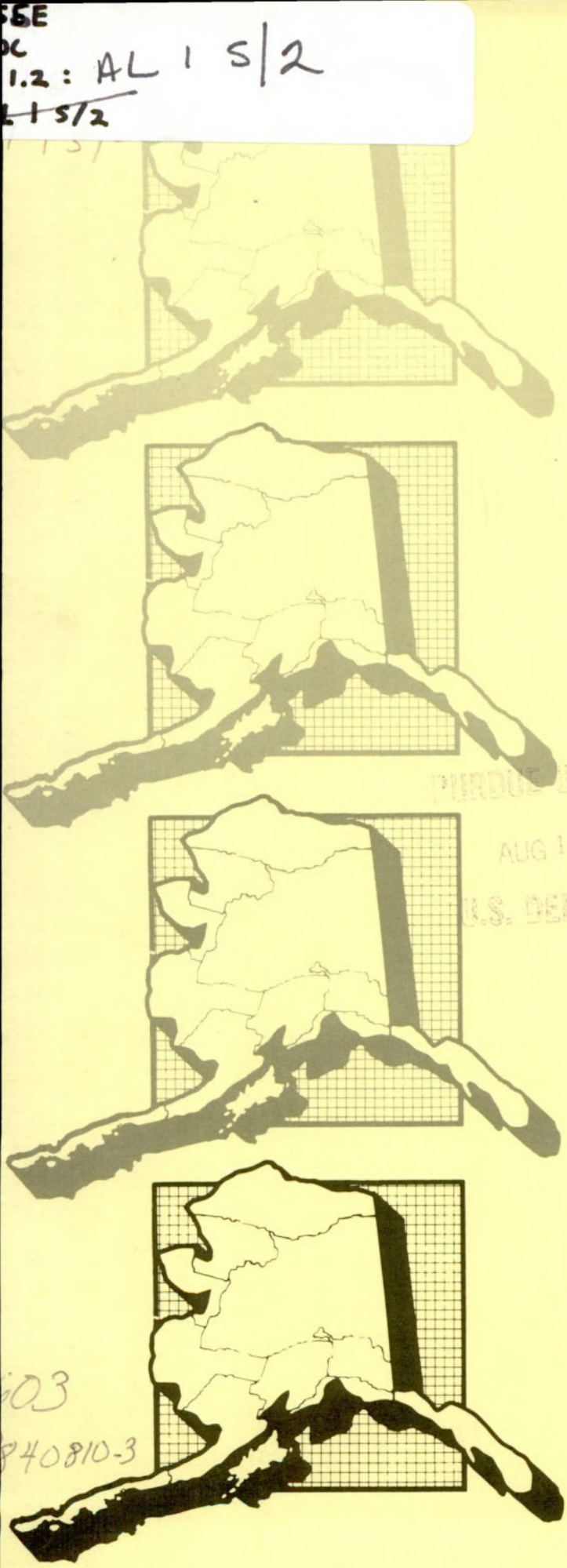
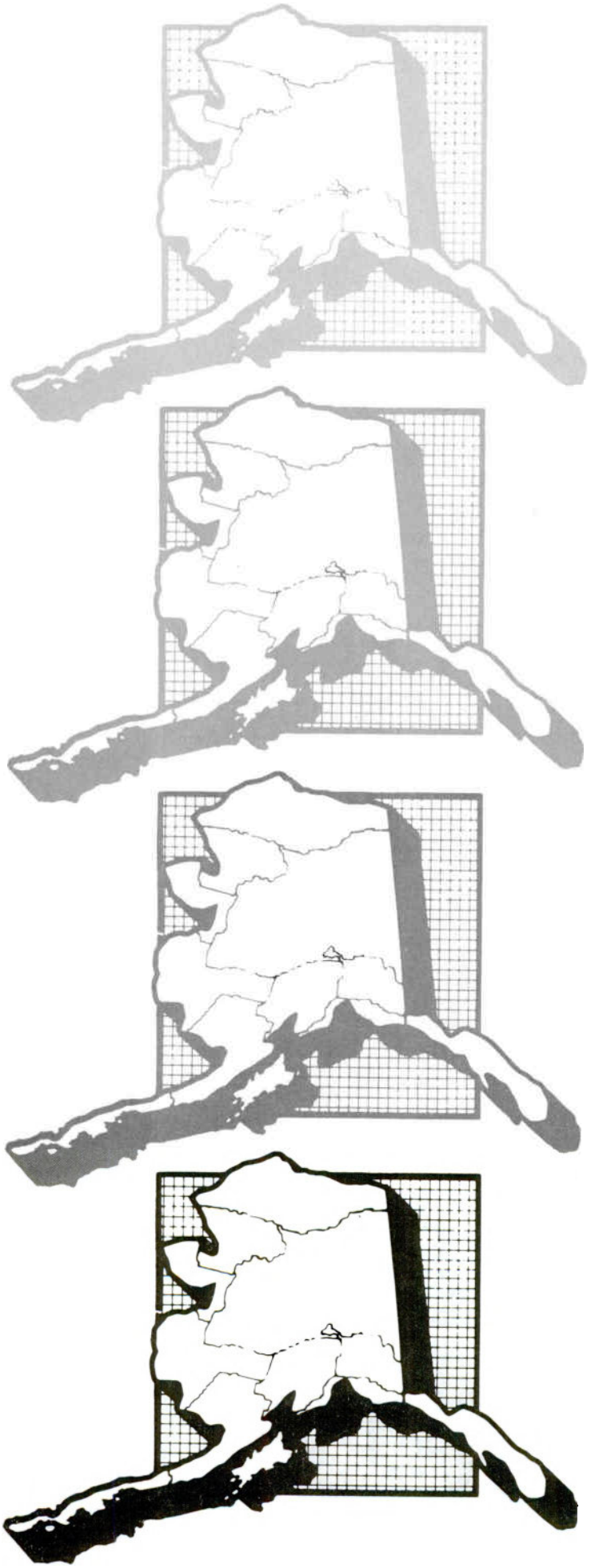
ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)



ANCSA 1985 STUDY

June 29, 1984 DRAFT

United States
Department of the Interior



ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

ANCSA 1985 STUDY

JUNE 29, 1984 DRAFT

United States
Department of the Interior

Prepared by ESG
5201 Leesburg Pike
Falls Church, VA 22041

PREFACE

Section 23 of the Alaska Native Claims Settlement Act (ANCSA) requires the Secretary of the Interior to submit to Congress in 1985 "a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under the Act, together with such recommendations as may be appropriate." This draft report of the "ANCSA 1985 Study" has been prepared for the Secretary by ESG under Contract No. K51C14201208.

The draft is organized in five parts, preceded by an executive summary and followed by several appendices. Parts I and II provide historical background and summarize the provisions contained in the legislation as enacted in December 1971. Part III traces the implementation process, ongoing as of June 1984, and discusses major amendments. Part IV addresses changes in the status of Alaska Native individuals since ANCSA's passage. Part V considers the current status of the corporations established by ANCSA and of other Alaska Native entities. Part VI, "Conclusions and Recommendations," is not included in this draft; it will be prepared following public comment on Parts I through V.

As the primary audience for the report consists of members of Congress and their staffs, many of whom lack familiarity with the act and with its Alaskan context, an effort has been made to provide ample background and to limit the discussion to salient points without failing to convey the complexities of the act and its ramifications.

CONTENTS

PART I

A NEED FOR A SETTLEMENT:
A History of the People, the Land,
and the Question of Legal Status

EXECUTIVE SUMMARY

PART II

REALIZATION OF A LEGISLATIVE SETTLEMENT:
The Alaska Native Claims Settlement Act
December 18, 1971

PART III

IMPLEMENTING THE SETTLEMENT:
A Thirteen-Year Perspective

CHAPTER 8: THE LAND SETTLEMENT (continued)

PART IV

STATUS OF ALASKA NATIVES

PART V
STATUS OF THE ANCSA CORPORATIONS

CHAPTER 19 (continued)

EXHIBITS

Part III, Chapter 11 (continued)

Part IV, Chapter 12

APPENDICES

[See individual table of contents for each appendix]

EXECUTIVE SUMMARY

IMPETUS FOR A LAND CLAIMS SETTLEMENT

By the end of the 1960's, pressure was intense for resolution of what was by then the "Alaska Native land claims struggle." A deadlock on the State of Alaska's future was tightening. In granting statehood in 1958, Congress had sought to ensure Alaska's economic viability by authorizing it to select and obtain title to up to 103 million acres from "public lands of the United States which were vacant, unappropriated, and unreserved." Moreover, the State was permitted to lease lands for which it received "tentative approval" under section 6 of the Statehood Act. At the same time, Congress had provided in section 4 of the Statehood Act that Alaska must disclaim all right or title to lands "the right or title to which may be held by Eskimos, Indians, or Aleuts."

Yet, Congress had not—in the Statehood Act or in earlier legislation—defined what "right or title" the Native people might have. Nor had Congress determined the means by which the Native people might obtain title to the lands they occupied and used; Natives owned outright only a miniscule portion of the land. It was therefore inevitable that village after village would mount protests during the 1960's as the State proceeded with its selection of "vacant" public domain lands and began to issue mineral leases on some of those lands.

Although the State land selection process posed the biggest threat, Native land use was also endangered as the Federal Government made known proposals to withdraw lands from the public domain for development purposes. As the land threats multiplied, Native leaders traveled to villages warning that unless claims and protests were filed with the Department of the Interior, lands the villagers considered theirs would soon become the property of others. By 1968, 40 protests laying claim to Native lands had been filed with the Department. Because many areas claimed were overlapping, the total acreage under protest—about 380 million acres—was slightly greater than the land area of the State.

Natives from 24 villages petitioned Interior Secretary Stewart Udall in 1963, asking that all transfers of land ownership be stopped until Native land rights could be confirmed. In late 1966, in the face of mounting Native protests, Udall informally initiated a land freeze. This freeze, which Udall formalized

by executive order before leaving office in January 1969, halted all transfer of lands claimed by Natives until Congress could act on the claims. Although the State fought the freeze in the courts, it stayed in force through 1971. The State was thus barred from obtaining title to and issuing leases on lands which it selected. The State was also losing revenue because, under the terms of the freeze, no oil or mineral leases could be issued on Federal lands.

Continued filing of protests by Native groups, continued litigation, and continued land selections by the State of Alaska intensified the land claims dilemma. At the end of the decade, however, an odd coalition of interests emerged as a catalyst to its resolution. Oil—an estimated 9.6 billion barrels—was discovered in Prudhoe Bay.

In the 22 oil lease sales it held prior to the Prudhoe Bay discoveries, the State netted less than $100 million. Following those discoveries, the State sold leases for more than $900 million in a single day, September 10, 1969. It was widely believed that America's energy problems could be solved if the oil could be brought to market. Plans to construct an 800-mile Trans-Alaska pipeline from the North Slope to Valdez in the south got underway. National oil companies and contractors made enormous investments in anticipation of pipeline construction and were anxious to recover them. But the Federal Government could issue no permits for construction until the Alaska Natives' claims to the land were settled.

As the energy interests threw their weight into achieving quick resolution of the land claims, another interest coalition let its presence be known. Amidst the oil euphoria, conservationist groups and concerned Alaska residents warned of the need to maintain Alaska's open spaces.

THE CONVERGENCE OF NATIVE CLAIMS ISSUES

By the 1970's, the land claims dilemma was clearly the biggest problem the State of Alaska faced—and clearly one that had to be solved at the national level. The individual claims of Native villages had coalesced and found statewide voice in the Alaska Federation of Natives (AFN). Congressional hearings had been held and a voluminous record compiled. Task forces and study groups with Federal, State, and Native representatives had presented findings and recommendations. It was amply evident that Alaska Natives had valid land claims that must be recognized.

Furthermore, it was plain that the solution to the land claims problem must be legislative rather than judicial. To do justice to the Native people, the State, and the larger national interest, settlement of the issue needed to be both conclusive and prompt. What was required was the certainty, the flexibility, and the detail of a legislative settlement; a surer, more complex and imaginative resolution than simply confirming or denying title to specific tracts and awarding compensation; and a far more timely resolution than could reasonably be expected from the courts.

Congress, the Nixon administration, the State, and the Native leadership were in general agreement that the Alaska Natives must obtain both a land base and cash compensation for lands taken in the past or by the settlement. It remained for Congress to resolve the debates over method and means. Underlying those debates were fundamental issues:

- What settlement terms would afford justice to the Native people and fairness to all parties involved?

- Could legal or historical precedent provide guidance as to where the line should be drawn for the purpose of confirming or denying title to public lands in Alaska to the Alaska Natives?

- How, in the context of the 20th century, could the Native claims settlement effect a wiser resolution than had been typical of our country's history in dealing with Native people in other times and other States?

The eventual response to these considerations—and to years of debate over the settlement terms—would be the Alaska Native Claims Settlement Act (ANCSA). The act resulted from a legislative compromise that included the proposals of influential Native leaders. As the Alaska Federation of Natives (AFN) was the key lobbyist for the passage of settlement legislation, many of its views are therefore reflected in the legislative history; in fact, AFN's settlement proposals contributed the main features of the ANCSA settlement package. AFN sought a means of protecting aboriginal rights, preserving traditional culture for its intrinsic value, and permitting Natives to determine their own destiny. In a series of memorandums and position papers to Congress during the ANCSA hearings, the organization asserted that a land base was the only viable way to achieve those ends. Throughout, AFN stressed that, for a majority of Natives, land was more important than money. To provide for continued use of the lands, the AFN proposed that incorporated villages manage the lands' surface and that for-profit regional corporations achieve a balance between the need for economic development and the desire to preserve traditional values.

By 1971, AFN proposed a settlement of 60 million acres of land, $500 million from the U.S. Treasury, and a perpetual 2-percent royalty from State of Alaska resource revenues. Native corporations at the regional and village levels would manage this settlement for the benefit of Natives and their descendants. The regional corporations' charters would authorize them to undertake projects to promote the "health, welfare, education, and economic and social well-being" of their constituents.

In addition to the positions of the Native leadership, the views of Native villagers were taken into account through the hearings process. A wide range of views—encompassing social, economic, and cultural needs and goals—were expressed, but the importance of continued use and occupancy of the land was the central theme that unified the testimony. Desires to attain self-determination and self-sufficiency and to retain cultural identity were tied to this key point.

PROVISIONS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AS ENACTED DECEMBER 18, 1971

POLICY AND INTENT

ANCSA was not to be considered social welfare legislation. That point is made frequently in the legislative history. Yet a pivotal 1968 report to the Senate Committee on Interior and Insular Affairs prefaced its presentation of "appalling" statistics on the social and economic conditions of the Alaska Natives by stating that the matter of improving Native living conditions and that of settling Native land claims were indeed one issue. A Senate Interior Committee report in 1971 expressed the view that the unresolved status of Native lands had had a role in subverting both traditional livelihoods and the possibility of social and economic progress on a modern footing.

The settlement effected by ANCSA was intended to compensate Alaska Natives for the extinguishment of title to lands they claimed. At the same time, the legislative history evinces Congress' intent to provide the Native people with means for improving many of the conditions under which they lived. In ANCSA's declaration of policy [section 2(b)], Congress stated that it intended a fair and just settlement of the Alaska Natives' aboriginal land claims. The settlement was to meet the real economic and social needs of Natives and provide for maximum participation by Natives in decisions affecting their rights and property. It was to do so without establishing permanent racially defined institutions, rights, privileges, or obligations and without creating a reservation system or lengthy wardship or trusteeship.

The broad statutory purpose expressed in section 2(b) of ANCSA echoes key themes that ran throughout the course of congressional hearings, floor debates, and reports. Congress stressed the importance of social and economic improvements for Natives, beginning at the rural village level where 70 percent of the Native people resided. The benefits of ANCSA and the corporate mechanisms to manage those benefits were intended to play a role in this social and economic betterment, although they were never intended to meet all the needs of Alaska Natives. Indeed, Congress made clear that the passage of ANCSA was not intended to terminate any existing or future Federal Indian programs in Alaska.

The report accompanying the final House bill further clarifies Congress' intent. The amounts of land and money conveyed to Natives under ANCSA would be based not upon the probable extent of aboriginal title but, rather, upon the land base needed for subsistence livelihood and, primarily, upon the assets needed for economic development. Regarding land, the report states that:

> In determining the amount of land to be granted to the Natives, the Committee took into consideration the land needed for ordinary village sites and village expansion,

> the land needed for a subsistence hunting and fishing economy by many of the Natives, and the land needed by the Natives as a form of capital for economic development.

In reference to land use, the report states:

> The acreage occupied by villages and needed for normal village expansion is less than 1,000,000 acres. While some of the remaining 39,000,000 acres may be selected by the Natives because of its subsistence use, most of it will be selected for its economic potential. The land selected is not required to be related to prior use and occupancy, which is the basis for a claim of aboriginal title.

As to money, the report states that:

> The $925,000,000 figure [$965,000,000 in the legislation as enacted] is an arbitrary one. It is not intended to be related to the value of the lands claimed by the Natives under the doctrine of aboriginal title.
>
> The figure chosen by the Committee, $925,000,000, over half of which will come from the State, is based on the following considerations: the extreme poverty and underprivileged status of the Natives generally, and the need for adequate resources to permit the Native to help themselves economically. The Natives constitute about one-fifth of the total population of the State, but they are almost completely lacking in the capital needed to compete with the non-Native population and to raise their standard of living through their own efforts. The money grant in this bill is intended to provide that capital.

Regarding the matter of how Natives were to manage the settlement proceeds, the expectations of Congress deviated from those expressed in other Indian legislation. Two threads wind through the legislative history. First, Congress intended that management of the capital and the land would be in Native hands. Second, Congress desired Native management to be free from Federal, State, and local non-Native government control, yet in harmony with governmental objectives. Further, while Congress did recognize the necessity of the land base to Alaska Native cultural survival, its expectations centered around commercial use of the land for improving Native social and economic conditions, allowing for Native self-determination, and ensuring complementary Native and State goals.

TERMS

Congress declared that the ANCSA settlement extinguished all Native claims of aboriginal title, including any aboriginal hunting and fishing rights and any pending or statutory claims. The settlement was to be accomplished "with certainty" and "without litigation." ANCSA's provisions were not to be construed as granting implied consent to Natives to sue the United States with respect to the claims extinguished. Nor were they to set a precedent for reopening, renegotiating, or legislating any past settlement with any Native or American Indian entity.

In compensation for the extinguishment of broad aboriginal claims to Alaska's land and resources, Alaska Natives were to receive a cash settlement of $962.5 million, to be paid over a number of years from an Alaska Native Fund established in the United States Treasury. Congress would appropriate $462.5 million over an 11-year period, and the State would contribute a 2-percent share of its mineral revenues until the balance of $500 million was reached. The Natives would also receive title, including both surface and subsurface rights, to 40 million acres of land (slightly less than one-ninth of the total acreage of the State).

In addition to the land grants to Native entities, the legislation contained broad authorization for the Secretary of the Interior to withdraw public lands in Alaska for possible designation as national parks, forests, and wildlife refuges.

MECHANISM FOR EFFECTING THE SETTLEMENT

Alaska Natives who were living at the time of enactment were qualified to participate in the settlement. To take part, Natives had to register their names, declare the community and region of their permanent or ancestral residence, and either submit proof that they possessed one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or declare that they were regarded as Alaska Native by a Native community. They would then be enrolled and would each become the holder of 100 shares of stock in a regional corporation, and, if a village resident, an additional 100 shares of stock in a village corporation.

Congress provided for the creation of 12 State-chartered, profit-oriented regional corporations, to be delineated roughly according to the geographic areas covered by 12 existing Native associations. If a majority of adult Natives residing outside of Alaska voted in favor of it, a 13th regional corporation would be established for them. The 13th regional corporation, if created, would receive no land entitlement; its members would share only in the money settlement.

Congress also mandated the creation of Native village corporations. Any tribe, band, clan, group, village, community, or association that was composed of 25 or more eligible Natives, and which was not modern or urban in character, could organize as either a business for profit or as a nonprofit corporation. In addition, special provisions extended eligibility under the act

to "Native groups," made up of less than 25 Natives who nevertheless comprised a majority within their locality, and to Natives in four once-Native urban areas—Sitka, Kenai, Kodiak, and Juneau.

Money from the Alaska Native Fund would be paid out to the regional corporations, which would retain a portion and distribute prescribed amounts to village corporations and individuals.

Native corporations would select the lands to which they would obtain title from lands withdrawn from the public domain by the Secretary of the Interior. The Native entities were limited in the amounts of land that they could select for national forests or wildlife refuges or from lands chosen but not yet patented to the State. The village corporations would receive surface rights to a total of 22 million acres of land. The regional corporations would, generally speaking, hold subsurface rights to the lands selected by the village corporations. Those regional corporations that had small enrolled populations but covered large land areas would select, under a complex "land lost" formula, an additional 16 million acres to which they would hold surface and subsurface rights.

All reserves in Alaska, except the Metlakatla Indian Community of Annette Island, were revoked by the act. Members of the Metlakatla Community would not be eligible for any ANCSA benefits. Villages on revoked reserves could choose to hold both surface and subsurface title to what had been their reserved lands, instead of surface title only. If they chose to take full title, however, they and their members could not share in the money settlement. Any formerly reserved lands granted under this provision would be in addition to the 40-million-acre award.

Several ANCSA provisions were intended to protect the value of the compensation paid and promote an equitable distribution among the Native people. Corporations and individuals were granted immunity from taxation on monies received from the Alaska Native Fund. All lands conveyed under ANCSA were exempted from property taxes for 20 years, as long as they were not leased or developed. Native shareholders were prohibited from selling their stock or transferring any of their ownership rights for 20 years, and non-Natives who inherited stock were denied voting rights through 1991. If one of the 12 regional corporations sold timber or received income from subsurface minerals, it was to share a portion of the income with the other 11 regional corporations as well as with its village corporations and individual shareholders.

IMPLEMENTATION OF THE SETTLEMENT

Implementation of history's most complex land claims settlement package placed large demands on all parties involved, especially since the ANCSA settlement model had never before been tested. The initial implementation years were confusing and hectic, with much to do and little time. Personnel within the Department of the Interior had to work out the myriad details of implementation. Alaska Natives had to complete the formalities required for

participation in the settlement as well as take on the responsibility of making the settlement work. Both Departmental personnel and Natives had to master the intricacies of the 29-page law, make critical decisions based in part on speculation, and juggle priorities so as to meet one requirement after another in the face of unrelenting deadlines. As they did, ambiguities and oversights were discovered. Mistakes were made. Conflicts of interest surfaced and controversies flared.

Enrollment, the critical first step in the implementation process, was scheduled for completion 2 years after ANCSA's passage. Through an all-out effort, that deadline was met—but at the expense of thoroughness and accuracy. Several more years passed before the roll was considered final. The Department of the Interior instituted disenrollment procedures, a Federal District Court ruled that the 13th Region election results should be overturned, and Congress determined that the roll should be reopened. The delays and uncertainties that resulted had ramifications for all succeeding implementation steps.

Each of the 12 Alaska Native regions met ANCSA's 18-month deadline for incorporation, and the last of the disputes over regional corporation boundaries was resolved by amendment of ANCSA in 1976. All issues surrounding the formation of village-level entities were not resolved as readily. The matter of village eligibility was a significant source of uncertainty during the startup period. First, there was concern that the implementing regulations' eligibility criteria would unfairly preclude certain Native villages. After that concern was alleviated, the major issue was the effect of village eligibility delays on the land selection process. Some eligibility contests lasted for years, as villages, regions, and third parties disputed eligibility decisions; indeed, one entity was still appealing its eligibility as a village in June 1984. What is more, ANCSA's provisions regarding "Native groups" living in smaller-than-village communities are for the most part yet to be implemented. No statutory deadline for the certification of Native groups has compelled action. Many potential "groups" have been unable to achieve recognition, and most of those that have been recognized have yet to receive their lands.

The most significant concern in relation to the cash settlement has been the settlement's devaluation by unanticipated levels of inflation. Since the settlement was structured as a "promissory note . . . bearing no interest," its value was eroded over time by double-digit inflation. Congress determined in 1976 that the Fund should earn interest. In addition, the State of Alaska's decision to complete the balance of its mineral revenue payments in FY 1980 was helpful in mitigating further loss.

The land settlement has been by far the most complicated and controversial aspect of ANCSA's implementation. Given the high levels of expectation expressed in section 2(b) of the act, and the central importance of the land to the act's beneficiaries, implementation of the land provisions has brought disappointment and frustration. ANCSA's land-related provisions were drafted not strictly as a vehicle for settling Native land claims, but for settling State

and national interests in the land as well. Accordingly, it is not surprising, and in fact inevitable, that conflicts and hence delays would ensue. These difficulties have been compounded by many administrative problems. The task of officially determining and describing who owns what land is made especially complex and time-consuming by two factors that pertain in Alaska: the general absence of land surveys and the presence of thousands of small unpatented land claims. Delays in completing several prerequisite implementation steps (enrollment, eligibility determinations, creation of the 13th Region, and so on) threw more unknowns into the land settlement process and further taxed the limited budget and manpower available for implementation. Further, several years transpired before the Department of the Interior promulgated workable land selection and conveyance policies and put efficient conveyance procedures in place.

After years of controversy—and a tremendous expenditure of funds and effort by the Native corporations—the major issues that have complicated the land settlement's implementation are now resolved. For the most part, acceptable policies and procedures are at last in place. Yet many problems remain, and uncompleted implementation tasks represent a considerable workloand which, at present funding levels, may not be completed for decades. Many Native corporations still await final patenting of the bulk of their lands. Despite better coordination of efforts with the Native corporations and increased efficiency, Departmental officials expect the land survey and patent process to slow down rather than accelerate because most land selections yet to be conveyed (to the Native corporations and to the State) are encumbered by conflicting claims. Furthermore, few reconveyances by village corporations of tracts to individuals, businesses, and municipalities, as anticipated by ANCSA section 14(c), have taken place. Again, a huge backlog in the prerequisite adjudication and survey processes is the main factor in the delay.

In sum, execution of a complex settlement plan and an exacting implementation schedule were disrupted by disputes over the intent of specific provisions and further complicated by adversarial relationships between the implementing agencies and the Native corporations. As implementation progressed, oversights of the original legislation became increasingly evident. Omnibus legislation in 1976, a series of amendatory and implementing provisions in the 1980 "Alaska Lands Act" (ANILCA), and other amendments have been necessary. Those legislative actions have clarified ambiguities, remedied the unforeseen or underestimated consequences of specific provisions, and worked out Native/Federal, Native/State, and Native/Native conflicts of interest. Nevertheless, prolonged litigation, negotiation, and administrative appeals—as well as considerable lobbying efforts—have burdened the ANCSA corporations during their startup years.

Section 2(b) of ANCSA states that "the settlement should be accomplished . . . in conformity with the real economic and social needs of Natives." House Report No. 92-523 clarifies the congressional perception of those needs. The report states that the size of the cash settlement was based on considerations of "the extreme poverty and underprivileged status of the Natives generally, and the need for adequate resources to permit the Natives to help themselves economically." It declares that the aim was to enable Natives "to compete with the non-Native population and to raise their standard of living through their own efforts."

Socioeconomic data compiled by the University of Alaska's Institute of Social and Economic Research provide a basis for comparing the status of Alaska Natives before ANCSA with their status after ANCSA in such categories as population size, growth, and distribution; birth and death rates; employment; income; and education. Comparison of 1970 and 1980 data reveals that the Alaska Native population increased by 26 percent from 1970 to 1980, and that it is entering the job market in greater numbers, earning more money, living in newer housing, and attaining a higher level of formal education. The 1970 and 1980 data also show that the non-Native population of Alaska increased more than the Native population and continued to exceed the Native population by every measure of socioeconomic status. The non-Native population of Alaska increased at a 3.0 percent annual rate from 1970 to 1980, while the Alaska Native population increased 2.4 percent. The Census Bureau reported 6,700 more employed Natives in 1980 than in 1970; it reported 69,000 more employed non-Natives. The median income for Native families in 1980 was $15,921; for non-Native families, it was $28,395. Forty-seven percent of Alaska Native households lacked plumbing in 1980; only 6 percent of non-Native household lacked plumbing. In 1980, 32 percent of Natives over 25 had completed 4 years of high school; 40 percent of non-Natives over 25 had. Fifty-eight percent of Alaska's population below the poverty level in 1980 were Natives, although Natives made up only 16 percent of Alaska's population.

These comparisons relate to the Native population's standard of living, and thus are directly relevant to the study of ANCSA as a monetary and land settlement aimed at improving the beneficiaries' material situations. In addition, one can compare the status of Natives to that of non-Natives in categories that do not relate directly to the goals of ANCSA. For example, the arrest rate for Alaska Natives was 9,008 per 100,000 population; for non-Natives, it was 2,564. The murder rate for Natives is 12 times that for non-Natives, rape is 7 times higher, aggravated assault is over 5 times more frequent, and so on. From 1977 to 1980, Natives accounted for over 30 percent of admissions to the Alaska Psychiatric Institute, although Natives were only about 16 percent of Alaska's population. Alcoholism has been identified as the most serious health problem facing the Alaska Native people today. Suicide is more frequent for Natives than for non-Natives. Thus, there remains much room for improvement, and many signs of social disorder.

Although improvement in living standards has occurred for Natives (albeit not enough to bring them to the level of non-Natives), ANCSA has made a relatively minor contribution. In the aggregate, the Alaska Native Fund distributions constituted a substantial amount of money. However, when compared to Federal, State, and oil industry spending levels over the same period, the Fund distributions appear minor—especially when the sizable proportion spent on implementation and associated litigation is taken into account. In terms of the individual Alaska Native, the impact of the cash settlement—actual and perceived—has been minor as well. It has been estimated that shareholders enrolled "at large" to a regional corporation received about $6,500 over the course of the Alaska Native Fund distributions, and that those enrolled to village corporations received only about $400. A majority of Alaska Natives surveyed indicate either that ANCSA has had no impact on their lives or that they don't know whether it has.

When assessing the benefits ANCSA has distributed to Alaska Natives, one must bear in mind the limitations of the corporate form of organization as the means of delivering benefits. The only way the corporations could benefit their shareholders directly was to give them jobs or pay them a regular dividend. To no one's surprise, the corporations have been able to employ only a small minority of shareholders (around 8 percent) and, with a few exceptions, have yet to pay regular or substantial dividends. The corporations have provided some services to shareholders, but those services are not regular functions of corporations and should not be expected to involve a major corporate effort. In general, the Natives who have benefited most from ANCSA are those directly employed by a corporation.

That the corporations have been able to benefit only those Natives who participate directly in the business of the corporation does not mean that ANCSA has failed. ANCSA was to begin a process of growth and development within the Native community. To varying degrees, ANCSA has contributed to the process of development in the Alaska Native community, as evidenced by the fact that some shareholders have received jobs and educational assistance.

The ANCSA corporations control considerable resources, and they have an opportunity to benefit their shareholders. But if ANCSA corporations succeed in benefiting shareholders, as corporations are usually meant to do, will they then have benefited the majority of Alaska Natives? Analyses of shareholder status and Alaska Natives' attitudes towards their corporations show that, by the time ANCSA corporations are able to establish themselves, it is likely that only a minority of Alaska's Native population will own stock in ANCSA corporations. The proportion of Natives who own stock in ANCSA corporations shrinks every year as the proportion of the Native population born after December 18, 1971, grows. Meanwhile, the proportion of shareholders who are non-Natives increases every year, though by a lesser degree. Additionally, survey data indicate that as many as 40 percent of present ANCSA shareholders will, if in need, sell their stock in an ANCSA corporation if stock alienation restrictions are lifted after 1991. Thus, if there is a demand for ANCSA stock, there will be a supply; if the demand comes from non-Natives, the corporations will lose their Native character.

STATUS OF THE ANCSA CORPORATIONS

At the time of ANCSA's passage, Congress, the Native leadership, and Alaska Native individuals expected that the corporations established to administer and perpetuate the settlement benefits would serve as vehicles for achieving far-ranging ends. It was widely believed that Natives would realize a higher standard of living and indeed self-sufficiency, both through the direct settlement benefits and through efforts initiated by the corporations. Corporations were seen as vehicles to promote the health, education, social, and economic welfare of their shareholders. Congress and Native leaders alike anticipated that the assets conveyed would be used to initiate a process of economic development in rural Alaska which, by a "trickle-down" effect, would benefit Alaska Native villagers. This process was expected to enable Natives to participate fully in the modern economy. At the same time, many looked to the corporations to preserve the Native heritage for future generations. At basis, that meant preserving sufficient land and fostering an environment in which Natives could pursue traditional ways of life.

These expectations have placed unrealistic demands on the ANCSA corporations. Many are appropriate for governments, not corporations. The ANCSA corporations are limited legally and financially in what they can do to meet the social, cultural, and income needs of their shareholders. They cannot ignore their fiscal responsibilities or divert their focus from profit-maximizing activity without jeopardizing their corporate survival. They cannot fully engage in the mainstream of Alaskan economic activity and at the same time fully serve the aspirations of their many shareholders who continue to state that control of the land to preserve the traditional way of life is their primary objective. In sum, the ANCSA corporations have not been able to fulfill the range of high expectations placed on them, and it is highly unlikely that they might ever do so. High ideals held by shareholders and managers alike early in the corporations' existence have necessarily given way to corporate survival and bottom-line management for most corporations. In addition, events since ANCSA have fostered the development of regional nonprofit service organizations and thus enabled the ANCSA corporations to concentrate more of their energy on profitmaking.

Rather than ask whether the corporations have met or will meet the gamut of Natives' social, cultural, and economic needs, it is thus more pertinent to ask whether the ANCSA corporations can be expected to prosper financially—so as to deliver some level of benefit to their shareholders in the form of dividends, jobs, and shareholder services. In seeking to answer this question, several circumstances that have affected or will likely affect corporate financial performance must be borne in mind. In addition, the corporations must be assessed individually as well as collectively—and in doing so, it must be recognized that certain factors may make it impossible to reach firm conclusions about a corporation's viability and performance based on information contained in its annual financial reports.

Attempts to apply industry-average standards or "rules of thumb" can be misleading due to the mix of activities in which a given corporation may be engaged, the insufficiency of the business-segment data provided in its annual reports, and lack of information about corporate-operating strategies and financial-reporting practices. Further, in the absence of a market for the corporations' shares of stock, theoretical valuation approaches must be used. Yet the approaches customarily used are either inappropriate or inapplicable due to lack of information. Further, one cannot assess the corporations solely by dividends paid. For mature corporations with stable demand and steady growth, payment of sizable dividends is normal. But none of the ANCSA corporations can be so categorized. As their assets are for the most part undeveloped and their markets largely unestablished, their approach should be to reinvest corporate earnings rather than pay dividends.

Across the board, the unusual circumstances of the formation and operation of the ANCSA corporations must be considered. Several factors influenced—mostly in a negative way—the financial results of the corporations' first 12 years of operation. The workload which the corporations bore in implementing ANCSA should not be underestimated. Corporate resources were strained at the regional level, and even more so at the village level, for several years. Comprehending, interpreting, and implementing the extremely complex and often ambiguous legislation required tremendous effort. Mistakes were made, some of them costly. Conflicts of interest inherent in the provisions meant that the early years of implementation were characterized by misunderstanding and strife. Corporations found it necessary to expend inordinate amounts of time, energy, and money in negotiation, litigation, administrative appeals, and lobbying. Corporate planning and decisionmaking were seriously undermined. In addition, significant delays in conveyance of lands severely handicapped the corporations' planning and development efforts.

What is more, many corporate managers had to assume the burden of managing startup with little experience in the corporate arena and little opportunity for formal introduction or training. Management in the early years was often by trial-and-error. Unlike most other corporations, the ANCSA corporations were not formed to meet a particular need in an established market; they had to formulate their business purpose and acquire business acumen after the fact.

Furthermore, certain ANCSA provisions intended to ensure that the settlement benefited Natives, and benefited them relatively equally, have also had the effect of constraining corporate operations. Because ANCSA stock cannot be traded or sold, the corporations have been denied a primary tool for raising capital to finance the development of their resources. They have generally been limited to the relatively modest amounts remaining from Alaska Native Fund distributions after deducting operating overhead. In addition, the section 7(i) requirement creates a disincentive for regional corporations to invest capital in resource development. If an investment is not successful, the corporation must bear all the loss; if surplus revenues are generated, 70 percent must be shared with other regional corporations. This provision raises the prospect of a regional corporation becoming inactive, relying on passive investment and 7(i) receipts for its existence.

In assessing corporate performance, it is also necessary to take into account the economic environment in which the ANCSA corporations must operate. In contrast to the boom which many believed would follow ANCSA, resource development in Alaska has remained at a low level—due primarily to the economic environment rather than to lack of knowledge about the resource base. Indications are that the oil and gas industry will remain a strong and growing presence in the economy for 50 to 75 years, but any predictions about the timing, location, and magnitude of petroleum development are highly speculative. Due to high production and transportation costs and stiff competition from oil and natural gas, coal export expansion will be slow, and any major expansion of domestic coal markets is unlikely before the end of the century. Similarily, Alaska will see only modest expansion of nonfuel mineral development over the next decades because of high production costs and generally unfavorable Federal policies regarding domestic production. As renewable resources—fisheries, forest products, tourism—are being exploited at near-maximum levels, little growth can be expected in those industries. Moreover, one must bear in mind that economic development is a slow process under even the best of circumstances. Progress must be judged decade by decade, not year by year.

Individual corporate performance runs the gamut from sustained profitability to sustained losses. Many village corporations have been hard pressed merely to survive. Most still exist, but many are in deep financial trouble. Some obtained lands with valuable surface resources and sufficient money with which to develop these assets. Most did not. Some without surface assets have banked their capital and thus are "profitable" but inactive. The smallest village corporations received insufficient capital to maintain a headquarters and conduct operations. For some of them, mergers and consolidations have offered a way to survive.

Even at the regional level, only one corporation has not reported a loss since its formation—and more than one has had to consider bankruptcy. In recent years, the regional corporations have at last been able to devote more of their concern to long-term issues of corporate management. For many, general and administrative expenses are declining as a portion of total assets and net income. Long-term debt is modest. Natural resource income is beginning to appear and show significant growth. Certain corporations are investing in rural Alaska with at least some success. The regional corporations' combined net income continues to be modest, however, and losses are commonplace.

In summary, the available evidence indicates that many village corporations and possibly one or more regional corporations may not remain viable, as well as that some corporations at both regional and village levels may achieve at least a modest success. Lack of evidence and lack of appropriate tools for assessment preclude firm conclusions about the financial status of any given corporation as well as accurate predictions as for its future.

Several provisions contained in ANCSA or its amendments have been aimed at affording the corporations an opportunity to get on their feet free from burdensome administrative demands and from threats of takeover or erosion of their assets. They include exemptions from the reporting demands of Federal securities laws, and from State and local property taxes, as well as the restriction on stock alienation. These measures are temporary, however; their protection will run out in 1991 and the years that follow.

As 1991 approaches, the ANCSA corporations are examining options to assure continued Native control of stock and guarantee permanent Native ownership of the land. The Alaska Federation of Natives has initiated a study and discussion program aimed at reaching agreement about what legislative and other changes may be needed. Topics being addressed include land protection (methods of protecting Native ownership); stock alienation (continued ban on alienation beyond 1991); protection of Native values (changes in the corporate structure to better suit Native culture and Native needs); new Natives (changes of ANCSA to provide benefits for Natives born after December 18, 1971); stock protection (prevention of non-Native control after 1991); elders (changes to allow special benefits to elders); retribalization of Native lands (recommendation that villages consider transferring ANCSA land to tribal government control); and combined resources (recommendation that all ANCSA corporations cooperate to develop a unified position on necessary changes to ANCSA).

Part I

THE NEED FOR A SETTLEMENT

A History of the People, the Land, and The Question of Legal Status

Chapter 1

PROLOGUE: IMPETUS FOR A LAND CLAIMS SETTLEMENT

In 1961 the Alaska Native village of Minto petitioned the Federal Government to protect the lands it used and occupied. The State of Alaska wanted to establish a recreation area near the village and had plans to construct a road to make the area more accessible to Fairbanks residents and visiting sportsmen. State officials also believed that the area around Minto held potential for the development of oil and other resources; oil exploration was being conducted in the nearby village of Nenana.

Learning of the State's plans, Minto's chief, Richard Frank, asked the U.S. Department of the Interior to turn down the State's application for the land. Minto's residents, he asserted, had traditionally depended on a surrounding area of 1 million acres as their hunting and fishing grounds. His father, Minto's former chief, had delineated this area in making a land claim to the Department in 1951.

At a 1963 meeting held in response to Minto's protest, Frank explained that his people's traditional way of life, and their very livelihood, were at stake: "If you people could live off Minto Flats for one year or even a quarter of a year, you would understand my point."[1]

Minto's protest was a precursor of events to come, for during the years that followed, many other Native communities would protest actions that threatened their lands.

The forces that gave rise to the Minto protest were typical of those which triggered the ensuing statewide drama. A century-old latent conflict, stirred by the definite indication of vast untapped resources, at last emerged in head-on confrontation. The new State sought to develop a growth economy and broaden opportunities for all its citizens. Its first citizens—Alaska's Natives—sought to perpetuate their traditional way of life—and participate in the State's economic future.

By the end of the 1960's, pressure was intense for resolution of what was by then the Alaska Native "land claims struggle."

The deadlock on the State's future had tightened. In granting statehood in 1958, Congress sought to ensure Alaska's economic viability by authorizing it to select and obtain title to up to 103 million acres from "public lands of the United States which are vacant, unappropriated, and unreserved."[2] Moreover, the State was permitted to lease lands for which it received "tentative approval" under section 6 of the Statehood Act. At the same time, Congress provided in section 4 of the Statehood Act that Alaska must disclaim all right or title to lands "the right or title to which may be held by Eskimos, Indians, or Aleuts."

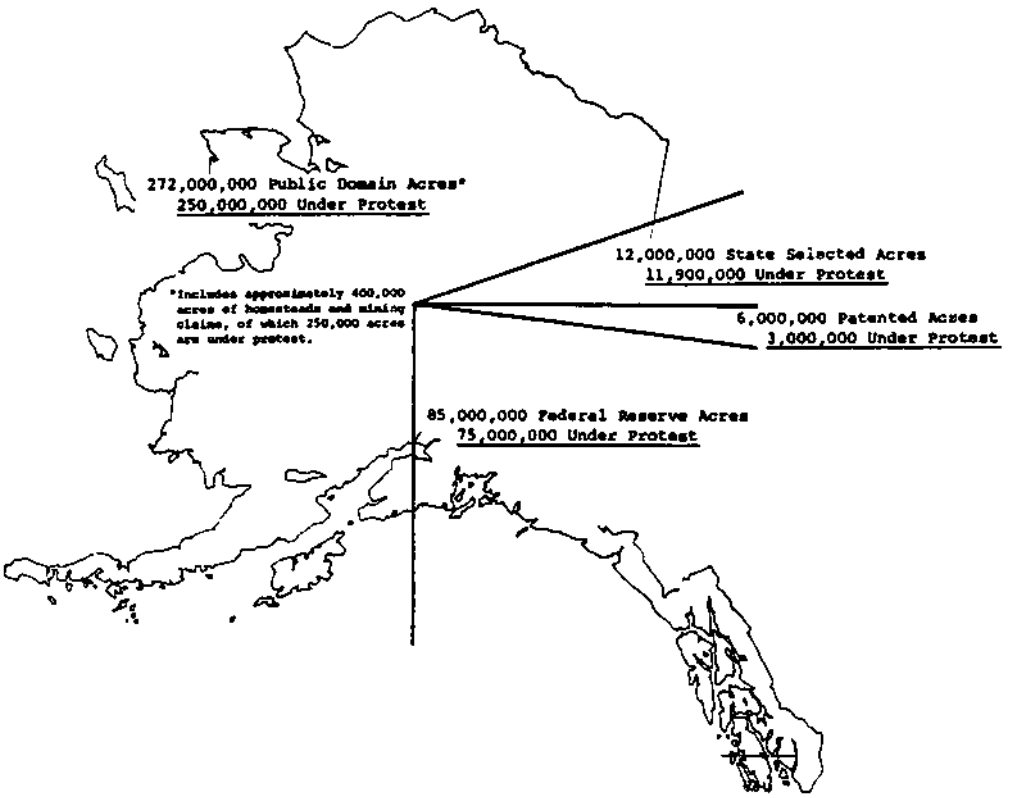
However, Congress had not—in the Statehood Act or in earlier legislation—defined what "right or title" the Native people might have. Nor had Congress determined the means by which the Native people might obtain title to the lands they occupied and used; Natives owned outright only a miniscule portion of the land.[3] It was therefore inevitable that the story of Minto would repeat itself many times over during the early 1960's as the State proceeded with its selection of "vacant" public domain lands and began to issue mineral leases on some of those lands.

Although the State land selection process posed the biggest threat, Native land use was also endangered as the Federal Government made known its proposals to withdraw lands from the public domain. As early as 1958 the Atomic Energy Commission planned to test peaceful uses of atomic energy by blasting out an artificial harbor near Point Hope, where Eskimo villagers had lived off the land and sea for at least 5,000 years.[4] In 1963 the U.S. Army Corps of Engineers sought to build a dam at Rampart Canyon on the Yukon River. The dam would generate cheap electrical power—and in the process flood 9 million acres, displace an estimated 1,200 Natives, and threaten the livelihood of thousands more.[5]

As the land threats multiplied, Native leaders traveled to villages warning that unless claims and protests were filed with the Department of the Interior, lands the villagers considered theirs would soon become the property of others. By 1968, 40 protests laying claim to Native lands had been filed with the Department. Because many areas claimed were overlapping, the total acreage under protest—about 380 million acres—was slightly greater than the land area of the State.[6]

Natives from 24 villages petitioned Interior Secretary Stewart Udall in 1963, asking that all transfers of land ownership be stopped until Native land rights could be confirmed. In late 1966, in the face of mounting Native protests, Udall informally initiated a "land freeze."[7] This freeze, which Udall formalized by executive order[8] before leaving office in January 1969, halted all transfer of lands claimed by Natives until Congress could act on the claims. Although the State fought the freeze in the courts, it stayed in force through 1971.[9]

Figure 1-1
LAND OWNERSHIP OF ALASKA AFFECTED BY NATIVE PROTESTS, JUNE 1968



The State was thus barred from obtaining title to and issuing leases on lands which it selected. The State was also losing revenue because, under the terms of the freeze, no oil or mineral leases could be issued on Federal lands. Since the State was authorized to receive 90 percent of the Federal revenues from those lands, the Governor's office estimated in 1968 that the freeze had already cost the State more than $400,000 and predicted that unless the freeze was lifted, the State would soon be in economic crisis.[10]

Continued filing of protests by Native groups, continued litigation, and continued land selections by the State of Alaska intensified the land claims dilemma. At the end of the decade, however, an odd coalition of interests emerged as a catalyst to its resolution. Oil—an estimated 9.6 billion barrels—was discovered in Prudhoe Bay.

In 22 oil lease sales it held prior to the Prudhoe Bay discoveries, the State netted less than $100 million.[11] Following the Prudhoe Bay discoveries, the State sold leases for more than $900 million in a single day, September 10, 1969. It was widely believed that America's energy problems could be solved if the oil could be brought to market. Plans to construct an 800-mile Trans-Alaska pipeline from the North Slope to Valdez in the south got underway. National oil companies and contractors made enormous investments in anticipation of pipeline construction and were anxious to recover them. But the Federal Government could issue no permits for pipeline construction until the Alaska Natives' claims to the land were settled.

As the energy concerns threw their weight into achieving quick resolution of the land claims, another interest coalition let its presence be known. Amidst the oil euphoria, conservationist groups and concerned Alaska residents warned of the need to maintain Alaska's open spaces. They were eager to resolve the uncertainties presented by Native claims and at the same time anxious to make sure that large areas of pristine wilderness would be preserved for future generations of all Americans.

THE CONVERGENCE OF NATIVE CLAIMS ISSUES

By the seventies, the land claims dilemma was clearly the biggest problem the State of Alaska faced—and clearly one that had to be solved at the national level.

The individual claims of Native villages had coalesced and found statewide voice in the Alaska Federation of Natives (AFN). The efforts of AFN, and those which lent support to it, had won coverage and editorial backing from major national newspapers. Congressional hearings had been held and a voluminous record compiled. Task forces and study groups with Federal, State, and Native representatives had presented findings and recommendations. It was amply evident that Alaska Natives had valid land claims that must be recognized.

Furthermore, it was plain that the solution to the land claims problem must be legislative rather than judicial. To do justice to the Native people, the State, and the larger national interest, settlement of the issue needed to be both conclusive and prompt. What was required was "the certainty, the flexibility, and the detail of a legislative settlement";[12] "a surer, more complex and imaginative resolution than simply confirming or denying title to specific tracts and awarding compensation";[13] and "a far more . . . timely resolution of the claims and protests than can reasonably be expected from the Courts."[14]

Congress, the Nixon administration, the State, and the Native leadership were in general agreement that the Alaska Natives must obtain both a land base and cash compensation for lands taken in the past or by the settlement. It remained for Congress to resolve the debates over method and means.

Underlying those debates were fundamental issues:

> What settlement terms would afford justice to the Native people and fairness to all parties involved?
>
> Could legal or historical precedent provide guidance as to "where the line should be drawn for the purpose of confirming or denying title to public lands in Alaska to the Alaska Natives"?[15]
>
> How, in the context of the 20th century, could the Native claims settlement effect "a wiser resolution than ha[d] been typical of our country's history in dealing with Native people in other times and other states"?[16]

To provide for a settlement that would respond to all these concerns, several considerations were necessary: Who were the Alaska Natives, and on what basis could they claim title to the land? How had Alaska Natives lived prior to the United States' purchase of Alaska in 1867, and what had been the impact of American possession on their way of life? How had the Federal Government structured its relationship to Alaska Natives, and how had it carried out its obligation to protect their rights to the land?

The eventual response to these considerations—and to years of Native claims debate—would be the Alaska Native Claims Settlement Act (ANCSA).

The next two chapters present some of the pertinent background to the Alaska Native claims settlement. Chapter 2 addresses the origin and perpetuation of the Alaska Natives' relationship to the land and then describes the impact on that relationship of Russian and American newcomers to Alaska. Chapter 3 outlines the history of Federal Government dealings with Alaska Natives, indicating the ramifications of a century-long postponement of settling their land claims. However, this study does not address the political claims of Alaska Natives to rights of self-government. Those claims are to a substantial degree analyzed elsewhere.[17]

Chapter 2

ALASKA NATIVES AND THEIR RELATIONSHIP TO THE LAND BEFORE ANCSA

INTRODUCTION

ANCSA was "not in any sense to be considered as social welfare legislation."[18] That point is made frequently in the legislative history. Yet a 1968 report to the Senate Committee on Interior and Insular Affairs prefaced its presentation of "appalling" statistics on the social and economic conditions of the Alaska Natives with this statement:

> How can Alaska Natives be enabled to improve the circumstances under which they live? And how can settlement of their land claims and protests—the subject of proposed legislation before Congress—contribute importantly to this end? It is these two questions made one that are now the opportunity of government to answer.[19]

A Senate Interior Committee report in 1971 expressed the view that, while the conditions Alaska Natives faced "did not result only or even mainly" from lack of title to the lands, "the unresolved status of those lands ha[d], however, subverted both traditional livelihoods and the possibility of social and economic progress on a modern footing."[20]

The settlement effected by ANCSA was intended to compensate Alaska Natives for the extinguishment of title to lands they claimed. At the same time, the legislative history evinces Congress' efforts to address the social, cultural, and economic history of the Native people and Congress' intent to provide the Native people with means for improving many of the conditions under which they lived.

ALASKA NATIVES AND THE LAND—1968

In March 1968 the Senate Committee on Interior and Insular Affairs asked for a comprehensive study that would help Congress reach a "fair and intelligent resolution of the Alaska Native problem."[21] The study, performed by the

Federal Field Committee for Development Planning in Alaska with the cooperation of other Federal and State agencies, produced a report entitled Alaska Natives and the Land in late 1968. The report reflected an "effort . . . to record all relevant, available data and information on the Native peoples, the land and resources of Alaska, the uses which these people have made of them in the past, their present uses and ownership and the future—often conflicting—needs of the Native peoples, the State of Alaska, and the Federal Government."[22]

Alaska Natives and the Land reported that in 1966 about 70 percent of Alaska's 53,000 Native people lived in 178 predominantly Native communities. It was these villagers who ranged over, occupied, and used Alaska's public domain lands and who thus would be the principal focus of any settlement of the land claims issue.

Their communities were small: median size, 155 persons. They were remote: fewer than a dozen were on the State's limited road network, and only 23 had telephone service linking them to other places. The people relied on hunting, fishing, trapping, and other food-gathering activities for their livelihood.

While most Alaska Natives faced economic and social problems that were broad and complex, the problems of these village Alaskans were the most severe. By any measure, the study said, most of them lived in poverty.

> The few permanent, full-time jobs at the highest rates of pay are typically held by non-Natives. State public assistance programs provide income to almost one of four households in villages; temporary relief programs provide income to about the same proportion, but usually for three months or less. Low cash incomes and high prices, even though supplemented by free health and educational services and food-gathering activities, have resulted in exceedingly low standards of living for villagers: dilapidated housing, absence of sewer and water facilities and electric power. Most village adults have less than elementary school education, and large numbers have no formal education at all; for village adults speaking English, it is a second language. Nearly all Native communities have schools, but educational opportunity ends at the eighth grade in most places. Owing largely to socioeconomic conditions and the difficulty of providing health services to remote villages, the health status of Alaska Natives is inferior to that of the other Alaskans.[23]

The authors reached this conclusion:

> While joblessness is high and income levels low among Natives generally, these conditions are worse for those in villages. While educational achievement is low among

> Natives generally, it is lower for those in villages. While the health status of Natives is poor across the state, it is poorer for those in villages. While opportunity for progress is limited for most Natives, it is virtually absent for those in villages.[24]

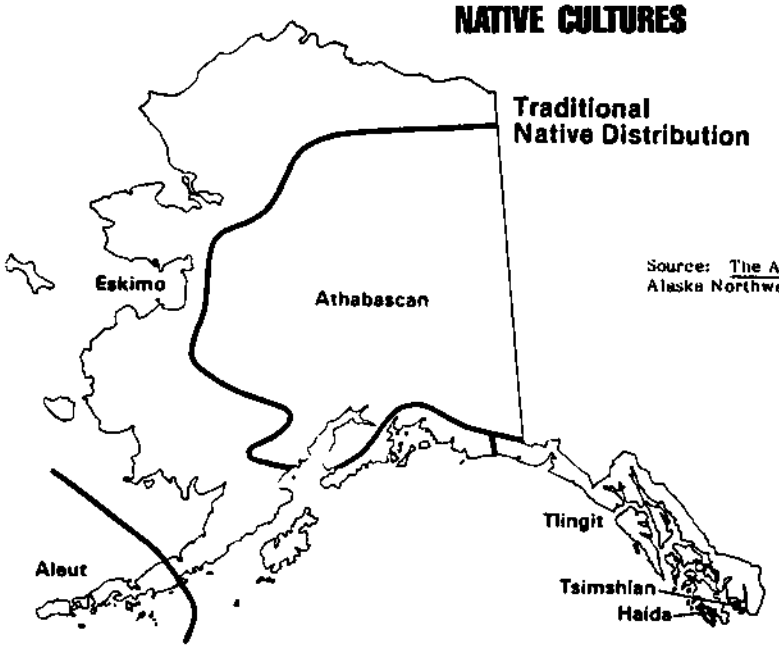
Having documented the range and severity of the problems facing village Alaska, the authors of Alaska Natives and The Land acknowledged that outside observers might understandably question the feasibility and even the value of seeking solutions that would enable village life to persist. However, the authors cautioned that in such views there would lie a blindspot; the observers would be insensible of "the values on the one side of the equation, namely the character and quality of the cultural heritage to which [Natives] are attached."[25] Village Alaska, the authors said, "will persist because of circumstance and choice." Government decisionmakers, they warned, "must not presume that the life they've known is the only meaningful existence; they must understand the meaningfulness of the character and quality of Eskimo, Indian, and Aleut life patterns."[26]

ALASKA'S NATIVE INHABITANTS

DIVERSE CULTURES

It is now generally agreed that the first people to inhabit Alaska came from Asia via a 1,000-mile-wide land bridge that connected Alaska and Siberia in prehistoric times—between 10,000 and 40,000 years ago.[27] The oldest archeological evidence of human occupation in Alaska dates back about 11,000 years.

Figure 2-1
NATIVE CULTURES



Source: The Alaska Almanac, 1983 edition (Anchorage: Alaska Northwest Publishing Company, 1982), 125.

Accounts of Alaska's first people emphasize their diversity. The Native people were, and are, not one people but many. They were dispersed over the entirety of the immense Alaskan land mass—586,000 square miles, or one-fifth the size of the contiguous United States; 1,400 miles from north to south, 2,700 miles from east to west. They lived in distinct climatic regions ranging from temperate to frigid, arid to rain-drenched, and in several dozen ethnic regions with their own languages and cultures.

Discussions of these indigenous peoples generally distinguish three major ethnolinguistic cultures—Eskimo, Aleut, and Indian—each with its own divisions and subdivisions.[28] Many of the differences between the cultures can be linked with their varying adaptations to different physical environments. Yet many characteristics were not determined by the environment.[29] People of a common cultural origin lived in vastly different environments and acquired widely different means of survival; likewise, people whose environments and means of survival were very similar belonged to different cultural and linguistic groups.

Eskimos

The lands inhabited by Eskimos range from Bristol Bay in the southwest of Alaska, up Alaska's entire western coast, and across its northern coast into Canada and Greenland. In addition, the people of the Kodiak Island, the southern Kenai Peninsula, and the Prince William Sound areas of southern Alaska—the Koniag, the Sugpiaq, and the Chugach—show a clear relationship to Eskimos in language and physical type. Most Eskimos, based on linguistic differences, belong to one of two groups: the Inupiat who live north of the Norton Sound area, and the Yupik, who live south of it. The lands these people inhabit range from arctic tundra to temperate forest.

It is estimated that 40,000 Eskimos lived in Alaska when the first Europeans arrived in the mid-1700's. Most lived along the coast and hunted marine mammals, although others lived inland along rivers and hunted primarily caribou. Most acquired an array of food products from the land including eggs, birds, greens, berries, and roots. Coastal Eskimos traded with inland Eskimos (and sometimes Athabascan Indians and the Chukchi of Siberia), exchanging seal oil, walrus and seal skins, ivory, and other products for caribou and wolverine skins.

Small societies developed within specific geographic territories, and people related to each other through their common possession of territory. They lived in permanent winter villages of from 50 to 500 persons, in dwellings made from driftwood and sod or sticks and caribou skins. As with Native Americans elsewhere, the villages' social structures were based on extended family relationships. Villages cooperated in food-gathering activities. Leadership was based on hunting prowess and on diplomatic skill in negotiating with other territorial groups. The Eskimos did not recognize social classes, but there were definite distinctions between poor families and rich ones.

Aleuts

Aleuts and Eskimos may once have spoken the same language, but their isolation led over time to differences in language and culture.

It is believed that, prior to their contact with the Russians, the Aleuts numbered anywhere from 15,000 to 30,000. Most lived on the treeless, fog-enshrouded, wind- and rain-swept islands that extend from the southwest of Alaska 1,000 miles across the North Pacific, although some lived at the lower end of the Alaska Peninsula. The Aleuts lived in small villages along the small portion of the coast that was safe and large enough for settlement. A village typically consisted of six or seven large households of 20 or 30 people.

Like many of the Eskimos, the Aleuts hunted sea mammals. Yet, since their coastal waters did not freeze, ice hunting was not necessary. The interior of the islands provided roots, berries, birds, and eggs. It is said that anyone who could walk could survive year-round by gathering food from the beaches and the reefs. Each village had its own sea hunting areas, which had to be respected by other villages. Risking warfare, the Aleuts engaged in trade with far-distant peoples. However, relatively little is known of their aboriginal culture because it was gravely affected by Russian domination.

Indians of the Interior: Athabascans

The Athabascans were seven separate groups, each further subdivided into tribes or bands who had their own territories. They occupied Alaska's interior: a vast expanse of arctic and subarctic land characterized by climatic extremes—from 100°F in summer to -60°F or colder in winter—and affording relatively little in the way of resources to sustain life. In contrast to the Aleuts and the coastal Indians, and to a lesser extent the Eskimos, the Athabascans faced an uncertainty of subsistence. Exclusively hunters and gatherers, they had to exercise considerable flexibility in meeting the demands of the environment. A constant search for food kept many on the move, with little time to spend in their home villages. The more mobile a group, the more simple would be its dwellings.

Members of many groups spent at least part of the year in small groups consisting of a few nuclear families. These small groups came together in large bands for hunting purposes when resources were relatively plentiful and for potlatches—celebrations marking special occasions such as death, marriage, and victory in war.

Due to the difficult life and the relative isolation of family groups, individual achievement—rather than rank and status in a social order—were important, particularly in the northern regions. Yet the folk stories of the culture also stress mutual dependence and sharing—between man and man, man and animal, man and inanimate life.

Rivalries between Indians and Eskimos who shared a common boundary sometimes led to bloodshed. Yet there was also active trading and social exchange.

Coastal Indians: Tlingits, Haidas, and Tsimshians

Two major groups occupied the coasts and islands along the panhandle of southeastern Alaska. They were part of the Pacific Northwest Indian people. The Tlingits were the most numerous and powerful and their territory was the most extensive. They were fierce warriors and shrewd traders who traveled secret routes along the sea as far south as California and north through the mountains into the Alaska's interior. According to tradition, the second major group—the Haida—came from what became Canada and drove out some of the Tlingit tribes about 200 years before European contact. A third group, the Tsimshian, had lived south of southeastern Alaska in Canadian territory; they moved to Annette Island in Alaska in 1884.

The lands occupied by the coastal Indians were rich in resources—having at least a dozen species of saltwater fish, in addition to shellfish, sea mammals, and many land plants. Due to this natural abundance and the warm and rainy climate, large villages were possible.

The richness of resources meant that a surplus could be acquired, and thus the Tlingit's and Haida's cultures emphasized the amassing of wealth. Although there was no form of currency, blankets were a basic unit of exchange. Painted carvings in wood were often made for shows of wealth. Great quantities of food and gifts were collected for potlatches, which were held to establish prestige and reputation.

A class system evolved, separating individuals into a series of statuses. Social units, built up along matrilineal lines, had their own houses and chiefs, their own crests and personal names, and their own ceremonial songs and dances.

A COMMON ELEMENT: SUBSISTENCE

Even such a cursory description of these very broadly defined Alaska Native groups reveals dissimilarities and contrasts. Yet despite their cultural differences, the Alaskan peoples shared many characteristics. According to one anthropologist,[30] they were what are known as hunting and gathering peoples. They had no agriculture and only one domesticated animal, the dog. Few, if any, were nomadic. Virtually all groups lived in permanent dwellings in permanent villages and moved to camps, also in permanent locations, for various summer occupations. Tribal boundary lines were generally well defined, and portions of tribal lands were used repeatedly from season to season.

Most importantly, all cultures—as documented in Alaska Natives and the Land—shared "one great thing in common—their dependence upon the land and its waters for their very existence."[31] They "completely used the biological resources of the land, interior, and contiguous waters in general balance with their sustained human carrying capacity."[32] In adapting to their varied environments, all adopted a subsistence way of living; they obtained food, clothing, and shelter from the land's resources at all times of the year. Human population density in any given area depended on the availability of resources. Land use in any given area was only as intensive as the peoples' hunting and gathering capabilities allowed.

Research done in preparation of Alaska Natives and the Land substantiated that, even in the 1960's, Alaska's Native peoples still shared this "dependence upon the land and its waters for their very existence." But the "delicate ecological balance"[33] that had once supported their existence had been significantly disturbed.

NEWCOMERS TO ALASKA

THE COMING OF THE RUSSIANS

Russian traders claimed to have visited Alaska as early as 1648.[34] Nevertheless, it was the voyage of Vitus Bering, returning to Russia in 1742 laden with sea otter furs, that is credited with the "discovery" of Alaska and that extended the Russians' eastward expansion through Siberia to the Alaskan coasts.

The Russian phase of Alaska's history lasted 126 years. Russian settlement of Alaska was very limited, however. There were never more than 700 or 800 people in the colony. All but a few settlements were very small; many were only trading posts manned by one or two Russians. The Russians were interested in gathering and trading furs, not in developing Alaska's lands or making Alaska their home. They made no attempt to take the Natives' lands because they had no need of them. Nevertheless, though their lands were not taken, thousands of Natives were profoundly affected.

The Russians came first to the Aleutian Islands. One historian recounted the results:

> The Aleuts' flourishing culture and economy did not long survive this discovery. When the Bering expedition returned to Russia and told of the vast herds of fur animals in the North Pacific, fortune hunters started a stampede almost equal to the great Klondike gold rush that came some 150 years later. . . . The Aleuts fought back, but they were overwhelmed by the superior weapons of the Russian hunters. Whole villages were wiped out; the population was decimated not only by guns but also by smallpox, measles, tuberculosis, and pneumonia.[35]

The Aleuts were skilled hunters. Those who survived attack and disease were forced into slavery and relocated to harvest furs for the Russians. It is estimated that, after only two decades of Russian occupation, the Aleut population was reduced by at least 80 percent.[36]

As the sea otter and other fur bearers in the Aleutians became scarce, the Russian fur seekers moved eastward along the Gulf of Alaska. Their arrival on Kodiak Island in the 1760's soon brought extreme and irreversible disruption to the Koniag people's way of life. The Natives were subjugated, not without bloodshed; families were broken up; men were sent to distant

coasts in frail boats to hunt otter; and the structure of the aboriginal society and its living regimen were drastically changed.[37] Here too, the sea otter, which had been the mainstay of the Koniag diet, was destroyed. Starvation was widespread, along with diseases introduced by the invaders.

At first, Russian control was largely limited to the Aleutian, Pribilof, and Kodiak Islands, as well as scattered locations all along the southern and southeastern coasts including a substantial settlement at Sitka that became the headquarters for the colony. Then, in the 1820's, Russian expansion continued into the western mainland. By this time the mass killings of Natives had ended, although scattered hostile encounters continued. By the 1860's the Russian fur enterprise was no longer profitable, Russia's treasury was drained from war with Britain in the Crimea, and the Russian government feared it would be powerless to defend Alaska against America and Britain.[38] In 1867, Russia sold Alaska to the United States for $7.2 million.

THE INFLUENCE OF THE AMERICANS

Within a few decades, American influence in Alaska was far more pervasive than the Russians' had been. A diversity of commercial and other interests had taken white Americans far into Alaska's interior; U.S. land laws had been extended to Alaska to protect the new explorers' and settlers' interests. By 1900, non-Natives outnumbered Natives 34,056 to 29,536.[39]

Figure 2-1
POPULATION OF ALASKA, 1880-1970

Year of Census	Eskimos, Indians, and Aleuts	Non-Natives	Total
1880	32,996	430	33,426
1890	25,354	6,698	32,052
1900	29,536	34,056	63,592
1909	25,331	39,025	64,356
1920	26,558	28,478	55,036
1929	29,983	29,295	59,278
1939	32,458	40,066	72,524
1950	33,863	94,780	128,643
1960	43,081	183,086	226,167
1970	51,712	250,461	302,173

Source: Rogers, George W., "Alaska Native Population Trends and Vital Statistics, 1950-1985," Institute of Social, Economic, and Government Research, University of Alaska, Fairbanks, Alaska, November 1971.

Even before the 1867 purchase, American traders had been interested in Alaska and had been given a right to trade with the Natives by treaty. Yankee whalers had pursued the bowhead whale along the Arctic coast. While the Russians had had virtually no contact with the northern Eskimos, American vessels began competing with Eskimos for bowhead in 1848; later, as bowhead became scarce, they hunted walrus for oil and tusks. Depletion of these and other sea mammals meant famine for some coastal villages. Disease and alcohol further ravaged their populations.

Commercial fishermen began harvesting and marketing salmon, one of the most important Native food resources, in 1878. Whereas the Natives' salmon catches were based mainly on immediate need or on drying and smoking for the winter months, the commercial packers used expensive special gear to catch as many fish as could be processed and sold. As a result, Natives in the southeast, on Kodiak Island, and throughout southern Alaska were left without enough salmon to live on—and without means of making a living, as they were generally refused employment by the canneries.

Discoveries of gold around the turn of the century brought the first great migration of non-Natives to Alaska. Miners swarmed to the Klondike district of the Yukon and westward. The beaches of Nome held 20,000 prospectors in 1900. Strikes in 1902 near what became the city of Fairbanks drew thousands. Caribou and other game in these areas were depleted as the miners sought a food supply. In addition, wildlife populations either shifted or disappeared due to indiscriminate use of fire and siltation caused by gold washing. By 1908, over $140 million in gold had been taken from Alaska.[40]

During the 20th century, Alaska's non-Native population became the increasingly dominant majority. The extension of homestead laws to Alaska attracted non-Natives. World War II brought a major increase in Alaska's non-Native population as Alaska took on a strategic defense position and military bases were built. After the war, Americans from the mainland came to Alaska seeking economic opportunity and the lifestyle afforded by "the last frontier." In 1950, nearly three-quarters of Alaska's population of 128,643 were non-Natives; by 1960, non-Natives accounted for over four-fifths of a population of 226,167.[41] In the 1970's, the oil boom would further expand Alaska's non-Native population.

IMPACT OF THE NEWCOMERS ON THE NATIVE PEOPLES

Russian and American exploitation of Alaska's resources damaged the economic base of the Native cultures, as outside interests and Native users competed for the land's resources. The outsiders introduced guns, axes, traps, metal containers, and all manner of instruments to increase the efficiency of the harvest—and thus disrupted the precarious balance that had long existed between the human population and the land's carrying capacity.

Furthermore, a new phenomenon was set in motion. Many Natives were encouraged to work at the newcomers' commercial pursuits and in return

were given new hunting instruments, frequently rifles. Rifles were often helpful to the Natives in their quest for subsistence, but they were of no use without bullets. To obtain bullets, the Natives needed cash.

Thus began a slow movement of the Native peoples toward the cash economy. Gradually the availability of—and the need to resort to—new tools and new foods brought increased Native reliance on cash. Many Natives seeking cash income journeyed outwards from their small traditional settlements to the larger centers of population. They and their families were encouraged to relocate to those larger centers, where education and health services could be provided to them more economically.

In the 20th century, some Natives—primarily those in the major urban areas and in communities that had close contact with non-Native populations—lived with a money economy. Their subsistence activities, pursued to supplement food bought with cash, resembled those of non-Native Alaskans.

Nevertheless, even in 1968, Alaska Natives and the Land reported to Congress that subsistence was still "a dominant and characteristic way of life for most of the Native communities, where about three-fourths of Alaska's Eskimos, Indians, and Aleuts live."[42] Especially for those in western and northern Alaska, subsistence as a primary way of life was still possible, though more difficult and more expensive.

For most, especially in rural Alaska, subsistence was necessary. The little cash available usually went for the materials and equipment—rifles, snow machines, gasoline—that had become vital to subsistence activities.[43] In a 1968 survey of 35 northern coastal and interior villages, more than 50 percent of the respondents said that subsistence activities provided half or more of their food supply.[44] An earlier study in 11 villages found that, while imported foods accounted for more calories than did local foods, local foods were of much greater importance for protein.[45]

What is more, for many, subsistence was preferred—as a study quoted in Alaska Natives and the Land noted: The same sentiment is heard over and over—that "our food is walrus" . . . "It's our bread."[46]

In summary, at the time when pressure for a land claims settlement was mounting, most Native people lived off the land and pursued the traditional ways of being that accompanied subsistence. Over the past two centuries Natives had responded to intrusion on their way of life by adapting to cultural forces—as their ancestors had adapted to fluctuations in their means of livelihood caused by physical and biological forces. They had drawn on well-developed capacities for resourcefulness and resilience to face the challenges of increased competition for the land's resources.

Over the same period, the government of the latest newcomers to Alaska had faced challenges of its own. The United States had sought to discover how best to govern the huge territory it controlled—including how best to formulate its relationship with Alaska's Native population.

Chapter 3

THE FEDERAL GOVERNMENT'S RELATIONSHIP TO ALASKA NATIVES BEFORE ANCSA

INTRODUCTION

The Americans who came to Alaska in the 19th century—like those who explored and settled the other states—brought an attitude toward the land which was fundamentally different from that of the Native American people. To the American of European origin, land could be owned, and owners of land protected their property by recording their rights in perpetuity. Owners could also alter or exploit their land in any way they wished, and they could lease or sell it for a profit.

In contrast, the Native Americans used no written deeds or titles to prove who occupied and used certain lands. To the Native American, land was not a mercantile commodity. The rights to land were not held and transfered by individuals. "Property rights" were group rights—the entitlement of a certain tribe, social unit, or family to exclusive use of the area needed to sustain life. The land was thus of primary value, but alteration of the land was not conceivable.

The United States has long acknowledged this difference in attitude toward land by recognizing the existence of "aboriginal claims" or "Indian title," as the Supreme Court said in 1835:

> Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals.[47]

The courts have made several distinctions between aboriginal or Indian title and the "fee simple" title held under the Anglo-Saxon legal system. Aboriginal title signifies a group's, not an individual's, right to the land. It represents merely the exclusive right to occupy and use the land but not full fee

ownership; under the domestic law of the United States, the ultimate right to convey title to the land rests with the Federal Government. The Federal Government is obligated, however, to protect aboriginal claims until they are extinguished—either through abandonment of the land by the aboriginal people or through express congressional action to extinguish aboriginal title (usually by purchase). Until aboriginal title is extinguished, however, the right to use and occupy the land belongs exclusively to the original inhabitants.

The land claims of the Alaska Natives were the "main remaining body of unresolved claims by aboriginal people in the United States,"[48] and their resolution was to come about in circumstances far different from those which prevailed when other Native Americans' claims were extinguished.

In the continental United States, wars of conquest had been fought, treaties had been signed, and tribes had been removed from their traditional lands to make way for the new society's westward expansion. Extinguishment of aboriginal claims had generally been a two-step process in which the tribes ceded their right to occupy large expanses of land in exchange for money and "recognition" of a permanent right to occupy a smaller "reservation."[49]

In Alaska, however, there was no history of conquest and treaty making, no demand on a scale large enough to force removal of the Natives from their lands. Many Natives were able to continue to live on their lands relatively free from interference. The question of whether Natives held rights or title to the land was therefore largely ignored.

The treaty that sealed the United States' purchase of Alaska implicitly reserved to Congress the power to determine Alaska Natives' rights to the land. Yet, for 104 years, Congress did not make that determination. When the 92nd Congress at last set about resolving Native land claims in 1971, the claims were acknowledged to be a "longstanding, long-neglected issue."[50]

Throughout the first century of American control, however, intertwined executive policies, congressional enactments, and judicial interpretations resulted in a relationship between the Federal Government and the Alaska Natives as complex and significant as any other that exists between the United States and Native Americans.[51] The discussion that follows distinguishes four phases in the history of that relationship.

THE EARLY YEARS (1867–1905)

ALASKA AS A MILITARY AND CUSTOMS DISTRICT

In purchasing Alaska from Russia, the United States made no agreement with the Native people; their aboriginal claims were not extinguished. Only one paragraph of the 1867 treaty[52] addressed the status of the Native people. In its provisions defining the rights of the "inhabitants," Article III stated the following:

> The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized Native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country. [emphasis added]

The last sentence of the article has been held to apply the whole body of Federal Indian and statutory law to the "Indian tribes of Alaska."[53]

From 1867 to 1884, Alaska was governed first by the Army, then by the Collector of Customs, and then by the Navy. America was little concerned with a land so unknown and so remote; the Civil War just over, public attention focused on the industrial and agricultural prospects opening up at home.[54] The governmental view of Alaska was confined to southeastern Alaska;[55] Sitka, the old Russian capital, became the American headquarters.

During these early years of American control, interference with the traditional uses of the land and waters was limited relative to that which would follow. There were intrusions, however. In the absence of a formal government structure, miners drafted their own code, drawing up rules for the staking and registry of claims.[56] Some Natives were paid by miners to vacate their lands—although, in the absence of land laws, such transfers of land rights were not legal.[57] Newcomers to Alaska came to regard records in the customs office as evidence of their title to lands.

CIVILIAN GOVERNMENT: THE DISTRICT OF ALASKA

In 1884, the First Organic Act[58] established civilian government and extended to Alaska those United States land laws which related to mining claims. The Organic Act provided that mining claimants would be allowed to perfect their titles; it also protected lands used by missionaries. With respect to the Natives inhabiting Alaska, it provided in Section 8:

> . . . That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress . . . [emphasis added]

The phrase "or now claimed by them" was added at the request of legislators who, aware of their lack of knowledge of Alaska, desired " . . . that the Indian shall at least have as many rights after the passage of the bill as he had before."[59]

The Organic Act launched a period of growth in Alaska's non-Native population, which increased from 430 in 1880 to about 6,700 in 1890 and to about 30,000 in 1900. Laws passed in the decades following the Organic Act further opened lands in Alaska to trade, exploration, and settlement. None specifically dealt with the land status of Alaska Natives, although the 1891 act that opened lands in Alaska to trade and manufacturing sites excluded, among others, "those lands to which the Natives of Alaska have prior rights by virtue of actual occupation";[60] the Act of May 14, 1898, extending the homestead laws of the United States to Alaska, reserved suitable tracts of land as "landing places for canoes and other craft used by such Natives";[61] and the law extending a system of public land surveys to Alaska in 1900 provided that "Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use or occupation . . . "[62]

In 1887, passage of the General Allotment Act, or Dawes Act,[63] launched a policy toward Indians that had been growing in favor for many years. Large tribally held lands were to be subdivided into small segments—from 40 to 160 acres—and allotted to Indian families or individuals. The intent was to assimilate the Indians, helping them to become self-supporting.[64] Assimilation was the keystone of Federal Indian policy until the 1920's.[65] A policy statement issued by the Commissioner of Indian Affairs in 1889 said this in part:

> (1) The Reservation system belongs to the past,
> (2) Indians must be absorbed into our national life, not as Indians but as American citizens,
> (3) the Indian must be "individualized" and treated as an individual by the Government . . . [66]

The provisions of the General Allotment Act were not applied to Alaska, as there were then no reservations in Alaska. Yet executive policy and congressional action during the period reflect the assimilationist view. A request of the Tlingit and Haida Indians for a reservation was ignored.[67] Section 13 of the first Organic Act[68] directed the Secretary of the Interior to ". . . make needful and proper provisions for the education of the children of school age in the Territory of Alaska, without reference to race . . . " As Alaska's first General Agent for Education and later as Alaska General Agent, the former Presbyterian missionary Sheldon Jackson gave special attention to the "advancement" of Alaska Natives through education.[69] Jackson opposed the use of Native languages in education and religion. The reindeer-herding enterprise which he established for Eskimos in 1891 exemplified his concern with providing "industrial training"[70] for Natives and promoting Native economic self-sufficiency.

Along with the assimilationist view, another position with respect to Alaska Natives' status is apparent in statements of executive policy of the period. Because there was no Indian Agency in Alaska and Natives were entitled to the same services as non-Natives, the Solicitor for the Department of the Interior held in 1894[71] that Alaska Natives did not have the same relationship to the Federal Government as did other Native Americans and were to be treated

differently from Native Americans generally. In his annual report as Agent for Education in 1886, Sheldon Jackson stated, "The government has never treated [Alaskan Natives] as Indians and it would be a national calamity to subject them to the restrictions and disabilities of our Indian system."[72] In addition, an 1886 Alaska Federal District Court opinion[73] held that Alaska was not Indian country, and its language implied that Alaska Natives were so dependent on the Federal Government that they did not have the internal governing authority which the United States recognized Indian tribes as having.[74]

As the 20th century began, Alaska Natives were in what has been referred to as an "anomalous position"[75] and described as follows: "Physically they comprised the major part of Alaska's population. Officially they were invisible."[76] They were omitted from the General Allotment Act, which applied to Indians elsewhere, and they were precluded from the Homestead Act because they were neither citizens nor aliens capable of becoming citizens. An 1871 congressional act banning treaty making[77] prohibited them from entering into treaties under which they could cede some lands to the Government and retain others. Their rights to possession of their lands could therefore be enforced only through civil action in the courts, which were inaccessible to them by reason of distance, expense, and lack of knowledge. Both their status as Native Americans in relation to the United States Government and their land status were undetermined.

THE TRANSITIONAL PERIOD (1905–1936)

Between roughly 1905 and 1936, the assumption that the status of Alaska Natives was different from that of other Native Americans underwent a transformation. That transformation is reflected in judicial interpretations as well as in administrative actions and statutory enactments that extended to Alaska most of the policies adopted regarding Native Americans in the 48 States.

EDUCATION AND HUMAN SERVICES FOR NATIVES

Although the 1884 Organic Act had provided for Federal education services "without regard to race," a dual system of education had emerged by the early 20th century. Sheldon Jackson's administration had supported or established schools in remote Native villages all over Alaska, and those schools were becoming the focal point of reindeer herding, health care, and other programs. Such programs were in fact intended to benefit only Natives. Thus, when in 1905 Congress authorized appropriations specifically for the "education and support of the Eskimos, Indians, and other Natives of Alaska,"[78] it merely acknowledged an accomplished fact.[79]

Subsequent congressional appropriations contained similar broad authority for Federal "support" of Alaska Natives.[80] Monies were used to implement a variety of economic development and social welfare programs in addition to education programs.

In 1921, the Snyder Act provided an extremely broad authorization of appropriations "for the benefit, care and assistance of Indians throughout the United States."[81] Initially the Snyder Act, which applies only to the Bureau of Indian Affairs (BIA), did not apply in Alaska. However, Alaska Native programs came under the authority of the act in 1931, when the Bureau of Education's Alaska activities were transfered to the BIA.[82] A comprehensive opinion issued by the Department of the Interior Solicitor in 1932 after a thorough examination of Federal policy, history, and law reached the following conclusion:

> (I)t is clear that no distinction has been or can be made between the Indians and other Natives of Alaska so far as the laws and relations of the United States are concerned whether the Eskimos and other natives are of Indian origin or not, as they are wards of the Nation, and their status is in material respects similar to that of the Indians of the United States.[83]

NATIVES' LAND RIGHTS

By the early 20th century, the matter of protection for Native land rights had to be considered. Threats to Native land use mounted as the Federal Government carved out large forest and other reserves; as miners poured into Alaska following the gold and coal strikes; as the steadily increasing permanent non-Native population pressed for self-government and the establishment of a political and economic intrastructure; and as plans for highway and railroad construction got underway.[84]

The situation in Alaska began to some degree to resemble that in the Lower 48 States in previous decades: "Pressure . . . forcing Government to a faster pace in the business of opening Indian lands."[85] This development coincided with the emergence in white America at the turn of the century of "a rising crescendo over the fate of the 'Vanishing American'."[86] In 1904, the first full report to Congress on Alaska placed "particular stress [on] the problem of the Native in his relation to the White."[87]

An Alaska Native Allotment Act,[88] patterned on the Dawes Act of 1887, was adopted in 1906. This act was the first to allow Alaska Natives to obtain title to land. It did not recognize aboriginal title, however. Rather, like the 1887 act, it allowed individual adult Natives to select as homesteads up to 160 acres in lands not valuable for coal, oil, or gas deposits. The act provided for "restricted" title; the Native holder of title could not lease or sell the allotment until a 1956 amendment[89] allowed conveyance with Secretarial approval.

The allotment concept did not take hold in Alaska. Only 80 allotments—most of them in southeastern Alaska—were issued under the Act during the first 54 years following its passage. Most Natives lacked knowledge of the Anglo-Saxon property concepts incorporated in the Act. Furthermore, the 160-acre allotment concept ill-fitted a society adapted not to farming but to hunting, fishing, trapping, and foraging.[90] A similar measure, the Alaska

Native Townsite Act[91] of 1926, also had little effect. The act enabled Alaska Natives to receive restricted deed titles to surveyed townsite lots. However, as of June 30, 1967, less than 500 acres were held in Native townsite ownership.[92]

In a 1905 case, United States v. Berrigan, the Alaska District Court determined that under Article IV of the Treaty of Cession, Natives were "entitled to the equal protection of the law which the United States affords to similar aboriginal tribes within its borders."[93] That protection included the Federal obligation to protect aboriginal title. The decision also cited the protection of the Indian right of occupancy which Congress had provided for in the Organic Act of 1884 and subsequent statutes. In 1914, another District Court case, United States v. Cadzow,[94] upheld the right and duty of the United States to protect Alaska Native title.

Between 1905 and 1919, "reserves" ranging in size from 17.21 to 316,000 acres were created by executive order for "the Natives of the indigenous Alaskan race."[95] After 1919, executive order reserves for Natives were set aside for "public purposes," such as facilitating Native reindeer herding, education, and fishing. However, up until the 1930's, only one permanent "reservation" of land for Natives—the Annette Island Reservation for the Metlakatla Indian Community—was created.[96]

In 1936, the setting aside of large areas for Native use and occupancy became a possibility. Congress extended the Indian Reorganization Act (IRA) to Alaska. Enacted in 1934, the IRA represented a decisive shift in Federal Indian policy and a turning away from assimilationist views. The IRA was aimed at enabling Indian tribes to interact with and adapt to a modern society as governmental units, rather than at forcing the assimilation of individual Indians.[97] Toward this end, it sanctioned tribal self-government under Secretarially approved constitutions.

The 1936 Amendment to the IRA, sometimes called the Alaska Reorganization Act, fully applied the IRA to Alaska and permitted creation of a new type of reservation. Section 2 permitted the Secretary of the Interior to designate as an Indian reservation any area previously reserved for Alaska Natives or placed under the jurisdiction of the Department, as well as any other public lands actually occupied by Alaska Natives.[98]

In a letter to the House Indian Affairs Committee, Secretary Ickes stated that the creation of reservations in Alaska would "enable the United States Government in part to fulfill its moral and legal obligations to protect 'economic rights' of Alaska Natives."[99]

PRESERVATION OF THE STATUS QUO (1935-1958)

THE IRA IN ALASKA

The reservation provisions of the IRA set off an Alaska-wide controversy. Natives feared that they might be confined to small areas with limited resources on land held "in trust" for them by the Government. Non-Natives were apprehensive about the amount of land that would be closed to

development. Especially disconcerting was the announcement that approximately 100 reservations would be created—coupled with the creation in 1943 of the 1,408,000-acre Venetie Reserve (just north of the Arctic Circle).[100] Only seven IRA reserves were established in Alaska; three villages turned down reserves proposed for them.[101]

Two judicial decisions cast a cloud of doubt over the status of Alaska's IRA reserves.[102] In Hynes v. Grimes Packing Co. (1949),[103] the Supreme Court approved the authority of the Secretary of the Interior to create a reserve under the Alaska IRA. However, it denied his authority to criminally enforce exclusive Native fishing rights on the reserve—the main reason for creating the reserve. The decision also said that an IRA reservation, as it was created by Secretarial order, "convey[ed] no right of occupancy to the beneficiaries beyond the pleasure of Congress or the President."[104] In United States v. Libby, McNeil & Libby (1952), the Alaska District Court invalidated the Hydaburg IRA reserve, holding that evidence of continuous Native use and occupancy was insufficient to establish a reservation under the IRA.[105]

Ultimately, World War II pressures, territorial politics, bureaucratic conflict, Native mistrust, and adverse court decisions combined to defeat IRA policy in Alaska.[106] Although by 1950 an additional 80 villages had submitted requests for reservations totaling approximately 100 million acres, no reservations were created after 1946. Public opinion in Alaska opposed reservations, and the pendulum of national policy had again begun to swing toward assimilation and acculturation.[107] Thus, the Alaska IRA enabled only a few Native villages to obtain limited protection against encroachment, and the durability of that protection appeared open to question.

CLAIMS BASED ON ABORIGINAL RIGHTS

Another potential vehicle for protecting Native lands emerged in 1946 when Congress created the Indian Claims Commission[108] to permit Indians to file suit against the Government on certain claims not previously allowed. However, only 12 Alaska Native groups filed claims before the 1951 deadline, and not all the claims concerned the loss of aboriginal land rights. At the time, most Alaska lands claimed under "Indian title" were still under Federal control and in use by Native groups; loss of those lands would not be perceived as a threat for over a decade.

In 1947, the Ninth Circuit Court considered the impact of the 1884 Organic Act on Alaska Native aboriginal title. In Miller v. United States[109] the court held that, in providing that Natives' use or occupation of lands should not be disturbed, the Organic Act recognized not aboriginal title but individual title.

However, the U.S. Supreme Court specifically disapproved the Miller holding in two subsequent Alaska cases: Hynes v. Grimes Packing Co. (1949) and Tee-Hit-Ton Band of Indians v. United States (1955). The Court also held in Tee-Hit-Ton that the 1884 Organic Act "was intended merely to retain the status quo until further congressional or judicial action was taken."[110] The Tee-Hit-Tons thus held their land not by individual title but, at most, by "unrecognized" aboriginal title. The question of whether the Tee-Hit-Tons—and all Alaska Natives—could in fact claim aboriginal title was left open because the Court specifically avoided deciding whether the 1867 Treaty of Cession had extinguished aboriginal title.[111]

CRISIS: STATEHOOD AND THE ASSERTION OF NATIVE CLAIMS (1958–1971)

Just prior to Alaska statehood, the existence of Alaska Native aboriginal title was not judicially established and the concept was vigorously opposed by Alaska's political leaders.[112] Ironically, just after statehood, acknowledgment of broad aboriginal claims in Alaska would receive a significant judicial boost.

Alaska achieved statehood on January 3, 1959, nearly a century after the purchase from Russia. Section 4 of the Statehood Act[113] provided in part the following:

> [T]he State and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said natives.

The Statehood Act thus renewed the 1884 Organic Act's disclaimer of lands used and occupied by Natives—without defining the "right or title" which Natives might have. That was left to Congress or the courts.

In October of 1959 the Federal Court of Claims settled a long-pending suit by declaring that the Tlingit and Haida Indians had established aboriginal title to virtually all of southeastern Alaska.[114] The court concluded that the Tlingits' and Haidas' aboriginal patterns of use and occupancy had not been interfered with until 1884; that since 1884 the Tlingits and Haidas had lost most of their land through the Government's failure to protect their rights; and that a large area was taken without their consent and without compensation. The Court decided that the Tlingits and Haidas were entitled to compensation for "all usable and accessible land which they used and occupied."[115]

Although Court of Claims decisions are not necessarily precedent for other Federal courts, the conclusiveness of this decision made it probable that, given proper jurisidictional acts, Alaska Native communities could successfully pursue claims based on aboriginal title to virtually all of Alaska.

Acting under authority of Section 6(b) of the Statehood Act, the State of Alaska began its selection of up to 102.5 million acres from "vacant, unappropriated, and unreserved public lands." Yet Native claims to those same lands could no longer be ignored. A crisis began to unfold.

NOTES: PART I

Works frequently cited have been identified by the following abbreviations:

Arnold — Robert D. Arnold, Alaska Native Land Claims, 2nd edition (Anchorage: The Alaska Native Foundation, 1976).

Land — Federal Field Commission for Development and Planning in Alaska, Alaska Natives and the Land (October 1968).

Naske — Claus M. Naske, and Herman E. Slotnick, Alaska: A History of the 49th State (Grand Rapids: William B. Eerdmans Publishing Company, 1979).

SR — Senate Report, 92-405, accompanying S. 35 (October 21, 1971).

HR — House Report No. 92-523, accompanying H.R. 10367 (September 28, 1971).

Case — David S. Case, The Special Relationship of Alaska Natives to the Federal Government: An Historical and Legal Analysis (Anchorage: The Alaska Native Foundation, 1978).

[1] This capsule description of the Minto protest is drawn from three sources: Arnold, 100-102; SR, 96-97; and Naske 208-211. These sources, particularly the first two, are the basis for most of the information presented in this section (see Arnold, 93-144; SR 61-63 and 71-106; and Naske, 204-220, 225, and 233-241).

Other information was gleaned from the following sources: Land, 535-546; HR, 3-4; Indian Legal Information Development Service (ILIDS) Legislative Review, October 1971, vol. 1, no. 2, 17-27; Congressional Record of the House debate on H.R. 10367 (October 18-21, 1971) and of the Senate debate on S. 35 (November 1, 1971).

[2] Statehood Act, Act of July 7, 1958, P.L. 85-508, section 6, 72 Stat. 339.

[3] Land, 537. In 1968 Alaska Natives owned in fee simple less than 500 acres and held in restricted title only an additional 15,000 acres. Approximately 900 families shared the use of 4 million acres administered by the Bureau of Indian Affairs. All other rural families lived on the public domain.

[4] The experiment, called Project Chariot, was eventually abandoned due to opposition from the Eskimos and the public.

[5] Paul Brooks, The Pursuit of Wilderness (Boston: Houghton Mifflin Co., 1971), 92. The Rampart Dam project was discontinued for a number of reasons including adverse ecological reports and economic projections as well as opposition from Natives and the public.

[6] Arnold, 119. Land, 537, states: "Of the 272 million acres in the public domain, Natives claim 250 million acres; of the 85 million acres reserved by the federal government for specific purposes, they claim 75 million acres; of the 12 million acres in process of selection by the State under terms set forth by the Statehood Act, they claim all but 100,000 acres; and of the 6 million acres already patented to the State or to private individuals, they claim 3 million acres." (See Figure 1-1.)

[7] In a letter to Governor Walter J. Hickel dated August 10, 1967.

[8] Public Land Order 4582, Department of the Interior, January 17, 1969.

[9] The State filed a civil action in the Federal District Court. An appeal was taken to the Ninth Circuit Court of Appeals, which was not willing to hold that there were no valid Native claims to lands under State selection [State of Alaska v. Stewart L. Udall, 420 F. 2d 938 (1969)]. The State's request for review by the Supreme Court was denied.

[10] Arnold, 123.

[11] Naske, 240-241.

[12] SR, 62.

[13]Ibid., 78.

[14]Ibid.

[15]HR, 4.

[16]SR, 62.

[17]See, for example, Case; Felix S. Cohen's Handbook of Federal Indian Law (Charlottesville, Virginia: Michie Bobbs-Merrill, 1982), 739-770; and Robert E. Price, Legal Status of the Alaska Natives: A Report to the Alaska Statehood Commission (Juneau: State of Alaska Department of Law, 1982).

Chapter 2

[18]SR,72.

[19]Land, 3.

[20]SR, 72.

[21]Land, iii.

[22]Ibid.

[23]Ibid., 536.

[24]Ibid., 35.

[25]Land, 83, quoting Carl Muschenheim in a speech ("The National Significance of Indian Health") delivered before the Fourth National Conference on Indian Health, November 30, 1966.

[26]Ibid., 83.

[27]This brief and admittedly superficial ethnographic description of Alaska's Native people is drawn principally from the accounts (themselves acknowledgedly brief and superficial) provided by Arnold; Dorothy Jean Ray, "The First People," in Alaska's Native People, ed. Lael Morgan (Anchorage: Alaska Geographic Society, 1979); and Naske. Those sources are supplemented by information from Land and from the 2(c) Report: Federal Programs and Alaska Natives, "Introduction and Summary," Lee Gorsuch, (Portland, OR: Department of the Interior, 1973).

[28]It should be emphasized that these broad groupings are an oversimplification. The Alaska Native Language Center, in its 1982 language map, distinguishes 10 major ethnic/linguistic groups: Tsimshian, Tlingit, Haida, Eyak, Aleut, Alutiiq, Athabascan, Yupik, Siberian Yupik, and Inupiaq. Land, in treating land and ethnic relationships, discusses 15 distinct regions.

[29]Dorothy Jean Ray, "The First People," Alaska's Native People, 17.

[30]Ibid., 15.

[31]Land, 91.

[32]Ibid., 89.

[33]2(c) Report, op. cit., 11.

[34]The information presented in this section is drawn from Arnold, 61-92; Naske, 27-131 and 195-199; Land, 86-283; and the 2(c) Report, op. cit., Introduction and Summary, Part A, Section 1. The bibliography of this report lists other pertinent sources.

[35]T. P. Barr, "The Aleuts," Scientific American, 1958 [quoted in Land].

[36]Margaret Lantis, "The Aleut Social System, 1750 to 1810, from Early Historical Sources," in Ethnohistory in Southwestern Alaska and the Southern Yukon: Method and Content, ed. Margaret Lantis (Lexington, KY; University of Kentucky Press, 1970), 179 [quoted in Naske].

[37]Ales Hrdlicka, Anthropology of Kodiak Island (Philadelphia: The Wister Institute of Anatomy & Biology, 1941) [cited in Land, 247].

[38]Arnold, 24.

[39]George W. Rogers and Richard A. Cooley, Alaska's Population and Economy: Regional Growth, Development, and Future Outlook, Vol. 2, Statistical Handbook (College, Alaska: Institute of Social, Economic, and Government Research, 1963), 7.

[40]Arnold, 74.

[41]George W. Rogers, Alaska Native Population Trends and Vital Statistics, 1950-1985," Institute of Social, Economic, and Government Research (Fairbanks: University of Alaska, 1971).

[42]Land, 87.

[43]2(c) Report, op. cit., 13.

[44]Land, 51.

[45]Christine A. Heller, Ph.D., and Edward M. Scott, Ph.D., The Alaska Dietary Survey, 1951-1961. U.S. Department of Health, Education and Welfare, Public Health Service, Nutrition and Metabolic Disease Section, Arctic Health Research Center, Anchorage, Alaska, 35 [cited in Land, 52].

[46]Charles Campbell Hughes and Jane Murphy Hughes, An Eskimo Village in the Native World (Ithaca, New York: Cornell University Press, 1962). [quoted in Land, 175].

[47]Mitchel v. United States, 34 U.S. 711 (1835).

[48]SR, 61.

[49]Case, 18.

[50]SR, 62.

[51]Case, 6.

[52]Treaty of Cession, March 30, 1867, 15 Stat. 539.

[53]In re Minook, 2 AK. Rpts. 200, 220-221 (1904) so holding in the context of an Alaska Native citizenship petition.

[54]Naske, 57.

[55]Land, 433.

[56]Naske, 63.

[57]Arnold, 68.

[58]Act of May 17, 1884, 23 Stat. 24.

[59]15 Congressional Record 530-531.

[60]Act of March 3, 1891, Section 14, 26 Stat. 1095.

[61]30 Stat. 409.

[62]Act of June 6, 1900, 31 Stat. 321.

[63]Act of February 8, 1887, 24 Stat. 388.

[64]Cohen, op. cit., 128-132.

[65]Theodore H. Haas, "The Legal Aspects of Indian Affairs from 1887 to 1957," Annals, May 1957, 13.

[66]U.S. Department of the Interior, The United States Indian Service, "A Sketch of the Development of the Bureau of Indian Affairs and of Indian Policy," May 1962, 583.

[67]Land, 432.

[68]Act of May 17, 1884, 23 Stat. 24.

[69]Case, 3.

[70]Sheldon Jackson, "Fifteenth Annual Report on Introduction of Domestic Reindeer into Alaska," 1905, Government Printing Office, Washington, D.C. (1906), 8.

[71]19 L.D. 323.

[72]Quoted in Alaska's Native People, ed. Lael Morgan (Anchorage: Alaska Geographic Society, 1979), 39.

[73]In re Sah Quah, 1 Ak Fed. Rpts., 136, which, in questioning the sovereign authority of Tlingit Indians to maintain their traditional practice of slavery, held that Tlingits were subject to the Thirteenth Amendment to the Constitution.

[74]Discussed in Case, 2.

[75]SR, 90.

[76]Ibid.

[77]Act of March 3, 1871, 16 Stat. 544.

[78]Act of January 27, 1905 (the "Nelson Act"), 33 Stat. 617.

[79]Case, 3.

[80]"Status of Alaska Natives," 53 L.D. 593, 598 (1932).

[81]Act of November 2, 1921, 42 Stat. 208, 25 USCA 13.

[82]Secretarial Order No. 494, March 14, 1931.

[83]Note 80, above, 605.

[84]Detailed accounts of the events of this period can be found in A Guide to Alaska: Last American Frontier, by Merle Colby, Federal Writers' Project (New York: The Macmillan Company, 1944) and in Alaska: A History of Its Administration, Exploitation, and Industrial Development During Its First Half-Century by Jeannette Nichols (Cleveland: The Arthur H. Clark Company, 1924).

[85]Remark of Senator Dawes, as quoted in D. Otis, The Dawes Act and the Allotment of Indian Lands, 82 (1973).

[86]Ted C. Hinckley, The Americanization of Alaska, 1867-1897 (Palo Alto: Pacific Books, 1972).

[87]Nichols, op. cit., 227.

[88]Act of May 17, 1906, ch. 2469, 34 Stat. 197 (repealed 1971).

[89]70 Stat. at 954, section 1(e) (repealed 1971).

[90] Land, 435.

[91] Act of May 25, 1926, 44 Stat. 629.

[92] Land, 452.

[93] United States v. Berrigan, 2 Ak. Rpts., 447-448 (D.C. AK 1904).

[94] United States v. Cadzow, 5 Ak. Rpts., 125 (D.C. AK 1914).

[95] Land, 435 and 445.

[96] Act of March 3, 1891, 26 Stat. 1095.

[97] Cohen, op. cit., 147.

[98] Act of May 1, 1936, 49 Stat. 1250, Section 2.

[99] Ibid., Rept. No. 2244,74th Cong., 2d Sess. (March 26, 1936), 4.

[100]Naske, 201.

[101]Arnold, 87.

[102]Case, 41.

[103]337 U.S. 86 (1949).

[104]Ibid., 103.

[105]107 F. Sup, 697 (D. Alaska 1952).

[106]Case, 38.

[107]Land, 438.

[108]Act of August 13, 1946, ch. 959, 60 Stat. 1049 (codified as amended, 25, U.S.C. sections 70 to 70v-3), now omitted from the code because the Indian Claims Commission terminated on September 30, 1978.

[109]159 F.2d, 997 (9th cir., 1947).

[110]348 U.S., 278.

[111]Ibid., 274. The Court did conclude—in a much criticized decision—that unrecognized aboriginal title was not compensable. Ibid., 284-285.

[112]See, e.g., Ernest Gruening, The State of Alaska (New York: Random House, 1968), 380.

[113]Act of July 7, 1958, 72 Stat. 339.

[114]Tlingit and Haida Indians of Alaska v. United States, 147 Ct. Cl. 315, 177 F. Supat 452 (October 7, 1959).

[115]After nine years, the court placed a value of $7,546,053.80 on the 16 million acres taken by the Government. Tlingit and Haida Indians of Alaska v. United States, Court of Claims No. 47900, decided January 19, 1968.

Part II

REALIZATION OF A LEGISLATIVE SETTLEMENT

The Alaska Native Claims Settlement Act

December 18, 1971

Chapter 4

EMERGENCE OF THE SETTLEMENT TERMS

TOWARDS A LAND CLAIMS SETTLEMENT: 1963-1970

Facing the threat of land loss, Alaska Natives began to organize in the early 1960's—first locally, as villages protesting State and Federal actions filed official claims; then regionally, as isolated villages recognized that they faced common problems; then statewide, as Native peoples' traditional mistrust of those outside their own geographic regions was at last overcome through the emergence of vehicles for communication and cooperation.[1]

The first regional Alaska Native organization to be formed in nearly half a century, Inupiat Paitot, emerged in 1961 as northern Eskimos marshaled their opposition to limitations being imposed around Barrow on the subsistence hunting of ducks and to plans for the Project Chariot nuclear blast near Point Hope. By 1962 three other regional and one urban organization had formed. With the publication in October 1962 of the Tundra Times, the first statewide Native newspaper, the Native movement gained new strength. As antipoverty funding from the Office of Economic Opportunity furthered community and regional planning via "Operation Grassroots," the land rights movement spread across the State.

By 1963 the Department of the Interior recognized that resolution of the Native land rights issue was long overdue. Interior Secretary Stewart Udall appointed a three-man group, the Alaska Task Force on Native Affairs, which urged that Congress define the Native entitlement promptly. The Task Force specifically called for: (1) granting of up to 160 acres to each Native individual for homesites, fish camps, and hunting grounds; (2) withdrawal of "small acreages" for villages; and (3) designation of areas to be used for food gathering activities but not owned.

Alaska Natives opposed the Task Force's recommendations and those of State officials who urged that they allow the State to proceed with its land selections and then work out with the State a plan for land use. The Natives maintained that they needed title to large areas for subsistence use and, later, for resource development, in addition to cash compensation for lands they would lose.

In 1966, transcending regional rivalries, delegates to a statewide meeting agreed to unify the Native effort and establish a common front through the Alaska Federation of Natives (AFN). This statewide organization was of tremendous importance in coordinating and advancing the Natives' numerous and often conflicting land claims. From its inception, AFN called for settlement of the claims by Congress, with substantial consultation with Natives. Recognized as the voice of the Natives, AFN was to lead the effort to lobby a settlement through Congress.

During the summer of 1967, the first two land claims bills were introduced in the 90th Congress—one sponsored by the Department of the Interior, the other by AFN. Both proposed that a Federal court determine how much cash compensation Natives should be awarded. The Department's bill allowed 50,000 acres of trust land per village (altogether, 8 to 10 million acres); the AFN bill authorized the court to award title to an unspecified amount of land. Natives criticized the Department's bill both for allowing too little land and for proposing that the land be held in trust for Natives by the Department rather than owned and controlled by Natives themselves. A trust relationship, they believed, would be demoralizing as well as commercially inhibiting.[2] It was critical, they asserted, that Natives be in a position to develop the land's subsurface resources and ensure that such development was compatible with surface uses.[3]

Also during the summer of 1967, Alaska's Governor, Walter J. Hickel, announced a policy of cooperation with Native groups. Hickel wanted to avoid lengthy litigation that would prolong the land freeze. Under advice from the State's new Attorney General, Edgar Paul Boyko, he came to see that Native ownership could benefit the State's economy. A Land Claims Task Force was established under State sponsorship. Chaired by State Representative Willie Hensley, of Kotzebue, the Task Force included other Native leaders as well as State and Department of the Interior representatives.

In January 1968 the Task Force recommended that Native villages be given legal possession of 40 million acres; that all lands currently used for hunting and fishing be available for those purposes for up to 100 years; and that the Native Allotment Act remain effective. Ten percent of income from the sale or lease of oil rights from certain lands would be paid to Natives, up to a total of at least $65 million. If the land freeze was lifted before the end of 1968, Natives would be paid up to $50 million from State mineral revenues. Business corporations organized by villages and regions, and one statewide corporation, would carry out the settlement.

Hearings held by the Senate Interior and Insular Affairs Committee opened in Anchorage in February 1968. A month later, the chairman of the committee, Henry Jackson (D Wash.), requested that the Federal Field Committee for Development Planning in Alaska study the social and economic circumstances of Natives, describe historic patterns of settlement and land use, and examine many elements of land ownership and claims. The Committee's report in late 1968[4] confirmed the validity of Native land claims but recommended that only 7 to 10 million acres be owned by Natives, with additional lands available for

Native use. In what would prove to be its most significant recommendation, the Committee proposed compensation of up to $1 billion—the highest figure to date—with only $100 million to be appropriated and the remainder to derive from mineral revenues.

The Committee's recommendation of mineral revenue sharing, and the support it gained from Senator Jackson, reinstated the concept as a feature of the settlement proposal AFN adopted in 1969. The State's $900 million Prudhoe Bay oil sale in September 1969 reinforced AFN's contention that the State could afford to share some of its mineral revenues.

Congressional hearings were held during 1969 but no bill was released. In April 1970 Senator Jackson's Interior Committee recommended to the Senate S. 1830, which drew on the Federal Field Committee's recommendations. Natives objected strongly to S. 1830's land provisions, which would grant full title to little more than 10 million acres, and they challenged the provisions which authorized revenue sharing for only a limited number of years. Efforts to amend the bill failed, however. The measure was adopted by the Senate in July but died in the House when the 91st Congress adjourned.

Late in the year AFN drew up a new proposal, which was introduced in both houses of the new Congress in 1971. The proposal raised the amount of land to 60 million acres. It continued AFN's concept of 12 for-profit regional corporations, one for each existing regional Native association, and provided for $500 million in Federally appropriated funds plus a 2-percent share in perpetuity of revenues from public lands. The proposal resolved regional differences by incorporating a "land lost" formula. Each region would receive an initial $8 million payment, after which the $500 million appropriation and the land would be distributed based on the regions' land areas rather than their populations. The mineral revenues, however, would be distributed on a per capita basis to each corporation.

THE LEGISLATIVE ISSUES

When the 92nd Congress convened for its first session in 1971, there was no question that prompt settlement by Congress of the Alaska Natives' land claims would serve not only the Natives' interests but the interests of the State and the Nation as well.

Nor was there any question that the settlement must be comprehensive and innovative. To resolve claims that had a common basis in aboriginal use and occupancy, the settlement had to attempt to address the current status and needs of a wide diversity of claimants across the State. To steer clear of the paternalism and parochialism that had characterized past dealings with Native Americans, those who were to benefit from the settlement had to be allowed a hand in shaping it.

The outlines of a broad and novel settlement emerged and altered and gained consensus over the course of a decade. In 1971, elements of the settlement yet to be delineated were relatively few but nevertheless significant.

Regarding land:

> How much land should be awarded, and how should it be awarded? Should Natives be granted full ownership of a large land base to use as they saw fit, or merely protection of their rights to use acreage adequate to their hunting and fishing needs? Should land be apportioned based on the amount of land a Native area claimed or based on the Native area's population? Should the settlement legislation contain strict land controls for conservation purposes, or would such controls significantly undermine the objectives of the settlement?

Regarding money:

> How much money should be awarded as compensation for lands lost, and how should the money be apportioned and distributed? What portion of the compensation should come from Federal appropriations, and what portion from the sharing of oil and natural resource revenues? Should the revenue sharing be limited to a specified number of years or continued in perpetuity?

Regarding implementation:

> At what level or levels should the land and cash assets be distributed and managed—village? regional? state wide? Should the Alaska Natives themselves be given full responsibility for planning, directing, and adjudicating the distribution and use of the assets awarded? Or should the State or the Federal Government have an oversight role?

By the end of 1971, the specific features of the land claims settlement were at last brought into focus.

ACHIEVEMENT OF A SETTLEMENT: THE 92ND CONGRESS, 1971

In what would be the final campaign for a claims settlement, AFN concentrated on achieving favorable action in the House of Representatives. The chances of obtaining such action were greatly aided when President Nixon issued a new settlement proposal in 1971 and said he would veto any bill with inadequate land provisions. Whereas the Administration had heretofore

proposed a settlement of 10 million acres and $500 million, the new plan called for 40 million acres in Native ownership, plus $500 million from appropriations and $500 million from revenue sharing. The outlook for a favorable resolution was also improved when Governor William A. Egan told the House Interior and Insular Affairs Committee that the State would accept AFN's proposed 60 million acre settlement and would agree to share 2 percent of State mineral revenues with Natives.

Pressure from the Native lobby, the Nixon administration, the oil interests, and the public compelled achievement of a settlement. The Interior Committees of both houses released land claims bills in September. The House acted first. On October 20 an overwhelming majority of the members voted to accept a bill (H.R. 10367) containing a land provision of 40 million acres and a cash provision totalling $925 million, with $500 million derived from mineral revenues. The two days of floor debate preceding the final vote had been largely devoted to the consideration of amendments urged by conservationist interests, particularly an amendment proposed by Morris Udall (D Ariz.) and John Saylor (R Pa.). The amendment, which sought to extend the land freeze for an additional five years and provide strict control over land use, was defeated.

The Senate promptly responded with a bill of its own. On October 21 the Interior Committee unanimously voted to report S. 35. On November 1, the Senate, substituting the provisions of S. 35 for those of H.R. 10367, passed the House bill, as amended, by a vote of 76 to 5. The Senate bill provided for $1 billion in cash and offered two land provisions from which Natives could choose: option A would grant title to 40 million acres around villages; option B would authorize 50 million acres but grant title to only 30 million, making the remaining 20 million available for subsistence use. Unlike the House debate, the Senate debate did not center around criticism that the bill failed to ensure the preservation of lands as parks, wildlife refuges, and other protected land categories. However, the Senate did adopt amendments that allowed Congress to study all unreserved public lands for possible inclusion in Federal park or wildlife refuge systems and that preserved Federal control of wildlife refuges used by Natives.

A conference committee, made up of nine members of the House and seven members of the Senate,[5] met to produce a bill acceptable to both houses. The House and Senate were close to agreement regarding the amounts of land and money to be granted. The conferees settled upon the House version of 40 million acres in fee title and reached a compromise figure of $962.5 million compensation, $500 million of which would derive from revenue sharing. The major differences to be resolved by the committee concerned three areas.

THE LAND PROVISION

What rules would govern the process by which Natives would select their lands?

> The House bill proposed to withdraw all unreserved public lands indefinitely—in effect, continue the land freeze—to permit the Secretary of the Interior to decide which lands would be available for Native selection. The

conference committee adopted that proposal but provided that the Secretary would make the withdrawal determination within 60 days, or as soon thereafter as practicable.

The House bill gave Natives first choice of 18.5 million acres from withdrawn public lands surrounding the villages; then the State would complete its selection of the 102.5 million acres granted by the statehood act, whereupon the Natives could select an additional 21.5 million acres. The Senate bill authorized one year for villages to make their selections. The compromise bill withdrew some 115 million acres for Native selection and allowed the State to continue its land selections only after all Native lands had been selected. The 26 million acres selected by the State prior to the land freeze were opened to Native selection, up to 3 townships (a township is a surveyed parcel of 36 square miles) per village.

LAND MANAGEMENT

What provisions should be made to ensure that land use in Alaska took into account the interests of all groups?

The Senate bill provided for creation of a land use planning commission that would possess some enforcement powers; the House bill did not provide for a planning commission. The conference bill authorized a commission but limited its functions to providing advice, coordination, and recommendations to the State and Federal Governments.

The conference bill also allowed the Secretary of the Interior seven years to withdraw up to 80 million acres for possible inclusion in Federal park and wildlife systems. The House had not provided that lands be set aside for parks; the Senate had so provided but had not set any maximum limit on the acreage.

ADMINISTRATION AND MANAGEMENT OF THE SETTLEMENT

To what extent and at what levels would Natives control the distribution and use of the land and money awarded?

The House bill provided for 12 regional for-profit corporations, the concept advocated by AFN. The Senate version, however, provided for only 7 regional for-profit corporations, along with corporations for urban Natives, and a national corporation for nonresident Natives. In addition, the Senate bill would create two

statewide Federally chartered corporations: one to handle investments, the other to perform social welfare functions and hold title to the mineral estate of the lands. The Senate bill would also establish a new Federal agency, the Alaska Native Commission, to administer and adjudicate the implementation of certain settlement provisions.

The conference bill adopted the House provision for 12 regional for-profit corporations which would carry out many of the responsibilities the Senate bill had delegated to the Alaska Native Commission and the statewide corporations. A 13th corporation for nonresident Natives was also permitted.

The Senate bill anticipated nonprofit corporations at the village level; the House version allowed villages to form either municipal or business corporations. The conference bill provided villages the option of organizing as either for-profit or nonprofit corporations.

Individual conferees were widely divided in their opinions regarding the settlement terms but were able in 9 days to reach a compromise which they thought would "do justice to the Native people, insure a viable and economically healthy State goverment, and allow the fulfillment of the reasonable expectations and legitimate interests of all Alaskans and all Americans."[6]

Both houses passed the conference bill before adjourning. On December 14, 1971, the House adopted the bill by a vote of 307 to 16 and the Senate adopted it by unanimous consent. President Nixon signed the measure into law on December 18.[7]

PROVISIONS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AS ENACTED DECEMBER 18, 1971: A SUMMARY

This chapter summarizes the most important provisions of the 29-page Alaska Native Claims Settlement Act (ANCSA). Amendments that have added to or modified the 1971 provisions will be treated in Part III, the discussion of the act's implementation. A copy of the act and major amendments is provided as Appendix A.

OVERVIEW

POLICY AND INTENT

In ANCSA's declaration of policy, Congress stated that it intended a fair and just settlement of the Alaska Natives' aboriginal land claims. The settlement was to meet the real economic and social needs of Natives and provide for maximum participation by Natives in decisions affecting their rights and property. It was to do so without establishing any permanent racially defined institutions, rights, privileges, or obligations and without creating a reservation system or lengthy wardship or trusteeship. Federal programs affecting Natives were to be studied and, within 3 years, the Secretary of the Interior was to give Congress his recommendations for the future operation of those programs.

Congress declared that the settlement extinguished all Native claims of aboriginal title or those claims based on use and occupancy of land or water, including any aboriginal hunting or fishing rights and any pending or statutory claims. The settlement was to be accomplished "with certainty" and "without litigation." Its provisions were not to be construed as granting implied consent to Natives to sue the United States with respect to the claims extinguished. Nor were they to set a precedent for reopening, renegotiating, or legislating any past settlement with any Native or American Indian entity.

TERMS

In compensation for the extinguishment of broad aboriginal claims to Alaska's land and resources, Alaska Natives were to receive a cash settlement of $962.5 million, to be paid over a number of years from an Alaska Native Fund established in the United States Treasury.

The Natives would also receive title, including both surface and subsurface rights, to 40 million acres of land (slightly less than one-ninth of the total acreage of the State).

MECHANISM FOR EFFECTING THE SETTLEMENT

Alaska Natives who were living at the time of enactment were qualified to participate in the settlement. To take part, Natives had to register their names, declare the community and region of their permanent or ancestral residence, and either submit proof that they possessed one-fourth or more Alaska Indian, Eskimo, or Aleut blood, or declare that they were regarded as an Alaska Native by a Native community. The Natives would then be enrolled and would each become the holder of 100 shares of stock in a regional corporation, and, if a village resident, an additional 100 shares of stock in a village corporation.

Congress provided for the creation of 12 State-chartered, profit-oriented regional corporations, to be delineated roughly according to the geographic areas covered by 12 existing Native associations. If a majority of adult Natives residing outside of Alaska voted in favor of it, a 13th regional corporation would be established for them; those opposing would become at-large stockholders in one of the 12 corporations.

Congress also mandated the creation of Native village corporations. Any tribe, band, clan, group, village, community, or association which was composed of 25 or more eligible Natives, and which was not modern or urban in character, could organize as either a business for profit or as a nonprofit corporation. In addition, special provisions extended eligibility under the act to "Native groups," made up of less than 25 Natives who nevertheless comprised a majority within their locality, and to Natives in four once-Native urban areas—Sitka, Kenai, Kodiak, and Juneau.

Money from the Alaska Native Fund would be paid out to the regional corporations, which would retain a portion and distribute prescribed amounts to village corporations and individuals.

Native corporations would select the lands to which they would obtain title. The village corporations would receive surface rights to a total of 22 million acres of land. The regional corporations would, generally speaking, hold subsurface rights to the lands selected by the village corporations. Those regional corporations which had small enrolled populations but covered large land areas would select, under a complex "land lost" formula, an additional 16 million acres to which they would hold surface and subsurface rights.

All reserves in Alaska, except the Metlakatla Indian Community of Annette Island, were revoked by the act. Members of the Metlakatla Community would not be eligible for any ANCSA benefits. Villages on revoked reserves could choose to hold both surface and subsurface title to what had been their reserved lands, instead of surface title only. If they chose to take full title, however, they and their members could not share in the money settlement. Any formerly reserved lands granted under this provision would be in addition to the 40-million-acre award.

The 13th regional corporation, if created, would receive no land entitlement. Its members would share only in the money settlement.

The following discussion outlines the major provisions governing the cash and land settlements, and other key provisions such as taxation.

THE CASH SETTLEMENT

The $962.5 million cash compensation would come from two sources : (1) congressional appropriations and (2) mineral revenues from State and Federal lands.

An Alaska Native Fund was established in the U.S. Treasury. Congress would appropriate $462.5 million to the Fund over an 11-year period, in proportionally larger payments during the early years of the settlement. The remaining $500 million would be paid into the Fund on an indefinite timetable. A 2-percent share of the mineral revenues obtained from certain Federal and State lands in Alaska (chiefly oil and gas lands) would go into the Fund until the $500 million sum was reached. Although the $500 million would come from both the Federal Government and the State, the State would be responsible for the larger share; most of the revenue to be paid into the Fund would otherwise have gone to the State.

All money in the Fund would be paid out to the regional corporations on a quarterly basis (except that $2.6 million would be held back from the second fiscal year payment to cover attorney and consultant expenses which Native entities had incurred in obtaining a settlement). The corporations would divide the money paid out, each receiving an amount based on its enrolled Natives in proportion to the total number of enrolled Natives.

Each regional corporation would retain some funds and pay out the remainder. During the first 5 years, at least 10 percent of the funds would be distributed directly to its individual stockholders. At least another 45 percent would be distributed to the village corporations within the region (excluding those which had chosen title to their former reserves, those which had been formed in the four urban areas, and those which had been certified as Native groups to enable them to obtain land) and to the at-large stockholders not enrolled in any village. In the following years, 50 percent of the region's income would be paid to the village corporations and the at-large stockholders; the required 10 percent distribution to individuals would no longer apply. (The 13th corporation would be required to distribute half of its revenues to its stockholders from the beginning.)

The amount each village corporation received would be based on its stockholders in proportion to the total number of stockholders in the region. For the first five years, a village corporation would have to submit a budget that met the regional corporation's approval in order to receive its funds.

THE LAND SETTLEMENT

WITHDRAWAL

Since the late 1960's, all transfer of land claimed by Natives had been halted until Congress acted upon the claims. Passage of the Alaska Native Claims Settlement Act lifted this "freeze." However, to assure that 40 million acres would be available for selection by Natives, the act authorized and directed the Secretary of the Interior to withdraw—set aside for selection—approximately 115 million acres surrounding the villages and elsewhere. These lands included certain lands selected by the State but not yet patented to it. They did not, however, include lands already patented to the State or lands already in private ownership. Nor did they include lands in national parks or lands set aside for national defense purposes (other than Naval Petroleum Reserve No. 4 on the Arctic Slope). If available lands surrounding a village were inadequate to satisfy the village's entitlement, the Secretary was authorized to withdraw "deficiency lands" nearby.

The lands withdrawn were to be protected for a 3-year period in which village corporations would make their selections and for an overlapping 4-year period in which regional corporations would select their lands.

In addition, the act withdrew all public lands for a 90-day period to prevent a massive "land grab" once the freeze was lifted and to allow the Secretary to determine which tracts should remain protected in the national interest.

SELECTION

The village corporations were to make their selections first, with advice and assistance from the regional corporations with which they were associated. Based on its enrollment, each eligible village would receive a share of the total 22 million acres earmarked for villages. A village with an enrolled population of only 25 to 99, for example, would receive 3 townships or 69,120 acres, while a village with 600 or more would receive 7 townships or 161,280 acres. The 10 villages in southeastern Alaska were an exception, however. Each of them would receive only 1 township (23,040 acres or 36 square miles) since they had participated in the cash award of the 1959 Tlingit-Haida land settlement. Any difference between the acreage allocated in this manner and the total 22-million-acre village entitlement was to be allocated among the villages (excluding those in southeastern Alaska) in a second round of selections based on villages' populations, subsistence needs, and historic uses.

Certain limitations were placed on the village selections. Selections had to be compact, contiguous, and, wherever possible, in units not less than 1,280 acres. The core township—the one in which the village was located—had to be chosen. An entitled village could choose only up to 3 townships of land in national forests or wildlife refuges and only 3 townships of land chosen by but not patented to the State. Any additional entitlements would have to be selected from deficiency lands.

As title to the surface estate was obtained by the village corporations, title to the subsurface estate of the same lands was to go to the appropriate regional corporations. However, in cases where the village selections were made in wildlife refuges or in Naval Petroleum Reserve No. 4, the regional corporation would have to select equivalent acreage from other "in lieu" lands. Furthermore, before a regional corporation could explore or develop resources under a "Native village," it had to obtain the village corporation's permission.

Some of the regional corporations would also get both surface and subsurface title to lands totaling an additional 16 million acres. A complex "land lost" formula provided that these regional selections would be based not on a region's population but rather on the size of the land area it claimed relative to its population. The geographically larger regions with small populations were thus entitled to make selections from lands withdrawn for but not selected by the villages. Their selections had to be "checkerboarded"—confined to every other township—so that the State of Alaska could later select lands in the alternate townships; but they could not come from lands previously selected by the State, even though those lands might have been set aside for village selection.

The remaining 2 million acres of the total land settlement were set aside for grants of title for specified purposes. The Native corporations of Sitka, Kenai, Kodiak, and Juneau would each choose one township from lands withdrawn within 50 miles of their cities; they would receive the surface estate, while the regional corporation would take title to the subsurface. Similarly, Native groups of 25 members or less would each obtain title to the surface estate of not more than 1 township, and the regional corporation would obtain the subsurface title. The regional corporations would also have subsurface rights to the surface estates acquired by individuals who had filed for tracts away from villages. Finally, the regional corporations would receive full title to existing Native cemetery sites and historical places. Any lands remaining from the 2-million-acre entitlement were to be divided (surface and subsurface) among the regional corporations on a per capita basis. This ensured that all regional corporations would receive some surface estate even if they were not "land lost" regions.

CONVEYANCE

Once the village corporations applied for the lands they selected and were found to meet all requirements by the Secretary of the Interior, they were to receive a patent to the surface estate. Having transferred certain tracts as required to individual occupants and to the Federal, State, and municipal governments, the village corporations could protect the remaining lands for subsistence or, if they chose, sell or lease the land or its surface resources.

All conveyances of land under the act would be subject to "valid existing rights," including existing leases, contracts, permits, rights-of-way, and easements. The act also provided that certain public-use easements would be established by the Government at the time of conveyance.

The lands also had to be surveyed by the Secretary of the Interior before they could be patented. Because few lands had been surveyed at the time of the act's passage, provisional deeds would be granted and then adjusted if necessary once surveys were done.

OTHER LAND-RELATED PROVISIONS

Land Exchanges

To help consolidate land holdings or to facilitate land management and development, the Secretaries of the Interior, Defense, and Agriculture were authorized to exchange lands or interests in lands with Native corporations, individuals, and the State. Any party to an exchange could pay or accept cash in order to equalize the value of the properties exchanged.

Revocation of Indian Allotment Authority in Alaska

After passage of the act, no Alaska Native could apply for an allotment of land under previous acts. However, those whose applications for allotments were pending at the time of passage could choose either to pursue their allotments or to receive title to their "primary place of residence" under ANCSA.

Planning Commission

A 10-member Joint Federal-State Land Use Planning Commission was established to recommend how to dispose of Alaskan lands while balancing the interests of all concerned groups. The Commissior's responsibilities would include identifying public easements across the lands selected by the Native corporations.

National Interest Areas

The Secretary of the Interior was authorized to withdraw from selection by the regional corporations and the State, but not from selection by the village corporations, up to 80 million acres of land for possible designation as national parks, national forests, wildlife refuges, and wild and scenic rivers. The Secretary would have 2 years to recommend to Congress specifically which lands should be so designated. Those lands were to remain withdrawn until Congress acted but no longer than 5 years following the Secretary's recommendation. In addition, the Secretary was empowered to withdraw other lands for study to determine whether they should be classified or reclassified for specific "public interest" uses. No time limit was placed upon the exercise of this authority.

OTHER KEY PROVISIONS

Several ANCSA provisions were intended to protect the value of the compensation paid and promote an equitable distribution among the Native people.

TAXATION

The regional and village corporations were to pay no taxes on the funds they received from the Alaska Native Fund. Any profits they made from investments would, however, be taxable. Similarly, individuals would not pay income tax on the settlement money they received but would pay tax on their shares in corporation profits.

All land conveyed to Native corporations, groups, or individuals would be exempt from Federal, State, and local property taxes for 20 years, as long as the land was not leased or developed. If the land was developed or leased for a profit, the profit would be taxable as income—but it is unclear whether undeveloped lands would be taxable if sold.

NONALIENABILITY OF STOCK

Stockholders in Native corporations, unlike those in typical corporations, were prohibited from selling their stock or transfering any of their ownership rights for 20 years. The act did make allowance for transfers of stock pursuant to a court decree of separation, divorce, or child support.

Only Natives would have voting rights through 1991; non-Native inheritors of stock were prohibited from voting until that time.

REVENUE SHARING AMONG REGIONAL CORPORATIONS

If one of the 12 regional corporations sold timber or received income from subsurface minerals, it was to share 70 percent of the revenue. The corporation would keep 30 percent and divide the remainder among all 12 regional corporations (including itself but excluding the 13th regional corporation) based on the proportionate number of Natives enrolled to each. Each regional corporation was required to share this income with its individual shareholders and village corporations, under the same formula that applied to the distributions from the Alaska Native Fund.

CONCLUSION

ANCSA fashioned a complex settlement for a complex situation.[8] The claims resolution ANCSA formulated was unprecedented in spirit, in scope, and in substance. Nevertheless, few realized at the time of passage how long and difficult the implementation of ANCSA would be. Part III of this report provides a 13-year perspective on the ongoing implementation process.

NOTES: PART II

Chapter 4

[1] The accounts provided in this and the following subsection are derived primarily from that provided by Robert D. Arnold, Alaska Native Land Claims, 93-144, supplemented by that of Claus-M. Naske and Herman E. Slotnick, Alaska: A History of the 49th State, 205-225 and by "Alaska Claims: Natives to Receive $962 Million," 1971 Congressional Quarterly Almanac, 828-834.

[2] A Bill to Authorize the Secretary of the Interior to Grant Certain Lands to Alaska Natives, Settle Alaska Native Land Claims, and for Other Purposes: Hearings on S. 2906 Before the Senate Committee on Interior and Insular Affairs, pt. 1, 90th Cong., 2d Sess. 31, pt. 1, 28.

[3] Ibid., 294.

[4] Federal Field Commission for Development and Planning in Alaska, Alaska Natives and the Land (October 1968). The report's findings are also discussed in Chapter 2.

[5] The House was represented by Wayne N. Aspinall, James A. Haley, Ed Edmondson, Morris K. Udall, Lloyd Meeds, Nick Begich, John Kyl, Sam Steiger, and John N. Happy Camp. The Senate was represented by Henry M. Jackson, Alan Bible, Frank Church, Lee Metcalf, Mike Gravel, Gordon Allott, and Ted Stevens. These representatives were senior members of Congress' two Interior committees and members of their Alaskan delegations.

[6] Conference Report No. 92-746, December 13, 1971, 34.

[7] P.L. 92-203, Alaska Native Claims Settlement Act, 85 Stat. 688.

Chapter 5

[8] "The Settlement Act is a complex settlement of a complex situation . . . Many problems have arisen already and many more will arise in the implementation of the law." Stewart French, "Alaska Native Claims Settlement Act," Arctic Institute of North America, August 1972 [quoted in Arnold, op. cit., 145].

Part III

IMPLEMENTING THE SETTLEMENT

A Thirteen-Year Perspective

OVERVIEW

Part III of the report documents the process of ANCSA's implementation, with the aim of presenting a multidimensional perspective on events often viewed in isolation or from one vantage point or another. In discussing why implementation problems arose and how they have been addressed, the text assesses implementation efforts in terms of both the specific provisions of the act and the intent of the law as reflected in section 2 of the legislative history. Key amendments to ANCSA are discussed in context throughout. An overview of all ANCSA amendments is provided with the text of the act in Appendix A at the end of this report.

ANCSA's implementation is discussed in chapters 6 through 10 in terms of the following categories of activity:

Chapter 6, "The Startup Phase," traces the enrollment, corporation formation, and eligibility determination tasks that had to be accomplished in order that ANCSA benefits could be distributed.

Chapter 7, "The Cash Settlement," discusses deposits to and distributions from the Alaska Native Fund.

Chapter 8, "The Land Settlement," addresses actions taken to implement ANCSA's provisions for the withdrawal of lands for Native selection and the conveyance of the selected lands.

Chapter 9, "Land Use and Land Management," focuses on the implementation of ANCSA provisions that bear on the Native corporations' ongoing efforts to protect and develop their land assets.

Chapter 10, "Corporate Operations and Distribution of Assets,' reviews Federal and State actions that regulate or otherwise affect the Native corporations' activities.

Citations of ANCSA's original or amended provisions are contained in brackets in the text. The citations refer the reader to the section designations most often used in discussions of ANCSA—those of the original statute or slip law [at 85 Stat. 688; a copy is provided as Appendix A]. In most instances, the corresponding citations in the United State Code [Title 43, Chapter 33, sections 1601-1628] vary from the statute by one section. For example, the statute's section 3(e) is found at 43 USC 1602(e); section 11(a) is found at 43 USC 1610(a). In instances which depart from this general rule, specific citations to the Code are supplied in the text.

Chapter 6

THE STARTUP PHASE

INTRODUCTION

Implementation of history's most complex land claims settlement package placed large demands on all parties involved, especially since the ANCSA settlement model had never before been tested. The initial implementation years were confusing and hectic, with much to do and little time. Personnel within the Department of the Interior had to work out the myriad details of implementation. Alaska Natives had to complete the formalities required for participation in the settlement as well as actually take on the responsibility of making the settlement work. Both Departmental personnel and Natives had to master the intricacies of the 29-page law, make critical decisions based in part on speculation, and juggle priorities so as to meet one requirement after another in the face of unrelenting deadlines. As they did, flaws and oversights were discovered. Mistakes were made. Conflicts of interest surfaced, and controversies flared.

The central undertaking of the startup phase was determining which Native individuals and which Native entities would share in the settlement benefits and, broadly speaking, what types and amounts of benefits each was eligible to receive. A roll of all eligible Alaska Natives had to be developed. At the same time, the conduits for the settlement benefits—the regional, village, and other local corporations—had to be formed and approved.

ENROLLMENT

Enrollment was crucial as it would provide the foundation for implementation. The Alaska Native Roll would determine who received benefits, how much they would receive, and who was authorized to elect directors of the corporations. It would also determine whether a Native locality had sufficient Native residents to qualify as an eligible village or group, how much land a village corporation was authorized to select, and what proportion of Alaska Native Fund distributions and shared resource revenues a regional corporation was entitled to receive.

The enrollment was a huge task—the largest of its kind ever undertaken. It had to be accomplished within the 2-year period mandated by the Act. And it had to be accomplished despite logistical obstacles, including the vast distances (within Alaska and beyond) over which potentially eligible Natives were spread, the difficulty or impossibility of contacting many rural Natives by mail, and the fact that a good number of Natives neither knew English nor had any experience in dealing with paperwork. Nevertheless, the enrollment was accomplished—but not the first time around. A reopening of the roll for new enrollments, changed enrollments, and disenrollments would be needed before the roll could be accepted as accurate and complete.

CORPORATE FORMATION

Corporate formation and startup had to take place as the roll was being prepared. The 12 Alaska regional corporations organized quickly, using startup advances from the Alaska Native Fund. The formative period of most corporations was marred, however, by disputes. Regional boundaries were sometimes contested—because of the strength of the peoples' traditional ties to the land and because the number of acres, villages, and enrolled persons in a region determined, in large part, the amount of land and cash the regional corporation and its members would receive.

In exercising their option under ANCSA to form either nonprofit or for-profit corporations, all villages eventually chose to form for profit because that alternative enabled them to distribute land and cash benefits to their enrollees. Thus, the villages were suddenly confronted with the need to deal with such totally foreign concepts as stockholding and dividend payments, as well as land ownership. The overwhelming task for most villages during the first 3 years was selecting their land, but regional corporations were able to use their superior resources to assist villages. The regional corporations also helped their constituent villages develop articles of incorporation. A village's articles had to be approved by its regional corporation before its land selection application could be filed. What is more, the village had to have been certified eligible by the Department of the Interior before its land selection would be considered and before it could receive any cash.

VILLAGE ELIGIBILITY

For some villages and their regions, village eligibility was a significant source of uncertainty during the startup period. First, there was concern that the implementing regulations' eligibility criteria would unfairly preclude certain Native villages. After that concern was alleviated, the major issue was the effect of village eligibility delays on the land selection process. Some eligibility contests lasted for years, as villages, regions, and third parties disputed eligibility decisions.

While a village's eligibility was pending, the village was unsure of whether it would get land at all. If its number of eligible residents was at issue, it might also be unsure of how much it would get, since villages were allocated a specified number of acres based on their populations. Furthermore, until

village eligibility questions were settled, the region could not be sure of how much land it was entitled to. Under ANCSA's complex land selection formula (Chapter 9), the operation of many variables meant that a particular region's entitlement to surface and/or subsurface could go either up or down depending on how many of its villages, and how many other regions' villages, became eligible.

SPECIAL PROVISIONS

ANCSA made special provision for the interests of villages located on former reserves, Natives residing in urban areas, and Natives living in smaller than village groups. The provisions regarding the latter—the "Native groups"—are for the most part yet to be implemented. No statutory deadline for the certification of Native groups has compelled action. Lacking organized leadership to herald their cause and financial resources beyond those contributed by individual members, many potential "groups" have been unable to achieve recognition. Most of those which have been recognized have yet to receive their lands.

ENROLLMENT

Enrollment, the critical first step in the implementation process, was scheduled for completion 2 years after ANCSA's passage. Through an all-out effort by the regional associations and Bureau of Indian Affairs (BIA) personnel, that deadline was met—but at the expense of thoroughness and accuracy. Several more years passed before the roll was considered final, because BIA instituted disenrollment procedures; Federal District Court ruled that 13th region election results should be overturned; and Congress determined that the roll should be reopened. The delays and uncertainties that resulted had ramifications for all succeeding implementation steps.

PREPARING THE ALASKA NATIVE ROLL

Section 5 of ANCSA (43 USC 1604) required the Secretary of the Interior to prepare a roll of all Alaska Natives living on December 18, 1971. In accordance with Congress' overall intent that the land claims settlement be "accomplished rapidly, with certainty . . . ,' the roll was to be prepared within 2 years, and any decisions of the Secretary regarding eligiblity for enrollment were to be final.

Regulations governing application for enrollment and preparation of the roll were issued by the Secretary on March 27, 1972. The regulations set March 30, 1973, as the deadline for enrollment applications, thus leaving 8-1/2 months for the processes of verifying application information, notifying applicants, and deciding appeals of eligibility determinations.

The Bureau of Indian Affairs' Juneau Area Office was given the responsibility of preparing the roll. It set up an Enrollment Coordinating Office in Anchorage in February 1972. Due to a hiring freeze and budgetary constraints, the Office faced a shortage of manpower and facilities. To overcome this problem, BIA contracted with the 12 regional Native associations in Alaska (those from which the 12 regional corporations were formed).

Personnel from the regional organizations met with and prepared applications for almost all Natives living in Alaska, often traveling to isolated areas to find and assist inhabitants who were hard to locate by mail. BIA officials were aware that having the regional entities assist in enrollment could lead to a conflict of interest, since the amount of money and land distributed to a region would depend in part on how many Natives were enrolled within its boundaries. However, there is no evidence that the regional organizations took advantage of this possibility.[1]

DIFFICULTIES ENCOUNTERED IN THE ENROLLMENT PROCESS

Several factors—some anticipated, others unforeseen—complicated and protracted the application and application verification processes.

Problems for Natives

Even with help from regional personnel and from enumerators assigned to the regions, many Natives found it difficult to respond fully and definitively to the numerous requirements of the application process. Some had difficulty in filling out the "family tree" portion of the form or, alternatively, providing birth certificates or notarized statements that they or their near family members were accepted as Natives.

Perhaps the biggest problem for most people was stating their "Permanent Residence as of April 1, 1970" (the date of the 1970 Census enumeration). The regulations defined "permanent residence" as follows:

> the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home. [43 CFR 69.1(k)]

Given this definition, many people—among them, students and seasonally employed people who worked in urban places or large villages but returned regularly to traditional fishing villages or traplines—faced a choice between options. The choice was a critical one, for it would determine the corporation or corporations to which the person might be enrolled and therefore the kind

and amount of benefits the person would receive. This choice was made more difficult because its consequences could not be predicted with certainty. (The case study on the next page illustrates the bewildering number of options available to one hypothetical Native, as well as the impossibility of determining which option would prove most advantageous.)

Special Problems of Out-of-State Residents

Enrollment difficulties were compounded for those Natives who lived outside Alaska. An extensive media campaign was mounted to alert these Natives; enrollment officials visited groups in 10 major cities; and, in the last 6 weeks of enrollment, 19 enumerators were hired to provide assistance. Nevertheless, most out-of-State Natives completed their enrollment applications with only the assistance of the accompanying instruction sheets.[2] That they experienced difficulty in doing so became evident in the early months of the enrollment, when nearly 80 percent of the applications received had to be returned because they were incomplete in critical areas. Later, out-of-State Natives testified in court[3] and in congressional hearings[4] that lack of information, as well as confusing and contradictory instructions, had kept them from making sound and timely decisions regarding their primary residence and regarding whether they wanted a 13th region established.

Enrollment Options Facing One Out-of-State Resident: A Case Study

Bob is an Alaska Native over the age of 18 who is recognized as a Native; meets the blood quantum requirement; filed for a Native allotment to four separate 40-acre tracts prior to 1968; was attending school in Chicago on April 1, 1970, and plans to do so through March 30, 1973; grew up in and has parents who reside in a village located within a revoked reserve; and has a home of his own in another region.

In completing his enrollment application, Bob must choose a place of enrollment. His options—and the attendant implications and unknowns—are as follows:

1. Enroll as an "out-of-State" Native eligible to participate in the 13th Region.

   There is, at the time, no way to foresee whether nonresident Natives will elect to form a 13th regional corporation. If one is formed, its members will participate in ANCSA's money distributions but not in the land settlement.

2. Enroll back to the region where his own home is located and where he lived for 10 years prior to the April 1, 1970, Census date.

Even though he was not living there on April 1, 1970, Bob can consider this location his "permanent place of abode" if he considers this place to be his home (the "center of Native family life") and intends to return to it. His home is in Juneau, not listed as an "eligible village" under the Act but recognized as a historic Native place located within a predominately urban area. Land is to be conveyed to such places under special provisions.

3. Enroll back to the region and village in which his parents reside.

   His parents live on a revoked reserve. It remains to be seen whether those enrolled there will elect to participate in ANCSA instead of taking full title to their former reserve. If they elect the latter, Bob will not be eligible for any ANCSA benefits. (An amendment—P.L. 94-204—would later give him the option of enrolling in another village or remaining as a regional shareholder at large. However, he would not be eligible for any retroactive benefits.)

4. Enroll back to the region where his claim for allotment was pending.

   He can thus receive ANCSA cash distributions and also pursue title to his parcel of land, which lies well outside any village, under ANCSA section 14(h)(5), "primary place of residence," or under his claim for allotment—but not under both. He has no way of knowing whether his allotment claim will be found valid.

Difficulties Faced by BIA Enrollment Officials

Enrollment officials faced the task of processing, with limited staff and unpredictable computer performance, some 90,000 enrollment applications.[5] Under the circumstances, enrollment officials elected to accept as accurate individuals' statements of place of primary residence, since the individuals had to certify those statements subject to fine or imprisonment. However, they generally sent enrollment information to the applicable village and regional corporations so that those corporations could contest blood degree or residency.

Locating potentially eligible Natives—especially those who lived out of State and those who changed residences during the hunting and fishing seasons—was a formidable task. Mailed applications often failed to reach the prospective applicants. Especially troublesome were incomplete applications filed without a return address. The applicants' names had to be placed on an error list and reviewed later on the basis of the information provided.

As the March 30, 1973, application deadline drew near, the Enrollment Office had to step up its efforts. Personnel were told to skip certain cross-checking procedures in an effort to make sure all potential applications were entered on the computer. Regions were urged to make a final push to ensure that their enrollments were complete. Individuals were urged to file their applications

on time, even if incomplete. Those who questioned the choices they had made regarding place of residence or establishment of a 13th region were told that they would have an opportunity to amend their applications following the deadline.[6]

Despite requests for extensions, the Department of the Interior held to its position that the March 30 deadline for application was final, as such cutoff was necessary to allow time for coordination, amendment, appeal, and verification before the December 17, 1973, statutory deadline. Written amendments to applications were allowed if submitted by May 4.[7] Decisions regarding those amendments could be appealed until August 15.

REOPENING OF THE ROLL

The Secretary met the statutory deadline for preparation of an Alaska Native Roll. Yet several questions remained as to whether that roll could be accepted as final. The Department of the Interior itself questioned the accuracy or purity of the roll. As of August 1974, the Department was still scrutinizing the roll to eliminate duplicates and individuals who did not qualify.[8]

The Department circulated proposed regulations for disenrollment—removal of names from the roll—during 1975. From the outset, Native leaders protested that the disenrollment procedures would challenge many Natives' eligibility without adequate investigation and that default judgments would be entered against Natives who, due to lack of notice or misunderstanding, failed to answer complaints.

However, the proposed removal of names from the roll was not the only procedure about which Natives and others had grave misgivings. It was widely contended that the Department's adherence to the March 30 closing date for applications had unjustifiably barred from enrollment many Natives who had not been informed in sufficient time or who did not fully understand the enrollment process. Indeed, approximately 1,000 applications filed after the March 30 deadline but before December 18, 1973, were summarily denied,[9] and the Department estimated that as many as 2,000 otherwise eligible persons had not filed by March 30.[10]

It was also argued that the very short timeframes allowed for amendment and appeal, and the confusion over the attendant deadlines, meant that many Natives' applications—particularly applications of those eligible to vote on the 13th region—reflected choices based on incomplete information and misapprehensions. In addition, there was concern that individuals who elected to enroll to villages that were later determined ineligible might be denied ANCSA benefits.

The January 2, 1976, omnibus legislation amending ANCSA—Public Law 94-204[11]—addressed these concerns. The roll was reopened for one year (until January 2, 1977) to enroll Natives who missed the March 30, 1973, deadline. The place of residence of Natives who had enrolled to Native "villages" or "groups" subsequently found ineligible would be redetermined. Natives who resided on lands of but who were not members of village corporations that

took title to their former reserves were allowed to enroll to those corporations. The legislation stipulated that no changes in the roll resulting from these provisions—and no changes resulting from any disenrollment decisions—would affect prior cash distributions from the Alaska Native Fund, village or group eligibility determinations, or land entitlements.

CREATION OF THE 13TH REGION

The Department's failure to create a 13th region, based on its determination that less than a majority of Natives voted for its creation, was another hotly contested enrollment issue. In deciding a suit brought against the Secretary,[12] the Federal District Court overruled the Department, finding that confused, contradictory, and one-sided instructions regarding the vote and failure to consider timely amendments had marred the election. The court ordered the Department to establish the 13th region and to set aside for it the funds to which it would have been entitled had it been established by December 1973.

Secretarial Order No. 2980, effective October 1, 1975, created the 13th region and gave all Natives residing out of State a final opportunity to "opt in or out" of the 13th region in late 1976. Table 6-1 shows the results of that election. As provided by P.L. 94-204, the results of that election did not affect previous cash distributions, village or group eligibility, or land entitlements. They did, however, affect the enrollment ratios upon which future cash distributions were based.

FINAL ROLL

With the reopening of the roll, over 12,000 additional applications were filed. Nearly half were determined ineligible, and an additional 4,000 were duplicates. Roughly 2,000 names were actually added to the roll[13] (bringing the total to approximately 80,000).

The Department's disenrollment regulations[14] provided that enrollment status could be contested only on grounds of death prior to or birth after enactment of ANCSA, no Native ancestry, noncitizenship, or enrollment in the Metlakatla Indian Community.[15] All contests had to be initiated by July 31, 1977 (regarding names on the original 1973 roll) or by January 2, 1978 (regarding names on the reopened roll). Although the Secretary's disenrollment authority came under attack, it was upheld by the U.S. District Court in 1977 on grounds that providing benefits to those not entitled to them would undermine the intent of ANCSA.[16] Over 800 disenrollment complaints were filed by the enrollment coordinator on behalf of the Department or a Native corporation, but only 132 names were actually removed from the roll.[17] Table 6-2 shows the status of the roll on December 31, 1983 (at which time all disenrollment complaints had been resolved and only 7 requests for removal from Metlakatla members were still pending).

Table 6-1
RESULTS OF 1976 "OPT IN OR OUT" ELECTION

Opted In:

Eligible voters voting for inclusion:	1,545
Dependents affected by their votes:	724
Total	2,269

Opted Out:

Eligible voters voting for exclusion:	2,571
Dependents affected by their votes:	1,029
Total	3,600

Not Voting (status unchanged):

Eligible votes not voting, ballots declared invalid:	3,185
Dependents affected by votes not cast or ballots invalidated:	2,252
Total	5,437

Summary Results: The enrollment for the 13th Region went from 4,536 before the election to 4,032 following the election—amounting to a net loss for the 13th Region of 504 enrollees.

Source: Department of the Interior, Secretary's Annual Report for 1976, section 5(c).

Table 6-2
STATUS OF THE ALASKA NATIVE ROLL
December 31, 1982

	Original Roll Public Law 92-203	Reopened Roll Public Law 94-204	Total
Applications filed	97,360	12,424	109,784
Determined eligible	78,334	1,905	80,239
Ahtna, Inc.	1,057	17	1,074
Aleut Corp.	3,124	125	3,249
Arctic Slope Regional Corp.	3,703	35	3,738
Bering Straits Native Corp.	6,272	61	6,333
Bristol Bay Native Corp.	5,312	89	5,401
Calista Corp.	13,183	123	13,306
Chugach Natives, Inc.	1,876	32	1,908
Cook Inlet Region, Inc.	6,048	216	6,264
Doyon, Ltd.	8,898	163	9,061
Koniag, Inc.	3,268	74	3,342
NANA Regional Corp.	4,758	70	4,828
Sealaska Corp.	15,341	446	15,787
13th Regional Corp.	3,980	446	4,426
Former Reserves	1,514	8	1,522
Determined ineligible	9,588	6,090	15,678
Disenrollments	132	0	132
Removals	41	8	49
Duplicates	9,265	4,421	13,686

Source: Secretary's Annual Report for 1983.

FORMATION AND START-UP OF THE NATIVE CORPORATIONS

REGIONAL CORPORATIONS

ANCSA established two deadlines for the startup of the regional corporations: (1) the boundaries of the regions, closely approximating the areas of influence of the 12 preexisting Native associations, were to be established by the Secretary within 1 year [section 7(a)]; (2) the regional corporations were to incorporate as for-profit entities within 18 months [section 7(e)]. The latter task was accomplished well within the statutory timeframe. However, although the Secretary did establish regional boundaries on December 1, 1972, all disputes regarding those boundaries were not resolved until passage of P.L. 94-204 on January 2, 1976.

Boundary Disputes

The Secretary did not promulgate regulations to govern the boundary establishment process. Instead, the Native associations entered into boundary agreements which, absent objection from the affected parties, would be adopted by the Secretary. Problems arose, however, when the newly formed regional corporations disputed boundaries so established. Nearly every region was involved in at least one boundary dispute, giving rise to considerable speculation and controversy.[18] Three of the boundary disputes proceeded to the Federal courts.

ANCSA contemplated that boundary disputes would be resolved by arbitrators appointed by the Native "associations" but left several matters open to interpretation. Among them: Were the newly formed regional corporations authorized to dispute boundaries agreed to by their predecessor regional association? Was a region obligated to arbitrate a boundary determination it did not itself contest? Was there a cutoff date for arbitration, and if so, what was it?

The Alaska Federal District Court ruled in an Ahtna-Doyon case[19] that the new regional corporations were the proper parties to seek arbitration, as they were the real parties at interest, and that one corporation's declaration of a dispute was enough to establish that a dispute existed. The court also concluded that arbitration could occur after the Secretary's December 1972 establishment of boundaries. It ordered Ahtna and Doyon to arbitrate.

The Secretary took the position that boundary disputes had to be settled by March 15, 1973, if subsequent implementation actions were to proceed in accordance with the timetable contained in the Act. While the legality of this deadline was contested in the Ahtna-Doyon case, the court did not rule on it directly. In a case brought by Sealaska against Chugach,[20] however, the Ninth Circuit Court decided that the Secretary's establishment of a cutoff date was contrary to the legislative history behind section 7 of ANCSA, which had called for "a policy of self-determination on the part of the Alaska Native people."[21]

The court ordered Sealaska and Chugach to arbitrate, but the dispute between them was not resolved until 1976, when P.L. 94-204[22] established the boundary determined by the Secretary and claimed by Chugach, yet also authorized members of a Sealaska village to continue limited traditional use of a portion of Chugach's land.

Incorporation Process

ANCSA section 7(b) authorized the Secretary to merge any of the 12 regional Native associations within the first year of passage, as long as the total number of regions was at least 7. No regions chose to merge, however.

Under section 7(d), each Native association was to name 5 persons who would be responsible for organizing the regional corporation. Those incorporators appointed interim boards of directors who served until the final Alaska Native Roll was approved and authorized boards of directors could be elected by shareholders.

Incorporators of the 12 Alaska regions submitted articles of incorporation and bylaws for the Secretary's review a year ahead of the act's June 1973 deadline. Following timely review and approval by the Secretary, the articles and bylaws were submitted to the State.

The five incorporators for the 13th region were elected in December 1975. After a U.S. District Court judge invalidated the results of an earlier, bitterly contested election, a board of directors was elected by shareholders in June 1976.[23]

VILLAGE CORPORATIONS

To become entitled to land and money benefits, Native villages had to be determined eligible by the Secretary within 2-1/2 years from enactment. Section 11(b)(2) stated that the 215 villages set out in section 11(b)(1)--"listed villages"—were deemed eligible unless the Secretary found that fewer than 25 Natives resided in the village on the 1970 Census enumeration date or that the village was modern and urban in character and populated by a majority of non-Natives. Section 11(b)(3) provided that villages not listed in the Act ("unlisted villages") could become eligible if they could establish to the Secretary's satisfaction that they met the same conditions—i.e., that at least 25 Natives resided in the village on the 1970 Census date and that the village was not modern or urban and the majority of residents were Natives.

As initially drafted by BLM, regulations implementing these village eligibility provisions met with unanimous opposition from the Native community. The regulations were modified, and initial eligibility determinations were made on schedule. Nevertheless, some of the determinations were implemented only after long, expensive adjudication or by legislation. Third parties threatened by village corporation land selections sought to prevent them by defeating village certification.[24] In addition, when certain villages found ineligible challenged those findings in court, it was decided that procedures used to determine eligibility had denied due process to the villages.[25]

Controversy Concerning the Regulations

The Native community's major objection to the initially proposed eligibility regulations centered around the definition of "modern and urban." Expanding on the statutory language, the regulations said that a village would be considered modern and urban and therefore ineligible if it possessed a majority of six listed criteria. It was feared that several large villages could indeed be construed as meeting "a majority" of these criteria. In addition, while the act said that villages could be denied eligibility only if (1) they were deemed modern and urban and (2) the majority of their residents were non-Native, the regulations stated that they would be ineligible if one or the other condition applied. Furthermore, the regulations added limitations not contained in the act, such as a stipulation that village inhabitants rely on the natural resources of the area for all or a portion of their livelihood.[26]

Department of the Interior representatives said the additional criteria were included to ensure that no region or village lost land because the acreage went to a village that did not in fact exist. Several Native representatives expressed the belief that the additional criteria were aimed at blocking eligibility for unlisted villages located on valuable resource lands.[27]

Following extensive consultation with Native representatives, the regulations were modified. As published May 30, 1973, and codified at 43 CFR 2651.2(b), the regulations set standards for "modern and urban" too high to apply to any Native village. In addition, they provided that the requirement that a majority of residents be non-Native would not apply to listed villages. All Natives properly enrolled to a village would be counted as residents, whether or not they resided there on the 1970 Census date. However, the village had to have had an identifiable physical location on that date, and at least 13 enrolled people must have lived in it for a time during 1970.

The Eligibility Determination and Appeals Procedures

BIA's Juneau Area Director made initial village eligibility determinations based on findings of fact by the Area Realty Office, which (1) determined the number of Native residents by relying on Enrollment Office data, (2) made field inspections when necessary, and (3) obtained affadavits when necessary. The Director's decisions were published in the Federal Register and in local newspapers. If no valid protest was filed within 30 days, the decisions became final. If a protest was filed, the Director reviewed the evidence and rendered a decision within 30 days of the filing. That decision was published and became final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeals Board ("ANCAB"; often referred to as "the ad hoc appeals board").

ANCAB was organized by the Department in early 1974 to review questions of village eligibility and disputes over land selections. It consisted of four members, each an Alaska resident and each appointed from outside the Department. The board decided to have administrative law judges hear all village eligibility appeals to ensure compliance with the Administrative Procedures Act.[28] Then, based on the judges' decisions and review of the records, it made recommendations, which were not binding, directly to the Secretary. The Secretary's decisions were to be final.

Controversy Concerning Eligibility Determinations

ANCSA set forth June 18, 1974, as the deadline for the Secretary's village eligibility determinations. Not all determinations were made by that date. However, the Interior Department Solicitor held that the ANCSA timetable was "at best an estimate of time reasonable enough to accomplish the basic purposes of the act" and that it therefore "must be used as a guideline, but not at all costs."[29]

Preliminary eligibility determinations were issued by the Bureau in December 1973 for the 215 villages listed in the act (the 205 set out in section 11 and the 10 southeastern villages listed in section 16). Of these villages, 201 were determined eligible. No protest was filed regarding the 14 villages declared ineligible. Twelve of the villages deemed eligible were protested, however, and the cases went before ANCAB.

Thirty-one unlisted villages submitted eligibility applications. BIA determined 24 eligible and 7 ineligible. Twenty-three of the "eligible" decisions were appealed by third parties—including conservationist and sportsmen's groups, State and municipal governments, and the U.S. Forest Service and U.S. Fish and Wildlife Service; five of the seven "ineligible" decisions were appealed by regional corporations.

When ANCAB's determinations and the Secretary's final decisions regarding the protests and appeals were announced, litigation ensued. A suit was filed in the Federal District Court by some of the villages that had been found eligible by BIA but then declared ineligible by ANCAB and the Secretary. Three listed villages (Salamatof, Pauloff Harbor, and Uyak) and several unlisted villages (Alexander Creek, Anton Larsen Bay, Ayakillik, Bell Flats, Litnik, Port William, and Uganik) were the litigants.

One critical issue in the lawsuit was whether the Department could conclude that a village had 25 Native residents when preparing the roll and then later conclude, through reexamination of residence during village eligibility proceedings, that it did not. The appeals court held that the Department could reexamine residence to determine village eligibility, but it could not as a result decrease the number of residents without also adding residents who were incorrectly excluded.

Another key issue concerned the propriety of the procedure used in deciding appeals. The court declared that the "secret review process" used by the Department—under which the administrative law judges' decisions were forwarded to ANCAB and the ANCAB decisions forwarded to the Secretary, without notification to the villages—had denied the villages due process and violated ANCSA's policy of maximum participation by Natives in matters that concerned their property rights.

All in all, the District Court opinion, issued in November 1975, overruled the Secretary's eligibility determinations.[30] The Secretary filed an appeal concerning all the villages except Pauloff Harbor, which became eligible.[31] In 1978, the appeals court remanded the cases to the Department for further administrative determination.

Outcomes: Village Eligibility Determinations

The Department held administrative proceedings in abeyance (regarding the litigated villages and others) pending efforts by Native corporations and others to foster legislation that would make administrative determinations unnecessary. In 1980, sections 1427 and 1432 of P.L. 96-387 (ANILCA) provided procedures for resolving most pending village eligibility cases. Stratman v. Woody Island was settled in 1982 when the parties reached an agreement acceptable to the Department.

In summary, 201 of the 215 listed villages became eligible for ANCSA benefits. (Seven decided subsequently to take title to their former reserves.) Of the 31 unlisted villages who applied, 11 were eventually determined eligible and 20 ineligible. Three communities determined ineligible as villages were ultimately determined eligible as Native groups.[32] As of May 1984 one of those groups, Alexander Creek, was still appealing its eligibility as a village.

NATIVE GROUPS

Section 14(h)(2) of ANCSA provided that a Native community that did not meet village eligibility standards could incorporate under State of Alaska laws and seek eligibility as a Native group. This provision would allow small groups to claim land near settlements established by their ancestors.

Group eligibility determinations are yet to be completed 13 years after the passage of ANCSA. Thirty-one group applications were filed in 1976,[33] but only nine groups have been certified—six of them as recently as 1983. Ten applications remain on appeal.[34] (Appendix B of this report contains a current status report on all Native group applications.) Problems with group eligibility have stemmed from two principal factors: the interrelationship of the group eligibility process to the village eligibility process, and the manner in which ANCSA's broad definition of "Native group" has been translated into group eligibility criteria.

Interrelationship with the Village Eligibility Process

Some of the problems in the group eligibility process have to do with complications and delays that arose concerning village eligibility determinations. Eleven of the entities that applied for group status were initially considered for village status. Of those 11, 4 were initially determined eligible as villages by the BIA, but the determinations were protested by the State and other parties and subsequently reversed by ANCAB and the Secretary. One of the four (Alexander Creek) was eventually determined eligible as a village by the District Court but ultimately established as a Native group by ANILCA in 1980 (section 1432); the remaining three were declared groups by administrative determination, one as recently as 1982. Of the remaining group applications that arose out of unfavorable village eligibility determinations, four represented communities listed as potentially eligible villages under section 11 of ANCSA. To date, one of those entities has been certified as a Native group; two others are appealing group ineligibility determinations.

The Eligibility Criteria Obstacle

The eligibility criteria adopted for groups, which were more stringent than those adopted for villages, have been another major obstacle to implementation. The only group eligibility standard set out in ANCSA appears in the 3(d) definition:

> "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than 25 Natives who [comprise] a majority of the residents of the locality.

The Secretary did not publish final regulations addressing group eligibility until April 7, 1976[35]—although, per the regulations, group applications were due April 16, 1976. Under the eligibility criteria set forth by the regulations, a group bore the burden of proving its eligibility. Its application had to identify the group's location by section, township, and range; list group members; show permanent improvements and periods of use by members; and attach articles of incorporation.

According to the regulations, the BIA Area Director had to investigate and was to certify eligibility only if a community had an identifiable physical location; was separate and distinct from nearby communities; and was composed of more than one family or household—and only if the community's Native members were the majority of residents, had resided in the community on the 1970 Census date, and had actually lived there since that time. In addition, the BIA was to certify eligibility only if notified by the Bureau of Land Management (BLM) that land on which the group was located and on which individual members resided was available for the group to acquire.

The Native group of Wisenak successfully challenged the regulatory requirement that land be available.[36] Wisenak's selection was rejected by BLM in 1975 because it lay inside the pipeline corridor. In 1979, the Federal District Court held that the right of an otherwise eligible group to select land could not be denied because the land in the group's immediate locality was unavailable. (The case was remanded to allow Wisenak to select other lands;[37] however, Wisenak was eventually determined ineligible on other grounds.)

It was decided in 1978 that BIA, BLM, and the Alaska Regional Solicitor would thoroughly review the regulations' group eligibility criteria.[38] Although several discrepancies between those criteria and the ones for village eligibility were found, no new regulations were published and no waivers were granted. It was not until June 1982 that Interior Secretary James Watt issued Secretarial Order No. 3083 waiving certain group eligibility regulations. The order left intact the requirement that group members had to have lived in the group's locality on April 1, 1970, but it waived the requirement that they had to have lived in the locality "since that time." The order also waived the requirement that land used most intensively and land occupied by individual members be available for selection. However, it did not waive the requirement that group members constitute the majority of the locality's residents.

In sum, the stringency of the initial group eligibility criteria and the delay in amending those criteria have impeded group eligibility determinations. The results have been litigation, legislative remedies, ongoing appeals, long delays in receipt of land entitlements, frustration and expense for individual enrollees—and, possibly, lack of recognition and therefore of land benefits for eligible Native communities within an aggregate of some 170 members.

Funds for Native Groups

In 1980, ANILCA (section 1413) directed the Secretary to grant each Native group finally certified an amount between $50,000 and $100,000, according to its population, to be used only for ANCSA-related planning, development, and organization. (Native groups were not eligible under ANCSA for distributions from the Alaska Native Fund, although their members received distributions as at-large shareholders in their respective regional corporations.)

In 1982, $250,000 was appropriated but the funds were not used. Five of the groups certified eligible have submitted grant applications, which BIA is attempting to fund.

URBAN CORPORATIONS

Like Native groups, entities of Natives residing in the cities of Sitka, Kenai, Juneau, and Kodiak were eligible to receive land but not money if they incorporated under State laws. Faced with startup and operational difficulties, they lobbied for and in 1976 won a one-time appropriation of $250,000 per corporation for planning, development, and operation under ANCSA.[39]

VILLAGES ON FORMER RESERVES

Section 19(b) of ANCSA authorized village corporations located on the reserves revoked by ANCSA to elect to either (1) take full (surface and subsurface) title to their former reserves and forego other ANCSA benefits or (2) receive cash benefits and land under ANCSA. The regulations (43 C.F.R. 2654) provided that after the village incorporated, a majority vote by its stockholders or members would decide the issue; any corporation that had not elected to acquire full title to reserve lands by December 18, 1973 (the 2-year deadline required by the act) would be deemed to have elected to obtain ANCSA cash and land benefits.

For village corporations located on large reserves with subsurface resource potential, the choice was not easy. It was necessary to speculate about revenue to be gained from the subsurface and then assess that possible benefit against the likelihood that the village would have the financial and organizational means to perpetuate itself and develop the resources.

Seven village corporations located within the five former reserves of St. Lawrence Island, Elim, Tetlin, Klukwan, and Chandalar (Venetie) elected to

take full title to their reserve lands, which totaled approximately 4 million acres.[40] Later, when they learned that a 1970 mineral rights lease might not succeed to the village corporation but might instead remain with the Indian Reorganization Act (IRA) entity, the members of Klukwan Village Corporation desired instead to take benefits under ANCSA. In 1976, P.L. 94-204 remedied the problem by requiring the village corporation to convey all reserve land to the IRA and by permitting the Klukwan Village Corporation and its members to select other land and obtain cash benefits.[41] Later that year, further legislative action was necessary to ensure that Klukwan had a suitable land area from which to make its selections.[42]

Also, P.L. 94-204 provided for a one-time startup grant of $100,000 to each of the six remaining village corporations that took title to their former reserves,[43] determining that they, like the urban corporations, had been "severely hampered in carrying out the functions which Congress intended."[44]

Chapter 7

THE CASH SETTLEMENT

The first official distribution of cash compensation from the Alaska Native Fund was made on December 21, 1973, according to the ANCSA timetable—"after completion of the roll . . ." [section 6(c)]. For disbursement to the regions to take place, the roll first had to establish how the funds would be apportioned between regions. For disbursement by the regions to their villages and shareholders to take place, eligible Natives and villages had to be formally identified.

Although the first distribution from the Fund was made on schedule, within days after the Secretary certified the roll in December 1973, there were problems connected with its timing per se. It was in one sense too late, and in another sense too soon: too late, in that the Native corporations were supplied no funds for their startup operations; too soon, in that the basis for distribution provided by the December 1973 roll was not final or definitive.

As the primary vehicles for ANCSA's implementation, the regional corporations in particular had much to accomplish at the outset. They needed to organize, hire staff, prepare to administer the cash disbursements, and begin financial planning. At the same time they needed to help their constituents enroll and help their villages incorporate, select land, and plan ahead. Their lack of funds for carrying out these responsibilities was immediately recognized and soon remedied. Through a special congressional appropriation, each of the 12 Alaska regional corporations received a $500,000 advance in June 1972.[45] In December 1972 and November 1973, an additional $2 million was advanced on the basis of need to some of the regional corporations.[46]

Uncertainties about the Alaska Native Roll as certified in December 1973 complicated the allocation of funds among the regions. To accommodate formation of 13th region, disenrollment, reopening the roll, and other contingencies, funds had to be held in reserve and readjustments had to be made.

The regional corporations received two payments from the (Alaska Native) Fund during FY 1974 and one payment during FY 1975. All succeeding

distributions were made on a quarterly schedule, however, in accordance with section 6(c). Distributions from the Fund were actually completed ahead of schedule. While it was initially expected that the distributions would take place over 15 to 20 years (at least until 1985),[47] the final payment was made from the State of Alaska's treasury one decade after passage, in December 1981.

Nevertheless, inflation significantly decreased the purchasing power of the cash settlement. The decrease was only partially offset by the early payment by the State and by a decision that the Fund would earn interest prior to its distribution.

THE ALASKA NATIVE FUND

Section 6(a) of ANCSA established in the U.S. Treasury an Alaska Native Fund that was to pay a total cash settlement of $962.5 million. Section 20 provided that up to $2 million of the amount would be used to pay attorney and consultant fees and expenses incurred in connection with the settlement of Native claims and that up to $600,000 would be used to reimburse Native organizations for costs they incurred in advancing such claims.

DEPOSITS TO THE FUND

In accordance with the schedule provided in section 6(a)(1), Congress appropriated a total of $462.5 million to the Fund in fiscal years 1972 through 1982. The remaining $500 million resulted from a 2-percent share of gross mineral revenues received from State and Federal lands in Alaska, as provided in sections 6(a)(3) and 9.

Prior to completion of the Trans-Alaska pipeline, mineral revenue-sharing deposits to the Alaska Native Fund were small. In fiscal years 1972 through 1977, only about $2.4 million was deposited. So that the delays in deposits would not hinder the fledgling corporations' financial planning efforts and cost them the use of significant amounts of money, the Trans-Alaska Pipeline Authorization Act stated that Congress would appropriate advance payments of $5 million every 6 months beginning July 1, 1975, and continuing until pipeline delivery of the North Slope oil began.[48] (The appropriations authorized by this legislation were never made, however.[49])

The first oil flowed into the pipeline on June 20, 1977,[50] and shortly thereafter substantial revenue-sharing deposits were made to the Alaska Native Fund. FY 1978 payments totaled over $34 million.[51]

On June 30, 1980, the State of Alaska made a lump-sum payment of nearly $300 million. This payment completed the $500 million revenue-sharing portion of the Fund considerably sooner than had been expected. This acceleration of payments helped to assuage concern over the devaluation of the cash settlement due to inflation,[52] but did not eliminate the effect of the extraordinary inflation of the previous 8-1/2 years.

Table 7-1 shows total deposits to the Alaska Native Fund for fiscal years 1972 through 1982. (Table 7-4, in a later section, shows the effect of inflation on the cash distributions retained by the regional corporations.)

Table 7-1
DEPOSITS TO THE ALASKA NATIVE FUND
BY FISCAL YEAR

FY	Appropriations from U.S. Treasury Authorized by Congress*	Mineral Revenue Deposits from State Treasury+
1972	12,500,000	38,883
1973	50,000,000	344,957
1974	70,000,000	156,478
1975	70,000,000	1,570,839
1976	70,000,000	175,570
1977	40,000,000	128,415
1978	30,000,000	34,150,858
1979	30,000,000	39,641,807
1980	30,000,000	415,988,259
1981	30,000,000	[0]
1982	30,000,000	[0]

*Authorized by Congress in section 6(a).

+Based on receipts provided by BIA Juneau Area Office Finance Officer.

UNCERTAINTY REGARDING PAYMENT OF INTEREST ON THE FUND

Whether the Alaska Native Fund should earn interest was long debated. The Treasury Department opposed payment of interest. Natives and others argued that potentially large sums should not lie idle, even for relatively short periods, between credit to the Fund and distribution to the regional corporations.

ANCSA [section 6(a)(2)] authorized only the appropriation of 4 percent annual interest on any Federal appropriation not made within 6 months after the fiscal year in which it was payable and stipulated [in sections 20(e) and (g)] that no interest would be earned on appropriations to the Fund for the reimbursement of attorney and consultant fees or lobbying expenses.

In October 1972 the Comptroller General, overruling the Treasury Department, stated that, "pending enrollment," the Fund would be treated as an Indian trust fund and therefore either earn interest of 4 percent per annum or be eligible for investment by the Secretary.[53] However, in December 1973 the Comptroller General ruled that after the roll was prepared and distributions began to be made, the Fund would no longer bear interest or be eligible for investment. The ruling was based on the premise that Congress did not want a "lengthy wardship or trusteeship,"[54] and it was followed by the Department of the Interior. For two years—from January 1, 1974, until January 1, 1976—the Fund earned no interest of any kind.[55]

On January 2, 1976, Congress reversed the Comptroller General's decision, stating that the Fund should be treated like some 400 other trust accounts maintained for Native American groups.[56] Thereafter, the Secretary placed the funds on deposit in short-term investments. In 1978, however, the Comptroller General ruled that interest earned on the FY 1977 Federal appropriation did not belong to the Fund, and the interest was returned to the Treasury.

Finally, in 1980, ANILCA section 1414[57] authorized retroactive distribution of the FY 1977 interest to the Native corporations. The section provided other remedies as well by changing the timing of deposits to and distributions from the Fund. Appropriations would be deposited on the first day of the fiscal year, rather than during the fourth quarter, to ensure their immediate investment by the Secretary. Appropriated funds and interest earned would be distributed at the end of the first quarter, rather than the end of the fourth, so that Natives could assume responsibility for their investment sooner. Table 7-2 shows the Fund's receipts and earned interest.

Table 7-2
TOTAL RECEIPTS—ALASKA NATIVE FUND
(Fiscal Years 1972 through 1982)

Federal Appropriations	$462,500,000.00
Mineral Income	
Bureau of Land Management (Federal share)	$5,208,173.77
State of Alaska	494,791,826.23
Interest+	16,897,288.34
Total	$979,397,288.34

+Interest earned prior to the initial distribution on December 12, 1973, totaled $6,017,907.97. Interest earned after that distribution totaled $10,879,380.37.

Source: BIA memorandum explaining final distribution, January 15, 1982, Table 1.

DISTRIBUTIONS FROM THE FUND

DISTRIBUTIONS TO THE REGIONAL CORPORATIONS

Section 6(c) provided that, after completion of the roll, all money in the Fund (except that reserved for the payment of attorney and other fees per section 20) would be distributed quarterly to the regional corporations. Each region's share was determined on a per-capita basis—that is, based on the ratio of its enrollment to the total number of enrollees. It was anticipated that the distribution ratios established by the December 1973 roll would be final. That was not the case.

Necessary Adjustments of the Distribution Ratios

First, while the initial December 1973 distributions were made to only 12 regional corporations, the 1974 court order establishing a 13th regional corporation also set aside sufficient money to ensure the new region the amount it would have been entitled to had it been established in December 1973.[58] Adjustments therefore had to be made. Payments distributed by the 12 regions to people who transfered to the 13th were credited to those regions and debited to the 13th. As a result, some regions owed the Fund because their share was reduced by the transfers to the point that their previous receipts exceeded their newly computed share.[59] The court order also provided that certain funds be withheld from distribution pending the outcome of an election giving non-Alaska residents a final chance to "opt in or out" of the 13th Region. Based on the results of the election, distribution ratios were further modified and payment adjustments were made in FY 78.

Secondly, another question concerning the distribution ratio arose in 1975. Section 6(c) stated that funds would be divided based on "the relative numbers of Natives enrolled in each region." The Secretary interpreted the term "Natives enrolled in" as meaning "shareholders in." Following the election ofcertain "19(b)" villages to take title to their former reserves, the Secretary excluded those villages' enrollees from the regional count. The two regions in which most of the villages were located, Doyon and Bering Straits,[60] challenged this interpretation in the courts. A reserve fund (constituting about .016 of the total funds[61]) was withheld pending a final decision. The reserve was distributed to all regions in FY 1979 upon a final ruling that enrollees to the 19(b) reserves should not be counted.[62]

Thirdly, the reopening of the roll by P.L. 94-204 in 1976 meant that the distribution ratio had to be recomputed. The approximately 2,000 new enrollees would not share in the distributions made before March 30, 1976, but would share in those made thereafter.

Finally, an escrow account had to be maintained pending the outcome of disenrollment contests. It was not until December 1981, following the "last" official distribution of March 31, 1981, that the more than $8 million held in escrow ($7.4 million plus interest earned) was distributed. Because the disenrollment regulations[63] stated that disenrollment was retroactive, a lengthy series of recomputations had to be performed to arrive at the "final" distribution amounts.[64] Table 7-3 shows total distributions to the regional corporations.

Table 7-3
TOTAL PAYMENTS FROM THE ALASKA NATIVE FUND TO THE 13 REGIONAL CORPORATIONS (In Descending Order)

Region	Payment	Percentage of Total Distribution
Sealaska	$198,648,874.25	20.3%
Calista	166,100,326.12	17.0
Doyon	113,159,858.92	11.6
Bering Straits	80,067,152.26	8.2
Cook Inlet	77,797,231.07	7.9
Bristol Bay	67,443,494.18	6.9
Nana	60,269,094.32	6.2
Arctic Slope	46,888,935.89	4.8
Thirteenth	46,600,910.39	4.8
Koniag	41,674,921.16	4.3
Aleut	40,536,503.27	4.1
Chugach	24,153,013.14	2.5
Ahtna	13,364,952.93	1.4
Total	$976,705,267.90	100.0%

Source: BIA memorandum explaining final distribution, January 15, 1982.

Note: A detailed breakdown showing all disbursements is contained in Appendix C. It indicates the degree to which the size of each region's payment varied from quarter to quarter.

Effect of Inflation on Cash Distributions Retained by Regional Corporations

The Fund distributions retained by the regional corporations were intended to give the corporations enough liquid capital to conduct business enterprises and exploit the natural resources of the lands conveyed under ANCSA. Spreading the distributions over several years was intended to facilitate an orderly developmental period. However, as indicated in Table 7-4, inflation substantially reduced the purchasing power of the distributions. The table shows a reduction totaling $168,912 for the $472,958 retained by the regional corporations—a decrease of about 35.7 percent in purchasing power.

Table 7-4
CASH DISTRIBUTIONS RETAINED BY REGIONAL CORPORATIONS

Regional Corporation	Cash Distributions (thousands) Distributed Amounts*	Discounted Amounts+	Reduction in Purchasing Power
Ahtna, Inc.	$ 6,464	$ 4,200	$ 2,264
The Aleut Corp.	19,610	12,645	6,965
Arctic Slope Reg. Corp.	22,654	14,670	7,984
Bering Straits Native Corp.	38,649	25,152	13,497
Bristol Bay Native Corp.	32,615	21,063	11,552
Calista Corp.	80,307	51,821	28,486
Chugach Natives, Inc.	11,670	7,581	4,089
Cook Inlet Region, Inc.	37,639	24,219	13,420
Doyon, Limited	54,692	35,330	19,362
Koniag, Inc.	20,172	12,977	7,195
Nana Regional Corp., Inc.	29,142	18,812	10,330
Sealaska Corp.	96,044	62,084	33,960
The 13th Regional Corp.	23,300	13,492	9,808
	$472,958	$304,046	$168,912

*Compiled from the BIA memorandum explaining final distribution, January 15, 1982.

+Derived from the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Anchorage. Since ANCSA was enacted in late 1971, the base year used was 1972. The index for that year was 117.30; the 1980 index was 246.50.

Approval of Fund Assignments Made by the Regional Corporations

Regional corporations were enabled to borrow capital for development projects at reduced rates pursuant to section 31 (43 U.S.C. 1628), which was added to ANCSA by amendment in 1977.[65] Prior to the amendment, a regional corporation could assign, or transfer its interest in, future distributions from the Fund, but the Secretary was prohibited by the Anti-Assignment Act[66] from recognizing the assignment and thereby securing (guaranteeing) it. The new section 31 allowed the Secretary to recognize an assignment, but only to the extent that it did not interfere with the distribution of funds to village corporations and shareholders as required by sections 7(i) and (j). Such recognition enabled a corporation to obtain better finance terms.

Regulations governing the Secretary's recognition of assignments were published in May of 1978.[67] The regulations made clear that only an assignment of a "fixed sum" would be approved and that the Secretary would judge not the merits of a requested assignment but only whether it was validly executed.

Fourteen assignments made by eight of the regional corporations were approved by the Secretary. They ranged from less than $200,000 to $15 million.[68] All have been paid off.

REIMBURSEMENTS OF ATTORNEY AND OTHER FEES (SECTION 20)

From 1976 through 1978 a total of $2,692,020.44 was awarded from the Fund via the Court of Claims to reimburse attorney, consultant, and related expenses incurred in advancing Native land claims.[69] An excess reserve of $107,979.56 was distributed among the regional corporations on December 29, 1981.[70]

DISTRIBUTIONS FROM REGIONAL CORPORATIONS TO VILLAGE CORPORATIONS AND INDIVIDUAL SHAREHOLDERS

The regional corporations did not, of course, retain all of the money disbursed from the Fund. They were required by sections 7(j), (k), and (m) to distribute part of the cash to individual shareholders and part of it to the village corporations.

For the first five years after enactment (through 1976) the 12 regional corporations in Alaska had to distribute not less than 10 percent of money from the Fund among their shareholders. Under this per capita distribution, all Natives enrolled in the region received equal amounts. In addition, the corporations had to distribute not less than 45 percent of these funds among its village corporations and at-large shareholders (shareholders not enrolled to a village corporation).

Under this distribution, an equal amount was allocated for every shareholder in the region; however, at-large shareholders received their per capita payments directly in the form of cash, while the payments allocated for village corporation shareholders went not to the individuals but to the village corporations. In other words, shareholders enrolled to village corporations (about 2/3 of all Natives enrolled) received a per capita share of not less than 10 percent of each distribution; at-large shareholders received directly a per capita share of not less than 55 percent, since they would not be eligible for land or other benefits from a village corporation.

After 5 years the 10-percent distribution among all regional shareholders ceased; it was expected that by that time, the regional corporations would be earning income and declaring dividends that would replace the funds distribution. (This was actually the case for only a few of the regional corporations, as most did not begin to function as businesses until approximately 7 years after ANCSA's enactment. See "Financial Review" in Part V.) Instead of keeping up to 45 percent, as in the initial 5 years, the regional corporations kept up to 50 percent, distributing the other 50 percent among their village corporations. (See Figure 7-1.)

The 13th Regional Corporation was required to distribute half of its revenues among its shareholders from the beginning.

Table 7-5
CASH DISTRIBUTIONS BY THE
12 REGIONAL CORPORATIONS IN ALASKA
[Required by ANCSA Sections 7(j), (k), and (m)]

Distribution	First Five Years	After Five Years
To all regional stockholders	10%*	--
To village corporations and at-large stockholders	45%*	50%*
Kept by region	45%	50%*

* Required minimum.

Implementation of the Requirements

ANCSA did not stipulate how often, or how soon after receipt, the regional corporations would make the required distributions to their shareholders and villages. Most regions proceeded slowly in making the initial payouts, while some were delayed by significant errors in their rolls.[71] Others, aware that there would be changes to the Alaska Native Roll and that the 13th Region question was unresolved, decided to make only the 10-percent distribution and hold back the 45-percent distribution until the roll was finalized.[72]

Distributions to Village Corporations

Because the eligibility of many villages had not been determined when the first disbursements were made, some regional corporations held funds in reserve. If a village corporation was certified, it received the funds; if a village was declared ineligible, the funds were distributed among the Natives who had enrolled to it (who then became at-large shareholders for all future distributions).

Section 7(e) permitted a regional corporation to withhold distributions to a village corporation until the village submitted a satisfactory plan for the use of the money. In addition, sections 7(l) and (m) authorized the regional corporation to withhold funds from village corporations and at-large shareholders so as to finance projects that would benefit the region generally; section 7(n) authorized the regional corporation to undertake projects financed by the villages.

Village corporations were not required to make distributions to their shareholders. Indeed, many villages, especially the smaller ones, were hard-pressed to conduct essential operations with the funds they received. During the first 3 years after passage, for example, village corporations had to organize, elect boards of directors, set up plans for stock issuance, and establish recordkeeping systems. To carry out these and other tasks, as well as the huge task of land selection, they needed to hire staff and consultants. Yet the funds most village corporations received did not go far.

A village corporation of 100 shareholders received about $80,000 from the initial December 1973 distribution (assuming that the regional corporation made distributions immediately and withheld no funds); a village of 25 received only one-quarter of that amount, or about $20,000.[73] Furthermore, over the next 2 years the village corporations received cumulative distributions only slightly greater than those initial distributions, as distributions from the Fund to the regional corporations were small during 1974 and 1975. (See Appendix C)

Payments to the village corporations were irregular—both in timing and in size. As discussed earlier, distributions from the Fund were not made on the quarterly schedule in the early years and the regional corporations were not

required to make their distributions on a regular timetable. In addition, the size of payments made from the Fund, and therefore the size of potential distributions to villages, fluctuated widely. Over the period FY 1976 through FY 1980, the approximate potential size of the annual payments to a village corporation of 100 enrollees ranged from under $20,000 in FY 77 to a high of about $250,000 in FY 80, when the State made its lump sum payment to the Fund.

Table 7-6 shows amounts received by village corporations over the course of the distributions and indicates the effect of inflation on those amounts. Corporations with 0 to 199, with 200 to 999, and with 1,000 to 2,499 shareholders were combined for purposes of this analysis.

Table 7-6
CASH DISTRIBUTIONS TO VILLAGE CORPORATIONS
(Thousands)

Midpoint	Distributed Amounts	Discounted Amounts	Reduction In Purchasing Power
100	$ 605	$ 391	$ 214
600	3,630	2,345	1,285
1,750	10,587	6,840	3,747
	$14,822	$9,576	$5,246

Cash Payments to Individuals

Information on the amounts of cash distributed to individual Native shareholders is provided in chapter 11.

Distributions to about 1,000 Native children and incapacitated adults committed to the care of the State were postponed by a 1974 court order.[74] The cash was placed in interest-bearing accounts until legal custodians were appointed.

Pursuant to U.S. Department of Agriculture directives, some Natives in Alaska and other states were denied food stamp benefits because their combined income and resources exceeded financial eligibility requirements, raising the fear that other kinds of benefits might be denied as well. In a suit brought against the Secretary of Agriculture,[75] the Ninth Circuit Court of Appeals held that ANCSA distributions should not be counted in determining eligibility for food stamps, stating that "[the] decision of the Secretary would encourage,

or even require, the very poorest of the Alaska Natives . . . to dissipate their settlement awards for current consumption. Such a result would, in our view, be wholly at odds with the Congressional aim."[76] P.L. 94-204 resolved the eligibility issue in 1976, adding to ANCSA a new section 29 [43 USC 1626] which states in part that ANCSA payments "constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska."

Chapter 8

THE LAND SETTLEMENT

The land settlement has been by far the most complicated aspect of ANCSA's implementation. That is largely because ANCSA's land-related provisions were drafted not strictly as a mechanism for settling Native land claims but also as a vehicle for intervening in the course of land actions statewide. Many of ANCSA's provisions effect political compromises between State, national, and Native interests in Alaskan lands.

Before ANCSA's enactment, the State of Alaska had received tentative approval of only about 9 million acres and had been patented only about 5 million of the nearly 104 million acres to which it was entitled by the 1958 Statehood Act.[77] What is more, the State had by no means completed its land selections. Certain provisions of ANCSA therefore addressed Native vs. State priorities in land selection and conveyance. Other provisions removed vast tracts of land from both Native and State selection, for possible placement in the national conservation units managed by four Federal agencies within the Department of the Interior.[78] Final disposition of those lands remained in question until in 1980 when, after extended debate, the Alaska National Interest Lands Conservation Act ("ANILCA") was passed.[79] Another provision established a Joint Federal-State Land Use Planning Commission (LUPC) to serve as a forum for studying the wide spectrum of interests in Alaska as well to assist the Native corporations in the land selection process.

As these and other broad statutory provisions were translated into policy and procedure, and were applied case by case, it was inevitable that conflicts between the parties—and hence delays—would ensue. These difficulties have been compounded by a host of administrative problems. The task of officially determining and describing who owns what lands in Alaska has become especially complex and time-consuming because of the general absence of land surveys and the presence of thousands of small, unpatented land claims. Delays in completing several prerequisite implementation steps, such as enrollment, eligibility, and regional boundary determinations, threw many more unknowns into the land settlement process and further taxed the limited available budget and manpower. Further, several years transpired before the Department of the Interior promulgated workable land conveyance policies, concentrated authority for the conveyance process, and put efficient conveyance procedures in place.[80]

This chapter discusses both the difficulties that have hampered the land settlement process, and the actions taken to overcome those difficulties and mitigate their effects. The discussion is divided into 3 sections: withdrawal, selection, and conveyance. This scheme provides a logical framework for discussion; it tracks the relatively straightforward land settlement scheme provided in sections 11, 12, and 14 (and related sections) of ANCSA. In presenting the implementation process as it has actually unfolded, however, this neatness of organization is misleading. As will be pointed out in the text, the withdrawal, selection, and conveyance phases are not separate and discrete but, rather, highly interdependent (as well as dependent on other implementation steps). What is more, the various implementation problems noted above have disrupted the sequential progression envisioned by ANCSA. After many years of effort, the withdrawal and selection provisions, as well as the conveyance provisions, are still being implemented.

Appendix D of this report present statistical data—region by region and village by village—on the status of interim conveyances, patents, and other land entitlements and conveyances. All information is current as of February 1984.

WITHDRAWAL

To afford the village and regional corporations a land base from which to make their selections, Congress withdrew from all other forms of appropriation certain public lands surrounding each village listed in the act. If the Secretary determined that those lands were inadequate for the corporations' selections, Congress authorized the Secretary to withdraw additional "deficiency" lands. Congress also directed the Secretary to withdraw lands from which those unlisted villages found eligible could make their selections, as well as lands to be conveyed for special purposes under section 14(h). In addition to these withdrawals for Native selection, the Secretary was to withdraw unreserved public lands for study to determine which lands should be opened to appropriation and which should be added to the existing national conservation systems.

As implementation of these provisions proceeded, it became apparent that the major challenge lay in identifying enough suitable land to meet the Native corporations' requirements for both a subsistence and an economic development base. Withdrawal of the public lands surrounding villages in accordance with the legislative provision was a relatively straightforward process that, aside from determinations of whether certain Federal holdings should be relinquished for Native selection, took place without significant delay. The biggest difficulties arose as the Department sought alternative lands to set aside in areas where the lands surrounding the villages were unavailable for selection. The Department had an obligation to uphold the "valid existing rights" in the land of the State and private parties. The

Department also had to weigh the interests of the Native corporations against the broader public interest in attempting to fulfill both its mandate to designate appropriate lands for Native selection and its mandate to conserve lands with significant natural, scenic, historical, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife resources. Many adjustments and tradeoffs had to be negotiated and legislated in order to effect the necessary land withdrawals.

LEGISLATIVE WITHDRAWALS

Upon enactment of ANCSA, public lands in and around Native villages were automatically withdrawn [under sections 11(a) and 16(b)]. These village site withdrawals included lands that had been selected by the State and tentatively approved but not yet patented [section 11(a)(2)], although only 3 townships (36 square miles each) of a village corporation's total entitlement could be selected from such lands [section 12(a)(1)]. All lands selected by Native corporations would remain withdrawn until the Secretary conveyed them pursuant to section 14. All other withdrawals terminated after 4 years, unless otherwise stated in the act or unless the Secretary determined they were no longer needed.[81]

Confusion Regarding Township Determinations

Section 11(a)(1) contained a formula spelling out how much land surrounding a village was to be withdrawn. The units used were townships—areas of 23,040 acres or approximately 36 square miles that appear on the maps of the U.S. Rectangular Survey System. The "core" township in which the village was located was withdrawn, followed by an inner ring of all townships cornering on or contiguous to the core township as well as an outer ring of all the townships cornering on or contiguous to the inner townships. The average withdrawal under this formula totaled 23 to 25 townships.

Some confusion arose concerning withdrawals for villages located in more than 1 township; adjacent villages having their selection areas separated by a township line; and core townships that were split by a regional boundary. These matters were resolved expeditiously by administrative determinations.

Problems concerning whether certain townships could be considered "cornering" townships were not resolved as quickly. Because not all townships were aligned in straight grids, there were situations where parts of the outer ring of townships were not in physical contact with the inner ring—although the townships were adjacent, or cornering, by legal description. The Native corporation took the position that cornering by legal description was sufficient; the State actively opposed that position. In 1977 the Alaska Native Claims Appeal Board (ANCAB), revising an earlier decision, held that townships cornering by legal description but not by physical contact would not be considered cornering.[82] This meant that some village site withdrawals were reduced by 2 townships.

Delays in "Smallest Practicable Tract" Determinations

The village site withdrawal provisions stipulated that, in accordance with the township formula, all "public lands" were to be withdrawn subject to valid existing rights. Section 3(e) defines public lands as including all lands held by the Federal Government except "the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation." Recognizing that Federal agencies in Alaska generally had more lands withdrawn for their use than they actually needed to carry out their missions, Congress authorized the Secretary to determine the smallest tract actually in use and to make unused lands available for Native selection.

Little was done to implement this provision until the 1980's. As the agency responsible for implementation, the BLM was placed in an awkward position. The Federal holdings were generally small in acreage, yet they often had considerable value and frequently were located within the Native communities. Native demand for the lands was matched by agency reluctance to give them up.

In mid-1972 BLM endeavored to implement the provision in a manner inoffensive to the Federal holding agencies. A form letter asked each agency to state whether it still needed all of its holdings. Not surprisingly, almost all the agencies who responded said that they did. Only the U.S. Coast Guard hired a private firm to inventory its land needs and then released the lands no longer needed. During this time, BLM told Native corporations that they were to exclude Federal holdings from their selections. As the village corporation selection deadline drew near, however, BLM reversed that procedure and allowed the corporations to include Federal holdings in their selections. Title to any selected agency holdings, however, would be conveyed to the corporations only if BLM later determined that the holdings were unused.

Under pressure from the LUPC and the Native community, BLM began in 1976 to try to determine unused agency land on a case-by-case basis. Over 90 percent of the village land selection applications filed by December 1974 included Federal holdings. As each such application was being processed, BLM wrote to the holding agency in question, asking that it either justify the size of its holdings or identify areas that could be conveyed to the Native corporation. If the agency was not responsive, BLM proceeded to process only the rest of the land selected.

In 1977, GAO reviewers informed Department officials that BLM's approach failed to identify unused lands that could be made available to the Native corporations. The reviewers also told the Department that an agreement it had signed with the General Services Administration in 1974 was improper, as it gave other Federal agencies priority over Native corporations in the distribution of lands that were declared excess.[83] The effect of the BLM procedures to that date had been to generate uncertainties about the validity of land selections, delay conveyances of title, and cause some corporations to lose title to lands which had not been made available.[84]

At last, in March 1978, then-Secretary Cecil Andrus gave BLM a clear directive[85] to conduct a thorough and unbiased review of all Federal agency holdings at issue, placing the burden of proof on the holding agency rather than on the Native corporation. The regulations needed to implement this review were not published until October 1980,[86] however, and it was not until 1982 that BLM began to implement the review in a concentrated fashion.[87] Efforts to resolve this 3(e) problem continue.

DEFICIENCY WITHDRAWALS

The automatic withdrawals required by section 11(a)(1) withdrew approximately 576,000 acres around each village—about 3-1/2 times as much land as even the largest village was allowed to select. Nevertheless, additional deficiency withdrawals had to be made in every region [pursuant to 11(a)(3)] to provide village and regional corporations sufficient lands from which to make their selections.

Why Deficiency Withdrawals Were Necessary

Some of the village site withdrawals were significantly reduced because many of the townships withdrawn consisted of water. Native corporations could not select either parts of the ocean bed or the beds of navigable inland waters (see discussion below).

In some cases, a large portion of the withdrawal area consisted either of lands that had been selected by but not yet patented to the State or of national forests, national wildlife refuges, or naval petroleum reserve. Village corporations were allowed to select only 3 townships, or 69,120 acres, of such lands [12(a)(1)]; regional corporations were prohibited from obtaining title to the subsurface in the Federal conservation lands and had to make "in lieu" selections elsewhere.

Any land to which some party held a valid right was not available for Native selection. Such rights included Native allotments, homesteads, trade and manufacturing sites, Native townsites, and others. Although the individual parcels were small, the lands involved totaled several million acres. Patented mining claims also were unavailable for selection, as would be any valid unpatented mining claim for which a patent was obtained within 5 years after enactment.

In addition, the regional corporations entitled to share in the selection of 16 million acres under the 12(c) "land lost" formula were restricted by ANCSA from selecting compact units of land. The requirement that they "checkerboard" their selections—select only every other township—necessitated regional deficiency withdrawals in some areas.

What ANCSA Provided

Section 11(a)(3) provided that when deficiency withdrawals were necessary, the Secretary would withdraw three times the deficiency from "the nearest

unreserved, vacant, and unappropriated lands." Deficiency withdrawals were therefore more restricted than the legislated withdrawals, as they could not include national forest or wildlife reserve lands, or lands tentatively approved (TA'd) to the State. Furthermore, deficiency lands were to be "of a character similar to" the village lands.

How Deficiency Withdrawals Were Ascertained

No regulations were published to govern withdrawals, including deficiency withdrawals. Instead, an advisory committee made up of the Interior Assistant Secretaries (the Alaska Task Force) made recommendations for all types of withdrawals required by the act. In March 1972 (within the 90-day period required by ANCSA), the Secretary announced the withdrawal of some 274 million acres of Alaska public lands. Approximately 60 million were the village site withdrawals required by ANCSA; an additional 52 million were deficiency withdrawals. A total of 127 million acres were withdrawn pursuant to the Secretary's authority under 17(d)(1) and (2) to set aside lands of possible public interest for further review. The remaining 35 million acres were made available to the State.[88]

Both the State and the Native community objected strongly to the initial withdrawals. The State, which received only 35 million out of 72 million acres for which it had filed selections in January 1972, charged that the Secretary had overreached the withdrawal authority provided by ANCSA and violated the intent of the Statehood Act.[89] Native leaders charged that Native interests had been shortchanged, with choice lands being withdrawn under 17(d)(1) and (2) for their recreational or wilderness value and the Native corporations receiving mountain peaks, glaciers, and snowfields for their deficiency areas.[90] A modified withdrawal plan was issued in September 1972, following input from the LUPC, the State, and the Native leaders, but that plan, too, was considered unsatisfactory.

Nearly all the regions objected to the quality of the deficiency lands withdrawn; Chugach and Cook Inlet regions faced the most severe problems. Chugach hired a consulting firm which determined that half the region's deficiency area was glacier.[91] Most of the land in the southcentral coastal region was unavailable, as it was already in State or private ownership; Chugach contended, however, that there would be no deficiency problem if Chugach National Forest lands were made available. Located around the populated Anchorage area, Cook Inlet (CIRI) faced a similar situation. Most of its deficiency areas extended up into the mountains, since the bulk of the nearby lands were already in private, State, or military ownership. Problems faced by other regions and their villages stemmed from, among other factors, the presence of large bodies of navigable waters and conflicting withdrawals for the pipeline corridor.

The difficulties caused by these land shortages and conflicting interests were compounded by uncertainties concerning the amounts of deficiency lands that would actually be needed. Many of the variables that would ultimately determine village and regional selection entitlements could not yet be pinned down. Regional boundaries, which would determine regional entitlements,

were still being worked out. Incomplete enrollments placed the size of some village entitlements in question, and uncertainty about formation of the 13th region meant that regional entitlements were not firm. Furthermore, there was a lack of resolution concerning which inland waters were navigable and therefore not available for selection, which villages located on former reserves would elect to participate in the ANCSA benefits, which villages with overlapping withdrawals would require deficiency lands, and a number of other factors.

Aided by recommendations from the LUPC and coordination with the State, Interior Department officials solicited input from the Native corporations and were able to negotiate amicable withdrawal agreements with most corporations by mid-1973.[92] Cook Inlet and Chugach filed suits against the Department, however, claiming among other things that their regional and village deficiency lands were not similar in character to the lands on which their villages were located.

The Cook Inlet and Chugach withdrawal problems were ultimately resolved by legislation. After the Federal District Court found against Cook Inlet,[93] the regional corporation negotiated alternative land withdrawals and selections for itself and its villages. The terms of the agreement were implemented by legislation in 1976 and later amended.[94] Chugach's withdrawal problems centered around a lack of lands that offered economic development potential. They were not resolved until, following long negotiations with the Departments of the Interior and Agriculture and the State, as well as a study by the Alaska Land Use Commission,[95] a negotiated settlement was signed in January 1983.

After the withdrawals required by ANCSA were terminated in December 1975, new withdrawal authority was provided by special legislation. For example, P.L. 94-204, § 15, directed special withdrawals for the Koniag region; P.L. 94-204, § 9, rewithdrew lands for selection by the Klukwan village corporation when it decided to participate in ANCSA; P.L. 96-487 (ANILCA), §§ 1415-1435 authorized withdrawals, selections, and land exchanges for the benefit of various Native corporations.[96] Furthermore, § 1410 of ANILCA amended ANCSA [43 U.S.C. 1621(j)(2)] to authorize the Secretary to withdraw available lands for selection in instances where a village corporation did not previously select sufficient lands to obtain its full entitlement. (No regulations have been promulgated to implement § 1410, however.)

OTHER ADMINISTRATIVE WITHDRAWALS

In addition to authorizing the village site and deficiency withdrawals for the benefit of the regional corporations and the listed villages, ANCSA also directed the Secretary to withdraw lands for the benefit of other Native entities. Approximately 12 million acres were withdrawn to protect the land pending eligibility determinations for unlisted villages. Lands have also been withdrawn pending decisions regarding Native group eligibility.

The Secretary's withdrawal under section 14(h)(3) for the urban corporations in Juneau (Goldbelt) and Sitka (Shee Atika) have engendered extensive debate and litigation in southeast Alaska. The withdrawals for both corporations were originally made on Admiralty Island. Their legality was contested in court by both the environmental community and the village of Angoon (Kootznoowoo, Inc.), which is located on the Island.[97] In 1979, Goldbelt was able to negotiate a land exchange with the U.S. Forest Service which afforded the corporation lands off the Island of comparable value. Shee Atika, however, was unable to reach agreement with the Forest Service on such an exchange. To resolve the issue, ANILCA § 506(c) confirmed Shee Atika's selection rights on Admiralty Island; Congress reconfirmed Shee Atika's title in 1982.[98]

Goldbelt is now prospering, while Shee Atika faces imminent bankruptcy. Having received no funds under ANCSA, development of its land resources represents Shee Atika's sole source of revenue. Yet since 1980, Shee Atika has been subject to lawsuits challenging the conveyance of the Admiralty Island lands and contesting the corporation's right to harvest timber. Oversight hearings held in late 1983[99] addressed the substantial conflicts of interest created by ANILCA's provision that both the village of Angoon's subsistence activities and the Shee Atika corporation's development activities be allowed to take place on Admiralty Island, but as of mid-1984 there had been no satisfactory resolution of the problem.

SELECTION

Land selection was a formidable undertaking for the Native corporations. Much was at stake, as land selections would have lasting impact. Regional corporations needed to obtain lands that would provide a base for profit-making operations. Village corporations had to establish priorities. They needed to choose lands that would enable their people to continue traditional ways of life. Yet they also had to look to the future, attempting to identify lands that would increase in value over time, as well as lands that would be needed to protect other lands.

The critical choices necessary were made all the more difficult by several factors. First, time was short. ANCSA required that village selections be made within 3 years, and regional selections within 4 years, of enactment. That meant that the selection process had to commence before the enrollment and corporate organization processes could be concluded. Second, restrictions on selections, imposed by the act and by regulation, had to be contended with. Corporate leaders would find it necessary to protest policy determinations which they saw as denying needed flexibility in land selections. Third, technicalities had to be mastered. In order to both make judicious selections and express those selections accurately in the bulky selection application forms, corporation leaders had to learn the techniques and terminologies of land use planning and related disciplines, or hire practitioners who knew them. Finally, uncertainties had to be grappled with. Due in part to a lack of finality

in policy determinations and in larger part to the interdependency of variables inherent in the settlement scheme, corporations had to make land selections without knowing whether their selections would be recognized, whether the lands they sought were available for selection, or precisely how much land they were entitled to select.

Despite these difficulties, all Native corporations managed to file their land selections on time. Village corporations were aided by the regional corporations, who hired the expertise of geologists, foresters, wildlife managers, recreation planners, economists, lawyers, and other consultants. In addition, the Resource Planning Team of the Federal-State Joint Land Use Planning Commission helped both village and regional corporations, providing recommendations with respect to proposed land selections and assistance in coping with the complex land selection rules and procedures. Errors were made; some choices were made hastily, and, inevitably, with less than adequate information. Yet, with varying degrees of success, the corporations were able to master the process and make advantageous selections on time.

Nevertheless, although the major deadlines for land selection were met in 1974 and 1975, the land selection process did not conclude then. Until certain prerequisite determinations were made, some selections could not be accomplished. Furthermore, because of the deficiency withdrawal difficulties discussed above and, in at least one instance, inadvertent errors made in selection,[100] legislation in subsequent years extended some corporations' selection opportunities.

What is more, the uncertainties inherent to the land selection process are not fully resolved as of 1984. Because of the large number of unknowns, corporations were permitted to "overselect" and to "top-file" on lands that might or might not prove to be owned by another. While sanctioning of the practices of overselection and top-filing has circumvented some problems, it has at the same time led to others. The Native selection and conveyance processes have been further complicated and prolonged; in many cases, there are as yet no determinations of which of a corporation's selections will be conveyed. State land selections have been blocked as a result of these uncertainties.

Major disputes over the interpretation and implementation of ANCSA's land selection provisions have been defused and resolved through consultation, negotiated agreements, and the 12(e) arbitration provisions for village selection disputes. Yet over 300 appeals of specific land selection decisions by the Alaska State Director, BLM (acting for the Secretary), had been filed with ANCAB as of December 31, 1982,[101] and 62 Alaska land claims appeals involving both ANCSA selections and Native allotment applications were still before the Interior Board of Land Appeals (ANCAB's successor) on May 31, 1984.[102]

LAND SELECTION ENTITLEMENTS SET FORTH IN ANCSA

Section 12, augmented by section 16(b) and 14(h), provided an overall land selection scheme.

Section 12(a)(1) entitled each village corporation eligible under section 11(b) to select from 1 to 7 townships, depending [section 14(a)] on its enrollment. (See Table 8-1.) Section 16(b) authorized the southeastern village corporations to select 1 township each. These selections represented what came to be termed the "first round"; they had to be made by December 18, 1974. Section 12(b) provided for a "second round" of selections. The village corporations eligible under section 11(b) were entitled to an aggregate of 22 million acres. In this second round, the Secretary would allocate to the regions, for reallocation to their villages, any of the 22 million acres left over once the first round selections were complete. (Table 8-2 shows, by region, the land entitlements obtained under sections 12(a) and 12(b).)

The regional corporations would receive title to the subsurface estate of the lands selected under 12(a) and 12(b). If those lands were selected by and tentatively approved to the State or located in wildlife refuges or Naval Petroleum Reserve No. 4, the region would have to select subsurface rights to other withdrawn lands. In addition, 12(c) provided that certain regional corporations would obtain both surface and subsurface rights to an additional 16 million acres. So that lands would not be allocated solely on a per capita basis, the complex "land lost" formula contained in this section allocated the 16 million acres among those regions with relatively large geographic areas but relatively few villages and relatively low village populations. (See Table 8-3.) Selections had to be made by December 18, 1975.

The remaining 2 million acres (not considering the approximately 3.7 million acres obtained by villages that took title to their former reserves) were distributed under section 14(h). The four "urban" corporations of Sitka, Kenai, Juneau, and Kodiak were each to receive up to 1 township; Native groups were each to receive up to 1 township; cemetery sites and historical places were to be conveyed. Grants of land to individual Natives would also be made from this acreage, under either the Native Allotment Act of 1906 (but only allotments approved by December 18, 1975) or the ANCSA 14(h)(5) "primary place of residence" provision. Any acreage remaining would be distributed to the regions on a per capita basis.

Table 8-1
VILLAGE CORPORATION LAND ENTITLEMENTS

Number of Village Corporations	Number of Townships	Stated in Acres
10	1	23,040
54	3	69,120
58	4	92,160
60	5	115,200
14	6	138,240
8	7	161,280

Source: Arnold, Alaska Native Land Claims, 236.

Table 8-2
LAND ENTITLEMENTS OBTAINED BY REGION IN TOWNSHIPS UNDER SECTIONS 12(a) AND 12(b)
(Surface Estate to Villages; Subsurface Estates to Regions)

	VILLAGE SELECTIONS		SECOND ROUND	TOTAL
REGION	Number of villages	Their township entitlements based on their enrollments	Additional townships based upon region's percentage of total enrollment	Entitlement for villages
Ahtna, Inc.	8	30	2.0	32
Aleut Corp.	12	50	6.3	56.3
Arctic Slope Native Corp.	8	37	7.3	44.3
Bering Straits Native Corp.	16	76	12.9	89.9
Bristol Bay Native Corp.	29	118	10.0	128.3
Calista Corp.	56	245	25.1	270.1
Chugach Native Corp.	5	20	3.9	23.9
Cook Inlet Corp.	6	25	11.9	36.6
Doyon, Ltd.	34	140	17.1	157.1
Koniag, Inc.	9	40	6.3	46.3
NANA Corp.	11	52	9.2	61.2
Sealaska	9	9	0	9.0
Totals	203	843	112.0	955.0

Source: Alaska Native Management Report, March 31, 1975.

Table 8-3
ESTIMATED ENTITLEMENTS, BY REGION, UNDER SECTION 12(c)
(Land Lost Formula)

Region	Acreage
Ahtna	992,030.93
Aleut	-0-
Arctic Slope	4,011,728.72
Bering Straits	-0-
Bristol Bay	-0-
Calista	-0-
Chugach	338,665.08
Cook Inlet	1,324,472.71
Doyon	8,356,571.96
Koniag	-0-
Nana	746,130.60
Sealaska	—
TOTAL	15,769,600.00

Source: Federal Register, July 15, 1982.

CONTROVERSIES CONCERNING IMPLEMENTATION OF ANCSA'S LAND SELECTION LIMITATIONS

The land selection regulations initially released by BLM (in September 1972) met with strong opposition from the Native community, largely on grounds that they imposed restrictions beyond those contained in the act.

Section 12(a) imposed restrictions on the first round village selections. A village had to choose all available lands within its core township(s) before selecting lands in other townships. No more than 69,120 acres (3 townships) could be selected in wildlife refuges, national forests, or Naval Petroleum Reserve No. 4, or from State-selected lands. The parcels of land the corporation selected had to be "contiguous" (joined to one another rather than scattered) as well as "in reasonably compact tracts," unless separated by bodies of water or unavailable lands. Selections were to be made in whole sections—areas of 640 acres or one mile square; "wherever feasible," they were to be in units not less than 1,280 acres, or 2 sections. Section 16(b) imposed the core township and the compact and contiguous requirements, but not the whole-section and 1,280-acre-unit requirements, on selections by the village corporations in southeastern Alaska.

The first issuance of the regulations required village selections to be in tracts of not less than 5,760 acres, rather than 1,280 as stated in the act. What is more, they stated that the entire village corporation selection—not simply the selection tracts—had to be compact, stipulating that selections must have a length to width ratio of 2:1.[103]

Restrictions beyond those stated in the act were also applied to regional corporation selections. The draft regulations stated that all regional selections were to be no less than "one complete township"—23,040 acres, rather than the 1,280-acre requirement contained in the act. The regulations also said that regional selections had to be "in conformity with the regional land selection recommendations" of the LUPC—a requirement not stated in the act. They also required a region to select all deficiency lands withdrawn for its villages before selecting regional deficiency lands, although the act did not so stipulate.[104]

After a 2-week working session, representatives of the Department and AFN were able to hammer out a final set of regulations regarding land selection and other issues,[105] published May 30, 1973 (43 CFR subparts 2651 and 2652). Regarding village corporation selection requirements, these regulations dropped the 2:1 length to width requirement and reinstated the 1,280-acre minimum selection tract requirement contained in the act. They qualified the requirement that the total selection be compact by stating that "taking into account the situation and potential uses of the land involved" the total selection must be "reasonably compact." Of the regional corporation selection requirements, the whole township requirement and the requirement to select village deficiency lands first were retained. With the concurrence of the LUPC, the requirement to adhere to LUPC recommendations was dropped.

Two regional corporations filed separate suits in August 1973. The suits contested the requirement for regional corporations to select in whole township blocks[106] and the requirement that village selections be compact and contiguous.[107] These suits were dropped, however, as a result of negotiations.

Further administrative determinations have generally interpreted the selection requirements loosely. All but the most egregious violations of the "reasonably compact" standard have been accepted; it is not uncommon for a corporation to be conveyed a "stringer" of land that follows a river away from a village's core township and then widens out as the terrain improves. An earlier policy that each type of selection (first round, second round, land lost, and 14(h)) had to be contiguous, and that each corporation's selection had to be contiguous in and of itself, has also been relaxed. A 1978 policy memo[108] provided that section 12 and section 14 selections could be intermingled for purposes of contiguity, as could selections of two or more Native corporations.

Regional corporations with 12(c) (land lost) entitlements persisted in their objections to the whole-township selection requirement, as it prevented them from "high-grading" their selections in areas where valuable resources appeared to be concentrated. The Department was persuaded to negotiate less restrictive selection patterns for many of the 12(c) selections.

In 1980, section 1402 of ANILCA amended section 12 of ANCSA [43 U.S.C. 1611(a)(2)] to allow the Secretary to waive the whole-section requirement for village corporations under certain circumstances. In 1981, one village requested and was granted such a waiver.[109]

Section 1428 of ANILCA permitted three Chugach village corporations to make selections in the Chugach National Forest.

A KEY CHARGEABILITY ISSUE: NAVIGABILITY

Besides objecting to restrictions to be placed on their manner of selecting lands, the Native corporations also protested Departmental interpretations concerning which lands were to be charged against their entitlements.

Some questions of chargeability concerned uncertainties regarding prior existing rights. ANCSA [14(g)] stated that all conveyances of lands selected would be subject to valid existing rights. Questions arose concerning what approach was to be taken when the validity of existing rights was in question, as in the case of unpatented mining claims that might or might not proceed to patent and Native allotment applications that might or might not be approved. The regulations resolved the question of how these claims were to be treated—at least for selection purposes. Village and regional corporations were permitted to omit from their selections lands within unpatented mining claims or pending Native allotments, without the omission being construed as a violation of the compact and contiguous requirements. In the case of a mining claim eventually abandoned or declared invalid, the corporation would have to amend its selection to include the land. In the case of a rejected allotment

claim, however, the corporation would be permitted but not required to select the land. (See the subsection "Remaining Conveyance Problems . . . ," below, for a discussion of how the presence of such "inholdings" has complicated the land conveyance process.)

One chargeability issue—whether the beds of bodies of water were to be charged—has been especially controversial. Under section 6(m) of the Alaska Statehood Act, which incorporates the Submerged Lands Act, ownership of the beds of navigable waters automatically vests in the State. Two intertwined issues have therefore arisen: (1) Should the beds of nonnavigable waters be charged against Native corporation entitlements? and (2) If they are to be charged, how should nonnavigable be defined?

The definition of navigability is complex, having evolved through numerous court decisions. In a nutshell, a waterway is navigable if it is used, or is capable of being used, as a highway of commerce over which trade and travel are or may be conducted in the customary modes of trade or travel on water. Several gray areas exist, however, especially as regards "capability of being used" and "customary modes of trade and travel" in Alaska. What should be the determination concerning, for example, rivers and lakes which have not been used for trade, travel, or commerce due to their remote locations but which could support such use? rivers where the primary use is recreational, such as rafting? rivers and lakes that can be used by planes with floats? rivers and lakes used by snowmobiles when frozen? rivers and lakes used for subsistence?

BLM's regulations, issued in 1973, state [43 CFR 2650.5-1(b)] that the beds of all bodies of water determined nonnavigable would be charged to the corporations' total acreage entitlements. This requirement raised serious concerns. Alaska contains thousands of miles of rivers and millions of acres of inland waters; in some areas such as Calista, 30 to 40 percent of lands available for selection were submerged. Should a region or village corporation be charged for vast acres of marsh and overflow lands? Further, if a corporation's selections included submerged lands that were subsequently determined navigable, would the corporation simply lose out on acreage in the absence of any provision allowing it to make replacement selections?

Native corporations engaged in years of litigation with the State concerning navigability determinations and thus sustained millions of dollars of expenses and experienced uncertainty over land selections and delays in land conveyances. This situation was partially rectified when, in 1980, ANILCA section 901(c) stipulated that all challenges to BLM navigability determinations had to be brought in the Federal District Court and that, if the court determined that a Native corporation owned the body of water at issue, it would be awarded a judgment against the plaintiffs equal to its costs and attorney's fees. In addition, section 905(e) of ANILCA provided a mechanism by which the State could acquire the beds of waterways which BLM either had already conveyed to a Native corporation or was prepared to convey to it. The corporation would receive replacement acreage.

Native corporations were not totally satisfied with these compromises. The fundamental issue—whether Native corporations should be charged with the acreage of submerged lands—had not been addressed.

The issue was at last addressed by a December 1983 Departmental policy memorandum[110] providing that the beds of nonnavigable lakes 50 acres and larger and the beds of streams 3 chains (198 feet) and wider would not be charged against the entitlement of any Native corporation or the entitlement of the State of Alaska.

As the new policy is implemented, the Native communities' major concern regarding the navigability issue—the charging of significant acreages of unusable submerged lands—will be resolved. Some problems remain, however, as the question of whether or not a body of water is navigable remains open.

First, while it is doubtful that the State will contend that any lakes less than 50 acres are navigable, it is likely that certain rivers less than 3 chains in width may be challenged. Second, determinations regarding many of the "gray areas" mentioned earlier are still before the courts and may not be decided for some years. Third, BLM and the State have slipped behind their goal for completion of comprehensive research on the historical use of waterways throughout the State. This research is intended to serve as a basis for BLM's navigability determinations and the State's decisions on whether to contest those determinations. The current target date for completion is mid- to late 1984.

Finally, the Native community has agreed (in negotiating the December 1983 submerged lands policy) to support the introduction of legislation to repeal the statute of limitations contained in ANILCA section 901(a). This subsection provides that the State must challenge a BLM navigability determination within 5 years of an interim conveyance or patent to a Native corporation issued within 7 years after ANILCA's enactment, and within 7 years of a conveyance or patent issued prior to ANILCA. Repeal of this provision could present problems to a Native corporation if, years hence, the State succeeded in challenging the nonnavigability of a river less than 3 chains in width. Since the acreage would have been charged against the corporation's entitlement, further legislative action might be necessary to provide the corporation with replacement acreage, for any overselections (discussed below) that had once been available might have been rejected or relinquished.[111]

FURTHER UNCERTAINTIES REGARDING LAND ENTITLEMENTS

Some of the matters that complicated the land selection process did not involve implementation policies. Rather, they entered the picture because certain critical determinations in the settlement scheme were not made on schedule. All land entitlements under section 12 depended wholly or partially on enrollment and village eligibility determinations. However, as discussed in chapter 6, the Startup Phase, many of those determinations could not be finalized as soon as had been anticipated by the framers of ANCSA. Controversies and litigation concerning the finality of the roll and creation of

a 13th region precluded certainty about entitlements during the selection period. Even when P.L. 94-204 provided that charges resulting from new enrollments, disenrollments, and transfers to and from the 13th region would not affect land entitlements, there remained for a time a concern that that provision might be found unconstitutional. Further, until the issue was finally resolved in 1978, it was not certain whether section 19(b) enrollees (villages on former reserves) would be counted toward a region's enrolled population. In addition, during the land selection period and beyond, the eligibility of many villages remained in doubt; all village eligibility determinations were not finalized until 1982.

The uncertainties resulting from these open-ended matters were compounded because of the interdependence of ANCSA's selection provisions. Section 12(c) depended on 12(b) which depended on 12(a). Until 12(a) matters were settled—how many villages were eligible and what acreages they were entitled to, based on their enrolled populations—it was not possible to calculate how many of the 22 million acres for village corporations would be left after 12(a) selections for "second-round" allocation under 12(b). Since 12(a) and 12(b) entitlements figured in the 12(c) "land lost" formula, 12(c) entitlements depended on them. For the six regions entitled to select lands under 12(c), entitlements under 12(c) would decrease if total village entitlements increased.

Throughout the period when entitlements could not be determined exactly, the Department provided the Native corporations with minimum/maximum 12(b) and 12(c) allocation estimates. Table 8-4 provides a sample display of 12(b) and 12(c) minimum/maximum estimates; Table 8-5 illustrates how certain variables were considered or disregarded in arriving at 12(a) entitlements.[112] Although the figures provided were often widely separated, they at least gave the corporations some indication of their entitlements.

The Department made its first formal allocation of 12(b) entitlements to the regional corporations on December 17, 1976.[113] (See Table 8-6.) Those allocations had to be further adjusted, however. As of December 31, 1983, the Koniag entitlement was still being adjudicated.[114] Section 12(c) estimated entitlements (see Table 8-6) were based on an assumption that ANILCA resolved all pending questions regarding village eligibility.[115]

Table 8-4
ESTIMATES OF MINIMUM AND MAXIMUM ALLOCATIONS UNDER SECTIONS 12(b) AND 12(c)

	Estimate of Minimum 12(b) Acres	*Estimate of Maximum 12(b) Acres*	*Factored Estimate of Minimum 12(c) Acres*	*Estimate of Minimum 12(c) Acres*	*Estimate of Maximum 12(c) Acres*	*Factored Estimate of Maximum 12(c) Acres*
Ahtna	33,325	57,110	673,600	986,005	991,433	1,312,400
Aleut	102,757	176,099	0	0	0	0
ASRC	119,573	204,916	3,121,000	3,986,803	4,018,753	4,908,000
BSNC	211,537	362,520	0	0	0	0
BBNC	168,918	289,482	0	0	0	172,600
Calista	411,029	704,397	0	0	0	0
Chugach	64,388	110,344	185,500	320,130	356,652	532,500
CIRI**	191,848	328,788	640,000	1,360,396	1,242,948	1,920,600
Doyon	282,621	484,338	6,418,700	8,413,163	8,372,330	10,316,300
Koniag	103,766	177,828	0	0	0	0
NANA	150,238	257,468	314,500	703,103	787,484	1,195,800
Total	1,840,000	3,153,380	*	15,769,600	15,769,600	*

* Figures do not add

** Does not consider effect, if any, of section 12 of the Act of January 2, 1976.

Source : Alaska Native Management Report, November 15, 1976, 3.

Table 8-5
CONSIDERATION OF 12(a) [14(a)] VARIABLES AS BASIS FOR 12(b) AND 12(c) ALLOCATION ESTIMATES (Example)

Variables considered:

- *the villages in litigation.*
- *villages which may go to litigation.*
- *villages where 14(a) would increase or decrease with a change in population of one or two.*

Variables not considered.

- *other places that may raise eligibility litigation;*
- *redetermination of eligibilities due to litigation as a result of a finding of fraud;*
- *additional changes in Village populations over the plus or minus one or two considered;*
- *Villages not selecting their entire 12(a) [14(a)] amount, due to Village action;*
- *Villages not obtaining their full 12(a) [14(a)] amount due to other actions---such as CIRI withdrawal/ selection situation, SS/mental health lands etc.;*
- *a finding that section 8(a) of the Omnibus Bill of Jan. 2, 1976 is unconstitutional;*
- *other.*

	No. of Villages with pop. of 25-99	*Acreage under 14(a) for Villages with pop. of 25-99*	*No. of Villages with pop. of 100-199*	*Acreage under 14(a) for Villages with pop. of 100-199*	*No. of Villages with pop. of 200-399*	*Acreage under 14(a) for Villages with pop. of 200-399*	*No. of Villages with pop. of 400-599*	*Acreage under 14(a) for Villages with pop. of 400-599*	*No. of Village with pop. over 600*	*Acreage under 14(a) for Villages with pop. over 600*
Ahtna	4	276,480	2	184,320	2	230,400	0	0	0	0
Aleut	5	345,600	2	184,320	3	345,600	2	276,480	0	0
ASRC	2	138,240	2	184,320	2	230,400	1	138,240	1	161,280
BSNC	1	69,120	6	552,960	7	806,400	0	0	2	322,560
BBNC	9	622,080	12	1,105,920	7	806,400	0	0	1	161,280
Calista	14	967,680	12	1,105,920	21	2,419,200	5	691,200	2	322,560
Chugach	2	138,240	1	92,160	2	230,400	0	0	0	0
CIRI	2	138,240	1	92,160	3	345,6000	0	0	0	0
Doyon	11	760,320	12	1,105,920	7	806,400	3	414,720	1	161,280
Koniag	2	138,240	2	184,320	4	460,800	1	138,240	0	0
NANA	1	69,120	5	460,800	2	230,400	2	276,480	1	161,280
Total	53	3,663,360	57	5,253,120	60	6,912,000	14	1,935,360	8	1,290,240

Source: Alaska Native Management Report, November 15, 1976, 4.

Table 8-6
FORMAL ALLOCATIONS OF SECTION 12(b) ENTITLEMENTS
December 17, 1976

Regional Corporation	Acreage Allocation
Ahtna, Incorporated	33,325
Aleut Corporation	102,750
Arctic Slope Regional Corporation	119,575
Bering Straits Native Corporation	211,525
Bristol Bay Native Corporation	168,900
Calista Corporation	411,025
Chugach Natives, Incorporated	64,400
Cook Inlet Region, Incorporated	191,850
Doyon, Ltd.	282,625
Koniag, Incorporated	103,750
NANA Regional Corporation, Inc.	150,250
TOTAL	1,839,975

Source: Secretary's Report for 1976, section 12(b).

MEASURES TAKEN TO AMELIORATE THE LAND SELECTION COMPLICATIONS

Because of the many uncertainties that surrounded both the corporations' land entitlements and the availability of the lands from which they were to make their selections, Departmental policy permitted certain selection measures aimed at ensuring that the corporations were able to receive their full entitlements. The measures have successfully mitigated the effects of many land selection uncertainties. Paradoxically, however, they created additional uncertainties that have complicated and prolonged the ANCSA land selection and conveyance process as well as impeded selections by and conveyances to the State.

Top-Filing

Top-filing denotes the filing of one type of land selection or claim on top of the prior claim of another party, so that the two overlap geographically. The party that top-files applies for lands presumably owned by another in order to obtain the lands in the event that the other's ownership claim does not materialize.

Faced with imminent selection deadlines, most Native corporations filed on all possible selections, regardless of whether the land was indeed available or whether their top-filed selections would be recognized. Unpatented mining

claims, Native allotment claims, and the beds of waters which the State claimed were navigable were top-filed. In addition, 12(b) selections were filed over 12(a) selections, and 12(c) selections were filed over both 12(b) and 12(a) selections, to ensure that if one type of entitlement was exhausted the land would be obtained under another type. In early 1975, the Department adopted policies that clearly permitted top-filing over Native allotment applications and top-filing of one type of section 12 selection over another. Many areas have overlapping sets of selections which have yet to be adjudicated.

Overselections

The Native corporations were able to adopt the practice of filing on all possible selections because the selection regulations [43 CFR 2651.4(f) and 2652.2(f)] permitted them to overselect, or file applications for acreage in excess of their total entitlements. As a result, the 12(a) selections filed by December 18, 1975, totaled more than 20 million acres, whereas the 12(a) entitlement total had been estimated at only about 19 million acres; the selections filed under 12(c) totaled more than 38 million acres by December 1982, although the total 12(c) allocation had been estimated at less than 16 million acres. Most corporations routinely filed overselections on the order of 10 percent of their entitlement, although some corporations filed overselections amounting to several or more times their entitlements. The regulations placed no limit on the overselections; indeed, an equitable across-the-board rule could not be arrived at because land selection problems varied drastically from corporation to corporation.

The regulations stated that the corporations "should" prioritize their overselections in filing them. BLM took the view, however, that the priorities could be switched until the time of actual conveyance. This provided an opportunity for astute corporations. All lands selected were "segregated"—that is, they continued to be withdrawn from all forms of appropriation—until they were conveyed. Corporations that made excessive overselections thus gained extra time to evaluate the relative economic potential of various tracts and then reprioritize them accordingly.

Native overselections prevented the State from selecting its full entitlement. The State obtained a limited remedy with the passage of ANILCA in 1980. Under section 906(a), the State received a 10-year extension (until 1994) of its selection deadline, and under section 906(e), it acquired the right to top-file on Native selections. Under section 906(f), the State was authorized to make overselections but only up to a 25 percent cap. In an out-of-court settlement of a lawsuit that closely followed ANILCA, the Department stipulated that it would compel the Native corporations to reduce their overselections. The Department attempted in early 1982 to promulgate regulations calling for a cap 25 percent above a corporation's entitlement, allowing also for such uncertainties as potentially navigable waters and prior existing rights. These regulations were not implemented due to strong resistance from the Native community. However, most of the Native corporations have cooperated with the Department and the State in reducing their overselections to levels that are reasonable in view of the amounts of acreage subject to uncertainties.

Underselections

Due to the authorization of top-filing and overselection, there were few instances of a corporation selecting too little acreage. In instances that did arise, the Department consistently maintained that it was its policy to ensure that all corporations would be able to obtain their entitlements, yet there was concern regarding the authority of the Secretary to carry out this policy. Section 1410 of ANILCA has authorized the Secretary to make additional withdrawals necessary to satisfy an "underselected" corporation's entitlement. This provision potentially addresses only village corporation entitlements, however. Additional authority may be needed to accommodate the requirements of regional corporations, Native groups, or urban corporations. Furthermore, unique circumstances may prevent the Secretary from withdrawing nearby lands similar to those on which the corporation is located. In such cases, land exchanges (discussed in chapter 9) or alternative withdrawal provisions may be necessary.

IMPLEMENTATION OF SECTION 14(h)

Section 14(h) of ANCSA provided for the conveyance of 2 million acres to Native corporations and individuals, but it did not stipulate how the acreage would be allocated among the various special purposes to be served, except to state that up to 23,040 acres would go to each of the four "urban" corporations, and that any acreage left over from the other allocations would be allocated among the regions. Regulations promulgated in May 1973 at 43 CFR 2653 divided the 2 million acres as shown in Table 8-7.

Table 8-7
SECRETARY OF THE INTERIOR'S ALLOCATIONS OF 2 MILLION ACRES PURSUANT TO 14(h) [43 U.S.C. 2653.1]

No. Acres		Purpose
500,000 (300,000 equally among the regions; 200,000 on the basis of regional enrollments)	14(h)(1) 14(h)(2) 14(h)(5)	Cemetery sites and historical places Native groups Primary place of residence
92,160	14(h)(3)	Corporations formed by Sitka, Kenai, Juneau, Kodiak
400,000	14(h)(6)	Native allotment applications
Any remaining	14(h)(8)	Allocation among regions based on enrolled population

The act specified that "unreserved and unappropriated" lands and lands from the national wildlife refuges and forests would be available for selection under 14(h). The regulations [2654.3(a) and (b)] specified that the selections could be made after December 1, 1976, from lands formerly withdrawn under sections 11 and 16 but not selected. They also allowed selection of public interest lands withdrawn under 17(d)(1) but not recommended to Congress for inclusion in national conservation systems. A 1978 policy memo[116] allowed, under certain conditions, selection of lands recommended for inclusion in national conservation systems.

Section 14(h)(1): Cemetery Sites and Historic Places

ANCSA 14(h)(1) provided that regional corporations might receive fee title to cemetery sites and historic Native places. Section 1406 of ANILCA amended the provision to stipulate that, when a site is contained in a wildlife refuge and is 640 acres or larger, only title to the surface estate will be conveyed.[117] The regulations required the regional corporations to submit applications to BLM by December 18, 1975 (later extended to December 31, 1976), accurately identifying the size and location of the site and describing the site's historical value and significance. They provided that BLM would publish notice of the application and forward it to the Juneau Area Office, BIA, for investigation, report, and certification. BLM received 2,750 applications for 5,762,033 acres by the December 31, 1976, deadline.[118] Few field investigations were performed by BIA until, in 1977, a special ANCSA Projects Office was established.

Once that office became fully operational, it estimated that the necessary field investigations and certifications could be completed by FY 86. A change of procedure in 1984 made attainment of that goal impossible, however. Until 1984, BLM referred to the BIA Projects Office only those applications for which the lands in question were clearly available for 14(h)(1) selection. As early as 1984, BLM referred 1,118 such cases to BIA and BIA had completed the field investigations for 858 of them. In the spring of 1984, however, BLM transmitted to BIA an additional 845 applications which in its determination warranted investigation. These applications are likely to be problematic in that they have been top-filed on Native corporation selections and Native allotment applications. BIA will need to return to some areas to conduct additional investigations; further, some of the effort may be wasted, as investigations may be conducted for sites that will later be conveyed to Native corporations or Native allotment applicants.

The BIA Projects Office estimates that at current funding levels, field reports on all applications (a total of 1,963) can be completed by FY 91. (About 250 applications can be investigated each summer.) Eligibility reports on the 863 field investigations completed by the end of FY 82 have been done; approximately half of the sites were certified eligible. Certification is in process for the approximately 250 additional sites that were field investigated in FY 83. All necessary work on another 250 cases (FY 84) will be done by early 1985.[119]

Little acreage has been conveyed as of 1984, however, as shown in Appendix D of this report.

Section 14(h)(2): Native Groups

As discussed, the initial Native group eligibility regulations provided that a group would not be determined eligible unless lands occupied by individual members of a group as well as lands on which the group is located were available for selection. Those requirements were waived by Secretarial Order 3083 in June 1982. However, the order did not waive the regulatory provision [43 CFR 2653.6(b)(1)] that reduces the 23,040 acre ceiling allowed under the act to only 320 acres per person, or a maximum of 7,680 acres for a group of 24 members. This ruling has not as yet been challenged in court by a Native group.

No lands had been conveyed to a Native group as of May 1984.

Section 14(h)(3): Urban Corporations

The Native corporations formed in Sitka, Kenai, Juneau, and Kodiak—each eligible under ANCSA for conveyance of up to 23,040 acres—filed selection applications totaling 154,394 acres.[120] The Kenai Native Association, Inc., received title to the 4,265 acres of the former Wildwood Air Force Station.[121] The land withdrawal and land selection problems of the corporations formed at Juneau and Sitka are discussed in this chapter.

Section 14(h)(5): Primary Place of Residence

This ANCSA provision allowed an individual Native to file for title to the surface estate, up to 160 acres, of the residence he or she occupied as of August 31, 1971. The deadline for filing was December 18, 1973.

Only 40 applications were filed.[122] Following preadjudication, BLM eventually referred 28 applications to the BIA for eligibility decisions. Only one actual conveyance has taken place to date.[123] BIA completed its survey of all the remaining sites in 1983, however, and expects to issue decisions on all of them in 1984.

Several factors may explain why so few "primary place of residence" applications were filed. Only a 2-year filing period—concurrent with the enrollment period—was allowed; it is likely that many individuals did not learn of, or did not understand, the primary place of residence option. Most importantly, prospective members of a Native group were prohibited by the regulations [43 CFR 2353.8-1] from filing for land under 14(h)(5) as a back-up. This rule was intended to prevent individuals from obtaining duplicate benefits under the act. However, it may have had the effect of causing individuals who attempted unsuccessfully to secure Native group status to end up without any land benefits.

Section 14(h)(6): Native Allotment Applications

This provision, and the provisions of section 18, declared that any application for an allotment that was pending on the date of enactment might be approved

by the Secretary, and that all allotments approved prior to December 18, 1975, would be charged against the 2-million-acre grant. As of that date, 1,710 allotment applications involving 195,000 acres were approved. Several thousand applications had yet to be adjudicated, however (as discussed below).

Section 14(h)(8): Allocation of Remaining Acreage

The Secretary allocated to the regional corporations, on a per capita basis, acreage not conveyed under the other 14(h) provisions. Although only a total of approximately 1.2 million acres was involved, this allocation of land was significant. It meant that all regional corporations—including those which did not participate in the 12(c) "land lost" selections—obtained full (surface and subsurface) title to some lands. Sealaska's 14(h)(8) selections have made it one of the largest private timber-owners in the State.

Many of the regional corporations had very few prospective lands to select under 14(h)(8). Some 14(h)(8) selections were top-filed on other selections. To help remedy the situation, the Department extended the selection deadline from December 18, 1975, to September 18, 1978. Additional withdrawals were made administratively[124] and by special legislation.[125] Table 8-8 shows the regional corporations' entitlements under 14(h)(8). Further withdrawals may be needed if, as a result of future Native group [14(h)(2)] ineligibility decisions or navigability determinations, more acreage is added to the 14(h)(8) entitlement pool.

Table 8-8
SECTION 14(h)(8) ENTITLEMENTS*

Region	Percent by Population (1978)	Acres Allocated Under 14(h)(8)
Ahtna	1.41538	17,313.60
Aleut	4.36431	53,383.24
Arctic Slope	5.07850	62,119.04
Bering Straits	8.98443	109,895.48
Bristol Bay	7.17430	87,754.39
Calista	17.45725	213,533.07
Chugach	2.73467	33,449.85
Cook Inlet	8.15078	99,698.47
Doyon	12.00348	146,823.81
Koniag	4.40716	53,407.37
NANA	6.38041	78,049.82
Sealaska	21.84883	267,249.86
TOTAL		1,223,177.00

*Actual acreage conveyed may differ from the total entitlement because of special legislation, etc.

Source: Federal Register, Vol. 48, No. 159, August 16, 1983, 37086.

CONVEYANCE

INTRODUCTION

No aspect of ANCSA's implementation has been, or continues to be, as controversial as implementation of the land conveyance provisions. Implementation had become controversial by 1976, when the tone for congressional oversight hearings on ANCSA was set by the Native corporations' frustration at having received next to none of their land entitlement.[126] Land conveyance remains controversial because to date the Native corporations have received patent to only about 7 percent of their land entitlement.

Congress intended that the Native corporations receive title to their lands rapidly. The act states in relation to village corporations [14(a) and (b)] that "[i]mmediately after selection . . . the Secretary shall issue a patent to the surface estate . . ." In relation to the regional corporations it declares [14(e)] that "[i]mmediately after selection . . . the Secretary shall convey . . . title to the surface and/or the subsurface estates, as appropriate." A Federal District Court has held that these requirements for immediate conveyance meant "conveyance within a reasonable time under the circumstances."[127]

It was recognized early on that the surveys that must be completed before land patenting constituted a staggering task. BLM would have to survey the exterior boundaries of the Native selections, as well as the boundaries of some 25,000 Native allotment land parcels, some 120 Native townsites, and many other "inholdings." Officials of BLM estimated in 1972 that this survey work would not be finished until the mid-1990's or even later.[128] "Reasonable" or not, such a schedule was realistic.

So that lands could be transferred to the Native corporations before surveys were performed, the Department of the Interior devised an approach known as interim conveyance. As defined in the regulations [43 CFR §2650.0-5, May 30, 1973], interim conveyance would grant a Native corporation legal title to unsurveyed lands, subject only to confirmation of the boundaries following survey approval. This device reflected the congressional intent expressed in section 22(j), which addressed the fact that many lands were unsurveyed or even uncharted by protraction diagrams at the time of passage. It also authorized the Secretary to grant deeds that would be adjusted as appropriate once surveys were made.

The interim conveyance concept, devised to speed land transfers, was thus in place before the selection phase had ended.[129] Why then did a congressional oversight committee find in mid-1976 that the Native corporations had been interim-conveyed only 1/2 of 1 percent of their lands? Why did a GAO review find that as of late 1977—3 years after the village corporations' selection

deadline and 2 years after the regional corporation deadline--that the village and regional corporations had been conveyed only 7 and 20 percent of their land entitlements respectively, and that completion of the interim conveyance task was not expected for another 6 to 13 years?[130]

Although interim conveyance circumvents the survey requirement, it does not occur automatically following land selection. A lengthy series of procedures must be performed before an interim conveyance can be issued. The selection application itself must be checked for timeliness, completeness, accuracy, and compliance; all errors must be eliminated or corrected.[131] The corporation's selection priorities must be taken into account; questions arising out of top-filing must be resolved. All lands to be excluded from the conveyance must be identified, section by section, lot by lot. Then acreages must be computed and, finally, the conveyance instrument prepared. These tasks placed a huge administrative burden on the Bureau of Land Management—but that was actually the lesser half of the problem.

As documented in a congressional commission's report, and corroborated by the GAO's review, "the major stumbling block to receipt of land by Native corporations [was] the Federal Government's easement policies and procedures."[132] An interim conveyance document had to contain "all the reservations for easements [and] rights of way" required by section 17(b) of ANCSA [as implemented by 43 CFR 2650.0-5(h)]. The Department's proposed policies and procedures for easement reservation drew vehement opposition from the Native community, the State, and other interest groups. The standoffs and the litigation that eventually resulted brought land conveyance to a virtual halt by mid-1976.[133]

The delay in conveyance was of more serious consequence for some Native corporations than for others. Indeed, not all corporations have sought rapid conveyance. As discussed previously, some corporations chose to prolong the withdrawal and selection phase so as to further assess and reprioritize their potential selections. Others were able to use the extra time to prepare for land management responsibilities. Some corporations saw it as being in their interest to forgo title until the questions about easements and other policies were resolved.

On the other hand, the delay in conveyance seriously hurt many corporations. The testimony offered in 1976 congressional oversight hearings was filled with accounts of the "staggering" economic costs of the delays.[134] A 1976 congressional commission report concluded that "the long-term ability of Native corporations to be economically successful [has been] undercut by the significant delays in transfers of land."[135] The GAO found in 1977 that the delays had caused corporations to lose or defer substantial resource development and other business opportunities. Some village corporations, the GAO reported, had serious financial problems because they could not generate revenue from the land; they had had to use their Alaska Native Fund distributions for operating expenses in the absence of any revenue. In addition, the State's selection of its lands had been further impeded.[136] Over and above all these costs, lengthy disputes and lawsuits over land conveyance matters had drained corporate energies and finances.

At last, in 1978, interim conveyances began to proceed on a "reasonable" schedule. Acceptable easement policies were promulgated. A major overhaul of the Department's land settlement administrative processes took place, giving rapid conveyance of Native lands' top priority. In 1979 BLM was able to convey 7.6 million acres—more than had been conveyed in all the previous years together. As of July 1983, 53 percent of the total 44-million-acre entitlement had been interim conveyed, and another 7 percent had been patented.[137]

Just as BLM's interim conveyance mechanism got into gear, however, Native concerns over land transfers began to shift. The focus on speed of conveyance began to be replaced by attention to what was being conveyed. Amendments to ANCSA had at least partially remedied the ill effects of conveyance delays and had removed much of the pressure on the corporations to develop their lands due to years of Federal mismanagement and imminent tax liabilities. What is more, corporations that had received interim conveyances were beginning to experience problems with those conveyances. Uncertainties about exterior boundaries, private inholdings, and other potential encumbrances had emerged to cloud their title. Through the early 80's, desire for quantity of title through rapid conveyance has gradually been overtaken by desire for quality of title based on thorough adjudication and survey.

This section continues by discussing the major hurdle in the interim conveyance process—easement identification and reservation. Next, it presents steps taken to speed up the interim conveyance process or to minimize the consequences of conveyance delays. Finally, the discussion addresses the adjudication and survey tasks that must be accomplished before final patents can be issued and the corporations can be assured of clear title.

EASEMENTS: THE MAIN OBSTACLE TO INTERIM CONVEYANCE

The identification and reservation of easements—allowances of public use of and access to Native lands—can be characterized as the most explosive issue in ANCSA's implementation. Failure to resolve the disputes over easements led to litigation and impeded land conveyance—at significant cost to the Native corporations.

ANCSA Section 11(b) provided that the Land Use Planning Commission would identify public easements "across lands selected by "the Native corporations and "at periodic points along the courses of major waterways." These easements were to be limited to those "reasonably necessary" to guarantee, among other things, "a full right of public use and access for recreation, hunting, transportation, utilities, and docks." [17(b)(1)] Prior to conveying Native lands, the Secretary was to identify and reserve such easements in consultation with the LUPC, with State and Federal agencies, and with "interested organizations and individuals" [17(b)(3)].

The 17(b) provisions left many matters open-ended. Among the most significant were: How many easements were "reasonably necessary"? What kinds of use and access should be permitted? How wide should easements be?

What is a "major waterway"? Should the need for easements be based on a history of public use? "present use" at the time of enactment? present use at the time of conveyance? possible future use? Should easements be revoked if they proved no longer necessary?

That these questions be answered was critical to the Natives, for until easements were reserved, interim conveyances could not be issued. Yet how the questions were answered was even more critical. A single easement could provide public access into a remote area and thereby exert a controlling influence on how the lands were used. Development options might be closed off; subsistence uses might be interfered with; trespass problems might arise.

Many other parties took a keen interest in the easements as well. Various State and Federal agencies, sportsmen's groups, conservationists, the oil and gas industries, non-Native citizens—all stood to gain or lose by the way in which easement matters were worked out. With all these competing interests, it is little wonder that an acceptable easement identification and reservation process and firm easement criteria were not worked out for many years.

Polarization of Factions Around the Easement Issue

The Department's initial easement regulations, issued in May 1973, were controversial and failed to establish definitive procedures and criteria for the easement reservations required by ANCSA.

In the fall of 1974, apprehensions concerning easements intensified dramatically, as the Department announced plans for a new form of easement that went far beyond the local easements previously contemplated. The Department proposed that an 11,135-mile system of transportation and utility corridors traverse Native lands and all other parts of the State. This proposal represented a response to the steeply climbing cost of energy in the wake of the first Arab oil embargo. The corridor system was intended to expedite the transportation of energy, fuel, and material resources by ensuring unlimited access to all remote areas of the State.

The Secretary officially issued the Department's local easement and transportation and utility corridor policies in early 1976, in Order No. 2982 of February 1976, and Order No. 2987 of March 1976, respectively. These issuances were opposed by a number of parties, for they did not present acceptable resolutions of the easement disputes that had by then evolved.

Governor Jay Hammond opposed the transportation and utility corridor system. Along with many other observers, land use specialists, and conservationists, he saw it as premature: elaborating plans for bringing resources to market before determining where the resources were or whether they could feasibly be extracted.

Sportsmen's groups championed the cause of increased easements, warning the public that without easements many favorite camping and fishing spots would

soon be off-limits. Many State bureaucrats also favored a plethora of public use and access easements; the Department of Fish and Game was one of the primary advocates of additional easement reservations, keeping a series of maps that showed every access route reported to it and proposing most of the routes as easements.[138]

The LUPC took the opposite view, urging the Department to limit the number and scope of easements.[139] Among other recommendations, it advocated that there be no transportation and utility corridor, no recreational use easements, no reservation of private access rights, and no continuous shoreline easements. It also recommended that permitted and prohibited uses on easements be spelled out in the conveyance documents.

The alarm and opposition which the Department's easement policies engendered within the Native community were voiced both in local hearings held by BLM and, later, in oversight hearings held by Congress.[140] The widespread reaction is summarized succinctly in the statement of one individual: "They're going to ease us right out of our land."[141] Natives were dismayed at the cumbersome nature of BLM's easement identification and reservation process, protesting that the resulting delays in conveyance amounted to a protection of non-Native interests at the expense of Native interests. Their main causes for concern, however, were the magnitude of the easements that had been proposed, as well as the lack of specificity about what easements and what easement uses might be permitted in the future. Indeed, it was feared that Native land holdings might be reduced to as little as 29.5 million acres rather than the 40 million Congress intended.[142]

Because Section 17(b) of the act had called for "periodic" easements along major waterways, Natives objected to easement proposals for continuous and linear types of easements, most notably the proposed 25-foot-wide continuous shoreline easement along the entire coast and along both shores of navigable rivers. The Department's transportation and utility corridor plan evoked outrage not merely because of the anticipated extent of the corridors, some up to 6 miles in width, but also because the plan called for a "floating" easement to cross all the land conveyed pursuant to ANCSA so that the system's specific routes could be delineated in the future. Furthermore, Natives regarded as unfair the Department's proposals that conveyance documents include ambiguous language suggesting that easements beyond those specifically described might be reserved in the future. The Alaska Federation of Natives (AFN) took the position that, if it was impossible to be specific about an easement based on the agreed-upon criterion of "existing use," the easement was probably unnecessary and therefore should not be reserved at all.[143]

Litigation

Soon after the Secretary's easement policy issuances in early 1976, three separate suits were filed by Native corporations and by a sportsmen's group. These cases were consolidated and tried in the Federal District Court.[144]

Only a few isolated land conveyances had been made prior to the litigation. So that the litigation would not bring the conveyance process to a standstill, BLM adopted the policy of executing "interim easement agreements" with willing Native corporations. Any easements reserved under these agreements would be "conformed" later to meet the standards that were finally promulgated. By January of 1977, such interim agreements had been negotiated with most of the regional corporations. In many of these regions, however, conveyances remained blocked. An agreement could not take effect until two-thirds of the regional village corporations signed off on it, and many villages refused to sign.

In July of 1977 the court held that the Secretary had exceeded his authority to reserve easements under Section 17(b) of the act.[145] Specifically, the court found the "floating" transportation and utility corridor easement illegal, stating that "Congress did not envision the narrow purpose of Section 17(b) as creating a cloud on the title and usability of all of the Native's land . . . " The court also declared the continuous shoreline easement to be void, on grounds that it exceeded the criterion of providing public access to other public lands. The reservation of linear easements along rivers and streams for recreational use was also determined as being in excess of Congress' intent, as were easements pertaining to the construction of ditches, canals, railroads, and telegraph and telephone lines.[146]

On two issues, the decision went against the Native position. Natives had argued that the date for establishing "present recreational use" should be the date of ANCSA's passage, but the court declared that the Secretary's adoption of December 18, 1976, was consistent with the purpose of 17(b). The court also overruled Native arguments that former reservation lands should be treated differently for easement purposes than other Native lands. The Department appealed the decision, as did several Native corporations and the sportsmen's coalition. Before the Ninth Circuit Court could render a decision, however, the Department decided to amend its position on many of the issues before the court.

New Departmental Policies: 1978

Following extensive policy review and consultation with BLM field staff, and with AFN and the Native corporations, the Department published final "ANCSA Issues" decisions on matters that had held up land conveyance (discussed below). Easement identification and reservation was the number one issue. The new policy on easements abandoned the transportation and utility corridor plan, as well as plans for ditch, canal, railroad, telegraph, and telephone easements. It replaced the continuous shoreline easement with easements at periodic points along the coast, and it limited easements along inland waterways to site easements along "major" waterways. Former policy on easement agreements with Native corporations was substantially revised. All easements were to be specific as to use, location, and size. Easements not used for the purpose for which they were reserved by the date specified in the easement or by December 18, 2001, were to be terminated. LUPC, Native, State, Federal agency, and public participation in easement identification was to be ensured.

New draft easement regulations appeared in May 1978 and were formalized that November.[147] Appeals of the earlier court decision were withdrawn, and the easement process—and with it, the interim conveyance process—went forward without major impediment.

OTHER ACTIONS TAKEN TO RESOLVE PROBLEMS WITH INTERIM CONVEYANCES

Actions to Speed the Interim Conveyance Process

The Department's issuance of new easement policies and procedures in 1978 was only one facet of a comprehensive revamping of the Department's land conveyance operations. In 1977, with the advent of the Carter administration, the Department embarked on an almost year-long process of policy review and of consultation with AFN and regional corporation leaders. The product of these efforts was the "ANCSA Issue" papers.[148] These papers marked a turning point in the land settlement implementation. They provided a comprehensive, systematic treatment of land conveyance problems by identifying the problems, analyzing alternative solutions, and determining courses of action. In addition, steps were taken to concentrate responsibility for policy making. The Alaska Task Force responsibilities for ANCSA issues were reassigned to the Assistant Secretary for Land and Water Resources, who would also be responsible for Alaskan land issues and exercise direct control over BLM's administration of ANCSA.[149]

Concurrent with these top-level policy efforts, BLM's Alaska State Office was restructured to place more emphasis on Native conveyances. The conveyance section was taken out of the Branch of Lands and Minerals Operations and was established as a separate division that reported to the Assistant State Director. Under new leadership, the conveyance process became one of if not the most significant projects within the Alaska State Office. The new Division was able to command increased budget and staffing levels. Twenty-three additional staff began working on ANCSA conveyances in 1979 alone.[150] New procedures increased the efficiency of the conveyance process by enhancing coordination with the Native corporation at each step. Draft decisions to issue conveyance (DDIC's), draft easement memoranda (DEM's), draft navigability determinations (DND's) and other notices began to be issued to the corporations prior to the issuance of decisions to issue conveyance (DIC's).

As the conveyance process accelerated, greater efficiency was needed in order to handle the increased numbers of conveyance appeals that were bound to occur despite efforts at coordination with the Native corporations. Early in the implementation phase, appeal to ANCAB meant that conveyance of the entire parcel was stalled—even though, as was usually the case, only a small portion of the total acreage was appealed. Thereafter, ANCAB began to segregate the parcels of land not affected by the appeal, remanding them to BLM for further processing. Frequently, however, the conveyance would remain stalled because it could not be inserted into the current work plan. New procedures now enable efficient processing of the remanded lands.

In addition to the administrative changes described above, section 1437 of ANILCA [43 U.S.C. §1641] authorized a modification aimed at expediting interim conveyances. "Legislative conveyances" of core townships were to be made to those village corporations which opted for them within 6 months after ANILCA's enactment. The section also provided a means of speeding up receipt of patent by authorizing the substitution of protraction diagrams for surveys. Very few village corporations took advantage of these vehicles, however, because most had already received their first interim conveyance by this time or were scheduled to receive it shortly. Furthermore, many feared that the quality of title conveyed by legislative conveyance or based on a protraction diagram would be inferior to that transferred by BLM following adjudication and survey. By the time of ANILCA's passage, concern had already begun to shift away from quantity of acreage to quality of title.

Actions to Address Native Corporations' Concerns About the Effects of Conveyance Delays

Beyond the economic drain of legal fees spent to gain title and the business opportunities lost in the absence of title, a good deal of the Native corporations' apprehension and frustration about land conveyance delays stemmed from two specific concerns. First, the corporations were concerned that they might lose title to their lands when ANCSA's 21(d) tax exemption expired in 1991, since delays in conveyance would have deprived them of sufficient time to develop a revenue base from which to pay state and local taxes. Second, they were concerned that in managing the lands selected until the time of conveyance, the responsible Federal agencies would issue contracts, leases, permits, rights of way, or easements that ran counter to the corporations' own plans for the land and that failed even to afford the corporations any income as compensation. Amendments to ANCSA, in conjunction with administrative and judicial actions, eventually allayed these concerns and provided some retroactive remedy.

The Native corporations' sense of urgency concerning receipt of their lands was considerably alleviated when section 904 of ANILCA extended ANCSA's 21(d) property tax exemption. Instead of running 20 years from ANCSA's enactment, the tax moratorium on lands not developed or leased will run 20 years from interim conveyance or patent, whichever is earlier.

Concerns about management of selected lands prior to their conveyance were also addressed by legislation. By the time Public Law 94-204 was enacted (January 1976), it was apparent that many conveyances would not take place for years. Section 2 of the law established that all proceeds derived from contracts, leases, permits, rights-of-way, and easements on Native-selected lands would be deposited into an interest-bearing escrow account. If the lands were ultimately conveyed, the Native corporation would receive the escrowed funds; if they were restored to the public domain, the funds would go to the appropriate agency. Section 1411 of ANILCA (1980) made the escrow provision effective retroactively, as of the date of the lands' withdrawal for selection; the Secretary was given 2 years from ANILCA's enactment or the date of conveyance, whichever was later, to pay the Native corporation with

interest, any pre-1976 proceeds that had not been escrowed. (Those proceeds have been calculated at $3 million for BLM and the Forest Service alone. As yet, Congress has not appropriated funds to cover them.[151])

Section 22(i) of ANCSA gave the Secretary of the Interior (or the Secretary of Agriculture in the case of national forests) the authority to manage the Native land selections until conveyance. Regulations adopted by the Department of the Interior [43 C.F.R. 2650.1, May 30, 1974] recognized Native concerns in that they directed the Secretary to "obtain and consider the views of" the concerned village and regional corporations before committing any of the lands set aside for their selection.[152] However, many corporations insisted that such commitments should not be made without their express consent, lest they be penalized by actions taken during delays that they had not caused. This issue has been partially resolved by the Department's policy of avoiding impacts and encumbrances on the land which might jeopardize the interests of future Native owners.[153] The issue of whether a Native corporation had an enforceable legal right in selected timber lands prior to conveyance was litigated. The court held that the Native corporation had a right to be consulted about but not a right to control management of selected timber lands.[154] Later, section 908 of ANILCA amended section 15 of ANCSA [43 U.S.C.L 1614(b)] to prohibit timber contractors from entering, or cutting timber on, lands selected by a Native corporation.

One Native concern never directly addressed legislatively or administratively is the problem of trespass on Native-selected lands that are yet to be conveyed. Prior to conveyance, BLM is responsible for trespass abatement. Native corporations have charged that BLM has failed to abate trespass, especially against violation of cemetery and historical sites and unlawful extraction of resources. Trespass has remained a problem following conveyance as well, as discussed further in Chapter 9.

Actions to Address Concerns About the Legal Force and Effect of Interim Conveyances

The draft interim conveyance regulations proposed by the Department in the fall of 1972 defined interim conveyance as "a patent" that would contain "a provision for the issuance of supplemental patent upon completion of the surveys." However, in a later set of draft regulations issued in March 1973, the definition of interim conveyance was changed. An interim conveyance was described not as a patent but as "an instrument confirming the validity of the selection of a described tract of public land under the act, entitling the transferee to a conveyance by patent or legal title" (emphasis added). The Native corporations objected to this definition because it did not indicate conveyance of legal title and the rights of ownership but merely a form of scrip entitling the corporation to conveyance at a point that might be many years in the future.[155] The final regulations [43 CFR §2650.0-5(h)] addressed these objections, defining interim conveyance as "the conveyance granting to the recipient legal title to unsurveyed lands . . . subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed lands."

Nevertheless, the Native corporations continued to have concerns about what legal standing an interim conveyance would have if they sought to sell or lease their lands. The Department took the view that interim conveyances would have the same legal status as tentative approvals of unsurveyed lands selected by the State (which had been successfully leased and sold). Native leaders, however, perceived differences between the State's situation and their own. Whereas specific language in the Statehood Act established congressional intent that tentatively approved lands be allowed to be sold, no such language appeared in ANCSA.

Section 1410 of ANILCA addressed this situation. It amended section 22(j) of ANCSA to provide that an interim conveyance would convey "exactly the same right, title, and interest in the lands" as that conveyed by a patent. It also made the terms "interim conveyance" and "patent" interchangeable throughout ANCSA, unless such an interpretation would clearly be out of context. The provision stated that, following survey, the boundaries defined in the interim conveyance would not be altered but would be redescribed, if necessary, in reference to the survey plot. The Secretary would make any needed adjustments to ensure that the corporation received its full entitlement.

Despite the clarification and assurances provided by this amendment, some Native corporations have continued to experience problems concerning the marketability of the title they hold by interim conveyance. These problems do not concern the legal force and effect of the interim conveyance instrument. Rather, they arise unavoidably in the absence of thorough adjudication and survey of the lands conveyed. Until all potential prior existing claims are validated or invalidated, and until those validated are precisely located by survey, the Native corporation does not hold clear, unencumbered title. Until its boundaries are surveyed, the corporation cannot be sure that the lands it claims it holds are precisely those to which it will finally receive patent.

REMAINING CONVEYANCE PROBLEMS: ADJUDICATION OF OTHER INTERESTS IN THE LAND

Under section 14(g), all ANCSA conveyances must be subject to valid existing rights. The regulations [43 CFR §2650.0-5] stipulate that interim conveyances and patents will contain "all the reservations for easements, rights of way, and other interests in land, provided by the act or imposed on the land by applicable law."

Having now received much of their lands by interim conveyance, many Native corporations are now shifting their concern towards receiving final patents which assure them title clear of potential encumbrances and inholdings. Any unknowns regarding potentially valid interests in its lands can create problems for a corporation, as they cloud the corporation's title and diminish the corporation's control over its land.

Some of the problems regarding potential encumbrances and inholdings have been addressed. Policy determinations have resolved ambiguities concerning whether certain types of interests constitute valid existing rights. BLM has begun to adjudicate, or resolve, some types of individual claims.

Nevertheless, most of the effort to resolve encumbrances and inholdings looms ahead—giving Native corporations cause for concern. To speed the issuance of interim conveyances, BLM generally excluded potentially competing interests from the conveyances, for adjudication at a later time. BLM has recently shifted its emphasis towards the adjudication effort, but a considerable backlog remains. Furthermore, the Native corporations themselves must take on the task of handling those interests, such as the 14(c) reconveyances and unpatented mining claims, over which BLM claims to have no jurisdiction.

Easements: Remaining Problems

Although the 1978 regulations have resolved the most significant easement reservation issues, problems remain. First, Native corporations are concerned that no serious effort is being made to locate easements on the ground. The corporations' title is encumbered because, although easements exist on paper, it is impossible to determine precisely where they are located. Second, the U.S. Forest Service and others have expressed concern regarding the regulatory provisions stating that transportation easements [2650.4-7(b)(1)(v)] and utility easements [2650.4-7(c)(1)] can be reserved only if they are actually planned for construction within 5 years of the date of conveyance. While most Native corporations hold that this requirement is reasonable, the Forest Service maintains that a period of 20 to 25 years would be more realistic.

In addition, some of the easements reserved by interim agreement while litigation was pending have yet to be "conformed" to the provisions of the 1978 easement regulations. As of June 1984, all reservations of four types of easements have been released: rights of way for ditches and canals; rights of way for railroad, telegraph, and telephone construction; right of the United States to enter Native lands for survey purposes; and transportation corridor reservations. In addition, BLM has released most linear streamside and continuous coastline easements, although its move to do so has been opposed by the State. The State wanted to see such easements maintained until they could be replaced by justifiable site-specific easements. BLM opted to release the easements and acquire replacements later, since the unresolved status of Native allotment claims may prevent designation of the replacement easements for many years. (See discussion of Native allotment applications, below.)

Navigability Determinations

Determination of whether inland waterways or waterbodies are navigable must be made before land is conveyed to a Native corporation, as the State holds title to lands under navigable bodies of water. BLM's navigability determinations and challenges brought against those determinations by the State have delayed Native land conveyances and involved Native corporations in numerous lawsuits. A 1983 departmental policy issuance has now resolved most Native corporations' overriding concerns about the navigability issue, although some navigability determinations remain problematic.

Native Allotment Act Applications

The Native Allotment Act of 1906 entitled Alaska Native individuals to file claims for up to 160 acres, in as many as four 40-acre parcels. ANCSA [Section 18(a)] repealed the Allotment Act and cut off allotment applications as of December 18, 1971. Before the cutoff date, however, BLM was inundated with thousands of applications as a result of a last-minute drive conducted by the BIA and the Alaska Rural Community Action Program. As of June 1984, over 7,400 allotment applications involving about 11,000 separate parcels of land were still pending.[156]

Pending applications have not only been a source of frustration for the individual applicants; they have also caused considerable problems for the Native corporations. At the interim conveyance stage, selected lands that are subject to pending applications are generally excluded from the conveyance, for adjudication at a later time. The Native corporation is thus left uncertain as to whether it will eventually obtain title to those lands or whether it will have to select other lands. Final patent cannot be issued until all applications are adjudicated. The task of adjudication is complex, requiring eligibility determinations and on-the-ground field examinations as well as surveying and preparation of documentation. Litigation, appeals, policy changes, and allotment application errors further complicate the process.[157]

Due to more than a dozen legal developments since ANCSA's passage, the rules for certifying allotment applications have changed repeatedly. Points that have been litigated included, among others, when the 5-year use and occupancy period required by the Allotment Act begins, how to treat applications not received by BLM before the cutoff date because they were lost by another agency, at what point in the process an applicant had to be 21 years of age, whether applications should be denied because of applicants' failure to sign a waiver within a certain period of time, and how allotment applications are to be reinstated if the land has already been conveyed to the State or a Native corporation. Each time a new decision has been rendered, BIA and BLM have had to alter their policy and procedure accordingly—reinstating for adjudication all over again many formerly rejected applications.

Applications have also been reinstated and reprocessed due to policy changes initiated by the Department. In 1972, for instance, a number of cases were reopened when the Department abandoned its requirement for visual evidence of use and occupancy of the land claimed.

Errors in the applications' descriptions of location have also caused problems. In one case, the land described is said to have been 200 miles from the allotment; in another, 80 miles the other side of the North Pole. It has been estimated that 40 to 50 percent of the pending applications do not accurately describe the location of the allotment.[158] Such errors make it difficult for BLM to verify boundaries. Furthermore, correction of errors may cause an allotment to overlap already approved allotments or previous conveyances to the State or a Native corporation—meaning that new field examinations and surveys must be performed and conflicts must be resolved.

Section 905 of ANILCA was enacted (in 1980) to help accelerate the allotment adjudication process. It provides legislative approval for all applications pending on or before December 18, 1971, as long as the applications file for lands available for selection under the Allotment Act and are not appealed by any eligible parties. The provision has been partially successful in accomplishing its purpose. It has done away with the need for eligibility determinations on most applications. However, BLM still needs to determine final locations, perform surveys, and issue certificates. Moreover, the State filed some 6,000 protests under section 905(a)(5)(B)--on grounds that lands slated to receive legislative approval were necessary for access to Federal or State lands, resources, or public bodies of water—but has now dropped all but 700 of the protests.

During 1983-84, BLM has given the adjudication and survey of Native allotment applications greater priority. Closer coordination has been effected within BLM and with all parties to the adjudication process; personnel have been reassigned; new field procedures have been instituted.[159] BLM expects to issue 483 certificates of allotment during 1984—more than two-thirds as many as were issued from 1906 through 1983.[160] Nevertheless, thousands of allotments—all of them pending for at least 13 years—will remain undecided.

Native Townsites

Lack of clarity about the relationship between the 1926 Native Townsite Act[161] and ANCSA sections 11(a)(1) and 14(c)(3) has created uncertainty about land title and confusion about land planning in many Native villages. The lands in dispute are relatively insignificant in terms of acreage but can be highly significant because of their strategic location within the village.

The Native Townsite Act enabled a trustee appointed by the Secretary of the Interior to survey and withdraw a parcel of public land, deed individual lots to the occupants of this "townsite," and hold the remaining unsubdivided lands in trust for future occupants. At the time of ANCSA's passage, a number of Native villages had pending petitions for surveys and subsequent withdrawals under the Townsite Act. A conflict arose when ANCSA section 11(a)(1) withdrew (subject to valid existing rights) all the lands within and around Native villages which might otherwise be subject to withdrawal under the Townsite Act.

The Secretary has taken the position that townsite petitions pending at the time of ANCSA's passage represent valid existing rights and that, therefore, the lands are not open to selection under ANCSA.[162] However, in litigation before the courts as of December 1983,[163] certain villages allege that since ANCSA withdrew all Federal lands in all Native villages for ANCSA selection, the lands covered by pending townsite petitions do not constitute "valid existing rights" and should, along with unsubdivided portions of existing townsites, be made available for village selection.

Apart from these problems in relation to ANCSA's 11(a)(1) withdrawal provision, ANCSA's 14(c)(3) reconveyance provision has resulted in an awkward

and inefficient duplication of functions vis-a-vis over 80 in Native townsites.[164] Section 14(c)(3) requires each village corporation to deed a minimum of 1,280 acres to the incorporated municipality, if any, or to the State in trust for any future municipality. Section 1405 of ANILCA amended this requirement to permit reconveyance of fewer acres if the village corporation and the municipal corporation or the State so agree. In any case, unincorporated villages for which the Federal Government's townsite trustee still holds lands in trust will have two trustees: a Federal trustee for unoccupied or unsubdivided Native townsite lands and a State trustee for ANCSA's 14(c)(3) municipal lands. BLM has recommended that Congress enact legislation transferring all unoccupied townsite lands to the State trustee for municipal lands.[165]

Unpatented Mining Claims

Unpatented mining claims pose significant problems for many Native corporations—problems that are not being resolved as part of BLM's adjudication process.

Section 22(c) of ANCSA protected for 5 years the possessory rights of a person who had initiated a valid mining claim prior to August 31, 1971, on lands conveyed to a Native corporation. During this 5-year period the claims holder was allowed—but not required—to "proceed to patent," as long as the annual assessment and filing requirements of the general mining laws were met. BLM's implementing regulations [43 CFR §2650.3-2] interpreted the 5-year period for proceeding to patent as meaning that a patent application had to be filed either by December 18, 1976, or by the date when the land was conveyed to the Native corporation, whichever was later.

Native corporations had the option [under 43 CFR §2651.4(e)] of selecting or not selecting lands within unpatented claims. The lands were deemed selected, however, unless they were specifically excluded. As a practical matter, most Native corporations could not exclude unpatented mining claims from their selections, primarily because the locations of the claims could not be determined precisely. Consequently, their selections collectively contain thousands of unpatented claims.

BLM maintains that it lacks authority to adjudicate unpatented mining claims prior to conveyance. Thus, lands subject to unpatented claims are "interim conveyed" and patented to the Native corporation. As a result, the corporation acquires three problems. First, it holds lands that count against its entitlement but over which it may have no control, since the holders of valid but unpatented claims may continue, under the general mining laws, to extract minerals and conduct other activities. Second, it faces the possibility that some time in the indefinite future (if the claims holder successfully pursues the costly and time-consuming process of patent application), it may have to give up lands and be conveyed substitute acreage from its remaining selections—if any selections remain. Third, as long as any patent applications are pending, it possesses clouded title.

After conveyance, the Department has no jurisdiction over unpatented claims; any contest of the validity of a claim is a matter between the claimant and the Native corporation. To resolve the title problems that result from such claims, the Native corporation must either negotiate an agreement with the claimant or initiate action in the courts.

Oil and Gas Lease Offers

Many Native land selections were made on lands already encumbered by oil and gas lease offers. How these offers would be treated under ANCSA was unclear until March 1978, when in ANCSA Policy Issue No. 13 the Secretary declared that all such lease offers would be rejected by BLM to the extent that they conflicted with approved Native corporation selections that included the subsurface estate. A 1975 Ninth Circuit Court[166] decision and a 1979 U.S. District Court decision[167] have upheld the Secretary's authority to reject lease offers.

Entries Addressed by Section 22(b)

Section 22(b) of ANCSA directed the Secretary to "promptly" issue patents to persons who had as of December 31, 1971 made lawful homestead, headquarters site, trade and manufacturing site, or small tract site entries on public lands and who qualified to receive a patent. By 1980, a considerable backlog of applications for such sites were on file with BLM. Section 1328 of ANILCA provided that pending applications for such entries, with certain exceptions, would be automatically approved as of May 31, 1981, absent timely protest. As of December 1981, 318 active cases were on file with BLM; 152 were either protested or excluded from coverage by section 1328 of ANILCA, while the remaining 166 were considered legislatively approved.

Other Interests Created by the State of Alaska or the United States

Under section 11(a)(2) of ANCSA, lands selected by or tentatively approved to but not yet patented to the State were withdrawn, subject to valid existing rights, for Native selection. During the Native selection and conveyance processes, there arose the question of whether third-party interests created in the land by the State prior to ANCSA were to be considered valid existing rights under ANCSA. These interests generally involve open-to-entry parcels, municipal selections, and patents to individuals of former permit sites or leaseholds.

The Secretary concluded in 1977 that the State did have the power to create fee (absolute) rights in such lands, as well as less-than-fee interests with an option to obtain a fee which could be exercised as long as the option existed prior to the passage of ANCSA.[168] In accordance with the Secretary's conclusion, BLM considers adjudication of such interests as being outside its jurisdiction.

With limited exceptions, temporary interests, such as leases or contracts, created before ANCSA by either the State or the United States, are to be considered valid existing rights under section 14(g).[169] Such interests must be described in the conveyance documents as conditions or restrictions on title. The Native corporation succeeds the State or the United States as the lessor, contractor, permitter, or granter and is thus entitled to the revenues from such interests.

Section Line Easements

Section line easements are another potential encumbrance on a Native corporation's title. At present, there is no unanimity of opinion as to whether these easements in fact exist. A Federal statute—RS 2477[170]—reserved section line easements on "public land not reserved for public uses," and these easements were "accepted" by the Territory of Alaska.[171] Later, RS 2477 was repealed by both Federal[172] and State[173] laws, but the section line easements themselves were not vacated.

The section line easements are not a matter of record, so BLM does not adjudicate them. However, where a 17(b) easement exists and the State of Alaska claims an RS 2477 easement, the conveyance document will note that the easement may be subject to an RS 2477 claim, should such a claim be held valid.

REMAINING CONVEYANCE PROBLEMS: SURVEY AND PATENT

To expedite transfer of title, an interim conveyance document issued by BLM describes lands conveyed and identifies all known potential "inholdings" (lands not available for conveyance) by reference to the most accurate means available—generally BLM protraction diagrams.[174] Before a final patent can be issued the lands must be surveyed, so that legal descriptions describing all boundaries precisely can be written and substituted for the descriptions contained in the interim conveyance instrument. Generally speaking, there will be little discrepancy between the lands a corporation has selected and received via interim conveyance and the lands it is entitled to receive based on the surveys. It is possible, however, for significant discrepancies to occur due to inaccuracies in the protraction diagrams. In such cases, appropriate adjustments will be made to ensure that the corporation receives its full entitlement [section 22(i)], but the corporation will not be allowed to extend its selections so as to pick up lands excluded by the survey description [43 CFR §2650.5-6].

Over the last couple of years—as the Native corporations have become increasingly concerned with the quality of title they hold and residents of unsurveyed villages and holders of unsurveyed allotments have become increasingly frustrated over lack of title to their homes and businesses—BLM has placed more emphasis on completing its surveying responsibilities. Nevertheless, BLM officials now estimate that, at the current funding levels, survey completion will take 40 years.[175]

Magnitude of Survey Requirements

Pursuant to ANCSA [section 13] and the implementing regulations [43 CFR §2650.5], BLM's Division of Cadastral Survey has the responsibility for surveying the exterior boundaries of all lands to be patented to the corporations. In addition, the Division must survey all inholdings (conflicting claims) to be excluded from the patents—a total of some 25,000 small parcels, including lands under navigable waters, primary places of residence, homesteads, Native allotments, trading and manufacturing sites, airport sites, cemeteries and historical sites, and the like. These parcels represent by far the largest part of the Division's survey task. The Division must also survey the individual, subdivision, and municipal tracts to be reconveyed by each village corporation under section 14(c).

Over and above the surveys requirements created by ANCSA, the Division is responsible for surveying all lands to be patented to the State of Alaska, as well as surveying the exterior boundaries of conservation units such as parks, preserves, and fish and wildlife refuges. In addition, provisions of the Alaska Railroad Transfer Act of December 1983[176] have substantially increased BLM's short-term survey load by requiring BLM to survey the centerlines of existing tracks and over 150 separate parcels of land owned by the railroad.

Recent Efforts to Increase Efficiency

In placing greater emphasis on the survey and patent process, BLM was able to make major improvements during 1982 and 1983.

Although contractors were used previously for much of the Division of Cadastral Survey's field work, only minor gains in productivity were realized because Division personnel remained closely involved in the contractors' work. Recently, however, contracting out has begun to contribute significantly to survey progress, as Division personnel involvement is limited to reviewing field notes and the survey plat itself.

Enhanced coordination between BLM's Division of Cadastral Survey and the Division of Conveyance Management's Branch of Adjudication has boosted efficiency by enabling a shift to what is termed the "window concept." An attempt is made to ensure that all selections and claims within a particular area are identified and adjudicated before surveying begins, so that survey crews can perform all surveys required in the area during a single season.

In addition to taking these steps forward in its field operations, the Division of Cadastral Survey has recently made progress in overcoming considerable obstacles in the post-survey phase of its work. Once a survey plat is prepared by the Division or a contractor, it must be approved (by the Alaska State Office) before the Division of Conveyance Management can prepare a final patent. Many time-consuming administrative procedures—including rectification of aerial photographs, determination of meander boundaries (those adjacent to rivers and streams), and computation of the acreages surveyed—must be performed in-house prior to survey plat approval.

A huge backlog in these procedures developed for two reasons. First, the Division had to go through an initial adjustment period when it converted to state-of-the-art computer technology. Second, around the same time, the Division had to make major changes in its survey platting procedure in response to State and Native complaints about the quality of the plats. Whereas it had not done so before, the Division agreed to segregate lakes over 50 acres and rivers over 3 chains wide (which conforms with the Department's recent submerged lands policy, in which the beds of lakes and rivers of that size are not to be charged against either the State's or the Native corporation's entitlements). Instead of computing acreages by using USGS topographic maps, which are often inaccurate, the Division agreed to use recent aerial photographs or inertial measurement. Furthermore, instead of platting on a section (640 acre) basis, the Division agreed to plat on an aliquot (40 acre) basis—thereby increasing six-fold the number of calculations required.

By the end of 1983, the Division had considerably reduced the backlog that resulted from these changeovers. BLM anticipates that, from now on, Native allotment surveys should be approved in 12 months, and Native corporation exterior boundary surveys in 18 months.

An Additional Responsibility: 14(c) Reconveyance Surveys

As noted earlier, BLM is responsible for surveying all village corporation reconveyances under section 14(c)—including, but not limited to, reconveyances of primary places of residence, subsistence campsites, municipal corporation lands, and airport sites. Before BLM will begin the surveying, the village corporation must submit acceptable survey plans. The regulations [43 CFR §2650.5-4] require submission of a map showing all boundaries to be surveyed and all lands excluded from the conveyance. According to the regulations, all conflicts must be resolved before the map is submitted. Once approved by BLM, the map becomes the final survey plan. No changes can be made to it, and no additional surveying will be done.

BLM initially interpreted these rules as allowing a village corporation to submit only one map. This interpretation made it difficult for village corporations who were ready to make some of their reconveyances but were prevented from making the remainder because of uncertain land status or disagreements over the 14(c)(3) land to be conveyed to either the municipal government or the State in trust. A compromise system has been worked out through cooperation between BLM and the village corporations. BLM now allows a village corporation to submit up to three separate maps, or plans: a first plan showing all tracts to be reconveyed in the village proper, a second plan showing all outlying areas ready for reconveyance at the time when the first plan is submitted, and a third plan showing all remaining tracts to be surveyed.

Progress and Prognosis

As of July 1983, the Division of Cadastral Survey had completed survey field work (but not all survey approval work) on the exterior boundaries of approximately one-fifth of the townships in the State—meaning that 70 percent of the exterior boundary surveys on village corporation lands (and 44 percent of the exterior boundary surveys for State selections) had been done. Still to be surveyed, however, were at least 22,000 inholdings. Based on progress to date, BLM believes that it can complete all exterior boundary surveys of Native lands by 2005 and of State lands by 2020.[177]

The Cadastral Survey Workgroup Workload Committee of the Alaska Land Use Commission (ALUC) estimates that well over half a billion in today's dollars will be needed to complete all survey work in Alaska: $107,944,000 for ANCSA lands, $290,500,000 for State selections, and $197,686,000 for ANILCA lands (in which classification Native allotments have been included). Table 8-9, Cadastral Survey Workload Estimates, represents the Committee's best effort to specify the types and amounts of work to be done and to assign costs.

The Committee cautions that most of the data presented—as well as any time-needed-to-complete projections—must be viewed only as rough estimates, for several reasons. First, survey cost estimates are traditionally calculated based on time required per survey mile, but BLM presently lacks the computer capability needed to translate with precision its acreage and parcel measures into survey miles. In addition, it is impossible to arrive at a definitive identification of the total workload: the effect of future judicial decisions, amendments to ANCSA, land exchanges, and other such factors cannot be calculated. Further, BLM's administrative workload grows as, more and more, its staff is called upon to supply technical data concerning matters in litigation or adjudication. Finally, BLM's efforts are constrained by funding levels.[178]

BLM indicates that the survey process can be speeded up considerably if additional funding becomes available. Many firms with several years' experience in performing surveys under contract with BLM are prepared to take on more work. Approximately $2.5 million out of BLM's $10.8 million FY 84 cadastral survey budget is earmarked for contracting out. BLM states that with little or no increase in staff, it could efficiently administer a budget of $18 to $20 million, with nearly all the increase allocated to contract surveys.[179]

Table 8-9
CADASTRAL SURVEY WORKLOAD ESTIMATES

ANCSA	Approximate Workload	Estimated Cost	Remarks
Village & regional selections (3e)	15,942,000 acres	$31,884,000	
Federal installations, primary places of residence, and quitclaim deeds	57,000 acres/ 567 parcels	3,402,000	
Mineral segregations	160,000 acres/ 8,000 parcels	24,000,000	Locations (claims) filed but not surveyed. No parcels/acres estimated. Some claimants may undertake own surveys.
Cemetery and historical sites	2,596 parcels	8,658,000	Total acreage unknown.
Land exchange	--		No way to estimate surveying required since no way to predict future land exchanges. Workload expected to be substantial, however.
Fragmented parcels	--	40,000,000	Exceptions to "whole section" selection requirement — small, noncontiguous, irregular tracts. High cost per survey mile.
	ANCSA Total	$107,944,000	
State			
State selections	54,000,000 acres	$180,000,000	As of 4/22/84.
Mineral segregations	470,000 acres/ 23,500 parcels	70,500,000	No parcels/acres estimated. State and ANCSA lands believed to include about half the mineral claims in Alaska.
Municipal exclusions	--	40,000,000	Estimate only. Predominantly in Southeast. High cost per survey mile.
Land exchanges	--	--	No way to estimate. Workload expected to be substantial.
	State Total	$290,500,000	
ANILCA			
Native allotments	1,276,000 acres/ 14,052 parcels	$112,416,000	Some may fall within ANCSA selections.
Park areas	83,500,000 acres	83,500,000	Broad estimate based on $1/acre. Includes inholdings and ANCSA corporation selections within wildlife refuges.
Homesteads and trade/ manufacturing sites	14,000 acres 143 parcels	858,000	Some may fall within ANCSA selections.
Homesites & headquarters sites	1,000 acres 304 parcels	912,000	Some may fall within ANCSA selections.
	ANILCA Total	$197,686,000	
	TOTAL ESTIMATED COST	$596,130,000	

Source: Alaska Land Use Council, Cadastral Survey Workgroup Workload Committee, May 9, 1984.

Chapter 9

LAND USE AND LAND MANAGEMENT

With the implementation of the ANCSA land settlement, the Native corporations have become the largest private landowner in the State. They now must grapple with the responsibilities of land use and land management.

This chapter addresses conditions and restrictions which ANCSA places on the village and regional corporations as landowners, including requirements that certain lands be used and managed in a manner compatible with the use and management of adjoining public lands. It also addresses programs, established by ANCSA and ANILCA, that are intended to protect the corporations' lands and facilitate their land management activities as well as to meet Federal and State land management objectives. The text discusses the impact of these provisions and cites problems that have emerged with their implementation. Recommendations regarding many of the issues raised are provided elsewhere in this report.

LAND USE AND LAND MANAGEMENT REQUIREMENTS CONTAINED IN ANCSA

RECONVEYANCES [14(c)]

Once a village corporation receives its land conveyances it is obligated to reconvey some of the lands to individual residents and to any present or future municipalities. Section 14(c)(1) provides for the transfer of land to Native and non-Native occupants as primary places of residence or business, subsistence campsites, or reindeer husbandry headquarters. These reconveyances are free. Section 14(c)(2) provides that nonprofit organizations, such as hospitals and churches, will also receive lands—either free or at some charge. Section 14(c)(3) provides that, once the 14(c)(1) and (2) reconveyances are carried out, the corporation will reconvey land "on which the Native village is located" as well as "as much additional land as is necessary for community expansion, and appropriate rights of way for public use and other foreseeable community needs."[180] In addition, section 14(c)(4) requires reconveyance of

airport sites to the Federal Government, the State, or the municipal corporation. Section 1404 of ANILCA establishes that the beneficiaries of the 14(c)(1), (2), and (4) reconveyances must have been qualified for the reconveyances as of December 18, 1971.

The 14(c) reconveyance requirements are, in large part, yet to be implemented. No village corporation has fully accomplished all of its 14(c) reconveyance responsibilities, and it may be decades before all complete their 14(c) reconveyance tasks.

The delay in implementation is due largely to practical problems. Some villages have yet to receive title to the lands they are to reconvey. Furthermore, apart from the surveying to be done by BLM, the village corporations must effect the reconveyances on their own. Despite the provision of training materials and technical assistance,[181] many lack the technical expertise and organization to establish policy, notify occupants, conduct field examinations and interviews, review applications, adjudicate overlapping claims, hear appeals, plot boundaries, prepare survey plans, and issue deeds. What is more, many lack the financial wherewithal, having used most of their funds in litigation to obtain conveyances.

In addition, the 14(c) reconveyance requirements run counter to the interests of some corporations. Some of the 14(c) claimants are individuals who were in trespass on the then-public lands prior to ANCSA. Moreover, the transfer of even small land parcels may weaken the corporation's control of its lands and detract from the corporation's land management capability. The 14(c)(3) requirement for reconveyance to an existing municipal corporation (defined as any general unit of Alaska municipal government), or to the State in trust for a future municipal corporation, has caused the most problems. Under ANCSA, a community government cannot receive title to village lands until it incorporates under State law. Yet some villages have chosen to protect their tribal sovereignty by remaining unincorporated under State law; when a village incorporates as a first- or second-class city, it opens itself to non-Native representation on the city council. In many of the 100 or so villages that have formed municipal corporations, reconveyance to the corporation would place ANCSA lands under the control of a city council dominated by non-Natives.

The State has passed a law[182] assigning the Department of Community and Regional Affairs responsibility for holding reconveyed lands in trust for future municipalities and prohibiting any land transfer without approval from the "appropriate village entity."

Thus far, neither the potential beneficiaries nor the State has brought much pressure to bear on the village corporations. Most village corporations' only incentive to make 14(c)(3) reconveyances has been the need for title to a small tract in order to complete a capital improvement project. The Department of the Interior has maintained a "nonintervention position" regarding the 14(c) reconveyance process.[183] ANCSA provided no deadline for the reconveyances. However, the delays could become costly for the village corporations. Potential recipients may go to court to compel reconveyance. Furthermore, a village corporation seeking to develop or sell its lands may discover that its unmet 14(c) obligations are a considerable liability since such obligations constitute a cloud on title until they are satisfied.

VILLAGE CORPORATION CONSENT TO SUBSURFACE DEVELOPMENT [14(f)]

The final proviso of section 14(f) makes a regional corporation's right to explore, develop, or extract minerals from the subsurface estate within the boundaries of any "Native village" subject to the consent of the village corporation. No amendment or policy determination has clarified whether the terms "within the boundaries of any Native village" refer to the boundaries of the community proper, the core township, the village corporation's 11(a)(1) and (2) selection area, or the village corporation's deficiency withdrawal area.

It is possible that litigation over this provision will ensue as more regional corporations prepare to embark on subsurface development ventures.

SALE, USE, AND DEVELOPMENT OF WILDLIFE REFUGE LANDS [22(g)]

Section 22(g) provides that two covenants will appear in conveyances of lands that lie within the National Wildlife Refuge System. The first covenant gives the United States the right of first refusal if a village corporation ever seeks to sell refuge land. The second provides that every patent under ANCSA of pre-ANCSA refuge lands will "remain subject to the laws and regulations governing use and development" of the wildlife refuge. These provisions are leniently interpreted in the regulations at 43 CFR 2650.4-6. The United States must exercise its right of first refusal within 120 days of notification by the village corporation. The Native corporation is permitted land uses "that will not materially impair the values for which the refuge was established."

Section 22(g), along with the 3-township restriction on conveyances of lands within a refuge [12(a)(1)], represents a compromise aimed at balancing the national interest in wildlife refuge lands against the traditional significance of the lands to the Native residents. The challenge of implementing 22(g) lies in maintaining this balance and at the same time ensuring that the ANCSA grantees' rights as land owners are not unjustly restricted.

Many Native corporations are affected by the provisions. Thirty-nine village corporations hold land entitlements located partly within the boundaries of pre-ANCSA refuges; those entitlements, totaling about 2 million acres, must be managed in conformity with national wildlife refuge laws and regulations. Section 22(g) can significantly reduce the value of a corporation's lands—especially if the lands are located in relatively accessible areas. For instance, it has been estimated that the Kenai Native Association's holdings within the boundaries of the Kenai National Wildlife Refuge are worth only about one-half to two-thirds of what they would be worth if they lay outside the refuge system. In addition, the 22(g) provisions threaten to cloud the title of the village corporation. In the village of Mekoryuk, for example, questions about title raised by 22(g) have led a bank to deny financing for construction on lots deeded by the village corporation to third parties.[184] Such villages confront the dilemma of having to make a profit despite the fact that valuable lands are controlled by a third party.

The U.S. Fish and Wildlife Service has not formally developed a standard method of implementing the second sentence of 22(g)—the provision that 22(g) lands remain subject to the laws and regulations governing use and

development of the wildlife refuge. In two recent instances in which regional corporations (Cook Inlet and Arctic Slope) have obtained pre-ANCSA refuge lands under exchanges undertaken in part to resolve their ANCSA entitlements, the implementation of this covenant has been accomplished by detailed land use stipulations set forth in the exchange agreements and incorporated in the conveyances. To what extent this case-by-case approach will continue to be used remains to be seen.

FOREST MANAGEMENT [22(k)(2)]

Section 22(k)(2) of ANCSA provided that land conveyances from within the boundaries of a national forest would contain a covenant ensuring that the lands would be managed under "the principle of sustained yield" and under "practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands." This covenant, which was to remain in effect for 12 years, expired on December 18, 1983.[185]

Agreement on precisely how 22(k)(2) should be implemented was crucial, as certain corporations—primarily in southeast Alaska—were embarking on sizeable investments in the forest products industry. The corporations risked legal liabilities in the absence of certainty regarding the application of 22(k)(2). Beginning in late 1979, a series of meetings between the affected regional and village corporations, BLM, BIA, the U.S. Forest Service, and the State of Alaska Division of Forestry resulted in a plan of action. The participants worked together to formulate the forest management standards that would be applied. It was decided that the Forest Service would disseminate information on forestry practices, the Forest Service and BIA would provide technical assistance to the corporations, and the State Division of Forestry would develop and implement procedures for monitoring 22(k) provisions. Specific and straightforward, the plan of action has reportedly worked well.

TRESPASS AND EASEMENT MANAGEMENT PROBLEMS

Protecting their lands from use and abuse by the public is becoming a serious problem for many Native corporations. The protection once provided by remote location and inaccessibility is eroding as Alaska's non-Native rural population grows, as easement reservations provide increased access, and as competition for the land and its resources intensifies.

Trespass takes many forms and has varying consequences for the Native corporation. Unlawful timber harvesting or mineral extraction can threaten the corporation's economic viability. Unlawful occupancy may not involve an immediate loss of revenue but may in time cost the corporation land title if the occupant ultimately gains legal title through adverse possession. Wildland fires caused by trespassers may result in huge damages and prove very costly to the Federal agency responsible for fire protection as well. Even casual or innocent trespass by sport hunters and fishermen may escalate to the point where a village's subsistence resources are depleted.

A key factor contributing to trespass problems is the absence of a program for managing the public use easements reserved under 17(b) of ANCSA. The final easement reservation regulations state that each interim conveyance and patent is to be specific as to the locations of easements and the types of easement uses allowed [43 CFR 2650.4-7(d)(2)]. The regulations prohibit use of the easements for hunting or fishing on Native lands [43 CFR 2650.4-7(a)(8)]. The Department of the Interior is responsible for enforcing such rules, but thus far its efforts to do so have been ineffectual. Despite consultation with groups including the Alaska Land Use Council, the Alaska Native Land Managers Association, and the Alaska Federation of Natives, no workable agreements have been reached regarding such issues as the commercial use of public easements and the rights of the easement management agency to use mineral or vegetable materials to construct or maintain easements. Faced with irreconcilable differences on these issues as well as Department of Agriculture pressure to avoid promulgating easement management regulations, the Department of the Interior has abandoned efforts to publish regulations and instead intends to publish guidelines in its own departmental manual. Interior agencies are thus permitted, within the established guidelines, to adopt their own procedures; State agencies and other Federal agencies are not bound by the guidelines at all. It is likely that the ultimate result may be litigation—involving both the Department and one or more Native corporations—to determine the scope of the Department's responsibility for easement management.

Meanwhile, Federal and State agencies are reluctant to manage public use of the 17(b) easements, citing lack of legal authority and funding. The burden of responsibility is thus placed on the Native corporation—in most cases, a village corporation. The potential for trespass problems is great because the easements themselves are ill-defined and because public awareness of allowed easement uses is low. BLM is not surveying easements, nor is it marking them except in highly unusual cases. No public information effort has been mounted to acquaint easement users with permitted and prohibited activities. Furthermore, abuse is prevalent in the absence of any concerted enforcement effort. The Alaska Regional Solicitor has stated that enforcement becomes BLM's responsibility only when an easement is misused to the point where it is damaged or obstructed.

A similar situation exists with regard to trespass on lands conveyed to the Native corporations. Lack of public awareness and lack of clarity regarding enforcement responsibility are serious problems. The Regional Solicitor has also held that trespass by a user off an easement and onto Native corporation land is the responsibility of the Native corporation. State trespass law applies—meaning that criminal trespass falls under the jurisdiction of the Alaska Department of Public Safety and the Alaska State Troopers. Yet there are complications; the site of the trespass may raise questions about which agency—the State, a Federal agency, or a municipal corporation—is responsible for enforcement. Furthermore, State criminal law against trespass cannot be held to apply in many instances. The law excludes from criminal offense entries upon unimproved lands when there is no marker or fence indicating a prohibition against such intrusion, but such posting or fencing is unrealistic given the vastness of Native corporation land holdings. The Native corporation's only recourse may therefore be a generally ineffectual civil damage suit.

FIRE PROTECTION [21(e)]

Section 21(e) provides that lands conveyed to Native corporations shall continue to receive forest fire protection from the United States at no cost, as long as no "substantial revenues" are derived from them. Section 1409 of ANILCA amended the language of the section to read "wildland fire" instead of "forest fire."

Department of the Interior regulations [2650.1(c)] do not attempt to define "substantial revenues" but state that the Secretary will promulgate criteria in consultation with the concerned Native corporations and the State of Alaska. What has actually happened is that the Native corporations and the State have collaborated with the Department in formulating cooperative fire plans for individual areas, providing for different levels of attack and suppression on different types of land holdings.

Implementation of 21(e) falls within the Department of the Interior's jurisdiction because BLM is responsible for firefighting on the lands concerned. However, the Department of Agriculture has pressed for a definition of "substantial revenues" that would minimize the Federal Government's obligation. Thus far, the Department of the Interior has resisted Agriculture's requests. Few Native corporations have the financial wherewithal to provide fire protection for their lands; if the Federal Government's services were withdrawn, most would be forced to stand by and watch a fire burn across their acreage.

LAND EXCHANGES [22(f)]

Section 22(f) of ANCSA, as amended, grants broad land exchange authority. The section authorizes the Secretaries of the Interior, Agriculture, and Defense to exchange lands or interests in lands under their jurisdiction in Alaska for lands or interests therein of village or regional corporations, individuals, or the State. Section 17 of Public Law 94-204 (1976) significantly broadened this authority. Whereas section 22(f) required exchanges on the basis of equal value, the amendment allows exchanges on the basis of other than equal value when in the public interest. It also expanded the exchange authority to apply to any Federal agency. Section 1302(h) of ANILCA (1980) further broadened the provisions by granting authority to exchange lands or interests within conservation system units (Secretary of the Interior) or within the national forests (Secretary of Agriculture).

All potential parties to land exchanges agree that they offer an excellent mechanism for rectifying some of the awkward patterns of ownership existing in Alaska. For example, a Native corporation inholding within a national park may afford little development or revenue potential for the corporation but

be significant to the Park Service in terms of preserving the integrity of the park system. If the parties can locate other Park Service land (or land of another Federal agency) that offers more development potential but has less environmental value, a trade that theoretically benefits both parties can be made.

Whereas such exchanges are expected to have widespread use in the future, there have been few to date. Only a handful of Native corporations (Goldbelt, Chugach, Cook Inlet, Calista, and Arctic Slope) have participated in exchanges. Land exchanges are a complex, expensive, and time-consuming procedure. Few Federal agencies—and only the regional corporations, and perhaps the largest of the village corporations—have the manpower to research and initiate land exchange proposals. In addition, most Federal agencies have yet to complete the comprehensive planning that should precede the use of land exchanges or any other land management tool in order that optimum boundaries for all parties can be determined in a comprehensive rather than a piecemeal fashion.

The State has been active in the land exchange process and is taking steps to become still more active. Whereas land disposals have taken precedence over land exchanges in the past, the State now anticipates funding a full-time position for land exchange purposes, establishing land exchange as part of its land planning and classification process, and allowing lands designated for disposal to be earmarked for exchange as well. State land exchange regulations and procedures will soon be issued.

ALASKA LAND BANK

Section 907 of ANILCA [43 USC 1636] authorizes private landowners to obtain legal and tax exemptions by agreeing not to alienate, transfer, assign, mortgage, or pledge some or all of their lands, and by agreeing to manage the lands in a manner compatible with plans for adjacent public lands. This "land bank" concept originated in the Native community as a means of protecting the lands conveyed under ANCSA. The land bank was seen as a means of preventing corporations from having to sell or develop their lands in order to pay property taxes once ANCSA's 20-year tax moratorium [21(a), as amended by ANILCA section 904] ended. It would also offer the more immediate benefit of preventing loss of land through bankruptcy sales or other legal judgments against a corporation or its shareholders. The concept gained acceptance among Federal agencies, environmentalists, and others, as it was perceived as a way of preventing uncontrolled, unplanned development deleterious to the use of public lands.

Any private landowner—hence any Native corporation or individual—can enter into an agreement with the Secretary of the Interior or Agriculture (or with the State of Alaska, if it decides to participate) to place lands in the Alaska Land Bank.[186] Those lands cannot be disposed of (except as provided in section 14(c) of ANCSA), developed, or improved, except as provided in the land bank agreement. They must be managed in a manner compatible with adjoining public land uses, and appropriate government officials must be afforded "reasonable access" in order to manage the adjoining lands. The lands

are to remain banked for 10 years, with subsequent 5-year renewal options. Some or all of the lands may be withdrawn upon 90-day notice, but the landowner must pay any back property taxes and interest.

ANCSA grantees can receive three major benefits for lands placed in the bank. The lands are immune from adverse possession (the process by which a person who trespasses on land long enough and meets other requirements can get title to the land). They are also immune from real property taxes and assessments by Federal, State, and local governments. In addition, the lands are immune from judgment in any legal action to recover sums owed or penalties incurred by any corporation, corporate officer, or shareholder. Beyond these benefits, the "appropriate Secretary" is authorized—but not obligated—to provide technical and other assistance. Section 907 specifies that assistance in fire control, trespass control, resource and land use planning, fish and wildlife management, and maintaining and enhancing special land values may be given. Table 9-1 (at the end of this chapter) lists other forms of assistance which the Alaska Land Use Council (ALUC) Land Bank Study Group[187] has suggested for possible inclusion in land bank agreements. The Department of the Interior finalized guidelines for the program in June 1984.

The benefits of the land bank were automatically conferred on all land conveyed by ANCSA or ANILCA for 3 years following ANILCA's enactment (until December 3, 1983) or 3 years following conveyance, whichever is later. As of May 1984 no Native corporation had finalized a land bank agreement, but the level of interest in doing so was reportedly increasing.

Some corporations are adopting a "wait and see" attitude until there is evidence of how the program will function in practice.[188] Besides uncertainties about the type and extent of technical assistance that might be made available, there are concerns about potential conflicts between regional and village corporations if surface and subsurface estates are placed in the land bank independently of each other. Further, section 907 provides no definitions for "development," "improvement," and "compatible." The term "development" has now been defined by State statute.[189] The ALUC Study Group decided in 1982 that the meaning of these terms could best be clarified case by case, through negotiation of land bank agreements that spell out allowed and disallowed uses. (The study group did state that the term "compatible" should be loosely defined and not be read as permitting only uses identical to those on adjoining public lands.)[190] In addition, no definition has yet been provided for "adverse possession," so it remains unclear whether Native lands will receive immunity from prescription (the process by which a person, through long and flagrant use of an easement, becomes legally entitled to use of the easement).

It is also not yet clear whether the State will participate in the land bank program. Enabling legislation has not yet been enacted.

Table 9-1
TECHNICAL ASSISTANCE THAT MIGHT BE PROVIDED UNDER LAND BANK AGREEMENTS (Alaska Land Use Council)

Management and use of firewood and logs on private, Federal, or State land

Easement management and enforcement

Recreational use of private lands

Air quality assistance

Visual impact reduction and enhancement

Stream flow minimums

Fish stocking and enhancement

Historic and cemetery site research and management

Antiquities Act research and permitting

Oil and gas exploration cooperation

Subsistence research, use management, and protection

Upland water quality protection

Scientific research

Visitor services and facilities on private lands

Resource inventories and mapping

Habitat management

Predator control

Soil surveys

Hydraulic studies

Insect and disease control

Public use of prior public use cabins

Cooperation in permitting, leasing, and material sales

Endangered species monitoring and habitat protection

Access cooperation

Cost-share road authorization

Default clauses for party nonperformance of terms

Establishment of joint management committees or boards

Source: "The Alaska Land Bank: A Report on the Provisions and Implementation of Section 907 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2444)," Land Bank Study Group of the Alaska Land Use Council, (November 16, 1982).

Chapter 10

CORPORATE OPERATIONS AND DISTRIBUTION OF ASSETS

INTRODUCTION

In establishing the ANCSA settlement mechanism, Congress authorized the creation of a unique breed of corporate entity. Although the Native corporations would initially serve as the vehicles for carrying out the Federal Government's settlement of Native claims, the corporations were not created by Federal charter. Instead, Congress provided that they would be organized "under the laws of Alaska" and that the regional corporations, and at their option the village corporations, would "conduct business for profit" [sections 7(d) and (8)d]. As they carry out their responsibilities in effecting ANCSA's settlement terms, the corporations are seemingly to be established as profitmaking entities of infinite duration.

Although all the Native corporations were organized initially as for-profit entities under State law, they have many features that set them apart from other such corporations in Alaska.[191] The Native corporations are not trading corporations in that, at least for the initial 20 years, their stock cannot be bought or sold. Nor are they "natural" corporations, for they were not formed to meet a particular need in an established market by supplying a product or service. Instead, they have had to formulate their business purposes and acquire business acumen after the fact. Unlike other Alaska corporations, the Native corporations' initial capital consisted of funds contributed not by stockholders but by the Federal and State Governments. Whereas in publicly held corporations board members need not be stockholders, ANCSA [7(f)] requires the opposite.

Furthermore, Congress initiated in ANCSA a set of relationships between private corporations that is "unprecedented in the annals of American legal history."[192] The regional corporations were given significant authority over the assets and affairs of the village corporations—despite the fact that the village corporations are set up as independent entities, not subsidiaries.

Having authorized a unique set of corporations to operate in a unique set of circumstances, Congress provided only general guidelines as to how the corporations' operations would be regulated. Congressional directives in ANCSA regarding corporate functioning are aimed at ensuring that the substance of the settlement would be shared among the corporations and the individual shareholders. Congress provided for rather limited Federal agency oversight and involvement insofar as the corporations' responsibilities in distributing cash and land benefits are concerned. Regarding the corporations' future operations, Congress largely took a "hands-off" posture, providing that those operations would be governed by State law except in instances where State provisions conflicted with ANCSA—in which case ANCSA would prevail.

The conference report accompanying the final ANCSA bill states that in sections 7 and 8 (addressing the organization and functions of the regional and village corporations) a policy of "self-determination on the part of the Alaskan Native people" was adopted in anticipation of "responsible action by the board members and officers of the corporation[s]."[193] Indeed, ANCSA does not limit the kinds of business activities the corporations may conduct or where they may conduct them.[194] Further, ANCSA merely suggests rather than directs the manner in which regional corporations may exercise control over the village corporations.[195]

This final chapter of Part III surveys the numerous statutory, administrative, and judicial actions that affect and regulate the operations of the Native corporations. It treats significant exemptions, exceptions, clarifications, determinations, directives, and compromises that have emerged as the Federal Government, the State, and the Native corporations themselves have sought to define how the corporations will both effect the ANCSA settlement and enter the economic mainstream. Information on actual corporate operations to date is presented in Part V.

OWNERSHIP OF NATIVE CORPORATION STOCK

RESTRICTION ON ALIENATION

ANCSA subsection 7(h)(1) restricts the stock issued by the Native corporations to ensure that, for 20 years, such stock remains Native owned. The stock cannot be sold or otherwise alienated (transferred) during this period. Stock can only change hands through inheritance or by a court decree of separation, divorce, or child support. An amendment[196] allows members of professional organizations to alienate their stock if holding it interferes with the conduct of their business.

ANCSA subsection 7(h)(3) provides that, after 1991, the restrictions on alienation of Native corporation stock will be lifted. At that time, the corporations are to cancel all the restricted shares and reissue new, unrestricted shares, which the stockholders will be free to sell or transfer.

This subsection was amended in 1980[197] to give Native shareholders and corporations additional protection after 1991 and limit the possibility that outside interests will take over the corporations.[198] The new provision allows the corporations the option of amending their bylaws, before December 18, 1991, to deny voting rights to non-Native shareholders and to reserve to the corporation or to the seller's immediate family the first right of refusal on stock sales. This provision supersedes Alaska corporation law—which requires that amendments to bylaws be passed by a two-thirds majority—in that it authorizes these amendments by a simple majority vote. Any subsequent vote to grant voting rights previously denied would have to have the support of the majority of Native shareholders.[199]

INHERITANCE

ANCSA provides [sections 7(h)(2) and 8(c)] that the stock of a deceased shareholder shall transfer by will or, absent a will, under the applicable laws of intestacy. If the deceased stockholder has no will and no heirs, the stock escheats to the regional corporation.

The State has enacted special legislation concerning the inheritance of Native corporation stock; it is not subject to formal State probate procedure.[200] Instead, persons who claim an ownership interest must submit affadavits and proof to the regional corporation, which will make a determination. That determination can be appealed to the State Superior Court.[201] This method of informal probate is functioning with regard to regional corporation stock, but in many instances the regional corporations are refusing to make determinations regarding the stock of their village, urban, or Native group corporations. Some of those corporations are reportedly taking it upon themselves to make the determinations. As State law permits only regional corporations to make such decisions, it is possible that stock transfers pursuant to other corporations' determinations may be rescinded.

The State has also changed, where Native corporation stock is concerned, the rule normally applied to inheritance by the spouse in the absence of a will. Normally, the spouse is entitled to the first $50,000 of the estate, whether or not there are children.[202] As modified, the law ensures that children of a deceased Native shareholder will benefit by providing that the spouse will receive only one-half of the stock if there are children.[203]

CORPORATE VIABILITY

AUTHORIZATION TO MERGE OR CONSOLIDATE

Soon after their certification, it became apparent that many of the smaller village corporations would be unable to function on an efficient scale; they lacked financial wherewithal. A 1977 study[204] stated that it took a minimum of $70,000 a year to carry on essential corporate operations, yet, as noted in

Chapter 7, many village corporations did not annually receive that much in distributions. What is more, they lacked the technical expertise to conduct the formalities and undertake the planning necessary for corporate viability. Most villagers had never had anything to do with running a business. Thus, to be able to accomplish even the basic implementation tasks ANCSA required, many village corporations had to spend a major part of their budget on professional and consulting fees[205] or depend heavily on assistance from their regional corporation.[206]

Recognizing that the smaller corporations were not viable,[207] Congress authorized mergers and consolidations, adding section 30 by amendment in 1976.[208] Such authorization was necessary to establish that the exchange of stock that would transpire under a merger or consolidation would not violate ANCSA's 7(h)(1) prohibition against stock alienation. Section 30 permits any Native corporation in Alaska to merge or consolidate[209] at any time with the regional corporation or with any other corporation or corporations within the region. The resultant corporations are also allowed to merge or consolidate with other corporations in the same region.

Certain technicalities involved with mergers and consolidations were also addressed. The amendment provides that village corporations that merge or consolidate must give up their right [under section 14(f)] to withhold consent to the mineral development activities of the regional corporation, transfering such right to a separate entity composed of the Native residents of the village.[210] It also stipulates that cash distributions will continue as though no merger or consolidation has taken place; those who enrolled to a village corporation and those who enrolled to the region at large will continue in the same status unless elimination of that status is part of the merger. Significantly, the amendment supersedes State law by allowing approval by only a simple majority of the Native shareholders in each corporation, rather than by a two-thirds majority.[211]

Information on the mergers and consolidations that have taken place is provided in Part V of this report.

INVOLUNTARY DISSOLUTION AND SUBSEQUENT REVIVAL

Thirty corporations were involuntarily dissolved by the State following their failure to pay biannual corporate registration fees. Recognizing that many of these corporations had not been aware of the requirement to register, the State enacted a special provision in 1982[212] that allowed any dissolved corporation to revive its legal status by applying for reinstatement. All the corporations applied within the 1-year period allowed and have been reinstated.

TEMPORARY EXEMPTION FROM FEDERAL SECURITIES LAWS

ANCSA provisions authorizing the Native corporations to distribute stock brought into question the applicability of Federal securities laws. Section 28 (43 U.S.C. 1625) was added to ANCSA in 1976[213] to exempt the Native

corporations from three of those laws until December 31, 1991. Congress determined that "to require [the] corporations to meet the costly submission requirements of these laws would be inappropriate given cultural considerations, the nonalienation of stock provision in the Settlement Act, and the changing character of the corporations."[214]

The Investment Company Act of 1940[215] requires highly technical registration and periodic reporting from "investment companies"—companies that have over 40 percent of their assets in investment securities. Initially, many of the Native corporations risked being determined "investment companies," since they sought to protect and earn from their cash assets by placing most of them in certificates of deposit—which the SEC viewed as investment securities. Because that situation was likely to change once the corporations received their land assets and embarked on business ventures, Congress decided that it would be a "needless waste of time, money, and manpower"[216] to force the corporations to comply with the 1940 act. Similarly, Congress determined it unnecessary to subject the Native corporations to the expense and administrative burden of registering stock and filing prospectuses and reports under the 1933 Securities Act[217] and the 1934 Securities Exchange Act,[218] since there would be no "market" for their stock during the 20-year period when stock could not be alienated.

Exemption from the 1933 act, as well as the 1940 act, was also needed to implement the merger authority provided in section 30 (discussed above). In 1975, one regional corporation had spent well over $100,000 preparing the elaborate documentation required by those laws prior to a merger—thus vitiating the main purpose of the merger, which was to reduce administrative expense and overhead.[219]

Waiver of the 1934 act's provisions removed proxy battles among Native corporation factions from the oversight of the SEC. However, the State of Alaska soon found it necessary to regulate the solicitation of proxies in Native corporation elections. Two proxy battles have reached the State courts. The first, in 1978, raised but did not decide the issue of misleading proxy solicitations.[220] In 1979, however, the Alaska Supreme Court determined on common law grounds that misleading statements had been used to influence shareholders to grant proxies and remanded the case for further rel ef.[221] While these cases were in litigation, the State amended the Alaska Securities Act of 1959 to (1) require certain Native corporations to file proxy solicitation materials with the Administrator of Securities at the same time as the materials are circulated to shareholders[222] and (2) prohibit the filing of false or misleading statements.[223]

SPECIAL TAX TREATMENT OF ANCSA CORPORATIONS

Section 21 of ANCSA affords the Native corporations special treatment under Federal, State, and local tax laws. Subsections 21(a) and (b) established that ANCSA cash benefits (distributions from the Alaska Native Fund and shares of Native corporation stock) were exempt from any form of Federal, State, or local tax. A 1976 amendment exempted the inheritance of stock from inheritance taxes until January 1, 1991.[224]

Special rulings by the Internal Revenue Service determined that interest earned on the Fund while on deposit at the U.S. Treasury was part of the Fund and not taxable; that regional corporation receipts of Section 7(i) revenues which they must redistribute are not income and hence are not subject to taxation; and that, similarly, any interest earned on cash receipts that must be distributed is not income and therefore is not subject to taxation.

Section 21 was amended in 1976 and again in 1980 to ensure that Federal, State, and local tax treament would be consistent with the intent of ANCSA. The State has enacted a "mirror" statute that reflects most of the original section 21 provisions but does not yet reflect the amendments.[225]

PROVISIONS ADDED BY P.L. 95-600

Three subsections were added at the end of section 21 in 1978,[226] two of them in response to Internal Revenue Service rulings that had placed heavy tax burdens on the Native corporations and thus diminished the cash settlement they had received.[227]

Native corporations had contracted with oil companies to do exploratory work on lands available for selection. Although the corporations had received only data from the companies, the IRS had treated the exploratory work as income to the corporations. Subsection 21(g) was enacted to provide that neither the funds expended by third parties in resource analysis nor the data and services derived from such analysis would be imputed as income to the corporations. This provision applies until December 18, 1991, or until a corporation receives conveyance of its full land entitlement, whichever occurs first.

The IRS had also taken the position that Native corporations were not "in business" at the time they were established by Congress and that, consequently, their startup costs were not deductible. Subsection 21(h) was added to stipulate that all Native corporations would be considered as having been engaged in a trade or business since incorporation, and that all previous and future expenses in connection with land selection and conveyance would be considered "ordinary and necessary expenses" for tax purposes.[228]

Section 21(i) clarified that no ANCSA corporation would be considered a personal holding company prior to January 1, 1992. If a corporation had only a small number of stockholders, some of whom ran the corporation and derived income from it, it risked being considered a personal holding company and subjected to a special Federal income tax.

EXEMPTIONS EXTENDED AND AMBIGUITIES CLARIFIED BY ANILCA (1980)

Exemption from State and Local Property Tax

Under subsection 21(d) as originally enacted, Native lands that remained undeveloped or unleased were exempted from State and local property taxes

until December 18, 1991. This tax moratorium was intended to allow time for land use planning free from the threat of taxation, as well as to prevent the Native people, at least temporarily, from having to exploit their traditional subsistence lands in order to raise money for taxes. Due to the long delays in land conveyance, however, the moratorium until 1992 was likely to be of little benefit.

Section 904 of ANILCA amended ANCSA section 21(d) to extend the moratorium until 20 years from vesting of title or interim conveyance, whichever is earlier.[229] The provision states that the exemption is reactivated if developed or leased land is returned to its undeveloped state and declares that Native lands remain tax exempt despite mineral exploration. It also applies the exemption to lands received in exchanges with government agencies, other Native corporations, and private parties—as long as both the land traded and the land received are undeveloped and neither party receives in cash more than 25 percent of the value of the land it exchanged.

Neither the ANCSA provision nor the ANILCA amendment define what constitutes "developed real property." However, a recent State law does refine the standards for determining whether land is developed and may reduce the uncertainty over when the tax exemption is applicable.[230] For property to be considered "developed," two conditions must apply: the property must be modified from its original state with a definite purpose in mind, and the modification must result in gainful, productive present use without substantial further modification. Surveying, road construction, utilities provision, and similar actions are not considered development unless they are accompanied by these two conditions. Moreover, only the smallest practicable tract to which the conditions apply will be deemed "developed."

Exemption of Shareholder Homesites

ANILCA section 1407 also amended ANCSA to add subsection 21(j), intended to provide that a Native corporation's conveyance of a homesite to one of its shareholders will not be considered a distribution of corporate assets (and thus taxable) as long as each of three conditions is met. The land conveyed may not exceed 1-1/2 acres; the homesite must be maintained as a single family residence for at least 10 years; and the homesite may not be subdivided. The apparent motivation for the amendment was to enable village corporations to distribute additional lands to their shareholders without impediment.

Clarification of Basis for Tax Computation

As originally enacted, subsection 21(c) established that, when ANCSA land was leased or sold, the basis for determining gain or loss for tax purposes would be "the fair value of such land or interest in land at the time of receipt." ANILCA section 1408 amended the subsection to clarify that "the time of receipt" is the time of conveyance by the Secretary, whether interim conveyance or patent. The amendment also makes clear that, pursuant to the

Internal Revenue Code, the basis value will be adjusted for "any expenditure, receipt, loss, or other item properly chargeable to the capital account including the cost of improvements and betterments made to the property."[231]

In addition, the amendment provides that the basis of mineral deposits, wells, or blocks of timber is the fair market value "at the time of first commercial development."[232] This provision responded to Native corporations' concerns that neither the extent or quality of mineral deposits nor the fair market value of timber could be determined with certainty at the time of receipt.

MANAGEMENT AND DISTRIBUTION OF CORPORATE ASSETS

ANCSA provided only broad directives for the management and distribution of the Native corporations' assets. Subsequent administrative rulings, amendments, and State enactments, as well as extensive litigation and negotiations, have been necessary to interpret the intent of the directives and effect their implementation.

DIVIDENDS

ANCSA provided a basic formula to govern how corporate funds would be distributed [sections 7(i)-(m)]. The act was ambiguous, however, in defining what funds were to be distributed.

Construction of section 7(j) posed a problem:

> During the 5 years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first 5-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages . . . [emphasis added]

To what did the phrase "from such sources" refer? Were the regional corporations expected to distribute 45 percent, and after 5 years 50 percent, of all net income—distributions from the Fund, mineral and timber revenues, and income from business activities alike? Or did "such sources" refer only to distributions from the Fund and 7(i) resource revenues?

In their report on the bill that became ANCSA, the conference committee stated that the provision "does not apply to revenues received by the Regional Corporations from their investment in business activities."[233] Based in part on this statement, the U.S. District Court decided in 1981[234] that "all other net income" is not a "source" which must be distributed and that therefore the second section of 7(j) did not require the regional corporations to distribute any "other net income" to village corporations and at-large shareholders.[235]

The State of Alaska has given Native corporations wider latitude than other corporations in declaring what funds will be paid out as dividends. Other corporations are allowed to pay dividends only out of surplus earnings—that is, out of the amount over and above the corporation's capital and actual liabilities. State law[236] gives a financially solvent Native corporation the option of paying dividends out of net profit. Native corporations are thus allowed to pay out dividends when, under normal practice, their revenues would be insufficient to permit them to do so. It can be argued that this special authorization permits bankrupting of the corporations. Yet, since it does enable the corporations to place money in the hands of shareholders who might otherwise receive no benefits under the act, the authority can also be seen as consistent with Congress' intent that ANCSA be implemented "in conformity with the real economic and social needs of Natives."

DISTRIBUTION OF 7(i) RESOURCE REVENUES

Section 7(i) has engendered more problems of interpretation than any other ANCSA provision.

The section is brief, and deceptively simple in concept. It states that a regional corporation must share "all revenues" it receives from its timber resources and mineral estate, keeping 30 percent for itself and dividing the remaining 70 percent on a per capita basis among the 12 Alaska regional corporations (including itself). The intent is to mitigate inequalities between the resource-rich and the resource-poor regions.

Given its spareness of language, section 7(i) raises more questions than it answers. The section says merely that "all revenues received by each regional corporation from timber resources and subsurface estate patented to it" are to be divided. Does the section refer to revenues derived directly from the sale, lease, or development of the resources? Or does it refer also to revenues in any way connected with the resources—such as nonmonetary forms of compensation, consideration received for exploratory rights, and profits from the sale of goods manufactured from the resources? Does it mean gross revenues or net? If it means net revenues, what deductions are allowable in calculating net? Further, do the provisions take effect only after land is patented by the Secretary, or do they apply from the time of interim conveyance?

These fundamental ambiguities, among others, emerge from a reading of 7(i). They only begin to suggest the problems that emerge in the course of the complicated accounting procedures required to implement the section—and the

difficulties that arise in attempts to assure compliance. Prolonged disputes over the 7(i) provisions were inevitable due to the number of problems raised and the far-reaching implications of any solutions reached. Regional corporations are obligated by 7(i) to distribute the major part of their resource revenues. Millions and potentially billions of dollars are at stake, as the 7(i) provisions—and the 7(j) provisions governing redistribution of 7(i) distributions to village corporations and at-large shareholders—will seemingly remain in effect in perpetuity. After tremendous expenditure of money and energy in 8 years of dispute and litigation, the 7(i) issue now appears largely resolved—at least as far as the 12 regional corporations are concerned. The resolution has left a bitter aftertaste for some village corporations, however.

Principles Established by Litigation

For 8 years, the courts provided the only forum for resolving the fundamental problems surrounding 7(i), as the Department of the Interior had taken the position that the promulgation of clarifying regulations was inappropriate since 7(i) governed relationships between the Native corporations.

Litigation, in which all regional corporations soon took part, began in 1972. The litigation resulted, by 1980, in five published Federal District Court decisions and two published Ninth Circuit Court decisions. The major principles that emerged include rulings that a regional corporation must share resource revenues it receives both prior to and after issuance of a patent or interim conveyance;[237] the term "all revenues" includes nonmonetary benefits received in exchange for the acquisition of 7(i) resources or for interests in those resources;[238] "all revenues" means net, not gross, revenues;[239] and sand and gravel are part of the subsurface estate for all purposes under ANCSA including section 7(i).[240] (Despite this 1978 decision, disputes over who owns sand and gravel have continued; see discussion below.)

Provisions of Oil and Gas Tax Laws

Special provisions of the State's oil and gas tax laws have decided certain issues concerning taxation of 7(i) and 7(j) revenues. Included among these provisions are determinations that only the oil and gas producing corporation, not the corporations that derive production income solely via 7(i) and (j), will be subject to the corporate net income tax (so as to avoid taxing the revenues twice);[241] a corporation's 7(i) distributions are deductions in determining its taxable production income;[242] 7(i) and (j) revenue is not a production interest subject to the multistate tax compact, although the State reserves the right to tax the revenue under other tax provisions.[243]

Need for Negotiation and Arbitration

Despite the court decisions and tax rulings, the questions surrounding 7(i) continued to impede its implementation. Given the large sums at stake—and the fact that due to the complexities involved, 7(i) distributions and subsequent 7(j) redistributions would be impossible to recover—regional corporations delayed, and in some cases declined to make, 7(i) distributions.[244] Some maintained that they would not make distributions until the rules were fixed. Others offered to make distributions, but only on the basis of the most conservative of estimates.

The principles established by the court decisions and State tax rulings provided only isolated underpinnings for the definitive, detailed policy determinations needed. An agreement formulated and implemented by the 12 regional corporations themselves was necessary.

In early 1981, the 12 regional corporations embarked on an 18-month negotiation process that resulted in the signing of an agreement on June 29, 1982. The 100-page agreement sets forth the detailed accounting procedures needed to effect the 7(i) distributions. It defines what revenues are to be shared, specifies exclusions, and stipulates allowable deductions. It sets up a strict accounting and reporting system, including audit procedures and penalties for noncompliance.

Challenges to the Agreement: Current Status

Formulation of the 7(i) agreement represents a major breakthrough for the regional corporations. It provides a necessary vehicle for cooperation between competitors.

At the same time, it has set off a new wave of disputes. In hammering out the agreement, the regional corporations focused on overcoming the serious differences between themselves. However, village corporations, which were not involved in the negotiation process, contended that the agreement favored regional interests over village interests because it minimized the revenues to be distributed pursuant to 7(j). Some village corporations filed a motion to intervene, but the motion was dismissed because the corporations had waited too long to intervene.[245] There is however, ongoing discussion about the possibility of a village-regional lawsuit.

The regional corporations are proceeding to make distributions in accordance with the agreement's terms.

A Critical Issue: Who Owns Sand and Gravel?

Are sand and gravel part of the surface estate and therefore the property of the village corporations? Or are they part of the subsurface estate and therefore owned by the regional corporations?

Provisions of the 7(i) agreement have addressed but not resolved this longstanding controversy. In accordance with a Ninth Circuit Court decision,[246] the agreement treats sand and gravel as part of the subsurface estate but makes special provision for the interests of village corporations. Each regional corporation is authorized to exclude from its annual 7(i) sharing obligation the first $100,000 of revenues generated from sand and gravel resources. This exclusion allows village corporations to use sand and gravel locally without fear of being charged by another region of violating 7(i).

The regional corporations have discussed plans to petition Congress to amend section 7(i) to exclude sand and gravel revenues from distribution. Yet many village corporations maintain the view that sand and gravel should belong to them. They contend that, while transactions involving sand and gravel are often too small to warrant the attention of the absentee regional corporation, the proceeds from such transactions frequently amount to a major source of revenue for the village corporation.

NOTES: PART III

Works frequently cited have been abbreviated as follows:

GAO	Comptroller General of the United States, "The Native Enrollment and Village Eligibility Provisions of the Alaska Native Claims Settlement Act," Report to the Subcommittee on Fisheries and Wildlife Conservation of the Environmental Committee on Merchant Marine Fisheries, House of Representatives (General Accounting Office: December 13, 1974).
Morton	Alaska Native Association of Oregon v. Morton, 417 F. Supp. 462 (D.D.C. 1974).
Sec.	Department of the Interior's Annual Report on the Implementation of ANCSA (for the year cited in the individual note, e.g., Sec. 1975).
ANMR	Alaska Native Foundation, Alaska Native Management Report (Anchorage, twice monthly). This newsletter's publication dates are cited in the individual note, e.g., ANMR, February 28, 1973.
BIA Memorandum	BIA Memorandum from Ralph L. Sabers, Acting Assistant Director, Financial Management, Bureau of Indian Affairs, explaining final distribution to the regional corporations and documenting previous distributions, January 15, 1982.
"Land Title Faster"	"Land Title Should Be Conveyed to Alaska Natives Faster," Report by the Comptroller General of the United States, U.S. General Accounting Office, CED-78-130 (June 21, 1978).
JTF	American Indian Policy Review Commission, Special Joint Task Force Report on Alaskan Native Issues, July 1976.
GAO Draft	"Alaska Land Conveyance Program—A Slow, Complex, Costly Process," (Government Accounting Office [draft], 1983).

[1] GAO.

[2] Morton, 462.

[3] Ibid. This decision provides an account of the enrollment difficulties and the 13th region decision faced by out-of-state Natives.

[4] See, for example, Hearings Before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, House of Representatives, on H.R. 6644, held May 12 and 13, 1975 (Serial No. 94-20).

[5] Sec. 1973. According to section 5(a) 93,355 applications had been filed as of June 1973. The 1982 report stated that following reopening of the roll, the total number of applications reached 109,722.

[6] ANMR, February 28, 1973, 4 and Morton, 463.

[7] Confusion regarding the amendment deadline resulted when the BIA Office of Community Service publicized May 9, 1973, as the deadline and the Deputy Assistant Secretary of the Interior allowed one corporation until June 1, 1973, to submit changes.

[8] GAO, 6. See also the Secretary's Annual Reports, section 5(a). As of mid-1974 (1974 Report), 7,488 duplicates had been identified. According to the 1982 report containing final enrollment figures, 88 percent (13,686 out of 15,749) of rejected applications had been rejected because they were duplicates.

[9] Senate Report 93-1354, "Extension of Alaska Native Enrollment," to accompany S. 3530, December 14, 1974. See (1) Background to and description of S. 3530, as amended, 6, and (2) Letter to Hon. Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, from Royston C. Hughes, Assistant Secretary of the Interior, May 1, 1975.

[10] Sec. 1975, section 5(a).

[11] 89 Stat. 1145, sections 1 and 8.

[12] Morton.

[13] Sec. 1982, section 5(a).

[14] Published March 30, 1976, 25 CFR §69.15. Amended at 43 FR 26442, June 20, 1978, and at 43 FR 29115, July 6, 1978.

[15]As a result of an administrative interpretation, some Metlakatla members were enrolled as ANCSA shareholders. P.L. 96-505 [94 Stat. 2743, December 5, 1980] allowed those persons to remove their names from the ANCSA roll.

[16]Sealaska v. Roberts, 428 F. Supp. 1254 (D. Alaska, 1977).

[17]Sec 1982, section 5(a).

[18]ANMR, March 13, 1973, 4-7.

[19]Ahtna v. Doyon, Civil No. A-198-72 (D. Alaska 1972).

[20]Central Council of the Tlingit and Haida Indians of Alaska v. Chugach Native Association, 502 F.2d 1323 (1974).

[21]Conference Report No. 92-746, 92nd Congress, 1st Session (1971), 1971 Code (Cong. & Admin. News at 2250).

[22]Section 11 (89 Stat. 1145 at 1150).

[23]ANMR, April 15, 1976, 2, and July 1, 1976, 1.

[24]See, e.g., Stratman v. Andrus, 472 F. Supp. 1172 (D. Ak. 1979) rev'd sub nom, and Stratman v. Watt, 656 F.2d 1321 (9th Cir. 1981), cert. dis'm, 102 S. Ct. 1744. See also ANMR, January 31, 1974, e, and September 16, 1974, 1.

[25]Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978).

[26]Native opposition to the initial village eligibility regulations is discussed in ANMR, March 13, 1973, 6, and March 30, 1973, 5.

[27]ANMR, 5.

[28]GAO, 10.

[29]Solicitor's Opinion M-36876, May 29, 1974: "Authority to Determine Eligibility of Native Villages after June 18, 1974" 81 I.D. 316 (1974).

[30]Koniag, Inc. v. Kleppe, 405 F. Supp. 1360 (D.D.C. 1975).

[31]Koniag, Inc., Village of Uyak v. Andrus, 580 F.2d 601 (D.C. Cir.1978).

[32]Alexander Creek, Montana Creek, and Caswell. See Sec. 1982, sections 11(b)(3) and 14(h)(2).

[33]Sec. 1976, section 14(h)(2).

[34]Status report issued by Bureau of Indian Affairs, ANCSA Projects Office, May 1984.

[35]43 CFR 2653; 41 Fed. Reg. 14739.

[36]Wisenak, Inc. v. Andrus, 471 F. Supp. 1004 (D. Ak. 1979).

[37]Sec. 1982, section 14(h)(2).

[38]See Department of the Interior, ANCSA Issue Papers (final decision document for ANCSA implementation and review), March 3, 1978, 20-K.

[39]P.L. 94-204, section 14 (89 Stat. 1154).

[40]Sec. 1975, section 19.

[41]90 Stat. 1150 (1976), section 9.

[42]P.L. 94-456, section 1, 90 Stat. 1934 (1976). See Senate Report No. 94-1170, August 26, 1976, 1-4, for the legislative history.

[43]Section 14(b), 90 Stat. 1154.

[44]Senate Report 93-1354, December 14, 1974, 24-25.

Chapter 7

[45]BIA Memorandum (see abbreviations). Ahtna actually received only $300,000 in June and the remaining $200,000 in December of 1972. Cook Inlet received only $499,484 and the balance in November 1973.

[46]Ibid. The December 26, 1972, advances were: Bering Straits, $100,000; Calista, $427,400; Doyon, $277,400; Nana, $45,200; Sealaska, $150,000. The advances made on November 12, 1973, were: Bering Straits, $100,000; Bristol Bay, $85,000; Calista, $565,000; and Cook Inlet, $250,516.

[47]See, for example, Robert D. Arnold, Alaska Native Land Claims, 2nd ed. (Anchorage: The Native Foundation, 1976) [hereafter "Arnold"], 212, and ANMR, July 31, 1973, 3. The legislative history reveals that the Department of the Interior proposed that the $500 million from the U.S. Treasury be paid over 20 years, whereas AFN sought payment over 8 years to lessen the impact of inflation. No expectations are stated, however, regarding the period over which funds derived from mineral revenues would be paid out.

[48]P.L. 93-153 (November 16, 1973), section 407 (87 Stat. 591).

[49]Due to "the budget crunch," the House defeated an appropriations measure passed by the Senate. ANMR, September 15, 1976, 1.

[50]Claus-M. Naske and Herman Slotnick, Alaska: A History of the 49th State (Grand Rapids: William B. Eerdmans Publishing Company, 1979) [hereafter "Naske"], 260.

[51]Receipts for deposits to the Alaska Native Fund by the State of Alaska, provided by the BIA Juneau Area Office.

[52]See analysis concerning devaluation of the Fund by inflation, prepared by Robert Nathan and Lee Gorsuch, advisors to the Alaska Native Foundation (reprinted in ANMR, June 1, 1975, 7).

[53]52 Comp. Gen. 248, October 31, 1972. An act of February 12, 1929, [45 Stat. 1164, as amended ; 25 U.S.C. §161a)] provided that all funds to the credit of tribes having balances over $500 on the books of the Treasury would bear interest of 4 percent per annum. An act of June 24, 1938, [52 Stat. 1037; 25 U.S.C. §162a] permitted the Secretary of the Interior to withdraw such funds from the Treasury for alternative investment.

[54]Comp. Gen. decision B-108439, December 28, 1973.

[55]With the exception of a reserve of some $7 million withheld pending creation of the 13th regional corporation. The December 30, 1974, court order in Morton required that such a reserve be withheld and that it be paid interest or invested.

[56]"The requirement that funds be distributed at the end of the fiscal quarter was intended to avoid administrative inconvenience, not to permit the United States to use the Natives' funds during the interim." Senate Report 94-361, Accompanying S. 1469, August 1, 1975, 12.

[57]94 Stat. 2498.

[58]December 30, 1974, in Morton. The order required $7 million plus 7 percent of the balance of the fund in excess of $7 million to be withheld and either paid interest or invested as a trust fund.

[59]See ANMR, August 1, 1976, 7, and BIA Memorandum, Table 6B.

[60] Aleut Corp. v. Artic Slope, 417 F. Supp. 900 (D. Ak. 1976); rev'd sub nom, Doyon v. Bristol Bay Native Corp., 569 F.2d 491 (9th Cir. 1978); cert. den. 439 U.S. 954 (1978), excluding former reserves.

[61] Doyon, Ltd. v. Bristol Bay Native Corp., 569 F.2d 491 (1978) 499.

[62] Ibid. At 495, the court stated that "the entire scheme of the Act treats all eligible Natives on an equal basis with respect to monetary portions of the settlement, and . . . this may only be accomplished by excluding landed Natives in calculating distributive shares."

[63] 43 CFR § 4.1000-4.1011 and 25 CFR § 43h.15.

[64] See BIA Memorandum.

[65] P.L. 95-178, November 15, 1977 (91 Stat. 1370) section 4.

[66] 31 U.S.C. 203.

[67] 43 FR 20003.

[68] See BIA Memorandum, Table 10.

[69] Because the aggregate amount of all claims for attorneys' fees exceeded the $2 million allocated to the Fund, some attorneys were not compensated to the full extent of their claims. See, e.g., Jackson v. United States, 485 F. Supp. 1243 (D. Ak. 1980).

[70] BIA Memorandum, Table 1.

[71] ANMR, February 18, 1974, 5.

[72] Ibid.

[73] Analysis contained in ANMR, January 15, 1974, 4 (Table I, "An Analysis of the Distribution of Alaska Native Fund Monies," column 4). The analysis was based on total fund receipts as of December 1973—i.e., it included advances made prior to that date.

[74] Issued by the Superior Court in Juneau on January 25, 1974, pursuant to an agreement between Alaska Legal Services attorneys, attorneys for the State, and Sealaska Corporation.

[75]Hamilton v. Butts, 520 F.2d 709 (9th Cir. 1975).

[76]Id. at 713.

Chapter 8

[77]Federal Field Commission for Development and Planning in Alaska, Alaska Natives and the Land, (October 1968) [hereafter "Land"], 450.

[78]The Bureau of Land Management (BLM), the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. BLM also has had the lead role in implementing ANCSA's land provisions.

[79]P.L. 96-487, 94 Stat. 2371 (December 2, 1980) [hereafter "ANILCA"].

[80] "Land Title Faster" (see abbreviations), 14-31.

[81]Section 22(h). Subsection 22(h)(2) stipulates that section 16(a) withdrawals for southeastern villages and section 11(a)(2) withdrawals of State selected lands would terminate after 3 years.

[82]Appeal of Eklutna, Inc., 2 ANCAB 214, 84 I.D. 982 (December 19, 1977). Cf., Appeal of Tanacross, Inc., 2 ANCAB 379, 85 I.D. 97 (May 12, 1978), where a township was excluded from a section 1610(a)(1)(C) withdrawal because it failed to share a common corner due to an offset made by BLM to cure a survey error.

[83]"Land Title Faster," 22-27, provides a detailed account of BLM's implementation procedures, 1972 through 1978.

[84]About 90 percent of some 50 title conveyances completed to date contained areas set aside because smallest practicable tract determinations had not been made. "Land Title Faster," 26.

[85]See attachment to memorandum to the Secretary of the Interior (Cecil D. Andrus) from Guy R. Martin, Assistant Secretary—Land and Water Resources, March 3, 1978, regarding Alaska Native Claims Settlement Act Implementation and Policy Review (hereafter "ANCSA Issue"), Issue No.6.

[86]43 C.F.R. §2655 (45 FR 70206, Oct. 22, 1980).

[87]See Sec. 1982, section 3(e).

[99]See Sec. 1972, sections 11(a)(1), 11(a)(3), 17(d)(1), 17(d)(2).

[89]ANMR, August 8, 1972, 8. The State filed suit against the Department on April 10, 1972, in the U.S. District Court in Anchorage. This suit cast the first legal cloud over the ANCSA land settlement. It questioned whether ANCSA's withdrawal authorities should prevail over the land selection rights granted by the Alaska Statehood Act. However, in September 1972, the State and the Department reached an out-of-court settlement. The State relinquished over 40 million acres of its selections to d(1), d(2), and Native deficiency classifications, in return for selection rights in 1.6 million "critical" acres. (See ANMR, September 26, 1972, 4-5.)

[90]Ibid.

[91]Ibid.

[92]See ANMR, August 17, 1973, 1.

[93]Unreported.

[94]P.L. 94-204 §12 (January 2, 1976), as amended by P.L. 94-456 §§3-5 (October 4, 1976), P.L. 95-178 §3 (November 15, 1977), and P.L. 96-487 §1435 (December 2, 1980). A legal challenge to this agreement was thrown out after proceeding all the way to the State Supreme Court.

[95]The study was mandated by P.L. 96-487, §1430.

[96]See generally S. Rep. No. 96-413, 96th Cong., 1st Sess., Alaska National Interest Lands Report of the Committee on Energy and Natural Resources (November 14, 1979), 258-265.

[97]Kootznoowoo, Inc. v. Andrus, Civil Action No. A75-257, and Sierra Club v. Andrus, Civil Action No. A76-3.

[98]P.L. 97-394, §315.

[99]Hearings Before the Select Committee on Indian Affairs, U.S. Senate: Oversight Hearings on the Matter of Shee Atika, Inc., November 2 and 3, 1983.

[100]The village corporation at Tatitlek, relying on a consultant's advice, erred in selecting 2 of its 5 townships from areas withdrawn pursuant to 17(d)(2); BLM disapproved the selections of those townships. Since no administrative remedy existed to allow for reselection, P.L. 94-204, section 16, enabled Tatitlek to select the remainder of its entitlement from deficiency withdrawals.

[101]Sec. 1982, section 12.

[102]Status report provided by Docket Officer, Interior Board of Land Appeals, June 1984.

[103]ANMR, October 24, 1972, 2.

[104]ANMR, March 30, 1973, 5 and 7.

[105]ANMR, May 15, 1973, 8.

[106]Doyon v. Morton.

[107]Arctic Slope v. Morton.

[108]ANCSA Issue, op. cit., No. 7.

[109]Sec. 1981, section 12(a).

[110]Federal Register, vol. 48, no. 234, December 5, 1983, 54483. BLM is in the process of determining whether regulations will be required to implement this policy.

[111]If the "underselection" provision of ANILCA section 1410 is held to apply in such a situation, it may need to be amended to provide for regional corporation deficiency needs. As written, it addresses only the deficiency needs of village corporations. As another approach, the ANILCA 901(a) statute of limitations might, instead of being repealed, be extended to a length of time which the State finds minimally acceptable.

[112]These tables and others were published in the ANMR, November 15, 1976. They were issued by the Department of the Interior.

[113]Sec. 1976, section 12.

[114]Sec. 1983, section 12.

[115]As of December 31, 1983, Alexander Creek was the only village whose eligibility was still in question. Sec. 1983, section 11(b)(2).

[116]ANCSA Issue, op. cit., No. 20.

[117]In 1980, section 1406(d) of ANILCA authorized the Secretary to withdraw and convey "in lieu" lands for such sites.

[118]Sec. 1976, section 14(h)(1).

[119]Status update provided by BIA ANCSA Projects Office, June 1984.

[120]Sec. 1976, section 14(h)(3).

[121]Ibid.

[122]Sec. 1974, section 14(h)(5).

[123]See Sec. 1981, section 14(h)(5).

[124]Sec. 1982, section 14(h)(8).

[125]P.L. 94-204, section 10, amended ANCSA section 16(b) to allow Sealaska to select, with certain restrictions, lands withdrawn for village selection under 16(a). P.L. 95-178, sections 1 and 2, which amended ANCSA subsections 16(b) and 14(h)(8), respectively, allowed Sealaska to receive conveyances in the Klukwan withdrawal area. Sections 1418, 1423, 1424, 1429, 1433, and 1430 of P.L. 96-487 (ANILCA) withdrew lands and expedited 14(h)(8) selections for several other regional corporations.

[126]ANMR, June 15, 1976, 1, reporting on Senate Interior and Insular Affairs Committee hearings held in Washington, D.C.

[127]Cape Fox Corporation v. United States, 456 F. Supp. 784 (D. Alaska 1978), reversed on jurisdictional grounds, 646 F.2d 399 (9th Cir. 1981).

[128]ANMR, November 14, 1972, 2, reporting on a BLM presentation on problems posed by the survey task at seminar sponsored by the State Department of Community and Regional Affairs.

[129]A draft copy of an interim conveyance document had been sent to Washington for approval by the Regional Solicitor's Office in Anchorage. ANMR, March 15, 1974, 8.

[130]"Land Title Faster," 6. Other estimates placed the time needed to complete interim conveyances at 20 to 30 years.

[131]See "Village Land Selections Begin," summarizing the processing procedures, in ANMR, October 31, 1973, 4-6.

[132]JTF (see abbreviations). Summaries of easement problems are presented 13-14 and 30-31.

[133]"Land Title Faster," 15.

[134]See, for example, testimony before the House Subcommittee on Oversight and Alaska Lands, as reported in ANMR, August 1, 1977, 4-5.

[135]JTF, 25.

[136]"Land Title Faster", 6.

[137]GAO draft (see abbreviations), 8.

[138]ANMR, January 15, 1977, 1.

[139]In a March 14, 1975, letter to Royston Hughes, Assistant Secretary of the Interior, the State Co-Chairman for the LUPC, David Jackman, presented 15 specific easement recommendations which the LUPC believed were more appropriate than the Department's policies in that they more closely reflected "the substantial amount of public discussion, policy analysis, and legal research" that had taken place.

[140]See reports concerning hearings by the Senate Interior and Insular Affairs Committee held in Washington, D.C., June 1976 contained in ANMR, February 15, 1976, 1, and June 15, 1976, 1-3, 7. See also JTF, 13-14, 30-31.

[141]Bill Morgan, Eskimo, in testimony presented to the BLM, January 30, 1975, Bethel, Alaska, as reported in JTF, 31.

In their public statements, Native leaders provided parallel assessments of the situation : "In effect, Interior is taking back Native lands under the device of easements and thereby preventing us from enjoying title to the lands we retained under the Settlement Act" [Sam Kito, president of AFN, in Senate Interior and Insular Affairs oversight hearings, June 1976]; "Congress clearly did not intend in the Act to grant Natives a right to select lands from the public domain and then permit federal agencies to take the land back by calling their uses easements" [Roger Lang, former president of AFN, as quoted by Arnold, 270]; "The provisions of the Settlement Act for only limited easements are being greatly expanded by the Department of Interior and are being used by the Department to effectively deprive the Native corporations of many of the rights of the land for which they fought so long and hard" [William L. Hensley, member of board of directors of Nana Corporations, in testimony before Senate Committee on Interior and Insular Affairs, June 1976].

[142]JTF, 31.

[143]See analysis, "The Trouble with Easements," in ANMR, August 15, 1975, 4-6.

[144]Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alaska, 1977).

[145]The court held that, whereas the Secretary was not bound to choose from easements recommended by the LUPC (as LUPC was merely an advisory body), he was bound by the specific criteria found in section 17(b)(1).

[146]The latter types of easements had been proposed by the Secretary pursuant to statutory provisions [43 U.S.C. §945 and 43 U.S.C. §975d] calling for rights of way on lands patented under the U.S. land laws. The court ruled that the "floating easements" contemplated by those provisions were preempted by "certain procedural safeguards" contained in ANCSA's easement provisions.

[147]43 CFR §2650.4-7 (published at 43 FR 55329, November 27, 1978).

[148]ANCSA Issue, op. cit., No. 6.

[149]"Land Title Faster," 15.

[150]A low level of experienced staff and high vacancy rates had slowed the processing of land selections under the earlier administrative structure. See "Land Title Faster," 27-30.

[151]Letter from Robert Arndorfer, Deputy State Director for Conveyance Management, BLM, January 24, 1984.

[152]The Secretary must obtain the consent of the Native corporations located on 19(b) (former reserve) lands.

[153]Sec. 1983, Section 22(i).

[154]Cape Fox Corporation v. United States, op. cit.

[155]
ANMR, March 30, 1973, 4.

[156]Status update presented by ANCSA Office, BLM, June 1984.

[157]These complications have been documented by the GAO draft, 12-17.

[158]The estimate has been prepared, and the cases cited, by the Native Allotment Council, an organization of Federal, State, and Native agencies. (See GAO draft, 15.)

[159]Alaska Conveyance News, Bureau of Land Management, vol. 6, no. 2, May/June 1983.

[160]Alaska Conveyance News, Bureau of Land Management, vol. 7, no. 1, April 1984.

[161]Act of May 25, 1926, 44 Stat. 629, 44 Stat. 629, 43 U.S.C. 733 et. seq. (1970). The Act was repealed by the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2744, 43 USCA 1701 et. seq. (BLM Organic Act).

[162]This position is stated in a memorandum from the Director of the BLM, June 30, 1972.

[163]Alegnagik Natives Ltd. v. Watt, 977-200 (D. Ak. filed Sep. 27, 1977) and Unalashka Corp. v. City of Unalashka, A81-435 (D. Ak. 1981).

[164]The 11(a)(1) litigation now pending (see note 162) could limit this situation to only 31 potential townsites remaining unpatented as of March 14, 1978.

[165]Further analysis is provided in David Case, Special Relationship of Alaska Natives to the Federal Government (Anchorage: Alaska Native Foundation, 1978), 62-63.

[166]Burglin v. Morton, 527 F.2d 486 (9th Cir. 1976).

[167]Rowe v. U.S., 464 F. Supp. 1060 (D. Ak. 1979); aff'd. and rec'd. in part on other grounds, 633 F.2d 799; cert. den., 101 S. Ct. 2047.

[168]Valid Existing Rights Under the Alaska Native Claims Settlement Act, Secretarial Order No. 3016; 85 I.D.1. (December 14 1977); Cf. Appeals of the State of Alaska and Seldovia Native Association, Inc., 3 ANCAB 1, 84 I.D. 349 (June 9, 1977). (Open to entry leases are a less than fee interest that can be withdrawn for selection, whereas any fee interests created by the State in Temporarily approved lands before the enactment of ANCSA are not subject to withdrawal).

[169]Rowe v. United States, 464 F. Supp. 1060 (D. Alaska 1979), aff'd in part 1633 F.2d 799 (9th Cir., 1980) cert. den., 451 U.S. 970 (1981); Bergland v. Morton, 527 F.2d 486 (9th Cir., 1975).

[170]43 U.S.C. 932.

[171]19 SLA 1923.

[172]Federal Land Policy and Management Act ("BLM Organic Act").

[173]1 SLA 1949.

[174]The regulations [43 CFR §2650.0-5(1)] define "protraction diagram" as an approved diagram of BLM mathematical plan for extending the public land surveys or, alternatively, a State of Alaska protraction diagram authenticated by BLM.

[175]Estimate provided by BLM Division of Cadastral Survey, May 1984.

[176]P.L. 97-468, (96 Stat. 2557), January 14, 1983.

[177]Data provided by BLM Division of Cadastral Survey, May 1984.

[178]Cadastral Survey Workload Policy Statement, Cadastral Survey Workgroup Workload Committee, Alaska Land Use Council, May 9, 1984.

[179]Data provided by BLM Division of Cadastral Survey, June 1984. BLM's in-house technical and administrative capability of handling a considerable increase in contracting is corroborated by the findings of a program review undertaken by the Alaska Department of Natural Resources (Bureau of Land Management Cadastral Survey Program Review, March 1984).

Chapter 9

[180]ANCSA section 14(c)(3) provided that "no less than" 1280 acres would be reconveyed. ANILCA section 1405 amended the provision, however, to allow reconveyance of less than 1,280 acres if the municipal corporation (or the State in trust) so agreed.

[181]See, for example, Village Land Reconveyance Planning: A Handbook on ANCSA Section 14(c), prepared by the Alaska Native Foundation in December 1981. In addition to ANF, the Alaska Department of Community and Regional Affairs, several regional corporations, and other interested parties have provided training and technical assistance.

[182]A.S. 44.47.150, enacted in 1975.

[183]See, for example, ANCSA Issue No. 21.

[184]Interview with Bill Mattice, Realty Officer, U.S. Fish and Wildlife Service, December 1983.

[185]However, the matter of when the 12-year term began has been raised in a lawsuit involving Shee Atika's logging plans on Admiralty Island.

[186]Lands conveyed to Native corporations or individuals under ANCSA need not be adjacent to Federal lands or directly affect Federal lands to be included in the land bank. Other private lands must adjoin or directly affect Federal lands (or State lands, if the State participates).

[187]The ALUC Study Group was made up of representatives of the Alaska Federation of Natives, U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, U.S. Forest Service, Alaska State Department of Natural Resources, Alaska State Department of Fish and Game, and St. Mary's Native Corporation. The group met in 1982 to research and develop information on land bank implementation. Products of this effort are included in "The Alaska Land Bank: A Report on the Provisions and Implementation of Section 907 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2444)," November 16, 1982 (hereafter "ALUC Alaska Land Bank Report, 1982").

[188]Interior Region Post ANCSA Impact Analysis, (Fairbanks: Tanana Chiefs Conference, 1983) Volume II, "Land Use Planning Concerns of Interior Village Corporations," 15.

[189]As 29.53.020(a)(9) and (12).

[190]ALUC Alaska Land Bank Report, 1982.

Chapter 10

[191]Further discussion of the differences between the Native corporations and the "standard" Alaska corporation can be found in "Charitable Donations under the Alaska Native Claims Settlement Act" by Richard Goodman, UCLA—Alaska Law Review [vol. 3, 1973], 150-154 [hereafter "Goodman"], and in the Interior Region Post ANCSA Impact Analysis, note 186a, above, Volume II, "Native Corporations: Statutes and Practice," 17-20. The discussion here draws on those sources.

[192]Arthur Lazarus, Jr., and W. Richard West, Jr., "The Alaska Native Claims Settlement Act: A Flawed Victory," Law and Contemporary Problems, vol. 40 (Winter 1976), 132. This article, and an article by Douglas M. Branson, "Square Pegs in Round Holes: Alaska Native Claims Settlement Corporations under Corporate Law," UCLA-Alaska Law Review, vol. 8. (Spring 1979) [hereafter "Branson"] provide further treatment of the unique relationships between the regional and the village corporations. See also Goodman, 153-155.

[193]Senate Conference Report 92-581, to accompany H.R. 10367, December 14, 1971, 37.

[194]Goodman, 151.

[195]See Branson, op. cit., 109. See also Monroe E. Price, "Regional-Village Relationships Under the Alaska Native Claims Settlement Act—Part II," 5 UCLA-Alaska Law Review 237 (1976).

[196]ANILCA, P.L. 96-487 (December 2, 1980), section 1401(c), 94 Stat. 2492.

[197]ANILCA, section 1401(a), 94 Stat. 2491.

[198]Senate Report 96-413, 310.

[199]ANCILA S 1401(a)(3)(c)(ii). Compare A.S. 10.05.276.

[200]A.S. 13.16.705.

[201]A.S. 13.16.685.

[202]A.S. 13.11.010.

[203]A.S. 13.11.012.

[204]"Alaska Natives: A Status Report" (Anchorage: Alaska Native Foundation, August 1977), 11.

[205]Nancy Yaw Davis, Study conducted for the Federal and State Land Use Planning Commission, "Social Implications of ANCSA, May 1979," included in Commission Study #44, "Alaska Native Claims Settlement Act 1971-1979," (Anchorage, Alaska); analyzed annual reports of 35 village corporations for 1977, finding that the villages spent 31 to 88 percent of their general budgets on professional and consulting fees.

[206]In hearings before the Subcommittee on Indian Affairs of the House Interior and Insular Affairs Committee, Willie Hensley, then a member of the board of directors of NANA Regional Corporation, testified that NANA "ha[d] for the past two years been 'carrying' the villages" and that the effort had been "an extensive drain on NANA's own resources." See Hearings on H.R. 6644 (May 12 and 13, 1975), Serial No. 94-20, 164-166.

[207]See Senate Report No. 94-361, accompanying S. 1469, August 1, 1975, 12-13.

[208]P.L. 94-204, section 6, 89 Stat. 1148.

[209]A distinction does exist between a merger and a consolidation, although the term merger is often used (as in the title of section 30) to denote both. In a merger, one corporation absorbs another's assets and liabilities; the absorbing corporation keeps its own identity, while the absorbed corporation ceases to exist. In a consolidation, a totally new entity is formed; it assumes the assets and liabiities of the corporations being dissolved.

[210]The entity to which rights are transferred might be an IRA council or corporation, a traditional village council, or a nonprofit village association.

[211]The State of Alaska recognizes this departure in A.S. 10.05.005.(c).

[212]A.S. 10.05.005.(e).

[213]Section 3 of P.L. 94-204, 89 Stat. 1145 (at 1147).

[214]Senate Report 94-361, accompanying S. 1469, August 1, 1975, 5.

[215]Title I of the Act of August 22, 1945, c.686, 54 Stat. 789.

[216]Senate Report 93-1354, accompanying S.3530, December 14, 1974, 11.

[217]Act of May 27, 1933, c.38, Title I, 48 Stat. 74.

[218]Act of June 6, 1934, c.404, 48 Stat. 881.

[219]The merger being effected was between NANA corporation and 10 of its 11 village corporations. See Senate Report 94-361, August 1, 1975, 16-18. See also Hearings Before the Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, on H.R. 6644, May 12 and 13, 1975, 172-176.

[220]Aleut Corp. v. McGarvey, 573 P.2d 473 (1978).

[221]Brown v. Ward, 593 P.2d 247 (Alaska, 1979). The State Supreme Court had previously [Brown v. Cook Inlet Region, Inc., 569 P.2d 1321] remanded the case to the Superior Court, which dismissed it. The case was again appealed to the State Supreme Court, which again reversed and remanded the case for further relief from the effect of the misleading proxies. Misleading proxy statements have also been alleged in two unreported, still-pending cases that have blocked the merger of Koniag with certain of its village corporations and have threatened to bankrupt the corporation.

[222]A.S. 45.55.139. The requirement applies to proxy solicitations made to at least 30 Alaska resident shareholders of a Native corporation that has total assets exceeding $1 million and a class of equity securities held by 500 or more persons (i.e., the regional corporations and a small number of the village corporations). See generally AAC 3.08.300 et. seq.

[223]A.S. 45.55.160.

[224]Section 541 (92 Stat. 2887).

[225]A.S. 43.80.015.

[226]92 Stat. 2887 (November 6, 1978).

[227]Senator Gravel, the sponsor of the amendments, stated that the IRS had taken "an extremely hard line" with the Native corporations, assessing them deficiencies and penalties that amounted to an additional tax liability of $400 per shareholder for the corporations' first two years in operation. Congressional Record—Senate, October 7, 1978, 34602-34603.

[228]Senator Gravel explained Congress' rationale in stating, "The business of the Native corporation was the implementation of the Native Claims Act." Ibid., 34603.

[229]P.L. 96-487, December 2, 1980, section 904 (94 Stat. 2434), section 1407 (94 Stat. 2495), and section 1408 (94 Stat. 2495).

[230]See A.S. 29.53.020(k). The State specifically recognized the real property tax exemption under statutes effective January 1, 1984 [see A.S. 29.53.020.(a)(9)]; however, the exemption has been in force since the passage of ANCSA.

[231]Treasury Regulations section 1.1016-2.

[232]The legislative history defines the time of first commercial development as "the first day of the taxable years in which (1) a deduction for depletion is allowed or allowable, (2) gain or loss is realized from disposal of minerals or timber with a retained economic interest, or (3) minerals in place or standing timber are sold or exchanged." Senate Report 96-413, accompanying H.R. 39, November 14, 1979, 257.

[233]Senate Conference Report 92-581, to accompany H.R. 10367, December 14, 1971, 36.

[234]Ukpeagvik Inupiat Corp. v. Arctic Slope Regional Corporation, 517 F. Supp. 1255 (D. Alaska, 1981).

[235]The court also ruled that a regional corporation must distribute to villages and at-large shareholders its 70 percent share of 7(i) resources but not, in the case of a resource-producing regional corporation, its 30 percent retained share.

[236]A.S. 10.05.005.(d)(1) and (2).

[237]Aleut Corporation v. Arctic Slope Regional Corporation, 410 F. Supp. 1196 (D. Alaska, 1976).

[238]Aleut Corporation v. Arctic Slope Regional Corporation, 417 F. Supp. 900 (D. Alaska, 1976).

[239]Aleut Corporation v. Arctic Slope Regional Corporation, 421 F. Supp. 862 (D. Alaska, 1976); rev'd sub nom, on other grounds, Chugach Natives v. Doyon, 588 F.2d 723 (9th Cir. 1978).

[240]Chugach Natives v. Doyon Ltd., 588 F.2d 723 (9th Cir. 1978). Other rulings include: enrollees to village corporations that elected to take title to their former reserves are to be counted in computing the distribution ratios for 7(i) revenues [Aleut Corporation v. Arctic Slope Regional Corporation, 417 F. Supp. 900 (D. Alaska, 1976); compare with Doyon Ltd. v. Bristol Bay Native Corporation, 569 F.2d 491 (9th Cir. 1978) cert. denied, 439 U.S. 945, regarding Alaska Native Fund distributions]; revenues received from a mineral lease are 7(i) revenues, despite the accounting categories to which the revenues are allocated [Aleut Corporation v. Arctic Slope Regional Corporation, 484 F. Supp. 482 (D. Alaska, 1976); a regional corporation is not required to sequester funds (place them in secure and liquid investments) pending distribution [Aleut Corporation v. Arctic Slope Regional Corporation, 424 F. Supp. 397 (D. Alaska, 1976)].

[241]15 AAC 21.010.(b).

[242]Ibid. at section .215. See other pertinent provisions at section .250 and at 15 AAC 20.410.(d).

[243]15 AAC 20.410.(d).

[244]Aleut Corp. v. Arctic Slope Regional Corporation, 484 F. Supp. 482 (1980).

[245]Aleut Corp. v. Tyonek Native Corp., 725 F.2d 527 (9th Cir. 1984).

[246]Chugach Natives, Inc. v. Doyon, Ltd., op. cit.

Part IV

STATUS OF ALASKA NATIVES

OVERVIEW

Part IV addresses the general question of the status of Alaska Natives after the passage of ANCSA.

Chapter 11, "The Changing Status of Alaska Natives, 1970 to 1980," is based primarily on census data compiled by the University of Alaska's Institute of Social and Economic Research (ISER). ISER created an extensive body of tabular data on Alaska Natives for the Department of the Interior's 1973 report to Congress, entitled "Federal Programs and Alaska Natives," most commonly known as "The 2(c) Report." For the ANCSA 1985 Study, ISER updated most of the tables contained in the 2(c) Report, which had been based on pre-ANCSA 1970 census data. The updated version of the tables can be found in Appendix E. Chapter 11 highlights a number of the findings that emerge from a comparison of the 1970 and 1980 tables.[1]

Chapter 12, "Stock Ownership," presents information from two primary sources. The regional corporations provided valuable information on the characteristics of their shareholders. That information enabled the ANCSA 1985 Study to present a shareholder profile that describes the present composition of the shareholder population and compares it to the ANCSA enrolled population. A survey of Alaska Natives around Alaska and, by mail, outside the State provided information on shareholders' attitudes, levels of knowledge, and perceived impact of ANCSA. Over 2,000 Natives (1,380 Alaska-resident respondents and 703 13th Region shareholders who mailed back questionnaires) participated in the study's ANCSA 85 Survey, which provides many insights into the way ANCSA is seen by its intended beneficiaries. Appendix F presents the survey questionnaire showing Alaska-sample results, followed by an overview of the survey sample, sample comments in response to the survey's open-ended questions, and a discussion of the survey methodology.

Chapter 13 is derived exclusively from the ANCSA 85 Survey results. In addition to ascertaining Natives' attitudes about ANCSA and their perception of its impact, the survey sought information on Natives' level of knowledge about ANCSA and the corporations. Responses to a series of questions about ANCSA's provisions yielded a cumulative score. Chapter 13, "Knowledge about ANCSA and the ANCSA Corporations," reports the results of this "test" along with other findings.

Chapter 14 provides separate treatment for the 13th Region. Shareholders in the 13th Region live all over the North American continent. Because it was necessary to survey them by a mail-in questionnaire, their responses were tabulated and analyzed separately. When compared with those from the Alaska-resident sample, the responses of the 13th Region shareholders on knowledge, attitude, and impact issues reflect the unique circumstances and history of the region.

Chapter 15, "Implications," derives from the experience of the ANCSA 1985 Survey and Study research staff in working with the information and with people who are concerned with ANCSA and the ANCSA corporations. Its intent is to draw on the data presented in Chapters 11 through 14 to formulate broad conclusions about how ANCSA has worked and how it will work in the future.

Chapter 11

CHANGING STATUS OF ALASKA NATIVES: 1970 TO 1980 A Comparison of Pre- and Post-ANCSA Socioeconomic Data

OVERVIEW

Section 2(b) of ANCSA states that "the settlement should be accomplished . . . in conformity with the real economic and social needs of Natives . . . " House Report No. 92-523 clarifies the Congressional perception of those needs. The report states that the size of the cash settlement was based on considerations of "the extreme poverty and underprivileged status of the Natives generally, and the need for adequate resources to permit the Natives to help themselves economically." It declares that the aim was to enable Natives "to compete with the non-Native population and to raise their standard of living through their own efforts."[2]

This chapter draws comparisons between the status of Alaska Natives before and after ANCSA in order to illustrate the extent to which the poverty and underprivileged status of Natives have been alleviated. Data from the 1970 census, taken one year prior to ANCSA's passage, is compared with data from the 1980 census to examine changes in status over time. For both 1970 and 1980, census data on Alaska Native status is examined in relation to data on the status of non-Native Alaskans.[3] Where applicable, information obtained from the Native corporations, the ANCSA 1985 Survey, or other studies is used to augment the census data.

One broad conclusion emerges from the analysis. For many Alaska Natives, living conditions improved—in some cases, markedly—in the decade following ANCSA's passage. However, for most individuals, ANCSA's role in effecting that improvement was minor. For a small proportion of Native individuals, ANCSA has meant considerable change in status due to expanded employment, leadership, and land ownership opportunities. For others, ANCSA has been a significant influence—though no more significant than the development of North Slope oil. For still others—the majority—ANCSA's immediate effects have been marginal or nil. Yet its indirect and long-term effects may be important for nearly all Alaska Natives, enrolled and nonenrolled. The extent to which ANCSA has affected the status of Alaska Natives depends, then, on the group of Natives to which one refers.

The analysis presented in this chapter provides, where possible, some indication of ANCSA's effect on the Native population as a whole as well as on certain groups within the population. It attempts to indicate how many people have been affected and to what degree.

STATUS INDICATORS

It should be noted that except for the chapter on the 13th Region, all figures relate to in-State Natives.

The changing status of Alaska Natives is examined through analysis of six indicators. Findings regarding each indicator are briefly summarized below and presented in detail in the remainder of the chapter.

Population

ANCSA has had no measurable impact on the growth or geographic distribution of the Native population. The information provided on population serves as a context within which other changes in Native status can be viewed.

At its current rates of population increase, the Alaska Native population will double every 26 years. Deaths due to preventable diseases and infant mortality are on the decline; an increase in deaths due to accidents and suicides signifies escalating levels of social and emotional stress and increasing modernization. Although the Alaska Native population is becoming increasingly urban, the majority of Alaska Natives still continues to live in small communities in rural Alaska.

Employment

The proportion of the adult Native population in the labor force increased from 1970 to 1980. The role of the ANCSA corporations in increasing employment for Natives is small in comparison with employment by State and local governments.

Subsistence

Many Natives continue to depend on subsistence for their food requirements. ANCSA's influence on subsistence activity is uncertain.

Income

Although Native family income was higher in relation to non-Native family income in 1980 than in 1970, a Native family received only 56 percent as much income as its non-Native counterpart. For most Native families, ANCSA has done little to contribute income.

Housing

Housing for Alaska's Native population has improved, as measured by the standards of crowding, age of housing, and presence of plumbing. The Federal government appears to be responsible for most of the improvements, while the ANCSA corporations have played a minor role.

Education

A major decentralization of the rural school system took place in the early 1970's and has been followed by efforts to bring high school facilities and programs to Alaska's villages. Education is the important exception to the general observation that ANCSA has not significantly affected the status of Alaska Natives. ANCSA provided the "organizational impetus" which led to the decentralization of Alaska's school system. Although its role has been largely indirect, ANCSA will have long-term impact.

POPULATION

POPULATION GROWTH

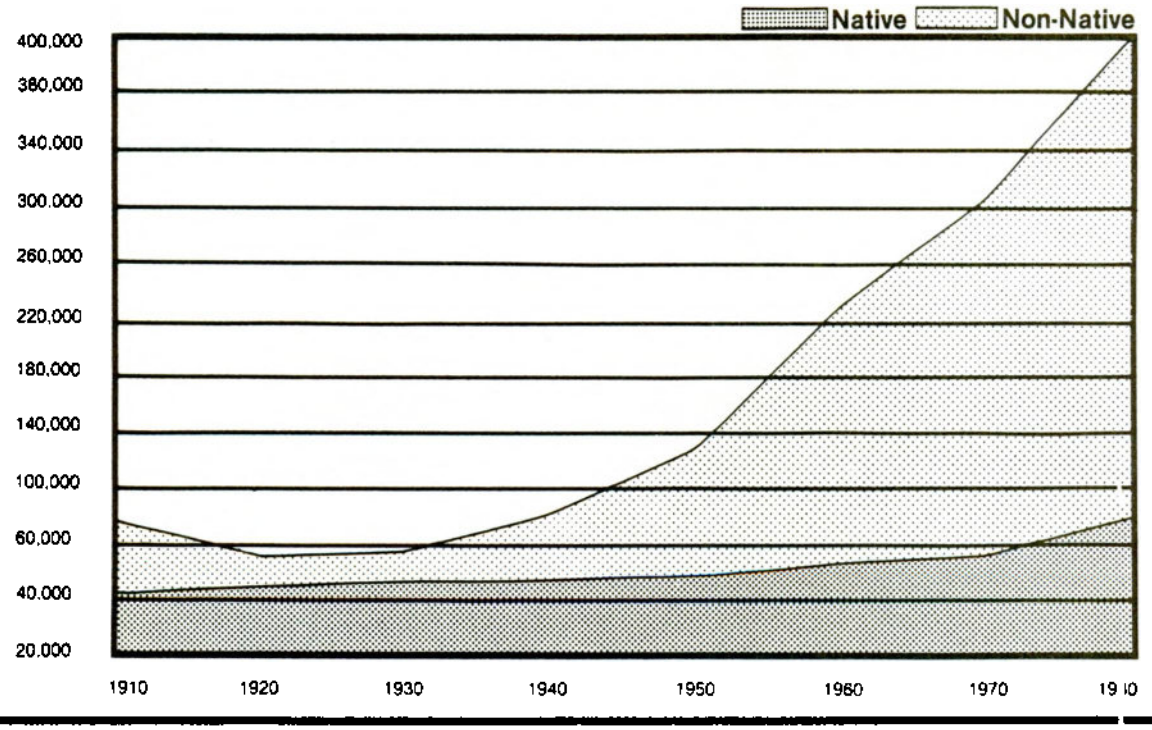
According to the 1980 census, Alaska's total population was 401,851. Of that number, 64,357—or 16.0 percent—identified themselves as Alaska Natives.[4] The Native population reported in the 1970 census was 50,654, which was 16.9 percent of Alaska's total population of 300,382.

From 1970 to 1980 the Native population grew at an annual rate of 2.4 percent—double the national average. Alaska's non-Native population grew at a still faster rate of 3 percent per year from 1970 to 1980. The growth in the Native population resulted from natural increase, however, whereas immigration contributed a large proportion of the increase in the non-Native population. The 2.4 percent average annual percentage increase in Alaska's Native population from 1970 to 1980 compares to a figure of 1.6 percent for the years 1960 to 1970, 2.4 percent per year for the years 1950 to 1960, and 0.2 percent for the years 1900 to 1940 (Table A-1 of Appendix E).

In 1980, Natives were a smaller minority in Alaska than they were in 1970, due to the comparatively faster growth of Alaska's non-Native population. Whereas Natives made up 16.9 percent of the total population in 1970, they represented 16.0 percent in 1980. Population data from 1982[5] indicate that this diminishing of the proportion of Natives in Alaska's population is a continuing trend. The State estimates that Alaska's population grew by 40,000 persons from 1980 to 1982, including 25,000 net immigrants. If the Native population continued to grow at the 2.4 percent annual rate from 1980 to 1982, the Native proportion of Alaska's population dropped from 16.0 percent to 14.5 percent in those 2 years—more than it did during the entire decade of the seventies.

The Alaska Native population outside the State was estimated at 22,500 in 1980—an increase of 4,500 persons over 1970.[6]

Figure 11-1
ALASKA NATIVE AND NON-NATIVE POPULATION GROWTH:
1910 TO 1980



Source: U.S. Department of Commerce, Bureau of the Census: 1950 U.S. Census of the Population, General Characteristics for Alaska, P-B51 Table 6; 1970 Census of Population, Supplementary Report, Native Population of Alaska by Race; 1970, P-B(51-64), Table B; 1980 Census of Population, General Social and Economic Characteristics, Alaska, PC80-1-C3, Table 58.

BIRTH RATES

Although the average number of children born to Native women declined, the birth rate (births per 1,000 of population) for Alaska Natives was slightly higher in 1980 than in 1970. The average number of children born to Alaska Native women between the ages of 25 and 34 dropped from 3.8 in 1970 to 2.5 in 1980. Nonetheless, a large increase in the proportion of Native women in their child-bearing years more than offset the decline in the fertility rate. In 1980, Alaska Native women who were 20 to 34 years of age composed 14 percent of the Native population, compared to just 10 percent in 1970. Consequently, the Alaska Native birth rate increased from 30.9 in 1970 to 33.6 in 1980.

Both the relatively high birth rate and the higher proportion of women in their child-bearing years have affected the shape of the age profile for Alaska Natives (shown in Figure 11-2, contrasted to the age profile for the non-Native population). Children constitute a much larger proportion of the Alaska Native population than of the Alaska non-Native population. In 1980, persons under age 20 comprised 48 percent of the Native population, compared to 34 percent of the non-Native population.

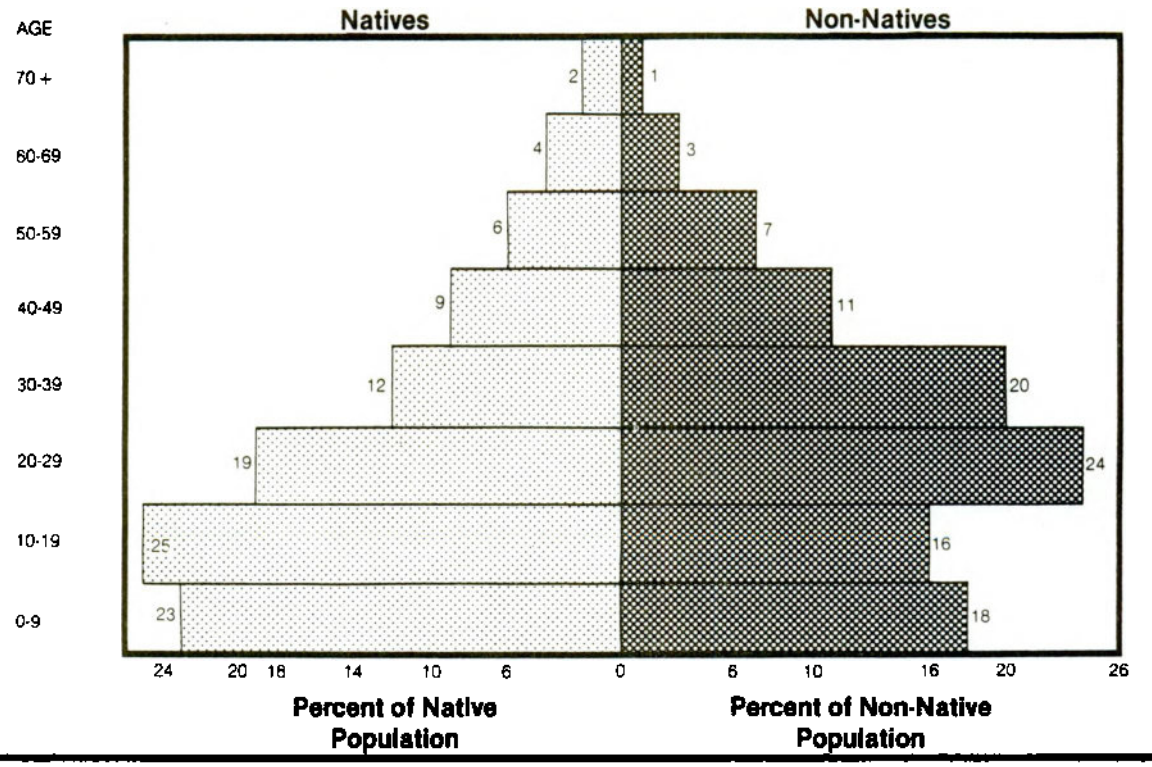
DEATH RATES

The growth of the Alaska Native population has also been affected by changes in the pattern and extent of Native deaths. While the crude (overall) death rate among Alaska Natives has remained virtually constant over the last 10 years at a level below that of the national population (lower because the Native population is younger), significant changes have occurred in the causes of death contributing to the overall death rate. Between 1970 and 1980, the infant mortality rate (per 1,000 births) among Alaska Natives dropped 29 percent: from 28.5 in 1970 to 21.0 in 1980. (Despite this significant decline, the Native infant mortality rate is still almost double that of non-Natives.) The Alaska Native population also experienced a decline in the rate of deaths due to prevention of such illnesses as tuberculosis, influenza, and other respiratory diseases. These declines were offset, however, by increases in the rate of deaths due to accidents and suicides.

The suicide rate for Alaska Natives averaged 24.2 per 100,000 for the years 1968-72; rose to 38.3 for 1975-78; and declined to 25.3 for 1972-81. The sharp increase in the middle period may reflect stress associated with the peak years of pipeline construction in Alaska. However, even the lower suicide rates for the other periods were, respectively, two and three times the national rate and were over twice the rate for Alaska non-Natives in each period. Suicide rates provide one important indicator of social stress, and the data indicate that social stress remains high among Alaska Natives.

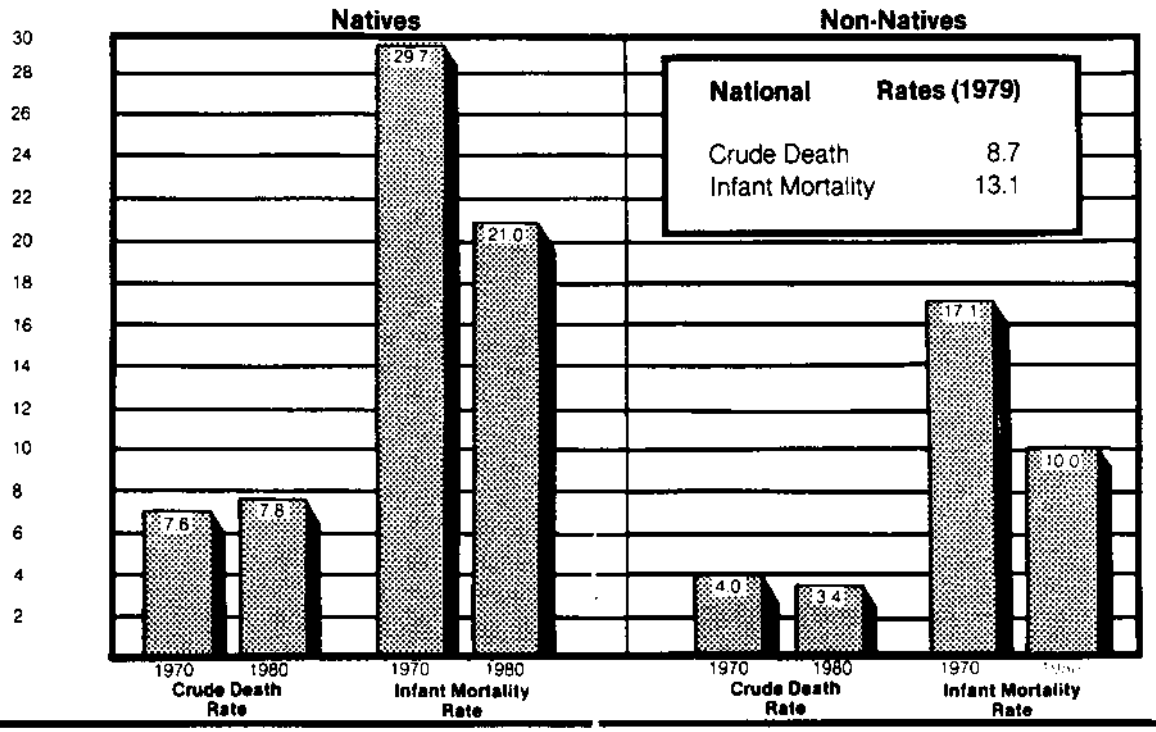
The accidental death rate, which was already 3-1/2 times the national average in 1970, grew by 17 percent from 1970 to 1980. Many factors may have contributed to this increase in accidental deaths, including the larger proportion of young adults in the Native population, the more extensive availability and use of modern forms of transportation, a greater proportion of

Figure 11-2
AGE PROFILES OF THE ALASKA NATIVE AND NON-NATIVE POPULATIONS



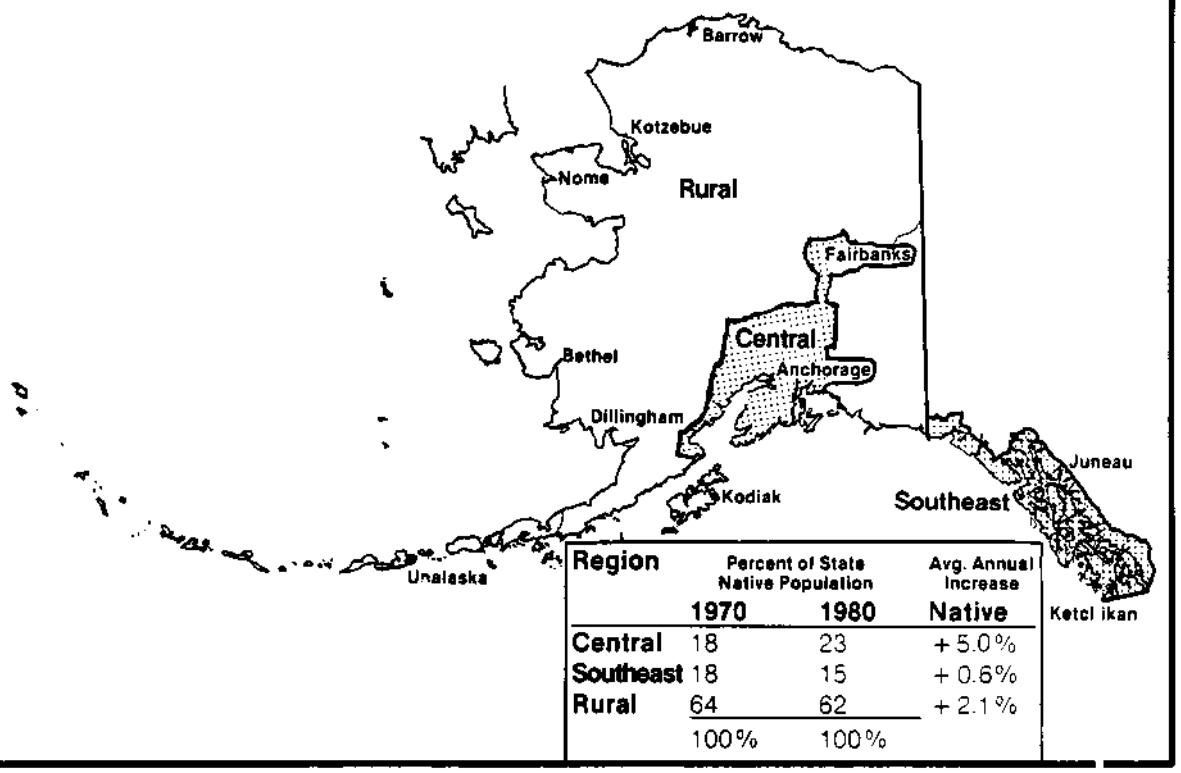
Source: Bureau of the Census Publication No. PC80-1-C3.

Figure 11-3
CRUDE DEATH RATE AND INFANT MORTALITY RATE
(per 1,000 population)



Source: Alaska Bureau of Vital Statistics, unpublished data, and 1982-1983 Statistical Abstract of the U.S.

Figure 11-4
REGIONAL DISTRIBUTION OF ALASKA NATIVE POPULATION



Region	Percent of State Native Population		Avg. Annual Increase
	1970	1980	Native
Central	18	23	+5.0%
Southeast	18	15	+0.6%
Rural	64	62	+2.1%
	100%	100%	

Source: ISER Census Data Base.

Natives employed in the wage economy, and the increased proportion of the Native population living in urban Alaska. Comparison of 1970 and 1980 data (see Tables C-6 and C-7 in Appendix E) shows that rates for motor and road vehicle accidents, air and space transport accidents, and the category of "other accidents" (which includes accidental stabbing, drowning not related to boats, gunshot, electrocution, and various other causes) all increased from 1970 to 1980; rates for accidents caused by fire and flame, water transport accidents, accidental poisoning, and accidental falls decreased; and rates for accidents due to natural or environmental factors remained the same. The category "other accidents" showed a particularly sharp increase, from 62.9 per 100,000 population in 1970 to 102.6 in 1980. The second greatest increase was for air and space transport accidents, which increased from 11.4 to 14.0 per 100,000.

GEOGRAPHIC DISTRIBUTION

Alaska's Native population became more urban from 1970 to 1980, with a gradual increase in the proportion of Natives living in the greater Anchorage area. Figure 11-4 shows that the Central Railbelt region experienced a 5.0 percent average annual increase in population, compared to 2.1 percent for rural Alaska, and 0.6 percent for Natives in Southeast. Part of the high rate of growth in the region came from migration from other parts of Alaska, while part came from a higher birth rate in Cook Inlet than in any other region in Alaska. Cook Inlet had a 1980 birth rate of 43.5 per 1,000 population compared to an average of 30.7 for the other 11 regions. Doyon, with its large urban population, had the second highest birth rate at 36.9 per 1,000, further augmenting population growth in the Central Railbelt region. At current growth rates, the proportion of Natives living in the Central Railbelt region will reach 29 percent by 1991, up from 23 percent in 1980.

Table 11-1
DISTRIBUTION OF NATIVE POPULATION BY SIZE OF PLACE

Size in 1970	1970 Population	1970 Percent	1980 Population	1980 Percent	Average Annual Percent Increase
5,000 or more	13,663	27	20,594	32	4.2
1,000-4,999	10,121	20	10,297	16	0.2
Under 1,000	26,821	53	33,466	52	2.2
		100		100	

Source: ISER Census Data Base.

Table 11-1 shows Native population change by size of place. Places with populations under 1,000, including those in the Central and Southeast regions of Alaska, have experienced an increase in Native population of 25 percent, from 26,821 in 1970 to 33,466 in 1980. But the proportion of Natives living in places of under 1,000 total population fell slightly from 53 percent in 1970 to 52 percent in 1980.[7]

Towns of 1,000 to 4,999 showed little growth in Native population from 1970 to 1980. As a group, they represented 16 percent of Alaska's Native population in 1980, down from 20 percent in 1970. However, some of the medium-sized towns showed considerable growth in Native population. For example, Bethel's Native population increased 30 percent from 1970 to 1980.

Table 11-2
ALASKA'S RURAL PUPULATION OF NATIVES AND NON-NATIVES
1970 AND 1980

	1970	1980	Change	Percent Change	Percent of Total Change
Alaska	89,900	127,200	37,300	41.0	100.0
Natives	39,000	46,200	7,200	18.0	19.0
Non-Natives	50,900	81,000	31,900	64.0	81.0

Source: Derived from a comparison of Table 1D of the 2(c) Report: Federal Programs and Alaska Natives, Task I (Portland, OR: Department of the Interior, 1973), and Table 1D of the ANCSA 85 Study in Appendix E.

Rural Alaska, as defined by the Census Bureau, grew in population by 41 percent from 1970 to 1980, (as compared to 31 percent for urban areas). Most Natives live in rural Alaska, yet over 80 percent of the additional rural residents were non-Native. Alaska's rural population in 1980 was 127,000, including 46,200 Natives. From 1970 to 1980, the non-Native rural population had increased 64 percent. The effect of this rapid increase was to reduce the proportion of Natives in the rural population from 43 percent in 1970 to 36 percent in 1980.

Further detail on the geographic distribution of the Alaska Native population is presented in Table A-3 in Appendix E.

EMPLOYMENT

NATIVE EMPLOYMENT IN 1970 AND 1980

At the outset of this analysis, it is important to note that, although the Native population was a smaller proportion of Alaska's population in 1980 than in 1970, Natives' share of the working-age population (age 15 to 64) was slightly greater in 1980 than in 1970. In 1980, 14.8 percent of Alaska's 15 to 64-year-olds were Native, compared to 14.0 percent in 1970. The proportion of eligible Natives who actually participated in the labor force increased as well from 51 percent to 55 percent for Native men and from 31 percent to 43 percent for Native women. The number of employed persons in Alaska's Native population increased 74 percent from 1970 to 1980, approximately from 9,000 to 15,700. At the same time, unemployment increased for both Natives and non-Natives.

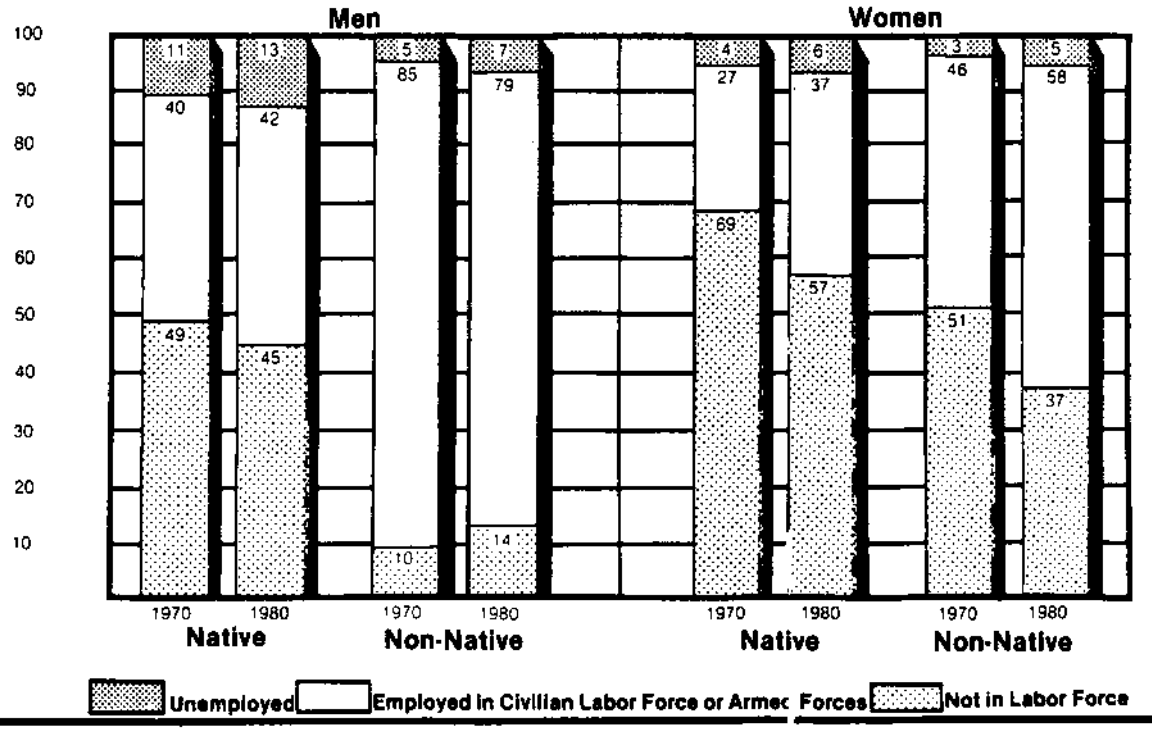
The number of non-Natives employed in Alaska increased 86 percent from 1970 to 1980. In 1970, 80,200 non-Natives were employed in Alaska, compared to 149,200 in 1980. A larger proportion of non-Native women were in the labor force in 1980 than in 1970, while the proportion of Alaska's non-Native men in the labor force declined 4 percent.

Table 11-3
EMPLOYMENT FOR NATIVES ANB NON-NATIVES
1970 AND 1980

	1970	1980	Change	Percent Increase
Native	9,000	15,700	6,700	74.0
Non-Native	80,200	149,200	69,000	86.0
TOTAL	89,200	164,900	75,700	85.0

Source: Comparison of Table 5B, 2(c) Report Task I, and ANCSA 1985 Study in Appendix E.

Figure 11-5
LABOR FORCE STATUS



Source: Bureau of the Census Publication Nos. PB(1)-C3 and PC80-1C3.

Figure 11-5

The data clearly indicate that in 1980 Natives were a larger proportion of those Alaskans working or seeking work than they were in 1970. Their share of the working-age (age 15 to 64) population had increased, their participation rate had increased, and their unemployment rate (which indicates what proportion of individuals seeking work cannot find it) had increased. In short, the demand for jobs among Natives was higher in 1980 than in 1970.

NATIVE EMPLOYMENT: GOVERNMENT AND PRIVATE SECTOR

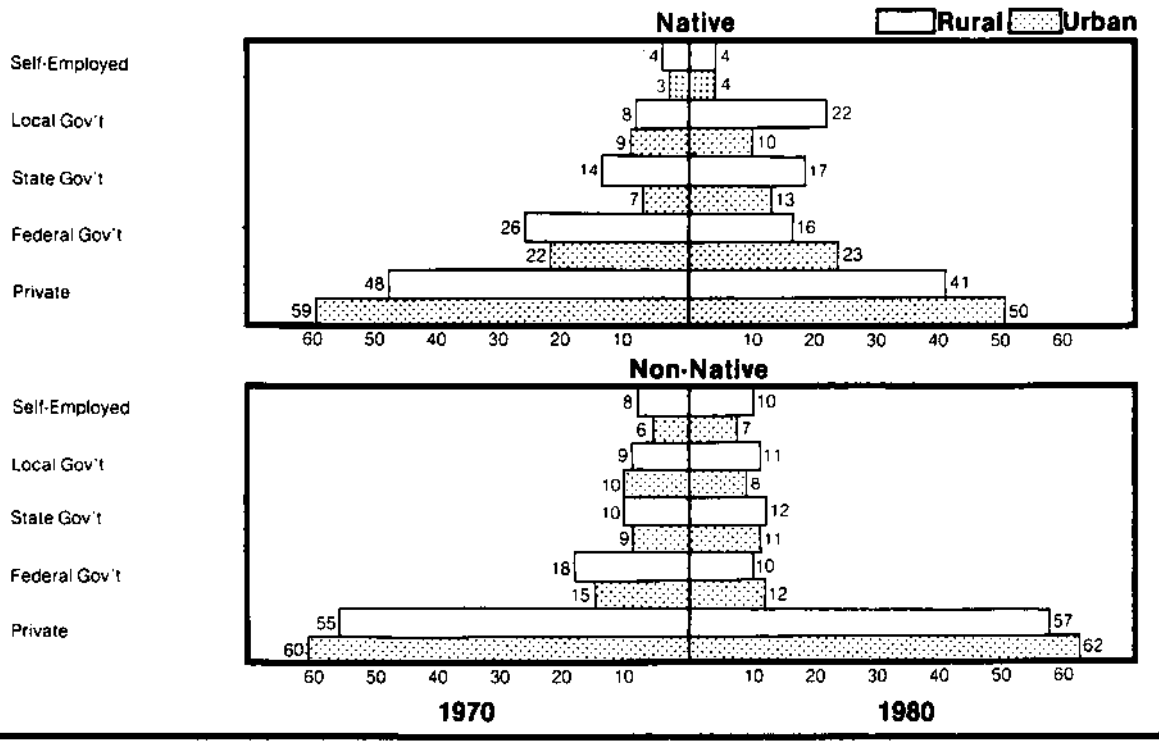
Table 11-4 shows that the number of Natives employed by government increased 88.0 percent from 1970 to 1980, while government employment for non-Natives increased 67.0 percent. Meanwhile, private employment increased 102.0 percent for non-Natives, compared to 64.0 percent for Natives.

Table 11-4
EMPLOYMENT BY SECTOR FOR NATIVES AND NON-NATIVES
1970 AND 1980

	Native			Non-Native		
	1970	1980	Percent Increase	1970	1980	Percent Increase
Total	9,000	15,700	74.0	80,200	149,200	86.0
Private (non-agricultural)	4,200	6,900	64.0	44,250	89,600	102.0
Government	4,300	8,100	88.0	28,150	47,000	67.0
Self	400	650	38.0	7,250	11,600	60.0
Agriculture	150	50	(-66.0)	550	1,000	82.0

Source: Compilation and comparison of Tables 5C to 5G(3), 2(c) Report, and ANCSA 1985 Study in Appendix E.

Figure 11-6
MIX OF PUBLIC AND PRIVATE EMPLOYMENT



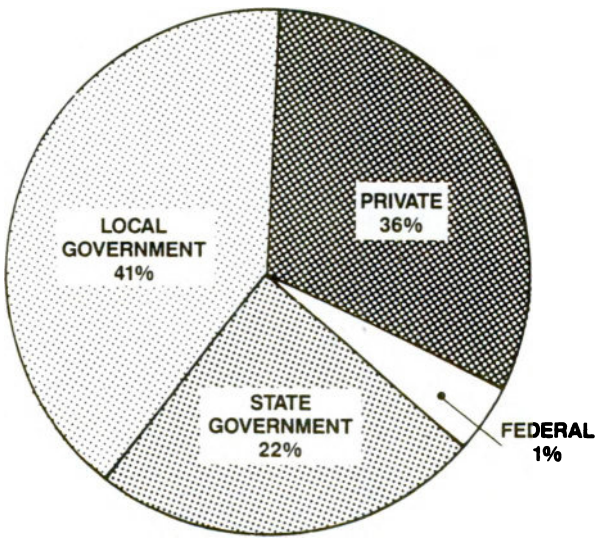
Source: Bureau of the Census Publication Nos. PC(1)-C3 and PC801-C3.

Figure 11-6 compares the mix of employment for rural and urban Natives in 1970 with the mix for 1980. It also shows how that data compares with data on non-Native employment for the same years. The greatest increase in the proportion of Natives employed in rural Alaska was the proportion of Natives employed by local government; the second greatest increase came in State government employment. For Natives in urban areas, however, State government employment constituted the greatest increase, and private employment the greatest decline. By comparison, the private sector employed a greater share of non-Natives, rural and urban, in 1980. Thus, as shown previously in Table 11-4, government employment has been responsible for most of the increase in Native employment.

In rural Alaska, where the majority of Natives live, government employment has accounted for 64 percent of the increase in employed persons. The private sector accounted for only 36 percent of the increase in rural Native employment.

Yet the private sector, which includes ANCSA corporations, employed 61 percent more rural Natives in 1980 than in 1970.

Figure 11-7
COMPONENTS OF GROWTH IN RURAL NATIVE EMPLOYMENT



Source: Comparison of Table 5A, 2(c) Report and ANCSA 1985 Study (see Appendix E).

NATIVE EMPLOYMENT BY ANCSA CORPORATIONS

It is not possible with available data to specify the number of persons employed by ANCSA corporations. The ANCSA 85 Survey sought to obtain some indication of the impact of ANCSA on Native employment. A minority of Natives have received work from the corporations, in a wide variety of positions. Of the 1,380 respondents, 25 percent reported that they were presently employed by a Native corporation or had been since ANCSA's inception. (Eight percent stated that they were presently in a corporation's employ.) Respondents reported a range of positions held with Native corporations. Twenty-nine percent of those presently or previously employed by a corporation (7 percent of the total sample) held executive positions.

SUMMARY

Alaska has an expanding economy, boosted by oil development and State spending of oil revenues. For non-Natives, most of the growth in employment from 1970 to 1980 was in the private sector, as private-sector employment more than doubled for non-Natives. For Natives, government was the source of most employment growth. Private sector employment increased for Natives, but not as much as for non-Natives.

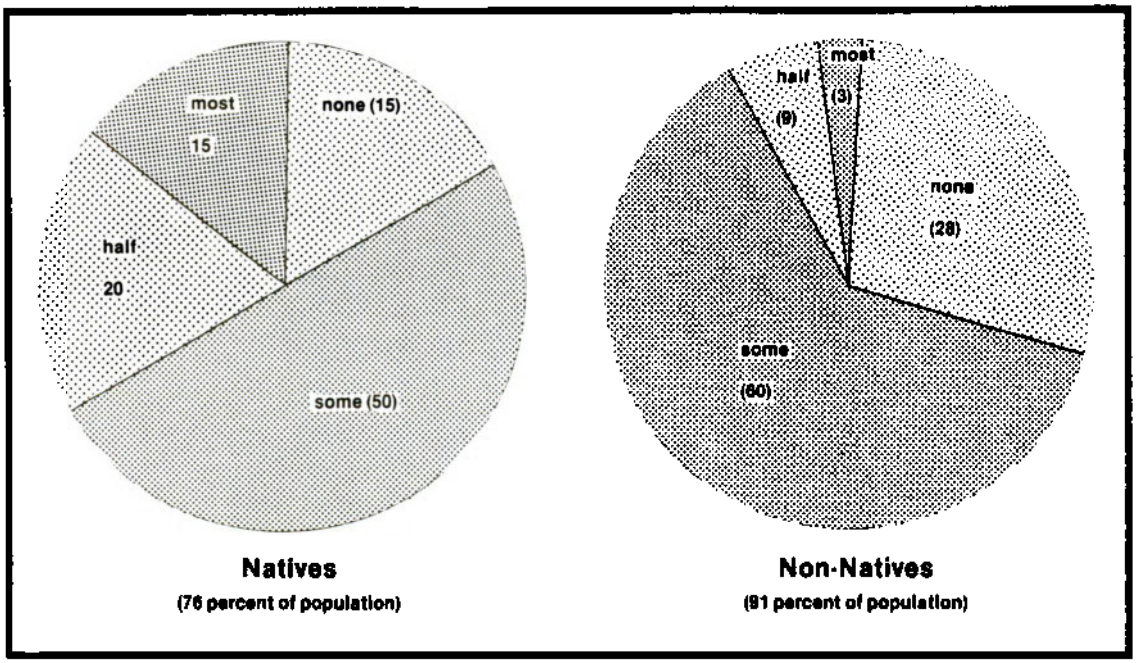
ANCSA played a part in increasing employment of Natives in the private sector, although the specific number of jobs provided to Natives by ANCSA corporations is undetermined. Survey data show that a minority of Natives have worked for a Native corporation. There has been improvement in employment for Alaska Natives since passage of ANCSA, but ANCSA's role in that improvement was minor in comparison to the role of government. ANCSA has not, by itself, enabled Natives "to compete with non-Natives and to raise their standard of living through their own efforts."[8]

SUBSISTENCE

For many Alaska Natives, subsistence continues to provide a large proportion of food requirements. Statewide data are not available, but the combined results of several regional studies on subsistence indicate that 35 percent of Alaska's Natives obtain at least half their food from subsistence activities, compared to 12 percent of Alaska's non-Natives.[9]

In the absence of comprehensive, longitudinal data, it is not possible to state with confidence the degree to which dependence on subsistence has changed since ANCSA. It is also impossible to state what role ANCSA and ANILCA have played in increasing or decreasing Natives' dependence on subsistence.

Figure 11-8
PROPORTION OF FOOD FROM SUBSISTENCE



Source: Kruse, J., Subsistence and the North Slope Inupiat: The Effects of Energy Development, Institute of Social and Economic Research, MAP Monograph No. 4, Anchorage, 1982; Lewis Berger and Associates, Western Arctic Transportation Study, Survey Report, Fairbanks, 1981; Institute of Social and Economic Research, Alaska Public Survey, unpublished data, 1979.

INCOME

COMPARISONS

Income for Alaska Native families has increased since passage of ANCSA, but other than for individuals employed in ANCSA corporations, the impact of the act has been small.

Cash income for the average Native family was $15,921 in 1979. This amount reflects a 39-percent increase in real income (measured in 1979 dollars) from 1969 to 1979. During the same period, real income for non-Native families increased 16 percent to $28,395. Thus, although real income increased by a larger percentage for Natives than for non-Natives, Native family income remained far below that of non-Native families. Average Native family income was 56 percent of average non-Native family income in 1979.

The percentage of Native families receiving public assistance declined from 25 percent in 1969 to 23 percent in 1979. During the same period, the percentage of Alaska's non-Native families receiving public assistance increased from 2 percent to 4 percent. (See "Families Receiving Public Assistance" in Figure 11-9.) Nevertheless, the proportion of families requiring public assistance remains higher for Native families than for non-Native families.

The proportion of Natives below the official poverty level declined from 44 percent in 1970 to 26 percent in 1980. During the same period, the proportion of non-Natives below the poverty level increased from 7 percent to 8 percent. Again, despite the relative gains made by the Native population, the proportion of the population living in poverty is greater for Natives than for non-Natives.

In the Calista Region, the proportion of Natives living below the poverty level was 37 percent, the highest for all 12 regions. Sealaska, at 11 percent, shows the lowest proportion of Natives below the poverty level. Table E-3 in Appendix E provides data on poverty in the Alaska Native population by region.

ANCSA CASH DISTRIBUTIONS

Cash distributions of Alaska Native Fund monies to individuals varied in size, depending on the individual's shareholder status and, to some degree, on the particular corporation(s) to which he or she was enrolled. The data needed to calculate the precise amounts paid to individual shareholders are not available. A 1977 report of the Alaska Native Foundation states that village shareholders received approximately $410 each as their entire cash settlement, and that as of 1977 the shareholders who had elected at-large status had received about $2,250 on average.[10] It has been estimated that at-large shareholders would receive a total of approximately $6,525 from the Alaska Native Fund.[11] (Payments to village shareholders ceased after 5 years, whereas at-large shareholders received payments over the life of the Fund distributions.)

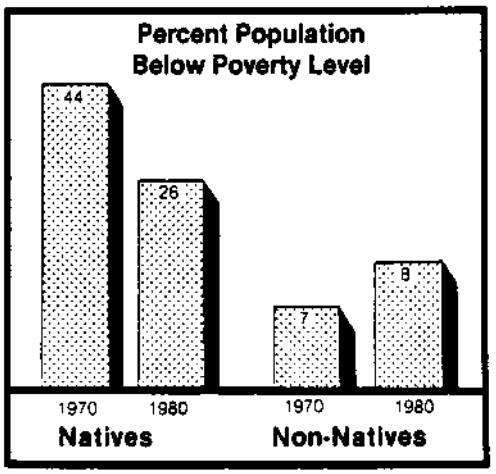
Figure 11-9
INCOME COMPARISONS

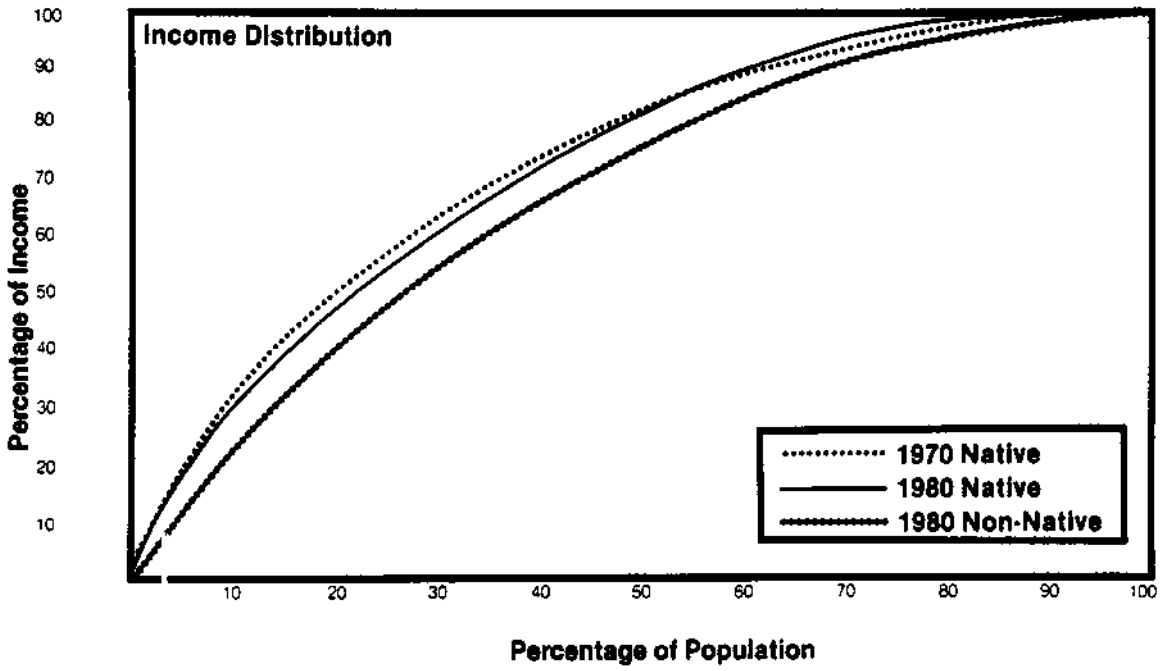
Median Family Incomes

	1969 Actual	1979$'s	1979
Native Families	$5,799	$11,424	$15,921
All Families	$12,443	$24,513	$28,395

Families Receiving Public Assistance

	1969	1979
Native	25%	23%
Non-Native	2%	4%





Source: Bureau of the Census Publication Nos. PC(51)-64, PC(1)-C3, and PC80-1-C3.

CORPORATE DIVIDENDS

When ANCSA 85 Survey respondents were asked if they had received dividends paid by their village and regional corporations, 45 percent reported receiving dividends from their regional corporations, 15 percent reported receiving dividends from a village corporation, and 26 percent reported receiving dividends from both. It is not possible to determine the accuracy of the respondents' answers on this point. Some may have confused Alaska Native Fund distributions with corporate dividends; some who did receive dividends may have forgotten that they did. The most that can be said is that 86 percent believe that their corporations have paid them dividends, while 14 percent believe that their corporations have not.

HOUSING

In FY 80, the Federal Government spent $2.8 million to provide housing in Alaska.[12] Federal aid has helped reduce the average age of housing in rural Alaska; whereas in 1970 one in five rural housing units was under 10 years old, in 1980 the figure was only one in two. Federal aid has also helped reduce the percentage of overcrowded households and the number of households without plumbing.

For Natives, there was a substantial reduction from 1970 to 1980 in the number of households lacking plumbing. The percentage of overcrowded households (those with more than one occupant per room) dropped as well, as the average number of persons per Native household decreased from 5.2 in 1970 to 3.8 in 1980.

Yet, although Natives had less crowding, more plumbing, and newer housing in 1980 than in 1970, they had more crowding and less plumbing than non-Natives. Thirty-seven percent of Native households had more than one occupant per room, while only 7 percent of non-Natives' did. Forty percent of Alaska's Native households lacked plumbing, compared to 6 percent of non-Native households.

ANCSA's role in improving housing for Natives has been minor. No data exist on dollar amounts in housing aid provided to individuals from ANCSA corporations, but there is no indication of a major effort. Seven percent of Natives reported receiving aid from their corporation or corporations.

EDUCATION

Education is the prominent exception to the general proposition that ANCSA has had little impact on the status of Alaska Natives. The structure of Alaska's rural education system has undergone considerable change since the passage of ANCSA, moving toward decentralized control of program and service delivery. Recent authoritative work[13] points to ANCSA as a major factor in changing the rural educational system.

ANCSA'S ROLE IN DECENTRALIZATION OF THE RURAL EDUCATIONAL SYSTEM

In 1970, the State of Alaska operated 85 schools, serving approximately 2,300 students, in rural Alaska. Many small communities did not have high schools: 28 percent of Native high-school-age children lived in communities which did not operate a high school. To attend high school, these students enrolled in boarding schools or lived with friends or relatives in other communities. The rural school system was characterized by centralized, professional control and by long periods of separation from family for teenagers.

In 1971, the State legislature created the Alaska State-Operated School System to govern schools in rural Alaska, removing responsibility from the State Department of Education. This action came in response to "increasing interest on the part of rural Alaskans for a stronger role in educational policymaking." It did not do away with the pressure for change, however. Dissatisfaction with lack of local control and lack of high school programs in small communities still existed.

In this atmosphere, ANCSA provided the stimulus to further changes in the State's educational system. Whereas the land claims associations of the 1960's had conducted a range of social service programs, ANCSA contained no provision for the continuation of those activities; as profit-making entities, the ANCSA corporations could not undertake them. Hence ANCSA had the indirect impact of stimulating the development of organizations whose major role was the delivery of public services in rural regions. Further, in setting up regional and village Native corporations with cash and wealth in land, ANCSA was an important force in changing the social and political structure of rural Alaska and thus creating an organizational impetus for decentralized educational services. Because education was the most visible and most prevalent government service performed in rural Alaska, its decentralization became a focal point for demands for local control.

In 1975 the State school system was decentralized, with control over most State schools transferred to 21 regional school districts called Rural Educational Attendance Areas (REAA's). Concurrently, the Federal Government instituted policies intended to increase local control. Bureau of Indian Affairs (BIA) schools were to be transferred to the State, although 43 schools had yet to change hands in 1975. Federal withdrawal from education in Alaska accelerated under the Reagan administration and was to have been completed in 1984. In addition, litigation resulted in a 1976 out-of-court settlement in which the State Department of Education agreed to actively pursue funds for rural secondary education.[14] As a result, the State has constructed schools in nearly 100 villages and instituted many new high school programs.

EFFECTS OF DECENTRALIZATION—ANCSA'S INDIRECT IMPACT

Assessing the impact on student achievement of the changes in Alaskan education is a tentative enterprise, but census data show that the educational attainment of Alaska Natives, urban and rural, was higher in 1980 than in 1970. The proportion of young adults (age 18 to 24) who had completed high school in 1970 was 37 percent. In 1980, the proportion had increased to 59 percent. Among non-Natives, the proportions of high school graduates were 68 percent in 1970 and 83 percent in 1980. Some of Alaska's rural schools have become more responsive to the needs of Native children, and bilingual education can now be found in most rural schools.

Decentralization of education and establishment of high school programs in rural villages have had and will continue to have an impact on other indicators of Native status. New educational programs and increased facilities are partly responsible for the growth in local government employment in rural Alaska, and that growth increases income and lessens dependence on public assistance. Population growth and migration patterns may also be influenced by the availability of educational services in villages. If so, ANCSA's indirect effects may be greater than the direct effects of the cash distribution and the corporations' activities. In addition, the ANCSA corporations have played a direct role in education. They have granted scholarships and provided internships for Alaska Natives. The ANCSA 85 Survey inquired into the extent of such benefits among the Native population and found that 11 percent had received some educational aid from an ANCSA corporation. Further, 13 percent reported receiving job training or participation in a vocational program. (The extent of overlap between the two groups was not determined.)

Chapter 12

STOCK OWNERSHIP

OVERVIEW

The benefits granted Alaska Natives by ANCSA were to accrue to them through their participation as shareholders in corporations. Different people expected different things from the corporations created by ANCSA, yet one expectation is clearly mandated by the act's structure and intent: in addition to distributing the cash settlement in accordance with ANCSA, the regional corporations were to develop their assets so as to provide their shareholders with meaningful cash dividends. Many thought that in so doing, the corporations would provide enhanced employment opportunities for Alaska Natives as shareholders, as well as whatever other benefits a healthy and sound corporation might extend to its shareholders.

This chapter addresses three important questions in regard to the corporate structure and its role as a means of delivering ANCSA benefits:

1. What was the composition of the shareholding population in 1983, and how did it compare to the shareholding population in 1971?

2. What shareholder attitudes toward ANCSA and the ANCSA corporations might influence further changes in the composition of the shareholding population? The answer to this question is perhaps the most important information derived by the ANCSA 85 Survey.

3. What benefits have Alaska Natives so far received from ANCSA and the corporations?

Each of these questions arises because of one important fact: the Alaska Native population and the shareholding population are becoming less and less congruent with the passage of time.

This chapter is organized in reference to the three main research questions. The shareholder profile in the first section utilizes data provided by regional corporations to describe the changes in stock ownership that have occurred. Eight regional corporations responded to our requests for information on shareholders' race, age, and residence, and on the number of shareholders deceased and inheriting stock. The following section discusses attitudes towards sale of stock and reenrollment. It is based on data derived from the ANCSA 85 Survey. The last section reports information from the survey and from the regional corporations' annual reports to address the perceived impact of ANCSA in terms of services to shareholders.

The chapter points to two important conclusions: (1) the proportion of the Alaska Native population participating in ANCSA through stock ownership has decreased and will continue to decrease under present conditions, and (2) in the event of the removal of restrictions on sale of stock in Native corporations, the reduction in the proportion of Alaska Natives who are shareholders will accelerate.

SHAREHOLDER PROFILE

Although sale of stock in Native corporations is restricted by law until 1991, there has been considerable change in numbers of shareholders and distribution of shares. Eight regional corporations responded to the ANCSA 85 Study's request for information on shareholders' race, age, and residence and on the number of shareholders deceased. This section describes the shareholding population and discusses changes in its composition.

THE ENROLLED POPULATION

All U. S. citizens living on December 18, 1971, who had one-fourth or more Alaska Indian, Eskimo, or Aleut blood, and any persons regarded as Native by the village or group of which they were members, were declared eligible to enroll as beneficiaries of ANCSA [section 3(b)]. Only a small percentage of eligible individuals failed to enroll.

Following the close of the second (reopened) enrollment under P.L. 94-204, enrollment to all regions and reserves totaled 80,239 individuals. Of those individuals, 65,418 were enrolled to both a region and a village; 4,426 were enrolled to the 13th Region; 8,873 were at-large shareholders enrolled to one of the 12 Alaska regional corporations but not to a village; and 1,522 were enrolled to a reserve.

Table 12-1
ENROLLMENT BREAKDOWN

	Number	Percent of Total
All Enrolled	80,239	100.0
Village	65,418	81.5
At-large	8,873	11.5
Region 13	4,426	5.5
Reserve	1,522	2.0

Changes in the composition of the Native population and transfers of stock in ANCSA corporations have resulted in three categories of Alaska Natives:

1. Natives who failed to enroll but have since obtained stock in a Native corporation through inheritance.

2. Natives born after December 18, 1971, who have inherited stock.

3. Natives born after December 18, 1971, who own no stock.

Within the population of shareholders there are, in addition to the various categories of Native shareholders, both non-Natives who have inherited stock and institutional shareholders, such as the State of Alaska, who hold stock in trust for shareholders in their custody.

DECEASED SHAREHOLDERS AND STOCK TRANSFERRED BY INHERITANCE

To date, most transfers of stock in Native corporations have come about through inheritance. All eight regions responding supplied information on the numbers of shareholders deceased since 1971. Table 12-2 shows them in order of percentage of shareholders deceased.

Table 12-2
SHAREHOLDERS DECEASED
Eight Regional Corporations

Regional Corporation	Percent
Bering Straits	9.9
Ahtna	8.9
Aleut	8.0
Bristol Bay	7.8
Doyon	7.8
NANA	7.4
CIRI	7.3
Sealaska	6.3

The average of the percentages given is 7.9, which compares to a reported 1980 crude death rate for Alaska Natives of 7.6 per 1,000 of population. Taking into account shareholders who live outside Alaska, the death rate and percentage of shareholders deceased are comparable.

This death rate, when applied to the total enrollment, indicates that approximately 6,300 of the original enrollees have died, bequeathing roughly 680,000 shares of regional corporation stock and 500,000 shares of village corporation stock. The average number of shares in regional corporations transferred per death was 107.0 in the eight regions reporting.[15] Those regions declared that a total of 385,000 shares transferred due to inheritance from 3,574 deceased shareholders—including some who were not originally enrolled, some who had inherited stock which they bequeathed, and others who owned more than 100 shares due to mergers and consolidations.

Table 12-3
SHARES DISTRIBUTED THROUGH INHERITANCE
Eight Regional Corporations

Regional Corporation	Number of Deaths	Shares Distributed	Average
Ahtna	96	18,895	196.8
Aleut	261	26,100	100.0
Bering Straits	627	62,700	100.0
Bristol Bay	402	40,200	100.0
CIRI	486	46,100	94.8
Doyon	747	74,700	100.0
NANA	359	55,600	154.8
Sealaska	998	101,467	101.7

Of the stock transferred by inheritance, varying percentages went to non-Natives. Information was provided by the regional corporations in two forms. Five regions reported the number of non-Native persons inheriting stock, while three other regions reported the number of shares transferred to non-Natives.

Table 12-4
PERSONS INHERITING STOCK
Five Regional Corporations

Regional Corporation	Native	Non-Native	Percentage Non-Native
Ahtna*	195	9	4.4
Aleut	530	19	3.4
Bering Straits	152	54	26.2
Bristol Bay	930	71	7.6
Doyon	2,244	105	4.5

*Represents each case. There may be double counting of those who inherited stock from more than one person.

Table 12-5
SHARES DISTRIBUTED THROUGH INHERITANCE TO NATIVES AND NON-NATIVES
Three Regional Corporations

Regional Corporation	Native	Non-Native	Percentage Non-Native
CIRI	36,790.7	9,319.3	20.2
NANA	55,600	-0-	-0-
Sealaska	82,412	15,055	18.8

The tables show that in some regions the number of shares transferred to non-Natives is significant. While current non-Native ownership is small, transfers through inheritance will result in an increasing number of non-Natives who possess regional corporation stock, and possibly, voting rights beginning in 1991.

CURRENT NUMBER OF SHAREHOLDERS

All eight regional corporations reporting included data on the current number of shareholders. (Table 12-9 summarizes this data and compares the current number of shareholders in each region to the enrollment figures.)

RESIDENCE AND AGE OF SHAREHOLDERS

Five regions reported current residences of shareholders, as summarized in Table 12-6. Two of the regions have more shareholders outside the region than living in the region (Ahtna and Aleut), two have a large proportion of non-resident shareholders (Doyon and Sealaska), and only one (NANA) shows less than one-fourth of its shareholders as nonresidents.

Table 12-6
RESIDENCE OF REGIONAL SHAREHOLDERS
Six Regions

Regional Corporation	Living in Region	Living Outside	Percent Outside Region
Ahtna	497	507	50.3
Aleut	1,521	1,623	51.6
Bristol Bay	3,170	1,921	31.3
Doyon	6,719	3,533	34.4
NANA	3,358	849	20.1
Sealaska	8,504	6,338	43.7

Six regions reported the ages of their current shareholders. Taking age 55 and above as the definition of an elder, Table 12-7 shows that from 10.4 percent to 15.4 percent of shareholders in the regions are elders. Totals for the six regions show that 12.9 percent of their shareholders are over 55, compared to 9 percent of Alaska's Native population. Since original enrollment is roughly equal to current number of shareholders (see Table 12-9), the number of shareholders who are elders is approximately 10,000 to 11,000. We cannot estimate what proportion live in Alaska from the data given. (NANA reports 69 shareholders of age 55 or older living outside the NANA region.)

Table 12-7
AGE DISTRIBUTIONS OF SHAREHOLDERS
Seven Regional Corporations

Regional Corporations	Under 20		20 - 54		55 and Over	
	#	%	#	%	#	%
Ahtna	261	26.3	607	61.0	126	12.7
Aleut	628	20.1	2005	64.5	476	15.4
Bristol Bay	1206	23.0	3354	64.1	678	12.9
CIRI	1512	24.4	4040	65.2	645	10.4
Doyon	2144	22.6	5897	62.0	1464	15.4
NANA	1198	26.0	2833	61.6	565	12.3
Sealaska	3376	22.7	9704	65.4	1762	11.9

Within the "under 20" category are the so-called "afterborns" or "new Natives"—those born after passage of ANCSA in 1971. Seven regional corporations provided data identifying shareholders under 15 years of age (a group which includes some ANCSA enrollees as well as children who have inherited stock). Table 12-8 shows the number and percentage of corporate shareholders under age 15 by region.

Table 12-8
SHAREHOLDERS UNDER AGE 15
Seven Regional Corporations

Regional Corporation	Under 15	Percentage
Ahtna	111	11.0
Aleut	233	7.4
Bristol Bay	339	7.6
CIRI	567	9.1
Doyon	886	9.3
NANA	425	9.2
Sealaska	1,236	8.3

Only one corporation (CIRI) provided ages of shareholders in 1971. Their records show that 45.1 percent of CIRI shareholders were under 15 in 1971, reflecting the population of Alaska Natives at the time. CIRI's percentage of young shareholders has dropped to 9.1 percent since 1971. CIRI also reports that 40 individuals born since 1971 have inherited stock, 34 of them Natives.

Table 12-9
NUMBER OF ENROLLEES COMPARED TO
NUMBER OF 1983 SHAREHOLDERS
Eight Regional Corperations

Regional Corporation	Alaska Native Roll	1983
Ahtna	1,074	1,004
Aleut	3,249	3,144
Bering Straits	6,333	6,539
Bristol Bay	5401	5238
CIRI	6,264	6,197
Doyon	9,061	10,252
NANA	4,828	4,628
Sealaska	15,787	14,842
TOTAL	51,997	51,844

The table shows that the number of shareholders in the regions is litt.e changed from enrollment to the present. Six of the corporations have fewer shareholders than original enrollees. Only Doyon and Bering Straits have gained shareholders—although, according to census data, the population of Alaska Natives residing in Alaska increased 26.5 percent from 1970 to 1980.

SUMMARY

The data reported by eight regional corporations indicates that the number of individuals participating in ANCSA through ownership of corporate stock is a decreasing proportion of the Native population as a whole and a decreasing number of individuals in most regions; that young Natives are not participating in ANCSA through ownership of stock in significant numbers; that non-Native ownership of stock is increasing faster than ownership by nonenrolled Natives, that a substantial number of shareholders do not live in the regions to which they are enrolled; and that persons over 55 represent a substantial proportion of shareholders.

The changes in stock ownership reported by the regional corporations have occurred under a prohibition on the sale of stock. That prohibition expires in 1991. When stock becomes alienable, further changes in stock ownership will occur. Trends already present in some corporations—such as greater non-Native ownership, fewer shareholders, and absentee ownership—may accelerate.

ATTITUDES TOWARDS ANCSA AND ANCSA CORPORATIONS

The corporations created by ANCSA have been expected to do more than earn profits. They have been charged by Congress with managing the land and money settlement so as to improve the social and economic status of Alaska Natives. Implicit in this expectation is the assumption that the shareholders of the corporations and Alaska Natives are more or less synonymous.

As the foregoing analysis of changes in the shareholding population shows, that is increasingly less the case. Every year, due to births and deaths alone, the proportion of Alaska Natives who are shareholders of ANCSA corporations shrinks. Furthermore, information gathered by the ANCSA 85 Survey indicates that the proportion of Natives who are shareholders in ANCSA corporations will begin to diminish faster after restrictions on sale of stock end in 1991.

ATTITUDES TOWARDS SALE OF STOCK

Seven of every 10 ANCSA 85 Survey respondents who owned shares in a regional corporation said they would not sell their stock. Only 5 percent said they would sell, while the remainder divided evenly between a "maybe" and a "don't know" opinion.

Table 12-10
"WOULD YOU EVER SELL YOUR STOCK?" (Question 15a)

	Regional Stock n = 1291	Village Stock n = 1193*
Yes	5.8%	5.1%
Maybe	12.5%	15.9%
No	68.6%	69.9%
Don't Know	13.1%	14.2%

*178 cases removed due to no response/no membership in village corporation

It would appear from Table 12-10 that few Natives are willing to sell their shares. While a small proportion definitely would consider selling, and a larger proportion might sell, most Alaska Natives say they will not sell. But when response patterns on the survey questions concerning sale of stock are subjected to closer scrutiny, more ambiguity and complexity are found. Many of those who said in response to Question 15a that they would not sell declared in response to Question 15b that they would consider selling under certain circumstances, including price offered, personal need, and the identity of the buyer. These "conditional refusals" were rank-ordered, from high willingness to sell to no willingness to sell, by development of a scale from the logical combinations of response found prevalent among those surveyed.

The construction of the scale involved the following steps:

1. The respondent was determined to have indicated that he or she was a shareholder in an ANCSA corporation.

2. If the respondent answered "yes" to Question 15a, "Would you ever sell your corporation stock?" he or she was ranked high in willingness to sell and was placed on the "Will sell" category.

3. If the respondent answered "maybe" or "don't know" to Question 15a, he or she was ranked in the next highest category of willingness to sell, "May sell."

4. If, in response to Question 15b, the respondent indicated that he or she would sell under conditions of personal need or if offered the right price, he or she was ranked in the second category, "May sell."

5. If, in response to Question 15b, the respondent indicated he or she would sell only to the right person, he or she was placed in the third category of willingness, "Sell with conditions."

6. If the respondent indicated he or she would not sell in all parts of Question 15, and in Question 16, "What do you plan to do with your stock?" he or she was placed in the category of least willingness, "Not selling."

Table 12-11 displays the results of the more detailed interpretation of the responses made possible by construction of this scale of responses.

Table 12-11
WILLINGNESS TO SELL
(Percentage Response)

	Regional Stock	Village Stock
Will sell	5	4
May sell	37	36
Sell w/conditions	11	10
Not selling	47	50

As the table shows, many of the 68 percent who stated in response to Question 15a that they would not sell did mention, when queried further, a willingness to sell on certain conditions or given certain considerations. The conditions most frequently mentioned by respondents were that the stock stay in Native hands or within their immediate families. Those who "may sell" were those who would consider such factors as price and personal need, but did not appear to condition sale on retention in Native hands. When ordered in this manner, the proportion of those who would consider selling to non-Natives at least doubles for both regional and village stock. Low desire to sell is coupled closely with the desire to keep shares of Native corporations in Native (usually immediate family) hands, as Table 12-12 illustrates:

Table 12-12
SCALE OF WILLINGNESS TO SELL REGIONAL STOCK BY RESPONSE TO QUESTION 13b: "SHARES IN NATIVE CORPORATIONS SHOULD ONLY BE SOLD TO OTHER ALASKA NATIVES"

(n = 1129)

Response to Q. 13b	Will Sell	May Sell	Sell w/Cond	Not Selling	Total
Agree	44.9%	54.6%	80.1%	67.2%	63%
Disagree	45.7%	19.6%	14.3%	18.7%	20%
Don't know	9.4%	25.8%	5.6%	14.1%	17%

Those with low willingness to sell tend to favor restricting sale of stock to Natives only, while those with a strong willingness to sell do not show a strong tendency to favor restrictions.

In the middle categories, the same direction of response was evident. Among those who would sell their stock under "depends who buys it" circumstances, 80 percent favor restrictions. Thus it appears that most Natives do not want to sell their stock and favor restrictions on the sale of it. Many appear willing to sell only if to another Native (including family members).

It appears that removal of the ban on sale of ANCSA corporation stock would not result in immediate changes in the composition of the shareholding population. Sale of stock by those who definitely wish to sell could, even if sale to non-Natives is restricted, result in a reduction in the proportion of Alaska Native population holding shares—although that result is not certain to occur. In any case, the proportion of shareholders likely to sell immediately is small (5 percent plus an uncalculated percent of "may sell" and "sell with conditions" respondents).

Influence of Age and Location of Residence

Willingness to sell was also analyzed in relationship to age and residence variables. As shown in Table 12-13, both exercise statistically significant influences and evidence certain noteworthy tendencies.

For example, the young appear least likely to sell both regional and village stock. However, the strength of this pattern diminishes when one notes that over 60 percent of this group appears in the "may sell" category—the "gray area."

Table 12-13
WILLINGNESS TO SELL REGIONAL & VILLAGE STOCK BY SIZE OF LOCATION OF RESIDENCE AND AGE

Percentage Response
[Responses regarding village stock are shown in parentheses]

	(1) Will sell	(2) May sell	(3) Sell w/cond.	(4) Not selling
A. Location				
Village	6 (4.5)	37 (36)	10 (9)	47 (50)
Reg Ctr	3 (3)	34 (33)	9 (8)	53 (56)
City	3 (4)	40 (36)	13 (12)	43 (47)

Table 12-13
(continued)

	(1) Will sell	(2) May sell	(3) Sell w/cond.	(4) Not selling
B. Age				
13-19	3 (1.4)	61 (60)	14 (11)	21 (27)
20-29	3 (3)	40 (38)	13 (12)	43 (47)
30-39	3 (5)	43 (36)	7 (8)	46 (51)
40-49	6 (6)	39 (38)	14 (13)	42 (42)
50-59	12 (8)	27 (32)	9 (6)	51 (53)
60-69	10 (8)	28 (21)	10 (9)	51 (62)
70+	- (-)	5 (14)	8 (12)	87 (73)
TOTALS:				
Regional	5.0%	38.5%	11.0%	45.4%
Village	(4.5%)	(36.6%)	(10.4%)	(48.5%)

As expected, the old are the least likely to consider selling stock; over 70 percent are in the not selling category. Area of residence shows a surprising lack of influence on patterns of willingness to sell.

Influence of Knowledge About ANCSA

Table 12-14 displays the relationship between respondents' level of knowledge of ANCSA and willingness to sell their stock. As an independent factor of influence in willingness to sell, level of knowledge shows two striking tendencies:

1. While "little or no" knowledge about ANCSA does not increase likelihood to sell stock, it does not serve to increase likelihood of not selling. Rather, a majority of those who knew little about ANCSA were in the gray "may sell" category.

2. A disproportionate number of those who apparently know a lot about ANCSA also show a willingness to sell stock (6.5 percent). High levels of knowledge, however, do not appear to affect willingness significantly.

Table 12-14
WILLINGNESS TO SELL REGIONAL CORPORATION STOCK BY LEVEL OF KNOWLEDGE ABOUT ANCSA
(n = 1,129)

Willingness to sell	Level of Knowledge: Little to None (score 0-2)	Average (score 3-6)	A Lot (score 7-9)
Will sell	3.2%	4.4%	6.5%
May sell	53.5%	32.6%	34.8%
Sell w/cond.	5.3%	12.7%	10.7%
Will not sell	38.0%	50.2%	48.0%

Level of knowledge appears to have a conditional effect on willingness to sell, with those with less knowledge more likely to report in the "may sell" range. This trend is probably influenced by the high percentage of those with little knowledge who responded "don't know" in reference to Question 15, "Would you sell your regional/village stock?"

DESIRE TO REENROLL

Another factor bearing on changes in the composition of the shareholding population involves the desire of some shareholders to belong to a different region or village than the one in which they currently own stock. A number of individuals indicated that they did not understand their options at the time of enrollment. Others said they want to change, to be in the same corporation as family members. Some have undergone divorce and no longer want to be enrolled in the same corporation as a former spouse. A few indicated that they believed the persons responsible for enrollment had told them they had to enroll in a corporation in which they did not want to enroll. Still others simply want to move from a corporation they see as unsuccessful to one they consider successful.

The ANCSA 85 Survey found that about one-fifth of the Alaska sample wanted to reenroll and knew what change in enrollment status they would like to see—whether a change to a different region, village, or both, or a change to at-large status. A small proportion (1 percent) of the total Alaska sample would not enroll if they had it to do over again. Another one-fifth of the population answered that they did not know if they would enroll the same way. The majority, 59 percent, would enroll the same way.

Projected to the total enrollment of approximately 75,000 (excluding the 13th Region), the survey results indicate that as many as 15,000 shareholders would change their enrollment status if afforded the opportunity.

PERCEIVED IMPACT OF ANCSA

As discussed at the outset of chapter 11, Congress expected ANCSA to lead to improved social and economic status and to contribute to greater self-determination for Alaska Natives. The analysis in Chapter 11 indicates the social and economic status of Alaska Natives has improved, but that ANCSA's impact on this improvement is not significant.

The ANCSA 85 Survey provides information on the degree to which individual Natives believe ANCSA has affected their lives in general terms. More Natives—but not many more—believe ANCSA has affected their lives than believe it has not. There is no majority for either position since a full fifth of the ANCSA sample responded "don't know." Eighteen percent said they felt ANCSA had affected their personal lives "a lot," 25 percent said it had affected their lives "somewhat," and 35 percent said it had had no effect. The "don't know" respondents appear to fall between those who say ANCSA has affected their lives somewhat and those who perceive no impact.

Table 12-15
PERCEIVED IMPACT OF ANCSA

None	Don't Know	Some	A Lot
35%	21%	25%	19%

When taken together, those who believe ANCSA has had no impact and those who perceive too little impact to say are the majority of respondents. On the basis of the survey, it appears that if ANCSA has improved the social and economic status of Alaska Natives, the majority are not yet aware of it.

BENEFITS TO SHAREHOLDERS

SHAREHOLDER SERVICES

Survey Findings

To achieve greater specificity on the question of ANCSA's impact, the ANCSA 85 Survey also asked respondents if they had been employees of ANCSA corporations, had received dividends from ANCSA corporations, or had requested or received any of a number of shareholder services. As reported in

chapter 11, one-fourth of the respondents were or had been employees of a Native corporation. Nearly all (85 percent) reported receiving dividends. Information from two sources--the ANCSA 85 Survey and the regional corporation annual reports—indicates that, in addition to jobs and dividends, shareholder services have benefited some shareholders.

Consultation with the officers in regional corporations resulted in a list of shareholder services, which the survey presented to respondents. They were asked (Question 18) to indicate whether they had requested or received each service listed. Table 12-16 summarizes the results of the research, but the data are presented with several qualifications as to reliability.

Table 12-16
PROPORTION OF RESPONDENTS WHO REQUESTED OR RECEIVED VARIOUS TYPES OF SERVICES

Service	Requested (%)	Received (%)
Job training/vocational	17	12
Education	14	10
Health care	10	10
Legal advice	9	7
Shareholder information	19	27
Heir identification	10	7
Employment assistance	18	8
Financial help	18	8
Permission to hunt on corporation land	8	8
Home improvement	11	7
Other	3	1

It is not clear whether respondents were able to distinguish between services offered by the nonprofit corporations and those offered by the for-profit corporations. In such areas as employment, training, health, eduction, and home improvement, some of the nonprofits have established programs but most of the for-profits have not. The difficulty of distinguishing is compounded by the fact that while some of the nonprofits are called

associations, some are called corporations. The question itself makes no attempt to specify regional or village "for-profit" corporation. As a result of the ambiguity, the survey information can be taken either as an overreporting of services received from ANCSA corporations or as an underreporting of services received from all sources.

Aside from questions about the reliability of the data, it is also pertinent to note that the for-profit corporations have engaged in limited assistance to shareholders--although they were not expected to be involved in service areas. As reported in the discussion of changes in education in Chapter 11, ANCSA made major direct impact on the structure of service delivery in rural Alaska in that it did not provide for the ANCSA-created corporations to continue delivery of services provided by the land claims associations. The purpose of this section is not to imply that the corporations should (or should not) have provided the services listed in Table 12-16, but to provide information on how respondents perceived the impact of ANCSA. The data indicate that a proportion of the respondents attribute services they have received to ANCSA corporations. The survey does not pretend to measure levels of service delivery, which may be more or less than shown in each service category. Yet, although not precise, the information gathered by the survey does indicate that only a minority of ANCSA shareholders have received any one of the services listed. If anything, respondents have overreported services received from ANCSA for-profit corporations.

The responses indicated that the service most often requested from corporations is shareholder information. Such information is readily provided; more shareholders receive information than request it. Employment assistance, financial assistance, and job training are requested next most often. In each of these categories, however, fewer reported receiving assistance than requesting it.

Annual Reports of Regional Corporations

The annual reports of the regional corporations provide further perspective on service delivery which is valuable in that it is authoritative and unambiguous as to source of service. Of the 13 regions, 6 reported providing services to shareholders. Four of the seven regions that did not report providing services experienced financial losses in the report year. Three of the corporations that reported providing services also reported financial losses.

Regional corporations reported providing a wide range of services to shareholders. All six said they sponsored scholarships for shareholders; four provided scholarships or internships for a total of over 200 students, and two did not indicate the number of scholarships they provided. Several corporations sponsored cultural programs, and gatherings. Three indicated that they provided employment counseling for shareholders on a formal basis, and two corporations provided venture capital for shareholders' small businesses. Several corporations provided sponsorship for elders' conferences and one had established a program to provide speakers for high school graduations and similar functions.

Although not directed to shareholders individually, a few corporations reported providing assistance to village corporations. (In this regard, staff for the ANCSA 85 Study note that in the course of the research, a number of individuals mentioned the need for more technical advice and management assistance to the village corporations.) Services to villages included assistance on land issues, accounting, and other forms of management consultation.

In comparison to survey data, the regional corporations' reports did not indicate involvement in health care, legal advice (aside from questions of stock inheritance), or home improvement. The corporation reports do, however, confirm shareholders' perceptions that job training, education, shareholder information, heir identification, employment assistance, and financial help are being provided. (Permission to hunt on corporation land is not likely to be reported in a corporation's annual report.)

LAND CONVEYANCES TO INDIVIDUALS

In addition to Alaska Native Fund distributions and other monetary benefits from the corporations, ANCSA provided for conveyance of land to individuals. However, for most Natives, the direct benefit has been nil. Only two sections of the act provide for transfer of land ownership to individuals: sections 14(c)(1) and 14(h)(5).

As discussed in chapter 8, only 39 applications for primary places of residence were filed pursuant to ANCSA section 14(h)(5), primarily because members of a potential Native group were prohibited from also submitting applications under section 14(h)(5). Were it not for this prohibition, a large number of individuals could have filed under section 14(h)(5) as a backup. As it is, a number of individuals whose groups have attempted unsuccessfully to secure eligibility have ended up without any land benefits whatsoever.

As discussed also in chapter 8, section 14(c)(1), as amended, provides that the village corporation must reconvey to all Native and non-Native occupants the surface estate in tracts they occupied (as of December 18, 1971, with certain exceptions) as primary places of residence, primary places of business, subsistence campsites, or headquarters for reindeer husbandry. ANILCA amended section 14 of ANCSA to allow the village corporations to reconvey small homesites to shareholders. Although not required to do so, many village corporations that have received title to land have taken advantage of this amendment to satisfy the desire of individual shareholders for land within the village.

Since these transfers of land to individuals merely give legal status to existing occupancy, their effect will be small. On the other hand, the effect on individuals of the land settlement in general is profound. At a conference of elders in the spring of 1982, Evelyn Alexander of Minto stated:

> I wonder about 1991. Can we have some kind of protection, as we had before [before 1991]? We're fighting this for our kids and grandchildren and everything. Can we find a way to keep it [the land] safe so we don't lose it in 1991?

The Alaska Federal of Natives focused almost entirely on this issue at its 1983 convention, and several of the regional corporations have held workshops for their shareholders on the subject. There is still much confusion about the concept of land ownership among some shareholders, who continue to hold to a more traditional concept associated with use. Fear of losing the land through sale, or failure of regional and village corporations, or corporate takeover is prevalent among all shareholders.

SUMMARY

The analysis of the shareholding population and shareholders' attitudes toward ANCSA point to a reduction in the proportion of Alaska Natives who will participate in the land claims settlement through ownership of corporation stock. There exists today a large proportion of the Alaska Native population which does not own stock in an ANCSA corporation. Transfers of stock through inheritance have not kept pace with population growth. Transfers to non-Natives appear to be at least as numerous as transfers to Natives not on the Alaska Native Roll. By 1991, the number of Natives who do not own stock will approach or surpass the number who own stock.

After 1991, some shareholders will want to sell, depending on personal circumstances. As a result, some ANCSA corporations might have a non-Native majority. Some might maintain Native majority, but with stock concentrated in a few Native hands. Some will undergo little change after 1991. Which corporations will change and which will not is a matter that no one can predict with certainty.

In the aggregate, it is unlikely that the attitudes present in the shareholding population will result in diffusion of stock ownership to a greater proportion of the Native population. The majority indicate they will sell only to other Natives and family members or pass on their stock when they die. Yet enough are willing to sell, or would be willing under the right circumstances, that it is unlikely that stock will remain in Native hands—unless no non-Natives want to buy.

Meanwhile, it is not clear that substantial benefit has reached the current shareholders of ANCSA corporations. Most do not perceive any impact from ANCSA, and analysis of information on benefits—jobs, dividends, and shareholder services—indicates that they have been significant for only a minority of shareholders statewide.

Chapter 13

KNOWLEDGE ABOUT ANCSA AND ANCSA CORPORATIONS

OVERVIEW

The ANCSA 85 Survey sought answers to three research questions concerning shareholder knowledge about ANCSA and the ANCSA corporations:

1. How knowledgeable are shareholders about ANCSA?

2. Do shareholders want to know more about ANCSA and the corporations?

3. Where do shareholders obtain information about ANCSA and the corporations?

Survey responses indicate a reasonably high level of knowledge on the part of Alaska-resident shareholders. A majority of respondents believed their level of knowledge to be below average, however, and an even larger proportion expressed a desire to learn more. Respondents' sources of information varied with the individual and with the subject of inquiry—ANCSA, the village corporation, or the regional corporation.

LEVEL OF KNOWLEDGE

Level of knowledge about ANCSA was measured by asking respondents nine questions concerning the act[16] and constructing a cumulative scale[17] much in the same way as a teacher measures students' level of knowledge through testing and scoring. The mean (average) for all respondents' scores on the 10-point scale was 4.67—near the midpoint. That the mean was near the midpoint rather than extremely high or low strengthens the degree of confidence that can be placed in the ability of the set of questions to discriminate levels of knowledge. Had the mean been disproportionately high or low, the questions themselves might have been responsible for the distribution of scores. The 4.68 mean score indicates that the set of questions do indeed measure levels of knowledge of ANCSA.

The scores show a bimodal pattern of distribution. They tend to group near either end of the range of scores, with a larger proportion of respondents scoring either high or low than scoring in the middle range. The left column of Table 13-1 shows the distribution of the total sample of respondents.[18] The respondents tend to fall into two groups--those with avove-average knowledge about ANCSA (scores of 7 to 9) and those who know little about ANCSA (scores of 0 to 2). As the most frequent score in the total sample was 7, knowledge about ANCSA appears to be fairly high in general although some respondents know little, if anything.

Table 13-1 also shows the influence of location of residences on knowledge of ANCSA. It shows that location of residence has a weak influence on level of knowledge of ANCSA, with village residents apparently knowing less than residents of regional centers who, in turn, appear to know less than urban residents.

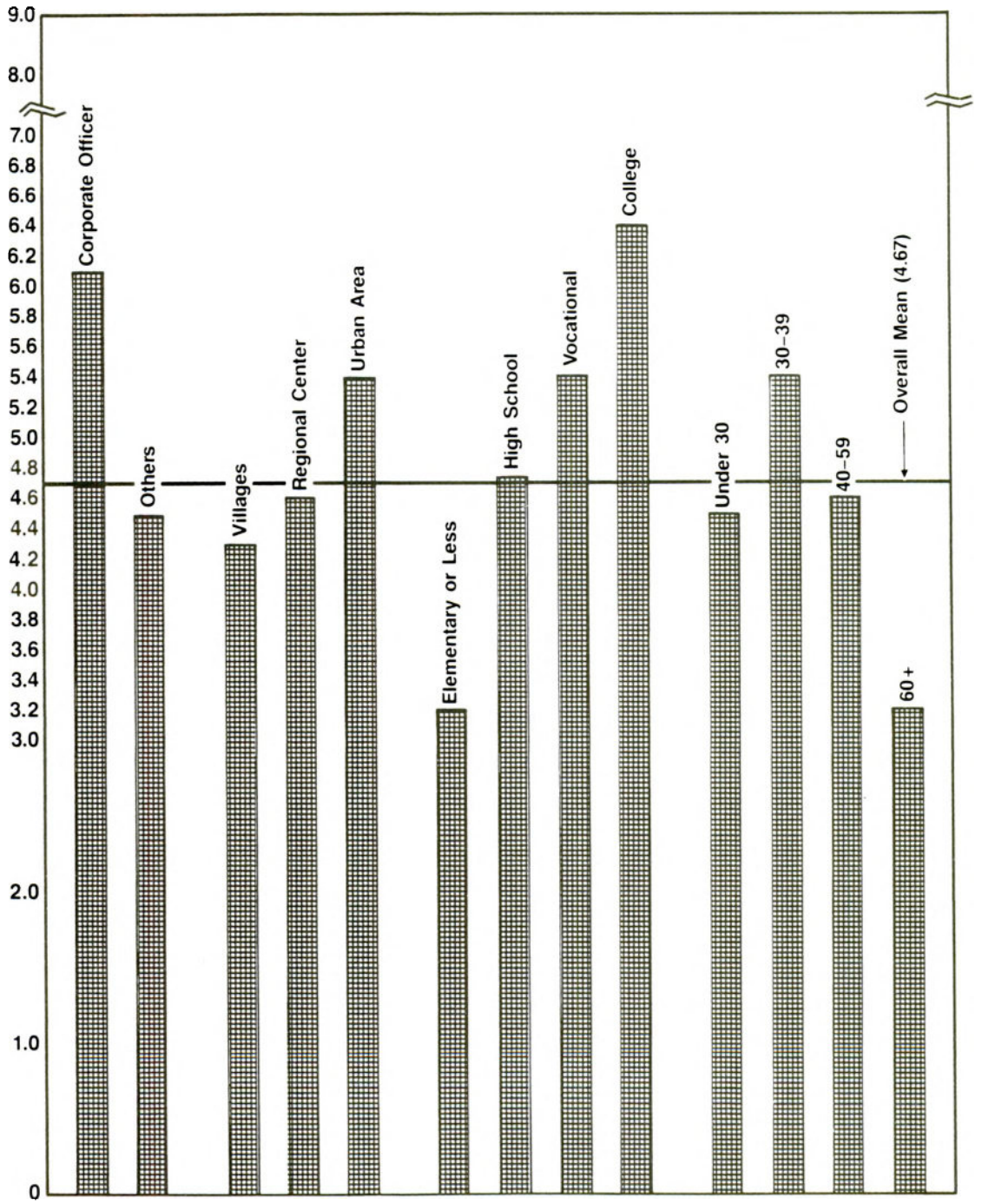
To determine whether affiliation with a corporation, level of education, and age influenced level of knowledge, those variables (as well as location of residence) were examined together using the technique of analysis of variances.[19] All were found to exert an influence. The results of the analysis conformed to research expectations, further strengthening confidence in the ability of the set of questions to measure level of knowledge about ANCSA. The typical respondent with a high level of knowledge is a former or present corporate officer, urban resident, 30 to 40 years of age, who had attended college. A low level of knowledge was found most often among those who had not held corporate office, lived in small villages, were either young (under 20) or old (over 60) and had little formal education. Of course, this analysis indicates tendencies and probabilities, not absolute categories. A wide range of individuals exists between the "high" and the "low" poles, and not every person who scored high in knowledge or low in knowledge fits the "typical" descriptions just given.

Figure 13-1 shows the degree to which each independent variable—corporate experience, place of residence, level of formal education, and age—influences level of knowledge. It shows the distribution of scores for each of those variables in relation to the overall mean score.

The data presented suggest that there is a fairly high level of knowledge in the aggregate population, but that it is unevenly distributed among those who have above-average knowledge and those who have little or no knowledge.

It is interesting to note that in response to Question 6, which asked respondents to assess their own level of knowledge, over half the sample reported having no knowledge to less than average knowledge about ANCSA. A disproportionate share of those reporting no knowledge were either young (under 20) or old (over 60). Stated another way, about half the sample think they do have average to above average knowledge about ANCSA. Their self-perceptions are generally supported by the knowledge index.

Figure 13-1
INFLUENCE OF SELECTED FACTORS ON LEVEL OF KNOWLEDGE



INTEREST IN ANCSA AND THE ANCSA CORPORATIONS

Several questions dealt with respondents' level of interest in ANCSA and ANCSA corporations. Question 5 of the survey asked if the respondent was interested in learning more about ANCSA. Question 9, which asked for source of information on corporations, offered respondents the option of indicating no interest in corporation business. Question 7b asked respondents if they agreed or disagreed that "most Natives should know what their corporation is doing." Question 10 asked respondents to evaluate the level of interest in regional and village corporations among the people they knew.

In general, the data indicate that although the actual level of knowledge is not low, individuals feel the need for more information about ANCSA and about the activities of their corporations. When asked if they were interested in learning more about ANCSA, 84 percent said yes. (The response rate was very high on this question, with only 32 "don't know/no response" cases out of 1,380. In regard to the corporations, a similar response was found. Respondents were nearly unanimous in agreeing that most Natives should know what their corporation is doing. At the same time, two-thirds agreed that most Natives do not know what their corporation is doing. Sixteen percent disagreed, and one-fifth of the sample stated that they did not know. When presented with the option of indicating no interest in corporation business (Question 9), only 9 percent of those responding indicated no interest in regional corporation business, while 7 percent so indicated for village corporation business. Taken together, the respondents' answers indicate dissatisfaction with their level of knowledge and a need for more information.

SOURCES OF INFORMATION ON ANCSA AND ANCSA CORPORATIONS

ON ANCSA

The respondents reported utilizing a variety of information sources to increase their knowledge of ANCSA and their corporations. The survey (Question 9) presented a list of probable sources of information and allowed respondents to list other sources, which elicited a fair number of responses not anticipated by the questionnaire. For example, some respondents said they would get information on ANCSA from the Library of Congress; others named the Congressional Record. In all, 12 percent of the sample listed "other" sources of information on ANCSA. The distribution of response is summarized in Table 13-1.

Table 13-1
PROPORTION OF ALASKA NATIVES REPORTING USE OF VARIOUS SOURCES OF INFORMATION ON ANCSA

Information Source	Percent
Family	29
Community member	28
Corporate officer	39
Corporation events	34
School	27
News media	32
Other	12

The corporate officer was named most frequently as a source of information, although not significantly more often than other sources. School was least utilized, reflecting the proportion of the sample beyond school age. The table shows that there is little difference in the degree to which the various information sources are used. All are relied upon to some extent. Experience with the data indicate that this distribution is not the result of roughly 30 percent of the sample indicating they use each source, but rather is a reflection of the range of information sources utilized by the Native community. Ninety percent of the sample indicated that they made use of at least one source of information on ANCSA.

ON ANCSA CORPORATIONS

Respondents exhibited different patterns of information source utilization for village corporations than for regional corporations. As might be expected, personal contact is utilized more often at the village level than at the regional level. Whereas respondents were most likely to rely on the corporation newsletter to get information on a regional corporation, friends and family were the most likely sources of information about a village corporation. Also, respondents were most likely to report attendance at the annual meeting and board meetings and contact with corporation officers in regard to information on the village corporation.

Table 13-2
SHAREHOLDERS' UTILIZATION OF SOURCES OF INFORMATION ON REGIONAL AND VILLAGE CORPORATIONS

Information Source	Proportion utilizing (%) Region	Village
Newsletter	77	52
Annual meeting	34	47
Board meetings	12	24
Workshops	11	15
Officers	28	40
Letters to Corporation	16	15
Friends/family	47	64
Other	4	5
No interest	10	6

SUMMARY

Many Alaska Natives know a lot about ANCSA, many know little or nothing, and a smaller proportion fit in between. While the general level of knowledge appears to be fairly high, most respondents expressed a desire to know more about ANCSA and the corporations. Communication patterns about ANCSA and corporate affairs appear to fall along a continuum of personal/impersonal information channels, with village corporation information obtained primarily through personal contact and information about the regional corporations obtained primarily through newsletters.

Chapter 14

THE 13th REGION

OVERVIEW

The 13th Region is unique. It was organized to represent only Alaska Natives who do not reside in Alaska. Further, it lacks a land base, has no village corporations, and does not participate in the section 7(i) distributions. Shareholders of the region live in most of the states of the Union and elsewhere. It appears that by far the greatest number live in the Pacific Northwest.

Because the 13th's shareholders are so widely dispersed, they were surveyed by mail, using the same questionnaire as that used in interviewing the Alaska-resident sample. Of the 4,500 shareholders to whom survey questionnaires were mailed, more than 700 responded in time for their responses to be taken into account. Due to the variation from other regions in data collection method, and due to the unique organizational circumstances of the 13th Region and the 13th's unfortunate history (see Part V), the region is treated separately in this part of the report. This chapter briefly outlines the results of the mail survey in terms of the three major research areas the survey was designed to address: (1) What is the level of knowledge about ANCSA and the ANCSA corporations? (2) What impact has ANCSA had on individuals? and (3) What attitudes do individuals have regarding ANCSA and the ANCSA corporations? The results indicate that in comparison with the shareholders of the other regions, the 13th Region shareholders know less about ANCSA and have experienced less impact as a result of ANCSA. The attitude of most 13th Regior shareholders towards ANCSA can be described as a mixture of anger, sadness, and disillusionment.

KNOWLEDGE ABOUT ANCSA AND ANCSA CORPORATIONS

A few comparisons of the responses of the 13th Region shareholders to the responses of the Alaska-sample shareholders suffice to indicate the low level of knowledge about ANCSA among 13th Region shareholders. The designers of the survey thought that, at a minimum, knowledgeable shareholders could be expected to know the name of their regional corporation's president. Among the Alaska-resident sample, 65 percent correctly identified the president of

their regional corporation, 6 percent gave an incorrect answer, and 26 percent said they did not know. Among the 13th Region sample, only 35 percent of respondents correctly identified the president, 14 percent gave incorrect answers, and 52 percent said they did not know. Table 14-1 shows that for each survey question designed to measure knowledge, a higher proportion of the Alaska sample answered correctly.

Table 14-1
KNOWLEDGE ABOUT ANCSA AND ANCSA CORPORATIONS: 13TH REGION VERSUS OTHER SHAREHOLDERS

Question	Percent of Correct Answers	
	13th	Others
Name of Regional President (Question 2)	35	65
Only Natives can own stock after 1991 (Question 8a)	40	52
Corporations can sell ANCSA lands (Question 8b)	18	42
All Natives got same settlement (Question 8c)	44	50
Corporations resulted from ANCSA (Question 8d)	59	68
Corporations end in 1991 (Question 12a)	38	61
ANCSA lands must be sold in 1991 (Question 12b)	41	61
Stock can be sold in 1991 (Question 12c)	52	62
Corporate income first taxed in 1991 (Question 12d)	9	13

Some 13th Region shareholders returned their survey questionnaires with letters asking the ANCSA 1985 Study group for information about ANCSA. The following comments are illustrative:

> "Would you please send me all available information on ANCSA?"

"I would like all information that you can spare on this ANCSA study and information on the corporations and what they can do for me and what I can do for them."

"I would like to know when my son and I are going to get another check! It has been about 5 years since we got our last check!"

"I am writing this letter to find out about more information about ANCSA and about getting into a different corporation. Because some time in the next few years I will be moving near my Dad's village, and I was wondering if I am able to get some land to live on."

Indeed, 13th Region shareholders who responded to the survey considered themselves less knowledgeable about ANCSA than the Alaska-resident shareholders. The responses to Question 6, which asked respondents to rate their own knowledge, are compared in Table 14-2.

Table 14-2
SELF-EVALUATIONS OF KNOWLEDGE ABOUT ANCSA: 13TH REGION VERSUS OTHER SHAREHOLDERS (Percentage Response per Level)

Level of Knowledge	13th	Others
None	32	19
Below Average	41	34
Average	20	33
Above Average	5	9
Great Amount	1	4
Don't Know/No Response	1	1

As shown in the table, nearly three-fourths of the 13th Region respondents felt they had below average or no knowledge of ANCSA. Their ability to answer objective questions about ANCSA (see Table 14-1) confirms their self-evaluation. However, 13th Region shareholders appear to have a high level of interest in learning more about ANCSA. Slightly more 13th Region shareholders than Alaska-resident shareholders (90 percent as opposed to 85 percent) expressed interest in learning more about ANCSA.

Judging from the survey response, it appears that 13th Region shareholders have received a lower level of benefits and services from their corporation than have the Alaska-resident shareholders. While one-fourth of the Alaska respondents said they were or had been employed by a Native corporation, only 5 percent of 13th Region so reported. The Table 14-3 compares the responses to Question 18, which asked respondents to indicate any type of service received from their corporation.

Table 14-3
TYPES OF SERVICES RECEIVED:
13TH REGION VERSUS OTHER SHAREHOLDERS

	Percent Who Reported Receiving Service	
Service	13th	Others
Job training/vocational	2	12
Education	3	10
Health care	3	10
Legal advice	2	7
Shareholder information	21	27
Heir identification	3	7
Employment assistance	2	8
Financial help	3	8
Home improvement	4	7

Less than 5 percent of 13th Region respondents reported receiving any given service except shareholder information. Furthermore, for every type of service, a higher proportion of Alaska-resident respondents than 13th Region respondents reported receiving the service.

When asked whether anything resulting from ANCSA had changed or affected their personal life (Question 11a), more 13th Region shareholders than other shareholders said "No."

Table 14-4
RESPONDENTS' PERCEPTIONS OF DEGREE TO WHICH ANCSA HAD AFFECTED THEIR LIVES: 13TH REGION VERSUS OTHER SHAREHOLDERS (Percentage Response)

Perception	13th	Others
Yes, a lot	5	18
Some	21	25
No	54	35
Don't know	18	21

Table 14-4 shows that a majority of 13th Region shareholders feel that ANCSA has not affected their lives, and that nearly three-fourths either believe it hasn't or don't know whether it has. (The reader will note that fewer—but nevertheless a majority—of Alaska-resident shareholders either believe ANCSA has had no impact or don't know.)

ATTITUDES TOWARDS ANCSA AND THE REGIONAL CORPORATION

As discussed earlier in this chapter, 13th Region shareholders are less likely than their Alaska-resident counterparts to know about ANCSA and their corporation or to believe that ANCSA has had an effect on their lives. They are also less likely to have received employment or any other type of service from their corporation.

When asked if they would ever sell their corporation stock (Question 15), 47 percent of the 13th Region respondents said they would consider it, as opposed to 18 percent of the Alaska sample. Yet some responses on the matter of sale of stock paralleled those of the Alaska-resident shareholders. Fifty-five percent of 13th Region respondents agreed that stock should be sold to Natives only (Question 13b), as did 60 percent of the Alaska sample. Roughly 20 percent of each group agreed with the statement that anyone should be able to buy Native corporation stock (Question 13c).

Partly because of lack of a land base, a higher percentage of 13th Region shareholders said they would enroll differently if given the opportunity. Only one in five 13th Region shareholders said they would enroll the same way, as opposed to three in five in the Alaska sample.

A large volume of written comments offered by 13th Region respondents provides further insight into the attitudes held. Most of the comments were negative. Regarding stock in the corporation, many echoed the respondent who wondered "how I can sell worthless stock" and the one who stated a desire to "get rid of it before they go backrupt." One individual sent newspaper clippings about alleged corruption in the corporation's management. Several people expressed dissatisfaction with the lack of a land base for their region. One respondent thought corporate management had misled prospective shareholders during formation with promises of future participation in the land settlement. A number of respondents indicated their desire to obtain a piece of land and felt the corporation might provide it.

Not all the comments were negative, however. Many expressed the desire to keep stock in family or Native hands. Representative of those offering supportive comments were the respondents who wrote, "I don't think I'll ever sell my shares due to heritage and pride" and "Sell out? No way—I want to leave something behind for our children."

All in all, 13th Region shareholders, like their Alaska-resident counterparts, hold diverse opinions and attitudes about ANCSA, ranging from strong attachment to ANCSA as a symbol of Native heritage to disgust with "mismanagement" of 13th's financial affairs. Most are unhappy with the results of ANCSA, although many seem in sympathy with its general goals. The negative feelings appear to arise from a sense of being cheated by the management of the corporation. Some respondents proposed abolishing the corporation, some said it never should have been established, and many others called for investigation of its financial affairs and its management. Still, a strong sense of commitment to the Native community is evident. Thirteenth Region shareholders are interested in their corporation. They want to know more about it, and they want it to succeed. Some consider it their link to their Native heritage—something of value to pass on to their children.

The general point to be made about the 13th Region is that its shareholders expected better.

Chapter 15

IMPLICATIONS

Part IV of the ANCSA 1985 Study describes and analyzes the status of Alaska Natives to show where Alaska Natives stand 13 years after passage of ANCSA. Socioeconomic data gathered primarily by the U.S. Census Bureau provide a basis for comparing the status of Alaska Natives before and after ANCSA, in such categories as population size, growth rate, and distribution; birth and death rates; employment; income; and education. Comparison of 1970 and 1980 data reveals that the Alaska Native population increased by 26 percent from 1970 to 1980, and that it is entering the job market in greater numbers, earning more money, living in newer housing, and attaining a higher level of formal education. It also shows that the non-Native population increased more and continued to exceed the Native population by every measure of socioeconomic status.

The comparisons presented in chapter 11 relate to the Native population's standard of living, and thus are highly relevant to the study of ANCSA as a monetary and land settlement aimed at improving the beneficiaries' material situation. In addition to the comparisons presented in the chapter, Appendix E contains a number of tables which compare the status of Natives to that of non-Natives in categories which do not relate so directly to the goals of ANCSA. For example, Appendix E Table C-10 shows that the arrest rate for Alaska Natives was 9,008 per 100,000 population, while for non-Natives it was 2,564. By type of crime, the table shows that the murder rate for Natives is twelve times that for non-Natives, rape is seven times higher for Natives, aggravated assault is over five times more frequent for Natives, and so on. Appendix E Table C-13 shows that from 1977 to 1980 Natives accounted for over 30 percent of admissions to the Alaska Psychiatric Institute, although Natives were only about 16 percent of Alaska's population. Alcoholism has been identified as the most serious health problem facing the Alaska Native people today. As reported in Chapter 11, suicide is more frequent for Natives. Also, as previously reported, a greater proportion of Alaska Natives live below the poverty level; Appendix E Table E-4 shows that the majority (58 percent) of Alaskans below the poverty level in 1980 were Natives. Thus, while the measures of standard of living which were the focus of Chapter 11 show improvement in the status of Alaska Natives, there remains much room for improvement, and many signs of social disorder.

Part IV has addressed the role of ANCSA in altering the status of Alaska Natives, and the analysis indicates that ANCSA has had a relatively minor impact on improvements in Alaska Natives' status. Figure 15-1 compares the level of distributions from the Alaska Native Fund with other types of expenditure in Alaska. The fund, which received its last contributions from the State and Federal Governments in 1980, was exceeded by Federal spending in all but 1980, exceeded by the oil industry in all but 2 years, and far surpassed by State spending. The Alaska Native Fund involved a substantial amount of money; that it exceeded Federal spending in Alaska for even a year shows that it was a significant settlement. However, when assessing the relative impact of ANCSA and attempting to determine major influences on the status of Alaska Natives, the comparison to other sources of income in Alaska shows the Fund distributions to have been minor—especially when the sizable proportion of the settlement spent on litigation is taken into account.

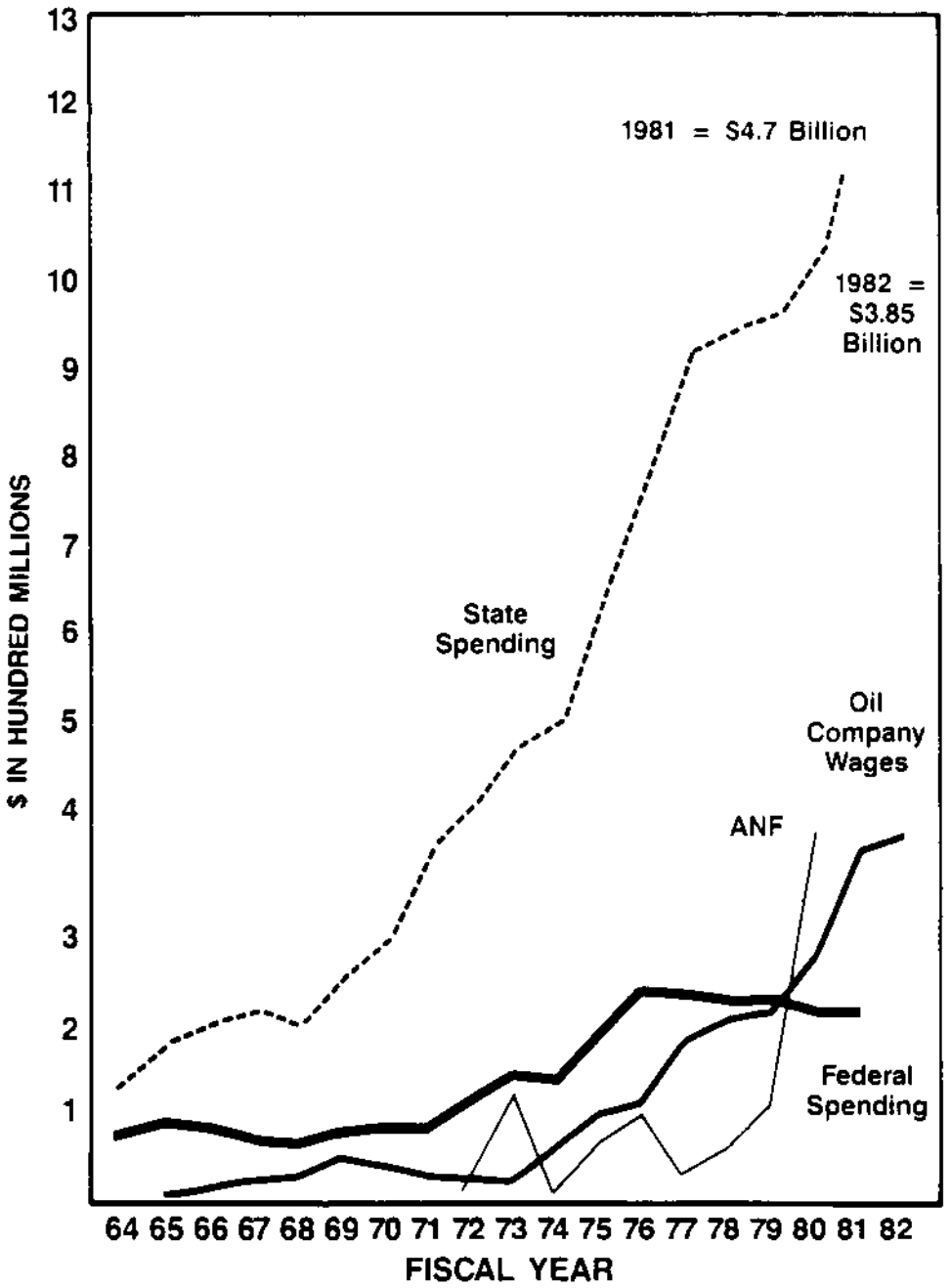
ANCSA'S ROLE IN IMPROVING THE SOCIOECONOMIC STATUS OF ALASKA NATIVES

ANCSA has had some impact on the Alaskan economy, and some impact on Alaska Natives, but State and Federal spending have had far more impact than ANCSA in employment, income, housing, and education. However, some jobs have been provided by ANCSA; one-fourth of ANCSA 85 Survey respondents reported they had at one time or another worked for a Native corporation. Some educational opportunities have been provided, including scholarships and job training. Some Native-owned small businesses have received financial assistance from ANCSA regional corporations, and a number of services to shareholders have been provided.

Additionally, ANCSA has had important indirect effects. Perhaps the most important effect of ANCSA has only been alluded to thus far in Part IV: ANCSA corporations provided institutional support from which some Natives could begin to assert themselves in the political arena. ANCSA's indirect effect on education, discussed in Chapter 11, reinforces the assertion of Daisy May Lamont, Director of the Alaskan Native Commission on Alcohol and Drug Abuse, that "formation of the regional Native corporations [has] made Alaska Natives a significant collective force in the State of Alaska from the economic and political standpoint." The survey indicates that more than half of Alaska's Natives over age 13 agree with her. When asked how ANCSA had enhanced Natives' political power, one respondent said that it enabled Native leaders to "afford the lifestyle necessary to compete successfully in politics." In addition, through conferences and corporate functions, the corporations provide a forum for Natives to discuss common needs and means of achieving common goals.

The only way the corporations could benefit their shareholders directly was to give them a job or pay them a regular dividend. To no one's surprise, the corporations have been able to employ only a small minority of shareholders (around 83), and with a few exceptions have yet to pay regular or substantial dividends. The corporations have provided some services to shareholders, but those services are not regular functions of corporations and should not be expected to involve a major corporate effort.

Figure 15-1
EXPENDITURES ASSOCIATED WITH STATE GROWTH, 1964-1983



Source: State of Alaska Blue Book, 1964-1982; data provided by State of Alaska Department of Labor; and BIA Memorandum Explaining Final Distribution of Alaska Native Fund, January 15, 1982.

That the corporations have been able to benefit only those Natives who participate directly in the business of the corporation does not mean that ANCSA has "failed," nor does it mean that the majority, or perhaps all, of Alaska Natives will never benefit from ANCSA. ANCSA was to begin a process of growth and development within the Native community by training young people in the ways of business, by providing capital for economic development, and by providing title to resources that could be marketed. To varying degrees, depending on which corporation and what time one refers to, ANCSA has contributed to the process of development in the Alaska Native community, as evidenced by the fact that some Natives have received jobs and educational assistance. If ANCSA corporations survive to prosper financially, they will have the resources to provide shareholders with jobs, pay regular and significant dividends, and open up greater opportunities for the development of rural Alaska.

NOTES: PART IV

Chapter 11

[1] It has not been possible within the scope of this report to discuss all aspects of the changing status of Alaska Natives about which comparison of the 1970 and 1980 tables yields information. Nor has it been possible to include in this volume the 1970 set of tables. The reader who wishes to explore the data base further is referred to Task I, "An Analysis of Alaska Natives' Well-being," of the 2(c) Report.

[2] House Report No. 92-523, to accompany H.R. 10367, September 28, 1971, 5-6. (The cash settlement specified in H.R. 10367 was $925 million—slightly less than the final settlement.)

[3] Preliminary analysis of census data was performed under subcontract by the Institute of Social and Economic Research (ISER) of the University of Alaska-Anchorage (A Summary of Changes in the Status of Alaska Natives, January 1984).

[4] It should be noted that several definitions of "Alaska Native" are used in Part IV. The one used most frequently for chapter 11 is that of the Census Bureau, which simply asks respondents to declare their race and makes no attempt to define racial categories. Another definition is that provided by ANCSA, which defines an Alaska Native as an individual of one-quarter or more Native ancestry or an individual accepted as Native by the Native community by reason of residence and association. This definition applies to nearly all of the respondents to the ANCSA 85 Survey. In addition, this definition also includes a number of individuals who fit the ANCSA definition of Alaska Native but do not own stock. Nearly all of this group are individuals born after December 1971. The distinction between these two definitions is made explicit in chapter 11 and the rest of Part IV whenever the context does not clearly indicate which is operative.

Given their differing means of defining Alaska Native, the census and the ANCSA enrollment counts do not coincide. In 1970 the Census Bureau identified 50,605 Alaska Natives as residing in Alaska. However, the ANCSA enrollment reported 59,771 Alaska Natives as residing in the State as of December 14, 1971. Only about 1,400 of the 9,166 difference between the 1970 census figure and the December 1971 ANCSA figure can be explained by population growth. The balance, some 7,700 Alaska Natives, represents a potential undercounting by the Census Bureau or different definitions of who is an Alaska Native.

For purposes of this study, it has been assumed that the 1970 and 1980 censuses are comparable and that any errors or omissions made in 1970 were also made in 1980. The 1980 census was conducted in the same manner as

the 1970 census, including self-enumeration of race by respondents. Having had numerous opportunities to test the reliability of the census data, ISER concluded that--with the sole exception of the absolute count--the data fairly represent the social and economic conditions of Alaska Natives.

[5] Alaska Population Overview, 1982, Alaska Department of Labor.

[6] The Census Bureau publishes the number of Eskimos and Aleuts present in the United States but does not differentiate between the various American Indian groups. ISER estimated the number of Athabascans, Tlingits, and Haidas living outside Alaska on the basis of (1) the number of American Indians enumerated in Alaska in 1980 and (2) an estimate of the proportion of Alaska Native Indians who lived outside Alaska in 1980. This estimate was, in turn, based on the observed proportion of Alaskan Indians who lived outside Alaska in 1974 according to enrollment statistics, adjusted to fit the observed change in the proportion of Eskimos and Aleuts living outside of Alaska between 1974 and 1980.

[7] The size of each community in 1970 was used as the basis for this comparison to avoid showing an apparent shift in population toward larger places simply because the places grew and were reclassified into a larger size category.

[8] House Report No. 92-523, 6.

[9] Kruse, J., "Subsistence and the North Slope Inupiat: The Effects of Energy Development," Institute of Social and Economic Research, MAP Monograph No. 4 (Anchorage, 1982); Lewis Berger and Associates, "Western Arctic Transportation Study," Survey Report (Fairbanks, 1981); and Institute of Social and Economic Research, Alaska Public Survey, unpublished data, 1979.

[10] "Alaska Natives: A Status Report" (Anchorage: Alaska Native Foundation, August 1977), 2, 5.

[11] Arnold, 218-219.

[12] Scott Goldsmith and J. Phillip Rowe, "Federal Revenues and Spending in Alaska: The Flow of Funds Between Alaska and the Federal Government," Institute of Social and Economic Research (Anchorage, September 1981).

[13] Gerald A. McBeath et al., Patterns of Control in Rural Alaska Education (Center for Cross-Cultural Studies, Department of Political Science and Institute of Social and Economic Research, University of Alaska-Fairbanks, October 1983). The discussion of education in this chapter draws heavily on this source. For a more penetrating analysis, or as a source of information on Alaska's rural school system, the reader is referred to this authoritative work.

[14]Anna Tobeluk v. Marshall Lind (Commissioner of Education).

Chapter 12

[15]The eight regions reporting include two in which some of the villages have merged with the regional corporation, resulting in some individuals holding 200 shares in their corporation. Therefore, the average number of shares distributed through inheritance in all regions may be lower than 107.0.

Chapter 13

[16]See questions 8a, 8b, 8c, 8d, 12a, 12b, 12c, 12d, and 20 of the survey questionnaire (Appendix F).

[17]See "Discussion of ANCSA 85 Survey Approach and Results," Part III, in Appendix F.

[18]The pattern of distribution is depicted in the figure entitled "Distribution of Scale of Knowledge by Residence" in the survey methodology discussion, Appendix F.

[19]See Table 10 in Appendix F.

Chapter 15

[20]Testimony presented in hearings before the Select Committee on Indian Affairs of the U.S. Senate: Indian Health Issues, Anchorage, Alaska, June 3, 1983.

Part V

STATUS OF THE ANCSA CORPORATIONS

OVERVIEW

Part V, "Status of the ANCSA Corporations," describes the corporations that were formed by the settlement act, summarizes the obstacles and circumstances that have affected their performance, and presents detailed economic and financial data relating to the performance of the corporations.

Chapter 16 establishes the frame of reference for evaluating the current financial conditions and past performance of the corporations. It also addresses the suitability of the corporate model as the basis of the settlement, indicates some of the problems that may arise in 1992 after certain features of the act expire, and evaluates relationships between the regional and village corporations and with other non-ANCSA Native organizations.

Chapter 17 describes the broad economic context within which the ANCSA corporations operate. It highlights factors that have affected corporate activity to date and examines prospects for future activity.

Chapters 18, 19, and 20 provide an overall indication of the individual corporations' activities and performance records since inception. Summary financial data derived from annual financial reports are presented in tables, accompanied by brief narrative discussions. Financial ratios which facilitate interpretation of the summary data are also provided, along with cautions regarding the limitations of their applicability and usefulness.

Chapter 18 presents this financial information for each of the 13 regional corporations; chapter 19, for various categories of village corporations; and chapter 20, for each of the four urban corporations. Chapter 18 contains definitions of the financial summary categories and explanations of the financial ratios used.

In treating the status of the ANCSA corporations and their degree of success in fulfilling the initial expectations of Congress, Native leaders, and Alaska Native individuals, Part V raises the question of the suitability of the settlement terms for meeting the current needs and expectations of Alaska Natives. The Alaska Federation of Natives (AFN) has initiated a study and discussion program aimed at reaching agreement about what legislative changes may be needed. Other options for assuring continued Native control of the corporations, better defining the purposes of the corporations, and guaranteeing the permanent ownership of the land by Natives are also being examined. The effort is based on eight resolutions adopted at AFN's October 1983 convention.

Topics to be studied and discussed include land protection (methods of protecting Native ownership); stock alienation (continued ban on alienation beyond 1991); protection of Native values (changes in the corporate structure to better suit Native culture and Native needs); new Natives (changes of ANCSA to provide benefits for Natives born after December 18, 1971); stock protection (prevention of non-Native control after 1991); elders (changes to allow special benefits to elders); retribalization of Native lands (recommendation that villages consider transferring ANCSA land to tribal government control); and combined resources (recommendation that all ANCSA corporations cooperate to develop a unified position on necessary changes to ANCSA).

Chapter 16

THE ANCSA CORPORATIONS

PERFORMANCE EXPECTATIONS

The ANCSA corporations have been expected to achieve many goals, some of which are incompatible. Their overall mandate from Congress was to administer the land and cash settlement "in conformity with the real social and economic needs of Alaska Natives." Before they could begin developing their assets and returning a profit to their shareholders, however, they had to implement the terms of ANCSA. Corporate entities had to be formed and shareholders had to be enrolled; cash from the Alaska Native Fund had to be distributed; land selections had to be made and land conveyances obtained. As detailed in Part III and discussed further in the next section of this chapter, these tasks represented a huge workload that has strained management and financial resources. What is more, ambiguities and conflicts of interest inherent in the act had the ultimate effect of delaying the delivery and diminishing the value of the settlement.

In addition to achieving implementation, the ANCSA corporations were to fulfill a variety of expectations, ranging from generating substantial earnings to preserving the subsistence way of life. The Alaska Federation of Natives (AFN) proposed that a corporation's charter "provide that the corporation . . . be devoted to promoting health, welfare, education, and economic and social well-being of its members and their descendants," and that the corporation be authorized to "construct, operate, and maintain public works and community facilities, to engage in medical, educational, housing, and charitable programs," as well as engage in economic development activities.[1]

From the written record of ANCSA's legislative history, including testimony before Congress, and from recent testimony in overview hearings before the Alaska Native Review Commission, it is possible to identify at least six broad expectations placed on the ANCSA corporations—over and above expectations regarding implementation and administration of the land and cash settlement. Congress, Native entities, and individual Natives have said that they expected the corporations to:

1. Contribute to the social and economic well-being of Natives.

2. Initiate the economic development of rural Alaska.

3. Provide for Natives' participation in the modern economy.

4. Contribute to Native self-determination.

5. Preserve Native heritage and property for future generations.

6. Protect the traditional way of life.

CONTRIBUTE TO THE SOCIAL AND ECONOMIC WELL-BEING OF NATIVES

The foremost goal of ANCSA was to settle disputes over land ownership that prevented development of Alaska's mineral resources. However, the needs of the Alaska Natives who depended on the land became a major concern as a result of the active lobbying efforts of Native organizations. Congress became convinced that, in addition to settling the land issue, ANCSA should promote Natives' well-being. This expectation is embodied in section 2(b) of ANCSA, which says that ANCSA was to be implemented "in conformity with the real social and economic needs of Alaska Natives." As noted in a House report, ANCSA was the result of extensive research and testimony demonstrating the need for attention to Alaska Natives' "extreme poverty and underprivileged status."[2] A comprehensive, pivotal report to the Senate Committee on Interior and Insular Affairs in 1968 stated that settling land claims and enabling Natives to improve their living conditions were, in effect, two sides of the same coin.[3]

Research conducted for and testimony presented in overview hearings of the Alaska Native Review Commission in early 1984 provide further evidence of the high expectations many held for ANCSA and therefore the ANCSA corporations. It was widely believed that self-sufficiency for Natives was to be realized through both the direct settlement benefits and the economic development the corporations would initiate. In ANCSA's inception phase, one Native leader, for example, "visualized[d] sawmills coming into being to start a housing program" and "Native businesses beginning to alleviate unemployment."[4] Another stated the belief that individuals would benefit from the general economic development which would improve living conditions in their localities.[5] A widespread expectation that corporations shoulder responsibility for meeting a wide range of needs was summarized in the recent Alaska Native Review Commission hearings by a regional corporation president: " . . . [T]he profit corporations . . . addressing some of these other needs is not always done by choice. We are expected by our people because, in fact, there is a gap or a void that otherwise . . . that should be filled by other institutions, that we are expected as representatives of our people to address some of these needs."[6]

INITIATE THE ECONOMIC DEVELOPMENT OF RURAL ALASKA

The corporations were expected to help Natives improve the conditions in which they lived; for the most part, that meant improving conditions in the remote areas of Alaska. Congress found that Natives lacked the capital necessary to raise their standard of living and intended to provide the capital necessary for them to do so. Native leaders envisioned a "trickle-down" process by which the infusion of otherwise-lacking investment capital would develop the rural Alaska economy and thereby benefit rural Alaska's Native residents.[7] One leader stated in testimony before Congress: " . . . if this bill passes, and if we do get some money to work with, and some land, we will be competitive in every field in a very short period of time."[8]

In establishing the corporations as the owners of the assets conveyed by ANCSA, Congress implied that it wanted those assets used for economic purposes, since the corporation is a singularly economic institution. Tying the corporations to the villages and geographic regions implied that the corporations were to use their assets in rural Alaska, where villages are located. The location and nature of the corporations' primary asset—undeveloped land—ensures that their concerns focus on rural Alaska.

PROVIDE FOR NATIVES' PARTICIPATION IN THE MODERN ECONOMY

There is ample evidence that both members of Congress and Alaska Natives expected the corporations to bring a form of economic development to Alaska Natives that would be compatible with Western institutions and would enable them to become full participants in national life. Native control of this process was a central issue. A comment from testimony given in the late 1960's is representative: "I believe that every village should have an opportunity to develop their communities by their own initiative and not on a dole system. I believe that the Native people of Alaska should be able to plan their own economic and business development."[9] Indeed, a 1971 House report declares that the intent of the cash settlement provision was to provide capital necessary to enable Natives "to compete with the non-Native population and to raise the standard of living through their own efforts."[10]

CONTRIBUTE TO NATIVE SELF-DETERMINATION

Section 2(b) of ANCSA states that Congress sought a settlement that would allow "maximum participation by Natives in decisions that affect their lives and property." In testimony before Congress, the Native leadership time and again expressed Native desire for independence and self-sufficiency, for enabling Native people to "pick up the reins" and "develop their own birthright after their own fashion."[11] The corporate structure aims toward that goal, since it is controlled by its shareholders through democratic procedures. Because all Natives living when ANCSA was passed were made shareholders in the corporations, and because the corporations were made owners of the assets conveyed by ANCSA, Congress clearly intended that Natives control their own property.

PRESERVE NATIVE HERITAGE FOR FUTURE GENERATIONS

In the period prior to ANCSA, the desire to preserve the Native cultural heritage underlay much of the testimony presented to Congress, especially the discussions of the inherent value of the land and the way of life it continued to make possible over and above its economic worth. Such desires can best be characterized as a will to preserve not simply one spiritual aspect of life but, rather, a "whole way of life including 'economic' acts of hunting and fishing, 'social' acts of sharing and exchange, and 'political' acts of self-determination."[12] Many individuals believed, and continue to believe, that the goal of preserving cultural heritage cannot be separated from the goal of preserving Natives' material birthright—i.e., the land and, now, the ANCSA stock.

PROTECT THE TRADITIONAL WAY OF LIFE

In addition to implementing ANCSA and stimulating economic development, the corporations were expected to preserve sufficient land for Natives to pursue their traditional lifestyles. This goal was not explicitly tied to the corporate structure, but many hoped that it would be the result of congressional action on Native land claims. Since ANCSA corporations have been given responsibility for administering the lands granted by ANCSA, they have been expected to foster an environment in which traditional lifestyles can continue. One regional corporation official has observed that many Natives view the corporations as stewards mandated to protect the land "for some long-term, Native-oriented, subsistence-oriented, tribal-oriented, culturally-oriented purpose," and that the corporations have in fact retained control of the land (not sold it or used it as collateral) despite pressures for economic success. He has also articulated the conflict which this expectation engenders, in that it pits preservation of traditional and noneconomic use of corporate assets against the corporations' economic imperatives.[13]

SUITABILITY OF THE CORPORATE FORM OF ORGANIZATION IN MEETING EXPECTATIONS OF ANCSA

Congress and the Native leadership expressed broad expectations for the benefits that would accrue to the Native people as a result of ANCSA—expectations that are unrealistic. Corporations are limited legally and financially in what they can do to serve the social, cultural, and income needs of their shareholders. Many of the objectives and expectations of ANCSA are pertinent for governments, not corporations.

The corporation model for the settlement fixed stock ownership at the time of enactment. Natives born after the settlement will benefit only to the extent that stock is inherited or acquired by other means. It is likely that by the time