

ANILCA's Organization

Consists of 15 Titles (four major parts):

1) Introductory material (*Title I*)

e.g., purposes of Act, definitions, maps, boundaries

2) Establish and expand conservation system units and areas (*Titles II-VII*)

e.g., Parks, Refuges, BLM Areas, forests, W&SRs, Wilderness

3) **Special Alaska provisions** (*Titles VIII, X-XIII, XV*)

e.g., subsistence on federal land, North Slope, access

4) Amendments to Alaska Native Claims Settlement Act and Alaska Statehood Act (*Titles IX & XIV*)

Title VIII – Subsistence Management and Use

Findings; policy; definitions; preference for subsistence uses;
local & regional participation; federal authority to regulate
harvests of fish and wildlife; federal monitoring

Park & monument subsistence resource commissions

Requires evaluate land use decisions affecting subsistence

Protects traditional methods of access for subsistence

Limits closure authorities for subsistence and nonsubsistence



Title X – Federal North Slope Lands Studies, Oil and Gas Leasing Program and Mineral Assessment

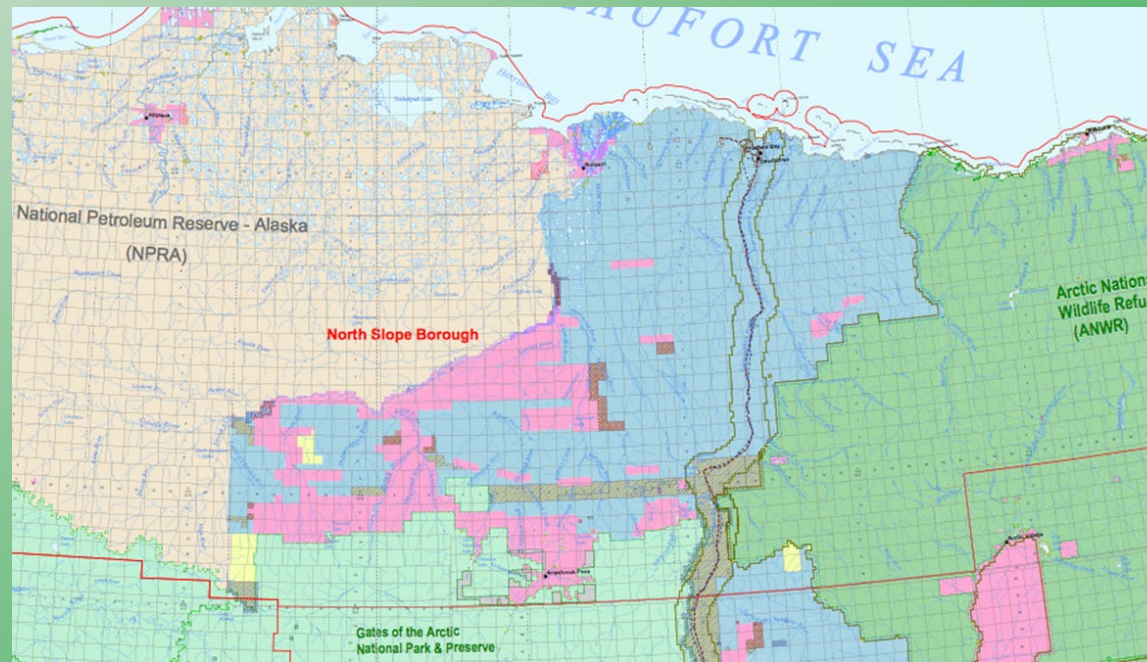
Sec 1001 – Study of federal lands north of 68° latitude, between NPR-A and Arctic Refuge

Sec 1002 – Arctic Refuge coastal plain resource assessment (part not Wilderness)

Sec 1003 – Prohibits oil & gas development in Arctic NWR

Sec 1004 – Wilderness study of Sec 1001 lands; and Wilderness review of Sec 1002 area

Sec 1005-1011 –
Additional provisions on research, transportation studies, and oil & gas leasing in nonWilderness



Title XI – Transportation and Utility Systems in and Across, and Access into, Conservation System Units

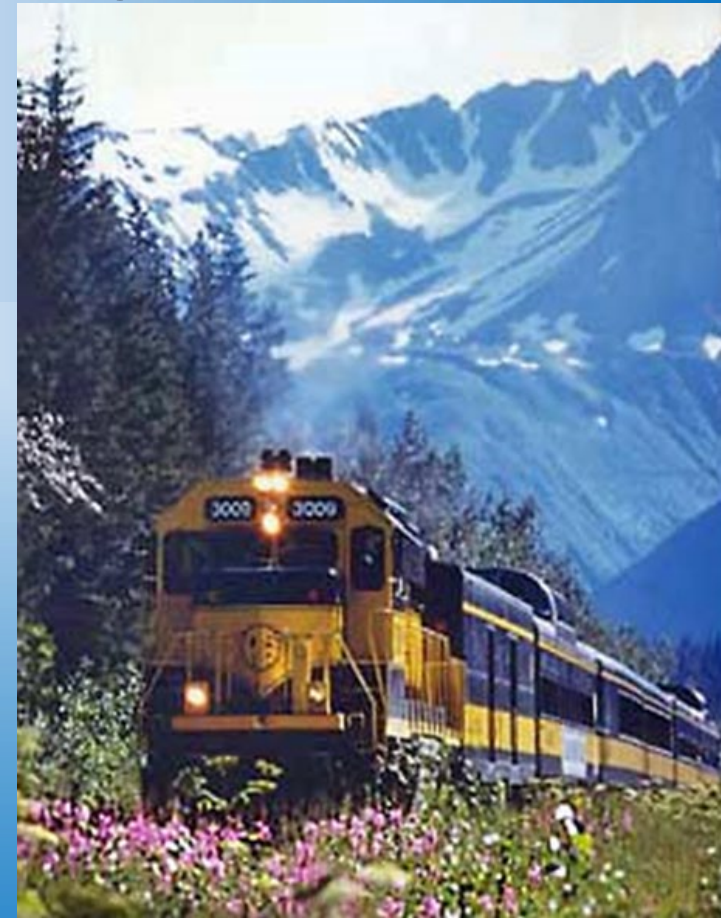
Sec's 1101-1108 — TUS's

Findings; Definitions; establishes required processes for agencies to handle applications and apply standards for approval or disapproval across CSUs

Lead agency, appeal to President, and congressional actions

Judicial Review

Sec. 1109 – Valid existing rights



Title XI – Transportation and Utility Systems in and Across, and Access into, CSUs (continued)

Sec. 1110 Special Access and Access to Inholdings

- **a)** use of snow machines, motorboats, airplanes and nonmotorized surface transportation for traditional activities and for travel to and from villages and home sites; open until closed
- **b)** guarantees the State and private owners *“adequate and feasible access for economic and other purposes”*

- **Sec. 1111 Temporary Access** to nonfederal land



Title XII – Federal-State Cooperation

Establish Alaska Land Use Council *[sunset after 10 years]*:
*Federal, State, Alaska Native representatives reviewed
federal management plans, regulations, etc*

*[recommended by the Joint Federal-State Land Use Planning
Commission to encourage cooperation in decisions in Alaska]*



Title XIII – Numerous Administrative Provisions

Land Acquisition Authority within CSUs

Use of Cabins and other sites of occupancy on CSUs and Areas

Administrative sites & visitor facilities *[preference to corporations]*

Revenue producing visitor services *[preference to ANCSA corporations and locals, except guided hunting & fishing]*

Reaffirms State management authority for fish and wildlife

Navigation aids and other facilities and related access in CSUs

Allowed uses of temporary facilities and equipment on all public lands, including Wilderness, necessary to take fish and wildlife

Wilderness management provisions

No affect federal & state water rights

Rescinds 1978-1980 Public Land Orders

Local Hire

Alaska Gas Pipeline (TAPS)

. . . and many more



Title XV – National Need Mineral Activity Recommendation Process

- Process for authorizing mineral exploration, development, or extraction on lands otherwise closed to such activities, except Arctic Refuge and National Park units
- President recommends, sends findings of national need to Congress for approval
- Expedited Congressional review and rulemaking by resolution

Requires Congressional concurrence



ANILCA's Organization

Consists of 15 Titles (four major parts):

- 1) Introductory material (*Title I*)
e.g., purposes of Act, definitions, maps, boundaries
- 2) Establish and expand conservation system units and areas (*Titles II-VII*)
e.g., Parks, Refuges, BLM Areas, forests, W&SRs, Wilderness
- 3) Special Alaska provisions (*Titles VIII, X-XIII, XV*)
e.g., subsistence on federal land, North Slope, access
- 4) **Amendments to Alaska Native Claims Settlement Act and Alaska Statehood Act (*Titles IX & XIV*)**

Title IX – Implementation of Alaska Native Claims Settlement Act (ANCSA) and Alaska Statehood Act

Submerged lands *[rewritten by 'Alaska Submerged Lands Act' of 1988]*;
Easements on ANCSA lands; Tax moratorium extension; Alaska Native
allotments *[legislative approval provision]*; Alaska land bank; ANCSA
amendment on timber sales; ANCSA conveyances NEPA-exempt
Statehood Act Conveyances *[Tentative approval treated title for State]*
Use of protraction diagrams for patents in lieu of field surveys



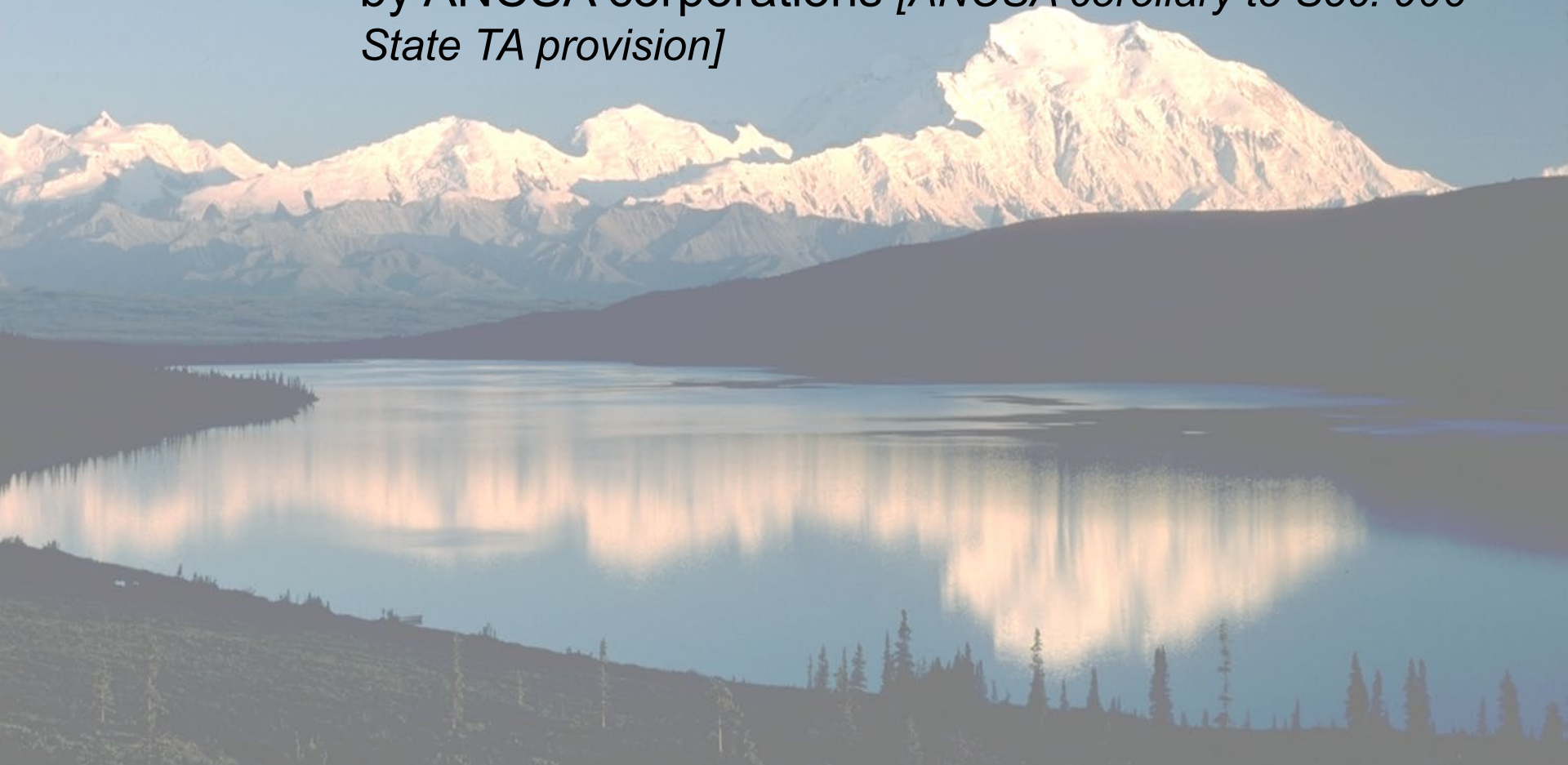
Title XIV – Amendments to ANCSA and related provisions

37 Sections amend ANCSA

Examples:

Sec. 1409 – Federal wild land fire protection on ANCSA lands

Sec. 1410 – “Interim conveyance” is treated same as if owned by ANCSA corporations [*ANCSA corollary to Sec. 906 State TA provision*]



ANILCA's Organization

Consists of 15 Titles (four major parts):

1) Introductory material (*Title I*)

e.g., purposes of Act, definitions, maps, boundaries

2) Establish and expand conservation system units and areas (*Titles II-VII*)

e.g., Parks, Refuges, BLM Areas, forests, W&SRs, Wilderness

3) Special Alaska provisions (*Titles VIII, X-XIII, XV*)

e.g., subsistence on federal land, North Slope, access

4) Amendments to Alaska Native Claims Settlement Act and Alaska Statehood Act (*Titles IX & XIV*)

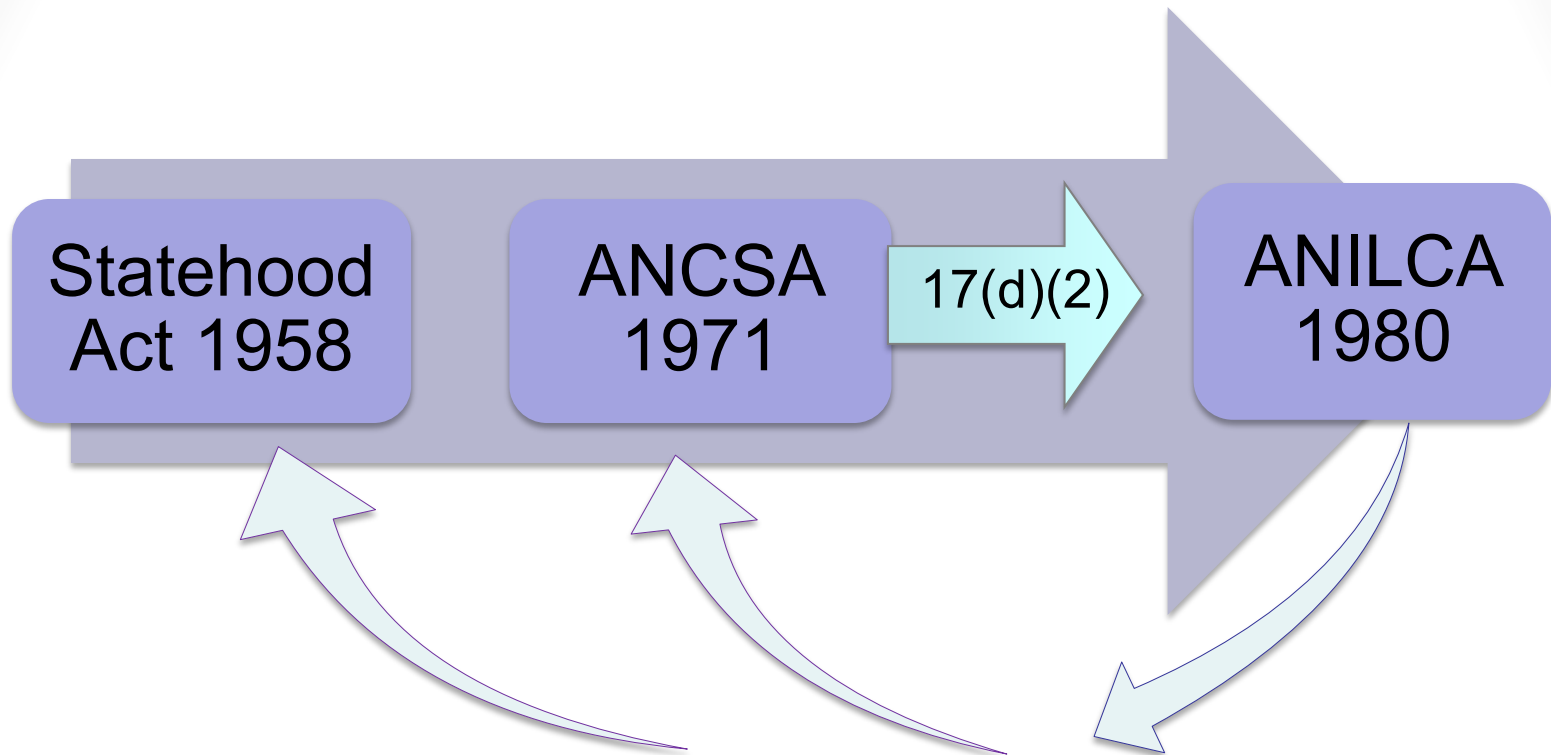
Justice Kagan in *Sturgeon II* described ANILCA's compromises

“... ANILCA's grand bargain. ANILCA announced its Janus-faced nature in its statement of purpose”
(p. 22)



“ANILCA sought to ‘balance’ two goals, often thought conflicting. . . . So if, as you continue reading, you see some tension within the statute, you are not mistaken: It arises from Congress’s twofold ambitions.” (p. 6)

Three Acts Interrelated



Dramatic changes in short time

Presentation Outline

- *Compromises in Crafting ANILCA*
- *Introduction to the Act*
- ***Select Key Provisions***
- *Amendments and Implementation*

Questions

1979 Governor & State Legislature adopted 7 Consensus Points, “The Alaska Position”

- Revoke all 1978 land withdrawals, including monuments
- Fulfill land entitlements to State & ANCSA corporations
- Access across federal lands to state & private lands
- State management of fish and game on all lands
- Conservation unit boundaries exclude economically important natural resources
- Continue traditional land uses on all federal lands
- Preclude future administrative expansion of conservation system units (“no more” clause)

ANILCA addresses Alaska interests

- Retains ANCSA land entitlements in ANILCA units
- Approves many state selections outside ANILCA units
- Boundaries exclude some resources for development
- Includes special provisions for mining
- Recognizes traditional activities on federal lands
- Authorizes land exchange and boundary adjustment
- “No more” large withdrawals without Congress approval; revoked 1978 monuments & withdrawals

more . . .

Summary of “No More” clause(s)

ANILCA general intent

SEC. 101(d). Congressional finding of “proper balance” and the need for future conservation designations, “has been obviated thereby.”

ANILCA administrative prohibitions

SEC. 1326. (a) Executive branch withdrawals exceeding five thousand will terminate unless Congress passes a joint resolution of approval within one year of notification.

(b) “No further studies” of Federal lands for the single purpose of considering the establishment of new conservation designations without Congressional authorization.

SEC. 708(b)(4) no further statewide roadless area reviews to address suitability for national forest wilderness designation

ANILCA addresses Alaska interests

(continued)

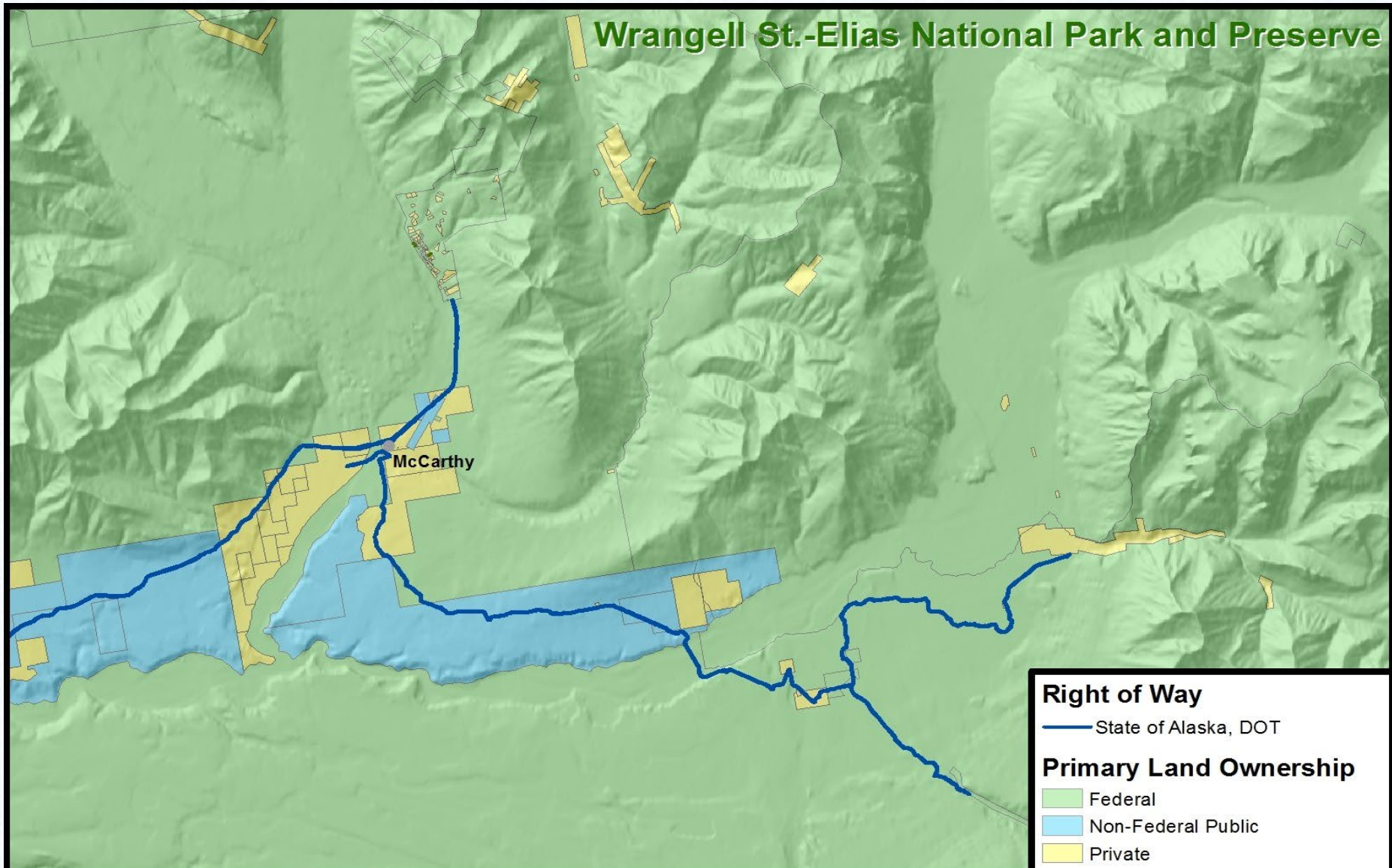
- Annual oil, gas, and mineral assessments
- North Slope oil and gas leasing program
- New process for future transportation & utility corridors on CSUs & Areas
- Provides for Tongass timber harvest
- Local hire
- Allows some normally-prohibited uses in Wilderness
- Guarantees access to inholdings

more . . .

ANILCA Sections 1110(b) and 1323 – e.g.,

Over **2 million acres** of inholdings in park system units in Alaska

Over **17 million acres** of inholdings in wildlife refuge units in Alaska

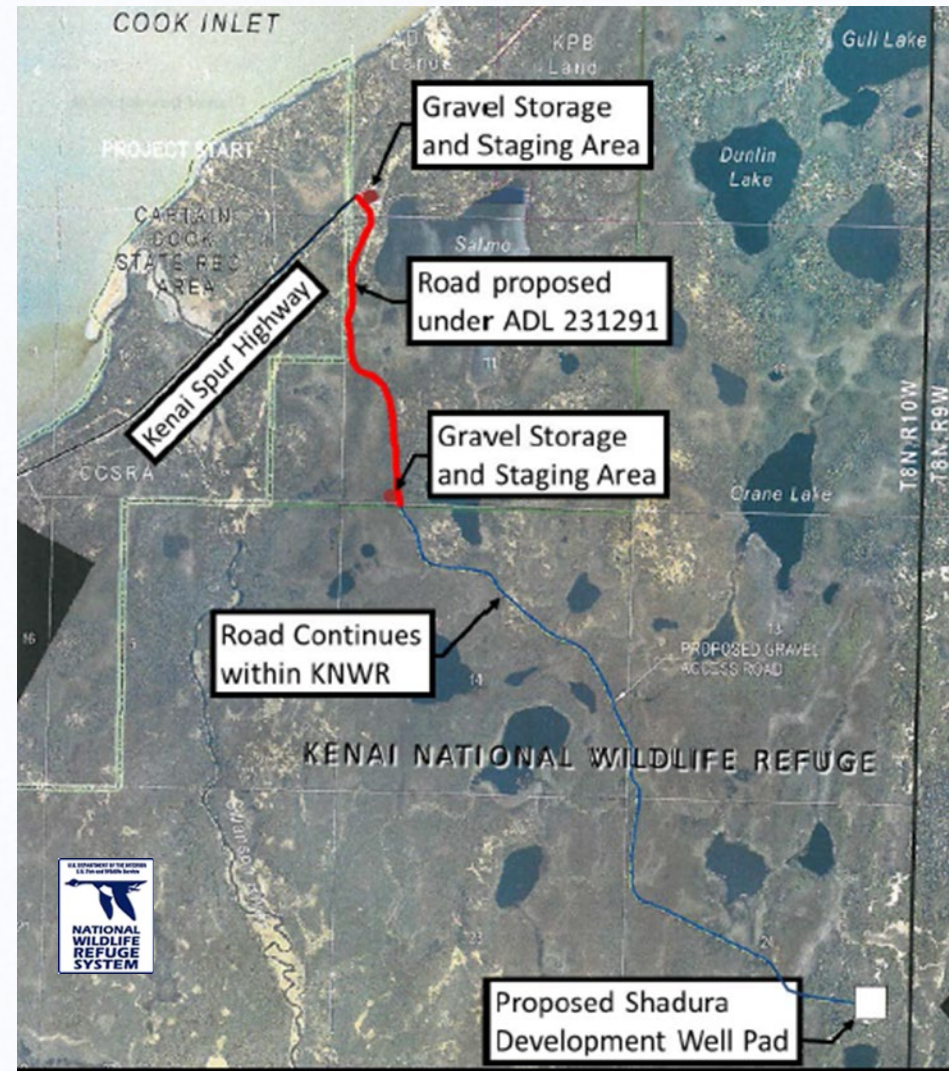


ANILCA Section 1110(b) (continued)

Example

FWS Right-of-way & facilities → for access to CIRI (ANCSA corporation) subsurface estate in Kenai National Wildlife Refuge

Many applications are expected in the future for access to ANCSA corporation subsurface estate or other inholdings that may involve large projects on most wildlife refuges and some national park units.



ANILCA addresses Alaska interests

(continued)

- Retains state management of fish, wildlife, & water
- Park “preserves” allow hunting; some “pure” park units allow subsistence
- Priority opportunity for customary and traditional subsistence use by rural residents
- Motorized access for subsistence; access and facilities for traditional activities

Presentation Outline

- *Compromises in Crafting ANILCA*
- *Introduction to the Act*
- *Select Key Provisions*
- ***Amendments and Implementation***

Questions

Select Major Amendments to ANILCA

PL 100-395, Aug 16, 1988, 'Alaska Submerged Lands Act'

Deletes/replaces Sec 901 [change acre calculations for submerged lands in conveyances]; & other ANILCA changes

PL 101-626, Nov 28, 1990 "Tongass Timber Reform Act"

Repeal Sec 705 required to provide 4.5 bbf/decade supply; reinstates policies of Nat'l Forest Mgmt Act; amends Sec 508 to establish 12 new LUD IIs; amends Sec 703 to designate 5 new Wilderness; modifies long-term timber contracts; riparian buffers

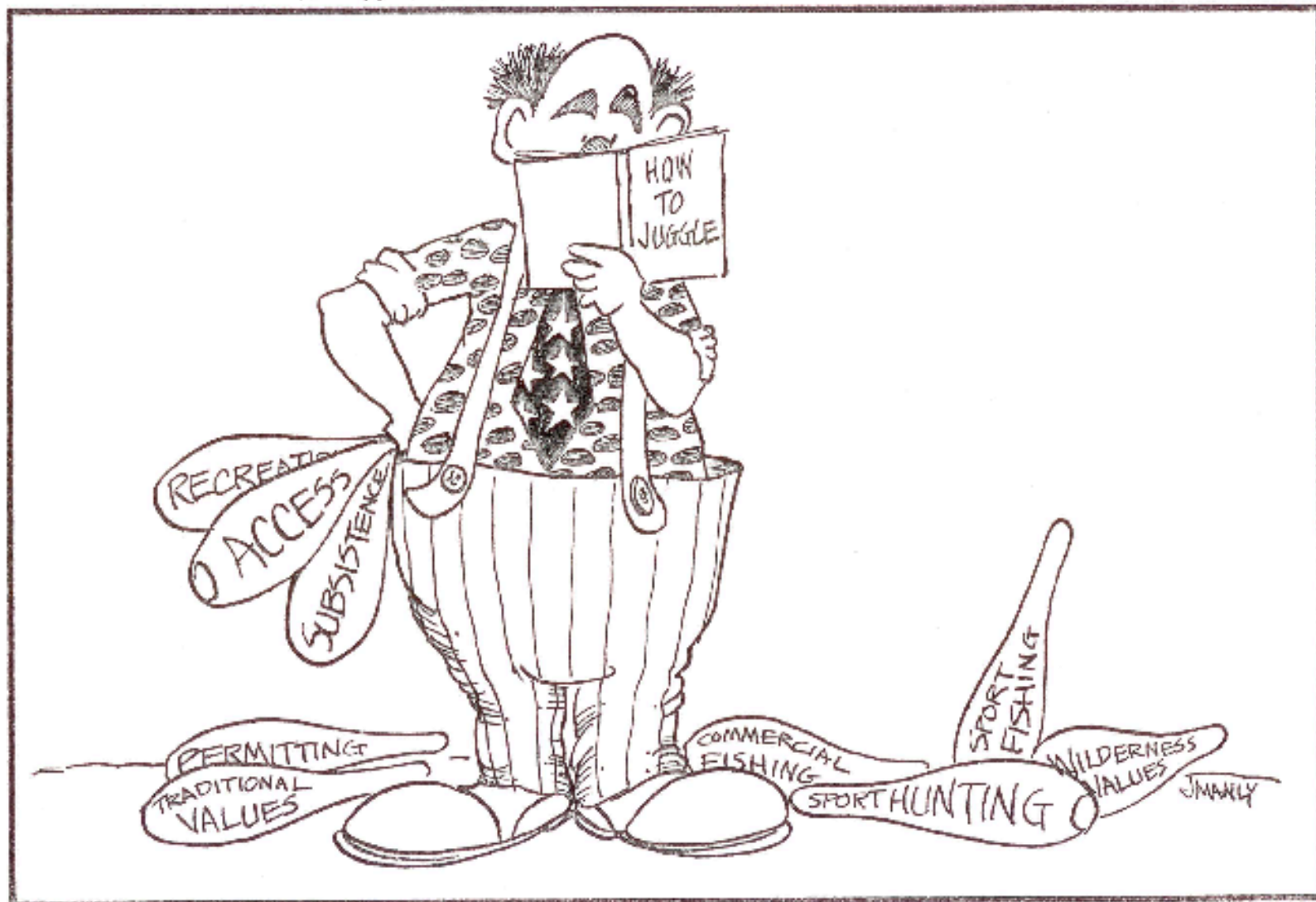
PL 113-291, Dec 19, 2014 "Sealaska Land Entitlement"

Completes Sealaska Corporation entitlement; amends Sec 508 to add 8 new LUD IIs to Tongass; other changes

PL 115-97, Dec 22, 2017 "Tax Cuts and Jobs Act"

Amends Sec 303, 1002, & 1003; requires Secretary conduct 2 lease sales in 10 years; authorizes develop \leq 2,000 acres Coastal Plain

WHAT IS INVOLVED IN IMPLEMENTATION OF ANILCA?





ALASKA LAND USE COUNCIL



State Cochairman

Federal Cochairman

National members

Federal co-chair

NPS

USFWS

USFS

BLM

US DOT

NOAA

Alaskan members

State co-chair

DNR

DFG

DEC

AK DOT

ANCSA corporation*

AFN*

Staff Committee: Members' staff handled day-to-day work

**The Native community identified the representatives of their organizations selected to fill the two seats on the Council*

Public Involvement in ANILCA Implementation

Created under ANILCA Title XII

Land Use Advisors Committee: Forum for public input to Alaska Land Use Council decisions; review federal actions
(*sunset with the ALUC*)

Created by the ANCSA Corporations

ANCSA Regional Land Managers Forum: Coordinate among corporations; inform leadership & shareholders; monitor and participate in federal decisions affecting corporation lands; Chair served on ALUC Staff Committee (*unknown*)

Created by the State Legislature

Citizens' Advisory Commission on Federal Areas (CACFA): Independent advocate for public interests during federal land planning, studies, regs, etc.; assists individual Alaskans with navigating “red tape”, e.g., commercial services, cabin permits
(*in hiatus due to budget*)

Citizens' Advisory Commission on Federal Areas

- Established by Legislature in 1981; renewed to June '21
- Public members serve as Commissioners appointed by Governor and Legislature
- Independent; staff administered through DNR
- Independently advocates for public interests on federal land during land planning, studies, regs, etc.
- Assists individual Alaskans with navigating “red tape” – such as permitting, commercial services, cabins
- Coordinates with delegation to resolve specific issues, e.g., local hire, amended ANILCA Sec. 1308
- May hold hearings; authorized to litigate

[needs legislation to renew; in hiatus due to budget cut 2015]

State Agencies' Involved in ANILCA Implementation

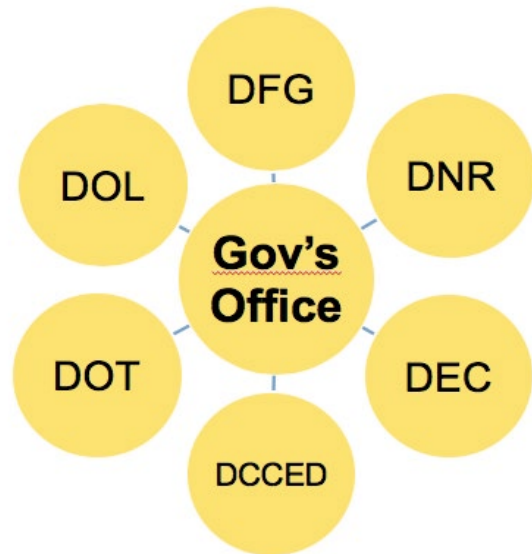
- 1981 Legislature funded supplemental budget (CIP)
- Governor established leadership structure to participate in Alaska Land Use Council; retained Wash DC office
- State “ANILCA Team” (reps from each agency, coordinator assigned for Governor’s Office) established to:
 - coordinate State agencies’ input into federal plans, studies, regulations, wilderness reviews, etc.
 - advocate for State’s interests in ANILCA
 - pursue issue resolution with federal agencies
 - <http://dnr.Alaska.gov/commis/opmp/anilca/>
- State legislature assigned staff to monitor federal legislation, plans, regulations, policies, etc. case-by-case

State ANILCA Program Coordination

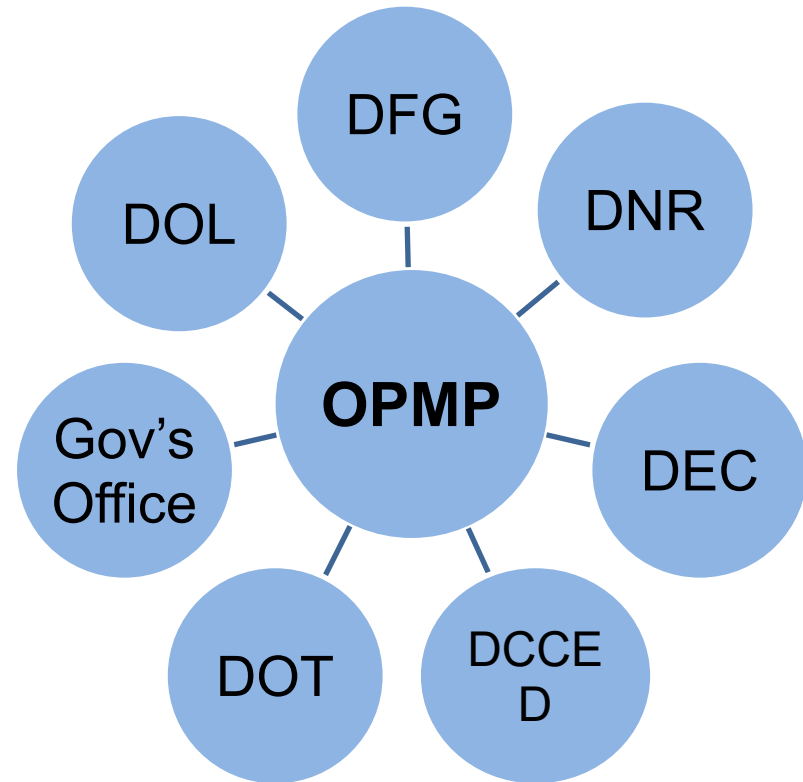
location of statewide coordination function

1981-1984: AK Dept
of Fish and Game

1984-2003: Gov's Div. of
Governmental Coordination



Since 2003: DNR's Office of
Project Mngmt & Permitting



State's effectiveness dependent on agencies' cooperative participation in processes and coordinated unified responses

Federal land use plans and regulations— ANILCA requires ongoing consultation

- First park plan under Sec 1301 (Lake Clark) & first refuge plan under Sec 304 (Kenai) developed without genuine consultation
- ALUC recommended revisions consistent with ANILCA
- Federal agencies established more effective interagency planning teams to improve cooperation & information exchange
- Successful use of internal drafts review with State to reduce conflicts in public review drafts (State is FACA-exempt)
- ALUC provided forum for difficult issues; e.g., workgroups assisted drafting regulations, land exchanges, interpretations
- As issues resolved, solutions adopted in subsequent plans and/or by other agencies (template)

Status — ANILCA'S Implementation 40 years later

Example: Management plans and regulations

Many ongoing federal land management decisions are in revised & increasingly complex land plans

Park plans, refuge plans, BLM plans, wilderness plans, Forest plans, more detailed “step-down” plans, environmental impact statements, followed by rulemaking

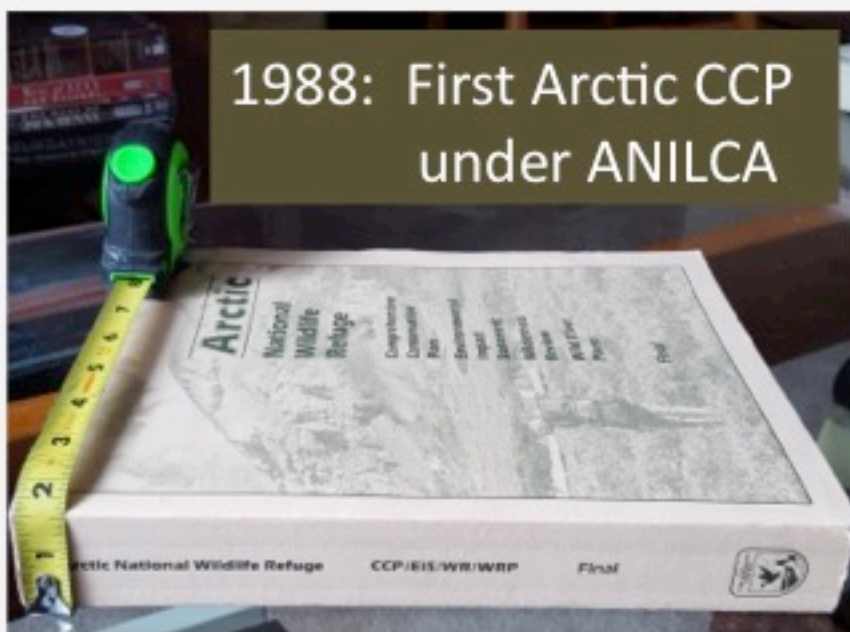
Challenging for stakeholders to keep up & participation reduced:

State agencies, ANCSA corporations, NGOs, and public

The Arctic Refuge—an illustrated guide to the evolution of land management planning



1971 Arctic
Master Plan
(34 pages)



Example: “No more” clauses

De facto CSUs without ANILCA compromise provisions:

BLM policy option to prioritize management of wilderness character above other multiple uses

BLM planning designations, e.g., Areas of Critical Environmental Concern (ACECs)

Wilderness management of all classes of wilderness (suitable, recommended, etc.) by national policy

Federal permitting of commercial services, limiting for undefined “values”

USFS Roadless Rule – court determined rule applies in Alaska despite ANILCA Sec. 708; USFS supporting State’s request for rulemaking to exempt Tonga

Chugach Forest W&SR recommendations, interim river mgmt

Cabins, Temporary Facilities, & Other Structures

APPENDIX B

AGENCY IMPLEMENTATION OF ANILCA §1303 ON NON-NPS LANDS

	USFS	BLM	FWS
Specified cabin-eligible types of activities or uses	Isolated, Recreational, Customary and Traditional	Subsistence, Commercial, Special Use, Recreation, Winter-Use-Only Trapping	Subsistence, Commercial, Commercial Fishing Rights, Trapping
Is there a definition of “private recreational use”?	No; private recreation-related definitions do not clarify what constitutes “recreational use.”	No; permits simply cannot be allowed for “recreational uses” of cabins.	Yes; uses associated with leisure activities, not including subsistence uses; 50 CFR 36.33(a).
Is there a definition of “traditional and customary use”?	No	No	No
Is there a definition of “immediate family members”?	Yes; parents and children in the same household as of 12/2/80 who previously used the facilities; FSH 2709.11.5.	No	Yes; spouse and children, either by birth or adoption; 50 CFR 36.33(a).
Is there a definition of “public use cabin”?	No	No	Yes; owned and administered by FWS for use by the public; 50 CFR 36.33(a).
Is “subsistence” use of cabins limited to federally qualified subsistence users or to particular activities?	n/a (no “subsistence” category of cabins)	No	Yes; policy at 3(b) and 50 CFR 36.33(d)(1).

August 30, 2019, letter from Office of the Secretary of the Interior concurred with cabin issues raised by Alaska delegation:

“despite identical direction in [ANILCA], a significant amount of inconsistency exists across federal agencies in the management of these cabins.”

A working group (BLM, FWS, FS, and State) is developing guidance to continue Alaskan traditions, as directed by ANILCA.

Challenges of ANILCA Implementation

- Loss of institutional memory in federal & State agencies
- Loss of collective knowledge/memory among Alaskans
- Loss of the Alaska Land Use Council as an issue resolution forum for face-to-face solutions in Alaska
- Loss of negotiators that knew ‘the deal’, e.g., Sen Stevens
- Increasing direction from Wash DC & agencies without understanding or recognition of ANILCA
- Solicitor reinterpreted FACA so State not consulted on internal plans and regulations
- Poor baseline information on “traditional” uses in 1980
- Decreased consultation on regulations affect management of fish and wildlife – State treated as member of the public

Keeping the Promises in the Compromises



ANILCA Sec. 101(d): *“This Act provides sufficient protection for the national interest . . . and at the same time **provides adequate opportunity for the satisfaction of the economic and social needs of the State of Alaska and its people;**”*