

**HB**

**244**

<TARGET><BILL>HB 244</BILL><SUBJECT>HB  
244</SUBJECT><COMM>HFIN28</COMM></TARGET>



# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 244  
Fiscal Note Number: 1  
(H) Publish Date: 2/5/14

Identifier: HB244-DNR-CACFA-1-31-14  
Title: ADVISORY COMMISSION ON FEDERAL MGT AREAS  
Sponsor: \*\* KELLER, MILLETT  
Requester: House Resources

Department: Department of Natural Resources  
Appropriation: Administration & Support Services  
Allocation: Citizen's Advisory Commission on Federal Areas  
OMB Component Number: 2225

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services		230.8	230.8	230.8	230.8	230.8	230.8	230.8
Travel		31.6	31.6	31.6	31.6	31.6	31.6	31.6
Services		18.9	18.9	18.9	18.9	18.9	18.9	18.9
Commodities		4.0	4.0	4.0	4.0	4.0	4.0	4.0
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>

## Fund Source (Operating Only)

1004 Gen Fund		285.3	285.3	285.3	285.3	285.3	285.3	285.3
<b>Total</b>	<b>0.0</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>	<b>285.3</b>

## Positions

Full-time		1.0	1.0	1.0	1.0	1.0	1.0
Part-time		1.0	1.0	1.0	1.0	1.0	1.0
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

## Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Esther Tempel, Legislative Liaison	Phone:	(907)465-4730
Division:	Commissioner's Office	Date:	01/31/2014 12:00 PM
Approved By:	Joe Balash, Commissioner	Date:	01/31/14
Agency:	Department of Natural Resources		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. HB 244

**Analysis**

HB 244 extends the sunset date of the Citizen's Advisory Commission on Federal Areas (CACFA) in Alaska through June 30, 2021. This fiscal note extends the amount included in the FY2015 Governor's Budget for CACFA through FY20; however, funding is required through FY21.

# ALASKA STATE LEGISLATURE

**Interim:**

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Wasilla, Alaska 99654  
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**Session:**

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Juneau, Alaska 99801-1182  
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## REPRESENTATIVE WES KELLER DISTRICT 7

### SPONSOR STATEMENT HB 244

“An Act extending the termination date of the Citizens’ Advisory Commission on Federal Management Areas in Alaska; and providing for an effective date.”

House Bill (HB) 244 extends the Citizens Advisory Commission on Federal Areas’ (CACFA) sunset date from June 30, 2014 to June 30, 2021.

CACFA was first established a year after the passage of the Alaska National Interest Land Conservation Act (ANILCA). Sunset in 1999 and later reconstituted in 2007, CACFA has ably continued to perform its mission in helping Alaskans navigate ANILCA’s complex management rules and regulations and serving as a vigilant and forceful advocate for protecting Alaskans’ rightful access to federal lands and the natural resources held therein.

CACFA has reviewed, sought citizen comment, and submitted written testimony on federal management plans ranging from the Gates of the Arctic National Park and Preserve, the Cook Inlet Beluga Whales, the Joint Pacific Alaska Range Complex, and the proposed Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act.

CACFA has also significantly advanced the debate in seeking solutions to the increasingly contentious relationship between federal agencies and the State of Alaska regarding national land and resource management policies in Alaska: particularly relating to the promises made in ANILCA. In August 2013, CACFA hosted a two-day summit that brought together a diverse body of experts on Alaska federal land management issues to propose solutions towards improving the state-federal relationship and thereby enhance the ability of Alaskans to freely access and enjoy Alaska’s lands and resources. The summit was not a standalone event. CACFA has advanced the Summit’s work by conducting additional public meetings on federal overreach to develop a comprehensive list of policy recommendations.

With federal land management policies increasingly at odds with Alaska’s desire to access and sustainably develop its resources, CACFA is an essential tool in ensuring Alaskans have a strong and consistent voice. I urge you to join me in allowing CACFA to continue its important mission by passing HB 244.

E-Mail: [Representative\\_Wes\\_Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)  
Call Juneau Toll free: (800) 468-2186  
Website: [www.akrepublicans.org/keller/](http://www.akrepublicans.org/keller/)

STATE OF ALASKA  
CITIZENS' ADVISORY COMMISSION  
ON FEDERAL AREAS

2013 ANNUAL REPORT

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DEPARTMENT OF  
NATURAL RESOURCES  
3700 AIRPORT ROAD  
FAIRBANKS, ALASKA 99709

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## INTRODUCTION

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This Annual Report provides an overview of the activities of the Citizens' Advisory Commission on Federal Areas during 2013.

During the year the Commission continued to focus its efforts on monitoring, reviewing and providing recommendations and comments on an extensive list of federal land management agency plans, policies, regulations, proposed legislation and projects. A summary of the comments submitted by the Commission can be found later in this report. The Commission also held regular meetings in Juneau, Fairbanks and Anchorage. At those meetings, individual members of the public as well as representatives from State and Federal agencies, interest groups and organizations testified about problems and concerns on topics such as access to inholdings, mineral development, subsistence management, wilderness management, use of cabins, guiding for hunting and fishing, transporting services, proposed federal legislation, land selections and use of the State's navigable waters.

Commission members and staff also met and discussed management and planning activities, regulatory changes, endangered species listings, transportation planning, fish and game management issues, as well as other federal policies and programs with representatives from the National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, and the Office of the Secretary of the Interior. Commission staff continued to provide information to the public on federal land management agencies' activities and to help resolve problems or issues related to use of federal public lands and resources.

In addition to its regular meetings in Juneau, Fairbanks and Anchorage, the Commission sponsored a **Federal Overreach Summit** in Anchorage on August 12 and 13. The purposes and goals of the Summit were outlined in an invitation letter from the Commission: *"The purpose of the Summit is to "gather major participants in an examination of Alaska's relationship with the federal government prior to Statehood, during the Statehood process, and after Statehood, including a discussion of the following: Equal Footing Doctrine, navigable waters, ANCSA, ANILCA, RS 2477, the Endangered Species Act, Clean Air & Water Acts, etc. and documenting a historical perspective of the relationship discussing particular events, actions, and results. The goal of the summit is to lay the foundation for an action plan for Congress, the Alaska State Legislature, and the governor to improve the working relationship between Alaska and the federal government."*<sup>1</sup>

Additional information from the summit along with recommendations can be found in a later section of this report.

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## BACKGROUND

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The Citizens' Advisory Commission on Federal Areas was established originally in 1981 as a temporary advisory agency in the executive branch of the state. Its purpose was to provide assistance to the citizens of Alaska affected by the management of federal lands within the state. The original Commission operated from 1982 until funding was eliminated in 1999.

The Commission was reestablished in 2007 by the Alaska State Legislature and resumed full operations in July 2008. Under its enabling legislation the Commission is part of the Department of Natural Resources, Office of the Commissioner, for administrative purposes, but operates independently of the department. Its purpose, duties and responsibilities remain essentially unchanged from the original and are outlined below.

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## DUTIES OF THE COMMISSION

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The duties and responsibilities of the Commission are contained in AS 41.37.220:

- (a) The commission shall consider, research and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development and additions to federal management areas in the state.
- (b) The commission shall consider research and hold hearings on the effect of federal regulations and federal management decisions on the people of the state.
- (c) The commission may, after consideration of the public policy concerns under (a) and (b) of this section, make a recommendation on the concerns identified under (a) and (b) of this section to an agency of the state or to the agency of the United States which manages federal land in the state.
- (d) The commission shall consider the views, research, and reports of advisory groups established by it under AS 41.37.230 as well as the views, research, and reports of individuals and other groups in the state.
- (e) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.
- (f) The commission shall report annually to the governor and the legislature within the first 10 days of a regular legislative session.

(g) The commission shall cooperate with each department or agency of the state or with a state board or commission in the fulfillment of its duties.

The Commission also may establish advisory groups. Members of an advisory group must be broadly representative of individuals involved in activities affected by the establishment or management of units of federal land within the state.

Although the Commission's role is advisory, it is authorized by AS 41.37.240 to request the attorney general to file suit against a federal official or agency if the Commission determines that the federal agency or official is "acting in violation of an Act of Congress, congressional intent, or the best interests of the State of Alaska."

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## COMPOSITION

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The Commission is composed of twelve members, six appointed by the Governor and six appointed by the Legislature. Commission officers for 2012 were: Chairman, Rep Wes Keller (Wasilla) and Vice-Chairman, Mr. Mark Fish (Anchorage). The Chairman, Vice-Chairman and Mr. Rod Arno (Wasilla) and Mr. Charlie Lean (Nome) comprise the Commission's Executive Committee.

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## 2013 MEMBERS

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Rod Arno Wasilla (S)	Sen. John Coghill North Pole (S)	Mark Fish Anchorage (S)
Teresa Hanson Fairbanks (G)	Rep. Wes Keller Wasilla (H)	Charlie Lean Nome (G)
Kathleen Liska Anchorage (G)	Mike Meekin Palmer (H)	Warren Olson Anchorage (S)
Susan Smith Chokosna (G)	Ron Somerville Juneau (H)	Frank Woods Dillingham (G)

(G) Governor's Appointment  
 (S) Senate Appointment  
 (H) House Appointment

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## STAFF

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The Commission currently has two staff positions: Executive Director, Stan Leaphart, and Commission Assistant, Karrie Improte. The office is located in the Department of Natural Resources Northern Regional Office, 3700 Airport Way, Fairbanks, AK 99709-4699. (907) 374-3737 or 451-2035. FAX 451-2751.

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## NEWSLETTER

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Commission staff produces a newsletter *Alaska Lands Update* that is distributed electronically to several hundred recipients each month. Printed copies are also distributed at the DNR Public Information Centers in Fairbanks, Anchorage and Juneau. Please contact the Commission staff if you are interested in receiving the newsletter.

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## COMMISSION MEETINGS

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The Commission holds three regular meetings each year. The meeting are open to the public and testimony is accepted on any issue related to the management of federal public lands in Alaska. There are four public participation segments at each 2 day meeting and the public is provided a toll-free number to participate even if they are unable to attend the meeting. During 2013, regular Commission meetings were held in Juneau, Fairbanks and Anchorage. Minutes of the meetings are available on the Commission's website and any material distributed at the meetings is available to the public upon request.

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## COMMISSION ACTIVITIES IN 2013

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Following is an overview and summary of the comments and recommendations submitted on the federal land management plans, regulations, policies and related issues the Commission addressed during 2013. The full text of all comments and correspondence, as well as previous annual reports, meeting minutes, the monthly newsletter and other information can be found at <http://dnr.alaska.gov/commis/cacfa/>. Printed copies of all Commission documents can also be obtained from to the Commission office at the address above.

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## NATIONAL PARK SERVICE

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**National Park Service 2013 Compendiums** – In January each year the National Park Service updates the compendium for each of the Alaskan units of the National Park System. A compendium is a compilation of the designations, closures, openings, permit requirements and other provisions established by the park superintendent under the discretionary authority found in National Park Service regulations. The public is provided a 30 day review period to submit comments on revisions proposed by the agency or to make their own recommendations for changes.

In late 2012 the Service announced its intention to adopt regulations for 2013. Some of those regulations would preempt State general hunting regulations adopted by the Board of Game earlier in the year. Hearings were held in December and continued into January 2013. The Commission determined the hearing schedule was inadequate and requested that additional hearings be held in all affected areas, as required by the agency's own regulations. The lack of public hearings was compounded by the fact that all hearings were held prior to the release of the proposed 2013 revisions. Consequently, members of the public attending the hearings were unable to review and comment on the actual proposals or review any of the background material that the Agency must provide to justify its actions. The Service declined to hold additional public hearings, but did provide for opportunities for public participation via social media.

This Commission recognizes the many improvements made in the National Park Service compendium process since the agency first began using them in Alaska more than 20 years ago. The most significant improvement has been the addition of the 30 day public review period and the opportunity for the public to comment on proposed changes, closures or restrictions and to suggest other actions. Depending upon the type of regulation or restriction, public meetings are held to discuss proposed revisions, particularly those involving closures or public use restrictions.

Another improvement in the revision process is an annual meeting between the State ANILCA Implementation Program staff and the National Park Service staff, including the chief rangers for each of the park units. At that meeting potential compendium revisions are discussed along with other potential management issues before the documents are released to the public. Commission staff has participated in those annual meetings in each of the last five years.

Despite these improvements, problems remain and in some cases, have worsened. Park compendiums continue to include what the agency categorizes as temporary or seasonal closures of park and preserve areas to activities and uses. In what the Commission believes to be a violation of the agency's own regulations, these closures can remain in place for several years. The National Park Service contends that because these seasonal closures are less than 12 months in duration, they can be renewed each year without a formal rulemaking. The Commission and the State have consistently maintained that when a public closure or use restriction remains in effect indefinitely, even if it is seasonal, it constitutes a permanent closure.

Since 2010, the National Park Service has also issued several regulations through the compendium process that preempt State hunting regulations. In one instance the Service restriction was temporary and addressed what the agency considered to an emergency situation. However, in the last three years the National Park Service has issued regulations preempting regulations adopted by the Alaska Board of Game in accordance with its responsibilities and authorities under the State Constitution and State statutes. These the closures are effectively permanent in nature. As such, they require initiation of a formal rulemaking process. That process requires publication of proposed regulations

in the *Federal Register*, public notice, public meetings or hearings in the affected area(s), and opportunity for public comment. Most importantly, permanent closures or restrictions require a clear finding by the agency that the proposed action is necessary to protect park resources or values or for protection of public safety.

In mid- January the National Park Service released the 2014 revised park compendiums and announced its intention to make a procedural change in the compendium process:

“ The NPS intends to make one procedural change. In previous years, the NPS listed temporary restrictions to taking wildlife for sport purposes in this document. These restrictions have been in response to actions by the Board of Game. The NPS has requested the Board of Game consider exempting preserves from the activities listed in the 2013 compendium. If NPS restrictions are necessary, the NPS will continue to follow the federal statutory and regulatory requirements in 36 CFR, which includes notice and a public hearing in the affected vicinity. NPS will post federal restrictions at <http://www.nps.gov/akso/management/compendiums.cfm>.”

The Commission will continue to monitor this issue and after consultation with the Alaska Department of Fish & Game and the National Park Service, will provide recommendations to the agency on this procedural change.

**Chandler Lake Mitigation Project- Gates of the Arctic National Park & Preserve**  
This mitigation project involves clean-up of private property within Gates of the Arctic. The project was necessary to remove Department of Defense (DOD) debris left by Federal agencies engaged in oil exploration and arctic research activities during the 1960's. A key element of the project involved permitting access through an ANILCA Section 1110(b) Right of Way Certificate of Access (RWCA). Section 1110(b) guarantees access “for economic and other purposes” to owners of property located within conservation system units. The project is being funded by DOD and involves transport of several hundred fuel drums and cans over the course of two summers. The Commission submitted comments in support of the project and will monitor its progress.

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## U.S. FISH AND WILDLIFE SERVICE

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**Wood Bison** – In March 2013 the Commission reviewed and submitted comments supporting a proposed rule and finding in an associated Environmental Assessment (EA) for the establishment of a nonessential experimental population (NEP) of wood bison in Alaska. This nonessential population can be established under the authority of section 10(j) of the Endangered Species Act of 1973 (ESA).

Previously, the Commission commented on a proposal to reclassify the wood bison from endangered to threatened. The Commission suggested removing the wood bison from any listing under the ESA, rather than simply reclassifying. Our assessment found that delisting under the ESA would result in a significant increase in the number of free ranging herds and in the wood bison population overall because of opposition from

adjacent land owners, land managers and the resource industry concerned about reintroduction of an listed species.

This concern exists because the ESA creates regulatory and legal problems for land management agencies, private property owners and the general public in dealing with a listed species and designated critical habitat. Alaska in recent years has been adversely impacted by questionable and unnecessary listings under the ESA. Agency decisions to often are driven more by political considerations and agendas than by genuine biological necessity. Certain special interest groups engage in non-stop petition filings and litigation to misuse the ESA as a tool to prevent economic development and growth rather than one to help the recovery of truly threatened or endangered species.

The Commission expressed confidence the proposed section 4(d) special rule associated with the proposed NEP designation would provide necessary assurances to landowners and development interests that reintroduction of wood bison would not interfere with resource development or other human activities. Many Alaskans who would otherwise support the reintroduction of wood bison in this state are rightfully concerned about possible reintroduction of this, or any listed species, without adequate regulatory and legal safeguards against frivolous litigation or interference with the State of Alaska's ability to manage this NEP.

The Commission also expressed its support for the Alaska Department of Fish and Game (ADF&G) as the lead agency in the reintroduction and management of wood bison in Alaska to develop appropriate implementation and management plans. We further offered to provide assistance to ADF&G in reaching out to the general public, local communities, landowners, other State and Federal agencies, Alaska Native interests, and industry in developing those plans.

**Surrogate Species** – Also in 2013, the Commission reviewed the U.S. Fish & Wildlife Service's *Draft Guidance on Selecting Species for Design of Landscape-scale Conservation*. Based on our review, the Commission opposed adoption of the Surrogate Species program by the U.S. Fish & Wildlife Service within the State of Alaska. The Commission is unconvinced that the program would provide any substantive benefits for the management of fish and wildlife resources in this state.

There are 16 units of the National Wildlife Refuge System in Alaska, ranging in size from 700,000 acres to more than 19 million acres and encompassing 76.8 million acres in total. The lands and habitats found in these refuges are representative of all Alaskan ecosystems. Habitats in all of these refuges are essentially intact and resident fish and wildlife populations are healthy and well managed by the State of Alaska. The Commission pointed out that application of a USFWS surrogate species program to state managed species or to non-USFWS managed lands would interfere with the State's constitutional authority to manage its fish and wildlife resources.

Recognizing that the USFWS has primary management responsibility over migratory waterfowl, endangered species and certain marine mammals found in Alaska, the

Commission suggested that if the USFWS were compelled to adopt a surrogate species program, that it select species over which it has clearly delineated statutory and regulatory management authority. Species which are the responsibility of the State of Alaska should not be selected, nor should non-USFWS managed lands be included.

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## U.S. FOREST SERVICE

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**Tongass National Forest Sustainable Cabin Program** - The Commission continued its involvement with the U.S. Forest Service Public Cabin Program in the Tongass in 2013. In late 2012 the Commission submitted scoping comments on the proposed removal of nine cabins in the Tongass National Forest and the conversion of three cabins into shelters. The Commission voiced concerns with the proposal based on several factors. One was the need for the public to be provided the opportunity to review and comment on a more detailed environmental assessment as well as a separate report that assessed the cabin program and recommended ways to make it financially sustainable. We also objected to the lack of alternatives for addressing the maintenance issue for the 12 cabins in question. In effect, the original proposal only considered either doing nothing or removing the nine cabins and converting three others. No alternative was considered that would have repaired and retained at least some of the cabins for recreational use, to support subsistence activities or to provide emergency shelter. It was also pointed out that ANILCA and the Forest Service Manual both require that removal of any public use cabin or shelter in designated wilderness requires preparation of a health and safety analysis and notification to Congress.

The Commission met with Forest Service officials at its February 2013 meeting in Juneau to discuss the proposal and the Sustainable Cabin Program. An Environmental Assessment on the program and the proposed removal and/or conversion of the 12 cabins was released in November, 2013. The Commission resubmitted its earlier scoping comments along with additional comments expressing appreciation for the Forest Service decision to prepare a more detailed environmental assessment which included the required health and safety analysis and to provide a public review period. At the same time, the Commission reasserted its position that the agency's overly restricted wilderness management policies have contributed to the maintenance problems for the Tongass cabin program through the loss of volunteers and through increased costs to the agency by restricting use of mechanized equipment for maintenance and construction.

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## BUREAU OF LAND MANAGEMENT

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**Eastern Interior Draft Resource Management Plan**- This plan, which analyzes proposed management actions on approximately 6.7 million acres of land administered by the BLM, was originally released in March 2012. In mid-2012 the agency issued a supplement to the draft plan that examined mineral leasing in the White Mountains

National Recreation Area, as provided by Section 1312 ANILCA. The comment period was subsequently extended until April 2013. The Commission conducted an extensive review of the draft plan and associated environmental documents for the Eastern Interior Planning Area and submitted a number of recommendations for management of the area.

One of the key recommendations made by the Commission's encouraged the revocation or modification of the ANCSA 17(d)(1) withdrawals that have been in place since the early 1970's. These withdrawals, implemented through public land orders, closed the lands to mineral entry or location and leasing and also imposed other restrictions, pending the resolution of the national interest conservation lands question. Passage of ANILCA in 1980, which included designation of the Birch Creek, Beaver Creek and Fortymile Wild and Scenic Rivers (WSR), the Steese National Conservation Area (NCA) and the White Mountains National Recreation Area (NRA), eliminated the need for the majority of these withdrawals. The Commission also recommended modification of the applicable public land orders to allow mineral leasing to occur within the White Mountains NRA, subject to the provisions of ANILCA, existing regulations for leasing in the NRA and an objective assessment of the issue by the agency and the Secretary of the Interior.

Because of the high number of remaining withdrawals and public land orders, several of which overlap, the Commission recommended that the BLM include an appendix in the final plan that addresses withdrawals, how existing withdrawals will be handled in the each of the alternatives and clarify whether new or additional withdrawals are proposed.

The draft plan found that most of the planning area possesses wilderness characteristics. The amount of acreage proposed for management actions which would maintain wilderness characteristics varied by alternative. The Commission recommended that only the designated river corridor for the Birch Creek WSR within the Steese NCA, the Beaver Creek WSR corridor within the White Mountain NRA and the Joseph Creek segment of the Fortymile WSR be managed to maintain wilderness characteristics. The Commission further recommended against designation of any Special Recreation Management Areas, primarily because each of the proposed areas includes one or more ANILCA designated unit. In addition to the ANILCA designation, each of those units is a component of the National Landscape Conservation System. Adding another administrative designation on top of the existing statutory designations serves no real purpose and may actually detract from the mandated purposes for which the areas are to be managed.

The draft Eastern Interior RMP contained a Travel Management Plan for the White Mountains subunit. In light of this plan, the Commission felt that it was appropriate to include travel management proposals in the range of alternatives for this planning subunit, although we supported no closures. However, for the Steese, Fortymile, and Upper Black River subunits, the Commission recommended deferring any final decisions on travel management under all alternatives until a Comprehensive Travel Management Plan is completed for each subunit. This was particularly true for any alternative that proposed limits on access beyond those already in effect under the existing resource

management plans. The Commission suggested no action be taken until further identification and definition of the transportation assets in the planning area is achieved. There is no functional way to apply restrictions and limitations on a network of trails and roads in advance of all the information being gathered, evaluated and presented. A final plan is anticipated in mid-2014.

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## FEDERAL OVERREACH SUMMIT

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In August 2013, the Commission sponsored a two day summit designed to explore the issue of Federal Overreach and improving the working relationship between the State of Alaska and Federal land management and regulatory agencies. Invited speakers presented examples of issues and problems associated with implementation of Federal statutes such as the Alaska National Interest Lands Conservation Act (ANILCA), Alaska Native Claims Settlement Act (ANCSA), Federal Land Policy Management Act (FLPMA), Clean Water Act, Clean Air Act, the National Environmental Policy Act (NEPA), the Wilderness Act and the National Forest Management Act (NFMA), Tongass Timber Reform Act, Quiet Title Act, Revised Statute (RS) 2477 and the National Wildlife Refuge Improvement Act.

The Summit was attended by nearly two hundred members of the public who heard presentations from 24 speakers, including Governor Sean Parnell, Senator Lisa Murkowski, Senator Mark Begich, Congressman Don Young, State Attorney General Michael Geraghty, and other speakers with extensive experience with the implementation of federal public land laws, regulations and policies in Alaska. A full transcript of the Summit, as well as a video of the event, are available on the Commission's website. A summary is included as an appendix to this report.

The Summit opened with a presentation by Governor Sean Parnell. In addressing the participants, Governor Parnell defined Federal Overreach as: *"Simply, the federal government moving into areas never intended under the color of law or outside the rule of law. Federal overreach is federal encroachment, whether express or implied, whether by commission, omission, or delay. Federal overreach occurs as the federal government over-spends, over-taxes, over-regulates, over-snoops, and over-decides those things that ought to be left to individuals, or their local or state representatives."*

To provide an historical context for current issues, Summit participants were provided an overview of the history of land ownership in Alaska from the time of Russian possession through the present day. Special attention was given to key pre-Statehood issues that drove the push for Statehood. These included the lack of local control of fish and wildlife as well as inadequate representation or influence in land management and budget decisions in Washington D.C. that affected the Territory and its residents. Outside interests were able to affect Federal agencies management of the fishing industry, such as fisheries allocation in Southeast Alaska's salmon fisheries between fish trap operators and local fishermen. Motor restrictions in the Bristol Bay commercial fishery affected

the efficiency of that fishery. Monopolistic freight rules that required all goods shipped to and from Alaska be routed to Seattle were another example of outside control.

Also covered in the presentations were Alaska's land entitlement under the Statehood Act, settlement of Alaska Native land entitlements provided in ANCSA and the protracted debate and controversies leading to the passage of ANILCA. An overview of the key provisions of ANILCA was also provided.

A follow-up meeting was held on October 3, 4 & 5 in Anchorage. Lieutenant Governor Mead Treadwell attended and discussed issues related to State-Federal relationships, Federal overreach and the effects of Federal regulations and policies on the State of Alaska. To provide additional perspectives on the issues, invitations were sent to each of the ANCSA Regional Corporations and the Alaska Federation of Natives. Several Native organizations and tribal entities participated in the October meeting.

In order to discuss the issues and concerns heard at the summit and the preliminary recommendations made there, the Commission invited Federal agency representatives, including the Special Assistant to the Secretary of the Interior, the Bureau of Land Management, the National Park Service, the U.S. Fish & Wildlife Service, the U.S. Forest Service, the National Marine Fisheries Service and the Environmental Protection Agency. Unfortunately, due to the shutdown of the Federal government on October 1, none of the Federal agency representatives were able to attend. Commission staff was able to meet with several of agency representatives individually once government operations resumed

Commission members are fully aware that a number of these recommendations are controversial. Implementation of some, whether through the legislative process, through the courts or through negotiations and cooperative efforts with Federal agencies will be challenging. At the same time, we believe some of them will be readily accepted and can be implemented through a little hard work and cooperation by State and Federal agencies and involvement by the public. Some may be impossible to implement through any process.

We recognize that implementation of some of these recommendations by the State could require increases in funding and staff resources. We are also fully aware of the extensive efforts that the Administration and the Legislature already make to deal with the issues and problems brought forth at the summit and addressed in these recommendations. And finally, we are sensitive to the fact that the State faces very real uncertainties about future revenues and that future budgets will be affected by those uncertainties.

Implementation of a number of these recommendations will likely be resisted by the Federal agencies, special interest groups and some segments of the public. **Recognizing that difficulty, this Commission remains committed to the effort because our members believe that the promises and compromises built into the Statehood Act, the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act must be fully honored by the Federal government.**

While the Commission acknowledges the authority and power of the Federal government, members do not accept that it exists without limits or restrictions. The sovereign rights and powers of the State of Alaska and its citizens must be protected from an overreaching and overzealous Federal government in those instances when it attempts to exceed its statutory and Constitutional authorities.

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## CACFA ISSUES AND RECOMMENDATIONS

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Following are a number of recommendations made by Summit participants and by the members of this Commission. These recommendations have been endorsed by the Commission and are submitted to the Governor of Alaska and the Alaska State Legislature for consideration in accordance with our statutory responsibilities. The recommendations are grouped by topic, but are not presented by priority.

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### NAVIGABLE WATERS AND SUBMERGED LANDS

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**Recommendation: The State should take the following steps to continue to aggressively pursue its submerged land entitlement.**

- Draft an amendment to the Quiet Title Act to establish a process for state ownership of navigable waters based on specific criteria so BLM must take a timely position on navigability determinations or concede State title.
- Improve and explore ways to simplify and streamline the Recordable Disclaimer of Interest(RDI) process.
- Establish and clarify BLM criteria for determining navigability.
- Push to make navigability decisions/determinations based on physical characteristics of a water body.

Alaska became a state in 1959 and under the Equal Footing Doctrine and the Submerged Lands Act inherited title to almost 60+ million acres of submerged lands. Unfortunately, since statehood, less than 20 rivers have been determined to be navigable by the federal courts.<sup>2</sup>

In the State of Alaska's litigation to quiet title to the Black, Kandik and Nation Rivers in northeast Alaska, the process took nine years to complete even though the State's claim that the rivers meet the criteria for navigability was uncontested. In its decision, a panel for the Ninth Circuit Court of Appeals noted in January 2000:

*"There is also a serious policy concern in favor of allowing resolution of disputes based on the United States' inchoate claim to everything in Alaska but what it has disclaimed. Eventually all the witnesses will be dead, reducing the reliability of litigation. Someone who used one of these rivers in 1959 at age 20 is now 60. The population in the area was so sparse at all relevant times - probably no more than a*

*couple of hundred people who might have used the three rivers during the relevant time, most too young to have relevant knowledge or too old to have survived the forty years since statehood - that a few deaths by old age can remove most or all the knowledgeable witnesses. Also, a state entitled as of 1959 to all the incidents of ownership in its rivers, yet still deprived of clear title forty years later. is effectively deprived of what it is entitled to under the equal footing doctrine."*<sup>3</sup>

Given the existing lengthy and complicated process to establish clear title to the State's navigable waters changes to the applicable statutes are needed.

**Recommendation: The use of the basin wide adjudication process authorized under Alaska Statutes (AS) 46.15.165 and 166 and 11 AAC 93.410 should be considered as a mechanism for asserting Federal Reserved Water Rights.**<sup>4</sup>

According to a 2009 report prepared by the Alaska Department of Fish and Game:

*Additional amendments to the Alaska Water Use Act were approved by the Legislature and Governor in 1986 relating to federal reserved water rights claims on federal reservations of land and to facilitate basin wide water rights adjudications for adjudication of Federal Reserved Water Rights and other Basin Wide Adjudications (Senate Bill, SB 150). The 1986 amendments established formal mechanisms for adjudicating Federal Reserved Water Rights (for withdrawals impoundment and reservations of surface and subsurface waters) under administrative jurisdiction of state law (AS 46.15.165) and the Alaska judicial system (AS 46.15.166). These processes enhance the roles and opportunities for the state to maintain more control and minimize costs when using these tools to eliminate uncertainty related to competing water rights claims that may be associated with future claims for reserved rights. The importance of basin wide adjudications is also discussed in White (1981), Anderson (1991), Welker (1997) and Estes (1998, 2007). Welker (1997) provides a series of recommendations associated with basin wide adjudications for state action as part of an audit requested by the Alaska Legislature.*<sup>5</sup>

The report acknowledges that several attempts to assert Federal Reserved Water Rights have not been successful, but states that this and related basin wide adjudication provisions of the State's Water Use Act may eventually be used as one of the supplemental mechanisms for reserving water for specific purposes for water uses associated with federal land reservations. The report suggests a review of the failed attempts to adjudicate reserved water rights asserted by the National Park Service and others in the Indian River Basin in Sitka in the 1980's could provide insight in how to better apply the process.

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## ACCESS ISSUES

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**Recommendation: Aggressively pursue public access solutions.**

- Continue to identify, document and protect RS2477 Rights-of-Way.
- Provide additional resources to the Public Access Assertion and Defense (PAAD) Unit in DNR and Department of Law.

**Recommendation: Consideration should be given to amending current Federal law to allow use of the Recordable Disclaimer of Interest (RDI) process for RS 2477 rights-of-way.**

In 2004 the General Accounting Office issued an opinion which determined that Section 315 of the Federal Land Policy and Management Act (FLPMA) provides the authority for the Department of the Interior to issue recordable disclaimers of U.S. interests in lands in certain circumstances, including the acknowledgement of RS 2477 rights-of-way.<sup>6</sup>

However, in the same report, the GAO also determined that a 2003 Memorandum of Understanding (MOU) between DOI and the State of Utah that would implement a "State and County Road Acknowledgment Process" intended to acknowledge the existence of certain R.S. 2477 rights-of-way on BLM land within the State of Utah, using the FLPMA §315 disclaimer process constituted a final or regulation. As such, the MOU was prohibited from taking effect by Section 108 of the *Omnibus Consolidated Appropriations Act, 1997*.<sup>7</sup> Because of this statutory prohibition, use of the RDI process for RS 2477 rights-of-way would require specific exemption from Section 108 of the 1997 appropriations bill.

**Recommendation: Provide adequate funding to develop and conduct a coordinated and comprehensive program to document traditional access in Alaska.****Recommendation: Prohibit ANCSA 17(b) easements from being vacated unless at least comparable alternative access is provided.****Recommendation: State and Federal agencies should pursue funding for marking and signing of 17(b) easements and trailheads.****Recommendation: Clarify and strengthen the statutory provisions and implementing regulations and policies that guarantee access to inholdings within or effectively surrounded by conservation system units or other federal public land.**

Section 1110(b) of ANILCA guarantees adequate and feasible access to State owned or privately owned lands, subsurface rights, mining claims or other valid occupancy, within or effectively surrounded by a conservation system unit in Alaska. ANILCA Sections 1323(a) & (b) guarantee access to private lands within the boundaries of the National Forest System and to private property surrounded by lands managed by the Bureau of

Land Management under the provisions of FLPMA. Despite these guarantees access problems for inholders continue.

**Recommendation: Encourage the U.S. Fish & Wildlife Service to adopt the Right of Way Certificate of Access process developed by the National Park Service.**

**Recommendation: State and Federal agencies should work with all land owners and the public to resolve access issues.**

**Recommendation: Federal agencies should pursue funding for creation, designation and maintenance of trails for off-road vehicle and other uses in accordance with the Alaska Federal Lands Long Range Transportation Plan.**

The 2012 BLM portion of the *Alaska Long Range Transportation Plan* recognized the importance of access in rural Alaska:

*“Not only are trails the predominant transportation network within BLM lands, they are of great importance to various user groups for recreation, subsistence, permitted commerce, and daily travel. For some remote communities, winter trails are the primary means of accessing neighboring communities, and the transportation of goods and services where no constructed roads exist. For these communities, winter trails are not recreational, but the primary means of overland transportation and commerce. Trails are also significant travel resources for participating in subsistence related activities by connecting villages to remote reaches of BLM lands. Trails support numerous modes of travel, which are influenced by seasonal conditions. Trails support travel by OHVs, hiking, horses, and bikes in the summer, and snowmobiles, dogsleds, and cross-country skiing in the winter.”<sup>8</sup>*

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## FISH AND WILDLIFE MANAGEMENT ISSUES

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**Recommendation: Draft legislation or propose other Congressional action in concert with other states to specifically recognize the primacy of state management of resident fish and wildlife on all lands within the individual states, so that it is not subject to discretionary authority of individual managers in implementation of agency policies, values, and plans.**

**Recommendation: Seek Congressional assistance (through the appropriations process) to prevent Federal agencies from funding initiatives that duplicate or diminish state authorities for managing fish and wildlife.**

**Recommendation: Litigate improper use of National Park Service compendia that diminish ANILCA protections and intrude in State management of fish and wildlife.**

**Recommendation: Take all necessary actions to address wildlife management conflicts, including:**

- Pursue legal and conclusive definition of "federal public lands."
- Apply distinct administrative standards to simply and clarify federal subsistence.
- Develop new or improve existing cooperative state/federal administrative actions to reduce conflicts and confusion.
- Pursue State/Native land cooperative management programs.

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## LEGISLATIVE RECOMMENDATIONS

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**Recommendation: Pursue adoption of an ANILCA amendment that: (1) clarifies "no more" wilderness and wild & scenic river reviews; (2) that lands in Alaska identified or recommended for designation in previous studies or reviews are not to be managed for "wilderness character" until designated by Congress; and (3) sunsets any and all recommendations for such designations if Congress doesn't act within a specified period of time.**

ANILCA 1317 required the National Park Service and the U.S. Fish & Wildlife Service to conduct wilderness suitability reviews for all lands within national park and refuge units not designated as wilderness by ANILCA<sup>9</sup>. Those reviews were completed in conjunction with the preparation of the first generation of National Park General Management Plans and National Wildlife Refuge Comprehensive Conservation Plans. Even though the suitability reviews and environmental impact statements were completed and records of decisions signed, the final steps, which involved the Secretary of the Interior submitting final recommendations to the President, who in turn would submit recommendations to Congress were never completed. Despite that, the Section 1317 reviews should be considered as complete and no additional reviews should be conducted.

Section 704 of ANILCA designated the Nellie Juan-College Fiord area in the Chugach National Forest as a wilderness study area, in accordance with the Wilderness Act.<sup>10</sup> At the same time, ANILCA contained release language in Section 708, which according to the Congressional Research Service "provides statewide USFS release language, except for the area identified in §704."<sup>11</sup> The Forest Service should be required to recognize this release language and not conduct any further wilderness reviews or studies.

**Alternative Recommendation:** Congress could require full compliance with ANILCA 1317 by directing NPS & USFWS, through the Secretary of the Interior, to update and revise the original ANILCA Section 1317 Wilderness Reviews conducted in accordance with that section. The Secretary should be directed to complete the reviews and submit any recommendations to the President within a time certain. (ANILCA required the reviews be completed and reported to the President within 5 years of passage of the act). The President would then submit any recommendations for additional wilderness designation to Congress in accordance with sections 3(c) and (d) of the Wilderness Act within 18 months of receiving any recommendation from the Secretary. Any wilderness

recommendation from the President would expire if Congress took no action within 18 months and no further wilderness reviews would be conducted. This would stop what will ultimately be an endless cycle of wilderness reviews resulting from recent policy changes and inconsistencies between ANILCA and more general statutes and national policies.

Congress should also provide direction that should the U.S. Forest Service develop recommendations for additional wilderness in conjunction with the upcoming revisions or amendments to the Chugach National Forest and the Tongass National Forest Land and Resource Management Plans, those would be the final reviews required under any applicable law.

Clarifying Release language for Alaskan Units of the National Park System, National Wildlife Refuge System, National Forest System and BLM managed lands should be developed to prevent a continual cycle of wilderness reviews and wild and scenic rivers suitability reviews.

Suggested language: RELEASE OF WILDERNESS STUDY AREAS.—

(A) Congress finds that, for the purposes of section 1317 of the Alaska National Interest Lands Conservation Act (16 USC 3205), all lands within the units of the National Park System and units of the National Wildlife Refuge in Alaska not designated as wilderness by said Act have been adequately studied for wilderness designation.

(B) RELEASE. – Any public land referred to in subparagraph (A) not designated as wilderness by ANILCA (16 USC 3101 *et. seq.*) is no longer subject to section 3(c) and (d) of the Wilderness Act

**Recommendation: Continue to pursue litigation and support legislation or regulatory revisions to exempt Alaska from the Forest Service Roadless Rule.**

Senator Begich and Senator Murkowski have co-sponsored legislation - S. 384- *A Bill to exempt National Forest System land in the State of Alaska from the Roadless Area Conservation Rule.*<sup>12</sup>

The Forest Service's decision to reapply the 2001 Roadless Rule presents a number of concerns. For example, the 2008 Tongass Forest Plan Amendment was approved while the Tongass Exemption was in effect. This means that major components of the current Forest Plan, such as its Land Use Designations (LUDs), Old-growth Conservation Strategy, and management goals and objectives, which were designed specifically to address the management challenges of the Tongass, are effectively superseded by the 2001 Roadless Rule.

Additionally, the Forest Service's decision to reinstate the 2001 Roadless Rule rather than revising it disregards the fact that authorized road building occurred in Inventoried Roadless Areas on the Tongass during the seven years under the exemption. This produced what is known as "roaded roadless." By now operating under provisions of the

2001 Roadless Rule, the Forest Service is unable to authorize commercial timber harvest or additional road building in these "roaded roadless" areas, even though they may be zoned for such development activities under the current Forest Plan, and previous harvest may have occurred there.

The State has requested that the Forest Service comply with the Congressional directives in ANILCA and the TTRA by administratively reinstating the Tongass Exemption through a new rulemaking or amending the original 2001 Roadless Rule to exempt Alaska lands. Unless the steps are taken it may not be possible for the U.S. Forest Service to produce any forest plan that complies with federal law.

Another impact from the roadless rule is the ability to construct new power transmission lines and expand the power distribution network in Southeast Alaska.

**Recommendation: Draft an amendment to Title XI of ANILCA to improve the process to authorize transportation and utility systems across conservation system units and to maintain traditional access, recognize RS2477s (valid existing rights), and assure the other access protections are not subject to subjective or arbitrary values of a land manager.**

**Recommendation: Amend ANILCA Title I to reiterate and clarify that federal regulations for management of conservation system units in Alaska do not apply to state lands, including submerged lands, navigable waters, private lands, and validly selected state and Native corporation lands; e.g., clarify non-applicability of NPS "water regulations" at 36 CFR Part 1.2. Stop federal permit requirements on state navigable waters.**

**Recommendation: Amend the Endangered Species Act to refine the listings qualifications, minimize critical habitat designations, establish triggers for delisting, and give primacy to the state's in management of trust species.**

**Recommendation: Request the Congressional delegation conduct committee oversight hearings to require federal agencies to justify actions that are identified as inconsistent with ANILCA, that are impractical in the Alaska context, and which lack genuine dialogue or consultation with the State.**

**Recommendation: Continue to pursue additional Congressional action if necessary to ensure proper implementation and continuation of the ANILCA Section 1308 Local Hire Program.**

The ANILCA Local Hire Program has provided hundreds of jobs to Alaskans with local knowledge and expertise who may not have otherwise qualified for employment with Federal land management agencies under standard hiring practices. Since 1980, a number of amendments were made to Section 1308 in order to improve the program. The local hire program was strongly supported by the Federal land management agencies in Alaska. The program operated successfully for some 25 years, before the Office of

Personnel Management inappropriately imposed several restrictions. The result was several years of lost seasonal employment opportunities for Alaskans and adversely affected the Federal agencies' operations and projects. Recent statutory changes appear to have restored the program to its previous effectiveness, but it should be closely monitored to ensure operation as intended by ANILCA.

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## PLANNING & POLICY ISSUES

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**Recommendation: Monitor federal agencies' activities to ensure that plans, policies, guidelines or management actions do not extend beyond federal lands.**

**Landscape Conservation Cooperatives, Surrogate Species Monitoring Initiatives, Rapid Ecoregional Assessments, Regional Mitigation Strategies** and other "cross boundary" policy initiatives must be carefully monitored to ensure that Federal policies, restrictions, regulations or management strategies do not extend beyond Federal lands to State and private lands without clear statutory authorities and with the full concurrence of the non-federal land owner.

The Science Committee of the National Park System Advisory Board in 2012 released a report entitled "*Revisiting Leopold: Resource Stewardship in the National Parks.*" The report (pg. 9) states: "*Resource stewardship requires land- and seascape strategies at larger regional scales.*" It then goes on to state (pg. 14) that the agency's management strategies "...*must be expanded to encompass a geographic scope beyond park boundaries to larger landscapes and to consider longer time horizons.*"<sup>13</sup>

The U.S. Fish and Wildlife Service describes Landscape Conservation Cooperatives (LCC) as "public-private partnerships that provide the expertise need to support conservation planning, implementation and evaluation at landscape scales." LCC were created under Secretarial Order No. 3289 *Addressing the Impacts of Climate Change on America's Water, Land and Other Natural Resources.*<sup>14</sup>

A recent Government Accountability Office report to Congress defined Landscape level (and landscape level) as "*a regional system of interconnected properties that is larger than the boundaries of any single land management jurisdiction, such as a national park. Managing natural resources at the landscape level involves defining the scope of the landscape to be managed, identifying specific conservation objectives, and collaborating with stakeholders to achieve them.*"<sup>15</sup>

In the report accompanying the FY2014 Department of the Interior appropriations bill, Congress expressed concern about Landscape Conservation Cooperatives.<sup>16</sup> Also in the appropriations bill, Congress directed that a comprehensive report to Congress describing in detail all Federal agency funding for climate change programs, projects and activities in fiscal years 2013 and 2014, including an accounting of funding by agency with each

agency identifying climate change programs, projects and activities and associated costs. In addition, the State of Alaska recently reviewed and submitted comments expressing concerns about an Interim Policy and draft BLM Regional Mitigation Manual. The Commission will continue to monitor these programs and initiatives implemented by the agencies to monitor climate change.

**Recommendation: A review should be conducted of each agency and department climate change programs and initiatives in Alaska to avoid duplication of effort and redundant programs and unnecessary expenditure of funds.**

The U.S. Fish & Wildlife Service has identified five Landscape Conservation Cooperatives in Alaska. The Bureau of Land Management is conducting Rapid Ecoregional Assessments (REA) in four areas of Alaska. The U.S. Forest Service is currently conducting a vulnerability assessment of the Chugach National Forest which will include information on the expected ecological effects of climate change on key natural resources on the forest. The National Park Service has adopted a Alaska Region Climate Change Response Strategy.

An examination of maps depicting the locations of the areas covered by these programs indicates extensive overlap. For example, the U.S. Fish & Wildlife Service LCC's encompass each of the BLM Rapid Ecoregional Assessment Areas, the Chugach National Forest and all of the National Park Units in Alaska. While we recognize that each Federal agency has different statutory mandates for managing lands and separate funding, the individual programs and initiatives should be reviewed and consideration given to consolidating programs to avoid unnecessary duplication of efforts.

**Recommendation: Avoid spending scarce federal funds and resources on special, non-designated areas such as Beringia International Park or administratively created programs such as the National Water Trails System, National Blueways System, and the BLM Wildlands Program.**

While the Blueways System, created by secretarial order in 2012 was recently terminated by the Secretary of the Interior because of public opposition, it took Congressional action through the appropriations process to end the Wildlands Program. Even then, the framework of that program remains in place and has the potential to significantly influence future Bureau of Land Management planning and management decisions.

**Recommendation: A mechanism must be put into place to prevent Federal agencies from adopting or implementing substantive changes in management or planning policy without public notice and opportunity for public comment. There are several examples of unilateral policy initiatives and policy changes that have made in the last few years.**

**U.S. Fish & Wildlife Service Cabin Policy** – In draft policy released in September 1987 in the Federal Register (52 FR 35157) with a 60 day review and comment period. After significant objections were raised a revised draft policy was released in December 1988

(53 FR 48732), also with a 60 day review period. A final cabin management policy was approved August 23, 1989. Draft regulations were published in the Register in April 1999. Public hearings were held in Anchorage and Fairbanks and final regulations published in July 1994. In 2010 a revised regional cabin policy was approved by the regional director. There was no prior notice, no consultation or opportunity for comment by the public, CACFA or the State of Alaska.

**U.S. Fish & Wildlife Service - Wilderness Review Policy-** Section 1317 of ANILCA required the USFWS to conduct wilderness reviews of all lands within the NWR system in Alaska that were not designated wilderness by ANILCA. These reviews were completed as part of the refuge planning process mandated by Section 304 of ANILCA, although no recommendations were forwarded to Congress through the Office of the Secretary of the Interior or the Office of the President. In November 2008, following an extensive development and public review process that began in 2001, the Service adopted a Policy on Wilderness Stewardship. The policy clearly stated that the wilderness reviews required by ANILCA Section 1317 were completed and that additional wilderness reviews are not required for refuges in Alaska.<sup>17</sup>

In January 2010, then U.S. Fish & Wildlife Service Director Sam Hamilton issued a memorandum to the Alaska Regional Director contravening the formally adopted agency policy and directed that the revisions of the Comprehensive Conservation Plans for Alaska National Wildlife Refuges should contain a “complete wilderness review of refuge lands and waters that includes the inventory, study and recommendation phases in accordance with 610 FW 4 (Wilderness Review and Evaluation).”

Not only was there no notice to the public or opportunity for public comment, nor consultation with the State of Alaska, the memorandum was not made known by the U.S. Fish and Wildlife Service Alaska Regional Office until the summer of 2010, some six months following its signing.

**Bureau of Land Management - Wild Lands Policy** – In December 2010, with no outside consultation, no public notice and no opportunity for public comment, Department of the Interior Secretary Ken Salazar issued Secretarial Order 3310 – *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*. This Secretarial Order created what came to be known as the Wild Lands Policy. It directed the Bureau of Land Management to inventory and protect lands determined to have wilderness characteristics through land use planning and project level decisions and to designate those lands as Wild Lands unless the agency determines that impairment of wilderness characteristics was appropriate and consistent with other applicable law and resource management considerations.

Objections were raised by most of the Western public lands states and at least one lawsuit was filed. The Secretarial Order was viewed as an effort to circumvent Congress and create a system of administratively designated wilderness areas. The Wilderness Act of 1964 authorizes only Congress to designate wilderness. Despite the widespread objections, the Secretary refused to rescind the order and it was only when Congress

prohibited the expenditure of any funds for the implementation of the Wild Lands program. The Bureau of Land Management continues to conduct wilderness characteristic inventories as part of its resource management planning process.

**Recommendation: The State of Alaska, the Congressional delegation, and NGOs should press Federal agencies to exempt Alaska from national policies that fail to adequately recognize and reflect the Alaskan context or Alaska specific conditions.**

Recent problematic examples include the FS Transition Strategy, FWS Wilderness Review Policy, BLM Wild Lands Policy, and NPS Management Policies.

**Recommendation: Encourage federal agencies to adopt simplified management plans that update existing ones rather than write completely new ones that do not retain the original plans' context.**

Agencies must recognize that the public simply cannot keep up with the increasing size and complexity of the management plans and environmental documents currently being developed. Plans and accompanying environmental impact statements that are hundreds of pages in length overwhelm the average member of the public. For example, the draft plans for the Arctic National Wildlife Refuge, the National Petroleum Reserve-Alaska and the Eastern Interior Planning Area all exceeded 1000 pages in length. These were in addition to preliminary scoping reports, analyses and other material that are integrated into the planning process. Even State agencies, industry and other organized groups with staff and expertise in the planning and NEPA processes are struggling to review the increasing volume of plans. More importantly, because of the complexity of the plans it is often difficult to fully understand and evaluate the implications and potential effects of the management strategies. This is particularly so when Federal agencies regularly change underlying policies and guidelines without explicit rationale or clear justification.

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## ANCSA SECTION 17(D)(1) WITHDRAWALS

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**Recommendation: Find a mechanism to induce the Department of the Interior to release the ANCSA 17(d)(1) withdrawals consistent with approved BLM resource management plans so the public lands are available under Public Land laws, including mineral entry.**

The series of Public Land Orders (PLOs) issued from 1972 to 1975, signed by the Secretary of the Interior under the authority of Sections 17(d)(1) and 17(d)(2) of the Alaska Native Claims Settlement Act (ANCSA) withdrew and reserved lands for study and classification. These PLOs closed the lands to disposal and appropriation under the public land laws (including mining and mineral leasing laws) except for PLO No. 5180, which did allow for location of metalliferous minerals. The intent of the withdrawals was

to protect resources, to prevent encumbrances that could interfere with State or Native entitlements, and to study lands for further inclusion into conservation units.

In the 1980's pursuant to Section 1008 of Alaska National Interest Lands Conservation Act (ANILCA), some limited studies and environmental assessments were done and about 10 million acres of the land withdrawn by the d-1 PLOs were opened to entry. No further openings have been offered since that time. The BLM's land use planning (LUP) process now serves as the means to assess resource values and make recommendations for opening lands withdrawn by these PLOs.<sup>18</sup>

At the time of the 2006 report, 158,958,000 acres of federal public land in Alaska were under the d-1 withdrawals. More than 102,097,900 of those acres were withdrawn by ANILCA and are incorporated into conservation system units. The Records of Decision for four current Resource Management Plans recommended lifting the d-1 withdrawals as follows:

- Ring of Fire RMP ROD( 2007) – Revoke all withdrawals (486,000 acres)
- East Alaska RMP ROD (2007 - Revoke 80% of withdrawals (6.0 million acres)
- Kobuk-Seward RMP ROD (2008) - Revoke all withdrawals (11.9 million acres)
- Bay RNP ROD (2008) - Revoke all withdrawals (1.1 million acres)

To date the Secretary of the Interior has taken no action to modify the long list of public land orders and revoke any of the existing d-1 withdrawals, despite the commitment from the department to Congress to do so as part of the RMP planning process.

**Recommendation: Reinstate the Alaska Mineral Resource Assessment Program (AMRAP) and annual report.**

ANILCA Section 1010 of ANILCA states: *“The Secretary shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the data base with respect to the mineral potential of such lands.”*

From the mid 1970's until the mid 1990's the Alaska Mineral Resource Assessment Program collected basic data and prepared mineral resource assessments. The program was originally created by the U.S. Geological Survey USGS to meet the demand by public and private interests for information on Alaska's mineral endowment. After enactment of ANILCA in 1980, the AMRAP program evolved to meet the requirements of Section 1010. The original AMRAP program included several levels of study, but the focus of the program was based on the Alaska quadrangles (1:250,000 scale maps). These studies included geologic mapping, geochemical sampling, collection of some geophysical data, and publication of a mineral resource assessment for the quadrangle. Funding for AMRAP was originally a Congressional budget line item. Over time, specific appropriations shrank and the line item was eliminated. AMRAP was essentially gone by the mid-1990s.<sup>19</sup>

According to the U.S. Geological Survey, over the 20 years of AMRAP, studies were completed for approximately one third of Alaska's quadrangles with concentration on those quads considered most mineral prospective. Area-wide mineral assessments of Alaska were conducted in coordination with several Federal agencies. Historically, these have included the U.S. Bureau of Mines, USGS, BLM, and the Forest Service. In 1996, the U.S. Bureau of Mines closed and its functions in Alaska were transferred to the BLM under Secretarial Order 3196, dated January 19, 1996.

Some USGS minerals work in Alaska continues today under the Mineral Resource Program (MRP). Currently, the DOI budget proposes a \$2.8 million funding reduction that is tied to the Research and Assessment part of the MRP. This part of the program covers work nationwide and would also reduce mineral resources work in Alaska. USGS states that Alaska is still a priority area for the MRP, but clearly less than when AMRAP was a stand alone program. There are several projects underway in Alaska, including research to understand geologic controls of mineral resources in the Western Alaska Range, investigations at the Bokan Mountain rare earth element deposit, and interpretation of existing regional airborne geophysical survey data.

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## COMMUNICATION, CONSULTATION AND COOPERATION

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**Recommendation: Pursue improved communication and cooperative/collaborative processes with federal agencies to more fully engage the Alaskan public, Native corporations, Tribal organizations, local governments and State of Alaska agencies, in federal decision-making that is Alaska-based. In order to do so we propose the following:**

**1) Draft legislation to reauthorize the Alaska Land Use Council (ALUC) or a similar forum.** Several presenters at the Summit recommended reestablishing the ALUC as a useful forum for bringing State, Native and Federal land managers and officials together on a regular basis to discuss issues and coordinate management decisions. The ALUC was created under Section 1201 of ANILCA.<sup>20</sup> Authorization for ALUC expired in 1990, ten years after the passage of ANILCA.

Prior to ceasing operations, as required by ANILCA Section 1201(l), two reports on the accomplishments of the Council and recommendations for extending it were submitted to Congress.<sup>21</sup> Both the full Council report and a separate report the Federal cochairman recommended reauthorization. However, both reports also recommended significant changes to the membership and structure of the Council if it was reauthorized. While there was some support for reauthorizing the Council, problems arising from partisan politics during its latter years worked strongly against its continuation. Many of these problems are outlined in a consultant's report included in the final reports to Congress.<sup>22</sup> Most advocates of reestablishing the Council agree that, at a minimum, the changes recommended in the final 1201(l) report be adopted.

**2) Cooperating Agency** - The State of Alaska, borough and municipal governments, and Tribal organizations are encouraged to seek Cooperating Agency Status in any land use planning process where National Environmental Policy Act compliance or analysis is required. According to a Department of the Interior, cooperating agency status is a term under the National Environmental Policy Act (NEPA) that refers to Federal, State, Tribal, or local governmental agencies that have special expertise with respect to an environmental issue or jurisdiction in regard to some aspect of a proposed action under relevant laws. A cooperating agency assists the lead agency under NEPA by participating in the NEPA process and bringing its special expertise or jurisdiction to the attention of the lead agency and other stakeholders. Cooperating agency status neither enlarges nor diminishes any agency's authority in the NEPA process, but is an important part of stakeholder involvement.<sup>23</sup>

The State of Alaska and the North Slope Borough were cooperating agencies during the preparation of the Integrated Activity Plan for the National Petroleum Reserve –Alaska, although the State later withdrew. The State and the Fairbanks North Star Borough declined the opportunity to be cooperating agencies for the BLM's Eastern Interior Resource Management Plan (RMP) released in 2012.

In mid- 2013, the BLM recently announced its intent to prepare RMPs for the Central Yukon Planning Area and the Bering Sea-Western Interior Planning Area. In the preparation plans for the development of these two RMPs the agency has included a list of potential cooperating agencies.

**3) Coordination Process** - The State of Alaska, borough and municipal governments, and Tribal organizations should coordinate with the Bureau of Land Management and the U.S. Forest Service to seek consistency between federal land use planning and local land use plans and policies.

Coordination is a federally mandated process that requires the BLM and Forest Service to work with local governments to seek consistency between federal land use planning and local land use plans and policies. Coordination requires federal agencies do more than just *inform* local governments of their future management plans and decisions, and it requires that they do more than merely *solicit comment* from local government entities. Coordination calls for something beyond that: a negotiation on a government-to-government basis that seeks to ensure officially approved local plans and policies are accommodated by planning and management decisions on federal lands.<sup>24</sup>

**4) State agencies should continue to work closely with and actively participate in the activities of Federally chartered advisory groups, such as the Regional Advisory Councils for the Federal Subsistence Management Program, National Park Service Subsistence Resource Commissions, Bureau of Land Management Resource Advisory Councils, and U.S. Forest Service Resource Advisory Councils.**

Beginning in 2011, the Commission began working with the BLM Resource Advisory Council (RAC), the Alaska Trappers Association and the Alaska Department of Fish and

Game to revise a longstanding, but unworkable policy on the permitting, construction and use of cabins to support trapping activity on BLM managed lands. By working through the BLM Resource Advisory Council, this cooperative effort resulted in the agency adopting a much improved and feasible cabin policy in 2012. While some issues related to the policy remain unresolved, permit applications under the revised policy are now being reviewed by the BLM.

In 2013, the BLM RAC formed a subcommittee to address implementation of the agency's new placer mining policy. Commission staff has been invited to work with the subcommittee which will begin its efforts in February 2014.

The U.S. Forest Service recently announced its intention to establish an advisory committee for the Tongass National Forest under the authority of the Federal Advisory Committee Act (FACA). According to the announcement the committee is being established "to provide advice and recommendations for developing an ecologically, socially, and economically sustainable forest management strategy on the Tongass National Forest with an emphasis on young growth management. Recommendations and advice may directly inform the development of a proposed action for modification of the 2008 Tongass Land Management Plan."

**Recommendation: Stakeholders should work with agencies to find voluntary solutions to problems that do not require adoption of regulations or government enforcement.**

The Denali Overflights Council is an example of a successful stakeholders' group that has developed voluntary measures that are proving successful is addressing aircraft noise problems in Denali National Park & Preserve.

**Recommendation: Develop a comprehensive plan to deal with State/Federal conflicts.**

- Develop Specific action plans and recommendations to address key issues.
- Adopt case-by-case strategies for judicial and legislated remedies.
- Develop a comprehensive public information process that includes both solicitation of information from the public and distribution of information to the public.
- Continue to promote and expand dialogue between Alaskans.

**Recommendation: The State should continue to fund a knowledgeable and adequately staffed Citizens' Advisory Commission on Federal Areas and State ANILCA Program. This would include sufficient legal counsel and legal resources to litigate in cases where issues cannot be resolved through negotiations.**

**Recommendation: Each state agency should conduct a comprehensive review and evaluation of cooperating agreements and Memorandums of Understanding (MOU), including the Master Memorandums of Understanding between the Alaska Department of Fish & Game and the four Federal land management agencies.**

Any cooperative agreement or MOU determined to be outdated, unnecessary, ineffective or which does not benefit the State's interest should be rescinded.

**Recommendation: While the Commission encourages productive cooperative efforts, we also recommend that where there is little or no benefit to the State and where continued cooperation wastes limited State resources, the State should not participate in that effort.**

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## TRAINING & EDUCATION

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**Recommendation: Increase public, ANCSA Corporation, Tribal organizations, state and federal agencies, and legislative/congressional staff understanding of ANILCA through training.**

It has been more than 33 years since ANILCA was enacted. During that time State and Federal agencies' staff have changed many times. Much of the institutional knowledge and experience developed by both State and Federal agencies during the first ten to fifteen years of implementation is gone. Because of the unique provisions in ANILCA for management of the Alaskan Conservation System Units, Wilderness, access, hunting and fishing and other activities, it is essential that Federal land managers are familiar with these provisions. It is equally important for State land managers, as well as ANCSA Village and Regional Corporation managers to understand the statute and its implications for management of fish and wildlife and other resources on Alaska's federal lands.

The Institute of the North holds an ANILCA Training Seminar twice a year in Anchorage. The seminar provides an overview of the ANILCA statute and examines in more detail key titles dealing with access, subsistence and general hunting, fishing and trapping on federal lands, management of designated wilderness areas, ANILCA planning and implementation.<sup>25</sup>

**Recommendation: Seek federal and state funding to digitize expanded and updated training so it is broadly accessible, including in schools.**

**Recommendation: The State should encourage and assist school districts to develop and include in the high school history or social sciences curriculum a survey course on the Statehood Act, ANCSA and ANILCA.**

**Recommendation: The State should develop and continue to support educational programs that will encourage Alaskan youths to pursue careers in land and resource management.**

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## REGULATORY ISSUES

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**Recommendation: To help reduce high operating and generating costs the State should seek regulatory relief for small electric utilities serving rural areas of the state.**

According to the Alaska Power Association the cost of electricity and the cost of heating fuel are heavily impacted by well-meaning regulations that drive up costs but provide no attendant benefits such as air quality improvement. In fact, they can do precisely the opposite. Emission control equipment on generators result in reduced efficiencies so even more fuel must be burned to generate the same number of kilowatt hours. Similarly, diesel regulations intended to produce lower emissions end up producing more emissions because the lower heating value of fuel results in more fuel being burned to provide needed power.

For example, EPA requirements to reduce sulfur emissions mandate the use of Ultra Low Sulfur diesel. The process to refine out the sulfur results in a reduction in the heat value of the fuel. This reduces efficiency and increases the amount of fuel needed – along with the resulting nitrous and carbon emissions. The fuel is also more expensive, resulting in the cost of electricity increasing twice – first for the higher cost fuel and second for the more fuel burned per kilowatt hour produced.

Also, according to APA, most electric utilities, including those serving very small communities of 2,000+ populations, fall under “Prevention of Significant Deterioration” rules and are required to operate under a very complex permit. The permit required is the same for a small electric utility in rural Alaska as for a utility 100 or 1,000 times larger. The complex air shed modeling, generation reporting and engine retrofits contribute heavily to the cost of generation, no diesel is saved, but costs of compliance increase the cost of electricity by one to five cents per kilowatt hour.

**Recommendation: The Department of the Interior should be required to implement the recommendations contained in the 1998 report to Congress entitled *Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska*.**

The Department of the Interior has acknowledged conveying some 650 contaminated sites to Alaska Native Corporations. The 1998 report contains six recommendations for identifying contaminated sites and cleanup needs on corporation lands.<sup>26</sup> As of September 2013 only a small percentage of the contaminated sites have been cleaned-up and none of the six recommendations have been implemented.<sup>27</sup>

**Recommendation: Draft Alaska-specific NPS regulations for commercial use authorizations (CUAs) and extend the current 2 year time limit for CUAs issued to Alaska businesses, which may be highly capitalized (remote facilities, airplanes, and other equipment).**

**Recommendation: Request each federal agency collaborate with the State and Native Corporations to conduct of boundary surveys and to pursue land exchanges and boundary adjustments to resolve management issues, as envisioned by Congress.**

**Recommendation: Conduct a review of each section/Title of ANILCA to analyze the status of its implementation consistent with Congressional direction and develop a strategy to resolve inconsistent implementation**

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## CONCLUSION

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During 2014 the Commission will continue its work with Federal agencies, State agencies, the Congressional delegation and the public to find solutions to the issues and problems identified in this report. Despite the many problems we have identified in this report and the conflicts which exist between the State and Federal government, the Commission is committed to working with the Federal land management agencies to resolve those conflicts. While we find that we frequently disagree, the Commission has a solid and mutually respectful working relationship and good communication with Federal agency staffs working here in Alaska. Maintaining that relationship is important to us and critical to success.

The Commission has formed a subcommittee which has already started to work on prioritizing the recommendations made in this report and to develop strategies to implement as many of those recommendations as possible.

With the continued support of the Governor's office and the Alaska State Legislature, the Commission is confident that it can make a valuable contribution to protecting the interests of the State of Alaska and those of its citizens.

Citizens' Advisory Commission on Federal Areas  
Representative Wes Keller, Chairman  
Stan Leaphart, Executive Director

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ENDNOTES

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<sup>1</sup> June 20, 2013 letter to prospective participants from Citizens' Advisory Commission on Federal Areas Chairman, Representative Wes Keller.

<sup>2</sup> Ron Somerville and Ted Popely – *Conflicts Concerning Title to Submerged Lands in Alaska*, Report to the Alaska State Legislature, February 2004.

<sup>3</sup> Ron Somerville and Ted Popely - *Conflicts Concerning Title to Submerged Lands in Alaska*, Report to the Alaska State Legislature, February 2004.

<sup>4</sup> Alaska Statutes: Sec. 46.15.165. Administrative adjudications

(a) The commissioner may, by order, initiate an administrative adjudication to quantify and determine the priority of all water rights and claims in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

(b) In the order initiating an administrative adjudication, the commissioner shall describe the appropriate geographic and hydrologic boundaries of the adjudication area. During the adjudication, the commissioner may adjust the boundaries to ensure the efficient administration of water appropriations among users.

<sup>5</sup> Christopher Estes, Alaska Department of Fish and Game – *ADF&G Instream Flow and Lake Level (Reservation of Water) Protection Report for the Nature Conservancy*, May 2009.

<sup>6</sup> “After consulting with any affected Federal agency, the [Department] is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where [the Department] determines [that] a record interest of the United States in lands has terminated by operation of law or is otherwise invalid . . .” FLPMA § 315(a), 43 U.S.C. § 1745(a)

<sup>7</sup> “SEC. 108. No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.” Department of the Interior and Related Agencies Appropriations Act, 1997, § 108, enacted by the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

<sup>8</sup> 2012 - *BLM Alaska Long Range Transportation Plan*, section 2.1 Trails, p. 11-12.

<sup>9</sup> ANILCA Section 1317 : GENERAL WILDERNESS REVIEW PROVISION

(a) *Within five years from the date of enactment of this Act, the Secretary shall, in accordance with the provisions of section 3(d) of the Wilderness Act relating to public notice, public hearings, and review by State and other agencies, review, as to their suitability or nonsuitability for preservation as wilderness, all lands within units of the National Park System and units of the National Wildlife Refuge System in Alaska not designated as wilderness by this Act and report his findings to the President.*

(b) *The Secretary shall conduct his review, and the President shall advise the United States Senate and House of Representatives of his recommendations in accordance with the provisions of sections 3 (c) and (d) of the Wilderness Act. The President shall advise the Congress of his recommendations with respect to such areas within seven years from the date of enactment of this Act.*

(c) *Nothing in this section shall be construed as affecting the administration of any unit of the National Park System or unit of National Wildlife Refuge System in accordance with this Act or other applicable provisions of law unless and until Congress provides otherwise by taking action on any Presidential recommendation made pursuant to subsection (b) of this section.*

<sup>10</sup> SEC. 704. *In furtherance of the purposes of the Wilderness Act the Secretary of Agriculture shall review the public lands depicted as "Wilderness Study" on the following described map and within three years report to the President and the Congress in accordance with section 3 (c) and (d) of the Wilderness Act, his recommendations as to the suitability or nonsuitability of all areas within such wilderness study boundaries for preservation of wilderness: Nellie Juan-College Fiord, Chugach National Forest as generally depicted on a map entitled "Nellie Juan-College Fiord Study Area", dated October 1978.*

<sup>11</sup> Ross W. Gorte – *Wilderness Laws: Statutory Provisions and Prohibited and Permitted Uses*, 2011- Congressional Research Service Report R41649.

<sup>12</sup> Text of legislation: *SECTION 1. ROADLESS AREA CONSERVATION RULE EXEMPTION. The Roadless Area Conservation Rule established under part 294 of title 36, Code of Federal Regulations (and successor regulations), does not apply with respect to any National Forest System land in the State of Alaska.*

<sup>13</sup> National Park System Advisory Board Science Committee – *Revisiting Leopold: Resource Stewardship in the National Parks*, August 2012.

<sup>14</sup> Secretary of the Interior Ken Salazar issued Secretarial Order 3289 in September 2009.

<sup>15</sup> United States Government Accountability Office – *Climate Change – Various Adaptation Efforts are Under Way at Key Natural Resource Management Agencies*, May 2013- GAO Report 13-253.

<sup>16</sup> Landscape Conservation Cooperatives (LCC) - *The Committees are concerned about a recent Inspector General report finding "areas of concern that could potentially place millions of dollars at risk and jeopardize future funding and support for LCC activities overall." From within the funds provided for LCC activities, the Service is directed to contract with the National Academy of Sciences to evaluate: (1) the purpose, goals, and scientific merits of the program within the context of other similar programs; and (2) whether there have been measurable improvements in the health of fish, wildlife, and their habitats as a result of the program.*

<sup>17</sup> ***U.S. Fish & Wildlife Service Stewardship Policy, 2008.***

5.17 Does the [U.S. Fish & Wildlife] Service conduct wilderness reviews of refuge lands in Alaska? We have completed wilderness reviews for refuges in Alaska in accordance with section 1317 of ANILCA. Additional wilderness reviews as described in the refuge planning policy (602 FW 1 and 3) are not required for refuges in Alaska. During preparation of CCPs for refuges in Alaska, we follow the provisions of section 304(g) of ANILCA, which requires us to identify and describe the special values of the refuge, including wilderness values. Subsequently, the CCP must designate areas within the refuge according to their respective resources and values and specify the programs for maintaining those values. However, ANILCA does not require that we incorporate formal recommendations for wilderness designation in CCPs and CCP revisions.

<sup>18</sup> For additional information see: U.S. Bureau of Land Management – Report to Congress *Sec. 207 Alaska Land Transfer Acceleration Act – A Review of D-1 Withdrawals*, June 2006.

<sup>19</sup> A review of the Department of the Interior budgets from 1997 through 2005 show specific line item appropriations for AMRAP ranged from a low of \$2,043,000 to \$4,000,000 or an average of \$2.9 million per year. Despite the absence of specific line item appropriations for the years from 2006 through 2014, the following language has been included in every appropriations bill:

*For necessary expenses for protection, use, improvement, development, disposal, cadastral surveying, classification, acquisition of easements and other interests in lands, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the general administration of the Bureau, and assessment of mineral potential of public lands pursuant to Public Law 96-487 (16 U.S.C.3150(a))*

<sup>20</sup> The Alaska Land Use Council was established under ANILCA Section 1201. It consisted of two co-chairs: a Federal cochairman appointed by the President with the advice and consent of the Senate and a State cochairman who was the Governor of Alaska. The Council also included the head of the Alaska offices of the following Federal agencies: National Park Service, United States Fish and Wildlife Service, United States Forest Service, Bureau of Land Management, Heritage Conservation and

Recreation Service National Oceanic and Atmospheric Administration, and Department of Transportation. State members included the Commissioners of the Alaska Departments of Natural Resources, Fish and Game, Environmental Conservation, and Transportation. The Council also included two representatives selected by the Alaska Native Regional Corporations, in consultation with their respective Village Corporations. For a full description of the functions and responsibilities of the Council see ANILCA Section 1201 (16 USC 3181).

<sup>21</sup> Alaska Land Use Council – *Alaska National Interest Lands Conservation Act Section 1201(l) Recommendations- Federal Co-Chairman Final Report*, March 1990.  
Alaska Land Use Council – *The ANILCA Section 1201 Report to Congress – As endorsed by the Alaska Land Use Council*, November 2, 1989.

<sup>22</sup> Barry Lawson Associates, Inc. – *Options for Future Cooperative Management in Alaska – A Report to the Alaska Land Use Council*, March 1989.

<sup>23</sup> See: Public Lands Council – *A Beginner's Guide to Cooperating Agency Status*, September 2012.  
Also: U.S. Bureau of Land Management – *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*, 2012.

<sup>24</sup> Public Lands Council – *A Beginner's Guide to Coordination*, September 2012.

<sup>25</sup> Institute of the North, 1675 C Street, Suite 106, Anchorage, Alaska 99701.  
[www.institutenorthern.org](http://www.institutenorthern.org)

<sup>26</sup> The six recommendations were as follows:

1. Establish a forum of ANCSA landowners and federal, state, local and tribal agencies for exchanging information, discussing issues, and setting priorities;
2. Compile a coordinated, comprehensive inventory of contaminated sites with input from all parties;
3. Apply EPA policies to ANCSA landowners, not to impose landowner liability to federal transferees for contamination existing at the time of conveyance, where the landowner has not contributed to the contamination;
4. Analyze the data collected and report to Congress on sites not covered in existing programs and recommend whether further federal programs or actions are needed;
5. Modify policies, where needed, [0 address contaminants and structures that may affect public health and safety on ANCSA lands; and
6. Continue to develop, under the leadership of the EPA and any other relevant agencies, a process to train and enable local residents to better participate in cleanup efforts.

<sup>27</sup> September 23, 2013 letter to the Citizens' Advisory Commission on Federal Areas from Daniel Cheyette, Associate General Counsel, Bristol Bay Native Corporation.

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**Conservation System Units and Federally Designated Areas in Alaska**

**National Park Service**

<b>Park Unit</b>	<b>Size in Acres</b>	<b>Wilderness Acreage</b>
Aniakchak National Monument & Preserve	514,000	0
Bering Land Bridge National Preserve	2,457,000	0
Cape Krusenstern National Monument	560,000	0
Denali National Park & Preserve	6,028,200	2,124,783
Gates of the Arctic National Park and Preserve	7,592,000	7,167,192
Glacier Bay National Park & Preserve	3,283,000	2,664,876
Katmai National Park & Preserve	4,268,000	3,384,358
Kenai Fjords National Park	567,000	0
Klondike Gold Rush National Historical Park	113	0
Kobuk Valley National Park	1,710,000	174,545
Lake Clark National Park & Preserve	3,363,000	2,619,550
Noatak National Preserve	6,700,000	5,765,427
Sitka National Historical Park	113	0
Wrangell-Saint Elias National Park & Preserve	12,318,000	9,078,675
Yukon-Charley Rivers National Preserve	1,713,000	0
Alagnak Wild and Scenic River	30,665	0
Aleutian World War II National Historical Area	134	0
<b>Total</b>	<b>51,104,225</b>	<b>32,979,406</b>

**U.S. Fish & Wildlife Service**

<b>National Wildlife Refuge</b>	<b>Size in Acres</b>	<b>Wilderness Acreage</b>
Alaska Maritime National Wildlife Refuge	3,417,756	2,576,320
Alaska Peninsula National Wildlife Refuge	3,563,329	0
Arctic National Wildlife Refuge	19,286,242	8,000,000
Becharof National Wildlife Refuge	1,200,060	400,000
Innoko National Wildlife Refuge	3,850,321	1,240,000
Izembek National Wildlife Refuge	311,075	307,981
Kanuti National Wildlife Refuge	1,430,160	0
Kenai National Wildlife Refuge	1,912,425	1,354,247
Kodiak National Wildlife Refuge	1,980,270	0
Koyukuk National Wildlife Refuge	3,550,080	400,000
Nowitna National Wildlife Refuge	1,560,000	0
Selawik National Wildlife Refuge	2,150,161	240,000
Tetlin National Wildlife Refuge	700,058	0
Togiak National Wildlife Refuge	4,100,857	2,272,746
Yukon Delta National Wildlife Refuge	19,162,296	1,900,000

Yukon Flats National Wildlife Refuge	8,632,224	0
<b>Total</b>	<b>76,807,314</b>	<b>18,691,294</b>

**U.S. Forest Service**

<b>National Forest</b>	<b>Size in Acres</b>	<b>Wilderness Acreage</b>
Tongass National Forest	16,773,804	5,753,548
Chugach National Forest	5,491,580	0
<b>Total</b>	<b>22,265,384</b>	<b>5,753,548</b>

<b>National Forest Wilderness and Wilderness Study Areas</b>	<b>Size in Acres</b>
Kootznoowoo Wilderness (Admiralty Island National Monument)	956,255
Misty Fjords Wilderness (Misty Fjords National Monument)	2,142,442
Coronation Island Wilderness	19,232
Chuck River Wilderness	74,298
Endicott River Wilderness	98,729
Karta River Wilderness	39,889
Kuiu Wilderness	60,581
Maurille Islands Wilderness	4,937
Petersburg Creek-Duncan Salt Chuck Wilderness	46,849
Pleasant/Lemusurier/Inian Islands Wilderness	23,096
Russell Fjord Wilderness	348,701
South Baranof Wilderness	319,568
South Etolin Wilderness	82,619
South Prince of Wales Wilderness	90,968
Stikine-LeConte Wilderness	448,926
Tebenkof Wilderness	66,812
Tracy Arm-Fords Terror Wilderness	653,179
Warren Island Wilderness	11,181
West Chichagof-Yakobi Wilderness	265,286
Nellie Juan - College Fiord Wilderness Study Area	1,412,230
<b>Total</b>	<b>7,165,778</b>

**Bureau of Land Management**

<b>Designated Area</b>	<b>Size in Acres</b>
Steese National Conservation Area*	1,208,624
White Mountains National Recreation Area	998,702
Central Arctic Management Area - Wilderness Study Area*	478,700
<b>Total</b>	<b>2,686,026</b>

<b>BLM Wild and Scenic River Corridors</b>	<b>River Miles</b>	<b>Size in Acres</b>
Beaver Creek Wild and Scenic River*	111.0	71,040
Birch Creek Wild and Scenic River*	126.0	80,640

Delta Wild and Scenic River*	62.0	39,680
Fortymile Wild and Scenic River*	392.0	250,880
Gulkana Wild and Scenic River*	181.0	115,840
Unalakleet Wild and Scenic River*	80.0	51,200
<b>Total</b>	<b>952</b>	<b>609,280</b>

<b>National Trails System</b>	<b>Miles</b>
Iditarod National Historic Trail*	418.0
<b>Total</b>	<b>418.0</b>

\* Component of the National Landscape Conservation System (P.L. 111-11)

**National Wild and Scenic Rivers**

**Within the National Park System**

<b>River</b>	<b>Park Unit</b>	<b>River Miles</b>
Alaganak	Katmai National Preserve	67.0
Alatna	Gates of the Arctic National Park	83.0
Aniakchak	Aniakchak Nat. Monument & Preserve	63.0
Charley	Yukon-Charley Rivers Nat. Preserve	208.0
Chilikadrotna	Lake Clark National Park & Preserve	11.0
John	Gates of the Arctic National Park	52.0
Kobuk	Gates of the Arctic Nat. Park & Preserve	110.0
Mulchatna	Lake Clark National Park & Preserve	24.0
Noatak	Gates of the Arctic Nat. Park and Noatak National Preserve	330.0
North Fork of the Koyukuk	Gates of the Arctic National Park	102.0
Salmon	Kobuk Valley National Park	70.0
Tinayguk	Gates of the Arctic National Park	44.0
Tlikakila	Lake Clark National Park & Preserve	51.0
	<b>Total</b>	<b>1215.0</b>

**Within the National Wildlife Refuge System**

<b>River</b>	<b>Refuge Unit</b>	<b>River Miles</b>
Andreafsky	Yukon Delta National Wildlife Refuge	262.0
Ivishak	Arctic National Wildlife Refuge	80.0
Nowitna	Nowitna National Wildlife Refuge	225.0
Selawik	Selawik National Wildlife Refuge	160.0
Sheenjok	Arctic National Wildlife Refuge	160.0
Wind	Arctic National Wildlife Refuge	140.0
	<b>Total</b>	<b>1027.0</b>

Citizens' Advisory Commission on Federal Areas  
FEDERAL OVERREACH SUMMIT  
August 12 & 13, 2013 in Anchorage, Alaska

**SUMMARY:**  
**PRESENTERS' ISSUES AND SOLUTIONS**  
Prepared by Tina Cuning<sup>1</sup>  
(Revised October 4, 2013)

Abstract: Presentations by invited speakers highlighted numerous examples of issues associated with implementation of federal land law in Alaska and identified wide-ranging, potential solutions. Identified issues include: 1) discretionary federal actions perceived to be inconsistent with federal law, 2) a lack of understanding among agencies and the public of federal statutes regarding management of federal lands in Alaska, and 3) a breakdown in relations among federal agencies, the State of Alaska, Native corporations, and other key stakeholders. Identified solutions include: 1) Continued identification and documentation of federal overreach problems; 2) development of a strategic plan to regain and/or maintain state sovereignty, retain statehood entitlements and protection of the compromises found in ANILCA, ANCSA and other federal legislation; 3) commit sufficient state resources to implement an effective plan; 4) increase communications, education and effective public relations and agency consultation; 5) strategic evaluation of judicial remedies; and 6) heightened engagement with the Alaska Congressional delegation and Congressional members and organizations from other public land states concerning oversight, education, and problem-solving. These preliminary issues and suggested solutions will inform future dialogue among the agencies and stakeholders.

## OVERVIEW

### **Summit Format:**

The Citizens' Advisory Commission on Federal Areas selected presenters to provide contextual information and views on issues with federal agencies and possible solutions. For one and a half days, speakers identified a wide range of issues in implementation of several federal laws and possible solutions. The speakers: (1) provided background information on federal and state land and resource laws, (2) described past and current issues involved in implementation of federal laws, primarily focusing on the discretionary implementation of some federal agencies, and (3) offered wide-ranging suggestions for resolutions. Some provided previous examples of the State of Alaska inadequately fulfilling its role. Several recommended improved involvement of the public and Native corporations in identifying issues and seeking solutions. Many submitted written materials that provide detail beyond their verbal presentations. Following the presentations, the Co-chairs led a roundtable discussion among the commissioners and presenters that identified additional issues and solutions. This summary includes these additional materials, issues, and proposed solutions. The Co-chairs ended the Summit with an explanation of next

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<sup>1</sup> Tina Cuning, ANILCA Specialist, Former ANILCA Program Coordinator, ADF&G. NOTE: The original summary compiled by Ms. Cuning was revised by the Commission at its October, 2013 meeting. The views expressed by the Summit participants as summarized in this document do not necessarily reflect the views of the original author.

steps that include meeting with federal agencies and Native corporations in October to further explore issues and solutions.

**Scope:**

Presentations, supplemental materials, and discussion primarily focused on issues involving the following federal agencies and/or implementation of the following federal laws, their amendments, and related court decisions:

Fish and Wildlife Service (FWS)	National Park Service (NPS)
Forest Service (FS)	Bureau of Land Management (BLM)
Environmental Protection Agency (EPA)	Federal Aviation Administration (FAA)
Federal Energy Regulatory Commission	US Department of Transportation (USDOT)
Endangered Species Act (ESA)	Quiet Title Act
Wilderness Act	National Wildlife Refuge Improvement Act
Tongass Timber Reform Act (TTRA)	Revised Statute (RS) 2477
Alaska Native Claims Settlement Act (ANCSA)	
Alaska National Interest Lands Conservation Act (ANILCA)	

**Summary of Issues:**

Identified problems involving transportation, utilities, resource development, traditional public uses, access to inholdings and adjacent lands, commercial services on federal lands, and state management of fish and wildlife. These issues were largely attributed to one or more of the following:

- (1) Federal actions portrayed as **inconsistent with ANILCA and/or other laws** due to:
  - a) evolving and/or political interpretation of federal laws,
  - b) DC-based decisions without Alaska-specific context,
  - c) federal agency resistance to using cooperative approaches to resolve conflicts, despite previous experience in such resolution
  - d) application of discretionary agency authorities, and
  - e) diverging implementation decisions based on successive agency policies, executive orders, and management plans.
- (2) Federal decision-making perceived as **increasingly autocratic**, i.e., lacks genuine consultation with the affected Alaskan public, adjacent landowners (Native Corporations, State of Alaska), and/or lacks common sense applicability in Alaska.
- (3) Federal, state, and public **lack of understanding of ANILCA** compounded by the sunset of the Alaska Land Use Council, where agencies were required by ANILCA to meet and resolve issues in a cooperative, public forum consistent with ANILCA compromises.
- (4) Ineffective and/or inconsistent measures by the state to uphold public and state interests.
- (5) Court decisions based on excessive deference to federal agencies instead of facts and Congressional intent.

**Summary of Proposed Solutions:**

A synthesized list of possible solutions proposed by presenters is at the end of this Summary. Original source materials and prepared presentations referenced in this summary, along with a

full transcript of the Summit and the October 2013 meeting are posted on the Commission's Summit website at: <http://dnr.alaska.gov/commis/cacfa/>. The bullets below summarize the most significant or repeated suggestions:

- (1) **Increase communication:** Many presenters illustrated a need to improve collaborative processes among all agencies and engage the Alaskan public and Native corporations, while alternatively a few advocated that state agencies cease trying to cooperate with federal agencies in favor of judicial and legislative remedies. Most frequent suggestions for reviving Alaska-based federal-state collaboration and improved involvement by the affected public included:
  - a) re-authorizing the expired Alaska Land Use Council (ALUC) established under ANILCA Title XII or a similar forum, and
  - b) Expanded ANILCA training for federal and state administrators and the public.
- (2) **Increase state effectiveness:** Improve funding and staffing for the Commission, state's ANILCA Team, and Department of Law and/or establish a "state's rights" team among the agencies, legislature, and governor's office to develop/implement long-term strategies.
- (3) **Seek judicial remedies:** Recommendations for court actions ranged widely from pursuing more frequent court action (with necessary strategy and funding to be successful) to none (primarily because federal courts give deference to federal agencies with too high of a bar to prove "arbitrary and capricious" conduct).
- (4) **Involve an active Congressional delegation:** Proposals involving Congressional oversight or action included:
  - a) conduct Congressional committee oversight hearings (with follow-up),
  - b) assist delegation to ask questions and seek information ("shed light into dark places"), to challenge appropriateness of actions, and/or insist on consultation in decisions,
  - c) amend or clarify federal law(s) to fix "loopholes" and enforce the consensus agreements reflected in ANILCA, and
  - d) apply the "budget hammer" to reduce unilateral decisions and duplication/intrusion of state authorities

Several presenters explained how current issues have historic bases that were addressed at Statehood, in the settlement of Alaska Native land claims, and in special provisions of ANILCA. An understanding of the historic context for these concerns and the success or failure of prior resolutions is fundamental to understanding some of today's issues and possible solutions.

## HISTORICAL CONTEXT OF TODAY'S ISSUES

### Pre-Statehood

Before Alaska achieved statehood on January 3, 1959, Alaskans were increasingly dissatisfied with their status as a Territory. Among the many reasons for supporting statehood, three issues dominated:

1. Control of fish and wildlife: Residents were frustrated by unresponsive regulation of salmon harvests by federal agents overseen by high level out-of-state federal officials influenced by powerful "outside" industry lobbyists. Residents believed that fish traps were highly effective terminal harvest methods with insufficient science and enforcement causing significant salmon declines, thus hurting the resource viability, communities'

economies, and sustenance of Alaska's residents. Federal agents conducted extensive aerial poisoning of predators that resulted in indiscriminate killing of many species and affected trapping for sustenance and rural economies. Federal agencies also conducted fire suppression for decades that changed the natural mosaic of successional habitat across the state. The Territorial Game Commission had authority to provide harvests for subsistence use of fish and wildlife for residents and other uses but had little influence over actions by federal agencies, particularly unable to regulate the commercial fishing industry for conservation purposes.

2. Government without Representation: Residents were frustrated by lack of representation in land management and budget decisions at the federal level resulting in poorly developed infrastructure and few community services. Very little land was available for private ownership except through proving up homesteads, Trade and Manufacture sites, and Native allotments, all of which took years through the federal bureaucracy. The Alaska Native Brotherhood was among the many to lobby for statehood and took proactive steps to provide extensive leadership training, particularly for young people, as part of their intensive support of the movement to achieve state and local government.
3. Economic viability: The ability of Alaska's residents to be economically viable and support state government was a cause for concern by the opponents of statehood. Supporters of statehood believed that commercial fishing, mining, and timber provided basic industries better managed for local conditions and sustainability under state than federal control, but all acknowledged the future state's need for a land base, transportation and other infrastructure, and revenues.

### **Statehood**

The Statehood Act of 1958 brought a number of significant changes to the territory. Of paramount importance to the residents, statehood granted a significant land base and traditional sovereign authority to the state for management of its fish, wildlife, and water on all lands. (See CACFA website: Brad Palach Presentation) The State Constitution requires sustainable management for common use of all fish and wildlife by Alaska Department of Fish and Game. The state established a Board of Fisheries and Game to allocate the resources, with input from about 80 locally elected fish and game advisory committees, in providing for subsistence, recreational, and commercial uses. The state received a land grant, totaling 104 million acres, to select from unreserved federal lands. (See presentation by Dick Mylius detailing the land history of Alaska from the Treaty of Cession through ANILCA. Mylius Presentation) The Statehood Act provided a land base and significant share of oil and gas revenues to support the state government and economic opportunities. The State of Alaska under Governor Egan made slow and conservative land selections until, after only seven years, the Secretary of the Interior froze the state's selections in order to resolve Alaska Native land claims.

### **Alaska Native Claims Settlement Act, December 1971**

Settlement of Native claims through ANCSA authorized selection and transfer of 44 million acres (final totals about 46 million acres) into private ownership, established a regional and village corporations structure rather than the traditional reservation model, and provided cash. The Act extinguished aboriginal land claims but recognized subsistence needs would be addressed in future federal and state laws. Section 17(d)(2) of ANCSA required identification and study of up to an additional 80 million acres for potential designation in conservation system

units, as described in the following excerpts in the Joint Federal-State Land Use Planning Commission final report. Many of the same issues that drove Alaskans to seek statehood remained unresolved after ANCSA, which led Congress to adopting special provisions in ANILCA for management of federal lands while established unprecedented acreage in conservation system units:

*The Native Claims Settlement Act and action by the Alaska Legislature created the Joint Federal-State Land Use Planning Commission as an advisory body to both governments, and set out as one of our duties the making of "recommendations concerning areas planned and best suited for permanent reservation in Federal ownership as parks, game refuges, and other public uses ...."*

....

*State and national interests in developing and conserving Alaska resources have often been cast as Federal-State conflicts when actually they are areas of mutual concern. The Federal lands in Alaska are a part of the State and the State lands are a part of the Nation, and the private lands are part of both. To look upon them as separate competing interests is to destroy any chance for the fulfillment of the interests of either the Nation, the State, or Alaska's Natives.*

....

*Three major land use and management issues have also reoccurred throughout the Commission deliberations. The first issue centered on wildlife management, particularly with respect to meeting the subsistence needs of rural Alaskans, and the Federal-State relationship with respect to the management of fish and game species in the (d)(2) areas.*

*The second issue arose from the fact that the (d)(2) lands extend across regions where there is virtually no ground transportation and future transportation needs are now uncertain. Certain natural transportation routes dictated by the physical characteristics of the land are encompassed within some of the (d)(2) units deserving of a high level of enduring protection in the national interest. This issue is an explicit example of the need to establish institutions for future decisions with respect to Alaska lands. The future is limited and no agency or group can predict or design today with absolute certainty.*

*The third land use issue was that of locatable mineral exploration and development in the (d)(2) areas under the existing location-patent system established in the Mining Law of 1872. ...*

*How surrounding State, Native, or other Federal lands affect the (d)(2) lands is also of prime importance. . . . The legal and regulatory relationships of Federal and State governments also will be overlapping. The determination of the navigability of inland streams and lakes which will determine the subsurface title of inland waters in Alaska has yet to be made. The Federal government alone cannot assure the protection of natural values of national importance on Federal lands, nor can it assure that present or future national and international needs for energy resources, locatable minerals, wood fiber, or food are met totally from Federal lands.*

*If major Alaska land use decisions are to be made in a comprehensive context, the involvement of all major landholders and full ongoing involvement of the public will be critical. We are convinced that the future development of the mutual national and State interest in Alaska can only be carried forward through a strong, formalized, cooperative planning and classification system . . .*  
(emphasis added)

Congress deliberated from 1971-1980 on how to divide the remaining federal lands into conservation areas, and the Federal-State Commission oversaw studies as directed in ANCSA

17(d)(2). Numerous environmental, economic, and local interests teamed up to lobby Congress to address various competing interests. In 1977, Congressman Udall introduced HR-39, which intensified the issues by proposing 145 million acres of designated wilderness. When Congress adjourned in 1978 without adopting a bill, the Secretary of the Interior withdrew 110 million acres from State of Alaska and Native selections, and President Carter invoked the Antiquities Act to create 17 national monuments totaling 56 million acres, which prohibited many subsistence and other traditional uses by Alaskans. The environmental interests were well organized nationally to lobby for very large conservation system units in a final bill.

Governor Hammond and the Alaska Legislature organized a wide range of Alaska-based environmental, development, Native Corporations, residents, and other interests who spoke with one voice in pressing Congress to accommodate Alaska's special circumstances. This constituency adopted the following consensus points, which they lobbied through an office in DC and pressed through the delegation:

**Seven State of Alaska Consensus Points**

- (1) Revoke all 1978 monuments and executive withdrawals
- (2) Full Statehood and ANCSA land entitlements to the State and Native corporations
- (3) Access guaranteed across federal lands to state and private lands
- (4) Retain State management of fish and wildlife on all lands
- (5) Exclude economically important natural resources from conservation area boundaries
- (6) Guarantee traditional land uses continue on all lands
- (7) Preclude administrative expansion of conservation units ("no more")

Twenty years later, Senator Stevens explained Alaska's delegation could have killed the legislation, but the agreements reached in the final legislation seemed to resolve the issues reflected in the Alaska consensus points. These would provide for future transportation and utilities and protect the Alaskan traditional uses of federal lands to balance the addition of 104+ million acres in conservation system units (removed from further selection by the Native corporations and State of Alaska). In addition to addressing the above consensus points in special provisions of ANILCA, Congress established the Alaska Land Use Council to monitor those provisions and to insure Alaska-specific collaboration in federal decisions affecting management of federal lands. Just as the Joint Federal-State Land Use Planning Commission's recommendation for a forum to cooperatively resolve land management issues in Alaska, the November 1979 final Senate Committee on Energy and Natural Resources Report (p. 250) describes the amendment that added the Alaska Land Use Council provision in ANILCA Title XII, as follows:

***Title XII—Federal-State Cooperation***

*Cooperative Management has been one of the most heated issues in the debate on the Alaska National Interest Lands legislation. . . .*

*"Cooperative management" is shorthand for methods of requiring or encouraging cooperation among Federal and State land management agencies.*

*The Alaska Land Use Council will recommend land uses on Federal or State lands, identify special opportunities for cooperation, including cooperation with Native Regional and Village Corporations. The Council's recommendation would be implemented only if accepted by the land*

*management agency. If recommendations were rejected, the agency would have to set out the reasons for rejection in a public document.*

*One of the most significant roles for the Council will probably be as a forum for negotiating future land exchanges among Federal, State and Native lands.*

*The Council will provide a focus now for Federal-State coordination and any future more sophisticated organization could evolve if necessary from this base. Certainly, as involvement of the citizen advisory groups of the various State and Federal agencies became integrated in this process, there would be insured a reasonably high level of public involvement in the coordinating process.*

*The main function of the Presidential representative would be to eliminate those semi-institutionalized blockages to information flow that continually plague all governments and large governments in particular. By providing a high level of horizontal integration at the regional level and that same horizontal integration at the Washington level, on a regional basis, the Committee believes that we can approach solutions to problems with clearer ideas of what the realities of the situation in Alaska are. [emphasis added] Senate Report No. 96-413 Committee on Energy and Natural Resources.*

### **Alaska National Interest Lands Conservation Act, December 2, 1980**

Upon the signing of ANILCA, President Jimmy Carter observed, *"That we've struck a balance between Alaska's economic interests and its natural beauty, its industry and its ecology . . . "*

Representative Udall echoed *"I'm glad today for the people of Alaska. They can get on with building a great State. They're a great people. And this matter is settled and put to rest, and the development of Alaska can go forward with balance."*

Senator Jackson observed, *"So, this is a great day. It's not what everyone wanted on either side of the issue, but I believe it will be indeed a lasting monument in striking a balance between development on one hand, and preservation and conservation on the other."*

At the signing of the bill, Senator Stevens concluded: *"Over half of the Federal lands that will remain under control of the Department of Interior will be in Alaska after the passage of this bill. Over half of the hydrocarbon resources of the United States are in Alaska's lands. We know that the time will come when those resources will be demanded by other Americans. And we seek to protect our freedoms, to try to prevent us from becoming a 'permit society' where we have to have a permit to do everything; and at the same time, be able to contribute to the nation that we all love so well."*

Thirty-three years later, the above optimism in adopting ANILCA contrasts to this Summit's presenters who detailed numerous examples of erosion of Congress' vision of collaborative, unique, and balanced legislation.

ANILCA contains 15 titles, the majority of which establish 104 million additional acres in Alaska in unprecedented size and number of conservation system units and provide direction for federal agencies to allow traditional public uses on those lands. Two of the titles amend the Alaska Statehood Act and ANCSA. One title provides a priority for consumptive use of fish and wildlife on federal lands for subsistence by rural residents, and another one confirms traditional state management of fish and wildlife. One title limits federal conservation system unit regulations to apply only to federal lands but also authorizes land exchanges and boundary

adjustments of the conservation system units to address local, geographic situations with adjoining landowners. See *Sally Gibert's presentation, "ANILCA context, Key Provisions, and Implementation,"* addressing selected key ANILCA provisions to illustrate the complexity of implementation in light of the unprecedented provisions for "open until close" access and uses of the federal lands. These include providing for motorized access for "traditional activities", access to inholdings and valid occupancy, traditional methods of access for subsistence activities, and a process for transportation and utility systems across conservation units to address the state's future need for infrastructure. All of these provisions and their explanatory preambles contained in the Department of the Interior regulations implement Congressional access protections along with specific closure processes to protect resources. The environmental community litigated these regulations (43 CFR 36), which were upheld by the court. Congress also created numerous ANILCA exceptions to administration of wilderness in Alaska to allow cabins, chainsaws, temporary facilities, and motorized access, among others. In adopting final language, Congress' committees specifically urged the agencies to limit use of their discretionary authority to err on the side of allowing traditional uses and to avoid unnecessary requirements for permits .

Consultation and coordination was a fundamental principle throughout the final Act, reflected in every federal land management title and the Subsistence title. In addition to these specific requirements for cooperation and consultation, ANILCA established the Alaska Land Use Council (ALUC) under Title XII, composed of high level heads of federal and state agencies and the Alaska Native community. The ALUC sought consensus after extensive deliberations and successfully facilitated numerous broad understandings of ANILCA exceptions through approval of federal land management planning and regulations. Similarly, the State of Alaska established an ANILCA team to provide one voice from the state on behalf of its several agencies in participation, consultation, and cooperation with the federal agencies.

The legislature established the Citizens' Advisory Commission on Federal Areas to assist the public in navigating the ANILCA-resultant changes in requirements to provide visitor services and participation in public uses under the new land designations, as well as to provide a voice for the public in ANILCA implementation.

ANILCA established the Subsistence Resource Commissions to facilitate state and federal support to local residents in addressing hunting within the national park areas. To eliminate concerns that the new land classifications would bring 'lower-48' federal oversight to management of fish and wildlife, the Alaska Department of Fish and Game negotiated a Master Memorandum of Understanding with each of the four federal land management agencies. In these agreements, the agencies recognize that ANILCA did not substantively change the state's primary authority to manage fish and wildlife on federal lands and committed to coordination whenever actions would affect the other party. Overall, the ALUC functioned effectively to put people eye-to-eye at the same table to resolve issues or leveraged the agencies to resolve issues so they would not come before the Council's public deliberations.

### **First Ten Years after ANILCA**

A priority responsibility of the ALUC was to review and approve all land management plans and regulations. Each federal agency had a designated representative who advised Regional leadership and provided ANILCA expertise to guide its agency's decisions and land planning. The Native leadership on the Council provided key participation due to their economic and inholder interests as adjoining landowners impacted by access needs and federal land management decisions. The State of Alaska, which is exempt from the Federal Advisory Committee Act, established a team of agency representatives to review internal federal management plans and regulations during their development. This level of cooperative involvement resulted in resolving unnecessary management conflicts and correcting errors prior to public review, thus significantly reducing public discord. For example, when the National Park Service tried to adopt nine general management plans at one time that reviewers found did not meet ANILCA provisions, the Council voted to reject the plans. The Service agreed to redo the plans to be more consistent with ANILCA, and when completed, the Council voted to accept the revised final plans.

The following is a synopsis of select issues that were resolved as a result of collaborative efforts among the agencies and public and/or under review of the ALUC:

1. NPS legal boundaries adopted to fulfill ANILCA Title I were successfully negotiated to exclude the state's waters below mean high tide in offshore areas;
2. The first park and refuge management plans recognized that federal authority did not apply off federal land to inholdings and adjacent state waterways and other non-federal land;
3. Federal land management plans recognized that transportation and utilities can be developed on conservation system units whereas their initial position often was to prohibit such developments (contrary to explicit ANILCA provision);
4. Federal land plans also recognized that the state asserted numerous RS2477s;
5. Federal plans included language recognizing that ANILCA requires any changes to management direction in the plans to involve the same level of coordination with the public and state as required in the initial plans;
6. Studies required by ANILCA Title VI of possible wild and scenic river designations resulted in recommending only one designation. The others were not recommended because they did not qualify, were not supported by the public, or were not considered necessary (per eligibility requirements of the Wild & Scenic Rivers Act);
7. The state and NPS completed a joint study of traditional (pre-ANILCA) access in the Wrangell-St. Elias National Park and Preserve that documents protected access methods, locations, and activities—no such comprehensive, cooperative studies have been completed since;
8. More recently, NPS closely collaborated with the state and inholders to develop an inholders access guide to protect ANILCA-guaranteed access rights without requiring permits or application fees; and
9. NPS recognized long-standing traditional ORV access for subsistence by Cantwell residents in a part of Denali National Park where it was previously prohibited and collaborated to adopt conditions of use that protect the park.

## REPRESENTATIVE EXAMPLES OF CURRENT ISSUES

At the request of the Governor's Office, the State of Alaska's ANILCA team provided a report on August 13, 1992, of "Deteriorating Relationship Between the State and DOI" (1992 State DGC Memo on CACFA website). It concludes that the federal agencies were increasingly failing to coordinate with the state and ignoring state comments and more and more decisions were being made "at higher levels within Alaska and in Washington, D.C." without adequate understanding of ANILCA provisions, its intended cooperation and consultation, and which lacked the necessary Alaska context:

*Factors that appear to have contributed to this situation may include the federal takeover of subsistence management, the demise of the Alaska Land Use Council (ANILCA-established federal/State/Native cooperative forum), and a long-standing tendency of the State to allow the federal agencies to proceed with objectionable activities without mounting effective intervention measures.*

The Summit's presenters described ongoing divergence from the ANILCA compromises over the subsequent decades resulting in ever-increasing conflicts with federal agency decisions and diminished involvement by the public, Native corporations, and state in federal decisions affecting public uses and adjacent landowners. Presenters also observed the public's and agencies' poor understanding of ANILCA and its consultation requirements, while federal agencies increasingly take actions unilaterally. Overall many presenters noted that federal agencies are not engaged in genuine consultation with Alaskans and state agencies ("giving notice is not the same as consultation"). Presenters described how the federal regional leadership often change significant policy interpretations affecting management of federal lands without notice and increasingly defer such decisions to the political leadership in the agencies' national offices, which provides no opportunity for appropriate consultation envisioned in ANILCA.

**"No More Clauses":** An example of diverging political decisions and lack of sensitivity to the ANILCA compromise is the increasing number of recommendations by Department of the Interior agencies for additional wild and scenic rivers and defacto wilderness despite Congress resolution in ANILCA that there would be "No More" set asides for conservation units in Alaska. (See CACFA memo providing "No More Clauses" analysis to the Senate and House State Affairs Committees on CACFA website). For the first 12 years after passage of ANILCA, federal land management agencies applied a consistent interpretation with the State of Alaska and many others that Sections 101(d), 1326(a) and (b) of ANILCA simply mean what they say—that "No additional wilderness reviews, no additional wild and scenic river suitability reviews, and no additional administrative withdrawals" would occur without congressional authorization. This understanding was key to final passage of ANILCA. (See "Promises Broken" by Steve Borell on CACFA website) In sharp contrast, the FWS used its national policies and a Director's memorandum in a circular reading of the law to justify conducting another round of wilderness reviews and potential wild and scenic river designations during planning for refuges in Alaska, resulting in numerous such recommendations in the recently adopted Arctic National Wildlife Refuge updated comprehensive conservation plan. FWS spent several years cooperating with representatives of the 50 states to adopt its wilderness management policy, published in the

Federal Register, that exempted Alaska from new wilderness reviews. However two years ago the agency abruptly changed the policy without notice and with no consultation, and now requires a new round of reviews despite the “No More” provisions of ANILCA

Presenters described major impacts on the state and local agencies and communities due to the national office of the US Forest Service shifting their policies away from the “working forest” concept toward preservation management on the Tongass and Chugach Forests, despite the provisions for harvest in ANILCA and the Tongass Timber Reform Act. As a result, only about seven percent of the Tongass’ forested land base is available for commercial timber harvest. The State of Alaska served as a cooperating agency in all phases of the 2008 Tongass Forest Plan Amendment, which allocated land for harvest and conservation measures. The Forest Service national office has taken two significant actions that undo that plan despite protests from the State of Alaska: (1) reapplication of the 2001 Roadless Area Conservation Rule to the Tongass (which was exempt from Roadless Rule from 2004 to 2011) and (2) implementation of the Transition Strategy policy. The State of Alaska considers reapplication of the Roadless Rule a violation of ANILCA’s “No More” provisions, which also disregards the roads already built in these areas, zoning adopted collaboratively in the Tongass Plan for development activities, and previous harvests in the areas. (See [Kyle Moselle's presentation](#); the July 1, 2013 letter from State of Alaska to Forest Supervisor; and the August 2013 Task Force Recommendations and Status on CACFA website) The Roadless Rule also renders vast tracts of the Tongass and Chugach inaccessible for utility infrastructure, inconsistent with the intent of Congress in ANILCA Title XI. (See [Alaska Power & Telephone Company](#) “Comments of Southeast Utilities on Five Year Review of the 2008 Forest Plan”.)

**ANCSA 17(d)(1) withdrawals:** In 1971, ANCSA section 17(d)(1) resulted in numerous withdrawals totaling more than 150 million acres of federal lands in Alaska. These lands were no longer available for disposal and appropriation under the Public Land Laws to allow federal agencies to complete inventories and studies for conservation system units required by ANCSA section 17(d)(2). The withdrawal orders segregated the lands from entry under all public land laws including mining and mineral leasing laws. With passage of ANILCA in 1980, the withdrawals outside of conservation system units and other withdrawals were expected to be terminated. Nearly 25 years later, Section 207 of the Alaska Land Transfer Acceleration Act in 2004 required a review and report that identifies the lands still withdrawn so that they could be reopened to appropriation. On June 2, 2006, the Office of the Secretary transmitted the BLM report to Congress recommending that release of some of the withdrawals be accomplished through the BLM Resource Management Plans. BLM Alaska has adopted four Resource Management Plans (East Alaska, Ring of Fire, Kobuk-Seward, and Bay) covering large geographic areas, which recommend many ANCSA (d)(1) withdrawals be revoked. According to the BLM report, 21.5 million acres could be open to entry under Public Land Laws, but the Secretary of the Interior has not followed through with any of the recommendations.

**State Management of Fish and Wildlife:** Both National Park Service and Fish and Wildlife Service increasingly trump the state’s fish and wildlife management authority despite clear intent by Congress in enacting the Statehood Act, ANILCA, and other laws to place the management of Alaska’s resources in the hands of its residents. (See [Brad Palach's Federal Overreach Presentation](#) for details on CACFA website.) Numerous examples by several presenters

demonstrate that the federal agencies too often demonstrate little or no respect for the state's authorities; particularly where agency officials personally dislike or disagree with certain harvests. Certain federal actions are increasingly inconsistent with federal policy in 43 CFR Part 24:

*This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife. . . . [f]ederal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.*

In contrast to this Secretarial Policy, presenters described how NPS and FWS use land management decisions and national policies (adopted with inconsistencies with State of Alaska law) that favor "values" over the state's constitutional responsibilities and fail to respect the State of Alaska's primary authority for sustainable management of fish and wildlife. Federal agencies pursue closures of state-authorized harvest methods/means that federal managers dislike, often implementing these through permit conditions or non-regulatory discretionary processes (see NPS use of compendia below). FWS threatened state employees with personal arrest if conducting state activities the federal agency disapproves despite federal and state scientists mutually supporting the action (See FWS Unimak case example).

In one case, a Forest Service district ranger decided to prohibit catch and release steelhead fishing in the Situk River because of her concern for mortality—despite the state's decades long highly effective management of that popular and healthy catch and release fishery that contributes significantly to the economy of Yakutat. Federal agencies are requiring the state to get permits to conduct its sovereign fish and game management activities, despite ANILCA retaining that authority unchanged, and/or are requiring the public to get permits for state-authorized activities with stipulations that unnecessarily limit public participation in hunting, fishing, and trapping activities. The federal agencies are increasingly using a bias against consumptive uses of fish and wildlife in the issuance of permits for commercial services for guides and other service providers. (See Bill Horn's presentation on [Summit video](#), Part 1, 8/13/2013)

In Alaska, the state not only has responsibility for its traditional role as the principle manager of fish and game resources, those resources are important to Alaska's economy, quality of life, and critical sources of food and sustenance as the state manages for sustained yields and benefits to the residents. Federal philosophical conservation (or preservation) goals are interfering with the state's ability to meet its constitutional responsibilities. The Board of Game under Alaska Legislative authority and vetted through an extensive public process, implements intensive management programs in less than 10% of the state's land area. These have proven successful at restoring healthy populations of predators and prey and providing sustainable hunting opportunities. Despite this sound management approach, federal agencies are trumping the state's program by stating it is not "compatible" with federal management objectives or values. In the case of the Southern Alaska Peninsula caribou herd, when the U.S. Fish and Wildlife Service refused to allow the program on refuge land, the state was able to successfully implement the program for three years on its limited adjacent land and the caribou herd rapidly rebounded. The federal agencies then authorized "take" in excess of the state's recommended

harvestable surplus, thereby preventing quick reestablishment of a healthy, sustainable population and eliminating harvest opportunities for many Alaska residents.

**Dual Management of Subsistence:** Federal agencies, through the Subsistence Board, increasingly override the state's authority in Title VIII of ANILCA, *e.g.*, by retaining closures of take by non-subsistence users longer than necessary for conservation concerns and authorizing harvests in excess of state determinations of "conservation concerns", substituting the state's responsibility and experience in sustainable management with federal opinions. As another example, despite the ANILCA Section 815 provision that restrictions not unnecessarily impact non-subsistence users, the Federal subsistence program retains closures for three years, is considering extending those closures to five years, and provides no process to cancel the closure when no longer needed except to go through the proposal and regulation review process. Since dual regulation of subsistence began in 1990, the State of Alaska repeatedly requested that efforts be made for the state and federal governments to work together more effectively in managing subsistence use. The State reiterated that it is responsible for management of the fish and wildlife that the federal program allocates and that the state already administers a preference among consumptive uses for subsistence on most lands in the state. Consequently, the duplication of administration and regulations is unnecessarily confusing, costly, and a growing source of conflicts.

In 2005 the State produced a white paper proposing a variety of administrative actions that would significantly reduce the conflicts inherent in the federal and state subsistence laws (*See "White Paper- Policy Administrative Direction Needed To Resolve Significant Issues Between State and Federal Subsistence Program" Appendix #4 presented by Ron Somerville on CACFA website .*) The federal delegation unfortunately rejected all of the concepts proposed by the state in favor of continued unnecessary regulatory conflicts.

In 2006, the Governor specifically asked the Secretary for three things of the Federal Subsistence Board: follow its own regulations, follow existing secretarial direction to implement written policies and procedures with clear criteria, and make decisions based on data. Each time that the state has tried to litigate individual examples of these issues, the court has given deference to the federal agency without addressing the process issues. Federal legal counsel told the state liaison in response to concerns that the federal subsistence board was authorizing take in areas where there was no federal land, "You don't like it, sue us and win!", illustrating the combative and autocratic approach of the federal board in contrast to ANILCA Title VIII's many requirements for consultation with the State of Alaska. Numerous federal employees challenge that the state could "take back" management of subsistence under ANILCA if it would pass a constitutional amendment, despite that the federal appeals court twice stated it would not give deference to the state in implementing federal law, thus the federal program remains in place unless ANILCA is amended. Such action was suggested by several presenters.

In 2009, the Secretary of the Interior undertook a review of the federal subsistence program in Alaska, asking for public comments. On January 5, 2010, the state provided extensive comments on problems, urged improved coordination and adherence to ANILCA's role for the state, and offered numerous constructive suggestions to improve the regulatory process for the benefit of wildlife, the user, and responsible administration. The Secretary responded publicly in adopting

changes requested by one user group, but, despite the Governor writing again March 1, 2010, concerning the status of the state's recommendations, the Secretary has never responded to the State of Alaska or taken action to address any of the procedural issues or unnecessary intrusions in the state's management authority. (See both letters on CACFA website)

**Future Transportation and Utility Systems, Guaranteed Access, and other protected public activities:**

Senator Murkowski described her frustration with the U.S. Fish and Wildlife Service raising every objection possible to the proposed road between King Cove and Cold Bay that would cross a few miles of Izembek National Wildlife Refuge Wilderness. During ANILCA's deliberations, Congress recognized Alaska's poorly developed infrastructure and need for future transportation and utility systems despite the presence of large conservation system units. Instead of setting aside specific corridors for future such needs, Congress developed an administrative process to allow for applicants, such as Native corporations, mining companies or the state, to apply to build necessary transportation and utility projects. The road across Izembek Refuge is desperately sought by King Cove residents to provide access to reliable year-round air service for public health and safety and would be built on uplands where many miles of roads were built during World War II and actively used by 20,000 troops. Not only is such a road permissible under ANILCA Title XI, but also Congress and the State of Alaska legislatively approved giving state and ANCSA land to the Service in a significantly unequal land exchange to more than compensate the FWS for any potential impacts.

This refusal to cooperate in authorizing the road parallels other actions Izembek managers have taken to reduce historic uses of the refuge, such as blocking roads and parking areas (despite the original management plan committing to keeping all existing roads open to public use). The refuge put up signs at the driving edge of roads denoting a wilderness boundary that is actually 150 feet from the centerline (thereby precluding traditional parking opportunities outside the refuge wilderness boundary), and posted signs for several years closing an area to hunting without such a closure in either federal or state regulations. The refuge established the expanded ANILCA area with a straight-line boundary that does not follow hydrographic features as required in ANILCA Title I, thereby incorporating an inholder along the boundary into the refuge and crossing the mouth of navigable Trout Creek. A Izembek refuge manager also told a False Pass trapper that he could not build a cabin on Unimak Island because it is a wilderness—even though the FWS regulations in 50 CFR Part 36 specifically allow construction of trapping cabins in refuge wilderness areas. A review of each refuge and park would probably reveal similar unilateral and other management actions that are inconsistent with ANILCA. The public that report such actions fear to publicly file complaints because they need permits for economic activities, commercial services, or "have to live with" the federal officials.

Senator Lisa Murkowski illustrated the endemic problem of federal "overreach" in telling a story of a daycare provider in Wrangell who was at a Southeast Alaska Forest Service campground picnic table with children, when an enforcement officer ticketed her for conducting a commercial service without a Forest Service commercial service permit. Senator Murkowski brought this to the attention of the Chief of the US Forest Service, who she said, to his credit, was horrified. She reiterated that it should not require a US Senator talking to the head of a federal agency to "inject some rational thinking into this process". This example epitomizes a growing number of

situations where federal agencies act without adequate common sense, communication, and collaboration with the residents and others.

The Alaska Power Administration representative described many regulatory challenges faced by Alaska's electric industry as a result of "*well-intended regulations that backfire.*" For example, the regulation to require ultra low sulfur diesel intended to reduce emissions actually required significant capital cost at the refinery and for transportation and storage, resulted in reduced heat (BTU) content of the fuel, and increased costs of the fuel itself. More fuel was needed due to the lower heat content with a net result of higher costs and higher emissions. As the regulations change and grow increasingly complex, small utilities do not have the expertise so must hire consultants, further driving up costs. The numerous agencies regulating air and water quality, restricting activities to protect the environment and "values", often implement contradictory conditions on the utilities that lack common sense (e.g., one agency required a development to "blend into the landscape" and another required "enhanced visibility" to avoid bird strikes.) (See Meera Kohler's presentation and Alaska Power Authority written presentation.)

Presenters described adoption of national policies that do not take ANILCA or Alaska's unique circumstances into consideration and provide no meaningful public input. For example, without any public deliberation, BLM adopted a policy to not process public rights-of-way established under federal statute RS 2477. BLM also issued a secretarial order to create de facto wilderness under the Wild Lands Policy without consultation with states and in direct conflict with ANILCA's "No More" provisions. These unilateral actions have forced the state(s) to litigate. In other cases, national leadership dictated a pre-determined outcome despite federal processes that had extensive public involvement, such as the final NPR-A decision. That decision put thousands of acres off limits despite years of work by state agencies and the North Slope Borough as cooperating agencies to find a best solution that allowed development while protecting the resources.

**National Park Service water regulations:** In 1989 the NPS Regional Director wrote a letter to the State of Alaska, advising that "*We find no general law that will allow NPS management of non-federal lands outside the boundaries of national park areas. NPS can manage non-federal lands within authorized park boundaries pursuant to a memorandum of understanding.*" No such memorandum of agreement with the state was adopted. Despite this lack of authority, in 1996 NPS revised its national regulations to extend its authority to regulate activities in state waters. The states have traditional sovereign responsibility to regulate public use and manage resources in waters overlying navigable waterways. ANILCA 103(c) specifically prohibits application of federal regulations, which are adopted for management of conservation system units, to nonfederal lands in Alaska. The State of Alaska requested the NPS exempt Alaska in the final regulations to no avail. During repeated attempts to resolve this dispute, the Secretary of Interior promised to evaluate a solution and then Governor Knowles elected not to litigate. After several years, NPS began enforcing its self-granted authority by restricting eligibility and methods of users fishing under state regulations in state waterways that flowed through park units, prohibiting use of certain types of watercraft authorized by the state in navigable waterways, and applying other NPS regulations. John Sturgeon, a private citizen, who was prevented from using his traditional motorized access on a navigable waterway to hunt in an area

beyond the park, is litigating this preemption in state waterways that violates ANILCA 103(c). (See *John Sturgeon presentation*)

**Endangered Species Act:** Presenters described examples of perceived abuses through precautionary listings of species irrespective of their current health or abundance based solely on untested models predicting possible extinction in the distant future. This began with the polar bear listing based on speculation they would be threatened by 2050 but which remain at all-time record numbers (three times their population 40 years ago). For the Chukchi subpopulation which experienced some of the greatest sea ice loss over the past several decades, vital rates remain as healthy as they were 30 years ago. Recently, National Marine Fisheries Service proposed to list ringed seals based on speculative climate impacts 100 years into the future, despite there being over 3 million seals in existence. The agency's own data suggests there will be no measurable impacts to seal populations for 50 years. Once a species is listed, all hunting, fishing, and other "take" comes under federal oversight. These listings of currently healthy species are an unprecedented federalization of state trust species and their management, i.e., an unnecessary federal intrusion into state fish and wildlife management authority.

The ESA is also being used as a landscape control mechanism through expansive designations of critical habitat that encompass any area potentially occupied by the species, rather than those areas truly critical to species survival. An area of Alaska larger than California was designated as critical habitat despite the rulemaking acknowledgement that designation would not benefit the species. Such designations allow federal agencies to exert their management goals and authorities on state, Native corporation, and other nonfederal lands. National Marine Fisheries Service decided that commercial fishing was causing nutritional stress to Western Stellar Sea Lions, which they listed despite a population over 70,000 that is growing 1.5% annually, and they closed the commercial cod fishery with significant impacts on local economies. Seven subsequent independent science reviews, three contracted by the Service, all demonstrated the federal science used to make these listing decisions was incorrect. Through the agency's discretion, federal scientists are driving species and land management decisions based solely on perspectives rather than sound science.

**Navigable Waters and the Submerged Lands Act:** Under the Equal Footing Doctrine and the Submerged Lands Act, the state received title to almost 60 million acres of lands under inland navigable waters, tidelands, and submerged lands out to the three-mile territorial boundary. To definitively resolve a dispute over whether a waterway is navigable, the state must file a Quiet Title action in federal court. The federal court will not take a case unless the federal government asserts an interest in the title, requiring the state to force the federal government to take a position. Such cases that do go to court take many years and millions of dollars to resolve. The result is the state does not have its entitlement despite Congress giving it to the state. (See 02/11/04 "*Conflicts Concerning Title to Submerged Lands in Alaska*" by Ron Somerville and Ted Popely. [Appendix 1](#) of Ron Somerville's presentation CACFA website.) In recent years, the Bureau of Land Management, as the federal agency handling realty matters for the federal government, began issuing Recordable Disclaimers of Interest (RDI) to quiet title of waterways where there was no dispute. A few dozen have been issued to the state after expending significant research effort and money. However, when the adjacent federal agency objects to the BLM issuing an RDI—not based on navigability facts, such as the Stikine River application—the

RDI goes into a black hole and the state still has no “dispute” to resolve the title issue in court. Attempts to find cooperative solutions resulted in the state legislature adopting legislation to form a joint federal-state commission but Congress did not adopt parallel legislation. This issue has major implications for Native regional and village corporations that received title to their ANCSA selections with acreage under navigable waterways counted against their entitlement. If their entitlement is completed without resolution of title, the ANCSA corporation may be unable to replace the acreage of state submerged land that was erroneously conveyed to them.

**Recent DC-based initiatives impinge on state authorities and curtail public dialog:**

**Landscape Conservation Cooperatives (LCC)**—Department of the Interior initiated a program to coordinate science at a landscape scale to study effects of climate change. Fish and Wildlife Service expanded the concept to establish conservation goals and objectives for all lands, including state and private lands. The numerically dominant federal partners vote to establish goals and objectives on state and private lands involving state trust resources over the State of Alaska’s objections, ignoring its science, intruding in its sovereign authorities, and potentially unnecessarily impacting state sustainably-managed hunting, fishing, and trapping .

**Surrogate Species Monitoring Initiatives**—Fish and Wildlife Service proposes to replace its long-standing inventory and monitoring programs with this initiative, whose goals are to monitor ecosystem health by selecting surrogate species. Other federal agencies previously tried this approach without success. The selection of state trust resources as surrogates, establishment of federal population goals and objectives for those species, and application on the LCC scale expands federal authority outside refuge boundaries, with significant potential to impact State of Alaska authorities and responsibilities for fish and wildlife and their management.

**National Ocean Policy**—Under a Presidential administrative order, a National Ocean Council is implementing a National Ocean Policy and regional planning boards. The geographic extent of these boards covers the state’s territorial seas, as well as adjacent uplands and waterways. Dominant federal voting decisions could stipulate closures on state and other lands and waters where fishing, hunting, and other consumptive uses would be prohibited and could overrule other state sovereign authorities in management of its lands and waters out to the three mile limit.

**Wilderness Act and FWS Biological Diversity Policy**—The FWS prevented any state-sanctioned predator control program from being conducted despite their objective of ensuring the severely declining native caribou population would not be extirpated from Unimak Island. The FWS determined that provisions of the Wilderness Act and their Biological Diversity Policy override the refuge’s purposes as outlined in ANILCA, which include providing for conservation of caribou and subsistence uses by rural residents. Review by a group of recognized wildlife scientists resulted in conclusion that extirpation of the herd is likely without intervention, but the Service continues to refuse to allow the State of Alaska to conduct its management responsibility, stating that allowing the herd “to blink out” is consistent with their Biological Diversity Policy.

**National Park Service Compendia**—The NPS can restrict public uses under a unique authority designed to assist management of park lands, but this discretionary authority in 36 CFR Part 1.5-1.7 must, instead, be pursued through formal rulemaking if it is controversial. Recently, the NPS has expanded its use of compendia to enact reoccurring annual closures of public uses

without going through the required rulemaking process (ANILCA-based regulations at 43 CFR Part 36 and 36 CFR Part 13 only allow emergency or temporary closures without rulemaking). The NPS has also preempted state subsistence harvest regulations in two park units despite no conservation concern or impact on park visitors. NPS closed a state trapping season in another park on the pretense of protecting subsistence harvest when there was no conservation concern for sustainability of the population. Expansion of compendia authority trumps protections in ANILCA of public uses through rulemaking and protections of state fish and wildlife management authority.

**U.S. Fish and Wildlife Service Friends Policy**—FWS proposed a policy in 2010 to allow these Friends groups to use federal funds and infrastructure to assist the FWS as volunteers, but also to advocate for or against proposed projects that the Service was conducting. These groups' members include FWS employees and in kind funding and training contributed through the FWS budget, but these groups also inappropriately advocate and lobby positions where the same FWS employees have an objective decision-making responsibility. The Congressional delegation notified the FWS that enveloping such a group would be a violation of the Hatch Act and, along with the State of Alaska and the Citizens' Advisory Commission on Federal Areas, objected to the FWS adopting the policy, urging the FWS to distance itself (e.g., remove links from the FWS website) from an advocacy group.

**Surveys and land exchanges of conservation system units:** Congress recognized in Title I of ANILCA that there would be a need to adjust the boundaries of the units so they are more easily locatable in the field, follow hydrographic divides to ease management of public uses, and enact land exchanges with adjoining land managers to resolve boundary issues. One of the priority responsibilities of the Alaska Land Use Council was to facilitate and review such exchanges and surveys of the boundaries to resolve issues. Surveys of the units are being completed without consultation with the state to identify where such adjustments are needed to resolve short or long-term issues, despite extensive efforts toward such exchanges and boundary adjustments in past decades.

## RECOMMENDATIONS FOR RESOLUTION

The above examples of problems in state-federal relations, particularly demonstrated in presenters' discussion of inconsistent implementation of ANILCA and other federal laws, are symbolic of a deep fissure on many more issues. Each presenter provided ideas on solutions summarized in this overview and available on the CACFA website. The following is a synopsis and/or consolidation of recommendations raised by more than one presenter. To achieve maximum success, all affected parties will need to shoulder responsibility for pursuing solutions to the conflicts in implementation of "the deal" in ANILCA and other federal laws appropriate to the Alaskan context. Without such an across-the-board commitment, only court suits or further congressional actions will address the conflicts, fostering arbitrary winners and losers rather than long-term, stable resolution consistent with both Alaskan and national interest.

- Pursue improved communication and collaborative processes with federal agencies that engage the Alaskan public, Native corporations, State of Alaska agencies, and others in federal decision-making that is Alaska-based; e.g., draft legislation to reauthorize the Alaska Land Use Council or a similar forum.

- Increase public, Native corporation, state and federal agencies, and legislative/congressional staff understanding of ANILCA through training; seek federal and state funding to digitize expanded and updated training so it is broadly accessible, including in schools.
- State of Alaska should adopt case-by-case strategies for judicial and legislated remedies.
- State should fund a knowledgeable and adequately staffed CACFA and State ANILCA program, including sufficient legal counsel to assist prior to litigation in current issues if resolution is not achieved through negotiation.
- Involve the Congressional delegation in conduct of committee oversight hearings and seeking federal justification for actions believed inconsistent with ANILCA, that lack common sense in the Alaska context, and/or lack genuine consultation.
- Draft and pursue adoption of an ANILCA amendment that (1) clarifies “no more” wilderness and wild & scenic river reviews, (2) that lands in Alaska are not to be managed for “wilderness character” until designated, and (3) sunsets recommendations for such designations if Congress doesn’t act within a specified time.
- Increase State of Alaska and Native Corporation pressure on the Secretary of the Interior to release the ANCSA 17(d)(1) withdrawals consistent with approved BLM resource management plans so the public lands are available under Public Land laws, including mineral entry.
- Pursue litigation and/or draft legislation to exempt Alaska from the Forest Service Roadless Rule.
- Elevate pressure by the State of Alaska, delegation, and NGOs to seek an exemption for Alaska whenever national policies fail to respect and reflect the Alaska context. Recent problematic examples include the FS Transition Strategy, FWS Wilderness Reviews Policy, BLM Wild Lands Policy, and NPS Management Policies.
- Draft legislation or propose other Congressional action in concert with other states to specifically recognize the primacy of state management of fish and wildlife on all lands within the individual states, so that it is not subject to discretionary or arbitrary authority of individual managers in implementation of agency policies, values, and plans.
- Draft an amendment to Title XI of ANILCA to improve the process to authorize transportation and utilities across conservation units and to maintain traditional access, recognize RS2477s, and assure the other access protections are not subject to subjective “values” of the land manager.
- Draft an amendment to the Quiet Title Act to establish process for state ownership of navigable waters based on specific criteria so BLM must take a timely position.
- Amend ANILCA Title I to reiterate that federal regulations for management of conservation system units in Alaska do not apply to state lands, navigable waters, private lands, and validly selected state and Native corporation lands; e.g., clarify non-applicability of NPS “water regulations” at 36 CFR Part 1.2.
- Amend the Endangered Species Act to refine the listings qualifications, minimize critical habitat designations, establish triggers for delisting, and give primacy to the state’s authority in management of trust species.
- Seek Congressional “budget hammer” to prevent agencies from funding initiatives that duplicate or diminish state authorities for fish and wildlife.
- Litigate NPS use of compendia in instances that diminish ANILCA protections and intrude in state management of fish and wildlife.

- Pursue reinstatement of the Alaska Mineral Resource Assessment Program (AMRAP).
- Encourage federal agencies (“budget hammer”) to adopt simplified management plans that update existing ones, not write completely new ones that lose the original plans’ context. The public simply cannot keep up, the state agencies are struggling to review the increasing volume of plans and read between the lines, and the federal agencies are changing underlying policies without explicit rationale or recognition.
- Insist federal agencies keep planning within their boundaries. Avoid spending scarce federal funds on special (non-designated) areas such as Beringia International Park.
- State should take steps to improve its coordination on federal issues with Native corporations and rural communities to educate and seek consensus in advocating funding for land surveys and patents and for land exchanges to resolve issues with unit boundaries that are hard to detect and manage in the field.
- Continue to pursue additional Congressional direction regarding improper implementation of ANILCA 1308 local hire provisions by the federal Office of Personnel Management
- Draft Alaska-specific amendment to NPS concession regulations to lengthen the 2-year commercial use authorizations for Alaska businesses, which are highly capitalized (remote facilities, airplanes, etc)
- Conduct a review of each section/Title of ANILCA to analyze the status of its implementation consistent with Congressional direction and develop a strategy to resolve inconsistent implementation.
- Aggressively address Wildlife Management Conflicts.
  - Pursue legal and conclusive definition of "federal public lands"
  - Apply distinct administrative standards to simplify and clarify federal subsistence
  - Develop cooperative state/federal administrative actions to reduce conflicts and confusion
  - Pursue state/native land cooperative management programs
- Aggressively pursue submerged land entitlement for state.
  - Amend Quiet Title Act to force feds to take a position on navigability determinations or concede State title
  - Litigate "federal reserve water rights" issue to the U.S. Supreme Court
  - Stop federal permit requirements on state navigable waters
  - Establish and clarify BLM navigability criteria
  - Improve and Expand Recordable Disclaimer of Interest process
  - Push to make navigability decisions based on physical characteristics
- Aggressively pursue public access solutions
  - Identify and protect RS2477 R-O-W
  - Prohibit 17(b) easements from being vacated unless comparable access is provided
  - Clarify and strengthen public access to inholdings within federal public lands
  - Work with all land owners to resolve access issues
- Pursue adequate State funding
  - For important litigation demands
  - Reauthorization and increased funding for CACFA
  - Public information solicitation and public information distribution
  - Legislative and administrative communications efforts with DC delegation, other states, federal administrators and public
- Develop a comprehensive plan to deal with State/Federal conflicts.

- Develop specific action plans and recommendations to address issues
- Develop a comprehensive public information process
- Clarify remote cabin policy to protect ANILCA compromise to maintain
- Consider taking Constitutional issues directly to the U.S. Supreme Court.
- Evaluate and consider scrapping cooperative agreements and MMOU's that are not effective and do not represent the state's interest.
- It was suggested that, in response to the unrelenting federal over-reach that we stop state/federal cooperation.
- Continue to promote and expand dialogue between Alaskans.
- Seek a legal opinion on powers of EPA over private and state lands.
- Promote the U.S.F.S. developing forest-wide standards and guidelines for young growth forest management.
- Continue to fund the state's own science and research on key issues.
- Push for Washington D.C. to give back control and decision making authority to the federal regions and local authorities.
- Push for ocean zoning and marine species protection monitoring.
- Push for World Heritage and Biosphere Reserve tracking systems.
- Push for "Beringia" tracking system.
- Closely follow actions and websites of environmental preservation organizations.
- Push to assume primacy for Section 404 permitting under the Clean Water Act permitting.
- Push for mechanisms to help private parties that are forced to litigate on key state's rights or state's sovereignty issues (i.e. Sturgeon Case).
- Push for increased economic development with shared revenue on federal lands.
- Push for programs to entice Alaskan youths into land management careers.
- Fund more intensive efforts to document traditional access in Alaska.
- Push for voluntary stakeholders solutions to problems that do not require regulations or government enforcement.
- Litigate based on the authority and principles of the 14th amendment.
- The legislature should reclaim and assert its policy making authority over state/federal relations.
- The mission of ADF&G Subsistence Division should be readjusted to contemporary relevance.
- Consider suing the federal government for lost revenue to the state from harvesting wildlife on federal lands.
- Stop cooperating with federal entities (i.e. Federal Subsistence Board) where there is little or no benefit to the state and it wastes limited state resources.



ALASKA STATE LEGISLATURE  
**HOUSE FINANCE COMMITTEE**

State Capitol, Room 519

Rep. Alan Austerman, Co-Chair

Rep. Bill Stoltze, Co-Chair

Wednesday, February 12, 2014

1:30 PM

Agenda:

HJR 22-FEDERAL CONSTITUTIONAL CONVENTION

T Wilson - Barbara Barnes - Aide

HB 244-ADVISORY COMMISSION ON FEDERAL MGT AREAS

Wes Keller - Ernest Prax - aide

Possible testifiers via teleconference -

All potential testifiers are from the Citizen's Advisory Commission on Federal Areas

- **Stan Leaphart, Fairbanks (Executive Director)**
- **Rod Arno, Wasilla (S)**
- **Mark Fish, Big Lake (G)**
- **Teresa Hanson, Fairbanks (G)**
- **Charlie Lean, Nome (G)**
- **Kathleen Liska, Anchorage (G)**
- **Mike Meekin, Palmer (H)**
- **Warren Olsen, Anchorage (S)**
- **Ron Somerville, Juneau (H)**
- **Susan Smith, Chokosna (G)**
- **Frank Woods, Dillingham (G)**

• *Senator Coghill*