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

**1993 ANNUAL REPORT**

**JANUARY 24, 1994**

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# *Citizens' Advisory Commission on Federal Areas*

January 24, 1994

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Dear Reader:

The Citizens' Advisory Commission on Federal Areas was established in 1981 by the Alaska State Legislature as a temporary advisory agency of the executive branch of the state. Through its enabling legislation the Commission was charged with the responsibility to consider, research, and hold hearings on the effects of federal regulations and federal management decisions on the people of the state. The attached report documents the Commission's activities over the past year in carrying out those responsibilities. It is also submitted pursuant to our obligation to file an annual report to the governor and legislature under AS 41.37.080(f).

The relationship between the State of Alaska and the federal government is by its very nature one of dual sovereignties, with each sovereignty exercising authority over its own affairs without undue influence from the other. Yet, these two governments often find themselves in the position of dueling sovereignties, each attempting to exercise control over areas it deems are properly under its sole jurisdiction. This conflict is most apparent in the areas of administrative control and access.

Over the years the state seems to have steadily lost its battle with the federal government. At the same time the federal government has gradually increased its exercise of power over the interests of the citizens of the state. Examples of where Alaskans have felt the greatest impacts from increased federal control are in the areas of restricted access, subsistence, commercial fishing, timber harvest and mining. Where those impacts have been identified the Commission has attempted to provide a forum to encourage resolution. Where it is perceived that the federal government, in the exercise of its authorities, is encroaching on the rights of the people and the sovereignty of the State of Alaska, this Commission has attempted to speak out on the state's behalf.

It is only through the perseverance of the state through its agencies, boards and commissions and its citizens that Alaska will be able to retain those rights granted to it and reserved by it in the Statehood Act and subsequent acts of Congress. The 35th anniversary of Alaska's admission as a state provides an opportunity to reflect on the original conditions of statehood and how those covenants and responsibilities have been carried out.

The following report documents the activities of the commission as it continues to monitor the effects of federal actions on the State of Alaska. It is only a snapshot of the broader picture of the relationship between the state and federal government. A relationship where many of the areas of conflict can be resolved through good communication, mediation and negotiation, but occasionally one where the state must protect its rights through litigation.

The Commission appreciates the opportunity we have had to serve the governor and the legislature this past year. We look forward to identifying additional ways to better serve the state as advocates for its interests in the years to come.

Sincerely,



*for* Steven Porter  
Chairman

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## INTRODUCTION

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1993 brought with it the promise of significant changes in the management of federal public lands in Alaska. The arrival of a new administration in Washington, D.C. meant a change in philosophy in how these lands and the resources they contain should be managed. It also signaled the start of a process to revise many of the policies in place since implementation of the Alaska National Interest Lands Conservation Act began in 1981. For example, the Department of the Interior recently settled a lawsuit which will result in numerous rivers on lands managed by the Bureau of Land Management being studied for possible wild and scenic river designation. Interior is also considering revision of regulations which guarantee access to State and privately owned lands within or effectively surrounded by conservation system units. Expansion of the Federal Subsistence Management Program continued in 1993 with the creation of Federal Regional Advisory Councils. Federal agencies also began developing new strategies for uses and management of wetlands. The proposed PACFISH Strategy, once implemented, will impose new use restrictions on the use of U.S. Forest Service and BLM managed lands throughout the state.

These, and other policy decisions mean that Alaskans face new and additional constraints on their traditional uses of the federal public lands in this state. Since its creation in 1981, 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 an overview of its activities during 1993. This document represents the Commission's annual report to the Governor and the Alaska State legislature as required by AS 41.37.080(f).

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## BACKGROUND

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The Citizens' Advisory Commission on Federal Areas was established in 1981 by the Alaska State Legislature 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. 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.

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**DUTIES OF THE  
COMMISSION**

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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."

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**GOALS AND  
OBJECTIVES**

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In order to ensure that its goals and objectives fulfill 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 in 1982, 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 all comments and recommendations. In recent years, due to significant reductions in staff and budget for the Commission, staff has coordinated much of its work with other state agency personnel. Through various cooperative efforts, primarily with the Division of Governmental Coordination and the Alaska Department of Fish and Game ANILCA program, 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.

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."

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## COMPOSITION

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The Commission is composed of sixteen

members, eight appointed by the Governor and eight appointed by the Legislature. Current Commission officers are: Chairman, Mr. Steven Porter (Anchorage) and Vice-Chairman, Mr. Don Finney (Ward Cove). The Chairman, Vice-chairman and Mr. Arthur Robinson (Soldotna), Mr. William Dam (Anchorage) and Ms. Kathleen Weeks (Anchorage) comprise the Commission's Executive Committee. A full list of the members for 1992 is included at the end of this document.

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## **STAFF**

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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.

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## **COMMISSION ACTIVITIES IN 1993**

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1993's objectives were divided between reviewing and commenting on federal agency planning documents and regulations, monitoring proposed federal legislation, and investigating citizens' complaints. The Commission also continued its efforts to ensure maximum levels of public participation in agency management and policy decisions affecting the federal public lands in Alaska by notifying individuals,

organizations, and interest groups of pending actions. Unfortunately, due to budget reductions, the Commission is no longer able 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. Commission staff had hoped to begin publication and distribution of a newsletter in 1993, but due to staffing and budget constraints was unable to do so. Minutes of Commission meetings, as well as copies of all comments and recommendations made by the Commission are also available from Commission staff 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 calendar year. The reader is reminded that many of the issues monitored by the Commission are complicated and it is difficult to explain both the issue and the Commission's involvement in this brief format. Commission members and staff would be pleased to provide a more in depth explanation of any of the issues and activities outlined in this report.

Readers of past annual reports may note the similarities between Commission activities in 1993 and those in previous years. The reason is simple. Most federal land management issues are not resolved quickly, but rather move slowly from one phase to the next, with long delays in the process as the rule rather than the exception. As pointed out in the introduction of this report, the change in administration in Washington, has already resulted in new policy initiatives

and proposals to revise existing management strategies.

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## 1993 FEDERAL AGENCY ACTIVITIES

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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.

### FEDERAL SUBSISTENCE MANAGEMENT PROGRAM

***Background:*** In operation since July 1990, the Federal Subsistence Management Program (FSMP) continued its expansion in 1993. The Federal Subsistence Board is the primary administrative agency of the federal program. The membership of the Federal Subsistence Board (FSB) consists of the regional directors of the National Park Service and the U.S. Fish & Wildlife Service, the state director of the Bureau of Land Management, the area director of the Bureau of Indian Affairs, the regional forester of the U.S. Forest Service and a chairman appointed by the Secretary of the Interior.

The FSB has assumed responsibility for

establishing fishing and hunting seasons and bag limits; determining which communities and areas of the state are rural; making customary and traditional use determinations; and establishing a system of regional councils and, if necessary, local fish and game advisory committees. Although, under the federal program, the FSB is responsible for subsistence management on all federal public lands, the individual agencies retain their existing regulatory authorities. These include the regulation of access, use of plant material, and in the case of the National Park Service, more restrictive eligibility criteria.

After determining that the state's system of regional councils was inadequate to satisfy the requirements under Title VIII of ANILCA, the FSB established a new regional council system. This new federal system consists of ten regional councils with 7 to 13 members each. The ten regions are Southeast, Southcentral, Kodiak/Aleutians, Bristol Bay, Yukon/Kuskokwim Delta, Western Interior, Seward Peninsula, Northwest Arctic, Eastern Interior, and North Slope.

According to their federal charters, within the FSMP, the regional advisory councils will perform the following duties:

- Review, evaluate and make recommendations to the Board (FSB) on proposals for regulations, policies, management plans and other matters relating to subsistence take of fish and wildlife on public lands within the region;
- Provide a forum for the expression of opinions and recommendations by

persons interested in any matter related to the subsistence uses of fish and wildlife on public lands within the region;

- Encourage local and regional participation in the decision-making process affecting the taking of fish and wildlife on public lands within the region for subsistence uses;
- Prepare and submit to the Board an annual report containing the following:
  - an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
  - an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;
  - a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs;
  - recommendations concerning policies, standards, guidelines and regulations to implement the strategy;
- Appoint members to the National Park Subsistence Resource Commissions in their region in accordance with Section 808 of ANILCA;
- Make recommendations on

determinations of customary and traditional use of subsistence resources;

- Make recommendations on determinations of rural status;
- Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to Section .17 of the Federal Subsistence Regulations;
- Develop proposals pertaining to the subsistence taking of fish and wildlife, and review such proposals submitted by other sources; and,
- Provide recommendations on the establishment and membership of Federal local subsistence advisory committees.

The regional councils held their first meetings in October 1993 and are scheduled to meet again in February 1994. Their effectiveness within the FSMP is as yet unknown, but the predictions are generally optimistic.

**Commission Action:** A key issue in the FSMP is that of customary and traditional use determinations. Under the federal subsistence regulations, the opportunity for subsistence users within a given area to utilize a particular animal species or population depends upon a determination that such use is "customary and traditional." The FSB has adopted criteria for making customary and traditional use determinations, but has not developed a fair, consistent and open process for applying those criteria. In some instances existing

customary and traditional use determinations, which were originally made by the State Board of Game and adopted under the federal program, have been changed by the Board. In many other instances Board action on requests from the public to make changes in customary and traditional use determinations has been delayed for years.

In February 1993, the FSB appeared to be nearing adoption of a process for applying the customary and traditional use criteria. After discussion with FSB members and staff, it was determined that the FSB was prepared to consider adoption of a process during an "executive session." These sessions are closed to the public. The Commission wrote to the FSB chairman, urging against any Board action on this proposed process without first providing the public an opportunity to review and submit comment. Due in large part to the concerns raised by the Commission and others about the closed process, no action was taken on the proposal during the February meeting.

Commission staff presented testimony to the FSB at its April 1993 meeting. In that testimony, the Board was urged to move forward quickly in adopting a viable process, but to allow the public to participate in its development. As of the date of this report, the FSB has yet to develop or adopt a process for making new or revising existing customary and traditional use determinations. Nor has a firm commitment to allow the public to participate in the development of the process yet been made.

As a result, numerous requests for reconsideration of existing determinations

have received no action by the Board. The Board has given no reliable date for completion or adoption of a process.

The Commission will continue to monitor the activities of the Federal Subsistence Board. It will also continue to work with the public, as necessary, to provide assistance in preparing appeals and recommendations to the Board and to ensure that adequate opportunities for public participation in the regulatory process are provided.

#### **BUREAU OF LAND MANAGEMENT REPORT ON RS 2477 RIGHTS-OF-WAY**

***Background:*** In January 1993 the Bureau of Land Management began preparation of a report to Congress on the issue of Revised Statute (RS) 2477 rights-of-way. Revised Statute 2477 is a federal law passed in 1866 that granted "the right-of-way for the construction of highways over public lands, not reserved for public uses" to the state. The rights-of-way established under this statute are still valid today, although the statute was repealed by the Federal Land Policy and Management Act of 1976.

In recent years, several efforts have been made in Congress to invalidate these rights-of-way, primarily due to concerns about the potential effects of their use and development across federal public lands. RS 2477 rights-of-way across conservation system units in Alaska are of particular concern to federal public land managers. One recent proposal, with a complicated

claims and appeals process, coupled with unrealistic time limits, would make it virtually impossible for an RS 2477 right-of-way across federal public lands to be processed or validated. The rights and interests of the State of Alaska are seriously jeopardized by this and similar proposals.

The purpose of the BLM report was to examine the history of RS 2477 rights-of-way, including some of the legal issues surrounding the acceptance of the grant, and possible alternative means of securing rights-of-way or other access. The agency sought public input during the preparation of the draft report as well as comments on the report before its submittal to Congress.

**Commission Action:** Commission staff attended BLM meetings held to gather public input during preparation of the report. Additionally, staff worked with state agency personnel from the Lieutenant Governor's office, Department of Natural Resources, Department of Fish & Game, Department of Transportation & Public Facilities and the Department of Law in developing the state's recommendations on the report. The Commission also submitted its own recommendations to the BLM.

In its recommendations, the Commission asked the BLM to emphasize the following points in the report to Congress:

- ▶ Through the enactment of various Territorial and State statutes, Alaska has clearly recognized and accepted the federal grant under RS 2477.
- ▶ Both the federal courts and the Interior Board of Land Appeals have consistently held that the existence

and validity of an RS 2477 right-of-way is a question of state rather than federal law.

- ▶ Once accepted, rights-of-way created under the RS 2477 grant are irrevocable. Any "taking" of the grant must involve some form of compensation to the affected state(s).

The Commission also urged the Department of the Interior to develop and adopt a comprehensive process for asserting and certifying RS 2477 rights-of-way. The Commission argued that it is essential that each DOI land managing agency adopt an identical process primarily due to the fact that a single right-of-way may cross lands managed by more than one agency. The Commission recognizes that each agency had differing statutory mandates that must be recognized in any procedure adopted, but that a uniform program would work to the benefit of all interests.

The Commission also commented on possible alternatives to RS 2477 rights-of-way. It was pointed out that other mechanisms for authorizing and permitting rights-of-way such as ANILCA Title XI, the Federal Land Policy and Management Act (FLPMA), and Alaska Native Claims Settlement Act (ANCSA) Section 17(b) each have limitations that prohibit their use in all situations. While use of RS 2477 rights-of-way will not be feasible for securing access in every situation, their use must be considered as an alternative and a complement to other means.

**Status:** In presenting the report to Congress, the Secretary of the Interior announced that the department would

develop regulations for processing and certifying RS 2477 claims. Release of draft regulations was originally planned for Fall 1993. However, no such regulations have been released. In the interim, DOI agencies are under a secretarial directive not to process any RS 2477 claims. A recent 9th Circuit Court of Appeals decision, *Shultz v. Department of the Army*, which essentially supports many of the arguments made by the State of Alaska with respect to RS 2477 rights-of-way may also have delayed the rulemaking process.

The Department of Natural Resources, in cooperation with the Department of Transportation, is currently involved in a project to identify, document and assert as many as 500 RS 2477 rights-of-way by July 1, 1994. Commission staff has provided support to this project by making all relevant Commission files available and by providing background information on a number of federal conservation system units.

The Commission will analyze and provide comments on the DOI regulations once they are released. Additionally, staff will continue to provide whatever assistance possible to the State's ongoing RS 2477 project.

#### DESIGNATION OF CRITICAL HABITAT FOR THE STELLER SEA LION

**Background:** In April 1993, the National Marine Fisheries Service (NMFS) issued proposed regulations that would designate critical habitat areas in Alaska, Washington, Oregon and California for the Steller sea lion. Designation of critical habitat for all

threatened and endangered species is required under the provisions of the Endangered Species Act. The Steller sea lion was listed as threatened in 1991.

The regulations proposed designation as critical habitat a zone 3000 ft. seaward from all major rookeries and haulout areas east of 144° W. longitude in Alaska and in state and federally managed waters in Washington, Oregon and California. This designation is consistent with the recommendations of the Steller Sea Lion Recovery Team in its recovery plan. However, for all state and federal waters west of 144° W. longitude, the proposed regulations would designate a zone 20 nautical miles (nm) seaward from all major rookeries and haulouts. This was far in excess of the 3000 ft. zone recommended by the recovery team. The proposal gave little or no explanation for the dramatic difference in the size of the zones.

In addition to the zones around the rookeries and haulout areas, 3 aquatic foraging habitat areas were proposed. Encompassing thousands of square miles, these areas included the entire Shelikof Strait and two areas in the Bering Sea and Western Aleutian Islands.

**Commission Action:** The Commission found procedural errors in the proposed rulemaking effort. The *Federal Register* notice indicated that the proposed regulations had been found to be consistent with the State of Alaska's Coastal Zone Management Program. However, when staff discussed the proposal with the Division of Governmental Coordination, it was discovered that the state had not been provided the opportunity to review the

NMFS consistency review. In addition, none of the other affected Coastal Zone Management Districts were aware of the proposal. In response to the Commission's request, NMFS reopened the public comment period on the proposed regulations and submitted its consistency review to the state and all affected Coastal Zone Management Districts for review. NMFS also agreed to hold a public hearing on the proposal in Anchorage.

In its comments on the draft regulations, the Commission objected to the proposal to designate the 20 nm zone around rookeries and haulout areas west of 144° W. longitude and the designation of the entire Shelikof Strait as an aquatic foraging zone. The NMFS proposal failed to provide sufficient justification for the designation of such large areas. Based upon review of the recovery plan and the recommendations of the recovery team, the Commission argued that the 3000 ft. zone was adequate for protection of critical habitat for the Steller sea lion.

The proposal to designate such large areas of critical habitat also failed to take into consideration existing regulations that were designed to protect Steller sea lions. These regulations, implemented under the Magnuson Fishery Conservation and Management Act, reduce the adverse impacts of groundfish harvest on the sea lions. They prohibit trawling within 10 nm of listed Gulf of Alaska and Bering Sea/Aleutian Island area rookeries; prohibit trawling within 20 nm of certain other rookeries and placed spatial and temporal restrictions of the pollack fishery within the Gulf of Alaska.

The Commission also pointed out that designation of critical habitat areas, in spite of claims to the contrary, could affect state regulated commercial, subsistence and sport fishing activities, fishery enhancement projects, shellfish farming, state oil and gas lease sales, timber transfer facilities and management of state owned tidelands. Concerns were also expressed about potential adverse impacts to subsistence activities in the affected areas.

***Status:*** In spite of concerns raised by the Commission, the State of Alaska and the commercial fishing industry, the NMFS adopted final regulations in September 1993. There were no changes made to the original proposal in the final regulations. The long term effects of these regulations and the large areas of critical habitat on the future recovery of the Steller sea lion will not be known for some time, nor will their effects on activities within the designated areas.

In December 1993, NMFS announced its intention to consider changing the status of the sea lion from threatened to endangered. The Commission will continue to monitor the progress of this latest action.

### National Park Service Compendia

***Background:*** In 1990 the Commission acquired a document for Katmai National Park & Preserve and Aniakchak National Monument & Preserve known as a Compendium of Orders. This document is a management tool that outlines for users of the park units various restrictions on such things as camping, aircraft landings, areas of the park unit which may be closed, use of

snowmachines and other guidelines. The Commission learned that the compendium was being distributed at the Alaska Lands Information Centers throughout the state.

After reviewing the document, Commission staff determined that a number of the listed use restrictions had been implemented without following the correct procedures. The regulations at 36 CFR Part 13, which are specific to Alaskan park units, contain procedures for proposing and implementing use restrictions. These involve public notice, publication of draft regulations in the *Federal Register*, opportunity for public review and comment and public meetings. The agency had not complied with these regulatory procedures.

The Commission requested that the Compendium for Katmai and Aniakchak be withdrawn until such time as the regulations contained in it were properly implemented. The same request was made for compendia for the other park units, as well. The National Park Service refused to do so.

**Commission Action:** For various reasons, the issue was not pursued further until 1993 when the opportunity arose to review a draft compendium for Gates of the Arctic National Park & Preserve. Procedural problems, similar to those found in the earlier compendia, were identified during the review. The continuing problems with the existing compendia were brought up at a meeting with the agency's regional director. At that meeting the regional director acknowledged that some of the restrictions contained in the compendia had not been properly implemented and were probably not legally defensible. However, the agency declined to immediately rescind them,

indicating that it would take two to three years to correct the problem.

At a subsequent meeting, the NPS agreed to provide Commission staff and other state agency representatives with copies of the most current compendia. It was further agreed that Commission staff and state agency personnel would conduct an analysis of the compendia and identify those use restrictions or other regulations that we believed to be improperly promulgated and implemented. Still, there was no commitment to rescind the compendia made at that meeting.

**Status:** Commission staff is currently analyzing the compendia and will be submitting the analysis to the NPS. The issue has been discussed with the Department of Law in order to explore possible legal options. A meeting with NPS officials is scheduled for late February 1994. Hopefully, the issue can be resolved satisfactorily in the near future.

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## CONTINUING ACTIVITIES

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### Proposed Federal Legislation

There a number of bills now being considered in Congress that would affect both the federal public lands and resources in Alaska. Several of these proposals were originally introduced in previous sessions of Congress, but failed to pass. As part of its mandated duties, the Commission monitors

the progress of these proposals, analyzes them, solicits input from interested individuals and organizations and submits recommendations to the Governor's office and Alaska's congressional delegation.

### Commercial and Subsistence Fishing in Glacier Bay

**Background:** Two bills, S. 29, "Alaska National Interest Lands Conservation Act, Amendment" and H.R. 704, "Fishing Regulation in Certain Alaska Waters, Provision" were introduced early in the first session of the 103rd Congress. Both bills, although somewhat different, would authorize subsistence fishing and gathering and allow the continuation of commercial fishing within Glacier Bay National Park.

The need for this legislation arose from a 1990 decision by the National Park Service to begin enforcement of agency regulations prohibiting commercial fishing within a national park, unless the activity is specifically authorized by statute. Glacier Bay and the waters along the outside coast of the park are vitally important to the commercial fishing industry in Southeast Alaska. Closure of these areas would result in the loss of millions of dollars of revenue annually and displace hundreds of fisherman. Additionally, the NPS announced that it could not permit subsistence activity within Glacier Bay because ANILCA does not authorize subsistence activity within the park. This prohibition is contrary to the traditional subsistence use of this area, primarily by the Native residents of Hoonah.

In 1991 the agency proposed regulations that would allow commercial fishing to continue

for a period of seven years. During that time studies would be conducted to determine the effects of the activity on the other resources of the park. Designated wilderness waters would be closed to commercial fishing upon adoption of the final regulations. The regulations would also clarify that subsistence activities within the park are prohibited because they are not specifically authorized by ANILCA.

Although, it has been more than two years since these regulations were proposed, it is not known when final regulations will be adopted. In the interim, commercial fishing continues. Limited subsistence fishing and other activities apparently still occur within the bay.

**Status:** S. 29 was introduced by Senator Murkowski in February 1993 and referred to the Senate Committee on Energy and Natural Resources. As of December 1993 no hearings had been held on the bill. H.R. 704 was introduced by Representative Don Young in January 1993 and referred to the House Committee on Natural Resources and the Committee on Merchant Marine and Fisheries. The bill went through hearings and mark-up and was reported out of the committee in May 1993. At the hearing the NPS testified against passage of the bills. As of the date of this report no additional hearings of either bill have been scheduled.

**Commission Action:** The Commission has supported passage of legislation to resolve this issue from the time bills were first introduced in 1991. We continue to support both of these bills as the best means of providing for the continuation of commercial fishing and guaranteeing the rights of area residents to continue their traditional

subsistence activities within the area now encompassed by Glacier Bay National Park. The Commission will continue to work with the governor's office and the congressional delegation toward passage of these bills.

### Alaska Peninsula Bills

**Background:** Two separate bills dealing with subsurface ownership of lands within 3 conservation system units on the Alaska Peninsula were introduced in April 1993. As with the Glacier Bay bills, both were originally introduced during the previous Congress. H.R. 1688 "Alaska Peninsula Wilderness Designation Act of 1993," was sponsored by Congressman Young. This bill would designate some 2.7 million acres of land within the Aniakchak National Monument & Preserve, the Alaska Peninsula National Wildlife Refuge and the Becharof National Wildlife Refuge as wilderness.

The bill also contains a "grandfather" clause that would allow those individuals currently holding a special or commercial use permit for operations on lands included in the designation to renew that permit through their lifetime. Permit holders would also be allowed continued use of any structures, such as cabins and lodges, used in support of their operation.

H.R. 1688 would provide authority for the relinquishment of the subsurface selection rights of Koniag, Incorporated to approximately 275,000 acres of lands within the three conservation system units. In exchange for relinquishing the subsurface oil and gas rights, Koniag, Inc. would receive certificates of credit which could then be used for bidding on and purchasing property

sold at public sale.

The second bill, S. 855 "Alaska Peninsula Subsurface Consolidation Act of 1993" was sponsored by Senator Murkowski. This proposal would also allow Koniag, Inc. to relinquish its subsurface selection rights in the three conservation system units in exchange for the fair market value of its oil and gas or other interests. These funds would be placed into a special account and could then be used by Koniag for bidding on or purchasing property sold at public sale. Unlike H.R. 1688, this bill would not designate any lands within these units as wilderness.

**Status:** Hearings on H.R. 1688 were held by the Oversight and Investigation Subcommittee of the House Committee on Natural Resources in October 1993. In July 1993 the Subcommittee on Public Lands, National Parks and Forests of the Senate Committee on Energy and Natural Resources held hearings on S. 855. As of the date of this report, no additional actions on either bill have been scheduled. Prospects for their passage is unknown.

**Commission Action:** When the previous version of H.R. 1688 (H.R. 1219) was introduced during the last Congress, this Commission presented written testimony opposing its passage because of the proposal to designate approximately 2.9 million acres of lands as wilderness. In November 1993, the Commission voted to not support H.R. 1688 for the same reasons. The Commission's opposition is based upon its longstanding position to not support additional wilderness designations within Alaskan conservation system units. This position was adopted when it became

obvious that federal land management agencies had generally failed to adopt wilderness management policies that are consistent with the special provisions of ANILCA. Over the years the Commission has identified many public use problems and management conflicts that are a direct result of overly restrictive wilderness management policies. These policies do not provide the flexibility intended by Congress in passing ANILCA.

In spite of its opposition to the proposed wilderness designation in H.R. 1688, the Commission fully supports Koniag, Incorporated's efforts to exchange its subsurface selection rights for certificates of credit. Consequently, the Commission does support passage of S. 855 because it would provide for the same type of exchange without the unnecessary wilderness designations.

## FEDERAL AGENCY ACTIVITIES

### U.S. Forest Service Bureau of Land Management PACFISH Strategy

**Background:** The PACFISH Strategy is a developing management program of the U.S. Forest Service and Bureau of Land Management. It is designed to address long term management problems with Pacific salmon and steelhead and their habitats in Alaska, Washington, Oregon, California and Idaho. It is described by the agencies as a "proactive, ecosystem approach to management of watersheds and Pacific anadromous fish habitats."

The PACFISH Strategy will address such issue as the effects of hydroelectric projects, harvest activities, the effects of hatcheries and declining habitat conditions for anadromous fish in the above listed states. Various management alternatives are being considered which will include some combination and application of key watershed identification, watershed analysis, riparian habitat conservation areas and standards and guidelines, and watershed restoration.

This management strategy is designed primarily to target problems with anadromous fish populations and habitat in the Pacific Northwest. As a general rule, these problems do not exist in Alaska and the implications for the commercial fishing industry, timber harvest and mineral development in this state are significant.

**Commission Actions:** The Commission's role in this issue has been limited to this point. After being briefed on the issue by Forest Service representatives in November, the Commission called for development of a public outreach program that would inform the public of the PACFISH Strategy and provide opportunities for public involvement in the implementation process. Commission involvement will increase as the issue progresses.

**Status:** There is currently a congressionally imposed one year moratorium on implementation of the PACFISH Strategy in Alaska. However, watershed analysis and other data gathering activity continue on both National Forest and BLM managed lands in the state. Additionally, given the newly adopted ecosystem management policy for federal public lands, it is

anticipated that some level of the PACFISH Strategy will be implemented in Alaska soon after the current moratorium expires.

## Bureau of Land Management Wild & Scenic River Studies

**Background:** In 1991 the Sierra Club Legal Defense Fund, on behalf of American Rivers, the Sierra Club, the Wilderness Society and the Northern Alaska Environmental Center, filed suit against the Bureau of Land Management. The lawsuit challenged the BLM decision to not conduct wild and scenic river studies as part of the resource management plan process in Alaska. Also challenged in the lawsuit was a decision to manage, pending final action by Congress, as wilderness only those lands in the Central Arctic Management Area that had been recommended for designation as part of the planning process for that area.

The BLM and the plaintiffs reached an out of court settlement on the lawsuit in late 1993. Under the terms of the settlement agreement, the BLM agreed to rescind its earlier order to not conduct wild and scenic rivers studies on BLM managed lands in Alaska, amend the Resource Management Plan for the Utility Corridor and, as part of that process, evaluate the eligibility of any potential wild and scenic river within the utility corridor. The settlement agreement also requires the agency to manage all lands within the Central Arctic Management Area so that no activities are allowed in the area that are inconsistent with wilderness recommendation for the area.

**Commission Action:** The Commission has consistently maintained that the Bureau of Land Management and other federal agencies are prohibited from conducting wild and scenic river studies by the provisions of Section 1326(b) of ANILCA, the so called "no more clause". That section of ANILCA states that "No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress."

The BLM decision not to conduct such studies came about primarily because of objections by this Commission and the State of Alaska over preliminary wild and scenic river study activities as part of the Southcentral Resource Management Plan process. The Commission felt this decision to be consistent with both the language and the intent of Section 1326(b).

The current settlement agreement circumvents the prohibitions in ANILCA by conducting the studies only in conjunction with other planning activities and not solely for the purpose of establishing new wild and scenic rivers. This same tactic was used by the U.S. Forest Service in its revision of the Tongass Land Management Plan. The preferred alternative in the draft plan recommended some 24 rivers on the Tongass for wild and scenic designation.

**Status:** According to the terms of the settlement, the BLM will commence field work during the summer of 1994. The review of the Utility Corridor RMP must

begin by fiscal year 1995 (begins October 1, 1994) and must be completed by November 30, 1997. Because the settlement also requires the BLM to rescind its earlier decision regarding wild and scenic river studies, it appears that these studies will be conducted on all BLM managed lands in Alaska. The Commission will be involved with all aspects of these future studies.

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## CONCLUSION

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As stated in the introduction of this report, philosophies for the management of federal public lands in the United States appear to be changing dramatically. Alaskans will view these changes with mixed emotions. Some will be supportive and advocate for additional changes in management policies. Still others will feel threatened, fearing loss of their traditional uses of the public lands and their livelihoods. Regardless of one's position on these new directions, Alaska's citizens will be challenged in the years to come.

The Citizens' Advisory Commission on Federal Areas was created to help the public meet these challenges. In the coming year, the Commission will continue to advocate for maximum levels of public involvement in the planning and regulatory processes of all federal agencies. It will continue to work to protect the customary and traditional uses of the federal public lands

throughout Alaska. Commission staff will continue to provide whatever assistance possible to individuals having problems with federal land managers in pursuing legitimate uses of public lands.

As competition for public resources increases, cooperation and understanding between user groups will be critical to successful management of those resources. At the same time, federal land management agencies must recognize the role of the public in their planning efforts. Most importantly, those land managers must be aware of the effects of their decisions on the citizens of this state. This Commission will strive to successfully address these issues and work toward solutions to them during the coming year.

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