

STATE OF ALASKA

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DIVISION OF GOVERNMENTAL COORDINATION

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Ms. Sharon Janis, Chief, Division of Realty
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503

Dear Ms. Janis:

The State of Alaska appreciates the opportunity to review the draft Alaska Submerged Lands Act Report, dated September 20, 1989. This letter is submitted on behalf of State agencies and represents a consolidation of State comments and concerns.

In general, State agency review indicates the draft Submerged Lands Act Report fails to satisfy all three components of the report required by the Alaska Submerged Lands Act of 1988 (Public Law 100-395).

Identification of State and Native Lands

The first section of the Act requires the identification and estimation of the acreage of all lands conveyed or selected by an Alaska Native Claims Settlement Act (ANCSA) corporation or the State within the boundaries of a conservation system unit (CSU). This estimation and identification requirement was only partially met. Page 11 of the report states that 1,815,000 acres of additional federal land will be conveyed as a result of this Act. Of that total, regional corporations will receive about 72,000 additional acres and village corporations will receive about 641,000 acres within CSU's. The report assumes that this acreage is the result of valid unconveyed selections within the CSU's. However, this statement is not justified and the accompanying table in the text does not clarify this issue.

In addition, this report does not identify or address ANSCA land that may be conveyed as a result of this Act, as required by the Act. More importantly, the text does not indicate that the State will obtain no additional land within any CSU's beyond that which is already validly selected.

Aquisition Priorities

The second section of the Act states that priorities for acquisition of land currently patented to or selected by an ANCSA

corporation or the State within CSU's shall be identified. The appendices specifically address this issue. We also take exception to the identification process. The agencies responding to the requirements "elected to expand the scope to include National Conservation Areas and National Recreation Areas managed by the Bureau of Land Management, as well as lands within the CSU's which are owned by other than ANCSA corporations or the State".

For example, on page 7 of the report, and throughout Appendix B, there are lands identified that do not fall within the acquisition parameters of the Act. In this case the land identified is all land beneath navigable waters, thus owned by the State pursuant to the Submerged Land Act and the Equal Footing Doctrine. These lands cannot be acquired, therefore, it is incorrect to assert that State ownership of this land "results in increased mileage of as well as establishment of excluded narrow corridors to inholdings which do not necessarily provide reasonable access to private land."

To further state that "federal agencies have limited options in the management of these rivers to preclude or reduce adverse impacts" is also unjustified. The State has already signed a cooperative management agreement for the Gulkana River and we are presently actively involved in the planning process for others as well.

The majority of the report appears to portray overall acquisition priorities of the various federal agencies that do not relate in any way to the intent of Congress - namely the impact and possible need to acquire or in some way protect land that may be conveyed as a result of this Act.

The report is also flawed in that the only acquisition method seriously discussed is direct acquisition. Without further justification, we do not agree that little remaining federal land deemed desirable for land exchanges is available. Other types of protection are also available, such as acquisition of conservation easements or by use of ANILCA Section 907 Land Bank provisions. These options should be addressed in the final document. As you know, most of the conveyed or selected ANCSA lands are already within the Land Bank.

Recommendations

The third section of the Act requires the Secretary of the Interior to recommend administrative or Congressional action deemed appropriate to reduce any adverse effects of the Act on the management of lands or resources within CSU's. While the report contains a comprehensive identification of problems and possible options, it intentionally stops short of providing the required recommendations. Most of the issues identified, such as

underselections, overselections, and available funding, have been discussed at various levels for years. Yet the report states only that the "final report will contain recommendations which will be developed following public comment." While we agree with some of the alternative solutions that are discussed, this draft report fails to make recommendations, thus eliminating the opportunity for the required public review.

Submerged Lands Within Pre-Statehood CSUs

One of the primary issues remaining to be resolved is the management and ownership of land under navigable waters in pre-Statehood federal withdrawals, i.e. pre-Statehood CSU's. The recent U.S. Supreme Court decision in Utah Lake is very clear on this issue - these lands are State-owned. There is no "doubt" about who owns these lands as the report suggests under item 5 on page 14.

Processes for Setting Aquisition Priorities

Appendices A through D describe the processes by which each of the federal agencies have established their priorities for acquiring inholdings in the various CSUs. Unfortunately, there was no coordinated effort among the federal agencies to develop or report on uniform procedures for establishing such priorities. For example, in Appendix A, the Fish and Wildlife Service provides detailed information regarding the methods and results of a comprehensive computer model, while Appendix C provides the National Park Service priority ratings for individual inholdings without describing rating criteria or methodology.

Some of the rating systems appear to discriminate against certain fish and wildlife resources and their uses. The rating process employed by the Bureau of Land Management stresses the value of fish and wildlife habitat, while the FWS model stresses the value of individual species, including their abundance levels. A rating system based on habitat considerations is more useful since populations may fluctuate greatly due to natural or human induced causes. The FWS system also affords greater importance to salmon species having spawning escapements in excess of 100,000 fish. This discriminates against species like chinook salmon that rarely have total runs exceeding 100,000, but are often the most economically and socially important species in an area.

The State is concerned that species under federal management (marine mammals, waterfowl) are afforded substantially greater values than species under State authority, e.g. fish, moose, bear, furbearers. In addition, the FWS model inappropriately affords equal importance to subsistence and recreational uses even though subsistence uses are given priority over all uses in

federal and State laws. Furthermore, the criteria used for evaluating subsistence uses is not flexible enough to take into account the relative importance of an area for a given community.

While the State has noted the above specific concerns with the FWS computer model, we recognize that the new system has value beyond its application for this document. The Alaska Department of Fish and Game therefore requests the opportunity to work with the FWS to refine the computer model for future use.

Page-Specific Comments

Page 11, third paragraph. The document contains a statement that an "adjustment was made for navigability, based on Bureau of Land Management administrative determinations" to calculate the acreage of submerged lands that would be affected by this Act. This report should recognize that the quality of these administrative determinations has vastly improved in the last 10 years. Navigability determinations made 10 or 20 years ago are not a true picture of what would be determined navigable today. Thus land that was purportedly conveyed into private ownership may in fact be navigable and owned by the State, subject to the Public Trust Doctrine. This important fact should be recognized.

Appendix A, page 1, first paragraph. The statement "the Act ruled that submerged lands beneath either non-navigable lakes greater than 50 acres in size or non-navigable rivers or streams less than 198 feet across will not be charged against the land entitlement granted a Native, Native corporation or the State of Alaska. The underlined portion should be changed to read, "more than".

Appendix A, page 26, Fisheries. It appears that the term "salmonoids" referred to in the enabling legislation for several refuges has been misinterpreted. This has resulted in relatively low values assigned to salmonoid species other than salmon, such as trout, char, whitefish, sheefish, and grayling.

Thank you for the opportunity to review this document. The State wishes to be kept informed of progress on the final report. Also, since State agencies were not made aware of the October 3-5 informational meetings, we recommend that appropriate agency representatives meet informally to discuss and consider revisions

in the process. We also specifically request an opportunity for State and public review of the recommendations before they are submitted to Congress.

Sincerely,
Robert L. Grogan



By Sally Gibert
State CSU Coordinator

Identical letters sent to:

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National Park Service
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cc: Walt Stieglitz, Regional Director
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Boyd Evison, Regional Director
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Michael Barton, Regional Forester
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Les Rosendrance, Acting State Director
Bureau of Land Management

The Honorable Lennie Gorsuch, Commissioner
Dept. of Natural Resources

The Honorable Don Collinsworth, Commissioner
Dept. of Fish and Game

The Honorable Mark Hickey, Commissioner
Dept. of Transportation and Public Facilities

The Honorable Dennis Kelso, Commissioner
Dept. of Environmental Conservation