

State of Alaska FY2002 Governor's Operating Budget

Department of Law
Statehood Defense
BRU/Component

Component: Statehood Defense

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Component Mission

Mission statement appears at the department summary level.

Component Services Provided

The Statehood Defense group handles the following types of cases:

ENDANGERED SPECIES ACT CASES: These cases involve the efforts of the National Marine Fisheries Service to protect Columbia River fall chinook salmon, listed as endangered under the Endangered Species Act, by restricting chinook salmon harvest in Alaska. The state considers the restriction unreasonable because it will have an insignificant effect on the salmon population, which has been decimated by the dams on the river system.

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

ACCESS CASES: Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The state currently is in litigation against the United States on an RS2477 right-of-way, the Harrison Creek-Portage Creek Trail. Additionally, the state has several other cases where access is a primary issue, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access issues.

ANILCA CHALLENGES: These cases constitute challenges by rural residents based on the priority granted them in Title VIII of the Alaska National Interest Lands Conservation Act for hunting and fishing for subsistence purposes. The state is defending its regulatory authority in several cases in U.S. District Court and anticipates further cases now that the federal regulations granting the Federal Subsistence Board broad regulatory authority have become final.

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

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

Component Goals and Strategies

The Statehood Defense group of the Department of Law litigates issues raised by conflicts between state and federal jurisdiction. The group handles a variety of complex cases that will have a profound and lasting impact on

management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state.

1. To continue to litigate to protect the State's fisheries management authority.
 - The federal courts hold that the state, not the United States, has authority to manage hunting and fishing for subsistence purposes in navigable waters in which the federal government has water rights.
 - The federal courts hold that the United States does not have authority to regulate hunting and fishing on lands that have been selected, but not conveyed.
 - The federal courts hold that the United States does not have authority to regulate fisheries off "public lands" as defined in ANILCA.
2. To protect Alaska's salmon resources in the Pacific Salmon Treaty.
 - Southern U.S. treaty parties adhere to long-term agreement for the sharing of Chinook salmon.
 - The federal government focuses on the true causes of the decline of endangered Pacific salmon stocks instead of restricting the harvest of Alaska fishers.
3. To participate in the ESA process as it relates to Pacific salmon and litigate when needed to protect Alaska against unreasonable restrictions on harvest levels of salmon listed under the Endangered Species Act, when Alaska's incidental take has little measurable effect on the number of fish returning to spawn.
4. To protect access to state and private lands and on public waters across Alaska.
 - Alaska continues to litigate title to the RS 2477 right-of-way known as the Harrison Creek-Portage Creek Trail.
 - Alaska files suit or otherwise acts to protect access on navigable waters restricted by upland owners.
 - Alaska publishes maps and pamphlets to educate the public about their rights to access public waterways and easements as well as the limits on use of private uplands.
 - Alaskans are able to exercise their rights to access state and private lands through federal lands.
 - Alaska provides information to BLM that convinces it to declare waterways navigable within the survey windows it is completing.
5. To litigate to protect the State's title to navigable waters.

Alaska continues its suit in the United States Supreme Court to quiet title to the submerged lands underlying the marine waters of the Tongass National Forest and Glacier Bay National Park.

6. To continue to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program
 - The federal subsistence program considers the state's comments on proposed regulations, places conservation first, and does not infringe upon the state's regulatory authority or unnecessarily restrict the use of the state's fish and game by qualified subsistence, sport, or commercial users under state law.
 - Protocols are developed to facilitate dual management by the state and federal programs.
7. To litigate to protect Alaska's jurisdiction to manage, protect, and use its own resources against challenges by or on behalf of the federal government.
 - Alaska will be free to regulate activities on navigable waters and on state and private lands without interference from the United States.

Key Component Issues for FY2001 – 2002

Glacier Bay -Filed an original action in the United States Supreme Court to quiet title to all lands underlying marine waters in Southeast Alaska, including those within Glacier Bay National Park and the Tongass National Forest, and were successful in getting the court to accept the case. The court assigned a special master who began work in October, 2000. The \$170,000 included in our Statehood Defense budget to handle this case did not anticipate the cost of the special master. The trial is anticipated for FY 2002. We plan to seek funding for the approximately \$205,000 in projected need for this case as a supplemental to our FY 2001 operating budget.

Major Component Accomplishments for FY2000

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

Alaska continues to work towards resolution of litigation over its claim of title to the Harrison Creek-Portage Creek RS 2477 trail and the Jualin Mine RS 2477 road.

Alaska has continued to provide information and develop pamphlets for public distribution educating the public on its rights to access public waterways and easements, as well as the limits on use of private uplands.

Alaska has educated individual property owners about public rights of access to public waterways.

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

Alaska filed an original action in the United States Supreme Court to quiet title to all lands underlying marine waters in Southeast Alaska, including those within Glacier Bay National Park and the Tongass National Forest, and is progressing with the case.

On Protection of Salmon Resources:

Alaska has participated in the Section 7 consultation process under the Endangered Species Act which resulted in a Biological Opinion approving the Pacific Salmon Treaty and management of the Southeast Alaska salmon fisheries subject to the Pacific Salmon Treaty as not likely to jeopardize any of 16 listed Evolutionarily Significant Units (ESUs) of Pacific Salmon, steelhead or cutthroat trout.

Alaska continues to act as a cooperating agency in the preparation of an Environmental Impact Statement (EIS) addressing the coastwide salmon fishery.

On Protection of State Fisheries Authority:

The department appealed a final judgment finding federal authority to manage most navigable waters in Alaska for subsistence hunting and fishing, and convinced the Ninth Circuit Court of Appeals to hear the case as a full court.

Alaska Department of Law continued to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program.

The Department drafted and/or reviewed the state's comments about proposed federal regulations that affect state authority and resources, such as the Federal Subsistence Board proposal to designate the Kenai Peninsula as rural, and the federal program to compensate the fishermen phased out of the Glacier Bay fisheries.

The state has filed an amicus brief with the Ninth Circuit Court of Appeals in *Greenpeace v. NMFS*, challenging the issuance of the injunction closing areas within 20 miles of shore to groundfish trawling, to protect stellar sea lions.

Statutory and Regulatory Authority

AS 44.23.020

Statehood Defense
Component Financial Summary

All dollars in thousands

	FY2000 Actuals	FY2001 Authorized	FY2002 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	680.7	695.2	754.3
72000 Travel	9.1	14.4	14.4
73000 Contractual	229.6	364.4	300.3
74000 Supplies	10.9	26.4	26.4
75000 Equipment	9.0	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	939.3	1,100.4	1,095.4
Funding Sources:			
1004 General Fund Receipts	925.8	1,093.9	1,095.4
1007 Inter-Agency Receipts	13.5	0.0	0.0
1053 Investment Loss Trust Fund	0.0	4.7	0.0
1108 Statutory Designated Program Receipts	0.0	1.8	0.0
Funding Totals	939.3	1,100.4	1,095.4

Estimated Revenue Collections

Description	Master Revenue Account	FY2000 Actuals	FY2001 Authorized	FY2001 Cash Estimate	FY2002 Governor	FY2003 Forecast
Unrestricted Revenues						
None.		0.0	0.0	0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0	0.0	0.0
Restricted Revenues						
Interagency Receipts	51015	13.5	0.0	0.0	0.0	0.0
Statutory Designated Program Receipts	51063	0.0	1.8	0.0	0.0	0.0
Investment Loss Trust Fund	51393	0.0	4.7	0.0	0.0	0.0
Restricted Total		13.5	6.5	0.0	0.0	0.0
Total Estimated Revenues		13.5	6.5	0.0	0.0	0.0

Statehood Defense

Proposed Changes in Levels of Service for FY2002

None.

Summary of Component Budget Changes From FY2001 Authorized to FY2002 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2001 Authorized	1,098.6	0.0	1.8	1,100.4
Adjustments which will continue current level of service:				
-Convert Special FY2001 Labor Cost Fund Sources to GF	1.8	0.0	-1.8	0.0
-Year 2 Labor Costs - Net Change from FY 2001	-5.0	0.0	0.0	-5.0
FY2002 Governor	1,095.4	0.0	0.0	1,095.4

Statehood Defense

Personal Services Information

Authorized Positions			Personal Services Costs	
	FY2001 Authorized	FY2002 Governor		
Full-time	9	9	Annual Salaries	592,055
Part-time	1	1	COLA	12,748
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	172,800
			<i>Less 3.00% Vacancy Factor</i>	(23,328)
			Lump Sum Premium Pay	0
Totals	10	10	Total Personal Services	754,275

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	3	0	0	0	3
Attorney IV	2	0	0	0	2
Attorney V	2	0	0	0	2
Legal Secretary I	1	0	0	0	1
Paralegal Asst II	1	0	0	0	1
Totals	10	0	0	0	10