THE
CONCORD REVIEW

I am simply one who loves the past and is diligent in investigating it.
K'ung-fu-tzu (551-479 BC) The Analects

The Rwandan Genocide — Madeline Kaemmerling
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Boxer Indemnities — Ziqing Wang
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THE FEDS ARE COMING: A HISTORY OF COMPETING INTEREST GROUPS AND THE ALASKAN NATIONAL INTERESTS LAND ACT OF 1980

Isaac Stern

Introduction

On January 15, 1979, more than 2,500 Alaskan settlers gathered in protest at the edge of Mount McKinley (now known as Denali) National Park. President Carter had just issued an executive order under the Antiquities Act placing more than fifty-six million acres of land within Alaska under Federal protection. Rowdy and irreverent, settlers shot guns at a King George III effigy (which was also labeled "Carter") and unleashed dogs in purposeful violation of federal regulations.[1] One, dressed up as Paul Revere, shouted: "The Feds are Coming! The Feds are Coming!" To the settlers, Carter's executive action was an outrageous federal overreach that violated the Alaska Statehood Act and undermined Alaskan sovereignty. To Carter, it was a last-ditch effort to conserve the Alaskan wilderness following Congress's failure in 1979 to pass

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the first version of the Alaska National Interest Lands Conservation Act (ANILCA).

Settler protests were just the tip of the iceberg when it came to competing stakeholder interests complicating the path to passing effective legislation. Four interest groups vied for influence in the battle over Alaska land. Energy companies, represented by Citizens for Management of Alaskan Lands (CMAL), sought to secure their ability to extract oil at Prudhoe Bay in northern Alaska and ship that oil via the Trans-Alaska Pipeline to Valdez on the south coast of Alaska. Through the Alaska Coalition, conservationists focused on the long-term preservation of the ecosystems and habitats, viewing the protection of Alaska as a historic opportunity to safeguard America's "finest remaining wilderness."[2] For Native Alaskans, protecting their culture and way of life was paramount. The Alaskan Federation of Natives (AFN) demanded rights to use the land (including those within National Parks) for subsistence hunting and agriculture and official recognition of land rights promised to Native Alaskans in the 1971 Alaska Native Claims Settlement Act (ANCSA). Finally, settlers (non-Native Alaskans), many living on isolated tracts of land inside the boundaries of proposed National Parks, wanted to hold on to their land and way of life in the Alaskan wilderness.[3] While it might appear at first glance that settlers and Native Alaskans shared the same interests, the two groups were actually at odds with each other. Both laid claim to the Alaskan wilderness (and in many cases to the same land within that wilderness). Native Alaskans argued that they had a historic right to live in the Alaskan wilderness, and this claim was respected by the conservationist community. The settlers (who dubbed themselves the "Real Alaska Coalition") were largely made up of recent transplants to Alaska, so they had no historical claims to their land. However, their cause was popular with sportsmen and many non-Native Alaskans who came to Alaska after statehood in 1957. Accordingly, settlers ended up more in alliance with the energy companies and the belief that Alaskan lands should be managed in service of sustainable resource extraction for the benefit of many.[4] Each of the four different interest

groups had overlapping but competing interests in ANILCA, and these conflicts stymied the act's passage through the U.S. Congress.

The election of November 1980 proved to be a pivotal moment, spurring action on Alaskan conservation and land rights. The election of Ronald Reagan, a conservative Republican who favored further oil and gas development, spurred all stakeholders to seek an agreement better than one that the Reagan Administration might deliver or more certain to avoid a Congressional stalemate. While they each had different objectives, conservationists, Natives, settlers, and energy companies all wanted a permanent solution. They banded together in the weeks after the election to forge a compromise and lobby for rapid action. With agreement by each of the key stakeholders, Congress passed the 1980 Alaska National Interest Land Conservation Act (ANILCA), which lame duck President Carter signed into law on December 2nd, 1980.

This paper examines the history of the competing interests that ultimately led to the passage of ANILCA, the long-term impact of ANILCA on Alaska, and ANILCA's influence on the conservation movement around the world. ANILCA is a complex piece of legislation with many different elements.[5] Among other things, ANILCA protected more than 157 million acres from development (adding more than 43 million acres of new national parklands), officially recognized land claims by Native Alaskans, allowed oil companies to continue extracting and transporting oil from Prudhoe Bay while opening up significant additional land for oil and gas exploration, and permitted Alaskan settlers who lived on newly protected land to retain their homes and continue their current uses of land in otherwise protected locations.[6] ANILCA thus achieved what, less than two years before, had seemed impossible: successfully protecting the rights of generally underrepresented groups while satisfying the needs of all four Alaskan interest groups and the U.S. government. The compromise and key provisions established via ANILCA have come to serve as a model for the establishment of national parks around the world to this day.

Historical Background: Protecting Land and Promoting Development in Alaska

The Origins of Alaska Conservation: Mount McKinley National Park

The passage of ANILCA in 1980 was the culmination of more than sixty years of Federal efforts to clarify the competing interests, claims, and controversies surrounding land conservation and development in Alaska. Alaska became a territory of the United States after its purchase in the 1860s, and it received its first meaningful influx of new settlers during the gold rushes in the 1890s. However, it was not until the establishment of Mount McKinley National Park in 1917 that the Federal government became involved in actively protecting and conserving Alaskan land from development. The establishment of Mount McKinley National Park sought to protect the largest mountain on the North American continent using an approach that had already been pioneered in the lower 48 states.[7] Unanimously approved by Congress, little controversy surrounded the park's founding. Congress authorized light development and the construction of roads within the park to enable a proper viewing of the great mountain by visitors. When the park opened in 1921, it was not very popular as it was extremely difficult to access (there was no road providing access to the park). It was not until the construction of the Denali Highway in 1958 that the park saw a meaningful number of visitors. [8] While the establishment of Mount McKinley National Park set a precedent for protecting land in Alaska, it did not establish a park system around the state or resolve the different claims on large tracts of land throughout Alaska.

The Alaska Statehood Act

Federal involvement in clarifying land ownership and use in Alaska began to be addressed but remained uncertain with the induction of Alaska as a state in 1959. The main goal of the Alaska Statehood Act (ASA) admitting "the State of Alaska into the Union" was to ensure the economic well-being of the new state. The ASA included key provisions that began to establish

different claims on the land of Alaska, but left open many questions as to who specifically would control what lands (and under what conditions).[9]

On the one hand, the ASA entitled the new state "to select, within thirty-five years after the admission of Alaska into the Union, …one hundred and two million five hundred and fifty thousand acres from the public lands of the United States" as state land. Alaska had been a Federal territory prior to the ASA. Through the ASA, Alaska was empowered to select some land to be under its own domain. However, the ASA limited state claims of public lands to those that were "vacant and unappropriated" and left open the question of which lands in Alaska met this standard.[10]

At the same time, the ASA reaffirmed the 1884 Organic Act for the Territory of Alaska which had reserved the Natives' right to the land of Alaska, stating that Native lands "shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority." [11] Native Alaskans claimed a large amount of Alaska as their Native lands, believing they had a right to use or occupy almost all of the state.[12] Since the ASA included the right of the state to appropriate land for itself and also respected the claims of Native Alaskans, the ASA left uncertain what type and level of land use by Native peoples rendered the land occupied by them ineligible for use by the State.

Beyond the division of land between the state and Native Alaskans, the ASA reserved the majority of the land of Alaska for the Federal government, disempowering the new state when it came to land rights and management. Under the ASA, Alaska was granted less than a third of the total territory in its own borders, with roughly 320 million acres (out of 425) remaining under Federal control.[13] Notably, establishing new permanent national parks or forests required additional legislation by Congress, not the state of Alaska, and Federal land in Alaska was entirely outside state control. The state of Alaska was left with little power over the majority of land within its borders.

Indeed, after the passage of the ASA, Native Alaskan land rights became the most pressing issue. *The New York Times* called its resolution "a complicated yet urgent task," and Native leaders went to Washington in 1962 to "present their grievances."[14] But little to no progress was made in resolving the ambiguous status of vast tracts of Alaskan land during the early years of Alaska's statehood. During that time, the land was largely unpopulated, with fewer than 230,000 people (less than 0.5% of the U.S. population) in 1960 living in a state that accounted for more than 17% of all U.S. land.[15] Perhaps as a consequence, land rights in Alaska remained a low-profile issue in Washington, and Congress failed to act on Native Alaskan Land Rights in the early 1960s even when prompted.

The Impact of the 1964 Tsunami and the Discovery of Oil in Prudhoe Bay

Two critical events during the mid-to-late 1960s elevated the importance of Alaskan land rights and created pressure to resolve longstanding ambiguities over permitted uses. First, on March 27, 1964, a 9.2-magnitude earthquake rocked Prince William Sound, laying waste to the town of Valdez (the key port linking the Alaskan mainland to the rest of the United States) and devastating the military base of Whittier, Alaska.[16] Reconstructing communities around Prince William Sound required clarifying land ownership and potential uses. It was unclear, for example, whether civilians were allowed to rebuild in Whittier on Federal land where the military base once stood. Second, and probably more importantly, oil exploration that began in the late 1960s around Prudhoe Bay resulted in the discovery of oil by Atlantic Richfield Company (ARCO) in March 1968. Tapping into Alaska's potentially vast oil reserves required building a pipeline from the Northern region (where Prudhoe Bay is located) across the entire state to Valdez (where the oil could be shipped to the lower 48 states), a project that could not be completed or even begun as "the proposed Trans-Alaska Pipeline System (TAPS) would need to cross over land that various Alaska Native groups claimed."[17]

The Alaska Native Claims Settlement Act

Prompted by these developments over the 1960s, the first major legislation to clarify land rights in Alaska after statehood was passed in 1971. The Alaska Native Claims Settlement Act (ANCSA) sought "to provide for the settlement of certain land claims of Alaska Natives, and for other purposes, … as there [was] an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska."[18]

ANCSA included two key provisions that clarified and reorganized land rights in Alaska. First, ANCSA enabled the Federal government and Native Alaskan leaders to extinguish traditional Native Alaskan land rights in exchange for establishing for-profit regional Native Alaskan Corporations that would formally control land rights in particular regions. All Native Regional Corporations would map the land in their respective territories and submit their land claims to Federal agencies (removing land that had been previously managed in trust for their benefit). Native Alaskans in each region would then become shareholders in the regional corporation and receive income or other services from the returns earned from the use of the land.[19] At the same time, to extinguish other Native land rights granted by the 1884 Organic Act for the Territory of Alaska, the Federal government compensated the new Native regional corporations an additional $925 million. Within three years after its passage, forty-four million acres of land had been allocated through ANCSA to 12 Native regional economic development corporations.

A second provision of ANCSA was focused on conservation, authorizing the Secretary of the Interior to withdraw, for conservation purposes, a large amount of land from availability for the use of the State or Native Corporations. Section 17d(2) of ANCSA states: the "Secretary [of the Interior] shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to ensure that the public interest in these lands is properly protected."[20]

The ANSCA set a seven-year time frame for legislation with respect to these "d-2 lands." The Secretary of the Interior was allotted a "two-year period to make withdrawals" and the U.S. Congress then had a "five-year period from the recommendation dates to act" on any "withdrawn land." This small but critical piece of the ANCSA gave Congress until December 18, 1978 to conserve any d-2 lands withdrawn by the Secretary of Interior, or else the lands "shall be available for selection by the State and for appropriation under the public land laws."[21]

Finally, though ANCSA aimed to establish land rights for Native Alaskans and set aside land for conservation, a primary motive for its passage was clarifying land rights in a way that enabled the building of the TAPS. ANCSA provided a pathway for the 1973 passage of the Trans-Alaska Pipeline Authorization Act and allowing the Alyeska Pipeline Service Company to build and operate the TAPS.[22] In other words, as the ANCSA Regional Association notes, the passage of "the ANCSA" had "expansive effects," including "the construction of the Trans-Alaska Pipeline System."[23]

ANCSA fundamentally reshaped land ownership and development prospects in Alaska. At the beginning of 1971, barely one million acres of Alaskan land were in private hands. By the end of the decade, over 145 million acres were privately owned, mostly due to the passage of ANCSA.[24] ANCSA created a way to settle Native Alaskan claims to their homelands through the establishment of capitalist enterprises, reserve Alaskan lands for conservation and preservation, and open Alaskan territories for economic development, including oil drilling and transportation through TAPS. Oil had greased the wheels of that legislative settlement.

Contemporaneous Federal Conservation Efforts

While Alaska was making strides toward private land management and economic development, Federal conservation efforts were increasing nationwide. During the Nixon administration, direct action groups, such as Greenpeace, started to gain prominence and environmentalism became politically popular in the United States. As Historian Meir Rinde writes, President Nixon saw

the "huge political power of environmentalism" and proposed "an ambitious and expensive pollution-fighting agenda to Congress."[25] Nixon wanted to claim the environment as a "Republican issue" and worked with Congress to pass legislation. Between 1970 and 1980, the number of Federal environmental laws and regulations increased by nearly 300%.[26]

When it came to policy, however, the Nixon Administration remained staunchly business first, environment second. It disagreed with environmentalist suggestions of moving away from oil in response to the OPEC oil embargo.[27] Among many efforts aimed at expanding the supply of oil, the Nixon Administration supported ANCSA principally to gain approval of the Trans-Alaska Pipeline Authorization Act. This move "antagonized environmentalists," leaving the perception that Nixon did not "care" about the environment.[28]

Gerald Ford continued Nixon's basic environmental policy agenda: protect the environment, but not at the cost of business. In office for less than three years, President Ford described his position on the environment as follows: "I am committed to the Nation's effort to clean up the environment. At the same time, I am concerned about the costs and impact on the economy. We can't do it all tomorrow."[29] Responding to the energy crisis sparked by the OPEC Embargo, Ford signed the Energy Policy and Conservation Act into law in 1975. While the Act promoted the conservation of scarce energy supplies, it also empowered the Federal government to stockpile oil in a strategic reserve and supported measures to increase domestic energy production. In signing the compromise bill, President Ford stated: "This legislation is by no means perfect…[But, it] should give industry sufficient incentive to explore, develop and produce new fields in the Outer Continental Shelf, Alaska, and potential new reserves in the lower 48 states."[30]

The Carter Administration represented a large shift in environmental policy. When asked whether he would prefer economic development or environmental quality, he simply

said, "I would go with environmental quality."[31] During the 1976 campaign, Carter sought out the support of conservationists, including assembling the group "Conservationists for Carter." Stewart Brandborg, head of the Wilderness Society, stated in 1976, "Environmental leaders don't have to be sold on his superiority."[32] Carter then followed through on his commitment to conservation, passing several important pieces of legislation on environmental cleanliness and pesticide control, and even installing solar panels in the White House. Carter let the public know he would put the "environment first."[33]

The Failure to Pass the Alaska Land Bill in the 95th Congress

Despite broad commitment to environmental protection by both the Carter Administration and Congress as well as the impending ANCSA deadline for legislative action on d-2 lands, the 95th Congress (1977-1979) was unable to pass required legislation. Legislators introduced H.R. 39 (a bill to conserve national interests in Alaska land) in January of 1977 at the beginning of the Carter Administration. However, the introduction of this bill was greeted by extensive efforts by multiple different constituencies to review, revise, seek input concerning, and/or derail the bill. The Carter Administration reaffirmed "the Administration's support for a strong Alaska lands bill, saying…'The establishment and protection of large land areas in Alaska is the highest environmental priority of this administration.'"[34] Different agencies within the Administration conducted detailed studies of the bill's terms and assessments of the environmental impact of reserving areas within Alaska as national parks and monuments. Parallel efforts proceeded in both chambers of Congress to review the bill and propose amendments. The House of Representatives held public hearings, gathering testimony from more than 2,300 people from all walks of life, including 1,000 people from Alaska.[35]

There was of course some opposition: "Development industries and related groups—chambers of commerce, tourist industry, logging industry, miners, and recreation interests—all expressed varying degrees of opposition and became the driv-

ing force behind the Citizens for Management of Alaska Lands (CMAL), a lobbying group formed to oppose [H.R. 39]."[36] Despite these organized efforts to oppose the legislation, the House found most stakeholders to be in favor or neutral, and passed H.R. 39 by an overwhelming margin (277-31) in May 1978.

Despite success in the House, the bill faced strong opposition in the Senate. Both Senators from Alaska, Mike Gravel and Ted Stevens, opposed H.R. 39. Stevens, a Republican, served on the Senate Committee on Energy and Natural Resources, and this committee returned with a marked-up version of H.R. 39 which significantly limited the acreage to be designated as national parks and afforded remaining areas much less protection.[37] These amendments proved unacceptable to the Carter Administration, Senator Gravel, and H.R. 39 supporters in the House. In October 1978, with just days remaining before the Congressional session came to a close, a last-ditch proposal to extend protections for d-2 lands by one year was defeated via threat of filibuster (and walk-out) by Senator Gravel.[38] With Stevens and Gravel in disagreement as to what the bill should include, it became clear that H.R. 39 could not pass during the 95th Congress, and the December 18, 1978 d-2 lands deadline would not be met. The land that was meant to be preserved under ANSCA would be at risk of being claimed by the state of Alaska for potential development. As Alaska Governor Jay Hammond, a former bush pilot, sanguinely noted during public hearings, "it is not easy to be both the oil barrel to the nation and national park to the world."[39]

Carter Invokes the Antiquities Act and Protests Erupt

With the December 18, 1978, deadline looming, on December 1, 1978, the state of Alaska filed for selection of 41,000,000 acres of land under the ASA, including over 9,500,000 acres of lands that fell within the d-2 proposed conservation areas. Carter faced immediate pressure to block the state of Alaska's claims, including a call from 146 members of Congress to take executive action in advance of the December 18 deadline. Carter responded with an executive order under the Antiquities Act to preserve vast

swaths of land in Alaska that fell under proposed d-2 conservation areas: "On December 1, 1978, President Jimmy Carter, in the most sweeping application of the Antiquities Act in history, designated seventeen national monuments in Alaska that totaled approximately 56,000,000 acres."[40] His proclamations each stated in relevant part "Now, Therefore, I, Jimmy Carter, President of the United States of America, by the authority vested in me by section 2 of the Act of June, 8, 1906, (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the [respective designated National Monument] all lands, including submerged lands, and waters owned or controlled by the United States within the boundaries of [the area depicted in accompanying maps]."[41]

Carter's unprecedented use of the Antiquities Act (and bold exercise of executive power) provoked an outcry among all stakeholder groups. All disagreed on what should be the ultimate outcome. Not one stakeholder group believed that Carter's use of the Antiquities Act represented an acceptable permanent solution. Settlers felt that the land had been "taken" from them. Native Alaskans were concerned that the right of Native Regional Corporations to claim lands under ANCSA would not be honored. The Alaska Federation of Natives (AFN) emphasized that, while the Antiquities Act was an acceptable means of preserving the lands pending congressional action, as "…strong legal action [would follow] if…[there was] additional protection" beyond the 56 million acres previously set aside.[42] Representing the oil companies, Citizens for Management of Alaskan Lands (CMAL) objected that "too much of the Federal lands…would be off limits to oil and mineral exploration and timbering," and argued that protected lands should be able to be "reclassified" if later found to have "commercial potential."[43] Even environmentalists, who celebrated the setting aside of the largest amount of land in U.S. history, were unsatisfied. They worried that Carter's executive order in Alaska provided only temporary protections of wilderness areas and demanded that the 17 Alaskan Preserves be codified into law under the National Parks Act.[44]

Governor Hammond, vehemently opposed to Carter's use of the Antiquities Act, pushed to bring together a coalition of all interested parties. He called for the Alaska Coalition (Environmentalists), the Real Alaska Coalition (settlers), CMAL (energy companies), and the AFN (Native Alaskans) to meet in Juneau in January 1979. Hammond emphasized the importance of unity among the parties, worrying that disunity would cause the stakeholders who lived in Alaska to seem "fringe." He implored: "if we choose the fringe, we will be watching from the sidelines while the choices will be made by others."[45]

Meanwhile, on Alaska's frontier, Carter's exercise of executive power under the Antiquities Act sparked protests and civil strife. Local governments in remote wilderness outposts were impassioned: journalist John McPhee wrote, "[O]nly two weeks had passed since the president's proclamation when the City Council of Eagle voted to advise President Carter that it found his use of the Antiquities Act to create the nearby 1.7-million-acre Yukon-Charley Rivers National Monument 'illegal, immoral and in violation of the basic human rights of American citizens.'"[46] Residents believed that Federal lands were and should remain free for public use without restrictions. Historian Timo Allen wrote that protecting these lands as public monuments was nothing less than an attempt "to force local residents to renounce the independence of a subsistence lifestyle and to accept the government-controlled lifestyle of the welfare recipient."[47] National Park Service employees deployed to various towns in Alaska during the summer of 1979 were met with open hostility. Businesses refused to serve them, community meetings descended into yelling matches, and threats were even made against their lives.

Coming Back to the Table: Negotiating ANILCA

The Stakeholder Positions During the 96th Congress

While the protests in Alaska received the most attention in the press, Carter's use of the Antiquities Act prompted the different stakeholder groups to relaunch their efforts to reach

compromise through the legislative process. Notably, between 1979 and 1980, each of the four stakeholder groups sharpened and revised their positions, lobbying (or in the case of the settlers, loudly protesting) to gain advantage and secure the rights that were most important to them.

Conservationists had three main priorities for land use and management: free access, no hunting in the parks, and Federal protection for all d-2 lands. "Old Conservationists" believed in allowing subsistence for Natives but not settlers, while "New Conservationists" believed no subsistence should be permitted on protected lands and that ecosystem preservation should be prioritized over public use.[48] More generally, all Conservationists envisioned that national parks would be managed similarly to those in the continental United States, such as Yellowstone or Yosemite, which prohibited hunting and encouraged responsible tourism. In particular, the Conservationist model did not envision a complete ban on development, but instead allowed for very limited structures, such as park roads, parking structures for automobiles, and lodging to accommodate tourists.[49] Their twin goals were to protect the land while making it accessible.

At base, the energy companies were motivated by profit. This led them to highlight three main priorities: access to oil reserves on the North Slope of Alaska, the ability to use the Trans-Alaska Pipeline System (TAPS), and the ability to develop oil deposits that might be discovered in other Alaskan lands. So long as proposed legislation assured energy companies of continued use of their pipeline, left open the possibility of expansion (in the event that other reserves were found), and grandfathered in standards on existing infrastructure (regardless of future industry regulations), the oil companies did not object to the creation of permanent conservation areas.[50] Because of this narrow focus, the energy companies were able to be neutral on some topics and even aligned with other stakeholder groups in certain areas. For example, the energy companies enjoyed at least some support (or at least not fervent opposition) from both the Real Alaska Coalition and the

AFN. Each of these groups relied on income from the pipeline to support their respective communities.[51] CMAL and the energy companies even signaled that there was room to maneuver with respect to the priorities of Conservationists. For example, a CMAL representative made clear that as long they maintained access to the oil reserves and the ability to transport oil over TAPS, energy companies were neutral on conservation issues.[52] Though distrusted by conservationists, the oil companies were willing to negotiate with them and other stakeholder groups to find a solution that protected their already planted stake.

Native Alaskans, on the other hand, placed a high priority on maintaining access to and use of the land and resources that they had enjoyed before Carter's designation of national monuments under the Antiquities Act.[53] ANCSA had solidified the power of Native Alaskans by clarifying their land rights and concentrating land management through Native Regional Corporations. The AFN leveraged this position with respect to energy companies. AFN President Willie Hensley recognized the value of income from the pipeline as "a safety net," but likewise noted, "it wasn't as if we had to support the pipeline."[54] TAPS was simply not essential to their culture and way of life. As a consequence, Native Alaskans were less concerned with currying the favor of CMAL than the state of Alaska, settlers, and others dependent on the pipeline. Native Alaskans leveraged their relative independence from other stakeholder groups and political power within the state to push for three main demands: no parking structures in National Parks, statutorily protected subsistence rights, and free access to all protected lands for their peoples.[55] Native Alaskan demands were simple but strategic. By limiting infrastructure, they would restrict tourism in and to Alaskan National Parks and reduce the disruptions that tourism could bring to their ancestral lands. By guaranteeing subsistence rights and free access to Federally protected lands, Native Alaskans could permanently preserve their customs and traditions in living off that land. Apart from these needs, Native Alaskans were willing to negotiate almost all other terms.

Finally, settlers wanted the same access to lands that they enjoyed before Carter's invocation of the Antiquities Act. To them, the purpose of conservation should be sustainable resource extraction—promoting both their way of life and the opportunity for oil, gas, and mineral extraction.[56] As a group, they were more dependent than Native Alaskans on the jobs that the pipeline provided and had less leverage in terms of land ownership. For them, additional protection of land meant a loss of jobs, loss of subsistence use of the land, and possibly even loss of their homes. Thomas Snapp, a writer for *The New York Times*, reported that "leaders [of the Real Alaska Coalition] declared the regulations for the newly created national monument [protected lands], an expansion of the park so unreasonable as to be clearly at odds with the Declaration of Independence's promises of life, liberty, and the pursuit of happiness."[57]

Lacking the land and political standing to demand that others negotiate on their terms, settlers turned to civil disobedience to get their points across and attract media attention to their cause.[58] While early protests included only a few marchers in the major cities, such as Fairbanks and Anchorage, demonstrations quickly spread across the state and started to include effigies of President Carter (which at one point were thrown off a pier in the small fishing town of Ketchikan). Hand-lettered signs read: "We Don't Want Carter's Park," "Jimmy's Got a Case of the Gimmies," "Sierra Club Go Home," and "Alaskan Lands for Alaskans."[59] By January 1979, thousands of protesters gathered within Federal parks and engaged in different acts of civil disobedience. In the "Great Denali-McKinley Trespass," the Real Alaska Coalition burned effigies, let dogs free on Federal land, and even staged an impromptu (and unsuccessful) wolf hunt.

The protests had their intended effect, raising awareness in the "lower forty-eight" about the strong objection of many Alaskans to the Federal protection of lands there.[60] The demonstrations sparked state and nationwide debates on whether the use of the Antiquities Act by President Carter was government overreach,

seeding doubt, even among some who were initially "pro-park" people, as to whether they wanted the parks at all.

Initial Failure During the 96th Congress: January 1979-November 1980

The interests and powers of each of these stakeholders clashed in conflict as the new 96th Congress got underway in January 1979. H.R. 39 was reintroduced into the new Congress as the Alaska National Interest Lands Act (ANILCA), and it failed in much the same way as it had in the previous year. The House of Representatives passed ANILCA in May 1979. A Senate subcommittee then marked up the bill with terms unacceptable to the Carter Administration, conservationists, and the House. Senator Gravel again prevented consideration of the bill on the Senate floor. The 1979 Congressional Session came to a close with the bill stalled.

The full Senate took up consideration of the bill again in the summer of 1980 and managed to pass its version of the bill. By this time, several competing amendments had been developed by the Senate. The Senate balanced, to varying degrees, the countervailing (and in some ways inconsistent) concerns of the four competing stakeholder groups. For example, the Senate version of ANILCA protected vast swaths of land (in line with the goals of Conservationists) but prohibited new roads or parking structures (in line with the goals of Native Alaskans). True to form (and despite these changes), Senator Gravel continued to threaten to filibuster. However, on August 18, 1980, the Senate voted to end Gravel's filibuster and approve their version of ANILCA.[61] Unfortunately, this was not enough to make ANILCA a law. The Senate vote created an alternative version of ANILCA to the one passed by the House and left the fate of the bill in limbo as the election of 1980 loomed.

ANILCA: Not a Consensus but a Compromise

The 1980 election was a political turning point that broke the log jam in Congress. Blamed by settlers for Carter's invocation of the Antiquities Act and Alaskan residents for serving interests

outside the state, Senator Mike Gravel lost the Democratic primary in August 1980, and a Republican, Frank Murkowski, was elected in 1980 to the Senate in his place.[62] Moreover, Republicans would gain a majority in the Senate.

Even more significantly to the Alaskan conflict, Carter lost the 1980 election in an electoral landslide to Ronald Reagan. Reagan's position on conservation was the antithesis of Carter's when it came to Alaska. Reagan not only prioritized economic development, he had also expressed opposition to H.R. 39 and asserted "that [environmental] regulatory procedures must be reformed."[63] Alaskan environmentalists, settlers, and Native Regional Corporations all feared the immediate reversal of Carter's executive action and the possible loss of their respective priorities for land use that such a move would entail.[64]

To protect their interests from the new Administration and a Congress favorable to oil and gas industries, each of these key stakeholder groups softened its position and rallied in support of the Senate version of ANILCA. Only eight days after the 1980 election, the House passed the Senate version of ANILCA without any changes.[65] And, on December 2, 1980, President Carter signed ANILCA into law.

ANILCA stands out for its reach and unusual mix of provisions relative to other United States National Parks Acts. Under ANILCA, "overnight, the national park system and national wildlife refuge system would more than double in size…In all, ANILCA permanently protected well over 100,000,000 acres—almost the size of Italy and Greece combined."[66] ANILCA "approved" promised land grants to Native Alaskan Regional Corporations and the state government under ANCSA.[67] ANILCA also directed specific agencies, such as the federal Bureau of Land Management (BLM), to manage the use of Federal lands in the state. Notably, contrary to National Parks in the lower forty-eight states, ANILCA permitted subsistence practices by both Native Alaskans and settlers so long as animal populations and habitats are not endangered. ANILCA "provided the opportunity for rural residents engaged

in a subsistence way of life to do so" without securing a license or permit. Existing land use practices and homestead claims of both non-native and Native Alaskans were likewise "grandfathered in." Locals were "permit[ed]…the use of motorized vehicles" in the park under almost any legal circumstance. And the land was not heavily policed by rangers. At the same time (and in a nod-to Native Regional Corporation concerns), ANILCA banned almost all new development on parkland. No roads, resorts, or even hiking trails may be built by the Federal government.[68]

At the time of its passage, many politicians hailed ANILCA as a significant achievement. Carter himself stated that "passage of a balanced Alaska bill has been my highest environmental priority since the beginning of my Administration, and the bill approved today closely resembles the proposals I sent to Congress more than three years ago."[69] At the same time, many legislators were disappointed that the law fell short of the measures they hoped to secure. Representative Morris Udall (D-Az), who had pushed for an earlier version of ANILCA with greater conservation measures, was crestfallen: "Neither I nor those who support me consider this legislation to be a great victory for the cause."[70] Alaska House Republican Don Young, on the other hand, commented that "I hope we can come back in the next Congress and unlock more lands for mineral development."[71]

ANILCA reflects a "draw" across the key stakeholder groups, as opposed to a win for any one or a consensus among them. As the Alaska Department of Fish and Game succinctly stated: "The precedent-setting compromises of ANILCA challenge Federal land managers to cooperate with others to balance the national interest in Alaska's natural resources with recognition of Alaska's fledgling economy and infrastructure, and its distinctive rural way of life."[72]

While disappointed that ANILCA did not extend to all areas of Alaska that they had hoped to protect, conservationists were generally satisfied with the Act and the compromises struck within it. ANILCA extended permanent protection to the wilderness areas at a scale never achieved before (or after) anywhere

in the world.[73] National parks in Alaska are generally much less accessible to visitors than National Parks in the lower 48 due to a lack of infrastructure.[74] While conservationists ceded hunting bans in the parks in service of subsistence rights, endangered species remained covered under the Endangered Species Act and are exempted from all hunting for any purpose in the parks.[75]

Native Peoples were successful in securing statutory protection for both land and subsistence rights through ANILCA. Land rights promised under the ASA and ANCSA but left uncertain were allotted to Native Regional Corporations under ANILCA.[76] Subsistence rights for Native Alaskans were likewise protected, allowing them to continue to live in approximately the same way they were living before the Act.[77] The importance of this legislative achievement to Native Alaskans cannot be overstated. As Mike Fleagle, former Federal Subsistence Board Chair, explained:

> For millennia—or as many Tribal people prefer to say *since time immemorial*—Indigenous Peoples have relied on the plentiful resources of the lands and waters of what would become known as Alaska for their sustenance, livelihoods, and cultural identity…This age-old (or infinite according to the Native perspective) dependence on natural resources for survival has been ingrained into the fibers of their persons and societies to the point of being the primary focus of their cultural identities at a deep spiritual level.[78]

Settlers, on the other hand, were initially resistant to the passage of ANILCA. Settlers saw ANILCA as a permanent instantiation of the Antiquities Act and overstepping by the Federal government on their rights. Over the longer term, though, many settlers did benefit from the Act, keeping their jobs in energy and gaining access to greater employment opportunities with the Federal agencies charged with ANILCA's implementation. It took a while, but eventually, many settlers started to "warm up" to the idea of parks in Alaska. Still, some settlers never let go of their anger, frustration, and fear with respect to the National Park Service. Over four decades after the Act's passage, residents of Slana, Alaska, continue to resist the National Park Service (echoing the same concerns

they voiced in 1979) while enjoying the land use carveouts that ANCILA afforded them to protect their way of life.

ANILCA met the needs of energy companies by granting them the permanent access they needed through protected lands in the state. This certainty incentivized energy companies such as Exxon to build corporate offices in Alaska and to continue to fund infrastructure development.[79] Laying the foundation for permanent drilling in Prudhoe Bay and needed transport through TAPS, ANILCA set a precedent for oil companies to invest in Alaska even further, which helped grow the economy over time.

Long-Term Consequences of ANILCA in Alaska

Rarely visited, the National Parks in Alaska remain among the largest in the world and considered by many to be some of the most beautiful. In accordance with ANILCA, they lack parking structures, hotels, and other infrastructure (with many accessible only by plane). Gates of the Arctic National Park, over six hundred miles from Anchorage, Alaska, for example, span 8,500,000 acres and contain no roads and no trails. Hailed by the National Park Service as "a true wilderness experience," the park is home to 500,000 caribou and welcomes only about 30 visitors per day.[80] Just as Native Alaskans hoped, ANILCA's prohibitions on development inhibit travel to many of these parks, specifically those in Northern Alaska. Inaccessibility has proven to be a blunt but effective instrument in sustainably preserving true wilderness.

Three hours inside Wrangell-St. Elias National Park, the town of McCarthy, Alaska, reflects the stalemate that has enabled ANILCA's stunning conservation legacy. Sister town to the Kennecott Copper mines, McCarthy was built in 1900 (long before ANILCA), and boasts twenty permanent, year-round residents who remain entitled to their land in the middle of the National Park under ANILCA's carveouts. Next to the town rests the old, broken-down copper mine of Kennecott, which the National Park Service is not allowed to restore, but instead only permitted to maintain to the point so the mine does not fall.[81] Outside of Mc-

Carthy & Kennecott, the park's sole privately owned hotel is only accessible by plane, able to operate by the allowance of homesteads under ANILCA.[82]

At the same time, and notwithstanding ANILCA's restrictions, the statute has promoted development elsewhere in the state. Tourism has become the state's second largest industry, primarily via cruises along the southern coast. The balance achieved by ANILCA has benefited almost all of Alaska.

ANILCA and Global Conservation

ANILCA was a compromise rooted in a stalemate whose passage came together during the waning days of the Carter Administration. Given the interests of different stakeholders at that point in time, ANILCA prioritized the conservation of wilderness, wildlife, and ecosystems over public access and sustainable recreation. The Act preferences rural subsistence (by both Native peoples *and* settlers) over land uses prioritized in other national parks (including the recreational benefit for all). While ANILCA was accomplished under what might seem like the most unlikely of circumstances, the approach used to establish its main tenets has come to serve as a framework for many national parks' laws worldwide. ANILCA defined a new priority of public use for national parks, one that elevates conservation while still balancing competing interests fighting for resource extraction and legitimizing existing subsistence communities. Over time, the compromise struck by stakeholders proved to be an effective and sustainable formula for protecting the needs of Native residents, preserving the environment, and promoting economic growth in the state. Conservationists around the world continue to learn from this unlikely case study to this day. As environmental scientists Egan Cornachione and Paula Pletnikoff noted:

> The top-down conservation planning of ANILCA, based upon the best available scientific data at the time, is a strong example parallel to the IUCN's recommendation that each ecosystem type be protected within the scope of each law…From an international perspective, ANILCA serves as a useful case study in not only putting these guidelines into

law but also how to observe their effectiveness over time. While it does not fully address every component of conservation best practices, it achieves pieces of each. In this way, ANILCA provides a useful lens for witnessing how the current best practices in conservation legislation are continually unfolding in Alaska.[83]

Conclusion

ANILCA was a milestone in Alaskan history and the history of conservation efforts more broadly. The compromise reached under ANILCA achieved a unique conservation footprint, one where each of the four interest groups—energy companies, conservationists, Native Alaskans, and settlers—had their principal needs addressed, but not through the balance any might reasonably have anticipated.

The culmination of this distinct configuration of interests created a park system in Alaska that is meaningfully different than that found in the lower forty-eight and, ironically, served the Nation's interests more broadly. Trade-offs made time stop in Alaska's National Parks, then advanced both U.S. conservation and energy independence. The "price" of doubling the size of U.S. National Parks was curbing both conservation in Alaska (to permit, prioritize, and sustain existing ways of life by Native Alaskans and settlers there) and tourism from the "lower-48" (that would enable more people from the U.S. and around the world to enjoy them). The stalemate achieved sustained vast ecosystems of unspoiled wilderness but meaningfully bounded the livelihoods of the people of rural Alaska. Meanwhile, exploration and oil production in Prudhoe Bay has sustained the production of hundreds of thousands of barrels of oil per day, and TAPS continues to facilitate crude oil transport to Valdez without jeopardizing the isolation of these lands or the people who call them home.

ANILCA continues to serve as an exemplar to this day, demonstrating the potential of balanced, respectful conservation, that honors the land and intentionally protects the varying rights of all stakeholders. This historic act continues to have profound and lasting impacts not only on Alaskan land, but also conserva-

tion movements and ecological stewardship worldwide. Somewhat shockingly, the rushed, messy, and imperfect ANILCA established a sustainable system that has worked to conserve some of the most beautiful wildernesses in the world for the past four decades and will continue to do so for years to come.

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