

Legislators,

Thank you for allowing me to meet with you or one of your aides on Feb. 1st & 2nd, 2023 in Juneau.

I was impressed with how accommodating, helpful and hard working all of you and your staff are and how committed everyone is to improving Alaska.

In our meetings, we discussed the seasonal resident problem we have in SE Alaska.

Seasonal residents claim to be AK residents but really they are just visitors to AK who fish/hunt/trap with a resident license to take advantage of our generous resident fishing/hunting/trapping bag limits.

They show up during fishing season and/or hunting season to harvest as much as possible then leave shortly afterwards.

THE ASK:

Sponsor and/or co-sponsor a bill that would increase the requirements for residency when purchasing a resident hunting/fishing/trapping license.

THE PROBLEM:

Our dwindling resources, specifically king salmon and halibut, are making it difficult for real year-round Alaskans to secure food. We have an increasing number of seasonal residents that come to our coastal communities, drive up property values, harvest our precious resources with little regard to conservation and don't contribute much of anything back into local communities after their initial investment of property and/

or home ownership. They come here for a few weeks or months during harvesting season to catch as much as possible. Shortly afterwards they leave and head back to their true residence in the lower 48.

THE SOLUTION:

Make the resident hunting/fishing/trapping requirements mirror the Permanent Fund requirements.

We aren't suggesting they need to receive the PFD, just that they must meet the requirements. Another great option would be to keep the current requirement of one full continuous year AND add the PFD requirements for the successive years.

THE NUMBERS:

The Dingell Johnson Act is a 10% federal excise tax on sport fishing and boating equipment that provides money for state fish restoration and management plans and projects.

The Pittman Robertson Act is a 11% federal excise tax on all guns and ammunition that provides funding to each state to manage wildlife.

For every dollar that the State collects in licenses and tags these two Acts match three to one dollars.

Annual non-resident sport fishing license is \$145.

Annual Non-Resident King Salmon stamp is \$100. Total is \$245.

The 3:1 Dingell-Johnson match is $\$245 \times 3 = \735 .

$\$245 + \$735 = \$980$ total from one non resident angler directly to ADFG!

Annual Resident sport fishing license is \$29.

Annual king salmon stamp is \$10. Total = \$39.

$\$39 \times 3 = \117 . $\$39 + \$117 = \$156$ from one resident angler to ADFG.

The difference is \$824 per angler!

It is even more substantial if they are playing the permanent ID game. If so, the difference is \$980 per angler AND the community also gets sales tax revenue.

The State is losing \$824 for every seasonal resident fisherman who is getting a resident license. If the seasonal resident has been able to get a Permanent License, then the State is missing out on the full \$980 annually. Those funds would go a long way in ADFG budgets to benefit more anglers.

The financial loss to AK for each seasonal non resident for sport fishing alone is quite substantial without considering Commercial Fisheries licenses, subsistence, Halibut SHARQ cards and other benefits related to Alaska Residency.

In addition to the financial benefits for a seasonal resident angler to pay less for the resident license, the resource incentive is large. For example, current regulations in SE Alaska during the summer allow resident fisherman to catch one or two King Salmon and a Ling Cod daily and 2 halibut of any size.

A non-resident angler has an annual limit of three Kings, one Lingcod and one or two halibut per day depending if they are guided or unguided.

Other areas of Alaska have also met with the issue of residency as it relates to seasonal residents and their domicile. In larger communities it might be more difficult to know who these seasonal residents are but in small communities it is much easier to spot them.

THE SUPPORTING EVIDENCE:

Several members of both the Klawock AC, the Craig AC and the East POW AC purchased the ADFG licensing list for the entire state. The list confirmed that many seasonal residents are purchasing resident ADFG licenses or have a Permanent Identification Card.

In Craig, AK a seasonal resident shipped 17 boxes of fish home on the barge after being here for just two months. He has been doing this for years.

In Klawock, a seasonal resident claims residency because he has a cabin on a nearby island and has been coming here for decades harvesting as much as possible then feeding it to his guests when he operates his business in the lower 48.

Many seasonal residents in SE AK claim their boat as their principal home, even though they are only here for a few weeks or months.

Many in Klawock rent cabins or RV spaces, maintain a PO Box, have a drivers license, fish nearly every day, use a maximum number of crab pots, fill up their freezers and/or canning jars then go back to their true residence shortly afterwards.

In the Mary Jackson subdivision of Klawock, we have dozens of lots owned by seasonal residents. Some have a building but many just have an RV, a vehicle and/or ORV and/or a boat that are parked and dormant for 9 months or more.

In Coffman Cove, they have a census of almost 200 but there are only about 92 year-round real residents.

Nearly 108 of them are here just in the summer. Many of them have beautiful homes. A few entertain a steady stream of "friends" every week.

New "friends" that all fish under the guise of resident anglers and/or unguided nonresident anglers.

Some even pull their boats completely out of the water every night because they don't want to unload their fish in front of anyone, instead, taking the boat "home" where they process fish in privacy.

Few boat owners rarely ever go through that much effort to haul/launch every day since it makes no sense.

The disparity in the halibut regulations between residents/unguided nonresidents vs guided nonresidents is what's driving this increasing halibut fishing effort.

Currently unguided nonresident anglers are allowed 2 halibut of any size. Same as residents.

Guided anglers have a much more restrictive bag limit of 1 fish under 40"(subject to change every year) or 1 fish over 72" with no retention at all on Mondays starting July 24th.

We can't do much about halibut regulations since they are managed by the feds but WHAT WE CAN DO is increase the requirement for Alaskan resident hunting/fishing/trapping licenses to mirror the PFD requirements.

The PFD requirements are well thought out and have withstood challenges in the courts.

This change will force residents to spend the majority of their time in Alaska and make them contribute to our economies instead of competing with real Alaskans and depleting our precious and important natural food resources.

Currently, you can get an AK drivers license the day you arrive.

Thirty days later you can get a voter ID and a PO Box.

After you serve one full year of residency in the state you are free to come and go as you please to your true residence in the lower 48.

As long as you don't claim residency in another state, enforcement and the courts have a very difficult time proving these seasonal resident cases.

It takes enforcement an inordinate amount of time to prosecute these cases and many times they are thrown out because the judge has a different interpretation of the word "domicile".

Our local troopers have stopped prosecuting these cases because of the time involved and low success rate.

Anyone who buys a summer place and pays the electric bills and/or city utility bills even if they never actually come here can show twelve months of “evidence” that they’re “residents.”

The truth is that no one issuing licenses can verify real residence status and once a seasonal resident lies and pays for their license, the entire burden of proving non-resident status falls onto the State of Alaska. Judges are throwing cases out due to their interpretation of the word “domicile”.

After enough years have passed and the person reaches 60 years of age, they leverage their now long-standing “resident” status to get a PID then they never have to worry about it again. The state receives no money for licenses, the community receives no sales tax then they leave with full freezers.

Seasonal residents are getting away with hiding their true domicile information because it’s easy to sign your name to a license that includes a false affirmation of residency but time consuming and costly for the state to compile evidence proving otherwise.

There are a few cases where enforcement has successfully charged these seasonal residents and gained convictions.

Even cases where the non-resident has registered to vote in Alaska, gotten an Alaska DL and bought local property. Some of these people have histories going back ten years.

And the Alaska Supreme Court has confirmed that it is constitutional for the state to impose different durational

residency requirements for different purposes and has laid out conditions under which judges and juries can distinguish between real residents who are temporarily absent and seasonal residents who are temporarily present in Alaska.

Those conditions include many of the factors we've discussed such as seasonal residency, wife and kids living in the states, property owned in the states, etc.

The courts, at all levels, are relying on the history and demonstrated intentions (versus stated intentions) of these people.

The few enforcement efforts the state has pursued have targeted higher profile cases which is to be expected given constrained law enforcement resources.

For example, in a 2012 Sitka case, two men were convicted for falsely claiming residency. They had been getting resident licenses since 1997 and 1998 respectively. The facts of the case included many of the same things we discussed: both owned property in Alaska that they claimed as their domicile but their wives and children lived in the Lower 48, both owned homes in the Lower 48, and both traveled to Alaska for the summer but left in the winter. They even co-owned a fishing lodge in Sitka.

In a 2013 Elfin Cove case, two other fishing lodge co-owners were similarly charged. The facts of the case were about the same and one of the investigating officers stated: *"His actions are consistent with that of a seasonal business owner who comes up to the state of Alaska to run a sport fish charter*

business during the summer months then returns to his true home state once the season is over instead of electing to stay in the state in which he is claiming resident benefits,”

A 1991 case in Circle, AK resulted in conviction for a man who owned a cabin but had never spent a full 12 months in the state. He'd been coming up in the summer and leaving in the winter for 9 years.

It is extremely easy to get away with lying about your residency status to receive a resident hunting, fishing or trapping license. All it really takes is an unverified false oath of resident status and once a person has claimed resident status the burden of proving otherwise falls to the state which must accumulate enough factual evidence to overcome the presumption of innocence built into our justice system.

The Alaska Supreme Court has upheld both different residency requirements for different state purposes **AND** a durational residency requirement for the PFD.

The problem with the CURRENT law is a lack of law enforcement resources to adequately investigate potential residency violations.

Investigating officers are doing a lot of research into property records, travel histories, residency status of spouses and children, school records, vehicle and other registrations, voter registrations, benefits received in other states, statements made by suspects on other government documentation...essentially a deep dive into everything about the suspect.

If these licensing violations have been given normal or enhanced priority the budget isn't the issue and something else is going on.

In that case we need to review the arguments being made by prosecuting and defense attorneys and the decisions being written by judges to find out where the weaknesses are.

It is a broken system that non-residents are abusing.

KEY POINTS:

1. A resident is physically present in the state with the intent to remain in the state indefinitely.
2. The person must have maintained domicile in the state for the immediately preceding 12 months.
3. Domicile is the true and permanent home from which the person has no present intention of moving.

Show through travel records that a person has never spent a full year in state and that their travel originated and ended in another state and a first year law student should be able to win a conviction.

If you haven't physically been in the state for 12 months, ever (as shown through travel records), then you cannot claim domicile in Alaska and if you can't claim domicile then you cannot be a resident for purposes of obtaining a resident hunting, fishing or trapping license.

It's completely straightforward.

For cases where it is unknown if the person has ever spent 12 months in the state it takes more in-depth research to prove non-residency.

Sec. 16.05.415. Determination of residency.

(a) In AS 16.05.330 - 16.05.430, a person, except as provided in (c) - (f) of this section, is a resident if the person

(1) is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state;

(2) has maintained the person's domicile in the state for the 12 consecutive months immediately preceding the application for a license;

(3) is not claiming residency in another state, territory, or country; and

(4) is not obtaining benefits under a claim of residency in another state, territory, or country.

Sec. 16.05.940. Definitions.

In AS 16.05 - AS 16.40,

(11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

(28) "resident" means

(A) a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(B) a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made;

(D) a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or

(E) an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

In a past seasonal residency case on POW, the magistrate convicted on the theory that the one year domicile requirement hadn't been met based on information from a PFD application. On appeal the defense demonstrated that the PFD information had been interpreted incorrectly.

On appeal the court is limited in what facts it can rely on...the appeal isn't a retrying of the facts of the case so the appeal judge is restricted to the trial record.

The defense successfully argued that the magistrate had incorrectly determined that the domicile period in question had begun one day later than it had.

The appeal judge had no choice but to overturn the conviction.

The mistake here was not arguing at trial that the defendant lacked the intent to remain indefinitely in the state as one of the points for conviction.

If that had been presented as a legal theory at trial the appeal judge could have addressed that under the precedent set in *Thomas v. State of Alaska* and might have upheld that the defendant lacked the required intent as demonstrated by his intention to leave the state every single year after spending what amounts to a long vacation here during the fishing and hunting seasons.

AS 16.05.415 (a) (1) defines three requirements, one being "*intent to remain in the state indefinitely.*" It is impossible to prove an intent to remain in the state indefinitely if all you've ever done is travel to Alaska during the hunting and fishing season with the intention to leave every single winter. The fact that the person leaves every year is *prima facie* evidence that they lack an intent to stay indefinitely. They may have an intent to return every year for the season but that would be properly considered as a vacation.

Every seasonal resident who has **never** spent a winter in Alaska, only coming here for what is really nothing but a

vacation of varying length, can be convicted under this legal theory.

AS 16.05.415 (a) (2) concerns domicile. AS 16.05.940 (11) defines domicile.

Domicile is a second, independent of intent, legal concept that lays the foundation for a second legal theory to prosecute on.

Domicile is harder to convict on because of subjectivity around what the defendant claims as his true and permanent home, his intentions to return when away, etc.

But...a person who has an out of state home that he leaves to vacation in Alaska but that he then returns to every winter would have an uphill battle convincing a judge that the out of state home isn't actually his true and permanent home, especially if he owned the home prior to purchasing a home in Alaska.

Every residency case taken to trial should include both of these legal theories so that if one is rejected the other might convict or stand up on appeal.

The case we just looked at had only domicile and should have included intent to remain indefinitely because it's obvious that there is no intent to remain if you have a history of leaving every year AND have never spent a full year in the state.

It would be interesting to have a seasonal resident cited and then tried under both intent to remain indefinitely and domicile.

CONCLUSION:

At the past Board of Fish meeting March 20-24, 2022, the East POW AC submitted two proposals that were also supported by the Craig AC and the Klawock AC.

Proposal 235: Improve the definition of the word “domicile” to make it easier to convict seasonal residents.

Proposal 236: Increase the requirement for resident fishing/hunting/trapping licenses to mirror the PFD.

The Board of Fish correctly determined that both of the above proposals required a statute change not a regulation change.

Hence the need for a bill from one of you.

We can save the state a lot of time, money and our natural resources by tightening the residency requirements for fishing/hunting/trapping licenses to mirror the PFD requirements.

Thank you very much,

Kurt Whitehead and all the real residents of POW.