



Citizens' Advisory Commission on Federal Areas

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Dear Reader:

The Citizens' Advisory Commission on Federal Areas was established in 1981 by the Alaska State Legislature to protect the rights of Alaskans to continue their traditional uses of federal lands throughout the State. The need for an official State agency to oversee the management of federal lands in Alaska was created primarily by the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. ANILCA placed 104 million acres of land in Alaska into federal conservation units, and outlined specific use requirements and restrictions for those areas.

The changes in land status and the statutory requirements for the use and management of federal lands often conflict with the traditional activities to which Alaska's peoples have become accustomed. The Commission is charged with the responsibility of researching issues and determining the impact of federal statutes, regulations and management decisions on the citizens of Alaska in order to minimize or resolve potential conflicts. Through the development and maintenance of a good working relationship with the various federal agencies, the Commission has been effective in assuring that land management decisions are consistent with both statutory language and Congressional intent and in protecting the interests of Alaska's citizens. This document represents the Commission's annual report to the Governor and the Alaska State Legislature as required by AS 41.37.080(f).

COMPOSITION

The Commission is composed of sixteen members, eight appointed by the Governor and eight by the Legislature. The Commission officers for 1987 were: Chairman, Ms. Dorothy Jones (Talkeetna) and Vice-Chairman, Senator Bettye Fahrenkamp (Fairbanks). The Chairman, Vice-Chairman, Phil Holdsworth (Juneau), Jim Palmer (Anchorage), and Lew Williams, Jr. (Ketchikan), comprise the Executive Committee.

STAFF

There are currently two staff positions for the Commission: an executive director and an administrative assistant. The office is located in Fairbanks.

GOALS

The Commission objective of working to "assure that Alaskans' rights are protected from federal encroachment, and that the stated congressional intent of refraining from interrupting traditional Alaskan activities (fishing, hunting, mining, camping) be continued to the best extent practicable" has been carried out by meeting the past year's goals as stated in the 1986 annual report. These same goals are projected for 1988. The Commission will function as a

vehicle for citizen input to the executive, legislative, and local/municipal decision-making processes with respect to federal management areas in Alaska.

Specifically:

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

Review of any federal/public lands proposed for exchange will also be continued.

Commission research on special projects mandated by ANILCA will continue.

The Commission will continue its involvement at the earliest stages of planning activities for the conservation system units established or expanded by ANILCA.

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

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

The Commission will continue to work with the congressional offices and monitor federal legislation and regulations which have an impact on the administration and management of federal lands in Alaska.

The Commission has developed and maintained good working relationships with federal and State agencies and with individual and organizational contacts by thoroughly analyzing issues before submitting comments and recommendations on land management issues. Although the Commission's primary role is advisory, it has the authority to recommend suit by the State's Attorney General against any federal agency which fails to act within the bounds of congressional intent or within the limits of the law. For the first time in 1987, the Commission exercised this authority and recommended, through the Governor's office, that the State file suit against the Department of the Interior and the National Park Service over that agency's final regulations on the use and construction of cabins and other structures in the national parks in Alaska. Details of the lawsuit will be discussed later in this report.

COMMISSION ACTIVITIES IN 1987

1987 was the fifth full calendar year of operation for the Commission. The year's objectives were divided between reviewing and commenting on federal agency planning documents and regulations, investigating citizen complaints and working to ensure maximum levels of public participation in all stages of planning for the management of federal lands in Alaska.

In this seventh year of the implementation of ANILCA, federal land managing agencies continued their extensive planning schedules. The most active, in terms of number of plans released for public review, was the U.S. Fish and Wildlife Service. That agency released four draft comprehensive conservation plans (CCP) and finalized plans for eight refuges. The final plan for the Yukon Delta National Wildlife Refuge remains to be released. Draft plans for the two remaining Alaskan refuges, the Arctic National Wildlife Refuge and the Alaska Maritime National Wildlife Refuge, are currently being prepared and are expected to be released in early 1988. In addition, a supplemental environmental impact statement for the wilderness recommendations in the Alaska Peninsula National Wildlife Refuge is scheduled for release within the next few months.

The National Park Service continued work on draft environmental impact statements which will contain the agency's recommendations for designation of additional wilderness areas in thirteen Alaskan park units. The studies are required by Section 1317 of ANILCA. The agency's first recommendations are expected to be released by March, 1988.

As a result of a lawsuit brought against the National Park Service in 1985, the agency is developing minerals management plans and cumulative environmental impact statements for three national park units. The minerals management plans and environmental impact statements for Denali National Park and Preserve, Wrangell-St. Elias National Park and Preserve, and Yukon-Charley Rivers National Preserve are scheduled for release in June, 1989. The courts have halted virtually all mining activity in the three park units until the required studies and documents are completed. Efforts to speed up this process have been unsuccessful.

In keeping with the Commission's legislative mandate to maximize the opportunities for public participation in federal agency planning efforts, the Commission in February, 1987 requested that the National Park Service establish consultation committees to oversee the preparation of both the wilderness EIS's and the cumulative EIS's on mining. The Commission felt that due to the extended time period between the initial public scoping process and the public review period following release of the draft documents, it would be beneficial to the agency and the public to allow a consultation committee, comprised of representatives from state agencies and user groups, to periodically review progress made on the various EIS's. While the NPS did not agree to form these committees, the Commission was assured that there would be a 120 day public comment period on the draft documents.

In April, 1987, the U.S. Forest Service released a revised environmental impact statement for the U.S. Borax Quartz Hill Molybdenum Project located in the Misty Fjords National Monument. At its June 12 meeting, the Commission passed a resolution supporting the plan's proposal to dispose of tailings from the mine's processing plant into the Wilson Arm rather than the previously proposed Boca de Quadra site. The Commission also recommended to Governor Cowper that the State support the revised proposal. The Governor agreed and the State endorsed the Wilson Arm disposal site in its comments submitted on the EIS.

In mid-1987 the Forest Service began the process of revising the Tongass Land Management Plan. Finalized in 1979, the forest plan is required by law to be revised every ten years. The current revision process is scheduled for completion in 1989. The Commission discussed the revision process with agency representatives at its June Meeting. The agency also held meetings throughout Southeastern Alaska during November and December in order to identify issues and concerns which will be addressed in the revised plan. The Commission will closely monitor the progress of and continue its participation in this critical planning effort during 1988.

The major planning effort of the Bureau of Land Management in 1987 was the Draft Resource Management Plan and Environmental Impact Statement for the Utility Corridor and the Central Arctic Management Area Wilderness Study Supplement. The major issue identified in this plan was the question of State land selection. In comments submitted on the plan, the Commission fully supported the state's right to select some 1.1 million acres of land within the corridor and urged the BLM to change its policy which prevents the State selected lands within the corridor from being conveyed. The Commission pointed out that the plan's preferred alternative was inconsistent with the State's policy to select the lands within the corridor. The Commission also expressed its concern regarding potential conflict between the proposed increased recreational use of the corridor and local subsistence uses. Negotiations between the State and the Bureau of Land Management are currently underway in an effort to resolve the question of State land selection.

In May, 1987, as result of a lawsuit brought against the agency in early 1986, the BLM was directed to prepared cumulative environmental impact statements on the effect of placer mining on federal mining claims within four river drainages. The rivers for which the studies must be prepared are the Birch, Beaver and Fortymile National Wild and Scenic Rivers, and the rivers within the Minto Flats drainage. In addition, an injunction was placed on any mining operations within the four drainages that disturb more than five acres. This injunction went into effect on October 1, 1987.

Commission members and staff met with the BLM to discuss issues and alternatives that needed to be addressed in the cumulative EIS's. These studies are scheduled for release in Spring, 1988. The Commission will review the documents when they are released and will work with the agency and the industry as well as affected user groups to resolve the problems associated with placer mining in these areas.

Federal agency planning documents or regulations reviewed by the Commission during the year included:

U.S. FISH AND WILDLIFE SERVICE

Draft Comprehensive Conservation Plans:

Innoko National Wildlife Refuge
Koyukuk National Wildlife Refuge
Kanuti National Wildlife Refuge
Yukon Delta National Wildlife Refuge

Final Comprehensive Conservation Plans:

Nowitna National Wildlife Refuge
Selawik National Wildlife Refuge
Kodiak National Wildlife Refuge
Koyukuk National Wildlife Refuge
Kanuti National Wildlife Refuge
Innoko National Wildlife Refuge
Tetlin National Wildlife Refuge
Yukon Flats National Wildlife Refuge

Draft Policy for Cabin Management on National Wildlife Refuges in Alaska
Draft Furbearer Management Plan for Kenai National Wildlife Refuge
Notice of Intent to Propose Rules: Subsistence Harvest of Migratory
Birds in Alaska

BUREAU OF LAND MANAGEMENT

Draft Resource Management Plan for Utility Corridor and Environmental
Impact Statement

U.S. FOREST SERVICE

Revised Draft Environmental Impact Statement: Quartz Hill
Molybdenum Project Mine Development
National Forest Guidelines for Cabins
1987 Amendment to Tongass Land Management Plan

NATIONAL PARK SERVICE

Proposed Regulations: 36 CFR, Part 9, Mining and Mining Claims

ENVIRONMENTAL PROTECTION AGENCY

Proposed Regulations: 40 CFR, Part 440, Placer Mining Effluent Guidelines

U.S. DEPARTMENT OF THE INTERIOR

Final Legislative Environmental Impact Statement and Coastal Plain
Resource Assessment, Arctic National Wildlife Refuge, Alaska

STATE OF ALASKA V. NATIONAL PARK SERVICE LAWSUIT

As reported in the Commission Annual Report for 1986, final regulations for the use and construction of cabins and other structures in the Alaskan national park units were released in September, 1986. Following a review of the final regulations, this Commission and the Division of Governmental Coordination recommended to Governor Sheffield that the State file a formal petition with the Secretary of the Interior requesting either revision or repeal of the regulations.

When the Secretary failed to respond to the State's petition in a timely fashion, as required by department regulations, the Commission voted at its November, 1986 meeting to examine the legal options open to the State to resolve this issue. Commission staff was directed to work with the Attorney General's office to explore the feasibility of initiating legal action against the Department of the Interior (DOI) and the National Park Service.

In early 1987 the Governor's office in Washington, D.C. attempted to expedite a response to the State's petition from the Department of the Interior, but was unsuccessful. When it became apparent that the Secretary was not going to respond to the petition, the Commission requested that the Attorney General's office begin drafting a complaint against DOI. Then Commission chairman, Senator Rick Halford, Senator Fahrenkamp, Commission Executive Committee member Phil Holdsworth and Commission staff met with Governor Cowper in order to request his approval to bring suit against the Department of the Interior and the National Park Service. Realizing that all possible administrative solutions had been exhausted, the Governor approved the lawsuit.

Following the Governor's approval, and with concurrence by the State's resource agencies, the Attorney General's office filed suit in Federal District Court on April 27, 1987. The State's complaint asked for "injunctive and declaratory relief pertaining to improper promulgation of regulations by the United States of America, Department of the Interior, National Park Service and Donald Hodel," Secretary of the Interior.

In its complaint the State argued that: 1) the NPS regulations improperly deny adequate and feasible access for cabin owners; 2) the regulations do not protect traditional and customary cabin use in Alaska in accordance with the ANILCA; 3) the regulations unnecessarily burden valid commercial fishing rights and privileges; 4) the regulations pertaining to temporary facilities substantially deviate from Section 1316 of ANILCA; 5) the regulations pertaining to use of cabins in designated wilderness for commercial activities are unnecessarily restrictive; and 6) the regulations unduly restrict subsistence uses in Alaska.

With respect to procedural issues, the State argued that the DOI had failed to respond to the petition submitted to the Secretary in October, 1986 in a timely fashion, as required by federal regulation. The complaint also argued that the Secretary "failed to provide a complete, adequate and proper evaluation of the effect the regulations will have on subsistence uses and needs as required by Section 810 of ANILCA."

The State further argued that the NPS had failed to comply with procedural requirements in Section 1201(k) of ANILCA. This section requires that a member agency of the Alaska Land Use Council submit written reasons to the Council for rejecting recommendations made by that body. In 1984 the Council adopted a number of recommendations for the use, construction and occupancy of cabins and other structures on all federal conservation system units in Alaska. The regulations promulgated by the NPS are inconsistent with a number of the adopted recommendations, however, the agency has never presented reasons for not following the recommendations. This particular question and how it is ultimately decided by the courts may be an important precedent for future actions by the ALUC.

In its complaint the State asked the court to determine and declare that the NPS cabin regulations are not in conformity with ANILCA and that the agency be directed to "review, redraft and readopt" regulations, following appropriate public hearings, that conform with the provisions in the statute. In addition, the State asked the court to direct the NPS to prepare a complete, adequate and proper ANILCA Section 810 subsistence evaluation.

On June 17, 1987 the U.S. Department of Justice on behalf of the Department of the Interior filed a motion to dismiss the State's complaint, arguing that the State lacked sufficient legal standing to bring suit. The State then submitted additional information supporting the complaint and establishing its legal standing. On December 21, the court denied the Department of Justice's motion to dismiss, finding, on both the procedural and substantive issues, that the State did have sufficient legal standing to bring suit.

Commission staff and State agency personnel, through the Division of Governmental Coordination assisted the Attorney General's office in preparing background information to support the State's complaint. The Commission gathered several affidavits from cabin owners and claimants explaining how their continued use of their cabins or other structures would be adversely affected or even precluded by the NPS regulations. These affidavits were then submitted to the Attorney General's office to be used as supporting evidence. The Commission will continue to work with the Division of Governmental Coordination in assisting the office of the Attorney General with this litigation in 1988.

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Two other federal agencies, the U.S. Forest Service and the U.S. Fish and Wildlife Service, released policies for the use of cabins on lands under their management. In its review of the Forest Service policy, the Commission found only one inconsistency with the Alaska Land Use Council's recommendations. This was pointed out to the agency and the inconsistency was corrected. However, the draft policy developed by the Fish and Wildlife Service contains many of the same inconsistencies with the law and the Council's recommendations that make the NPS regulations unacceptable. In November the Commission submitted comments on the Service's draft policy which pointed out these inconsistencies. Due to the similarities between provisions in the Service's proposed policy and the NPS regulations, the final outcome of the State v. NPS

lawsuit may have considerable effect on any future Fish and Wildlife Service regulations developed to implement that agency's policy.

One issue of concern to the Commission for the last several years, which pertains to the use of cabins on national wildlife refuges, was successfully resolved during 1987. This issue dealt with the use of cabins in support of commercial fishing activity on the Kodiak National Wildlife Refuge. Since the planning effort for the refuge began in 1983, the Commission has sought to have the refuge cabin policy modified. Previously, the refuge management refused to allow the construction of any additional commercial fishing cabins on refuge lands, as well as unreasonable restrictions on the modification, repair and expansion of existing structures. This policy presented considerable hardship for approximately 12 commercial set-net operators that were operating from tents or other temporary facilities. Given the inclement, often severe, weather on Kodiak, operation of these set-net sites was difficult at best.

In the final refuge plan, the Service indicated that a decision had been made to allow these temporary facilities to be replaced with permanent cabins. In comments on the final plan and this proposal, the Commission fully endorsed this long sought for change in the refuge cabin policy.

TONGASS NATIONAL FOREST

1987 brought the first real efforts to change the management of the Tongass National Forest through legislation, since the passage of ANILCA. The forest is presently managed primarily by the Tongass Land Management Plan, implemented in 1979, the National Forest Management Act, and certain specific provisions in ANILCA. Section 705(a) of ANILCA established an annual \$40 million Tongass Timber Supply Fund and directed the Forest Service to offer for sale 450 million board feet of timber per year. The Timber Supply Fund was intended to help maintain the timber supply from the Tongass to dependent industry at a rate of 4.5 billion board feet per decade, or an average of 450 million board feet per year.

Both of these provisions have been criticized as unnecessary and wasteful by a number of groups and organizations and by some members of Congress. Supporters view the provisions as necessary to offset the loss of available timber in designated wilderness areas on the forest and the depressed timber industry. The differing opinions on the management of the Tongass have provided the major impetus behind the legislation currently being considered in Congress. In addition, during 1987 the General Accounting Office (GAO) conducted an investigation of the implementation of the ANILCA provisions and how that implementation affects the management of the Tongass.

Legislation now being considered in Congress would eliminate the Timber Supply Fund and reduce the mandatory harvest levels on the forest. Other proposed legislation would eliminate two long term contracts between the Forest Service and two major timber companies operating in Southeastern Alaska. Still other legislation being considered, but not yet introduced, would designate as much as 1 million acres of wilderness in the Tongass. This would be in addition to the 5.4 million acres already in the forest. While recognizing that there are significant management problems on the forest that must be rectified,

the Commission at its June meeting passed a resolution in opposition to the proposed legislation.

The Commission felt that any changes to the ANILCA should be deferred until a number of actions had been completed. First, the Commission believes that the Forest Service should be allowed to complete the revision of the Tongass Land Management Plan. As stated earlier in this report, the revision process began in mid-1987 and is scheduled for completion in 1989. Secondly, the findings of the General Accounting Office investigation must be analyzed and considered before any changes in ANILCA are made. And finally, and most importantly, the Commission believes that Congress must hold formal hearings throughout Southeastern Alaska in order to hear directly from affected individuals, communities and users groups that have been unable to testify at hearings held in Washington, D.C. The Commission believes that current management problems can be corrected through cooperative efforts between the State, the U.S. Forest Service, local communities and affected user groups; and through revisions to the Tongass Land Management Plan. The Commission will continue to monitor the progress of the proposed legislation and will continue its involvement in the revision of the management plan.

OTHER AGENCY ACTIVITIES IN 1987

In April, 1987 the National Park Service released proposed revisions to certain regulations governing mining activity on national park lands in Alaska. The proposed regulations would require a mine operator to have an approved plan of operations before conducting any operations on his patented claim regardless of how access was gained to the claims. Prior to October, 1986 regulations at 36 CFR §13.15 exempted claim owners in Alaska, who accessed their patented claims without crossing national park lands, from certain procedural requirements in 36 CFR, Part 9 which regulate mining activity within national park units. The exemption was removed from the regulations governing access to Alaskan park units when those regulations were released in October, 1986. The purpose of the proposed regulation change was purportedly to clarify that the regulations at 36 CFR, Part 9 would apply to mining claims within national park units, regardless of how access is obtained.

The Commission joined the State and the mining industry in opposing the proposed changes for a number of reasons. The primary objection stemmed from the fact that any change to existing regulations is inappropriate until the NPS has completed its cumulative environmental impact statements and mineral management plans. The Commission believes that the process of preparing these documents will help identify other provisions in the regulations that require revisions to reflect the unique conditions affecting mining operations in Alaska. Another objection to the proposed change was the fact that there were serious legal questions about the extent of the authority the NPS has to regulate activities on patented mining claims in light of the provisions of ANILCA 103(c), particularly when access to those claims does not require the use of federal lands. The proposed change had not been finalized by the end of 1987. The Commission will continue to work toward other necessary changes to the regulations governing mining in the national parks.

The U.S. Fish and Wildlife Service released its first so called "step-down" plan in August. This plan, the Kenai National Wildlife Refuge Furbearer Management Plan, was designed to implement a number of specific management strategies for managing furbearers on the refuge. The Commission became very concerned by the Service's failure to provide the public, including user groups affected by the provisions in the plan, a reasonable opportunity to review and comment on the proposals. We noted in particular the plan's limited distribution and unusually brief comment period. These concerns were magnified in light of the plan's importance in setting a precedent for future "step-down" planning efforts on the other 15 national wildlife refuges in Alaska. The Commission urged the Fish and Wildlife Service to make a number of changes to the plan and to delay any recommendations to the State Board of Game for changes to the trapping seasons and bag limits on the refuge until such time as affected user groups had an opportunity to discuss the Service's proposals and provide their own recommendations.

Partly as a result of the Commission's efforts, the Fish and Wildlife Service agreed to withdraw their proposals to the Board of Game and to revise the plan. As part of the revision process a work group, representing trappers, environmental organizations, non-consumptive users, the Service and the State, met in December to review the proposals and to make recommended changes to the plan. The revised draft plan is scheduled to be released for additional public review in January, 1988.

On October 30 the Commission held a joint meeting with the Land Use Advisors Committee to the Alaska Land Use Council. This was the first joint meeting of the two groups since October, 1984. The purpose of the meeting was to discuss federal land management issues and the implementation of ANILCA. A major point of concern for the two groups centered on the question of wilderness in general and the implementation of ANILCA 1317. Both groups objected to the excessive length of time taken by the National Park Service in preparing the environmental impact statement containing its wilderness recommendations to the Secretary of the Interior.

The ANILCA mandated deadline for submission of the recommendations was December 2, 1987, however the NPS indicated that the documents would not be released for public review until November, 1988. Several members expressed a concern that the delay was merely an effort on the part of the agency to withhold final recommendations for additional wilderness until the current administration in Washington, D.C. is no longer in office in the hope that the next would be more amenable to the concept of extensive new wilderness designations. In an effort to speed up the process, the two groups passed a resolution urging the Secretary of the Interior to direct the National Park Service to expedite its planning process and release the environmental impact statements for public review as soon as possible. Senate President Jan Faiks and the Congressional delegation also urged the Secretary to expedite the process. Senator Stevens included language in the Continuing Resolution Conference Report directing the NPS to speed up the release of the documents.

The first three NPS wilderness EIS's are now scheduled for release in mid-March, 1988, with the last ones due out by September. The Commission will work to ensure a maximum level of public awareness and participation in the

review process. The amount of wilderness that will be recommended and how it is managed in the future will be of great importance to the people of this State. It will be essential for those individuals who utilize the national park lands throughout the State to make their views and concerns about wilderness and wilderness management fully known.

1987 also saw another major effort in Congress to amend a number of provisions in ANILCA. The issue of oil and gas development on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR), as outlined in the Department of the Interior's ANILCA Section 1002 Report, provided the impetus for many of the proposed changes. Bills have been introduced that would designate the coastal plain as wilderness, thereby precluding any possibility of oil and gas development. Other proposals would open the area to oil and gas leasing, while another would authorize additional exploration with development allowed following Congressional approval and designate the 23 million acre National Petroleum Reserve-Alaska as a national wildlife refuge. Still other proposals would require Congressional approval of any land exchanges involving ANWR lands and a reduction of the State's royalty share from any oil and gas development occurring on refuge lands. Although the Commission has not taken a position either in support of or in opposition to any of the proposed legislation dealing with ANWR at this time, it continues to follow the progress of these bills very carefully and to provide information to interested individuals and groups.

The changes proposed for the Tongass National Forest (discussed earlier in this report) and the Arctic National Wildlife Refuge appear to signal the possibility of additional amendments to the ANILCA. While the Commission, as well as other organizations and individuals, has long recognized the need for some changes in the law, any changes must be very carefully considered. During the development of ANILCA a number of compromises, such as those on the Tongass, were reached. The Commission believes that these compromises must be preserved. It was also the intention of Congress that the customary and traditional use of the federal lands in Alaska were to be protected. The major goal of this Commission has always been to ensure that the federal agencies implementing the law remain aware of this intent. The Commission will continue to work to ensure that the protective provisions in ANILCA remain unchanged even though amendments to the law may be made.

The Alaska National Interest Lands Conservation Act was enacted just over seven years ago. In that time it has had and will continue to have an enormous impact on the citizens of Alaska. Implementation of the provisions and mandates of this very complex piece of legislation continues at an unabated pace. The challenge of continuing to monitor implementation is best illustrated by the number of plans, studies and regulations that must be completed in the years to come. As the general or conceptual plans for the various conservation system units are completed, they will be followed by more specific resource management plans and unit specific regulations. With considerable planning yet to be completed, it is essential that citizen involvement remain at the highest possible level and that participation in the planning process continue to be encouraged. While it is not always possible to quantify the

Commission's success in effecting changes through the planning process, it is clear that our efforts have had a positive result in many cases. Much remains to be done and the Commission will continue to work toward reasonable and balanced management of the federal lands in Alaska during 1988.

Sincerely,

Dorothy Jones, Chairman
CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS



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