

Letter from Gustavus

The Alaska National Interest Lands Conservation Act: An Open Letter

June 19, 1993

Mr. George Frampton
Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior
Interior Building
Washington, D.C. 20240

Dear Mr. Secretary:

I am a recently retired National Park Service ranger-historian living in Alaska, having worked in the Alaska parks since 1975. I was on the NPS task force during the “d-2” period as task force historian and keyman for Yukon-Charley, then had various assignments as regional historian and park historian through 1989.

I wish to urge you to urge appropriate congressional committees to launch a long-term oversight investigation into the implementation of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). I have no doubt that you have followed the sorry history of that implementation—its dominance by an anti-theoretical congressional delegation and the Watt–Hodel ideologues. In sum, the National Interest of ANILCA has been travestied in favor of special economic and user interests without regard to congressional intent and the plain statutory language. These abuses have been big and little, and pervasive. They have created precedents with major debilitating effect on protected lands across Alaska. Backed by a species of administrative terror (head-loppings and exile), micro-management for special interests has spawned soft, even craven administrative patterns amongst the various conservation agencies, in the process degrading the

people and missions of those agencies—and thus eroding the land base itself. Many who have drawn the line have been shipped out or rendered impotent, leaving the public trust to the more compliant. Thank God, at operational levels there are many exceptions to this devolutionary process.

My point is that so much has gone wrong, and by inertial momentum is still going wrong, at such deep levels, that a major review of the implementation process is necessary to rectify ANILCA's 12-year-long false start under the Reagan-Bush regime. A new setting of strategic goals based in law, accompanied by roll-back of bad precedents and revitalization (including selective replacement) of personnel, is the bare minimum program for realization of ANILCA's promise. A close coordination between the Department and Congress via oversight hearings, General Accounting Office investigations, and rigorous agency action is the bare minimum level for such a venture. Moreover, the public deserves to know how badly its trust has been traduced. And this Administration could use a forum on matters of real substance in a zone of cohering national concern. In addition, doing something about perverted public lands policy in high-profile Alaska would open the way for roll-back and reform of such policy in the rest of the country. For starters, I offer four general and two specific zones of inquiry, starting with the general:

1. The wilderness studies called for by ANILCA. I know that you know that the lines were drawn by former Assistant Secretary Bill Horn, *et al.*, without regard to the criteria of the Wilderness Act, *before* the study teams began their work.

2. The maladministration of ANILCA's subsistence title. By way of joint state-federal administration of this title, a flood of non-qualifying people (non-rural and lacking traditional and customary ties to the land) have overwhelmed wildlife and fisheries resources in Alaska, with devastating effect on rural, land-based people and the cultural values ANILCA sought to preserve. This, combined with assault-rifle sport-hunting hordes, has placed true subsisters in dire competition for livelihood. A permit system, going back to the intents of the statute, is essential.

3. RS2477, Historic Roads and Trails. With benign support from the delegation and the DOI, the map of Alaska has been splattered with spaghetti across conservation units and other federal lands. The prevailing loose standards for granting such state-administered access threatens to dismember parks, refuges, and other public lands. This effect is of course intended.

4. Navigable waters. Ditto. A floating twig qualifies a stream for navigability in the state-DOI conspiracy.

There is more, much more. But this gives a window on the kinds of general precedents that are making Swiss cheese out of the ANILCA legacy.

Now for a couple of specifics relating to Glacier Bay National Park, at whose entrance I dwell. These same *kinds* of issues are legion in every one of the new parks and refuges created by ANILCA:

1. Proposed Vessel Management Plan. The park's sensible proposed Vessel Management Plan was revamped, as dictated by the cruise-ship industry with support from the delegation and DOI. Proposed 30% or more increases in num-

bers of cruise ships per season have no basis in scientific understanding of the bay's ecosystem. Limits were originally imposed because the increasing numbers of ships may well have contributed to the absence from the bay of humpback whales for several years in the early 1980s. The proposed plan violates the core conservation-preservation dictum: Be conservative if we don't know what the results will be, so err in favor of the resource. Well, we don't have the foggiest.

Incidentally, this proposed plan, catering to the big ships, infuriates local boaters, who also enter the bay under permit and are getting no commensurate slack. But of course they don't contribute big bucks to politicians.

The proposed Vessel Management Plan is in your office somewhere. It should be killed, or at least tabled until you can judge its iniquity and inequity. *Even at today's level of ship and flight-seeing traffic, the wilderness solitude of Glacier Bay is a thing of the past.* Dave Bohn's great book on Glacier Bay, subtitled *The Land and the Silence*, no longer applies.

2. Commercial fishing in the park. Today there is absolutely no legal basis for any commercial fishing in the park. Glacier Bay National *Preserve* (the Dry Bay area at the northwest corner of the park) does have special legislative provision for commercial fishing. Lacking such specific exceptions in law, commercial fishing is prohibited in National Parks. The Park Service has been lax in past years on this issue, resulting in a major commercial fishery operating in Glacier Bay proper. It is perfectly legitimate to proceed to legal administration, i.e., a ban on commercial fishing, by way of a set phase-out time frame, given the historical ambivalence of USNPS administration. But the premise of the current fisheries study oversteps administrative discretion: the study is to determine whether commercial fishing adversely impacts the park's marine resources, with the option of allowing regulated fishing to continue if the impacts are sustainable. Interpretation of Park Service legislation (Organic Act of 1916, NPS Administration Act of 1970, and Redwood National Park Act amendments of 1978) in the 1986 District Court decisions *National Rifle Association v. Potter* allows no such discretion, nor do our own regulations of June 30, 1983, which stemmed from the 1978 amendments. The sum and substance of our legal and regulatory mandate is that we, the Park Service, cannot allow consumptive uses in the National Parks lacking specific legislative provisions for such uses. So how can we justify a study whose upshot is a decision whether or not to allow commercial fishing in Glacier Bay?

I am not advocating dismantling the fine research unit doing this work; there is great need for long-term, in-depth research at Glacier Bay. But let's set those people to work on productive research—changing the current project design and purpose to a full-scale marine ecosystem study whose end would be a designated Glacier Bay Marine Sanctuary, by far the largest and most dynamic in the Nation.

As a resident of Gustavus, where local beneficiaries of the current Glacier Bay fishery live, I can see some accommodation to local, small-scale fishermen who, in the years since World War II (after which the park was finally staffed), have grown accustomed to this source of income and depend on it. Special legislation to that effect—tenured; strictly regulated as to take, species, and zones; and limited to local, small-scale fishermen with a provable history of use—might well be in order,

given the history of this issue at Glacier Bay, where the park has been party to the on-going fishery. But I see no authority whatever for commercial fishing in the bay—small-scale or otherwise—without special legislation. Thus a study hinged on an administrative discretion that does not exist under law or regulation contradicts our mandate; agrees with the National Rifle Association interpretation of our charge, which was rejected by the District court by way of judicial affirmation of the *preservation* nature of that charge; and poses vast precedential danger to the National Park System as a whole. In this instance, the Park Service need only obey its laws and regulations, with such accommodations as deemed appropriate, to avoid shooting itself in the foot.

This whole tangled mess, general and specific, is, I repeat, only illustrative of the multiplex kinds of problems that have grown into the fiber of the pre-ANILCA and the ANILCA lands. As for the national parklands in Alaska, they compose nearly two-thirds of the entire acreage of the National Park System. They and the other beleaguered ANILCA conservation units (not to mention the tragedy of the Tongass National Forest) are surely worthy of some emergency-room care by this Administration after the wrecking-ball experience of the last twelve years. And, as noted above, a cleansing issue, positive and unquestioned by the vast majority of the American people, could be a great boost for this Administration, putting it on track for positive accomplishment in a Nation begging for leadership. I dearly want this Administration to succeed, for otherwise we face another Dark Age in all realms of our society and heritage.

Sincerely yours,

William E. Brown