



**To:** Subcommittee for Indigenous Peoples, Republican Members  
**From:** House Committee on Natural Resources Republican Staff; Rob MacGregor ([Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov)) (202-424-9616)  
**Date:** February 28, 2022  
**Subject:** Republican Roundtable “The Alaska Native Claims Settlement Act at 50: Successes and Opportunities for the Next 50 Years”

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On **March 1, 2022, at 2:00 p.m. EST**, Republicans of the Subcommittee for Indigenous Peoples of the United States will hold a roundtable titled “The Alaska Native Claims Settlement Act at 50: Successes and Opportunities for the Next 50 Years.” All Members of the House Committee on Natural Resources are invited to participate. This will be a hybrid roundtable. Witnesses will attend virtually. Members may participate in person in room CVC 217 or virtually using their laptops from another location. Viewers may observe the roundtable on the [Committee's YouTube page](#).

Member offices are requested to notify Baylee Seeman ([Baylee.Seeman@mail.house.gov](mailto:Baylee.Seeman@mail.house.gov)) by **5:00 p.m. EST on Monday, February 28, 2022**, if their Member intends to participate in person in CVC 217 or from another location.

## I. KEY MESSAGES

- This roundtable discussion will be an opportunity for Members to learn more about the Alaskan tribal system created by the Alaska Native Claims Settlement Act (ANCSA) of 1971.
- At its inception, ANCSA was a new model of settling Native land claims in Alaska, departing significantly from the reservation system common throughout the lower 48 United States. ANCSA makes Alaska Native corporate ownership foundational to Alaska’s tribal system.
- ANCSA created Native-controlled Alaska Native Corporations (ANCs), which were designed to provide the opportunity for self-determination for Alaska Natives and settle aboriginal land claims that had been unresolved for more than 100 years.

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- Over the past 50 years, ANCs, Alaskan Tribal governments, and Native non-profits have created a unique, interconnected system to support and encourage the economic and social wellbeing of all Alaska Natives.

## II. WITNESSES

- **Hallie Bissett**, Executive Director, Alaska Native Village Corporation Association (ANVCA), Anchorage, AK
  - ANVCA promotes the success of Village Corporations and protection of Native lands through education, advocacy, outreach, and sustainability.
  - Village corporations have surface rights on the lands they own. Protection of Native lands and cleaning up contaminated lands, as well as government consultation with ANCs will likely be topics of discussion for this witness.
- **Joe Nelson**, Co-Chair, Alaska Federation of Natives (AFN), Anchorage, AK
  - AFN is the largest statewide Native organization in Alaska, representing more than 140,000 Native peoples – about one out of every five Alaskans.
  - AFN is a forum that is particularly important given the diverse opinions and views that can exist among various Alaska Natives and Alaska Native entities.
  - AFN was formed in 1967 and primarily worked to achieve passage of ANCSA in its early years. AFN advocates on behalf of Alaska Natives to promote job growth and workforce development, greater self-determination, and access to federal resources. Its policy objectives are selected at its annual conventions.
- **Stephen Maxie**, Chairman, Native Village of Napaskiak, Napaskiak, AK
  - The Native Village of Napaskiak is on the Kuskokwim River and is within the Yukon-Kuskokwim Delta, which has challenging topography and many rural villages, creating unique access concerns. Since villages don't own trust land, all Native owned land is owned by the local ANCs.
- **Gloria O'Neil**, President/CEO, Cook Inlet Tribal Council (CITC), Anchorage, AK
  - CITC is a Tribal nonprofit organization serving the Alaska Native and American Indian people residing in the Cook Inlet region of southcentral Alaska.
  - The witness also serves as Chair of the National Commission on Native Children so may also speak to the needs of youth and the next generation and how tribes, ANCs and Native organizations support those needs.

- **Kim Reitmeier**, President, ANCSA Regional Association (ARA), Anchorage, AK
  - ARA promotes and fosters continued growth and the economic strength of the Alaska Native regional corporations for the benefit of their Alaska Native shareholders and communities.
  - Regional corporations are generally larger than the village corporations and therefore can be more diversified.
  - As the owners of subsurface estate on ANCSA lands and subsurface natural resource development projects, they are well positioned to speak to the unique aspects of these resource development projects.

### III. The Alaska Native Claims Settlement Act (ANCSA) and the Alaska Tribal System

#### *ANCSA Background*

President Nixon signed ANCSA into law in 1971 (P.L. 92-203) to settle land claims from aboriginal Alaska Natives which had gone unresolved for more than 100 years since the U.S. purchased Alaska from the Russian empire in 1867 (Treaty of Cession)<sup>1</sup>. Under the law, Alaska Natives received a \$962.5 million settlement payment and roughly 44 million acres of land, which was divided between almost 200 village corporations and 12 regional corporations established by the legislation. ANCSA revoked all Native reservations in existence in Alaska in 1971 except for the Metlakatla Indian Community of the Annette Island Reserve.

The \$962.5 million was distributed through the Alaska Native Fund (Fund). ANCSA authorized deposits of \$462.5 million into the Fund over a period of 11 years.<sup>2</sup> The rest of the



**Figure 1:** Alaska Native Lands

**Source:** Congressional Research Service, using data from the U.S. Census Bureau (Census), U.S. Department of the Interior (DOI), State of Alaska, and ESRI.

<sup>1</sup> 15 Stat. 539.

<sup>2</sup> 43 U.S.C. §1605; Newton, Cohen’s Handbook, §1.07.

money, \$500 million, came from oil and gas revenues from within the State of Alaska that were also deposited into and distributed through the Fund.<sup>3</sup>

ANCSA differs from the reservation system for tribes in the lower 48 states. Instead of the reservation system, it created village and regional corporations (together commonly referred to as “Alaska Native Corporations” or “ANCs”) to receive land under the settlement and disperse the payments to Alaska Natives. The ANCs created by ANCSA are organized by village and by region within the State of Alaska, with ANCSA specifying the criteria for individuals, groups, and villages to organize and own the corporations.

Generally, ANCs are state-chartered, private, for-profit businesses with the statutory mandate to provide health, education, and welfare benefits to their Alaska Native shareholders. ANCSA mandated that both regional and village corporations be owned by enrolled Alaska Native shareholders. The 1991 Amendments to ANCSA (P.L. 105-333) confirmed Native control over ANCs and gave more authority to corporations and their shareholders to change the shareholder structure, as well as create new classes of stocks that could benefit younger generations of Alaska Natives not included as original shareholders. Each ANC controls their own corporate structure and structures. Types of stock offered can vary from corporation to corporation.

#### *Land Allocations*

The land ANCs received under ANCSA is considered private property and owned in fee simple, unlike reservation lands in the lower 48 states which are held in trust by the Federal government. Under ANCSA, each regional and village corporation received a set number of acres of land to be transferred to them. However, for acres of land each village corporation received, the village corporation obtained fee title to the surface estate and the local regional corporation received fee title to the subsurface estate.

After the passage of ANCSA, regional and village corporations selected land in and around native villages in the state in proportion to their enrolled populations. Village populations during the 1970 census largely determined acreage amounts for land entitlements to village corporations.<sup>4</sup> ANCSA created another process for ANCs to select lands for withdrawal, which would no longer be subject to public laws like mining and mineral laws. Most unappropriated federal land in Alaska was withdrawn and became available for selection by ANCs.<sup>5</sup> Village corporations were required to select lands from withdrawn lands within three years of 1971, and regional corporations were required to select lands within four years of 1971. Upon selection of the lands, the federal government was directed to convey the property to the appropriate ANC.

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<sup>3</sup> 43 U.S.C. §1608; Newton, Cohen’s Handbook, §4.07[3][b][ii][B].

<sup>4</sup> 43 U.S.C. §1613.

<sup>5</sup> Stephen S. Sorenson, “Split Estates Under the Alaska Native Claims Settlement Act,” Rocky Mountain Mineral Law Institute, 2005, p. 3, <https://www.rmmlf.org/publications/digital-library/split-estates-under-the-alaska-native-claims-settlement-act>.

### *Revenue Sharing*

Revenue sharing is a crucial aspect of ANCSA. Because the potential for resource development differed between regions, ANCSA Sections 7(i) and 7(j) were included to help equalize ANC revenues from activities such as oil and gas development, mineral development, and timber sales. Under Section 7(i) of ANCSA, each of the 12 regional corporations share 70 percent of the net profits they receive from developing the natural resources in their regions with the other regional corporations. These shared revenues, called “Section 7(i) distributions”, are divided among all the regional corporations based on the number of original shareholders enrolled in each region. Under 7(j) of ANCSA, each regional corporation shares 50 percent of the Section 7(i) payments it receives with the village corporations in its region, and with those shareholders who were not enrolled in a village corporation (at-large shareholders). The Section 7(j) payments are divided based on the number of original shareholders enrolled in each village corporation and the number of original at-large shareholders.

### *Alaska Native Villages and Tribal Governments*

Alaska Natives have had tribal governments since before the arrival of Europeans, and a few tribes were federally recognized before the passage of ANCSA in 1971. However, the vast majority of tribes in Alaska were confirmed as officially federally recognized in 1993, when the Bureau of Indian Affairs (BIA) added many Alaska Native villages to the list of federally recognized tribes kept as eligible to receive services from BIA with the immunities and privileges available to other federally recognized tribes in the lower 48.<sup>6</sup> Congress then passed the Federally Recognized Indian Tribe List Act of 1994 (P.L. 103-454; also known as the “List Act”), which requires the Secretary of the Interior to publish a list each year of federally recognized tribes that have a formal government-to-government relationship between the tribe and the federal government.

In Alaska, there are 229 tribes and Alaska Native villages that are federally recognized and have their own tribal governments. Most tribes in Alaska have adopted constitutions, either under the Indian Reorganization Act of 1934 (P.L. 73-383), or simply under their own tribal authority to organize their government. Tribes can be village-based, like the Native Village of Napaskiak, or region-based, like the Central Council of Tlingit and Haida.

Tribes in Alaska generally do not have trust lands like tribes in the lower 48 United States. Instead, tribal governments work with ANCs as the Native landowners, and with municipal governments and the State of Alaska on jurisdictional questions, particularly with respect to issues of public safety and justice.

Because ANCs are business entities and not tribes, they do not have a government-to-government relationship with the United States and are not included in the list of federally recognized tribes required by the List Act. However, because ANCs are the Native

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<sup>6</sup> “Interior Publishes Revised List of Alaska Native Tribes Eligible for Services from Bureau of Indian Affairs” Department of Interior. Oct. 15, 1993. *historical press release, available at:* <https://www.bia.gov/as-ia/opa/online-press-release/interior-publishes-revised-list-alaska-native-tribes-eligible>

landowners in Alaska and they provide services to Alaska Natives, the federal government is generally required to consult with ANCs with respect to federal actions and policies that could affect ANCs. Typically, consultations with ANCs have happened at the same time as with Alaska Native Villages and Tribes. However, the Biden Administration has, on occasion, separated the consultation sessions holding separate sessions for ANCs and Alaska Native tribes.

Tribal governments can offer a wide variety of services to their tribal members and residents of Alaska Native villages, including: health care, social services, housing, utilities, educational assistance, employment, and judicial services. These services may be delivered directly through the tribal government or through Native nonprofits or Tribal organizations. The type of services offered by tribal governments vary throughout Alaska. Services through tribal governments or Native nonprofits are generally provided through contracts and compacts from the Department of the Interior and the Indian Health Service, and through grants and contracts with various other state and federal agencies.

### *Benefits of the ANCSA System*

The resulting ANCSA system in Alaska that includes ANCs, tribal governments, and Native nonprofits, provides services and benefits to Alaska Natives throughout Alaska. Generally, the benefits of this interconnected system, with various Native entities in various programs, can include specialization and capacity building.

ANCs may provide varied benefits to Alaska Natives. In addition to dividends paid out to shareholders, they may offer benefits such as scholarships, internships, burial and funeral support, and support to initiatives that educate on native languages and traditional culture. Tribal governments may also provide a wide variety of services. Though they vary from village to village, they include many of the traditional local government functions like public safety, law and order, governance, and courts. Native nonprofits, like the Cook Inlet Tribal Council, are usually the engines of social services for housing, workforce development, addiction treatment, and health care services. In addition, Native nonprofits, or consortia, are able to function over a larger area than one village and may provide services across a regional area.

The for-profit nature of ANCs has also been an economic benefit to Alaska. Since the passage of ANCSA, ANCs have become an integral part of Alaska's economy. ANCs employed approximately 15,000 Alaskans in 2018 as well as thousands more worldwide.<sup>7</sup> More than 12 percent of Alaska's 365 million acres are privately owned by ANCs, making Native Corporations the largest private land owners in the state.<sup>8</sup> Natural resource development of Native-owned surface and subsurface estates provides income and economic stability for Alaska Natives. Revenues from the Alaska Native regional corporations benefit the overall economy of Alaska, providing jobs and wages that circulate

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<sup>7</sup> Resource Development Council, Inc. "Alaska Native Corporations Overview." *available at:* <https://www.akrdc.org/alaska-native-corporations>.

<sup>8</sup> *Id.* and University of Alaska Anchorage. "The ANCSA Top 10 List" *available at:* <https://www.ciri.com/pdfs/CIRI-SHR-00011.pdf> & <https://www.akrdc.org/alaska-native-corporations>

throughout the state. In fiscal year (FY) 2017, Alaska Native regional corporations had a combined revenue of \$9.1 billion.<sup>9</sup>

### *Small Business Administration 8(a) Contracting*

In 1986, Congress passed legislation that allowed ANCs to participate in the Small Business Administration's disadvantaged business program, known as the "8(a) program". The program sets aside federal contracts for minority-owned or other disadvantaged companies. This has further allowed diversification and expansion of Alaska Native owned businesses.

To be eligible for the 8(a) Program, a business must be a small business which is unconditionally owned (at least 51 percent) and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrate potential for success.<sup>10</sup> Indian tribes, ANCs, and NHOs (collectively referred to as Native 8(a) companies) are afforded certain exemptions that are not available to other 8(a) companies, such as an exemption from the competitive threshold that applies to individually owned firms, and the ability to operate multiple 8(a) companies. ANCs also have a specific designation making them the only presumed economically disadvantaged group. All other applicants must provide evidence that they are economically disadvantaged.

With the approval of the SBA, section 8(a) firms can benefit from a variety of SBA services including the ability to:

- Efficiently compete and receive set-aside and sole-source contracts;
- Receive one-on-one business development assistance from dedicated Business Opportunity Specialists focused on helping firms grow and accomplish their business objectives;
- Pursue opportunities for mentorship from experienced and technically capable firms through the SBA Mentor-Protégé program;
- Connect with procurement and compliance experts who understand regulations in the context of business growth, finance, and government contracting;
- Pursue joint ventures with established businesses to increase capacity;
- Qualify to receive federal surplus property on a priority basis; and
- Receive free training from SBA's 7(j) Management and Technical Assistance program.

### *Opportunities for Improvement*

Despite the successes of Alaska's tribal system under ANCSA, there are several areas for improvements, which Alaska natives may identify:

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<sup>9</sup> Resource Development Council, Inc. "Alaska Native Corporations Overview."

<sup>10</sup> 13 C.F.R. §124.101

Land conveyances under ANCSA remain unfinished. Though it has been more than 50 years since ANCSA was signed into law, there is still a large number of acres that have not been transferred to some ANCs. The remaining ANCSA settlement is 1.8 million acres out of the total 45.7 million ANCSA entitlement.<sup>11</sup> Without the completed conveyances, ANCs are not able to do natural resource development on the lands they are owed, which can affect revenues of ANCs and in turn benefits that go to Alaska Natives.

Contaminated ANCSA lands need cleanup. Over the years, many lands that were conveyed to ANCs have been found to have been environmentally contaminated prior to their conveyance as a result of their previous uses by the federal government. In most cases, contamination was either not cleaned up before conveyance of the lands or was discovered after conveyance had occurred. In 2016, the Bureau of Land Management updated to their 1998 report to Congress on the Hazardous Substance Contamination on ANCSA Lands in Alaska.<sup>12</sup> As of 2015, the Alaska Department of Contamination (ADEC) recorded 920 contaminated sites conveyed to ANCs.<sup>13</sup> Of those identified 920 sites, only 328 had cleanup completed as of 2015, with another 242 sites with land use controls in place.<sup>14</sup> It has been 50 years since ANCSA was signed into law, and around 2/3rds of identified sites have not been completely cleaned up and available to ANCs for full economic use. In many cases, remediation of the contamination is necessary to fully reap the benefits the land may provide to Alaska Natives for subsistence practices, economic activities, resource development, or conservation. Due to the challenging terrain and remote nature of most of Alaska's 365 million acres, it is very possible new contaminated sites will be discovered in future years.

This issue is coming to a head. In January of 2022 the State of Alaska gave notice to the Department of the Interior's Bureau of Land Management of its intent to sue the agency to encourage cleanup of those lands contaminated by federal government activity.<sup>15</sup>

One-size fits all statutory definitions may not address all facets of the ANCSA system. Litigation recently arose after passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) as to whether ANCs were included in the definition of "tribe" within the Indian Self Determination and Education Assistance Act (ISDEAA). In June 2021, the Supreme Court ruled that ANCs were eligible for CRF funds because the definition of a tribe included Alaska Native Corporations.<sup>16</sup> The Supreme Court reasoned

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<sup>11</sup> Alaska Land Transfer Program. Bureau of Land Management. *available at:* <https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land-transfer>

<sup>12</sup> "Report to Congress: Hazardous Substance Contamination of Alaska State Native Claim Settlement Act Lands in Alaska" Bureau of Land Management. 2016, *available at:* [https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom\\_Alaska\\_ContaminatedLands\\_ReporttoCongress\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom_Alaska_ContaminatedLands_ReporttoCongress_0.pdf).

<sup>13</sup> *Id.* at p. 12.

<sup>14</sup> *Id.* at p. 14.

<sup>15</sup> Liz Ruskin, "Alaska prepares to sue feds over contamination on Native corporation land" Alaska Public Media. Jan. 3, 2022, *available at:* <https://www.alaskapublic.org/2022/01/03/alaska-prepares-to-sue-feds-over-contamination-on-native-corporation-land/>.

<sup>16</sup> *Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. \_\_\_\_ (2021). *available at:* [https://www.supremecourt.gov/opinions/20pdf/20-543\\_3e04.pdf](https://www.supremecourt.gov/opinions/20pdf/20-543_3e04.pdf).



that ANCs were included in the ISDEEA definition of “tribe” because of the services that ANCs provide to Alaska Natives.

It is unavoidable that Congress will continue to legislate in ways that affect Alaska Natives and ANCs. As such, policymakers should be mindful of the definitions they use when they intend to include ANCs and other tribal organizations in programs that serve Native peoples and Native communities in the United States. Without careful consideration of statutory definitions Alaska Natives may be inadvertently left out of programs for which Congress intended to make them eligible and to which they are entitled under the federal trust responsibility. Being aware of the areas that ANCs operate, like lands management, will help ensure effects on the corporations will be considered.

ANCs exercise self-determination through their corporate structure. The 1991 ANCSA amendments provided some changes to the ANC structure and allowed corporations to make the decision individually if they wanted to issue further stock to younger generations of Alaska Natives. Initially, stock in ANCs was only issued to Alaska Natives alive in 1971. After the 1991 amendments, each ANC was able to determine if they wanted to change that structure. In 2006, Congress reduced the number of shareholders needed to add a new class of shareholders, with provisions for ANCs that set a higher standard in their articles of incorporation. Any further changes to the corporate structure of ANCs that Congress may enact should keep in mind questions of Native self-determination and the rights of Native shareholders to make changes to the structure of their ANCs.

Extension of Federal Subsistence Priorities. Subsistence fishing and subsistence hunting are important for the economies and cultures of many families and communities in Alaska. An estimated 36.9 million pounds of wild foods are harvested annually by rural subsistence users.<sup>17</sup> Subsistence uses of wild resources exist alongside other important uses of fish and game in Alaska and are especially important for most rural families, who depend on subsistence hunting and fishing as sources of nutrition and cultural practices.

Subsistence is also a specific issue for Alaska Natives because there are generally no reservations and no treaty lands on which to conduct traditional fishing, hunting and harvesting practices. ANCSA did not directly address subsistence practices, which were later protected when Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487) in 1980. Any legislation impacting subsistence rights should include discussion among all affected parties in Alaska.

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<sup>17</sup> “Subsistence in Alaska” Alaska Department of Fish and Game *available at:* <https://www.adfg.alaska.gov/index.cfm?adfg=subsistence.main>