

ALASKA CENTER FOR THE ENVIRONMENT

WINTER 2005

Center News

BECAUSE YOU LOVE ALASKA



photo by Larry Aumiller



photo by Alaska Division of Tourism



photo by Kim Heacox



Center News, the newsletter of ACE, is published four times a year. Subscription rate is \$35 annually and includes membership. For subscriptions or information contact:

Center News / Alaska Center
for the Environment
807 G Street, Suite 100
Anchorage, Alaska 99501
(907) 274-3621 / FAX: 274-8733

E-mail: ace@akcenter.org
www.akcenter.org



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from the

DIRECTOR

ALASKA 25 YEARS AFTER ANILCA

This winter marks the 25th Anniversary of the date when President Jimmy Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law, and with a pen stroke, created over 100 million acres of national parks, national wildlife refuges, and national forests in Alaska.

This significant piece of legislation was almost ten years in the making and brought together many varied interests from across the country. It was passed against great odds and under the timeline pressure of a lame-duck Congress and President. As President Jimmy Carter said, "I don't believe there has ever been an issue so contentious in the U.S. Congress that involved more powerful interests marshaled against one another." I couldn't have said it better myself.

To commemorate the anniversary, a conference was held this summer and was attended by President Jimmy Carter, the late Jay Hammond and many other ANILCA heroes. As ACE began preparing for this conference, it became apparent that a new generation of Alaskans has grown up enjoying the benefits of ANILCA without even realizing it. Access to large swaths of untouched wilderness, the rural subsistence priority and jobs in recreational tourism are just a few of the many ways that ANILCA has helped Alaskans.

To help us gain perspective, experts from the community, and a few people who were instrumental in the passage of this legislation, have joined together to create this 25th Anniversary of ANILCA edition of Center News. On these pages, you will find testimony of how ANILCA came about, how it has helped the Alaska Native community, how it created an Alaska eco-tourism industry and why it is so important for us to keep the legacy alive.

And as we celebrate past victories, we want to take this opportunity to savor some current ones. Just this year, your support has helped us fight off harmful bills in the state legislature, pass a state-wide pesticide right-to-know bill, defeat a floating fuel lodge in Prince William Sound and expand Trailside Discovery to the Mat Su Valley. You can learn more about these accomplishments and the other issues we are working on this winter by reading page 13.

Of course, these accomplishments would not be possible without your support. You are our most potent resource- every phone call, letter to the editor, email and financial contribution you make really counts, and really adds up.

Because of your support, we are able to set some pretty ambitious goals for the upcoming year. Whether it's defending and improving our quality of life in urban areas, protecting popular recreation areas like Denali, or promoting wind energy development at Fire Island, ACE is your voice for Alaska's environment.

So, thank you for your support in 2005 and best wishes for the New Year.

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

25 YEARS LATER, THE LEGEND CONTINUES



by Deborah Williams

Deborah Williams is the Director of Alaska Conservation Strategies. She has been actively involved in conservation and sustainable community issues in Alaska for over 25 years, including a Presidential Appointment as Special Assistant to the Secretary of Interior for Alaska from 1994-1999 and most recently as the Executive Director of Alaska Conservation Foundation from 1999-2005.

On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (ANILCA). Protecting over 100 million acres of land in Alaska, ANILCA constituted the greatest piece of land conservation legislation in the history of the United States, and arguably the world. ANILCA also safeguarded rural subsistence hunting and fishing rights on those lands.

By any measure, ANILCA's statistics are impressive. On the day it was enacted, ANILCA doubled the size of the entire National Park system by creating 10 new parks and adding over 43 million acres to our national park heritage. Among other natural treasures, ANILCA established Kenai Fjords National Park, Lake Clark National Park and Preserve, and Wrangell-Saint Elias National Park and Preserve. Notably, ANILCA also expanded significantly most of Alaska's pre-existing beloved parks like Denali National Park (from 1.9 to over 5.6 million acres) and Katmai National Park and Preserve (from 2.9 to 4.3 million acres).

With respect to the National Wildlife Refuge (NWR) system, which has over 83% of its lands in Alaska, ANILCA created 9 new refuges and added approximately 53 million acres to the Refuge system. The new ANILCA refuges included the Alaska Peninsula NWR, Tetlin NWR and Yukon Flats NWR.

ANILCA also contributed to both of Alaska's national forests. The Chugach National Forest was expanded by about two million acres through the inclusion of the Nellie Juan area east of Seward, the College Fjord extension and the Copper/Rude Rivers addition. In the Tongass National Forest, ANILCA established approximately 5.3 million acres of wilderness,

and added three new areas to America's largest national forest: the Juneau Icefield, Kates Needle and part of the Brabazon Range, which totaled more than one million acres.

In addition to parks, forests, and refuges, ANILCA also created 26 Wild and Scenic Rivers and two Bureau of Land Management (BLM) Special Management Areas. Beloved by many, the Wild and Scenic Rivers include the Alagnak, the Fortymile, the Kobuk, the Noatak, the Sheenjek, and Beaver and Birch Creeks.

Located near Fairbanks, the two BLM areas are the widely used White Mountains National Recreation Area and the Steese National Conservation Area, which consist of over 2.2 million acres in total.

Altogether, ANILCA protected vast areas as wilderness, adding over 55 million acres to the National Wilderness Preservation System, with the promise of additional acreage to be studied and then protected by Congress in the future.

Finally, Title 8 of ANILCA established a rural subsistence priority "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." This section of the law was instrumental to its passage and continues to be instrumental to its implementation.

How did a piece of legislation of this magnitude become law? There were three primary components: tremendous vision, remarkable political leadership, and unprecedented cooperation and effectiveness among a wide spectrum of individuals and groups.

One of the most remarkable aspects of ANILCA was its audacious vision: to protect entire ecosystems by carefully protecting tens of millions of acres of land. In its purposes

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ANILCA 25TH ANNIVERSARY EDITION

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section Congress proclaimed: "It is the intent of Congress to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems, and to maintain opportunities for scientific research and undisturbed ecosystems."

The passage of ANILCA culminated a period of extraordinary land allocation activity in Alaska, all of which occurred during a 22 year period. It started in the late 1950's with the Statehood Act, which provided 104 million acres to the state. In 1971, the second distribution took place with the Alaska Native Claims Settlement Act (ANCSA), which provided 44 million acres to Native Corporations. While Congress debated ANCSA, a small number of farsighted and bold Alaskans and other Americans asked for a proportional allocation

(over 80 million acres) for America's conservation units in order to preserve Alaska's most ecologically significant lands and waters for the benefit, use and inspiration of present and future generations. Congress agreed and included a section in ANCSA - section 17(d) -- that directed the Secretary of Interior to withdraw up to 80 million acres of land deemed suitable for parks, refuges, and so forth. Congress was then given five years to permanently protect these areas.

There were, indeed, many political heroes who made ANILCA possible:

President Carter, Secretary of Interior Cecil Andrus, Congressman Mo Udall, Congressman John Seiberling, and Senator Paul Tsongas, just to name a few.

Each realized that they had to reach out to the entire nation to achieve ANILCA's unprecedented protections, understanding that they were doing the nation's business by creating these vast national parks, national refuges, and

other national protected lands. Each made sure that there were hearings across the nation so that the public had the opportunity to be heard.

Finally, to pass ANILCA required a remarkable degree of cooperation among its proponents, which was facilitated to a large degree by the Alaska Coalition. This cooperation extended to grassroot groups, agency personnel, grassroot representatives, and included numerous diverse voices.

Not surprisingly, there is important unfinished business associated with ANILCA, due in part to ANILCA's compromises. In this article, I will mention one in particular: the Arctic Refuge.

While Congress expanded the Arctic National Wildlife Refuge in ANILCA from 8.8 to 18 million acres, Congress could not agree on the future of the Arctic Refuge's coastal plain. As a result, Congress punted, and created a coastal plain study area (Section 1002). However, in Section 1003 Congress insured that "production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress." Established initially in 1960 by President Eisenhower, the Arctic Refuge should, of course, never be opened to industrialization. This year, it is facing its greatest challenge ever.

Furthermore, global warming, if unaddressed, poses a massive threat to the animals, plants, subsistence values, water bodies, and entire ecosystems protected by ANILCA.

Despite the unfinished issues, ANILCA has been a huge success from so many perspectives: economics, subsistence, quality of life, and ecosystem services. An Institute of Social and Economics Research (ISER)



Mt. Sanford in Wrangell St. Elias National Park (photo by Damion Kintz)

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THE NATIONAL INTEREST IN ALASKA'S NATIONAL INTEREST LANDS



by Doug Scott

*Doug Scott, who lives in Seattle, is policy director of the Campaign for America's Wilderness and author of *The Enduring Wilderness: Protecting Our Natural Heritage through the Wilderness Act* (Fulcrum Publishing, 2004), www.leaveitwild.org.*

At statehood in 1960, the American people gave the people of the State of Alaska an extraordinary gift: far-and-away the largest grant of Federal lands—103 million acres—given as a statehood grant to any state, not just in acres but also in proportion to the size of the state. And the State was given the right to select those lands anywhere across the nearly all-Federal landscape. So, when Alaskans cash those Permanent Fund checks each year, they should thank a generous Congress for having given their state the opportunity to own those oil lands at Prudhoe Bay.

With the enactment of the Alaska Native Claims Settlement Act in 1971, Congress took steps toward justice for Alaska's Native peoples, including Native selection opportunities to 44 million acres of Federal lands.

Finally, in 1980 Congress passed ANILCA, extending long-needed protection to the park, wildlife, and wilderness values of portions of the Alaskan lands remaining in Federal ownership. In that historic act, the Congress that had already been so extremely generous to Alaskans addressed the rights that all the rest of us—the American people, for now and forever—have in the national interest in Alaska lands.

As I wrote recently in the Anchorage Daily News, we who venture north



Denali in Autumn (photo by Alaska Division of Tourism)

from “outside” crowd the ship rail and plane window to gaze at Alaska's wild scenery—the deep silences of uncut forests of the Tongass and Chugach and the vastness of mountains, glaciers, and tundra. More of us each year come to Alaska to grab a paddle or strap on backpack or skis, adventuring into wild Alaska to hunt, fish, photograph, or just chill out. We are your new gold rush!

Now, we are seeing your State-financed tourism ads down here, that Alaska license plate image urging us to see Alaska “B4UDIE.” The state's website invites us to imagine our “delight when [we] spot a grizzly bear with a cub or two in tow. That instant when the silence of a misty fjord is shattered by a pod of giant humpback whales.... While your

floatplane flies over crystal glaciers, toward the midnight sun, remember: This is Alaska. This is real.”

As the promoters in your tourism industry know, when we come to Alaska, it is not your oil fields that lure us, nor the clearcuts we are not at all fond of subsidizing—and certainly not those infamous bridges. It is your wilderness ... and your wilderness is ours, too.

If you want to know what power propelled ANILCA to overwhelming votes in Congress (with the House voting, twice, to make all of the Arctic Refuge coastal plain wilderness), think of President Jimmy Carter and gifted congressional champions, backed

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WORKING FOR THE STATE OF ALASKA ON ANILCA 1976-1980: ONE PARTICIPANT'S PERSPECTIVE



by Tom Meacham

Thomas Meacham is an attorney with a private practice in Anchorage. He served as an assistant attorney general for the State of Alaska from 1976-1980.

If you examine the index of a printed copy of ANILCA, it becomes apparent that it is quite long (177 pages). However, it is also apparent that only the first 56 pages really deal with the substance of what we think of as ANILCA: the Congressional designation of new or expanded national parks, forests, wildlife refuges, wild and scenic rivers, wilderness, and the protection of subsistence opportunities for rural Alaskans.

The rest of the Act (some 121 pages) is made up of what might be described as peripheral matters: "corrections" to the Alaska Native Claims Settlement Act (ANCSA), land exchanges, state land selections, future federal land management mandates, and a host of land-related legislative tinkering or fixes for old problems -- and sometimes inadvertently, the creation of new problems. Simply stated, H. R. 39, the original bill sponsored by Rep. Morris Udall of Arizona in the U. S. House of Representatives, inevitably became a "Christmas tree" on whose branches were hung all sorts of legislative "add-ons," following the old Washington premise that if this train was moving, it was an ideal opportunity to get on board.

The State of Alaska had vital land and economic interests involved in the core federal conservation issues of ANILCA. Unfortunately, some state officials and legislators took a strong, "hell no" stance against the conservation and subsistence designations in H. R. 39. In the final analysis, these were issues of federal land preservation or development, issues that the State could offer its opinions about, but could not dictate. Some influential state legislators unfortunately did not

recognize these distinctions, and when they descended on Washington, D.C. to tell Congress what to do, they did not help the State's cause regarding ANILCA as a whole. (They were nicknamed the "propeller-heads" by one of the State's hired Washington lobbyists).

Today, 25 years removed, it is difficult to recall just how heated, vitriolic (and even vicious) the debate was over the proposed ANILCA. Fortunately, the State was led at this crucial time by Gov. Jay Hammond, whose own personal integrity and his conservation ethic were apparent in this guidance in shaping the State's positions, while quietly recognizing that significant, permanent protection of proposed federal conservation lands was also in the State's own long-term interest. Against charges from state newspapers and state lawmakers (and Alaska's own congressional delegation) that H.R. 39 was a federal "land grab" and a "lock-up" of public lands, Gov.

Hammond simply pointed out that in reality, "private land is the ultimate lock-up."

My own bit part in this drama that unfolded from 1976 through 1980 was as an assistant attorney general for the State of Alaska. I was in charge of reviewing H. R. 39, and all proposed amendments, for their legal implications from the State's point of view. I worked directly under John Katz, who was (and remarkably, still is) the Governor's representative in Washington. John and I understood at the outset that I declined to engage in any lobbying on the State's behalf, and that my role would be as the State's "scrivener," examining each word of ANILCA for its legal implications. (I personally felt uncomfortable with some of the anti-conservation positions that the State was being urged to take, and would not have made a very convincing lobbyist).

My challenge, as the State's
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Arrigetch Glacier, Gates of the Arctic National Park. (photo by Carl Battreal)

TITLE VIII SUBSISTENCE MANAGEMENT AND USE

Compiled by The Wilderness Society, Heather Kendall Miller, Native American Rights Fund and Trustees for Alaska. Reprinted with permission from The Wilderness Society.

Title VIII of ANILCA sets a priority for subsistence uses of fish and wildlife on federal lands in Alaska. It requires that subsistence uses of particular fish stock or game populations be permitted. Section 803 defines subsistence uses as “the customary and traditional uses by rural Alaska residents of wild, renewable resources” for purposes of “direct personal or family consumption..., the making and selling of handicrafts...”, customary trade and barter.

ANILCA AND THE FEDERAL TRUST RESPONSIBILITY TO PROTECT SUBSISTENCE USES

The federal government’s legal obligation to protect subsistence, as embodied in Title VIII of ANILCA, originates from the federal government’s trust responsibility to protect the hunting and fishing rights of Alaska’s indigenous peoples. The trust responsibility, in turn, arises from the extinguishment of aboriginal title to Indian lands.

The Alaska Native Claims Settlement Act extinguished all claims of aboriginal title in Alaska and “any aboriginal hunting and fishing rights that may exist” (43 U.S.C. 1603, 1604). The last Senate version of ANCSA contained language for the continued protection of “...Native subsistence hunting, fishing, trapping and gathering rights.” The State of Alaska objected to the inclusion of any language in ANCSA specifying particular Native subsistence rights, and despite objections from Native Alaskans, Congress deferred to the state and removed the language. However, the final House-Senate Conference Committee Report that accompanied ANCSA explained clearly that Congress expected “both the Secretary [of the Interior] and the State to take any action necessary to protect the subsistence needs of the Natives” (S. Rep. No. 92-581, p.37).

That never happened. For nine years after passage of ANCSA, the Secretary of the Interior and the state did nothing

to protect Native hunting and fishing rights. By 1978, it was clear that remedial legislation was necessary. Title VIII became the vehicle to redress the problem. Rep. Morris Udall emphasized “that the trail of broken promises will end with the passage of Alaska national interest lands legislation...[and] that any legislation passed by this Congress will guarantee the protection and continuation of subsistence uses by rural Native people” (125 Cong. Rec. 9899, 9904, May 4, 1979).

The Original drafts of Title VIII proposed a Native-only subsistence preference on all federal lands in Alaska and allowed the state to manage the priority on those lands if it passed a law of general applicability that provided the same preference on state lands. But the State of Alaska claimed that it could not grant such a preference because it would allegedly constitute racial discrimination under state law. Congress accommodated the state by making the preference race neutral, applying it to rural Alaskan residents, and allowed the state to continue management of fish and game uses on federal lands on the condition that the state adopt a statute to make rural subsistence uses a priority for fish and game on all state lands as well. If the state failed to comply with Title VIII, Congress required the Secretary of the Interior to reassume management of fish and game on federal lands.

Reconciling differences between the Federal ANILCA laws and the State of Alaska’s local laws has led to a decades-long litigation battle over the true intent of the law, with the most well-know case being the Katie John case. *For more information on this subject, see “Litigation on Title VIII” by Heather Kendall Miller on page 9.*



photo by John Hyde

ANILCA: ECOTOURISM IN ACTION



by Kirk Hoessle, President, Alaska Wildland Adventures

For those of us involved in the tourism trade, whether we lead small group expeditions or operate the mega cruise ships, Wild Alaska provides a tremendous business asset. Ironically, it's not a business asset that you find on a company's financial statement prepared by an accountant -- the one that states assets like cash in the bank, receivables, equity in real property, etc. All those are important, but in my opinion, Wild Alaska is the primary business asset all tourism companies share in common. Alaska's vast wilderness system, largely created and certainly put on the tourism trail by ANILCA, sets Alaska apart from other nature destinations around the world and provides the real tourism draw.

This past year, more than 1.7 million people sought some kind of

tourism experience with Alaska and were responsible for spending around \$2 billion dollars in the state. When you think about twenty-five years of many million visitors and many billion dollars spent, the economic impact is staggering. I surmise that a great deal of Alaska's visitors over the years were the very ones who actively fought to make ANILCA a reality, coming to Alaska to see the incredible places they helped protect. Unwittingly, the controversy during the early days of ANILCA probably served as an excellent marketing opportunity to provide a steady and growing stream of visitors for years to come. ANILCA is arguably the single most important reason that tourism is now Alaska's number two private sector industry behind oil and gas.

ANILCA represents Ecotourism in action: protecting ecosystems while contributing to economic development; sustaining the use of natural resources; residents benefiting greatly from visitors coming to experience wilderness through one mode or another; and native peoples carrying on with their traditional lifestyles and ways. While all is not perfect with ANILCA, from the standpoint of responsible tourism, resource development, and economic impact, ANILCA is a grand success story that is still unfolding.

More than 2,000 businesses ply the tourism trade in Alaska, and many more thousands of businesses are greatly influenced by the spending of our visitors, when you count restaurants, gift shops, food stores, gas stations, building suppliers, contractors, etc. All of these businesses, one way or the other, can link a very significant part of their success to ANILCA. In turn, Alaska's tourism businesses have played important roles in making ANILCA lands such a tremendous economic asset over the years. The critical roles played come down to three words: access, education, and quantification.

Access is provided in the form of guides and outfitters and tour companies of all sizes providing opportunities to visitors who do not have the equipment, time, skills, or interest to find their own way. Education comes in the form of guides and trip leaders leading by example, interpreting the flora and fauna, instructing and modeling the behavior necessary to travel in the wilderness in a safe and in an environmentally friendly manner. Quantification is



photo by Alaska Wildland Adventures (www.alaskawildland.com)

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DEFENDING TITLE 8 THE LITIGATION BATTLE OVER THE SUBSISTENCE PRIORITY



by Heather Kendall Miller, Senior Staff Attorney, Native American Rights Fund

Title VIII of ANILCA, with its rural preference on the public lands and its management incentive for statewide compliance is the legal foundation of federal subsistence policy in Alaska. It was the principal mechanism by which the Congress substituted statutory protections of subsistence for the aboriginal hunting and fishing rights it had extinguished in ANCSA (Alaska Native Claims Settlement Act).

ANILCA permitted the State of Alaska to manage the rural preference and subsistence resource management programs throughout Alaska so long as it did so in full compliance with its provisions. However, the state law enacted to achieve that compliance was challenged and in 1989, the Alaska Supreme Court held that the rural-preference provisions of state law violated the Alaska Constitution. The

State's own constitutional law therefore precluded it from continuing to afford a subsistence priority to rural residents, as required by ANILCA, and the federal government consequently assumed subsistence-use management on the public lands beginning July 1, 1990.

In adopting federal regulations to assume management authority, the Secretaries initial position was that the priority for subsistence uses did not apply to navigable waters - leaving 99% of all subsistence fisheries subject to management under state law. Consequently, Katie John's fish camp at the confluence of Tanada Creek and Copper River within the Wrangell-St. Elias Park, remained closed to subsistence fisheries while downstream users were permitted to take hundreds of thousands of salmon for sport and commercial uses. In 1990,

Katie filed suit against the Secretaries challenging the exclusion of subsistence fisheries. The State was later joined as a defendant on the ground that the State claimed general authority, apart from ANILCA, to regulate fishing in navigable waters.

The crux of the case turned on the proper construction of the term "public lands," and the words "lands, waters, and interests therein," "title to which is in the United States." Katie John argued that "public lands" under ANILCA include the federal government's reserved water rights appurtenant to federal reservations in Alaska and that the navigational servitude of the United States renders all navigable waters in Alaska "public lands."

Prior to oral argument on summary judgment motions, the federal government changed its position and concluded that at least some navigable waters - those that were subject to the federal reserved rights - are subject to federal subsistence management. The federal courts agreed that by virtue of its reserved water rights, the United States has interests in some navigable waters and directed the Secretaries to identify and implement ANILCA's priority on those waters.

A final rule was promulgated in January, 1999, which by its terms became effective October 1, 1999. Although federal management authority has been in place on 60% of Alaska's navigable waters for over six years, the State recently filed suit on January 6, 2005, challenging the federal government's final rule implementing the Katie John mandate. The State's new law suit, known as John II, will ultimately determine the scope of the federal government's management authority over fisheries in Alaska's navigable waters.



Katie John celebrates her 90th birthday with Tony Knowles (photo by Bill Hess)

KEEPING THE ANILCA LEGACY ALIVE - ATTENDING TO THE UNRESOLVED ISSUES



by Jim Stratton, Alaska Regional Director, National Parks Conservation Association

I followed the Alaska Lands Act debate from Oregon where parks with names like Gates of the Arctic and Forest Service monuments like Misty Fjords were images in a book and places I hoped someday to explore. So when given a chance to move north and help implement the newly passed Alaska Lands Act I didn't hesitate one minute. I arrived in Juneau to work for the Southeast Alaska Conservation Council six weeks after President Jimmy Carter signed the Bill and was immediately confronted with how to implement this new land protection legislation with Ronald Reagan as President and Jim Watt as Interior Secretary.

Congress did its best to say exactly what it meant in each section of the bill. Some sections are very clear, like those establishing boundaries for new parks, refuges and wilderness areas. But many sections of the Alaska Lands Act that direct public land managers on HOW to manage protected lands are still open to interpretation. Key among those is Title XI: access to and through conservation system units. And of principal concern in Title XI is section 1110 - providing for special access for traditional activities, access to villages and homesites, and access to inholdings - is being actively interpreted and implemented.

In Section 1110(a), Congress directed that the Interior Secretary "shall permit the use of snowmachines, motorboats, airplanes, and non-motorized surface transportation methods for traditional activities and for travel to and from villages and homesites...subject to reasonable regulations...to protect the natural and other values of the conservation system units."

But what exactly is a traditional activity? Other than the two million

acres of the original Mt. McKinley National Park (Old Denali), traditional activities have not been defined. The conservation community the Old Denali definition; traditional activities are those necessary to sustain a traditional, utilitarian rural lifestyle such as hunting, wood gathering, fishing, and berry picking, and such a lifestyle does NOT include recreational activities. The Forest Service, however, seems to think that recreation is a traditional activity and that definition is reflected in the Chugach Forest Plan. The National Park Service has avoided defining traditional activities, other than the Old Denali, which makes planning for how to manage a park somewhat problematic.

Take the rest of Denali, for example. Without a definition specifically excluding recreation, snowmobile high-marking and powder surfing is a perfectly allowable activity, as

reflected in the latest draft of the Denali Backcountry Plan. In the absence of a strict traditional activities definition, the Park Service has adopted the attitude that anything goes, so long as you call it traditional. As long as the term remains undefined it will continue to be interpreted and implemented far too broadly with negative impacts on the very purposes for establishing our parks, refuges, and wilderness areas.

Another concern with how Section 1110(a) is being implemented is the inclusion of All-Terrain Vehicles (ATVs) in the implementing regulations (promulgated during the Reagan/Watt years). Congress was very specific on what forms of access are permitted for traditional activities and ATVs simply are not in the original law passed by Congress. The Reagan-era regulations allow for non-subsistence ATV riding by permit on trails recognized by the

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photo by Alaska Wildland Adventures (www.alaskawildland.com)

ANILCA - 25 YEARS LATER

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study demonstrated that Alaska's intact ecosystems contribute tremendously to Alaska's economy, providing over 84,200 jobs and \$2.6 billion in annual income, in such fields as fishing, tourism, fish processing, recreation, and management and stewardship. Seward, for example, has prospered significantly since the creation of its adjacent ANILCA park, Kenai Fjords National Park.

In terms of ecosystem services, according to the ISER study, Alaska's intact ecosystems conservatively provide at least a \$1.628 billion dollar a year value for such things as clean water, waste treatment and disturbance regulation.

For all of us fortunate to live in or visit Alaska, we also know how much the lands protected by ANILCA contribute to our quality of life. In many ways, this is priceless.

On the occasion of the 25th Anniversary of ANILCA, we should all take the opportunity to thank the remarkable women and men who worked so hard to pass and defend this great law. It is also an important time to renew our determination to safeguard ANILCA so that future generations will be able to enjoy Alaska's magnificent, vast, and profoundly valuable parks, refuges, forests, and wild and scenic rivers forever.



photo by R. Valentine

ECOTOURISM

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demonstrated by the jobs, the purchase of goods and services, the development of lodges and support facilities, and in the collective investment in the considerable expenditures it takes to responsibly market a destination.

After 25 years, the economic engine created by ANILCA goes underappreciated. Wouldn't it be great if one day in the not too distant future, school teachers, school children, business leaders, politicians, bankers, restaurateurs, fast food workers, auto mechanics, refrigerator repairmen, and taxi drivers will recognize and freely

and proudly tell our visitors and residents alike that the protection of Alaska's land and wildlife are totally necessary for the well being of our economy and our way of life?

Consider the wisdom of Theodore Roosevelt:

"The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased and not impaired in value.

Conservation means development as much as it does protection."

NATIONAL INTEREST IN ALASKA'S NATIONAL INTEREST LANDS

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by tens of thousands of grassroots conservation activists working in every state. But the ultimate power was, in fact, in the hearts and souls of everyday Americans. We were motivated by a deep attachment, for Alaska's wilderness is an indelible part of our American dream ... but indelible, that is, only if it is preserved. The lands protected by ANILCA and the Tongass Timber Reform Act—and many other still-unprotected wild Alaskan places that deserve similar preservation—constitute a common

heritage we share with all the children of all the future.

This is why so many Americans have worked so tirelessly to fight the very idea of drilling in our Arctic National Wildlife Refuge. And we will keep on fighting it, whatever comes.

From a crassly commercial point of view, preserving the millions of acres of wilderness gems that are still unprotected on the federal lands in Alaska is in Alaskans' self-interest, for it protects the wild "gold" that entices so many of us from outside to visit and

return as often as we can. We come live out exactly the dreams your state lured us with in the first place, in millions of dollars of glossy tourism advertising featuring all that is vast and wild about the Great Land.

And whether we use these wilderness areas by foot or kayak, or by savoring our own wild dreams just gazing into wild country from ship, bus, or train, we are making cash registers ring all across Alaska.

WELCOME BROOK KINTZ!

Alaska Center for the Environment welcomes Brook Kintz as our new Outreach and Communications Coordinator. He will manage the ACE web site, coordinate the quarterly newsletter, improve outreach and volunteer opportunities at ACE, and assist with membership fundraising. Brook holds a Master's degree in Geography and previously worked for the U.S. Geological Survey's Alaska Science Center as a remote sensing scientist creating land use land cover maps for the state of Alaska.



EXXON PAY UP- ALASKA HAS CLAIM TO \$100 MILLION THROUGH THE EXXON SETTLEMENT "RE-OPENER"

The 1991 Exxon Valdez Oil Spill civil settlement among Exxon, the United States and the State of Alaska for damages to publicly-owned wildlife and wild lands from the oil spill provided a "Re-opener for Unknown Injury."

Today, only 7 of 30 species officially listed as "injured" by the Exxon Valdez Oil Spill Trustee Council are now listed as "recovered". Scientists have documented severe and unexpected long-term ecological harm from Exxon's spill – harm which was not anticipated at the time of the 1991 settlement.

Much of the documented unforeseen harm stems from unexpectedly high levels of Exxon's spilled oil, which remains buried on publicly-owned lands in the intertidal zone and which NOAA (federal) scientists now estimate will take at least another 20 years to naturally degrade.

Please do your part and request the Attorneys General of the United States and the State of Alaska to take immediate action to reopen the 1991 civil settlement and claim the entire \$100 million due from Exxon for mitigation projects of publicly-owned wildlife and wild lands, projects to protect these injured resources from future spills, and public education on oil toxicity.

TELL EXXON TO PAY UP for what they are responsible for. Comments Needed Today!

Sign the online petition at: <http://www.soundtruth.info/takeaction.htm>



Help keep Prince William Sound Pristine - Tell Exxon to Pay Up

ANCHORAGE UPDATE

As you are probably already aware, ACE and our members have been involved in the development of key planning documents that will guide the growth of Alaska's largest city for years to come. Title 21 Land-Use Codes, the Parks Plan and the Long Range Transportation Plan are all issues you've seen many times in this newsletter. The planning process for these documents has taken place over the past several years and we've kept you up-to-date as opportunities for public input have arisen.

The end result of this process is that we have wide community support for comprehensive plans that will help determine the type of city that Anchorage will become in the next 20 years. While they are not perfect, we feel that a conservation voice was incorporated into all of the plans.

And now, after many years of community involvement and public input, these documents are almost complete and are up for Assembly approval this winter.

Unfortunately, as we witnessed this fall with Assembly revisions of the Transportation Plan, the current Assembly has their own agenda for these plans. They are attempting to overturn years of hard work and planning and implement their narrow vision for Anchorage. In addition to injecting their own political bias into these community documents, they are also attempting to re-examine the sign ordinance and the Simonian ball fields.

Your participation this winter is critical to ensuring that public transit, trails, and strong design standards are a part of Anchorage's future. We will keep up-to-date info on our website at www.akcenter.org and you can also join the "Take Pride in Anchorage" email group for the latest alerts.

2005: A YEAR IN REVIEW



by Lena Kilic

As we turn the corner towards a new year, it is a natural time to reflect on what changes we have seen over the past twelve months at ACE. Thanks to supportive members like you, we have had major gains on environmental issues all over the state. It is because of our extensive membership that such a strong voice for conservation in Alaska has been heard. By writing letters, testifying at hearings, and making calls, we have all made sure that 2005 was a fantastic year and we can bring even more people together to celebrate next year! **Thank you!**

- **Minimized environmental damage in the State Legislative session-** In yet another challenging legislative session, ACE and our partners fought off several harmful environmental bills, protected key areas from development in the University Lands bill, and passed the pesticide right to know bill.
- **Fought off a rollback of the pesticide notification law in Anchorage.** When Assembly

leaders attempted to rollback Anchorage's "good neighbor" pesticide notification laws, ACE and our partners worked to protect the law's key provisions, achieving a compromise ordinance that is currently protecting our community.

- **Ensured fair access to the courts.** When the state legislature passed a law to prevent public interest groups from challenging illegal actions in court, ACE was a lead plaintiff in the successful case to declare the law unconstitutional. Superior Court Judge Collins threw the bill out, and a Supreme Court decision is pending.
- **Campaigned for successful transit bond in Anchorage.** In an unusual move, ACE joined forces with road bond proponents to campaign jointly for congestion relief by supporting the roads and transit bonds, and voters responding by approving the transit bond for the first time in years.

- **Helped defeat 'Water World' proposal-** the floating fuel lodge in the Prince William Sound. With lots of public support from various conservation groups, including ACE, the appeal that Water World filed in response to the first decision was denied and the Sound will remain pristine.
- **Played key role in planning for Anchorage's future-** ACE brought a conservation voice to the table and helped bring Title 21, Parks, and Transportation Plans to completion. Now we are working to get those plans passed and start realizing our vision for the future of Anchorage
- **Stopped legally-questionable Coal Bed Methane leasing in the Mat-Su.** After two years of dogged battles over public notice, water quality, noise pollution, and community protection, the Mat-Su leases were forfeited back to the state in recognition of the state's failure to properly regulate and manage coal bed methane.
- **Defended Denali's South Side-** ACE has been involved in the planning process for the Denali South Side Visitors Center project for many years. The potentially destructive proposal for a Petersville Road complex has been pulled from the table and now ACE is working to minimize the negative impact of a proposed Parks Highway visitor's center.
- **A record setting year for Trailside Discovery Camp.** Over the course of the summer, 1,700 kids attended session at the Campbell Creek Science Center to learn about their natural environment and get excited to take part in it. To accommodate



Cottonwood Leaf on glacial silt, Wrangell - Saint Elias National Park. (photo by Carl Battreal)

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2005: ACE YEAR IN REVIEW

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- all the new kids, Trailside has also grown with 15 new programs for an even more varied experience.
- **Maintained momentum on several positive projects for Alaska-** through public education and support of projects like wind energy at Fire Island and commuter rail, ACE is working to support initiatives for a bright Alaska future.
- **Supported conservation groups with the newly created GIS mapping center-** ACE created maps for groups like Alaskans for Responsible Mining (ARM) on the Pebble Mine project to get a more accurate representation of the mine footprint and Arctic Connections to make maps available to the public that actually reflect proposed drilling plans in the Arctic National Wildlife Refuge.
- **Continued to educate the public** through quality publications, timely alerts, and media appearances. Every week, we provide members with the tools to make a difference, as well as information about ways to reduce our impact on Alaska's environment. We're also continuously working to get our message of sustainability and stewardship out to all Alaskans through paid and earned media.
- **United the community through celebration-** ACE celebrations bring people together, educate the community on pressing issues and give people from opposing backgrounds an opportunity to set differences aside and celebrate common ground. This year's Oceans Film Fest, ANILCA Celebration of Wild Alaska, Chugach Days and summer Oceans Fest all had record-setting attendance and great public participation.
- **Got our hands dirty.** ACE staff, board, and volunteers make it a point to get out in the field throughout the year to roll up our sleeves and make a difference; participating in Creeks Clean Up, adopt-a-road, adopt-a-trail, and more.
- **Built and participated in coalitions-** A big part of our success comes from working with partners in coalitions to have a bigger impact than any of us could as a single group. ACE is pleased to be a part of Alaskans for Responsible Mining, Renewable Energy Alaska Project, Alaska Citizens for the Chugach, the Kenai Brown Bear Committee, The Alaska Oceans Network, and the Children's Health Initiative, just to name a few. ACE is also working to forge new alliances with labor, native organizations, and other progressive voices in Alaska.

ANILCA PARTICIPANT'S PERSPECTIVE

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wordsmith, was to make certain that H. R. 39 and each amendment, if adopted, accomplished exactly what it was intended to accomplish, and no more or less. Federal public land law is burdened with centuries of history and legal angles. One of the more daunting legal drafting tasks is to craft a new law (or an amendment to existing law) that conforms to existing land-law precedents without inadvertently opening new interpretations, or creating new rights that might divert federal land management in an unintended direction.

One example of this difficulty is demonstrated by Section of ANILCA ("State Selections and Conveyances"), in which virtually every word in each convoluted provision has recognized legal implications, rooted in the history and process of federal land management since the 1860's. Another example is the "existing access" provision in ANILCA that applies to National Forest lands. Only after ANILCA was enacted

did it become apparent (and confirmed all the way to the U. S. Supreme Court) that the "existing access" provisions of ANILCA apply to all National Forests nationwide, simply because the ANILCA definition of a "National Forest" failed to define these forests as "National Forest in Alaska."

A process for all interested parties in Washington to review and comment on all proposed amendments somehow evolved naturally, during the four years of extended debate and amendment of H. R. 39. There were four major "players" in this ANILCA debate: the federal government, the State of Alaska, the Alaska Native community, and the conservation community. A "Rule of Three" evolved: If a proposed amendment to ANILCA (on any subject) could be reviewed and receive the consent of representatives of three of the four major players, then that amendment could be introduced in a committee hearing and debated on its merits by its sponsor, and by the major

group opposing it.

If a proposed amendment could not obtain the consent of at least three of the four major players, it would not be introduced in committee, but instead would be re-written and re-worked until at least three of the four groups could agree to not oppose it. If the proposal could not be re-worked to the satisfaction of at least three of the groups, then it simply was not introduced in committee. This informal, unwritten "velvet glove" system worked well in expediting the H. R. 39 amendment process. It assured that all amendments to the bill were finely crafted and thought through carefully, in order to gain the most possible support (or at least non-objection) from diverse interest groups, and to avoid a time-consuming battle in committee, or on the floor of Congress. This approach seems alien from the "blunt instrument" approach often used in Washington today; but then, times have changed.

land management agency. This is a wrong interpretation of 1110(a).

Simply put, section 1110(b) provides that “adequate and feasible” access to inholdings shall be given to the state of Alaska and private property owners subject to “reasonable regulations” to protect natural and other values. Inholdings are those privately held parcels of land surrounded by protected federal lands. The need for this access was clearly recognized by Congress but with conditions. The key words to interpret are “adequate and feasible” and “reasonable regulation.”

Over the past 25 years federal agencies have made it clear that “adequate and feasible” is not always the landowners first choice of access. If adequate access is provided by snowmachine in the winter and boat or airplane in the summer, a request for constructing a road will much more likely be denied. This is what

happened in the Hale Family case at Wrangell-St.Elias. The Hale Family, (aka: the Pilgrims), illegally constructed a road, which was closed by the Park Service, and then applied for a permit for unlimited access by bulldozer over the very same route. The Park Service ultimately issued a permit for 9 round trips in winter only when there is adequate snowcover.

Implementing access-to-inholding requests are currently done on a case-by-case basis as each situation is unique. However, to make the process more understandable, the National Park Service is developing an Access Guide that will describe the process.

But during the discussion of what should be in this guide, the state of Alaska and others put forward the concept that the National Environmental Policy Act (NEPA) does NOT apply to these requests. This means the state doesn't want any access to

inholding request to be reviewed in an environmental assessment or environmental impact statement, regardless of its potential impact to park resources. This unreasonable position shows just how contentious access issues can become.

Digging into a technical, regulatory issue that is seemingly mired in legalese and legislative nuance tends to make one's eyes roll back in their head. Yet it is an issue that has huge implications for how our protected areas will be managed to perpetuate the outstanding wilderness and wildlife values that caused our parks and refuges to be established in the first place. Resolving these twin concerns—the legality of non-subsistence ATV use and a traditional activities definition that doesn't include recreation - demands constant attention and vigilance. And eventually a judge that ultimately understands what Congress intended 25 years ago.

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Last Child in the Woods,
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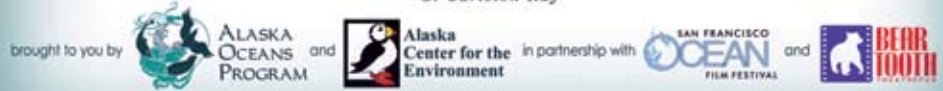
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*The last fallen mahogany would lie perceptibly on the landscape,
and the last black rhino would be obvious in its loneliness,
but a marine species may disappear beneath the waves unobserved
and the sea would seem to roll on the same as always.*

— G. Carleton Ray



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