

H.R. 39 AS PASSED BY HOUSE

MAJOR FISH AND WILDLIFE PROBLEM AREAS

Drafted by: Ron Somerville

Date: 5/31/78

APPENDIX #3

1. Definition of "Lands" includes "waters and interests therein". This creates severe problems related to access control on water column within Federal withdrawals and native selections, regulation of fisheries within the above areas, and water appropriation authority of the State (see Meacham memo of 4/18/78).

RECOMMENDATION: Delete "waters and interests therein" from lands definition.

2. Proposed Refuges, Parks, Forests and Wild and Scenic Rivers include significant navigable and non-navigable waters within boundaries.

RECOMMENDATION: This problem can be partially solved by above amendment.

3. Wild and Scenic Rivers Title V restrictions on snowmobile users would effectively prohibit winter sport fishing and hunting, plus commercial trapping and fishing.

RECOMMENDATION: Amend wording here and in Title VI to guarantee traditional and customary access, including motorized access, to all Federal lands included.

4. Access provisions for customary modes of travel in all Wilderness Areas and Federal units are vague and only clearly protect subsistence uses.

RECOMMENDATION: Same as for No. 3.

5. Wilderness Title VI provides only limited fisheries hatchery potential in Forest Wilderness areas and fish incubator sites on Kenai with a 10-year maximum development period.

RECOMMENDATION: Submit previous amendment giving general authority to Secretary to make exception for hatcheries in all wilderness areas.

6. Establishes many wilderness units which have not been studied under provisions of 1964 Wilderness Act.

RECOMMENDATION: All areas not having followed designated procedures be excluded from "instant wilderness".

7. Village Core Township conveyances eliminate easement

requirement of ANSCA which drastically reduces public access to public lands adjacent to villages.

RECOMMENDATION: Amend to delete easement elimination clause.

8. State land selections are not patterned to offset this critical loss of access (i.e., alternate township selection).

RECOMMENDATION: All alternate township selections should be immediately considered to offset loss of public easements.

9. There are numerous State and private inholdings within Federal units established by the Act. Previous U. S. Supreme Court decisions appear to support U. S. Government regulation of some activities on inholdings.

RECOMMENDATION: Request clear amendment excepting any activities on private and state lands from Federal agency regulations.

10. Closes almost an additional 27 million acres of extremely high quality sport hunting and commercial trapping areas except for limited 20 year grandfather rights for some guides and trappers in selected areas.

RECOMMENDATION: Suggest boundary adjustments in Parks and Monuments to place critical hunting and trapping areas under category which does not preclude such uses.

11. Places almost 16 million acres in National Preserves and almost 77 million acres in Wildlife Refuge system.

RECOMMENDATION: Propose amendment which clearly dictates that primary uses on these lands are hunting, fishing and trapping.

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12. Establishing "Seaward Area Management" for 6 miles seaward of every coastal refuge.

- a. Not tied to land areas in terms of management and planning.
- b. During time when plan is not in effect, the Secretaries of Interior and Commerce and other Federal agencies are to regulate activities compatible with purposes of refuge. This provides basis for closer control and possible regulation of access and activities within area.
- c. Coupled with paragraph 304(a)(1)(ii), this means that practically all of Alaskan coastline will fall under "Seaward Area Management".

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- d. Exempts passage for fishing but not for research, enhancement, or marine mammal associated activities.
- e. This section is so vague and ambiguous that it could jeopardize existing delicate jurisdictional situation.
- f. If this creates a legal regulatory overlap it may jeopardize existing state limited entry program.

RECOMMENDATION: Delete this section unless rewritten and included under Governor's cooperative management system and unless it is made clear that there are no effects on state regulated activities.

13. Alaskan Maritime National Wildlife Refuge 304(a)(1)(ii) includes "all islands, islets, rocks, reefs, spits and spires, or portions thereof, which are off the coast of Alaska, are public lands, and are not conveyed under the Alaska Statehood Act or the Alaska Native Claims Settlement Act or not reserved for inclusion within the National Forest System or the National Park System". This is a significant change from previous legislation and would include most of the State's coastal area. Coupled with #12 above, it could give Secretarial control over most of Alaska's coastal waters.

RECOMMENDATION: Unless Seaward Management Area is amended, this must be opposed except for site specific inclusions.

14. Bristol Bay Cooperative Management Area.

- a. Establishes most Federal lands as refuges or to be managed as refuges and only seems to serve as land trade mechanism. This provides little incentive for State participation.
- b. If State doesn't participate in Bristol Bay Cooperative Management, then Secretary shall unilaterally submit plan to Congress - including State selections.
- c. Previously selected lands not tentatively approved in Cooperative Management Area shall be under jurisdiction of Fish and Wildlife Service.
- d. If no Bristol Bay Management Plan, then State selection will have fish and wildlife covenant.

RECOMMENDATION: Oppose plan in present form and offer cooperative management amendment similar to structure in S. 1787.

15. Proposes caribou treaty with Canada, with study emphasis by Secretary.

RECOMMENDATION: Oppose treaty but support studies and cooperative agreements.

16. Subsistence

- a. Requires State to establish subsistence management program for all public lands.
- b. Requires State to establish regional administrative and regulatory structure.
- c. Establishes requirements which appear to be in conflict with State Constitution.
- d. Gives Secretary authority to regulate taking on public lands by:
 - 1) Closing all but subsistence uses;
 - 2) Closing subsistence uses; and
 - 3) Opening for subsistence uses.
- e. The Committee dropped Sec. 715(e) which allowed for establishment of priorities if funding is not available. This is significant commitment of State funds if Federal appropriations are not available.
- f. Subsistence still does not include any provision for commercial trapping and thus many areas are going to be closed to this type of use.
- g. Allows Secretary to extend authority to private and State lands plus territorial and navigable water.
- h. Environmental Impact Statements could be required for all State-related activities and regulations.
- i. Includes such a broad definition of subsistence that it will require adjudication on all Federal lands.
- j. Provisions for Secretarial authority may jeopardize State's limited entry system for commercial fisheries.

RECOMMENDATIONS: Submit wording in S. 1787 as proposed substitute. Propose additions of following paragraphs:

- a. Nothing in this section shall be construed to grant a property right in fish, wildlife, plants, habitat, lands or waters to any subsistence user.
- b. Territorial waters, navigable waters, private lands, State lands and the resources in such lands and waters are exempt from the provisions of this Title.
- c. Nothing in this Title shall be construed as requiring the State to establish or any Secretary to require any program, regulation or action which conflicts with the Constitution of the State of Alaska, as amended.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JENKINS

May 22, 1978

The Honorable Henry M. Jackson
U. S. Senate
137 Russell Building
Washington, D. C. 20510

Dear Senator Jackson:

Once again, I shall attempt to clarify the State of Alaska's position on Title VII of the pending (d)(2) legislation presently labeled H.R. 12625. This latest version still contains language throughout which is not acceptable to the State and therefore we cannot endorse it as written.

There continues to be a misunderstanding and misinterpretation in Washington regarding my views on this portion of the bill. In particular, I wish to state that I am opposed unequivocally to the intrusion of Federal authority into the long accepted right of the State to be the primary authority for managing resident fish and wildlife. Present language in Title VII, although considerably better than the original version, to the extent that it accommodates such intrusion, still remains unacceptable. However, the State does support other provisions of this Title to the extent they do not erode the State's authority.

Basically, I am against any language being placed into Federal law that would restrict the State, either explicitly or implicitly, in carrying out its primary role and responsibilities for resource management. The State can and will handle responsibly and effectively the protection of its resources and the rights of its citizens to maintain a "way of life" without any need for Federal intervention or overview. Such overview should take place through appropriate processes determined by the people of Alaska and not those residing elsewhere.

The State prefers the language and philosophical approach contained in the Wildlife Management Title (Section 4304) of Senator Stevens' S. 1787 to the approach taken in H.R. 12625. S. 1787 recognizes the management of fish and wildlife on Federal lands for priority subsistence use, but acknowledges and maintains the responsibilities of the State of Alaska as fish and wildlife manager. This principle is consistent with the authority and responsibilities of fish and wildlife management agencies of all other states in the Nation. Alaska should be treated with fairness and equality on this issue.

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May 22, 1978

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Unilateral authority by the Secretary of Interior and/or the Secretary of Agriculture to dictate program design, details on regulatory design, and specific regional requirements are some problem areas. Most importantly, provisions for Secretary interference in the regulatory process of the State is unacceptable. I should like to point out specifically some of the main sections of the bill with which we object.

Section 704 - State Regulation

Language in Section 704(a) says that the State may regulate the taking of fish and wildlife on public lands for subsistence use only, and in addition, only if the State develops and implements a subsistence management program. This language implies that the State cannot regulate fish and wildlife on public lands for uses other than subsistence use, e.g., the recreational or commercial taking of fish and wildlife, and should be revised to correct this implication.

Language in Section 704(b) dictates to the State what a subsistence management program must consist of and imposes certain organizational constraints on the State. For example, the State must establish not less than five regions; it must establish a "grievance procedure" which allows local and regional councils to "obtain appropriate relief from the State agency"; it must establish regulations for subsistence use of fish and wildlife resources; it (i.e. the State wildlife agency) must implement all recommendations received from the Regional Councils unless a public hearing, specifically held for that purpose, determines otherwise, under certain criteria. Imagine the many kinds of "recommendations" from these councils that would have to be addressed!

All of the above items constitute invasions of the State's authorities and responsibilities.

Section 705 - Enforcement Duties of Secretary

Language in Section 705(a) mandates that each Secretary shall monitor the State's subsistence management program to determine whether or not the State is maintaining compliance with this Title. We fear that the regulations developed by the respective Secretaries to implement this mandate might become excessively burdensome to the State wildlife agency, to the detriment of the program.

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Language in Section 705(b) provides for an overview authority by the local and regional councils upon the State and allows them to proceed directly to the Secretaries with their complaints, even though they must proceed first through the State's "grievance procedure", provided such has been established. This is strong indication that the secretaries, not the State, hold the ultimate authority, which is not as it should be.

Section 713 - Other Laws

The present language in Section 713 eliminates all specific references to existing Federal laws pertinent to the management of fish and wildlife in Alaska. Earlier versions had listed all such Federal laws, and recommended by the State of Alaska for inclusion in this list was the Alaska Statehood Act (77 Stat. 339), as amended. Language in the Statehood Act clearly acknowledges the rights of the State to manage resident fish and wildlife resources in Alaska. I believe that the Statehood Act is an important piece of Federal legislation relative to such management rights and believe it desirable to list all such pertinent laws as had been done until this latest version. It is important that this (d)(2) legislation does not modify or repeal provisions of any such Federal law, and this section should reflect that.

In summary, I would like to stress again my position regarding the management of fish and wildlife in Alaska relative to the (d)(2) legislation now under consideration.

1. The State does not endorse H.R. 12625 as written.
2. The State strongly prefers the language and philosophical approach contained in the Wildlife Management Title (Section 4304) of S.B. 1787.
3. The State agrees that subsistence should have priority over other uses in the event of conflicts as has been the State's policy for some years.
4. The State objects to Federal overview which places management authority for fish and wildlife on all Federal lands in the hands of the Secretary of Interior and the Secretary of Agriculture, and mandates the manner in which the State organizes its Department of Fish and Game and conducts its

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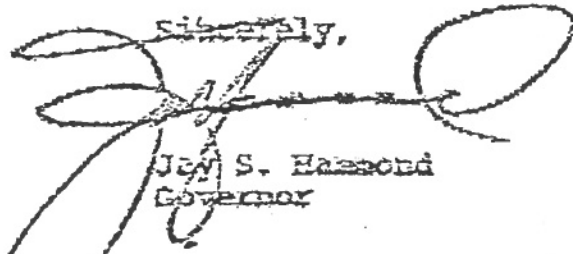
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regulatory process. Clearly, such language is an unwelcomed Federal invasion of traditional State authority.

5. The State believes strongly that the past and present policy of the Federal Government that all states have management authority over resident fish and wildlife—reaffirmed many times in the past and specifically stated in the Alaska Statehood Act as passed by the Congress—needs to be supported and needs to prevail.

Please feel free to contact me or members of my staff for further information or assistance regarding the necessity, from the State's standpoint, of incorporation of the changes and additions to Title VII suggested herein. Thank you for your consideration of my concerns.

Sincerely,



Jay S. Hammond
Governor

This letter was also sent to Senator Gravel and Senator Ted Stevens.