

Alaska Land History

Senate Resources Committee
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Why the Historical View is Important

Alaska Land Ownership is Unique:

- 87 percent of Alaska is public land (federal, state, municipal)
- Large acreage of federal lands set aside for conservation
- Alaska has more state-owned land than any other state

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Alaska Land Ownership is Unique

- No other state has one federal law that applies to all federal lands within its borders (Alaska National Interest Lands Conservation Act (ANILCA))
- No other state has a comprehensive federal law that creates exceptions to nationwide federal land laws (ANILCA)
- No other state has a comprehensive, statewide land settlement with its Native people (Alaska Native Claims Settlement Act (ANCSA))

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Alaska Land Ownership is Unique

"ANILCA repeatedly recognizes that Alaska is different, and ANILCA itself accordingly carves out numerous exceptions to the Park Service's general authority over federally managed preservation areas. Those Alaska specific provisions reflect the simple truth that Alaska is often the exception, not the rule."

U.S. Supreme Court Chief Justice John Roberts in the Court's unanimous decision in *Sturgeon v Frost*, March 22, 2016

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Presentation Outline

Alaska Land History:

- Native use and occupancy
- Russian ownership
- Federal ownership
- Statehood Act
- Alaska Native Claims Settlement Act
- Alaska National Interest Lands Conservation Act

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Federal Land

National Parks – 54 million acres

National Wildlife Refuges – 77 million acres

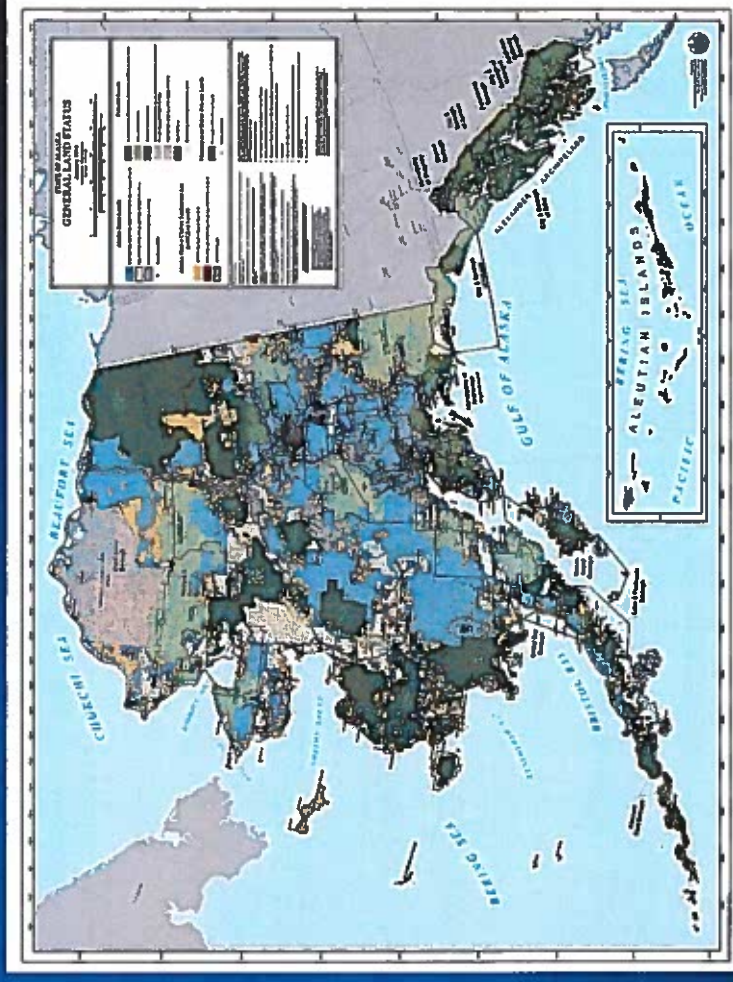
National Forests – 22 million acres

BLM – National Petroleum Reserve – 23 million acres

Other BLM – 51 million acres

Military – 2 million acres

TOTAL FEDERAL LAND - 242 million acres (60% of Alaska)



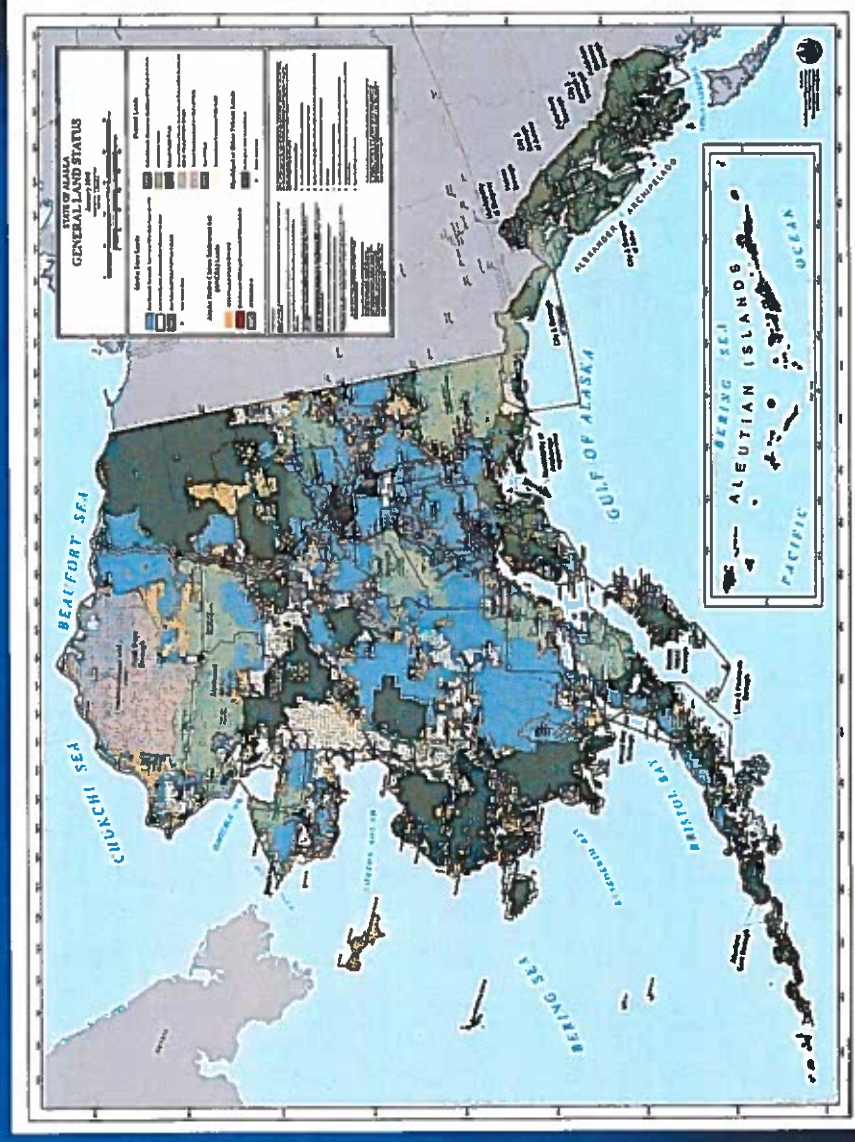
Federal protected areas in green
Other Federal lands in grey (NPPRA and military lands) or light yellow (other BLM lands)

State, Municipal, ANCSA, private land

State Land – (blue)
105 million acres
(28% of Alaska)

ANCSA Corporation
Land – (pink) 46 million
acres (12% of Alaska)

Native Allotments,
other private or
municipal land – (grey)
5 million acres (1%)

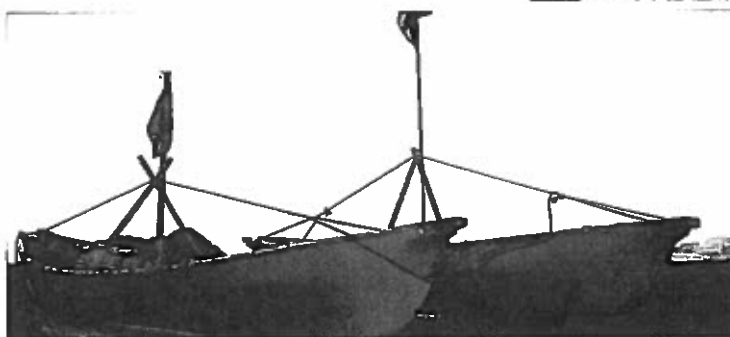


"We begin, as *Sturgeon* I did, with a slice of Alaskan history. The United States purchased Alaska from Russia in 1867. It thereby acquired "[i]n a single stroke" 365 million acres of land—an area more than twice the size of Texas. You might think that would be enough to go around. But in the years since, the Federal Government and Alaskans (including Alaska Natives) have alternately contested and resolved and contested and . . . so forth who should own and manage that bounty.."

U.S. Supreme Court Justice Elena Kagan in the Court's unanimous decision in *Sturgeon v Frost*, March 26, 2019

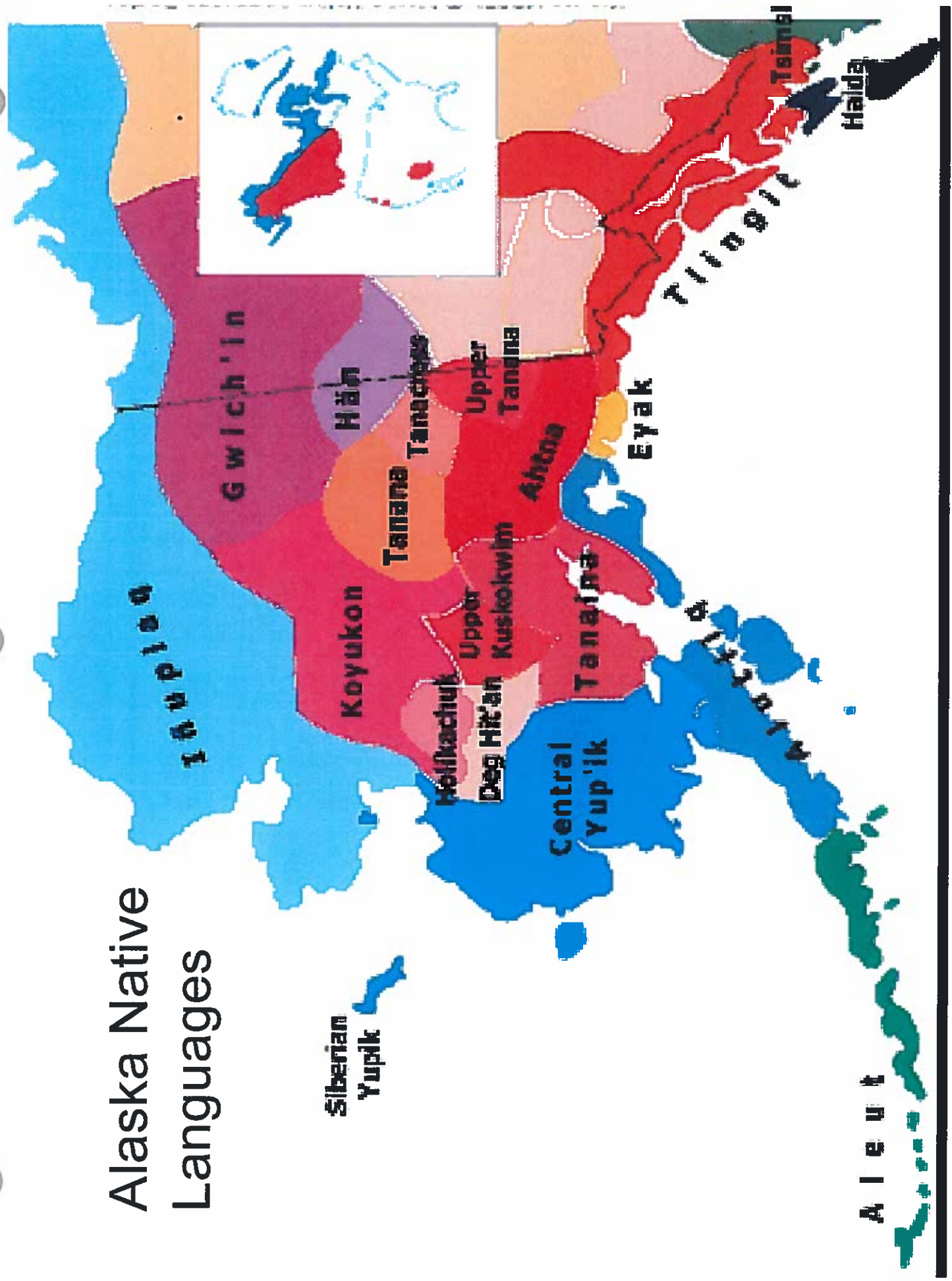
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Pre 1867 – Native Alaskans used and "owned" most land. "Aboriginal Title"



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Alaska Native Languages



1867 – Treaty of Cession

- United States purchased the Alaska Territory from Russia
- Negotiated by Secretary of State William H. Seward
- All of Alaska is declared federal land



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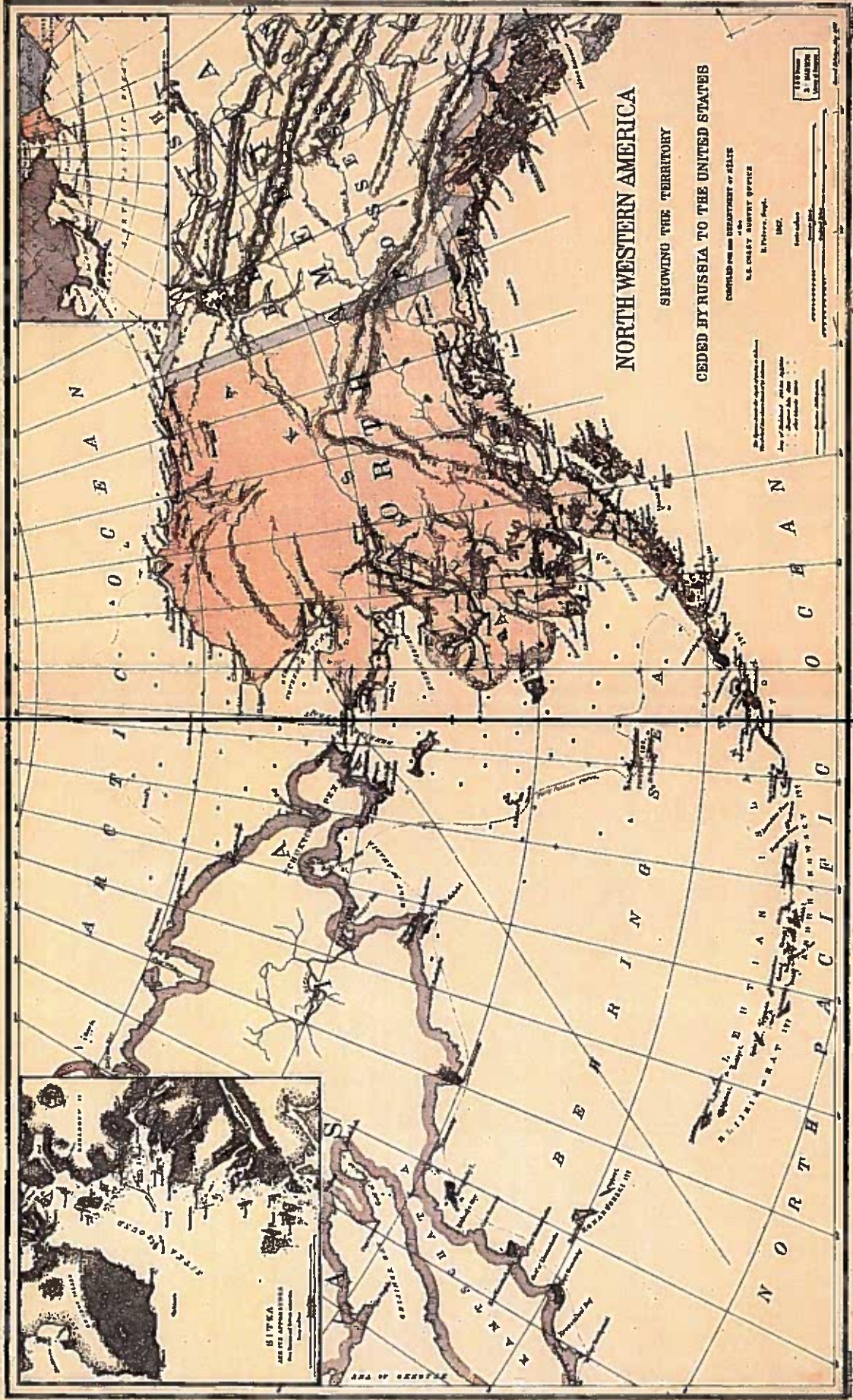
1867 – Treaty of Cession

Article III –

“The uncivilized tribes will be subject to such laws and regulations as the United States, from time to time, adopt in regard to aboriginal tribes of that country.”

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Land Ceded by Russia to the United States - 1867



Early Territorial Land Events

- 1870 – gold discovered at Sumdum (SE Alaska)
- 1880s – gold discovered at Juneau & Fortymile
- 1884 – District Organic Act - first federal land law in Alaska, extended mining laws to Alaska, recognized Native possession of lands
- 1897 – Klondike Gold Rush
- 1899 – 1900 - Nome Gold Rush
- 1900 – Kennecott Copper discovered
- 1903 – Alaska open to Federal Homesteading
- 1906 – Alaska Native Allotment Act

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The National Perspective on Federal Lands 1867 to early 20th Century

- 1864 – Yosemite set aside
- 1872 – Yellowstone National Park established,
– Federal Mining Law passed
- 1903 – Pelican Island (Florida) National Wildlife Refuge established (first NWR)
- 1905 – US Forest Service established
- 1906 – Federal Antiquities Act passed
- 1916 – National Park Service established

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Pre-Statehood Federal Land Withdrawals – Alaska

- 1868 – Pribilof Islands Reserve
- 1891 – Afognak Island Reserve
- 1907 – Chugach and Tongass National Forests
- 1917 – Mount McKinley National Park
- Katmai (1918) and Glacier Bay (1925) Monuments
- 1923 – Naval Petroleum Reserve
- National Wildlife Refuges (Ranges): Kenai Moose Range, Kodiak, Arctic, Aleutians
- Indian Reserves

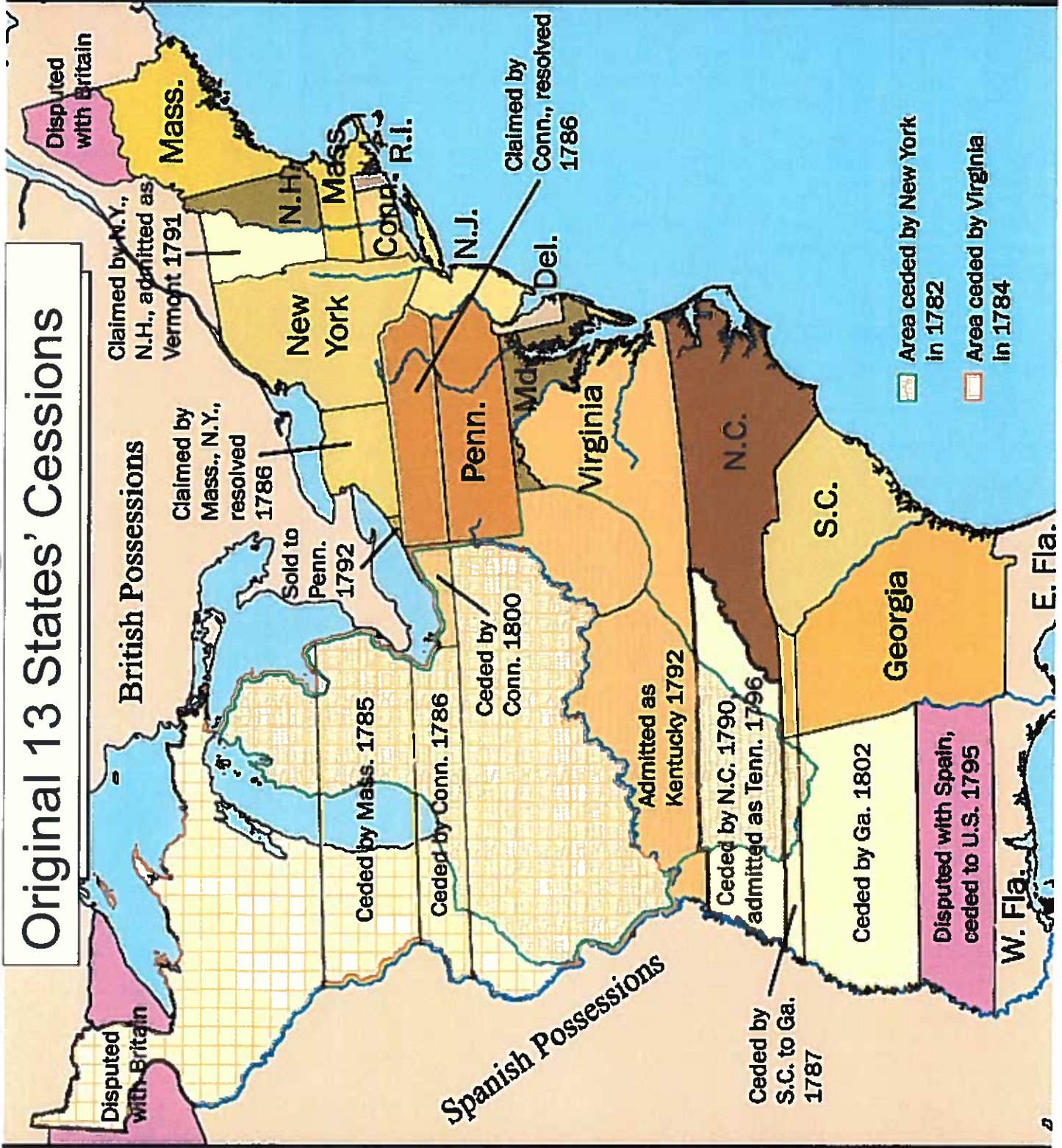
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Significance of Pre-statehood Land Withdrawals

- Largely off limits to Statehood Land Selections (400,000 acre exception from Chugach and Tongass National Forests)
- Often constrained ANCSA selections – especially in Parks and Refuges
- Generally closed these lands to public land laws (such as mining claims, except National Forest)
- May defeat State's title to navigable waters
- May alter how certain provisions of ANILCA and ANCSA apply (old Mt McKinley, NPRA)

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Original 13 States' Cessions



Federal Land Grants to States

- Land Ordinance of 1785 - Established Public Land Survey System (township and ranges, square mile "sections")
- New states received every Section 16 (640 acres) for public schools (first was Ohio – 1803)
- 1850 – California received 2 sections per township
- 1896 – SW states received 4 sections per township
- Grants also given for prisons, public buildings, etc.
- These are all "trust" lands

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Alaska Territorial Land Grants

- School Trust – 104,000 acres
- University (1929) – 111,000 acres
- Mental Health (1956) – 1 million acres
- These are all trust lands: lands must be managed for fiduciary interest of the trust beneficiaries

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Status of Trust Land Grants

- Legislature "dissolved" Trusts in 1978 to enable disposals
- University and Mental Health Lands subject to litigation in 1980s-1990s
- Courts ruled state violated trust responsibilities
- Legislative fix reconstituted trusts with unencumbered original trust lands and other state lands not set aside for other uses

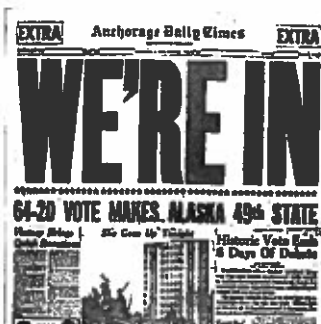
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Alaska Statehood Debate

- Major federal spending in Alaska during WW II
- Most public services were provided by the federal government
- Congress concerned about how the State would support itself
- Statehood advocates argued for a large federal land grant – for development and to fund State services

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1958 - Alaska Statehood Act



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Alaska Statehood Act

In 1959, Alaska became the 49th state, with a grant of 103,350,000 acres, including:

- Section 6(a) Community Grant - 400,000 acres from both National Forests and BLM
- Section 6(b) General Grant – 102,500,000
- Section 6(m) Submerged Lands Act applied to Alaska
- Section 4 acknowledges Native land rights

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Alaska Statehood Act

Three unique provisions of Alaska's Statehood land grant:

- Alaska could select from vacant and unappropriated federal land (most BLM and US Forest Service land)
- Alaska was given 25 years to file land selections (amended to 35 years in ANILCA Section 906)
- These were not "Trust Lands"

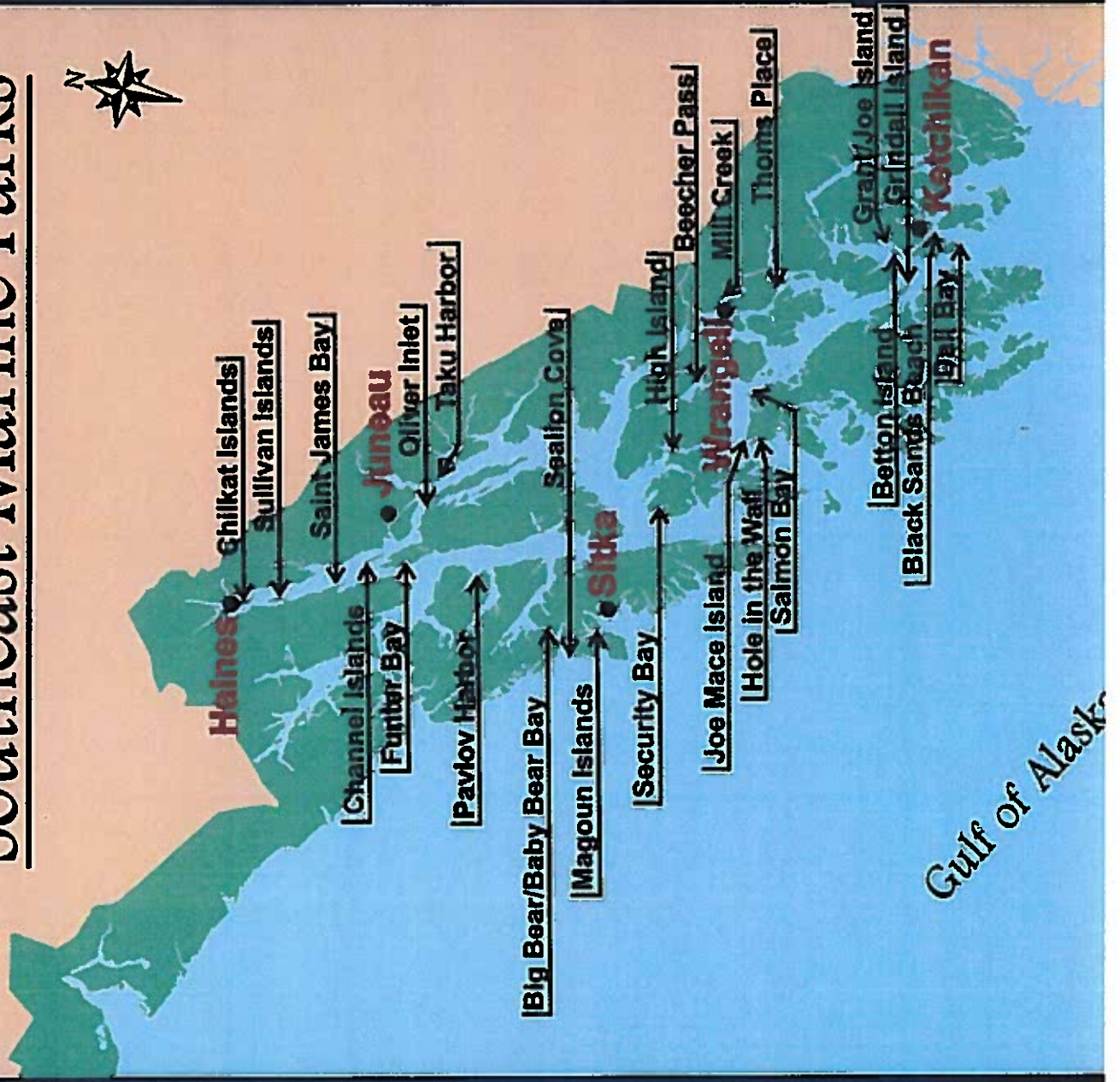
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6(a) – National Forest Community Grant (NFCG) Selections

- 400,000 acres from both National Forests
- Must be "adjacent to established communities or suitable for prospective community centers and recreational areas"
- Could not select for forestry or minerals, but land use not constrained after State acquires the land
- Selections created most Marine Parks in Prince William Sound and Southeast

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Southeast Marine Parks



Alaska Statehood Act – Section 6(i)

Section 6(i) – all Statehood land grants include minerals BUT requires the state to reserve minerals in any sales or other disposals, hence:

- All disposals must contain mineral reservation in AS 38.05.125
- State mining claims can never go to patent (unlike federal mining law)
- Must be considered in any land exchange

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State Land Grants

- Statehood and territorial land grants total over 105 million acres
- 100 million acres transferred to date
- 69 million acres patented (surveyed)
- 31 million acres tentatively approved (state owned but not patented)
- Most not trust land

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Promised Land – the last 5 million acres

- State has received 100 million acres of 105 million acres total
- University, School and Mental Health Grants largely fulfilled
- Remaining 5 million acres:
 - 2 million acres set aside for withdrawn lands (e.g. Pipeline Corridor)
 - 1 million acres set aside for inholdings
 - 2 million acres for good ANCSA leftovers and other state interest

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State-owned waters – 60-65 million acres

- Shorelands – land under inland navigable waters – e.g. Susitna, Tanana, Gulkana Rivers
 - Acquired under Equal Footing Doctrine
 - Includes waters within Conservation System Units established after statehood
- Tidelands – lands under tidal influence
 - Acquired under 1953 Submerged Lands Act and Equal Footing Doctrine
- Submerged lands – lands seaward to 3-mile territorial limit
 - Acquired under 1953 Submerged Lands Act

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What are the State-owned Navigable Waters

State acquired title in 1959, BUT –

- There was no list at statehood
- There is disagreement about what is navigable

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Multiple legal definitions of navigable waters and navigability

Navigability for title purposes

- Ownership of the bed of navigable waters
- Defined by over 150 years of federal court cases

Not to be confused with navigability under:

- Clean Water Act
- Army Corps jurisdiction
- Coast Guard authority

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How are navigable waters determined ?

Federal courts have established criteria - in *The Daniel Ball* (1870), the Supreme Court declared:

"Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. "

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How do you determine what are navigable waters for title purposes?

- Federal Courts refined criteria for Alaska – Gulkana River (commercial rafting and susceptibility)
- State asserts ownership and manages waterways that meet Gulkana criteria
- Federal agencies and ANCSA Corporations sometimes disagree with State
- Finality may require Quiet Title in federal court
- State and BLM use Recordable Disclaimer of Interest

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Impact of Pre-Statehood Withdrawals on Ownership of Navigable Waters

EXCEPTION – pre-statehood withdrawals of federal lands may defeat the state from acquiring title to navigable waters, tidelands, and submerged lands

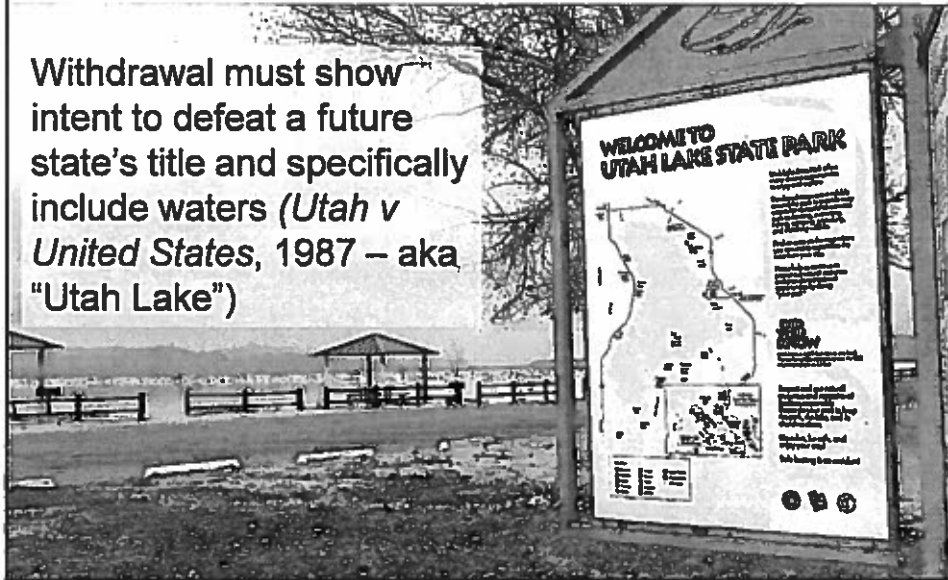
US Supreme Court rulings:

- Utah Lake
- North Slope – Dinkum Sands, Arctic Wildlife Range, NPRA
- Glacier Bay and Tongass marine waters

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Impact of Pre-Statehood Withdrawals on Ownership of Navigable Waters

Withdrawal must show
intent to defeat a future
state's title and specifically
include waters (*Utah v
United States*, 1987 – aka
"Utah Lake")



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Pre-Statehood Withdrawals – NPRA and Arctic National Wildlife Range

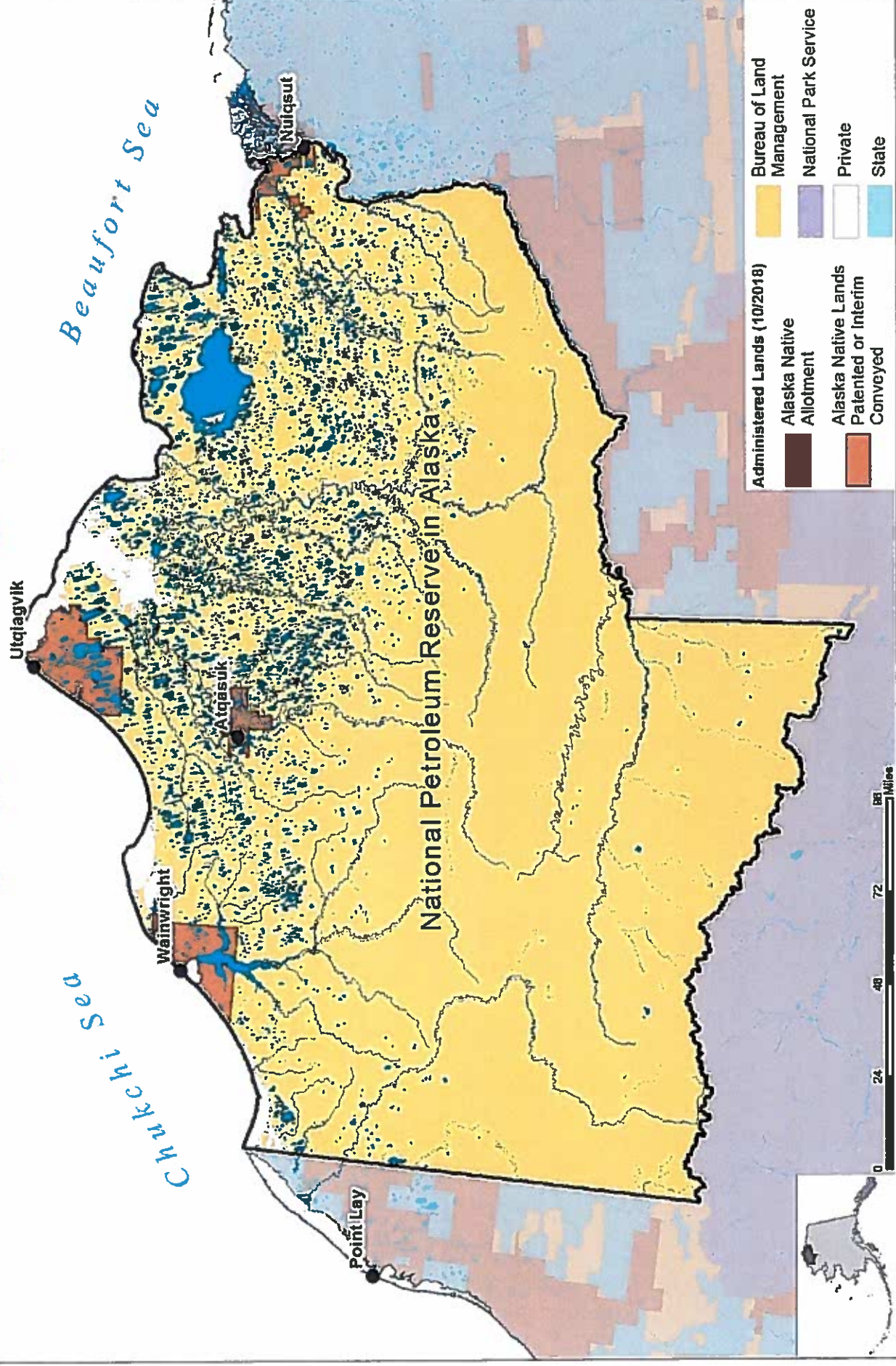
- US Supreme Court – *Alaska v United States*, Number 84 Original (aka Dinkum Sands)
- Dinkum Sands – not an island hence no state owned submerged lands
- Arctic National Wildlife Range – waters reserved at statehood (only within pre-statehood boundary, not ANILCA additions)
- National Petroleum Reserve Alaska - waters within NPRA boundary were reserved at statehood

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BLM's National Petroleum Reserve - Alaska

ARCTIC OCEAN



Pre-Statehood Withdrawals – Glacier Bay Monument and Tongass National Forest

US Supreme Court – *Alaska v United States*, Number 128 Original:

- Glacier Bay – reserved at statehood (within pre-statehood boundary)
- Southeast "Donut Holes" – areas more than 3 miles offshore are federal
- Tongass marine waters – US and AK agreed they are State owned, Supreme Court approved disclaimer
- Tongass inland navigable waters addressed by later Stikine River disclaimer

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Why Does Ownership of Navigable Waters matter?

- Ownership of bed of waterbodies (navigability for title purposes) determines if state laws govern use of riverbed and waterway
- State Constitution governs public use
- Private owners and occasionally federal agencies may want to limit/restrict uses that the State believes are protected by the Alaska Constitution

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Alaska's State-owned land:

165 million total acres

- 105 million acres of uplands
- 60+ million acres of tidelands, shorelands and submerged lands

Equal in area to California, Oregon, and Washington combined

Alaska is second largest landowner in US

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State Constitution – Article VIII

- Encourage settlement of its land and development of its resources by making them available for maximum use consistent with the public interest
- Provide for the utilization, development, and conservation of all natural resources belonging to the State, including lands and waters, for the maximum benefit of its people.
- Fish, wildlife, and waters available for common use

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State Constitution – Article VIII

- Manage renewable resources for sustained yield
- Legislature can establish special sites and areas (parks, refuges, etc.)
- State must give public notice of, and safeguard public interest in, any disposal (sale, lease, etc.)
- Mineral rights by discovery and appropriation (claims)
- Public access to navigable and public waters assured

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Municipal Land Entitlements

- Municipalities are entitled to a percentage of state land within their boundaries
- New municipalities receive 10% of vacant, unappropriated, unreserved state land
- Entitlements examples:
 - Mat-Su Borough: 355,210 acres
 - Kenai Peninsula Borough: 155,780 acres
 - Municipality of Anchorage: 1986 agreement

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State Land Selections – 1960s

- State selected lands slowly at first
- Initial selections were surveyed lands near population centers – Kenai, Mat-Su, Fairbanks, Southeast communities
- Selections at Prudhoe Bay inspired by oil seeps

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Native Land Claims – 1960s

- State selections conflict with land that Native groups felt was theirs (e.g., Minto)
- 1966 – Secretary of the Interior Udall imposed land freeze until aboriginal land claims are resolved, converted to land withdrawal in 1969
- By 1968 - Native groups' land claims covered 80% of Alaska
- 1968 – Prudhoe Bay oil discovery; conflicting land claims made it impossible to establish pipeline route

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1971 - Alaska Native Claims Settlement Act (ANCSA)



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Alaska Native Claims Settlement Act

ANCSA took a different approach than in lower 48 states:

- "Lower 48" tribes not given traditionally used lands
- Reservation lands are held in trust by Federal Government – not owned

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Alaska Native Claims Settlement Act

- Extinguished aboriginal land claims
- Provided land near Native Villages for subsistence and community uses.
- Provide economic opportunities for Natives
- Native ownership of the lands – private lands, not trust lands, not reservations, not tribal lands
- Monetary compensation for additional lands and money to help corporations get started

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Alaska Native Claims Settlement Act

- Established 13 regional and 224 village corporations
- Enrollment in corporations – Alaska Natives living on 12/18/1971 were enrolled in a regional corporation and most in a village corporation
- Each individual received stock
- Established Alaska Native Fund – approximately \$1 billion

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ANCSA Regional Corporations

- Received sub-surface estate under village lands (except in pre ANCSA National Wildlife Refuges and NPRA)
- Received additional acreage based on population and area formulas
- Total 17 million acres surface and subsurface (plus subsurface under the 22 million acres of village lands)
- 2 million acres of cemetery & historic sites
- Revenue sharing provision – 70% of revenue from timber and subsurface shared among corporations

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ANCSA Regional Corporation Boundaries



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ANCSA Village Corporations

- Received surface estate
- Selected lands around villages
- Entitlement acreage based on village population for Section 11 villages: 69,120 – 161,280 acres
- Tlingit – Haida Villages: 23,040 acres
- Total (all villages): 22 million acres

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ANCSA – Provisions for Indian Reservations

- Fourteen reservations existed at time of ANCSA
- Thirteen were extinguished by ANCSA
- Four opted to keep former reservation land, received surface and subsurface:
 - St Lawrence Island (Gambell & Savoonga), Arctic Village & Venetie, Tetlin, and Elim
- Nine opted to be treated as ANCSA villages:
 - Akutan, Diomede, Hydaburg, Karluk, Unalakleet, Tyonek, Wales, Noorvik, Klukwan
- Annette Island (Metlakatla) retained reservation, opted out of ANCSA

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ANCSA Section 17(b)

- Congress recognized that access to public lands could be cut-off due to ANCSA conveyances
- Sec 17(b) authorized the identification and reservation of public easements for access to public lands and waters across ANCSA corporation lands
- Easements often not physically located, marked, or maintained

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Select ANCSA Amendments

- 1977 – authorizes mergers, ratified Cook Inlet land exchange
- 1980 – ANILCA Titles 9 and 14
- 1988 – Restrictions on stock alienation, shareholder enrollments, and more
- 1988 – Alaska Submerged Lands Act
- 1992 – Alaska Land Status Technical Corrections Act
- 2004 – Alaska Land Transfer Acceleration Act
- 2014 – National Defense Authorization Act (section 3002) – Sealaska lands finalization

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National Perspective on the Environment and Public Lands before ANCSA

- 1963 – Clean Air Act
- 1964 – Wilderness Act
- 1966 – National Historic Preservation Act
- 1968 – Redwoods National Park
- 1970 – First Earth Day
- 1970 – National Environmental Policy Act (NEPA)
- 1970 – Environmental Protection Agency (EPA) established
- 1971 – ANCSA Section 17(d)(1) and 17(d)(2)

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ANCSA Section 17(d)(1) – Secretary of Interior to withdraw lands from entry under public land laws (i.e. mineral entry, leasing, sales) for study and classification

- Many (d)(1) withdrawals still in place
- Alaska Land Transfer Acceleration Act (2004) required BLM to make recommendations regarding these withdrawals
- On January 19 the Secretary of Interior revoked 9.7 million acres of (d)(1) withdrawals in Northwest Alaska and Seward Peninsula

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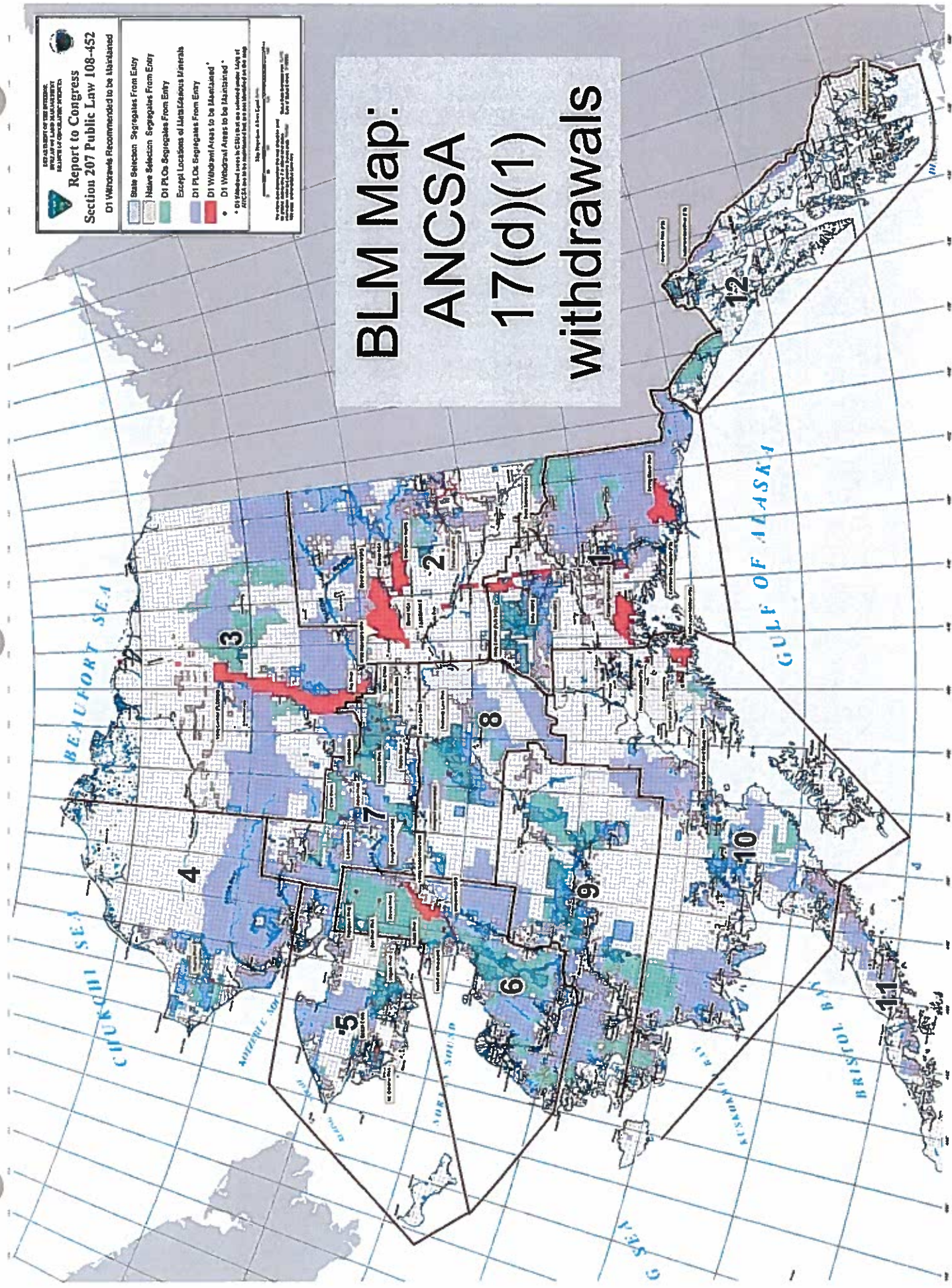

Report to Congress
Section 207 Public Law 108-452
 D1 Withdrawals Recommended to be Maintained

State Selection	Segregates From Entry
Native Selection	Segregates From Entry
D1 PLGs Segregates From Entry	
Except Locations of Jurisdiction Minerals	
D1 PLGs Segregates From Entry	
D1 Withdrawal Areas to be Maintained	
D1 Withdrawal Areas to be Maintained	

• D1 Withdrawal Areas to be Maintained
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State Selection: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

BLM Map: ANCSA 17(d)(1) withdrawals



ANCSA Section 17(d)(2) – Secretary of Interior to withdraw from public land laws and state and ANCSA Regional Corp. selections up to 80 million acres for study as future National Interest Lands (parks, refuges, etc.)

- Public debate raged over proposals for federal parks, refuges, etc.
- “(d)(2)” led directly to ANILCA

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“(d)(2)” lands – Examples of disputes:

- Mining vs. Preservation – Wrangell Mountains
- Timber production vs. Wilderness – Tongass National Forest
- Oil and Gas vs. Wilderness – Arctic Coastal Plain
- State Multiple Use vs. National Wildlife Range – Lake Iliamna (including Pebble site)
- Traditional Alaskan lifestyles and access versus restrictive land use

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1980 – Alaska National Interest Lands Conservation Act (ANILCA)

- Created or expanded National Parks, Wildlife Refuges, National Forests, National Monuments, and other federal land designations.
- New Conservation System Units (CSUs) areas totaled about 106 million acres
- Protected federal lands now total 137 million acres (37% of the state)
- ANILCA established new wilderness areas

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Acreages - Before and After ANILCA

	<u>Before*</u>	<u>After</u>	<u>Net</u>
National Park System	7.5 million	54 million	+ 46.5m
National Wildlife Refuges	23.3 million	77 million	+ 53.7m
National Forests	19 million	22 million	+ 3m
BLM National Recreation/ Conservation Areas	0	2.2 million	+ 2.2m
Other BLM	200+million	72 million	-128m

* “Before” acreages are estimates and exclude 1978 Monuments

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Acreages - Before and After ANILCA

	<u>Before*</u>	<u>After</u>	<u>Net</u>
Designated Wilderness	0.1 million	57 million	+56.9m
Wild and Scenic Rivers	0	0.6 million	+0.6m
Total National CSUs	30.8 million	137 million	+106m

* “Before” acreages are estimates and exclude 1978 Monuments

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ANILCA's ANCSA amendments

- Title XIV - Amendments to the Alaska Native Claims Settlement Act (ANCSA)
- 37 sections of ANCSA amendments, resolving issues that surfaced in the land conveyance process, land selection adjustments, land exchanges
- Many amendments recognized ANILCA's impact on ANCSA lands – such as moving ANCSA land selection rights outside new CSUs

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2021 - Remaining Land Transfers

- 2 million acres still to transfer under ANCSA
- 7 million acres to survey/patent under ANCSA
- 5 million acres still to be transferred to State of Alaska
- About 19 million acres of State selections and topfilings
- Many State selections overlap ANCSA selections and Native Allotments
- 36 million acres to survey/patent to State
- About 250 Native Allotment parcels to transfer
- New Veteran Native Allotment Program in 2019 Natural Resource Management Act (S 47)

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Three Laws to Remember

- Alaska Statehood Act – granted land to the State (1958)
- Alaska Native Claims Settlement Act – (ANCSA) resolved aboriginal land claims (1971)
- Alaska National Interest Lands Conservation Act (ANILCA) – designated federal conservation units and legislated unique provisions for public use (1980)

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