

State of Alaska FY2004 Governor's Operating Budget

Department of Law Statehood Defense Component Budget Summary

Component: Statehood Defense

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Component Mission

Mission statement appears at the department summary level.

Component Services Provided

ENDANGERED SPECIES ACT CASES: These cases involve the efforts of the National Marine Fisheries Service to protect Columbia River fall chinook salmon, listed as endangered under the Endangered Species Act, by restricting chinook salmon harvest in Alaska. The state considers the restriction unreasonable because it will have an insignificant effect on the salmon population, which has been decimated by the dams on the river system. To that end, Alaska promotes the efficacy of the conservation and allocation levels achieved under the Pacific Salmon Treaty abundance-based management, and is working with NMFS to ensure that salmon recovery efforts fairly address the effect of habitat degradation on the productivity of salmon. In addition, the state is actively involved in NMFS' efforts to revise its salmon hatchery policy, both as it relates to listing decisions and recovery efforts.

The state closely follows federal regulations intended to protect the western stock of Steller sea lions, which has been listed as endangered. The National Marine Fisheries Service has imposed dramatic restrictions on fishing in federal waters, especially near-shore areas most accessible to fleets based in coastal Alaska towns and villages, although there is no scientific agreement that such restrictions are likely to have any affect on the sea lion population. The state follows the federal regulations to protect coastal fisheries and the state's authority to manage fisheries that occur in state waters.

SUBMERGED LANDS CASES: The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in several instances.

ACCESS CASES: Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The state recently settled litigation against the United States on an RS2477 right-of-way, the Juilan Mine Road, securing a permanent right-of-way in Southeast Alaska. Additionally, the state has several other cases where access is a primary issue, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access issues. The state has also filed suit challenging the Forest Service's "Roadless Rule," regulations that prohibit building roads and timber harvests except in very limited circumstances in all roadless areas of National Forests.

ANILCA MATTERS: The department provides ongoing legal advice to the Department of Fish and Game as it works to implement dual management of subsistence resources, and closely monitors the actions of the Federal Subsistence Board.

PROTECTION OF SALMON RESOURCES: The department is fighting to protect Alaska's salmon resources on several fronts. First, we provide legal advice to the Department of Fish and Game in the Pacific Salmon Treaty arena. In this capacity, we work closely with Alaska's treaty negotiators to develop strategy for treaty negotiations and implementation within the United States Section and bilaterally with the Government of Canada. Second, we handle litigation that arises out of the Pacific Salmon Treaty. Finally, we remain in litigation against the Pacific Northwest Indian Tribes in United States v. Washington. In this case, the Tribes seek a ruling that the treaties they entered with the United States in the 1850's entitle them to a share of the salmon caught in Southeast Alaska. The parties have filed a stipulation to stay the case as a result of the 1999 amendments to the Pacific Salmon Treaty recently agreed upon by the United States and Canada.

REVIEW OF FEDERAL LEGISLATIVE, REGULATORY, AND ADMINISTRATIVE PROPOSALS: The department frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, and the Endangered Species Act. The department also assists with state comments on federal proposals such as the Forest Service Roadless Initiative, and designation of new national monuments in Alaska.

Component Goals and Strategies

The Statehood Defense group of the Department of Law litigates issues raised by conflicts between state and federal jurisdiction. The group handles a variety of complex cases that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state.

1. To protect Alaska's salmon resources in the Pacific Salmon Treaty.
 - Southern U.S. treaty parties adhere to long-term agreement for the sharing of chinook salmon.
 - Southern U.S. treaty parties adhere to the Habitat and Restoration Agreement commitment to protect and restore salmon habitat, and ensure adequate water quality and quantity for the safe passage of salmon to and from their natal streams.
2. To participate in the ESA process as it relates to Pacific salmon and litigate when needed to protect Alaska against unreasonable restrictions on harvest levels of salmon listed under the Endangered Species Act, when Alaska's incidental take has little measurable effect on the number of fish returning to spawn.
3. To protect access to state and private lands and on public waters across Alaska.
 - Alaska continues to litigate title to the RS 2477 rights-of-way.
 - Alaska files suit or otherwise acts to protect access on navigable waters restricted by upland owners.
 - Alaska publishes maps and pamphlets to educate the public about their rights to access public waterways and easements as well as the limits on use of private uplands.
 - Alaskans are able to exercise their rights to access state and private lands through federal lands.
 - Alaska provides information to BLM that convinces it to declare waterways navigable within the survey windows it is completing.
 - Alaska is challenging the Forest Service's Roadless Rule.
4. To litigate to protect the State's title to navigable waters.
 - Alaska continues its suit in the United States Supreme Court to quiet title to the submerged lands underlying the marine waters of the Tongass National Forest and Glacier Bay National Park.
5. To continue to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program
 - The federal subsistence program considers the state's comments on proposed regulations, places conservation first, and does not infringe upon the state's regulatory authority or unnecessarily restrict the use of the state's fish and game by qualified subsistence, sport, or commercial users under state law.
 - Protocols are developed to facilitate dual management by the state and federal programs.

6. To litigate or otherwise protect Alaska's jurisdiction to manage, protect, and use its own resources against challenges by or on behalf of the federal government.
 - Alaska will be free to regulate activities on navigable waters and on state and private lands without interference from the United States.
 - Alaska will work cooperatively as partners with adjacent federal land managers as appropriate.

Key Component Issues for FY2003 – 2004

1. The State filed *Alaska v. United States* as an original action in the United States Supreme Court against the United States in November 1999. The State's purpose in filing the suit is to quiet title to the lands underlying marine waters in Southeast Alaska. The State's amended complaint raises four counts.

These counts can be divided into two groups. Counts I and II require a determination of the seaward boundary of the State of Alaska. As a general rule, the United States has confirmed or granted to states title to lands beneath navigable waters within their boundaries. States have no claim to lands seaward of their boundaries, which are part of the Outer Continental Shelf (OCS).

The case also raises the issue of whether the marine submerged lands at issue in this case passed to Alaska at statehood or whether the United States reserved them prior to statehood and intended to defeat the State's title at statehood. Counts III and IV address the marine submerged lands within the exterior boundaries of Tongass National Forest and Glacier Bay National Monument (now Glacier Bay National Park and Preserve).

The Court has appointed a Special Master to oversee the case, Professor Gregory Maggs of George Washington Law School, who has a web site for the case: <http://www.law.gwu.edu/facweb/gmaggs/128orig/docket.htm>

The parties have filed motions and cross-motions for summary judgment on all four counts in the complaint. Briefing on the motions will be complete in late December, and oral argument will be in February, 2003. Because the Master will have close to 1,000 pages of briefs to review and rule on, a decision on summary judgment is not expected until the summer of 2003. Trial on remaining issues will be scheduled for the summer of 2004.

2. Subsistence Litigation - Very little remains of the large subsistence caseload of a few years ago. Several of the cases were dismissed, and several went to judgment. The state continues to litigate issues raised by the plaintiffs' claims for attorney fees in two cases, *Quinhagak v. United States*, Ninth Circuit No. 01-35430, and *Katie John v. United States*, District Court No. A90-484-CV (HRH). The state has paid most of the fees in *Quinhagak*, but has on appeal to the Ninth Circuit two issues with over \$100,000 at stake. The plaintiffs in *Katie John* have asked for \$800,000 in fees and costs, plus interest, and litigation on these fees is awaiting decision in the district court.

Major Component Accomplishments in 2002

On Access to state and private lands and on public waters across Alaska:

- Alaska quieted title to the Jualin Mine RS 2477 road.
- Alaska has continued to provide information and develop pamphlets for public distribution educating the public on its rights to access public waterways and easements, as well as the limits on use of private uplands.
- Alaska has educated individual property owners about public rights of access to public waterways.

On litigation to protect the State's title to navigable waters:

- Alaska continued litigation in its an original action in the United States Supreme Court to quiet title to all lands underlying marine waters in Southeast Alaska, including those within Glacier Bay National Park and the Tongass

National Forest.

On Protection of Salmon Resources:

- The department has assisted the Department of Fish and Game in providing comments, as a co-manager, on the draft hatchery policy being developed by NMFS. This review and status reviews for the 24 listed ESUs with hatchery components was prompted by the Oregon federal district court decision in Alsea Valley Alliance v. Evans. Alaska continues to be involved in these processes.
- Alaska continues to act as a cooperating agency in the preparation of a Programmatic Environmental Impact Statement (PEIS) addressing the coastwide salmon fishery. The department has recently assisted the Department of Fish and Game in commenting on the Draft PEIS.
- The department continued to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program.
- The department successfully petitioned the Federal Subsistence Board for reconsideration of sportfishing restrictions on the Kuskokwim River.
- The department has assisted the Department of Fish and Game in commenting on two major environmental impact statements on federal groundfish fisheries off the Alaska coast, and a biological opinion analyzing the effect of state and federal fisheries on endangered Steller sea lions.
- The department has advised the Department of Fish and Game on the requirements of the federal Marine Mammal Protection Act and the federal Endangered Species Act with respect to commercial fisheries in Alaska.
- The department is in litigation against the United States challenging the Forest Service's Roadless Rule.

Statutory and Regulatory Authority

AS 44.23.020

Statehood Defense
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	601.8	773.4	738.9
72000 Travel	16.3	14.4	13.9
73000 Contractual	380.3	300.3	282.5
74000 Supplies	8.7	26.4	22.4
75000 Equipment	8.5	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	1,015.6	1,114.5	1,057.7
Funding Sources:			
1004 General Fund Receipts	1,015.6	1,114.5	1,057.7
Funding Totals	1,015.6	1,114.5	1,057.7

Statehood Defense

Proposed Changes in Levels of Service for FY2004

To achieve a more compact and flexible budget, the stand-alone Statehood Defense BRU is eliminated and its component is transferred to the Civil Division BRU in this budget. No changes in services provided will result.

Summary of Component Budget Changes

From FY2003 Authorized to FY2004 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	1,114.5	0.0	0.0	1,114.5
Adjustments which will continue current level of service:				
-PCN 03-0338 to Office of the Attorney General	-160.0	0.0	0.0	-160.0
-\$75 per Month Health Insurance Increase for Non-covered Staff	6.1	0.0	0.0	6.1
-From Deputy Attorney General's Office to Adjust Vacancy Factor	70.0	0.0	0.0	70.0
-From Natural Resources to adjust vacancy by fund source	15.9	0.0	0.0	15.9
-From Legislation/Regulations to adjust vacancy by fund source	11.2	0.0	0.0	11.2
FY2004 Governor	1,057.7	0.0	0.0	1,057.7

Statehood Defense

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	10	9	Annual Salaries	585,998
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	175,846
			<i>Less 3.01% Vacancy Factor</i>	(22,954)
			Lump Sum Premium Pay	0
Totals	10	9	Total Personal Services	738,890

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	2	0	0	0	2
Attorney IV	2	0	0	0	2
Attorney V	2	0	0	0	2
Law Office Assistant I	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	9	0	0	0	9