

B-180940  
12-13-74

094005



*REPORT TO THE SUBCOMMITTEE ON  
FISHERIES AND WILDLIFE  
CONSERVATION AND THE  
ENVIRONMENT, COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES*

The Native Enrollment and Village  
Eligibility Provisions  
Of The Alaska Native  
Claims Settlement Act

B-180940

Bureau of Indian Affairs  
Department of the Interior

*BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES*

711455

094005

DEC. 13, 1974



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D C 20548

B-180940

*ATR*

*1-6  
2-33*

The Honorable John D Dingell, Chairman  
Subcommittee on Fisheries and Wildlife  
Conservation and the Environment  
Committee on Merchant Marine and Fisheries  
House of Representatives

*H 2702*

Dear Mr Chairman

On June 11, 1974, you requested that the General Accounting Office (1) furnish an opinion as to whether the Department of the Interior's Alaska Native enrollment and village eligibility regulations are within the intent of the Alaska Native Claims Settlement Act (85 Stat. 688) as reflected by its legislative history, and (2) review the Native enrollment and village eligibility portions of the act to see if they have been properly administered

We furnished you with our opinion on the regulations on August 12, 1974 This letter reports on our review of the administration of the enrollment and eligibility portions of the act

The Alaska Native Claims Settlement Act extinguished the aboriginal land claims and any aboriginal hunting and fishing rights of Alaska Natives It provided the framework for establishing the basic land ownership pattern of Alaska through which Alaska Natives may fully participate in the social, political, and economic life of the State and Nation Among other things, the act provides for

- The ultimate conveyance of some 40 million acres of Federal land to Alaska Natives in fee simple ownership
- The enrollment within 2 years of all Alaska Natives living on the date of the act of one-fourth or more Alaska Indian, Eskimo, or Aleut blood or, if blood quantum cannot be proved, of those who are accepted as Alaska Natives by the village or group in which they claim membership.

*094005  
711455*

--The formation of Native villages and regional corporations to take title to most of the lands granted and to administer the funds and revenues granted

The act made the Secretary of the Interior responsible for enrolling Natives to the places they resided on the 1970 census enumeration date and for determining the eligibility of Native villages for land and monetary benefits. The Secretary delegated these responsibilities to the Commissioner of Indian Affairs, who in turn re delegated them to the Director of the Juneau Area Office, Bureau of Indian Affairs (BIA). The Secretary also established the Alaska Native Claims Appeal Board to hear appeals of BIA's village eligibility determinations.

We reviewed the Juneau Area Office's procedures and evidence for enrolling Natives and determining the eligibility of Native villages. In agreement with your office, the review of village eligibility was directed to 11 villages located near and having land selection rights from within the Kodiak National Wildlife Refuge, Kenai National Moose Range, and the Chugach and Tongass National Forests. We also reviewed one village having land selection rights within the Izembek National Wildlife Refuge. BIA had determined that the 12 villages were eligible, but such eligibility had been appealed to the Appeal Board in every case by other Federal agencies, the State of Alaska, and private organizations. (See app. I for a list of the 12 villages.)

Our review at the Juneau Area Office showed the procedures for enrolling Natives and determining village eligibility were being followed. These procedures did not provide for any independent verification of the data furnished by the individual Natives which was used to determine whether (1) the Natives qualified as residents of the village in which they wished to enroll and (2) the Natives used and occupied the village site during 1970.

BIA contracted with Native organizations, from which the regional corporations were later formed, to assist the Natives in preparing their enrollment applications. The Native organizations had a possible conflict of interest because they could influence the Natives' decisions as to the villages in which they should enroll, thereby, impacting on the land benefits to which the regional corporations would subsequently become entitled. The Department

B-180940

of the Interior believes, however, that there was no evidence that any real advantage was taken of this possibility

According to Juneau Area Office officials, an independent verification of the data submitted by the Natives was not made by BIA. They also stated that the Native organizations assisted in the enrollment process because BIA did not have sufficient staff to carry out these functions within the statutory time frame

We also determined the Alaska Native Claims Appeal Board procedures for processing appeals to BIA's determinations of village eligibility and reviewed the eight decisions which they made as of August 16, 1974. When BIA's decisions on village eligibility were appealed to the Board, it seemed to have adequately considered the information presented by BIA and those making the appeals

#### NATIVE ENROLLMENT PROCEDURES

BIA officials in the Juneau Area Office said they did not anticipate being assigned the responsibility for preparing the Alaska Native roll, when the act was being finalized a bill in the Congress provided for establishing an independent commission to enroll Natives. When the enrollment responsibility was given to the Secretary of the Interior and then delegated to BIA, a shortage of funds, manpower, and facilities existed

In February 1972 the Juneau Area Director established the Enrollment Coordinating Office in Anchorage with the responsibility to coordinate and complete enrollment activities by December 17, 1973. In early 1972 a hiring freeze prevented the hiring of any additional permanent staff in the BIA Juneau Area Office. The Area Director told us that, because of this hiring ceiling, the Enrollment Office was staffed initially with temporary employees, BIA personnel from divisions within the Juneau Area Office, and personnel from area offices in other States

To overcome these staffing problems and complete the enrollment within the required time, BIA contracted with Native organizations in Alaska (from which the regional corporations were formed)

B-180940

to meet with the Natives within the organization's geographical area and prepare the Natives' enrollment applications

The Native organizations' personnel prepared the enrollment applications for almost all Natives living in Alaska. In some instances, meetings were held with Natives living outside Alaska, in other instances, these Natives obtained enrollment applications by mail. The enrollment application requested such information as the applicant's social security number, address, sex, date of birth, degree of Native blood, permanent residence on April 1, 1970, and family tree.

BIA officials told us that they were aware that the Native organizations personnel who met with the Natives could influence where a Native enrolled. Although we believe there was a possible conflict of interest on the part of a Native organization (regional corporation) helping to enroll Natives (the distribution of monetary and land benefits under the act depends partially upon the number of Natives enrolled in villages within the geographical boundaries of the regional corporation), the Department of the Interior found no evidence that any real advantage was taken of this possibility.

The Juneau Area Director told us that, considering the staffing and time constraints involved, the use of these organizations was the only feasible way of completing the enrollment on time.

The BIA Enrollment Coordinator told us that March 30, 1973, was the deadline for a Native filing a completed enrollment application. Although there was no formal regulation prescribing a deadline for changing information on the applications, BIA allowed the Natives until May 9, 1973, to change the place stated on the enrollment application as their permanent residence on April 1, 1970, if it was demonstrated that an error had been made. Until May 9, 1973, such a change could be made by the BIA Enrollment Office, or in the event that the Enrollment Office denied the request for a change, by formally appealing to the Alaska Regional Solicitor, Department of the Interior. After May 9, 1973, the Enrollment Office denied all requests for change without consideration of their merit, and such changes could only be made through

B-180940

the appeal process. Subsequently, the Department of the Interior established August 15, 1973, (25 CFR 43h 14) as the deadline for making any changes to enrollment applications, therefore amendments to applications that were not on file on or before this date were returned to the applicant without action. We were told that these deadlines were necessary to enable BIA to complete the processing of applications before the December 17, 1973, statutory deadline.

To insure that the information submitted by a Native had been accurately recorded, Enrollment officials sent each Native a computerized letter with the information obtained from his application. Each Native was asked to verify the accuracy of the information. The Enrollment Office officials said they generally sent the information to the village corporation to which the applicant claimed residency and to the regional corporation in which the village was located so that the village and regional corporations could protest the blood degree of any applicant.

We noted that this enrollment information had not been provided to 10 of the 12 village corporations we reviewed, although it was sent to the regional corporations. The BIA Enrollment Coordinator stated that, at the time BIA was sending this information to the villages, there were too few Natives enrolled or actually at the village sites to properly review the list. Consequently, this check on a Native's eligibility and place of residence was missing for these villages.

Section 5(b) of the act states that

"The roll prepared by the Secretary (of the Interior) shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration (April 1, 1970), and he shall be enrolled according to such residence."

The act does not define "residence," so the Secretary, in his regulations, defined "permanent residence" as

"\* \* \* the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the

applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home." (25 CFR 43h 1(k))

BIA's procedure for enrolling Natives to where they resided on April 1, 1970, was to have each Native state on his application form his place of residence (using the above definition) on April 1, 1970. BIA officials told us that this statement was relied on with no verification and the Native was not required to provide any evidence of his actual residence on April 1, 1970. The statement of residency was accepted as accurate because each individual preparing an application had to certify, subject to a penalty of not more than \$10,000 or 5 years in prison, or both, that the information given in the application was accurate.

The Enrollment Coordinator told us that as of August 1974 the Alaska Native roll was still being reviewed to eliminate duplicate applications and individuals who do not qualify under the act.

#### DETERMINING VILLAGE ELIGIBILITY

The Juneau Area Director delegated to the Area Realty Office the responsibility for making findings of facts relating to village eligibility determinations, but he made the final eligibility determinations. The Realty Office (1) determined the number of Native residents of each village, (2) made a field inspection of villages when considered necessary, and (3) obtained affidavits, when necessary, from Natives who claimed to have used the village site in 1970.

#### Determining the number of residents

For a village to be eligible for benefits under the act 25 or more Natives must have resided in the village on the 1970 census enumeration date (April 1, 1970). According to the regulations,

a Native enrolled to a village is considered a resident of that village for eligibility determinations. To determine the number of Native residents of a given village, the Realty Office relied on the Enrollment Coordinating Office lists of Natives enrolled

The Assistant Area Realty Officer said that census data was not used to determine the number of Native residents of a village, because the census procedures relied only on an individual's unverified statement that he was a Native having one-fourth Native blood. Thus, BIA could not rely on the census data to determine whether the Native residents of a village had one-fourth or more Native blood as required in the act. The Director of the Census Bureau, Department of Commerce, confirmed that census takers accept without verification an individual's statement that he is a Native.

The Census Bureau's criteria for determining residency differs from that of BIA. For census purposes, each person is "counted as an inhabitant of his usual place of residence, which is generally construed to mean the place where he lives and sleeps most of the time." BIA enrollment regulations could consider a Native a resident of a region or village, even though he was not actually living there on the census date (i.e. if he has continued to intend that place to be his home).

#### Field inspections

The act required the Secretary to make determinations of eligibility for 215 villages. BIA initially certified 170 villages eligible for benefits under the act. Field inspections were not made of these villages, and affidavits relating to use were not obtained. The former Area Realty Officer said that--on the basis of various studies, information available in the area office, and his personal knowledge--these villages were qualified and field inspections were not necessary. The eligibility of these 170 villages was not protested.

Field inspections were made of the remaining 45 villages listed in the act and of 29 of the 31 villages not listed in the act which applied for eligibility. We were told that field inspections were not necessary for two of the unlisted villages because they did not have the required number of Native residents for eligibility.



Field inspections were made to determine whether

- The village had an identifiable physical location
- There was evidence of use and occupancy in accordance with the Native's own life style and at least 13 Natives enrolled to the village used it for a period of time during 1970
- The village was not modern and urban in character
- The village was temporarily unoccupied in 1970 because of an act of God or government within the previous 10 years (The regulations provide that a traditional Native village should not be considered ineligible if such an act caused it to be unoccupied in 1970 )

According to BIA officials, the field inspectors took pictures to show the nature of the various physical structures at the village sites and obtained affidavits from at least 13 Natives who claimed to have used each village site during 1970. BIA accepted these affidavits at face value without verification. These village eligibility procedures were followed at the 12 villages in our sample.

BIA officials told us that their field inspectors were not given any written instructions for making the above determinations because there was not time to prepare them. A 3-day meeting had been held in June 1973 where the field inspection approach was discussed and an inspection checklist developed.

Some superficial field inspections may have resulted from the lack of specific guidelines. For example, the Appeal Board decision on the village of Afognak disclosed that the field inspection had not determined the actual use of the village by the various Natives who claimed to have used it for "a period of time" during 1970. The field inspector also was not clear as to what constituted "a period of time" during 1970, which could be expected since the regulations do not define "a period of time" for determining use.

APPEAL PROCEDURES

The Code of Federal Regulations relating to village eligibility (43 CFR 2651.2) requires that the BIA Juneau Area Director publish each BIA proposed determination of village eligibility in the Federal Register and in one or more newspapers of general circulation in Alaska, and mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within Alaska, and the State of Alaska. This procedure provided information to interested parties who could, if they had supporting evidence, protest the Area Director's proposed determination. BIA officials stated that this procedure was followed for each village. We verified that this procedure was followed for the 12 villages included in our review.

Upon receipt of a protest, the Area Director was responsible for

- examining and evaluating the protest and supporting evidence,
- preparing his record of findings of fact and proposed decision, and
- rendering a final determination on the eligibility of the village being protested

The Area Director's determination on the protest was also published and furnished to interested parties in the same manner as his proposed decision on village eligibility. The Area Director's determination became final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeal Board.

Statistics on BIA determinations  
of village eligibility

Of the 215 villages identified by the act, BIA determined 201 eligible and 14 ineligible. Twelve of the villages determined eligible were appealed to the Appeal Board.

B-180940

Of the 31 villages not listed in the act which applied, BIA determined 24 eligible and 7 ineligible, 28 of these determinations (23 eligible and 5 ineligible) were appealed to the Appeal Board

#### Appeal Board procedures

The Secretary of the Interior established the Alaska Native Claims Appeal Board to hear appeals of BIA's determinations of village eligibility. The Appeal Board consists of four members appointed from outside the Department of the Interior, most of whom have direct familiarity with Native village life. The Board is responsible for obtaining facts and making recommended decisions to the Secretary regarding village eligibility. Thus, the Appeal Board is an independent check of the adequacy of BIA's determinations.

The Appeal Board has interpreted broadly its responsibility to be a fact-finding body, it will consider any factual evidence presented to it relevant to the determination of a village's eligibility. For example, the Appeal Board will consider evidence bearing on the question of a village's number of residents which rebuts BIA's determination of the number of residents.

An administrative law judge from the Department of the Interior's Office of Hearings and Appeals hears all appeals of BIA's determinations of village eligibility scheduled by the Appeal Board. The Chairman of the Appeal Board told us that his Board decided to have the judges hear each case to insure compliance with provisions of the Administrative Procedures Act. The judges were instructed to prepare recommended decisions for the Appeal Board's consideration.

The Appeal Board decisions on village eligibility are based on the BIA village case files, the Board's files containing the Notices of Appeal, pleadings, briefs, and motions of the parties, exhibits submitted by the parties and admitted into evidence at the hearing, hearing transcripts, proposed findings of fact and conclusions of law submitted by the parties, and the recommended decisions submitted by the administrative law judges. The Appeal Board decisions were submitted to the Secretary of the Interior for his final decision.

B-180940

Twelve appeals on listed villages were initially made to the Appeal Board. BIA had determined all 12 to be eligible. Four appeals were dropped by the appellant before a hearing was held. The Appeal Board determinations of eligibility on the remaining eight appeals follow.

	<u>Appeal Board decision</u>
Manley Hot Springs	Eligible
Chitina	Eligible
Kaguyak	Eligible
Afognak	Eligible
Kasaan	Eligible
Salamatoff	Ineligible
Pauloff Harbor	Ineligible
Uyak	Ineligible

Seven of the eight law judge decisions upheld BIA, but the Appeal Board overturned two of these decisions. The Secretary accepted the Appeal Board's recommendations in all eight cases. A brief summary of the reasons the Appeal Board overturned BIA follows.

Salamatoff

The Appeal Board determined that Salamatoff was not a "Native village" on April 1, 1970, within the meaning of the act. It did not have an identifiable physical location evidenced by occupancy consistent with Native cultural patterns and life style.

There were Natives residing in the area, but the Appeal Board found little sense of community among these people and that the people living in the area were an offshoot of the town of Kenai. It said the people in the area were not a tribe, band, clan, group, village, community, or association within the meaning of the act. The Board overturned the administrative law judge and BIA in making this determination.

Pauloff Harbor (Sanak)

The Alaska Native Roll showed 25 Natives enrolled to Pauloff Harbor, which BIA accepted as the number of native residents in Pauloff Harbor on April 1, 1970. Evidence presented at the Pauloff Harbor hearing showed that certain of those individuals on the roll were not residents of Pauloff Harbor on April 1, 1970, so the 25 or more Native criteria of the act was not met. The Board determined that (1) one of the enrolled Natives was born after April 1, 1970, and was, therefore, ineligible, (2) four enrolled Natives were not known by the residents to have inhabited Pauloff Harbor at any time, and (3) four Natives claiming residence at Pauloff Harbor were enrolled to other villages and, therefore, could not be considered residents of Pauloff Harbor.

The Board also determined 13 Natives enrolled to Pauloff Harbor did not use the village for a period of time during 1970. There was testimony of use by other Natives who were not enrolled to Pauloff Harbor who could not be considered as part of the 13 needed to demonstrate use of Pauloff Harbor during 1970.

Uyak

The parties at the hearing stipulated that the village or site had an identifiable physical location (e.g. it is shown on maps). The Board, however, determined that the evidence presented at the hearing was sufficient to show that Uyak did not have a physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style. Testimony tended to show a historical pattern of nonoccupancy. The Appeal Board determined that there were not 25 or more Native residents of the village on April 1, 1970.

- - - -

We believe that considerable information relating to village eligibility was brought out through the appeal hearings and Appeal Board decisions. The question of physical existence of villages, for example, appeared to be adequately resolved through the appeal process. Considerably more information than had been available to BIA on the number of Native residents and the use and occupancy of

B-180940

villages during 1970 was made available through the appeal process for the Secretary's consideration in making the final determinations of village eligibility

Of course, for villages which were not appealed, no information other than that developed by BIA was considered in determining their eligibility

Twenty-eight appeals on unlisted villages were initially made to the Appeal Board. One of these appeals was not allowed by the Appeal Board because the deadline for filing appeals had passed. Another seven appeals were dropped by the appellant before the administrative law judges held hearings. The following table summarizes information relating to the appeals

	<u>Number BIA determined</u>		
	<u>Eligible</u>	<u>Ineligible</u>	<u>Total</u>
BIA determinations appealed	23	5	28
Appeals not accepted by Board	<u>1</u>	<u>0</u>	<u>1</u>
Total appeals to have been considered	22	5	27
Appeals dropped	<u>5</u>	<u>2</u>	<u>7</u>
Remaining appeals decided by Appeal Board	17	3	20

As of September 1, 1974, the Appeal Board had not reached a decision on any of the 20 remaining appeals

#### CONCLUSION

The Juneau Area Office followed the procedures for enrolling Natives and determining village eligibility. However, these procedures did not provide for any independent verification of the data furnished by the individual Natives. The data was used to determine whether (1) the Natives qualified as residents of the villages in which they wished to enroll and (2) the Natives used and occupied the village site during 1970.

B-180940

The Native organizations (regional corporations) which BIA contracted with to help Natives prepare their enrollment applications had a possible conflict of interest because they could obtain a greater share of the benefits provided by the act depending on where Natives were enrolled. The Department of the Interior said there was no evidence that any real advantage was taken of this possibility.

In cases where BIA's decisions on village eligibility were appealed to the Appeal Board, considerably more information than was available to BIA was made available by witnesses during the hearing process. It appears that the Appeal Board adequately considered the information presented to it in making its determinations of village eligibility.

We have obtained comments on the facts in the report from BIA and such comments are included where appropriate.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Thomas B. Akers". The signature is written in a cursive style with some capital letters.

Comptroller General  
of the United States

APPENDIX I

VILLAGES INCLUDED IN GAO REVIEW

<u>Villages listed in the act</u>	<u>Located near and with land selection rights from</u>
Afognak	Chugach National Forest
Kaguyak	Kodiak National Wildlife Refuge
Kasaan	Tongass National Forest
Pauloff Harbor	Izembek National Wildlife Refuge
Salamatoff	Kenai National Moose Range
Uyak	Kodiak National Wildlife Refuge
 <u>Villages not listed in the act</u>	
Anton Larsen Bay	Kodiak National Wildlife Refuge
Bells Flats	Kodiak National Wildlife Refuge
Eyak	Chugach National Forest
Litnik	Chugach National Forest and Kodiak National Wildlife Refuge
Point Possession	Kenai National Moose Range
Port William	Chugach National Forest