

128 Orig ALASKA V. UNITED STATES

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

ALASKA'S EXCEPTIONS TO REPORT OF SPECIAL MASTER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT:

1. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count IV of the Amended Complaint. See Report at 227-276. Instead, the Court should grant summary judgment to Alaska on Count IV because, inter alia, the plain language of Section 6(e) of the Alaska Statehood Act does not express the requisite unambiguous intent of Congress to reserve for the United States submerged lands within the boundaries of the Glacier Bay National Monument, but rather expressly applies only to a narrow subset of other lands that are indisputably not at issue here.

2. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count I of the Amended Complaint. See Report at 9-137. Instead, the Court should grant summary judgment to Alaska on Count I because the undisputed historical record demonstrates that the United States continuously exercised sovereignty over the waters of the Alexander Archipelago with the acquiescence of foreign nations, and the Nation's vital interests support a finding of historic waters status.

3. The Court should decline to adopt the Special Master's recommendation that the United States be granted summary judgment on Count II of the Amended Complaint. See Report at 138-226. Instead, the Court should grant summary judgment to Alaska on Count II as to the areas referred to as North Bay and South Bay because the undisputed record demonstrates that the areas qualify as juridical bays under Article 7 of the Convention on the Territorial Sea and Contiguous Zone, and the assimilation principles adopted and applied by this Court in *United States v. Maine*, 469 U.S. 504 (1986).

Alaska does not take exception to, and urges the Court to adopt, the Special Master's separate recommendation that the Court confirm the United States' disclaimer of title relating to Count III of the Amended Complaint and dismiss Count III for lack of jurisdiction. See Report at 276-294.

CERT. GRANTED 11/1/2004