

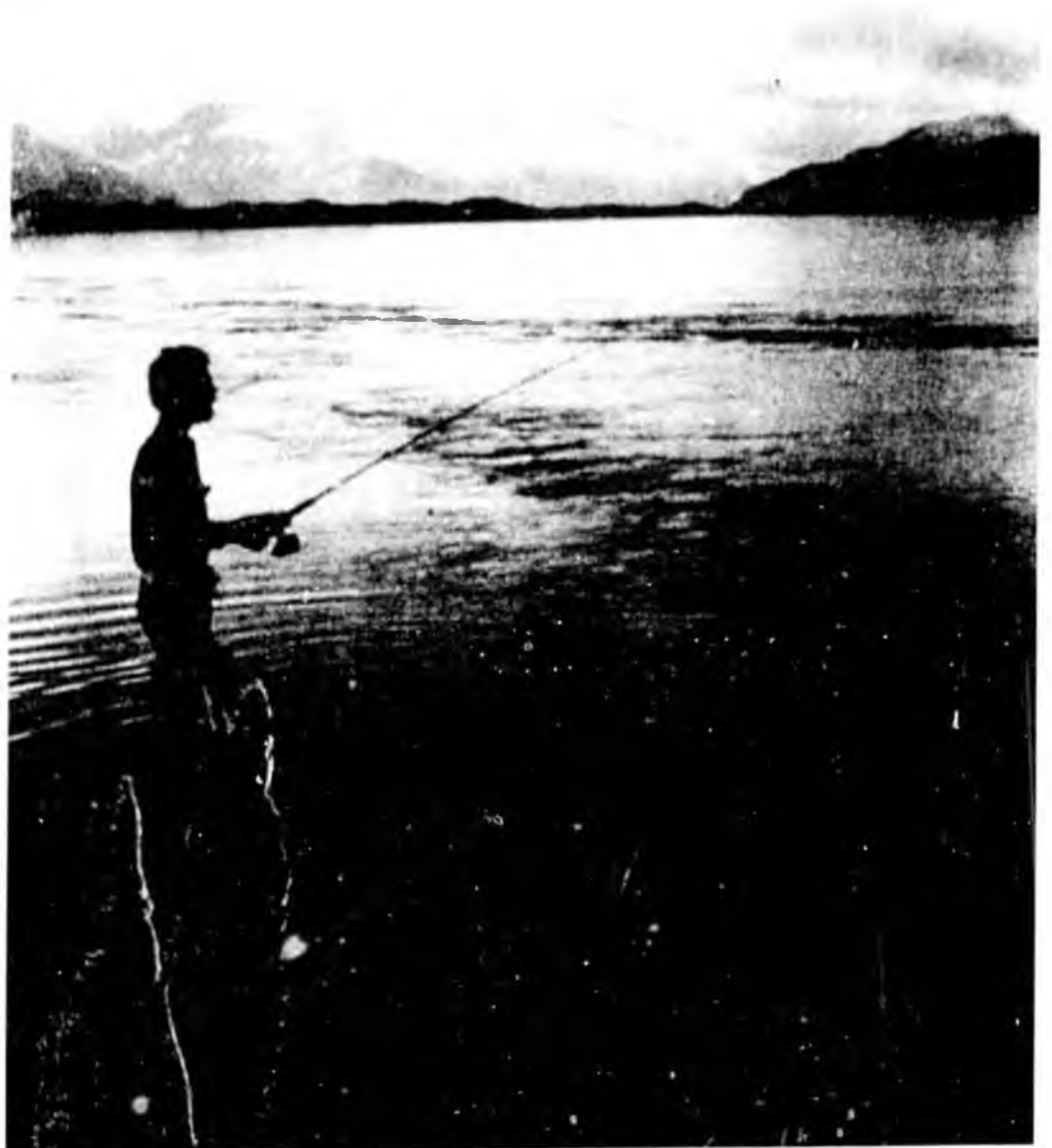
ACCESS

ISSUES,

2/16/05

THE FOLLOWING DOCUMENT HAS NOT
BEEN FILMED BUT IS AVAILABLE IN THE
ORIGINAL FILE.

ACCESSING ALASKA'S PUBLIC LANDS & WATERS



JUNE 1999

U.S. Department of Agriculture
Forest Service
Alaska Region (R-10)
709 W. 9th Street, P.O. Box 21628
Juneau, AK 99802-1628
(907) 586-8863
<http://www.fs.fed.us>

Anchorage District Office
6881 Abbott Loop Road
Anchorage AK 99507
(907) 267-1203

National Park Service
2525 Gambell St., Room 107
Anchorage, AK 99503
(907) 257-2574
<http://www.nps.gov>

U.S. Fish & Wildlife Service
605 West 4th Ave., Suite 105
Anchorage, AK 99501
(907) 271-2737
<http://www.fws.gov>

REGIONAL NATIVE CORPORATIONS

Ahtna, Inc.
P.O. Box 649
Glennallen, AK 99588
(907) 822-3478

Bristol Bay Native Corp.
P.O. Box 100220
Anchorage, AK 99510
(907) 278-3812

Doyon Limited
201 First Ave.
Fairbanks, AK 99701
(907) 452-4756

Aleut Corporation
4000 Old Seward Hwy,
Suite 300
Anchorage, AK 99503
(907) 561-4300

Calista Corporation
601 W. 5th Ave., Suite 200
Anchorage, AK 99501
(907) 279-5518

Koniag, Inc.
4300 B Street, Suite 407
Anchorage, AK 99503
(907) 561-2668

Arctic Slope Regional
Corp.
P.O. Box 129
Barrow, AK 99723
(907) 852-8633

Chugach Alaska Corp.
560 E. 34th Ave., Suite 200
Anchorage, AK 99503-4196
(907) 563-8866

NANA Regional Corp.
1001 E. Benson Blvd.
Anchorage, AK 99508
(907) 285-4100

Bering Straits Native
Corp.
P.O. Box 1008
Nome, AK 99782
(907) 443-6252

Cook Inlet Region, Inc.
P.O. Box 93330
Anchorage, AK 99509-3330
(907) 274-8638

Sealaska Corporation
One Sealaska Plaza
Suite 400
Juneau, AK 99509-3330
(907) 586-1512

The Alaska Department of Fish & Game and Department of Natural Resources administer all programs and activities free from discrimination on the basis of sex, color, race, religion, national origin, age, marital status, pregnancy, parenthood, or disability. For information on alternative formats available for this and other department publications, contact the department ADA Coordinator at (voice) (907) 465-4120, or (telecommunication device for the deaf) 1-800-478-3648.

Brochure developed by the State Interagency Navigability Team and produced by the Department of Natural Resources Graphics Unit, June 1999.



Bering

Saint Paul

The Ale

Unalaska



The State's Interests in Access via ANILCA, ANCSA 17(b) easements, RS 2477 Trails and Easements, Public Trust Doctrine, & Navigability



State Agencies Responsible for Access and a Role Related to ANILCA



DNR ~ management of and access to state lands and waters



DOT ~ management of transportation system & facilities



ADF&G ~ management of fish & wildlife, some land

Dept of Law ~ legal aspects of state's interests

Fish and wildlife throughout Alaska are managed* by the Alaska Department of Fish and Game regardless of land ownership.

(*Management tools are modified for some species by Congress; e.g., Marine Mammal Protection Act, Migratory Bird Treaty Act, etc.)

Access - on land & water

Why is access so important to AD? (2017)

- We need access to manage – tools include surveys, research, activities in waters, regulation of harvest, access, and enforcement
- If you can't get there, you can't hunt, fish, trap, or otherwise use and enjoy our fish, wildlife, and water resources.



HIGHLIGHTS IN ALASKA HISTORY

- 1867 TREATY OF CESSION BETWEEN RUSSIA AND THE US
- 1894 ALASKA ORGANIC ACT
- 1887 GENERAL ALLOTMENT ACT
- 1906 NATIVE ALLOTMENT ACT
- 1956 AMENDMENT TO 1906 ACT
- US SUBMERGED LANDS ACT OF 1953
- STATEHOOD ACT EFFECTIVE JAN 3, 1959
 - 1960s North Slope Oil Discoveries
- 1971 ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)
 - Revoked Indian Allotment Authority in Alaska Repealed 1906 Act
- 1980 ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (ANILCA)
 - Conserve additional 104 million acres of Unique Resources
- 1988 ALASKA SUBMERGED LANDS ACT



HISTORICAL OVERVIEW (CONT'D)

Alaska Statehood Act; effective January 3, 1959

PL 85-508 (72 Stat. 339), July 7, 1958, authorized the state to select 102.5 m acres from "unappropriated" public lands

Alaska Native Claims Settlement Act (ANCSA)

PL 92-203 (85 Stat. 688), December 18, 1971, 44 m acres to corporations; Section 17(b)–public easements across corporation lands; Section 17(d)(2)(A) directed the Secretary to withdraw "up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska" (an addition of 50 m acres) in CSU

Alaska National Interest Lands Conservation Act (ANILCA)

PL 96-487 (94 Stat. 2371), December 2, 1980, added 104* m acres to existing Conservation System Units (CSU), total = 133* m acres.

The "d(2) bill" – The great compromise: large acreage in CSUs accompany access and public use protections;

Congress intent to "protect the Alaska lifestyle"



Key Access Provisions

STATE MANAGER:
 Navigable Waters - quiet title; own land underlying navigable waters
 Public Trust Doctrine - public use of and access on all waters
 Easements To & Along Waters - reserved when state land transfers
 Revised Statute (RS) 2477 - Trails & section line easements

FEDERAL MANAGER:
 ANCSA Sec. 17(b) - easements across conveyances
 ANILCA 905(a)(5) - access across Native allotments
 ANILCA 811 - traditional methods for subsistence on public lands
 ANILCA 1109 - valid existing rights
 ANILCA 1110(a) - methods for traditional activities on CSU's
 ANILCA 1110(b) - access to inholdings in CSU's
 ANILCA 1111 - temporary access for research across CSU's
 ANILCA 1310 - reasonable access for navigation, fisheries, CSU's
 ANILCA 1323 - for inholdings in Forests and FLPMA lands



State's New Waters Program

State Navigable Waters Team:

Result of 1995 Legislative Audit
Law, Natural Resources, Fish & Game



☞ Asserts ownership & management of navigable waters;

☞ Protects public access for hunting, fishing, trapping, and other uses and enjoyment of fish and wildlife, and access to state lands/waters

☞ Promotes respect of upland property rights



Navigable for "title":
Ownership of Alaska's Waterways
- Tidelands, Submerged Lands, Shorelands -

- U. S. Submerged Lands Act of 1953
- Alaska Statehood Act of 1958
—transferred to State January 3, 1959
- Equal Footing Doctrine
States entered into union on an equal footing with the original states with respect to the same sovereign rights and powers
- Alaska Submerged Lands Act of 1988

*shorelands of inland navigable waters (12 to 15 million acres)
tide and submerged lands to 3-mile limit (50 million acres)
estimate ≥ 60 million acres owned by Alaska*

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Navigability for "Title" Purposes

States have different navigability definitions based on federal test to determine what waters were navigable at statehood

Federal Test

Waters navigable in fact must be regarded as navigable in law
- when used, or are susceptible of being used
- in their natural and ordinary condition
- as highways for commerce, over which trade and travel are or may be conducted in the customary modes

Quiet Title - Court decisions

Utah Lake - establishes 2-prong test
Gulkana - recreational craft; total weight 1000 lbs; susceptible
Kandik, Natton, Black - Black ⇒ federal "interest" problem

Recordable Disclaimers of Interest

Tidelands & Submerged Lands

mean high tide to 3 mile territorial limit

- includes enclosed bays less than 12 miles wide - except Upper Cook Inlet
- State ownership can be defeated only by certain pre-statehood withdrawals (e.g. NPRA and ANWR) but not others, e.g., Tongass National Forest
- Boundaries can be disputed (e.g., Dinkum Sands Supreme Court case)

Shorelands

lands under inland navigable waters

- Defined as below ordinary high water, includes gravel bars
- Must be navigable under federal law; Gulkana River case refined this for Alaska
- Navigable or susceptible for navigation at statehood
- Gulkana standard - 1000 foot inflatable raft, upheld by 9th Circuit Court
- Defeated by certain pre-statehood withdrawals

Navigability for Title
defines ownership under navigable waters
BLM made determinations for land transfers to ANCSA Corporations

Certainty of navigability requires either:

1. Quiet Title Action initiated by state
- against federal government in federal court
- against private land owners in state court

Or 2. Established through Recordable Disclaimers

Quiet Title

- 13 waterbodies in Alaska (Gulkana, Gakona, Alagnak/Branch, Kandik, Nation, and others)
- judicial process:
 - × requires extensive research and attorney's time
 - × adversarial process, can resolve disputes
 - × good for setting precedents, establishing criteria
 - × not good for thousands of waterbodies
 - × costly, estimated \$200,000 to 1 million per waterbody
 - × Federal Court - very difficult for state to get standing

Federal Process
"Recordable Disclaimer of Interest"

- provision in Federal Land Policy and Management Act of 1976
- Recent BLM regulation change allows states to use for navigable waters & RS 2477s
- administrative process
- works where state-federal agreement on navigability
- controversial, primarily for RS 2477


Federal Process

“Recordable Disclaimer of Interest”

- Only Alaska applying for waters
- BLM and state working together; files, \$ savings
- state filing waterbodies BLM determined navigable and Quiet Title noticed
- Alaska pioneering Disclaimer process for nation
- Alaska filed applications to date; BLM granted
- Public concerns
 - Local—process, notification, uses of waterway
 - National— in CSUs, contested for RS 2477

DNR Land and Water Management

- Multiple use, except Parks and other legislatively established areas
- DNR acts as owner of lands under navigable waters
 - Can lease for facilities, but cannot sell
 - Can lease for oil and gas
- Open to mining claims, unless specifically closed; closures limited to 640 acres unless legislated
- Regional Land Management Offices
 - Southeast, Northern, Southcentral
- Land Planning & Navigability projects
 - In Anchorage, RS2477 in Fairbanks



DNR Land and Water Management

- Generally allowed uses on state land & waters (*no permit required*)
 - Travel by boat, small aircraft, snowmachines
 - Mooring buoys, docks, etc. for upland owners personal, non-commercial use
 - Recreational gold panning, small suction dredges
 - Recreation use of a site for up to 14 days
- *Can be restricted through Special Use designation*
- *Statute limits restrictions of “traditional” access*
- Commercial day-use recreation, Registration required



Navigable
for title?
(ownership)
For public
use?
(public trust
doctrine)

Public Trust Doctrine (PTD)

- Evolved from Roman civil law – state authority
- Each state adopted the doctrine upon statehood – Common law
- Each state expands or limits its definition through legislation and state court system

“Public trust lands, waters and living resources in a state are held by the state in trust for the benefit of all the people . . .”

Establishes the right of the public to fully enjoy those lands for a variety of reasons

Gulkana River =>

PTD Lands

The "Ordinary High Water Mark"

The Ordinary High Water Mark can usually be identified by the vegetation line along the bank or shore, or by other distinctive signs. It is defined as the mark along the bank or shore where the presence and action of water are so common and usual as to leave a natural line impressed on the bank or shore that line may be indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.

Use of and Access to State Waters
(Navigable for "public use" under Public Trust Doctrine)

Alaska Constitution Article 8, Sections 3, 13, 14, 15
 Alaska Statute 38.05.126


- constitutional right of free access to, and use of, navigable or public water
- state has full power and control over those waters
- ownership of land adjacent to water does not grant an exclusive right of use

AS 38.05.127

- "to & along" waterway easements, state land transfers

AS 38.05.128

- no one may obstruct or interfere with free passage





PUBLIC TRUST DOCTRINE)
If you can float a boat on it, you can use it!

AS 38.05.965 "... Any water forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other waterbody within the territorial limits of the state subject to its jurisdiction, that is navigable in fact for any useful public purpose . . ."

Commercial navigation, floating logs, landing and taking off of aircraft, and public boating, trapping, hunting, fishing or other public recreational purposes; portaging

If you are fishing in it, you can walk in it to fish!





Navigable
 for title?
 (ownership)

For public
 use?
 (public trust
 doctrine)

Navigable Waters

Why do anything?

Ownership impacts regulation of public uses & ...
Federal agency autho. des...
Private landowners
Enforcement
Revenues from oil, gas, gravel



Nav Team Activities

- Recordable Disclaimers of Interest
 - LB&A contracts, BLM contract
 - As move away from easy one, need research
 - Measurements - depths, widths, gaging stations
 - Usage - Records, reports, and affidavits
- Quiet Title Actions: 11p, 10y notice
- Pre-statehood withdrawals: jurisdiction
- Litigation, e.g., Southeast boundaries, Glacier Bay
- Avulsed lands, e.g., Chukalon Flats, Mendenhall Refuge
- Education and Resolve Conflicts
 - Map land status to resolve key trespass and access conflicts
 - Public brochures - Inform public, respect private property



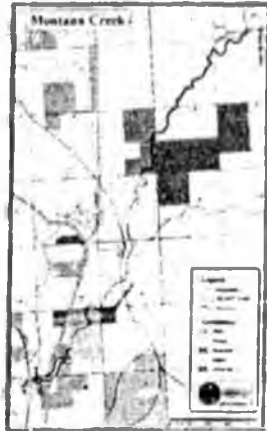
Recordable
Disclaimers

Quiet Title
Amendment

Nav Waters
Commission



DRAFT:
Example of
discontinuous
to & along
easements



RS 2477 trails & section line easements



Alaska Department of Natural Resources
Alaska Department of Fish & Game
Alaska Department of Transportation
Alaska Department of Law

RS 2477 ~ trails & section line easements

The revised statute, passed in 1866, states in its entirety:

*"the right-of-way for the construction
of highways over public lands, not
reserved for public uses, is hereby granted."*



A RS 2477 right-of-way (ROW) could be established only over land owned by the federal government not otherwise restricted or reserved. "Reserved" means it was set aside as a national park, monument, forest, military reservation, or similar withdrawal. Entries under public land laws also removes federal land from being available for RS 2477 road construction and use. If the ROW predated the reservation, it remains a valid property right.

RS 2477 statute was repealed 1976, but the ROW is still valid
RS 2477s are the responsibility of the respective states to assert and manage

RS 2477 ~ trails & section line easements (cont.)

The validity of all RS 2477 rights-of-way will be determined on a case by case basis.

Although the DOI attempted to define the terms of the grant through regulation, Congress mandated that no rules governing RS 2477 would be effective until specifically authorized by an act of Congress.



RS 2477 ~ trails & section line easements

- DOT-DNR 1993-1998 RS 2477 Project:
 - \$1.1 million over 5 years
 - 2000+ trails researched
 - 602 trails initially qualified for RS 2477 easements
 - 69 more identified as qualifying and 12 recommended to be "removed"
- 1998 State Legislation ~ Through AS 19.100.010, public use, expenditure of public funds for construction and other means, the State of Alaska claims numerous rights-of-ways across federal land under RS 2477, including section line easements and rights-of-way identified in AS 19.30.400.
- DNR required to annually report to Legislature:
 - (1) trails for addition to Alaska Statute 19.30.400(f), and
 - (2) trails for removal due to lack of historical use or new information on status of withdrawal of the public land, rendering it "reserved"

RS 2477 ~ trails & section line easements

- RS 2477 trails & section line easements can be replaced by alternative public access **only** if compliance with Chapter 26 SLA 98, AS19.30.410.

"Agencies of the state may not vacate a right-of-way acquired by the state under former 43 USC 932 unless (1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;"

Section line easements and RS 2477s may not be surveyed, thus not on plats—but they are a public access right of way that cannot be vacated without due process.
- DNR adopted first of two phases of regulations:

DNR's Easement Regulations

- **Phase I (adopted by DNR in 2001):**
 - Explains what public easements are
 - Lists the types and widths of easements, including section line easements
 - Sets out process for identifying RS 2477s
 - Adequate information from public or government agency is required
 - DNR will perform administrative adjudication of the route's status
 - If qualifies, DNR will report to legislature as required by statute
 - Repeals existing certification process and fees

DNR's Easement Regulations

- **Phase II – to be drafted:**
 - Management of Section Line Easements
 - Management of Utility Easements
 - What level of trail maintenance can occur without a permit
 - Other management issues

RS 2477 ~ State's Access Team Issues

- + Allowable Uses; 17(b) & RS 2477s overlap; width & use differ
- + Marking & managing section line easements between DOT & DNR; permitting uses
- + Valid surveys of location; recording slow & expensive
- + Vacating, standards and process
- + Municipal Authorities
- + Federal agencies frequently refuse to recognize RS 2477 trails
- + LB&A S, Quiet Title Actions

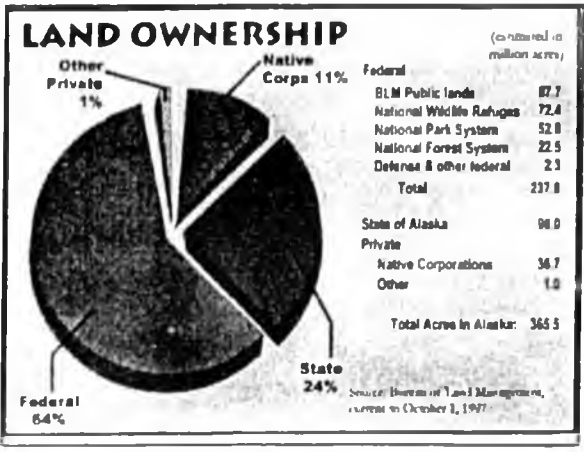
Key Access Provisions

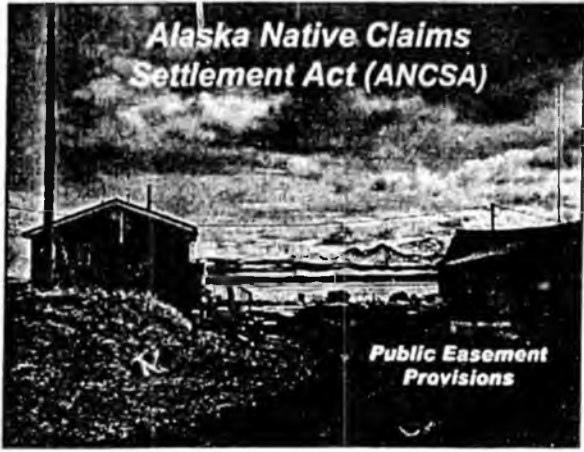
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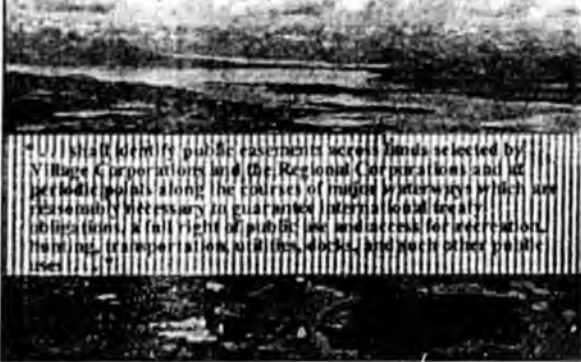
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 ANILCA 1323 - for inholdings in Forests and FLPMA lands





Alaska Native Claims Settlement Act (ANCSA) Section 17(b)



shall identify public easements across lands selected by Village Corporations and the Regional Corporations and its subsidiaries along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, fishing, transportation, utilities, docks, and such other public uses.

ANCSA WITHDREW PUBLIC LAND

1. Township(s) in which village located (approx. 23,000 acres) - Core Township(s)
2. Townships surrounding Core
3. Township(s) surrounding those in #2

GENERAL SELECTION REQUIREMENTS -

- Selections must be in whole sections.
- All available land in the core township(s) will be conveyed
- Selections must be contiguous and reasonably compact
- Can't create isolated tracts of land less than 1,280 acres (2 Sections)
- Originally no rules on over-selections, prioritization, and relinquishment (state selections limited to 125%)

17(b) EASEMENT REGULATIONS

General Requirements

- ⇒ Reasonably necessary to guarantee access to publicly owned lands or major waterways and other public uses
 - Recreational use on an easement (e.g., fishing) is prohibited
- ⇒ Primary standard for determining which easements are reasonably necessary shall be present existing use (i.e., use as of 12/18/76)
- ⇒ Absent present existing use, public easements can only be reserved
 - To guarantee international treaty obligations
 - Where no reasonable alternative route or site exists
 - To provide access to isolated tracts of public land

17(6) Easement Regulations - cont.

- ☐ All easements reserved shall be specific as to use, location, and size. *Standard sizes and uses may be varied only when justified by special circumstances.*
- ☐ An easement shall be terminated if not used by December 18, 2001, for the purpose for which it was reserved.
 - An easement shall not be terminated if it provides access to isolated public lands solely because of absence of proof of public use
 - An easement may be terminated at any time if its retention is no longer needed for public use or governmental function

17(6) EASEMENT DESCRIPTIONS
Trails & Sites

- | | |
|---|---|
| <p>25' wide trail - travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs GVW)</p> <p>50' wide trail - travel by large all-terrain vehicles (more than 3,000 lbs GVW), track vehicles, and 4-wheel drive vehicles.</p> <p>60' wide existing road - travel by automobiles or trucks.</p> <p>100' wide proposed road - proposed road whose width can be reduced if after construction a lesser width is sufficient.</p> | <p>1-acre site easements - for aircraft landing or vehicle parking (boats, ATVs, cars, trucks), temporary camping, loading/unloading at trailhead, along access route or waterway, or in reasonable distance of transportation route or waterway where demonstrated need to access publicly owned lands or major waterways.</p> <p>- Temporary camping, loading or unloading limited to 24 hrs</p> <p>- Reserved on marine coastline at periodic points reasonably necessary to facilitate transportation on coastal waters</p> |
|---|---|





Issues in Conveyances

- BLM only reviews waters for acreage purposes
 - Any water body greater than 198 ft or 50 / 25 1/2 acres is automatically mandated from the survey and not assessed to the upland owner
- BLM "pre-Gulkana" conveyances
 - Need to be corrected
- BLM Survey Windows - ANILCA 90 Stat allotments must be surveyed before certified (patented) to the allottee
 - include public waterways
 - 160 rod rule
- BLM Navigability section researches and determines which waterbodies should be excluded from the survey.
- State's interests: Access between one body of public land/water and another. 17(b) easements: ADF&G & ADNR staff review BLM documents to ensure public access to and use of all navigable waters and public lands.
 - provide added research and justification.
 - participate in negotiations.
 - appeal as necessary.



ANCSA 17(b) easements; current issues

+ Overselections & "2009"

+ Marking & Managing Easements
needed to reduce trespass

+ Allowable Uses

ANILCA'S KEY TITLES AND SECTIONS

TITLE I - Purposes, Definitions, and Maps

- Sec. 101 - Purposes

- Sec. 102 - Definitions

- "public lands"
- "conservation system unit"

- Sec. 103 - Boundary Maps

- Maps control: published in the Federal Register
- Boundaries of additions do not extend seaward
- CSU regulations only apply to federal public lands



KEY TITLES AND SECTIONS (CONT'D)

TITLE II - National Park System (NPS)

Sec. 201 - Established 10 New Units

Sec. 202 - Additions to 3 Units

Sec. 203 - General Administration

Provides for hunting
No admission fees

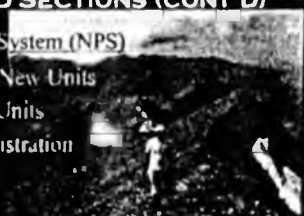
Sec. 205 - Commercial Fishing

Sec. 808 - Subsistence Resource Commissions ★

Sec. 1301 - General management plan requirements ★

Sec. 1309 - Amends 1976 Klondike Park Act

Sec. 1313 - Administration Preserves, hunting, trapping ★
& other general provisions in Title XIII



KEY TITLES AND SECTIONS (CONT'D)
TITLE III—National Wildlife Refuge System (FWS)

Sec. 302 - Establishment of 9 New Refuges

Sec. 303 - Additions to 7 Existing Refuges

Sec. 304 - Administration of Refuges

(b) compatibility

(d) commercial fishing

(e) fisheries enhance, rehabilitate & maintain

(g)(1) Comprehensive Conservation Plan

★ prepare and revise ★

16 CCPs plus stepdown plans

1997 — Refuge System Improvement Act



KEY TITLES AND SECTIONS (CONT'D)

**TITLE III—National Wildlife Refuge System
& Refuge System Improvement Act of 1997 (FWS)**

★ Policies/Regulations:

Planning

Biological Integrity

Compatibility

& more to come

★ Plan process in

Alaska revisions:

★ template

★ AK Point/Beech

Kodiak, Togiak

ANILCA prevails when conflicts between laws



KEY TITLES AND SECTIONS (CONT'D)

**TITLE IV—National Conservation & Recreation
Areas (BLM)**

Sec. 401 - Steese National Conservation Area

Sec. 402 - Steese NCA Administrative provisions
FLPMA & ANILCA

Sec. 403 - White Mountains National Recreation Area

Sec. 1312 - White Mtns NRA Administration + FLPMA

★ recreation use & management planning

Sec. 404 - inholder mining claims
and leasing rights



KEY TITLES AND SECTIONS (CONT'D)

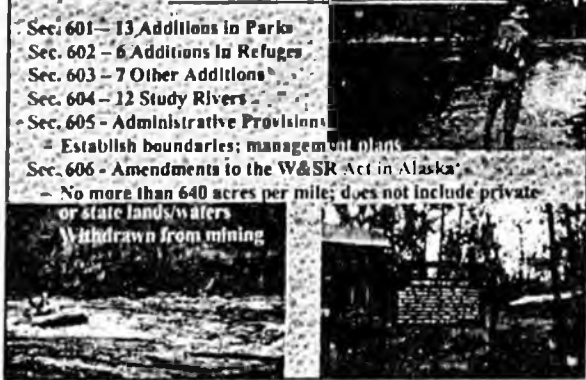
TITLE V - National Forest System (USDA)

- Sec. 501 - Additions to Chugach and Tongass Forests
- Sec. 502 & 504 - mining
- Sec. 503 - Establishment of Misty Fjords and Admiralty Island National Monuments
- Sec. 505 & 507 - Fisheries



KEY TITLES AND SECTIONS (CONT'D)
TITLE VI - National Wild & Scenic Rivers

- Sec. 601 - 13 Additions in Parks
- Sec. 602 - 6 Additions in Refuges
- Sec. 603 - 7 Other Additions
- Sec. 604 - 12 Study Rivers
- Sec. 605 - Administrative Provisions
 - Establish boundaries; management plans
- Sec. 606 - Amendments to the W&SR Act in Alaska
 - No more than 640 acres per mile; does not include private or state lands/waters
 - Withdrawn from mining



KEY TITLES AND SECTIONS (CONT'D)

TITLE VII - National Wilderness Preservation System

- Sec. 701 - 8 Designations in Park units
- Sec. 702 - 13 Designations in Refuge units
- Sec. 703 - 14 designations in Tongass Forest [amended by Tongass Timber Reform Act adds 5 more Units]
- Sec. 704 - Wilderness Study Areas
- Sec. 707 - Administration, Wilderness
- Sec. 708 - No roads, area review allowed for further wilderness
- Sec. 1315 - Wilderness Management
- Sec. 1317 - Wilderness
- Sec. 1320 - BLM
- ★ Management plans
- ★ Wilderness policies





Federal lands & their management

Access and public uses

KEY TITLES AND SECTIONS (CONT'D)
TITLE VIII—Subsistence
 Sec. 808 - Park and Park Monument SRC's *
 Sec. 810 - Federal Action Evaluation
 Sec. 811 - Access Guarantees Traditional Methods

ANILCA 811 (CONT'D) - ACCESS FOR SUBSISTENCE TRADITIONAL METHODS OF ACCESS FOR SUBSISTENCE PURPOSES

"(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowshoes, icebreakers, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation."

Most trails not designated, thus ATVs not allowed
 SRC's request studies of traditional access
 State requests cooperative studies of pre-ANILCA access

ANILCA TITLES AND SECTIONS (CONT'D)

TITLE XI—Transportation & Utility Systems in and Across, and Access into Conservation System Units

Sec. 1101-1108 – recognizes Alaska transportation infrastructure undeveloped;

– standardized application and EIS process established;

Approval Standard: TUS compatible with "purposes" of CSU, and no economically feasible and prudent alternative; conditions to control damage



ANILCA TITLES AND SECTIONS (CONT'D)

TITLE XI—TUSs in and Across, and Access into Conservation System Units (Cont'd)

Sec. 1109 – Valid rights of access protected

Sec. 1110 – Special Access & Access to Inholdings

Sec. 1111 – Temporary Access across CSUs to other lands

Sec. 1112 – North Slope Haul Road

Sec. 1113 – Stikine River Access Study for Canada

Sec. 1323 – Access for irholders across public lands



TITLE XI—Transportation and Utility Systems in and Across, and Access into CSUs
Section 1110 – Special Access & Access to Inholdings



ANILCA 1110 (A)

**ACCESS FOR TRADITIONAL ACTIVITIES
AND TO VILLAGES AND HOMESITES**

... the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities . . . and for travel to and from villages and homesites."

*This section affects the public and state
as much as any other in the Act.*

-THE GREAT COMPROMISE"



ANILCA 1110 (A)-

"subject to reasonable regulations"

ACCESS OPEN UNTIL CLOSED: 2-prong test

1. for "traditional" activity—not pre-existing use test, "generally occurring in area";
2. unless detrimental to resource values of unit or area

PROCESS TO CLOSE:

- ✓ Make a "finding" of damage
- ✓ Public notice and hearing in affected area
- ✓ Rulemaking—emergency, temporary, and permanent



KEY PROVISIONS & INTENT in ALASKA-SPECIFIC RULES:

- ➔ NPS '81 & '83 Regulations & Preamble--36 CFR Part 13
- ➔ FWS '81 Regulations & Preamble--50 CFR Part 36
- ➔ All DOI Title XI Regulations & Preamble--43 CFR Part 36

ANILCA 1110(a) Access Issues

- what is "traditional" i.e., activities, not method
- how is "traditional" different from "subsistence"
- how measure "detrimental to the resource values"
- how / when / who - process to restrict regulations
- compendia
- commercial service permits

litigation:

43 CFR Regs: Trustees for Alaska
[Issue is it isn't an issue]

Denali "snow machine" case



ANILCA 1110(B)

... in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulations, to protect the natural and other values of such lands.

guarantee access rights of inholder to inholdings for economic and other purposes
- for clients
- for themselves
? What's reasonable & economic ?



ANILCA Sec. 1111 Temporary Access

Section 1111 Temporary Access: "... Secretary shall authorize and permit temporary access by the State or a private landowner to or across any conservation system unit . . . for purposes of survey, geophysical, exploratory, or other temporary uses thereof whenever he determines such access will not result in permanent harm to resources of such unit, area, Reserve or lands."

e.g., mechanized access to conduct fish, wildlife, or habitat-related management and research activities in waterways, to state and private land/water inholdings, and to adjacent lands.

(Read 43 CFR Part 36 Preamble)

ANILCA 1323 - Access across BLM Non-CSU Land to Inholdings

"(b) . . . subject to such terms and conditions . . . the Secretary shall provide such access to non-federally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 USC 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands."

In other words . . .

♦ on non-CSU BLM lands, access "shall" be provided for "reasonable use and enjoyment" of inholdings within FLPMA lands, subject to "reasonable" regulations

Key Access Provisions

STATE MANAGER:

Navigable Waters - quiet title, own land underlying navigable waters

Public Trust Doctrine - public use of and access on all waters

Easements To & Along Waters - reserved when state land transfers

Revised Statute (RS) 2477 - Trails & section line easements

FEDERAL MANAGER:

ANCSA Sec. 17(b) - easements across conveyances

ANILCA 905(a)(5) - access across Native allotments

ANILCA 811 - traditional methods for subsistence on public lands

ANILCA 1109 - valid existing rights

ANILCA 1110(a) - methods for traditional activities on CSU's

ANILCA 1110(b) - access to inholdings in CSU's

ANILCA 1111 - temporary access for research across CSU's

ANILCA 1310 - reasonable access for navigation, fisheries, CSU's

ANILCA 1323 - for inholdings in Forests and FLPMA lands



**Community Meeting
Everyone's Invited
June 19, 2003 2:00pm
McCarthy Lodge**

of the Department of Natural Resources
and Department of Fish and Game will present a
discussion of ANILCA access issues, public trust,
publicly navigable waters and 103417

"Rights, Roles & Responsibilities"

It is sure to be informative. Hope to see you there.



PUBLIC TRUST DOCTRINE

ALASKA CONSTITUTION

Alaska Constitution Article VIII, section 3 states:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Constitution Article VIII, section 13 states:

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Alaska Constitution Article VIII, section 14 states:

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Alaska Constitution Article VIII, section 15 provides, in pertinent part:

No exclusive right of special privilege of fishery shall be created or authorized in the natural waters of the State...

Alaska Statute 38.05.965(13) defined navigable waters:

"navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

LEGISLATIVE INTENT

The Legislature further interpreted the constitutional protections for public use of the waters in an act relating to the navigable or public waters of the state, declaring in the preamble (85 SLA c.82):

- (a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.
- (b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust.
- (d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

ALASKA STATUTES

38.05.126. Navigable and public water.

- (a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.
- (b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

Sec. 38.05.127. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

(a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is

(1) authorized by a federal agency and a state agency;

(2) authorized under a federal or state law or permit;

(3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);

(4) caused by the normal operation of freight barging that is otherwise consistent with law; or

(5) authorized by the commissioner after reasonable public notice.

(b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(c) This section may not be construed to affect or abridge valid existing rights.

(d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

(1) entry is made without injury or damage to the land;

(2) entry is made in the least obtrusive manner possible;

(3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

(4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.

(f) A violation of (a) of this section is a class B misdemeanor.

Public Trust Doctrine

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- (b) The department shall adopt regulations implementing this section.
- (c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.
- (d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.
- (e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.
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 - (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
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- (b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.
- (c) This section may not be construed to affect or abridge valid existing rights.
- (d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.
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 - (1) entry is made without injury or damage to the land;
 - (2) entry is made in the least obtrusive manner possible;
 - (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and
 - (4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.
- (f) A violation of (a) of this section is a class B misdemeanor.

NOVEMBER 2003 COMPILATION¹ AND ANNOTATION OF
AMENDMENTS AND OTHER CONGRESSIONAL ACTIONS AFFECTING
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT
Pub. L. 96-487, 94 Stat. 2371 (1980)

P. L. 97-394, 96 Stat. 1966 (December 30, 1982), "Department of the Interior Appropriations Act, FY 1983":

Title I at 1970, OPERATION OF THE NATIONAL PARK SYSTEM, affects concessionaire and guide services in Alaska (16 USC 20b note), as follows:

Provided, That the Park Service shall not enter into future concessionaire contracts, including renewals, that do not include a termination for cause clause that provides for possible extinguishment of possessory interests excluding depreciated book value of concessionaire investments without compensation.

Title I at 1971, CONSTRUCTION, authorizes funds (amends 16 U.S.C. 451) to remain available until expended past the fiscal year (16 USC 3195), as follows:

For construction, improvements, repair or replacement of physical facilities, without regard to the Act of August 24, 1912, as amended . . . for the Federal share of the construction and development cost for the Alaska Interagency Visitor Centers of Anchorage, Fairbanks, and Tok, Alaska, pursuant to section 1305 of the Alaska National Interest Lands Conservation Act (Public Law 96-487).

SEC. 110 at 1982, GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR, amends ANILCA 1002(e)(2)(C) regarding exploration plans of the coastal plain of the Arctic National Wildlife Refuge directing the Secretary to adopt regulation regarding use of confidential information acquired from any lease sale, as follows:

*SEC. 110. Notwithstanding any other provision of law, section 1002 of the Alaska National Interest Lands Conservation Act (Public Law 96-487)(16 U.S.C. 3142(e)(2)(C)) is amended as follows: Insert before the period: "and: **Provided**, that the Secretary shall prohibit by regulation any person who obtains access to such data and information from the Secretary or from any person other than a permittee from participation in any lease sale which includes the areas from which the information was obtained and from any commercial use of the information. The Secretary shall require that any permittee shall make available such data to any person at fair cost."*

¹ This compilation may be incomplete. Items contained in annual appropriation bills can affect federal land management authorizations without specifically referencing statutes and/or are not available electronically. This does not include amendments to the Alaska Native Claims Settlement Act, affecting ANILCA Titles IX and XIV.

SEC. 308 at 1996 prohibits use of funds which would permit exploration or development in wilderness, forest areas, or designated wilderness areas, **except in Alaska** and in certain national forest system lands released to management for any use; allows land management planning in Alaska and exploration and development of mineral resources on Federal lands within the Wilderness system or recommended under Forest Service RARE II.

SEC. 315 at 1998 explicitly does not amend ANCSA or ANILCA, but it does confirm (94 Stat. 2406) the Secretary of Interior's conveyance of surface estate on Admiralty Island to Shee Atika, Incorporated per ANILCA Section 506(c), subject to valid existing rights, 17(b) easements designated by the Secretary of Agriculture, and conveyance of subsurface to Sealaska Incorporated, as follows:

*SEC. 315. The titles conveyed by and the easements and restrictions heretofore reserved and imposed by the Secretary of the Interior pursuant to section 506(c) of Public Law 96-487 are hereby confirmed in all respects: **Provided, That nothing herein shall be deemed to amend the Alaska National Interest Lands Conservation Act or the Alaska Native Claims Settlement Act.***

P. L. 97-468, 96 Stat. 2543 (January 14, 1983), "Rail Safety and Service Improvement Act of 1982": Provides guidance for the transfer of the Alaska Railroad to protect existing rights-of-way and to not affect state and Native Corporation land entitlement and related court actions.

SEC. 613(a) at 2577 exempts "*actions taken pursuant to this title*" in transfer of rail properties of the Alaska Railroad from the provisions of the Administrative Procedures Act, Federal Advisory Committee Act, and National Environmental Policy Act, among others, "*. . . except to the extent that such laws may be applicable to granting of rights-of-way under section 609 of this title.*"

SEC. 613(b) exempts application of this title in transfer of rail properties of the Alaska Railroad to affect prior withdrawal or reservation of land for the use of the Alaska Railroad under the Alaska Statehood Act, ANCSA, ANILCA and general land and land management laws of the United States.

SEC. 613(d) contains savings clauses for acreage entitlement to the state and Native corporations.

SEC. 613(e) states:

With respect to interests of Native Corporations under [ANCSA and ANILCA], except as provided in this title, nothing . . . affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

SEC. 615(b)(5) at 2578 amends ANILCA Section 202(3)(a) in removing authority of national park regulations for fish, wildlife, and other park values within the Alaska Railroad right-of-way crossing Denali National Park and Preserve:

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1(3)(a)) is amended by striking the third sentence.

P. L. 98-620, 98 Stat. 3335 (November 8, 1984) *"An Act To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes"*:

SEC. 402(22)(A) at 3358 amends ANILCA by repealing Sec. 807(b), thereby deleting the requirement for precedence of district court and appellate courts to hear civil actions filed for judicial enforcement of the ANILCA Sec. 804 priority for subsistence uses over scheduling for other matters, as follows:

(22)(A) Section 807(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3117(b)) is repealed.

SEC. 402(22)(B) at 3358-3359 deletes all of ANILCA Sec. 1108 rights of way "EXPEDITED JUDICIAL REVIEW" and replaces it as follows:

(B) Section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168) is amended to read as follows:

"INJUNCTIVE RELIEF"

"SEC. 1108. No court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursuant to this title except in conjunction with a final judgment entered in a case involving an action pursuant to this title."

P. L. 99-235, 99 Stat. 1761 (January 9, 1986) *"To amend section 504 of the Alaska National Interest Lands Conservation Act to promote the development of mineral wealth in Alaska"*:

SEC. 2(a) at 1761 amends ANILCA Sec. 504(c), as follows:

(1) by adding the following after the words "two hundred-seventy days after the date of the enactment of this Act" in subparagraph (A) of paragraph (1) of subsection (c): "(or, with respect to an unperfected claim within the Greens Creek watershed portion of the Admiralty Island National Monument, within five years and three months after the date of the enactment of this Act.)"

- (2) by striking the period at the end of subparagraph (A) of paragraph (2) of subsection (c) and by inserting in lieu thereof the following: "or subparagraph(c)(2)(C)";
- (3) by adding a new subparagraph (C) after subparagraph (B) of paragraph (2) of subsection (c) as follows:
- “(C) Any permit to explore an unperfected mining claim within Admiralty Island National Monument during the period beginning on the date five years and one day after the date of enactment of this Act shall terminate on the date six years after the date of enactment of this Act.”
- (4) by striking the words "before the expiration of such permit" from paragraph (1) of subsection (e) and by inserting in lieu thereof the words "on or before the date five years after the date of enactment of this Act";
- (5) by striking the words "upon the expiration of such permit" from paragraph (2) of subsection (e) and by inserting in lieu thereof the words "at midnight, December 2, 1986,"; and
- (6) by adding the following new paragraph (3) at the end of subsection (e):
- “(3) No patent of any type shall be issued under this subsection with respect to any unperfected mining claim with regard to which the holder thereof has not notified the Secretary pursuant to paragraph (1) of this subsection on or before the date five years after the date of enactment of this Act.”

SEC. 2(b) at 1761-1762 amends ANILCA Sec. 504 by adding new subsection (k) at the end, which directs the Secretary regarding agreements for uses of Shee Atika, Incorporated, lands and authorizing execution of similar agreements with regards to timber harvest, construction of roads, and other activities that may affect wilderness areas within the boundaries of the Admiralty Island National Monument, as follows:

- (k) PROTECTION AGREEMENTS.—(1) Subject to the availability of necessary appropriations, the Secretary shall undertake to negotiate an agreement acceptable to and binding on Shee Atika, Incorporated, its successors and assigns, whereby it is agreed that during the term of such agreement there shall occur on lands within the boundary of the Admiralty Island National Monument which as of October 1, 1985, were owned by Shee Atika, Incorporated, no harvesting of timber, construction of roads, or any other activities which would impair the suitability of such lands for preservation as wilderness.*
- (2) During the period an agreement as described in paragraph (1) is in effect the requirements of Corps of Engineers permit numbered 071-OYD-2-810133, Chatham Strait 92 shall be suspended so far as such requirements are applicable to lands subject to such an agreement.*
- (3) After the execution of the agreement described in paragraph (1) of this subsection, and subject to the availability of necessary agreements acceptable to and binding on Shee Atika, Incorporated, its successors and assigns, for periods after the expiration of the agreement described in paragraph (1). The provisions of paragraph (2) shall apply during the period any agreements executed pursuant to this paragraph are in effect.*

(4) The Secretary is authorized to execute agreements similar to the agreement described in paragraph (1) with regard to any lands within the boundaries of the Admiralty Island National Monument which are owned by an entity other than the United States.

P. L. 99-258, 100 Stat. 42 (March 19, 1986):

Amends ANILCA Sec. 901(a) by striking "five years after the date of execution" each time it occurs in the subsection and replacing it with: "six years after the date of execution".

P. L. 99-644, 100 Stat. 3581 (November 10, 1986), "To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation.":

Amends ANILCA Sec. 901(a) by striking "six years after the date of execution" each time it occurs in the subsection and replacing it with: "eight years after the date of execution" and by striking "seven years after the date of enactment" wherever it occurs in the subsection and replacing it with "nine years after the date of enactment".

P. L. 100-203, 101 Stat. 1330 (December 22, 1987), "Omnibus Budget Reconciliation Act of 1987", "Title V—Energy and environmental programs":

SEC. 5105 at 1330-259, ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, amends ANILCA Sec. 1008:

Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

- (1) Subsections (c) and (e) are deleted in their entirety.*
- (2) The second sentence of subsection 1008(d) is deleted.*

P. L. 100-241, 101 Stat. 1788 (February 3, 1988), "Alaska Native Claims Settlement Act Amendments of 1987":

SEC. 11 at 1806-1810 amends ANILCA Sec. 907 (43 U.S.C. 1636) "ALASKA LAND BANK" as follows:

- (1) Replace "subsection (c)(2)" with "subsection (d)(1)",
- (2) Delete the proviso of subsection (a) "lands not owned by landowners described in subsection (c)(2) shall not" and replace it with "no lands shall",

(3) Delete ANILCA Sec. 907(c), (d) and (e) and replace with language addressing:

(c) *BENEFITS TO PRIVATE LANDOWNERS . . . ,*

(d) *AUTOMATIC PROTECTIONS FOR LANDS CONVEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. . . , and:*

(e) *CONDEMNATION.—All land subject to an agreement made pursuant to subsection (a) and all land, and interests in land, conveyed or subsequently reconveyed pursuant to the Alaska native Claims Settlement Act to a native individual, Native Corporation, or Settlement Trust shall be subject to condemnation for public purposes in accordance with the provisions of this Act and other applicable law.”; and*

(4) Retains ANILCA Sec. 907(f) and adds a new subsection:

(g) *STATE JURISDICTION.—Except as expressly provided in subsection (d), no provision of this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.*

P. L. 100-395, 102 Stat. 979 (August 16, 1988), “Submerged Lands Act of 1988”, “to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska”:

SEC. 101-103 at 979 deletes all of ANILCA Sec. 901 (94 Stat. 2430) and replaces it with new Sec. 901(a)(1)-(4), (b)(1)-(2), (c)(1)-(3), and (d). In summary, Sec. 101 addresses acreage calculations regarding submerged lands, directs related conveyances, and defines navigable. Sec. 102 directs the changes to not affect prior land exchanges. Sec. 103 directs the Secretary to report to Congress on priorities for acquisitions of private and state lands within conservation system units. The statute of limitations on navigability decisions is deleted.

SEC. 201 at 981 amends ANILCA Section 1302(h) (94 Stat. 2430) as follows:

. . . is amended by redesignating the section “(h)(1)” and by adding the following new subsection:

(2) Nothing in this Act or any other provision of law shall be construed as authorizing the Secretary to convey, by exchange or otherwise, lands or interest in lands within the coastal plain of the Arctic National Wildlife Refuge (other than land validly selected prior to July 28, 1987), without prior approval by Act of Congress.

SEC. 301 amends ANILCA Sections 303(2) and 304 by redesignating lands to part of the Arctic National Wildlife Refuge as follows:

The lands described in Public Land Order 6607 of July 8, 1985 (50 Fed. Reg. 130), comprising approximately three hundred and twenty-five thousand acres, are hereby included as part of the Arctic National Wildlife Refuge to be subject to and administered in accordance with the provisions of section 303(2) and 304 of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96-487) and other applicable statutes.

P. L. 100-689, 102 Stat. 4161 (November 18, 1988) "Sec. 401. VETERANS PREFERENCES WITHIN LOCAL HIRE OF ALASKA CONSERVATION SYSTEM UNITS":

SEC. 401 at 4177 extends the ANILCA employment preference to veterans. (ANILCA Sec. 1308 modifies the federal job process to give a preference to local residents competing for employment in the Alaska conservation system units.) SEC. 401 amends ANILCA Sec. 1308 (16 U.S.C. 3198) "by redesignating subsection (b) as subsection (c)" and inserting after (a) a new subsection (b), as follows:

(b) PREFERENCE ELIGIBLES WITHIN LOCAL HIRE.—Notwithstanding the provisions of subsection (a), any individual who is eligible to be selected for a position under the provisions of subsection (a) and is a preference eligible as defined in section 2108(3) of title 5, United States Code, shall be given employment preference, consistent with the preference in the competitive service as defined in section 2102 of such title for which such person is eligible under subchapter I of chapter 33 of such title, in selection to such position.

P. L. 101-378, 104 Stat. 468 (August 17, 1990) "Admiralty Island National Monument Land Management Act of 1990":

SEC. 201 at 468:

(b) PURPOSE—The purpose of this title is to improve Federal management of lands on Admiralty Island, Alaska, as provided herein.

SEC. 202 at 468-469:

(2) land management and Federal administration of Admiralty Island National Monument may be enhanced by Federal land acquisitions, through land exchanges or otherwise, and by cooperative agreements between the Federal Government and the indigenous residents of the island, the people of the city of Angoon and the Native Village Corporation, Kootznoowoo, Incorporated.

SEC. 203 at 469 "LAND ACQUISITION AND EXCHANGE" amends ANILCA Sec. 506(a) (94 Stat. 2406) by adding language as a new paragraph authorizing cooperative agreements

and agreements for land acquisitions, through exchange or otherwise, and requires a report to Congress, as follows:

(9)(A) The Secretary is authorized and directed to enter into such cooperative agreements and agreements for land acquisitions, through exchange or otherwise, with Kootznoowoo as are deemed necessary by the Secretary to carry out the purposes specified in sections 201 and 503 of this Act and to improve the management of Federal lands on Admiralty Island.

(B) The Secretary shall make every effort to complete agreements within eighteen months of the date of enactment of this paragraph.

(C) The Secretary shall report to Congress before the end of such eighteen-month period on the status and results of negotiations with Kootznoowoo. The report shall include, but not be limited to, any Kootznoowoo properties proposed to be acquired by the United States, any Federal land or other compensation to be offered in exchange, and the text of any proposed or executed agreements.

(D) Any lands on Admiralty Island acquired by the United States pursuant to this paragraph shall be added to and incorporated within the Admiralty Island National Monument.

(E) The inability of the Secretary and Kootznoowoo to reach agreement shall not preclude subsequent negotiations at any time for the purposes of land exchanges or other matters.

(F) Enactment of this paragraph shall not create any right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States.

SEC. 204 at 469-470 "LAND SELECTION CONSOLIDATION" amends ANILCA Sec. 506(a)(5) by adding new subparagraphs "(C)" and "(D)" which provide for exchanges of land pursuant to ANILCA Sec. 1302(h) and availability for exchange in relation to state selections and the Mining Law of 1872, with subsurface estate granted to Sealaska, Inc., as follows:

(C) In order to consolidate Federal land ownership and improve management of all land and timber resources in the area, the lands between such sale area and lands lying to the east of such sale area which have been or may be conveyed to Kootznoowoo, pursuant to this paragraph shall be made available by the Secretary for an exchange between the Federal Government and Kootznoowoo, Incorporated, pursuant to the terms of section 1302(h) of this Act. If such sale is voluntarily terminated, or is canceled or forfeited in accordance with applicable law and regulations, then the lands within the sale area shall also be made available for exchange. The availability of the lands within the sale area for exchange shall continue for one year following the date the sale is completed and closed, or for one year following its termination, cancellation, or forfeiture, whichever is later. Nothing in this section shall affect valid land selections which the State of Alaska has filed with the Federal Government pursuant to Public Law 85-508, nor shall this section cause these lands to be removed from entry pursuant to the Mining Law of 1872.

(D) Subject to lode mining claims, known as KAEL 1-216 inclusive, and valid existing rights, the subsurface estate in the lands conveyed to Kootznoowoo, Incorporated, pursuant to subparagraph (C) shall be granted to Sealaska, Incorporated.

Nothing in subparagraphs (C) or (D) shall create a right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States.

SEC. 205(a) at 470 amends ANILCA Section 703(a)(1) (16 U.S.C. 1132 note) by deleting "*Admiralty Island National Monument Wilderness*" and inserting "*Kootznoowoo Wilderness*".

SEC. 205(b) at 470 establishes 17.34 acres as the Angoon Administrative Site pursuant to (b)(1) for uses related to administration of the Tongass, as referenced in ANILCA Sec. 506(a)(3)(A) on Admiralty. Sec. 205(b)(2) requires the boundaries to be adjusted and resurveyed under (A) description with (B) a perpetual public easement for the Angoon-Killisnoo Road. (C) provides an easement for road and utility access to connect and follow the Relay Road right of way, subject to valid existing rights except those of Kootznoowoo, Inc. and providing certain other provisions for structures, improvements, and management of the easements. Sec. 205(b)(3) requires the title to be quitclaimed by Kootznoowoo to the Secretary of Agriculture. Sec. 205(b)(4) states that paragraphs (2) and (3) are subject to dismissal of litigation with prejudice by Kootznoowoo, Incorporated against the Department of Agriculture, with each bearing their respective litigation costs.

P. L. 101-380, 104 Stat. 484 (August 18, 1990), "Oil Pollution Act of 1990", "Subtitle C—Provisions Applicable to Alaska Natives":

SEC. 8301 at 572, LAND CONVEYANCES, amends ANILCA (43 U.S.C. 1642) by adding a new section after Sec. 1437, as follows:

SEC. 1438. Solely for the purpose of bringing claims that arise from the discharge of oil, the Congress confirms that all right, title, and interest of the United States in and to the lands validly selected pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by Alaska Native corporations are deemed to have vested in the respective corporations as of March 23, 1989. This section shall take effect with respect to each Alaska Native corporation only upon its irrevocable election to accept an interim conveyance of such land and notice of such election has been formally transmitted to the Secretary of the Interior.

SEC. 8302 at 572, IMPACT OF POTENTIAL SPILLS IN THE ARCTIC OCEAN ON ALASKA NATIVES, amends ANILCA Sec. 1005 (16 U.S.C. 3145) as follows:

(1) by amending the heading to read as follows:

*"WILDLIFE RESOURCES PORTION OF STUDY AND IMPACT OF
POTENTIAL OIL SPILLS IN THE ARCTIC OCEAN"*

(2) by inserting "(a)" after "SEC. 1005."; and

(3) by adding at the end the following:

"(b)(1) The Congress finds that—

"(A) Canada has discovered commercial quantities of oil and gas in the Amalagak region of the Northwest Territory;

"(B) Canada is exploring alternatives for transporting the oil from the Amalagak field to markets in Asia and the Far East;

"(C) one of the options the Canadian Government is exploring involves transshipment of oil from the Amalagak field across the Beaufort Sea to tankers which would transport the oil overseas;

"(D) the tankers would traverse the American Exclusive Economic Zone through the Beaufort Sea into the Chuckchi Sea and then through the Bering Straits;

"(E) the Beaufort and Chuckchi Seas are vital to Alaska's Native people, providing them with subsistence in the form of walrus, seals, fish, and whales;

"(F) the Secretary of the Interior has conducted Outer Continental Shelf lease sales in the Beaufort and Chuckchi Seas and oil and gas exploration is ongoing;

"(G) an oil spill in the Arctic Ocean, if not properly contained and cleaned up, could have significant impacts on the indigenous people of Alaska's North Slope and on the Arctic environment and

"(H) there are no international contingency plans involving our two governments concerning containment and cleanup of an oil spill in the Arctic Ocean.

"(2)(A) The Secretary of the Interior, in consultation with the Governor of Alaska, shall conduct a study of the issues of recovery of damages, contingency plans, and coordinate actions in the event of an oil spill in the Arctic Ocean.

"(B) The Secretary shall, no later than January 31, 1991, transmit a report to the Congress on the findings and conclusions reached as the result of the study carried out under this subsection.

"(c) The Congress calls upon the Secretary of State, in consultation with the Secretary of the Interior, the Secretary of Transportation, and the Governor of Alaska, to begin negotiations with the Foreign Minister of Canada regarding a treaty dealing with the complex issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean.

"(d) The Secretary of State shall report to the Congress on the Secretary's efforts pursuant to this section no later than June 1, 1991."

P. L. 101-626, 104 Stat. 4426 (November 28, 1990) "Tongass Timber Reform Act":

TITLE I—FOREST MANAGEMENT PROVISIONS

SEC. 101 at 4426 amends ANILCA by deleting Sec. 705(a) (16 U.S.C. 539d(a)) and replacing it with:

SEC. 705. (a) Subject to appropriations, other applicable law, and the requirements of the National Forest Management Act of 1976 (Public Law 94-588) except as provided in subsection (d) of this section, the Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.

SEC. 102 at 4426 amends ANILCA by deleting Sec. 705(d) (16 U.S.C. 539d(d)) and replacing it with:

(d) All provisions of section 6(k) of the National Forest Management Act of 1976 (16 U.S.C. 1604(k)) shall apply to the Tongass National Forest except that the Secretary need not consider economic factors in the identification of lands not suited for timber production.

SEC. 103(a) at 4426-4427 amends ANILCA Sec. 705 (16 U.S.C. 539d) by adding a new subsection:

(e) In order to assure protection of riparian habitat, the Secretary shall maintain a buffer zone of no less than one hundred feet in width on each side of all Class I streams in the Tongass National Forest, and on those Class II streams which flow directly into a Class I stream, within which commercial timber harvesting shall be prohibited, except where independent national forest timber sales have already been sold prior to March 1, 1990, or where volume has been released prior to March 1, 1990; to either the Alaska Pulp Corporation or the Ketchikan Pulp Company pursuant to the long-term timber sale contracts numbered 12-11-010-1545 and A10fs-1042 respectively. If such an independent timber sale or released volume is within the buffer zone, the Secretary shall make every effort to relocate such independent sale or released volume to an area outside of the buffer zone. The Secretary shall use best management practices, as outlined in the Region 10 Soil and Water Conservation handbook (FSH 2509.22), January 1990, to assure the protection of riparian habitat on streams or portions of streams not protected by such buffer zones. For the purposes of this subsection, the terms 'Class I streams' and 'Class II streams' mean the same as they do in the Region 10 Aquatic Habitat Management Handbook (FSH 2609.24), June 1986.

SEC. 103(b) at 4427 further amends ANILCA Sec. 705 by requiring:

No later than one year after the date of enactment of this Act, the Secretary of Agriculture, in consultation with the State of Alaska, the National Marine Fisheries Service, and affected private land owners, shall prepare and transmit to

the Congress a study containing recommendations on the need, if any, to standardize riparian management practices for Federal, State, and private lands within the Tongass National Forest.

SEC. 104(a) at 4427 amends ANILCA Sec. 706(a) (16 U.S.C. 539e(a)) by striking the second sentence and amends ANILCA Sec. 706(b) (16 U.S.C. 539e(b)), as follows:

- (1) Strike "and (4)" and insert in lieu thereof "(4)".*
- (2) Strike the period at the end of the subsection and insert ", and (5) the impact of timber management on subsistence resources, wildlife, and fisheries habitats."*

SEC. 104(b) at 4427 amends ANILCA Sec. 706(c) (16 U.S.C. 539e(c)) by inserting "*the southeast Alaska commercial fishing industry,*" before "*the Alaska Land Use Council*" for required consultation.

SEC. 105(a) at 4427 amends the National Forest Management Act of 1976 (16 U.S.C. 472a(i)(1)) to delete the exemption for sales of timber on National Forest System lands in Alaska.

SEC. 105(b) at 4427 amends ANILCA Sec. 705 (16 U.S.C. 539d) by adding a new subsection at the end to assure the continuation of the Small Business Administration timber sale program, as follows:

(f) Subject to appropriations, the provisions of this Act and other applicable law (including but not limited to the requirements of the National Forest Management Act of 1976 (Public Law 94-588)) and in order to assure the continuation of the Small Business Administration timber sale program, the Secretary shall, in consultation with the Administrator of the Small Business Administration and to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest to those purchasers qualifying as 'small business concerns' under the Small Business Act as amended (15 U.S.C. 631 et seq.).

SEC. 105(c) affects timber sales in the Tongass:

The provisions of subsections 105(a) and (b) of this section shall not apply to the purchase of timber within the Tongass National Forest pursuant to the long-term sale contracts numbered 12-11-010-1545 and A10fs-1042 between the United States and the Alaska Pulp Corporation, and between the United States and the Ketchikan Pulp Company, respectively.

SEC. 106. TENAKEE SPRINGS ROAD directs:

The Secretary of Agriculture shall not construct a vehicular access road connecting the Indian River and Game Creek roads, and shall not engage in any further efforts to connect the city of Tenakee Springs with the logging road system

on Chichagof Island, unless the city council of Tenakee Springs and Hoonah both determine that the road should be constructed and so inform the Secretary.

TITLE II—TONGASS NATIONAL FOREST LANDS PROTECTION

SEC. 201 at 4428, LUD II MANAGEMENT AREAS, amends ANILCA Title V by adding a new section 508 that designates 12 areas as LUD II in perpetuity: Yakutat Forelands, Berners Bay, Anan Creek, Kadashan, Lisianski River/Upper Hoonah Sound, Mt. Calder/Mt. Holbrook, Nutkwa, Outside Islands, Trap Bay, Point Adolphus/Mud Bay, Naha, and Salmon Bay.

SEC. 202 at 4429-4430, WILDERNESS DESIGNATION, amends ANILCA Sec. 703 (16 U.S.C. 1132-1136) by adding 6 additional wilderness designated areas in the Tongass National Forest: Pleasant/Lemusurier/Inian Islands, Young Lake addition, South Etolin Island, Chuck River, Karta River, and Kuiu.

SEC. 203 at 4430 requires the Secretary, as part of revising the Tongass Land Management Plan, in consultation with the State of Alaska, the City of Tenakee Springs, and other interested parties, a comprehensive study of the Kadashan LUD II Management Area. The Secretary shall report to Congress, which shall include:

- (a) an assessment of the natural, cultural, environmental, fish and wildlife (including habitat) resources and values of such area; and*
- (b) an assessment of the need for, potential uses, alternatives to and environmental impacts of providing a transportation corridor route through the Kadashan river valley.*

P. L. 102-172, 105 Stat. 1206

SEC. 8126 authorized a land exchange between Calista Corporation and the Secretary to resolve the majority of lands included within the Yukon Delta National Wildlife Refuge (established by ANILCA Section 303(7)) thus under the management restrictions of ANCSA 22(g).

P. L. 102-415, 106 Stat. 2112 (October 14, 1992) "Alaska Land Status Technical Corrections Act of 1992":

SEC. 2 at 2112, FORT DAVIS NATIVE ALLOTMENT, amends ANILCA Sec. 905(a)(1) (43 U.S.C. 1634(a)(1)) by inserting "(A)" after "(1)" and by inserting "or within Fort Davis (except as provided in subparagraph (B))" after "Naval Petroleum Reserve No. 4"; and by adding the following new subparagraph at the end:

- (B) The land referred to in subparagraph (A) with respect to Fort Davis—*
 - (i) shall be restricted to—*

(I) the allotment applications named in the decision published at 96 IBLA 42 (1987) and to the acreage involved in those applications; or
(II) the heirs of an applicant who made an application described in subclause (I) and
(ii) shall be subject to valid existing rights and an easement for the Iditarod National Historic Trail established by section 5(a)(7) of the National Trails System Act (16 U.S.C. 1244(a)), but pending final determination of the trail's location, the easement shall be located on an interim basis by the Secretary, in consultation with the Iditarod Historic Trail Advisory Council.

SEC. 12 at 2115-2118, ALASKA NATIVE ALLOTMENTS, amends ANILCA Sec. 905 (43 U.S.C. 1634) by adding a new section at the end, with additional provisions affecting allotments and corporations.

SEC. 16 at 2124, LOCAL HIRE, extends the ANILCA Section 1308 (16 USC Sec. 3198) local hire preference to jobs related to the management of all public lands in Alaska. Section 16 amends ANILCA Sec. 1308(a) by striking "*a conservation unit*" and inserting "*public lands*" and by striking "*such unit*" everywhere it occurs and replacing it with "*public lands*".

P. L. 103-437, 108 Stat. 4581 (November 2, 1994) "*To make technical improvement in the United States Code by amending provisions to reflect the current names of congressional committees*":

SEC. 6(d)(31) at 4584 amends ANILCA Sec. 706(a) and 1315(d) (16 U.S.C. 5393(a), 3203(d)) to strike "*Interior and Insular Affairs*" and replace with "*Natural Resources*".

SEC. 6(y) at 4587 amends ANILCA Sec. 806 (16 U.S.C. 3116) to strike "*Interior and Insular Affairs*" and replace with "*Natural Resources*".

P. L. 104-42, 109 Stat. 353 (November 2, 1995) "*An Act to amend the Alaska Native Claims Settlement Act, and for other purposes*":

SEC. 105 at 355 amends ANILCA Sec. 1431(o) (94 Stat. 2542) by adding at the end:

(5) Following the exercise by Arctic Slope Regional Corporation of its option under paragraph (1) to acquire the subsurface estate beneath lands within the National Petroleum Reserve—Alaska selected by Kuukpik Corporation, where such subsurface estate entirely surrounds lands subject to a Native allotment application approved under section 905 of this Act, and the oil and gas in such lands have been reserved to the United States, Arctic Slope Regional Corporation, at its further option and subject to the concurrence of Kuukpik

Corporation, shall be entitled to receive a conveyance of the reserved oil and gas, including all rights and privileges therein reserved to the United States, in such lands. Upon the receipt of a conveyance of such oil and gas interests, the entitlement of Arctic Slope Regional Corporation to in-lieu subsurface lands under section 12(a)(1)) shall be reduced by the amount of acreage determined by the Secretary to be reduced by the amount of acreage determined by the Secretary to be conveyed to Arctic Slope Regional Corporation pursuant to this paragraph.

SEC. 106(a) at 355 references ANILCA Sec. 102(4) (94 Stat. 2375), requiring the Secretary to report within 9 months as follows:

(2) An assessment of the potential impacts of additional allotments on conservation system units as that term is defined as in section 102(4) of the Alaska National Interest Lands Conservation Act (94 Stat. 2375).

(3) Recommendations for any additional legislation that the Secretary concludes is necessary. "

P. L. 104-167, 110 Stat. 1451 (July 29, 1996), "Mollie Beattie Wilderness Area Act":

In its entirety, the statute amends ANILCA Sec. 702(3):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 702(3) of Public Law 96-487 is amended by striking "Arctic National Wildlife Refuge Wilderness" and inserting "Mollie Beattie Wilderness". The Secretary of the Interior is authorized to place a monument in honor of Mollie Beattie's contributions to fish, wildlife, and waterfowl conservation and management at a suitable location that he designates within the Mollie Beattie Wilderness.

P. L. 104-333, 110 Stat. 4093 (November 12, 1996) "Omnibus Parks and Public Lands Management Act":

SEC. 302 ANAKTUVUK PASS LAND EXCHANGE (16 USC 410hh note) at 4117-4119: Section 302(a) recognizes inadequacy of linear easements reserved for all-terrain vehicles and need for residents of Anaktuvuk Pass to use all-terrain vehicles in summer to access caribou and other subsistence resources. It also recognizes the land exchange agreements need ratification by Congress. Section 302(b) ratifies the agreement of 1992, amended in 1993 and 1994, and directs the lands acquired to be administered as part of Gates of the Arctic National Park and Preserve, with maps.

SEC. 302(c)(1) amends ANILCA Section 701(2) (94 Stat. 2371) by adding 56,825 acres of wilderness and deleting 73,993 acres as wilderness "thus revising the Gates of the Arctic Wilderness to approximately 7,034,832 acres".

SEC. 302(c)(2) amends ANILCA Section 201(8)(a) (94 Stat. 2417) by decreasing Noatak National Preserve acreage from "*approximately six million four hundred and sixty thousand acres*" to "*approximately 6,477,168 acres*" and references the above maps accompanying the exchange.

SEC. 302(c)(3) amends ANILCA Section 701(7) (94 Stat. 2417) by increasing Noatak Wilderness by striking "*approximately five million eight hundred thousand acres*" and inserting "*approximately 5,817,168 acres.*"

SEC. 302(d) subsection (1) clarifies that private lands received via the exchange are conveyed subject to valid existing rights and shall be deemed received consistent with ANCSA 22(f). Under subsection (2) nothing in the exchange affects "*the preference for subsistence uses and access to subsistence resources otherwise provided under*" ANILCA.

SEC. 303 ALASKA PENINSULA SUBSURFACE CONSOLIDATION at 4119-4122: Excludes lands in a conservation system unit as defined in ANILCA Section 102(4) from availability for this exchange and directs terms for an exchange of Koniag Corporation subsurface 275,000 acres within Aniakchak National Monument and Preserve (ANILCA 201(1)), Alaska Peninsula National Wildlife Refuge (ANILCA 302(1)), and Becharof National Wildlife Refuge (ANILCA 302(2)). Directions to the Secretary include negotiations with the State of Alaska for selection rights and direct valuation of property rights.

SEC. 311 KENAI NATIVES ASSOCIATION LAND EXCHANGE at 4139-4145, cited as "**Kenai Natives Association Equity Act Amendments of 1996**" (43 USC 1784 note): Sec. 311 amends ANILCA Sec. 702(7) Kenai Wilderness (110 Stat. 4144) to add 592 acres, as part of completing conveyances to Kenai Natives Association and transferring land rights, in and near Kenai National Wildlife Refuge, including access easement, which were negotiated as directed by Public Law 102-458. Changes to implement Kenai Native Association Land adjustments include, among others:

such lands shall be automatically removed from the National Wildlife Refuge System and shall neither be considered as part of the Refuge nor subject to any laws pertaining solely to lands within the boundaries of the Refuge. The conveyance restrictions imposed by section 22(g) of ANCSA (i) shall then be ineffective . . .

SEC. 311 further designates 37,000 acres of Bureau of Land Management (BLM) land adjacent to Kanuti National Wildlife Refuge (ANILCA Sec. 302(4)) as withdrawn from entry and created as a special management area. In managing this new BLM area adjacent to Kanuti Refuge, Sec. 311 protects ANILCA Sec. 1110(b) access for inholdings and extends application of ANILCA Sec. 1110(a), as follows:

(A) Private access for any purpose, including economic development, to lands within the boundaries of the Special Management Area which are owned by third parties or are held in trust by the Secretary for third parties pursuant to the Alaska Native Allotment Act (25 U.S.C. 336). Such rights may be subject to restrictions issued by the BLM to protect subsistence uses of the Special Management Area.

(b) Existing public access across the Special Management Area. Section 1110(a) of ANILCA shall apply to the Special Management Area.

SEC. 703 GLACIER BAY NATIONAL PARK at 4185-4186: This section effectively amends ANILCA Sec. 203 (which prohibits any fees or entrance charges to parks in Alaska) by establishing a permit fee in Glacier Bay. A \$5.00 per person fee is required of passengers on cruise ships (accommodating 500 or more for at least 3 nights) and of concessionaires providing visitor services in Glacier Bay. A special fund is established to allocate 60% for emergency response equipment and to conduct studies, as follows:

Section 3(g) of Public Law 91-383 (16 U.S.C. 1a-2(g)) is amended by: striking "and park programs" and inserting the following at the end: "Sixty percent of the fees paid by permittees for the privilege of entering into Glacier Bay for the period beginning on the first full fiscal year following the date of enactment of this sentence shall be deposited into a special account and that such funds shall be available—

(1) to the extent determined necessary, to 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) to conduct investigations to quantify any effect of permittees' activity on wildlife and other natural resource values of Glacier Bay National Park. The investigations provided for in this subsection shall be designed to provide information of value to the Secretary, in determining any appropriate limitations on permittees' activity in Glacier Bay. The Secretary may not impose any additional permittee operating conditions in the areas of air, water, and oil pollution beyond those determined and enforced by other appropriate agencies. When competitively awarding permits to enter Glacier Bay, the Secretary may take into account the relative impact particular permittees will have on park values and resources, provided that no operating conditions or limitations relating to noise abatement shall be imposed unless the Secretary determines, based on the weight of the evidence from all available studies including verifiable scientific information from the investigations provided for in this subsection, that such limitations or conditions are necessary to protect park values and resources. Fees paid by certain permittees for the privilege of entering into Glacier Bay shall not exceed \$5 per passenger. For the purposes of this subsection, 'certain permittee' shall mean a permittee which provides overnight accommodations for at least 500 passengers for an itinerary of at least 3 nights, and 'permittee' shall mean a concessionaire providing visitor services within Glacier Bay. Nothing in this subsection authorizes the Secretary to require additional categories of

permits in, or otherwise increase the number of permits to enter Glacier Bay National Park."

SEC. 1035 REGULATIONS OF FISHING IN CERTAIN WATERS OF ALASKA:
SEC. 1035(a) amends ANILCA Sec. 202(2) description of Katmai National Park and Preserve. Subsections (c) and (d) are savings clauses that clarify these changes do not affect jurisdiction and management of water and submerged lands. Paragraphs (a) and (b) allow traditional fishing of spawned-out sockeye salmon in Naknek Lake and River, as follows:

(a) IN GENERAL.—Local residents who are descendants of Katmai residents who lived in the Naknek Lake and River Drainage shall be permitted, subject to reasonable regulations established by the Secretary of the Interior, to continue their traditional fishery for red fish within Katmai National Park (the national park and national preserve redesignated, established, and expanded under section 202(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1).

(b) RED FISH DEFINED.—For the purposes of subsection (a), the term "red fish" means spawned-out salmon that has no significant commercial value.

P. L. 105-83, 111 Stat. 1543 (1997):

SEC. 316. SUBSISTENCE. (16 U.S.C. 3102 note) Sec. 316(b) amends ANILCA Title VIII in subsections (b)(2)-(9) at 1592-1595 with a savings clause in Sec. 316(c) and a conditional effective date in Sec. 316(d), as follows:

Unless (16 U.S.C. 3102 note) and until laws are adopted in the State of Alaska which provide for the definition, preference, and participation specified in sections 803, 804, and 805 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 et seq.), the amendments made by subsection (b) of this section shall be effective only for the purposes of determining whether the State's laws provide for such definition, preference, and participation. The (NOTE: Certification. Alaska) Secretary shall certify before December 1, 1998 if such laws have been adopted in the State of Alaska. Subsection (b) shall be repealed on such date if such laws have not been adopted.

Such State law was not adopted, thus these amendments were repealed.

P. L. 105-277, 112 Stat. 2681 (October 21, 1998) "Omnibus Appropriations Bill 1998":

SEC. 123 at 259-261, **COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK,** amends ANILCA Title II (16 U.S.C. 410hh—4 note) with regards the reduction and

administration of commercial fishing within Glacier Bay National Park and Preserve. Sec. 123 affects the park unit, which was expanded and redesignated by ANILCA Sec. 202(1). Although Sec. 123 does not specify what section of ANILCA to insert the new language, it could be viewed as new provisions under either Sec. 202(1) or ANILCA Sec. 205 Commercial fishing. Sec. 123 reads as follows:

(a) GENERAL.—

(1) The Secretary of the Interior and the State of Alaska shall cooperate in the development of a management plan for the regulation of commercial fisheries in Glacier Bay National Park pursuant to existing State and Federal statutes and any applicable international conservation and management treaties. Such management plan shall provide for commercial fishing in the marine waters within Glacier Bay National Park outside of Glacier Bay Proper, and in the marine waters within Glacier Bay Proper as specified in paragraphs (a)(2) through (a)(5), and shall provide for the protection of park values and purposes, for the prohibition of any new or expanded fisheries, and for the opportunity for the study of marine resources.

(2) In the nonwilderness waters within Glacier Bay Proper, commercial fishing shall be limited, by means of non-transferable lifetime access permits, solely to individuals who—

- (A) hold a valid commercial fishing permit for a fishery in a geographic area that includes the nonwilderness waters within Glacier Bay Proper;*
- (B) provide a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that such individual engaged in commercial fishing for halibut, tanner crab, or salmon in Glacier Bay Proper during qualifying years which shall be established by the Secretary of the Interior within one year of the date of the enactment of this Act; and*
- (C) fish only with—*

- (i) longline gear for halibut;*
- (ii) pots or ring nets for tanner crab; or*
- (iii) trolling gear for salmon.*

(3) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the West Arm of Glacier Bay Proper (West Arm) north of 58 degrees, 50 minutes north latitude, except for trolling for king salmon during the period from October 1 through April 30. The waters of Johns Hopkins Inlet, Tarr Inlet and Reid Inlet shall remain closed to all commercial fishing.

(4) With respect to the individual: engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the East Arm of Glacier Bay Proper (East Arm) north of a line drawn from Point Caroline, through the southern end of Garforth Island to the east side of Muir Inlet, except that trolling for king salmon during the period from October 1 through April 30 shall be allowed south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet.

(5) *With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in Geikie Inlet.*

(b) *THE BEARDSLEE ISLANDS AND UPPER DUNDAS BAY.—Commercial fishing is prohibited in the designated wilderness waters within Glacier Bay National Park and Preserve, including the waters of the Beardslee Islands and Upper Dundas Bay. Any individual who—*

(1) on or before February 1, 1999, provides a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that he or she has engaged in commercial fishing for Dungeness crab in the designated wilderness waters of the Beardslee Islands, or Dundas Bay within Glacier Bay National Park pursuant to a valid commercial fishing permit in at least six of the years during the period 1987 through 1996;

(2) at the time of receiving compensation based on the Secretary of the Interior's determination as described below—

(A) agrees in writing not to engage in commercial fishing for Dungeness crab within Glacier Bay Proper;

(B) relinquishes to the State of Alaska for the purposes of its retirement any commercial fishing permit for Dungeness crab for areas within Glacier Bay Proper;

(C) at the individual's option, relinquishes to the United States the Dungeness crab pots covered by the commercial fishing permit; and

(D) at the individual's option, relinquishes to the United States the fishing vessel used for Dungeness crab fishing in Glacier Bay Proper; and

(3) holds a current valid commercial fishing permit that allows such individual to engage in commercial fishing for Dungeness crab in Glacier Bay National Park,

shall be eligible to receive from the United States compensation that is the greater of (i) \$400,000, or (ii) an amount equal to the fair market value (as of the date of relinquishment) of the commercial fishing permit for Dungeness crab, of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel, together with an amount equal to the present value of the foregone net income from commercial fishing for Dungeness crab for the period January 1, 1999, through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991, through December 31, 1996. Any individual seeking such compensation shall provide the consent necessary for the Secretary of the Interior to verify such net earnings in the fishery. The Secretary of the Interior's determination of the amount to be paid shall be completed and payment shall be made within six months from the date of application by the individuals described in this subsection and shall constitute final agency action subject to review pursuant to the Administrative Procedures Act in the United States District Court for the District of Alaska.

(c) DEFINITION AND SAVINGS CLAUSE.—

(1) As used in this section, the term "Glacier Bay Proper" shall mean the marine waters within Glacier Bay, including coves and inlets, north of a line drawn from Point Gustavus to Point Carolus.

(2) Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National park, or the tidal or submerged lands under any provision of State or Federal law.

SEC. 127 at 261 amends ANILCA Sec. 1302 (16 U.S.C. 3192a) **LAND ACQUISITION AUTHORITY**, as follows:

Notwithstanding any other provision of law, none of the funds provided in this Act or any other Act hereafter enacted may be used by the Secretary of the Interior, except with respect to land exchange costs and costs associated with the preparation of land acquisitions, in the acquisition of State, private, or other non-federal lands (or any interest therein) in the State of Alaska, unless, in the acquisition of any State, private, or other non-federal lands (or interests therein) in the State of Alaska, the Secretary seeks to exchange unreserved public lands before purchasing all or any portion of such lands (or interest therein) in the State of Alaska.

The above Section 127 directive to the Secretary of the Interior (to offer exchange lands before purchasing lands) applies to all acquisitions forevermore in Alaska until Congress enacts legislation that amends this limit on the Secretary's discretion.

SEC. 339. (a) - () at 295-296 amend ANILCA Title VIII but delay implementation. Sec. 339(a) was repealed under terms of (b), as follows:

(a) RESTRICTION ON FEDERAL MANAGEMENT UNDER TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.—

(1) Notwithstanding any other provision of law, hereafter neither the Secretary of the Interior nor the Secretary of Agriculture may, prior to December 1, 2000, implement or enforce any final rule, regulation, or policy pursuant to title VIII of the Alaska National Interest Lands Conservation Act to manage and to assert jurisdiction, authority, or control over land, water, and wild, renewable resources, including fish and wildlife, in Alaska for subsistence uses, except within—

(A) areas listed in 50 C.F.R. 100.3(b) (October 1, 1998) and

(B) areas constituting "public land or public lands" under the definition of such term found at 50 C.F.R. 100.4 (October 1, 1998).

(2) The areas in subparagraphs (A) and (B) of paragraph (1) shall only be construed to mean those public lands which as of October 1, 1998, were subject to federal management for subsistence uses pursuant to Title VIII of the Alaska National Interest Lands Conservation Act.

(b) SUBSECTION (a) REPEALED --

(1) The Secretary of the Interior shall certify before October 1, 1999, if a bill or resolution has been passed by the Alaska State Legislature to amend the Constitution of the State of Alaska that, if approved by the electorate, would enable the implementation of state laws of general applicability consistent with, and which provide for the definition, preference, and participation specified in sections 803, 804, and 805 of the Alaska National Interest Lands Conservation Act.

(2) Subsection (a) shall be repealed on October 1, 1999, unless prior to that date the Secretary of the Interior makes such a certification described in paragraph (1).

The certification above in SEC. 339(b) was not made, therefore SEC. 339(a) was repealed.

SEC. 339(c) at 296 is a technical amendment to ANILCA Sec. 805, affecting the time frame for establishment of subsistence resource regions and regional advisory committees. SEC. 339(d) is a savings clause applicable to all of Section 339.

(c) TECHNICAL AMENDMENTS TO THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.—Section 805 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3115) is amended—

(1) in subsection (a) by striking "one year after the date of enactment of this Act,"

(2) in subsection (d) by striking "within one year from the date of enactment of this Act."

(d) EFFECT ON TIDAL AND SUBMERGED LAND.—Nothing in this section invalidates, validates, or in any other way affects any claim of the State of Alaska to title to any tidal or submerged land in Alaska.

SEC. 353 provides funds and enables construction of facilities for transportation under ANILCA Title XI within the exterior boundary of Izembek National Wildlife Refuge, established by ANILCA Sections 303(3). Sec. 353 prohibits any part of the facilities from being built on Izembek National Wilderness, established by ANILCA Section 702(6) but determines that private land within the Izembek refuge designated-Wilderness is not part of the designated wilderness.

SEC. 353. KING COVE HEALTH AND SAFETY.

(a) ROAD ON KING COVE CORPORATION LANDS.—Of the funds appropriated in this section, not later than 60 days after the date of enactment of this Act, \$20,000,000 shall be made available to the Aleutians East Borough for the construction of an unpaved road not more than 20 feet in width, a dock, and marine facilities and equipment. Such road shall be constructed on King Cove Corporation Lands and shall extend from King Cove to such dock. The Aleutians East Borough, in consultation with the State of Alaska, shall determine the appropriate location of such dock and marine facilities. In no instance may any part of such road, dock,

marine facilities or equipment enter or pass over any land within Congressionally-designated wilderness in the Izembek National Wildlife Refuge (for purposes of this section, the lands within the Refuge boundary already conveyed to the King Cove Corporation are not within the wilderness area).
(b) KING COVE AIR STRIP.—

P. L. 105-317, 112 Stat. 3002 (October 30, 1998) “Glacier Bay National Park Boundary Adjustment Act of 1998”:

The Act affects ANILCA Sec. 202(1) and ANILCA Sec. 701(3) by providing authorization for the Secretary to exchange land within Glacier Bay National Park and Glacier Bay National Wilderness areas with the State of Alaska under specified conditions for a hydroelectric power project, and to modify the units' boundaries accordingly.

P. L. 105-333, 112 Stat. 3129 (October 31, 1998) “ANCSA Land Bank Protection Act of 1998”: *“To amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.”*

SEC. 1 and SEC. 2 amend ANILCA Sec. 907(d) Land Bank Protection and Third-Party Trespassers. SEC. 6 affects ANILCA Sec. 303(7) Yukon Delta Refuge land exchange. SEC. 9 amends ANILCA Sec. 905(a) allotment applications. SEC. 10 amends ANILCA Sec. 1307(b) Visitor Services. SEC. 11 requires ANILCA Sec. 1308 Local Hire report in a specific time period, and gives directions regarding ANILCA Sec. 1302(h) land exchanges, as follows:

SECTION 1. AUTOMATIC LAND BANK PROTECTION.

(a) LANDS RECEIVED IN EXCHANGE FROM CERTAIN FEDERAL AGENCIES.—The matter preceding clause (i) of section 907(d)(1)(A) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1636(d)(1)(A)) is amended by inserting “or conveyed to a Native Corporation pursuant to an exchange authorized by section 22(f) of the Alaska Native Claims Settlement Act or section 1302(h) of this Act or other applicable law” after “Settlement Trust”.

(b) LANDS EXCHANGED AMONG NATIVE CORPORATIONS.—Section 907(d)(2)(B) of such Act (43 U.S.C. 1636(d)(2)(B)) is amended—

(1) by striking “and” at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting “; and”; and

(3) by adding at the end the following:

“(iv) lands or interest in lands shall not be considered developed or leased or sold to a third party as a result of an exchange or conveyance of such land or interest in land between or among Native Corporations and trusts,

partnerships, corporations, or joint ventures, whose beneficiaries, partners, shareholders, or joint venturers are Native Corporations."

(c) ACTIONS BY TRUSTEE SERVING PURSUANT TO AGREEMENT OF NATIVE CORPORATIONS.—Section 907(d)(3)(B) of such Act (43 U.S.C. 1636(d)(3)(B)) is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; or"; and

(3) by adding at the end the following:

"(iii) to actions by any trustee whose right, title, or interest in land or interests in land arises pursuant to an agreement between or among Native Corporations and trusts, partnerships, or joint ventures whose beneficiaries, partners, shareholders, or joint venturers are native Corporations."

SEC. 2. DEVELOPMENT BY THIRD-PARTY TRESPASSERS.

Section 907(d)(2)(A)(i) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1636(d)(2)(A)(i)) is amended—

(1) by inserting "Any such modification shall be performed by the Native individual or Native Corporation." after "substantial modification.";

(2) by inserting a period after "developed state" the second place it appears; and

(3) by adding "Any lands previously developed by third-party trespassers shall not be considered to have been developed."

SEC. 3. RETAINED MINERAL ESTATE.

(a) IN GENERAL – Section 12(c)(4) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c)(4)) is amended—

(1) by redesignating subparagraphs (C) (D) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (B) the following new subparagraphs:

(C) Where such public lands are surrounded by or contiguous to subsurface lands obtained by a Regional Corporation under subsections (a) or (b), the Corporation may, upon request, have such public land conveyed to it.

(D)(i) A Regional Corporation which elects to obtain public lands under subparagraph (C) shall be limited to a total of not more than 12, 000 acres. Selection by a Regional Corporation of in lieu surface acres under subparagraph (E) pursuant to an election under subparagraph (C) shall not be made from any lands within a conservation system unit (as that term is defined by section 102(4) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(4)).

(ii) An election to obtain the public lands described in subparagraph (A), (B), or (C) shall include all available parcels within the township in which the public lands are located.

(iii) For purposes of this subparagraph and subparagraph (C), the term 'Regional Corporation' shall refer only to Doyon, Limited.'; and
(2) in subparagraph (E) (as so redesignated), by striking '(A) or (B)' and inserting '(A), (B), or (C)'.

(b) **FAILURE TO APPEAL NOT PROHIBITIVE**- Section 12(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c)) is amended by adding at the end the following:

'(5) Subparagraphs (A), (B), and (C) of paragraph (4) shall apply, notwithstanding the failure of the Regional Corporation to have appealed the rejection of a selection during the conveyance of the relevant surface estate.'

...

SEC. 6 CALISTA NATIVE CORPORATION LAND EXCHANGE.

(a) **CONGRESSIONAL FINDINGS.**—Congress finds and declares that—

(1) the land exchange authorized by section 8126 of Public Law 102-172 should be implemented without further delay;

(2) the Calista Corporation, the Native Regional Corporation organized under the authority of the Alaska Native Claims Settlement Act for the Yupik Eskimos of Southwestern Alaska, which includes the majority of the Yukon Delta National Wildlife Refuge—

... [omitted text]

(5) in light of the foregoing, it is appropriate and necessary in this unique situation that Congress authorize and direct the implementation of this exchange as set forth in this section in furtherance of the purposes and underlying goals of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

SEC. 9 allows legislative approval of Native allotment applications where State protests have been withdrawn or dismissed and the applications are "open and pending on the date of enactment of this paragraph"; such approval is subject to reservation of any easement, right-of-way, and trail for public use if the trail predated the applicant's claimed use and occupancy.

SEC. 9. ALASKA NATIVE ALLOTMENT APPLICATIONS

Section 905(a) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634(a)) is amended by adding at the end the following:

"(7) Paragraph (1) of this subsection shall cease to apply, to an application—

"(A) that is open and pending on the date of enactment of this paragraph;

"(B) if the lands described in the application are in Federal ownership other than as a result of reacquisition by the United States after January 3, 1959; and

"(C) if any protest which is filed by the State of Alaska pursuant to paragraph (5)(B) with respect to the application is withdrawn or

dismissed either before, on, or after the date of the enactment of this paragraph.

"(8)(A) Any allotment application which is open and pending and which is legislatively approved by enactment of paragraph (7) shall, when allotted, be made subject to any easement, trail, or right-of-way in existence on the date of the Native allotment applicant's commencement of use and occupancy.

"(B) The jurisdiction of the Secretary is extended to make any factual determinations required to carry out this paragraph."

SEC. 10 allows the Secretary flexibility of working with affected Native Corporations rather than just one Native Corporation, thus amends ANILCA Section 1307 for contracting visitor services, except sport fishing and hunting guiding activities, within any conservation unit, as follows:

SEC. 10. VISITOR SERVICES.

Paragraph (1) of section 1307(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197(b)) is amended—

(1) by striking "Native Corporation" and inserting "Native Corporations"; and

(2) by striking "is most directly affected" and inserting "are most directly affected"

SEC. 11 requires a report submitted by the Secretaries of Agriculture and Interior concerning the implementation of the local hire preferences for public lands employment and relationship to the federal competitive service opportunities. Persons previously appointed under the local hire process were unable to become permanent employees of the Department with all the attendant benefits in the competitive service, even if they acquired all the skills. This amends ANILCA Section 1308 as follows:

SEC. 11. LOCAL HIRE REPORT.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary of the Interior shall transmit to Congress a report.

(b) LOCAL HIRE.—The report required by subsection (a) shall—

(1) indicate the actions taken in carrying out subsection (b) of section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198);

(2) address the recruitment processes that may restrict employees hired under subsection (a) of such section from successfully obtaining positions in the competitive service; and

(3) describe the actions of the Secretary of the Interior in contracting with Alaska Native Corporations to provide services with respect to public lands in Alaska.

(c) COOPERATION.—The Secretary of Agriculture shall cooperate with the Secretary of the Interior in carrying out this section to the Forest Service.

P. L. 105-391, 112 Stat. 3497, (November 13, 1998) "National Parks Omnibus Management Act of 1998": *"To provide for improved management and increased accountability for certain National Park Service programs, and for other purposes."*

The Act contains numerous directives affecting National Park career development, resource inventory and management, concessions management, and miscellaneous provisions regarding fees that could affect park management decisions in Alaska park units. Section 419 Savings Provisions specifically exempts the 1998 Glacier Bay Prospectus for cruise ship services but provides an expiration date of December 31, 2009 for any preferential right of renewal issued under that prospectus.

P. L. 106-31, 113 Stat. 57, (May 21, 1999) "Emergency Supplemental Appropriations":

Amends P. L. 105-277 (above) with technical changes and provides compensation through a specified process to fish processors, crew members, communities, and others affected by the congressional closures of Alaska-regulated commercial fishing in Glacier Bay National Park, as follows:

SEC. 501. GLACIER BAY.

(a) DUNGENESS CRAB FISHERMEN.—Section 123(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277 (16 USC 410hh-4 note.)) is amended—

(1) in paragraph (1)—

(A) by striking "February 1, 1999" and inserting "August 1, 1999"; and

(B) by striking "1996" and inserting "1998"; and

(2)(A) by striking "of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel,"; and

(B) by striking "the period January 1, 1999, through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991, through December 31, 1996." and inserting "for the period beginning January 1, 1999 that is equivalent in length to the period established by such individual under paragraph (1), based on the individual's net earnings from the Dungeness crab fishery during such established period. In addition, such individual shall be eligible to receive from the United States fair market value for any Dungeness crab pots, related gear, and not more than one Dungeness crab fishing vessel if such individual chooses to relinquish to the United States such pots, related gear, or vessel."

(b) OTHERS AFFECTED BY FISHERY CLOSURES AND

RESTRICTIONS.—Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277), as amended, is amended further by redesignating subsection (c) as

subsection (d) and inserting immediately after subsection (b) the following new subsection:

"(c) OTHERS AFFECTED BY FISHERY CLOSURES AND RESTRICTIONS.—The Secretary of the Interior is authorized to provide \$23,000,000 for a program developed with the concurrence of the State of Alaska to fairly compensate United States fish processors, fishing vessel crew members, communities, and others negatively affected by restrictions on fishing in Glacier Bay National Park. For the purpose of receiving compensation under the program required by this subsection, a potential recipient shall provide a sworn and notarized affidavit to establish the extent of such negative effect."

(c) IMPLEMENTATION.—Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (section 101(e) of division A of Public Law 105-277 (16 USC 410hh-4 note.)), as amended, is amended further by inserting at the end the following new subsection:

Publication "(e) IMPLEMENTATION AND EFFECTIVE DATE.—The Secretary of the Interior shall publish an interim final rule for the Federal implementation of paragraphs (2) through (5) of subsection (a) and shall provide an opportunity for public comment of no less than 45 days on such interim final rule. **Federal Register, publication.** The final rule for the Federal implementation of paragraphs (2) through (5) of subsection (a) shall be published in the Federal Register no later than September 30, 1999 and shall take effect on September 30, 1999, except that the limitations in paragraphs (3) through (5) of such subsection shall not apply with respect to halibut fishing until November 15, 1999 or salmon troll fishing until December 31, 1999. In the event that any individual eligible for compensation under subsection (b) has not received full compensation by June 15, 1999, the Secretary shall provide partial compensation on such date to such individual and shall expeditiously provide full compensation thereafter."

(d) For the purposes of making the payments authorized in section 123 of the Department of the Interior and Related Agencies Appropriations Act, 1999, as amended by this section, an additional \$26,000,000 is hereby appropriated to 'Departmental Management, Department of the Interior', to remain available until expended, of which \$3,000,000 shall be an additional amount for compensation authorized by section 123(h) of such Act, as amended, and of which \$23,000,000 shall be for compensation authorized by section 123(c) of such Act, as amended. The entire amount made available in this subsection is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901(b)(2)(A)), and shall be available only if the President transmits to the Congress an official budget request that includes designation of the entire amount as an emergency requirement as defined in such Act.

P.L. 106-291, 114 Stat. 998 (October 11, 2000) "Department of the Interior and Related Agencies Appropriations Act, FY 2001":

The Act's directive, which limits Secretarial discretion, applies only to use of FY 2001 funds. However, the agencies are hereby 'sensitized' to current Congressional interest:

SEC. 345 BACKCOUNTRY LANDING STRIP ACCESS

(a) IN GENERAL.—Funds made available by this Act shall not be used to permanently close aircraft landing strips, officially recognized by State or Federal aviation officials, without public notice, consultation with cognizant State and Federal aviation officials and the consent of the Federal Aviation Administration.

(b) AIRCRAFT LANDING STRIPS —An aircraft landing strip referred to in subsection (a) is a landing strip on Federal land administered by the Secretary of the Interior or the Secretary of Agriculture that is commonly known, and is consistently used for aircraft landing and departure activities.

(c) PERMANENT CLOSURE.—For the purposes of subsection (a), an aircraft landing strip shall be considered to be closed permanently if the intended duration of the closure is more than 180 days in any calendar year."

P. L. 107-89 (December 18, 2001) amends 43 USC Section 1312:

Amends the Submerged Lands Act Subchapter II Section 1312 "Seaward boundaries of States" (related to ANILCA 103(a) regarding seaward boundaries and ANILCA Title IX land conveyances), to read as follows:

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

**TITLE 11. NATURAL RESOURCES.
PART 1. OFFICE OF THE COMMISSIONER.
CHAPTER 05. FEES FOR DEPARTMENT SERVICES.**

11 AAC 05.010(a)(7)(H) is repealed:

(H) repealed 5/3/2001;

(Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; add'l am 7/1/89, Register 110; am 8/16/89, Register 111; am 12/9/89, Register 112; am 1/17/90, Register 113; am 3/16/91, Register 117; am 12/25/91, Register 120; am 5/14/92, Register 122; am 9/16/92, Register 123; am 4/18/93, Register 126; am 5/5/93, Register 126; am 10/1/94, Register 131; am 12/13/95, Register 136; am 2/16/96, Register 137; am 5/24/96, Register 138; am 5/18/97, Register 142; am 2/21/98, Register 145; am 7/29/98, Register 147; am 8/26/98, Register 147; am 9/10/98, Register 147; am 1/29/99, Register 149; am 5/9/99, Register 150; am 2/9/2001, Register 157; am 5/3/2001, Register 158)

Authority:	AS 03.10.020	AS 38.05.295	AS 40.17.030
	AS 09.25.110	AS 38.05.600	AS 41.06.020
	AS 27.21.030	AS 38.05.850	AS 41.21.020
	AS 27.21.940	AS 38.08.110	AS 41.21.026
	AS 38.04.045	AS 38.09.020	AS 41.23.440
	AS 38.04.900	AS 38.09.110	AS 44.37.020
	AS 38.05.020	AS 38.35.020	AS 44.37.025
	AS 38.05.035	AS 38.35.050	AS 45.50.315
	AS 38.05.057	AS 38.50.160	AS 46.15.020
	AS 38.05.082	AS 38.95.240	AS 46.15.035
	AS 38.05.177	AS 40.15.370	AS 46.15.037
	AS 38.05.180		

PART 6. LANDS.

Chapter

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51. **Public Easements (11 AAC 51.010 - 11 AAC 51.990)** [NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY (11 AAC 51.010 - 11 AAC 51.900)]
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CHAPTER 51. PUBLIC EASEMENTS [NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY].

Article

1. **Applicability of Chapter (11 AAC 51.010)**
2. **Identification, Reservation, and Modification of Public Easements (11 AAC 51.015 - 11 AAC 51.100)**
3. **(Reserved)**
4. **General Provisions (11 AAC 51.900 - 11 AAC 51.990)**

ARTICLE 1. APPLICABILITY OF CHAPTER.

Section

10. Purpose and applicability
- [20. NOMINATION APPLICATION
30. IDENTIFICATION AND NOTIFICATION
40. EVALUATION PROCEDURE
50. (REPEALED)
60. EVALUATION CRITERIA FOR DEPARTMENTAL DECISION
70. APPEAL
80. FINAL DECISION AND JUDICIAL APPEAL
90. CLASSIFICATION
100. MANAGEMENT OF RS 2477 RIGHTS-OF-WAY
900. DEFINITIONS]

11 AAC 51.010 is repealed and readopted to read:

11 AAC 51.010. PURPOSE AND APPLICABILITY. (a) This chapter applies to each public easement

(1) reserved by the department or granted to the state, including each right-of-way established under R.S. 2477 or other authority; and

(2) managed by the department under AS 38.

(b) For purposes of this chapter, a public easement

(1) includes any interest in land that is not possessory and that, upon land that may be owned by another person, is reserved by the department or granted to the state for use by or the benefit of the public, including an access easement, survey easement, and utility easement; and

(2) does not include

(A) full ownership of all rights in a strip or corridor of land; or

(B) a negative easement.

(c) Construction or use of a road, trail, or other access improvement on state land does not create an easement. By authorizing construction of a temporary road or casual-use trail under 11 AAC 96 the department does not grant or reserve a public easement.

(d) Unless and until it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state.

(Eff. 5/14/92, Register 122; am 5/3/2001, Register 158)

Authority:	<u>AS 38.04.050</u>	AS 38.04.900	<u>AS 38.05.127</u>
	<u>AS 38.04.055</u>	AS 38.05.020	<u>AS 38.05.850</u>
	AS 38.04.058	AS 38.05.035	

**ARTICLE 2. IDENTIFICATION, RESERVATION, AND MODIFICATION
OF PUBLIC EASEMENTS.**

Section

- 15. Standards for easements**
- 20. (Repealed)**
- 25. Section-line easements**
- 30. (Repealed)**
- 35. Determination of navigable and public water**
- 40. (Repealed)**
- 45. Easements to and along navigable and public water**
- 50. (Repealed)**
- 55. Identification of R.S. 2477 rights-of-way**
- 60. (Repealed)**
- 65. Vacation of easements**
- 70. (Repealed)**
- 75. Surveying and field marking of easements**
- 80. (Repealed)**
- 85. Access and utility easements to mental health land**
- 90. (Repealed)**
- 100. Management of public easements, including R.S. 2477 rights-of-way**

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.015. STANDARDS FOR PUBLIC EASEMENTS. (a) Before selling, leasing, or otherwise disposing of the land estate, the department will reserve public easements under this section. The department will require survey and platting under 11 AAC 53 of a public easement reserved under this section, unless survey is unnecessary to determine the easement's location, as in the case of an easement tied to a surveyed property boundary, the ordinary high water mark, or the mean high water line.

(b) In addition to the circumstances set out in (a) of this section, the department will require survey of a public easement on land

(1) that the department does not manage under AS 38, if required under 11 AAC 51.100(g); or

(2) presently not intended for sale, lease, or other disposal, as the department determines necessary to resolve uncertainty over the easement's relationship to a property boundary.

(c) The dedication to public use, on a plat approved by a municipal platting authority, of a public easement reserved by or granted to the state does not convey to the municipality

(1) an R.S. 2477 right-of-way, a section-line easement under AS 19.10.010, or an access easement reserved under AS 38.05.127; or

(2) a public easement other than one described in (1) of this subsection, unless the department specifically expresses in a final disposal decision under AS 38.05.035(e) its intent to convey the public easement.

(d) Before selling, leasing, or otherwise disposing of the land estate, the department will reserve

(1) public easements in the following minimum widths, except that a platting authority or the department may set a different width to address special conditions, including topography, difficult soils, or the presence of existing improvements:

(A) for a utility easement, 30 feet;

(B) for a pedestrian easement, 25 feet;

(C) for an arterial road, 100 feet;

(D) for a neighborhood service road, 60 feet;

(E) for an existing road that does not already have a reserved easement, 60 feet;

(2) a survey easement at least five feet wide from the nearest practical point on the property boundary to a survey control station; a survey easement reserved under this paragraph includes

(A) an easement with a radius of five feet around the control station; and

(B) as applicable, a five-foot wide direct line-of-sight easement from the control station to an azimuth mark or other control station;

(3) access easements, in the minimum widths set out in 11 AAC 51.045, to and along navigable and public water; and

(4) public easements along section lines in the widths set out in 11 AAC 51.025.

(e) The department may reserve additional public easements as the department considers necessary and in accordance with applicable law, and may determine the location, size and type of those public easements. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.045	AS 38.04.900	AS 38.05.035
	AS 38.04.050	AS 38.05.020	AS 38.05.127
	AS 38.04.055		

Editor's note: The subject matter of 11 AAC 51.015 was formerly located at 11 AAC 53.300. The history note for 11 AAC 51.015 does not reflect the history of the earlier section.

11 AAC 51.020 is repealed:

11 AAC 51.020. NOMINATION APPLICATION. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.025. SECTION-LINE EASEMENTS. (a) In accordance with AS 19.10.010, before selling, leasing, or otherwise disposing of the surveyed or unsurveyed land estate, the department will reserve along each section line public easements in the following widths:

(1) if the section line forms a boundary of the parcel being disposed, 50 feet measured from the section line;

(2) if the section line runs through the parcel being disposed, 50 feet measured on each side of the section line, for a total width of 100 feet.

(b) Whether reserved by the department or granted to the state, a section-line easement continues to exist unless and until it is vacated under 11 AAC 51.065, regardless of whether that easement is in use.

(c) Nothing in this chapter affects or modifies the existence and width of any section-line easement as established by ch. 19, SLA 1923, ch. 123, SLA 1951, ch. 35, SLA 1953, and AS 19.10.010, as applicable. (Eff. 5/3/2001, Register 158)

Authority: AS 38.05.020

AS 38.05.035

AS 19.30.400

Editor's note: The provisions of ch. 19, SLA 1923, ch. 123, SLA 1951, ch. 35, SLA 1953, and AS 19.10.010 apply to the existence and width of any section-line easements on federal or state lands. The existence and width of any section-line easement that arose, varies in accordance with the statute in effect on the date of the creation of the easement. The following calculations of widths, as measured from the section line and derived from the relevant statutes, are provided below as guidance, but do not alter the legal existence, extent, or terms of any section-line easement:

1. for public lands in the Territory of Alaska before April 6, 1923, section-line easements did not arise by operation of statute;

2. for surveyed land owned by the Territory of Alaska at any time on or after April 6, 1923 through Jan. 17, 1949, or for surveyed federal land that was unappropriated and unreserved at any time during that period, the identified in ch. 19, SLA 1923 for any section-line easement is 33 feet;

3. for any land owned by the Territory of Alaska at any time on or after January 18, 1949 through March 25, 1951, section-line easements did not arise by operation of statute;

4. for federal land at any time on or after January 18, 1949 through March 20, 1953, section line easements did not arise by operation of statute;

5. for any surveyed land owned by the Territory of Alaska or the state on or after March 26, 1951 through June 30, 1960, the width identified in ch. 123, SLA 1951 for any section-line easement is 50 feet;

6. for surveyed federal land that was unappropriated and unreserved at any time on or after March 21, 1953 through December 14, 1968, the width identified in ch. 35, SLA 1953 for any section-line easement is 33 feet;

7. for surveyed or unsurveyed land owned by the state on or after July 1, 1960, the width, as identified in AS 19.10.010, is 50 feet.

For purposes of calculating the widths for section-line easements, "each section of land," as used in ch. 19, SLA 1923 is read to mean each section of surveyed land owned by the Territory of Alaska, and each section of surveyed, unappropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477. As used in ch. 35, SLA 1953, and AS 19.10.010, "all other sections" is read to include all sections of surveyed, unappropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477. An easement, if any, may exist on each side of a section line. Depending on land status on each side of the section line, the total easement width may be 33 feet, 50 feet, 66 feet, 83 feet, or 100 feet.

11 AAC 51.030 is repealed:

11 AAC 51.030. IDENTIFICATION AND NOTIFICATION. Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.035. DETERMINATION OF NAVIGABLE AND PUBLIC WATER.

(a) As part of a preliminary or proposed written decision under AS 38.05.035(e) before the sale, lease, grant, or other disposal of any interest in state land, the department will determine whether water adjacent to or contained within the land intended for disposal is navigable water, public water, or neither under AS 38.05.127. However, if the preliminary or proposed written decision is for an oil and gas lease or a mineral lease, the determination under this section and reservation of access easements under 11 AAC 51.045 may be postponed until the lessee proposes, within 100 feet upland from the ordinary high water mark or mean high water line, lease facilities or lease development activities involving surface entry.

(b) For purposes of the determination under (a) of this section and for reserving access easements under 11 AAC 51.045, a water body at least 50 acres in size or a waterway at least 50 feet in width from the ordinary high water mark to the ordinary high water mark will be considered navigable water. The commissioner may determine that a water body smaller than 50 acres or a waterway smaller than 50 feet in width is navigable water.

(c) For purposes of the determination under (a) of this section and for reserving access easements under 11 AAC 51.045, a water body at least 10 acres but less than 50 acres in size or a waterway at least 10 feet but less than 50 feet in width from the ordinary high water mark to the ordinary high water mark will be considered

(1) navigable water if the department finds that the water body or waterway is navigable in fact for a useful public purpose under AS 38.05.965; or

(2) public water if the department does not make a finding described in (1) of this subsection.

(d) The commissioner may determine that a water body smaller than 10 acres in size or a waterway smaller than 10 feet in width from the ordinary high water mark to the ordinary high water mark is public water. (Eff. 5/3/2001, Register 158)

Authority: AS 38.04.005 AS 38.04.900 AS 38.05.035
 AS 38.04.055 AS 38.05.020 AS 38.05.127

Editor's note: The subject matter of 11 AAC 51.035 was formerly located at 11 AAC 53.310 and 11 AAC 53.320. The history note for 11 AAC 51.035 does not reflect the history of the earlier sections.

11 AAC 51.040 is repealed:

11 AAC 51.040. EVALUATION PROCEDURE. Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.045. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER. (a) As part of a preliminary or proposed written decision under AS 38.05.035(e) before the sale, lease, grant, or other disposal of any interest in state land the department will

(1) list or map the access easements that the department proposes to reserve under this section for public access to and along water determined under 11 AAC 51.035 to be navigable or public water; or

(2) state why reserving an access easement is not necessary to ensure free access to and along water determined under 11 AAC 51.035 to be navigable or public water or why regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) In its final written decision under AS 38.05.035(e), the department will incorporate the list or map prepared under (a)(1) of this section or, in response to public comments or other information known to the department, will incorporate a modified version of that list or map. Unless the final decision under AS 38.05.035(e) determines that reserving an access easement is not necessary to ensure free access to and along the water or that regulating or limiting access is necessary for other beneficial uses or public purposes, the department will reserve access easements as required by this section.

(c) Before the department grants a lease of the land estate or conveyance of land adjacent to any water affected by tidal action, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet from the mean high water line on the side to be leased or conveyed, and on both sides of the mean high water line if land on both sides is to be leased or conveyed; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(d) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under 11 AAC 51.035 to be navigable water, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet upland from the ordinary high water mark;

(2) will retain the bed of that water in state ownership; and

(3) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(e) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under 11 AAC 51.035 to be public water, the department

(1) will reserve, along and on the bed of that water, an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement; and

(B) extends at least 50 feet upland from the ordinary high water mark; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(f) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing water determined under 11 AAC 51.035 to be navigable or public water, and if

(1) an existing trail, road, or other overland route provides access to the water but does not already have a reserved easement, the department will reserve an access easement, with a minimum width as required under 11 AAC 51.015(d)(1)(E);

(2) a trail, road, or other overland access route to the water does not exist, but a public road or a public trail lies within two miles of the navigable or public water, and if overland access from the road or trail to the water is feasible, the department

(A) will reserve, from the road or trail to the water, an access easement with a minimum width of 50 feet, or with a minimum width of 60 feet if the department also determines that the need for increased public access to

navigable or public water may justify construction of a road along an easement; and

(B) will reserve access easements under (A) of this paragraph, at intervals of approximately one mile, from the water to a public road or a public trail that lies parallel to the water; in reserving these easements, the department may designate

(i) a section-line easement under AS 19.10.010 as an access easement, to the extent that the section-line easement runs on state land, and if the section-line easement provides a practical route to the shore; and

(ii) an access easement along a tributary waterway for access to another water body or waterway, if the easement along the tributary waterway provides a practical and reasonably direct route from the road or trail to the other water body or waterway; or

(3) a trail, road, or other overland access route to the water does not exist, but a public railroad crossing authorized by the railroad operator lies within two miles of the navigable or public water, and if overland access from the railroad crossing to the water is feasible, the department will reserve, from the railroad crossing to the water, an access easement with a minimum width of 50 feet, or with a minimum width 60 feet if the department also determines that the need for increased public access to navigable or public water may justify construction of a road along an easement.

(g) If reserving access easements under (f) of this section, the department may reserve additional access easements to a water body or waterway to accommodate existing or anticipated heavy use, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public water.

(h) In determining the access easements to be reserved to and along navigable or public water, the department will solicit comments from the Department of Fish and Game and from a municipality or other person entitled under AS 38.05.945 to notice of the preliminary or proposed written decision under AS 38.05.035(e). (Eff. 5/3/2001, Register 158)

Authority: AS 38.04.005
AS 38.04.055

AS 38.04.900
AS 38.05.020

AS 38.05.035
AS 38.05.127

Editor's note: The subject matter of 11 AAC 51.045 was formerly located at 11 AAC 53.330. The history note for 11 AAC 51.045 does not reflect the history of the earlier section.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.055. IDENTIFICATION OF R.S. 2477 RIGHTS-OF-WAY. (a) Before reporting to the legislature in accordance with AS 19.30.400(b), the department will issue a proposal to identify a historic road or trail as an R.S. 2477 right-of-way that has been accepted by the state or territory of Alaska or by public user or construction.

(b) In a proposal under (a) of this section, the department will consider if sufficient evidence

(1) exists to locate the potential R.S. 2477 right-of-way on a United States Geological Survey topographical map at a scale of 1:63,360 (one inch = one mile) or on an equivalent or more detailed map;

(2) shows that the potential R.S. 2477 right-of-way crossed federal land that was unappropriated and not reserved for public use at the time of any acceptance described in (3)(A) or (3)(B) of this subsection; and

(3) exists of historical use; that evidence must include a reliable historical account, or information supplied by a knowledgeable person, to show that

(A) public use or construction constituted acceptance of the right-of-way grant under R.S. 2477 in accordance with applicable law; or

(B) a positive act on the part of a public authority constituted acceptance of the right-of-way grant under R.S. 2477 in accordance with applicable law.

(c) The department will consider any relevant evidence that

(1) supports or is contrary to evidence considered under (b) of this section; and

(2) is offered during a public comment period of at least 30 days after the department gives public notice

(A) on the Alaska Online Public Notice System developed under AS 44.62.175, or in a newspaper of statewide circulation;

(B) in a newspaper of general circulation in the vicinity of the route;

(C) by posting at a post office in the vicinity of the route, or by public service announcements in media serving the vicinity of the route;

(D) to a municipality through whose boundaries the route passes;

(E) to a regional corporation established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act) through whose region the route passes and

(F) to a village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a), Alaska Native Claims Settlement Act) if the route is within 25 miles of the village for which the corporation was established; and

(G) to the Department of Fish and Game.

(d) After the comment period held under (c) of this section, the department will prepare a written decision whether to identify the route, in whole or in part, as an R.S. 2477 right-of-way. The department will base its decision on evidence considered or received, and will include a response to comments received. The department will give notice of its identification decision to any person who commented during the comment period.

(e) If under (d) of this section the department identifies a historic road or trail as an R.S. 2477 right-of-way, the department will show the approximate location of the right-of-way on a map described in (b) of this section.

(f) The department's identification decision may be appealed under 11 AAC 02 if the appellant demonstrates that questions of fact remain to be resolved on a route's

qualification as an R.S. 2477 right-of-way. The possible adverse impacts that public use of a route may cause to private property are not grounds for an appeal of the department's identification of an R.S. 2477 right-of-way. However, the department will consider adverse impacts in the department's management of the right-of-way, and the property owner may raise them if petitioning under 11 AAC 51.065 to vacate or relocate the right-of-way.

(g) After reporting to the legislature under AS 19.30.400(b), the department will manage use by the general public of an R.S. 2477 right-of-way that is identified under this section unless the

(1) R.S. 2477 right-of-way is part of the state highway system or the department transfers the R.S. 2477 right-of-way to the Department of Transportation and Public Facilities for management; or

(2) the department transfers management authority to a municipality, with the municipality's consent; however, management by a municipality does not include the right to vacate the right-of-way. (Eff. 5/3/2001, Register 158)

Authority:	AS 19.30.400	AS 38.04.058	AS 38.05.020
	AS 38.04.055	AS 38.04.900	AS 38.05.035

11 AAC 51.060 is repealed:

11 AAC 51.060. EVALUATION CRITERIA FOR DEPARTMENTAL DECISION.

Repealed. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; repealed 5/3/2001, Register 158)

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.065. VACATION OF EASEMENTS. (a) An affected person or a municipal assembly or city council may petition the department to vacate, modify, or relocate,

(1) in accordance with AS 19.30.410, an R.S. 2477 right-of-way, including a section-line easement under AS 19.10.010 that the department manages under AS 19.30.400 and AS 38;

(2) in accordance with AS 38.05.127(d), an access easement reserved under AS 38.05.127 and 11 AAC 51.045;

(3) in accordance with AS 40.15.300 - 40.15.380, a platted easement dedicated to public use and managed by the department under AS 38;

(4) on land that the state currently owns or formerly owned, a public easement reserved along a section line under AS 19.10.010; or

(5) another state-owned public easement managed by the department.

(b) A petition to the department under (a) of this section must also be submitted to the platting authority for consideration, including public notice and a public hearing, in accordance with the procedures set out in

(1) AS 29.40.120 - 29.40.150, if the platting authority is established under AS 29.40.080 by a municipality described in AS 40.15.070(a); or

(2) AS 40.15.305 and 11 AAC 53.250, as applicable, if the platting authority is the department in accordance with AS 40.15.070(b).

(c) If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice.

(d) In addition to a notice, comment opportunity, or hearing provided under (b)-(c) of this section by a municipal platting authority or the department, the department will give notice of a petition under (a) of this section and provide a comment period of at least 30 days by publishing notice in a newspaper of statewide circulation, posting notice on the Alaska Online Public Notice System developed under AS 44.62.175, and notifying other parties known or likely to be affected by the action, including the Department of Transportation and Public Facilities and the Department of Fish and Game. The petitioner shall reimburse the department for the costs of notice.

(e) In its administrative review and finding under this section whether to vacate, modify, or relocate a public easement is in the best interests of the state, the department will include

(1) consideration of any recommendation or decision, as applicable, from the platting authority;

(2) a comparison of the public easement sought to be vacated, modified, or relocated with alternate access proposed in accordance with (f), (g), or (h) of this section, as applicable, in terms of underlying land ownership, land management policies, current public use patterns, and practicality of use; and

(3) consideration of public and agency comments that are material to the comparison undertaken in (2) of this subsection.

(f) Before any vacation, modification, or relocation of a public easement described in (a)(2) - (a)(5) of this section, the petitioner must demonstrate to the satisfaction of the department that equal or better access is available. Equal or better access must be access that is

(1) protected by an easement of record that is adequately wide for the purpose; if the easement of record is new, the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the new easement as a replacement for the vacated easement; and

(2) at least equally usable, considering length, type of terrain, and level of improvement, as the easement to be vacated; if development or improvement is needed to make the replacement easement at least equally usable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect.

(g) For purposes of any department determination to vacate, modify, or relocate, in accordance with AS 19.30.410(1), an R.S. 2477 right-of-way described in (a)(1) of this section,

(1) the petitioner must demonstrate to the satisfaction of the department that a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;

(2) a right-of-way or means of access is reasonably comparable if it provides

(A) equal or better access as described in (f) of this section; and

(B) access between the same destinations as the R.S. 2477 right-of-way, for an R.S. 2477 right-of-way other than a section-line easement;

(3) a right-of-way or means of access is established if, before any vacation takes effect, all necessary surveying, platting, and recording have been completed, and the alternate access is ready for its intended use; the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the right-of-way or means of access that serves as a replacement for the vacated R.S. 2477 right-of-way; and

(4) a right-of-way or means of access is sufficient to satisfy all present and reasonably foreseeable uses if it is suitable for future trail development, road development, and utility installation, if the department finds that those uses may be needed in the future, and if the department finds that the R.S. 2477 right-of-way to be vacated is suitable for those uses; for purposes of this paragraph,

(A) if poorly drained soils make an R.S. 2477 right-of-way suitable only for winter use, the alternate right-of-way or means of access must also be suitable for winter use, but need not be suitable for an all-season road;

(B) the alternate right-of-way or means of access may be provided through more than one route, each suitable to a particular use; and

(C) the alternate right-of-way or means of access may be provided at a reduced width, either along the original alignment or elsewhere, if the reduced width is sufficient for all present and reasonably foreseeable uses.

(h) For purposes of any department determination to vacate, modify, or relocate, in accordance with AS 19.30.410(2), an R.S. 2477 right-of-way described in (a)(1) of this section,

(1) the department will not consider a municipal assembly or city council to have requested the vacation unless vacation is requested by ordinance; and

(2) the petitioner must demonstrate, to the department's satisfaction, that a reasonable alternative means of access is available; a reasonable alternative means of access need not qualify as equal or better access as described in (f) of this section; the petitioner must arrange for a note in the vacation document to be recorded under (j) of this section that identifies the alternative means of access that serves as a replacement for the vacated R.S. 2477 right-of-way.

(i) The department will not approve the vacation, modification, or relocation of a section-line easement or R.S. 2477 right-of-way described in (a)(1) or (a)(4) of this section, including an R.S. 2477 right-of-way that has been identified under 11 AAC 51.045(f)(2)(B)(i) as an access easement to navigable or public water, without the consent of the commissioner of transportation and public facilities under AS 19.05 - 19.30.

(j) A vacation, modification, or relocation of a public easement is not final until a
 (1) plat is recorded evidencing the vacation, modification, or relocation, if the public easement being altered was previously identified by a recorded plat; or
 (2) document is recorded identifying the affected lot, tract, or parcel and describing the manner in which the affected public easement is being altered, if the easement was not previously identified by a recorded plat; the department will not require a plat to be prepared and recorded unless a plat is necessary to locate a new easement that will replace the easement being altered.

(k) An owner of land affected by an unplatted R.S. 2477 right-of-way may request the department's approval to reroute the right-of-way elsewhere on that owner's land to an alignment that less adversely affects the landowner's interests. The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land. The realignment of an R.S. 2477 right-of-way under this subsection within a parcel of land does not constitute a vacation under this section. (Eff. 5/3/2001, Register 158)

Authority:	AS 19.30.410	AS 38.04.900	AS 38.05.127
	AS 38.04.058	AS 38.05.020	AS 40.15.070
	AS 38.04.200	AS 38.05.035	AS 40.15.305

11 AAC 51.070 is repealed:

11 AAC 51.070. APPEAL. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.070 was relocated to 11 AAC 51.910.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.075. SURVEYING AND FIELD MARKING OF EASEMENTS. (a) The department may require as a condition of any sale, lease, grant, or other disposal of state land that the purchaser, lessee, or grantee survey, mark, or both survey and mark access easements reserved or retained under this chapter in a manner consistent with the following requirements:

- (1) marking of an access easement across uplands must include clearly visible monuments or signs at the following places:
 - (A) at the intersection of the access easement and any public road, railroad, trail, or aircraft landing site;
 - (B) at the intersection of the access easement and any navigable or public water;

(C) along the access easement at intervals reasonably sufficient to allow the route to be followed, unless the easement's route is shown by a clearly visible trail or road;

(2) marking of an access easement along a water body or waterway must include a clearly visible monument or sign where the access easement intersects any public road or trail.

(b) Both the purchaser, lessee, or grantee and the successors or assignees of that person shall perpetuate and maintain any marking required under (a) of this section.

(c) A person may not obstruct, move, or destroy a marking on an access easement without written permission from the department. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.005	AS 38.04.900	AS 38.05.035
	AS 38.04.050	AS 38.05.020	AS 38.05.127
	AS 38.04.055		

Editor's note: The subject matter of 11 AAC 51.075 was formerly located at 11 AAC 53.350. The history note for 1 AAC 51.075 does not reflect the history of the earlier section.

11 AAC 51.080 is repealed:

11 AAC 51.080. FINAL DECISION AND JUDICIAL APPEAL. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.080 was relocated to 11 AAC 51.910.

11 AAC 51 is amended by adding a new section to read:

11 AAC 51.085. ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND. Before disposing of land, or granting or reserving an easement across land, the department will, after consulting with the executive director of the mental health trust land or it established under AS 44.37.050, either reserve or ensure the department's future ability to reserve adequate and feasible access and utility easements to any adjoining or adjacent Alaska mental health trust land without cost to the Alaska mental health trust. (Eff. 5/3/2001, Register 158)

Authority:	AS 37.14.009	AS 38.05.020	AS 38.05.801
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Editor's note: The subject matter of 11 AAC 51.085 was formerly located at 11 AAC 53.305. The history note for 11 AAC 51.085 does not reflect the history of the earlier section.

11 AAC 51.090 is repealed:

11 AAC 51.090. CLASSIFICATION. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

11 AAC 51.100 is amended by adding new subsections to read:

11 AAC 51.100. MANAGEMENT OF PUBLIC EASEMENTS, INCLUDING R.S. [RS] 2477 RIGHTS-OF-WAY.

(e) If an access use or access development activity on a public easement managed under AS 38 may not occur without a permit under 11 AAC 96.010 or other authorization by the department, and if the permit or authorization sought is for new access construction

(1) that would displace or preclude a traditional means of access for a traditional outdoor activity on the easement, including construction of a road on a trail traditionally used for hiking or snowmachine travel, the department will provide public notice and an opportunity for comment of at least 14 days before deciding whether to issue the permit or authorization; or

(2) on an unsurveyed easement that crosses land not managed under AS 38, the department will provide notice and a comment opportunity of at least 14 days to the owner of the land determined to be subject to the easement before deciding whether to issue the permit or authorization.

(f) Even of notice is not required under (e)(1) or (e)(2) of this section, the department may provide notice and a comment opportunity to the owner of the land subject to an R.S. 2477 right-of-way;

(g) If a permit or authorization is sought for new access construction as described in (e)(2) of this section, the department will require the permit applicant to survey the public easement, in order to show the relationship between property boundaries and that easement and to reduce the possibility of unintentional trespass. However, the department will not require a survey if the location of the public easement may readily be determined, and if a dispute does not exist regarding whose land the easement crosses. The survey is subject to approval by the department. The survey must be conducted by a surveyor, must show the relationship of the easement to the boundaries of the land it crosses, and must be performed to Class III standards under 11 AAC 53.110.

(h) The department or a person may complete a trail easement diagram showing the location of an existing trail or road. An applicant who is subject to (g) of this section may not use a trail easement diagram as a survey unless the trail easement diagram satisfies the requirements for a survey set out in that subsection.

(i) On land subject to a public easement managed under AS 38, uses and activities by the landowner that are consistent with the landowner's property rights and that do not restrict public use of the easement do not require a permit under 11 AAC 96.

(j) If the state holds only a public easement, and another person holds the other interests in the land, the department will issue a permit under 11 AAC 96 only for uses and activities related to access. (Eff. 5/14/92, Register 122; am 11/10/93, Register 128; am 5/3/2001, Register 158)

Authority:	<u>AS 38.04.045</u>	AS 38.04.900	AS 38.05.027
	AS 38.04.058	AS 38.05.020	AS 38.05.035

ARTICLE 3. (RESERVED).

ARTICLE 4. GENERAL PROVISIONS.

Section

900. (Repealed)

910. Appeal

990. Definitions

11 AAC 51.900 is repealed:

11 AAC 51.900. DEFINITIONS. Repealed. (Eff. 5/14/92, Register 122; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 51.900 was relocated to 11 AAC 51.990.

11 AAC 51 is amended by adding new sections to read:

11 AAC 51.910. APPEAL. (a) In accordance with 11 AAC 02, an eligible person may appeal a decision issued under this chapter, including

(1) an R.S. 2477 right-of-way identification decision under 11 AAC 51.055(d) or a decision following notice under 11 AAC 51.100(f), if the appellant demonstrates that there are questions of fact to be resolved on the route's qualification as an R.S. 2477 right-of-way;

(2) a permit decision following notice under 11 AAC 51.100(e)(1) or (e)(2), on the basis that new construction or use of an easement will adversely affect the appellant's access or use, or that the easement's surveyed location is incorrect.

(b) The commissioner's decision on an appeal under 11 AAC 02 is the final administrative order and decision of the department for purposes of appeal to superior court. (Eff. 5/3/2001, Register 158)

Authority:	AS 38.04.900	AS 38.05.035	AS 44.37.011
	AS 38.05.020		

Editor's note: The subject matter of 11 AAC 51.910 was formerly located at 11 AAC 51.070 and 11 AAC 51.080. The history note for 11 AAC 51.910 does not reflect the history of the earlier sections.

11 AAC 51.990. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "access easement" means a public easement that is identified to allow access by the public, including access to private property by the owners of that private property and their invitees, and that may be used for any mode of transportation commonly employed for access purposes, subject to any restrictions noted on the plat, deed, recorded reservation, or other legally applicable document;

(2) "arterial road" means a road that is used primarily for traffic through and beyond the area, rather than for access to adjacent land;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "land estate" means any interest in land other than an interest reserved under AS 38.05.125;

(6) "mean high water line" means the tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(7) "navigable water" has the meaning given in AS 38.05.965;

(8) "neighborhood service road" means a road that is primarily for traffic within a residential area;

(9) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the non-tidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;

(10) "pedestrian easement" means an access easement that is identified for travel

(A) on foot;

(B) by a hand- or foot-propelled vehicle, including a wheelchair or bicycle; or

(C) by dogsled;

(11) "platting authority" means the applicable platting authority identified in AS 40.15.070;

(12) "public water" has the meaning given in AS 38.05.965;

(13) "R.S. 2477" means former 43 U.S.C. 932 (Act of July 26, 1866, 14 Stat. 251);

(14) "state highway system" or "Alaska highway system" means all roads constructed, managed, operated, or maintained by the Department of Transportation and Public Facilities;

(15) "state land" has the meaning given in AS 38.05.965; "state land"

(A) includes an interest in land that is owned by the state and managed under AS 38; and

(B) does not include Alaska mental health trust land as defined in 11 AAC 99.990 and managed under AS 37.14.009 and AS 38.05.801;

(16) "survey easement" means a public easement that the department identifies for access to a survey control station set by the United States, the department, or a private surveyor;

(17) "surveyor" means a professional land surveyor who is registered under AS 08.48 (Architects, Engineers, and Land Surveyors Registration Act);

(18) "utility easement" means a public easement that is identified for use by utility services, and not for public access unless the

(A) landowner gives permission for public access; or

(B) easement is also identified as an access easement;

(19) "vacate" means to relinquish, release, or extinguish a right or interest in property;

(20) "water body" means a natural, well-defined body of water;

(21) "waterway" means a natural, well-defined channel of water produced wholly or in part by a definite flow of water, whether continuous or intermittent. (Eff. 5/3/2001, Register 158)

Authority: AS 38.04.900
AS 38.05.020

AS 38.05.035

AS 38.05.127

Editor's note: The subject matter of 11 AAC 51.990 was formerly located at 11 AAC 51.900. The history note for 11 AAC 51.990 does not reflect the history of the earlier section.

**CHAPTER 53. RECORDS, SURVEYS, AND PLATTING.
ARTICLE 3. EASEMENTS AND RIGHTS-OF-WAY.**

Section

- 300. **(Repealed)** [EASEMENTS AND RIGHTS-OF-WAY]
- 305. **(Repealed)** [ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND]
- 310. **(Repealed)** [DETERMINATION OF NAVIGABLE AND PUBLIC WATER]
- 320. **(Repealed)** [WRITTEN DECISION CONCERNING EASEMENTS]
- 330. **(Repealed)** [EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER]
- 340. **(Repealed)** [DIRECTORY OF EASEMENTS]
- 350. **(Repealed)** [SURVEYING AND FIELD MARKING OF EASEMENTS]
- 360. **(Repealed)** [LIABILITY FOR INJURY OR ACCIDENT]
- 370. **(Repealed)** [LIABILITY FOR DAMAGES]

Register 158, July 2001 NATURAL RESOURCES

11 AAC 53.300 - 11 AAC 53.370 are repealed:

11 AAC 53.300. EASEMENTS AND RIGHTS-OF-WAY. Repealed. (Eff. 3/27/80, Register 73; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.300 was relocated to 11 AAC 51.015.

11 AAC 53.305. ACCESS AND UTILITY EASEMENTS TO MENTAL HEALTH TRUST LAND. Repealed. (Eff. 3/31/97, Register 141; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.305 was relocated to 11 AAC 51.085.

11 AAC 53.310. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.310 was relocated to 11 AAC 51.035.

11 AAC 53.320. WRITTEN DECISION CONCERNING EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.320 was relocated to 11 AAC 51.035.

11 AAC 53.330. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER. Repealed. (Eff. 12/29/77, Register 64; am 3/27/80, Register 73; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.330 was relocated to 11 AAC 51.045.

11 AAC 53.340. DIRECTORY OF EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; am 3/27/80, Register 73; repealed 5/3/2001, Register 158)

11 AAC 53.350. SURVEYING AND FIELD MARKING OF EASEMENTS. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

Editor's note: The subject matter of 11 AAC 53.350 was relocated to 11 AAC 51.075.

Register 178, July 2001 NATURAL RESOURCES

11 AAC 53.360. LIABILITY FOR INJURY OR ACCIDENT. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

11 AAC 53.370. LIABILITY FOR DAMAGES. Repealed. (Eff. 12/29/77, Register 64; repealed 5/3/2001, Register 158)

DATE: November 3, 2003

SUBJECT: Motorized access in parks, refuge, other CSUs, including Wilderness

The following summarizes provisions for motorized access by the public on federal lands under the Alaska National Interest Lands Conservation Act and the implementing regulations:

ANILCA Section 102 defines "*conservation system unit*" (CSU) to include refuges, parks, and designated wilderness areas. Motorized access provisions in ANILCA Section 1110(a)¹ and Section 811² apply to all conservation system units, thus modifying prohibitions on such access generally applied outside Alaska. Through these provisions, ANILCA amends the Wilderness Act for Alaska (see Section 707) in a manner that leaves most refuge and park lands "open until closed" for access by snow machines, airplanes, motorboats, and other surface transportation. Off-road vehicle (ORV) access for subsistence use is also protected by ANILCA Section 811 on CSUs, including wilderness.

The access guarantee for subsistence under ANILCA Section 811 includes motorized "*traditional methods*" and under Section 1110(a) by specified methods for "*traditional activities*." Pre-ANILCA traditional activities include those generally occurring in the area, such as subsistence and recreation. Motorized access by snow machines, motorboats, and airplanes for "*traditional activities*" and by other "*traditional methods*" of surface transportation (e.g., Off Road Vehicles) for subsistence activities "*shall be permitted*" in the refuge (including designated wilderness) unless restricted through a codified process of public notice and a finding of damage.

The process for permanent restrictions of access for these activities on park and refuge land (including wilderness) is found in 43 CFR 36.11, for ORVs for subsistence on refuges at 50 CFR 36.12, and ORVs for subsistence on parks at 36 CFR 13.46. Snow machine access for "*traditional activities*" protected by ANILCA Section 1110(a) on parks and refuges is subject to regulations in 43 CFR 36.11, a process that requires a finding of damage, public hearings, and federal regulations. Motorized access for subsistence activities is protected by ANILCA Section 811 subject to reasonable regulations for their conduct, which regulations are found at 50 CFR 36.12(d) for refuges and 36 CFR 13.46(d) for park units. Such use can only be further restricted pursuant to the process in 50 CFR 36.12(a)-(c) for refuges and 36 CFR 13.46(a)-(c) for parks.

Other sections of ANILCA authorize motorized access and equipment for public access, access to in holdings, commercial fishing, general hunting and fishing, access to conduct studies, and for transportation and utility corridors, among others. The regulations that address these additional access provisions are primarily found in 43 CFR Part 36. The definition of "traditional" was not included in the 43 CFR Part 36 regulations, and the preamble states this should be defined on a case or unit basis. Activities and methods of access were addressed by Congressional committees with directions to the land managers to liberally interpret as those "generally occurring in the area" of the refuge or park unit prior to ANILCA and to specifically not require a pre-existing use test. The state consistently requests the federal managers cooperatively study and document pre-ANILCA access and activities prior to pursuing restrictions on access, except in those cases where such access is damaging the unit.

¹ Sec. 1110(b) applies to all CSUs plus wilderness study areas.

² Sec. 811 applies to all "public lands" where the subsistence activity is allowed thus would not apply where subsistence is not allowed.

ANILCA Section 102(4) defines "conservation system unit" as:

The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

A list of all CSUs follows additional discussion on "non-CSUs" below (wilderness units of the refuge and park system are within the refuges and parks so not listed separately).

The BLM units, Steese National Conservation Area and White Mountains National Recreation Area, are not CSUs. These BLM units are managed according to the Federal Land Policy and Management Act of 1976. The National Forests, Wilderness Study Areas, and Wild and Scenic study rivers are also not defined as CSUs. However, many significant public use provisions of ANILCA include some of the above units when "public lands" are listed along with the CSUs.

ANILCA Section 604 identified 12 rivers to be studied for possible designation per Section 5(a) of the Wild & Scenic Rivers Act. Those 12 studies were completed in the 20+ years since ANILCA, and only one was recommended as suitable for designation. The study rivers are not CSUs unless and until Congress designates them:

1. Colville
2. Etivluk-Nigu
3. Utukok
4. Kanektok
5. Kisaralik
6. Melozitna
7. Sheenjok (lower segment)
8. Situk
9. Porcupine
10. Yukon (Ramparts section)
11. Squirrel
12. Koyuk

National Trails System is a problematic category. The National Trails System Act (P.L. 90-543, as amended through P.L. 107-325, December 4, 2002) establishes a national trails system:

- National Recreation Trails may be established by the appropriate secretary.
- National Scenic and National Historic Trails can only be authorized and designated by Congress. Congress designated the Iditarod National Historic Trail and directed the "Gold Rush Trails in Alaska" to be studied.
- Connecting or Side Trails may be established by the appropriate secretary as components of a national recreation, national scenic, or national historic trail.

Under ANILCA, the Congressionally designated Iditarod National Historic Trail is clearly part of the "National Trails System" and thus a CSU to be managed under all the applicable provisions of ANILCA. The status of the National Recreation Trails is not so clear. The trails listed on the National Trails System website that would appear to be included under ANILCA's list of CSUs are listed below. However, **Congress likely intended CSUs to only include those it so designates;**

thus, the recreational and other trails administratively created within the Trails System are not considered CSUs.

1. Mt Edgecombe National Recreation Trail (within Tongass National Forest)
2. Naha River National Recreation Trail (within Tongass National Forest)
3. Resurrection Pass National Recreation Trail (within Chugach National Forest)
4. Swanson River Canoe Route National Recreation Trail (within Kenai Wildlife Refuge)
5. Swan Lake Canoe Route National Recreation Trail (within Kenai Wildlife Refuge)
6. Crane Lake National Recreation Trail (within Tongass National Forest)
7. Deer Mountain-John Mountain National Recreation Trail (within Tongass National Forest)
8. Mendenhall Moraine Ecology National Recreation Trail (within Tongass National Forest)
9. Petersburg Lake National Recreation Trail (within Tongass National Forest)
10. Pinnell Mountain National Recreation Trail (within BLM)
11. Williwaw National Recreation Trail (within Glacier Ranger District, Chugach Forest)
12. Tony Knowles Coastal National Recreation Trail (within Municipality of Anchorage)

Conservation system units in Alaska, as defined by Section 102(4) are:

“any unit in Alaska of the National Park System”:

1. Aniakchak National Monument and Preserve
2. Bering Land Bridge National Preserve
3. Cape Krusenstern National Monument
4. Denali National Park and Preserve (encompasses Denali Wilderness unit)
5. Gates of the Arctic National Park and Preserve (encompasses Gates of the Arctic Wilderness)
6. Glacier Bay National Park and Preserve (encompasses Glacier Bay Wilderness)
7. Katmai National Park and Preserve (encompasses Katmai Wilderness)
8. Kenai Fjords National Park
9. Klondike Gold Rush National Historical Park
10. Kobuk Valley National Park (encompasses Kobuk Valley Wilderness)
11. Lake Clark National Park and Preserve (encompasses Lake Clark Wilderness)
12. Noatak National Preserve (encompasses Noatak Wilderness)
13. Sitka National Historical Park
14. Wrangell-St. Elias National Park and Preserve (encompasses Wrangell-St. Elias Wilderness)
15. Yukon-Charley Rivers National Preserve

“any unit in Alaska of the . . . National Wildlife Refuge System”:

1. Alaska Maritime National Wildlife Refuge (encompasses Aleutian Islands Wilderness, Semidi Wilderness, and Unimak Wilderness)
2. Alaska Peninsula National Wildlife Refuge
3. Arctic National Wildlife Refuge (encompasses Mollie Beattie Wilderness)
4. Becharof National Wildlife Refuge (encompasses Becharof Wilderness)
5. Innoko National Wildlife Refuge (encompasses Innoko Wilderness)
6. Izembek National Wildlife Refuge (encompasses Izembek Wilderness)
7. Kanuti National Wildlife Refuge
8. Kenai National Wildlife Refuge (encompasses Kenai Wilderness)
9. Kodiak National Wildlife Refuge
10. Koyukuk National Wildlife Refuge (encompasses Koyukuk Wilderness)
11. Nowitna National Wildlife Refuge
12. Selawik National Wildlife Refuge (encompasses Selawik Wilderness)

13. Tetlin National Wildlife Refuge
14. Togiak National Wildlife Refuge (encompasses Togiak Wilderness)
15. Yukon Delta National Wildlife Refuge (encompasses Andreafsky Wilderness and Nunivak Wilderness)
16. Yukon Flats National Wildlife Refuge

"any unit in Alaska of the . . . National Wild and Scenic Rivers Systems":

1. *Alagnak National Wild River (main stem plus Nonvianuk River within Katmai Preserve and portions of the main stem and Nonvianuk tributary outside and west of Katmai Park/Preserve and running to the west boundary of T 13 S, R 43 W))
2. Alatna National Wild River (main stem with Gates of the Arctic Park)
3. Andreafsky National Wild River (that portion from its source, including all headwaters, and the East Fork, within Yukon Delta Refuge)
4. Aniakchak National Wild River (portion including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork Aniakchak River, within Aniakchak Monument and Preserve)
5. *Beaver Creek National Wild River (segment of main stem from confluence of Bear and Champion Creeks downstream to its exit from the NE corner of T12 N, R 6 E, Fairbanks meridian within White Mountains National Recreation Area and Yukon Flats Refuge)
6. *Birch Creek National Wild River (segment of main stem from south side of Steese Highway in T 7 N, R 10 E, Fairbanks meridian, downstream to south side of Steese Highway in T 10 N, R 16 E)
7. Charley National Wild River (entire river, including its major tributaries, Copper Creek, Bonanza Creek, Hosford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within Yukon-Charley Rivers Preserve)
8. Chilikadrotna National Wild River (portion within Lake Clark Park and Preserve)
9. *Delta National Wild and Recreational River (segment from and including all of Tangle Lakes to a point one-half mile north of Black Rapids)
10. *Fortymile National Wild, Scenic, and Recreational River (main stem, O'Brien Creek, South Fork, Napoleon Creek, Franklin Creek, Uhler Creek, Walker Fork downstream from the confluence with Liberty Creek, Wade Creek, Mosquito Fork downstream from the vicinity of Kechumstuk, West Fork Dennison Fork downstream from the confluence of Logging Cabin Creek, Dennison Fork downstream from confluence of West Fork Dennison Fork, Logging Cabin Creek, North Fork, Hutchison Creek, Champion Creek, Middle Fork downstream from confluence of Joseph Creek, and Joseph Creek)
11. *Gulkana National Wild River (main stem from outlet of Paxson Lake in T 12 N, R 2 W, Copper R meridian to confluence with Sourdough Creek, south branch of west fork from outlet of unnamed lake in sections 10 and 15, T 10 N, R 7 W, Copper R meridian to confluence with West Fork, north branch from outlet of two unnamed lakes, one in sections 24 and 25, second in sections 9 and 10, T 11 N, R 8 W, Copper R meridian to confluence with West Fork, West Fork from confluence with north and south branches downstream to its confluence with main stem, Middle Fork from outlet of Dickey Lake in T 13 N, R 5 W, Copper R meridian to confluence with main stem)
12. Ivishak National Wild River (that portion from its source, including all headwaters and unnamed tributary from Porcupine Lake within Arctic Refuge)
13. John National Wild River (portion within Gates of the Arctic Park)
14. Kobuk National Wild River (portion within Gates of the Arctic Park and Preserve)
15. Mulchatna National Wild River (portion within Lake Clark Park and Preserve)

16. Noatak National Wild River (from its source in Gates of the Arctic Park to its confluence with Kelly River in Noatak Preserve)
 17. North Fork of the Koyukuk National Wild River (portion within Gates of the Arctic Park)
 18. Nowitna National Wild River (portion from where river crosses the west limit of T 18 S, R 22 E, Kateel River meridian, to its confluence with Yukon River within Nowitna Refuge)
 19. Salmon National Wild River (portion within Kobuk Valley Park)
 20. Selawik National Wild River (portion from fork of the headwaters in T 12 N, R 10 E, Kateel R meridian to confluence of Kugarak River, within Selawik Refuge)
 21. Sheenjek National Wild River (segment within Arctic Refuge)
 22. Tinayguk National Wild River (portion within Gates of the Arctic Park)
 23. Tlikakila National Wild River (portion within Lake Clark Park)
 24. *Unalakleet National Wild River (segment of main stem from headwaters in T 12 S, R 3 W, Kateel R meridian extending downstream 65 miles to western boundary of T 18 S, R 8 W)
 25. Wind National Wild River (portion from its source, including all headwaters and one unnamed tributary in T 13 S, within Arctic Refuge)
- [*all or a portion that is outside of a refuge or park CSU is designated as wild & scenic river]

"any unit in Alaska of the . . . National Trails System"

1. Iditarod National Historic Trail

"any unit in Alaska of the . . . National Wilderness Preservation System"; includes those encompassed within refuges and parks above and forest monuments below; thus, the following are those additional wilderness designations within the Tongass National Forest:

1. Chuck River Wilderness
2. Coronation Island Wilderness
3. Endicott River Wilderness
4. Karta River Wilderness
5. Kuiu Wilderness
6. Maurille Islands Wilderness
7. Petersburg Creek-Duncan Salt Chuck Wilderness
8. Pleasant, Lemusurier and Inian Islands
9. Russell Fjord Wilderness
10. South Baranof Island Wilderness
11. South Etolin Island Wilderness
12. South Prince of Wales Wilderness
13. Stikine-LeConte Wilderness
14. Tebenkof Bay Wilderness
15. Tracy Arm-Fords Terror Wilderness
16. Warren Island Wilderness
17. West Chichagof-Yakobi Wilderness

"any unit in Alaska of . . . a National Forest Monument":

1. Misty Fjords National Monument (encompasses Misty Fjords National Monument Wilderness)
2. Admiralty Island National Monument (encompasses Kootznoowoo Wilderness)

Select State Tools for Managing State Land/Water and Related Public Activities Involving Fish and Wildlife Resources

January 2004 DRAFT #6

The following is a brief compilation of the land and resource management tools that the state and municipal governments may apply to public activities involving state land, water, and related use of fish and wildlife resources.

State Administrative Authorities

Most state land management authorities for general state-owned lands are found in Title 38 of the Alaska Statutes. Most fish and game management authorities are found in Title 16 of the Alaska Statutes. Title 38 provides the Alaska Department of Natural Resources (DNR) and Title 16 provides the Alaska Department of Fish and Game (ADF&G) with general administrative authorities provided by the legislature. These administrative management tools include the following.¹

DNR Administrative Authorities

Special Use Land Designations – Under 11 AAC 96.014, DNR may designate state land² “Special Use Land.” The process for developing this designation always includes public notice and involvement and may be part of a DNR planning process under AS 38.04.065. Special Use Land designations that call for public use restrictions must be promulgated as regulations before they become effective. Such designations have been used to establish guidelines for activities such as camping, limiting motorized access, and resource extraction. This designation has also been used to require authorizations for activities where they were not formerly required. Restrictions on public access can be made administratively only if within the limits of AS 38.04.200 (see *Access Restrictions* below).

This designation has been applied to state-owned land and water, providing an administrative and regulatory means for limiting public uses that are “Generally Allowed Uses.”³ For example, the Marmot Island area has restrictions placed on off-road vehicles, boating, and camping, among other uses. Another example is the proposed Kashwitna Special Use Land, which will include restrictions on off-road vehicle use. The State’s Togiak Special Use Land was established as part of a coordinated management strategy with the U. S. Fish and Wildlife Service. The designation established camping limits on state-owned shorelands within and adjacent to the Togiak National Wildlife Refuge.

¹ Some of these management tools are provided in more than one statute and/or regulation, so the citations may not be complete.

² “Land” or “State Land” means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state (AS 38.05.965(20)).

³ “Generally Allowed Uses” are listed under 11 AAC 96.010 which describes which uses on land managed by the DNR Division of Mining, Land and Water do not require a permit or other written authorization.

Land Planning – Several statutes, including AS 38.05.300, require or allow DNR to adopt land use plans to provide for the use and management of state-owned land. DNR uses a system of multiple use classifications, which identify primary uses for any given parcel of land within a planning area. Any given parcel can have up to three primary use classifications. There are numerous classifications established by regulation, including ones for public recreation and wildlife habitat. A map of completed plans can be viewed at the DNR website: <http://www.dnr.state.ak.us/mlw/images/plan.gif>

Plans have been used to recommend the establishment of Special Use Areas (the Kashwitna Special Use Area was proposed by the Kashwitna Management Plan) and as the basis for establishment of Special Use Areas. For example, the Lake Clark, Kenai Fjords, Resurrection Bay, and Exit Glacier Road Special Use Land designations were adopted concurrently with the Kenai Area Plan.

Development and Management of Parks – AS 38.05.295 gives the Commissioner of the Department of Natural Resources the authority to establish a policy and adopt regulations by which parks and recreation areas can be developed and managed, and it gives the authority to classify public land as parks and recreation areas. This statute works in conjunction with AS 38.05.300, and, therefore, any parks or recreation areas created under this statute are limited to 640 acres. Many of the smaller units of the State Park System located around the state were established by this method. Units over 640 acres can be added to the State Park System only through legislation (see "*Legislative Authorities*" section below).

Cooperative Resource Management Agreements – Under AS 38.05.027, the state can cooperate with federal agencies through mutual agreement. Under these agreements, management objectives and practices are explicitly addressed on specifically identified parcels of land. Memoranda of Understanding have also been used. For instance, the U. S. Fish and Wildlife Service, Alaska Department of Fish and Game, and Alaska Department of Natural Resources signed a memorandum to cooperatively manage the lands and waters of the Chickaloon Flats in the vicinity of Kenai National Wildlife Refuge.

Access Restrictions – The DNR Commissioner can regulate access on state lands, but state law restricts that authority regarding traditional means of access for traditional outdoor activities on state lands and waters. Specifically, 38.04.200 states:

The commissioner may not manage state land, water, or land and water so that a traditional means of access for traditional outdoor activities is restricted for the purpose of protecting aesthetic values of the land, water or land and water or is prohibited unless the restriction or prohibition meets one or more of the following criteria:

- (1) for an area of land and water that encompasses 640 contiguous acres or less;
- (2) temporary in nature and effective cumulatively less than eight months in a three year period;
- (3) for the protection of public safety and public or private property;

- (4) for the development of natural resources and a reasonable alternative for the traditional means of access across the land, water, or land and water for traditional outdoor activities on other land, water, or land and water is available and approved by the commissioner;
- (5) authorized by the legislature

State land is required to be managed for multiple use. Alaska Statute 38.05.300 states that land and water may not be closed to multiple purpose use if the area involved is more than 640 acres (one square mile), except by act of the legislature or under specific criteria. In addition, while theoretically DNR can administratively create a non-motorized area, as a practical matter, to effect such restrictions through enforcement is limited by available staff and the provisions of Title 38.

ADF&G Administrative Authorities

In conjunction with the regulatory authorities of the Alaska Boards of Fisheries and Game, ADF&G's general mandate is to manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-being of the state. The combined authorities of the Boards and ADF&G include the establishment of seasons, quotas, bag limits, and harvest levels and regulation of commercial, recreational, guided, subsistence, and personal uses of fish and wildlife through fishing, hunting, trapping and other activities. The ADF&G and Boards of Fisheries and Game are empowered to establish the means and methods employed in the pursuit, capture, transport, and related uses of fish and wildlife. Restrictions on methods and means may include types of access, vessel types, size of motors, and establishment of areas with particular public restrictions such as non-motorized areas for hunting and limiting fishing to catch and release only. Except in emergencies or on legislated lands managed by ADF&G, such restrictions can only be effected through regulations adopted after an extensive public process.

State Legislative Authorities

The power to establish policy for managing public uses of state natural resources resides with the legislature. Although the legislature is not limited regarding what types of designation it can create for any area of state land and water, several designations have consistently been used under Titles 41 and 16, described below.

Alaska Statutes, Title 41

Designations legislated under Title 41 include: State Parks, Recreation Areas, Special Management Areas, Public Use Areas, and Recreational Rivers. For any of these designations, the legislature identifies in statute the public purposes meriting the designation, the lead management agency, specific guidance regarding incompatible activities and allowable uses, the specific powers to adopt and enforce a management plan and regulations, and provides funding. The legislation also can provide specific directions to state agencies regarding joint management with federal agencies.

Management of these areas is usually legislatively assigned to DNR and frequently to the Division of Parks and Outdoor Recreation (State Parks). ADF&G has responsibilities for management of fish and game resources on all lands in the State of Alaska, and this responsibility remains unchanged by these legislative designations. Typically, DNR implements the statutory purposes of the land designation by developing management plans and promulgating regulations in consultation with ADF&G. Given an area's statutory purposes, these plans and regulations identify incompatible uses, restrict certain uses, and require that guides and other commercial operators obtain special permits to operate in these areas. In state park units established under Title 41, Chapter 21, a person who violates a provision of the statute or regulations is guilty of a misdemeanor, and a citation may be issued to the offender by DNR.

State Park – The statutory purposes for individual parks vary. Examples include "park area" for Denali State Park; water supply, recreational opportunities, scenic value, wildlife, and wilderness for Chugach State Park; and recreational and scenic resources, fish and wildlife habitat, sport and subsistence hunting and fishing, personal use fishing, trapping, and commercial fishing for Afognak Island State Park.

State Recreation Area (SRA) – These are created for "public recreation." Examples include Captain Cook SRA, Cairnes Head SRA, and Chena River SRA.

Special Management Area (SMA) – The general intent is to protect and perpetuate fishery and wildlife resources and habitat and to manage recreational uses and development activities. There currently are only two: Kenai River SMA and Business Park Wetlands SMA.

Public Use Area – The statutory purposes vary but may include protection of fish and wildlife habitat, public enjoyment of fish and wildlife and their habitat, public recreation, traditional public uses, personal use woodcutting, fishing, hunting, grazing, trapping, protection of water quality, and scenic resources. Typically the legislature provides very detailed policy guidance (much more so than for a state park), including delineating incompatible uses and specifying uses which may not be restricted. Such policy guidance expresses legislative intent regarding any limitation of public uses. To illustrate how such legislation can be tailored to specific areas, the Nelchina Public Use Area statutes specify that the DNR will obtain the concurrence of ADF&G on land plans for the central caribou calving area.

Recreation River – The statutory purposes for the Susitna Basin Recreation Rivers include protection of fish and wildlife populations and habitat, recreation and economic use, multiple use management of upland activities, and accommodation of access for resource uses. As with Public Use Areas, the legislature provides very detailed guidance on management and compatible activities. Recreation Rivers are not part of the State Park system, and instead are managed primarily by the DNR Division of Mining, Land, and Water. The division has limited field staff and does not have the statutory authority to issue citations for infractions of the regulations.

Alaska Statutes, Title 16

In certain areas where conservation and protection of wildlife and fish is emphasized, the Alaska Legislature under Title 16 created refuges, sanctuaries, and critical habitat areas. As with other types of legislative designation, unit-specific policy guidance regarding allowable uses and incompatible activities is common. Generally, the legislature does not specifically direct ADF&G to restrict fishing or hunting, although there are exceptions, and ADF&G has general statutory authority to issue citations and to arrest violators. DNR also has authorities that vary between designated areas such as the right to issue leases, rights of way, mining claims, and oil and gas leases.

Title 16 authority for managing fish and wildlife resources is delegated to the Commissioner of Fish and Game, with certain responsibilities assigned to the Board of Fisheries and the Board of Game. This division of powers can seem complex, especially in regard to the "special areas" discussed below. For simplification, the combined authorities are referred to as belonging to ADF&G, recognizing that within the responsibility for conservation and development of the resources, the allocation of resource utilization rests with the Boards.

Sanctuaries – Three such areas have been designated and were created to protect a specific species and associated public uses: walrus at Walrus Island State Game Sanctuary and brown bear at Stan Price and McNeil River State Game Sanctuaries. ADF&G manages the fish and wildlife resources and most land use activities. The DNR manages mineral entry and leasing (except at McNeil River, which is closed to mineral entry and leasing by statute). Hunting and trapping within McNeil River Sanctuary are statutorily prohibited. At Stan Price Sanctuary, ADF&G is legislative directed to manage state owned tidelands compatibly with the U. S. Forest Service's management of the adjacent uplands.

Refuges – The generic purpose of the state's refuge designation is to protect and preserve natural habitat and wildlife populations in certain areas of the state, and some refuges have more specific statutory purposes. ADF&G and DNR retain their respective management authorities in refuges. ADF&G manages the fish and wildlife and is responsible for developing a management plan for the refuge in consultation with DNR. An example of site-specific policy guidance is found at the Yakataga State Game Refuge, where timber harvest activities in certain areas are provided for and commercial, recreational, and subsistence fishing and hunting are specifically allowed.

Critical Habitat Areas – The purpose of these areas is to protect and preserve habitat especially crucial to the perpetuation of fish and wildlife and to restrict other uses not compatible with that primary purpose. ADF&G is specifically directed to adopt regulations it considers advisable for conservation and protection purposes governing the taking of fish and game in these areas. Similar to Refuges and Sanctuaries, ADF&G and DNR retain their other respective management authorities. There is sometimes a

provision for establishing a citizens advisory committee. At Dude Creek Critical Habitat Area, allowable public uses are listed.

Public Trust Doctrine

The Alaska Constitution and Statutes accepts the authority and responsibility for management of its public trust doctrine resources. The doctrine provides that public trust lands (those below Mean High Tide and within Ordinary High Water boundaries), waters, and living resources are held by the state in trust for the benefit of all of the people and establishes the right of the public to fully utilize these lands, waters, and resources for a wide variety of public uses. The public has a right to use all waterways in Alaska regardless of ownership of the underlying land. State law permits members of the public to touch the bed of a waterway to the extent reasonably necessary to participate in public trust activities, such as boating, hunting, fishing, and trapping. The state manages all waterways for public uses in the state except where specifically limited by Congressional legislation or Court actions. Attached are most public trust doctrine provisions in Alaska's Constitution and statutes. These lands/waters are managed as general state lands by DNR except where modified by legislative designations or administrative actions.

Designation of waters as special areas – One option for state management of public uses on waters, shorelands, tidelands, and submerged lands may be to adopt legislation utilizing one of the existing designations discussed above or to create a new designation. The legislation would need to identify the purposes for the designation, lead management agency, specific guidance regarding incompatible activities and allowable uses, specific powers the resource agencies have to adopt and enforce a management plan and regulations, and provide funding. The legislation could also provide a specific change to state agencies regarding joint management with federal agencies, if appropriate.

Enforcement Issues

Adequate law enforcement is a concern statewide. Some resource and land management concerns could be alleviated through enforcement of existing state regulations. Strict enforcement of the existing state regulations could reduce impacts of illegal public use and curb unethical commercial operators. The Alaska Department of Public Safety's Division of Fish and Wildlife Protection enforcement efforts are spread out statewide over all lands, focused on the subsistence, recreational, and commercial fisheries and hunting, during the periods of seasonally high public use on state lands and waters. Citations may also be issued for violations under Title 16 (regulations which apply to ADF&G) and Title 11 sections 09-21 (regulations which apply to Alaska State Parks). Unfortunately, Title 11 (sections 51-98) regulations that apply to general state lands may only be enforced by civil action. While Alaska State Troopers can enforce some nuisance activities such as trespass and littering under the Alaska Criminal Code, many of the nuisance activities that occur on state land are not covered under this code.

Trespass

Trespass concerns generally takes one of two forms. The first is trespass onto private uplands, and the second is trespass that occurs on conveyed lands below the ordinary high water mark (shorelands). The first form of trespass often occurs because the private lands are not marked or the parcel has recently been conveyed into private ownership. The second form occurs in cases where shorelands under waterways (which the state asserts are navigable, thus state owned) were conveyed to the private upland owner in error by the Bureau of Land Management. Regardless of ownership, the private landowner is usually unaware that the public is allowed full use of the waterway. The Alaska State Troopers will enforce trespass on private and state lands where sufficient evidence of land ownership is available. Oftentimes, trespass enforcement falls upon appointees of the upland owner to file civil complaints if ownership is in question. Alaska State Troopers will not issue citations for trespass where the land ownership is in dispute.

Trespass could be reduced through educational efforts of land managers, such as maps and brochures that describe land ownership boundaries, the ordinary high water mark, Public Trust Doctrine rights, and the location of public trails, rights-of-way, or easements.

Water quality

All waste not disposed of in accordance with State of Alaska waste water disposal regulations or General Permit issued by the Department of Environmental Conservation, must be hauled to a permitted solid waste facility per 18 AAC 72.020(b). Regulations require a minimum separation of 100 feet between the mean annual high water level of a lake, river, stream, spring, or slough, or the mean higher high water level of coastal waters and the disposal of human waste.

Other Relevant State Regulations

DNR Permits

All commercial recreation businesses that use state uplands, shorelands, tidelands, and fresh water bodies must register. At this time, day use commercial recreation businesses that exclusively operate on salt water, without taking clients ashore on state-owned tidelands or uplands, are not required to register. Air or water taxi services that drop clients off on state tidelands for guided or unguided recreation must register. Air or water taxi services are not required to register the transportation of non-recreation oriented passengers or business services such as delivering supplies to commercial fisherman or transporting people to their remote cabin site. Commercial recreation businesses that occasionally use state land must also register.

Those commercial recreation businesses with a camp or facility, whether occupied or unoccupied, that remains overnight on state land must first obtain a land use permit or

lease from DNR. These permits are issued on a non-competitive basis and cost \$500/year. A \$2.00 per overnight client fee is also charged.

Those commercial recreation businesses that already have permits or leases to operate on state land are required to register any commercial recreation day use regardless of whether it is directly related to the permits or leases.

Guide Registration

(1) **Sport Fishing.** Under 5 AAC 75.075, all sport fish guides and sport fish service providers must register annually with the Alaska Department of Fish and Game. In addition, all registered sport fish service providers are required to annually register any powered water crafts and non-powered boats 10 feet or greater in length with the Department of Motor Vehicles. All sport charter vessels used in the guided recreational taking of fish must also be licensed with the Commercial Fishing Entries Commission (CFEC). Under 5 AAC 75.076, all fishing services operating charter vessels in saltwater must obtain and complete a marine logbook for all charter vessels they operate in marine waters.

Fish guiding regulations in various areas of the state, including Cook Inlet, provide specific area and seasonal stipulations that make it illegal for a guide to fish while a client is present or within a guide's control or responsibility, unless the guide is providing assistance to a client with a disability. This prevents the guide from harvesting a bag limit for themselves or more commonly for their clients.

Important Definitions:

"Fishing service" means the indirect provision of assistance for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempt to take fish or shellfish by a business that employs or contracts with a fishing guide for fishing guide services during any portion of the angler's fishing trip; "fishing service" does not include booking or ancillary services provided by a tour broker or agent to a business that conducts fishing services.

"Fishing guide services" means the direct provision of assistance, for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempting to take fish or shellfish by accompanying or personally directing the angler in fishing activities during any portion of the angler's fishing trip; however, the term does not include services provided by assistants, deckhands, or persons similarly employed who work directly under the supervision of, and on the same vessel as, a fishing guide.

"Charter vessel" means a vessel licensed under AS 16.05.490, used for hire in the sport, personal use, or subsistence taking of fish or shellfish, and not used on the same day for any other commercial fishing purpose; a charter vessel does not include a vessel or skiff without a charter operator.

(2) **Wildlife Guiding.** Big game guides and transporters are regulated by the Alaska Department of Community and Economic Development under Alaska Statutes Title 8. The Big Game Commercial Services Board (commonly referred to as the Guide Board) was eliminated several years ago, replaced by limited controls and monitoring through the Division of Occupational Licensing. While there is a limit on the number of areas a game guide can operate in, there is no limit on the number of guides than

can operate in any given area unless restricted by the federal or private land manager. Alaska Statute 08 Chapter 54 contains the state's rules for game guides and related definitions can be found as follows: AS 08.54.610 defines⁴ a registered guide⁵; AS 08.54.620 Class A assistant guide; 08.54.630 Assistant guide, and 08.54.650 Transporter.

Under AS 08.54.720(17) and (18), big game guides are prohibited from taking big game while accompanying a client or taking the species a client has contracted for while the client is still in the field (excluding defense-of-life-and-property situations):

AS 08.54.720. Unlawful acts.

(a) It is unlawful for a

(17) registered guide, except in the defense of life or property, to knowingly personally take

(A) big game while accompanying a client in the field; or

(B) a species of big game if the registered guide is under contract with a client to provide a guided hunt for that species of big game and the client is in the field;

(18) person who is licensed as a registered guide, a class-A assistant guide, or an assistant guide, except in the defense of life or property, to knowingly personally take big game while a client of the registered guide by whom the person is employed is in the field unless the person is not participating in, supporting, or otherwise assisting in providing big game hunting services to a client of the registered guide by whom the person is employed; or

(19) person who is licensed as a transporter, or who provides transportation services under a transporter license, to knowingly accompany or remain in the field with a big game hunter who is a client of the person except as necessary to perform the specific duties of embarking or disembarking big game hunters, their equipment, or big game animals harvested by hunters; this paragraph does not apply to a person who holds both a transporter license and any class of guide license issued under this chapter.

Alaska Statute 16.05.790 prohibits obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

Alaska Statute 16.05.940(33) defines "take" to mean taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game. The phrase "or in any manner disturbing ..." may theoretically provide authority to cite those who "disturb" wildlife or fish out of season with the same force as someone who kills those critters; this has not been tested in court.

Attracting Wildlife

⁴ Beginning in 1932, the Alaska Game Commission required nonresident photographers to hire a registered guide to photograph brown, grizzly, or polar bear. The regulation was retained by the State of Alaska until 1967.

⁵ Through the early 1970s, the definition of guiding was, "Guiding as herein used means accompanying, guiding, or assisting another person to take or photograph game with the intent of receiving monetary or material remuneration for such services..."

Feeding of wildlife or leaving garbage that attracts them is prohibited by regulation (5 AAC 92.230) except under an ADF&G permit:

A person may not intentionally feed a moose (except under terms of a permit issued by the department), bear, wolf, coyote, fox, or wolverine, or negligently leave human food, pet food, or garbage in a manner that attracts these animals. However, this prohibition does not apply to use of bait for trapping fur bearers or hunting black bears under 5 AAC 84 – 5 AAC 92.

The guidelines for taking a bear in defense of life and property are set forth in regulation 5 AAC 92.410. Provocation of the animal and negligent storage of food are not justifications for shooting a bear. Brochures and other means are used to advise traveling public to avoid using well-worn bear trails and avoid camping near food sources such as salmon streams or berry patches. The brochure, "Bear Facts," from the Alaska Department of Fish and Game offices around the state addresses these issues.

Other Government Tools

Boroughs (municipal governments) have authority to adopt planning, zoning, or municipal land use regulations that can address recreational development. Some boroughs have used planning and zoning powers to address certain types of recreational use, such as motorboats on lakes in the Mat-Su Borough, but generally do not restrict recreational uses unless there is a public health or safety issue (such as snowmachines on residential streets). Municipalities can adopt Coastal Management Plans that apply to state, municipal, and private lands; these plans provide general guidance over development activities. The Coastal Management Plans generally do not address recreational use. Boroughs may also own land, most of which is land transferred from the state under the municipal entitlement program.

Fact Sheet

Recordable Disclaimers of Interest: State Owned Navigable Waters



July 2003

Frequently Asked Questions:

What is a Recordable Disclaimer of Interest?

A Recordable Disclaimer of Interest is a legal document through which the United States disavows ownership of specified land. The State of Alaska is asking the Bureau of Land Management to disclaim ownership of the beds of some navigable waters that the state acquired at statehood.

Is the federal government conveying federal lands through these disclaimers?

No. If a waterbody meets the federal legal requirements for navigability for title purposes, the state already owns the underlying lands. The state acquired title to the submerged lands at statehood, so when the federal government issues a recordable disclaimer of interest, it is simply acknowledging that it does not own the identified land.

Why is the state asking for disclaimers on navigable waters?

A Recordable Disclaimer of Interest for submerged lands will lift the cloud on the state's title. The state's title to submerged lands is somewhat clouded because it took ownership without any written documentation. Alaska owns the lands underlying navigable waters not because the United States conveyed them, but rather by virtue of the equal footing doctrine. Under the equal footing doctrine, new states are admitted to the Union with all of the powers of sovereignty and jurisdiction that pertained to the original states, and ownership of lands underlying navigable waters is an essential attribute of state sovereignty. When Alaska became a state, title to lands underlying navigable waters within its boundaries passed to it automatically, as a matter of constitutional grace. But whether a waterway meets the technical criteria for navigability is not always clear. While ideally the state would like to verify ownership of all lands underlying waterways in Alaska, recordable disclaimers of interest provide finality for at least

those waterways that the state and the United States agree are clearly navigable.

Under what authority does the federal government issue these disclaimers?

The disclaimers are issued by the federal government's primary land manager, the Bureau of Land Management (BLM). The federal law authorizing these disclaimers is section 315 of Federal Land Policy and Management Act, 43 U.S.C. 1745. BLM regulations spell out the requirements and procedures for filing and approving the disclaimers, in 43 C.F.R. 1864. In early 2003, BLM revised the regulations to allow states to apply for disclaimers for submerged lands.

What is required for the state to apply for a Recordable Disclaimer?

The federal regulations specify the filing requirements. The state must submit an application letter to the State Director of the BLM, along with a filing fee. The application must include a legal description of the lands, the reasons the applicant believes the federal government does not own the specified land, documents or title evidence to support the application, and names and addresses of any others who may claim title to the lands. BLM's State Director can waive requirements if necessary.

How does BLM process an application?

When BLM receives an application, it will take the following actions:

- BLM will review the application to ensure that it meets all filing requirements. Pre-application meetings may be held to ensure that the applications are complete before filing.
- BLM must publish a notice in the Federal Register at least 90 days before it issues a disclaimer, and also must publish a notice in

local newspapers. The purpose of the notice is to allow adjacent property owners an opportunity to assert a competing claim or to provide evidence of federal ownership.

- BLM must also offer an opportunity to review and comment on the application to adjacent federal landowners such as the National Park Service, the U.S. Fish and Wildlife Service, the Department of Defense, or the U.S. Forest Service.

Which rivers will the state file applications on?

The state's initial filings are for rivers that BLM has previously determined to be navigable for title purposes.

The state filed its first application in February 2003 for the Black River, a tributary of the Porcupine River in Northeast Alaska. The state will file five additional applications in July 2003. These five include:

- * The Porcupine River in Northeast Alaska;
- * The Klutina River and Klutina Lake, in the Copper River Basin;
- * The Tazlina River and Tazlina Lake, in the Copper River Basin;
- * The Kvichak River and Lake Iliamna; and
- * The Wood River and lake system, within Wood Tikchik State Park.

Within the next several months, the state intends to file applications for additional rivers that BLM has already found to be navigable. Not all navigable waters in Alaska are as well documented as these, of course. For waterways that require more research, the state and federal agencies will establish a process to gather information about the waterways from the public and other sources.

Various interest groups have claimed that the state plans to file applications for 20,000 rivers and a million lakes. Is this true?

While neither the state nor the federal government knows how many waterbodies in Alaska are navigable, hundreds of waterways certainly qualify, based on the legal standard for navigability. The state has no intention of filing applications for 20,000 rivers and a million lakes.

Why did the state file on the Black River first?

The state selected part of the Black River for its initial application for several reasons. First, BLM has previously determined this segment of the river to be navigable. In addition, in 1993 the state filed an action to quiet title to the riverbed, and the United States Court of Appeals for the Ninth Circuit acknowledged that the submerged land was probably state-owned, although it could not enter judgment for jurisdictional reasons. Finally, the river has a long history of use for navigation that precedes statehood.

How does the state's ownership impact allocation of fisheries?

State title to submerged land has no impact on allocation of fish or game. The federal subsistence priority granted by Title VIII of the Alaska National Interest Lands Conservation Act applies to all waterways in which the federal government has reserved water rights, generally in federal reservations such as National Parks and National Wildlife Refuges. Thus, the federal subsistence priority applies to waters within and adjacent to reserved federal lands regardless of the ownership of the land underlying the waters. The state manages fish and wildlife and provides for harvest on all lands in Alaska, regardless of ownership. On federal lands and in waters where the United States has a federal reserved water right, the Federal Subsistence Board may limit harvests by people ineligible for the federal subsistence priority. Thus, the ownership of land under navigable waters is not a factor in allocation of fish and wildlife among users.

Contact Information:

DNR Public Information Center
550 W. 7th Avenue, Suite 1260
Anchorage, AK 99501-3557
(907) 269-8400

DNR Public Information Center
3700 Airport Way
Fairbanks, AK 99709-4699
(907) 451-2705