

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

February 4, 2015

3:29 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW OF THE ALASKA STATEHOOD COMPACT AND THE ALASKA NATIONAL INTEREST LANDS ACT (ANILCA)

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SARA TAYLOR, Executive Director
Citizens' Advisory Commission on Federal Areas (CACFA)
Department of Natural Resources (DNR)
Palmer, Alaska

POSITION STATEMENT: Presented an overview of ANILCA and its context.

SUSAN MAGEE
State ANILCA Program Coordinator
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Related the state ANILCA program activities.

MIKE SCHECHTER, Assistant Attorney General
Natural Resources Section
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Commented on ANILCA litigation.

PAUL DECKER, Director
Division of Oil and Gas
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Commented briefly on ANILCA.

DOUGLAS VINCENT-LANG, representing himself
Anchorage, Alaska

POSITION STATEMENT: Related his ANILCA-related experiences having until recently been director of the Division of Wildlife within the Alaska Department of Fish and Game (ADF&G) in charge of the state Endangered Species team and the ANILCA team.

THOR STACEY, Director
Government Affairs
Alaska Professional Hunters Association

POSITION STATEMENT: Related history of the guide industry in Alaska and discussed state and federal regulatory policy issues related to ANILCA.

ACTION NARRATIVE

[3:29:51 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:29 p.m. Present at the call to order were Senators Stedman, Costello, Wielechowski, Coghill, and Chair Giessel.

[3:30:18 PM](#)

Overview of the Alaska Statehood Compact and the Alaska National Interest Lands Act (ANILCA)

[3:30:36 PM](#)

CHAIR GIESSEL announced an overview of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) and the Alaska Statehood Compact by Sara Taylor.

SARA TAYLOR, Executive Director, Citizens' Advisory Commission on Federal Areas (CACFA), Department of Natural Resources (DNR), said she would present an overview of ANILCA. She said CACFA is a statutory commission that has been operating since 1981 with a

brief break; it was created to help Alaskans navigate ANILCA's very complex implementation. Sue Magee would present on Arctic National Wildlife Refuge (ANWR) plan.

She said ANILCA was passed in 1980 and is unprecedented in more ways than one. It didn't just create a vast swath of 104 million acres of conservation lands in a very diverse patch-work across the state, it also created a different way of managing lands to accommodate the Alaskan context, a very critical piece in ANILCA's passage. She explained that when the Alaska Native Claims Settlement Act (ANCSA) passed in 1971, section 17(d)(2) specifically directed the secretary of the Department of Interior to designate up to 80 million acres (one-third of the federal land at that time) into conservation lands. The debate about that area continued and the secretary was given until 1978 to make those land designations. In October 1978, session ended without it happening. Shortly after that, Secretary of Interior Andrus and the President used their executive authority to withdraw about 160 million acres from entry and state land selection pending congressional action. This really motivated everyone to come to a compromise.

At that time, the Alaska State Legislature passed a joint resolution referred to as "The Seven Consensus Points," the points the state absolutely needed when it came down trading for the balance that ANILCA was to create.

[3:33:55 PM](#)

SENATOR MICCICHE joined the committee.

[3:34:22 PM](#)

The seven consensus points the state needed were:

1. Revoke all monuments and executive withdrawals that had just happened
2. Grant the state and Native corporations their full land entitlement
3. Barricade access across these federal lands to be able to access state and private lands
4. State management of fish and game on all lands
5. Conservation boundaries should exclude critical natural resources
6. Continue traditional uses on all lands
7. "No more" administrative expansion or additions to conservation system units (CSU)

Each of these consensus points was infused into various places when ANILCA passed. There are three "no more" clauses and the access provisions were very specific.

MS. TAYLOR said the conservation system units created by ANILCA are managed by several federal agencies, all with very different mandates, very different internal policies and guidelines, and it is CACFA's job to help Alaskans navigate those and to enforce the promises that were made in ANILCA, because it was an unprecedented compromise. Unprecedented means they have continually challenged the federal agencies that are used to managing things one way into managing them differently in Alaska, because of the guarantees under ANILCA.

[3:36:10 PM](#)

SENATOR STOLTZE joined the committee.

MS. TAYLOR said ANILCA also expanded the Arctic National Wildlife Refuge (ANWR), which had been in existence since just after statehood from about 8.9 million acres to 19 million acres. Part of the area was designated as wilderness, most of the original range was included in that wilderness, but the Coastal Plain was excluded, and it was addressed in a separate ANILCA provision.

MS. TAYLOR stated that everyone was here today to discuss the President's recent announcement to designate the Coastal Plain and the majority of the ANWR as wilderness and create four new Wild and Scenic Rivers in addition to the three that already exist there. She said Sue Magee, the Statewide ANILCA coordinator, would discuss the management plan, the vehicle by which those designations occur.

[3:38:18 PM](#)

SENATOR COGHILL commented that conservation unit planning has come to Alaska and not only do these people have to be educated, they have systematically ignored the existing law.

[3:41:36 PM](#)

SUSAN MAGEE, State ANILCA Program Coordinator, Department of Natural Resources (DNR), Juneau, Alaska, related that the ANILCA program consists of a small group of dedicated state employees from various state departments who work diligently to review these federal plans, policies and regulations to ensure the provisions of ANILCA that apply to Alaska are appropriately recognized and to protect the state's interests. She would discuss the Arctic Refuge Revised Management Plan, which is the

vehicle for the wilderness and Wild and Scenic River recommendations that the President recently announced.

She said ANILCA requires the Park Service (Service) to prepare and update comprehensive management plans (CMPs) to guide management refuges in Alaska. The law also requires the Service to consult with the state and Native corporations, and hold hearings to get input from those that will be most affected by these planning efforts.

The Arctic Refuge planning process which revises the 1988 CMP began in 2009. The draft plan was released for public review and comment in 2011 and the final plan while just released, was actually completed in 2012. After 30 days when the record of decision is signed by the Service, they can then forward their wilderness and Wild and Scenic River recommendations to Congress for either approval or rejection. State representatives participated in the planning process from the beginning and the administrative record for that process shows that the Service was well aware of the state's position opposing new wilderness and Wild and Scenic River recommendations. They were not included as decision-makers, and the Service did not disclose their final decision to them prior to release of the plan. The plan includes a disclaimer that the state did not endorse it, but had valuable input.

The Service is recommending that Congress add approximately 11 million acres of wilderness to the existing 8 million acres of wilderness in ANWR. If Congress passes it, almost the entire refuge will be designated wilderness. It also recommends adding four new Wild and Scenic Rivers to the refuge's existing three Wild and Scenic Rivers, which were designated by ANILCA.

She explained that only Congress can designate wilderness and Wild and Scenic Rivers, but if it doesn't take action to reject these recommendations, federal agency policy dictates that these areas be managed to protect their status until Congress does act, which sometimes takes decades, or possibly never occurs. Leaving these areas in protective status indefinitely requires more restrictive management.

[3:45:19 PM](#)

The state doesn't agree with the Service on this; they believe the Service is either ignoring or misinterpreting several provisions in ANILCA. It allowed the Service a one-time opportunity to conduct a wilderness review, but that ended in 1980. That was limited another section that allows the Bureau of

Land Management (BLM) to conduct wilderness reviews and make recommendations "from time to time."

While the Service completed the on-time wilderness review it did not include the Coastal Plain, because ANILCA section 1002 gave the Service explicit direction for it. Congress explicitly directed the Service to study the Coastal Plain fish and wildlife resources, to evaluate the potential impacts that oil and gas development would have on those resources, and to authorize all oil and gas exploration. The results were documented in a legislative environmental impact statement (EIS) and in 1987, the secretary of the Department of Interior recommended that Congress authorize full leasing of the entire area for oil and gas production. Congress has yet to act on that recommendation.

A cornerstone provision of ANILCA is commonly referred to as the "no more" clause. The most familiar one says federal agencies cannot conduct any more studies of federal lands for the single purpose of establishing new conservation system units without congressional authorization, and wilderness and Wild and Scenic Rivers are defined under ANILCA as issues.

Congress has not authorized any more studies. The studies in the Arctic Refuge Management Plan are administrative actions that are based on agency policy, not law. ANILCA also had clear intent language in which Congress states that it believes ANILCA found a balance between the national conservation interest and the state's economic and social needs. It ends with: "The need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas has been obviated thereby."

MS. MAGEE said the Service's response to all of this is that they are simply following the planning requirements in ANILCA which state that they must identify and describe the special values of the refuge in the management plans. So, they are merely assessing the wilderness and river values in the plan and the associated recommendations are not required; they are just agency policy.

They also say they are not violating ANILCA's "no more" clause, because the reviews have been incorporated into the larger management plan, itself, not for the single purpose of establishing new CSUs.

[3:48:43 PM](#)

There will be no oil and gas development if the Coastal Plain is designated wilderness, Ms. Magee said. The Service is also not abiding by the overall commitment and compromise in ANILCA.

She said that designated wilderness is the most restricted management regime possible for federal lands. Alaska has rural communities scattered throughout whose residents rely on these lands for food and shelter. There are limited roads and infrastructure and the state's economy is based on responsible resource development. Federal wilderness management directives, which are developed by policy makers without an understanding of ANILCA or the unique Alaska context, make it nearly impossible for these types of activities to occur. These restricted policies also interfere with state management activities and the public's ability to use and enjoy these areas.

Even if federal land managers want to allow more uses, their hands are tied because environmental groups are watching and poised to sue. Because the Arctic Refuge Wildlife Management Plan is so steeped in protective-oriented management directions, the plan establishes buffers around two villages - Kaktovik and Arctic Village - implying that Alaska's village life is somehow incompatible with designated wilderness even though Alaska's rural residents have been living in and taking care of wilderness for thousands of years.

The Wild and Scenic River recommendations are managed more restrictively, and from experience these recommendations if left in place will be used as additional justification for restrictive management actions and project-related mitigation. This was the case with the Pt. Thomson oil and gas development project that is located on state land adjacent to the refuge and they are concerned about impacts to future development projects such as the AKLNG gasline project, which will also run adjacent to the Arctic Refuge.

[3:51:29 PM](#)

MS. MAGEE said the state is in the process of review and evaluation of the final plan including the Service's responses to its comments.

[3:54:48 PM](#)

SENATOR WIELECHOWSKI asked how many lawsuits the state has filed over ANILCA violations and what the win/loss ratio is.

MS. MAGEE answered there are a couple of current lawsuits: one (Sturgeon lawsuit that the state joined) about section 103(c)

having to do with whether or not the Park Service regulations apply to state and private lands and waters.

3:56:27 PM

MIKE SCHECHTER, Assistant Attorney General, Natural Resources Section, Department of Law (DOL), said he didn't have a win/loss number, but the research could be done. He said the Sturgeon lawsuit is at the stage to apply for certiorari to the U.S. Supreme Court. The state has until March 16 to file its petition for review and the work is under way in the AG's office in concert with the governor's office to make a decision as to whether the state will participate in the appeal. His most recent information (through CACFA) with regard to Mr. Sturgeon is that he has decided to file suit and has found funding to push forward.

CHAIR GIESSEL said John Sturgeon is a constituent of hers who has been funding the lawsuit himself so far. Both she and Senator Coghill had submitted a letter requesting the state to join in that lawsuit.

SENATOR WIELECHOWSKI followed up saying he was interested in a synopsis of all ANILCA litigation the state had been involved with to see a record of interpretation.

3:59:31 PM

MS. TAYLOR said she would add lawsuits the state has not been involved in, too, because that would provide a lot more information.

SENATOR COGHILL asked the names of Wild and Scenic Rivers. It looks like that would be a significant taking at this point.

MS. TAYLOR said three Wild and Scenic Rivers are currently designated in ANILCA, section 602: the Ivishak, the Sheenjek, and the Wind Rivers. Four more are being proposed: the Atigun, Hulahula, Kongakut, and the Marsh Fork of the Canning Rivers.

SENATOR COGHILL asked if the designation, which is for portions of the rivers, would cut off travel and commerce or subsistence through them.

MS. TAYLOR replied that some provisions in ANILCA guarantee certain levels of access and activity on Wild and Scenic Rivers that may now apply to other Wild and Scenic Rivers that are not in Alaska.

SENATOR COGHILL said he was trying to understand if this is what we expected under the "no more" clause as wilderness designations and how it impacts Alaskans.

MS. TAYLOR said he might want to also consider the U.S. versus Alaska case about whether or not the state owns the submerged lands in ANWR.

SENATOR COGHILL said several studies were to be done on the 1002 area to look at impacts on flora and fauna but also to look at the energy potential for America, and asked if Congress had asked for that study yet or is it an open question.

[4:04:00 PM](#)

MR. SCHECHTER explained that section 1002 (h) required the Fish and Wildlife Service to do one study and that study was submitted in 1987. The purposes of section 1002 requires a continuing inventory of wildlife and such. A lawsuit is pending before Judge Gleason of the Alaska District Court over the exploration plan they were just discussing. The question is whether the submission of the 1987 report to Congress terminated the Fish and Wildlife Service's authority to review submitted plans for exploratory activity, non-drilling exploration in the Coastal Plain. He didn't know whether or not Congress had specifically requested more studies or information, but it is the state's position in that lawsuit that the opportunity for private parties or the state to continue to seek out that information about the energy potential of the Coastal Plain is there and it is balanced by the Service's ability to determine that an exploration plan may be duplicative or may impact the environment. Judge Gleason has yet to rule on it.

[4:05:49 PM](#)

PAUL DECKER, Director, Division of Oil and Gas, Department of Natural Resources (DNR), said he didn't have any better information.

MS. MAGEE said she thought that Mr. Schechter answered that question very completely.

SENATOR COGHILL said he would look at the congressional record on that.

SENATOR MICCICHE said two villages, Kaktovik and Arctic Village, are within the Coastal Plain area and asked if there is any precedence within the U.S. of an active community that is suddenly designated as being included in a wilderness area, and

what happens with things like fuel storage, water wells, or release of household effluent, home construction, and that sort of thing that happens in an active community.

MS. MAGEE answered that these village boundaries are not part of the refuge. The buffers she was referring to are beyond the village boundaries that would not be designated as wilderness. So that activities they feel are inconsistent with wilderness, such as ATV use, wouldn't be restricted because of the buffers.

SENATOR STEDMAN said they need to prepare for the fact that the feds want the people to move out over time.

SENATOR STOLTZE said over the last 65 days there has been substantial change in the statehood defense team and he wondered if the new team had the horsepower in the DNR, the legal department commitment, and the same resolve.

MS. TAYLOR answered that the CACFA team is the Department of Law and it is the very dedicated employees in the ANILCA implementation program. It operated while CACFA was defunded and has been advocating for the state's interest and the interest of Alaskans for the past 30 years. That has been a critical component of the continual monitoring, but it is very challenging to "keep this wall manned."

[4:12:42 PM](#)

SENATOR WIELECHOWSKI asked the practical impact to ANWR of designating more wilderness.

MS. TAYLOR replied that there are significant implications. If Congress does not reject this plan, ANWR gets managed to a non-impairment standard pending designation. This means there are still certain guarantees with respect to ANILCA that they hope are honored, but the ANWR CMP has taken the management of wilderness to an additional extreme, more than the one contemplated under ANILCA. People will have to use non-mechanized tools to maintain airstrips, no wheeled vehicles, like strollers or bikes, and public use cabins (which ANILCA provides for) would not be allowed even for health and safety.

MS. MAGEE added if Congress rejects the recommendations, then the refuge gets managed minimally, which is more restive than with other CMPs; the danger is if Congress doesn't act and then the wilderness and Wild and Scenic River designations remain in place and get managed as defacto wilderness and that can spill over into adjoining state lands.

SENATOR WIELECHOWSKI asked if Congress rejects the recommendations does ANWR get managed as it is today.

MS. MAGEE replied that it would be managed in accordance with the management plan without the wilderness and Wild and Scenic River recommendations. Because ANWR is very important to the wilderness community, a lot of the management direction is more restrictive. For example, ANILCA allows public use cabins in wilderness for public health and safety, but this plan says even though ANILCA allows it, they will not allow public use cabins in wilderness.

[4:18:36 PM](#)

SENATOR WIELECHOWSKI asked how many airstrips and public use cabins are there now.

MS. MAGEE answered she didn't know an exact number, but there wouldn't be any new ones under the new management plan.

SENATOR STEDMAN said he was curious about how residents up there will be treated under the new designation and how many feds will be needed to monitor the visitors.

MS. MAGEE responded that she couldn't provide those details, but added that wilderness has a philosophical management associated with it: the refuge is to be untrammled. What is ironic is that management occurs behind the scenes to make sure visitor experiences are maintained.

SENATOR STEDMAN remarked that Yellowstone Park has been enjoyed by a lot of Americans for decades; it has a lot of wildlife viewing and fishing. He has a hard time trying to grasp how many people go to the Coastal Plain; it doesn't have a hotel or transportation. It looks like the real point is to restrict the Alaskans that are up there in the two villages and to block oil development.

MS. TAYLOR said the Fish and Wildlife Service has reported roughly 1,000 visitors per year.

CHAIR GIESSEL said volunteers in Southeast used to cut firewood with chainsaws for some of the public use cabins, but quit because motorized equipment can't be used there.

SENATOR STEDMAN added that a family cabin built in the 50s has evolved into a wilderness area. You can't cut any brush without

permission and you can't run a gas-fired or wood heater; the next door cows are gone. It's very challenging to use and maintain. Alaskans are viewed as an invasive species in their own state and the feds want us out of there.

SENATOR COSTELLO said she appreciated the comments and everyone is wondering how we can get our voices to Washington, D.C. She asked if CACFA was just observing or are they going to put forward recommendations.

MS. TAYLOR answered that in 2013, CACFA had a federal overreach summit and came up with a number of powerful recommendations. They are still processing those recommendations, but they are not advocates. Their job is to be a resource for Alaskans, more the institutional memory and means of helping Alaskans figure out what their rights are. One recommendation is creating an advisory group to examine the ability to acquire federal land into state ownership or at least state management. That is gaining some traction in the Lower 48.

CHAIR GIESSEL said that is why she gave the committee maps showing the percentages of federal land and pointed out that Nevada is worse off than Alaska.

SENATOR COSTELLO said she was interested in coordinating with other western states that are facing similar challenges.

CHAIR GIESSEL responded that the American Lands Council is vigorously working this topic and is led by a Nevada Representative who is also an attorney.

[4:33:54 PM](#)

SENATOR STOLTZE said the Department of Agriculture is a bigger problem for Southeast.

MS. TAYLOR said the National Marine Fisheries Service (NMFS) and the Environmental Protection Agency (EPA) also have interesting ways of interrupting development.

SENATOR STEDMAN said the cows were gone before going to wilderness designation probably through improved barge service and modernization of homogenized milk and transportation. But Southeast has its own unique set of problems, because it is a forest that was created in 1907.

SENATOR MICCICHE liked his analogy and asked if the state has been successful on a single ANILCA challenge.

MS. TAYLOR answered yes; many times it has headed off major misunderstandings with respect to ANILCA and those far outnumber the ones lost.

SENATOR MICCICHE asked her to add those informal successes to her litigation document so they can understand where Alaska has been successful even if it doesn't involve litigation.

[4:38:44 PM](#)

DOUGLAS VINCENT-LANG, representing himself, Anchorage, Alaska, said up until recently he was the director of the Division of Wildlife within the Alaska Department of Fish and Game (ADF&G) and was in charge of the state Endangered Species team and the ANILCA team and has first-hand experience on these issues. He said this afternoon he would speak about a range of federal intrusions into the state's wildlife management programs. These issues will forever impact our state and our ability to determine sovereignty as promised under the statehood compact, ANILCA and other federal laws. These are his comments:

Let me begin by saying that despite what some are saying, Alaska has a rich and excellent history of successfully managing our fish and game resources and their habitats. We restored many once depleted fishery stocks that we received from the federal government at the time of our statehood. Alaskans have the experience, using the efforts of people ranging from highly professional scientists to the wisdom of our Native Elders, to manage our fish and game resources and our lands for their sustained yields and benefits. And yes, Alaskans manage our resources for sustainability and human benefit and use and not just for their natural diversity and existence. This is part of our constitution.

Let me also say that Alaska routinely tries to seek common ground with our federal partners. At times, these efforts succeed and we are able to work cooperatively. However, we have recently begun to experience increased federal intrusions on a wide range of fronts into our sovereign authorities and responsibilities to sustain and manage wildlife populations that are seemingly unresolvable given differing management and conservation philosophies and goals. Unfortunately what we once saw as rare

occurrences are now becoming more commonplace and the norm.

Let me demonstrate the nature of these federal intrusions by starting with a discussion of the Endangered Species Act, or ESA for short, as a species and landscape control mechanism. Alaska has been assaulted with precautionary listings of species irrespective of their current or near term health or abundance based solely on untested models speculating possible extinction sometime in the far distant future. This began with the listing of the polar bear, which despite our scientist's concerns with the untested models that speculated extinction by 2050, remain today at all-time record numbers, and for the Chukchi Sea population which has experienced some of the greatest sea ice loss over the past decade, vital rates remain the same as they were 30 years ago. We have now seen this strategy being employed by federal agencies and NGOs to list or attempt to list additional species. For example the NMFS listed the ringed seal based on speculative climate impacts 100 years in the future, despite their being over 3 million of these seals in the world today and, this is important, their own information that suggests that there will be no measurable impacts for the next 50 years. Similar proposals are pending for other species based solely on speculated impacts in the far distant future rather than observed or documented declines now or in the near future.

This concerns me for many reasons; however, my greatest concern is that once a species is listed all forms of take, including hunting and fishing, or incidental takes through development of our resources, comes under federal oversight. I view this as an unprecedented and unjustified federalization of state trust species and their habitats, and more significantly, of their management. It will not be long before a raft of state managed species are petitioned for listing and federalization, many of which are managed sustainably under state management. For example, what would happen if sockeye salmon were listed due to speculated impacts from ocean acidification, or caribou from global warming? Both species are currently well managed by the state but if listed would become federally managed.

Alaska has begun to fight back on these unwarranted listings. For example the state challenged the listing of the bearded seal and successfully reversed it with the judge calling the listing a gross misuse of federal discretion and authority.

We are also seeing this Act used as a landscape control mechanism through overly expansive designations of critical habitat that encompass any area potentially occupied by a species, rather than those areas truly critical to a species survival. As an example, for the polar bear, an area of Alaska larger than California was designated as critical habitat despite acknowledgment in the rule that the designation would not significantly benefit the species or that much of the area did not contain the primary constituent elements defining the habitat as critical.

4:44:21 PM

I believe this needlessly federalizes broad areas of land/seascapes. I also fear that such designations allow federal agencies to unnecessarily exert their management goals and authorities onto the designated lands and waters, including state and private lands. Such designations have opened a Pandora's Box regarding federal intrusion into state management authority. Again, Alaska fought back by successfully challenging the polar bear critical habitat designation. This rule was found so faulty the judge threw out the entire rule. It is currently under appeal by the U.S. Fish and Wildlife Service (USFWS). Recently, the National Marine Fisheries Service (NMFS) has proposed to list an area twice the size of California to protect those ringed seals that number in the millions. I wonder what our position will be as we did not state one at the recent public hearing held in Anchorage.

4:45:00 PM

Alaska's concerns that the use of Endangered Species (ESA) listings has gone too far came to fruition near the small island of Adak. Here the NMFS determined that commercial fishing was causing nutritional stress to Steller sea lions and closed commercial fishing resulting in significant economic impacts to local

Aleut communities dependent upon these fisheries. This occurred despite there being over 70,000 endangered sea lions at the time of this action and data showing that the population was increasing at a rate of 1.5 percent per year and nearing federally determined down-listing objectives.

4:46:00 PM

State scientists challenged the foundational science associated with the nutritional stress hypothesis and challenged the fishery closures as unwarranted. Seven subsequent independent reviews, three contracted by the NMFS itself, verified the state concerns. Despite this, the NMFS stood by their action citing that amorphous cloud, federal discretion. Alaska challenged NMFS in court, succeeding in a partial victory and restoring fishing to our western Alaskan communities. Again, a legal challenge proved successful in overturning unjustified federal action and intrusion.

Speaking of federal influence on state lands and waters, the Department of Interior has recently initiated an expansive program called Landscape Conservation Cooperatives (LCCs). LCCs were initially established to coordinate science at a landscape scale to study the effects of a changing climate. On the surface this sounds good as climate is having an impact on our landscapes. Unfortunately this program has morphed into something much broader and controlling. The USFWS has now directed these entities to establish conservation goals and objectives for all lands and waters and species occupying them within the boundaries of these cooperatives. Included in the boundaries of these LCCs are millions of acres of state and private lands and waters, including lands owned by Native Corporations. As such, federal conservation goals and objectives would apply to those lands and waters, state and private. When I was Wildlife Director we quit participation in two LCCs because they chose to vote by majority, allowing numerically dominant federal partners to establish conservation goals and objectives that apply on state lands and waters or over state trust species all over our objection. This approach causes me great concern as federal agencies often have quite differing conservation and management philosophies, as I will discuss shortly.

On yet another front, the National Ocean Council is implementing a National Ocean Policy under administrative order of the President. Alaska has voiced significant concerns with the proposed national ocean policy and its associated planning bodies. In short, the concerns of the state related to the level of federal authority associated with these policies and how they may be applied to state trust resources, lands and waters. Alaska also expressed concern regarding the extent of these planning boards' jurisdiction cover state territorial seas as well as adjacent uplands and waterways.

4:48:01 PM

Alaska also expressed concern that these planning bodies, again dominated by a federal voting decision and appeal process, could stipulate sanctuaries or other closed areas where resource use and development would be restricted.

4:48:43 PM

On yet another front, Alaska continues to implement intensive management programs to meet our constitutional responsibilities for sustained yield management. Overall, many of these programs have shown success and are providing additional hunting opportunities for Alaskans, particularly rural Alaskans wholly dependent upon wild foods for their food security and livelihood. Despite this sound management approach Alaska has been criticized by our federal partners as overly focusing on and managing our wildlife for human benefits and that our wildlife management is nothing more than running a game farm. They also oppose such an approach on federal lands despite its demonstrated success, but interestingly usurp the subsequent benefits for federally qualified users when these animals move onto federal lands, then claim that intensive management (IM) is not compatible with undefined federal management objectives or values. I am grateful that you see the value of our IM programs and continue to fund and support them despite the expressed federal opposition.

Alaska is also seeing impacts caused by federal wilderness management. In response to declining abundance of caribou on Unimak Island, Alaska

attempted to work with the USFWS to reduce predation and improve calf recruitment through a very limited and selective wolf reduction program. Our hope was to restore caribou hunting and food security to people that live in this remote area. Alaska was warned in a letter from the USFWS that if we took action we would be arrested and charged in federal court. The Service determined that under provisions of the Wilderness Act and their Biological Diversity Policy that caribou could be allowed to be extirpated from the island, or as their leadership described it - blink out of existence.

Alaska cannot under its constitutional responsibilities allow a species to simply blink out of existence. This makes one wonder what is in store for ANWR which was recently proposed for increased wilderness designations by the USFWS. Will the Porcupine Caribou herd someday be allowed to become extirpated under their wilderness and biological diversity policies? You need to be aware that the USFWS in Alaska is currently seeking a federal regulation that will forever prohibit management of wildlife that has the intent or even potential to alter or manipulate populations to provide for harvest opportunities in any way for any reason, including for subsistence use.

[4:51:17 PM](#)

We are also seeing intrusions into our sovereign jurisdiction of state waters. The NPS recently authorized themselves the authority to regulate uses on all water bodies within their Park units, including state navigable waterways. This is a direct violation of the Submerged Lands Act and ANICLA. Alaska challenged this action with John Sturgeon and should consider appealing the recent court 9th Circuit Court decision upholding the federal action. This is impacting state authorized hunting and fishing and research, as well as public use and access to state lands and waters.

[4:51:42 PM](#)

While I could continue with many other examples, let me close with a real example. The National Park Service (NPS) recently preempted state subsistence hunting regulations for the documented customary and

traditional harvest of bears at den sites in two Alaska national parks. The Park Service also preempted state wolf seasons in two other Alaska national park units despite there being no conservation concerns and acknowledgement that the preempted practice would not impact other park users. The Park Service told the state the action was necessary given that the preempted state regulations impacted undefined park values and biological integrity, whatever they may be. Alaska repeatedly asked for measurable metrics on how such impacts could be assessed, but none were ever provided. In short, state hunting regulations adopted under an open public process can be preempted if they are perceived by a federal manager to have some undefined impact on park values or natural diversity.

Both the NPS and USFWS are now proposing to adopt their own set of hunting regulations on federal lands that are based on their undefined values and natural diversity conservation goals; goals that do not take into account the needs and desires of Alaskans, including those Alaskans living a subsistence lifestyle, a lifestyle ANILCA was intended to protect.

4:53:22 PM

In sum, we are seeing an unprecedented administrative intrusion on a wide range of fronts by federal agencies into our traditional role as the primary manager of fish and wildlife. In my 30 plus years I have never seen such a siege on so many fronts. This is occurring despite our statehood compact, ANICLA and other Congressional assurances to the contrary that were intended to protect Alaska's ability to fulfill our constitutional sustained yield mandates. It is directly impacting management of fish and game given that federal management agencies often have quite differing philosophical management objectives, objectives that do not have the interests of Alaskans as a part of their development.

I urge you to remain vigilant given the impacts this is having on Alaska and our future. While no one likes to sue, we should not rule this out as it allows us a seat at the settlement table. The NGO community has successfully employed this strategy. The future of Alaska, its resources and the people who depend on it rest on the ability of Alaskans to manage, use and

conserve all our resources for the benefit of its people. That is the mandate Alaska's Constitution requires. It is our future and we must protect it.

Thank you.

4:54:15 PM

SENATOR STOLTZE thanked him for his service, foundational knowledge and science-based approach, with a vision to maintain an opportunity for the state's constitutional mandates.

4:57:30 PM

SENATOR COGHILL thanked him for his service, too, and his very compelling testimony. He said the issue of caribou on Unimak Island ended up in court and asked if some appeals were made to the USFWS and to our congressional delegation.

MR. VINCENT-LANG answered that they went round and round on what could happen on Unimak Island to restore caribou, because the state could not accept the fact that they could blink out of existence as the leadership of USFWS portrayed it. He eventually negotiated a deal, by being very hard-nosed, that his staff should be able to go to that island and participate in legal hunts for wolves. This past year, the department actually sent a few people down to Unimak Island to take wolves under state hunting regulations. If that continues for a year or two he hoped that would turn the tide on that caribou herd.

SENATOR COGHILL asked if Unimak Island was a wilderness designation.

MR. VINCENT-LANG answered yes. He said the USFWS is applying wilderness on a broader range across refuges in Alaska and basically elevating the natural diversity and bio-diversity mandate higher than hunting in a variety of other uses.

5:01:16 PM

THOR STACEY, Director, Government Affairs, Alaska Professional Hunters Association, said he is also an active registered guide in the state. He holds a special use permit in ANWR, which allows him to provide commercial hunting activities there. He wanted to make the committee aware that there are some nuts and bolts questions on how those concession permits are administered, and he would entertain those from an individual perspective.

MR. STACEY said the Alaska Professional Hunters Association was formed as result of concerns created by ANCSA when ANILCA was going into effect and as a result of federal overreach. From a hunting guide's perspective the person who owns the land controls the industry, he said. The trespass that hunting guide operates under essentially defines a person's operation, and with the committee's permission, he would suggest a plan forward for the guide industry.

[5:04:51 PM](#)

He said the hunting guide industry existed pre-statehood. It is resource based, but also a visitor industry. Alaska hunting guides are Alaskans, which is important for understanding how economics affects this group. Hunting guides have a very positive relationship with Alaskan-owned small businesses and the resource they are allowed to utilize.

MR. STACEY said guides don't own the resource; all Alaskans do. Wildlife, the resource they rely on, is important to all Alaskans. Sixty-five percent of Alaskans view wildlife as very important or mostly important to why they live here or how they see themselves.

[5:06:04 PM](#)

When the lawsuit over closure of Alaska's refuge after the appropriation act failed to pass Congress in October 2013, Mr. Stacey said he was guiding hunters on the Alaska Peninsula. They were listening to the radio and hearing that the appropriations act may not pass Congress and it was possible there wouldn't be funding to continue the refuges or the Department of Interior's programs. It was communicated to them via satellite phone from family members at home that the ANWR system might be closed for business in the middle of his hunting season, which is what happened. When the appropriations act failed to pass, the hunters viewed it as political retaliation toward the user group that was viewed as a conservative user group (hunters).

The Alaska Refuge system was closed in the middle of their bear hunting season. They interacted with the Parnell Administration and a lawsuit was filed, because under ANILCA, specific provisions allow for state wildlife and enforcement personnel to trespass any time on federal lands. Within the act there are also specific provisions when an emergency closure happens: they have to consult with the affected user groups. But that wasn't done. The hunting guides were asked to sign onto the lawsuit to help give the state standing, because members of the association experience real financial hardship as a result of this closure.

Fortunately, the refuges were re-opened the day the court case was filed.

Moving forward their standing was mooted and they opted not to appeal, but they hoped to have a discussion with the refuge system about what would happen if a shutdown happened again in the future. Their response was simply that they were discussing a proposed rule. It would take away the requirements for consultation, extending the amount of time for an emergency shutdown from 30 to 60 days and proposing to extend the duration of a closure based on itemized concerns from 1 year to 5 years before they have to explain their action.

[5:10:20 PM](#)

MR. STACY remarked that before they had a chance to discuss what would happen to them in the future, the agency's response was it agreed that it might have broken the rule, so the agency changed the rule, in order to not break it in the future.

[5:11:13 PM](#)

SENATOR MICCICHE asked if there is an emergency closure while he is out on the Alaska Peninsula, what park services they use.

MR. STACEY said they don't use any of their services, but if they violate the terms of their contract, like continue hunting, they will take away their land use authorization.

SENATOR MICCICHE said under ANILCA the state manages its own fish and game and it would be best if they would temporarily hand off that responsibility when they have closures so it doesn't affect our hunters.

[5:12:39 PM](#)

MR. STACEY said the concern is that whoever issues the trespass permit controls the industry. If a person violates the terms of the landlord they have the ability to remove him. People experience very real stress and angst over such an action. You can lose your entire livelihood over an arbitrary decision that happens in Washington, D.C.

[5:13:59 PM](#)

Mr. Stacey read the following history of how the guide industry got to the point of so much federal oversight:

1. The state of Alaska regulated the establishment of guide areas through the 60s, 70s, and 80s.

2. Congress deferred to this state regulatory scheme when ANILCA was enacted in 1980. Specifically 1307, which set forth various preferences for visitor services in the park and refuge units, exempted state regulated fishing and hunting guide services.

3. During the first eight years of ANILCA's implementation, the federal agencies deferred to the state guide area program and honored those state authorizations/permits to guide on federal land units.

4. In 1988, the Alaska Supreme Court declared unconstitutional the state guide area system as inconsistent with the equal use provisions. However, the decision outlined features, which if added to the guide area system, would make a guide area program constitutional. These included competition, reasonable time limits on permits, and state oversight of permit transfers.

5. New state legislation was drafted in 1989-1990 per the court ruling but the legislation was not passed.

6. For three years there was a regulatory hiatus during which the state had no program and the federal agencies continued to wait for the state to act to fill the regulatory gap created by the 1988 ruling.

7. When it became evident that the state action was not likely, the NPS and USFWS took regulatory steps to create a federally administered guide program on the National Park Service preserve lands and the Fish and Wildlife Refuge lands. These two federal programs were first implemented in 1993-94 and have been in force and effect over the subsequent 20 years to fill the regulatory gap created by state inaction.

8. During this 20 year period, MLM accepted the regulatory gap and took no steps to create a program comparable to those set up by the NPS and FWS. That hiatus is likely to end as BLM now indicates it intends to set up a similar federal program absent action by the state to do likewise.

MR. STACEY remarked that this is not a very cheery narrative. He would prefer to be under the administration of the state. He

would prefer that this body administer and regulate and write laws to create, enhance, and improve or restrict the industry.

5:17:26 PM

He said the "quick" expansion of federal authority over guide service in Alaska is the direct result of state inaction, especially when ANILCA outlines mutually responsible stewardship relationships between the state and the federal side.

He said the guide industry has a full brother, the transporter industry, the two commercial services that can sell Alaska big game services, and there is no program to regulate transporters right now on federal or state land. In a recent Fairbanks advisory meeting, the manager of the Arctic National Wildlife Refuge said they are going to create a regulatory regime for transports there. He explained that transporters largely service Alaska hunters. There is an absence of regulation and he finished the historical outline.

9. The expansion of federal authority over guide services in Alaska is the direct result of state inaction. Passage of a state program will likely stop BLM from setting another federal guide program. Passage of a state program will also enable the state to go to NPS and FWS and seek re-establishment of state primacy on federal lands that existed until 1993-94.

The very core question that causes the regulatory vacuum that the agencies are exploiting in the guide industry is does the state have the authority to limit the number of commercial operators on its land. Because it is paralyzed by that question for now for a variety of reasons, the federal agencies are filling that vacuum in controlling the industry.

5:19:33 PM

SENATOR MICCICHE asked why the state went 20 years without any action.

MR. STACEY answered that the industry was exhausted and discouraged from making the argument for the state to fill that void after a divisive Supreme Court decision. Some of the industry received concessions, which have proven to be stable and good for them over time. The other portion of the industry was left open on state lands, splitting the voice. Because the voice was split, the one group tended to focus on making the federal concession program better, and for a lack of better

words, the others didn't know what to do in advocating for themselves within the state process. He added that program was drafted right here in Senate Resources.

CHAIR GIESSEL, finding no further questions, said she appreciated the history Mr. Stacey presented as well as the robust documentation.

[5:20:55 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 5:20 p.m.