

ANILCA Context, Key Provisions, and Implementation

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The Alaska National Interest Lands Conservation Act (ANILCA) was the largest single federal land conservation legislation in the United States, and arguably the world. ANILCA created a network of federal conservation areas in Alaska on an unprecedented scale, with similarly unprecedented management provisions to account for the state's lack of infrastructure and unique geographic, social, and economic conditions.

Self-introduction

- Moved from California to Alaska in 1974. Worked as a cartographer and then planner for the Joint Federal-State Land Use Planning Commission.
- Late 1970s: Worked for the Alaska Department of Natural Resources as a planner. Discovered near-ghost town of McCarthy, Alaska within the soon-to-be-created Wrangell-St. Elias National Park and Preserve. Lived full-time in a cabin in McCarthy for several years starting shortly before passage of ANILCA, thus witnessing the affects of ANILCA on the ground.
- 1984: Appointed as the statewide ANILCA Program Coordinator (then called "CSU Coordinator") within the Office of the Governor, and later within the Alaska Department of Natural Resources.
- 2011: Retired after 27 years of ANILCA Coordination, serving 7 Governors.

Context leading up to passage of ANILCA

- Section 17(d)(2) of the Alaska Native Claims Settlement Act (ANCSA) called for reservation of "up to 80 million acres" for study as future conservation areas.
- Section 17(d)(2) responded to the massive transfer of land out of federal ownership arising from the Statehood Act and ANCSA, to retain some intact tracts of federal land for conservation purposes "in the national interest."
- Much was at stake, and virtually all Alaskans allied with one or more constituent groups in a very public, and very contentious, debate.

Key Constituents Groups

- Environmental – conservation interests wanted to expand on lessons learned in the Lower 48 by setting aside large tracts in Alaska to protect representative examples of whole ecosystems. A strong, nationally-networked Alaska Coalition formed, anchored by a motivated, knowledgeable and passionate group of conservationists in Alaska that ferried specific recommendations to DC.
- Statewide economic interests – Development proponents (including industry representatives and non-profit groups like the Resource Development Council, Alaska Miners Association, and Citizens for Management of Alaska Lands) sought to minimize loss of resource development opportunities, and lobbied to protect opportunities for access to inholdings and across federal reserves.

- Local residents and inholders – often with the most at stake, but largely off the grid and out of the loop (no internet and few phones in those days), thus frustrated and fearful about the outcome. Concerns included access; hunting, fishing & trapping; harvest of house logs and firewood; impacts on their private property, and local job opportunities.
- Rural Natives – shared most of the non-Native rural resident concerns, plus fear of loss of subsistence and cultural practices. But many also supported the d-2 conservation theme as a way to protect these practices.
- Native corporations – major players that shared many of the economic development interests and concerns about access. The extent of overlap with individual Native and village interests varied by region.
- State of Alaska – The Alaska Governor’s Office opened an office in Washington, DC to track legislation and coordinate extensive Congressional lobbying.
- Joint Federal-State Land Use Planning Commission, created by ANCSA to advise Congress on “d-2” legislation, among other purposes.

Congressional Deliberations

- Numerous d-2 bills introduced in mid-late 1970s, mostly ranging 50-80 million acres.
- Governor Jay Hammond and others pushed for a network of cooperative state/federal management areas, but this concept failed to gain traction in Congress.
- Congress defaulted to considering mostly traditional management categories (e.g., national parks and wildlife refuges).
- HR 39, introduced in 1977, was a game-changer, redefining the scale of the d-2 debate by proposing 145 million acres of instant designated wilderness.
- With the political momentum headed toward larger withdrawals, the debates in Alaska and Washington DC shifted to special provisions to accommodate Alaska’s special circumstances. “*We Don’t Give a Damn How They Do It Outside*” was a common and illustrative bumper sticker at the time.
- With no bill prior to expiration of the d-2 withdrawals in 1978, President Carter invoked the Antiquities Act to create 17 national monuments, totaling 56 million acres.

Recognizing the importance of a consolidated Alaska voice, Governor Hammond and the Alaska Legislature worked with a wide array of constituent groups on several consensus points, summarized below. (See Legislative Resolve #2 of the 1979 Alaska Legislature for full text.)

1. Revoke all 1978 monuments and executive withdrawals
2. Full land entitlements to the State and Native corporations
3. Access across federal lands to state and private lands
4. State management of fish and game on all lands
5. Conservation boundaries should exclude economically important natural resources
6. Continue traditional land uses on all lands
7. Preclude administrative expansion of conservation units (“no more” clause)

All were addressed with passage of ANILCA; although several of these points have experienced varying degrees erosion and inevitably remain works in progress with mixed success and failure.

ANILCA at Passage in 1980 – The Great Compromise

- Unprecedented legislation – *Not easy to implement!*
 - Large conservation units of unprecedented size
 - Similarly unprecedented provisions for access and use

Selected Key ANILCA Provisions (Just a few examples to illustrate complexity.)

- “No More” clause(s)
 - Section 101(d) focuses on overall Congressional intent. Essentially Congress believed they had thought through the conservation/development balance comprehensively, and had arrived at a fair solution that would not need to be revisited. *But* 101(d) is not an enforceable provision since Congress can’t prohibit a future Congress from taking another bite at the apple.
 - Section 1326(a) clearly precludes future large administrative withdrawals such as the Antiquities Act, but debate is increasing about applicability toward other administrative actions and policies (e.g., interim wilderness management).
 - Section 1326(b) prohibits administrative studies of new conservation areas – *but* this provision contains a frequently-used loophole for studies conducted as part of a multi-purpose land use plan.
 - In addition, ANILCA contains several one-time study provisions not designed to be repeated, e.g. Section 1317 requires wilderness reviews for parks and refuges with explicit deadlines – *but* does not contain explicit prohibitions against future wilderness studies.

Therefore Congressional intent regarding these “no more” clauses was seemingly clear at the time, but implementation has not mirrored this intent.

- *Selected ANILCA Access provisions*
 - 1110(a) – *airplanes, motorboats and snowmobiles for “traditional activities” on conservation system units (CSUs) and certain other lands.*
Common misconception: not for “traditional access”. There is no across-the-board definition of “traditional”. One restrictive definition was developed by the National Park Service for snowmobiles in the pre-ANILCA portion of Denali Nat’l Park (leading to a prohibition in 36 CFR 13.63(h) for the old park since prior to ANILCA this area was closed to snowmobiles). On the other end of the spectrum lies an open-ended definition applying to all national forest lands that includes “recreational activities” as traditional. (See Forest Service Handbook, Chapter 2320 – Wilderness Management.) These two approaches bookend a debate that will likely continue for years to come. According to the DOI authors of the regulations implementing Section 1110(a), a uniform definition is not required, nor is a definition necessarily even desirable (See Preambles).
 - 1110(b) & 1323 – *access to inholdings and valid occupancy.*
A true access guarantee. After the Pilgrim Family access conflict with the NPS in the Wrangell-St. Elias National Park and Preserve, the Park Service finally stepped up to the plate and worked with many statewide constituents and landowners on an Inholder Access Guide that outlined both the landowners’ and NPS responsibilities to arrive at “reasonable” access accommodations. The courts have determined that inholders must go through a process with NPS, but the NPS can’t “just say no.” Good communication is key, and landowners have standing, if necessary, to seek judicial review of adequacy and reasonableness.
 - 811 – *traditional methods of access for subsistence on public lands.*

The biggest challenge with this provision is lack of a systematic assessment of what's "traditional." [This paucity of information also applies to Section 1110(a).] Lack of rigorous historical documentation of qualified use enables federal agencies to take a de facto "closed until open" stance, when Congress intended an "open until closed" approach. Denali provides a good example of how new information can lead to appropriate accommodation of off-road vehicles for access to subsistence resources without undue harm to resources. But I've observed that federal agencies in general are very reluctant to embark on this process given both environmental and political sensitivities.

- 1101-1107 – *process for considering transportation and utility systems (TUS)*. Congress had to decide if they wanted ANILCA to pro-actively reserve specific corridors for future use, or set up a process to consider future corridors and their desired alignment. Pros and cons on both sides. Congress chose the process, which – contrary to widespread mythology that it has never been used – has been used successfully dozens of times for small to large projects. A recent project approved through the TUS process: GCI broadband internet for rural Western Alaska that involves a combination of underground cable installation and microwave towers in Lake Clark National Park, Togiak National Wildlife Refuge, and on remote BLM lands.

All of these access provisions are accompanied by closure regulations for Department of the Interior (DOI) agencies. Note important explanatory "Preambles" in the interim, final, and consolidated DOI regulations. Unlike many ANILCA regulations for Alaska, the so-called DOI "Title XI" regulations at 43 CFR Part 36 were contested in court by Trustees for Alaska and upheld. (So far, no parallel regulations exist for the Forest Service under the Department of Agriculture, complicating implementation.)

- **Wilderness Management**
 - ANILCA established 35 wilderness areas in Alaska, totaling 56.5 million acres, effectively tripling the size of the National Wilderness Preservation system.
 - Section 102 defines Wilderness as a conservation system unit.
 - Most common ANILCA exceptions apply to all CSUs, including wilderness.
 - Section 707 says that except as provided for in ANILCA (the numerous "exceptions"), wilderness shall be administered under the Wilderness Act.
 - The Wilderness Act calls for preservation of "wilderness character."
 - Thus it's quite a challenge for federal agencies to "protect wilderness character" in light of ANILCA exceptions for "incursions" like new cabins, use of chainsaws, tent platforms, airplane landings, snowmachines, ORVs, fish ladders, and even hatcheries [see 1315(b)]. There are few black and white answers, and plenty of controversy.
 - Example of a successful, nuanced decision: recent Forest Service authorization to re-build a pre-wilderness designation bath house associated with the White Sulphur Springs public use cabin on the Tongass.

ANILCA Implementation

These few provisions are just a hint of the unprecedented statutory direction that sets ANILCA apart from other conservation legislation in the US. To help address the expected challenges of implementation, ANILCA included an entire Title XII on "Federal-State Cooperation" – in addition

to incorporating numerous requirements for cooperation and consultation throughout other ANILCA titles. Some of these provisions were developed in lieu of the abandoned cooperative management concepts proposed earlier by Governor Hammond.

- Section 1201: Alaska Land Use Council (ALUC) – a key forum for issue resolution in the first ten years after passage of ANILCA
 - Representation from the heads of federal and state agencies and Native corporations
 - High-level Federal and State Co-chairs
 - Quarterly meetings
 - Broad mandate to make recommendations regarding regulations, plans, studies, policies, programs, budgets and more.
 - Pros: An active staff committee conducted most of the real work between meetings. Much accomplished, mostly by consensus after extensive deliberations, e.g., access regulations, wild and scenic river guidelines, boundary reviews, etc.
 - The ALUC also facilitated broad understandings of ANILCA exceptions through federal plan review and approval, especially first generation national park service “general management plans” and national wildlife refuge “comprehensive conservation plans.”
 - Cons: As the 10-year sunset/renewal date approached, the Council became mired in partisan politics and was not renewed by Congress. (Side note: While the politics was challenging, it sometimes provided incentive for the professional staff committee to resolve issues before formal meetings and thus deprive the political fire of fuel.)
- A few other examples of cooperation and consultation implemented by ANILCA:
 - Bristol Bay Cooperative Plan
 - Establishment of interagency visitor centers in Anchorage, Ketchikan and Tok
 - McCarthy to Denali Scenic Highway Study
 - Subsistence Resource Commissions
- To participate in the above processes, as well as numerous other implementation efforts involving participation, consultation or cooperation, the State invested in:
 - An interagency State ANILCA Team <http://dnr.alaska.gov/commis/opmp/nilca/>
 - Legislative establishment of CACFA
 - Alaska Department of Fish and Game Master Memorandums of Understanding with all four federal land managing agencies
 - Participation on numerous federal planning teams

Recommendations

- Improve and expand ANILCA education/training. (Current ANILCA training info is available at <https://www.institutenorth.org/programs/alaska-commons/nilca-seminars>)
 - Require more ANILCA training for federal employees engaged in implementation.
 - Fund federal participation in re-development of ANILCA curriculum.
 - Fund development of distance learning opportunities and technologies.
 - Make affordable ANILCA training available to non-federal parties (e.g., state employees, Native corps, industry, the public).
- Be strategic in use of the judicial system.
 - Do litigate when it’s important to establish or overturn precedent.
 - Don’t litigate just because you don’t like a decision. Doing so can lead to serious losses.

- When litigating, devote adequate financial resources to do it well.
- Pick lawsuits carefully since federal courts tend to defer to federal agency discretion concerning federal laws. Need good cases to prevail. Assess risks.
- Revive the Alaska Land Use Council (or similar forum) for active dialogue, accountability, and in-state problem solving.
- Continue to reduce/slow federal agency staff turnover and loss of institutional memory.
- Entice more Alaska youth, especially from rural areas, into land management careers.
- Return more federal decisions to Alaska (from DC) where state and federal laws are better understood in their proper context.
- Seek a Congressional prohibition on administrative wilderness and wild and scenic river reviews in Alaska, and/or
- Seek a Congressionally-mandated expiration period for all existing and future wilderness and wild & scenic river recommendations, including expiration of mandated default interim wilderness management if not designated.
- Fund research on activities and methods of access taking place in Alaska prior to passage of ANILCA to help understand the concepts of “traditional.” Such research is already becoming difficult given the loss of old-timers with first hand knowledge, but sooner is better than later.
- Encourage the Forest Service under the Dept of Agriculture to develop Title XI regulations modeled after the court-tested Interior regulations at 43 CFR Part 36.
- Research opportunities for minor boundary adjustments under Section 103(b), or land exchanges under Section 1302, to improve boundary identification in the field and simpler management (e.g., Pike Ridge Trail in Katmai).
- Section 1308 Local Hire – Continue to pursue additional Congressional direction regarding improper implementation of ANILCA intent by the federal Office of Personnel Management.
- Consider an Alaska-specific fix to the national NPS Concession regulations that would lengthen the 2-year commercial use authorization period for Alaskan businesses, many of which are highly capitalized (e.g., air taxis).
- Consider voluntary stakeholder solutions that do not require regulations or government enforcement, such as the Denali Overflights Advisory Council, designated under the Federal Advisory Committee Act. www.nps.gov/dena/parkmgmt/aoac.htm

Recommendations beyond ANILCA that apply equally to all those in federal and state government who are responsible for building and maintaining government relationships:

- Put issue resolution and resource stewardship ahead of politics.
- Spend more time talking and less time writing chest-pounding letters (recognizing, of course, the importance of good persuasive writing at key administrative junctures).
- Do more active listening. Issues are rarely black and white. Invest in understanding the opposing perspective to find solutions.
- Earn respect for your position by respecting the views of others. Most agency representatives (state and federal) are intent on serving the public interest, even if you completely disagree with their approach.
- Don't let disagreements over one issue taint good working relationships elsewhere.