

**BRIEFING:
CITIZENS
ADVISORY
COMM. ON
FED. AREAS**

**STATE OF ALASKA
CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS**

1996 ANNUAL REPORT

February 1997

INTRODUCTION

Since its creation in 1981, the Citizens' Advisory Commission on Federal Areas has worked extensively with public user groups to help them understand federal regulations and policies and to ensure that they have a voice in the development of those same regulations and policies. This report will outline the statutory mandates of the Commission and provide a brief overview of some of its activities during 1996. This document represents the Commission's annual report to the Governor and the Alaska State legislature as required by AS 41.37.080(f).

The Citizens' Advisory Commission on Federal Areas was established in 1981 by the Alaska State Legislature to provide assistance to the citizens of Alaska who are affected by the management of federal lands within the state. The need for the Commission arose primarily from the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. The ANILCA placed an additional 104 million acres of land in Alaska into federal conservation system units. It also delineated specific uses requirements and restrictions for those areas.

The changes in land status that resulted from the creation and expansion of conservation system units increased the potential for conflict between Alaskans' traditional uses of these federal lands and the various agency mandates in ANILCA. Of the 239 million acres in Alaska still under Federal management, there are more than 150 million acres with conservation restrictions. In addition, there have been significant changes in the management directions for Federal public lands throughout the country. Even lands with no specific statutory conservation restrictions are subject to a steadily increasing number of administrative designations and withdrawals that can result in reductions in public uses, including hunting, fishing, trapping, timber harvest, mineral extraction, grazing and other resource development opportunities on the Federal public lands.

The Commission, through its enabling legislation, is charged with determining the impact of Federal statutes, regulations and management decisions on the citizens of Alaska in order to minimize or resolve existing and potential conflicts. Through the development and maintenance of a good working relationship with the various Federal agencies, the Commission has been effective in assuring that land management decisions are consistent with both statutory language and Congressional intent, and in protecting the interests of Alaska's citizens.

DUTIES OF THE COMMISSION

The duties of the Citizens' Advisory Commission on Federal Areas are mandated in AS 41.37.080. These duties include:

- (a) "The commission shall consider, research and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development and additions to federal management areas in the state.
- (b) The commission shall consider research and hold hearings on the impact of federal regulations and federal management decisions on the people of the state.

- (c) The commission may, after consideration of the public policy concerns under (a) and (b) of this section, make a recommendation on the concerns under (a) and (b) of this section to an agency of the state or to the agency of the United States which manages federal land in the state.
- (d) The commission shall consider the views, research, and reports of advisory groups established by it under AS 41.37.090 as well as the views, research, and reports of individuals and other groups in the state.
- (e) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.
- (f) The commission shall report annually to the governor and the legislature within the first 10 days of the regular legislative session.
- (g) The commission shall cooperate with each department or agency of the state or with a state board or commission in the fulfillment of their duties.

To ensure that it meets its mandates and responsibilities under the law, the Commission has adopted the following goals and objectives statement.

- I. To provide a citizens' forum to facilitate improvement in intergovernmental relations regarding federal area management issues.
- II. To ensure that the impacts on Alaskans by federal area managers are minimized.
- III. To advocate for consistency, with the law, in the management of federal areas.
- IV. To circulate information to the public on federal area management.

To fulfill these goals, the Commission will perform the following functions:

The Commission will monitor federal agency planning, management activities and implementation efforts.

The Commission will review any proposed exchange of federal public lands.

Commission research and analysis of special projects mandated by ANILCA or other federal statutes will continue.

The Commission will become involved at the earliest stages of any planning effort for the conservation system units established or expanded by ANILCA.

Commission efforts to resolve conflicts between federal land managers and land users will be emphasized.

The Commission will work to assure that the best interests of the State of Alaska are brought into the decision making process.

The Commission will work with the congressional delegation and monitor proposed federal legislation and regulations that have an impact on the administration and management of federal lands in Alaska.

The Commission will continue to report to the Governor and the Legislature on any recommendations made on federal land management decisions that affect Alaskans.

Since beginning full time operations in 1982, the Commission has worked closely with both federal and state agencies and with individual and organizational contacts to thoroughly analyze issues before submitting all comments and recommendations. In recent years, due to significant reductions in staff and budget for the Commission, staff has coordinated much of its work with other state agency personnel. Through various cooperative efforts, primarily with the Division of Governmental Coordination the Alaska Department of Fish and Game ANILCA program, and the Department of Natural Resources, the Commission has remained effective in monitoring, analyzing and submitting recommendations on a wide array of federal land management proposals and initiatives. This team approach has worked to the benefit of the Commission and the other state agencies involved in implementation of ANILCA and other Federal statutes.

Although the Commission's role is advisory, it has the authority under AS 41.37.100 to request the attorney general file suit against a federal agency or official if the Commission determines that the federal agency or official is "acting in violation of an Act of Congress, congressional intent, or the best interests of the State of Alaska.

COMPOSITION

The Commission is composed of sixteen members, eight appointed by the Governor and eight appointed by the Legislature. Current Commission officers are: Chairman, Ms. Thyes Shaub (Juneau) and Vice-Chairman, Mr. Del Ackels (Fairbanks). The Chairman, Vice-chairman and Sen. Rick Halford (Chugiak), Mr. Steve Porter (Anchorage) and Mr. Don Finney (Ward Cove) comprise the Commission's Executive Committee. A full list of the members for 1996 is included at the end of this document.

STAFF

There is currently one staff position for the Commission: an executive director, Stan Leaphart. The office is located in the Department of Natural Resources Northern Regional Office, 3700 Airport Way, Fairbanks, AK 99709-4699. (907) 451-2775. FAX 451-2761.

COMMISSION ACTIVITIES

Activities for 1996 were divided between reviewing and commenting on federal agency planning documents and regulations, monitoring proposed federal legislation, and investigating citizens' complaints about federal agency actions. Commission staff was also given the opportunity to participate in 3 groups working to resolve various federal land management issues. These are discussed in greater detail later in this report.

Special effort is made to ensure maximum levels of public participation in agency management and policy decisions affecting the federal public lands in Alaska. This is accomplished through regular contact with individuals, organizations, and interest groups interested in or affected by land management decisions. Commission staff monitors the *Federal Register* on a daily basis and routinely provides other State agencies, organizations, interest groups and individuals with copies of notices and proposed or final regulations and policies. Commission files, with a 15 year collection of information and background material, have also become a useful resource for researching the implementation of ANILCA.

As a major part of its mandated duties, the Commission reviews and provides comments and recommendations on federal land management agency planning documents, policies and proposed regulations. In conducting its review, the Commission consults with affected user groups and land owners, as well as with interested groups and organizations and with other state and federal agencies.

Unfortunately, due to budget reductions, the Commission is no longer able to sponsor public meetings solely for gathering public input on specific issues. However, at each regular Commission meeting, opportunities are provided for members of the public to present their views and concerns on any matter concerning federal public land management. Minutes of Commission meetings, as well as copies of all comments and recommendations made by the Commission are also available upon request.

Following is a brief overview and status report of a number of major issues in which the Commission was involved during the past year and which we are currently monitoring. The list does not include every issue or activity with which we have been involved. The reader is also reminded that what is presented here is only a thumbnail sketch of each. Commission members and staff are always available to provide more information or a more in depth explanation of any of the issues and activities outlined in this report.

REGULATORY AND POLICY ISSUES

National Park Service

Glacier Bay Vessel Management Regulations. In May 1996 the National Park Service also adopted regulations (36 CFR §13.65) that implement various closures and use restrictions within Glacier Bay National Park & Preserve. Many of these closures and restrictions were originally contained in the park's improperly implemented Compendium and were also proposed in the park's recently adopted Vessel Management Plan. Other portions of these regulations were originally adopted in 1985 to regulate use of the bay to protect humpback whales, an endangered species which seasonally is found in park waters. The new regulations, in addition to revising those regulations aimed at protecting whales, closed portions of the marine waters in the bay to motorized vessels during the summer season, closed several island and upland areas in the park to protect a variety of resources and provided for an increase in cruise ships, tour boats and charter boats entries in the bay.

In comments on the Vessel Management Plan and the draft regulations the Commission argued that many of the closures and use restrictions were unnecessary and failed to meet the criteria in 1110(a) of ANILCA for closure of these areas to motorized vessels. The Commission is considering filing a petition for revision of portions of these regulations.

Navigable Waters Regulations. In July 1996 the National Park Service adopted revised regulations (36 CFR Parts 1 and 13) which the agency claimed clarified the "applicability of those regulations that apply in all National Park System areas to waters subject to federal jurisdiction located within park boundaries, including navigable waters." (61 FR 35133) According to the NPS the revision simply clarified that NPS regulations continue to apply on navigable waters within national park units, as they have for years. In actuality the regulations improperly extend NPS jurisdiction into State-owned water in direct violation of ANILCA.

The Commission strongly objected to these revisions when they were first proposed in 1995. While the actual effect of the revised regulations is not yet known, the likely result will be another intrusion into the State's ability to manage uses and activities on its lands and waters. The Commission is considering filing a petition with the Secretary of the Interior requesting further revision of the regulations to more properly reflect the limits of the agency's management authority intended under ANILCA.

Special Visitor Services Regulations. Section 1307 of ANILCA allows Federal agencies to grant a preference to historical operators, local residents or Native corporations when issuing permits for providing visitor services within conservation system units. It was not until 1995 that regulations implementing this preference were proposed. Commission staff worked with the visitor service industry and other State agencies to identify potential problems with the draft regulations and suggested a number of revisions.

In late 1996, some 16 years after the passage of ANILCA, both the National Park Service and the U.S. Fish and Wildlife Service adopted final regulations (36 CFR §13.80) which provide guidance and a mechanism for granting a preference in permitting visitor services.

U.S. Fish & Wildlife Service

Commercial Visitor Services- Special Use Permits. The U.S. Fish & Wildlife Service proposed regulations for the administration of commercial visitor services permits for hunting guides and outfitters operating on national wildlife refuges in Alaska. Because of the Alaska Supreme Court's decision in *Owsichuk v. State Guide Licensing and Control Board*, which declared the State's system of assigning exclusive big game guide areas unconstitutional, the USFWS implemented its own interim system in 1992. That interim program had a number of problems and guides and outfitters encouraged the agency to make some much needed changes.

The proposed regulations (50 CFR §36.41) would establish a more equitable program for issuing and administering both competitively and non-competitively issued permits for commercial visitor services on national wildlife refuges. These regulations would be supplemented by the agency's ANILCA 1307 regulations, which are similar to those adopted by the NPS discussed above.

The Commission reviewed the proposed regulations and, after discussing them with the agency and a number of hunting guides and outfitters, submitted a number of suggested revisions. Final regulations are anticipated in the near future.

Status Reviews: Alexander Archipelago Wolf and Queen Charlotte Goshawk. The USFWS is currently conducting status reviews to determine if listing under the Endangered Species Act (ESA) is warranted for these two species found in Southeastern Alaska. Status reviews for both the wolf and the goshawk were conducted previously in 1994 and 1995. Following those reviews, the agency made the determination that listing under the ESA was not warranted. However, because of a recent Federal court ruling, the status reviews have been reinitiated.

During the previous status reviews the Commission submitted comments strongly in opposition to listing either species as threatened. Our analysis of the available information indicated that listing was not warranted, as neither population met the necessary criteria for listing under the ESA. One of our primary concerns is that listing would have significant consequences for future management of the Tongass National Forest and disastrous impacts on the timber industry. In response to the current status review, the Commission has again indicated its opposition to listing either of these two populations under the ESA. The comment period on the status reviews remains open until March 7.

Bureau of Land Management

Law Enforcement Regulations- Criminal. Released in late 1996, and still under public review, these revisions to the BLM law enforcement regulations (43 CFR Part 9260) have generated considerable public interest. Although the agency categorizes the changes as "housekeeping" type revisions several of the proposed revisions are more substantive in nature. For example, a key section states that the regulations apply to "activities on or having a clear potential to affect water bodies on or adjacent to BLM lands." In its discussion of the proposed regulations (61 FR 57606) BLM asserts that this statement is "not an attempt to establish ownership over those waters [on or adjacent to BLM lands], but an attempt to clarify BLM's jurisdiction for protection of resources." In fact, BLM has no jurisdiction over waters or lands that are not in Federal ownership. In addition, several sections of the regulations do not reflect specific statutory guidance found in ANILCA for the management of federal public lands in Alaska. The public comment period remains open until March 7, 1997.

Wild and Scenic River Proposed Regulations. The BLM has proposed regulations (43 CFR Parts 6400 and 8350) which would establish standards and procedures by which the agency will consider Federal licensing of, or assistance to, water resources projects on components affecting Wild and Scenic Rivers or Study Rivers. In proposing the regulations, the BLM cites its authorities under the Wild and Scenic Rivers Act (WSRA). However, there are a number of sections within the proposed regulations that clearly exceed the agency's authorities under that statute. In its review of the proposed regulations, the Commission also identified conflicts with provisions of the ANILCA and its implementing regulations. In addition, there are serious questions regarding study rivers, as well as requirements for managing both designated and study rivers. The Commission also identified particular concerns about the affects of these proposed regulations on permitting and management of mining activities on State owned navigable waters and development of transportation and utility system corridors under ANILCA Title XI.

U.S. FOREST SERVICE

Cancellation of Timber Sale Contracts. These proposed regulations (36 CFR Part 223) would revise the rules on cancellation of timber sale contracts, permits, and other such instruments authorizing the sale or harvest of timber to clarify when, why and by whom contracts may be canceled. The revisions also contain a new formula for compensation if sale contracts are canceled and would limit the financial liability of the United States. Because of the management situation on the Tongass National Forest, these regulations could have significant effects on the ability of timber companies to recoup any losses incurred resulting from cancellations of sale contracts. The Commission has not completed its review of the regulations. Public comment period ends 2/13/97.

DEPARTMENT OF THE INTERIOR

Revised Statute 2477 Rights-of-way -Revised Interim Policy. This interim policy, issued in January of this year, repeals the 1988 Policy which was developed and adopted after extensive consultation with Alaska and the other Western public lands states. It also maintains Secretary Babbitt's 1993 moratorium on processing of RS2477 assertions, except in cases where there is a demonstrated, compelling need to make a determination. Further, it establishes a revised policy for carrying out any determinations that the DOI might be called upon to make regarding RS2477. As a practical matter, the Hodel policy had been inoperative since 1990 so the argument has been made that little is lost by its repeal. However, the Commission identified several problem areas in this interim policy.

Following DOI's 1994 release of draft regulations on RS 2477, Congress attached provisions to the department's appropriation bill for FY 96 which prohibited use of funds for the promulgation, adoption and implementation of final regulations. The appropriations bill for FY 97 allows publication of final regulations, but states that no regs may become effect unless authorized by an act of Congress. This interim policy appears to be an effort to circumvent Congressional intent.

The interim policy recognizes that anyone making a claim of the existence of an RS 2477 right-of-way continues to have the option of seeking validation of the claim in court. While this is true regardless of DOI policy, there is concern that this policy will negatively impact any future court action on an RS 2477 right-of-way. Any adverse decision on the part of a DOI agency will affect the outcome in any quiet title action, particularly since DOI will be a party to any action on a claim involving lands under its management authority

The interim policy does provide for an entity to ask the DOI to make a determination of validity in advance of adoption of final regulations if there is a "demonstrated, compelling and immediate need" for such determination. The policy contains no definition or explanation of what constitutes a "demonstrated, compelling and immediate need." If the department does not believe such a need exists a request will not be processed.

One of the major problems of the 1994 draft regulations was the definition of construction. The draft regulations would require that in order to meet the definition of construction, intentional physical acts must have been performed with the achieved purpose of preparing a durable, observable physical modification of land and that the modification be suitable for highway traffic. Creation of a right-of-way by passage of vehicles or people- the so-called "public user" standard- would only be recognized if the right-of-way was subsequently maintained by acts that meet the requirements of construction. The interim policy maintains the same restrictive definition and criteria. We should point out that the courts have long recognized the validity of rights-of-way created through the passage of

vehicles, pack animals and even foot traffic. Many trails still in use today in Alaska were created by simple public use.

As with the section on construction, the interim policy reflects the definition of highway proposed in the 1994 draft regulations. In order to meet the standard in the interim policy a RS 2477 would have to constitute a thoroughfare used prior to October 21, 1976 by the public for the passage of vehicles carrying people or goods from place to place.

It is still too soon to determine exactly how this interim policy will affect Alaska's ability to assert its rights under RS 2477. Commission members were told at our December 1996 meeting that the Department of the Interior would be re-writing the draft RS 2477 regulations and releasing them for another round of public review and comment by late this year. The Commission has been involved with the RS 2477 rights-of-way since the early 1980's. We will continue to monitor this issue and to work with other State agencies and the public in an effort to protect Alaska's interests in these rights-of-way.

PROJECTS AND STUDIES

Denali National Park- North Access Study. In 1995, the Commission endorsed a proposal for the private construction of a railroad into the northern portion of Denali Park and Preserve. In addition to specifically supporting the railroad the Commission also expressed its general support for the concept of a northern access route into the park.

In April 1996, Congress directed the National Park Service to conduct a feasibility study for a northern access route into Denali National Park and Preserve. The study was to be completed within one year, utilizing existing funds and taking into consideration the "viewpoints of all interested parties, including the tourism industry and the State of Alaska." (Public Law 104-134) Further the study was to be conducted solely by NPS planning personnel permanently assigned to Alaska in consultation with the Alaska Department of Transportation and Public Facilities.

In May 1996 a study group consisting of representatives from the National Park Service, Alaska Department of Natural Resources, Alaska Department of Fish and Game, Alaska Department of Transportation and Public Facilities, Office of the Governor- Division of Governmental Coordination and the Citizens' Advisory Commission on Federal Areas began the preparation of this northern access feasibility study. During a series of monthly meetings, issues were defined, information sources identified, and existing data compiled. In addition, information was solicited from a wide range of interests, organizations and user groups to help determine the need and feasibility for an additional access route into the park.

The range of alternatives examined ranged from a pioneer road, to a two lane gravel road, to an all-season paved road and both a publicly and privately funded railroad into the Kantishna area of the park. While no specific alignment was defined, a general route corridor along the Stampede Road was identified. Estimated costs, permitting

requirements and other compliance issues were outlined. This information was conveyed to the public in three meetings held in Anchorage, Healy and Fairbanks in January 1997. A draft of the study has been circulated to study group members for their input and a final report will be sent to Congress by April of this year.

Squirrel River Study. Section 604 of ANILCA mandated that the Squirrel River be studied for possible designation as a National Wild and Scenic River. The NPS conducted a study and prepared a draft environmental impact statement in 1985. That EIS was never finalized. Because so much time had passed since release of the NPS draft EIS, the Bureau of Land Management, the agency now charged with completing the study, decided that the best approach would be to start over and prepare a new Legislative EIS.

Initially, after a series of public scoping meetings and consultation with the State of Alaska, the BLM proposed recommending sections of the Squirrel for designation as scenic. A draft legislative EIS was scheduled for release in late 1995 or early 1996. However, the agency has now taken a step back to "address concerns both inside and outside the BLM" and in December 1996 released a "Scoping" draft EIS. The purpose of this document is to ensure that all important issues are identified; that there is an adequate range of alternatives; and that the existing situation and possible impacts from the various alternatives are addressed. The next phase of the study is the preparation and release of another draft environmental impact statement.

The Commission first went on record in opposition to designation of any portion of the Squirrel River as a component of the Wild and Scenic River System when the NPS released its study. During this current round of BLM planning, the Commission has reconfirmed that opposition. The Commission does, however, strongly support completion of the study.

Currently the entire area of the Squirrel River is withdrawn under the ANILCA mandated study. It has been under interim management as a wild and scenic river since 1980. This means that the river is managed to protect its "wild and scenic values" and the lands encompassed by the withdrawal are not available for selection by the State or Native corporations and cannot be conveyed until the withdrawal is lifted. Once the agency makes its recommendation to Congress, a three year time limit for action begins. If Congress takes no action within 3 years, the withdrawal is lifted. The Commission feels it is in the State's interest to complete the study, as it is unlikely that the delegation would support designation.

Commercial Fishing- Glacier Bay National Park. This is an issue with which the Commission has been involved since 1982, our first year of operation. Commission members and staff have been involved with at least 5 different efforts to reach some equitable resolution to commercial fishing within Glacier Bay. The National Park Service has consistently maintained that commercial fishing is not allowed in designated wilderness waters by statute and by regulation in other marine waters surrounded by the park.

In December 1995 another effort began. The Glacier Bay Working Group, consisting of representatives from the National Park Service, Alaska Department of Fish and Game, Governor's office, Lieutenant Governor's office, Commission staff, Sealaska Corporation, the commercial fishing industry, local and national environmental groups held 3 meetings under the guidance of a facilitator. Some progress toward resolving the complicated issues was made, but the effort stalled when the NPS, who had organized the meetings, raised concerns about potential violation to the Administrative Procedures Act (APA). The last meeting was held in May 1996.

In the fall of 1996, the NPS suggested to the Department of the Interior that a negotiated rulemaking process be initiated. This process involves creation of a negotiated rulemaking committee under the authority of an APA charter. The Commission had serious reservations about a negotiated rulemaking process because the NPS made it clear that the regulations developed by the committee would not necessarily be those that would ultimately be adopted. Our reservations were further tempered by the knowledge that the NPS has indicated that it would insist on an eventual shutdown of all fishing within the bay. The commercial fishing industry had made it very clear that such a shutdown was not acceptable.

As of the date of this report, it appears that a negotiated rulemaking will not be pursued by the NPS. Rather, it is our understanding that the agency will revise draft regulations it originally released in 1991. Those regulations are expected to be available for public review within the next few months. While it is not known exactly how the regulations will address commercial fishing in the bay, it is anticipated that fishing in wilderness waters will be terminated within a year and commercial fishing in the remainder of the bay would be phased out over an, as yet, unknown period of time.

The Commission has always opposed closing Glacier Bay to commercial fishing. It is our goal to achieve a solution that is equitable for the industry, protects the resources within the bay and maintains the State of Alaska's ability to manage the fishery. We will continue to work toward that goal.

Alaska Land Managers Forum- Permitting Work Group. During 1996, Commission staff had the opportunity to work with the Alaska Land Managers Permitting Work Group. This group consists of representatives from the Division of Governmental Coordination, Department of Commerce and Economic Development, Department of Natural Resources, Department of fish and Game, U.S. Fish and Wildlife Service, National Park Service, U.S. Forest Service, Bureau of Land Management, Alaska Visitors Association and the Alaska Wilderness Recreation and Tourism Association.

The work group is working toward developing a streamlined permitting process for commercial visitor service providers that operate on the public lands in Alaska. The need for some type of permit streamlining was first identified in the early 1980's by the Alaska

Progress by the work group has been good. Work is underway on a inter-agency *Commercial Visitor Services Guide* which will provide an over view of each agencies permitting and insurance requirements. The group is also looking into standardizing policies and procedures for liability insurance, issuing multi-year permits, developing standardized applications and reporting forms. The Commission staff will continue its involvement with the work group's efforts.

FEDERAL LEGISLATION

On November 12, 1996 President Clinton signed into law the "Omnibus Parks and Public Lands Management Act of 1996" (Public Law 104-333). This law contains a number of sections which affect federal public lands in Alaska. Some portions of the statute, such as Sections 302 and 303, were originally separate bills endorsed by this Commission. Following is a brief outline of those sections directly affecting Alaska.

Section 302: Ratifies the "Donation and Exchange of Lands and Interests in Lands and Wilderness Redesignation Agreement Among Arctic Slope Regional Corporation, Nunamiut Corporation, City of Anaktuvuk Pass and the United States of America," executed December 17, 1992.

Section 303: Directs the Secretary, subject to specified requirements, to: (1) value the rights granted to Koniag, Incorporated and confirmed as valid selections to receive title to certain oil and gas rights and other interests in the subsurface estate of certain public lands in Alaska which Koniag possesses within boundaries of Aniakchak National Monument and Preserve, Alaska Peninsula National Wildlife Refuge, and Becharof National Wildlife Refuge; and (2) enter into negotiations for an agreement or agreements to exchange Federal lands or interests in Alaska for such rights.

Section 311: Kenai Natives Association Equity Act Amendments of 1996- Directs the Secretary to offer to convey to the Kenai Natives Association, Inc. (KNA) specified interests in land and rights in Alaska in return for the conveyance by KNA to the United States of the interests in land or relinquishments of certain Alaska Native Claims Settlements Act of 1971 selections, subject to specified requirements.

Requires the United States to make a specified cash payment to KNA for specified lands, contingent upon the appropriate approvals of the Federal or State of Alaska Exxon Valdez Oil Spill Trustees (or both) necessary for any expenditures of the settlement funds. Directs the Secretary to nominate the Stephanka Tract to the National Register of Historic Places.

Sets forth provisions regarding; (1) removal of KNA lands from the National Wildlife Refuge System, maps, and KNA acceptance of the Secretary's offer; (2) adjustments to the National Wilderness System; and (3) designation of the Lake Tondatonten Special Management Area.

Section 513: Aleutian World War II National Historic Areas Act of 1996- Designates the Aleutian World War II National Historic Area. Directs the Secretary to award grants and provide assistance to the Ounalaska Corporation and the City of Unalaska.

Section 704: Modifies Federal law to direct that 60 percent of the fees paid by permittees to enter Glacier Bay over a specified period be available to: (1) acquire and preposition necessary and adequate emergency response equipment to prevent harm or the threat of harm to aquatic park resources from permittees; and (2) conduct investigations to quantify any effect of permittees' activity on wildlife and other natural resource values of Glacier Bay National Park.

Section 1038: Directs that local residents who are descendants of Katmai residents who lived in the Nakenk Lake and River Drainage be permitted, subject to reasonable regulations established by the Secretary, to continue their traditional fishery for red fish within Katmai National Park.

Section 1039: Authorizes the Cape Fox Corporation to transfer all or part of its right to the 320-acre parcel that includes Beaver Falls Hydroelectric power-house site to the United States as part of an equal value exchange.

Proposed Federal Legislation During the 104th Congress, the Commission also endorsed the following legislative proposals affecting federal public lands in Alaska:

S. 1054- *Southeast Alaska Jobs and Community Protection Act of 1995.*

H.R. 2413- *Tongass Transfer and Transition Act.*

H.R. 2081- *Revised Statute 2477 Rights-of-Way Settlement Act.*

PLANNING DOCUMENTS

During 1996, the Commission received the following planning documents:

Katmai National Park & Preserve- Final Development Concept Plan Brooks River Area.

Klondike Gold Rush National Historic Park- General Management Plan.

Bering Land Bridge National Preserve- Development Concept Plan Nome Visitor Facilities

Glacier Bay National Park and Preserve- Vessel Management Plan.

Denali National Park and Preserve- Southside Development Concept Plan.

Entrance Area & Road Corridor Development Plan.

Tongass National Forest: Tongass Land Management Plan Revision & EIS.

Helicopter Landings in Wilderness EIS.

Stikine Area- Outfitter/Guide EA.

Chugach National Forest: Six Mile Creek Timber Salvage Sale EA

Moose Pass Cooperative Project EA.

CONCLUSION

The Alaska National Interest Lands Conservation Act passed in December 1980. In the intervening 16 years the level of federal land management planning, accompanied by regulation and policy development has been unprecedented. The impacts to the citizens of Alaska and their uses of the federal public lands have been considerable. The level of planning by federal agencies will remain high into the foreseeable future. As a general rule, federal land management plans are revised on a 10 to 15 year schedule. Federal agencies will soon begin revising many of the original ANILCA mandated plans for national park and wildlife refuge units. At the same time, numerous unit specific resource management plans, development concept plans, land protection plans and public use management plans continue to be released.

Problems and conflicts between federal land managers and public land users also continue. During 1996, Commission staff provided assistance to individuals having problems with access to private property within national park units and commercial visitor service activities on federal lands. Whenever possible, the staff will continue to provide similar assistance in 1997. Additionally, the Commission remains committed to resolving the commercial fishing issue in Glacier Bay National Park.

In the coming year, the Citizens' Advisory Commission on Federal Areas will continue to advocate for maximum levels of public involvement in the planning and regulatory processes of all federal agencies and for the protection of customary and traditional uses of the federal public lands throughout Alaska. As competition for public resources increases, cooperation and understanding between user groups will be critical to successful management of these areas. At the same time, federal land management agencies must recognize the role of the public in their planning and regulatory efforts and the effects of their decisions on the citizens of Alaska. This Commission will strive to work toward these and other stated goals during 1997.

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Official Business

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

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Vice Chair: Senator Lyda Green
Senator Loren Leman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

AGENDA

3:30 to 5:00 p.m.

Wednesday, February 26, 1997

Joint with House Resources

BRIEFING: Citizens' Advisory Commission on Federal Areas

Ms. Thyes Shaub, Chairman
Mr. Steven Porter, past Chairman
Mr. Stan Leaphart, Executive Director

* bills previously scheduled

NEXT MEETING

Wednesday, March 5

Schedule to be announced

ADJOURN

P. 10/10

**CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS
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TO: Senate Resources Committee Members
House Resources Committee Members

FROM: Stan Leaphart- Executive Director

DATE: February 26, 1997

SUBJECT: Selected Federal Land Management Issues

Navigable Waters. The following recent regulatory actions attempt to extend Federal management authority and jurisdiction into State-owned navigable waters.

- 1) **National Park Service Regulations (36 CFR Parts 1 and 13)** In July 1996 the National Park Service adopted revised regulations which it claimed simply clarified the "applicability of those regulations that apply in all National Park System areas to waters subject to federal jurisdiction located within park boundaries, including navigable waters." According to the NPS the revision clarified that NPS regulations continue to apply on navigable waters, as they have for years. In actually the regulations improperly extend NPS jurisdiction into State-owned water in direct violation of ANILCA. While no direct effects have been identified as yet, these regulations eventually will be utilized to by the NPS to restrict or regulate use of motorized boats, commercial activities, and recreational uses, including hunting and fishing.
- 2) **BLM Wild and Scenic River Regulations 43 CFR Parts 6400 and 8350).** The BLM has proposed regulations which would establish standards and procedures by which the agency will consider Federal licensing of, or assistance to, water resources projects on components affecting Wild and Scenic Rivers or Study Rivers. In proposing the regulations, the BLM claims authorities under the Wild and Scenic Rivers Act (WSRA) that clearly exceed the agency's authorities under that statute. There are also conflicts with key provisions of the ANILCA and its implementing regulations. Further, there are serious questions regarding study rivers, as well as

requirements for managing both designated and study rivers. The proposed regulations raise particular concerns about the effects on permitting and management of mining activities on State owned navigable waters and development of transportation and utility system corridors under ANILCA Title XI. As proposed, the regulations would almost certainly shutdown suction dredge operations on the Fortymile River and seriously restrict mining activities on any tributary to a wild and scenic river.

- 3) **BLM Law Enforcement Regulations- Criminal (43 CFR Part 9260)**. Released in late 1996, and still under public review, these revisions to the BLM law enforcement regulations have generated considerable public interest and concern. Although the agency categorizes the changes as "housekeeping" type revisions several of the proposed revisions are much more substantive in nature. For example, a key section states that the regulations apply to "activities on or having a clear potential to affect water bodies on or adjacent to BLM lands." In its discussion of the proposed regulations BLM asserts that this statement is "not an attempt to establish ownership over those waters [on or adjacent to BLM lands], but an attempt to clarify BLM's jurisdiction for protection of resources." In fact, BLM has no jurisdiction over waters or lands that are not in Federal ownership. In addition, several sections of the regulations do not reflect specific statutory guidance found in ANILCA for the management of federal public lands in Alaska. The public comment period remains open until March 7, 1997.
- 4) **Glacier Bay National Park**. Management of the marine waters in this park unit continues to be a major concern. In May 1996 the NPS adopted a Vessel Management Plan and regulations for the park which closed large portions of the bay (both wilderness and non-wilderness) to any motorized vessels through most of the summer season. Additionally, a cooperative effort between local and regional NPS staff, State of Alaska agencies, commercial fishing interests and environmental groups to resolve the commercial fishing question now appears to be abandoned by the Department of the Interior. Regulations which will close the bay to commercial fishing are expected in the near future.
- 5) The Department of the Interior has expressed interest in reestablishing the Navigability Task Force which ceased to function in 1995. The Special Assistant to the Secretary of the Interior, in a meeting with the Commission, stated that if the State was willing to participate, they would like to continue with the task force.
- 6) The Commission is considering filing a Petition for Rulemaking with the Secretary of the Interior to request revision of regulations and policies that do not allow BLM to make navigability re-determinations on lands conveyed to Native corporations. Under current procedures, all landowners must agree to re-determinations. This has resulted in what are likely State-owned submerged lands being conveyed to private corporations.

Revised Statute (RS) 2477 Rights-of-Way.

This interim policy, issued by the Secretary of the Interior in January, repeals the 1988 Hodel Policy which was developed and adopted after extensive consultation with Alaska and the other Western public lands states. It also maintains the 1993 moratorium on processing of RS2477 assertions, except in cases where there is a demonstrated, compelling need to make a determination. Further, it establishes a revised policy for carrying out any determinations that the DOI might be called upon to make regarding RS2477.

The interim policy recognizes that anyone making a claim of the existence of an RS 2477 right-of-way continues to have the option of seeking validation of the claim in court. While this is true regardless of DOI policy, there is concern that this policy will negatively impact any future court action on an RS 2477 right-of-way. Any adverse decision on the part of a DOI agency will affect the outcome in any quiet title action, particularly since DOI will be a party to any action on a claim involving lands under its management authority

The interim policy does provide for an entity to ask the DOI to make a determination of validity in advance of adoption of final regulations if there is a "demonstrated, compelling and immediate need" for such determination. The policy contains no definition or explanation of what constitutes a "demonstrated, compelling and immediate need." If the department does not believe such a need exists a request will not be processed.

One of the major problems of the 1994 draft regulations was the definition of construction. The draft regulations would require that in order to meet the definition of construction, intentional physical acts must have been performed with the achieved purpose of preparing a durable, observable physical modification of land and that the modification be suitable for highway traffic. Creation of a right-of-way by passage of vehicles or people- the so-called "public user" standard- would only be recognized if the right-of-way was subsequently maintained by acts that meet the requirements of construction. The interim policy maintains the same restrictive definition and criteria. We should point out that the courts have long recognized the validity of rights-of-way created through the passage of vehicles, pack animals and even foot traffic. Many trails still in use today in Alaska were created by simple public use.

As with the section on construction, the interim policy reflects the definition of highway proposed in the 1994 draft regulations. In order to meet the standard in the interim policy a RS 2477 would have to constitute a thoroughfare used prior to October 21, 1976 by the public for the passage of vehicles carrying people or goods from place to place.

It is still too soon to determine exactly how this interim policy will affect Alaska's ability to assert its rights under RS 2477. Commission members were told at our December 1996 meeting that the Department of the Interior would be re-writing the draft RS 2477 regulations and releasing them for another round of public review and comment by late this year.

Endangered Species Act (ESA)

The U.S. Fish and Wildlife Service is currently conducting a status review for the Alexander Archipelago Wolf and the Queen Charlotte Goshawk to determine if either or both species should be listed as threatened under the ESA. Previous status reviews resulted in determinations that listing was not warranted for either species. Listing could have disastrous implications for the timber industry in Southeast Alaska. Listing of the Stellar Sea Lion as threatened (endangered for the Western Alaska population) has had major impacts on the commercial fishing industry in the Bering Sea and Aleutian Islands areas.

At present both the wolf and the goshawk are listed as "species of concern," along with some 15 other birds, mammals and fishes in Alaska. There are some 10 species of birds and mammals in Alaska currently listed as threatened or endangered. Absent some reforms to the ESA and the manner in which it is implemented, its effects will increase in Alaska.

International Area Designations

There is increasing concern about programs such as the United Nations Man and the Biosphere Program and the World Heritage Convention. These programs have resulted in the designation of some 67 sites throughout the United States, including 4 Biosphere Reserves and 2 World Heritage Sites in Alaska. There are an additional 7 areas in Alaska that have been nominated for inclusion on the World Heritage Sites list. The National Park Service has for several years moved forward to implement the designation of 3 national park units in northwestern Alaska as the Beringian Heritage International Park.

The Alaska Legislature is currently considering passage of HJR14 "Relating to supporting the "American Land Sovereignty Protection Act." This act was introduced by Congressman Don Young during the last 104th Congress. This bill would require Congressional approval prior to restricting any use of U.S. land under international agreements.

Studies

BLM- Squirrel River Wild & Scenic River Suitability Study. Mandated by Section 604 of ANILCA, the study has never been completed. A Scoping Draft EIS is currently under review. Public comment period on the scoping draft ends 1/31/96.

Following public comment period, BLM will make any revisions, select a preferred alternative and publish a draft EIS. Target date "early 1997."

NPS- Denali National Park & Preserve- Northern Access Study. Congress directed the NPS, Alaska, in consultation with the State of Alaska, to conduct a feasibility study for a northern access route into Denali NP&P. Report due to Congress April 1997.

On the Horizon

US Fish & Wildlife Service- Review and Revision of the Comprehensive Conservation Plans for National Wildlife Refuges in Alaska. The agency has indicated that it will begin the process of revising the management plans for the 16 national wildlife refuges in Alaska in 1997.

US Forest Service- Revision of Chugach Forest Plan. Agency is currently conducting a "need to change" analysis to determine scope of revision. Formal scoping will begin with publication of Notice of Intent sometime in mid 1997.