



# Petersburg Borough

12 South Nordic Drive  
Petersburg, AK 99833

## Meeting Agenda Borough Assembly Regular Meeting

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Tuesday, January 21, 2025

6:00 PM

Assembly Chambers

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You are invited to a Zoom webinar!  
When: January 21, 2025 06:00 PM Alaska  
Topic: January 21, 2025 Assembly Meeting

[https://petersburgak-  
gov.zoom.us/j/88075594564?pwd=XWr1mhwR3RyCbEGOcgcxdddR7dEbQN.1](https://petersburgak.gov.zoom.us/j/88075594564?pwd=XWr1mhwR3RyCbEGOcgcxdddR7dEbQN.1)  
Passcode:482260

Join by phone:  
(720) 707-2699 or (253) 215-8782  
Webinar ID: 880 7559 4564  
Passcode: 482260

1. **Call To Order/Roll Call**
2. **Voluntary Pledge of Allegiance**
3. **Approval of Minutes**
  - A. January 6, 2025 Assembly Meeting Minutes**

4. **Amendment and Approval of Meeting Agenda**

5. **Public Hearings**

6. **Bid Awards**

- A. Pumps and Related Equipment for Pump Station 4 Project Bid Award**

Public Works Director Cotta recommends award of the Pumps and Related Equipment bid to DPX/Alaska Pump and Supply, of Anchorage, for an amount not to exceed \$158,208.

7. **Persons to be Heard Related to Agenda**

*Persons wishing to share their views on any item on today's agenda may do so at this time.*

8. **Persons to be Heard Unrelated to Agenda**

*Persons with views on subjects not on today's agenda may share those views at this time.*

## 9. Boards, Commission and Committee Reports

## 10. Consent Agenda

## 11. Report of Other Officers

### A. Resolution #2025-02 Edit Notification

After the adoption of Resolution #2025-02 on January 6, Clerk Thompson was informed that Proposal 242 was not an ADF&G proposal. Proposal 242 to the Board of Fisheries was drafted by the Territorial Sportsmen, Inc. The only reference to Proposal 242 being an ADF&G proposal was in the title of the resolution. Clerk Thompson edited the title before the Resolution was signed to reflect that Proposal 242 was submitted by the Territorial Sportsmen, Inc. A copy of the edits made to Resolution #2025-02 is attached in this meeting packet.

## 12. Mayor's Report

### A. January 21, 2025 Mayor's Report

## 13. Manager's Report

### A. January 21, 2025 Manager's Report

## 14. Unfinished Business

### A. Ordinance #2024-24: An Ordinance Authorizing the Issuance of General Obligation Bonds of the Borough, in the Principal Amount not to Exceed \$3,500,000, to Pay the Costs of Public School Capital Improvements; Fixing Certain Details of Such Bonds; Authorizing the Sale of Such Bonds; Authorizing the Preparation, Execution, and Delivery of Certain Documents in Connection Therewith; Pledging the Full Faith and Credit of the Borough to the Payment Thereof; and Providing for Related Matters - Third and Final Reading

If approved, Ordinance #2024-24 will authorize the issuance of General Obligation Bonds in the principal amount not to exceed \$3.5 million to fund capital improvements for the Petersburg School District. The Assembly unanimously approved Ordinance #2024-24 in its first and second readings.

## 15. New Business

### A. Republic Services Municipal Solid Waste and Transportation and Disposal Contract Extension

The Borough's two-year solid waste contract with Republic Services expires in September of 2025, but has an option to extend the agreement for one year if the Borough notifies Republic Services of the extension by February 1, 2025. Public Works Director and SEASWA Representative Cotta recommends the extension to provide time for SEASWA to conduct a solid waste study to determine how the

Southeast region can work together on waste disposal in the future. If the Republic Services contract is not extended and the waste disposal picture is still unclear with SEASWA in September of 2025, the Borough would either need to find another solid waste vendor or obtain our own fleet of containers to use for solid waste shipment via Republic. The monetary value of extending the contract for one year is expected to be between \$425,000 and \$475,000 at a rate of \$192.40/ton starting September 1, 2025.

**B. Support for Reauthorization of Secure Rural Schools (SRS) Funding**

The Petersburg Borough has received approximately \$500,000 annually from the *Secure Rural Schools Reauthorization Act of 2023* which is used to maintain high quality education services in our local schools and to maintain our municipal roads. A bill to reauthorize and extend the SRS program through 2026 passed the Senate but died in the House in November of 2024. If SRS funding is not reauthorized by the 119th US Congress, the Borough will need to decide to reduce funding to the school district or raise our property tax rate to the maximum allowed by Borough Charter. If approved, the attached letter urging reauthorization of the *Secure Rural Schools Reauthorization Act of 2023* will be sent to Senator Murkowski, Senator Sullivan, and Representative Begich.

**C. Assembly / School Board Work Session**

Borough Charter Section 8.04 provides that the Assembly and School Board shall meet at least once yearly in public session to discuss and coordinate financial planning, capital improvement needs, comprehensive plans for education, and other matters of concern. Thursday, February 6, 2025, at 6:00 p.m. has been suggested for the work session.

**D. Appointment to the Planning Commission**

Donald Sperl has submitted a letter of interest to fill the vacant seat on the Planning Commission until the October 2025 Municipal Election.

**16. Communications**

**A. Correspondence Received Since January 2, 2025**

**17. Assembly Discussion Items**

**A. Assembly Member Comments**

**B. Recognitions**

**18. Adjourn**



# Petersburg Borough

12 South Nordic Drive  
Petersburg, AK 99833

## Meeting Minutes Borough Assembly Regular Meeting

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Monday, January 06, 2025

12:00 PM

Assembly Chambers

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### 1. Call To Order/Roll Call

Mayor Jensen called the meeting to order at 12:00 p.m.

#### PRESENT

Mayor Mark Jensen  
Vice Mayor Donna Marsh  
Assembly Member Bob Lynn  
Assembly Member Scott Newman  
Assembly Member Rob Schwartz  
Assembly Member Jeigh Stanton Gregor  
Assembly Member James Valentine

### 2. Voluntary Pledge of Allegiance

The Pledge was recited.

### 3. Approval of Minutes

#### A. December 16, 2024 Assembly Meeting Minutes

The December 16, 2024 Assembly meeting minutes were unanimously approved.

Motion made by Vice Mayor Marsh, Seconded by Assembly Member Valentine.  
Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

### 4. Amendment and Approval of Meeting Agenda

The agenda was approved as submitted.

Motion made by Assembly Member Schwartz, Seconded by Assembly Member Newman.  
Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**5. Public Hearings**

**A. Ordinance #2024-24: An Ordinance Authorizing the Issuance of General Obligation Bonds of the Borough, in the Principal Amount not to Exceed \$3,500,000, to Pay the Costs of Public School Capital Improvements; Fixing Certain Details of Such Bonds; Authorizing the Sale of Such Bonds; Authorizing the Preparation, Execution, and Delivery of Certain Documents in Connection Therewith; Pledging the Full Faith and Credit of the Borough to the Payment Thereof; and Providing for Related Matters**

No testimony was given.

**6. Bid Awards**

**A. Pump Station 4 and Force Main Replacement Project Bid Award**

The Assembly unanimously approved award of the Pump Station 4 and Force Main Replacement Project to Rock-N-Road Construction for an amount not to exceed \$2,090,300.

Motion made by Vice Mayor Marsh, Seconded by Assembly Member Stanton Gregor. Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**7. Persons to be Heard Related to Agenda**

*Persons wishing to share their views on any item on today's agenda may do so at this time.*

Debra O'Gara, PIA President, urged the Assembly to approve Resolution #2025-01.

John Jensen and Craig Evens each spoke in support of Resolution #2025-02.

**8. Persons to be Heard Unrelated to Agenda**

*Persons with views on subjects not on today's agenda may share those views at this time.*

No views were shared.

**9. Boards, Commission and Committee Reports**

There were no reports.

**10. Consent Agenda**

There were no consent agenda items.

**11. Report of Other Officers**

**A. Petersburg Medical Center Update**

PMC CEO Hofstetter updated the Assembly on Medical Center activities.

**B. US Forest Service Update**

District Ranger Case gave an update on Forest Service activities.

## 12. Mayor's Report

### A. January 6, 2025 Mayor's Report

Mayor Jensen read his report.

## 13. Manager's Report

There was no written Manager's Report.

## 14. Unfinished Business

### A. Ordinance #2024-24: An Ordinance Authorizing the Issuance of General Obligation Bonds of the Borough, in the Principal Amount not to Exceed \$3,500,000, to Pay the Costs of Public School Capital Improvements; Fixing Certain Details of Such Bonds; Authorizing the Sale of Such Bonds; Authorizing the Preparation, Execution, and Delivery of Certain Documents in Connection Therewith; Pledging the Full Faith and Credit of the Borough to the Payment Thereof; and Providing for Related Matters - Second Reading

If approved in three readings, Ordinance #2024-24 will authorize the issuance of General Obligation Bonds in the principal amount not to exceed \$3.5 million to fund capital improvements for the Petersburg School District.

The Assembly unanimously approved Ordinance #2024-24 in its second reading.

Motion made by Assembly Member Stanton Gregor, Seconded by Assembly Member Lynn.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

## 15. New Business

### A. Resolution #2025-01: A Resolution Approving the Real Property Improvement and Conveyance of Borough Owned Land, Described as Lots 25 and 26, Block 302, Lots 7, 8, 9, and 10, Block 304, and Lots 11, 12, 13, 14, and 15, Block 305, Airport Addition Subdivision, According to Plat 77-2 Recorded on March 1, 1977; Seven (7) of which will be Conveyed to the Tlingit Haida Regional Housing Authority (THRHA) and Four (4) of which will Stay in Borough Ownership, for the Purpose of Expanding the Airport Subdivision; and Authorizing the Borough Manager to Sign Conveyance Documents

By roll call vote, the Assembly unanimously approved Resolution #2025-01.

Motion made by Assembly Member Stanton Gregor, Seconded by Assembly Member Schwartz.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly

Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**B. Resolution #2025-02: A Resolution Supporting Alaska Department of Fish and Game (ADFG) Proposal 243 and Opposing Territorial Sportsmen, Inc. Proposal 242, both of which will be Considered at the January 28 - February 9, 2025, Alaska Board of Fisheries Meeting**

Resolution #2025-02 was unanimously approved.

Motion made by Assembly Member Schwartz, Seconded by Assembly Member Newman.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**C. 2025 Capital Projects List**

The Assembly approved the Capital Projects List as submitted.

Motion made by Assembly Member Stanton Gregor, Seconded by Assembly Member Valentine.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**D. 2025 Federal Priority Projects List**

The Federal Priority Project List was unanimously approved.

Motion made by Assembly Member Newman, Seconded by Assembly Member Schwartz.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine

**16. Communications**

**A. Correspondence Received Since December 12, 2024**

**17. Assembly Discussion Items**

**A. Assembly Member Comments**

There were no comments.

**B. Recognitions**

There were no recognitions.

**18. Adjourn**

The meeting was adjourned at 12:38 p.m.

Motion made by Assembly Member Stanton Gregor, Seconded by Assembly Member Valentine.

Voting Yea: Mayor Jensen, Vice Mayor Marsh, Assembly Member Lynn, Assembly Member Newman, Assembly Member Schwartz, Assembly Member Stanton Gregor, Assembly Member Valentine





## Memorandum

January 14, 2025

To: Steve Giesbrecht, Borough Manager  
Mayor Jensen and Members of the Petersburg Borough Assembly

From: Chris Cotta, Public Works Director

Re: Pumps and Related Equipment for Pump Station 4 – Bid Award Recommendation

Petersburg's Borough Assembly recently awarded construction of the Pump Station 4 project to Rock-N-Road Construction. A separate bid process was undertaken by the Borough to purchase the pumps and related equipment needed for the project.

In response to the Borough's bid solicitation for pumps and equipment, 1 respondent submitted a timely bid: DPX / Alaska Pump and Supply. DPX's bid is summarized in the attached bid tabulation form. The pumps and equipment will qualify for ADEC reimbursement under the terms of the Borough's ADEC loan for Pump Station 4, and the overall project budget is more than adequate to support this purchase.

For the reasons outlined above, Public Works recommends award of the Pumps and Related Equipment bid to DPX / Alaska Pump and Supply, of Anchorage, in the amount of \$158,208. If you agree with this recommendation, please forward it to the Borough Assembly for consideration at their next regular meeting to be held on January 21<sup>st</sup>, 2025. I will be present at the meeting to answer any questions that you or the Assembly may have about this proposed award. Thank you for your consideration of this matter.

Attachment: Bid Tabulation (1 page)

**BID TABULATION FORM**

**JOB** New, Unused Pumps and Equipment  
**Bid Opening Date** January 10, 2025, 2:00pm

	Vendor A	Vendor B	Vendor C	Vendor D
Company Name	DXP/Alaska Pump	/	/	/
Bid Request Form - Signed	X	/	/	/
Bidder's Response Form - Signed	X	/	/	/
Bid Price - Pumps	136,542.00	/	/	/
Bid Price - Guide Rail Parts	18,732.00	/	/	/
Bid Price - Controls	2,934.00	/	/	/
<b>Total Bid Price</b>	<b>\$158,208.00</b>			

Notes:

Party opening proposals (print & sign) *Chris Cotta*

Witness (print & sign) *Kegan Green*

**PETERSBURG BOROUGH  
RESOLUTION #2025-02**

**A RESOLUTION OF THE BOROUGH ASSEMBLY OF PETERSBURG,  
ALASKA, SUPPORTING ALASKA DEPARTMENT OF FISH AND GAME (ADFG)  
PROPOSAL 243 AND OPPOSING ADFG TERRITORIAL SPORTSMEN, INC.  
PROPOSAL 242, BOTH OF WHICH WILL BE CONSIDERED AT THE JANUARY 28  
- FEBRUARY 9, 2025, ALASKA BOARD OF FISHERIES MEETING**

**WHEREAS**, the commercial Southeast Alaska Red King Crab fishery is almost exclusively an Alaskan resident fishery; and

**WHEREAS**, the Petersburg Borough has the largest commercial Red King Crab fleet in the State of Alaska and the largest crab processor in the region; and

**WHEREAS**, the current ADFG Red King Crab management plan does not allow for annual commercial Red King Crab harvest even when there is a harvestable surplus; and

**WHEREAS**, ADFG has proposed a new management plan in Proposal 243 that will allow for a commercial fishery when scientifically and biologically available; and

**WHEREAS**, the Borough supports the scientific analysis of the State of Alaska and ADFG, which protects and allows a sustainable harvest of the Red King Crab resource on which coastal communities like Petersburg depend; and

**WHEREAS**, when open, the commercial Red King Crab fishery supports 100 local fishing and processing jobs, and provides \$2 million in additional fishing income; and

**WHEREAS**, Proposal 243 was generated in collaboration with ADFG, the fishing community and processing community; and

**WHEREAS**, Proposal 243 will not hurt other user groups of Red King Crab, it will only allow access to Red King Crab already allocated to the commercial fishery; and

**WHEREAS**, Proposal 242 would reallocate the remaining commercial Red King Crab Guideline Harvest Level (GHL) in area 11-A to the personal use fishery; and

**WHEREAS**, personal use fishermen already receive 60% of the Red King Crab GHL in 11-A; and

**WHEREAS**, Area 11-A's biomass is important to the area wide stock assessment for the commercial fishery; and

**WHEREAS**, reallocating 11-A Red King Crab from the commercial GHL to personal use would lead to further season closures of the commercial fishery and would reduce harvest opportunity for the local commercial fishing fleet.

**THEREFORE, BE IT RESOLVED BY THE PETERSBURG BOROUGH ASSEMBLY,  
THAT:**

**Section 1.** The Petersburg Borough Assembly strongly supports Proposal 243 and opposes Proposal 242, both of which are scheduled for consideration at the January 28 - February 9, 2025, Alaska Board of Fisheries meeting. The Assembly urges the Board to support Proposal 243 and oppose Proposal 242 to prevent detrimental economic and social impacts on Alaska’s coastal fishing industry and communities.

**Section 2.** The Petersburg Borough reaffirms its support for ADFG and the commercial Red King Crab fleet, acknowledging their essential contributions to Petersburg’s economy, community well-being, and sustainable fishery practices.

**Section 3.** The Petersburg Borough calls upon the Alaska Board of Fisheries to commit to science-based, objective assessments for Red King Crab management, working in collaboration with the Alaska Department of Fish and Game, the processing industry, and the fishing community to ensure that management decisions reflect the value and benefits Alaska’s fishing industry brings to all residents.

**PASSED AND APPROVED** by the Petersburg Borough Assembly this 6<sup>th</sup> day of January, 2025.

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**Mark Jensen, Mayor**

**ATTEST:**

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**Rebecca Regula, Deputy Clerk**

**Mayor's Report  
for  
January 21, 2025 Assembly Meeting**

- 1. American Cruise Lines:** The Borough has been discussing the possibility of a new dock in Petersburg for American Cruise Lines to use. It is important for everyone to weigh in on this important topic.
- 2. Seeking Letters of Interest:** The Petersburg Borough is accepting letters of interest from citizens who wish to serve the community by filling one of the vacant seats on the following Borough Boards until the October 2025 Municipal Election:

Parks & Recreation Advisory Board – one vacant seat  
Planning Commission – one vacant seat

Letters of interest may be submitted to Clerk Thompson at the Borough offices located at 12 S. Nordic Drive; by sending to PO Box 329, Petersburg, AK 99833; or by emailing to [dthompson@petersburgak.gov](mailto:dthompson@petersburgak.gov).

- 3. Assembly Work Session with Hospital Board:** The Assembly and the Hospital Board will hold a work session in the Assembly Chambers on Monday, January 27, 2025, at 6:00 p.m. Borough Charter Section 9.04 states a public work session must be held at least once per year to discuss and coordinate financial planning, capital improvement needs, comprehensive plans for health care and other matters of concern.
- 4. Alaska Municipal League Winter Legislative Conference:** Mayor Jensen and Assembly Member Lynn will be attending the AML Winter Legislative Conference in Juneau February 18 – 20, 2025.
- 5. Tlingit Haida Regional Housing Authority (THRHA) and the Volunteer Income Tax Assistance (VITA) Program to Provide Free Tax Preparation Support:** THRHA and the VITA program will be at the Petersburg Indian Association on March 10, 2025, from 4:00 to 9:00 p.m. to provide free tax preparation support. There will also be a Financial Education Workshop given from 7:00 to 9:00 p.m. See the attached flyer for more information.

# ATTENTION PETERSBURG RESIDENTS



## Free Tax Assistance

THRHA and the Volunteer Income Tax Assistance (VITA) program are coming to your community to provide tax preparation support.

Please note that we do not provide assistance for comprehensive income tax returns, business tax returns, or returns involving litigation or ongoing legal action.

### Free Tax Preparation:

March 10, 4 p.m. – 9 p.m.

### Financial Education Workshop:

March 10, 7 p.m. – 9 p.m.

### Location:














Petersburg Indian Association  
15 N. 12th St., Petersburg, AK

### Dinner will be provided for the attendees

If you can't access our events, you can send a completed intake/interview form 13614-C, photo ID, and all tax documents to the address below.

Attention: THRHA VITA Program  
5446 Jenkins Drive, Juneau, AK 99801.

## Items to Bring

-  All income information (if filing jointly, for both spouses)
-  Social Security cards for ALL those claimed on your tax return
-  Picture ID for you and your spouse
-  W-2s
-  Interest and any other investment statements
-  Unemployment statements
-  Social Security statements
-  Pension or retirement statements
-  Any 1099-DIV Forms
-  Power of attorney (if you have one)
-  Copy of previous year's tax return
-  Any other tax-related documents
-  Your return will not be processed with partial documentation



**Borough Manager's Report  
Assembly Meeting 21 January 2025**

- ❖ Parks and Recreation Advisory Board is having a meeting on Wednesday, January 22nd at 4pm at the Aquatic Center.
- ❖ Please look at the new Gymnasium and Aquatic schedules around the Community Center now that school is back in session! You can also find the updated schedules on Facebook and our website.
- ❖ The borough was selected to receive a FY 2025 RAISE grant for the Scow Bay Haul-out. The \$8.8 million award, coupled with the \$4.1 million congressional funding received last year, fully funds the proposed project, including expanded uplands, extended breakwater, new concrete plank launch ramp, mooring float, concrete wash-down pad with pre-treatment system, extension of water/sewer/power to site, area lighting, and power pedestals.
- ❖ PMPL is finishing up on the annual FERC license compliance correspondence and reporting. There were no license compliance issues to discuss with our stakeholders for 2024.
- ❖ Crystal Lake continues to receive inflows from rain; however snowpack is minimal.
- ❖ While it was initially a mystery, the outage on December 23rd was confirmed to be caused by a bird strike near the South Nordic/Dock Street area.
- ❖ The department put the new 55' bucket truck into service after a once over by the motor pool. The new digger derrick truck is complete and on its way to Petersburg at the present time. The old-line trucks will be auctioned in the near future, with proceeds from the sales going back into the replacement account.
- ❖ Staff has submitted all required information to the Dept of Energy for the Section 243 grant. The final amount of this grant towards the Blind Slough Hydro project is \$2.815 million. Now we wait to see how long it will take for DOE to issue payment.
- ❖ The Harbor Department reminds their permanent stall holders to return their updated stall contracts that were sent out at the end of the year.
- ❖ I submitted the CAPSIS list through the State's online system and gave each assembly member a copy of the summary. If an Assembly member wants more detailed information on an item on the list, let me know.
- ❖ As you know, Debra Thompson will be retiring from the Borough on April 30<sup>th</sup>. I have offered the Borough Clerk position to Becky Regula, and she has accepted, beginning on April 1st. This will be brought forward to the Assembly at the February 3<sup>rd</sup> meeting for approval. We will post the Deputy Clerk position

**Borough Administration**  
PO Box 329, Petersburg, AK 99833 – Phone (907) 772-4519 Fax (907)772-3759  
[www.ci.petersburg.ak.us](http://www.ci.petersburg.ak.us)

soon for a hopeful start date of April 1 as well.

- ❖ I have completed the draft proposal for Skylark Development. This has been supplied to the developer, and I am expecting their feedback shortly. Once this is resolved, the ordinance and other documents will be brought to the Assembly for approval.
- ❖ Streets Dept personnel operated a small excavator to assist with firefighting efforts at a structure fire on Frederick Point Drive.
- ❖ Martin and crew are ditching and grading at the baler site to mitigate some drainage issues that are present in the loading dock area.
- ❖ Assistant Director Marohl has stepped in to lead the Sanitation Dept in the short term as we are working on finding a permanent Sanitation Supervisor.
- ❖ Siemens will be here starting January 15th to investigate some HVAC issues at the muni building and Library.
- ❖ The maintenance crew is assisting Island Refrigeration with some repairs to the heat pump system at Motor Pool.
- ❖ We are still waiting for the new EPA discharge permit to drop. This is expected sometime in January.
- ❖ The Pump Station 4 and Force Main Replacement project was awarded to Rock-N-Road. An award letter has been sent, and Rock-N-Road is working with the Borough on submittal of the required contract paperwork.
- ❖



**PETERSBURG BOROUGH  
ORDINANCE #2024-24**

**AN ORDINANCE OF THE BOROUGH ASSEMBLY OF PETERSBURG, ALASKA,  
AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE  
BOROUGH, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000, TO PAY  
THE COSTS OF PUBLIC SCHOOL CAPITAL IMPROVEMENTS; FIXING CERTAIN  
DETAILS OF SUCH BONDS; AUTHORIZING THE SALE OF SUCH BONDS;  
AUTHORIZING THE PREPARATION, EXECUTION, AND DELIVERY OF CERTAIN  
DOCUMENTS IN CONNECTION THEREWITH; PLEDGING THE FULL FAITH AND  
CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF; AND PROVIDING FOR  
RELATED MATTERS**

**WHEREAS**, the Petersburg Borough, Alaska (the "Borough") is a home rule borough and is authorized to take the actions set forth in this ordinance; and

**WHEREAS**, on July 15, 2024, the Borough Assembly enacted Ordinance No. 2024-12 the ("Ballot Ordinance"), authorizing the issuance of general obligation bonds of the Borough (the "Bonds") in the principal amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000), in one or more series, for purposes of financing public school capital improvements (the "Project"); and

**WHEREAS**, pursuant to the Ballot Ordinance, the Borough Assembly directed that a proposition ratifying the issuance of the Bonds be submitted to the qualified voters of the Borough for approval or rejection at a regular municipal election to be held on October 1, 2024; and

**WHEREAS**, at such election, the qualified voters of the Borough ratified the issuance of the Bonds; and

**WHEREAS**, the Borough Assembly deems it necessary and desirable and in the public interest to authorize the issuance of the Bonds in accordance with the terms and conditions set forth in this ordinance; and

**WHEREAS**, the Borough Assembly finds it is necessary and appropriate to delegate to each of the Borough Manager and Borough Finance Director the authority to determine the principal installments, interest rates and other details of the Bonds, and to determine other matters pertaining to the Bonds that are not provided for in this ordinance; and

**WHEREAS**, the Alaska Municipal Bond Bank is expected to purchase the Bonds pursuant to the terms of a loan agreement;

**NOW, THEREFORE, BE IT ENACTED BY THE BOROUGH ASSEMBLY OF  
PETERSBURG BOROUGH, ALASKA, that:**

**Section 1. Definitions.** In addition to the definitions specified elsewhere in this Ordinance, the following terms shall have the following meanings in this Ordinance:

- Ordinance.
- (a) “Authorized Denomination” means, unless otherwise specified in the Loan Agreement, \$5,000 or any integral multiple thereof within a maturity of a series of the Bonds.
  - (b) “Authorized Officer” means each of the Borough Manager, the Borough Finance Director, and the Borough Clerk.
  - (c) “Ballot Ordinance” shall have the meaning set forth in the recitals to this Ordinance.
  - (d) “Beneficial Owner” means, with respect to the Bonds, the owner of any beneficial interest in the Bonds.
  - (e) “Bonds” means each of the bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Ballot Ordinance.
  - (f) “Bond Bank” means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.
  - (g) “Bond Bank Bonds” means the general obligation bonds to be issued by the Bond Bank, a portion of the proceeds of which will be used to purchase each series of Bonds.
  - (h) “Bond Register” means the registration books maintained by the Paying Agent as registrar, which shall include the names and addresses of the owners or nominees of Registered Owners.
  - (i) “Borough” means Petersburg Borough, a home rule borough duly organized and existing under the laws of the State of Alaska.
  - (j) “Code” means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
  - (k) “Cost” means the cost of planning, designing, site preparation, construction, acquiring, renovating, installing, and equipping the Project, including interest on the Bonds during the period of planning, designing, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, the cost whether incurred by the Borough or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough or by another in connection with the Project prior to or during construction thereof and

allocation of portions of direct costs of the Borough, legal fees, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors, and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus, and equipment, the cost of engineering, architectural services, designs, plans, specifications, and surveys, estimates of cost, the reimbursement of all money advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incidental to the acquisition and development of the Project, the financing thereof, and the putting of the same in use and operation.

- (l) “Government Obligations” means direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.
- (m) “Loan Agreement” means the loan agreement between the Borough and the Bond Bank relating to the purchase of the Bonds, specifying the matters required to be set forth therein by this ordinance, which offer is authorized to be accepted by the Borough pursuant to this ordinance, if consistent with the provisions of this ordinance.
- (n) “Ordinance” means this ordinance of the Assembly.
- (o) “Owner” means, with respect to the Bonds, the Registered Owner or Beneficial Owner of the Bonds.
- (p) “Paying Agent” means the entity or official of the Borough appointed as such to perform the duties of paying agent, registrar, transfer agent, and authentication agent pursuant to this Ordinance and its successors.
- (q) “Paying Agent Agreement” means the agreement, if any, between the Borough and the Paying Agent specifying the terms and conditions under which the Paying Agent will perform its duties.
- (r) “Project” means public school capital improvements located in the Borough.
- (s) “Record Date” means, (i) with respect to an interest payment date, unless otherwise specified in the Loan Agreement, the close of business of the Paying Agent on the 15th day of the month preceding an interest payment date; and (ii) with respect to a prepayment or redemption date, the close of business of the Paying Agent on the date on which the Paying Agent prepares the notice of prepayment or redemption.
- (t) “Registered Owner,” with respect to Bonds, means the person named as the registered owner of the Bonds in the Bond Register.

- (u) “Rule” means Rule 15c2-12 of the United States Securities and Exchange Commission, promulgated under Section 15(c)(2) of the Securities and Exchange Act of 1934.
- (v) “Term Bonds” means Bonds designated for mandatory sinking fund prepayment or redemption.

**Section 2. Authorization of Bonds; Purpose of Issuance.** For the purpose of providing the funds required to pay a portion of the Costs of the Project, the Borough hereby authorizes and determines to issue and to sell the Bonds in the aggregate principal amount of not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000). The Bonds shall be designated “Petersburg Borough, Alaska General Obligation Public School Bond,” with such additional series, year, and other designation as the Borough Manager or the Borough Finance Director may fix and determine. The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this ordinance is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the constitution and the statutes of the State of Alaska and the Charter and Code of the Borough to incur the indebtedness and issue the Bonds as referred to in Ballot Ordinance.

**Section 3. Obligation of Borough.** The Bonds shall be direct and general obligations of the Borough, and the full faith and credit of the Borough are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy ad valorem taxes upon all taxable property within the Borough, without limitation of rate or amount, to pay the principal of and interest on the Bonds as the same become due and payable.

**Section 4. Dates, Maturities, Interest Rates, and Other Details of the Bonds.** Bonds shall be dated the date of its initial delivery to the purchaser, shall be issued in an Authorized Denomination, and shall be numbered separately in such manner and with any additional designation as the Paying Agent deems necessary for purposes of identification.

Interest on the Bonds shall be payable on the dates specified in the Loan Agreement, and principal installments of the Bonds (whether at maturity or upon prior prepayment or redemption) shall be payable in each of the years and in the amounts specified in the Loan Agreement.

Unless otherwise specified in the Loan Agreement, interest on the Bonds shall be computed on the basis of a 360-day year composed of twelve 30-day months. The the Manager and the Finance Director of the Borough are each individually authorized to fix and determine the principal amount, optional and mandatory sinking fund prepayment and redemption provisions, maturity dates, principal amounts per maturity, payment dates, and the rates of interest to be borne by the Bonds, provided that (i) the true interest cost of the Bonds shall not exceed 4.95% unless approved by resolution of the Borough; and (ii) all of the Bonds shall mature on or before December 1, 2044.

**Section 5. Place and Medium of Payment.** Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. If the Bonds are registered in the name of the Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. If the Bonds are not registered in name of the

Bond Bank, payment of principal of and interest on the Bonds shall be made to the Registered Owner at the address appearing on the Bond Register on the Record Date by check or draft mailed by first-class mail on the payment date, or, at the request and sole expense of a Registered Owner made on or prior to the Record Date, by wire transfer to a bank account in the United States on the payment date, and payment of the final principal amount of the Bonds shall be made at the office of the Paying Agent upon presentation and surrender of the Bonds by the Registered Owner to the Paying Agent.

**Section 6. Prepayment, Redemption, and Purchase of Bond.** The Loan Agreement may provide that principal installments of the Bonds stated to mature in one or more years are not subject to prepayment or redemption at the option of the Borough prior to maturity, and that principal installments of the Bonds stated to mature in one or more years are subject to prepayment or redemption at the option of the Borough prior to their stated maturity dates, at any time on or after the date specified in the Loan Agreement, as a whole or in part, at the price or prices specified in the Loan Agreement, expressed as a percentage of the principal amount thereof, plus accrued interest to the date fixed for prepayment or redemption.

The Loan Agreement may provide that principal installments of the Bonds stated to mature in one or more years are Term Bonds and, if not previously prepaid or redeemed at the option of the Borough, defeased, or purchased by the Borough for cancellation, are to be called for mandatory sinking fund prepayment or redemption prior to their stated maturity dates, on the dates and in the amounts specified in the Loan Agreement, at a prepayment or redemption price equal to 100 percent of the principal amount to be prepaid or redeemed, without premium, plus accrued interest to the date fixed for prepayment or redemption.

All or a portion of the principal amount of the Bonds that are subject to optional or mandatory prepayment or redemption may be prepaid or redeemed in any Authorized Denomination. If less than all of the outstanding principal amount of the Bonds is prepaid or redeemed, then, upon surrender of the Bonds to the Paying Agent, there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same interest rate, maturity, and series, in any Authorized Denomination, in the aggregate principal amount to remain outstanding.

Unless otherwise specified in the Loan Agreement, if less than all of the outstanding Bonds are prepaid or redeemed at the option of the Borough, the Borough shall select the maturities to be prepaid or redeemed, and if less than all of the outstanding Bonds of a maturity are to be prepaid or redeemed, the Paying Agent shall select the principal installments of the Bonds to be prepaid or redeemed randomly in such manner as the Paying Agent shall determine.

Notice of prepayment or redemption of the Bonds, unless waived by the Registered Owner of the Bonds to be prepaid or redeemed, or unless otherwise specified in the Loan Agreement, shall be given by the Paying Agent not less than 30 nor more than 60 days prior to the date fixed for prepayment or redemption by first-class mail, postage prepaid, to the Registered Owner of the Bonds to be prepaid or redeemed at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be satisfied when notice has been mailed as so provided, whether or not it is actually received by the Owner of any Bonds. In addition, notice of prepayment or redemption shall be mailed or sent electronically by the Paying Agent and within the same period to the Municipal Securities Rulemaking Board and to such other persons and with such additional information as an Authorized Officer may determine, but such

additional notice shall not be a condition precedent to the prepayment or redemption of any Bonds.

Unless otherwise specified in the Loan Agreement, in the case of an optional prepayment or redemption, the notice of prepayment or redemption may state that the Borough retains the right to rescind the prepayment or redemption notice and the optional prepayment or redemption of those principal installments of the Bonds by giving a notice of rescission to the affected Registered Owners at any time on or prior to the date fixed for prepayment or redemption. Any notice of optional prepayment or redemption that is so rescinded shall be of no effect, and any Bonds for which a notice of optional prepayment or redemption has been so rescinded shall remain outstanding. The Paying Agent shall give prompt notice to the affected Owners that the prepayment or redemption was rescinded and that the principal installments of the Bonds called for prepayment or redemption and not so paid remain outstanding.

If notice of prepayment or redemption is given for any Bonds as provided in this Section and is not rescinded, such Bonds shall become due and payable on the date fixed for prepayment or redemption at the price specified in the notice of prepayment or redemption, and upon the deposit of money with the Paying Agent in the amount necessary to effect the prepayment or redemption, such Bonds shall cease to bear interest on the date fixed for prepayment or redemption.

All principal installments due under the Bonds which are prepaid, redeemed, or purchased by the Borough pursuant to this Section shall be canceled.

**Section 7. Failure To Pay Principal Installments Due Under the Bonds.** Unless otherwise specified in the Loan Agreement, if a principal installment due under the Bonds is not paid when properly presented at its maturity or date fixed for prepayment or redemption, the Borough shall be obligated to pay interest on the principal installments due under the Bonds at the same rate provided in the Bonds from and after its maturity or date fixed for prepayment or redemption until the Bonds, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit with the Paying Agent and the Bonds have been called for payment by giving notice of that call to the Registered Owner.

**Section 8. Paying Agent.** The Borough Manager of the Borough is hereby authorized and directed to appoint a Paying Agent, which shall be qualified to perform its duties, and which may be the Finance Director or other officer of the Borough. The Paying Agent shall keep, or cause to be kept, the Bond Register for the registration and transfer of the Bonds, which shall be open to inspection by the Borough at all times. The Paying Agent is authorized, on behalf of the Borough, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this Ordinance, and to serve as the Borough's paying agent for the Bonds. The Paying Agent shall be responsible for its representations contained in the Paying Agent's Certificate of Authentication on each Bond.

**Section 9. Registration of Bonds.** The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register. The Bond Register shall contain the name and mailing address of the Registered Owner of the Bonds and the principal amount and number of the Bonds held by each Registered Owner. The Borough and the Paying Agent, each in its discretion, may deem and treat the Registered Owner of the Bonds as the absolute owner thereof for all purposes, and neither the Borough nor the Paying Agent shall

be affected by any notice to the contrary. The Bonds may be transferred only upon the Bond Register. Upon surrender for transfer or exchange of any Bonds at the office of the Paying Agent, together with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Paying Agent, duly executed by the Registered Owner or its duly authorized attorney, the Borough shall execute and the Paying Agent shall deliver an equal aggregate principal amount of Bonds of the same interest rate, maturity, and series of any Authorized Denominations, subject to such reasonable regulations as the Paying Agent may prescribe and upon payment sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid in connection with such transfer or exchange. Any Bonds surrendered for transfer or exchange shall be canceled by the Paying Agent. The Borough covenants that, until the Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of the Bonds that comply with the provisions of Section 149 of the Code.

**Section 10. Form of Bonds.** The Bonds shall be in substantially the following form, subject to the provisions of the Loan Agreement, and with such changes as the Manager of the Borough approves:

No. \_\_\_\_\_ \$ \_\_\_\_\_

**UNITED STATES OF AMERICA**

**STATE OF ALASKA**

**PETERSBURG BOROUGH**

**GENERAL OBLIGATION PUBLIC SCHOOL BOND, 20XX**

Maturity Date: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ [CUSIP No.:]

Registered Owner:

Principal Amount:

The Petersburg Borough (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner set forth above (the "Registered Owner"), or its registered assigns, the principal amount set forth above in accordance with the installment payment schedule set forth below (unless prepaid prior thereto as provided herein) together with interest on such installments from the date hereof or the most recent date to which interest has been paid or duly provided for, on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 20\_\_, at the interest rate per annum set forth below.

Year of Principal Installment Payment (_____)	Principal Installment <u>Amount</u>	<u>Interest Rate</u>
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Payment of principal hereof and interest hereon shall be made to the Registered Owner at the address appearing on the Bond Register on the Record Date by check or draft mailed by first-class mail on the payment date, or, at the request and sole expense of a Registered Owner

made on or prior to the Record Date, by wire transfer to a bank account in the United States on the payment date, and payment of the final principal amount hereof shall be made at the office of the Paying Agent upon presentation and surrender of this bond by the Registered Owner to the Paying Agent. Notwithstanding the foregoing, so long as the Alaska Municipal Bond Bank (the "Bank") is the Registered Owner of this bond, payments of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). Interest on this bond shall be computed on the basis of a 360-day year composed of twelve 30-day months.

This bond is one of the General Obligation Public School Bonds of the Borough (the "Bonds"), together aggregating \$\_\_\_\_\_ in principal amount and constituting bonds authorized for the purpose of providing the funds required to pay public school capital improvements, and is issued under Ordinance #2024-24 of the Borough titled:

AN ORDINANCE OF THE BOROUGH ASSEMBLY OF PETERSBURG, ALASKA, AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE BOROUGH, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000, TO PAY THE COSTS OF PUBLIC SCHOOL CAPITAL IMPROVEMENTS; FIXING CERTAIN DETAILS OF SUCH BONDS; AUTHORIZING THE SALE OF SUCH BONDS; AUTHORIZING THE PREPARATION, EXECUTION, AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH; PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF; AND PROVIDING FOR RELATED MATTERS.

(the "Ordinance").

This bond is subject to prepayment or redemption prior to the maturity date as provided in the Ordinance.

This bond is transferable as provided in the Ordinance, (i) only upon the Bond Register and (ii) upon surrender of this bond together with a written instrument of transfer duly executed by the Registered Owner or the duly authorized attorney of the Registered Owner. The Borough and the Paying Agent may treat and consider the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or prepayment or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This bond is a direct and general obligation of the Borough, and the full faith and credit of the Borough are pledged to the payment of the principal hereof and interest hereon. The Borough has irrevocably pledged and covenanted to levy ad valorem taxes upon all taxable property within the Borough, without limitation of rate or amount, to pay the principal hereof and interest hereon as the same become due and payable.

Reference is hereby made to the Ordinance and any ordinance supplemental thereto for a description of the rights of the Registered Owner of this bond and of the rights and obligations of the Borough thereunder, to all of the provisions of which the Registered Owner of this bond, by acceptance hereof, assents and agrees.



IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, or things required by the constitution or statutes of the State of Alaska or the Borough Charter or the ordinances or resolutions of the Borough to exist, to have happened, or to have been performed precedent to or in the issuance of this bond, exist, have happened, and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by such constitution, statutes, charter, ordinances, or resolutions.

IN WITNESS WHEREOF, PETERSBURG BOROUGH, ALASKA, has caused this bond to be signed in its name and on its behalf by its Manager, and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

PETERSBURG BOROUGH, ALASKA

\_\_\_\_\_/specimen/  
Borough Manager

ATTEST:

\_\_\_\_\_/specimen/  
Borough Clerk

**Section 11. Execution of Bonds.** The Bonds shall be executed in the name of the Borough by the Borough Manager, and the corporate seal of the Borough shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of the Bonds on behalf of the Borough by persons who at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bonds or shall not have held office on the date of the Bonds. Only Bonds bearing a Certificate of Authentication in substantially the following form, manually signed by the Paying Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance: "Certificate of Authentication. This bond is one of the fully registered Petersburg Borough, Alaska, General Obligation Public School Bond, 20XX described in the Ordinance." The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated has been duly executed, authenticated, and delivered and is entitled to the benefits of this Ordinance.

**Section 12. Mutilated, Destroyed, Stolen, or Lost Bonds.** Upon surrender for cancellation to the Paying Agent of mutilated Bonds, the Borough shall execute and deliver a new Bond of the same interest rate, principal amount, maturity, and series. Upon filing with the Paying Agent evidence satisfactory to the Borough that a Bond has been destroyed, stolen, or lost and of the ownership thereof and upon furnishing the Borough with indemnification satisfactory to it, the Borough shall execute and deliver a new Bond of the same interest rate, principal amount, maturity, and series. The person requesting the execution and delivery of a new Bond pursuant to this Section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith.

**Section 13. Disposition of Sale Proceeds of the Bonds.** The Borough Finance Director is hereby authorized and directed to create a fund designated as the "Public School 2025"

for the Bonds to be used for the payment of Costs of the Project. The proceeds of the Bonds (except for accrued interest, if any, which shall be applied to payment of interest on the Bonds) shall be deposited into the Public School 2025 Fund to be used to pay costs of issuing the Bonds and Costs of the Project; provided however, that any bond premium exceeding the costs of issuing the Bonds shall be deposited into the fund for payment of principal and interest on the Bonds, or for other lawfully authorized purposes.

**Section 14. Tax Covenants.** The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the interest on the Bonds to be excluded from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds that will cause the Bonds to be “arbitrage bonds” subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action what would cause the Bonds to be a “private activity bonds” as defined in Section 141 of the Code.

The Borough covenants to comply with the tax certificate executed upon the issuance of the Bonds unless it receives advice from nationally recognized bond counsel or the Internal Revenue Service that certain provisions have been amended or no longer apply to the Bonds.

**Section 15. Sale of the Bond; Loan Agreement.** The sale by the Borough to the Bond Bank of not to exceed \$3,500,000 in aggregate principal amount of the Bonds, as specified in the Loan Agreement and this Ordinance, is hereby authorized and approved. The sale proceeds of the Bonds shall be applied to pay Costs of the Project and shall be deposited in the Public School 2025 Fund of the Borough for such purpose.

The Borough authorizes the Borough Manager to negotiate, execute, and deliver a Loan Agreement, in a form consistent with the provisions of this Ordinance. The execution by the Borough Manager any such Loan Agreement or shall be conclusively evidenced by such official's execution and delivery of such document.

The Manager and Finance Director of the Borough are each authorized to execute and deliver a continuing disclosure undertaking if required by the purchaser of the Bonds to comply with Rule 15c2-12.

**Section 16. Authority of Officers.** Each Authorized Officer is hereby authorized and directed to execute such documents, agreements, and certificates and to do and perform such things and determine such matters necessary and desirable for the Borough to carry out its obligations under the Bonds, the Loan Agreement, and this Ordinance.

**Section 17. Amendatory and Supplemental Ordinances.**

(a) The Borough Assembly from time to time and at any time may adopt an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this Ordinance, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Borough in this Ordinance other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough; or

(ii) to make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provision contained in this Ordinance or in regard to matters or questions arising under this Ordinance as the Borough Assembly may deem necessary or desirable and not inconsistent with this Ordinance and which shall not materially adversely affect the interest of the Registered Owners.

Unless otherwise specified in the Loan Agreement, any such supplemental ordinance may be adopted without the consent of any Registered Owner, notwithstanding any of the provisions of subsection (b) of this Section.

(b) With the consent of the Registered Owners of a majority in aggregate principal amount of the affected Bonds at the time outstanding, the Borough Assembly may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(i) extend the stated maturity date of any of the Bonds, or reduce the amount or change the payment date of any principal installment, or reduce the rate of interest thereon, or extend the stated dates for payments of such interest, or reduce any prepayment or redemption price, without the consent of the Registered Owner of Bonds so affected; or

(ii) reduce the aforesaid percentage of Registered Owners required to approve any such supplemental ordinance, without the consent of all Registered Owners of the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners under this subsection to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent approves the substance thereof.

(c) Upon the adoption of any supplemental ordinance under this Section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Ordinance of the Borough and all Registered Owners shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) Bonds executed and delivered after the execution of any supplemental ordinance adopted under this Section may bear a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this Ordinance contained in any such supplemental ordinance may be prepared by the Borough and delivered without cost to the Registered Owners, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

**Section 18. Defeasance.** Payment of any Bonds may be provided for by the irrevocable deposit in trust of cash, noncallable Governmental Obligations, or any combination thereof. The cash and the maturing principal and interest income on such Government Obligations, if any, must be sufficient and available without reinvestment to pay when due the principal, whether at maturity or upon fixed prepayment or redemption dates, of and interest on

such Bonds. The cash and Government Obligations shall be held irrevocably in trust for the Registered Owners of such Bonds solely for the purpose of paying the principal or prepayment or redemption price of and interest on such Bonds as the same shall mature or become payable upon prepayment or redemption, and, if applicable, upon the irrevocable giving of (or irrevocable provision for the giving of) notice of prepayment or redemption and notification of all Registered Owners of affected Bonds that the deposit required by this Section has been made and that such Bonds are deemed to be paid in accordance with this Ordinance. Bonds the payment of which has been provided for in accordance with this Section shall no longer be deemed outstanding hereunder. The obligation of the Borough in respect of such Bonds shall nevertheless continue, but the Registered Owners thereof shall thereafter be entitled to payment only from the cash and Government Obligations deposited in trust to provide for the payment of such Bonds.

**Section 19. No Recourse.** No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this Ordinance against any member of the Borough Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral, or otherwise, of the State of Alaska or of any political subdivision thereof, except the Borough.

**Section 20. Severability.** If any one or more of the provisions of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds.

**Section 21. Effective Date.** This Ordinance shall take effect immediately from and after its passage and approval by the Borough Assembly.

PASSED AND APPROVED BY THE PETERSBURG BOROUGH ASSEMBLY,  
PETERSBURG, ALASKA, THIS \_\_\_\_ day of \_\_\_\_\_, 2025.

**PETERSBURG, ALASKA**

\_\_\_\_\_  
**Mark Jensen, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Debra K. Thompson, Borough Clerk**

Adopted:  
Published:  
Effective:



## Memorandum

January 14, 2025

To: Steve Giesbrecht, Borough Manager  
 From: Chris Cotta, Public Works Director  
 Re: Republic Services Contract Extension

The Borough's Municipal Solid Waste (MSW) Transport and Disposal Agreement with Republic Services was renewed in September 2023. The renewal was for a 2-year contract term, with an optional 1-year contract extension at the Borough's discretion. The two-year renewal period ends in September 2025 and if we want to extend for another year, we need to let Republic know by no later than February 1<sup>st</sup>, 2025. Value of the one-year contract extension is expected to be between \$425,000 and \$475,000 depending on waste volume actually collected and shipped out.

My recommendation is to extend the contract for one year, for the following reasons:

- If we do not extend, we will likely need to purchase our own fleet of containers for waste shipment (using Republic); or find an alternate waste services provider. Buying a fleet of containers is cost prohibitive and we need to avoid that option if possible. As for alternative shippers, the last time we sought alternatives for waste shipment and disposal, the only price we got was significantly higher than Republic quoted. By extending our contract now, we will lock in a rate of \$192.40/ton through Republic starting September 1<sup>st</sup> of 2025 and continuing through end of August 2026. This is still less than the \$195.87/ton that we were quoted by Waste Management back in 2023. Finding a lower price than Republic is offering via the proposed contract extension is unlikely.
- The Southeast Alaska Solid Waste Authority (SEASWA) is currently in the process of undertaking a large-scale study of solid waste management issues and potential solutions in Southeast Alaska. By the time our contract extension expires in 2026 we should have a much better understanding of possible alternatives for the region. This will give us more information with which to make an educated decision on what the best options for solid waste management and disposal will be for Petersburg once our Republic contract has fully run its course.

For reference, I have attached my 2023 contract renewal memo to the Manager along with a copy of the 2023 contract renewal/extension letter from Republic Services. If you agree with my recommendation for the one-year contract extension starting September 2025, please forward this issue to the Borough Assembly for consideration at their next regular meeting to be held on January 21<sup>st</sup>. I will be present at the meeting to answer any questions that you or the Assembly may have in regards to this issue. Thank you.

**Public Works Department**

PO Box 329, Petersburg, AK 99833 – Phone (907) 772-4430 Fax (907) 772-4102  
[www.petersburgak.gov](http://www.petersburgak.gov)



Sustainability in Action

Mr. Steve Giesbrecht
Borough Manager
Borough of Petersburg
PO Box 329
Petersburg, AK 99833

Dear Steve,

Republic Services is pleased to extend the current Municipal Solid Waste and Transportation and Disposal Agreement between Petersburg (Borough) and Republic Services for an additional two-year period with the inclusion of the mutually negotiated terms.

Here are the new terms of your contract:

- The new rate for disposal will include a 30-ton container minimum, and a per ton rate of \$172.86.
The new rates for recycling will include a 30-ton container minimum, the recycling component rate will be \$63.92, and the recycling processing component rate will be \$63.43.
The new rate will commence beginning on September 1, 2023.
Republic will continue to pass through to the Borough AML's fuel recovery charges.
The annual PI beginning on September 1 of 2024 will be a fixed 5.5% for both your recycling and disposal rates.
The Borough will have the ability to unilaterally exercise an additional one-year extension to this agreement and must be communicated to Republic by February 1, of 2025.
Once this contract has been completed either after two or three years, the Borough will be required to utilize its own containers for solid waste disposal and transport.

We are looking forward to continuing our partnership with Petersburg and please contact Steve Gilmore if you have any additional questions.

Republic Services

Petersburg

By: Ryan P Lawler
Ryan Lawler, Northwest Area President

By: [Signature]
On Behalf of Petersburg



## Memorandum

July 12, 2023

To: Steve Giesbrecht, Borough Manager  
 From: Chris Cotta, Public Works Director  
 Re: Republic Services Contract Renewal

The Borough's Municipal Solid Waste (MSW) Transport and Disposal Agreement with Republic Services expires on August 31, 2023. The basic terms of this agreement date from 2013 and cover transportation and disposal of MSW and recyclables generated by the Petersburg Borough. The basic form of the agreement has been in use for over 25 years and was updated in 2013 to incorporate changes resulting from negotiations with the Southeast Alaska Solid Waste Authority (SEASWA) and Petersburg Borough.

Republic Services is proposing a 2-year renewal of the existing agreement, with some significant changes:

- Price escalations will be a fixed 5.5% per year.
- In the first year of the new contract our base rate per ton of MSW will go up from \$128.76 to \$172.86 starting September 1, 2023 and will thereafter be subject to the annual 5.5% increase. This represents a first-year increase of approximately 34% from our current rate.
- Recycling rates will also increase but the first-year cost is a lesser percentage than MSW.
- Once the proposed renewal agreement expires (in either 2 or 3 years), future agreements with Republic will require the Borough to utilize its own shipping containers. This would mean a substantial capital investment and would also greatly increase O&M costs for the dept.

Although the contract cost increase is significant, the above costs are in line with what other nearby Southeast communities pay for waste disposal. Annual contract cost is expected to be in the \$400-450K range, with a total value of the proposed 2-year contract of approximately \$850K. We were able to obtain one other quote for solid waste shipment and disposal, from Waste Management. Their base rate per ton was \$195.87 vs. \$172.86 quoted by Republic.

Public Works recommends moving forward with the 2-year renewal as described above, with optional 3<sup>rd</sup> year at Borough's discretion. Hopefully by the time the contract has reached its expiration date we will be able to find a less expensive solution for waste disposal, either by negotiating a joint contract with other local communities or perhaps a region-wide solution applied through the SEASWA.

If you agree with this contract approval recommendation, please forward it to the Borough Assembly for consideration at their next regular meeting on July 17<sup>th</sup>, 2023. Thank you.

Attachment: Republic Services Contract Extension Agreement (1 page)

**Public Works Department**

PO Box 329, Petersburg, AK 99833 – Phone (907) 772-4430 Fax (907) 772-4102  
[www.petersburgak.gov](http://www.petersburgak.gov)



January 21, 2025

Honorable Senator Murkowski  
522 Hart Senate Office Building  
Washington, DC 20510

Honorable Senator Sullivan  
302 Hart Senate Office Building  
Washington, DC 20510

Honorable Representative Begich  
153 Cannon House Office Building  
Washington, DC 20510

Dear Senator Murkowski, Senator Sullivan, and Representative Begich,

On behalf of the 3,367 residents in the Petersburg Borough in Alaska, we urge the reauthorization of the *Secure Rural Schools Reauthorization Act of 2023*, extending it through 2026 and ensuring that local governments in forested counties continue to have a crucial reliable funding stream.

The SRS program provides critical funding to national forest counties to finance numerous critical services, including infrastructure, conservation projects, search and rescue missions, fire prevention programs and education services. In Petersburg, we rely on SRS funds to maintain high quality education services in our local schools and to maintain our road system. If Congress fails to renew its long-standing federal obligation to forest counties and the lands managed by the federal government by not reauthorizing the SRS program, the Petersburg Borough and over 700 similar counties across the United States would face dramatic budgetary shortfalls. Authorization for SRS last lapsed in FY 2016 and as a result federal forest payments to counties decreased by over 80 percent.

Historically, rural counties have relied on a share of receipts from local timber harvests to supplement local funding for education services and roads. During the 1980s, national policies substantially diminished the revenue-generating activity permitted on these forests. The resulting steep decline in timber sales decreased the revenues that rural counties and school districts received from forest management activities. In response to this decline, SRS was first enacted in 2000 to stabilize payments to counties and compensate for lost revenues.

SRS was last reauthorized on February 15, 2021, for FYs 2021 through 2023. In April 2023, the U.S. Forest Service and Bureau of Land Management distributed \$270 million to over 700 counties, parishes and boroughs. In April 2024, the U.S. Forest Service announced \$232 million in SRS funds to be distributed to counties. Ensuring these funds continue to be distributed to federal forest counties will allow counties to fund essential government services fully – those mandated by federal and state laws – such as education, emergency services, transportation infrastructure and law enforcement.

Thank you for your continued service to the Petersburg Borough and our residents. We appreciate your partnership and respectfully ask that you swiftly reauthorize the Secure Rural School program through 2026.

Respectfully,

Mark Jensen, Mayor  
Petersburg Borough, Alaska

**Borough Administration**  
PO Box 329, Petersburg, AK 99833 – Phone (907) 772-4425 Fax (907)772-3759  
[www.ci.petersburg.ak.us](http://www.ci.petersburg.ak.us)



**Debra Thompson**

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**From:** Donald Sperl <donaldsperl@gmail.com>  
**Sent:** Friday, January 10, 2025 1:05 PM  
**To:** Debra Thompson; Becky Regula  
**Subject:** P & Z seat

External Email! Use Caution

Good afternoon,

I am "officially" interested in the temporary seat on the planning and zoning board. I would miss the July and August meetings for sure, but otherwise should be able.

If this is still vacant, and you choose to consider me, let me know.

Thanks!

— Donald Sperl  
donaldsperl@gmail.com  
(907) 518-1604

## Debra Thompson

---

**From:** Mary L Stephenson <mlstephenson2017@gmail.com>  
**Sent:** Monday, January 13, 2025 5:40 PM  
**To:** City KTN 1 Bob Siversten Mayor; KGBAK 1 Rodney Dial Mayor.; KTN Ward Cove Group Dave Spokely; City of Metlakatla Albert Smith; City of Klawock Mayor Don Nickerson; City of Juneau Mayor Beth Weldon; City of Sitka Mayor Steven Eisenbeisz; Mark Jensen; City of Wrangell Mayor Patricia Gilber; City of Skagway Mayor Sam Bass; KTN B Survey Point Ethan Berto; City KTN Laurie Booyse Tourism Manager; City KTN VB Kara Tetley Executive Director; City KTN 8 Wayne Phillips Port Harbor Director  
**Cc:** City KTN 2 Kim Stanker City Clerk .; KGBAK 2 Kacie Paxton Borough Clerk.; City of Sitka John Leach Administrator; Debra Thompson; City of Saxman Marissa Medford City Manager; City of Wrangell Kim Lane City Clerk; City of Metlakatla Shaun Thomas Executive Director  
**Subject:** Thurs 1.16.25 Council Mtg with Survey Point Holding re B3 B4  
**Attachments:** 1.12.24 Ltr Council Survey Point Presentation upgrading B3 B4.pdf; 11.29.1999 The New York Times Sovereign Islands AK Regulations Cruise Ships.pdf

### External Email! Use Caution

Good afternoon Recipients of this Letter...

Requesting city clerks disburse the email amongst council and assembly members - thank you.

Thursday 16th Ketchikan City Council agenda is addressing Berth 4 and possibly Berth 3: Infrastructure Improvements. Projects are long over due and remain a liability to stakeholders.

So why are you receiving this letter....because all eyes are on City & Borough of Juneau as Norwegian Cruise Lines and Royal Caribbean Cruises develop private docks by 2027ish. As my letter reference - City of Juneau's four downtown terminals will have to fill its vacancy as mentioned in the Table. This will exceed current 1.5M projections by industry.

The letter addresses how this will affect City of Ketchikan in particular as Survey Point Holdings makes their presentation for upgrading Berth III and IV. Both are capable of handling larger ships and lightering facilities.

As mentioned, use, abuse and not capable of sustainability would be our struggles (gloom and doom) if regulations are not put in place setting limits based on FULL CAPACITY of passengers and/or cap on number of ships daily.

Unlike 26 years ago, Southeast Alaska is being divided into public and private land and dock facilities. City Charter is being updated. Ideal time to protect our investment (Economic Development) - the General Budget.

Legislators have presented bills: Alaska (revisions to) Tourism Restoration Act and Tribal Tourism Sovereignty Act - if approved, dynamics change drastically and rest assure cruise industry is working the lobbyists with big rewards. Speculating City of Juneau becomes home port for interstate cruising similar to Hawaii inner islands. Enough said.

Attached is November 29, 1999 New York Times article: Sovereign Islands A Question of Regulation; Alaskans Choose Sides in Battle Over Cruise ships - written 26 years ago. Unless one has a subscription to TNYT, it is not available. Copy was obtained from subscriber and saved. Best refresh history and get prepared for the next generation 26 years i.e. 2051.

Residents of Ketchikan's only request - don't let us be the last to know the non-transparent deals with the Port of Ketchikan. Thank you.

Respectfully submitted,

*Mary L Stephenson*

Resident of Ketchikan Alaska since 2014

Employed in Tourism since 1982, now retired.

January 13, 2025

Mayor Bob Sivertsen Ketchikan  
 City Council Members  
 Delilah Walsh, City Manager  
 Wayne Phillips, Port & Harbors Dr.  
 Laurie Booyse, Tourism Manager  
 Kara Tetley, KVB Executive Director

Mayor Rodney Dial & Assembly  
 Ketchikan Gateway Borough  
 Mayor Frank Seludo & Assembly  
 City of Saxman KGBAK  
 Mayor Albert Smith & Assembly  
 City of Metlakatla  
 Mayor Don Nickerson & Assembly  
 City of Klawock

Mayor Beth Weldon & Assembly  
 City & Borough of Juneau  
 Mayor Steven Eisenbeisz & Assembly  
 City & Borough of Sitka  
 Mayor Mark Jensen & Assembly  
 City & Borough of Petersburg  
 Mayor Patricia Gilbert & Assembly  
 City & Borough of Wrangell  
 Mayor Sam Bass & Assembly  
 City & Borough of Skagway

- Residents of City of Ketchikan and Gateway Borough
- Ethan Berto, Survey Point Holdings & Managing Member for KDC

**SUBJECT: Berth III and IV Infrastructure Improvements for larger vessels deployed to Alaska**

1.16.25 Council Meeting <https://ketchikan.primegov.com/Portal/Meeting?meetingTemplateld=3508> NB-7a

Ketchikan City Council, City Manager’s office along with Port & Harbors Director are reviewing the community’s options for Berth III and Berth IV structural upgrades and future scheduling of newer, larger vessels being deployed to Alaska. Our future is uncertain with the lack of transparency from CLAA membership. Saying “YES” to improvements without conditions to ‘passenger limits’ or ‘caps on number of ships’ daily is poor, unmanaged-tourism to this community who is left with undaunting bills to pay.

Mr. Berto reference to larger ships NCL Bliss in 2018 and Princess newest ship, Star Princess in 2026

- 1) Norwegian: Bliss 168,028 tonnage, 1,094 feet, full capacity at 4,903 with crew of 1,716
- 2) Princess: Star Princess\* 250,800 tonnage, 1,198 feet, full capacity at 5,189 with crew of 1,550

Plus media announcement three new ships in 2026: Azamara ‘Pursuit’, MSC ‘Poesia’, and Virgin Voyages ‘Brilliant Lady’ along with Star Princess (above) sailing Alaska waters. 2026 schedule not yet published, we estimate the 4 ships will make 18 stops each with FULL CAPACITY totaling 213,894 passengers.

**Epicenter for Southeast Alaska:** Port of Juneau reconfigures with existing contracts as Norwegian Cruise Lines and Royal Caribbean partner with private enterprises adding space at each facility.

- 1) Terminal 5 Huna Totem Corporation AAK’W Landing and Norwegian Cruise Lines (2 slips)
- 2) Port of Douglas Island with Royal Caribbean Corp. partnership with Goldbelt LLC (2 slips)

In the shell game of scheduling, Southeast seaports continue with NCL and RC ships calling at our ports. We must get answers from CLAA schedulers: What are the contracts being signed at west coast home ports heading to Port of Juneau attempting to ‘fill’ the loss of 16 ships making 276 stop to occupy Terminals 1-4 empty spaces? According to Table below, an estimated **875,760 passengers** on top of current 1.5M projections??? And what is the timeline for Juneau to be at full capacity....again? Privately owned, NCL and RC could sign contracts that otherwise was denied or offered better incentives than downtown.

Using 2025 cruise schedule to anticipate space available at Juneau Downtown Terminals 1-4 in 2026							
Terminal 5 Huna Totem Landing/NCL and Port of Douglas Island Royal Caribbean & Goldbelt							
Total Ships	# of Stops	2027 # of Stops : Port Hours : Capacity	Port Hours	Double Occupancy	Un-counted	Full Capacity	Crew
7	134	Norwegian Cruise Lines Huna Totem Corp.	1,252	313,736	63,763	377,499	149,368
9	142	Royal Caribbean Goldbelt	1,509	419,536	78,725	498,261	180,203
16	276	Estimated Total Vacancies	2,761	733,272	142,488	875,760	329,571

2026 Ketchikan Projections: Are we hosting NCL and RC ships along with 16 ships that fill Juneau’s T1-4 terminal vacancies, a minimum of **875,760 at full capacity** in addition to 1.5M projections?  
 An option: simple refuse contracts ~ we don’t have to be the Epicenter for all ships to Alaska!  
 And learning from the best, when ‘accommodating’ we get the “revenue supplement” in writing.

Always critical transportation, ferry shuttle, increase charter operations & its inventory for exclusive shore excursion packages and independent tour operators. Upland infrastructure needs to be in place by 2027 for KTN.

Comment from CLAA has acknowledged there are too many ships for too few ports. Metlakatla, Klawock, Port of Ketchikan, Port of Ward Cove, and Port of Saxman will absorb some but not all vessels. We trust Juneau will want to recover its revenues lost with new contracts even though Juneau and Sitka communities pursued initiatives for a Ship-Free day. Petersburg, Sitka, Wrangell, and Skagway are accommodating new ships and upgrades. Would CLAA declare their 10-year commitments with west coast facilities, new public and private facilities, and scheduled ships? Can we agree to a moratorium of sorts allowing ports to adjust **number of ships in region that meet capacity limits** to achieve sustainability beyond 2030?

**Would've, Could've, Should've ...Council - Didn't** – In the pipeline for the past 10+ years, CLAA is putting pressure from its membership to upgrade public dock facilities to meet arrival projections by 2027 all-the-while increasing private partnerships in direct competition. Based on buyers beware documents signed, “*upgrades had no clause to constrain its public or private competition with Alaska.*” If Ketchikan completes the demands without full transparency with stakeholders knowing full details of Juneau’s commitments, this community will never have grounds for a ‘limit of passengers, cap on ships daily or ship-free day’ initiative intended to scale back the overtourism repercussion. *Industry mantra: what’s mine is mine, what’s yours is mine.*

#### Data from the 2024 Ketchikan Independent Study

- ❖ Downtown docks had 179 stops northbound and 340 stops southbound (519 total).
- ❖ Port of Ward Cove had 39 northbound and 103 southbound (142 total).
- ❖ Thursday, June 13 data reports **7 ships at full capacity with 23,040 passengers.**
- ❖ There were **3 days w/8 ships; 24 days w/5 ships; 26 days w/6 ships and 8 days w/7 ships.**
- ❖ 2024 City and Ward Cove logged 5,094 port hours, **1,747,632\* total at full capacity,**  
\*CLAA records less **difference of 284,701 Un-counted passengers.**
- ❖ Cruise industry tracks Lower Berth (Double Occupancy) even though ships are sailing at Full Capacity. City of Ketchikan General Budget is adding a category Department Expenditures covering city labor, equipment used, and services spent on cruise industry. Departing west coast, manifest records full capacity counts. **GROSS not NET capacity. 284,701 passengers contributed to hospitality expenses causing a strain on budget designated for community services.**
- ❖ Using Alaska to sell cruise tickets, and then compete by profiting with destination with exclusive shore excursion that consumes leisure time before all aboard. What ‘value’ does it bring Ketchikan when gangways are set by 6:30 AM and remain at 8:00 PM or later? Based on location of store and working daily for 168-day season, merchants open when foot-traffic reaches display windows 2 hours later. Late night departures benefit the ship with onboard meals and activities until departure.
- ❖ Ketchikan has more ships “hot-berthing and “lightering” (fewer hours in port) from the Narrows than any other seaport in SE Alaska. Quantity vs. Quality – general budget ledgers keeps us poor and needy.
- ❖ Overtourism i.e. UnManaged Tourism looks to CLAA/Council/Assembly partnership with every seaport not addressing congestion, air, land, and sea pollution (emissions, fossil fuels) and higher levels of noise (aviation overhead and marine wildlife with charter boats). Losing our sustainability not an option.

In summary, city council reviews offer by Survey Point Holdings and Ketchikan Dock Company to upgrade dock facilities. It is done so with understanding amongst CLAA membership that Juneau’s two private docks plus downtown terminals sustains the agreeable level as defined in capping ships/limiting passengers at full capacity in SE Alaska. In addition, for the first time within the industry the ‘rush’ of competition with new-builds filling Juneau’s vacancies should be constrained that honor individual seaport limits without forcing us into litigation protecting our sovereignty and home rule status. Given Alaska’s past, \*\* use, abuse, and discard stakeholders’ investment may not guarantee nor support the 2051\*\* projections. Thank you for taking notes.

Respectfully submitted,

Mary L Stephenson

Resident of Ketchikan Alaska since 2014

Attached to email:

The New York Times November 29, 1999 (The Industry in 26 years = 2051)\*\*

**SOVEREIGN ISLANDS -- A Question of Regulation; Alaskans Choose Sides in Battle Over Cruise Ships**

**Council members – Ketchikan, including Port of Ward Cove must be able to establish OUR FULL CAPACITY daily limits !!!**

<https://www.nytimes.com/1999/11/29/us/sovereign-islands-question-regulation-alaskans-choose-sides-battle-over-cruise.html>

## The New York Times

### **SOVEREIGN ISLANDS -- A Question of Regulation; Alaskans Choose Sides in Battle Over Cruise Ships**

By [Douglas Frantz](#)

- Nov. 29, 1999

The cruise ship industry, once embraced as a savior for Alaska's lagging economy, has worn out its welcome in some quarters.

Fed up with giant ships that discharge waste into their waterways and with tourists who flood their downtown, residents of Juneau, the state capital, in early October approved a \$5 tax on every passenger. A bit farther north, the small town of Haines voted to limit the number of cruise ships allowed at its dock. And some Juneau residents have called for one cruise line to be barred from the state's waters.

But the Alaskans who are fighting to restrict the booming \$12 billion cruise ship industry have a powerful opponent they may not have expected: their own representatives in the United States Congress.

At every juncture, efforts to slow the industry's expansion in Alaska have been blocked by members of the state's Congressional delegation, all three of whom are Republicans and chairmen of committees with wide influence over both the state and the industry.

In the last three years, the Alaska delegation has, among other actions, opened the way to allowing more ships into the environmentally delicate waters of Glacier Bay National Park, stymied federal efforts to consider stricter antipollution standards for ships and overridden a state law prohibiting shipboard gambling in Alaska waters.

Some of the actions were legislative sleights of hand, adding amendments to bills after public discussion had ended. In some cases, people here do not even know what their representatives have done for the industry. Other actions were exercises in political muscle by an influential Alaska tag team, Senator Frank H. Murkowski and Representative Don Young, the chairmen, respectively, of the Senate Energy and Natural Resources Committee and the House Resources Committee.

Mr. Murkowski, Mr. Young and their spokesmen contend that they are not protecting the cruise industry but promoting tourism in Alaska, where the economy has suffered from declines in the timber industry and a slackening of oil revenue. And many businesspeople throughout the region have applauded their delegation's efforts as loudly as environmentalists have condemned them, noting that the cruise industry has been crucial to the state's economy.

Cruise ship passengers spend more than \$160 million a year in southeast Alaska, according to a 1997 study financed by the industry and the cities in the region. In Juneau, the influx of passengers has spawned dozens of businesses, from upscale art galleries to T-shirt shops, and helped rejuvenate the downtown area.

"There's been a very positive impact from the cruise ships," said Jack Cadigan, whose family owns three shops that cater to tourists.

Mayor Dennis Egan of Juneau agreed that the industry's growth had helped the economy, and he gave part of the credit to the state's Congressional delegation.

"They are friends of the industry, no question about that," said Mr. Egan, a Democrat. "And they have Alaskan issues at heart, too."

But the tensions have grown as the foreign-registered cruise companies have become a major leisure industry, with legislative protections that are the envy of American business, and as the Alaska delegation has played an important and little-understood role in helping to expand the number of ships and passengers visiting the state.

### **An Age-Old Feud**

A look at the fight that has broken out here provides insight into that role, as well as into how the industry's ever-larger ships, some of them longer than three football fields, are beginning to stir a backlash in some communities. The struggle also reflects an age-old feud over Alaska's unrivaled natural resources. It echoes earlier battles between the timber and oil interests, who have often bristled at too much Washington meddling, and the environmentalists, whom some critics portray as uncompromising in the face of a struggling local economy.

Kimberly Metcalfe-Helmar, a second-generation Juneau resident and president of a downtown neighborhood group, was surprised and pleased by the vote to tax cruise passengers. Just three years ago, she had led an unsuccessful effort to pass an identical tax.

"I've been fighting this since the mid-80's, but it's only recently that the noise, pollution and dumping have galvanized the town," Ms. Metcalfe-Helmar said.

The tax was approved by nearly 70 percent of the voters. The margin of victory demonstrated how frustrated many of the people in this town of 30,000 have become with the 600,000 passengers who clog their streets each summer, and with the ships whose smokestacks send a hazy pollution snaking around the mountains that cradle the town.

But the backlash also reflected deep indignation over the admission by one company, Royal Caribbean International, that its ships had dumped hazardous waste within the Inside Passage, whose clear glacial waters wind gently through southeast Alaska and teem with salmon, halibut, king crab and whales.

The industry's reaction to the vote was swift. Princess Cruises, which brought about 180,000 passengers to Juneau this past summer, said its ships would shorten their stays next season,

a decision that created anxiety among local businesses about lost revenue and led them to form a pro-tourism organization. The company also said it was canceling the one stop it had planned for next summer in Haines. Princess's representative here said the moves were intended to lessen the cruises' impact on the two towns.

Another cruise line took action that some people saw as clearly punitive. Holland America Line cut off donations to some charitable and civic organizations in Juneau, including the arts council and the Civil Air Patrol, and explained that the tax vote had prompted a "reassessment" of its relationship with the city. The local newspaper, The Juneau Empire, condemned the company for taking revenge on nonprofit groups.

Tensions may flare again when state regulators hold a public meeting here, scheduled for this Friday, to consider whether new restrictions are needed to curtail the activities of cruise ships. Such restrictions would again put backers at odds with industry stalwarts in Congress.

The cruise industry maintains a low profile in Washington, and its contributions to candidates for federal office from January 1993 through the end of October 1999 totaled \$1.2 million, far less than those of many other interest groups. But an analysis of contributions by individuals and political action committees associated with the industry found that they have been most generous with the Alaska and Florida delegations, which makes sense given that the companies have their most important operations in those states.

The Alaska delegation, whose third member is Senator Ted Stevens, chairman of the Appropriations Committee, was the second-largest recipient of campaign contributions, with \$117,950. Only Florida, which has 25 members in Congress and is home to most of the cruise companies, got more: \$230,701.

Mr. Young was the largest House recipient, with \$69,500. Three years ago, he played a pivotal role when a lucrative part of the industry's business was threatened.

### **The Battle Over Gambling**

Alaska law limits gambling to charities, which operate small-scale bingo games and raffles to raise money. In 1993, the state attorney general determined that the law extended into the waters the state controlled within three miles of shore and ordered cruise ships to shut down their casinos.

In most places, the order would not have had much impact, because cruises quickly escape the three-mile jurisdiction of American states and operate in international waters, where they are free of regulation.

But, in Alaska the itinerary follows the Inside Passage along the rugged coast, and only several sections along the route, known as doughnut holes, are more than three miles from either shore. That made it illegal for the ships to operate highly lucrative casinos for virtually the entire time they were in Alaska.



Cruise industry lobbyists persuaded the legislature to change the law in 1994, but the governor at the time, Walter Hickel, vetoed the bill. The next year, the industry won a temporary exemption for a single season.

Frustrated in Juneau, the industry turned to Mr. Young, a former Yukon tugboat captain, asking him to assert federal authority over gambling within Alaska's waters.

He responded in the fall of 1996 by inserting an amendment into the Coast Guard authorization bill after public hearings had ended. The amendment, which applied solely to Alaska, prevented the state from banning gambling except when ships were docked or within three miles of a port of call. Mr. Young's staff acknowledged that the amendment had been sought by the industry and applied just to the big ships in southeast Alaska.

The change caught state officials by surprise. "All of a sudden came this federal law saying they could gamble," said Deborah Vogt, who at the time was the deputy commissioner of the state revenue department.

Meanwhile, Senator Murkowski was undoing plans to allow the National Park Service to weigh new antipollution standards for cruise ships in exchange for permitting more vessels to enter Glacier Bay, the national park and preserve 65 miles northwest of Juneau.

Glacier Bay is a 3.2 million-acre expanse of towering mountains, deep fjords, and forests. It is home to abundant wildlife, including several species of whales, seals and otters, and its unspoiled beauty makes it the destination of choice for cruise ships.

For years, Mr. Murkowski had pushed to allow more ships into the bay, arguing that it was the most environmentally sound way for people to see the park. Park service officials resisted, fearing that the noise and air pollution would be harmful, especially to the endangered humpback whales.

After the Republican Party took control of Congress in 1994, Mr. Murkowski became chairman of the Energy and Natural Resources Committee, which oversees the budget of the Interior Department and the park service.

At Mr. Murkowski's urging, Interior Secretary Bruce Babbitt directed the park service to expand cruise ship permits to 184, or two ships a day, from about 100, during the three-month summer cruise season.

After environmental groups threatened to sue, a compromise was reached. A slightly slower expansion was approved on the condition that the park service receives authority to impose higher antipollution standards if they were found to be warranted by later studies.

"The amazing thing was that we managed to put together a plan that satisfied just about everybody," said Chip Dennerlein, the Alaska regional director for the National Parks and Conservation Association.

After the compromise was published in The Federal Register, however, Mr. Murkowski added a last-minute amendment to the 1996 parks bill that took away the park service's authority to increase pollution controls.

The change came at the urging of the cruise industry, whose lobbyists had argued that it was unfair to hold their ships to a higher standard than other vessels, according to Mr. Murkowski's staff and a former industry lobbyist.

"It was like the rug was pulled out from under us," Mr. Dennerlein said.

The park service was surprised, too. Robert D. Barbee, the regional director for Alaska, wrote to the cruise lines in March 1997 that the change "effectively negates a key mitigation measure" and that it prevented the park service from adopting "higher planning and operating standards."

Mr. Murkowski's chief of staff, David Garman, defended the senator's action, arguing that Glacier Bay could handle two ships a day without damaging the environment and that the park service should not establish antipollution standards. Mr. Garman also said the senator would consider tightening laws and regulations if it became clear that ships were polluting Alaska's waters.

The prospect of tightening regulations will be the subject of the coming public meeting in Juneau. The Alaska Department of Environmental Conservation scheduled the session after concerns were raised that current laws were no longer sufficient in this age of megaships.

"These ships are floating cities, really larger than most cities in Alaska," said Michele Brown, commissioner of the department. "But unlike cities, they don't need a permit to pump their waste into the Inside Passage."

With 3,000 or more passengers and crew members, a big cruise ship generates an average of 170,000 gallons a day of gray water from showers, sinks and dishwashers, and 17,000 gallons of black water, or human waste, according to industry officials.

Under current federal and international laws, ships can discharge gray water anywhere. Human waste and ground food waste can be discharged legally anywhere beyond three miles from shore.

The three-mile-limit standard has caused concerns in southeast Alaska because of the doughnut holes within the Inside Passage. Though technically international waters, the holes lie within the passage and adjacent to fertile fishing grounds and feeding areas for humpback whales. In October, The Anchorage Daily News reported that some ships had discharged waste in the holes.

Pointing to the holes on a nautical chart in his Juneau office earlier this month, Steven A. Torok, the senior Environmental Protection Agency official in Alaska, said the law did not take them into account. "Three miles offshore was intended to be three miles offshore, not within the Inside Passage," he said.

## 'They Say It's Legal'

Two independent pilots who help ship captains navigate the passage said in interviews that they were often asked to take ships to the areas to pump waste water overboard.

"They say it's legal, but nobody's monitoring what's in that water," said Capt. Robert W. Smith, who has spent 50 years in Alaska's waters and said he had often been directed to the doughnut holes. "We live here and we want to know what they're dumping."

Capt. Ted Kellogg said he sometimes encountered so many ships discharging in the holes along the eight miles of Chatham Strait that he was concerned about safety. "They want to get to the middle of the strait to dump, and you'll have vessels meeting on reciprocal courses," he said.

Captain Smith and Captain Kellogg said most lines, including Celebrity Cruises, Holland America Line, and Princess Cruises, dumped waste into the holes.

Julie Benson, a spokeswoman for Princess Cruises, said the company was declining to answer questions because officials thought previous articles in The New York Times about the industry had been unfair.

Erik Elvejord, a spokesman for Holland America, said the company's ships did not discharge waste water into the doughnut holes and never discharged raw sewage. Instead, he said, the ships treat their sewage on board and discharge legally permissible gray water only while traveling between ports so the waste mixes with the largest amount of outside water possible.

Holland America sends the most ships into Glacier Bay, and Mr. Elvejord said company policy did not allow even gray water to be discharged within the bay.

Nancy J. Wheatley, senior vice president for safety and environment at Royal Caribbean, which is also the parent company of Celebrity Cruises, said Celebrity ships might have used the doughnut holes to discharge waste on occasion. But, she said, no ships from either line ever discharge raw sewage within the Inside Passage, and both lines try to discharge as little gray water as possible.

"Our company goal is to discharge to the greatest extent possible outside of 12 nautical miles," Ms. Wheatley said.

Since pleading guilty twice in the last 18 months to criminal charges involving a fleetwide conspiracy to discharge oily waste water and hazardous material, Royal Caribbean has adopted voluntary standards to operate above legal requirements for discharges. It has also begun experimenting with treating gray water before it is discharged. The company's president, Jack Williams, said at a town meeting in Juneau last August that he thought the laws governing discharges should be more stringent.

No ship can store all of its gray water during the average seven-day cruise through the Inside Passage. As a result, it must be discharged. Though the lines say their ships do not discharge

gray water while sitting in port and never discharge raw sewage in the Inside Passage, some regulators are skeptical.

"The cruise lines say that they don't discharge raw sewage, but the issue is that the law allows them to do it and this is a very competitive industry," said Mr. Torok of the Environmental Protection Agency. "The laws and regulations are outdated."

Ms. Brown, the Alaska environment commissioner, said she would not hesitate to ask Congress for new laws restricting discharges if regulators determined that such legislation was necessary.

In the meantime, the state of Alaska took the unusual step Friday of filing a lawsuit in the United States Supreme Court claiming jurisdiction over the waters of southeast Alaska, including Glacier Bay. The suit argued that the federal Submerged Lands Act gives the state the right to regulate activities in the waters, including discharges by cruise ships.

A version of this article appears in print on Nov. 29, 1999, Section A, Page 1 of the National edition with the headline: SOVEREIGN ISLANDS -- A Question of Regulation; Alaskans Choose Sides in Battle Over Cruise Ships. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)  
See more on: [Ted Stevens](#), [Don Young](#)

## Debra Thompson

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**From:** Garrett, Alice <alice\_garrett@fws.gov>  
**Sent:** Wednesday, January 15, 2025 1:52 PM  
**To:** runger@koniag.com; BOD@afognak.com; info@aki-kodiak.com; ayakulik@goplay.com; info@leisnoi.com; info@nativesofkodiak.com; info@oldharbor.org; info@ouzinkie.com; atoh@alutiiqtribe.org; pamodo\_98@yahoo.com; tribe@afognak.org; speridon.simeonoff@kanaweb.org; tribalmember@karluktribal.org; Mary Nelson; ouztribe@gmail.com; nnelson@portlionstribes.org; administrator@portlionstribes.org; jeanninem@sunaq.org; info@woodyisland.com; danmcak@gmail.com; mshuravloff-nelson@city.kodiak.ak.us; clerk@city.kodiak.ak.us; cityoflarsenbay@gmail.com; oldharborcitycouncil@gmail.com; clerk@ouzinkie.city; mayor.jackson@ouzinkie.city; cityofportlions@gmail.com; clerks@kodiakak.us; josie.hickel@chugach.com; info@ciri.com; aci@gmail.com; charles.totemoff@chenega.com; info@eklutnainc.com; info@ganaayoo.com; Knikcorp@gci.net; atomharris@gmail.com; nnai@nnai.net; greg@nnai.net; info@salamatof.com; info@eyakcorp.com; info@portgraham.tech; kkomakhuk@tatitlek.com; sdeemer@tyonek.com; lrwade@chickaloon-nsn.gov; batchison@kenaitze.org; mtucker@kniktribe.org; nve@eklutna.org; bhewitt@eklutna.org; info@eyak-nsn.gov; Pat Norman; fran@portgraham.org; nanci.tatitlekira@gmail.com; nanci@tatitlekira.com; rpaulsen@tatitlek.com; NVTPresident@gmail.com; nvtyonekpresident@gmail.com; Greg Encelewski; iencelewski@niniichiktribe-nsn.gov; cmonfor@salamatof.com; svt@svt.org; Crystal D. Collier; mayor@cityofcordova.net; citymanager@cityofcordova.net; cityclerk@cityofcordova.net; citymanager@cityofhomer-ak.gov; clerk@cityofhomer-ak.gov; mayor@kachemak.city; cityclerk@kachemak.city; ssaner@kenai.city; cityclerk@kenai.city; citymanager@cityofseldovia.com; cityclerk@cityofseldovia.com; clerk@cityofseward.net; jbower@soldotna.org; cityclerk@soldotna.org; spierce@valdezak.gov; citymanager@whittieralaska.gov; jwilde@whittieralaska.gov; receptionist@whittieralaska.gov; cityclerk@whittieralaska.gov; micheleturner@kpb.us; assemblyclerk@kpb.us; wwmasmc@anchorageak.gov; wwmasmc@muni.org; Mayor@muni.org; joe.nelson@sealaska.com; cblair@capefoxcorp.com; communications@capefoxss.com; info@goldbelt.com; adminasst@haidacorporation.com; receptionist@haidacorporation.com; shareholders@hunatotem.com; robert.mills@kaketribalcorp.com; info@kaketribalcorp.com; carol.kavilco@gmail.com; khcadmin@aptalaska.net; khc@aptalaska.net; info@kootznoowoo.com; eddouville@shaanseet.com; contact@shaanseet.com; info@sheeatika.com; meda@yaakwdaatkhaan.com; admin@ytkcorp.com; sramey.agntribe@gmail.com; otp@tlingitandhaida.gov; otp@cchita-nsn.gov; klukwan@chilkat-nsn.gov; hbrouillette@chilkoot-nsn.gov; Clinton Cook Sr; tribal.admin@craigtribe.org; alaiti-dia@gci.net; Nathan Moulton; tribalpresident@hcatribes.org; rstele@kictribes.org; tribaladmin@klawocktribes.org; Judith Eaton; ed.kake-nsn\_contact; ovk@kasaan.org; mikej@kasaan.org; saxmanira@kpunet.net; iragovt@kpunet.net; tribaladmin@piatribal.org; lisa.gassman@sitkatribes-nsn.gov; Bricker1@skagwaytraditional.org; Info@skagwaytraditional.org; Dawn Hutchinson; admin@ytttribes.org; beth.weldon@juneau.gov; boroughassembly@juneau.gov; city.clerk@juneau.gov; clerk@cityofsitka.org; sara.peterson@cityofsitka.org; clerk@wrangell.com; clerk@yakutatak.us; mayor@cityofangoon.com; frontdesk@cityofangoon.com; clerk2@ccalaska.com; info@ccalaska.com; administrator@craigak.com; cityclerk@craigak.com; info@craigak.com; mayor@cityofednabay.org; clerk@cityofednabay.org; shelly.owens@gustavus-ak.gov; clerk@gustavus-ak.gov; cityadministrator@cityofhoonah.org; jbidiman@cityofhoonah.org;

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**Cc:** Boario, Sara D; jon.kurland@noaa.gov; Anne Marie Eich - NOAA Federal

**Subject:** Update on Continuing Process to Clarify Marine Mammal Harvest Eligibility

**Attachments:** FWS NMFS Update on Clarifying Marine Mammal Harvest Eligibility\_Jan. 2025.pdf; FWS-Director\_Interpretation on Eligibility of AK Natives to Take Marine Mammals-final.pdf; DOI-Solicitor\_Opinion on Eligibility of AK Natives to Take Marine Mammals final.pdf

**External Email! Use Caution**

Tribal leaders and stakeholders,

The U.S. Fish and Wildlife Service and National Marine Fisheries Service continue to make progress with the evaluation of legal standards for Alaska Native marine mammal harvest eligibility under the Marine Mammal Protection Act (MMPA).

We are reaching out today with an update on the current status, as well as to share two memos. This includes the Department of Interior Legal Opinion and an accompanying U.S. Fish and Wildlife Service Director’s memo. The update document includes information on the two memos as well as on timing for joint consultations and meetings.

Please let me know if you have any questions.

Look forward to talking with you soon.

---

Alice Garrett  
 Marine Mammals Management Project Leader  
 U.S. Fish and Wildlife Service-Alaska Region

Alice\_Garrett@fws.gov  
503.413.9589

Item 16A.

## Update on Continuing Process to Clarify Marine Mammal Harvest Eligibility

### January 15, 2025 Update

The National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (FWS) continue progress with the evaluation of legal standards for Alaska Native marine mammal harvest eligibility under the Marine Mammal Protection Act (MMPA), but have not yet issued any implementing guidance or made any changes to existing regulatory requirements. We had hoped to begin joint consultations and meetings with our Alaska Native Organization co-management partners, Alaska Native Tribes, and others starting in December or January, but now plan to initiate the first of a series of such discussions February 3 and 4, 2025.

**February 3:** Meeting with Tribally-authorized MMPA section 119 co-management partners

**February 4 (am):** Government to government consultation with Alaska Native Tribes

**February 4 (pm):** Consultation with Alaska Native Corporations

Meeting call-in information will be sent out in forthcoming communications.

### DOI Legal Opinion and Approach for Marine Mammal Species under FWS's Jurisdiction

The Department of the Interior's Office of the Solicitor began its initial review in July and provided a January 8, 2025, legal opinion to the FWS Director on this topic. The Solicitor found that a restrictive interpretation of FWS's implementing regulations, i.e., one that excludes persons with a known blood quantum of less than one-fourth degree from the second means of qualifying, is not consistent with the law and that FWS lacks discretion to interpret its regulation in this manner. Among other findings, the Solicitor noted:

- The legislative history of the MMPA clearly reflects Congress' broad intent to protect not only a food source for any coastal-dwelling "Indian, Aleut, or Eskimo who resides in Alaska" (language from MMPA), but also their cultural identity and way of life without any mention of or limitation relating to blood quantum.

Based on the Solicitor's opinion, the FWS Director issued a memorandum adopting a permissive interpretation of the FWS implementing regulations that will serve as a foundation for discussions with partners and the development of official implementation guidance related to eligibility for subsistence use of the marine mammal species under FWS's jurisdiction: northern sea otters, Pacific walrus, and polar bears. That interpretation does not alter the use of a minimum blood quantum as a valid way of qualifying, noting that blood quantum is only problematic under the law if used as a means to limit individuals who would otherwise be qualified under the second means. Both the Solicitor's opinion and FWS's interpretation note additional criteria for eligibility remain and raise a number of important questions that remain to be addressed in implementing guidance, such as the role of Tribes, Alaska Native Organizations (ANOs), the consideration of current and future co-management agreements, regionally-specific (e.g., North Slope, Southeast Alaska, etc.) and species-specific considerations, and conservation objectives. FWS will work with its co-management partners, Tribes, and others to develop appropriate implementation guidance for species under FWS's jurisdiction. Given concerns that have



been previously expressed, it may be as important to convey what this opinion and interpretation do not do:

- They do not open the exemption to non-Natives or to sport hunting or guiding;
- They are not self-executing, meaning that implementation guidance is still necessary; and
- They do not foreclose a robust role for Tribes and co-management partners.

#### **Approach for Marine Mammal Species under NMFS's Jurisdiction**

The DOI Solicitor's Opinion pertains only to FWS. NMFS has not made the same determination as FWS or any other determination on potential changes to how it should implement the MMPA's Alaska Native exemption for subsistence-harvested species under NMFS's jurisdiction, including harbor seals, Steller sea lions, ringed seals, bearded seals, ribbon seals, spotted seals, northern fur seals, beluga whales, and bowhead whales. Like FWS, NMFS recognizes that a standard reliant on blood quantum poses challenges in some cases for the long-term continuity of traditional subsistence use of marine mammals, and warrants reconsideration. Before making any changes, NMFS will work with its co-management partners, Tribes, and others to explore options for clarifying Alaska Native harvest eligibility for species under NMFS's jurisdiction.

#### **Next Steps**

Both NMFS and FWS are committed to using a transparent and inclusive process to develop more clarity for Alaska Native subsistence users going forward. In the interim, eligibility requirements under the MMPA have not changed and will not change until the two agencies have worked through the process to develop official guidance. NMFS and FWS will be in touch with our partners soon to begin scheduling additional meetings and consultations.

If you have any questions or want to be included in these or other opportunities for engagement, please contact Anne Marie Eich at [annemarie.eich@noaa.gov](mailto:annemarie.eich@noaa.gov) (NMFS) or Alice Garrett at [alice\\_garrett@fws.gov](mailto:alice_garrett@fws.gov) (FWS).



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



## Memorandum

To: Regional Director, Alaska Region

Fom: Director  Digitally signed by  
MARTHA WILLIAMS  
Date: 2025.01.10  
13:20:05 -05'00'

Subject: Interpretation of the Service's Regulations Implementing the Marine Mammal Protection Act (MMPA) Native Exemption for the Taking of Marine Mammals

### Introduction

The Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361-1423h, generally prohibits the taking of marine mammals, but section 101(b) provides an exemption for any "Indian, Aleut, or Eskimo" (collectively referred to as "Alaskan Natives" elsewhere in the Act) who resides in Alaska and dwells on the coast to harvest marine mammals in a non-wasteful manner for subsistence purposes or for the creation of authentic native articles of handicraft or clothing. Based on a written opinion from the Solicitor of the Department of the Interior, this memorandum provides a definitive interpretation regarding who qualifies for this exemption pursuant to the definition of "Alaskan Native" in the Service's implementing regulation at 50 C.F.R. § 18.3. Consistent with the Solicitor's memo, the Service's interpretation does not exclude persons with blood quantum of less than one-fourth degree from qualifying under the second standard expressed in the regulatory definition.

### Discussion

Section 101(b) of the MMPA, as amended, reads:

Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: ...; and
- (3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

The Service's regulation implementing section 101(b), which is found at 50 C.F.R. § 18.3, defines "Alaskan Native" to mean:

A person defined in the Alaska Native Claims Settlement Act (43 U.S.C. section 1603(b) (85 Stat. 588)) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

In summary, the Service's regulation provides three alternative means of qualifying as an Alaskan Native for the purposes of the MMPA exemption. The first is based on a blood quantum threshold, the second is based on being "regarded as" an Alaska Native, and the third is based on Alaska Native Claims Settlement Act (ANCSA) enrollment. The first and third of these are unambiguous, independent means of determining who qualifies for the exemption and are therefore not further addressed in this memorandum.

With regard to the second means, the following sentence in the regulation has proven to be ambiguous in practice:

It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town.

The clause "in the absence of proof of a minimum blood quantum" has previously been interpreted by the Service restrictively, *i.e.*, as excluding persons with a known blood quantum of less than one-fourth degree from qualifying under the standard expressed in the remainder of the sentence. However, that regulatory clause can also be interpreted permissively, *i.e.*, as confirming that the means of eligibility described in the remainder of the sentence is available to any person who cannot prove their blood quantum is of at least one-fourth degree, including those who know they are of less than the minimum blood quantum.

The Solicitor found that the restrictive interpretation is not consistent with the law and that the Service lacks discretion to interpret its regulation in this manner. After a review of the text of the MMPA, its legislative history, and relevant case law, I agree that a permissive interpretation of the clause reflects the best interpretation of the exemption, i.e., one that does not impose a minimum blood quantum as a pre-requisite to the second means of qualifying. This does not alter the use of a minimum blood quantum as a valid way of qualifying under the first means; blood quantum is only problematic under the law if used as a means to limit individuals who would otherwise be qualified under the second means.

This conclusion is based on the following considerations. First and foremost, the MMPA does not specify any degree of blood quantum as a prerequisite for taking marine mammals pursuant to the section 101(b) exemption nor does it adopt or even reference the definition in ANCSA. In addition, the legislative history of the MMPA clearly reflects Congress' broad intent to protect not only a food source for coastal-dwelling Indians, Aleuts, and Eskimos, but also their cultural identity and way of life without any mention of or limitation relating to blood quantum. And finally, the Indian Canon of Statutory Construction requires any statutory or regulatory ambiguity in Indian law to be resolved in favor of Native peoples.

### Conclusion

For these reasons, the Service necessarily rejects the restrictive interpretation and adopts the permissive interpretation of the second eligibility standard expressed in the definition in its regulations defining "Alaskan Native." Therefore, the Service will consider any citizen of the United States who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean to qualify for the exemption who is:

- 1) one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof, including any Native, as so defined, either or both of whose adoptive parents are not Natives; or
- 2) regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town; or
- 3) enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act.

This interpretation does not address a number of important implementation questions under the second standard, such as the role of Tribes, Alaska Native Organizations (ANOs), the consideration of current and future co-management agreements, regionally-specific (e.g., North Slope, Southeast Alaska, etc.) and species-specific considerations, and conservation objectives. These questions should be addressed in implementing guidance developed by the Service in consultation with affected Alaska Native Tribes, Alaska Native Organization co-management partners, and discussions with the National Oceanic and Atmospheric Administration and the Marine Mammal Commission, among other stakeholders.

This memorandum is intended to improve the internal management of the U.S. Fish and Wildlife Service and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person




United States Department of the Interior  
OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

January 8, 2025

Memorandum

To: Director, U.S. Fish and Wildlife Service

From: Robert T. Anderson, Solicitor 

Subject: Eligibility of Alaskan Natives to Take Marine Mammals Pursuant to Section 101(b) of the Marine Mammal Protection Act and the U.S. Fish and Wildlife Service's Implementing Regulation at 50 C.F.R. § 18.3

**I. Background**

You have requested my opinion concerning the best interpretation of the U.S. Fish and Wildlife Service's (Service, or FWS) regulation at 50 C.F.R. § 18.3, implementing section 101(b) of the Marine Mammal Protection Act of 1972 (MMPA or Act).<sup>1</sup> The MMPA generally prohibits the take of marine mammals but provides an exemption in section 101(b) for subsistence- or handicraft-related harvest by "any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean" (hereinafter "MMPA Native exemption" or "exemption").<sup>2</sup> The Act does not define any of these terms or provide any guidance on how they should be interpreted.

The FWS has attempted to clarify, via a regulation at 50 C.F.R. § 18.3, who qualifies as "Indian, Aleut, or Eskimo who resides in Alaska" for purposes of the section 101(b) exemption. The regulation provides three alternative means of qualifying. The first means is based on a blood quantum threshold, the second is based on being "regarded as" Alaska Native, and the third is based on Alaska Native Claims Settlement Act (ANCSA) enrollment. I have been asked to advise on how to interpret the second means of qualifying, which reads:

It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town.

The clause "in the absence of proof of a minimum blood quantum" has previously been informally interpreted by the Service restrictively, *i.e.*, as excluding persons with a known blood quantum of less than one-fourth degree from qualifying under the eligibility standard expressed in the remainder of the sentence. However, that regulatory clause can also be interpreted permissibly, *i.e.*, as confirming that the means of eligibility described in the remainder of the

<sup>1</sup> Pub. L. No. 92-522, 86 Stat. 1027, codified at 16 U.S.C. § 1361-1423h.

<sup>2</sup> 16 U.S.C. § 1371(b).

sentence is available to any person who cannot prove their blood quantum is of at least one-fourth degree, including those who know they are of less than the minimum blood quantum.

Based on a review of the text of the MMPA, its legislative history, and relevant case law, I find that the restrictive interpretation is not consistent with the law and that the Service lacks discretion to interpret its regulation in this manner. For the reasons detailed below, I find that the permissive interpretation of the clause is the best interpretation of the exemption.

## II. Analysis

In enacting the MMPA, Congress found that “certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man’s activities.”<sup>3</sup> The MMPA thus established a moratorium and prohibitions on the taking and importation of marine mammals and marine mammal products.<sup>4</sup> However, section 101(b) of the Act also provides an exemption to the moratorium and prohibitions for “the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean” if the taking is either “for subsistence purposes” or “done for purposes of creating and selling authentic native articles of handicrafts and clothing” and, in either case, the take “is not accomplished in a wasteful manner.”<sup>5</sup>

### A. **Statutory Interpretation**

Any interpretation of a statute must start with its plain meaning.<sup>6</sup> If the statutory language lacks plain meaning, courts will next employ other tools including canons of construction and a review of the legislative history.<sup>7</sup>

#### i. **The Text of the Statute**

Section 101(b) of the MMPA, as amended, reads:

Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: ...; and
- (3) in each case, is not accomplished in a wasteful manner.

<sup>3</sup> 16 U.S.C. § 1361.

<sup>4</sup> 16 U.S.C. § 1371(a), 1372(a).

<sup>5</sup> 16 U.S.C. § 1371(b).

<sup>6</sup> *United States v. Lillard*, 935 F.3d 827, 833 (9th Cir. 2019).

<sup>7</sup> *Id.* at 833-834.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.<sup>8</sup>

The terms “Indians,” “Aleuts,” and “Eskimos” are not further defined in the MMPA and are sociological terms that can apply broadly or narrowly.

Dictionary definitions of “Indian,” “Aleut,” and “Eskimo” do not provide much guidance other than that each definition begins with “a member” generally of an “Indigenous people[]” and none of the definitions include any reference to blood quantum or other similar limiting criteria.<sup>9</sup> According to a leading treatise: “Who counts as an Indian for purposes of federal Indian law varies according to the legal context. Federal law provides no universally applicable definition. Furthermore, many federal definitions associate Indian status with citizenship in a tribe under tribal law, so the different citizen criteria tribal nations employ must be folded into federal definitions of who is an Indian.”<sup>10</sup>

<sup>8</sup> 16 U.S.C. § 1371(b).

<sup>9</sup> The Oxford English Dictionary defines “Indian” in relevant part as “A member of the Indigenous peoples of (any part of) the Americas” and noting that “Inuit of northern Canada and Alaska are often excluded from this term.” Oxford English Dictionary, “Indian (adj. & n.),” [https://www.oed.com/dictionary/indian\\_adj?tl=true](https://www.oed.com/dictionary/indian_adj?tl=true) (last visited December 30, 2024). The Merriam-Webster Dictionary defines “Indian” in relevant part as “a member of any of the Indigenous peoples of the western hemisphere except often certain peoples (such as the Yupik and Inuit) who live in arctic regions.” Merriam-Webster Dictionary, “Indian (noun),” <https://www.merriam-webster.com/dictionary/Indian#word-history> (last visited December 26, 2024). The Oxford English Dictionary defines “Aleut” as “A member of a people native to or inhabiting the Aleutian Islands, other islands in the Bering Sea, and parts of western Alaska.” Oxford English Dictionary, “Aleut, (n. & adj.),” <https://www.oed.com/search/dictionary/?scope=Entries&q=Aleut> (last visited December 26, 2024). The Merriam-Webster Dictionary defines “Aleut” as “a member of a people of the Aleutian and Shumagin islands and the western part of Alaska Peninsula.” Merriam-Webster Dictionary, “Aleut (noun),” <https://www.merriam-webster.com/dictionary/Aleut> (last visited December 26, 2024). The Oxford English Dictionary defines “Eskimo” as “A member of any of several closely related Indigenous peoples inhabiting the Arctic coasts of Canada and Greenland, and parts of Alaska . . .” and noting that the word “Inuit” has generally superseded the word “Eskimo” but that “Eskimo . . . is the only term which applies to the Eskimo peoples as a whole, including not only Inuit of Canada, Greenland, and Alaska, but also the Yupik of Siberia and the Inupiaq of Alaska.” Oxford English Dictionary, “Eskimo (n. & adj.),” <https://www.oed.com/search/dictionary/?scope=Entries&q=Eskimo&tl=true> (last visited December 26, 2024). The Merriam-Webster Dictionary defines “Eskimo” as “a member of a group of Indigenous peoples of southwestern and northern Alaska, Greenland, eastern Siberia, and especially in former use arctic Canada.” Merriam-Webster Dictionary, “Eskimo (noun),” <https://www.merriam-webster.com/dictionary/Eskimo> (last visited December 26, 2024).

<sup>10</sup> Cohen’s Handbook of Federal Indian Law § 4.03[1], p. 214 (N. Newton and K. Washburn eds. (2024)).



To determine the plain meaning, courts will “examine not only the specific provision at issue, but also the structure of the statute as a whole, including its object and policy.”<sup>11</sup> When the D.C. District Court reviewed the statutory scheme of the MMPA, it found:

Substantively, two major competing policy considerations are here involved the need for protecting marine mammals from depletion, on the one hand, and the responsibility of the federal government to protect the way of life of the Alaskan Natives (see pp. 428-429, [i]nfra), including their tradition of hunting marine mammals for their subsistence, on the other. What emerges vividly from an examination of the total statutory scheme is that the Congress carefully considered these competing considerations and deliberately struck a balance which permits continued hunting by the Alaskan Natives as long as this is done in a non-wasteful manner, is restricted to the taking of non-depleted species, and is accomplished for specified, limited purposes.<sup>12</sup>

The statute is best understood to mean that members of an Indian, Aleut, or Eskimo Tribe or Group who reside in Alaska qualify for the exemption if the other limitations (resides in Alaska, dwells on the coast and non-wasteful taking) are satisfied. The text of the MMPA provides no support for a limitation based on a minimum blood quantum either directly by incorporating a minimum blood quantum or indirectly through a reference to the statutory provision in ANCSA or other provision of law that contains a minimum blood quantum.

#### ii. History of the Statutory Language

As originally enacted, section 101(b) of the MMPA<sup>13</sup> stated:

The provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes *by Alaskan natives who reside in Alaska*,<sup>14</sup> or
- (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing ... and
- (3) in each case, is not accomplished in a wasteful manner.

<sup>11</sup> *Children's Hosp. & Health Center v. Belshe*, 188 F.3d 1090, 1096 (9th Cir. 1999).

<sup>12</sup> *People of Togiak v. United States*, 470 F. Supp. 423, 426-27 (D.D.C. 1979).

<sup>13</sup> When the law was codified at 16 U.S.C. § 1371, the U.S. Code added a heading to subsection 101(b) stating, “Exemptions for Alaskan natives.” Language added in the codification is not a part of the law, but merely a tool for helping the reader understand the organization for the section and should not be considered when interpreting the statute. A helpful website to see the MMPA as amended is [https://www.govinfo.gov/content/pkg/GOVPUB-Y3\\_M33\\_3-PURL-gpo117958/pdf/GOVPUB-Y3\\_M33\\_3-PURL-gpo117958.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-Y3_M33_3-PURL-gpo117958/pdf/GOVPUB-Y3_M33_3-PURL-gpo117958.pdf).

<sup>14</sup> Italics added here to denote language subsequently removed in the 1981 Amendments to the MMPA. The clause “by Alaskan natives” was deleted entirely from section 101(b) and the clause “who reside in Alaska” was moved to just after the initial “any Indian, Aleut, or Eskimo” in the first clause of Section 101(b). Section 2 of P.L. 97-58 (October 9, 1981); 95 Stat. 979, 981).

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.<sup>15</sup>

However, the changes to the statute in other sections demonstrate that the removal of “Alaskan natives” from section 101(b)(1) was not meant to change who is included as “Indian, Aleut, or Eskimo.” The 1981 Amendments inserted “Alaskan Natives” into other sections of the MMPA which refer back to the exemption.<sup>16</sup> In the MMPA, Congress appears to consider the phrase “Indians, Aleuts, and Eskimos who reside in Alaska” to be synonymous with “Alaskan Natives.” However, just as the statute leaves undefined who is considered “Indian, Aleut, or Eskimo,” it also leaves “Alaskan Native” undefined.

### iii. Use of the same terms in other statutes

Around the same time the MMPA was enacted, Congress included a similar exception in the Endangered Species Act that allowed for the take of endangered species for subsistence purposes by “any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska.”<sup>17</sup> Consequently, in 1980, the D.C. Circuit Court of Appeals recognized that:

(e)very statute and treaty designed to protect animals or birds (e.g., Marine Mammal Protection Act, 16 U.S.C. § 1371(b); ESA, 16 U.S.C. § 1539(e)) has a specific exemption for Native Alaskans who hunt the species for subsistence purposes. These statutes have been construed (e.g., *People of Togiak v. U.S.*, 470 F. Supp. 423, 428 (D.D.C. 1979)) as specifically imposing on the Federal government a trust responsibility to protect the Alaskan Natives’ rights of subsistence hunting.<sup>18</sup>

<sup>15</sup> P.L. 92-522 (Oct. 21, 1972) (emphasis added); 86 Stat. 1027, 1031.

<sup>16</sup> In the same 1981 Amendment, Congress amended section 109(e)(2)(B), where the MMPA provides for what happens when a State that has taken over management under the Act and that management is returned to the Federal government. It provides that the Secretary shall regulate the taking of marine mammals in that case and specifies that “in the case of Alaskan Natives, section 101(b) and subsection (i) of this section shall apply upon such revocation or return of management authority.” Additionally in section 508(a)(1), added by Pub. L. 109-479, title IX, § 902(a), Jan. 12, 2007, 120 Stat.

3664 and codified at 16 U.S.C. § 1423g(a)(1), the MMPA refers to the exemption as “the exemption for Alaskan natives under section 101(b) of this Act as applied to other marine mammal populations.”

<sup>17</sup> Section 10 of the Endangered Species Act of 1973, P.L. 93-205, 87 Stat. 884 (1973); codified at 16 U.S.C. § 1539(e)(1)(A).

<sup>18</sup> *North Slope Borough v. Andrus*, 642 F.2d 589, 612 (D.C. Cir. 1980).

However, none of the laws and treaties considered by that court require a particular blood quantum to demonstrate status as an Indian, Aleut, or Eskimo.<sup>19</sup>

The Alaska Native Allotment Act of 1906, as amended in 1956, also used “Indian, Aleut, and Eskimo” to encompass all of the Native populations of Alaska.<sup>20</sup> For similar purposes, the Alaska Native Townsite Act of 1926 used “Indian or Eskimo.”<sup>21</sup> Both acts specified that the terms include “full or mixed blood” but neither specify a minimum blood quantum.

The same Congress passed both the MMPA and the Alaska Native Claims Settlement Act of 1971 (ANCSA).<sup>22</sup> ANCSA uses “a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla<sup>23</sup> Indian Community) Eskimo, or Aleut blood, or combination thereof . . .” within its definition of the term “Native”.<sup>24</sup> Despite the 92<sup>nd</sup> Congress passing both Acts, the MMPA does not use this definition of Native or otherwise offer any delineation of Indian, Aleut, and Eskimo. The ANCSA also uses “Alaska Native” in the same definition of Native, but the MMPA used “Alaskan native” within the original language of section 101(b)(1). No explanation in the legislative history was found for why the MMPA used “Alaskan native” and “Indian, Aleut, and Eskimo” instead of “Alaska Native” or “Native.” Notably, with the MMPA enacted less than a year after ANCSA, the drafters of the MMPA had at their disposal the language in ANCSA concerning blood quantum and did not include it in the MMPA or any cross-reference to ANCSA.

#### iv. Indian Canon of Construction

An important canon of construction for this statute is that “[s]tatutes that touch upon federal Indian law ‘are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.’”<sup>25</sup> Most notably, the District Court for the District of Columbia used this canon in a case called *People of Togiak v. U.S.* when it found the section 101(b) exemption preempts State regulation of subsistence harvesting by Alaskan Natives even after the State of Alaska assumed management authority under the MMPA for walrus pursuant to section 109 of the MMPA.<sup>26</sup> The Ninth Circuit similarly applied this canon when finding that a regulation impermissibly limited the eligibility of who qualifies as Indian for the purposes of higher education grants.<sup>27</sup> Thus, when applying this canon of construction to section 101(b), a court would almost certainly construe “Indians, Eskimos, and Aleuts who reside in Alaska” to the benefit of Alaska Natives and reject regulatory or interpretative limitations, such as a minimum blood quantum, not found in the MMPA.

<sup>19</sup> *Id.*

<sup>20</sup> 43 U.S.C. § 270-1 (originally enacted in 1906, repealed in 1971).

<sup>21</sup> 43 U.S.C. § 733 (originally enacted in 1926, repealed in 1971).

<sup>22</sup> 43 U.S.C. §§ 1601 et seq.

<sup>23</sup> Spelling used in the original ANCSA text. Probably should be “Metlakatla.”

<sup>24</sup> 43 U.S.C. § 1602(b).

<sup>25</sup> See *Metlakatla Indian Cmty. v. Dunleavy*, 58 F.4th 1034, 1042 (9th Cir. 2023) (citing *Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1156 (9th Cir. 2020) (quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S. Ct. 2399, 85 L. Ed. 2d 753 (1985))).

<sup>26</sup> *People of Togiak v. United States*, 470 F. Supp. 423, 428 (D.D.C. 1979).

<sup>27</sup> *Zarr v. Barlow*, 800 F.2d 1484, 1493 (9th Cir. 1986).

## v. Legislative history

When a statutory term is ambiguous, courts will often turn to the legislative history to determine if Congress clarified the meaning of the term. While addressing the need for a moratorium on the taking of marine mammals, Congress explicitly recognized the need to protect certain Indians, Aleuts, and Eskimos from the effects of the Act. Congress recognized that “Many Alaska Natives, particularly Eskimos along the coast, depend upon ocean mammals for their existence.” (statement of Sen. Stevens).<sup>28</sup> Senator Stevens further explained:

Mr. President, I believe that passing this bill without this exception would disastrously affect the Alaskan Natives. If this exception were not included, Alaskan Natives would lose their traditional way of life, the way they have lived for centuries, dependent upon seals, walruses, and whales. This way of life has not adversely affected the numbers of any of ocean mammals. As one Eskimo told me during Senate Commerce Committee hearings in Alaska last May our taking away the Natives’ right to hunt these animals would be similar to taking away “beef from the non-native people.” If we deprived non-native people of beef, pork, and chicken, this would be doing just what we would do to the Eskimos if we deprived them of seal, walrus, and whale.<sup>29</sup>

The Senator also pushed strongly for an amendment to provide an exemption for the taking of marine mammals for the purpose of Native handicraft. Stevens explained:

the way of life of the Alaskan Native is threatened by the proposed legislation. If Congress enacts provisions outlawing all but subsistence hunting by Alaskan Natives, not only will this group of Americans have their economic livelihood stripped from them, but they will face the certain fate of cultural extinction.<sup>30</sup>

His emphasis on protecting culture continued:

. . . I urge the Senate to reach a reasonable solution to the problem and to take into account not only the biological aspect, but also the sociological and anthropological effects of this legislation. We must not destroy a civilization in the process.<sup>31</sup>

Senator Hollings acknowledged that an early version of the MMPA has “carefully and considerately exempted from the act the Alaskan Eskimos, Aleuts, and Indians who rely upon the marine mammals for food and clothing as well as their small, limited cash economy.”<sup>32</sup> Senator Stevens concurred, saying “[w]e have sought a solution that would protect the mammals, yet not wipe out the Eskimo culture and several important native handicraft activities in the process.”<sup>33</sup>

<sup>28</sup> 118 Cong. Rec. 8400 (1972).

<sup>29</sup> 118 Cong. Rec. 25258 (1972).

<sup>30</sup> 118 Cong. Rec. 8400 (1972).

<sup>31</sup> 118 Cong. Rec. 8401 (1972) (emphasis added).

<sup>32</sup> 118 Cong. Rec. at 25254 (Statement of Sen. Hollings).

<sup>33</sup> 118 Cong. Rec. at 25258 (Statement of Sen. Stevens).

Senator Hollings also praised the legislation's ability to protect the Indians, Aleuts, and Eskimos.<sup>34</sup>

While the legislative history clearly reflects Congress's intent to protect Indian, Aleut, and Eskimo people and their way of life, it does not shed light on the scope of these terms or otherwise explain how a person may qualify as an Indian, Aleut, or Eskimo for purposes of the Act. The Department of Commerce recommended that Congress add the following definition to the MMPA: "(e) 'Natives' shall mean any Indians, Aleuts, Eskimos, or other aborigines traditionally deriving their subsistence or livelihood, in whole or in part, by taking marine mammals."<sup>35</sup> However, this recommendation was not adopted, and no attempt was made in either the legislative history nor in the Act to define who qualifies as Indian, Aleut, or Eskimo.

In sum, the legislative history as a whole<sup>36</sup> demonstrates the Congressional intent to protect not just a food source, but the cultural identity and way of life for the Indians, Aleuts, and Eskimos who dwell on the coast in Alaska. The statements supporting the exemption highlights the importance of the ability to hunt marine mammals for subsistence and use the materials to create Native handicraft to coastal-dwelling Alaska Native peoples. While the legislative history does not clearly define what qualifies a person as an Indian, Aleut, or Eskimo, it demonstrates the exemption was intended to allow Native harvest of marine mammals to continue, such that Native traditions, ways of life, and cultural identities may be preserved.

Interpreting the section 101(b) exemption as applicable only to individuals with a minimum blood quantum would, in practice, serve to increasingly frustrate this Congressional intent over time. Data from a 2016 Sealaska Heritage Institute report shows how quickly blood quantum is reduced in successive generations.<sup>37</sup> While this data reflects only the Sealaska region, statistically, the same pressures will hit all regions in time; the proportion of the population that will be ineligible if a one-fourth blood quantum is applied as an eligibility criterion is destined to grow in all regions, although both the percentages and rate of the increase in ineligibility will vary by region.

In a recent letter to the FWS, Richard Peterson, the President of the Central Council Tlingit and Haida Indian Tribes of Alaska stated:

the most detrimental effect of this arbitrary regulation is that it is preventing the passage of traditional knowledge and skills from our elders to our younger tribal citizens. Our tribal citizens who can legally harvest sea otters and work with sea otter pelts often cannot teach their skills to other tribal citizens because those

<sup>34</sup> 118 Cong. Rec at 25285 ("Then, too, we have to protect the Aleuts, Eskimos, and Indians, and they are protected.") (Statement of Sen. Hollings).

<sup>35</sup> H.R. Rep. No. 92-70, at 37 (1971).

<sup>36</sup> A review of the legislative history for the 1981 Amendment did not identify material that addresses who qualifies as Indian, Aleut, or Eskimo.

<sup>37</sup> S. Langdon, Determination of Alaska Native Status Under the Marine Mammal Protection Act, at 30-43.

citizens do not meet the one fourth blood quantum standard. Our young people need to learn these necessary skills to keep our cultural practices alive.<sup>38</sup>

The application of a blood quantum requirement has the potential of creating a real-world effect where it is increasingly more difficult to pass on cultural practices from one generation to another. Over time, the data suggests this dilution effect will worsen.

To summarize, the plain language of the MMPA does not define how a person must qualify as an Indian, Aleut, or Eskimo or impose a minimum blood quantum or other limitation on qualifying; the Indian canon of construction dictates that any interpretation of the terms Indian, Aleut, or Eskimo must be construed in favor of the person claiming to be an Indian, Aleut, or Eskimo; and, the legislative history highlights congressional intent to continue the Alaska Native culture and civilizations without reference to any technical limitation concerning who qualifies as an Indian, Aleut, or Eskimo by blood quantum or otherwise.

## **B. Regulation**

### **i. Regulatory Authority**

There are three sources of regulatory authority in the MMPA. Section 103 of the MMPA provides:

The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.<sup>39</sup>

Section 112(a) of the MMPA provides more broadly:

The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this title.<sup>40</sup>

Last, within the exemption provision itself, section 101(b) provides:

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations

<sup>38</sup> Letter from Richard Peterson, President, Central Council of Tlingit and Haida to Sara Boario, Alaska Regional Director, U.S. Fish and Wildlife Service, *Request to Enter into a Co-Management Agreement between the USFWS and the Central Council of Tlingit & Haida Indian Tribes of Alaska*, dated October 2, 2023.

<sup>39</sup> 16 U.S.C. § 1373.

<sup>40</sup> 16 U.S.C. § 1382(a).

upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act.<sup>41</sup>

As used here, “Secretary” refers to the Secretary of the Interior with respect to marine mammals managed by the FWS (*e.g.*, polar bears, walruses, and sea otters), and to the Secretary of Commerce with respect to marine mammals managed by the National Marine Fisheries Service (NMFS) (*e.g.*, whales and seals). These Secretaries have delegated certain MMPA authorities to FWS and NMFS, respectively, and both FWS and NMFS have promulgated regulations intended to clarify ambiguities concerning who is eligible to harvest marine mammals pursuant to section 101(b).

## ii. FWS’s Implementing Regulation

This analysis considers whether FWS’s regulation implementing section 101(b) of the MMPA is consistent with the best reading of the statute. As discussed below, the regulatory definition of “Alaskan Native” largely adopts the definition in the Alaska Native Claims Settlement Act but does not reflect the nuances of the MMPA regulatory scheme.<sup>42</sup> In its entirety, the FWS’s regulatory definition states:

*Alaskan Native* means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. section 1603(b) (85 Stat. 588)) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla<sup>43</sup> Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.<sup>44</sup>

The differences in this language from the ANCSA definition of “Native” are the addition of the citation to the ANCSA,<sup>45</sup> the inclusionary language for the people of the Metlakatla Indian Community, the inclusion in the last sentence of a third way to show a person is an Alaskan

<sup>41</sup> 16 U.S.C. § 1371(b).

<sup>42</sup> See 50 C.F.R. § 18.3.

<sup>43</sup> Spelling used in the original ANCSA text. Probably should be “Metlakatla.”

<sup>44</sup> 50 C.F.R. § 18.3. See also 39 FR 7262, Feb. 25, 1974, as amended at 70 FR 48323, Aug. 17, 2005.

<sup>45</sup> The citation in the regulation to the ANCSA definition is incorrect. It should state 43 U.S.C. section 1602(b).

Native by being on the ANCSA rolls, and the FWS's regulation uses "Native village or Native town"<sup>46</sup> instead of "Native village or group."

While the MMPA text and legislative history contain no direct or indirect reference to the ANCSA definition of "Native," that does not necessarily mean, and this memorandum does not conclude, that the general use of the ANCSA definition in the FWS's regulation is problematic for determining whether a person qualifies for the section 101(b) exemption.<sup>47</sup> This memorandum focuses on a particular aspect of the definition that is susceptible to more than one interpretation, one of which is inconsistent with the MMPA. Understanding the issue here requires additional analysis of FWS's regulatory definition.

FWS's definition describes multiple means of qualifying as an "Alaskan Native" for the purpose of harvesting marine mammals, and qualifying under any one of these means is sufficient to render an individual eligible to harvest. Briefly summarized, the first is based on possessing at least one-fourth degree of Alaska Indian, Eskimo, or Aleut blood (or combination thereof), the second is being regarded as an Alaska Native, and the third is based on enrollment under ANCSA. The standards for qualifying under the first and third means are clear and unambiguous, *i.e.*, a prospective harvester either meets the one-fourth blood quantum standard or does not meet that standard, and a prospective harvester is either enrolled under ANCSA or is not so enrolled. For this reason, these two standards require no further discussion or analysis herein. However, there is ambiguity with respect to the second means of qualifying, which reads in its entirety:

It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the native village or town of which he claims to be a member and whose father or mother (or, if deceased, was) regarded as a Native by any Native village or town.

The key question concerns whether the clause "in the absence of proof of minimum blood quantum" serves to limit the scope of who may qualify as "Alaskan Native" pursuant to the remainder of the sentence by excluding individuals with a blood quantum of less than one-fourth degree.

The rationale that it does impose such a limitation stems from an application of statutory construction applied to regulations, *i.e.*, reading regulations as a whole and, if possible, giving effect to every word and every provision. It can be argued that the only way to give effect to the clause "in the absence of proof of minimum blood quantum" is as a limitation; after all, FWS could have allowed individuals with blood quantum of less than one-fourth degree to nevertheless qualify as "Alaskan Natives" by simply omitting the clause from its regulatory definition.

But this is not the only possible interpretation. One can alternatively interpret the clause "in the absence of proof of minimum blood quantum" as a recognition that not all Alaska Natives have

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<sup>46</sup> FWS regulations define "Native village or town" to mean "any community, association, tribe, band, clan, or group." 50 C.F.R. § 18.3.

<sup>47</sup> Many federal bureaus have adopted the definition of Native from the ANCSA for Alaska Natives in their regulations, including the Small Business Administration, Veterans Affairs, Bureau of Land Management, Bureau of Indian Affairs, FWS, and NMFS.



proof of their blood quantum and those who do not meet the blood quantum may still qualify as “Alaskan Natives” via the means described in the remainder of the sentence. This interpretation gives greater effect to the first clause, “[i]t also includes,” which suggests an alternate means of qualifying that is largely rendered ineffective if it applies only to that category of individuals who have greater than the minimum blood quantum but cannot prove it. It is not unusual for regulatory provisions to address practical realities related to demonstrating and verifying compliance, as is illustrated by the final sentence of this “Alaskan Native” definition, which describes a scenario under which eligibility “shall be conclusively presumed” but does not articulate additional eligibility criteria per se.

Past interpretations of the regulatory language have assumed a restrictive reading of the clause and concluded that any Alaska Native with a blood quantum of less than one-fourth cannot qualify as “Alaskan Native” for the exemption. The view expressed has been either taken or assumed by FWS at various points in time by various officials. But this interpretation found its support in analyses focused only on the regulatory language and created a restriction that is absent from the MMPA text, not addressed in its legislative history, and contrary to case law interpreting analogous statutory and regulatory provisions.

Courts have struck down FWS regulations that imposed restrictions on the section 101(b) exemption that were not found in the statutory text. In 1976, the State of Alaska took over the management of walrus in Alaska pursuant to section 109 of the MMPA. In order for the State to manage walrus, while still following the State’s constitutional mandate that all people are treated the same, the FWS adopted a regulation that rescinded the MMPA Native exemption for the take of walrus and allowed management in accordance with title 16 of the Alaska Statutes.<sup>48</sup> The D.C. District Court in a case called *People of Togiak* found the FWS regulation improperly contravened the provisions of section 101(b) and found the regulation invalid.<sup>49</sup>

A similar result occurred in a 1991 Alaska District Court opinion in *Didrickson v. U.S.*, in which the Court found that FWS lacked authority to adopt a regulation which prohibited the take of sea otters for the purpose of creating native handicraft without any showing the sea otter population was depleted.<sup>50</sup> The Court found “the term ‘authentic native article of handicraft or clothing’ was not left undefined by Congress” in the MMPA.<sup>51</sup> Therefore, the Court resolved the question as to whether or not the Secretary’s interpretation is consistent with that definition as a matter of pure statutory construction and found no need to give deference to the agency’s interpretation.<sup>52</sup>

<sup>48</sup> *People of Togiak*, 470 F. Supp. at 425.

<sup>49</sup> *Id.* at 425 and 430. The 1981 Amendments referred to in the History of the Statutory Language section added “Except as provided in section 109” to section 101(b) following *People of Togiak* to expressly allow State management to override the MMPA Native exemption. Section 2 of P.L. 97-58 (October 9, 1981); 95 Stat. 979, 981.

<sup>50</sup> *Didrickson v. United States Dep’t of the Interior*, 796 F. Supp. 1281, 1291 (D. Alaska 1991), upheld by *Beck v. United States Dep’t of Commerce*, 982 F.2d 1332 (9th Cir. 1992). The *Didrickson* Court also acknowledged it was coming to a different conclusion than it had in *Katelnikoff v. United States Dep’t of the Interior*, 657 F. Supp. 659 (D. Alaska 1986), where the Court had previously upheld FWS’ ability to adopt regulations which limited the types of Native handicraft.

<sup>51</sup> *Id.* at 1288.

<sup>52</sup> *Id.*

In the 1990 case of *Clark v. U.S.*, the Ninth Circuit upheld a FWS regulation defining “wasteful manner” from section 101(b)(3) of the MMPA.<sup>53</sup> The regulation defined wasteful manner as a process “which results in the waste of a substantial portion of the marine mammal . . . .”<sup>54</sup> The Court found in “light of the legislative history, the regulation does not exceed the statutory authority.”<sup>55</sup> While predating *Didrickson*, *Clark* confirms, notwithstanding a potential interpretation of *Didrickson*, FWS authority to promulgate regulations that interpret ambiguous section 101(b) terms (including the “Indian, Aleut, or Eskimo who resides in Alaska” clause relevant here) without first making a depletion finding as long as those regulations do not restrict the harvest of a particular stock or species.

In 1986, the Ninth Circuit reviewed a Bureau of Indian Affairs (BIA) regulation that, like the current FWS regulation, created a blood quantum requirement not contemplated in the statute.<sup>56</sup> The BIA promulgated a regulation establishing a requirement that an applicant must have a blood quantum of at least one-fourth Indian blood to be eligible for a higher education grant.<sup>57</sup> The Court reviewed the Snyder Act, 25 U.S.C. § 13, which provides the authority for the BIA to make grants for education, to determine if the regulation is “consistent with governing legislation.”<sup>58</sup> The Court found the “Snyder Act nowhere contains a definition of Indian or any restrictive eligibility standard; therefore, it would have been reasonable for the BIA to look to other expressions of congressional intent in formulating an eligibility standard to ‘fill the gap.’”<sup>59</sup> The Court then reviewed other recent changes to Indian law to see Congress has been removing blood quantum requirements in other contexts, including school funding.

Where Congress has determined to make Indian blood quantum an eligibility factor in the past, it has expressly so provided. See, e.g., 25 U.S.C. § 297. It did not do so in the Snyder Act, and we refuse to construe its general language authorizing appropriations for educational assistance for “the Indians throughout the United States” as authority to continue restrictive distinctions among members of federally recognized tribes.<sup>60</sup>

Last, the Court applied the canon of construction that ambiguities in laws intended for the benefit of Native Americans need to be resolved in favor of Native Americans.<sup>61</sup> The Court concluded that the regulation fell outside of BIA’s authority, and that it was not reasonably related to the purposes of the various congressional enabling acts.<sup>62</sup>

*People of Togiak, Didrickson, and Clark*, when considered collectively, demonstrate a reviewing court will take a hard look at a regulation that places restrictions on the MMPA native exemption. A court will review the statutory text and legislative intent and invalidate regulations that fail to give full force to the exemption. The definition of “Alaskan Native” at 50 C.F.R. § 18.3, if

<sup>53</sup> *Clark v. United States*, 912 F.2d 1087, 1090 (9th Cir. 1990).

<sup>54</sup> 50 C.F.R. § 18.3 (1989).

<sup>55</sup> *Clark*, 912 F.2d at 1090.

<sup>56</sup> *Zarr*, 800 F.2d at 1485.

<sup>57</sup> *Id.* at 1485 (citing 25 C.F.R. § 40.1).

<sup>58</sup> *Id.* at 1489.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 1492.

<sup>61</sup> *Id.* at 1493.

<sup>62</sup> *Id.*

applied in a restrictive manner, would also create a restriction on the Native exemption that is neither reflected in the MMPA nor supported by the legislative intent of protecting Native culture. Similarly, the *Zarr* case reflects another instance in which a court interpreted a law for the benefit of Natives and invalidated a regulation that created a limitation on the law's benefit. The *Zarr* Court found the current trend away from using blood quantum in legislation further undercut the reasonability of BIA's choice to adopt a blood quantum standard in its regulation, which suggests a court would not support a restrictive reading of 50 C.F.R. § 18.3 that inserts a blood quantum requirement into the MMPA exemption. Last, both the *Didrickson* and *Zarr* courts were careful to consider the authority for the agency to issue the regulations. In *Didrickson*, the court reviewed a regulation addressing other language within section 101(b) and found it invalid due to a lack of authority. If strictly followed, a court could invalidate the definition of Alaskan Native in 50 C.F.R. § 18.3 because FWS did not first establish the presence of a depleted resource prior to issuing a regulation affecting the exemption. However, the *Didrickson* rationale is best understood as limited to circumstances where the regulation attempts to place limits on the take of specific species or stocks of marine mammals, like the sea otters in that case.<sup>63</sup>

Another significant consideration in this analysis is that, like the court in *Zarr*, the Indian canon of construction, although typically applied to statutory interpretation, is also appropriately used in construing an ambiguous regulation. Accordingly, the phrase "in the absence of proof of a minimum blood quantum" would likely be interpreted by a reviewing court in a permissive, not restrictive, fashion that benefits Native hunters. As the Ninth Circuit has indicated, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite."<sup>64</sup>

### iii. The ANCSA Definition

While the MMPA text and legislative history lack any direct or indirect reference to the ANCSA definition of "Native," it is instructive to review any relevant caselaw and legislative history regarding that ANCSA definition to the extent it may shed light on the interpretation of the regulation.

While no court has squarely confronted the interpretation, dicta from court cases reviewing the ANCSA definition of "Native" support a permissive reading of the phrase "in the absence of proof of a minimum blood quantum" as the process that is followed when a person either cannot prove or does not meet the minimum blood quantum.<sup>65</sup> Courts have read the ANCSA definition

<sup>63</sup> Notably, the regulation upheld by the *Clark* court provides a definition for a word within section 101(b) and was promulgated under section 112 of the MMPA. 912 F.2d at 1090.

<sup>64</sup> *U.S. v. Nosal*, 676 F.3d 854, 863 (9th Cir. 2012) (quoting *Jones v. United States*, 529 U.S. 848, 858 (2000)).

<sup>65</sup> Relatedly, see Resolution 24-01 of the Alaska Federation of Natives, which requests the federal government to "amend the different definitions of 'Alaska Native' in ANCSA, ANILCA, and the Marine Mammal Protection Act to create one unified definition of 'Alaska Native' which removes the federally defined one-fourth Native blood quantum eligibility and instead allows for self-determination by including citizens of Federally Recognized Tribes, and voting shareholders of Alaska Native Corporations ..." <https://nativefederation.org/wp-content/uploads/2024/10/2024-AFN-Resolutions.pdf>.

as providing two independent methods to establish a person is Native. In a concurring opinion, Justice Breyer used the ANCSA definition as an example of a broad statute:

The Alaska Native Claims Settlement Act, for example, defines a “Native” as “a person of one-fourth degree or more Alaska Indian” or one “who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is . . . regarded as Native by any village or group” (a classification perhaps more likely to reflect real group membership than any blood quantum requirement).<sup>66</sup>

The Alaska District Court has likewise read the phrase as providing a second way to establish a person as Native without reference to blood quantum.

“Natives” means both persons of one-fourth degree or more Alaska Indian, Eskimo, or Aleut blood or combination thereof but also any person who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or if deceased, was) regarded as Native by the village or group.<sup>67</sup>

The issues raised in both cases did not require the court to interpret the ANCSA definition, but each court expressed a view in dicta that supports a permissive reading of the “in the absence of proof of minimum blood quantum” clause.<sup>68</sup>

The legislative history of this definition in ANCSA also provides insights on how the definition was intended to be applied. During consideration of the bill, it was argued that the definition should apply a requirement of one-quarter blood quantum to avoid inflating the number of people enrolled as Natives thus diluting the settlement amongst more people.<sup>69</sup> However, the Alaska Federation of Natives (AFN) provided comments that are instructive as to the reasons the definition of “Native” was expanded:

Two changes are suggested. First the Task Force desired to extend benefits of the settlement to Alaska Natives who are adopted by non-natives. Without appropriate language, such persons would probably not be included on the rolls.

Second, there are many natives who are uncertain of their blood lines but they are regarded by their people as natives. The most striking example are the Aleut

<sup>66</sup> *Rice v. Cayetano*, 528 U.S. 495, 526, 120 S. Ct. 1044, 1061-62 (2000) (Breyer concurrence) (citing 43 U.S.C. § 1602(b)).

<sup>67</sup> *Cape Fox Corp. v. United States*, 456 F. Supp. 784, 798 (D. Alaska 1978) (citing 43 U.S.C. § 1602(b)).

<sup>68</sup> No case law was found in which the phrase “in the absence of proof of minimum blood quantum” in the ANCSA definition, or any of the regulations adopting that definition, was at issue in a case or directly addressed by a court.

<sup>69</sup> From the 1971 Senate Report: “The Act, through the operation of this subsection, provides benefits only to the descendants [*sic*] of those tribes, bands, and groups of Indians, Eskimos and Aleuts who are of one-fourth degree or more Alaska Indian, Eskimo or Aleut blood, or a combination thereof. The language of the subsection as approved by the Committee provides that in cases where there is no proof of blood quantum, the views of the members of the Village or Native group may be determinative as to whether an individual is eligible for enrollment as a “Native” under this Act. When there is proof that a person does not qualify the views of members of the Village would be immaterial.” S. Rep. 92-405 at 109 (92d Cong., 1st sess., Oct. 21, 1971) (emphasis added).

people who have been in contact with white men for hundreds of years. The proposed amendment permits a person of Native ancestry to be included in the absence of proof as to minimum blood quantum and even if the blood quantum is known to be less than one-quarter native, provided such person and at least one parent is regarded as Native.

The AFN has no strong opinion on blood quantum. Under the Task Force bill one-quarter blood was included as a requirement largely in the belief that the Department of the Interior desired it, and also to avoid undue inflation of the rolls. However, the task force proposal, S. 2906/H.R. 15049, permits benefits to be extended to persons of less than one-quarter blood in a manner somewhat similar to such provisions in Section 10 of this bill.<sup>70</sup>

While the relevant caselaw and legislative history of the ANCSA definition provide certain insights into the interpretation of the FWS regulatory definition, they are ultimately inconclusive as to the best interpretation under the MMPA.

### **III. Conclusion**

The U.S. Fish and Wildlife Service should interpret its existing regulations at 50 C.F.R. § 18.3 as providing three independent means of qualifying as an “Indian, Aleut or Eskimo” for purposes of the section 101(b) exemption of the MMPA. More specifically, FWS may not interpret its regulations as precluding persons who lack one-fourth blood quantum from qualifying as “Indian, Aleut, or Eskimo” if they are “regarded as an Alaska Native by the Native village or town of which he claims to be a member” and their “father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town.”

However, qualifying as “Indian, Aleut, or Eskimo” does not itself establish eligibility to take marine mammals pursuant to section 101(b) because this statutory exemption is further limited to those who reside in Alaska and dwell on the coast of the North Pacific Ocean or the Arctic Ocean. Also, section 101(b) only exempts take that is conducted for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing, and that is not accomplished in a wasteful manner.

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<sup>70</sup> 114 Cong. Rec. 21943 (1968).