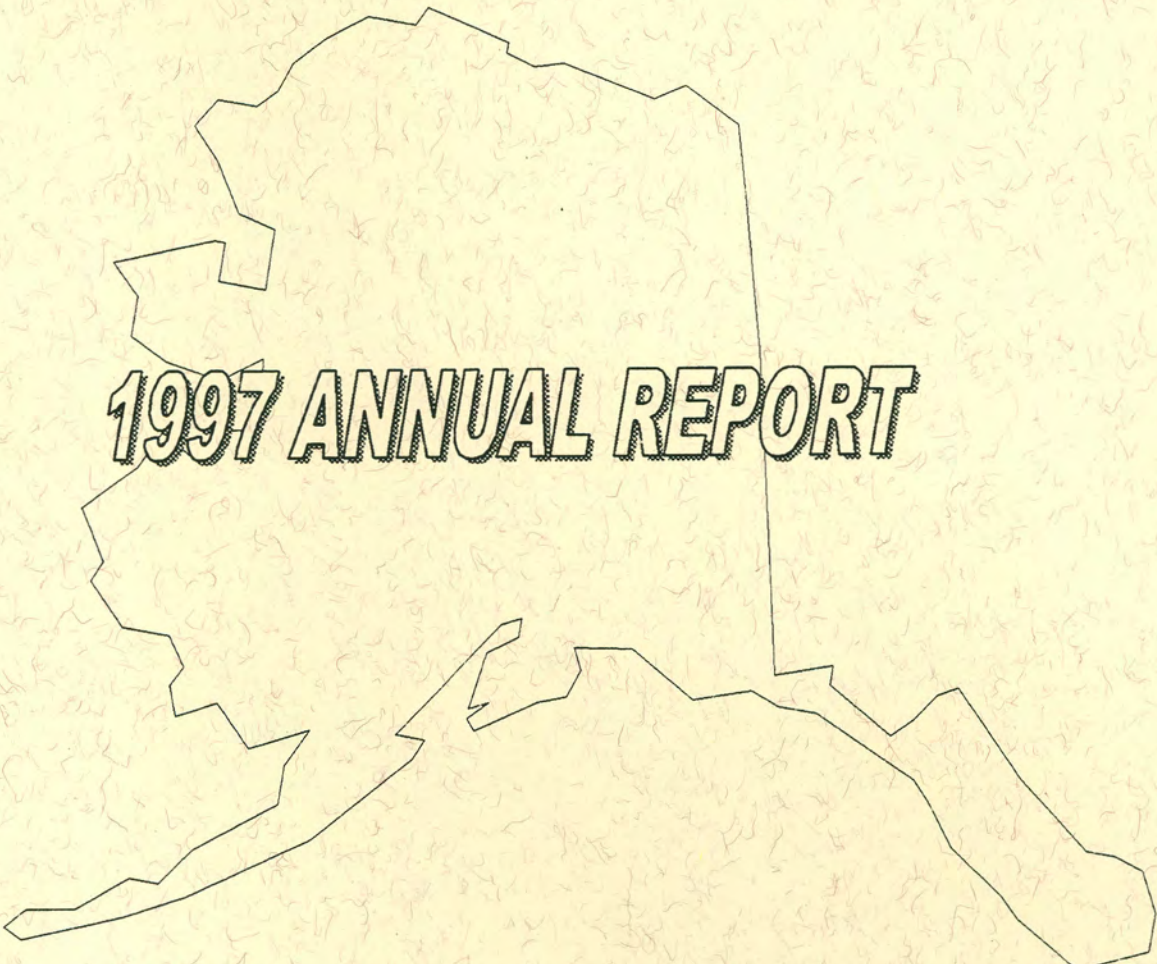

**STATE OF ALASKA
CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS**



1997 ANNUAL REPORT

FEBRUARY 1998



Citizens' Advisory Commission on Federal Areas

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INTRODUCTION

Since its creation, the Citizens' Advisory Commission on Federal Areas has worked extensively with public user groups to help them understand federal regulations and policies and to ensure that they have a voice in the development of those same regulations and policies. This report will outline the statutory mandates of the Commission and provide a brief overview of some of its activities during 1997. This document represents the Commission's annual report to the Governor and the Alaska State legislature as required by AS 41.37.080(f).

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

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

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

Extension of the Commission's current termination date of June 30, 1998 is proposed in SB 236 and HB 346, now under consideration by the Legislature. Both proposals would extend the termination date for an additional ten years. Should no extension be authorized, the Commission will cease operations at the end of the current fiscal year.

DUTIES OF THE COMMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMPOSITION

The Commission is composed of sixteen members, eight appointed by the Governor and eight appointed by the Legislature. Current Commission officers are: Chairman, Ms. Thyas Shaub (Juneau) and Vice-Chairman, Mr. Del Ackels (Fairbanks). The Chairman, Vice-chairman and Sen. Rick Halford (Chugiak), Mr. Steve Porter (Anchorage) and Mr. Don Finney (Ward Cove) comprise the Commission's Executive Committee. A full list of the members for 1997 is included at the end of this document.

STAFF

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

COMMISSION ACTIVITIES

Activities for 1997 were divided between reviewing and commenting on federal agency planning documents and regulations, monitoring proposed federal legislation, and investigating citizens' complaints about federal agency actions. Commission staff also participated in a number of groups working to resolve various federal land management issues. This participation is discussed in greater detail later in this report.

Special effort is made to ensure maximum levels of public participation in agency management and policy decisions affecting the federal public lands in Alaska. This is accomplished through regular contact with individuals, organizations, and interest groups interested in or affected by land management decisions. Commission staff monitors the *Federal Register* on a daily basis and routinely provides other State agencies, organizations, interest groups and individuals with copies of notices and proposed or final regulations and policies. Commission files, with a 16 year collection of information and background material, have also become a useful resource for researching the implementation of ANILCA and other federal statutes affecting federal public lands in Alaska.

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

In recent years, due to staff and budget reductions, the Commission has been unable to sponsor public meetings solely for gathering public input on specific issues. However, at each regular Commission meeting, opportunities are provided for members of the public to present their views and concerns on any matter concerning federal public land management. Staff also makes an effort on a regular basis to consult with representatives from a wide range of organizations and interest groups. Minutes of Commission meetings, as well as copies of all comments and recommendations made by the Commission are also available upon request.

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

REGULATORY AND POLICY ISSUES

National Park Service

Commercial Fishing Regulations- Glacier Bay National Park. This has become a perennial issue with which the Commission has been involved since 1982, our first year of operation. Commission members and staff have been involved with a number of different attempts to reach some equitable resolution to the commercial fishing issue within Glacier Bay National Park. The Commission's 1996 Annual Report outlines the effort that took place in 1995 and 1996. Some progress toward resolving the complicated issues was made, but the effort stalled in May 1996 when the National Park Service, who had organized the meetings, raised concerns about potential conflicts with the Federal Advisory Committee Act.

In April 1997 the agency withdrew draft regulations that were originally released in August 1991 and issued a new set of proposed regulations addressing commercial fishing within the boundaries of the park. The public review period remains open until May 15, 1998. As currently proposed, these regulations would close Glacier Bay proper to all commercial fishing, but would provide certain limited exemptions over a 15 year phase-out period. Commercial fishing in the park's marine waters outside Glacier Bay proper would be authorized, subject to reexamination at the end of 15 years. With respect to designated wilderness water within the park, all commercial fishing would be terminated. However, certain crab fishermen who are essential to an existing multi-agency research program being conducted in the Beardslee Islands area may be authorized under a special use permit to take crab for the remaining five to seven years of the project.

As part of the rulemaking effort, the NPS held public workshops in November and December 1997 to discuss the proposed regulations and the alternatives being examined in the draft environmental assessment. The workshops were designed to provide an opportunity for an informative exchange on the legal, policy and resource issues associated with commercial fishing in the park. In conjunction with the NPS sponsored workshops, the State has established a working group consisting of representatives from the fishing industry, regional and national environmental organizations, State resource agencies and this Commission.

The State working group has made progress toward resolution of this issue. However, a number of significant issues remain. These include: conditions under which fishing along the outer coast will continue; the role of the NPS and the State in the management of fisheries and fish resources; and the establishment of "no-take" marine reserve areas within the park. Additionally, the working group is preparing recommendations on S. 1064, the "Glacier Bay Management and Protection Act," to be presented at hearings before the U.S. Senate Committee on Energy and Natural Resources.

The Commission has been consistent in its support for the continuation of commercial fishing in Glacier Bay. We are committed to working with all parties involved in an effort to achieve a solution that is equitable for the industry, protects the resources within the bay and maintains the State of Alaska's ability to manage the fishery. We will continue to work with

the fishing industry, other State agencies, the National Park Service, and the Congressional delegation toward that goal.

U.S. Fish & Wildlife Service

Endangered Species Act. During 1997 there were an number of regulatory actions related to the Endangered Species Act (ESA). These actions ranged from proposed revisions to regulations and policies that affect the national ESA program to actions which directly affect species of animals (and activities) in Alaska. Following is a brief summary of some those proposals and actions.

Steller's Eider. On June 11, 1997 the U.S. Fish & Wildlife Service (FWS) issued final regulations (effective July 11) listing the Alaska breeding population of the Steller's eider as threatened under the Endangered Species Act. This action was based upon the agency's determination that there has been a substantial decrease in the species' nesting range in Alaska, a reduction in the number of Steller's eiders nesting in Alaska and the resulting increased vulnerability of the remaining breeding population to extirpation. The agency has determined that as a result of their low numbers and restricted breeding range, the Alaska breeding population is at risk from natural and human-caused factors. No critical habitat is being designated at this time.

The current breeding distribution of the Steller's eider encompasses the arctic coastal region in Alaska from Wainwright to Prudhoe Bay up to 90 kilometers (54 miles) inland, with the majority of the range of the species largely contained within the National Petroleum Reserve-Alaska (NPR-A). Historically, this species also nested in western Alaska (primarily the Yukon-Kuskokwim Delta), but is now virtually absent as a breeder from that area, as well as that portion of the North Slope east of Prudhoe Bay. The majority of the world's population nests in arctic Russia. The Russian population is not being listed.

Under the ESA, a species may be determined to be endangered or threatened due to one or more of the following five criteria: 1) *Present or threatened destruction, modification, or curtailment of its habitat or range*; 2) *Overutilization for commercial, recreational, scientific, or educational purposes*; 3) *Disease or predation*; 4) *The inadequacy of existing regulatory mechanisms*; and 5) *Other natural or manmade factors affecting its continued existence*. As with the Steller sea lion, the cause of the decline in the Steller's eider is unclear. The FWS has determined that as a result of their low numbers and restricted breeding range, the Alaska breeding population is at risk from both natural and human caused factors.

Section 7(a) of the ESA requires federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Consequently the FWS has indicated that it anticipates consultation with the U.S. Army Corps of Engineers and the U.S. Department of Transportation to avoid impacts to Steller's eiders from wetlands fill permitting and other activities on the North Slope. Consultation is also expected with the Bureau of

Land Management to identify potential impacts within NPR-A, the Mineral Management Service for oil and gas lease sales in the outer continental shelf and the National Marine Fisheries Service for commercial fishing regulations. In addition, development of a recovery plan for the Steller's eider will be initiated upon listing.

Alexander Archipelago Wolf & Queen Charlotte Goshawk.

During 1997 the FWS continued the rangewide status reviews for the Alexander Archipelago wolf and the Queen Charlotte goshawk. Initially, the FWS requested comments on its use of management guidelines, projected timber harvest levels and data from the 1979 Tongass Land Management Plan (TLMP) to prepare the status reviews for these two sub-species. Following the release of the revised Tongass Land Management Plan in mid-year, the FWS requested information, data, or comments on the status of the wolf and goshawk population in Southeast Alaska under the provisions of that plan. In September 1997, the agency released its determination that listing as threatened or endangered was not warranted for either species.

While use of the 1979 TLMP as the basis for determining the future status of the wolf and goshawk populations would have almost certainly resulted in listing under the ESA, listing was avoided under the revised 1997 TLMP. However, management actions under the new forest plan will result in a *de facto* listing, with similar consequences for any future resource development activity on the Tongass National Forest. These actions include designation of extensive habitat conservation areas for both the wolf and goshawk, old-growth reserves and other areas where no timber harvest will occur. Consultation between the Forest Service and the FWS on any management action that might adversely impact either species will also be required.

No Surprises Policy. The FWS and the National Marine Fisheries Service (NMFS) released proposed regulations that would codify the Endangered Species Act "No Surprises" policy that originally was issued by the two agencies in 1994. This policy is intended to provide regulatory assurances to the holder of an incidental take permit issued under sections 10(a) of the ESA that no additional land use restrictions or financial compensation will be required of the permit holder with respect to species adequately covered by the permit, even if unforeseen circumstances arise after the permit is issued indicating that additional mitigation is needed for a given species covered by a permit.

In amendments to the ESA enacted in 1982, Congress authorized FWS and NMFS to issue permits allowing the incidental take of listed species in the course of otherwise lawful activities, provided activities are conducted according to a conservation plan (or habitat conservation plan or HCP) designed to further the long-term conservation of the species and to avoid jeopardy to the continued existence of the species. Congress' intent was to "address the concerns of private landowners who are faced with having otherwise lawful actions not requiring Federal permits prevented by section 9 [ESA] prohibitions against taking..." (H.R. Rep. No. 835, 97th Congress)

The Commission's initial analysis indicated that both the policy and the proposed regulation changes will help to reduce the regulatory and financial burden of private landowners who may find threatened or endangered species on their property.

Steller Sea Lion. On May 5, 1997 the National Marine Fisheries Service (NMFS) issued a final rule reclassifying one segment of the Steller sea lion population from threatened to endangered status. Based on biological information collected since the species was first listed as threatened in 1990, the agency decided to reclassify the sea lion as two distinct population segments under the ESA. The population segment found west of 144°W longitude (a line near Cape Suckling) will be reclassified as endangered. The remainder of the sea lion population will remain listed as threatened.

As part of the 1990 listing action, there were a number of regulations adopted that were designed to protect the sea lion population. These included: 1) prohibiting the discharge of firearms at or near a sea lion; 2) designation of buffer zones around specific haulouts and rookeries; 3) designation of critical habitat and; 4) restrictions on fishing activities (both spatial and temporal). In addition, the NMFS has established quotas for the "take" of sea lions incidental to commercial fishing operations. According to the notice, the current negligible impact determination for these incidental takes may have to be reassessed. The agency is not proposing to designate any additional areas as critical habitat.

The effects of this change in classification from threatened to endangered is hard to predict as the agency has concluded that: "A final determination with respect to whether existing regulatory mechanisms are adequate is difficult to make, given the lack of a clear cause of the decline... However, in some cases, even after further study, it may be difficult or impossible to make definitive determinations about the adequacy of specific regulations because of the lack of understanding of all the mechanisms contributing to the decline or vulnerability of Steller sea lion populations."

Bureau of Land Management

Law Enforcement Regulations- Criminal. These proposed revisions to the BLM law enforcement regulations (43 CFR Part 9260) generated extensive nationwide controversy. Although the agency categorized the changes as simple "housekeeping" type revisions, many of the proposed revisions were much more substantive in nature. The Commission identified several new parts that attempted to extend the agency's management authority beyond that specifically allowed by statute, in spite of claims to the contrary. Additionally, we found other new parts that outlined authorities which do not appear in the existing regulations and which were the primary basis for the widespread concerns that the agency was proposing a significant expansion of its law enforcement authority.

For example, a key section stated that the regulations apply to "activities on or having a clear potential to affect water bodies on or adjacent to BLM lands." In its discussion of the proposed regulations BLM asserted that this statement was "not an attempt to establish ownership over those waters [on or adjacent to BLM lands], but an attempt to clarify BLM's

jurisdiction for protection of resources.” In fact, the Commission argued, the BLM has no jurisdiction over waters or lands that are not in Federal ownership.

In addition, several sections of the proposed regulations did not reflect specific statutory guidance found in ANILCA for the management of federal public lands in Alaska. For example, various portions of proposed rules contained prohibitions or restrictions on access development of rights-of-way and associated facilities, camping, use of firearms, boats, and motor vehicles that were inconsistent with Alaskan specific regulations and policies. Other sections potentially would have created conflicts with State statutes and management programs on water use and water rights.

Due to the strong objections from the public, numerous public land user groups, as well as state and local governments, the BLM decided to withdraw the proposed revisions. While the Commission supported the concept of revising the existing regulations for the purposes of simplification, we strongly objected to the apparent attempts to expand the agency's authority beyond that allowed under existing statutes. No further revisions of these regulations have been proposed.

DEPARTMENT OF THE INTERIOR

Revised Statute 2477 Rights-of-way -Revised Interim Policy. This interim policy, issued in January 1997, repealed the 1988 Department Policy. In his memo outlining the interim policy, Secretary Babbitt pointed out that the Hodel policy “was not promulgated according to rulemaking procedures and is not a rule.” While that statement is legally correct, the Hodel policy was developed after extensive consultation with Alaska and the other Western public lands states. The department chose to develop and adopt this new interim policy unilaterally, without any consultation from outside the DOI. It also maintained the 1993 moratorium on processing of RS2477 assertions, except in cases where there is a demonstrated, compelling need to make a determination. Further, it established a revised policy for carrying out any determinations that the DOI might be called upon to make regarding RS2477. As a practical matter, the Hodel policy had been inoperative since 1990 so the argument was made that little was lost by its repeal. However, the Commission identified several problem areas in this interim policy, both substantive and procedural. The Commission presented the following concerns to the Alaska State Senate Resources Committee in February 1997 during hearings on the RS2477 issue.

Following Interior's 1994 release of draft regulations on RS 2477, Congress attached provisions to the department's appropriation bill for FY 96 that prohibited use of funds for the promulgation, adoption and implementation of final regulations. The appropriations bill for FY 97 allowed publication of final regulations, but states that no regulations may become effective unless authorized by an act of Congress. That prohibition remains in effect for the current (FY 98) federal fiscal year. The 1997 interim policy appeared to be an effort to circumvent congressional intent in establishing the prohibition.

The interim policy recognized that anyone making a claim of the existence of an RS 2477 right-of-way continues to have the option of seeking validation of the claim in court. While

this remains true regardless of DOI policy, there was concern that this policy would negatively impact any future court action on an RS 2477 right-of-way. Any adverse decision on the part of a DOI agency would affect the outcome of any quiet title action, particularly since DOI would be a party to any action on a claim involving lands under its management authority.

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

The Commission identified no problem with the requirement in the policy that lands must not have been withdrawn, reserved or otherwise unavailable pursuant to RS 2477 for a right-of-way to be established. This has long been a recognized and accepted requirement. In fact, in the State's RS 2477 project, extensive research was done to determine the status of lands at the time a right-of-way may have been established.

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

As with the section on construction, the interim policy reflected the excessively narrow definition of highway proposed in the 1994 draft regulations. In order to meet the standard in the interim policy an RS 2477 would have to constitute a thoroughfare used prior to October 21, 1976 by the public for the passage of vehicles carrying people or goods from place to place. The Commission found that definition inconsistent with previous standards and, therefore, unacceptable.

In response to this interim policy, Senator Stevens proposed language in a supplemental appropriations bill addressing the issue of RS 2477 rights-of-way. Senator Stevens' proposal was designed to prevent unilateral change to existing policies and standards with respect to validating RS 2477 rights-of-way through the regulatory process. Subsequently, the proposal was removed from the appropriations bill under an agreement whereby the Department of the Interior would submit proposed legislation on the subject. In August 1997, Secretary Babbitt sent a draft proposal to Congress. As of the date of this report, no bill has been introduced.

PROJECTS AND STUDIES

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

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

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

The various alternatives examined ranged from a pioneer road, to a two-lane gravel road, to an all-season paved road and both a publicly and privately funded railroad into the Kantishna area of the park. While no specific alignment was defined, a general route corridor along the Stampede Road was identified. The estimated costs, permitting requirements and other compliance issues were outlined. For example, the report estimates that the cost of constructing an approximately 80 mile road from the existing George Parks Highway near Healy to the Wonder Lake/Kantishna area within Denali National Park would range from \$87 million for gravel and \$100 million for paved. The cost to construct a railroad of similar length and along the same general route would range from \$136 million to \$213 million. The report estimates that more than 247,000 people per year would use a northern access road.

The information in the report was initially conveyed to the public in three meetings held in Anchorage, Healy and Fairbanks in January 1997. A final report was prepared by the study group and submitted to the Department of the Interior in April 1997. That report was transmitted to Congress in October 1997.

Alaska Land Managers Forum- Permitting Work Group. During 1997, Commission staff continued its work with the Alaska Land Managers Permitting Work Group. This group consists of representatives from the Division of Governmental Coordination, Department of Commerce and Economic Development, Department of Natural Resources, Department of Fish and Game, U.S. Fish and Wildlife Service, National Park Service, U.S. Forest Service,

Bureau of Land Management, Alaska Visitors Association and the Alaska Wilderness Recreation and Tourism Association.

The work group is engaged in a cooperative effort to develop a streamlined permitting process for commercial visitor service providers operating on the public lands in Alaska. The Alaska Land Use Council first identified the need for some type of permit streamlining in the early 1980's. Since that time the issue has been raised at numerous conferences, symposiums and workshops involving the visitor service industry.

Progress by the work group has been good. In October an inter-agency guide, *Commercial Visitor Services in Alaska*, was released by the ALMF. This excellent and well-received publication provides guidelines for obtaining commercial visitor service permits and licenses on State, Federal and Native owned lands of Alaska. The working group is examining the potential for standardizing policies and procedures for liability insurance, issuing multi-year permits, developing standardized applications and reporting forms. Commission staff is currently analyzing all use report forms in an effort to develop a single reporting form that may satisfy the reporting needs of the various State and Federal land management agencies. Additionally, we will continue involvement with the work group's other efforts.

FEDERAL LEGISLATION

H.R. 901-American Land Sovereignty Protection Act. The Commission supported passage of H.R. 901, which would require Congressional approval of all future designations of areas as either Biosphere Reserves or World Heritage Sites. The Commission's following concerns about international land designations were presented to the Alaska House of Representatives State Affairs Committee during consideration of House Joint Resolution (HJR) 14.

“While we feel we still have a lot to learn about international land designations such as ‘Biosphere Reserves’ and ‘World Heritage Sites’ under the United Nations Scientific, Educational and Culture Organization (UNESCO), the Commission shares the growing concerns about these programs. We are particularly concerned about the effects of designation on the ability of the State of Alaska to exercise its management authorities over its natural resources, including fish and wildlife, as well as the potential impacts to private property interests either within or adjacent to areas designated under one of these programs.

The United Nations' Man and the Biosphere Program was created in 1968 and the World Heritage Convention in 1972. In the intervening years these programs have operated in relative obscurity, at least as far as the American public is concerned. In fact, previous UNESCO operational guidelines discouraged publicity about nomination of an area for designation with the following guidance:

'In all cases, as to maintain the objectivity of the evaluation process and to avoid possible embarrassment to those concerned, State parties should refrain from giving undue publicity to the fact that a property has been nominated... pending the final decision to the Committee of the nomination in question. Participation of the local people in the nomination process is essential to make them feel a shared responsibility with the State party in the maintenance of the site, but should not prejudice future decision-making by the committee.' (House Report 104-835, September 24, 1996)

This guidance has been revised in the most recent (February 1997) operational guidelines to state that: "Participation by local people in the nomination process is essential to make them feel a shared responsibility with the State party in the maintenance of the site." No doubt this change was precipitated by recent adverse publicity about these programs.

In spite of the past policy of not publicizing nominations, events such as those surrounding the proposed New World Mine near Yellowstone National Park and continuing efforts to designate a Beringian Heritage International Park, have increased the public's awareness of these programs and their potential to affect local management prerogatives or resource development projects.

In another case, the proposal to develop the Windy Craggy copper mine near the mouth of the Tatshenshini River in British Columbia provided the impetus for the Department of the Interior to nominate Glacier Bay National Park as a World Heritage Site in 1991. In its submission letter, Interior also "(n)oted environmental threats to the area posed by the patented mineral claims on the Brady Icefield, ten Native allotment claims inside the park [and] the existence of commercial fishing in Glacier Bay..." (Land Reborn: A History of Administration and Visitor Use in Glacier Bay National Park and Preserve, Theodore Catton, p. 270). One cannot help but wonder how these statements fit the program's guidelines to garner support by local fishermen and allotment owners for support of the nomination and "maintenance of the site." Glacier Bay's status as both a World Heritage Site and a Biosphere Reserve continues to be major factor in the continuing effort by the National Park Service and a number of environmental organizations to close the bay to commercial fishing activity.

There are 4 Biosphere Reserves in Alaska: Glacier Bay-Admiralty Island Biosphere Reserve, Denali National Park and Biosphere Reserve, Noatak National Preserve and the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge. In addition, there are 8 World Heritage Sites in Alaska: Arctic National Wildlife Refuge, Denali National Park and Preserve, Gates of the Arctic National Park and Preserve, Katmai National Park, Wrangell-St. Elias National Park and Preserve, Glacier Bay National Park and Preserve, Cape Krusenstern Archeological District (Cape Krusenstern National Monument, and the Aleutian Island Unit of the Alaska Maritime National Wildlife Refuge. Six of these areas have been nominated for listing, with only Glacier Bay and Wrangell-St. Elias actually inscribed as World

Heritage Sites. In practice, there does not appear to be any distinction made between nominated and inscribed areas.

Although designation of an area as either a Biosphere Reserve or a World Heritage Site is not supposed to convey any regulatory powers over lands within the United States to UNESCO or other international entities, there are numerous examples of how designation influences management decisions by Federal agencies. This Commission also shares the concerns expressed by HJR 14 and H.R. 901 about the potential effect on private property rights and values on lands within or adjacent to designated areas and that administrative actions to designate lands pursuant to international agreements can conflict with congressional constitutional responsibilities and State sovereign capabilities.

While the full effect of designation is not readily apparent, this Commission believes that there is sufficient concern to justify approval by Congress, State or local government or affected private property owner, as appropriate. Again, we urge passage of HJR 14. The Commission will also be submitting a letter of support for H.R. 901.

H.R. 901 passed the U.S. House of Representatives in October 1997. It is awaiting action in the U.S. Senate. In the interim, not additional sites in the United States have been nominated for designation as either World Heritage Sites or Biosphere Reserves.

S. 268- National Parks Overflights Act of 1997. Commission staff analyzed this proposed legislation. The following analysis, which was provided to the State's Washington, D.C. office, identified many potential problems if the provisions of this proposal were applied to national park units in Alaska.

Staff recognized that excessive aircraft overflights could be intrusive for park visitors and hazardous in certain situations, as demonstrated by mid-air collisions over Grand Canyon National Park. At the same time, there is a clear recognition of the importance of aircraft use in Alaska, including their use within all conservation system units, written into ANILCA and its implementing regulations. That recognition and the ability of the public to continue its use of aircraft within national park units and the growth of the flightseeing industry could be seriously jeopardized by this legislation. This is due, in part, to the fact that the legislation appeared to have fairly vague and potentially arbitrary criteria which could form the basis for restricting aircraft uses based upon the perception of adverse effects or impacts on park resources. Additionally, we determined the proposed time requirements for submitting recommendations and plans to be unrealistic and would prevent adequate and meaningful public participation in the process.

The suggestion was made to add language to the bill stating: "Nothing in this Act is intended to affect the provisions of Section 1110 of the Alaska Interest Lands Conservation Act (16 USC 3170)." It was also suggested that reference to the regulations at 36 CFR Part 13 and 43 CFR Part 36 which outline the procedures necessary for implementing any restrictions on access into Alaskan park units be included.

What this proposed legislation failed to recognize is that sightseeing flights over a national park unit is one of the least damaging means of visiting the area. It requires no roads or trails and no structures or facilities within the park itself. Absent the deliberate low-level harassment of wildlife, the primary impact is to the experience of other park visitors. There are virtually no impacts to the wildlife, water, or vegetation resources. More importantly, for Alaska, the legislation simply did not recognize the importance of aircraft to the basic transportation infrastructure of this state, nor the serious effects that it could have for Alaskans.

It was also not clear from our analysis how the purposes of this legislation would interact with the recommendations that are to be made by the joint FAA/NPS National Parks Overflights Working Group. This group was formed in May 1997 and tasked with recommending proposed regulations that would define the process for reducing or preventing the adverse effects of commercial sightseeing flights over national park units. The group was to have completed its work by September 22, 1997. It is our understanding that this bill will be extensively modified, pending the working group's report.

H.R. 1420- the National Wildlife Refuge System Improvement Act of 1997. This bill was signed into law as Public Law 105-57 on October 9, 1997. This statute provides an organic act for the National Wildlife Refuge System, similar to those which exist for other public lands. Its principal focus is to establish the conservation mission of the refuge system, provide Congressional guidance for management of the system, provide a mechanism for unit-specific refuge planning, and give direction and procedures for making determinations regarding wildlife conservation and public uses of the system.

During consideration of this proposal, the Commission worked with other State agency personnel experienced with the implementation of ANILCA provisions with respect to the Alaskan units of the refuge system to provide comments and recommendations to the State's Congressional delegation. The result was a bill which protected the specific provisions found in ANILCA for management of the refuges in Alaska while providing guidance for the entire system.

The U.S. Fish and Wildlife Service recently announced their intention to develop new and revised policies pursuant to the Refuge Improvement Act. The Commission will work with the public, State agencies and the Service in this revision process to ensure that the new and revised policies are consistent with both the Refuge Improvement Act and ANILCA.

ADMINISTRATIVE ACTIONS

American Heritage Rivers Initiative. In the 1997 State of the Union Address, President Clinton announced that he had directed his cabinet to design an initiative to support communities in their efforts to "restore and protect America's rivers." To that end, the Council on Environmental Quality (CEQ) released for public review and comment a proposal for an American Heritage Rivers Initiative. This initiative was developed by an interagency task force which included the Departments of Agriculture, Commerce, Defense, Energy,

Interior, Justice, House and Urban Development, the Environmental Protection Agency, Advisory Council on Historic Preservation, Army Corps of Engineers and the National Endowment for the Humanities.

Under this program, the President would designate ten rivers as American Heritage Rivers in 1997. According to the notice, these designated rivers would receive special recognition and focused federal support and will "serve as models of the most innovative, economically successful and ecologically sustainable approaches to river restoration and protection for communities across the United States." This initiative proposed to assist communities through better use of existing programs and resources and coordinating the deliver of those services in a manner designed by the community, or "bottom-up." According to the CEQ, the initiative would create no new regulatory requirements for individuals or state and local governments.

During April and May, there were 10 meetings held around the country, during which the interagency team talked to communities and "interested parties" to establish criteria for river selection, to determine how rivers will be designated and to propose how the initiative will be implemented. There were no meetings held in Alaska. The initiative proposal was released on May 19, with a comment period of only 21 days. Both the initiative and the extremely short comment period were immediately protested by a number of organizations. Additionally, the Chairmen of 6 U.S. House Committees and Subcommittees wrote to CEQ Chair, Katie McGinty requesting an 90 day extension of the public comment period, and stating that they have "strong reservations about this unauthorized initiative and we are fully aware of the public outcry occurring over the *Federal Register* notice on this issue." In addition the Chairmen further stated that "this Committee has serious concerns about this initiative to designate specific areas for special Federal assistance without any authorization from Congress. Ironically, it would appear that CEQ has totally ignored the requirements of the National Environmental Policy Act of 1969 in undertaking this 'major Federal action'." The public comment was extended for an additional 90 days.

The Commission's review determined that the major deficiency of the proposal was its failure to explain adequately the need to create a new program in order to improve the manner in which federal agencies are supposed to conduct business. It was clear that, despite claims to the contrary, this initiative constituted a new federal program, not just a realignment of existing ones. We concluded that this proposal, complete with an interagency task force of a dozen different federal departments and agencies, assignment of a federal "river navigator," creation of so-called Performance-Based Organizations, and the stated objective to reinvent federal programs, would ultimately result in greater federal control over state and private properties and greater regulatory burdens. Additionally, by siphoning off agency personnel and resources to provide special recognition and focused federal support for newly designated heritage rivers, other programs and projects will necessarily suffer. The result would be poorer, not better, delivery of services.

The Commission pointed out that the Government Performance and Results Act (GPRA) of 1993 requires all federal agencies to submit a 5 year strategic plan and an annual performance plan to the Office of Management and Budget and Congress by September 30, 1997. In

passing GPRA, Congress intended to improve federal program effectiveness and public accountability by focusing on end results, service quality and customer satisfaction. We argued that if the real motivation behind the proposed American Heritage Rivers Initiative is simply to improve agency functions and provide better support to state and local governments by utilizing existing programs, it would be more appropriate to address ways of accomplishing those goals in the GPRA performance and strategic plans without the creation of a new federal program.

The Commission also found the proposed process for nomination of an American Heritage River to be highly suspect. The AHRI uses the term "river community" and states that it is self defined by the members of the community. Based upon this criteria and the discussion in the notice, it appeared that any group could define itself as a river community and submit a nomination to designate a river under the AHRI. While it is "highly recommended" that nominations for designation of a river be accompanied by letters of support from other members of the community, and a local mechanism that allow members of a community to comment on the nomination must be outlined, it was unclear how much community support is necessary for designation or what level of opposition would prevent designation. In spite of assurances to the contrary, we foresaw the possibility of designation of a river or river area over the objections of the local city, county, borough or state governments. We further recommended that, if this initiative was to be implemented, changes needed to be made to allow nominations only upon full approval by the legally recognized government(s) responsible for management of the nominated river or river area.

The Commission concluded that the proposed American Heritage Rivers Initiative was an unnecessary duplication of existing programs, which would do little to enhance the functions of those programs or the delivery of services. We strongly recommended against its adoption. In spite of considerable opposition throughout the country, primarily from the western states, the initiative was adopted. More than 200 nominations, none in Alaska, for AHRI designations are currently under consideration. No decision date has been announced.

CONCLUSION

The Alaska National Interest Lands Conservation Act passed in December 1980. In the intervening 17 years the level of federal land management planning, accompanied by regulation and policy development has been unprecedented. The impacts to the citizens of Alaska and their uses of the federal public lands have been considerable. The level of planning by federal agencies will remain high into the foreseeable future. As a general rule, federal land management plans are revised on a 10 to 15 year schedule. Federal agencies will soon begin revising many of the original ANILCA mandated plans for national park and wildlife refuge units. At the same time, numerous unit specific resource management plans, development concept plans, land protection plans and public use management plans continue to be released.

Problems and conflicts between federal land managers and public land users also continue. During 1997, Commission staff provided assistance to individuals having problems with access to private property within national park units and commercial visitor service activities on federal lands. Whenever possible, the staff will continue to provide similar assistance in 1998. Additionally, the

Commission remains committed to resolving the commercial fishing issue in Glacier Bay National Park.

If the statutory authorization for the Citizens' Advisory Commission on Federal Areas is extended, we will continue to advocate for maximum levels of public involvement in the planning and regulatory processes of all federal agencies and for the protection of customary and traditional uses of the federal public lands throughout Alaska. As competition for public resources increases, cooperation and understanding between user groups will be critical to successful management of these areas. At the same time, federal land management agencies must recognize the role of the public in their planning and regulatory efforts and the effects of their decisions on the citizens of Alaska. This Commission will strive to work toward these and other stated goals during 1998.

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