Alaska Department of Law
List of Federal Issues and Conflicts
July 2021

NAVIGABLE WATERWAYS

Case or Matter	Alignment with Federal Approach	Brief Description	Status
Kuskokwim River/ Interior Board of Land Appeals (IBLA) Appeal. AAG J. Alloway	Not aligned.	The State requested a recordable disclaimer of interest on the Kuskokwim River to resolve a dispute over ownership of a portion of the riverbed. The Bureau of Land Management (BLM) denied the request, and the State appealed to Interior Board of Land Appeals.	Briefing is complete and we are awaiting a decision by the IBLA.
Middle Fork, North Fork, and Dennison Fork of the Fortymile River—navigability. AAGs R. Opsahl, L. Harrison	Not aligned.	BLM previously found portions of the Middle Fork of the Fortymile, North Fork of the Fortymile, Dennison Fork, and West Fork of the Dennison Fork non-navigable. In response to the State's notice of intent to sue, BLM reversed its position on the Dennison Fork and the West Fork of the Dennison Fork, but not the other two rivers. The State filed a quiet title action on those rivers in October 2018.	BLM filed an answer denying the navigability of the disputed portions of the Middle Fork and North Fork of the Fortymile. The parties are engaged in discovery; trial is anticipated Summer 2022.
Navigable Waterways/ Togiak Public Use Management Plan (PUMP). AAG A. Nelson	Not aligned.	The PUMP asserts jurisdiction over, and directs the United States Fish and Wildlife Service (USFWS) to adopt regulations to limit unguided use on state navigable waterways in the Togiak National Wildlife Refuge.	The USFWS has not proposed the regulations yet.

ACCESS AND LAND

Case or Matter	Alignment with Federal Approach	Brief Description	Status
Roadless Rule - *State of Alaska v. U.S. Dept. of Agriculture* (D.C. Cir., 17-5260). AAG M. Gramling	Not aligned.	State challenged the application of the Roadless Rule in Alaska as well as nationwide. The Roadless Rule prohibits the building of roads in Inventoried Roadless Areas of national forests, which essentially shuts down resource development in many areas of the Tongass. On a parallel track, the State is pursuing regulatory relief for the Tongass.	In the litigation, the district court upheld the Roadless Rule, and the State appealed. Briefing has been completed before the D.C. Circuit, but in 2018 the appellate court granted intervenor's request to put the case on hold until the rulemaking is done. In October 2020, the USDA published a final rule exempting the Tongass from the 2001 Roadless Rule. The 2001 Roadless Rule continues to apply to about 5.4 million acres in the Chugach. In December 2020, the State requested that the abeyance be lifted and the case put back on the calendar for argument. The federal government and intervenor defendants have requested the case be dismissed as moot. The State's motion to lift the abeyance was granted. The briefing on the merits and the motions to dismiss the case are scheduled for argument. Argument will be held on September 10, 2021.
2020 Tongass Exemption Rule - *Organized Village of Kake, et al v. U.S. Dept. of Agriculture* (Alaska Dist., 1:2020-cv-00011). AAG M. Gramling	Uncertain.	In late December 2020, a group of Alaska Native tribes, tourism businesses, a fisheries advocacy group, and environmental organizations filed a complaint in the U.S. District of Alaska challenging the 2020 Tongass Exemption Rule. The 2020 Tongass Exemption Rule exempts the Tongass National Forest from the 2001 Roadless Rule. The Complaint alleges that the 2020 Tongass Exemption Rule violates ANILCA, NEPA, the APA, the Organic Administration Act, and the National Forest Management Act. The 2020 Tongass Exemption Rule was published following a rulemaking process that begin in 2018 with the State of Alaska's petition for an exemption.	The case is stayed until at least September 1, 2021. The USDA has yet to answer the complaint. The State and various communities and businesses have intervened to support defense of the 2020 Tongass Exemption Rule. The USDA requested the stay because the Biden administration asked that the USDA review the 2020 Tongass Exemption Rule. The USDA has given notice that it intends to propose a rulemaking to repeal or amend the 2020 Tongass Exemption Rule. The anticipated date for the new rulemaking is August 2021.
R.S. 2477 Rights of Way - *State of Alaska v. U.S.* (4:13-cv-00008). AAGs J. Alloway, R. Opsahl1	Not aligned.	State sued the U.S. and others to quiet title to a number of R.S. 2477 rights-of-way near Chicken, Alaska.	The State successfully condemned the rights-of-way across Native allotment lands, which was necessary before the case proceeded on the main issues relating to land owned by the federal government. The Native allotment owners appealed that decision to the Ninth Circuit, and in November 2020 the Ninth Circuit affirmed the district court. Since the district court's decision on the condemnation, the remainder of the case has also proceeded. The case is currently stayed pending settlement discussions.

ACCESS AND LAND, continued			
King Cove Road - *Friends of Izembek NWF v. Bernhardt* (3:19 cv-00216) (Ninth Circuit: 20-35721, 35727, 35728). AAGs S. Lynch, M. Gramling	Aligned.	For many years, residents of King Cove have been trying to get a road from the village to the airport at Cold Bay. The road would be primarily for health and safety purposes, as the airport at Cold Bay is the nearest location where large planes can land in the area's often poor weather conditions. A road directly connecting these two towns would have to cross federally designated wilderness in the Izembek National Wildlife Refuge.	There have been three attempts to complete a land exchange with federal administrations. The State has participated as an intervenor-defendant and amicus curiae in past litigation. Most recently, King Cove Corporation and the U.S. Dept. of Interior (DOI) entered into a 2019 land exchange agreement, which, like previous similar agreements, has been challenged by environmental groups. The State intervened in support of the agreement. On June 1, 2020, the district court vacated the land exchange agreement after finding it violated the Administrative Procedures Act and Title XI of the Alaska National Interest Lands Conservation Act. The State, King Cove Corporation, and DOI appealed the decision to the Ninth Circuit. Oral arguments are scheduled for August 4, 2021
2016 Amendment to the Tongass Land Resources Management Plan (TLMP). AAGs M. Gramling, S. Lynch	Not aligned.	The 2016 TLMP amendment fully incorporated both the Roadless Rule and the Secretary of Agriculture's directive to rapidly transition timber harvest from old growth to young growth. The result would effectively place millions of additional acres off-limits to timber harvest and other resource development. The timber industry would likely be forced out of business while utilities, mining, and other industries would be substantially harmed.	The Secretary of Agriculture granted the State's petition for a rulemaking to effectively amend the Roadless Rule by promulgating a state specific rule to manage roadless areas in Alaska. USDA published a Notice of Intent to commence the rulemaking on August 30, 2018. But, the USDA declined the State's request to simultaneously amend the 2016 TLMP concluding that any amended to the TLMP must be a second process after the regulation has been changed. The final rule published in October 2020 exempted the Tongass from the 2001 Roadless Rule and directed administrative changes be made to the Tongass forest plan consistent with the changes in timber suitability determinations from the new exemption rule. It is not anticipated that the plan will change regarding the transition from old growth to young growth. In support of the USDA's motion to stay litigation challenging the 2020 Tongass Exemption Rule, the USDA indicated that it did not anticipate approving any projects in inventoried roadless areas in the Tongass. The USDA has yet to amend the TLMP as required by the 2020 Tongass Exemption Rule. The State is monitoring the USDA's implementation of the 2020 Tongass Exemption Rule and the TLMP.
2019 Amendment to the Chugach Land Resources Management Plan. AAG S. Lynch	Not aligned.	The new Chugach NF Plan established de facto Conservation System Units (CSUs) in violation of ANILCA's prohibition of additional CSUs except by Act of Congress. The unauthorized CSU's overlap existing highways, railways, and utilities and will make it difficult to impossible to expand or improve these facilities.	The State sought resolution of these issues with the USFS both formally and informally. On April 16, 2020 the USFS issued the final ROD and new Plan, which specifically identified the Resurrection Pass Trail as a CSU, although the trail has no such congressional designation. The new Plan also mandates management of a number of river segments as if those segments were CSUs, although State highways parallel these rivers and are located within the restrictive management areas. The State is disappointed that the USFS did not resolve the State's concerns with their management plan and the State is considering its options.

ACCESS AND LAND, continued			
Eastern Interior Resource Management Plan (EIRMP). AAG A. Nelson	Not aligned.	The EIRMP, adopted January 6, 2017, recommends unjustified mineral closures and conservation designations that are inconsistent with Alaska National Interest Lands Conservation Act (ANILCA) and Federal Land Policy Management Act's multiple use mandate. The EIRMP also fails to provide for lifting outdated ANCSA d-1 withdrawals unless new conservation withdrawals are implemented, although BLM has lifted the withdrawals in some of the less controversial areas, facilitating conveyance of certain statehood selections.	We continue to monitor congressional and agency action on the issue and evaluate options, including administrative action and litigation. We also continue to monitor implementation decisions made under EIRMP.
Lands into Trust. AAGs Chris Orman, A. Nelson	Uncertain.	After the district court in Akiachak v. Dept. of Interior found in favor of plaintiffs, DOI changed its regulations to permit lands in Alaska to be taken into trust. In the summer of 2018, the Department of Justice temporarily withdrew the Solicitor's Opinion on which the DOI relied to change its regulations. The State submitted comments to Interior on the proposed rule on January 25, 2019. DOI has not yet published a new rule, but on January 19, 2021 the Solicitor permanently withdrew the 2017 opinion and published a new Opinion contending that the 2017 Opinion was flawed because it didn't adequately consider the Alaska Statehood Act or ANCSA.	On April 27, 2021, the Solicitor issued a new opinion, M-37069, that withdrew the January 19, 2021 opinion, and announced that the Department of Interior would accept trust land acquisition applications from Alaska tribes. We are closely monitoring this issue.
SOA v. BLM, IBLA 2016-109 & 2017-55 (ANWR Boundary). AAG D. Burke	Not aligned.	BLM denied the State's statehood entitlement request for conveyance of 20,000 acres, based on dispute over whether the western boundary of ANWR is the western bank of the Canning River or the western bank of the Staines River. The State also objected to a survey plat of the area directly south of the area requested for conveyance.	IBLA denied BLM's motion to dismiss and consolidated the State's two appeals. Briefing was completed in May 2018 and IBLA denied a joint motion to expedite the case in June 2019. The IBLA issued its decision in November 2020, affirming the challenged BLM decisions and the underlying actions that informed them because they effectuated the intent behind PLO 2214, and Alaska failed to demonstrate error thereto. The State has two years from the date of the decision to determine whether to appeal to district court and is evaluating its options.
ANWR Section 1002 Lease Sale. AAGs J. Ptacin, R. Opsahl	Mostly Aligned.	The Tax Cuts and Jobs Act of 2017, Pub. L. 115- 97, opened the ANWR 1002 area to oil and gas exploration and leasing.	Department of Interior (DOI) conducted a lease sale on January 6, 2021. The sale netted 13 bids, on 11 of the 22 tracts offered. AIDEA won 9 of the 11 leases. Regenerate Alaska won the lease of tract 29, title to which is disputed and is the subject of *SOA v. BLM*, IBLA 2016-109 & 2017-55, above. On June 1, 2021 the Biden Administration suspended all ANWR oil and gas leases pending a deeper look at the environmental impacts and the process which led up to the underlying lease sale themselves.

ACCESS AND LAND, continued			
ANWR 1002 Lease Sale Litigation (*Native Vill. Venetie et al. v. Bernhardt et al.*, 3:20-cv-00223; *Gwich'in Steering Cmtee et al. v. Bernhardt et al*, 3:20-cv-00204; *Audubon Soc'y et al. v. Bernardt et al.*, 3:20-cv-00205; *State of Washington et al. v. Burnhardt et al*, 3:20-cv-00224). AAG R. Opsahl	Mostly Aligned.	Two tribal groups, Non-governmental organizations, and a group of states allege violations of the National Environmental Protection Act (NEPA), Endangered Species Act (ESA), Migratory Bird Treaty Act, National Wildlife Refuge System Administration Act, Alaska National Interest Lands Conservation Act (ANILCA), and Tax Cuts and Jobs Act of 2017.	Complaints were filed in late August and early September, 2020. Alaska Oil and Gas Association (AOGA), Alaska Petroleum Institute (API), North Slope Borough, Native Village of Kaktovik, and Kikiktagruk Iñupiat Corporation (KIC) intervened. The State was granted intervention on December 31, 2020. Plaintiffs' motions for preliminary injunctive relief were denied on January 5, 2021. This case is currently stayed pending Department of Interior review and determination how to proceed.
Native Village of Eklutna v. United States Department of the Interior, et al (D.C. District Court No. 1:19- cv-02388). AAG L. Harrison	Aligned.	The Native Village of Eklutna requested a determination from the Department of the Interior that a certain Alaska Native allotment is "Indian lands" eligible for gaming under the Indian Gaming Regulatory Act. The Department denied the request primarily on the grounds that the plaintiff does not have jurisdiction or "exercise governmental power" over the allotment, as required to meet IGRA's definition of "Indian lands." The plaintiff has challenged the denial in D.C. District Court pursuant to the Administrative Procedures Act. The State has intervened in defense of the Department's denial.	The case is briefed and awaiting decision.
Trout Unlimited v. U.S. Environmental Protection Agency (Ninth Cir. Case No. 20- 35504). AAG L. Harrison	Aligned.	In 2019 the U.S. EPA withdrew a 2014 proposal to prohibit Clean Water Act dredge-and-fill permitting in the Pebble deposit area of Southwest Alaska. Trout Unlimited, along with a number of other tribal and environmental organizations, sued under the APA to invalidate the withdrawal. EPA moved to dismiss. At the briefing stage, the State intervened to defend the withdrawal on substantive grounds. Before substantive briefing was complete, the District Court granted EPA's prior motion to dismiss on the grounds that the withdrawal was unreviewable under the APA. Trout Unlimited appealed to the Ninth Circuit on an expedited basis.	The Ninth Circuit reversed the District Court and found that the EPA's decision was reviewable. The Ninth Circuit has remanded for further proceedings.

ACCESS AND LAND, continued			
NPRPA Integrated Activity Plan Litigation (*Nat'l Audubon Soc'y et al. v. Bernhardt*, 3:20-cv-00206; *Northern Alaska Envtl. Ctr. et al. v. Bernhardt*, 3:20-cv-00207). AAG R. Opsahl	Mostly Aligned.	Non-governmental organizations allege violations of the National Environmental Protection Act (NEPA) and the Naval Petroleum Reserves Production Act (NPRPA).	Complaints were filed in late August 2020 and the cases were effectively stayed pending issuance of the Record of Decision. The ROD issued on December 31, 2020. This case is stayed pending Department of Interior review and determination how to proceed.
Ladue Statehood Entitlement Survey (*SOA v. IBLA*, 2020-0361). AAG B. Gregg	Not aligned.	The State appealed BLM's rejections of its objections to a proposed statehood entitlement patent on General Selection application F-028269 (GS- 913). The plat of survey includes an insufficiently surveyed and described boundary between SOA land and land owned by Tetlin Native Corporation. Mining claims straddle the insufficiently described boundary.	Alaska filed the notice of appeal with the IBLA on June 5, 2020. Merits briefing is stayed pending ongoing settlement discussions with BLM and Tetlin Native Corporation, the adjacent land owner.
Ambler Industrial Access Road Litigation (*Northern Alaska Envt'l Center et al. v. Bernhardt et al., 3:*20-cv-00187*; Alatna Village Council et al. v. Padgett et al,* 3:20-cv-00253). AAGs B. Gregg, E. Fossum	Currently Mostly Aligned.	Non-Governmental Organizations and Tribes allege violations of the National Environmental Protection Act (NEPA), Alaska National Interest Lands Conservation Act (ANILCA), National Historic Preservation Act (NHPA), Federal Land Policy and Management Act (FLPMA), and Clean Water Act (CWA).	Complaints were filed in August and October 2020. Ambler Metals LLC and AIDEA intervened. The State moved to intervene in *NAEC, et al. v. Bernhardt, et al.* on December 16, 2020; and in *Alatna, et al. v. Padgett, et al.* on January 8, 2021. Over the past four months, the federal defendants lodged the administrative record with the court in both cases. The parties are now set to establish whether the AR is complete, or requires supplementation. A briefing schedule will issue if/when the parties settle any issues re: the AR.

ACCESS AND LAND, continued			
Challenge to delay in implementing ANCSA 17(d)(1) withdrawal revocations (*State of Alaska v. Haaland, et al.* 3:21-cv-0158). AAG R. Opsahl	Not aligned	Challenge to decisions by Department of Interior to delay the implementation of five public land orders executed by Secretary Bernhardt before change in administration. These orders would have removed ANCSA 17(d)(1) withdrawals from 28 million acres of BLM lands, and returned those lands to multiple use management, including possible conveyance to the State under Statehood Act entitlements.	On July 7, 2021, the State filed its complaint.

CLEAN AIR ACT

Case or Matter	Alignment with Federal Approach	Brief Description	Status
2017 Regional Haze State Implementation Plan Rule - *State v. Environmental Protection Agency (EPA)*; Texas v. EPA (D.C. Cir., 17-1074). AAG S. Mulder	Uncertain, but appears unlikely.	The State, along with North Dakota, Texas, and Arkansas, challenged the 2017 Regional Haze State Implementation Plan Rule, which imposed quantification requirements on international air emission contributions to regional haze affecting national parks and wilderness areas. The State is concerned about having international contributions to haze that are beyond the State's control count against Alaska and other states. The State also objects to the Environmental Protection Agency (EPA) shifting its modeling responsibilities and modeling costs to Alaska.	This case is at the appellate court level. Briefing is currently on hold, while EPA revisits aspects of the rule and engages in a new rulemaking process.
Affordable Clean Energy Rule (ACE). AAGs S. Mulder, N. Haynes	Aligned.	The Affordable Clean Energy (ACE) rule and took effect on September 6, 2019. ACE repeals the Clean Power Plan (CPP); issues emissions guidelines for greenhouse gas emissions; and revises the emission guidelines implementing regulations under the Clean Air Act.	Legal challenges were filed by various groups and states challenging the ACE rule. *Am. Lung Assoc. v. EPA*, No. 19-1140 (D.C. Cir. July 8, 2019); *New York v. EPA*, No. 19-1166 (D.C. Cir. Aug. 14, 2019). Alaska and several other states intervened in *New York v. EPA*, in support of EPA's ACE rule. The D.C. Circuit Court of Appeals issued a decision on January 19, 2021, jettisoning the Trump Administration's Affordable Clean Energy Rule. Alaska joined West Virginia and other states in a petition for review by the U.S. Supreme Court. The federal government's response is due in July.
Union of Concerned Scientists v. National Highway Safety Administration (D.C. Cir., No. 19-1230); *Environmental Defense Fund v. National Highway Safety Administration* (D.C. Cir., No. 19-1200). AAG S. Mulder	Aligned.	Alaska and several other states intervened in two lawsuits involving a new rule promulgated by the National Highway Traffic Safety Administration (NHTSA) that will effectively preempt California laws that set vehicle emission standards that are different that the federal Clean Air Act standards.	Both cases are in the briefing stage.

CLEAN AIR ACT, continued			
Multi-state challenge to executive order requiring the consideration of the social costs of greenhouse gases (*Missouri, et al. v. Biden*, 4:21-cv-0287 (E.D. Mo.). AAG R. Opsahl	Not aligned	Coalition of 14 states challenge President Biden's executive order required the consideration of the social costs of greenhouse gases.	A complaint was filed on March 11, 2021. On March 26, 2021, the states amended their complaint. On April 26, 2021, the plaintiff states, and others, submitted comments to the Federal Energy Regulatory Commission on a proposed rule that would mandate the use of social cost of carbon analysis. On July 2, 2021, plaintiff-States filed a response to the federal defendants motion to dismiss and reply in support of their motion for preliminary injunction.
Kelsey Cascadia Rose Juliana, et. al. v. United States (D. Oregon 6:15-cv-01517-AA). AAG N. Haynes	Generally aligned, but change in administration leaves significant uncertainty	A group of people (predominately minors represented by guardians *ad litem*) sued the federal government (the Office of the President and a group of federal agencies) seeking to compel the federal government to stop taking actions that perpetuate climate change, and establish a federal policy to transition away from fossil fuels. This case is very similar to the *Kanuk* case that the State of Alaska successfully defended against in state court. *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088 (Alaska 2014).	The case has already been heard and decided by the Ninth Circuit, which resulted in an order on remand to dismiss the case for lack of standing. *Juliana v. United States*, 947 F.3d 1159, 1175 (Ninth Cir. 2020). It is now on remand with the D. Oregon, and the plaintiffs are seeking to amend the complaint while the court is setting settlement conferences. The SOA joined a motion for limited intervention as defendant, led by Alabama. The federal defendant has opposed the motion, arguing they adequately represent our interests.

WATER

Case or Matter	Alignment with Federal Approach	Brief Description	Status
"Waters of the U.S." Rule - North Dakota v. EPA (ND Dist. Ct. 3:15- cv-00059). AAG J. Currie	Uncertain.	State joined a coalition of 12 states challenging the 2015 "waters of the U.S." (WOTUS) rule. Among other things, the 2015 rule expands what falls under federal jurisdiction by automatically sweeping up "adjacent" or "neighboring" waters and wetlands within certain geographical limits to downstream waters already covered by federal law.	The district court action is currently proceeding in North Dakota Federal District Court. The WOTUS rule has been stayed by the court as to the states that are a party to this case, including Alaska. Summary judgment briefing is complete. The federal government is no longer defending the merits of the 2015 rule, though intervening environmental groups are. Plaintiff states requested a stay based on the ongoing litigation related to the WOTUS 2020 Rule. The request was granted through September 20, 2021.
"Waters of the U.S." Rule - State of California v. Wheeler (ND CA Dist. Ct. 3:20 cv 03005-RS). AAG J. Currie	Uncertain, likely not aligned.	State joined in a multi-state motion to intervene on behalf of the Defendant, EPA, in support of the 2020 "waters of the U.S." (WOTUS) rule.	In 2020, a rulemaking to redefine WOTUS was completed and the 2020 Rule was issued. Numerous states sued EPA arguing that the new rule was too narrow. Alaska joined a multi-state effort and intervened in the lawsuit on behalf of EPA and in support of the new rule. The Biden administration announced its intention to revisit the rule and to file a motion to remand without vacatur for reconsideration at the agency level. That motion is due July 16, 2021.

FISH AND GAME

Case or Matter	Alignment with Federal Approach	Brief Description	Status
NPS and USFWS Rules on Management of Fish and Game - *State v. Bernhardt* (3:17-cv-00013). AAG C. Brooking	Not aligned.	The State challenged regulations adopted by the National Park Service in 2015 affecting hunting on preserve lands throughout Alaska and regulations adopted by the U.S. Fish and Wildlife Service restricting hunting on the Kenai National Wildlife Refuge (NWR). Three cases were filed and consolidated. The NPS regulations preempted state management of wildlife, prohibited several means of take for predators, and changed public participation procedures for hunting and fishing closures. The USFWS regulations prohibit certain activities within the Kenai NWR and the State is objecting to the prohibition on taking brown bears at black bear baiting stations, a practice that is allowed under state regulations.	In July 2017, NPS and USFWS were directed by the Acting Assistant Secretary for Fish and Wildlife and Parks to initiate rulemaking procedures to reconsider their rules. In June 2020, NPS published a final rule that reversed much of the 2015 rule challenged in the litigation. USFWS published a proposed rule in June 2020 that would reverse a portion of the current rule being challenged, but no final rule has been published. In November 2020, the court upheld portions of the Kenai Rule but revoked restrictions on firearms along rivers and remanded for non-compliance with NEPA. The State appealed portions of the decision pertaining to the Kenai Rule. The remaining claims against the NPS were dismissed.
Federal Subsistence Board actions – *State of Alaska v. Federal Subsistence Board* (No. 20-00195). AAG C. Brooking	Not aligned.	In August 2020, the state challenged actions taken by the Federal Subsistence Board as violating ANILCA, the federal open meetings laws, and the APA. The state challenged FSB's decision to close moose and caribou hunting in GMU 13A and 13B for two years to non-federally qualified hunters. The state also challenged FSB's delegation of authority to local federal land managers to open emergency hunts and to delegate hunt administration outside of a federal agency, neither action being authorized by Congress.	The state's requests for injunctions were denied. We are in the briefing stage.

FISH AND GAME, continued			
Salmon Fishery Management Plan - *United Cook Inlet Drift Association v. National Marine Fisheries Service* (Alaska intervened in support of defendants) (3:13-cv- 0104). AAG A. Peterson	Aligned.	United Cook Inlet Drift Association (UCIDA) sued the National Marine Fisheries Service (NMFS) challenging the validity of Amendment 12 to the Fishery Management Plan (FMP) for Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska. Amendment 12 effectively removes federal oversight under the Magnuson-Stevens Act (MSA), thereby allowing state management, for three fishing areas beyond the three-mile limit from shore. One of these areas was the Cook Inlet EEZ, which is the focus of the lawsuit.	The State intervened in support of NMFS to protect the State's interest in maintaining management authority over the area. The federal district court found in favor of NMFS, upholding Amendment 12. After UCIDA appealed, the Ninth Circuit reversed the district court and held that Amendment 12 was contrary to law to the extent it removed the Cook Inlet EEZ from the FMP. The court explained that the MSA allows delegation to the state under an FMP, but does not excuse the federal government's obligation to adopt an FMP when it opts for state management. The U.S. Supreme Court denied the State's request to hear the case. The district court retained jurisdiction to oversee adoption of a new plan. The North Pacific Fishery Management Council continues to work through the issues. The plaintiffs filed a motion to enforce judgement, seeking the court's intervention in the creation of the FMP and oversight of the fishery until the plan is in place. The district court denied the plaintiff's motion, and ordered that the Council adhere to their estimated timeline and adopt a final FMP amendment by December 31, 2020, with final agency action to occur within one year thereafter. On appeal the Ninth Circuit affirmed the district court. As a result of the litigation, and the associated deadlines to adopt an FMP, the North Pacific Fisheries Management Council adopted a plan that closes the federal waters in Cook Inlet to commercial fishing. That plan is now forwarded to the Secretary for adoption and final rulemaking.
Southeast Alaska Salmon Fisheries - *Wild Fish Conservancy v. Thom, et al*., (Alaska intervened in support of defendants) (2:20-cv-00417). AAG A. Peterson	Aligned.	In March of 2020 the Wild Fish Conservancy (WFC) sued the National Marine Fisheries Service, alleging that the salmon fishery in federal waters adjacent to Southeast Alaska violated the Endangered Species Act. Specifically, WFC argues that the Biological Opinion and its Incidental Take Statement related to Southern Resident Killer Whales was flawed and that take of their prey (chinook salmon) in Southeast Alaska is unlawful.	WFC moved for a preliminary injunction in April 2020. In June of 2020 the magistrate issued a Report and Recommendation that the court deny the motion for a PI. The Court adopted the recommendation denying the PI in March of 2021. Alaska's motion to intervene was granted shortly thereafter and summary judgment briefing was completed in May. Oral argument is scheduled to occur in late July.

MINING

Case or Matter	Alignment with Federal Approach	Brief Description	Status
2003 and 2008 Mining Claim Rules - *Earthworks v. U.S. Dept. of Interior* (D.C. Dist. Ct. 1:09-cv- 01972; D.C. Cir. 20-5382). AAG E. Fossum	Currently Aligned.	Plaintiffs challenged 2003 & 2008 Mining Claim Rules promulgated by U.S. BLM. State intervened—in support of federal defendant—to support the federal rule, which eliminated some of the regulatory hurdles for miners.	The district court granted Defendants' motions for summary judgment on October 26, 2020. Appellant appealed to the D.C. Circuit on December 23, 2020. Briefing on this matter was pushed to December 2021 / January 2022 upon request by the federal government and in consultation with all parties.
Wishbone Hill Mine - *Castle Mountain Coalition v. OSMRE* (AK Dist. Ct., 15-cv- 00043). AAG E. Fossum	Not generally aligned.	The State intervened—in support of defendant—to defend the validity of the state-issued mine permits, which plaintiffs asserted had automatically terminated.	The district court found in favor of plaintiffs and remanded the decision back to the agency. On remand, the federal agency ultimately found that the State had "good cause" to not take action because it needed additional time to come to a decision. The State issued a decision at the end of November 2018, upholding the validity of the permits. OSMRE subsequently determined that it did not have sufficient reason to believe a violation existed, and therefore did not issue a ten-day notice or order an inspection. At this time, no party has requested further review. The State is currently reviewing another request to issue permits for this mining project, which may renew this issue through state or federal agency appeals, or through federal litigation. Currently, no immediate issues or litigation are anticipated, but the State (DNR) expects to hold an informal public hearing on any new permit issuance for Wishbone in August/September 2021.

OIL AND GAS

Case or Matter	Alignment with Federal Approach	Brief Description	Status
Reversal of Ban on Offshore Development –*Trump v. League of Conservation Voters* (Nos. 19-35460, 19-35461. 19-35462). AAG L. Fox	Aligned.	Before leaving office, former President Obama issued an order pursuant to the 1953 Outer Continental Shelf Lands Act indefinitely banning all leases in certain off-shore areas, including large portions of the Chukchi and Beaufort Seas. President Trump issued an executive order rescinding the ban, and environmental groups have challenged the order. BOEM is gathering comments on a new proposed five-year National Offshore Oil and Gas Leasing Program, for years 2019–2024. The State intervened in a lawsuit to support and defend President Trump's executive order.	In March 2019, the federal district court granted summary judgment to the plaintiffs (and denied summary judgment to the federal government and the State), ruling that the Outer Continental Shelf Lands Act's language permitting a president to "from time to time, withdraw" unleased lands from disposition did not permit President Trump to undo President Obama's previous withdrawal of lands. The federal government and the State appealed to the Ninth Circuit, and briefing and argument was completed in June 2020. After taking office, incoming President Biden reversed President Trump's executive order, mooting the lawsuit over that order's validity. In April 2021, the Ninth Circuit dismissed the appeal and vacated the district court decision as moot.
Multi-state challenge to executive order imposing moratoria on federal oil and gas leasing (*Louisiana, et al. v. Biden*, 2:21-cv-0778 (W.D. La.). AAG R. Opsahl	Not aligned	Coalition of 13 states challenge President Biden's de facto moratorium on federal oil and gas leasing.	A complaint was filed in March 2021, followed by a motion for preliminary injunction. The district court granted plaintiff-States' motion for preliminary injunction on June 15, 2021, enjoining defendants from implementing the challenged executive order. Currently, the parties are briefing a motion to dismiss filed by the federal defendants.
Willow project challenges (*Center for Biological Diversity v. BLM*, 3:20-cv-0308-SLG; *Sovereign Iñupiat for a Living Arctic v. BLM*, 3:20-cv-0290-SLG). AAGs R. Opsahl, J. Ptacin	Mostly aligned	Environmental NGOs and tribal groups challenge BLM, Corps of Engineers, and Fish & Wildlife Service approvals of the Willow Master Development Plan, which authorized additional development by ConocoPhillips Alaska on federal oil and gas leases for lands in the National Petroleum Reserve–Alaska.	Oral argument on plaintiffs' motions for summary judgment was held for July 12, 2021.

ENDANGERED SPECIES ACT

Case or Matter	Alignment with Federal Approach	Brief Description	Status
Endangered Species Act Rules - *California v. Bernhardt*, (N.Cal. Dist. Ct., 4:19-cv-06013-JST); *Animal Legal Defense Fund v. Bernhardt* , (N.Cal. Dist. Ct., 4:19-cv-06812-JST0; and *Center for Biological Diversity v. Bernhardt* , (N.Cal. Dist. Ct., 4:19-cv-05206- JST0). AAG C. Brooking	Aligned, initially.	Three lawsuits were filed challenging regulations adopted in 2019 by the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Among other things, the rules clarified the meaning of "foreseeable future" in determining whether a species is threatened, allows economic factors to be considered while still making decisions based on the best scientific and commercial data, and provided guidance on when to consider unoccupied areas as critical habitat for listed species.	In December 2019 and January 2020, Alaska joined twelve other states to intervene in all three cases to defend the new rules. The current administration announced its intent to start a new rulemaking process to reverse the progress made with the 2019 rules.
Seismic testing in Cook Inlet - *Cook Inletkeeper et al. v. Ross, et al.* (D. Alaska 3:19-cv-00238-SLG). AAGs A. Peterson, J. Pickett	Aligned.	Cook Inletkeeper and others sued to challenge permission given to Hilcorp Alaska to conduct seismic testing in Cook Inlet. The testing is permitted by the National Marine Fisheries Service under the Marine Mammal Protection Act and the Endangered Species Act. The permission includes conditions to avoid and limit impacts on beluga whales. Cook Inlet belugas are listed as a distinct population segment.	In December 2019 the court granted Alaska's motion to intervene. Summary judgment briefing was completed, and oral argument was held December 14, 2020. The federal district court (Judge Gleason) granted summary judgment in favor of plaintiffs, finding that NMFS' permitting did not adequately protect belugas from the impact of sounds associated with Hilcorp's proposed drilling activities. The State, along with Hilcorp and NMFS, asked Judge Gleason not to vacate all of NMFS's permitting, but only that related to mitigation measures associated with sound. Judge Gleason took the unusual step of granting this request, leaving in place the majority of NMFS's rulemaking permitting Hilcorp's proposed development activities in Cook Inlet.

LABOR			
Case or Matter	**Alignment with Federal Approach**	**Brief Description**	**Status**
Eugene Scalia (in his official capacity as Secretary of Labor) v. State of Alaska Department of Transportation (Ninth Circuit, 19-35824). AAG K. Demarest	Not aligned.	The Secretary of Labor challenged the State's application of the Family and Medical Leave Act (FMLA) to Alaska Marine Highway System workers working "rotational" schedules, such as seven days on, seven days off. The district court sided with the Secretary, holding that the phrase "twelve workweeks of leave" in the Act means only weeks the worker was "actually scheduled to work" count against the leave entitlement, because a "workweek" can never have no hours scheduled. The State argued that "workweek" means the same thing in the FMLA as it means in the Fair Labor Standards Act—a period of seven consecutive 24-hour periods. We also argued that continuous leave under the statute and regulations must be simply one continuous block, not twelve weeks separated by "off" weeks, leading to the unfair result that some employees can stay away from work for 24 full weeks.	In its January 15, 2021 decision, the Ninth Circuit agreed with the State's analysis that "workweek" is a statutory term of art from the Fair Labor Standards Act and must mean the same thing in the FMLA. This means Alaska has been calculating 12 weeks of continuous leave correctly, by counting 12 continuous weeks for everyone, regardless of whether the employee works a traditional or a rotational schedule. The case is now closed.