

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10370 HOUSE RESOURCES

*Charlotte
Macy*



A Subsidiary of Cominco American Incorporated

(District)

Mining Potential at Red Dog

Red Dog is the world's largest zinc deposit, and twice as large as the next largest deposit. The enormity and richness (20% zinc) of the deposit are the extraordinary features that made developing this remote site a reasonable consideration. Partnerships with NANA and with AIDEA are what made the project possible.

Proven Ore Reserves

Main Pit	42 MT
Aqquluk	56 MT

Estimated Ore Resources

Qanaiyaq	10 MT
Aqquluk – additional resources	10 MT
Paalaaq	13 MT
Anarraaq,	17 MT

within 10 miles

And still looking...

3.5 M\$ exploration program for 3 sites:

3 –4 miles N of Red Dog – on NANA land,

The Wulik hole about 2 miles from Anarraaq – on state land,

Southern site off the road between the mine and port – on state land.

All areas have metallurgical and infrastructure obstacles at present which would need to be overcome to allow production.



Cominco Alaska

A Subsidiary of Cominco American Incorporated

Community Relations

Community partnerships are essential to our presence in the Northwest Arctic Borough – In the original agreement we were awarded the operation of the mine due in part to our arctic expertise, but more so due to our willingness to commit to shareholder hire, subsistence communications, and training obligations. Success in these arenas shows in:

- 60% shareholder hire,
- 9 full-time scholarships,
- 18 apprenticeships,
- an on-site apprentice for every journeyman,
- Cominco employees earn an average wage of \$71,000 year. These wages have increased the average borough wage from some of the lowest in the State to well above the state average of \$33, 500.

HOW DOES STRATA LOWC?

We are a major influence on the region, and we continue to take our role in community development to heart, looking for ways to mix good business with good neighborliness.



A Subsidiary of Cominco American Incorporated

See website

Natural Gas Development

The potential to replace diesel fuel with natural gas could cut costs, improve air quality, and have the potential to expand into a highly advantageous fuel source for the local communities.

Mineral exploration has shown:

- Total Organic Carbon – 1 – 5 %, with occasional values up to 15%
- Gravity anomalies suggest favorable gas conditions beneath 1000 feet for an area of about 5,430 acres at an average of 175 feet thick.
- 45% gas saturation
- 43 Scf/T gas content
- Thermal Capacity 984-1004 BTU/CF
- 97.8% methane with minor amounts of ethane and carbon dioxide.
- No measurable CO, H₂S, H, or O

Not Conventional Gas Development

- No "reservoir" of gas
- Gas flows out of small fissures throughout the shale bed
- Uses conventional gas drilling equipment
- Requires air or water to push gas out of the fissures, sometimes involves injection of sand to keep fissures from closing.

Gas Field Development

- *• Access road from Red Dog to the field – about 10 miles
- Construct underground pipeline
- Convert to power at Red Dog.
- No flaring anticipated

(Rs2477?)

Power Generation

- Convert Wartsilas to gas
- Cut NO_x emissions in 1/2



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I. - combine Borough
- Borough does not want
to combine

Fuel Distribution

The DeLong Mountain Transportation System Port Site, which services Red Dog Mine, is strategically located for distributing diesel fuel to the local villages. This arrangement can result in substantial savings for villagers. The U.S. Department of Transportation has monies to fund a feasibility study to support requests for construction funding. We are looking to see that these funds get allocated in a timely manner that allows for feasibility completion in time for the July 2001 federal funding cutoff.

- Many villages fly in fuel at great costs – flying fuel the short distance from this port will result in great savings.
- Bulk purchasing for the borough will allow more cost negotiating power.
- With natural gas conversion, the present storage capacity can be transferred to local diesel storage.
- Villages will not need to store as great of quantities on site.
- + • The airstrip will allow for better support access in the event of a port site fuel spill.
- The airstrip will allow better landing opportunities for Red Dog, including increased assurance of medivac access during an emergency.

↑
Donny
Fed \$?



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Economic Impacts

- Alaskan Vendors and Services: 150 Million \$ in 2000
- Wages in State: 14 Million \$ in 2000
- Mining license tax 2.4 Million \$ in 1999
(Paid April to April)
- Payments to NANA in leases and royalties: Over 6 Million \$/year
- Payments to AIDEA that go to State General Funds 10 Million in 2000
- Payments in lieu of taxes
to the Northwest Arctic Borough 4 Million \$ in 2000

- Profits in 2000 75 Million \$ in 2000
- Remaining Debt after paying in 2000 profits 968 Million \$ in 2000



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Regulatory Concerns

*only mine w/ no
Awards*

Red Dog continues to strive to be an environmental model, but to also work towards reasonable regulations.

- New regulations are proposed for ambient air boundaries. As currently written, these regulations could shut down some operations and possibly Red Dog. We are working with other industries to prepare constructive comments that will provide ADEC with the definition they are pursuing, yet retain their discretionary powers that allow for consideration of site specific factors.
- We issue strong support for the motorized transport oil spill regulations. As the spot charter representative, we feel these regulations provide meaningful and practical spill management measures.
- ADEC and Cominco are jointly filing suit against the EPA regarding ADEC's authority to use discretion in determining Best Available Technology. Oral arguments are scheduled for next week and a decision should be forthcoming in 2 - 6 months.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

10/14/2003

Date

SOIL

&

WATER

OVERVIEW

1/3 1/01

Key Issues for Legislative Support

- The ADNR Conservation and Development Board, the 12 officially recognized Soil and Water Conservation Districts under its jurisdiction, and the non partisan Alaska Association of Conservation Districts stand for responsible natural resource development on state and private lands.
- The Board, with paralleling status in all of the lower 48 states and Hawaii, is Alaska's natural resource conservation agency required by Public Law 46, established by A.S. 41.10, and as such provides a substantial linkage for USDA and other federal programs earmarked and implemented in Alaska.
- On June 14, 1991 then Commissioner Harold Heinze recognized the significance of the Conservation and Development Board and its service as a linkage to private land owners and natural resource users in Alaska. As a result the Board and its Executive Director were elevated to the Commissioners Office and ADNR cabinet level status. This relationship must be supported and preserved.
- In FY 2000 / 2001 Congress appropriated \$2,000,000 directly to Conservation District programs and the Alaska conservation initiative. Not including millions in direct program funding for flood and erosion control measures, the USDA Natural Resource Conservation Service contribution has been in excess of \$10,000,000. The State of Alaska's contribution for the same two year funding period; \$232,102.
- *The ADNR Conservation and Development Board established in 1948 under A.S. 41.10 receives less than 00.1% of the national average for state contributions.*

ACTION REQUIRED: The Alaska Legislature and the Administration must recognize the unique and significant contribution of the ADNR Conservation and Development Board. Over the next three years the Alaska Legislature and the Administration must initiate incremental appropriations of \$250,000 annually to achieve a static funding level of \$750,000 by the year 2003.

FORM FOR RESPONSIBLE RESOURCE DEVELOPMENT

**Alaska Department of Natural Resources
Conservation and Development Board
FY 2001 Request for Legislative Support**

**FY 2001 ADNR Conservation and Development Board (current budget request)
Identified in ADNR Div. of Agriculture / Ag Development BRU)**

▪ 7100	Personal Services (PCN 10-0087 / 9.6 months)	\$71,851
▪ 7200	Travel (Board and Commissioners Office)	\$19,000
▪ 7300	Contractual Services (District Stipend)	\$24,000
▪ 7400	Supplies (Commissioners Office)	\$ 1,200
	TOTAL:	\$116,051

NOTE: Current funding is:

- 62.5% Div. of Agriculture ARLF
- 37.0% Interagency receipts

**FY 2001 ADNR Conservation and Development Board (amended budget request)
Identified in ADNR Commissioners Office**

▪ 7100	Personal Services (PCN 10-0087 / 12 months)	\$89,814
▪ 7200	Travel (Board and Commissioners Office)	\$30,000
▪ 7300	Contractual Services (District Stipend)	\$24,000
▪ 7400	Supplies (Commissioners Office)	\$ 5,000
	TOTAL:	\$148,814

Dick Zobel, Chairman
Wasilla Susitna Soil and Water Conservation District
P. O. Box 872288
Wasilla, Alaska 99687

Dear Dick:

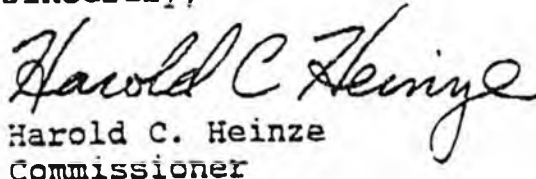
I agree that the Alaska Soil and Water Conservation Districts and Board should have a larger role in solving several key issues that are important across Alaska. Certainly the boards are well equipped to help conduct public hearing processes and they should be an integral part of important land management projects like wetlands determination and our Statehood land selection.

In support of this view, I am transferring the executive director's position for the Alaska Soil and Water Conservation Board to the Department of Natural Resources Commissioner's Anchorage Office. This week I've appointed Cheryl Boren as a Special Assistant to the Commissioner and she has been assigned this responsibility.

By copy of this letter to the Department of Natural Resources Division Directors and to other State departments, I am initiating a review of the utilization of SWCB expertise and how we might improve upon it.

I look forward to your continued work and involvement. If you have any questions, please ask.

Sincerely,


Harold C. Heinze
Commissioner

This letter is to serve as an introduction of what we feel is one of

Alaska's best kept secrets. Conservation Districts nation wide function as the key link between state, federal, and local agencies and your constituency; the private landowners and natural resource user groups throughout Alaska. The partnership in Alaska was initiated in 1948 with the passage of A.S. 41.10. A.S. 41.10 was modeled from draft documents sent in 1936 to every state in the union asking legislators to provide for local units of government. More explicitly, locally led grassroots organizations to be known as Conservation Districts. The framers of this model legislation intended Districts and their locally elected leadership to be the link between government land and resource management agencies and private landowners / natural resource users.

A.S. 41.10 provides for certain duties and authorities; some assigned directly to the Alaska Conservation and Development Board and some as delegated to the Board by the Commissioner of the Dept. of Natural Resources. The Board is appointed by the Governor to advise the Commissioner on land and resource issues, but more importantly to provide for and guide the orderly settlement of land by Alaskans.

For many years now, the Board has struggled to be recognized by state leaders as a legitimate private sector link with legal authority. Although we have made some strides with regard to the attitude / understanding of our sister state agencies, the battle from time to time becomes quite frustrating. As often time is the situation, our ability to perform is directly tied to personnel and fiscal limitations.

We appreciate you taking the time during your busy schedule to listen to our concerns. As settlement of state lands escalates and pressure for the use of state resources increases, our mandate is to provide guidance in the transition from public to private ownership. The guidance and/or support we seek is not an immediate short term remedy, but permanent long term solution.

Sincerely;



Mike Swan; President

Alaska Association of Conservation Districts

**351 West Parks Hwy., Suite 101 • Wasilla, Alaska 99654
Phone: (907) 373-7923 • Fax: (907) 373-7192 • E-mail: aacd@rrtaonline.net**

The Cooperative Relationship Between USDA Natural Resources Conservation Service and Alaska's Soil and Water Conservation Districts

Natural Resources Conservation Service (NRCS)

..... provides leadership in the conservation, development, and productive use of the nation's soil, water, and related resources.

Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; resource conservation and development; and other programs.

Through local Soil and Water Conservation Districts, NRCS assists individuals, groups, and units of government, who are seeking help to conserve and develop soil, water and related resources.



Soil and Water Conservation Districts (SWCD)

..... are subdivisions of state government organized and run by local people.

Each district has responsibility for developing a district-wide conservation program directed at solving local soil, water, and related resource problems.

The district assists land managers plan, apply, and maintain appropriate land practices and uses.

The District governing board helps set direction and priorities for the NRCS field offices and technical support staff.

THE LINK

NRCS staff and District board members work together to carry out District programs.

Assistance is provided to the public and government agencies on conservation issues.

An Introduction to USDA Natural Resources Conservation Service and Alaska's Soil and Water Conservation Districts

Many individuals, groups, and agencies in Alaska are relatively unfamiliar with U.S. Department of Agriculture's Natural Resources Conservation Service and its local partners, the Alaska Soil and Water Conservation Districts.

Natural Resources Conservation Service (NRCS) is a federal agency that collects information and provides technical assistance related to natural resources. NRCS programs help both public and private land managers conserve, improve, and sustain natural resources.

A primary goal of NRCS efforts is to help land managers achieve a level of natural resource protection that prevents degradation and permits sustainable use.

Soil information, collected nationwide by NRCS soil scientists and published in soil surveys, is probably the most familiar kind of NRCS technical assistance known.

In addition to soil surveys, NRCS specialists collect and interpret a wide range of data for use by diverse land managers.

These specialists include foresters, range conservationists, engineers, biologists, agronomists, archaeologists, hydrologists, geologists, economists, and land architects. Each specialist works to assist land managers in protecting our resources.

NRCS efforts are focused to work in partnership with local Soil and Water Conservation District (SWCD).

Each SWCD has a volunteer board composed of landowners from within the district's boundaries.

SWCD boards help NRCS staff with their efforts on resource issues and concerns of local and regional significance. SWCDs also help familiarize local landowners and managers with NRCS assistance.

NRCS is a *technical assistance and information* agency and its effectiveness must be measured through the actions of others. In particular, NRCS information and programs are effective only if they lead others to manage natural resources wisely and in sustainable ways.

The more NRCS programs help land managers to conserve, improve, and sustain the resources in their care, the more effective those programs can be.

Districts help NRCS:

- ◆ identify types of resource information and planning assistance needed by others
- ◆ reach those resource managers most likely to apply for NRCS assistance

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA Office of Communications at 202-720-2791.

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C., 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.



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William J. Carter

Signature of Camera Operator

10/14/2003

Date

STATUS

STATE-

HOOD

DEFENSE

2/02/01

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 2, 2001

1:10 p.m.

COMMITTEE CALENDAR

OVERVIEW: STATUS OF THE STATEHOOD DEFENSE CASES

TAPES

01-7, SIDES A & B

CALL TO ORDER

REPRESENTATIVE BEVERLY MASEK, Co-Chair, called the House Resources Standing Committee to order at 1:10 p.m.

PRESENT

Committee members present were Representatives Fate, Green, Stevens, Kapsner, McGuire, and Scalzi. Representatives Kerttula and Chenault were excused.

SUMMARY OF INFORMATION

BARBARA RITCHIE, Deputy Attorney General, Office of the Attorney General, Department of Law, told members that her department was requested to give an update of the status of state lawsuits pending. She introduced Ms. Grace.

JOANNE GRACE, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, briefed committee members on the status of the three major pending lawsuits filed by the State of Alaska:

Katie John v. United States - state's right to manage its navigable waters. The state filed a notice of appeal in the Ninth Circuit Court and a decision is expected within six months. The state asserts that Congress did not intend federal agencies to usurp state sovereignty to manage state navigable waters.

State of Alaska v. United States - state's right to claim title to submerged lands in Southeast Alaska marine waters including those within Glacier Bay National Park and the Tongass National

Forest. The case will be heard in the Supreme Court and is significant, as it would affect the state's management of commercial fishing in waters within those park boundaries.

State of Alaska v. U.S. Forest Service and Department of Agriculture - Clinton Roadless Plan for Chugach and Tongass National Forests. Governor Knowles filed in the U.S. District Court on January 31, 2001. The suit seeks to permanently prevent the federal government from implementing the roadless policy, which would affect over 90 percent of the Tongass National Forest and 98.9 percent of the Chugach National Forest.

ANNOUNCEMENTS

CO-CHAIR MASEK announced that the House and Senate Resources Committees will meet jointly on February 6, 2001, at 12:15 p.m. to hear a presentation from the Alaska mining industry.

COMMITTEE ACTION

The committee took no action.

ADJOURNMENT

CO-CHAIR MASEK adjourned the House Resources Standing Committee meeting at 2:19 p.m.

NOTE: The meeting was recorded and handwritten log notes were taken. A copy of the tape(s) and log notes may be obtained by contacting the House Records Office at State Capitol, Room 3, Juneau, Alaska 99801 (mailing address), (907) 465-2214, and after adjournment of the second session of the Twenty-Second Alaska State Legislature this information may be obtained by contacting the Legislative Reference Library at (907) 465-3808.

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 2, 2001

1:00 p.m.

COMMITTEE CALENDAR

Overview: Status of the Statehood Defense Cases

TAPES

01-7, SIDES 1, 2

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COMMITTEE TAPE LOG

COMMITTEE: RESOURCES

DATE: 2/2/01

TIME:

SUBJECT:

MEMBERS:

Masek BM Scalzi DS Fate HF Green JG Chenault LXC
 Stevens GS Kapsner MK 116 Kerttula BK excused McGuire LM

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
BM	01-29	SIDE A
BM	0001	call to order @ 110 - status of state cases still open - esp for new mbrs
JG	155	JAG - Barbara Ritchie Deputy AG -
BR		JA heads up statewide defence dept in Arch -
BM		Ron S here for ? -
JAG	288	- background on new - 2 imp cases K John & Bay case SEAK sub. land KJ - 1990 filed after AK out of comp w ANILCA That cases have priority to h&f on p. lands in 87 AK SC. ruled violated Const - no priority based on where person lived - for agency set up bd to reg h&f on public lands - or federal lands - not navig waters (state property) KI filed suits p.l. should apply to fed lands & navig. waters - state wd lose most of state waters - Dist Ct ruled all navig waters public - apud 94 - Ct reversed - said fed only.

COMMITTEE TAPE LOG

COMMITTEE: RESOURCES DATE: TIME:

SUBJECT:

MEMBERS: Masek Scalzi Fate Green Chenault
 BM DS HF JG MC
 Stevens Kapsner Kerttula McGuire
 GS MK BK LM

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	01-	SIDE A
	0001	call to order @
		Ct ruled implication some navig waters are fed - ordered fed. agency to ID - they did over 1/2 states -
		Kapsner, at 116 - last Jan Dist Ct - appealed again last yr to 9th Cir. ^{en banc} -
		Wall 11 judges - critical stage - nearly over course - USSC more willing now than past to limit Cong authority on fed
		manet of states - violates "Clear stmt doc" not assume congress intended to take over w/o clear language - not clear on ANILCA
	1160	history 150 yrs states manage navig ^{waters} clear stmt doctrine requires Congress to make clear language - Solid water service of Cost County case - Ct of Error - Ct ruled Engr had no auth/state right -
DS	1516	good summary - ANILCA may be perceived vs. state/fed - affect other issues in other states?
JAC	1614	probably - other states concerned - fed water right would be perceived.

COMMITTEE TAPE LOG

COMMITTEE: RESOURCES DATE: TIME:

SUBJECT:

MEMBERS: Masek Scalzi Fate Green Chenault
 BM DS HF JG MC
 Stevens Kapsner Kerttula McGuire
 GS MK BK LM

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	01-	SIDE A
	0001	call to order @
DS	1665	fed gov int in our water / usurping authority of state no. must now? state have beneficial interest in water rights -
JAG	1727	still more wishes for other purposes (subsidies) need to wait to see what regs promulgated for other uses (sport, comers,) - take over only for federal subsistence -
JG	1825	any final decision date -
JAG	1851	hard to predict - need 6 mos / simple majority
JG	1935	get final worst rendering - attempt to appeal
JAG	1956	- may - option for final step -
LM	1976	any? indicate outcome guess -
JG	2004	non gamut - if prevail - p. lands would not have navigable waters in its fed. waters -
MK	2302	- our interests represent dif people in state
JG	2318	track record of 9th abnormal - being influence on appeal -
JAG	2365	9th so large - 28 judges - too many decisions - don't know law - but rectifying - take more on punc -

COMMITTEE TAPE LOG

COMMITTEE: RESOURCES DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: Masek Scalzi Fate Green Chenault
 BM DS HF JG MC
 Stevens Kapsner Kerttula McGuire
 GS MK BK LM

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	01-	SIDE A
	0001	call to order @
JAG	2530	SE Case US Supreme Ct - original action - re. submerged lands - This case started in SC coastal boundary dispute betw state & US - both claim - filed motion Nov 94 ago - court agreed to take claim we own lands w/in (Bay Park / state says took when made park) - • Tongue Nat Forest passed automatically • Waters w/in SE are inland waters Oct. SC apptd special master - to take evidence & make recom. - Oct Greg Masses HULL law School apptd - link to web site to case - • asked to amend to include 3rd count. state boundary 3 mi from legal coastline - mean low time line
	SIDE B	- Denkan Sands 1970 -
JG	2983	if DS true inland - State got title? Post that case
JAG	1210	hard to prove - trying to prove what the SE of made of 4 bays judicial, bays -

COMMITTEE TAPE LOG

COMMITTEE: RESOURCES DATE: TIME:

SUBJECT:

MEMBERS: Masek Scalzi Fate Green Chenault
 BM DS HF JG MC
 Stevens Kapsner Kerttula McGuire
 GS MK BK LM

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	01-	SIDE A
	0001	call to order @
		4 Bays - must west marked & land-locked
		impact "Sovereignty" of area @ semi-circle
		test - any area no longer than 24 mi -
		probably here in 2002 or 03 in Arch
JG	2525	lose cause of duration
JAG	2514	law will change -
He		no-exceed time
He	2501	no- can't lose title because of time
CS	2476	other areas in jeopardy, (I Sh. St -
JAG	2456	can't believe 2
DS		Feds claimed 14% in CI per
CS	2416	Sh. St - Bear refuge -
JG	2393	out of Valdez - 24 mi across
JAG	2375	don't drain - of islands -
		new case just filed - Roadless case -
		to challenge FS regs in inventoried
		Chug 95 Tong 90 - closed to
		road const & timber harvest -
		one regulation eliminates land use
		planning required by state

PAT

FEDERAL RELATIONS MATERIALS

*Maps from Alaska v. United States, Original No. 128


*Web site of Professor Gregory Maggs, with resumé
and docket

*Quarterly Report, natural resources cases


THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES


EXHIBIT 1

Historic Waters of Alexander Archipelago

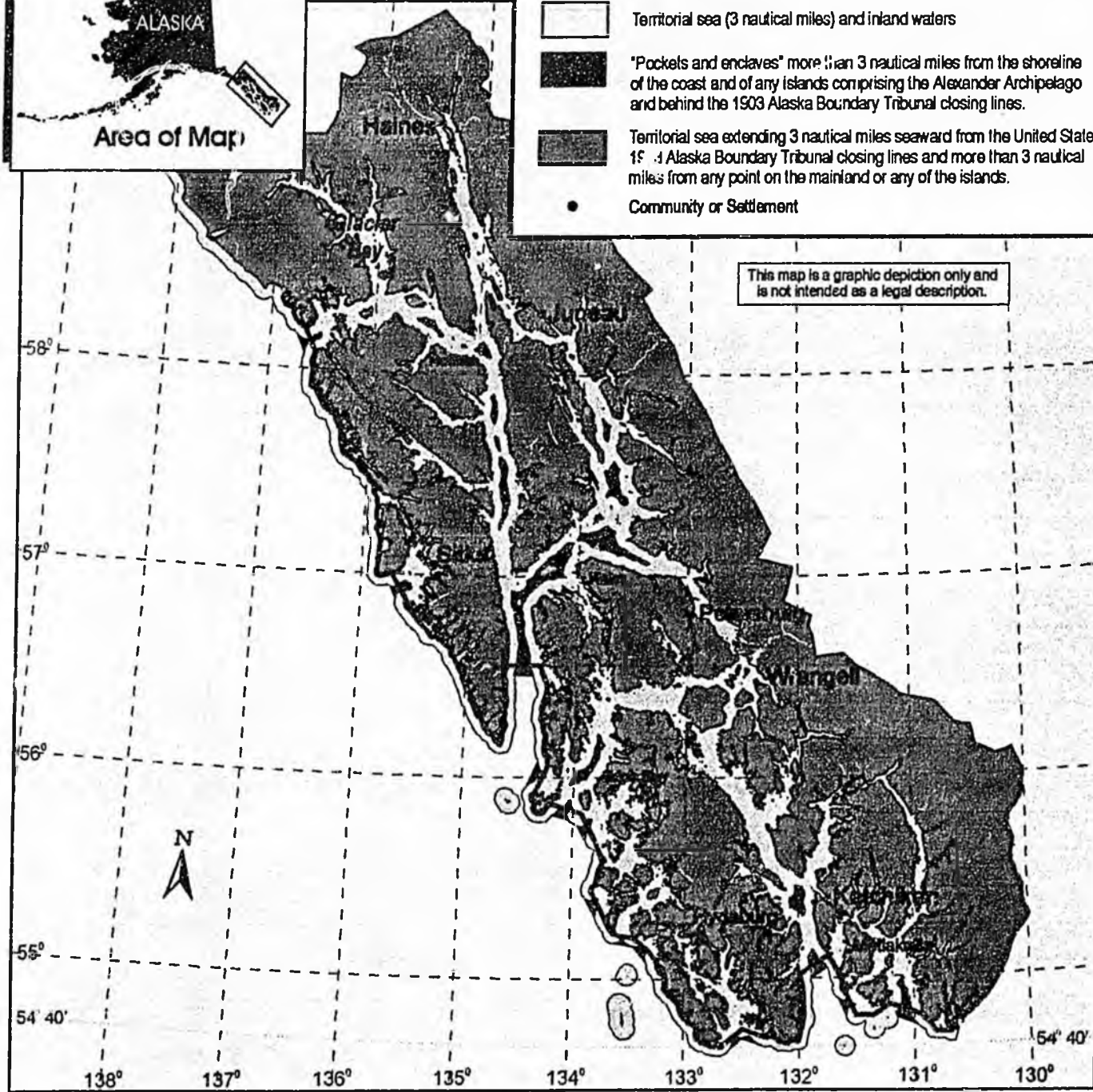
 Graphic depiction of closing lines drawn by the United States at the 1903 Boundary Tribunal to mark the seaward limits of the inland waters of the Archipelago. See *5 Proceedings of the Alaskan Boundary Tribunal*, S. Doc. No. 162, 58th Congress, 2d Session (1903-04), Pt. I, Argument of the United States, pp. 15-16; *id.* Vol. 4, Pt. I, Counterargument of the United States, pp. 31-32.

 Territorial sea (3 nautical miles) and inland waters

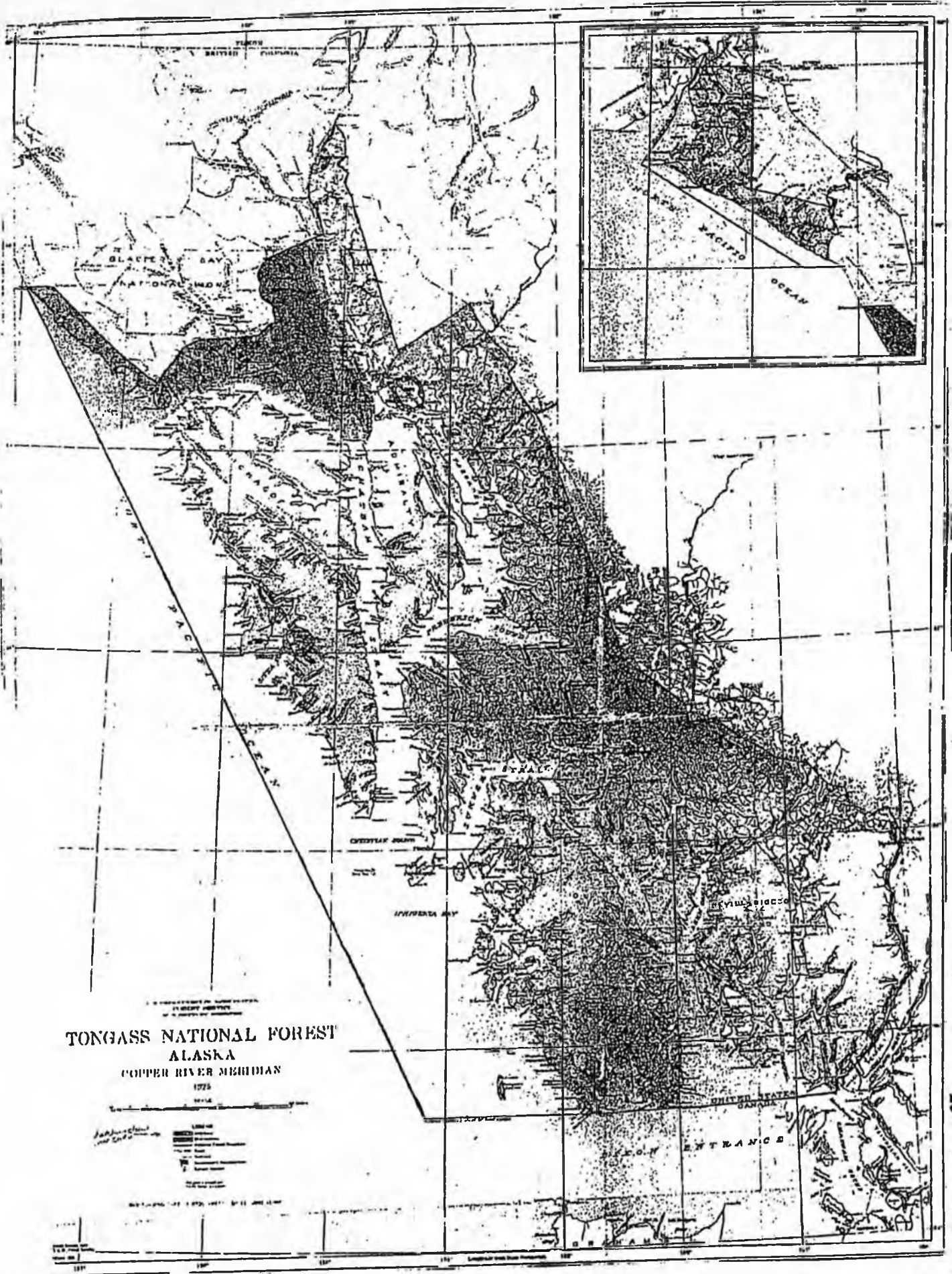
 "Pockets and enclaves" more than 3 nautical miles from the shoreline of the coast and of any islands comprising the Alexander Archipelago and behind the 1903 Alaska Boundary Tribunal closing lines.

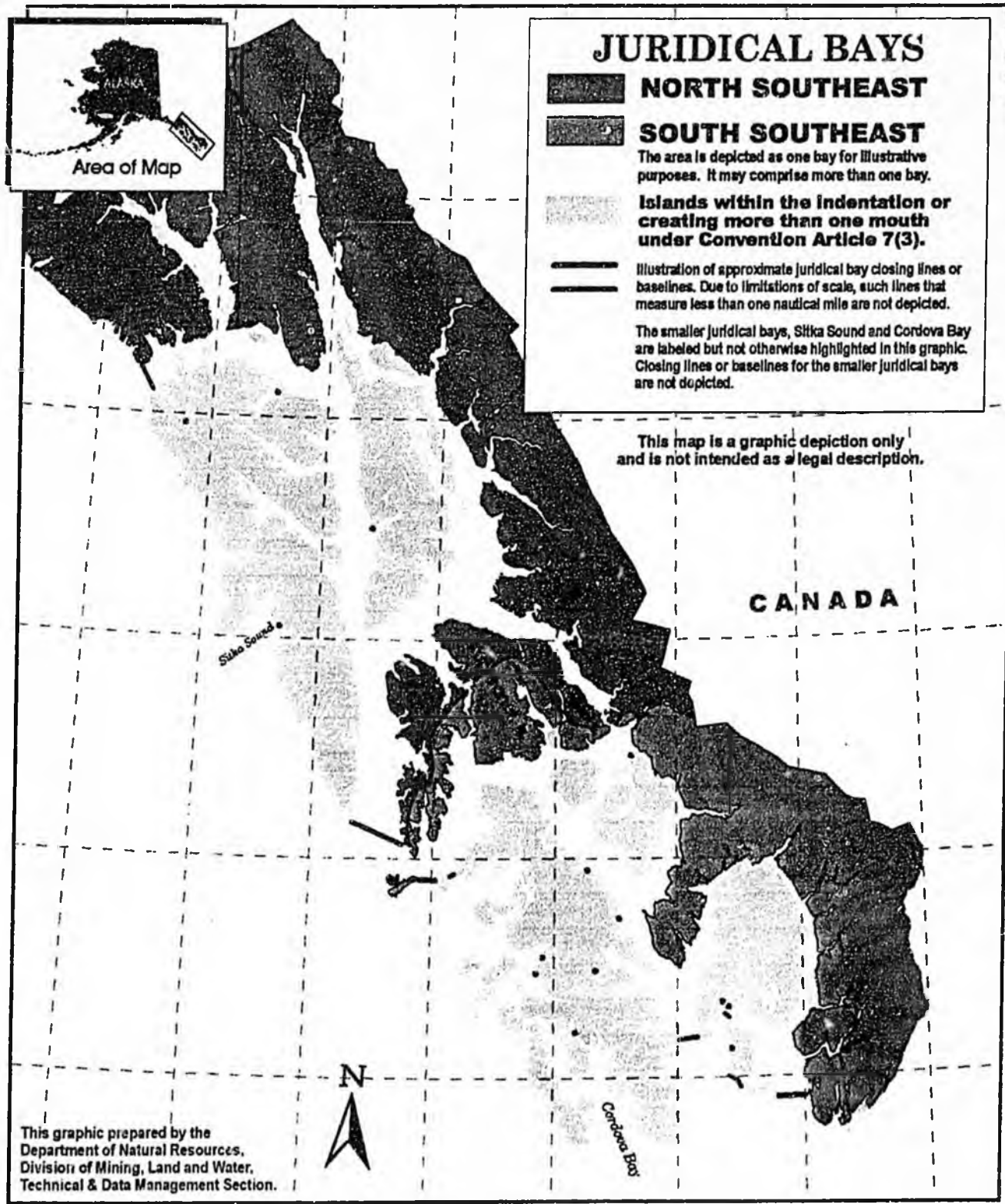
 Territorial sea extending 3 nautical miles seaward from the United States' 1903 Alaska Boundary Tribunal closing lines and more than 3 nautical miles from any point on the mainland or any of the islands.

 Community or Settlement



Prepared by the Department of Natural Resources, Division of Mining, Land & Water - Technical & Data Management Section October, 1999





JURIDICAL BAYS

NORTH SOUTHEAST

SOUTH SOUTHEAST

The area is depicted as one bay for illustrative purposes. It may comprise more than one bay.

Islands within the indentation or creating more than one mouth under Convention Article 7(3).

Illustration of approximate juridical bay closing lines or baselines. Due to limitations of scale, such lines that measure less than one nautical mile are not depicted.

The smaller juridical bays, Sitka Sound and Cordova Bay are labeled but not otherwise highlighted in this graphic. Closing lines or baselines for the smaller juridical bays are not depicted.

This map is a graphic depiction only and is not intended as a legal description.

CANADA

Sitka Sound

Cordova Bay



This graphic prepared by the
 Department of Natural Resources,
 Division of Mining, Land and Water,
 Technical & Data Management Section.





Gregory E. Maggs

Professor of Law, George Washington University Law School

Mailing Address: 720 20th Street, N.W., Washington, DC 20052

Campus Office Location: Old Main Building, 1922 F Street, N.W., rm. 406c, Washington, DC 20052

Telephone, Fax, and Email: Tel. (202) 994-6031 / Fax. (202) 994-5654 / gmaggs@main.nlc.gwu.edu

Personal Information: [resume](#), [publications](#)

Courses: Constitutional Law I ([spring 2000 syllabus](#), [exams](#), [grading guides](#))

Contracts I ([fall 2000 syllabus](#), [exams](#), [grading guides](#))

Contracts II ([spring 2000 syllabus](#), [exams](#), [grading guides](#))

Commercial Paper ([fall 2000 syllabus](#), [exams](#), [grading guides](#), [review videos](#))

No. 128, Original, [Alaska v. United States](#): [docket sheets](#)

Updated November 6, 2000

GREGORY E. MAGGS -- Resume

PRESENT EMPLOYMENT

The George Washington University Law School, Washington, D.C.

Professor of Law (2000-present); Associate Professor of Law (1993-2000)

Subjects taught: Commercial Paper--Payment System, Constitutional Law I,
Contracts I & II

Distinguished Faculty Service Award (1997, 1998)

Special Master, U.S. Supreme Court No. 128, Orig., Alaska v. United States

EDUCATION:

Harvard Law School, J.D., magna cum laude, 1988

Harvard Law Review (Articles Office Co-Chair)

Harvard College, A.B., summa cum laude, 1985

Phi Beta Kappa, John Harvard Scholar

Concentration: Linguistics and Applied Mathematics

PREVIOUS EMPLOYMENT:

Consultant to the Office of Independent Counsel, In re: Madison Guaranty
Savings & Loan Ass'n (Hon. Kenneth W. Starr) (1998-2000)

Assistant Professor of Law, University of Texas School of Law, Austin, Texas

Subjects taught: Bankruptcy, Insurance Law, Payment Systems

(Fall 1991, 1992-1993)

Law clerk to Hon. Clarence Thomas, U.S. Supreme Court, Washington, D.C.
(1991-1992)

Private practice and research with Hon. Robert H. Bork, Washington, D.C.
(1990-1991)

Law clerk to Hon. Anthony M. Kennedy, U.S. Supreme Court, Washington, D.C.
(1989-1990)

Law clerk to Hon. Joseph T. Sneed, U.S. Court of Appeals for the Ninth Circuit,
San Francisco, Calif. (1988-1989)

ADMITTED TO PRACTICE:

New York, District of Columbia, Massachusetts

MILITARY:

U.S. Army Reserve, Judge Advocate General's Corps (1990-present)

FOREIGN LANGUAGE STUDY:

German, Arabic, Spanish

DOCKET SHEETS -- NO. 128, ORIGINAL, ALASKA v. UNITED STATES

Below are two docket sheets for United States Supreme Court, No. 128, Original, State of Alaska, Plaintiff v. United States of America.

The first is a copy of the official docket sheet maintained by the U.S. Supreme Court's Office of the Clerk. The second is a docket sheet prepared by the Special Master for proceedings before him.

The Special Master will post selected documents, including the final (but unsigned) versions of all of his orders, in ".pdf" format. To view and print these documents, you will need Adobe® Acrobat® Reader, ™ which you may download for free at www.adobe.com.

Gregory E. Maggs, Special Master
George Washington University Law School
720 20th Street, N.W.
Washington, DC 20052
[Special Master's Home Page](#)

Last updated Dec. 20, 2000

COPY OF OFFICIAL DOCKET SHEET MAINTAINED BY THE U.S. SUPREME COURT
FROM NOVEMBER 24, 1999 UNTIL OCTOBER 16, 2000.

ENTRY	DATE	PROCEEDING AND ORDERS	PDF
1	Nov 24 1999	Motion for leave to file and bill of complaint filed.	
2	Jan 24 2000	Order extending time to file response to motion for leave to file a bill of complaint until February 28, 2000.	
3	Feb 25 2000	Order further extending time to file response to motion for leave to file a bill of complaint until March 29, 2000.	
4	Mar 29 2000	Order further extending time to file response	

		to motion for leave to file a bill of complaint until April 12, 2000.
5	Apr 12 2000	Brief for United States filed.
6	Apr 25 2000	DISTRIBUTED. May 11, 2000 (Page 16)
7	Apr 25 2000	Reply brief filed.
8	May 23 2000	REDISTRIBUTED. June 8, 2000 (Page 4)
9	Jun 9 2000	Motion for leave to file a bill of complaint is granted. The United States is allowed 60 days within which to file an answer.
10	Aug 9 2000	Order extending time to file answer to bill of complaint until August 25, 2000.
11	Aug 25 2000	Answer of United States to bill of complaint filed.
12	Sep 13 2000	DISTRIBUTED. October 6, 2000 (page 4)
13	Oct 10 2000	REDISTRIBUTED. October 13, 2000 (page 14)
14	Oct 16 2000	It is ordered that Gregory E. Maggs, Esquire, of Washington, D.C., is appointed Special Master in this case.
15	Oct 16 2000	IT IS ORDERED that Gregory E. Maggs, Esquire, of Washington, D.C., be appointed as Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such Reports as he may deem appropriate. The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his Reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

DOCKET SHEET FOR PROCEEDINGS BEFORE THE SPECIAL MASTER
STARTING OCTOBER 25, 2000.

ENTRY	DATE	PROCEEDING AND ORDERS	PDF
1	Oct 25 2000	Case Management Order No. 1	cmo-1.pdf
2	Nov 6 2000	Case Management Order No. 2	cmo-2.pdf
3	Nov 10 2000	Case Management Order No. 3	cmo-3.pdf
4	Dec 14 2000	Alaska's Unopposed Motion for Leave to File an Amended Complaint, Amended Complaint, and Brief in Support of Motion filed.	
5	Dec 20 2000	Case Management Order No. 4	cmo-4.pdf



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Alaska Department of Law / Natural Resources

Updated December 15, 2000

Significant Natural Resources Cases

The following is a summary of many of the active subsistence, statehood defense, and other significant lawsuits being handled by the Natural Resources Section of the Alaska Department of Law.

FEDERAL COURT CASES

1. Katie John v. U.S.
2. Stevens Village v. McVee and Rosier
3. Native Village of Quinhagak v. United States
4. Peratrovich v. United States
5. Kluti Kaah v. Alaska
6. State v. Harrison
7. State of Alaska v. United States [Southeast Alaska marine waters]
8. Confederated Tribes & Bands of the Yakama Indian Nation, et. al v. Baldrige
9. U.S. v. Washington
10. Alaska v. United States and Bruce Babbitt
11. Hyak Mining Co. v. U.S. [RS 2477]
12. Harold Kalve v. Frank Rue

STATE COURT CASES

1. Kenaitze Indian Tribe v. State
2. Interior Airboat Ass'n v. State
3. Kachemak Bay Conservation Society, et al. v. State, DNR

4. Kashwitna Farms, Inc., Harry and Consuelo Wassink v. State
5. Koyukuk River Tribal Task Force v. Rue
6. Cigna Insurance Co. & Native Village of Mekoryuk, et al. v. Moses
7. Leuthe v. State of Alaska
8. Greenpeace, Inc. v. State
9. Greenpeace v. Alaska Dep't of Natural Resources
10. Greenpeace v. Alaska Dep't of Natural Resources
11. Cook Inlet Keepers v. State
12. Haida Corp. v. Patrick Galvin
13. Crivello v. State, CFEC
14. Kenai Peninsula Borough v. State, Dep't of Natural Resources
15. Alaska Trademark Shellfish, Zaugg, et al. v. ADF&G, et al.
16. Kenai Peninsula Borough v. State, DNR
17. The Association of Village Council Presidents, Inc., et al. v. State
18. Alaska Center for the Environment, et al. v. State of Alaska, DGC
19. Fallis, Walker v. ADF&G
20. AHTNA, Inc., et al. v. State
21. Kenneth H. Manning v. State
22. Alaska Wildlife Alliance, et al. v. Alaska Board of Game, et al.
23. Fish and Wildlife Enforcement Actions

ADMINISTRATIVE PROCEEDINGS

1. In Re: Native Allotment Application of Donna Huff
2. In re: Native Allotment Application of Alfred Bayou
3. FPA Enforcement Actions

FEDERAL COURT CASES

1. Katie John v. U.S. (Ninth Cir. No. 00-35121; our file no. 221-00-0474; state's attorney: Joanne Grace; plaintiffs' attorney: Heather Kendall of NARF; U.S.' attorneys: Dean Dunsmore and Elizabeth Ann Peterson). This is one of the jointly managed ANILCA subsistence cases. These cases had been stayed until October 1, 1999. The plaintiffs alleged that ANILCA requires the federal government to manage fisheries in navigable waters of

Alaska, and accordingly, that the Federal Subsistence Board should take over management of the Copper River and authorize a subsistence fishery at Bazulnetas.

Both the District Court and the Ninth Circuit Court of Appeals agreed in part and held that the term "public lands" includes navigable waters in which the United States has reserved water rights. (Under the reserved water rights doctrine, when the United States withdraws land and reserves it for a federal purpose -- for example, a national park or wildlife refuge -- it also reserves by implication water rights necessary to fulfill the purposes of the reservation). The court remanded the case to the Departments of Interior and Agriculture to identify those waters.

In January 1999, the Departments of Interior and Agriculture published final regulations to assume management of subsistence fisheries. The regulations cover subsistence activities on all waters within or adjacent to the exterior boundaries of 34 identified federal areas, including national parks, refuges, preserves, monuments, wild and scenic rivers, and national forests (excluding the marine waters of the Tongass and Chugach National Forests). They also extend the Federal Subsistence Board's management to some federal lands selected under the Alaska Native Claims Settlement Act or the Alaska Statehood Act until conveyed. In addition, the rules purport to confirm the Secretaries' authority to restrict or eliminate hunting, fishing, and trapping on state and private lands when these activities interfere with the subsistence priority on the public lands. The rules became final in October 1999, and the U.S. District Court entered final judgment in the case on January 7, 2000, affirming its earlier orders and dismissing any remaining claims without prejudice. The state filed an appeal to the Ninth Circuit Court of Appeals on January 26, 2000. The court agreed to hear the appeal en banc. Oral argument will be December 20, 2000.

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2. Stevens Village v. McVee and Rosier (United States District Court No. A92-567-CV (HRH) (Judge Holland); our file no. 221-93-0123; state's attorney: Joanne Grace; plaintiffs' attorney: Carol Daniel; U.S.' attorneys: Bruce Landon and Dean Dunsmore). This is one of the jointly managed ANILCA cases.

In 1992, plaintiffs filed suit against the Federal Subsistence Board (FSB) and ADF&G, alleging they are being denied their federal subsistence priority within Game Management Unit 25(D) West. Following denial of a TRO, the federal defendants moved for a voluntary remand to the FSB. On remand, the FSB changed its regulations to accommodate plaintiffs' requests for: an extension of the season; provisions allowing a permittee to designate another person to hunt on his or her behalf; and closing federal public lands in GMU 25D West to hunting by non-local residents. The parties filed cross-motions for summary judgment on the only remaining issue: whether the FSB has authority to regulate hunting on state-managed lands adjacent to federal lands in GMU 25D West to protect subsistence uses on "public lands" in GMU 25D West. Judge Holland has characterized this as the "where II" issue.

Judge Holland tentatively indicated in the stay order that the FSB lacks authority off "public lands" because the Secretaries of Interior and Agriculture did not grant such authority in the regulations establishing the FSB. Judge Holland expressed no opinion on the question of whether the Secretaries themselves have that authority, but indicated that he would entertain further briefing on the issue. Meanwhile, the Stevens Village plaintiffs and others submitted a rulemaking petition to the Secretaries of Agriculture and Interior, requesting that they extend the FSB's authority to state and private lands. The parties agreed to stay the case while the Secretaries considered the petition.

In January 1999, the Departments of Interior and Agriculture published final regulations that purport to confirm the Secretaries' authority to restrict or eliminate hunting, fishing, and trapping on

state and private lands when these activities interfere with the subsistence priority on the public lands. The regulations became effective on October 1, 1999. To date, the secretaries have not attempted to restrict or eliminate moose hunting on state or private lands in GMU 25D West.

On December 16, 1999, the parties stipulated to dismissal of the case without prejudice. An order approving the stipulation was entered on January 3, 2000. The parties are now litigating attorney fees and costs.

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3. Native Village of Quinhagak v. United States (United States District Court No. A93-023-CV (HRH) (Judge Holland); Ninth Cir. No. 93-35496; our file no. 221-93-0041; state's attorney: Joanne Grace; plaintiffs' attorneys: Carol Daniel, John Starkey (AVCP); U.S.' Attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases.

The plaintiffs (the villages of Quinhagak and Goodnews Bay, the AVCP, and individual Yup'ik Natives) seek declaratory and injunctive relief allowing the harvest of rainbow trout from the Kanektok and Goodnews Rivers for subsistence. The plaintiffs claim that navigable rivers are "public lands" for purposes of ANILCA, that the state has no subsistence jurisdiction over the waters of the Kanektok and Goodnews River systems, and that the federal government has the authority to regulate non-public lands and waters owned by the state when necessary to provide for subsistence uses. In September of 1994, the Ninth Circuit reversed Judge Holland's order denying the plaintiffs' motion for preliminary injunction. On remand, the court entered an order prohibiting the state and federal defendants from enforcing regulatory prohibitions on the subsistence harvest of rainbow trout while the case is pending. The plaintiffs were awarded

partial attorneys fees incurred in connection with the motion for preliminary injunction and appeal.

The regulations extending the federal subsistence program to certain navigable waters became final in October 1999. The federal district court entered final judgment in the case on January 10, 2000, affirming its earlier orders and dismissing the remaining claims without prejudice. The parties now are litigating the issue of attorneys fees.

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4. Peratrovich v. United States (United States District Court No. A92-734-CV (HRH) (Judge Holland); our file no. 221-93-0340; state's attorney: Joanne Grace; plaintiffs' attorneys: Thomas Luebben and Richard Young of Albuquerque, New Mexico; U.S.' attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases. The case has been stayed while the United States Supreme Court hears Alaska v. United States, Orig. 128, which involves an issue similar to that raised in Peratrovich.

In an amended complaint filed on October 24, 1996, plaintiffs seek declaratory and injunctive relief requiring the Federal Subsistence Board (FSB) to issue a collective permit allowing the harvest of up to 366,000 pounds of herring roe on kelp (1000 pounds per individual for 366 applicants) from the marine waters of southeast Alaska as "customary trade." (The state "customary trade" regulation allows sale of up to 32 pounds of herring roe on kelp by an individual, and up to 158 pounds per household.) The FSB has taken the position that it lacks jurisdiction over the navigable waters where the harvest would occur.

Plaintiffs contend primarily that (1) the United States owns the submerged lands within the Tongass National Forest as a result of a prestatehood withdrawal, and (2) that the waters in question are "public lands" within the meaning of ANILCA, on a reserved

water rights theory.

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5. Kluti Kaah v. Alaska (United States District Court No. A90-004-CV (HRH) (Judge Holland); our file no. 221-90-0433; state's attorney: Joanne Grace; plaintiff's attorneys: Heather Kendall of the Native American Rights Fund (NARF) and Mike Walleri of Tanana Chiefs' Conference (TCC); U.S.' attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases.

Plaintiffs and intervenors initially challenged state and federal regulations governing subsistence hunting of caribou in the Copper River basin. Plaintiffs claimed, among other things, that the federal regulations impermissibly fail to cover caribou located on state lands. This case has been consolidated with Arctic Regional Council v. United States. Kluti-Kaah filed an amended complaint which does not include any claims against the state. The court granted an unopposed motion by the federal government to dismiss TCC's claims against it, and the court dismissed all of TCC's claims against the state following an unopposed motion by the state.

On December 16, 1999, the parties stipulated to dismissal of the case without prejudice. An order approving the stipulation was entered on January 3, 2000. That parties are now litigating attorney fees.

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6. State v. Harrison (United States District Court No. A94-464-CV

(HRH) (Judge Holland); our file no. 221-95-0270; state's attorneys: John Baker and Robert Nauheim; private defendants' attorney: none, two successive attorneys withdrew). This action involves the state's assertion of a right-of-way for the Chickaloon River Road across the Native allotment owned by members of the Harrison family, who claim that the allotment constitutes sovereign Indian country. The Harrisons have relied on Chickaloon's inclusion on the 1993 BIA list of tribes to claim immunity from Alaska law, including charges of obstructing lawful public use of the Chickaloon River Road. The United States moved to dismiss the state's original complaint, initially arguing that the Quiet Title Act, 28 U.S.C. § 2409a, forbids any judicial inquiry into the validity of the state's right-of-way to the extent that "trust or restricted Indian land" is implicated. We amended our complaint to seek a title adjudication under 25 U.S.C. § 357, the federal condemnation statute. The Harrisons cross-claimed, alleging that the United States breached its trust obligation to the Harrisons as Natives by not defending the Harrisons' alleged ownership of the road.

In February 1997, Judge Holland dismissed the Harrisons' cross-claims against the United States and in May 1998, the court dismissed the Harrisons' counterclaims against the state. In October 1998, Judge Holland issued an order granting the state partial summary judgment on the state's claim of title to the road. On July 23, 1999, Judge Holland granted the state's further motion for summary judgment, ruling that only a 1.75-acre portion of the road, which had been realigned, had been "taken." The court also ruled that the value of the taken portion did not exceed the state's \$3,000 offer of judgment. On August 24, 1999, the court entered final judgment in favor of the state. The Harrisons appealed to the Ninth Circuit Court of Appeals, submitting a form "brief." After delays caused by motion practice to determine the status of the United States (with the court ruling the U.S. is no longer a party to the case), the state's brief was filed on June 29, 2000. On September 6, 2000 the court issued an order allowing the parties 10 days to submit reasons why oral argument should be held, an indication that the court is inclined to decide the case on the briefs. Although the Harrisons

did respond to the order, the court has not ruled on the request.

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7. State of Alaska v. United States [Southeast Alaska marine waters] (United States Supreme Court, No. 128, Original; our file nos: 221-99-0502, 221-99-791; state's attorneys: Joanne Grace and Laura Bottger, with outside counsel John Roberts, Jonathan Franklin, and Tom Koester; United States' attorneys: Jeff Minear, Mike Reed, and Bruce Landon).

The state filed a complaint against the federal government, claiming title to the lands underlying marine waters in Southeast Alaska, together with a motion requesting leave of the United States Supreme Court to file its case as an original action, in November of 1999. The suit was prompted by the Park Service's closure of commercial fishing in Glacier Bay National Park but extends to other areas of Southeast as well.

The action is based on the Submerged Lands Act and the equal footing doctrine, which grant states entering the Union title to the submerged lands within their boundaries as well as the lands underlying inland waters, including any historic waters. The state's complaint asserts the state's claim to all lands underlying marine waters in Southeast Alaska in three counts encompassing the submerged lands in Glacier Bay National Park, the Tongass National Forest, and jurisdictional "doughnut holes" more than three miles from the mainland or any islands within Southeast Alaska's inside passage.

The state filed its case as an "original action" that originates in the U.S. Supreme Court, rather than working its way through the lower courts. While the Supreme Court has jurisdiction over cases between a state and the federal government, it can decline the state's request that it take the case. The Court has appointed George Washington University Law Professor Gregory Maggs to

act as special master.

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8. [Confederated Tribes & Bands of the Yakama Indian Nation, et. al v. Malcolm Baldrige](#) (U.S. District Court for the District of Washington; state's attorney: Mike Stanley). This case has been resolved by a long term agreement in the Pacific Salmon Treaty. However, the court retains jurisdiction over the controversy.

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9. [U.S. v. Washington](#) (U.S. District Court for the Western District of Washington. [In U.S. v. Washington](#), 384 F. Supp. 312 (W.D. Wash. 1974), [aff'd](#), 520 F.2d 676 (9th Cir. 1975), Judge Boldt held that certain northwest Indian Tribes have a treaty fishing right to harvest 50 percent of the harvestable fish passing through recognized tribal fishing grounds. Under the continuing jurisdiction of the federal court, the northwest tribes now seek a ruling that their treaty rights include salmon caught in southeast Alaska that would otherwise return to tribal fishing grounds. The parties have filed a stipulation to stay the case for 10 years as a result of the 1999 amendments to the Pacific Salmon Treaty recently agreed upon by the United States and Canada.

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10. [Alaska v. United States and Bruce Babbitt \[RS 2477\]](#) (U.S. District Court No. F97-0009-CV (Judge Singleton); our file no.

221-97-0574; state's attorneys: Rob Nauheim and Laura Bottger; U.S.' attorney: Bruce Landon). On March 26, 1997, the state filed a quiet title action in federal court seeking to adjudicate an R.S. 2477 route on the Harrison Creek-Portage Creek Trail. The state has obtained entry of default against the mining claimants with claims located on the trail. The remaining parties are engaged in settlement discussions and the case has been stayed. The state recently dismissed its claim against a remaining defendant, and the state and the United States have now settled the case, recognizing a 60 foot right-of-way in the state.

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11. Hyak Mining Co. v. U.S. [RS 2477] (U.S. District Ct. No. A96-0478-CV (HRH); our file no. 221-97-0707; state's attorney: Elizabeth Barry; plaintiff's attorney: Mary Nordale; U.S.' attorney: Bruce Landon). Hyak Mining Co. sued the United States to quiet title to the Jualin Mine Road in Berner's Bay in southeast Alaska. The state is not a party to the action but state participation will be required to enable the parties to settle the case. Settlement discussions are progressing and the state has given the required 180-day notice of intent to sue to allow intervention in the case. Details regarding the means and methods of survey remain to be resolved between the parties.

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12. Harold Kalve v. Frank Rue, Commissioner of Fish and Game, William Daley, U.S. Sect'y of Commerce, Steve Pennoyer (U.S. District Court, District of Alaska, No. A99-0004 (Judge Singleton) and State of Alaska v. Harold Kalve, Alaska Court of Appeals No. A-07394; our file nos. 221-99-0408, 221-00-0016,

and 221-99-0533; state's attorneys: Rob Nauheim and Lance Nelson; U.S.' attorneys: Lauren Smoker and Rick Monikowski; Kalve's attorney: Jim Brennan.) In 1998 Harold Kalve, an IFQ holder, was charged in state district court with fishing for sablefish in state waters (Resurrection Bay) after a state closure. Kalve asked the Seward District Court to continue or dismiss the criminal matter based on the suit he filed in U.S. District Court claiming that federal law and the federal Individual Fishing Quota (IFQ) program preempt the state from closing state waters when the federal waters are open. In June 1999, Magistrate Peck dismissed the state criminal case. He based his decision on the federal paramountcy doctrine – an issue that both parties agree does not apply here. The state appealed to the Alaska Court of Appeals to decide the merits of Kalve's preemption claim and whether to reinstate the criminal charge. On September 29, 2000, the Court of Appeals issued a decision reversing the District Court and reinstating the charges against Kalve. The court held that federal regulations did not preempt state regulations in state waters because federal regulations acknowledged the validity of state regulations. Kalve petitioned the Alaska Supreme Court for a hearing. The petition was recently denied.

In the federal court case, U.S. District Judge Singleton issued a favorable decision dismissing Kalve's case against ADF&G Commissioner Frank Rue on the basis that the 11th Amendment does not permit Kalve to sue the state in federal court. Judge Singleton stated that the 11th Amendment issue was a close one, and that his decision turned on an interpretation of Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261. In Coeur d'Alene the Supreme Court acknowledged the continuing validity of the Ex parte Young exception but found where a suit involves a particular interest affecting the state's sovereignty, the Ex parte Young exception does not apply and the suit is barred by the 11th Amendment. Judge Singleton held that Kalve's lawsuit "implicates the state's control of its fish and wildlife resources as well as similar sovereignty concerns" and that the Young exception should not apply. He further found that "Kalve's suit seeks to divest the state of all regulatory power over certain of the

State of Alaska's waters." Kalve amended his complaint to name the individual members of the Board of Fisheries, but after the adverse ruling in state court has agreed to stipulate to their dismissal.

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STATE COURT CASES

1. Kenaitze Indian Tribe v. State (Alaska Superior Court No. 3AN-91-4569 Civ. (Anchorage, Judge Hensley); our file no. 223-91-0528; attorney for state: Steve White; attorney for plaintiffs: Carol Daniel). The Kenaitze tribe filed suit to challenge the Cook Inlet subsistence fishing regulations, and amended their complaint to challenge the constitutionality of the 1992 subsistence law. Other Native groups from Ninilchik, Eklutna and Knik intervened.

Judge Fabe granted summary judgment invalidating the nonsubsistence area provision of the 1992 law on the grounds that it violates the equal access provisions of the state constitution. In 1995 the Alaska Supreme Court reversed, holding that the nonsubsistence area provision is valid. However, the court found unconstitutional another provision of the 1992 subsistence law that makes the proximity of an individual's domicile a factor at the Tier II level. Regulations have been adopted to reinstate the nonsubsistence areas.

The Kenaitzes' challenge to the findings of the Joint Boards that resulted in the establishment of the Anchorage/MatSu/ Kenai Peninsula nonsubsistence area remains to be decided. The parties moved the court to stay proceedings on that claim in order to allow the Alaska legislature and Congress to take actions which would moot the case. As the legislature did not take those actions the briefing schedule has been reactivated. The tribes filed a

motion for summary judgment, the state filed an opposition, and the plaintiff's reply is due December 18, 2000.

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2. Interior Airboat Ass'n v. State (Fairbanks Superior Court No. 4FA-96-1494 Civ. (Judge Beistline); our file no. 221-97-0004; state's attorney: Kevin Saxby; Interior Airboat attorney: Lynn Levengood). The Airboaters sought to invalidate a regulation which prohibits the use of airboats for moose hunting near Nenana and another which limits aircraft use for hunting along part of the Noatak River. After briefing and oral argument, the court entered summary judgment in the state's favor, upholding the regulations. The Airboaters appealed the decision to the Alaska Supreme Court, and briefing and argument have been completed. We await the opinion.

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3. Kachemak Bay Conservation Society, et al. v. State, DNR (Alaska Superior Court No. 3AN-96-7609 Civ. (Anchorage, Judge Murphy); our file no. 221-98-0109; Intervenor-Appellee Alaska Mental Health Trust's attorney: Henry Wilson; Appellee Department of Natural Resources' attorneys: Lawrence Ostrovsky and Jeffrey Landry; Intervenor-Appellees' (Marathon Oil Co. and Union Oil Co. of California, Forcenergy, Inc., CIRI, Anadarko Corp.) attorneys: Susan Reeves and Tom Amodio, Rubini and Reeves; Appellants' attorney: Patrick Lavin, Trustees for Alaska). Kachemak Bay Conservation Society, et. al., appealed the administrative decision of DNR's Division of Oil and Gas that Oil and Gas Lease Sale 85-A was in the best interests of the state. The Alaska Mental Health Trust intervened in the litigation

because the Trust owns several of the parcels that were leased in the sale, and the Alaska Mental Health Trust Land Office had determined that the lease sale was in the best interests of the Trust, as separate from the best interests of the state as a whole. In a decision dated August 11, 2000, the Alaska Supreme Court found that Kachemak Bay Conservation Society's challenge failed in all respects, and affirmed.

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4. Kashwitna Farms, Inc., Harry and Consuelo Wassink v. State, consolidated with Hawkins v. Wassink (Alaska Superior Court No. 3AN-88-56 Civ. (Anchorage, Judge Joannides); our file no. 221-88-0853; Kashwitna Farms/Wassink's attorney: Joe Josephson; state's attorneys: Kevin Saxby and Rob Nauheim). These consolidated cases arise out of the Pt. MacKenzie Agricultural Project. The Wassinks acquired a dairy parcel and borrowed money from the Alaska Agricultural Revolving Loan Fund to develop it. When they failed to meet contractual development requirements, DNR sued them to terminate the land sale contract (Hawkins). When they defaulted on repayment of their loans, as the state was preparing to take collection action against them, they sued the state under various lender liability theories including misrepresentation, breach of fiduciary duty, and breach of the duty of good faith and fair dealings (Kashwitna Farms). The state countersued to collect the defaulted debt. In the Hawkins contract termination action, the superior court has twice granted the state summary judgment and the Alaska Supreme Court has twice reversed it, indicating that the Wassinks are entitled to a trial on their defenses that the contract should not be terminated under waiver, estoppel and contract frustration theories. The court has dismissed nearly all of the claims against the state with the affirmative defenses in Hawkins and the breach of duty of good faith and fair dealings and related issues in Kashwitna Farms remaining to be resolved. Recent efforts to

settle have been unsuccessful. Trial should be scheduled within the next several months.

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5. Koyukuk River Tribal Task Force v. Rue (Alaska Superior Court No. 4FA-99-561 and 4FA-00-777 (Fairbanks, Judge Greene); our file nos. 221-99-0630 and 221-00-0677; Koyukuk Tribal Task Force's attorney: Michael Walleri; state's attorney: Kevin Saxby). The seven village councils of the Koyukuk drainage have sued to obtain injunctive relief, requiring the Board of Game to make further findings as to the harvestable surplus and amounts reasonably necessary to provide for subsistence uses of moose, to eliminate or restrict nonsubsistence uses of moose in the area, and to require the department to implement an emergency closure of nonsubsistence uses until the desired regulatory scheme is in place. The trial court granted the state summary judgment because the tribal task force failed to exhaust administrative remedies. Following the Spring Board of Game meeting, at which Koyukuk moose issues were decided, the Tribal Task Force has filed a new, nearly identical, complaint. Summary judgment briefing is now being done.

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6. Cigna Insurance Co. & Native Village of Mekoryuk, et al. v. Moses, (Alaska Supreme Court No. S-08908/08918; state's attorney: Judy Rabinowitz; appellants' attorneys: Mark Figura & Tom Batchelor; appellee's attorney: Erling Johansen). This case is before the Alaska Supreme Court on interlocutory petitions for review of a superior court decision that the Native Village of Mekoryuk is not validly recognized as a tribal government. The

superior court reversed and remanded the Alaska Workers Compensation Board's determination that it lacked subject matter jurisdiction over a widow's workers compensation claims against the Native Village of Mekoryuk and its commercial enterprise because of the tribe's sovereign immunity from suit which had not been waived. The state filed an amicus brief in support of the petitions for review urging that the court clarify the state law on the status of federally recognized tribes in Alaska. The petitions were granted and briefing was completed. However, the parties reached a settlement and the appeal was dismissed.

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7. Leuthe v. State of Alaska (Alaska Supreme Court No. S-09343; Alaska Superior Court No. 3HO-98-62 Civ. (Judge Brown); our file no. 221-99-0173; state's attorney: John Baker; plaintiff's attorney: C. Michael Hough). Plaintiff alleges he was wrongfully denied a Cook Inlet drift gill net entry permit for commercial fishing of salmon. Plaintiff argues that his application was three years late due to "misadvice" by a state employee and therefore his application should be accepted. The state's position is that he was given good advice, not "misadvice", namely that he doesn't have enough points to qualify for a permit. The permit was, therefore, rightfully denied. Leuthe filed an opening brief and the state filed its opposition. On August 20, 1999, the superior court issued a memorandum decision upholding the CFEC, without waiting for Leuthe to file his reply brief. Leuthe appealed to the Alaska Supreme Court, and briefing was completed on August 30, 2000. As Leuthe did not request oral argument, the case is awaiting decision.

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8. Greenpeace, Inc. v. State (Anchorage Superior Court. No. 3AN-99-3350 Civ. (Judge Reese); our file no. 223-99-0408; state's attorneys: Lisa Weissler, Larry Ostrovsky, Mike Barnhill; Greenpeace's attorney: Nancy Wainwright; Intervenor BP's attorney: Jeff Feldman). Greenpeace filed an administrative appeal of the state's coastal program consistency determination for BP Exploration's Northstar Project. BP was granted intervenor status in the litigation. Briefing is complete, and oral argument was held September 7, 2000. A decision is pending.

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9. Greenpeace v. Alaska Dep't of Natural Resources (Anchorage Superior Court No. 3AN-00-3648 Civ., our file no. 221-00-0613; state's attorney: Rob Nauheim; Greenpeace attorney Nancy Wainwright). Greenpeace has appealed the Department of Natural Resources' decision to lift an automatic stay of the department's decision to issue a temporary water use permit for water used on the Northstar oil development project. Briefing will begin in December 2000.

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10. Greenpeace v. Alaska Dep't of Natural Resources (Anchorage Superior Court No. 3AN-00-3415; our file no. 221-99-0860; state's attorney: Rob Nauheim and Larry Ostrovsky; Greenpeace's attorney Nancy Wainwright. In October and November, 2000, superior court judge, pro tem, Sigurd Murpny remanded two water permits to the Department of Natural Resources for additional review. The permits had been issued to BP (Alaska) Exploration (BPXA) for oil development at the Northstar field. Judge Murphy ruled that the department must provide Greenpeace an opportunity for an administrative appeal

of the department's decisions on several legal issues related to a certificate of appropriation for oil development at Northstar. Judge Murphy also ruled that the department's issuance of a temporary water use permit to BPXA was not permissible without conducting public notice of the decision to issue the permit or conducting a review of the application under AS 46.15.080. The matter is now before the agency.

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11. Cook Inlet Keepers v. State of Alaska Office of Management and Budget, Div. of Governmental Coordination (Superior Court. No. 3AN 99-3482 Civ. (Judge Card); our file no. 223-00-0140; state's attorney: Lisa Weissler; appellant's attorney: Trustees for Alaska). Cook Inlet Keepers appealed the state's final coastal program consistency determination concurring with Forcenergy's certification that installation of an exploration drilling platform in Cook Inlet is consistent with the coastal program. The superior court ruled in favor of the state. Trustees have appealed to the Alaska Supreme Court. Appellant's brief is due December 22, 2000.

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12. Haida Corp. v. Patrick Galvin, Director, Division of Governmental Coordination, Office of Management and Budget, Office of the Governor, State of Alaska (Superior Court. No. 3AN 99-3455 Civ. (Judge Souter); our file no. 223-00-0052; state's attorney: Lisa Weissler; appellant's attorney: Cynthia Pickering Christianson). Haida Corporation appealed the state's final consistency determination that imposed stipulations on Haida's proposed hydroelectric project in Southeast Alaska. Haida objects to two of the stipulations, one related to screen size and the other to instream flow requirements. Haida has requested a

stay of the appeal pending issuance of the FERC license. The FERC license issued October 24, 2000. Haide is requesting another stay pending issuance and agency administrative appeals of state permits.

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13. Crivello v. State, CFEC (Kenai Superior Court No. 3HO-99-159 Civ. (Judge Brown), our file no. 221-00-0144; state's attorney: John Baker; appellant's attorney: C. Michael Hough). In this Rule 601 Administrative Appeal, Crivello claims the CFEC erred in denying him a limited entry permit for the Bristol Bay drift gill net salmon fishery. The appellant alleges that the CFEC improperly measured his "income dependence" on the fishery, and denied him due process by ruling, on reconsideration, to grant a third hearing on his claims. On August 21, 2000, the Superior Court affirmed the Commission's decision in all respects. On September 18, Crivello appealed to the Alaska Supreme Court. The briefing schedule is pending.

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14. Kenai Peninsula Borough v. State, Dep't of Natural Resources (Superior Court No. 3KN-00-30 Civ. (Judge Neville); our file no. 221-00-0444; state's attorney: Rob Nauheim; borough attorney: Holly Montague). The Kenai Borough challenges the state's reporting of the Quartz Creek Trail to the state legislature as a qualifying RS 2477 route under AS 19.30.400(b). The parties are engaged in settlement discussions and have moved the court for a stay until December 2000.

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15. Alaska Trademark Shellfish, Zaugg, et al. v. ADF&G, Commissioner Rue, and various ADF&G employees (Alaska Superior Court No. 1KE-00-211 Civ. (Judge Thompson); our file no. 223-01-0122; state's attorneys: Shannon O'Fallon and Steve White; appellants' attorneys: Bruce Weyhrauch and Clifford Smith). ATS sued for injunctive relief and damages over the Department of Fish and Game's alleged refusal to issue a decision on pending aquatic farm operating permits to geoduck farmers. Given the complicated nature of the issues involved with permitting aquatic farms in areas where there were large quantities of wild geoduck clams, ADF&G wanted to promulgate regulations before acting on the permits. ATS and the state reached an agreement for a date certain for issuing a decision which halted the original action. The department developed principles for issuing permits and drafted permits for the applicants to sign, but the aquatic farmers were not willing to abide by the permit conditions, leaving the Commissioner no choice but to deny the applications. ATS and five other applicants appealed to the superior court and the cases were consolidated. The issues on appeal are (1) how the department interprets the statute regarding conflicting uses at a proposed farm site; and (2) whether the department is correct that the law does not allow a farmer to harvest and sell wild resources off a farm site prior to engaging in any farming activity. ATS has filed its brief and the state is awaiting the other appellants' brief, before filing its response brief. In meantime, the promulgation of regulations is proceeding.

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16. Kenai Peninsula Borough v. State, DNR (Alaska Superior Court No. 3KN-00-257 Civ. (Judge Neville, pro tem); our file no: 221-00-0645; state's attorney: John Baker; KPB's attorney:

Collette Thompson). The Kenai Peninsula Borough, at the direction of newly-elected Borough Mayor Dale Bagley, filed an administrative appeal of the final Kenai Area Plan. The plan was prepared by DNR through an exhaustive 10-year planning process in which KPB participated actively. KPB asserts among its numerous points on appeal: that classifications under the plan threaten vested Borough selection rights under Title 29; that the DNR did not allow KPB sufficient participation in the planning process; that DNR classified land arbitrarily and capriciously, without adequate factual support; and that DNR was under a duty to provide selections of similar value to those KPB was forced to relinquish as a result of the Mental Health Trust land litigation. On June 30, 2000 the parties reached a settlement and signed a stipulation for dismissal of the case with prejudice. In return for the dismissal of KPB's claims, the state will expedite processing of KPB's remaining selections and facilitate the reclassification of certain lands currently managed by DOT under Interagency Land Management Agreements. DNR will also allow KPB a "first right of refusal" to select lands, if any, that become available due to reclassification within 10 years from the date of settlement.

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17. The Association of Village Council Presidents, Inc., et al. v. State of Alaska, Division of Governmental Coordination (Bethel Superior Court No. 4BE-00-263 Civ. (Judge Curda); our file no. 223-01-0153; state's attorney: Lisa Weissler; appellant's attorney: Scott Jay Sidell). AVCP appealed the state's coastal program consistency determination for the U.S. Postal Service's proposal to deliver mail via Hovercraft in the Yukon-Kuskokwim. The record was due December 11, 2000.

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18. Alaska Center for the Environment, et al. v. State of Alaska,

Division of Governmental Coordination (Anchorage Superior Court No. 3AN-00-3737 Civ. (Judge Tan); our file no. 223-01-0146; state's attorneys: Lisa Weissler, representing DGC and Jim Cantor, representing DOT, AIA; appellant's attorney; Trustees for Alaska). ACE appealed the state's coastal program consistency determination for the Corps of Engineers' ten-year wetland fill permit to be issued to the Anchorage International Airport. The record is due December 25, 2000.

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19. Fallis, Walker v. ADF&G (1JU-00-551 Civ. (Judge Weeks); our file no. 223-00-0341; state's attorney: Shannon O'Fallon; plaintiffs' attorney: Robert Reges). Plaintiffs filed suit for injunctive relief and damages after ADF&G found the expansion of their trailer park project inconsistent with the ACMP. Plaintiffs needed a stream crossing permit to cross an anadromous stream, which is what triggered ACMP review. The catalogued stream is alleged to be an artificially dug drainage ditch that over time has attracted rearing juvenile coho salmon. Plaintiffs challenged ADF&G's authority to regulate an artificial stream, and on partial summary judgment, Judge Weeks agreed, though he found there were material facts as to whether this stream was artificial or natural. The Judge also found there were open questions regarding how the stream had been catalogued and how it was mapped. The outstanding claims are inverse condemnation, trespass, and interference with prospective business relations. The claimed damages are approximately \$850,000 in lost profits. The case is set for trial in September 2001, but the parties are working toward a mutually agreeable resolution of the case.

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20. AHTNA, Inc., et al. v. State, (Alaska Superior Court No. 3PA-00-916 Civ. (Judge Beverly Cutler) our file no. 221-01-0195,

state's attorneys, Kevin Saxby and Lance Nelson; AHTNA, et al., attorneys, Patrick Anderson and James Brennan). AHTNA, et al., are suing to invalidate regulations which authorize the hunting of the Copper River Bison Herd, under the theory that the regulations cause trespass on Native Corp. lands in the area. The court denied preliminary injunctive relief; and a motion to dismiss filed by the state is now pending.

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21. Kenneth H. Manning v. State (Alaska Superior Court No. 3AN-00-8814 Civ. (Judge Sen Tan); our file nos. 221-01-0056 and 221-01-0235; state's attorney, Kevin Saxby; Ken Manning, pro se). Suit challenging Tier II hunting permit application scoring process and seeking to halt Nelchina Caribou Herd hunt until re-scoring is complete. Arguments are that the scoring decisions unconstitutionally take place of residence into account. The superior court denied preliminary injunctive relief, and the plaintiff immediately appealed to the state supreme court. After the appeal was dismissed because no final judgment had yet been entered by the trial court, litigation has again focused at the superior court level. A trial setting conference was held on December 7.

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22. Alaska Wildlife Alliance, et al. v. Alaska Board of Game, et al. (Alaska Superior Court No. 3AN-00-12369 Civ.; (Judge Peter Michalski); state's attorneys: Kevin Saxby and Sabrina Fernandez; plaintiffs' attorney: Tom Meacham). Alaska Wildlife Alliance, et al. have sued seeking declaratory relief and orders requiring that the Board of Game be disbanded, that its powers be vested in the commissioner of the Department of Fish and Game, and that the Board then be reconstituted to include

nonconsumptive use advocates. They claim that the Board historically and currently represents only hunting, trapping and guiding interests and so does not represent the views of a majority of Alaskans, thus violating the Board's enabling act and several state constitutional provisions. The state's answer is due in approximately a month.

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23. Fish and Wildlife Enforcement Actions

Several attorneys in our section pursue various actions against those persons and companies that commit serious violations of the state's fish and game laws. These attorneys work closely with the Division of Fish and Wildlife Protection and the Department of Fish and Game. Some of their cases involve seizure of vessels and equipment and subsequent forfeiture actions. Other cases involve claims for damages for the value of illegally taken fish, or damages for injury or loss to the fishery resources of the state. In addition, as time allows, these attorneys provide briefing, consultation, and other back-up assistance to the District Attorney's Offices around the state in criminal cases involving violations of state fish and game laws. Monetary recoveries in these cases amount to several million dollars over the last few years, with part of that money going to the Fish and Game Fund and the remainder to the state's general fund.

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ADMINISTRATIVE PROCEEDINGS

1. In Re: Native Allotment Application of Donna Huff (BLM Serial

No. AA-8185 (Hearing Officer: Elizabeth Carew); state's attorney: Laura C. Bottger; applicant's attorney: Alaska Legal Services Corp.). On September 26-27, 1996, an Aguilar hearing was conducted in Anchorage before the BLM hearing officer to determine whether Donna Huff's use of a 110 acre parcel of land situated in Kachemak Bay State Park satisfied the requirements of the Native Allotment Act. The state selected the land claimed in the application on June 13, 1962. At the hearing, Donna Huff testified on her own behalf while the state presented six witnesses to contest Ms. Huff's claim of qualifying use and occupancy. Each of the state's witnesses had either fished off the shore of the claimed parcel or otherwise occupied adjacent homestead property at the critical time. Briefing has been completed.

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2. In re: Native Allotment Application of Alfred Bayou (BLM Serial No. A-023839 (Hearing Officer: Elizabeth Carew); state's attorney: John Baker; applicant's attorney: Bart Garber). The applicant claims a 160-acre Native allotment located on Kachemak Bay outside of Seldovia. The heirs of the applicant claim use and occupancy of this parcel dating from 1943. At a hearing held in Seldovia on September 17, 1996, the state put on evidence that the applicant only made sporadic, intermittent and non-exclusive use of the parcel, not satisfying the standards of the Native Allotment Act. Post-hearing briefs have been filed and the parties are awaiting a decision from the hearing officer.

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3. FPA Enforcement Actions

Kevin Saxby represents DNR in various administrative actions involving violations of Alaska's Forest Practices Act. The cases often involve assessing liability for illegal harvest within riparian buffer zones, illegal bridge or stream crossings, anadromous waterbody classifications, and similar issues.

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William J. Carter

Signature of Camera Operator

10/14/2003

Date

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Involving the Public

Ideas and suggestions from subsistence users help us improve and administer the Federal Subsistence Management Program. You can participate by submitting proposals to change the regulations, testifying at public meetings, and providing wildlife or fishery harvest information.

Cooperative agreements between the Federal government and several Native organizations and the Alaska Department of Fish & Game help to manage some subsistence activities more effectively. These organizations work in an advisory capacity and provide technical information and biological data to help address subsistence issues. In this way, traditional and local knowledge is weighted in subsistence management decisions.



A Regional Advisory System

Alaska is divided into ten subsistence resource regions. Each region is represented by a Regional Advisory Council. These ten Regional Councils offer important opportunities for Alaskans to contribute to the management of subsistence resources. The Regional Councils develop and review proposals to change Federal subsistence regulations, and provide valuable local information to the Federal Subsistence Board and Federal Subsistence Management Program. Each Regional Council meets at least twice a year, and subsistence users can comment and offer input on subsistence issues at these meetings.

Schedules, minutes, regulations, and other information can be found on the internet at <http://www.r7.fws.gov/asm/home.html>, or by contacting the Office of Subsistence Management.

The Secretaries of the Interior and Agriculture appoint Regional Council members. To qualify, members must reside in the area they wish to represent and have knowledge of regional subsistence uses and needs. If you are interested in applying for membership, please contact the Regional Coordinator for your region, or call (800) 478-1456.

Regional Coordinators

The Federal Subsistence Regional Coordinators work closely with the Regional Advisory Councils and the Federal Subsistence Board. Each Regional Coordinator is responsible for one or two regions. They serve as contacts for the Regional Councils, Federal agency staffs and the public. Contact the Regional Coordinators for more information on the activities of each Regional Council.

Southeast, Region 1

Fred Clark, Juneau
(800) 586-7895 or (907) 586-7895
Fax: (907) 586-7860
E-mail: Fred_Clark@fws.gov

Southcentral, Region 2 and Seward Peninsula, Region 7

Ann Wilkinson
(800) 478-1456 or (907) 786-3888
Fax: (907) 786-3898
E-mail: ann_wilkinson@fws.gov

Kodiak/Aleutians, Region 3 and Bristol Bay, Region 4

Cliff Edenshaw, Anchorage
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Yukon-Kuskokwim Delta, Region 5

Alex Nick, Bethel
(800) 621-5804 or (907) 543-3151; Fax (907) 543-4113
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Western Interior, Region 6

Vince Mathews, Fairbanks
(800) 267-3997 or (907) 456-0277
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Eastern Interior, Region 9

Donald Mike
(800) 478-1456 or (907) 786-3888
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E-mail: donald_mike@fws.gov

Northwest Arctic, Region 8 and North Slope, Region 10

Barb Armstrong, Kotzebue
(800) 492-8848 or (907) 442-3799
Fax: (907) 442-3124
E-mail: barbara_armstrong@fws.gov

For more information about the Federal Subsistence Management Program:

Chair, Federal Subsistence Board
U.S. Fish & Wildlife Service
Office of Subsistence Management
3601 C Street, Suite 1030 • Anchorage, AK 99503
Voice: Toll-free (800) 478-1456 or (907) 786-3888
Fax: (907) 786-3898
E-mail: bill_knauer@fws.gov
Internet Site: <http://www.r7.fws.gov/asm/home.html>

TTY or modem users may call the Federal Relay Service
toll free on (800) 877-8339 to reach any Federal agency in program.

ASM Creation Date: Feb 1, 2001

Federal Subsistence Management In Alaska



Many rural Alaskans live off the land, relying on fish, wildlife, and other wild resources. Alaska Natives have used these resources for food, shelter, clothing, transportation, handicrafts, and trade for thousands of years. Other residents living in Alaska depend on local harvests as reliable and economic food sources.

Since Statehood, Alaska's growing population has placed new and conflicting demands on natural resources. Most dramatically, the discovery of oil at Prudhoe Bay provided momentum for an effort to resolve the aboriginal land claims of Alaska Native people. A central focus of this movement was the protection of the hunting and fishing lifestyle, which came to be known as "subsistence".

ANILCA: The Alaska National Interest Lands Conservation Act

In deliberations leading to the Alaska Native Claims Settlement Act of 1971, the U.S. Congress acknowledged the importance of subsistence hunting and fishing to Alaska Natives, but provided no specific protection. By the late 1970's, more direct action was needed to protect subsistence activities in Alaska.

The Alaska National Interest Lands Conservation Act of 1980 requires that subsistence users have a priority over other users to take fish and wildlife on Federal public lands where a recognized consistent and traditional pattern of use exists. When it is necessary to restrict the taking of fish and wildlife on these lands, subsistence uses are given preference over other consumptive uses.

The State of Alaska managed statewide subsistence harvests until late 1989, when the Alaska Supreme Court ruled that the rural residency preference required by ANILCA violated the Alaska Constitution. Despite repeated efforts, the State has been unable to bring its regulatory framework back into compliance with ANILCA through a change in the constitution.



The Federal Subsistence Management Program



The Federal government has managed subsistence trapping, hunting, and limited fishing on Federal public lands since July 1, 1990. As directed by the 9th Circuit Court in the Katie John case, and to meet the requirements of the rural subsistence priority in Title VIII of the Alaska National Interest Lands Conservation Act (or ANILCA), the Federal subsistence management program expanded on October 1, 1999, to include subsistence fisheries on Alaskan rivers and lakes within and adjacent to Federal public lands.

The Federal Subsistence Management Program involves five Federal agencies. These are the U.S. Fish and Wildlife Service as the lead agency, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the USDA Forest Service. A Federal Subsistence Board oversees the program. The Alaska directors of the five agencies, along with a representative of the Secretary of the Interior who serves as the Chair, make up the Board. Subsistence Regional Advisory Councils and State representatives play an active role in Board deliberations.

Residents of rural areas may harvest fish and wildlife under Federal subsistence regulations if a recognized customary and traditional use of that species exists in the area of consideration. All of Alaska is considered rural, except:

- ◆ Adak;
- ◆ Anchorage (Municipality of Anchorage);
- ◆ Fairbanks North Star Borough;
- ◆ Juneau area (Juneau, West Juneau, and Douglas);
- ◆ Ketchikan area (Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennekot Island);
- ◆ Valdez; and,
- ◆ Wasilla area (Palmer, Wasilla, Sutton, Dig Lake, Houston, and Bodenbug Butte).

Federal Subsistence Regulations



The Federal Subsistence Management Program publishes two Subsistence Management Regulations for Federal Public Lands in Alaska booklets annually.

These regulations cover the subsistence harvests of wildlife, fisheries, and shellfish on Federal public lands. The booklets contain important information on seasons, harvest limits, methods and means, and customary and traditional use determinations. The Wildlife hunting and trapping booklets are available in July, and the Fisheries booklets are available in March of each year.

Opportunities also exist to take fish and wildlife under State of Alaska hunting and fishing regulations. Often a State season is open for the same species and in the same area as a Federal subsistence hunt or fishery. The State continues to manage subsistence on State and privately owned lands and Native corporation lands.

The Federal regulations do not address the management of endangered species, migratory birds, or marine mammals. For information on endangered species, migratory birds, or marine mammals, contact the Migratory Bird Management Office (waterfowl and other migratory birds), 907-786-3423, the Marine Mammals Management Office (sea otter, polar bear, and walrus), 907-271-2394 or 800-362-5148, and the National Marine Fisheries Service, (seals, sea lion, whales, dolphins, and porpoise), 907-586-7221.



INTERIM MEMORANDUM OF AGREEMENT

for

Coordinated Fisheries and Wildlife Management for Subsistence Uses on
Federal Public Lands in Alaska

between

U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, National Park Service, Bureau
of Land Management, Bureau of Indian Affairs, and the Federal Subsistence Board

and

Alaska Department of Fish and Game, Alaska Board of Fisheries,
and Alaska Board of Game

I. PREAMBLE

This Interim Memorandum of Agreement (MOA) between the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the U.S.D.A. Forest Service (collectively, Federal agencies), and the Federal Subsistence Board (Federal Board), and the Alaska Department of Fish and Game (ADF&G), the Alaska Board of Fisheries, and the Alaska Board of Game (collectively, State Boards), establishes guidelines to coordinate in managing subsistence uses of fish and wildlife resources on Federal public lands in Alaska.

WHEREAS, the State of Alaska, under its laws and regulations, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State on the sustained yield principle, subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife (where such uses are customary and traditional), and implements its program through the State Boards and the ADF&G, providing for public participation through Advisory Committees authorized in the State's laws and regulations (Alaska Statutes Title 16; Alaska Administrative Code Title 5) and through the Administrative Procedures Act;

WHEREAS, the Federal Government, by authority of the Alaska National Interest Lands Conservation Act (ANILCA) and other laws of Congress, regulations, and policies, is responsible for protecting and providing the opportunity for rural residents of Alaska to engage in a subsistence way of life on Federal public lands in Alaska, consistent with the conservation of healthy populations of fish and wildlife, as those lands are defined in

INTERIM AGREEMENT

ANILCA section 102 and Federal regulation (36 CFR Part 242 and 50 CFR Part 100 pgs 1276-1313, dated January 8, 1999) and implements its program through the Federal Board, providing for public participation through Regional Advisory Councils authorized by Section 805 of Title VIII of ANILCA and Federal regulations (above); and,

WHEREAS, ANILCA, Title VIII, authorizes the Federal Government to enter into cooperative agreements in order to accomplish the purposes and policies of Title VIII, and the State of Alaska and the Federal Government believe it is in the best interests of the fish and wildlife resources and the public to enter into this Memorandum of Agreement;

THEREFORE, the signatories endorse coordination of State and Federal regulatory processes and the collection and exchange of data and information relative to fish and wildlife populations and their use necessary for subsistence management on public lands. This MOA forms the basis for such cooperation and coordination among the parties with regard to subsistence management of fish and wildlife resources.

II. PURPOSES:

The purpose of this MOA is to provide a foundation and direction for coordinated interagency subsistence fisheries and wildlife management, consistent with State and Federal statutes, that will protect and promote the sustained health of fish and wildlife populations, ensure conservation and stability in fisheries and wildlife management, and include meaningful public involvement. The signatories hereby enter this MOA to establish guidelines for subsequent agreements and protocols to implement coordinated management of fish and wildlife resources and their subsistence uses on Federal public lands in Alaska.

III. GUIDING PRINCIPLES:

- 1) Ensure conservation of fish and wildlife resources while providing for continued subsistence uses through coordinated interagency subsistence management and regulatory programs that promote coordination and cooperation between State and Federal agencies, regulatory bodies, Regional Advisory Councils and Advisory Committees, local organizations, tribes and other government entities;
- 2) Use the best available scientific information and local traditional knowledge, for decisions regarding subsistence fisheries and wildlife management;
- 3) Avoid duplication in research, monitoring, and management;
- 4) Involve subsistence and other users in the fisheries and wildlife management planning process;

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5) Ensure the exchange of fisheries and wildlife information between the signatories, subsistence users, Alaska Native groups including Alaska Native tribes, non-profit regional organizations and governments, Regional Advisory Councils and Advisory Committees on fish and wildlife management, and other pertinent Alaska organizations, local organizations and government, and,

6) Promote stability in fish and wildlife management and minimize unnecessary disruption to subsistence and other beneficial uses of fish and wildlife resources.

IV. THE SIGNATORIES MUTUALLY AGREE:

1) To cooperate and coordinate their respective research, monitoring, regulatory, and management actions to ensure the conservation of fish and wildlife populations in accordance with scientific and cultural principles.

2) That State historical and current harvest and population data and information and cultural information are critical components of successful implementation of Federal responsibilities under ANILCA Title VIII. To the extent possible, Federal research programs should supplement and complement the State, regional, and local programs.

3) To provide a priority for subsistence uses of fish and wildlife resources as set forth in the relevant State or Federal law, and to allow for other beneficial uses of fish and wildlife resources when harvestable surpluses are sufficient, consistent with ANILCA, Title VIII, Section 815(3) and AS 16.05.258.

4) That cooperative funding agreements implementing the provisions of this agreement may be negotiated when necessary and as authorized by Title VIII, Section 809 of ANILCA. Funding agreements for cooperative research and monitoring studies of subsistence resources with organizations representing local subsistence users will be an important component of information gathering and management programs.

5) That the state and federal standards for conservation of fish and wildlife populations are generally compatible.

6) That the Federal agencies and ADF&G will establish protocols that will address data collection and information management, data analysis and review, in-season fisheries and wildlife management, and other key issues jointly agreed upon.

7) To cooperate through interagency Federal-State technical committees that may include Regional Advisory Council representatives, among others, as necessary to implement the protocols in the identification of data and information important for the Federal agencies to fulfill their responsibilities under Title VIII of ANILCA.

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8) To provide an opportunity, through interagency Federal-State technical committees, for appropriate scientific staff, along with Regional Advisory Council representatives, subsistence users and other members of the public, to discuss and review data analyses associated with proposal analyses and resource and harvest assessment and monitoring.

9) To designate liaisons for policy communications and, as appropriate, to designate local agency representatives for efficient day-to-day communication, field operations, and data retrieval between State and Federal programs.

10) To provide adequate opportunity for the Federal agencies, Regional Advisory Councils and ADF&G to review data analyses associated with proposed subsistence special actions and subsistence emergency orders. Where conservation of the resource is of immediate concern, the review shall not delay timely management action.

11) To cooperatively review existing State management plans providing an opportunity for Regional Advisory Councils, Advisory Committees and other publics to participate. To use State management plans as the initial basis for any management actions so long as they provide for subsistence priorities under state and federal law. Procedures for management plan revisions will be developed by the respective Federal and State Boards in a protocol.

12) To use the State's harvest reporting and assessment systems supplemented by information from other sources to monitor subsistence uses of fish and wildlife resources on public lands. In some cases, Federal subsistence seasons and harvest limits necessitate separate Federal subsistence permits and harvest reports.

13) Local residents will have meaningful involvement in subsistence wildlife and fisheries management processes.

V. SCOPE FOR INDIVIDUAL PROTOCOLS:

The signatories agree to implement this agreement through a set of protocols. Individual protocols provide a foundation for cooperation and coordination between the signatories, as appropriate, for management and regulation of subsistence fish and wildlife uses.

1) Individual protocols will be developed between the Federal agencies and ADF&G and between the Federal Board and State Boards, as appropriate, including, but not limited to the following areas: in-season management, data collection, including traditional ecological knowledge, and information management, regulatory processes, identification of subsistence use amounts, and fisheries and wildlife management planning. Data and information include those used for resource assessment and monitoring, including population status and trends; information on harvestable surpluses and escapement or population objectives; subsistence harvest and use data and information; and socioeconomic information about subsistence users.

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- 2) The Federal and State Boards, in consultation with their respective advisory bodies (Regional Advisory Councils and Advisory Committees), will establish protocols that will address regulatory process coordination (including review of subsistence proposals and emergency or special action requests); quantification of amounts necessary for subsistence uses; review of fisheries and wildlife management plans (including biologically-based harvestable surpluses, escapement or population objectives, and harvest plans); customary trade determinations, and other key coordination issues jointly agreed upon. The protocol will identify opportunities and specify roles for agency liaisons to participate in board meetings, work sessions, and reviews of proposal analyses.

- 3) The ADF&G and Federal agencies will establish protocols for collecting and exchanging data and information for managing fish and wildlife resources for subsistence uses. These protocols will detail the agency roles and processes used in the collection, distribution, storage, and use of data and information, and review of data analyses. The intent is to establish a coordinated data and information management program that addresses the most important subsistence information needs. Data collection protocols shall be designed to maximize comparability, consistency, and reliability across resources, areas/communities, and time, and to ensure timely access by managers to fish and wildlife resource and subsistence use data. Data analysis protocols shall be designed to include appropriate scientific staff as members of a joint Federal-State technical committee, along with public members, to discuss and review data analyses.

- 4) The Federal and State Boards may appoint joint technical committees or workgroups as necessary to implement the provisions of the pertinent protocols.

- 5) The ADF&G and Federal agencies may appoint joint technical committees or workgroups as necessary to implement the provisions of the pertinent protocols.

- 6) Individual protocols shall at a minimum:
 - a. Be developed by an interagency committee. The committee shall involve, as appropriate, Regional Advisory Council representatives and other state/federal regional or technical experts.
 - b. Identify the subject or topic of the protocol.
 - c. Identify the parties to the protocol.
 - d. Identify the process to be used for implementing the protocol.
 - e. Provide for appropriate involvement of Regional Advisory Councils, Alaska Native groups, including Tribes, and other Alaska entities when implementing protocols.
 - f. Specify technical committee or workgroup memberships.
 - g. Identify funding obligations of the parties.
 - h. Provide justification for the process.
 - i. Define the mechanism to be used for review and evaluation.
 - j. Develop a timeline to complete tasks.

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7) Protocols will require concurrence by the signatories of this MOA prior to implementation.

VI. GENERAL PROVISIONS:

1) Each party will be responsible for its own acts and omissions, including those of its officers, agents and employees, and each party will indemnify, defend and hold harmless the others, to the maximum extent allowed by law, from any claim of or liability for error, omission or negligent act of any kind, including attorney fees, for damages to property or injury to a person occasioned by each party's own acts or omissions in connection with the terms of this MOA.

2) No member of, or Delegate to, Congress shall be admitted to any share or part of this document, or to any benefit that may arise therefrom.

3) This MOA is complementary to and is not intended to replace, except as specifically regards Federal responsibility for subsistence uses of fish and wildlife on public lands, the Master Memoranda of Understanding between the individual Federal parties and the ADF&G. Supplemental protocols to this document may be developed to promote further interaction and coordination among the parties.

4) Nothing herein is intended to conflict with Federal, State, or local laws or regulations.

5) Policy and position statements relating specifically to this MOA may be made only by mutual consent of the parties.

6) Nothing in this MOA is intended to enlarge or diminish each party's existing responsibilities and authorities, if any, for management of fish and wildlife resources, or the public lands.

7) Upon signing this MOA, the parties shall each designate an individual and an alternate to serve as the principal contact or liaison for implementation of this Agreement and individual protocols.

8) This MOA becomes effective upon signing by all signatories and will remain in force until such time as the Secretary of the Interior determines that the State of Alaska has implemented a subsistence management program in compliance with Title VIII of ANILCA, or, signatories terminate this understanding by providing 60 days written notice.

9) The signatories will meet annually, or more frequently if necessary, to review coordinated programs established under this MOA and to consider modifications that would further improve interagency working relationships. Modifications within the

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scope of this understanding shall be made by mutual consent of the signatories, in writing, signed and dated by all parties.

10) Nothing in this document shall be construed as obligating the signatories to expend funds or involving the United States or the State of Alaska in any contract or other obligations for the future payment of money, except as may be negotiated in future cooperative funding agreements.

11) This MOA establishes guidelines and mutual management goals by which the signatories shall coordinate, but does not create legally enforceable obligations or rights.

12) This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures.

13) This instrument in no way restricts the signatories from participating in similar activities with other public or private agencies, organizations, and individuals.

INTERIM AGREEMENT

SIGNATORIES:

IN WITNESS WHEREOF, the parties hereto have executed this Interim MOA as of the last date written below.

Frank Rue *FR*
Commissioner
Alaska Department of Fish and Game

Date: 4.13.00

Dan Coffey *DC*
Chair
Alaska Board of Fisheries

Date: 4/20/00

Lori Quakenbush *LQ*
Chair
Alaska Board of Game

Date: 4/26/00

Dave Allen *DA*
Regional Director
U.S. Fish and Wildlife Service

Date: _____

Jim Caplan *JC*
Regiona' Forester
U.S.D.A. Forest Service

Date: 4/18/00

Judy Gottlieb *JG*
Associate Regional Director
National Park Service *4-18-00*

Date: _____

Fran Cherry *FC*
State Director *for*
Bureau of Land Management

Date: 4/19/00

Niles Cesar *NC*
Area Director
Bureau of Indian Affairs

Date: 4.24.00

Mitch Demientieff *MD*
Chair
Federal Subsistence Board

Date: 4-18-00

YUKON RIVER DRAINAGE SUBSISTENCE SALMON FISHERY MANAGEMENT PROTOCOL

Objective:

The objective of this protocol is to provide a framework for coordinated subsistence fisheries management between the Alaska Department of Fish and Game and the Federal subsistence management programs in the Yukon River Drainage. The Yukon River Drainage includes State waters and waters subject to ANILCA Title VIII (hereinafter referred to as "applicable Federal waters").

The goals of coordinated State and Federal programs are:

- To manage all fisheries for healthy fish populations, sustained yield, and established escapement goals, while providing a priority for subsistence uses in all waters.
- To provide for commercial, recreational, and personal use harvests when the harvestable surplus is sufficient.
- To maximize cooperation between State and Federal agencies and minimize disruptions to resource users and existing agency programs.

Overview:

- This protocol provides State and Federal managers of the Yukon River drainage salmon fisheries with coordinated decision making processes, a flexible framework for in-season management, and a method to evaluate results. Pre-season planning, in-season decision-making, and post-season evaluation are important components of an effective coordinated in-season management program.
- State managers are responsible for in-season management of State subsistence, commercial, recreational, and personal use fisheries in all waters. Federal managers are responsible for in-season management of subsistence fishing by qualified rural residents in applicable Federal waters; this responsibility includes the authority to restrict all uses in applicable Federal waters if necessary to conserve fish stocks or to provide for subsistence uses in applicable Federal waters, when salmon returns are inadequate to provide for other uses.
- Coordinated in-season management programs will minimize disruptions to fisheries as well as minimize duplication of effort by State and Federal managers.
- State and Federal run assessment programs will be coordinated to the maximum extent possible.

- State and Federal managers will work cooperatively to assess stock status during the season and implement appropriate harvest management strategies.
- The approach is responsive to the interests of the public and users by providing for input in the decision-making process.

Justification for Protocol:

With the implementation of a Federal subsistence fisheries management program, Federal and State in-season management actions, if not coordinated with each other, have the potential to cause unnecessary disruptions to established fisheries, confusion among fishers, and unintended misunderstandings between Federal and State managers.

This agreement establishes a mutual basis for managing Yukon River salmon fisheries and specifies the roles and responsibilities of State and Federal in-season fishery managers in carrying out their respective duties and responsibilities. The agreement describes the communication, coordination, and information sharing procedures considered advisable to establish a common basis for making decisions and for sharing information between managers, and between managers and users. This guidance is critical when fishery managers are fully engaged in the day-to-day management of fisheries.

Yukon River drainage salmon fisheries require intensive in-season management because of varying run sizes and timing, the complexity and interaction of the fisheries harvesting the fish, and the inability to accurately forecast abundance pre-season. Additionally, in some fisheries there is a very short time period when salmon are available to harvest. Effective management requires a decision making process that can quickly adjust to changes in fish abundance and run timing while delivering sufficient stocks to spawning areas and users throughout the drainage. Such management requires in-season implementation of flexible management plans by local area biologists charged with regulatory authority to ensure sustained yields to the extent possible.

Local State area managers must be able to implement Board of Fisheries approved management plans and regulations, with openings and closures as required to meet conservation and allocation objectives. Similarly, Federal managers may take regulatory action in-season in applicable Federal waters to meet Federal conservation and subsistence use objectives. These decisions, often made within very short time frames, are based on available information being assembled and evaluated during the progression of the fisheries.

When the magnitude of the run is less than anticipated, managers reduce fishing times and in some circumstances close commercial, recreational, and personal use fisheries to provide for predetermined escapement needs and for subsistence uses. Restrictions or closures of subsistence fisheries are taken only after other measures have failed to improve escapements to desired levels. When runs are strong and it is anticipated that escapement and subsistence needs will be met, State managers may liberalize harvest to utilize surpluses among commercial, personal use, and recreational fishers within the guidelines and regulations established by the Board of Fisheries. Local users' input into the decision making process is key to responsive and effective decisions.

Coordinated Fishery Management:

The intent of this protocol is to formalize the working relationships between State and Federal managers and foster cooperation with Regional Advisory Councils and fisheries interest groups. Under a coordinated management system, in-season subsistence fishery management will remain primarily a State function, except where required on applicable Federal waters. Coordinated run assessment programs, rather than duplicative and separate programs, will improve the information base used by both State and Federal in-season managers. Coordination between State and Federal managers and communication with the public will help minimize disruption to established fisheries and make it easier for the public to understand and comply with State and Federal regulations. Involvement of local subsistence, commercial, personal use, and recreational users are an integral part of Yukon River salmon management.

Subsistence salmon management on the Yukon River consists of three phases: 1) pre-season planning based on pre-season run outlooks and regulations; 2) in-season management decisions based on in-season stock and harvest assessments; and 3) post-season evaluation of the fisheries and spawning escapements.

The following sections describe the roles of State, Federal, and public participants in pre-season planning, in-season management, and post-season review processes. The chart on page 7 illustrates the fishery management process.

Pre-season planning

Pre-season planning is one of the most critical steps for successful coordination of State and Federal fishery management programs. It is important that State and Federal managers reach a mutual understanding prior to the fishing season on the outlook for the coming season and on the management strategies to be employed. Managers need to be on common ground entering into the fishing season because once the fishery is underway they will be fully engaged in day to day management activities.

The State management staff will work closely and cooperatively with the Federal manager in preparation of the State's pre-season management plans in an attempt to resolve, during plan development, any concerns that federal managers may identify with the State's outlooks for salmon returns and proposed management strategies. It is important that the Federal manager is kept apprised of current developments in the State's pre-season management planning process so that there is a good understanding of how pre-season management strategies are derived. The Federal manager will review these pre-season plans with affected Regional Advisory Councils to identify any potential conservation concerns and issues that may arise associated with meeting subsistence uses of qualified Federal users on applicable Federal waters. The Federal manager will formally concur with the final pre-season management plans or provide comments back to the State on any issues that remain a concern to the Federal manager regarding providing for the subsistence uses of qualified Federal users on applicable Federal waters. The Federal comments should include a detailed explanation, including supporting data, for the basis of any concerns with the State outlook or management strategies, and allow the State manager time to prepare a response prior to meeting with Federal staff to discuss those concerns. This cooperative approach will help expedite the review process of the final pre-season management plans.

Federal managers will participate in pre-season State staff meetings and in meetings with the Yukon River Drainage Fisheries Association (YRDFA) and representatives of the three Yukon River drainage Regional Advisory Councils (the Yukon River Coordinating Fisheries Committee (YRCFC)) to discuss pre-season management plans.

In-season management

Information from in-season stock and harvest assessments provides the basis for in-season management decisions to open, close, or modify fishing seasons/periods or areas. The State conducts numerous assessment projects to monitor stock status and harvest. Additionally, a number of harvest and stock assessment projects are conducted cooperatively by State and Federal agencies and local cooperators, and new or expanded projects are anticipated in the near future. Information from these assessment projects will be shared between the agency managers and with YRCFC members and other public participants as it becomes available.

During the season, extensive involvement of fishers through YRDFA provides input into the decision-making process. Managers may also meet with other organizations and communities on management issues. The State will work with YRDFA, Federal managers, and other affected interests to solicit input. Federal managers, in consultation with YRCFC members, will participate in the State's teleconferences and attend in-season meetings to provide their perspectives on relevant issues.

State managers are responsible for the management of State subsistence, commercial, personal use, and recreational fisheries in all waters. State managers will consult with Federal managers when considering in-season subsistence regulatory actions (Emergency Orders) and when taking regulatory action in other fisheries that could have a significant negative impact on subsistence fisheries. Federal managers will seek the advice of YRCFC members if time permits. Time is of the essence in issuing EOs and interagency consultation shall not delay the timely issuance of EOs. EOs and associated public announcements by State managers will be distributed to Federal managers.

Federal managers are responsible for the management of subsistence fishing by qualified rural residents in applicable Federal waters. Federal managers will consult with State managers when considering in-season regulatory actions (Special Actions). Federal managers will seek the advice of YRCFC members if time permits. Time is of the essence in issuing SAs and interagency consultation shall not delay the timely issuance of SAs. Distribution of SAs and associated public announcements by Federal managers will include State managers and law enforcement personnel.

In instances where State and Federal managers are in agreement on initiating parallel in-season management actions, a joint news release will be prepared in order to minimize possible confusion to subsistence users and the general public. While managers will continually strive for cooperative management strategies, Federal/State consensus on in-season management decisions may not always be achieved. If differences cannot be reconciled, the respective agencies may implement actions in accordance with their agency's mandates and applicable regulations for waters under their respective jurisdictions.