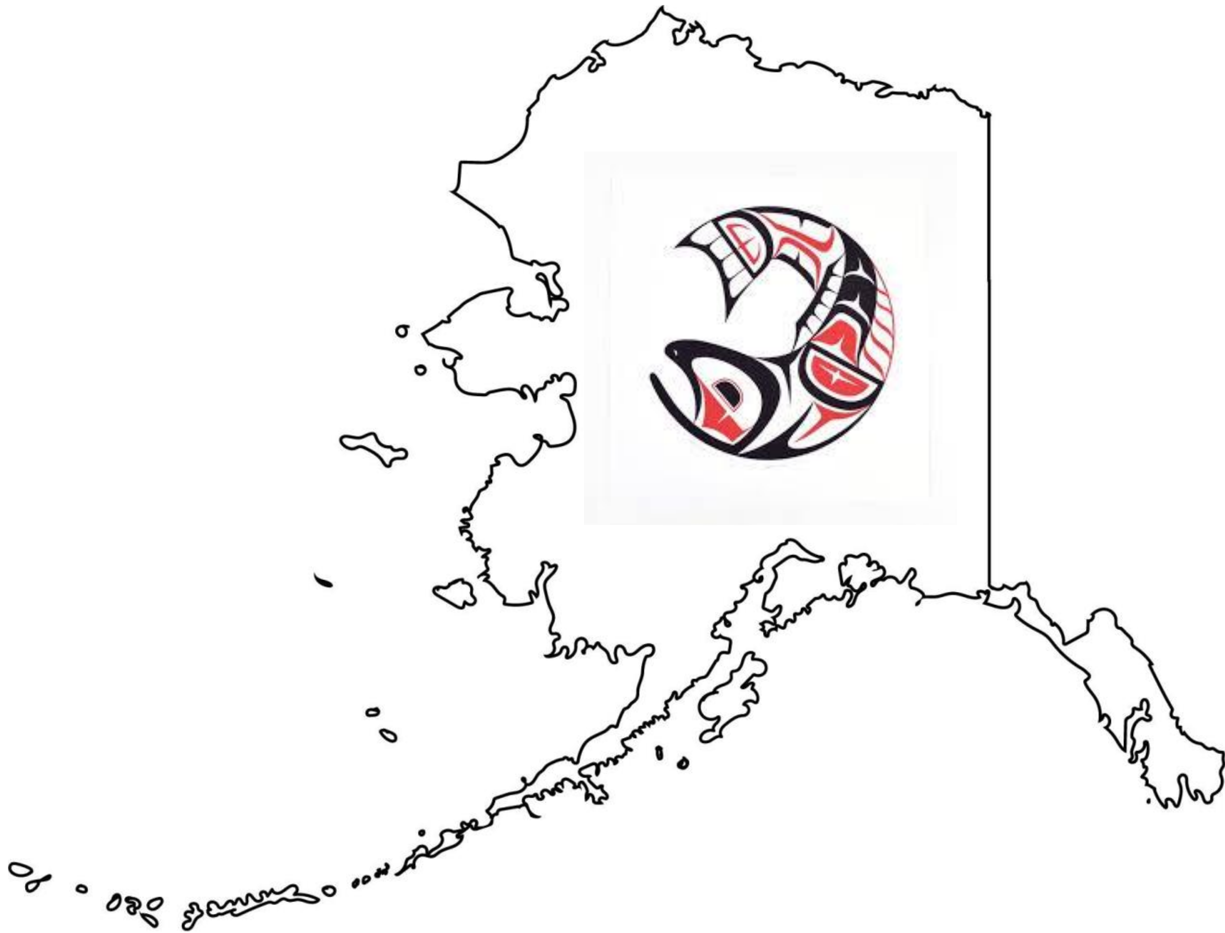
SALMON IN ALASKA
AND FEDERAL ACTIONS



United Cook Inlet Drift Association

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SALMON AND ALASKA AND FEDERAL ACTIONS

1.0 Introduction

This paper is a collection of the historical activities by the three branches of the Federal Government: The Executive, the Legislative and the Judicial, concerning constitutional and property rights and commerce related to the Broad National Interest(s). As the nation was being created, the three branches of government acted to clarify sovereignty, commerce clause and property rights in the broad national interest(s). The themes of constitutional and property rights involving land, water, fish and wildlife will be followed through time as the national interest events occurred.

The Executive Branch actions include proclamations, purchases, treaties and concessions of property (fish and wildlife). The Legislative Branch issues include Acts. The Supreme Court decisions directly decided, constitutional, property and commerce issues, when there were questions involving national interest issues. These national interest issues involved the state's ownership of property (fish and wildlife) and the Commerce Clauses of the U.S. Constitution.

These are two Supreme Court decisions that are pivotal in establishing the national interests in property (fish and wildlife) and the Commerce Clauses in the U.S. Constitution. These are: Geer v. Connecticut, 161 US 519 (1896) and Hughes v. Oklahoma, 441 US 322 (1979). These two cases are discussed in detail later in this paper.

Concerning Alaska's property (fish and game) and Commerce Clauses, the supreme Court of Alaska Case No. S-7642.923.2d 54, Pullen v. Ulmer (1996), should be reviewed considering the decisions in Hughes v. Oklahoma (1979). This case will also be discussed later in this paper.

Special Note: Bold and underlining have been added to the text to provide emphasis.

2.0 Definitions

Anadromous

As defined by the Magnuson-Stevens Act, The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters. (See Appendix 2)

Broad National Interest

This is a term often used to mean: the interest of a nation as a whole held to be an independent entity separate from the interests of subordinate areas (states), subordinate areas (regions, territories) or groups (political parties) and also of other nations or supranational groups (United Nations, treaty parties) and any foreign policy which operates under the standard of national interest. Modified from H. J. Morgenthau.

National interest are topics that are of significant economic, political or social interest to a nation. For example: Antiquities Act, Organic Act, National Parks, Refuges and, of course, the Magnuson-Stevens Act (MSA).

The role of Broad National Interest is to maintain public well-being, order, safety and enhancement of a nation's power and influence in general or specific thematic subjects (fish, wildlife, marine mammals and migratory birds.) Note: the reader should make an independent inquiry as to the meaning of Broad National Interest.

Commerce Clause

Overview

The Commerce Clause refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Congress has often used the Commerce Clause to justify exercising legislative power over the activities of states and their citizens, leading to significant and ongoing controversy regarding the balance of power between the federal government and the states. The Commerce Clause has historically been viewed as both a grant of congressional authority and as a restriction on the regulatory authority of the States.

"Dormant" Commerce Clause

The "Dormant Commerce Clause" refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce. Of particular importance here, is the prevention of protectionist state policies that favor state citizens or businesses at the expense of non-citizens conducting business within that state. In West Lynn Creamery Inc. v. Healy, 512 U.S. 186 (1994), the Supreme Court struck down a Massachusetts state tax on milk products, as the tax impeded interstate commercial activity by discriminating against non-Massachusetts

The Meaning Of "Commerce"

Origin

The meaning of the word "commerce" is a source of controversy, as the Constitution does not explicitly define the word. Some argue that it refers simply to trade or exchange, while others claim that the Framers of the Constitution intended to describe more broadly commercial and social intercourse between citizens of different states. Thus, the interpretation of "commerce" affects the appropriate dividing line between federal and state power. Moreover, what constitutes "interstate" commercial activity has also been subject to consistent debate.

Property Rights

A property right is the exclusive authority to determine how a resource is used, whether that resource is owned by government or by individuals. Society approves the uses selected by the holder of the property right with governmental administered force. If the resource is owned by the government, the agent who determines its use has to operate under a set of rules determined, in the United States, by Congress or by executive agencies it has charged with that role.

Private property rights have two other attributes in addition to determining the use of a resource. One is the exclusive right to the services of the resource. Thus, for example, the owner of an apartment with complete property rights to the apartment has the right to determine whether to rent it out and, if so, which tenant to rent to; to live in it himself; or to use it in any other peaceful way. That is the right to determine the use. If the owner rents out the apartment, he also has the right to all the rental income from the property. That is the right to the services of the resources (the rent).

Finally, a private property right includes the right to delegate, rent, or sell any portion of the rights by exchange or gift at whatever price the owner determines (provided someone is willing to pay that price). If I am not allowed to buy some rights from you and you therefore are not allowed to sell rights to me, private property rights are reduced. Thus, the three basic elements of private property are (1) exclusivity of rights to choose the use of a resource, (2) exclusivity of rights to the services of a resource, and (3) rights to exchange the resource at mutually agreeable terms.

Sovereign – National Interest(s)

During the last 125 years, the courts have made significant constitutional and property rights decisions. These cases and attending decisions were necessary and appropriate. These decisions are from across the country involving many states. These decisions are the law for the Federal and State Governments. Note: the reader should pay particular attention to the Hughes v. Oklahoma and Pullen v. Ulmer cases.

The executive branch and congress have taken action(s) in the broad national interest hundreds of times. The executive branch made land purchases, designated military bases and outposts, concluded treaties, acquired lands as spoils of wars and conflicts and declared Presidential proclamations. Congress adopted acts, statutes and regulations that concerned sovereign rights and were in the broad national interest. The executive and legislative branches have been very reluctant to encumber these sovereign national interests, especially with the states. In 1864, when Secretary of State William H. Seward signed the money draft for 7.2 million US dollars, payable in gold, from the US Treasury to Emperor Alexander II for all of the Russia America interest, it was done in the broad national interest of the Federal government. There were no enabling acts of congress. Secretary Seward concluded the 1864 purchase under the authority of the executive branch of the Federal government.

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. **It does not, however, allow the federal government to review or veto state laws before they take effect.**

3.0 Early Years – 1000 AD to 1864 AD, Pre-Secretary William H. Seward's Purchase

Beginning with indigenous people's homelands, these ancestral people were a part of and occupied the "Great Land." These ancestral families were amazing and survived for hundreds of years. Moving about in search of the essential resources needed for surviving through some very difficult times. The concept of owning land and its salmon were matters that were settled within and between the local communities and not necessarily based on a commodity or monetary-exchange economic system. The ancestral peoples land claims were settled with the passage of the Alaska Native Claims Settlement Act of 1971 (ANILCA).

In 1732 a new group arrived in these ancestral lands from Far-Eastern Russia (Russia). The Russian colonization of the Americas covers the period from 1732 to 1867, when the Russian Empire laid claim to northern Pacific Coast territories in the Americas. Russian colonial possessions in the Americas are collectively known as Russian America. In 1725, Emperor Peter the Great ordered navigator Vitus Bering to explore the North Pacific for potential colonization. The Russians were primarily interested in the abundance of fur-bearing mammals found along the coast. Bering's first voyage was foiled by thick fog and ice, but in 1741 a second voyage by Bering and Aleksei Chirikov made sight of the North American mainland.

Russian trappers and hunters quickly developed the maritime fur trade, which instigated several conflicts between the Aleuts and Russians in the 1760s. The Russians extended their claims eastward from the Commander Islands to the shores of Alaska. In 1784 Grigory Shelekhov founded Russia's first permanent settlement in Alaska at Three Saints Bay. By the late 1780s, trade relations had opened with the Tlingits, and in 1799 the Russian-American Company (RAC) tried to monopolize the fur trade.

The first Russian colony in Alaska was founded in 1784 by Grigory Shelikhov. Subsequently, Russian explorers and settlers continued to establish trading posts in mainland Alaska, on the Aleutian Islands, Hawaii, and Northern California.

During this Russian-American era from 1732 to 1867, what began as a fur-trading venture ended in Russia claiming ownership of all lands and resources, including salmon, on these islands and main lands.

In 1802, Tlingit warriors destroyed several Russia America settlements, most notably Old Sitka, leaving New Russia as the only remaining outpost on mainland Alaska. In 1808, Redoubt Saint Michael was rebuilt and became the capital of Russian America after the previous colonial headquarters were moved from Kodiak. A year later, the RAC began expanding its operations to more abundant sea otter grounds in Northern California, where Fort Ross was built in 1812.

For historical reference, in 1802 the Louisiana Purchase was completed for 15 million dollars, to be paid to France. In 1804-1806 the Lewis and Clark Expedition traveled from St. Louis, MO, west across the Rocky Mountains to the mouth of the Columbia River, Then, in 1806, returned to St. Louis via a northern route down the Missouri and Mississippi Rivers.

Faced with the reality of periodic Native American revolts, the political ramifications of the Crimean War, and unable to fully colonize the Americas to their satisfaction, the Russians concluded that their North American colonies were too expensive to retain. Eager to release themselves of the burden, the Russians sold Fort Ross in 1842, and in 1867, after less than a month of negotiations, the United States accepted Emperor Alexander II's offer to sell all the lands, waters, colonies and outposts in Russian America. The purchase of the Russian American holdings for $7.2 million ended Imperial Russia's colonial presence in the Americas.

A. Sovereignty, Commerce and Property Rights

As the reader progresses throughout the remainder of this paper, note the actions and events that are involved with establishing sovereignty in “The Great Land” of what is now Alaska. The commerce clause and property rights were developed in the national interest to promote public well-being, order, safety and enhancement of the nation.

B. William H. Seward's Purchase in 1867 to Alaska Statehood in 1959-1960

When Secretary Seward concluded the purchase of the Russian America lands and resources, including salmon, the US government became the new owner along the west coast of North America, from San Francisco to Attu Island. The US and Great Britain renegotiated, with military intervention, to carve out the present-day British Columbia, Canada. The negotiated settlement for British Columbia also quieted the debate over ownership of land and resources, including salmon, between the US and British Governments.

Adapted from Anjuli Grantham, 2017, After Alaska Purchase, the First Salmon cannery Pops Up:

> "But this Treaty is the beginning… Our own Fisheries, now so considerable, were small in the beginning… Small beginnings, therefore, are no discouragement to me," Senator Charles Sumner, Chair of the Foreign Relations Committee, said to the US Senate on April 8, 1867, speaking of the potential of Alaska's mostly-unknown fisheries.
>
> Just the week before, Secretary of State William Seward negotiated the Treaty of Cession with Russian Ambassador Eduard de Stoeckl. The United States was about to purchase Alaska for $7.2 million, but the treaty required Senate approval. Sumner spoke to the Senate at length about the opportunities available to the United States if the body approved the acquisition of Russian America.
>
> Sumner waxed about the otters, the timber, the potential for mines (gold had not been discovered in significant quantities in Alaska), but he ended with fisheries. He detailed the reports of European explorers who caught hundreds of halibut with limited effort, of large Native communities subsisting on salmon through the winter, of the newly pioneered cod grounds off the Aleutian Islands. He envisioned an Alaskan fishing industry that would feed growing domestic markets in California, that would export salted fish to majority Catholic nations in Latin America, and that would provide seafood to nascent Chinese and Japanese markets.
>
> "The beautiful baidar will give way to the fishing smack, the clipper, and the steamer. All things will be changed in form and proportion; but the original aptitude for the sea will remain. A practical race of intrepid navigators will swarm the coast, ready for any enterprise of business or patriotism. Commerce will find new arms; the country new defenders; the national flag new hands to bear it aloft."
>
> He concluded his speech, stating, "…the Fisheries, which, in waters superabundant with animal life beyond any of the globe, seem to promise a new commerce to the country." The next day, the US Senate ratified the treaty. Alaska and its marine resources became American.

> The commercial salmon industry started soon after. Entrepreneurs salted fish in barrels at Karluk on Kodiak Island, in Karta Bay on Prince of Wales Island and elsewhere. But it was a Scottish entrepreneur named George Hamilton who claims the glory of founding what would become the first establishment to put out a can of salmon in Alaska.
>
> Hamilton started a saltery at Klawock on Prince of Wales Island in 1869. He sold his concern to a California firm called Sisson, Wallace & Co and became a shareholder in the newly established North Pacific Trading & Packing Co. In 1878, the first two canneries were built on Alaska's shores. The North Pacific Trading and Packing Co. was established at "Hamilton's Fishery" in Klawock, while the Cutting Packing Co. was built in Sitka. However, the Klawock cannery managed to process the first can of salmon, thus earning the distinction of being remembered as the first cannery in Alaska.
>
> At the time of the establishment of the Klawock cannery, eleven years had passed since Sumner's speech and the subsequent Alaska Purchase. Alaska's commercial salmon industry was tiny, but it was viable. It was Fred Hamilton's grandparents who took the early steps to convert Charles Sumner's vision for Alaska into reality."

The commercial fishing industry began in 1867 when a few small whaling and salmon salting operations were initiated in the area noted above which later became the Military District of Alaska.

For historic reference, President Abraham Lincoln was shot by an assassin on April 14 and died on April 15, 1865. Little known to many individuals, Secretary of State William H. Seward also had an assassination attempt on his life on April 14, 1865.

C. History of Alaska: 1867 – 1884 (17 years)

From 1867 to 1884, Alaska was considered to be a **Military District of the United States** under the control of the Secretary of War, known as the **Department of Alaska**. From 1884 to 1912, it was designated as the **District of Alaska**, and from 1912 to 1959, was organized into the incorporated **Territory of Alaska**. Alaskans had sought statehood since as early as the 1920s.

D. The First Organic Act: 1884 – 1912 (28 years)

In 1884, the Military District, Department of Alaska was organized into the **District of Alaska**, when Congress passed the first Organic Act allowing for Alaska to become a judicial district as well as a civil one, with judges, clerks, marshals, and limited government officials appointed by the federal government to run the territory. Furthermore, during the 1896 – 1910 gold rush eras, hundreds of thousands of people traveled to Alaska. Several industries flourished as a result, such as fishing, trapping, mining and mineral production. Some of Alaska's resources were depleted. Alaska was still just a district and the local government had little control over local affairs.

E. The Second Organic Act: Feb. 2, 1912 – 1957 (47 years)

In August 1912 Congress passed the Second Organic Act, which established the **Territory of Alaska** with a capital at Juneau and an elected legislature. The formation of the "Alaska Syndicate" in 1906 by the two barons J. P. Morgan and Simon Guggenheim was formed in order to control major developments. Their influence spread and they came to control the Kennecott copper mine, steamship and railroad companies, and salmon packing. The influence of the Syndicate in Washington D.C. opposed any further movement towards Alaskan home rule. However, President William Howard Taft sent a message to Congress on February 2, 1912, insisting that they listen to James Wickersham. The federal government still retained much of the control over laws regarding fishing, gaming, and natural resources and the governor was also still appointed by the President. In 1916, Wickersham, who was now a delegate to Congress, proposed the first bill for Alaskan statehood. **The bill, however, failed, partly due to lack of interest among Alaskans in gaining statehood.**

Beginning in 1878, two salmon and herring salting canneries began operations with a pack valued at $16,000. By 1956, fisheries products were valued at $86 million. By this time, numerous species were harvested, however, salmon harvests remained the major economic commodity. During this time, Washington-based individuals and companies were the primary investors and beneficiaries of the seafood industry in the Territory of Alaska.

For historical reference, World War I occurred from 1914-1918. Tens of thousands of cases of salmon were caned as part of the war effort.

Since 1867, the jurisdiction, supervision and control over the salmon and other fisheries of Alaska have been formally vested in the Federal government. The Bureau of Commercial Fisheries (Bureau), later known as the US Department of the Interior, Fish and Wildlife Service, is the bureau having the direct responsibility of managing the fisheries resources in what is now Alaska. The Bureau, under the control of the Secretary of the Interior, may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction and establish closed seasons during which fishing may be limited or prohibited; it may fix the size and character of nets, boats, traps or other gear; it may limit the catch of fish to be taken from any area; it may make regulations to time, means, methods and extent of fishing (except such authority shall not apply to any creek, stream, river or other bodies of water in which fishing is prohibited by specific provisions of Federal law); and finally, the Bureau is directed to take the necessary action to enforce all such regulations and laws.

The authority granted to the Territorial Legislature by 48 USC (United States Code), Sec. 23./3 "to alter, amend modify and repeal laws" in force in Alaska at the time of the passage of the Second Organic Act (37 Stat., 512, Aug. 24, 1912) **did not extend to those Federal laws pertaining to the regulation of the fishing industry. See 48 USC, Sec. 24./3**.

For historical reference, World War II occurred from 1940-1945. Millions of salmon were caught and canned to supply American, European and Pacific war efforts.

Comment: Considering the importance of smoked, salted and canned salmon to the national food supply and its allies in the Americas, Europe, Russia, Great Britain and the Pacific Island nations, the Federal Government appeared to be very protective of the seafood resources in all the continental states, waters, territories, districts and possessions.

In view of this limiting power of the Second Organic Act, when the Alaska Legislature established the Territorial Department of Fisheries in 1949 (Chapter 68, SLA (Statutes of Legislature, Alaska) 1949) its purposes were necessarily restricted to:

- **assist** in the conservation of Alaska's fisheries by appropriate measures, including steps to overcome the present depleted condition of the salmon runs;

- **foster** ownership, management and control of fishing equipment and gear by residents of Alaska; and

- **cooperate** with the United States Fish and Wildlife Service, and more particularly, that agency (Bureau) managing the fisheries resources of Alaska.

In 1957, Chapter 68, SLA 1949 was repealed by Chapter 63, SLA 1957. /4 which Act created the Alaska Department of Fish and Game and the Alaska Fish and Game Commission. This measure replaces the former Territorial Department of Fisheries, transfers its existing powers to the newly created Department, and broadens its scope and responsibility to include lending assistance in the protection, research, restoration, propagation and increase of Alaska's game as well as Alaska's fish. Ownership and management of the salmon fishery remained with the Federal Government.

The number of salmon fishermen in the Territory of Alaska, since 1936, has steadily increased – from approximately 6,500 in 1925; 7,500 in 1936, to almost 14,000 in 1955. In 1956, the number of fishermen dropped to 8,500 as reported by the Bureau, US Fish & Wildlife Service, in their Progress Report and Recommendations for 1957 (November 1956 publication), to their regulation concerning area licensing.

In 1954, 89 canneries were operating in Alaska, a decrease of 11 from the year before. (31 in Southeastern Alaska; 43 in Central Alaska and 17 in Western Alaska.) These 89 canneries operated 181 of the total 216 [fish] traps functioning that year, licensed under the Bureau.

Beginning in 1878 up to the mid 1930's, salmon were super abundant. However, from the mid 1930's through the mid 1950's, salmon populations went into a steep decline. By the late 1950's, salmon became scarce and the harvesting and processing sectors had serious economic challenges.

As noted earlier, the Bureau is the Federal agency empowered to regulate the fisheries in Alaska, with the exception of halibut. The Bureau has two major sections, whose activities viewed as a whole adequately describe present (1958) programs and responsibility.

The Management section has the primary responsibility of devising regulations and enforcing them. Regulations are promulgated after the careful study and consideration of data and information gathered by them in studying fisheries. If research statistics indicate that escapements are not sufficient, regulations are altered in an attempt to preserve a maximum, sustained future yield. The regulations set out the fishing districts, closed waters, closed and open seasons, maximum limits, maximum size of boats and gear, as well as types of gear, etc. in each of the fishing areas, not only for the salmon fishery but for the whole Alaska fishery including herring, shellfish, sablefish and personal use fish.

The Alaska Territory government, as discussed earlier, was limited in its power to legislate statutes concerning fisheries. However, the Territorial Department of Fisheries, since 1949, has carried out research programs which are designed to assist the Bureau in the conservation of Alaska's fisheries and has worked closely with this Federal agency in order to avoid duplication of effort.

The Territorial Department of Fisheries main function is to investigate watersheds blocked to salmon by falls and other obstructions.

For the time being (1958), the Alaska Legislature's authority was restricted to parallel and supplemental measures. **Even the care must be exercised, for if any such act (by the Alaska Legislature) is interrupted as transcending or in any way interfering with the exclusive regulatory power of the Federal government, it is subject to being stricken as a matter of law.**

4.0 Actions by the Three Branches of the Federal Government

A. Geer v. Connecticut, 1896

Geer v. Connecticut Supreme Court Case and Decision (Geer, 1896)

161 U.S. 519 (1896)

Case Summary

The defendant lawfully killed certain game birds in the state of Connecticut during an open season on the birds. However, the defendant was subsequently convicted of possessing woodcock, ruffled grouse and quail with the unlawful intent of transporting them out of state in violation of Conn. Gen. Stat. § 2546 (rev. of 1888) which provided, in pertinent part, that:

"No person shall at any time kill any woodcock, ruffled grouse of quail for the purpose of conveying the same beyond the limits of this State; or shall transport *or have in possession, with intent to procure the transportation beyond said limits*, any of such birds killed within this State….." (emphasis supplied).

The Connecticut Supreme Court affirmed the defendant's conviction pursuant to this statute. On appeal, the U.S. Supreme Court affirmed and held that the **state of Connecticut owned the game birds in trust for the benefit of the people of the state, who owned all of the wild game in the state in common.** Thus, the Court concluded that the state had the right to keep the game birds within the state for all purposes and to create and regulate its own internal state commerce with respect to the birds. **The Court held that the Connecticut statute was *not* governed by the Commerce Clause of U.S. Const. art. I, § 8 and that its enactment did not violate the Constitution.** The Court explained that the state had the police power to preserve a food supply that belonged to the people of Connecticut by requiring that the commerce in game birds be kept within the state.)

Comment: The holding in Geer, 1896 made the following conclusions of law:

I. The State of Connecticut (and all other states) owned the game birds

II. That the ownership of birds (fish and wildlife) was for the benefit, or interest, of the people in the state. The term "state" refers to individual states, not the Federal State.

III. That Connecticut's (State's) ownership of birds (fish and wildlife) was not governed by the Commerce Clause of the U.S. Constitution. This meant that a state's interest came before the general commerce and national interest of the Federal Government and other states.

IV. The Geer, 1896 ruling put individual states at odds with each other concerning commerce as it existed prior to the U.S. Constitution adoption.

V. The Geer, 1896 case applied to the then existing states. However, non-state entities, districts, and territories such as Alaska were similarly left unaddressed.

VI. The other view is that the non-state lands and properties could be considered a Federal state that owned and controlled the remainder of Federal lands and property.

VII. ''Alaska," in 1896, was the District of Alaska, which was completely purchased by the Federal Government.

B. American Antiquities Act, 1906

American Antiquities Act of 1906

16 USC 431-433

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any

historic or prehistoric ruin or monument, **or any object of antiquity, situated on lands owned or controlled by the Government of the United States**, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, national battlefields, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: Provided, **That when such objects are situated upon a tract covered by a bona fied [bonafide] unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government**, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. **That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War** to institutions which the[y] may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, **with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.**

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

Approved, June 8, 1906

Comment: The American Antiquities Act of 1906 was one of many actions taken by the Federal Government to establish Federal sovereignty over property, both public and private, that are for the benefit, or public interest, of the citizens. This 1906 Act is one of the first federal actions that starts to reverse the U.S. Supreme Court holding in Geer, 1896. “Alaska” is the District of Alaska, completely owned and managed by the Federal Government. As such, the President was within the law to implement this 1906 Act **at his discretion**.

C. Organic Act, 1916

ACT TO ESTABLISH A NATIONAL PARK SERVICE (ORGANIC ACT), 1916

AN ACT TO ESTABLISH A NATIONAL PARK SERVICE,

AND FOR OTHER PURPOSES,

Approved August 25, 1916 (39 Stat. 535)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that there is hereby created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the Secretary. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified **by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (U.S.C., title 16, sec. 1.)**

Comment: This 1916 Organic Act adds further depth and meaning to sovereign property and broad national interest(s). “Alaska” is now designated as the “Territory of Alaska”, still completely owned and controlled by the Federal Government.

D. Migratory Bird Act, 1918

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918, (https://www.fws.gov/laws/lawsdigest/migtrea.html) (16 U.S.C. 703–712, MBTA) implements four international conservation treaties that the U.S. entered into with:

Canada in 1916: (https://www.fws.gov/migratorybirds/pdf/Treaties-Legislation/Treaty-Canada.pdf),

Mexico in 1936: (https://www.fws.gov/le/pdf/MigBirdTreatyMexico.pdf),

Japan in 1972: (https://www.fws.gov/international/pdf/treaties-and-conventions-us-japan-migratory-bird-convention.pdf) and

Russia in 1976: (https://www.fws.gov/le/pdf/MigBirdTreatyRussia.pdf). It is intended to ensure the sustainability of populations of all protected migratory bird species.

The law has been amended with the signing of each treaty, as well as when any of the treaties were amended, such as with:

Mexico in 1976: (https://www.fws.gov/le/pdf/MigBirdTreatyMexico.pdf) and

Canada in 1995: (https://www.fws.gov/le/pdf/MigBirdTreatyCanada.pdf).

The Migratory Bird Treaty Act prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service.

Comment: Federal supremacy over migratory birds was an act passed in the Broad National Interest. The individual states have no direct ownership or management functions. Thus, it is in the direct opposition of the Geer, 1896 decision.

Comment: The 1918 Migratory Bird Act adds further depth and meaning to property (birds) and the broad national interest. This act is in direct opposition to the Geer, 1896 holding. Sovereignty over migratory birds (property) rests with the Federal Governments broad national interest(s).

E. Halibut Treaty, 1923

Halibut Treaty

The Halibut Treaty was a 1923 Canadian–American agreement concerning halibut fishing rights in the northern Pacific Ocean. The treaty established the International Pacific Halibut Commission (IPHC) as a mechanism for the joint management of the Pacific halibut (Hippoglossus stenolepis) which, at that time, was in severe decline. The commission originally had four members but now has six, which are selected from industry and related government agencies. Half the members are Canadian and half are from the United States.

Comment: Federal supremacy over halibut was an act passed in the Broad National Interest. The individual states have no direct ownership or management functions. Thus, it is in the direct opposition of the Geer, 1896 decision.

F. National Petroleum Reserve in Alaska, 1923

National Petroleum Reserve in Alaska

1923, mindful of the land's conceivable petroleum value, President Harding set aside this area as an emergency oil supply for the U.S. Navy. In 1976, in accordance with the Naval Petroleum Reserves Production Act, administration of the reserve was transferred to the Department of the Interior's Bureau of Land Management (BLM) and renamed the NPR-A. Formerly known as Naval

Petroleum Reserve No. 4, the National Petroleum Reserve in Alaska (NPR-A) is now a vast ~23-million-acre area on Alaska's North Slope.

Once again, in 1923, the Federal Government takes a sovereign action of 23 million acres of land and resources in the national interest. “Alaska” is the Territory of Alaska.”

Comment: Federal supremacy over land thought to contain oil was an act passed in the Broad National Interest. The individual states have no direct ownership or management functions. Thus, it is in the direct opposition of the Geer, 1896 decision.

G. <u>White Act, 1924</u>

Federal Regulation and the White Act

Other territories (such as Hawaii) controlled their own fisheries. But the salmon industry was able to prevent this transfer of power to the territory of Alaska in 1912. One reason they opposed the transfer was because the people of Alaska were already hostile to traps as a result of a fisherman's strike that year. As a result various federal agencies -- the Treasury Department, the Commerce Department, and ultimately the Interior Department -- ran the salmon fishery.

The Treasury Department attempted to control the initial depletion of entire salmon runs by gradually prohibiting fishing and especially traps in streams, then rivers, and then bays. By 1906 it was using closures of specific areas and for specific times in a sometimes-vain effort to preserve the resource. In an extraordinary but short-lived effort to rationalize the fishery, Commerce Secretary Herbert Hoover persuaded President Harding to create several Fishery Reserves in 1922. The reserves were closed to entry unless a permit was obtained, allowing Hoover's Bureau of Fisheries to regulate fishing effort directly. The initial effects of this policy were almost revolutionary. In the Karluk River, for example all fishing was prohibited except by two canners, who were able to take all the fish they needed directly from the river using a simple weir!

The attempt to "enclose" the fisheries by executive order met with fierce legal and political resistance from Alaskans. The White Act of 1924 was the result of the ensuing political battle and remained the foundation of all further federal regulation through 1959. The act prescribed an escapement goal of 50% of all Salmon and allowed the Secretary of Commerce to regulate all aspects of Alaska salmon fishing *except* for access to the fishery. No "exclusive right of fishery shall be granted." The House version of the bill abolished fish traps, but the Senators from Washington blocked that provision.

The White Act further hurt Natives by prohibiting subsistence fishing within streams. The Indians were conflicted about asking for full-blown reservations but worked with the Interior Department and pressed claims for aboriginal fishing rights. Eventually, the courts ruled that they had abandoned those rights when they went to work in the canneries for cash. Eventually, the

Indians asked for reservations including fishing rights, but were rejected in that request by the Interior Department.

Up until about 1930 most of the people using seine boats were Natives, but after the onset of the depression whites began to enter the fishery: For example, Price cites federal statistics showing that in 1929, "practically all" seiners were Natives. In 1934, "eight percent" of the Ketchikan district's seiners were Natives. But by the 1940s, the percentage in the Wrangell district was only 20% all Native plus 60% mixed race crews. Price asserts based on these data that Natives -- the most immobile part of the labor force -- suffered the brunt of the displacement effects of traps.

H. International North Pacific Fisheries Commission, 1952

International North Pacific Fisheries Commission (1952–1992)

The International North Pacific Fisheries Commission (INPFC) was established by the International Convention for the High Seas Fisheries of the North Pacific Ocean in 1952, and comprised Canada, Japan, and the United States of America as members. The INPFC contributed significantly to the understanding of the life history and distribution of **anadromous species (salmon included, see Appendix 2)**, groundfish, crab, and marine mammals in the North Pacific Ocean and Bering Sea. The INPFC dissolved when the NPAFC Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean came into effect on February 16, 1993, and the NPAFC came into existence.

The INPFC International Convention for the High Seas Fisheries of the North Pacific Ocean includes 12 articles, annexes and memoranda of understanding.

Comment: Federal supremacy over **anadromous species** and other living resources was an act passed in the Broad National Interest. The individual states have no direct ownership or management functions. Thus, it is in the direct opposition of the Geer, 1896 decision. This is the first time that **anadromous species**, groundfish, crab and marine mammals are properties, subject to Federal Supremacy and the broad national interest(s). This 1952 International North Pacific Fisheries Commission was seven years before Alaska statehood in 1959.

When the term ‘anadromous species’ is used, it includes all 32 anadromous fish species, see Appendix 2, occurring throughout the entire nation, territories, military bases and other properties.

I. Submerged Lands Act of 1953

Submerged Lands Act of 1953

Submerged Lands Act (SLA) of 1953, 43 U.S.C. § 1301 et seq., is a U.S. federal law that recognized the title of the states to submerged navigable lands within their boundaries at the time they entered the Union. They include navigable waterways, such as rivers, as well as marine waters within the state's boundaries, generally three geographical miles (almost exactly 3 nautical miles or 5.6 kilometers) from the coastline.

In passing the SLA, Congress gave title to submerged lands to the states and promoted the exploration and development of petroleum deposits in coastal waters.

The SLA was enacted in response to litigation that effectively transferred ownership of the first 3 miles of a state's coastal submerged lands to the federal government. In the case United States v. California (1947), the United States successfully argued that the three nautical miles seaward of California belonged to the federal government, primarily finding that the federal government's responsibility for the defense of the marginal seas and the conduct of foreign relations outweighed the interests of the individual states.

In response, Congress adopted the SLA in 1953, granting title to the natural resources located within three miles of their coastline (three marine leagues for Texas and the Gulf coast of Florida). **For purposes of the SLA, the term "natural resources" includes oil, gas, fish, shrimp, clams and all other minerals.**

Title II addresses the rights and claims by the States to the lands and resources beneath navigable waters within their historic boundaries and provides for their development by the States.

Title III preserves the control of the seabed and resources therein of the Outer Continental Shelf beyond State boundaries and to the federal government and authorizes leasing by the Secretary of the Interior in accordance with certain specified terms and conditions.

Comment: The SLA was upheld in 1954 by the U.S. Supreme Court (Alabama v. Texas) emphasizing that **Congress could relinquish to the states the federal government's property rights over the submerged lands without interfering with U.S. national sovereign interests.**

Comment: Also, the passing of the **SLA does not interfere with U.S. National Sovereign Interests. The SLA does not interfere with or modify any other actions taken by the Federal Government**.

Comment: The SLA was enacted under Geer, 1896. The SLA occurred 26 years before the Hughes v. Oklahoma decision in 1979.

Comment: Both the Legislative and Executive Branches had previously made resource

management designations and land withdrawals that were to be unaffected by the SLA: migratory birds, halibut, national parks and monuments, military and national defense facilities.

J. Outer Continental Shelf Lands Act, 1953

Outer Continental Shelf Lands Act

Agencies: Bureau of Ocean Energy Management (BOEM) (within the Department of the Interior)

Citation: 43 U.S.C. §§ 1331 et seq.

Enacted as: the "Outer Continental Shelf Lands Act", on August 7, 1953

Where Law Applies: Under the Outer Continental Shelf Lands Act (OCSLA), the subsoil and seabed of the outer continental shelf belong to the United States and "are subject to its jurisdiction, control, and power of disposition" (43 U.S.C. § 1332(1)). 'Outer continental shelf' is defined under OCSLA as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters and of which the subsoil and seabed appertain to the United States " (43 U.S.C. § 1331(a)).

Summary:

The Outer Continental Shelf Lands Act (OCSLA or Act) (43 U.S.C. §§ 1331 et seq.) defines the United States outer continental shelf (OCS) as all submerged lands lying seaward of state submerged lands and waters (as defined in the Submerged Lands Act, e.g., 3 nautical miles offshore) which are under U.S. jurisdiction and control. Under the OCSLA, the Secretary of the Interior is responsible for the administration of mineral exploration and the development of the OCS. The Act empowers the Secretary to grant leases to the highest qualified responsible bidder on the basis of sealed competitive bids and to formulate regulations as necessary to carry out the provisions of the Act. The Act, as amended, provides guidelines for implementing an OCS oil and gas exploration and development program.

Since its original enactment in 1953, the OCSLA has been amended several times, most recently as a result of the Energy Policy Act of 2005. Amendments have included, for example, the establishment of an oil spill liability fund and the distribution of a portion of the receipts from the leasing of mineral resources of the OCS to coastal states. In addition, the Energy Policy Act of 2005 amended OCSLA Section 8 to give jurisdiction of alternate energy-related uses (including renewable energy projects) on the outer continental shelf to the Department of the Interior.

Source: http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Outer-Continental-Shelf/Lands-Act-History/OCSLA-HIstory.aspx (last visited Sept. 12, 2012).

Legislative History:

In the late 1800s, the citizens of Summerland, California, began producing numerous springs of crude oil and natural gas. After drilling a large quantity of wells on these springs, early oil drillers discovered that wells nearest the ocean were the best producers. This eventually led to wells drilled on the beach. As oil and natural gas became increasingly profitable, control over these resources became a major issue. The tidelands controversy between the United States and Texas precipitated the OCSLA: it involved a dispute over the title to 2.5 million acres of submerged land in the Gulf of Mexico between low tide and the state's Gulfward boundary, almost 10 miles from shore. Texas first acquired this land when it entered the Union in 1845, with ownership recognized by federal officials for more than 100 years.

By 1910, America had quickly turned to oil as its primary natural resource, and several innovations resulted: the internal combustion engine, steel cable tool drilling, and the first diamond drill in 1919. Technology advanced quickly, and for a decade new valves, controls, and drilling control instrumentation were developed. In 1926 modern seismology was created. In the mid-1940s, major changes in the oil industry occurred as America was making its transition from a wartime- to postwar-economy. There was an enormous public demand for oil and gas, and offshore exploration encountered enormous challenges, such as underwater exploration, drilling location determination, and offshore communications. By 1949, 11 fields and 44 exploratory wells were operating in the Gulf of Mexico.

As the industry continued to evolve through the 1950s, oil production became the second-largest revenue generator for the country, after income taxes. The U.S. government passed the U.S. Submerged Lands Act in 1953, which set the federal government's title and ownership of submerged lands at three miles from a state's coastline. The OCSLA was also passed which provided for federal jurisdiction over submerged lands of the OCS and authorized the Secretary of the Interior to lease those lands for mineral development. After the Santa Barbara Oil Spill in 1969, Congress passed several acts which spurred the development of oil spill regulation and research. They included the National Environmental Policy Act, which mandates a detailed environmental review before any major or controversial federal action, the Clean Air Act, which regulates the emission of air pollutants from industrial activities, and the Coastal Zone Management Act, which requires state review of federal actions that would affect land and water use of the coastal zone. In 1977, the Clean Water Act passed, which regulates the discharge of pollutants into surface waters.

Creation of BOEM from the Reorganization of Minerals Management Service (MMS)

In 1982, Congress passed the Federal Oil & Gas Royalty Management Act, which mandates protection of the environment and conservation of federal lands in the course of building oil and gas facilities. The Secretary of the Interior designated the MMS as the administrative

agency responsible for the mineral leasing of submerged OCS lands and for the supervision of offshore operations after lease issuance. On May 19, 2010, MMS was renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). On October 1, 2010, the Office of Natural Resource Revenues (ONRR) split from BOEMRE, and on October 1, 2011, BOEMRE was divided into BOEM and Bureau of Safety and Environmental Enforcement (BSEE.) See the Reorganization page for more information.

Source: http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Outer-Continental-Shelf/Lands-Act-History/OCSLA-HIstory.aspx.

Cases:

- Treasure Salvors, Inc. v. The Unidentified, Wrecked & Abandoned Vessel, 569 F.2d 330 (5th Cir. 1978), modifying 408 F. Supp. 907 (S.D. Fla. 1976). Click here for a summary of the case.
    - The judgment of the lower court granting title under the law of finds was modified and affirmed. The federal government appeal of that judgment failed to demonstrate a claim of ownership over a shipwrecked Spanish vessel outside of the territorial jurisdiction of the U.S. The Court thus rejected the application of the Abandoned Property Act and the Antiquities Act. The Court also stated that "an extension of jurisdiction for purposes of controlling the exploitation of the natural resources of the continental shelf is not necessarily an extension of sovereignty." This case supports the view that OCSLA only extends federal control over the outer continental shelf for purposes of exploration and exploitation of natural resources and establishes that abandoned shipwrecks found on the OCS are governed by the traditional law of salvage, except where there is a specific preservation law or permitting regime that can be used to protect submerged cultural resources.

No Comment

K. Alaska Statehood Act, 1958

Alaska Statehood Act: July 7, 1958

There are three documents that need to be taken as a whole. First was the proposed Alaska Constitution, approved March 19, 1955 by a Constitutional Convention, which was approved by the voice of the people, April 24, 1956; second was the Alaska Statehood Act, signed by President Eisenhower on July 7, 1958 and third was the revised constitution of the new state of Alaska. There were several sections of the Alaska Statehood Act that repealed, modified or gave meaning to the proposed constitution of April 24, 1956. There were sovereignty and property issues resolved, including Section 6 (e), fish and wildlife.

Article 8, section 2. General Authority. Some individuals try to apply the term “benefit of its people” only to Alaskans. As you will see in the Supreme Court Hughes v Oklahoma holding, no state can restrict the benefits to any one particular state.

United States Statutes at Large: Containing the Laws and Concurrent Resolutions ….and Reorganization Plan, Amendment to the Alaska Constitution, and Proclamations

An act to provide for the admission of the State of Alaska into the Union

SEC. 1.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held an April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

SEC. 5. (Property Issues)

The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

SEC. 6. (Property Issues)

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U. S. C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U. S. C., secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U. S. C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: **Provided, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the**

administration, management, and conservation of said resources in the broad national interest: Provided, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937, as amended (16 U. S. C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U. S. C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U. S. C., secs. 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U. S. C., sec. 772 et seq.).

(m) The Submerged Lands Act of 1953 (Public Law 31, Eightythird Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

Comment: The Secretary of the Interior **NEVER** certified to Congress that the new state of Alaska had complied with this provision for administration and management of fish and wildlife.

L. Constitution of the State of Alaska, 1959

The Constitution of the State of Alaska, Article VIII, specifically addresses the property issues:

Article 8 - Natural Resources (as amended by the Alaska Statehood Act, 1958)

§ 1. Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the **public interest. Note: public interest is the Nation's interest.**

§ 2. General Authority

The legislature shall provide for the utilization, development, and conservation of all natural resources **belonging to the State, including land and waters, for the maximum benefit of its people.**

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 4. Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses. Note: Broad National Interest

§ 5. Facilities and Improvements

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

§ 6. State Public Domain

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

§ 7. Special Purpose Sites

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

§ 8. Leases

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

§ 9. Sales and Grants

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

§ 10. Public Notice

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

§ 11. Mineral Rights

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

§ 12. Mineral Leases and Permits

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

§ 13. Water Rights

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to

stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, **<u>and to the general reservation of fish and wildlife.</u>**

§ 14. Access to Navigable Waters

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

<u>§ 15. No Exclusive Right of Fishery</u>

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

<u>§ 16. Protection of Rights</u>

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

<u>§ 17. Uniform Application</u>

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

<u>§ 18. Private Ways of Necessity</u>

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

Comments:

I. All prior actions by the three branches of the Federal Government remain as a matter of law.

II. The SLA was upheld in 1954 by the U.S. Supreme Court (Alabama v. Texas) emphasizing that **<u>Congress could relinquish to the states the federal government's property rights over the submerged lands without interfering with U.S. national sovereign interests.</u>**

III. The Federal Government gave each state property rights to submerged lands. Federal Government is the original and residual owner. If a state fails in their national interest duties, then the property can be returned to the Federal Government.

IV. Also, the passing of the **SLA does not interfere with U.S. National Sovereign Interests. The SLA does not interfere with or modify any other actions taken by the Federal Government**.

V. The Alaska Statehood Act of 1958 was developed and organized under Geer 1896. Hughes v. Oklahoma, 1979 is 21 years in the future.

VI. Comment: A careful examination needs to be made concerning what was the original meaning of this section. Every new state had unique property rights granted as they were admitted into the Union. There was no "standard package of property rights" that applied to new states. The Territory of Alaska property rights that came with the State of Alaska are contained in the Statehood Act of 1958. It is a myth to think that Alaska somehow was tricked or cheated by the passage of the Alaska Statehood Act of 1958. Alaska fully participated in this legislation. If Alaskans or Alaska made a bad deal, they only have to look in a mirror.

VII. Comment: Alaskans had the smell of oil tax revenues in their minds and agreed to forego strong property interests in fish (salmon) in the hope that Alaska could get to own fish (salmon) at a later date.

M. National Historic Preservation Act, 1966

National Historic Preservation Act of 1966

As amended through 1992

Public Law 102-575

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT.915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, and Public Law 102-575).

Other federal actions that developed the scope of sovereignty, property rights and national interests:

I. Federal Waters Pollution Act (1948)

II. This Act may be cited as the "National Historic Preservation Act" (1966)

III. The Clean Water Act 33 U.S.C. § 1251 et seq (1972)

N. United States v. Oregon, 1968

Salmon and Steelhead Fisheries on the West Coast: United States v. Oregon

United States v. Oregon (302 F. Supp. 899) is the ongoing Federal court proceeding first brought in 1968 to enforce the reserved fishing rights of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation.

West Coast

United States v. Oregon (302 F. Supp. 899) is the ongoing Federal court proceeding first brought in 1968 to enforce the reserved fishing rights of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation. The "parties" to U.S. v. Oregon include: the states of Washington, Oregon, and Idaho; the United States; the Shoshone-Bannock Tribes, the Confederated Tribes of the Warm Springs of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation.

In his 1969 decision, Judge Robert C. Belloni of the Federal District Court for the District of Oregon ruled that state regulatory power over Indian fishing is limited because treaties made in 1855 between the United States and the tribes reserved the tribes' exclusive rights to fish in waters running through their reservations and at "all usual and accustomed places, in common with the citizens of the United States [or citizens of the territory]." Sohappy v. Smith, 302 F. Supp. 899 (D. Oregon 1969). The court further held that the state is limited in its power to regulate treaty Indian fisheries. Among other things, the court held that the state may only regulate when reasonable and necessary for conservation, provided reasonable regulation of non-Indian activities is insufficient to meet the conservation purpose, the regulations are the least restrictive possible, the regulations do not discriminate against Indians, and voluntary tribal measures are not adequate.

Later in 1975, Judge George Boldt considered identical treaty language in United States v. Washington. Judge Boldt held that the "in common with the citizens of the United States [or citizens of the territory]" language reserved 50 percent of all the harvestable fish destined for the tribes' traditional fishing places. Judge Belloni reached the same holding, that the Columbia River treaty tribes' were entitled to 50 percent of the harvestable runs destined to reach the tribes' usual and accustomed fishing grounds and stations.

Fisheries in the Columbia River have subsequently been managed subject to provisions of United States v. Oregon under the continuing jurisdiction of the federal court. The Columbia River Fish Management Plan provided a framework for management from 1988 through 1998, although certain provisions were modified during that time to address concerns related to the increasing number of ESA-listed species. **After 1998, fisheries were managed through a series of short-term agreements among the parties, the duration of which ranged from several months to ten years.** The 2018-2027 United States v. Oregon Management Agreement provides the current framework for managing fisheries and hatchery programs in much of the Columbia River Basin.

Comment: The salmon and steelhead allocation(s) of harvest(s) were matters of pre-existing treaties between the Federal Government and (sovereign) and certain ancestral people (sovereign(s)). Treaties, as a matter of law, rank in application above Acts of Congress. The courts can interpret these treaties. Pre-existing treaties will be a matter of law above a state's interest. The interests of the treaty party will supersede property rights of a state, without regard to the timing of admission of that state to the union.

Comment: This 1969 decision by Federal District Court Judge Belloni provides a precedent for short-term agreements among the parties lasting from 10 months to 10 years.

O. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) of 1969, as amended.

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July

3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

A NEPA analysis is required for every Federal Fisheries Management Plan (FMP).

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. **fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;**

2. **assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;**

3. **attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;**

4. **preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;**

5. **achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and**

6. **enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.**

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332]. The Congress authorizes and directs that, **to the fullest extent possible**: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) **all agencies of the Federal Government shall –**

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334]. Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

Comment: The 1969, NEPA legislation directly involves sovereignty, Commerce Clause issues, property rights and the broad national interest(s). The NEPA Act applies to every part of national sovereignty: land, water, fish, wildlife and federal resources, including money in any Federal action.

Comment: Public Interest – to declare a national policy which will encourage successful salmon food production (MSA, NS 1: MSY management) and enjoyable harmony between man and his environment (MSA sustained yields), eliminate damage, enrich the understanding of ecological systems (MSA, NS 2: Best Scientific Information Available, NS 8: Importance of Coastal Communities).

P. Alaska Native Claims Settlement Act, 1971

Alaska Native Claims Settlement Act

The Alaska Native Claims Settlement Act (ANCSA) was signed into law by President Richard Nixon on December 18, 1971, constituting at the time the largest land claims settlement in United States history. ANCSA was intended to resolve long-standing issues surrounding aboriginal (ancestral) land claims in Alaska, as well as to stimulate economic development throughout Alaska.

When Alaska became a state in 1959, section 4 of the Alaska Statehood Act provided that any existing Alaska Native land claims would be unaffected by statehood and held in status quo. Yet while section 4 of the act preserved Native land claims until later settlement, section 6 allowed for the state government to claim lands deemed vacant. Section 6 granted the State of Alaska the right to select lands then in the hands of the federal government, with the exception of Native territory. As a result, nearly 104.5 million acres (423,000 km2) from the public domain would eventually be transferred to the state. The state government also attempted to acquire lands under section 6 of the Statehood Act that were subject to Native claims under section 4, and that were currently occupied and used by Alaska Natives. **The federal Bureau of Land Management began to process the Alaska government's selections without taking into account the Native claims and without informing the affected Native groups.**

But a succeeding Alaska state administration under Governor William A. Egan would stake out positions upon which the AFN and other stakeholders could largely agree. Native leaders, in addition to Alaska's congressional delegation and the state's newly elected Governor William A. Egan, eventually reached the basis for presenting an agreement to Congress.

In 1968, the Atlantic-Richfield Company discovered oil at Prudhoe Bay on the Arctic coast, catapulting the issue of land ownership (property rights) into headlines. the oil companies proposed building a pipeline to carry the oil across Alaska to the port of Valdez. From there, the oil would be loaded onto tankers and shipped to the contiguous states. The plan had been approved, but a permit to construct the pipeline, which would cross lands involved in the land claims dispute, could not be granted until the Native claims were settled.

In 1971, the Alaska Native Claims Settlement Act was signed into law by President Nixon. It abrogated Native claims to aboriginal lands except those that are the subject of the law. In return, Natives received up to 44 million acres (180,000 km2) of land and were paid $963 million for their property rights. The land and money were to be divided among regional, urban, and village tribal corporations established under the law, often recognizing existing leadership.

Q. Marine Mammal Protection Act, 1972

Marine Mammal Protection Act

The MMPA was enacted in October 1972 in partial response to growing concerns among scientists and the general public that certain species and populations of marine mammals were in danger of extinction or depletion as a result of human activities. The MMPA set forth a national policy to prevent marine mammal species and population stocks from diminishing, as a result of human activities, beyond the point at which they cease to be significant functioning elements of the ecosystems of which they are a part.

Comment: In direct opposition to Geer 1896. This was also passed in the broad national interest over objection by the coastal states, including Alaska. This is a good example of Federal Sovereignty.

R. United States v. Washington, 1975

United States v. Washington

United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), commonly known as the **Boldt Decision** (from the name of the trial court judge, George Hugo Boldt), was a 1974 case heard in the United States District Court for the Western District of Washington and the United States Court of Appeals for the Ninth Circuit. It reaffirmed the

reserved right of American Indian tribes in the State of Washington to act alongside the state as co-managers of salmon and other fish, and to continue harvesting them in accordance with the various treaties that the United States had signed with the tribes. The tribes of Washington had ceded their land to the United States but had reserved the right to fish as they had always done, including fishing at their traditional locations that were off the designated reservations. Over time, the state of Washington had infringed on the treaty rights of the tribes despite losing a series of court cases on the issue. Those cases provided the Indians a right of access through private property to their fishing locations, and said that the state could neither charge Indians a fee to fish nor discriminate against the tribes in the method of fishing allowed. Those cases also provided for the Indians' rights to a fair and equitable share of the harvest. The Boldt decision further defined that reserved right, holding that the tribes were entitled to half the fish harvest each year.

In 1975 the Ninth Circuit Court of Appeals upheld Judge Boldt's ruling. The U.S. Supreme Court declined to hear the case. **After the state refused to enforce the court order, Judge Boldt ordered the United States Coast Guard and federal law enforcement agencies to enforce his rulings.** On July 2, 1979, the Supreme Court rejected a collateral attack on the case, largely endorsing Judge Boldt's ruling and the opinion of the Ninth Circuit. In Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, **Justice John Paul Stevens wrote that "[b]oth sides have a right, secured by treaty, to take a fair share of the available fish." The Supreme Court also endorsed Boldt's orders to enforce his rulings by the use of federal law enforcement assets and the Coast Guard.**

Comment: Judge Boldt’s decision sets a precedent for the use of Federal Law Enforcement to manage a fishery.

S. United States v. Alaska, 1975 **(THIS IS VERY IMPORTANT TO COOK INLET)**

United States v. Alaska

Supreme Court of United States

Argued April 19, 1975

Decided June 23, 1975

Certiorari to the United States Court of Appeals for the Ninth Circuit.

In early 1967, the State of Alaska offered 2,500 acres of submerged lands in lower Cook Inlet [South of Kalgin Can] for a competitive oil and gas lease sale. The tract in question is more than three geographical miles from the shore of the inlet and is seaward more than three miles from a line across Kalgin Island, where the headlands are about 24 miles apart, as contrasted with 47 miles at the natural entrance at Cape Douglas. In view of the United States, the Kalgin Island line

marks the limit of the portion of the inlet that qualifies as inland waters. The United States, contending that the lower inlet constitutes high seas, brought suit in the United States District Court for the District of Alaska to quiet title and for injunctive relief against the State. Alaska defended on the ground that the inlet, in its entirety, was within the accepted definition of a “historic bay” and thus constituted inland waters properly subject to state sovereignty. Alaska prevailed in District Court. 352 F. Supp. 815 (1972). The United States Court of Appeals for the Ninth Circuit affirmed with a *per curiam* opinion. 497 F 2d 1155 (1974). **We granted certiorari because of the importance of the litigation and because the case presented a substantial question concerning the proof necessary to establish a body of water as a historic bay. 419 U.S. 1045 (1974).**

State sovereignty over submerged lands rests on the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. §§ 1301-1315. By this Act, Congress effectively confirmed to the States the ownership of submerged lands within three miles of their coastlines. See *United States* v. *Maine*. 420 U.S 515 (1975). “Coast line was defined in terms not only of land but, as well, of ”the seaward limit of inland waters.” The term “inland waters” was left undefined.

In reviewing the period of United States sovereignty over the Territory of Alaska, the District Court found that there had been five separate instances in which the Federal Government exercised authority over all the waters of cook inlet. Pet. For Cert. 26a-37a.

Our conclusion that the fact of enforcement of game and fish regulations in cook Inlet is inadequate, as a matter of law, to establish historic title to the inlet as inland waters is not based on mere technicality. The assertion of national jurisdiction over coastal waters for purposes of fisheries management frequently differs in geographic extent from the boundaries claimed as inland or even territorial waters.

Thus, for example, the Gharrett-Scudder line, which the District Court considered “a classic demonstration of the assertion by the United States government of its claim to sovereignty over the whole of Cook Inlet,” Pet. for Cert. 37a., was drawn almost solely with reference to the needs of the coastal salmon net fisheries and was never intended to depict the boundaries of the territorial waters of the United States. Indeed, the very method of drawing the fishery boundaries by use of straight baselines conflicted with this country’s traditional policy of measuring its territorial waters by the sinuosity of the coast. See *United States* v. *California*, 381 U.S., at 167-169.

Section 6 (m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act “shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.” 72 Stat. 343, note following 48 U.S.C. c. 2. Section 2 of the Act provides: “The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.” 72 Stat. 339, not following 48 U.S.C c. 2.

The term 'boundaries' includes the seaward boundaries of a State…as they existed at the time such State became a member of the Union…but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic or Pacific Ocean…"

For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as line as the sum total of the lengths across different mouths. Islands within an indentation shall be included as if there were part of the water areas of the indentation.

If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

In this case, the U.S. Supreme Court held:

I. **Enforcement of fish and game laws was inadequate, and a matter of law, to establish historic title to the inlet**

II. **Base lines were to be a single straight 24 nautical mile line in length, islands to be considered as water**

III. **Submerged lands shall have the same meaning as Section 6 (m) of the Alaska Statehood Act, 1958**

IV. **Different boundary lines may be established dependent on original Federal ownership and property situations**

T. The Magnuson-Stevens Act, 1976 – 2007 Revision

Statement of Broad National Interest(s)

Purposes – It is therefore declared to be the purposes of the Congress in this act to:

SEC. 2. FINDINGS, PURPOSES, AND POLICY 16 U.S.C. 1801

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, **and the anadromous species (see Appendix 2) which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.**

104-297

(2) **Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.**

(3) **Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation.** Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. **(Note: overfishing by sport and commercial.)** The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

95-354

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

101-627

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

104-297

(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

104-297

(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

109-479

(11) A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.

109-479

(12) International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.

(b) PURPOSES. – It is therefore declared to be the purposes of the Congress in this Act-

99-659, 101-627, 102-251

(1) **to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]***;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

104-297

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

99-659, 101-627

(4) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

101-627

(5) to foster and maintain the diversity of fisheries in the United States; and

104-297

(6) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS 16 U.S.C. 1802

As used in this Act, unless the context otherwise requires—

(1) **The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.**

104-297

(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

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(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

104-297

(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) **The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures**

(A) **which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and**

(B) which are designed to assure that—

(i) **a supply of food and other products may be taken**, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

Comments:

I. Congress declares (a) **Sovereign Rights** for the purposes of exploring, exploiting, conserving and managing all fish and; (B) **Exclusive Fishery Management Authority** beyond the Exclusive Economic Zone (EEZ) and **over such anadromous**

species which spawn in the United States rivers or estuaries and constitutes a valuable and renewable natural resource.

II. The MSA Finding is abundantly clear concerning "Supremacy" and Broad National Interests. Thus Congress, not the State, is defining the Broad National Interest.

III. The Federal Government, not Alaska, claims Sovereignty over the fishery resources, including anadromous fish stocks.

IV. Additional comment: By 1958, the Federal Government had signed several treaties including migratory birds and halibut. Also, there were Indian country recognitions, Alaskan native peoples were pressing for resolutions to their claims, national petroleum reserves, military bases and outposts. Several Antiquity Act withdrawals (Refuges and National Parks), Organic Act withdrawals (Forest Service). It is very clear that the Federal government did reserve to themselves these resources. That is what **broad national interest**, at a minimum, meant. It is pure fiction that the State of Alaska somehow at Statehood became the "new owner" of these resources, Notwithstanding the Submerged Lands Act of 1953. See Hughes v. Oklahoma.

U. Hughes v. Oklahoma, 1979 **(THIS IS AN EXTREMELY IMPORTANT CASE FOR COOK INLET)**

U.S. Supreme Court

Hughes v. Oklahoma, 441 U.S. 322 (1979)

No. 77-1439

Argued January 9, 1979

Decided April 24, 1979

441 U.S. 322

APPEAL FROM THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

Syllabus

An Oklahoma statute prohibits transporting or shipping outside the State for sale natural minnows seined or procured from waters within the State. Appellant, who holds a Texas license to operate a commercial minnow business in Texas, was charged with violating the Oklahoma statute by transporting from Oklahoma to Texas a load of natural minnows purchased from a minnow dealer licensed to do business in Oklahoma. **Appellant's defense that the Oklahoma statute was unconstitutional because it was repugnant to the Commerce Clause was rejected**,

and he was convicted and fined. The Oklahoma Court of Criminal Appeals affirmed, relying on Geer v. Connecticut, 161 U. S. 519, which had sustained against a Commerce Clause challenge a Connecticut statute forbidding the transportation beyond the State of game birds that had been lawfully killed within the State.

We noted probable jurisdiction, 439 U.S. 815 (1978). We reverse. Geer v. Connecticut, 161 U. S. 519 (1896), on which the Court of Criminal Appeals relied, is overruled. In that circumstance, § 4-115(B) cannot survive appellant's Commerce Clause attack.

The few simple words of the Commerce Clause -- "The Congress shall have Power . . . To regulate Commerce . . . among the several States . . ." -- reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that, in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation. Page 441 U. S. 326

Held: The Oklahoma statute is repugnant to the Commerce Clause. Pp. 441 U. S. 325-339.

(a) *Geer v. Connecticut, supra,* is overruled. Time has revealed the error of the result reached in *Geer* through its application of the 19th-century legal fiction of state ownership of wild animals. Challenges under the Commerce Clause to state regulations of wild animals should be considered according to the same general rule applied to state regulations of other natural resources. Pp. 326-335.

(b) Under that general rule, this Court must inquire whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; whether the statute serves a legitimate local purpose; and, if so, whether alternative means could promote this local purpose as well without discriminating against interstate commerce. P. 336.

(c) The Oklahoma statute, on its face, discriminates against interstate [441 U. S. 322, 323] commerce by forbidding the transportation of natural minnows out of the State for purposes of sale, and thus overtly blocking the flow of interstate commerce at the State's border. The statute is not a "last ditch" attempt at conservation after nondiscriminatory alternatives have proved unfeasible. It is, rather, a choice of the most discriminatory means, even though nondiscriminatory alternatives would seem likely to fulfill the State's purported legitimate local purpose of conservation more effectively. Pp. 336-338.

(d) States may promote the legitimate purpose of protecting and conserving wild animal life within their borders only in ways consistent with the basic principle that the pertinent economic unit is the Nation; and when a wild animal becomes an article of commerce, its use cannot be limited to the citizens of one State to the exclusion of citizens of another State. Pp. 338-339.

Mr. Justice Field and the first Mr. Justice Harlan dissented, rejecting as artificial and formalistic the Court's analysis of "ownership" and "commerce" in wild game. **They would have affirmed the State's power to provide for the protection of wild game, but only "so far as such protection . . . does not contravene the power of Congress in the regulation of interstate [441 U. S. 322, 329] commerce." Their view was that, "[w]hen any animal . . . is lawfully killed for the purposes of food or other uses of man, it becomes an article of commerce, and its use cannot be limited to the citizens of one State to the exclusion of citizens of another State."**

The erosion of Geer[, 1896] began only 15 years after it was decided. A Commerce Clause challenge was addressed to an Oklahoma statute designed to prohibit the transportation beyond the State of natural gas produced by wells within the State. West v. Kansas Natural Gas Co., 221 U. S. 229 (1911). Based on reasoning parallel to that in Geer, Oklahoma urged its right to "conserve" the gas for the use of its own citizens, stressing the limited supply and the absence of alternative sources of fuel within the State. Nevertheless, the Court, in a passage reminiscent of the dissents in Geer, condemned the obvious protectionist motive in the Oklahoma statute and rejected the State's arguments with a powerful reaffirmation of the vision of the Framers.

The *Geer* analysis has also been eroded to the point of virtual extinction in cases involving regulation of wild animals. The first challenge to *Geer's* theory of a State's power over wild animals came in *Missouri v. Holland,* 252 U. S. 416 (1920). The State of Missouri, relying on the theory of state ownership of wild animals, attacked the Migratory Bird Treaty Act on the ground that it interfered with the State's control over wild animals within its boundaries. Writing for the Court, Mr. Justice Holmes upheld the Act as a proper [441 U. S. 332, 332] exercise of the treatymaking power. He commented in passing on the artificiality of the *Geer* rationale: **"To put the claim of the State upon title is to lean upon a slender reed." 252 U.S. at 252 U. S. at 434.**

Foster-Fountain Packing Co. v. Haydel, 278 U. S. 1 (1928), undermined *Geer* even more directly. A Louisiana statute forbade the transportation beyond the State of shrimp taken in Louisiana waters until the heads and shells had been removed. The statute clearly relied on the *Geer* "state control of ownership" rationale. Anyone lawfully taking shrimp from Louisiana waters was granted "a qualified interest which may be sold within the State." Only after the head and shell [441 U. S. 322, 333] had been removed within the State did the taker or possessor acquire "title and the right to sell and ship the same *beyond the limit[s] of the State, without restriction or reservation.'" 278 U.S. at 8.*

Ignoring the niceties of "title" to the shrimp and concentrating instead on the purposes and effects of the statute, *Foster-Fountain Packing* struck down the statute as economic protectionism abhorrent to the Commerce Clause.

"The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that

power, like its other powers, so as not to discriminate without reason against citizens of other States."

"A State does not stand in the same position as the owner of a private game preserve, and it is pure fantasy to talk of 'owning' wild fish, birds, or animals. Neither the States nor the Federal Government, any more than a hopeful fisherman or hunter, has title to these creatures until they are reduced to possession by skillful capture. . . . *Geer v. Connecticut,* 161 U. S. 519, 539-540 (1896) [441 U. S. 322, 335]. (Field, J., dissenting). The 'ownership' language of cases such as those cited by appellant must be understood as no more than a 19th-century legal fiction expressing 'the importance to its people that a State have power to preserve and regulate the exploitation of an important resource.' [Citing *Toomer.*] Under modern analysis, the question is simply whether the State has exercised its police power in conformity with the federal laws and Constitution." 431 U.S. at 284.

Oklahoma argues that § 4-115(B) serves a legitimate local purpose in that it is "readily apparent as a conservation measure." Brief for Appellee 8. The State's interest in maintaining the ecological balance in state waters by avoiding the removal of inordinate numbers of minnows may well qualify as a legitimate local purpose. We consider the States' interests in conservation and protection of wild animals as legitimate local purposes similar to the States' interests in protecting the health and safety of their citizens. *See, e.g., Firemen v. Chicago, R.I. & P. R. Co.,* 393 U. S. 129 (1968). But the scope of legitimate state interests in "conservation" is narrower under this analysis than it was under *Geer.* A State may no longer "keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose." ***Geer v. Connecticut,* 161 U.S. at 530. The fiction of state ownership may no longer be used to force those outside the State to bear the full costs of "conserving" the wild animals within its borders when equally effective nondiscriminatory conservation measures are available.**

Far from choosing the least discriminatory alternative, [441 U. S. 322, 338] Oklahoma has chosen to "conserve" its minnows in the way that most overtly discriminates against interstate commerce. The State places no limits on the numbers of minnows that can be taken by licensed minnow dealers; nor does it limit in any way how these minnows may be disposed of within the State. Yet it forbids the transportation of any commercially significant number of natural minnows out of the State for sale. **Section 4-115(B) is certainly not a "last ditch" attempt at conservation after nondiscriminatory alternatives have proved unfeasible. It is rather a choice of the most discriminatory means even though nondiscriminatory alternatives would seem likely to fulfill the State's purported legitimate local purpose more effectively.**

We therefore hold that § 4-115(B) is repugnant to the Commerce Clause.

The overruling of *Geer* does not leave the States powerless to protect and conserve wild animal life within their borders. Today's decision makes clear, however, that States may promote [441 U. S. 322, 339] **this legitimate purpose only in ways consistent with the basic principle that "our economic unit is the Nation**," *H. P. Hood & Sons, Inc. v. Du Mond,* 336 U.S. at 537, and that, when a wild animal "becomes an article of commerce . . . , **its use cannot be limited to the citizens of**

one State to the exclusion of citizens of another State." *Geer v. Connecticut, supra* at 538 (Field, J., dissenting).

Reversed.

V. Idaho ex rel. Evans v. Oregon, 1980

U.S. Supreme Court

Idaho ex rel. Evans v. Oregon, 444 U.S. 380 (1980)

Argued November 26, 1979 Decided January 21, 1980

Syllabus

Held: Failure to join the United States as a party to **Idaho's action against Oregon and Washington to secure equitable apportionment of various runs** of anadromous fish migrating between spawning grounds in Idaho and the Pacific Ocean, will not prevent this Court from entering an adequate judgment. Pp. 444 U. S. 387-393.

(a) None of the federal interests cited by the Special Master as rendering impossible an adequate judgment in the absence of the United States as a party -- the Government's control over the ocean fishery on the runs of the fish at issue, its management of the various dams that separate the spawning grounds in Idaho from the Pacific Ocean, and its role as trustee for the various Indian tribes with treaty rights in the fish at issue -- constitutes a sufficient reason for dismissing the action for the failure to join the United States as the Special Master recommends. *Arizona v. California,* 298 U. S. 558, and *Texas v. New Mexico,* 352 U.S. 991, distinguished. Pp. 444 U. S. 387-391.

W. EEZ Proclamation 5030, 1983

Proclamation 5030--Exclusive Economic Zone of the United States of America

Source: The provisions of Proclamation 5030 of Mar. 10, 1983, appear at 48 FR 10605, 3 CFR, 1983 Comp., p. 22, unless otherwise noted.

WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

X. Pullen v. Ulmer, 1995 **(THIS IS A VERY IMPORTANT ALASKAN CASE)**

Pullen v. Ulmer

Harvey PULLEN and United Fishermen of Alaska, Inc., Appellants, v. Fran ULMER, Lieutenant Governor of the State of Alaska, Fairness in Salmon Harvest, Inc., Appellees.

Supreme Court of Alaska. No. S-7642. **923 P.2d 54 (1996)**

August 26, 1996.

Pullen and United Fishermen of Alaska, Inc. challenge an initiative designed to set priorities among different salmon harvest users.

II. FACTS AND PROCEEDINGS

In August of 1995, Appellee Fairness In Salmon Harvest, Inc. (F.I.S.H.) (Bob Penney, Kenai River Sportfishing Association and others) submitted an initiative application to the state. The proposed initiative provided that subsistence, personal use, and sport fisheries would receive a preference to take a portion of the salmon harvest before the remaining harvestable salmon are allocated to other harvest users. The proposed initiative also sets a limit on the amount to be allocated to personal use and sport fisheries of five percent of the total projected statewide salmon harvest, though this limit may be exceeded for any particular species or region.

On November 7, 1995, appellants Harvey Pullen and United Fishermen of Alaska (Pullen) filed suit for declaratory and injunctive relief challenging, on several grounds, the Lieutenant Governor's certification of the initiative. More particularly, Pullen asserted that (1) the proposed bill is not a proper subject of an initiative because it would make an appropriation of the State of Alaska's salmon resources, (2) the allocation of salmon resources of the state among common users is exclusively the responsibility of the legislature, (3) the Lieutenant Governor's impartial summary explaining the proposed bill is misleading as to its terms and effects, and (4) the proposed classification of common users of the state's salmon resource is underinclusive and unfair because the initiative denies commercial fishers equal treatment and protection, a violation of the Uniform Application *57 clause in article VIII, section 17 of the Alaska Constitution. By way of relief, Pullen sought a declaration of unconstitutionality and an injunction prohibiting the Lieutenant Governor from placing the initiative on the November 1996 general election ballot.

*58 III. STANDARD OF REVIEW

The parties agree that there are no genuine issues of material fact in dispute. The appeal primarily concerns only questions of the constitutionality of the proposed initiative. These are questions of law. In regard to questions of law, we apply our independent judgment. Croft v. Pan Alaska Trucking, Inc., 820 P.2d 1064, 1066 (Alaska 1991). Regarding questions of law, this court adopts the rule of law that is most persuasive in light of precedent, reason and policy. Guin v. Ha, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

IV. DISCUSSION

Pullen's appeal from the superior court's decision on summary judgment raises two issues. First, Pullen argues that management of Alaska's salmon resources falls exclusively within the power of the state legislature as trustee of Alaska's wildlife, and therefore is not a proper subject of an initiative. Second, Pullen contends that the proposed initiative makes an appropriation of state property, in violation of article XI, section 7 of the Alaska Constitution. We address this latter contention first.

We noted [in Thomas v. Bailey] **that the constitutional convention delegates "wanted to prohibit the initiative process from being used to enact give-away programs, which would have inherent popular appeal, that would endanger the state treasury."** ... We conclude that the logic of Bailey also applies in the instant appeal. The prohibition against appropriation by initiative applies to all state and municipal assets.

It is against this decisional background that F.I.S.H. argues that wildlife is not truly an asset of the state. F.I.S.H. argues that state ownership of wildlife is merely a legal fiction, and should not be applied in the context of deciding whether wildlife is an asset of the state which is subject to appropriation. F.I.S.H. cites several United States Supreme Court cases in support of its position that a state does not literally own the wildlife found within its borders. More particularly, F.I.S.H. concludes that "[a]s a matter of simple common sense, it should be obvious that whatever the Constitution says about fish and game `belonging to the state,' salmon or moose or other wild creatures are not state assets in the same way that money or buildings are assets." (Footnote omitted.)

We agree that this facet of F.I.S.H.'s argument is well established the state does not own wildlife in precisely the same way that it owns ordinary property. However, this does not answer the question of whether the state's interest in wildlife is such that it can be appropriately characterized as state property subject to appropriation.

Insofar as loss, use, or exploitation of wildlife directly affects Alaska's fish, it is a state "asset." The fact that other aspects of ownership may not be present in the state's legal relationship to its wildlife does not change this conclusion. We reach this holding for the following additional reasons.

Article VIII – Natural Resources

§ 1. Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

*60 Article VIII, section 2 of the Alaska Constitution provides:

General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for maximum benefit of its people.

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people **(National Interest)**. We have twice recognized this duty in our prior decisions.

The Court overruled Geer's state ownership doctrine in Hughes v. Oklahoma, 441 U.S. 322, 99 S. Ct. 1727, 60 L. Ed. 2d 250 (1979). That case involved facts almost identical to Geer: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See id. at 323, 99 S. Ct. at 1729, 60 L. Ed. 2d at 254. The Court struck down the statute as violative of the commerce clause. Id. at 338, 99 S. Ct. at 1737, 60 L. Ed. 2d at 263. **The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." Id. at 335, 99 S. Ct. at 1735, 60 L. Ed. 2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in Geer.** Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership." Id. at 335-36, 99 S. Ct. at 1735-36, 6C L.Ed.2d at 261. .... **After Hughes, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted supra, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains.**

First, it is clear that the proposed initiative [F.I.S.H.] is designed to appeal to the self-interests of sport, personal and subsistence fishers, in that these groups are specifically targeted to receive state assets in the circumstance of harvestable shortages. In short, it "tempt[s] the voter to [prefer] ... his immediate financial welfare at the expense of vital government activities." Bailey, 595 P.2d at 8. Second, the initiative significantly reduces the legislature's and Board of Fisheries' control of and discretion over allocation decisions, particularly in the event of stock-specific or region-specific shortages of salmon between the competing needs of users.

V. CONCLUSION

The judgment of the superior court is REVERSED insofar as it holds that the proposed F.I.S.H. initiative does not make an appropriation of state assets in violation of the provisions of article

XI, section 7 of the *65 Alaska Constitution. The case is REMANDED to the superior court with directions to amend its judgment to provide that the Lieutenant Governor is permanently enjoined from placing the proposed F.I.S.H. initiative on the 1996 general election ballot.

[8] **According to F.I.S.H., "[t]he United States Supreme Court itself has been careful in its decisions since [Geer v. Connecticut, 161 U.S. 519, 16 S. Ct. 600, 40 L. Ed. 793 (1896)] to clarify the fact that state `ownership' of fish and game is simply a shorthand way of describing the state's significant interest in preserving and regulating fish and wildlife within its borders."** In addition to Geer, F.I.S.H. cited Hughes v. Oklahoma, 441 U.S. 322, 99 S. Ct. 1727, 60 L. Ed. 2d 250 (1979) (overruling Geer); Baldwin v. Montana Fish and Game Comm'n, 436 U.S. 371, 384-86, 98 S. Ct. 1852, 1860-62, 56 L. Ed. 2d 354 (1978); Toomer v. Witsell, 334 U.S. 385, 402, 68 S. Ct. 1156, 1165, 92 L. Ed. 1460 (1948); and Douglas v. Seacoast Products, Inc., 431 U.S. 265, 284, 97 S. Ct. 1740, 1751-52, 52 L. Ed. 2d 304 (1977) **("The `ownership' language of cases such as those cited by appellant must be understood as no more than a 19th century legal fiction expressing `the importance ... that a state have power to preserve and regulate the exploitation of an important resource.'").**

Y. Sustainable Fisheries Act, 1996

Sustainable Fisheries Act of 1996

The Sustainable Fisheries Act of 1996 is an amendment to the Magnuson-Stevens Fishery Conservation and Management Act, a law governing the management of marine fisheries in the United States. Another major amendment to this legislation was later made under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. The SFA was enacted to amend the outdated MSFCMA of 1976. The amendment included changes to the purpose of the act, definitions, and international affairs, as well as many small changes.

The U.S. Senate bill S. 39 was passed by the 104th United States Congressional session and enacted into law by the 42nd President of the United States Bill Clinton on October 11, 1996.

Purpose

There were several major changes to the purpose of the law:

1. Prohibiting fisheries managers from using social, economic, or any other justifications to allow catch targets to exceed a calculated "maximum sustainable yield."

2. Mandating that for each managed species, fisheries managers quantitatively define "overfishing" (certain specified maximum allowed rates of fishing mortality) and "overfished" (depletion below a certain population level).

3. Mandating regular assessment of which fish populations that are overfished, and creating an official list of overfished species in U.S. waters.

4. Mandating that for overfished species, plans must be enacted allowing them to recover to quantitatively specified target population levels (usually about one-third of the estimated pre-fishing population) within ten years (with certain exceptions).

5. Adding that catches of unintended species or unmarketable fish be reduced, to the extent practicable.

6. Adding the promotion of protection of "Essential Fish Habitat."

7. Adding the promotion of catch and release programs to conservation and management principles.

Definitions

The following terms which became relevant in the twenty years following the original [Magnuson-Stevens, 1976] act were added:

1. Bycatch

2. Charter Fishing

3. Commercial Fishing

4. Economic Discards

5. Essential Fish Habitat

6. Fishing Community

7. Individual Fishing Quota

8. Optimum Yield

9. Overfishing (Overfished)

10. Pacific Insular Area

11. Recreational Fishing

12. Regulatory Discards

13. Special Areas

14. Vessel Subject to the Jurisdiction of the United States

International affairs

Besides establishing the Pacific Insular Area fishery agreement regulations, the SFA directs the Secretary of State to "seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen."

Z. Shark Conservation Act, 2009

Shark Conservation Act

The Shark Conservation Act (P.L. 111-348) was introduced in January 2009 by Representative Madeleine Bordallo (D-GU) in the House of Representatives and Senator John Kerry (D-MA) in the Senate in April 2009. The long-awaited bill was approved by both chambers by unanimous consent on the last days of the 111th Congress in December 2010. President Obama signed the bill into law on January 5, 2011.

The bill represents a giant step forward for shark [skates and rays excluded] conservation as it strengthens the US ban on shark finning, the practice by which living sharks' fins are sliced off and their mutilated bodies thrown back into the ocean, where the sharks endure long, painful deaths. Shark finning kills an estimated 73 million sharks each year, driven by the demand for shark fin soup.

In 2000, President Bill Clinton signed the Shark Finning Prohibition Act, making it unlawful to possess a shark fin in US waters without a corresponding carcass. Loopholes in the ban, however, prevented effective enforcement, and finning continued. As a countermeasure, the National Oceanic and Atmospheric Administration issued regulations in 2008 mandating that sharks must be landed with fins attached in the Atlantic, Caribbean and Gulf of Mexico, but not the Pacific.

Details of the bill

- Requires all federally managed sharks to be brought to port with their fins naturally attached, bringing Pacific fisheries under the same regulation as Atlantic, Gulf and Caribbean fisheries.
- Provides clear rules for enforcement officials who were unable to identify shark species once fins were removed and therefore were unable to expose and prevent finning. Accurate species identification is imperative to ensure that endangered species are not being harvested and that finning is not occurring.

- Amends the High Seas Driftnet Fishing Moratorium Protection Act to allow the US to identify nations that do not have comparable shark conservation measures in place.
- Prohibits all US flagged vessels from having custody, control or possession of shark fins without the corresponding carcass and prohibits the transfer of fins at sea.
- Provides discretionary authority to the President to restrict imports of shark products from those countries not taking comparable actions to protect sharks.
- Includes an exemption for smooth dogfish sharks, for which a fishery exists along the Mid-Atlantic coast. The exemption allows fishermen to continue to separate fins of this species from carcasses at sea to conserve space on their boats. These fishermen will be responsible for demonstrating that the fins on their boat belong to the carcasses.

Why is this important?

Sharks have ruled the oceans for more than 400 million years and the removal of such large numbers from the ecosystem can have irreversible effects on every species in the marine web, including popular seafood such as shellfish. Since sharks are top predators, their decimation creates a ripple effect throughout the marine food web, impairing the balance of the ocean ecosystem. Sharks are particularly vulnerable, because they produce few young and reach sexual maturity late in life.

There is a global misconception that the oceans are teeming with sharks. Existing population data shows that some shark populations have declined by as much as 99 percent. Many shark species are being overfished at rates and with methods that are highly unsustainable and, as a result, are now facing extinction.

APPENDIX 1

Refuge establishment timeline provided as an example of broad national interest(s):

Date	Event
1871	The U.S. Commission on Fish and Fisheries established by Congress. The Commission is the first Federal agency concerned with natural resources conservation, directed to study "the decrease of the food fishes...and to suggest remedial measures."
1885	The Division of Economic Ornithology and Mammology is established in the U.S. Department of Agriculture. The division studies the geographical distribution of animals and plants throughout the country.
1896	The Division of Economic Ornithology and Mammology is renamed the Division of Biological Survey.
1900	The Lacey Act becomes the first Federal law protecting game, prohibiting the interstate shipment of illegally taken wildlife and the importation of species. Enforcement of the act is the responsibility of the Division of Biological Survey.
1903	Pelican Island Federal Bird Reservation is established by President Theodore Roosevelt and placed under the jurisdiction of the Division of Biological Survey. Pelican Island is recognized as the first unit of what is now the National Wildlife Refuge System.
1905	The Division of Biological Survey becomes the Bureau of Biological Survey in the Department of Agriculture.
1913	Congress passes the first Migratory Bird Act providing the Federal government with the authority to regulate hunting of migratory birds. This law is repealed in 1918 as a result of the passage of the Migratory Bird Treaty Act, which implements the Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds.
1916	The Bureau of Biological Survey's administrative responsibilities are expanded to focus on five program areas: investigations of food habits of birds and mammals in relation to agriculture; biological investigations with special emphasis on the

	distribution of native species; supervision of reservations set aside for birds and mammals and the preservation of wild game; enforcement of the Lacey Act; and, administration of the Federal Migratory Bird Act.
1925	The Alaska Game Law is passed, authorizing the Bureau of Biological Survey to work with the Alaska Game Commission to manage fish and wildlife in the state.
1934	The Migratory Bird Hunting Stamp Act (or "Duck Stamp Act") is passed. Waterfowl Hunters are required to purchase a stamp; revenues from the sales provide for lands to be purchased by the Federal government for "inviolate migratory bird sanctuaries." Since 1934, 4.5 million acres of waterfowl habitat has been protected.
1934	Jay Norwood "Ding" Darling is appointed as Chief, Bureau of Biological Survey, resulting in a new and ambitious course for the agency, to acquire and protect wetlands and other vital habitat throughout the country. Darling appoints J. Clark Salyer II as the first Chief of the Bureau's Wildlife Refuge Program. The number of refuges expands tremendously over the next 30 years under Salyer's leadership. Salyer is widely regarded as the "Father of the Refuge System."
1939	The Bureaus of Biological Survey and Fisheries are transferred from the Departments of Agriculture and Commerce, respectively, to the Department of the Interior.
1940	The Fish and Wildlife Service is created by combining the Bureaus of Biological Survey and Fisheries.
1940	Executive Order 2416 renames 193 "reservations" as "refuges," where it is "unlawful to hunt, trap, capture, willfully disturb, or kill any bird or wild animal...or to enter thereupon for any purpose, except as permitted by...rules and regulations of the Secretary of the Interior."
1956	The Fish and Wildlife Service is renamed the U.S. Fish and Wildlife Service, with two bureaus, the Bureau of Sport Fisheries and the Bureau of Commercial Fisheries. Management of wildlife refuges falls to the former.
1964	The Wilderness Act establishes the National Wilderness Preservation System. Since its passage, over 20 million acres of wilderness have been designated on units of the National Wildlife Refuge System.

1966	The National Wildlife Refuge System is formally established, under section 4 of the Endangered Species Act. This law, commonly referred to as the National Wildlife Refuge System Administration Act, consolidates various authorities and authorizes the Secretary of the Interior to permit the use of refuges whenever it is determined that such a use is compatible with the purposes for which the area was established.
1968	The first Wilderness Area managed by the U.S. Fish and Wildlife Service is designated by an act of Congress at the Great Swamp National Wildlife Refuge, New Jersey.
1969	Cape Newenham National Wildlife Refuge was established by the Secretary of the Interior. With goals of protecting important waterfowl staging areas, nesting seabird colonies, and marine mammal haulouts, 265,000 acres of land were included in the refuge.
1970	The Bureau of Commercial Fisheries is abolished and its functions are moved to the National Marine Fisheries Service in the Department of Commerce. The Bureau of Sport Fisheries and Wildlife remains in the Department of the Interior, continuing to manage refuges.
1971	Alaska Native Claims Settlement Act (ANCSA) passed. This act allowed for the withdrawl of lands that were considered "national interest" lands as possible additions to the National Park Service, Refuge System, or Forest Service, or to establish Wild and Scenic River desigantions. ANCSA, and the subsequent withdrawls, set in motion a chain of events that would lead to the creation of Togiak National Wildlife Refuge and several other refuges in Alaska.
1974	The Bureau of Sport Fisheries and Wildlife is renamed the U.S. Fish and Wildlife Service.
1980	Alaska National Interest Lands Conservation Act (ANILCA) passed. This act designated the Togiak National Wildlife Refuge and incorporated the Cape Newenham Refuge within the 4.7 million acre Togiak Refuge, with the northern 2.3 million acres designated as a Wilderness Area.
1984	The Yukon-Kuskokwim Delta Goose Management Plan, originally known as the Hooper Bay Agreement, was passed by the Association of Village Council Presidents meeting in Hooper Bay, Alaska. The plan works to conserve populations of cackling Canada geese, black brant, white-fronted geese, and emperor geese that breed on the Yukon-Kuskokwim Delta. Togiak Refuge is an important area for these geese as well.

1997	The National Wildlife Refuge System Improvement Act explicitly states that the mission of the National Wildlife Refuge System is wildlife conservation. The act identifies a number of wildlife-dependent recreational uses that will be given priority consideration, mandates a long-term refuge planning process, and clarifies the process for determining the compatibility of refuge uses.
1998	The National Wildlife Refuge Volunteer and Community Partnerships Act authorizes partnerships with organizations to promote the understanding and conservation of fish, wildlife, plants, and cultural resources on refuges and directing the Service to develop educational programs.
2003	Centennial of the National Wildlife Refuge System: 100 years since the creation of Pelican Island Refuge by President Theodore Roosevelt. Happy Birthday!

APPENDIX 2

Anadromous Fish Stocks of the United States:

	Family	Species	Management
1.	Acipenseridae (sturgeons)	2 species	FMP Throughout Range
2.	Clupeidae (herring, shad)	7 Species	FMP Throughout Range
3.	Moronidae (temperate river basses)	2 Species	FMP Throughout range
4.	Osmeridae (smelts)	5 Species	FMP Throughout Range
5.	Petromyzontidae (lampreys)	2 Species	FMP Throughout Range
6.	Salmonidae (trout, char)	11 Species	FMPs, Some Throughout Range
7.	Anguillidae (freshwater eels)	3 Species	FMP Throughout Range