.20.040

11 AAC 12.180. FIRES. On state park land all fires shall be in a portable or other camp stove or confined to a structure or facility provided in the park for this purpose, unless otherwise authorized by the director or by regulation. State fire permit regulations apply to park lands. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020
AS 41.20.040

11 AAC 12.190. EXPLOSIVES AND FIREWORKS. Discharge of explosives, mechanical or air-operated guns, gas-operated explosive devices, fireworks or similar devices in a state park is prohibited except that the director may authorize use of such items when required for construction or maintenance purposes or for the general public safety or welfare. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44; am 7/19/73, Reg. 47)

Authority: AS 11.55.050
AS 41.20.020
AS 41.20.040

11 AAC 12.200. UNDERWATER DIVING SAFETY. A person engaged in underwater diving, using scuba or other special gear shall place a flagged buoy in the area. The flag shall be red with one white diagonal stripe and large enough to be identifiable at 100 yards. The diver shall rise to the surface within 50 feet of the

flagged buoy. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020

11 AAC 12.210. LIMITATION AS TO NUMBERS. The number of vehicles and persons occupying a campsite unit may be limited by a local park officer for the preservation of the site and safety of the campers. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020

11 AAC 12.220. UNATTENDED CAMPS. A campsite shall be occupied on the first night after camping equipment has been set up. Equipment left unattended for a period of 72 hours at a campsite may be impounded by a park officer unless advance arrangements have been made with a park officer. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020

11 AAC 12.230. CAMPING. (a) Within a developed campground camping is permitted only in a developed campsite. Camping is prohibited within one mile of a developed campground, except in an area designated by the director.

(b) It is unlawful for a person to camp in a state park for more than 15 days in a calendar year except when authorized by a park officer. If the director determines that a campsite in a state park is in danger of being damaged or subject to unusual demand he may limit camping at that site to a period of less than 15 days. Notification of a time limit of less than 15 days shall be posted at the campsite or in the campground. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020
AS 41.20.040

ARTICLE 3. GENERAL PROVISIONS.

- Section
- 300. Peddling
- 310. Fees
- 320. (Repealed)
- 330. Transfer to local agencies
- 340. Definitions

MEMORANDUM

State of Alaska *file*

TO Judith E. Marquez, Director
Division of Parks
DNR - Anchorage

DATE November 19, 1982

FILE NO A66-379-82

Division of Parks

TELEPHONE NO

NOV 29 1982

FROM Wilson L. Condon
Attorney General

SUBJECT Regulation of
Firearms Discharge in
State Parks

By: *Claire Steffens*
Claire Steffens
Assistant Attorney General
AGO-Anchorage

The Division of Parks has requested our advice respecting its authority to regulate the discharge of firearms in state parks.

QUESTIONS PRESENTED

To what extent may the Division of Parks regulate the discharge of firearms within areas under its jurisdiction? Subsumed in this inquiry are the additional questions of whether legislative repeal of AS 11.55.050 invalidated regulation 11 AAC 12.190 1/ which prohibits the discharge of "mechanical or air-operated guns" in all state parks; and whether the term "firearms" is included within the meaning of "mechanical or air-operated guns" in 11 AAC 12.190.

CONCLUSIONS

The State legislature has delegated to the Department of Natural Resources the authority to regulate the discharge of firearms within all areas under the jurisdiction of the division of parks to the extent necessary to accomplish the purposes for

1/ It has been brought to our attention that a staff member of the Office of the Ombudsman has suggested, in connection with certain hunting incidents in Denali State Park, that 11 AAC 12.190 is invalid as lacking statutory foundation and, in any event, as not applying to the discharge of "firearms". For the reasons set forth in this memorandum of advice, we disagree with these views.

which state parks and recreational areas have been created. AS 41.20.010 - .040.

Legislative repeal of AS 11.55.050 did not invalidate 11 AAC 12.190. The statutory foundation for 11 AAC 12.190 exists in AS 41.20.010-.020 which mandates the creation and development of a system of parks fostered, inter alia, for the general health, welfare and enjoyment of Alaskans and for the attraction of visitors to the state.

The prohibition against discharging "mechanical or air-operated guns" in 11 AAC 12.190 includes the discharge of "firearms".

ANALYSIS

A. Authority of the Division of Parks to Regulate the Discharge of Firearms in State Parks

The general provisions granting authority to the Department of Natural Resources 2/ to acquire, develop and maintain state parks and recreational areas are contained in AS 41, Chapter 20. 3/

2/ AS 41.20.040 authorizes the Department of Natural Resources to establish a separate division to perform functions related to parks and recreational facilities, thus giving rise to the division of parks.

3/ Article VIII, Section 7 of the Constitution of Alaska provides:

Special Purpose Sites. The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

1. Legislative Authority.

The legislatively declared purpose of the provisions of Chapter 20 is:

[t]o foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education and welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state.

AS 41.20.010.

In pertinent part, AS 41.20.020 provides:

The Department of Natural Resources shall ...

(2) plan for and develop a system of state parks and recreational facilities, to be established as the Legislature authorizes and directs; ...

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, and control, supervision, improvement, development, extension and maintenance of public recreational lands, and make necessary arrangements, contracts or commitments for the improvement and development of lands acquired under §§10-40 of this chapter;

The broad language of these provisions supplies the division of parks with ample authority to regulate the discharge of firearms on lands and waters under its jurisdiction.^{4/} Moreover, the expressly stated purpose of establishing state parks and recreational facilities "for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state" compels this conclusion as the purpose of establishing state parks and recreational areas would be thwarted were the authority to regulate firearms discharge absent. In addition to the statutory provisions cited, there exists implied authority to do what is reasonably necessary to achieve the general purposes for which these areas are reserved.^{5/}

Except where limited by other statutes dealing with specific state parks or recreational areas, the legislative mandates of AS 41.20.020 apply to all areas within the jurisdiction of the division of parks. Where the legislature has enacted statutes concerning specific state parks or recreational areas, the further purposes and authority expressed within those statutes also may authorize the division to regulate the discharge of firearms within those parks or recreational areas.

2. Some Limitations on the Division's Authority.

It is important to note that the division of parks does not have authority directly to prohibit hunting in areas within its jurisdiction. However, the division does have the authority to prohibit all discharge of firearms or to restrict the circumstances of their discharge, whether the discharge of the

4/ Additional authority for the regulation of the discharge of firearms in state parks and recreational areas may be contained in AS 41.20.020(1), (7) and (11).

5/ See generally 3 Sands, Sutherland Statutory Construction §55.03, §§65.02-.03 (4th ed. 1973).

firearms is related to hunting or to any other activity,^{6/} provided that the prohibition or restriction is reasonably necessary to accomplish the purposes^{7/} for which the park or recreational area was created. Similarly, the division may regulate indirectly other aspects of hunting in state parks such as vehicle or airplane access.

B. Repeal of AS 11.55.050

The legislature repealed AS 11.55.050 as part of a general criminal code revision in 1980. This former statutory provision provided:

(a) Unless specifically permitted by law or ordinance, a person who flourishes, points, or discharges a firearms in a city of any class, or on a railway coach, steamboat or steamship, or in or near a park or public grounds, or at a public place, whether public in itself, or made public at the time by an assemblage of persons, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than 6 months, or by both.

(b) Notwithstanding the provisions in (a) of this section, firearms may be used in those state parks which are by statute, or by lawful regulation, open to shooting. (§65-12-5 ACLA 1949; am §1 ch 2 SLA 1972; am §1 ch 47 SLA 1972; repealed §21 ch 166 SLA 1978, effective January 1, 1980).

This provision was cited as one of three statutory authorities supporting the adoption of regulation 11 AAC 12.190.

^{6/} Accord Informal Op. Att'y. Gen. (May 25, 1980).

^{7/} The purposes for which a state park or recreational area was created may be expressly stated or necessarily implied from the expressly stated purposes. See Sutherland, supra, fn 5.

The repeal of AS 11.55.050 had no effect on the validity of 11 AAC 12.190. Sufficient and independent statutory foundation for this regulation exists in AS 41.20.020. The citation of AS 11.55.050 in support of the regulation was, at best, additional authority and, at worst, no authority at all.^{8/} The legislative history of the repeal of AS 11.55.050 evidences no intent to invalidate 11 AAC 12.190. If the legislature had desired to allow unrestricted discharge of firearms in state parks, we believe it would have expressly amended AS 41.20.020.

C. A Firearm is a "Mechanical or Air-Operated Gun".

11 AAC 12.190 prohibits the discharge of "mechanical or air-operated guns" in state parks:

Discharge of explosives, mechanical or air-operated guns, gas-operated explosive devices, fireworks or similar devices in a state park is prohibited except that the Director may authorize use of such items when required for construction or maintenance purposes or for the general public safety or welfare. (Emphasis added.)^{9/}

Apparently, in some quarters it is argued that this prohibition against the discharge of mechanical or air-operated guns does not apply to firearms. We disagree.

^{8/} AS 11.55.050(a) was a general criminal law provision prohibiting flourishing, pointing, or discharging of a firearm in a public place. The division of parks was not charged with the affirmative duty to adopt regulations to make this statutory provision operative. If anything, 11.55.050(b) was an express acknowledgement by the Legislature of the authority it granted the division of parks to prohibit the discharge of firearms in state parks.

^{9/} The rules and regulations of administrative bodies have the force and effect of law. Pearce v. Director, Office of Workers Comp. Program, U.S. Dep't. of Labor, 647 F.2d 716, 726 (7th Cir. 1981); LA Sands Sutherland Statutory Construction §23.19 (4th ed. 1973).

Judith E. Marquez, Director
Division of Parks
File No. A66-379-82

November 19, 1982
Page 7

The regulation clearly intended to encompass the discharge of firearms within the meaning of the terms "mechanical guns".^{10/} Words in regulations, as in statutes, should be construed as having their commonly understood meanings unless judicial construction or statutory definition has clad them with other meanings. See Lynch v. McCann, 478 P.2d 835, 837 (Alaska 1970).

The proper test to determine if the words of a statute or regulation are impermissibly vague is whether persons of common intelligence must necessarily guess at its meaning and differ as to its application. Stock v. State, 526 P.2d 3, 8 (Alaska 1974).

It is our view that persons of common intelligence need not necessarily guess at the meaning of 11 AAC 12.190 nor differ as to its application. In common usage, the terms "mechanical guns" clearly includes the mechanism called a "firearm".

^{10/} In Webster's Third New International Dictionary, Unabridged (1971 ed.), "gun" is defined as "a piece of ordnance ... throwing projectiles by the force of some explosive (as gunpowder) usu. with high muzzle velocity and with comparatively flat trajectory a portable firearm (as a rifle, shotgun, carbine, pistol); "firearm" is defined as a weapon from which shot is discharged by gunpowder; "mechanical" is defined as "of, relative to, or concerned with machinery or tools ... relating to, governed by or in accordance with mechanics; "air-operated" is not defined. Since a "mechanical gun" clearly includes a "firearm", we need not determine whether an "air-operated gun" also includes a "firearm".

§ 41.21.150

§ 41.21.151

PUBLIC RESOURCES

§ 41.21.160

in. (§ 1 ch 82

Revisor's notes. — Formerly AS 41.20.300. Renumbered in 1983.

within the parcel entries or under AS 38.05 as amended by Native Claims Act 1911 and 1613; however, relinquished to the State

Sec. 41.21.151. Denali State Park established. The state-owned land and water and that acquired in the future by the state lying within the parcels described in this section are designated as the Denali State Park. This land and water is reserved from all uses incompatible with its primary function as park area. Land covered by AS 41.21.150 — 41.21.152 is that within the following described parcels:

(1) Township 29N Range 6W, Range 5W, and that portion of Range 4W lying north and west of the Alaska Railroad right-of-way; Township 30N Range 5W and that portion of Range 3W and 4W lying north and west of the Alaska Railroad right-of-way; Township 31N Range 5W, Range 4W and that portion of Range 3W and Range 2W lying north and west of the Alaska Railroad right-of-way; Township 32N Range 4W, Range 3W and that portion of Range 2W lying north and west of the Alaska Railroad right-of-way; and Township 33N Range 4W, Range 3W and that portion of Range 2W lying west of the Alaska Railroad right-of-way, all in the Seward Meridian;

(2) Township 29N, Range 7W, Sections 1-27 and 34-36; Township 29N, Range 8W; containing approximately 42,240 acres, all in the Seward Meridian. (§ 2 ch 233 SLA 1970; am § 1 ch 135 SLA 1976)

Revisor's notes. — Formerly AS 41.21.020(6); for legislative declaration that certain electrical transmission line is a compatible use in Denali State Park, see § 14, ch 118, SLA 1981.

Cross references. — For authority of commission to adopt regulations designating incompatible uses, see AS

Sec. 41.21.152. Eminent domain prohibited. The state may not acquire by eminent domain privately owned land for inclusion in the Denali State Park. (§ 2 ch 233 SLA 1970)

Revisor's notes. — Formerly AS 41.20.320. Renumbered in 1983.

Sec. 41.21.160. Purpose of AS 41.21.160 — 41.21.167. The purpose of AS 41.21.160 — 41.21.167 is to establish the state-owned land and water areas described in AS 41.21.161 as the Wood-Tikchik State Park. The primary purposes of creating the Wood-Tikchik State Park are to protect the area's fish and wildlife breeding and support systems and to preserve the continued use of the area for subsistence and recreational activities. The state park is also created to protect the area's recreational and scenic resources. AS 41.21.160 — 41.21.167 are intended to close the described land and water to multiple-purpose use in conformity with AS 38.05.300 and to dedicate it as a special purpose site in accordance with art. VIII, § 7 of the Constitution of the State of Alaska. (§ 1 ch 86 SLA 1978)

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99211
(907) 465-3834
(907) 465-3835

Senate Committee on Resources

MINUTES

May 18, 1983
3:10 p.m.

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

| | |
|-----------------------------|----------------------|
| Senator Fahrenkamp, Chair | Senator V. Fischer |
| Senator Ziegler, Vice Chair | Senator Mulcahy |
| Senator P. Fischer | Senator Sturgulewski |

CALENDAR

Slide Presentation by Alaska Miners Association, Inc., regarding the Canadian Arctic mining tour.

SB 279 An Act relating to wholesale prices for salmon; and providing for an effective date.

SB 289 An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

SB 268 An Act relating to the sale of Prudhoe Bay royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company; and providing for an effective date.

SB 285 An Act relating to the sale of Cook Inlet royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company; and providing for an effective date.

Canadian Mining Tour:

Russ Babcock and Ron Sheardown of the Alaska Miners Association, presented a slideshow describing the Canadian Arctic mine tour.

SB 279

Pat Pourchot, committee aide, said the bill sets out the process of reporting prices for canned salmon to the Department of

Revenue in order to provide average wholesale price information. He said that representatives of processors and the fishing industry had met and discussed the proposed committee substitute. He explained the committee substitute and amendment #7, regarding types and amounts of discounts to be allowed in the calculation of wholesale prices.

Senator Sturgulewski moved to adopt the committee substitute. The motion passed without objection.

Senator Sturgulewski moved to adopt Amendment #7. The motion passed without objection.

Senator Mulcahy moved to report the committee substitute, as amended, out of committee with individual recommendations. The motion passed without objection.

SB 289

Neil Johannson, Director of the Division of State Parks, read a letter from Bob Arnold explaining the hunters' dilemmas due to conflicting laws regarding hunting and discharging firearms in state parks. The Department requested postponement of action on the bill so that it could initiate regulations addressing the situation.

Senator Fahrenkamp expressed concern that the regulations would not be in place in time for the hunting season this fall. Mr. Johannson said that the Division of Parks had always taken a reasonable approach toward hunting in state parks, and that he would proceed in a timely manner. No action was taken on the bill.

SB 285 and SB 268

Senator Mulcahy moved to report SB 285 and SB 268 out of committee with individual recommendations. The motion passed without objection.

The meeting was adjourned at 3:45 p.m.

STATE OF ALASKA

JUN 15 1983

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

2601 COMMERCIAL DRIVE
ANCHORAGE, ALASKA 99501
(907) 279-3413/3414

June 7, 1983

Dear Alaskan,

Attached is a proposed amendment to the Department of Natural Resources' regulations. This amendment deals with the discharge of firearms in state parks and is being submitted to you for review and comment. The Department will hold public hearings on the proposed regulation amendment in Anchorage and Talkeetna (see attached "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details). You are invited to present a statement, written or oral, at one of the hearings.

The regulation is being amended to clarify the existing regulation governing the discharge of firearms in state parks. 11 AAC 12.190. EXPLOSIVES AND FIREWORKS is being amended to include specific references to "firearms" and thereby eliminate confusion as to the intent of the regulation. The discharge of firearms, including other explosive devices in a state park is prohibited except as provided in 11 AAC 20. (See attached Title 11 Natural Resources regulations).

Since 1949, the discharge of firearms within or near state waysides, campgrounds and parks has been unlawful for reasons of public safety. This has minimized the states' liability in our 84 public use areas. The proposed regulation does not affect the discharge of firearms, allowed under 11 AAC 20 for the purpose of lawful hunting in the larger, more remote park areas.

A new section is proposed to be added, 11 AAC 20.400, that would open Denali State Park west of the west bank of the Chulitna River to the discharge of firearms for the purpose of lawful hunting. This area has been previously closed to the discharge of firearms but has been open to bowhunting. The area proposed for opening is approximately 1/2 of the 421,000 acres contained in the park.

In reviewing the draft regulations, you will notice that some sections contain underlined or bracketed and capitalized words or phrases while other sections contain only text with no underlined or bracketed words or phrases. Where underlined words or phrases appear, those items are proposed for addition to the

regulation currently in effect. Where brackets and capitalization appear, those items are proposed for deletion from the currently effective regulations. A section where only text appears indicates that the department proposes to add the text as new material. The presence of (---) indicates that material not proposed for amendment is intentionally deleted.

Your comments on the proposed regulation change will be most useful to the department if you reference particular wording changes or other modifications you feel would result in improvement to the regulations. Comments should be submitted to the address stated in the attached legal notice and received by 4:30 p.m. on July 5, 1983.

Thank you.

Sincerely,



James K. Barnett
Deputy Commissioner

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF
THE DEPARTMENT OF NATURAL RESOURCES
DIVISION OF PARKS

Notice is given that the State of Alaska, Department of Natural Resources, under authority vested by AS 41.20.020, proposes to amend regulations in Title 11 of the Alaska Administrative Code, dealing with the discharge of firearms, to implement AS 41.20.020, as follows:

The existing 11 AAC 12.190 is proposed to be amended to clarify that this section generally prohibits the discharge of firearms within state park units and to allow for exceptions in certain parks.

A new section, 11 AAC 20.400, is proposed to be added that would open Denali State Park west of the west bank of the Chulitna River to the use of firearms for lawful hunting.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the proposed action at hearings to be held:

Wednesday, June 29, 1983, 7:00 p.m.
Talkeetna Elementary School Gymnasium
Talkeetna

Thursday, June 30, 1983, 7:00 p.m.
Pioneer Schoolhouse, 3rd and Eagle Streets
Anchorage

In addition, written statements or arguments may be sent to Pete Panarese, Superintendent, Chugach State Park, 2601 Commercial Drive, Anchorage, Alaska 99501, to be received no later than July 5, 1983.

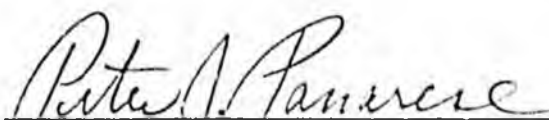
This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to:

State of Alaska
Division of Parks
2601 Commercial Drive
Anchorage, Alaska 99501

The Department of Natural Resources, upon its own motion or at the instance of any interested person, may, at the hearing or after it, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

Date: June 7, 1983


Peter J. Panarese, Superintendent
Chugach State Park

TITLE 11
NATURAL RESOURCES
PART 2
PARKS, RECREATION AND PUBLIC USE

CHAPTER 12 PUBLIC USE

Article

1. ---
2. Trails, Roads and Campsites
3. ---

ARTICLE 2 Trails, Roads and Campsites

Section

190. Explosives and firearms [FIREWORKS]

11 AAC 12.190. EXPLOSIVES AND FIREARMS [FIREWORKS]. Discharge of explosives, discharge of firearms, including mechanical or air-operated guns, gas-operated explosive devices, fireworks or similar devices in a state park is prohibited except as provided in 11 AAC 20. The director may authorize use of such items when required for construction or maintenance purposes or for the general public safety or welfare. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44; am 7/19/73, Reg. 47; am / /83, Reg.)

Authority: [AS 11.55.050]
AS 11.61.200
~~AS 41.20.020~~
AS 41.20.040
AS 41.20.230
~~AS 41.20.261~~
AS 41.20.280

A new section is proposed to be added as follows:

CHAPTER 20 STATE PARKS

Article

- 5. Denali State Park (11 AAC 20.400)

ARTICLE 5 Denali State Park

Section 400

11 AAC 20.400. USE OF FIREARMS. The use and discharge of firearms for the purpose of lawful hunting is allowed west of the west bank of the Chulitna River. (Eff. / /83, Reg.)

Authority: AS 41.20.020