

**U.S./Canada
Border
Treaties**

Alaska State Legislature



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Legislative Research Agency

March 2, 1990

TO: Senator Lloyd Jones
FROM: Glenn T. Gray ^{GG}
Legislative Analyst
RE: Alaska Border Treaties
Research Request 90.250

Please check the appropriate box and return to Mail Stop 3100 or the above mailing address.

- I approve the release of this information.
- I approve the release of this information, but remove my name.
- Keep confidential.

Date

Signature

To assist us in improving the quality of our research services, we would appreciate your response to the following questions. Please be assured that we will take your comments seriously in performing future research for you.

Was the information objective?

Was it clearly written?

Did it provide answers to (or, at least, useful information on) all the questions you posed?

Was the research completed and delivered to you in a timely manner?

Alaska State Legislature

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March 2, 1990

MEMORANDUM

TO: Senator Lloyd Jones

ATTN: Charlie Miller

FROM: Glenn T. Gray ^{JG}
Legislative Analyst

RE: Alaska Border Treaties
Research Request 90.250

You requested information about treaties that established transportation rights across the Alaska-Canada border. Many agreements have been signed between the United States and the United Kingdom regarding the Alaska-Canada border and navigation rights in general (see Table 1). Although these agreements provide for free navigation of boundary waters, no explicit language establishes rights for Canadian land access to tidewater across the Alaska Panhandle. Section 1113 of the Alaska National Interest Lands Conservation Act (ANILCA), however, directed the president of the United States to consult with the Canadian government regarding Canada's needs for access in the Stikine River region.

Treaties Addressing Navigation Issues

A May 2, 1985 federal Canadian position paper identified three sources for Canadian rights for transportation access across the Alaska Panhandle: the 1825 Anglo-Russian Treaty, the 1871 Treaty of Washington and the 1909 Boundary Waters Treaty (see Attachment A). These three agreements address navigation rights but do not mention land access. Each of these treaties will be discussed below.

Section VI of the 1925 Anglo-Russian Treaty, which established navigation rights for Great Britain, states, in part:

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean, or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in article three of the present convention.

Senator Jones
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Attachment B contains the original text of this treaty in French, followed by an English translation.

The 1871 Treaty of Washington between the United States and the United Kingdom settled many differences between the two countries including navigation issues. Article XXVI of this treaty specifically mentions several trans-boundary rivers crossing the Alaska-Canada border.

The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty, and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

See Attachment C for the complete text of this treaty.

The 1909 Boundary Waters Treaty between the U.K. and the U.S. established a forum to address conflicts occurring in boundary waters between Canada and the U.S. Article I of this treaty declares that:

the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

Attachment D contains the entire text of the Boundary Waters Treaty.

Transportation Consultation Mandated by ANILCA

While no treaty expressly gives Canadians the right of land access to tidewater, section 1113 of ANILCA directed the United States to consult with Canada concerning their needs for access through the Stikine River region.

Congress finds that there is need to study the effect of this act upon the ability of the Government of Canada to obtain access in the Stikine River region of southeast Alaska. Accordingly, within five years from the date of enactment of this Act, the President shall consult with the Government of Canada and shall submit a report to the Congress containing his findings and recommendations concerning the need, if any, to provide for such access.

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The U.S.D.A. Forest Service submitted the report to Congress in 1987 (see Attachment E). The report recognized that tidewater access would be needed by the Canadians and identified seven routes in the Stikine region without a specific recommendation.¹ The report also noted that existing treaties guaranteed free navigation, but not surface transportation rights.

The 1985 Canadian position paper suggested that a new process be implemented to address access needs across the Panhandle. The paper recommended that a bilateral agreement be completed to recognize Canada's right for land access to tidewater. The paper also advocated that either the International Joint Commission or a special committee review access proposals on a case-by-case basis.

The 1987 Forest Service report to Congress also recommended a process to approve surface transportation routes. This process would involve a formal request by Canada to the U.S. Department of State and a subsequent analysis of the request by the Forest Service. The report also recommended that the Department of State establish a joint committee to coordinate access requests.²

I hope this memorandum and attachments answer your questions. Please contact this agency if we may assist you further.

¹The 1987 report predicted that new highway corridors across the Panhandle border would not be needed for another 15 to 25 years.

²Steve Noble of the Department of State's Canadian Desk did not know if a process had been implemented to evaluate Canadian proposals for highway corridors across the Alaska Panhandle. The staff of the Canadian Desk have only worked there since the summer of 1989 and were unable to find any records regarding this issue.

Table 1: Important Agreements Concerning the Alaska-Canada Border

Year	Agreement	Explanation
1825	Anglo-Russian Treaty	Treaty provides the first description of present Alaska-Canada border.
1867	Alaska Purchase	Treaty between U.S. and Russia describes border.
1871	Treaty of Washington	Treaty between U.S. and U.K. solves many issues concerning Canada and provides for free navigation on the Yukon, Porcupine and Stikine rivers.
1892	U.S.-U.K. Convention	Agreement calls for a joint survey of the Alaska-Canada border within two years.
1894	U.S.-U.K. Convention	Agreement extends the completion date of the survey until December 31, 1895.
1899	U.S.-U.K. Exchange of Notes	Agreement accepts a provisional boundary for region at the head of the Lynn Canal.
1903	Hay-Herbert Treaty	U.S.-U.K. treaty establishes a tribunal to decide the final location of the contested Alaska-Canada border.
1905	U.S.-U.K. Exchange of Notes	Agreement accepts the findings of the 1903 tribunal with a few clarifications.
1906	U.S.-U.K. Convention	Agreement establishes procedures for marking the 141st meridian portion of the border.
1909	Boundary Waters Treaty	U.S.-U.K. treaty establishes authority for the International Joint Commission and provides for free navigation of boundary waters.
1925	Lake Superior-Lake of the Woods Boundary Treaty	Treaty establishes authority for the International Boundary Commission to maintain the U.S.-Canada boundary including the Alaska-Canada border.

Prepared by the Legislative Research Agency, March 1, 1990 (90.250)

ATTACHMENT A

1985 Canadian Position Paper on
Access Through the Alaska Panhandle

ALASKA PANHANDLE TRANSPORTATION ACCESSCanadian Position PaperIntroduction

On December 2, 1980, the United States Congress passed the Alaska National Interests Lands Conservation Act (ANILCA), Public Law 96-487. The Act reserves from development and in some cases limits access to certain tracts of land in Alaska. Some of these tracts are near the Canada/U.S. border or lie among possible transportation corridors across the Panhandle (e.g. the Stikine River Valley).

Prior to passage of this legislation, the Canadian Government, after consultation with provincial authorities, formally expressed its concern through the State Department that ANILCA might restrict Canadian transportation access across the Panhandle. This position was based in part on treaty rights acquired in the nineteenth century.

In response, the U.S. legislators inserted Section 1113 of ANILCA, which directed the President to report within five years on "...the need, if any" to provide access across the Panhandle. In the course of conducting this study, the Administration is to consult with the Canadian Government.

This paper sets out in a preliminary fashion the Canadian position on the question of transportation access across the Alaska Panhandle.

Basic Approach

Canada's position is based on the assumption that north-western British Columbia and Yukon will in the years ahead become an area of significant economic development. Similarly, it is expected that Alaska, particularly the south-eastern part (the Panhandle), will participate directly or indirectly in such activity. Accordingly, the Canadian side believes that an agreed system for dealing with probable requirements for transportation access across the Panhandle would be mutually beneficial to both countries.

International Legal Considerations

Canada's rights of access through the Alaska Panhandle rest on or are affected by three factors.

1. An 1825 treaty between Russia and Great Britain which guaranteed the subject of his Britannic Majesty "the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean (cross through the Panhandle)".
2. The 1971 Treaty of Washington, Article XXVI, which provided that navigation of the "Stikine, ascending and descending from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of her Britannic Majesty...subject to any laws and regulations...not inconsistent with such privilege of free navigation".
3. The 1909 Boundary Waters Treaty, Article I, which provides that "navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce...".
4. Section 1113 of the 1980 Alaska National Interests Lands Conservation Act mandates a presidential study of "the effect of this Act upon the ability of the Government of Canada to obtain access in the Stikine River region of southeast Alaska". The Section goes on to call for examination of the impact of "various forms of access including, but not limited to, a road along the Stikine and Iskut Rivers, or other alternative routes, should such access be permitted.

Canada has existing navigation rights under the 1825 treaty between Russia and Great Britain, the Treaty of Washington of 1871 and the Boundary Waters Treaty of 1909. The practical effect of the legal situation governing these navigation access rights, in conjunction with the provisions of the 1980 U.S. Alaska National Interests Lands Conservation Act (ANILCA), is potentially to inhibit mutually beneficial economic development and resource management on both sides of the border. In the interests of both countries, Canada would therefore be interested in exploring with the USA the possibilities of establishing a process for the provision of additional transportation access through the Panhandle which would be consistent with both the economic development requirements of the region and the environmental objectives of the ANILCA.

Economic Development Considerations

Northern British Columbia and Yukon is a region of considerable economic potential. The sector which will eventually drive economic development in the area is mining. Forest based resource development may also take place, but probably on a limited scale. Finally, the possibility exists for major hydro-electric projects on the Stikine and Iskut Rivers. Broadly speaking, significant economic activity in this region is not likely to get underway for ten to fifteen years.

Preliminary consideration of the transportation requirements which may be generated suggests that there may be seven main potential access corridors across the Panhandle. Those corridors are described in an Appendix, together with an indication of the resource values in their immediate vicinity.

A. Mining

Recent studies by the B.C. Government (available on request) conclude that access through the Panhandle may be economically attractive in the Stikine region. This particularly the case for one project, Stikine Copper, a potential copper mine requiring copper prices in the U.S. \$1.00/lb. range (constant 1982 dollars) and, therefore, not likely to be developed until the next decade or beyond. Nevertheless, the property may in the end be best served via an access road along the Stikine to the Iskut and then west along the Iskut through Alaska.

For several other potential mines in the area studied in the Government's reports, access to tidewater would probably be via Highway 37 to Stewart. Analysis showed that new road construction costs in this region were high and unless there was a very significant haul cost saving to be obtained from a shorter route to tidewater, it would not be economical to incur new capital costs. Further, the existing port infrastructure in Stewart favours it as an export point over other potential ports with no existing infrastructure.

Since the Northwest studies were completed, a number of other potential mineral properties have been identified and three of these could benefit from direct access to tidewater leading through the Panhandle. One of these is a precious metal property owned by Skyline Resources. The property is located at Johnny Mt. near the Iskut River and could be served via a road from the Wrangell, Alaska area along the Iskut.

A second major property not fully discussed in the Northwest reports is Windy Craggy. This property is located in the most extreme northwest corner of B.C. Access from Windy Craggy could be gained through Alaska via the Alsek River. This property is situated in an extremely isolated area and would require a huge investment (company officials have estimated over \$1 billion) to bring on stream. The timing of this property is unknown at this time.

The Tulsequah mineral area up the Taku River, north of Juneau, also has excellent potential. The zone contains both massive sulphide and gold deposits. There have been three operating mines in the area. Transportation in the past has been by barge up the Taku River.

The northwest region also contains other mineral properties, but little information is available on their viability, timing or scale. Generally, the corridors most likely to be affected are - Tatshenshini River to Dry Bay, Taku River to Taku Inlet, and the routes along the Stikine and Iskut Rivers.

The extractive industries in Yukon depend entirely on existing access routes through the Panhandle to get their products to market. The major producer, the Cyprus Anvil Mining Corporation lead-zinc mine at Faro, Yukon, has access to tidewater at Skagway, Alaska via the Whitehouse-Skagway corridor. There are numerous known mineral properties throughout Yukon which will depend on existing or new routes to tidewater when conditions are right to bring them into production.

B. Forests

All seven possible access corridors across the Panhandle originate within the provincial Cassiar Timber Supply Area (TSA) - the largest supply area in B.C. (14.5 million hectares). Currently, the availability of timber in the TSA is constrained by difficult access and environmental considerations. The allowable annual cut of 140,000 cubic metres per year, set in 1984 and reviewed every five years, reflects the presently operable land base. Access through the Panhandle may enable the use of interior spruce and lodgepole pine stands as well as the coastal Sitka spruce, hemlock and cottonwood stands accessible from the developed corridors.

Notes on the forest values in the seven corridors appear in the Appendix. Two contain usable resources. The Stikine River to Stikine River Estuary route contains a moderate amount of potentially merchantable timber. There is currently one active Timber Sale near the junction of the Stikine and Iskut Rivers, involving 50,000 cubic metres of cottonwood and 10,000 cubic metres of sitka spruce. This timber will be bundle-boomed down the Stikine for export. In the area served by the Iskut River to Wrangell/Stikine Estuary corridor, there is also a considerable volume of merchantable timber, although much of it is poor quality hemlock and balsam. The direction of the timber flow is uncertain, but movement to tidewater appears attractive because of the distance to manufacturing centres in B.C.

C. Hydro-electric Development

B.C. Hydro has conducted extensive studies into the feasibility of hydro sites on the Stikine and Iskut Rivers which could provide a total of 15,000 million kwh/year. The development would consist of two dams and associated generation facilities on the upper reaches of the Stikine, two in the Iskut Basin, and a diversion of the head waters of a tributary of the Iskut. In addition, major transmission lines would be required to connect the development to the existing B.C. Hydro grid.

In September 1983, B.C. Hydro deferred detailed engineering and environmental studies of this development because of reductions in the forecast demand for electrical energy and current economic conditions in B.C. The deferral period is expected to last a number of years (with any probable in service date postponed past the year 2000) and its length will depend on the future growth of electrical energy demand.

At the northern end of the Panhandle, consideration is being given to a hydro grid inter-tie between the Northern Canada Power Commission's Whitehorse plant and Juneau, Alaska.

Environmental Considerations

The Ministry of Environment of the Province of British Columbia has prepared a Preliminary Environmental Assessment (PEA) of potential access routes in the Panhandle area (available on request). The report addresses the major environmental considerations in each of seven possible corridors.

It is apparent from this report that the documentation of resource and environmental information for the North West region of the province, particularly for that portion adjacent to the Panhandle, is relatively limited. Baseline information for a variety of parameters is required as the basis for analysis of both the feasibility and impacts of any major access development. Required in relation to corridors under consideration is an in-depth program to document physical parameters such as terrain, soils, climate and hydrology; and environmental factors such as vegetation, forests, fisheries, wildlife, visual and recreational resources. Provided it is initiated sufficiently in advance of any access development, this program will assist in reaching decisions on corridor and enroute feasibility, route location and design. Canadian agencies are prepared to cooperate with U.S. authorities in undertaking such investigations and related analysis.

Of greatest environmental concern in the region are the fishery resources. All five species of Pacific salmon have been documented in the major rivers (Alsek, Tatshenshini, Taku, Nakina, Stikine, Iskut and Unuk). These salmon stocks, as well as steelhead trout and Dolly Varden char, have important commercial, recreational and cultural values, and are of international interest. They must be afforded adequate protection. Migration patterns, spawning beds, water quality objectives and traditional fishing sites must all be accounted for in the corridor and route selection process and within route design.

Also important to the area are wilderness values, wildlife populations and heritage sites. These too, must be documented, evaluated and safeguarded from unnecessary impact in the context of the planning of access alternatives via Southwest Alaska.

On the basis of this preliminary assessment it is apparent that road design and construction will be difficult in the rugged terrain and harsh climatic conditions of the Northwest coast. Moreover, environmental protection measures must be incorporated into project cost estimates as basic project requirements.

Existing Transportation Links

It should be borne in mind that there are already numerous transportation routes and services linking B.C. and Yukon with Panhandle Alaska.

The public road connections include: the extension of Highway 37A from Stewart, B.C. to Hyder, Alaska; the road between Hyder and the Grand Luc mine in B.C.; the Klondike Highway from Whitehorse, Yukon to Skagway, Alaska, now open in summer only, and under active review for year-round operation as the principal supply route to Yukon; the Shakwak Highway from Haines Junction Yukon to Haines Alaska, which in addition to being a major commercial and tourist artery, is the Alaskan land bridge to Southeast Alaska from the rest of the State. The Shakwak Highway route was established on the basis of a 1942 Canada-U.S. Agreement through an exchange of diplomatic notes which also included the Alaska Highway. This route was reaffirmed in a Canada-U.S. Agreement of 1975 providing for reconstruction of the highway.

On the marine side, Alaska State Ferries offer vehicle and passenger services between Prince Rupert and several Panhandle communities, with connections to Vancouver and Seattle. Major cruise ship operators also stop at these points, and provide the major elements of Yukon tourist traffic through the ports of Skagway and Haines into Yukon. Other marine carriers offer commercial freight service to Yukon, B.C. and Alaska through Panhandle points. In addition, an Alaskan marine barge operator is aggressively soliciting freight business in the Yukon.

Currently there are no regular specific point services between B.C. and Panhandle communities. In the past, an air carrier held a licence to serve the Prince Rupert-Ketchikan route, but the licence has been cancelled. It should be noted, however, that there is scheduled air service between Whitehorse and Juneau by both U.S. and Canadian air carriers.

Freight and passenger services on the White Pass and Yukon Railway (Whitehorse to Skagway) are suspended. There are no other international rail links in the Panhandle.

The White Pass Corporation continues to operate a small diameter pipeline which carries oil products between the port of Skagway and Whitehorse along the line of the railway.

The concept of the International Gold Rush Park has been agreed to by the U.S. and Alaska as well as Canada and Yukon and is currently under review by B.C. This includes the route of the Gold Rush of 1898, from Skagway and Dyea, over the Chilcoot Trail to Canada.

The Report to Congress

Resource development in northwestern B.C. and Yukon will in due course result in significant economic benefits for both Canada and the United States. Clearly, however, the pace of that development is difficult to predict and few projects are likely to proceed in the short term.

Accordingly, it would be misleading to respond to Congress with respect to Canada's access requirements in too definitive a fashion. A more productive approach would be to focus on the process through which a particular access requirement might be considered. Such an approach would have the following elements.

- Canada's existing specific access would be guaranteed and augmented by a new bilateral agreement which would recognize Canada's general right to access across the Panhandle and would provide a method for dealing with specific access requirements as they come up.
- As part of this agreement a mechanism would be established whereby individual access requirements would be reviewed and approved according to agreed terms of reference.
- This reviewing body could be a committee made up of government representatives, or alternatively the International Joint Commission might be asked to take on this task.
- Under this scheme, the intent and relevant provisions of the ANILCA could be worked into the terms of reference of all access reviews.

It is Canada's view that this process-oriented approach will be more useful to the two countries than a premature, tightly defined corridor-by-corridor determination of access rights. The uncertainty of the timing and nature of economic development in the area suggests that this kind of flexible arrangement will in the end ensure that the full range of both countries' interests are adequately protected.

ATTACHMENT B

1825 Anglo-Russian Treaty

In faith whereof the respective Plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at St. Petersburg the 17th April, of the year of Grace one thousand eight hundred and twenty-four.

SEAL.
SEAL.
SEAL.

HENRY MIDDLETON.
Le Comte CHARLES DE NESSELRODE.
PIERRE DE POLETICA.

TREATY BETWEEN GREAT BRITAIN AND RUSSIA, SIGNED AT
ST. PETERSBURG FEBRUARY 16/20, 1825.

Au Nom de la Très Sainte et Indivisible Trinité.

Sa Majesté le Roi du Royaume Uni de la Grande Bretagne et de l'Irlande, et Sa Majesté l'Empereur de toutes les Russies, désirant resserrer les liens de bonne intelligence et d'unité qui les unissent, au moyen d'un accord qui réglerait, d'après le principe des conventions réciproques, divers points relatifs au Commerce, à la Navigation, et aux Pêcheries de leurs Sujets sur l'Océan Pacifique, ainsi que les limites de leurs Possessions respectives sur la Côte Nord-ouest de l'Amérique, ont nommé des Plenipotentiaries pour conclure une Convention à cet effet, savoir:—Sa Majesté le Roi du Royaume Uni de La Grande Bretagne et de l'Irlande, le Très Honorable Stratford Canning, Conseiller de Sa dite Majesté en Son Conseil Privé, &c. Et Sa Majesté l'Empereur de toutes les Russies, le Sieur Charles Robert Comte de Nesselrode, Son Conseiller Privé actuel, Membre du Conseil de l'Empire, Secrétaire d'Etat dirigeant le Ministère des Affaires Etrangères, &c.; et le Sieur Pierre de Poletien, Son Conseiller d'Etat actuel, &c. Lesquels Plenipotentiaries, après s'être communiqué leurs Plein-pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et signé les Articles suivants:—

I. Il est convenu que dans aucune partie du Grand Océan, appelé communément Océan Pacifique, les Sujets respectifs des Hautes Puissances Contractantes ne seront ni troublés, ni gênés, soit dans la navigation, soit dans l'exploitation de la pêche, soit dans la faculté d'aborder aux Côtes, sur des Points qui ne seraient pas déjà occupés, afin d'y faire le commerce avec les Indigènes, sauf toutefois les restrictions et conditions déterminées par les Articles qui suivent.

II. Dans la vue d'empêcher que les droits de navigation et de pêche exercés sur le Grand Océan par les Sujets des Hautes Parties Contractantes, ne deviennent le prétexte d'un commerce illicite, il est convenu que les Sujets de Sa Majesté Britannique n'aborderont à aucun Point où il se trouve un Etablissement Russe, sans la permission du Gouverneur ou Commandant, et que, réciproquement, les Sujets Russes ne pourront aborder, sans permission, à aucun Etablissement Britannique, sur la Côte Nord-ouest.

III. La ligne de démarcation entre les Possessions des Hautes Parties Contractantes sur la Côte du Continent et les Iles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit:—

A partir du Point le plus méridional de l'Île dite Prince of Wales, lequel Point se trouve sous la parallèle du 54^{me} degré 40 minutes de latitude Nord et entre le 131^{me} et le 130^{me} degré de longitude Ouest

(Méridien de Greenwich), la dite ligne remontera au Nord de long de la passe dite Portland Channel, jusqu'au Point de la terre ferme où elle atteint le 50^{me} degré de latitude Nord: de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la Côte, jusqu'au point d'intersection du 141^{me} degré de longitude Ouest (même Méridien); et, finalement, du dit point d'intersection, la même ligne méridienne du 141^{me} degré formera, dans son prolongement jusqu'à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le Continent de l'Amérique Nord-ouest.

IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent:

1^o. Que l'Île dite Prince of Wales appartiendra toute entière à la Russie:

2^o. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte depuis le 50^{me} degré de latitude Nord au point d'intersection du 141^{me} degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l'Océan, la limite entre les Possessions Britanniques et la lisière de Côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la Côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.

V. Il est convenu en outre, que nul Etablissement ne sera formé par l'une des deux Parties dans les limites que les deux Articles précédents assignent aux Possessions de l'Autre. En conséquence, les Sujets Britanniques ne formeront aucun Etablissement, soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des Possessions Russes, telles qu'elles sont désignées dans les deux Articles précédents, et de même, nul Etablissement ne sera formé par des Sujets Russes au delà des dites limites.

VI. Il est entendu que les Sujets de Sa Majesté Britannique, de quelque Côte qu'ils arrivent, soit de l'Océan, soit de l'intérieur du Continent, jouiront à perpétuité du droit de naviguer librement, et sans entrave quelconque, sur tous les fleuves et rivières, qui, dans leur cours vers la mer Pacifique, traverseront la ligne de démarcation sur la lisière de la Côte indiquée dans l'Article 3. de la présente Convention.

VII. Il est aussi entendu que, pendant l'espace de dix Ans, à dater de la signature de cette Convention, les Vaisseaux des deux Puissances ou ceux appartenans à leurs Sujets respectifs, pourront réciproquement fréquenter, sans entrave quelconque, toutes les Mers intérieures, le Golfe, Havres, et Criques sur la côte mentionnée dans l'Article 3. afin d'y faire la pêche et le commerce avec les Indigènes.

VIII. Le Port de Sitka, ou Novo Archangélak, sera ouvert au Commerce et aux Vaisseaux des Sujets Britanniques durant l'espace de dix ans, à dater de l'échange des Ratifications de cette Convention. A cas qu'une prolongation de ce terme de dix ans soit accordée à quelque autre Puissance, la même prolongation sera également accordée à la Grande Bretagne.

IX. La susdite liberté de commerce ne s'appliquera point au trafic des liqueurs spiritueuses, des armes-à-feu, des armes blanches, de la poudre à canon, ou d'autres munitions de guerre; les Hautes Parties Contractantes s'engageant réciproquement à ne laisser ni vendre, ni livrer, de quelque manière que ce puisse être, aux Indigènes du pays

X. Tout Vaisseau Britannique ou Russe naviguant sur l'Océan Pacifique, qui sera forcé par des tempêtes, ou par quelque accident, de se réfugier dans les Ports des Parties respectives, aura la liberté de s'y radouber, de s'y pourvoir de tous les objets qui lui seront nécessaires, et de se remettre en mer, sans payer d'autres Droits que ceux de Port et de Fanaux, lesquels seront pour lui les mêmes que pour les Bâtimens Nationaux. Si, cependant, le Patron d'un tel navire se trouvait dans la nécessité de se défaire d'une partie de ses marchandises pour subvenir à ses dépenses, il sera tenu de se conformer aux Ordonnances et aux Tarifs de l'Endroit où il aura abordé.

XI. Dans tous les cas de plaintes relatives à l'infraction des Articles de la présente Convention, les Autorités Civiles et Militaires des deux Hautes Parties Contractantes, sans se permettre au préalable ni voie de fait, ni mesure de force, seront tenues de faire un rapport exact de l'affaire et de ses circonstances à leurs Cours respectives, lesquelles s'engagent à la régler à l'amiable, et d'après les principes d'une parfaite justice.

XII. La présente Convention sera ratifiée, et les Ratifications en seront échangées à Londres, dans l'espace de six semaines, ou plutôt si faire se peut.

En Foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé le Cachet de leurs Armes.

Fait à St. Petersbourg, le ^{Vingt huit} _{Seizo} Février, de l'an de Grâce mil-huit-cent-vingt-cinq.

[L. S.]
[L. S.]
[L. S.]

STRATFORD CANNING.
LE COMTE DE NESSELRODE.
PIERRE DE POLETICA.

[Translation—Hertslet's Commercial and Slave Trade Treaties, Vol. III, p. 362.]

In the name of the Most Holy and Undivided Trinity.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, being desirous of drawing still closer the ties of good understanding and friendship which unite them, by means of an agreement which may settle, upon the basis of reciprocal convenience, different points connected with the commerce, navigation, and fisheries of their subjects on the Pacific Ocean, as well as the limits of their respective possessions on the North-west coast of America, have named Plenipotentiaries to conclude a convention for this purpose, that is to say: His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honorable Stratford Canning, a member of his said Majesty's Most Honorable Privy Council, etc., and His Majesty the Emperor of all the Russias, the Sieur Charles Robert Count de Nesselrode, His Imperial Majesty's Privy Councillor, a member of the Council of the Empire, Secretary of State for the department of Foreign Affairs, etc., and the Sieur Pierre de Poletica, His Imperial Majesty's Councillor of State, etc. Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and signed the following articles:

ART. I. It is agreed that the respective subjects of the high contracting Parties shall not be troubled or molested, in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in

fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following articles.

II. In order to prevent the right of navigating and fishing, exercised upon the ocean by the subjects of the high contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment, without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land, without permission, at any British establishment, of the Northwest coast.

III. The line of demarcation between the possessions of the high contracting Parties, upon the coast of the continent, and the islands of America to the North-west, shall be drawn in the manner following:

Commencing from the southernmost point of the island called *Prince of Wales* Island, which point lies in the parallel of 54 degrees 40 minutes, north latitude, and between the 131st and the 133d degree of west longitude (Meridian of Greenwich), the said line shall ascend to the north along the channel called *Portland Channel*, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British Possessions on the continent of America to the North-west.

IV. With reference to the line of demarcation laid down in the preceding article it is understood:

First. That the island called *Prince of Wales* Island shall belong wholly to Russia.

Second. That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British Possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

V. It is moreover agreed, that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding articles to the possessions of the other; consequently, British subjects shall not form any establishment either upon the coast, or upon the border of the continent comprized within the limits of the Russian Possessions, as designated in the two preceding articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

VI. It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean, or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams

which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in article three of the present convention.

VII. It is also understood, that, for the space of 10 years from the signature of the present convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in article three for the purposes of fishing and of trading with the natives.

VIII. The port of Sitka, or Novo Archangolsk, shall be open to the commerce and vessels of British subjects for the space of 10 years from the date of the exchange of the ratifications of the present convention. In the event of an extension of this term of 10 years being granted to any other Power, the like extension shall be granted also to Great Britain.

IX. The above-mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire-arms, or other arms, gunpowder or other warlike stores; the high contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

X. Every British or Russian vessel navigating the Pacific Ocean, which may be compelled by storms or by accident, to take shelter in the ports of the respective Parties, shall be at liberty to refit therein, to provide itself with all necessary stores, and to put to sea again, without paying any other port and light-house dues, which shall be the same as those paid by national vessels. In case, however, the master of such vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses, he shall conform himself to the regulations and tariffs of the place where he may have landed.

XI. In every case of complaint on account of an infraction of the articles of the present convention, the civil and military authorities of the high contracting Parties, without previously acting or taking any forcible measure, shall make an exact and circumstantial report of the matter to their respective courts, who engage to settle the same, in a friendly manner, and according to the principles of justice.

XII. The present convention shall be ratified, and the ratification shall be exchanged at London, within the space of six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at St. Petersburg, the 17th day of February, in the year of our Lord, 1825.

[L. S.] STRATFORD CANNING. [L. S.] THE COUNT DE NESSELEKODE.
[L. S.] PIERRE DE POLETIOA.

EXTRACTS FROM TREATY OF COMMERCE AND NAVIGATION OF 1843, BETWEEN GREAT BRITAIN AND RUSSIA.

[For full text, see Hertlet's Commercial and Slave Trade Treaties, Vol. VI, p. 782.]

XII. It is understood that, in regard to commerce and navigation in the Russian possessions on the north-west coast of America, the Convention concluded at St. Petersburg, on the 16th 28 February, 1825, continues in force.

XV. The present Treaty shall remain in force during the space of 10 years dating from the exchange of the ratifications thereof; and further, until the expiration of 12 months after either of the High Contracting Parties shall have given notice to the other of its intention to put an end thereto; each of the High Contracting Parties reserving to itself the right of giving such notice to the other at the expiration of the first 9 years; and it is agreed between them, that at the expiration of 12 months after such notice shall have been received by either of the High Contracting Parties from the other, the present Treaty, and all the stipulations contained therein, shall cease to be binding on the 2 Parties.

EXTRACTS FROM TREATY OF COMMERCE AND NAVIGATION OF 1859, BETWEEN GREAT BRITAIN AND RUSSIA.

[For full text, see Hertlet's Commercial and Slave Trade Treaties, Vol. X, p. 1057.]

XIX.

In regard to commerce and navigation in the Russian Possessions on the North-West Coast of America, the Convention concluded at St. Petersburg on the 16th (28th) of February, 1825, shall continue in force.

XXII. The present Treaty of Commerce and Navigation shall remain in force for 10 years from the date of the exchange of the ratifications; and further, until the expiration of 12 months after either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same; each of the High Contracting Parties reserving to itself the right of giving such notice to the other at the expiration of the first 9 years, or at any time afterwards.

TREATY CONCERNING THE CESSION OF THE RUSSIAN POSSESSIONS IN NORTH AMERICA BY HIS MAJESTY THE EMPEROR OF ALL THE RUSSIAS TO THE UNITED STATES OF AMERICA.

[Concluded March 30, 1867. Ratified by the United States May 30, 1867. Exchanged June 20, 1867. Proclaimed by the United States June 20, 1867.]

Sa Majesté l'Empereur de toutes les Russies et les Etats-Unis d'Amérique, désirant raffermir, s'il est possible, la bonne intelligence qui existe entre eux, ont nommé, à cet effet, pour leurs Plénipotentiaires,

ATTACHMENT C

1871 Treaty of Washington

appointed as her High Commissioners, and Plenipotentiaries the Right Honourable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, etc etc; the Right Honourable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honourable Privy Council, a Member of Parliament, a Companion of the Most Honourable Order of the Bath, etc etc; Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; Sir John Alexander Macdonald, Knight Commander of the Most Honourable Order of the Bath, a Member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney General of Her Majesty's Dominion of Canada; and Mountague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

ARTICLE I

Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims:"

And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels and generically known as the "Alabama claims," shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators, to be appointed in the following manner, that is to say: one shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

In case of the death, absence or incapacity to serve of any or either of the said Arbitrators, or, in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the

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Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ARTICLE II

The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its agent to represent it generally in all matters connected with the arbitration.

ARTICLE III

The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV

Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified

or alluded to any report or annexing a copy, such Party to apply for it, to furnish may call upon the other, to certified copies of any papers such reasonable notice as

It shall be the duty of the Arbitrators of the time both sides, to deliver in duplicate to the agent of the other Party; and referring to the evidence the Arbitrators may, if they do require a written or printed counsel upon it; but in such either orally or in writing

In deciding the matters by the following three rules Parties as rules to be taken of international law not in mine to have been applica

A neutral Government

First, to use due diligence within its jurisdiction, of is intended to cruise or to peace; and also to use like tion of any vessel intended having been specially adapted to war-like use.

Secondly, not to permit or waters as the base of port of the renewal or recruitment of men.

Thirdly, to exercise due all persons within its jurisdiction obligations and duties.

or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V

It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing as the case may be.

ARTICLE VI

In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:

RULES

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to war-like use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of Military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other Maritime Powers, and to invite them to accede to them.

ARTICLE VII

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States, at Washington, within twelve Months after the date of the award.

The award shall be in duplicate, one copy whereof shall be delivered to the agent of the United States for his Government the other copy shall be delivered to the agent of Great Britain Government.

ARTICLE VIII

Each Government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE IX

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

In case the Tribunal or duties as aforesaid, and the Contracting Parties agree that a sum shall be paid by Great Britain to the United States arising from such failure to fulfil any duty or duties as aforesaid, liability as decided by the Tribunal.

The Board of Assessors shall be named by the High Contracting Parties; and in case of a vacancy in the same manner in which the Board of Assessors shall be named by Her Majesty's Government named by the Representatives of the United States of America and Italy; and in case of a vacancy in the same manner in which the Board of Assessors shall be named by Her Majesty's Government.

As soon as possible after the meeting of the Tribunal organized in Washington, New York, or in Boston. The Tribunal shall make a declaration that they will use the best of their judgment in deciding the claims submitted to them, and will give their decisions as they may present themselves to be presented to them by the Arbitrators to examine and decide upon the merits of the claims proper, but upon such evidence as may be presented or on behalf of the Government of the United States respectively. They shall be assisted by one person on behalf of each of the Governments of the United States and of the Assessors in each of the Governments.

The decision of the Assessors shall be signed by them.

Every claim shall be presented to the Tribunal on the day of their first meeting for the presentation of their claims within six months.

The Assessors shall be appointed for a term of one year from the date of their appointment by them up to the date of their first meeting. If, after they have been decided, they shall make a report to the High Contracting Parties from the date of such first meeting. If, after they have been decided, they shall make a report to the High Contracting Parties within six months.

The report or reports

ARTICLE X

In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators.

The Board of Assessors shall be constituted as follows: One member thereof shall be named by the President of the United States; one member thereof shall be named by Her Britannic Majesty; and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause it shall be filled in the same manner in which the original appointment was made.

As soon as possible after such nominations the Board of Assessors shall be organized in Washington, with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of the United States and of Great Britain respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government, as counsel or agent. A majority of the Assessors in each case shall be sufficient for a decision.

The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively and dated.

Every claim shall be presented to the Assessors within six months from the day of their first meeting, but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

The Assessors shall report to each Government at or before the expiration of one year from the date of their first meeting the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

The report or reports shall be made in duplicate, and one copy thereof

shall be delivered to the Secretary of State of the United States, and one copy thereof to the Representative of Her Britannic Majesty at Washington.

All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

The Board of Assessors may employ such clerks as they shall think necessary.

The expenses of the Board of Assessors shall be borne equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

ARTICLE XI

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XII

The High Contracting Parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the thirteenth of April, Eighteen hundred and sixty one, and the ninth of April, Eighteen hundred and sixty five, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this Treaty, and all claims, with the like exception, on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner—that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington

of His Majesty the King of any Commissioner, or to act, the vacancy shall making the original app substitution being calcul

The Commissioners : convenient period after proceeding to any busi they will impartially an judgment, and accordin before them on the part Britannic Majesty, resp record of their proceedi

The Commissioners the claims which shall b such claims in such or upon such evidence or i of the respective Govern all written documents c on behalf of the respect claim, and to hear, if r Government, as counse separate claim. A majo award in each case. The shall be signed by the for each Government t agent to present and su upon it, and to repres investigation and decision

The High Contracting Commissioners as abso upon by them, and to g evasion, or delay whate

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The Commissioners

* See additional article of

of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment; the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet at Washington^a at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty, respectively; and such declaration shall be entered on the record of their proceedings.

ARTICLE XIII

The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claim, and to hear, if required, one person on each side, on behalf of each Government, as counsel or agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

ARTICLE XIV

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every

^a See additional article of Jan. 18, 1873 (TS 134), *post*, p. 188.

claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ARTICLE XV

All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Article XVI of this Treaty.

ARTICLE XVI

The Commissioners shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and agent or counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commissioners, provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

ARTICLE XVII

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this Treaty upon either Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XVIII

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States fishermen by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818,⁷ of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic

⁷ TS 112, ante, p. 57.

Majesty, the liberty, for the purpose of this Treaty, to take fish on the shores, and in the bays, New Scotia, and New Brunswick, and of the several islands to any distance from the shores and islands, and of drying their nets and curing their fish, shall not interfere with the right in the peaceable use of any same purpose.

It is understood that the liberty of the fishery, and that the salmon and the mouths of rivers shall be reserved to the fishermen.

It is agreed by the High Contracting Parties to have, in common with the subjects of the United States north of the term of years mentioned in Article XII, every kind, except shell-fish, on the shores of the several islands and creeks of the said sea, and of the said islands, without being permitted to land upon the shores aforesaid, for the purpose of drying their fish, that, in so doing, they do not interfere with the right of the fishermen of the United States of the said coasts in their own fisheries.

It is understood that the liberty of the fishery, and that salmon and the mouths of rivers, and the fisheries of the United States.

It is agreed that the liberty of the fishery under the first Article of the Convention between Great Britain, concluded at Washington, 1818, shall be reserved from the common use, and shall be regarded as in like manner as in the preceding Articles.

⁸ TS 124, ante, p. 117.

Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

ARTICLE XIX

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX

It is agreed that the places designated by the Commissioners appointed under the first Article of the Treaty between the United States and Great Britain, concluded at Washington on the 5th of June, 1854,⁶ upon the coasts of Her Britannic Majesty's Dominions and the United States, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Gov-

⁶ TS 124, *ante*, p. 117.

ernments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

ARTICLE XXI

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

ARTICLE XXII

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty, are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

ARTICLE XXIII

The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the

period of three months in date of the happening of

The Commissioners so appointed in the Province of Nova Scotia, and in the Province of New Brunswick, have been respectively named, and shall be sworn in, and shall subscribe a solemn oath, and examine and decide the matters referred to them, and according to justice and equity, and to the record of their proceedings.

Each of the High Courts of Justice shall be authorized to appoint the Commission as its Agents, and to confer with the Commission

The proceedings shall be conducted by the Commissioners appointed under Articles XXII and XXIII. They shall be bound to report to the Government of Her Britannic Majesty, and the Government may present. If either of the Commissioners shall have the right of calling on the other Commissioners shall prescribe.

If in the case submitted to the Commissioners, it shall be proved or alluded to any report, the Commissioners shall send out annexing a copy, such as may be proper to apply for it, to the Government of the United States. The Party may call upon the Commissioners for the originals or certified copies, in any instance such reasonable.

The case on either side shall be decided from the date of the order of the Commissioners shall be requested. The aforesaid period of three months in case of a vacancy occurring in any of the instances contemplated in

The Commissioners shall employ a secretary and shall be authorized in the transaction of the business of the Commission.

Each of the High Courts of Justice shall be authorized to appoint an agent or counsel; all of the expenses shall be borne in equal moieties.

period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the city of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its Agent, to represent it generally in all matters connected with the Commission.

ARTICLE XXIV

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and agent or counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without the payment of duties, from such Possessions through the territory of the United States for export from the said ports of the United States.

It is further agreed that for the like period goods, wares, or merchandise arriving at any of the ports of Her Britannic Majesty's Possessions in North America and destined for the United States may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the said Possessions, under such rules and regulations, and conditions for the protection of the revenue, as the Governments of the said Possessions may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without payment of duties, from the United States through the said Possessions to other places in the United States, or for export from ports in the said Possessions.

ARTICLE XXX

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the same, to another port or place within the territory of the United States as aforesaid: Provided, That a portion of such transportation is made through the Dominion of Canada by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

Citizens of the United States may for the like period carry in United States vessels, without payment of duty, goods, wares, or merchandise from one port or place within the Possessions of Her Britannic Majesty in North America, to another port or place within the said Possessions: Provided, That a portion of such transportation is made through the territory of the United States by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of Her Britannic Majesty.

The Government of the United States further engages not to impose any export duties on goods, wares, or merchandise carried under this Article through the territory of the United States; and Her Majesty's Government engages to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandise carried under this Article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Can-

for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.¹⁰

ARTICLE XXXIV

Whereas it is stipulated by Article I of the Treaty concluded at Washington on the 15th of June, 1846,¹¹ between the United States and Her Britannic Majesty that the line of boundary between the territories of the United States and those of Her Britannic Majesty, from the point on the Forty ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fuca Straits to the Pacific Ocean;" and whereas the Commissioners appointed by the two High Contracting Parties to determine that portion of the boundary which runs southerly through the middle of the channel aforesaid, were unable to agree upon the same; and whereas the Government of Her Britannic Majesty claims that such boundary line should, under the terms of the Treaty above recited, be run through the Rosario Straits, and the Government of the United States claims that it should be run through the Canal de Haro, it is agreed that the respective claims of the Government of the United States and of the Government of Her Britannic Majesty shall be submitted to the arbitration and award of His Majesty the Emperor of Germany, who, having regard to the above-mentioned Article of the said Treaty, shall decide thereupon, finally and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15, 1846.

ARTICLE XXXV

The award of His Majesty the Emperor of Germany shall be considered as absolutely final and conclusive; and full effect shall be given to such award without any objection, evasion, or delay whatsoever. Such decision shall be given in writing and dated; it shall be in whatsoever form His Majesty may choose to adopt; it shall be delivered to the Representatives or other public agents of the United States and of Great Britain, respectively, who may be actually at Berlin, and shall be considered as operative from the day of the date of the delivery thereof.

¹⁰ Arts. XVIII-XXV, XXX, and XXXII terminated July 1, 1885, pursuant to notice of termination given by the United States July 2, 1883.

¹¹ TS 120, *ante*, p. 95.

ARTICLE XXXVI

The written or printed case of each of the two Parties, accompanied by the evidence offered in support of the same, shall be laid before His Majesty the Emperor of Germany within six months from the date of the exchange of the ratifications of this Treaty, and a copy of such case and evidence shall be communicated by each Party to the other, through their respective Representatives at Berlin.

The High Contracting Parties may include in the evidence to be considered by the Arbitrators such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases.

After the written or printed case shall have been communicated by each Party to the other, each Party shall have the power of drawing up and laying before the Arbitrator a second and definitive statement, if it think fit to do so, in reply to the case of the other party so communicated, which definitive statement shall be so laid before the Arbitrator, and also be mutually communicated in the same manner as aforesaid, by each Party to the other, within six months from the date of laying the first statement of the case before the Arbitrator.

ARTICLE XXXVII

If, in the case submitted to the Arbitrator, either Party shall specify or allude to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one Counsel or Agent for each Party, in relation to any matter, and at such time, and in such manner, as he may think fit.

ARTICLE XXXVIII

The Representatives or other public Agents of the United States and of Great Britain at Berlin respectively, shall be considered as the Agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications and give all his notices to such Representatives or other public agents, who shall represent their respective Governments, generally, in all matters connected with the arbitration.

It shall be competent and all matters relating or by a person or persons or absence of evidence or otherwise.

The Arbitrator may for the purposes of the proceedings shall think proper. The said arbitration, shall

The Arbitrator shall account of all the communications to this matter, in equal moieties.

The Arbitrator shall convene after the said and to deliver one copy

The present treaty between the United States of America, by and by Her Britannic Majesty at Washington or at an earlier if possible.

In faith whereof, the Treaty and have hereunto

Done in duplicate at our Lord one thousand

ARTICLE XXXIX

It shall be competent to the Arbitrator to proceed in the said arbitration, and all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both agents and either orally or by written discussion or otherwise.

ARTICLE XL

The Arbitrator may, if he think fit, appoint a Secretary, or Clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This, and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

ARTICLE XLI

The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

ARTICLE XLII

The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

ARTICLE XLIII

The present treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

Done in duplicate at Washington the eighth day of May, in the year of our Lord one thousand eight hundred and seventy one.

HAMILTON FISH	[SEAL]
ROBT. C. SCHENCK	[SEAL]
SAMUEL NELSON	[SEAL]
EBENEZER ROCKWOOD HOAR	[SEAL]
GEO. H. WILLIAMS	[SEAL]
DE GREY & RIPON	[SEAL]
STAFFORD H. NORTHCOTE	[SEAL]
EDWD. THORNTON	[SEAL]
JOHN A. MACDONALD	[SEAL]
MOUNTAGUE BERNARD	[SEAL]

SESSIONS OF COMMISSIONERS UNDER
ARTICLE XII OF TREATY OF WASHINGTON

Additional article signed at Washington January 18, 1873, supplementing article XII of treaty of May 8, 1871

Senate advice and consent to ratification February 14, 1873

Ratified by the President of the United States February 28, 1873

Ratified by the United Kingdom March 21, 1873

Ratifications exchanged at Washington April 10, 1873

Entered into force April 10, 1873

Proclaimed by the President of the United States April 15, 1873

Terminated on fulfillment of its terms

17 Stat. 947; Treaty Series 134

ADDITIONAL ARTICLE TO THE TREATY BETWEEN THE UNITED STATES AND
HER BRITANNIC MAJESTY OF THE 8TH OF MAY, 1871

Whereas pursuant to the XIIth Article of the Treaty between the United States and Her Britannic Majesty of the 8th of May 1871,¹ it was stipulated that the Commissioners therein provided for should meet at Washington; but whereas it has been found inconvenient in the summer season to hold those meetings in the city of Washington, in order to avoid such inconvenience, the President of the United States has invested Hamilton Fish, Secretary of State, with full power, and Her Britannic Majesty has invested the Right Honourable Sir Edward Thornton, one of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States, with like power, who having met and examined their respective powers, which were found to be in proper form have agreed upon the following

¹ TS 133, *ante*, p. 170.

It is agreed that the
twelfth Article of the
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The present Additio
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ADDITIONAL ARTICLE

It is agreed that the sessions of the Commissioners provided for by the twelfth Article of the Treaty between the United States and Her Britannic Majesty of the 8th of May 1871, need not be restricted to the City of Washington, but may be held at such other place within the United States as the Commission may prefer.

The present Additional Article shall be ratified, and the ratifications shall be exchanged at Washington as soon as possible thereafter.

In witness whereof, we the respective Plenipotentiaries, have signed the same and have hereunto affixed our respective seals.

Done in duplicate at the City of Washington, the eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three.

HAMILTON FISH	[SEAL]
EDWD. THORNTON	[SEAL]

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WASHINGTON

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UNITED STATES AND
MAY, 1871

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ATTACHMENT D
1909 Boundary Waters Treaty

TREATY
BETWEEN THE UNITED STATES AND GREAT BRITAIN
RELATING TO BOUNDARY WATERS, AND QUESTIONS
ARISING BETWEEN THE UNITED STATES AND CANADA.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this Treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

- (1) Uses for domestic and sanitary purposes;
- (2) Uses for navigation, including the service of canals for the purposes of navigation;
- (3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavour to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced

to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated

October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

ARTICLE XI

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange

of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

(Signed) ELIHU ROOT [SEAL]

(Signed) JAMES BRUCE [SEAL]

AND WHEREAS the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to wit:

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's river at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's river, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty."

AND WHEREAS the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the City of Washington, on the 5th day of May, one thousand nine hundred and ten;

Now, THEREFORE, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the said understanding, as forming a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten,

[SEAL] and of the Independence of the United States of America the one hundred and thirty-fourth.

Wm H Taft

By the President:

P C Knox
Secretary of State.

PROTOCOL OF EXCHANGE.

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial, or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In witness whereof, they have signed the present Protocol of Exchange and have affixed their seals thereto.

DONE at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL]

JAMES BRYCE [SEAL]

ATTACHMENT E

1987 U.S.D.A. Forest Service Report to
Congress Concerning Section 1113 of ANILCA

H 4402 1987 C15

STIKINE RIVER REGION ACCESS STUDY

REPORT TO CONGRESS

Section 1113
Alaska National Interest Lands Conservation Act

U.S.D.A Forest Service
Region 10
Tongass National Forest
Stikine Area

1987

(3)

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STIKINE ACCESS STUDY

THE PURPOSE

On December 2, 1980, Congress enacted Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA). The intent was to provide for the designation and conservation of certain lands and waters in the State of Alaska. Section 703 (A)(10) of ANILCA further designated the Stikine-LeConte Wilderness. This area, nearly 443,000 acres in size, is located northeast of the community of Wrangell within the Tongass National Forest.

Prior to the passage of Public Law 96-487, the Government of Canada formally expressed its concern that this legislation might restrict transportation access across the panhandle of Alaska. The result was Section 1113 of ANILCA, which states:

Congress finds that there is a need to study the effect of this Act upon the ability of the Government of Canada to obtain access in the Stikine River region of southeast Alaska. Accordingly, within five years from the date of enactment of this Act, the President shall consult with the Government of Canada, and shall submit a report to the Congress containing his findings and recommendations concerning the need, if any, to provide for such access. Such report shall include, among other things, an analysis of the need for access and the social, environmental, and economic impacts which may result from various forms of access including, but not limited to, a road along the Stikine and Iskut Rivers, or other alternative routes, should such access be permitted.

This report includes those findings and recommendations to Congress.

CONSULTATIONS AND RECOMMENDATIONS:

The Canadian Government's need for access to tidewater is dependent on future economic development within its interior regions. Although the potential exists for growth, current economic conditions are such that few projects are expected to proceed in the next 5 to 10 years. For example, expansion of the Canadian forest products industry as well as extraction of the mineral resources in northwest Canada will depend, to a large extent, on improved world markets. Operation of Stikine Copper would require prices to reach the \$1-per-pound-range (1982 dollars)--not likely in the near future. Lastly, the construction of hydroelectric facilities on the upper reaches of the Stikine and Iskut Rivers has been deferred due to a reduction in forecasted demand of electrical energy. Online service may not begin until the year 2000.

Information provided by the Government of Canada, the State of Alaska, and local communities suggest a reasonable probability that some type of surface access will be needed in the Stikine River Region during the next 15 to 25 years. While there are no immediate surface access demands for this area, preliminary engineering reconnaissance data demonstrate that when surface access is needed through the Stikine River Region, the most economic and feasible alternative may be to cross some portion of the Stikine-LeConte Wilderness Area. However, identification and reservation of a specific route or routes should be deferred until such time as actual or planned development in the region has progressed to the point that access design requirements and objectives can be formulated. This report, therefore, takes no position on any form of route or access through the region.

On the basis of these considerations, we propose that the following process be utilized to analyze and develop appropriate recommendations at such time as access in the Stikine River Region is actually requested by the Government of Canada. In addition, the Government of Canada has identified the potential need for access through seven areas of the Alaska panhandle. The process recommended herein would also be appropriate for addressing these access needs if and when they occur.

1. The Government of Canada shall notify the U.S. Department of State of its desire to open formal negotiations with the Government of the United States for the purpose of obtaining transportation or utility system access through the Stikine River Region of Southeast Alaska. Such notification is required only for Canadian access needs not provided for under the provisions of existing Treaties. Notification should include the information requested in appendix "C" (Standard Form 299(11-83)), "Application for Transportation and Utility Systems and Facilities on Federal Lands."
2. The U.S. Department of State, upon receipt of notification under 1 above will request that the Chief, USDA, Forest Service provide the Secretary of State with an analysis and recommendation with respect to the requested access. Such analysis and recommendation is to be prepared in accordance with the provisions of Title XI of PL 96-487 and will be provided to the Secretary for use in the negotiations initiated under section 1 above. The Chief, USDA, Forest Service in preparing the analysis and recommendations shall solicit and consider the views of other Federal agencies, the Alaska Land Use Council, the State of Alaska, local communities, and affected corporations formed pursuant to the Alaska Native Claims Settlement Act, and, after public notice, shall receive and consider statements and recommendations regarding the request for access submitted by interested individuals and organizations. Congressional approval will be required for future access. The granting of this access across the Stikine-LeConte Wilderness, if required, will be under the authority of the Secretary of Agriculture and subject to such reasonable terms and conditions as he may prescribe to minimize the impact of the access on the purposes for which the Stikine-LeConte Wilderness was established.
3. The Department of State, in consultation with the Chief, USDA, Forest Service and appropriate Canadian officials, will establish a joint committee to coordinate any access request.

An alternate to the above recommended process has been proposed by the State of Alaska. They have suggested that ANILCA be amended at some appropriate time in the future to include an access arrangement similar to the provisions currently available in Section 201(4) of the Act for the Kobuk unit of the Gates of Arctic National Park and Preserve. The effect of a Section 201(4) type of arrangement would be to authorize the Secretary of Agriculture, subject to specific procedural requirements, to grant access in the Stikine River Region, including access across designated Wilderness if there is no feasible or prudent alternative, without further action by the Congress. Although this procedure may be possible, we recommend that this type of legislative amendment process only be pursued if Congress decides to consider other general access changes in ANILCA.

Relationship of the Study to Existing Treaties: The Government of Canada was guaranteed navigation privileges on the Stikine River by treaty provisions which predate the passage of the Alaska National Interest Lands Conservation Act. Navigation privileges on the Stikine River accrue to the Government of Canada through Article XXVI of the Treaty of May 8, 1871, between the United States and Great Britain (The Treaty of Washington). Article XXVI of the Treaty provides that:

The navigation of the rivers Yukon, Porcupine, and Stikine ascending and descending, from, to, and into the sea, shall forever remain free and open for the purpose of commerce to the subjects of her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

The fundamental principles that must guide analysis of the relationship between ANILCA, other Acts, and the obligation set forth in the Treaty of Washington are:

-- United States domestic law should be interpreted consistent with the international legal obligations of the United States (Restatement (Second) of Foreign Relations Law of the United States S3 (3)), and

-- an Act of Congress enacted after an international agreement supersedes that agreement only if it was the clear purpose of the Congress to do so (Restatement (Second) S145 (1)).

The Congress, in enacting ANILCA and other applicable law, expressed no intent to supersede Article XXVI of The Treaty of Washington. On the contrary, Section 1113 strongly implies that Congress was concerned that the relevant international obligations of the United States not be interfered with by the Act. The Treaty provisions, however, only provide the Government of Canada with the "privilege of free navigation" on the Stikine; the Treaty provisions do not appear to grant the Government of Canada any surface access privileges.

It should be noted that the Canadian Government maintains that its right of access is also derived from the 1825 Convention between Great Britain and Russia.

This report, therefore, acknowledges the Government of Canada's continued navigation privileges on the Stikine River as provided by treaty and focuses, instead, on future Canadian access needs not currently provided for under existing treaties.

EXISTING CONDITIONS

The Stikine River Region is located on the mainland of North America in the southeastern panhandle of Alaska. The study area includes parts of the Stikine-LeConte Wilderness, and public lands east of Wrangell in the Aaron Creek drainage (including State selection NPG-116). A large part of the region is covered by icefields. Currently the Stikine River provides water access under treaty to British Columbia, Canada, through the Coast Range Mountains for shallow draft boats and barges. The primary land use in Alaska is for recreation-oriented activities.

Physical and Biological Environment: The Stikine River region supports a full range of life zones, from the estuarine to the alpine. These zones all occur close to saltwater due to a rapid rise in land elevation.

Most of the land north of the Stikine River and above timberline is steep glacial-worn rock, with some peaks reaching 10,000 feet. From sea level to an elevation of 2,000 feet, the area consists of steep slopes and deep valleys covered with dense forests of spruce and hemlock.

The area south of the Stikine River contains steep, sparsely-vegetated mountains, averaging 3,000 feet in elevation. Higher land forms contain hanging glaciers. Two large stream systems, Andrew Creek and Kikaha River, originate within the area. The lower 2-1/2 miles of Andrew Creek is navigable.

The Stikine River is a U-shaped valley with forests of spruce and hemlock along the valley wall, giving way to alder, willow, cottonwood, and occasional spruce in the valley bottom and surrounding islands. Muskeg vegetation is predominant in many locations. On the tideflats, the vegetation is primarily rushes and sedges proceeding to grasses, forbs, wildflowers, and shrubs in the more upland areas. The Stikine River begins as one basic channel at the Canadian border, but develops into three braided channels 30 miles downriver. In between, navigable waterways split off and rejoin the main river course, forming an intricate system of sloughs, tributaries, islands, and tideflats. Alluvial deposits, consisting of stratified gravels, sand, silt, and clay, occur along the river's floodplain.

Precipitation at higher elevations falls as snow, producing icefields and glaciers. The remaining areas receive the typical wet weather of southeast Alaska, averaging 90 inches of rain annually. The presence of the glaciers and icefields has an effect on local weather in the form of winds, temperature, and the amount and kind of precipitation.

Wildlife includes big game species such as mountain goat, black bear, brown bear, moose, and a minor population of Sitka black-tailed deer. The mountain goat are primarily at the higher elevations (steep rocks). Moose and bear are found along the Stikine River valley. Beaver, mink, land otter, weasel, martin, wolverine, and wolf are representative of the smaller furbearing animals.

The Stikine River tideflats are one of the major resting and feeding areas for waterfowl along the Pacific Flyway. Waterfowl are particularly abundant during the spring and fall migrations. Primary species include the mallard, northern pintail, Canada goose, snow goose, and green-winged teal. Sandhill cranes and a variety of shorebirds and sea ducks are found in abundance along the tideland waters. Barnes Lake and smaller ponds along the river provide nesting and migratory habitat for the trumpeter swan. Game birds include the blue grouse and up to three species of ptarmigan, none of which reach high densities, except in isolated portions on the Wilkes Range and the Andrew Creek drainage. In all, the Stikine Region may provide breeding habitat for up to 140 species and migratory habitat for an additional 50-60 species.

Coho, chum, pink, sockeye, chinook salmon, sulachon, and Steelhead trout can be found in the Stikine River or tributary stream systems. Cutthroat trout and Dolly Varden occur in clearwater streams where they join the silty river water. The fishery resource is used for commercial, sport, and subsistence purposes. A potential for fishery enhancement exists. Work is currently being done by the Alaska Department of Fish and Game with chinook salmon stocks. Scientific studies continue on salmon runs in the main river channel.

No species of plants or animals presently listed by the Federal Government or the State as threatened or endangered in Alaska are known to exist within the region.

Social and Economic: The study area is close to the communities of Wrangell and Petersburg. However, the small quantity of readily usable area, limited aircraft access to lakes, and tide fluctuations that restrict boat access limit man's intrusion. Developments are relatively simple and located near the main river channel. The majority of the region remains in its natural condition. Persons using the area can expect a moderate to high probability of experiencing isolation from the sights and sounds of humans. Independence, closeness to nature, tranquility, and self-reliance are the demands of the environment.

Historically, the Stikine River has been an important transportation corridor for residents of the coastal communities. At the time of the European contact, the Tlingits had many seasonal hunting and fishing camps on the islands between the mouth of the river and Telegraph Creek, British Columbia. In the early 1800's, the river provided access for Russian and British fur trappers and traders. The mid-1800's produced the first gold rush along the Stikine route. Later, in 1871, an international treaty was signed by Great Britain and the United States to allow free and open navigation for purposes of commerce. During the late 1800's and early 1900's, the river provided one of the main access routes for miners and others on their way to the gold fields of the Yukon and Northwest Territories.

The Stikine continues to provide access to Telegraph Creek, the only large permanent community on the river. Telegraph Creek is often the starting point for a 150-mile float/kayak trip downriver to saltwater. Today no major mining activity occurs within the region. Geothermal resources are present, but have not been used as an energy source.

The Canadian portion of the Stikine River is utilized for commercial fishing. The primary use on the American side is for recreational activities. Access to sites on the river is by boat, float plane, and/or snowmobile during the winter.

Fifteen Forest Service public recreation cabins are located within the study area; six on the tideflats, five near the main river, and four scattered along the mainland coast. These cabins serve as a base camp for waterfowl and moose hunting, sportfishing, boating, trapping, picnicking, water and snow skiing, recreational prospecting, and general recreation outings. In addition, Chief Shakes Hot Springs provides facilities for hot tubbing.

Several short, developed trails are within or closely associated with recreation sites. These lead to boat landings or address dispersed recreation opportunities. Trails also follow both Aaron and Berg Creeks.

Many areas and sites are used for dispersed recreation. The north arm of the Stikine, Mallard Slough, and the tideflat areas are popular for waterfowl and moose hunting. Fishing occurs at the mouth of several streams. Picnicking and camping is common on Linn Island and the Desert. Float and kayak trip participants enjoy the many side sloughs and tributaries. The exact number of visitors and the time spent is not known, but use has not been enough to cause user conflict.

Twelve special-use permit cabins may be found along the river. Permittees use these as base camps for dispersed recreation. In addition, fourteen tent platforms are located along the upper and middle river areas.

The Alaska Department of Fish and Game maintains four administrative cabins along the Stikine. One is located on the tideflats and three along the main river. These facilities are used for scientific study of fish and wildlife resources. The department also maintains a weir and two sonar counting sites.

The United States Geological Survey maintains two stream gauges and an administrative cabin under a Memorandum of Understanding.

Commercial uses of the river include: recreational charter boat and aircraft services, freight operations, snag clearing to remove hazards to navigation, aquaculture activities, and sand/gravel removal. These activities are generally well received by the public due to their direct recreational benefits.

The towns of Petersburg and Wrangell lie west of the study area. Petersburg's population numbers approximately 3,200. The economy is supported by several cold storage plants, canneries, and a sawmill operation.

Wrangell, 7 miles from the river's mouth, is one of the oldest communities in southeast Alaska, with a population of 2,400. The town's development was strongly influenced by the Stikine and its role as a transportation corridor. Not until after the last gold rush in the late 1800's did fishing and timber begin to assume more of a role in the community's daily life. Today, these industries remain the dominant livelihood of Wrangell's residents. However, the river has not lost its influence. The town's deepwater port facilities, providing sea access, continue to encourage not only minor logging operations in the upper reaches of the Stikine, but also a renewed interest in tourism.

Yet, the Stikine's primary use by community residents remains outdoor recreation.

The role of subsistence in the lifestyles of Wrangell and Petersburg residents is moderate. Residents acquire moose, waterfowl, and fish. Many plan on these resources to supplement their store-bought provisions. However, relatively few are totally dependant on subsistence for a livelihood or existence.

THE NEED FOR ACCESS _____

The Government of Canada's position concerning the need for access is based on the assumption that both British Columbia and the Yukon Territory will in the future experience economic growth which will require access through the Stikine River Region as well as other areas of the Alaskan Panhandle. The projected growth can be tied to three major industries: mining, timber, and hydroelectric.

Mining: Recent studies indicate potential mineral development in the Stikine region of British Columbia. Areas of interest include copper mining at Galore Creek and a precious metal property located at Johnny Mountain near the Iskut River. Both could be best served via access roads through the Alaska panhandle. Other sites have also been identified, but current economic conditions do not permit profitable operation. As the price of copper and other extractive minerals climbs, so will the need to find viable transportation routes.

Timber: Currently, timber production within British Columbia is constrained by difficult access and various environmental concerns. Access through Alaska to tidewater would appear attractive. The B.C. Ministry of Forests and Lands is completing a resource plan that will address harvesting activities in the Stikine River Valley from Andi-Saith Creek to the American border, and the Iskut Valley from the Stikine River to the Johnson River.

Hydroelectric: Extensive studies have been completed on the construction of generation facilities on the upper reaches of the Stikine and in the Iskut Basin. Construction would consist of four dams with a total capacity of 15 billion kwh/year. Major transmission lines would be required to connect this to the grid system in British Columbia and potentially to other areas of the Yukon and Alaska.

Concerns for an access corridor in the Stikine River Region have also been expressed by the State of Alaska and many of the residents in the communities of Petersburg and Wrangell. Economic growth and development along the southeastern coast depends on timber, fishing, and the visitor industries. Historically, this limited economic base has resulted in radical changes in employment and commerce expansion. Residents feel that a secure future entails plans for hard surface transportation facilities. Interest in a Stikine access corridor is not new. Plans to address these concerns began in the early 1940's.

In addition, the State of Alaska recently completed a "Southeast Alaska Transportation Plan" (June 1986). Seven corridor linkage options within the Stikine Region were analyzed using road links to British Columbia and ferry service scenarios. In general, the long-term plan focuses on continued service to the panhandle of Alaska by the traditional marine highway mainline service. Nevertheless, it was recommended that road corridors and transportation technology development be re-evaluated in the future.

SOUTHEAST ALASKA TRANSPORTATION CORRIDORS

Water Transportation: Use of the Stikine River as an expanded water travelway may be a feasible alternative. Historically, the river has supported a significant amount of commerce and trade. The first boats were log canoes belonging to the Tlingits who traded with the Tahltans. Later, gold brought the first steampower to the Stikine. From the spring of 1862 to the end of the era, August 1916, boats were a common sight delivering men and materials to Telegraph Creek. This small British Columbia community is historically considered the head of navigation on the Stikine.

The last of the commercial riverboats was the Margaret Ross which operated from 1967 to 1969. Passengers were ferried between Telegraph Creek and Wrangell requiring 4 days for the round trip. Twenty-two inches of water were needed for boat operation.

With the building of a road to Telegraph Creek, commercial surface traffic on the Stikine dwindled. The Telegraph Creek Road is approximately 90 miles in length. It connects with the Cassiar Highway (37) near Dease Lake, British Columbia.

According to customs officials and boat operators, recent commerce on the Stikine has been limited to the logging and fishing industries. During the summer of 1985, timber activities were centered approximately 10 miles inside the Canadian border. Logs were bundled into rafts and floated downriver to Wrangell. Operations ceased in 1986.

River commerce is confined to shallow draft barges and tugs. Approximately 40 trips per year are currently made carrying supplies and commercial products up and down the Stikine. Use is limited to the period of late April or early May, till late November. The river remains frozen for a 4-to 5-month period.

Other restrictions to navigation include shifting river channels, and changing river levels. These factors combine to make navigation most difficult on the Stikine Flats (near the mouth of the river), where operation requires high tide conditions.

Transportation to the central panhandle is provided by the Alaska State Ferry System, various cruise ships, and other marine carriers. Passenger vessel services originate in Prince Rupert, British Columbia and Seattle, Washington. Seattle lies approximately 900 miles south of Wrangell.

Air/Rail Transportation: Air service to the lower river is generally limited to charter flights. Most of these originate in Wrangell and Petersburg. These same communities are served daily by jets. Canadian air carriers provide flights to Telegraph Creek and Dease Lake. No rail services currently extend into the Stikine River basin. More study into this form of transportation is needed.

Road Transportation: Three major road systems currently serve British Columbia and the Yukon with southeastern Alaska. All provide access to only the northern and southern extremes of the panhandle. The Alaska National Interest Lands Conservation Act (ANILCA) does not question the continued existence of these roads.

1. Highway 37 - connecting Stewart, British Columbia; Hyder, Alaska; and the interior. Sea access via the Portland Canal.
2. Haines Highway - connecting Haines, Alaska, with Haines Junction on the Alaskan Highway.
3. Klondike Highway - connecting Skagway, Alaska, with Whitehorse on the Alaskan Highway.

The Government of Canada has identified seven potential travel corridors which may be needed in the future. These include: 1) Tatshenshini River/Dry Bay - A connection from the Haines Road to Dry Bay via the Tatshenshini and Alsek Rivers, 2) Taku River/Taku Inlet - A link from the Atlin/Mount McMaster Road to Taku Inlet via the Nakina and Taku Rivers, 3) Chutine River/Tracy Arm or Endicott Arm - Access from the Olenora Road along the Stikine to the Chutine River and across to either Endicott Arm or Tracy Arm, 4) Bell-Irving River/Wrangell - A link from Highway 37 at the Bell-Irving River via Teigen Creek to the Iskut River and to Wrangell, and 5) Unuk River/Burroughs Bay - Access to Burroughs Bay via the Unuk River from Highway 37 at the Bell-Irving River. Two additional routes, the Stikine River/Stikine Estuary and the Iskut River/Wrangell corridors encompass the Stikine River area and are of interest in this report.

During the fall of 1978 the British Columbia Ministry of Highways completed an analysis involving the Cassiar Highway and the United States border via the Iskut River. A preferred connection with Alaska was identified as the south side of the Stikine River in the vicinity of the Kikake River on the West Fork of the Katete River.

In order to evaluate and link up with this proposal, the Alaska Department of Transportation and Public Facilities conducted a reconnaissance of alternative routes using Wrangell and Petersburg as deepwater ports. The work was completed and published in November 1984. A supplemental report, dated January 1986, further identified another alternative in the vicinity of the Bredfield Canal.

This work may be summarized as follows:

Access to Wrangell Using Pat's Creek

1. Alternative A: This route connects to the Canadian border along the West Fork of the Katete River. Total distance is approximately 50 miles. Existing logging roads would be used from Pat Creek to the Narrows at the northwestern end of the Blake Channel. From this point new construction would follow Aaron Creek to its crossing at milepost 13.7. Tending in an easterly direction, it climbs to West Fork Pass where it finally turns north and descends to the Katete River.

Numerous river crossings would be required (a 1,000-foot span at the Narrows) along with construction of snowshed structures for avalanche prone areas. Tunnel building was also investigated. The entire route would remain outside the Stikine-LeConte Wilderness.

2. Alternative B: This route begins at the Aaron Creek Crossing (Alternative A) and proceeds in a northerly direction along Aaron Creek to its headwaters and the Andrew Creek drainage. It connects with Alternative D near the Stikine River and Andrew Island. Total distance to the Canadian border is approximately 68 miles. The terrain in many areas is steep and rugged. Avalanche hazard is considered to be severe. Most of the route is within the designated Wilderness.

3. Alternative C: This corridor begins at the northwest side of the Narrows and for the most part parallels the Eastern Passage to milepost 10. Here the alignment swings northeast using the Crittenden Creek Valley and the South Fork of Andrew Creek to the Stikine River. It also connects with Alternative D. Total distance--61 miles. The most northern portion of the route is within the Wilderness area.

4. Alternative D: Alignment along this route is common with Alternative C till one reaches milepost 10. From this point the road would cross Crittenden Creek heading in a northward direction to the mouth of the Stikine River. Here it turns northeastward following the south bank of the river along timbered slopes to the United States/Canadian border. Total distance from Pat Creek is approximately 65 miles. Most of the construction would occur within the Stikine-LeConte Wilderness.

Several major stream structures would be required in addition to numerous small stream crossings. Most of the alignment, in the latter part of the route, would be in rock.

Access to Petersburg

5. Alternative E: Access to Mitkof Island and the community of Petersburg would require the crossing of Dry Strait with a bridge and causeway totaling 4,500 feet in length. This route traverses the northern banks of Knig Slough, Farm Island, and the Stikine River. At Kakwan Point, the road follows the base of the mountains to Shakes Slough and then in a southeasterly direction to the Canadian line. Distance from the end of the Mitkof Highway to the border is approximately 34 miles. The project would bisect the Stikine-LeConte Wilderness. Additional bridge construction in British Columbia may be required to recross the Stikine River.

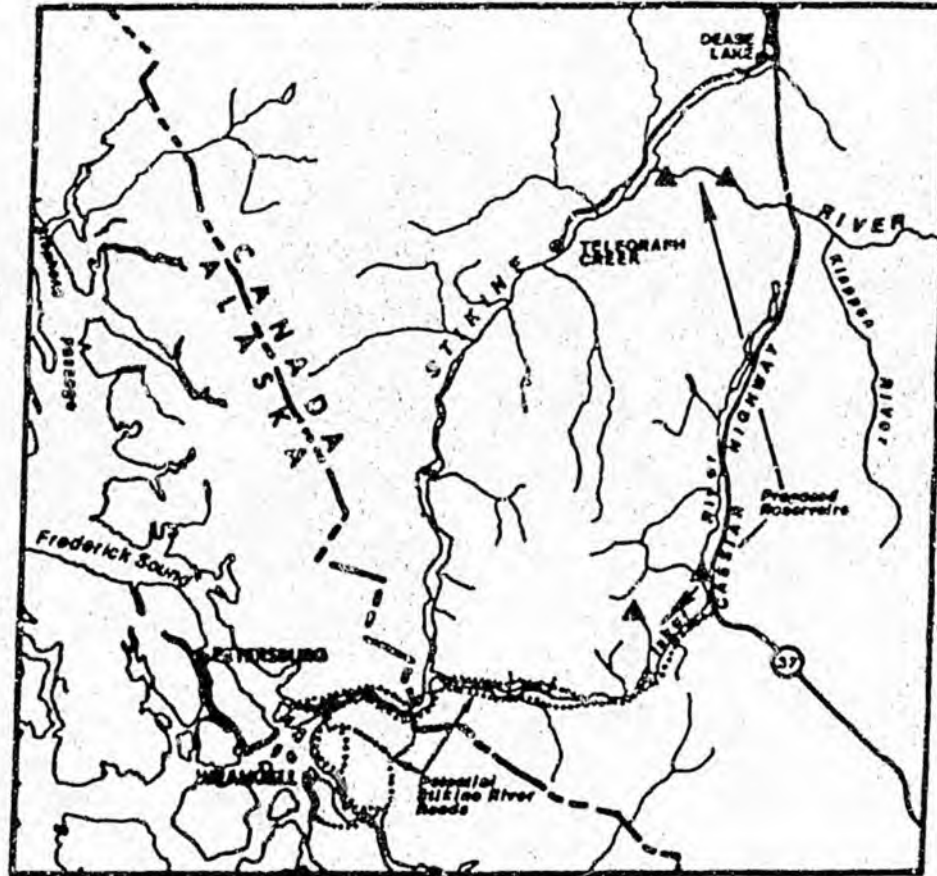
6. Alternative P: Access to Petersburg via proposed alignments on the south side of the Stikine requires a river crossing in the vicinity of Liub Island. This road location would tie with that proposed under Alternative D, near the south of Andrew Creek. Two bridge spans, totaling 3,000 feet in length, would be constructed. Total distance to the Canadian border is approximately 34 miles. The entire planned route is within the designated Wilderness.

Wrangell Using Bradfield Canal

7. Alternative Q: This alternative would provide access through the Bradfield Canal area. The approximately 83-mile route would lie totally outside of the boundary of the Stikine-LaConte Wilderness Area. This route, though longer than the Aaron Creek route described in Alternative A, differs in that it has far fewer difficult avalanche areas to traverse and could be constructed to more acceptable design standards.

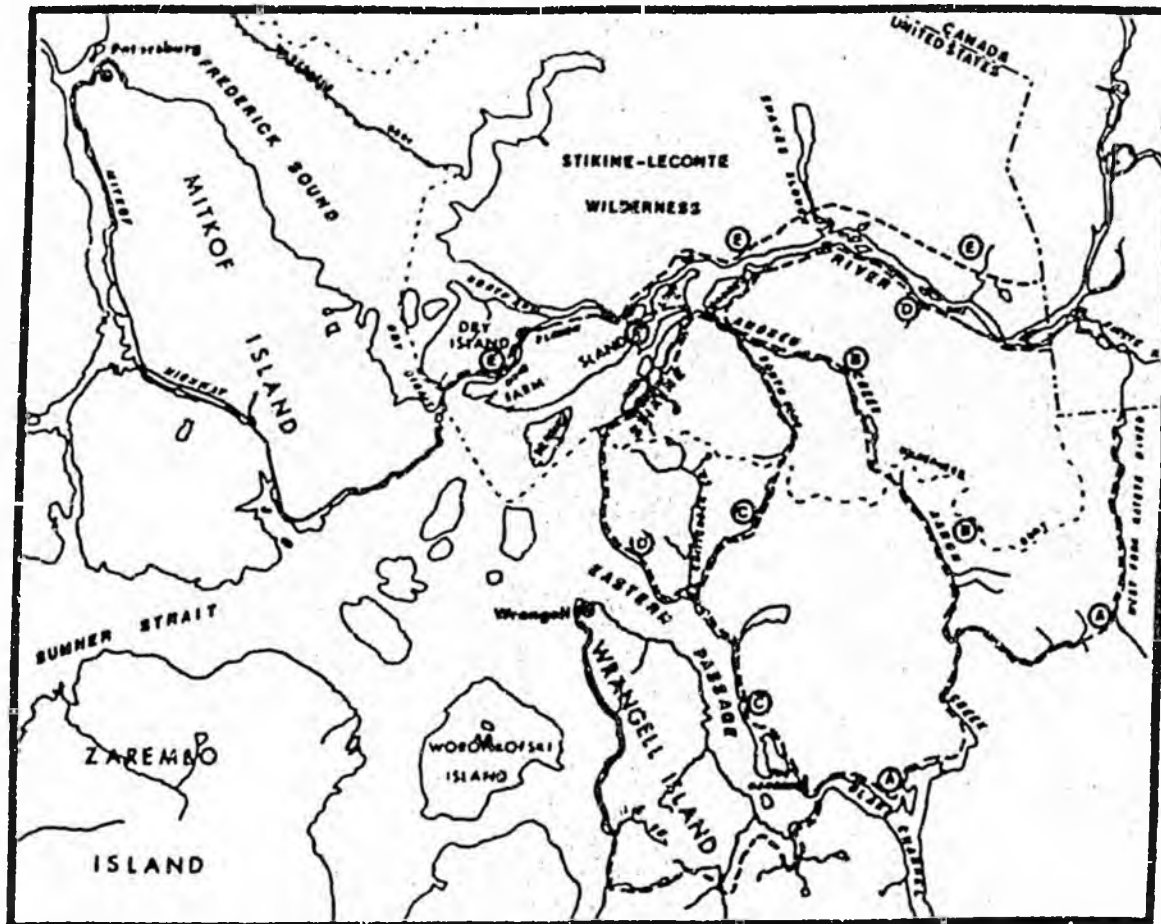
Cost estimates for all roadway construction alternatives were developed considering various terrains, bridges and snowshed structures. Preliminary expenditures ran from a low of \$139 million to a high of \$260 million. Maintenance and operation costs for each alternative were estimated. Development of more reliable estimates for the purpose of decisionmaking will be undertaken as part of the Title XI (PL 96-487) process when, and if, road access is needed.

STIKINE WATERSHED CANADA



STIKINE RIVER REGION

HIGHWAY ACCESS ALTERNATIVES (A THROUGH F)



ENVIRONMENTAL CONSIDERATIONS

No attempt will be made to analyze, in depth, the environmental impacts that could result with the implementation of the proposed alternatives. A more detailed investigation of road/rail alignment would be required. Environmental considerations have been recognized as an important issue in the overall question of access through the Stikine River Region, but past analysis in the subject area has been limited. Nevertheless, some general conclusions may be drawn from the data already at hand (see Bibliography). This review is an attempt to define the scope of possible effects.

Physical and Biological: Road or rail construction will create ground disturbance. When ground disturbance occurs, the potential for soil erosion increases. The result may be a deterioration of water quality in streams and rivers. Sediment may occur from simple surface erosion of exposed material, from mass soil movement caused by undercutting of unstable slopes, or by the uncontrolled channeling of water. Road surfaces concentrate runoff. Not only would these problems be expected during the construction phase, but road use during periods of high precipitation and soil saturation may also result in a degradation of water quality.

A change in water quality could affect the fishery resource. All five species of Pacific salmon are found in the Stikine River or its connecting tributaries. Research has shown that sediments on the streambed may reduce the early survival of fish and other aquatic life.

Potential water quality impacts can be minimized with proper site selection, design criteria and construction scheduling. Nevertheless, impacts may not be completely eliminated.

In addition to changes in soil and water, some increase can be expected in both air and noise pollution.

The effect of opening up access to a remote area, containing an abundance of fish and wildlife populations, is another important consideration. Two items of major concern include the loss of habitat with road and associated facility construction, and wildlife dispersion due to increased human activity. Affected habitats include timber areas, alpine/subalpine, estuarine, streamside/riparian, and inland wetlands. The proposed transportation corridors follow, to a large extent, streams or major drainage patterns in mountainous areas. In particular, a permanent displacement of spawning and rearing habitat due to fill, causeways, and other construction activities could occur. Roadcuts may also affect upwelling habitat, critical to spawning fish.

With an increased presence of man, some stress to the existing wildlife populations can be expected. Traditional use patterns may be influenced as access corridors bisect the land. Equally important, as the opportunities for taking game improve, harvest rates would likely go up with the potential existing for an increase in unregulated or illegal kills. The Stikine River region is currently a prime habitat for waterfowl and other big game species.

On the other hand, easier access to the region may allow more opportunities for habitat manipulation, including fishery enhancement. Further study is needed.

Road access may also benefit Canadian timber management programs. The Canadian Government feels that stands of interior spruce and lodgepole pine could be more economically reached.

Social/Economic: Several of the proposed transportation corridors lie within the Stikine-LaConte Wilderness. Implementation of these alternatives, including further expansion of commerce on the river, would in general shift recreation opportunities from primitive/semi-primitive to motorized forms. Users would view these impacts differently. Some would see improved access as advantageous. Recreational use opportunities would be more diverse. Less strenuous forms of activities would be possible. On the other extreme, some people would be displeased by man's presence and seek the experience of "solitude" elsewhere. Furthermore, as use increased, the potential for conflict between users would be greater.

Impacts resulting from increased visitor use and road construction could significantly affect the area's cultural resources. Proposed corridors appear, in some areas, to overlay known prehistoric sites. The coastal areas of this region were Tlingit territory of the Stikine Clan. The interior regions of British Columbia were home to the Tahltans. Development would require an intensive inventory in order to adequately protect this heritage.

The coastal communities may also benefit economically from expanded commerce. Increased tourism and expansion of port facilities could reduce the current isolation, contributing to more stability within the work force. New business opportunities may also arise. A new access route to Canada would open the possibilities for other utility ties. Population increases could be expected with associated growth impacts. Adequate housing, schools, and health facilities would all be concerns.

A secondary benefit of better access would be increased opportunities to engage in subsistence activities such as hunting, trapping, stream fishing, berry picking, and wood gathering.

Cumulative Impacts: The opening of a hard surface transportation facility would likely result in other construction projects. Transmission lines originating in British Columbia and rail services or utility pipelines may follow road development.

The environmental issues dealing with road construction should be assessed as to their overall effect in relation to other developments occurring in interior Canada. For example, the construction of hydro facilities in the Stikine-Iskut Basin could result in water quality changes in the Alaskan floodplain and estuary. River flows would be regulated, sediment supply to the delta reduced, and an eventual change in streamside vegetation could occur. What effect this would have on the fish and wildlife habitat, and how these changes would influence wildlife populations are some of the questions which will require further analysis and research at such time as the Government of Canada has specific access needs in the region. In such case, the specific requirements in terms of traffic volumes, kind of traffic, purpose of access, support requirements, and other factors could be reasonably estimated and would provide the basis for evaluating expected social, economic, and environmental effects.

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STATE OF ALASKA

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DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

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OFFICE OF THE COMMISSIONER

October 3, 1985

Mr. Michael Barton
Regional Forester
U.S. Department of Agriculture
U.S. Forest Service
P. O. 1628
Juneau, AK 99802

Dear Mr. Barton:

I understand that your agency, working with the Alaska Department of Transportation and Public Facilities (DOT&PF), is nearly finished with a draft of the Stikine River Region study mandated under Section 1113 of the Alaska National Interest Lands Conservation Act (ANILCA). The purpose of my letter is to provide the State's position regarding this matter, which has been developed with assistance from the concerned State agencies and the Division of Governmental Coordination, Office of the Governor.

Section 1113 of ANILCA acknowledges the need to study the effect of that law upon the ability of the Government of Canada to obtain access in the Stikine River region of Southeast Alaska. The Government of Canada delivered a briefing paper on May 2, summarizing its position. In short, because of uncertainty about economic development projects, the Canadians indicated they are not ready to identify particular routes and do not have access requirements at this time. However, the Canadians did mention a keen interest in establishing a responsive process to deal with access needs.

Although their position focuses on access needs throughout the entire Southeastern panhandle, the State of Alaska is quite supportive of the Canadian position, insofar as the Stikine River region is concerned. Any discussion of future access needs in the Stikine region must reckon with the fact that portions of this area are Congressionally designated "Wilderness" areas, which precludes general surface access absent Congressional authorization. Clearly, there are several development activities that might occur in this area where the availability of immediate and economic access will be a key determinant. The process provided in Title XI of ANILCA, which authorizes the siting of transportation and utility systems within conservation system units such as the Stikine-LeConte Wilderness Area, is a lengthy, cumbersome, and potentially flawed solution to access needs, particularly when a foreign government and possible treaty obligations are involved.

Mr. Michael Barton

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October 3, 1985

As you probably know, DOT&PF has performed several engineering reconnaissance studies of various transportation corridors in the area. As part of its participation in the Stikine River region study group, in July 1984, the Department conducted an engineering reconnaissance by helicopter which further evaluated road routing alternatives, and the capital, maintenance, and operation costs. Our reconnaissance work found that construction costs of access routes which bypass the Wilderness portions of the Stikine River valley would be extremely high, and that winter avalanche control and snow removal would be difficult and costly. According to this work, one potential highway Wilderness bypass route traverses approximately 50 miles of moderate to extremely rough terrain from Wrangell to the Canadian border along the West Fork of the Katete River. This route presents grades of eight percent, poor alignment, the need for a two-mile tunnel, and it traverses forty-nine separate avalanche paths.

DOT&PF's regional transportation planning activity has long identified the need for surface transportation access for Southeast Alaska. In addition to encouraging economic development and resource extraction, mid-region surface access might facilitate a restructuring of southeastern routes of the Alaska Marine Highway System. This would provide improved service and reduce future transportation costs. These considerations, combined with the engineering reconnaissance work, suggest that surface access may indeed be needed in the future, with the Stikine River valley corridor appearing as the only realistic alternative at this time.

For these reasons, the State wishes to preserve the options for future surface access in the Stikine River region. Accordingly, we wish to echo the Canadians' request for a responsive and systematic process to address access requests. Although Title XI does provide the statutory arrangement for review of such a request, we believe the final draft of the Stikine River region study should find there are overriding transportation considerations that justify a more streamlined review and approval process.

In that regard, the State of Alaska recommends the final study propose to Congress adoption of a provision addressing access for surface transportation specifically across the Stikine-LeConte Wilderness Area. We suggest it be modelled on the provisions in Section 201(4) of ANILCA, which guarantees surface access across the Kobuk River unit of the Gates of the Arctic National Preserve. It is not essential that Congress act immediately to amend ANILCA, or for the sole purpose of including a Stikine access provision. However, we recommend the study suggest Congressional action to amend this section of ANILCA as part of any appropriate amendment package which may be considered by Congress in the future, or when access needs are more demonstrable.

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P.004

Mr. Michael Marton

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October 3, 1985

We believe that making this recommendation is consistent with the mandate in Section 1113 of ANILCA and responsive to the Canadians' request for a reasonable process to address access needs in the Stikine River region. Concurrently, adoption of modified access provisions modelled upon Section 201(4) ensures performance of complete environmental and economic analyses for mitigation of wildlife, fish and their habitat, and other social and environmental concerns. This provision could also include an arrangement that if a feasible alternative is identified outside the Wilderness area, the guaranteed route through the Stikine River Valley could be revoked.

I would appreciate full consideration of these recommendations by the Forest Service as you prepare the final draft study for review and comment. As the lead agency with the responsibility to oversee the State's efforts on this issue, we would be happy to answer any questions you might have regarding this letter.

Thank you for your consideration of our suggestions.

Sincerely,

 R. J. Anas
 Commissioner

cc: The Honorable Bill Sheffield, Governor
 Don Collinsworth, Commissioner
 Department of Fish and Game
 William A. Ross, Commissioner
 Environmental Conservation
 Eather Wunnicke, Commissioner
 Department of Natural Resources
 Loren R. Lounsbury, Commissioner
 Department of Commerce and Economic Development
 William Privett, Mayor, City of Wrangell
 Don Koenigs, Mayor, City of Petersburg
 Hal Brown, Attorney General
 Department of Law
 John Katz, Special Counsel
 State/Federal Relations
 Robert Grogan, Associate Director
 Office of Management and Budget

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1. The intent of this reference list is to provide the reader with additional sources of information, should he or she desire more research. The list is not all inclusive. New publications may be forthcoming. Most of the material pertains to B.C. Hydro projects on the Stikine-Iskut Rivers. Nevertheless, it may be used to assess potential impacts of downstream projects. Brief descriptions follow some of the references.