

RG 22 FISH AND WILDLIFE SERVICE  
BUREAU OF BIOLOGICAL SURVEY  
GENERAL CORRESPONDENCE, 1890-1956  
Reservations  
Miscellaneous  
General  
1943-59  
BOX No. 191 E162

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## Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Bureau of Sport Fisheries and  
Wildlife, Washington, D. C.

DATE: 12-1-59

FROM : Acting Regional Director, Bureau of Sport Fisheries and  
Wildlife, Juneau, Alaska

SUBJECT: Status of and Jurisdiction Within Federal Refuges in Alaska

You will be interested to learn that attorneys in the state's (Alaska) Department of Law are researching a currently held and popular theory that most of the Federal wildlife refuges in Alaska created prior to passage of the Statehood Act (Public Law 85-508) might very well be invalid and that the state has exclusive jurisdiction over such lands.

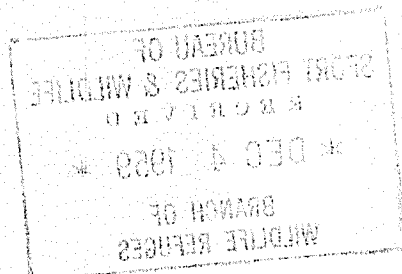
The question of validity is based upon the fact that none of the areas were specifically mentioned in the original Statehood Act as was McKinley Park in Section 11 thereof. They argue that because such refuges were not named the people of Alaska were not provided with an opportunity to assent to their retention in Federal ownership.

The exclusive jurisdiction theory arises from Section 2 of the Omnibus Act which amends Section 4 of the Statehood Act to clarify the matter of jurisdiction over lands of the United States. Generally, it provides that absolute jurisdiction and control of the United States applies only to land and property held by natives or by the United States in trust for natives. Using this as a base, state legal authorities question the right of the United States to legislate in any manner relative to the control of non migratory wildlife species on the Federal wildlife refuges.

✓	Chief
	Asst. Chief C
✓	Asst. Chief A
	Adm. Services
	Operations
	I. R.
	Public
	D. S.
✓	W.P.K.
	Refuges
	D. H. [initials]
	Management
	L. G.
	W.B.S.

let's get copies of  
these acts

*Dan H. Ralston*  
Dan H. Ralston



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ALASKA DEPARTMENT OF  
SPORTS, FISHERIES AND WILDLIFE

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Surname:

*DuMont*  
*Ackerknecht*

Acting Regional Director, Bureau of Sport  
Fisheries and Wildlife, Juneau, Alaska

July 2, 1959

Acting Chief, Branch of Wildlife Refuges

Statement on refuges in Alaska

Mr. Hugh A. Johnson, who is in the Research Division of Farm Economics, Department of Agriculture, is collaborating with Harold Jorgensen of the Bureau of Land Management in writing a book on Alaska's Land Resources.

One chapter is on "Recreational Lands." It will contain sections on "Forests", "National Parks", "Wildlife Refuges", and several other related categories.

Mr. Philip DuMont, of our staff, was asked by Mr. Johnson to draft a statement on the National Wildlife Refuges in Alaska. Mr. Johnson was interested in having the present recreational potentiality stressed as well as the future potentialities. It is difficult for us to visualize these areas as contributing economically to an expanded recreational program comparable to that visualized by Mr. Johnson.

We have, nevertheless, prepared a statement which we would appreciate having reviewed in your office and rewritten, if you consider it necessary. We are also sending a copy to Dr. John Buckley to secure his comments. Please be perfectly frank with any suggestions for improvement or modification of this statement.

(SGD.) WILLIAM E. ACKERKNECHT

Enclosure

Copy to: Dr. John Buckley  
Patuxent Refuge

MAILED JUL 10 1959

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## RECREATION - LANDS

### National Wildlife Refuges

National Wildlife Refuges have been established in nearly all of the 50 states under authority originating from treaties between the United States and Great Britain and with Mexico. The first of these refuges was established in Florida in 1903. Many of the areas in Alaska were established by Executive orders between 1909 and 1912.

National wildlife refuges are established and maintained to provide for: The protection of migratory birds, in order to insure an adequate residual brood stock to perpetuate the resource; the preservation through public ownership of an adequate segment of the overall migratory bird breeding, migrational and wintering habitat; and for public enjoyment of migratory bird and other wildlife resources. Nearly half of the total area in national wildlife refuges is in Alaska. These 14 refuges are of several types; only one being primarily for migratory waterfowl.

Ten of the 14, including the 2,720,000-acre Aleutian Islands National Wildlife Refuge, protect colonies of oceanic birds and marine mammals. These contain some of the largest and most spectacular concentrations of nesting birds to be found anywhere. These islands are mostly inaccessible. They are usually small and rocky with no human inhabitants. Enormous numbers of Pacific kittiwakes and California murrelets occupy all available niches on the seemingly sheer walls of rock. Deep water makes it possible for even

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a large vessel to drift almost to the base of such cliffs providing an excellent opportunity to watch these birds. The sea otter, formerly rare, has increased considerably in numbers around several islands in the Aleutian Refuge. Their further increase is limited to those islands having protected beds of kelp.

The other three areas, containing nearly 5 million acres, are primarily for big-game animals. Nunivak National Wildlife Refuge, occupying all of the Island with 1,109,390 acres, has the only musk-oxen in Alaska. This herd, numbering about 100 animals, was established with a nucleus of 34 brought from Greenland in 1930.

Kodiak National Wildlife Refuge, with 1,921,802 acres, has some of the largest brown bears in the world. The entire area is open to the public and access is by plane or foot travel as no roads exist on the refuge. Hunting and trapping are allowed in accordance with the Alaska Game Laws. The deep bays provide excellent shelter for small boats and various sporting and trapping activities on the refuge are conducted from these base camps. Small amphibious planes are used consistently by sportsmen on all major parts of the refuge.

Kenai National Moose Range was established in 1941 to ensure the continued abundance of this great animal. Located on the west side of the Kenai Peninsula near Alaskan population centers, the Moose Range provides a public area for outdoor recreation and is heavily utilized for that purpose. Over 125 lakes are suitable for float plane operation. Areas along lakes and streams near the Sterling Highway from the eastern boundary of the Range to the inter-

section of the settlement area, approximately 5 miles east of Moose River, will be developed to provide for reareational use by highway travelers. Much of the remainder of the Range will be kept in wilderness areas as a game conservation measure.

During the summer season, fishing is popular; although the number of fishermen probably does not exceed 500 a year. In the fall, hunting of Dall sheep, mountain goats, and moose attract hunters from a wide area. It was estimated that about 700 moose were harvested on the range in the fall of 1958. The recent exploratory operations of oil companies have resulted in additional access roads. These may facilitate hunters reaching more remote parts of the moose range and removing an adequate number of animals to prevent overbrowsing.

The administration of this 2 million-acre area must be accomplished with a staff of two or three individuals. The lack of roads, while a safeguard in protecting the wilderness aspect of the area, adds to the difficulty of patrol. Aerial surveys are expensive but most practical from the standpoint of covering significant parts of the range. It is also the most practical way of censusing the big-game populations. The use of boats, while slower, is much more reliable in all types of weather.

The management of the lands of the Kenai National Moose Range for moose is principally a problem of maintaining a balance between the habitat and the moose population. They utilize the entire area with the exception of high mountain regions, their numbers varying with the quality of the habitat.

Moose populations respond quickly to increased browse production, and, in order to maintain the balance between the population and the available food, reductions in the herd must be made by public hunting.

There is an interesting variety of wildlife to be seen. Bands of Dall sheep may be found on the western slopes of the Kenai Mountains between Skilak Lake and the head of Kachemak Bay. Mountain goat inhabit the Range in the vicinity of Skilak Glacier. Brown bear, in limited numbers, and the more abundant black bear are distributed over the area. Beaver, land otter, lynx, mink, weasel, wolverine, and coyote are among the fur animals found on the area. Both willow and white-tailed ptarmigan are present on the Range, usually in the mountains. Spruce grouse are scattered over the lower areas. Ducks and geese use the Chickaloon flats and some of the rivers during migration.

While the glacier-fed waters of Skilak and Tustumena Lakes are poor fishing areas, the tributary streams and major rivers yield good catches of rainbow and Dolly Varden trout and silver salmon. Many of the deep, clear lakes on the north end of the Range are good fishing areas for rainbow trout, and Hidden Lake is popular for lake-trout fishing.

The Kenai National Moose Range may be used for short periods of time by anyone without a permit for the purpose of camping, taking photographs, or natural history studies. Hunting, trapping, or taking game fish is permitted by anyone who complies with the provisions of



the Alaska Game Law and regulations. Commercial lodges are not permitted. Temporary tent camps for private use are allowed without formal permit provided that no site may be occupied for more than 60 days and all installations and facilities must be removed from the site after the conclusion of occupancy.

Guides or Agents who furnish transportation to hunters, fishermen, or others must secure a permit (issued without charge) from the Refuge Manager for establishing or maintaining a camp of any type. Guides and agents, however, may not establish or maintain camps on the Kenai River, Sillak Lake, Hidden Lake, Russian River, or Upper and Lower Russian Lakes.

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

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EASEMENTS

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JAN 21 1947

CHICAGO, ILLINOIS

MEMORANDUM

To: Mr. Warner W. Gardner, Acting Chairman, Coordination Committee.  
From: Director, Fish and Wildlife Service.  
Subject: Revised Administrative Procedure for Easements.

Supplementing my memorandum of January 8, 1947, requesting additional time within which to comment upon recommendations made by Mr. Wolfsohn and Mr. Northrop in their memorandum to you of December 19, 1946, and in accordance with your reply of January 13, 1947, I now wish to advise that the Fish and Wildlife Service is in sympathy with the objectives sought to be attained by the adoption of the recommendations presented. Furthermore, I wish to advise that I concur in the recommendations presented with your memorandum to members of the Coordination Committee of December 26, 1946, subject to the comments which follow.

1. It is understood that the recommendations shall affect the Fish and Wildlife Service with respect to all lands over which it has primary administration regardless of whether they were withdrawn from the public domain or were acquired through purchase.

2. In connection with Recommendation B, it is suggested that the time limit to be established be of sufficient length to permit full exchange of information between our central office and field offices.

3. With respect to Recommendation H, easements and permits on Fish and Wildlife Service lands relating to uses which are a part of the management for the development and conservation of fish and wildlife should be issued only within the Fish and Wildlife Service. This distinguishes between such types of use and others, such as public roads, power lines, pipe lines, telephones or telegraph lines, and oil and gas leases, and constitutes a limitation upon the authority of B.L.M.

To illustrate and justify the above, we cite the agricultural operations on the various wildlife refuges as an example of the type of use which is an integral part of management of the lands for wildlife purposes. The issuance of permits therefor by any agency other than the Fish and Wildlife Service would seriously handicap administration and management of the areas for the purpose

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for which they were established. Crops are grown on refuge lands primarily as feed for wildlife and not for the production of revenue or public service as might be the case on other Government lands. The same situation prevails in relation to timber cutting, grazing, trapping, and many other uses made of refuge lands where the issuance of permits or easements is based on a determination of the wildlife management needs and requirements.

4. The adoption of a uniform procedure would, I believe, constitute a great step forward in clarifying the approach of the general public, as well as the governmental agencies involved. In this regard it is suggested that upon the adoption of a clear-cut and uniform procedure the B.L.M. may wish to delegate to other agencies the authority to issue easements and permits which are temporary or revocable in their nature, and which are so local in character as to involve only the lands of a single agency. Should such prove to be the case, the Fish and Wildlife Service expresses its willingness to assume the obligation of issuance of permits pursuant to the uniform procedure to be adopted.

(SGD.) ALBERT M. DAY

Albert M. Day.  
Director.

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PERMITS

Chief Counsel, Washington, D. C.

July 9, 1946

Assistant Chief Counsel, Chicago, Ill.

Policy to be adopted for granting rights-of-way.

Attached hereto is a memorandum to me from Mr. Krummes dated June 26, 1946, relating to past efforts to arrive at policy to be adopted for permitting or granting rights-of-way over public lands and reservations of the United States, and more particularly over lands within national wildlife refuges.

One of the questions which Mr. Krummes would like to have answered is whether the conference to be held by one administrative and one legal representative each of the Fish and Wildlife Service and the General Land Office was ever held pursuant to the recommendation of the Solicitor in his memorandum to the Assistant Secretary dated December 15, 1944 and approved by then Assistant Secretary Oscar L. Chapman on January 20, 1945.

If such a conference has not been held and is still in contemplation, in addition to the viewpoints expressed in past discussions and interchange of correspondence upon this problem there should be arrived at a procedure for remittance of 25 percent of the receipts in accordance with Section 401 of the act of June 15, 1935 (49 Stat. 383). Regardless of who issues permits or who collects the fee it would appear mandatory under the provisions of that act that 25 percent of the receipts is to be paid by the Secretary of the Treasury to the county or counties in which the refuges are situated for the purposes named in said act. Since use permits of types other than those contemplated under the acts of February 15, 1901 (31 Stat. 790) and March 4, 1911 (36 Stat. 1253) are frequently executed and are not supervised in any way by the General Land Office, it would not appear to me that centralization is greatly aided by having the General Land Office supervise the issuance of permits under those acts. However, as the Solicitor has pointed out since authority for the issuance of permits even for roads, canals, telephone and telegraph lines, as well as electric power lines, springs from different statutory sources (i.e. the acts above referred to, as well as the Federal Water Power Act and the Migratory Bird Conservation Act, together with the act of June 15, 1935, *supra*), a determination of which procedure to follow is an administrative matter.

Further, in any discussion of this problem consideration should be given to the advisability of consultation with the Fish and Wildlife Service in order that conditions can be applied to the permits both for the purpose of protecting the refuges and possibly for the purpose of providing additional valuable considerations, such as the furnishing of power, maintenance of Government owned telephone or power lines, or any other consideration which might prove of value in the administration of the particular refuge.

Please advise whether the conference above referred to has been held, and if not whether it is still in contemplation. I would also appreciate your reaction to Mr. Krummes' suggestion that the permittees remit their fees to the

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Fish and Wildlife Service even if it is determined that the General Land Office shall issue the permits. This would seem to me to be a rather complicated way of producing a result which is primarily the responsibility of the Secretary of the Treasury, namely, the payment of 25 percent of the receipts for privileges upon wildlife refuges.

In addition to Mr. Krummes' memorandum, I am attaching copies of earlier correspondence upon this subject matter with the request that it be returned with your answer to this memorandum.

JET:ced

(Sgd) Joseph E. Taylor  
Joseph E. Taylor.

MAILED JUL 10 1946

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Joseph E. Taylor

June 26, 1946

William T. Krummes

Policy to be adopted for granting rights-of-way.

We wish to call your attention to the memorandum for the Assistant Secretary dated December 13, 1944 signed by the Solicitor Fowler Harper, and approved by Assistant Secretary Oscar L. Chapman on January 20, 1945, relating to a policy to be adopted for permitting or granting rights-of-way over public lands and reservations of the United States under the control or jurisdiction of the Department of the Interior as it relates to National Wildlife Refuges.

It is our desire to ascertain whether the conference suggested by the Solicitor was held, and what decisions, if any, were determined by such conference. These data are essential for the proper supervision and processing of applications for rights-of-way by this office and by the Division of Lands. It is also important that we have clarification on the several points under discussion since this office has been holding a number of applications for rights-of-way. Temporary authorizations have been granted for some of these rights-of-way, and others have been stymied for lack of a clear-cut policy relating to the procedure for handling them.

In the event the conference recommended by the Solicitor has not as yet been held, there are matters of policy that would appear to be mandatory for the proper administration of National Wildlife Refuges regardless of the departmental policy that may evolve from such a conference. One of these is with regard to Section 401 of the Act of June 15, 1935 (49 stat. 383), that provides for the disposition of all monies received from privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive Order administered by the Fish and Wildlife Service. The disposition of 25 percent of such receipts to the county or counties in which refuges are located appears to be provided for under Section 244.13 of Chapter 1, Title 43 of the Code of Federal Regulations wherein it is stated that, "Rentals for reservation lands shall be applied to the credit of the related receipt, account, or fund". If our interpretation of this is correct, and it is determined that certain right-of-way permits are to be handled by the General Land Office, it appears that such monies as may be received in connection therewith should be deposited to the "Refuge Receipts Fund". Further, if it is so determined, it is requested that the Fish and Wildlife Service be furnished with certified true copies of all permits issued by the General Land Office immediately upon issuance, and that permittees, in all cases where fees are involved, be instructed to remit such fees directly to the Fish and Wildlife Service, Merchandise Mart, Chicago 54, Illinois. Also that the General Land Office be requested to furnish to the Fish and Wildlife Service certified true copies of all permits on refuge lands issued prior to June 30, 1946, together with a report of all monies received prior to that date in connection with rights-of-way on National Wildlife Refuges.

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The facts and contentions contained in previous memoranda and opinions are not restated here, but the entire file is attached for your review and consideration. There is one point, however, that apparently has not been brought out in the discussion, and that is the laws and regulations under which the General Land Office is operating do not <sup>include</sup> ~~have~~ all types of right-of-way permits that might be applied for, with the result that certain types of right-of-way permits are still of necessity being handled by the Fish and Wildlife Service regardless of any decision as to procedure that might be reached.

(Sgd) WILLIAM T. KRUMMES

William T. Krummes.

Enclosure 810.

cc: Division of Lands.

File routed through Mr. Shepard.

F.V.K.  
WEA:smr

