

IN THE SUPREME COURT OF THE STATE OF ALASKA

Alaska Trappers Association, Inc., )  
National Trappers Association and )  
Inc., )

Appellants/Cross-Appellees, )

v. )

City of Valdez, )

Appellee/Cross-Appellant. )

Supreme Court No.: S-18189/S-18389

Trial Court Case No.: 3VA-20-00015CI

APPEAL FROM THE SUPERIOR COURT  
THIRD JUDICIAL DISTRICT AT VALDEZ  
THE HONORABLE RACHEL L. AHRENS

BRIEF OF STATE OF ALASKA AS *AMICUS CURIAE*

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(The Alaska Constitutional Convention Proceedings Excerpts are attached hereto as Attachment 2)

## **AUTHORITIES PRINCIPALLY RELIED UPON**

### **Constitutional provisions:**

#### **Alaska Const. Art. VIII, § 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.

#### **Alaska Const. Art. VIII, § 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.

#### **Alaska Const. Art. VIII, § 3: Common Use**

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

#### **Alaska Const. Art. VIII, § 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.

#### **Alaska Const. Art. X, § 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.

**Federal Statutes:**

**16 U.S.C. § 669: Cooperation of Secretary of the Interior with States; conditions:**

The Secretary of the Interior is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter in this chapter set forth; but no money apportioned under this chapter to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this chapter and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after September 2, 1937, the assent of the Governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this chapter, shall agree upon the wildlife-restoration projects to be aided in such State under the terms of this chapter and all projects shall conform to the standards fixed by the Secretary of the Interior. One of the purposes of this chapter is to provide financial and technical assistance to the States for the promotion of hunting and recreational shooting.

**Other Authorities:**

**Valdez Municipal Code, Chapter 9.38 - Trapping:**

**Sections:**

- 9.38.010 Purpose of chapter.**
- 9.38.020 Definitions.**
- 9.38.030 Trapping allowed.**
- 9.38.040 Other exceptions.**
- 9.38.050 Violation—Penalty.**

**A. 9.38.010 Purpose of chapter.**

It is the purpose of this chapter to enact land use regulations pursuant to AS 29.35.260(c) to protect all persons from hazardous devices and to protect domesticated animals and pets from damage and destruction which may result from uncontrolled trapping activities. (Ord. 20-05 § 1; Ord. 17-03 § 1 (part); Ord. 14-06 § 1 (part); Ord. 05-10 § 1 (part))

**B. 9.38.020 Definitions.**

The following words and phrases shall have the meanings respectively ascribed to them by this section:

“Trap” means any device used for the purpose of catching, capturing, snaring, holding or killing animals.

“Trapping” means the placing or setting of traps with the intent to catch animals. This definition does not apply to the catching of animals within a dwelling place or garage, shed or barn. (Ord. 20-05 § 1; Ord. 17-03 § 1 (part); Ord. 14-06 § 1 (part); Ord. 05-10 § 1 (part))

**C. 9.38.030 Trapping allowed.**

Trapping for both recreational and for subsistence purposes is allowed within the Valdez city limits except that:

- A. Trapping shall not be allowed within one-half mile in any direction of an occupied subdivision.
- B. Trapping shall not be allowed within five hundred feet of any road, excluding bridges and culverts outside the downtown area and past the duck flats. No trapping is allowed within the area known as the Valdez duck flats, which is defined as that area bounded on the east by Mineral Creek Loop Road, on the west by the Richardson Highway, on the south by a line extending from the Valdez Container Terminal to and including Dock Point and on the north by elevation of one thousand feet.
- C. Trapping shall not be allowed within portions of Mineral Creek Canyon and all areas northeast of the Richardson Highway from Airport Road to the Glacier Stream Bridge. No trapping is allowed within five hundred feet of the Mineral Creek trails, located in Mineral Creek Canyon as designated on Exhibits A and B to Section 12.08.010.
- D. No trapping is allowed within the area known as Mineral Creek State Park, which is defined as a fifty-acre parcel known as Tract A-2, ASLS 99-21; and a 91.68-acre portion of U.S. Survey 5113 bounded on the north by Raven Subdivision and Tract A-1, ASLA 79-117, on the east by Tract A-1, ASLA 79-117, on the south by Blueberry Subdivision and Port Valdez, and on the west by Tract A-2, ASLA 99-21. (Ord. 20-05 § 1; Ord. 17-03 § 1 (part); Ord. 14-06 § 1 (part); Ord. 05-10 § 1 (part))

**D. 9.38.040 Other exceptions.**

The chief of police or the chief’s designee shall have the absolute authority to authorize trapping within a restricted area within the Valdez city limits as is deemed necessary to protect public health and safety. Examples of exceptions include, but are not limited to, the following:

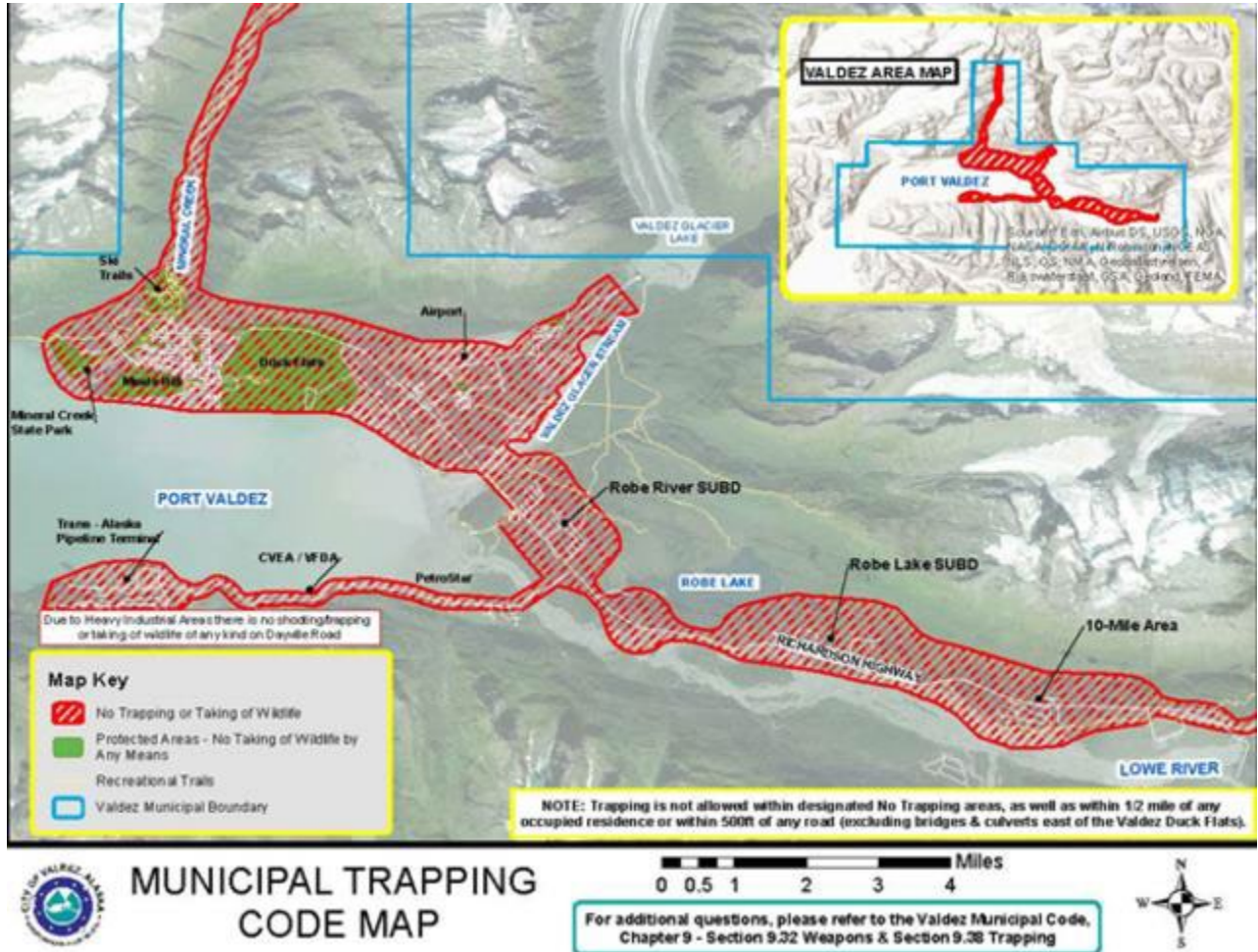
- A. Employees or agents of governmental units or agencies who, using live traps, in the course of their duties, are required to trap animals or birds for authorized purposes.
- B. Scientists in their work of identifying and studying wildlife, animals and birds for scientific purposes.



C. Persons who have specific animal nuisance problems. (Ord. 20-05 § 1; Ord. 17-03 § 1 (part); Ord. 14-06 § 1 (part); Ord. 05-10 § 1 (part). Formerly 9.38.080)

**E. 9.38.050 Violation—Penalty.**

Violation of Sections 9.38.010 through 9.38.030 is punishable by a minimum fine of fifty dollars. Upon citation under Sections 9.38.010 through 9.38.030, court appearance is mandatory. (Ord. 20-05 § 1; Ord. 17-03 § 1 (part). Formerly 9.38.090)



(Ord. 20-05; Ord. 17-03 § 1 (part); Ord. 14-06 § 1 (part))

## **PARTIES**

Alaska Trappers Association, Inc. and National Trappers Association Inc. are the appellants. City of Valdez is the appellee.

## **INTRODUCTION**

The State of Alaska submits this brief as *amicus curiae* to support the position of the appellants (“Trappers”) and incorporates their assertions.<sup>1</sup> By upholding the Valdez ordinance, codified in the Valdez Municipal Code as 9.38, the Superior Court misconstrued the constitutional delegation of comprehensive authority over wildlife to the legislature and the legislature’s plenary delegation of that authority to the Alaska Board of Game (“Board”) and the Alaska Department of Fish and Game (“ADF&G”). The State urges this Court to reverse the superior court’s ruling because State law preempts the local ordinance.

## **BACKGROUND** **Alaska’s Wildlife Management**

Self-management of natural resources, including Alaska’s wildlife resources, was a driving force behind Alaska statehood; fish and wildlife are the property of the State held in trust for the benefit of all residents.<sup>2</sup> Ownership of the resources passed to Alaska upon statehood under the Alaska Statehood Act.<sup>3</sup> General management authority over

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<sup>1</sup> The State’s request to intervene was denied by the Superior Court. *See* Orders dated June 21 [Exc. 340] and July 30, 2021 [missing from the record; attached].

<sup>2</sup> *See, e.g., Pullen v. Ulmer*, 923 P.2d 54, 57 n.5 (Alaska 1996); *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 47(1962).

<sup>3</sup> Pub. L. No. 85-508, (1958), 72 Stat. 339.

fish and wildlife within Alaska passed from the federal government to Alaska shortly after Alaska's adoption of a comprehensive fish and game code.<sup>4</sup>

The United States Congress, through the Pittman-Robertson Act, 16 U.S.C. 669, recognizes state primacy for fish and wildlife management and conservation. The federal law provides dedicated funds to state fish and wildlife departments for those purposes. The State provides matching funds from proceeds derived from the sale of licenses and tags. These are dedicated funds in the Fish and Game Fund. The legislature does not need to appropriate this money but gives ADF&G annual spending authority for the 25% match needed for federal Pittman Robertson funds. There is no corresponding source of federal or state funding for municipal management of the state's game resources.

The Alaska Constitution requires the State to manage wildlife for the maximum benefit and use for all Alaskans.<sup>5</sup> Wildlife is reserved to the people for common use,<sup>6</sup> and must be "utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."<sup>7</sup>

Responsibility for wildlife management in Alaska is constitutionally vested in the Alaska legislature.<sup>8</sup> The legislature delegated regulatory authority to the Alaska Board of

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<sup>4</sup> See Executive Order No. 10857, 25 Fed. Reg. 33 (Dec 29, 1959) (transferring management of fish and wildlife resources to the State of Alaska effective January 1, 1960); see also *Metlakatla Indian Community*, 369 U.S. at 47 n.2.

<sup>5</sup> Alaska Const. Art. VIII, §§ 1-2.

<sup>6</sup> Alaska Const. Art. VIII, § 3.

<sup>7</sup> Alaska Const. Art. VIII, § 4.

<sup>8</sup> Alaska Const. Art. VIII, § 2.

Game<sup>9</sup> and administrative authority to the Commissioner of the Alaska Department of Fish and Game.<sup>10</sup> Subject to a subsistence priority,<sup>11</sup> the Board exercises its authority to manage wildlife, including the authority to regulate taking of wildlife resources.

Under this authority, the Board has adopted comprehensive wildlife regulations.<sup>12</sup>

The Commissioner has the statutory duty to “promote fishing, hunting, and trapping and preserve the heritage of fishing, hunting, and trapping in the state.”<sup>13</sup> The Board adopted regulations opening trapping in Game Management Unit 6, an area that includes the City of Valdez.<sup>14</sup> The Board also has the authority, where appropriate, to close certain areas to trapping within Units that are otherwise open to trapping, and it has done so.<sup>15</sup>

### ARGUMENT

The Valdez ordinance improperly prevents the application of state law. Alaska’s constitutional framers, and in turn the Alaska legislature, intended to comprehensively occupy the field, leaving no room for conflicting local regulation.

This Court has addressed preemption of municipal authority by the State in several cases discussed below. In *Jacko*, this Court found local mining restrictions were invalid because they would prevent the State from carrying out the legislature’s directives.

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<sup>9</sup> AS 16.05.221; AS 16.05.241; AS 16.05.255; AS 16.05.258.

<sup>10</sup> AS 16.05.010; AS 16.05.020; AS 16.05.050; AS 16.05.060; AS 16.05.241.

<sup>11</sup> AS 16.05.258.

<sup>12</sup> AS 16.05.255; 5 AAC 84; 5 AAC 85; 5 AAC 92.

<sup>13</sup> AS 16.05.050(a)(19).

<sup>14</sup> See 5 AAC 84.270 for trapping seasons and bag limits in Game Management Unit 6 for beaver, coyote, red fox, marten, mink, weasel, muskrat, land otter, squirrel, wolf, and wolverine.

<sup>15</sup> 5 AAC 92.550.

In *Jefferson*, this Court held preemption is implied where the state statute and municipal ordinance “are so substantially irreconcilable that one cannot be given substantive effect if the other is to be accorded the weight of law.”<sup>16</sup> In the earlier *Chugach* decision, preemption was found where the subject matter was of statewide concern. In *Herscher* and *Liberati*, this Court held that only the State – not municipalities – are authorized to manage fish and game.

**F. The Alaska Constitutional Convention intended for the management of all game resources to be regulated by the Department of Fish and Game and the Board of Game.**

The comprehensive nature of the Board of Game’s authority is traceable to its near inclusion in the State Constitution. During the Alaska Constitutional Convention (“Convention”), a significant point of contention was whether or not to create a board or commission to regulate fish and game, as opposed to (or in conjunction with) a principal department responsible for all natural resources.<sup>17</sup> The framers ultimately agreed that a board or commission was preferable to a single principal department head for consistency in policy for some of the state’s most cherished resources. The only concern was whether or not it was appropriate to include the board in the Constitution.<sup>18</sup> Upon recognition that the legislature would have the authority to create such a board or commission, and that

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<sup>16</sup> *Jefferson v. State*, 537, P.2d 37, 43 (Alaska 1974)

<sup>17</sup> *See, e.g.*, Alaska Constitutional Convention Proceedings at 2500-20.

<sup>18</sup> *Id.*

the legislature ought not be restrained by a board with independent authority, the Convention agreed to leave such a board out of the constitutional text.<sup>19</sup>

The First Legislature followed through on the intent of the delegates when it created both the Department of Fish and Game and the Board of Fish and Game in 1959 to manage the wild game of Alaska.<sup>20</sup> This direct path to entrusting the management of Alaska’s game in the Board of Game<sup>21</sup> from the founding of our state speaks to the all-encompassing breadth of authority intended to vest in the Board of Game—leaving no room for regulation by political subdivisions of the state.

Furthermore, during the Convention, through the Committee on Resources, floor debate, and up until the very last set of stylistic amendments, Article VIII, § 2 read “[t]he State of Alaska shall provide for the utilization, conservation and development of all of the natural resources.” This provision was characterized as “indicat[ing] the state’s proprietary interest” over “all of the resources.”<sup>22</sup> A later misunderstanding of the phrase ‘all resources’ gave rise to a further clarification that the State’s authority under § 2 covered all resources owned by the state.<sup>23</sup> These discussions of Article VIII, §2 at the Convention demonstrate the delegates’ plain intention to vest exclusively in the State the power to regulate the natural resources of Alaska, with no caveat for municipal actions—

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<sup>19</sup> *Id.*

<sup>20</sup> Ch. 94 SLA 1959.

<sup>21</sup> The Legislature divided the Board of Fisheries and Game into two separate boards in 1975. Ch. 206 SLA 1975.

<sup>22</sup> Alaska Constitutional Convention Proceedings at 2451.

<sup>23</sup> *Id.* at 2499.

this was their understanding when approving the provision. Section 4 of Article VIII further solidifies that game is owned by the State: “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.”<sup>24</sup>

On January 30, 1959, seven days before the conclusion of the Convention, Delegate Sundborg, Chair of the Style and Drafting Committee, presented Article VIII to the Convention following edits by his committee, stating that “no substantive changes have been made,”<sup>25</sup> and calling upon Delegate Hurley to explain the edits.<sup>26</sup> On section 2, Delegate Hurley stated “[s]ection 2 is the same as Section 2 of the enrolled copy[,] [t]he only change was the state to the legislature,” with no further mention or debate on the word change amongst the Convention. This brought section 2 into its final form, reading as “the Legislature shall provide for . . . .” With the understanding that ‘State of Alaska’ and ‘legislature’ were substantively identical, the Convention intended to, and believed they had, exclusively entrusted the State to “provide for the utilization, conservation, and development of all natural resources.”<sup>27</sup>

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<sup>24</sup> Alaska Const. Art. VIII, § 4.

<sup>25</sup> The Committee on Style and Drafting was prohibited from making substantive changes to provisions submitted to it. *See*, Alaska Constitutional Convention Proceedings, Rule 50, at 200, 213-15.

<sup>26</sup> Alaska Constitutional Convention Proceedings, pg. 3630.

<sup>27</sup> Alaska Const. Art. VIII, § 2.

Once more, the First Legislature followed through on the intent of the Convention with the enactment of HB 201, creating the Board of Fish and Game and vesting in it “the authority to make such rules and regulations as it deems advisable” on matters of game management without recognition of any other entity having such authority.<sup>28</sup>

**G. Field preemption principles apply because the State has Plenary Authority to Manage Trapping.**

As stated above, fish and game are resources held in trust by the State, and governed by Article VIII of the Alaska Constitution.<sup>29</sup> Many decades ago this court confirmed that “the state has the right to direct the use of its natural resources, including fish and game.”<sup>30</sup> Only the State, not a municipality, has the authority to regulate and manage fish and wildlife.<sup>31</sup> No laws confer fish and game management authority on a municipal government. Title 16 of the Alaska Statutes does not delegate nor leave room for the exercise of regulatory authority by a municipal government.<sup>32</sup> Reinforcing the fact that the State has sole authority to regulate trapping are the longstanding legal opinions that municipal governments may not directly manage game, and that neither the Board of Game nor ADF&G can delegate their discretionary authority over game management.<sup>33</sup>

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<sup>28</sup> §6 ch. 94 SLA 1959.

<sup>29</sup> “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.” Article VIII, sec. 4. [Emphasis added.]

<sup>30</sup> *Herscher v. State Dept of Commerce*, 568 P.2d 996, 1003 (Alaska 1977).

<sup>31</sup> *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

<sup>32</sup> AS 16.05.150 authorizes municipal police officers to enforce State fish and game violations. There is no regulatory or management authority given to a municipality.

<sup>33</sup> 1982 Inf.Op.Att’y Gen. (Nov. 19; 661-82-0486); 1988 Inf.Op Att’y Gen. (May 12; 663-88-0521). *See also*, *State v. Kluti Kaah*, 831 P.2d 1270, 1274-1275 (Alaska 1992)



The City of Valdez – as a property owner – can restrict activities on *municipality owned* land within its boundaries. However, the City exceeded its authority by adopting an ordinance affecting *all* lands, regardless of ownership.<sup>34</sup>

In upholding the local ordinance, the superior court relied upon Article X, §11 of the Alaska Constitution, noting that Valdez, as a home rule city, “may exercise all legislative powers not prohibited by law or by charter.” [Exc. 244] The court correctly recognized that restrictions on home rule powers may be either express or implied. [Exc. 245] “The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.” [Exc. 245]<sup>35</sup>

The court erred, however, by upholding the municipal ordinance, codified in the Valdez Municipal Code as 9.38, despite the obvious conflict with state law. The Board of Game, under 5 AAC 84.270, opened GMU 6 to trapping for a dozen species of furbearers. The Board has the authority to close areas but has not chosen to close areas within the boundaries of the City of Valdez. The State regulations (opening the area to trapping) cannot be given effect if the directly contrary City ordinance (closing the same areas to trapping) is given effect.

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(Vacating preliminary injunction that would result in significant and irreparable harm to the state’s interest in orderly game management.)

<sup>34</sup> AS 16.05.790(f)(2) provides that lawful trapping includes trapping on private land with permission of the landowner. AS 11.46.350(b) provides that a person is privileged to enter upon unimproved and unfenced land for lawful activities unless the owner has given notice against trespass by personal communication or conspicuous posting.

<sup>35</sup> *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

This Court’s decision in *Jacko v. State Pebble Ltd. Partnership*<sup>36</sup> is instructive and controlling. In that case, this Court held that a home rule municipality could not adopt an ordinance closing an area to mining where the legislature conferred that authority on the Department of Natural Resources.<sup>37</sup> To do so would allow local government to ignore state decisions and prevent the State from carrying out the legislature’s directives.<sup>38</sup> Local regulation was therefore impliedly preempted. This Court recognized the legislature gave the Department of Natural Resources “charge of all matters affecting exploration, development, and mining of the mineral resources of the state . . . and the administration of the laws with respect to all kinds of mining.”<sup>39</sup>

Here, the superior court distinguished *Jacko* – and ADF&G’s authority over wildlife - based on the language used by the legislature in delegating rulemaking authority to the Board of Game. [Exc. 361-2] The superior court recognized the broad authority given by the legislature to the Board, but improperly concluded that, by saying the Board may adopt hunting and trapping regulations that it considers advisable, the legislature’s language was not “potent” enough to preempt municipal regulation.<sup>40</sup>

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<sup>36</sup> *Jacko v. State Pebble Ltd. Partnership*, 353 P.3d 337 (Alaska 2015).

<sup>37</sup> *Id.* at 344.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* The superior court may have been confused by the legislature’s delegation to three state entities for fish and game management. Unlike the mining statutes delegating authority to the Department of Natural Resources in Title 27 of the Alaska Statutes, in Title 16 the legislature delegated its authority to the Board of Game, Board of Fisheries, and Department of Fish and Game. Collectively, the delegation effected a statewide policy of state management over fish and wildlife and their harvests.

This interpretation overlooked the pervasive, jurisdictional state authority over both fish and game resources that was explicitly adopted in statute: The “legislature recognizes that . . . the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control . . . .”<sup>41</sup>

**C. The municipal ordinance is preempted under the species of preemption known as “conflict” or “obstacle” preemption because it directly conflicts with and creates an obstacle to state law.**

The Valdez Ordinance prohibits trapping on large swaths of state land (see the below map) explicitly including “the area known as Mineral Creek State Park,”<sup>42</sup> a state recreation site managed by the Division of Parks and Outdoor Recreation (DPOR) under an interagency land management agreement (ILMA) with the Department of Natural Resources (DNR). The legislature conveyed management authority for general state lands to DNR.<sup>43</sup> In recognition of the Board’s exclusive authority over wildlife, neither DNR nor DPOR limited trapping at this site.<sup>44</sup> Nevertheless, the City of Valdez now asserts management authority over the taking of game on State land—something not even the land manager may do.

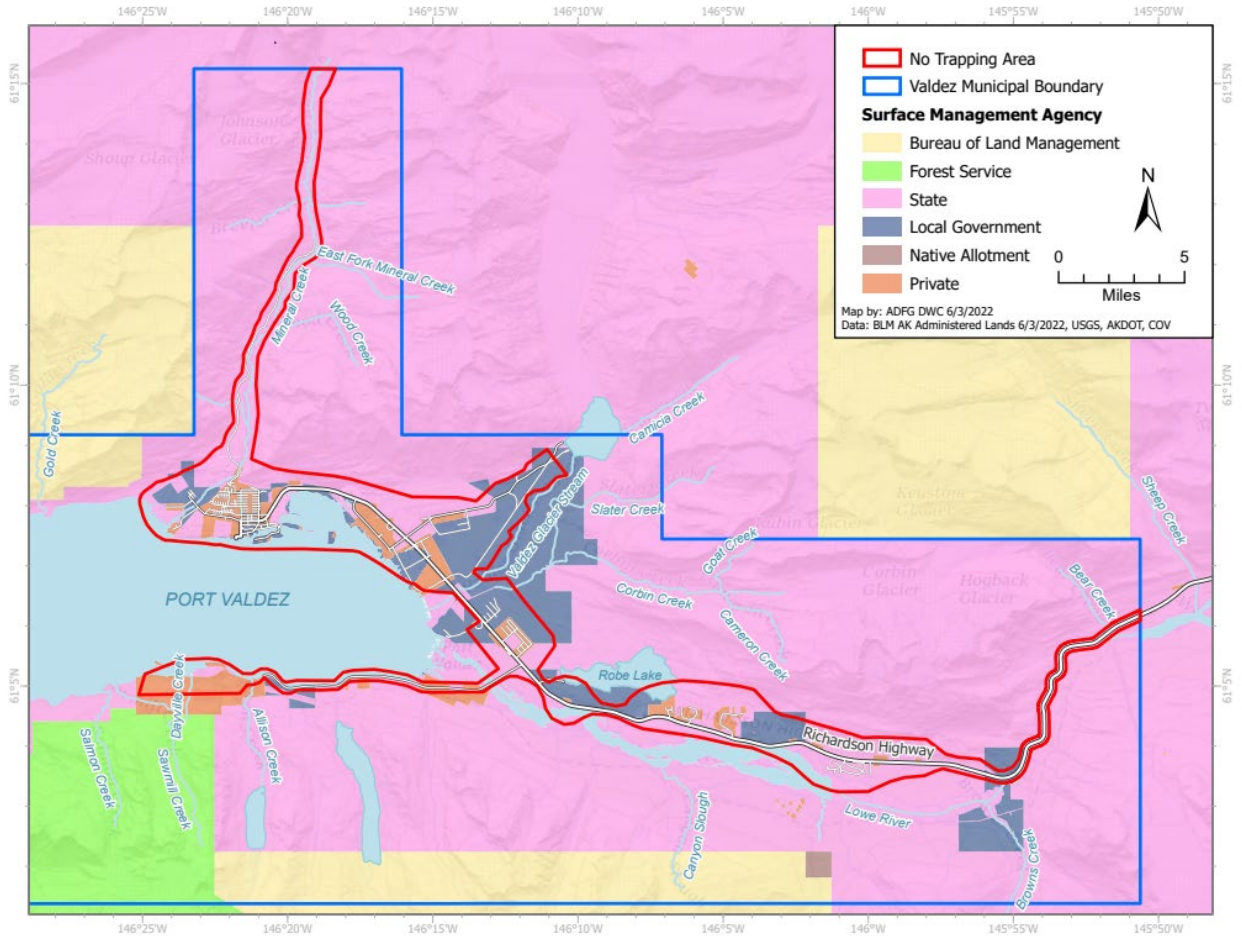
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<sup>41</sup> AS 16.20.010.

<sup>42</sup> Valdez Municipal Code 9.38.030. D.

<sup>43</sup> AS 44.37.020.

<sup>44</sup> *See* 11 AAC 12.990(31) (“state park” is defined as “any land or water managed by the division”); 11 AAC 12 (no regulations prohibiting hunting or trapping in a state park); 11 AAC 20 (no regulations prohibiting hunting or trapping in a state park). 11 AAC 12.190 is the only regulation that mentions trapping, and it does so in the context of discharge of a firearm within a state park related to lawful trapping. 11 AAC 12.190 limits the discharge of firearms near trails, and does not regulate trapping in any manner on state park lands.



This Court has on multiple occasions spoken to this issue of conflicting state and municipal law, recognizing that “the Alaska Constitution contains a broad grant of authority to municipalities,” but “the exercise of that authority is not insulated from possible invalidity when a conflict with state law occurs.”<sup>45</sup> Even where a municipal charter speaks directly to a matter wholly internal to its operations—such as the sale and distribution of city assets—“the municipal charter provision” may be “overridden by statutory authority.”<sup>46</sup>

<sup>45</sup> *Johnson v. City of Fairbanks*, 583 P.2d 181, 184 (1978).

<sup>46</sup> *Id.* at 184 (citing *Jefferson v. State*, 527 P.2d 37 (Alaska 1974)).

The most prevalent test applied by this Court has been the conflict preemption test set forth in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974). Recognizing that home rule municipalities “may exercise all legislative powers not prohibited by law or by charter,”<sup>47</sup> the *Jefferson* court held that such prohibition may be “by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given substantive effect if the other is to be accorded the weight of law.”<sup>48</sup> Here, the decision of the Board and the Valdez ordinance are directly opposed to one another, the former opening the area in question to trapping and the latter closing it. This is classic conflict preemption, fitting squarely within the “substantially irreconcilable” test, necessitating the invalidation of the Valdez ordinance.

Prior to *Jefferson*, in *Chugach Elec.*, a different test was set forth by this court for addressing conflicts in state and municipal law—the “local activity rule,” “a rule requiring the local enactment to yield if it directly or indirectly impeded implementation of statutes which sought to further a statewide policy.”<sup>49</sup> Specifically, this rule provides “an expedient method for resolving an impasse between state statutes [] and municipal ordinances,” where the statutes do not “evinced[] a clear manifestation of intent to occupy the entire field of [] regulation.”<sup>50</sup> The *Jefferson* Court noted that its test focusing on express or implied prohibition “is in accord with this court’s opinions relating to cases of

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<sup>47</sup> Alaska Const. Art. X § 11

<sup>48</sup> *Jefferson v. State*, 537, P.2d 37, 43 (Alaska 1974)

<sup>49</sup> *Chugach Elec. Ass’n v City of Anchorage*, 476 P.2d 115, 117, 122 (Alaska 1970).

<sup>50</sup> *Id.* at 122-23.

conflict between local ordinances and state enactments,” explicitly including *Chugach Elec.* The *Jefferson* Court endorsed the finding of *Chugach Elec.* that “municipalities were prohibited from regulating the same utilities [as the State’s Public Service Commission]” since the “court discerned in the statute a strong policy in favor of treating regulation of public utility service areas as a matter of statewide concern.”

The Superior Court in *Jacko* understood the *Jefferson* legislative intent and ‘substantially irreconcilable’ analysis to replace the ‘local activity rule.’<sup>51</sup> But this court has never endorsed such a proposition,<sup>52</sup> and the local activity rule remains as a species of preemption that applies here.<sup>53</sup> Furthermore, even without the local activity rule, the recognized consistency between the two tests supports a finding that legislating on matters of state-wide concern and vesting authority over that concern into a state entity, evinces an implied prohibition on contrary municipal action.<sup>54</sup>

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<sup>51</sup> *Jacko v. State*, 2014 WL 8396243 (Alaska Super.)

<sup>52</sup> This court applied the *Jefferson* test in *Jacko* without mention of *Chugach Elec.* or the local activity rule. *Jacko*, 353 P.3d at 343.

<sup>53</sup> The local activity rule expresses what the United States Supreme Court has described as “obstacle” preemption. See, e.g., *Arizona v. United States*, 567 U.S. 387, 400-401 (2012) (explaining that “conflict preemption” invalidates a local law where “compliance with both” the higher-level law and the local one “is a physical impossibility” or where “the challenged [local] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in a federal preemption case, or the legislature in a state law preemption case like this one.

<sup>54</sup> Where a local law “impose[s] a duty that [is] inconsistent—i.e. in conflict—with” state law, the local law is preempted. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1480 (2018).

Alaska is home to 2,500–3,500 trappers across 26 game management units<sup>55</sup> and the Board of Game is charged with, among other things, providing these trappers “open and closed seasons and areas for the taking of game.”<sup>56</sup> Pursuant to these duties, while balancing the constitutional directives of “maximum use” and “sustained yield”<sup>57</sup> for over a dozen furbearer species across the whole state,<sup>58</sup> the Board decided to open GMU 6 to trapping. Just as in *Johnson, Jefferson, and Chugach Elec.* the Valdez ordinance “severely impair[s] the proper functioning” of the Board’s decision by closing significant portions of the unit.<sup>59</sup> The municipal ordinance is therefore preempted.

**D. The Proper Avenue to Seek a Change to a Trapping Regulation is to Participate in the State's Board of Game Regulatory Process.**

**1. The legislature delegated authority to the Board to adopt regulations.**

The legislature created the Board by statute, with members selected “on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership.”<sup>60</sup> The legislature expressly delegated authority to the Board to adopt regulations: “The Board of Game may adopt regulations it considers advisable in

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<sup>55</sup> <http://www.adfg.alaska.gov/index.cfm?adfg=trapping.main>

<sup>56</sup> AS 16.05.255(a)(2).

<sup>57</sup> Alaska Const. Art. VIII §§ 1, 4.

<sup>58</sup> 5 AAC 84.260.

<sup>59</sup> *Chugach Elec.*, 476 P.2d at 120.

<sup>60</sup> AS 16.05.221(b).

accordance with AS 44.62 (Administrative Procedure Act).”<sup>61</sup> The broad plenary authority conveyed to the Board includes authorizing the Board “to regulate regarding the conservation, development, or utilization of game in a manner that addresses whether, how, when, and where the public asset of game is allocated or appropriated.”<sup>62</sup>

This Court has explained:

The State of Alaska devotes substantial resources to the protection and management of fish and wildlife. As the trustee of those resources for the people of the state, the state is required to maximize for state residents the benefits of state resources.<sup>63</sup>

Subject to a subsistence priority,<sup>64</sup> the Board uses its authority to manage wildlife, including the authority to regulate taking of wildlife resources. Under this authority, the Board has adopted comprehensive wildlife regulations.<sup>65</sup>

**2. The Board of Game utilizes a very public process; the City of Valdez has many ways to participate.**

Anyone can submit a proposal to the Board for consideration.<sup>66</sup> The Board addresses hunting and trapping regulations on a three year cycle, and may consider a proposal out of cycle if the Board finds it meets the requirements of 5 AAC 92.005. Anyone can participate in public Fish and Game Advisory Committee meetings to make recommendations on proposals that will be heard by the Board. Anyone can submit

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<sup>61</sup> AS 16.05.255(a).

<sup>62</sup> AS 16.05.255(j).

<sup>63</sup> *Shepard v. State*, 897 P.2d 33, 40-41 (Alaska 1995).

<sup>64</sup> AS 16.05.258.

<sup>65</sup> AS 16.05.255; 5 AAC 84; 5 AAC 85; 5 AAC 92.

<sup>66</sup> 5 AAC 96.600-660.



written comments to the Board on proposals, and anyone can testify at a public Board meeting. All proposals, all biological and harvest information provided by the Department, all Advisory Committee comments and recommendations, all written public comments, and much more, can be found on the Board's website. Board deliberations are all conducted in meetings open to the public. All Board meetings are streamed online for anyone who cannot attend in person, and the audio recordings of each meeting is posted on the Board's website to review.<sup>67</sup>

If a change in regulation is sought, the City of Valdez can participate in the Board process in a variety of ways. This is the established procedure for seeking to adopt or change furbearer trapping regulations. The City could work with a local Advisory Committee<sup>68</sup> to agree upon a proposal to be submitted to the Board for consideration, or the City could simply submit a proposal directly to the Board. A proposal from the City of Valdez would be published, and public comments would be solicited. Advisory Committees may review and provide a recommendation on the proposal. The Board would review written comments and listen to oral testimony at a public meeting. The Department would provide information on the managed population at issue. The Board would then deliberate in a public meeting to consider the proposed regulation change.

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<sup>67</sup> See <http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.main> for information on the Board of Game process and meeting details.

<sup>68</sup> The Prince William Sound/Valdez Fish and Game Advisory Committee meets regularly.

This process was used successfully by the City and Borough of Juneau, another home rule municipality, to pursue a change in state regulations to restrict the placement of traps in heavily used recreation areas. The areas closed to trapping in Juneau were adopted by the Board of Game and are now in regulation at 5 AAC 92.550. The City of Valdez can use, and ought to have used, the same established process.

**E. The State Supports the Trappers' Assertion that Closing Areas to Trapping Directly Conflicts with the Board's Authority.**

Fish and game are resources held in trust by the State, and governed by Article VIII of the Alaska Constitution.<sup>69</sup> “[T]he state has the right to direct the use of its natural resources, including fish and game.”<sup>70</sup> Forty years ago this Court upheld a municipal sales tax on fish, but noted that only the State could charge a severance tax and only the State, not a municipality, has the authority to regulate and manage fish.<sup>71</sup> The same is true for the taking of game via trapping.

There are no laws conferring fish and game management authority on a municipal government. Title 16 does not delegate any regulatory authority to a municipal government, but does authorize municipal police officers to enforce State fish and game

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<sup>69</sup> 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 the people. Article VIII, sec. 2. “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.” Article VIII, sec. 4.

<sup>70</sup> *Herscher v. State Dept of Commerce*, 568 P.2d 996, 1003 (Alaska 1977).

<sup>71</sup> *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

violations.<sup>72</sup> This was a conscious choice made by the legislature to define the role of municipalities in the realm of fish and game management. To compare, the legislature authorized municipal governments to adopt traffic ordinances, to the extent not inconsistent with State laws, and expressly allows a municipality to adopt by reference all or part of State statutes and regulations related to the Alaska Uniform Traffic Laws Act.<sup>73</sup> Similar provisions could have been adopted for trapping, but they were not.

The State, not Valdez, has the power to open and close areas to trapping.

### **CONCLUSION**

For these reasons and those presented in the Appellants' briefing, the State asks this Court to hold that the Valdez ordinance is preempted, and reverse the judgment of the superior court.

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<sup>72</sup> AS 16.05.150. Enforcement Authority.

The following persons are peace officers of the state and they shall enforce this title except AS 16.51 and AS 16.52:

- (1) an employee of the department authorized by the commissioner;
- (2) a police officer in the state;
- (3) any other person authorized by the commissioner.

<sup>73</sup> AS 28.01.010.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT VALDEZ

ALASKA TRAPPERS ASSOCIATION,  
INC. and NATIONAL TRAPPERS  
ASSOCIATION, INC.,

Plaintiffs,

v.

Case No. 3VA-20-00015CI

CITY OF VALDEZ,

Defendant.

ORDER RE: STATE OF ALASKA'S MOTION FOR RECONSIDERATION

Before the court is the State's motion for "limited reconsideration" of the court's June 21, 2021 order denying the State's motion to intervene as a matter of right.<sup>1</sup> In the motion, the State writes that it now seeks to intervene "solely to make the State a party to the appeal."<sup>2</sup>

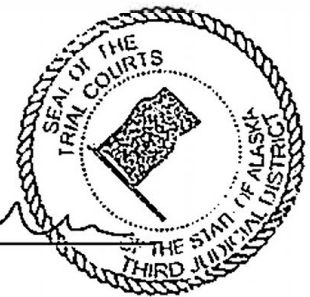
Per Civil Rule 77(k), however, such a change in the State's posture is not appropriate grounds for reconsideration.<sup>3</sup> Had the State advanced these arguments in a motion for limited permissive intervention for the purposes of appeal to which the Defendant had an opportunity to respond, the court might have been able to conclude differently. The State's *Motion for Limited Reconsideration Regarding Intervention for Appeal* is DENIED.

IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of July 2021.

I certify that a copy of the original was forwarded to: Leistico Wilson Corey Straser & Co. on 8/2/21 by J. Boudon

Rachel Ahrens  
Rachel Ahrens  
Superior Court Judge



<sup>1</sup> State's Mot. for Limited Reconsideration Regarding Intervention for Appeal 1.

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> Alaska R. Civ. P. 77(k)(1).

## ALASKA CONSTITUTIONAL CONVENTION

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University of Alaska  
1955

### DELEGATES AND OFFICERS

WILLIAM A. EGAN -- President  
FRANK PERATROVICH -- First Vice President  
RALPH J. RIVERS -- Second Vice President

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MILDRED R. HERMANN - Temporary President  
THOMAS B. STEWART -- Secretary  
KATHERINE T. ALEXANDER -- Chief Clerk

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Delegate	Home	Alaska Resident Since	Place of Birth	Date of Birth
Armstrong, R. Rolland	Juneau	1940	Pennsylvania	1910
Awes, Dorothy J.	Anchorage	1945	Minnesota	1918
Barr, Frank	Fairbanks	1932	Illinois	1903
Boswell, John C.	Fairbanks	1926	Oregon	1905
Buckalew, Seaborn J.	Anchorage	1950	Texas	1920
Coghill, John B.	Nenana	1925	Alaska	1925
Collins, E. B.	Fairbanks	1904	Indiana	1873
Cooper, George D.	Fairbanks	1949	Colorado	1923
Cross, John M.	Kotzebue	1934	Kansas	1895
Davis, Edward V.	Anchorage	1939	Idaho	1910
Doogan, James P.	Fairbanks	1914	Alaska	1914
Egan, William A.	Valdez	1914	Alaska	1914
Emberg, Truman C.	Dillingham	1935	Minnesota	1909
Fischer, Mrs. E.A. (Helen)	Anchorage	1905	Washington	1905

<u>Delegate</u>	<u>Home</u>	<u>Alaska Resident Since</u>	<u>Place of Birth</u>	<u>Date of Birth</u>
Fischer, Victor	Anchorage	1950	Germany	1924
Gray, Douglas	Douglas	1912	Montana	1908
Harris, Thomas C.	Valdez	1950	Oklahoma	1926
Hellenthal, John S.	Anchorage	1915	Alaska	1915
Hermann, Mildred R.	Juneau	1919	Indiana	1891
Hilscher, Herb	Anchorage	1906	Washington	1902
Hinckel, Jack	Kodiak	1922	Massachusetts	1901
Hurley, James	Palmer	1933	California	1915
Johnson, Maurice T.	Fairbanks	1937	Minnesota	1901
Kilcher, Yule F.	Homer	1936	Switzerland	1913
King, Leonard H.	Haines	1920	Michigan	1901
Knight, William W.	Sitka	1919	England	1889
Laws, W. W.	Nome	1935	Washington	1884
Lee, Eldor R.	Petersburg	1920	Alaska	1920
Londborg, Maynard D.	Unalakleet	1946	Nebraska	1921
McCutcheon, Steve	Anchorage	1911	Alaska	1911
McLaughlin, George W.	Anchorage	1949	New York	1914
McNealy, Robert J.	Fairbanks	1940	Nebraska	1907
McNees, John A.	Nome	1942	Idaho	1917
Marston, M. R.	Anchorage	1941	Washington	1900
Metcalf, Irwin L.	Seward	1927	Washington	1908
Nerland, Leslie	Fairbanks	1930	Yukon Territory	1902
Nolan, James	Wrangell	1920	Massachusetts	1901

<u>Delegate</u>	<u>Home</u>	<u>Alaska Resident Since</u>	<u>Place of Birth</u>	<u>Date of Birth</u>
Nordale, Katherine D.	Juneau	1925	Washington	1902
Peratrovich, Frank	Klawock	1895	Alaska	1895
Poulsen, Chris	Anchorage	1933	Denmark	1904
Reader, Peter L.	Nome	1934	North Dakota	1913
Riley, Burke	Haines	1938	Montana	1914
Rivers, Ralph J.	Fairbanks	1906	Washington	1903
Rivers, Victor C.	Anchorage	1906	Washington	1905
Robertson, R. E.	Juneau	1906	Iowa	1885
Rosswog, John H.	Cordova	1905	Washington	1904
Smith, W. O.	Ketchikan	1932	New Mexico	1907
Stewart, B. D.	Sitka	1910	Montana	1878
Sundborg, George	Juneau	1938	California	1913
Sweeney, Dora M.	Juneau	1907	Minnesota	1907
Taylor, Warren A.	Fairbanks	1909	Washington	1891
VanderLeest, H. R.	Juneau	1908	Michigan	1882
Walsh, M. J.	Nome	1905	Ireland	1882
White, Barrie M.	Anchorage	1947	New York	1923
Wien, Ada B.	Fairbanks	1907	Alaska	1907

# ALASKA CONSTITUTIONAL CONVENTION

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## PART 1

Proceedings: November 8 -- December 12, 1955

ALASKA LEGISLATIVE COUNCIL

Box 2199 -- Juneau, Alaska



to the appropriate Standing Committee. Where a proposal embraces subject matter which falls within the proper consideration of two or more Standing Committees, the President may divide the proposal or he may refer it to one Standing Committee with instructions to consult with other Standing Committees.

Rule 46. The Convention may set a date after which no proposal shall be introduced, except by a Committee.

Rule 47. Each Standing Committee report recommending any matter for incorporation in the Constitution shall be accompanied by a Committee proposal containing a complete article or other appropriate subdivision or group of articles or subdivisions of the Constitution.

Rule 48. A report shall be made by the Standing Committee as to each proposal referred to it. Such report shall state whether the proposal has been:

- (a) adopted in whole or in part in a Committee proposal;
- (b) disapproved;
- (c) disposed of otherwise.

Rule 49. On the question of the agreement upon any proposal on third reading, the vote shall be taken by roll call and entered on the journal of the Convention. No proposal shall be declared adopted unless at least twenty-eight Delegates shall have voted in favor of its adoption.

Rule 50. After the Constitution has been framed and before final agreement thereon, the Convention shall refer the proposed Constitution to the Committee on Style and Drafting for final arrangement in proper order and form. After the report of said Committee, the Convention shall by the affirmative vote of at least twenty-eight Delegates agree upon the final form of the Constitution.

Rule 51. When the Convention shall have agreed upon the final form of the Constitution, the original and at least four copies thereof shall be signed by the President and by the Delegates and attested by the Secretary. Facsimile copies shall then be prepared and certified by the President and delivered to each Delegate."

Mr. President, I ask unanimous consent that Chapter IX of the proposed rules as read be adopted.

V. RIVERS: Question, Mr. President.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I would like to ask the Chairman of the Rules

RILEY: No, that was not my purpose. It may not have been clear but it was just taking out the intermediate step.

PRESIDENT EGAN: You ask unanimous consent that the amendment to subsection "b" of Rule No. 6 be adopted?

RILEY: Rule 6, subdivision "b", yes.

PRESIDENT EGAN: Is there objection to Mr. Riley's unanimous consent request? Hearing no objection it is so ordered and the amendment is adopted.

RILEY: In line with our remarks this morning I should like now to ask, Mr. President, for unanimous consent to the adoption of this body of rules as adopted rule by rule throughout the day to be the permanent rules of this Convention, and to supercede all previous action taken.

PRESIDENT EGAN: Mr. Hellenthal?

HELLENTHAL: As long as we are being quite particular about commas and wording, I should like to propose that on Page 7, subsection "c", in the second line, that the word, and I shall spell it, "w-o-r-d" be substituted for the word "edit", the reason being that the word "edit" has an accepted definition which is change in substance, and I am sure that that is not the intent of the rule because the qualifying language so indicates, but if we are going to be precise I think we should avoid the use of that word in the most important rule.

PRESIDENT EGAN: Do you ask unanimous consent for the adoption of that amendment, Mr. Hellenthal?

HELLENTHAL: I ask unanimous consent.

PRESIDENT EGAN: Is there objection?

JOHNSON: I object.

PRESIDENT EGAN: Objection is heard. We have nothing before us. Is there a motion?

HELLENTHAL: I so move, Mr. President.

PRESIDENT EGAN: Mr. Hellenthal so moves.

SMITH: I second the motion.

PRESIDENT EGAN: Mr. Smith seconds the motion. The subject is open for discussion. Mr. Johnson?

JOHNSON: Mr. President, it occurs to me that if you change that word "edit" for the word, "word" you change the intent

and meaning of the section, because by using the word "word" you have given to the Committee on Style and Drafting the power to add or take away the substance of the proposal, whereas their job is to "edit" it, and it seems to me that the word is correctly used.

PRESIDENT EGAN: Is there further discussion. Mr. Smith?

SMITH: I am of the opinion that Mr. Johnson has it backwards. Maybe I have it backwards, but the word "edit" to me would connote to me the right to change in substance, and that the Committee on Style and Drafting is precluded from doing by the rules, so I think the word, "word" is correct.

HERMANN: I would rather use the word "phrase".

HELLENTHAL: I have no objection to the word "phrase" as Mrs. Hermann suggests, and I amend my motion accordingly with the consent of my second.

PRESIDENT EGAN: Mr. Hellenthal then with the consent of his second, asks unanimous consent that on the second line of subsection "c" on Page 7, the word "edit" be deleted and the word "phrase" be inserted in its place. Is there objection?

BARR: I object.

PRESIDENT EGAN: Mr. Barr objects.

HELLENTHAL: I so move.

PRESIDENT EGAN: Mr. Hellenthal so moves.

SUNDBORG: I second the motion.

PRESIDENT EGAN: Mr. Sundborg seconds the motion. Mr. Barr?

BARR: Mr. President, we seem to disagree on what the word "edit" means. I agree if you "edit" something you can't change the meaning but also it means more than that. It means changing the punctuation and a lot of minor things. Now if we leave the word "edit" in there, it means they can do all that, but down here in the next sentence it specifically prohibits them from changing the meaning. Therefore, you can edit it completely with the exception of changing the meaning. If you put the word "word" there, that prohibits them from doing anything except changing the word, so I think we should leave it the way it is. Under this rule they cannot change the meaning.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Ralph Rivers?

R. RIVERS: Mr. President, Delegate Barr's statement sounds rather clear and convincing to me.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If there is no further discussion the question is, "Shall Mr. Hellenthal's amendment be adopted?" All those in favor of the adoption of the amendment say "aye", all opposed say "no". The noes" have it and the amendment has failed. Are there other amendments to the proposed standing rules of the Convention?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Riley, your motion was a unanimous consent request, was it?

RILEY: The motion now I believe was that the rules as of now adopted individually or by chapter be in their entirety adopted, and supersede earlier adopted temporary rules, any earlier adopted rules as the permanent rules of this Convention.

PRESIDENT EGAN: Mr. Riley, you ask unanimous consent, is that right?

RILEY: I do.

PRESIDENT EGAN: You have heard Mr. Riley's request. Is there objection? Hearing no objection then the rules as they have been adopted here have become the standing rules of the Convention and supersede any previous rules that have been adopted. Mr. Sundborg?

SUNDBORG: Mr. President, I move and ask unanimous consent that the Secretary be instructed to prepare a complete copy of the rules as adopted and furnish one copy to each delegate.

PRESIDENT EGAN: Mr. Sundborg moves and asks unanimous consent that the Secretary be instructed to have a copy of the rules as adopted available for each delegate. Is there objection? Hearing no objection it is so ordered. Mr. Sundborg?

SUNDBORG: Mr. President, I move and ask unanimous consent that the Secretary be instructed to write a letter to the Fairbanks Chamber of Commerce expressing the appreciation of the Convention for the souvenir booklet, which were prepared under its direction, for the work it has done in helping to house the delegates, for the invitation it has extended to us to attend a social function Wednesday evening and for the work of its hospitality committee generally.

PRESIDENT EGAN: You have heard Mr. Sundborg's unanimous consent request. Is there objection? Hearing no objection it is

on that until the members have had a chance to have a look at them. I believe it is the Chairman's thought that we start with the statement of purpose and go right through the article. A few of the articles haven't anything in the nature of a preamble because we are operating somewhat on uncharted seas here. We thought it desirable to include in the outset a statement of purpose, and we feel that shows the Committee's basic thinking; the doctrine of putting all of our resources, both to maximum use while, at the same time, safeguarding the public interest in the avoidance of waste. The second paragraph, which is Section 1, simply repeats the enabling bills and boundary coverage. That's the identical language contained in House Measure 2535. Section 2 indicates the state's proprietary interest, which shall provide for utilization, conservation and development of all of the resources. Now, it was proposed to the Committee by, I believe, Delegate Hurley, yesterday, that our recital of various acts in this language in accordance with provisions and applicable acts of Congress, including the act admitting Alaska to the union, might be redundant, and I'll go along with that. It probably is, but I think it calls attention at once to the Congress that our proposal is subject to the very act which to the Congress is of prime importance as concerns Alaska statehood. I think that it might have some merit, even though redundant, for that reason. Section 3 states that replenishable resources shall be administered on the sustained yield principle. I won't go into that in detail here, beyond saying that, in our reference to sustained yield, we have in mind no narrow definition of "sustained yield," as is used, for example, in forestry, but the broad premise that insofar as possible a principle of sustained yield shall be used with respect to administration of those resources which are susceptible of sustained yield, and where it is desirable. For example, predators would not be maintained on a sustained yield basis. Section 4 merely states the general reservation of fish, wildlife, and the waters. Section 5 is the controversial section which Mr. Smith referred to when he stated that with few exceptions the Committee has gone along with recommendations which have come to it from outside the Committee proper. The members will all recall that we have been advised of the wishes of many in the Territorial Sportsmen Association and the local chapters of that organization. It was the consensus, not unanimous, of the Committee, that the language set forth in Section 5 go into the committee proposal. I'm sure that when we come to that, later, further comment will be made. Section 6 might be a little obscure. Its purpose is to authorize the state to provide those aids and facilities which might assure the fuller utilization of resources, such aids as roads, for example, to undeveloped areas; the provision of soil studies in agricultural areas should the Territory in its administrative structure have such talent at hand to go out in the field and assist settlers in testing their ground for particular agricultural capacity; forest management, advice from any forestry agencies which might be sought from the owners

SUNDBORG: Mr. President, may I be permitted to ask a question, please?

PRESIDENT EGAN: If there is no objection, Mr. Sundborg.

SUNDBORG: Mr. Riley, has your Committee considered the point which I raised last night about this language, "in accordance with provisions of applicable action of Congress" in connection with possible legislation on fish traps?

RILEY: We have considered it this morning, conversationally, with a number of delegates present. Without having conducted any study on the point, since you raised the question last evening, the Committee does not feel that a danger exists here. I should say that probably within the next day or two, if that view is not confirmed, I feel sure we could put it back in second reading should it have progressed beyond that.

SUNDBORG: Is the Committee pursuing the matter to be absolutely certain?

RILEY: Yes. The title of 2535, for example, and every other enabling bill that has been proposed, points up the congressional view that each state admitted is admitted on equal footing, but I should say the Committee's final reply should be held in abeyance on that.

DAVIS: Mr. President, may I ask Mr. Riley a question?

PRESIDENT EGAN: You may, Mr. Davis.

DAVIS: Mr. Riley, in Section 2, line 14, or actually lines 12, 13 and 14, it says, "The State of Alaska shall provide for the utilization, conservation and development of all of the natural resources, including lands and waters belonging to the State." It appears to me that as that is written it is broad enough to cover all natural resources, no matter whether they are privately owned, publicly owned, or what they may be. I am wondering if you did not intend to put a comma after the word "waters" at the end of line 14, so that it would then become clear that we are only talking about natural resources belonging to the state.

RILEY: That would be my conception of it, Mr. Davis.

DAVIS: There wasn't any intention that the state is going to develop natural resources on either federal land or privately owned land, is that right?

RILEY: No. The sections covered in the commentary states all resources over which the state has a proprietary interest, and I think that point is well taken.

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PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, did he ask unanimous consent?

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mrs. Nordale had just made a suggestion that I think is even better, if it is all right with the Committee. Take the words "belonging to the state" and place them after "resources", so it would read: "All the natural resources belonging to the state including lands and water."

RILEY: I think the Committee would be receptive to that.

PRESIDENT EGAN: Mr. Davis, are you so moving the disposal of that wording?

DAVIS: I would, and ask unanimous consent for that transposition of words.

PRESIDENT EGAN: Does the Chief Clerk have that transposition?

CHIEF CLERK: Yes.

PRESIDENT EGAN: Unanimous consent is asked for the adoption of the proposed amendment. Is there objection? Hearing no objection it is so ordered and the amendment has been adopted. Are there other amendments proposed to Section 2? To Section 3? To Section 4? Are there amendments to Section 5? Mr. Rosswog.

ROSSWOG: Mr. Chairman, I don't want to make an amendment, but I would like to ask the Committee -- I notice in this place, it is the only place that a natural resource is put under a commission and I would like to find out just why it was necessary. I know there is a controversy in that matter, and I would just like to have it explained.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I would like to ask Mr. King to answer that question first.

PRESIDENT EGAN: Mr. King.

KING: Mr. President, of course we all know this has been a very controversial matter, and the feeling of the persons, organizations, and the wildlife agencies as to -- they expressed a desire to spell these things out in the constitution. It wasn't in detail, setting up various departments, of course, but it wasn't the feeling of the Committee that such should be done

here, that it should be confined to basic constitutional provisions. Now, the thing, of course, we know, being part of the controversy, is a difference of opinion between the sportsmen organizations and the Fish and Wildlife Service as to separation of the departments into commercial fisheries department and into fish and game departments, which would include sport fish. We thought here that this would be a compromise. Now, on my way through Juneau, and letters we have from Mr. Anderson of the Territorial Fisheries Department, the Director, I spoke to him on my way back here and he had no objection, whatsoever, to the commission form. Now, as we know, one of the most successful operations while we have been under federal control in the Territory of Alaska, has been the Alaska Game Commission. That is a commission that was established and has lived without criticism. The organizations throughout the states, the three states -- the Pacific Coast states which are more closely related to us than any other people, have established forms of commissions to do this work that we are talking about here; and we thought here that this would only provide guiding lines to the Territorial legislature, giving them permission to establish a commission or commissions that would govern this type of resource.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I would like to address a question to Mr. Smith.

PRESIDENT EGAN: If there is no objection, Mr. Fischer.

V. FISCHER: With the provision here for the establishment of a commission or commissions, would it preclude the creation of an over-all department of resources including not only fisheries, wildlife, but also lands and whatever other resource subdepartments there might be?

SMITH: In my opinion, Mr. Fischer, it would not. I think under the present Territorial law we have such a resources board and under the present Territorial setup we also have the commission-type management for our fisheries department. I do not believe it would preclude the establishment of such an over-all resources board.

V. FISCHER: I am not speaking in terms of a resources board. I am speaking of a department within the executive branch.

SMITH: I would say that the answer would still be "no".

V. FISCHER: Thank you.

PRESIDENT EGAN: Mr. Johnson.



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JOHNSON: I have an amendment on the Chief Clerk's desk in relation to Section 5.

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment as offered by Mr. Johnson.

CHIEF CLERK: "Section 5, lines 12 and 13, strike the words 'to a commission, or'."

JOHNSON: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Johnson moves the adoption of the amendment. Is there a second?

KNIGHT: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Johnson.

JOHNSON: We have had a great many communications in the last few days regarding this matter, and it seems to me that if the words "to a commission, or" were taken out of the section that it would more nearly be in compliance with the wishes of the people that have been communicating with us. I don't think that it detracts in any way from the section, and if we just direct the legislature to set up a separate commission for each branch of the fisheries, then I think we are complying with the wishes of the largest group of the public.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: I will have to speak very definitely against this amendment to the motion. I know that there are two thoughts on this matter and the men that are making their living on the fisheries are very definitely opposed to two separate commissions, and I think if the matter is left up to the legislature and where it is handled in the proper manner, it would be fine, but I know if this motion should carry we would be doing harm to a lot of our citizens who are depending for their livelihood upon fisheries.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, probably, I should say I am speaking for myself and not for the Committee. This question has been discussed widely both before the Convention and since that time. From my viewpoint the insertion of Section 5 in its entirety was a concession to the pressure brought by the sports fishing organizations or the game fishermen's organizations. Actually, my thought was that all this section did, as it originally read, was to say that game fish, wildlife, and commercial fish

should be delegated to a commission or to commissions leaving it up to the legislature as to whether that should be one all-inclusive commission or two separate commissions. Frankly, I would have preferred to see no mention made of the subject in the constitution. I think the constitution throughout, I think the Convention as a whole has throughout the consideration of all of the articles stayed away from setting up commissions or departments in other things in the constitution, and my preference here would have been to follow that procedure in this instance. However, you are all aware of all of the flood of telegrams, communications, etc., that have come in. Just today I received three telegrams from commercial fishing groups in support of leaving this entirely to the legislature. I had not intended to ask that those be read, in the hopes that we might not get into this argument. I would like to say further that before the Convention began, I took this question up with all of the fishermen, the commercial fishermen and the sport fishermen whom I could contact in the Ketchikan area, and I expressed to them my thoughts that the whole matter should be left to the legislature, and they were in agreement. I also submitted this question to the Alaska Fisheries Board which held a meeting just before this Convention began, and I also expressed to them the thought that this should be left to the legislature and they were in perfect agreement. The fact that we have not had more communications from the commercial fishermen, and those who advocate leaving this to the legislature, I am sure is due to the fact that it had been discussed and agreed that this matter should be left to the legislature.

PRESIDENT EGAN: Mr. Stewart.

STEWART: May I ask a question of Mr. Smith? Did you not also receive communications from Mr. Anderson, the head of the Territorial Fisheries Board urging that it be left to the legislature?

SMITH: That is absolutely correct, Mr. Stewart. The Committee and I received communications from the Alaska Fisheries Board and from the Alaska Department of Fisheries, recommending that this matter be left entirely to the legislature.

STEWART: May I make an amendment verbally?

PRESIDENT EGAN: An amendment to the amendment?

STEWART: I move we strike Section 5.

WHITE: I second the motion.

R. RIVERS: Point of order.

PRESIDENT EGAN: The Convention will be at recess for one minute.

## RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Johnson.

JOHNSON: Mr. President, I move and ask unanimous consent to withdraw the amendment which I had offered to Section 5.

PRESIDENT EGAN: Mr. Johnson moves and asks unanimous consent for the withdrawal of his proposed amendment to Section 5. Is there objection? Hearing no objection, it is so ordered. Mr. Stewart.

STEWART: Mr. President, after having discussed this matter a little bit with others, I, also, at this time withdraw this amendment.

PRESIDENT EGAN: Mr. Stewart asks unanimous consent that his proposed amendment be withdrawn. Mr. Taylor.

TAYLOR: Mr. President, I have an amendment to offer.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Taylor.

CHIEF CLERK: "Strike Section 5."

TAYLOR: I move the adoption of the amendment.

WHITE: I second the motion.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the amendment, seconded by Mr. White. The proposed amendment is open for discussion. Mr. Taylor.

TAYLOR: I would like to speak on that, Mr. President. Now, under the executive article the power was given to establish up to 20 departments of the state and I cannot see where there is any doubt but what there will be a committee, a commission, or a department of resources under which would be commissions to administer the fisheries, the commercial fisheries, and a commission to administer the game fish and game. That would be one of the most important departments of the new state and they would have the inherent power and the all-power that would be given to them by the state to do just what it intended to do under this; but we are trying to confine this subject of such importance to a commission, that I think it should be stricken and let the resources department do everything it is supposed to be in here. I have no doubt but what, due to the great difference in commercial fishing, and the game fishing and game, that a separate bureau or a commission could be set up under the department of resources to handle those particular matters. And I think by leaving this in here we are going to do the state

a disservice, the fact that that will preclude a department of fisheries or a resources department that would be setting up the way they want to handle it, because they would be then confined by this constitution to having a commission or commissions to handle it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, thousands of people in this Territory feel strongly about this. I would say maybe as many as 10,000 and a good many of them have taken the trouble to send us letters and wires urging that we have a provision of this kind in the constitution. If we leave the language exactly as it is in Section 5, I believe we have met the desires of everyone of those people who have wired to us. If we strike it, we are inviting criticism and trouble, and trouble on the ratification of the constitution from those people who do feel very strongly, and I feel with good reason, that with our heritage of fish and wildlife up here, we should be very careful; we should be more careful than any state that has ever entered the union before this, to see that they are administered and regulated by commissions which would not be subject to the political control of the state as it may go from administration to administration. I feel very strongly that we should leave it as it is. Now, all of the things that Mr. Taylor says should probably be done or would be done by a legislature, can still be done if we leave it alone. We can have an over-all department of resources which would have under it a commission for the administration of the fisheries and a commission for administration of the wildlife or a single commission for the administration of both. I don't think it ties the hands of the state or does a disservice to the people of the state in any way, and I think if we strike that, we are really going to be in hot water. Now, I don't like to yield to pressures just because the pressures have been built up, but I feel these people do have a good case, and we ought to leave Section 5 alone.

PRESIDENT EGAN: Mr. Lee.

LEE: Mr. President, in the time we have been here we have all taken cognizance of any opinions that the various lawyers had to take because we have felt that we could trust their opinion because that is their business. This is getting back to my business. I am going to vote against the amendment, and I hope that you will do the same.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, as a member of the Committee, I would like to explain why I seconded the motion and why I support it.

Mr. Sundborg has stated, correctly, that we have had large numbers of communications representing very large numbers of people on this subject, but the section, as it stands does not, Mr. Sundborg, solve their problems or satisfy them except insofar as one of their requests was that management of the fisheries and wildlife be delegated to a commission. If we are to follow the next step of their request, it would be that it be relegated to separate commissions, as Mr. Johnson suggested in the amendment that he withdrew. If we are to follow it to its complete conclusion, we would include a page, or two pages here, setting out an entire plan, something similar to the Missouri Plan, so this has been boiled down to a compromise which really doesn't satisfy any of the parties to this controversy except those that suggest that these matters be delegated to a commission, or separate commissions. Both points of view are represented there in any event, and I feel that to make an exception in this one case, to state that it will be a "commission" is not constitutional matter and that it would be more properly treated as a resolution from our Committee or the Convention to the first state legislature.

PRESIDENT EGAN: Mr. King.

KING: Mr. President, I will have to take exception to Mr. White's remarks that this does not satisfy anybody. I think that is certainly contrary to the common belief. Dr. Gabrielson spoke to the Convention here and told them what type of thing that was best for this; Dr. Bartley appeared before our Committee; they all expressed, these different people. As I spoke before, I talked to the Director of Fisheries on my way through this time. I sat with him and talked to him. He was not opposed to a commission form that they are talking about here; I talked to him, I have letters from him; he was not opposed to this. I don't think you are talking about pressure here when you are talking about telegrams and letters. You are talking about the will, the wishes of people; I can't say that those are pressure groups. Those are people just like the rest of us. I belong to three or four sportsmen organizations. I don't think I am putting any pressure on anybody; I think it is the will of the people, the will of 2,000 people alone in the Alaska Sportsmen Association, and this is just one of them. I think this is a very good thing; I think this is just a guide; this has been very successful all throughout the Western states, this type here, and it is a guiding line to the Territorial legislature to make a successful operation.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I want to speak on this amendment because under the executive the same problem arose. We discussed there, not only one board or commission or department

but the interests of a great number, so under the executive department we have provided that there shall be departments with single heads as principal departments; there may be multiheaded departments; there may be regulatory boards as established by the legislature. Now, I think we would be doing a grave injustice to the commercial fisheries and wildlife groups, both of them, if we failed to allow them the freedom that we allow other departments of government. If we let this stay in we are forever tying them under this constitution to a commission form of government. They could have this form under the present executive. They could have a multiheaded department under the present executive; they could have a singleheaded department, either separately or jointly as the importance of their function in the state government desired or required. Now if we tie them forever to a commission form of government, that is it; but if we leave it as it is under the executive, they may have their choice for the present or may change as they desire in the future. They may adopt any and all of these forms they recommended or any of the other forms of government that we have provided for in the executive. I for one would favor striking of the word "commission" but with the full understanding that they have now the power to have this type of administration if they so desire, and this way you would limit it to the one thing, and the one thing only, for all time.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I feel called upon to speak against this amendment here. The sports fishing and game and commercial fishing are among the greatest resources of the Territory, and if they are properly conserved they are going to continue to be a great resource, and I believe it is a resource that is great enough to be dignified by leaving this section in the constitution and leaving it in, in its present form. It was a compromise on the Committee; I feel it should be a compromise upon this floor. Now, we have already, under the article on finance and taxation, have arranged so that if the federal government ever stops paying funds into the fish and wildlife, it will be an earmarked fund, and it will no longer apply. We have taken that whack at the sports fishing and game commission in the Territory of Alaska, and I disagree heartily with Mr. Victor Rivers. It is true that in the executive branch of the government, the proposal that has gone through second reading here, that they have set up the very machinery whereby a commission of this kind could go into effect. That was the thought I had when they established the 20 principal departments and said there may be other regulatory or quasi-judicial departments there, that they meant by that something along this line, a commission form that could be set up. This is the only time I am going to speak, Mr. President. I will have to ask the delegates to bear with me just another minute here; but as to Mr. Anderson, who is presently head of the

Department of Fisheries there, I want to point out to the Convention, I don't go strongly on what Mr. Anderson says or what the head of any present department of the Territorial government says. I have served on the ways and means committee and have seen these various heads of departments, and among the leaders of which was Mr. Anderson, who are desirous of only one thing, that of perpetuating themselves in office, and naturally it is a desire, if we transfer suddenly over to a state, that Mr. Anderson would like to become the head of all the departments covering everything here. Well and good, if there is one commission set up by the legislature, I have no particular objection to Mr. Anderson being the head of that department, but if it is his desire there to interject, or attempt to interject, as a department head, things into this Convention that are going to harm the sports fishing and the game commission of this Territory, then I am opposed to Mr. Anderson. It is simply a purely and a wholly selfish view as it is with the heads of practically every one of these departments; and if you serve on one of these committees, the finance in the senate and ways and means in the house, and see the attitudes that the heads of these departments take to perpetuate, and the attempts to perpetuate themselves in office, then you can very readily see through any stand Mr. Anderson might take upon these things. Now as I say, this matter here was a compromise in the Committee. I hope it can be a compromise in the Convention with the sportsmen here. I have been presented with material, as all the delegates have, and requested to make amendments, and could go on making amendments ad infinitum here, but I have felt that if this can be held in, it still leaves it up as the legislature shall prescribe, and if they want to set up one commission, well and good, or if they feel it is necessary to set up two commissions under it, or under a principal department head, or however they care to do this, at least we are recognizing this one great segment of our population, or if you will, two great segments of the population and also the future, because of the thousands of people who will move to the Territory with the thought in mind of hunting and fishing either on the sportsman level or the commercial fishing.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, I have not --

PRESIDENT EGAN: Mr. Riley, the Chair does not wish to interrupt, but the Chair would like to state, with your pleasure, that the photographer is set up in the gallery for a picture during the noon recess. He has been ready for quite some time. It will only take about five minutes and upon the recess, if every delegate would remain here and go into the gallery, and it might be well if we have that done at this time, because we are holding him here. If it is the wish of the Convention, we will hold this

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amendment over until following the noon recess. Mr. Sundborg.

SUNDBORG: Mr. President, subject to committee announcements, I move that we recess until 1:30 o'clock.

PRESIDENT EGAN: Mr. Sundborg moves that we recess until 1:30 p.m. Mr. Smith.

SMITH: I would like to announce a meeting of the Resources Committee at 1:00 o'clock in the gallery.

PRESIDENT EGAN: There will be a meeting of the Resource Committee at 1:00 o'clock in the gallery. Are there other committee announcements? Mr. McNealy.

MCNEALY: A meeting of the Ordinances Committee at 1:00 o'clock in the committee room upstairs.

PRESIDENT EGAN: There will be a meeting of the Ordinance Committee at 1:00 o'clock in the committee room upstairs. Mr. Sundborg.

SUNDBORG: Mr. President, Style and Drafting Committee will meet immediately upon recess at the rear of the gallery.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Local Government Committee will meet at 1:00 o'clock.

PRESIDENT EGAN: Are there other announcements? If there are no other announcements and if there is no objection, the Convention will stand at recess until 1:30.

#### RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. McNees.

MCNEES: Mr. President and delegates, we have in the gallery Miss Sally Carrighar who has written numerous articles for the Saturday Evening Post and who has made her home here in Alaska for some time.

PRESIDENT EGAN: Miss Carrighar, we are happy to have you with us and hope you enjoy the proceedings this afternoon. (Applause) We have before us the proposed amendment as offered by Mr. Warren Taylor to Committee Proposal No. 8/a. The proposed amendment is the deletion of Section 5 from the proposal. Mr. Sundborg.



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SUNDBORG: Mr. President, I raise the point of order of asking whether Mr. Taylor discussed this amendment and cleared it with the Committee as required by our rules?

PRESIDENT EGAN: Mr. Taylor, did you discuss the proposed amendment with the Committee?

TAYLOR: Yes, I did and they said to bring it up on the floor of the Convention. They said they did not want to make any changes in the Committee, and if there were any amendments, they were to be brought up on the floor.

PRESIDENT EGAN: Is there further discussion on the proposed amendment? Mrs. Hermann.

HERMANN: I would like to ask a question. I would like to know if this word "commission" as it appears in the text refers to a board or a department such as the Department of Fisheries that Mr. Anderson at present heads.

PRESIDENT EGAN: Could anyone answer that question of Mrs. Hermann's? Mr. Riley.

RILEY: Mr. President and Mrs. Hermann, I have in mind that all of the proponents of a commission or commissions have been thinking in terms of the commission that we know as the Alaska Game Commission, the commission which is charged with the administration of the Department of Fisheries. Is that responsive to your question?

HERMANN: Well, I just am not sure whether it would restrict, whether the language you have in there would restrict the governor to the appointment of a board rather than a department of wildlife, such as the department of fisheries is.

RILEY: All of whom I have discussed it with have suggested that they had in mind a board or commission charged with running a department or a section of a department confined solely to the fish or game field, as the case might be, with two commissions. I have heard during the noon recess questions with respect to the same section and I think in the same nature as yours. I believe it fair to say that most of those have been concerned with two words: "and administration". I am not in a position to speak for the Committee in this respect, but in adopting this language the Committee has had in mind a commission that would issue, promulgate regulations in these two areas and would be charged with overseeing the executive agency which had the responsibility for management in this field.

PRESIDENT EGAN: Mrs. Hermann.

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HERMANN: Was it the Committee's feeling that the legislature would not have that power unless it was included in this proposal?

RILEY: I don't know that that question arose. I see it is a valid question and some doubt is left by this language. I have no recollection that the Committee discussed depriving the legislature of the regulatory function.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, there is no doubt in my mind, whatsoever, in the absence of this section that the legislature would have that power.

HERMANN: In the absence of this section? Then, Mr. President, I would like to state my position in regard to the amendment to strike. I am very much opposed to boards and commissions on general principles, and I do not believe that they should be made a part of a constitution. I think that the legislature, if it has that authority to create a board temporarily and dissolve it at its later pleasure, should not be tied down by a permanent provision of the constitution requiring them to administer fish and wildlife by the commission or board form of regulation; and if the legislature does not have that authority or if there is any doubt in the minds of any of the delegates that the legislature has that authority, we could easily amend the section by saying that the regulations, etc., should be prescribed by the legislature. Personally, I am of the opinion that it does have the authority, and I would certainly hate to see a permanent part of the constitution advocating the control and regulation of any of our natural resources or any of our departments of government by the commission or board form of government. I shall have to vote for the amendment, though I am not averse to having two commissions if the legislature wishes to prescribe them, and I am not averse to putting in provisions that will carry out the wishes of the Sportsmen's Association; I think we have the authority already.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I have the same feeling toward this section as Delegate Hermann has and I feel that the language is covered very well under Section 17 of our proposal 10/a which provides that the legislature may put principal commissions at the head of departments, and I feel that if we are going to make an exception of not putting in any language as to any one board in the judicial item, I don't see why we should have the fish and wildlife commission provided for in the constitution. I think the legislature should have full and a free hand to do as they want because they will do what the people wish them to do.

PRESIDENT EGAN: Is there anyone else who wishes to speak in the negative? Mr. Barr.

BARR: Mr. President, I would like to ask a question and also make a statement. I personally wish that this had not been brought up, but I think a great many people do want a statement in the constitution as to how the fish and wildlife will be administered in the state. I would like to ask Mr. Riley, or any member of the Committee, that if there had been no communications to us on this matter, would the Committee still have thought it wisest to have a commission administer the fish and wildlife matters in the state rather than a single department head?

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. Barr, would you repeat the last part of your question?

BARR: If none of us had received any communications regarding this matter from anyone outside the Convention, would your Committee have still thought that the fish and wildlife resources should be administered by a commission rather than a single department head?

SMITH: I can only answer that this way, Mr. Barr, and probably again should speak for myself in regard to my views as to what the Committee would have done. It is clear in my mind that had it not been for all of the communications there would have been no mention of any commission or commissions in this article.

BARR: You never heard any member of the Committee mention that they would be against a single man being the head?

SMITH: I don't believe that the question would have come up at all and that is subject to the expression of individual opinions by any member of the Committee.

BARR: Like Mrs. Hermann, I am against a great many boards and commissions. We are afflicted with a great number of them at the present time and I think the trend is going to be the other way. I believe that the legislature from now on, and especially after statehood, will eliminate most of them. I can see where there may be a very few that are necessary. I see Mr. Coghill does not believe that this is necessary but a lot of people believe that the education of the Territory should be administered by a board. I do, too. It seems to me this might be one of them, and if that is true, to prevent the legislature abolishing our present commission, it would be necessary to put it in the constitution, if we feel that that is the way we want our wildlife affairs administered.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: I believe that if this section were left in it could be improved to take care of Mrs. Hermann's objection to it and some of the other objections. I think the point, the important thing here is whether a commission is the better form of regulating these sort of things, and I don't mean a commission right up at the top but rather we would have a head of a department and have an advisory commission or commissions at some lower point to advise that particular head of department, and I think if we could work out a section here that would accomplish that purpose we would satisfy the sportsmen and the commercial fishermen and still not get something in our constitution that is going to tie our hands for the future. The one reason, in speaking for myself, that I felt it was better not to have separate commissions, was that as I understand it, at the last legislature the sportsmen wanted the single commission right down to practically the end of the legislature; then they changed their minds and wanted separate commissions and I feel that if they did not know well enough at that time what they wanted, perhaps they don't know well enough now and we should not tie their hands to something in the constitution, and that is why we have two single commissions or two separate commissions, and I believe if we would retain this section and then correct it to accomplish what we would like to do, that we would be better off.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I would like to be heard. I am concerned about this language "regulations shall be delegated". That sounds almost as though you are commanding the legislature to delegate legislative power to a commission. There are various levels of regulations. Regulations can be by law, where basic factors are covered and with the administrative regulations, delegated to administrative boards or bodies. But unless, as Mr. Boswell suggests, this thing can be reprocessed, I will have to vote in favor of the present amendment.

PRESIDENT EGAN: Mr. Gray.

GRAY: I am going to speak in favor of leaving the section as it is. The principal reason is that regardless of whether you strike it or not, you are going to end up with basically the same thing. It has been proven in the administration of wildlife resources and fisheries, a commission form of administration has been the most successful in the wildlife resources. Whether they are tied together or separated is a matter of time. In some states they are tied together and in other states they are separated. In some states as the times changed they are combined and as times

change they are separated again. That has been provided for. Regardless of what is done by this body, the Section 5, I am pretty positive Section 5 will be the standard they will do by. Now, if you leave out Section 5 you create a danger of implying to those people who are interested that you are taking away something from them, primarily because we have set up a very very strong executive department. As long as you set up this strong executive department, I believe the delegates should allay the fears of these people, not only in the sports fishing but in the "bread and butter" fishing too. I think there is no question or doubt about the method of administration of the wildlife resources. I think we should allay the fears of the people who are interested, as you have heard. I think the fisheries will always be with us, as the wildlife will be. There is no state where the impact of fish and wildlife is so great on the people as it is in Alaska, and I believe it can and does deserve special attention. If you strike this section, I don't see how you can keep away from leaving to these people that have been so concerned, that you are actually denying, you are taking away something from them they are used to; they have been used to the Alaska Game Commission. They have set up their own board of fisheries that appears to be the desire of our fishing people. That is what we had. At the present feeling of the people, we want to continue that way, and if you do turn it over to the legislature they will continue, but you do not help but imply that you are going to take away something from the people if you strike this section. I wish the section would remain as is.

PRESIDENT EGAN: Mr. McCutcheon.

McCUTCHEON: Mr. President, I feel impelled to support the motion to strike this particular section. I predicate my decision on the fact that first off, as Mr. Gray has already so aptly pointed out, we do have a strong executive. Secondly, in the event the executive, who is elected by the people of Alaska and who will certainly be particularly sensitive to the will of the people and a good many of those sportsmen are voters, he will be very concerned about this particular department, and I am sure that he will take that into consideration when he is establishing, under his various departments and or in his cabinet, this particular thing that we are concerned with here. Secondly, if the governor does not provide properly for it, it is within the realm of the legislature to establish such method and fashion in which we can operate satisfactorily this particular type of fish and wildlife resource. Thirdly, and what no one has mentioned yet, is we have initiative. The people can initiate and certainly a group of sportsmen who are so pressure-minded as to have flooded this Convention hall, with various types, both pro and con of communications, they will not be bashful about

initiating a type of legislation that is necessary to prosecute the very desires that they seek to do. The last reason I oppose this section is I dislike seeing a board enshrined in our constitution. There is no reason why we have to make this particular exception. As Mr. Fischer said the other day, it is no "holy cow" to me. I don't see why we have to bow down and enshrine this particular type of a commission or board in our constitution. There are ample remedies, not only at the polls, but by their own initiative, so I am supporting the motion to strike.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I have to agree with Mr. Gray and vote against this amendment. I think the fish and wildlife is an important enough resource of ours it should be mentioned in the constitution. I do believe that it could be corrected by an amendment later.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: It seems to me that this section is very bad as it is written. It removes the whole regulation and administration of the commercial fisheries from the executive branch of the government, because it says "regulation and administration shall be delegated to a commission", and I don't believe that we want any department set up separate and apart from the other main branches of the government. Our executive article says that regulatory bodies need not be put into a principal department, and right here it gives complete force and effect to that. They would never put it under the executive branch, they would not have to. I don't like the way it is written.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I rise for a question to the Committee. Don't you think that in being so insistent upon the commission being enshrined in the constitution that most people advocating it thought it also would carry along with it a certain number of earmarked funds? Don't you think that was the main intent rather than just the body itself?

SMITH: I would like to ask Mr. King if he would like to answer that.

PRESIDENT EGAN: Mr. King.

KING: I don't believe so, Mr. Rivers. As you know, I am a minority of one on this Committee, but I don't believe that the Committee felt that at all.

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V. RIVERS: I did not mean the Committee. I meant the request to the Committee, had envisioned this request having this unalienable source of revenue?

KING: I don't think so.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: I wonder if the Committee would consider the rewording of Section 5 as something in this order -- that the management of the commercial fisheries --

PRESIDENT EGAN: Mr. Armstrong, at this time we have an amendment by Mr. Taylor before us; whether or not the Committee, if it has anything to do with that particular question at this time, as the Chair sees it, although others have mentioned it.

ARMSTRONG: It seems to me, Mr. President, if we could arrive at a wording that would retain the section some would vote then against the amendment.

R. RIVERS: May we have a two-minute recess?

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for two minutes.

#### RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. White.

WHITE: Mr. President, I would like to answer a question posed by Mr. Victor Rivers if I may in which he was inquiring about earmarked funds and commissions. The Alaska Sportsmen's Council in a letter dated October 24, 1955, advocated the inclusion in our constitution of certain sections of the Missouri State Constitution, Sections 40, 41, 42, 43, 44, 45 and 46, as a complete program. It says in part, "The fees, monies or funds arising from the operations and transactions of the commission shall be expended and used by the commission for certain purposes and for no other purpose." So it was certainly, originally an integral part of the plan. We have now come down to retaining only the idea of a commission or commissions and I think no one can say with certainty that all people who favored the whole plan would favor the retention of the commission without the other parts of the plan.

PRESIDENT EGAN: Is there further discussion? The question is -- Mr. Taylor.

TAYLOR: I would just like the opportunity of closing.

PRESIDENT EGAN: Is there anyone else who wishes to be heard before Mr. Taylor closes? Mr. Armstrong.

ARMSTRONG: I shall offer an amendment to retain part of this wording and I think correct some of the abuse that some people seem to feel is inherent in this which would make it possible to have commissions if the legislature so ordered.

PRESIDENT EGAN: That is, after we vote on this amendment. Mr. Coghill.

COGHILL: I rise to a point of information on Delegate Armstrong. It is already provided for in your executive article and you don't have to have it in here at all.

PRESIDENT EGAN: Mr. Taylor has the floor.

TAYLOR: Mr. President, possibly the membership of this Convention might believe that I am against the sportsmen of Alaska, but I am not. I am just as much interested and desirous of conservation and the regulation of fish and game as I think any person in this house. But the fact that I am interested in these matters is for the reason that I am offering this amendment to strike this section because I believe it would be a disservice to the fishermen and the hunters of the Territory by leaving it in. I think it would be a disservice to the other people of Alaska who are not particularly interested in hunting or fishing. Now, if this section in its present form became a part of the constitution, we would be reversing a stand which we have taken here and which many members of the legislature have taken for a number of years in regard to commissions, and instead of eliminating or abolishing some of these commissions, we are saddling by this constitution, the state with not only one commission but maybe two to handle one subject; fish and game. It looks to me like we are trying to backtrack in this thing. Now, if we adopt this in the Convention, and the legislature did then take action upon this particular section and they did establish two commissions, one for game and one for fish or one for commercial fishermen and one for game fish and game, there is no way we can abolish either one of those commissions unless we amend the constitution of the state, which is not an easy thing to do. So, I think that the Convention should think twice before they pass this section in its present form because if we read this and give each and every word its common and accepted meaning, the construction of this section is that the executive departments and the legislature surrendered to some unknown commissioners on a game commission their power and prerogatives which we have given to them in all other matters in this constitution except the game fish and game; because we once set up the commission in the matter that is provided for in here, we have



delegated to them all the power to deal with those particular matters, and who are they answerable to? Nobody, they are the commission; they are the regulators and the administrators. They might have to answer to the legislature -- nothing in here that says they would. So, then we have one independent commission or possibly two, which no matter to what extent they go, we cannot get rid of them unless we have a constitutional amendment and do we want to go so far as that that we are going to surrender our rights and our prerogatives? When I say "our", I mean the legislature's and executive department's prerogative, to this commission. Now there are quite a number of us here who have been in the legislature, have been in there one or two or more times, and we know when the legislature is in session down there the corridors of the capitol building are cluttered with commissions that are appearing there to report and have meetings and spending the taxpayers' money. So, why should we make an exception in this particular instance of something we are trying to get away from, the establishment of more boards, more commissions? Now, also, I have listened to Mr. McNealy; he is all for this commission. I have listened to Mr. Sundborg; he was all for this commission; also, Mr. Gray. Mrs. Hermann, perhaps, expressed her opinion as to this commission matter in much better language than I can, and I am going to adopt Mrs. Hermann's speech as my sentiments in that particular matter. We know recently the political winds have started to blow --

McLAUGHLIN: Mr. Chairman, point of order. I think, perhaps, these remarks might be interpreted as being personally addressed. I am sure Mr. Taylor does not mean them as such.

TAYLOR: If they are, I apologize.

HELLENTHAL: Don't they involve the five-minute rule?

PRESIDENT EGAN: Do we have any five-minute rule? But the Chair would ask that all delegates would preclude any political feeling on the floor. Mr. Taylor.

TAYLOR: I'm not going into the political field; I was just saying to these members here that possibly have been kissed by the political breeze that has been blowing at this Convention, that this Committee would not have thought about this unless it had been for the clamor put up by this particular segment of our population. Perhaps this political breeze, as I say, that has kissed the cheek of prospective legislators might be the reason that this is in the resources section.

PRESIDENT EGAN: The Chair feels that references such as that are reflections upon the delegates and that they are not in order. You may proceed with your arguments on the proposed amendment.

TAYLOR: Mr. President, we had here some experts that we paid quite a lot of heed to. We had experts in the judiciary field and we had experts on the resources field. Now on January 16, 1956, a Mr. Ostrom, who was supposed to be an expert upon resources, wrote a letter, January 16, just a few days ago; and among other things he said in this letter, he said, "I am still much concerned about the serious consequences of constitutional reference to the delegation of regulation and management of fish and wildlife to a commission or commissions." Now there are the words from the man we spent thousands of dollars to bring up here and help the Resources Committee. We have also a communication dated earlier. This was a week ago, and this was from Mr. Anderson, Director of Alaska Department of Fisheries. Those who know Mr. Anderson know of his conscientiousness to duty and desire to aid the fisheries of Alaska; and among other things he says, "The creation of boards and/or commissions for supervision of the various natural resources should be a legislative prerogative." He doesn't want it in the constitution. Now, if my amendment is carried and this Section 5 is voted down, I don't believe it would take the Committee over five minutes to sit down and write a section to take its place which will express the intent of this Convention and will not delegate all the powers of the executive, the chief executive, and the legislature, to a commission; and I hope that my amendment carries.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

JOHNSON: Mr. President, may we have a roll call?

CHIEF CLERK: "Strike Section 5."

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Taylor be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 34 - Awes, Buckalew, Coghill, Davis, Doogan, Emberg, V. Fischer, Harris, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Knight, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nordale, Poulsen, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, VanderLeest, White, Wien, Mr. President.

Nays: 21 - Armstrong, Barr, Boswell, Collins, Cooper, Cross, H. Fischer, Gray, Hellenthal, Johnson, King, Laws, Lee, McNealy, Nolan, Peratrovich, Reader, Riley, Sundborg, Sweeney, Walsh.)

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CHIEF CLERK: 34 yeas, 21 nays and none absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Mr. Armstrong.

ARMSTRONG: Mr. President, I would like to move a new Section 5 of Proposal 8/a which would read as follows --

R. RIVERS: Point of order. It appears to be long enough to be handed to the Clerk.

ARMSTRONG: I believe the Clerk has it in the form of deletions and additions.

R. RIVERS: Those don't apply now because the section is --

PRESIDENT EGAN: If there is no objection, the Convention will be at recess for a couple of minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Kilcher.

KILCHER: Point of order, Mr. President, and information at the same time. If we move to strike a section without substitution, just to plain strike, wouldn't that then express the will of the majority to consider the matter dead?

PRESIDENT EGAN: It is not the opinion of the Chair that moving to strike a section makes it, by that action, dead as you might say. It is dead at this moment. If someone offered an amendment to change the intent or the meaning of the original section, it would be in order so long as it was not the same thing. It is not correct, no, that when you strike a section it is dead forevermore. Mr. Armstrong.

ARMSTRONG: Mr. President, I will try to see whether it is dead or not by trying again. My parliamentary procedure seems to get off the track, but I have left an amendment with the Clerk by way of Burke Riley's shorthand. So we will ask the Clerk if she would read it, please.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

HELLENTHAL: Slowly.

CHIEF CLERK: I will. "Section 5. Regulation of the commercial fisheries and of the wildlife, including game fish, may be delegated to a principal department of the state or to a commission

and Drafting Committee the return to the Convention of the Article on Natural Resources, Article VIII, copies of which have been distributed to delegates. Although this is not according to our calendar the next order of business, it is the next one which we have ready for consideration by the Convention, and I ask unanimous consent that it be considered at this time.

PRESIDENT EGAN: Hearing no objection, Article No. VIII, the Article on Natural Resources, will be -- the report of the Committee on Style and Drafting with relation to Article VIII, will be considered at this time. The Chief Clerk will please read the report of the Style and Drafting Committee.

(The Chief Clerk read Article VIII in its entirety.)

PRESIDENT EGAN: Would the Sergeant at Arms please determine whether there are any other delegates in the building? Mr. Sundborg, does your Committee have a report to make in explanation of any changes that might have been made by your Committee?

SUNDBORG: Mr. President, we believe that no substantive changes have been made in this report. It was worked over, first of all by a subcommittee of our Committee, which consisted of Mr. Hurley, Mrs. Hermann, and Mr. Armstrong. It has been discussed with and reviewed by members of the Committee on Resources, and I believe that they agree with us that no substantive changes have been made. We have asked Mr. Hurley to explain the changes incorporated in the Article and to answer the questions of delegates.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I would like first to call attention, which you probably already noted, to a typographical error on line 15, page 2, in which "of" should be "or"; line 15, page 2.

PRESIDENT EGAN: Is that "recreational or scientific"; is that right?

HURLEY: Yes, Mr. President.

PRESIDENT EGAN: You ask that unanimous consent be given that that change be made at this time?

HURLEY: I do, Mr. President.

PRESIDENT EGAN: Is there objection to the unanimous consent request that the word "of" be changed to "or"? Hearing no objection, the change is ordered. Mr. Hurley.

HURLEY: Mr. President, I also call attention to line 7 on that same page and the first word in line 8, we have an extra "the"