



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

**ALASKA NATIVE CLAIMS SETTLEMENT ACT:  
THE FIRST TWENTY YEARS**

**Circumpolar and Scientific Affairs**

E78  
.A3  
S567  
c.1

Canada

E78.A3

S567

C.1

**ALASKA NATIVE CLAIMS SETTLEMENT ACT:  
THE FIRST TWENTY YEARS**

**CIRCUMPOLAR AND SCIENTIFIC AFFAIRS  
PUBLICATION SERIES**

**92-07**

**LENNARD SILLANPAA**

**June 1992**

## ABSTRACT

### ALASKA NATIVE CLAIMS SETTLEMENT ACT: THE FIRST TWENTY YEARS

The Alaska Native Claims Settlement Act (ANCSA) of 1971 extinguished all Native claims of aboriginal title by the Indians, Aleut and Inuit living in Alaska, including aboriginal hunting and fishing rights. Alaska native peoples received a total cash settlement of \$962.5 million and title, including both surface and subsurface, to almost 1/9th of the total land mass of Alaska. Congress also created twelve profit-oriented regional corporations and more than 200 Native village corporations. All Alaska Natives living at the time of the enactment could be enrolled as shareholders in these corporations which, in turn, administered the lands that were conveyed to Native groups. Today, there are two categories of Alaska Native: those enrolled as ANCSA shareholders and those recognized as Alaska Natives but having no shares in ANCSA corporations. Only ANCSA shareholders can exercise control of ANCSA corporations. A number of studies indicate that many ANCSA shareholders would readily sell their stock for cash. However, a fundamental concern for most Alaska Natives is that if they lose control of their corporations, they will also lose the lands obtained under ANCSA. This vulnerability underlines the precarious position of their assets.

## RÉSUMÉ

### L'ALASKA NATIVE CLAIMS SETTLEMENT ACT: LES PREMIERS VINGT ANS

L'adoption de l'*Alaska Native Claims Settlement Act (ANCSA)* ("Loi concernant le Règlement de la Revendication des Autochtones de l'Alaska), en 1971, a fait disparaître tous les droits territoriaux des Amérindiens, Aléoutes et Inuit vivant en Alaska, y compris tous leurs droits de chasse et de pêche. Ces autochtones recurent une somme de 962,5 millions \$ et la propriété de presque 1/9 de la masse continentale de l'Alaska (sol et sous-sol). Le Congrès a également prévu la création de douze sociétés régionales à but lucratif, ainsi que de plus de 200 sociétés communautaires autochtones. Tous les autochtones de l'Alaska qui étaient vivants au moment de l'adoption de la loi pouvaient devenir actionnaires de ces sociétés, chargées d'administrer les terres qui leur avaient été cédées. Aujourd'hui, on remarque deux catégories d'autochtones en Alaska : ceux qui sont actionnaires d'une société créée en vertu de l'ANCSA et ceux qui ne le sont pas, même s'ils sont reconnus comme autochtones alaskiens. Seuls les actionnaires ANCSA peuvent diriger les sociétés créées en vertu de l'ANCSA. Les études menées depuis dix ans montrent que beaucoup d'actionnaires ne comprennent pas le système de leur société et échangeraient volontiers leur part contre un montant en espèces. Cependant, la plupart des autochtones de l'Alaska craignent essentiellement qu'en perdant la responsabilité de leurs sociétés, ils perdront aussi les terres qui leur ont été cédées en vertu de la loi. Cette vulnérabilité fait ressortir la précarité des biens que le Congrès a accordés aux autochtones alaskiens.

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	iii
<b>1. INTRODUCTION</b> .....	1
1.1 Background to ANCSA .....	1
1.2 General Provisions of ANCSA .....	4
1.3 Outline for this Analysis .....	5
<b>2. IMPLEMENTATION OF ANCSA</b> .....	7
2.1 Problems of Implementation .....	7
2.2 ANCSA 1985 Study .....	8
2.2.1 The ANCSA Corporations .....	9
2.2.2 Opinions of ANCSA Shareholders .....	11
2.2.3 Summary .....	13
2.3 Impact of Berger Report .....	13
<b>3. ANCSA AMENDMENTS OF 1987 - THE "1991 LAW"</b> .....	17
3.1 Land Protection .....	17
3.2 Settlement Common Stock .....	18
3.3 Duration of Restrictions on Settlement Common Stock .....	19
3.4 Dissenters' Rights .....	19
3.5 Options on Stock Issuance .....	20
3.6 Land Transfer Options .....	21
3.7 Welfare Eligibility .....	22
3.8 Tax Exemption on Alaska Native Fund Distribution .....	22
3.9 Federal Indian Programs .....	22
3.10 Disclaimer .....	22
<b>4. EVOLUTION OF ANCSA REGIONAL CORPORATIONS 1974-90</b> .....	23
4.1 Early Development of ANCSA Corporate Strategies .....	23
4.2 Net Operating Loss (NOL) Sales .....	24
4.3 Current Financial Status of ANSA Regional Corporations .....	25
<b>5. OTHER ANCSA-RELATED ISSUES</b> .....	27
5.1 Subsistence Harvesting .....	27
5.2 Corporate Takeovers .....	28
5.3 Tribalism .....	29

5.4	Alcohol and Drug Abuse by Alaska Natives .....	29
5.5	ICC Alaska .....	30
5.6	Senate Hearing on Alaska Native Languages .....	30
5.7	Joint Federal-State Commission .....	30
5.8	Land Exchanges .....	31
<b>6.</b>	<b>RELEVANCE TO CANADA .....</b>	<b>33</b>
6.1	Some Comparisons .....	33
6.2	Issues of Concern to Canada .....	35
<b>7.</b>	<b>CONCLUSIONS .....</b>	<b>37</b>
<b>8.</b>	<b>APPENDIXES .....</b>	<b>41</b>
I.	RECENT DEMOGRAPHIC DATA ON ALASKA NATIVES .....	43
II.	LIST OF ANCSA REGIONAL CORPORATIONS .....	44
<b>9.</b>	<b>REFERENCES .....</b>	<b>45</b>

## EXECUTIVE SUMMARY

On December 18, 1971, the Alaska Native Claims Settlement Act (ANCSA) was signed into law by the President of the United States. This legislation extinguished all Native claims of aboriginal title by the Indians, Aleut and Inuit living in Alaska, including any aboriginal hunting and fishing rights and any pending or statutory claims. In compensation, the Alaska native peoples received a total cash settlement of \$962.5 million and title, including both surface and subsurface, to 40 million acres of land (almost 1/9th of the total acreage of Alaska). Congress also provided for the creation of 12 State-chartered, profit-oriented regional corporations and of more than 200 Native village corporations. All Alaska Natives living at the time of the enactment could be enrolled. Each would receive 100 shares of stock in a regional corporation and, if a village resident, an additional 100 shares of stock in a village corporation.

The original legislation stipulated, however, that there would only be a twenty-year period of restrictions on the trading of stock in ANCSA corporation; it is these corporations that administer the lands that were conveyed to Native groups. The original settlement act left three major issues unresolved: stock alienation; the situation of the "afterborn"--those born after December 18, 1971; and land taxation and protection. To a certain extent, these issues were addressed in the Alaska Native Claims Settlement Act Amendments of 1987; ANCSA corporations now have a number of options for dealing with shares in their corporations and on which they can take the initiative.

ANCSA created a number of potentially serious problems. Today, there are two categories of Alaska Native: those enrolled as ANCSA shareholders and those recognized as Alaska Natives but having no shares in ANCSA corporations. Only ANCSA shareholders can exercise control of ANCSA corporations. The non-ANCSA shareholder group will soon represent a majority of the Alaska Native population--if it does not already do so. Also, there have been significant demographic shifts of the Alaska Native population since ANCSA was enacted in 1971; shareholder enrolment does not necessarily reflect current realities of residence. These discrepancies can be expected to accentuate.

Studies over the past ten years indicate that many Alaska Natives are prepared to sell their stock in ANCSA corporations. Many of these shareholders have never understood the corporate system and would readily sell their stock for cash. However, a fundamental concern for most Alaska Natives is that if they lose control of their corporations, they will lose control of the lands obtained under ANCSA. This vulnerability underlines the precarious position of the assets provided to Alaska Natives by Congress.

Two Alaska Native issues that are of special concern to aboriginal peoples in Canada and other circumpolar jurisdictions are: (i) subsistence harvesting where native groups in Alaska are challenging federal and state authorities in the courts; and (ii) tribal sovereignty which is emerging as a viable grass roots political movement among Alaska Natives and raises issues that are somewhat similar to the demands of Canada's aboriginal peoples for self-government.

## 1. INTRODUCTION

The Alaska Native Claims Settlement Act enacted by the United States Congress in 1971, was, at the time, an unprecedented initiative that strived to provide Alaska Natives with opportunities to deal with modern American society. The provisions of this legislation established a modern corporate structure for the Inuit, Indian and Aleut peoples of Alaska and provided these corporations with resources such as lands and cash. ANCSA was supported at that time by the President and Congress, the State of Alaska, the oil and gas industry, and by many Alaska Native organizations. ANCSA was vastly different from earlier Indian treaties concluded by the United States government and can justifiably be seen as a major modern-day initiative by the U.S. Congress in dealing with the complex problems of aboriginal land title. ANCSA can also be seen as being completely different in scope from Canada's "Numbered Treaties" of the nineteenth and early twentieth centuries and predated by several years, the James Bay and Northern Quebec Agreement of 1975 which has been termed as the first of Canada's "modern day treaties."

### 1.1 Background to ANCSA

Archaeologists generally agree that the first people to inhabit Alaska came from Asia. The oldest archaeological evidence of human occupation dates back about 11,000 years. Alaska Natives (officially defined by most official records as Aleut, Eskimo and Indians) differ from each other in ethnic origin, language and culture. These aboriginal peoples are dispersed across Alaska occupying geographically and climatically distinct regions. In 1990, the U.S. Census enumerated 85,698 Native residents--a significant increase from 64,103 in 1980. The percentage of Natives in the overall population, however, decreased from 16.0 per cent in 1980 to 15.6 per cent in 1990 due to the migration into the State of non-Natives.

The land inhabited by Alaska's Eskimos range from Bristol Bay in the southwest, along all of Alaska's western coast, and across its northern coast. Most belong to one of two linguistic groups: the **Inupiat** who live north of Norton Sound, and the **Yupik** who live south of it. The lands these people inhabit range from arctic tundra to temperate forest. Many Inupiat are related to the Inuvialuit of Canada's Western Arctic.

Most **Aleuts** live on the Aleutian Island chain that extends some one thousand miles from southwest Alaska across the North Pacific. Their population, which has been estimated to have numbered as many as 30,000, was severely decimated from contacts with Russian traders in the 18th and 19th centuries.

Of Alaska's Indians, the **Athabascans**, consisting of seven separate groups each further subdivided into tribes or bands with their own territories, occupied Alaska's vast interior of arctic and subarctic lands. Because of the climatic extremes they faced, the Athabascans tended to be more nomadic in their search for food and residence. Two major Indian groups occupied the coasts and islands along the panhandle of southeastern Alaska: the **Tlingit**, who were more numerous and occupied

an extensive range of territory; and the **Haida**, who came from what is now Canada. In 1884, a third group, the **Tsimshians**, moved to Annette Island in Alaska from Canadian territory.

From 1742, with the voyage to Alaska of Vitus Bering, until 1867, much of Alaska was administered by Imperial Russia. There were never more than 800 Russian people in the colony; the main administrative centre was in Sitka. The Russians were interested in gathering and trading furs, not in developing Alaska's lands or making Alaska their home. They made no attempt to take the lands of these indigenous inhabitants since they had no need for owning title. These Russian commercial entrepreneurs did cause great disruption to the way of life of first the Aleutians and then of other Native groups who reside more inland. Many Alaska Natives died as a result of fighting against the Russians or from diseases acquired through contact with them; others were enslaved into the Russian commercial system. In 1867, with the fur enterprise no longer profitable, Russia sold Alaska to the United States. The treaty that conveyed Alaska to the United States implicitly reserved to the U.S. Congress the power to determine Alaska Natives' rights to the land.

Soon after this purchase, U.S. commercial fishermen began harvesting and marketing salmon; this conflicted with Native subsistence practices in many areas. Discoveries of gold around the turn of the century brought the first great migration of non-Natives to Alaska; this resulted in the depletion of wildlife and a further disruption of Native lifestyles. U.S. homestead laws were extended to the Alaskan territory bringing in additional settlers. World War II brought a major increase in Alaska's non-Native population as Alaska acquired a strategic defense position for the Pacific and later the Arctic; many military bases were built. By 1950, nearly 75 per cent of Alaska's population were non-Natives. The oil boom of the 1970's would lead to a further expansion of Alaska's non-Native population.

Russian and American exploitation of Alaska's resources have damaged the economic bases of the cultures of Alaska's native peoples since outside interests and the indigenous residents competed for the land resources. Many of Alaska's native peoples came to adapt to the cash economy by moving to the urban centres for employment. However, during the legislative proceedings that led to ANCSA, a 1968 study conducted for Congress found that the subsistence lifestyle was still a dominant and characteristic way of life for most of the Native communities where more than three-fourths of the Inuit, Indians and Aleuts of Alaska were living.

Unlike the experiences of Native Americans in other parts of the United States, Alaska had no history of conquest and treaty making and there had not been any large scale forcible removals of the aboriginal inhabitants from their lands. Many had been able to continue to live on their lands relatively free from interference. However, the question of aboriginal title was largely ignored.

In 1936, Congress extended the Indian Reorganization Act (IRA) to Alaska. The objective of this legislation was to enable Indian tribes to interact with and adapt to a modern society as governmental units rather than forcing the assimilation of individual Indians. Tribal self-government was sanctioned by this legislation under constitutions approved by the Secretary of the Interior. This meant the possibility of setting aside large areas for the use and occupancy of Alaska's Natives. This legislation, however, had only a minimal impact on Alaska; a combination



of World War II pressures, territorial politics, bureaucratic conflict, Native mistrust and adverse court decisions defeated IRA policy in Alaska. It is interesting to note, therefore, that, today, more than thirty years after statehood and twenty years after ANCSA, many Alaska village corporations created under ANCSA are examining the provisions of the Indian Reorganization Act as a means of more effectively protecting the lands they acquired under ANCSA.

In legislating the Alaska Statehood Act in 1958, the United States Congress tried to ensure Alaska's economic viability by authorizing it to select and obtain title to some 103 million acres from "public lands of the United States which are vacant, unappropriated, and unreserved." The State was also permitted to lease lands for which it received "tentative approval" under section 6 of the Statehood Act. Congress at the same time provided in section 4 of the Statehood Act that Alaska must disclaim all right or title to lands "the right or title to which may be held by Eskimos, Indians, or Aleuts."

However, Congress had not--either in the Statehood Act or in earlier legislation--defined what "right or title" the Native peoples of Alaska might have nor had Congress determined the means by which the Native peoples might obtain title to the lands they occupied and used; the aboriginal peoples of Alaska only held clear title under law to a tiny fraction of the lands of Alaska. Native peoples in Alaska also faced threats from the Federal Government which also intended to withdraw lands from the public domain for its own purposes such as implementing proposals for peaceful uses of atomic energy or the building of a huge hydro-electric dam on the Yukon River.

In 1959, shortly after Alaska's achieving statehood, the U.S. Federal Court of Claims resolved a lengthy legal dispute by deciding that the Tlingit and Haida Indians had established aboriginal title to virtually all of southeastern Alaska. The court's conclusion was that the Tlingit and Haida aboriginal patterns of use and occupancy had not been interfered with until 1884; that since then, the Tlingit and Haida had lost most of their land through the failure of the Federal Government to protect their rights; and that a large area was taken without their consent and without compensation. The Court decided that the Tlingit and Haida were entitled to compensation for all of the land that they used and occupied.

This decision was an important precedent for all aboriginal groups in Alaska to pursue claims based on aboriginal title. Soon the aboriginal peoples of Alaska began challenging the State of Alaska which was starting the process of selecting up to 102.5 million acres from "vacant public lands"; these native groups differed with the State as to what constituted vacant.

In 1963, Alaska Native peoples from 24 villages petitioned the Secretary of the Interior, Stewart Udall, to prohibit all transfers of land ownership until Native land rights could be confirmed. The Secretary implemented an informal freeze in 1966; Mr. Udall, before leaving office in January 1969, formalized this freeze through an executive order which halted all transfers of lands claimed by Natives until Congress could act. The State of Alaska challenged this freeze in the courts but it remained in effect until ANCSA was signed into law. The State was barred from obtaining title to and issuing leases on those lands that it had selected; the State also lost revenue since, under the terms of the freeze, no oil or mineral leases could be issued on Federal lands.

Confronted with the threat of losing all title to lands in Alaska, the native peoples of that State began to organize in the early 1960's--first locally, then regionally. The founding of the Tundra Times, the first state-wide Native newspaper, gave a cohesiveness and strength to their movement. In 1966, a number of regional groups set aside their regional rivalries to found the **Alaska Federation of Natives (AFN)** which proved to be of great influence in unifying the Native effort and establishing a common front. The AFN led the effort to effect a settlement by Congress. By 1967, two different land claims bill had been introduced in Congress. A **Land Claims Task Force** was established under State sponsorship to determine the terms of a settlement; this Task Force was chaired by State Representative Willie Hensley and included other Native leaders as well as State of Alaska and Department of the Interior representatives.

A number of factors including the continued filing of protests by Native groups, more litigation, and additional land selections by the State of Alaska combined to intensify the land claims dilemma; by 1970, the land claims situation was the biggest problem in the State of Alaska. With the discovery of a huge oil deposit in Prudhoe Bay, there were increased pressures by oil and gas interests to resolve this problem.

A number of Congressional hearings were held on this issue. Alaska Natives were active participants in the legislative process; Congress wanted to avoid any sign of the paternalism of earlier dealings with Native Americans.

## 1.2 General Provisions of ANCSA

On December 18, 1971, President Richard Nixon signed into law the Alaska Native Claims Settlement Act (ANCSA). The substance of ANCSA had been ratified that same day by the Alaska Federation of Natives. It also had the support of the oil industry, the Alaska business community and the Alaska state government. **This legislation extinguished all Native claims of aboriginal title by the Indians, Aleut and Inuit living in Alaska, including any aboriginal hunting and fishing rights and any pending or statutory claims.**

In compensation, the Alaska native peoples received a total cash settlement of \$962.5 million from both the Federal and State governments; title, including both surface and subsurface, to 40 million acres of land (almost 1/9th of the total acreage of Alaska). The legislation also provided broad authorization for the Secretary of the Interior to withdraw public lands in Alaska for possible designation as national parks, forests and wildlife refuges. The money would be distributed from an Alaska Native Fund established by the United States Treasury. Congress has made major amendments to ANCSA on seven occasions, the most recent being in December 1987.

Congress provided for the creation of 12 State-chartered, profit-oriented regional corporations. The legislation also provided for possibility of creating a 13th regional corporation for out-of-state resident Native beneficiaries; this was subsequently done. The head office of the **Thirteenth Regional Corporation** is in Vancouver, Washington. Congress also mandated the creation of more than 200 Native village corporations. These regional and village corporations administer the lands,

resources and cash provided under the legislation. Money from the Alaska Native Fund was paid out to the regional corporations which would retain a portion and then distribute prescribed amounts to village corporations and individuals.

Native corporations would select the lands to which they would obtain title from lands withdrawn from the public domain by the Secretary of the Interior. Village corporations would select first and received surface rights to a total of 22 million acres of land. The regional corporations generally held subsurface rights to the lands selected by the village corporations. In addition, those regional corporations that had small enrolled populations but covered large land areas selected an additional 16 million acres to which they held both surface and subsurface rights.

All Alaska Natives living at the time of the enactment could be enrolled as beneficiaries under ANCSA. Each then received 100 shares of stock in a regional corporation and, if a village resident, an additional 100 shares of stock in a village corporation.

Section 7(i) of the ANCSA legislation requires that regional corporations share 70% of their revenues from timber and subsurface with other regional corporations and with village corporations.

With respect to how Alaska Natives were to manage the settlement proceeds, Congress clearly intended that management of the capital and the land would be in Native hands and sought to ensure that Native management would be free of Federal, State and local non-Native government control while still remaining in harmony with government objectives.

### 1.3 Outline of this Analysis

This paper will examine a number of developments regarding the implementation of the Alaska Native Claims Settlement Act over the first twenty years as they affect the rights of indigenous minorities in the State of Alaska and elsewhere in the circumpolar world, notably in the Canadian North.

The next section of this paper will summarize some of the problems in the implementation of ANCSA. It will examine the main findings and recommendations contained in the ANCSA 1985 Study (ANCSA, 1985) that was commissioned by the U.S. Secretary of the Interior and the recommendations of the Alaska Native Review Commission headed by Canada's Thomas R. Berger contained in Village Journey (Berger, 1985).

The third section will analyze the provisions contained in the most recent amendments of ANCSA that were adopted by Congress in December 1987 and later signed into law by President Reagan. These were the so-called "**1991 amendments**" which legislated new options to deal with the 20-year restriction on the trading of stock in ANCSA corporations and the protection of lands conveyed for Native groups.

Section four will summarize a December 1991 study by Steve Colt for the Institute of Social and Economic Research, University of Alaska Anchorage on the financial performance of the Alaska Native regional corporations (Colt, 1991).

Section five will briefly examine a number of general issues that affect Alaska Natives.

Finally, this paper will make some comparisons with the situation of aboriginal peoples in Canada.

## 2. IMPLEMENTATION OF ANCSA

This section will describe some of the major problems encountered by Alaska Native organizations when the provisions of ANCSA came to be implemented. In particular, it will examine the main findings contained in the ANCSA 1985 Study (ANCSA, 1985) that was commissioned by the U.S. Secretary of the Interior and the recommendations contained in Village Journey: The Report of the Alaska Native Review Commission (Berger, 1985) that was headed by Canada's Thomas R. Berger. Each of these reports sought the opinions of a large number of Alaska Natives.

### 2.1 Problems of Implementation

The Alaska Native Claims Settlement Act did not provide a means for ensuring that historic communal uses of the land would persist. Land use planning and development could occur through the activities of Native corporations and in the legal and regulatory framework established by the federal, state and municipal levels of government. The original ANCSA legislation did not guarantee the perpetuation of existing rights enjoyed by Natives prior to 1971.

The implementation of the legislation was largely an economic process with little reference to the existing political system. The benefits of the settlement were channelled to the recipients through modern business corporations; under the 1971 legislation, these corporations were assured of a Native character by restrictions on voting shares for the first twenty years after the enactment of the legislation. The Native corporations created under this legislation were not tied into the formal political structure.

The structure of ANCSA gave rise to a very hectic post-settlement period. A number of unanticipated problems arose concerning applications for enrolment by individual beneficiaries, land selections, and legal interpretations of the settlement by the involved parties (Federal agencies, state agencies, Native groups) with their conflicting goals and interests.

One major factor that hampered the establishment and, later on, the viability of village corporations set up under ANCSA was the general lack of experience of local residents in administering such corporations. These difficulties were duplicated for the regional corporations. This shortage of experienced and trained Natives able to take advantage of the new opportunities created by the settlement forced the corporations to look outside the Native community for senior employees.

Regional and village corporations have a legal obligation to make a profit for their shareholders. This interest in revenue generation and profit maximization clashes with other Native aspirations such as the preservation of the subsistence economy, the protection of the environment and the enhancement of traditional culture. Some regional corporations have attempted to balance such conflicting goals. It remains to be seen whether these corporations that were imposed on the Native communities of Alaska can successfully combine the goals of profit-maximization with the broader social goals of raising the quality of life of Alaska's Native population.

12/10  
While the 1971 Settlement did not contain an explicit political component, the sheer amount of land and other resources controlled by the Natives through their corporations served to expand Native influence in political decision-making particularly at the regional and local levels. The regional corporation has become a major influence in all Native regions in Alaska.

All of the Alaska Native regional corporations survived their first 20 years but several did just barely. A major factor in their relative success or failure is their different resource endowments--some corporations received more natural resources at the beginning; others were able to win rich resource lands through negotiations and exchanges.

2  
Most Alaska Native regional corporations were held back by business losses resulting from putting too much of their money into single big, risky business ventures. However, as Steve Colt (Colt, 1991) points out, hundreds of Alaska businesses went into bankruptcy during the recession of the late 1980's: "Alaska, especially rural Alaska, is a hard place to do business." These regional corporations, especially those primarily based in rural areas, often involved themselves in marginal ventures with the goal of sustaining jobs for their members in their respective regions as a primary objective.

The Regional Corporations have come to have a major impact on the economy of the state and, in many regions, as a provider of employment. In corporate operations, joint ventures and subsidiaries, the Native regional corporations in 1991 employed almost 7,500 people; this represents about 5 per cent of Alaska's private workforce.

5  
Overall, it would seem that ANCSA has generated positive results for the Natives of Alaska. The tenacity and political skills of the leadership has helped the corporations. As a result of the settlement, there has been a substantial increase in the supply of capital and the availability of wage employment at the local level. Most rural Alaskan Natives would seem to be better off economically today than they were some 20 years ago. However, the economic focus of these ANCSA corporations has diverted attention away from broad social goals. Many have questioned the compatibility of linking a strategy of capitalist development with an overall long-range goal of maintaining a distinct Alaska Native culture; serious reservations have been expressed about this strategy from the beginning.

## 2.2 ANCSA 1985 Study

Section 23 of ANCSA instructed the Secretary of the Interior to prepare "a report of the status of the Natives and native groups in Alaska and a summary of actions taken under the Act, together with such recommendations as may be appropriate." The Secretary awarded the contract for this status report to a private consulting firm, ESG, which produced, for public discussion, the draft ANCSA 1985 Study, dated June 29, 1984 which examined the 1971 Legislation and the first six sets of amendments. No final version of this report was completed.

This section will first present an overview of the ANCSA corporations, particularly the initial performance expectations for these corporations and the start-up problems they experienced. This

section will then analyze the views of the shareholders of ANCSA corporations on such questions as stock ownership, knowledge about their respective Regional and Village corporations, and about the 13th Region.

### 2.2.1 The ANCSA Corporations

The ANCSA corporations had been expected to achieve many goals:

- (a) contribute to the social and economic well-being of Natives;
- (b) initiate the economic development of rural Alaska;
- (c) provide for Native participation in the modern economy;
- (d) contribute to Native self-determination;
- (e) preserve Native heritage and property for future generations;
- (f) protect the traditional way of life.

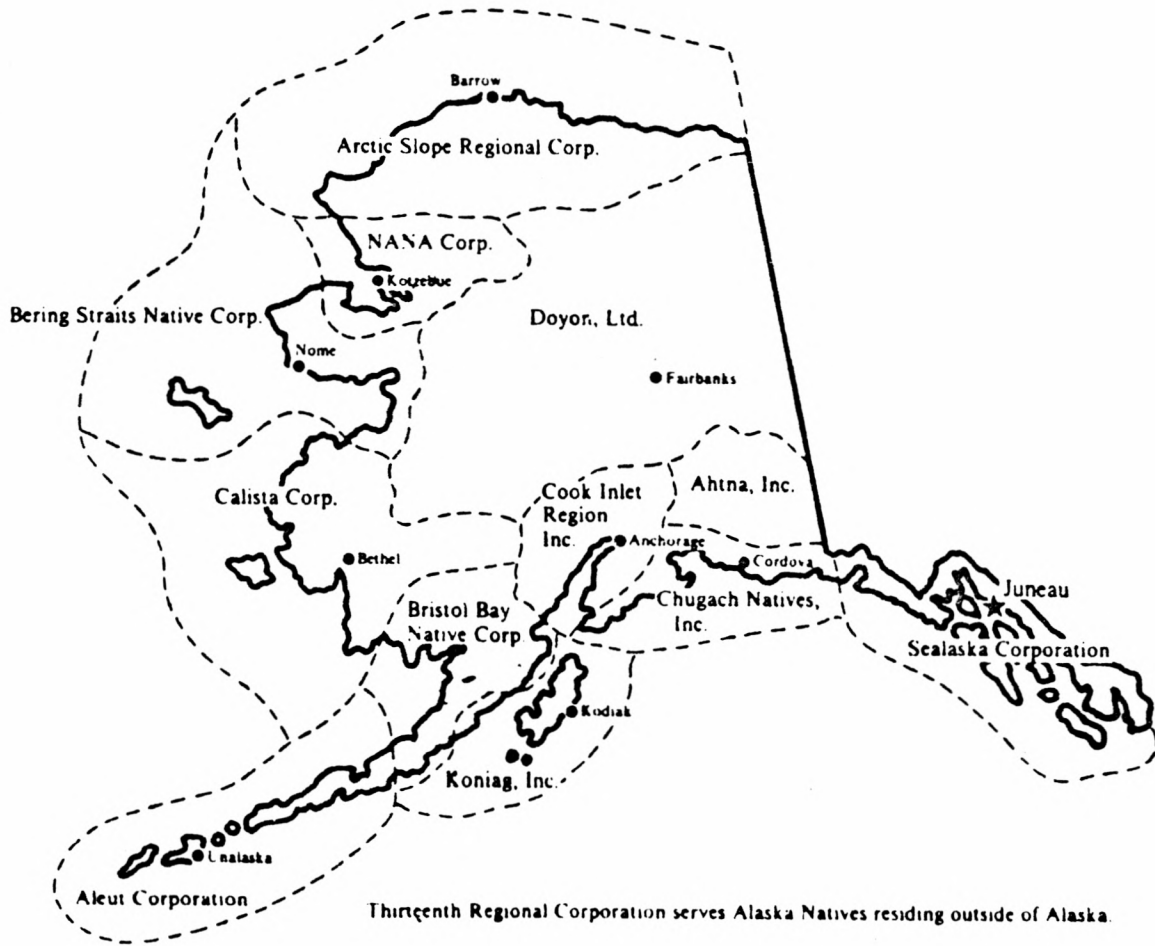
Many of these goals would be more in the realm of public government and would, therefore, seem to have been incompatible with the profit-oriented corporations that were suddenly juxtaposed onto the traditional lifestyle of most Alaska Natives.

Congress and the Native leadership expressed broad expectations for the benefits that would accrue to the Native people as a result of ANCSA -- expectations that were unrealistic. Corporations are limited legally and financially in what they can do to serve the objectives of their shareholders. These expectations for ANCSA would have been more pertinent for governments than for corporations.

The ANCSA 85 Study noted that one element that distinguished Native corporate reports was a strong sense of a community of interest that encompasses far more than the financial activities of the corporation. ANCSA corporations, both regional and village, do not conform fully to the profit-maximizing behaviour commonly associated with corporate decision-making.

The 1985 Study noted that, for mature corporations with stable demand and steady growth, the payment of sizable dividends is normal. None of the ANCSA corporations could, in 1985, have been so categorized. They owned considerable undeveloped assets but had yet to establish stable markets for their products or services. The 1985 Study recommended that their approach should have been to reinvest corporate earnings rather than pay dividends.

# ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS



Source: Alaska Blue Book 1992-93



The study also cited a number of factors that affected the performance of ANCSA corporations:

1. **Start-up difficulties:** Comprehending, interpreting and implementing an extremely complex and often ambiguous piece of legislation required tremendous effort. Corporations found it necessary to expend inordinate amounts of time, energy and money in negotiation, litigation and lobbying.
2. **Litigation:** As high as \$50 million. Corporate planning and decision-making were seriously undermined for the first 10 years of operation under ANCSA.
3. **Land Convergence Delays:** Long-term ability of native corporations to be economically successful was undercut by significant delays in transfers of land. This severely handicapped corporations in their performance until 1979-80.
4. **Management:** Legislation did not provide for any formal assistance in acquiring the management experience, training and skills needs to successfully operate the large-scale corporate entities that were formed by ANCSA.
5. **Non-Alienation of Stock:** Because stock cannot be traded or sold, corporations were denied a primary tool for raising capital and therefore limited to relatively modest amounts remaining from Alaska Native Fund distributions.
6. **Resource Revenue Sharing:** Since section 7(i) requires that regional corporations share 70% of their revenues from timber and subsurface with other regional corporations and with village corporations. The ANCSA 1985 Study considered this to be creating a disincentive to invest. (See Section 3.3 for a breakdown over the years of this legislated revenue sharing.)

### 2.2.2 Opinions of ANCSA Shareholders

The ANCSA 1985 Study also analyzed the views of the shareholders of ANCSA corporations who responded to a survey questionnaire as to their views on stock ownership, their knowledge about the activities of Regional/Village corporations in which they own shares, and, for out-of-state beneficiaries, their feelings regarding membership in the 13th Region.

#### (a) **Stock ownership**

The Study stated that when the prohibition on stock sales was scheduled to expire in 1991, further changes in stock ownership would occur. Trends already present in some corporations--such as greater non-Native ownership, fewer shareholders, and absentee ownership--would accelerate. Some ANCSA corporations might emerge with a non-Native majority. Others would continue to have

a native majority but with stock ownership concentrated in a few Native hands. Some would undergo little change.

The Study stated that it was unlikely that the attitudes present in the shareholding population would result in a diffusion of stock ownership to a greater proportion of the Native population. The majority of those surveyed indicated that they would only sell to other Natives and to family members or pass on their stock when they die. However, enough were willing to sell or would have been willing to sell under the right circumstances that the Study felt that it was unlikely that stock would have remained in Native hands -- unless no non-Natives wanted to buy.

Most shareholders did not perceive that they had received any substantial benefits from ANCSA. Analysis of information on benefits (jobs, dividends and shareholder services) indicated that these had been significant for only a minority of shareholders in the State.

(b) **Knowledge about ANCSA**

While respondents to the survey appeared to be fairly high, most also expressed a desire to know more about ANCSA and the corporations. Information about village corporations was obtained primarily through personal contact; information about regional corporations primarily through newsletters.

(c) **The 13th Region**

In responding to a survey questionnaire, the attitude of most 13th Region shareholders--the regional corporation that enrolled non-resident Alaska Natives--towards ANCSA was described as "a mixture of anger, sadness and disillusionment." Its shareholders expected better. Many regarded ANCSA as a symbol of Native heritage and were disgusted with the perceived mismanagement of the 13th Region's financial affairs. There was a strong sense of "being cheated" by the management of the corporation and wanting an investigation. Some considered it to be their link to their Native heritage -- something of value they could pass on to their children.

### 2.2.3 Summary

The ANCSA 1985 Study concluded that ANCSA has had some impact on the Alaskan economy and on Natives but that State and Federal spending had been of far greater importance. Many Natives had at one time or another worked for a Native corporation. ANCSA has also provided some educational opportunities.

The Study listed two important indirect effects of ANCSA:

1. ANCSA corporations provided institutional support from which some Natives could begin to assert themselves in the political arena: (e.g. -- rural high school reform).
2. Provided forums for Natives to discuss common needs and means of achieving common goals.

### 2.3 Impact of Berger Report

In July 1983, the Inuit Circumpolar Conference appointed Thomas R. Berger, former Justice of the Supreme Court of British Columbia, to head the Alaska Native Review Commission that would review the Alaska Native Claims Settlement Act. The World Council of Indigenous Peoples was a co-sponsor of this Commission. A number of foundations, church groups, native corporations and associations contributed funds to this Commission.

In 1985, Village Journey: The Report of the Alaska Native Review Commission was published in New York. Berger's Report was a major factor in bringing the problems Alaska Natives had with ANCSA to the national forefront. It was reviewed in a number of major American periodicals including the New York Times. Berger's criticisms of the 20-year moratorium on shares trading in ANCSA corporations and the potential impact that the ending of these restrictions could have on Native land title had a major influence on the public debate of that time.

In the course of his work, Mr. Berger visited some sixty villages to learn of the depth of feeling about the land that existed among the Native peoples of rural Alaska. Based on testimony at the hearings, Berger noted that most Native persons wanted to sever Native lands from the ANCSA corporations; many wanted to "retribalize" their lands by transferring them to tribal governments; many Natives believed that if the corporations kept the lands, these would eventually pass out of Native control.

Berger concluded that the persons who spoke at the hearings were chiefly concerned about the land, self-government and subsistence and he addressed his main recommendations to these topics:

1. That shareholders of village corporations transfer their lands to tribal governments to ensure the land remains in Native ownership; that Congress amend ANCSA to permit such initiatives;
2. ANCSA legislation be amended to permit the establishment of regional tribal organizations and the transfer of the lands of regional corporations to these entities; Berger listed a number of precedents in the United States and in Canada for achieving this;
3. Pending and future applications by villagers in Alaska for tribal constitutions and charters under the Indian Reorganization Act should be granted; that the state should recognize tribal governments as appropriate local governments for all purposes under state law; that tribal governments would hold land in fee simple; that all land subject to the jurisdiction of Native government be referred to as "Indian Country" (or, as appropriate, "Eskimo Country" or "Aleut Country");
4. That the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters; that through tribal institutions, Alaska Natives could work out such sharing arrangements with State and Federal authorities; Berger listed a number of existing precedents in the United States and in Canada.

The U.S. Congress faced fierce opposition to legally permitting the creation of such tribal governments and refused to consider it when preparing the final version of the 1987 ANCSA Amendments. Section 17 of these Amendments specifically precludes the tribal government premise on which Berger based his recommendations.

Although his recommendations were ignored, Berger's Village Journey has had a major impact in shaping the agenda of the tribal government movement. Throughout his Report, Berger emphasized that Native rights rest on a fundamentally different basis from that of other minorities in the United States and that no other minority can assert a right to a land base and to distinct political institutions based on the recognition of Native sovereignty. Berger also noted that, President Reagan, in a policy statement issued in January 1983, had reiterated the sovereignty of tribal government. He questioned why this statement applied to Natives in the Lower 48 states but not, apparently, to Alaska Natives:

"It is neither logically consistent nor morally defensible to deny Alaska Natives the rights held by other Native Americans...Their goals are fundamentally the same as those of American Indians as well as those of related peoples throughout the

Canadian and Greenland Arctic and sub-Arctic and indigenous peoples the world over." (p.157)

### 3. ANCSA AMENDMENTS OF 1987 - THE "1991 LAW"

On February 3, 1988, President Ronald Reagan signed Public Law 100-241, Alaska Native Claims Settlement Act Amendments of 1987. (This is commonly known as the "1991 Law" as it was primarily concerned with protecting Alaskan Native corporations from changes due to occur in 1991.)

The 1987 amendments to ANCSA are an attempt by Congress to recognize the desires and needs of each Native corporation and to provide a flexible scheme that permits Native shareholders to adapt their Corporations to ever-changing conditions. The amendments establish a general rule that restrictions on the ability to sell stocks will continue indefinitely or until a majority of the shareholders of a Corporation elect to terminate those restrictions. It also provides these Corporations such options as issuing stock to Natives born after 1971 and creating trusts for the benefit of all shareholders.

U.S. Senator Frank Murkowski of Alaska stated that these amendments were designed to ensure that ANCSA is a "living" settlement:

"It is not a fixed formula which is cast in stone and incapable of adapting to changing reality. Rather it is a flexible framework designed to provide Alaska Natives with a maximum amount of self-determination as they strive to balance the needs of their present and future generations." (Tundra Times, January 4, 1988)

The following are some of the main provisions of the recent amendments to ANCSA.

#### 3.1 Land Protection

This legislation provides that all undeveloped land owned by village, urban and regional corporations have the following protection:

- (a) the land cannot be taxed;
- (b) the land cannot be taken by trespassers who otherwise might acquire rights to the land through adverse possession;
- (c) the land cannot be taken by creditors to pay a debt owed by the corporation;
- (d) the land cannot be lost if the corporation files bankruptcy;
- (e) the land cannot be lost even if the corporation is involuntarily dissolved.

These protection are automatic. The board of directors of a Native corporation does not need to take any action unless an activity that has created some form of "development" has already occurred. Development is defined in the legislation. Shareholders do not need to vote in order to protect a corporation's undeveloped land.

A corporation loses these protection if its land is pledged, leased, developed or subdivided. One exception is that if the purpose of the lease is to allow oil, gas or mineral exploration, then land protection would continue to apply. The legislation specifically precludes hunting and fishing activities on village and regional corporation land from the definition of "developed" land. For these reasons, fish camps, trapping cabins and other structures may be built and used on the land if they are for subsistence hunting, fishing or gathering. Even if land is mortgaged, leased or "developed", the protection automatically resume when the mortgage or lease expires or the development ends. If a corporation has subdivided land, it can be returned to undeveloped status if the land is re-subdivided back to its original state.

Timber lands can also regain land protection. When a Native corporation cuts timber on its land for sale, the land is considered developed. However, when the harvest ends, the land is no longer considered to be developed and the land is automatically protected.

### **3.2 Settlement Common Stock**

Under the original ANCSA legislation, each eligible Native received 100 shares of stock in a Native corporation. Under these amendments, that stock is renamed Settlement Common Stock. Holders of Settlement Common Stock have: (1) the right to receive dividends or other distributions from the corporations; and (2) the right to vote in elections to the board of directors and on other questions decided by shareholders. Settlement Common Stock held by a person who is neither a Native nor a descendant of a Native does not carry voting rights.

Settlement Common Stock cannot be sold, pledged as collateral for a loan, taken to pay a debt or traded away. During a shareholder's lifetime, Settlement Common Stock can only change hands in three ways: (i) by court order to pay child support or alimony; (ii) transferred to another person if stock ownership conflicts with a shareholder's profession; and (iii) given as a gift to a child, grandchild, great-grandchild, niece or nephew. In each of these situations, the new owners of the stock must be a Native or a descendant of a Native.

Native corporations may amend their articles of incorporation to purchase stock from a non-Native who inherits stock in the absence of a will from the original shareholders. If a shareholder dies with no heirs and no will, the stock returns to the corporation and is then cancelled.

### 3.3 Duration of Restrictions on Settlement Common Stock

Under these amendments, stock restrictions will continue indefinitely until removed by the shareholders using one of three alternative procedures:

- (a) Opt-Out Approach: Under this option, stock restrictions will continue unless the corporation's shareholders vote to remove the restrictions by amending the corporation's articles of incorporation. The resolution to amend the articles of incorporation may be put to the shareholders either by a resolution passed by the board of directors or by a shareholder petition. If the resolution fails, another vote can be considered at a later date.
- (b) Opt-In Approach: If the board of directors of a regional corporation passes an opt-in resolution by February 3, 1989, the stock restrictions of that corporation will expire on December 18, 1991 unless a majority of shareholders vote to continue restrictions. Dissenters rights must be granted to shareholders who voted against the restrictions.
- (c) Recapitalization: The recapitalization option allows a Native corporation to keep stock restrictions for a definite or indefinite period of time as part of a larger package of structural changes. A recapitalization plan would require an amendment to the corporation's articles of incorporation. If adopted, the Settlement Common Stock and the restrictions on that stock are governed by the terms of the recapitalization plan. Any such plan must be approved by shareholders before December 18, 1991.

If stock restrictions are removed or allowed to expire, the corporation must cancel the old stock and issue new replacement common stock to its shareholders. Shareholders can vote to put some restrictions on replacement common stock before it is issued.

### 3.4 Dissenters' Rights

In some cases, shareholders who vote to remove stock restrictions can require the corporation to buy their stock if the majority has voted to keep the stock restricted. This right is not absolute. If the opt-in approach is used, dissenters rights must be granted. With the opt-out approach, however, dissenters rights apply only if the shareholders have voted to allow it.

If the minority shareholders have dissenters' rights, the corporation can buy their stock with either cash or a note payable within five years, or issue them alienable common stock. The amount of payment depends on how the stock is valued.



### 3.5 Options on Stock Issuance

Native corporations can now issue new shares of settlement common stock to Elders, to Natives born after December 18, 1971, or to Natives who were eligible for enrolment in 1971 but excluded for some reason. A majority of shareholders must vote to approve this issuance. Also, certain conditions may be attached to this new stock.

Even if new shares of stock are issued, revenue sharing as provided under section 7(i) of the original 1971 ANCSA will not change. Regional corporations will continue to make distributions to the other regions. Holders of new shares of Settlement Common Stock in a regional corporation can be included in distributions made under section 7(m) for at-large shareholders but only if a majority of that regional corporation's shareholders approve it.

A corporation may issue other kinds of stock in addition to Settlement Common Stock. This other stock may be fully alienable or partially restricted. It can have such voting rights, dividend rights and liquidation preferences as the shareholders approved:

- (a) Stock may be issued as a dividend or distribution to holders of Settlement Common Stock, allowing shareholders to sell some of their stock while keeping control of the corporation with their Settlement Common Stock.
- (b) Stock could be issued for sale to the public so the corporation could raise capital on the open market.
- (c) Stock could be issued without charge to Elders, Settlement Trusts, certain groups of Natives and descendants or organizations established for the sole benefit of Natives and descendants of Natives. (Elders, for example, might be issued preferred stock as a form of special benefits. Such stock could have a priority for dividends and could be cancelled when the Elder dies.)

So far only Arctic Slope Regional Corporation (ASRC) has issued new stock. NANA Regional Corporation plans to enrol new stockholders. It remains to be seen to what extent current shareholders in other corporations will be willing to share the value of their corporations with the new generation.

Many elders may never benefit fully from the settlement since most profits that are re-invested for the future mean less money for dividends today. Sealaska and ASRC have addressed that issue by establishing special trust funds to pay distributions to elders.

### 3.6 Land Transfer Options

Native corporations may transfer land or other assets to another entity, such a traditional or IRA Native government, a cooperative, or a non-profit corporation. There are two ways to transfer land or assets: with a Settlement Trust, or under state law.

#### (a) Settlement Trust

Under this legislation, a Native corporation may transfer some or all of its assets - such as surface land, stock and property - to a Settlement Trust created just for the benefit of its shareholders. The main purposes of a Settlement Trust are to:

- (i) promote the health, education and welfare of Native shareholders;
- (ii) preserve Native heritage and culture; and,
- (iii) give greater protection to Native corporation lands.

A Settlement Trust is established under state law. The corporation transferring assets is entitled to set the terms and conditions for how the trust is operated and how the assets are managed. There are limitations on a Settlement Trust. It cannot operate as a business. It cannot sell the land or any interest in the land. When a corporation transfers land to a Settlement Trust, that land can never be used as an economic asset.

Those who receive benefits from the Settlement Trust are called beneficiaries. Only people who hold Settlement Common Stock can be beneficiaries of the Settlement Trust. If the corporation issues Settlement Common Stock to children as they are born or reach a certain age, they, too, can be beneficiaries of the Settlement Trust.

An important benefit of the Settlement Trust is that it allows the corporation to protect certain assets from creditors' claims. However, a corporation that is insolvent or bankrupt cannot transfer its assets to a Settlement Trust. If a corporation becomes insolvent or bankrupt at some time after the transfer (but not as a direct result of it), the corporation's creditors could not claim the assets of the Settlement Trust.

(b) **State Law**

Land transfers using state law must follow two general requirements. If the corporation plans to transfer all, or substantially all of its assets, two-thirds of the shareholders must approve it. If shareholders approve the transfer, the corporation must be able to buy out the stock from the minority shareholders who voted against it.

**3.7 Welfare Eligibility**

This legislation ensures that federal assistance payments -- such as food stamps and Aid to Families with Dependent Children -- cannot be reduced because an individual receives corporate dividends, Native stock, land, partnership interests, or beneficial interest in a settlement trust. Assistance can be limited only if the person receives \$2,000 or more in annual corporate dividends.

**3.8 Tax Exemption on Alaska Native Fund Distributions**

This legislation ensures that distributions from the Alaska Native Fund continue to be exempt from taxes. (The Alaska Native Fund was a special account established in the U.S. Treasury into which the original ANCSA monies were deposited. All of the Alaska Native Fund money was distributed among the regional corporations which in turn paid out part to individuals and village corporations).

This legislation clarifies that certain distributions from the Fund cannot be taxed and that this tax exemption will continue until the corporation has distributed an amount equal to the total money it received from the Alaska Native Fund.

**3.9 Federal Indian Programs**

These amendments do not affect the eligibility of Alaska natives to participate in Federal Indian programs; Alaska Natives remain eligible for all Federal Indian programs on the same basis as other Native Americans.

**3.10 Disclaimer**

Section 17 of the 1987 legislative amendments states that the question of the existence of "Indian Country" in Alaska and the governing powers usually associated within the meaning of "Indian Country" is neither enhanced nor diminished by these amendments. In other words, this legislation is sovereignty neutral.

#### 4. EVOLUTION OF ANCSA REGIONAL CORPORATION 1974-1990

This section will summarize some of the main findings of Steve Colt's 1991 study "Financial Performance of Native Regional Corporations" published in the December 1991 issue of Alaska Review of Social and Economic Conditions. This is a publication of the University of Alaska Anchorage's Institute of Social and Economic Research,

##### 4.1 Early Developments of ANCSA Corporate Strategies

During their first twenty years, the twelve ANCSA regional corporations by and large concentrated on making profits. They also used their political clout to help preserve and increase public spending for social programs that benefit Alaska Natives. Long before they received their land or all of their money, the corporations tried many kinds of business operation, financial investments and resource development.

During the start-up period which extended from 1974 to 1980, total corporate assets grew rapidly as more than \$400 million of ANCSA payments flowed into the corporations. However, liquid assets (stocks, bonds, and cash) declined as the corporations rapidly transformed ANCSA receipts into business capital. Corporate leaders also invested into research to help them choose lands. In 1980, the corporations received their last major ANCSA payments, causing securities as a share of the asset base to nearly double--from 22 per cent to 40 per cent.

Over the period 1981-86, the corporations continued to move assets into active businesses, both subsidiaries and joint ventures. Between 1981 and 1986 securities dropped from 39 per cent of the asset base to 24 per cent while business capital increased from 50 to 60 per cent. While the asset base for the native regional corporations as a group remained fairly stable, individual corporations made major moves into and out of business activities. Some corporations began to have business losses and folded some operations, such as:

- (i) Bristol Bay lost on its processed food operations and sold them in 1986;
- (ii) Aleut corporation withdrew from the shipping and fishing industries in 1983; and
- (iii) Chugach Alaska began to suffer losses in fish processing.

The 1986 collapse of world oil prices and the resulting recession in the Alaska oil and construction industries hurt regional corporations involved in construction and oil field service operations.

By the end of 1986, the financial results of the individual corporations had diverged substantially. The Cook Inlet, NANA, Bristol Bay, Arctic Slope and Ahtna regional corporations had all made

cumulative profits up to that point; each of the other seven corporations had suffered cumulative losses with Bering Straits Regional Corporation emerging from a bankruptcy reorganization.

#### 4.2 Net Operating Loss (NOLs) Sales

A technical amendment to the 1986 Tax Reform Act (U.S. Public Law 99-514 1986) permitted Alaska Native corporations to sell net operating losses to profitable corporations which use the losses to reduce their taxes through write-offs. The U.S. Internal Revenue Service recognizes a net operating loss (NOL) as a loss of taxable income. American firms generally use accumulated NOLs from past years to offset current taxable income. During the early 1980s U.S. corporations were allowed to sell their accumulated net operating losses to one another. However, in 1986, Congress eliminated NOL sales for all U.S. corporations except Alaska Native corporations; i.e., Alaska Native corporations became the only ones in the United States that could sell their NOLs.

ANCSA corporations were approached by major U.S. corporations eager to buy their tax losses. Colt describes this brief period as "a bright shining star in the financial sky" for Alaska Native corporations. For the regional corporations as a group, NOL sales proceeds provided a cash infusion equal to two-thirds of the original ANCSA payments. Bering Straits and Chugach Alaska were probably saved from liquidation. Congress closed this loophole in 1988 but corporations continued to receive proceeds from past transactions until 1990.

Some who have criticized this tax provision maintain that the claimed losses were exaggerated and only occurred on paper; the U.S. Internal Revenue Service is currently investigating this. Others have pointed out that many of the losses that had been incurred by ANCSA corporations were based on actual declines in the world price of commodities such as timber and asbestos. If the Native corporations had been in control of their lands when these prices were high, they could have reaped the gains from these higher prices. But the fact they did not have control at that time was, in many cases, largely because of delays in the implementation of ANCSA. In examining the sale of NOLs as a public policy, Colt's study concludes:

"Overall, the corporations with the most resources benefited most from NOL sales, while resource-poor corporations missed out--because NOL proceeds weren't shared under 7(i) provisions. The 7(i) revenue sharing requirements help compensate for unequal resource endowments among corporations. By contrast, the NOL sales exacerbated these inequalities. NOL sales provided a great benefit to Native corporations as a group, but they were a poorly targeted policy, if they were intended primarily to help those corporations in the worst financial trouble." (Colt, p. 14)

Depending on the outcome of the IRS investigation, this tax break may have provided Alaska Native corporations with more than US\$445 million.

### 4.3 Current Financial Status of ANCSA Regional Corporations

Steve Colt's study determined that, collectively, the twelve Native regional corporations made more than \$575 million, adjusted for inflation, for the period when they started in 1973 through 1990. However, two major public policies, implemented after ANCSA, accounted for most of these earnings:

1. Almost all of the \$363 million in net resource revenues that they collected came from petroleum and timber on lands that were not originally open for selection. Several regional corporations only acquired these resource lands through negotiations and amendments to ANCSA.
2. As noted above, a special tax law that existed from 1986-88 allowed these native regional corporations to collect some \$445 million by selling their net operating losses (NOLs) to other corporations.

Besides these two special sources of income, investments in stocks and other securities worked well for the corporations. As a group they lost money on many of their business ventures. However, a few individual corporations did well in business ventures and some suffered losses while providing jobs for shareholders.

Collectively, the regional corporations reported close to a billion dollars in book equity in 1990. Adjusted for inflation, the real accrued wealth of the regional corporations in 1990 was about 10 per cent more than their initial capital. Book equity per shareholder in 1990 varied from one corporation to the other. Substantial potential additional wealth that is not valued on corporate books is embodied in natural resources on undeveloped ANCSA lands. This could represent billions of dollars of additional assets and equity.

Ahtna, Arctic Slope, Cook Inlet and Doyon are the only regional corporations that produced positive cumulative net income on business ventures from 1974 through 1990.

Petroleum and timber resources owned by Cook Inlet, Arctic Slope and Sealaska contributed almost all of the \$400 million in total net resource revenues the corporations collected through 1990. All three corporations acquired the resource lands in negotiations after ANCSA was passed. Colt expressed concern that selling resources to produce income is, in effect, liquidating assets and that this may not be sustainable into the future.

Under the sections 7(i) and 7(j) of ANCSA, resource revenues must be shared with other ANCSA corporations and represent an important source of income for village corporations and for those regional corporations with few commercial resources of their own. Of the \$400 million in net resource revenues generated largely (95%) by Cook Inlet, Arctic Slope and Sealaska, these three corporations kept \$162 million; the other nine regional corporations received \$96 million; and the village corporations received \$139 million.

Shared resource revenues have been an important source of income for those corporations without resource revenues of their own. Aleut, Bristol Bay, Bering Straits, Calista, Chugach and Koniag have generated very little or no resource revenues but have collected more than \$60 million collectively from the investments of other ANCSA regional corporations.

The NOL sales brought the corporations a huge influx of cash. Cook Inlet, the wealthiest corporation, benefited more from NOL sales than did such struggling corporations as Calista, Bering Straits and Aleut. Chugach Alaska collected the largest proceeds per shareholder from NOL sales which will likely rescue it in its current bankruptcy proceedings. NOL sales made Doyon Limited and Sealaska Corp. among the most profitable corporations through 1990. Cook Inlet, Doyon and Sealaska together collected \$272 million from NOL sales; however, as of 1991, \$175 million of this total was in escrow pending approval by the Internal Revenue Service.

Sales of NOLs rescued several corporations from financial distress and helped others embark on new business ventures from a stronger financial position. At the end of 1990, the corporations seemed to fall into three groups each with its own strategy and asset allocation:

- (a) The first group consists of those recovering from heavy losses sustained during the 1980s and with few total assets--Aleut, Bering Straits, Bristol Bay, Calista, Chugach and Koniag.
- (b) The second group has consolidated operations, focused on natural resource developments where possible and appears to see large portfolios of securities as major long-term sources of income. This group is made of NANA, Ahtna, Doyon and Sealaska.
- (c) The third group consists of Cook Inlet and Arctic Slope regional corporations which continue with major business expansions and active participation in the oil and gas industry.

It remains to be seen what Cook Inlet, Doyon and Sealaska will do with the combined \$225 million based on NOL sales held in escrow pending an IRS ruling should it be favourable to them.

Some corporations have emphasized shareholder employment as a primary goal. Arctic Slope (22% of its 3,700 shareholders) and NANA (20 % of its 5,000 shareholders) employ the biggest percentage of their shareholders. NANA realizes that, in choosing to create jobs for their shareholders, it is foregoing profits. Ahtna employs about 5 % of its 1,100 shareholders; other corporations employed roughly 1 to 2 per cent of their shareholders.

Colt's study demonstrates that the twelve ANCSA regional corporation have developed substantially different corporate strategies over the years. Some shareholders want their corporations to concentrate less on profits and more on jobs, education and training. Others want them to be even more aggressive in going after profits and distributing dividends.

## 5. OTHER ANCSA-RELATED ISSUES

The Alaska Federation of Natives (AFN) was founded in 1966 to serve as the collective spokesman of the various Inuit, Indians and Aleut peoples of the State of Alaska. The first five years of the organization were dedicated to achieving the passage of legislation for resolving their land claims.

When ANCSA was enacted in 1971, the role of AFN evolved into other directions. It provided technical assistance to Alaska Natives for implementing ANCSA. Later it became a prime negotiator in the federal legislative process to ensure Alaska Native interests were protected under the Alaska National Interest Lands Conservation Act of 1980, the 1987 amendments to ANCSA, and other federal legislation affecting Native Americans.

The 1991 AFN Annual Convention held in Anchorage commemorated the 25th anniversary of the founding of the AFN and the 20th anniversary of the passage of the Alaska Native Claims Settlement Act. A number of issues relevant to Alaska Natives were discussed and debated at the 1991 AFN Convention or otherwise took place at the time of this Convention.

### 5.1 Subsistence Harvesting

The issue of subsistence harvesting has become a major political issue in the State of Alaska and one that strikes a deep emotional chord with the Alaska Native population.

"The economic base of our families' survival, the foundation of our traditional cultures and the spiritual connection of our peoples to the land--all rest on continued practices of hunting, fishing and gathering. The future of village Alaska itself is at stake in this complex, emotional issue of fish and game allocations." (ANCSA: Twenty Years Later, Alaska Federation of Native 1991 Annual Report.)

The original ANCSA terminated all aboriginal rights with respect to subsistence harvesting. The 1980 Alaska National Interest Lands Conservation Act (ANILCA) provided for subsistence harvesting based on preference for rural residents. However, decisions by Alaska State courts have stated that rural preference, as provided in ANILCA, was in violation of the rights granted to all Alaskans under the State constitution; these issues are currently the subject of disputes before the U.S. Federal courts.

The Alaska Federation of Natives has recommended that the Legislature and people of Alaska adopt an amendment to the Alaska state constitution allowing a statutory subsistence preference for rural residents. The AFN maintains that such an amendment would allow state law to comply with federal law and return management of all fish and game to state government. Public opinion polls suggests that such a proposal would be supported in a state referendum. However, in July 1990, the State Legislature declined to adopt a resolution that would have put such a proposed amendment before the voters of Alaska.



The issue of subsistence harvesting by Alaska Natives has served as the main catalyst for uniting various factions under the AFN umbrella once again. In 1990, the Tanana Chiefs Conference based in Fairbanks voted to return to the AFN; in 1991, the Association of Village Council Presidents also voted to return. The two groups, together representing almost 100 native villages (of a total of 220), had withdrawn from the AFN four years ago complaining that it was dominated by Native corporate interests. The debate on subsistence harvesting was the most passionate of the AFN's 1991 annual convention.

A Subsistence Advisory Council that had been appointed in 1991 by Governor Hickel recommended a new definition as to who would be considered a subsistence user by shifting the subsistence law from classes of Alaskans--such as rural and urban--to individuals. Sports hunters and fishermen such as the Alaska Outdoor Council have generally endorsed this proposal.

Alaska Native groups have rejected this stating that this would further restrict their aboriginal rights. At a meeting held with Alaska Natives prior to start of the 1991 AFN Convention, Governor Hickel announced that he would direct his Subsistence Advisory Council to draft a new proposal. He also appointed a new Native member to this advisory body to represent the AFN. For the first time, the Governor also indicated that he might consider an amendment to the state constitution on this issue which has been the AFN position.

The AFN has made it clear that if the State of Alaska could not draft suitable legislation, it would ask the Federal government to prepare legislation on this matter as provided under the Alaska National Interest Lands Conservation Act of 1980.

## 5.2 Corporate Takeovers

Another emotional debate took place over the issue of the possible takeover of existing native corporations established under ANCSA. This debate was a direct result of a proposed takeover of **Sealaska Regional Corp.** located in Juneau by **Klukan Inc.**--a member village corporation within that region. Earlier, this year, Ralph Strong, President of Klukan and a member of the board of directors of Sealaska, had made an informal offer of \$201.1 million dollars for Sealaska shares; this offer was rejected. Strong maintains that his goal is to merge the two corporations in a manner similar to earlier mergers of NANA Regional Corp. and some of its member village corporations.

Under the provisions of the 1987 amendments to ANCSA, the freeze on the trading of shares would continue indefinitely. However, this amended legislation also provided that Sealaska shareholders could, for example, call a special meeting of shareholders specifically for the purpose of lifting the ownership restrictions on their stock anytime after the 20th anniversary of the Act (i.e., anytime after December 18, 1991) and approve this takeover. Once this restriction was lifted, the shares would be available to anybody on the open market.

This aroused the fear among many Alaska Natives that, if the shares of their corporations can be traded on the open market, then outside non-native interests may acquire control of their

corporations--and, in this way, their lands. In other words, basic takeovers, as provided under U.S. Federal and State of Alaska corporate law, could quickly deprive Native Alaskans of most of the benefits they gained as final settlement for their land claim.

In late 1991, Congress, acting in response to a resolution of the 1991 AFN Convention, precluded stock sales until July 16, 1993 in a move designed to prevent hostile takeovers of Alaska Native corporations. Alaska politicians such as U.S. Senator Ted Stevens have come to appreciate the complexity of the present situation:

"Contested takeovers of Alaska Native corporations raise profound policy questions that need to be examined in depth by Congress. We need to strike the proper balance between the rights of shareholders to shape the future of their corporations and the strong Congressional interest in the preservation of ANCSA."

### 5.3 Tribalism

Because of the possibility of losing the lands acquired through ANCSA as a result of hostile corporate takeovers, many Alaska Natives have proposed to have their village corporations "tribalized"; i.e., these village corporations would become bands or tribes as provided under the Indian Reorganization Act (IRA) of 1934. All of their assets such as lands, would be protected under the IRA from hostile corporate takeovers. (Thomas Berger, in Village Journey, had advocated a return of the ANCSA land base to tribes and Congressional assertion of tribal control over fishing, hunting and trapping.)

### 5.4 Alcohol and Drug Abuse by Alaska Natives

The 1988 AFN Convention established the **Alaska Native Blue Ribbon Commission on Alcohol and Drug Abuse**. The Chairman of this Commission is John Schaeffer, a member of the executive of NANA corporation and a retired U.S. general. The AFN has declared alcohol and drug abuse to be one of the major social problems of Alaska Native society and has worked to have Federal and State programs assist Native groups to address this problem. The Blue Ribbon Commission has four goals:

- encourage the practice of traditional Native values;
- encourage existing groups which promote sobriety;
- encourage sobriety groups in every community;
- encourage sober Native leaders.

During the 1991 AFN Convention, the Commission staged a Sobriety Pledge Campaign; approximately 2,500 pledged their support during the Convention. From discussions with a number of Native spokesmen and from listening to various speakers, there clearly seems to be a grass roots campaign that is gaining considerable support among many Alaska Native communities. The Commission receives financial support from ANCSA regional corporations, village corporations and from Alaska businesses.

## 5.5 ICC Alaska

The Alaska Regional Office of the Inuit Circumpolar Conference has been very active in developing an international perspective on aboriginal rights issues for Alaska's Native peoples. The ICC was founded in 1977 at Barrow, Alaska with Inuit representatives from Canada and Greenland taking part. Eban Hobson, of Barrow Alaska, is widely regarded as the founder of ICC, and served as first President from 1977 to 1980.

ICC Alaska is supported by the North Slope Borough, the Arctic Slope Regional Corporation, the Northwest Arctic Borough, NANA Regional Corporation, Maniialaq Association, Bering Straits Regional Corporation, Kawarak Association, and the Association of Village Council Presidents. Calista Regional Corporation has been a sponsoring member. ICC Alaska, located in Anchorage, has recently received some \$150,000 from the U.S. Federal government to implement an Inuit regional conservation strategy in the Alaskan communities of Kotzebue, Nome and Wainwright.

## 5.6 Senate Hearing on Alaska Native Languages

In 1991, Senator Frank Murkowski of Alaska introduced a bill in the United States Senate (S.1595), Alaska Native Languages Preservation and Enhancement Act of 1991. This legislation would provide for an appropriation of \$2.5 million each year from 1992 to 1996 for Alaska Native villages, a consortium of such villages, and regional corporations established under ANCSA "for the purposes of enhancing, encouraging, preserving and facilitating the ability of Alaska Natives to speak their native languages, and to preserve and expand knowledge about such languages." Senator Murkowski chaired a Senate hearing on this bill at which a number of Alaskans presented briefs and testimony.

## 5.7 Joint Commission

In 1990, the U.S. Congress established a **Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives** that would analyze the conditions of Alaska Natives and the federal and state laws which address their needs. This Joint Commission is a direct result of the publication by the AFN in early 1989 of its "Report on the Status of Alaska Natives: A Call for Action."

Appointments to this Commission were completed at the time of the 1991 AFN Convention. Seven members have been appointed by the President of the United States; seven others by the Governor of Alaska. In addition, 10 ex officio non-voting members will represent committee of the Congress and both houses of the Alaska Legislature. The Joint Commission has two years to produce a comprehensive report with specific recommendations for the President, Congress, the Governor of Alaska and the Alaska Legislature.

Policy areas the AFN has asked the Joint Commission to address include subsistence, education, rural economic development, health and social services, and local government in rural Alaska.

## 5.8 Land Exchanges

Several land exchanges have occurred during the past decade: (a) exchanges of U.S. federal lands in Cape Krusenstern National Monument with NANA Corporation lands to permit construction of a road to the proposed Red Dog Mine north of Kotzebue; and (b) exchanges of Arctic Slope Regional Corporation lands in the Arctic National Wildlife Refuge for subsurface rights to other U.S. Federal lands on the coastal plain in the refuge closer to the village of Kaktovik. These exchanges easily passed the U.S. Congress.

Of a more controversial nature, the Federal Administration, in an attempt to secure surface rights to critical wildlife habitat in holdings held by Native corporations in several U.S. Federal refuges within the state, has proposed a major exchange for lands within the coastal plain of the Arctic National Wildlife Refuge directly east of oil-producing Prudhoe Bay. The U.S. administration, the state of Alaska and major oil companies are seeking approximately 607,000 hectares on the coastal plain. Environmentalists, on the other hand, wish to declare the coastal plain a wilderness area.

Arctic Slope Regional Corporation (ASRC) has collected over \$30 million in revenues from an oil lease in the Arctic National Wildlife Refuge (ANWR) which it does not have to share with other ANCSA corporations. ASRC acquired these subsurface rights in ANWR under a 1984 land trade with the federal government but, in making the trade, ASRC did not give up any resources subject to 7(i) sharing. Therefore, no 7(i) obligations apply to the lands received.

If other corporations hope to benefit from any future development in ANWR, they will have to negotiate their own trades. Several are presently attempting to do so.

The issue of opening up parts of the Arctic National Wildlife Refuge to oil and gas exploration remains a very important one in Alaska. Alaska Governor Walter Hickel, both U.S. Senators from Alaska (Frank Murkowski and Ted Stevens), and the Alaska State Legislature are active proponents. Many Alaska Native corporations are attempting to exchange their present land holdings for lands within ANWR. In November 1991, the U.S. Senate refused to consider an energy bill containing a provision allowing for the opening of the coastal zone of ANWR to oil exploration. It is not known if and when this matter will be raised again in Congress. The Canadian government, which created North Yukon National Park directly adjacent to ANWR, has protested to the United States

government about this exploration. This issue can be expected to remain on the national agenda of both the United States and Canada for some time.

## 6. RELEVANCE TO CANADA

This section will compare some of the provisions of ANCSA with recent comprehensive agreements the Canadian government has concluded or is presently negotiating with aboriginal groups in northern Canada. It will also identify two aboriginal rights issues in Alaska that can be of concern to Canada.

### 6.1 Some Comparisons

A number of useful comparisons can be made with respect to the provisions and the implementation of ANCSA with the provisions and implementation of agreements in Canada, particularly northern Canada. ANCSA was the first modern-day treaty anywhere in the circumpolar north between a national government and aboriginal inhabitants of an area within that nation's borders. It preceded by many years agreements in northern Québec (1975), the Inuvialuit Final Settlement in the Western Arctic (1984), and negotiations on major comprehensive claims involving the Council for Yukon Indians, the Dene-Métis of the Mackenzie Valley, and the Tungavik Federation of Nunavut which represent the Inuit of the eastern and central Arctic.

1. The question of share ownership is a unique feature of the ANCSA settlement and has no real comparison with recent comprehensive land claims settlements/negotiations in Canada. Share ownership emphasizes that ANCSA is very much an economically oriented settlement. The 1987 amendments provide that Native corporations can, by a vote of existing shareholders, grant shares to Alaskan Natives born after December 18, 1971. It also provides automatic restrictions to the acquisition of shares by non-Natives unless an existing Native corporation formally decides to remove these restrictions.

Under the 1987 amendments, in the provisions for dissenters' rights, it is now possible for a corporation to buy out the shares of minority native shareholders within that corporation. (In some ways this could lead to the selling out of one's Native heritage.) As Native shareholders become more active in dealings within their corporations, it will be interesting to see if majority Native shareholders can force minority shareholders to sell their shares, as is the case with many American corporations.

2. Some of the innovations contained in these ANCSA amendments may be worth further examination by Canadian corporations established through comprehensive claims settlements, particularly once these corporations gain confidence in the administration of their affairs. One such innovation is the possibility of a corporation using its

holdings to develop a recapitalization plan so as to secure additional funding from outside sources. While there are risks to the Native corporation that wishes to undertake such an initiative, ANCSA legislation does give that corporation the flexibility to develop its own initiatives and secure funding from the private sector rather than continually depend on the public.

3. ANCSA has no provisions for subsistence hunting on federal lands. Regulations for hunting and fishing are controlled by the State Department of Fish and Game and are applied to both Native subsistence hunters and white sports hunters. By contrast, comprehensive claims negotiations in Canada deal in great detail on the issue of harvesting; and these rights, since 1982, would be guaranteed by the Canadian Constitution. In Alaska, subsistence harvesting rights for Natives has become a major issue in court challenges and in the developing tribal sovereignty movement.
4. After 1971, most of the regional native associations that had been organized in the land claims movement incorporated as non-profit arms of regional corporations, turning their attention to the social and educational programs that are important to Natives. These associations provide a number of services including as advocates for Native interests and administering programs in such fields as health, housing and employment. Some of these Alaskan Native initiatives might be useful to comprehensive land claims negotiations; others might be more suitable to the implementation process or to self-government negotiations.
5. Although Section 17 of the 1987 Amendments declares ANCSA to be neutral on the tribal sovereignty question (tribal sovereignty is in many ways comparable to the aboriginal self-government question in Canada), it would seem that this will be the next major priority on the agenda of Alaska Native organizations. Two regional associations withdrew from the Alaska Federation of Natives for several years because they felt that this central organization was not proceeding rapidly enough on this question.
6. Alaska Natives see their situation as somewhat different from aboriginal peoples of the Lower 48. They see themselves as sharing many common concerns with other indigenous minorities in the circumpolar north. Members of ICC Alaska joined with their ICC colleagues in Canada and Greenland to host the first **Arctic Indigenous Leaders Summit** that was held in Copenhagen in June 1991. Representatives of the Nordic Sami Council and the USSR

Association of Aboriginal Peoples of the North participated in this Conference which adopted consensus statements on subsistence and on renewable resource harvesting. The Alaska delegation was not made up solely of Inuit; Julie Kitka, an Alaska Indian and President of the Alaska Federation of Natives, also attended.

## 6.2 Issues of Concern to Canada

Two Alaska Native issues that are of special concern to the situation of aboriginal peoples in Canada and in other circumpolar jurisdictions are: (i) subsistence harvesting; and (ii) tribal sovereignty.

### (i) Subsistence Harvesting

The subsistence issue has been a major catalyst for uniting different Alaska Native factions. The original ANCSA legislation extinguished all aboriginal harvesting rights in Alaska. Twenty years later there is no new subsistence harvesting administrative regime in place that is acceptable to Alaska's Natives. Alaska Natives are aware that the aboriginal harvesting issues is of critical concern to aboriginal minorities in other circumpolar jurisdictions. For example, at the Arctic Indigenous Leaders Summit held in Copenhagen in June 1991, that was attended by the Inuit Circumpolar Conference, the Nordic Sami Council, and the Association of the Aboriginal Peoples of the Soviet North, the Conference adopted consensus statements on subsistence and on renewable resource harvesting and resolved to place it on the agenda of the next Summit scheduled for 1993.

Julie Kitka, President of the Alaska Federation of Natives, who attended this Summit, later wrote in The Tundra Times (August 5, 1991) that Alaska Natives are not alone in their claims that subsistence harvesting is a fundamental aboriginal right and that this Conference emphasized "the undiminished importance of subsistence to the cultures and economies of indigenous peoples." She concluded her column by stating:

"The Summit articulated full support for legal protection of Alaska Native subsistence, including an amendment to the Alaska Constitution.

"We are mistaken if we think Alaska Natives are alone in all of this-- or that the world is not watching. Our state and our nation are parts of an international community, and what we do about subsistence must rise to that moral and political challenge."



In light of the May 1990 decision of the Supreme Court of Canada in the Sparrow case, subsistence harvesting by indigenous peoples in the circumpolar nations including developments of the situation in Alaska, will bear further examination.

(ii) **Tribal Sovereignty**

Many Alaska Natives fear that, if the shares of their corporations can be traded on the open market, then outside non-native interests can gain control of their corporations--and, in this way, their lands. Basic takeovers, as provided under U.S. Federal and State of Alaska corporate law, could quickly deprive Native Alaskans of the lands they have gained as final settlement for their land claim. Many Alaska Native, therefore, have proposed that these village corporations be "tribalized": i.e., these village corporations would become bands or tribes as provided under the Indian Reorganization Act (IRA) of 1934. All of their assets such as lands, would be protected under the IRA from hostile corporate takeovers. In so doing, Alaska's Native groups could return to a more traditional way of life that the corporate structure imposed by ANCSA. The tribalization of ANCSA lands had been one of the main recommendations of Thomas Berger in Village Journey.

The original ANCSA legislation left tribal sovereignty in an undefined state of legal limbo. This issue was specifically avoided in the 1987 amendments by a disclaimer which states that this legislation was not intended to either validate or invalidate any claims to tribal government.

The tribal sovereignty movement is a genuine grass roots movement among many Alaska Native groups. In many ways, tribalism can be compared to the demands of Canada's aboriginal peoples for self-government that would respect traditional aboriginal values and systems of administration and justice.

## 7. CONCLUSIONS

The Alaska Native Claims Settlement Act enacted by the United States Congress in 1971, was a major (and at the time unprecedented) initiative that strived to provide Alaska Natives with opportunities to deal with modern American society. This legislation established a corporate structure--some twelve Regional corporations and 220 village corporations--and provided these corporations with such resources as lands and cash. ANCSA was supported at that time by the President and Congress, the State of Alaska, the oil and gas industry, and by many Alaska Native organizations. ANCSA was a vastly different from earlier Indian treaties concluded by the United States government and can justifiably be seen as a major modern-day agreement in dealing with the vexing problems of aboriginal land title. ANCSA is also completely different in scope from Canada's early "Numbered Treaties" and predated by several years, the James Bay and Northern Quebec Agreement of 1975 which has been termed as the first of Canada's "modern day treaties."

The original settlement act left three major issues unresolved: stock alienation; the situation of the "afterborn"--those born after December 18, 1971; and land taxation and protection. To a certain extent, these issues were addressed in the 1987 ANCSA amendments and ANCSA corporations now have a number of options for dealing with shares in their corporations and on which they can take the initiative.

However, ANCSA has a number of potentially serious problems that will need to be addressed.

1. The issue of shares and enrolment in ANCSA corporations can be expected to become even more critical in the next decade. Many have seriously questioned the wisdom of the criteria of being enroled as an ANCSA shareholder with a true definition of Alaska Native. While this might have had validity at the time of the initial enrolment, today, twenty years after the enactment of the legislation, there are two categories of Alaska Native: those who are enroled as ANCSA shareholders and those who recognized to be an Alaska Native but are not ANCSA shareholders. Only enroled ANCSA shareholders can exercise control of ANCSA corporations and therefore, of the most concrete embodiment of Native culture in Alaska. The non-ANCSA shareholding group will soon represent a majority of the Alaska Native population--if it does not already do so. While many will inherit their shares, there is no certainty that this will happen.
2. While the 1987 amendments permit ANCSA corporations the option of issuing new shares to elders and to those born after 1971, it should be noted that four years after these amendment came into law, only the Arctic Slope Regional Corporation of the twelve Regional corporations, has begun to issue shares to new shareholders; NANA Regional Corporation has plans to do likewise. While the legislation

now enables ANCSA corporations to exercise this option, This does not mean, however, that other ANCSA corporations will be motivated to do likewise. If, for example, an ANCSA corporation is doing poorly and has been paying small or no dividends to its shareholders, there is little reason why shareholders in such a corporation would want to expand the shareholders base and, thereby, receive even smaller dividends.

3. There has been a major demographic shifts of the Alaska Native population since ANCSA was enacted in 1971. Many Alaska Natives enroled as shareholders of ANCSA corporations reside outside the State. Many have moved to Alaska cities and are no longer resident in the areas of the village corporations in which they are enroled but continue to own shares in these corporations. There are many such deviations in shareholder enrolment within the various ANCSA regional and village corporations; shareholder enrolment does not necessarily reflect current realities of residence. These discrepancies can be expected to accentuate.
4. Studies over the past ten years indicate that many Alaska Natives are prepared to sell their stock in ANCSA corporations. While shareholders in most U.S. business corporations can shop around to purchase stock in those companies that they wish, shareholders in ANCSA corporations have not had such a choice for the past 20 years; they have had to stick with the corporations under which they were enroled and accept whatever financial benefits that been available. Many Alaska Native shareholders have never understood the corporate system and would readily sell their stock for cash. A major factor that could restrain ANCSA Native shareholders from giving up their shares in a corporation would be that this would jeopardize control of the land owned by ANCSA corporations.
5. A fundamental concern for most Alaska Natives is that if they lose control of their corporations, they will lose control of the lands obtained under ANCSA. Alaska Natives do not own or control their own lands; the ANCSA corporations do. The vulnerability of ANCSA corporations to takeovers by outsiders, which is common practice in the American corporate system, produced an emotional debate at the 1991 Convention of the Alaska Federation of Natives. The United States Congress responded to this by amending ANCSA to extend the moratorium to July 1993 but thi does not disguise the vulnerability of these corporations to hostile takeovers. The vulnerability of ANCSA corporations underlines the vulnerability of the assets of Alaska Natives that was provided them by Congress.

Steve Colt (1991) underlines this underlying flaw in the ANCSA legislation as the embodiment of Alaska Native culture:

"From the shareholders' perspective, therefore, Congress may have gotten things backwards when it allowed the corporations to sell ANCSA lands but prohibited the shareholders from selling stock." (p.22)

6. Julia Bowen (1991) focuses on what she sees as another fundamental flaw in ANCSA--the difficulty Alaska Natives face in adapting to the corporate lifestyle that this legislation has imposed on them:

"Alaska Native lifestyle...centers around activities that are vastly different from the business world. Assimilation into the corporate world is very difficult for Natives who have previously had no contact with such a world. The twenty-year restriction period from entering into the open market is not long enough for a Native shareholder to understand the complexities and implications involved in owning stock. Forcing Natives to defend themselves within a framework that they have not yet learned to understand is an injustice even when the framework, in theory, was intended to help them realize profits from their land."

**8. APPENDIXES**

## I. RECENT DEMOGRAPHIC DATA ON ALASKA NATIVES

The 1990 United States Census enumerated a total Alaskan population of 550,043--an increase of 148,192 since the 1980 census. The population of Alaska has almost doubled since the achievement of statehood in 1959. Alaska's total land area of 586,412 square miles represents 15.8 per cent of the land area of the entire United States; its population represents less than 0.5 per cent of the total national population.

During the 1980's, Alaska ranked second among the 50 states in population growth with an increase of 36.0 per cent. While two-thirds of the population increase during the past decade has been the result of natural growth, Alaska has had a large in-migration as a result of the boom in its oil economy. In the latter part of the 1980's, with the oil industry suffering a downturn, there has been a correspondingly high out-migration.

Some 75 per cent of Alaskans reside in the state's five largest municipalities. The rest of the population lives in towns, villages or clustered settlements throughout the state. Large areas of Alaska remain uninhabited.

Alaska Natives (officially defined as Aleut, Eskimo and Indians who differ from each other in ethnic origin, language and culture) are dispersed across Alaska occupying geographically and climatically distinct regions. In 1990, the Census enumerated 85,698 Native residents--a significant increase from 64,103 in 1980. The percentage of Natives in the overall population, however, decreased from 16.0 per cent in 1980 to 15.6 per cent in 1990 due to the in-migration of non-Natives.

In 1990, just over half of Alaska's Native population lived in largely Native rural census areas where they formed over half of the population. Today, more Natives live in Anchorage than in any other borough or census area--13,607 in 1988. The birth rates of Alaska Natives in the late 1980's continued to be considerably higher than the birth rate among whites. In 1987, the birth rate for Alaska Natives was 35.8 per thousand population as compared to 21.7 per thousand for the white population (and a rate of 15.7 births per thousand for the United States as a whole).

**Source:** Alaska Blue Book 1991-92 (1991). Juneau: Division of State Libraries, Archives and Museums.

## II. ANCSA REGIONAL CORPORATIONS.

**Ahtna, Inc.**  
P.O. Box 649  
Glennallen, AK 99588

**Cook Inlet Region Inc.**  
2525 C St., Suite 500  
Anchorage, AK 99503

**Aleut Corporation**  
4000 Old Seward Hwy., Suite 300  
Anchorage, AK 99503

**Doyon Limited**  
201 1st Ave.  
Fairbanks, AK 99701

**Arctic Slope Regional Corporation**  
P.O. Box 129  
Barrow, AK 99723

**Koniaq, Inc.**  
4300 B St., Suite 407  
Anchorage, AK 99503

**Bering Straits Native Corporation**  
P.O. Box 1008  
Nome, AK 99762

**NANA Corporation**  
1001 E. Benson Blvd.  
Anchorage, AK 99508

**Bristol Bay Native Corporation**  
800 Cordova, Suite 200  
Anchorage, AK 99501

**Sealaska Corporation**  
One Sealaska Plaza,  
Suite 400  
Juneau, AK 99801

**Calista Corporation**  
601 W. 5th Ave., Suite 200  
Anchorage, AK 99501

**Thirteenth Regional Corporation**  
The First Place Plaza  
12503 Mill Plain  
Vancouver, WA 98684

**Chugach Alaska Corporation**  
3000 A St., Suite 400  
Anchorage, AK 99503

Source: Alaska Blue Book 1991-92

## 9. REFERENCES

- Alaska Federation of Natives (1988). 1991: Making it Work. A Guide to Public Law 100-241, 1987 Amendments to the Alaska Native Claims Settlement Act. Anchorage.
- Alaska Federation of Natives (1991). ANCSA: Twenty Years Later. Alaska Federation of Natives 1991 Annual Report. Anchorage, Alaska.
- Arnold, Robert D. et al (1976). Alaska Native Land Claims. Anchorage, Alaska: Alaska Native Foundation.
- Baker, David (1982). Eastern Arctic Case Study Series: The Alaska Native Claims Settlement. Institute for Local Government, Queen's University, Kingston.
- Berger, Thomas R. (1985). Village Journey. The Report of the Alaska Native Review Commission. New York: Hill and Wang.
- Case, David S. (1984). Alaska Natives and American Laws. Fairbanks: The University of Alaska Press.
- Colt, Steve (1991). "Financial Performance of Native Regional Corporations". Alaska Review of Social and Economic Conditions. University of Alaska, Institute of Social and Economic Research. (XXVII, 2) December 1991.
- McBeath, Gerald A. and Thomas A. Morehouse (1979). Alaska Native Self-Government. Ottawa: DIAND.
- Naske, Claus-M. (1987). "History of Alaska", in Alaska Blue Book 1987 (229-250). Juneau: Dept. of Education, Division of State Libraries.
- Thomas, Monica E. (1986) "The Alaska Native Claims Settlement Act: Conflict and Controversy," Polar Record 23(142): 27-36.
- Thomas, Monica E. (1988) "The Alaska Native Claims Settlement Act: An Update," Polar Record 24(151): 328-329.
- U.S. Department of the Interior (1984). ANCSA 1985 Study. June 29, 1984 Draft. Prepared by ESG, Falls Church, VA. Washington.