
Eric A. Kueffner*

INTRODUCTION

The Alaska National Interest Lands Conservation Act (ANILCA),1 passed in 1980, placed approximately 105 million acres of Alaskan land under federal management as national forests, wildlife refuges, and other conservation units.2 Southeast Alaska Conservation Council, Inc. v. Watson (SEACC III)3 provides the first interpretation by the Ninth Circuit Court of Appeals of ANILCA as applied to Alaskan lands.4

In SEACC III, the Ninth Circuit addressed the narrow question whether ANILCA required that an environmental impact statement (EIS) be filed before mining activities known as "bulk sampling"5 could continue in the Misty Fjords National Monument.6 However, the case also presented the broader issue whether activities such as bulk

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3. 697 F.2d 1305 (9th Cir. 1983).
5. Unlike exploratory drilling, which punches small holes in the earth, bulk sampling involves the blasting of tunnels and large adits (horizontal mine entrances) and the removal of large amounts of earth and rock. Brief for Plaintiff-Appellee Southeast Alaska Conservation Council, Inc. at 9-15, SEACC III, 697 F.2d 1305 (9th Cir. 1983) [hereinafter referred to as Brief for Plaintiff-Appellee]. The mining plan at issue in SEACC III proposed the blasting of two 7' x 8' adits and nearly a mile of tunnel, and removal of about 34,000 tons of rock for sampling. Id. at 9-10.
6. 697 F.2d at 1313. National monuments are defined as "historic landmarks, historic and prehistoric structures, and other objects of historic and scientific interest." 16 U.S.C.
sampling can be conducted in harmony with the purposes of the Monument and the intent of ANILCA. ANILCA requires that all mining activities within the Misty Fjords National Monument be compatible "to the maximum extent feasible with the purposes for which the Monuments were established." Instead of sorting through ANILCA's ambiguous legislative history to uncover a primary purpose, the Ninth Circuit focused on ANILCA's general statutory objective of protecting items of ecological interest, and, as a result, the court required the Forest Service to prepare an EIS before approving the bulk sampling.8

Two features of the SEACC III opinion will be particularly significant for future litigation concerning ANILCA. First, the court's implicit recognition that the legislative history behind ANILCA demonstrates an intent to compromise between environmental protection and resource development means that litigants who can point to favorable portions of legislative history will not necessarily prevail. The overall conservationist purpose of the Act will be more persuasive than evidence of the frequently conflicting intentions of the legislators who forged the compromise. Second, the court's strict interpretation of the "maximum extent feasible" standard suggests that the court will also read other portions of the Act containing similar language in a strict manner. This approach will also favor conservation because the avowed purpose of the Act is to protect and preserve natural resources.9

The Ninth Circuit's interpretation of ANILCA may also affect the way it reads other environmental laws. SEACC III indicates that a court should look first to the general purpose of the law, and then to the particular section at issue when discerning legislative intent. Consequently, the court will determine whether the activity complies with the spirit as well as the letter of the law. The SEACC III opinion will be especially relevant to the interpretation of other environmental statutes which employ compatibility standards similar to the "maximum extent feasible" standard.10

This Note argues that the Ninth Circuit's interpretation of ANILCA sets the tone for future cases involving the Act. The first section provides a brief factual and procedural introduction to the SEACC III litigation. Part II reviews the Ninth Circuit opinion in the case. Part III contains an analysis of both the court's use of legislative history

§ 431 (1982). This section of the the United States Code also gives the President the power to propose designation of an area as a national monument. See infra note 71.
10. See infra notes 146-49 and accompanying text.
and its treatment of the "maximum extent feasible standard" and discusses the significance of the opinion for future litigation.

I

FACTUAL AND PROCEDURAL BACKGROUND

The Misty Fjords National Monument occupies over two million acres in the Tongass National Forest near Ketchikan, Alaska.11 The Monument is a land of steep cliffs, deep saltwater bays and six thousand-foot mountains forested with Sitka Spruce and Western Hemlock.12 The frequent rains of Southeast Alaska fill numerous mountain lakes and streams, making the area an important fishery habitat. The Monument is home to both black and brown bear, mountain goats, bald eagles, ducks and geese.13 In short, the Misty Fjords National Monument contains a wealth of recreational, wildlife, fishery, and timber resources.

The Monument also contains what may be the largest molybdenum deposit in the world.14 In 1974, the United States Borax & Chemical Corporation (Borax) staked a claim on the molybdenum in an area of the Monument known as Quartz Hill.15 Because the claim was located in the Tongass National Forest, Borax needed United States Forest Service approval of any proposed mining plan before actual mining work could begin on the claim.16

Borax's first plan, developed in 1976, called for construction of an access road from the saltwater fjord to the proposed mining site and a bulk sampling program, which would involve the removal of large amounts of ore via the access road.17 The bulk samples were then to be crushed in order to determine the feasibility of commercial operations. The Forest Service approved this plan, but the approval was overturned by the Secretary of Agriculture, who determined that the samples should be removed by helicopter rather than by trucks on an access road.18

13. Brief for Plaintiff-Appellee, supra note 5, at 7-8; See also SEACC III, 697 F.2d at 1306.
14. SEACC I, 526 F. Supp. at 204. It has been estimated that the deposit at Misty Fjords constitutes perhaps 10 percent of the world's known minable molybdenum reserves. Id. Molybdenum, a mineral used in the manufacture of high strength steel, is not in short supply. Id. at 204 n.3. See also Wall St. J., Aug. 10, 1981, at 13, col. 1 (Colorado molybdenum development project deferred because of low demand).
15. SEACC I, 526 F. Supp. at 204.
17. SEACC I, 526 F. Supp. at 204.
18. Id. at 205 n.8.
Borax proposed a second plan in 1979. The Forest Service approved the part of the 1979 plan that called for exploratory drillings, but the agency denied a request for bulk sampling on the grounds that any bulk sampling plan had to be evaluated within the context of a full environmental analysis. Borax proposed its third plan in 1980. This plan, known as the 1980-83 operating plan, did not include a bulk sampling phase and was approved in full by the Forest Service. Soon after the plan’s approval, however, President Carter signed ANILCA into law.

Sections 503 through 505 of the Act specifically addressed the Borax claims at Quartz Hill and changed the scheme of regulatory control over the exploratory activities. ANILCA permitted Borax, as the holder of a potentially valid mining claim on land within the Misty Fjords National Monument, to carry out mining activities “in accordance with reasonable regulations promulgated by the Secretary [of Agriculture] to assure that such activities are compatible, to the maximum extent feasible, with the purposes for which the Monuments were established.” ANILCA also required the Secretary of Agriculture to prepare an EIS “which covers an access road for bulk sampling purposes and the bulk sampling proposed by United States Borax and Chemical Corporation in the Quartz Hill area.”

After ANILCA was enacted, Borax amended its 1980-83 operating plan. The amendments to the plan contained proposals for activities which were virtually identical to the bulk sampling proposals of 1976 and 1979, although the company did not describe them as bulk sampling. The Forest Service approved this amended plan.

Due to the similarities between the amended 1980-83 plan and the earlier bulk sampling proposals, and because of the apparent failure of the Forest Service to consider the full environmental effects of the 1980-83 amendments, the Southeast Alaska Conservation Council, Inc. (SEACC) sued to overturn the Forest Service’s approval. SEACC con-

19. Id. at 205.
20. Id. at 205 n.10. Bulk sampling has significant environmental effects partly because it requires large amounts of explosives and consequently disturbs wildlife and geography. See Brief for Plaintiff-Appellee, supra note 5, at 9-15. Even when the bulk samples are removed by helicopter, as the Forest Service approved in 1977, the frequent overflights can disturb wildlife. Id. at 13.
22. 16 WEEKLY COMP. OF PRES. DOC. 2755 (Dec. 2, 1980).
24. ANILCA, Pub. L. No. 96-487, § 503(h)(3), 94 Stat. 2371, 2400-01 (1980). Section 503(h)(2) also requires the Secretary of Agriculture to prepare a document analyzing mine development concepts for the proposed molybdenum mine at Quartz Hill. Id. at 2400.
tended that the Borax plan amounted to bulk sampling and thus that ANILCA required an EIS before the sampling plan could proceed.\textsuperscript{27}

In \textit{SEACC v. Watson (SEACC I)},\textsuperscript{28} the district court agreed in part with SEACC. The court did not require the preparation of an EIS but instead ordered the Forest Service to decide whether the amended 1980-83 plan constituted bulk sampling.\textsuperscript{29} To aid the agency in its decision, the court provided four factors for the Forest Service to use in determining whether the amended 1980-83 plan constituted bulk sampling: 1) the length and size of the tunnels used to excavate the rock, 2) the amount of blasting contemplated, 3) the total amount of rock excavated, and 4) the amount of on-site crushing and sampling.\textsuperscript{30} If the Forest Service found that bulk sampling was contemplated by the amended plan, it was to prepare a full EIS on the mining activities.\textsuperscript{31} Upon remand after \textit{SEACC I}, the Forest Service found that the amendments did not constitute bulk sampling, and therefore it did not prepare an EIS.

SEACC contested this determination, and the district court, in \textit{SEACC v. Watson (SEACC II)},\textsuperscript{32} agreed that the Forest Service had not used the relevant factors in reaching its decision. The court found that a full consideration of the four relevant factors compelled the conclusion that the Borax proposals \textit{did} constitute bulk sampling.\textsuperscript{33} As a result, the district court ordered the Forest Service to prepare a full EIS on the amended 1980-83 plan.\textsuperscript{34} The court also based its decision on the finding that the effects of bulk sampling were so significant that the National Environmental Policy Act (NEPA)\textsuperscript{35} alone mandated an EIS.\textsuperscript{36} Borax appealed this decision to the Ninth Circuit Court of Appeals.

\section*{II}

\textbf{THE SEACC III OPINION}

In \textit{SEACC v. Watson (SEACC III)}, the Ninth Circuit upheld the district court.\textsuperscript{37} The court of appeals applied common principles of statutory interpretation to section 503 of ANILCA and based its analy-
sis on the district court's reading of that section. The significant additional link in the Ninth Circuit's opinion was its use of the underlying purpose of the statute to strengthen the district court's interpretation of section 503. Although not a novel interpretive practice, the use of ANILCA's purpose serves to broaden the impact of the court's opinion.

The court first examined the purpose of ANILCA as a whole to discern the meaning of the particular sections within the Act. SEACC I and II examined the intent of Congress in framing sections 503 and 504, but SEACC III went further. The court observed that the purpose of ANILCA, as a whole, is to protect objects of ecological and cultural interest. The first section of ANILCA states that:

In order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, recreational, and wildlife values, the units described in the following titles are hereby established.

National monuments are among the "units" described in the Act. ANILCA provides that national monuments "shall be managed by the Secretary of Agriculture . . . to protect objects of ecological, cultural, geological, historical, prehistorical and scientific interest." These two statements of purpose convinced the court that the overall intent of Congress was to protect resources.

Section 503(f)(2)(A) of ANILCA, however, specifies that mining activities are permitted within the Misty Fjords National Monument, provided they are conducted in a way that is "compatible to the maximum extent feasible with the purposes for which the Monuments were established." The court called the "maximum extent feasible" standard a "strict one" that demands strict compliance with the environmental protection provisions set forth in ANILCA and in other applicable environmental statutes. Because the purposes of the national monuments are spelled out clearly in ANILCA, strict compliance with section 503(f)(2)(A) means simply that the mining activities

38. Id. at 1309. The court of appeals relied on the Supreme Court's analysis in Richards v. United States, 369 U.S. 1, 11 (1962).
39. The court began by noting that questions of statutory interpretation are questions of law so that de novo review is appropriate. SEACC III, 697 F.2d at 1309.
44. SEACC III, 697 F.2d at 1309-10.
46. SEACC III, 697 F.2d at 1310.
proposed by Borax must be compatible with protecting the Misty Fjords National Monument’s resources.\textsuperscript{47} One way to assure such protection is by insisting that each phase of the mining plan be discussed in an EIS. Section 503(h), which requires an EIS for certain Borax operations, provides for this protection.\textsuperscript{48} The court thus read the provisions of section 503(h) to require maximum resource protection.

After recognizing the general policies behind ANILCA, the court in \textit{SEACC III} addressed the more specific contentions of the parties. The court first considered Borax and Forest Service arguments that section 503(h)(3) requires an EIS only when an access road is built in conjunction with a bulk sampling plan.\textsuperscript{49} Section 503(h)(1) states that “[a]ny special use permit for a surface access road for bulk sampling of the mineral deposit at Quartz Hill in the Tongass National Forest shall be issued in accordance with this subsection.”\textsuperscript{50} Presumably, the subsection referred to here is the whole of subsection (h). Section 503(h)(3) states that “[t]he Secretary shall prepare an environmental impact statement (EIS) . . . which covers an access road for bulk sampling purposes and the bulk sampling phase proposed by . . . [Borax] . . . .”\textsuperscript{51} Borax contended that section 503(h)(3) only concerns limitations on a surface access road; Borax argued that if it did not use an access road, an EIS was not required for the bulk sampling phase.\textsuperscript{52}

The court, however, observed that sections 503(h)(1) through 503(h)(8) set forth several kinds of provisions governing mining activity, and that not all of them concern an access road.\textsuperscript{53} This lack of

\textsuperscript{47} At first glance, a mining plan that is protective of resources seems like a contradiction in terms. Nevertheless, the drafters of ANILCA took pains to explain that the development of the molybdenum deposits was not inherently incompatible with the protective purposes of the Misty Fjords Monument. S. REP. No. 413, 96th Cong., 2d Sess. 209-10, \textit{reprinted in} 1980 U.S. CODE CONG. & AD. NEWS 5070, 5153-54. Obviously, the molybdenum would not be protected, but the impact on other resources affected by mining activity could be minimized. \textit{See infra} note 108 and accompanying text.


\textsuperscript{49} \textit{SEACC III}, 697 F.2d at 1310.


\textsuperscript{51} \textit{Id.} at 2400-01.

\textsuperscript{52} \textit{SEACC III}, 697 F.2d at 1310.

\textsuperscript{53} \textit{Id.} at 1310. Section 503(h)(2) requires Borax to prepare a document analyzing mine development concepts for its claim. Section 503(h)(3) instructs the Secretary of Agriculture to prepare an EIS for the program. Section 503(h)(4) requires the Secretary to issue a special use permit for an access road for bulk sampling “unless he should determine that the construction or use of such a road would cause an unreasonable risk of significant irreparable damage to the habitats of viable populations of fish management indicator species.” Section 503(h)(5) provides for expedited judicial review of agency action. Sections 503(h)(6) through (h)(8) regulate the wilderness area surrounding the Borax claim. Section 503(h)(6) requires the Secretary to give permission to Borax for docking and landing facilities in the wilderness portion of the Monument “subject to reasonable regulations issued by the Secretary to protect the values of the Monument wilderness.” Section 503(h)(7) instructs the Secretary to permit salvage operations and emergency activity in the wilderness portion of the monument, and section 503(h)(8) declares that the wilderness designation shall not enlarge
coordination convinced the court that the provisions of section 503 should be read in parallel, rather than be limited to the case of an issuance of a special use permit for a surface access road.\textsuperscript{54}

The court stated that section 503(h)(3) may be viewed as a congressional response to the history of attempts by Borax to obtain approval for both bulk sampling and an access road.\textsuperscript{55} Congress knew of the 1977 EIS prepared by the Forest Service on both bulk sampling and an access road,\textsuperscript{56} and it knew of the Forest Service decision in 1979 to reject Borax's bulk sampling plan because of inadequate environmental analysis.\textsuperscript{57} By approving section 503(h)(3) as part of ANILCA, Congress implicitly affirmed the 1979 Forest Service decision that a more thorough environmental analysis was necessary before bulk sampling could be approved.\textsuperscript{58} This compressed reading of legislative history was as far as the court was willing to go in exploring legislative intent. Although Borax had argued that Congress favored mine development, and SEACC argued that Congress only grudgingly allowed it,\textsuperscript{59} the court apparently was unmoved by either view. The court rejected suggestions of partisan intent and recognized the goal of the legislative compromise reflected in the statutory language—development with environmental safeguards—as the true purpose of ANILCA.

Once the court of appeals determined that the purposes and terms of the Act demanded a full EIS, it confronted the question of whether the Forest Service abused its discretion by not finding that the amended 1980-83 plan constituted a bulk sampling plan. The district court in \textit{SEACC II} found that the Forest Service decision on remand was arbitrary and capricious because it was not based on the relevant factors as established by the \textit{SEACC I} decision.\textsuperscript{60} The Ninth Circuit agreed with the district court that the Forest Service had not considered the relevant factors and set aside the agency's findings as arbitrary and

or diminish the rights and regulations applicable to the waters around the mining claim. Pub. L. No. 96-487, § 503(h), 94 Stat. 2371, 2400-02 (1980).

\textsuperscript{54} \textit{SEACC III}, 697 F.2d at 1310-11.

\textsuperscript{55} \textit{Id} at 1311.

\textsuperscript{56} \textit{Id}. See S. REP. No. 413, 96th Cong., 2d Sess. 210, \textit{reprinted in} 1980 U.S. CODE CONG. & AD. NEWS 5070, 5154.


\textsuperscript{58} \textit{SEACC III}, 697 F.2d at 1311.

\textsuperscript{59} \textit{Id}. \textit{See} Brief for Defendant-Appellants Pacific Coast Molybdenum Co. and U.S. Borax & Chemical Corp. at 17-19, 23-24, \textit{SEACC III}, 697 F.2d 1305 (9th Cir. 1983); Brief for Plaintiff-Appellee, \textit{supra} note 5, at 16-23.

\textsuperscript{60} \textit{See supra} text accompanying note 30. The district court specifically stated in \textit{SEACC I} that the amount of rock shipped from the mining site was environmentally irrelevant. 526 F. Supp. at 208 n.19. Yet the Forest Service noted that the most striking difference between the earlier disapproved plan and the present one was that under the 1976 plan, 5,000 tons of rock were to be shipped out, while under the amended 1980-83 plan, only 42 tons were to be taken from the site for sampling. \textit{SEACC II}, 535 F. Supp. at 657.
III

ANALYSIS

SEACC III is not the first case to interpret ANILCA. Two lawsuits over ANILCA have already reached the Ninth Circuit, and numerous additional suits are now pending in the district courts. The SEACC III litigation, however, raises two issues which were present, but not expressly addressed, in the previous ANILCA litigation and which are likely to arise in the future.

First, because ANILCA is the product of legislative compromise, its legislative history must be read carefully. Some weight may be given to each of the conflicting interests which forged the legislation, but only if a court carefully considers the overarching goals of the legislation will its protectionist and preservationist purpose prevail. Second, several sections of ANILCA demand that certain practices be compatible with the purposes of the Act; however, these sections vary in the extent of compatibility that is required. Although SEACC III specifically concerns activities which must be compatible to the "maximum extent feasible," the opinion can also guide disputes over standards which require activities to be consistent to the "maximum extent practicable" with the protection or conservation of resources. The scope of the various compatibility standards depends on judicial interpretation of the precise statutory language and the amount of discretion afforded to the agencies which administer ANILCA.

A. The Use of Legislative History

1. Federal Land Policy in Alaska

The history of ANILCA began in 1971 with the enactment of the Alaska Native Claims Settlement Act (Native Claims Act). The Native Claims Act provided native Alaskans and state and local govern-

61. SEACC III, 697 F.2d at 1312. The Ninth Circuit declined, however, to address the district court's finding that the National Environmental Policy Act alone would require an EIS. See supra note 36 and accompanying text.


ments with the opportunity to choose parcels of federal land for their own use. The Native Claims Act also directed the Secretary of the Interior to withdraw up to eighty million acres of federal land in Alaska for consideration as national parks and forests.66 Withdrawal meant that the land would be unavailable for selection by the state or by native Alaskans. Interior Secretary Morton initially complied with this directive by selecting eighty million acres.67 He then went beyond the mandate in the Native Claims Act and recommended that eighty-three million acres be added to the federal conservation system.68

The Secretary's actions shifted the focus of activity to Congress, which had to draft legislation specifying how to deal with the withdrawn land. Under the Native Claims Act, Congress had five years to act before the withdrawals expired.69 The issue was complicated further because the Secretary had withdrawn additional land under the Federal Land Policy and Management Act of 1976 (FLPMA),70 and President Carter had withdrawn fifty-six million acres under the American Antiquities Preservation Act of 1906 (Antiquities Act).71

These additional withdrawals spurred both litigation and legislation. The litigation, which was ultimately unsuccessful, challenged the authority of the Secretary and President to make the withdrawals.72 The legislation consisted of a series of bill proposals which went back and forth for several sessions among members of both the House and Senate.73 Finally Congress passed a compromise bill known as the

66. This provision, familiarly known to Alaskans as "(d)(2)" is codified at 43 U.S.C. § 1616(d)(2) (1982).
72. The Anaconda Copper Company contested the President's right to designate large areas of land as national monuments in Anaconda Copper Co. v. Andrus, 14 Env't Rep. Cas. (BNA) 1853 (D. Alaska 1980). District Court Judge Fitzgerald rejected the challenge, finding that the legislative history of the Antiquities Act, as well as the history of presidential practice under the Act, supported President Carter's action. In Alaska v. Carter, 462 F. Supp. 1155 (D. Alaska 1978), the State of Alaska tried to enjoin the Secretary of the Interior from proceeding with withdrawals under FLPMA on the ground that insufficient time had been permitted for public comment on them. The injunction was denied, and the withdrawals remained in effect.
73. No fewer than thirty-five bills were introduced on the subject. For a short history
Tsongas-Jackson substitute. This bill, entitled the Alaska National Interest Lands Conservation Act (ANILCA) and signed into law by President Carter on December 2, 1980, established the Misty Fjords National Monument, along with many other conservation lands.

2. Trustees for Alaska: The Model for SEACC III

Although SEACC III is the first Ninth Circuit opinion to discuss the application of ANILCA to Alaskan lands, the district court previously encountered ANILCA in Trustees for Alaska v. Watt. In deciding Trustees for Alaska, the district court provided the analytical framework which supports the SEACC III decision.

In Trustees for Alaska, the district court held that the Wildlife Refuge Administration Act and ANILCA prohibited the Secretary of the Interior from transferring management of the Arctic National Wildlife Refuge (Arctic Refuge) from the Fish and Wildlife Service to the Geological Survey. The Secretary attempted to transfer to the Geological Survey responsibility for making a baseline survey of fish and wildlife in the Arctic Refuge for use in issuing guidelines for oil and gas exploration. Presumably the Geological Survey, which is dedicated to developing non-renewable resources such as oil and minerals, would have


The Senate passed the Tsongas-Jackson substitute in August of 1980, 126 CONG. REC. 21,891 (1980), and the House followed suit in November. 126 CONG. REC. 29,285 (1980).

524 F. Supp. 1303 (D. Alaska 1981), aff'd, 690 F.2d 1279 (9th Cir. 1982).

Trustees for Alaska is relevant to the outcome of SEACC III because the procedural posture of Trustees for Alaska, SEACC I, and SEACC II, was identical. All three cases were decided by Chief Judge James Von der Heydt, who framed the issues in each case the same way. Preliminary issues of standing did not present formidable obstacles. Just as in Trustees for Alaska, the court in SEACC I relied on Duke Power Co. v. Carolina Envtl. Study Group Inc., 438 U.S. 59, 72 (1978) as the basis for standing to sue. Sections 706(2)(A) and (C) of the Administrative Procedures Act provided the relevant standard of review in Trustees for Alaska, and in SEACC I and II; at issue was whether the Secretary had abused his discretion, acted in an arbitrary or capricious manner or in excess of his authority, or based his decision on irrelevant factors. See Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1970). Finally, in SEACC I and Trustees for Alaska, the court noted that an agency's interpretation of a statute was entitled to great weight, but that the court was entitled to the last word on statutory interpretation. See Nance v. Environmental Protection Agency, 645 F.2d 701, 714 (9th Cir. 1981) and Patagonia Corp. v. Board of Governors of the Federal Reserve, 517 F.2d 803, 812 (9th Cir. 1975).

been less sensitive than the Fish and Wildlife Service to the importance of preserving renewable resources such as wildlife.

Upon a review of the intent of the Wildlife Refuge Act and ANILCA as expressed by the statutory language and as implied by the legislative histories, the court concluded that Congress believed the goals of the National Wildlife Refuge System would be best served by permitting the Fish and Wildlife Service to manage the Refuge System. The court observed that section 303(2)(B)(i) of ANILCA states that one of the main purposes behind the establishment of the Arctic Refuge is to conserve fish and wildlife in their natural diversity. ANILCA also provides for the administration of the refuge in accordance with the laws governing the units of the National Wildlife Refuge System, which grants administrative authority to the Secretary of the Interior through the Fish and Wildlife Service. The court's examination of the legislative histories of the two acts confirmed congressional intent to vest the Fish and Wildlife Service with authority to manage the Arctic Refuge.

The court in *Trustees for Alaska* properly examined both the statutory language and the congressional purposes. In reading the statutes, the court relied on the rule of interpretation set forth in *Consumer Product Safety Commission v. GTE Sylvania* that unless there is a clearly expressed legislative intent to the contrary (which may be gleaned from the legislative history), the plain intent of the statutory language itself is controlling. The plain intent of the Wildlife Refuge Act is to let the Fish and Wildlife Service manage the Arctic Refuge, and nothing in the legislative history contradicts that intent. Because the administration of the baseline study and the subsequent publication of guidelines involved management and administrative functions, the court properly held that the Secretary's transfer of these activities was beyond his statutory authority.

3. Montana Wilderness and the Use of Subsequent Legislative History

In contrast to the court's proper use of legislative history to construe a statute in *Trustees for Alaska*, the only Ninth Circuit interpretation of ANILCA other than *SEACC III* provides an example of how

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82. 524 F.2d at 1310.
84. 524 F. Supp. at 1305.
85. Id. at 1304-05. See also 16 U.S.C. 668dd(a)(1) (1982).
86. 524 F. Supp. at 1309.
88. 524 F. Supp. at 1308.
legislative history may be misused. In Montana Wilderness Association v. United States Forest Service, the court held that section 1323(a) of ANILCA permits access to private landholdings across federally owned land in Montana. The court, bearing in mind the "plain intent" rule of GTE Sylvania, concluded that although the language of ANILCA reflected an intent to limit its application to Alaska, congressional intent expressed after ANILCA was passed indicated that certain parts of the Act applied to all of the states. This use of congressional intent not only places the meaning of statutes in constant danger of revision but constitutes an abdication by the courts of their judicial function of interpreting statutes.

The court in Montana Wilderness discounted numerous proffered indications of legislative history made before ANILCA was passed, but found one item of subsequent legislative history to be decisive. Three weeks after Congress passed ANILCA, a House-Senate conference committee considering the Colorado Wilderness Act interpreted section 1323 of ANILCA as having nationwide application. The conferees, who included several ANILCA sponsors, agreed to delete a section of the pending Colorado Wilderness Act which would have provided for access to private lands within the national forest wilderness in Colorado. The reason given by the conferees for their action was that "similar language has already passed Congress in Section 1323 of the Alaska National Interest Lands Conservation Act." Based on this legislative history, the court applied provisions of ANILCA to lands in Montana.

There are two substantial flaws in the reasoning of Montana Wilderness. First, by accepting the conference committee's interpretation of a statute, the court abdicates some of its judicial power. Although

89. 655 F.2d 951 (9th Cir. 1981), cert. denied, 455 U.S. 989 (1982).
91. 655 F.2d at 952.
92. See 16 U.S.C. § 3102(3) (1982), which defines the term "public lands" as used in ANILCA to mean lands situated in Alaska which are federal lands.
93. The court limited the use of post-hoc congressional statements in determining legislative intent to situations where both the statutory language and the pre-enactment legislative history are ambiguous, and the subsequent interpretation is clearly expressed by the statute's original sponsors. 655 F.2d at 954-57.
94. 655 F.2d at 955-57.
95. 126 CONG. REC. 31,864 (1980).
96. Id.
97. Id., quoted at 655 F.2d at 957. The judicial history of Montana Wilderness illustrates the importance given this subsequent legislative history. An earlier slip opinion, subsequently withdrawn, makes no mention of the conference report, and concludes that ANILCA applies only to Alaska lands. Montana Wilderness Ass'n v. United States Forest Serv., No. 80-3374 (9th Cir. withdrawn Aug. 19, 1981) (available on LEXIS, Genfed library, Cir file). Apparently the court changed its result when the conference report was brought to its attention.
98. 655 F.2d at 957.
the legislators who wrote the Colorado Wilderness Act may have believed that section 1323 of ANILCA made an access provision in the Colorado Wilderness Act unnecessary, the interpretation of statutes is a job for the courts, not Congress. The legislative history of section 1323 was ambiguous, as the Montana Wilderness court acknowledged,\textsuperscript{99} and the committee members who drafted the conference committee report may well have been wrong about the applicability of ANILCA to all federal lands. Even if Congress intended section 1323 of ANILCA to permit access across all federal land, the proper place to manifest such an intent was in the preparation of ANILCA, not in the preparation of a subsequent bill.

The second flaw consists of letting an ambiguous congressional intent outweigh the plain meaning of the statutory language. One of the hazards of using legislative history to prove intent is that a legislator may make statements in the House or Senate chamber or insert remarks into a report which convey a broad range of possible intentions. This approach may result from a legislator's desire to win votes or to manufacture a legislative intent that will satisfy a broad constituency. It may not correspond at all with the language of the statute. Where the plain language of a statute is contradicted by legislative intent, the plain meaning rule of \textit{GTE Sylvania} indicates that the legislative history should be given some weight in determining the true meaning of the statute. If that legislative history is ambiguous, however, a court should give more weight to the plain language of the statute than to the uncertain and unfocused intentions expressed by legislators. While the Montana Wilderness court recognized the difficulty of gauging the significance of various kinds of legislative materials,\textsuperscript{100} it placed too much emphasis on the belated statement of intent found in the subsequent conference committee report. The court was correct to balance the plain meaning of the statute (which it found to indicate that only Alaska land was covered by section 1323) against the indications of legislative intent which contradicted the plain meaning,\textsuperscript{101} but it should have given less weight, rather than more, to the conference committee report.

\textit{Montana Wilderness} sets a dangerous precedent by permitting authors of legislation to make \textit{post hoc} statements about what they believed a particular act meant and thereby supply an intent that was not necessarily shared by the rest of the legislature. If lawmakers are per-

\textsuperscript{99} Id. at 955 n.6.
\textsuperscript{100} The court made sophisticated and valid distinctions among committee reports written by sponsoring committees, committee reports by non-sponsoring committees, remarks inserted into the \textit{Congressional Record} by lone legislators, discussion on the Senate floor, lack of discussion on the Senate floor, and letters between the members of responsible subcommittees. See 655 F.2d at 955-57 nn.5-11.
\textsuperscript{101} Id. at 954-57.
mitted to interpret legislative language after passage of the legislation, all statutes will be subject to revision by their authors. While the statement upon which the court in *Montana Wilderness* placed so much emphasis was made only a few weeks after passage of the legislation, the logic of *Montana Wilderness* would permit a bill's sponsor to substitute wishful second thoughts for actual intentions with a statement made months or even years after passage of the legislation. Statutory interpretation is the province of the judicial branch of government and should not be abandoned to legislative authors.

4. The Use of Legislative History in SEACC III

In deciding *SEACC III*, the Ninth Circuit did not rely on the dubious authority of subsequent legislative history. The court had ample legislative material to consider without bringing in statements of intent made after the enactment of ANILCA. However, an examination of ANILCA's contradictory expressions of legislative intent shows why the court in *Montana Wilderness* chose to rely on what it considered a decisive statement of intent, or at least one which tipped the balance in one direction.

The tortuous path which ANILCA followed through Congress makes it difficult to discern one true compelling legislative intent. Numerous compromises were made to accommodate Borax's unperfected mining claims in Misty Fjords, which were only one small part of ANILCA lands. The early versions of ANILCA legislation designated the potential mining site as a wilderness area. If the claim had remained in this category, development of the molybdenum deposit would have been difficult, if not impossible. As Representative Young (R - Alaska) pointed out in arguing against the wilderness designation, "[c]ourt cases have confirmed that wilderness and mining operations are inherently incompatible . . . . [H]ence, including . . . the U.S. Borax discovery in wilderness amounts, frankly, to a shutdown." A Borax representative testified before Congress that "inclusion of Quartz Hill in the Misty Fjords wilderness area . . . will effectively prohibit United States Borax from further exploration and development of this property."


103. 125 CONG. REC. 11,135 (1979). Representative Young was more poetic in the committee hearing on H.R. 39 when he observed that "Mr. Andrus states that no rights are taken away, but if you do not have the key to the bathroom, you do not go to the bathroom." *Alaska National Interest Lands Conservation Act of 1978: Hearings on H.R. 39 Before the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess.* (1979).

104. *Inclusion of Alaska Lands: Hearings on H.R. 39 Before the Subcomm. on General*
Fortunately for Borax, a compromise was reached in which 149,000 acres surrounding the Borax claim were excluded from the wilderness designation,\textsuperscript{105} although the whole of Misty Fjords remained a national monument.\textsuperscript{106} The compromise allowed development of the claim in return for assurances from Borax that it would adhere to strict environmental standards. As the Senate Committee staff explained to Senator Jackson (D - Wash.), the Chairman of the Committee on Energy and Natural Resources:

Borax is, in essence, agreeing to go through some additional environmental studies, provide some additional safeguards in order to move forward on its mine. So they will be having some additional burdens [since] other [smaller] mining operations . . . would not have to go through the same stringent tests.\textsuperscript{107}

The legislative intent that emerges from this history of horse-trading is that Congress was willing to allow mining of the molybdenum only if it could be assured that environmental precautions would be taken. The Senate Committee on Energy and Natural Resources, the committee that produced sections 503 to 505 of ANILCA, issued a report demonstrating the intent of the drafters:

The Committee intends that mining on existing claims should be permitted under reasonable regulations designed to make that activity compatible to the maximum extent feasible with the purposes of the monument . . . . These claims are presently being evaluated, but there are indications that the deposit represents one of the largest molybdenum discoveries in the world. The committee intends that the evaluation and development of these claims be permitted to continue should that prove economically feasible and intends to avoid the implication that mining or related activities are inherently incompatible with the purposes for which the monument was established.\textsuperscript{108}

While Borax contended that this report indicates a congressional com-

\textsuperscript{105} Oversight and Alaska Lands of the House Comm. on Interior and Insular Affairs, Part X, 95th Cong., 1st Sess. 25 (1977) (statement of Robert Kendall, Executive Vice President of United States Borax Corporation).

\textsuperscript{106} See also ANILCA, Pub. L. No. 96-487, § 703, 94 Stat. 2371, 2418-19 (1980).

\textsuperscript{107} Id. at 617.

\textsuperscript{108} S. REP. No. 413, 96th Cong., 2d Sess. 209-10, reprinted in 1980 U.S. CODE CONG. & AD. NEWS 5070, 5153-54. Senator Stevens made this report an explicit part of the legislative purpose by his statements on the floor of the Senate:

Mr. STEVENS. I am concerned, and I believe many others also to be concerned, that we have the committee report language that accompanied the legislative language of the “Borax compromise” as a part of the permanent Record. It is essential that we include that report language in the Record, so that the totality of this accord is a matter of record. I want there to be no mistake in interpreting the intentions of the parties who negotiated that compromise and the intentions of this body.
mitment to proceed with mine development, it seems more reasonable to read it as indicating a willingness to accommodate the mine if it is not too disruptive to the National Monument. Congress intended that mining would be regulated to make the activity compatible with the purposes of the National Monument.

Senator Stevens (R-Alaska), in a carefully worded statement on the floor of the Senate, provided his interpretations of ANILCA and made a special point of discussing the Borax mine because he wanted to make clear that the development of the mine was the purpose of sections 503 to 505 of ANILCA. Senator Stevens framed his statements as a series of questions addressed to Senator Tsongas (D-Mass.), and the result is an example of the kind of manufactured legislative intent discussed above. Despite Senator Stevens' efforts to establish a definitive legislative intent, his questions did not resolve the ambiguity, as the following exchange illustrates:

Mr. STEVENS. Senator Tsongas, as we both know, the U.S. Borax molybdenum deposit at Quartz Hill is located within a national monument. It is my understanding that the classification of these lands as national monument will not impinge on the U.S. Borax's ability to develop that deposit. Does this comport with your understanding?

Mr. TSONGAS. My distinguished colleague from Alaska knows that it has always been our intention to allow the Quartz Hill deposit to be developed if it is economically feasible for U.S. Borax to do so. Let there be no misunderstanding, U.S. Borax will have to comply with some very restrictive environmental regulations incorporated into the future regulations which may be promulgated by the Secretary of Agriculture.

Mr. TSONGAS. As I understand it, that agreement was the result of many hours of negotiation between your staff and my staff, representatives of the State of Alaska, representatives of the executive branch, and representatives of U.S. Borax.

Mr. STEVENS. That is correct. The negotiations on this section of the bill were very precise. In many instances, requests for specific legislative language were waived on the condition that the intentions of the parties would be clearly spelled out in the committee report. The legislative language dealing with [sections 503 to 505] does not accurately capture the total spirit of the accord. In order to understand the full measure of the compromise, I am adding the committee report language in Senate Report 96-413 dealing with [sections 503 to 505] to the Record at this point.

Mr. JACKSON. I agree, often, in order to fully understand a carefully worded compromise, such as this one, report language that accompanied the legislative language must be made part of the permanent Record. In this instance, I believe that the report language when examined side by side with the legislative language will give the true picture of the parties' intent and the intent of this body.

Mr. STEVENS. I thank the chairman. As he knows, the Borax compromise was made possible because all of the interested parties were able to agree that it would be better if certain sections were explained in the report as opposed to being included in the legislative language. Therefore, this report language is vital in interpreting these sections of the bill in administrative or judicial review settings.

126 Cong. Rec. 21,885 (1980).


110. See infra text accompanying note 115.

111. See supra text accompanying note 100.
Mr. STEVENS. It is my understanding, and the Senator will correct me if I am wrong, the exploration permits, patents, surface leases, access rights, and so forth will all be provided by the Secretary [of Agriculture]. It has been established here that our intention is to permit full development of valid mining claims—the "core claims" to the molybdenum deposit at Quartz Hill—and also to allow for development of certain unperfected claims. I assume we do agree that we have given full protection to valid existing rights.

Mr. TSONGAS. My colleague from Alaska is quite correct. Section [503] was carefully drafted to give full protection to all valid existing rights—to patented claims and to permit perfection of certain unpatented claims.112

Senator Tsongas does not give an unqualified assent to any of Senator Stevens' questions. Even where Senator Tsongas says that Senator Stevens is "quite correct," he goes on to clarify just how correct he means that to be. Despite Senator Stevens' efforts, the exchange does not demonstrate an unambiguous congressional enthusiasm for rapid development of the Borax mine. The exchange does indicate that considerable give and take occurred behind the scenes, and that the resulting compromise should not be interpreted as a clear mandate to Borax to develop the molybdenum deposit without regard for environmental safeguards.

In order to extract a legislative intent from such a history of compromise, the tension between competing interests must be appreciated. Without concessions from Borax in the form of environmental safeguards, mining in the National Monument would probably have been impossible. Similarly, without concessions from environmental groups in other features of ANILCA, the Act as a whole might not have won enough votes for passage in the Senate. It is misleading to say that the intent behind the Borax provisions in ANILCA is to "permit development" or to "restrict development." The legislative intent behind ANILCA was to accommodate competing interests. The best way to further that intent is to recognize that the indivisible goals of the legislature were: 1) to allow the molybdenum deposit to be developed and 2) to regulate its development through strict environmental safeguards.

112. 126 CONG. REC. 21,884 (1980).
gressional response to this history of attempts by Borax to obtain approval for both bulk sampling and an access road.”

When confronted with the conflicting legislative intentions of section 503, the *SEACC III* court wisely chose not to weigh those intentions itself; instead it relied almost entirely on the plain language of the statute as conclusive evidence of how Congress had weighed the competing interests.

**B. The “Maximum Extent Feasible” Standard**

The second significant issue in *SEACC III* is the reading the court gave to the “maximum extent feasible” standard. ANILCA provides that Borax shall be permitted to carry out exploratory and mining activities “in accordance with reasonable regulations promulgated by the Secretary [of Agriculture] to assure that such activities are compatible, to the maximum extent feasible, with the purposes for which the Monuments were established.”

Although the goal of this statute is clear, its implementation raises two issues: how feasible is the “maximum extent feasible” and who has the authority to apply the standard?

1. **Statutory Interpretation**

The first question does not unduly trouble the court in *SEACC III*. The court describes the standard as a “strict one” and compares it to the requirement in the National Environmental Policy Act (NEPA) that all federal agencies comply with the EIS requirement “to the fullest extent possible.”

As the Supreme Court stated in *Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma,* the NEPA phrase “is neither accidental nor hyperbolic” and commands federal agency compliance with NEPA unless there is “a clear and unavoidable conflict in statutory authority.”

*Flint Ridge* is the only case cited in *SEACC III* in support of its strict reading of the “maximum extent feasible” standard, even though other cases have considered similar language. For example, in *American Textile Manufacturers Institute, Inc. v. Donovan,* the Supreme Court interpreted a statute which required the Secretary of Labor to set a standard for exposure to toxic chemicals in the workplace “which most adequately assures, to the extent feasible, on the basis of the best

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113. *SEACC III*, 697 F.2d at 1311.
114. *Id.* at 1310-11.
117. 426 U.S. 776 (1976), reh'g denied, 429 U.S. 875 (1976); *SEACC III*, 697 F.2d at 1310.
118. 426 U.S. at 787-88.
available evidence,” that employee health will not suffer.\textsuperscript{120} The Court observed that if Congress had intended for the Secretary to engage in a cost-benefit analysis, or some other balancing test, the statute would have indicated that intent. The Court concluded that absent such a limitation, “feasibility” meant what its plain meaning suggested, that is, “capable of being done.”\textsuperscript{121} \textit{SEACC III}’s strict interpretation of “to the maximum extent feasible” is in accord with the Supreme Court’s reading of the less emphatic “to the extent feasible” standard in \textit{American Textile}.

The Ninth Circuit might also have found some guidance for its interpretation of the ANILCA language in the Seventh Circuit case of \textit{Porter County Chapter of the Izaak Walton League of America, Inc. v. Costle}.\textsuperscript{122} In \textit{Porter County}, the Seventh Circuit wrestled with statutory language which provided that before building a harbor project, the “State of Indiana shall furnish assurance satisfactory to the Secretary of the Army that water and air pollution control sources will be controlled to the ‘maximum extent feasible’ in order to minimize any adverse effects on public recreational areas . . . .”\textsuperscript{123} The court held that, absent a stricter standard in the statute itself, the way to determine whether pollution sources were controlled to the maximum extent feasible was to look to the provisions of the Federal Water Pollution Control Act (FWPCA), which provided that “effluent limitations. . . shall require the application of the best practicable technology currently available as defined by the Administrator.”\textsuperscript{124}

The court had two reasons for adopting this less than strict interpretation of the “maximum extent feasible” standard. First, it pointed out that the FWPCA was more specific than the public law under review, which did not give the Secretary of the Army the authority to promulgate specific standards.\textsuperscript{125} Second, it called the “maximum extent feasible” standard a “broadly stated objective, which gives the Secretary of the Army authority to exercise his discretion in obtaining assurances from Indiana of maximum feasible” pollution control.\textsuperscript{126}

Nonetheless, the \textit{Porter County} court did offer some guidelines for evaluating the Secretary’s actions. The court quoted from the case of \textit{United States v. Sisson},\textsuperscript{127} in which the Supreme Court adopted “the axiom that courts should endeavor to give statutory language that

\begin{itemize}
\item \textsuperscript{120} \textit{Id.} at 508 (emphasis added by the Court). \textit{See} 29 U.S.C. § 655(b)(5) (1982).
\item \textsuperscript{121} 452 U.S. at 508-09.
\item \textsuperscript{122} 571 F.2d 359 (7th Cir. 1978).
\item \textsuperscript{123} Pub. L. No. 89-298, § 301, 79 Stat. 1073, 1091 (1965); 571 F.2d at 362.
\item \textsuperscript{124} 33 U.S.C. § 1311(b)(1)(A) (1982); 571 F.2d at 366.
\item \textsuperscript{125} 571 F.2d at 366.
\item \textsuperscript{126} \textit{Id.} at 367.
\item \textsuperscript{127} 399 U.S. 267 (1970).
\end{itemize}
meaning that nurtures the policies underlying legislation. Thus, the courts in *Porter County* and *SEACC III* were following the same approach in interpreting the compatibility standard. The underlying policies of legislation must be ascertainable, however, if they are to be furthered. In *Porter County*, the court found the legislative history and the purpose of the law ambiguous. Although section 503(h) of ANILCA has a somewhat ambiguous legislative history as well, the policy behind the Act as a whole was easier for the Ninth Circuit to discern and translate into the strict reading of “maximum extent feasible.”

2. Administrative Discretion

*Porter County* emphasizes the importance of the second issue raised by the compatibility standards in ANILCA: who determines what “maximum extent feasible” means? When, as in *Porter County*, the official with the discretion to decide whether pollution will be controlled to the maximum extent feasible is not given any explicit standards for making that determination, a court cannot easily dispute his judgment and therefore must defer to the official’s decision. ANILCA, however, provides that Borax’s mining plan must be compatible with the purposes of the Misty Fjords National Monument, and those purposes are clearly spelled out in the Act. In addition, the district court supplemented the statutory guidelines by outlining the factors it deemed relevant to the decisionmaking.

The opinion in *SEACC III*, however, did not discuss who should make the decision about compatibility or why the court was better equipped to apply the standard than the Secretary of Agriculture or some other agency administrator. This omission is notable because the Ninth Circuit case of *California v. Watt*, decided just five months earlier, had considered a similar problem.

*California v. Watt* involved the determination, among other questions, of what the Coastal Zone Management Act (CZMA) means when it states that federal activities which directly affect the coastal zone should be conducted “in a manner which is, to the maximum extent practicable, consistent with approved state management pro-

128. Id. at 297-98; 571 F.2d at 367-68.
129. 571 F.2d at 368-69.
130. See supra text accompanying note 30.
132. *California v. Watt* was decided only a week before arguments were heard in *SEACC III*, and Circuit Judge Pregerson sat on the panel of both cases. California v. Watt, 683 F.2d at 1256 (9th Cir. 1982); *SEACC III*, 697 F.2d at 1306. Despite these connections of proximity and persons, *California v. Watt* was not mentioned in *SEACC III*.
grams." The court held this "maximum extent practicable" standard to be a broad grant of discretion to the Secretary of the Interior despite noting that the CZMA is not explicit as to who possesses final authority to determine whether a federal action is consistent with state coastal management plans. This authority remains "subject, of course, to such judicial review as is appropriate."

Under ANILCA, authority to apply the "maximum extent feasible" standard and to make consistency determinations presumably belongs to the Forest Service. Nothing in SEA CC I, II, or III indicates that the Forest Service does not have this power, but the cases indicate that the authority may be lost through misuse. The SEA CC II and III courts used the power of judicial review to declare that the agency had abused its discretion by failing to consider the factors deemed relevant by the district court in SEA CC I.

The court in California v. Watt did not intervene so forcefully. In determining whether an offshore lease was consistent with a state's coastal management plan to the maximum extent practicable, the court observed that:

the lease sale need not be configured so as to preclude any possible future inconsistency arising as development proceeds. . . .

The limit beyond which conformity with a state plan would not be practicable to the maximum extent cannot be precisely delineated. Such factors as the extent to which leasing, exploration, development, drilling, and production would be hampered or proscribed by conformity; the reasonableness of the state plan; as well as the terms of the particular proposed lease sale must be examined. Beyond this it is difficult to go; verbal formulas cannot eliminate the necessity of examining each situation with care and sensitivity to the concerns of the state and the nation. This interpretation gives a great deal of discretion to the person making the consistency determination and a limited role to the court reviewing the decision.

The courts' different conceptions of agency discretion under CZMA and ANILCA may be attributable to the different consistency standards in the two acts. Arguably, the "maximum extent feasible" standard in ANILCA is more demanding than the "maximum extent practicable" standard of the CZMA. Practicability requires only that performance accord with current practice; feasibility suggests that

135. In California v. Watt, the court held that the Secretary of the Interior had not even made the determination, and remanded the case for him to do so. 683 F.2d. at 1265.
136. Id. at 1264.
137. Id. at 1265 (emphasis in original).
whatever is possible should be attempted. Yet if the CZMA regulations are any indication, even the less stringent practicability standard requires earnest efforts at compliance. The stricter standard of ANILCA demands not only greater consistency with the goals of the statute but more careful scrutiny by the courts to ensure that the standard is met.

C. Future Applications of the SEACC III Opinion

ANILCA contains a number of other compatibility standards which are likely to require court review. In addition, other federal environmental laws contain compatibility standards like that interpreted by the court in SEACC III. The approach taken in SEACC III should prove helpful in ascertaining the meaning of these various standards.

One section of ANILCA which may come under close scrutiny is section 505(b)(1), which addresses the effects of the Borax mine on fisheries in Misty Fjords National Monument. This section requires that the Secretary of Agriculture examine any mining plan to insure that it includes studies or information adequate for evaluating "to the maximum extent feasible and relevant, the sensitivity to environmental degradation from activities carried out under such plan of the fishery habitat . . ." Thus, the same issues that arose in SEACC III are likely to arise in litigation under section 505(b)(1). Any court interpreting this section, though, will be guided by the strict interpretation given to the "maximum extent feasible" standard in SEACC III and should require the Secretary to show that all fishery studies are rigorously protective, that is, adequate to evaluate environmental sensitivity.

Similarly, any judicial interpretation of section 1107(a) of ANILCA should rely heavily on the precedent of SEACC III. Section 1107(a) requires the Secretary of the Interior or the Secretary of Agriculture to include terms and conditions in any right-of-way granted over a conservation unit which will "insure that, to the maximum extent feasible, the right-of-way is used in a manner compatible with the purposes for which the affected conservation unit . . . was established . . ." Section 1107(a) affects a wide variety of federal land governed by the provisions of ANILCA, and the "maximum extent feasible" requirement for rights-of-way is a significant restriction on the use of that land. SEACC III provides clear guidance as to what it means for an activity to be compatible to the maximum extent feasible.

138. The United States Supreme Court endorsed this latter definition in American Tex- tile Manufacturers Institute, Inc. v. Donovan, see supra note 121 and accompanying text.
141. Id.
with the purposes of the land and insures that section 1107(a) will protect ANILCA lands from incompatible incursions.

Sections 402\(^{142}\) and 404\(^{143}\) of ANILCA use language similar to that of section 503, and require that mining in the Steese National Conservation Area and the White Mountains National Recreation Area be conducted in a manner which is consistent to the maximum extent practicable with the protection of the resources of these areas. Sections 302\(^{144}\) and 303\(^{145}\) of ANILCA provide that roads and other facilities may be built within wildlife refuges if such activities are compatible with the major purposes for which such areas were established. If a court is required to interpret these sections of ANILCA, \textit{SEACC III} indicates that at the very least an EIS will be required before mining, or even steps preliminary to mining such as bulk sampling, can proceed.

The strict compatibility standard of \textit{SEACC III} may also prove influential in evaluating agency conduct undertaken pursuant to other federal environmental laws. For example, portions of the Atomic Energy Act\(^{146}\) require that the Environmental Protection Agency make a consistency determination when promulgating standards for the disposal of tailings from uranium mills.\(^{147}\) The Outer Continental Shelf Lands Act\(^{148}\) provides that “the terms of any lease issued [by the Secretary of the Interior] shall be consistent with . . . applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State.”\(^{149}\) If the Ninth Circuit is asked to interpret these analogous provisions, \textit{SEACC III} suggests that such standards will be strictly construed.

\section*{CONCLUSION}

\textit{SEACC III} is an encouraging case for the cause of responsible environmental conservation. It suggests that ANILCA will be read broadly as a conservationist measure and that particular provisions of the Act will not be interpreted out of context. The Ninth Circuit focused on the language that requires mining activities to be compatible

\begin{itemize}
\item \textbf{147.} 42 U.S.C. § 2022(a) (1982). \textit{See also} 42 U.S.C. § 2114(a) (1982), which requires the Nuclear Regulatory Commission to insure that the management of byproduct material (i.e. radioactive waste) be carried out in a manner that “conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.”
\item \textbf{149.} 43 U.S.C. § 1337(g)(3) (1982).
\end{itemize}
"to the maximum extent feasible" with the purposes for which the national monuments were created. Since the essential purpose of the national monuments is to preserve precious and irreplaceable resources, the approach of SEA CC III bodes well for future interpretations of the Act.

SEA CC III is a good decision because it is built upon a firm foundation. Each aspect of the court's opinion, from its strict reading of the statute to its insistence that the general protective purpose of ANILCA be read into each part of the Act, is backed up by settled law and compelling logic. In addition, the court's conservative use of legislative history means that the decision is not vulnerable to attacks based on new discoveries or new theories about the legislative intent behind the Act.

The Ninth Circuit's interpretation of the compatibility standard of section 503(f)(2)(A) of ANILCA is reliable enough to support extrapolation to other sections of ANILCA and to other federal statutes. Thus, SEA CC III guides future cases involving ANILCA in an environmentally responsible direction and presents a generally useful analysis for interpreting other environmental compatibility standards.