



***Southeast Alaska
Subsistence Regional
Advisory Council***

**Don Hernandez, Chairman
1011 E. Tudor Road, MS121
Anchorage, Alaska 99503-6199**

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USDA Forest Service – Tongass National Forest
ATTN: Forest Supervisor, Earl Stewart
648 Mission Street
Ketchikan, AK 99901-6591

USDA Forest Service – Tongass National Forest
ATTN: Greens Creek Min NEP SEIS
8510 Mendenhall Loop Road
Juneau, AK 99801-9218

Dear Mr. Stewart and Planning Staff:

The Southeast Alaska Subsistence Regional Advisory Council (Council), formed under Title VIII of the Alaska National Interests Lands Conservation Act (ANILCA) and chartered under the Federal Advisory Committee Act, is writing to express its concerns regarding the Hecla Greens Creek Mining Company's (HGCMC) request to expand their Tailings Disposal Facility (TDF) and related infrastructure.

The Council reviews resource management actions that may impact subsistence resources critical to Federally qualified subsistence users and the area of Hawk Inlet has been discussed often in the last several years. The Council reviewed and discussed water contaminants and the potential effects on subsistence resources at its fall 2018 public meeting. The Council then submitted a letter, dated March 13, 2019, to three employees of the USDA Forest Service (Forest Service), and has yet to receive any response to its concerns.

At its most recent meeting, the Council elected to send a second letter to Forest Service to specifically provide comment on the Tongass National Forest's proposed approval of HGCMC's TDF expansion. These comments, along with those expressed in 2018 (incorporated herein by reference), are being submitted to share the concerns of the Council and the public regarding the water quality issues in Hawk Inlet in recent years. The pollution is affecting the food sources

That subsistence users harvest in and around this area and are of particular concern to Angoon and Hoonah residents who harvest in the upper Chatham Strait marine environment.

1. Responsibilities under the Alaska National Interest Conservation Act (ANILCA)

SECTION 805: A significant amount of this Council's work concerns the fish and wildlife regulatory ANILCA responsibilities found in ANILCA Sections 802 and 804. ANILCA Section 805 authorizes the Council to review and evaluate management plans.

"§ 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish:

(1) at least six Alaska subsistence resource regions which taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and
(3) a regional advisory council in each subsistence resource region. Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region"

2. New Environmental Impact Statement Should Be Prepared

The Forest Service states that it plans to prepare a supplemental Environmental Impact Statement (EIS) to the 2013 final supplemental EIS completed for the Plan of Operations, based on the potential for significant environmental impacts. The Council believes that a completely new EIS should be prepared for the same reason that the Forest Service has admitted: there is the potential for **significant environmental impacts**. The water quality and pollution issues should be evaluated under the EIS treatment because the environment of proposed 13 additional acres are subject to change. The evaluation should not simply supplement the existing EIS, based on the 2013 analysis, because significant degradation in water quality of the area is suspected.

3. 1981 Baseline Study of Hawk Inlet Should Be Replicated

In its 2018 letter, this Council provided detailed reasons in support of replicating the baseline study conducted in the area in 1981. The Council believed that the Department of Environmental Conservation (DEC) failed to provide sufficient monitoring of this large mine in the past and that it lacks sufficient data or information to determine whether permit objectives, including the protection of aquatic life, in Hawk Inlet and Young Bay are being attained. In the absence of current and sufficient data, a new baseline study should be performed. The 1981 baseline study needs to be replicated to assess the mining impacts on the health of the biological community and the subsistence foods harvested from the area subject to impact from mining. *(See attached 2019 letter for details supporting this request)*

Further, once the new study is complete and the results known, an 810 determination should be made.

4. Obligations under ANILCA Section 810

SECTION 810: This section of ANILCA informs the Council's responsibilities concerning land management actions. This protection of subsistence uses from egregious land use actions that may significantly reduce subsistence opportunities shows the clear intention of ANILCA: to enjoin Federal land management agencies from actions that are deleterious to subsistence uses.

*"§810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. **No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency--***

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to §805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that--

*(A) such a significant restriction of subsistence uses is **necessary**, consistent with sound management principles for the utilization of the public lands,*

*(B) the proposed activity will involve the **minimal amount of public lands necessary** to accomplish the purposes of such use, occupancy, or other disposition, and*

*(C) reasonable steps will be taken to **minimize adverse impacts upon subsistence uses and resources** resulting from such actions.*

*(b) If the Secretary is required to prepare an environmental impact statement pursuant to §102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and **include the findings required by subsection (a)** as part of such environmental impact statement.*

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law."

ANILCA Section 810 requires a land management agency to first examine the effect of proposed land management actions on subsistence uses. Secondly, the agency needs to make an ANILCA Section 810 determination or finding. If the analysis shows significant restriction(s) to subsistence uses, the agency must state this in its National Environmental Policy Act (NEPA) planning documents and then hold ANILCA Section 810 hearings in the affected communities. ANILCA Section 810 hearings are held to inform the public that the land management action may significantly restrict subsistence uses, to verify the subsistence analysis, and to hear directly from the public concerning the acceptability of the likely restrictions on subsistence uses. Hearings cannot precede the required subsistence finding. Finally, the land management agency must demonstrate that the land use action is necessary; that it uses the minimal amount of land possible, and; steps are taken to minimize adverse impacts on subsistence uses.

The Council requests that the Forest Service follow the ANILCA requirements and make an 810 determination for the HGCMC TDF expansion project. Section 810 hearings should take place with adequate notice and dissemination of pertinent material to the public beforehand so that it has the opportunity to be informed before the 810 hearings take place. This will aid the public in understanding the issue so that they can provide relevant testimony for consideration.

5. Environmental Regulations Within Mining Laws Should Be Followed

The Forest Service should observe and follow all environmental regulations that specifically fall under mining laws. The Greens Creek Mine was grandfathered in because of pre-existing mining claims when Admiralty Island National Monument was formed. Mining was to be allowed only if mining did not create irreparable harm to the Monument itself. The original EIS published in 1984 held the protection of the biological community in Hawk Inlet as the primary conservation goal. The Council believes that this should still be the goal, and as such, new analyses for the EIS should be conducted under existing mining laws.

As always, the Council appreciates the opportunity to convey its concerns about the long-term effects of water contaminants and pollution from the current Greens Creek Mine and from any additional tailings or infrastructure to support the tailing expansion. If you have any questions regarding this letter, they can be addressed through our Council Coordinator, DeAnna Perry, at 907-209-7817, deanna.perry@usda.gov.

Sincerely,



Donald Hernandez,
Chair

Enclosure: Hawk Inlet Letter_RAC SE 19004

cc: Federal Subsistence Board
Southeast Alaska Subsistence Regional Advisory Council Members
Sue Detwiler, Assistant Regional Director, Office of Subsistence Management

Lisa Maas, Acting Subsistence Policy Coordinator, Office of Subsistence Management
George Pappas, State Subsistence Liaison, Office of Subsistence Management
Tom Kron, Acting Supervisory Program Analyst, Office of Subsistence Management
Michael Ielmini, Acting Regional Subsistence Program Leader, U.S. Forest Service
James King, Acting District Ranger, Juneau/Admiralty Ranger Districts
Benjamin Mulligan, Deputy Commissioner, Alaska Department of Fish and Game
Deputy Commissioner, Alaska Department of Fish and Game
Mark Burch, Special Projects Coordinator, Alaska Department of Fish and Game
Interagency Staff Committee
State staff/programs
Administrative Record