



Testimony of Sealaska Corporation
Native Regional Corporation for Southeast Alaska's Tlingit, Haida, and Tsimshian People
May 16, 2013

Before the
Committee on Natural Resources
Subcommittee on Indian and Alaska Native Affairs
United States House of Representatives
Legislative Hearing on H.R. 740 and H.R. 1306

Chairman Young and Members of the Subcommittee:

Thank you for the opportunity to submit testimony on behalf of Sealaska, the regional Alaska Native Corporation for Southeast Alaska, regarding H.R. 740, the “Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act,” a bill that we refer to as *Haa Aaní*. “Haa Aaní” is the Tlingit way of referring to our ancestral and traditional homeland and the foundation of our history and culture. We also appreciate the opportunity to testify on H.R. 1306, the Southeast Alaska Native Land Conveyance Act, which we call our “Bridge timber” bill to address conveyance of a small portion of the lands included in H.R. 740.

My name is Byron Mallott, and I am a Director of Sealaska Corporation, as well as a former President and CEO of Sealaska. I am from Yakutat, an Alaska Native village, and I am *Shaa-dei-ha-ni* (Clan Leader) of the *Kwaashk'i Kwáan*. My Tlingit name is *K'oo deel taa.a*.

Most of our testimony relates to H.R. 740, but H.R. 1306 is very much related. H.R. 1306 would transfer a small subset of the land in H.R. 740 and does not detract from the purpose of H.R. 740. H.R. 1306 provides an interim solution to preserve jobs vital to the region's delicate economy if Congress does not act on H.R. 740 this year.

Background

Sealaska is one of 12 Native Regional Corporations established pursuant to the Alaska Native Claims Settlement Act (“ANCSA”) of 1971. Our shareholders are descendants of the original Native inhabitants of Southeast Alaska – the Tlingit, Haida and Tsimshian people. ANCSA authorized a land settlement for the Natives of Southeast Alaska. Today, Sealaska seeks legislation that will define the location of the last 70,000 acres of land we will receive under ANCSA. Our people will own these lands in perpetuity. The land will support our villages and will help sustain our people and our culture.

H.R. 740 would convey just 70,000 acres in the Southeast Alaska region, a region with almost 23 million acres of land; 85% of the region is already in some form of conservation, wilderness or other protected status. Putting the acreage in perspective, Sealaska's remaining land entitlement represents about 1/3 of one percent of the total land mass in Southeast Alaska.

This legislation also represents a significant opportunity for the public, this Congress, the Obama Administration, the Forest Service, communities, environmental groups and others to get it right in the Tongass. H.R. 740 protects ecologically sensitive areas, sustains jobs and communities, and returns important cultural lands to Southeast Alaska's Native people.

This legislation does not give Sealaska one acre of land in addition to that which was originally promised by Congress under ANCSA. Sealaska has worked closely with the timber industry, conservation organizations, tribes and Native institutions, local communities, the State of Alaska, and federal land management agencies to craft legislation that provides the best possible result—the most balanced solution—for the people, communities and environment of Southeast Alaska.

For you, Members of Congress and staff, who must consider this legislation, one thing should be clear by now: Every acre of Southeast Alaska is precious to someone. And given the vast array of interests in Southeast Alaska, there is simply no way to achieve absolute consensus on where and how Sealaska should select its remaining lands. We believe—and we hope you will agree—that this legislation offers a balanced solution as a result of our congressional delegation's engagement with all regional stakeholders.

Can Sealaska Select its Remaining Land under Current Law?

Under ANCSA, as amended, Sealaska is required to select land from within 10 “withdrawal boxes”. Opponents of the legislation say that Sealaska asked to select land from within the 10 withdrawal boxes in 1976, and today Sealaska should be forced to select the remaining 70,000 acres to which it is entitled under current law. Let's set the record straight.

ANCSA authorized the distribution of approximately \$1 billion and 44,000,000 acres of land to Alaska Natives and provided for the establishment of 12 Regional Native Corporations and more than 200 Village Corporations to receive and manage the funds and land to meet the cultural, social, and economic needs of Native shareholders.

Under section 12 of ANCSA, each Regional Corporation, *except Sealaska*, was authorized to receive a share of land based on the proportion that the number of Alaska Native shareholders residing in the region of the Regional Corporation bore to the total number of Alaska Native shareholders, or the relative size of the area to which the Regional Corporation had an aboriginal land claim bore to the size of the area to which all Regional Corporations had aboriginal land claims.

Sealaska received its land only under section 14(h) of ANCSA. Sealaska did not receive land in proportion to the number of Native shareholders or in proportion to the size of the area to which Sealaska had an aboriginal land claim because, in part, in 1968, minimal compensation was paid to the Tlingit and Haida Indians pursuant to a U.S. Court of Claims decision, which held compensation was due for the taking of the 17 million acre Tongass National Forest and the 3.3 million acre Glacier Bay National Park. The 1968 settlement provided by the Court of Claims did not compensate the Tlingit and Haida for 2,628,207 acres of land in Southeast Alaska also subject to aboriginal title. The court also determined the value of the lost Indian fishing rights at \$8,388,315, but did not provide compensation for those rights. It's also important to understand that the U.S. Court of Claims did not compensate at anything close to fair market value. The settlement worked out to just 43.8 cents per acre.

The 1968 settlement also should be viewed in context with the universal settlement reached by Congress, just three years later, which allowed for the return of 44 million acres and almost \$1 billion to Alaska's Native people. Land was always the ultimate goal. With a population that represented more than 20 percent of Alaska's Native population in 1971, Southeast Alaska Natives ultimately would receive title to just 1 percent of land returned to Alaska Natives under ANCSA, ostensibly because the taking of Native lands in Southeast Alaska had been dealt with by the Court of Claims. The Tlingit and Haida people thus led the fight for Native land claims, and lost a majority of our land as a consequence.

As documented in "A New Frontier: Managing the National Forests in Alaska, 1970-1995", discussed below, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest for decades prior to the passage of ANCSA. As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska. The logging of "public" lands proceeded over the objection of Alaska Natives, with the 1947 Tongass Timber Act explicitly authorizing the Secretary of Agriculture to sell "timber growing on any vacant, unappropriated, and unpatented lands within the exterior boundaries of the Tongass National Forest in Alaska, notwithstanding any claim of possessory rights."

In hearings leading to the passage of ANCSA, the Forest Service opposed most selections near Native villages because the selections would conflict with existing public timber contracts. The Forest Service publicly acknowledged their interest in limiting the extent of Native land selections to protect two 50-year timber supply contracts between the Forest Service and Ketchikan Pulp Company and Alaska Lumber and Pulp Company, agreed to in 1951 and 1957.

In 1969, in a letter submitted for the record to the House Committee on Interior and Insular Affairs, U.S. Forest Service Associate Chief Arthur Greeley made the following argument opposing the conveyance of land to Native people in the Tongass for the specific purpose of supporting economic development in Native villages:

* * * Such [land] grants would alter the management objectives of valuable commercial forest lands now committed to the growing pulp industry. Although provision might be made so that individual [pulp industry] contracts can be adjusted to meet

specific contract requirements, these lands would be removed from the National Forests. They would thus be removed from the larger whole that attracted the pulp industry to Alaska. Removing these lands from long-term National Forest management would serve to dilute the base on which this industry has been established.

Alaska Native Land Claims, Part I: Hearing before the H. Comm. on Interior and Insular Affairs, 91st Cong. 333 (1969) (statement of Arthur W. Greeley, Associate Chief of the Forest Service, U.S. Department of Agriculture) (emphasis added).

Sealaska ultimately would be authorized to recover about 365,000 acres of land under ANCSA. However, under the terms of ANCSA, and because the homeland of the Tlingit, Haida and Tsimshian people had been reserved by the U.S. government as a national forest, the Secretary of the Interior was not able to withdraw land in the Tongass for selection by and conveyance to Sealaska. Only the Village Corporations were permitted to select land near the villages, and each Village Corporation in southeastern Alaska was limited to just one township of land. The only lands available for selection by Sealaska in 1971 were slated to become part of the Wrangell-St. Elias National Park or consisted essentially of mountain tops.

Faced with strong opposition from the U.S. Forest Service to Native land ownership in the Tongass, Sealaska had no choice but to request that Congress amend ANCSA to permit Sealaska to select lands near its villages. Sealaska made this request with the understanding, based on Bureau of Land Management (BLM) estimates, that its entitlement would be just 200,000 acres and that land available near the villages would be sufficient for Sealaska selections. See Amendments to Alaska Native Claims Settlement Act, Part I: Hearing before the S. Comm. on Interior and Insular Affairs, 94th Cong. 184 (1975) (statement of John Borbridge, President, Sealaska Corporation).

Congress concurred, amending ANCSA in 1976 to allow Sealaska to make its selections from within some of the 10 withdrawal boxes established under ANCSA for the 10 Southeast Native villages recognized under that Act. Today, however, we know that Sealaska's entitlement under ANCSA is approximately 365,000 acres, not the 200,000 acres BLM had originally estimated. Sealaska has now received just over 290,000 of the acres to which it is entitled from inside the withdrawals authorized by Congress. The remaining selections, as discussed throughout this testimony, are not appropriate for development, and would require Sealaska to select community municipal watersheds, and from areas with exceptional fisheries values.

Sealaska agreed to select land from within the withdrawal boxes because, in 1976, we had no other place to go. With two large pulp mills holding contracts to cut timber throughout the Tongass at the time, and the Forest Service favoring the timber industry over Native land claims, the political reality was such that Sealaska had no true ability to ask for a fair settlement. Did Sealaska ask to select land from within the withdrawal boxes? Yes. But the suggestion that we, Alaska's Native people, invited our own exclusion from our own Native homeland is an idea that any witness to our history should find both reprehensible and nonsensical. For us, it was a choice between something limited, or nothing at all. It was hardly a choice.

H.R. 740 addresses problems associated with the unique treatment of Sealaska under ANCSA and the unintended public policy consequences of forcing Sealaska to select its remaining land entitlement from within the existing ANCSA withdrawal boxes. The legislation presents to Congress a legislative package that will result in public policy benefits on many levels.

Observers unfamiliar with ANCSA sometimes suggest that the Sealaska legislation might somehow create a negative “precedent” with respect to Alaska Native land claims. This seems odd in the context of the history of the Tongass and its impact on the Southeast settlement. Clearly, there were different circumstances in Southeast Alaska that resulted in disparate treatment that must be rectified. Congress has, on multiple occasions, deemed it appropriate to amend ANCSA to address in an equitable manner issues that were not anticipated by Congress when ANCSA passed. Congress continues to amend federal law to include more protected conservation acreage without debate about whether or not it is a negative precedent.

Sealaska’s Land Settlement in the Context of Southeast Alaska’s History

Two documents attached to this written testimony present an historical perspective on the long struggle to return lands in the Tongass to Native people: (1) the draft document funded by the Forest Service and authored by Dr. Charles W. Smythe and others, “A New Frontier: Managing the National Forests in Alaska, 1970-1995” (1995) (“A New Frontier”); and (2) a paper by Walter R. Echo-Hawk, “A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska (“Indian Policy in Southeast Alaska”).

The findings and observations summarized below are to be attributed to the work of Dr. Smythe and Mr. Echo-Hawk. For the sake of brevity, we have summarized or paraphrased these findings and observations.

Dr. Smythe’s research, compiled in “A New Frontier”, found, among other things:

- By the time the Tongass National Forest was created in 1908, the Tlingit and Haida Indians had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.
- The Act of 1884, which created civil government in the Alaska territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim exclusively areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.
- For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. As late as 1954, the Forest Service formally recommended that all Indian

claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska.

- The policy of the Roosevelt Administration was to recognize aboriginal rights to land and fisheries in Alaska. Following hearings on the aboriginal claims related to the protection of fisheries in the communities of Hydaburg, Klawock and Kake, Secretary of the Interior Harold Ickes established an amount of land to be set aside for village reservations. This was troubling to the Forest Service. The Department of Agriculture supported the efforts of the U.S. Senate to substantially repeal the Interior Secretary's authority to establish the proposed reservations in Southeast Alaska.

Walter Echo Hawk's paper, "Indian Policy in Southeast Alaska", observes, in part:

- The creation of the Tongass National Forest was done unilaterally, more than likely unbeknownst to the Indian inhabitants.
- The Tongass National Forest was actually established subject to existing property rights, as it stated that nothing shall be construed "to deprive any persons of any valid rights" secured by the Treaty with Russia or by any federal law pertaining to Alaska. This limitation was essentially ignored.
- A Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which ruled that lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, federal lawmakers passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. The Congress, in its sole discretion, would decide if there was to be any compensation whatsoever for lands stolen.

H.R. 740: A Balanced Solution with Significant Public Policy Benefits

Alaska's congressional delegation has worked hard to ensure that the fair settlement of Sealaska's Native land claims is accomplished in a manner that may have the greatest benefit to all of Southeast Alaska while balancing the interests of individuals, communities, federal and state land management agencies, and other interested stakeholders.

Thanks to the hard work of Alaska's congressional delegation, this legislation largely is in symmetry with the Obama Administration's goals for the Tongass, while also allowing

Sealaska to apply to receive cultural sites that are sacred to our people as well as land for sustainable economic development, supporting local jobs and communities.

Sacred Sites

- H.R. 740 would permit Sealaska to select up to 127 cultural sites, totaling 840 acres. In previous version of the legislation, Sealaska would have been permitted to select more than 200 cultural sites, totaling 3600 acres.
- Sites will be selected and conveyed pursuant to the terms of ANCSA Section 14(h)(1) and federal regulations.

Small Parcels of Land

- H.R. 740 permits Sealaska to select 16 parcels totaling 2,050 acres, near Native villages. The land offers cultural, recreational, and renewable energy opportunities for the villages.
- More than 50 small parcels sites were considered in previous version of the legislation. Sites heavily used by local communities were removed from H.R. 740.
- Sealaska will seek partnerships with local tribes, clans, businesses and residents to enhance the indigenous and recreational experience on these parcels of land and to share local character and knowledge.

Large Parcels of Land

- Most of Sealaska's entitlement lands will be conveyed as large parcels of land, comprising approximately 67,185 acres.
- These lands were identified in consultation between Alaska's congressional delegation, Sealaska, tribes, the State, local communities, the Forest Service, local conservation groups, and other regional stakeholders, avoiding ecologically sensitive areas, the "backyards" of local communities, conservation areas, and community watersheds.
- These lands are generally roaded, and contain significant second growth stands of timber, supporting Sealaska's efforts to develop a sustainable forestry economy on Native lands in southeastern Alaska.

We believe this legislation is in symmetry with the goals of the Administration. H.R. 740 will:

- Protect roadless areas and accelerate the transition away from forest management that relied on old growth harvesting;
- Help struggling communities in rural Alaska by promoting economic development; and
- Finalize Sealaska's Native entitlement in an equitable manner, including the conveyance of important cultural sites.

Without legislation to amend ANCSA, Sealaska will be forced either, to select and develop roadless old growth areas within the existing withdrawals or, to shut down all Native timber operations, with significant negative impacts to rural communities, the economy of Southeast Alaska, and our tribal member shareholders.

The public benefits of this legislation also extend far beyond Sealaska Corporation and its shareholders. Pursuant to a revenue sharing provision in ANCSA, Sealaska distributes 70 percent of all revenues derived from the development of its timber resources among all of the more than 200 Alaska Native Village and Regional Corporations.

Finalizing Sealaska's ANCSA land entitlement conveyances will also benefit the federal government. This legislation allows Sealaska to move forward with its selections, which ultimately will give the BLM and the Forest Service some finality and closure with respect to Sealaska's selections in Southeast Alaska.

Seeking Sustainable Solutions by Selecting Outside the "Boxes"

Unlike the other eleven Regional Native Corporations, Sealaska was directed to select the entirety of its entitlement lands only from within boxes drawn around a restricted number of Native villages in Southeast Alaska. Forty-four percent of the ten withdrawal areas is comprised of salt water, and multiple other factors limit the ability of Sealaska to select land within the boxes.

To date, Sealaska has selected approximately 290,000 acres of land under ANCSA from within the withdrawal boxes. Based on BLM projections for completion of Sealaska's selections, the remaining entitlement to be conveyed to Sealaska is approximately 70,000 acres. The only remaining issue is where this land will come from. Of the lands available to Sealaska today within the ANCSA withdrawal boxes:

- 270,000 are included in the current U.S. Forest Service inventory of roadless forestland;
- 112,000 acres are comprised of productive old growth;
- 60,000 acres are included in the Forest Service's inventory of old growth reserves; and
- much of the land is comprised of important community watersheds, high conservation value areas important for sport and commercial fisheries and/or areas important for subsistence uses.

The Sealaska legislation allows Sealaska to move away from sensitive watersheds and roadless areas, to select a balanced inventory of second growth and old growth, and to select most of its remaining ANCSA lands on the existing road system, preserving on balance tens of thousands of acres of old growth, much of which is inventoried "roadless old growth".

Local Impact of H.R. 740: Saving Jobs in Rural Southeast Alaska

While jobs in Southeast Alaska are up over the last 30 years, many of those jobs can be attributed to industrial tourism, which creates seasonal jobs in urban centers and does not translate to population growth. In fact, the post-timber economy has not supported populations in traditional Native villages, where unemployment among Alaska Natives ranges above Great Depression levels and populations are shrinking rapidly.

We consider this legislation to be the most important and immediate “economic stimulus package” that Congress can implement for Southeast Alaska. Sealaska provides significant economic opportunities for our tribal member shareholders and for residents of all of Southeast Alaska through the development of an abundant natural resource – timber.

Our shareholders are Alaska Natives. The profits we make from timber support causes that strengthen Native pride and awareness of who we are as Native people and where we came from, and further our contribution in a positive way to the cultural richness of American society. The proceeds from timber operations allow us to make substantial investments in cultural preservation, educational scholarships, and internships for our shareholders and shareholder descendants. Our scholarships, internships and mentoring efforts have resulted in Native shareholder employment above 80% in our corporate headquarters, and significant Native employment in our logging operations.

We are also proud of our collaborative efforts to build and support sustainable and viable communities and cultures in our region. We face continuing economic challenges with commercial electricity rates reaching \$0.61/kwh and heating fuel costs sometimes ranging above \$6.00 per gallon. To help offset these extraordinary costs, we work with our logging contractors and our local communities to run a community firewood program. We contribute cedar logs for the carving of totems and cedar carving planks to schools and tribal organizations. We are collaborating with our village corporations and villages to develop hydroelectric projects. We do all of these collaborative activities because we are not a typical American corporation. We are a Native institution with a vested interest in the well-being of our communities.

ANCSA authorized the return of land to Alaska Natives and established Native Corporations to receive and manage that land so that Native people would be empowered to meet our own cultural, social, and economic needs. H.R. 740 is critically important to Sealaska, which is charged with meeting these goals in Southeast Alaska.

Sealaska’s Sustainable Forest Management Program

Sealaska has a responsibility to ensure the cultural and economic survival of our communities, shareholders and future generations of shareholders. Sealaska also remains fully committed to responsible management of the forestlands for their value as part of the larger forest ecosystem. At the core of Sealaska’s land management ethic is the perpetuation of a sustainable, well-managed forest, which supports timber production while preserving forest ecological functions. Sealaska re-plants, thins and prunes native spruce and hemlock trees on its lands, thereby maintaining a new-growth environment that better sustains plant and wildlife populations and better serves the subsistence needs of our communities. Significant portions of Sealaska’s classified forest lands are set aside for the protection of fish habitat and water quality; entire watersheds are designated for protection to provide municipal drinking water; and we set aside areas for the protection of bald eagle nesting habitat. The decision to cut trees is not taken lightly, and is always based on the best science and best forest practices.

The Forest Service's Plans for the Tongass: Impact of H.R. 740 on Tongass Management

We believe Sealaska's offer to leave behind roadless old growth timber in the Tongass is significant; it is a proposal we believe this Administration should support based on its goals to protect these types of forest lands. We also believe that the lands proposed for conveyance under H.R. 740 conflict minimally with and may ultimately benefit the Forest Service's Transition Framework for the Tongass.

Sealaska and the Forest Service agree that to achieve a successful transition to second growth, the Forest Service needs Sealaska to remain active in the timber industry in the Tongass, because Sealaska's operations support regional infrastructure (including roads and key contractors), development of markets (including second growth markets), and development of efficient and sustainable second growth harvesting techniques.

Sealaska has 30 years of experience developing and distributing Southeast Alaska wood to new and existing markets around the world. Sealaska recently has pioneered second growth harvesting techniques in Southeast Alaska and is active in this market. By partnering with the Forest Service, harvesting in proximity to each other, and collaborating to build new markets based on second growth, we will all have a better chance of success.

Conservation Considerations and H.R. 740

This legislation is fundamentally about the ancestral and traditional homeland of a people who have lived for 10,000 years in Southeast Alaska. For more than 200 years, people from across the western world have traveled to Southeast Alaska with an interest in the rich natural resources of the region – an area the size of Indiana. We have endured Russian fur trade, whaling, gold miners and fishing interests over time. We had large fishing industry activity and two large pulp mills with significant access to our resources. In the meantime, Natives were ignored, marginalized or relocated to central locations, in part for federally-mandated schooling.

More recently, some conservation-minded groups, like industrialists before them, introduced new ideas about how best to serve the public interest in the Tongass. The conservation community writ-large has long fought to preserve the Tongass for its wilderness and ecological values, and we have often worked with them to seek appropriate conservation solutions for the forest. Our resource development practices have evolved over thirty or more years to better ensure the preservation of the Tongass' ecological values.

We support conservation, but there must be a recognition of the human element—that people have to live in this forest, and that people rely on a cash economy to survive. Industrial tourism, ecotourism, and fishing provide limited employment to the residents of our Native villages. But these jobs are scarce and short-term, and have not prevented widespread outmigration from our communities.

We also want those expressing an interest in the Tongass to recognize that *the Tongass is a Native place*, and that Native people have a right to own Native places and to promote economic development on Native lands while seeking to balance the needs of our tribal member

shareholders, our neighbors, and the forest itself. We welcome people to our homeland – but we have a right and an innate desire to exist and subsist in the Tongass.

There are groups that consistently agree with us that we should have our land, but wish to decide—to the smallest detail—where that land should be. Native people have always been asked to go second, third or last. Let’s not forget that H.R. 740 addresses the *existing* land entitlement of the Native people of Southeast Alaska.

Some groups have claimed that “the lands that Sealaska proposes to select . . . are located within watersheds that have extremely important public interest fishery and wildlife habitat values.” H.R. 740 will result in net benefits for watersheds, anadromous streams, public hunting and fishing and recreation, the preservation of roadless old growth forests, sensitive species, and the Forest Service’s conservation strategy for the Tongass. We agree that all lands in our region are valuable, and we believe our federal lands and our Native lands should be managed responsibly. We acknowledge the need for conservation areas and conservation practices in the Tongass. This bill meets all of those goals.

Technical Amendments to the TFPA and NHPA

Section 7(d)(1) of H.R. 740 would permit Native Corporations to work with the Secretary of Agriculture under the Tribal Forest Protection Act (TFPA) to address forest fire and insect infestation issues on Forest Service lands that threaten the health of the adjacent Native lands. Section 7(d)(2) of H.R. 740 would allow Native Corporations, as owners of Native cemetery sites and historical places in Alaska, to work with the Secretary of the Interior to secure federal support for the preservation of such lands under the National Historic Preservation Act (NHPA).

Prior to the reintroduction of legislation on Sealaska’s behalf in the 112th Congress, these amendments were re-drafted to clarify only that Native Corporations are “eligible” to participate in the respective federal programs established under the TFPA and NHPA. The amendments also included language that explicitly states that they do not create “Indian country” in Alaska.

A New Bill for the 113th Congress

In the 113th Congress, Congressman Don Young introduced new legislation that incorporates a number of changes, all intended to resolve the outstanding concerns of the Obama Administration. H.R. 740 incorporates the following changes, among others:

- Final entitlement acreage identified: In the 112th Congress, the Sealaska bill did not finalize Sealaska’s entitlement *upon enactment*. Instead, the bill provided for finalization of entitlement by allowing Sealaska to identify its remaining entitlement lands from within a pool of lands. H.R. 740 identifies with finality the land Sealaska will receive.
 - BLM has estimated Sealaska’s final entitlement at approximately 70,075 acres. H.R. 740 establishes Sealaska’s final entitlement as 70,075 acres.
- Forest Service concerns addressed: H.R. 740 “squares up” the boundaries of Sealaska’s economic parcels so the boundaries can more easily be managed by the Forest Service,

removes some lands that conflicted with the Forest Service's Tongass National Forest conservation plan and/or timber harvesting plan, and removes parcels of land on Prince of Wales Island, Tuxekan Island, and Kosciusko Island that raised local concerns.

- Cemetery sites and historical places removed: In the 112th Congress, the bill would have allowed Sealaska to use 3600 acres of its existing entitlement to select cemetery sites and historical places, consistent with Section 14(h)(1) of ANCSA.
 - H.R. 740 would allow Sealaska to select up to 127 cemetery and historical sites, and will limit the acreage available for those sites to just 840 acres.
- Small parcel sites removed: In the 112th Congress, the Sealaska bill would have conveyed 30 small parcels to Sealaska to be used for cultural or economic activities.
 - To address some local concerns, H.R. 740 will reduce the number of small parcel sites to 16—about half of which are located within the original withdrawal boxes.

Time is of the Essence

Timing is critical to the success of the legislative proposal before you today. Without a legislative solution, we are faced with choosing between two scenarios that ultimately will result in dire public policy consequences for our region. If H.R. 740 is stalled during the 113th Congress, either Sealaska will be forced to terminate all of its timber operations within approximately one year for lack of timber availability on existing land holdings, resulting in job losses in a region experiencing severe economic depression, or Sealaska must select lands that are currently available to it in existing withdrawal areas. The timing is the reason for H.R. 1306, which is a vehicle to more quickly transfer two parcels of land currently included in H.R. 740, just in case H.R. 740 is held up and not passed in 2013.

Our Future in Southeast Alaska

Our people have lived in the area that is now the Tongass National Forest since time immemorial. The Tongass is the heart and soul of our history and culture. We agree that areas of the region should be preserved in perpetuity, but we also believe that our people have a right to reasonably pursue economic opportunity so that we can continue to live here. H.R. 740 represents a sincere and open effort to meet the interests of the Alaska Native community, regional communities, and the public at large.

It is important for all of us who live in the Tongass, as well as those who value the Tongass from afar, to recognize that the Tlingit, Haida and Tsimshian are committed to maintaining both the natural ecology of the Tongass and the Tongass as our home. We therefore ask for a reasoned, open, and respectful process as we attempt to finalize the land entitlement promised to our community more than 40 years ago. We ask for your support for H.R. 740.

Gunalchéesh. Thank you.

A NEW FRONTIER

Managing the National Forests in Alaska, 1970-1995

by Robert D. Baker, Charles W. Smythe and Henry C. Dethloff

Intaglio, Inc

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DRAFT

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INTRODUCTION

In no other Region of the USDA Forest Service are the affairs and resources of the National Forests so intertwined with the daily lives and welfare of the people. The Chugach and Tongass National Forests account for six percent the total land area of Alaska. Within those areas the peoples of Alaska historically depended upon the resources associated with those forested areas for their livelihood. That dependence is still very significant. Regional Forester Michael Barton put it succinctly: "The National Forests are dominant in the lives of the people who live within or adjacent to them." Paul Brewster, Assistant Director of the Division of Recreation, Heritage and Wilderness Management in Region 10, commented in a similar vein: "Nowhere have I been where anything approaches the tie or closeness of the people to the land, as is true in Alaska." The greater dependence of the people on the land and resources of the forests is only one of the many features distinguishing Region 10, Alaska, from the other Forest Service Regions in the United States.

One of the distinctive characteristics of Alaska is that it is considered by many inside and outside of the State to be the nation's last frontier. In the American mind a frontier suggests rugged individualism, nature, wilderness, and opportunity. Alaska is the nation's largest state with the smallest population per square mile. The two National Forests in Alaska, the Tongass and Chugach, are respectively the largest and second largest in the National Forest System. The Tongass, occupying most of the southeastern region of Alaska, contains 16.9 million acres including the Admiralty Island and Misty Fiords National Monuments, and the state capitol, Juneau. The Chugach, with 5.7 million acres, covers much of the southcentral coastal region. It once included the site of the City of Anchorage. The two Alaska forests comprise about ten percent of the total acreage administered by the USDA Forest Service.

Forest management has changed since statehood from a largely custodial/inventory function to an active "conflict management" role involving the allocation of resources among many diverse and changing uses. The social and economic context in which management decisions are made has changed. The legislative guidelines are markedly different. Interestingly, what has changed least in the National Forests are the forests themselves, and the fish and the wildlife, and even the people themselves who live within and adjacent to the forests. Therein lies a good part of the problem of managing finite and renewable resources in times of rapid change.

The National Forests in Alaska are often the focus of a very large and diverse external constituency. They variously champion conservation, environmental, wilderness, wildlife, tourist, timber, mining, fishing, hunting, subsistence, and recreation interests, among others. Much of the history of Alaska has been determined by "outside" influences. As the "last frontier" Alaska represents economic opportunity on the one hand, and a pristine and sensitive environment on the other. Thus, Kimberly Bown, Acting Director of Public Services and formerly Regional Director of Recreation, Heritage and Wilderness Resources, characterizes Region 10 as being "at the cutting edge of political intervention." The Alaska Forests have become the legislative and ideological battleground for clashes between preservation and developmental partisans. These conflicts markedly affect forest resource use and management.

The Alaska National Forests are unique in several respects. They are the home of a very large native American population who have historically subsisted on the resources of the lands in the National Forests and its tributaries and adjoining waters. Moreover, many new non-native communities have been formed who also consider themselves very close to the land and practice a new subsistence lifestyle modelled on that of the older native communities. The interests of the Native Americans and the new subsistence communities affect the allocation and use of National Forest resources in Alaska. The Statehood Act of 1959, the Alaska Native Claims Settlement Act of 1971, the Alaska National Interest Lands Conservation Act of 1980, the Tongass Timber Reform Act, court cases, and environmental legislation have made it so. This study necessarily focuses on this unique management environment.

Another distinctive characteristic of the Alaska National Forests are that they can best be described as wild, wilderness, or roadless areas. Over one-third of the Tongass National Forest is designated Wilderness or National Monument area. The Chugach National Forest is variously coastal lands and islands, and inland glacier and arctic type tundra. It adjoins the Kenai National Wildlife Refuge administered by the Fish and Wildlife Service, and the Chugach State Park administered by the State of Alaska. Large portions of the Chugach and Tongass National Forests are roadless, and generally accessible only by boat, foot, or aircraft. They are, moreover, generally remote from the nation's large metropolitan areas and heavy concentrations of population.

The climate and geography of the Alaska forests are different. The Tongass National Forest is a "rain forest" with average annual rainfall of almost 100 inches. The Tongass is essentially a "marine" forest, a forest on "mountains in the sea" in that its lands are either surrounded by or generally adjoin the sea and inland waterways. The Chugach is geographically two forests, one a "marine" forest, and the other an inland and essentially alpine or near-arctic forest with large areas of ice and tundra. Annual mean temperatures are lower on the two Alaskan forests than other national forest areas. Employment, and activity, tends to be much more seasonal.

The regional economy, until contemporary times, has been heavily extractive and has focused on furs, fishing, mining and timber. Since World War II, government employment, tourism, and petroleum are becoming leading sectors for economic growth. But the traditional industries, and subsistence, account for the occupation and welfare of a large portion of those who live within and adjacent to the National Forests.

Petroleum, which is not produced on any national forest lands, has only since 1970 come to dominate the state's revenues and affects the welfare of all the people—and indirectly the management policies and practices in the National Forests. Because of its petroleum-based revenues, the State of Alaska has created a more substantial infrastructure and bureaucracy, prominently in the areas of forestry, fisheries, wildlife and tourism, which are at once both complimentary to the work of the USDA Forest Service, but also sometimes competitive.

Today, instead of timber and fishing being the leading employers in Alaska, the local, state and federal governments are collectively the largest employers. Many of those state and federal employees, along with the traditional timber, fishing, and mining industries, use resources in the lands and waters related to the Chugach and Tongass National Forests. Subsistence users, including a large portion of the Native Americans and a large population of non-Native Americans, are directly dependent on National Forest resources. The nature and the mix of the uses of forest resources have changed markedly since World War II.

Tourism and recreation are the most rapidly growing sectors of the state economy and are primary uses of National Forest scenic and recreational resources. Recre-

ation and tourism have, within the past three decades, generated considerable expansion in the retail trades and services industries. Most of the hotel, motel and restaurant accommodations in Alaska were not there two or three decades earlier. A host of cottage industries, ranging from Bed and Breakfast establishments to sport fishing, boating, kayaking, packing, hunting, and wilderness guide and outfitting operations have come into being only within the past twenty-five years. Home-based craft industries, both Native and non-Native, support the burgeoning tourist and recreation sectors of the Alaska economy. All of these things comprise what is now collectively referred to as the "visitor industry." The National Forests are critical to the developing visitor industry and it with the more traditional timber, fishing and mining industries, affect management decisions and the administration of the National Forests.

Until 1960 professional foresters in the USDA Forest Service were almost exclusively responsible for forest management policies and resource utilization. Each Region exercised considerable autonomy. "Although the Forest Service had a unified and dynamic national program, it early delegated most administrative authority for the Alaska program to the Regional Forester." Within each Region Forest Supervisors and their staff were responsible for the implementation of rather broadly constructed policies and guidelines. District Rangers frequently had almost exclusive jurisdiction and exercised considerable license in the management of the Ranger District. In recent times management policies have become more narrowly defined. Management decisions increasingly have been elevated from the District to the Forest, and from the Forest to the Region, from the Region to the Chief, and from the Chief, USDA Forest Service to the Office of the Secretary of Agriculture, then to Congress and the courts.

In 1954, the Forest Service began operating under the first of several "long-term" timber contracts, in part as a mechanism to assure the survival and welfare of Alaska communities whose traditional dependence on fishing was being threatened by declining harvests and foreign competition. These contracts have been significant factors in the regional economy and continue to affect management decisions in the Region. Beginning in 1959, a number of important developments wholly external to the National Forests, began to impact upon the long-term timber contracts, the use of forest resources, and the very nature of

forest management and planning. The long-term timber contracts are a continuing part of this study of forest resource management.

Awarded statehood only in 1959, the State of Alaska has since that time increasingly influenced the determination of National Forest management policies. Alaska statehood, which coincided with the beginning of a new era of Congressional mandates affecting forest management, precipitated almost revolutionary changes in the way Alaska forest resources were used and administered. The state obtained rights to 103 million acres of federal land, including 400,000 acres of land formerly a part of the Chugach and Tongass National Forests. The state assumed control over wildlife management on the National Forests, entered into cooperative agreements with the Forest Service, and developed a governmental infrastructure that both cooperated and conflicted with federal management systems.

The Multiple Use-Sustained Yield Act approved by Congress in 1960 required that forest managers must sustain renewable resources and make just or equitable allocations of the use of forest resources among the diverse users including timber, recreation, camping, hunting, grazing, fishing or other uses. The Wilderness Act of 1964 mandated the designation of appropriate portions of National Forests as Wilderness areas where humans should leave no permanent imprint of their passage. The National Wild and Scenic Rivers Act (1968) supplemented the Wilderness Act by requiring that certain (to be) designated rivers remain in their "free-flowing" natural state.

Finally, in 1969, the National Environmental Policy Act (NEPA) required the Forest Service to assess potential damage or change to the forest environment that might be caused by any significant federal actions such as road building, timber-cutting, water impoundments or drainage systems (usually elements of timber sales)—or anything that might change or disturb the existing environment. In Alaska, NEPA had a more substantial impact on forest management than in the "lower 48," since National Forest lands existed, for the most part, in their natural pristine condition. NEPA criteria discouraged altering that environment more so than was true in the second growth, more used, forests of the other states. By 1970, forest management, which only a decade earlier had been largely the responsibility of the Region, its administrative divisions and staff, had become subject to Congressional direc-

tives and a host of diverse and often divergent interest groups who used the legislation and courts to challenge, monitor, and implement policies affecting national forest management by the Forest Service managers. In this, Region 10 was no different than those in the lower forty-eight states.

Legislation approved by Congress after 1970, however, created policies and directives that applied only to Alaska. The Alaska Native Claims Settlement Act (ANCSA) conveyed title to approximately 44 million acres of federal land in Alaska (including 550,000 acres of land in the National Forests) and \$962 million to Alaska's native peoples organized into corporations, rather than reservations. The Act also set in motion the processes for decisions on the use and ownership of much of Alaska's remaining 375 million acres of land by mandating the reservation of large conservation areas on Federal lands which comprised 59% of the total land area. ANCSA sought to determine issues of aboriginal titles to land in Alaska that had remained unresolved since the Alaska purchase in 1867. It was the first major land legislation following statehood. It created, among other things, the "ANCSA corporation," which allowed native communities for the first time to enter into commercial timber sales and operations. The ANCSA settlement was precipitated by industry, and state and federal interests anxious to facilitate petroleum exploration and other commercial development. ANCSA and subsequent amending legislation, land transfers, and exchange acts created an institutional framework that transformed Alaska, and the administration of the National Forests.

The Forest and Rangeland Renewable Resources Planning Act (RPA or Resources Planning Act of 1974) initiated comprehensive studies leading to long-range forest planning. The Act imposed more constraints on timber harvest and gave greater importance to recreation and watershed uses. The Sikes Act of 1960, amended in 1974, established cooperative programs between National Forest managers and state authority relating to wildlife management on the National Forests. The National Forest Management Act of 1976 amended the 1974 Planning Act and established additional criteria and definitions for multi-use management policies. Region 10's major management products and efforts of the 1970s, relating to this legislation, included the Tongass Forest Management Plan (1979) and the Chugach Forest Management Plan completed in 1981.

Those plans immediately became subject to the revisions imposed by ANILCA, the Alaska National Interest Lands Conservation Act (December 2, 1980). ANILCA evolved directly out of ANCSA, which authorized the federal government to set aside 80 million acres of Alaska's land for study and potential selection as "National Interest Lands" (referred to as "d-2" lands). Federal and state agencies, under the authority of the Secretary of the Interior, established a joint Federal/State Land Use Planning Commission to make recommendations on the allocation and use of the undesignated "d-2" lands. Those studies engaged Region 10 personnel in intensive evaluation, surveys and negotiation for much of the decade between 1970 and 1980. Indeed, the studies and relevant land transfers are still an on-going part of Forest Service business in the 1990s.

ANILCA established fourteen Wilderness areas totaling 5.4 million acres in the Tongass National Forest. The Act also changed the proscriptions on the use of Wilderness. In the Alaska Region, unlike in Wilderness areas of the lower forty-eight states, wilderness users could under certain conditions build shelters and use motorized vehicles. ANILCA added 1.4 million acres to the Alaska National Forests. On December 1, 1978, in an executive action related to pending ANILCA legislation, President Jimmy Carter created the Admiralty Island and Misty Fjords National Monuments. ANILCA prescribed a new maximum production level (4.5 billion board feet per decade) for timber harvests.

ANILCA recognized one particularly unique use of some National Forest resources (and resources on other federal lands) in Alaska. The Act allowed subsistence use on the National Forests for both Native peoples and all rural residents. Subsistence is defined as:

the customary and traditional uses by rural Alaska residents of wild renewable resources for direct, personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of inedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Subsistence meant that rural Alaskans might continue to enjoy the customary and traditional non-commercial uses of the forests such as hunting, fishing, and gathering.

These rights were, in some cases, anterior to other uses and allocations of forest resources. But, insofar as ANILCA subsistence rights applied to rural residents, the Act conflicted somewhat with the Alaska State Constitution which reserved fish, wildlife, and waters for the common use of all the people—rural and urban. In any event, the recognition of subsistence rights by ANILCA, with the earlier ANCSA and NEPA provisions, made forest resource management considerably different in Alaska as compared to other Regions of the National Forest System.

Many Region 10 foresters expected approval of ANILCA in 1980 to mark the final stage of the land allocation process which had begun with the Statehood Act of 1958 and the ANCSA legislation of 1971. Rather, the Act led to oversight hearings, revision of the basic forest land management plans, and new legislation affecting land uses and allocations. Oversight hearings on ANILCA initiated in 1985 led to legislation introduced in Congress in 1986 and yet another amendment to ANCSA/ANILCA legislation. The Tongass Timber Reform Act of 1990, recognized land use designations (LUD's) unique to the Alaska National Forests, legislated buffer zones for timber harvest areas, created six new wilderness areas and reformed the long-term timber contracts. The Act removed the specified maximum annual board feet limit for timber production while stating that the Forest Service "should seek to provide a supply of timber which meets market demand...."

ANCSA, ANILCA, and the Tongass Timber Reform Act are legislative packages that affect forest management practices only in Alaska. The legislation recognizes the unique environment of Alaska, the cultural distinctiveness of its Native peoples, and the special qualities of life for all peoples on the last frontier. Since 1970, much of the business of the USDA Forest Service in Region 10 has evolved around ANCSA, ANILCA and the Tongass Timber Reform Act. Although the Alaska Constitution of 1959 provided the initial parameters for collaboration, cooperation, and sometimes competition between the State of Alaska and the National Forests, since 1970 the relationships have been redefined largely because of the new federal legislation and the rapidly developing Alaska economy and state governmental infrastructure made possible by revenues from Alaska's oil discoveries.

Thus, for the twenty-five years, 1970 to 1995, Alaska's two National Forests, the Tongass and Chugach, have

been significant elements in the rapidly changing social, political and economic order within Alaska as they have been in the past. During those same twenty-five years Alaska's National Forests have become an ideological battleground for developmental and anti-developmental interests at the local, state, and national levels.

But there are many gradients among those who might support commercial development and expansion, and among those who would leave the forests largely untouched by humankind. The traditional users of Alaska forest resources, the timber, mining, and fishing industries believe that the value of the National Forests lies in their consumptive uses. On the other hand, some wilderness advocates and environmentalists may object to timber cutting or mining because it might impair a scenic view. Others may not want the timber cut because it might impair a view believed vital to the tourist trade. Thus their interest, like that of the timber industry, is equally commercial. Others would preserve the natural forest environment in order to protect recreational uses that may also have a strong commercial context as in sport fishing and hunting, packing and kayaking. Other recreation advocates may wish to strip timber from certain areas and build lodgings for ski slopes, or cabins for wildlife viewers. Ironically, many of those who supported or initiated the organic legislation creating the National Forest system at the turn of the century, did so for the same reasons: that the resources might be conserved or preserved for use by future generations.

Native Alaskans are similarly divided over corporate versus traditional use of forest resources and vary as to the degree of their support for policies that would basically conserve and those that would facilitate the development and utilization of forest resources. Natives tend to oppose timber sales on National Forest lands in the interest of protecting their own subsistence rights. Until recently, Natives have shown little disposition to curb timber sales from Native-owned lands. Alaskans who advocate commercial expansion and development, native and newcomers, often tend to view federal regulatory policies as restrictive if not stifling. Those who seek subsistence rights on National Forest lands have sometimes collaborated with larger out-of-state environmental constituencies to influence federal legislation affecting their interests in the use of Alaska forest resources. The National Forests have traditionally provided the subsistence, timber, mining, fishing and recreational and other opportunities associated with the livelihood of many users.

Multiple-use management largely involves the allocation of resources among competitive interests under guidelines established in contemporary times, by Congress and the USDA Forest Service. The business of managing the National Forests has changed since statehood, and more markedly since 1970 under the influence of ANCSA, ANILCA and the Tongass Timber Reform Act.

The study entitled *A New Frontier: Managing the National Forests in Alaska, 1970-1995*, examines the history and dynamics affecting forest management in Region 10 over the past quarter-century. It attempts to do so, however, within the context of the previous sixty-five years of USDA-Forest Service administrative history, and in the context of the historical experiences of the people of Alaska. ANCSA and ANILCA have created a definitive imprint on forest management since 1970, thus the authors have emphasized resource management in the context of this legislation and Alaska Native populations and cultures and the developing economy.

Fundamental changes are occurring in the economy of Alaska and in its social and governmental structures. The inception of the state, and especially the development of state government since 1970 are important elements in the administration of federal forest resources. There have been dramatic changes in relevant Federal legislation. There have been significant changes in public attitudes and in the public's understanding of conservation and ecosystem management. This study seeks to define the issues and to profile the conservation, ecology, mining, subsistence, fishing, hunting, outfitting, visitor, recreation, timber, petroleum and other industries that are so much a part of the dynamics of resource management in Region 10.

Multiple use resource management is as much a matter of managing social and economic change as it is managing renewable and non-renewable resources. The dynamics of forest management go far beyond growing or harvesting timber, providing wildlife habitat, or wilderness, or recreational environs. The dynamics are a microcosm of a people, a state, and a nation. In some respects the Tongass and Chugach National Forests have been at the vortex of changes that are both Alaskan and national in scope. This then is a very contemporary history of change and the impact of change on the Alaska Region, USDA Forest Service.

The authors hope that this history will provide insight and a better understanding of the events and issues confronting forest managers, and environmental, business, and cultural groups who use or have an interest in the use of National Forest resources—in Alaska and elsewhere.

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The authors conducted approximately sixty interviews ranging from about thirty-minutes to several hours each with Forest Service personnel and retirees located variously in Juneau, Anchorage, Petersburg, Ketchikan, and Sitka. Without exception each was very helpful and responsive. Their time and contributions are greatly appreciated. Their names are listed in the bibliographic essay. We were very privileged to include Governor Walter J. Hickel among those interviewed.

Chapter I

The Alaska National Forests: The Land And Its Peoples

"Nowhere have I been where anything approaches the tie or closeness of the people to the land, as is true in Alaska," commented Paul Brewster, a forest manager with the USDA Forest Service, Alaska Region. That interdependence of the land and the peoples of Alaska has shaped the history of Alaska. That closeness continues to affect the management of the National Forests in Alaska in very distinctive ways. Alaska statehood, approved by Congress in 1959, markedly affected the administration of National Forest resources in Alaska. So too has passage of what might be termed the "environmental" legislation of the 1960s, including the Multiple Use Sustained Yield Act (1960), the Wilderness Act (1964), the National Wild and Scenic Rivers Act (1968), and not least, NEPA, the National Environmental Policy Act approved in 1969. Statehood, and certainly the legislation of the sixties, provided new directions for forest resource use and management.

The Forest Service began to implement the new policies of the sixties through practical management programs prescribed by Congressional enabling legislation in the 1970s. The Forest and Rangeland Renewable Resources Planning Act (Resources Planning Act or RPA, 1974) initiated comprehensive studies leading to long-range forest planning. The Act imposed more constraints on timber harvest and gave greater importance to recreation and watershed uses. The Sikes Act, also approved in 1974, established cooperative programs between National Forest managers and state authorities relating to wildlife management on the National Forests. The National Forest Management Act of 1976 amended the 1974 Resource Planning Act and established additional criteria and definitions for multiple-use management policies.

But no federal legislation has created such a distinctive management environment as has ANCSA, the Alaska Native Claims Settlement Act, approved by Congress on December 18, 1971. That Act, and related acts including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and most recently, the Tongass Timber Reform Act (1990), have created a management environment that is unique to the Alaska Region. While Alaska may be considered the nation's "last frontier," the Alaska National Forests comprise a "new frontier" in resource management.

ANCSA sought to determine and settle issues of aboriginal title to land in Alaska that had remained unresolved since the Alaska purchase in 1867. ANCSA and ANILCA incorporate the history of the Native peoples of Alaska and their traditional resource uses

with Alaska's contemporary populations and forest resource uses. Alaska's past has been legislatively commingled with the present. Thus, the more ancient history of the land and the people of Alaska are a necessary precursor to understanding this new frontier of National Forest management that has emerged since 1970.

The Organization of the National Forests

Curiously, the first federal forest legislation relating to Alaska had to do with fishing rather than forests. In response to visibly declining salmon populations in the late 1880s, the U.S. Commission of Fish and Fisheries sponsored a research study of salmon and salmon fisheries on Kodiak and Afognak Islands. The researchers observed fish traps and set nets erected so as to prevent the ascent of every returning fish upriver, and beach seining methods that completely obstructed the mouths of salmon streams, that were commonly carried out by commercial fishing enterprises in Alaska. They visited Afognak River at the mouth of which two canneries were operating, and reported a Native village of about 40 dwellings located on the stream. Conditions here were ideal for the establishment of a fish reserve: unobstructed streams with all five species of Pacific salmon, a mild climate, absence of development (mines, sawmills or railroads) or private holdings, sufficient timber for construction purposes, and a Native village nearby that could provide a labor force. Drawing a comparison with the passing of the buffalo on the plains and the Indian of California, the investigator suggested that the salmon, too, were helpless before the "white man's advancing civilization," as well as fishermen's greed.¹

At the request of the fish commission, President Harrison created the Afognak Forest and Fish Culture Reserve by executive proclamation on Dec. 24, 1892. Thus, as Lawrence W. Rakestraw explains in his *History of the United States Forest Service in Alaska*, the very birth of the national forest system in Alaska is connected with the need for conservation of one of Alaska's principal resources in the face of development pressures, and with the inter-connectedness among Alaska's resources, in this case forest and fishery resources.² This beginning prefigures the more modern management concept of multiple use.

It is perhaps ironic that the 1891 legislation that gave to the executive branch the powers to establish fish culture stations on Kodiak and Afognak Islands was also that which permitted new townsites to be surveyed and

conveyed, and extended the Trade and Manufacturing Act to Alaska which authorized the transfer of numerous sites used for commercial mining, fishing and logging, to the new white settlers in Alaska. The legislation also stated that the Natives of Alaska shall not be disturbed in their use and possession of occupied land until future legislation is passed. The dynamics between white settlement and aboriginal title remained unresolved until the 1970s.

Creation of the Tongass National Forest, 1902-1909
Between 1902 and 1909, President Roosevelt issued several proclamations establishing the Tongass National Forest in southeast Alaska. The first of these reservations, created on August 20, 1902, and entitled the Alexander Archipelago Forest Reserve, was completely insular. It encompassed the Prince of Wales (and associated islands to seaward), Zarembo, Kuiu, Kupreanof, and Chichagof Islands (also with associated islands to seaward). The second reservation encompassed the mainland of southeast Alaska from the southern border north to Lynn Canal and Skagway; it was made on September 10, 1907, and named the Tongass National Forest. On July 1, 1908, the Reserve and the Forest were consolidated into a single national forest, the Tongass, with a total area of 6,756,362 acres. The largest withdrawal occurred in the proclamation of February 16, 1909, when the mainland area near Yakutat (from Dry Bay to Yakutat Bay), the Chilkat Peninsula (on the western side of Lynn Canal) and the remaining islands (including Admiralty, Baranof, Etolin and Wrangell Islands) added another 8,724,000 acres to the Tongass National Forest.³ The existing mostly caucasian towns and cities were excluded from the forest.

The first forest reserve was made upon the recommendation of Lt. G.T. Emmons, whom the President asked to prepare a report on possible forests in Alaska.⁴ Emmons found that the best timber was on the islands, where it was not affected by the colder climate associated with the glaciers found on the mainland, and he selected the more sparsely populated islands. The principal inhabitants were about 800 Tlingit Indians in villages on Kuiu Island, in the village of Kake on Kupreanof Island and the villages of Hoonah and Tenakee on Chichagof Island. The largest of these was Kake, with a population of about 500. There were also small sawmills located at Howkan, Shakan, Kasaan Bay, and Hetta Inlet, and a few canneries in the area; Zarembo Island was uninhabited.⁵

Among the protestors to this action was the Rev. Henry Corser, the Presbyterian minister to the Tlingit and

Haida Indians in Wrangell, near Zarembo Island. He wrote that the restrictions on logging would force the Indians to "revert to primitive conditions or else starve," since they were "loggers by occupation."⁶ After the demise of fur-bearing animals and the subsequent collapse of the fur trade, the Wrangell Indians had very limited means and access to cash income. At the turn of the century, they derived a substantial portion of their cash from the occasional, but regular, sale of logs to Wrangell residents to be used as firewood. The provision of firewood had been a common pursuit of local Indians since the arrival of white settlers in Wrangell. Furthermore, the operator of the then recently-established Wrangell cannery preferred to import white and Chinese labor rather than employ local Natives, and the sawmill likewise did not hire Natives. Thus, as Corser knew, the newer economic opportunities were not available to the Indians in Wrangell. Corser also objected on the grounds that the reservation was an immoral confiscation of Indian property, since the Indians considered the land to be theirs by the prior right of occupation and ownership.⁷ As described below, Tlingit and Haida property rights in southeast Alaska were eventually upheld by the U.S. Court of Claims in Alaska's first Native land claims settlement in 1951.

The white population in the reserve was mainly engaged in mining and fishing, and there was need for timber in both industries. At this time, loggers were unrestricted and cut trees anywhere that was convenient. Rakestraw has noted that "the standard procedure was for the logger to go where he pleased and cut whatever he wanted, without getting permission from anyone and without notifying any official of the action."⁸ Non-reserve land was managed by the Department of the Interior's General Land Office, and in lieu of holding timber sales loggers were routinely assessed minor fines for "trespass" based on self-reported footage (until 1903, when the General Land Office initiated a sale policy). Proposing that Forest Service management would bring in more revenue than the GLO and also serve to protect the land from speculative development, the Forest Supervisor for Alaska, Langille, concluded that an additional reserve of two million acres on the mainland near Ketchikan should be made.

There were a few small sawmills in the area, but the largest mills were located at Juneau, Douglas, Wrangell and Ketchikan outside the reserve. According to Rakestraw, the owners of these large sawmills "wanted more reserves created in order to tap the potential export market." In 1907, the Forest Service proposed the area located on the mainland to be withdrawn as

the Tongass National Forest, and it was favorably acted upon by President Roosevelt. The final acreage was smaller than that suggested in the Service's initial report. The Ketchikan Power Company supported the proposal for another reserve because it would provide them with export timber. According to Rakestraw, "Its original creation was ... as a timber reservoir for the Ketchikan lumber industry and to curb Canadian log theft across the Portland Canal."⁹

The policy decision to create another national forest at this time was partly in response to a movement within Congress to curb the president's power to establish reserves by executive order. In 1909, the Forest Service made another recommendation for a reserve near Yakutat, which also included the remaining islands in the Alexander Archipelago, and another presidential proclamation putting 8.7 million additional acres into the Tongass National Forest was the result.¹⁰

Authorized by the Antiquities Act of 1906, the president was also empowered to set aside areas containing natural wonders or historic and prehistoric sites. Shortly thereafter, the Forest Service played a role in the creation of three such areas in southeastern Alaska. In 1910, the Sitka National Monument was created by the president at the urging of the Secretary of Agriculture, who submitted the proposal for such to the Secretary of Interior for the president's approval. Local Forest Service personnel assisted the Sitka Arctic Brotherhood with a petition to request better protection for the historic Sitka Indian Village and fort, the site of the 1804 battle with Baranof, from vandalism. Earlier, Olmsted had submitted recommendations for the preservation of totem poles and community houses at the former Tlingit and Haida villages of Tuxekan and Old Kasaan, and these were acted upon favorably within the decade.¹¹

Creation of the Chugach National Forest, 1904-1909

Like the Tongass, the Chugach National Forest was the product of several executive actions by President Roosevelt, in this case between 1907 and 1909. The initial proclamation creating the Chugach National Forest was issued on July 23, 1907. Comprising 4.96 million acres, it extended westward from the Copper River to the Kenai Peninsula, encompassing Prince William Sound and the islands such as Montague, Hitchinbrook, Hawkins, and Latouche Islands.¹² President Roosevelt added the Afognak Fish Culture and Forest Reserve to the Chugach by executive order on July 2, 1908; it remained under joint management of the Forest Service and the U.S. Fish Commission. Further additions were made to the Chugach by presidential

proclamation on February 23, 1909, when areas in the west (most of the timberland on the Kenai Peninsula, Turnagain Arm and Knik Arm) and the east (from the Copper River to Cape Suckling) increased the total region to 11,280,640 acres.

Prince William Sound and the Kenai Peninsula was first examined by Langille in 1904. The proposal to reserve the Prince William Sound area came about in 1907 when, as described above, the Forest Service grew concerned about a movement within Congress to restrict the president's ability to create reserves by executive order. In response, the Service moved to create both the Chugach and Tongass National Forests. The timber in the Chugach was mainly Sitka spruce, black spruce and hemlock, and the most valuable trees were on the islands. As in the Tongass, mining and fishing were the principal economic activities of the new white settlers in Prince William Sound, and copper mining was paramount. In 1907, there were active mines at four locations: Landlocked Bay, Boulder Bay, Ellamar and Latouche Island; and the great copper mine at Kennecott was soon to be developed. Commercial salmon fishing was mainly confined to the east, near Orca by Cordova and eastward at Katalla in Controller Bay, and on Wingham Island. In 1907, there was only one mill operating in the region, at Valdez; most of the lumber used in the region was imported from Puget Sound. But local trees provided logs for railroad ties, piling and mining tunnel supports.¹³ Shortly after the forest was created, 82,000 acres were eliminated in Valdez Arm as pre-existing mining interests.

Various syndicates were engaged in developing railroads during the first decade of this century at Seward, Valdez, Cordova, and Katalla (which was abandoned in favor of the Cordova route). The railroad boom brought abuses, which was a principal factor in Forest Service recommendations to make additions to the Chugach. Wasteful cutting by the Alaska Central Railroad along Turnagain Arm in the Rainbow, Indian, Bird and Glacier Creek areas was noted by Langille in 1907; the railroad was responsible for cutting three million board feet which had been left in the woods to decay between 1905 and 1907.¹⁴ The timber resources were seen as necessary for the development of railroads, which in turn were needed to develop the coal resources, and to support gold placer mining; the additional reserve would provide a system of forest production that would save the timber from overexploitation by larger interests at the expense of the individual. In a report of his inspection in 1907, Langille wrote of the need to protect the rights of the individual and to encourage small-scale

efforts to develop minerals against the “unscrupulous” mining and industrial interests “who seek by every known method of extortion to obstruct and hinder every enterprise undertaken.”¹⁵

Similar waste occurred east of Prince William Sound around Controller Bay, near Katalla, where two million board feet were left on the ground to rot by one of the railroad syndicates competing for a route to the Kennecott field. Most of this eastern block was under fraudulent coal mining claims since 1904 or 1905. This area, as well as the western area around the Kenai Peninsula and Turnagain and Knik Arms, was added to the Chugach in 1909. In 1913, several mining (coal) claims in this eastern area, which were known as the Cunningham claims, were cancelled by the Department of Interior, after investigations determined that their true purpose was to acquire the timber, rather than being legitimate mining pursuits.¹⁶

In 1904-05, Langille observed that there was an influx of wasteful white game hunters into the Kenai Peninsula, and as result of their influence the Tanaina Indians had become less mindful of their traditional conservation practices of animal populations. Langille observed that the white sports “stayed for a short time, killed as many good heads as they saw, and then took out the best.” He explains, “Traders also hired Indians to kill trophy-sized heads for sale to sportsmen.”¹⁷ Langille identified an area of the Kenai Peninsula suitable for a national forest, and he suggested that a portion of the forest region ought to be set aside as a game preserve, to protect the natural populations of bear, mountain sheep, moose and caribou from overharvesting.¹⁸ He provided cursory reports of the human population centers, estimating 200 permanent residents at Seward (mostly connected with the railroad), 200 at Kenai and 100 at Hope, with additional settlements in the interior and fishing villages along the coast (such as Homer).¹⁹ He also reported that, in the vicinity of the Knik River, there were several Dena’ ina villages and one trading post inhabited by four white men. He observed that the coming of the railroad would likely encourage market hunting among these Indians, much as had occurred on the Kenai, and would degrade the indigenous cultural practices and traditions.²⁰

Other Alaskan Proposals

The proposed Norton Bay area forest reserve was withdrawn in 1903, but was restored to the public domain in 1907 after Langille investigated and recommended against its creation. Following investigations in the Cook Inlet area in 1905, Langille recommended a Talkeetna National Forest of 10.3 million acres, encompassing the drainages of the

Talkeetna, Yentna, Susitna, and the Matanuska rivers. No action was taken regarding this recommendation.

Peoples Of The Forests Before The Establishment Of National Forests In Alaska

Chugach Region

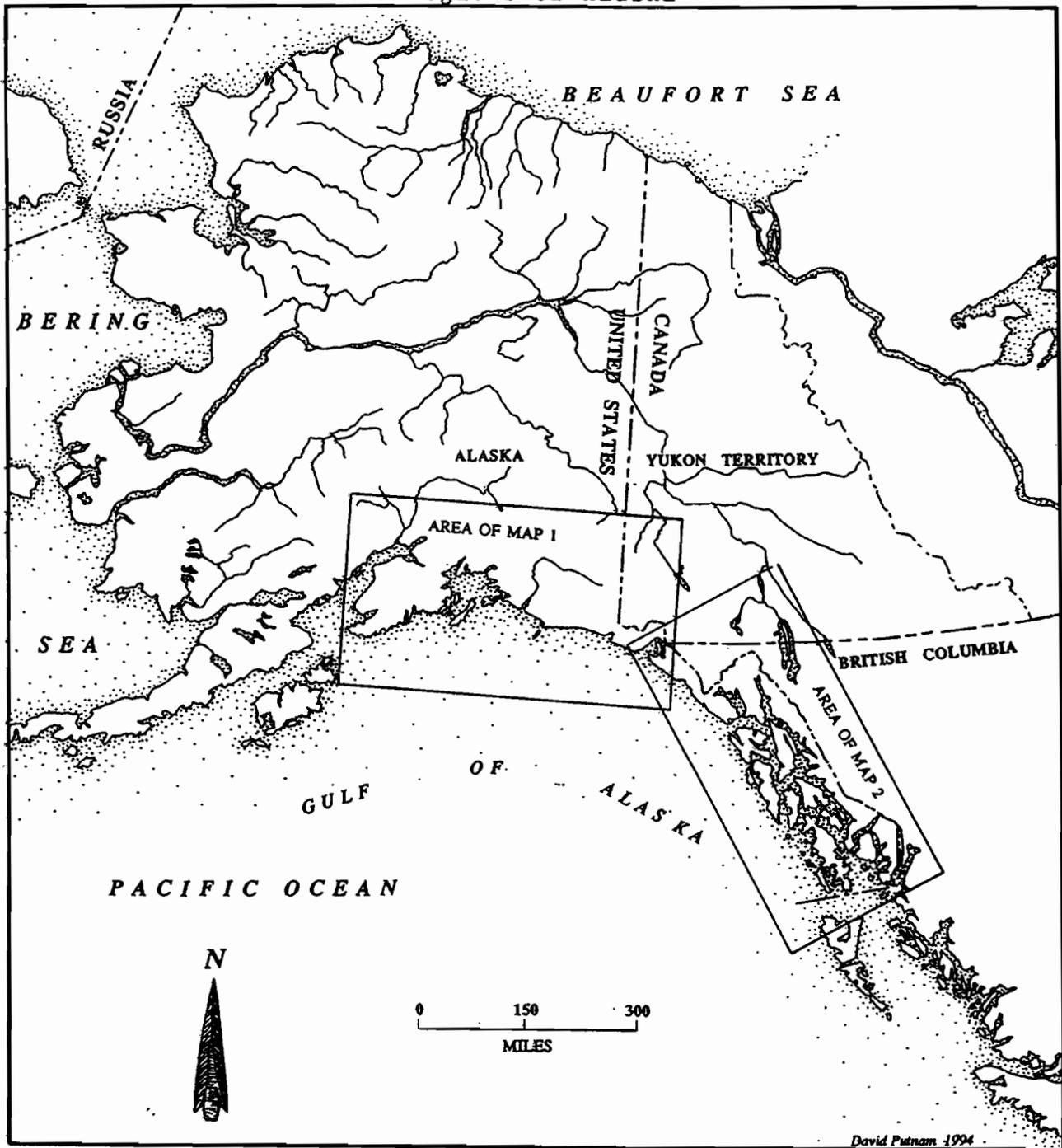
The boundaries and dimensions of the Chugach National Forest have changed since 1909, when its 11.2 million acres covered the vast south central coastal region of Alaska from the Copper River to the southern tip of the Kenai Peninsula. Although most of the Kenai Peninsula, the interior, and the eastern extremities are no longer part of the Chugach National Forest, the central coastal core of the original forest is the modern Chugach. The Chugach National Forest encompasses all of Prince William Sound and extends inland into the Chugach range. The forest boundary extends from Cape Suckling, east of Prince William Sound, to the north and west through the sound to northeastern Kenai Peninsula as far as the Russian River, and to Hope on Turnagain Arm. A short distance southeast of Cape Suckling is Yakutat Bay, which marks the start of the Tongass National Forest in southeast Alaska. The 5.8 million acres of the Chugach is the second largest forest in the United States. The coastal margin and islands of Prince William Sound are covered with stands of spruce and hemlock supported by the substantial rainfall in the region, but proximity to glaciers in the mountains of the Chugach range brings lower temperatures and inhibits the growth on the mainland, as compared to the islands. Enormous wetlands on the Copper River Delta to the east serve as the nesting, staging and feeding grounds for over 20 million birds each year. To the west, on the Kenai Peninsula, the spruce forest is outside of the rainbelt. The beautiful scenery and abundant fish and wildlife attracts substantial recreation, wildlife viewing, sport and commercial use in the region. These lands and fisheries were used by the ancestors of contemporary Native Alaskans in pre-historic times.

Prehistory of the Chugach Alutiiq (Pacific Eskimo) People

Information on the early prehistory of the Chugach region is derived from assumed associations with trends in nearby coastal areas since there have been only two major excavations in the region, the older of which shows human occupation at about 4400 years ago.²¹ Judging from the prehistory of adjacent regions to the west and southeast, the first inhabitants of the Chugach region could have arrived as long as 11,000 years ago when late Pleistocene glaciers receded from

PLATE I. The Chugach (Map 1) and the Tõngass (Map 2)

Regions of Alaska



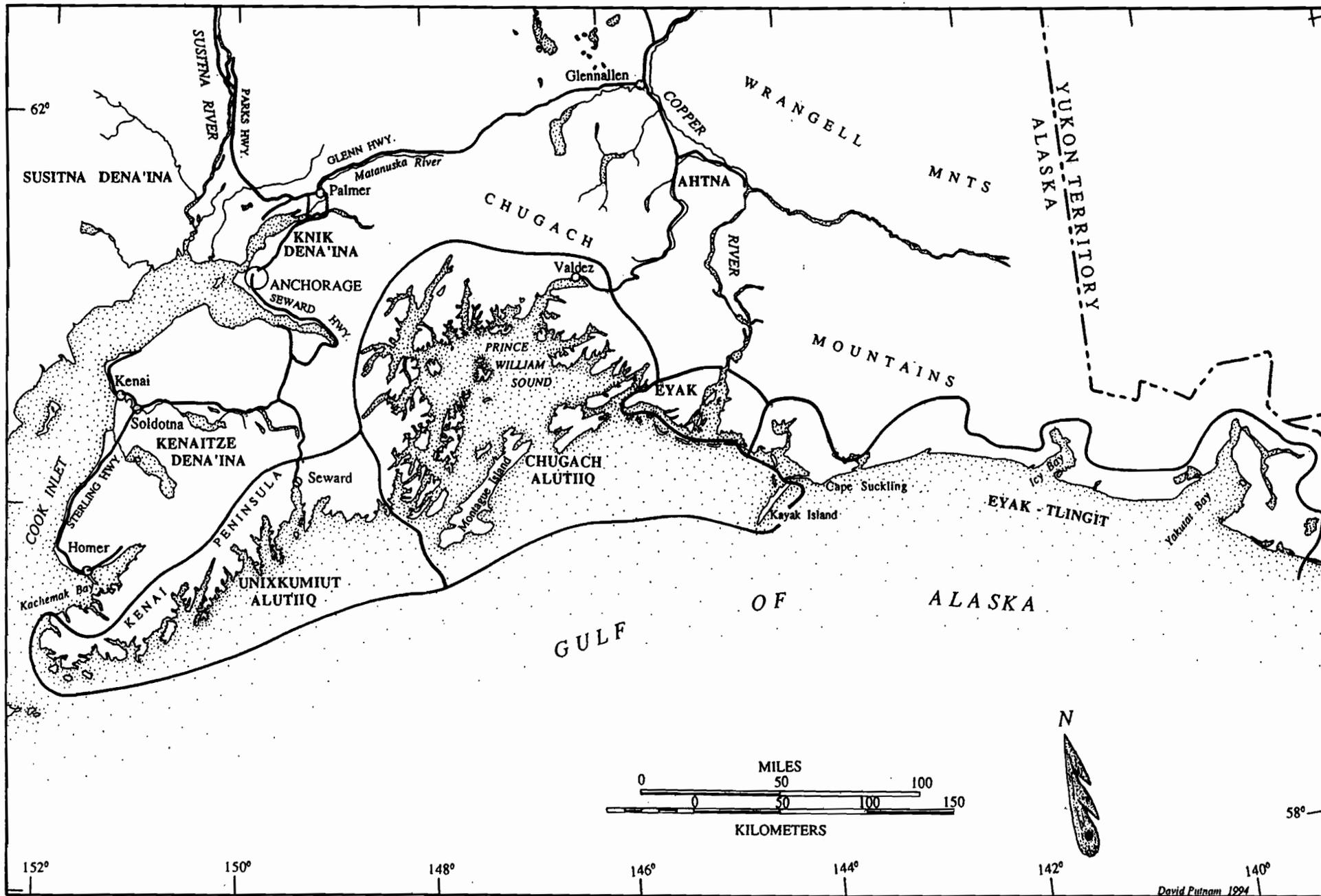
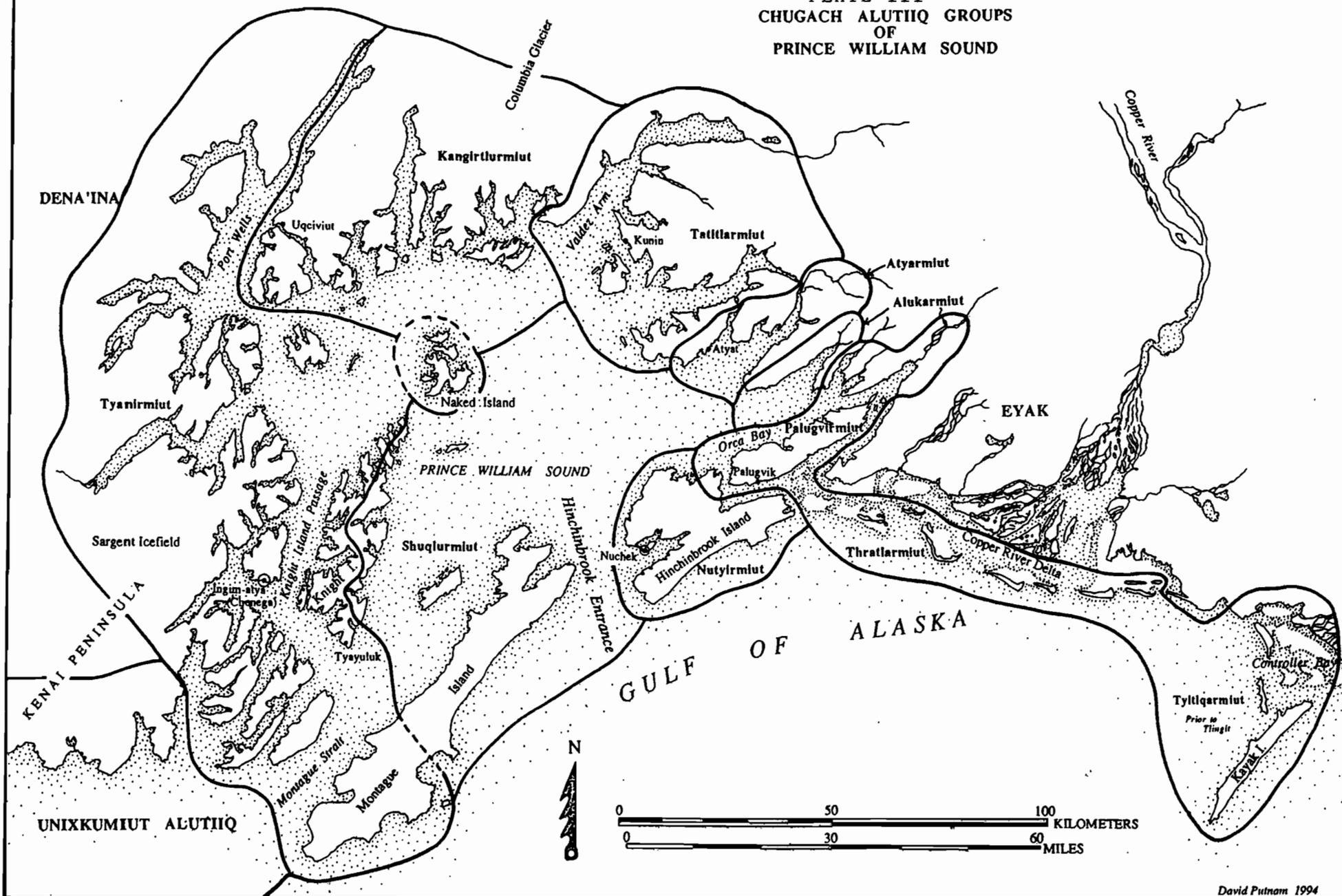


PLATE II. The Chugach Alutiiq (Pacific Eskimo) and People of the Chugach Region

David Putnam 1924

CHUGACH MOUNTAINS PLATE III
 CHUGACH ALUTHQ GROUPS
 OF
 PRINCE WILLIAM SOUND



the area.²² Specialized maritime hunters and fishers were living on Kodiak Island and on the adjacent Alaska Peninsula by 7,000 years ago. A modified form of this culture, called the Ocean Bay tradition, probably extended to the Chugach region including the southern Kenai Peninsula and Prince William Sound. These people exploited salmon runs during the summer while residing in fish camps, and pursued sea mammals (seals, sea lions, sea otters, porpoises and whales), ocean fish, birds, land animals and shellfish at other seasons.

The production of ground stone (slate) implements commenced about 4500-4000 years ago, introducing a new phase in the Ocean Bay tradition in the Kodiak and Alaska Peninsula area which lasted until about 3500-3000 years ago. This overlaps with the earliest known human habitation in Prince William Sound which occurred between about 4400 and 3300 years ago and which the Yarrowbroughs call the Uqciuvit phase based on their work at the site of that name.²³ They report that very little is known about these people, "except that they hunted sea mammals, used red ocher, and were familiar with slate grinding." From 3200 to 2500 years ago a glacier advance probably drove the inhabitants of the inner sound out of the area, but there is evidence that the outer areas, such as at Knight Island, were occupied at this time.²⁴ By about 2400 years ago, Uqciuvit was reoccupied and Palugvik (on Hawkins Island on the eastern sound) was first inhabited. These two sites provide the substance of the more recent prehistory for the sound.

Starting about 3500 years ago, a new culture — the Kachemak tradition — appeared in the Alutiiq region. Although centered in lower Cook Inlet, evidence for this culture has also been found in sites on Kodiak Island, the Alaska Peninsula, and at Palugvik in Prince William Sound. This culture, also based on a maritime economy, became progressively more elaborated until about 1000 years ago when it reached an apex.²⁵ There is some association between the late Kachemak culture and the early Palugvik occupation during the second or third century A.D. at Palugvik, where people lived in houses constructed of timbers. A change to a later cultural form at Palugvik, which occurred a few centuries later, may have been associated with the development of conifer forest communities in the sound that became established during this millennium.²⁶ At Uqciuvit, on the other hand, the assemblage does not reflect a Kachemak association and an *in situ* development can be seen from its reoccupation to the protohistoric or early historic period (Chugach phase).²⁷ Further, a continuity in lithic technology is noted at both

sites, suggesting there was more independent development and stability in the Sound, more of an outlier of the Kachemak culture, within prehistoric Alutiiq traditions. Residents of both sites relied heavily on marine resources, particularly mammals; but there was more dependence on fish at Uqciuvit than at Palugvik indicating there was a larger supply of other resources at Palugvik.²⁸

The formation of historic Alutiiq Eskimo culture is traced to the last centuries of the first millennium A.D., for the earlier traditions (the Norton and Kachemak) cease to exist as distinct assemblages by about 1000 A.D. In the west (Alaska Peninsula and Kodiak Island), this shift is associated with assimilation and then partial rejection of elements of a new northern Eskimo culture (Thule), before the formation of the Koniag phase on Kodiak Island, while in Prince William Sound there was a more gradual change incorporating localized antecedents and new artifacts.²⁹ Modern Alutiiq culture is associated with the simultaneous appearance of Koniag (Kodiak Island) and the Chugach (Prince William Sound) phases, as well as with related communities on the Alaska Peninsula and southern Kenai Peninsula. The modern Chugach had close cultural, linguistic and archaeological ties with the Koniag, but they also showed great similarities with many traits of Yakutat archaeology, including recent trends in the use of copper and woodworking tools, as well as traits that are very much older.³⁰

The Aboriginal Cultures of the Chugach Region

At the time of the arrival of the first European explorers, the Chugach region was inhabited by members of three groups: Chugach Alutiiq Eskimo, Eyak and Tanaina Athapaskan. The Chugach Eskimo occupied all the coast and islands of Prince William Sound, and a closely related group lived on the southern Kenai Peninsula. The Eyak were living along the coast from the mouth of the Copper River at Cordova east to Cape Suckling and beyond, where they had become intermixed significantly with the northernmost Tlingit. The Tanaina Athapaskan people appeared in the upper Kenai Peninsula area, supplanting the prehistoric Eskimo culture in this area, sometime before the first arrival of Europeans. There is substantial ethnographic and archaeological information showing elements of a north Pacific maritime culture shared by Aleut, Alutiiq, Eyak and Tlingit (Northwest Coast) peoples. The Chugach culture is essentially an Eskimo culture, but it is highly modified by influences from the Northwest Coast, and to a lesser extent from the interior of Alaska. The Eyak language is distantly related to the interior Athapaskan, but their culture is maritime with character-

istics of Northwest Coast and Chugach societies.

Chugach Eskimo

The Chugach are the easternmost of the Alutiiq-speaking Eskimo people.³¹ They occupied the coast and islands of Prince William Sound, extending east nearly to Cordova, and at one time also the mainland farther to the east as far as Controller Bay. In the eighteenth century, they occupied Kayak, Wingham and Middleton Islands, while the area between Cordova and Point Martin belonged to the Eyak, a different cultural group with distant linguistic affinities with the Athapaskan Indians of the interior. After the advent of the Russians, who enforced peace between the Chugach and the Eyak, the latter extended their hunting area northwest into Prince William Sound to Port Gravina and as far as Ellamar. To the southeast, Tlingitized Eyak drove the Chugach from Controller Bay in the nineteenth century when, under the influence of Russian settlement, the eastern Chugach concentrated at the village of Nuchek on Hitchinbrook Island.³² A related Alutiiq group, called "unixkumiut" by the Chugach, inhabited the area on the south shore of the Kenai Peninsula from Puget Bay (near Seward) to Cook Inlet.

There were numerous settlements in the region, although the overall numbers of the Chugach did not approach those of the Koniag to the west, or the Tlingit to the east. Veniaminov counted 471 Chugach in the 1830s, after the smallpox epidemic of 1834-36 had taken its toll. The Chugach were divided into eight local groups comprised of one or more permanent villages, and seasonal camps. These groups were geographical divisions named after the principal village or some other locality in their territory (see Plate III). Each group had its own customary hunting grounds, but there were no sharp boundaries between them and families did not claim exclusive use of certain areas, although villages would chase away intruders from their salmon or trapping places.

Each village, or perhaps a few villages in common, had a head chief and a chief assistant. He directed the scheduling of hunting activity, led hunting expeditions, sent people whaling, and decided when to put up fish or undertake military excursions. He presided over meetings in the village and was considered to be the richest man in the village. However, a rich man was not made chief just because of his wealth; the Chugach chief served as the node in a redistribution network. The Chugach chiefs owned slaves who were captives in wars with the Koniag, or were purchased from the Eyak and Yakutat Tlingit.

Chugach villages were always located close to the sea. The settlement pattern was adjusted to the seasonal requirements of the subsistence economy, with some dispersal to hunting and fishing camps depending upon the availability of resources. Some villages were inhabited on a year-round basis. People would congregate in winter villages with more permanent structures that housed several families. Chugach houses were rectangular with sprucewood plank walls and roofs and sleeping rooms along the sides. The houses were semi-subterranean, with walls ascending to about 3-4 feet above ground, and a steam bath was always attached. Summer houses were similar in construction, but were above ground and were used as smoke-houses.

Hunting and fishing was the basis of the Chugach economy. Sea mammals, salmon and, on the mainland, mountain goat, were mainstays of the diet, and small rodents and birds were regularly pursued. Sea mammals (fur and spotted seal, whale (humpback, fin and minke), sea lion, porpoise, and sea otter), salmon (all five species, depending upon availability), ducks and geese, salt water fish (cod, halibut and sculpin), land mammals (mountain goat, black and brown bear, squirrel and marmot), eulachon, herring, shellfish, berries and roots were taken for food. Berries, plants and vegetable products played a part in the Chugach diet that far exceeded that of other Eskimo societies, according to Birket-Smith.³³

There were sub-regional variations in this general subsistence pattern depending upon local availability of resources. For example, the Nuchek people, inhabiting the west coast of Hitchinbrook Island, had the best sea otter grounds in the sound, as well as abundant whales and salmon, while the neighboring Sheep Bay people of Port Gravina were poorer and fewer in number, and utilized mountain goat heavily.

The natural resources used as food, as well as stone and copper, also provided raw materials for tools, weapons, clothing, boats, and trade. The Eyak served as middlemen in trade between the Chugach and the Ahtna Athapaskans, and the Chugach also traded with the Tanaina, Koniag and Aleut; but less so with the Tlingit with whom they were more often at war. The Chugach hunted and travelled by one- and two-hatch kayaks, dugout canoes and umiaks. A portage from Passage Canal to Turnagain Arm on Cook Inlet provided access across the foot of the Kenai Peninsula.

Eyak

The Eyak culture represents an older form of Northwest

Coast culture and suggests what may have been characteristic in northern Tlingit territory before historical changes occurred, particularly influences from more southerly Tlingit cultures.³⁴ In the eighteenth century, the Eyak territory extended along the coast of the Gulf of Alaska between the Chugach Eskimo in Prince William Sound and the Tlingit-Athapaskan people of Dry Bay. Many place names from Cordova to Cape Suckling are Chugach in origin, while those further east are often Eyak or Tlingit translations, which suggests prehistoric cultural distributions. In the early nineteenth century, much Tlingit influence was spread westward from Dry Bay and a more Tlingitized Eyak occupied the coast from Yakutat to Controller Bay, while a more traditional Eyak population had already pushed deeper into Chugach territory to the Copper River and as far as Eyak village near the present town of Cordova.

In the nineteenth century, the Eyak formed four regional groups that were geographical, not tribal or political, sub-divisions: those living in the Cordova-Copper River area, in Controller Bay, near Cape Yakataga and around Yakutat Bay. Each of these groups was associated with one or more villages. The Eyak of Cordova were the more purely Eyak and inhabited their own village ("Eyak"), while those in Yakutat have become completely Tlingitized. Within this area, 47 sites have been identified that were at one time occupied by the Eyak.³⁵ The Eyak language is related to the proto-Athapaskan family; there is only one speaker presently alive.

Salmon (five species) was the most important food in the Eyak economy. They also caught halibut, sand sharks, trout, whitefish, and eulachon, and gathered shellfish. Seal and sea otter were the only sea mammals hunted; they hunted harbor and hair seals but were afraid of fur seals. Mountain goat and bear (brown and black) were the most valuable land animals hunted by the Eyak. They took beaver, fox, lynx, mink, martin, muskrat, weasel and ermine, as well as ptarmigan, grouse, swan, and several species of ducks and geese. The Eyak built wooden dugout canoes: small ones were used for sea otter hunting, fishing, and hunting seals, while larger craft were used exclusively for transportation. They also purchased kayaks from the Chugach for use in sea otter hunting, while under Russian influence.

The Eyak had a similar concept of territorial rights as the Chugach, that is, hunting and fishing places were not used or claimed exclusively by any one group. There were no exclusive family, moiety or village rights over fish camps and streams, although in a few instances individual families did claim certain places for

setting salmon or seal nets. The Eyak lived in rectangular houses built of hemlock planks laid in a structure of four corner houses posts, with two more on either side of the door, and roofing planks laid over a structure of poles and covered in bark. They had both single family and communal houses.

Each village also had two ceremonial potlatch houses, one for each moiety. All the Eyak potlatch houses had names (such as "Goose House," "Raven House," "Skeleton House"), most of which correspond with Tlingit names for houses in southeast Alaska. The potlatch was primarily a moiety ceremony; and the principal activities were feasting and distribution of gifts. Potlatches were held on four occasions: to dedicate a new house, to mourn those slain in battle, to commemorate a death, and to honor visitors.

The Eyak are divided into two exogamous, matrilineal moieties, the Eagles and the Ravens, but there was no formal subdivision of the moiety into smaller groups such as clans or house groups.³⁶ Both moieties were represented in each village. Each moiety was headed by a chief; one of them was also recognized as the head of the village or group while the other was a moiety leader. Below the head chief was a sub-chief in each moiety. The chief commanded war parties, led hunting parties, and was regarded as the richest and strongest man in the village. Eyak society was divided into three strata: chiefs and their families, commoners and slaves. Slaves were captives taken in war, or offspring of the same. Most of the Eyak wars were with the Chugach; and all of the slaves of the Eyak were Chugach.

Kenaitze Dena'ina Athapaskan

In the upper Kenai Peninsula, archaeological sites on the Kenai River and in Turnagain Arm show affinities with both earlier and later Eskimo traditions, and indicate that this area was part of the prehistoric Alutiiq culture area for two thousand years, at least until the fourteenth century A.D. However, by the time of the earliest contact with westerners in the eighteenth century, the upper Kenai Peninsula area was settled by Dena'ina Athapaskan Indians. The traditional history recounts that the Dena'ina migrated from the east, in the direction of Copper River.³⁷ On the northern Kenai Peninsula, they inhabited the coastal area at the mouths of rivers in the west during the summer, where they pursued salmon and marine resources, but during the winter they moved inland in search of caribou and small land mammals.

The Dena'ina are sub-divided into seven geographical

groups across their territory, which extends from Seldovia on southwestern Kenai Peninsula north and westward around the drainages of Cook Inlet and includes Lake Clark and the western half of the Lake Iliamna area. Of interest here is the Kenaitze subdivision, which inhabited the western portion of the Kenai Peninsula north of Kachemak Bay as far as Turnagain Arm, including the interior country of Tustumena, Skilak and Kenai Lakes and the Kenai and Russian Rivers. Mountain passes provided passage from the Kenaitze area to the country of the Chugach Eskimo in the Seward area, between whom there was considerable trade. There was also extensive visiting and some intermarriage between the Kachemak subdivision and the Alutiiq of the southern Kenai Peninsula and western Prince William Sound. The Dena'ina were frequently at war with the Koniag Alutiiq.

The Dena'ina regional groups were comprised of several villages, with at least one recognized as the principal village. In 1805, when Lisiansky visited Cook Inlet, he noted there were 14 settlements and about 3,000 inhabitants in the area.³⁸ The principal Kenaitze Dena'ina settlement was at Kenai; other villages were located at Anchor Point, Ninilchik, Kasilof, Skittok (near Kenai), Chinila (also near Kenai), Skilak (south side of Skilak Lake), Titukilsk (near Nikishka), Nikishka, and Kultuk (near Nikishka). Townsend identifies 17 former Dena'ina communities in the Kenai region.³⁹ Their settlements were located both inland and along the shores of Cook Inlet on or near the outlets of rivers.

During the winter, the Kenaitze Dena'ina collected themselves into villages located in the forest away from the coast. Villages ranged in size from one to 10 or more communal houses, each comprised of about four or five families. They were semi-subterranean structures with walls of whole or split spruce logs and roofs of split logs covered with moss, sod and dirt. Sleeping compartments were built adjoining and a bath house was attached to the main room. In the spring, summer and fall, when the Kenaitze relocated to fish camps along the shores and rivers of the western Kenai Peninsula, the Dena'ina inhabited their smoke houses. Temporary shelters used in hunting expeditions are made from lashing together of alders covered with bark or skins. The Indians constructed small birch bark canoes, and also adopted the kayak and umiak from the Eskimo. Dugouts were used for transporting dried food from fish camps and log rafts for crossing rivers.

The Kenaitze are adapted to the land environment. Salmon was the most important component of their economy, and land mammals were also fundamental

especially during the winter season. They harvested all five species of salmon, as well as trout, herring, catfish, eulachon and tomcod. Land mammals were also significant, including caribou, moose, mountain sheep, black and brown bear, beaver, porcupine, rabbit, marmot, lynx, fox, ermine, marten, mink, tree squirrel, land otter and wolverine. Birds included species of duck, goose, swan, loon, ptarmigan, grouse, eagle and owl, as well as bird eggs. Clams and crabs were taken from the beach; the only sea mammals were hair (harbor) seals and beluga whales, which were hunted in the rivers. Berries, inner bark and other plant and vegetable foods were also part of the diet.

The Dena'ina are divided into exogamous, matrilineal moieties that are unnamed. These are further divided into about 15 named matrilineal clans.⁴⁰ Each village had one or more rich men who were also the most prestigious persons in their lineage and considered to be the headman of their respective kin group. Apparently the most prominent headman was considered village chief. The headman functioned as the center of a redistributive system, providing support to the aged and orphaned, care for the welfare of the group, significant ability in subsistence and war expeditions, and general counsel and advice, and receiving in exchange assistance in hunting, fishing, trapping and manufacture of trade goods. The society consisted of two strata: wealthy families and those of little wealth and prestige who were attached to their more wealthy relatives. Slaves were obtained by rich men in trade or acquired in battles. Dena'ina potlatches are essentially moiety ceremonies given to honor recently deceased individuals. These are characterized by feasting, the distribution of gifts, and the repayment of mortuary workers. Smaller feasts were given to honor living persons. There is conflicting evidence with regard to the non-exclusivity of individual, clan or moiety hunting territories and fishing sites.

Tongass Region

The Tongass National Forest extends the full length of the southeast region, 500 miles from Yakutat Bay in the north to Dixon Entrance in the south. This region lies at the northern end of the traditional Northwest Coast culture area, one of the most developed maritime cultures of the American coast. Heavily forested with hemlock, spruce and cedar, the coastal fringe and islands of this archipelago is truly a rain forest: the average annual rainfall in most communities is over 120 inches per year (Ketchikan, the highest, has 162). There are nearly 11,000 miles of shoreline among the coast and islands, and in most areas majestic mountains rise from the tidewater. On the mainland, in

addition to steep slopes, three large rivers, numerous glaciers, and icefields dominate the landscape. Rich and varied wildlife and fish resources are found throughout the region, and they are accessible only by boat or plane except in localized areas. Tourism, recreation, logging, sport and commercial fishing and hunting, and subsistence hunting, fishing and gathering are among the uses of the forest.

Prehistory of the Tlingit People

There are two major maritime cultural traditions associated with the Tongass region. The earliest culture, which Stanley D. Davis (*Handbook of North American Indians*) calls the Paleomarine tradition, existed from 11000 to 6500 years ago, while the second, which is related to the traditional Northwest Coast cultural pattern, was present from about 5000 years ago to contact with Europeans and the historic period. Davis identifies a transitional stage between the two, dating from 6500-5000 years ago, whereas Arndt et al. argue that the archeological data is insufficient to conclude that the transition was a gradual development or a more sudden cultural shift from the early to the late culture period.⁴¹

Although the oldest documented sites are from 10,000 years ago, it is possible that the first peopling of the coast occurred 12-13,000 years ago when the environment was free of ice; the evidence of earliest human occupation is believed to be destroyed by fluctuating sea levels. The Paleomarine culture was a well-developed microblade and core tradition that also included cobble tools and cores, and an economic strategy focused on coastal and marine resources. The principal sites for this distinctive microblade industry are the Ground Hog Bay 2 site on the mainland shore of Icy Strait, the Hidden Falls site on Baranof Island, Chuck Lake and Rice Creek on Heceta Island, and the Irish Creek site on the west side of Kupreanof Island. This tradition corresponds with a similar lithic assemblage documented for the northern coastal region of British Columbia. Evidence of marine mammal, fish, shellfish, waterfowl and land mammal resources are associated at some of the sites, indicating a coastal-marine adaptation.

Between 6500 and 5000 years ago, the region underwent climatic change, and the new culture that emerged by the latter date reflects an adaptation to new and more stable environmental conditions, particularly stabilization of shorelines and river drainages, that were conducive to an increase in the productivity of salmon runs associated with the classic traditional Northwest Coast way of life. The emergence of larger, winter

villages resulted in massive midden accumulations which clearly distinguish sites of the later period from earlier stages. A corresponding change in technology to ground stone (slate) and bone, complex human burials, specialized subsistence camps and fortifications also characterize this period. Davis, who calls this the Developmental Northwest Coast Stage, identifies early, middle and late phases of this period. The late phase, from A.D. 1000 to European contact, is characterized by a move to larger structures associated with winter villages, sites used for defensive purposes, and use of native copper and other materials for items of technology as well as personal adornment (such as bracelets, necklaces, pendants, pins and beads). This sequence seems to correspond with de Laguna's impression, based on extensive prehistoric and historic excavations in Angoon and Yakutat, "that a good deal of Northwest Coast culture is of relatively recent growth and elaboration."⁴²

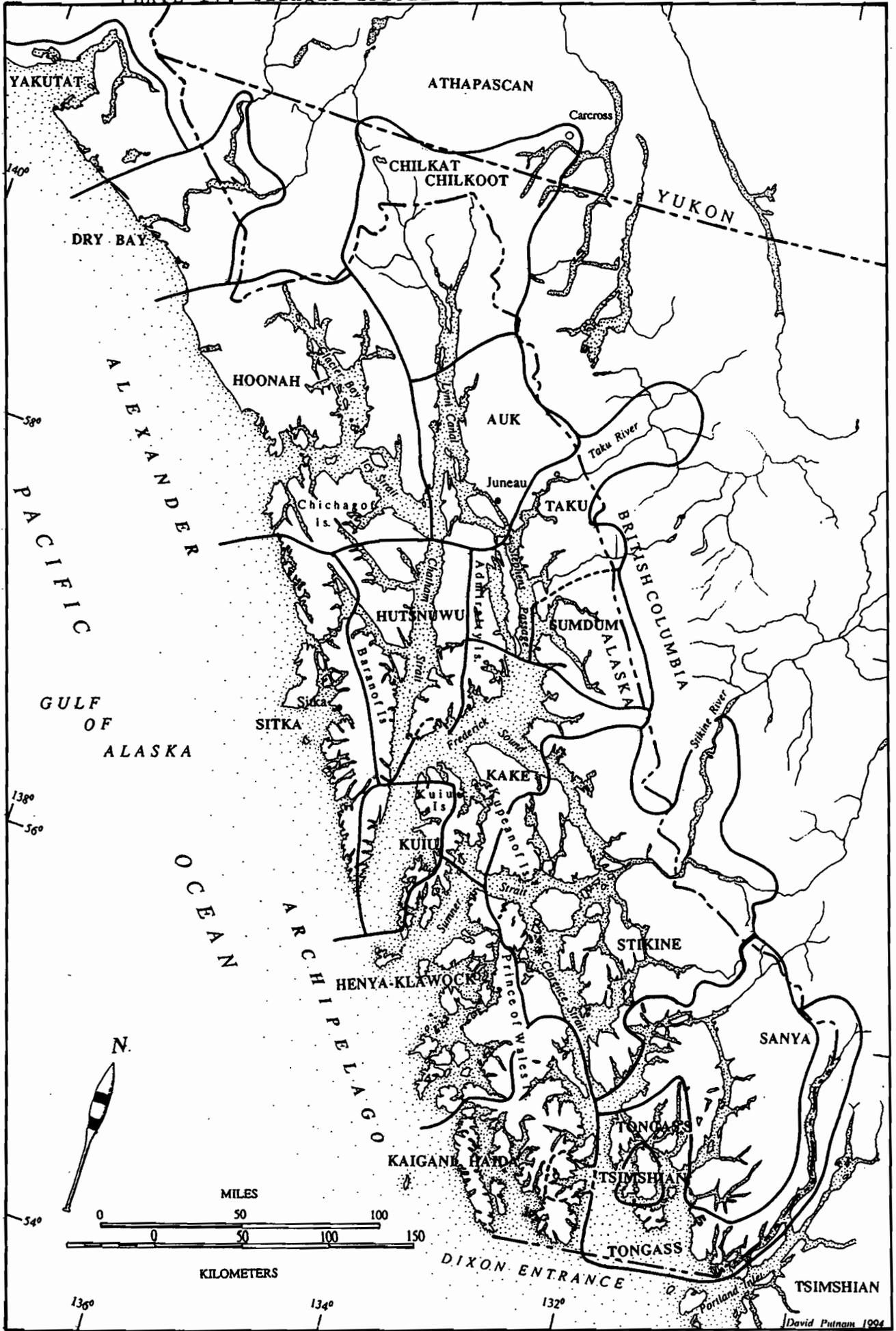
The Aboriginal Cultures of the Tongass Region

Tlingit Indians

At the time of the arrival of white settlers, the Tlingit Indians were divided into fourteen tribal subdivisions, or kwan. From the north, these divisions are the Yakutat, Chilkat/Chilkoot, Hoonah, Auk, Taku, Sumdum, Hutsnuwu, Sitka, Kake, Kuiu, Stikine, Henya, Sanya and Tongass (see map). There were 10-15,000 Tlingit at the time of contact. Together with the Kaigani Haida, who pushed their way into the southern Tlingit area in the eighteenth century, these kwan used and occupied all of the southeastern region, with the exception of the steeper mountain slopes and tops, at the time of first contacts with whites.⁴³ The aboriginal possession of the lands and waters of southeast Alaska, including trade routes into the interior across the Canadian border, were recognized by the U.S. Court of Claims in 1959 (discussed below).⁴⁴

The Tlingit kwan are geographical groupings of smaller political divisions, or clans, which lived together in a common area, intermarried, and cooperated for defensive purposes. De Laguna identifies 74 clans of the Tlingit kwan.⁴⁵ In the nineteenth century, members of the kwan would congregate in larger communities for the winter season. Each kwan is associated with one or more principal villages that contained large clan houses constructed of hand-hewn spruce planks. These traditional villages were often located on a shoreline with houses arranged in a line facing a landing area for canoes. During the spring, summer and

PLATE IV. Tlingit Tribal Subdivisions of the Tongass



fall, community members would usually disperse to smaller villages, hunting and fish camps depending upon the availability of resources and clan relationships.

Annual runs of salmon were the primary determinant of the pattern of transhumance; all five species of salmon were harvested, as well as eulachon, herring, halibut, cod, trout and several types of shellfish. The most important sea mammals in the diet were seals (harbor and fur), but sea lion, sea otter, and porpoise were also taken. Bear, the most important land mammal, were hunted along with deer, mountain goat and sheep; small animals and fur-bearers such as rabbits, porcupine, marmots, mink, muskrat, and marten were also acquired, along with birds (including species of duck, geese, and grouse). Berries, roots and bark and other vegetable foods were gathered.

The Tlingit are divided into two exogamous moieties, Raven and Eagle (called Wolf in the south), that functioned as reciprocal social and ceremonial groupings. The fundamental unit was the matrilineal clan, which was the political, land-owning and property-holding group of the tribe. Each village was comprised of two or more clans representing opposite moieties; each clan was usually subdivided into clan segments (lineages) or house-groups. Tlingit society was comprised of nobles (wealthy and influential families), commoners and slaves; and social rank was very important. The named house groups or lineages and clans in each village differed by wealth and status, and within the village the leader of the leading house of each clan was considered the head of the clan. The heads of the houses and clans were stewards of their group's property, which included crests, ceremonial regalia, songs, names, stories, trade routes, and hunting and fishing sites. These individuals often decided when to hunt and fish, embark on trading expeditions or raids, exact payment or retribution for a wrong, or host an elaborate and expensive ceremony in honor of deceased maternal ancestors.

The coastal Tlingit engaged in voluminous trade with neighboring tribes including the Eyak, Athapaskan, Tsimshian and Haida. The northern Chilkat and Chilkoot built and maintained trails to the interior Athapaskans and the Yakutat Bay Tlingit, and similar networks with the interior were developed by the Taku and Stikine subdivisions. Large canoes constructed or acquired in trade were used for extensive marine travel and interchange among coastal groups from the Chilkat to the north to the southern Tlingit, Haida, and Tsimshian groups; Tsimshian carvings and slaves were among the most prized goods acquired in trade or

captured in war. European trade stimulated the development of Tlingit culture and art after the introduction of iron and steel carving tools and copper sheeting. Several Tlingit Kwan, particularly the Chilkat and the Stikine, became large, powerful and wealthy in the nineteenth century through their monopolistic control of lucrative trade with the interior Athapaskan groups.

The Tlingit are known for their elaborate ceremonies or feasts which are given at funerals and memorials to the dead. Structured by moiety and clan affiliations among related persons, the potlatch could go on for four to eight days; it involved feasts, songs and dances, the recitation of clan names and stories, the distribution of food and gifts to members of the opposite moiety (in payment for funeral services and contributions), and the use of clan heirlooms including crest hats, blankets, vests and ceremonial items such as speakers' staffs, drums and dancing poles. Such ceremonies also increased the prestige of the living, and might be associated with the construction and dedication of a new house. The display of crests and other clan property, including the recitation of names and clan histories, entailed payments to members of the opposite moiety who served as witnesses validating the right to hold and use the property.

The clan owned the most important property including hunting territory, fishing grounds, salmon streams, clan crests, ceremonial clothing and artifacts, shamanistic practices, names, songs, stories, and trading routes. A well-developed system of property rights and inheritance identified which family groups owned specific sites and tracts of land and who had access to clan land and property. This property was administered by the chief on behalf of the clan; he was the steward and responsible for its protection, use and upkeep. The clan chief, in consultation with the council, would decide when salmon streams could be used or when to hold the complex, competitive memorial feasts at which the clan's crests and other ceremonial property would be displayed. They would organize war parties to defend against incursions into clan territory, and launch attacks against other groups. Often the chief would trade on behalf of the clan.⁴⁶

Kaigani Haida

In the early eighteenth century a group of Haida apparently emigrated from the Dedans area of Graham Island (northernmost island of the Queen Charlotte Islands) to southern Prince of Wales Island, displacing the Tlingit residing there. This branch of the Haida is known as the Kaigani Haida, or simply Kaigani, to the early traders in the area. To the casual observer there

was little outward difference between the Tlingit and the Kaigani Haida, for the latter adapted to the different mix and availability of salmon and other fish, sea and land mammals, and forest resources characteristic of the southern Alexander Archipelago. The Kaigani Haida were also heavily influenced by Tlingit culture after the invasion, particularly in aspects of the social system. In one aspect the Haida appear to be unique on the Northwest Coast—their language has no demonstrable genetic relationships to any other language.⁴⁶

The Wetalh (Tsetsaut)

The Wetalh were a band of Athapascan Indians occupying the Unuk River drainage and the landmass between Portland Canal and Behm Canal in southern Southeast Alaska. Numbering some 500 in the early nineteenth century, their population was seriously reduced in the later 1800s by feuds with the neighboring Tlingit, with whom they had previously been on good terms. Quite possibly they were the victims of Tlingit population shifts ultimately caused by the Haida occupation of southern Prince of Wales Island. By the early twentieth century the Wetalh merged with the Tsimshian and effectively ceased to exist as a separate cultural entity.⁴⁸

Wetalh economy differed sharply from that of the neighboring Tlingit: while eulachon and salmon were taken in season, the mainstay of the food economy was land mammals, particularly bear, mountain goat, porcupine, and marmot. Most articles of clothing were fashioned from marmot or mountain goat hide.⁴⁹

Dwellings were temporary in nature, consisting of an A-frame of poles propped near the base of a large tree; the poles were covered with bark. Entrance was through a side door, or through the smoke hole when the winter snows became too deep. Chief modes of transportation were snowshoes and cedar bark canoes.⁵⁰

The Arrival of White Settlers (Explorers, Traders, Miners and Fishermen) and Development of New Towns in the Chugach and Tongass Regions

The Russian Period: 1741-1867

The first landfall by Europeans in Alaska occurred in July 1741. Crewmen from Vitus Bering's Russian ship, the *St. Peter*, went ashore on Kayak and Wingham Islands east of Prince William Sound, and others from Chirikov's *Saint Paul* landed on Chichagof Island north of present Sitka, Alaska. Evidence of human use and

occupation, including homes, storehouses, and the remains of a meal and warm cooking stones, were discovered indicating that the inhabitants fled at their approach. These were Chugach Eskimo.⁵¹ Russian claims to the discovery and ownership of Alaska are based principally on the results of this expedition.

The sea otter skins brought back by the survivors of the voyages (Bering himself perished on the journey) lured the fur-hungry Russians into American waters beginning as early as 1743. The taking of hostages, enforcement of tribute, and outrages against the Aleuts became customary in the expansion of the *promyshleniki* and traders into the northwestern Pacific country. By 1760, the Russians reached Unalaska, and by 1763, the first Russian expedition landed at Kodiak.

Other European exploration and trading expeditions to Alaska commenced in 1775 in response to the expanding Russian activity in the northern Pacific. In that year, the Spaniards in Mexico organized the first European expedition to southeast Alaska during which Mt. Edgecumbe was first given a Spanish name. This expedition brought the first of western diseases — smallpox — to the Tlingit; this factor (epidemics of infectious diseases introduced by Europeans) was the primary cause of the decimation of Native populations through the next 150 years, as high as 50 percent in many areas, and probably caused more disruption to traditional Native social systems than any other influence.

In 1778, the English Capt. James Cook journeyed through southeast Alaska, giving Mt. Edgecumbe its current English name. He entered Prince William Sound which he also named. Cook remained there eight days and encountered Chugach Eskimo in Port Etches (Hinchinbrook Island) and Snug Corner Cove (Port Fidalgo).⁵² He sailed on to Cook Inlet where he met both Alutiiq and Kenaitze people.⁵³ A second Spanish expedition to Alaska in 1779 resulted in further exploration in Prince William Sound, during which Bodega Y Quadra also visited Port Etches (Nuchek) and surmised the existence of a large river in the eastern region of the sound.

The mouth of this large river was discovered in 1783 by a Russian trading expedition under Zaikov, which explored Prince William Sound and the waters near Kayak Island after Zaikov learned of Cook's discovery of the Sound.⁵⁴ On Kayak Island, Zaikov met a Chugach hunting party from Nuchek, and his men communicated with another group of Nuchek residents at the mouth of the Copper River who informed them of

other tribes in the larger area including the Koniag, Kenaitze, Ahtna Athapaskan, Eyak and the Tlingit. While Zaikov was spared, the Chugach retaliated against the leader of a sister Russian ship for robbing them of furs and debauching their women, by killing him and some of his men. The Russians found that the Chugach were more warlike and prone to defend their property rights than the western Natives (Koniag and Aleut).⁵⁵

Meanwhile in 1783, another Russian company under Shelikov forcibly established the first permanent settlement in Alaska on Kodiak Island at Three Saints Bay. Two years later, Shelikov sent a party of *promyshleniki* together with Aleut and Koniag hunters to Cook Inlet and Prince William Sound to prospect for sea otter and attempt to establish good relationships with the inhabitants; and they returned with 20 hostages from Cook Inlet as insurance. In the following year, Shelikov established a fortified trading settlement at English Bay, named Alexandrovsk. In 1788, another group of *promyshleniki* and Native hunters from Three Saints Bay under Ismailov visited Kayak Island and the vicinity, before proceeding on to Yakutat Bay, in search of sea otter. This party reported the Eyak living near the mouth of the Copper River. By this time, the Russians were feeling the effects of new competition with British ships in Prince William Sound and Cook Inlet.

The successful transport and trade of Alaskan furs (particularly sea otter) to China (Macao) in 1779 by Cook's surviving officers opened the door to the lucrative Oriental fur market for British and American trading ships, where previously an overland route through Siberia controlled exclusively by the Russians was the exclusive channel. Soon, English ships from India and Great Britain, and American ships from the United States, launched fur trading expeditions to the Pacific northwest coast. In 1786, four British ships sailed to Prince William Sound from India; one of these was forced to overwinter in the Sound near the village of Tatitlek. In the same year, Capts. Dixon and Portlock sailed from England to the Sound, where in the following year Dixon gave much needed supplies to one of the overwintering ships from India under the condition that it leave the area promptly.

By this time, the fur trade was in decline in the Cook Inlet area and the Tanaina were acting as middlemen in the European trade, obtaining furs of land animals from the interior.⁵⁶ Dixon proceeded southeast to Yakutat Bay and then to Sitka Sound for more trade, this time with Tlingit Indians, while Portlock (who named Port Etches while he stayed at Nuchek) traded in Prince William

Sound and Cook Inlet for the month of July before following, sailing to the west coast of Chichagof Island to barter with the Tlingit in what became known as Portlock Harbor. In 1788, William Douglas of the Hudson's Bay Company also sailed to Cook Inlet and Prince William Sound, and then on to Cross Sound, on a trading expedition.

Other nationalities were also beginning to enter the area. A French vessel under LaPerouse anchored in Lituya Bay for the month of July in 1786 where he traded and bartered with the Tlingit, whom he observed to be shrewd traders and the crafters of very fine art. Another French ship landed in Sitka Sound in 1791. French accounts describe the rapidity with which European trade goods had become dispersed among the tribes, resulting in a higher and more specialized demand for trade goods. The scarcity of furs was by this time affecting the profitability of trade as the Indians were demanding (and receiving) higher prices than previously.

The United States of America, having just won recognition in the Treaty of Paris in 1783, will very soon become a factor in North Pacific trade. The first Americans began to appear in the northwest in 1789, when two ships journeyed to coastal regions untouched by the Europeans. American presence in the region would not become significant until the next century. The Spanish government sent three more expeditions in quick succession into the northern area (Prince William Sound and Kodiak) in 1788, '90 and '91 to press its territorial claims, but they were politely rebuffed by the Russians.

In 1792, after ordering the relocation of the principal Shelikov company settlement to the present site of Kodiak City, Baranof made his first venture east to Prince William Sound and to Nuchek Island, where he came under attack by a raiding party of Eyak and Yakutat Tlingit. Two years later, Baranof sent another party to the Copper River, where they discovered a large Eyak village (perhaps Alaganik, according to de Laguna).⁵⁷ Baranof also established a shipyard in 1792 at Voskressenski, or Sunday Harbor, in Resurrection Bay for building, repairing and launching vessels. He hired an English ship-builder and a total of three ships were built in this yard with Alaskan timber.

During this period, the rival Lebedev Company was also operating in Cook Inlet and Prince William Sound. The company established three posts in Cook Inlet: in 1786 at Kasilof, called St. George; in 1891 on the Kenai River, named St. Nicholas; and the third higher up in

the inlet on the western shore. In 1793, the company opened a station in Prince William Sound on Nuchek Island at Port Etches, named Fort Constantine.

Authority over the Cook Inlet posts was assumed by Baranof in 1794, when he was able to smooth over a planned uprising against the Russians organized by the Kenaitze from Skilak Lake in response to offenses against their people by employees of the Lebedev company. The effrontery and crimes of the rival company had so incensed the Kenaitze Dena'ina that the Skilak Lake group was reportedly forming a union with the western Cook Inlet Tanaina bands and the Chugach to drive the Russians from the Kenai. 1794 was also the year that Vancouver visited Prince William Sound, determined that Cook Inlet was not a river, and documented the portage from Turnagain Arm to Resurrection Bay (Seward). Visiting Nuchek in 1796, on his return from Yakutat, Baranof succeeded in persuading the majority of the Lebedev Company's employees to work for the Shelikov Company.⁵⁸

The elimination of Baranof's competition was sanctioned by the Russian government in 1799, when the Russian-American Company (formerly the Shelikov Company) was granted a complete monopoly over all Russian enterprises in Alaska for 20 years. The decree authorized the company to conscript Aleut for three years of service to the company, and the Natives of Cook Inlet and Prince William Sound were required to submit a yearly tribute in animal skins. Nuchek became the principal Chugach community in the sound, when it was the sea otter hunting and trading center for the region until after the Alaskan purchase in 1867. The Russians maintained the post at Nuchek until it was taken over by an American trader following the American purchase of the territory. However, the focus of their subsequent mercantile activity was in southeast Alaska, where there was greater opportunity.⁵⁹

Under orders from Baranof, the Russians first took their Aleut and Koniag hunters, nearly 1500 strong, to Yakutat Bay in 1794 and '95 and where, in 1796, Baranof established a convict colony called "New Russia." The Russianized hunters took three thousand sea otter pelts from the Yakutat and Lituya Bays in these three years. Leading another party of Aleut hunters in 1799 on an expedition of further expansion into southeast Alaska, Baranof was attacked by the Tlingit in Controller Bay as he was making his way to Yakutat, when bad weather forced him to the beach. He travelled on to Sitka Sound, where he bartered successfully for the right to establish a fortified trading post among the Sitka Tlingit. The Tlingit soon grew

dissatisfied with the arrangement, particularly with the efficiency with which the Aleut hunters killed the sea otter, seal and other fur-bearing animals in Tlingit territory. In 1801, the Sitka kwan were joined by allies from Yakutat, Chilkat, Angoon and Sitka and they attacked the Russian post, Fort St. Michael, killing 150 and burning the fort and a ship. Encouraged by the success of their countrymen at Sitka, the Yakutat Tlingit attacked an Aleut hunting party and the Russian manager of the colony, and Indians from Kake and Kuiu villages ambushed an Aleut hunting expedition of 90 baidarkas in Keku Straits and killed all but the Russian leader (Urbanof) and 20 Aleuts.⁶⁰

With the company's recently granted monopoly at stake, the decline of fur-bearing animals in the northern Alutiiq region, and the need to establish a settlement in southeast Alaska to justify Russian possessory claims against competition from European and American traders, Baranof moved in retaliation against the Tlingit. In 1804, he set out for Sitka in several ships and, along the way, razed and burned villages of the Kake and Kuiu people as punishment for their attack on Urbanof's party. Baranof was wounded in the ensuing fight at Sitka, and he prevailed only with the assistance of the Russian ship *Neva* which bombarded the newly constructed Tlingit fort and caused the warriors to flee across the island by night.⁶¹

According to a Native account of the battle, the Tlingit decided to withdraw only after they discovered their supplies of gunpowder were exhausted, and a lucky cannon shot destroyed a war canoe filled with their ablest warriors, leaving no survivors. Baranof erected a new stockade, which he named New Archangel, and several years later in 1808 moved the company headquarters from Kodiak. The Tlingit built a new fort at Point Craven, where the residents numbered between 1,300 and 1,400. In 1806, 2,000 Tlingit gathered in 400 boats to re-take Sitka, including members of the Sitka, Chilkat, Auk, and Stikine kwan, but the battle was forestalled by a negotiated peace with the Chilkat chief, and others who followed his example.⁶²

Sitka subsequently developed as the principal land-based trading center in Alaska. After the sea otter reached near extinction in the 1820s, the Russian colony grew dependent upon the Tlingit as a source of land mammal furs that replaced the sea otter trade, as well as a source of supplies.⁶³ A market grew up in Sitka through which the Tlingit supplied many of the needs of the fort and provided them with trade goods. The ready access to trade goods through this market freed the local Tlingit to trade furs with the European

and American ships that regularly plied the waters of conscripts, on the one hand, and the Tlingit kwan was never guaranteed, and the Russians remained in need of protection of their stockade for nearly their entire tenure. In 1852, for example, after the Stikine were attacked by the Sitka kwan during a peace ceremony, the Stikines destroyed the Russian hospital at the hot springs south of town in retaliation, since the Russians had made no effort to warn them or prevent the attack. There was an outbreak of armed conflict between the Russians and Tlingit in 1855, and the Sitka kwan took possession of a church erected for their use outside the stockade from which they fired on the Russian fort. The Tlingit lost 60 men before they laid down their arms. Outside of Sitka, the Russians rarely ventured beyond the safety of their ships. They operated a post at Wrangell from 1834-1839, after which it was turned over to the Hudson's Bay Company until 1849, at which time the British withdrew in part due to continuing hostility from the Stikine.⁶⁵ The Chilkat likewise forcibly protected their trade monopoly, destroying a newly established Hudson's Bay Company post along their interior trade route in Canada on the Pelly River (Fort Selkirk) in 1852. Another post was briefly established on Tongass Island, which the Russians hoped would serve to demarcate the southward extension of the Russian-American territory, and the Hudson's Bay Company also had a post on the Taku Harbor, for a time.

Although the first Russian priests appeared in the colony as early as 1794, there was little activity east of the Alaska Peninsula until the early 1830s, when Baron von Wrangell brought Father Veniaminov from Unalaska to Sitka. The smallpox epidemic which swept through Alaska between 1835 and '39, and claimed about half of the Tlingit population in Sitka, left the inoculated Russians untouched. This occurrence greatly increased the stature of the Russian Orthodox priest in Sitka and aided the missionization process, which

proceeded more slowly in outlying areas. The first Tlingit villages; in 1860 the Russian Orthodox Church estimated there were 456 Christians among the Chugach, which may have been their entire population in the sound (as compared with only 447 Tlingit in southeast).⁶⁸ Under this influence, the Chugach became more peaceful, and the Eyak and their more Tlingitized relatives moved into what was formerly Chugach territory along the mainland from Controller Bay into eastern Prince William Sound, as described previously. Petroff reported in 1880 Nuchek continued to serve as an important trading center that was visited by Tlingit and Ahtna Athapaskan Indians, and the Russian chapel there was supported by donations from surrounding villages. He also observed the Russian church and missionary that was active in Kenai at this time.⁶⁹

The American Period: 1867-1910

At the time of the transfer of Alaska to the United States, there were at least 35-40 Tlingit and Haida villages and towns in southeast Alaska. In 1838, Veniaminov listed a population of about 6,000 for the Tlingit, which he enumerated after the smallpox epidemic of 1833, and reported that the figure was 10,000 prior to that event. U.S. census figures from 1880-1910 indicate a decrease from 6,431 to 4,458 in the Indian population in southeast during this period; there was also a decline in the number of traditional Tlingit villages and towns, and the beginning of a significant migration trend from Indian villages to newly established white towns.⁷⁰

In the Chugach region, Veniaminov reported 471 Chugach, 150 Eyak and 1628 Tanaina Athapaskan. In 1880, the federal census reported there were 500 Chugach in four villages in the sound: Chenega, Kaniklik, Tatitlek and Nuchek. The Eyak had two main villages, Eyak (near Cordova) and Alaganik (about 20 miles east on the Copper River delta), which in the

1880s had a total population of about 200. The mixed Eyak and Tlingit village of Chilkat in Controller Bay had about 100 inhabitants. Petroff also reported 12 Kenaitze villages.⁷¹

Following the purchase of Russian-America by the United States, there was no provision for civil government. As in one of the western territories in the contiguous states, the U.S. Army was sent to maintain law and order and protect American citizens from the Indian and Eskimo, whom military authorities believed might rise up in opposition to the new settlers expected to come into the territory. To this end, Army forts were established at Sitka, Wrangell, and Tongass in south-east, and at Kenai and Kodiak in southcentral Alaska, within a year or two of acquisition. These garrisons, with the exception of Sitka, were withdrawn by 1870 to fight Indian wars in the west.

Headquartered in Sitka, the Army was not shy about teaching the Natives a lesson. In demonstrations of military might and determination to enforce American law, two Native villages —Wrangell and Kake — were bombarded in 1869.⁷² These instances impressed upon the Tlingit people the power of the military to impose civil authority in specific cases. However, aside from these occurrences, the period of military administration (1867-84) has been characterized as an 'era of neglect' during which, at least in the first ten years after the purchase, there was negligible impact on the Tlingit and Haida Indians' use and possession of southeastern Alaska.⁷³

Beginning in Wrangell in the mid-1870s, the influx of white settlers into Alaska substantially altered the political landscape and settlement patterns by which the Indian and Eskimo had lived for centuries. The principal cause of this migration of settlers was economic: the availability of gold and other minerals, rich salmon stocks and extensive timber stands brought thousands of whites into southeastern Alaska and other regions. They established new towns, canneries, mines and industrial sites at many locations. In the 1870s, the rush for gold in Canada up the Stikine River brought more than a thousand miners, traders, merchants and laborers through Wrangell, and their effects on the local Indian community also attracted the first American missionaries to the state (1877). The first gold camp in Alaska was established in Alaska at Sumdum in 1878, and in the same year, the first salmon canneries were built at Klawock and Sitka. Two years later, the discovery of gold at Juneau resulted in the founding of the town of that name, and another discovery in 1887 across the channel led to the establishment of the city

of Douglas. The small community at Deishu (later renamed Haines), which began as a trading post and mission to the Chilkat and Chilkoot Indians in 1881, shifted among several canneries which operated in the area after 1884, became stabilized as a trade and support center for the Klondike stampede in 1897. Skagway also traces its beginning to this gold rush. The white town of Ketchikan places its start with fish saltery and cannery operations at the mouth of Ketchikan Creek starting in 1886-7. The incipient town of Petersburg was constructed as a fish cannery and sawmill which opened for operation in 1900. The town of Craig was similarly initiated as the site of a commercial saltery and cannery in about 1910-11.⁷⁴

Thousands of white miners were working the hard-rock gold deposits in Juneau and Douglas (Treadwell) in the 1880s and '90s. The mines became an employment opportunity that attracted Tlingit from the northern region. In Wrangell, the first sawmill began production in about 1890, and the Alaska Packers Association opened a cannery in 1893 using mainly imported labor. These industries were the economic mainstay of the white business community for many years. A large cannery and sawmill was erected in Ketchikan before the turn of the century, and by 1910-11, a rival cannery located at Loring (also operated by the Alaska Packers Association) had exhausted the massive run of pink salmon returning to Ketchikan Creek, the original impetus for white settlement at the town, with a fish trap anchored off the mouth of the creek. By the 1920s and '30s, Ketchikan became the hub of regional economic activity that centered on fishing and timber extraction. Petersburg also became the center of a localized commercial fishing industry during this period, and it was supported by the available timber supply. The fishery in the Haines area had declined in significance by the 1920s due to overfishing, but this community persisted as a supply and support center for the regional Native population as well as the Army post that had been established in the town.

The initial movements of Indians into the new communities took place as group movements. They occurred principally for economic reasons, although in some cases they were the result of the force of missionary and school personalities, and the desire to escape the constraints of tradition. Rogers has described these new communities as "non-indigenous" towns which, since their formation between 1804 (Sitka) and 1910, have become the principal towns and cities of the southeast region associated with the massive growth of the non-Native population in the region.⁷⁵ He uses census data to show the reorientation of Tlingit kwan to

these communities from traditional villages and seasonal settlements: the Sitka Indians becoming citizens of the white town of Sitka, the Stikine moving to Wrangell, the residents of Auk settlements moving to Juneau, Taku people to Douglas, the Tongass and Cape Fox people to Ketchikan and the Chilkat dividing themselves between Klukwan and Haines.

Although located in or near the site of Indian settlements, the towns that grew up at these locations were essentially white towns. The first legislation providing for a civil government in the territory, the Acts of 1884 and 1890, provided for the protection of areas used, occupied or claimed by Native Alaskans, but did not entail the legal rights of ownership to the aboriginal residents because they were not recognized as citizens.⁷⁶ Non-Natives were able to file for town and industrial sites without restriction and thereby acquire legal ownership of lands used for exploiting the mineral, fish and timber resources, or settled as villages and towns in service to these industries. Indians lost control of their land and resources and, as the settler population and industry grew, often found themselves excluded from their customary settlement, fishing and hunting areas. The new competition for valued resources severely restricted their traditional economy at these towns. The new towns were later organized formally with townships and municipal governments, which occurred with little or no political participation by the local Indian residents. Alaska Natives did not gain citizenship until the mid-1920s, and their aboriginal title was not freely acknowledged until the Alaska Native Claims Settlement Act was passed in 1971, as described in the following chapters.

A few new Indian communities were also formed during this time at the urging of missionaries and school authorities. In 1887, the Tsimshians moved under the direction of the missionary William Duncan in a large group (800 strong) to Annette Island from Old Metlakatla in British Columbia, and in 1891 this land was set aside by Congress as a reservation. Saxman was a new community formed through the encouragement of the Presbyterian church and territorial school authorities in 1897; it was settled initially by the Cape Fox (Sanya) kwan. The first missionary was a Tsimshian minister and discontented former adherent of William Duncan. There was a consolidation of Haida communities into the new communities at Craig, Hydaburg and Ketchikan, and a movement from Old to New Kasaan. Hydaburg was a new settlement organized specifically for the Prince of Wales Island communities of Howkan and Klinquan by educational authorities; it was established by the Bureau of Education by

1911.⁷⁷

During this period, there was a significant Indian population which chose to remain in traditional villages at or near their original locations, including the communities of Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock and Kasaan. A cannery was started in Klawock in 1878, which attracted a Tlingit Indian population from traditional villages, principally Tuxekan, in the nearby area. A whaling station, which was soon converted to a factory manufacturing herring oil and fish guano, operated at Killisnoo, near the village of Angoon. When it ceased operation, the inhabitants returned to the village of Angoon.⁷⁷

There was a similar pattern of change in Prince William Sound and the Kenai Peninsula, except that it was delayed by a decade or two. After the transfer, the Russian post at Nuchek was taken over by an American trader, a small trading post was established at Katalla in Controller Bay, and Norwegians at Kayak Island and Chenega continued to offer local trading opportunities.⁷⁹ In 1889, four American salmon canneries were established, marking the first intensive contact of the Eyak with western culture: two were on Eyak Lake where Old Town (Cordova) would be founded (one of which was moved to Orca in 1895), and two were on Wingham Island in Controller Bay (one of these was moved to the Copper River delta in 1891). By 1900, the two principal Eyak villages were abandoned, the inhabitants destroyed by epidemics and degraded by the cannery experience, and the few remaining Eyak (about 60) lived at Old Town.⁸⁰

The four Chugach communities had a population of 317 Chugach, 54 creoles (of mixed European and Native ancestry), and nine whites in 1890.⁸¹ The hunting and trapping of fur-bearing animals, and the sale of fish (in Tatitlek and Chenega) provided the only source of revenue for these communities. In comparison, the 1890 cannery population totalled 423, which were mainly white and Chinese seasonal employees; the largest groups were at Odiak (Cordova) (273) and Wingham Island (150). By the end of the century, Kaniklik was abandoned and Chenega had become "the most important native settlement on the sound."⁸² Nuchek was left behind in the winter of 1929-30, after the old chief died and his survivors moved to Cordova.⁸³

Several white mining, fishing and railroad towns developed in the Chugach region shortly before and after the turn of the century. The Pacific Steam Whaling Company operated a cannery at Orca Inlet, near Cordova, in the 1890s, and others were located on Wingham Island

and in Controller Bay. Use of dynamite and other methods soon had a disastrous effect on the returning fish stocks near Cape Suckling.

Valdez had its start in 1897 as the terminus of a route to the interior gold fields in the Yukon (Klondike) and later the Fairbanks area, and the U.S. Army erected a post (Fort Liscum) before the turn of the century to serve in the construction of the overland telegraph to Nome and a trail, and later road, to Fairbanks that followed an Indian trail. Valdez was a participant in the early railroad speculations that occurred in the first decade of this century. By 1910, Valdez had a population of 810 while the surrounding district held nearly 5,000 inhabitants, mostly connected with the proposed railroad. The copper mining town of Ellamar, located near Tatitlek, was built on the site of a Native village in 1900.

In 1906, Cordova was chosen as the terminus and construction headquarters of a railroad from the Kennecott copper mine, and two years later the white town of Cordova was founded which grew to a population of more than a thousand in 1910.⁸⁴ Katalla, the site of coal mining claims and a competing railroad terminus to the Copper River (which lasted until a storm washed away an expensive breakwater), had first developed as a commercial salmon fishing site: there were 188 residents reported in the village, and 623 in the Kayak Island district as a whole, in 1910. This can be compared with 210 in the Prince William Sound district.

To the west, at the future town of Seward, another group of capitalists began construction of the Alaska Central Railroad in 1903, on a route to the Matanuska coal fields. This project was not successful until after the federal government authorized funding for its construction in the second "organic act" for Alaska passed in 1912. In 1910, there were 534 people reported living in Seward village.

Alutiiq villages of the Unegkurmiut group were formerly located in Day Harbor, Resurrection Bay (including one at or near the present town of Seward), Ayalik Bay, Two Arm Bay, Nuka Bay, Yalik Bay, Port Dick, and Rocky Bay.⁸⁵ According to Johnson, people from this region, as well as Prince William Sound communities at Tatitlek and Nuchek, had been migrating to English Bay since the early 1800s under the influence of Russian priests and fur traders.⁸⁶ Yalik, which had 32 Alutiiq residents in the 1880 census, was abandoned by 1890 at the encouragement of the Russian Orthodox missionary at Kenai, and the inhabitants migrated to Alexandrovsk (English Bay) on Cook Inlet.⁸⁷ In 1890, the only inhabitants of this region were a whiteman and his Native wife,

living in Resurrection Bay.

In Cook Inlet, a small Army garrison was stationed at Kenai from 1868-70. The Alaska Commercial Company took over the Russian post at Kenai after the Alaskan purchase, and in the 1870s and '80s began supplying miners and prospectors coming to the area. In 1880, the eight Kenai Dena'ina communities had a total population of 218 (Laida, Kassilof, Chkituk, Cherila, Skilak, Titukilsk, Nikishka, and Kultuk), while two creole communities (Ninilchik and Kenai) had 105 residents.⁸⁸ The upper Kenai River area was the traditional winter residence of the Kenaitze. They occupied the area in 1880 and continued there for the next 10-20 years, after which they maintained seasonal use of the area until about 1920. In the 1880s, one of the early prospectors set up a post on the Kenai River later known as Cooper Landing, where he traded with the Tanaina living in the area. In 1893, the first gold claims were filed on creeks flowing into Turnagain Arm near Hope, and in 1896 2000-2500 people came to work placer claims. After a drop off the following year, a secondary rush occurred in 1898 that brought 7-10,000 people to the Turnagain area.⁸⁹

Salmon canneries were established on the peninsula in the 1880s; the Tanaina sold fish to the canneries, but cannery work was not available to them until about 1915.⁹⁰ Kenai was the site of a large cannery employing about 50 whites and 80 Chinese; about 100 Tanaina (including residents of the former villages of Chkituk and Nikishka) and 50 creoles lived in Kenai and two small villages nearby in 1890. The Dena'ina hunted and trapped for revenue, but in 1890 they were severely hampered by the demise of the fur-bearing animal populations.⁹¹ The influx of white sport hunters and the hiring of Kenaitze as trophy hunters in support of this new activity provided some alternative opportunity to the decline in trapping after turn of the century, but this activity had an impact on the caribou, moose and bear populations and was another factor in the movement of the Dena'ina off the land and into the settlement at Kenai. The Kenaitze apparently established permanent residence at Kenai by 1900, although use of the upper Kenai area as a hunting and trapping area probably continued into the first or second decade of this century.⁹²

By the time the Tongass National Forest was created by executive order of the president, the Tlingit and Haida Indians were becoming a marginalized people forced into a second-class socioeconomic status by the new white settlers and the legal and governmental institutions they brought with them. As white settlers and commercial interests moved into the territory, they

utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, mining and prospecting activities. The loss of control over their land and resources to the new settlers left the Indians with little to fall back upon. The Act of 1884 , which created civil government in the territory, also extended the first land laws to the region, and in combination with subsequent legislation in 1903, new settlers were given the ability to demarcate and claim exclusively areas for canneries, mining claims, townsites, and homesteads, and obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.

Reference Notes

- ¹ See Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, pp. 8-9. It is possible that this investigator, Livingston Stone, had come in contact with one of the formulators of the conservation ethic that was forming in America at this time —John Muir, who on his Alaska trips in 1879-80 experienced first hand the wildness that was found no longer in the lower 48 states, and observed that just as the coming of the white man spelled the dissolution of that wildness, so it led to the demise of what is best in Indian culture (see *Letters from Alaska*, John Muir, ed. by Robert Engberg and Bruce Merrell, Madison: University of Wisconsin Press, 1993).
- ² *Ibid.*, pp. 8-10.
- ³ *Ibid.*, pp. 15-24. Another other major land reservation in the region was made subsequently for Glacier Bay National Park, which was originally withdrawn as a monument.
- ⁴ Emmons, who served in the U.S. Navy at the head of Lynn Canal in the 1880s and '90s, after the Chilkat were persuaded to open their country to miners and prospectors, had become an authority on Alaska and, in particular, the Tlingit people and culture. During his tour of duty, he was frequently called upon to serve as mediator between the Chilkat and Chilkoot people and the white settlers and transients who brought rapid changes to Tlingit territorial rights, economy and social organization.
- ⁵ *Ibid.*, pp. 15-17
- ⁶ *Ibid.*, p. 17
- ⁷ *Ibid.*, p. 17. Corser also thought that the reserve would injure the small timber operators in Alaska, and would only benefit the monopolistic lumber interests in Puget Sound.
- ⁸ *Ibid.*, p. 22
- ⁹ *Ibid.*, p. 163; K. A. Soderberg and Jackie DuRette, *Alaska Forestry Under Attack* (Bellevue: The Free Enterprise Press, 1988), p. 101.
- ¹⁰ *Ibid.*, p. 43, 49
- ¹¹ *Ibid.*, pp. 29-30
- ¹² *Ibid.*, p. 44
- ¹³ *Ibid.*, p. 44-45
- ¹⁴ *Ibid.*, p. 47
- ¹⁵ *Ibid.*, p. 45
- ¹⁶ *Ibid.*, p. 51-54.
- ¹⁷ *Ibid.*, p. 38
- ¹⁸ *Ibid.*, p. 38
- ¹⁹ *Ibid.*, p. 37
- ²⁰ *Ibid.*, p. 40
- ²¹ It has been generally believed that earlier sites in Prince William Sound were destroyed by the rise in sea

level following glacial retreat, but significant inventories of newly discovered sites will likely provide important information on Chugach cultural precedents and prehistoric relationships. Numerous sites have been reported following extensive historical site and cultural resource surveys of the Prince William Sound region carried out by BIA, NPS, and Chugach Alaska Corporation seeking to identify and protect historical sites under ANCSA provisions, as well as by organizations and groups involved in the cleanup, damage assessment, and restoration efforts following the *Exxon Valdez* oil spill in March of 1989. For example, the Forest Service sponsored a major excavation of Uqciuvit in 1988, the first in the region since de Laguna's pioneering work at Palugvik in 1933, in order to fulfill site protection responsibilities required by the National Historic Preservation Act of 1966. John F.C. Johnson, of Chugach Alaska Corporation, documented numerous sites in the region during the 1980s. Exxon's cultural resource program staff identified 271 new sites, and augmented data for 238 previously-known sites, in 1989 and 62 new sites were recorded in 1990, in the Prince William Sound, outer Kenai Peninsula, Kodiak Archipelago, and Alaska Peninsula areas. See Michael R. and Linda F. Yarborough, *Uqciuvit: A Multicomponent Site in Northwestern Prince William Sound, Alaska* (Final Report for USDA Forest Service Contract Number 53-0114-7-00132, 1994); James C. Haggarty, Christopher B. Wooley, Jon M. Erlandson and Aron Crowell, *The 1990 Exxon Cultural Resource Program: Site Protection and Maritime Cultural Ecology in Prince William Sound and the Gulf of Alaska* (Anchorage: Exxon Shipping Company and Exxon Company, USA, 1991), pp. 4-13.

²² Donald W. Clark, "Prehistory of the Pacific Eskimo Region" (*Handbook of North American Indians*, Vol. 5: Arctic, Washington, D.C.: Smithsonian Institution, 1984), p. 137. This earlier culture, called the Paleoarctic tradition, has been identified by some archaeologists as including elements of a coastal-marine tradition. It is associated with the subsidence of Beringea and the rise in sea-levels following the last major glaciation; and it is found in southwestern Alaska and across the north pacific rim. The cultural pattern is related to a similar microblade tradition from the same time period in southeast Alaska, which has been called the Paleomarine tradition, as discussed below. See also Haggarty et al. 1991, op.cit., pp. 115-119.

²³ Michael R. Yarborough and Linda Finn Yarborough, "Regional Overview of Prince William Sound and the Pacific Coast of the Kenai Peninsula, Paper prepared for the International Seminar on the Origins, Development, and Spread of Prehistoric North Pacific-Bering Sea Maritime Cultures, Honolulu, June 1993, p.6

²⁴ *Ibid.*

²⁵ During the first millennium B.C., for example, the Kachemak people began to practice more complex burial customs that were characteristic of their descendants. Later assemblages of Kachemak culture included better-finished tools and hunting implements, a large variety of adornment artifacts (such as beads, pendants, figurines, labrets and ornamental pins), heavy stone lamps carved with human and animal figures, as well as evidence of very elaborate funeral practices. Clark op.cit., p.140

²⁶ Yarborough and Yarborough op.cit., p. 6

²⁷ *Ibid.*

²⁸ *Ibid.*, pp.7-8

²⁹ Clark, op.cit. (1984), pp.145-46

³⁰ See Yarborough and Yarborough, p.9. Since de Laguna's Yakutat archeology is largely that of the Eyak, this statement indicates the degree of similarity with the Eyak culture as well as the Tlingit.

³¹ The Alutiiq are the southernmost of Alaska's Eskimo cultural groups. They are also referred to as the Pacific Eskimo or Pacific Yupik, and are distinguished from the Yupik, Siberian Yupik and the Inupiaq-speaking peoples in western and northern Alaska. These are the four major language and cultural divisions of the Arctic Eskimo people represented in Alaska. This discussion of the Chugach is derived principally from the following sources: Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953; Donald W. Clark, "Pacific Eskimo: Historical Ethnography," *Handbook of North American Indians*, Vol. 5: Arctic, Washington, D.C.: Smithsonian Institution, 1984; and Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, and "Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990.

³² de Laguna suggests that the easternmost Chugach band may not have permanently occupied the mainland east of the Copper River and specifically the village named "Chilkat" on the Bering River at the head of Controller Bay, after which the band was named. She argues that there was probably earlier (prehistoric) Eyak occupation because of the tradition that an Eyak clan obtained their beaver crest in the vicinity, and that the name of the village is itself Tlingit in origin.

³³ See Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953.

³⁴ The principal sources on the Eyak are Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938; and Frederica de Laguna,

"Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990.

³⁵ Frederica de Laguna, "Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, p.189

³⁶ However, there were two groups that each formed somewhat separate social groups within their respective moieties, and who referred to themselves as 'the Wolf People' and 'the Bark House People.' According to de Laguna, these groups were originally Tlingit groups who migrated from Katalla, the nearest Tlingit village, and were adopted into the respective Eyak moieties.

³⁷ The principal sources for this discussion are Cornelius Osgood, *The Ethnography of the Tanaina*, Yale University Publications in Anthropology Number 16, New Haven: The Human Relations Area Files, 1976 (1937) and Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981.

³⁸ Cornelius Osgood, *The Ethnography of the Tanaina*, Yale University Publications in Anthropology Number 16, New Haven: The Human Relations Area Files, 1976 (1937), p. 19

³⁹ Osgood considers the Kachemak Bay Tanaina (Seldovia area) to be a separate subregional group from the Kenai Tanaina, while Townsend includes all of Kenai Peninsula Tanaina within the Kenai Society, with the exception of the coast of Turnagain Arm (and the village at Point Possession) which is put in with the Susitna Society. Townsend divides the Kenai Peninsula Tanaina into the following subregional variants: East Foreland Tanaina, Kenai River Tanaina, Kenai Mountain Tanaina, and Seldovia Tanaina. See Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p.625.

⁴⁰ Osgood listed 10 clans in one moiety and five in the other, while Townsend (p.631) states there were between 11 and 18 clans.

⁴¹ The principal sources for this discussion are Stanley D. Davis, "Prehistory of Southeastern Alaska," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, and Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987, pp. 54-84

⁴² Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987, p. 84

⁴³ The Tsimshian Indians of the Ketchikan area

originated in British Columbia and moved to Annette Island in 1887 under the influence of the missionary William Duncan; in the twentieth century this group formed the largest component of the Native community in Ketchikan.

⁴⁴ Walter R. Goldschmidt and Theodore H. Haas, *Possessory Rights of the Natives of Southeastern Alaska*, A Report to the Commissioner of Indian Affairs, Chicago: Office of Indian Affairs, 1946. The primary sources for this section are Frederica de Laguna, "Tlingit," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, George Thorton Emmons, *The Tlingit Indians*, edited and additions by Frederica de Laguna, Seattle: University of Washington Press, 1991, and Kalvero Oberg, *The Social Economy of the Tlingit Indians*, Seattle: University of Washington Press, 1973.

⁴⁵ Frederica de Laguna, "Tlingit," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, p. 227

⁴⁶ This complex system of property rights was acknowledged and described in the judgement of the Tlingit and Haida claims (*Tlingit and Haida Indians of Alaska v. United States*, Ct. Cls. 1959, Opinion pp. 4-5, 49-52.)

⁴⁷ Margaret B. Blackman, "Haida: Traditional Culture," in *Handbook of North American Indians*, v. 7, Northwest Coast (Washington, D.C.: Smithsonian Institution, 1999), pp.240-260.

⁴⁸ See George T. Emmons, *The Tahltan Indians*, Anthropological Publications, Vol. IV, No. 1, University of Pennsylvania Museum, 1911; Franz Boas, Fifth Report on the Indians of Canada: the Northwestern Tribes of Canada, in Report of the British Association for the Advancement of Science, Vol. 34, London, 1895, pp. 552-569; and W.H. Collison, In the Wake of the War Canoe (New York: E.P. Dutton and Company, 1915).

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Later, another Russian party obtained a Chugach account of this encounter, which confirmed that the people fled when the Europeans came to land; see Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp.80-81; Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, pp.345-49. This section is drawn from many sources, including Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987; Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884; Kaj Birket-Smith, *The Chugach*

Eskimo, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953; Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938; Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956); Charles W. Smythe, *A Study of Five Communities*, Appendix A: History of Occupation and Use, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

⁵¹ He noted their umiat (skin boats) and two-holed kayaks, and also blue glass trade beads and iron in their possession which indicated to him that contact with European traders had already taken place; see Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953, p.9

⁵² Cook noted the use of the Aleut-style double-bladed kayak paddle, which suggests that the Eskimo were sent by the Russians to this area in search of sea otter. Cook explored the inlet believing it was the outlet of a large river; and it was first named Cook's River on his charts. After sending boats to explore Knik River and Turnagain Arm, from which the latter derives its name, the disappointed Cook was forced to turn back. He then proceeded past Kodiak Island down the Alaska Peninsula into country in Russian possession, and sailed through Unimak Pass into the Bering Sea where he continued his search along the coast for the northwest passage. Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 206-208

⁵³ By 1783, the fur-bearing populations of the Aleutians and the Alaska Peninsula were disappearing due to over-hunting. Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, p. 187

⁵⁴ See Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 186-191 and Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.356. In addition, the loss of half of Zaikof's men (to scurvy) while overwintering at Montague Island discouraged further Russian expansion into the region for several years. The focus of this Russian company's activity soon shifted to the Pribilof Islands, which were discovered in 1786, and the harvesting of pelts from the fur seal colony found there.

⁵⁵ Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, p. 240, 251. It

was probably during this period, under the influence of European trade, that residents of the formerly more numerous settlements in Cook Inlet converged at fewer locations, and the headmen of Tanaina bands accumulated unprecedented wealth.

⁵⁶ Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.358

⁵⁷ Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 227-30, 320-21, 334-45. The effrontery and crimes of the rival company had so incensed the Kenai Tanaina that the Skilak Lake group was reportedly forming a union with the western Cook Inlet Tanaina bands and the Chugach to drive the Russians from the Kenai.

⁵⁸ The Russians made several attempts at exploration of the Copper River between 1796 and 1847, some of which were massacred by Ahtna, and no further expeditions were made until the Americans resumed exploration in 1884 and '85 when it was proven that the Copper River did not provide a practical route to the interior. Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.360

⁵⁹ Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 401-413

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Russian profits were affected both by the decline of the sea otter population and by the success of the British and American ships that travelled in southeast Alaska. After 1800, the decline in sea otter in Alaska began to seriously reduce the profits of the Company; and sea otter were nearly extinct in southeast Alaska by about 1825. The Russians were also hampered in their competition with British and American traders because their prices were fixed below adequate levels by headquarters in St. Petersburg.

⁶³ The Tlingit supplied halibut, porpoise, whale blubber, bark (to cover sheds and barracks), bird eggs, birds, roots and grasses, berries, deer, mountain sheep, crabs, shellfish, and handicrafts (hats, blankets, masks, pipes, etc.), and received tobacco, iron pots, axes, glassware, linen, potatoes, flour, and from the company woolen blankets & copper pots.

⁶⁴ In 1834, the Russians established a small station on Wrangell Island to forestall the establishment of a British post up the Stikine River, and they backed up the Stikine Tlingit who stated they would resort to warfare to defend their control of the Stikine River trade route against the Hudson's Bay Company. After a diplomatic resolution of these differences, the Russians agreed to lease the littoral area of southeast Alaska to the Hudson's Bay Company, and in 1839 the British re-

placed the Russians at Wrangell. However, the Britons returned to trading by ship after five years, and another settlement was not established at Wrangell until the first gold rush of the 1860s.

⁶⁵ Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p.636; Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956), p.13

⁶⁶ Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p. 26-29; see Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Stryker, Ethnografisk Raekke VI, Copenhagen, 1953, p. 11.

⁶⁷ Census figures from the annual report of the holy synod of the Russian Orthodox Church, "as furnished by the priests and missionaries stationed in the colonies," and, according to Petroff, "including nearly all the Natives under immediate control of the company." Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p. 38

⁶⁸ Petroff, *Report*, pp. 26-29.

⁶⁹ The U.S. Court of Claims identified 32 villages as of 1867, while Swanton, based on fieldwork conducted in 1904, enumerated 40 Tlingit towns, "ancient and modern," which he said was an incomplete listing. A map prepared by Lt. Emmons for the Alaska Boundary Tribunal shortly after the turn of the century provides a similar figure.

⁷⁰ *Ibid.*

⁷¹ Angoon was likewise bombarded by the Navy in 1882. In these cases, the Tlingit had killed, or demanded payment from, a white person as compensation for the wrongful death of one of their own tribe; and in doing so they had acted according to Tlingit laws which sanctioned and required retaliation in kind or payment in lieu of human sacrifice.

⁷² U.S. Court of Claims, *The Tlingit and Haida Indians of Alaska v. The United States*, Opinion and Findings of Facts, Case No. 47900, Decided October 7, 1959; George Thornton Emmons, *A Report on the Condition and Needs of the Natives of Alaska*, 58th Congress, 3rd Session, Senate Document No. 106, January 19, 1905; Ernest Gruening, *The State of Alaska*, New York: Random House, 1954

⁷³ These settlement trends are discussed in George W. Rogers, *Alaska in Transition: The Southeast Region*, Baltimore: Johns Hopkins University Press, 1960, pp. 198-214

⁷⁴ *Ibid.*

⁷⁵ The Act of 1884 included the first provisions for a

civil government for the Territory of Alaska, including a judicial branch for the administration of American law, which ended the period of military administration.

⁷⁶ See Rogers, *Alaska in Transition*, pp. 198-214.

⁷⁷ *Ibid.*

⁷⁸ Another American established the first and only trading post at the Eyak village of Alaganik, probably in 1899. B-S & de Laguna p. 360-61, Porter 1890:66-67

⁷⁹ Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956), pp. 13-14

⁸⁰ In 1890, Nuchek had a population of 120 Chugach Eskimo, 18 creoles (mixed with Russian ancestry) and seven whites; the village of Tatitlek had 53 Chugach and about 36 creoles; Kaniklik was inhabited by 73 Chugach; and there were 71 Chugach resident at Chenega, which was also the location of a fishing station for one of the Cordova canneries. Porter

⁸¹ Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 28

⁸² Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 12

⁸³ The railroad was the Copper River and Northwestern Railroad. The first shipment of copper ore from the Kennecott-Bonanza Mine took place in 1911; and for the period from 1915-24 the production generally exceeded 50 million pounds per year. After 1924, the output of copper declined rapidly, and the Kennecott mines closed down for the first time in 1932. David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, p. 27

⁸⁴ Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 35-6

⁸⁵ John F.C. Johnson, *Chugach Legends: Stories and Photographs of the Chugach Region*, Anchorage: Chugach Alaska Corporation, 1984, p. vii

⁸⁶ Robert P. Porter, *Report on Population and Resources of Alaska at the Eleventh Census: 1890*, Department of the Interior Census Office, Washington, D.C.: Government Printing Office, 1890, p.68

⁸⁷ Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p.29

⁸⁸ Craig Mischler, "Tanaina Ethnohistory on the Northern Kenai Peninsula," *Progress Report Project F-021-2(15)/(A09812) Sterling Highway Archaeological Mitigation: Phase I Excavations at Four Sites on the Kenai Peninsula*, ed. by Charles E. Holmes, Report

Prepared by Division of Geological and Geophysical Surveys for Alaska Department of Transportation and Public Facilities, 1985, pp. 55-56

⁸⁹ Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p. 637

⁹⁰ Robert P. Porter, *Report on Population and Resources of Alaska at the Eleventh Census: 1890*, Department of the Interior Census Office, Washington, D.C.: Government Printing Office, 1890, pp. 69-70

⁹¹ Craig Mischler, "Tanaina Ethnohistory on the Northern Kenai Peninsula," *Progress Report Project F-021-2(15)/(A09812) Sterling Highway Archaeological Mitigation: Phase I Excavations at Four Sites on the Kenai Peninsula*, ed. by Charles E. Holmes, Report Prepared by Division of Geological and Geophysical Surveys for Alaska Department of Transportation and Public Facilities, 1985, pp.45-47, 52-53

Chapter II

Prelude to ANCSA: Acknowledgement of Native Property Rights

The southeast Indians first expressed their objections to the sale of Alaska and what they viewed as a usurpation of their territorial and political sovereignty as early as 1867, when they first met with representatives of the American government that had purchased Alaska without their consent. But the subsequent actions of the new settlers, the authority of the new government (which was backed up by the force of military weaponry), and the ideology of missionaries and teachers all worked against them. In 1898, for example, the leaders of several Indian groups from Wrangell, Juneau, Douglas and Hoonah were rebuffed by the Governor of Alaska, when they expressed their hope of recovering their land, or being paid for it, and retaining their rights and access to the resources that were being devastated by the onslaught of new settlers and commercial enterprises:

... By and by they began to build canneries and take the creeks away from us, where they make salmon and when we told them these creeks belong to us, they would not pay attention to us and said all this country belonged to President, the big chief at Washington. We have places where we used to trap furs; now the white man get up on these grounds. They tell us that they are hunting for gold ... There are animals and fish at places where they make homes. ... We make this complaint because we are very poor now. The time will come when we will not have anything left. The money and everything else in this country will be the property of the white man, and our people will have nothing. We meet here tonight for the purpose for you to write to the chief at Washington and to let him know our complaint. We also ask him to return our creeks and the hunting grounds that white people have taken away from us.¹

These meetings were cited in the 1959 decision recognizing Tlingit and Haida land claims to southeast Alaska, which held that the Indians had not voluntarily given up their aboriginal property rights during the period of American occupation.

The Tlingit and Haida Land Claims Settlement in Southeast Alaska, 1935-1968

The history of the Tlingit and Haida land claims begins with the Alaska Native Brotherhood (ANB) and Sisterhood (ANS). The ANB is a civic organization of the Indians of southeast Alaska started with encouragement from the Bureau of Education (the forerunner of the Bureau of Indian Affairs) and missionaries of the

Sheldon Jackson School and Russian Orthodox Church in Sitka; its first meeting was in Juneau in 1912. Its purpose was the improvement of the socioeconomic status of Indians, and initially the organization espoused cultural assimilation and abandonment of traditional practices as the methods to achieve their goal. But by 1920, under the influence of Louis and William Paul, a more activist approach was adopted which became the hallmark of the organization: the pursuit of specific issues through the court system by bringing test cases to trial, funded through contributions from members. The organization became more focused on ending discrimination and achieving basic civil rights (such as the right to vote, freedom of education, non-discrimination in employment opportunities, etc.). In the 1920s, all the southeastern communities formed local chapters of both the ANB and the ANS, and went to court challenging the denial of the Indian vote and attendance at publicly funded, all-white schools.

The idea to pursue Indian claims for the loss of lands and property rights in Alaska is attributed to one of the founders of ANB, a Tsimshian named Peter Simpson, who first posed the question, "Whose land is this?" and urged the Native leaders to take action. The noted Tlingit attorney, William L. Paul, Sr., initiated the process in Haines at the 1929 annual ANB convention. Paul invited Judge James Wickersham to address the convention, and Wickersham called upon the ANB to pursue Congressional action to redress the loss of land and the timber on it. He read a list of Indian communities that should participate in this action together: Angoon, Douglas, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Klukwan, Petersburg, Sitka and Wrangell.² The impetus for the lawsuit was not confined to land rights. William Paul has said that he brought the land claims idea to the convention because he felt that the Natives were not winning the fight against industry-supported fish traps.³

So in 1929, the ANB made an historic decision to pursue federal standing to bring a claims action against the United States government for the loss of tribal property, and of its use and possession, in Alaska.⁴ Working with the Territorial Congressional delegate, members of the ANB helped draft and introduce legislation, and in 1935 Anthony Dimond succeeded in achieving passage of the special jurisdictional act granting authority to the Tlingit and Haida Indians of Alaska to pursue these claims. Later that year, the first organizational meeting of the Tlingit and Haida Indians of Alaska took place in Wrangell, concurrently with the ANB annual convention. After a series of delays, a BIA-approved contract was signed with attorneys selected

by the Tlingit and Haida Indians and the case was filed on October 1, 1947. There were 18 communities represented in the case. In 1954, descendants of traditional Tlingit and Haida tribes, who were recognized as chiefs or active leaders of Tlingit and Haida clans, intervened as parties plaintiff in the suit; and the following tribes were represented: Chilkat, Auk, Taku, Hoonah, Yakutat, Lituya, Sitka, Angoon, Kake, Kuiu, Henya, Stikine, Tongass, Sanya, and Kaigani (Haida). A comparable lawsuit was also filed before the Indian Claims Commission with corresponding plaintiffs in the 1950s.

On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida Indians had established their claims of aboriginal Indian title to the land in Southeast Alaska and were entitled to recover compensation for the uncompensated taking of their lands by the United States, and for the failure or refusal of the United States to protect the interest of the Indians in their lands or their hunting and fishing rights. The court held that the Tlingit and Haida Indians exclusively used and occupied a large area of Southeast Alaska at the time of purchase of Alaska in 1867, and that the land had not been abandoned by the Indians prior to the dates of taking.

The court found that some of the land and water used and occupied by the Indians in 1867 were subsequently taken outright by the Government, including the various areas set aside for the Tongass National Forest and Glacier Bay National Monument, and the Annette Islands reserve. The court also held that part of the land and water rights was subsequently lost through the failure of the United States to exempt such property from the operation of the general land laws in Alaska and from the failure of the Government to enforce such minimum protection as was authorized in the laws (particularly section 8 of the Organic Act of Alaska). This included areas lost to homesteads, mineral leases, mining and industrial sites, and townsites established by white settlers.⁵

A second trial followed this one which established the value of the possessory rights lost and for which compensation was made by the federal government. On January 19, 1968, the U.S. Court of Claims decided that the Tlingit and Haida Indians were entitled to recover \$7,546,053.80 for the loss of their land. In this case, the Court established standards of valuation for Indian title lands and determined the acreage to which such values applied, including townsites, mineral lands and timber lands in areas of Indian title land taken or patented by the United States. This included the recognition of Indian title in the townsites that were

established by white settlers (Douglas, Haines, Juneau, Ketchikan, Petersburg, Sitka, Skagway and Wrangell), as well as the town of Metlakatla on the Annette Island Reserve. The Court also determined the value of the lost Indian fishing rights (\$8,388,315); however, the Court disallowed compensation for the Indians' lost fishing rights. These rights were subsequently pursued through the pending property claims action before the Indian Claims Commission, originally filed in 1954, but there was no decision on the merits by the time of the passage of the Alaska Native Claims Settlement Act (ANCSA) in December of 1971. The Commission subsequently ruled that ANCSA extinguished all such claims and the proceeding became a moot issue.

The Tlingit and Haida settlement established aboriginal Indian title to nearly all of Southeast Alaska, and determined that the land had not been abandoned at the time of taking by the federal government. Although the southeast Indians received compensation for the national forest, national park, townsite, and other lands that were taken from them, this did not constitute all of the Indian owned land in the southeast region. There were 2,628,207 acres of land in southeast Alaska that remained in aboriginal Indian title and belonged to the Tlingit and Haida Indians, as identified in the 1959 court decision. These other lands became the basis for the participation of the southeast Indians in the subsequent statewide Alaska Native land claims settlement in 1971. In the 1960s, the Central Council of the Tlingit and Haida Indians was reconstituted with expanded authority granted by Congress as a regional tribal organization overseeing the distribution and use of the claims compensation. With the transfer of contracting authority by the Bureau of Indian Affairs, the Central Council assumed its current role as the major tribal governmental services organization in southeast Alaska.⁶

Aboriginal Claims, and the Development of the Pulpwood Industry in Southeast Alaska

The Forest Service first offered acreage in the Tongass for a pulpwood sale in 1913, recognizing that the pulp industry would be the best use of the forest (hemlock comprised about 55 percent of the potential timber resources in the forest).⁷ The sale was not completed because the applicant could not obtain financing, and a subsequent offering in 1917 had similar results. Forest Service officials pursued efforts to establish a pulp industry in the Tongass and, by the early 1920s, had identified 14 areas of potential timber sales with mill sites. Forest Service Chief Greeley had a deep personal interest in the development of a pulp program in

Alaska, and industrialists were taken around to view potential sites on the Forest Service boat.⁹ But pulp sales in the 1920s and '30s were unproductive, although one pulp mill operated at Speel River about 30 miles south of Juneau in 1922-23. Forest Service efforts succeeded under the leadership of B. Frank Heintzleman who first came to Alaska with the service in 1918 and served as Regional Forester from 1937-53, after which he replaced Ernest Gruening as Governor of the Territory of Alaska. Heintzleman's major interest was to recruit and promote a pulp industry in Alaska, which would help Alaska develop and advance the welfare of the region.⁹ His efforts were consistent with established Forest Service policy to support and encourage the settlement and development of Alaska. The early Forest Service policy towards development of the Tongass was to encourage the industrial use of forest resources as an aid to community settlement and economic stability. In 1926, the following "Statement of Priorities" was prepared for the Tongass:

All policies and practices should be developed in such a manner as will contribute in the largest possible way to the welfare and prosperity of the individuals and communities which will eventually constitute a State of the Union, so far as this can be done without defeating the fundamental purposes for which National Forests are established...

Encourage in every possible manner compatible with the best interests of the Forest Service and the public in general, the development of a timber and paper manufacturing industry in Alaska which will utilize timber growth up to the full sustained yield basis in coordination with possible water powers naturally available.¹⁰

Tongass Timber Act of 1947

In the mid-1940s, Heintzleman revived a Ketchikan area pulpwood timber sale which first failed in 1927, while Senator Magnuson of Washington and Delegate Bartlett of Alaska played a major part in the development of the Tongass Timber Act of 1947. This act allowed for long-term timber sales and enabled the Forest Service to enter into long-term contracts with pulp mill developers. A single bid was accepted in 1948 for the Ketchikan sale, and following negotiation of a 50-year timber purchase agreement, the Forest Service awarded a contract to the Ketchikan Pulp Company in 1951. In the agreement, the Forest Service stated objectives that were unchanged since the 1920s: the Forest Service was "deeply interested in encouraging and bringing about the industrial development of Alaska."¹¹ At this time, new national security goals that arose after World

War II were to be served by the settlement and development in Alaska.

The Ketchikan Pulp Company agreed to establish a pulp mill and develop water supplies and other facilities for the enterprise and, in return for the unusual risks and long-term investment associated with the "pioneering undertaking," the Forest Service agreed to afford the opportunity to purchase supplies of timber for permanent operation of the enterprise through sustained yield management of the Tongass National Forest.¹² A second 50-year contract within the Tongass was awarded in 1957 to the Japanese-owned Alaska Pulp Company in Sitka. This agreement served as an element of the post-war redevelopment efforts of the Japanese economy on the part of the United States.

These commercial objectives of the Forest Service were also congruent with local sentiment supporting statehood, community settlement and development of Alaska's resources for the benefit of its permanent residents. The development of the pulp industry had strong support from Alaska's governor, who saw the significance of this enterprise in terms of creating stable employment on a year-round basis in a region that had been dominated by the canned salmon industry, which only provided seasonal opportunities filled largely by non-residents who left the state at the end of the fishing period. The salmon fishing industry was long the principal component in the regional economy of southeast Alaska, and the reckless exploitation of the salmon stocks engendered by the commercial use of fish traps threatened the very resource on which it was based.

Development of the pulp industry was also expected to benefit the Indians of southeast Alaska, whose principal economic activity — commercial seine fishing — was significantly affected by the decline in fish stocks in the 1940s and the subsequent crash in the 1950s. The future economic well-being of the Native population was associated with the expected employment opportunities in the new pulp timber industry that was developing in Ketchikan and Sitka.¹³ While the development of the pulp industry in Ketchikan prompted a substantial migration of Tlingit and Haida Indians from Prince of Wales communities into that city, the principal economic benefits accruing to the Indians resulted from employment in construction and other positions associated with the development of the community, rather than direct employment in the pulp industry itself.¹⁴

The Tongass Timber Act also included a provision regarding unresolved Indian claims to the Tongass which potentially undermined the ability of the Forest

Service to enter into the long-term contracts necessary for the development of a pulpwood industry. The legislation stipulated that the receipts from the long-term timber sales would be placed in a special escrow fund until the outstanding claims of aboriginal Indian title to the forest were settled.¹⁵ The law also clearly entailed no Congressional recognition of such rights: nothing in the act either affirmed or denied the validity of native claims, but in the event that such claims were found to be valid, it provided that the funds would be allocated to the payment of compensation.

The escrow provision was proposed as a compromise measure by the Department of Interior in response to the "unmitigated chaos in land titles and land claims" in southeast Alaska, which included Forest Service opposition to the recognition of traditional Indian use and aboriginal title.¹⁶ If Rakestraw's treatment of the Indian possessory rights issue is revealing of the attitude within the Forest Service during the first half of this century, Indian land use and title were seen as a persistent problem of management on the Tongass that came to a head in the 1940s. At that juncture, he writes, Heintzleman's "ambition to establish a pulp industry in Alaska was badly complicated by the question of Native claims and possessory rights."¹⁷ DOI efforts supporting such claims, such as backing passage of the 1935 jurisdictional act on behalf of the Tlingit and Haida Indians and moving to create large land and fisheries reserves in southeast, seriously conflicted with Forest Service plans for a pulpwood industry in Alaska.

Proposed Reservations in the Tongass

The New Deal policy of the Roosevelt administration, with Harold Ickes as Interior Secretary, was to recognize aboriginal rights to land and fisheries in Alaska and, founded on an acknowledgement of these rights, to support efforts to provide a land and resource base to Native communities for their economic benefit. The institutional and economic development of Indian reservations was the cornerstone of a new national Indian policy that empowered tribal groups to form governments and corporations to manage their communities and utilize the resources on their reservations, and that was codified in the Wheeler-Howard Act, or Indian Reorganization Act (IRA), of 1934 with support from the Department of the Interior. As discussed above, the Department of the Interior also supported the special jurisdictional act of 1935 under which the Tlingit and Haida Indian Tribes of Alaska were authorized to bring their land and fishery claims in court against the United States. William Paul was instrumental in this effort, with the full backing of the Alaska Native Brotherhood.

Because there was only one reservation in Alaska, many of the provisions did not apply in the territory. With key support from William Paul and the Secretary of the Interior, the Alaskan delegate succeeded in acquiring passage of IRA amendments in 1936 extending provisions of the act to Alaska. These amendments included granting authority to the Interior Secretary to create reservations in Alaska, a power he did not have in the lower 48 states. The efforts by the Interior Department to establish reservations in southeast Alaska over the next 15 years greatly alarmed the Forest Service, which opposed the principle of aboriginal rights.¹⁸

Following passage of the 1936 legislation extending the IRA to Alaska, the Department of the Interior conducted an investigation of the conditions and needs of Indian communities in southeast Alaska, which recommended the creation of reservations in the Tongass National Forest.¹⁹ In 1937, an Interior solicitor gave the opinion that the Secretarial authority to establish reservations in Alaska extended to fisheries reserves over submerged lands under navigable waters adjacent to lands occupied by Alaska Natives, and in 1938 Interior proposed Alaska's first IRA corporation at Hydaburg including a reservation that extended over nearby waters. In 1942, Interior issued a second opinion, known as the Margate opinion, which stated that Indian fishing rights were violated by the operation of traps by and allocation of trap sites to non-Indians within reservations. The Margate opinion affirmed "that original occupancy establishes possessory rights in Alaskan waters and submerged lands, and that such rights have not been extinguished by any treaty, statute or administrative action."²⁰ The issue was over three non-Native fish traps that were located within the proposed Hydaburg reservation. The conclusion that aboriginal fishing rights are violated by the operation of fish traps by non-Natives in waters reserved for Indians prompted strong opposition on the part of the salmon packing industry, which objected strenuously to proposals for the establishment of fisheries reserves. As a result public hearings on aboriginal fishing rights scheduled for that year were delayed.

In 1944, hearings were held on the aboriginal claims related to the protection of fisheries in the communities of Hydaburg, Klawock and Kake. The hearing officer concluded that exclusive aboriginal possession of the waters (aboriginal fishing rights) had been abandoned, but he upheld rights to land based on occupancy and recommended the DOI investigate aboriginal claims throughout southeast so that Congress could compensate for losses, or so DOI could set aside reservations if

Congress did not compensate for them. Upon appeal to the Secretary, Ickes affirmed the loss of fishing rights but sustained rights to land, and he established an amount of land to be set aside for the three village reservations:

Hydaburg - 101,000 acres
Klawock - 95,000 acres
Kake - 77,000 acres

Prior to this time, the Department of the Interior had identified three options to protect fishing rights: 1) a legislative remedy offering financial compensation for deprivation of fishing rights; 2) an administrative action protecting rights through regulations such as gear and harvest limits; or 3) a secretarial order establishing reservations. But as a result of these fishery decisions, by 1945 the DOI was moving towards the third option for the resolution of aboriginal possessory claims. In 1946, the DOI sponsored an investigation of claims in the remaining villages in southeast, which was published in a report entitled *Possessory Rights of the Indians of Southeast Alaska*.²⁰ Subsequent investigations were expected for the remainder of the state. However, there was a change in administration in 1946 when Truman was elected President, Ickes was replaced by John A. Krug, and the Interior policy on aboriginal rights softened substantially after Ickes resigned.

The concept of Indian rights was challenged on several fronts during 1947, the year that the Tongass Timber Act became law. A decision in a case involving the federal condemnation of Indian-owned tidelands in Juneau (*Miller v. United States*, 159 F.2d 997) held that aboriginal rights were extinguished by the Alaskan purchase, but they were compensable as individual interests because such were explicitly recognized in the 1884 Organic Act. There was substantial opposition to reservations expressed to Congressmen by representatives of the salmon packing industry, as well as by Governor Gruening and Delegate Bartlett. In chapter 25 of his history of the State of Alaska, Gruening describes the reservation policy as another instance of "federal overlords" mismanaging Alaska, and particularly singles out "the confusion created by Secretary Ickes's arbitrary and disingenuous efforts of impose his reactionary concepts upon the people of Alaska."²² But Gruening and Bartlett both advocated for speedy resolution of aboriginal claims by the federal government either through granting land in fee simple or monetary compensation. Ironically, their position on reservations put them on the same side of the issue as the salmon canning industry, which they normally attacked fiercely

for its economic and political domination of Alaskan affairs. It should also be noted that reservations were not unanimously supported within the Native community in southeast Alaska; several villages and the ANB had expressed their concerns over reservations which were viewed as a return to the past when they did not have citizenship rights to own property in fee simple, and were forced into a segregated school system. Finally in 1947, the Senate passed a resolution (Senate Joint Resolution No. 162) repealing the Secretary of Interior's authority to establish reservations in Alaska, but no corresponding action was taken in the House.

Secretarial authority to create reservations in Alaska was upheld in a 1949 supreme court decision over the validity of the Karluk reservation ordered in 1943.²³ In 1949, over the opposition of Gruening and Bartlett, Secretary Krug signed a secretarial order establishing a Hydaburg reservation of 100,000 acres, which was approved by referendum of Hydaburg residents in 1950.²⁴ This order included nearby waters, and the DOI sought the transfer of commercial fish traps within the reserve to the Indians of Hydaburg. When the operator, Libby, McNeil, and Libby, refused to turn over their traps, the federal government brought suit to enjoin the company from operating the traps inside the reservation. In a 1952 decision, the court held that the order creating the Hydaburg reservation was invalid and ruled in favor of the operator. The judge in this case, Mr. Folta, was the same person who ruled in 1947 that the Treaty of Cession extinguished aboriginal title in Alaska (*Miller v. United States*) and concluded that aboriginal fishing rights had been abandoned in the waters of southeast Alaska after the 1944 Interior hearings. The government chose not to appeal this decision, and after this ruling it abandoned efforts to establish reservations in Alaska. According to Naske, this was the outcome of a compromise over the Senate's resolution to repeal the Secretary of Interior's authority to establish reservations in Alaska: no further reservations would be created in Alaska until after statehood was achieved.²⁵

Forest Service Opposition to Traditional Land Use and Aboriginal Rights

The Forest Service was deeply opposed to the recognition of aboriginal title to large areas of southeast Alaska and did not give credence to claims based on traditional land use and Indian occupancy for hunting, fishing and gathering activities. The Service preferred to delimit prior occupancy and aboriginal title based on physical evidence of actual use, such as garden sites, graves, fish houses, and smoke houses. The denial of Native land claims based on traditional use and occupancy, that is, using areas for hunting, fishing and gathering

activities, was also a common practice among other federal agencies in Alaska. For example, the Bureau of Land Management, the federal agency having custody of unreserved lands in Alaska, rejected hunting and fishing activities as proof of use and occupancy in applications for Native allotments under the 1906 Alaska Native Allotment Act. "Partly for this reason, only 101 allotments had been made in Alaska in the 56 years since the act had been adopted in Congress."²⁶

According to Rakestraw, this policy applied in the way that the Forest Service carried out the provisions of the Forest Homestead Act of 1906, which was the first land law that enabled Indians to take up land in the Tongass, and it also characterized their response to the 1906 Alaska Native Allotment Act, which authorized the Secretary of Interior to allocate up to 160 acres of land to Indian family heads. However, the available evidence indicates that this policy developed first in practice, as it was not until the late 1940s and early 1950s that it begins to appear in written form in internal memos, correspondence and Congressional testimony. It continued in practice in the 1960s.

Although Rakestraw reports only one dispute between the Forest Service and Indians seeking to use the Tongass in a customary and traditional manner, conflicts were common since Forest Service personnel sought to protect the forest for specified public and private uses, while Tlingit Indians sought to continue their use of the coastal region for hunting, fishing and gathering.²⁷ Tlingit residents reported that during first half of this century, it was a common practice for Forest Service personnel to burn Indian cabins, trolling poles, and smokehouses to discourage Indians from entering upon and using land within the Tongass National Forest. According to statements by K.J. Metcalf, this continued in the 1960s, when "it was unofficial policy to remove as many smokehouses and what they would call abandoned structures as possible to eliminate land-use problems" by burning them down:

The Forest Service had an unwritten policy that they did not want land to be transferred out of public ownership. And the way to ensure this was that whenever they could they would remove any cabins or smokehouses that appeared to be abandoned. ... It was a very common practice. People talked about it all the time. People would come in from the field and say they found an old smokehouse and burned it down or a cabin and burned it down. In fact, there was a concerted effort by people who were going into the field to remove these structures.²⁸

John Sandor, however, who served his first tour in the Region from 1953 to 1962, and as Kasaan District Ranger from 1957-58 recalls no written or unwritten policy to burn Indian Allotment smokehouses or other structures. Abandoned structures that were unsafe to use and a potential nuisance were cleared and sometimes burned, which he thought contributed to the incorrect perception that there was a "policy" to clear Indian allotments.

This practice probably had a significant impact on the progress of approval of Indian allotments under the 1906 legislation, which remained in effect until the passage of ANCSA in 1971. Congressional review of the program in 1956 showed that a total of only 79 allotments had been made in Alaska in the 50 years since the law was enacted, leading to a judicial conclusion that there has been "minimal implementation" of the program.²⁹ Rakestraw does not describe the effects on Indian use of the numerous leases of forest lands granted to non-Natives for fox farms, one of the approved uses of the Tongass.

The Forest Service policy on Indian occupancy mirrors the findings of the court in the Miller decision from 1947, discussed above, which stated that for aboriginal use and occupancy to be compensable, it "must be notorious, exclusive and continuous and of such a nature as to leave visible evidence thereof, so as to put strangers upon notice that the land is in the use or occupancy of another, and the extent thereof must be readily apparent."³⁰ It also coincides with the position of Senator Butler who in 1948, with the support of the Department of Agriculture, proposed a Senate Resolution rescinding all orders of the Secretary of Interior establishing reservations in Alaska, and the authority under which they were issued, replacing it with authority for the Secretary to issue patents to Native "tribes and villages or individuals for town sites, villages, smokehouses, gardens, burial grounds, or missionary stations."³¹

There was an inevitable contradiction between western concepts of land use, measured in terms of a built environment and according to the agricultural origins of the homestead and allotment legislation, and the customary and traditional Indian practice of land occupancy characterized by flexibility and seasonal use of large expanses of territory with minimal physical impact on the environment. But underlying the Service's practices was a basic conflict of interest between its institutional mission and the traditional Indian occupancy and use, including subsistence, of land and water.

In the 1940s, Heintzleman was on the side of the salmon cannery industry which was equally threatened by the IRA reservation proposals and had mounted a major lobbying and public information program in opposition to DOI administrative policy and actions to recognize aboriginal claims and establish reservations. The Congressional lobbyist for the salmon canning interests continually used the aboriginal rights issue in arguments against statehood, in warnings about the confusion which would result from the land claims and criticizing the DOI for its erratic policies. In July of 1944, at about the time DOI announced it would hold hearings on the fishing rights issue in Hydaburg, Klawock and Kake, Heintzleman arranged a meeting between a Juneau attorney representing the salmon cannery interests and the Chief of the Forest Service, Mr. Watts, and his assistant, Mr. Grainger. The parties exchanged confidences and spent about two hours discussing the matter of Indian reservations and ancestral rights, which was reported in a letter by the attorney to the Alaska Packers Association:

They [Watts, Grainger and Heintzleman] are very much concerned, and Mr. Watts says that it is the most serious thing facing Alaska. They are particularly concerned because of their efforts to get capital in here to develop the paper making industry. ...

I am giving Mr. Grainger a copy of my Brief which I used here last summer in the argument on the Demurer as this goes into all phases of the question of ancestral rights ...

I think these gentlemen will put up considerable opposition to any claims of the Indians which are backed by [Felix] Cohen's theories.

P.S. Please treat as confidential what I have said about the Forest Service officials as I know they do not want to be quoted now.³²

Unfortunately for the Forest Service, their views were not kept confidential. A letter from Heintzleman expounding this position was published in the *Yale Forest School News* in January of 1945, causing embarrassment to the Forest Service. As reported by Rakestraw,

The judgements of the Department of Interior were alarming to the Forest Service. If Ickes's views were realized, the whole timber industry in southeast Alaska would be jeopardized. Pulp companies would be discouraged from making investments, since the right of the Forest Service to make timber sales would be in doubt. Heintzleman expounded his views in a letter to Harold Lutz. The effort to

give Indians title to southeast Alaska, he wrote, was "under the theory that they are the owners of all the lands and resources through their heredity of aboriginal rights and that these rights have never been extinguished by the federal government." Heintzleman blamed the Department of Interior for the matter, particularly Secretary Ickes. "With the assistance of the Interior Department, and on the basis of some legal opinion given by the Secretary of Interior by the Solicitor's office of that department," he wrote, "each village, as S.E. Alaska has never had a tribal organization, has made application for hundreds of thousands of acres of land and tidewater fishing areas that blanket all the fishing sites and large areas of trolling grounds." He went on to summarize the existing laws under which the Indians could acquire land. He concluded, "The thought is often expressed by private citizens that the move to set up vast Indian reservations in S.E. Alaska is based, in large part, on a desire to eliminate the National Forests in Alaska."³³

The establishment of reservations may have been seen by Forest Service officials as part of a DOI strategy to takeover the Forest Service: elsewhere Rakestraw reports that the Secretary of the Interior "was at this time deeply committed to transferring the Forest Service to the Interior Department."³⁴ However, the passage of the Tongass Timber Act in 1947 preserved the National Forests, established the framework for the development of the pulpwood industry, and deferred the question of aboriginal possessory rights to timber and land in southeast Alaska.

During this period, the Forest Service consistently advocated for the needs of the pulp and paper industry over the uses of Natives. In testifying on behalf of timber sales within the Tongass National Forest in 1947, a Forest Service official declared that the industry's needs required cutting areas important to Indians. After a representative of the DOI explained that berry-picking, hunting, trapping, and "a little log cutting for their own use" might support Native claims to about 10-15 percent of the forest, a Forest Service official asserted that "we cannot possibly stay out of the 10 percent."³⁵ In 1948, the Department of Agriculture expressed its agreement with the Senate's efforts to repeal the Interior Secretary's authority to establish reservations in Alaska, proposing instead a much more limited authority "to establish small Indian reservations covering areas in actual use for such purposes as villages, burial grounds, smoke houses, gardens, and missionary stations."³⁶ Similarly, in 1954 the Forest Service recommended that all Indian claims to the forest be

extinguished because of continuing uncertainty affecting the pulpwood industry: the agency explained to a Congressional committee that Indian claims "based largely on hunting, trapping, berry picking, fishing, firewood cutting, or other highly transitory and nomadic use by the Indians or their forebears inject a large amount of uncertainty into the prospective development of the pulp and paper industry in southeastern Alaska based on national forest timber."³⁷

The commitment of the Forest Service to timber harvest objectives during this period later brought its actions into conflict the wider purposes of multiple use management. In a review of past Forest Service practices in the Tongass, Senators Metzenbaum and Tsongas provided this commentary in the following statement:

Since the early 1950s ... the management of the Tongass National Forest has stressed logging to the virtual exclusion of all other values with resultant adverse impacts on fisheries, wildlife habitat, and wilderness. The primary goal of the Forest Service in the late '40s and '50s was to eventually cut most of the Tongass timber for pulp. At that time, the old growth forest was thought to be good for pulp production only.³⁸

The Tee-Hit-Ton Case

In 1951, the Forest Service contracted for the sale of timber in the Wrangell area under the Tongass Timber Act. The sale area included 350,000 acres of land and 150 square miles of water which was the traditional territory belonging to the Tee-Hit-Ton Indians, a Tlingit clan from the community of Wrangell. The Tee-Hit-Ton, with their chief William Paul as the single witness, brought suit in the Court of Claims for compensation for the taking of timber by the United States from these lands. The Court of Claims ruled that the Indians did indeed hold the land according to original Indian title and right of occupancy prior to 1867, but it found that aboriginal title was an insufficient basis to grant compensation because there had been no government recognition of Indian occupancy after 1867.

The Tee-Hit-Ton appealed this decision to the Supreme Court, which upheld the finding in 1955 (348 U.S. 272). The Supreme Court did not deny the Tee-Hit-Ton claims of possession based on occupancy, thus repudiating the finding in the Miller case that the purchase of Alaska extinguished aboriginal title, but it awarded no compensation for the taking of timber since their occupancy had not been specifically recognized by congressional action or authority. The court stated that Indian occupancy was not a property right protected

under the Fifth Amendment, but it is a right of occupancy granted by permission of the United States after conquest. In order for compensation to be awarded to Indian claimants, there must be a clear intent by Congress to recognize their *permanent* possessory rights in the lands occupied by them, not merely 'permissive occupation.' Such recognition was explicit in the decision of the 1959 Tlingit and Haida land claims lawsuit, authorized by the 1935 jurisdictional act, and in 1971 with the passage of ANCSA legislation.

The Tee-Hit-Ton asserted that the early land laws in Alaska sufficiently recognized the clan's possessory rights to the land in question, and referred to provisions in the Organic Act of 1884 and the Act of June 6, 1890, which command that Indians and certain other persons "shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them." The court examined these statutes and legislative history and did not find support for the contention, and decided that what was intended was to retain the *status quo* until further Congressional or judicial action was taken.

But three justices, including the chief justice, dissented, finding otherwise both in the language and legislative history of the 1884 Organic Act. Writing for the minority, Douglas reported that the act's intent was clearly stated in the record of the debates, to protect to the fullest extent of the law the rights of the Indians and the residents who had settled there and not to diminish the rights of the Indians in any way. This intent was acknowledged in statements on the record by Senator Plumb of Kansas, who introduced the words, "or now claimed by them," even though he also facetiously suggested that the language "actually in their use or occupation" might be construed as no larger than two by six feet [that is, the body space for each Native person]. In the words of Justice Douglas, "Senator Harrison replied that it was the intention of the committee "to save from all possible invasion the rights of the Indian residents of Alaska." Harrison gave emphasis to the point by adding:

It was the object of the committee absolutely to save the rights of all occupying Indians in that Territory until the report which is provided for in another section of the bill could be made, when the Secretary of the Interior could ascertain what their claims were and could definitely define any reservations that were necessary to be set apart for their use. We did not intend to allow any invasion of the territory by which private rights could be acquired by any person except in so far as it was necessary

in order to establish title to mining claims in the Territory. Believing that that would occupy but the smallest portion of the territory here and there, isolated and detached and small quantities of ground, we thought the reservation of lands occupied by the Indians or by anybody else was a sufficient guard against any serious invasion of their rights.³⁹

Of these words, Douglas wrote, "The conclusion seems clear that Congress in the 1884 Act recognized the claims of these Indians to their Alaskan lands." It is interesting to note that Secretary of the Interior Ickes also referred to this provision in departmental testimony in favor of the 1936 IRA amendments conferring secretarial authority to establish reservations in Alaska, which he argued would enable the United States to fulfill its obligation to Indians under the 1884 act.

The Tongass Timber Act of 1947, Tlingit and Haida land settlements, and Alaskan Statehood achieved in 1959, are all integral parts of the Alaska Native Claims Settlement Act of 1971 (ANCSA), and its sequel, the Alaska National Interest Lands Conservation Act in 1980 (ANILCA). The Alaska Native land claims settlements, statehood, and multiple-use, environmental, and wilderness legislation approved by Congress in the 1960s markedly changed the policies, practices, and procedures for National Forest Management in the nineteen seventies and beyond.

Reference Notes

¹ Statement by Chief Kadishan of Wrangell to Governor John G. Brady, December 14, 1898, in "The Canoe Rocks — We Do Not Know What Will Become of Us," The Complete Transcript of a Meeting Between Governor John Green Brady of Alaska and a Group of Tlingit Chiefs, Juneau, December 14, 1898, ed. by Ted C. Hinckley, *The Western Historical Quarterly*, July 1970, pp. 270-71

² Judson Brown, 1993, personal communication; Paul, William L., Sr., Letter to Conrad Mather, 1946

³ Peter M. Metcalfe, *The Central Council 50 Years: A Historical Profile of the Central Council and the Tlingit and Haida People*, Juneau: The Central Council of the Tlingit and Haida Tribes, 1985, pp. 14-15

⁴ A Native group or tribe cannot sue the federal government without its permission, and so before a court action can be brought the group must first be granted recognition and the right to bring a claim before the federal court.

⁵ U.S. Court of Claims, *The Tlingit and Haida Indians of Alaska v. The United States*. Opinion and Findings of Facts, Case No. 47900, decided October 7, 1959

⁶ Charles W. Smythe, "Tlingit and Haida Tribal Status," A Report of the Central Council of the Tlingit and Haida Indians Tribes of Alaska, Juneau: Central Council, 1989; Charles W. Smythe, *A Study of Five Communities*, Chapter 3: The Tlingit and Haida Settlement, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

⁷ The proposed sale was on the Stikine River. K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, pp. 214-15

⁸ Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, pp. 109-110

⁹ *Ibid.*, p.119; K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, p. 33

¹⁰ K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, pp. 216-17

¹¹ *Ibid.*, p. 223

¹² *Ibid.*, p. 222-23

¹³ George W. Rogers, *Alaska in Transition: The Southeast Region*, Baltimore: Johns Hopkins University Press, 1960, pp. 214-219

¹⁴ Charles W. Smythe, *A Study of Five Communities*, Appendix A: History of Occupation and Use for

Ketchikan, Anchorage: Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

¹⁵ The Tlingit and Haida Indians of Alaska brought suit in 1947 against the United States in the Court of Claims over their pre-existing land and water property rights in southeast Alaska, and sought compensation for the unlawful taking of such lands by the United States and its citizens. This action was authorized by the special jurisdictional act of 1935, granting the Indians the right to bring suit against the United States, as described above.

¹⁶ Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 372

¹⁷ *Ibid.*, pp. 126-27

¹⁸ For valuable discussions of the IRA as applied in Alaska, and the forces against the establishment of reservations, see Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, pp. 103-137, and Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, pp. 364-381

¹⁹ Oscar H. Lipps, *The Indian Tribes of Southeast Alaska. A Report on their Location, Village Organization and their Social and Economic Conditions*, Chicago: Office of Indian Affairs, 1937.

²⁰ Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 368

²¹ Walter R. Goldschmidt and Theodore H. Haas, *Possessory Rights of the Natives of Southeast Alaska*. A Report to the Commissioner of Indian Affairs. (Mimeographed.) Chicago: Office of Indian Affairs, 1946

²² Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 381

²³ The case was *Hynes v. Grimes Packing Company* (337 U.S. 86).

²⁴ The Secretary also signed orders for reservations at Barrow and Shungnak in 1949, but they were not approved in local elections.

²⁵ The compromise prompted "howls of protest" from the National Civil Liberties Clearing House, the National Congress of the American Indians, the president of the Association of American Indians, the previous Secretary of Interior Harold Ickes, and the *Nation*, all of whom maintained that this action denied Native property rights. Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), p.143-44.

²⁶ Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Depart-

ment of Agriculture Forest Service, 1981, pp. 125; Robert D. Arnold, *Alaska Native Land Claims* (Anchorage: Alaska Native Foundation, 1978), p. 98.

²⁷ In 1921, a fur farmer sought protection from the Forest Service of his lease from use by Indians, and the Forest Service first suggested he post no trespassing signs. Upon investigation, the Service found that some 2,000 Indians used the area as a fishing site and had 20 buildings there, and the lease was subsequently cancelled by the Forest Service. He reports one other case, but in this one the claims of Indian possession were being used by a white man seeking a federal injunction in 1916 to prevent construction of a dam in an area of a pulpwood sale near Ketchikan, based on Indian use of the drainage for hunting and fishing the rights to which the white man had purportedly acquired from the Indians (the injunction was eventually denied in 1932). Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p. 110, 125

²⁸ *United States of America v. George Jim, Senior*, U.S. Department of the Interior Office of Hearings and Appeals, Transcript of Proceedings, Docket No. AA-6561, June 8, 1993, pp. 158-59

²⁹ *Shields v. United States*, 698 F.2d 987, 1983, p. 990

³⁰ Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 374

³¹ Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 143

³² Letter from H.L. Faulkner to Alaska Packers Association dated July 31, 1944 (available in the Alaska Packers Association records in the Alaska Historical Library, Microfilm MS Reel 8, Data Concerning Activities Which the Alaska Packers Association Considered Detrimental to their Fishery Operation), quoted in Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, p. 112

³³ Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p. 127

³⁴ Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p.119

³⁵ *Hanlon v. United States*, quoting from *Hearings before the Committee on Agriculture, House of Representatives on H.J. Resolution 205, to Authorize the Secretary of Agriculture to Sell Timber Within the*

Tongass National Forest, 80th Cong., 1st Sess. (1947), p. 9

³⁶ Repeal Act authorizing Secretary of Interior to Create Indian Reservations in Alaska, Hearings on S. 2037 and S. J. Res. 162 Before the Subcommittee of the Committee on Interior and Insular Affairs, 80th Cong., 2nd Sess. (1948), cited in Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, p. 123

³⁷ Arguments in *Hanlon v. United States*, quoting from Letter from E.T. Benson, Secretary of Agriculture, to A.L. Miller, Chairman, House Interior and Insular Affairs Committee, January 11, 1954, reprinted in *Staff of House Interior and Insular Affairs Committee, 83rd Cong., 2nd Sess., Reports of the Departments of Interior, Agriculture, and Justice on H.R. 1921, A Bill to Settle Possessory Claims in Alaska*, pp. 6-7

³⁸ Senate Report No. 96-413, 96th Cong., 1st Sess., 1979, p. 393. Cited in *Hanlon v. United States*, p. 5-6

³⁹ Justice Douglas, Dissenting, *Tee-Hit-Ton Indians v. United States*, Opinion of the Court, 348 U.S. 272, p. 293-94

Chapter III

Statehood To ANILCA: State, National and Native Interests

Prior to statehood, the federal government owned about 99 percent of Alaska's land. The Statehood Act of 1958 gave the new state authority to select 103.5 million acres from "vacant, unappropriated and unreserved" lands of Alaska. The statehood act also reserved the right of the Congress to recognize prior aboriginal title to lands that the state might select. Alaska Natives protested to the government when the state started to select lands that conflicted with their traditional areas of use and occupancy, and the Secretary of Interior imposed a freeze on further state selections until Congress passed legislation clearing title to Alaska's lands. Following the discovery of oil on the North Slope, the Natives gained an important ally in their quest for recognition of land rights—the petroleum industry—which needed prompt resolution of aboriginal title before the oil could be brought to market.

The passage of the Alaska Native Claims Settlement Act in 1971 recognized aboriginal claims to Alaska and authorized the transfer of 44 million acres and nearly one billion dollars to Alaska Native corporations in a land settlement and compensation package. Another provision of the act authorized the Secretary of Interior to withdraw up to 80 million acres of federal land for inclusion in existing and new units of federal land management systems (national parks, forests, wildlife refuges and wild and scenic rivers). As these systems entailed restrictions on the development of natural resources, this provision was intended to preserve a portion of Alaska's land from development by the state and Native corporations. Thus, ANCSA had two major parts to it: besides transferring a large amount of Alaska's land to private ownership by Native corporations, ANCSA also protected national interests in Alaska's lands for purposes of conservation and protection of the environment. The Alaska National Interest Lands Conservation Act of 1980 carried out the imperatives of the second part of ANCSA. It created new units of federal land management systems, and modified existing ones. It also addressed outstanding subsistence issues that were not resolved as intended by the drafters of ANCSA.

In a sense, ANCSA is an extension of the Statehood Act, which transferred a large portion of federal lands in Alaska to the new state but reserved federal authority to resolve aboriginal claims on the lands. The principal aim of ANCSA was to clear up unresolved issues of aboriginal title, which was accomplished by extending the benefits of land ownership and development opportunities to the Natives of the state. ANILCA is the outcome of another part of ANCSA, which asserted federal authority over additional public land areas

designed to serve the national interest in conservation. But the federal authority to accomplish this end was likewise originally reserved in the Statehood Act.

Alaska Statehood (1959)

Although Territorial Delegate James Wickersham introduced the first Alaska statehood bill to Congress in 1916, momentum for the initiative was weak until after World War II when the growth in Alaska's population and economy, and more concerted action by Alaska's territorial governor (Greuning) and Congressional delegate (Bartlett), led to a new drive for statehood. Until 1940, the regional economy of Alaska was colonial in nature: non-resident commercial interests—chiefly canned salmon, mining, and marine transportation—controlled the means of production. The labor force, seasonal in nature, was non-resident as well.¹ The land and resources were controlled by the federal government while Alaska's representation in Congress was limited to one non-voting territorial delegate in the House of Representatives. The severity of federal mismanagement, particularly of the fishery (salmon) resources, was one of the principal causes of statehood proponents. Another issue was that practically no federal revenues derived from the local resource industries were paid back to the territory to develop and maintain the territorial government and provide services for the local population.

In good measure, statehood was motivated by a desire among the citizens of Alaska to gain local control over Alaska's land and resources in a region that had seen a significant growth in population and infrastructure development associated with military activities during World War II. But economic and political control was maintained by "outside" interests.² In 1945, the Territorial Legislature enacted a pro-statehood resolution, and a group of citizens formed the Alaska Statehood Association which commissioned a study of the pros and cons of statehood. The report predicted that with statehood federal land would become available for settlement and the extraction of resources, and recommended that Alaskans ask the federal government for lands in the Chugach and Tongass national forests for settlement and economic development.³ These land provisions eventually became law. Later, in 1946, Alaska held a statehood referendum with 9,630 voting for statehood and 6,822 against. This was considered a good showing, since there was strong opposition by the absentee interests. Congressional hearings on statehood bills began in 1947, and the House Committee on Public Lands unanimously approved a revised statehood statute early in the next year.⁴

In 1949, the territorial legislature enacted a comprehensive revenue system (including a property and income tax) in part to demonstrate that the people of Alaska could support themselves with statehood. The legislature also appropriated \$80,000 in that year to create the Alaska Statehood Committee to work on behalf of statehood. In 1955-56, 55 elected delegates met and developed a state constitution to provide self-government and end "American colonialism" in Alaska. The constitution was approved by better than a 2-to-1 majority in a referendum held in April of 1956, when voters also approved the election of shadow representatives (two senators and a representative) to go to Congress and work for statehood, following the "Tennessee plan" for achieving statehood. Seven Alaska statehood bills were introduced during the 85th Congress in 1957; and on May 28, 1958 the House passed one of these (H.R. 7999) introduced by Congressman O'Brien of New York. The Senate passed the House bill without amendments on June 30, and President Dwight D. Eisenhower signed the Statehood Act (P.L. 85-508) on July 1, 1958. Alaskans ratified the Act by 83 percent of the vote in a referendum held on August 26, 1958, and Alaska officially became a state of the Union on January 3, 1959, with the signing of a presidential proclamation.⁵

Governors at a Glance

Here is a list of Alaska's governors since statehood, along with their political affiliations and years served:

- William A. Egan, Democrat, 1959 - 1966
- Walter J. Hickel, Republican, 1966 - 1969
- Keith H. Miller, Republican, 1969 - 1970
- William A. Egan, Democrat, 1970 - 1974
- Jay S. Hammond, Republican, 1974 - 1982
- Bill Sheffield, Democrat, 1982 - 1986
- Steve Cowper, Democrat, 1986 - 1990
- Walter J. Hickel, AIP then Republican, 1990 - 1994
- Tony Knowles, Democrat, 1994 - ?

Source: *Juneau Empire*, December 6, 1994

The Constitutional Mandate

The Alaska state constitution provided a broad mandate for the settlement of Alaska's lands and the development of its resources for the use and benefit of its citizens. In anticipation of 100 million acres from the federal domain, and cognizant of the dangers of overexploitation and control by outside interests, the drafters wrote a natural resources article which estab-

lished the state's goals of resource development and use:

to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest ...[and] ... to provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

In addition to surface land, Alaska received title to submerged land in contiguous waters and under navigable waters, all mineral resources on or under its land, and control over fish and wildlife resources. The constitution stipulated that land and resources will be used for community and economic development, but this will be done responsibly, in the public interest and according to conservation principles "for the maximum benefit" of Alaska's people. The constitution included these special stipulations regarding the management of resources:

Wherever occurring in the natural state, fish, wildlife and waters are reserved to the people for common use ... Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on a sustained yield principle, subject to preferences among beneficial uses.⁶

This "common use" provision became significant after the passage of ANILCA, which included a provision recognizing a rural preference on all federal lands for hunting, fishing, gathering and barter of wild resources that was in conflict with this constitutional stipulation. In the late 1980s the federal government took over management of fish and game on public lands to ensure that subsistence uses were protected after the state was unable to come up with a resolution of this conflict.

The constitution also granted specific authorities to the legislature to provide for the selection of lands granted to the state by the federal government, for the sale or grant of these lands to citizens, and for the acquisition of areas of natural beauty or with recreational, historic, cultural or scientific value for the use and enjoyment of the people. It guaranteed free access to navigable waters of the state to any citizen of the United States or Alaska. In response to the past domination by the commercial fishing industry and the consequences of unregulated use of fish traps, the constitution expressly stated that "No exclusive right or special privilege of fishery shall be created or authorized in the natural

waters of the State.” These provisions cleared away “the ambivalence of past federal management policy, which fluctuated between controlled sustained yield harvesting and loose exploitation, and between resident and nonresident orientation in its basic objectives.”⁷

The Alaska Statehood Act - 1958

Alaska officially became a state in 1959 when the President signed a proclamation of statehood, which followed an election in Alaska ratifying the 1958 Alaska Statehood Act. The beneficial objectives of Alaska statehood, as reported by the House Committee on Interior and Insular Affairs, were to reverse the pre-existing federal domination of Alaska affairs, to “open up many of the resources of Alaska” and to provide continuous representation in Congress to sustain efforts to revise federal policy “necessary to further the economic growth of Alaska.”⁸ Entitlement to Alaska’s lands and natural resources was the key to the future development and settlement of Alaska, goals which were enshrined in the constitution and conveyed in the statehood act. Special provisions regarding access to and control over these lands and resources were included in the statehood act in recognition that, during territorial days, the federal government owned over 99 percent of Alaska’s land and withdrew:

from public use many of the more valuable resources of the Territory through creation of tremendous Federal reservations for the furtherance of the programs of the various Federal agencies. Thus, approximately 95 million acres — more than one-fourth of the total area of Alaska — is today enclosed within various types of Federal withdrawals or reservations. Much of the remaining area of Alaska is covered by glacier, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.⁹

In contrast with other states, the historical federal control and management of Alaska’s land and resource base was a special condition, one which established the foundation for the singular and distinctive land provisions in the Alaska statehood act.

The principal land provisions in the statehood act were federal land grants to the new state including 800,000 acres for community development and expansion and 102.55 million acres for general selection by the state. This left about 60 percent of Alaska’s lands in federal

hands. The purpose of the land grants was to provide for a viable economy in the new state.¹⁰

To ensure that lands of value were granted to the state, the statehood act gave the state the right to select lands of known mineral character, specifically including areas under federal lease for coal, oil or gas development, including the first rights to reserved coal lands that may be restored to the public domain in the future. Other provisions ensured the state would receive significant portions of the revenues from federal mineral leases, including 90 percent of profits from the operation of government coal mines and 52.5 percent of net proceeds realized from coal, phosphates, oil, oil shale and sodium on the public domain. Finally, the House committee offered the opinion that the state and federal government should conduct a “vigorous program of restudying of the needs of the various federal agencies for land in Alaska.”¹¹

State Selections from National Forests

Of the 800,000 acres of federal land made available to the state for community expansion under the statehood act, 400,000 were designated to come from the Chugach and Tongass National Forests.¹² This land was made available for the purposes of furthering the expansion of existing communities, the development of prospective communities, and community recreation needs, in the regions that were withdrawn and reserved as national forests in the beginning of the century. The national forest selections are commonly referred to as National Forest Community Grant (NFCG) lands. The statehood act granted 25 years to the state to complete selections, but with the passage of ANCSA, which gave Native regional and village corporations rights to selections within the forests and authorized substantial additional federal withdrawals in the national interest, the time limit was extended 10 years in ANILCA to allow additional time for resolution of disputes over multiple and overlapping selections.¹³ The state’s final land selections were due by January 2, 1994.

The state’s selection activity proceeded very slowly until 1977, when 250,000 acres were selected. Based on their interpretation of the purposes for such land selections as specified in the statehood act, the Forest Service disapproved of over 50,000 acres of the state’s selections which resulted in litigation with the state. The litigation was finally settled in early 1988. The state selected another 57,000 acres in 1982 and completed the remaining selections in 1989. These efforts “represent the state’s last major opportunity to influence land ownership patterns within the national forests.”¹⁴

To gain Forest Service approval, state selections had to be 1) adjacent to established communities; 2) suitable for community centers; or 3) suitable for prospective community recreation areas. These criteria were upheld by the courts, and selections were not approved for other purposes, such as timber harvest, mineral extraction, or as the site of a fish hatchery or log transfer facility. Selections were intended "to satisfy the long-range needs and goals of Alaskans residing within or adjacent to national forests and to encourage a rational pattern of recreation, settlement and growth."¹⁵

State selections were held in check by the freeze on all withdrawals imposed by the Secretary of Interior in 1966, after Alaska Natives began to file extensive protests against the state's selections that covered areas of traditional use for subsistence and trapping activities. The freeze remained in effect until the passage of the Alaska Native Claims Settlement Act in 1971. However, state selections were also affected by another provision of ANCSA, Section 17(d)(2), which authorized the Secretary to withdraw 83 million acres of public domain land for future selection in the national interest. These "d-2" lands were later added to existing federal land management systems in the Alaska National Interest Lands and Conservation Act of 1980.

Statehood and Aboriginal Title

The Alaska Statehood Act included a disclaimer to property rights, held either by the United States or by Indians, Eskimos or Aleuts, which were to remain under federal jurisdiction until disposed of by the government or by Congress. This provision was included in the Compact with United States (Section 4 of the Act, as amended):

As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress

has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation....

The section also specified that the clause in no way affects any existing claim against the United States (such as the Tlingit and Haida land claims suit proceeding at this time) and exempted from taxation any lands or property that may belong to Natives or is held in trust for them.

The intent of this clause was to leave unimpaired the rights of Alaska Natives to compensation from the United States for their land and possessory claims, which may be decided at some time in the future. The legislative history of the statehood act does not identify a Congressional intent underlying its treatment of Native use and occupancy, which suggests that Congress chose to bypass the question in this legislation because Congress was principally concerned with achieving statehood rather than resolving Native land claims. But the statehood act is important insofar as it is a significant part of the background of ANCSA and contributes to an understanding of legislative intent in the settlement act.¹⁶

The disclaimer clause regarding Native claims was first proposed in 1947 by the Acting Secretary for the Interior Warner W. Gardner, who objected that Native rights were not protected in draft statehood legislation. He proposed that the state and its people forever disclaim both the right and the title to all land ... owned or held by Natives or Native "tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty...." Until the United States either disposed of or extinguished title to such land, it would remain within the exclusive jurisdiction of the federal government and not be taxable by the state.¹⁷ This guarantee of Native rights was also sought by James Curry, the lawyer for the Alaska Native Brotherhood and who also represented the Tlingit and Haida Indian Tribes of Alaska in their land claims against the United States. These land provisions were opposed by various federal agencies and national conservation groups, but statehood proponents did not object.

In 1950, the Senate expanded the language defining property rights to include "any lands or other property (including fishing rights)" but deleted reference to rights or titles which had been acquired from "any prior sovereignty." This change probably shows the influence of the Miller decision, discussed in the previous chapter, which held that the Treaty of Cession had transferred

title to Alaska lands from the Russian to the United States government, with the exception of individual holdings.¹⁸ Thus, as the language was eventually adopted in the statehood act, Congress reserved for itself the right to recognize Native claims to lands they used and occupied at the time of the transfer, and placed this condition within the terms of the statehood act.

The issue of Native land rights was brought to the Alaska constitutional convention by M.R. Marston, wartime organizer of the original Eskimo National Guard. He believed that the new state should, based on moral values, recognize aboriginal rights to areas Natives were using and occupying for fishing, hunting and trapping. He proposed a constitutional amendment to instruct the future state legislature to "translate" into 160-acre homesteads or land grants the traditional land rights of Alaska Natives. Although a disclaimer regarding Native lands was adopted, Marston's amendment was rejected.

Marston had firm supporters who agreed that the convention must do justice to the Alaska Natives. Others, however, expressed concern about interfering with the federal responsibility for safeguarding and compensating aboriginal rights and raised doubts about the state's ability to implement the intent of the Marston amendment. Various delegates also objected to language, to the amount of land involved, and to the special treatment proposed for one class of Alaskans. It was also noted that since 1906, Alaska Natives had by federal statute been entitled to 160-acre allotments, and that their occupancy could be taken care of under existing law.¹⁹

The measure was rejected after undergoing successive revisions from the floor, which put it into an unrecognizable form. Writing about this debate, Fischer concluded, "Thus, the proposal for granting land rights to Alaska Natives went down to defeat without ever coming to a direct vote on the basic issues involved."²⁰ As in this instance, subsequent state proposals to protect Native land rights were frequently impeded by the realization that the ultimate authority for settling the issue was reserved by Congress. On the other hand, early efforts by the newly established state to select lands without regard for the traditional use and occupancy of Alaska Natives prompted events that led the federal government to step in and protect Native interests in lands until Congress enacted a Native claims land settlement in 1971.

The Alaska Native Claims Settlement Act of 1971

Congress finds and declares that (a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property... (ANCSA, Section 2(b))

ANCSA was the largest and most innovative aboriginal land claims settlement in American history. The incentive behind ANCSA had most to do with petroleum development on Alaska's North Slope. As a result of this settlement Alaska Natives received title to 44 million acres of land — more than all other American Indian reservations combined — and \$962.5 million in compensation — nearly four times the total amount awarded by the Indian Claims Commission over its 25-year lifetime — for their claims to the remaining area. Congress devised a new vehicle for the granting of title to land in the form of corporations: land and monetary distributions were to be managed as corporate assets. Alaska Natives were enrolled as stockholders in these corporations.

As Justice Berger has written, "By its terms, Alaska Natives would have land, capital, corporations and opportunities to enter the business world."²¹ The corporate mechanism for the settlement was both a rejection of past models — reservations and tribal governments — and an attempt to improve the social and economic conditions of Alaskan villages by providing a means for Native people to go into business and participate actively in the economic development of Alaska. While Congress recognized the necessity of land as a base for the Native subsistence economy, it regarded as paramount the use of the land as a resource base for economic development:

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. 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.²²

There are inherent contradictions between the land requirements of the subsistence economy in Alaska Native villages and the capital, resource-development needs of profit-making Native corporations.²³ Also, since the Native subsistence economy was dependent upon a larger land base than that transferred under ANCSA, the act did not adequately protect Native hunting, fishing and gathering rights from encroachment. This subsistence question, which was a major concern of the regional Native associations seeking recognition of land claims, was deferred to subsequent legislation, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

In addition to the settlement of aboriginal land claims, ANCSA also revived the issue of federal entitlement to Alaska lands. Section 17 created a joint Federal-State planning commission to determine the use of 80 million acres of land withdrawn from the public domain for consideration as national parks, wildlife refuges, national forests, or wild and scenic rivers. These proposed areas became known as D(2) lands. The identification of these lands, and their allocation among different purposes under the management of different federal agencies, occurred in legislation passed in 1980, the ANILCA, and are discussed in later chapters. The impact of statehood, ANCSA, and ANILCA on national forest management is a continually unfolding story.

Events Leading Up to ANCSA

Shortly after statehood, encroachments upon traditional areas used by Alaska Natives for their hunting, fishing and gathering economy stimulated protests and the development of regional Native associations to pursue protection of their land and subsistence rights and the improvement of social and economic conditions in their villages. In the mid-1960s, a statewide Native organization was formed that carried these objectives forward at a state and national level. At about the same time, the Department of Interior imposed a land freeze on state land selections until the issues of aboriginal claims could be settled. Following the discovery of vast oil deposits in Prudhoe Bay on Alaska's North Slope in 1968, the interests of the oil industry coincided with those of Alaska Natives seeking a timely solution to their claims. The Nixon Republican administration was receptive to these interests and assisted in pursuing a legislative remedy, which ultimately resulted in the

passage of the ANCSA in December of 1971.

In 1960, Inupiat Eskimos in Barrow protested the arrest of a fellow Inupiat state representative for taking a duck out of season, a season established by an international migratory bird treaty that included no acknowledgement of customary and traditional practices of Alaska's Native peoples. Known as the Barrow "Duck-In," 138 other men presented themselves for arrest to federal game wardens. All charges were subsequently dropped with warnings against future violations. Not far away near the Inupiat village of Point Hope, the U.S. Atomic Energy Commission once planned to detonate a nuclear device to create a harbor for the shipment of minerals and other resources from the area, in an experiment named Project Chariot. Residents of nearby villages expressed concern for their health and that of the animals and plants upon which they depended for their livelihood.²⁴ These events led to the formation of the first regional Native association in Alaska (the Inupiat Paitot, the People's Heritage) since the establishment in 1912 of the Alaska Native Brotherhood in southeast Alaska. Membership in Inupiat Paitot was comprised of village representatives from northern and northwestern Alaska.

In central Alaska, another protest developed in 1961 over one of the state's land selections under the statehood act. The state wanted to develop the area near the Athapaskan village of Minto as a recreation area, to put in a road for Fairbanks residents and visiting sports hunters, and ultimately to develop the area for its oil and gas potential. The village of Minto filed a protest over this selection with the Department of Interior, since it conflicted with their hunting, fishing and trapping activities. By 1963, 24 villages in the Yukon River delta, Bristol Bay, Aleutian Islands, and Alaska Peninsula regions voiced similar concerns, and sent a petition to the Interior Secretary requesting a land freeze on selections near their villages until Native land rights could be confirmed. At this same time, proposed federal land withdrawals also provoked protests. Most notable was the Rampart Dam project on the Yukon River, which would have created electric power and a recreation area but would have flooded numerous Athapaskan villages and a large area used for hunting, fishing and traplines.

A Department of Interior (DOI) report, completed by the three-member Alaska Task Force on Native Affairs, recognized aboriginal land rights and concluded that Congress should remedy the failure of successive Congresses to carry out the expectations of the Organic Act of 1884, which left to future legislation the establish-

ment of the means by which Natives could obtain title to land. In another arena, national figures and groups urged President Kennedy to propose legislation to settle aboriginal land claims and halt transfers of land until such action was completed. The legislative solution had the support of Native groups in Alaska, who regarded existing mechanisms — reserves, allotments and homesites — as wholly inadequate to protect their land rights. This position was also supported by conclusions drawn from the experience of the Tlingit and Haida settlement, which showed that a court settlement took too long and resulted in insufficient compensation (in this case, based on land values in 1907, the time the Tongass National Forest was established). Furthermore, the fact that courts were not able to grant title to land was also a fundamental concern.

Besides the need to protect the subsistence economy, Native leaders also expressed concerns over the poor social and economic conditions in Native villages including inferior health care, substandard housing, lack of water and sewer systems, inadequate educational programs, incidents of discrimination, and lack of employment opportunities for Natives. They reasoned that a land settlement would assist them to improve these socioeconomic conditions. Regional Alaska Native organizations continued to form throughout the early 1960s, and there were incipient discussions of a statewide Native association. During this period, organizational work in villages was furthered through funding from President Johnson's Office of Economic Opportunity to the state's community action program, which sent representatives to the villages.

In early 1966, the Arctic Slope Native Organization made a claim to all land on Alaska's North Slope, 58 million acres, based on aboriginal use and occupancy. By 1967, 39 protests had been filed with DOI for a total of 380 million acres, more than the total area of the state due to overlapping claims.²⁵ In October of 1966, seventeen Native organizations met and agreed to establish a statewide organization that later adopted the name of the Alaska Federation of Natives (AFN). The organization's land claims committee recommended that a land freeze be established on all federal lands until Native claims were resolved, that Congress enact legislation to settle claims, and that hearings and consultations be established with Natives immediately.

Before the end of 1966, Interior Secretary Udall imposed a freeze on the transfer to the state of lands claimed by Natives until Congress could act on the issue. In response to Governor Hickel's objection that the stoppage denied the state its rights to select lands

under the statehood act, the Secretary pointed out that both the statehood compact and the Organic Act of 1884 recognized the existence of Native land rights, and that state selections could not continue until Congress enacted a settlement. He felt that to do otherwise would allow title to pass into non-Native possession, which would violate the 1884 federal guarantee that Alaska Natives shall not be disturbed in their use and occupation of lands.²⁶ The state then filed a lawsuit to require the Secretary to transfer lands to the state. This suit was put to rest in 1970 when the Supreme Court refused to review a lower court's adverse ruling against the state.

In the following year, the state convened a Land Claims Task Force, comprised of state and AFN representatives, which in 1968 recommended the basic form which was eventually adopted in the ensuing settlement: the Natives would receive land and money, and the settlement would be carried out by village and regional business corporations.²⁷ Alaska's Senator Gruening introduced this proposed bill into Congress and held hearings in Anchorage. Before leaving office after the 1968 election of Nixon's republican administration, Secretary Udall issued an order making the land freeze permanent. However, Governor Hickel, having been nominated as the new Secretary of Interior, pledged to undo this order. After intensive Congressional lobbying by AFN which threatened Hickel's confirmation hearings, the organization was able to extract a promise from the nominee to maintain the land freeze until the end of 1970, in exchange for their endorsement.

In 1968, Congress initiated its own study of Native land claims and protests, entitled *Alaska Natives and the Land*. The validity of land claims was supported by the conclusions of this study. Moreover, the researchers reported that Alaska Natives used all of the biological resources of Alaska's land and contiguous waters, confirming the aboriginal use and occupancy of nearly the entire state. They also wrote that the specific land legislation passed for Alaska Natives — the Alaska Native Allotment Act of 1906 and the Townsite Act of 1926 — failed to meet their land needs.²⁸ But the report emphasized that economic development was a central issue in the resolution of Native protests, since the form of the settlement would be crucial to the future development of the state as a whole. In proposing a solution, it considered the probable effects on the economic status of Alaska Natives and on Alaska's general economic development.

For elements of the settlement, the Congressional report emphasized the necessity of land for present

Native use and occupancy, including subsistence use, as well as compensation in the form of money, land and interests in land (including participation in future revenues from land or resources). It acknowledged two approaches in protecting Native assets and the public interest — reservations and Native development corporations — that had been presented in bills before Congress. The study recommendations became the basis of a bill introduced in 1969 by Senator Henry Jackson of Washington state, with provisions for land and monetary compensation without reservations. The land allocation (10 million acres) was meager; however, the proposed cash settlement approached one billion dollars. Later in the year, further impetus for a substantial financial settlement was received from the state's oil lease sale for the Prudhoe Bay region, which reaped the state over \$900 million.

The draft legislation did not move forward in 1970, but three bills were introduced in the 1971 session which proposed differing amounts of land and money. Fearing an unsuitable version might pass, the AFN approached the White House directly for support of a more favorable measure. Their efforts held the interest of the oil industry, which was facing delays in gaining DOI permits to proceed with the construction of an oil pipeline from Prudhoe Bay to a shipping terminus in Valdez in Prince William Sound. With the assistance of these oil interests, associated businesses and Alaska's Republican Senator Stevens, AFN representatives succeeded in convincing the administration to introduce another settlement proposal to Congress. This proposal became the basis of a final bill which was approved by Congress in December. Following a referendum approved by 511 of 567 AFN delegates, with North Slope representatives in dissent, President Nixon signed ANCSA into law on December 18, 1971.

The ANCSA Settlement

ANCSA provided for the transfer of 44 million acres, or about ten percent, of Alaska's land and payment of \$962.5 million to Alaska Native corporations in the settlement of claims of aboriginal title to Alaska's land and water areas. The law called for the creation of regional and village corporations to manage the settlement lands and money as corporate assets. To receive benefits of the act, Alaska Natives were enrolled as stockholders in these corporations. As of 1985, 80,000 Natives were enrolled under the act, as amended. Twelve regional and over 200 village Native corporations were established in Alaska, and provision was made for a 13th regional corporation comprised of out-of-state residents.

The act declared that aboriginal title to prior conveyances of federal land and water areas, including tentative approvals under the statehood act, was extinguished. All claims of aboriginal title in Alaska based on use and occupancy of land and water areas, including aboriginal hunting and fishing rights, were also extinguished. ANCSA also extinguished all aboriginal claims against federal and state governments, and individuals, including those pending before the courts or the Indian Claims Commission (such was the case with Tlingit and Haida claims to fishing rights in southeast Alaskan waters). Finally, the act terminated Native allotment legislation and revoked all reservations in Alaska with the exception of the Metlakatla Reserve on Annette Island in southeast Alaska.

The act authorized the Secretary of Interior to withdraw public lands surrounding the listed villages, and lands of similar character from the nearest available area if such contiguous lands were insufficient to meet the corporate entitlements, and to make these lands available for selection by Native corporations. This provision applied to lands available for selection under the statehood act; only lands already in the National Park System or reserved for national defense purposes were excepted. The Secretary was entitled to withdraw up to three times the "deficiency," the difference between a village corporation's entitlement and what was available in contiguous townships, from other available tracts of public land. The complexities that arose over corporation selections, combined with subsequent provisions such as that allowing both corporations and the state to "overselect" lands, are partly the reason that corporations have not, more than 20 years after passage of the act, received their full land entitlement.

The Corporation Vehicle

All eligible Natives became stockholders in one or two Native corporations, which received and managed nearly all of the settlement land and money. Persons of at least one-quarter Alaska Eskimo, Indian or Aleut blood quantum who were alive on December 18, 1971, were qualified to enroll and receive 100 shares of stock in the Native corporations. Enrollment was also according to geographical location, which was based on residency defined as where persons were living at the time of the federal census in 1970, or where their ancestral family home was, or where they intended to have their principal residence if they were temporarily away from home.

Alaska Natives were enrolled both to their local village corporation and to the regional corporation established

for the region in which the village was located. Individuals who were living outside the region, or outside the state, were entitled to enroll back to their region. Natives who elected not to be enrolled in a village, or who were enrolled to a place that was not eligible for land and monetary benefits as a village, were enrolled as "at-large" shareholders in the regional corporation. These individuals received their proportionate share of the monetary distributions (from the cash settlement and from regional corporation stock dividends) in the form of direct payments, but they did not receive benefits of village corporation shareholders (such as stock, dividends, land grants, or other distributions). About one-third of ANCSA enrollees are at-large. Members of the 13th region were entitled to cash benefits, but did not receive land.

Title to 22 million acres was received by more than 200 village corporations; the land was divided up proportionally among the corporations based on population. Another 16 million acres were distributed among six regional corporations according to a complex formula based on population and area; the Sealaska region was excepted from this distribution in recognition of the prior Tlingit and Haida land settlement in that region. Up to two million acres were set aside for specific purposes such as cemetery sites and historical places, conveyances to Native groups, four Native groups residing in Sitka, Juneau, Kodiak and Kenai (which later formed the third type of Native corporation known as "urban"), and Native allotments, with the remainder to be allocated among all 12 regional corporations. Finally, about four million acres were conveyed to six villages which elected to receive title to the lands of their former reserves in lieu of other ANCSA benefits (including cash distributions).

The cash settlement was derived from federal and state sources. \$462 million was to be paid out over the 11 years from the federal treasury, while \$500 million would be procured from a two percent annual royalty on mineral leases on state and federal lands. Payments of settlement funds were made to regional corporations, which were required to pass on to village corporations at least 45 percent (later raised to 50 percent) after allowing for payments to "at-large" shareholders. Regional corporations were to follow a similar procedure in distributing any payments received from regional corporation profit-sharing provisions (called "7(i)" distributions) to the village corporations in their region.

Several special provisions differentiate ANCSA corporations from other business corporations in the state. Natives were to be the only voting shareholders in

these corporations for 20 years, a provision that was subsequently extended indefinitely (unless and until a majority of shareholders decide otherwise).²⁹ Village corporations received only the surface title to their lands. Regional corporations were granted the sub-surface estate to 40 million acres, including the lands of their village corporations, as well as the surface rights to their own land. The five former reserve villages received both surface and sub-surface rights in their lands, but no additional lands. The section 7(i) provision requires each regional corporation to share 70 percent of their profits generated by development of mineral and timber resources on their lands among all regional corporations, including itself, on a per capita basis. The regional corporations are, in turn, required to distribute at least 50 percent of these revenues to the village corporations and at-large shareholders in their region. The intent of this provision was to remedy inequities arising from the differential distribution of natural resources throughout the various regions of the state.

The ANCSA Settlement and the Alaska Forests

National forests currently are located in three regions that correspond with Native regional corporations. The Tongass National Forest spans the region of southeast Alaska, or Sealaska Corporation, identified with the Tlingit, Haida and Tsimshian Indians. The Chugach National Forest is associated with the region of the Chugach Eskimo, who organized Chugach Natives, Inc., later changed to Chugach Alaska Corporation, and with the Cook Inlet Region, Inc. (CIRI), on the Kenai Peninsula. These regional corporations, and the villages within their regions, were entitled to select lands from the public domain, subject to prior rights such as lands patented to others, certain federal holdings, mining claims and lands under navigable waters. Villages were authorized to select areas on the basis of population, starting with a minimum amount of 69,120 acres for villages with a population between 25 and 99, and up to 161,280 acres with a population of 600 or more. National Forest lands were available for selection by Native corporations, although there were certain restrictions that applied in each region as described below.

In addition to specific provisions regarding land selections that applied in the Tongass and Chugach regions, there were other sections pertaining to National Forest System lands in Alaska. ANCSA provided authority for the modification of timber sale contracts affected by

conveyances to Native corporations (section 15). The act allowed the Secretary of Agriculture to accommodate such conveyances by substituting timber on other National Forest lands approximately equal in volume, species, grade and accessibility. Concerns over the continued availability of commercial timber lands, which arose with respect to Forest Service commitments under the long-term timber sale agreements, led to a provision in ANILCA that required the Forest Service to study and report on the feasibility of buying back harvested timberlands from the Native corporations.³⁰

Section 22(k) required that for lands conveyed to Native corporations from within national forests, any sale of timber shall be under the same timber export restrictions as are applicable to national forests in Alaska for five years. The section also commanded that such lands shall be managed under sustained yield and environmental quality standards no less stringent than those practiced on national forests for a period of 12 years. According to Knapp, these provisions were never enforced, in practice, because ANCSA did not clearly assign implementation authority among federal agencies and because the authorized time periods had expired before the lands were developed.³¹

This latter provision was no doubt included with an understanding of the development process characteristic of private corporations. It is interesting to observe that the issue of commercial development of timberland at the expense of multiple use management objectives was described as one of the economic consequences of land grants to Native corporations prior to the passage of ANCSA, in the 1969 Congressional report on land claims. But the study also identifies corresponding benefits that would accrue to the corporations and their shareholders:

On balance, ownership by Native corporations, like private ownership in general, would probably result in a more rapid rate of development and a greater concern for maximizing the economic returns from the land resources than would management by government agencies. For instance, Native corporations would probably not require primary processing of extractive products or "sustained-yield" timber management except where they were clearly justified in dollar terms. Native corporations in attempting to maximize their net incomes from the land would pursue a multiple-use policy, and in doing so would probably be able to resolve conflicts among competing *commercial* land uses more economically and more satisfactorily than would government. On the other hand, to the extent their

policies reflected a single-minded concern with the commercial revenues of the land, they might be less concerned than would government with such nonmonetary and collective values as those of wilderness and scenery.

... Grants of commercially valuable land managed for its income by Native corporations could be expected to provide an income flow to individual families and to provide a source of capital which Native enterprise could invest in other lines of business and capital for community improvements. It would also provide openings for the development of Native managerial talent.³²

Looking back with the benefit of hindsight some twenty years after the passage of ANCSA, the general supposition that ANCSA corporations would create a significant income flow to Native families has proven to be a hypothesis that was not born out by subsequent events. For example, for shareholders of regional corporations, cumulative real dividends (with the high and low amount removed to indicate the more general trend) have ranged from \$60 to \$2,500 each, depending on the region.³³

The Tongass

Sealaska was the largest of the regional corporations in the number of shareholders: 15,782 were enrolled at the end of 1985, about 20 percent of total Alaska Native enrollment.³⁴ More than half of these live in southeastern Alaska. In addition to the regional corporation, twelve community Native corporations (10 village and 2 urban) were organized. At the first stockholders meeting of Sealaska, a prominent figure in the land claims struggle and the President of the Tlingit and Haida Central Council, John Borbridge, Jr., was elected president. The location of the corporate headquarters is Juneau, the state capital.

Sealaska Corporation received a small amount of land, relative to other regions, in recognition of the benefits received by Tlingit and Haida Indians under the Tlingit and Haida settlement. Sealaska was excluded from the principal distribution of 16 million acres of land among regional corporations (Section 12(b)), but it was entitled to select land for cemetery sites and historical places. It also received a proportionate allocation, based on population, of lands remaining from the 2 million acre set-aside that were to be conveyed to regional corporations under Section 14(h)(8).

ANCSA recognized ten southeastern villages that were eligible to form corporations and select lands in the

region (see Table 1). One of these, Klukwan, initially elected to receive transfer of its reservation lands in fee simple (surface and sub-surface) in lieu of selecting land for the village corporation as in the remaining nine villages. But later, when it was realized that non-resident shareholders were not entitled to royalties generated from the former reserve lands since they accrued only to members of the village IRA, the corporation was permitted by amendment to make selections as other villages in return for transferring the former reserve lands back to the village IRA. Members enrolled to the village of Metlakatla are not entitled to any ANCSA benefits because their reserve was expressly sustained by ANCSA. The Annette Island Reserve was exempted from the provision revoking reservations in Alaska, and in consequence it remains as the only Indian reservation in the state.

The ten southeast villages were recognized in a specific section of ANCSA distinct from the other Alaskan villages. Section 16 listed the southeastern villages and declared that they each were entitled to an allocation of 23,040 acres (one township), in contrast to other villages which were authorized to select larger areas on the basis of population. Section 16 acknowledged the favorable land claims judgement of the Tlingit and Haida Indians against the United States in the Court of Claims, and explained that the compensation already received was "in lieu" of a larger share of the lands in the region. To the extent possible, these selections were to be in areas within or contiguous to townships in which the villages were located. Because there were no such lands of any value available in the vicinity of Klukwan, the village corporation, Klukwan, Inc., was later exempted from the restriction, enabling the village to select lands elsewhere.

Two other southeast communities were able to form village corporations and select lands under a special provision, Section 14(h)(3), which authorized the conveyance of land in an equal amount (23,040 acres) to the Native residents of Sitka, Juneau, Kenai and Kodiak. The two corporations in Juneau and Sitka, known as "urban" corporations, increased to 13 the number of community Native corporations in southeast Alaska. The apparent intent of this stipulation was to recognize the special circumstances of some Native communities that were originally located on the site of an historical Native settlement, but had become circumscribed by the growth and development of a large "modern and urban" community in which Natives were in the minority.³⁵

The thirteen Native corporations in southeast Alaska were entitled to select about 540,000 acres from the Tongass National Forest.⁴³

Table III.1: Southeast Alaska

<u>Community</u>	<u>Original Corporation Name</u>	<u>Shareholders³⁶</u>	<u>ANCSA Land Entitlement³⁷</u>
Angoon	Kootznoowoo, Inc.	629	34,000 ³⁸ (acres)
Craig	Shaan-Seet, Inc.	317	23,040
Hoonah	Huna Totem, Inc.	876	23,040
Hydaburg	Haida Corporation	565	17,836 ³⁹
Kake	Kake Tribal Corp.	558	23,040
Kasaan	Kavico, Inc.	120	23,040
Klawock	Klawock Heenya Corp.	508	23,040
Klukwan	Klukwan, Inc.	253	23,040
Saxman Cape	Fox Corporation	196	23,040
Yakutat Yak-Tat	Kwaan, Inc.	342	23,040
Total Village Corps.:		4,364	236,156
Juneau	Goldbelt, Inc.	2,722	26,070 ⁴⁰
Sitka	Shee Atika, Inc.	1,863	31,316 ⁴¹
Total Urban Corporations:		4,585	57,386
Region Sealaska Corporation		15,782 ⁴²	310,692

In 1993, Congress directed the Secretary of the Interior to study the eligibility status of five other southeastern communities with Native residents—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—and to compile information about whether Congress had inadvertently denied village recognition under ANCSA.⁴⁴ These "modern and urban" villages located on or near historical Native settlements, were not listed in ANCSA as eligible to form corporations and select lands in the region. Depending on the outcome of the efforts by members of these communities to gain recognition under ANCSA, there may be additional villages in the southeast region with rights to select lands from within the Tongass National Forest.

The Chugach

More than half of the region of the Chugach Alaska Corp. lies within the Chugach National Forest. There are five recognized villages in the region, including three which are situated within the Chugach National Forest: Eyak (Cordova), Tatitlek and Chenega Bay (see Table Two). Chugach shareholders also live in Valdez, Seward, Anchorage and out-of-state. The four Native corporations (one regional and three village) will eventually receive about 650-700,000 acres from the Chugach National Forest.⁴⁵ There were 1,908 stockholders enrolled in Chugach Alaska Corporation in

1985. One of the region's leading proponents of aboriginal rights, Cecil Barnes, was elected as the corporation's first president. The corporate offices are located in Anchorage.

Community	Original Corporation Name	Shareholders ⁴⁶	ANCSA Land Entitlement ⁴⁷	
			Sec. 12a	Sec. 12b
<i>Inside the Chugach National Forest Boundaries:</i>				
Cheneg Bay	Chenega Corporation	69	69,120	6,973
Eyak	Eyak, Inc.	326	115,200	33,530
Tatittek	Tatittek Corporation	215	115,200	22,046
<i>Outside the Chugach National Forest Boundaries:</i>				
Nanwalek	Nanwalek Corporation	716	9,120	7,280
Port Graham	Port Graham Corporation	190	92,160	9,482
Region	Chugach Alaska Corp.	1,908 ⁴⁸	338,665	38,887

Note: as described above, there were limitations to the number of acres that village corporations located within the Chugach National Forest were able to select from the forest. Chugach Alaska Corp. entitlements were under Sec. 12c and 14(h)8.

One of the ANCSA selection limitations was that a village may not select more than 69,120 acres from within a national forest (Section 12 (a) (1)). While this did not affect villages in southeast Alaska, due to the provisions acknowledging the Tlingit and Haida settlement, it applied to Chugach villages. For example, Eyak Corporation was entitled to select five townships, or 115,200 acres.⁴⁹ Eyak selected all the land available to it within the core township, as it was required to do, as well as nearby townships. Because it lies within the boundaries of the Chugach National Forest, and its selections exceeded the allowable limits for selections within national forests, it had to choose two of its townships from so-called deficiency lands (federal lands set aside for Native conveyance outside the lands available near communities) outside the forest.

Limitations on land selections within the national forests ultimately led to a dispute between the Forest Service and the Chugach Alaska Natives, who felt that they were denied lands they used traditionally and were restricted to glaciers and mountain tops that were not suitable for development purposes as envisioned under the act. Working through Congressional channels, a provision was included in ANILCA which called for a study of this issue. A cooperative project involving the Forest Service, State of Alaska, USDOI, and Chugach

Natives, Inc. was carried out, and in 1982 representatives of the groups signed the Chugach Natives' Settlement Agreement which addressed the problem.

Unresolved Problems: Subsistence

On the face of it, ANCSA declared that all aboriginal titles, including hunting and fishing rights, are extinguished.⁵⁰ But the legislative history reveals that the protection of subsistence rights was a component of earlier bills, and although the provision was dropped from the final version, the conference committee report referred specifically to the authority of the Secretary of Interior to ensure such protection. When neither the state nor the federal government acted on the promise, the Alaska Native leadership took advantage of the opportunity entailed in Section 17(d)(2) to remedy this shortcoming. Through a political compromise with the environmental lobby, they were able to garner enough support for the inclusion of a subsistence provision in ANILCA that further protects Native subsistence rights. The legislative history of ANCSA documents that the protection of subsistence was a key element in the land claims settlement throughout the legislative process. The first AFN draft bill emphasized subsistence protection, and the final Senate land claims bill (S. 35) included "elaborate" provisions protecting Native subsistence.⁵¹

Protection of the Native subsistence economy, of the resources used in "the indigenous economy" and of Native access to these stocks are all salient points discussed in the Congressional study of land claims, *Alaska Natives and the Land*. Indeed, the first of three proposed elements of the settlement is "the grant or protection of lands and land rights now used by Alaska Natives for townsites, hunting and fishing camps, and subsistence hunting, fishing and other food and fuel gathering areas," and lands for subsistence use were considered separately from lands occupied as villages and camp sites.⁵²

The words of the conference committee report that accompanied the claims act disclose the intent of Congress to reserve the authority "to protect the subsistence needs of the Native." Case writes that the report "makes it clear that Congress viewed neither the purported extinguishment of hunting and fishing rights nor the absence of specific subsistence provisions as the end of Alaska Native subsistence interests."⁵³ The report states:

The Conference Committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary through the exercise of his existing

withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by nonresidents when subsistence resources for these lands are in short supply or otherwise threatened. *The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Native.*⁵⁴

To some Natives knowledgeable of the land claims process, according to Langdon, these words carry the weight of "an implicit contract between Alaskan Natives and Congress to protect subsistence rights and deal with them more fully in future legislation. ... This is taken to mean that Congressional intent was *to reserve Alaskan Natives subsistence rights and transfer the responsibility for the protection of those rights to the State.*"⁵⁵

State and federal governments did little to provide protection for subsistence after the passage of ANCSA, and in recognition of the need for further protection, the Alaska Native leadership sought additional measures in ANILCA and in state subsistence legislation.⁵⁶ They were encouraged by former Secretary of Interior Stewart Udall, who advised AFN in 1978 that adequate protection would only be achieved if "Congress uses its power under the U.S. Constitution and grants such rights to the Alaska Natives."⁵⁷ Although the state had developed a policy and, by 1978, enacted a law providing a preference for subsistence use on state lands, the Alaska governor also supported Congressional action to establish a priority for subsistence use on federal lands.

Title 8 of ANILCA — Subsistence Management and Use — provided that all rural Alaskans, Native and non-Native, would have a priority for the subsistence use of fish and wildlife and all other renewable resources on public lands. In its findings (Section 801), Congress recognized the significance of subsistence uses to both Natives and non-Natives, declaring that continued subsistence opportunities are "essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional and social existence." The distinction between Native and non-Native claims is explained further in subsection (4), which refers to the unfinished purposes of ANCSA and the fiduciary or trust responsibility of the United States to protect the subsistence rights of Alaska Natives:

in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a

matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents.

ANILCA fulfills the intention of Congress in ANCSA that was expressed in the conference committee report with regard to the protection of subsistence rights. Earlier versions of the bill provided explicit management authority to the federal government including setting seasons and bag limits, but this provision was later removed at the insistence of Senator Stevens, who argued that the Statehood Act granted to the state control of fish and wildlife management (as was common with other states), and that to do otherwise at this point would reinstate federal management of the state's resources, a battle that had been won with statehood.⁵⁸

Another area of continuity between ANCSA and ANILCA is the matter of the federal "trust" responsibility to Native Americans, the source of which is the commerce clause referred to in ANILCA (cited above). As Langdon points out, "Only Native Americans have such a relationship with the United States government therefore this section is interpreted as confirmation of the federal government's responsibility to protect rural Alaskan Natives' rights to subsistence."⁵⁹ He makes the point that the fiduciary or trust basis for Native rights in Alaska is also supported by Section 2(c) of ANCSA, which declares that:

no provision of this Act shall replace or diminish any right, privilege or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or Alaska.

He concludes, "The fiduciary responsibility for Alaska Native welfare in general is supported by ANCSA and for rural subsistence in particular by ANILCA." The federal responsibility to ensure the adequate protection of rural Native subsistence uses is ongoing, notwithstanding the declaration of extinguishment in ANCSA.

The ANILCA subsistence provisions have had a substantial influence on the administrative procedures of federal agencies. For the Forest Service, this is particularly true with regard to the Section 810 requirement for the protection of habitat necessary for subsistence,

which mandates the evaluation of all agency activities for their effect on subsistence. These issues will be discussed more fully below in the context of Forest Service administrative policies and practices.

Unresolved Problems: Land Selections

Almost all of the land selected by the southeast Native corporations was from within the Tongass National Forest. While seven villages corporations selected lands in proximity to the villages pursuant to ANCSA provisions, five community corporations and Sealaska were involved in land exchanges that resulted from ANCSA amendments or special legislation. Kootznoowoo, Inc., and Goldbelt were allowed to select additional acreage above their standard allocation in other areas of the forest in exchange for relinquishing their selections on Admiralty Island after it was declared a National Monument by President Carter (Shee Atika stayed on Admiralty Island but moved from its original selection). Klukwan, Inc. exchanged their reservation land for other lands within the Tongass National Forest after a 1976 amendment to ANCSA. The Haida Land Exchange Act of 1986 permitted the Haida Corporation to exchange some of their lands, much of which had low potential for economic returns, for more valuable lands with marketable timber and additional cash compensation. The latter action resulted in a reduction of their land entitlement by about 5,000 acres. Further exchanges are possible as new circumstances and proposals arise; and on the other hand the Forest Service may propose to buy back some of the Native corporation lands (Knapp study). ANCSA (and later ANILCA) permitted land exchanges with Native corporations when the public interest might be best served. ANCSA was amended in 1976 to eliminate some of the limitations placed on Regional Native Corporation entitlements on National Forests.

There were also exchanges and new selections made in the Chugach region. As previously discussed, the land available for selection in the vicinity of the Chugach villages was largely mountain top and glacier, and not comparable in economic value to lands generally available to Native villages. Consequently, the regional corporation asked Congress for authority to increase its selections from within the National Forest. In 1982, an agreement between the Chugach Natives, the State, the Department of Interior, and the Forest Service established new procedures which provided for additional selections within the forest. From the beginning, State and Native land selections affected long-term timber sales, boundary definitions, and overall management of the Alaska National Forests.

Unresolved Problems: Other Issues

There are numerous issues relating to the operation of the corporations, such as taxation, profit-sharing, mergers, boundary questions, and other concerns, that gave rise to amendments to the settlement act. As the year 1991 approached, there was apprehension in the Native community over the scheduled termination of a ban against the sale of stock in Native corporations to non-Natives. ANCSA provided such prohibition for 20 years, after which stock would be available for sale at the discretion of the shareholder. The Native community feared for the loss of their settlement land and assets through stock alienation, and asked Congress for amendments extending the ban. The so-called "1991 amendments," the ANCSA Amendments of 1987, extended such prohibitions indefinitely until a majority of shareholders voted in favor of permitting such sales.

Other issues addressed in the 1991 amendments included the concern for those Natives born after December 18, 1971, who were not eligible for enrollment to Native corporations or to receive benefits under the act. Provisions were made to allow corporations, at their discretion, to issue additional shares of stock to certain classes of people including younger Native persons, which included numerous optional rights and limitations on the stock. The 20-year exemption on taxation of undeveloped Native lands from property taxes was made permanent rather than ending in 1991. An ANILCA provision regarding settlement trusts was made automatic: timber lands placed in a settlement trust will remain free of taxation for as long as they are undeveloped, and they will be taxed only while they are actively being harvested, returning to undeveloped non-taxable status at the termination of harvest activity.

Section 17 of ANCSA: Comprehensive Planning and New Federal Withdrawals

In addition to authorizing Alaska Natives to select 44 million acres of land, ANCSA included a provision for the Secretary of the Interior to withdraw from appropriation up to 80 million acres for possible additions to the four federal land management systems: National Forests, National Parks, National Wildlife Refuges and Wild and Scenic Rivers. The Secretary had nine months in which to withdraw the lands, two years to make recommendations to Congress, and up to five years to maintain such withdrawals until Congress could act on the recommendation. Congressional inaction at the end of this termination period impelled the Secretary to maintain the withdrawals in the national interest until December 2, 1980, when the Alaska National Interest Lands Conservation Act (ANILCA)

was eventually passed by Congress. Prior to passage of ANILCA President Jimmy Carter used the authority of the Antiquities Act to designate portions of the Tongass as National Monuments, thus precluding state and Native selections from these lands.

As discussed in later chapters, these "d-2" withdrawals also reduced the land base from which timber harvests and mineral exploration might be allowed. The withdrawals also precipitated a major effort within land management agencies to study and make recommendations for additions and new units in their respective systems. This provision was of major significance to the State, since land selections under the Statehood Act were precluded from areas so withdrawn. Selections by regional Native corporations were also prohibited in these areas, although village selections were not affected. Under the federal systems, the development of natural resources on the withdrawals would be prohibited or restricted to some degree, which created conflicts in areas that would otherwise have been chosen by State or Native interests. The State unsuccessfully brought suit to protest the action. ANILCA was passed before its appeals were completed. However, the State's selection period was extended by ten years in ANILCA.

Joint Federal-State Land Use Planning Commission
ANCSA established a new and comprehensive planning regime to review and recommend Alaska land management proposals to the President and Governor. Section 17 created the Joint Federal-State Land Use Planning Commission and directed each agency to furnish the Commission with any information it needed to carry out its mandate.

The Commission was empowered to conduct a public process of land-use planning and making recommendations in a number of areas including land areas to be reserved for federal ownership in parks, refuges, etc., uses of lands to remain in federal and state ownership, lands to be selected by the State and Native corporations, existing federal withdrawals, and federal and state land management programs and budgets. Citizen participation was mandated through an advisory committee comprised of representatives of different land user groups. The Commission was to advise and assist in the development and review of land use plans for lands selected by Native corporations and the State, as well as to make recommendations to ensure that economic growth and development "is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the eco-

nomie and social well-being of the Native people and other residents of Alaska." It was also charged with recommending ways to avoid conflict between the State and Native people in the selection of public lands.

The Forest Service established the Alaska Planning Team to fulfill its responsibilities under this section and to develop its own review and recommendations for new National Forest proposals. In the 1970s Region 10 planned "New National Forests for Alaska," and much more. Timber sales, once negligible, became central to the work of the Forest Service in Alaska because of unique long-term timber contracts negotiated in the 1950s. Work on State and Native land selections and conveyances became more demanding as time passed. The Forest Service wrestled with a veritable deluge of new federal environmental and forest management legislation enacted in the decades of the Sixties and Seventies. And if these demands were not enough, the National Forests began to adjust to the economic growth and development of Alaska, and to the changing uses by the public of forest resources.

Reference Notes

¹ David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, pp. 22-35

² See Ernest S. Gruening, *The Battle for Alaska Statehood*, College: The University of Alaska Press, 1967, and *The State of Alaska*, New York: Random House, 1968

³ Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 102-103

⁴ Ernest S. Gruening, *The Battle for Alaska Statehood*, College: The University of Alaska Press, 1967, p. 2; Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 103-115

⁵ *Ibid.*

⁶ *The Constitution of the State of Alaska, as amended 1970*, p.25-26

⁷ David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, pp. 48

⁸ "Providing for the Admission of the State of Alaska into the Union," Committee on Interior and Insular Affairs, House of Representatives, 85th, 1st, Report No. 624 (to accompany H.R. 7999), June 25, 1957, p.23

⁹ *Ibid.*, pp. 18-19

¹⁰ Subsequent litigation has provided the following clarification of this issue: "The purpose of land grants under the Alaska Statehood Act is to serve Alaska's overall economic and social well-being. Some of the lands so selected will probably be used to protect mineral deposits. Others will safeguard wildlife. Still others will be used to protect domestic water supplies. *Udall v. Kalerak*, 396 F.2d 746 (9th Cir.1968) ... This section authorized the state to select 102,500 acres from public lands that were "vacant, unappropriated, and unreserved at the time of their selection." The intent of Congress was, of course, to provide the new state with a solid economic foundation. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977). Alaska Statutes, Alaska Statehood Act, Notes to Decisions, Juneau: Department of Law, 1983, p. 87.

¹¹ *Ibid.*, p.21. The 52.5% figure was later raised to 90% of proceeds on minerals from public lands.

¹² Section 6(a) of the Alaska Statehood Act. The Act provided for up to 400,000 acres from the National Forests. In later practice this came to be viewed as an entitlement of 400,000 acres.

¹³ ANILCA also allowed the state a 25 percent

overselection of its remaining entitlement for the same reason, and to replace withdrawn lands that were filed on by the state (such as military bases or the Trans Alaska Pipeline Corridor) in the event the state is unable to obtain them.

¹⁴ *State Land Selections from Tongass and Chugach National Forests*, Anchorage: Alaska Department of Natural Resources, June, 1989, p. 2

¹⁵ *Ibid.*, p. 3

¹⁶ Alaska Statehood Act, Notes to Decisions, in *Alaska Statutes*, p. 77

¹⁷ Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), p.107

¹⁸ *Ibid.*, p. 143

¹⁹ Victor Fischer, *Alaska's Constitutional Convention*, National Municipal League State Constitutional Convention Studies Number Nine, Fairbanks: University of Alaska Press, 1975, pp. 137-39

²⁰ *Ibid.*

²¹ Thomas R. Berger, *Village Journey*, New York: Hill and Wang, 1985, p. 20

²² House report accompanying the final version of ANCSA, quoted in Berger, p. 21

²³ see Steve J. Langdon, "Contradictions in Alaskan Native Economy and Society" in *Contemporary Alaskan Native Economies*, ed. by Steve J. Langdon, Lanham: University Press of America, 1986

²⁴ The concerns of residents of the area are being investigated, as we write (1994), by the federal government: the burial of nuclear wastes in underground dumps, and the use of Inupiat in experiments to disclose the effects of exposure to nuclear radiation, have been recently acknowledged by the government and are the subject of ongoing investigations.

²⁵ Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 119. A report prepared for Congress, *Alaska Natives and the Land*, stated similar findings based on information provided by DOI as of June, 1968: "Alaska Native groups and associations have claimed and filed protests to the transfer of almost the entire state. The claims and protests are based on aboriginal use of the lands." See pp. 454-514 for a discussion by region of the status of land ownership and control, as well as the petitions, claims and protests made by Alaska Natives.

²⁶ Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p.118

²⁷ A statewide corporation was also suggested.

²⁸ Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 129

²⁹ For a critical review of ANCSA and its implementa-

tion, and of the failed expectations of its "promise" for social and economic equity, see Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission*, New York: Hill and Wang, 1984

³⁰ See Gunnar Knapp, *Native Timber Harvests in Southeast Alaska*, USDA Forest Service, Pacific Northwest Research Station, General Technical Report PNW-GTR-284, 1992, p.5.

³¹ *Ibid.*, p. 5

³² Esther C. Wunnicke, Robert D. Arnold, David M. Hickok, Douglas N. Jones and Arlon R. Tussing, *Alaska Natives and the Land*, a report on Alaska Native land claims by the Federal Field Committee for Development Planning in Alaska, Anchorage, Alaska, 1968, p. 530

³³ Cumulative real dividends per shareholder ranged from zero (Koniag) to nearly \$10,500 (CIRI). Real net corporate income received per shareholder varied from \$44,000 for CIRI to a negative \$7,000 for Calista and Bering Straits. The other corporations had income received that ranged from negative \$2,000 to \$12,000 per shareholder. The regional corporations as a group suffered net losses in seven out of 17 years. Only four corporations produced positive cumulative net income on business ventures from 1974-90. See Steve Colt, "Financial Performance of Native Regional Corporations," *Review of Social and Economic Conditions*, Vol. XXVIII, No. 2, Anchorage: University of Alaska, Institute of Social and Economic Research, December, 1991. There has been very little research into this topic. For a general treatment, see Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission*, New York: Hill and Wang, 1984. For an examination of benefits received by shareholders in village corporations in southeast Alaska, see the chapter by Steve Colt in *A Study of Five Southeast Alaska Communities*, Appendix A: History of Occupation and Use, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

³⁴ Alaska Native Roll, Bureau of Indian Affairs, total as of 12/31/85.

³⁵ See in *A Study of Five Southeast Alaska Communities*, Institute for Social and Economic Research (Lee Gorsuch and Steve Colt), by Charles W. Smythe and Bart K. Garber, Chapter 2, pp. 17-19 (1994); and personal communication, Bart K. Garber to Charles W. Smythe, 1993.

³⁶ Source: U.S.D.O.I Bureau of Indian Affairs, Alaska Native Roll, Dec. 31, 1985. The actual number of shareholders is larger today, as some stock has been transferred through inheritance and other means.

³⁷ *A Study of Five Southeast Alaska Communities*,

Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994, p.92, from statistics provided by the U.S.D.A. Forest Service, Region 10, as of July 19, 1991.

³⁸ ANILCA Section 506(a)(3-6) provided additional land to Kootznوو.

³⁹ The Haida Exchange Act (1986) authorized the Haida Corp. to relinquish village corporation land to the United States in return for money and alternative lands, which resulted in the conveyance of about 5,000 acres to the government (some of which was added to the Tongass National Forest).

⁴⁰ Goldbelt and Shee Atika were initially entitled to 23,040 acres, but subsequent negotiations and land trades resulted in additional lands in exchange for relinquishing claims to Admiralty Island.

⁴¹ See Note 5.

⁴² This figure includes shareholders enrolled to other villages and towns in southeast Alaska and at-large shareholders, in addition to village and urban corporation shareholders.

⁴³ Gunnar Knapp, *Native Timber Harvests in Southeast Alaska*, U.S.D.A. Forest Service, Pacific Northwest Research Station, General Technical Report PNW-GTR-284, 1992

⁴⁴ *A Study of Five Southeast Alaska Communities*, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994

⁴⁵ Leo Keeler, Chugach National Forest, Personal Communication, February 8, 1994

⁴⁶ Source: U.S.D.O.I Bureau of Indian Affairs, Alaska Native Roll, Dec. 31, 1985. The actual number of shareholders is larger today, as some stock has been transferred through inheritance and other means.

⁴⁷ *A Study of Five Southeast Alaska Communities*, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994, p.92, from statistics provided by the U.S.D.A. Forest Service, Region 10, as of July 19, 1991.

⁴⁸ This figure includes shareholders enrolled to other villages and towns in the Chugach region and at-large shareholders, in addition to village corporation shareholders.

⁴⁹ Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 246

⁵⁰ ANCSA, Section 4(b)

⁵¹ David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 294

⁵² *Alaska Natives and the Land*, p. 539-40

⁵³ David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 295

⁵⁴ Senate Report 92-581, 92nd Cong.; 1st Sess., December 14, 1971, p. 37; cited in *Ibid.* p. 295: emphasis added

⁵⁵ Steve J. Langdon, "Alaska Native Subsistence: Current Regulatory Regimes and Issues, Paper prepared for the Alaska Native Review Commission Roundtable on Subsistence, Anchorage: Inuit Circumpolar Conference, 1984, pp. 11-12

⁵⁶ The state constitution, which prescribes the development and common use of all natural resources including fish and wildlife, did not ultimately afford an assurance of protection of Native or rural subsistence. In 1978 the State passed a subsistence law giving priority to subsistence users over all other fish and game uses. The State of Alaska's adherence to its constitution conflicts with ANILCA provisions, and this led to the Federal federal government asserting control over fish and wildlife resources on federal lands; this issue is currently under litigation.

⁵⁷ David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 297

⁵⁸ *Katie John, Doris Charles, and Mentasta Village Council, and The State of Alaska v. The United States of America*, Case no. A90-484 Civ, State's Motion for Partial Summary Judgement

⁵⁹ Steve J. Langdon, "Alaska Native Subsistence: Current Regulatory Regimes and Issues, Paper prepared for the Alaska Native Review Commission Roundtable on Subsistence, Anchorage: Inuit Circumpolar Conference, 1984, p. 12

A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska

By Walter R. Echo-Hawk¹

THE TLINGIT PEOPLE WERE MIGRATING downstream, searching for a better life. Following the banks of a mountain stream, they came upon a glacier! The vast field of ice blocked their trek. Seemingly impassable, it was too steep to climb and too far to go around. Yet, the river flowed beneath the deep crevasses, so the People decided to build a raft and sail underneath the glacier. Once the vessel was built, they asked, "Who will go?" Two elderly women volunteered. "We have lived a long life. We will go." The pair boldly floated into the mountain of ice and disappeared.

When they emerged on the other side, the elders discovered a wondrous land! It was an immense temperate rainforest beside the sea, a maritime paradise teeming with awesome creatures, edible plants of all kinds, and bountiful waterways in one of the most beautiful places in the world. This terra nullius was a Garden of Eden, located right on the shores of Native North America. The People identified this spectacular place as Haa Aaní (Our Land), the Land of the Tlingits.

—A Tlingit Migration Story told by Walter A. Soboleff in 2006.²

In 2009, Congress will conduct hearings on Native land entitlement and other pressing indigenous issues in southeast Alaska, a land called *Haa Aaní* by the Tlingit Indians. A useful background context for those hearings may help guide the formulation of meaningful Congressional action for the twenty-first century. Several overarching questions inform the hearings. After thirty-eight years, how well has the Alaska Native Claims Settlement Act of 1971 (ANCSA) worked in southeast Alaska?³ What impacts has federal law and policy had upon the well-being, subsistence, and cultural integrity of the indigenous inhabitants of America's largest rainforest? The treatment of these rainforest tribes, as federal protectorates under the Indian trust doctrine, stands as a barometer in the post-colonial world. On a larger level, it marks how our modern industrialized nation comports itself with Mankind's last remaining hunting, fishing, and gathering cultures that still live in the natural world, as well as the last remaining vestiges of the natural world itself.

The fate and well-being of marginalized Indigenous Peoples are pressing domestic and international concerns in the world today. During the twentieth century, many tribes in other lands went extinct.⁴ The goal is to protect those who remain, especially after witnessing the tragic, reoccurring outbreaks of genocide throughout the twentieth century. This shift in public opinion

is seen in the approval of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.⁵ That historic measure breaks sharply from colonialism and its urge toward subjugation, dispossession, and exploitation. As an international guideline, the UNDRIP replaces oppressive policies from that era—which are still found in some former colonies—with minimum standards for each modern nation to protect the dignity, survival, and the cultural, economic, social, and political well-being of the world’s Indigenous Peoples. Although the Bush Administration voted against the UNDRIP—along with three other dissenting nations—there are several reasons why the United States will not be the last to embrace the UN standards. Since 1970, federal Indian affairs have been guided by the cornerstone Indian self-determination policy. That is a precedent-setting and enlightened indigenous policy that sets a high standard for any nation and it is also the centerpiece of the UNDRIP. The Indian self-determination policy is strengthened in the United States by the law. First is the long-standing federal Indian trust doctrine, which was first articulated by Chief Justice John Marshall in *Cherokee Nation v. Georgia* (1831); and, second, for almost two hundred years, our law treats Indian tribes as “domestic dependant nations”—that is, sovereigns which are described in *Worcester v. Georgia* (1832) as “protectorates” of the United States.⁶ Finally, in the international arena, our nation is often a human rights champion. Americans eschew oppression. This combination of factors provides the heritage, history, and values to fully safeguard the well-being of Indigenous Peoples in the United States. The Bush Administration’s vote against the UNDRIP does not wash away that heritage, nor bar in any way our stride toward a more just society in the post-colonial world. Consequently, Native Americans can realistically look forward with optimism that their political, cultural, and property rights as Indigenous People will be justly safeguarded in the United States during the twenty-first century.

This paper is an educational tool. It provides an indigenous perspective for setting congressional policy in Native southeast Alaska. That context is sorely needed. Native American aspirations, needs, and concerns are not well known by most Americans, including policymakers. This is especially true for the Tlingit, Haida, and Tsimshian for several reasons. First, they live in remote southeast Alaska. Most Americans have never set foot in their maritime homeland. Second, these tribal hunters, fishers, and gatherers continue to live in their indigenous aboriginal habitats. Their cosmology in the natural world is vastly different from that of most Americans who are more familiar with the Westernized way of looking at the world. By contrast, the tribal cosmology in southeast Alaska arises from primal ties to the natural world. As such, those indigenous cultures are still imbued with the age-old values of hunters, fishers, and gatherers that were instilled into our species during our long evolution as humans spread across the planet. This is reflected in the remarkable art, dress, dance, songs, language, architecture, social organization, and customs of the Pacific Northwest tribes that comprise their subsistence way of life, which are absolutely unique in the world

today. That way of life is similar, however, to all hunting, fishing, and gathering cultures around the world; and it depends upon cooperation with the animals and plants to ensure their renewal, not the conquest of nature. Those primal cosmologies contain valuable teachings about human relations with the animal and plant world. Unfortunately, that indigenous knowledge and value system is long forgotten by most Westerners living in industrialized landscapes, dismissed as an inferior way of looking at the world, or worse yet, demonized and stamped out in many colonized lands.

It is important that policymakers grasp and incorporate the unique needs, aspirations, and concerns of the Tongass rainforest tribes when setting Indian policy in the post-colonial world. In those nations where policy is set in derogation of indigenous needs, human rights violations are often found. Tlingit, Haida, and Tsimshian congressional testimony will document the indigenous aspirations, needs, and concerns for Native southeast Alaska. It will also address the overarching questions posed above, and make recommendations to Congress. This paper provides a context for evaluating that record. It presents several points that help inform modern federal Indian policy in Southeast Alaska.

We shall examine the history of colonization in southeast Alaska and scrutinize the forces at work. Prior to the creation of the Tongass National Forest (“TNF”) in 1908, the land was owned, occupied, and in use by the aboriginal Tlingit, Haida, and Tsimshian peoples according to the laws and customs of those indigenous nations. In 1908, President Theodore Roosevelt issued an executive order to create the national forest. This summary action was done unilaterally at the zenith of the Age of Imperialism, when the United States administered a large colonial empire comprised of American colonies around the world, including Cuba, the Philippines, Puerto Rico, Panama, the Virgin Islands, Micronesia, Guam, the Wake Islands, Midway Island, San Domingo, and the territories of Hawaii and Alaska. In addition, the legal climate of this period under *Lone Wolf v. Hitchcock* (1902), treated American Indian reservations like colonies subject to the plenary power of Congress, that is, absolute power over Indian tribes as wards of the government without a right of judicial review.⁷ The edict simply established the vast TNF *in the middle of the Indians’ aboriginal homeland* where the tribes lived, hunted, fished, and gathered since times immemorial—a time span long before the Forest Service arrived to assume hegemony over its new fiefdom. Nearly every inch of the new federal enclave was already owned by the Tlingit clans, and their Haida and Tsimshian neighbors. This action was undoubtedly unbeknownst to most of the Indian inhabitants. Protests did come from missionaries on behalf of the Tlingit and Haida Indians “as an immoral confiscation of their property.”⁸

On paper, the TNF was established subject to existing property rights. The executive order stated that nothing shall be construed “to deprive any person of any valid right” secured by the Treaty with Russia or by any federal law pertaining to Alaska. However, this nicety was all but

ignored on the ground, when it came to tribal land rights. No effort at all was made for several decades to acknowledge and determine Native land rights. In the meantime, the agency occupied the land and ran roughshod over the Native peoples. For most of the twentieth century—until Congress began to curb the powers of the agency in the modern era of federal Indian law (*circa* 1970–present)—the U.S. Forest Service history presents a classic case of colonialism. As will be seen, the occupation, usurpation, and destruction of the land and its bounty, and the marginalization of the indigenous peoples and ways of life are a microcosm of Manifest Destiny. That history will be summarized here based upon U.S. Forest Service documents and the official U.S. Forest history written by Lawrence Rakestraw, entitled *A History of the United States Forest Service in Alaska* (Tongass Centennial Special Edition, 2002) (Reprinted by USDA Forest Service). It will include the Native protests against the creation of the TNF and efforts to protect their rainforest homeland in the face of dispossession and destruction by the Forest Service’s relentless drive to turn the rainforest into a paper and pulp mill industry.

That battle led to the infamous Supreme Court decision in *Tee-Hit-Ton Indians v. United States* (1955).⁹ In one of the worst decisions ever handed down, the court held that the aboriginal land of the Tongass tribes could be confiscated by the United States government without compensating the owners. This novel doctrine of confiscation was justified by Justice Stanley F. Reed by raw conquest. He tersely explained:

*Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror’s will that deprived them of their land.*¹⁰

The frightening decision dispensed with aboriginal land rights and allowed the government to freely seize an entire tribal homeland *despite the Bill of Rights* which guarantees to all other landowners that no person shall be deprived of property “without due process of law . . . nor shall private property be taken for public use without just compensation.”¹¹

This paper will examine the events leading to the *Tee-Hit-Ton* doctrine of confiscation and its grave impacts upon the Tongass tribes. It will highlight the dispossession of Native land rights as the indigenous way of life was brushed aside, and tribal efforts to protect “indigenous habitat” in their ancestral territory needed to support hunting, fishing, and gathering ways of life. As used here, the term “indigenous habitat” refers to the land, waters, animals, and plants in ancestral homelands traditionally occupied by indigenous tribes, and used by them to support their aboriginal cultures and ways of life—that is, vital habitat in the natural world without which aboriginal cultures and ways of life cannot survive.

The paper will also examine the impacts of the closely-related Supreme Court decision in *Organized Village of Kake v. Egan* (1962) on the indigenous way of life, Native subsistence, and the present-day economy of the villages. As will be seen, today villagers ironically live in an abundance of natural resources in a place that might as well be a desert, because so little is actually accessible under federal law and policy.¹² In *Kake*, the court placed aboriginal Tlingit fishing rights in TNF waters by tribal communities who were entirely dependent upon salmon under state regulation. State control of rights vital to the tribes' way of life was granted, even though Alaska's Statehood Act "disclaimed all right and title to and the United States retained 'absolute jurisdiction and control' over, inter alia, '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.'"¹³ In retrospect, it is not hard to imagine what became of the tribal subsistence economy and way of life, once aboriginal fishing rights were safely tucked under the control of the new settler state.

As will be seen, these potent factors jeopardized the survival and well-being of one of the world's last remaining hunting, fishing, and gathering cultures, and certainly one of the last primal cosmologies in the United States. Why is a twentieth century history of colonialism, confiscation, and subjugation relevant to modern policymakers in the twenty-first century? We cannot "unring the bell," but history does provide the context for charting the future as a nation. Many countries have a legacy of colonialism. That heritage must be soberly confronted as a starting place for reform. As used here, "colonialism" is defined by law professor Robert Clinton as "the involuntary exploitation of or annexation of lands and resources previously belonging to another people, often of a different race or ethnicity, or the involuntary expansion of political hegemony over them, often displacing, partially or completely, their prior political organization."¹⁴

During the Colonial Era (*circa* 1492-1960), the indigenous nations of Africa, the Western Hemisphere, Australia, the Circumpolar World, Oceania, India, and most of Asia were colonized by Westerners. "Indigenous peoples" are defined as non-European populations who resided in lands colonized by Westerners before the colonists arrived. For them, colonization was invariably a harsh, life-altering experience as the colonization process usually included the invasion and involuntary occupation of their land; the outright appropriation of their property and natural resources; political subjugation and marginalization; stamping out their traditional religions, languages, ways of life and subsistence; warfare; and sometimes genocide. These destructive processes were "legalized" in nearly every colony according to the laws of the colonizers.

Colonization of Native land is invariably accompanied by destroying the habitat that supports the tribal way of life. Colonies displace the Natives, extract natural resources from the land, and remake the natural world for agriculturists and manufacturers. Thus, conquest of nature often accompanies the settlement of Native territory. In *The Conquest of Paradise*, historian Kirkpatrick

Sale examined the astounding level of environmental degradation that accompanied European colonization of the New World.¹⁵ In 1823, Chief Justice John Marshall described the ebb and flow of colonization in the United States:

As the white population advanced, that of the Indians necessarily receded. The country in the immediate neighborhood of agriculturalists became unfit for them. The game fled into thicker and more unbroken forests, and the Indians followed. The soil . . . being no longer occupied by its ancient inhabitants, was parceled out according to the will of the sovereign power.¹⁶

In just a few short decades, for example, the Plains Indian habitat was virtually destroyed as countless millions buffalo and wolves were slaughtered and steel plows were pulled through native plant communities. When Native peoples resisted, the law invariably supported the destruction of their indigenous habitat, often with harsh, life-altering results. The depopulation of American Indians and destruction of their cultures following European contact has been attributed, in part, to the accompanying destruction of indigenous habitats.¹⁷ Simply put, deforestation, dewatering, and destruction of the wild animal and plants that sustained Indian tribes, led to their collapse. Many went extinct following the conquest of nature in North and South America since 1492.

The age of colonialism ended after World War II, with the emerging independence of former colonies around the world. Although colonialism was ultimately rejected by the international community several decades ago, that system remains embedded in the laws and social policies of some former colonies as a cornerstone for dealing with Indigenous Peoples. Their paramount challenge in the twenty-first century is to identify and root out the “dark side” of those laws and policies and strike a more just balance for the rights, relationships, and responsibilities between Indigenous and non-indigenous peoples.

As will be shown, southeast Alaska is one place where this familiar history occurred. The region was colonized as a *de facto* Forest Service colony for most of the twentieth century; and the aboriginal nations that reside in the TNF live under that legacy today. The challenge for Native southeast Alaska is to repudiate, not prolong, that legacy and restore the well-being of the indigenous peoples to the fullest extent possible, at least until the minimum UN standards are achieved. The moral call to rebuild and restore colonized areas can be likened to the enormous American efforts normally undertaken to voluntarily restore the lands and infrastructure of nations defeated in war by the United States. This is almost always done in the national interest where our nation has, in effect, made a destructive mess and cannot in good conscience leave a devastated people without rebuilding and restoring their nation—that is, by putting them back on their feet. That same good moral conscience and national interest should obtain with even stronger force at home for America’s indigenous nations living in colonized areas as protectorates of the United States. It is hoped that the congressional hearings will point the way toward that healing process in Native southeast Alaska.

1. Why *Tee-Hit-Ton* and *Kake* Deserve the Attention of Policymakers.

The *Haa Aanii* story deserves telling. It is a classic tale of colonization, the degradation of indigenous habitat, and cosmological conflict between different worldviews. It tells how *Haa Aanii* was colonized by the Forest Service (*circa* 1908-1955). The courts played a prominent role. They legitimized the outright confiscation of aboriginal property used for hunting, fishing, and gathering with the air of legitimacy in the *Tee-Hit-Ton* case; and the courts placed the indigenous subsistence way of life under the control of settlers in the *Kake* litigation.

By the 1950's and early 1960's when *Tee-Hit-Ton* and *Kake* were decided, Native America had slumped to its nadir. This was a time before the advent of the modern era of federal Indian law, when most Indians were living in abject poverty as marginalized persons upon the fringes of a nation bent on stamping out all vestiges of tribal culture during the Termination Policy era.¹⁸ During this period, judges could dispense with niceties in Indian cases and simply “tell it like it is.” A reading of the unvarnished *Tee-Hit-Ton* opinion does just that—in hard-edged, bone-chilling words; and it was easy to brush aside an ancient way of life in a colonized land by the *Kake* Court without realizing the enormous human and cultural costs at stake.

In that era, the legal climate recognized few Native American rights in the waning years before the advent of the modern era of federal Indian law (*circa* 1970-present). In 1954, the United States Supreme Court desegregated America in *Brown v. Board of Education* (1954) under the leadership of Chief Justice Earl Warren, but it was not ready to reverse doctrines of conquest and discovery in Indian cases.¹⁹ Instead, the court was still bent on conquering America in 1955, if we take Justice Reed at his words in the *Tee-Hit-Ton* opinion, written just ten months after *Brown* was handed down. That opinion brings the Law of Colonialism into a harsh, modern-day context. It illustrates how easily the manifestly unjust confiscation of Native land can be justified by leading jurists as the law of the land.

The *Tee-Hit-Ton* case, with its misplaced notions of conquest, has never been reversed.²⁰ It raises several sobering questions that are critical to the cultural survival of Indian tribes and their aboriginal way of life in modern-day America.

The ruling holds that Indian tribes cannot rely upon the Fifth Amendment or aboriginal property rights to protect themselves against government seizure, and on another level leaves them helpless to protect “indigenous habitat” from destruction at the hands of the government. Today discussion of aboriginal title is largely a moot point, since most aboriginal property rights were extinguished long ago by voluntary treaty cessions, myriad government takings, or

outright confiscation as legalized in *Tee-Hit-Ton*. To be sure, some Indian owners were eventually compensated for takings by various congressional remedies in laws like the Alaska Native Claims Settlement Act (“ANCSA”) or Indian Claims Commission Act (“ICCA”).²¹ However, monetary compensation for damages does not protect a way of life. That shortcoming raises the paramount question facing indigenous hunting, fishing, and gathering cultures in the world today: *How can Native Americans meaningfully protect “indigenous habitat” in ancestral homelands from destruction when that habitat remains vital to their hunting, fishing, and gathering existence?* Few Indian treaties in the lower 48 States reserved off-reservation hunting, fishing, and gathering rights in ceded land, and those that did often left those rights vulnerable to later invasions by “development.” None of those treaties expressly reserved water needed to support hunting, fishing, and gathering in ceded habitat or other protection from environmental harm. Those treaty rights have recently been implied by the courts in a nascent, but important body of growing law. Unfortunately, the alarming rate of indigenous habitat degradation has quickly outpaced the development of this body of law, leaving many hunting, fishing, and gathering cultures in the Pacific Northwest vulnerable to extinction. In Alaska, no treaties were made at all.

In this cultural crisis, federal Indian law offers few realistic protections for the last remaining “indigenous habitat” in ancestral territory that is no longer owned or controlled by Indian tribes. The *Tee-Hit-Ton* decision and judicial mindset illustrates the practical difficulties encountered in the courts when tribes attempt to protect a vulnerable way of life that is dependent upon aboriginal habitats. Today, most remaining land owned by Native communities is held under treaties, executive orders, or statutes. Although some Indian land includes “indigenous habitat,” most of that habitat is no longer tribally owned or controlled by Indian tribes or Alaska Natives after their aboriginal title was extinguished. Nevertheless, many Indian and Alaska Native tribes still struggle to maintain their traditional hunting, fishing, and gathering way of life, especially in the Pacific Northwest, which spans from the Yuroks in Northern California to the northern reaches of Tlingit country above Glacier National Park. Much of the critical habitat that produces fish, animal and plant populations necessary for that way of life is now federal land, or lies in navigable streams, riparian zones, and ocean waters beyond the outer continental shelf. Thus, the last remaining hunting, fishing, and gathering cultures have largely been divested of habitat critical to their survival. American law offers little protection for that habitat or way of life.

Why should we care? After all, the United States “mostly” paid the Indians for their ceded or confiscated territories. Huston Smith, the religion scholar, describes the ties to indigenous habitat in religious terms. One distinguishing feature of primal religion is “embeddedness” in nature. That occurs, according to Smith, to such a degree that we think “not of primal peoples as embedded in nature, but of nature . . . extending itself to enter deeply into them, infusing them in order to be

fathomed by them.”²² For them, the sanctity of nature is taken seriously. They venerate ancestral habitat through the world renewal ceremonies and belief systems found in Native America that transcend our lineal conception of time.²³ This “ensoulment” of nature, as described by Professor Gregory Cajete (Tewa), is the result of long human experience with the natural world by people who have interacted with a particular landscape so long that their identity is inseparable from the land.²⁴ This helps explain why Native People lament loss of ancestral land, removal, or destruction of tribal habitat, for this amounts to “a loss of part of themselves.”²⁵

Relationships between Native peoples and their environments became so deep that separation by forced relocation in the last century constituted, literally, the loss of part of an entire generation’s soul. Indian people had been joined with their lands with such intensity that many of those who were forced to live on reservations suffered a form of “soul death.” The major consequence was the loss of a sense of home and the expression of profound homesickness with all its accompanying psychological and physical maladies. They withered like mountain flowers pulled from their mother soil...²⁶

On another level, a larger, deeper cosmological battle took place in the struggle to colonize the Tongass. Government colonization of *Haa Aani* pitted two conflicting cosmologies. Simply put, the way that indigenous tribes look at animals and plants in natural habitats—as the world’s remaining hunting, fishing, and gathering cultures—is vastly different from the way settlers view colonized land. As will be explained, at one time, all humans were hunters, fishers, and gatherers who lived in the natural world and depended upon cooperation with nature to survive. Their cosmology universally respected life and revered the animals and plants found in human habitats. This worldview is still carried on by traditional Indigenous Peoples embedded in ancestral habitats. Some ten thousand years ago, an opposing cosmology began to emerge among those humans who began domesticating animals and plants in agrarian societies. Agriculturalists had to combat the natural world, control the plants, and dominate domesticated and wild animals to survive. They evolved a new cosmology that sanctifies domination of the land and the conquest of nature. The two ways of life would collide in *Haa Aani* and compete for control of the rainforest. In *Kake*, the Supreme Court empowered the State of Alaska to determine the fate of Indians’ hunting, fishing, and gathering existence by placing the exercise of their aboriginal fishing rights under state control.

As a result of *Tee-Hit-Ton* and *Kake*, the Tongass tribes would not only lose control of their lands, indigenous habitat, but also the exercise of rights vital to their way of life in this harsh colonial setting. Thus, as the Alaskan struggle spilled into the federal courts in those cases more than fifty years ago, it raised what has now become a crucial question facing the human family in the twenty-first century: *Can a hunting, fishing, and gathering way of life derived from tribal habitats survive in the colonized lands of modern nations?*

The way that we answer that question as a nation in the twenty-first century will tell much about our national character. Many dismiss the primal way of life as “inferior” or “primitive.” Environmentalists doubt whether indigenous habitats in the natural world, or the natural world itself can survive in modern nations. Thus, a core question which confronts Congress is: *How modern society should comport itself toward the world’s last remaining hunting, fishing, and gathering cultures.* Do these endangered human cultures have a right to exist? If so, what laws and policies need to be sharpened for that purpose? For governance, what is the best political model for federal control of minority cultures in the post-colonial world: abject domination, accommodation, cultural self-determination, or some other model that can assure their survival, well-being, and co-existence? Given the wide cosmological gulf that exists between agrarian and primal cultures, answers will test the tolerance of settler-state societies and the limits of their legal systems, and will reveal the character of our modern society.

The national interest insists upon just answers to these questions. Today most Americans appreciate the Native American cultures and want them preserved, as a result of changing values in a mature nation. Law and policy should keep pace with that social change in attitude. The UNDRIP standards may shine the way toward a more just culture in the post-colonial world. As we strive to find a just balance of rights, relationships, and responsibilities in the twenty-first century, the fate of the few surviving cultures that depend upon the integrity of indigenous habitat hangs in the balance. The world now insists that these questions be addressed and answered by each nation. The UNDRIP specifies that Indigenous Peoples must be given the right to own, control, and use ancestral territories and be provided effective means to protect the environmental integrity of indigenous habitat.²⁷ These UN standards seek to protect the well-being, dignity, and human rights of hunters, fishers, and gatherers who carry on the oldest way of life of the human race.

The struggle to achieve those standards affect raises some of the gravest matters ever expressed by international institutions. After all, “genocide” is defined by the United Nations as the deliberate destruction of a racial, ethnic or cultural group; and genocidal acts include “inflicting conditions of life calculated to bring about a group’s destruction in whole or part.”²⁸ Where indigenous peoples are concerned, some researchers interpret such acts to include “destruction of the habitats utilized by indigenous peoples.”²⁹ As mentioned earlier, the challenge is to protect surviving indigenous groups. Today, most people deplore clear-cutting the world’s remaining rainforests. We know that destruction of the Amazon rainforest, for example, will destroy the Indian tribes who live there; and public opinion insists that those cultures be preserved. Yet few realize that rainforest tribes exist *in our nation* and their way of life also depends upon healthy indigenous habitats. They inhabit the Pacific Northwest, from Yurok country in northwest California to Tlingit villages on the Chilkat River and Yakutat Bay. Their dignity, well-being, and survival are important national and

international questions that can not be decided solely by local politicians guided by parochialism, or by self-interest groups driven by narrow ideologies and interests.

2. The Cosmological Conflict over the way Humans View Animals and Plants.

There is a pronounced cosmological tension in Native southeast Alaska. To bring regional issues into perspective, policymakers must consider humanity's two age-old, often competing, ways of life and the conflicting cosmologies that arise from those worldviews. As used here, "cosmology" is the foundation for how a culture understands the natural order of the universe and the world around us, as derived from its religious, social, and political orders. From that vantage point, the fundamental interests at stake in the struggle to colonize *Haa Aanii* during the twentieth century emerge from the misty mountains, fjords, and bays of the temperate rainforest. As will be seen, when spurred by the forces of colonialism, the Western agrarian-based cosmology aggressively dominates the natural world, including the peoples who live there. This driving force ultimately produced the Supreme Court's *Tee-Hit-Ton* and *Kake* decisions, which jeopardized tribal property rights, indigenous habitat, and the way of life of the aboriginal tribes indigenous to *Haa Aanii*. As we chart our course for the future, it is necessary to harmonize human cosmology in the region to strike a better balance and bring out the best in both worldviews.

The underlying cosmological tension in *Tee-Hit-Ton* and *Kake* was over the way humans view animals and plants. The timber sale in *Tee-Hit-Ton* would reduce a rainforest homeland to pulp and paper. This would devastate occupants who "were in a hunting and fishing stage of civilization," according to the Supreme Court.³⁰ The vital tribal area contained their burial grounds, towns, houses, smokehouses, and hunting camps. The Indians used the land "for fishing salmon and for hunting beaver, deer, and mink," and gathering "wild products of the earth."³¹ In contrast, the Government was determined to establish timber-processing operations for the manufacture of pulp and paper. According to the Forest Service, protecting the Indians' way of life would "seriously delay, if not prevent, the development so earnestly desired by Alaskans" (meaning everyone except the aboriginal people who lived in Alaska for millennia).³² Under the *Kake* decision, the tension between these worldviews would be resolved solely by the newcomers. *Kake* places the exercise of aboriginal fishing rights in TNF firmly under the control of the newly-formed State of Alaska. In so doing, the courts put the fate of the aboriginal cultures into the hands of strangers with an alien cosmology. The different way their worldview treats the natural world placed the tribal people in a vulnerable

position familiar in many colonies during that era.

How a society views animals and plants in the natural world defines its character, culture, and reveals innermost feelings about the living world around us. As explained in much more detail below, human “cosmology” can be divided for purposes of this paper into two venerated ways of life: (1) The hunting, fishing, and gathering existence is the oldest way of life followed by humans since the dawn of our existence. It gave rise to primal cultures that dominated human evolution for hundreds of thousands of years and although endangered today, this lifeway continues to prevail in a few isolated tribal habitats around the world. (2) The agricultural way of life emerged about ten thousand years ago. Over time, agriculturalists swept the planet, except for isolated pockets of hunting, fishing, and gathering cultures. Their cosmology now informs the mindset for viewing nature in modern societies. The two outlooks differ significantly: To inhabit a natural world, primal people must cooperate with animals and plants and encourage natural processes to survive, while agriculturalists living in a man-made world must control and dominate nature to survive. These differences account for much atrocity, discrimination, and conflict found in human history during the conquest of nature; and they were very much at play in the twentieth century struggle to colonize *Haa Aaní*. A brief overview of these competing cosmologies follows.

A. THE ANIMAL-PEOPLES’ COSMOLOGY.

The Indians of the TNF are a race of hunters, fishers, and gatherers. That is made abundantly clear from a government report issued in 1946 by Walter R. Goldschmidt and Theodore H. Hass, entitled *Haa Aaní: Our Land: Tlingit and Haida Land Rights and Use* (1946).³³ For all of human evolution and most of our history, the entire human population subsisted as hunters, fishers, and gatherers.³⁴ For 160,000 years, this way of life dominated our species. As we spread across the planet, life in this lengthy period instilled gut instincts that shaped our biology, minds, and spirit. The relationships formed with animals during this period wired the human spirit. The habits of animal behavior and plant knowledge were instilled in people. Ancient humans amassed in-depth traditional ecological knowledge about the Natural World that parallels modern man’s fascination with Western science. Appropriate conduct for living with them guided human behavior. Hunting brought us into the wild and awakened our awe of animals, beings with remarkable attributes and powers. That awe may have inspired the first religions and art—as suggested by the animal spirits drawn in caves 20,000 years ago.

Spiritually, human hunters were animistic. People believed animals are endowed with spirits and souls. As animal spirits “gave” or “offered” themselves to humans, harvesting and eating them

required hunters to reciprocate by making offerings to them to ensure their return the following year. As illustrated by Native American beliefs, protection and reciprocity came from a sacred “covenant” forged between humans and the animals in mythic times, in which animal relatives willingly “gave” themselves to people in exchange for our prayers, reverence, and respect. We pledged to thank the animals, to respect them through song, dance, art, and story, and to call upon their spirits and seek their eternal return through ceremonies.³⁵ Those beliefs and practices sanctified our relationship with mystical animals and plants as hunters, fishers, and gatherers and legitimized our presence in their world.

Pockets of this belief system remain in Africa, North America, South America, Asia, and Oceania. One of the largest concentrations of these surviving cultures is in North America. They survived long enough to be studied by anthropologists.³⁶ Information gleaned from the Yup'ik, Inupiat, Cree, Bella Bella, Tsimshian, Kwakiutl, Nootka, Quileute, Quinault, Makah, Tlingit, Haida, Yurok, Hoopa, Klamath, Salmon Tribes of Puget Sound, Columbia River Tribes, Southwestern Dine, Apache, and Pueblo tribes, and hunter-gatherers of the Northern Plains tells us much about Mankind's earliest existence. These contemporary hunters, fishers, and gatherers provide a glimpse of human existence in its earliest mode. Their way of understanding the world is a human legacy. Unfortunately, this cosmology has been forgotten, dismissed, and sometimes demonized by the modern world.

Those Native American cultures named above uniformly derive from a hunting, fishing, and gathering way of life. It produced indigenous cosmologies well-described by Gregory Cajete (Tewa) in *Native Science: Natural Laws of Interdependence*.³⁷ That worldview revels in Mother Earth's remarkable ability to support life. It proclaims Mother Earth as the foundation for human culture. That is, ethics, morals, religion, art, politics, and economics derive from the cycles of nature, behavior of animals, growth of plants, and human interdependence with all things endowed with a spirit of their own.

The people of *Haa Aanii* are traditional gatherers whose robust aboriginal economy was based, in large part, upon the abundant berries, roots, herbs, fruits, medicines, and other natural products found in the verdant rainforest.³⁸ And much of their culture was made of wood. In the cosmology of Native American gatherers, plants hold an esteemed place of honor as the staff of life and foundation for human and animal life. The plant world, for example, is called “Toharu” in Pawnee, which is a sacred concept for the “living covering” of Mother Earth.³⁹ Across North America, plants are venerated in creation stories that tell us who we are, why we are here, and what is our place in the world. They are honored in ceremony, song, art, lore, and religion as foods, medicines, and materials. As explained in many tribal traditions and ethnologies, plants have “talked” to people in Native North America and sometimes become their guardians. Accordingly, gatherers approach wild roots, berries,

peyote, corn, tobaccos, cedar, sage, and other medicines in a ritual way, just like humans have done throughout evolution. The prayers, ritual preparation, and pilgrimages that accompany gathering make subsistence profound. They place restraints upon gatherers in their use of plants and govern conduct in the plant world.

The women of the Columbia River tribes remember the covenant with plants. They know that plants came first and took pity upon humans. They hold Longhouse ceremonies to honor plant relatives before the first roots can be dug or the first berries can be picked. Unlike shopping at the corner grocery store, plants are sacred food with spirits of their own that cannot be approached without the proper ritual preparation. Though illogical to Western minds, for the women of these tribes gathering demands a respectful participation with plants as spiritual beings in a natural environment; and it is carried out on a distinctly spiritual plane.

Similarly, the Native American perception of animals mirrors hunting cultures around the world. Hunting is an ancient way of life in North America—a tradition much older than the 10,000 year-old Clovis Site. This tradition evolved songs, dances, ceremonies, art forms, and a spiritual reverence for animals. It produced an elaborate cultural context for hunting and a worldview that explains how humans should conduct themselves with animals.

As noted by scholars Smith, Eliade, and Cajete, the wall that separates humans and animals in the primal world is thin. Like most hunting cultures, the widespread kinship with animals found in Native America was established through covenants, dreams, visions, and lore. Through those means, many animals endowed with power communicated with humans and shaped their cultures. The “conversation of death” between hunter and prey, in the words of author Barry Lopez, which takes place in this context, takes on a primal meaning; and meat thus acquired becomes “sacred meat.”⁴⁰ Today, Indian hunters often put a pinch of tobacco in the mouths of their kill to assist it on its spirit journey. It is part of the covenant made in mythic times. One Santee Dakota explained: “The animals long ago agreed to sacrifice their lives for ours, when we are in need of food or of skins for garments, but we are forbidden to kill for sport alone.”⁴¹

The Pawnee tribe provides one example of the pervasive animal-influence in tribal cultures in North America. Animals predominate in Pawnee names, stories, songs, ceremonies, hunting, and in the tribal social order itself.⁴² In mythic times, early Pawnees gained wisdom and knowledge about the spiritual world from the animals. As Eagle Chief (Pawnee) explained in 1907:

In the beginning of all things, wisdom and knowledge were with the animals, for Tirawa, the One Above, did not speak directly to people. He spoke to people through his works, the stars, the sun and moon, the beasts, and the plants. For all things tell of Tirawa. When people sought to know how they should live, they went into solitude and prayed until in a vision some animal brought wisdom to them.

It was Tirawa who sent his message through the animal. He never spoke to people himself, but gave his command to beast or bird, which came to some chosen person and taught him holy things. So it was in the beginning.⁴³

At birth, every child came under the influence of a particular animal which became its guardian in life. That tie could also arise when kindly humans took pity on helpless animals—like bear cubs, puppies, and orphaned horses—who returned kindness with animal-powers. Animal spirits are said to dwell in medicine lodges. Their councils could take pity on deserving humans, teach them secrets, and give them power or protection. Birds are also helpers who mediate between humans and *Tirawaahat*. In mythic times, there was a world without birds, only animals and people; however, some families turned into the birds we see today.⁴⁴ Among them, hawks are guardians of warriors and messengers for the Morning Star; and the crows, eagles, magpies, owls, bluebirds, meadow larks, and roadrunners carry messages from the beyond. The mystical power of messenger birds is illustrated in a Pawnee family tale:

A youth accompanied a war party a long ways from home on his first raid, when he was wounded by an arrow and left for dead. Before he collapsed several days later, he prayed for help from the Creator (Atius Tirawaahat), then fell into unconsciousness. As he came to, an eagle stood before him and said, "I am from Tirawaahat, who has taken pity upon your prayer, so I am here to help you." The messenger bird told the youth, "Nearby you will find a buffalo carcass. Though it is old and filled with maggots, it will not make you sick. Eat and remember the blessings of Tirawaahat, be sincere in your prayers, and from now on you and your descendants will not get sick from food that you eat." After the eagle flew away, everything he said came true. The people were surprised and thankful when the boy returned home, for they thought he was dead, killed upon the prairie.⁴⁵

Even clams are regarded as wonderful beings in the Pawnee worldview. They have a cleanly nature, though they live in the mud.

Animal-human relations in Native America are intimate on many levels, as illustrated, again, by Pawnee society. In many stories, Pawnees marry buffalo or other animals, and transformation between humans and them often occurs. The stories teach that humans are closely related to the animals who voluntarily offer themselves to people as food. Thus, entire societies can be shaped by the animals in tribal habitats. Pawnee social fabric consisted of societies that originated from animals in visions. It was a society built upon the Crow Lances, Horse Society, Deer Society, Crazy Dogs, Brave Raven Lance, Young Dog, Otter Lance, and Iruska Society. The Pawnee received many tribal religious ceremonies from the Plains animals, such as the Bear, Buffalo, Horse, White Beaver, and Young Dog Dances. Even medicine came from the animal beings who formed bonds with Indian

doctors and taught humans their medical secrets, how to heal, and gave deserving doctors special powers. Through these many avenues, the traditional Pawnee way of understanding the world is heavily influenced by the spirits of animals.

In short, in tribal cosmology, animals help hunters, fishers, and gatherers become fully human and they are regarded as holy. Identification with revered animals runs deep on many levels. For example, the Pawnee admire the wolf, imitated its ways, and “became” wolves when scouting or at war. For this kinship, they are called “Wolf People” by neighboring tribes. Similarly, many tribes, bands, and clans are named after animals that shaped their cultures. They include Salmon People, Buffalo Nations, Snakes, Crows, Wolf-People, Crayfish Eaters, Whaling People, and the Tlingit Eagles, Ravens, and Wolves.

They are the Animal-people of Native North America. Because they walk in the tracks left by our ancestral hunters, their cosmology remembers and understands human interdependence with animals and plants as the natural order of the universe. As hunters, fishers and gatherers, they are still related to a living world where everything has a spirit. The worldview of Animal-people strongly encourages natural processes so that animals and plants can flourish and will return to habitats shared with humans. As such, their values and lifeways are still imbued with Mankind’s ancient conservation ethic. That ecological ethic is evident in nearly every tribal habitat in North America, because those places *teemed* with animal and plant life, even after thousands of years of occupation by hunters, fishers, and gatherers.

B. THE AGRICULTURALISTS’ COSMOLOGY.

The Western view of the world and how we should live in it is based upon a ten-thousand-year-old agrarian culture. Agriculture was a major revolution in human history. As used here, “agriculture” is a farming culture that tames, domesticates, and breeds plants and animals; reorders natural features; and controls natural processes to make nature more productive and beneficial to humans. Over time, Western farming civilizations underwent industrial, scientific, and technological revolutions. But they still retained an agriculturalist cosmology. The pervasive effect of agriculture on modern society is described by Jim Mason, an American authority on animal-human relations:

For nearly 10,000 years people of the West have farmed—that is manipulated nature for human benefit. Ponder for a moment this long human experience and how deeply it influences our thinking and culture. This is a hundred centuries of controlling, shaping, and battling plants, animals, and natural processes—all things of the world around us that we put under the word nature. Controlling—and ultimately battling—nature is a very old way of life to us. It is a stance with nature so

deeply ingrained in us that we are rarely conscious of it. Controlling nature is second nature to us. We are people of an agrarian culture, and we have the eyes, ears, hearts, and minds of agriculturalists. Whether or not you have ever been a farmer, or even a visitor at a farm, if you are a Westerner you are imbued with the culture of the farmer and it determines virtually everything you know and think about the living world around you.⁴⁶

Agriculturalists must control the natural world to survive. It is impossible to farm virgin land or breed untamed animals for food. So land must be significantly altered to produce crops. Natural hydrology must be reordered for irrigation. Local wildlife must be suppressed, because insects, birds, predators, pests, and vermin kill farm animals or eat crops. Native plant communities must be destroyed to make way for crops grown by man. In the end, nature is conquered.

At its heart, the genius of agriculture is animal husbandry and mass crop production. This requires utter domination of plants and animals. Their biological processes, genetics, behavior, and lives are altered. Strict control is necessary to tame, domesticate, breed, and cultivate them. In this regime, animals and plants lose their stature. They become property with a slavish existence for Man's benefit. This form of enslavement is at odds with the animal-human relation in hunting cultures, as seen in Standing Bear's (Lakota) remarks:

The animals had rights: the right of man's protection, the right to live, the right to multiply, the right to freedom, the right to man's gratitude. In recognition of these rights, people never enslaved the animals, and spared all life that was not needed for food and clothing.⁴⁷

Because agriculturalists must constantly battle the living world to sustain their way of life, their cosmology must support, rationalize, and romanticize the conquest of nature; and it must exalt human domination of all other forms of life. That cosmology is described by Mason as a God-given domination of the natural world.⁴⁸ He coined the term "dominionism" to describe the exercise of human supremacy over all living things.⁴⁹

This way of thinking has deep religious and intellectual roots in the Western world. Our exalted place in the world is a foundational religious principle of early agrarian cultures. It was strengthened by secular thinkers during the industrial, scientific, and technological revolutions, as Western civilizations morphed into modern societies. Animal-human relations in modern society were summed-up by Sigmund Freud in 1917:

In the course of his development towards culture man acquired a dominating position over his fellow-creatures in the animal kingdom. Not content with this supremacy, however, he began to place a gulf between his nature and theirs. He denied the possession of reason to them, and to himself he attributed an immortal soul, and made claims of divine descent which permitted him to annihilate the bonds of community between him and the animal kingdom.⁵⁰

Freud described our supposed supremacy as “human megalomania.”⁵¹

In the Book of Genesis, biblical scribes wrote down the religious traditions of Judaism and Christianity in the early agrarian societies of the Middle East. In the foundation myth of Western civilization, the Creation Story of Genesis tells agriculturalists why they are here. After creating the world, plants, and animals, God made humans in his own image and granted them “domination over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.”⁵² God ordered humans to multiply and “have domination over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.”⁵³ God gave these early agricultural people all living things—the herbs, trees, fruits, seeds, beasts, fowl, and crawling creatures. In turn, animals would “fear” and “dread” humans, as the natural order of things:

*And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea.*⁵⁴

In Genesis, there is no religious restraint in man’s relation to animals and plants. Rather, it is God’s will that humans should own, rule over, and exploit all living things. This divine mandate, according to Mason, “tells the sacred story of how we came to have dominion over all of nature.”⁵⁵

Over the ages, the Western Intelligentsia contributed to the biblical version of domination. A long-line of thinkers—beginning with Aristotle through Roman thinkers, to St. Augustine and St. Thomas Aquinas—heartily endorsed the theme.⁵⁶ Aquinas taught that animals have no souls. He departed sharply from hunter-thinking.⁵⁷ Western science helped pave the way for the conquest of nature. In the 1600’s, Sir Francis Bacon said nature is a slave to man and can be conquered by science. Rene Descartes classified animals as dumb, unfeeling beasts that are incapable of thought, sensation, speech, or communication, animated only by machine-like reflexes. This idea freed us from moral guilt in our dealings with animals, since they are lowly, mindless beings without a soul. It severed any lingering human connection with animals and detached us from their world. As the only sentient spiritual beings on the planet, humans can treat animals and plants as they see fit. According to Mason, this opened the door for unbridled exploitation:

*Descartes’s decoupling from, and desensitizing of, nature blew away any remains of timidity or remorse a person might have in carrying out the ruthless, often violent deeds of nature conquest.*⁵⁸

Thus, science “freed” Westerners from kinship with other living things. They could now dominate life on earth without moral restraint. Absolute human control of the living world, then, rests upon a solid religious, scientific, and philosophical foundation in Western cosmology. As Cajete observed, Western culture “disconnected itself from the natural world in order to conquer it.”⁵⁹

Carried to its logical conclusion, “dominionism” creates a “Brave New World” for animals and plants. They live in bondage, subject to the “dark side” of agriculture. We dare not think about the abject cruelty involved in mass animal husbandry, with the stomach-turning treatment of food animals in factory farms, or how untold millions of them are killed in mechanized slaughterhouses.⁶⁰ Hidden away from public view, these nightmarish animal factories are haunting places where Man’s ruthless application of technology has outpaced our current ethical horizon.⁶¹ Unlike hunter-fishers-gatherers, we are totally estranged from our food supply. Monstrous treatment of non-human life is second nature to people anesthetized by a cosmology that safely distances humans from animals and plants. We cope by thinking, “That’s alright, they’re only animals—*this is the natural order of things.*” This outlook assaults wild animals and plants with even less compunction; and we do not hesitate to destroy their habitat, so long as it benefits a human interest. Governor Sarah Palin chanted that mantra in 2008, when she told the American public: “You bet we will drill, baby, drill. And we will mine, baby, mine.”⁶²

Unfortunately, “dominionism” does not stop at animal-human relations.⁶³ It sometimes spills over into human relations. *If we can enslave or exploit animals, why not people?* When people view others as “animals,” racism quickly surfaces. Discrimination, dispossession, and violence usually engulf vilified people who are branded as sub-human “vermin,” “monkeys,” “savage beasts,” “pigs,” “baboons,” “vipers,” “curs,” “cockroaches,” or “insects”—especially when these animal-stereotypes are reinforced by scientific racism.⁶⁴ That climate breeds injustice—racism, intolerance, and colonialism—and fosters socially-acceptable violence normally reserved for pests. In this context, animal exploitation leads to exploitation of people. It provides a mental analogue for injustice.

“Dominionism” in human relations becomes strident when fueled by the forces of colonialism. As Europe colonized the world, its notions of racial, cultural, and religious superiority joined forces with its long tradition of dominating the living world. That potent combination of forces produced one of the most destructive cosmologies in human history. It set in motion a “perfect storm” that engulfed Indigenous Peoples and the natural world. The modern legal systems of those aggressive societies have the capacity to produce manifestly unjust cases, like *Tee-Hit-Ton*.

In retrospect, we can only regret the historical aggression and great harm done to tribal peoples and habitats around the world, as human cosmologies collided during the conquest of nature in the past five hundred years. In that wake, ancient ways of life and the habitats upon which they depend are nearly extinct today. Human and biological diversity in the modern world depends upon curbing the excesses found in those legal regimes and recapturing the values, relationships, and cosmologies of the hunters, fishers, and gatherers who live in ancestral habitats. Unless the avowed goal of the modern world is to eradicate our oldest way of life, the law in each nation should justly mediate between those differences so that all of human culture can survive and co-exist. Today there

is hope that this can be achieved, because many now admire, not despise, the world's remaining hunting, fishing, and gathering cultures. Even hardened city dwellers find walks in the woods to be therapeutic. People grow lawns and gardens not because they need food, but because it somehow feels good and reconnects them, and animals bring out the humanity in autistic children when all other forms of therapy fail. Those urges promote human wellbeing and assist in recovering balance in our lives. Thus, the inbred connection to the natural world is not entirely dead, even in urban dwellers living in an industrialized land. After all, in our heart we are still Animal-people as a result of our biological upbringing, though it may dimly beat in the modern world.

To preserve the hunting, fishing, and gathering cultures, the unwarranted excesses found in agrarian societies that threaten the existence of hunters, fishers, and gatherers must be curbed by policymakers who are in a position to do so. Society must identify those excesses, reconcile differences that separate farmers from hunter-gatherers, and protect the best in both worldviews. This path offers the best hope for rekindling human spirituality after colonialism has run its course and the spiritual wells that fueled the conquest of nature have run dry. Indeed, this may be the *only* path to a more just culture in a mature nation that joins Indigenous and non-Indigenous people together for peaceable co-existence on the same planet. Against this general backdrop of the world's competing cosmologies, we journey next into in the remarkable land of the Tongass Indian tribal nations.

3. The Aboriginal Inhabitants, Cultures, and Natural Resources of *Haa Aaní*.

The Tlingit, Haida, and Tsimshian nations are rainforest tribes who reside in the great Pacific Northwest. After ten thousand years, these aboriginal hunters, fishers, and gatherers merged closely with *Haa Aaní* and evolved a striking culture that mirrors their habitat. In mythic times, little difference existed between early humans and the animals and fish that inhabited *Haa Aaní*, except in form. In those days, spirits freely transformed from animal to human, and back. This metaphysical kinship relationship shaped tribal society. For example, crossing the line that sometimes divides humans from animals, the Tlingit called themselves Eagles or Ravens, and they still do. The Animal-Fish people organized into clans respectfully named after exalted animals or fish who took pity upon early humans, such as, the Killer Whale, Dog Salmon, Wolf, Frog, and Bear Clans. Together, the clans make up present-day Tlingit society and provide identity for the People.

The Tongass tribes inhabit America's largest rainforest—an area about the size of West Virginia. Tribal villages dot shorelines along the islands, bays, rivers, and fjords of southeast Alaska. This homeland forms one of richest environments on earth. It is a remarkable place inhabited by whales, salmon, moose, deer, bears, eagles, and many other creatures. Berries of all kinds grow along the streams; and the beaches provide a breadbasket of seafood. This amazing habitat produced an astounding aboriginal culture. Tsimshian fishermen, who fish in waters on and off the coast of their Annette Island Indian Reservation, set the tone for that aboriginal Pacific Northwest Coast seafaring culture. These islanders migrated to the island from nearby British Columbia in 1887 to inhabit what is the only federally recognized “Indian reservation” in Alaska, recognized by Congress in 1891. The Haida and Tlingit migrated into *Haa Aaní* in the earlier mists of time, perhaps 10,000 years ago. Tlingit art, architecture, dance, music, spirituality, technology, and the subsistence way of life arose from the rainforest, rivers, and sea; and they comprise a culture that reflects the rich coastal habitat nestled against snow-covered mountain peaks.

In addition to land and sea, these tribal societies are heavily influenced by the animals and plants of southeast Alaska. This influence is evident in the abstract Tlingit art forms, such as carvings, totem poles, masks, and painting style. This beautiful, animistic art is surreal, as if produced from another world. It is at once imbued with a powerful spirituality deeply-rooted in the natural world. Similarly, the hunting, fishing, and gathering way of life of Tongass tribes are also based upon the same spirituality. Tribal ties to indigenous habitat run deep, because the two are one in the same.

In 2006, the author visited *Haa Aaní* to see the land and visit the people involved in the *Tee-Hit-Ton* and *Kake* litigations. The trip to this enchanting place is almost impossible to describe on

paper. The waterfalls, glaciers, immense mountains, and water bodies defy description. Whales steam across the horizon, while large-sized brown bears gallop through the tidelands, among crowds of eagles feasting on salmon, not to mention the marine life that congregates along the shorelines. Here, humans talk to the trees. “The trees are alive,” explained one Tlingit attorney, “you cannot cut them without asking permission before they can be used for any purpose.” Even to this day, Sealaska—the Native corporation created by federal law for Southeast Alaska—holds an annual Tree Ceremony to give thanks to the spirits of the trees. I experienced Nirvana in the Chilkat River Valley, a home to every known race of salmon. In Klukwan, Tlingit women hunt moose in the bush and lead rich traditional lives, while artists carve spellbinding animals in wood. In this land, Eagles and Ravens imitate animals as they dance; and humans are engulfed by the Natural World.

4. The U.S. Forest Service's Administration of *Haa Aaní* (1908-1955).

The TNF was carved out of Indian land. In 1908, nearly every inch was owned by Tlingit clans, and their Haida and Tsimshian neighbors. Today they comprise eighteen federally-recognized Indian tribes who live within TNF boundaries. As mentioned earlier, the TNF was created subject to any existing property rights.⁶⁵ However, Indian land rights were ignored as the Forest Service began its operations. Indian rights, if any, could be determined later.

In the early years from 1908 to 1920, the major agency tasks in Alaska were to finalize national forest boundaries, reconnoiter the natural resources, and map possible dam sites, mill sites, and pulpwood possibilities.⁶⁶ A young forester, B. Frank Heintzleman (1888-1963) came to Alaska in 1918 to help inventory the forests. He would later be promoted to Regional Forester and work to limit aboriginal property rights. Ultimately, Heintzleman became the Governor of the Territory of Alaska from 1953 to 1957.

In 1920, twenty million board feet of timber was cut, primarily along Alaskan shores.⁶⁷ President Harding called for the development of a pulp industry in Alaska.⁶⁸ The “Roaring Twenties” saw agency growth and flourishing timber sales. Visiting industrialists eyed the pulp possibilities of *Haa Aaní*, after two staggering sales of 1.6 billion feet of timber caught their attention in 1927.⁶⁹ They wanted “a piece of the pie” before all the trees were gone.

During this period, one Tlingit man belonging to the Raven People, named William Paul (1885-1977), emerged as a prominent attorney and indigenous political leader. He brought *Tee-Hit-Ton* as a test case.⁷⁰ He was born in 1885 at Tongass Village, Alaska, into the Tee-Hit-Ton Clan. He became a charismatic orator with many accomplishments, supporters, enemies, victories, and defeats. During the 1920's, this interesting Tlingit lawyer emerged as a force. He attacked school segregation in *Haa Aaní*; won citizenship for his people; secured the right to vote; and fought to protect salmon fishing. He helped build the Alaska Native Brotherhood (“ANB”)—founded in 1912 as the nation's first Native American civil rights organization—into a potent political voice. He launched a newspaper in 1923 to press the ANB political agenda; and, in the same year, Paul was elected to the territorial legislature as the first Native legislator. These victories set the stage for a long and distinguished career in the face of great adversity.

Despite the controversy that surrounded his work, William Paul was a real hero. His many feats are all the more remarkable, because they were accomplished before the 1924 Indian Citizenship Act, at a time when Native Americans were a subjugated and demoralized race. In 1929, Paul confronted the biggest challenge of his day: The fight for Native land rights in *Haa Aaní*. At an ANB

convention, he urged the people to fight for their land. During the 1930's, Paul lobbied for legislation authorizing land claim litigation in the Court of Claims to secure compensation for the taking of aboriginal land. A law was passed in 1935, but it required suit by a central body representative of Tlingit and Haida Indians, even though *clans* are the landowners in Tlingit society. This proviso created internal debate over the best litigation approach. At last, in the 1940's as the debate continued, Paul began filing cases to test his theory that the clans are the proper parties to litigate land rights, instead of the intertribal organization designated in the claims statute. By that time, the controversial litigator had been disbarred from the practice of law in Alaska, but he guided land rights litigation conducted by his two sons, attorneys William Paul, Jr. and Fredrick Paul.

Thus, in the 1940's a formidable Tlingit Raven emerged. William Paul would challenge Forest Service destruction of *Haa Aanii* and litigate to protect his way of life. Early victories sent shockwaves to agencies that were disturbing the use and possession of Tlingit land.⁷¹ With the help of his sons, he would fight-on as the architect and star witness in the *Tee-Hit-Ton* test case, which was filed by the Paul litigation team in 1951. They would face adversity in the courts as they confronted the Forest Service managers.

In 1929, when William Paul issued the battle-cry to protect aboriginal land rights, the Forest Service frenzy to extract natural resources from *Haa Aanii* was at full-cry. The frantic pace slowed somewhat during the Great Depression, but quickly resumed and was in full force by the 1940s, as Regional Forester Heintzleman marched toward an empire made of pulp. By then, the agency governed a vast fiefdom. It exercised unquestioned power in the TNF to parcel out water rights, homesteads, special use permits for mines, canneries, fox farms, and to build reservoirs, pipelines, and tunnels, like an omnipotent ruler.⁷²

The clash with the Indians was inevitable, as rangers made destructive sweeps into the forest from the 1930's to the 1950's to burn or destroy Native subsistence camps and remove their structures from the land. Foresters, loggers, and homesteaders often treated Indians "as trespassers on their own lands as if these lands had been abandoned or ceded."⁷³ In 1946, Tlingit people complained about "instances of violent confrontation" and a pattern of "being driven out due to intimidation or competition."⁷⁴ As *Haa Aanii* became a *de facto* colony of the Forest Service, "Government appropriation and restrictive regulation of traditional Native lands [were] a source of tension."⁷⁵ A 1944 memorandum describes timber sale procedures:

Exterior boundary of area is surveyed and blazed. Strips are then run through the area and a ten to twenty percent sample of the timber is cruised. Any improvements of importance on the area are readily seen, and special clauses are inserted in timber sale contracts which state measures to be used in protecting these improvements.

Disruption of Native subsistence, land use, and occupancy was unavoidable in the rip and run operations that clear-cut into, among, and around homesites, villages, burial grounds, subsistence camps, and gardens. During the 1940's, the Tlingit Indians were still living on the land attempting to subsist.

During Regional Forester Heintzleman's Administration (1937-1953), the pitched battle began. In 1944, the Department of Interior woke up and began developing protections for aboriginal land and subsistence rights in *Haa Aanii*. Following various petitions and hearings, Secretary of the Interior Harold Ickes issued a 1945 decision that recognized significant aboriginal land claims, together with hunting, fishing, trapping, and gathering rights, in the TNF and adjacent waters.⁷⁶ The Department resolved to establish Indian reservations on those aboriginal lands within the TNF. This proposal shocked foresters who vigorously opposed the creation of Indian reservations in their fiefdom.⁷⁷

The Heintzleman Administration fought to protect the agency's regime. Agency documents from this period show efforts to rally administrative, political, and public opposition against aboriginal rights, and to lobby in Washington against recognition of those rights.⁷⁸ Sounding the alarm, Heintzleman warned, "with not less than 18 Indian groups in the National Forest . . . very substantial portions of the National Forest would be split off for Indian use"—besides, aboriginal land is the best in the TNF and the rest "would hardly be worth retaining."⁷⁹ The agency argued it is "extremely improbable" that Congress would subordinate "non-Indian rights, equities and interests."⁸⁰ It opposed any relief that would disrupt progress or the "industrial possibilities" of the TNF.⁸¹ The interdepartmental squabbling between the Interior and Agriculture Departments produced a standoff. This allowed the Regional Forester to continue timber sales in aboriginal areas in 1946 and ignore the Interior Department's determination until ordered otherwise by Congress.⁸²

By 1947, the Natives were in open revolt. The ANB defiantly charged the Forest Service and pulp corporations with trespass on aboriginal lands. Even more alarming to agency big-wigs, several villages threatened the regime's timber monopoly by negotiating *Indian* contracts to sell timber on aboriginal land. The revolt caused the besieged foresters to retaliate by sending spies into the villages, interrogating the Indians, and threatening villagers with trespass actions to curtail the subversive sales.⁸³ In turn, the Indians *dared* the Forest Service to arrest them for exercising their property rights.⁸⁴ The tug-of-war between the Forest Service, Interior Department, ANB, and the tribal villages, scared away bewildered pulp paper companies. The Forest Service scrambled to quell the revolt which lasted into the 1950's.

In the midst of this turmoil, Paul scored a stunning legal victory in *Miller v. United States* (1947) that stopped the confiscatory rule of *Haa Aanii* in its tracks.⁸⁵ The Ninth Circuit's *Miller* decision affirmed the existence of congressionally-recognized aboriginal land in *Haa Aanii* and

ruled that it cannot be seized by the Government against the consent of Tlingit landowners without paying just compensation.⁸⁶ Unfortunately, the *Miller* rule was short-lived. It produced backlash just five months later, when Congress enacted a classic settler-state law. To combat the *Miller* decision, the lawmakers passed a Joint Resolution that authorized the Secretary of Agriculture to sell timber and land within the TNF “notwithstanding any claim of possessory rights” based upon “aboriginal occupancy or title.”⁸⁷ Thus, the agency could sell aboriginal timber and land, so long as the receipts were maintained in a special account “until the rights to the land and timber are finally determined.” Though it took no position on the validity of Indian land rights, the ramrod measure authorized the immediate sale of their property—the involuntary sale of *Haa Aaní*. The “final ownership determination” provision in this law was a cruel and meaningless gesture, since there would be little practical hope of recovering alienated land after the fact, much less restoring habitat destroyed by industrialists. Thus, despite tribal opposition to the 1947 act, the Forest Service succeeded in sidestepping the *Miller* decision by simply changing the rules, an easy feat for insiders in a colonized land.⁸⁸ The Supreme Court would later describe the law as a “congressionally approved taking of land.”⁸⁹ This is a euphemism for confiscation. The 1947 law amounted to theft. In short, this rainforest was stolen in 1947 in a classic tale of North American colonialism.

5. The Tlingit Bring Suit in the Courts of the Confiscators.

Under the authority of the 1947 act, the agency sold 60 million board feet in 1950.⁹⁰ Pulp investors formed the Ketchikan Pulp Company and, in 1951, won a contract to buy 1.5 billion cubic feet of timber at bargain-basement prices to manufacture pulp over a fifty-year period.⁹¹ The sweetheart deal was a long-awaited triumph. At last, Forest Service dreams of a pulpwood industry would come true.⁹² The sale of all the merchantable timber would destroy an immense area in the vicinity of Wrangell, Alaska, the aboriginal homeland of William Paul and the Tee-Hit-Ton Clan. They would resist confiscation of their property by filing *Tee-Hit-Ton v. United States* to test the nature and extent of Tlingit land rights in Alaska.

The early 1950's were bad times for Indian test cases. Those years marked the low point in Native American life, when Indian tribes faced a legal, social, economic, political, and cultural nadir.⁹³ At this time, the national Indian policy worked to terminate federal Indian trust responsibilities, extend state power over Indian reservations, and assimilate Indians into mainstream society. The last thing on Washington's mind was to protect a divergent way of life, much less aboriginal property rights in far-away *Haa Aanii*. The Supreme Court began the twentieth century with the Law of Colonialism, in cases like *Lone Wolf v. Hitchcock* (1903) and *United States v. Sandoval* (1913).⁹⁴ In 1955, the Supreme Court could hardly be expected to row against the tide. Justice Stanley Forman Reed wrote the *Tee-Hit-Ton* opinion. His views reflected the times. In 1946, he wrote that Indians who occupy their aboriginal homes, without definite congressional recognition of their right to do so, are like "paleface squatters on public lands without compensable rights if they are evicted."⁹⁵

The Supreme Court took the case to resolve two conflicting decisions concerning Tlingit land rights. The decision in the court below held that no rights exist because Congress has not recognized aboriginal land rights in Alaska, whereas *Miller* held several laws confirm such rights.

In the Supreme Court, the Indians advanced two arguments. First, they claimed absolute ownership of the land by virtue of aboriginal occupation since time immemorial. This original Indian title in Alaska is just like ordinary real estate owned by white people, despite the doctrines in *Johnson v. M'Intosh* (1823) and its progeny that espouse inferior Indian land rights. They argued that *Johnson's* doctrines of discovery and conquest are inapplicable in Alaska, because the historical, political, and legal background in Alaska is fundamentally different from that of the lower forty-eight states. After all, Russia never "conquered" any Alaska tribes; and the Tlingit possess a highly-developed culture and well-defined system of land ownership. Alternatively, the litigators claimed Tlingit land rights under two federal laws pertaining to Alaska that confirm aboriginal possessory interests in land, as

recognized by the Ninth Circuit in the *Miller* case.⁹⁶ A congressionally-recognized possessory right to the land arises under the Alaska Organic Act of 1884:

*Indians . . . shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them [with title to be acquired in a manner prescribed by] future legislation by Congress.*⁹⁷

Similarly, the Act of June 6, 1900 reads: “Indians . . . shall not be disturbed in the possession of any lands now actually in their possession.”⁹⁸ Under either theory of land ownership, William Paul’s team argued that Tlingit property may not be taken against their will without just compensation; and, thus, the sale of timber from Tlingit land is an unconstitutional taking. The Government denied all of the Indians’ contentions.

The Supreme Court rejected the Tlingit arguments. It went to great lengths to extend the usual apologies about injustice and avoid blame that are commonly found in unjust decisions. First, the opinion repeats *Johnson’s* excuse: “Conquest gives a title which the Courts of the Conqueror cannot deny.”⁹⁹ To avoid blame for injustice under the doctrine of conquest, the Court hid behind a presumption of good faith:

*It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race.*¹⁰⁰

In any event, justice is irrelevant and immaterial, because “the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy and thus is not a matter open to discussion.”¹⁰¹ Even though justice and morality are beyond the pale when it comes to dispossessing Indians, we should not be alarmed for “American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization” and they would like to “share the benefits of our society” with Indians.¹⁰² (That good will, however, does not “allow the tribes to recover for wrongs.” It is extended only as “a matter of grace, not because of legal liability.”¹⁰³) After the Court upheld the outright confiscation of Tlingit property, it defended its ruling with a bald claim that, “Our conclusion does not uphold harshness as against tenderness toward the Indians.”¹⁰⁴ Despite his platitudes, it is hard to hide manifest injustice.

The Court held that Indian land rights are subject to the doctrines of discovery and conquest. Under those doctrines, those rights disappear “after the coming of the white man” and thereafter Indians can inhabit land only with “permission from the whites.”¹⁰⁵ Justice Reed equated discovery with conquest. He reasoned that (1) conquest is a legitimate means to extinguish aboriginal title; (2) the Government conquered all Indian tribes, as a matter of fact—either through warfare or by forcing treaties upon Indians involuntarily; and therefore (3) all aboriginal title in the United States

had been extinguished by conquest prior to the *Tee-Hit-Ton* case, with the sole exception of any lands that Congress had chosen to grant back to the Indians.¹⁰⁶ The opinion states:

*Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food, and trinkets, it was not a sale but the conqueror's will that deprived them of their land.*¹⁰⁷

Under this rationale, conquerors do not have to compensate Indian tribes when they seize aboriginal land, because “original Indian title” is not a property right in a conquered land; and any Indian occupancy of aboriginal homelands that is “not specifically recognized as ownership by action of Congress, may be extinguished by the Government without compensation.”¹⁰⁸ The Court rejected the argument that these nefarious legal doctrines do not apply in Alaska.¹⁰⁹ In addition, contrary to the holding in *Miller*, the *Tee-Hit-Ton* Court found “nothing to indicate any intention by Congress to grant to the Indians any permanent rights in the lands of Alaska occupied by them by permission of Congress.”¹¹⁰ Consequently, Tlingit property rights “may be extinguished by the Government without compensation” just like Indians in the lower forty-eight states.¹¹¹ Relief for the Indians, if any, must come from Congress, not the courts—“no other course would meet the problem of growth of the United States.”¹¹²

Federal Indian law hit rock bottom with the 1955 decision. It sanctioned one of the greatest land heists in twentieth century American legal history. In the eyes of the law, outright confiscation of land is normally considered abhorrent, because it is prohibited by the Bill of Rights. Consequently, legal principles that sanction outright confiscation are suspect, as they come from the bottom of the barrel infected with nefarious notions of raw conquest and abject colonialism.

In the wake of *Tee-Hit-Ton*, the Forest Service stepped-up timber sales in the TNF. In 1959, a second pulp mill opened in Sitka, Alaska. The decision unleashed habitat destruction throughout *Haa Aanii* by the Government with impunity. The way of life of Tlingit hunters, fishers, and gatherers was placed into jeopardy as the dispossessed Indians helplessly watched their homeland being turned into paper and pulpwood. Public concern mounted in the ensuing decades as clear-cutting began to injure the habitat and the salmon runs.¹¹³

In the midst of this dispossession and environmental destruction, the Tongass tribes lost control over the exercise of rights vital to their tribal hunting, fishing, and gathering existence. In the 1962 *Kake* decision, the Supreme Court held that the exercise of those aboriginal rights would be controlled by the state. The newcomer became owners and stewards of the land, as well as the regulators of the Indian way of life. Colonization of *Haa Aanii* was complete.

6. Efforts to Overcome the Impacts of *Tee-Hit-Ton* and *Kake*.

Several vital challenges lay ahead for the Tongass tribes during the modern era of federal Indian law. First, the Indians were determined to obtain damages for the taking of their property. Second, they needed to establish a land base in their homeland. Third, they needed legal protections for their hunting, fishing, and gathering existence and to regain self-government in *Haa Aaní*. Fourth, the tribes needed to protect indigenous habitat in the TNF. Finally, these primal cultures needed to secure a reliable body of law to protect their right to exist as distinct cultures in a modern-day settler state, as a matter of cultural survival. This would be a tall order for tribal leaders who followed in William Paul's footsteps.

Compensation for taking *Haa Aaní* came from two sources. In 1968, the Tlingit and Haida received \$7,546,053.80 in damages in *Tlingit and Haida Indians v. United States* (1968), as compensation for aboriginal land "taken from them by the United States without payment of any compensation therefore."¹¹⁴ This action was filed under the 1935 act mentioned earlier, obtained by William Paul, which gave the Court of Claims authority to award damages for Tlingit and Haida land claims.¹¹⁵ In 1971, Congress contributed additional millions in compensation, as part of an elaborate settlement of all aboriginal land claims and hunting and fishing rights in Alaska. Congress extinguished those rights in the Alaska Native Claims Settlement Act of 1971 (ANCSA) in exchange for \$962.5 million and forty-five million acres distributed to Native corporations.¹¹⁶ The Tongass tribes received their share of these assets, and over a half-million acres of their ANCSA lands came from the TNF.¹¹⁷ The implementation issues and current concerns surrounding Native land entitlements under federal law some thirty-eight years later will be detailed at the upcoming congressional hearings.

Furthermore, the Indians of *Haa Aaní* would be governed by their federally recognized tribes and villages, with a village and regional corporate structure created by ANCSA. The rule of *Haa Aaní* as a *de facto* Forest Service colony came to an end, though many Native Alaskan challenges remain to protect tribal existence in a land where aboriginal natural resources are mostly owned and controlled by others under the *Kake* decision and its progeny.¹¹⁸ Governance and control over natural resources which are vital to these cultures may also be detailed in the congressional hearings.

The 1962 *Kake* decision turned control over aboriginal hunting, fishing, and gathering rights to the State of Alaska. ANCSA extinguished those aboriginal rights in Alaska altogether. However, at the same time Congress expected the Secretary of the Interior to protect traditional hunting and fishing practices.¹¹⁹ In 1980, a statutory scheme for protecting traditional Native subsistence

practices on public lands—including the TNF—was created by the Alaska National Interest Lands Conservation Act (ANILCA).¹²⁰ As a result of these statutory protections, the Tongass tribes are able to exercise some measure of their aboriginal existence and practice cultural self-determination in our modern society, as a positive first step in achieving the UNDRIP standards set in 2007. To some degree, the federal statute permits the Indians continue to hunt, fish, and gather, but it may fall short of preserving an ancient, but endangered indigenous subsistence lifestyle and cosmology that is under any measure a living treasure, because it provides a rare link to the human past in a modern-day world. The barriers and impediments to the exercise of rights vital to the survival of these cultures will be detailed by their representatives in the Congressional hearings.

ANILCA also curbed rampant timber sales in the TNF that were destroying indigenous habitat. The law created fourteen wilderness areas in the national forest, totaling over 5 million acres. Vital TNF habitat protection increased in 1990, when the Tongass Timber Reform Act designated five additional wilderness areas and several roadless areas in order to retain the wilderness characteristics of the TNF. The last pulp mill closed in 1997. By 2001, employment in the timber industry had fallen to just 780 jobs. Today, 13.2 million acres of the 16.8 million acre TNF are in a protected, non-development status. In the end, the Forest Service dream built upon “rip and run” clear-cutting operations failed.

Any logging done today on Native land in TNF borders is carried out by Native villages or corporations at a pace of development controlled by the Native peoples themselves, and it is done commensurate with the oldest way of life known to the human race, for the indigenous habitat of *Haa Aaní* maintains viable populations of fish, wildlife, and plants necessary to support the Tlingit way.¹²¹ Today, traditional food obtained from tribal habitat remains at the center of Tlingit culture. However, challenges remain in accessing those resources and protecting the habitat necessary to produce them.

These significant successes since the *Tee-Hit-Ton* and *Kake* decision would not have been possible without intervention by Congress. As interpreted by Justice Reed, the doctrines of federal Indian law lacked sufficient vitality to protect a lifeway dependent upon tribal habitat in *Haa Aaní*. To their credit, lawmakers filled the void with statutory protections. Some of that intervention was prompted by the need to resolve aboriginal claims in Alaska and to protect the environment of a magnificent region by a nation that is still searching for a land ethic to co-exist peacefully with the natural world. The Endangered Species Act (“ESA”) represents a major shift in “dominionist” thinking, described above. The ESA is the most comprehensive law for the preservation of endangered species ever enacted. It provides effective means to conserve critical ecosystems needed by endangered or threatened species to survive.¹²² Unfortunately, this watershed statute is not triggered until a species falters on the brink of extinction, and then it acts to place them on a life-support system; whereas, the hunting, fishing, and gathering way of life in the Pacific Northwest

depends upon healthy habitats that produce viable animal and plant populations. However, American law and social policy may be evolving in that direction. Significantly, federal law now recognizes that the “[m]ajor cause of extinction is destruction of natural habitat;” that animals and plants have intrinsic, incalculable value; and that the preservation of endangered species from extinction is more important than the projects of man.¹²³ It is but a short step for our society to protect animals and plants in their natural habitats *before* they become endangered, just like the hunting, fishing, and gathering cultures have done since the dawn of time. At that point, our human family will come full circle with life on earth.

This is not simply an environmental issue; and environmental groups are not the new “landlords” in *Haa Aanii*, even though their voice is a constructive force in southeast Alaska. The effort to protect indigenous habitat in *Haa Aanii* so that the Native cultures will continue to exist and thrive raises much larger human rights, cultural, and anthropological issues; and it will require Congressional attention to save the endangered tribal cosmologies, worldviews that will be critical to our nation in forming a real American land ethic necessary to protect the blessings of Mother Earth. The need for Congress to protect indigenous habitat is made clear by the UNDRIP. The UN asks each modern nation to protect that habitat when Native people depend upon it to carry on their way of life. Article 26 provides: “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and it requires legal protections for those lands, territories, and resources. Article 28 asks nations to affirmatively help Indigenous Peoples to conserve and protect that habitat. While not legally binding on the United States, the historic declaration suggests that our nation has an obligation to strengthen laws to protect indigenous habitat in ancestral areas that are presently outside of tribal control. International tribunals and the high courts in other countries are already beginning to recognize and extend similar habitat protection. For example, in *Arwas Tingini v. Nicaragua* (2001), the Inter-American Court of Human Rights held that Nicaragua violated tribal property rights by granting a logging concession to a foreign company to log traditional lands.¹²⁴ The court held that there is an international human right of Indigenous peoples “to the protection of their customary land and resource tenure.”¹²⁵ In *Maya Indigenous Community of Toledo District v. Belize* (2000), the Inter-American Commission of Human Rights recommended that logging and oil concessions on traditional tribal land be suspended to protect Mayan land rights.¹²⁶ It determined that Belize failed to protect that habitat. These international developments suggest that the *Tee-Hit-Ton* and *Kake* mindsets are outmoded and Congress much uplift federal Indian law to comport with the United Nations’ minimum standards.

7. Conclusion.

The conquest of Alaska has run its course. Most Americans seek not to look at the land in the twenty-first century like colonists bent upon exploitation and dispossession, but rather as a society that has joined indigenous and non-indigenous peoples together in a more just culture. With the passage of federal legislation during the modern era of federal Indian law, we can glimpse the hopes of the next generation—Alaskans at peace with the Natural World and all of its inhabitants. Given the hardships imposed by *Tee-Hit-Ton* and *Kake*, we are fortunate that the rainforest tribes of ***Haa Aanii*** managed to persist, and not wink out of existence like so many other tribal cultures in the world during the twentieth century. ***Haa Aanii*** is still inhabited by Eagles and Ravens. Everyone can celebrate the struggle to protect America's greatest rainforest. Today there are millions who love the land and admire the hunting, fishing, and gathering ideals of the Pacific Northwest Indians. Their way of life is everyone's legacy. Let us arise, take stock of the federal laws and social policies that impact Native southeast Alaska, and chart our course for the future.

Endnotes

1 Walter R. Echo-Hawk is an attorney with the Crowe & Dunlevy law firm of Oklahoma and a Justice on the Supreme Court of the Pawnee Nation. Previously, he served as a staff attorney for thirty-five years for the Native American Rights Fund (NARF) with a wide range of federal Indian law experience.

2 Personal Communication with the author. Walter A. Soboleff is a venerated Tlingit elder who turned 100 years old on November 14, 2008.

3 Alaska Native Claims Settlement Act of 1971, 43 U.S.C. §§ 1602-1628.

4 *See, generally*, Eugene Linden, “Lost Tribes, Lost Knowledge,” *Time Magazine* (Sept. 23, 1991), pp. 46-56. Linden was deeply concerned about the “cultural holocaust” confronting the world’s tribes, because when these cultures die, “vast archives of knowledge and expertise are spilling into oblivion, leaving humanity in danger of losing its past.” *Id.* at 46.

5 United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), U.N.G.A. Res. 61/295, U.N. H.R.C., 61st Sess., Annex, Agenda Item 68, U.N. Doc. A/RES/61/295 (2007). The UNDRIP is reproduced at: www.narf.org/events/07/declaration.pdf. *See also*, “United Nations Adopts Historic Declaration On The Rights Of Indigenous Peoples,” NARF L. Rev., V. 32, No. 2 (Summer/Fall 2007), pp. 1-17. Article 43 provides: “The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”

6 *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

7 *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *See also*, Blue Clark, *Lone Wolf v. Hitchcock: Treaty Rights & Indian Law at the End of the Nineteenth Century* (Lincoln & London: University of Nebraska Press, 1999); “Symposium: *Lone Wolf v. Hitchcock*: One Hundred Years Later,” 38 *Tulsa L. Rev.* 1 (2002).

8 Lawrence Rakestraw, *A History of the United States Forest Service in Alaska* (USDA Forest Service, 2002) at 17 (citing missionary correspondence to the Secretary of the Interior).

9 *Tee-Hit-Ton v. United States*, 348 U.S. 272 (1955).

10 *Id.* at 289-290.

11 U.S. Const., Fifth Amendment.

12 *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962).

13 *Id.* at 64.

14 Robert N. Clinton, “Redressing the Legacy of Conquest: A Vision Quest for a Decolonized Federal Indian Law,” 46 *Arkansas L. Rev.* 77, 86 (1993).

15 Kirkpatrick Sale, *The Conquest of Paradise: Christopher Columbus and the Columbian Legacy* (New York: Alfred A. Knopf, 1990).

16 *Johnson v. M’Intosh*, 21 U.S. 543, 590-591 (1823).

17 Walter Echo-Hawk, “Genocide and Ethnocide in Native North America,” in John Hartwell Moore (ed. in chief), *Encyclopedia of Race and Racism*, Vol. 2, g-r (Thompson Gale, 2007), p. 48; Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1493* (Norman: University of Oklahoma Press, 1987).

18 *See, generally*, Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (London, New York: W. W. Norton & Co., 2005).

19 *Brown v. Board of Education*, 347 U.S. 483 (1954).

20 It was most recently cited with approval by the *Supreme Court in Idaho v. United States*, 533 U.S. 262, 277 (2001).

- 21 Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1603 *et seq.* (“ANCSA”) (extinguishing all Aboriginal land claims in Alaska in exchange for various forms of compensation); Indian Claims Commission Act of 1946, 62 Stat. 683 (“ICCA”) (creating a special commission to hear native claims against the United States.)
- 22 Huston Smith, *The World's Religions: Our Great Wisdom Traditions* (HarperSanFrancisco, 1991) at 376. This book contains a great discussion on the nature of primal religion.
- 23 Mircea Eliade, *The Myth of the Eternal Return* (Princeton Univ. Press, 1971) (trans. by Willard R. Trask).
- 24 Gregory Cajete, *Native Science: Natural Laws of Interdependence* (Santa Fe: Clear Light Publishers, 2000).
- 25 *Id.* at 94.
- 26 *Id.* at 188 (citations omitted).
- 27 *See*, Articles 18–20, 24–29, 31–32, 38–40, UNDRIP.
- 28 *See*, United Nation’s Convention on the Prevention of and Punishment of the Crime of Genocide (1948).
- 29 Robert Hitchcock and Tara Tweed, “Physical and Cultural Genocide of Various Indigenous Peoples,” in Samuel Totten, et al (eds.), *Century of Genocide: Eyewitness Accounts and Critical Views* (New York: Garland Publishing, 1997), p. 378.
- 30 *Tee-Hit-Ton*, 348 U.S. at 287.
- 31 *Id.* at 286.
- 32 Letter from Claude R. Wichard, Secretary of Agriculture to Secretary of the Interior (February, 5, 1944), p. 2 (author’s files).
- 33 Walter R. Goldschmidt and Theodore H. Haas, *Haa Aani: Tlingit and Haida Land Rights and Use* (1946, reprinted by University of Washington Press, Seattle and London, Sealaska Heritage Foundation: Juneau, 2000), Thomas F. Thornton, ed. *See also*, Thomas R. Berger, *Village Journey: The Report of the Alaska Review Commission* (Hill and Wang: New York, 1985); Richard G. Newton and Madonna L. Moss (eds.), *Haa Atxaayi Haa Kusteeyix Sitee, Our Food Is Our Tlingit Way of Life: Excerpts From Oral Interviews* (USDA Forest Service, 2005).
- 34 Richard B. Lee and Irven DeVore (eds.), *Man The Hunter* (Chicago:Aldine Atherton, 1966).
- 35 *See, e.g.*, William S. Laughlin, “Hunting: An Integrating Biobehavior System and Its Evolutionary Importance,” in Lee and DeVore (1966) at 305; Barry Lopez, *Of Wolves And Men* (New York, London, Toronto, Sydney: Scribner, 1978) at 90–97; Smith (1991) at 372–377; Eliade (1971); Cajete (2000) at 156–165.
- 36 Lee and Devor (1966).
- 37 *See* note 24, *supra*.
- 38 Goldschmidt and Haas ((2000) at 19–26.
- 39 “Toharu” possess supernatural power in the Pawnee belief system. They play several ceremonial roles in Pawnee ceremonies, such as the Pipe Dance, Kitkahaki Dance, and Young Dog Dance. The plant world is one of the powers who make life possible, and plants helped early humans understand the meaning of sacred things. *See, e.g.*, Alice C. Fletcher, *The Hako: Song, Pipe, and Unity in a Pawnee Calumet Ceremony* (Lincoln and London: University of Nebraska Press, (1904) 1996), p. 31.
- 40 Lopez (1978) at 90–95.
- 41 Quoted in Paul Goble, *All Our Relatives: Traditional Native American Thoughts about Nature* (Bloomington, Indiana: World Wisdom, Inc., 2005).
- 42 *See*, George A. Dorsey, *The Pawnee Mythology* (Lincoln and London: Bison Books Edition, (1906) 1997) (based on turn-of-the-century interviews with Pawnee elders); James R. Murie, *Ceremonies of the Pawnee* (Lincoln and London: University of Nebraska Press, 1981), Douglas Parks (ed.); George Bird Grinnell, *Pawnee Hero Stories and Folk Tales* (Lincoln: University of Nebraska Press, (1889) 1961).

43 Quoted in Goble (2005).

44 “Death of the Flint-Monster: Origin of Birds,” told by Curly-Head between 1899-1902 in George A. Dorsey (ed.), *Traditions of the Skidi Pawnee* (Boston and New York: American Folklore Society, 1904), pp. 24-30.

45 Told by the author’s uncle, Myron Echo Hawk, and recorded by Roger Echo-Hawk.

46 Jim Mason, *An Unnatural Order: Uncovering the Roots of Our Domination of Nature and Each Other* (New York, London, Toronto, Sydney, Tokyo, Singapore: Simon & Schuster, 1993), 21-22.

47 Quoted in Goble (2005).

48 Mason (1993) at 21-22.

49 *Id.* at 25.

50 Cited by Charles Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (New York: Lantern Books, 2002), p. 3 (quoting Sigmund Freud, “A Difficulty in the Path of Psycho-Analysis,” (1979) in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (London: Hogarth Press, 1955), Vol. XVII, 130 (James Strachey, trans.)).

51 *Id.* (quoting Sigmund Freud, “Fixation to Traumas—The Unconscious” in Introductory Lectures on Psychoanalysis—Part III (1916-1917), Lecture XVIII, *Complete Works*, Vol. XVI, 285).

52 Genesis (1:26).

53 Genesis (1:28).

54 Genesis (9:2).

55 Mason (1993) at 28.

56 *Id.* at 33-49; Lopez (1978) at 147.

57 North America hunters believe animals have souls. In 1918, Bear-With-Paws (Lakota) stated: “The bear has a soul like ours, and his soul talks to mine in my sleep and tells me what to do.” Pete Catches (Lakota) explained: “All animals have power, because the Great Spirit dwells in all of them, even a tiny ant, a butterfly, a tree, a flower, a rock.” Thus, the Sioux say, “Do not harm your weaker brothers, for even a little squirrel may be the bearer of good fortune.” *See*, quotes in Goble (2005).

58 Mason (1993) at 38.

59 Cajete (2000) at 211.

60 Patterson (2002).

61 *See*, Jim Mason and Peter Singer, *Animal Factories: The Mass Production of Animals for Food and How it Affects the Lives of Consumers, Farmers, and the Animals Themselves* (New York: Crown Publishers, 1980)

62 Scott Sonner (Associated Press Writer), “Palin Appeals to Nevadans to Help Swing Election,” San Jose Mercury News (Nov. 4, 2008) (http://www.mercurynews.com/news/ci_10893972).

63 Patterson (2002).

64 *Id.* at 25-50.

65 The proclamation establishing the TNF provided that nothing shall be construed “to deprive any person of any valid right” secured by the Treaty with Russia or any federal law pertaining to Alaska.

66 Rakestraw (2002) at 70, 77.

67 *Id.* at 74.

68 *Id.* 83.

69 *Id.* at 112.

70 Stephen Haycox, “*Tee-Hit-Ton* and Alaska Native Rights,” in *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West* (Canadian Plains Research Center, University of Regina and Ninth Judicial Circuit Historical Society, 1992), p. 128-143. Paul’s bibliography is published in Nora Marks Dauenhauer and Richard Dauenhauer (eds.), *Haa Kusteeyi, Our Culture: Tlingit Life Stories* (Seattle, London, Juneau: University of Washington Press and Sealaska Heritage Foundation, 1994), pp. 503-524.

71 See, *Miller v. United States*, 159 F.2d 997 (9th Cir. 1947) and discussion *infra*.

72 The agency asserted the authority of the Regional Forester to do all these things. See, e.g., Regional Forester Memorandum, C. M. Archbold, October 9, 1953 (Author’s files). See also, Rakestraw (2002).

73 Goldschmidt and Haas (1998) at xvii-xviii.

74 *Id.*

75 *Id.*

76 “Claims of the Natives of Hydaburg, Klawock, and Kake, Alaska,” (Department of the Interior, July 27, 1945) (author’s files).

77 See, e.g., Letter from Secretary of Agriculture Claude R. Wickard to Secretary of the Interior Harold L. Ickes (Feb. 5, 1945) (author’s files); Memorandum from Lyle F. Watts, Chief, Forest Service to Secretary of Agriculture (Dec. 11, 1944) (author’s files), p. 2.

78 See, e.g., Memorandum from B. Frank Heintzleman, Regional Forester, to Chief, Forest Service (June 11, 1946) (relaying territorial opposition to aboriginal rights in the TNF and legislative efforts to extinguish those rights); Memorandum from B. Frank Heintzleman, Regional Forester, to Chief, Forest Service (Oct. 30, 1946) (author’s files) (passing along helpful political information about local opposition to aboriginal rights in the TNF); Letter from B. Frank Heintzleman to Region 10 (May 27, 1947) (author’s files) (Complaining about Tlingit opposition at a congressional hearing to H.R. 204, which would authorize timber sales in the TNF regardless of any aboriginal property right claims);

79 Memorandum from Regional Forester B. Frank Heintzleman to Chief, Forest Service (Nov. 5, 1945) (author’s files); Memorandum from Regional Forester B. Frank Heintzleman to Chief, Forest Service (Oct. 17, 1947) (author’s files) (aboriginal land is located in “the most commercially useful zone of the forest.”);

80 Letter from Secretary of Agriculture Claude R. Wickard to Secretary of the Interior Harold L. Ickes (Feb. 5, 1945) (author’s files), p. 3.

81 *Id.*

82 Memorandum from B. Frank Hentzleman, Regional Forester, to Chief, Forest Service (June 25, 1946) (author’s files) (calling attention to Indian protests to a timber sale in aboriginal land recognized by the Interior Department: “We can expect frequent protests . . . until the whole question is finally settled by Congressional action,” but in the meantime “it would be inadvisable to try to compromise with the Interior Department in any of these cases at this time.”); Memorandum from B. Frank Hentzleman, Regional Forester, to Division Supervisors, Southern and Petersburg (June 12, 1946) (author’s files) (“I cannot see that we are justified in suspending any form of Forest Service administration while awaiting a higher decision in the matter.”); Confidential Memorandum of C.M. Archbold, Division Supervisor (July 1, 1946) and attachments (passing along confidential orders from Hentzleman to be more careful when awarding special use permits that affect Indian structures, but continue making timber sales in designated areas); Letter from Don C. Foster, General Superintendent, to William A. Brophy, Commissioner of Indian Affairs (June 21, 1946) (author’s files) (complaining that the Forest Service sold 1,300,000 feet of timber in an area set aside by the Secretary of the Interior for the aboriginal uses of the Kake community.)

83 Memorandum from B. Frank Hentzleman, Regional Forester, to Division Supervisors (Oct. 20, 1947) (author’s files) (ordering the Supervisors to investigate any Indian timber sale as a high priority for possible trespass actions); Confidential and Personal Letter from “Arch” (presumably C.M. Archbold, Division Supervisor) to “Frank” (presumably Hentzleman) (Oct. 17, 1947) (author’s files) (“We will try to stop such cutting [at Kake and Klawock] by trespass proceedings.”); Memorandum from C. M. Archbold,

Division Supervisor, to Regional Forester (Dec. 9, 1947) (author's files) (reporting on timber cutting contract between the Kaasan community and the Timber Development Corp.); Memorandum from A. W. Hodgman, Forest Manager, to C. M. Archbold, Division Supervisor (Dec. 8, 1947) (author's files) (reporting investigation on a possible Tlingit sale of timber on aboriginal land claimed by the Kaasan Village); Letter from Lyle F. Watts, Chief, to Georgia Hardwood Timber Company (Dec. 10, 1947) (author's files) (asserting "the Indians have no authority to sell the timber on the national forest land.").

84 Statement of Thomas L. Jackson, Timber Committeeman of the Kake Indian Village (undated) (author's files).

85 *Miller v. United States*, 159 F.2d 997 (9th Cir. 1947).

86 *Miller* held the government is liable for taking Tlingit tidelands. It reached this result in a round-about way. The court first recognized aboriginal title, then ruled that the Russia Treaty extinguished it. Nonetheless, the court still awarded damages, because it determined that Congress has repeatedly recognized and protected a Tlingit right to possess traditional lands. For example, the Alaska Organic Act of 1884 provides that Indians "shall not be disturbed in the possession of any lands actually in their use or occupancy." *Miller* sent shockwaves to the Forest Service, because the disturbance of Tlingit land use and possession was at the core of its administration of the TNF.

87 Joint Resolution, 61 Stat. 920 (August 8, 1947).

88 Heintzeman's letter to Region 10 (May 27, 1947) (author's files) (Reporting on the congressional hearing on the bill and complaining about Tlingit opposition) suggests that he went to Washington D.C. to lobby for the measure.

89 *Tee-Hit-Ton*, 348 U.S. at 275.

90 Rakestraw (2002) at 127.

91 *Id.*

92 Timber-hungry Japanese would establish a second pulp mill at Sitka in 1959. *Id.* at 128.

93 Wilkinson (2005).

94 *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *United States v. Sandoval*, 231 U.S. 28 (1913).

95 *United States v. Alcea Band of Tillamooks et al.*, 329 U.S. 40, 58 (1946) (Reed, J., dissenting).

96 The Tlingit brief in the Supreme Court is reproduced at 1954 WL 72830.

97 Sec. 8, Organic Act for Alaska of May 17, 1884, 23 Stat. 24.

98 Sec. 27, Act of June 6, 1900, 31 Stat. 321, 330.

99 *Tee-Hit-Ton*, 348 U.S. at 280.

100 *Id.* at 281 (quoting *Beecher v. Wetherby*, 95 U.S. 517, 525).

101 *Id.* (quoting *Beecher*).

102 *Id.*

103 *Id.* at 282.

104 *Id.* at 290-291.

105 *Id.* at 279.

106 Newton (1980) at 1241-1242.

107 *Tee-Hit-Ton*, 348 U.S. at 289-90.

108 *Id.* at 288-289.

109 *Id.* at 278. The Court took the “all-Indians-are-alike” approach, even though the Tlingit lived in major permanent communities and enforced sanctions for violating their property rights and extended them to the early settlers.

110 *Id.* at 288.

111 *Id.* at 289.

112 *Id.* at 290.

113 Rakestraw (2002), pp. 139-145, 155-176.

114 *Tlingit and Haida Indians v. United States*, 389 F.2d 778, 791 (Court of Claims, 1968).

115 49 Stat. 388.

116 43 U.S.C. §§ 1601 et seq. The complex statutory settlement scheme is described in *Cohen's Handbook of Federal Indian Law* (Lexis Nexis, 2005 ed.), § 4.07[3].

117 Rakestraw (2002), pp. 159-160.

118 For example, the Tlingits are still implementing their land entitlements under ANCSA, nearly 30 years later. In addition, they must now contend with some environmentalists who consider *Haa Aani* their new fiefdom, as well as Forest Service hold-outs who harbor old notions of conquest and dominionism. However, the days of absolute rule of *Haa Aani* by the Forest Service as a *de facto* colony are gone.

119 *Cohen's* (2005 ed.), § 4.07[3][a]. The extinguishment of aboriginal hunting, fishing, and gathering rights by ANCSA was preceded by the Supreme Court decision in *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), which subjected Tlingit trap fishing to state regulation.

120 16 U.S.C. §§ 3101 et seq. That complex scheme and the enormous on-going efforts to implement it are described in *Cohen's, supra*, § 4.07[3][c].

121 Record of Decision entered by Regional Forester Dennis E. Bschor (Feb. 24, 2003), pp. 19, 26.

122 *See, Tennessee Valley Authority v. Hill*, 437 U.S. 154, 180 (1978).

123 *Palila v. Hawaii Dept. of Land and Natural Resources*, 471 F. Supp. 985, 994995 (D. Haw. 1979). *See, Tennessee Valley Authority v. Hill*, 437 U.S. at 168-169 (the social and scientific costs attributable to the disappearance of a species cannot be calculated); *Kandra v. United States, supra* (extinction is the *ultimate harm*); *State of Ohio v. U.S. Dept. of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (animals have value that cannot be captured by their monetary worth); *Palila v. Hawaii Dept. of Land and Natural Resources, supra* (endangered species are of the utmost importance to mankind); *Rio Grande Silvery Minnow v. Keys*, 333 F.3d 1109 (10th Cir. 2003) (Endangered species take precedence over the “primary mission” of federal agencies.)

124 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, [2001] IACHR Petition No. 11 577.

125 *Id.*

126 *Maya Indigenous Community of the Toledo District v. Belize*, Case No. 12.053, Report No. 40/04, Inter-Am. C.H.R. OEA/Ser.L/V/II.122 Doc. 5 rev, 1 at 727 (2004), ¶ 1, (<http://www1.umnn.edu/humanrts/cases/40-04.html>).