

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10401 HOUSE RESOURCES

246

North Pacific Universities Marine  
Mammal Research Consortium  
FY01 Budget- \$0.8 million

Study ( <i>Preliminary</i> )	Cost (000s)
Bioenergetics of SSL	250
Bias in scat analysis	35
Telemetry (implants)	40
Amack food quality/SE scat collection	24
Bioenergetic modeling/timing of molt	31
KW predation model/subs. Harvest	120
Diet in Oregon/WA/forage fish abund.	22
SSL vital rates and condition indices ?	120

North Pacific Fisheries  
Management Council  
FY01 Budget- \$2 million

Study ( <i>Preliminary</i> )	Cost (000s)
NAS Independent review	700
Management and legal compliance	1300

# Oceanic and Atmospheric Research

## FY01 Budget- \$6 million

Study ( <i>Preliminary</i> )	Cost (000s)
Analysis of existing environmental data	500
2-yr field study and modeling-combination of PMEL and RFP (CIFAR)	5000
Coordination, communication, outreach	500

# National Ocean Survey

## FY01 Budget- \$2 million

Study ( <i>Preliminary</i> )	Cost (000s)
Competitive process for directed research on predator/prey relationships (CIFAR)	2000

Dept. of Commerce  
FY01 Budget- \$15 million

Study ( <i>Preliminary</i> )	Cost (000s)
Competitive process for directed research on predator/prey relationships	15,000

% of Funds in FY01 Budget to inhouse  
research, contracts, management and reviews  
\$43.15 million

- 36% in-house research
- 56% contractual studies (research determined by competitive process)
- 6% management related to ESA/NEPA
- 2% external reviews
- Possible Problem- FY02 budget currently has \$7-10 million assigned to SSL-groundfish research and management
- Possible Problem- Contractual studies may not provide information in time for October 2001 review

This Edition Sponsored by: Pacific Seafood Processors Association

# Resource Review

October 2000

A periodic publication of the Resource Development Council, Inc.



*"Fishermen, fish processing plants and communities from Cordova to Dutch Harbor have survived and thrived despite earthquakes, volcanic eruptions, tsunamis, freezing spray and fluctuations in fish and shellfish abundance. The question now is can the communities from Cordova to Dutch Harbor survive the Endangered Species Act or will once thriving communities become ghost towns?"*

## Sea lion restrictions cripple fishing industry, coastal communities

By Chris Blackburn  
Alaska Fish Data Bank

When the third quarterly pollock fishery in the Gulf of Alaska opened August 20, more than half the fleet stayed tied to the dock. Out of the 41 vessels that make up the Kodiak pollock fleet, 15 vessels stayed at the dock. Of the 52 vessels in the Sandpoint area

fleet, 35 stayed at the dock. The tie-up was not due to price, but to safety considerations.

The vessels that remained at the dock had been displaced from their fishing areas near shore by Ninth Circuit Judge Thomas E. Zilly who, on July 19, issued an interim injunction effective August 8 which prohibited trawling within 20 nautical miles (NM) of the shore



*Many local residents in Kodiak have hard feelings toward environmental groups pressing for an end to trawling in Steller sea lion critical habitat areas.*

under the authority of the Endangered Species Act (ESA).

The Gulf of Alaska trawl fleet is mainly composed of vessels less than 60 to 100 feet in length – vessels designed to fish near shore. To venture 20 NM out is exceedingly dangerous.

The vessels that did try to fish the third pollock season found little pollock outside the 20 NM barrier and actually spent more money looking for pollock than the value of the small amounts of pollock they were able to find.

It is the 30-year decline of Steller sea lions in the Central and Western Gulf and Bering Sea/Aleutians that has brought the ugly realities of the ESA to the Alaska fishing industry. Between 1976 and 2000, the Western Area Steller sea lion population has declined from 120,000 animals to 25,000 animals.

According to National Marine Fish-  
(Continued to page 4)

### Impacts of trawling ban in critical habitat areas

- The ban on bottom fishing could reduce the tax base for local communities by as much as 60 to 70 percent.
- The fishing industry stands to lose well in excess of \$100 million annually from prohibitions on trawling in Steller sea lion critical habitat areas.
- Fishermen will face substantially higher risk factors as the ban forces their smaller boats further off shore into dangerous seas.
- The economic base of coastal communities depend heavily on fish. Revenues from fishing funds schools, hospitals, roads, and local merchants.
- The area closed to trawling is currently at least 50,000 square miles of near-shore ocean from St. Elias to Attu, a distance of 2,000 miles. The distance from the Canadian border to Key West, Florida is 1,800 miles.



# Steller sea lion debate rages, judge's decision approaching

(Continued from page 1)

eries Service (NMFS), the number of Steller sea lions declined at a steep rate from 1976 to 1988. By 1988 there were only 40,000 animals remaining. Since 1988 the rate of decline has slowed. It could be said that the situation for sea lions is improving, but this is not how NMFS Protected Resources Division views the picture nor that allowed under the ESA.

Little attention was paid to the Steller sea lion decline until 1990 when sea lions were listed as threatened under ESA. The Alaska Sea Grant Program held a meeting in Anchorage to discuss measures to help sea lion recovery. Prohibiting the shooting of Steller sea lions was agreed to by all fishermen. Beyond a ban on shooting, no one had any ideas to help Stellers because the cause of the decline had not been identified — nor has it been to this day.

The threatened listing in 1990 gave Greenpeace an opportunity to sue NMFS in an effort to reduce the Gulf of Alaska pollock quota. The Gulf communities intervened, as did the State of Alaska under Governor Wally Hickey. The Judge ruled in favor of the

interveners. The Judge also admonished NMFS for failing to update its Supplemental Environmental Impact Statement (SEIS). Despite the admonishment, NMFS failed to update the SEIS.

That failure, in the face of continued declines in the Steller sea lion population, left the door open for the current lawsuit filed by Greenpeace, American Oceans Campaign and Sierra Club.

Updating the SEIS is a long process which the agency is trying to do in a few months. Judge Zilly has turned down the biological opinions submitted so far. The judge has made it clear that he wants a document that explains how all the Alaskan fisheries fit together in the areas of Steller sea lion decline — a request which science may not be able to fulfill due to lack of knowledge.

In the early days of Steller sea lion research, blood samples indicated "nutritional stress" which was translated by marine mammal biologists as meaning sea lions were not able to find enough food. Industry has offered its opinion that rather than not enough food it was more likely that some dietary

elements may have disappeared during the 1975 regime shift during which crab and shrimp vanished in the Gulf of Alaska and Bering Sea while pollock and Pacific cod increased dramatically.

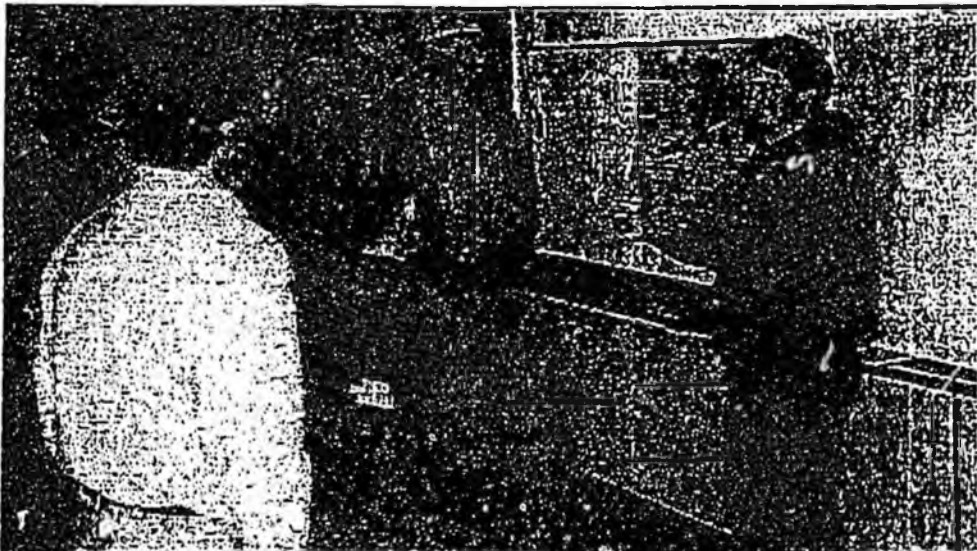
Currently pups leave the rookeries fat and healthy. In fact, according to NMFS, the pups born in areas of sea lion decline are leaving their rookery fatter than the pups born in Southeast Alaska where sea lions are increasing.

There are several hypotheses that could explain the sea lion declines, including the possibility that pollock have overrun the ecosystem or that the decline of fatty fish during the regime shift caused nutritional stress, or that the decline of the ocean productivity is low enough that there is not enough food to sustain the number of Steller sea lions seen in 1996 or that the million metric tons (MT) of arrowtooth flounder biomass in the Gulf whose diet is 90% pollock is out competing sea lions. However, the ESA does not simply wait for nature. The ESA requires action and the only action which can be taken is managing people since nature is unmanageable.

Right or wrong, the only hypotheses available in an ESA action is one that fingers human actions. The Protected Resources Division hypothesis is that fishing is competing with sea lions and depriving them of food. Based on the food competition theory, mitigation measures closing areas to fishing could make sense until it is pointed out that the fish taken by the industry represent 10-20% of the biomass, leaving 80-90% of the fish for sea lions, but the untested conjecture that fishing competes with sea lions is NMFS position.

Judge Zilly is tasked with the role of approving management measures which will, with certainty, reverse the decline of Steller sea lions as required by the ESA. Unfortunately there are no clear, certain answers. Frustrated with NMFS inability to deliver an adequate

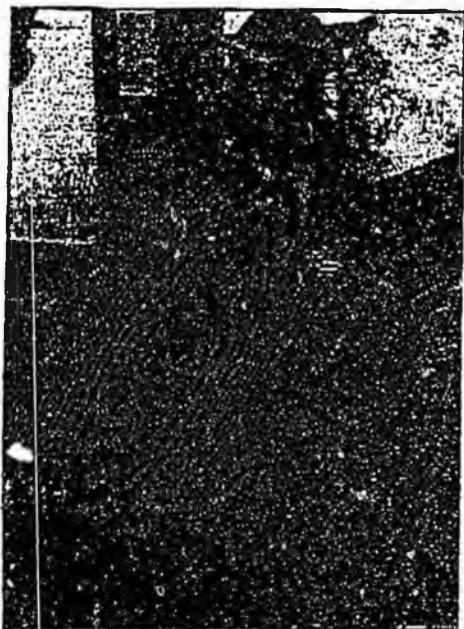
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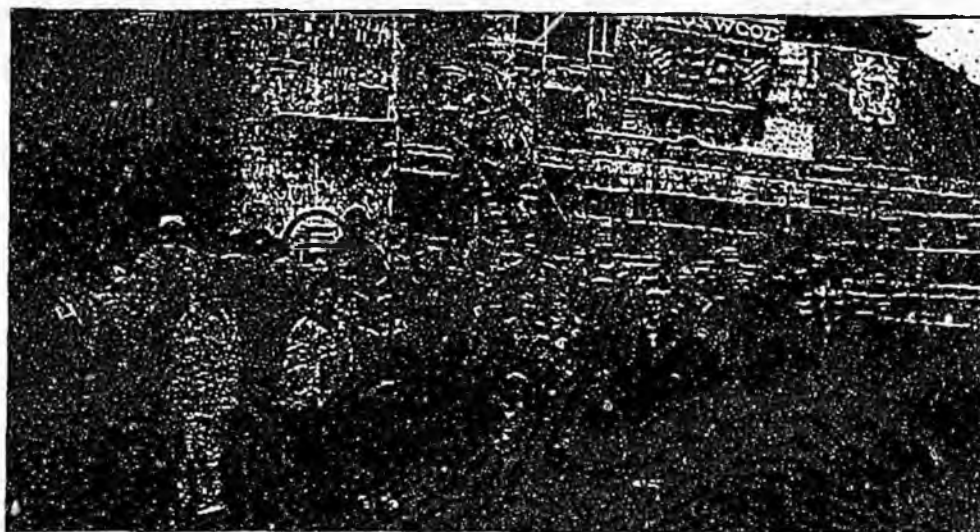
Matt Moir of Alaska Pacific Seafoods briefs RDC board members last month in Kodiak on the Steller Sea Lion Issue. Moir noted that the Kodiak fleet and local processing plants employing hundreds of local residents have been severely impacted by the ban on trawling.

# RDC Board visits Kodiak

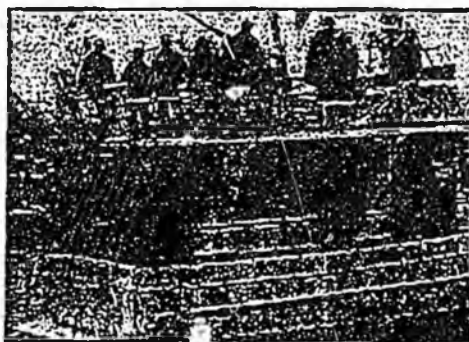
*Community Outreach  
September 2000*



*Anchorage Mayor George Wuerch watches Kodiak Harbormaster Marty Owen navigate his vessel "The Sea Breeze" along Kodiak's waterfront.*



*RDC board members pose before the U.S. Coast Guard Cutter Ironwood. The RDC board toured the U.S. Coast Guard base at Kodiak. The base is the largest Coast Guard facility in the U.S.*



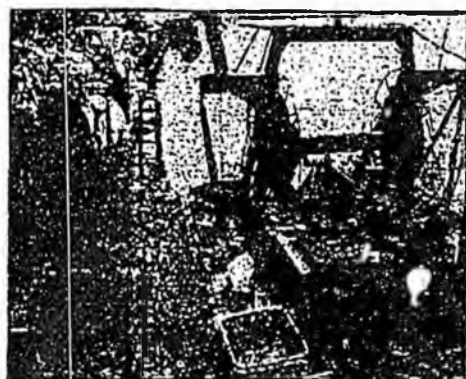
*RDC board members were treated to a waterfront tour of Kodiak's port by Harbormaster Marty Owen.*



*John Lucas describes the wine-making process at his Kodiak winery.*

## Steller Sea lion protection measures draw fire in Kodiak

*Continued from page 4)*



*RDC Board member Al Burch of the Alaska Driggers Association leads an RDC delegation to the fleet's docks in Kodiak.*

biological opinion as required by the ESA, Judge Zilly granted the plaintiffs' interim injunction which banned trawling within the critical sea lion habitat defined as the 20 NM from the shore. The interim injunction remains in effect until NMFS produces a satisfactory biological opinion. The opinion is due October 31. And no one knows how long the Judge will take to make his decision.

Meanwhile, many boats in the Gulf of Alaska will remain at the dock when the D season pollock fishery opens October 1 rather than risk fishing more than 20 NM from shore. When the boats can't fish or cannot find fish, there will be no work for processing workers, many of which are year-round residents of their communities.

The economic base for Alaska coastal communities is fish. When the pollock C season opened August 20,

there was 23,000 MT of pollock quota available. Because most of the pollock biomass was within the 20 NM critical habitat, the boats that did fish were only able to catch 9,620 MT before the season closed. The 13,413 MT left in the water was worth \$2,217,169 ex-vessel. Also lost was the severance tax and raw fish tax which is a significant part of a coastal community's income base.

Fishermen, fish processing plants and communities from Cordova to Dutch Harbor have survived and thrived despite earthquakes, volcanic eruptions, tsunamis, freezing spray and fluctuations in fish and shellfish abundance. The question now is can the communities from Cordova to Dutch Harbor survive the Endangered Species Act or will once thriving communities become ghost towns?



# ALASKA STATE LEGISLATURE

REPRESENTATIVE DREW SCALZI  
State Capitol, Juneau  
Alaska 99801-1182

OFFICIAL BUSINESS

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Email: Representative\_Drew\_Scalzi@legis.state.ak.us

## HJR:10 Sponsor Statement

*Relating to the management of the Bering Sea/Aleutian Islands and Gulf of Alaska groundfisheries and the protection and restoration of the Steller sea lion.*

The sharp decline of the Western Area Steller sea lion population from 120,000 to 25,000 animals in the past 30 years prompted a U.S. District Court Judge to impose a groundfish trawl ban on Alaska's coastal waters effective August 2000. The judge stated that the National Marine Fisheries Service (NMFS) violated the Endangered Species Act (ESA) by failing to write an adequate biological opinion for protection of the declining sea lion population. The ban dry-docked fishing fleets from waters within 20 nautical miles of sea lion breeding and resting areas, encompassing approximately 100,000 square miles of prime fishing waters in the Bering Sea and Gulf of Alaska from Prince William Sound to the Aleutian Islands.

Thanks to the direct efforts of Senator Ted Stevens, the August measures were suspended through 2001 and forty-four million federal dollars were allocated to review the biological opinion released by NMFS in November, 2000. Many industry and government experts feel the opinion lacks adequate scientific basis for such restrictions. The North Pacific Fisheries Management Council and the National Academy of Sciences will conduct an independent scientific review of the NMFS biological opinion. Additionally the governor has formed a Steller Sea Lion Restoration Team to assess factors affecting the decline of the species and the need for fishery restrictions.

According to Senator Stevens, the impacts of a ban on this fishery are far-reaching:

- \$1 billion pollack and cod fishery at risk (1,000 boats)
- \$500-800 million dollar impact on fishing industry
- one-half billion dollar impact on the entire state's economy
- commercial fishing loan industry will lose billions of dollars
- lost tax base will make ghost towns in Western Alaska
- Native Alaskan development programs lose \$50 million/year; thousands of Native jobs lost
- social impacts on communities include unemployment and related domestic problems; loss of community infrastructure employment, i.e., teachers, police officers, government officials
- national trade deficit raised by \$250 million

Supporting Senator Stevens' measure to temporarily postpone fishery restrictions until the NMFS biological opinion can be scientifically-reviewed means biology-based management decisions can be implemented for both the protection of the Steller sea lion and Alaska's important trawl fishery.





# UNITED FISHERMEN OF ALASKA

February 14, 2001

211 Fourth Street, Suite 110  
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E-Mail: [ufa@ufa-fisi.org](mailto:ufa@ufa-fisi.org)  
[www.ufa-fish.org](http://www.ufa-fish.org)

Representative Drew Scalzi  
Interdepartmental Mail Stop 3100  
State Capitol,  
Juneau, AK 99801

Dear Representative Scalzi,

United Fishermen of Alaska supports HJR10. The management of groundfish fisheries in relation to the Stellar Sea Lion is one of the most important economic issues for the commercial fisheries and communities from the Bering Sea to Prince William Sound.

United Fishermen of Alaska would like to thank you as the sponsor for bringing forward this very important resolution, for the benefit of affected communities and the State of Alaska.

Sincerely,

Tom Gemmell  
Executive Director

#### MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • At-sea Processors Association • Concerned Area 'M' Fishermen  
Cook Inlet Aquaculture Association • Copper River Salmon Producers Association • Cordova District Fishermen United  
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association  
Northern Southeast Regional Aquaculture Association • Northwest Snetnetters Association • Old Harbor Fishermans Association • Petersburg Vessel Owners Association  
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative  
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association  
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters



Alaska Fisheries Development Foundation, Inc.

February 8, 2001

Members  
Alaska State House of Representatives  
House Resources Committee  
Juneau, Alaska

Dear Committee Members:

With this letter the Alaska Fisheries Development Foundation is going on record in support of passage of House Joint Resolution No. 10 relating to the management of the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish fisheries and the protection and restoration of the Steller Sea Lion.

While the ongoing shift in population numbers of Steller Sea Lions merits concern, attention and, ultimately, action, it is very important to base regulatory decision making on sound science.

The current Federal approach is clearly being driven legal and political pressure, rather than a well-documented scientific assessment of the ecosystem. In the long run, management actions taken for other than scientific purposes will result in a complete loss of credibility for the regulatory process. If that regulatory process is perceived to be corrupt, the public will not support it and the "Failure of the Commons" is inevitable.

AFDF was chartered over twenty years ago to lead development of Alaska's underutilized seafood resources. Much of our early work was focused on bringing the groundfish industry into being. It would be tragic if all that has been built around Alaska's groundfish abundance was to fail for such a faulty premise.

Sincerely,

A handwritten signature in black ink, appearing to be "MSJ", written over a white background.

Marc S. Jones  
Executive Director, Alaska Fisheries Development Foundation



# Resource Development Council for Alaska, Inc.

121 W. Fireweed Lane, Suite 250, Anchorage, AK 99503  
Phone (907) 276-0700 Fax (907) 276-3887  
e-mail resources@akrdc.org http://www.akrdc.org

Founded 1975

Executive Director  
Thaddets J. Owens

2000-2001 Executive Committee:

Robert B. Stiles, President  
Charles W. Johnson, Sr. Vice President  
Mark Hanley, Vice President  
Uwe L. Gross, Secretary  
Stanley T. Foo, Treasurer

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R. Michael O'Neill

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Ex-Officio Members

Senator Ted Stevens

Senator Frank Murkowski

Congressman Don Young

Governor Tony Knowles

February 8, 2001

Representative Drew Scalzi  
State Capitol, Room 13  
Juneau, AK 99801-1182

Re: HJR 10, Groundfish Fisheries and Steller Sea Lion

Dear Representative Scalzi:

The Resource Development Council for Alaska, Inc., (RDC) is writing to express its strong support for HJR 10.

RDC is a statewide organization made up of all resource sectors, business associations, labor unions, Native corporations, tourism providers, local governments and thousands of individuals. RDC's purpose is to expand the state's economic base through the responsible development of our natural resources.












RDC supports the economies of local Alaskan communities which are dependent on the groundfish fishery. To this end, RDC endorses HJR 10, which supports the independent scientific review of the November 30, 2000 biological opinion for the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish fisheries. RDC also applauds Senator Stevens' legislation which delays implementation of the alternatives contained in the biological opinion until the independent scientific review is complete.

Thank you for introducing HJR 10. You have RDC's full support.

Sincerely,

Tadd Owens  
Executive Director

**Selected Areas through June 10, 2001**

-  10 and 20nm Pollock Trawl Exclusion Zones
-  10 and 20nm NO Trawling
-  Aleutian fishing restricted area, See 50 CFR 678
-  Pollock fishing restricted area, See 50 CFR 679
-  No Directed fishing for Pollock in Aleutian SubArea
-  3nm No Fishing
-  3nm No Transit
-  RPA Site
-  Isobary
-  Harbort
-  Aleutia Towns



No Transit 3nm			No Fishing 3nm			No Fishing 3nm Cont.			Pollock 20nm			Pollock 10nm			No Trawl 20nm			No Trawl 10nm					
SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA	SITE	MANAGEMENT	SEAs/RPA			
144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R	144 U. Inger Pt.	Aleutian Islands	R





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February 14, 2001

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Interdepartmental Mail Stop 3100  
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Juneau, AK 99801

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**SUPPORTING DOCUMENTATION**



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February 8, 2001

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House Resources Committee  
Juneau, Alaska

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Sincerely,

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Marc S. Jones  
Executive Director, Alaska Fisheries Development Foundation



# Resource Development Council for Alaska, Inc.

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Executive Director

Tadd Owen

2000-2001 Executive Committee

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State Capitol, Room 13  
Juneau, AK 99801-1182

Re: HJR 10, Groundfish Fisheries and Steller Sea Lion

Dear Representative Scalzi:

The Resource Development Council for Alaska, Inc., (RDC) is writing to express its strong support for HJR 10.

RDC is a statewide organization made up of all resource sectors, business associations, labor unions, Native corporations, tourism providers, local governments and thousands of individuals. RDC's purpose is to expand the state's economic base through the responsible development of our natural resources.

RDC supports the economies of local Alaskan communities which are dependent on the groundfish fishery. To this end, RDC endorses HJR 10, which supports the independent scientific review of the November 30, 2000 biological opinion for the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish fisheries. RDC also applauds Senator Stevens' legislation which delays implementation of the alternatives contained in the biological opinion until the independent scientific review is complete.

Thank you for introducing HJR 10. You have RDC's full support.

Sincerely,

Tadd Owens  
Executive Director

This Edition Sponsored by: Pacific Seafood Processors Association

# Resource Review

September 2000

A periodic publication of the Resource Development Council, Inc.



*"Fishermen, fish processing plants and communities from Cordova to Dutch Harbor have survived and thrived despite earthquakes, volcanic eruptions, tsunamis, freezing spray and fluctuations in fish and shellfish abundance. The question now is can the communities from Cordova to Dutch Harbor survive the Endangered Species Act or will once thriving communities become ghost towns?"*

## Sea lion restrictions cripple fishing industry, coastal communities

By Chris Blackburn  
Alaska Fish Data Bank

When the third quarterly pollock fishery in the Gulf of Alaska opened August 20, more than half the fleet stayed tied to the dock. Out of the 41 vessels that make up the Kodiak pollock fleet, 15 vessels stayed at the dock. Of the 52 vessels in the Sandpoint area

fleet, 35 stayed at the dock. The tie-up was not due to price, but to safety considerations.

The vessels that remained at the dock had been displaced from their fishing areas near shore by Ninth Circuit Judge Thomas E. Zilly who, on July 19, issued an interim injunction effective August 6 which prohibited trawling within 20 nautical miles (NM) of the shore

### Impacts of trawling ban in critical habitat areas

- The ban on bottom fishing could reduce the tax base for local communities by as much as 60 to 70 percent.
- The fishing industry stands to lose well in excess of \$100 million annually from prohibitions on trawling in Steller sea lion critical habitat areas.
- Fishermen will face substantially higher risk factors as the ban forces their smaller boats further off shore into dangerous seas.
- The economic base of coastal communities depend heavily on fish. Revenues from fishing funds schools, hospitals, roads, and local merchants.
- The area closed to trawling is currently at least 50,000 square miles of near-shore ocean from St. Elias to Attu, a distance of 2,000 miles. The distance from the Canadian border to Key West, Florida is 1,800 miles.



Many local residents in Kodiak have hard feelings toward environmental groups pressing for an end to trawling in Steller sea lion critical habitat areas.

under the authority of the Endangered Species Act (ESA).

The Gulf of Alaska trawl fleet is mainly composed of vessels less than 60 to 100 feet in length – vessels designed to fish near shore. To venture 20 NM out is exceedingly dangerous.

The vessels that did try to fish the third pollock season found little pollock outside the 20 NM barrier and actually spent more money looking for pollock than the value of the small amounts of pollock they were able to find.

It is the 30-year decline of Steller sea lions in the Central and Western Gulf and Bering Sea/Aleutians that has brought the ugly realities of the ESA to the Alaska fishing industry. Between 1976 and 2000, the Western Area Steller sea lion population has declined from 120,000 animals to 25,000 animals.

According to National Marine Fish-  
(Continued to page 4)



# Steller sea lion debate rages, judge's decision approaching

(Continued from page 1)

eries Service (NMFS), the number of Steller sea lions declined at a steep rate from 1976 to 1988. By 1988 there were only 40,000 animals remaining. Since 1988 the rate of decline has slowed. It could be said that the situation for sea lions is improving, but this is not how NMFS Protected Resources Division views the picture nor that allowed under the ESA.

Little attention was paid to the Steller sea lion decline until 1990 when sea lions were listed as threatened under ESA. The Alaska Sea Grant Program held a meeting in Anchorage to discuss measures to help sea lion recovery. Prohibiting the shooting of Steller sea lions was agreed to by all fishermen. Beyond a ban on shooting, no one had any ideas to help Stellers because the cause of the decline had not been identified – nor has it been to this day.

The threatened listing in 1990 gave Greenpeace an opportunity to sue NMFS in an effort to reduce the Gulf of Alaska pollock quota. The Gulf communities intervened, as did the State of Alaska under Governor Wally Hickel. The Judge ruled in favor of the

interveners. The Judge also admonished NMFS for failing to update its Supplemental Environmental Impact Statement (SEIS). Despite the admonishment, NMFS failed to update the SEIS.

That failure, in the face of continued declines in the Steller sea lion population, left the door open for the current lawsuit filed by Greenpeace, American Oceans Campaign and Sierra Club.

Updating the SEIS is a long process which the agency is trying to do in a few months. Judge Zilly has turned down the biological opinions submitted so far. The judge has made it clear that he wants a document that explains how all the Alaskan fisheries fit together in the areas of Steller sea lion decline – a request which science may not be able to fulfill due to lack of knowledge.

In the early days of Steller sea lion research, blood samples indicated "nutritional stress" which was translated by marine mammal biologists as meaning sea lions were not able to find enough food. Industry has offered its opinion that rather than not enough food it was more likely that some dietary

elements may have disappeared during the 1975 regime shift during which crab and shrimp vanished in the Gulf of Alaska and Bering Sea while pollock and Pacific cod increased dramatically.

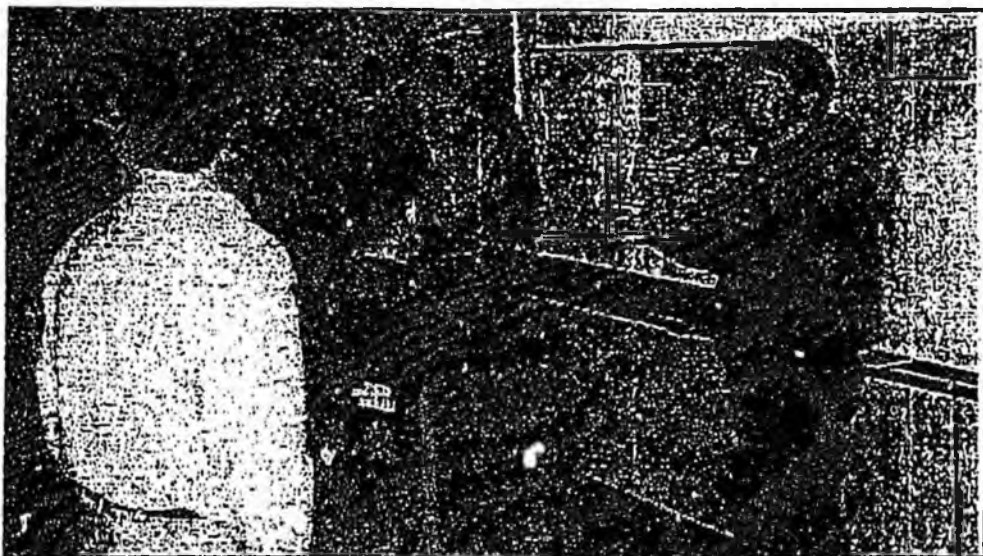
Currently pups leave the rookeries fat and healthy. In fact, according to NMFS, the pups born in areas of sea lion decline are leaving their rookery fatter than the pups born in Southeast Alaska where sea lions are increasing.

There are several hypotheses that could explain the sea lion declines, including the possibility that pollock have overrun the ecosystem or that the decline of fatty fish during the regime shift caused nutritional stress, or that the decline of the ocean productivity is low enough that there is not enough food to sustain the number of Steller sea lions seen in 1996 or that the million metric tons (MT) of arrowtooth flounder biomass in the Gulf whose diet is 90% pollock is out competing sea lions. However, the ESA does not simply wait for nature. The ESA requires action and the only action which can be taken is managing people since nature is unmanageable.

Right or wrong, the only hypotheses available in an ESA action is one that fingers human actions. The Protected Resources Division hypothesis is that fishing is competing with sea lions and depriving them of food. Based on the food competition theory, mitigation measures closing areas to fishing could make sense until it is pointed out that the fish taken by the industry represent 10-20% of the biomass, leaving 80-90% of the fish for sea lions, but the untested conjecture that fishing competes with sea lions is NMFS position.

Judge Zilly is tasked with the role of approving management measures which will, with certainty, reverse the decline of Steller sea lions as required by the ESA. Unfortunately there are no clear, certain answers. Frustrated with NMFS inability to deliver an adequate

(Continued to page 5)



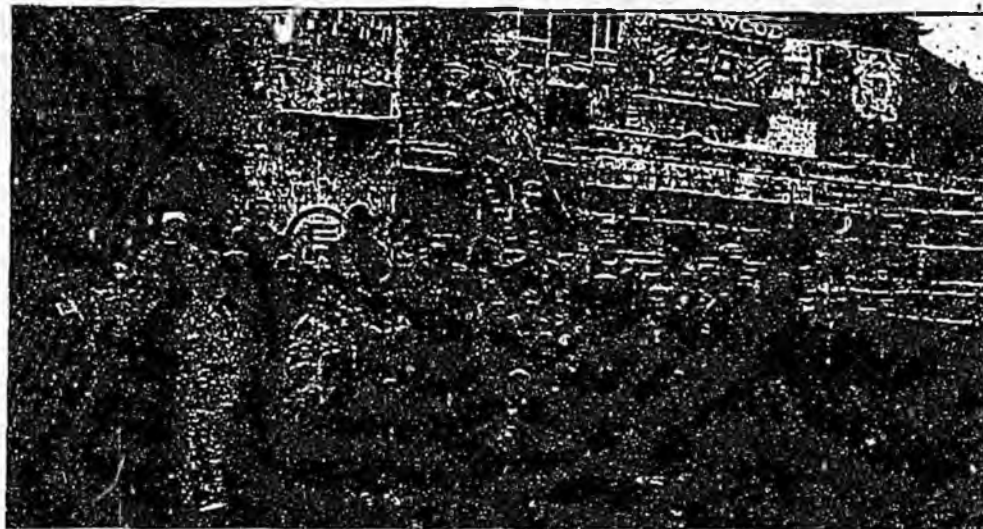
Matt Moir of Alaska Pacific Seafoods briefs RDC board members last month in Kodiak on the Steller Sea lion issue. Moir noted that the Kodiak fleet and local processing plants employing hundreds of local residents have been severely impacted by the ban on trawling.

# RDC Board visits Kodiak

*Community Outreach  
September 2000*



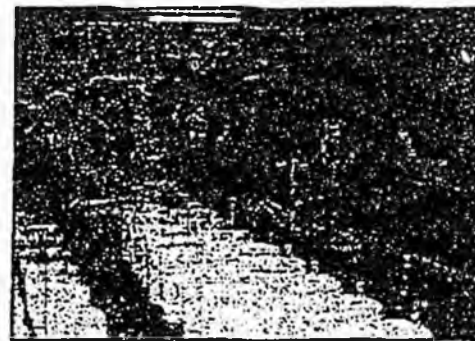
*Anchorage Mayor George Wuerch watches Kodiak Harbormaster Marty Owen navigate his vessel "The Sea Breeze" along Kodiak's waterfront.*



*RDC board members pose before the U.S. Coast Guard Cutter Ironwood. The RDC board toured the U.S. Coast Guard base at Kodiak. The base is the largest Coast Guard facility in the U.S.*



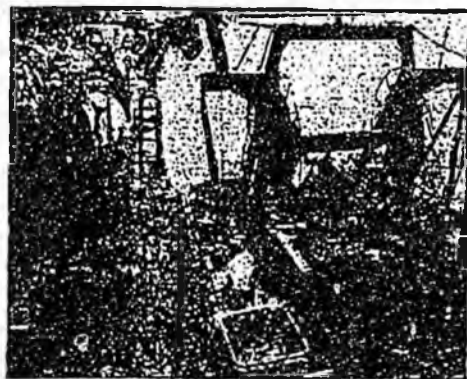
*RDC board members were treated to a waterfront tour of Kodiak's port by Harbormaster Marty Owen.*



*John Lucas describes the wine-making process at his Kodiak winery.*

## Steller Sea lion protection measures draw fire in Kodiak

*Continued from page 4)*



*RDC Board member Al Burch of the Alaska Dragers Association leads an RDC delegation to the fleet's docks in Kodiak.*

biological opinion as required by the ESA, Judge Zilly granted the plaintiffs' interim injunction which banned trawling within the critical sea lion habitat defined as the 20 NM from the shore. The interim injunction remains in effect until NMFS produces a satisfactory biological opinion. The opinion is due October 31. And no one knows how long the Judge will take to make his decision.

Meanwhile, many boats in the Gulf of Alaska will remain at the dock when the D season pollock fishery opens October 1 rather than risk fishing more than 20 NM from shore. When the boats can't fish or cannot find fish, there will be no work for processing workers, many of which are year-round residents of their communities.

The economic base for Alaska coastal communities is fish. When the pollock C season opened August 20,

there was 23,000 MT of pollock quota available. Because most of the pollock biomass was within the 20 NM critical habitat, the boats that did fish were only able to catch 9,620 MT before the season closed. The 13,413 MT left in the water was worth \$2,217,169 ex-vessel. Also lost was the severance tax and raw fish tax which is a significant part of a coastal community's income base.

Fishermen, fish processing plants and communities from Cordova to Dutch Harbor have survived and thrived despite earthquakes, volcanic eruptions, tsunamis, freezing spray and fluctuations in fish and shellfish abundance. The question now is can the communities from Cordova to Dutch Harbor survive the Endangered Species Act or will once thriving communities become ghost towns?

HJR

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Alaska State Legislature

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Alaska State Capitol  
Juneau, Alaska 99801-1182  
☎ (907) 465-2199  
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Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

### HJR 11

### Sponsor Statement

**A Resolution proposing amendments to the Constitution relating to Subsistence use of wild food resources and to the harvest of fish and wildlife.**

Last Updated: February 6, 2001

Contact: Representative Fred Dyson's Office at (907) 465-2199

The people of Alaska have always recognized that using natural resources for sustenance is a fundamental human right and they have always recognized that this use takes priority over all other uses.

The recent debates over "subsistence" and the Federal take over of fish management on Federal lands have focused attention on this issue and the reluctance of the Alaskan Legislature to change the State Constitution to provide for discrimination amongst Alaskan users. This has led some non-Alaskans to mistakenly think that the Alaskan mindset is to not support subsistence.

House Joint Resolution 11 puts in the Alaskan Constitution that which Alaskans have always agreed upon: The use of renewable resources for food is the highest and best use of the resource and takes precedence over all other uses.

It is the goal of the sponsor that by placing the subsistence priority in our constitution we will make it clear to everyone that Alaskans are very committed to subsistence. Placing this principle in our constitution will also help future generations understand the thinking of Alaskans of our generation. It will also commit a principle that has always been understood by Alaskan people to our founding documents.

###

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

**HJR**

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*Pat*

The attached materials were  
received this afternoon,  
and should be added to your packets for  
HJR-12

Thank you

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR12  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title: Constitutional Amendment relating to hunting, BRU: Elective Operations  
trapping, and fishing Component: Elections  
 Sponsor: Representative Dyson  
 Requester: House Resources Committee Component Number: 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenumiai Phone 465-3935  
 Division: Division of Elections Date/Time 3/7/01 11:00 AM  
 Approved by: Lieutenant Governor Fran Ulmer Date 03/07/2001  
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office



## ALASKA OUTDOOR COUNCIL

P.O. Box 2193  
Palmer, Ak. 99645  
(907) 745-3772  
FAX 745-6944

March 7, 2000

Representative Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801

Dear Representative Dyson:

The Alaska Outdoor Council (AOC) appreciates your efforts to sustain consumptive uses of wildlife as an important Alaskan heritage. Your legislation, HJR 12 HUNTING, TRAPPING AND FISHING, will provide Alaska's consumptive users a much needed level of protection.

We have ample historical evidence that consumptive uses have lost considerable ground over the past three decades here in Alaska. Actions like ANILCA, Sheep Mountain, Cooper Lake, Paint River, etc. have closed substantial areas to consumptive uses since statehood. Environmental groups continue to pressure the state for more closures and have effectively emasculated any attempts to manage wildlife for sustained yield. In fact very little has been done to reverse the dramatic declines in several ungulate populations over the past eight years. Declines that have resulted or will soon result in major new restrictions on consumptive uses.

It is clear for those of us who have been working to support wildlife conservation efforts over the past several decades that the environmental groups have every intention of stopping consumptive uses of wildlife. Although they consistently present themselves to be supportive of consumptive uses, their testimony before the Legislature and the Board of Game has always opposed increased opportunities, and has always supported increased restrictions. This is a matter of public record.

On behalf of our membership and the thousands of Alaskans who still cherish their natural relationship with the natural world and choose to participate in that world rather than just observe it, we would like to thank you for your courage and foresight in promoting legislation that will protect this important Alaskan heritage. Please feel free to contact us if we can be of any assistance in the passage of HJR 12.

Sincerely,

Carl Rosier  
President

Official State Association of the National Rifle Association

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**DONELAN, CLEARY, WOOD & MASER, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-3834

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

March 26, 1996

Via Telecopier

Roger Holmes, Director  
Division of Fish and Wildlife  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4001

Re: Proposed Amendment to the  
Constitution of Minnesota To Preserve  
Recreational Hunting

Dear Mr. Holmes:

You advise that the Minnesota legislature is considering measures which could lead to establishment in the state constitution of provisions which would preserve in residents of the state the right to engage in recreational hunting, subject to reasonable restrictions on seasons, bag limits, means and methods of take, and subject also to principles of sustained yield management. An alternative being considered would extend such constitutional recognition to the "privilege" of engaging in recreational hunting in contrast to the "right" of doing so.

You have requested my views on such proposals in light of my experience as Legal Counsel to the International Association of Fish and Wildlife Agencies, an organization whose government members include the fifty state fish and wildlife agencies. That experience over thirty years includes defending in court on numerous occasions against attempts by animal protection groups to close down recreational hunting. It also includes counseling with the State of Alaska for the last two years on the establishment of subsistence hunting provisions in that state's constitution.

No doubt exists that a considerable debt is owed to the hunters and anglers of America who, for over fifty years, have funded the restoration of game species from critical scarcity to relative abundance through the payment of license fees and of excise taxes on sporting equipment. They have willingly footed the bill for conservation. Nevertheless, there are problems in establishing constitutional recognition for a particular user group.

PRESENTED BY

DEPARTMENT OF LAW

MARCH 7, 2001



DONELAN, CLEARY, WOOD & MASER, P.C.

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Roger Holmes, Director  
March 26, 1996

Certainly in everyday conversation one distinguishes between a right and a privilege. We commonly speak of recreational hunting as a privilege which has been handed down to make clear that it is not a right to which an individual is entitled. Nevertheless, whether the subject constitutional provision were framed in terms of a right or a privilege, the mere presence in the constitution of a provision establishing safeguards for residents to engage in recreational hunting will inevitably shift decision-making authority from the legislature to the courts to elaborate the implications of the constitutional status bestowed on this particular use. And, the fact of constitutional recognition by itself will almost certainly open the way for argument that the right/privilege may not be restricted in the absence of a demonstration of conservation justification. If the burden were thereby to shift to DNR, requiring it to demonstrate a conservation justification for each challenged element of its fish and wildlife regulations, significant agency resources would be expended in the process.

The presumption in favor of the validity of agency action means that a plaintiff bears the burden of proof, freeing the agency from the need to prove the validity of its regulations merely because a plaintiff alleges a violation. Without the presumption of validity of agency action taken pursuant to authority delegated by the legislature, a vast drain on the time and resources of agencies, and of courts, would occur. And, of course, if the courts rendered unforeseen decisions with which the legislature were dissatisfied, legislative recourse would be limited.

Five years ago, a group of Montana sportsmen sought to gather signatures sufficient to place on the ballot an initiative (CI-62) which would guarantee in the Montana constitution the right of residents to hunt game animals. In opposition thereto, it was asserted that elevation of the privilege of hunting to constitutional status would undercut the state's authority to discriminate in favor of residents in establishing fees for licenses and permits, an authority which the Supreme Court of the United States had upheld in Baldwin v. Montana Fish & Game Comm'n, 432 U.S. 371 (1978). In Baldwin, nonresident discrimination was upheld against constitutional challenge under the Privileges and Immunities Clause because the Court found that recreational hunting is not a fundamental right of U.S. citizenship. The signature drive bogged down when opponents claimed that providing constitutional status for hunting would undermine Montana's ability to charge higher nonresident license fees.

I argued for the state in Baldwin and personally am not convinced that the ruling in Baldwin would have been undercut, but the possibility cannot be ruled out. In any case, the argument apparently convinced enough people in Montana to stall the CI-62 initiative drive.

In summary, explicit constitutional recognition, whether of a right or of a privilege in residents to engage in recreational hunting, poses problems (1) by transferring decision-making authority from the legislature to the courts, and (2) by raising the very real prospect that the burden in litigation would shift to the agency to justify conservation measures. Language negating explicitly any shift of burden could resolve



DONELAN, CLEARY, WOOD & MASER, P.C.

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the second point. By the nature of the subject, no language could resolve the first one if the constitution is amended.

Sincerely,

*Paul A. Lenzini*  
Paul A. Lenzini, Legal Counsel  
International Association of  
Fish and Wildlife Agencies

8500-500



State of Wisconsin \ DEPARTMENT OF NATURAL  
RESOURCES

Box 7921

George E. Meyer, Secretary

Tommy G. Thompson, Governor  
Madison, Wisconsin 53707-7921

101 South Webster

TELEPHONE 608-266-2621

FAX 608-267-3579

TDD 608-267-6897

March 30, 1998

TO: State Fish and Wildlife Directors

FROM: George E. Meyer - Chair, Legal Committee

SUBJECT: Report - Constitutional Amendments on the Right to Hunt/Ballot Initiatives

Enclosed is a copy of the Report prepared by the IAFWA Legal Committee on the issue of Right to Hunt Constitutional Amendments/Ballot Initiatives. It was approved unanimously by the Legal Committee on March 22, 1998. I hope it will prove to provide useful information for you and your staff if the issues arise in your State. Please note that the Subcommittee members, and in fact the members of the Legal Committee, remain available to discuss the issue and provide information to you and your staff.

I want to thank the Subcommittee for their effort in producing the draft report for consideration and action by the Legal Committee. They include:

L. Brooks Garland, TN - Co-Chair  
Jim Christenson, WI - Co-Chair  
Ron Arnold, WY  
Steve Masten, ME  
Scott Porter, KY

We also received significant input and assistance from Paul Lenzini, Legal Counsel for the IAFWA, Tom Sherman, Legal Counsel for the Wildlife Legislative Fund of America, and Roger Holmes from Minnesota DNR. Thanks Paul, Tom and Roger.

In addition, the Legal Committee meetings and action this Spring were well attended and very fruitful in addressing issues and forming a strong networking group of attorneys. If your Legal Counsel attended, thanks. If your Legal Counsel was unable to attend, I urge you to encourage their attendance at the September meeting of the IAFWA. It looks like we'll have significant issues to address and discuss this Fall, including a joint meeting with the Law Enforcement Committee to discuss issues before them, e.g. Violator's Compact, and how the Committees may work together to address issues.

See you in September.

Attachment

cc. Jim Christenson - LS/5  
Steve Miller - AD/5  
Tom Hauge - WM/4  
Tom Harelson - LE/5

iafwa. jsc

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PRESENTED BY

DEPARTMENT OF LAW

March 7, 2001

*Through Excellent Customer Service*

# CONSTITUTIONAL INITIATIVES

## “RIGHT TO HUNT”

### REPORT OF THE SUBCOMMITTEE

In recent years state wildlife agencies have been faced with legislative initiatives to amend their state constitution to create the right to hunt, trap and fish. For the purpose of this report, we will refer to these efforts as “Right to Hunt” amendments.

In addition, states with the ballot initiative and referendum available to address hunting, trapping and fishing laws, are facing efforts to modify their constitutions to eliminate the voters\* right to modify those laws by ballot initiatives. For the purpose of this report, we will refer to these amendments as “Ballot Initiative.”

The state wildlife agencies experiencing these initiatives, or anticipating they will be proposed in their state, have asked the International Association of Fish and Wildlife Agencies (IAFWA) and its Legal Committee for advice on this issue.

The Legal Committee, at its September 7, 1997 meeting in Scottsdale, AZ, formed a Subcommittee to review, analyze and prepare a report on the various known efforts to amend state constitutions on the right to hunt or ballot initiatives, identifying their pros and cons. The constitutional amendment issues were briefly discussed earlier at its meeting in 1996. Since the 1996 meeting, the issue has again arisen in various states, including Minnesota, Wyoming, Colorado and Tennessee. Legal counsel or agency representatives from those states, and others, suggested the Legal Committee review the issue and advise the state agencies on it. The Subcommittee met in St. Paul, MN, on November 12, 1997, to discuss and receive input prior to preparing this draft report. Paul Lenzini, legal counsel for the IAFWA, submitted comments and information pertinent to this analysis. Tom Sherman, attorney for the Wildlife Legislative Fund of America (WLFA), which has drafted a model constitutional amendment which would prohibit the initiative and referendum provisions of state constitutions from being used to enact or reject laws which permit, limit, or prohibit taking of any species of wildlife, also provided information for consideration.

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Both amendment initiatives (Right to Hunt or Ballot Initiative) appear to be motivated by a genuine concern that their creation will aid in guaranteeing the future of hunting and

fishing and thwart efforts of anti-hunting groups and others to stop or diminish these recreational activities in the future. Persons supporting amendments informed the Subcommittee that amending their state\*s constitution seems like a good idea, but they also want to assure that the effort does not interfere with or impair the excellent wildlife management and use programs they now enjoy. Recent initiatives include the creation of a constitutional amendment in Alabama and the development of a recommended draft of language by the WLFA. The Alabama language establishes a constitutional preference for a user group. The WLFA draft primarily seeks to eliminate the Ballot initiative for statutory provisions relating to wildlife management Please see the attached table prepared by the WLFA which identifies initiative states.

We think that it may be useful to briefly revisit the legal underpinnings and history of state hunting, fishing and trapping (I refer to all of them with the term "hunting") regulation which we must reflect on as we consider this issue.

## LEGAL UNDERPINNINGS

It has long been recognized that wild animals are subject to the authority of the sovereign and that the harvest of them is a privilege subject to regulation. The U.S. Supreme Court reviewed this history a century ago in the case of Geer v. Connecticut, 161 U.S. 519 (1896), and found the principle to be consistent in ancient Greece and the Roman Empire, during the subsequent history of northern Europe, and in England since the Norman Conquest nearly a thousand years ago. It was then vested in the colonial governments in North America, and passed to the states upon separation from the mother country.

Under the U.S. Constitution, the several states retain authority to regulate the wildlife resource as common property unless specifically pre-empted by federal law. Baldwin v. Montana Fish and Game Comm'n., 436 U.S. 371, 365-367 (1978). "We take it to be correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as a proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common." Geer at 529, quoting State v. Rodman, 58 Minn. 393, 59 N.W. 1089

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(1894).<sup>1</sup> Regulatory authority derives both from the state\*s common ownership and the police power. Geer at 534, Lacoste v. Dept. of Conservation, 263 U.S. 545, 552 (1924) ("Protection of the wildlife of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection.") This

authority to regulate wildlife harvest extends to both public and private land. Mountain States Legal Foundation v. Hodel, 799 F.2d 1423, 1426 (10 Cir. 1986).

In the last 100 years, or so, most of the states have developed comprehensive sets of laws for the conservation, management and harvest of their wildlife, normally consisting of statutes, orders and administrative rules (regulations), and court interpretations (common or case law) of the statutes and regulations. Although some states have constitutional provisions respecting the protection and management of wildlife, most do not. Of those states that have language respecting hunting or wildlife management, it appears the language has been part of the state constitution either for a long time or inserted only very recently. It is reasonable to infer that states that have had such language in their constitution for a long time have a set of wildlife laws, and court interpretations of them, considering and consistent with it. It is also reasonable to infer that recent amendments to a constitution will lead to a reexamination of the wildlife statutes and regulations of that state in light of the amendment. Therefore, the experience of states with longstanding language does not necessarily predict the experience of states with newly enacted language.

### RIGHT TO HUNT

With the short history of recent amendments, we simply do not have a body of law (court interpretations) to determine what their impact will be on management and regulation. Successful initiatives may be seen as a benefit in their apparent solidification of legislative and public support for these recreational activities. However, even with public or legislative support, we must expect that the courts will be asked at some time to

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<sup>1</sup>Geer also held that a state could prohibit out-of-state transport of game taken within its borders. This was later found to be violative of the interstate commerce clause and overturned. Hughes v. Oklahoma, 441 U.S. 322 (1979), Geer still correctly expresses the principle that states regulate their game as common property for the common good. See Mountain States Legal Foundation v. Hodel, 799 F.2d 1423, 1426 (10 Cir. 1986).

# REPORT

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Page 4

examine and determine just what an amendment means for wildlife management and regulation for the state. We must assume that courts will view a constitutional amendment as legally significant.

The Southeastern Association of Fish and Wildlife Agencies Legal Committee, in October, 1997, reviewed and acted on this issue. Following its review, the Committee voted that it "does not approve of the use of constitutional amendments to state constitutions to create a right or privilege to fish and hunt because of the legal ramifications of an elevated standard of review of legislative and administrative agency actions." "The Committee does not support preparing draft language for those states considering such a constitutional amendment." Legal Counsel representing the states of Tennessee, Minnesota, Wisconsin, Kentucky and Wyoming, at the subcommittee meeting in St. Paul MN, in the main, expressed more concerns than benefits over such initiatives. Following that meeting of the Subcommittee where these concerns were discussed, Ron Arnold, an Assistant Attorney General for the state of Wyoming, and a member of this Subcommittee, presented these concerns to a legislative Committee in Wyoming considering an initiative to modify the Wyoming constitution to recognize the right or privilege to hunt. The legislative Committee dropped further consideration of the initiative.

Let us emphasize at this point that this analysis and any conclusions made are speculative. When a state wildlife agency is in a position to comment on a proposal, we suggest it recommend the amendment not be pursued. Where a constitution has been amended, or legislation otherwise enacted, this broad statement of position cannot, and should not, bear on any interpretation or effect of the language. The law of each state will vary and conclusions cannot be reached without a comprehensive review of those laws. This Subcommittee, and we suggest the Legal Committee, should leave any in-depth analysis to the attorney representing the state fish and wildlife agency so he or she may provide advice to the agency.

Keeping in mind that each state\*s laws respecting wildlife management and the sports of hunting, fishing or trapping, may greatly vary, a number of general concerns have consistently been raised by attorneys when discussing the merits or demerits of proposing or creating a constitutional amendment.<sup>3</sup> Concerns include:

---

*Proposed with  
Constitutional Right  
to Hunt provisions*

<sup>2</sup>In constitutional usage, the term "right" may well have the same meaning as the term "privilege." For the purposes of trying to anticipate the impacts on hunting, we should assume them to be the same.

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1. Potential problems of placing a proposed constitutional amendment on the ballot include:
  - a. It may serve as a rallying cry for anti-hunting/fishing groups and create a cohesive group where one previously did not exist.
  - b. Such proposal may polarize individuals against fishing and hunting, where those individuals may have previously had little or no interest in the issue.
  - c. It may be viewed by the public as a firearms issue, rather than hunting, and encourage those concerned with firearms to oppose it.
  - d. The proposal may raise questions or concerns about private property rights and trespass laws.
2. What might the impact be if the proposal fails passage? Possible results may include:
  - a. A more wary and skeptical public may be created respecting hunting and fishing activities and agency management strategies.
  - b. A legislature may be made more wary and may more cautiously approach or view wildlife management, fishing and hunting proposals in the future; or, the failure may be viewed as a mandate to proactively question or modify the wildlife management authority of the agency or the authorized recreational activities.
  - c. Failure may be seen as a public endorsement of the anti-hunting agenda. Certainly, anti-hunting groups will make this argument.
3. State authority to conduct natural resource management may change as a result of the creation of a constitutional right to hunt. The effect of including this right or privilege in the constitution may be troublesome for a number of reasons, including:
  - a. It may mean the state will lose the presumption of validity and have to meet a higher constitutional standard for its management. Currently, the constitutional standard of review for game and fish laws is whether they are rationally related to legitimate governmental purposes. The presumption is that they are, and the burden lies upon the challenger to show they are not. Because of the presumption and the fact that the burden on the challenger is not easy to sustain, the



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constitutionality of fish and game laws is rarely challenged. If hunting and fishing are made a constitutional right, the burden will shift and a much stricter standard will apply. There will be no presumption of constitutionality, and when challenged the state will, we suspect, have to prove that its fish and game laws are necessary to achieve a compelling governmental purpose, and there are no less restrictive alternatives available. With this difficult burden to sustain, the courts will be making the management decisions. The decision-making authority will be shifted from the legislature and agency to the courts. We suggest that this burden issue may be addressed by appropriate language in any Constitutional amendment.

- b. Once the amendment is a part of the state constitution and interpreted by the courts, there may well be no remedy in the legislature from a bad ruling provoked by a hard set of facts.
- c. In criminal prosecutions defendants may contend that the state must prove beyond a reasonable doubt that the law or regulation in question and its enforcement in their situation meets the constitutional standard.
- d. It is likely litigation will result with any constitutional amendment. Any citizen unhappy with a citation or wishing to challenge a law or initiative will likely raise their position or challenge on a constitutional basis as well as any other. Litigation may include actions for declaratory and injunctive relief. For instance, to what extent is the law truly necessary for conservation, as opposed to serving ethical or traditional practice purposes? Will seasons or methods of taking be affected? Of course, as with any litigation, it is costly and time-consuming.
- e. Will such a constitutional right impact firearms laws or regulations? Will it result in different treatment of nonresidents? Is the right to hunt a right to keep and bear arms?
- f. Will the state be required to expend funds to support or insure some certain level of hunting opportunity?
- g. Will such an amendment be interpreted as creating a fundamental right which may be reviewed by the federal courts as interfering with other laws, e.g. Migratory Bird Treaty Act, or Endangered Species Act?



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- h. How might such an amendment affect professional hunters or guides? Can the state continue to regulate, charge a fee, or otherwise restrict this activity?
- i. How might an amendment affect the viability of inter-state compacts respecting conservation law violations?
- j. Impacts on private property. It is possible that courts might find the prohibition on infringement of the hunting right extends to private landowners as well. On the one hand, trespass laws could become less enforceable; on the other, landowners might be limited in their ability to develop land, insofar as doing so diminishes hunting opportunity.

From the perspective of the hunter, a constitutional right to hunt may sound good, especially if anti-hunting groups become more active or successful: On closer-examination, however, creation of a constitutional right may create unanticipated consequences. As is the case with all other natural resources, the legal basis for the management of the wildlife resource and the regulation of its harvest lies in the fact that it is a common resource to be maintained for the benefit of the public. Its utilization by any individual is a privilege granted and regulated consistently with the collective public benefit. From the perspective of both the resource management agency as well as the hunter, making hunting a constitutional right may fundamentally alter and drastically interfere with wildlife management as currently practiced.

## BALLOT INITIATIVE

As stated earlier in this report, the WLFA developed a draft constitutional amendment with the primary purpose of prohibiting the initiative and referendum provisions of a state constitution from being used to enact or reject laws which permit, limit, or prohibit the taking of any species of wildlife. The model amendment also includes a provision that the fish and wildlife belong to the people and shall be utilized and maintained on a sustained yield basis. In addition, it provides that fish and wildlife laws, and the agency empowered to conserve the fish and wildlife resources, shall not permit any taking which will reduce the

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population of any species authorized for taking as a game species below that level essential to its continued health and existence.

In that the model addresses the goals of the fish and wildlife program, as well as establishing restrictions of the regulatory agency, it is reasonable to anticipate similar issues and potential problems will arise with this type of an effort as the "Right to Hunt" amendment discussed previously. And, therefore, the position of the Subcommittee, and its recommendation, remains the same. The effort to amend the constitution, or actually enact the amendment, may raise more problems than it will resolve.

Any state seeking to reduce or eliminate the right of the people in initiative states to address fish and wildlife regulations may also subject it to the criticism that it is seeking to disenfranchise the voters. Thus, it can be expected that voters with little or no interest in the fish and wildlife program of the state may be brought into the mix. To this Subcommittee, adding this element of voter's rights merely serves only to amplify the issues raised with any hunting and fishing amendment and requires a sound analysis by the agency, and its legal counsel, on its role in or position on the pursuit of such an amendment.

Let us, however, add that this recommendation should not be read to demean or criticize the WLFA in its effort to achieve the goals we all share.

## INDEPENDENT ANALYSIS BY STATE AGENCY LEGAL COUNSEL

### Necessity

The fish and game laws of each state vary greatly, as do the history of their creation and interpretation. "One size fits all" should not be the philosophy in addressing concerns over or insuring the future of fishing and hunting. To understand or anticipate the mischief that may arise out of a proposal to amend the state constitution to create a right to hunt an in-depth analysis of the state laws must be conducted. Each state may reach different conclusions. In some cases the agency will have little or no say in such an initiative. However, ultimately, those who must act on the proposal, e.g. the person or group proposing it, the legislature, and the public, should develop their position based upon the development and availability of a sound analysis on the probable impacts of the initiative, be they perceived as good or bad. We strongly urge any agency facing

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such a proposal to create ample legislative history making clear the intended purpose of the constitutional change.

There have been suggestions that the Legal Committee develop a draft of a constitutional amendment that can be recommended to and used by a state agency. Because of the variance in state laws, and the foregoing discussion, the Subcommittee is of the opinion that development of a draft is not possible or prudent. Even the amendments or drafts that have been created or developed may not achieve the goals desired in light of the laws of your state. Amendments or drafts are available from the various states that have been struggling with this issue, along with information the state agency legal counsel can give. The draft by the WLFA is available from that organization, along with any information that can be provided by Tom Sherman. And, the members of this Subcommittee may be contacted by agency legal counsel for information and assistance.

#### **Other Alternatives that may Serve to Achieve the Goal**

Alternatives may exist to assure the future of hunting and fishing in each state short of pursuit or passage of constitutional amendment. Although the decision to pursue any initiative is a matter of policy for the agency, the alternatives listed below are either currently being pursued to address the very concerns identified as motives for pursuing constitutional amendments, or have been enacted to achieve those purposes. They include:

1. A review of current wildlife laws and modification as necessary, possibly including a statement of policy about the importance of hunting and fishing to the citizens of the state and the legislature's intention that they be preserved for future generations;
2. A review of hunter harassment laws to determine if they need modification to strengthen them in light of recent court rulings.
3. The modification of firearms use laws to ensure that the state retains sole authority to regulate hunting, with any authority of other jurisdictions to regulate the use of firearms for safety reasonably limited;
4. Enhancement of educational programs respecting hunting and fishing;

## **REPORT**

March 30, 1998

5. The establishment of youth hunting and fishing programs and opportunities that serve to introduce youth to these recreational activities, such as special hunting or fishing days, waters, or experiences;
6. Maintenance of a liaison programs with conservation groups and associations to create a cohesive and strong support group for the continuation of these recreational activities or needed modifications or additions to the wildlife laws, which may include an official advisory role and state budget;
7. A review and analysis of state trespass laws to determine if they need adjusting to assure they even-handedly protect private property rights while furthering their availability for public recreational use if the landowner does not object. This review may include an analysis of the state's landowner liability laws respecting private landowner liability for recreational user accidents on private property.

### SUMMARY

This Subcommittee is charged with preparing a report which identifies the pros and cons of the initiatives, both on Right to Hunt Amendments and the Ballot Initiative Amendments. The report, as for cons, is replete with examples of problems that may arise with the amendments. Attorneys confronted with this issue tell us that their main focus in analyzing drafts and providing advice was to minimize any negative impacts they may have on the agency's authority to manage and regulate wildlife and assure it remains in the state agency. The jury is still out on recently created amendments, but when weighing the possible benefits against the possible problems that may arise, the Subcommittee cannot recommend that they be pursued.

It has been suggested that this report include copies, or examples, of amendments that have been pursued or enacted. Some have suggested that the Subcommittee recommend the best and worst language, or that it even draft "good" language. It is the firm conviction of the Subcommittee that language currently being considered, or that has been enacted, not be included in the report. It also does not support any effort to "rate" the language as good, bad, or best. Matter of fact, the Subcommittee has concluded that it cannot draft "good" language. With the impossibility to predict the outcome of the enactment of such amendments, by jurisdiction, or otherwise, it would be irresponsible to recommend language.

## REPORT

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In the alternative, the Subcommittee suggests that any agency, or their legal counsel, with questions on amendments contact a member of the Subcommittee, or the attorney representing a state facing this issue, for information, language and advice. We continue to be of the opinion that discussion with legal counsel, or other agency representatives, who have experienced or are addressing amendments will work to convey the best information.

The position of this Subcommittee has been developed with the full consideration for the Directors and how we might best serve them. We are of the opinion that our recommendation serves the Directors best and will continue to be available for assistance.

Based upon information made available to the Subcommittee, the following States have or are experiencing efforts for such constitutional amendments

Alabama (passed)  
Colorado  
Idaho  
Minnesota  
Tennessee  
Wisconsin  
Wyoming

Respectfully Submitted

LEGAL COMMITTEE

George E. Meyer, Chair

legcom.jsc

## The Citizen's Initiative Process

*(Data compiled by the Wildlife Legislative Fund of America)*



State	Statutory Initiatives		Constitutional Initiative	Statutory Referendum
	Direct	Indirect		
Alaska	Yes	No	No	Yes
Arizona	Yes	No	Yes	Yes
Arkansas	Yes	No	Yes	Yes
California	Yes	No	Yes	Yes
Colorado	Yes	No	Yes	Yes
Florida	No	No	Yes	No
Idaho	Yes	No	No	Yes
Maine	No	Yes	No	Yes
Maryland	No	No	No	Yes
Massachusetts	No	Yes	Yes	Yes
Michigan	No	Yes	Yes	Yes
Mississippi	No	No	Yes	No
Missouri	Yes	No	Yes	Yes
Montana	Yes	No	Yes	Yes
Nebraska	Yes	No	Yes	Yes
Nevada	No	Yes	Yes	Yes
New Mexico	No	No	No	Yes
North Dakota	Yes	No	Yes	Yes
Ohio	No	Yes	Yes	Yes
Oklahoma	Yes	No	Yes	Yes
Oregon	Yes	No	Yes	Yes
South Dakota	Yes	No	Yes	Yes
Utah	Yes	Yes	No	Yes
Washington	Yes	Yes	No	Yes
Wyoming	Yes	No	No	Yes

*At a Glance:*

**Direct Statutory Initiative:** Specified number of voters petition to propose statutes for public vote. Places measure directly on ballot without legislative action.

**Indirect Statutory Initiative:** Specified number of voters petition to propose statutes for public vote. Requires action from the legislature prior to vote.

**Constitutional Initiative:** Specified number of voters petition to propose constitutional amendment for public vote.

**Statutory Referendum:** Public petition to vote for approval or disapproval of legislative act.

Initiative states, where voters can propose laws or constitutional amendment by petition, and/or reject them by popular vote.





Alaska State Legislature

- Interim (May-Dec.) -  
10928 Eagle River Rd., Suite 140  
Eagle River, Alaska 99577  
☎ (907) 694-6683  
FAX (907) 694-1015

- Session (Jan-May) -  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
☎ (907) 465-2199  
FAX (907) 465-4587

Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

### HJR 12 Sponsor Statement

#### "A Resolution proposing amendments to the Constitution relating to Hunting, trapping, and fishing.

Updated: February 27, 2001

Contact: Representative Fred Dyson's office at (907) 465-2199

For the nearly 250 years of recorded history and for 8-11,000 years of known human habitation, Alaskans have hunted, fished, and trapped for their food, clothing, and material needs.

For Alaska's Native peoples, hunting, fishing, and trapping and gathering is a precious tie to a rich cultural heritage and to an intimate relationship with the land.

For Alaska's non-Native residents, hunting, fishing and trapping are major attractions and are among the primary reasons they came to Alaska. Non-native Alaskans often also rely on fish and game for sources of food and clothing. For many hunting, fishing, and trapping are long-held family traditions.

Hunting and fishing provide millions of pounds of food for Alaskans each year. This valuable renewable resource should not be under-rated. It is arguably healthier, depends almost solely on solar energy, does not require a large marketing and shipping overhead, reduces our dependency on the lower 48, and does not require tilled land, insecticides, and fertilizer. We are truly fortunate to be Alaskans.

Our State Constitution is a significant way for Alaskans to come to consensus and clearly state their collective values and priorities. The passage of this amendment will allow Alaskans to protect these valuable and historic activities for future generations.

This constitutional amendment is similar to one passed in North Dakota, Virginia, and Minnesota. The right of Alaskans to hunt, trap, and fish does not preclude all other uses of these natural resources.

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

**HOUSE JOINT RESOLUTION NO. 12**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE DYSON**

**Introduced: 2/2/01**

**Referred: Resources, Judiciary, Finance**

**A RESOLUTION**

1 **Proposing amendments to the Constitution of the State of Alaska relating to hunting,**  
2 **trapping, and fishing.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** Article VIII, sec. 1, Constitution of the State of Alaska, is amended to read:

5 **Section 1. Statement of Policy.** (a) It is the policy of the State to encourage  
6 the settlement of its land and the development of its resources by making them  
7 available for maximum use consistent with the public interest.

8 \* **Sec. 2.** Article VIII, sec. 1, Constitution of the State of Alaska, is amended by adding a  
9 new subsection to read:

10 (b) Hunting, trapping, and fishing are a valued part of the heritage of the State  
11 that shall be forever preserved for the people and shall be managed by law for the  
12 public good.

13 \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
14 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
15 State of Alaska, and the election laws of the state.

## Environmental Sanity: -- Think Globally, Act Locally

A presentation by Dr. Samuel Harbo, Jr., Emeritus Professor of Wildlife Management & Biometrics University of Alaska, Fairbanks representing the Alaska Outdoor Council at the Wolf Summit Fairbanks, Alaska, January 16 - 18, 1993

At the core of many of our environmental problems is our profligate use of cheap energy, energy that allows us to utilize distant resources in far-flung economies. No longer is consumption constrained by the sustainable limits of local resources.

The distancing of consumption from the source seems to have made us myopic, diminishing our sense of stewardship. We seem unable to visualize the effects an action taken in one geographic area might have on the environmental health of more distant areas. The current controversy is a case in point. To fully assess the environmental impacts of the proposed management plans, one must look beyond the three Alaskan areas proposed for wolf management. I am going to do so, relating the finding to our Alaskan situation.

U.S. food production requires enormous amounts of energy, with nearly all from fossil fuels. As the slide shows, the food system uses nearly 17 percent of the total U.S. energy budget. Within the food system, food processing and distribution account for 40 percent of the energy use, reflecting the fact that no longer do we depend on local sources for our food. On average, a morsel of food travels 1300 miles from point of production to point of consumption.

Agriculture itself -- the on farm component -- is energy consumptive and energy dependent, with nearly all coming from fossil fuels. Most activities on the farm depend on energy consumptive machinery. As you can see from the slide, fertilizers and pesticides account for nearly one-third of the on farm energy use. We are using up nature's capital -- fossil fuels -- to produce and market agricultural products.

The relationship of energy used to production is mind boggling. For example, one gallon of gasoline is used per bushel of corn produced. On average, nearly 10 calories of energy are expended per calorie of food consumed. This dependence on fossil fuels to produce food cannot be sustained.

The dependence on nonrenewable energy has other serious consequences. Our farms have steadily increased in size to provide the capitalization needed for the large, expensive equipment now used in agribusiness. Individual fields have grown larger to accommodate the large, heavy equipment. In the process, we have lost the fencerows, marshes and small natural drainage systems that helped conserve soil and water and that provided wildlife habitat. Heavy equipment compacts soil and decreases soil friability. The most damaging consequence, however, has been the increase in land degradation.



The problem of land degradation is not restricted to the U.S. The amount of arable land surface suffering moderate or severe degradation in the late 1970's ranged from 27 per cent in South America to 52 per cent in Australia. And the situation has worsened.

Soil erosion in the U.S. is worse now than ever before. Current losses are 25 to 50 per cent greater than when the Soil Conservation Service was established in the 1930's. Currently, for every bushel of Iowa corn produced, 5 bushels of Iowa topsoil are lost. At current rates, by 2015 Iowa's topsoil will be no more. In Eastern Washington, 20 bushels of top soil are lost for every bushel of wheat harvested. Much of current agriculture is not sustainable; we are mining our soils.

Having larger farms and fewer farmers also causes social ramifications. No longer do we have cohesive rural communities with strong local economies based on local resources. The soybean futures on the Chicago Exchange in early September may be influenced less by the harvest prospects in the midwest than by the state of the seed bed preparation in Argentina. We have lost our sense of local economies, and with it our strong ties to the land and our sense of stewardship.

The connections between reliance on local resources, attitudes toward the environment, and energy conservation are being increasingly recognized in conservation and environmental thinking.

Cheap energy has also changed animal husbandry in the U.S. No longer do we have small operations using local resources with the objective of serving local needs. Rather, we have very large operations that cannot be supported only with local resources: operations that are designed to satisfy distant markets. The associated transportation, processing, storage and distribution are energy intensive.

An added environmental insult is that most of the large dairy and beef operations involve penned animals. No longer do we allow those plant eaters to be efficient solar energy converters. Rather we grow and harvest the hay and grains, using energy intensive and soil destroying methods, and then transport those feeds to the penned animals. And then comes the problem of concentrated animal wastes; a problem we attempt to solve using energy intensive methods.

Our reliance on energy intensive methodology is the root cause of many of our environmental problems. Air pollution, soil erosion, ozone problems and water pollution all relate to our demand for energy.

Some of our ground water pollution is directly related to agriculture, particularly our use of commercial fertilizers. My brother in the corn and soybean area of the midwest no longer drinks water directly from his 80-foot well, but distills the water first due to the dangerous levels of nitrates in solution.

What is the relevance of all this to our current topic? I will use a moose management example for Game Management Subunit 20A to show the relevance.

Subunit 20A lies immediately to the south of Fairbanks, and consists of between 16 and 17 thousand square kilometers of moose habitat. The moose population has varied greatly in size, with a high of about 23,000 animals in the early sixties and a current population of about 11,000 animals.

I will describe a plausible scenario showing the potential for Subunit 20A. A temporary reduction in wolf numbers would allow the moose population to increase. Naturally occurring wildfires and modest habitat manipulation consisting of small-scale prescription burning, could provide additional high quality habitat for moose habitat that could support a very productive moose population of 20,000 animals.

Let's suppose we decide to maintain a wolf population of 350 wolves in 20A. In a nearly pure moose-wolf system, a ratio of one wolf to 30 moose results in nearly stable moose numbers. Subunit 20A is not a pure system. Other predators of note are black and grizzly bears. However, 20A also has other large prey -- caribou and Dall sheep. For ease of presentation I am assuming that, so far as the effects on moose numbers are concerned, the additional predator species are offset by the additional prey species. A more sophisticated analytic approach indicates that this simplistic approach is warranted.

Using the 1 wolf to 30 moose ratio, the 350 wolves could be supported by 10,500 moose, leaving 9,500 moose to produce a surplus for take by humans. In a productive situation a harvest rate of 25 per cent is sustainable. Hence, the 9,500 moose could produce a harvestable surplus of 2,375 moose annually, more than 2,000 animals greater than the current average harvest of about 350- moose. Assuming an average of 500 pounds of meat per moose, the increased harvest is more than one million pounds greater than our current harvest. In addition, the wolf population would have increased by more than 20 per cent.

All of this could be done solely through predator management and modest habitat manipulation. Both are ecologically and environmentally safe.

Comparing the energy inputs of the 20A moose scenario with that of beef production in the Lower 48 is revealing. In the Managed Wildlife System, the integrity of the natural ecosystem and the efficiency of the system's solar energy converters -- the moose -- remain intact. The system runs almost entirely on solar energy, without significant inputs of fossil fuel energy, without tillage that leads to soil erosion, and without using fertilizers, herbicides, pesticides or growth hormones. In addition, most benefits accrue directly to the local residents, providing strong incentives to manage the system in a healthy, sustainable manner.

In contrast, the Managed Domestic Meat Production System is fossil fuels dependent. In most beef operations, energy intensive cropping and haying operations separate the primary producers from the primary consumers. The entire marketing effort, which includes processing, storage and distribution, also is energy intensive, since most

products from such systems are destined for distant markets. Without substantial inputs of fossil fuels, fertilizers, herbicides and pesticides, the Managed Domestic Meat Production System would collapse.

From an Alaskan conservationist's perspective, the choice of System is clear.

A closing comment about value systems is appropriate.

One of the most important and cherished attributes in our society is our cultural and value system diversity. I don't believe any single value system or viewpoint should be imposed on everyone, everywhere, at all times. It is doubly important that such not occur if elements of that value system fly in the face of environmental sanity, undermining the creed "think globally, act locally."

I also believe an ethical question is raised if individuals pursue a course of action that they know to be environmentally damaging.

*John*

The attached materials were  
received this afternoon,  
and should be added to your packets for  
HJR-12

Thank you

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HJR12  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title: Constitutional Amendment relating to hunting, BRU: Elective Operations  
trapping, and fishing Component: Elections  
Sponsor: Representative Dyson  
Requester: House Resources Committee Component Number: 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenumiai Phone 465-3935  
Division: Division of Elections Date/Time 3/7/01 11:00 AM  
Approved by: Lieutenant Governor Fran Ulmer Date 03/07/2001  
Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office





## ALASKA OUTDOOR COUNCIL

P.O. Box 2193  
Palmer, Ak. 99645  
(907) 745-3772  
FAX 745-6944

March 7, 2000

Representative Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801

Dear Representative Dyson:

The Alaska Outdoor Council (AOC) appreciates your efforts to sustain consumptive uses of wildlife as an important Alaskan heritage. Your legislation, HJR 12 HUNTING, TRAPPING AND FISHING, will provide Alaska's consumptive users a much needed level of protection.

We have ample historical evidence that consumptive uses have lost considerable ground over the past three decades here in Alaska. Actions like ANILCA, Sheep Mountain, Cooper Lake, Paint River, etc. have closed substantial areas to consumptive uses since statehood. Environmental groups continue to pressure the state for more closures and have effectively emasculated any attempts to manage wildlife for sustained yield. In fact very little has been done to reverse the dramatic declines in several ungulate populations over the past eight years. Declines that have resulted or will soon result in major new restrictions on consumptive uses.

It is clear for those of us who have been working to support wildlife conservation efforts over the past several decades that the environmental groups have every intention of stopping consumptive uses of wildlife. Although they consistently present themselves to be supportive of consumptive uses, their testimony before the Legislature and the Board of Game has always opposed increased opportunities, and has always supported increased restrictions. This is a matter of public record.

On behalf of our membership and the thousands of Alaskans who still cherish their natural relationship with the natural world and choose to participate in that world rather than just observe it, we would like to thank you for your courage and foresight in promoting legislation that will protect this important Alaskan heritage. Please feel free to contact us if we can be of any assistance in the passage of HJR 12.

Sincerely,

Carl Rosier  
President

Official State Association of the National Rifle Association

*Revised to HJR, McCombs*

**HOUSE JOINT RESOLUTION NO. 12**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE DYSON**

**Introduced: 2/2/01**

**Referred: Resources, Judiciary, Finance**

**A RESOLUTION**

1 **Proposing amendments to the Constitution of the State of Alaska relating to hunting,**  
2 **trapping, and fishing.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** Article VIII, sec. 1, Constitution of the State of Alaska, is amended to read:

5 **Section 1. Statement of Policy.** (a) It is the policy of the State to encourage  
6 the settlement of its land and the development of its resources by making them  
7 available for maximum use consistent with the public interest.

8 \* **Sec. 2.** Article VIII, sec. 1, Constitution of the State of Alaska, is amended by adding a  
9 new subsection to read:

10 (b) Hunting, trapping, and fishing are a valued part of the heritage of the State  
11 that shall be forever preserved for the people and shall be managed by law for the  
12 public good.

13 \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
14 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
15 State of Alaska, and the election laws of the state.

# Testimony - Wayne England, AD F&G.

Acknowledges similar bills = passed in other states w/ 2 parts.

- says Dept of Law says it could look like the intent is to side w/ a new part

∴ People may abuse system; Hunt out of season; By; side this "Right"

Suggests putting this in w/ one sustained yield regulated

## ATTY - Steve White

(Fate) - Resolution seems clean - what = "unintended consequences"  
Res. seems only to produce something that has already been

(Wayne) - Paul Linzini says don't use "public good" if will conflict w/ sustained yield

also "By Law" - should read "By law; Regulation"

He submitted paperwork from A.G. of Tennessee - when they decided Wayne thinks hunters could stop development not to do it in an area

(Mary K.) does Article 3 provide enough protection

(Wayne) - can't answer - too sick

(Kathleen) - I see that this could elevate hunting rights above sustained yield.

(Steve White) - Asst AG - for Bill concept - just wants to be careful

7 states have const. Right to hunt provision

this is similar to North Dakota & Minnesota

He provided letter by me Linzini's concerns - 2nd page,

const. around puts power w/ court - in statute

the legislature still has power to change

~~is~~

(Salvi) lets focus on resource issues; let JUD deal w/ legal.

(White) also states he does not see any direct conflict w/ or sustained yield

is worried about "public good's" interpretation  
(Kathleen) what about where it says "forever preserved"; a season?

**DONELAN, CLEARY, WOOD & MASER, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0000

March 26, 1996

Via TelecopierRoger Holmes, Director  
Division of Fish and Wildlife  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4001Re: Proposed Amendment to the  
Constitution of Minnesota To Preserve  
Recreational Hunting

Dear Mr. Holmes:

You advise that the Minnesota legislature is considering measures which could lead to establishment in the state constitution of provisions which would preserve in residents of the state the right to engage in recreational hunting, subject to reasonable restrictions on seasons, bag limits, means and methods of take, and subject also to principles of sustained yield management. An alternative being considered would extend such constitutional recognition to the "privilege" of engaging in recreational hunting in contrast to the "right" of doing so.

You have requested my views on such proposals in light of my experience as Legal Counsel to the International Association of Fish and Wildlife Agencies, an organization whose government members include the fifty state fish and wildlife agencies. That experience over thirty years includes defending in court on numerous occasions against attempts by animal protection groups to close down recreational hunting. It also includes counseling with the State of Alaska for the last two years on the establishment of subsistence hunting provisions in that state's constitution.

No doubt exists that a considerable debt is owed to the hunters and anglers of America who, for over fifty years, have funded the restoration of game species from critical scarcity to relative abundance through the payment of license fees and of excise taxes on sporting equipment. They have willingly footed the bill for conservation. Nevertheless, there are problems in establishing constitutional recognition for a particular user group.

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MARCH 7, 2001

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Roger Holmes, Director

March 26, 1996

Certainly in everyday conversation one distinguishes between a right and a privilege. We commonly speak of recreational hunting as a privilege which has been handed down to make clear that it is not a right to which an individual is entitled. Nevertheless, whether the subject constitutional provision were framed in terms of a right or a privilege, the mere presence in the constitution of a provision establishing safeguards for residents to engage in recreational hunting will inevitably shift decision-making authority from the legislature to the courts to elaborate the implications of the constitutional status bestowed on this particular use. And, the fact of constitutional recognition by itself will almost certainly open the way for argument that the right/privilege may not be restricted in the absence of a demonstration of conservation justification. If the burden were thereby to shift to DNR, requiring it to demonstrate a conservation justification for each challenged element of its fish and wildlife regulations, significant agency resources would be expended in the process.

The presumption in favor of the validity of agency action means that a plaintiff bears the burden of proof, freeing the agency from the need to prove the validity of its regulations merely because a plaintiff alleges a violation. Without the presumption of validity of agency action taken pursuant to authority delegated by the legislature, a vast drain on the time and resources of agencies, and of courts, would occur. And, of course, if the courts rendered unforeseen decisions with which the legislature were dissatisfied, legislative recourse would be limited.

Five years ago, a group of Montana sportsmen sought to gather signatures sufficient to place on the ballot an initiative (CI-62) which would guarantee in the Montana constitution the right of residents to hunt game animals. In opposition thereto, it was asserted that elevation of the privilege of hunting to constitutional status would undercut the state's authority to discriminate in favor of residents in establishing fees for licenses and permits, an authority which the Supreme Court of the United States had upheld in Baldwin v. Montana Fish & Game Comm'n, 432 U.S. 371 (1978). In Baldwin, nonresident discrimination was upheld against constitutional challenge under the Privileges and Immunities Clause because the Court found that recreational hunting is not a fundamental right of U.S. citizenship. The signature drive bogged down when opponents claimed that providing constitutional status for hunting would undermine Montana's ability to charge higher nonresident license fees.

I argued for the state in Baldwin and personally am not convinced that the ruling in Baldwin would have been undercut, but the possibility cannot be ruled out. In any case, the argument apparently convinced enough people in Montana to stall the CI-62 initiative drive.

In summary, explicit constitutional recognition, whether of a right or of a privilege in residents to engage in recreational hunting, poses problems (1) by transferring decision-making authority from the legislature to the courts, and (2) by raising the very real prospect that the burden in litigation would shift to the agency to justify conservation measures. Language negating explicitly any shift of burden could resolve



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the second point. By the nature of the subject, no language could resolve the first one if the constitution is amended.

Sincerely,

*Paul A. Lenzini*  
Paul A. Lenzini, *Legal Counsel*  
*International Association of*  
*Fish and Wildlife Agencies*

8500-000



State of Wisconsin \ DEPARTMENT OF NATURAL  
RESOURCES

Box 7921

Tommy G. Thompson, Governor  
George E. Meyer, Secretary  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
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101 South Webster

March 30, 1998

TO: State Fish and Wildlife Directors  
FROM: George E. Meyer - Chair, Legal Committee

SUBJECT: Report - Constitutional Amendments on the Right to Hunt/Ballot Initiatives

Enclosed is a copy of the Report prepared by the IAFWA Legal Committee on the issue of Right to Hunt Constitutional Amendments/Ballot Initiatives. It was approved unanimously by the Legal Committee on March 22, 1998. I hope it will prove to provide useful information for you and your staff if the issues arise in your State. Please note that the Subcommittee members, and in fact the members of the Legal Committee, remain available to discuss the issue and provide information to you and your staff.

I want to thank the Subcommittee for their effort in producing the draft report for consideration and action by the Legal Committee. They include:

L. Brooks Garland, TN - Co-Chair  
Jim Christenson, WI - Co-Chair  
Ron Arnold, WY  
Steve Masten, ME  
Scott Porter, KY

We also received significant input and assistance from Paul Lenzini, Legal Counsel for the IAFWA, Tom Sherman, Legal Counsel for the Wildlife Legislative Fund of America, and Roger Holmes from Minnesota DNR. Thanks Paul, Tom and Roger.

In addition, the Legal Committee meetings and action this Spring were well attended and very fruitful in addressing issues and forming a strong networking group of attorneys. If your Legal Counsel attended, thanks. If your Legal Counsel was unable to attend, I urge you to encourage their attendance at the September meeting of the IAFWA. It looks like we'll have significant issues to address and discuss this Fall, including a joint meeting with the Law Enforcement Committee to discuss issues before them, e.g. Violator's Compact, and how the Committees may work together to address issues.

See you in September.

Attachment

cc. Jim Christenson - LS/5  
Steve Miller - AD/5  
Tom Hauge - WM/4  
Tom Harelson - LE/5

iafwa. jsc

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DEPARTMENT OF LAW

March 7, 2001

*Through Excellent Customer Service*

# CONSTITUTIONAL INITIATIVES "RIGHT TO HUNT" REPORT OF THE SUBCOMMITTEE

In recent years state wildlife agencies have been faced with legislative initiatives to amend their state constitution to create the right to hunt, trap and fish. For the purpose of this report, we will refer to these efforts as "Right to Hunt" amendments.

In addition, states with the ballot initiative and referendum available to address hunting, trapping and fishing laws, are facing efforts to modify their constitutions to eliminate the voters\* right to modify those laws by ballot initiatives. For the purpose of this report, we will refer to these amendments as "Ballot Initiative."

The state wildlife agencies experiencing these initiatives, or anticipating they will be proposed in their state, have asked the International Association of Fish and Wildlife Agencies (IAFWA) and its Legal Committee for advice on this issue.

The Legal Committee, at its September 7, 1997 meeting in Scottsdale, AZ, formed a Subcommittee to review, analyze and prepare a report on the various known efforts to amend state constitutions on the right to hunt or ballot initiatives, identifying their pros and cons. The constitutional amendment issues were briefly discussed earlier at its meeting in 1996. Since the 1996 meeting, the issue has again arisen in various states, including Minnesota, Wyoming, Colorado and Tennessee. Legal counsel or agency representatives from those states, and others, suggested the Legal Committee review the issue and advise the state agencies on it. The Subcommittee met in St. Paul, MN, on November 12, 1997, to discuss and receive input prior to preparing this draft report. Paul Lenzini, legal counsel for the IAFWA, submitted comments and information pertinent to this analysis. Tom Sherman, attorney for the Wildlife Legislative Fund of America (WLFA), which has drafted a model constitutional amendment which would prohibit the initiative and referendum provisions of state constitutions from being used to enact or reject laws which permit, limit, or prohibit taking of any species of wildlife, also provided information for consideration.

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Both amendment initiatives (Right to Hunt or Ballot Initiative) appear to be motivated by a genuine concern that their creation will aid in guaranteeing the future of hunting and

fishing and thwart efforts of anti-hunting groups and others to stop or diminish these recreational activities in the future. Persons supporting amendments informed the Subcommittee that amending their state\*s constitution seems like a good idea, but they also want to assure that the effort does not interfere with or impair the excellent wildlife management and use programs they now enjoy. Recent initiatives include the creation of a constitutional amendment in Alabama and the development of a recommended draft of language by the WLFA. The Alabama language establishes a constitutional preference for a user group. The WLFA draft primarily seeks to eliminate the Ballot initiative for statutory provisions relating to wildlife management Please see the attached table prepared by the WLFA which identifies initiative states.

We think that it may be useful to briefly revisit the legal underpinnings and history of state hunting, fishing and trapping (I refer to all of them with the term "hunting") regulation which we must reflect on as we consider this issue.

### LEGAL UNDERPINNINGS

It has long been recognized that wild animals are subject to the authority of the sovereign and that the harvest of them is a privilege subject to regulation. The U.S. Supreme Court reviewed this history a century ago in the case of Geer v. Connecticut, 161 U.S. 519 (1896), and found the principle to be consistent in ancient Greece and the Roman Empire, during the subsequent history of northern Europe, and in England since the Norman Conquest nearly a thousand years ago. It was then vested in the colonial governments in North America, and passed to the states upon separation from the mother country.

Under the U.S. Constitution, the several states retain authority to regulate the wildlife resource as common property unless specifically pre-empted by federal law. Baldwin v. Montana Fish and Game Comm'n., 436 U.S. 371, 365-367 (1978). "We take it to be correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as a proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common." Geer at 529, quoting State v. Rodman, 58 Minn. 393, 59 N.W. 1089

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(1894).<sup>1</sup> Regulatory authority derives both from the state\*s common ownership and the police power. Geer at 534, Lacoste v. Dept. of Conservation, 263 U.S. 545, 552 (1924) ("Protection of the wildlife of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection.") This

authority to regulate wildlife harvest extends to both public and private land. Mountain States Legal Foundation v. Hodel, 799 F.2d 1423, 1426 (10 Cir. 1986).

In the last 100 years, or so, most of the states have developed comprehensive sets of laws for the conservation, management and harvest of their wildlife, normally consisting of statutes, orders and administrative rules (regulations), and court interpretations (common or case law) of the statutes and regulations. Although some states have constitutional provisions respecting the protection and management of wildlife, most do not. Of those states that have language respecting hunting or wildlife management, it appears the language has been part of the state constitution either for a long time or inserted only very recently. It is reasonable to infer that states that have had such language in their constitution for a long time have a set of wildlife laws, and court interpretations of them, considering and consistent with it. It is also reasonable to infer that recent amendments to a constitution will lead to a reexamination of the wildlife statutes and regulations of that state in light of the amendment. Therefore, the experience of states with longstanding language does not necessarily predict the experience of states with newly enacted language.

## RIGHT TO HUNT

With the short history of recent amendments, we simply do not have a body of law (court interpretations) to determine what their impact will be on management and regulation. Successful initiatives may be seen as a benefit in their apparent solidification of legislative and public support for these recreational activities. However, even with public or legislative support, we must expect that the courts will be asked at some time to

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<sup>1</sup>Geer also held that a state could prohibit out-of-state transport of game taken within its borders. This was later found to be violative of the interstate commerce clause and overturned. Hughes v. Oklahoma, 441 U.S. 322 (1979), Geer still correctly expresses the principle that states regulate their game as common property for the common good. See Mountain States Legal Foundation v. Hodel, 799 F.2d 1423, 1426 (10 Cir. 1986).

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examine and determine just what an amendment means for wildlife management and regulation for the state. We must assume that courts will view a constitutional amendment as legally significant.

The Southeastern Association of Fish and Wildlife Agencies Legal Committee, in October, 1997, reviewed and acted on this issue. Following its review, the Committee voted that it "does not approve of the use of constitutional amendments to state constitutions to create a right or privilege to fish and hunt because of the legal ramifications of an elevated standard of review of legislative and administrative agency actions." "The Committee does not support preparing draft language for those states considering such a constitutional amendment." Legal Counsel representing the states of Tennessee, Minnesota, Wisconsin, Kentucky and Wyoming, at the subcommittee meeting in St. Paul MN, in the main, expressed more concerns than benefits over such initiatives. Following that meeting of the Subcommittee where these concerns were discussed, Ron Arnold, an Assistant Attorney General for the state of Wyoming, and a member of this Subcommittee, presented these concerns to a legislative Committee in Wyoming considering an initiative to modify the Wyoming constitution to recognize the right or privilege to hunt. The legislative Committee dropped further consideration of the initiative.

Let us emphasize at this point that this analysis and any conclusions made are speculative. When a state wildlife agency is in a position to comment on a proposal, we suggest it recommend the amendment not be pursued. Where a constitution has been amended, or legislation otherwise enacted, this broad statement of position cannot, and should not, bear on any interpretation or effect of the language. The law of each state will vary and conclusions cannot be reached without a comprehensive review of those laws. This Subcommittee, and we suggest the Legal Committee, should leave any in-depth analysis to the attorney representing the state fish and wildlife agency so he or she may provide advice to the agency.

Keeping in mind that each state\*s laws respecting wildlife management and the sports of hunting, fishing or trapping, may greatly vary, a number of general concerns have consistently been raised by attorneys when discussing the merits or demerits of proposing or creating a constitutional amendment.<sup>2</sup> Concerns include:

---



*Problems with  
Constitutional Right  
to Hunt provisions*

<sup>2</sup>In constitutional usage, the term "right" may well have the same meaning as the term "privilege." For the purposes of trying to anticipate the impacts on hunting, we should assume them to be the same.

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1. Potential problems of placing a proposed constitutional amendment on the ballot include:

- a. It may serve as a rallying cry for anti-hunting/fishing groups and create a cohesive group where one previously did not exist.
- b. Such proposal may polarize individuals against fishing and hunting. where those individuals may have previously had little or no interest in the issue.
- c. It may be viewed by the public as a firearms issue, rather than hunting, and encourage those concerned with firearms to oppose it.
- d. The proposal may raise questions or concerns about private property rights and trespass laws.

2. What might the impact be if the proposal fails passage? Possible results may include:

- a. A more wary and skeptical public may be created respecting hunting and fishing activities and agency management strategies.
- b. A legislature may be made more wary and may more cautiously approach or view wildlife management, fishing and hunting proposals in the future; or, the failure may be viewed as a mandate to proactively question or modify the wildlife management authority of the agency or the authorized recreational activities.
- c. Failure may be seen as a public endorsement of the anti-hunting agenda. Certainly, anti-hunting groups will make this argument.

3. State authority to conduct natural resource management may change as a result of the creation of a constitutional right to hunt. The effect of including this right or privilege in the constitution may be troublesome for a number of reasons, including:

- a. It may mean the state will lose the presumption of validity and have to meet a higher constitutional standard for its management. Currently, the constitutional standard of review for game and fish laws is whether they are rationally related to legitimate governmental purposes. The presumption is that they are, and the burden lies upon the challenger to show they are not. Because of the presumption and the fact that the burden on the challenger is not easy to sustain, the

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constitutionality of fish and game laws is rarely challenged. If hunting and fishing are made a constitutional right, the burden will shift and a much stricter standard will apply. There will be no presumption of constitutionality, and when challenged the state will, we suspect, have to prove that its fish and game laws are necessary to achieve a compelling governmental purpose, and there are no less restrictive alternatives available. With this difficult burden to sustain, the courts will be making the management decisions. The decision-making authority will be shifted from the legislature and agency to the courts. We suggest that this burden issue may be addressed by appropriate language in any Constitutional amendment.

- b. Once the amendment is a part of the state constitution and interpreted by the courts, there may well be no remedy in the legislature from a bad ruling provoked by a hard set of facts.
- c. In criminal prosecutions defendants may contend that the state must prove beyond a reasonable doubt that the law or regulation in question and its enforcement in their situation meets the constitutional standard.
- d. It is likely litigation will result with any constitutional amendment. Any citizen unhappy with a citation or wishing to challenge a law or initiative will likely raise their position or challenge on a constitutional basis as well as any other. Litigation may include actions for declaratory and injunctive relief. For instance, to what extent is the law truly necessary for conservation, as opposed to serving ethical or traditional practice purposes? Will seasons or methods of taking be affected? Of course, as with any litigation, it is costly and time-consuming.
- e. Will such a constitutional right impact firearms laws or regulations? Will it result in different treatment of nonresidents? Is the right to hunt a right to keep and bear arms?
- f. Will the state be required to expend funds to support or insure some certain level of hunting opportunity?
- g. Will such an amendment be interpreted as creating a fundamental right which may be reviewed by the federal courts as interfering with other laws, e.g. Migratory Bird Treaty Act. or Endangered Species Act?

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- h. How might such an amendment affect professional hunters or guides? Can the state continue to regulate, charge a fee, or otherwise restrict this activity?
- i. How might an amendment affect the viability of inter-state compacts respecting conservation law violations?
- j. Impacts on private property. It is possible that courts might find the prohibition on infringement of the hunting right extends to private landowners as well. On the one hand, trespass laws could become less enforceable; on the other, landowners might be limited in their ability to develop land, insofar as doing so diminishes hunting opportunity.

From the perspective of the hunter, a constitutional right to hunt may sound good, especially if anti-hunting groups become more active or successful: On closer-examination, however, creation of a constitutional right may create unanticipated consequences. As is the case with all other natural resources, the legal basis for the management of the wildlife resource and the regulation of its harvest lies in the fact that it is a common resource to be maintained for the benefit of the public. Its utilization by any individual is a privilege granted and regulated consistently with the collective public benefit. From the perspective of both the resource management agency as well as the hunter, making hunting a constitutional right may fundamentally alter and drastically interfere with wildlife management as currently practiced.

## BALLOT INITIATIVE

As stated earlier in this report, the WLFA developed a draft constitutional amendment with the primary purpose of prohibiting the initiative and referendum provisions of a state constitution from being used to enact or reject laws which permit, limit, or prohibit the taking of any species of wildlife. The model amendment also includes a provision that the fish and wildlife belong to the people and shall be utilized and maintained on a sustained yield basis. In addition, it provides that fish and wildlife laws, and the agency empowered to conserve the fish and wildlife resources, shall not permit any taking which will reduce the

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population of any species authorized for taking as a game species below that level essential to its continued health and existence.

In that the model addresses the goals of the fish and wildlife program, as well as establishing restrictions of the regulatory agency, it is reasonable to anticipate similar issues and potential problems will arise with this type of an effort as the "Right to Hunt" amendment discussed previously. And, therefore, the position of the Subcommittee, and its recommendation, remains the same. The effort to amend the constitution, or actually enact the amendment, may raise more problems than it will resolve.

Any state seeking to reduce or eliminate the right of the people in initiative states to address fish and wildlife regulations may also subject it to the criticism that it is seeking to disenfranchise the voters. Thus, it can be expected that voters with little or no interest in the fish and wildlife program of the state may be brought into the mix. To this Subcommittee, adding this element of voter's rights merely serves only to amplify the issues raised with any hunting and fishing amendment and requires a sound analysis by the agency, and its legal counsel, on its role in or position on the pursuit of such an amendment.

Let us, however, add that this recommendation should not be read to demean or criticize the WLFA in its effort to achieve the goals we all share.

## INDEPENDENT ANALYSIS BY STATE AGENCY LEGAL COUNSEL

### Necessity

The fish and game laws of each state vary greatly, as do the history of their creation and interpretation. "One size fits all" should not be the philosophy in addressing concerns over or insuring the future of fishing and hunting. To understand or anticipate the mischief that may arise out of a proposal to amend the state constitution to create a right to hunt an in-depth analysis of the state laws must be conducted. Each state may reach different conclusions. In some cases the agency will have little or no say in such an initiative. However, ultimately, those who must act on the proposal, e.g. the person or group proposing it, the legislature, and the public, should develop their position based upon the development and availability of a sound analysis on the probable impacts of the initiative, be they perceived as good or bad. We strongly urge any agency facing

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such a proposal to create ample legislative history making clear the intended purpose of the constitutional change.

There have been suggestions that the Legal Committee develop a draft of a constitutional amendment that can be recommended to and used by a state agency. Because of the variance in state laws, and the foregoing discussion, the Subcommittee is of the opinion that development of a draft is not possible or prudent. Even the amendments or drafts that have been created or developed may not achieve the goals desired in light of the laws of your state. Amendments or drafts are available from the various states that have been struggling with this issue, along with information the state agency legal counsel can give. The draft by the WLFA is available from that organization, along with any information that can be provided by Tom Sherman. And, the members of this Subcommittee may be contacted by agency legal counsel for information and assistance.

#### **Other Alternatives that may Serve to Achieve the Goal**

Alternatives may exist to assure the future of hunting and fishing in each state short of pursuit or passage of constitutional amendment. Although the decision to pursue any initiative is a matter of policy for the agency, the alternatives listed below are either currently being pursued to address the very concerns identified as motives for pursuing constitutional amendments, or have been enacted to achieve those purposes. They include:

1. A review of current wildlife laws and modification as necessary, possibly including a statement of policy about the importance of hunting and fishing to the citizens of the state and the legislature's intention that they be preserved for future generations;
2. A review of hunter harassment laws to determine if they need modification to strengthen them in light of recent court rulings.
3. The modification of firearms use laws to ensure that the state retains sole authority to regulate hunting, with any authority of other jurisdictions to regulate the use of firearms for safety reasonably limited;
4. Enhancement of educational programs respecting hunting and fishing;

## **REPORT**

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5. The establishment of youth hunting and fishing programs and opportunities that serve to introduce youth to these recreational activities, such as special hunting or fishing days, waters, or experiences;
6. Maintenance of a liaison programs with conservation groups and associations to create a cohesive and strong support group for the continuation of these recreational activities or needed modifications or additions to the wildlife laws, which may include an official advisory role and state budget;
7. A review and analysis of state trespass laws to determine if they need adjusting to assure they even-handedly protect private property rights while furthering their availability for public recreational use if the landowner does not object. This review may include an analysis of the state's landowner liability laws respecting private landowner liability for recreational user accidents on private property.

### SUMMARY

This Subcommittee is charged with preparing a report which identifies the pros and cons of the initiatives, both on Right to Hunt Amendments and the Ballot Initiative Amendments. The report, as for cons, is replete with examples of problems that may arise with the amendments. Attorneys confronted with this issue tell us that their main focus in analyzing drafts and providing advice was to minimize any negative impacts they may have on the agency's authority to manage and regulate wildlife and assure it remains in the state agency. The jury is still out on recently created amendments, but when weighing the possible benefits against the possible problems that may arise, the Subcommittee cannot recommend that they be pursued.

It has been suggested that this report include copies, or examples, of amendments that have been pursued or enacted. Some have suggested that the Subcommittee recommend the best and worst language, or that it even draft "good" language. It is the firm conviction of the Subcommittee that language currently being considered, or that has been enacted, not be included in the report. It also does not support any effort to "rate" the language as good, bad, or best. Matter of fact, the Subcommittee has concluded that it cannot draft "good" language. With the impossibility to predict the outcome of the enactment of such amendments, by jurisdiction, or otherwise, it would be irresponsible to recommend language.

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In the alternative, the Subcommittee suggests that any agency, or their legal counsel, with questions on amendments contact a member of the Subcommittee, or the attorney representing a state facing this issue, for information, language and advice. We continue to be of the opinion that discussion with legal counsel, or other agency representatives, who have experienced or are addressing amendments will work to convey the best information.

The position of this Subcommittee has been developed with the full consideration for the Directors and how we might best serve them. We are of the opinion that our recommendation serves the Directors best and will continue to be available for assistance.

Based upon information made available to the Subcommittee, the following States have or are experiencing efforts for such constitutional amendments

Alabama (passed)  
Colorado  
Idaho  
Minnesota  
Tennessee  
Wisconsin  
Wyoming

Respectfully Submitted

LEGAL COMMITTEE

George E. Meyer, Chair

legcom.jsc

## The Citizen's Initiative Process

*(Data compiled by the Wildlife Legislative Fund of America)*

State	Statutory Initiatives		Constitutional Initiative	Statutory Referendum
	Direct	Indirect		
Alaska	Yes	No	No	Yes
Arizona	Yes	No	Yes	Yes
Arkansas	Yes	No	Yes	Yes
California	Yes	No	Yes	Yes
Colorado	Yes	No	Yes	Yes
Florida	No	No	Yes	No
Idaho	Yes	No	No	Yes
Maine	No	Yes	No	Yes
Maryland	No	No	No	Yes
Massachusetts	No	Yes	Yes	Yes
Michigan	No	Yes	Yes	Yes
Mississippi	No	No	Yes	No
Missouri	Yes	No	Yes	Yes
Montana	Yes	No	Yes	Yes
Nebraska	Yes	No	Yes	Yes
Nevada	No	Yes	Yes	Yes
New Mexico	No	No	No	Yes
North Dakota	Yes	No	Yes	Yes
Ohio	No	Yes	Yes	Yes
Oklahoma	Yes	No	Yes	Yes
Oregon	Yes	No	Yes	Yes
South Dakota	Yes	No	Yes	Yes
Texas	Yes	Yes	No	Yes
Washington	Yes	Yes	No	Yes
Wyoming	Yes	No	No	Yes

*At a Glance:*

**Direct Statutory Initiative:** Specified number of voters petition to propose statutes for public vote. Places measure directly on ballot without legislative action.

**Indirect Statutory Initiative:** Specified number of voters petition to propose statutes for public vote. Requires action from the legislature prior to vote.

**Constitutional Initiative:** Specified number of voters petition to propose constitutional amendment for public vote.

**Statutory Referendum:** Public petition to vote for approval or disapproval of legislative act.

Initiative states, where voters can propose laws or constitutional amendment by petition, and/or reject them by popular vote.



### **Potential Opposition:**

This resolution will encounter well-organized and fervent opposition, most of which will be empowered by sources outside of the State of Alaska. Many significant Alaskan-based organizations that might oppose HJR 12 are funded by national politically active environmental groups. Some opponents might include:

The Fund for Animals (based in New York)

American Museum of Natural History

People for the Ethical Treatment of Animals (PETA)

Common Roots/ Wild Voices (based in Alaska)

Humane Society of the United States

The Committee to Abolish Sport Fishing with a web site sponsored by:  
The Mary T. and Frank L. Hoffman Family Foundation

Alaska Conservation Voters (based in Alaska)

I have a list of over 250 Animal Rights WWW sites that could be added. While I have no desire to paint individuals involved in these organizations with the same brush in my defense of HJR 12, they unfortunately object in the name of, and with the funds of, cartels that frankly do not represent the will, or the best interest, of Alaskans. An example would be the Alaska Conservation Voters. I know and respect the opinions of some of the individuals that I know are involved, but, they are in a cartel that includes the Sierra Club, Greenpeace, and other large environmental groups. They were heavy investors in many Alaska campaigns this past fall.

As an extreme example of what we are up against, I quote a representative of PETA; "The eating of fish... is unjustifiable on the basis of the cruelty inflicted on the fish and the damage to the environment." The opposition to HJR 12 will not be that obvious, but they will unfortunately be enabled by some organizations like PETA.

ALASKA CONSERVATION VOTERS = ACA PAC



# Alaska Conservation Alliance

"Conserve Alaska: It's Only Natural"



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## Member Organizations

Alaska Conservation Alliance (ACA) is a statewide coalition of 44 conservation groups & businesses representing over 35,000 individual members.

[Alaska Center for the Environment \(ACE\)](#)

[Alaska Community Action on Toxics \(ACAT\)](#)

\*[Alaska Discovery](#)

[Alaska Forum for Environmental Responsibility](#)

\*[Alaska Rainforest Campaign](#)

\*[Alaska Wilderness Recreation and Tourism Assoc.](#)

[Alaska Wilderness League](#)

\*[Alaska Wildland Adventures](#)

[Alaska Wildlife Alliance](#)

[Alaska Youth for Environmental Action](#)

[Anchorage Audubon Society](#)

[Arctic Audubon Society](#)

\*[Campaign to Safeguard America's Waters](#)

([Earth Island Institute](#))

[Center For Marine Conservation](#)

\*[Chichagof Conservation Council](#)

\*[The Conservation Fund](#)

[Cook Inlet Keeper](#)

[Defenders of Wildlife](#)

[Denali Citizens Council](#)

\*[Denali National Park Wilderness Centers, Ltd](#)

[Earthjustice Legal Defense Fund](#)

[Eastern Kenai Peninsula Environmental Action Assoc.](#)

\*[Ecotrust](#)

[Friends of Potter Marsh](#)

[Greenpeace](#)

[Juneau Audubon Society](#)

[Kachemak Bay Conservation Society](#)

[Kodiak Audubon Society](#)

[League of Conservation Voters Education Fund](#)

[Lynn Canal Conservation](#)

[National Audubon Society](#)

[National Parks & Conservation Association](#)

[National Resources Defense Council](#)

[National Wildlife Federation-AK Natural Resource](#)

[Center](#)

[Northern Alaska Environmental Center](#)

[Sierra Club, Alaska Chapter](#)

[Sitka Conservation Society](#)

*"In terms of wild preservation, Alaska the last frontier. In time, given one's final chance, let us strive to do it right in our generation ever again, will be a land and wildlife opportunity approaching the end and importance of one."*

Morris Udall, U.S. Representative, co-sponsor of Alaska Lands Bill

### Join us

If your organization would like to join contact Marlo Sh at marlo@akvoice.org or call 258-6181.



- Southeast Alaska Conservation Council
- The Wilderness Society
- Tongass Conservation Society
- Trustees for Alaska
- Valley Alaska Center for the Environment
- Wildlife Federation of Alaska
- Wrangell Mountains Center

\* Associate Members

**If your organization would like to join Alaska Conservation Alliance, contact Marlo Shedlock at [marlo@akvoice.org](mailto:marlo@akvoice.org) or 258-6181**





## Other Interesting Animal Rights WWW Sites

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This page provides access to groups and organizations with homepages residing on remote servers or on EnviroLink.

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- [ACARA](#)
- [Action for Animals Network Home Page](#)
- [Ahimsa Homepage](#)
- [ALF Supporters Group \(Poland - Polish Language\)](#)
- [Alliance for Animals Wisconsin](#)
- [Alternativa para la Liberación Animal \[Spain\]](#)
- [American Anti-Vivisection Society \(AAVS\)](#)
- [Animal Abuse Home Page \(Zoophile\)](#)
- [Animal Activist of Central Florida \(AACF\) \[US-FL\]](#)
- [Animal Aid](#)
- [Animal Connection of Texas \(ACT\)](#)
- [Animal Cruelty Investigation Group \(ACIG\)](#)
- [Animal Defense League](#) Nationally active, grassroots-oriented, animal liberation organization.
- [ADL of Albany](#)
- [Animal Defense League \(ADL\) - L.A.](#)
- [Animal Defense League - New Jersey](#)
- [Animal Defense League - NYC/LI](#)
- [Animal Emancipation, Inc. \(AE\)](#)
- [Animal Freedom](#)
- [Animal Health, Wellbeing, and Rights WWW Virtual Library Section](#) maintained by Stephen Ronan.
- [Animal Legal Defense Fund \(ALDF\) Working For Justice For Animals.](#)
- [Animal Liberation Action Group \(ALAG\) \[University of Wisconsin Oshkosh\]](#)
- [Animal Liberation Collective \[University of Guelph\]](#)
- [Animal Liberation Frontline Information Service \[ALFIS\]](#)
- [Animal Liberation NSW Australia.](#)
- [Animal Liberation Queensland](#)
- [Animal Liberation South Australia](#)
- [Animal Liberation of Texas](#)

- [Animal Liberation Victoria Australia](#)
- [Animal Peace \(German\)](#)
- [Animal Place \(CA, USA\)](#)
- [Animal Politics Home Page](#)
- [Animal Protection Institute of America \(API\)](#)
- [Animal Protection of New Mexico \(APNM\)](#)
- [Animal Protester's Bulletin Against live exports.](#)
- [Animal Rights Advocates \(ARA\) \[Perth Western Australia\]](#)
- [Animal Rights Advocates of Western New York \(ARA of WNY\)](#)
- [Animal Rights Coalition \(ARC\) \(UK\)](#)
- [Animal Rights Coalition \[ARC\] \(Minnesota\)](#)
- [Animal Rights Coalition \(University of Massachusetts\)](#)
- [ANIMAL RIGHTS DIRECT ACTION COALITION - SAN FRANCISCO \[ARDAC - SF\]](#)
- [Animal Rights Foundation of Florida \(ARFF\)](#)
- [Animal Rights Hawai'i \(ARH\)](#)
- [Animal Rights Media Collective](#)
- [Animal Rights Mobilization \(ARM!\)](#)
- [Animal Rights New York City \(ARNYC\)](#)
- [Animal Rights Watch](#)
- [Animals 2000 and Beyond](#)
- [The Animals' Agenda Magazine: Web Edition](#)
- [Animals' Angels](#)
- [Animals Australia Australian arm of ANZFAS](#)
- [Animals Deserve Absolute Protection Today and Tomorrow \(ADAPTT\)](#)
- [Animals Contacts Directory \[UK\] Links to groups and individuals working for animal rights and welfare worldwide.](#)
- [Animals' Hope Petition Team](#)
- [Animals In Print \(AIP\)](#)
- [Animal Voices \[AR Radio Program\]](#)
- [Animal Watch Australia](#)
- [The Animal Welfare Institute](#)
- [Animal Wellness International](#)
- [APAP Ferrater Mora Tossa de Mar \[English, Catalan & Spanish AR Site\]](#)
- [APASFA -Associacao Protetora de Animais Sao Francisco de Assis \[Portuguese Language\]](#)
- [Ark Online](#)
- [Ark Trust](#)
- [Association of Veterinarians for Animal Rights \(AVAR\)](#)
- [Auckland Animal Action](#)
- [Beauty Without Cruelty](#)
- [Boston Resource for Animals, Vegetarians, and the Environment \[BRAVE\]](#)
- [Breach Marine Protection \[BMP\]](#)
- [Campaign Against Factory Farming \(CAFF\) \(NZ\)](#)
- [Cambridge Animal Rights](#)