

ALASKA LEGISLATURE COMMITTEE REPORTS, 2003-2007


11936 SENATE RESOURCES



# RECORDS CERTIFICATION



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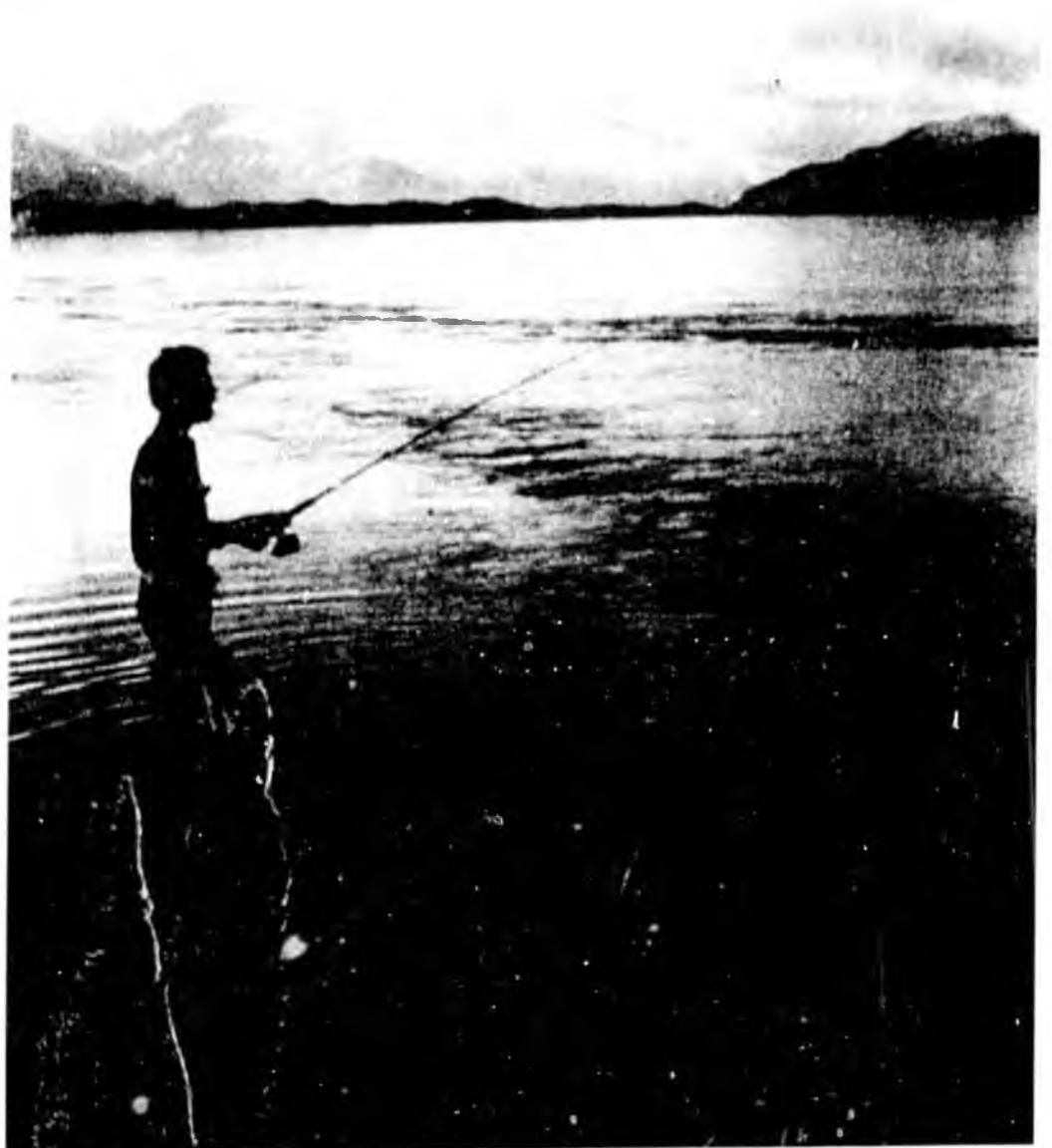
**ACCESS**

**ISSUES,**

**2/16/05**

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

# ACCESSING ALASKA'S PUBLIC LANDS & WATERS



JUNE 1999

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

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

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

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

### REGIONAL NATIVE CORPORATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*Bering*

• Saint Paul

The Ale

Unalaska



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



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*State Agencies Responsible for Access and a Role Related to ANILCA*



DNR ~ management of and access to state lands and waters



DOT ~ management of transportation system & facilities



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

Dept of Law ~ legal aspects of state's interests

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

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

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## Access - on land & water

Why is access so important to AD? (2017)

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



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## HIGHLIGHTS IN ALASKA HISTORY

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



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## HISTORICAL OVERVIEW (CONT'D)

### Alaska Statehood Act; effective January 3, 1959

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

### Alaska Native Claims Settlement Act (ANCSA)

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

### Alaska National Interest Lands Conservation Act (ANILCA)

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

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

Congress intent to "protect the Alaska lifestyle"

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*Key Access Provisions*

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

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

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## State's New Waters Program

### State Navigable Waters Team:

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



☞ Asserts ownership & management of navigable waters;

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

☞ Promotes respect of upland property rights

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definitions  
Navigable  
for title?  
for public  
use?

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

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

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

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THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

### *Navigability for "Title" Purposes*

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

#### *Federal Test*

Waters navigable in fact must be regarded as navigable in law

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

#### *Quiet Title - Court decisions*

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

#### *Recordable Disclaimers of Interest*

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### *Tidelands & Submerged Lands*

*mean high tide to 3 mile territorial limit*

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

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### *Shorelands*

*lands under inland navigable waters*

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

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**Navigability for Title**  
*defines ownership under navigable waters*

BLM made determinations for land transfers to ANCSA Corporations

Certainty of navigability requires either:

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

Or 2. Established through Recordable Disclaimers

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**Quiet Title**

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

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**Federal Process**  
**"Recordable Disclaimer of Interest"**

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

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**Federal Process**

**“Recordable Disclaimer of Interest”**

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

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*DNR Land and Water Management*

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




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*DNR Land and Water Management*

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

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

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### Public Trust Doctrine (PTD)

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

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

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

*Gulkana River* =>

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### PTD Lands

**The "Ordinary High Water Mark"**

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

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

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


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

AS 38.05.127

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

AS 38.05.128

- no one may obstruct or interfere with free passage




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

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

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

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




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Navigable for title?  
 (ownership)

For public use?  
 (public trust doctrine)

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## Navigable Waters

### *Why do anything?*

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



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### *Nav Team Activities*

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



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Recordable  
Disclaimers

Quiet Title  
Amendment

Nav Waters  
Commission



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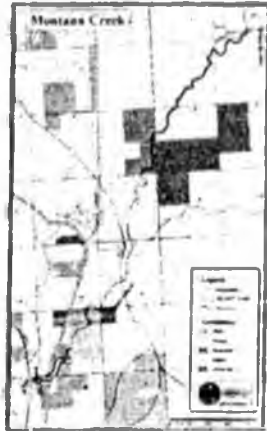
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**DRAFT:**  
Example of  
discontinuous  
to & along  
easements



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### RS 2477 trails & section line easements



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

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### RS 2477 ~ trails & section line easements

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

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



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

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

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

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

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



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**RS 2477 ~ trails & section line easements**

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

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**RS 2477 ~ trails & section line easements**

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

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

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

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*DNR's Easement Regulations*

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

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*DNR's Easement Regulations*

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

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**RS 2477 ~ State's Access Team Issues**

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

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**Key Access Provisions**

**STATE MANAGER:**

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

**FEDERAL MANAGER:**

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

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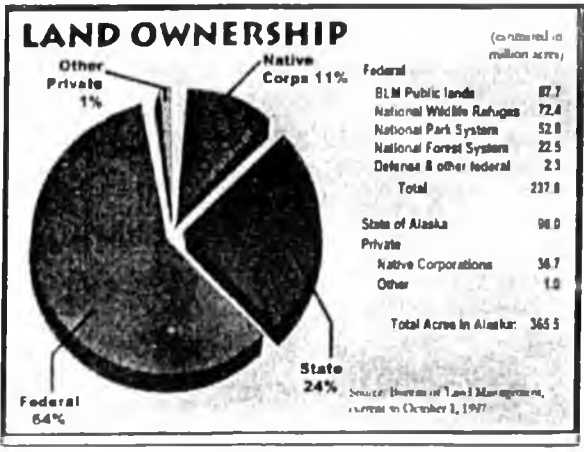
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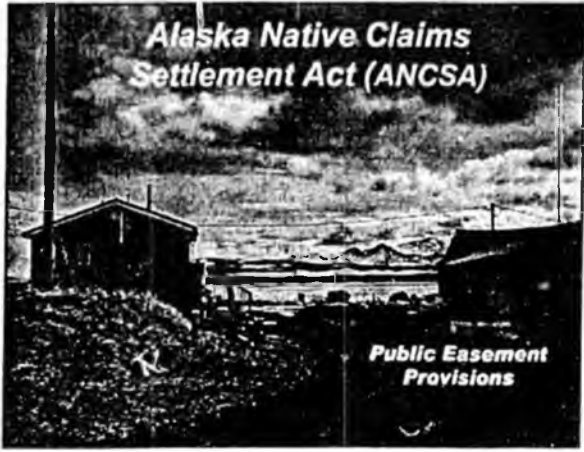
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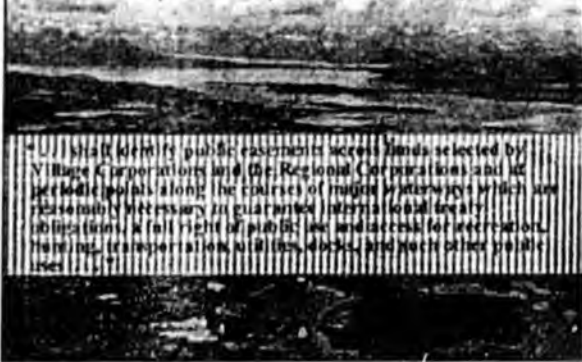
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**Alaska Native Claims Settlement Act (ANCSA) Section 17(b)**



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

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**ANCSA WITHDREW PUBLIC LAND**

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

**GENERAL SELECTION REQUIREMENTS -**

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

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**17(b) EASEMENT REGULATIONS**

**General Requirements**

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

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**17(6) Easement Regulations - cont.**

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

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**17(6) EASEMENT DESCRIPTIONS**  
**Trails & Sites**

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

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**Issues in Conveyances**

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

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*ANCSA 17(b) easements; current issues*

+ Overselections & "2009"

+ Marking & Managing Easements  
needed to reduce trespass

+ Allowable Uses

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**ANILCA'S KEY TITLES AND SECTIONS**

**TITLE I - Purposes, Definitions, and Maps**

- Sec. 101 - Purposes

- Sec. 102 - Definitions

- "public lands"
- "conservation system unit"

- Sec. 103 - Boundary Maps

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



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**KEY TITLES AND SECTIONS (CONT'D)**

**TITLE II - National Park System (NPS)**

Sec. 201 - Established 10 New Units

Sec. 202 - Additions to 3 Units

Sec. 203 - General Administration

Provides for hunting  
No admission fees

Sec. 205 - Commercial Fishing

Sec. 808 - Subsistence Resource Commissions ★

Sec. 1301 - General management plan requirements ★

Sec. 1309 - Amends 1976 Klondike Park Act

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



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

Sec. 302 - Establishment of 9 New Refuges

Sec. 303 - Additions to 7 Existing Refuges

Sec. 304 - Administration of Refuges

(b) compatibility

(d) commercial fishing

(e) fisheries enhance, rehabilitate & maintain

(g)(1) Comprehensive Conservation Plan

★ prepare and revise ★

16 CCPs plus stepdown plans

1997 — Refuge System Improvement Act



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**KEY TITLES AND SECTIONS (CONT'D)**

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

★ Policies/Regulations:

Planning

Biological Integrity

Compatibility

& more to come

★ Plan process in

Alaska revisions:

★ template

★ AK Point/Beech

Kodiak, Togiak

ANILCA prevails when conflicts between laws



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**KEY TITLES AND SECTIONS (CONT'D)**

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

Sec. 401 - Steese National Conservation Area

Sec. 402 - Steese NCA Administrative provisions  
FLPMA & ANILCA

Sec. 403 - White Mountains National Recreation Area

Sec. 1312 - White Mtns NRA Administration + FLPMA

★ recreation use & management planning

Sec. 404 - inholder mining claims  
and leasing rights



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**KEY TITLES AND SECTIONS (CONT'D)**

**TITLE V - National Forest System (USDA)**

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



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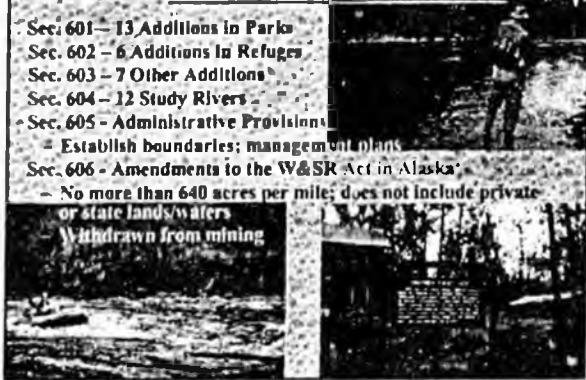
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**KEY TITLES AND SECTIONS (CONT'D)**  
**TITLE VI - National Wild & Scenic Rivers**

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



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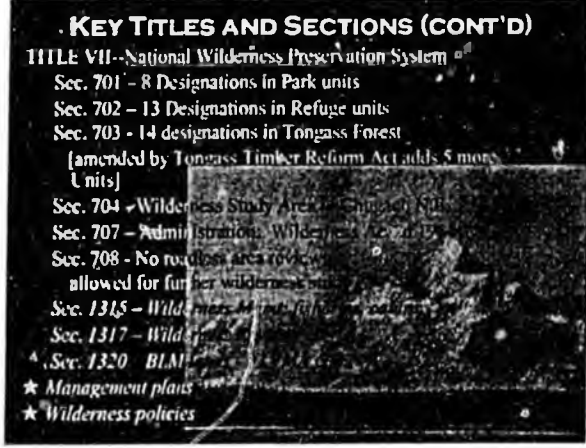
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**KEY TITLES AND SECTIONS (CONT'D)**

**TITLE VII - National Wilderness Preservation System**

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



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Federal lands & their management

Access and public uses

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

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

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

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

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

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**ANILCA TITLES AND SECTIONS (CONT'D)**

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

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

– standardized application and EIS process established;

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



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**ANILCA TITLES AND SECTIONS (CONT'D)**

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

**Sec. 1109** – Valid rights of access protected

**Sec. 1110** – Special Access & Access to Inholdings

**Sec. 1111** – Temporary Access across CSUs to other lands

**Sec. 1112** – North Slope Haul Road

**Sec. 1113** – Stikine River Access Study for Canada

**Sec. 1323** – Access for irholders across public lands



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



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**ANILCA 1110 (A)**

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

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

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

**-THE GREAT COMPROMISE"**



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**ANILCA 1110 (A)-**

*"subject to reasonable regulations"*

**ACCESS OPEN UNTIL CLOSED: 2-prong test**

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



**PROCESS TO CLOSE:**

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

**KEY PROVISIONS & INTENT in ALASKA-SPECIFIC RULES:**

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

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**ANILCA 1110(a) Access Issues**

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

**litigation:**

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

Denali "snow machine" case



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### ANILCA 1110(B)

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

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



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### ANILCA Sec. 1111 Temporary Access

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

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

(Read 43 CFR Part 36 Preamble)

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

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

In other words . . .

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

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*Key Access Provisions*

**STATE MANAGER:**

Navigable Waters - quiet title, own land underlying navigable waters

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

Easements To & Along Waters - reserved when state land transfers

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

**FEDERAL MANAGER:**

ANCSA Sec. 17(b) - easements across conveyances

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

ANILCA 811 - traditional methods for subsistence on public lands

ANILCA 1109 - valid existing rights

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

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

ANILCA 1111 - temporary access for research across CSU's

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

ANILCA 1323 - for inholdings in Forests and FLPMA lands

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A poster for a community meeting. The poster has a white background with a dotted border. At the top, there are two circular logos: one on the left showing a tree and one on the right showing a landscape. Below the logos, the text reads: "Community Meeting", "Everyone's Invited", "June 19, 2003 2:00pm", "McCarthy Lodge". Below this, there is a line of text: "\_\_\_\_\_ of the Department of Natural Resources and Department of Fish and Game will present a discussion of ANILCA access issues, public trust doctrine, navigable waters and RS2477". Below that, it says "Rights, Roles &amp; Responsibilities". At the bottom, it says "It's sure to be informative. Hope to see you there". The poster is set against a background of a forest scene with trees and a sky.

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## PUBLIC TRUST DOCTRINE

### ALASKA CONSTITUTION

**Alaska Constitution Article VIII, section 3 states:**

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

**Alaska Constitution Article VIII, section 13 states:**

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

**Alaska Constitution Article VIII, section 14 states:**

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

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

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

**Alaska Statute 38.05.965(13) defined navigable waters:**

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

### LEGISLATIVE INTENT

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

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

### ALASKA STATUTES

**38.05.126. Navigable and public water.**

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

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

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

**Sec. 38.05.127. Access to navigable or public water.**

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

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

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

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

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

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

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

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

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

**Sec. 38.05.128. Obstructions to navigable water.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Public Trust Doctrine

**Alaska Constitution Article VIII, section 3 states:**

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

**Alaska Constitution Article VIII, section 13 states:**

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

**Alaska Constitution Article VIII, section 14 states:**

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

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

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

**Alaska Statute 38.05.965(13) defined navigable waters:**

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

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

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

## ALASKA STATUTES

### 38.05.126. Navigable and public water.

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

### Sec. 38.05.127. Access to navigable or public water.

- (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,
  - (1) determine if the body of water or waterway is navigable water, public water, or neither;
  - (2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (b) The department shall adopt regulations implementing this section.
- (c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.
- (d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.
- (e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.
- (f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

### Sec. 38.05.128. Obstructions to navigable water.

- (a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is
  - (1) authorized by a federal agency and a state agency;
  - (2) authorized under a federal or state law or permit;
  - (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
  - (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
  - (5) authorized by the commissioner after reasonable public notice.
- (b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.
- (c) This section may not be construed to affect or abridge valid existing rights.
- (d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.
- (e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided
  - (1) entry is made without injury or damage to the land;
  - (2) entry is made in the least obtrusive manner possible;
  - (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and
  - (4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.
- (f) A violation of (a) of this section is a class B misdemeanor.

NOVEMBER 2003 COMPILATION<sup>1</sup> AND ANNOTATION OF  
AMENDMENTS AND OTHER CONGRESSIONAL ACTIONS AFFECTING  
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT  
Pub. L. 96-487, 94 Stat. 2371 (1980)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 613(e) states:

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

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

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

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

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

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

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

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

***"INJUNCTIVE RELIEF***

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

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

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

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

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

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

*(k) PROTECTION AGREEMENTS.—(1) Subject to the availability of necessary appropriations, the Secretary shall undertake to negotiate an agreement acceptable to and binding on Shee Atika, Incorporated, its successors and assigns, whereby it is agreed that during the term of such agreement there shall occur on lands within the boundary of the Admiralty Island National Monument which as of October 1, 1985, were owned by Shee Atika, Incorporated, no harvesting of timber, construction of roads, or any other activities which would impair the suitability of such lands for preservation as wilderness.*

*(2) During the period an agreement as described in paragraph (1) is in effect the requirements of Corps of Engineers permit numbered 071-OYD-2-810133, Chatham Strait 92 shall be suspended so far as such requirements are applicable to lands subject to such an agreement.*

*(3) After the execution of the agreement described in paragraph (1) of this subsection, and subject to the availability of necessary agreements acceptable to and binding on Shee Atika, Incorporated, its successors and assigns, for periods after the expiration of the agreement described in paragraph (1). The provisions of paragraph (2) shall apply during the period any agreements executed pursuant to this paragraph are in effect.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 201 at 468:

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

SEC. 202 at 468-469:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) by adding at the end the following:

*"(b)(1) The Congress finds that—*

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

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

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

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

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

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

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

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

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

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

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

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

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

## TITLE I—FOREST MANAGEMENT PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 106. TENAKEE SPRINGS ROAD directs:

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

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

**TITLE II—TONGASS NATIONAL FOREST LANDS PROTECTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(1) to the extent determined necessary, to acquire and preposition necessary and adequate emergency response equipment to prevent harm or the threat of harm to aquatic park resources from permittees; and*

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

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

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

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

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

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

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

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

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

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

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

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

*(a) GENERAL.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(c) DEFINITION AND SAVINGS CLAUSE.—*

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

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

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

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

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

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

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

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

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

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

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

**(b) SUBSECTION (a) REPEALED --**

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

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

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

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

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

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

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

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

**SEC. 353. KING COVE HEALTH AND SAFETY.**

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

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

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

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

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

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

**SECTION 1. AUTOMATIC LAND BANK PROTECTION.**

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

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

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

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

*(3) by adding at the end the following:*

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

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

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

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

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

*(3) by adding at the end the following:*

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

## **SEC. 2. DEVELOPMENT BY THIRD-PARTY TRESPASSERS.**

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

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

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

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

## **SEC. 3. RETAINED MINERAL ESTATE.**

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

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

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

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

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

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

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

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

...

#### **SEC. 6 CALISTA NATIVE CORPORATION LAND EXCHANGE.**

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

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

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

... [omitted text]

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

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

#### **SEC. 9. ALASKA NATIVE ALLOTMENT APPLICATIONS**

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

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

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

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

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

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

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

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

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

***SEC. 10. VISITOR SERVICES.***

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

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

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

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

***SEC. 11. LOCAL HIRE REPORT.***

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

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

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

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

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

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

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

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

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

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

**SEC. 501. GLACIER BAY.**

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

(1) in paragraph (1)—

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

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

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

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

**(b) OTHERS AFFECTED BY FISHERY CLOSURES AND**

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

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

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

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

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

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

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

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

**SEC. 345 BACKCOUNTRY LANDING STRIP ACCESS**

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

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

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

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

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

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

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

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

(H) repealed 5/3/2001;

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

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

**PART 6. LANDS.**

**Chapter**

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

**CHAPTER 51. PUBLIC EASEMENTS [NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY].**

**Article**

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

**ARTICLE 1.  APPLICABILITY OF CHAPTER.**

**Section**

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

11 AAC 51.010 is repealed and readopted to read:

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

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

    (2) managed by the department under AS 38.

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

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

    (2) does not include

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

        (B) a negative easement.

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

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

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

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

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

**Section**

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

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

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

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

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

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

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

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

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

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

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

(A) for a utility easement, 30 feet;

(B) for a pedestrian easement, 25 feet;

(C) for an arterial road, 100 feet;

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

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

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

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

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

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

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

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

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

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

11 AAC 51.020 is repealed:

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

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

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

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

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

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

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

Authority:    AS 38.05.020

AS 38.05.035

AS 19.30.400

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

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

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

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

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

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

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

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

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

11 AAC 51.030 is repealed:

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

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

**11 AAC 51.035. DETERMINATION OF NAVIGABLE AND PUBLIC WATER.**

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

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

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

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

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

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

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

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

11 AAC 51.040 is repealed:

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

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

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

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

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

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

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

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

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