National Park Service
U.S. Department of the Interior

Wrangell-St. Elias National Park and Preserve

Subsistence Plan

September 2014



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Purpose of the Plan

ANILCA Section 808 directed the National Park Service (NPS) to work with the Subsistence Resource Commissions (SRC) in developing a comprehensive subsistence hunting plan for the park. The General Management Plan for Wrangell-St. Elias National Park and Preserve (1986) further committed the National Park Service to prepare a subsistence management plan for the park; the major component of which would be the SRC's hunting plan. The plan is intended to provide clarification in the management of subsistence uses by addressing major topics related to management of subsistence, such as timber cutting, shelters and cabins, trapping, resident zones, traditional use areas, access, acquisition of resource and user data, and resolution of user conflicts and possible closures.

This is not a decision making document. Therefore, National Environmental Policy Act (NEPA) requirements have not been met. As aspects of the plan reach a stage where a decision is to be made, the appropriate level of NEPA compliance will be completed as required.

The plan is being developed in cooperation with all affected parties, including the State of Alaska, and the Southcentral and Eastern Interior Regional Advisory Councils. The draft plan was available for public review from January 11 - March 21, 1998, prior to its approval by the SRC.

The plan will be updated at least once every year depending on the level of activity of the Subsistence Resource Commission and NPS in advancing new issues and recommendations.

Significant revisions to the plan will go through a public involvement process.

Plan Construction and Layout

The plan contains eleven chapters. Each begins with a chapter overview that provides a description of the issue being addressed and summarizes relevant NPS policy and legislative authority. This is followed by Actions, which are ordered chronologically and fall into one of four categories: SRC Proposed Actions, NPS Proposed Actions, SRC Competed Actions, and NPS Completed Actions.

SRC Proposed Actions

SRC proposed actions may be either "formal" hunting plan recommendations or significant issues discussed by the SRC that have not resulted in a hunting plan recommendation. A "formal" hunting plan recommendation has gone through the consultation process and been

transmitted to the Secretary of Interior and Governor of State of Alaska. A brief summary of the Department of Interior and State of Alaska response to SRC recommendations is contained on these pages under the appropriate action item. The current status of each issue is described as well.

NPS Proposed Actions

These are actions proposed by the National Park Service. The document, "NPS Subsistence Management Program", dated August 1997 (see Appendix C) is the basis for the majority of these actions.

SRC or NPS Completed Actions

These actions are completed and contain a description of the action recommended, a chronology of correspondence and actions, and the final resolution.

Each action is assigned a static number that will not change even if the status of the action (from proposed to completed) does. This number consists of the chapter number followed by a chronologic number of the action. At the beginning of each action there are pages that summarize the Issue Background and the Current Status. Following this overview, letters, documents, and communications pertaining to the development of the action are included in their original form.

The plan was constructed in such a way that it can easily be modified. Each page shows a revision date for the action in the lower right corner. As work on the action progresses, additional information will be added to the Issue Background and Current Status sections as well as the relevant documents. The revision dates are updated when there are significant changes to the Issue Background and Current Status sections or new pages are inserted. The Table of Contents also lists the most current revision dates for each action.

Appendices at the end of the plan provide additional reference information.

To request additional copies of the plan or to obtain more information, contact:

Superintendent
Wrangell-St. Elias National Park and Preserve
PO Box 439
Copper Center, AK 99573
(907) 822-5234

Chapter 1

Subsistence Resource Commission Functions

The purpose of the Commission is to devise and recommend to the Governor and the Secretary of the Interior a program for subsistence hunting within Wrangell-St. Elias National Park.

Commission hunting program recommendations may address major topics related to management of subsistence, such as access, customary and traditional use determinations, eligibility, season and harvest limits, methods and means, traditional uses areas, trapping, customary trade, cabin use, plant materials and research. After consultation with appropriate local advisory committees and regional councils, the recommendations of the Commission are conveyed directly to the Secretary of the Interior and the Governor. Guidelines for submitting hunting plan recommendations follow on SRC Functions, pages 3-4. The Secretary shall implement the program unless a recommendation:

1) violates recognized principles of wildlife conservation,
2) threatens the conservation of healthy populations of wildlife in the park,
3) is contrary to the purposes for which the park was established, or
4) would be detrimental to the satisfaction of subsistence needs of local residents.

If approved by the Secretary, such recommendations are implemented by any one of several appropriate means.

The operation of the Commission is directed by the Federal Advisory Committee Act and the Commission charter. The charter contains information required by both regulation and the Department's administrative procedures. The current charter can be found in Appendix B.

The Commission reports to the Superintendent of Wrangell-St. Elias National Park. However, since the establishment of the Federal Subsistence management program in 1990, the SRC has been making recommendations on harvest limits and customary and traditional use proposals affecting Wrangell-St. Elias National Park directly to the Federal Regional Advisory Councils and the Federal Subsistence Board.

The Commission is comprised of nine local rural residents representing geographic, cultural, and user diversity from within the region. Each member's term on the Commission is for three years unless they resign or are removed for cause by the appointing source. See Appendix B for a list of the current members.

Federal Regional Advisory Councils (RAC) appoint three members to the SRC. These members provide an important link between the SRC and the Federal Subsistence Board. The Regional Advisory Councils who address issues in Wrangell-St. Elias National Park and Preserve include

the Southcentral Regional Advisory Council, the Eastern Interior Regional Advisory Council, and the Southeast Regional Advisory Council.

How Federal Subsistence Regulations Are Made

The SRC may play an important role in the development of federal subsistence management regulations. Each year the regulations are subject to change. The SRC may propose changes to regulations and comment on changes proposed by others. The regulatory change process follows the same general pattern from year to year, although specific dates may vary. Fisheries proposals and wildlife proposals are addressed in alternate years. The schedule is as follows:

Steps of the regulatory process	Timeline
Proposal period: The Federal Subsistence Board accepts proposals to change federal subsistence seasons, harvest limits, customary and traditional use determinations, and harvest methods and means.	**January to March**
Regional Advisory Councils (RACs) meet: The Councils meet to develop proposals. The Southcentral, Southeast, and Eastern Interior RACs all address subsistence issues in Wrangell-St. Elias National Park and Preserve.	**February and March**
Comment period: Proposals to change regulations are distributed for public review. The public has at least 30 days to review and comment.	**May and June**
Regional Advisory Councils meet: The Councils develop their recommendations on the proposals	**August to October**
Federal Subsistence Board meets: The Board meets in public session to consider public and staff input on proposals, hear public comment, and establish final regulations for the next regulatory year. Any comments or proposals from the SRC are considered at this meeting.	**January**
New regulatory year begins: The updated regulations take effect.	**Fisheries: April 1** **Wildlife: July 1**

Authority

ANILCA, Section 808 Park Subsistence Resource Commissions
Charter for Wrangell-St. Elias National Park Subsistence Resource Commission
Federal Advisory Committee Act (FACA)

ANILCA SECTION 808 GUIDELINES FOR SUBMITTING HUNTING PLAN RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR AND THE GOVERNOR OF ALASKA

I.	SRC develops "Draft Hunting Plan Recommendation" during regular meeting.
II.	SRC passes motion approving "Draft Hunting Plan Recommendation" during regular meeting.
III.	SRC sends "Draft Hunting Plan Recommendations" to appropriate local advisory committees and federal regional councils. Consultation is required pursuant to Section 808. A. Attach SRC Chairperson's cover letter requesting comments within a stated time of not less than 60 days from the date of mailing. Document letters sent to local advisory committees and federal regional councils. Use SRC stationary for all SRC correspondence. Do not use NPS Stationary. B. All responses to the "Draft Hunting Plan" become part of the SRC administrative record. Written comments should be sent to the SRC Chairperson and copied to the Superintendent. NPS SRC manager provides SRC members with copies of comments prior to next SRC meeting.
IV.	During a regular meeting, the SRC analyzes all comments received as a result of the consultation process. SRC should consider testimony received on the "Draft Hunting Plan" from the public during any hearings or meetings.
V.	SRC should modify, edit, re-write or eliminate or adopt the "Draft Hunting Plan Recommendation".

VI.	The "Draft Hunting Plan Recommendation" becomes a final "Hunting Plan Recommendation" when the SRC passes a motion approving the final language within the recommendation.
VII.	SRC Chairperson sends the SRC approved "Hunting Plan Recommendation" to both the Secretary of the Interior and the Governor of Alaska. Attach a Chairperson's cover letter of introduction to the plan.
VIII.	Secretary will take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the recommendations submitted by the commission which the Governor provides him.
IX.	Secretary shall promptly implement the recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or monument; is contrary to the purposes for which the park or monument is established,; or would be detrimental to the satisfaction of subsistence needs of local residents.

SRC Proposed Action 1.1

Action 1.1: Amend the charter to allow the SRC to report not only to the park Superintendent, but to the Federal Subsistence Board and Federal Regional Advisory Councils.

Issue Background

- The SRC submitted a letter to Secretary Lujan and Federal Subsistence Board chair McVee in 1991 and a hunting plan recommendation to Secretary Babbitt in February of 1996 requesting an allowance for the SRC to participate in Federal Subsistence Board meetings (see Action 1.1, pages 2-5).
- In August of 1996 the Office of Policy in Washington responded to the SRCs hunting plan. They state that the requested amendment to the charter is under review by the Alaska Regional Office of NPS in Anchorage (see Action 1.1, page 6).
- In August of 1996, the Alaska Regional Director submitted recommendations to the Secretary (see Action 1.1, pages 7-8).
- In January of 1997, the Regional Director met with the Secretary's staff in an attempt to expedite the Secretary's response.
- In September of 1997, the Regional Director requested follow-up action on the draft response from the Secretary's office on this matter.

Current Status

- The review of the NPS Subsistence Management Program supported adopting the SRC's recommendation through NPS policy (Appendix C, page 23, Note 3).
- As of November 2000, the Secretary has not responded to the Commission's request.

Authority

ANILCA, Section 808 Park Subsistence Resource Commissions
41 CFR 101-6 Federal Advisory Committee Act (FACA)
50 CFR Part 100 Federal Subsistence Management

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 29
Glennallen, Alaska 99588
(907) 822-5234
FAX (907) 822-5891

November 14, 1991

Mr. Manual Lujan,
Secretary of the Interior
Main Interior Building
18th and C Street, NW
Washington, D. C. 20240

Dear Mr. Lujan:

The Wrangell-St. Elias National Park Subsistence Resource Commission met on November 13 - 14, 1991 to discuss subsistence hunting plans for Wrangell-St. Elias National Park.

Our commission feels it is absolutely necessary the commission be represented at Federal Subsistence Board meetings when dealing with subsistence hunting plan/season or bag limits on park lands.

In order to comply with federal regulations, we request your approval and additional funding to send a representative (chairman or his designee) to Federal Subsistence Board meetings.

To improve the timely appointment and reappointment of Secretary appointees to the Commission, we request that you delegate your appointment authority to the Director of the National Park Service.

Thank you very much for your time and consideration to these very important items.

Sincerely,

Bill Ellis, Chairman

Chairman: Bill Ellis
Members: Walter Charley, Barbara DePaso, Paul Claus, Don Horrell, Ray Sensmeier, Doc Taylor, Lorraine Titus, John Vale

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 29
Glennallen, Alaska 99588
(907) 822-5234
FAX (907) 822-5891

November 14, 1991

Mr. Curtis McVee, Chairman
Federal Subsistence Board
1011 East Tudor Rd.
Anchorage, Alaska 99503

Dear Mr. McVee:

The Wrangell-St. Elias National Park Subsistence Resource Commission has the following concerns and positions regarding the EIS for federal subsistence management.

1. Retain the existing state system of local advisory committees and regional councils.

2. Revise the programmatic procedures to include specific requirements that the National Park Service consult with the Subsistence Resource Commission before submitting to the Federal Subsistence Board any proposals.

3. Add regulatory provisions for representatives of the Subsistence Resource Commissions along with local advisory committees and regional councils, to testify to the Federal Subsistence Board on proposals.

4. Recommendations on customary and traditional determinations should include the local advisory committees and Subsistence Resource Commissions in addition to regional councils.

5. Federal reimbursement section should increase funding provisions to provide adequate representation and staff support for appropriate participation of affected local advisory committees, regional councils, and subsistence resource commissions.

6. Secretary of Interior should retain authority to overturn Federal Subsistence Board decisions.

Chairman: Bill Ellis
Members: Walter Charley, Barbara DePaso, Paul Claus, Don Horrell, Ray Sensmeier, Doc Taylor, Lorraine Titus, John Vale

7. Whenever possible, the Federal Subsistence Board should recognize resident zone communities rather than making customary and traditional determinations by species.

The Federal Subsistence Board should limit its authorities and deliberations to the allocation of harvestable surplus of wildlife for subsistence on federal lands. We specifically oppose any extension of federal authorities over the State's existing authorities for management of wildlife and state's allocation on state and private lands. Only those restrictions on subsistence uses which meet the criteria specified in ANILCA Section 816 should be entertained by the Federal Subsistence Board, and then only the minimum necessary to retain the widest spectrum of subsistence uses possible.

Sincerely,

Bill Ellis, Chairman

MAR-21-96 08:32 FROM:US FISH & WILDLIFE SERVICE

WRANGELL-ST. ELIAS
NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234

February 29, 1996

Secretary Bruce Babbitt
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Secretary Babbit:

We are submitting to you a proposed revision to the charter for the Wrangell-St. Elias National Park Subsistence Resource Commission. We are requesting that the charter be amended to allow the Subsistence Resource Commission to report not only to the park Superintendent, but to the Federal Subsistence Board and the Federal Regional Subsistence Advisory Councils.

As you know the Federal Subsistence Board and the Federal Regional Subsistence Advisory Councils were established in 1990 after the Federal assumption of subsistence management on federal public lands. This of course was well after the passage of the Alaska National Interest Lands Conservation Act which laid out general terms how the Subsistence Resource Commission would function.

The Commission believes that under the current management regulations the advisory system would function much better with the changes to the charter

Sincerely,

John Vale
Chairman
Wrangell-St. Elias National Park -
Subsistence Resource Commission

OPTIONAL FORM 99 (7-90) FAX TRANSMITTAL 3/21/96 # of pages ▸ 4
To CLARENCE SHAKES From VALE
Dept./Agency Phone #
Fax # Fax #
NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Chair: John Vale
Members: Paul Claus, Bill Ellis, Frank Entsminger, Row Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D.C. 20013-7127

IN REPLY REFER TO:

A18(2530)

AUG 1 5 1996

Mr. John Vale
Chairman
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Dear Mr. Vale:

Your letter dated February 29, 1996, regarding the proposed revision to the charter for the Wrangell-St. Elias National Park Subsistence Resource Commission, has been referred to the Office of Policy for reply. We sincerely apologize for the delay in responding to your concern.

Your request to amend the charter to allow the Commission to report not only to the park superintendent, but to the Federal Subsistence Board and the Federal Regional Subsistence Advisory Councils, is currently being reviewed by the Alaska Field Area, National Park Service.

Thank you for your continued interest in National Park Service programs. If there are any questions regarding your request, please contact Clarence Summers, Subsistence Resource Coordinator, Alaska Field Area, (907)257-2646.

Sincerely,

Loran Fraser
Chief, Office of Policy

DRAFT:8/27/96:AKSO-RPS

AUG 30 1996

AKSO-RPS

Approved: Paul R. Anderson
Field Director

Mr. John Vale, Chairman
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Dear Mr. Vale:

Thank you for your letter of February 29 requesting revisions to the Wrangell-St. Elias National Park Subsistence Resource Commission's (SRC) charter. You have raised some interesting issues regarding the interrelationship between the Federal Subsistence Board (FSB) and the Federal advisory committees. We believe that there is sufficient latitude for the SRC to continue to provide input to the Regional Advisory Councils (RACs) and FSB. The input is particularly important on time sensitive issues, such as the annual Federal regulations for subsistence taking of wildlife and customary and traditional use determinations.

The SRCs communicate with RACs and the FSB and assist the RACs and the FSB as they carry out their functions and roles. The 1992 Final Environmental Impact Statement (EIS) on Subsistence Management for Federal Public Lands in Alaska recognized that the Board, through its National Park Service Board member, would use input from the SRCs on proposals affecting park areas.

We anticipate that the SRC will continue to make hunting program recommendations, after appropriate consultation, to the Secretary of the Interior and the Governor as it has in the past. However, we recognize that this process may not always be timely when harvest limits and seasons are being addressed. Therefore it is appropriate to continue to provide interim information to the RAC and to the FSB as the SRC has in the past.

We believe this response provides the answers you seek. We appreciate your comments and suggestions which help us to craft a subsistence management program that is effective and responsive to subsistence users. We encourage you to continue to provide appropriate input to the park Superintendent, RACs and the FSB. Thank you for your interest and involvement in the continuing effort of developing subsistence hunting program recommendations.

Sincerely,

George T. Frampton, Jr.
Assistant Secretary for Fish and
Wildlife and Parks

bcc:
WRST
AKSO-RPS (C. Summers)

CSummers:bb:8/27/96

SRC Completed Action 1.2

Action 1.2: Clarify the status of subsistence uses within parks and preserves as opposed to other managed uses allowed under federal law.

Issue Background

- At its meeting in November 1992 the SRC made a request that the NPS clarify their position on subsistence uses in parks.
- NPS responded to the SRC in February 1993 (letter on Action 1.2, pages 2-3). In that letter NPS stated that traditionally NPS has managed parks for non-consumptive purposes under the Organic Act of 1916. Current management policies state that subsistence uses and access will be allowed only where such activities are specifically mandated by federal law, such as ANILCA or treaty rights.

  NPS cited Section 201 of ANILCA which describes the purposes for which parks and preserves will be managed. While subsistence is a fundamental purpose of ANILCA, its is not a purpose for which the parks and preserves were established. This is not to say that subsistence is not important. It is clearly an activity given great importance as part of park management responsibilities.

United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:
L30 (ARO-WRST)

FEB 9 1993

Mr. Bill Ellis
Chairman, Wrangell-St. Elias National Park
Subsistence Resource Commission
PO Box 29
Glennallen, Alaska 99588

Dear Mr. Ellis:

At its November meeting, the Commission requested that the National Park Service clarify the "status" of subsistence uses within parks and preserves as opposed to other managed uses allowed under federal law. We appreciate your request for clarification of law and policy related to this issue.

Traditionally, the NPS has managed parks for non-consumptive purposes under its Organic Act of 1916. In that Act, the Park Service is directed "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Current management policies state: "Subsistence uses and access will be allowed only where such activities are specifically mandated by federal law, such as the Alaska National Interest Lands Conservation Act, or treaty rights. Subsistence uses will be conducted in accordance with the provisions of law and consistent with sound management principles and managed so that the composition, condition, and distribution of native plant and animal communities and ecosystem dynamics are not significantly altered."

ANILCA Section 201(9) provides that:

> "The park and preserve shall be managed for the following purposes among others: To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscape in their natural state; to protect habitat for, and populations of fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals; and to provide continued opportunities, including reasonable access for mountain climbing, mountaineering, and

> other wilderness recreational activities. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII." (Emphasis added.)

Thus, while subsistence is a fundamental purpose of ANILCA, it is not a purpose for which the parks and preserves were established. Rather it is a permitted use which should be managed "in accordance with recognized scientific principles and the purposes for which each conservation unit is established . . . ." [Section 101(c)] Further, this was clarified in the Federal Register of June 17, 1981, in the preamble to NPS regulations promulgated at 36 CFR Part 13 subpart B:

> "Purpose and Policy. Some commenters requested the Park Service to expand by regulation the purposes for which the park areas were established to include "subsistence uses by local residents" or "the protection and enhancement of subsistence hunting and fishing by local rural residents." Congress clearly authorized subsistence uses by local rural residents in all park preserves and in specifically designated parks and monuments. ANILCA sections 201-203. Congress did not, however, make subsistence a "purpose" of these units. Consequently, the National Park Service believes it would be inappropriate, especially in the context of this interim rulemaking exercise, to expand the Congressionally designated purposes of the park areas to include subsistence uses. Moreover, the Park Service does not have the authority to expand the authorization for subsistence hunting beyond the specific Congressional authorization."

This does not mean, however, that subsistence is not important. Because it is stated within the purposes section of the law, it is clearly an activity given great importance as part of park management responsibilities.

We appreciate the efforts of the Subsistence Resource Commission in dealing with issues related to subsistence management. The Commission is a vital component in assuring wise management of subsistence activities in Wrangell-St. Elias National Park. The Commission can do a great deal to assure that subsistence hunting activities are conducted in accordance with the purposes for which the park was established and at the same time satisfy the needs of those with a personal or family history of customary and traditional use of subsistence resources in the park.

Sincerely,

John M. Morehead
Regional Director

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SRC Proposed Action 1.3

Action 1.3: Recommendations to improve subsistence management in the parks.

Issue Background

- The SRC chairs met in Anchorage in October of 1998 and compiled a list of 9 recommendations. Recommendation number 2 indicated the Chairs' unhappiness over the long time frames required for a response from the Secretary of Interior when hunting plan recommendations are sent to Washington. Some SRCs have waited 5-10 years for a response on a hunting plan recommendation.

- The Regional Office prepared a list of backlogged hunting plan recommendations from all 7 SRCs. The list included 8 recommendations dating from March of 1986 through 1998. Two hunting plan recommendations from Denali were included on the list: 1) a recommendation for roster regulations dating back from July of 1986, and 2) a recommendation requesting a charter amendment to allow the SRC to report to the Federal Subsistence Board as well as the Superintendent instead of the Alaska Regional Director. In March 96, the Secretary amended all SRC charters to state that SRCs can also report to the appropriate superintendent. The roster regulations have yet to be approved.

- A second SRC Chairs recommendation (#4) addressed the need for longevity in the tenure of park Superintendents. The Chairs' felt that knowledge of subsistence issues comes with tenure and that when personnel changes occur frequently that the parks and subsistence communities lose the experience and knowledge base. There is a need to retain institutional knowledge. The Chairs noted several improvements in this area. Notably: 1) greater authority has been delegated from the Regional Office to the Superintendents in recent years; 2) parks and the Regional Office have more consistent long-term employees on staff; and 3) the recent effort to develop park subsistence hunting plans has proven useful in documenting institutional knowledge.

- NPS Response: NPS responded to this recommendation in a letter dated May 17, 1999. NPS stated that many subsistence managers in parks and in the Anchorage office have been in their positions for many years and have a wealth of experience. In many ways, they provide the continuity in tenure in staffing. NPS agrees that subsistence plans should help document the institutional knowledge of those that move on to other positions.

- The SRC Chairs met in October 1999 and made several recommendations which NPS responded to in February 2000. The SRC Chairs recommendations and NPS responses follow:

- *Recommendation 1:* NPS should develop an appeal/reconsideration procedure for hunting program recommendations that are responded to by the NPS Alaska Regional Director.

  NPS Response: The authority to respond to SRC hunting program recommendations has been delegated to the NPS Alaska Regional Director. NPS feels that this will allow more timely responses to recommendations made by the SRCs. The opportunity for the SRC to request in writing that the Secretary of Interior review the Regional Directors responses currently exists. If the SRC disagrees with the Regional Director, the SRC can write to the Secretary with their concerns.

  Recommendation 2: The seven SRCs should work more closely together to resolve issues and the SRCs should exchange meeting minutes and hunting program recommendation correspondence.

  NPS Response: NPS agrees and will do what they can to facilitate a closer exchange between Commissions. Meeting minutes and correspondence will be circulated to all SRCs.

  Recommendation 3: SRCs should meet twice a year.

  NPS Response: There is no specific limit to the number of times the SRCs can meet in a year. Most already meet twice per year. Rather than identify a number of meetings to have per year NPS asks that the SRCs work with their individual park to meet as often as necessary (as park budgets permit).

  Recommendation 4: NPS should hold two SRC Chairs/NPS meetings annually instead of one.

  NPS Response: This was not a consensus item identified by the Chairs. NPS is unable to fund two meetings per year at this time. However, if there are special issues that require a second meeting, NPS will consider doing so or arranging for a way that all can meet by teleconference.

- In the February 4, 2000 letter to the SRC Chairs NPS stated that they are considering a revision of the National Park Service Subsistence Management Program document (contained in Appendix C). NPS asked that each SRC review the document and forward any suggestions for improvement to Judy Gottlieb, the Associate Regional Director for Resources.

Current Status

- NPS is also unhappy about the amount of time required for a response from the Secretary of Interior and is actively seeking a delegation of authority for decision making on certain key issues (see Action 1.3, pages 4-5). A delegation of authority to the Regional Director in Alaska should expedite the process of getting a response to SRC recommendations.
- Furthermore, NPS is currently expending a great deal of effort in preparing subsistence plans, proposal analysis, a subsistence users' guide, etc. designed to benefit subsistence users as well as assist in retaining institutional knowledge on subsistence issues into the future.

United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO

JUL 28 1999

A96 (AKRD)

Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks

Through: Director, National Park Service

From: Regional Director

Subject: Request for Delegation of Signature Authority

This is a request that you delegate signature authority for responses to hunting plan recommendations of subsistence resource commissions (SRC) from your office, through the Director, National Park Service (NPS), to the Regional Director, Alaska Region.

The seven subsistence resource commissions in Alaska were established pursuant to Section 808 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The commissions are charged with recommending programs for subsistence hunting within the specified park and monument units in Alaska where subsistence uses are permitted. Section 808 specifies that these recommendations be submitted to "....the Secretary and the Governor [of Alaska]....". Section 808 further directs the Secretary to "....promptly implement...." the recommendations of an SRC unless he finds that such recommendations are inconsistent with specific criteria listed.

Over the years, since the seven SRC's were first established in 1984, all have submitted hunting plan recommendations to the Secretary and Governor. In all cases, your office has returned those recommendations to Alaska for preparation of draft responses to the commissions. We then return our draft to your office for preparation of a final response. Unfortunately, this process has resulted in a poor track record of timely responses to the commissions. In too many cases, there has been a delay of 2 years or more before commissions receive a response to their recommendations.

The hunting plan recommendations are restricted by Section 808 to specific recommendations relating to national park and park monument lands only. The commissions have no direct role in making recommendations on lands or issues other than subsistence on NPS lands. Because their role is limited to issues of NPS lands, and further limited to NPS lands only in Alaska, we believe that it would be proper—and more timely—if the authority to respond to the SRC's is delegated to this office. As a

matter of fact, your office just directed us to sign a response to recommendations from the Aniachak SRC. A formal delegation of this authority would be consistent with this most recent action on SRC recommendations.

If you concur with this delegation, there may still be occasions when we will need to request the assistance of your office in preparing a response to an SRC. A specific example is currently before us, with the 1996 Wrangell-St. Elias SRC recommendations regarding the harvest of migratory birds. Since their recommendation relates to a harvest which is controlled by the Migratory Bird Treaty Act, we feel it is proper that your office provide a coordinating role in an interagency review of this issue. Most SRC hunting plan recommendations will not, however, require this level of review.

Paul R. Anderson

Robert D. Barbee

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SRC Proposed Action 1.4

Action 1.4: Appoint alternates for SRC members to assure a quorum at meetings.

Issue Background

- At the November 2-3, 2000 SRC meeting in Yakutat members discussed the idea of having alternates appointed for commission members. The SRC requested that NPS research the possibility and provide the SRC's with possible solutions. The SRC's request was documented in a letter to Alaska Regional Director Arnberger dated November 4, 2000 (see Action 1.4, pages 2-3).
- At the February 20-21, 2001 SRC meeting Clarence Summers from the NPS office in Anchorage relayed information from Washington on appointing SRC alternates. The SRC must amend their charter to allow for alternate members. The goal is to have the amendment made by the fall of 2001 in order to allow the Secretary of Interior, Governor and Regional Councils to appoint alternate members. The SRC made a motion to amend the charter to allow for alternate members.

Current Status

- Since 2005, the WRST SRC Charter has provided for the appointment of alternates. See current SRC Charter in Appendix B.

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

November 4, 2000

Regional Director
Alaska Region National Park Service
2525 Gambell
Anchorage, AK 99503

Dear Mr. Arnberger,

The Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) met at the National Park Service Office in Yakutat on November 2-3 2000. During the meeting the SRC discussed three issues that require follow up by National Park Service staff in the Regional Office. These three issues are: Customary Trade material regulations, WRST hunting Program Recommendation 97-01 and approval for alternates for SRC members.

The NPS regulations do not adequately address customary trade materials and need to be updated. The SRC's have been tasked with providing the National Park Service with a list of items used for customary trade. This approach has worked only for the Denali SRC, and we request a different approach. We would like the National Park Service to use existing sources to provide us with a list to start with and either eliminate or add materials to the list. We feel that this will move this process faster. We would like to have something to work on by our February 20, 2001 SRC meeting.

WRST hunting Program Recommendation 97-01 would require a minimum residency requirement of one year, be established for individuals in resident zone communities. This issue was discussed at the SRC chairs meeting and there seemed to be unanimous support for this regulation change. We would like to exempt people who have left the community for education or military service. We request that your staff initiate the regulatory process for these regulations. We understand this process may take several years.

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Charles P. Milller, Fred John Jr. Gloria Stickwan, Don Horrell, Robert Marshall,

Finally we discussed the idea of having alternates for commission members. There was general support for this concept and we request that NPS staff research the possibility of appointing alternates for SRC members and provide the SRC's with possible solutions.

Sincerely,

Vice Chair
Wrangell-St. Elias National Park, Subsistence Resource Commission

cc: Aniakchak SRC
Cape Krusentern NM SRC
Denali SRC
Gates of the Arctic SRC
Kobuk Valley National Park SRC
Lake Clark SRC
Governor of Alaska
Office of Subsistence Management
Eastern Interior Regional Advisory Council
South-central Regional Advisory Council
Southeastern Regional Advisory Council
Superintendent Wrangell-St. Elias National Park

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Charles P. Milller, Fred John Jr. Gloria Stickwan, Don Horrell, Robert Marshall,

Chapter 2

Resident Zone Eligibility

The current regulations establishing eligibility for Wrangell-St. Elias National Park require a person to be a "local rural" resident. By regulatory definition, a person is considered "local" if they live in one of 23 designated resident zone communities or if they have a subsistence eligibility permit (13.440 permit).

The 23 resident zone communities are as follows: Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway (including Northway, Northway Village, and Northway Junction), Slana, Tazlina, Tanacross, Tetlin, Tok, Tonsina and Yakutat. Permanent residents of these communities do not need to obtain a subsistence eligibility permit (13.440 permit) to engage in subsistence uses. However, they must have a valid Alaska hunting and/or trapping license and have a "positive" customary and traditional (C&T) use determination established by the Federal Subsistence Board.

Boundaries for the communities of Dot Lake, Healy Lake, Northway, Tanacross, and Tetlin have been determined by the Superintendent after consultation with the affected communities. The other 18 resident zone communities are not defined by boundaries at the present time. If local residents are concerned whether their residence is within or outside a resident zone community, they should contact the Superintendent for a case-by-case determination.

Recently the NPS conducted a review of subsistence regulations and laws and received many comments and recommendations. This review has highlighted the complexity of many issues, particularly eligibility, and the need to conduct further discussion to resolve eligibility concerns.

The NPS recognizes the necessity for continued development and modification of the subsistence program based on review and input of the subsistence users, advisory councils and commissions, the general public, and legal and technical advisors. Future review of eligibility, including resident zones, will be done with the full participation of the above named parties.

Authority

36 CFR 13.420 Definition of 'Local Rural Resident' and 'Resident Zone'
36 CFR 13.430 Determination of resident zones
36 CFR 13.1902 Wrangell-St. Elias NP Subsistence resident zone communities

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SRC Completed Action 2.1

Action 2.1: Add resident zone communities.

Add Dot Lake, Tetlin, Northway and Tanacross to the Wrangell-St. Elias National Park resident zone. (Action 2.4 in this chapter provides information on the addition of Healy Lake to the resident zone.)

Issue Background

- The Wrangell-St. Elias NP SRC, beginning in 1986, first recommended the addition of Northway as a resident zone community. They later recommended the village of Tetlin be added.
- The NPS was directed by the Secretary of Interior to study the communities of Northway and Tetlin to see if they contained "significant concentrations" of residents with a history or pattern of use of park resources for subsistence purposes.
- In 1996, the NPS, using the information compiled from the Upper Tanana C&T Use Determination Study committed to drafting a rulemaking which would add the communities of Tetlin, Northway and Dot Lake to the resident zone.
- At the SRC meeting in December 1996, a draft rulemaking was presented to the SRC. The SRC recommended the addition of Tanacross. Healy Lake was proposed as an addition, however, no information or data was available on Healy Lake and the recommendation was postponed.
- At the February 1997 SRC meeting a draft rule was presented to the SRC which included the addition of Tanacross and language which provided a default boundary for resident zone communities. A timeline for the completion of rulemaking was also presented (see Action 2.1, page 8).
- At the April 1998 SRC meeting in Tanacross a presentation on the environmental assessment evaluating the impacts of the addition of new resident zone communities was given. The SRC approved the range of alternatives. They requested communities be given two years (previous proposal was for one year) after publication of the rule to come to agreement with the superintendent on community boundaries. Superintendent Jarvis agreed to this change. Appropriate changes were made to the draft rule (see Action 2.1, pages 9-29).

- The environmental assessment was released for public review in October 1998. Public meetings were held on the EA in Tanacross and Tok on October 28 and 29th. Comments were reviewed at the SRC meeting in November 1998. A copy of the EA can be found in NPS central files.

- A letter was received on November 13, 1998, from Tanana Chiefs Conference, Inc. indicating that Tetlin, Tanacross and Dot Lake were all in favor of the proposed alternative described in the environmental assessment. The preferred alternative called for adding the four Upper Tanana villages to the resident zone with defined boundaries. At the time the letter was written Tanana Chiefs Conference, Inc. did not know if Northway was in agreement with the preferred alternative.

- At the SRC meeting in November 1998, a motion was made to go forward with the designation of Northway, Tetlin, Tanacross, and Dot Lake to the resident zone.

- On February 6, 1997, Dot Lake Village Council submitted a proposed boundary for the Dot Lake resident zone (see Action 2.1, pages 6-7). On March 5, 1999, a letter was submitted to the council requesting their assistance in working with Wrangell-St. Elias National Park and Preserve staff to establish groundwork regarding the proposed boundary (see Action 2.1, page 5).

- On June 22, 1999, Director Rose Isaac of the Tanana Chiefs Conference Upper Tanana Subregion office sent a letter to Secretary Babbitt and NPS Director Stanton. She asked the Secretary to expedite the process for adding Tetlin, Tanacross, Northway, and Dot Lake to the resident zone for Wrangell-St. Elias National Park (see Action 2.1, pages 30-31).

- In August 1999, the NPS responded to the Tanana Chiefs Conference letter of June 1999. The Deputy Director for the NPS directed his staff to bring this matter to a close by moving the regulations through the process of publication and public comment in order to finalize them as quickly as possible (see Action 2.1, page 32).

- On June 14, 2001 a proposed rule to add the communities of Dot Lake, Healy Lake, Tanacross, Tetlin and Northway to the Wrangell-St. Elias National Park resident zone was published in the federal register with a 60-day comment period. The comment period ended on August 13, 2001.

- On February 25, 2002, a final rule (Vol. 67, No. 370 , Pages 8481-8484) was published in the Federal Register amending regulations in Wrangell-St. Elias National Park by adding the communities of Dot Lake, Healy Lake, Northway (including Northway, Northway Village and Northway Junction), Tanacross, and Tetlin to the park subsistence resident zone, effective on March 27, 2002. The final rule directed the Superintendent to consult with each community prior to establishing resident zone

community boundaries for the newly designated resident zone communities. The new regulation states that:

"If the Superintendent and a community are not able to agree on a boundary within two years, the boundary of the area or community added will be the boundary of the Census Designated Place, or other area designation, used by the Alaska Department of Labor for census purposed for that community or area. Copies of the boundary map will be available in the park headquarters office."

- In August 2002, NPS met with Rose Isaac, Director of the Tanana Chiefs Conference Upper Tanana Subregion, Loraine Titus, President, Northway Village IRA, and Jerry Isaac, Executive Director, Native Village of Tanacross, to discuss regulatory changes within the final rule. Rose Isaac agreed to sponsor an October 3rd meeting in Dot Lake with community representatives from the five communities to discuss community boundaries for the newly designated resident zone communities.

  Ingrid Zaruba, Research Analyst, Census and Geographic Information Network, Alaska Dept. of Labor, agreed to support the NPS resident zone boundary designation process by providing GIS mapping services for each community boundary.

- In March 2003, NPS meet with Rose Isaac, Director of the Tanana Chiefs Conference Upper Tanana Subregion Office, and representatives of several of the villages to discuss community boundaries for the newly designated resident zone communities. It was recommended that NPS meet individually with the villages.

- NPS traveled to Northway in June 2003 and to Tanacross in March 2004 to discuss community boundaries. Letters were subsequently received from these villages with their recommended community boundaries. A letter was also received from Tetlin with its recommendation.

Current Status

- On June 7, 2004, WRST Superintendent Gary Candelaria wrote to the villages notifying them that their boundary recommendations had been accepted and that the resident zone community boundaries had been designated.

- On August 3, 2004, a notice announcing the boundary designation and the availability of these boundary maps was published in the Federal Register. Public notices about the boundary designations were also published in local newspapers, the Mukluk News and the Delta Wind. Copies of the resident zone boundary maps are available at the park headquarters in Copper Center, Alaska.

Authority

36 CFR 13.430(b)(1) Adding resident zone communities

COPY FOR YOUR INFORMATION

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park/Preserve
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

IN REPLY REFER TO:

L3016 (WRST-SS)

March 5, 1999

Mr. William Miller
Dot Lake Village Council
Box 2275
Dot Lake, AK 99737

Dear Mr. Miller:

The Wrangell-St. Elias National Park and Preserve staff has reviewed your proposed resident zone boundary for Dot Lake. During our visit to Dot Lake for the upcoming Wrangell-St Elias Subsistence Resource Commission meeting on April 20 and 21, 1999, groundwork will be conducted regarding this proposal. Your assistance is requested in working with our staff to establish this groundwork.

I look forward to seeing you in April and if you need any further information, please feel free to contact Heather Yates, Subsistence Specialist, or Devi Sharp, Chief of Resources, at (907) 822-5234.

Sincerely,

Jonathan B. Jarvis
Superintendent

DOT LAKE VILLAGE COUNCIL
BOX 2275
DOT LAKE, AK 99737

6 February 1997

COPY TO PARK SERVICE FYI

REPLY TO
ATTN OF: William Miller

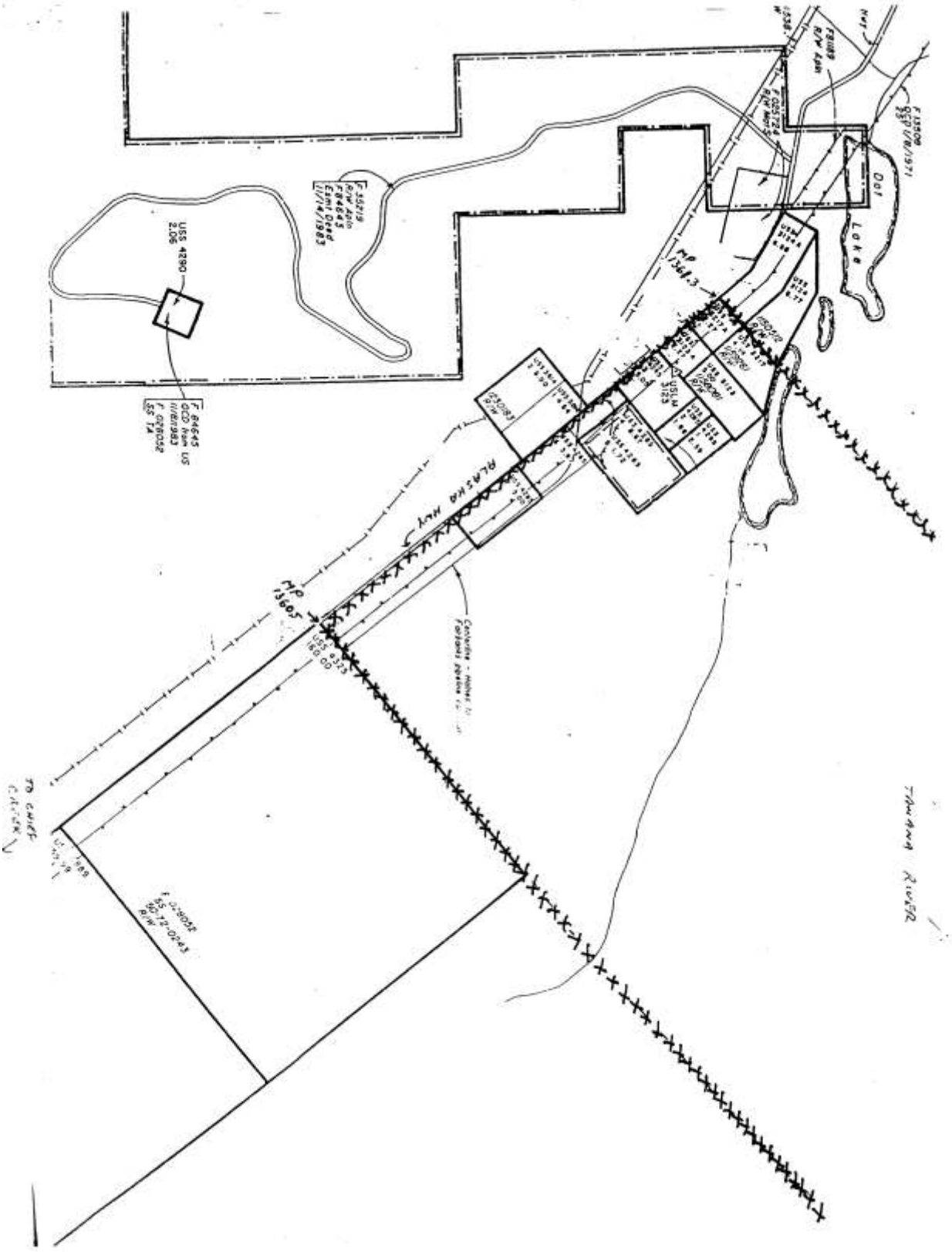
SUBJECT: Establishing Village Boundaries
Resident Zone Communities

TO: Wrangell-St.Elias National Park
Subsistence Resource Commission

After much discussion, the Village of Dot Lake, a recognized Indian Tribe, request that the attached map be used to establish a Resident Zone for Dot Lake. This request is based on the fact that a number of our Tribal Members have ties to and traditional and cultural use of the area which is now defined as the "Wrangell-St Elias National Park".

As a verbal definition of the boundaries being requested the following is being provided:

The core area of the Native Village is that area between mile post 1360.5 and mile post 1361.3 of the Alaska Highway (corner markers for USS 4325 and USS 3217A) bounded on the NNE by the Tanana River, on the SSW by the Alaska Highway, on the SSE by a line continuing from the NNW boundary line of USS 4325 to the Tanana River, and on the NNW by a line continuing from the NNW boundary of USS 3217A and USS 3217. (See attached map)


MP 13605
MP 13613
Lake
Tanana River

Updated Timeline
To Develop a Final Rule to Add New Communities to the Resident Zone for Wrangell-St. Elias National Park

Environmental Assessment

♦ Environmental Assessment	October 1, 1998
♦ Forty-five day public comment period deadline	November 14, 1998

Draft Proposed Rule

♦ NPS Washington Review	November 15, 1998
♦ Department of Interior Review	January 8, 1999
♦ Office of Management and Budget Review	February 5, 1999
♦ Publish Proposed Rule in Federal Register	February 19, 1999
♦ Public Review (including meetings or hearings)	April 16, 1999

Final Rule

♦ Review Public Comments and Develop Final Rule	May 28, 1999
♦ SRC Review	November 1, 1999
♦ NPS Park/Regional Review	November 20, 1999
♦ NPS Washington Review	December 11, 1999
♦ Department of Interior Review	January 14, 2000
♦ Office of Management and Budget Review	February 11, 2000
♦ Publish Final Rule in Federal Register	February 25, 2000
♦ Effective Date of Final Rule	March 23, 2000

D R A F T

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN: _____

Special Regulations; Wrangell-St.Elias National Park and Preserve

AGENCY: National Park Service, Interior

ACTION: Proposed rule

SUMMARY: The proposed rulemaking will amend 36 CFR Part 13, Subpart C - "Special Regulations-Specific Park Areas in Alaska", to add the communities of Dot Lake, Tetlin, Tanacross and Northway (including Northway, Northway Village and Northway Junction) as resident zone communities for Wrangell-St. Elias National Park (WRST). This action is in response to instructions from the Secretary of Interior and requests by the Park Subsistence Resource Commission (SRC), the Southcentral Subsistence Regional Advisory Council, and the affected communities.

The National Park Service (NPS) has completed an analysis of Dot Lake, Tetlin, Tanacross and Northway and found that they meet the criteria of a resident zone established under the provisions of 36 CFR 13.43. The addition of these communities to the resident zone will allow residents to engage in subsistence activities in the park without a NPS subsistence permit.

DATES: Comments may be submitted on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESS: Superintendent, Wrangell-St.Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573, (907)-822-5234.

FOR FURTHER INFORMATION CONTACT: Chief Ranger, Hunter Sharp, at the above address or telephone.

SUPPLEMENTARY INFORMATION:

Background

In 1981, the NPS published regulations in 36 CFR, Part 13 to implement the Alaska National Interest Lands Conservation Act (ANILCA) for the national park system units in Alaska. Because ANILCA restricted subsistence use in national parks to local rural residents, the implementing regulations included a method for identifying these residents. The primary method was to designate nearby communities with significant concentrations of subsistence users as "resident zone communities". All of the residents in these communities are considered to be local rural residents and, therefore, eligible to use the park for subsistence purposes in accordance with regulations adopted or approved by the Department of Interior. Initially 18 communities near the park were designated as resident zone communities. At the time those communities were selected there were few published sources of information documenting subsistence use of park resources. The authors of the regulations had to rely heavily on the input of local residents regarding their subsistence uses of the park to determine which communities or areas would be eligible for resident zone status. Some communities near the park, including Dot Lake, Tetlin, Tanacross and Northway, were not fully represented at the meetings when testimony was taken, and were not included in the resident zone when the final Part 13 rule was published on June 17, 1981 (46 FR 31836). Section

13.43 provides a method and criteria (see following section, "Application of Criteria") for adding communities to the resident zone.

The residents of Northway, Tetlin, Tanacross and Dot Lake have tried, since the regulations were published, to be added in accordance with §13.43. This proposed rule responds to that effort.

Origin of Requests to Add New Communities

Discussions by the SRC leading to a formal recommendation to add Northway to the Wrangell-St. Elias National Park resident zone were recorded in 1985. In August 1986 the Subsistence Resource Commission forwarded their first recommendation to the Secretary of the Interior requesting that Northway be included as a resident zone community. The state of Alaska responded to the SRC in September of 1986 indicating that the issue was an NPS decision and that the State could not act directly to implement the recommendation. The Secretary of the Interior responded to the request in May of 1988. His response, in part, was,

> "In order to designate the community of Northway as a resident zone community, NPS would have to determine whether or not a significant concentration of people who permanently reside in this community have a history of customary and traditional subsistence use in the park. . ."

Then, in 1989 the State Regional Advisory Council for the Interior and Southcentral regions of Alaska recommended to the Board of Game the addition of Northway to the resident zone for Wrangell-St Elias National Park. In response to the recommendation the US Fish and Wildlife Service director, who had been delegated the responsibility to review and respond to regional council recommendations, replied;

> "The Subsistence Resource Commission for Wrangell-St. Elias National Park did not provide any documentation or indication that such documentation existed in association with their recommendation. Therefore, the recommendation was denied and will not be reconsidered until data is available to indicate a resident zone designation is warranted."

Again in December of 1991 the SRC forwarded a recommendation to the Secretary for the addition of Northway to the resident zone. The Secretary's response (July 1992) was, in part,

> "...the NPS must first verify that a significant concentration of local rural residents with a history of subsistence use of the park's resources currently resides within the community of Northway. If this "significant concentration" requirement is verified, the NPS will define the boundaries of the community for resident zone designation purposes, and initiate a rulemaking process to add Northway as a park resident zone community."

After establishment of the Federal Regional Advisory Council system in 1993, the request to add Northway and Tetlin was forwarded by the Southcentral and Eastern Interior Subsistence Regional Advisory Councils to the Federal Subsistence Board, as well. The response to the regional advisory council (February 1994) came from the Regional Director of NPS. His response, in part, said,

> "The park is currently seeking funding to conduct the surveys necessary to assess Northway's possible addition as a resident zone community. Before NPS considers conducting any studies regarding the community of Tetlin and its potential designation as a resident zone community, consultation with the SRC is warranted. The Federal Subsistence Board is currently gathering information on the customary and traditional uses of large mammal species in the Upper Tanana region by communities of that region, including Tetlin and Northway. We expect the information accumulated as a result of that process will contribute to the question of whether the community of Northway had a customary and traditional subsistence use of the lands within the park."

In 1994 information documenting the customary and traditional use of resources by residents of these communities was compiled for the Federal Subsistence Board. During the process, residents of these communities contributed information regarding their use of park resources that had not previously been documented in subsistence studies. This information, coupled with previous study data, indicated that the addition of these communities into the resident zone had substantial merit.

The recommendation to add additional communities to the Wrangell-St. Elias National Park resident zone evolved across a period of 10 years. The Subsistence Resource Commission for the park as well as state and federal regional advisory groups supported the inclusion of new communities to the resident zone. Formal recommendations to regulators as well as meeting minutes indicate the overall support at the public advisory group level.

These recommendations have been the subject of public testimony for the past 10 years. Minutes from meetings of the SRC, regional advisory council and local advisory committees provide a public record reflecting the high level of support for these proposals in the villages. Comments submitted by the villages regarding subsistence issues in the state also reflect their sentiment on this issue.

Studies and Information Used

In determining which additional communities outside the park boundary were eligible for inclusion in the resident zone, the NPS considered all relevant evidence concerning these communities' qualifications. NPS reviewed studies of the subsistence use of resources in the region, independently analyzed data collected in such studies and considered mapped information developed in the past decade. NPS considered comments received from the general public, the state of Alaska and the local and regional advisory groups. NPS also relied on the knowledge of its own local field staff and the considerable traditional knowledge of the people who inhabit the region.

Alternatives Considered and Rejected

The NPS considered issuance of permits (pursuant to 36 CFR 13.44) to all eligible subsistence users in the villages of Dot Lake, Tetlin, Tanacross and Northway. This alternative was rejected, however, because of the burden this process would place on the subsistence user and the large administrative workload the NPS would shoulder as a result of taking such an action. For NPS to determine which individuals or households are eligible for a permit each household in these communities would be required to document, in detail, their subsistence use of the park. Previous attempts by NPS to encourage eligible households to come forward for permits have elicited no response. The Native people in these villages find this process foreign to their culture and choose not to participate in it. The NPS is seeking to avoid implementation of such an invasive process when it may clearly and legitimately be avoided.

This decision is supported in House and Senate discussions prior to passage of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Congress recognized that subsistence permits may be necessary in certain situations as an adjunct to the system of resident zones. According to ANILCA's legislative history, however, Congress intended the National Park Service to devise a system of resident zones as the primary mechanism for identifying local rural residents in park areas and to avoid a subsistence permit system to the greatest extent possible (S. Rep. No. 96-413, supra, 170-71; 126 Cong. Rec at H 10541)

Application of Criteria

NPS regulations in 36 CFR 13.43(a)(2) set forth the criteria by which resident zone communities or areas may be added or deleted. This section states, in part, that a resident zone shall include,

"The communities or areas near a national park or monument which contain significant concentrations of

> rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses...have customarily and traditionally engaged in subsistence uses within a national park or monument."

The preamble to these regulations (46 FR 31841, June 17, 1981) clarifies how the agency intended the "significant concentration" criteria be interpreted. As a result of public comment on the 1981 proposed rule, NPS determined that wording changes were necessary in order to fairly apply the criteria. They recognized that there would necessarily be limitations in any numerical data developed by NPS to make such decisions. NPS determined that an evaluation of communities or areas eligible for inclusion in a resident zone would need to consider the unique variables associated with each area, many of which cannot be reduced to a numerical value.

The preamble notes that, in establishing the criteria for adding and deleting resident zones, NPS chose to substitute the word "significant" for "preponderant" in the phrase "communities and areas...which contain significant concentrations of rural residents who, without the use of aircraft...have customarily and traditionally engaged in subsistence uses within a national park or monument." The term "preponderant" implied more numerical precision than is possible without an extensive standardized study of rural villages in the state. The term "significant" was adopted to clarify that the subsistence experts must exercise some discretion in examining the nature and needs of each community.

Furthermore, the National Park Service stated that concentrations may be "significant" in relative quantity (predominant numbers) or quality (e.g., cultural vitality, community leadership and influence)(46 FR 31850, June 17, 1981). Again, NPS recognized the variability in the subsistence harvest of resources across the state and the incomparable factors that define individual communities and people in each region that should be considered in such an evaluation.

Studies conducted in these communities that attempt to quantify the subsistence use of resources generally only represent a period of use of one year, and usually rely on a sample of the community to produce a harvest picture for the community as a whole. Although these data make important contributions to the literature on subsistence use of resources in this region, the studies were not designed to address the specific question of use of resources in the national park. Therefore, this rulemaking does not rely solely on the limited numeric data generated by these studies. Instead, this analysis focuses on the quality of the use and the importance of resource harvests to the Native people of the region.

Analysis

Tetlin, Northway, Tanacross and Dot Lake are rural Alaska Native villages consisting, primarily, of Athabaskan Indian people. According to the 1990 census, the communities contain 96, 77, 94 and 55% Athabaskan Indians, respectively. These Athabaskans are descendants of one of a number of Ahtna, Tanacross and Upper Tanana bands that harvested resources and otherwise occupied the Wrangell-St. Elias National Park area. The non-Native populations of these communities were generally born outside of the state, with an average length of residency of 11 years (based on a 1987 survey).

The Upper Tanana, Tanacross and Ahtna Athabaskan people who reside in these communities are recognized as two of nine linguistic subgroups of Interior Alaska. Historically, these people thought of themselves in terms of small, local bands constituting both social and geographical units. Bands generally consisted of a group of families with a defined territory. Through marriage, geography and common interests, bands would be sufficiently interlocked to consider themselves part of a larger unit, or regional band (i.e., Upper Tanana, Tanacross or Ahtna).

At the turn of the century there were at least six different bands of central and upper Tanana Athabaskans between the White River and Healy Lake on the Tanana River; and two upper Ahtna bands occupying the area between the Mentasta and Wrangell Mountains. These areas roughly include the northern one-third of the Wrangell-St. Elias National Park and Preserve.

Each band was associated with a specific territory within the region. However, the people were seasonal migrants and households with extensive kin connections might hunt over large areas of another band's territory. At no one time was the whole area occupied, but it did constitute the hunting territory of the group. Early anthropologists visiting the region described the bands as something of a cultural continuum consisting of a series of interlocking local bands whose culture varied only in minor details from one to the next, rather than as discrete units. A great deal of communication and interaction among the bands occurred. The diversity of resources available was often limited in a given band's territory, necessitating cooperation with other bands for use of their lands and resources.

The Athabaskan culture is based on a flexible system of exchange. Territory, resources and people readily crossed band territories as the need arose. Relations between the Ahtna and Upper Tanana and Tanacross Indians were close enough to allow exchange of goods, information and food when needed. Marriages across lines resulted in a net of kin ties that can be traced today through the Native villages in the region.

The Athabaskan people were seasonal fish and wildlife hunters and gatherers, moving from one temporary dwelling to another as necessary to exploit local resources. Their movement to fall, winter, spring and summer camps was a common practice. As hunters and gatherers in a relatively harsh environment, survival commonly depended upon their ability to know and utilize alternative plant and animal resources when conditions warranted. Often, when resources were in short supply, travel to distant places to harvest resources in another band's territory was necessary.

Ketchumstuk, Mansfield and Batzulnetas are sites of seasonal camps important to the Athabaskan people in this region. Caribou fences located near Ketchumstuk and Mansfield provided a means of harvesting meat for a large number of people of both Upper Tanana, Tanacross and Ahtna descent. Likewise, Batzulnetas is one of the few close places where salmon can be harvested; its resources are used by many through an extensive sharing network. Batzulnetas, located within the boundaries of Wrangell-St Elias National Park, was occupied continuously for more than a century until about 1940.

The late nineteenth to early twentieth century was a time of accelerated cultural change for Interior Athabaskans. From the time of the first non-Native-contact, (about 1880) material goods, technological changes, imposed harvest limits and epidemic diseases introduced in the region caused major changes in the Native culture and subsistence lifestyle. Traditional dwellings were abandoned, people adapted to new technology and semi-permanent riverine villages sprang up in place of seasonal camps. Seasonal movements were then reduced to a dual pattern of winter villages and summer fish camps. During that time Batzulnetas continued to be occupied, at least seasonally, for the purpose of subsistence hunting and fishing.

Mining had a tremendous impact on subsistence hunting during the period. In 1913 several thousand people flooded into the region via the White, Tanana and Copper Rivers during the "Chisana stampede" in search of gold. Miners largely employed Native people as hunters or hunted themselves for food. Depletion of wildlife resources due to the large influx of people, here as well as in other parts of the state, prompted the implementation of harvest regulations in 1926 that affected the subsistence harvests of resources by Native people in the region.

Mandatory schooling imposed in about 1950, seasonal labor opportunities and steady access to trade goods contributed to a more sedentary lifestyle for most Native people in the region.

By then Tetlin, Tanacross and Northway had become permanent settlements at or near their modern day locations. Dot Lake was evolving from a seasonal camp for Alaska Highway workers to a village composed primarily of Alaska Native people of Ahtna, Upper Tanana and Tanacross Athabaskan descent who migrated there from several local villages.

After World War II, Alaska gained statehood (1959). Resource development prospered, accelerating the Native land claims process. The trans Alaska oil pipeline was built from 1974 to 1977, causing economic and demographic changes that continued years after completion. Capital improvements in urban and rural areas of the state funded primarily by oil revenues created employment opportunities. Rapid population growth followed the development of support industries and the growth of state and federal infrastructures. The large influx of people into the region resulted in an increasingly more common for imposition of regulatory prohibitions on the harvest of certain species, the season of harvest and so on to protect a dwindling supply of game. Each of these factors in some respect contributed to changes in the subsistence way of life.

Despite the changes that have occurred, in recent decades, the Native people of these villages still identify with the places where they were raised and from which their parents came. Places such as Batzulnetas, Mansfield and Ketchumstuk remain of primary importance to Athabaskan people in these communities. Although none of these sites is permanently occupied today, they continue to be used seasonally for the purpose of hunting, fishing and gathering within the current regulatory structure.

Although some new technological advances have been employed by Native subsistence users, the use of aircraft for harvest of resources seldom occurs. Only a fraction of the people in these communities have used an aircraft in an effort to harvest resources. Documented instances did not occur in the park.

The amount and diversity of resources harvested are two measures that distinguish these four subsistence communities from others. They harvest a wide variety of resources (caribou, moose, fish, and so forth) typical of rural subsistence users across the state; and they are high harvesters of resources. The number of species harvested in these communities rank among the highest of any community in the region. Study data indicate that residents in the four communities harvest salmon, moose and caribou from Batzulnetas. Other species may be harvested from that area as well.

Exchange and gifting of resources harvested for subsistence purposes remain a central component of the Athabaskan culture. Such exchanges occur in the context of a potlatch, to reciprocate for the assistance given by another, or to provide native foods for elders and those unable to hunt. Reciprocal relations and gifting strengthen kinship ties between the people of these communities and educate the children in the ways of the Athabaskan people. Exchanges are made in the form of harvested resources, use of technology (such as a fishwheel) and the offer of the use of preferred fishing or hunting sites, such as Batzulnetas.

Exchange and gifting result in the distribution of resources throughout households in local communities although the actual harvest may have been accomplished by only a few. Examples of the gifting and exchange of resources harvested from Batzulnetas are documented in the literature for Tetlin, Northway, Tanacross and Dot Lake.

Conclusion

Northway, Tetlin, Tanacross and Dot Lake are all rural communities near Wrangell-St. Elias National Park and Preserve. The communities contain a significant concentration of Athabaskan Indians whose lifestyle is centered around the subsistence harvest of resources in the same areas their ancestors used for centuries. This area includes (approximately) the northern third of Wrangell-St. Elias National Park and Preserve, which is composed of both

park lands and preserve. Residents of these communities do not use aircraft in the subsistence harvest of resources in this area.

Effects of Proposed Regulation

The purpose of this rule is to add four communities to the subsistence resident zone for Wrangell-St.Elias National Park in accordance with the procedure at 36 CFR 13.43(b). This action is in response to instructions from the Secretary of Interior and requests from several FACA advisory groups and individual park subsistence users. A collateral administrative purpose consistent with the Secretary's instructions is to add a paragraph to §13.73 establishing a method for determining community and area boundaries for resident zone purposes.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public meaningful opportunity to participate in the rulemaking process. A 60-day comment period has been specified to facilitate public input for this rulemaking. Accordingly, interested persons may submit written comments concerning this proposal to the address listed above.

Drafting Information

The primary authors of this regulation are Jay Wells, Wrangell-St.Elias National Park and Preserve, and Janis Meldrum and Paul Hunter, Alaska System Support Office, Anchorage, Alaska.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance with Other Laws

This rulemaking is not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 801 et seq). The economic effects of this rulemaking are of a local nature and negligible scope.

In accordance with Executive Order 12612, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Also, the proposal has been evaluated in accordance with Section 810 of ANILCA and determined not to significantly restrict subsistence uses.

National Environmental Policy Act

NPS will complete a draft environmental assessment (EA) and make a finding on significance of any resulting impacts prior to promulgation of the draft rule. The draft EA will be on file in the NPS office at 2525 Gambell St, Anchorage, AK 99503 and at Wrangell-St. Elias National Park and Preserve offices in Copper Center.

List of Subjects in 36 CFR Part 13

Alaska, National Parks; Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR 13 is amended as follows:

PART 13--NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C - Special Regulations - Specific Park Areas in Alaska

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; §13.65 also issued under 16 U.S.C. 1a-2(h), 1361, 1531.

2. Section 13.73(a)(1) is amended by changing the existing language to question and answer format and adding alphabetically within the existing list, the communities of Dot Lake, Northway, Tanacross and Tetlin (shown in bold below, but not to be printed in bold in the CFR) so that the list will read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; §13.65 also issued under 16 U.S.C. 1a-2(h), 1361, 1531.

§13.73 Wrangell-St.Elias National Park and Preserve.

(a) Subsistence--(1) Resident Zone. Which communities and areas are in the park resident zone? The following communities and areas are in the park resident zone:

Chisana

Chistochina

Chitina

Copper Center

Dot Lake

Gakona

Gakona Junction

Glennallen

Gulkana

Kenny Lake

Lower Tonsina

McCarthy

Mentasta Lake

Nabesna

Northway/Northway Village/Northway Junction

Slana

Tanacross

Tazlina

Tetlin

Tok

Tonsina

Yakutat

3. Section 13.73(a)(1) is further amended by adding the following new paragraph after the list of resident zone communities and areas:

> How are boundaries determined for communities added to the park resident zone? Boundaries for communities and areas added to the park resident zone will be determined by the superintendent after consultation with the affected area or community. If the superintendent and community are not able to agree on a boundary within two years, the boundary of the area or community added will be the boundary of the Census Designated Place, or other area designation, used by the Alaska Department of Labor for

census purposes for that community or area.

Where can the public get a copy of the boundary map? Copies of the boundary map will be available in the park headquarters office.

* * * * *

Dated: [Insert date signed]

Donald Barry

Assistant Secretary for Fish and Wildlife and Parks

D R A F T

United States Department of the Interior
Record of Compliance for a Rulemaking Document

Title of rule: Wrangell-St.Elias National Park and Preserve, Special Regulations	RIN:
Sponsoring bureau/office: National Park Service (NPS)	
Contact name/phone number: Hunter Sharp (907) 822-7234	

A. Need for this regulation.

1. Why we are publishing this rule.

The purpose of this rule is to add four communities to the 36 CFR 13.73 list of resident zone communities for Wrangell-St.Elias National Park (hereafter, the park) in accordance with the procedure at 36 CFR 13.43(b). This action is in response to instructions from the Secretary of Interior and requests from several FACA advisory groups and individual park subsistence users. A collateral administrative purpose consistent with the Secretary's instructions is to add a paragraph to §13.73 establishing a method for determining community and area boundaries for resident zone purposes.

2. Why alternative approaches are not feasible.

A decision to not add an eligible community to the resident zone list maintained in the special park regulations could result in public confusion and different treatment of similarly situated user groups. For those reasons, assuming the four communities meet the §13.43 criteria, there is no alternative to treating the communities the same as the existing resident zone communities, and adding them to the list in the CFR. A contrary decision during rulemaking would, of course, result in the listing part of the proposed rule being withdrawn. However, regulatory clarity suggests it may be appropriate to go forward with the boundary provision regardless of the decision on the four communities.

Three alternatives were considered, 1) no action, 2) add the four communities without provision for boundaries, and 3) the preferred alternative, add the four communities with provision for determining the boundaries. The no action alternative is comparable to a determination that the communities do not meet the eligibility criteria established in §13.43. This is a possible result of the rulemaking, but as a practical matter, if selected, as the preferred alternative in conjunction with the environmental compliance process, would preclude rulemaking altogether. Regarding whether to clarify the boundary determination process, assuming a finding of eligibility, adding the four communities without provision for boundaries would continue an existing procedural weakness. Consequently, the third alternative is considered the most suitable for this rulemaking. It provides an opportunity for the resident zone decision to occur in the context of rulemaking with the most public participation. It also includes an option for strengthening the basic procedural framework for the parks resident zone system.

2. Authority under which this rule will be published.

This rule is published under authority of Title 16 U.S.C 410hh--2; Public Law 96-487, December 2, 1980.

C. Determinations and Certifications.

1. **Regulatory planning and Review.** In accordance with the criteria in Executive Order 12866, NPS has determined that this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required because there are no added costs associated with this action. The net effect of adoption of this rule would be to reduce costs by eliminating the need for subsistence users to apply for a permit. The cost saving would accrue to the affected user groups and the park through reduction of actual and potential administrative costs.

b. This rule will not create inconsistencies with other agencies' actions. Action on this rule represents ongoing administrative process in accordance with agency regulations. There will be no change in the manner or substance of interaction with other agencies.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Current and potential subsistence permittees will continue to be eligible under the resident zone system.

d. This rule will not raise novel legal or policy issues. The rule is the direct consequence of an existing regulatory method for administering the resident zone system. While the decision concerning adding or deleting a particular community could be controversial, the regulatory process for making that decision is well established in existing regulations.

5. **Regulatory Flexibility Act.** I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 USC 601 et seq.). The economic consequences of this rule will be to reduce administrative costs for private citizens and for the park. The permitting process that would be eliminated for the residents of four communities operates directly between individual subsistence users and the park. Therefore, there is no impact on small entities and a Regulatory Flexibility Analysis and Small Entity Compliance Guide are not required.

6. **Small Business Regulatory Enforcement Fairness Act.** This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule applies to individual subsistence users. It has no applicability to small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will reduce costs for private citizens and the federal government. It will eliminate the need for subsistence users in four communities to apply to the National Park Service for a subsistence permit. The rule will eliminate application costs to individual subsistence users such as the cost of a phone call, postage, or travel to the park office, and will reduce the current and potential administrative processing costs for the park.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule does not affect foreign trade. The interaction of the subsistence economy and the general economy is unchanged by this rule.

4. **Unfunded Mandates Reform Act.** In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.):

a. This rule will not "significantly or uniquely" affect small governments. A small Government Agency Plan is not required. This rule affects the permitting process between

individual subsistence users and a park. There is no involvement of small governments in this relationship. The subsistence activities affected occur only on federal public lands within a national park.

a. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This rule will reduce costs for the Federal government.

2. **Takings.** In accordance with Executive Order 12630, the rule does not have significant taking implications. This rule will modify regulations in a manner that reduces the regulatory impact on private citizens, and is, therefore, excluded from EO 12630.

3. **Federalism.** In accordance with Executive Order 12612, the rule does not have significant Federalism effects. This rule applies to the permitting relationship between individual subsistence users and the park for activities occurring on federal public lands within the park. The rule does not change or impact the relationship of the park with State and local governments.

4. **Civil Justice Reform.** In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. This rule has been written in plain language to ensure public clarity.

5. **Paperwork Reduction Act.** This regulation does not require an information collection under the Paperwork Reduction Act. The rule will eliminate permit applications for residents of the four affected communities, thus reducing the level of previously approved information collection (see 46 FR 31854) associated with subsistence management in the park.

6. **National Environmental Policy Act.** We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is attached.

7. **Government-to-Government Relationship with Tribes.** In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2 there are not effects on Federally recognized Indian tribes. This rule applies to individual subsistence users. If the rule is adopted, the result will be an elimination of the requirement for certain subsistence users to apply for a permit to engage in allowable subsistence activities in the park. Subsistence use on federal public lands is not managed as a tribal activity and the federal subsistence program does not apply on Native owned lands.

H. Approvals.

I have made each of the certifications/determinations specified above based upon the material in this record of compliance or documents indicated in each section above. I have ensured that this document will be distributed in accordance with Part D, below.

_____ _____

(Signature and title of lead Official) Date

Concur:

(Signature and title of head of Bureau or Office or other approving official) — Date

(Signature and title of program Assistant Secretary or other approving official) — Date

I. Distribution.

Copies of this document must be distributed to:

- Office of Regulatory Affairs (ORA)
- Office of Policy Analysis (PPA)
- Office of Small and Disadvantaged Business Utilization (OSDBU)
- Chief Counsel for Advocacy, Small Business Administration (SBA)

Reviewer	E-mail address	Mailing address
ORA	execsec@ios.doi.gov	MS 7229, MIB
PPA	Indur_goklany@ios.doi.gov	MS 4426, MIB
OSDBU	Ralph_rausch@ios.doi.gov	MS 5524, MIB
SBA	Jennifer.smith@sba.gov	Chief Counsel for Advocacy Attention: Regulatory Flexibility Small Business Administration Room 1010 409 Third Street SW Washington, DC 20416

TANANA CHIEFS CONFERENCE, INC. #99 021

122 FIRST AVENUE, SUITE 600
FAIRBANKS, ALASKA 99701-4897
PHONE 907/452-8251 • FAX 907/459-3850

UPPER TANANA SUBREGION
PO BOX 129
TOK, ALASKA 99780
Phone: (907) 883-5181
800-478-5182
Fax: (907) 883-1114

June 22, 1999

Mr. Robert Stanton
Director National Park Service
US Dept. of the Interior
PO Box 37127
Washington, DC 20013

Dear Mr. Stanton:

On behalf of the Native villages of Tanacross, Tetlin, Northway & Dot Lake I am writing to request that the proposal to grant these villages resident zone community status in the Wrangell/St. Elias National Park be moved through the final rule process as quickly as possible. The people of these villages have been involved in this lengthy process for TWELVE years; and as I understand it the bill is bogged down in Washington, DC. We would greatly appreciate your attention to this matter so that our people may continue to feed and care for our families according to our traditional way of life, without risking criminalization for it. Thank you for your time and assistance in this very important matter.

Sincerely,

Roselyn Isaac /df

Roselyn Isaac
Director

Cc: John Javis
Superintendent Wrangell/St. Elias
National Park

John Vale, Chairman
Wrangell/St. Elias
Subsistence Resource Commission

RI/ji

UPPER TANANA SUBREGION
PO BOX 129
TOK, ALASKA 99780
Phone: (907) 883-5181
800-478-5182
Fax: (907) 883-1114

June 22, 1999

Mr. Bruce Babbitt
Secretary of the Interior
US Dept. of the Interior
PO Box 37127
Washington, DC 20013

Dear Secretary Babbitt:

On behalf of the Native villages of Tanacross, Tetlin, Northway & Dot Lake I am writing to request that the proposal to grant these villages resident zone community status in the Wrangell/St. Elias National Park be moved through the final rule process as quickly as possible. The people of these villages have been involved in this lengthy process for TWELVE years; and as I understand it the bill is bogged down in Washington, DC. We would greatly appreciate your attention to this matter so that our people may continue to feed and care for our families according to our traditional way of life, without risking criminalization for it. Thank you for your time and assistance in this very important matter.

Sincerely,

Roselyn Isaac
Director

Cc: John Javis
Superintendent Wrangell/St. Elias
National Park

John Vale, Chairman
Wrangell/St. Elias
Subsistence Resource Commission

United States Department of the Interior

NATIONAL PARK SERVICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

A36

AUG - 2 1999

Director Roselyn Isaac
Tanana Chiefs Conference
122 First Avenue, Suite 600
Fairbanks, Alaska 99701-4897

Dear Ms. Isaac:

Thank you for your letter of June 22, 1999, regarding the Native villages of Tanacross, Tetlin, Northway, and Dot Lake. You requested help in moving the proposed change to the Code of Federal Regulations through the process to grant the communities resident zone status as quickly as possible.

As you know, the draft regulations were sent to the Washington office of the National Park Service in November of 1998 to be published in the Federal Register in draft form. I have directed my staff to bring this matter to a close by moving these regulations through the process of publication and comment required to finalize them as an amendment to the Part 13 Regulations as quickly as possible.

Thank you for taking the time to express your concern.

Sincerely,

Paul R. Anderson for

Robert D. Barbee
Regional Director

NPS Proposed Action 2.2

Action 2.2: Establishment of an alternative system of group eligibility (roster regulation).

Issue Background

- In 1986 the Lake Clark SRC, faced with increased numbers of new residents to two of their resident zone communities, proposed that an alternative system of eligibility be established. At the request of the SRC the resident zone community would be eliminated for two communities and be replaced by a group authorization.
- The Lake Clark SRC felt that the adoption of a group eligibility (roster) system would eliminate an influx of newcomers eligible for subsistence, thereby reducing competition for subsistence resources.
- In 1991 the National Park Service drafted a proposed rulemaking, which provided a group registration alternative to the resident zone/subsistence eligibility permit (13.440 permit) system. The proposed rule was sent to Department of Interior for review before being published.
- During review of the NPS subsistence issue paper, the SRC opposed the implementation of a roster system for Wrangell-St. Elias National Park and Preserve but was not opposed to its use in other parks provided the implementation of a roster list occurs at the recommendation of the SRC.
- In August 1992, the Lake Clark SRC wrote Secretary of Interior Manual Lujan requesting that the NPS rulemaking be expedited.
- The Associate Director for Operations at NPS responded to the SRC letter in October 1992 saying that the rulemaking was being held up in Washington by a presidential moratorium. The Associate Director agreed to have his staff consult with the Office of Policy, Management and Budget to determine if the rulemaking could be exempted from the moratorium.
- The Alaska Regional Director sent a letter to the Director of NPS on July 9, 1993 in an attempt to get the draft regulation published.
- The Denali SRC sent a letter to Secretary of Interior Bruce Babbitt on February 17, 1995 asking that the Department expedite the publication of the roster regulation.

- The NPS Acting Field Director, Paul Anderson responded to the Denali SRC letter (June 5, 1995) to the Secretary indicating that NPS continued to support the Commission in their recommendation to implement an alternative form of eligibility.

- In their comments on the "Draft Review of Subsistence Law and NPS Regulations" (see document in Appendix C, now titled "NPS Subsistence Program"), the Denali SRC recommended that if a resident zone were deleted and eligibility were changed to a roster list then people living in the community at the time who had established a long term pattern of use would be eligible for a subsistence use permit (13.440 permit) or roster listing. They also indicated their support for the concept of a roster regulation. However, the Commission stated that they do not want to be responsible for choosing who gets put on the roster list. The Commission felt they were not familiar enough with all individuals living in the resident zone to be able to fairly identify all eligible users.

- At the Lake Clark SRC meeting in February 1998, the proposed roster regulation was discussed. Comments from SRC members seemed to echo those of the Denali SRC. The Lake Clark SRC moved to rescind the original set of proposed regulations and asked to work with Bob Gerhard to develop a roster regulation that could be used as a tool to be implemented by the SRC via a hunting plan recommendation.

  After the Lake Clark SRC meeting, NPS withdrew the rule from consideration based on a perception that the Lake Clark and Denali SRCs no longer supported such an action.

- In October of 1998 the Aniakchak SRC submitted a hunting plan recommendation to the Secretary of Interior directing the NPS to develop a roster or group eligibility system alternative to the resident zone/13.440 permit eligibility system. NPS responded to their recommendations indicating that NPS will re-submit the draft proposed rule for a roster eligibility system. The proposed rule will only establish a mechanism for the implementation of a roster system for subsistence eligibility. In the future, when there is a need to replace existing resident zone communities with a roster eligibility system, a second rulemaking will be initiated. Any such action will be done in full cooperation with the SRC and with public notice and meetings in the affected area.

- During the SRC chairman's meeting in October 1998, the Chairs' recommended that the roster regulation go forward.

  NPS responded to this recommendation in May of 1999. This is one issue on a list of backlog recommendations from SRCs that NPS is trying to bring to closure. NPS is

pursuing a delegation of authority to deal with SRC recommendations from the Office of the Secretary.

Current Status

- The draft rule has not yet been approved by the Department of Interior for publication as a proposed rulemaking.

Authority

ANILCA, Section 801 Findings
36 CFR 13.400 Subsistence - Purpose and policy

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SRC Proposed Action 2.3

Action 2.3: Define resident zone community boundaries.

Issue Background

- In 1992 the NPS prepared draft resident zone community boundaries.
- At the November 1992 meeting of the SRC, boundaries were presented. The SRC rejected the proposed boundaries and was charged by the NPS to develop their own boundary proposal.
- In April 1993, two alternative boundary recommendations were made by the SRC and presented to the Alaska Regional Director.
- The boundary definition project was put on hold pending resolution of NPS Subsistence Program Review.
- At the February 1996 SRC meeting, Superintendent Jarvis stated that resident zone community boundaries are not necessary at this time to determine park eligibility.

Current Status

- Resident zone community boundaries are not necessary at the present time; no further actions are planned by NPS.
- However, if new communities are added to the resident zone for Wrangell-St. Elias National Park, the Superintendent will require that a community boundary be established.

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SRC Completed Action 2.4

Action 2.4: Evaluate the community of Healy Lake for possible inclusion in the resident zone.

Information on the addition of Tetlin, Tanacross, Northway and Dot Lake can be found in Action 2.1 of this chapter.

Issue Background

- At the SRC meeting in December 1996, Healy Lake was proposed as a resident zone community addition; however, no information or data was available on Healy Lake and the recommendation was postponed.
- In November 1997, the Healy Lake traditional council submitted several proposals to the Federal Subsistence Board requesting a "positive" customary and traditional use determination for the village of Healy Lake in Units 11, 12, and 13. The SRC considered these proposals at the November 1997 meeting and decided to take no action on them. However, the SRC invited the village to the next SRC meeting to be held in Tanacross and provide information on their subsistence uses in the Park.
- During the November 3-4, 1997 SRC meeting, Connie Friend stated that Healy Lake would also like to be considered part of the resident zone community. Chairman Vale replied the SRC has not had a formal request from Healy Lake to include them.
- December 15-17, 1997, NPS staff went to Healy Lake for the purpose of issuing subsistence eligibility permits (13.440 permits). Nine subsistence users were interviewed regarding their personal or family history of subsistence use of the Park.
- January 14, 1998, Park staff interviewed an elder in Tok, who grew up in Healy Lake, in order to gather additional information regarding the subsistence uses of residents of Healy Lake.
- On January 15, 1998, NPS sent a letter to the nine subsistence users of Healy Lake asking for verification of information staff recorded during oral interviews conducted in December. NPS received three responses; one indicating the person did not want a subsistence eligibility permit (13.440 permit) at this time.
- April 1998, the SRC met and reviewed the proposals submitted by Healy Lake. The SRC supported a "positive" customary and traditional use determination for Healy

Lake for black bear and caribou in Unit 13 and caribou and sheep in Unit 12. The SRC opposed a proposal for "positive" C&T use for moose in Unit 13 and deferred action on C&T determination for moose in Units 12 and 20.

- April 17, 1998, Tanana Chiefs Conference submitted customary and traditional information regarding historical use of Wrangell-St. Elias National Park by residents of Healy Lake and Tanacross.

- NPS has not issued subsistence eligibility permits (13.440 permits) to any residents of Healy Lake, lacking sufficient information to do so. However, NPS has been working with Tanana Chiefs Conference, Inc. in an effort to gain additional information and submitted a proposal to allow additional interviews of elders to be conducted. Unfortunately, the proposal was not funded in 1998.

- At the SRC meeting in November 1998, Pat Saylor; representing the Healy Lake Traditional Council; requested that their village be added to the resident zone for Wrangell-St. Elias National Park and provided some evidence for their case (see letter, report and map Action 2.4, pages 5-8).

- On October 20, 1998 the Copper River Native Association sent a letter to the Wrangell-St. Elias National Park and Preserve Superintendent saying that the five Upper Tanana villages of Dot Lake, Healy Lake, Northway, Tetlin and Tanacross have traditionally shared hunting areas with the Upper Ahtna within Unit 12 and north of the Sanford River in Unit 11. They supported the addition of these five communities to the resident zone for Wrangell-St. Elias National Park (see Action 2.4, page 9).

- A letter was received on November 13, 1998, from Tanana Chiefs Conference, Inc. indicating that Healy Lake would like to be included in the resident zone along with the other four Upper Tanana villages (see Action 2.4, page 10).

- A recommendation to formally consider Healy Lake as a resident zone community was then made by the SRC at their meeting in November 1998.

- On November 18, 1998 a letter was sent to the Eastern Interior Advisory Council requesting that the council take testimony in Healy Lake during their February 27-28, 1999, meeting. Council members and agency staff traveled to Healy Lake on February 26, 1999, prior to this meeting and recorded several hours of oral testimony. Testimony was incorporated into the report prepared by NPS staff and presented during the April 1999 SRC meeting.

- At the April 1999 meeting the SRC passed a motion to support Healy Lake as a resident zone community.

- A draft environmental assessment (EA) was prepared by park staff and sent out for public review. Comments received on the draft were presented at the November 1999 SRC meeting and appropriate comments incorporated into the EA.

- On June 14, 2001 a proposed rule to add the communities of Dot Lake, Healy Lake, Tanacross, Tetlin and Northway to the Wrangell-St. Elias National Park resident zone was published in the federal register with a 60-day comment period. The comment period ended on August 13, 2001.

- On February 25, 2002, a final rule (Vol. 67, No. 370 , Pages 8481-8484) was published in the Federal Register amending regulations in Wrangell-St. Elias National Park by adding the communities of Dot Lake, Healy Lake, Northway (including Northway, Northway Village and Northway Junction), Tanacross, and Tetlin to the park subsistence resident zone, effective on March 27, 2002. The final rule directed the Superintendent to consult with each community prior to establishing resident zone community boundaries for the newly designated resident zone communities. The new regulation states that:

- If the Superintendent and a community are not able to agree on a boundary within two years, the boundary of the area or community added will be the boundary of the Census Designated Place, or other area designation, used by the Alaska Department of Labor for census purposed for that community or area. Copies of the boundary map will be available in the park headquarters office."

- In August 2002, NPS met with Rose Isaac, Director of the Tanana Chiefs Conference Upper Tanana Subregion, Loraine Titus, President, Northway Village IRA, and Jerry Isaac, Executive Director, Native Village of Tanacross, to discuss regulatory changes within the final rule. Rose Isaac agreed to sponsor an October 3rd meeting in Dot Lake with community representatives from the five communities to discuss community boundaries for the newly designated resident zone communities.

- Ingrid Zaruba, Research Analyst, Census and Geographic Information Network, Alaska Dept. of Labor, agreed to support the NPS resident zone boundary designation process by providing GIS mapping services for each community boundary.

- In March 2003, NPS meet with Rose Isaac, Director of the Tanana Chiefs Conference Upper Tanana Subregion Office, and representatives of several of the villages to discuss community boundaries for the newly designated resident zone communities. It was recommended that NPS meet individually with the villages.

- NPS traveled to Healy Lake in June 2003 to discuss its community boundary. A letter was subsequently received from the village with its recommended community boundary.

Current Status

- On June 7, 2004, WRST Superintendent Gary Candelaria wrote to the villages notifying them that their boundary recommendations had been accepted and that the resident zone community boundaries had been designated.
- On August 3, 2004, a notice announcing the boundary designation and the availability of these boundary maps was published in the Federal Register. Public notices about the boundary designations were also published in local newspapers, the Mukluk News and the Delta Wind. Copies of the resident zone boundary maps are available at the park headquarters in Copper Center, Alaska.

Authority

36 CFR 13.430 Determination of resident zones

Subsistence Resource Commission
Wrangell/St. Elias National Park & Preserve
P.O. Box 439
Copper Center, Alaska 99573

Dear Commission Members:

Healy Lake Traditional Council on behalf of our village would like to formally request inclusion with the four other proposed resident zone communities of Dot Lake, Tetlin, Northway and Tanacross for the purpose of subsistence hunting in the Wrangell/St. Elias National Park. It has been well documented that Healy Lake is one of the original Upper Tanana Athabaskan villages. Our history has been verified as going back eleven thousand years. We have relatives among the villages of the Upper Tanana and Upper Ahtna region as well. Our people did hunt in the Park prior to its closure to us. We believe that our inclusion as a resident zone community can be reduced to the simplest of mathmatical equasions: If x = y The Upper Tanana Villages qualify to hunt in the Park. And y = z Healy Lake is an Upper Tanana village. Then x = z Healy Lake would also qualify to hunt in the Park.

We thank you for your encouragement and support to date and ask your continued assistance to a final ruling which would include all five villages of the Upper Tanana.

Again our deepest thanks.

Sincerely,

Healy Lake Traditional Council

Healy Lake Traditional Council
HLTC/cf Encl.



TANANA CHIEFS CONFERENCE, INC.

Upper Tanana Subregion
P.O. BOX 120
TOK, ALASKA 99701
(907)883-5181

MEMORANDUM

TO: Combined Subsistence Regional Advisory Councils of the Eastern Interior and South Central regions of Alaska

FROM: Connie Friend, Program Coordinator I, Upper Tanana subregion

DATE: September 29, 1998

RE: Proposals for C& T which overlap in the Upper Tanana and Ahtna regions

Council Members and Interested Parties:

The people themselves and many studies have established the historic & contemporary sharing of resources between the Upper Tanana and Ahtna peoples. Several years ago a report was prepared jointly by two anthropologists, one employed by Tanana Chiefs Conference and the other by Ahtna, Inc. This report,"Socioeconomic Integration of Alaskan Athabaskans" by Polly Wheeler & Matt Ganley was written for the express purpose of documenting the socio-integration of Interior Athabaskans. We believe that this paper may be helpful to you at this time in determining the C&T issues on the table today. We would be happy to provide the full report to anyone interested and would otherwise like to quote a few passages which might highlight the extent to which the Ahtna and the Upper Tanana Athabaskans form a "cultural continuum of integration".

"Northern Athabaskan culture has been described as consisting not of a series of neat cultural entities, but rather a cultural continuum carried on by a series of interlocking groups whose individual lifeways differed only in certain minor details from their immediate neighbors".

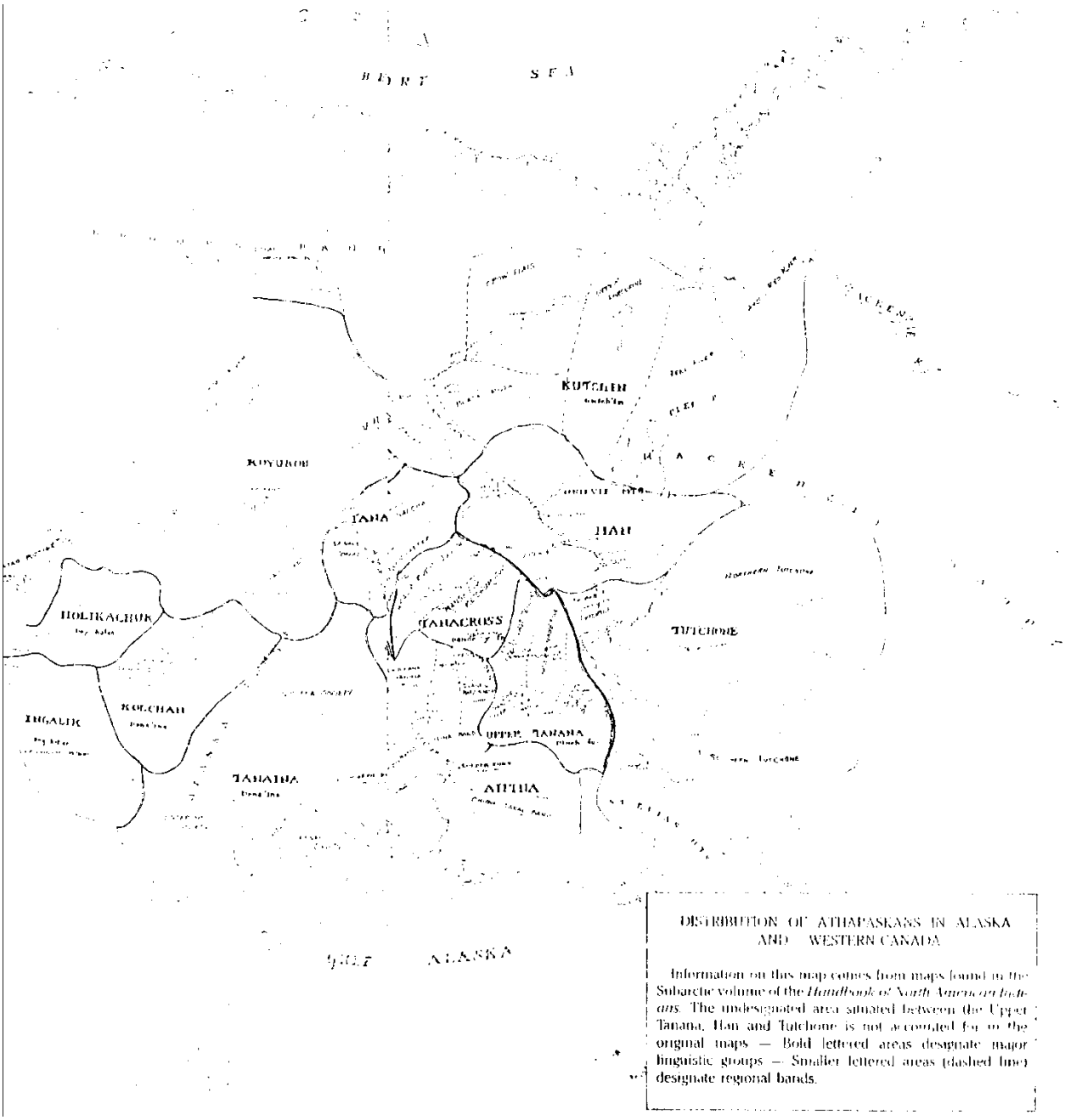
and "...both historically & contemporairly Alaska Athabaskans are linguistically, culturally, economically, pollitically & socially bounded, & without question they form a distinct socioeconomically integrated unit which remains separate & distinct from all of their Inupiat and Yup'ik neighbors...".

Also,"The ease with which people travelled from the Upper Copper River to the Tanana area and vice versa, is not the result of simple trade alliances. We know, through Allen's description, that Tanana people traveled to Batzelnitas for the yearly salmon runs and this is confirmed in the oral history (JJJ). This integration for trade and subsistence is also reflected in past land use patterns. When prospectors began to swarm over

the region in the 1890's people from Batzelnitas were hunting in the Tanana area for moose".

Another anthropologist, William E. Simeone states in his book "A History of Alaskan Athapaskans", "The historical land use area of all the Upper Tanana-Tanacross bands combined was 17,500 miles".

We thank you for your time and thoughtful consideration of these matters and hope that this brief summary may be helpful in rebuilding a cooperative effort among neighbors.



DISTRIBUTION OF ATHAPASKANS IN ALASKA AND WESTERN CANADA

Information on this map comes from maps found in the Subarctic volume of the *Handbook of North American Indians*. The undesignated area situated between the Upper Tanana, Han and Tutchone is not accounted for on the original maps — Bold lettered areas designate major linguistic groups — Smaller lettered areas (dashed line) designate regional bands.

Copper River Native Association
(ATNA' T'AENE NENE')
Mile 104 Richardson Highway
Drawer H • Copper Center, Alaska 99573 • Phone (907)822-5241

AD98-014

October 20, 1998

Wrangell St. Elias National Park & Preserve
PO. Box 439
Copper Center, AK 99573

To WRST Subsistence Resource Commission:

Copper River Native Association acknowledges that the Upper Tanana Villages have customarily and traditionally used Unit 11 north of the Sanford River. The five Villages, which are Dot Lake, Healy Lake, Northway, Tetlin, and Tanacross have traditionally shared hunting areas with the Upper Ahtna within Unit 12 and North of the Sanford River in Unit 11.

CRNA would like WRST Subsistence Resource Commission to add these five Villages to the Resident Zone for Wrangell-St. Elias National Park.

Sincerely,

Ken Johns,
President &CEO

TANANA CHIEFS CONFERENCE, INC.

UPPER TANANA SUB-REGION
P. O. BOX 129
Phone: (907) 883-5181 or
800-478-5182
Fax: (907) 883- 1114

TO: Report to the Wrangell/St. Elias National Park Subsistence Resource Commission.

FROM: Tanana Chiefs Conference, Inc. Upper Tanana Sub-region

DATE: November 13, 1998

The Upper Tanana Sub-region would like to thank the Park Superintendent, Jon Jarvis and N. P. S staff members: Janice Meldrum, Clarence Summers, Don Calloway, Heather Yates and Devi Sharp for their invaluable assistance with Federal process and projects. We are grateful for the special hunt maps for caribou, sheep and moose for Tanacross and Northway and for the map brochures for subsistence hunters. We deeply appreciate the openness and spirit of cooperation from the Park Superintendent and all of his staff.

Public meetings were held in Tanacross and Tok, October 28 and 29 for comment on the Environmental Assessment for the proposed resident zone communities of Tanacross, Tetlin, Dot Lake and Northway. Janice Meldrum was present form the N. P. S. to provide information and answer questions. There were ten community members and interested individuals in attendance at the Tanacross meeting.

The Tok meeting was attended by Janice Meldrum, myself and one individual from the public sector. All of the villages (except for Northway who's preference I don't know at this writing) chose the Park's preferred alternative - to be added as resident zones with defined boundaries.

Healy Lake would also like to formally request inclusion with the other four villages as a resident zone community. A letter of request and background information is included in a packet for your review.

Danny Adams, President of the Tetlin IRA council, would like your consideration regarding boundary infringements on Tetlin Corporation lands by hunters. The Council would like to recommend to the Commission a one-mile no hunting corridor along the lands where the Park and Native lands interface.

This concluds my report. Thank you for your time and consideration of these matters.

Respectfully

Connie Friend

Connie Friend, Program Coordinator

CF: hf

Xc: Rose Isaac, Tok Sub-region Director
Perry Ahsogeak, CNR & Realty Director
Gabe Sam, Wildlife & Parks Director
Daisy Stevens, Sub-regional Liaison Officer

SRC Completed Action 2.5

Action 2.5: Establish a minimum residency requirement for resident zone communities.

Issue Background

- The SRC commented during the December 1996 meeting that individuals should be required to live in a resident zone community for at least one year before becoming eligible for subsistence uses within the park.
- The SRC prepared a hunting plan recommendation at their November 1997 meeting (see Action 2.5, pages 5-6). The recommendation was made to establish a minimum residency requirement of one year for those people living in a resident zone community.
- The draft hunting plan recommendation was mailed to Regional Advisory Councils, Local Advisory Committees, the Secretary of Interior, and the Governor of Alaska in November 1997.
- In the fall of November 1997, the Aniakchak SRC prepared a draft hunting plan recommendation that would require residents of designated resident zone communities to live in a resident zone community for at least one year before becoming eligible for subsistence uses within the monument. In the fall of 1998 the hunting plan recommendation was approved by the SRC but not forwarded to the Secretary until April 2000. The SRC put a hold on their recommendation until they had the opportunity to consult with other SRCs.
- At the April 1998 meeting a motion was passed to accept the one-year residency requirement. Specifically the SRC agreed to use the existing federal subsistence definition with an amendment of a one-year residency requirement in an NPS resident zone community. This includes a provision allowing a subsistence user to continue to be eligible to hunt in the Park if they move from one NPS resident zone into another as long as they have lived there one year prior to the move.
- On April 13, 1998, Superintendent Jarvis received a phone call from Chairman Vale stating that he is now uncomfortable with the SRC hunting plan recommendation for the one-year residency that includes the amendment to allow other resident zone residents an exception. He felt that with the objection of Robert Marshall and Fred John Jr. and the absence of the other SRC members the motion probably would not

have passed. Chairman Vale would like to discuss this at the October SRC chair meeting and at the November SRC meeting before action is taken.

- The SRC chairs met in Anchorage in October of 1998 and discussed this hunting plan recommendation and decided to get comments back to John Vale for consolidation and action. Although no deadline for comment was agreed upon, each SRC coordinator was polled for comments on this issue. Those SRCs who had comments are summarized below.

- The Denali Commission stated they did not feel the one-year residency was appropriate for Denali National Park resident zones. Although if this hunting plan recommendation is passed, the Denali Commission feels it should be specific to Wrangell-St. Elias National Park and not be applicable to other park areas unless supported by their respective SRCs (see Action 2.5, page 7).

- In May 1999 the Gates of the Arctic SRC re-evaluated their 1987 hunting plan recommendation on eligibility for resident zones. The Commission shares the concerns of the Wrangell-St. Elias SRC. The Gates SRC feels it is only reasonable to expect a new resident of a designated resident zone community to have also established a pattern of subsistence use. They also agree that a one-year cycle of subsistence activities off park lands would be a minimal period of time in which to do this. They further agree that people who leave a community temporarily for school or work and return, should be excused from these requirements (see GAAR recommendation #2, Action 2.5, pages 8-9).

- A letter dated June 1999, from the Regional Director to Chairman Vale indicated that the NPS was awaiting a response from the Governor on the hunting plan recommendation before developing a response to the SRC (see Action 2.5, page 10).

- Governor Knowles responded to the SRC hunting plan recommendation on July 28, 1999, indicating that he shared their concern but did not agree with the recommendation (see Action 2.5, pages 11-12). When the State was implementing ANILCA (pre-1990) they believed a durational residency requirement was unnecessary and risked becoming arbitrary and unfair. Under the new Federal Subsistence Regulations a person is required to live in Alaska for 12 months before being considered a "resident" for purposes of ANILCA's subsistence priority. This is consistent with the state's requirement of 12 consecutive months Alaska residency before an individual may harvest fish and wildlife under a state-issued resident license. If properly enforced, the Governor believes the regulation can minimize potential abuses and ensure that only those individuals who legitimately reside and intend to remain in a resident zone community are eligible for subsistence uses of the park.

- The SRC Chairs met in Anchorage in October 1999 and discussed the recent changes to the Federal Subsistence Regulations that now require subsistence hunters to have a State resident hunting license, which requires one year of residency in the State. The Chairs felt the regulation did not go far enough in protecting subsistence rights and decided to once again put the recommendation before their Commissions in the coming year.

- On February 4, 2000, NPS Associate Regional Director Judy Gottlieb responded to the recommendations made by the Chairs of the SRCs at a workshop held in October 1999. In regard to the one-year residency requirement, Gottlieb said it would be beneficial to get recommendations from each of the SRCs on this issue and perhaps from the Regional Advisory Councils as well before NPS replies to the Wrangell-St. Elias SRC hunting plan recommendation. If all SRCs support this proposal then NPS will look at the issue for all parks and monuments in the state. All SRC recommendations will be considered in NPS' response to the Wrangell-St. Elias SRC hunting plan recommendation.

- In a memo dated February 14, 2000, to Associate Regional Director Gottlieb, the Denali SRC revised their position on the one-year residency requirement. The Denali SRC passed a motion to request a residency requirement with the same exceptions (for military service, college attendance, etc.) that the Wrangell-St. Elias SRC proposed, but with a three-year stay required for eligibility instead of one year. The reason for the longer requirement is to reduce hunting pressure on the local area and to preserve resources for longtime residents who have traditionally depended upon them. The SRC believes it takes more than just one year for individuals to sufficiently learn the area and the traditional use practices for the community.

- Following discussions at the November 3-4, 2000 meeting of the SRC in Yakutat, the SRC wrote a letter to Alaska Regional Director Arnberger requesting that staff initiate the regulatory process to require a minimum residency requirement of one year for people living in resident zones. The SRC asked to have an exemption written for people who have left the community for education or military service (letter is in Chapter 1; see Action 1.4, pages 2-3).

- At its February 20-21, 2001 meeting in Gulkana, the SRC voted to draft a letter to support the one-year residency requirement. Although the SRC had previously sent a letter to Alaska Regional Director Arnberger and had their comments on record regarding the issue they felt it was appropriate to reiterate their desire to see the regulation changed.

Current Status

- In January 2003, park and regional office staff briefed Alaska Regional Director Arnberger on the interest of several SRCs in a minimum residency requirement for people living in park resident zones. On behalf of the SRCs, it was requested that the regulatory process to require a minimum residency requirement be initiated.
- On October 8, 2003, Acting Regional Director Marcia Blaszak wrote to SRC Chair Ray Sensmeier and to Denali SRC Chair Florence Collins rejecting the SRCs' hunting plan recommendations for a minimum residency requirement. The letter explained that a legal review of the recommendation by the Solicitor's Office for the Department of the Interior, Alaska Region, had found that a residency requirement would be inconsistent with the intent of Congress as expressed in ANILCA. (For letter and September 30, 2003, memorandum from the Solicitor's Office, see Action 2.5, pages 13-18).

Authority:

36 CFR Part 13.420 Definitions

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234
FAX (907) 822-7216

November 4, 1997

Northway Village Council
Lorraine Titus
PO Box
Northway, AK 99764

Dear Ms. Titus,

The Wrangell-St. Elias National Park Subsistence Resource Commission met on November 3-4, 1997 and proposed a hunting plan recommendation pursuant to the requirements of Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. The Commission desires comment from Local Advisory Committees, Regional Subsistence Advisory Councils and the public on the draft recommendation. Copies of the enclosed draft recommendation were sent to each of the appropriate local Fish and Game Advisory Committees and Regional Subsistence Advisory Councils for consultation. Comments must be received prior to March 24, 1998.

We would appreciate any comments you may have on this draft recommendation. We look forward to your reply.

Sincerely,

John Vale, Chair

cc: Governor Tony Knowles, State of Alaska
Terry Haynes, ADF&G
Southcentral Regional Subsistence Advisory Council
Eastern Interior Regional Subsistence Advisory Council
Southeast Regional Subsistence Advisory Council
Upper Tanana/Fortymile Fish and Game Local Advisory Committee
Subsistence Resource Commissions at Lake Clark/Denali, Cape Krusenstern/Kobuk Valley, Gates of the Arctic, and Aniakchak
Citizens Advisory Commission on Federal Areas
Alaska Outdoor Council
Copper River Native Association
AHTNA
Councils at: Tazlina, Kluti-Kaah, Tanacross, McCarthy, Chistochina, Gulkana, Tetlin, Dot Lake, Chitina, Gakona, Mentasta Lake, and Northway

Chairman: John Vale
Members: Paul Claus, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Suzanne McCarthy, Ray Sensmeier

Wrangell-St. Elias National Park Subsistence Resource Commission Draft Hunting Plan Recommendation 97-01

The Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) met on November 3-4, 1997 in Glennallen and proposed a subsistence hunting plan recommendation. The Commission intends to solicit comments from the Regional Subsistence Advisory Councils, Local Advisory Committees and the public on this draft recommendation prior to taking final action.

We would like to receive comments on this proposal prior to March 24, 1998, the date of the next SRC meeting. Comments may be sent to: Chair, Wrangell-St. Elias National Park Subsistence Resource Commission, PO Box 429, Copper Center, Alaska 99708.

PROPOSED RECOMMENDATION

The Subsistence Resource Commission (SRC) recommends that a minimum residency requirement, of one year, be established for individuals in resident zone communities. The residency requirement would have to be met prior to gaining eligibility to hunt in the Park. The recommendation would permit individuals who temporarily leave the community to serve in the military or attend school to retain their eligibility for subsistence if residency in the community had previously been established.

DISCUSSION

The SRC discussed the need to place some restriction on eligibility in resident zone communities for individuals and families who are now moving into the area. Current regulations allow for "instant eligibility" for subsistence in the park for newcomers who move into a park resident zone community. The Commission felt there is a problem with individuals moving into the community and establishing instant eligibility without intending to permanently reside in the resident zone community. The Commission felt that minimum residency of one year is necessary to establish a persons primary residency.



March 4, 1999

John Vale, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Wrangell-St. Elias Hunt Plan Recommendation 97-01, Residency Requirement for Resident Zones:

Commission members,

The Denali Subsistence Resource Commission, at its February 26, 1999, meeting, discussed the Wrangell-St Elias SRC's proposed hunting plan recommendation 97-01 regarding a one year residency requirement for resident zone citizens before becoming eligible for subsistence uses on park lands. We had discussed this proposal in our previous August 28, 1998, meeting but did not express a formal opinion on it then. At our most recent meeting, the Denali Commission discussed it further and passed a motion by unanimous vote, stating the Commission does not feel the one-year residency is appropriate for Denali National Park resident zones, but the Denali Commission does appreciate Wrangell-St. Elias's concerns and needs for such program.

If this Hunting Plan recommendation is passed, it should be specific to Wrangell-St. Elias National Park and not be applicable to other park areas unless supported by their respective SRC's. The Denali Commission also had concerns for former residents and individuals who have had traditional use of Wrangell-St. Elias Park and Preserve who have moved away for various reasons and are now returning to one of Wrangell's resident zones. We believe these former residents should be excepted from having to serve the one-year wait before being eligible.

We appreciate being informed of your concerns. If you have any further questions, please contact Florence Collins, Chair, Denali Subsistence Resource Commission. (907) 457-2674.

Sincerely,

Florence Collins

Florence Collins
Chair, Denali Subsistence Resource Commission

CC:
Steve Martin, Superintendent Denali National Park and Preserve
Subsistence Resource Commissions at Lake Clark, Cape Krusenstern/Kobuk Valley, Gates of the Arctic, and Aniakchak.

GATES OF THE ARCTIC NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
201 First Ave, Doyon Bldg.
Fairbanks, AK 99707
(907) 456-0281 or FAX (907) 456-0452

L30 GAAR SRC

20 May 1999

Mr. John Vale
Chair, WRST SRC

Dear Mr. Vale,

During a regular meeting of this Commission on April 20 and 21, 1999, we discussed your Hunting Plan Recommendations to establish a 1 year residency requirement for subsistence.

We share your concerns and submitted a similar recommendation (HPR 87-2 (#2)) in 1987 in an attempt to protect existing subsistence activities and ensure the commitment of new residents to a subsistence lifeway.

We feel 36 CFR 13.44 (subsistence permits for persons whose primary, permanent home is outside a resident zone) section (a)(1) is instructive. This regulation requires that an applicant demonstrate that,

> (1) Without using aircraft as a means of access for the purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument.

We feel that it is only reasonable to expect a new resident of a designated resident zone community to have also established a pattern of subsistence use. We also feel that a 1 year cycle of subsistence activities off park lands would be a minimal period of time in which to do this and create the minimal burden on the new resident. Further, we agree with the joint Chairs recommendation that people who leave a community temporarily for school or work, and return, would be excused from these requirements. We have decided to revisit this issue ourselves and will be interested to see the result of your effort.

Sincerely,

Pollock Simon Sr.

Pollock Simon, Sr.
Chairperson

enclosure

Pollock Simon, Sr. (Chairperson), Jack Reakoff (Vice-Chairperson)
Bill Fickus, Levi Cleveland, Taqulik Hepa, Stanley Ned,
Ben Hopson, Jr., Carolee Walker, Rachel Riley

Gates of the Arctic NP SRC
HPR 87-2 (#2)

RECOMMENDATION #2: Eligibility and Resident Zones

The resident zone system (36 CFR 13.43) utilized in the vicinity of the Gates of the Arctic Park and Preserve has been evaluated by the Commission and found to be generally suitable. While not perfect, the system, if carefully monitored, appears to provide a means for addressing subsistence use patterns on a community rather than an individual basis in most cases. Such an approach is consistent with that of the state, and concludes with legislative history which states that "customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis" (126 Cong. Rec. H10546; 11-12-80). Furthermore, use of community resident zones avoids the need for complex and cumbersome permit systems; Congress intended that "rural communities and cultures will not be burdened by implementation of a complex, and in many instances culturally disruptive, regulatory system, unless necessary in specific instances to protect and administer park unit values."
(Cong. Rec. 311135; 8-18-80).

The Commission recognizes that the intent of Congress was to provide for the protection and continuation of the lifestyle of local rural residents who have or who are a member of a family which has an established or historical pattern of subsistence hunting in the park. However, maintaining the resident zone concept may have the effect of allowing a few new residents (not previously residing in the resident zone or otherwise related by family ties) to qualify for use of park resources. In these cases, the Commission recommends that those moving into existing zones should be required to live full time in that community for at least 12 months before being allowed to utilize the park for subsistence. This recommendation would help ensure that any new residents to a resident zone community live there throughout one annual cycle of harvest activities and begin to understand existing patterns of use by community residents. This recommendation is not meant to apply to persons who temporarily leave a resident zone community for a limited time (e.g. to attend school, serve in the military, or for temporary employment).

The Commission and the NPS should continue to monitor closely the suitability of the resident zones as now identified and modify them as necessary. If substantive changes occur in any of the communities such that established patterns of subsistence use are significantly altered, the Commission might recommend that a permit system be substituted for the resident zone to ensure that park values and subsistence needs are protected. Such changes might include connection of the community to year-round road or significant changes in the local economy to the degree in which subsistence no longer comprises a major component.

If a community or area is deleted from a resident zone, the Commission recommends that permits be issued to those local rural residents who demonstrate that the individual, without using aircraft (except in Anaktuvuk Pass) as a means of access for purposes of taking fish and wildlife for subsistence uses, has (or is a member of a family which has) historically engaged in customary and traditional subsistence uses within the park or region.

United States Department of the Interior

NATIONAL PARK SERVICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

L30 (AKSO-RER)

JUN 1 1999

Mr. John Vale, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Dear Mr. Vale:

Thank you for your letter of April 21, 1999, to Secretary Babbitt regarding Wrangell-St. Elias National Park Subsistence Resource Commission Hunting Plan Recommendation 99-01. Your letter has been forwarded to our office for response.

The Commission's recommendation falls under the guidelines of Section 808(b) of the Alaska National Interest Lands Conservation Act (ANILCA). Section 808(b) of ANILCA provides for implementation of your recommendation unless it would violate recognized principles of wildlife conservation, threaten the conservation of healthy populations of wildlife in the park, would be contrary to the purposes for which the park is established or would be detrimental to the satisfaction of subsistence needs of local residents.

Section 808(b) also provides for consultation with the State of Alaska if requested by the Governor within 60 days. Our experience with a similar residency proposal suggests it is likely that the Governor's Office will want to carefully review your recommendation. For this reason it could be several months before a final decision is reached.

We appreciate your patience and willingness to work with the National Park Service on subsistence management in Wrangell-St. Elias National Park and Preserve. If you have any additional questions, please continue to consult with the park superintendent.

Sincerely,

Robert D. Barbee
Regional Director

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

July 28, 1999

Mr. John Vale
Chair, Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Highway
Copper Center, AK 99573

Dear Mr. Vale:

Thank you for your letter requesting my review of the Wrangell-St. Elias Subsistence Resource Commission Hunting Plan Recommendation 99-01. This recommendation would establish a one-year residency requirement in resident zone communities before individuals would be eligible for subsistence hunting in the park. I understand the concerns underlying this recommendation and agree that only individuals who have established a primary, permanent home in a resident zone community should be entitled to subsistence uses of the park.

When the state was implementing ANILCA, pre-1990, we believed this concern could be addressed satisfactorily by reviewing verifiable indicators of residency and by challenging those cases where permanent residence was in doubt. We believed a durational residency requirement was unnecessary and risked becoming arbitrary and unfair.

Also, the legislative history of ANILCA shows the intent of Congress was not to impose durational residency requirements on Alaskans in particular communities. See, S. Rep. No. 413, 96th Cong., 1st Sess. 233 (1979) (the reference to "rural" residents is "not intended to impose a durational resident requirement . . . or impede the traditional movement of Alaska residents between the rural areas and major population centers and vice versa."); see also, 1990 Informal Op. Att'y Gen. 149 (advising the Alaska Department of Fish and Game that durational residency requirements may not be used to identify who may engage in subsistence uses under ANILCA).

Mr. John Vale
July 28, 1999
Page 2

I share the concern that a problem arises when non-Alaska residents move into rural communities in a resident zone and immediately qualify for the Title VIII subsistence priority, even though they are not eligible for a state resident hunting license, but I understand new federal subsistence regulations are designed to avoid this problem. These regulations require residency in Alaska for 12 months before an individual is a "resident" for purposes of ANILCA's subsistence priority. See, 64 Fed. Reg. 1276, 1288 (January 8, 1999). This is consistent with the state's requirement of 12 consecutive months Alaska residency before an individual may harvest fish and wildlife under a state-issued resident license.

If properly enforced, I believe the above mechanisms can minimize potential abuses and ensure that only those individuals who legitimately reside and intend to remain in a resident zone community are eligible for subsistence uses of the park.

Thank you once again for the opportunity to review and comment on this hunting plan recommendation.

Sincerely,

Tony Knowles
Governor

cc: The Honorable Bruce Babbitt, Department of the Interior
Robert Barbee, National Park Service, Anchorage
Commissioner Frank Rue, ADF&G

United States Department of the Interior

ALASKA REGION
NATIONAL PARK SERVICE
240 W. 5th Avenue, Rm 114
Anchorage, Alaska 99501

IN REPLY REFER TO:

L30 (AKRD-SUBS)

OCT - 8 2003

Mr. Ray Sensmeier
Wrangell-St. Elias Subistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Dear Chairperson Sensmeier:

I am responding to your letter from April 1999 on behalf of the Secretary of Interior. My apologies for the delay in the response. Your letter requesting a residency requirement for individuals moving into Wrangell-St. Elias National Park resident zone communities (Hunting Plan Recommendation 99-01) is a complicated issue. The Solicitor's Office within the Department of Interior reviewed and analyzed all the issues involved with this hunting plan recommendation. Other Subsistence Resource Commissions asked for similar requirements as well. For example, Denali made a recommendation in 2002 similar to your SRC. I wanted to be sure that our responses were consistent and carefully considered.

Attached is the opinion, which states that a residency requirement would be inconsistent with the intent of Congress as expressed in ANILCA. This is similar to prior decisions by the Department denying requests for a durational residency. If the amount of subsistence hunting by qualified local rural users ever reaches an unsustainable level, the SRCs certainly could consider proposing other limitations that are authorized specifically by ANILCA Section 804. We hope we do not ever reach that situation.

There will be opportunity to discuss this opinion at the workshop on October 21. Please accept my appreciation for your many years of service and dedication to the Wrangell-St. Elias Subsistence Resource Commission.

Sincerely,

Marcia Blaszak
Acting Regional Director

Attachment

cc: Superintendent, Wrangell-St. Elias NPP
Subsistence Manager, Wrangell-St. Elias NPP
Special Assistant to the Secretary
Subsistence Resource Commission Chairs

United States Department of the Interior

OFFICE OF THE SOLICITOR
Alaska Region
4230 University Drive, Suite 300
Anchorage, Alaska 99508-4626
Tel: (907)271-4131 Fax: (907)271-4143

September 30, 2003

MEMORANDUM

TO: Acting Regional Director, Alaska Region
National Park Service

FROM: Regional Solicitor, Alaska Region

SUBJECT: Durational residency proposals for establishing local rural residents' eligibility to subsistence hunt in National Parks and Park Monuments in Alaska

This is in response your request that this office provide a legal review of recommendations submitted by two National Park Subsistence Resource Commissions (SRCs) pursuant to § 808 of the Alaska National Interest Lands Conservation Act (ANILCA). 16 U.S.C. § 3118. Section 808 of ANILCA required the Secretary to establish SRCs consisting of local subsistence users for each national park or park monument (park) in Alaska that permits subsistence hunting within the park unit. 16 U.S.C. §3118(a). The SRC for each park may make such recommendations to the Secretary as it deems necessary related to that park's subsistence hunting program. Id. The specific SRC recommendations you have asked us to review would impose durational residency requirements of one year and three years in length upon new local rural residents of park resident zone communities surrounding Wrangell-St. Elias and Denali National Parks, respectively, before they could qualify to subsistence hunt in the nearby park.

Having reviewed the residency recommendations submitted by the SRCs, as well as ANILCA and its legislative history, the National Park Service's (NPS) regulations, and prior opinions of the Solicitor's Office, we are convinced that the SRC proposals in this instance are inconsistent with the intent of Congress as expressed in ANILCA. Therefore, we are reaffirming the Department's position, articulated on past occasions when the issue arose, that the imposition of durational residency requirements to limit eligibility for local subsistence hunting privileges in national parks and park monuments is impermissible under ANILCA. Consequently, we recommend that the two SRCs be informed of our conclusion and that their specific hunting plan recommendations be rejected. Our analysis follows.

SRC Durational Residency Proposals

The Wrangell-St. Elias National Park SRC submitted a subsistence hunting plan recommendation to the Secretary which calls for the establishment of a minimum local residency requirement of one year's duration for individuals moving to local park resident zone

communities prior to their being eligible to hunt in the park.[1] The SRC's recommendation contemplated that those individuals who have established eligibility by meeting the one-year residency requirement would retain it if they were temporarily away from their residence because of military service or to attend school. The SRC explained the reason for its recommendation was that it felt there was a problem with individuals moving into the local resident zone communities of Wrangell-St. Elias National Park and establishing instant eligibility for subsistence hunting within the park without intending to reside permanently in the local communities.

As provided in § 808 of ANILCA, the Wrangell-St. Elias SRC transmitted a copy of its proposed durational residency recommendation to the Governor of Alaska. In a letter dated July 28, 1999, the State of Alaska responded to the SRC by opposing the recommendation and asserting that it would be contrary to ANILCA and its legislative history.[2]

In a similar manner, the Denali National Park SRC recommended to the Secretary that a hunting plan amendment be adopted that would establish a minimum local residency requirement of three years before individuals moving to the Cantwell local resident zone community may gain eligibility to subsistence hunt in Denali National Park. The recommendation also made an exception for individuals temporarily away from the community for military service or to attend school. In explaining its recommendation, the Denali National Park SRC noted that the population of the community of Cantwell has doubled in recent years and has developed more of a transient nature than in the past. As with the Wrangell-St. Elias durational residency proposal, the State of Alaska responded to the Denali National Park SRC's recommendation by opposing the proposal.[3]

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[1] The NPS' park regulations set out requirements for local resident zone communities and qualifications for local rural residents to engage in subsistence uses in each national park and park monument in Alaska where subsistence uses are permitted. See 36 C.F.R. Subpart 13B (36 C.F.R. §§ 13.40-13.51). The individual local communities which qualify as local subsistence resident zones for each park are also set out in regulation. See 36 C.F.R. Subpart 13C (§§13.60-13.74). For Wrangell-St. Elias National Park, there are 23 local resident zone communities listed in the NPS' regulations, including Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway/Northway Village/Northway Junction, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina and Yakutat. 36 C.F.R. § 13.73(a). For Denali National Park, the local resident zone communities are Cantwell, Minchumina, Nikolai and Telida. 36 C.F.R. § 13.63(a).

[2] See Letter to J. Vale, Chair, Wrangell-St. Elias National Park Subsistence Resource Commission, from T. Knowles, Governor of Alaska (July 28, 1999). In its response to the Wrangell-St. Elias SRC's recommendation, the Governor also referenced a 1990 Informal Opinion of the State Attorney General advising the Alaska Department of Fish and Game that durational residency requirements could not be used as a requirement for eligibility to engage in subsistence uses under ANILCA. Id. at 1, citing 1990 Informal Opinion Attorney General 149 (dated March 21, 1990).

[3] In a letter to the Denali SRC from the Commissioner of the Alaska Department of Fish and Game dated July 29, 2002, the Commissioner stated that the three-year residency requirement was not

Legal Interpretation of ANILCA

The use of durational residency requirements as a means of determining local rural subsistence eligibility under ANILCA first came up in public comments on the January 19, 1981, proposed interim rule for managing park system units in Alaska. 46 Fed. Reg. 5642 (January 19, 1981). ANILCA had just recently been enacted on December 2, 1980, and it added a total of 13 new and expanded units to the national park system in Alaska. See ANILCA §§ 201 & 202, 16 U.S.C. § 410hh-1 and 431 note. In their comments on the proposed rule governing park management, certain Alaska Native organizations recommended that a one-year durational residency requirement be added as proof of an individual's qualification as a "local rural resident" for subsistence eligibility in the national parks and park monuments established by ANILCA. In the preamble to the final interim rule issued later that same year, the NPS responded that the Alaska Native organizations' "recommendations have intuitive appeal, but also present legal and equitable problems." 46 Fed. Reg. 31836, 31840 (June 17, 1981).

A few years later, the Attorney General of the State of Alaska sought the Department of the Interior's official views on a wide variety of ANILCA subsistence topics. The State's letter raising numerous legal issues was submitted shortly after the Department had made a determination that the State of Alaska's subsistence program was no longer in compliance with the requirements of ANILCA requiring protection of a "rural" subsistence preference. In a letter dated April 4, 1986, the Associate Solicitor of the Division of Conservation and Wildlife, Office of the Solicitor, responded to the questions submitted by the Alaska Attorney General. In response to the State Attorney General's explicit question: "[d]oes ANILCA authorize a durational rural residency requirement in identifying who may engage in subsistence uses," the Associate Solicitor responded definitively "no."[4] In explanation, the Associate Solicitor's letter cited the legislative history of ANILCA and concluded that means other than a durational residency requirement must be utilized to establish a person's permanent residence in a rural area.[5]

The legislative history referred to in the Associate Solicitor's opinion interprets key language of ANILCA providing a subsistence preference for "rural" residents of Alaska. In the Senate Report on ANILCA prepared by the Committee on Energy and Natural Resources, the Committee stated:

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necessary because the State had not seen any evidence that an increasing population near Cantwell over the past 20 years had led to increased park hunting effort or success. The letter also referenced the State's earlier letter to the Wrangell-St. Elias SRC and the 1990 Informal Opinion of the State Attorney General. Letter to F. Collins, Chair, Denali National Park Subsistence Resource Commission from F. Rue, Commissioner of the Alaska Department of Fish and Game (July 29, 2002).

[4] Letter to H. Brown, Attorney General of the State of Alaska, from the G. Norton, Department of the Interior, Associate Solicitor for Conservation and Wildlife at 5 (April 4, 1986). A copy of the Associate Solicitor's April 4, 1986, opinion is attached to this memorandum.

[5] Id.

3

> Although many residents of such cities such as Ketchikan, Juneau, Anchorage, and Fairbanks harvest renewable resources from the public lands for personal or family consumption, by its very nature a "subsistence use" is something done only by Native and non-Native residents of "rural" Alaska. The Committee adopted an amendment to clarify this point by limiting application of the definition to areas of "rural" Alaska, including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other Native and non-Native villages scattered throughout the State. However, the Committee does not intend to imply that the rural nature of such communities is a static condition; the direction of the economic development and rural character of such communities may change over time. It should be emphasized that this amendment is not intended to impose a "durational" rural residency requirement in the definition or impede the traditional movement of Alaska residents between the rural areas and the major population centers and vice versa.

S. Rep. No. 413, 96th Cong., 1st Sess. 233 (1979) (emphasis added). With this explanation, Congress made explicit its views and its intent that ANILCA not be construed to impose a rural durational residency requirement for subsistence eligibility. Relying on this express indication of Congressional intent, the Associate Solicitor's opinion concluded that imposition of a durational residency requirement was not authorized by ANILCA. Solicitor's Opinion, note 4 supra, at 5.

The Associate Solicitor's opinion addressed the durational residency question in connection with the subsistence requirement for "rural residency" in § 803 ANILCA, 16 U.S.C. §3113, and did not separately discuss the "local residency" requirement in §§ 201, 202, 203 and 816 of ANILCA which is applicable only to subsistence uses of parks. 16 U.S.C. §§ 410hh, 410hh-1, 410hh-2 & 3126. However, there is no indication that Congress intended any different result as applied to the national parks. As Congressman Udall explained the subsistence residency provisions that were soon to enacted in ANILCA, "the residency component in the subsistence priority, both rural residency and local residency, is not intended to impose a durational residency requirement." 126 Cong. Rec. H 10546, 96th Cong., 2nd Sess. (November 12, 1980) (emphasis added).

Even after the Associate Solicitor's legal opinion in 1986, the Gates of the Arctic National Park SRC in 1987 submitted a hunting plan pursuant to section 808 of ANILCA. One of the Gates of the Arctic SRC's recommendations was a requirement that individuals must live in the local resident zone community for twelve months before becoming eligible to subsistence hunt in the nearby national park. The Department responded to this hunting plan on May 18, 1988. In addressing the twelve month durational residency requirement proposed by the SRC, the Acting Assistant Secretary for Fish and Wildlife and Parks concluded that it could not be implemented because ANILCA does not allow for durational residency requirements for local resident subsistence eligibility under the Act.[6]

[6] Letter to B. Nageak, Chair, Gates of the Arctic National Park Subsistence Resource Commission from S. Reece, Department of the Interior Acting Assistant Secretary for Fish and Wildlife and Parks (May 18, 1988).

Conclusion

Since ANILCA's enactment in 1980, the Department has consistently interpreted the Act as disallowing any durational residency requirements which would prevent new residents of local resident zone communities from participating in subsistence hunting in a nearby park for an extended period of time. We find no grounds for modifying this view now. Consequently, we recommend that written responses be prepared to the Wrangell-St. Elias and Denali National Parks SRCs which explain that the durational residency recommendations they have proposed for their respective parks cannot be implemented as they are inconsistent with ANILCA.[7] If you wish, the responses could also explain that if the amount of subsistence hunting by qualified local rural residents in a park ever reaches an unsustainable level, the SRCs could consider proposing other limitations on hunting eligibility, such as those which are specifically authorized by § 804 of ANILCA.[8]



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[7] This conclusion in no way implies that the existing requirement of permanent residency in a park's local resident zone community should not be enforced. The NPS' regulations have long defined "local rural resident" as:

> Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

36 C.F.R. § 13.42(a)(1). To the extent the SRC recommendations for Denali and Wrangell-St. Elias National Parks suggest that there may be a problem with people who are not permanent residents of each park's resident zone communities nevertheless obtaining eligibility to participate in subsistence hunting in those parks, the residency claims of such individuals should be investigated and appropriate action taken if the person if found not to be a permanent resident.

[8] See, e.g., 126 Cong. Rec. H 10546, 96th Cong., 2nd Sess. (November 12, 1980), which explains that if hunting pressure on wildlife populations in national parks by residents of communities designated as local subsistence resident zones increases to the point that the numbers of local eligible hunters must be reduced, measures may be taken to reduce the numbers of eligible subsistence hunters pursuant to § 804 of ANILCA. 16 U.S.C. § 3114. That section authorizes limiting subsistence use in times of shortage to the local residents most dependent on the resource and those who have the least access to alternative resources.

SRC Proposed Action 2.6

Action 2.6: Evaluation of the community of Cordova for possible inclusion in the resident zone.

Issue Background

- On April 6-7, 1998 the WRST SRC reviewed a petition March of 1998 by the Copper River/Prince William Sound Advisory Committee requesting both the Wrangell-St. Elias National Park Service, and the WRST SRC for the history as to why Cordova was not given the status as a Resident Zone Community and the necessary steps Cordova must take to be classified as such. The WRST SRC charged this responsibility to both the National Park Service (NPS) and the City of Cordova (see Action 2.6, pages 3-4).
- On July 6, 1998, the National Park Service sent a letter to Tom Carpenter, Chairman of the Copper River/Prince William Sound Advisory Committee stating the necessary steps Cordova must take to be classified as a Resident Zone Community. This letter also stated Cordova should assume the burden of compiling the information and documentation and submit to the NPS before the fall SRC meeting (see Action 2.6, pages 5-6).
- The week of July 13-17, 1998, the NPS conducted a preliminary inventory of their pre ANILCA records searching for materials on the history as to why Cordova was not given status as a resident zone community.
- During the November 17-18, 1998, SRC meeting, NPS presented the report requested by the SRC containing information about Cordova's past use of the Park (see Action 2.6, pages 7-8).
- As of November 1998, no information has been received from the Copper River/Prince William Sound Local Advisory Committee in response to SRC/NPS request of July 6, 1998.
- During the November 1998 SRC meeting, the SRC recommended that NPS set up a meeting in Cordova to explain/issue 13.440 subsistence eligibility permits and to allow the people of Cordova to provide information on their past history of subsistence use in the park. Chairman Vale offered to participate in this meeting.

- NPS worked with Tom Carpenter and Chairman Vale and set up a meeting for March 16, 1999, which was later cancelled due to inclement weather.
- Wrangell-St. Elias National Park and Federal Subsistence Board staff held a public meeting in Cordova on September 15-16, 1999 to discuss their subsistence use of the Park (primarily Unit 11). A total of fifteen (15) residents attended the two-day meeting. Eleven residents were interviewed on their individual and community C&T use of the park. Only five individuals elected to fill out subsistence eligibility permit (13.440) applications. The NPS will review these applications and issue permits on an individual or household basis to qualified applicants.
- On September 21, 1999 Tom Carpenter, Chairman of the Copper River/Prince William Sound Advisory Committee, sent a letter thanking Park Service staff for setting up the meeting in Cordova.
- On October 29, 1999, NPS sent a letter to Chairman Vale summarizing the content of the meeting in Cordova. NPS concluded that the community of Cordova failed to meet the "significant concentrations" test used to determine resident zone eligibility (see Action 2.6, pages 9-10).

Current Status

- The SRC wrote a letter to Tom Carpenter on February 23, 2000 indicating that they had reviewed the NPS report on the meeting with Cordova residents and concluded that resident zone status for Cordova was not warranted. The SRC reasoned that a significant concentration of residents who used the National Park for subsistence uses, without the use of an aircraft, was not demonstrated. Only 15 people out of approximately 2000 residents in Cordova testified on the community's behalf. Only 5 of those 15 show a history of using the park prior to 1980 without the use of an aircraft. The SRC reminded Carpenter that residents who can show a history of subsistence use in the park prior to 1980 can apply for a 13.440 permit (see Action 2.6, pages 11-12).

Authority

36 CFR 13.430 Determination of resident zones

Copper River/Prince William Sound Advisory Committee
P.O. Box 1558 • Cordova, Alaska 99574

Jon Jarvis
Park Superintendent
Wrangell St. Elias National Park & Preserve
PO Box 439
Copper Center, Alaska
99573

Dear Mr. Jarvis, 23 March 98

My name is Tom Carpenter, I am the Chairman of the Copper River/ Prince William Sound Advisory Committee. I am writing in regards to the Resident Zone Community Status for the City of Cordova. Through several conversations with both Bruce Greenwood of the National Park Service, and Danny Rosencranz of the Wrangell St. Elias Park Service, I have began to grasp the ever confusing process that is involved in becoming a user of the Hard Park. I am of the understanding that a 13.44 permit allows individuals to have access based on either personal or family Traditional use during the Pre Park era, but does not allow a community as a whole to have access. Since the early 80's, Cordovans have constantly been both confused and amazed as to why this town which lies 56 miles from the Park Boundary, was not included as a town with Resident Zone Community Status.

Through this letter, the Copper River/Prince William Sound Advisory Committee would like to petition both the Wrangell St. Elias National Park Service, and the Wrangell St. Elias Subsistence Resource Commission for the history as to why Cordova was not given the Status as a Resident Zone Community, and also what are the necessary steps that Cordova must take to be classified as such. This committee understands that this is probably going to be a lengthy process, but we are determined to do what ever it takes to gain the status of a Resident Zone Community. I would appreciate your cooperation with this matter, and will do anything within my power to assist you.

Copper River/Prince William Sound Advisory Committee
P.O. Box 1558 • Cordova, Alaska 99574

I Understand that there is a Subsistence Resource Commission meeting scheduled for April 6th. I would like to know if this Advisory committee could request a agenda change to include the following petition. I was just informed today by Danny Rosencranz that there was a call for public comment dealing with the Parks Subsistence Management. Unfortunately, this Advisory Committee was not sent the information. If this request is at all possible please call at (907) 424. 3354 Days, (907) 424.3101 Nights, or fax to (907) 424. 7227. Once again, I appreciate all your help with this matter.

Sincerely,

Tom Carpenter
Chairman, Copper River/Prince William Sound Advisory Committee

cc: John Vale, Chairman Wrangell St. Elias Subsistence Resource Comm.
U.S. Fish &Wildlife Service, Office of Subsistence Management
Ann Wilkinson, Regional Coordinator Boards

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park/Preserve
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

IN REPLY REFER TO:

L30(260)

July 6, 1998

Thomas Carpenter, Chairman
Copper River/Prince William Sound Advisory Committee
P.O. Box 1558
Cordova, Alaska 99574

Dear Mr. Carpenter:

Thank you for your letter of March 23, 1998, regarding Resident Zone Community status for the City of Cordova. Please accept our apologies for the long delay in providing a response to you.

On April 6, 1998, the Wrangell-St. Elias Subsistence Resource Commission (SRC) reviewed your petition requesting the history as to why Cordova was not given the status as a Resident Zone Community and the necessary steps Cordova must take to be classified as such. It was discussed by the members of the resource commission and the decision was made that a letter stating the criteria would be sent to Cordova with them taking the burden upon themselves to get the information and documentation needed back to us hopefully by the next SRC meeting which is November 17th, 1998.

NPS regulations in 36 CFR 13.43(a)(2) set forth the criteria by which resident zone communities or areas may be added or deleted. This section states, in part, that a resident zone shall include --

> *The communities or areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses...have customarily and traditionally engaged in subsistence uses within a national park or monument.*

This section of the regulation indicates the criteria that must be used to make a decision about the addition of Cordova to the resident zone.

In determining resident zone status, a community or area must generally exhibit the following eight factors, which exemplify customary and traditional use (FR 50 CFR Part 100 B.16[b]).

- A long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area
- A pattern of use recurring in specific seasons for many years

- A pattern of use consisting of methods and means of harvest, which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics
- The consistent harvest and use of fish and wildlife as related to past methods and means of taking; near, or reasonably accessible from the community area
- A means of handing, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate
- A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation
- A pattern of use in which the harvest is shared or distributed within a definable community of persons
- A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community area

NPS will be conducting a preliminary inventory of their pre ANILCA records the week of July 13-17, 1998 searching for materials on the history as to why Cordova was not given status as a resident zone community. A full report of our findings will be presented at the next Subsistence Resource Commission meeting scheduled for November 17 and 18, 1998 in Gulkana, with a half-day work session at Park headquarters. For further information, please contact our Subsistence Specialist, Heather Yates at 822-7246 or Devi Sharp, Chief of Resources at 822-7236.

Sincerely,

Jonathan B. Jarvis
Superintendent

cc: John Vale, Chairman Wrangell-St. Elias Subsistence Resource Commission
U.S. Fish & Wildlife Service, Office of Subsistence Management
Ann Wilkinson, Regional Coordinator Boards
Subsistence Resource Commission Members
Clarence Summers, National Park Service--Alaska Support Office

Information Regarding the History of Cordova to the Resident Zone for Wrangell-St. Elias National Park and Preserve Prepared for the WRST Subsistence Resource Commission November 1998

During a Wrangell-St. Elias Subsistence Resource Commission (WRST SRC) meeting on April 6-7, 1998 the WRST SRC reviewed a petition by the Copper River/Prince William Sound Advisory Committee requesting both the Wrangell-St. Elias National Park Service, and the WRST SRC for the history as to why Cordova was not given the status as a Resident Zone Community and the necessary steps Cordova must take to be classified as such. The WRST SRC charged this responsibility to both the National Park Service (NPS) and the City of Cordova. This document was prepared in response to that request.

On July 6,1998, the National Park Service sent a letter to Tom Carpenter, Chairman of the Copper River/Prince William Sound Advisory Committee stating the necessary steps Cordova must take to be classified as a Resident Zone Community. This letter also stated Cordova should assume the burden of compiling the information and documentation and submit to the NPS before the fall SRC meeting.

The week of July 13-17, 1998, the NPS conducted a preliminary inventory of their pre ANILCA records searching for materials on the history as to why Cordova was not given status as a resident zone community.

The search uncovered a document entitled *"Local Exploitation of D-2 Lands in the Gulf of Alaska Region."* This document highlights the use of the Copper River Delta and Prince William Sound by residents of Cordova. Information included in the document was gathered in Cordova for a period of about seven weeks, during January and February of 1977, by Stephen A. McNeary. Most information came from conversations and interviews with Cordovan residents. At the time of the study, the community of Cordova had a population of approximately 2,500 residents.

At the outset, McNeary proposed that Cordovans make little use of the proposed park area. A few fly to the Wrangells to hunt sheep or to Icy Bay for goats, but due to the distances and expense involved they cannot be considered local hunters. A few Cordovans have shot mountain goats as far east as the logging camp at Icy Bay, but there is no regular pattern of use. North of the Copper Delta, the Bremner River was said to be "rich country" but is rather inaccessible. Farther north, although the Wrangell Mountains are beyond the normal use area of most Cordovans, people may occasionally fly up for the mountain sheep hunting.

Cordovans do, however, make extensive use of the Copper River Delta AEC, as well as Prince William Sound. Ninety percent of the "subsistence" use of Prince William Sound by Cordova residents takes place in the area including Orca Inlet, Hawkins and Hinchinbrook Islands, and the eastern sound as far as Port Gravina.

Moose were introduced to the Delta beginning in 1949 and were first hunted in the 1960's, becoming a major food source for Cordovans. Most are taken near the roads in the western Delta area, while access to the Martin River-Bering River area is by plane or shallow-draught boat. A few deer are shot in the western Delta area, but the great majority come from the islands of Prince William Sound. Mountain goats are most easily accessible in the mountains north of the Copper

River Highway, while there is also a fly-in hunt in the Ragged Mountain-Bering Lake area east of the Copper River. Bear (mostly black bear) are also sought in the foothills north of the highway, with trophy hunting more important than the subsistence take.

In order to give a rough idea of the level of subsistence activities in Cordova, McNeary estimated that about a third of the population use wild food regularly (at least several times a week), perhaps another third use wild foods less frequently, while the remaining third use wild food rarely. Extrapolating from ADF&G harvest counts, about one household in three has deer meat (with approximately two deer per household) and about one household in eight gets a moose. For most Cordova hunters and fishermen, use of wild foods is not usually an economic necessity, but an important income supplement.

Through his interviews with Cordovan residents, McNeary found that everyone agreed subsistence" had decreased dramatically in the past twenty years, despite the introduction of moose. The decline in subsistence use can be attributed largely to increasing affluence due to rising fish prices. The federal food stamp program may also have played a role.

From an economic point of view, McNeary found only a few Cordovan families that conform to the ideal type of a "subsistence life-style". The majority of Cordovans hunt and fish for reasons of income supplement, taste preference, or recreation. Between these extremes; however, is a group (perhaps 10% to 20% of the population) who combine cash and subsistence economies on an opportunistic basis.

REFERENCES

McNeary, S. A. 1978. Local exploitation of D-2 lands in the Gulf of Alaska region. University of Alaska Cooperative Park Studies Unit. Occasional Paper Number 16

Stratton, L. 1989. Resource uses in Cordova, a coastal community of southcentral Alaska. Alaska Department of Fish and Game, Division of Subsistence. Technical Paper Number 153.

Stratton, L. 1992. Cordova: A 1988 update on resource harvests and uses. Alaska Department of Fish and Game, Division of Subsistence. Technical Paper Number 204.

2.

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park/Preserve
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

L30

October 29, 1999

Mr. John Vale, Chairman
Wrangell-St. Elias National Park SRC
P.O. Box 193
Yakutat, AK 99689

Dear John:

On September 15-16, 1999, Wrangell-St. Elias National Park and Preserve (NPS) and the Federal Subsistence Board Staff (FSB) held a public meeting in Cordova to discuss subsistence use of Wrangell-St. Elias National Park (Unit 11).

The purpose of the meeting was to provide the residents of Cordova an opportunity to demonstrate their customary and traditional use of subsistence resources in the Wrangell-St. Elias National Park prior to the establishment of the park in 1980, without the use of aircraft for access.

Two separate issues were discussed during the meeting: the request to make Cordova a resident zone community for Wrangell-St. Elias National Park and the proposals (deferred Federal Board Proposals 7 and 12 for 1999) to grant residents of Unit 6(C) customary and traditional use of Unit 11 within the Park.

Regarding the request to make Cordova a resident zone community for Wrangell-St. Elias National Park, the NPS determined that the community of Cordova failed to meet the "significant concentrations" test used to determine resident zone eligibility:

> *The "significant concentrations" test for resident zone community designation can be met by considering two factors: quantity of users and cultural vitality. To meet the "quantity" test the majority of residents of a community must essentially qualify for a 13.44 permit. To meet the "cultural vitality" test, the majority of a community must be linked to subsistence use of the park resources through cultural or family association, and that subsistence use must be consistent with local subsistence use customs. "Cultural Vitality" would be community-based. Both factors may be used together in making resident zone community determinations. (Reference: Preamble to NPS regulations, Federal Register, Vol. 46, No. 116, p. 31850, right column, middle paragraph)*

According to the 1990 U.S. Census, the total population of Cordova was 2,110. The total number of residents who attended the public meeting was fifteen (15), all non-Native. Although the majority of the residents of Cordova are non-Native, the community does have a significant Native population (11.2%) with an active Village Council. However, council members were unable to attend the public meeting as they were attending an Eyak meeting.

After speaking with each of the fifteen (15) attendees, only five (5) individuals elected to fill out subsistence eligibility permit (13.44) applications. The NPS is currently reviewing these applications and will issue permits on an individual basis to qualified applicants. Qualified applicants must demonstrate their customary and traditional use of subsistence resources in the Wrangell-St. Elias National Park prior to the establishment of the park in 1980, without the use of aircraft for access.

Documentation in support of the proposals (deferred Federal Board Proposals 7 and 12 for 1999) to grant residents of Unit 6(C) customary and traditional (C&T) use of Unit 11 within the Park, was conducted by FSB staff through personal interviews. A total of eleven (11) residents were interviewed on their individual and community C&T use of the park (see attached sheet for interview questions). Evidence demonstrating their history or pattern of using the National Park for subsistence purposes was brought in the form of photos, maps, and letters of support.

I sincerely hope the Commission finds this information useful when formulating their recommendations to the FSB in preparation for the annual meeting in May 2000.

Sincerely,

Hunter Sharp

Hunter Sharp
Acting Superintendent

enclosure

cc: Wrangell-St. Elias National Park Subsistence Resource Commission Members
Tom Carpenter, Copper River/Prince William Sound Local Advisory Committee Chairman

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

February 23, 2000

Tom Carpenter
Copper River/Prince William Sound Advisory Committee
P.O. Box 1558
Cordova, Alaska 99574

Dear Mr. Carpenter,

The Wrangell-St. Elias National Park Subsistence Resource Commission met on February 22-23, 2000 at Tazlina Village hall. At the meeting the commission discussed the request submitted by the Copper River/Prince William Sound Advisory Committee to have the city of Cordova considered for residence zone status for Wrangell-St. Elias National Park. We received a report from the park staff who visited Cordova in September of 1999. The report indicated that there is not a significant concentration of residents in Cordova with a history of hunting and fishing in the park prior to 1980 to justify the inclusion of Cordova as a resident zone community at this time. The decision to include a community as a resident zone community is decided by the factor set forth in 36 CFR section 13.43 (a). "The community must contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses have customarily and traditionally engaged in subsistence uses within the National Park or monument." When park staff held open meetings in Cordova there were 15 respondents out of a population of over 2000 people. Out of the 15 respondents 5 could show a history of subsistence use of the park prior to 1980 without the use of aircraft.

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Frank Entsminger, Fred John Jr. Gloria Stickwan, Don Horrell, Robert Marshall,

The Commission voted to support the park's conclusion that the Cordova does not meet the "significant concentrations test".

Individuals who can show a history of subsistence use in the park prior to 1980 without the use of aircraft can apply for a 13.44 permit.

Sincerely,

Wrangell-St. Elias National Park, Chair
Subsistence Resource Commission

cc: Governor of Alaska
Eastern Interior Regional Advisory Council
Southcentral Regional Advisory Council
Southeastern Regional Advisory Council
Superintendent Wrangell-St. Elias National Park

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Frank Entsminger, Fred John Jr. Gloria Stickwan, Don Horrell, Robert Marshall,

SRC Proposed Action 2.7

Action 2.7: Evaluate the community of Tolsona for possible inclusion in the resident zone.

Issue Background

- In April 1999, the Wrangell-St. Elias SRC received a letter from the Tolsona Community Corporation requesting the community be added to the resident zone for Wrangell-St. Elias National Park (see Action 2.7, page 2). The letter indicated that the community is primarily a part of Glennallen for the purposes of voting, school attendance, banking, mail, fuel purchases, and employment.
- Later in April 1999, the SRC responded to the community's request (see Action 2.7, page 3). The SRC invited residents of the community to attend the next meeting of the SRC scheduled for November 1999. They also indicated what information would be useful to the SRC in making a resident zone determination for the community. The SRC suggested that residents of Tolsona apply for subsistence eligibility permits (13.440) if they wanted to assure their subsistence rights were protected while awaiting a decision on their resident zone status.

Current Status

- In July 1999, the Tolsona Community Corporation again wrote to the SRC (see Action 2.7, page 4). The letter stated that the Corporation would like to continue to consider themselves residents of Glennallen rather than pursue the issue any further. They requested prior notice be given if any action was pending on this issue.

Authority

36 CFR 13.430 Determination of resident zones

TOLSONA COMMUNITY CORPORATION
File 173 Glenn Highway
Glennallen AK 99588-0023
(907) 822-3865 twcg@alaska.net

16 April, 1999

Subsistence Resource Commission
C/o Wrangell-St.Elias National Park Service
P.O. Box 439
Copper Center AK 99573

Dear Commissioners:

The residents of the community of Tolsona, Alaska, do hereby petition the SRC and the NPS for consideration of the determination of Resident Zone Community Status, for the purpose of harvesting subsistence resources in the Wrangell-St.Elias National Park and Preserve.

Whereas the residents of Tolsona are primarily part of Glennallen insofar as voting, school attendance, banking, Post Office boxes, fuel purchase, and employment, etc, we hereby urgently request to be included as a Resident Zone Community for all subsistence species resources in the Park and Preserve. This includes, but is not limited to, moose, sheep, caribou, black bear, furbearers, birds and fish and any others determined as customary and traditional use resources, now or in the future.

Sincerely,

Graham Ward, President

Fax NPS= 822-7216
Don Horrell = 822-3121

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

April 21, 1999

Graham Ward
Tolsona Community Corporation
Mile 173 Glenn Highway
Glennallen, AK 99588-0023

Dear Mr. Ward,

The Subsistence Resource Commission (SRC) for Wrangell-St. Elias National Park met on April 20, 1999 and discussed your request for resident zone status for the community of Tolsona. The SRC has agreed to consider your request and would like to have more information about the community of Tolsona. You, and/or other representatives of Tolsona are invited to the next meeting of the SRC which will be conducted sometime in November 1999 in the Glennallen area.

Information that would be helpful to provide to the SRC includes: The number of residents in the community, the history of the community and the history of the resident's use of subsistence resources in Wrangell-St.Elias National Park prior to 1980.

Since the status of Tolsona as a resident zone community is in question and is undecided, any resident who wishes to insure their rights to subsistence harvest in Wrangell-St. Elias National Park is welcome to request a 13.44 permit from the superintendent.

Please feel free to contact Devi Sharp, Chief of Resources or Heather Yates, Subsistence Specialist for Wrangell-St. Elias National Park at 822-5234 with any question you might have.

Sincerely,

John Vale
Chairman Wrangell St.-Elias National Park
Subsistence Resource Commission

TOLSONA COMMUNITY CORPORATION

Mile 173 Glenn Highway
Glennallen AK 99588-0023
(907) 822-3865 twcg@alaska.net

27 July, 1999

John Vale, Chairman
Wrangell-St Elias National Park
Subsistence Resource Commission
P.O.Box 439
Copper Center AK 99573

Dear Mr. Vale,

Thank you for your letter of 21 April 1999 in which you pointed out that the status of Tolsona as a resident zone community is in question and undecided.

Rather than pursue the issue at this time perhaps it is better just to continue to think of ourselves as residents of Glennallen as we always have in the past.

We believe this is the correct and reasonable position for the reasons stated in my previous letter i.e. voting, school attendance, banking, Post office boxes, fuel purchase, and employment. In addition we get our electricity and telephone service from Glennallen and many of us, myself included, have hunted in the area now covered by the park, however, proof or even evidence of such hunting would be hard to produce.

We in Tolsona Community Corporation are only a non-profit corporation and have neither the time nor resources to gather the information you requested but we are as much a part of Glennallen as Silver Springs, Copper Shore or Enchanted Acres. Any help you could provide in gaining resident zone status for us either as a part of Glennallen or in our own right would be greatly appreciated.

Please advise us if any positive or negative actions pertaining to this issue are immanent.

Sincerely,

Graham Ward, President

NPS Proposed Action 2.8

Action 2.8: Define the term "significant concentrations".

Issue Background

- The determination of resident zones is dependent upon the identification of a community or area that contains a "significant concentration" of rural residents who customarily and traditionally engage in subsistence uses within a park without using aircraft as a means of access. The term "significant concentrations" has not been defined and therefore is subject to interpretation. One interpretation suggests that resident zone determinations can be met in two ways: by quantity of users or cultural vitality.
- To meet the "quantity" test a majority of a community must be able to qualify to receive a subsistence eligibility permit (13.440 permit).
- To meet the "cultural vitality" test, a majority of the community must be linked to subsistence use of park resources through cultural or family association and their subsistence use must be consistent with local subsistence use customs.
- The SRC commented that the "significant concentration" evaluation should not be based on a percentage but should be left to the SRC to decide if a community is a viable resident zone community.

Current Status

- A comprehensive review of the NPS subsistence program has been completed. The review has highlighted the complexity of many issues, particularly of eligibility and the need to conduct further discussions to resolve eligibility concerns. The NPS recognizes the necessity for continued development and modification of the subsistence program based on review and input from the subsistence users, advisory councils and commissions, the general public and legal and technical advisors. Future review of eligibility including subsistence eligibility permitting will be done with the full participation of the above named parties.

Authority

36 CFR 13.430 Determination of resident zones
Preamble to 36 CFR (1981), page 71

Chapter 3

Preserve Eligibility

To be eligible to hunt in the preserve under subsistence regulations, you must be a "local rural resident." Although this term has not been defined, any person who lives near Wrangell-St. Elias National Park and Preserve, in a resident zone for Wrangell-St. Elias Park or who has been issued a subsistence permit (13.440 permit) is considered to be a "local rural resident" and therefore is eligible to hunt and trap in the preserve.

In addition to being a "local rural resident" the community or area where you live must also have a "positive" customary and traditional use determination for the area and species you intend to hunt or trap.

In summary, to be eligible to hunt in the preserve you must:

- be a local rural Alaska resident
- have a "positive" customary and traditional use determination for the area and species you intend to hunt or trap. These determination are listed in the Federal Subsistence Management Regulations.
- possess a valid State of Alaska license (for hunting and/or trapping)
- comply with season and harvest limit regulations
- comply with any State or Federal permits, harvest tickets or tag requirements

Authority

ANILCA Section 1313 Administration of National Preserves
36 CFR 13.410 Applicability
36 CFR 13.420 Definition for local rural resident
36 CFR 13.40(d) Hunting and trapping

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NPS Proposed Action 3.1

Action 3.1: Establish an eligibility system for subsistence use of preserves.

Issue Background

- In the future if use increases and resources are impacted it may become necessary to establish an eligibility system for subsistence use of preserves.
- A new system of eligibility may include resident zones, a roster and subsistence eligibility permits (13.440 permits) as needed to best fit the subsistence management of the preserve. The proposed eligibility system should be consistent with that established for park lands for simplicity.
- Regulatory additions or changes would be necessary before a program for preserve eligibility can be established.

Current Status

- A comprehensive review of the NPS subsistence program has been completed. The review has highlighted the complexity of many issues, particularly of eligibility and the need to conduct further discussions to resolve eligibility concerns. The NPS recognizes the necessity for continued development and modification of the subsistence program based on review and input from the subsistence users, advisory councils and commissions, the general public and legal and technical advisors. Future review of eligibility including subsistence eligibility permitting will be done with the full participation of the above named parties.

Authority

ANILCA Section 1313 Administration of National Preserves

Chapter 4

Subsistence Eligibility Permit (13.440)

A person or family that does not have their primary permanent residence within one of the 23 resident zone communities may apply for a subsistence eligibility permit by calling or writing the Superintendent. The applicant must demonstrate that they have a history or pattern of using the national park for subsistence purposes prior to the establishment of the park without the use of an aircraft for access. Park staff will interview the applicant and document the applicants use. If qualified, the applicant will be issued a subsistence eligibility permit.

The permit does not expire and may cover all permanent residents of the household. When children leave the household they must obtain their own subsistence eligibility permit. If the circumstances in which a person is issued a subsistence eligibility permit change, such as a change in the location of their primary permanent residence or household composition, the permittee should contact the Superintendent. Such changes require a review, and perhaps, reissuance of the permit to reflect the new information. Generally, a permit may be easily amended if the composition of the household changes due to marriage, birth, adoption, or if moving to a different rural residence. Approximately 40 subsistence eligibility permits have been issued as of November 1998.

The subsistence eligibility permit (13.440) does not supersede the requirement to have a "positive" customary and traditional use determination before engaging in subsistence uses in the national park.

Recently the NPS conducted a review of subsistence regulations and laws and received many comments and recommendations. This review has highlighted the complexity of many issues, particularly eligibility, and the need to conduct further discussions to resolve eligibility concerns. The NPS recognizes the necessity for continued development and modification of the subsistence program based on review and input from the subsistence users, advisory councils and commissions, the general public and legal and technical advisors. Future review of eligibility, including subsistence use permitting, will be done with the full participation of the above named parties.

Authority

36 CFR 13.440 Subsistence permits for persons whose primary, permanent home is outside a resident zone (previously 36 CFR 13.44)
36 CFR 13.495 Application procedures for subsistence permits and aircraft exceptions

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Chapter 5

Subsistence Access

Off -Road-Vehicles (ORV)

ORVs are not specifically mentioned as an allowed means of access in ANILCA Section 811 and 36 CFR 13.460; however, both allow for the use of "other means of surface transportation traditionally employed." Through the public involvement process for the park's General Management Plan, it was acknowledged that ORVs are a traditional means of accessing subsistence resources by local residents.

Any permanent resident of the resident zone or holder of a subsistence eligibility permit (13.440) may use an ORV for subsistence use within the park and preserve (including wilderness) without a permit. Voluntary ORV permits serve to document ORV use and are available at the Slana Ranger Station and Park Headquarters in Copper Center. ORV use is limited to those areas where they were traditionally employed for subsistence. It is recommended that ORV users travel on established trails and/or dry creek beds to minimize impacts associated with ORV use.

The established trails are Black Mountain, Boomerang Lake, Caribou Creek, Copper Lake, Kotsina Road, Lost Creek, Nugget Creek, Reeve Field, Soda Creek, Suslota Lake, Tanada Lake, and Trail Creek.

Snowmachines

Snowmachines may be used for any purpose, including subsistence, in both the park and preserve (including wilderness) providing there is sufficient snow cover (at least 6" - 1' of snow).

Airplanes

Airplanes are not permitted for providing access to the park for subsistence purposes. Subsistence users may not land outside the park or in the preserve and walk into the park to engage in subsistence uses. Subsistence users may not fly to private inholdings for the purpose of entering the park to subsistence hunt. However if an inholder uses an airplane to access private property within the park and then goes subsistence hunting, the regulation has not been violated because an aircraft was not used for access to lands and waters within a park or monument for subsistence purposes. Instead, the aircraft was used to access the inholding, an activity clearly allowed.

Residents of Yakutat may obtain a permit under an exception in ANILCA to access the Malaspina Forelands for subsistence purposes. The use of airplanes to access the preserve (including wilderness) for subsistence purposes is permitted.

Motorboats

Motorboats may be used for any purpose, including subsistence, in both the park and preserve (including wilderness).

Authority

ANILCA, Section 811 Access
ANILCA, Section 1110 Special Access and Access to Inholdings
43 CFR 36.11(a)(2) Special Access
36 CFR 13.450 Prohibition of Aircraft Use
36 CFR 13.1902 Aircraft Use
36 CFR 13.460 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed

SRC Completed Action 5.1

Action 5.1: Allow aircraft access to the park for subsistence purposes.

Issue Background

- In 1985 NPS Regional Director Contor distributed a memo to all park Superintendents outlining the prohibition on aircraft use for the purpose of harvesting subsistence resources (see Action 5.1, pages 3-4).
- In 1985 the SRC prepared an "emergency" recommendation requesting that the NPS follow 36 CFR 13.30 (now 13.50) regulations in closing the park to aircraft access. The NPS interpretation of aircraft access regulations considered subsistence hunting in the Park to be illegal if an aircraft was used to gain access to the park (see Action 5.1, pages 3-4). Landing an aircraft on private lands within the park or in the preserve to access the Park was not allowed under this interpretation. The SRC considered the NPS interpretation of the regulation to, in effect, constitute a closure. The recommendation was considered an "emergency" because the hunting season was about to begin (see recommendations on Action 5.1, pages 5-7).
- The Secretary's response to the recommendation said that the 1984 memo by Superintendent Budge, allowing subsistence hunting in the park by a hunter landing an aircraft in the preserve or on an inholding, was an incorrect interpretation of the regulation under 36 CFR 13.45 (now 13.450) (see Action 5.1, pages 8-9).
- In 1986, a hunting plan recommendation was forwarded to the Secretary asking for an allowance for use of aircraft for subsistence purposes and clarification of NPS policy on the issue. The Secretary's response to the SRC recommendation, in 1988, said that use of aircraft for subsistence was prohibited (see Action 5.1, pages 10-13).
- A solicitors opinion was issued in April 1986 on aircraft access to the park (see Action 5.1, pages 14-16). The opinion said that NPS regulations not only preclude the use of aircraft for use in the subsistence taking of fish and wildlife but precludes accessing the park for subsistence use by landing an aircraft on inholdings within the park or adjacent to the park and walking into the park to subsistence hunt or fish. However if an inholder uses an airplane to access private property within the park and then goes subsistence hunting, the regulation has not been violated because an aircraft was not used for access

to lands and waters within a park or monument for subsistence purposes. Instead, the aircraft was used to access the inholding, an activity clearly allowed.

- The Secretary of Interior responded to the SRCs hunting plan recommendation in May of 1988. The Secretary reiterated that NPS regulations specifically prohibit the use of aircraft for access in a National Park or Monument for the purpose of taking fish or wildlife for subsistence use (see Action 5.1, pages 17-21).
- In April 1989 Superintendent Martin wrote to Chairman Ellis of the Wrangell-St. Elias National Park SRC. He also reiterated the prohibition on aircraft use for subsistence harvest of resources in the park and described that only in extraordinary cases will NPS grant an exception to this determination (see Action 5.1, pages 22-23).
- In December 1989 the SRC prepared another hunting plan recommendation asking NPS to recognize that aircraft are a traditional form of access for residents of resident zone communities (see Action 5.1, pages 24-29).
- Comments from the SRC on the NPS issue paper indicate that the Commission would like the NPS to change its policy on use of aircraft for access to the park. The SRC would like NPS to allow landing of aircraft in the preserve, outside the park or on inholdings for access to the park for subsistence harvesting of resources.

Current Status

- The solicitor's opinion still stands. There are no further actions planned.

Authority

36 CFR 13.450 Prohibition of Aircraft Use
36 CFR 13.1902 Aircraft Use
36 CFR 13.495 Application procedures for subsistence permits and aircraft exceptions

United States Department of the Interior
NATIONAL PARK SERVICE
ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503 - 2892

IN REPLY REFER TO:
L30 (ARO-CTS)

2 JUL 1985

Memorandum

To: Superintendents, Northwest Areas, Gates of the Arctic, Denali, Lake Clark, Wrangell-St. Elias, Aniakchak

From: Regional Director, Alaska Region

Subject: Accessing the park/monument for subsistence hunting or fishing with aircraft via private land or the preserve

Members of the public throughout the state have recently indicated uncertainty about the legality of landing an aircraft on private land (either within or adjacent to a park/monument boundary) or within a national preserve, and walking into the park to subsistence hunt or fish.

The Regional Office interpretation (confirmed verbally by Regional Solicitor's Officer - Bob Babson and Chris Bockman, June 3, 1985) is as follows:

1. Section 811(b) of ANILCA only allows for "surface transportation" in park units for subsistence purposes.

2. Section 13.45 of 36 CFR (Prohibition of Aircraft Use) states that the "...use of aircraft for access..." for subsistence taking of fish or wildlife "...is prohibited...."

The key word in this section is "access." Use of an aircraft to directly access fish or game for subsistence purposes in the park or monument or to indirectly access fish or game of the park for subsistence is prohibited. No one (unless otherwise permitted via exception) may utilize aircraft with the intent of taking fish or game in the park for subsistence purposes by either landing in the park, on a private inholding, outside the park/monument boundary or in the preserve and then walk into the park/monument.

Because Section 13.45 of 36 CFR uses the word "access," and not "landing" any aircraft access to the park/monument with the intent of harvesting its fish and game for subsistence is

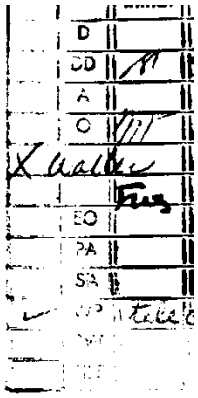
prohibited no matter where the actual landing of the aircraft may occur.

In the situation where an individual or family permanently resides on private property within a park/monument/preserve and their only reasonable means of access to their property is via aircraft, they may hunt within the park/monument from their private property. The use of aircraft in this instance is to access their home and is not being used with the sole intent to hunt within the park/monument

Another question has surfaced recently regarding the use of aircraft for subsistence hunting, fishing, gathering, etc., in the preserves. The current regulations do not prohibit the use of aircraft for subsistence purposes in any of the preserves (see 36 CFR, Subpart B, 13.45). However, 36 CFR, Subpart B, 13.41 does require a person to be a local rural resident in order to qualify for subsistence uses in the preserve.

(Sgd) Roger J. Contor

August 2, 1985



Regional Director
National Park Service
Alaska Regional Office
2525 Gambell St.
Anchorage, Alaska 99503

Dear Sir:

The Wrangell-St. Elias Subsistence Resource Commission adopted the enclosed emergency recommendation pertaining to aircraft access in your memo dated July 2, 1985.

We ask that you act on this emergency recommendation immediately as it is only eight days until the hunting season begins, and your memo of July 2, 1985 is contrary to previous administration.

Sincerely,

W. T. Ellis

W. T. Ellis, Chairman
Wrangell-St. Elias Subsistence
Resource Commission
S. R. Box 370
Gakona, Alaska 99586
822-3426

WTE:ts
Enc.

cc: Pacific Legal Foundation
Rick Davidge
Bill Horn
Representative Don Young
Senator Ted Stevens
Senator Frank Murkowski
Don Collingsworth
Governor Bill Sheffield
Alaska Legal Services
AHTNA Corporation
Copper River Native Assoc.
Alaska Land Use Council
Alaska Dept. of Fish & Game, Subsistence
Citizens Advisory Council on Federal Areas

EMERGENCY RECOMMENDATION

RECOMMENDATION:

Since the July 2, 1985 memo on aircraft access represents a permanent change in the type of access for the Wrangell-St. Elias area, the Subsistence Resource Commission therefore recommends that the closure regulations in 36 CFR 13.30 be followed by the National Park Service.

These regulations states that permanent closures or restrictions are required to be published in the Federal Register with a minimum of a 60 day public comment period and public hearings in the affected area.

This would allow this fall's subsistence hunt beginning August 10th to continue as traditionally enforced prior to the memo.

JUSTIFICATION:

The July 2, 1985 memo is a closure of subsistence hunting contrary to a previous statement by a park superintendent. A letter from Charles A. Budge, Wrangell-St. Elias Superintendent, dated February 13, 1984, addressed to Sue Entsminger states:

> "anyone can fly into the Preserve for the purpose of taking fish and wildlife in season in accordance with State and Federal hunting laws and regulations. It is then possible a local rural resident to proceed into the "park" to hunt. The same interpretation would also apply to private lands."

This has also been the accepted practice orally conveyed to local residents by local NPS authorities since the creation of the monument status in 1979 and 1980 and park and preserve land status since 1981.

The July 2, 1985 memo is also a closure contrary to Operations Memo 82-3 for guide lines which Robert Babson stated "are legally sufficient and in full compliance with Congressional intent as expressed in the applicable provisions of ANILCA. This includes each of the sections of the guidelines, including the section on subsistence activities."

The guidelines state: "Section 13.45 Prohibition of Aircraft Use - This section, with rare exceptions, prohibits the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses within the national park or monument. Since non-federal land within the exterior boundaries is determined not to be a park of the park area, then it stands to reason that an individual may access to or from this land by aircraft for subsistence hunting or fishing. We are applying one exception to this concept. Based on the property clause of the Constitution, the prohibition on the use of aircraft will be enforced on waters and accompanying submerged lands, which have been determined navigable."

The Subsistence Resource Commission also maintains that the July 2, 1985 memo is not legal because it denies "reasonable access" under ANILCA, Sec. 811 (a). It is also contrary to ANILCA, Sec. 811 (b) which states that the Secretary shall permit on the public lands "other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation". Walking into the Park from private property or the Preserve (which has been accessed by aircraft) is the traditional surface access to the park's subistence resources for which no reasonable alternative access exists.

The July 2, 1985 memo is also contrary to ANILCA, Sec. 802 which states that utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.

It is also contrary to Sec. 810 (a) which requires notice and hearings and reasonable steps to minimize adverse impacts upon subsistence uses to resources resulting from actions potentially adverse to subsistence.

Lastly, it is also contrary to Sec. 1314 (c) (1) which requires the Secretary to: notwithstanding any other process of this act, to administer subsistence uses to provide an opportunity for the continuance of such uses by local rural residents.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 2 9 1985



Mr. Bill Ellis, Chairman
Wrangell-St. Elias Subsistence
Resource Commission
SR Box 370
Gakona, Alaska 99586

Dear Mr. Ellis:

I want to thank you and the other members of the Wrangell-St. Elias Subsistence Resource Commission for the many hours you have spent over the past year and a half devising recommendations for a subsistence hunting program for the park. Yours is a difficult and oftentimes unclear task that requires dedication and foresight as well as an understanding of national values and the governmental process. Additionally, I take this opportunity to apologize to you and the commission members for the long delay in formally responding to your "emergency recommendation" concerning the July 2, 1985, policy interpretation on the use of aircraft by subsistence hunters for access to the Wrangell-St. Elias National Park.

In that regard, I want to state clearly that it is not within our authority to "select" which regulations we will enforce or ignore. The National Park Service is charged with the responsibility of enforcing all regulations. The memorandum of July 2, 1985, is considered by the Department of the Interior to be a formal written correction to a previous and incorrect interpretation of 36 CFR Part 13, Subpart B, Section 13.45 (Prohibition of Aircraft Use) by the former superintendent. The July 2 memorandum does not constitute a restriction or closure, in the sense that no change in the Code of Federal Regulations was made.

The National Park Service has attempted to approach this situation by making every effort to inform park users of the correction to local interpretation of the regulation. As you are probably aware, Superintendent Martin has discussed this issue at numerous meetings in the local area. The National Park Service conducted an "open house" in Fairbanks and at the park headquarters in Glenallen to help the public better understand the regulation. Each Tier II permit holder for Game Management Unit 11 (caribou) was mailed a letter briefly explaining the regulation and several news releases have been issued on this and related subjects.

In summary, I am committed to carrying out the intent of existing laws and regulations as well as providing for the continuation of the opportunity for a subsistence way of life by residents of rural Alaska.

Sincerely,

/s/ William P. Horn

Assistant Secretary for
Fish and Wildlife and Parks

cc:
Secretary's File
FW Reading File
FW (Horn Chron)
FW Fitzsimmons
PEP
AS/PBA
FHP-001 Reading File (Rm. 3104)
FHP-762
NPS-ARO

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

L30 (ARO-O) August 8, 1986

Secretary Donald Hodel
Department of the Interior
18th & C Streets, N. W.
Washington, D. C. 20240

Dear Secretary Hodel:

The Wrangell-St. Elias National Park Subsistence Resource Commission has completed its initial recommendations for a subsistence hunting plan as required by Section 808 of Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA). The enclosed recommendations represent the combined efforts of our nine-member commission which has met several times at various locations in and near the park since May 1984.

In August 1985, copies of the enclosed recommendations were sent to each appropriate local Fish and Game Advisory Committee and Regional Advisory Council for consultation (please see enclosed). I am also, on this date, sending these recommendations for a subsistence hunting plan to the Governor of Alaska, as required by Section 808 of ANILCA.

We will be eagerly awaiting your reply.

Sincerely,

W. T. Ellis

W. T. (Bill) Ellis, Chairman
Wrangell-St. Elias
Subsistence Resource Commission

cc: Honorable Bill Sheffield
Governor of Alaska
Subsistence Resource Commissions:
Aniakchak
Cape Krusenstern
Denali
Gates of the Arctic
Kobuk Valley
Lake Clark
Southcentral Regional Council
Southeast Regional Council
Interior Regional Council
ADF&G Subsistence Division
ADF&G, Glennallen & Tok
AHTNA Corporation
Copper River Native Assoc.
Citizens Advisory Commission on Federal Areas
Alaska Outdoor Council

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

The following represents recommendations for a subsistence hunting plan as required by Section 808 of Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA).

American Heritage Dictionary - Second College Edition
ACCESS: -n- 1. A means of approaching or nearing, 2. The act of approaching, 3. The right to enter or make use of.

APPROACH: -v- 1. To come or go near or nearer to.

LAND: -v- 1. To set down on land or another surface, 2. To cause to arrive in a place or condition.

1. AIRCRAFT ACCESS FOR SUBSISTENCE

Current National Park Service interpretation of its rules and regulations regarding aircraft access to park/preserve land(s) is contradictory to its past stand on this matter. A letter from Charles A. Budge, Wrangell-St. Elias Superintendent (retired), dated February 13, 1984, addressed to Sue Entsminger stated: "Anyone can fly into the Preserve for the purpose of taking fish and wildlife in season in accordance with State and Federal hunting laws and regulations. It is then possible for a local rural resident to proceed into the "park" to hunt. The same interpretation would also apply to private lands." This has also been the accepted practice orally conveyed to local residents by local "NPS" authorities since the creation of the monument status in 1979 and 1980 and for park and preserve land status since 1981.

Six years later, on July 2, 1985, a Memorandum from the Alaska Regional Director suddenly finds that ANILCA allows only for "surface transportation" in park units for subsistence purposes and that Section 13.45 of 36 CFR prohibits the "use of aircraft for access" for subsistence taking of fish and wildlife.

The NPS memo itself is contradictory when it later states that "any aircraft access to the park/monument with the intent of harvesting its fish and game for subsistence is prohibited no matter where the actual landing of the aircraft may occur". ACCESS is defined in any dictionary as "a means of approaching or nearing".

NPS has stated that one may not land outside the park/preserve and then walk into the park/preserve for the purpose of subsistence hunting. They ignore the fact that the actual entering of the park/preserve would have been by walking or other "surface transportation". They also ignore the fact that what happens outside the boundary of the park/preserve is of no concern to the NPS and would fall under the jurisdiction of local/state authorities. (ANILCA Section 103 (f).

The July 2, 1985 memo is also a closure contrary to Operations Memo 82-3 for guidelines which Robert Babson stated "are legally sufficient and in full compliance with Congressional intent as expressed in the applicable provisions of ANILCA. This includes each of the sections of the guidelines, including the section on subsistence activities.

The Park Service appears to be emphasizing certain phrases of the ANILCA legislativ history on subsistence aircraft use while ignoring other phrases which, if given equal weight, would result in the allowance of subsistence aircraft use in the Park.

The Congressional Record, 11/12/80, H10541 states: "It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occured."

This would seem to imply that it is possible for the NPS to allow this traditional use of aircraft to continue where such uses have traditionally and regularly occured. This is certainly the case in the Wrangell-St. Elias National Park.

Senate Report 96-413, 219 notes that the Wilderness Act and the access provisions of the act allow for the continuation of aircraft and motorboats in wilderness areas where those uses have been established. This is meant to relate to patterns of use. It is not meant to relate to specific uses by specific individuals. Continued aircraft use and landings are consistent with the purpose, character, and manner of the wilderness area.

It appears that it was the intent of Congress to allow for the continuance in the few cases where subsistence aircraft access is necessary. This is the case in the Wrangell-St. Elias area. With 13,500,000 acres in Wrangell-St. Elias and only 113 miles of road way with which to access that vast area, it can be seen that aircraft use in Wrangell-St. Elias is not only reasonable, it is often the only manner in which to safely access the Wrangells.

The Wrangell-St. Elias Subsistence Recource Commission has in hand a letter from the Glennallen office of the Alaska Department of Public Safety which lists accidental deaths for the Wrangells from January 1983 through April 1986. In that period, there were five deaths related to aircraft accidents. There were nineteen deaths involving water and watercraft in the same period. As demonstrated by these numbers, aircraft access in Wrangell-St. Elias has been traditionally safer than "surface transportation". Many comments have been made about the unrestricted use of ATV's in accessing the park/preserve. There are many areas in the park/preserve which cannot be accessed without crossing dangerous waterways. Given the opportunity to choose between aircraft and an ATV to access remote areas of the Wrangells, most users would opt for the aircraft Were the use of aircraft subsistence totally banned, users would be forced to use other means (ATV's being the most likely) to access these remote areas and would, in all probability, attempt to cross dangerous waterways thus endangering their safety.

It has been demonstrated that the most reasonable form of access to the park is via aircraft and the NPS action of denying local subsistence users to employ traditional means of aircraft access has had an adverse impact on subsistence uses in the park by denying the opportunity for continuing such use. Uder ANILCA Section 808 (b), the Secretary of the Interior may not deny a Subsistence Resource Commission recommendation if it would be detrimental to the satisfaction of subsistence needs. Since traditional subsistence aircraft access has not been shown to be contrary to recognized principles of wildlife conservation, healthy populations of wildlife, or the purposes for which the park was established, it is felt that the United States Department of the Interior is in conflict with its own regulations and is working at cross purposes to ANILCA.

2. PREDATOR CONTROL

Under Section 3 of the National Park Service Act of August 25, 1916, as amended, the Secretary of the Interior has the authority to provide for the destruction of such animals and of such plant life as may be detrimental to the use of any parks, monuments, or reservations. Subsistence is an allowed and protected use. It is also considered a natural part of the ecosystem. The Secretary of the Interior is prohibited from

denying a Subsistence Resource Commission request in several areas. He may deny a request if that request threatens the conservation of healthy populations of wildlif in a park or park monument. He may also deny a request if it is contrary to the purposes for which the park or park monument is established. He may also deny a request if it is detrimental to the satisfaction of subsistence needs of local residents. It would appear that if predator control is required to maintain healthy populations and subsistence needs, the Secretary of the Interior has the authority to allow or even order such predator control.

3. NORTHWAY ADDITION

The commission recommends that the village of Northway be added to the resident zone for Wrangell-St. Elias National Park and Preserve. The village of Northway has always utilized the resources from the park/preserve for subsistence purposes in a customary and traditional manner. The Alaska Department of Fish and Game has data to support traditional use of the Wrangells for subsistence purposes. It should also be noted that 36 CFR Part 13.43 (2) (a) and (b) (1) allow for the addition of a community to the resident zone for a park. The failure to include Northway in the resident zone was probably an oversight when resident zones were created.

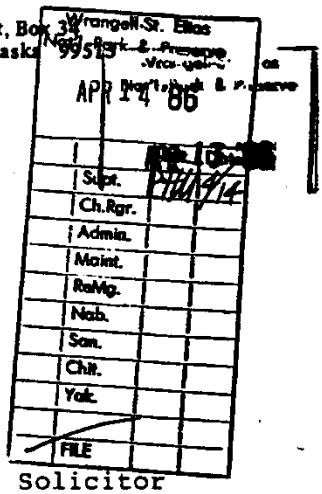
United States Department of the Interior

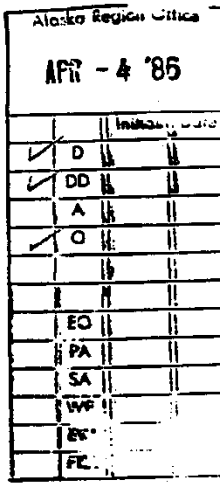
OFFICE OF THE SOLICITOR
ALASKA REGION

701 C Street, Box 35
Anchorage, Alaska 99513

IN REPLY REFER TO:

NPS.AK.0124





April 2, 1986

MEMORANDUM

TO: Regional Director
National Park Service
Alaska Regional Office

FROM: Attorney
Office of the Regional Solicitor
Alaska Region

SUBJECT: The Use of Aircraft to Access a Park or Monument for Subsistence Hunting or Fishing

This is in response to your request for an opinion regarding the use of an airplane to access a national park or monument for subsistence taking of fish or wildlife. The applicable regulation, 36 CFR 13.45, provides, with certain exceptions, that the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence use within the national park or monument is prohibited.

In an August 14, 1985 letter, the Assistant Secretary for Fish and Wildlife and Parks noted that it would not be proper for a subsistence hunter to land on private land or preserve land and walk from the aircraft into the park for subsistence hunting. The Assistant Secretary went on to note that this was a clear use of aircraft as a means of access for subsistence hunting which is not permissible under the regulation. On October 29, 1985 the Assistant Secretary wrote to the Chairman of the Wrangell-St. Elias Subsistence Resource Commission and noted that a July 2, 1985 memorandum from the Alaska Regional Office of the Park Service is the current departmental position regarding the prohibition of aircraft use for subsistence activities. As you are aware, your July 2, 1985 memorandum stated that use of an aircraft to directly access fish or game for subsistence purposes in a park or monument or to indirectly access fish or game of the park for subsistence is prohibited. Finally, a February 6, 1986 letter from the Associate Director, Park Operations, National Park Service in

Washington, D.C. stated that subsistence hunters may not fly to a point in a national preserve with the intent of walking across the park preserve boundary into a park or monument for subsistence hunting. Similarly, it was noted that subsistence hunters may not fly to private inholdings for the purpose of entering a park to subsistence hunt. In essence, your opinion request asks whether these several interpretations of 36 CFR 13.45 are correct.

The short answer to your question is: yes, this is the correct interpretation of 36 CFR 13.45. The word "access," which is clearly the operative word in the regulation, is defined as "the action of going to or reaching." Application of this definition to the regulation would clearly encompass and prohibit a person wishing to engage in subsistence hunting or fishing from landing along side a park or monument boundary or within an inholding within the park or monument and subsistence hunting within the park or monument.

The conclusion that the interpretation placed on the regulation by various departmental personnel is correct is further bolstered by the plain language of Section 811 of ANILCA (16 U.S.C. § 1321). Subsection (b) of Section 811 provides in part that "the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation." In most circumstances Congress meant to exclude aircraft as a means of access to subsistence resources on public lands. When Congress wished to allow the use of airplanes in conservation system units, it did so by specifically mentioning them. See Section 1110(a) of ANILCA, 16 U.S.C. § 3170.

The legislative history of ANILCA also supports the Department's position prohibiting the use of aircraft for subsistence hunting and fishing in parks and monuments. The legislative history provides:

> This section also recognizes the importance of the use of snowmachines, motorboats, and other means of surface transportation traditionally employed for subsistence purposes on the public lands. Although aircraft are not included within the purview of this section, reference to means "traditionally employed" for subsistence purposes is not intended to foreclose the use of new, as yet unidentified means of surface transportation, so long as such means are subject to reasonable regulation necessary to prevent waste or damage to fish, wildlife or terrain.

S. Rep. No. 96-413, 96th Cong., 1st Sess. (1979); reprinted in 1980 U.S. Code Cong. & Ad. News 5219.

The regulation is an accurate reflection of the congressional proclamation. As noted in the preamble when the regulation was published, the prohibition of aircraft use for subsistence was described as a key provision for protecting park values including subsistence. The regulation was described as implementing the intent of Congress that aircraft use for subsistence purposes is the rare exception, not the rule. 46 F.R. 31836, 31841 (June 17, 1981).

While it is clear that the Park Service's common-sense definition of the word "access" is appropriate, it does require the exercise of some discretion in determining whether or not a violation of the regulation has occurred. If an inholder uses an airplane to access private property within the park and then goes subsistence hunting, the regulation has not been violated because an aircraft was not used for access to lands and waters within a park or monument for subsistence purposes. Instead, the aircraft was used to access the inholding, an activity clearly allowed.

In enforcing 36 CFR 13.45, it is important to remember that the prohibition on the use of aircraft for subsistence use is limited to national parks or monuments. There is currently no prohibition in the regulation against using aircraft to access national preserves for the taking of fish and wildlife. This is consistent with the provision that hunting shall be permitted in areas designated as national preserves. See Sections 203 and 1313 of ANILCA, 16 U.S.C. 410hh-2 and 3201.

In conclusion, based upon the legislation, the legislative history, the regulation and the preamble to the regulation, the Department's interpretation of 36 CFR 13.45 is correct. The regulation precludes not only the use of aircraft to land in national parks or monuments for subsistence taking of fish and wildlife, but also precludes accessing parks and monuments for subsistence uses by landing an aircraft on inholdings within parks and monuments or adjacent to the park or monument and walking into the park or monument to subsistence hunt or fish.

Chris Bockmon

F. Christopher Bockmon

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

D18(763) MAY 16 1988

Mr. W. T. Ellis
Chairman, Wrangell-St. Elias
Subsistence Resource Chairman
P.O. Box 29
Glenallen, Alaska 99588

Dear Mr. Ellis:

The Subsistence Resource Commission for the Wrangell-St. Elias National Park is to be recognized for the many hours of effort that have gone into developing the subsistence hunting program recommendations submitted to the Secretary of the Interior. The recommended program cannot be implemented, however, because it is not within the guidelines stated in Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA) and other applicable laws and regulations that direct management of the National park System. The nature of the recommendations would tend to alter the management of the park in such a manner that would be contrary to the purposes for which the park was established.

Recommendations 1 and 2 do not meet the criteria of ANILCA Section 808(b), as well as other statutory and regulatory mandates, and recommendation 3 lacks justification at this time. Specific comments on each recommendation follows:

- The Commission's first recommendation calls for aircraft access for subsistence use in the park. National Park Service (NPS) regulations specifically prohibit the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence use. The 1985 memorandum from the NPS Alaska Regional Director was issued to clarify the use of aircraft for subsistence use when the Regional Office became aware that there was inconsistent application of the regulations by NPS superintendents in Alaska.

Section 811 of ANILCA specifically provides for subsistence users to access the park with snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses. The legislative history (Congressional Record and Senate Report No. 96-413) expresses congressional intent "...that only rarely should aircraft use for subsistence hunting purposes be permitted within National Parks, National Monuments and National Preserves...." (November 12, 1980, p. H10541, Congressional Record). Comments by both the House and the Senate state "...that in most new units of the National Park System the taking of wildlife by local rural residents for subsistence uses has not necessitated the use of aircraft as a means of

access...." (Senate Report No. 96-413, p. 169). There may be exceptions to the general prohibition to aircraft use for subsistence, but those exceptions will be provided for under permit and will continue to be rare and based upon extraordinary circumstances as currently outlined in 36 CFR Part 13.45.

- The Commission's second recommendation is for implementation of predator control, to maintain healthy populations and meet subsistence needs. The intent of Congress on this issue is clearly stated in Senate Report 96-413, (page 171): "...the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units." Since subsistence use is considered a natural part of the ecological process, subsistence users should substitute other natural resources to fulfill their needs when the moose or caribou populations fluctuate naturally to low levels. In addition, ANILCA, Section 804 provided for a subsistence priority during these times when populations are low. The State of Alaska is responsible for implementation of Section 804 but the Commission can and should, as discussed later, provide input into development of a subsistence priority system.

- The third recommendation discusses resident zone status for the community of Northway. Resident zone designation means that means that individuals who permanently reside within the identified community are awarded subsistence privileges as a community. In order to designate the community of Northway as a resident zone community, NPS would have to determine whether or not a significant concentration of people who permanently reside in this community have a history of customary and traditional subsistence use in the park. To date, the Service has had no indication from the residents of Northway that they have any interest in subsistence hunting within the park or that they have a history of customary and traditional subsistence use within the park. At this time, NPS will not further explore designating it as a resident zone. The residents will continue to be eligible to apply for subsistence hunting permits.

In addition to the above specific comments on your recommendations, the following material has been prepared to provide suggestions on the types of issues about which the Commission could provide useful recommendations for the Secretary, the Governor, and the National Park Service. These topics have been taken from a combination of sources, including the House and Senate Congressional Records; Senate Report 96-413; and the preamble to 36 CFR Part 13 issued on June 17, 1981. The Commission may wish to consult these documents as it considers the merits of providing recommendations on these topics. In addition, I suggest that you work with NPS to develop a viable program that meets the area's subsistence needs and is consistent with the purposes for which the Wrangell-St. Elias National was created.

Resident Zones. Most of the 18 designated resident zone communities are located along the Glenn, the Edgerton and the Richardson Highways; the Tok Cutoff; and the Nebesna Road. Settlement along this road system has made it increasingly difficult to delineate clear community boundaries since almost none of the established communities are incorporated. Major projects in the near future involving the Copper River area and road network will have the direct effect of bringing a large influx of new people into the area. Projections for the "Over The Horizon Backscatter Radar" project and the proposed Trans-Alaska Gas Pipeline

indicate that several hundred people will migrate into resident zone communities. Unless resident zone boundaries are conservatively established or communities are eliminated from resident zone status, all of these "new" people will be eligible to hunt, fish and trap within the park. As you consider this issue, keep in mind that even without resident zone status, residents with a history of customary and traditional subsistence use of the park area would still be eligible to continue that use (under a permit or other individual-based system), so long as the community or area remains rural under State definition and they continue to reside in the local area.

In the Federal Register (Vol. 46, No. 116, Wednesday, June 17, 1981, p. 31850), NPS recognized "...that additional information for more precise designation of resident zones will probably be developed in the future by NPS, the State Department of Fish and Game Subsistence Division, local communities, regional councils, and park and monument commissions." At this time, local input is needed from the Commission on a number of questions related to the park's resident zones. For example, are the communities currently designated as resident zones still viable as resident zones? How should the unincorporated community boundaries of resident zones be identified so the NPS can determine who needs to qualify for a permit and who resides within a resident zone? Can the resident zone concept remain viable with an influx of several hundred "new" residents into currently designated resident zone communities?

Local Rural Residents. The Interim Final Rules and Regulations published in the Federal Register on June 17, 1981, (p. 31840), stated that "...the rural people's concern and their recommendations for further evidence of local rural residency deserve thoughtful consideration. Their recommendations have intuitive appeal, but also present legal and equitable problems. The Park Service believes that the local committees, regional councils, and the park and monument commissions are more appropriate forums than this interim rulemaking for deciding whether and how to implement such recommendations."

In considering who should be eligible to subsistence hunt in park areas, congress was primarily thinking of people who had or were members of a family that had a history of customary and traditional subsistence use in the park, without the use of aircraft for access. The State of Alaska has criteria used by the Joint Boards of Fish and Game in designating areas as rural or non-rural for subsistence purposes. The Department of the Interior and the National Park Service will honor those determinations so long as the State is in compliance with ANILCA. However, questions still remain concerning the term local. What distance from the park boundary can be considered to be local? How far away can an individual or family reside from the park and maintain a customary and traditional pattern of subsistence use inside the park? Recommendations from the Commission on the definition of local rural resident as it pertains to eligibility to subsistence hunt in the park and is consistent with ANILCA and the associated legislative history would be most welcome.

Traditional Subsistence Hunting Zones

In Wrangell-St. Elias National Park, neither the regulations nor the statute offers specifics as to the geographic areas where subsistence uses are traditional. The legislative history clearly intends subsistence hunting to be

restricted in the park to traditional use areas (Senate Report No. 96-413, supra, 147; 126 Congressional Record H10535 (daily ed. Nov. 12, 1980); page 31848 FR, June 17. 1981). Since the legislative guidance on where subsistence uses are traditional in Wrangell-St. Elias was incomplete at the time of rulemaking, the Subsistence Resource Commission could provide valuable input into such determination.

Trapline Management

The June 17, 1981, Federal Register (page 31842), stated:

> One Eagle, Alaska, resident requested the National Park Service to develop a management system for traplines to freeze "ownership" according to pre-1978 or present patterns. He said that the old trapline system - "where a person live[d] on and look[ed] after his own little pocket of fur" - worked well, but he fears that the Park Service regulations will encourage people beyond park boundaries to enter, take, and leave. For the interim period, the Park Service is hopeful that such factors as the local rural residency test, the prohibition on aircraft use, the applicability of State law, and the pressure of local socioeconomic realities will adequately prevent or discourage the rush of opportunistic trappers which this resident fears. For the longer term, if the problem materializes, the local committees, regional councils, park and monument commissions, and the State will be able to consider solutions.

The Wrangell-St. Elias Commission could consider whether or not a trapping problem has materialized, or is likely to materialize within the park and provide some recommendations to solve the potential or actual problem situation.

Subsistence Priority

According to Section 804 of ANILCA, whenever a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users, the resources must be allocated in accordance with the three criteria of the subsistence priority: customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources. For example, if consumptive uses must be restricted to assure the continued viability of the resource population (including the conservation of healthy and natural populations in parks and monuments), or assure the local rural residents the continued opportunity to engage in subsistence uses, consumptive uses would have to be limited to subsistence uses by local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

NPS regulations deferred further refinement pending development of State regulations (the State of Alaska now has a program in place), and local input on the criteria from the local advisory committees and regional advisory councils established by Section 805 of ANILCA, and the park and park monument commissions established by section 808. To date, none of the Subsistence Resource Commissions have provided input to those criteria or the overall State process.

The Commission's task is a difficult one. Subsistence use of the wild renewable natural resources and especially, subsistence hunting, must be treated with great care to assure that abuses do not occur while at the same time providing the continuing opportunity for those people with a history of customary and traditional subsistence hunting activity within the park. We look forward to being able to implement future subsistence hunting program recommendations for Wrangell-St. Elias National Park.

NPS will incorporate, by addendum, those aspects of the Subsistence Resource Commission's future recommendations that can be implemented, into the General Management Plan for Wrangell-St. Elias National Park. If a comprehensive subsistence management plan is developed by NPS for the park at some point in the future, the Commission's subsistence hunting program recommendations, as implemented, will become the foundation for such a plan.

Please share this letter with each Commission member. The Department of the Interior looks forward to your future recommendations.

Sincerely,

(Sgd) Susan Reece

Deputy
Assistant Secretary for Fish
and Wildlife and Parks

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park / Preserve
P.O. Box 29
Glennallen, Alaska 99588



IN REPLY REFER TO:
L30

April 3, 1989

Bill Ellis, Chairman
Wrangell-St. Elias National Park
Subsistence Resource Commission
SRA Box 1455
Slana, AK 99586

Dear Bill:

Here is the copy of the Regional Director's comments on the Subsistence Resource Commissions' Recommended Hunting Programs that you requested.

Here also are copies of previous correspondence concerning the use of aircraft to support subsistence hunting in the Park. The use of aircraft to access the Park for subsistence hunting is prohibited. This has been stated consistently since 1985 and reaffirmed by the Secretary of the Interior in the letter of May 18, 1988 to the Commission. Exceptions to the general prohibition are to be rare and based upon extraordinary circumstances as outlined in 36 CFR 13.45.

The pertinent portion of the regulations state:

> "In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access to these resources, or other emergency situation, requires such relief."
> [36 CFR 13.45(b)(2)]

The law does not allow the change in the regulation sought by the Commission, although individual exceptions may be granted on a case-by-case basis. Unless some previously unknown and compelling reasons come to light it is very unlikely that the regulations will be changed to allow flying into the Park to subsistence hunt.

The Congressional directive on predator control is very clear. Congress has determined that it is not appropriate in National Park System units.

Page 2

You and the Commission have worked hard on these issues for four years now - but, as we said four years ago, it was a very long shot that the Commission could get the regulations changed. You gave it a good try. The law is very clear. Now the Secretary has suggested that the Commission look at some subsistence issues where there is some realistic hope that it will have a positive influence.

Resident boundaries and eligibility are very important concerns for the Commission to address. The Secretary has indicated that he would consider some positive suggestions from the Commission on these matters.

The Commission is at the point where it needs to decide which areas it can have an effect on and spend its limited time and resources on those more productive areas.

These are some thoughts for you and the other Commissioners to think over before the next meeting. In the meantime we're available to assist Don and Terry on their subcommittee work.

Sincerely,

Richard H. Martin
Superintendent

Enclosures:
1. Regional Director's July 7, 1987 memo
2. Regional Director's July 2, 1985 memo
3. Assistant Secretary's Oct. 29, 1985 letter
4. Regional Solicitor's April 2, 1986 memo
5. Assistant Secretary's May 18, 1988 letter

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

December 29, 1989

Dear Interested Citizen or Organization:

On December 5, 1989, the Wrangell-St. Elias Subsistence Resource Commission proposed several recommendations related to subsistence hunting opportunities in the park. The Commission desires public comment on these proposals prior to taking final action. Final recommendations will be transmitted to the Secretary of Interior and the Governor of Alaska, as detailed in the Alaska National Interest Lands Conservation Act (ANILCA) Section 808 (attached).

BACKGROUND: There are 7 subsistence resource commissions in Alaska - one for each National Park and Monument where subsistence hunting is allowed. Each Commission consists of 9 members: 3 appointed by the Governor of Alaska, 3 appointed by the Secretary of Interior, and 3 appointed by regional councils. The Wrangell-St. Elias Commission sent 3 recommendations believed necessary for continuance of subsistence hunting opportunities to the Secretary of the Interior in 1986. These were unilaterally rejected by the Secretary in 1988.

The Commission decided in December 1988 to pursue acquiring additional supporting information in order to resubmit those recommendations. This included requesting specific internal correspondence from the Alaska Department of Fish and Game, and conducting a public hearing in Northway.

At the December 1989 meeting, the Commission voted to replace one of the three original recommendations with a new one and to rewrite the other two original recommendations with appropriate supporting information. The Commission voted to present all 3 recommendations to the public for comments prior to final consideration at its next meeting (April 1990). The Commission took action requesting additional information or certain actions from the National Park Service and State of Alaska.

PROPOSED RECOMMENDATIONS

1. Recommend the Secretary of Interior cease actions to unilaterally eliminate opportunities for eligible subsistence hunters to harvest wolves on the same-day-as-airborne.

2. Recommend the Secretary of Interior add Northway as a resident zone community so subsistence hunting in Wrangell-St. Elias National Park/Preserve can resume.

3. A) Recommend the Secretary of Interior list Wrangell-St. Elias National Park/Preserve resident zones with histories aircraft use patterns as "exempt communities" in order to continue traditional access via aircraft for subsistence activities; and
B) Recommend the Secretary of Interior rescind the 1985 policy which bans eligible residents from subsistence activities if access to adjacent state, private, or preserve lands involves aircraft.

OTHER ACTION TAKEN

1. Repeated 1988 request that National Park Service pursue acquiring delegation authority from the Secretary of Interior to the Regional Director level to facilitate timely Commission appointments by the Department of Interior.

2. Repeated 1988 request that National Park Service provide copies of all internal correspondence related to the Commission's 1986 recommendations and to the recommendations of other Commissions.

3. Requested National Park Service schedule the next Commission meeting in April 1990 with the first day in Northway and the next 2 days in Copper Center.

4. Requested both the National Park Service and State of Alaska provide the following information related to aircraft access to all commission members prior to the April meeting; all legal opinions, information on legislative history, interpretations of "customary and traditional", data or sources regarding use of aircraft for subsistence hunting on park/preserve lands.

5. Reiterated the 1988 determination that the resident zone communities of Wrangell-St. Elias has not significantly changed, thus no change is necessary to further restrict eligible residents (such as the Park Service suggestions to define boundaries or adopt a "roster" system).

6. Agreed to submit a proposal to the Alaska Board of Game to reconsider the "customary and traditional" determination which eliminates Tok residents from certain subsistence hunts within Wrangell-St. Elias National Park/Preserve, with copies to the Governor and Secretary of Interior.

7. Agreed to draft a resolution requesting the Secretary of Interior/Congress adequately fund subsistence activities of the State of Alaska, consistent with the reimbursement provisions of ANILCA Section 805 D.

YOUR INPUT IN REQUESTED

The Commission requests comments and additional information on the recommendations from all persons, agencies, corporations, and others who have an interest in subsistence hunting opportunities within Wrangell-St. Elias National Park. Proposed wording for each of the recommendations with tentative justification language is attached. Please send any comments or information BY MARCH 1, 1990 to: Bill Ellis, Chairman
WRST Subsistence Resource Commission
S. R. Box 370
Gakona, Alaska 99586

Sincerely,

Bill Ellis, Chairman
Wrangell-St. Elias Subsistence Resource Commission

Attachments
cc: Governor Steve Cowper, State of Alaska
Secretary Manuel Lujan, Department of Interior
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
~~Commissioner Don Young,~~ ADF&G
~~Tina Cunning, ADF&G~~
~~Terry Haynes, ADF&G~~
Southcentral Regional Council
Interior Regional Council
Southeast Regional Council
Alaska Federation of Natives
Superintendent Dick Martin, National Park Service
~~All news medias in region~~
AHTNA Corp.
Copper River Native Assoc.
~~Alaska Board of Game~~
Citizens Advisory Commission on Federal Areas
Alaska Outdoor Council
RuralCap
Subsistence Resource Commissions:
Lake Clark
Denali
Cape Krusenstern
Aniakchak
Gates of the Arctic
Kobuk Valley

PROPOSED RECOMMENDATION #3:

Recognize the traditional use of aircraft access to harvest subsistence resources by resident zone communities of the Wrangell-St. Elias area as follows:

3A. Revise 36 CFR 13, Subpart C regulations [13.73(a)(2)], adding resident zone communities of Wrangell-St. Elias, which have traditional patterns of aircraft access, as "exempt communities" for subsistence harvests of fish and wildlife. The Superintendent is authorized under current Subpart B regulations [13.45(b)] to permit individual permanent residents of exempt communities to use aircraft for access to take fish and wildlife for subsistence uses. (Existing regulations allow the Superintendent to permit only those individuals who prove personal traditional aircraft use).

3B. Revise the 1985 policy which unilaterally closed traditional aircraft access to non-Park lands for users of subsistence resources on Park lands. This policy overturned the 1982 Park Service guidelines, approved by the Solicitor, which recognized traditional use of aircraft to access non-Park lands (e.g. preserves, state, private land) for subsistence harvests on park lands by permanent residents of resident zone communities.

Justification:

1. Many fish and wildlife resources within the Wrangell-St. Elias National Park/Preserve are virtually inaccessible. Most communities of the Wrangell-St. Elias area have traditionally depended upon aircraft access to harvest resources for subsistence uses. Historical documents and residents of the area verify the traditional and regular dependence on aircraft access for approximately 6 decades. Surface transportation is virtually impossible into much of the unit because of the harsh environment, hazardous terrain, deterrent vegetation and lack of transportation corridors into 13+ million acres. As a result, permanent residents of the communities have no reasonable alternative to aircraft use for access to the subsistence resources. In many cases, aircraft also cause less impact to the lands than other access methods.

2. Representative Udall addressed final Congressional intent regarding aircraft access for subsistence harvests in ANILCA November 12, 1980 legislative history [H10541]:

> "Similarly, residents of Yakutat have customarily used aircraft for access of the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska."

Udall similarly recognized the diverse physiography of the unit in H10538. We believe it was Congressional intent to recognize aircraft use (not new or expanded use) in parks and monuments where such uses traditionally and regularly occurred as part of

subsistence activities. However, the resident zone communities of Wrangell-St. Elias (other than Yakutat) with traditional patterns of use were not adequately represented during the Committee deliberations and hearings on this subject to assure inclusion in the original list.

3. The National Park Service clarified its intent for management of aircraft in the new units during development of the "interim regulations (July 23, 1980)": "the National Park Service would prefer to ensure the protection of monument values with the least restrictive approach". The section-by-section analysis by the National Park Service assured residents that "the proposed Subpart C regulations (now adopted) for individual monuments, however, afford the Service flexibility to make exceptions to the general prohibition (of aircraft for subsistence access). For any monument, the Service may designate communities whose local rural residents may apply for a permit to use aircraft for subsistence purposes. The Superintendent will grant the permit only in extraordinary cases where in the Superintendent's determination, no reasonable alternative to aircraft use exists".

The final regulations published after passage of ANILCA clarified National Park Service intent: "consistent with its policy throughout the legislative process and during the national monument period, the National Park Service fully supports the continuation of the opportunity for subsistence uses by local rural residents where authorized. The Park Service believes that subsistence uses are an important value of these new park areas, and the Service intends to protect these uses through regulations and policies". Further discussions regarding the Park Service's intent to allow permits and exempt communities to be added is included in the regulations Section-by-Section analysis on page 31852, Federal Register Vol. 46, No. 116, June 17, 1981.

4. The General Management Plan for Wrangell-St. Elias National Park/Preserve failed to include the transportation plan required by ANILCA Section 1301. Under discussion of Subsistence Access (P. 17) the Plan assured readers that "any additional information on traditional means will be reviewed on a case-by-case basis". The Commission has repeatedly pursued recognition of traditional aircraft access into the park for subsistence harvest purposes but believes the National Park Service has no intention of seriously reviewing historical documentation or the Commission's recommendations.

5. The Solicitor of the Department of Interior concurred in 1982 with the National Park Service permitting of aircraft (which included landing of aircraft on nonpark lands for purposes of subsistence harvest on park lands). However, the Department of Interior made a policy change in 1985 which prohibited this traditional activity. The attached October 15, 1985 letter from the Citizen's Advisory Commission clarifies the problems with the policy change and the adverse impacts on subsistence activities with the Wrangell-St. Elias National park area. This letter has not been adequately addressed by the National Park Service. We

request that the 1985 policy be struck and replaced by the original implementation.

6. Aircraft have been used for several generations in the Wrangell-St. Elias area and are considered by residents to be a more traditional access method than many others which are permitted. We note that the National Park Service has to use aircraft as their only means to patrol and access most of the park/preserve unit.

It has been demonstrated that the most reasonable form of access to the park is via aircraft. The National Park Service action of denying local subsistence users to employ traditional means of aircraft access has had an adverse impact on subsistence uses, significantly restricting opportunities for continuing such uses. Under ANILCA Section 808(b), the Secretary of Interior may not deny a Subsistence Resource Commission recommendation if it would be detrimental to the satisfaction of subsistence needs. Traditional subsistence aircraft access has not been shown to be contrary to recognized principles of wildlife conservation, healthy populations of wildlife, or the purposes for which the park unit was established. We believe that the Department of Interior is in conflict with its own regulations and is at cross-purposes with ANILCA.

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SRC Proposed Action 5.2

Action 5.2: Conduct a subsistence access study on the modes of transportation and areas utilized for subsistence purposes prior to establishment of the Park.

Issue Background

- In December 1991, the SRC submitted a hunting plan recommendation requesting that NPS conduct an access study of modes of transportation, including aircraft, and areas utilized for subsistence purposes within the park (see Action 5.2, pages 7-9).
- In a July 1992 response the Secretary indicated that the NPS was in the process of designing such a study and that NPS would keep the SRC informed of their progress in this effort. NPS never received funding for the access study (see Action 5.2, pages 10-11).
- In July 1994 ADF&G conducted a study of traditional and subsistence access to the park. The study consisted solely of a literature review. That same year the SRC recommended that the Secretary direct NPS to contribute staff time and/or funding toward completion of the ADF&G access study (see Action 5.2, page 12).
- The Secretary's response, in 1992, stated that NPS had no money during the current fiscal year to support an access study but that NPS would try to fund the study in the future. He also described non-monetary support NPS had provided to ADF&G to aid in completion of their access study.
- In 1995, ADF&G published a report on interviews they conducted relating to access in the northern portion of the park. This report included all past access routes, not just those used for subsistence (see brief description of project on Action 5.2, page 13).

Current Status

- The conceptual design of a project to document subsistence access has been prepared (see Action 5.2, pages 3-6).
- Some progress has been made toward collecting digital data. However, the project cannot be conducted until funding is secured. No decisions have made about the distribution of future year funding.

- NPS is preparing a map showing areas and routes where ORVs are currently being used for subsistence purposes.

WRST S100.01 Determine the Customary and Traditional Means of Access

PROBLEM STATEMENT:

The Alaska National Interest Lands Conservation Act (ANILCA) mandates that federal land managing agencies, including the National Park Service, shall,

"...provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so."

ANILCA further states that

"The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands".

In addition, 36 CFR §13.46(a) states that

"Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent".

Furthermore, the General Management Plan for Wrangell-St. Elias NP/P (WRST) stated that the use of ORV/ATV for subsistence access was determined to be traditional.

However, Executive Order 11989 directs that:

"...the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence."

Many ATV trails undoubtedly began as game and foot trails or winter access trails. Others were constructed to provide equipment access to mining prospects and claims. Some trails follow seismic lines constructed to support oil exploration during the early 1960s. Where these trails follow stream beds they are regularly scoured by high water eliminating most visual impacts of the trail. Where the trails pass through relatively dry and well drained sites a fairly stable two-rut trace is established. Trails passing through muskeg or poorly drained sites are particularly susceptible to rapid deterioration. These areas quickly become rutted, altering drainage and resulting in puddles or quagmires. Users re-route trails to adjacent drier areas when impassable sections are encountered. The Tanada Lake Trail exemplifies this process and is over ¼ mile wide in places.

It is known that the degree and rate of any resource deterioration is a function of vegetative type, soil and terrain characteristics, the time and amount of use, water table

level, presence of permafrost, vehicle type, and operator behavior. We do not know to what extent the visual scars presently observed are the result of past use, particularly by bladed heavy tracked equipment. We do not know to what extent current ATV use causes or accelerates damage.

The park/preserve is difficult for many residents to utilize. The Copper River, a swift, turbulent, and silt laden stream, separates the parkland from such communities as Glennallen, Gulkana, and Copper Center. Extensive lowland bogs, tussock covered tundra, and smaller waterways add to the difficulty of summer travel. However, access may be attained from points along the Copper River, McCarthy Road, Kotsina Road, Nabesna Road corridors. Access across the Copper River can be attained via a concrete highway bridge along the McCarthy Road.

A number of local residents do gain access to park/preserve wildlife resources via light aircraft. The use of aircraft is permissible within areas designated as preserves. By law and regulation, aircraft access for the purpose of conducting subsistence activities in the park is not permitted.

Numerous studies have been conducted by the State identifying subsistence resources both in quantity and spatially, however access to those resources have not been well documented. Access reports were prepared by the NPS in the mid-late 1970's, however these reports fail to distinguish between sport and subsistence users of park/preserve resources or more specifically federal subsistence versus state subsistence users. Considerable discussions have occurred among the members of the WRST Subsistence Resource Commission (SRC) concerning the prohibition of aircraft to access subsistence resources within the park. It is felt by the SRC that this prohibition restricts access to subsistence resources temporally. The SRC has made a formal recommendation to the Secretary to allow the use of aircraft to access subsistence resources within the park. This recommendation has been denied.

DESCRIPTION OF RECOMMENDED PROJECT:

The purpose of this program is to determine the customary and traditional means and use of access points and routes as they relate to the temporal and spatial use of subsistence resources. For the purposes of this program the federal definition of customary and traditional will be applied.

Phase I

(1) Work with Regional Office personnel and consult with State Subsistence personnel to define "traditionally employed" as it relates to access in WRST. The definition of "traditionally employed" should include: where ATV/ORVs were "traditionally employed"; what type of ORVs; seasons of use; and for what purposes.

(2) Collect and synthesize all historic and contemporary data, computerize, digitize and represent both temporally and spatially.

(a) Gather data used by NPS to determine aircraft use for the purposes of hunting park resources and determine sport versus subsistence use and park versus preserve.

(b) Gather and synthesize all published, unpublished, raw data and oral histories that relate to subsistence use and users of resources within WRST.

(c) Computerize and digitize all data, develop data themes and incorporate into a GIS to give a spatial interpretation of the data.

Data to be computerized	Data to be digitized	Themes already/being developed
1a)All harvest data by UCU within GMU's 5a, 5b, 6a, 11, 12, 13, 20d, and 20e.	1b)Airstrip database 2b)Stratton Maps* 3b)Mills Maps 4)Trap lines 5)Species habitat 6)Range maps 7)Fisheries maps 8)Land status 9)AEIDC maps	1c)NPS ATV trails 2c)UCU's and GMU's 3c)Political boundaries

*Stratton Maps will require developing digitized themes by community and by species. Species themes will require analytical evaluation to approximate an area traditionally used to seek subsistence resources.

(d) Overlay themes to create the following maps (Note: this can and should be expanded)

Map 1 - 1a+1b=potential harvest related to aircraft access
Map 2 - 1a+1c=potential harvest related to non-aircraft access
Map 3 - 1a+2b=harvest as it relates to where communities hunt
Map 4 - 1a+2b+5+6=harvest as it relates to where communities hunt, habitat and range
Map 5 - 1a+3b=harvest as it relates to where Yakutat people hunt
Map 6 - 1a+3b+5+6=harvest as it relates to where Yakutat people hunt. habitat and range
Map 7 - 1a+2c=harvest data distributed with GMU and UCU
Map 8 - 1a+1b+2c=harvest data related to aircraft and UCU
Map 9 - 1a+1c+2c=harvest data related to non-aircraft and UCU
Map 10- 1a+2b+2c=harvest data related to community hunt area related to UCU
Map 11- 1a+3b+2c=harvest data related to Yakutat hunt area related to UCU
Map 12- 1a+9+5+6
Map 13- 1a+9
Map 14- 1a+9+2c
Map 15- 1a+9+1b
Map 16- 1a+9+1c
Map 17- 1a+9+1c+2c
Map 18- 1a+9+1b+2c
Map 19- 1a+2b+1b+2c
Map 20- 1a+2b+1c+2c
Map 21- 1a+3b+1b+2c
Map 22- 1a+3b+1c+2c

(d) Obtain RS2477 maps from the state.
(e) Analyze the above information and determine if additional information is needed and make recommendations. If additional information is needed then develop Phase II.

Phase II
(1) Conduct an ethnography study.

Budget:

Phase I	
GS-09 Cartographic Technician (6 months)	$22000
GS-11 Natural Resource Manager (3 months)	$22000
Travel/Per Diem	$ 5000
Supplies and Materials (mylar, mylar cabinet)	$ 3000
20" Color Monitor	$ 3000
ARCVIEW II Software	$ 500
GRAND TOTAL	**$55500**

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 29
Glennallen, Alaska 99588
(907) 822-5234
FAX (907) 822-5891

December 2, 1991

Secretary of the Interior
U.S. Department of the Interior
Interior Building
18th & C Streets, N.W.
Washington, DC 20240

Dear Secretary Lujan:

Pursuant to the requirements of Section 808 of the Alaska National Interest Lands Conservation Act of 1980, the Subsistence Resource Commission of Wrangell-St. Elias National Park submits and recommends the implementation of the enclosed "Hunting Plan Recommendations". This submission fulfills our requirement to "devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park". These recommendations were passed by the commission with a quorum present on November 13-14, 1991.

We would appreciate timely review and consideration of the enclosed recommendations. We look forward to your reply.

Sincerely,

Bill Ellis, Chairman

HUNTING PLAN RECOMMENDATIONS: WRANGELL-ST. ELIAS NATIONAL PARK

RECOMMENDATION #1

The Subsistence Resource Commission recommends that the community of Northway be designated a resident zone community for Wrangell-St.-Elias National Park pursuant to 36 CFR Part 13, Subpart C.

DISCUSSION

Testimony received at the December 4, 1989 meeting of the Subsistence Resource Commission demonstrates that residents of Northway have historically used portions of the Wrangell-St. Elias National Park and Preserve for subsistence purposes. After reviewing maps of the park and preserve, a number of Northway residents testified to their use of several of the areas within the unit for subsistence activities.

Additionally, data compiled by the Alaska Department of Fish & Game Subsistence Division indicates that residents of Northway historically made extensive use of those areas which are now within the northern portion of Wrangell-St. Elias National Park. While use of the park area appears to be less now than in the past, there is an unbroken pattern of use which exists.

The Subsistence Resource Commission has requested that the Federal Subsistence Board make a positive customary and traditional use finding for all subsistence species. We are requesting the Federal Subsistence Board to support the recommendation that Northway be designated a resident zone community for Wrangell-St. Elias National Park.

RECOMMENDATION #2

The Subsistence Resource Commission requests that the National Park Service conduct a study on the modes of transportation, including aircraft, and areas utilized for subsistence purposes by area residents prior to the establishment of Wrangell-St. Elias National Park and Preserve in 1990.

DISCUSSION

A number of areas within the park portion of Wrangell-St. Elias, primarily in Game Management Unit (GMU) 11, are not being utilized due to restrictions on access. Those portions of the park that are accessible by road are heavily used while those portions that were historically accessed by aircraft receive little use. In some instances, use of aircraft to access subsistence is less expensive than surface transportation such as all-terrain vehicles.

Additionally, a number of communities and individuals within the Wrangell-St. Elias area historically depended upon aircraft

access to harvest subsistence resources. Surface access into much of the area is virtually impossible due to the harsh environment, hazardous terrain and lack of transportation corridors. Further, use of aircraft as a means of access in this area pre-dates use of all-terrain vehicles and snowmachines, which are recognized under current regulations as acceptable means of access for subsistence activities.

Current National Park Service regulations at 36 CFR 13.45(b) allow the Superintendent of a park area in "extraordinary cases where no reasonable alternative exists" to permit a local rural resident to use aircraft to access subsistence resources within that park area.

In conducting the proposed study, the Subsistence Resource Commission recommends that the National Park Service review existing data and studies, such as the OTH Backscatter Radar study, for pertinent information. The NPS should also support additional data collection for this study. The Subsistence Resource Commission will establish a committee to work with the NPS and developing the proposed transportation study, especially to identify key respondents, and to work with the agency and the Alaska Department of Fish & Game to develop study goal and questions.

.ske Region Office

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1992

L30(202)

Mr. Bill Ellis
Chairman, Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 29
Glennallen, Alaska 99588

Dear Mr. Ellis:

Thank you for submitting the Subsistence Resource Commission's hunting program recommendations for Wrangell-St. Elias National Park. The Department of the Interior appreciates the time and effort volunteered by each member of the commission while developing these recommendations.

We have carefully reviewed your recommendations under the guidelines stated in Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA) and other applicable laws and policies that direct the management of the National Park Service (NPS).

Currently, 18 communities are identified as belonging to the resident zone for the park. These communities were assumed to contain significant concentrations of local rural residents who, without using aircraft for access, had customarily and traditionally engaged in subsistence use of wildlife within the park prior to 1980, and were thus designated as part of the park's resident zone. Congress clearly intended for the NPS to add or delete resident zone communities from the park resident zone based upon the continuing existence of significant concentrations of customary and traditional subsistence users of the park within each community.

In order to initiate your first recommendation, the NPS must first verify that a significant concentration of local rural residents with a history of subsistence use of the park's resources currently resides within the community of Northway. If this "significant concentration" requirement is verified, the NPS will define the boundaries of the community for resident zone designation purposes, and initiate a rulemaking process to add Northway as a park resident zone community.

Your second recommendation requests that the NPS conduct a study to identify all modes of transportation and the areas utilized for subsistence purposes by local residents prior to the establishment of the park in 1980. The NPS is in the process of incorporating, within the Resource Management Plan, a study of subsistence access and use areas within the park. This study, when completed, should identify traditional methods of access used for subsistence, including aircraft and all-terrain vehicles, access routes, and traditional use areas. Existing data and studies will be used as appropriate to assist in gathering pertinent information.

By copy of this letter, I am asking the NPS to keep the Wrangell-St. Elias National Park Subsistence Resource Commission well-informed of the ongoing status of each of these projects.

Mr. Bill Ellis

The Commission is encouraged to continue working closely with the Superintendent for the park. We hope that you will continue to make appropriate recommendations pertaining to subsistence hunting issues within the park in accordance with Section 808 of ANILCA. The Department of the Interior looks forward to corresponding with you in the future.

Again, thank you very much for your commitment to the work of the Commission.

Sincerely,

/s/ Jennifer [illegible]

Deputy Assistant Secretary for Fish and Wildlife and Parks

bcc: 6025-Secy's RF (2) 3152-FW 6217-ES 6352-SOL 6214-PMB
6246-CL 650-Sisto) Supt.-WRST) Reg. Dir., AR)
001-RF 001-Ridenour 202-Cooke)
FNP:TSisto:208-7576:B:ES-52719:dl:5/21/92:
Revised:Barrios:dl:7/9/92:

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 29
Glennallen, Alaska 99588
(907) 822-5234
FAX (907) 822-5891

April 18, 1994

Secretary Bruce Babbit
Secretary of the Interior
18th & C Streets, N. W.
Washington, D. C. 20240

Dear Mr. Babbit:

At our December, 1991 meeting the Wrangell-St. Elias National Park Subsistence Resource Commission adopted a hunting plan recommendation requesting the National Park Service conduct a study of subsistence access in the park. Although your response directed the National Park Service to conduct such a study, to date this important project has not been funded.

The Alaska Department of Fish and Game has initiated a study similar to that requested by the Commission, but does not have adequate funding to complete the work. We recommend that you direct the National Park Service to participate in the Alaska Department of Fish and Game study by contributing staff time and/or funding toward its completion.

Work accomplished to date includes a literature search and compilation of access information that has already been documented. Support is needed to finish the literature search, to interview persons with knowledge of access in the area, and to incorporate all information in an interactive computerized system.

This work needs to be completed in a timely fashion so that it can be incorporated in the subsistence hunting plan being developed by the Commission for Wrangell-St. Elias National Park. As each day passes, documentation of access into the area, prior to its establishment as a park, becomes more difficult. Furthermore, completion of the hunting plan will be unnecessarily delayed if the access project is not funded until the park Resource Management Plan has been approved.

Sincerely,

Roy Ewan
Chairman

Chairman: Roy Ewan
Members: Paul Claus, Bill Ellis, Frank Entsminger, Don Horrell, Fred John Jr., Ray Sensmeier, John Vale

12/07/95 14:23 WRANGELL ST ELIAS NPP → 257 2410 NO. 219

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100
FACSIMILE: (907) 465-2332

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL | # of pages ▶ 1

To: Clarence Summers | From: R. Gallpeau

Dept./Agency: AK-RSL | Phone #

Fax # | Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

November 29, 1995

Dear Reader:

The Department of Fish and Game recently completed a study of traditional access used prior to establishment of the Wrangell-St. Elias National park and Preserve in 1980. The project in part responds to a subsistence hunting plan recommendation adopted in December 1991 by the Wrangell-St. Elias National Park Subsistence Resource Commission. It was designed to provide information essential for protecting established uses on public lands under the Alaska National Interest Lands Conservation Act (ANILCA).

The enclosed report was not designed to present a comprehensive look at access used in the park and preserve prior to passage of ANILCA in 1980. Instead, this report and the accompanying maps demonstrate the wealth of relevant information that can be gleaned from diverse data sources, including books, articles, agency files and maps, and personal interviews. Similar documentation should be developed for all federal public lands in Alaska as a first step in managing traditional and subsistence access on those lands.

This pilot project was developed in consultation with the National Park Service, the Subsistence Resource Commission, and affected residents of the Copper River Basin. As with all pilot projects, this one will benefit from your comments and suggestions.

Sincerely,

Frank Rue

Frank Rue
Commissioner

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SRC Proposed Action 5.3

Action 5.3: Conduct analysis of ATV use on Malaspina Forelands.

Issue Background

- May 6, 1997, Chief Ranger Jay Wells, Ranger Dennis Kaleta, and Chairman Vale flew to the Malaspina Forelands to look at ORV use on the forelands. The group identified the need to document areas or routes where ORVs were used for subsistence purposes in the past. Chairman Vale requested ORVs be allowed for qualified subsistence users on the sandy or grassy vegetated areas; the interior limit of use being the permanent vegetation line. Chairman Vale agreed to develop a list of people that have used jeeps, trucks, three wheelers, four wheelers, or other off road vehicles. NPS agreed to conduct follow-up interviews with people on the list during the summer to substantiate that ORVs were "traditionally employed" on the Malaspina Forelands for subsistence purposes. NPS further identified the need to conduct research relating to the coastal dune ecosystem, impacts associated with ORV use, defined limits of use, and identify a monitoring system.

- In September of 1997, NPS invited Stony Wright of the Plant Materials Center in Palmer to accompany Ranger Mike Thompson to Malaspina Forelands, with the objective of looking for potential impacts caused by ATV use on the beach dune grass. Little damage was noted during the site visit. ORV traffic seemed to be restricted to the beach area below the foredune. Foredune crossing by ORV was restricted to established trails. The total extent of ORV traffic could not be determined from one site visit. Because ORV activity had not been quantified a foredune monitoring program was recommended.

- In October 1997, Ranger Dennis Kaleta interviewed two individuals regarding their ORV use on the Malaspina Forelands. At that time additional contacts in the community were identified.

- In August 1998, Ranger Dennis Kaleta received photographs of ORV use on the Malaspina Forelands from Ray Sensmeier. The photographs date back to the 1950s. George Valle who fished the Forelands during the 1950s was interviewed.

- Walter Johnson, the Yakutat Tlingit Tribe's Natural Resource Officer, was interviewed in September.

- There is a history of use of ORVs along the Malaspina Forelands for the purposes of commercial fishing and subsistence fishing, hunting and gathering. Currently, ATV's are being used by commercial fishermen and by hunters. There is no monitoring of this use in place beyond visual inspection and photographs. Ultimately, a determination must be made on where/when their use is appropriate for commercial fishing and subsistence purposes.

- At the November 1998 SRC meeting, the SRC thought a permit system was worth considering. Chief Ranger Hunter Sharp stated the NPS would like to continue to study the area and return in the spring with a proposal or range of options to talk about.

- During the April 1999 SRC meeting, Chief Ranger Hunter Sharp stated that NPS would issue individual ATV permits to people with cabins to allow them to use ATVs to transport supplies from an airstrip to their cabin by a described route.

- On June 4-5, 1999, Chief Ranger Hunter Sharp and Chief of Resources Devi Sharp met with Chairman Vale in Yakutat to discuss the Malaspina Forelands subsistence ATV use request. They flew to the forelands to look at specific locations and conditions and at old cabins that Chairman Vale stated had previously been used for subsistence purposes.

- At the April 1999 meeting the SRC voted to support ATV use, by permit, in the Malaspina Forelands for subsistence use and in a defined area. Superintendent Jarvis said the NPS would prepare guidelines for issuance of permits. He agreed to have the system in place for the 2000 hunting season.

- The Wrangell-St. Elias SRC sent a letter to former SRC Chair John Vale on February 23, 2000 saying that the SRC had decided to defer the request to permit ATVs on the Malaspina Forelands for subsistence uses. The Commission felt that if ATV use could not be properly regulated in so many areas that are close to town it was putting the resources on the Forelands at too much risk to allow this activity in a remote area. The SRC acknowledged that the use of ATVs would make subsistence activities easier, but they felt the lack of this tool had not excluded subsistence hunting (see page Action 5.3, page 4).

- At the November 23, 2000 meeting of the SRC in Yakutat, former SRC member John Vale testified on ATV use of the Malaspina Forelands. After considerable discussion Superintendent Gary Candelaria agreed to have staff develop two alternate plans for permitting ATV use of the Forelands. The alternatives will be made available to SRC members prior to the next meeting and can serve as the focus of discussion. John Vale offered to assist the park in writing the plan.

Current Status

- Park staff developed a permitting process that would allow for close monitoring of ATV use on the Forelands and presented their idea to the SRC at the February 20-21, 2001 meeting. After considerable discussion the SRC made a motion to continue the restriction on ATV use until NPS is able to regulate ATV use on a daily basis. The SRC is concerned that resource damage will occur if there is insufficient NPS staff to monitor ATV use on the ground. At this point in time NPS does not have the staff or ability to monitor use effectively.

Wrangell-St. Elias National Park
Subsistence Resource Commission

P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

February 23, 2000

Mr. John Vale
P.O. Box 193
Yakutat, AK 99689

Dear John,

The Wrangell-St. Elias National Park Subsistence Resource Commission met on February 22-23, 2000 at Tazlina Village hall. At the meeting the commission discussed the request to permit ATV's or motorized vehicles on the Malaspina Forelands for subsistence uses. The park staff reviewed the history of motorized vehicle use on the Malaspina Forelands and discussed some of their concerns about damage to the beach grass and the other vegetation communities. The commission members cited several examples of environmental degradation due to ATV use in the Yakutat vicinity and other areas.

After quite a bit of discussion the commission decided that this request should be deferred. The commission felt that if ATV use could not be properly regulated in so many other areas that are close to town, it was putting the resources on the Forelands at too much of a risk to allow this activity in a remote area.

We recognize that use of an ATV on the Malaspina Forelands would make subsistence activities easier, but the lack of this tool has not excluded subsistence hunting. The Malaspina Forelands also has the added advantage of permissible use of aircraft.

Sincerely,

Wrangell-St. Elias National Park, Chair
Subsistence Resource Commission

cc: Governor of Alaska
Eastern Interior Regional Advisory Council
Southcentral Regional Advisory Council
Southeastern Regional Advisory Council
Superintendent Wrangell-St. Elias National Park

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Frank Entsminger, Fred John Jr. Gloria Stickwan, Don Horrell, Robert Marshall,

NPS Proposed Action 5.4

Action 5.4: Define "traditionally employed."

Issue Background

- A method needs to be developed to allow for the natural evolution of technology within a culture.
- The NPS subsistence management program review did not define "traditionally employed" or provide additional guidance on how these determinations are to be made.

Current Status

- A definition of "traditionally employed" has not been developed. This determination will be made by the Superintendent on a case by case basis.
- NPS is asking for comments from the public for a method of dealing with the evolution of technology.
- A map will be prepared showing areas where ORV use for subsistence purposes is currently allowed.

Authority

ANILCA Section 811 Access

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NPS Completed Action 5.5

Action 5.5: Develop plan for managing off-road vehicle (ORV) use in the Nabesna District

Issue Background

- On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and the Wilderness Society filed a lawsuit against NPS challenging the method used by NPS to issue recreational ORV permits for the nine trails within the Nabesna District of Wrangell-St. Elias. They asserted that when issuing recreational ORV permits, NPS failed to make the required finding that recreational ORV use is compatible with the purposes and values of the park and failed to prepare an environmental analysis of recreational ORV use as required by the National Environmental Policy Act of 1969 (NEPA). The plaintiffs did not challenge the use of ORVs for subsistence uses. In a settlement agreement announced on May 15, 2007, NPS agreed to suspend issuing recreational ORV permits for three specific trails unless the ground is frozen. NPS also agreed to prepare an environmental impact statement under NEPA and issue a record of decision.

- The Nabesna ORV Management Plan/EIS scoping period began December 21, 2007, with the publication of a Notice of Intent to prepare an environmental impact statement in the Federal Register. The initial planning process included extensive public involvement, public meetings, a project newsletter, agency consultation, and tribal consultation.

- Based on public scoping comments, the NPS developed a set of draft alternatives. In December 2008, an informational package describing these draft alternatives was sent out for public review and comment. The period for commenting on the draft alternatives extended through January 10, 2009, and the NPS received 30 comments. The NPS modified the draft alternatives based on these comments. The NPS distributed a third newsletter in spring 2009 to update the public regarding the planning process and to inform the public that the scope of the EIS had expanded to include subsistence ORV use on the nine trails. The NPS also published a supplemental NOI in the Federal Register to address this scope expansion. The NOI extended the public scoping period through June 29, 2009, and solicited comments from the public, including local rural residents and residents of the park's 23 resident zone communities who engage in subsistence activities within the park.

- The Nabesna Off-Road Vehicle Management Plan/Draft Environmental Impact Statement (DEIS) was released to the public on August 11, 2010. Five public meetings were held across Alaska to review the draft plan and receive public input. During the public comment period, NPS also held numerous briefings at the request of stakeholders in order to facilitate public review and comment, including the WRST SRC. The SRC established a work group to review and develop recommendations on the DEIS to the full SRC. The full SRC discussed possible comments at meetings in June and October 2010 and submitted two comment letters on the DEIS during the 90-day public comment period (see Action 5.5, pages 4-9).

- NPS responses to public comments were included in the Final Environmental Impact Statement Nabesna Off-Road Vehicle Management Plan (FEIS) published in August 2011. The FEIS describes major impacts to soils, wetlands, and vegetation associated with ORV use on unimproved trails. It also describes moderate to major impacts to wilderness character associated with subsistence ORV use in designated wilderness. Following a meeting in August 2011, the SRC submitted a comment letter regarding the FEIS (see Action 5.5, pages 10-11).

- On December 14, 2011, the Regional Director signed a Record of Decision (ROD) that identified Alternative 6 in the FEIS as the selected action. Although recreational ORV use was the main focus of the planning process, some components of the decision impact subsistence users. Under the selected action, NPS will improve the most degraded segments of ORV trails in the Nabesna District through trail re-routing or reconstruction to a design-sustainable or maintainable condition. In addition to the trail improvements, implementation of the selected plan will require a regulation change (discussed in more detail below).

- Following its spring 2012 meeting, the SRC wrote a letter to Superintendent Rick Obernesser expressing concern about the impact that new restrictions on recreational ORV use in the national park would have on the non-local family members of subsistence users. Specifically, the children and grandchildren of subsistence users who live outside of the local area would no longer be able to accompany them on trips into the park to engage in traditional activities such as hunting and fishing. The park responded that they had consulted with the regional office and solicitors on this topic, but had identified no feasible alternatives that would authorize the use of ORVs in the national park for the non-local family members of subsistence users. (see Action 5.5, pages 12-13)

- On January 15, 2014, the NPS published a proposed rule to make regulation changes needed to implement the FEIS. The proposed rule would authorize recreational ORV use on improved or frozen trails in the portion of the Nabesna District located within the national preserve, but not in the national park. It would also prohibit the use of certain types of vehicles based upon vehicle size and weight. In the area of designated wilderness

included in the FEIS (Black Mountain-area trails and the southern portions of the Tanada Lake Trail), subsistence ORV users will be required to stay on designated trails and trail corridors with limited off-trail use for game retrieval (i.e. 0.5 miles on either side of the trail). The remainder of the FEIS Wilderness Area will be closed to subsistence ORV use. In the portion of the Nabesna District located outside of the FEIS Wilderness Area, subsistence ORV use will be allowed on or off ORV trails before and after trail improvements. NPS will monitor the use and take management actions as described in the FEIS.

Current Status

- On August 20, 2014 the NPS published the final rule making the regulation changes needed to implement the EIS.

Authority

ANILCA Section 811 Access
36 CFR 13.460 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence use.

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

June 22, 2010

Meg Jensen
Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Dear Superintendent Jensen:

At its June 9, 2010, meeting the Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) approved the attached recommendations regarding the Nabesna Off-Road Vehicle (ORV) Management Plan/Environmental Impact Statement (EIS). We understand that the draft EIS is currently undergoing solicitor's review with particular attention to the issue of wilderness eligibility. If this review results in changes to the EIS that would impact subsistence users, we may submit additional comments to you.

Thank you for the opportunity to comment.

Sincerely,

Suzanne McCarthy
Vice-Chair

cc: NPS Alaska Regional Director
Chair, Southcentral Alaska Subsistence Regional Advisory Council
Chair, Eastern Interior Alaska Subsistence Regional Advisory Council

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

Wrangell-St. Elias National Park Subsistence Resource Commission
Recommendations on the Nabesna ORV Management Plan/EIS

The Wrangell-St. Elias Subsistence Resource Commission strongly supports the continued use of off-road vehicles (ORVs) as a means of access for subsistence, both on and off trail, as well as the use of ORVs in support of other traditional activities such as hunting and fishing by others. The latter use is a component of what the EIS calls recreational ORV use. The SRC supports three categories of users for these trails: (1) subsistence, (2) other traditional hunting/fishing, and (3) recreation.

ORVs are a traditional means of access for subsistence as well as other activities in Wrangell-St. Elias, with use pre-dating the establishment of the park. Decision makers should be directed to keep trails accessible for subsistence activities rather than closing trails or restricting opportunities. The SRC supports some trail improvements in order to keep trails open and re-open closed trails. As stated in the park's enabling legislation the Alaska National Interest Lands Conservation Act (ANILCA), as well as the park's Foundation Statement, subsistence is a fundamental value of Wrangell-St. Elias National Park and Preserve.

Monitoring Standards and Associated Management Actions:

- For all of the monitoring standards, both on and off trail, a statement is needed to clarify that the intent of the management actions is to keep access open for subsistence and other traditional activities.
- Management actions should be taken to address problem trail segments, not the entire length of a given trail.
- Closure should be the management action of last resort.
- It is critical that the monitoring standards are implemented in the most objective manner possible. To facilitate this, it is very important that the measurement protocols be clearly defined and described.
- Monitoring should be based over a five-year period, to account for natural variations in the environment, such as wet and dry years. In addition, monitoring results should be averaged over the total length of the trail and focus on changes in the overall character of the trail, rather than on individual trail segments.
- With regard to the monitoring standards for unimproved trails, management action should be taken when five or more of the eight measured indicators exceed the monitoring standard. (Rather than three of eight.) This change will ensure that actions are based on the overall character of the trail.
- With regard to the monitoring standards for off-trail ORV use for subsistence, management action should be taken when three or more of the five measured indicators

exceed the monitoring standard. (Rather than one of five.) The focus of this monitoring should be on unacceptable resource impacts, rather than on any impacts.
- A definition of what constitutes a "new trail" is needed in relation to monitoring standards for off-trail ORV use.
- The administrative use of ORVs should be monitored and documented. Subsistence use should be a higher priority than administrative use.

Proposed Trail Improvements:

- Trail improvements may or may not result in increased trail use, displacement of wildlife, and more hunters, resulting in increased competition with subsistence users. These impacts need to be taken into consideration in any planned improvements.
- In carrying out trail improvements the following priority order is recommended:
    1. Improvements that keep trails open to subsistence use.
    2. Improvements that allow trails to be re-opened in support of traditional activities such as general hunting and fishing by other Alaska residents. If it is not possible to re-open the entire trail, please work on at least opening portions thereof.
    3. Improvements that support recreational access to the park and preserve more generally.
    4. New construction. All trails improvements should be completed prior to any new construction.
- The development of non-motorized trails and routes should only occur after the ORV trail improvements are completed and recreational ORV use is reinstated.
- In planning for non-motorized trails and routes, it will be important to take possible conflicts with subsistence use areas and subsistence users into consideration. For example, the draft EIS mentions a trail accessing the Copper River at approximately Mile 4 on the Nabesna Road. There is an existing subsistence access route very close to this location.
- It is not realistic to expect the Tanada Spur Trail to be non-motorized. People will make motorized use of it regardless of its designation.

Trail Administration:

- We support the continued authorization of recreational ORV use on trails in the Nabesna District as well as elsewhere in the park and preserve. This is a long-standing use that pre-dates the establishment of the park.
- A tool that should be considered when limiting use is to restrict use by those classes of vehicles that cause the greatest impact. For example, we suggest looking at classes based on weight or ground pressure.
- The draft EIS did not explain the process for allocating recreational ORV permits in the event that permit numbers need to be reduced. We recommend adding a description of how permits would be allocated.

Designating Trails in Wilderness:

- We oppose designation of trails in designated Wilderness combined with a requirement that subsistence ORV users must stay on those trails. Subsistence users need to be able to use ORVs off trail to retrieve harvested animals as well as to access wildlife located far off the trails. The proposed monitoring standards would ensure that new trails are not created.

Other Comments:

- Aircraft as a means of subsistence access: The use of aircraft should be authorized to access the National Park for the purpose of taking fish and wildlife for subsistence. This is a management tool that would lessen use of trails and thereby the trail impacts. Aircraft are a traditional means of access for subsistence in Wrangell-St. Elias, and their use should be allowed. Section 811(a) of ANILCA states that "the Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands." We are not suggesting the establishment of new airstrips, simply allowing this traditional means of access to be used.
- Use of the term "recreational": The term "recreational ORV use" is misleading. The vast majority of non-subsistence ORV use in Wrangell-St. Elias National Park and Preserve is by other Alaskans hunting and fishing under general State of Alaska hunting and fishing regulations. This is a very utilitarian use in that it provides access in support of a traditional activity. In many cases, these users include former local residents who have moved to urban areas for employment and education, making them ineligible for federal subsistence, but who are members of families that have customarily and traditionally engaged in subsistence uses in the park. We are concerned that the term "recreational" does not accurately reflect the nature of this use. Our recommendation is that ORV use be managed using the following three user classes: subsistence, other traditional hunting/fishing, and recreation. In the event that it is necessary to restrict use, recreational use would be restricted first; other traditional hunting/fishing, second; and subsistence only as a last resort.
- Opportunities for education: Education can play an important role in reducing opportunities for user conflict. It is important for non motorized/non consumptive trail users to be aware of the history of and allowances for motorized and consumptive uses. And a code of ethics for subsistence users should be publicized.
- Estimates about growth in trail use: We believe that the estimates of future subsistence use of trails (Table 4.1) are too high. Future subsistence use levels will be based on game availability, not on improved trails. Game densities will not support that level of subsistence users. In addition, there has been no significant growth in the area population. So subsistence use is unlikely to increase.
- Link between trail use and wildlife populations and harvest opportunities: Nowhere in this draft EIS are trail users connected with game populations and hunting regulations. Trail use is nearly all driven by wildlife populations and the ability to hunt. Trail condition has a much more limited impact that those two factors.

ANILCA Section 810(a) Summary Evaluation and Findings:

- Regarding the analysis of the potential of Alternatives 4 and 5 to reduce important wildlife populations, we disagree with the statement that there will be a significant increase in ORV use and hunting pressure. We recommend deleting the word "significant" from this statement. Trails use is nearly all driven by wildlife populations and the ability to hunt, not by trail conditions.
- We also disagree that hunters will be displacing animals. Under current conditions the animals are a long way away from the trails.
- Finally, we disagree with conclusion that Alternatives 4 and 5 will have a moderate negative impact on the numbers and distribution of significant subsistence wildlife resources. This is based on the above two comments. We believe that there will be a minor negative impact.

Wrangell-St. Elias National Park
Subsistence Resource Commission

P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

October 19, 2010

Meg Jensen
Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Dear Superintendent Jensen:

At its October 6-7, 2010, meeting the Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) discussed and listened to public comments on the Nabesna Off-Road Vehicle (ORV) Management Plan/Environmental Impact Statement (EIS). We would like to add the following to our earlier comments:

- A mechanism to utilize volunteer labor for trail restoration and improvement should be adopted and put into place immediately. This could significantly impact expeditiously executing trail improvement for the Nabesna region.
- Federally qualified subsistence users should be able to obtain a permit that would allow family members who do not live in the local area to accompany them on trips into places that are otherwise not open to motorized use by non-local residents. This will help preserve the connection with the land for family members who have had to leave the area for reasons such as employment and thereby promote resource stewardship.
- We are concerned that trails could be closed to subsistence ORV use due to lack of funding for repairs. We urge you to consider language in the final alternative that would not put subsistence users in a position where there would be loss of access to food security.

Thank you for the opportunity to comment.

Sincerely,

Bert Adams, Sr.
Chairman

cc: NPS Alaska Regional Director
Chair, Southcentral Alaska Subsistence Regional Advisory Council
Chair, Eastern Interior Alaska Subsistence Regional Advisory Council

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

August 4, 2011

Elwood Lynn
Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Dear Superintendent Lynn:

At its August 4, 2011, meeting the Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) discussed the Nabesna Off-Road Vehicle (ORV) Management Plan/ Final Environmental Impact Statement (FEIS). We would like to make the following comments:

- The Record of Decision (ROD) should emphasize that the intent of the management actions in the FEIS is to keep access open for subsistence and other traditional activities. If trails need to be closed temporarily, the amount of time that they are closed should be kept to a minimum.
- NPS should collaborate to the maximum extent possible with local residents and other trail users on big picture trail improvements.
- The SRC should be informed about the types of trail improvements that will be occurring during upcoming field seasons.
- SRC meetings should be held in affected areas when monitoring will be occurring.
- NPS should inform and invite the local public when monitoring will occur.
- The highest priority for trail repairs or improvements should go to those trails that would close to recreational use with signing of the ROD in order to restore access as soon as possible.
- Ahtna place names should be incorporated into the trail system, for example, used in informational brochures.
- NPS should allocate funding for staff to do monitoring on existing trails.

On a more general note, we recommend that the park address the issue of wilderness eligibility throughout the park and preserve. The FEIS addresses this issue in a small way in the Nabesna area, but we see a pressing need to take a comprehensive look at this issue at Wrangell-St. Elias.

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

We would like to thank Bruce Rogers and Barbara Cellarius for working diligently with the SRC and local residents throughout the process to help us understand the Nabesna ORV EIS. Many thanks for their dedication and professionalism. We would like to also recognize the previous superintendent, Meg Jensen, for her work on the wilderness eligibility issue. We hope that this will set a precedent for future work between the park and the SRC.

Sincerely,

Suzanne McCarthy
Acting Chair

cc: NPS Alaska Regional Director

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

April 9, 2012

Rick Obernesser, Superintendent
Wrangell-St. Elias National Park and Preserve
PO Box 439
Copper Center, AK 99573

Dear Superintendent Obernesser:

One outcome of the recent Nabesna Off-Road Vehicle (ORV) Management Plan and Environmental Impact Statement is that ORV access to the national park by non-local residents is no longer authorized. We are concerned that this means, for example, that the children and grandchildren of subsistence users who live outside of the local area are no longer able to accompany them on trips into the park to engage in traditional activities such as hunting and fishing.

We are writing to request your assistance with authorizing motorized access to the national park via ORV trails such as the Copper Lake Trail and Tanada Lake Trail for non-local family members of subsistence users. Specifically, we would like to know what the steps are that can be taken to authorize motorized access to the park for these family members. As part of this process, we suggest including a clear definition of family member for the purpose of this authorization.

We look forward to working with you on this important issue.

Sincerely,



Suzanne McCarthy
Vice Chair

Chairman: Bert Adams, Sr.; Members: Suzanne McCarthy, Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Karen Linnell, Robert Fithian, Sue Entsminger

United States Department of the Interior
NATIONAL PARK SERVICE

Wrangell-St. Elias National Park & Preserve
Mile 106.8 Richardson Hwy. P.O. Box 439
Copper Center, AK 99573-0439
907 822 5234 Fax 907 822 7216

A22 (WRST-AD)

October 22, 2012

Bert Adams, Sr., Chair
Wrangell-St. Elias National Park Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Highway
Copper Center, AK 99573

Dear Mr. Adams:

This letter is in response to your April 9, 2012 letter requesting assistance with authorizing motorized access to the national park via ORV trails for non-local family members of subsistence users.

As you recall, this issue was brought up in public comments on the Nabesna Off Road Vehicle Management Plan/Draft Environmental Impact Statement (DEIS). The commenters requested NPS consideration for a special use permit to authorize ORV use in the national park for non-local family members. At that time, the park pursued options for issuance of a special use permit. After consultation with regional office personnel and solicitors, we concluded the following: We can find no existing NPS authority under which to issue such a special use permit for this activity. Title 36 CFR 4.10 generally prohibits ORV use. There are only three regulatory exceptions to the general prohibition applicable to Wrangell-St. Elias National Park and Preserve (WRST). Two regulations authorize WRST to issue a permit authorizing ORV use: 1) 43 CFR 36.11(g)(2) on existing ORV trails upon a finding that ORV use would be compatible with the purposes and values of the park; and 2) 43 CFR 36.10 when the Superintendent determines the applicant/inholder needs to use an ORV to provide adequate and feasible access to an inholding. The third regulatory allowance for ORVs is 36 CFR 13.460 because WRST determined that ORVs were traditionally employed by local rural residents engaged in subsistence uses. Title 36 CFR 13.460 authorizes local rural residents to use ORVs when engaged in subsistence uses.

Title 36 CFR 1.6 provides that NPS can only issue a special use permit to authorize an otherwise prohibited activity where issuance of the permit is authorized by regulation. No regulation, beyond the ones discussed above, authorizes the Superintendent to issue a permit for ORV use. The group of individuals you asked about (non-local rural residents - who are relatives of current local rural residents) cannot enjoy the special authorization of 36 CFR 13.460 as they are not local rural residents as defined at 36 CFR 13.420. The group of individuals does not enjoy any special statutory status either as relatives of current subsistence users or as former rural subsistence users.

In summary, the park ventured down this path in its response to comments on the DEIS. We have identified no feasible alternatives within our authority that would accomplish the objective of authorizing the use of ORVs in the national park by non-local family members of subsistence users.

Sincerely,
Wayne Challoner acting
Rick Obernesser
Superintendent

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Chapter 6

Subsistence Waterfowl Hunting

The traditional harvest of migratory birds may be permitted in parks and monuments as long as the harvest is consistent with the Migratory Bird Treaty Act. However, the Act does not provide for a preference under ANILCA for the taking of migratory birds. The authority to regulate taking of migratory birds has been delegated to the US Fish and Wildlife Service, not the Federal Subsistence Board.

Waterfowl harvest is permitted in Wrangell-St. Elias National Park and Preserve under State authorized seasons and bag limits. In addition, spring and summer subsistence harvest of migratory birds by residents of specified communities is permitted under US Fish and Wildlife Service regulations.

Only local rural residents are permitted to harvest migratory waterfowl within parks and monuments, and NPS regulations prohibiting the use of aircraft for subsistence in parks and monuments applies to the taking of migratory waterfowl.

Authority

36 CFR 13
50 CFR Part 92 Migratory Bird Subsistence Harvest in Alaska
50 CFR Part 100 Federal Subsistence Management
Migratory Bird Treaty Act

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SRC Completed Action 6.1

Action 6.1: Establish a fall federal subsistence waterfowl hunt and allow spring and summer harvest of migratory birds and their eggs.

Issue Background

- In April 1994 the SRC submitted a hunting plan recommendation requesting a fall subsistence harvest of waterfowl. They also requested the Secretary's assistance in amending the Migratory Bird Treaty Act to protect the subsistence harvest of bird eggs (see Action 6.1, page 4).
- The Secretary's response (September 12, 1994) said that a fall hunting season was in conflict with existing Federal subsistence management regulations that exclude migratory bird harvest for subsistence. Opening a fall season would require promulgation of new regulations. He said that he was willing to consider the matter further upon receipt of a formal hunting plan recommendation (see Action 6.1, pages 5-6).
- In December 1996, the SRC submitted a hunting plan recommendation requesting a fall subsistence season and bag limit for waterfowl consistent with the State season and harvest limit. They also requested a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes for qualified subsistence users (see Action 6.1, pages 7-10).
- The Eastern Interior supported the Commission's recommendation in a letter dated March 1996 (see Action 6.1, page 11).
- On November 18, 1998, Chairman Vale submitted a letter to all SRC chairs requesting their comments and position on waterfowl hunting and egg collecting on park lands. The Denali Commission responded with a letter dated March 4, 1999, indicating they did not have a particular concern with migratory waterfowl hunting or egg collecting on Denali park lands. However, they do support efforts by the Wrangell-St. Elias SRC to ensure that traditional hunting and harvesting practices are protected (see Action 6.1, pages 12-14).
- In May 1999, the Gates of the Arctic SRC commented on this issue. They stated that waterfowl are harvested in Gates of the Arctic National Park by subsistence users and

feel this harvest should be allowed to continue. They questioned the solicitor's opinion and asked to have his findings on paper to review (see Action 6.1, pages 15-16).

- In May 2000 NPS Alaska Acting Regional Director Anderson responded to the SRC's recommendations 96-1 and 96-2 (see Action 6.1, pages 17-19). NPS concluded there is nothing in ANILCA that specifically prohibits the taking of migratory birds for subsistence purposes within parks or monuments where subsistence uses are otherwise allowed. The traditional harvest of migratory birds may be permitted in parks and monuments as long as the harvest is consistent with the Migratory Bird Treaty Act. However, the Act does not provide for a preference under ANILCA for the taking of migratory birds. The authority to regulate taking of migratory birds has been delegated to the US Fish and Wildlife Service, not the Federal Subsistence Board.

- Hunting plan recommendation 96-1 requests the establishment of a fall subsistence season and bag limit for migratory waterfowl that is consistent with the State season and bag limit. This harvest is permitted as long as it is consistent with the regulations promulgated under the Migratory Bird Treaty Act. Only local rural residents are permitted to harvest migratory waterfowl within parks and monuments, and NPS regulations prohibiting the use of aircraft for subsistence in parks and monuments applies to the taking of migratory waterfowl.

- Hunting plan recommendation 96-2 requests a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes to qualified subsistence users, as is the case in western Alaska. In the past, the Fish and Wildlife Service has had a policy limiting enforcement of the general prohibition of spring and summer harvesting of migratory birds and their eggs in western Alaska. (This policy will be cancelled as regulations permitting such take are adopted.)

- The first meeting of the Alaska Migratory Bird Co-Management Council took place from October 30 to November 1 of 2000. At this meeting, they adopted bylaws for the council and began the process of drafting regulations for the spring and summer subsistence harvest of migratory birds. This management body was designed to ensure that subsistence users are involved in developing these regulations. Alaska Native, Federal (i.e., U.S. Fish and Wildlife Service), and State of Alaska representatives serve as equals on the council.

- On August 16, 2002, the final rule laying out procedural regulations to implement this harvest was published in the Federal Register. These regulations identify where subsistence harvest may occur and who is eligible to participate.

Current Status

- On July 21, 2003, the final rule for the 2003 annual harvest regulations for the spring and summer harvest of migratory birds with published in the Federal Register. This officially opened the first legal harvest season. In terms of the Wrangell-St. Elias area, only those resident zone communities located north and west of the Alaska Range were eligible for the harvest in 2003 – Healy Lake, Dot Lake, Tanacross, Tok, Tetlin, and Northway.
- On April 2, 2004, the final rule for the 2004 annual harvest regulations for the spring and summer harvest of migratory birds was published in the Federal Register. This rule adds seven Copper Basin communities to those eligible to participate in this harvest – Chistochina, Chitina, Copper Center, Gakona, Gulkana, Mentasta Lake, and Tazlina.

Authority

50 CFR Part 92 Migratory Bird Subsistence Harvest in Alaska
Migratory Bird Treaty Act

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 29
Glennallen, Alaska 99588
(907) 822-5234
FAX (907) 822-5891

April 18, 1994

Secretary Bruce Babbit
Department of the Interior
18th & C Streets, N. W.
Washington, D. C. 20240

Dear Secretary Babbit:

Re-authorization of the Migratory Bird Treaty Act has brought two issues to the attention of the Wrangell-St. Elias National Park Subsistence Resource Commission.

At the present time, local subsistence hunters are prohibited from harvesting migratory birds (ie ducks, geese) in Wrangell-St. Elias National Park, even though such use has a long and unbroken history. The protection of this valid subsistence use needs your support. The Commission recommends that regulations be adopted which provide for a fall subsistence harvest of waterfowl consistent with the State's season and bag limits. This recommendation is based on testimony of local residents and other parties opposed to the elimination of this traditional subsistence use.

Also, your immediate attention is needed in the form of amendments to the Act to protect the subsistence harvest of bird eggs. The harvest of bird eggs (especially sea gull and tern eggs) is an important part of the subsistence diet of Alaska Natives in the Yakutat area. This use should be provided for.

Thank you for your attention to these matters.

Sincerely,

Roy Ewan
Chairman

Chairman: Roy Ewan
Members: Paul Claus, Bill Ellis, Frank Entsminger, Don Horrell, Fred John Jr., Ray Sensmeier, John Vale

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 12 1994

Mr. Roy Ewan, Chairman
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 29
Glennallen, Alaska 99588

Dear Mr. Ewan:

Thank you for your letters of April 18, 1994, to Secretary Babbitt regarding subsistence harvest of migratory birds and the collection of their eggs and a study of subsistence access in Wrangell-St. Elias National Park. We appreciate the time and effort volunteered by each member of the Commission.

In response to your concerns over migratory bird subsistence issues, the Migratory Bird Treaty Act (MBTA) is not subject to re-authorization. However, discussions are now being undertaken on possible amendments to the 1916 Migratory Bird Convention (Convention) with Canada to address spring hunting and egg collecting issues. Provisions of the Convention are implemented by the MBTA.

The U.S. Fish and Wildlife Service (FWS) is the lead agency for the Department of the Interior regarding amendments to the Convention. The FWS has asked the U.S. Department of State for authority to negotiate directly with Canada for this purpose. The FWS has already completed an Environmental Assessment (EA) on managing migratory bird subsistence hunting in Alaska. The EA includes recommendations that could allow for the traditional take of some migratory bird eggs, including those of gulls, terns and other species, for subsistence purposes throughout much of Alaska.

Your request for a fall subsistence harvest of waterfowl, consistent with State of Alaska seasons and harvest limits, is in conflict with the existing Federal subsistence management regulations, which exclude migratory birds as a subsistence species. A fall subsistence season for the harvest of waterfowl would require promulgation of new regulations. However, we are willing to consider this matter in the future upon receipt of formal hunting plan recommendations.

With regard to the access study, representatives from the National Park Service (NPS) met in March with the Alaska Department of Fish and Game's (ADF&G) Subsistence Division to discuss study objectives and needs. By this point in the fiscal year, however, the NPS had already obligated its fiscal resources for data collection. The NPS did provide access to NPS files to help facilitate the ADF&G study.

In addition, a Cooperative Agreement between the NPS and the Copper River Native Association is investigating historic use areas and access routes, using archeological sites, place names, Native allotments, descriptions from written accounts and possibly descriptions from interviews. Upon completion of the project, the NPS will provide ADF&G with pertinent information related to subsistence access.

At this time, it appears that the anticipated 1995 subsistence research budget will be needed for the completion of ongoing projects. However, the NPS will work to incorporate this project into the earliest possible budget cycle.

Mr. Roy Ewan 2

Lastly, and importantly, recommendations of the Commission should be made in the form of hunting plan recommendations and must include consultations with the appropriate State advisory committees and Federal subsistence advisory councils as required by Section 808 of Alaska National Interest Lands Conservation Act (ANILCA).

Again, thank you very much for your continued commitment to the work of the Commission. We look forward to corresponding with you in the future.

Sincerely,

/sgn/ George T. Frampton Jr.

George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks

bcc: 1416-Secy's RF(2) 3152-FW 6217-ES 6024-SOL 5129-PMB
R/D-ARO) 001-RF 202-Salley)
FNP:ARO/RS:6/7/94:907/257-2646:ES#90614&90675/100404B2:LES
Revised:FWS/KMorehouse/703/358-1714:6/29/94
Revisee:SOL/DGayer:208-6172:7/29/94

WRANGELL-ST. ELIAS
NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234

February 29, 1996

Mr. Roy Ewan, Chairman
Southcentral Alaska Federal Regional Advisory Council
1011 East Tudor Road
Anchorage, Alaska 99503

Dear Mr. Ewan:

On February 28, 1996 the Wrangell-St. Elias National Park Subsistence Resource Commission approved the following draft hunting plan recommendation concerning the authorization of a fall federal subsistence waterfowl hunt consistent with the state season and bag limit.

As you know in national parks only Federal Subsistence hunting is authorized for local-rural residents, therefore it is not possible for local rural residents to hunt under a state authorized migratory bird season and bag limit like it is in National Preserves, Refuges and Forest Service lands. This recommendation encourages the Secretary to authorize through his authority a Title VIII subsistence season and bag limit for waterfowl.

In accordance with Section 808 of ANILCA, we request your review and comment on the draft recommendation. We are asking that the Council review this recommendation at the next Council meeting. Please send any comments to John Vale, Chairman, Wrangell-St. Elias National Park Subsistence Resource Commission at P.O. Box 439, Copper Center, Alaska 99573.

Sincerely,

John Vale
Chairman, Wrangell-St Elias National Park -
Subsistence Resource Commission

Chair: John Vale
Members: Paul Claus, Bill Ellis, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

W..ANGELL-ST. ELIAS NATIO..AL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234
FAX (907) 822-7216

DRAFT HUNTING PLAN RECOMMENDATIONS
February 29, 1996

96-1
Establish a fall subsistence season and bag limit, consistent with the state season and bag limit for waterfowl.

96-2
Provide a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes to qualified subsistence users, as is the case for western Alaska.

DISCUSSION:

Currently, there is no federal subsistence season for waterfowl.
In National Parks, only Federal subsistence hunting by local rural residents is authorized. Therefore, it is not possible for local rural residents to hunt under a state authorized migratory bird season and bag limit like it is in National Preserves, Refuges and Forest Service lands. The Commission believes the harvest of migratory birds for subsistence purposes is an important customary and traditional practice.

It is recognized that rural Alaskans have a longstanding subsistence use of migratory birds and their eggs during the spring and summer seasons. The Migratory Bird Treaty Act allows rural residents in western Alaska to harvest certain migratory birds and their eggs for subsistence purposes during the spring and summer. The Commission believes that qualified subsistence users across the State have similar customary and traditional subsistence use of migratory birds and their eggs and should be provided for.

34

Chairman: John Vale
Members: Paul Claus, Bill Ellis, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

WRANGELL-ST. ELIAS NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234
FAX (907) 822-7216

December 6, 1996

Tony Knowles, Governor
Office of the Governor
P.O. Box 110030
Juneau, AK 99811

Dear Governor Knowles:

The Wrangell-St. Elias National Park Subsistence Resource Commission submits to you the following formal hunting plan recommendations for Wrangell-St. Elias National Park in accordance with Section 808 of ANILCA.. These recommendations were submitted to you on April 18, 1994 and we received your request on September 12, 1994 to conduct consultations with the appropriate State advisory committees and Federal subsistence advisory councils. That consultation is complete and the comments are attached. Those advisory committees that responded to our request supported the hunting plan recommendation. The Hunting Plan Recommendations, discussion and comment letters are attached.

96-1: Establish a fall subsistence season and bag limit for migratory waterfowl, consistent with the state season and bag limit for waterfowl on state land.

96-2. Provide a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes to qualified subsistence users, as is the case for western Alaska.

We would appreciate your approval of hunting plan recommendation 96-1. We would also appreciate a clarification and analysis of hunting plan recommendation 96-2 as it relates to the 1916 Migratory Bird Convention.

Thank you for your attention to these matters.

Sincerely,

John Vale
Chairman

cc: Secretary of Interior

Chairman: John Vale
Members: Paul Claus, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234

HUNTING PLAN RECOMMENDATIONS
December 5, 1996

96-1
Establish a fall subsistence season and bag limit, consistent with the state season and bag limit for waterfowl.

96-2
Provide a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes to qualified subsistence users, as is the case for western Alaska.

DISCUSSION:

Currently, there is no federal subsistence season for waterfowl. In National Parks, only Federal subsistence hunting by local rural residents is authorized. Therefore, it is not possible for local rural residents to hunt under a state authorized migratory bird season and bag limit like it is in National Preserves, Refuges and Forest Service lands. The Commission believes the harvest of migratory birds for subsistence purposes is an important customary and traditional practice.

It is recognized that rural Alaskans have a longstanding subsistence use of migratory birds and their eggs during the spring and summer seasons. The Migratory Bird Treaty Act allows rural residents in western Alaska to harvest certain migratory birds and their eggs for subsistence purposes during the spring and summer. The Commission believes that qualified subsistence users across the State have similar customary and traditional subsistence use of migratory birds and their eggs and should be provided for.

Chair: John Vale
Members: Paul Claus, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

Eastern Interior Alaska Subsistence
Regional Advisory Council
c/o U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503
Phone: (907)-786-3871 or (907)-456-0406, Fax: (907)-786-3898
Toll Free: 1-800-478-1456 or 1-800-801-5108

March 20, 1996

John Vale, Chair
Wrangell-St. Elias National Park Subsistence Resource Commission
c/o Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, Alaska 99573

Dear Mr. Vale,

The Eastern Interior Regional Advisory Council reviewed your request to Roy Ewan, Southcentral Regional Advisory Council (dated 2/29/96), to support your Commission's draft hunting plan. The draft hunting plan recommends the Secretary of Interior authorize through his authority under Title VIII, a fall subsistence season and harvest limit for waterfowl hunting on Wrangell-St. Elias National Park lands consistent with the State season and harvest limit. The Regional Council passed a motion to support the above letter (Vote: 7-0-0-2). Waterfowl hunting is an important component of a traditional subsistence lifestyle. The Regional Council supports efforts to allow this important subsistence activity to be re-established on Wrangell-St. Elias National Park lands as it is currently allowed on National Preserve lands.

There maybe a need for further investigation on this issue and possible alternatives explored to allowing waterfowl hunting to return to eligible subsistence users and communities of Wrangell-St. Elias National Park on Park lands. The Regional Council supports protecting all traditional subsistence activities including waterfowl hunting in fall.

Thank you bringing your concern to our attention. We appreciate being consulted on the development of your hunting plans. If you have any questions, please contact me or Vince Mathews. My phone number is 662-2557 and Vince's are listed in the letter.

Sincerely,

Steven Ginnis, Vice-Chair

cc: Tom Boyd, Deputy Assistant Regional Director, Office of Subsistence Management
Eastern Interior Regional Subsistence Team

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

November 18, 1998

Aniakchak National Monument SRC, Chair
Cape Krusenstern National Monument SRC, Chair
Denali National Park SRC, Chair
Gates of the Arctic National Park SRC, Chair
Kobuk Valley National Park SRC, Chair
Lake Clark National Park SRC, Chair

Dear Subsistence Resource Commission Chairs:

The Wrangell-St. Elias Subsistence Resource Commission has requested that the National Park Service permit a waterfowl hunt in the fall and egg collection in the spring and summer for subsistence purposes within Wrangell-St. Elias National Park and Preserve. The response from the Secretary of the Interior has been that the National Park Service lacks the authority under ANILCA to make regulations permitting such a hunt.

While we understand the Secretary's response, we would like to pursue this issue further. It is our understanding that the Migratory Bird Treaty Act Protocols have been modified to allow for some subsistence hunting of waterfowl and egg collection for subsistence purposes. The Fish and Wildlife Service is charged with the responsibility for administering the provisions of the Migratory Bird Treaty Act. However, the Fish and Wildlife Service does not have the authority to make regulations permitting hunting within the national parks. We now believe that an amendment to ANILCA will be required to give the National Park Service the authority to make regulations permitting a waterfowl hunt on National Park lands under the provisions of the Migratory Bird Treaty Act. We believe that such a hunt, if permitted for subsistence purposes, would be consistent with the enabling legislation of the ANILCA parks.

We are interested in finding out if your commission has an interest concerning this matter, and if so, what the position of your commission would be.

Sincerely,

John Vale
Wrangell-St. Elias National Park, Chair
Subsistence Resource Commission

cc: Terry Haynes, ADF&G
Southcentral Regional Advisory Council
Southeastern Regional Advisory Council
Eastern Interior Regional Advisory Council
Kodiak/Aleutian Regional Advisory Council
Bristol Bay Regional Advisory Council
Yukon-Kuskokwim Delta Regional Advisory Council
Western Interior Regional Advisory Council
Northwest Arctic Regional Advisory Council
North Slope Regional Advisory Council
Seward Peninsula Regional Advisory Council
Upper Tanana/Fortymile Fish and Game Local Advisory Council Committee
Tanana Chiefs Conference
Copper River Native Association
AHTNA
Councils at: Chistochina, Chitina, Dot Lake, Gakona, Gulkana, Kluti-Kaah, Mentasta Lake, McCarthy, Northway, Tanacross, Tazlina, Tetlin,



March 4, 1999

John Vale, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Copper Center, Alaska 99573

Wrangell-St. Elias SRC requests for comments on waterfowl harvests on park lands.

Commission members,

The Denali Subsistence Resource Commission, at its February 26, 1999, meeting, discussed the Wrangell-St Elias SRC's requests for comments on migratory waterfowl hunting and egg collecting on park lands. To the best of our knowledge there is no subsistence harvest of migratory waterfowl or eggs from Denali National Park lands. However, local subsistence users do occasionally harvest them from adjacent lands and rarely from Denali National Preserve lands.

The Denali Commission unanimously passed a motion stating that, although we do not have a particular concern with migratory waterfowl hunting or egg collecting on Denali park lands, the Denali Commission does support efforts by the Wrangell-St. Elias SRC to ensure that traditional hunting and harvesting practices are protected.

We appreciate being informed of your concerns. If you have any further questions, please contact Florence Collins, Chair, Denali Subsistence Resource Commission. (907) 457-2674.

Sincerely,

Florence Collins

Florence Collins
Chair, Denali Subsistence Resource Commission

CC:
Steve Martin, Superintendent Denali National Park and Preserve
Subsistence Resource Commissions at Lake Clark, Cape Krusenstern/Kobuk Valley, Gates of the Arctic, and Aniakchak.

GATES OF THE ARCTIC NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
c/o 201 first Avenue
Fairbanks, AK. 99701
(907) 456-0281 or FAX (907) 456-0452

L30 GAAR SRC

12 May 1999

Wrangell - St. Elias National Park and Preserve
Subsistence Resource Commission
P.O. BOX 439
Copper Center, AK. 99573

Dear Mr. Vale,

Thank you for bringing it to our attention that waterfowl hunting is not allowed on Park lands, by interpretation.

Waterfowl are harvested on GATES Park lands by subsistence users, therefore we feel that the continuation of harvest by eligible subsistence users should continue as stated in Title VIII 802(1),

> " It is hereby declared to be the policy of Congress that - consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;"

Waterfowl have been and continue to be a portion of subsistence harvests. As harvest of waterfowl does not violate any recognized conservation principles or modify or repeal any provision of the Migratory Bird Treaty Act, their use should continue on Park lands.

We question the solicitor's opinion, and would like to see the findings delineated. It would be better to resolve this issue with the NPS, before entertaining an act of Congress with ANILCA changes.

Sincerely,

Pollock Simon Sr.

Pollock Simon, Sr.
Chairperson

Pollock Simon, Sr. (Chairperson), Jack Reakoff (Vice-Chairperson)
Bill Fickus,Levi Cleveland, Taqulik Hepa, Stanley Ned,
Ben Hopson, Jr., Carolee Walker and Rachel Riley

cc: Terry Haynes, ADF&G
Southcentral Regional Advisory Council
Southeastern Regional Advisory Council
Eastern Interior Regional Advisory Council
Kodiak / Aleutian Regional Advisory Council
Bristol Bay Regional Advisory Council
Yukon-Kuskokwim Regional Advisory Council
Western Interior Regional Advisory Council
Northwest Arctic Regional Advisory Council
North Slope Regional Advisory Council
Seward Peninsula Regional Advisory Council
Upper Tanana / Fortymile Fish and Game Local Advisory Council Committee
Tanana Chiefs Conference
Copper River Native Association
AHTNA
Councils at: Chistochina, Chitina, Dot Lake, Gakona, Gulkana, Kluti-Kaah, Mentasta Lake, McCarthy, Northway, Tanacross, Tazlina, Tetlin

United States Department of the Interior

NATIONAL PARK SERVICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

N1419 (AKRD-SUBS)

MAY 1 6 2000

Ray Sensmeier, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 8
Yakutat, Alaska 99689

Dear Mr. Sensmeier:

Thank you for your letter of December 6, 1996, to Secretary Babbitt regarding Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) hunting plan recommendations 96-1 and 96-2. Please accept our apologies for the long delay in providing this response to you. The Secretary has recently delegated the authority to respond to SRC hunting plan recommendations to this office. We hope this delegation will help us be more responsive to future SRC recommendations.

We recognize the importance of providing subsistence harvest opportunities for migratory birds in Alaska, where such uses have traditionally occurred. However, the legal issues involved are complex, and we have had frequent discussions with our Solicitor's office, both here and in Washington, to prepare this response.

After carefully reviewing the Commission's recommendations under the guidelines stated in Section 808 (b) of the Alaska National Interest Lands Conservation Act (ANILCA) and other applicable Federal law and policies that direct the management of the National Park Service (NPS), we have concluded that there is nothing in ANILCA that specifically prohibits the taking of migratory birds for subsistence purposes within national parks or national park monuments in Alaska where subsistence uses are otherwise allowed. As you know, the harvest of migratory birds in this country is managed by the U.S. Fish and Wildlife Service (FWS) in accordance with the Migratory Bird Treaty Act (MBTA) and applicable federal and state regulations. The MBTA and implementing regulations do not provide for a preference under ANILCA for the taking of migratory birds. However, the traditional harvest of migratory birds may be permitted in parks and monuments, as long as such harvest is consistent with the MBTA.

Section 816 of ANILCA states that national parks and park monuments shall be closed to the taking of wildlife except for subsistence uses specifically permitted in ANILCA. Section 815 states that nothing in Title VIII shall be construed as modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the

Migratory Bird Treaty Act. Earlier analysis of the impact of these two sections led us to believe that the taking of migratory birds could not be permitted in national parks and monuments, because such use could not be considered a subsistence taking as permitted in ANILCA. This is not the case. In fact, the language of Section 815, and delegations of the Secretary of Interior, only determines what regulations should govern such taking. The Secretaries of Interior and Agriculture have delegated the authority to regulate most subsistence hunting and fishing in Alaska to the Federal Subsistence Board. As you know, those regulations do not include migratory birds. Section 815 mandates that such taking be regulated in accordance with the MBTA, and the Secretary of Interior has delegated the authority to regulate taking of migratory birds to the FWS, not the Federal Subsistence Board.

Your hunting plan recommendation 96-1 requests the establishment of a fall subsistence season and bag limit for migratory waterfowl, consistent with the State season and bag limit for waterfowl on State land. As stated above, this harvest is permitted as long as it is consistent with the regulations promulgated under the MBTA. Because ANILCA and any regulations promulgated pursuant to ANILCA also govern such harvest, only local rural residents are permitted to harvest migratory birds within parks and monuments. In addition, the prohibition in NPS regulations against the use of aircraft for subsistence in parks and monuments extends to the taking of migratory birds.

Your hunting plan recommendation 96-2 requests a general exception to the spring and summer harvesting of migratory birds and their eggs for subsistence purposes to qualified subsistence users, as is the case for western Alaska. For a number of years, the FWS has had a policy limiting enforcement of the general prohibition of spring and summer harvesting of migratory birds and their eggs in western Alaska. However, this policy will be cancelled as regulations permitting such take are adopted. The U.S. Senate recently ratified protocols amending migratory bird treaties with Canada and Mexico. These protocols provide for legal, regulated spring subsistence hunting and egg harvest in Alaska. The FWS is currently in the process of establishing management bodies that will allow subsistence users to be involved in the development of those regulations. In response to your request, we are providing a copy of your recommendation and this response to the FWS for its consideration as it moves forward with the development of spring harvest regulations. The FWS has stated that it intends to have regulations finalized in 2001.

Again, we commend you and the Commission's efforts in addressing these complex subsistence issues, and we thank you for your patience while we worked through this issue. The Commission's role in defining the subsistence hunting program in Wrangell-St. Elias National Park is a continuing one and we look forward to your future involvement and recommendations.

Sincerely,

Paul R. Anderson

for Robert D. Barbee
Regional Director

cc: Assistant Secretary for Fish and Wildlife and Parks
Regional Director, FWS-Alaska
Superintendent, WRST
Governor of Alaska
Chairman, Eastern Interior Regional Advisory Council
Chairman, Southcentral Regional Advisory Council
Chairman, Southeastern Regional Advisory Council

Chapter 7

Wildlife Harvest

Subsistence harvest of wildlife (hunting and trapping) is allowed in Wrangell-St. Elias National Park by qualified subsistence users subject to Federal subsistence management regulations. These regulations are subject to change on a biennial basis. To be eligible to hunt or trap in Wrangell-St. Elias National Park you must meet all of the following requirements:

- be a rural Alaska resident;
- have a "positive" customary and traditional use determination for the area and species you intend to hunt and/or trap;
- permanently reside in Wrangell-St. Elias National Park, in a Wrangell-St. Elias National Park resident zone community or hold a subsistence eligibility permit (13.440 permit) for Wrangell-St. Elias National Park;
- possess a valid State of Alaska license (for hunting and/or trapping);
- comply with season and harvest limit regulations;
- comply with all State and Federal permits, harvest tickets or tag requirements.

Authority

50 CFR 100 Federal Subsistence Management Regulations
36 CFR 13.1902 Wrangell-St. Elias National Park and Preserve
36 CFR 13 Subpart F Subsistence

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SRC Completed Action 7.1

Action 7.1: Allow the use of predator control as a means of maintaining healthy populations of wildlife.

Issue Background

- The SRC prepared a hunting plan recommendation in 1986 indicating that they felt NPS had the authority, under provisions of the Organic Act of 1916, to allow the use of predator control in parks. The SRC wanted predator control used (of wolf and grizzly bear) as a means of maintaining healthy populations and providing for subsistence needs (see Action 7.1, pages 2-5).
- The Secretary's (1988) response indicated that Congress never intended NPS to engage in habitat manipulation or control of certain species for the purpose of maintaining subsistence uses within a National Park (see Action 7.1, pages 6-10).
- In December 1989 the SRC made seven (7) recommendations. One of these recommendations asked the Secretary of Interior to cease actions to unilaterally eliminate opportunities for eligible subsistence hunters to harvest wolves same-day-airborne (see Action 7.1, pages 11-14).
- Additional correspondence on this topic has been exchanged between the SRC, RACs, NPS, and the Secretary of the Interior (see Action 7.1, pages 15 -32.)

Current Status

- No further action has been taken on this issue.

Authority

NPS has no authority to allow predator control in parks.

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

L30 (ARO-O) August 8, 1986

Secretary Donald Hodel
Department of the Interior
18th & C Streets, N. W.
Washington, D. C. 20240

Dear Secretary Hodel:

The Wrangell-St. Elias National Park Subsistence Resource Commission has completed its initial recommendations for a subsistence hunting plan as required by Section 808 of Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA). The enclosed recommendations represent the combined efforts of our nine-member commission which has met several times at various locations in and near the park since May 1984.

In August 1985, copies of the enclosed recommendations were sent to each appropriate local Fish and Game Advisory Committee and Regional Advisory Council for consultation (please see enclosed). I am also, on this date, sending these recommendations for a subsistence hunting plan to the Governor of Alaska, as required by Section 808 of ANILCA.

We will be eagerly awaiting your reply.

Sincerely,

W. T. Ellis

W. T. (Bill) Ellis, Chairman
Wrangell-St. Elias
Subsistence Resource Commission

cc: Honorable Bill Sheffield
Governor of Alaska
Subsistence Resource Commissions:
Aniakchak
Cape Krusenstern
Denali
Gates of the Arctic
Kobuk Valley
Lake Clark
Southcentral Regional Council
Southeast Regional Council
Interior Regional Council
ADF&G Subsistence Division
ADF&G, Glennallen & Tok
AHTNA Corporation
Copper River Native Assoc.
Citizens Advisory Commission on Federal Areas
Alaska Outdoor Council

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

The following represents recommendations for a subsistence hunting plan as required by Section 808 of Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA).

American Heritage Dictionary - Second College Edition
ACCESS: -n- 1. A means of approaching or nearing, 2. The act of approaching, 3. The right to enter or make use of.

APPROACH: -v- 1. To come or go near or nearer to.

LAND: -v- 1. To set down on land or another surface, 2. To cause to arrive in a place or condition.

1. AIRCRAFT ACCESS FOR SUBSISTENCE

Current National Park Service interpretation of its rules and regulations regarding aircraft access to park/preserve land(s) is contradictory to its past stand on this matter. A letter from Charles A. Budge, Wrangell-St. Elias Superintendent (retired), dated February 13, 1984, addressed to Sue Entsminger stated: "Anyone can fly into the Preserve for the purpose of taking fish and wildlife in season in accordance with State and Federal hunting laws and regulations. It is then possible for a local rural resident to proceed into the "park" to hunt. The same interpretation would also apply to private lands." This has also been the accepted practice orally conveyed to local residents by local "NPS" authorities since the creation of the monument statu in 1979 and 1980 and for park and preserve land status since 1981.

Six years later, on July 2, 1985, a Memorandum from the Alaska Regional Director suddenly finds that ANILCA allows only for "surface transportation" in park units for subsistence purposes and that Section 13.45 of 36 CFR prohibits the "use of aircraft for access" for subsistence taking of fish and wildlife.

The NPS memo itself is contradictory when it later states that "any aircraft access to the park/monument with the intent of harvesting its fish and game for subsistence is prohibited no matter where the actual landing of the aircraft may occur". ACCESS is defined in any dictionary as "a means of approaching or nearing".

NPS has stated that one may not land outside the park/preserve and then walk into the park/preserve for the purpose of subsistence hunting. They ignore the fact that the actual entering of the park/preserve would have been by walking or other "surface transportation". They also ignore the fact that what happens outside the boundary of the park/preserve is of no concern to the NPS and would fall under the jurisdiction of local/state authorities. (ANILCA Section 103 (f).

The July 2, 1985 memo is also a closure contrary to Operations Memo 82-3 for guidelines which Robert Babson stated "are legally sufficient and in full compliance with Congressional intent as expressed in the applicable provisions of ANILCA. This includes each of the sections of the guidelines, including the section on subsistence activities.

The Park Service appears to be emphasizing certain phrases of the ANILCA legislativ history on subsistence aircraft use while ignoring other phrases which, if given equal weight, would result in the allowance of subsistence aircraft use in the Park.

The Congressional Record, 11/12/80, H10541 states: "It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occured."

This would seem to imply that it is possible for the NPS to allow this traditional use of aircraft to continue where such uses have traditionally and regularly occured. This is certainly the case in the Wrangell-St. Elias National Park.

Senate Report 96-413, 219 notes that the Wilderness Act and the access provisions of the act allow for the continuation of aircraft and motorboats in wilderness areas where those uses have been established. This is meant to relate to patterns of use. It is not meant to relate to specific uses by specific individuals. Continued aircraft use and landings are consistent with the purpose, character, and manner of the wilderness area.

It appears that it was the intent of Congress to allow for the continuance in the few cases where subsistence aircraft access is necessary. This is the case in the Wrangell-St. Elias area. With 13,500,000 acres in Wrangell-St. Elias and only 113 miles of road way with which to access that vast area, it can be seen that aircraft use in Wrangell-St. Elias is not only reasonable, it is often the only manner in which to safely access the Wrangells.

The Wrangell-St. Elias Subsistence Recource Commission has in hand a letter from the Glennallen office of the Alaska Department of Public Safety which lists accidental deaths for the Wrangells from January 1983 through April 1986. In that period, there were five deaths related to aircraft accidents. There were nineteen deaths involving water and watercraft in the same period. As demonstrated by these numbers, aircraft access in Wrangell-St. Elias has been traditionally safer than "surface transportation". Many comments have been made about the unrestricted use of ATV's in accessing the park/preserve. There are many areas in the park/preserve which cannot be accessed without crossing dangerous waterways. Given the opportunity to choose between aircraft and an ATV to access remote areas of the Wrangells, most users would opt for the aircraft Were the use of aircraft subsistence totally banned, users would be forced to use other means (ATV's being the most likely) to access these remote areas and would, in all probability, attempt to cross dangerous waterways thus endangering their safety.

It has been demonstrated that the most reasonable form of access to the park is via aircraft and the NPS action of denying local subsistence users to employ traditional means of aircraft access has had an adverse impact on subsistence uses in the park by denying the opportunity for continuing such use. Uder ANILCA Section 808 (b), the Secretary of the Interior may not deny a Subsistence Resource Commission recommendation if it would be detrimental to the satisfaction of subsistence needs. Since traditional subsistence aircraft access has not been shown to be contrary to recognized principles of wildlife conservation, healthy populations of wildlife, or the purposes for which the park was established, it is felt that the United States Department of the Interior is in conflict with its own regulations and is working at cross purposes to ANILCA.

2. PREDATOR CONTROL

Under Section 3 of the National Park Service Act of August 25, 1916, as amended, the Secretary of the Interior has the authority to provide for the destruction of such animals and of such plant life as may be detrimental to the use of any parks, monuments, or reservations. Subsistence is an allowed and protected use. It is also considered a natural part of the ecosystem. The Secretary of the Interior is prohibited from

denying a Subsistence Resource Commission request in several areas. He may deny a request if that request threatens the conservation of healthy populations of wildlif in a park or park monument. He may also deny a request if it is contrary to the purposes for which the park or park monument is established. He may also deny a request if it is detrimental to the satisfaction of subsistence needs of local residents. It would appear that if predator control is required to maintain healthy populations and subsistence needs, the Secretary of the Interior has the authority to allow or even order such predator control.

3. NORTHWAY ADDITION

The commission recommends that the village of Northway be added to the resident zone for Wrangell-St. Elias National Park and Preserve. The village of Northway has always utilized the resources from the park/preserve for subsistence purposes in a customary and traditional manner. The Alaska Department of Fish and Game has data to support traditional use of the Wrangells for subsistence purposes. It should also be noted that 36 CFR Part 13.43 (2) (a) and (b) (1) allow for the addition of a community to the resident zone for a park. The failure to include Northway in the resident zone was probably an oversight when resident zones were created.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

D18(763) MAY 16 1988

Mr. W. T. Ellis
Chairman, Wrangell-St. Elias
Subsistence Resource Chairman
P.O. Box 29
Glenallen, Alaska 99588

Dear Mr. Ellis:

The Subsistence Resource Commission for the Wrangell-St. Elias National Park is to be recognized for the many hours of effort that have gone into developing the subsistence hunting program recommendations submitted to the Secretary of the Interior. The recommended program cannot be implemented, however, because it is not within the guidelines stated in Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA) and other applicable laws and regulations that direct management of the National park System. The nature of the recommendations would tend to alter the management of the park in such a manner that would be contrary to the purposes for which the park was established.

Recommendations 1 and 2 do not meet the criteria of ANILCA Section 808(b), as well as other statutory and regulatory mandates, and recommendation 3 lacks justification at this time. Specific comments on each recommendation follows:

- The Commission's first recommendation calls for aircraft access for subsistence use in the park. National Park Service (NPS) regulations specifically prohibit the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence use. The 1985 memorandum from the NPS Alaska Regional Director was issued to clarify the use of aircraft for subsistence use when the Regional Office became aware that there was inconsistent application of the regulations by NPS superintendents in Alaska.

Section 811 of ANILCA specifically provides for subsistence users to access the park with snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses. The legislative history (Congressional Record and Senate Report No. 96-413) expresses congressional intent "...that only rarely should aircraft use for subsistence hunting purposes be permitted within National Parks, National Monuments and National Preserves...." (November 12, 1980, p. H10541, Congressional Record). Comments by both the House and the Senate state "...that in most new units of the National Park System the taking of wildlife by local rural residents for subsistence uses has not necessitated the use of aircraft as a means of

access...." (Senate Report No. 96-413, p. 169). There may be exceptions to the general prohibition to aircraft use for subsistence, but those exceptions will be provided for under permit and will continue to be rare and based upon extraordinary circumstances as currently outlined in 36 CFR Part 13.45.

- The Commission's second recommendation is for implementation of predator control, to maintain healthy populations and meet subsistence needs. The intent of Congress on this issue is clearly stated in Senate Report 96-413, (page 171): "...the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units." Since subsistence use is considered a natural part of the ecological process, subsistence users should substitute other natural resources to fulfill their needs when the moose or caribou populations fluctuate naturally to low levels. In addition, ANILCA, Section 804 provided for a subsistence priority during these times when populations are low. The State of Alaska is responsible for implementation of Section 804 but the Commission can and should, as discussed later, provide input into development of a subsistence priority system.

- The third recommendation discusses resident zone status for the community of Northway. Resident zone designation means that means that individuals who permanently reside within the identified community are awarded subsistence privileges as a community. In order to designate the community of Northway as a resident zone community, NPS would have to determine whether or not a significant concentration of people who permanently reside in this community have a history of customary and traditional subsistence use in the park. To date, the Service has had no indication from the residents of Northway that they have any interest in subsistence hunting within the park or that they have a history of customary and traditional subsistence use within the park. At this time, NPS will not further explore designating it as a resident zone. The residents will continue to be eligible to apply for subsistence hunting permits.

In addition to the above specific comments on your recommendations, the following material has been prepared to provide suggestions on the types of issues about which the Commission could provide useful recommendations for the Secretary, the Governor, and the National Park Service. These topics have been taken from a combination of sources, including the House and Senate Congressional Records; Senate Report 96-413; and the preamble to 36 CFR Part 13 issued on June 17, 1981. The Commission may wish to consult these documents as it considers the merits of providing recommendations on these topics. In addition, I suggest that you work with NPS to develop a viable program that meets the area's subsistence needs and is consistent with the purposes for which the Wrangell-St. Elias National was created.

Resident Zones. Most of the 18 designated resident zone communities are located along the Glenn, the Edgerton and the Richardson Highways; the Tok Cutoff; and the Nebesna Road. Settlement along this road system has made it increasingly difficult to delineate clear community boundaries since almost none of the established communities are incorporated. Major projects in the near future involving the Copper River area and road network will have the direct effect of bringing a large influx of new people into the area. Projections for the "Over The Horizon Backscatter Radar" project and the proposed Trans-Alaska Gas Pipeline

indicate that several hundred people will migrate into resident zone communities. Unless resident zone boundaries are conservatively established or communities are eliminated from resident zone status, all of these "new" people will be eligible to hunt, fish and trap within the park. As you consider this issue, keep in mind that even without resident zone status, residents with a history of customary and traditional subsistence use of the park area would still be eligible to continue that use (under a permit or other individual-based system), so long as the community or area remains rural under State definition and they continue to reside in the local area.

In the Federal Register (Vol. 46, No. 116, Wednesday, June 17, 1981, p. 31850), NPS recognized "...that additional information for more precise designation of resident zones will probably be developed in the future by NPS, the State Department of Fish and Game Subsistence Division, local communities, regional councils, and park and monument commissions." At this time, local input is needed from the Commission on a number of questions related to the park's resident zones. For example, are the communities currently designated as resident zones still viable as resident zones? How should the unincorporated community boundaries of resident zones be identified so the NPS can determine who needs to qualify for a permit and who resides within a resident zone? Can the resident zone concept remain viable with an influx of several hundred "new" residents into currently designated resident zone communities?

Local Rural Residents. The Interim Final Rules and Regulations published in the Federal Register on June 17, 1981, (p. 31840), stated that "...the rural people's concern and their recommendations for further evidence of local rural residency deserve thoughtful consideration. Their recommendations have intuitive appeal, but also present legal and equitable problems. The Park Service believes that the local committees, regional councils, and the park and monument commissions are more appropriate forums than this interim rulemaking for deciding whether and how to implement such recommendations."

In considering who should be eligible to subsistence hunt in park areas, congress was primarily thinking of people who had or were members of a family that had a history of customary and traditional subsistence use in the park, without the use of aircraft for access. The State of Alaska has criteria used by the Joint Boards of Fish and Game in designating areas as rural or non-rural for subsistence purposes. The Department of the Interior and the National Park Service will honor those determinations so long as the State is in compliance with ANILCA. However, questions still remain concerning the term local. What distance from the park boundary can be considered to be local? How far away can an individual or family reside from the park and maintain a customary and traditional pattern of subsistence use inside the park? Recommendations from the Commission on the definition of local rural resident as it pertains to eligibility to subsistence hunt in the park and is consistent with ANILCA and the associated legislative history would be most welcome.

Traditional Subsistence Hunting Zones

In Wrangell-St. Elias National Park, neither the regulations nor the statute offers specifics as to the geographic areas where subsistence uses are traditional. The legislative history clearly intends subsistence hunting to be

restricted in the park to traditional use areas (Senate Report No. 96-413, supra, 147; 126 Congressional Record H10535 (daily ed. Nov. 12, 1980); page 31848 FR, June 17. 1981). Since the legislative guidance on where subsistence uses are traditional in Wrangell-St. Elias was incomplete at the time of rulemaking, the Subsistence Resource Commission could provide valuable input into such determination.

Trapline Management

The June 17, 1981, Federal Register (page 31842), stated:

> One Eagle, Alaska, resident requested the National Park Service to develop a management system for traplines to freeze "ownership" according to pre-1978 or present patterns. He said that the old trapline system - "where a person live[d] on and look[ed] after his own little pocket of fur" - worked well, but he fears that the Park Service regulations will encourage people beyond park boundaries to enter, take, and leave. For the interim period, the Park Service is hopeful that such factors as the local rural residency test, the prohibition on aircraft use, the applicability of State law, and the pressure of local socioeconomic realities will adequately prevent or discourage the rush of opportunistic trappers which this resident fears. For the longer term, if the problem materializes, the local committees, regional councils, park and monument commissions, and the State will be able to consider solutions.

The Wrangell-St. Elias Commission could consider whether or not a trapping problem has materialized, or is likely to materialize within the park and provide some recommendations to solve the potential or actual problem situation.

Subsistence Priority

According to Section 804 of ANILCA, whenever a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users, the resources must be allocated in accordance with the three criteria of the subsistence priority: customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources. For example, if consumptive uses must be restricted to assure the continued viability of the resource population (including the conservation of healthy and natural populations in parks and monuments), or assure the local rural residents the continued opportunity to engage in subsistence uses, consumptive uses would have to be limited to subsistence uses by local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

NPS regulations deferred further refinement pending development of State regulations (the State of Alaska now has a program in place), and local input on the criteria from the local advisory committees and regional advisory councils established by Section 805 of ANILCA, and the park and park monument commissions established by section 808. To date, none of the Subsistence Resource Commissions have provided input to those criteria or the overall State process.

The Commission's task is a difficult one. Subsistence use of the wild renewable natural resources and especially, subsistence hunting, must be treated with great care to assure that abuses do not occur while at the same time providing the continuing opportunity for those people with a history of customary and traditional subsistence hunting activity within the park. We look forward to being able to implement future subsistence hunting program recommendations for Wrangell-St. Elias National Park.

NPS will incorporate, by addendum, those aspects of the Subsistence Resource Commission's future recommendations that can be implemented, into the General Management Plan for Wrangell-St. Elias National Park. If a comprehensive subsistence management plan is developed by NPS for the park at some point in the future, the Commission's subsistence hunting program recommendations, as implemented, will become the foundation for such a plan.

Please share this letter with each Commission member. The Department of the Interior looks forward to your future recommendations.

Sincerely,

(Sgd) Susan Reece

Deputy
Assistant Secretary for Fish
and Wildlife and Parks

WRANGELL-ST. ELIAS
SUBSISTENCE RESOURCE COMMISSION

December 29, 1989

Dear Interested Citizen or Organization:

On December 5, 1989, the Wrangell-St. Elias Subsistence Resource Commission proposed several recommendations related to subsistence hunting opportunities in the park. The Commission desires public comment on these proposals prior to taking final action. Final recommendations will be transmitted to the Secretary of Interior and the Governor of Alaska, as detailed in the Alaska National Interest Lands Conservation Act (ANILCA) Section 808 (attached).

BACKGROUND: There are 7 subsistence resource commissions in Alaska - one for each National Park and Monument where subsistence hunting is allowed. Each Commission consists of 9 members: 3 appointed by the Governor of Alaska, 3 appointed by the Secretary of Interior, and 3 appointed by regional councils. The Wrangell-St. Elias Commission sent 3 recommendations believed necessary for continuance of subsistence hunting opportunities to the Secretary of the Interior in 1986. These were unilaterally rejected by the Secretary in 1988.

The Commission decided in December 1988 to pursue acquiring additional supporting information in order to resubmit those recommendations. This included requesting specific internal correspondence from the Alaska Department of Fish and Game, and conducting a public hearing in Northway.

At the December 1989 meeting, the Commission voted to replace one of the three original recommendations with a new one and to rewrite the other two original recommendations with appropriate supporting information. The Commission voted to present all 3 recommendations to the public for comments prior to final consideration at its next meeting (April 1990). The Commission took action requesting additional information or certain actions from the National Park Service and State of Alaska.

PROPOSED RECOMMENDATIONS

1. Recommend the Secretary of Interior cease actions to unilaterally eliminate opportunities for eligible subsistence hunters to harvest wolves on the same-day-as-airborne.

2. Recommend the Secretary of Interior add Northway as a resident zone community so subsistence hunting in Wrangell-St. Elias National Park/Preserve can resume.

3. A) Recommend the Secretary of Interior list Wrangell-St. Elias National Park/Preserve resident zones with histories aircraft use patterns as "exempt communities" in order to continue traditional access via aircraft for subsistence activities; and
B) Recommend the Secretary of Interior rescind the 1985 policy which bans eligible residents from subsistence activities if access to adjacent state, private, or preserve lands involves aircraft.

OTHER ACTION TAKEN

1. Repeated 1988 request that National Park Service pursue acquiring delegation authority from the Secretary of Interior to the Regional Director level to facilitate timely Commission appointments by the Department of Interior.

2. Repeated 1988 request that National Park Service provide copies of all internal correspondence related to the Commission's 1986 recommendations and to the recommendations of other Commissions.

3. Requested National Park Service schedule the next Commission meeting in April 1990 with the first day in Northway and the next 2 days in Copper Center.

4. Requested both the National Park Service and State of Alaska provide the following information related to aircraft access to all commission members prior to the April meeting; all legal opinions, information on legislative history, interpretations of "customary and traditional", data or sources regarding use of aircraft for subsistence hunting on park/preserve lands.

5. Reiterated the 1988 determination that the resident zone communities of Wrangell-St. Elias has not significantly changed, thus no change is necessary to further restrict eligible residents (such as the Park Service suggestions to define boundaries or adopt a "roster" system).

6. Agreed to submit a proposal to the Alaska Board of Game to reconsider the "customary and traditional" determination which eliminates Tok residents from certain subsistence hunts within Wrangell-St. Elias National Park/Preserve, with copies to the Governor and Secretary of Interior.

7. Agreed to draft a resolution requesting the Secretary of Interior/Congress adequately fund subsistence activities of the State of Alaska, consistent with the reimbursement provisions of ANILCA Section 805 D.

YOUR INPUT IN REQUESTED

The Commission requests comments and additional information on the recommendations from all persons, agencies, corporations, and others who have an interest in subsistence hunting opportunities within Wrangell-St. Elias National Park. Proposed wording for each of the recommendations with tentative justification language is attached. Please send any comments or information BY MARCH 1, 1990 to: Bill Ellis, Chairman
WRST Subsistence Resource Commission
S. R. Box 370
Gakona, Alaska 99586

Sincerely,

Bill Ellis, Chairman
Wrangell-St. Elias Subsistence Resource Commission

Attachments
cc: Governor Steve Cowper, State of Alaska
Secretary Manuel Lujan, Department of Interior
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
~~Commissioner Don Young,~~ ADF&G
~~Tina Cunning, ADF&G~~
~~Terry Haynes, ADF&G~~
Southcentral Regional Council
Interior Regional Council
Southeast Regional Council
Alaska Federation of Natives
Superintendent Dick Martin, National Park Service
~~All news medias in region~~
AHTNA Corp.
Copper River Native Assoc.
~~Alaska Board of Game~~
Citizens Advisory Commission on Federal Areas
Alaska Outdoor Council
RuralCap
Subsistence Resource Commissions:
Lake Clark
Denali
Cape Krusenstern
Aniakchak
Gates of the Arctic
Kobuk Valley

PROPOSED REGULATION #1:

Terminate pursuit of unilateral federal rulemaking which would eliminate opportunities for eligible subsistence hunters to harvest wolves same-day-as-airborne on national park/preserve lands.

Justification:

1. Subsistence uses of fish and wildlife are the priority consumptive use of fish and wildlife. Harvest of wolves by the same-day-as-airborne method is a traditional subsistence activity conducted by area residents for several decades.

2. The Alaska National Interest Lands Conservation Act (ANILCA) authorizes the State of Alaska to regulate subsistence harvest of wildlife. The ANILCA creates a 2 tiered system of counsel to the Alaska Board of Game for the purpose of facilitating direct participation and influence of local residents in fish and game allocation decisions. The first tier consists of Regional Councils whose major function is to periodically assess and make recommendations on fish and game harvest proposals. Those recommendations can only fail to be adopted under specific conditions. The second tier consists of local advisory committees within each region, which effectuate direct participation of locals in fish and game management. So long as the State retains this system, the ANILCA defers regulations of subsistence harvests to the State.

3. The ANILCA Section 816 further restricts the Secretary's authority to implement subsistence harvest restrictions: "after consultation with the State and adequate notice and public hearing, may temporarily close any public lands . . . to subsistence uses of a particular fish and wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population.

The National Park Service and Alaska Department of Fish and Game have repeatedly agreed that <u>there is no biological reasons</u> for closure of the same-day-as-airborne method. The Alaska Board of Game has responsibly and historically acted to close other harvest methods (e.g., aerial shooting) and areas (e.g., certain game management units, including preserves) where necessary for enforcement or biological reasons. Therefore, permanent closure of the same-day-as-airborne method is inconsistent with ANILCA.

4. All fish and game advisory committees within the WRST area are opposed to the unilateral prohibition of the same-day-airborne method. The Southcentral and Interior Regional Councils are opposed to a unilateral prohibition of same-day-airborne method by the federal government. The Alaska Board of Game is on record desiring to retain the opportunity for this harvest method. The State of Alaska has provided detailed reasons for opposing the National Park Service issuing unilateral harvest regulations which prohibit a particular harvest method.

United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

N1615 (WRST)

FEB - 7 1997

Mr. Roy Ewan, Chair
Southcentral Alaska Subsistence
Regional Advisory Council
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road
Anchorage, Alaska 99503

Dear Mr. Ewan: Roy

Thank you for your letter of January 3, 1997, and the opportunity to explain the background and National Park Service management policy regarding the Unit 11 wolf issue. I trust that this letter will help you understand why we cannot allow control of wolves within the National Park Units in Alaska.

Wolf control in Alaska is a very contentious issue. Even the State of Alaska, the primary wildlife manager, has had a very difficult time gaining support from Alaskans that wolf control is needed or appropriate. The emotions surrounding this issue are even higher when wolf control in National Parks and Preserves is involved.

The National Park Service Management Policies mandate that predator control will not be practiced on National Park Service (NPS) lands unless part of an approved federally threatened and endangered species recovery program. Moose and caribou, in the State of Alaska are not threatened nor endangered.

In Alaska we are also guided by the language of the Senate Report on ANILCA, "It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained."

I have enclosed a copy of the pertinent section of the NPS Management Policies for your information. If you have any further questions, please contact me or Jon Jarvis, Superintendent of Wrangell-St. Elias National Park and Preserve.

Sincerely,

Robert D. Barbee
Regional Director

Enclosure

bcc: Official File
Reading File
WRST
James A. Caplan, USFS
Jjarvis:klw:1-29-97:d:karenw:royewan

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

March 28, 2006

Jed Davis, Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Dear Jed:

The Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) met at the Caribou Restaurant in Glennallen, Alaska, on February 22 and 23, 2006. At that meeting, the commission discussed the status of important subsistence wildlife resources in the park, such as moose, caribou and sheep.

We are concerned that many of these wildlife populations are at a low-density equilibrium level and that the park is not doing a very good job of managing these resources for the benefit of subsistence users. The SRC would like to see better management of subsistence wildlife species, including more active efforts to reduce the number of bears and wolves that prey on moose and caribou.

The Alaska National Interest Lands Conservation Act (ANILCA) clearly identifies subsistence as the highest priority among all consumptive uses on federal public lands in Alaska and recognizes the important role that subsistence harvests play in the lives of rural residents. Without more active management of subsistence resources for subsistence users, our rural way of life will be threatened.

Sincerely,

Bert Adams, Sr., Chairman
Wrangell-St. Elias National Park Subsistence Resource Commission

cc: Regional Director, Alaska Region, NPS

Chairman: Bert Adams, Sr.; Members: Suzanne McCarthy, Paul Claus, Charles Miller, Sr., Don Horrell, Ray Sensmeier, Robert Marshall, Robert Fithian, Dean Wilson, Jr.

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park/Preserve
Mile 106.8 Richardson Hwy. P.O. Box 439
Copper Center, AK 99573
907 822 5234 Fax 907 822 7216

L30(WRST-RE)

June 13, 2006

Subsistence Resource Commission
Wrangell-St. Elias National Park
P.O. Box 439
Copper Center, AK 99573

Dear Chairman Adams,

Thank you for your letter of March 28, 2006, and the opportunity to explain the background and the National Park Service (NPS) management policy regarding the issue of predator reduction. I trust that this letter will help you understand why we cannot take action to reduce the number of wolves or bears within Wrangell-St. Elias National Park. While subsistence use is given the highest priority among consumptive uses of fish and wildlife, the NPS is also directed to manage for natural and healthy populations of fish and wildlife.

The National Park Service Management Policies mandate that predator reduction will not be practiced on NPS lands unless part of an approved federally threatened and endangered species recovery program. Moose and caribou, in the State of Alaska are not threatened or endangered.

In Alaska we are also guided by the language of the Senate Report on ANILCA, "It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained."

If you have any further questions please contact me.

Sincerely,

Will Tipton
Acting Superintendent

cc: Clarence Summers

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

DEC 19 2006

Mr. Gerald Nicholia, Chair
Eastern Interior Alaska Subsistence
Regional Advisory Council
101 12th Avenue, Room 110
Fairbanks, Alaska 99701

Dear Mr. Nicholia:

Thank you for your letter of September 22, 2006, to Secretary Dirk Kempthorne requesting that the process to implement an intensive management program with the State of Alaska, Department of Fish and Game on Federal public lands within the Eastern Interior Region of Alaska, be started immediately. I have been asked to respond to you directly.

I take the responsibility, as mandated in the Alaska National Interests Lands Conservation Act (ANILCA), of protecting the opportunity for continued subsistence uses in Alaska seriously; as well as that of conserving the nation's fish and wildlife and other natural resources on Alaska's Federal public lands, as directed by ANILCA and other Federal statutes. Each of the Department of the Interior (DOI) land management agencies within your region manage the resources entrusted to them according to these statutory mandates and the implementing regulations and policies. Consistent with these mandates, the DOI agencies will address your concerns.

I understand that staff from the Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service (Service) gave presentations to your council at its October 2006 meeting in Delta Junction. They explained the legal requirements and policy guidelines each agency follows when considering requests for intensive management, including predator control. In addition, your council was provided written responses from the Refuge Managers of the Arctic, Yukon Flats, and Tetlin National Wildlife Refuges to your request to the Service Regional Director to initiate studies leading to control of predators of moose and caribou on these refuges.

Each DOI land management agency has differing legal requirements and policy guidelines regarding intensive management, including predator control, which are summarized below:

Bureau of Land Management (BLM)
The BLM manages its Alaska lands primarily under the Federal Land Policy and Management Act of 1976 and ANILCA. While the agency manages land uses and habitat on its lands, management of fish and wildlife on BLM lands is conducted by the State of Alaska, consistent with the traditional role of the State in managing resident species of fish and wildlife. Essentially, predator control activities by the State of Alaska may take place on BLM lands, as long as they do not conflict with on-going or anticipated BLM authorized actions. The BLM views predator control as a State function and the agency neither supports nor condemns the predator control methods approved by the Alaska Board of Game.

U.S. Fish and Wildlife Service (Service)
The Service manages the national wildlife refuges in Alaska under the mandates of ANILCA and the Refuge Administration Act. There is nothing in ANILCA, or other applicable federal laws, regulations and policies, nor in the refuge comprehensive conservation plans, which specifically precludes predator control on national wildlife refuges in Alaska. However, these laws, regulations and policies do require comprehensive analyses prior to considering a predator control program to ensure that the action is both appropriate and biologically justified. The following are some of the general prerequisites for considering predator control on Alaska refuges.

Foremost, management actions must be biologically justified and used in a prudent and ecologically sound manner to conform to the agency's Policy on Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System (System). This policy requires that the agency 1) *identify the refuge purpose(s), legislative responsibilities, refuge role within the ecosystem, and System mission;* 2) *assess the current status of biological integrity, diversity, and environmental health through baseline... surveys and studies...;* 3) *assess historic conditions and compare them to the current condition ... This will provide a benchmark... for the relative intactness of ecosystem functions and processes; and* 4) *consider the refuge's importance to refuge, ecosystem, national and international landscape scales of biological integrity, diversity, and environmental health....* A thorough evaluation must be given to substantiate intended benefits of the control efforts, and alternatives to direct control must be evaluated, attempted, and exhausted as a practical means of achieving management objectives.

Because predator control of wolves and/or bears on national wildlife refuges is highly controversial, it would be considered a major Federal action subject to National Environmental Policy Act (NEPA) requirements which would include preparation of an environmental impact statement (EIS) or, at a minimum, an environmental assessment

(EA). As part of an EIS or EA, the Service would evaluate predator control in the context of the purposes of the refuge and in consideration of the biological integrity policy. Additionally, the agency would evaluate the effects of the proposed predator control on subsistence uses and needs, as required by Section 810 of ANILCA. Section 810 requirements would be incorporated into the NEPA process and documents.

In addition, if predator control is proposed to be carried out on a refuge by an agency or others not acting as agents of the Service, the refuge manager must find the proposed control program to be consistent with the Service compatibility regulations implementing the Refuge Administration Act. These regulations require that permitted uses of the refuge be compatible with the purposes of the refuge, the mission of the national wildlife refuge system, and the resource management objectives identified in the refuge comprehensive conservation plans.

Be assured that the Service is giving serious consideration to the concerns you have raised relating to the effects of predation on subsistence uses. By copy of this letter I am requesting that the Service's staff in Alaska to explore available options to conduct the studies necessary to fully evaluate the need for and potential benefits of predator reductions to refuge resources and subsistence users, as well as alternatives to direct agency-conducted reduction of predators. In this evaluation, the Service will closely coordinate and, where possible, cooperate with the State of Alaska in its efforts to provide sustainable, harvestable surpluses for subsistence use.

National Park Service (NPS)
The NPS lands in Alaska are managed according to ANILCA and the underlying 1916 Organic Act, which established and continues to guide NPS management. The ANILCA, per sections 802(1), 808(6) and 815(1)(3), established a standard of "conservation of healthy populations" for wildlife management in Alaska's parks, monuments, and preserves. The legislative history to ANILCA clearly expresses congressional intent in regards to intensive management, including predator control. On page 171 of Senate Report 96-413, November 1979, it states:

In authorizing subsistence uses within National Parks, Monuments, Preserves, and National recreation Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utility of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained... Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within the National Park System units.

The same report goes on to state (pages 232-233):

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management program affecting ecological relationships, population dynamics, and manipulations of the components of the ecosystem.

As you can see, the Congress understood and expected that the policies of the NPS were to play a significant role in interpreting how the mandate for "conservation of healthy populations" is carried out.

One of the first major actions the Secretary completed was a long and thorough review of draft NPS management policies. On August 31, 2006, the Secretary was satisfied that the policies were appropriate and struck the correct balance for NPS guidance. Those policies contain several sections (in Chapter 4) that relate to your request. In all, those sections direct the NPS to, in a manner consistent with ANILCA and its Senate history, maintain the natural population fluctuations and processes that influence the dynamics of individual plant and animal populations within their ecosystems. Section 4.4.3, *Harvest of Plants and Animals by the Public*, directly deals with the issues you have raised. Among other things, that section states: *The (National Park) Service does not engage in activities to reduce the number of native species for the purpose of increasing the number of harvest species (i.e. predator control), nor does the (National Park) Service permit others to do so on land managed by the National Park Service.*

To summarize, undertaking intensive management practices, including predator control activities as conducted by the State of Alaska, is not allowed on NPS lands.

I hope this brief summary of the DOI agencies' legal frameworks for considering predator control on their respective lands is helpful to your council's understanding of the constraints they must conform to in addressing your concerns. I would encourage your council to continue to work closely with the Federal agencies and the State in developing management options to ameliorate, to the extent possible, the adverse effects of predation on wildlife resources utilized by subsistence users. In addition to seeking predator reduction programs on Federal lands which are consistent with the legal and policy mandates of the land managing agencies, opportunities for predator management on lands under State jurisdiction should be explored, as appropriate. Additionally, the council may be able to encourage increased harvests of predators by local residents under current State hunting and trapping regulations where applicable.

In closing, I support and applaud your efforts to ensure that subsistence uses and way of life in Alaska are protected. I appreciate your council's continuing contribution to the Federal Subsistence Program and your diligence in representing the interests of subsistence users in your region. If you have any further questions, please feel free to contact me at (202) 208-5347.

Sincerely,

Acting Assistant Secretary for Fish and Wildlife and Parks

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

October 28, 2010

Jon Jarvis, Director
National Park Service
1849 C Street NW
Washington, DC 20240

Dear Director Jarvis:

The Wrangell-St. Elias National Park (WRST) Subsistence Resource Commission (SRC) represents twenty-three rural Alaska communities whose residents are dependent upon prudent management of wildlife resources within WRST for subsistence use. This responsibility is one that we take seriously for the best interest of the rural residents we represent as well as the stewardship requirements for sustainable and resilient wildlife populations in this large region.

Congress established the SRCs in order to provide "rural residents who have personal knowledge of local conditions and requirements … a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska." It believed that this was necessary for "the continuation of the opportunity for a subsistence way of life," as well as the conservation of fish and wildlife (ANILCA 801(5)). It also indicates that there is value in traditional and local knowledge of wildlife populations and that access to these important resources is critical for the continuation of physical, cultural and spiritual well-being of those whose lives are integrated with the ecosystems of the conservation units created through ANILCA.

Wrangell-St. Elias National Park and Preserve is the largest National Park in United States representing a region nearly six times the size of Yellowstone. When ANILCA was signed into law, wildlife populations utilized by subsistence were at high-density levels. The spirit and intent of ANILCA relating to a subsistence way of life is to have that meaningful role in management of our resources, clearly outlined through the creation of SRCs.

In carrying out our charge, we believe it is necessary to continue to raise concerns about the post park decline of important wildlife populations in the park and the impact that these low densities have on providing food for local residents. Food resources that used to be available to local subsistence users are no longer available. The National Park Service (NPS) has a clear track record of avoiding management actions that would provide food. These same concerns have been brought forward for many years within several different Chairmanships of this SRC. The spirit and intent of ANILCA to protect important resources that local communities not only depend upon, but also are critical to their health and well-being, are not receiving priority attention as mandated by Congress. We are requesting your help. Our job is to make

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

recommendations for the management of healthy, sustainable wildlife populations, as well as meeting the critical needs of the dependent subsistence users. This is the crux of conservation.

We encourage the NPS to work together with the Alaska Department of Fish and Game (ADF&G) on research projects to determine the causes of the continued trend in low, density wildlife populations and identify what can be done to address them. We encourage DOI and NPS to work together to achieve the funding that will allow for this important science gathering. We also recommend acting on the results of this research in a cooperative manner. Past research determined the cause of low-density trends within WRST of wildlife populations to be mortality by predators.

Alaska is extremely different from the rest of the United States in management of National Park/Preserve systems. We are dependent upon our customary/traditional lifestyles and prudent management of our wild resources. We believe management for higher wildlife densities is important for subsistence. A denser wildlife population not only promotes the best opportunities for subsistence users who are dependant on healthy food but also ensures sustainable lifecycles for all of wildlife species, including predators while helping to avoid the typical feast and famine cycles of unmanaged populations (both predator and prey). This has proven to be sustainable and resilience in the socio-ecological systems that ANILCA protected. With this management philosophy the wildlife, as well as all people who depend upon healthy wildlife populations, are able to meet their needs of a steady state.

The SRC has held meetings in resident zone communities where real people cry for help. We are truly disheartened to see this situation continue. NPS response is that they cannot help. The people and the wildlife of this region need your help and we beg you to turn together for the best interest of all and help us solve this problem. Please advise us on where we should turn to gain resources and political clout as we try to intervene on food scarcity issues that local subsistence users look to us to provide. We anxiously await your response as soon as possible. Thank you for your consideration of this critical matter in advance.

Very Respectfully,



Suzanne McCarthy
Vice-Chair

cc: Secretary of the Interior
Governor of Alaska
Eastern Interior Regional Advisory Council
Southcentral Regional Advisory Council
Southeastern Regional Advisory Council
NPS Alaska Regional Director

Chairman: Bert Adams, Sr.; Members: Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Ray Sensmeier, Robert Fithian, Sue Entsminger, Suzanne McCarthy

United States Department of the Interior
NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:

L30(AKRO-SUBS)

FEB 18 2011

Ms. Suzanne McCarthy, Vice-Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Highway
Copper Center, Alaska 99573

Dear Ms. McCarthy:

Thank you for your October 28, 2010, letter expressing concerns over food scarcity and wildlife management issues with local subsistence users in the Copper Basin region. Director Jon Jarvis has asked me to reply to your letter. I appreciate the considerable knowledge you bring and the commitment to use this knowledge to continue to improve the overall management of the Wrangell-St. Elias National Park and Preserve. The National Park Service (NPS) remains fully engaged to provide for both the subsistence opportunities and protection of the park purposes and values encompassed in the Alaska National Interest Lands Conservation Act (ANILCA).

First, I believe it is important to state that available data do not appear to support the assertion that when ANILCA was signed into law, wildlife populations utilized for subsistence were at high-density levels. Wildlife populations fluctuate over time and are influenced by many factors affecting production and mortality. The Mentasta Caribou Herd has declined dramatically, starting in the early 1990s. By contrast, moose populations in Unit 11 were generally low from the early 1900s until 1940, according to the Alaska Department of Fish and Game.[1] They increased in numbers in the 1950s and peaked in the early 1960s. From that time until 1979 they declined. In the early 1980s (when the park was established) they increased, again peaking in 1987. In the 1990s they again declined. Moose numbers between 2001 and 2006 then increased slightly.

As you know, Title VIII of ANILCA was enacted to allow continued opportunities for traditional hunting, fishing and gathering and to ensure that they are the priority consumptive uses. Traditionally, subsistence users utilize other resources or resources in other areas when specific populations are not available.

[1] ADF&G Wildlife Management Report, Moose Management Report, 1 July 2005 to 30 June 2007

The subsistence priority in Title VIII of ANILCA provides authority to the federal government and the NPS to facilitate subsistence uses and provide for the opportunity to satisfy subsistence needs of Native and non-Native users. This priority applies on federal public lands and is directed to rural residents that have a customary and traditional use of wildlife in the area. Sec.802 (2) of ANILCA:

> *"Nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses";*

This preference is used to provide a priority for subsistence users when there is a need to allocate between federally qualified subsistence users and nonsubsistence users.

As you have recommended, we will work to improve the ongoing cooperation with the Alaska Department of Fish and Game on research projects that will help to better understand wildlife populations and the use of wildlife in your area. For example, park staff are working with ADF&G, as well as Tetlin National Wildlife Refuge, tribal entities, and the Yukon Government, to develop a management plan for the Chisana Caribou Herd, and they have participated in efforts to provide for a small harvest of this herd. Funds have also been pooled with ADF&G to complete Dall's sheep surveys in critical areas. In addition, the Copper Basin Community Harvest Assessment is a large cooperative project with ADF&G Subsistence Division to survey residents of four Copper Basin about their subsistence activities, including the harvest and use of fish, wildlife, birds and plants.

I am aware of the long history of discussions and letters that have taken place through the years between the Commission and the NPS, as well as the Department of the Interior. As you are aware from that correspondence, Congress did not intend for the NPS to manipulate wildlife populations in order to provide for high levels of human harvest. NPS is committed to working cooperatively with those affected by our management actions. We recognize that there are differences in the statutory, regulatory, and policy frameworks that govern the NPS and the State of Alaska. I encourage the Commission to seek solutions that recognize these differences and which could be implemented in a manner consistent with NPS policies to remedy the concerns that you have raised.

If existing harvest opportunities are not meeting the needs of subsistence users, additional opportunities can be sought through the Federal Subsistence Board proposal process to, for example, lengthen the seasons or even to eliminate harvest by nonsubsistence users. NPS staff are available to work with the SRC on drafting regulatory proposals to accomplish this, if needed. In cases where wildlife populations cannot support existing harvest demands for federally qualified users, the SRC could also explore and recommend changes to the State of Alaska general hunting regulations affecting non-federally qualified users in the Preserve.

Thank you for your continued service. Please let me know if I can be of further assistance.

Sincerely,

Sue E. Masica
Regional Director

cc:
Jon Jarvis, Director, National Park Service
Meg Jensen, Superintendent, Wrangell-St. Elias NP&Pres

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

April 22, 2013

Sally Jewell
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Jewell:

In Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA), Congress tasked National Park Subsistence Resource Commissions (SRCs) with making recommendations to the Secretary of the Interior and the Governor of Alaska regarding a program for subsistence hunting in their respective parks, including any needed changes in the program or its implementation. As part of carrying out this mission, this letter provides our recommendations regarding the continuation of a subsistence way of life within Wrangell-St. Elias National Park and Preserve.

Our subsistence dependent communities rely heavily upon healthy wildlife populations for food, which is our historical use of these precious resources. Our moose, wild sheep, and caribou populations can all be classified as being stable but low density, due to high calf and lamb mortality. Park management policies are partially responsible for the low densities of our wildlife resources.

Examples of this include the Mentasta and Chisana caribou herds. In the past, we depended significantly on these herds to meet our subsistence needs; however, we currently have little to no opportunity to harvest them due to their shrunken populations. Moose are another very important part of our subsistence way of life, yet the current low-density population in the southern areas of the park has had to adopt different behavior patterns and move to different areas in order to protect itself. The wild sheep populations of our region are suffering the same type of impact. They have to leave their natural habitats to seek security in the rougher cliffs and steep rocky terrain, which limits our opportunity to harvest them. Both moose and sheep also suffer from reduced resistance to disease, parasites and inclement weather, because of their reliance on more marginal habitat. These impacts are due in part to increasing predator populations, resulting in high calf mortality and restricted utilization of habitat.

Chairman: Karen Linnell; Members: Suzanne McCarthy, Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Robert Fithian, Sue Entsminger, and Bert Adams, Sr.

It is very challenging for the SRC to address the impacts of this situation on our communities, our culture and our charge to provide prudent and respectful stewardship for these incredible resources. Human harvest of these resources is not responsible for these declining wildlife populations; they are being held at low densities by predation.

There is a long history of responses to our recommendations from the National Park Service and the Secretary of the Interior since 1986. Those responses have explained the policy and legal basis for not granting the stewardship we have requested. We have, as well, explained our understanding of ANILCA as providing for the continuation of our way of life and healthy wildlife populations. In the meantime, our way of life and our wildlife stewardship continues to erode. We therefore request your help on this matter once again and ask that you encourage better cooperation between the State of Alaska and federal agencies and staff that will benefit the best interest of the whole through prudent and respectful stewardship.

Very respectfully,

Karen Linnell
Chair

cc: NPS Alaska Regional Director
Superintendent, Wrangell-St. Elias National Park and Preserve

Chairman: Karen Linnell; Members: Suzanne McCarthy, Dan Stevens, Don Horrell, Don Welty, Gloria Stickwan, Robert Fithian, Sue Entsminger, and Bert Adams, Sr.

United States Department of the Interior

OFFICE OF THE SECRETARY
1689 C Street, Suite 100
Anchorage, Alaska 99501-5151

JUL 18 2013

Karen Linnell, Chairperson
Wrangell-St. Elias National Park Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

Dear Ms. Linnell:

Thank you for your April 22, 2013, letters to the Secretary of the Interior concerning issues related to wildlife and subsistence management and land conveyances in Wrangell-St. Elias National Park and Preserve (WRST). The Secretary has asked me to respond on her behalf.

With regard to the compendium process used by the National Park Service (NPS), the agency prefers a state regulatory solution to this conflict rather than annual restrictions or permanent closure or restrictions. As noted in my February 12, 2013, letter to the WRST Subsistence Resource Commission (SRC), the NPS requested that the Alaska Board of Game (BOG) exclude Alaska national parks and preserves from the expanded wolf and coyote hunting seasons and the allowance for taking brown bears over bait. When the BOG adopted regulations that were inconsistent with the legal and policy framework for NPS areas, the compendium was used as a last resort. However, the NPS recognizes the concerns about the use of the compendium process and is considering regulatory alternatives.

Wildlife stewardship on NPS-managed lands in Alaska seeks to maintain natural processes, provide for subsistence opportunity by rural residents, and allow taking of wildlife for sport in preserves. This differs from the wildlife stewardship objectives of the State of Alaska to manage game for the ability to support a high level of human harvest. The NPS must balance consumptive uses of wildlife with other uses and values. It is this fundamental difference between the Federal and State frameworks that is at the core of many of the issues raised in your letter.

Conserving natural and healthy populations of all native species is at the core of wildlife stewardship in WRST. Subsistence harvests by local rural residents are the priority consumptive use. In the event that subsistence users are unable to meet their needs under the current regulatory framework, reducing or eliminating non-subsistence consumptive use is one of the alternatives that could be considered. Providing for the continued opportunity to engage in a subsistence way of life is the purpose of Title VIII of ANILCA and a goal that we share with the SRC.

We appreciate your concerns with the uncertainty over land status in the Ahtna region and its effects on subsistence activities. Although the land conveyance program administered by the Bureau of Land Management (BLM) has experienced significant budget reductions, survey and conveyance work is continuing. Within the Ahtna region, seven of the villages merged with the regional corporation. The combined village and region land entitlements for Ahtna total just over 1.63 million acres. To date, title has been conveyed to the corporation through interim conveyance and original patent of approximately 1.48 million acres. The remaining entitlement is slightly less than 137,000 acres and there are over 537,000 acres of land selections to meet this entitlement.

Ahtna submitted final priorities for its remaining lands, and the BLM is in the process of completing the survey of these lands through the use of contracts in accordance with the Indian Self-Determination and Education Assistance Act. Field surveys were performed over the majority of these lands in the last half of calendar year 2012 and are currently under review by BLM Alaska. We anticipate that the surveys will be approved and the lands conveyed within 24 to 30 months.

We greatly appreciate the work and the views of the Wrangell-St. Elias Subsistence Resource Commission. Thanks for continuing to keep the Secretary's Office as well as the NPS informed on subsistence issues.

Sincerely,

Pat Pourchot
Special Assistant to the Secretary for Alaska Affairs

cc: Sue Masica, NPS Regional Director, Alaska
Rick Obernesser, Superintendent, Wrangell-St. Elias National Park and Preserve

SRC Proposed Action 7.2

Action 7.2: Implement the Mentasta Caribou Cooperative Management Plan

Issue Background

- In February 1996 the SRC endorsed the Mentasta Caribou Herd Cooperative Management Plan. The SRC also recommended a Section 804 allocation process if the total harvest of caribou were limited to less than 30 animals. They determined that the 7 Ahtna villages of Chitina, Copper Center, Tazlina, Gulkana, Gakona, Chistochina, and Mentasta had the greatest customary and direct dependence on the herd. The SRC recommended allocation of 20 animals to these villages (see Action 7.2, pages 3-4).

- Annual review of the biological data collected by NPS on the Mentasta herd will be necessary. Recommendations from the SRC on allocation of caribou must continue until the herd increases to a level where all users may participate in the hunt.

- In 1996, the Federal Subsistence Board authorized an ANILCA Section 804 hunt for Mentasta Caribou consistent with the SRC recommendation. In 1996, 15 permits were issued to Ahtna elders. Three caribou were harvested in 1996. A designated hunter program was implemented.

- In 1997, ANILCA Section 804 permits were issued for a 15 bull harvest limit. Only one caribou was harvested. There was no subsistence harvest allowed in 1998 or 1999, because total numbers and cow:calf ratios were not sufficient under the Mentasta Caribou Herd Cooperative Management Plan.

- Composition counts have been conducted every June and September. June composition counts show low calf:cow ratios (15:100 in 1997, 13.4:100 in 1998, and 13.5:100 in 1999). June population estimates also continue to decline (600 in 1997, 416 in 1998, and 337 in 1999). The June population estimate is down 19.2% from 1998.

- September counts also show continued low calf:cow ratios (5.4:100 in 1997, 10:100 in 1998, and 9.5:100 in 1999), and continued decline of overall herd size (estimated at 614 in 1997, 535 in 1998, and 429 in 1999). The 1999 bull:cow:calf ratio was estimated at 77:100:9.5.

Current Status

- Research and monitoring activities continue, in cooperation with USGS-BRD and ADF&G. NPS will maintain a sample of radiocollared cows to continue the investigation of weights, reproduction and calf survival and to monitor seasonal movements. NPS also radiocollared bull caribou (45 total) and will be monitoring their seasonal distribution, especially during the rut.

Authority

ANILCA Section 804 Preference for subsistence uses

WRANGELL-ST. ELIAS
NATIONAL PARK
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 439
Copper Center, Alaska 99573
(907) 822-5234

February 29, 1996

Mr. Mitch Demientieff, Chair
Federal Subsistence Board
1011 East Tudor Road
Anchorage, Alaska 99503

Dear Mr. Demientieff:

On February 29, 1996 the Wrangell-St. Elias National Park Subsistence Resource Commission passed a motion to endorse the Mentasta Caribou Herd Cooperative Management Plan.

The Commission reviewed both federal subsistence proposals #17 and #18 regarding Mentasta caribou. The Commission recommended a harvest based on the upper portion of the allowable range (20%) which is consistent with the Plan. This would result is a total take of 20 bull caribou. The Commission further recommended that the 20 bull caribou be allocated to seven Ahtna native villages. These villages include: Chitina, Copper Center, Tazlina, Gulkana, Gakona, Chistochina, and Mentasta.

The Plan recommends a Section 804 allocation process if the total harvest is less than 30 caribou. In determining how to apply the three criteria in Section 804 of ANILCA, the Commission placed the greatest weight on the criteria concerning "customary and direct dependence upon the populations as a mainstay of livelihood". It was clear to the Commission that the seven Ahtna villages have the greatest dependence and long standing use on this limited resource throughout history. The Commission expects the village councils will work cooperatively among themselves and with the National Park Service, and act responsibly to assure a reasonable distribution between the villages will occur.

The Commission determined that the other two criteria outlined in Section 804 were not helpful in determining who or what communities have a higher priority. All communities included within the federal Customary and Traditional Use Determination are equal in proximity to the resource. The Commission also determined that all eligible communities have equal availability to alternative resources. Thus, the Commission's recommendation is based on the long term customary and direct dependence upon

Chair: John Vale
Members: Paul Claus, Bill Ellis, Frank Entsminger, Roy Ewan, Don Horrell, Fred John Jr., Robert Marshall, Ray Sensmeier

the Mentasta Caribou by the seven Ahtna villages.

The Commission urges the Federal Subsistence Board to authorize a Mentasta herd harvest of 20 bulls, allocated under Section 804 to the seven Ahtna villages listed.

Sincerely,

John Vale

John Vale
Chairman, Wrangell-St. Elias National Park
Subsistence Resource Commission

cc:
Secretary of Interior
Southcentral RAC
Eastern Interior RAC
Southeast RAC
State of Alaska-Commissioner of Fish & Game
Copper River Native Association

NPS Proposed Action 7.3

Action 7.3: Define the term "natural and healthy."

Issue Background

- Long term protection of fish and wildlife populations is necessary to ensure the continuation of the opportunity for a subsistence way of life. Consequently, subsistence uses on public lands must be conducted in a manner consistent with the conservation of natural and healthy populations in Parks as mandated by ANILCA.
- The term "conservation of healthy populations of fish and wildlife" is defined in Federal Subsistence regulations but the term "natural" is not included as part of the definition. Congress, in writing ANILCA, clearly intended for parks to be managed differently, with respect to fish and wildlife resources, from other Federal lands.
- In addition to the requirements of ANILCA, National Parks must be managed for the purposes mandated by the NPS Organic Act of 1916 and the 1978 amendment to the National Park Act.

Current Status

- A team of NPS natural resource managers from across the State have been asked to work on a definition of "natural and healthy". Their recommended definition will be presented and discussed with the SRC prior to completion.

Authority

ANILCA Section 815 Limitations, savings clause (natural and healthy)
ANILCA Section 816(b) Closure to subsistence uses
ANILCA Section 101(b) and (c) Purposes
16 USC 1 NPS Organic Act

Chapter 8

Firewood and Timber Harvest

Non-commercial harvesting of live standing timber (green logs) for appropriate subsistence uses, such as house logs or firewood (greater than 3" at ground height) is allowed. A permit is required and may be obtained from the park office in Copper Center.

The harvest of dead or downed wood is allowed for fires without a permit.

House log permits

Green logs may only be used for construction of a primary permanent residence and may not be used for commercial purposes.

Firewood permits

The harvest of firewood will be limited to what is reasonably required for heating, cooking, etc. at the applicant's primary place of residence.

Authority

36 CFR 13.485 Subsistence use of timber and plant material

L30

January 1, 1989

Memorandum

To: Park Staff

From: Superintendent, Wrangell-St. Elias NP/P

Subject: Subsistence Green Log Policy

It is the policy of the Superintendent, Wrangell-St. Elias National Park and Preserve, to allow for the non-commercial cutting of green logs in accordance with the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) and Title 36 CFR, Part 13.49, "... the Superintendent may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the park area was established". This policy covers the non-commercial cutting of live standing timber (green logs) for appropriate subsistence uses, such as houselogs or firewood greater than 3" at ground height.
Of primary concern to the National Park Service is the maintenance and protection of forest resources and other park values. Subsistence green log permits will only be issued if it can be shown that harvest will not impair or otherwise degrade the viability of the forest resource and other park values.

Applicants for subsistence green log permits must meet the following conditions prior to issuance of a permit by the Park Superintendent.

STANDARD PERMIT PROCEDURES AND CONDITIONS:

For subsistence house log permits, the applicant must demonstrate a significant need for green logs, and may only be used for a primary place of residence.

Applicant, generally, must live within the park boundary and have demonstrated a customary and traditional use of park resources.

Applicant must provide evidence of exploring reasonable alternative sources for logs such as logs from state, private or university lands, or by transporting logs which are harvested outside the park, to the building site. The Superintendent will also consider the availability of suitable downed timber from both private and public lands in determining amount of green logs to be taken from park lands.

For subsistence house log permits, the applicant must submit a rough plan/sketch, dimensions and proposed method of construction to the Superintendent before permit is considered.

For subsistence house log permits, the allowable harvest shall not exceed 120 trees (includes both live and dead trees), the amount required for a cabin of 280

sq. ft. (determined on the basis of the average size of 237 cabins identified on park/preserve lands). This amount includes a 20% allowance for waste, unusable wood, tree size variability and miscellaneous needs.

For firewood permits, the applicant will be limited to what is reasonably needed for purposes of heating, cooking, etc. in the primary place of residence.

The Superintendent may further limit the amount of logs based on concerns for forest viability, limited annual production and potential impact on park values.

Subsistence house logs may only be used for a primary residence and may not be used for commercial purposes (sale of whole logs or sale of lumber cut from subsistence logs) or in structures used for commercial purposes (lodges, etc.).

Green logs granted for firewood use may be used only for that purpose and may not be used for house construction, saw timber or other uses unless specifically authorized on the permit.

All subsistence logs, must be marked and measured by NPS staff prior to harvest.

The Superintendent will designate access routes to be used for harvesting and skidding subsistence green logs.

Subsistence green logs may not be harvested farther than one half mile from a designated access route.

Timber felling and skidding will be limited by ground conditions and season to protect resource values and is generally limited to frozen ground with a minimum of 6-12" of snow cover.

An additional subsistence house log permit will not be issued to a landowner/family for a period of 10 years after the previous permit was issued. This condition applies to any land subdivided or transferred subsequent to the issuance of the original subsistence house log permit.

An additional subsistence house log permit may be issued due to emergency or unusual and unforseen circumstances (fire, other damage, etc.).

Subsistence firewood permits may be issued on a yearly basis.

Permits may not be issued in zones or areas where subsistence timber harvest would result in a threat to the viability of the forest resource or which would otherwise compromise the purposes for which the park was established.

Environmental, archeological, historical and subsistence compliance may be required prior to issuance of subsistence log permit.

The Special Use Permit (10-114) shall be the permitting instrument and shall be completed in accordance with NPS-53.

Violation of the terms and conditions of the permit may result in an immediate revocation of the permit by the Superintendent.

Subsistence green log permits may only be issued by the Superintendent or his designee.

Richard H. Martin
Superintendent

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SRC Proposed Action 8.1

Action 8.1: Clarify rules regarding the subsistence harvest of firewood.

Issue Background

- In 2008, the subsistence regulations for all national park system units in Alaska were modified, including changes to 36 CFR 13.485 addressing subsistence use of timber and plant material. In §13.485(a), the word "live" was removed to leave the phrase "noncommercial cutting of standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted." This change clarified that the cutting dead standing timber, especially beetle-killed trees, for subsistence house logs is allowed. However, this removal created an ambiguity regarding firewood harvest with §13.485(b), which allows "gathering of dead or downed timber for firewood" without requiring a permit. The Wrangell-St. Elias SRC identified this ambiguity as a cause for concern.

- With this change, NPS-wide regulations concerning audio disturbances (36 CFR 2.12) also came to light. These regulations prohibit the operation of a power saw in developed areas or any type of portable motor in non-developed areas without a permit. The Wrangell-St. Elias SRC identified these regulations as a hindrance to many subsistence users, who use motorized equipment such as chainsaws in their subsistence activities and would benefit from the ability to do so without acquiring a permit. Under the provisions of ANILCA, the use of motorized vehicles, including snowmachines, motorboats, fixed wing aircraft, and off-road vehicles (ORVs) is already allowed in support of subsistence activities in Wrangell-St. Elias National Park and Preserve without a permit.

- At its fall 2009 meeting, the SRC established a working group to address NPS regulations on subsistence firewood harvest and the use of portable motors, including chainsaws. The primary goal of the work group was to develop proposed regulations clarifying that subsistence users in Wrangell-St. Elias do not need a permit to use portable motors for subsistence activities or to harvest standing dead or downed timber for subsistence firewood.

- At the fall 2010 SRC meeting, the working group presented its recommended regulatory changes to allow the use of portable motors in Wrangell-St. Elias without needing a permit. The SRC passed a motion to recommend as a first choice a park-specific regulation that would allow the use of portable motors park-wide without a permit. If that

does not pass, their second choice would be for the superintendent to designate areas open to wood cutting with a chainsaw without a permit. A friendly amendment asked that the superintendent consult with the SRC before designating areas. Additionally the SRC adopted a second motion to support the re-insertion of the word "live" in front of "standing timber" in 36 CFR 13.485(a) and to authorize the superintendent to include dead standing trees in the house log quota.

- At its March 2011 meeting, the SRC adopted a motion to support the inclusion in the Front-Country Management plan authorization for the superintendent to designate areas that would be open to portable motor use without a permit; and also to clarify that gathering includes cutting.
- On March 31, 2011, Superintendent Meg Jensen wrote to the SRC clarifying her interpretation of the definition of "gathering" to include cutting and re-stating her intention to use the Front Country Plan to designate areas which would allow chainsaw cutting of dead standing and downed firewood for subsistence purposes without a permit (see Action 8.1, pages 3-4).

Current Status

- Work has not yet started on a Front Country Plan. Park staff have discussed possible options for addressing the firewood cutting and portable motor use without requiring individual permits.

Authority

36 CFR 2.12 Audio disturbances.
36 CFR 13.485 Subsistence use of timber and plant material.

United States Department of the Interior
NATIONAL PARK SERVICE

Wrangell-St. Elias National Park & Preserve
Mile 106.8 Richardson Hwy. P.O. Box 439
Copper Center, AK 99573-0439
907 822 5234 Fax 907 822 7216

A22 (WRST-AD)

March 31, 2011

Mr. Bert Adams, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 106.8 Richardson Hwy
Copper Center, AK 99573

Dear Mr. Adams,

As we discussed at the park's recent Subsistence Resource Commission meeting, I would like to clarify for you in writing my interpretation of the definition of "gathering" under 36 Code of Federal Regulations (CFR) 13.485(b). The regulation states that "…noncommercial gathering of dead or downed timber for firewood shall be allowed without a permit in park areas where subsistence uses are allowed". As you remember, in 2008 the Service removed the word 'live' from 36 CFR 13.485(a) which has resulted in numerous discussions regarding whether or not the words "gathering" and "cutting" are synonymous, in the park's view. No definition of gathering is provided anywhere in 36 CFR part 13. These discussions have created confusion regarding whether or not a permit is required for the cutting of standing dead timber that will be utilized for firewood by subsistence users.

The regulations require a permit for the cutting of any standing timber for use as house logs as well as any harvest of standing green timber over three inches in diameter.

Further review of 36 CFR part13 reveals that under 36 CFR 13.35(d) the Superintendent may authorize, with or without conditions, the collection of dead standing wood in all or a portion of a park area. While collection is also not defined, I assume that the harvest of dead standing wood requires a person to cut that wood. Cutting wood as a method to gather it has been a long-standing practice in rural areas of the park by subsistence users.

After long and careful consideration of the regulations as well as public input from the Commission and many other individuals, I have concluded that the regulatory language "noncommercial gathering of dead or downed timber for firewood" was intended to include cutting of dead standing and downed timber which is the most efficient method to gather firewood.

This regulation does not specifically address the use of a portable motor, and a different National Park Service regulation requires a permit to utilize a portable motor on park lands. Because of the concern

expressed by subsistence users regarding this permit requirement, (which presumably applies to chainsaws), the park is evaluating other options to address these concerns.

In 2012 the park will begin a Front Country Plan for the park. In this plan, we hope to designate areas which would allow chainsaw cutting of dead standing and downed firewood for subsistence purposes without a permit. I plan to involve the Subsistence Resource Commission in these planning discussions.

Sincerely,

Meg Jensen
Superintendent

Chapter 9

Customary and Traditional Use Determinations

Community or Area Based Customary & Traditional Determinations

Customary and traditional use determinations (commonly called C&T determinations) define which communities or areas have customarily and traditionally taken a wildlife population or fish stock. To hunt, fish or trap in a particular area an individual must have a "positive C&T" use determination. These determinations are listed in the Federal Subsistence Management Regulations booklets by game management unit (GMU) and subunit and by fishery management area. Customary and traditional use determinations are made by the Federal Subsistence Board for each species on a community or area basis.

To be eligible to hunt, fish or trap for subsistence purposes in Wrangell-St. Elias National Park an individual must live in the resident zone or have been issued a subsistence eligibility permit (13.440) and have a positive customary and traditional use determination for the area and species which they intend to hunt.

The SRC plays an important role in this decision making process. The Commission may make recommendations on C&T proposals or develop C&T proposals for consideration by the Federal Subsistence Board. Proposals developed by the SRC may be submitted directly to the Federal Subsistence Board during the regulatory change process. (see Chapter 1, SRC Functions, page 2).

Individual Customary & Traditional Use Determinations

Federal Subsistence Management regulations provide a mechanism allowing C&T use determinations, for NPS areas, to be made on an individual basis. Individuals interested in seeking such a determination must apply directly to the Federal Subsistence Board.

ANILCA Section 804 Determinations

When it becomes necessary to limit the harvest of a fish or wildlife population in order to protect the viability of the population, criteria identified in Section 804 of ANILCA are used to differentiate between qualified subsistence users. Those three criteria are:

1. Customary and direct dependence on the populations as the mainstay of livelihood,
2. Local residency, and
3. Availability of alternative resources.

This process was implemented on the Mentasta Caribou Herd in 1996 and 1997.

Authority

ANILCA Section 804 Preference for subsistence uses
50 CFR 100 Subpart B Section 16(a) Individual C&T determinations for NPS managed lands
50 CFR 100 Subpart B Section 16 C&T use determination process
50 CFR 100 Subpart C Section 24 C&T use determinations

Action 9.1: Develop individual customary and traditional use determinations.

Issue Background

- In November 1997, a proposal was submitted to the Federal Subsistence Board requesting individual C&T determinations for sheep and goat in Unit 11 for an unspecified number of local people. At its November 1997 meeting the SRC considered the proposals and supported them with an amendment including the names of four families for C&T evaluation.

- In 1997, the proponent of the proposal submitted a letter to the Federal Subsistence Board asking to have seven families' names considered for individual C&T determinations under these two proposals.

- Superintendent Jarvis wrote the originator of the proposals in January 1998 explaining its reasons for requesting the Federal Subsistence Board's deferral of the two proposals until the following regulatory year. At the time the Park had lost five staff members and could not perform the steps necessary to complete this action.

- During the 1997 regulatory year another individual C&T proposal was being considered for a person living near Denali National Park. His proposal was for individual C&T for moose in Units 13E and 20C. The Federal Subsistence Board deferred this proposal in March 1998 citing the need to consult the Regional Solicitor of the Department of Interior regarding the legal authority for the Board to make C&T determinations on an individual basis.

- The Regional Solicitor's opinion was received March 23, 1999 (see Action 9.1, pages 3-5), relating to the question as to whether there is sufficient legal authority under ANILCA to make C&T determinations for NPS administered lands on an individual basis. In summary, the Solicitor indicated that the approach to C&T adopted in both the Temporary Regulations and the Final Rule reflects a reasonable administrative interpretation of ANILCA and is legally supportable. She therefore concluded that the Board may make individual C&T determinations for areas administered by the NPS as the regulations provide in 50 CFR § 100.16 and 100.24, in its discretion when appropriate cases for doing so are presented to it.

- In January 1998, NPS conducted interviews with the seven families that applied for C&T determinations in 1997. During the interview process four of the families withdrew their names from further consideration. At the May 1999 meeting of the Federal Subsistence Board, two of the applicants were granted an individual C&T determination for sheep and goat in Unit 11. The third applicant was denied.

Current Status

- The Federal Subsistence Board developed a policy by which individual C&T determinations will be made in the future (see Action 9.1, pages 6-7). The policy states that individual C&T determinations will only apply on National Parks and Monuments – not on National Preserve lands. Only those individuals who reside in a resident zone or hold a subsistence use eligibility permit (13.440) may apply for an individual determination.

Authority

50 CFR 100 Federal Subsistence Management Regulations

United States Department of the Interior

OFFICE OF THE SOLICITOR
Alaska Region
4230 University Drive, Suite 300
Anchorage, Alaska 99508-4626
Tel: (907)271-4131 Fax: (907)271-4143

From Sandy R

NPS.AK.0797

March 23, 1999

to Subsistence mgrs

MEMORANDUM

TO: Federal Subsistence Board
Mitch Demientieff, Chairman

FROM: Lauri J. Adams
Regional Solicitor

SUBJECT: Individual Customary and Traditional Use Determinations on Lands Administered by the National Park Service

You have requested our review of the section of the Federal Subsistence Regulations which sets out the Federal Subsistence Board's (Board) authority to make customary and traditional (C&T) use determinations on lands administered by the National Park Service (NPS). The regulation in question, identical versions of which are found in 36 CFR Part 242 and 50 CFR Part 100, provides as follows:

> .16(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

50 CFR § 100.16(a) (emphasis added) (identical language appears in 36 CFR § 242.16(a)). Subsection (b) of this regulation sets out eight factors which the Board is to consider in making its C&T determinations.

Your question is whether there is sufficient legal authority under ANILCA to make C&T determinations for NPS-administered lands on an individual basis as this regulation allows. The short answer to your question is yes. The regulation is valid; and individual C&T determinations may be made in the Board's discretion, pursuant to Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §§ 3111-3126 (1985 & Supp. 1998) and 50 C.F.R. §§ 100.16 and 100.24, for lands administered by the National Park Service. Our analysis follows.

Since the adoption of the Federal Subsistence Regulations in 1990, they have consistently made a distinction between NPS-administered lands and other Federal public lands in regard to C&T determinations. In the Temporary Subsistence Management Regulations for Public Lands in Alaska (Temporary Regulations), adopted on June 29, 1990, the definition of customary and traditional stated that "customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks, Park Monuments, or Park Preserves determinations may be specific to individuals." 55 Fed. Reg. 27114, 27116 (June 29, 1990). Elsewhere in these same regulations, in the section setting out the powers of the newly established Federal Subsistence Board, the Temporary Regulations provided: "For areas managed by the National Park Service, where subsistence uses are allowed, the [C&T] determinations may extend to individual local rural residents." Id., 55 Fed. Reg. at 27123 (Emphasis added).

The Final Rule adopting Subsistence Management Regulations for Public Lands in Alaska (Final Rule) was promulgated on May 29, 1992, after consideration of extensive public testimony and written comments. In words identical to the statement of the Board's authority contained in the Temporary Regulations, it provided for the Board to make individual C&T determinations for lands administered by the NPS. Final Rule, 57 Fed. Reg. 22940, 22948 (May 29, 1992).[1] Further recognizing the differential treatment in ANILCA of subsistence uses in NPS-administered areas, the Final Rule also provided that: "This section does not limit the authority of the National Park Service to regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13." 57 Fed. Reg. at 11953, *codified in* 50 C.F.R. § 100.5(d).[2]

The supplementary explanation accompanying the Final Rule responded to public comments on the proposed individual C&T regulation as follows:

> Several commentors felt that customary and traditional use determinations should be made on an area basis rather than an individual species or community basis. People also suggested that any species within the area should be considered a subsistence

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[1] The 1992 Final Rule setting out the process for C&T determinations, including determinations for individual local residents in areas administered by the NPS, is codified in 50 C.F.R. § 100.16, subsection (a) of which is quoted on page 1 of this memorandum.

[2] The NPS' authority under 36 C.F.R. Part 13 is separate from the Board's C&T determinations. The NPS determines resident zones and may grant individual eligibility permits for National Parks and Monuments pursuant to 36 C.F.R.§§ 13.43 & 13.44, but the Board makes the subsistence C&T determinations for communities, areas and individuals under 50 C.F.R. §§ 100.16 and 100.24.

> resource. The legislative history of ANILCA clearly indicates that, with the exception of lands managed by the National Park Service, customary and traditional uses should be evaluated on a community or area basis, rather than an individual basis.

Final Rule, 57 Fed. Reg. at 22948. Thus, at the time of the regulation's adoption, the difference in treatment of NPS-administered lands as compared with other Federal public lands was clearly recognized.

ANILCA itself does not explicitly address the process for C&T determinations, whether for communities, areas or individuals. When an issue like this is not addressed explicitly in the statute, the courts generally give a great deal of deference to the administrative interpretation adopted by the agency charged with implementing the law, as expressed in its duly promulgated regulations. See, e.g., Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), reh. den., 468 U.S. 1227, 105 S.Ct. 28 (1984); INS v. Cardoza-Fonseca, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987). Where the statute is silent, the agency's administrative interpretation in its regulations is generally upheld if it is found to be based on any permissible construction of the statute. Chevron, supra, 467 U.S. at 843-45. A longstanding, consistent agency interpretation, such as is the case here with the subsistence regulations, is particularly persuasive. INS, supra, 480 U.S. 421, 426, n. 30.

Furthermore, there is no compelling legislative history which indicates a Congressional intent contrary to the approach adopted in the Final Rule. Like the Act itself, the key committee reports which accompanied ANILCA did not address the issue of individual C&T determinations at all. See Sen. Rept. No. 96-413, 96th Cong. 1st Sess. (November 14, 1979), *reprinted in* 5 U.S. Code Cong. & Adm. News 5070 (1980); House Rept. 96-97, Parts I and II, 96th Cong. 1st Sess. (April 18 & 23, 1979). The legislative history of ANILCA does contain one brief statement in extended remarks appended to the House floor debate in 1980 indicating that as a general matter C&T determinations should be done on a community or area basis rather than an individual basis. Cong. Rec. H10527, 10546, 96th Cong., 2nd Sess. (November 12, 1980) (statement of Congressman Udall). Elsewhere in the same remarks, however, Congressman Udall's statement recognized the distinction in ANILCA's treatment of subsistence on lands administered by the NPS, and indicated that subsistence resident zones and an individual permit system could be appropriate in some circumstances. Id., Cong. Rec. H10541.

In sum, we believe the approach to C&T adopted in both the Temporary Regulations and the Final Rule reflects a reasonable administrative interpretation of ANILCA and is legally supportable. The legislative history is inconclusive and, as the Supreme Court has stated, "we are hesitant to rely on that inconclusive legislative history . . . to supply a provision *not* enacted by Congress ...." United States v. American College of Physicians, 475 U.S. 834, 106 S.Ct. 1591, 1598, 89 L.Ed.2d 841 (1986)(Emphasis added). We conclude, therefore, that the Board may make individual C&T determinations for areas administered by the NPS as the regulations provide in 50 C.F.R. §§ 100.16 and 100.24, in its discretion when appropriate cases for doing so are presented to it.

FEDERAL SUBSISTENCE BOARD
INDIVIDUAL
CUSTOMARY AND TRADITIONAL USE DETERMINATIONS.

The Board has received several proposals seeking individual customary and traditional (C&T) use determinations for use of wildlife in National Park Service managed areas. This document provides guidance in making these determinations. As stated in 50 CFR 100.16(a) and 36 CFR 242.16(a), "The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis."

Process and Procedures

1. In which NPS areas will the Board make individual determinations?

The regulation, 50 CFR100.16 says, "…for NPS managed areas." The three types of areas in Alaska are National Parks, National Monuments and National Preserves (including Wild and Scenic Rivers managed by the NPS). However, the Board will make individual determinations for national parks and monuments only. Section 1313 of ANILCA states that national preserves "…shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve…". Only subsistence hunting is permitted in national parks and monuments. There is no need to make individual determinations in national preserves since both subsistence hunting and sport hunting are permitted in preserves as they are on most other lands in the state. Also, when Congress established Subsistence Resource Commissions for national parks and monuments (but not for preserves or other conservation system units), it implied that subsistence uses in national parks and monuments may be managed in a manner different from other units.

The language in the last line of Section 16(a) allows the Board discretion in making individual C & T use determinations. Therefore, the Board will make individual customary and traditional determinations only for National Parks and Monuments. Customary and traditional use determinations for Preserves will continue to be made on a community or area basis as are other Federal lands.

2. Who may apply for an individual C&T use determination for National Park Service areas?

For National Parks and National Monuments, individuals who live in residents zone communities

(See 36 CFR 13.43) respectively for each park or monument and people who already hold a Section 13.44 subsistence use permit issued by the superintendent (See 36 CFR 13.44) may apply for an individual C & T use determination.

3. How do people apply for an individual C&T use determination?

Individuals would apply to the Board within the annual proposal period prescribed during each regulatory cycle. Proposals for individual C & T use determinations will not be considered through the Special Actions process.

4. ***What criteria are used to evaluate individual C&T requests?***

The criteria will be the same as the Board uses for communities and areas. These eight factors are found at 50 CFR 100.16 (b) and 36 CFR 242.16(b).

5. What regulations implement this process?

The regulation at 50 CFR 100.24 (a) *Customary and Traditional Use Determinations* provides for a list of individuals whom have been granted an individual C&T use determination. It reads:

> *(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request.*

6. What role will the Subsistence Resource Commissions play?

The Subsistence Resource Commission (SRC), for each National Park and National Monument, established by ANILCA section 808 will play the same role it does in any other proposal before the Board. The Board will provide each respective SRC with copies of individual C&T proposals. The SRC's can provide useful information and recommendations to the Regional Councils.

7. What role will the Regional Advisory Councils play?

The Regional Councils established under the Board's regulations, 50 CFR 100.11 will play the same role they do in any other proposal before the Board. The Board will provide each respective Regional Council with copies of individual C&T proposals. Prior to their deliberation on an individual C & T proposal, the Regional Council will solicit the recommendation of the pertinent SRC.

Chapter 10

Harvest of Fish

In January of 1999, final regulations were published expanding federal management of subsistence fisheries in Alaska. The action complies with the 1995 federal court decision in the Katie John case and expands federal management to include all waters in the State where the federal government has a reserved water right. Under these regulations federal management extends to approximately 60% of Alaska's rivers and lakes. This amounts to 3,917 miles of rivers and streams in Wrangell-St. Elias National Park and Preserve.

The effective date of the regulations was delayed until October 1, 1999, in order to allow the Alaska legislature additional time to resolve the impasse. It also allowed the federal agencies time to prepare for effective fisheries management if the Alaska legislature did not take action to comply with the rural subsistence priority required by ANILCA. The action would have been averted if the Alaska legislature had passed an initiative amending the state constitution to comply with Title VIII of ANILCA. However, the State legislature failed to act and on October 1, 1999, the fisheries regulations became effective.

The Department of Interior supports a subsistence priority and a return to state management of fish and wildlife for all uses, including subsistence management. Until management of subsistence harvests are returned to the state, the Federal Subsistence Board intends to implement the fisheries program by emphasizing cooperation with the Alaska Department of Fish and Game, Alaska Native organizations, and other regional fisheries organizations.

Final Fisheries Regulations

The final federal subsistence fisheries regulations are very similar to existing State of Alaska subsistence fishing regulations. Few changes in subsistence harvests are anticipated at the outset of federal management. The regulations incorporate and respond to public review comments received from more than thirty public hearings held throughout Alaska.

The regulations identify the federal waters involved and acknowledge existing authorities of the Secretaries of Agriculture and Interior to intervene off of federal lands and waters to protect subsistence harvests on federal lands and waters. The regulations also determine the customary and traditional uses for fisheries and establish federal subsistence seasons, harvest limits, and methods and means restrictions.

Waters Included Under These Regulations

The regulations apply on inland waters within the exterior boundaries of national wildlife refuges; national parks, monuments and preserves; national conservation and recreation areas; national wild and scenic river corridors; the National Petroleum Reserve; and the Chugach and Tongass National Forests. Jurisdiction extends to fresh waters flowing through state, private, and Alaska Native corporation lands (except the Metlakatla Reservation), within the boundaries of these federal land units.

Other Important Changes Included in These Regulations

Included in these regulations are two other important changes to the federal subsistence management program. These regulations provide for the non-commercial exchange of subsistence foods through customary trade and extend jurisdiction for subsistence wildlife management to selected but not conveyed lands within federal conservation unit areas.

The Role of the Subsistence Resource Commission

At the outset of federal subsistence management of fisheries, few changes will occur in the existing advisory and decision making structure that is currently in place. The 10 regional advisory councils will continue to meet as scheduled and will consider fisheries regulation changes and issues along with wildlife regulatory change proposals and issues. The SRC will continue to function as the primary advisory group for actions taken in parks under the expanded federal subsistence program.

Over time it may become necessary to re-evaluate the existing advisory council structure if the additional work required to manage fish becomes too overwhelming or to consider a different method of addressing regulatory changes. Likewise, the SRC may find it necessary to re-evaluate their additional workload and may choose to lengthen meetings or meet more frequently.

Customary and Traditional Use Determinations

Customary and traditional use determinations (C&T) define which communities or areas have customarily and traditionally taken a fish stock. To fish in a particular area or for a particular species an individual must have a "positive" C&T determination. These determinations are listed in the Federal Subsistence Management Regulations booklet for fish and shellfish by fisheries management area. Wrangell-St. Elias National Park and Preserve falls into three fishery management areas: Yakutat, Prince William Sound and Yukon/Northern.

Federal Subsistence Board

The Federal Subsistence Board is the decision making body that determines what the C&T determination will be, when seasons open and close, how many fish may be harvested, the method by which a fish may be taken, etc. The Board makes changes to the regulations on a biennial basis according to a regular schedule outlined in Chapter 1, SRC Functions, page 2. The deadlines vary somewhat from year to year but the general pattern remains consistent.

Licenses and Permits

Although you must be a rural Alaska resident to fish under Federal Subsistence regulations, no license is required to take fish or shellfish. However, State or Federal subsistence fishing permits or permit calendars may be required. Some areas have special reporting requirements.

Summary

Subsistence harvest of fish is allowed in Wrangell-St. Elias National Park and Preserve by qualified subsistence users subject to Federal subsistence management regulations. These regulations are subject to change on a biennial basis. To be eligible to fish in Wrangell-St. Elias National Park you must meet all the following requirements:

- be a rural Alaska resident;
- qualify for customary and traditional use for the species and area where you want to fish;
- permanently reside in Wrangell-St. Elias National Park or in a Wrangell-St. Elias National Park resident zone community or hold a subsistence use permit (13.440) for Wrangell-St. Elias National Park;
- comply with Federal subsistence regulations;
- comply with any State or Federal permits, harvest tickets, calendar or tag requirements.

Authority

50 CFR Part 100 Subsistence Taking of Fish and Wildlife

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SRC Proposed Action 10.1

Action 10.1: Support the collection of information on fisheries and human uses of fish.

Issue Background

- At their meeting in Yakutat on November 3-4, 2000 the SRC discussed several subsistence fisheries monitoring projects. Although the projects discussed were to be conducted inside Glacier Bay National Preserve, the SRC felt compelled to take some action on the proposals because they dealt with fish that were subject to subsistence harvest. In a letter dated November 3, 2000 to Steve Klein of the US Fish and Wildlife Service the SRC supported the following proposals, 1) Declining sockeye salmon in the East River, 2) A review of existing information, 3) East Alsek River water quantity and quality evaluation, and 4) East Alsek River sockeye salmon stock assessment (see Action 10.1, pages 2-3).
- The proposal to use traditional ecological knowledge to document the declining sockeye salmon in the East River has been recommended to the Federal Subsistence Board for funding. The proposal to review existing information was resubmitted for funding for 2002.

Current Status

- A report titled *Traditional Ecological Knowledge of Tlingit People Concerning the Sockeye Salmon Fishery of the Dry Bay Area* was completed in 2004.

Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

November 3, 2000

Steve Klein
U.S. Fish and Wildlife Service
Office of Subsistence Management
3601 C Street #1030
Anchorage, AK 99503-6199

Dear Mr. Klein,

The Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) met at the National Park Service Office in Yakutat on November 2-3 2000. During our discussion of subsistence fisheries monitoring projects it came the our attention that three of the four proposals proposed for the subsistence fisheries in the East Bay area of the were not selected to move forward for FY 2001. The titles of these proposals are: Declining Sockeye Salmon in the East River; A Review of Existing Information; East Alsek River water quantity and quality evaluation; and East Alsek River Sockeye Salmon Stock Assessment.

Although the Subsistence Resource Commission for Wrangell-St. Elias does not make hunting recommendations for Glacier Bay National Preserve, we do feel that we are in a position to support these proposals to investigate the reasons for the decline of the sockeye fishery in the East River in Dry Bay. The SRC meeting was held in Yakutat and we listened to the concerns of the local subsistence public and two of the SRC members are from Yakutat. Additionally, the Subsistence Fishery Biologist for Wrangell-St. Elias also covers the needs of the subsistence fishery issues for Glacier Bay National Preserve.

On first glance the Dry Bay fishery appears to be primarily a commercial fishery, but the records for subsistence permits only reflect fish taken in the marine environment, when in fact many of the fish taken for subsistence use are taken in the river system. The subsistence fishery is dependent upon the ability (financial feasibility) to travel to East Bay. Future subsistence harvest of East River salmon may increase if Hubbard Glacier impounds Russel Fjord. Subsequent flooding would negatively impact important Yakutat area subsistence fisheries. This event would most affect the Situk River, which provides most Yakutat community subsistence salmon. Families would be forced to rely on more distant Dry Bay fish.

Chairman: Ray Sensmeier
Members: Suzanne McCarthy, Bert Adams, Paul Claus, Charles P. Miller, Fred John Jr., Gloria Stickwan, Don Horrell, Robert Marshall,

We ask that you reconsider these monitoring projects for future funding.

Sincerely,

Vice Chair
Wrangell St.-Elias National Park
Subsistence Resource Commission

Cc: Superintendent, Glacier Bay National Park and Preserve
ARD, Gottlieb National Park Service
Terry Haynes, ADF&G
Southcentral Regional Advisory Council
Southeast regional Advisory Council
Office of Subsistence Management

Chapter 11

Trapping

Subsistence trapping of wildlife is allowed in Wrangell-St. Elias National Park and Preserve by qualified subsistence users subject to Federal subsistence management regulations. Sport and general trapping is allowed in Wrangell-St. Elias National Preserve subject to State of Alaska general trapping regulations. ANILCA provides a preference for local rural residents over other consumptive users should a shortage of subsistence resources occur and allocation of harvest becomes necessary. This is particularly important for National Preserves where State sport hunting and trapping is allowed in addition to Federal subsistence hunting and trapping. Federal subsistence and state regulations are subject to change annually.

To be eligible to trap for subsistence purposes in Wrangell-St. Elias National Park an individual must live in a resident zone or have been issued a subsistence use permit (13.440) and have a positive customary and traditional use determination for the area and species they intend to trap. The trapper must also trap within the confines of the published season and bag limit listed in the Federal Subsistence Management Regulations booklet for the area in which they are trapping and comply with all other requirements and restrictions set forth in that document.

Customary and traditional (C&T) use determinations define which communities or areas have customarily and traditionally taken a wildlife population. To trap in a particular area or for a particular species an individual must have a "positive" C&T determination. These determinations are listed in the Federal Subsistence Management Regulations booklet by game management unit.

Federal Subsistence Board

The Federal Subsistence Board makes C&T determinations, and determines when seasons open and close, how many animals may be harvested, the method and means by which an animal may be taken, etc. The Board makes changes to the regulations on a biennial basis according to a regular schedule outlined in Chapter 1, SRC Functions, page 2. The deadlines vary somewhat from year to year but the general pattern remains consistent.

The Role of the Subsistence Resource Commission

The SRC plays an important role in this decision making process. The Commission may develop season and bag limit, method and means or C&T proposals and submit them to the Federal Subsistence Board during the annual regulatory change process. The Regional Advisory Councils rely on the SRCs input on all regulatory change proposals that affect Wrangell-St. Elias

National Park and Preserve. Likewise, SRC input on proposals may influence the NPS position on proposals as well as the thinking of Federal Subsistence Board members from other agencies that vote on each proposal.

Use of Aircraft for Trapping

Aircraft may be used to access the preserve for the taking of wildlife under both State and Federal regulations. However, airplanes are not permitted for access to the park for subsistence harvesting of wildlife. A qualified subsistence user may use an aircraft in the park to carry supplies to a trapping base camp or cabin, but may not utilize the aircraft for working the trapline, setting traps, checking traps, harvesting furbearers or transporting furbearers from park lands.

NPS Definition of Trap

NPS regulations define the term "trap" to mean a snare, trap, mesh or other implement designed to entrap animals other than fish. Under the NPS definition of trap, a firearm is not an approved method of taking free roaming furbearers under the authority of a trapping license. The NPS does acknowledge the long-standing practice of doing so under State regulations, but has concern for high trapping harvest limits for many furbearers.

Customary Trade

NPS regulations recognize customary trade to be the exchange of furs for cash and such other activities as may be designated in the special regulations for a specific park area. In December of 1998 in response to suggestions made by the SRC Chairs and the Western Interior Regional Advisory Council, the NPS clarified the interpretation of customary trade regulations for park units by stating that the following activities are permitted under NPS subsistence regulations:

- The making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption, (in all parks, monuments, and preserves where subsistence uses are permitted) 36 CFR 13.410 and 36 CFR 13.420.
- The exchange of furs for cash (as customary trade), (in all parks, monuments, and preserves where subsistence uses are permitted) 36 CFR 13.410, 36 CFR 13.420, and 36 CFR 13.410(3).
- The selling of handicraft articles made from plant material taken by local rural residents of the park area (as customary trade)(only in Kokuk Valley National Park and Gates of the Arctic National Preserve which contains the Kobuk River and its tributaries) 36 CFR 13.1006 and 36 CFR 13.1504.

Commercial Operations

On park and preserve lands a person may not engage in trapping activities as an employee of another person. The legislative history clearly indicates that Congress did not intend the park and preserve lands to be a place where more extensive forms of commercial trapping would be allowed and trapping itself becomes a business with employees paid to support the trapping operation.

Summary

Subsistence harvest of furbearers is allowed in the Wrangell-St. Elias National Park and Preserve by qualified subsistence users subject to Federal Subsistence Management Regulations. To be eligible to trap in Wrangell-St. Elias National Park all of the following requirements must be met. You must:

- be a rural Alaska resident;
- have a customary and traditional use determination for the species trapped and the area you are trapping in;
- permanently reside in Wrangell-St. Elias National Park and Preserve, in a Wrangell-St. Elias National Park resident zone community or hold a subsistence eligibility permit (13.440) for Wrangell-St. Elias National Park;
- possess a valid resident State of Alaska license for hunting and/or trapping;
- comply with Federal subsistence season and harvest limit regulations;
- comply with any State or Federal permits, harvest tickets or tag requirements.

Authority

50 CFR 100 Federal Subsistence Management Regulations
36 CFR 13 Subpart F Subsistence

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NPS Proposed Action 11.1

Action 11.1: Clarify the NPS definition of "trap" at 36 CFR regarding the use of firearms.

Issue Background

- The NPS prepared a draft rule in 1994 recommending the clarification of the existing regulation at 36 CFR 1.4 and 13.1. The intent was to eliminate confusion about the use of firearms under a trapping license. The draft regulation was circulated widely across the State for comment prior to publication.
- In 1997, the NPS responded to comments received on the use of firearms as an approved method of taking free-roaming furbearers under the authority of a trapping license as a long-standing customary and traditional use in Alaska. The NPS position on this issue was not changed, but additional language was added to the "NPS Subsistence Program" document indicating that the NPS acknowledges the long-standing practice of allowing the use under state regulations (see Appendix C).
- NPS responded in May 1999 to the SRC Chairs' recommendation indicating that this has been a difficult issue for the NPS. While the regulations suggest that use of a firearm is not permitted under a trapping license on NPS lands, NPS acknowledges that there is a long-standing practice of doing so under State regulations. NPS will continue to work with the SRCs, Regional Advisory Councils and others to evaluate or further define traditional practices for use of firearms as a method of trapping. It may be difficult at this time to attempt to change the regulations.

Current Status

- The NPS will retain the existing regulation concerning the allowable methods for trapping. NPS has taken no action on the draft rule intended to clarify NPS definition of a "trap".
- NPS has acknowledged the long-standing practice of allowing the taking of free-roaming furbearers with a firearm under the authority of a trapping license. NPS will work with the SRCs, the Regional Advisory Councils and others to evaluate or further define traditional practices for use of firearms as a method of trapping.

Authority

36 CFR 1.4 Definition of "trap"
36 CFR 13.1 Definition of "trap"

SRC Proposed Action 11.2

Action 11.2: Include the practice of making, selling or trading handicraft items made by subsistence users as an authorized use under customary trade.

Issue Background

- In January 1998, the Western Interior Regional Advisory Council wrote to NPS Regional Director Robert Barbee regarding the issue of customary trade. Their concern was that NPS regulations governing customary trade state that only furs may be exchanged for cash. The Council saw this as a direct conflict with the definition of subsistence uses in Section 803 of ANILCA. They requested that NPS regulations, or their interpretation, be corrected to allow for the sale of handicrafts made from non-edible byproducts of fish and wildlife resources in conformance with ANILCA (see Action 11.2, pages 3-4).

- NPS responded to Western Interior Regional Council comments on customary trade saying that what the Council requested is and always has been allowed under ANILCA and NPS regulations. NPS promised to add language to clarify the issue in the next release of the NPS Subsistence Management Report (see Action 11.2, pages 5-7). The report referred to is in Appendix C.

- At the joint SRC chairs/NPS meeting in Anchorage in October 1998, one of the items discussed was the issue of "customary trade" and the "making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption." As explained in the August 24, 1998, letter to the Western Interior Regional Advisory Council, both these activities are permitted under NPS regulations.

- The NPS regulation for customary trade states that only furs may be exchanged for cash or other non-edible by-products of fish and wildlife resources taken for personal or family consumption. There are currently two exceptions to this: one in Gates of the Arctic National Preserve and one in Kobuk Valley National Park, which permit the sale of handicrafts made from plant material. To authorize the sale of handicrafts made from materials other than furs, under the NPS definition of customary trade, a change to NPS "Special Regulations" under 36 CFR 13.420 would need to be made (see Action 11.2, page 8).

- At the October 1999 meeting of the SRC chairs, a recommendation was made that each SRC should review the NPS customary trade regulations to ensure that local customary

trade practices are recognized and authorized under the current NPS regulations. They further recommended that NPS customary trade regulations be consistent with Federal Subsistence Board regulations.

- NPS responded to the SRC chairs recommendation in February 2000 agreeing that customary trade regulations should, to the extent possible, address local customary practices. NPS asked that each SRC review the customary trade regulations and provide comments and specific information on local practices.

- On November 4, 2000, the SRC wrote a letter to Regional Director Arnberger requesting that NPS use existing sources to provide the Wrangell-St. Elias SRC with a list of materials used in customary trade practices across the state. The list is intended to facilitate discussion by SRC members. The SRC asked to have the list prepared by their February 2001 meeting (see Chapter 1, Action 1.4, pages 2-3).

- At the February 20-21, 2001, meeting in Gulkana the SRC reviewed a letter written by the Gates of the Arctic SRC requesting a change in the regulation defining allowable customary trade practices. The Wrangell-St. Elias SRC passed a motion to prepare a letter similar to the Gates SRC letter with the exception that minerals would be separated out from the list of renewable resources.

- Superintendent Candalaria recommended that the SRC appoint a subcommittee to develop a regulation specifically for Wrangell-St. Elias National Park that outlines the customary trade concerns of subsistence users for that park. A park specific regulation would allow the SRC to be specific about what values they want to protect, what materials they wish to use and would allow for better management of the resource. The SRC passed a motion to form the committee and the following SRC members volunteered to sit on the committee: Gloria Stickwan, Donald Horrell, Bert Adams Sr., and Fred John, Jr. Meeting dates will be determined at a later date. The committee would like to visit all the resident zone communities for input into the process.

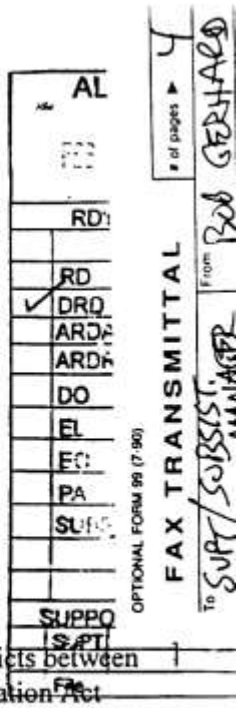
Current Status

- NPS has encouraged the SRCs to review NPS regulations pertaining to customary trade in light of changes made by Federal Subsistence Fisheries Regulations providing for the non-commercial exchange of subsistence foods through customary trade.

Authority

36 CFR 13.410 Applicability
36 CFR 13.420 Definitions

Western Interior Alaska Subsistence
Regional Advisory Council
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
101 12th Avenue, Box 19
Fairbanks, Alaska 99701
Phone: (907)-456-0277, Fax: (907)-456-0208
Toll Free: 1-800-267-3997



January 21, 1998

Robert Barbee, Regional Director
National Park Service
2525 Gambell Street
Anchorage, Alaska 99503

Dear Director Barbee:

The Western Interior Regional Advisory Council is concerned about two conflicts between National Park Service regulations and Alaska National Interest Lands Conservation Act (ANILCA) and Federal Subsistence Program regulations. The two areas of conflict are trapping and customary trade on Park Service lands.

TRAPPING: We are requesting your office submit a proposal to the Federal Subsistence Board to alleviate the apparent conflict with customary and traditional trapping practices currently occurring in Gates of the Arctic, Denali, and Lake Clark National Parks. The proposal would request that the existing Federal Subsistence Program regulations apply and/or supercede existing National Park Service regulations on all Park Service lands. This would result in uniformity of trapping regulations across Federal public lands making it easier for user compliance and enforcement. The Regional has taken an active role in aligning Federal trapping seasons with more liberal State trapping seasons by submitting alignment proposals for beaver and wolf for the region.

The conflict's root starts in the 36 CFR definition of a trap where a firearm is not an approved method of taking free roaming furbearers under the authority of a trapping license. Your *National Park Service Subsistence Management Program Report* (August 1997) on page 25 acknowledges that existing Park Service regulation does not conform to longstanding practice of using a firearm as a method of taking furbearers. It also states that the Park Service will work with others to address this apparent conflict. The above proposal would provide the means for all interested parties to participate in resolving this conflict.

This issue of firearms and trapping on Park Service lands has been before the Regional Council many times. Attached is copy of our May 18, 1995-letter recommending the Park Service amends the definition of trapping to reflect the longstanding customary and traditional uses that are ongoing on Park Service lands. It has been more than two years ago with little to no progress. The Regional Council is concerned about law enforcement being placed in position of subjective enforcement of lower 48 state standards in Alaska. We look forward to your proposal and working to resolve this conflict.

CUSTOMARY TRADE: On page 27 of your August 1997 Report, it states, "The NPS regulation for customary trade states that only furs may be exchanged for cash." This is in direct conflict with the ANILCA's definition of customary trade within the definition of subsistence uses in Section 803,

> SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption, for barter, or sharing for personal or family consumption- and for customary trade. For the purposes of this section, the term—
>
> (l) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
>
> (2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—
>
> (A) for other fish or game or their parts; or
>
> (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature. (Emphasis added)

Further, your reference to Senate Report 96-413, pg. 234, does not indicate a need for restricting customary trade on Park Service lands to *only furs exchanged for cash*. It only refers to not permitting the establishment of a significant commercial enterprise under the guise of subsistence uses. There has been trade in Alaska since the first occupation of Alaska by humans. Trade in the sense of cash exchange has existed in Alaska for hundreds of years. This trade was never limited to furs alone. It included handicrafts made from various parts of animals and various plant materials.

We strongly request that Park Service regulations conform to ANILCA and be corrected to allow the sale of handicrafts made from nonedible byproducts of fish and wildlife resources. Implementing this action would recognize and honor the longstanding practice of customary trade that continues on Park Service lands.

In conclusion, we applaud your efforts with an open door approach with your *National Park Service Subsistence Management Program Report* and we look forward to working cooperatively together on subsistence issues.

Yours truly,

Carl Morgan (vtm)

Carl Morgan, Chair

cc: Tom Boyd, Assistant Regional Director, Office of Subsistence Management
Subsistence Resource Commission Chairs for Gates of the Arctic, Denali, and Lake Clark
Taylor Brelsford, Office of Subsistence Management

United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

AUG 24 1998

Mr. Carl Morgan, Chair
Western Interior Regional Advisory Council
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
101 12th Avenue, Box 19
Fairbanks, Alaska 99701

Dear Mr. Morgan:

This letter is in response to your letter of January 21st, expressing concern about the issues of trapping and customary trade, and the relationship between National Park Service (NPS) and Federal Subsistence Management Program (FSMP) regulations . This letter is also responsive to that part of the Council's 1997 Annual Report submitted to the Federal Subsistence Board on May 6, 1998, in which the same issues were raised.

On the issue of trapping, you requested that the existing FSMP regulations apply and/or supersede existing NPS regulations on all lands. Your reason for requesting this is based on the fact that NPS regulations do not include a firearm as an approved method of taking free-roaming furbearers under the authority of a trapping license. As you stated in your letter, we have acknowledged (in our Subsistence Management Program Report distributed last year) that there is a long-standing practice of using a firearm for such take under State trapping regulations. However, the report also expressed concern for the high harvest trapping limits for many furbearers.

While a long-term solution to this issue is desirable, we cannot support your suggestion to make FSMP regulations supersede NPS regulations. The FSMP regulations clearly state that they "...do not supersede agency specific regulations." (50 CFR 100.3). Each individual agency operates under specific laws, passed by Congress, which define the mission of the agency. In ANILCA, for example, Congress recognized the difference in the NPS mission from other agencies, and specified that in national parks and monuments the NPS is to manage for "natural" and healthy wildlife populations, rather than "healthy" populations described for other conservation system units. Each agency develops the regulations necessary to carry out its particular Congressional mandate. The FSMP regulations cover the taking of fish and wildlife for subsistence uses on all federal lands where subsistence is authorized. When a FSMP regulation conflicts with an agency specific regulation, the agency regulation must take precedence, or the agency will not be fulfilling its Congressional mandate. For this reason, we cannot support, legally, nor in policy, revising the FSMP regulations to make them supercede the NPS regulations.

One of the primary mandates of the NPS is to ensure that natural and healthy populations of wildlife are maintained on NPS lands. Where permitted by law, subsistence uses must be consistent with that mandate. We acknowledge that there may be a legitimate need for bona fide trappers—actively working a trapline—to be able to use a firearm to take furbearers (and certainly to dispatch furbearers already in a trap). Historically, the need for enforcement of the NPS regulation has been minimal to non-existent.

Unfortunately, relatively little is known about the health of many furbearer populations on NPS lands. Before we make any changes to our regulations, we would like to explore other options for gathering biological and harvest information, which may reduce our need to rely on traditional regulatory systems. Two projects are already underway. The community of Wiseman, working with the NPS has developed a community harvest reporting system. In Northwest Alaska, the NPS and U.S. Fish and Wildlife Service, local communities and schools are all working together to better understand the biology and demography of wolverine in the region. We are excited about such cooperation with local subsistence users on harvest reporting systems and biological research, and want to give these and other such projects a chance to succeed before we revisit our regulations. We welcome your involvement and your ideas in how we can expand such programs.

The second issue in your letter relates to customary trade, and to our statement in the August 1997 NPS Subsistence Management Program Report that the "NPS regulation for customary trade states that only furs may be exchanged for cash." Your letter says that this statement "is in direct conflict with the ANILCA's definition of customary trade within the definition of subsistence uses in Section 803,..." and you request that NPS regulations be "corrected" to allow the sale of handicrafts made from nonedible byproducts of fish and wildlife resources.

In fact, what you request is and always has been permitted under ANILCA and under NPS regulations. However, we understand that there may have been some misunderstanding on this issue both within the NPS and with subsistence users. We will add language to clarify this issue the next time we reissue the NPS Subsistence Management Program Report.

In your letter, you suggest that the phrase "for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption" is part of the definition of "customary trade." In fact, that phrase is the second of four phrases that constitute the definition of "subsistence uses" in Section 803. The first is "for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation." The third is "for barter, or sharing for personal or family consumption", and the fourth is "for customary trade." These definitions are repeated in the NPS regulations at 36 CFR 13.42. Therefore, the NPS regulation that defines "customary trade" (36 CFR 13.42(c)(3)) is only a definition of the last of four types of permitted uses under the definition of "subsistence uses." It does not define or restrict any of the other three types of uses, all of which are permitted under ANILCA and under NPS regulations.

Therefore, the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption is permitted. "Customary trade" constitutes any or all other legitimate subsistence uses where the exchange of cash for subsistence resources is involved. On NPS lands, this is restricted to the sale of furs for cash (except where other uses are specifically authorized—currently the Kobuk unit of Gates of the Arctic National Preserve and Kobuk Valley National Park where the sale of handicrafts made from plant material is permitted).

Thank you for taking the time to review and comment on our subsistence management program. I hope the information we have provided in this letter is helpful to you. We look forward to continuing our relationship with the council, and with the subsistence users in the region.

Sincerely,

Paul R. Anderson

Paul R. Anderson
Deputy Regional Director

United States Department of the Interior

NATIONAL PARK SERVICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

DEC - 2 1998

Ms. Florence Collins, Chair
P.O. Box 10159
Fairbanks, Alaska 99710

Dear Ms. Collins:

At the joint Subsistence Resource Commission (SRC) Chairs/National Park Service (NPS) meeting in Anchorage last month, one of the items discussed was the issue of "customary trade" and the "making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption." As explained in the August 24, 1998, letter to the Western Interior Regional Advisory Council which was provided to you, both these activities are permitted under NPS regulations.

At the joint meeting you asked that we "spread the word" about this issue. This letter constitutes one step in accomplishing that request. Please share this with your commission members. We are also asking all superintendents with subsistence responsibilities to add this issue to the agenda of future SRC meetings and in other meetings where appropriate.

The following activities are permitted under NPS subsistence regulations:

- The making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption, (in all parks, monuments, and preserves where subsistence uses are permitted)36 CFR 13.41 and 13.42(c).
- The exchange of furs for cash (as customary trade), (in all parks, monuments, and preserves where subsistence uses are permitted) 36 CFR 13.41, 13.42(c), 13.41(c)(3).
- The selling of handicraft articles made from plant material taken by local rural residents of the park area (as customary trade), (only in Kobuk Valley National Park and in the Gates of the Arctic National Preserve unit which contains the Kobuk River and its tributaries) 36 CFR 13.64(a)(3) and 13.69(a)(2).

Thank you again for taking time out of your schedule for meeting with us last month. We greatly appreciate your interest and involvement on behalf of subsistence users in your area. We will be responding to your other recommendations from the joint meeting in a separate letter shortly.

Sincerely,

Paul R. Anderson

Paul R. Anderson
Deputy Regional Director

SRC Proposed Action 11.3

Action 11.3: Work with local trappers to assure that ethical and responsible trapping practices are used by everyone.

Issue Background

- At its February 20-21, 2001, meeting in Gulkana, the Wrangell-St. Elias National Park SRC heard testimony from Ed Bullock Sr. of Slana about trapping practices on trails near Slana. Mr. Bullock indicated that he wanted trappers to use ethical and responsible trapping practices for everyone's safety. He had observed trail sets that were unsafe for mushing dogs and skiers. He would like to see trappers put up signs indicating where their traplines run.
- After considerable discussion by the SRC and the Park Superintendent it was decided that the local community should work the situation out themselves if possible. The SRC may choose to take some action in the future if the problem is not resolved locally. The SRC passed a motion to send a letter to the Slana Community Corporation about the issue.
- Park staff worked with the Commission in writing an article to address the issue in the Wrangell Wire. Some comments on the issue were received and will be made available to the SRC at their meeting in September 2001, in Mentasta.

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Appendix A

Alaska National Interest Lands Conservation Act (ANILCA)
Title VIII – Subsistence Management and Use

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managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601 note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; *Ante*, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term— 16 USC 3113.

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria: 16 USC 3114. Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 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.

Regional advisory council, authority.

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;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

Implementation.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Reimbursement to States.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Report to Congress.

(2) Total payments to the State under this subsection shall not exceed the sum of $5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

FEDERAL MONITORING

Report to congressional committees.
16 USC 3116.

SEC. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

Civil actions. 16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or

Subsistence hunting program.

investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

Program and recommendation implementation.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

COOPERATIVE AGREEMENTS

16 USC 3119.

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title.

SUBSISTENCE AND LAND USE DECISIONS

16 USC 3120.

SEC. 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 section 805;

Hearing.

(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.

Notice and hearings.
42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 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.

48 USC note prec. 21.
43 USC 1601 note.

(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.

ACCESS

16 USC 3121.

SEC. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122.

SEC. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submittal to Speaker of House and President of Senate.
16 USC 3123.

SEC. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

(1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;

(2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;

(3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public. Publication in Federal Register.

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title. 16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

SEC. 815. Nothing in this title shall be construed as— 16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

CLOSURE TO SUBSISTENCE USES

16 USC 3126.

SEC. 816. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in Federal Register.

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

SEC. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within five years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within five years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this

43 USC 1601 note.

Appendix B

Subsistence Resource Commission Charter and Roster

U. S. Department of the Interior
National Park Service

National Park Service Subsistence Resource Commission for Wrangell-St. Elias National Park

Charter

1. **Committee's Official Designation.** The official designation of the committee is the National Park Service Subsistence Resource Commission for Wrangell-St. Elias National Park (Commission).

2. **Authority.** The Commission is established in accordance with the Alaska National Interest Lands Conservation Act, (16 U.S.C. § 3118) Title VIII, and the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., Appendix 2.

3. **Objectives and Scope of Activities.** The Commission, after consultation with appropriate local committees and regional advisory councils, considering all relevant data and holding one or more additional hearings in the vicinity of the Park, will make recommendations to the Secretary of the Interior (Secretary) and the Governor of Alaska (Governor) on an annual basis for any changes in the subsistence hunting program or its implementation which the Commission deems necessary.

4. **Description of Duties.** The duties of the Commission are solely advisory, and are as stated in Paragraph 3, above.

5. **Agency or Official to Whom the Committee Reports.** The Commission reports to the Secretary through the Designated Federal Officer (DFO).

6. **Support.** The National Park Service will provide administrative and logistical support to the Commission.

7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Commission's functions are estimated to be $95,000, which includes staff support including all direct and indirect expenses and .25 in staff years.

8. **Designated Federal Officer.** The DFO is the Superintendent, Wrangell-St. Elias National Park and Preserve, National Park Service who is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will approve or call all Commission and subcommittee meetings, prepare and approve all meeting agendas, attend all Commission and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Secretary.

9. **Estimated Number and Frequency of Meetings.** The Commission will meet approximately twice a year, and at such time as designated by the DFO.

10. **Duration.** Continuing.

11. **Termination.** The Commission will not meet or take any action without a valid current charter. Although the provisions of Section 14(b) of the FACA requiring a biennial rechartering are inapplicable to the Commission, pursuant to 16 U.S.C. 1a-14(a), the Department of the Interior will conduct a biennial review of the Commission to determine if its goals and objectives have been fulfilled.

12. **Membership and Designation.** The Commission will be composed of nine members, as follows:

    a. three members appointed by the Secretary of the Interior;

    b. three members appointed by the Governor of the State of Alaska;

    c. three members appointed by the Regional Advisory Council (Eastern Interior, Southcentral, and Southeast), established pursuant to 16 U.S.C. § 3115, which has jurisdiction within the area in which the Park is located. Each of three members shall be a member of either the regional advisory council or a local advisory committee within the Region and also engage in subsistence uses within the Park.

    Members will be appointed for 3-year terms. A vacancy on the Commission will be filled in the same manner in which the original appointment was made. Members serve at the discretion of the appointing source.

    Each appointing source (i.e., Secretary, Governor, or the appropriate Federal Regional Advisory Council) may appoint an alternate representative. Alternate members shall have experience and/or expertise similar to that of the primary members.

    Members of the Commission will serve without compensation. However, while away from their homes or regular places of business, Commission and subcommittee members engaged in Commission or subcommittee business, approved by the DFO, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of Title 5 of the United States Code.

13. **Ethics Responsibilities of Members.** No Commission or subcommittee member will participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department in which the member has a direct financial interest.

14. **Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Commission for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Commission Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.

15. **Recordkeeping.** The records of the Commission, and formally and informally established subcommittees of the Commission, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

Ken Salazar
Secretary of the Interior

JUL 19 2012
Date

AUG – 8 2012
Date Filed

Wrangell-St. Elias National Park and Preserve
Subsistence Resource Commission Members

All members serve for three year terms. The charter allows a member to continue to serve until the appointing source takes action to reappoint or make a new appointment.

Name	Community	Appointment Source	Term Expires
Karen Linnell	Kenny Lake	Secretary of Interior	12/14/2014
Don Welty	McCarthy	Secretary of Interior	12/14/2014
Dan Stevens	Chitina	Secretary of Interior	12/14/2014
Robert R. Fithian	Kenny Lake/Lower Tonsina	Governor	11/04/2014
Suzanne McCarthy	Gakona	Governor	11/04/2015
Donald R. Horrell	Tazlina	Governor	11/04/2015
Gloria Stickwan	Tazlina	Southcentral RAC	11/04/2014
Bert Adams	Yakutat	Southeast RAC	11/04/2014
Sue Entsminger	Mentasta Pass	Interior RAC	11/04/2015

Note: According to the SRC charter, members continue to serve until re-appointed or replaced.

Appendix C

National Park Service
Subsistence Management Program

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United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892

IN REPLY REFER TO:

NATIONAL PARK SERVICE SUBSISTENCE MANAGEMENT PROGRAM

AUGUST, 1997

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This document includes a summary of comments received on earlier drafts of this document, and a National Park Service (NPS) response to those comments. Comments and responses are included as endnotes to each section.

For further information, please contact the Superintendent of an NPS area where subsistence uses are permitted or the Alaska Regional Director in Anchorage.

NATIONAL PARK SERVICE SUBSISTENCE MANAGEMENT PROGRAM

Section 1. INTRODUCTION AND MISSION STATEMENT

The National Park Service (NPS) was involved in subsistence management in Alaska even before passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Interim rules for the new Alaska National Monuments, including a section related to subsistence uses, went into affect on December 26, 1978. On June 17, 1981, specific regulations for national park system units in Alaska were published. Subpart B of these regulations pertain to subsistence. Since 1990, the NPS has been deeply involved, with the other federal agencies comprising the Federal Subsistence Board, in the management of the statewide federal subsistence program.

Several years ago, the NPS initiated a review of the subsistence law and regulations. At the outset, this review was primarily internal, but we then circulated earlier draft versions of this document widely throughout the subsistence community and to other interested individuals and organizations. This document (in its draft versions) has been reviewed by regional advisory councils, subsistence resource commissions, the state of Alaska, and others.

The intent of this exercise was to initiate a continuing dialog with all affected individuals and organizations through a review of the law, regulations and legislative history and to identify and establish actions necessary to resolve subsistence management issues. As such, this document, or at least the process behind it, will be a continuing one, as new issues arise and program emphasis must shift. The NPS recognizes the necessity for continued development and modification of the program based on review and input from the subsistence users, the general public, and legal and technical advisors. The preamble for the NPS subsistence regulations, promulgated in 1981, state that those regulations "are the minimum necessary for interim administration of Alaska park areas" and that "Further rulemaking efforts will involve more expansive public guidance on the implementation and interpretation of ANILCA."

When the NPS regulations were published in 1981, there were no subsistence regional advisory councils or NPS subsistence resource commissions in place. The state of Alaska's subsistence management program was in its infancy, and the NPS had limited experience in dealing with the issue. Title VIII of ANILCA (and the NPS subsistence regulations) stress the importance of working with and adopting wherever possible the recommendations of local subsistence users and advisory groups.

Discussions focused on earlier drafts of this paper with interested individuals and organizations around the state have taken place over the last several years. To the extent possible, we have incorporated the input received into this document. But in many cases, this review has only highlighted the complexity of many issues, particularly issues related to eligibility. The NPS eligibility regulations were adopted, as stated above, as interim regulations. Over the years, park managers (and more importantly, subsistence users) have had to deal with situations where NPS eligibility conflicted with state or federal eligibility (customary and traditional use determinations).

Subsistence advisory groups have made recommendations related to eligibility issues that remain unresolved. One outcome of this review is the realization that we need to continue a further, complete review of all eligibility issues. Current regulations for eligibility are complicated and confusing for the general public. This review, which could take a couple of years to complete, may affect discussions in the eligibility section which follows. The review will be done with full participation by subsistence advisory groups, the state of Alaska, and other interested individuals and organizations.

Title VIII of ANILCA recognizes Alaska's uniqueness and the national interests in the proper regulation, protection and conservation of fish and wildlife, and the purposes for which the parks were established. To achieve this complex synthesis of protection and use, Congress felt it important to include input from those who have a personal knowledge of traditional subsistence activities and resources on federal lands.

The NPS is charged with conserving natural and healthy populations of fish and wildlife (healthy in preserves) on lands it manages. Subsistence uses of park resources have a priority over other consumptive uses, but only as long as natural and healthy or healthy populations as appropriate are conserved. The NPS believes that its major role is to see that these populations are conserved. To that end, we are developing guidelines (separate from this document) to help evaluate and protect natural and healthy or healthy populations. As with all other issues, involvement from subsistence users, advisory groups and others will be sought. If natural and healthy or healthy populations are conserved, then the recommendations of ANILCA advisory groups on allocation and eligibility issues can more easily be adopted as appropriate.

The following mission statement is written to bring a coordinated view of subsistence management on National Park Service lands in Alaska.

National Park Service Subsistence Mission Statement[1]

The National Park Service will manage subsistence as a legislated use consistent with provisions of the Alaska National Interest Lands Conservation Act, the Organic Act of 1916, and each park's enabling legislation to:

-- protect the opportunity for qualified local rural residents to continue traditional subsistence activities. These subsistence uses shall have priority over competing consumptive uses;[2]

-- recognize that subsistence life styles are continuing to evolve, and, where appropriate, park management practices may reflect regional diversity;

-- promote local involvement and participation in processes associated with subsistence management;

-- ensure that management practices involving the utilization of public lands adequately consider the potential for restriction of subsistence uses and impacts upon subsistence resources;

-- ensure that management of park resources is consistent with the conservation of unimpaired ecosystems and natural and healthy populations of fish and wildlife, incorporating scientific data and principles with traditional knowledge and cultural values;[3]

-- promote effective communication and mutual understanding of subsistence uses and related cultural and social values, and park purposes and protection, between the NPS, subsistence users, the state of Alaska and the public.[4]

Notes

1. One commentor supported the statement as written. One commentor said that the wording should be changed in several sections to include tribal entities as managers of subsistence harvests and resources and insert the word "Native" along with "local rural".

Response: The ANILCA preference is for rural residents (both Native and non-Native), therefore the suggested changes are not necessary.

2. Two commentors said that priority exists only during times when there is a shortage of resources. Two commentors said that NPS should not base eligibility on family and personal history of use when Title VIII mandates determinations be made on a community basis.

Response: ANILCA mandates a priority for subsistence use of resources over other uses, not solely in times of shortage. Title VIII does not mandate community eligibility determinations. Both Federal and NPS regulations provide for community and individual based eligibility determinations. The wording of this section was modified to clarify that the NPS will protect the opportunity for all qualified local rural residents.

3. Two commentors said that the term "unimpaired ecosystems" is ambiguous. One commentor said that man should be considered part of the ecosystem and included in the definition of "unimpaired ecosystems". One commentor recommended that the term "unimpaired ecosystems" be replaced with "ecosystem conservation".

Response: The term "unimpaired" is taken directly from the NPS Organic Act, which states that "the fundamental purpose of ....parks, monuments, and reservations .... is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (U.S.C., title 16, sec. 1) Where subsistence is authorized by ANILCA, such subsistence uses are not inconsistent

with "unimpaired ecosystems". Where legislatively authorized, the activities related to subsistence uses can and will be considered a part of "unimpaired ecosystems".

4. One commentor said that the document should address local and state management of subsistence. Two commentors noted the lack of reference to coordination and communication with the State of Alaska.

Response: This document is not the place to describe management of subsistence by other agencies. No changes made. We concur with the comment on communication and coordination with the state. The phrase, "the State of Alaska" was added to the last line based on this comment.

Section 2. GENERAL SUBSISTENCE ISSUES

Title VIII of ANILCA protects and provides the opportunity for continued subsistence uses on public lands by rural residents of Alaska. With respect to NPS lands in Alaska, the law (and its legislative history) are clear that Congress intended that subsistence uses be permitted only where specifically permitted. Therefore subsistence uses are not permitted in Katmai National Park, Glacier Bay National Park, lands within the pre-1980 Mount McKinley National Park, Kenai Fjords National Park, Klondike Gold Rush National Historical Park and Sitka National Historical Park. The following bullet statements provide further guidance and interpretation of the general applicability of Title VIII on NPS lands.

In addition to the following items, one commentor said that the NPS should restore the section on "natural and healthy" that appeared in an earlier version of the document. An NPS work group is presently analyzing and defining the term "natural and healthy", but their work is not yet ready to add to this document. Before it is added to this document, the work group intends to seek further input from subsistence advisory groups and other interested individuals and organizations.

Four commentors also recommended that the NPS permit decision-making for parks at the Superintendents level, in order to allow for regional diversity in NPS policy and regulations governing subsistence. As a result of recent restructuring in the NPS, the majority of decision-making for subsistence issues in Alaska is now vested in the Superintendents of parks where subsistence uses occur, but is still subject to review at the regional and national levels as appropriate. In accordance with the language of Section 808 of ANILCA, Subsistence Resource Commission (SRC) hunting plan recommendations must still be submitted to the Secretary of Interior (and the Governor of Alaska), but many issues can and are being resolved at the local level. The NPS agrees with the need for flexibility in interpreting law and regulation and setting policy based on regional diversity. Of course, such flexibility must be consistent with the guidance of ANILCA and federal regulation. The need for diversity is a major reason that Congress established regional subsistence advisory councils and specific subsistence resource commissions for parks and monuments where subsistence uses are permitted.

- ANILCA provides that subsistence uses be permitted in national preserves and "where specifically permitted" in national monuments and parks. Those areas include: Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Gates of the Arctic National Park and Preserve, Glacier Bay National Preserve, Katmai National Preserve, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve, Yukon Charley Rivers National Preserve, and the ANILCA additions to Denali National Park and Preserve. (*Reference: ANILCA, Section 203).*

- Congress intended to provide the opportunity for continued subsistence uses within NPS units for "....local rural residents who have, or are a member of a family which has,

an established or historical pattern of subsistence uses within such units." *(Reference: Senate Report 96-413, page 169)*[1]

- Subsistence use in park areas (where authorized by ANILCA) is an allowed use that must be provided for, consistent with stated park purposes and values. *(Reference: ANILCA, Section 101 on purpose of the act and Section 201 and 202 on NPS permitted activities and allowed uses)*

- There are five park areas; Gates of the Arctic, Wrangell-St. Elias, Lake Clark, Denali, Aniakchak, with subsistence allowed "where such uses are traditional." *(Reference: ANILCA, Section 201 and 202; 36 CFR 13.41, preamble to NPS regulations, Federal Register, Vol. 46, No. 116, pp. 31840, 31848)*[2]

- Title VIII only applies to "Public Lands" as defined in Section 102 of ANILCA. Current federal regulations do not provide for ANILCA subsistence on selected lands located within national parks or monuments and no state general/sport hunting is allowed, i.e., no hunting can legally occur on these lands. However, the Departments of Interior and Agriculture have published in the Federal Register an Advance Notice of Proposed Rulemaking which indicates their intent to amend the definition of "Public Lands" to include selected lands. *(Reference: Federal Register, Vol. 61, No. 66, p. 15014)*[3]

Notes

1. This and the previous bullet statement were split out from a single item in previous drafts of this document in order to clarify the difference between references to ANILCA itself (the identification of which units subsistence is allowed in) and to the intent language found in the legislative history of ANILCA.

One commentor said that the definition of "historical pattern of subsistence use" was not clear.

> Response: The term has not been specifically defined in either law or regulation, but may be defined as part of a further review of eligibility.

One commentor said that there needs to be an Alaska Native policy that would allow tribal membership to serve as the basis for eligibility rather than residency).

> Response: Since the ANILCA subsistence priority is for rural residents of Alaska, tribal membership rolls would not represent non-native subsistence users across the State and therefore could not serve as the sole basis for determining eligibility.

2. Two commentors said that the whole park area is a traditional use area. Two commentors said that if boundaries need to be established they should be determined based on historical data and

archaeological evidence. One commentor said that the word "should" in the 3rd sentence of the previous draft be replaced with "will", and that traditional use zones to be identified and mapped as they existed on the date ANILCA was signed. One commentor said that the NPS should work towards a geographic rather than a species approach. One commentor said that the NPS should combine "customary and traditional (C&T) and "where traditional" questions into one issue. Two commentors said that C&T should be given to all resident zone communities for all species within the park.

Response: The NPS has not defined traditional use zones for the five park areas, but other actions have served to help define traditional use areas, notably the C&T determinations made over the years by the state of Alaska and later the Federal Subsistence Board. While the C&T determinations provide some guidance in the determination of traditional use zones, they are specific to individual fish and wildlife species. The NPS believes that it must look further to the full range of subsistence uses, including plant uses (berries, timber) subsistence cabins and shelters and other uses, and further believes that it must work closely with subsistence advisory groups in this process. Neither C&T determinations nor subsistence resource commissions and regional advisory councils were in place in 1981 when the NPS regulations were adopted. The preamble to the NPS regulations state that "local input ... is essential to developing the 'subsistence hunting zones' for the five park areas" and that "local committees, regional councils, and park and monument commissions should facilitate such local input into these designations." (p. 31840). The Gates of the Arctic staff is currently responding to the Gates of the Arctic SRC recommendation that the entire park be considered "where traditional". Among other factors, they will consider whether Federal Subsistence Board C&T determinations can be used to define traditional use areas. Public input, particularly from subsistence advisory groups, will be sought in this process, and the comments above will also be considered.

3. One commentor said that State- and Native-selected land should not be included among areas subject to ANILCA management. Two commentors support the extension of federal subsistence management on selected lands. One commentor said that the NPS should clarify the term "selected lands".

Response: The NPS still believes that the federal subsistence program should extend to selected lands. Based on the Advanced Notice of Proposed Rulemaking cited above, the NPS assumes that the interpretation of the definition of "federal public lands" will eventually include selected lands. Therefore, the action item from the previous draft relating to specific NPS action on this issue was deleted.

Section 3. SUBSISTENCE ELIGIBILITY

The ANILCA subsistence priority is provided for rural residents of Alaska, both Native and non-Native. Title VIII of ANILCA (and its legislative history) further restrict eligibility for this priority on NPS lands to "local" residents. Thus, since NPS regulations were adopted in 1981, the NPS has provided for a subsistence opportunity for "local rural residents". For national parks and monuments, the NPS regulations provide for two methods of determining local rural residents: resident zones and 13.44 permits. Resident zones (as codified in the NPS regulations) permit all permanent residents within those zones to participate in subsistence activities on NPS lands without a permit. Local rural residents who live outside established resident zones can apply for an individual permit (under 36 CFR 13.44) to participate in subsistence activities on NPS lands. In the 1980's, two subsistence resource commissions recommended that the NPS adopt a third method (rosters) that would identify specific groups of people (although not necessarily all residents of a community or area) who would be "permitted" to participate in subsistence activities on NPS lands without having to get individual permits. While the concept of a roster system for group eligibility was approved by the Secretary of Interior, implementing regulations have yet to be adopted.

While the subsistence priority in national preserve areas is also limited to local rural residents, the regulations relating to national parks and monuments described above were not extended to national preserves. The preamble to the 1981 NPS subsistence regulations states "The Park Service believes that the need to identify local rural residents in preserves is not as pressing as in parks and monuments....".

As stated earlier in this document, there are many conflicts, problems, and/or unresolved issues relating to eligibility. Some of these issues include:

- -- Federal (and prior to 1990, state) C&T determinations that are inconsistent with NPS resident zone determinations.
- -- How should we deal with patterns of subsistence use established after 1980 (by virtue of residence in a resident zone community)?
- -- Standards for issuing 13.44 permits.
- -- How do we determine who are local rural residents for preserve areas?
- -- Dealing with individual C&T determinations (federal regulations provide for C&T determinations to be made on an individual basis for NPS areas, but to date no individual determinations have been made)
- -- Can resident zones include large, sparsely populated areas outside park units?
- -- How can we get a roster system implemented--or do subsistence resource commissions still want us to do so?

These and similar issues have caused confusion and frustration for subsistence users and park managers both. The review of these issues over the last several years focused on interpretation and implementation of the existing regulations. It is now time look further than the existing regulations. We need to take the experiences of the last sixteen years and take a fresh and critical

look at those regulations, which were, when implemented in 1981, identified as "interim guidance". Subsistence resource commissions, regional advisory councils, the federal subsistence program, and the information gained and lessons learned in the last sixteen years were not available to the NPS when those regulations were adopted. We look forward to working with subsistence advisory groups, the state of Alaska, and other interested individuals and organizations as we conduct this further review.

Resident Zones

- People who permanently reside within the boundary of the parks or monuments, including non-federal land, are within the designated resident zone and therefore are eligible for subsistence uses within the park or monument. *(Reference: 36 CFR 13.42 and 13.43, preamble to NPS regulations, Federal Register, Vol. 46, No. 116, p. 31850, bottom left paragraph)*[1]

- Where appropriate, and with SRC involvement, resident zone communities and areas should be mapped with boundaries delineated.[2]

- It is not the intent of the regulations to include large unpopulated or sparsely populated areas within the resident zone except for those areas within a park or monument. However, the SRC's for Cape Krusenstern and Kobuk Valley have requested that the resident zones for the two areas coincide with the boundaries of the NANA Region. At the direction of the Secretary of the Interior, their request is currently being reviewed through NEPA and ANILCA Section 810 compliance. If the SRC's recommendation is found to have merit, it may result in an exception to the general intent above. *(Reference: 36 CFR 13.42(b), preamble to federal regulations, Federal Register, Vol. 46 No. 116 June 17, 1981, pg 31850, bottom left paragraph)*[3]

- The "significant concentrations" test for resident zone community designation can be met by considering two factors: quantity of users and cultural vitality. To meet the "quantity" test the majority of residents of a community must essentially qualify for a 13.44 permit. To meet the "cultural vitality" test, the majority of a community must be linked to subsistence use of the park resources through cultural or family association, and that subsistence use must be consistent with local subsistence use customs. "Cultural Vitality" would be community-based. Both factors may be used together in making resident zone community determinations. The NPS will work with SRC's when considering resident zone community determinations. *(Reference: Preamble to NPS regulations, Federal Register, Vol. 46, No. 116, p. 31850, right column, middle paragraph)*[4]

Roster Regulations

- The NPS has been directed by the Secretary of Interior to implement an alternate method for determining user eligibility within communities. The option of a roster system for determining eligibility is an appropriate tool for managing subsistence eligibility. [5]

13.44 Eligibility: National Parks and Monuments

- In order to qualify for a CFR 13.44 permit, the applicant must demonstrate that at the time of ANILCA (1980), he or she had an established or historical pattern of subsistence use of the subsistence resources on the lands or waters within the park area in question, or is a member of a family with such established or historical patterns. An applicant who has established eligibility by virtue of residence in a resident zone community and who has established a pattern of subsistence use of subsistence resources within the park area in question, may qualify for a 13.44 permit if he or she moves out of a resident zone community but remains a local rural resident.*(Reference: ANILCA, Section 803 for definition of family; Senate Report 96-413, page 169, 2nd paragraph)*[6]

- Rural residents that live outside of the designated "resident zone" may apply for a 13.44 eligibility permit.

- The 13.44 eligibility regulations currently only apply to parks/monuments.

Preserve Eligibility

- ANILCA specifies that Preserves should be administered and managed in the same manner as parks, except as otherwise specified in the law. Congress clearly intended that Preserves be managed differently in some ways, since sport hunting is permitted in preserves but not parks or monuments. *(Reference: ANILCA, Sec. 1313)*[7]

- 36 CFR defines "local rural" only for parks and monuments.[8]

Action Items:

- Seek resolution to the Cape Krusenstern and Kobuk Valley resident zone recommendation, work with both Subsistence Resource Commission's to reach a mutually agreeable solution.

- Promulgate "Roster Regulations" establishing the roster list concept as an alternate method or determining eligibility for communities. Change the requirement for the person (as an individual or as a member of a family) to demonstrate a "customary and traditional use" to demonstrate a "history or established pattern of customary and traditional use as part of a subsistence lifestyle". As appropriate all documents in Resource Management

Plans, Statements for Management, and General Management Plans should be amended to reflect this change.[9]

- Eliminate the first sentence in 13.44(b), which was only applicable before August 1, 1981.

Notes

1. One commentor said that there is no support in ANILCA or the legislative history for the idea that subsistence eligibility is automatically conferred based on residency within the park or monument, but agreed that eligibility should be conferred to those persons residing in subsistence resident zones that are entirely within or overlap the unit boundaries. Two commentors supported the statement as written.

> Response: The NPS regulations define a resident zone as any area within a park or monument and any communities or areas identified in the regulations. Therefore all permanent residents within national parks and monuments are eligible for subsistence. This is consistent with the legislative intent found in Senate Report 96-413, p. 170, which states that "Persons whose primary, permanent place of residence is within a zone should be permitted to harvest wildlife within the park or monument for subsistence purposes without obtaining a National Park Service permit."

2. Three commentors said that mapping would be okay as long as there was extensive local involvement in the process. One added that mapping should only be undertaken at this time if there is a resource management issue or other compelling need. A fourth commentor opposed mapping, but added that if it was necessary it should be overseen by local governments, corporations, or local advisory committees. One commentor said that mapping must be done based on 1980 information, and said that the NPS should establish a time line to do so. One commentor said that it is not necessary to map Aniakchak resident zone boundaries at this time. One commentor said that the entire NANA Region should be the resident zone boundary for Cape Krusenstern and Kobuk Valley.

> Response: The statement was modified to indicate that boundaries should be mapped where appropriate and that SRC involvement will be sought in any mapping that takes place. Park managers and staff will work with subsistence advisory groups to identify needs for mapping of resident zone boundaries, and will work closely with those groups when communities are mapped.

3. Two commentors responded to a bullet statement in the previous draft that stated that "communities and areas" refers to obvious clusters or groupings of people living in close proximity to one another. Both agreed that "communities" refers to clusters or groupings of people, but both said that "areas" could refer to larger, less densely-populated regions.

Response: The NPS has removed that bullet at this time, since it duplicates language in the bullet statement retained above.

The commentors also disagreed with the retained statement that large, unpopulated areas (outside of parks or monuments) be automatically excluded from the resident zones.

Response: The intent of that statement was not changed as written in the previous draft, but additional language relating to the Cape Krusenstern and Kobuk Valley SRC recommendations was added because the Secretary of the Interior has directed the NPS to consider their recommendations prior to his final response to the SRC's. The NPS regulations define a resident zone as "the area within, and the communities and areas near, a national park or monument..." The question of whether the lands included within the two SRC's recommendation would qualify as "communities and areas near" the units has yet to be answered, since neither the legislative history nor the NPS regulations give any further guidance to the term "areas near". The ANILCA mandate for regional advisory councils confirms the need for regional differences in a subsistence management program in a state as large and varied as Alaska. In an area such as Northwest Alaska, with over 90% of the population being Native Alaskans with very strong cultural and historic ties to the entire region, the recommendation of the two SRC's may have merit.

4. Four commentors opposed the use of the 51% level for determining eligibility. Another three commentors opposed the use of any percentage level. One of the commentors said that these eligibility tests are more restrictive than Congress intended. Two of the commentors said that resident zone community determinations should be up to SRC's. One commentor said that a higher numerical threshold for resident zone eligibility is necessary and suggested that resident zone eligibility be determined by a minimum of two-thirds of residents who would otherwise qualify for a 13.44 permit.

Response: The statement was not changed from the previous draft, except that the reference to the cultural vitality meeting several of the eight C&T factors was removed. This part of the statement was not adequately defined, and will be included if appropriate after a further review of all eligibility issues. The preamble to the NPS regulations does give some guidance to the issue of quantity vs. cultural vitality when it states that the concentrations of subsistence users "may be 'significant' in relative quantity (e.g., predominant numbers) or quality (e.g., cultural vitality, community leadership and influence)."

5. One commentor said that the roster concept may thwart legitimate subsistence use of parklands. Two commentors expressed support for the roster concept. Three commentors expressed opposition to the concept of a roster for their own area, but said that they would not oppose it where other SRC's wanted it.

Response: The bullet has been retained based on the Secretary's direction to the NPS (in response to the Lake Clark and Denali SRC recommendations) to implement roster

regulations. However, members of at least one of the two SRC's may no longer support the roster concept for their area. Since the Secretary's order was based on the recommendations of that SRC, this issue will have to be further evaluated along with all other eligibility issues. The previous draft of this document suggested that a roster system should be implemented only as an alternative for resident zone communities that can no longer meet their significant concentration test. In fact, a roster system could be implemented (where appropriate at the request of SRC's) for communities which still meet the significant concentration test, or for other eligible communities not currently included as resident zone communities. The wording of this section was modified to remove the suggestion that it could be used for one reason only.

6. One commentor said that eligibility for a 13.44 permit should be allowed based on a pattern of use on any lands within a park area, not just on public lands within the area (as it appeared in the previous draft of this document). One commentor expressed concern about the definition of "family" and suggested the words "extended family" be used. Two commentors questioned the statement that the pattern of subsistence use had to be prior to 1980, pointing out that someone who established a pattern of subsistence use while a resident of a resident zone community may not qualify for a 13.44 permit if he or she moves out of the resident zone community. One commentor said that the statement reflects the intent of ANILCA and suggested a new action item to re-evaluate existing 13.44 permits in light of this policy. One commentor said that Wiseman should remain a resident zone community. One commentor said that all local residents should qualify to hunt unless game stocks are depleted. One commentor said that safety concerns for trappers should allow them to take friends along with them, not just family members who may not be available.

Response: The NPS agrees with the first comment and has removed the requirement that eligibility be established on public lands only. The NPS understands the concern of the two commentors who noted that eligibility which can be established by residency in a resident zone community may subsequently be lost if the person moves out of the resident zone community (but remains a local rural resident) if the initial eligibility was established after 1980, and has added language to the bullet to indicate that such eligibility will not necessarily be lost. The Senate Report section cited above states the commitment "to the protection and continuation of the lifestyle of local rural residents who have, or who are a member of a family which has, an established or historical pattern of subsistence hunting within the park or monument...." It is the belief of the NPS that anyone who has legally "established" a pattern of subsistence use based on residency in a resident zone community should not be forced to lose that eligibility if he or she moves out of a resident zone community and has to apply for a 13.44 permit. The requirement that the qualifying use be obtained prior to ANILCA is based on language in Section 101 of ANILCA which states, "...to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." The fact that a local resident can immediately be qualified based on residency in a resident zone, but must show a pattern of use prior to 1980 if he or she chooses to live in a rural area outside of a resident zone community is a good example of why the NPS believes that this, and other eligibility issues, need a more thorough review

and analysis.

7. One commentor said that there is insufficient basis for applying the subsistence management of parks and monuments (resident zones, rosters, 13.44 permits) to preserves, and pointed out a number of areas where ANILCA specified differences between the two types of units. Two other commentors added their objection to the establishment of resident zones for preserves. One commentor said that the language should be changed to say that preserves (and preserve eligibility) shall be managed the same as parks and monuments. One commentor said that the NPS would need regulatory changes to establish resident zones for preserves.

Response: The statement was modified to include a more complete summation of Section 1313 including acknowledgment that there are differences in the law between preserves and parks and monuments. The preamble to the NPS regulations states that "the need to identify local rural residents in preserves is not as pressing as in parks and monuments since sport hunting is allowed in preserves." If in the future, the NPS determines a need for further eligibility regulations for preserves, it will work closely with subsistence advisory groups to develop those regulations.

8. One commentor did not object to the definition of "local rural" being extended to preserves as long as it would not eliminate or unnecessarily restrict non-subsistence users in preserves, and also said the NPS should address how its proposed eligibility system for preserves would relate to the Federal Subsistence Board's general regulatory jurisdiction. Two commentors opposed any changes to 36 CFR in order to establish an eligibility system for preserves.

Response: While there is no specific definition for local rural applicable to preserve areas at this time, there are no pressing resource or other issues to indicate the need for further definition at this time. The Federal Subsistence Board C&T determinations appear to be adequate to define local rural residents for preserve eligibility. If, in the future, there appears to be a need to further define or regulate preserve eligibility, the NPS will undertake a public process to determine the best method to do so. This issue will be included in the further review of all eligibility issues.

9. Three commentors opposed use of the roster system until a sound justification has been identified. One added that a roster system was a good way to eliminate subsistence users entirely.

Response: The concept of a roster system was first recommended by two SRC's in the mid-1980's, but regulations to implement such a system have never been adopted. The NPS has recently learned that at least one of the two SRC's may no longer support their earlier recommendation. Because of this, and because of the need for a further review of eligibility issues discussed earlier, the NPS needs to further discuss this issue with the two SRC's and others to determine the best course of action.

Section 4. SUBSISTENCE ACCESS

ANILCA provides guidance as to the the means of access permitted for subsistence use on public lands in Alaska. The legislative history of ANILCA reflects Congress' intent that the use of aircraft for access to subsistence hunting within national parks and monuments should only rarely be permitted. Off-road vehicles (ORV's) are generally not permitted for subsistence within NPS lands, but their use may be permitted if such use is found to be traditional. The bullet statements below center around the interpretation and implementation of these issues.

- Reasonable access to subsistence resources shall be provided, this does not necessarily equate to unlimited access. Such access must be reasonably regulated to insure that purposes for which the park unit was established are protected, that all means of access are compatible with the protection of park resources and do not cause an unacceptable adverse impact on natural and cultural resources *(Reference: ANILCA, Section 811; and Senate Report 96-413, page 275)*[1]

- Use of aircraft to access the parks and monuments for subsistence taking of fish and wildlife is prohibited. However, an inholder may use an airplane to access private property pursuant to Sec. 1110(b). *(Reference: Senate Report 96-413, page 169, third paragraph; and preamble to NPS regulations, Federal Register, Vol. 46, No. 116, pp. 31841-2,31851, right column, middle of page)*[2]

- Exceptions to the aircraft prohibition within parks and monuments are allowed, but should be rare and should be true exceptions due to extraordinary circumstances, where no reasonable alternative exists. *(Reference: Senate Report 96-413, page 169, 3rd paragraph and 36 CFR 13.45 (b))*[3]

- Use of aircraft to access preserves for subsistence activities is permitted. *(Reference: preamble to NPS regulations, Federal Register, Vol. 46, No. 116, p. 31851 right column)*[4]

- Snowmobiles, motorboats, dog teams, and other forms of surface transportation traditionally employed for subsistence activities are allowed, subject to reasonable regulation. Clarification of "reasonable regulation" can be found in 36 CFR 13.46(b) & (d). *(Reference: ANILCA, Section 811 and Senate Report 96-413, page 275)*[5]

- ANILCA and NPS regulations do not specifically recognize ORV's as a form of access for subsistence, except that the law did provide for "other means of surface transportation traditionally employed" . Therefore, ORV's are prohibited for subsistence use except where found to have been traditionally employed. Determinations of where ORV's have been traditionally employed should be made on a community or area basis. Where found to have been traditionally employed, their use for subsistence purposes is subject to

reasonable regulation to protect park values and park resources. *(Reference: ANILCA, Section 811 and Senate Report 96-413, page 275)*[6]

- The NPS will assess the actual and potential impacts to the park by use of various means of surface access used for subsistence. The parks will monitor ORV uses and manage such uses where appropriate to insure that impacts from such use to not result in unacceptable impacts to the resources and purposes of the park unit.[7]

- The legislative history of ANILCA reflects Congress' intent to allow for the natural evolution of technology within a culture and allow for this in the "traditionally" employed determination. Any new and currently unforeseen technology will have to be consistent with subsistence use patterns and compatible with the purposes and values of the park area. *(Reference: ANILCA, Section 811, and Senate Report 96-413, page 275)*[8]

- Subsequent to a "traditionally employed" determination, ORV use must be subject to reasonable regulation designed to protect park values and the purposes for which the park was established. The NPS will monitor ORV use of this type to make sure the use does not compromise park purposes, values and resources. *(Reference: ANILCA, Section 811, and Senate Report 96-413, page 275)*[9]

- In park and monument areas aircraft may only be used to supply a base camp but not for working the trapline or accessing the trapline during the trapping season. *(Reference: 36 CFR 13.45(c), preamble to NPS regulations, Federal Register, Vol. 46, No. 116, p. 31852, middle column, middle of page)*[10]

- In preserve areas, furbearers may be taken under state regulations with the use of aircraft to support and work the trapline.[11]

Notes

1. One commentor said that subsistence access rules should provide guarantee of access, should designate more access points in Wrangell-St. Elias, and that the NPS and the Wrangell-St. Elias SRC should discuss what is and is not legitimate access. One commentor said there was a need for a definition of "reasonable access".

Response: The NPS agrees that documentation of subsistence access methods and use areas for both pre- and post-ANILCA is needed to guide management decision making and ensure reasonable access. Many of the subsistence access issues within park areas will not be resolved until credible information is gathered and documented. Coordination and communication with local users and subsistence advisory groups is fundamental in gathering this information and will be actively sought. The NPS does not believe that

"reasonable access" needs to be further defined. ANILCA and NPS regulations already recognize use of snowmachines, motorboats, dog teams and other surface means of transportation traditionally employed. Use of aircraft is allowed in preserves. The legislative record is clear that Congress did not intend to foreclose the use of new, as yet unidentified means of surface transportation, so long as such means are subject to reasonable regulation necessary to prevent damage or waste of fish, wildlife or terrain, and is compatible with the purposes and values of the park area.

Two commentors suggested that the word "significant" be added before the word "adverse" since any means of access has some level of impact on resources. One commentor said that the NPS should manage access to NPS lands to minimize trespass and damage to private lands. One commentor said that access should not be allowed in traditional national park areas closed to all hunting, and that NPS should adopt language from an earlier draft of this document. One commentor said that "reasonable access" should not result in red tape and unreasonable restrictions to access, and said that NPS should work with SRC and people most affected by restrictions.

Response: The word "unacceptable" was added before the word "adverse" to clarify that it is not the intent of the NPS to utilize a zero tolerance standard for subsistence access impacts. At the same time, the NPS may not wait until a "significant" adverse impact has occurred before management actions are taken. What constitutes an adverse impact may vary between park areas, or within a park area, depending on environmental conditions such as topography, soils, moisture, vegetation, time of year, and the particular legislative mandates for each unit.

2. Several commentors requested a regulatory change to allow the use of aircraft to access park or monument land for subsistence harvesting of fish or wildlife resources. Two commentors said that subsistence users should be allowed to fly in to preserves or private inholdings and then walk into a park or monument in order to engage in subsistence activities. One commentor agreed with use of aircraft as presented above.

Response: The statement above was not changed from previous drafts of this document. The ANILCA legislative record is clear that Gongress intended that only rarely, under extraordinary situations, should aircraft be used for subsistence hunting, trapping and fishing purposes in parks and monuments.

3. One commentor agreed with the use of aircraft as presented above. One commentor said that it is difficult to justify any subsistence use of aircraft. One commentor said that there should be special provisions for use of aircraft for subsistence in Wrangell-St. Elias, because it is a large park, aircraft use predated snowmachines, and leave only minimal impacts. One commentor asked if it was necessary to restrict use of aircraft for subsistence.

Response: This section was not changed from the previous draft of this document. The Congressional record is clear that the use of aircraft in parks and monuments for the

taking of subsistence fish and wildlife should be limited and only allowed when necessary to alleviate extraordinary circumstances. Such circumstances could include situations like at Anaktuvuk Pass, where caribou herds, which are the village's sole source of subsistence resources, alter their migration patterns, or where unusual weather conditions may restrict access to resources and there are no alternative resources available, such as at the Malaspina Forelands in Wrangell-St. Elias.

4. One commentor agreed with the use of aircraft as presented above. One commentor said that NPS should prohibit use of aircraft for subsistence in preserves, at least when sport and subsistence seasons diverge or in 804 situations.

Response: This section was re-worded for more clarity from the previous draft, but was not changed to prohibit use of aircraft for subsistence in preserves as the second commentor suggested. Senate Report 96-413 specifically identified national parks and monuments as areas where aircraft use for subsistence should only rarely be permitted. In addition, current regulations only prohibit use of aircraft in parks and monuments and the preamble to the regulations specifically states that the regulations "do not prohibit use of aircraft for subsistence uses in national preserves".

5. One commentor said that such traditional uses should not be eliminated or further restricted in any way. One commentor said that subsistence users should be allowed to use whatever means possible to get the animal as economically as possible, and that technology should not be capped at the 1980 level.

Response: This statement was not changed from the previous draft. As stated above, documentation of subsistence access methods and use areas for both pre- and post-ANILCA is needed to guide management decision making and ensure reasonable access. Many of the subsistence access issues within park areas will not be resolved until credible information is gathered and documented. Coordination and communication with local users and subsistence advisory groups is fundamental in gathering this information and will be actively sought.

6. One commentor said that NPS should exercise discretion and flexibility with respect to ORV use for subsistence, and that the NPS has the responsibility to document pre-ANILCA ORV use in order to honor Congressional access guarantees. One commentor said that NPS should find that ORV's were "traditionally employed" in Aniakchak National Monument. One commentor said that ORV policy should consider non-hunting subsistence ORV uses (e.g. berry picking). One commentor said that ORV use on trails is okay and if there are resource damages, NPS should correct them (like corduroy to keep people from going around wet areas). One commentor said that subsistence users should not be restricted in means of access, new forms of transportation should not be prohibited. Two commentors said that the determination of "traditionally employed" should be made on a group or community basis as opposed to an individual determination.

Response: The statement was modified slightly from the previous draft, but the general intent was not changed. Many subsistence users, advisory groups and the State are not comfortable with the NPS position on ORV access. In addition to the above comments, all the Chairs present during the 1996 ARC Chair's meeting identified ORV access as a major issue for their area. Several SRC's have requested access studies. It is likely that the questions regarding whether or not ORV's are already a traditional mode of access in some areas, and how (or when) the NPS will allow for the natural evolution of new technology commonly used by subsisters, will continue for many years. General guidance for an ORV policy are found in law, regulations and the legislative history. From such guidance, and recognizing the regional diversity appropriate to such subsistence issues, each park area should resolve and address the issue for their area as appropriate. Subsistence access studies need to be conducted to document traditional and contemporary access modes, use areas and routes. Adequate levels of funding are needed to conduct such studies. Such studies need to focus on appropriateness of ORV use in park areas and acceptable levels of impact. ORV use can be very impacting on some soils and vegetation, while completely non-impacting on others depending on surface terrain and hardness. Access studies also need to identify and document specifically where ORV use areas and routes are, and what are acceptable levels of impact for area and management goals. Park and monument General Management Plans that state that ORV's have not been found traditional for subsistence also state that new any new information on traditional uses will be reviewed for consistency with ANILCA. Determinations of appropriate use (if any) will be made by the NPS on a park-by-park basis.

7. One commentor said that the NPS should document modes of access used for traditional and subsistence purposes prior to passage of ANILCA before restricting motorized access, recommended that NPS consider ORV restrictions only where significant environmental degradation is documented, and recommended that NPS consider alternatives such as bridges or corduroy to protect sensitive trail sections. One commentor recommended that ORV use determinations should not be made on the basis of vehicle type, since flexibility could result in less, not more damage to the environment, and said that determinations should be community-wide, and made on the basis of routes and effects, not on an individual basis. One commentor said that subsistence users will not have a problem with working out the best way to access a trail without overly impacting the vegetation, but that NPS needs to avoid being overly restrictive.

Response: These and other appropriate comments will be incorporated in any actions the NPS takes in relation to the management of ORV's.

8. One commentor said that the NPS should be flexible in interpreting the term "traditionally employed" and that a 20-year test should not apply to specific types of motorized vehicle access. One commentor said that access should be allowed at the same level as 1980, with reasonable allowances for restrictions to preserve the environment. One commentor said that the multi-generational terminology is unnecessary and that any machines used in subsistence should be allowed. One commentor said that the NPS should document modes of access used for traditional and subsistence purposes prior to passage of ANILCA before restricting motorized

access, recommended that NPS consider ORV restrictions only where significant environmental degradation is documented, and recommended that NPS consider alternatives such as bridges or corduroy to protect sensitive trail sections. One commentor said that allowing new technology to be considered traditionally employed appeared to be a contradiction in terms. One commentor said that new technology should not be excluded.

> Response: The definition of "traditionally employed" found in the previous draft of this document was removed. The NPS will work with Subsistence Resource Commissions and other advisory groups on a case-by-case basis to further define and regulate the use of ORV's. See notes following previous bullet statements for further discussions of ORV issues.

9. One commentor said that if NPS gets too restrictive on definitions like this it will cause a major hardship on subsistence users and that NPS should work with SRC's to identify what the problems are before making decisions.

> Response: The NPS will work with subsistence users, SRC's, advisory groups and others to establish reasonable regulations and monitoring programs.

10. One commentor recommended that the NPS prohibit the use of aircraft to supply subsistence base camps. One commentor recommended the NPS use flexibility to allow use of aircraft to check traps in unusual weather conditions (i.e., ice goes out earlier than expected preventing ground travel).

> Response: Clarification of the NPS position on this issue is found in the preamble to the NPS regulations, which specifically state that "...a local rural resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin...." Therefore, a qualified subsistence user may use an aircraft in a park, monument or preserve to carry supplies to a base camp or cabin, but may not utilize the aircraft for working the trapline.

11. One commentor recommended that to NPS prohibit the use of aircraft in preserves to support and work subsistence and sport traplines. One commentor said that he could see no reason to regulate or restrict the use of airplanes or restrict trapping on preserve lands.

> Response: The NPS does not believe it is necessary to restrict aircraft access for sport or subsistence users withing national preserves at this time. If it becomes necessary to restrict method or means or reduce seasons or harvest limits, regulatory procedures are available through the Federal Subsistence regulations, state hunting and trapping regulations or NPS regulations.

Section 5. SUBSISTENCE RESOURCE COMMISSIONS

Section 808 of ANILCA established a subsistence resource commission for the seven national parks or monuments and directed that each commission "devise .... a program for subsistence hunting within the park or park monument." Subsistence resource commissions were not established for national preserves. The bullet statements below relate to meetings of the SRC's, hunting plans, appointments to the SRC's, and to the commissions' scope.

SRC Meetings:

- All SRC meetings are considered "public meetings" and should allow for public input or "testimony" on SRC recommendations as they are being developed or finalized.

- A "hearing" as used in Section 808 of ANILCA does not require court reporters and transcripts. The "hearings" should be tape recorded and a summary of minutes prepared and maintained in the park.

- The requirement to hold meetings in "convenient locations" means convenient to the subsistence users of the park/monument. This is to ensure that those most affected by SRC recommendations would have an opportunity to provide input.

- The SRC's are required to have a public meeting at least once a year, but they may meet more often if necessary. [1]

- The NPS will facilitate an annual meeting between the Chairs of the SRC's and NPS staff.

Hunting Plans:

- The words "hunting plan", "hunting program", "hunting plan recommendations" should be considered synonymous.

- In addition to the four stated reasons for the Secretary of Interior not to implement SRC recommendations, other existing laws and regulations may preclude the Department from implementing SRC recommendations.

- The SRC's shall submit their program recommendations to the Secretary of the Interior and to the Governor with the assistance of the NPS. If the SRC wishes their recommendations to be forwarded to other parties, they should request that assistance from the Superintendent. The park will forward SRC recommendations to a "reasonable" number of other parties.

- The following elements are identified as possible elements of a Hunting Plan outline. This listing should not be considered all-inclusive. The SRC should determine which elements are an appropriate part of the Hunting Plan. Possible elements to include are: Eligibility, access, education and interpretation, harvest monitoring, process for commenting on harvest limits, etc., methods and means, and research needs

SRC Appointments:

- Regional Advisory Council appointments to the SRC's must be a member of either the regional advisory council or a local advisory committee within the region and also must engage in subsistence uses within the park or park monument. "Engage in" means current or recent use of subsistence resources in the park or monument. It was the intent that these appointees have direct and "first hand" experience with subsistence uses in the park/monument, and that they serve as spokespersons for the subsistence users of the park or monument.[2]

- If Regional Councils make appointments to SRC's which do not meet statutory requirements a letter should be sent to the Regional Council and appointee. The NPS can not provide travel and per diem expenses and the appointee will not be considered a voting member.

- The charter for each SRC will specify how many appointments each Regional Council will make to the SRC. Each Regional Council which has a portion of the park/monument within the region is not necessarily given an appointment to the SRC.

Scope of SRC's:

- ANILCA does not authorize SRC's for National Preserves.[3]

- The SRC's statutory authority only extends to recommendations concerning parks/monuments, however, where the SRC can demonstrate some direct linkage between situations occurring within the preserve and subsistence uses in the park, then the SRC can make recommendations for resolution of that issue.

- Local Advisory Committees and Federal Regional Councils should be able to meet the advisory need functions for independent preserves such as Yukon-Charley, Katmai, Glacier Bay, and Bering Land Bridge.

- The Federal Regional Advisory Councils can provide input on preserve subsistence issues under the authority of section 805. The Regional Advisory Councils have recommendation authority similar to the SRC's.

Action Items:

- Park staff and the regional director's office should seek ways to reduce the length of time required for Secretary of Interior responses to SRC hunting plan recommendations.

- The NPS should insure that SRC's, the state of Alaska and other appropriate agencies and advisory groups are given an opportunity to review all NPS draft regulations that affect subsistence prior to finalization of such regulations.

Notes

1. Two commentors said that the SRC's should meet at least two times a year. One commentor agreed that having one meeting a year was very important and said that some years an SRC may require 2-3 meetings.

> Response: The statement as written in the previous draft set the minimum requirement only. Nothing in the regulations prohibits SRC's from having more than one meeting a year, provided that there are issues to be dealt with and sufficient funding to support the necessary travel costs. The statement was modified to clarify that SRC's can, if necessary, meet more than once a year.

2. One commentor questioned the term "actively engages in" used in the previous draft of this document, but agreed with the intent of the statement. One commentor agreed that appointees should be actively engaged in subsistence harvest in order to have first hand knowledge of the park or monument that they represent.

> Response: The word "actively" used in the previous draft was removed and the statement was modified to more closely track the language of Section 808.

3. One commentor said that SRC's should not be precluded from addressing issues in preserves, although acknowledged that such recommendations may not be entitled to the same deference granted recommendations formulated under Section 808(b). One commentor agreed with the statement as written, but said that SRC's should deal with preserve issues that impact the adjoining parks.

> Response: The statement was not changed from the previous draft. SRC's can make recommendations directly to the Federal Subsistence Board or other bodies when they feel it is appropriate. The following bullet statement provides additional clarification of this issue.

Section 6. CABINS

- The regulations on cabin use and provide that the issuance of cabin permits should occur only after an analysis is done that cabins are a necessary and traditional part of subsistence uses in the area, and that the park purposes would not be compromised by their construction. Cabin construction requires an Environmental Assessment, cultural resource clearances, section 810 analysis and other considerations.[1]

- The exclusive use of a designated subsistence use cabin cannot be authorized in the case of a permit for new cabin construction, thus insuring the opportunity for shared use of a cabin or structure by all subsistence users.*(Reference: 36 CFR 13.17, and preamble Federal Register, Vol. 51, No. 182, September 19, 1986, p. 33482, 3rd column)* [2]

- Designation and management of subsistence cabins should be done with input from the SRC, and/or affected users. The parks, as appropriate, should develop specific cabin management guidelines as part of their Subsistence Management Plans.[3]

Notes

1. One commentor said that the cabin regulations should differentiate between new cabins and replacement cabins and that replacement cabins should not have the same strict requirements needed for a new cabin.

Response: The construction of any cabin should undergo the same thorough scrutiny; however, the fact that a proposed cabin is to replace a cabin no longer usable may be a mitigating factor in the review.

2. One commentor said that to require shared use of all subsistence cabins is not traditional in all cases, although exclusive use is not required in most cases.

Response: This section was not changed. The NPS cabin regulations and the preamble to those regulations are clear that new cabins must be on a shared use basis. The preamble states that "All new cabins authorized under this subsection will be used on a shared rather than exclusive use basis."

3. One commentor supported a cabin management program on park lands based on an understanding of how cabins were used in park areas prior to passage of ANILCA, and said that cabin management guidelines should be subject to review and comment by SRC's, the State and the public before being implemented.

Response: The NPS agrees with this comment. Any cabin management guidelines will be subject to review and comment by SRC's, advisory groups, the State, and the public prior to implementation.

Section 7. TRAPPING

- Qualified subsistence users may trap in park areas in accordance with applicable state and federal law.

- A person may not engage in trapping activities as an employee of another person in national parks, monuments or preserves.*(Reference: Senate Report 96-413, p. 307)* [1]

- The NPS should actively work with trappers to manage wildlife resources. The NPS, trappers and SRC's should develop and implement traditional strategies, guidelines and/or regulations for subsistence trapping management, acknowledging that there are regional and cultural differences in trapping customs throughout the state.[2]

- Under the 36 CFR definition of trap, a firearm is not an approved method of taking free roaming furbearers under the authority of a trapping license. The NPS acknowledges the longstanding practice of doing so under state regulations, but has a concern for high trapping harvest limits for many furbearers. The NPS will work with Subsistence Resource Commissions, Regional Advisory Councils and others to evaluate or further define traditional practices for use of firearms as a method of trapping, and then consider regulatory changes as appropriate.[3]

Notes

1. Three commentors all questioned whether there is a difference between commercial, recreational, and subsistence trapping. One of the three acknowledged that NPS regulations prohibit engaging in trapping activities as the employee of another person, and said that the NPS should not attempt to define trapping as "commercial" or "subsistence" since most trapping results in some cash sale.

Response: The statement was modified to more clearly reflect the intent that persons not be allowed to engage in trapping as the employee of another. This is consistent with the legislative history which states that "The Committee clearly does not intend the preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation."

2. One commentor said that state management of furbearers should be continued under the sustained yield principal that ensures natural and healthy populations. One commentor said that the statement or may not be good depending on the NPS philosophy, and said that if the NPS believes that an animal is over- or under-trapped, then it should put in a proposal to change the bag limit.

Response: The general intent of the section was not changed, but the term "workable threshold values" in the previous draft was replaced for more clarity.

One commentor requested clarification of what is meant by "appropriate trapping regulations". One commentor said that if NPS have concerns about trapping regulations they should be brought up at SRC or other appropriate advisory committee meetings.

Response: The NPS reviews all subsistence related regulations including trapping regulations to ensure that they are appropriate to conserve natural and healthy or healthy populations, provide for subsistence opportunity, and do not conflict with NPS mandates. Any proposed regulations will be discussed with SRC's and other appropriate advisory groups as part of the rulemaking process.

3. Five commentors opposed the NPS position on the use of firearms as an approved method of taking free-roaming furbearers under the authority of a trapping license. Several said that the use of firearms under the authority of a trapping license has long been customary and traditional in Alaska.

Response: The general intent of this section was not changed, but additional language was added to include the NPS's acknowledgment of the long practice of allowing the use of firearms under a trapping license in Alaska, and to express it's desire to work with SRC's, RAC's and others to resolve the issue.

Appendix D

Current Issues

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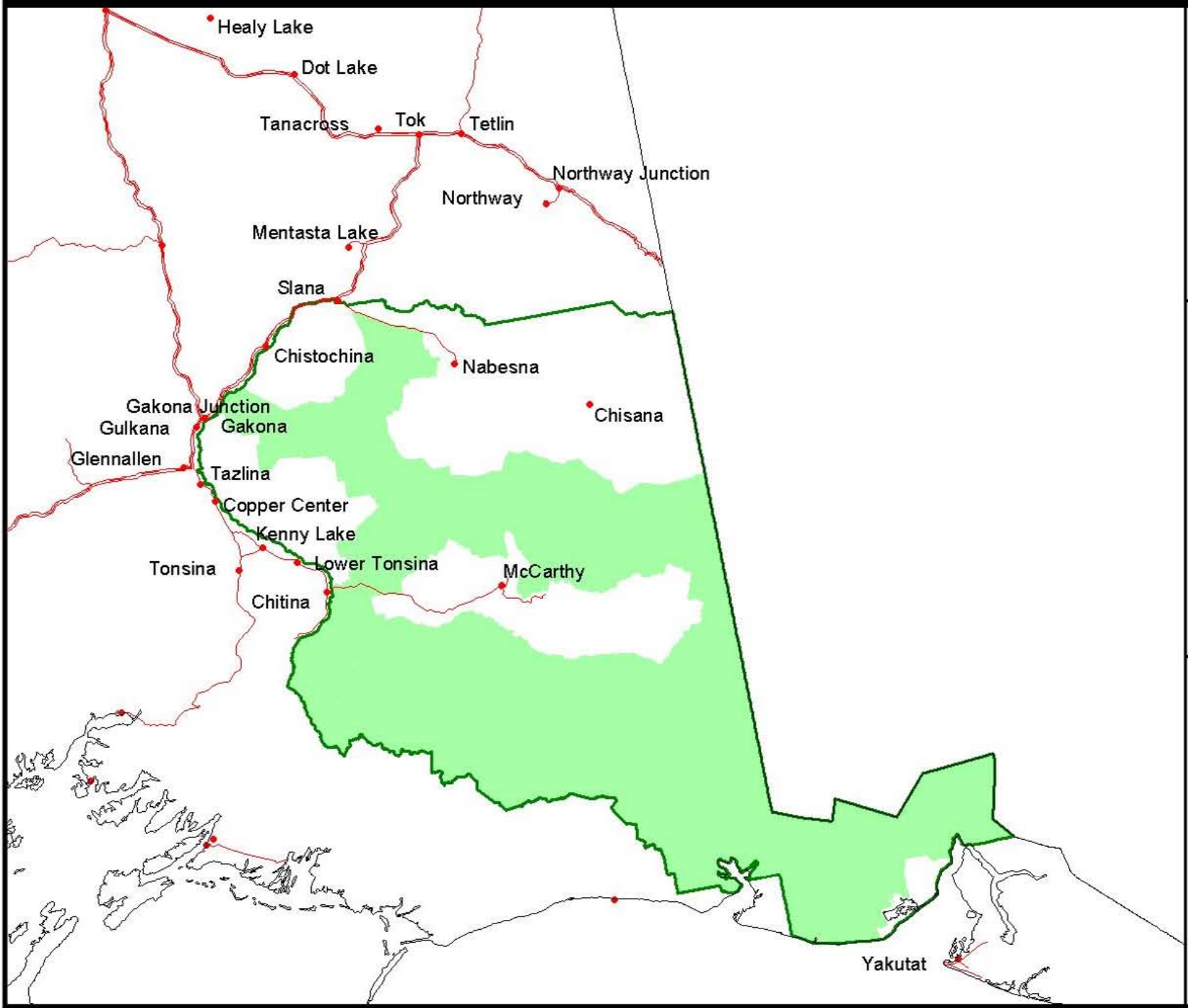
Appendix E

Reference Maps

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Wrangell-St. Elias National Park
Resident Zone Communities

National Park Service
U.S. Department of the Interior



Towns

Roads- 1:2,000,000

Primary

Secondary

Park Boundary

Park

Preserve

Wrangell-St. Elias National Park and Preserve

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1 : 2,597,760 1 inch = 41.00 miles

May 12, 2003

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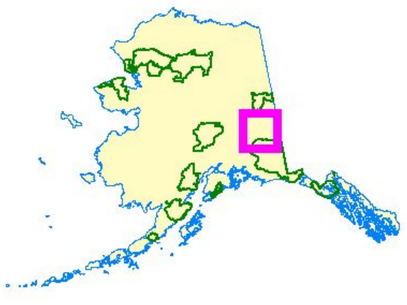
Resident Zone Boundaries
for Wrangell-St. Elias National Park

National Park Service
U.S. Department of the Interior

Boundary
Chicken
lta
Healy Lake
lta
nction
Dot Lake
Tanacross
Tok
Tetlin
Northway
Paxson
Mentasta Lake
Slana
Chistochina
Nabesna
Gakona
Gulkana

Community boundary
Towns
Roads
Primary
Secondary
Light Duty
Park Outline

Map Location



Wrangell-St. Elias National
Park and Preserve

N
W E
S

10 0 10 20 30 40 Miles

1 : 1,267,200 1 inch = 20.00 miles

September 17, 2004

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Dot Lake, Alaska

Resident Zone Community Boundary

National Park Service
U.S. Department of the Interior

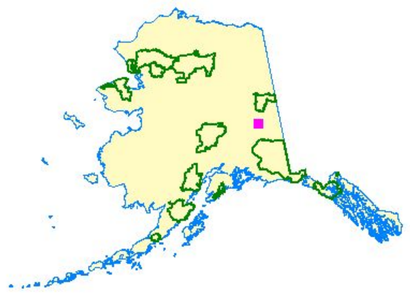
Community boundary

Roads

Primary

Secondary

Map Location



Wrangell-St. Elias National Park and Preserve

N
W E
S

0.5 0 0.5 1 1.5 2 Miles

1 : 63,360 1 inch = 1.00 miles

September 16, 2004

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Healy Lake, Alaska

Resident Zone Community Boundary

National Park Service
U.S. Department of the Interior

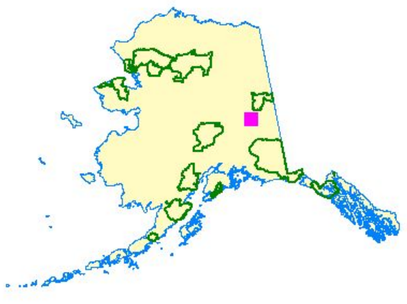
Community boundary

Roads

Primary

Secondary

Map Location



Wrangell-St. Elias National Park and Preserve

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1 : 253,440 1 inch = 4.00 miles

September 16, 2004

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Northway, Alaska

Resident Zone Community Boundary

National Park Service
U.S. Department of the Interior

Community boundary

Roads

Primary

Secondary

Map Location



Wrangell-St. Elias National Park and Preserve

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W E
S

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1 : 126,720 1 inch = 2.00 miles

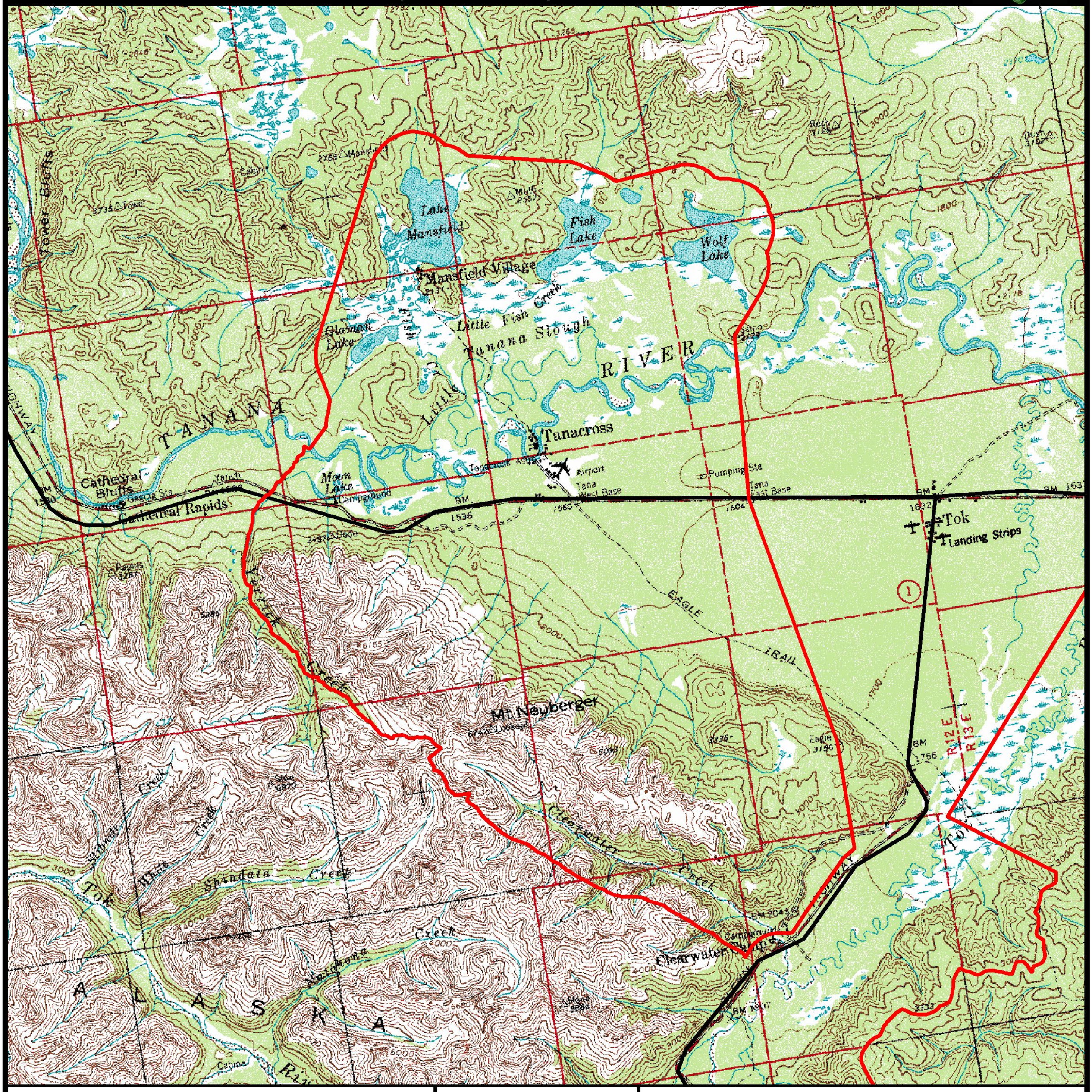
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Tanacross, Alaska

Resident Zone Community Boundary

National Park Service
U.S. Department of the Interior



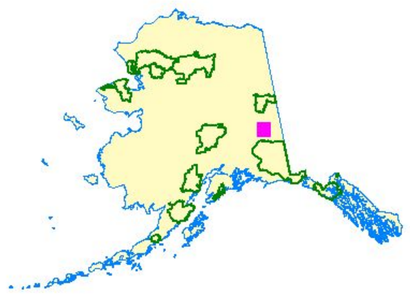
Community boundary

Roads

Primary

Secondary

Map Location



Wrangell-St. Elias National Park and Preserve

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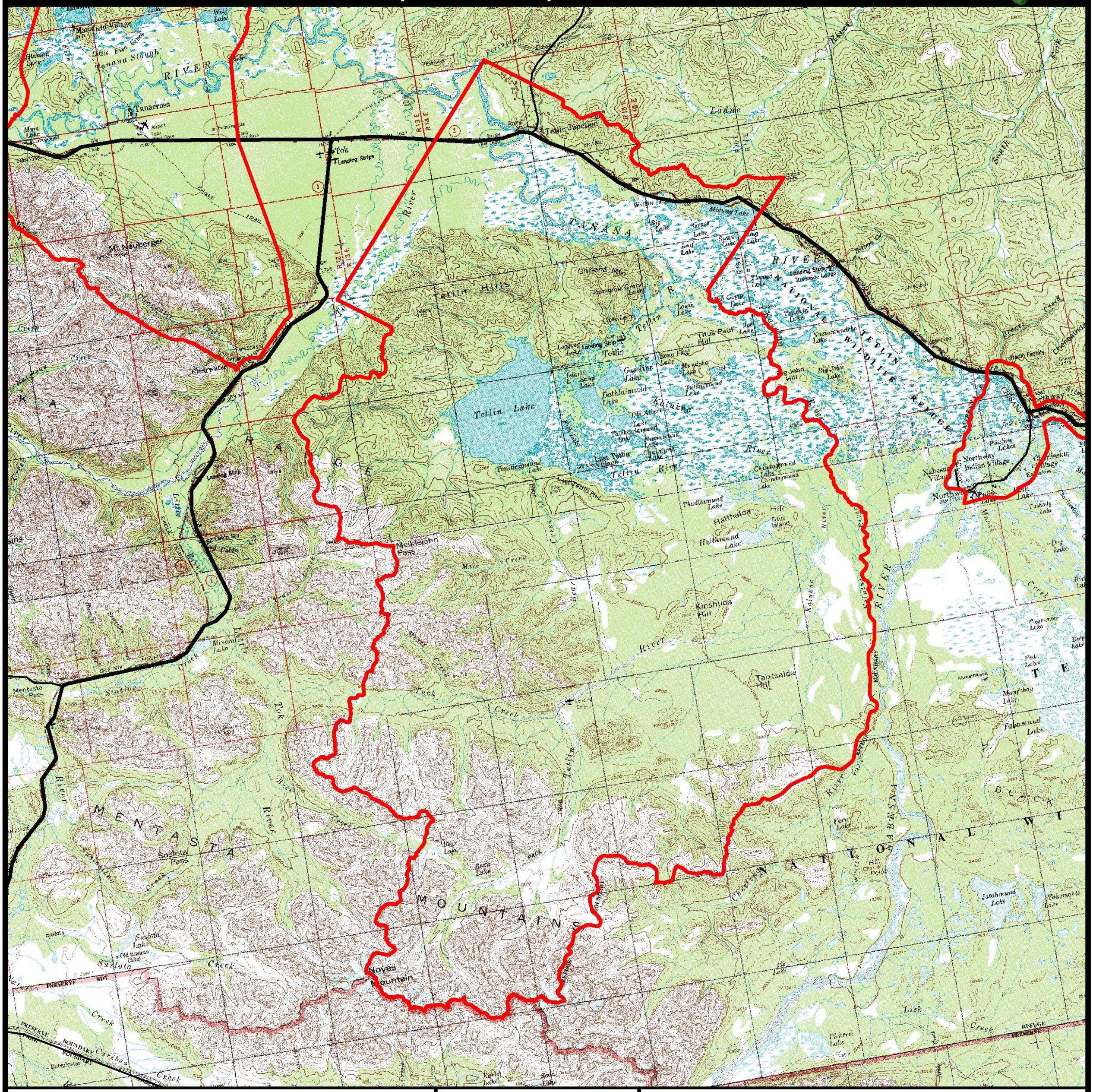
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Tetlin, Alaska

Resident Zone Community Boundary

National Park Service
U.S. Department of the Interior



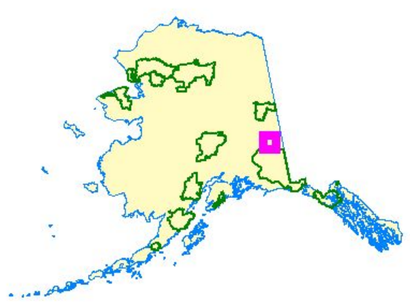
Community boundary

Roads

Primary

Secondary

Map Location



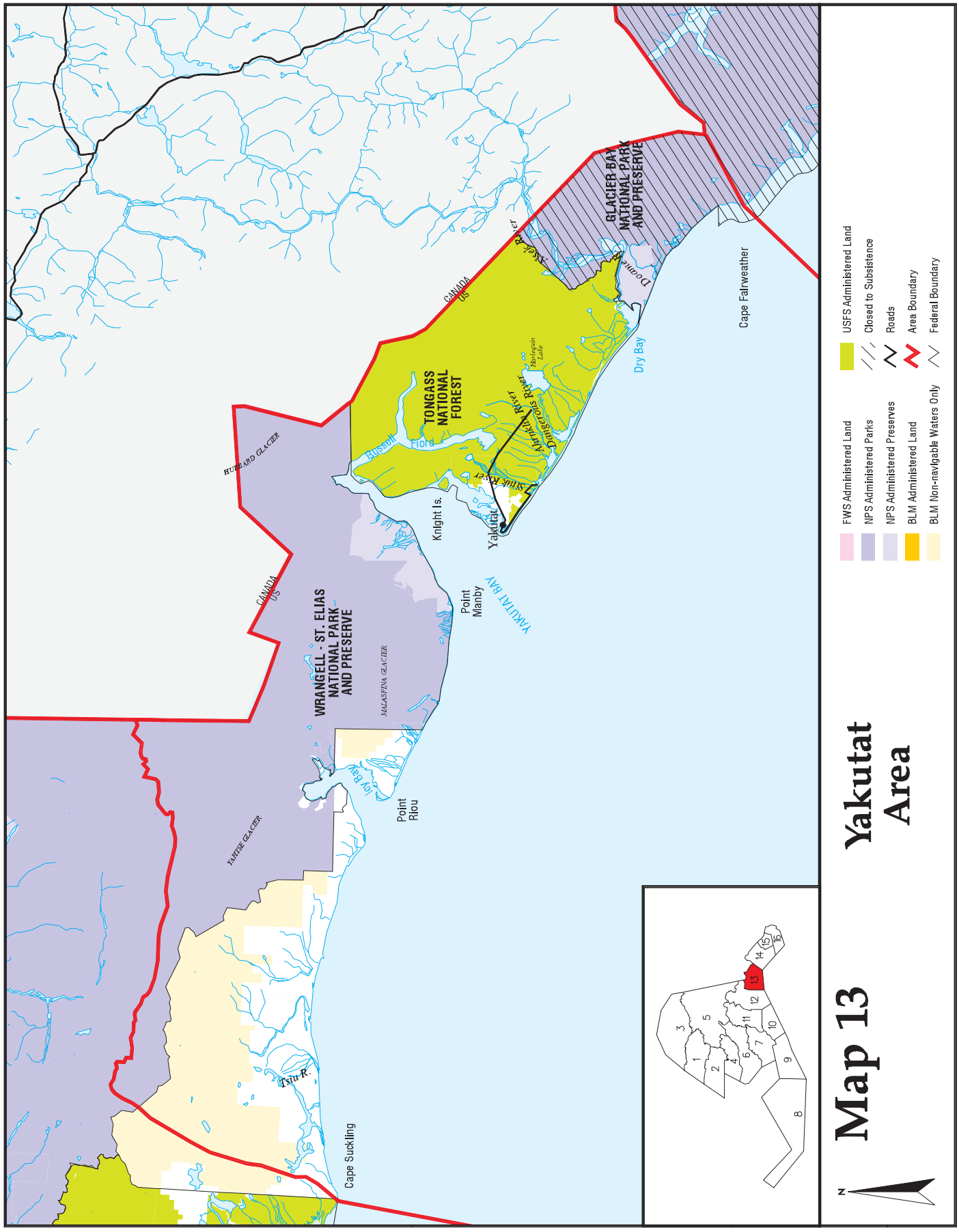
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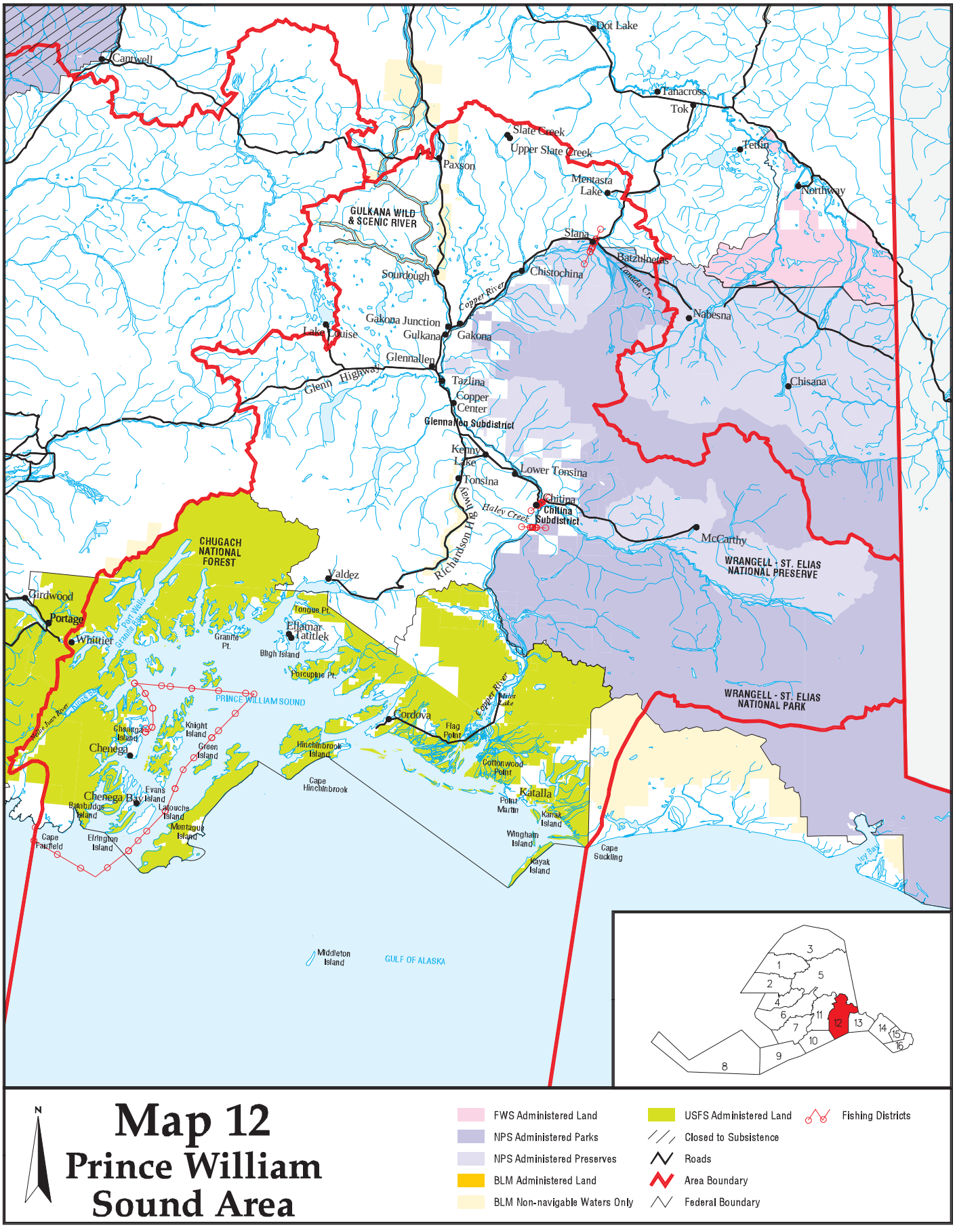
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1 : 506,880 1 inch = 8.00 miles

September 16, 2004

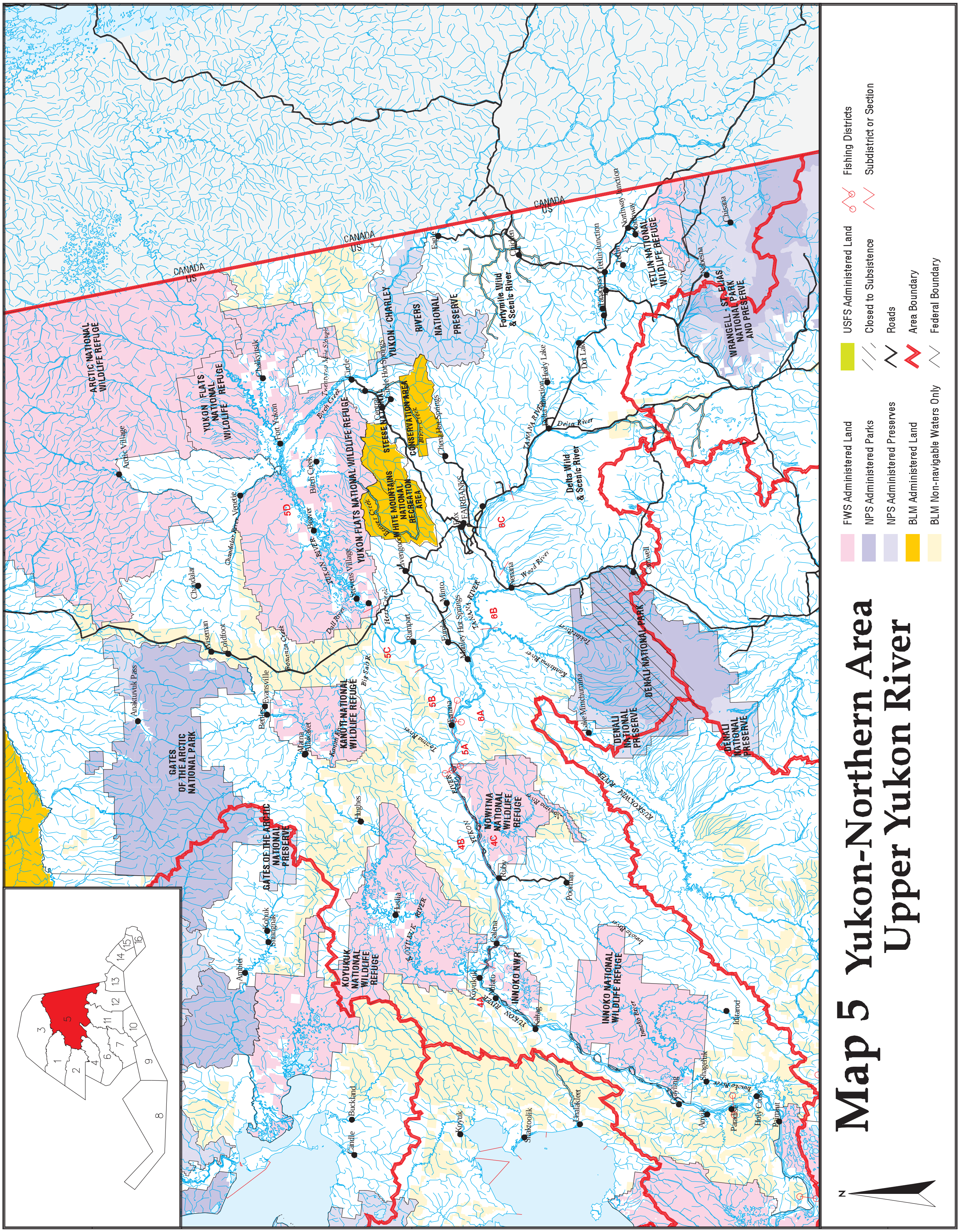
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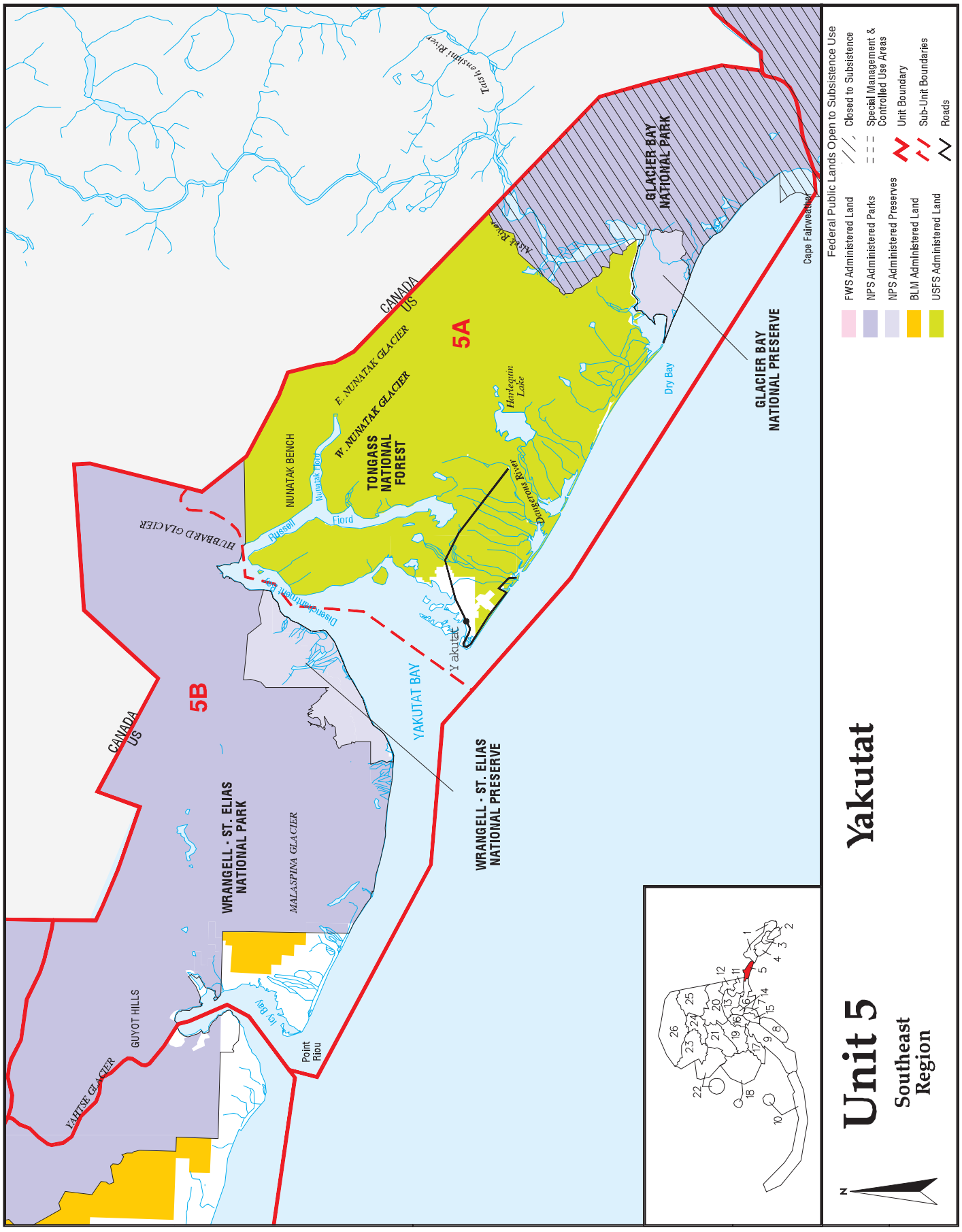

Map 13
Yakutat Area
N
USFS Administered Land
Closed to Subsistence
Roads
Area Boundary
Federal Boundary
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
BLM Non-navigable Waters Only
GLACIER BAY NATIONAL PARK AND PRESERVE
TONGASS NATIONAL FOREST
WRANGELL - ST. ELIAS NATIONAL PARK AND PRESERVE
CANADA
US
Dry Bay
Cape Fairweather
Yakutat
Knight Is.
Point Manby
YAKUTAT BAY
Point Riou
Cape Suckling
Russell Fiord
Situk River
Ahrnklin River
Dangerous River
Alsek River
Tsiu R.
Ivy Bay
HUBBARD GLACIER
YAHTSE GLACIER
MALASPINA GLACIER
Harlequin Lake
Duncan Canal

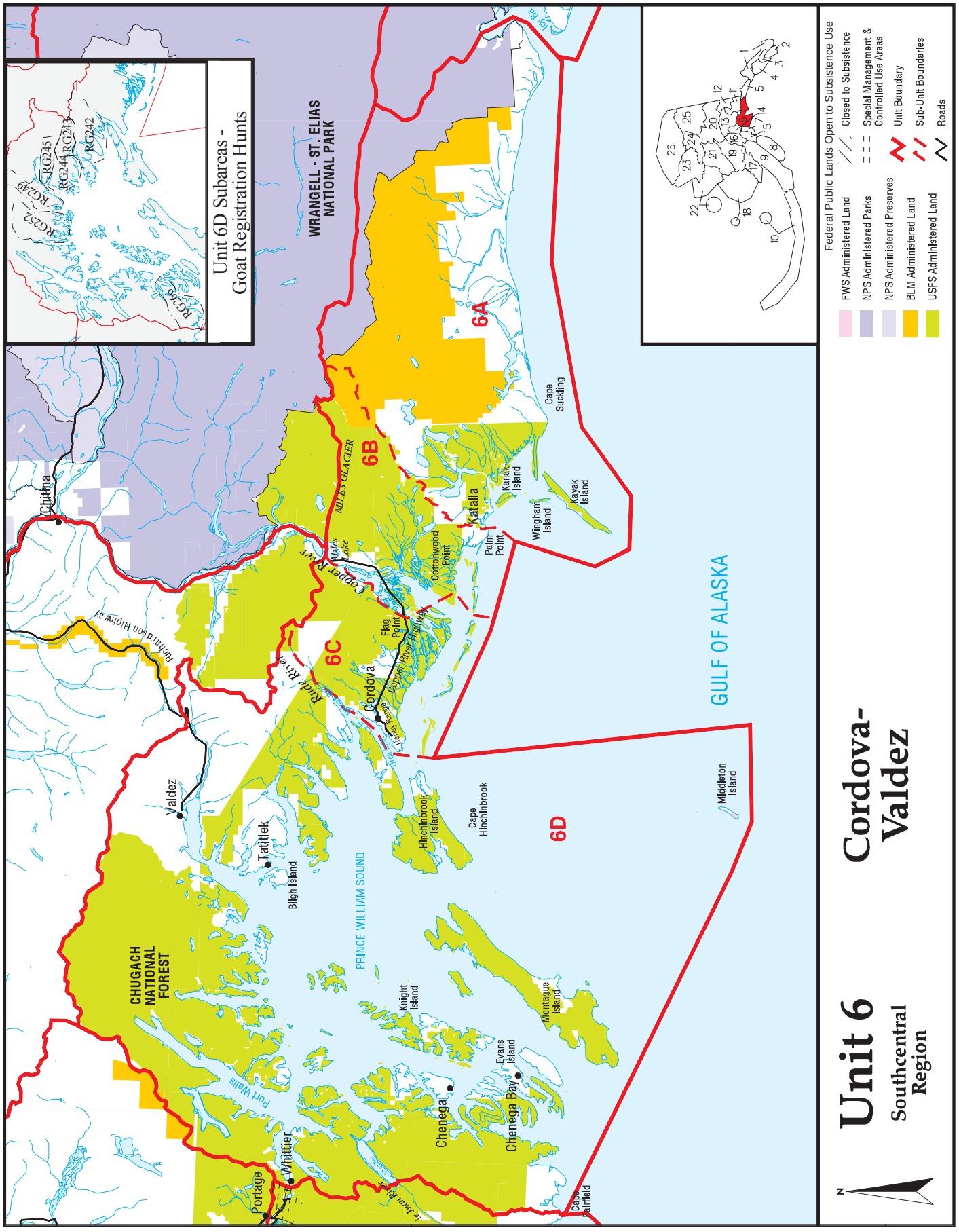


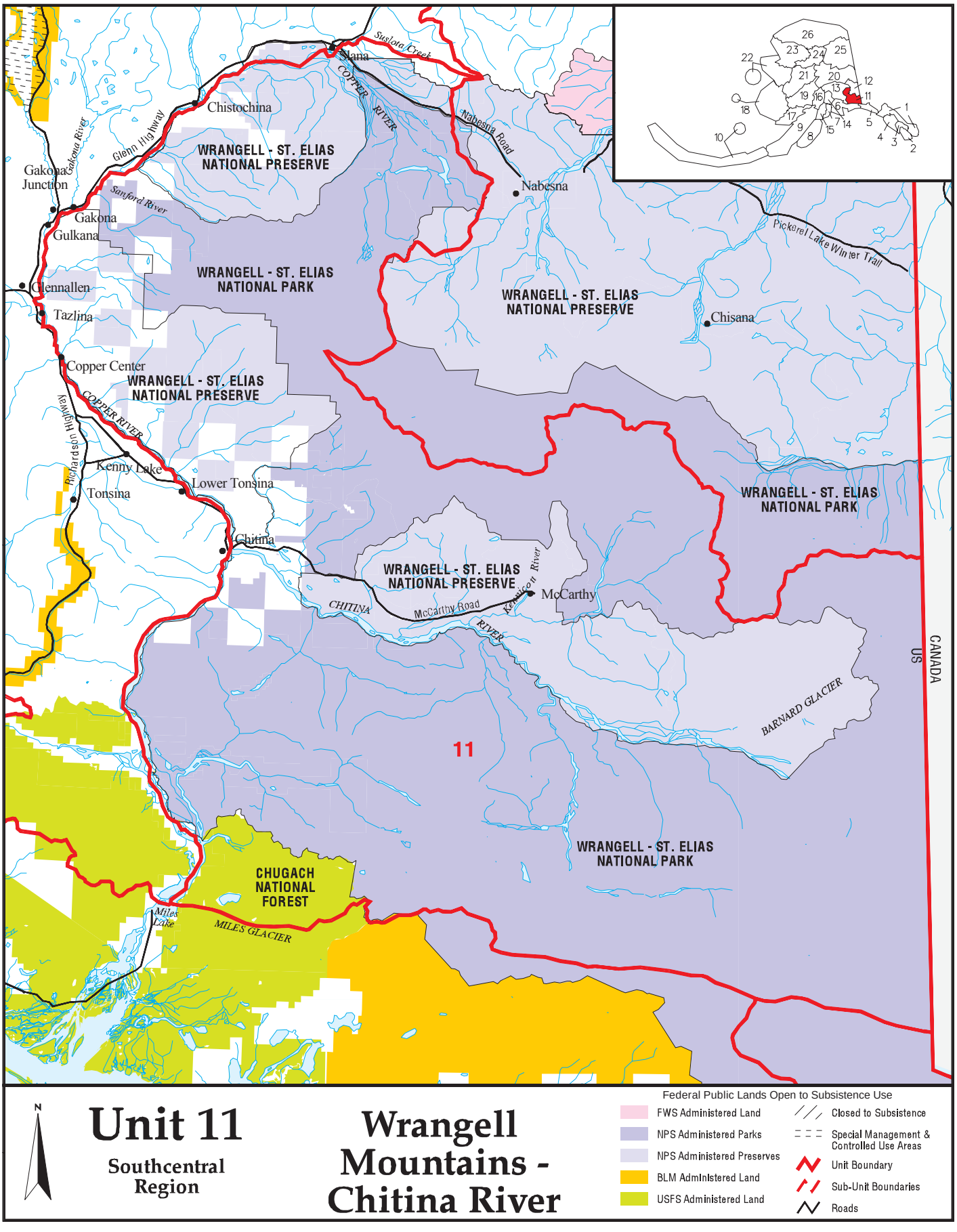
Map 12
Prince William Sound Area

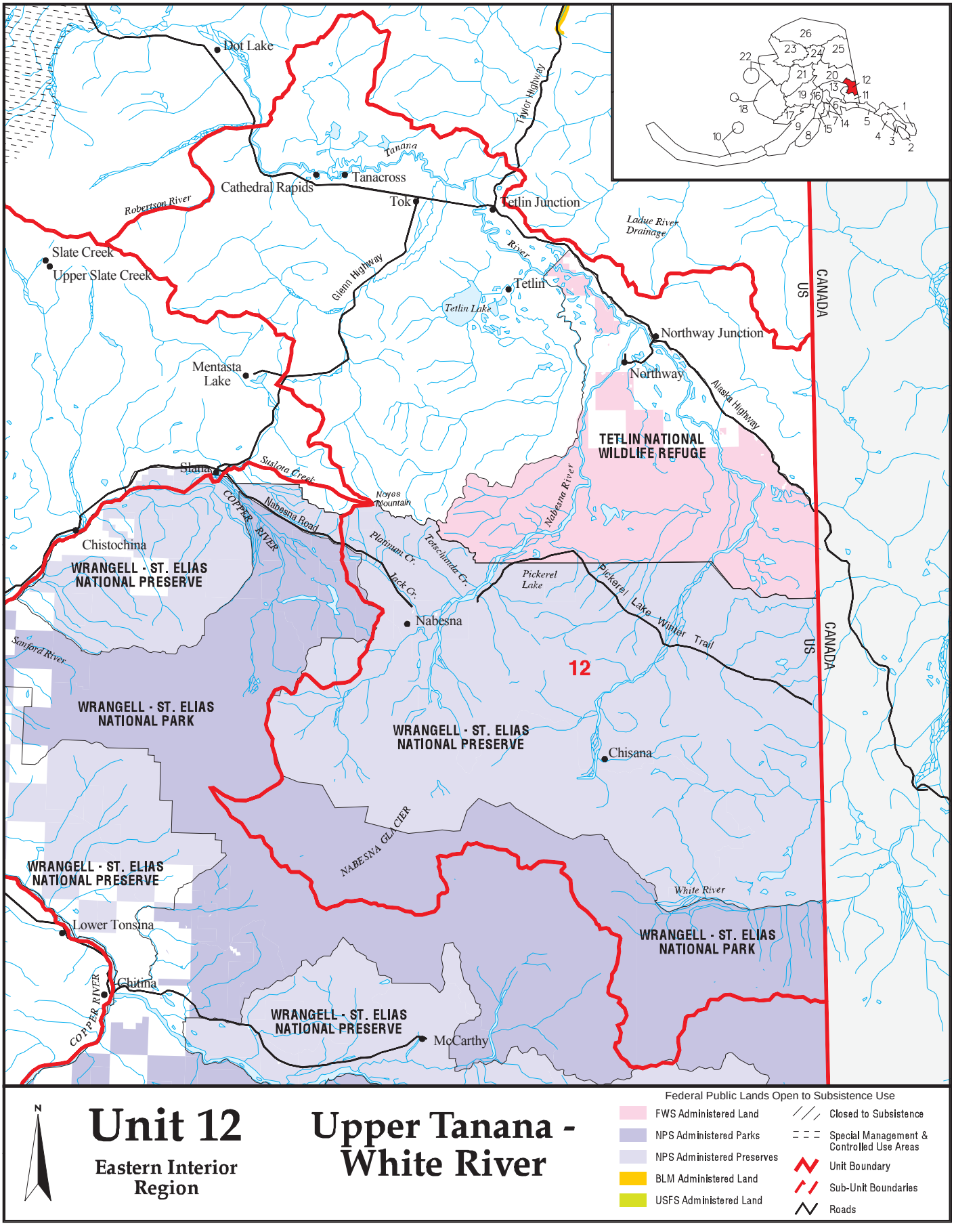
- FWS Administered Land
- NPS Administered Parks
- NPS Administered Preserves
- BLM Administered Land
- BLM Non-navigable Waters Only
- USFS Administered Land
- Closed to Subsistence
- Roads
- Area Boundary
- Federal Boundary
- Fishing Districts

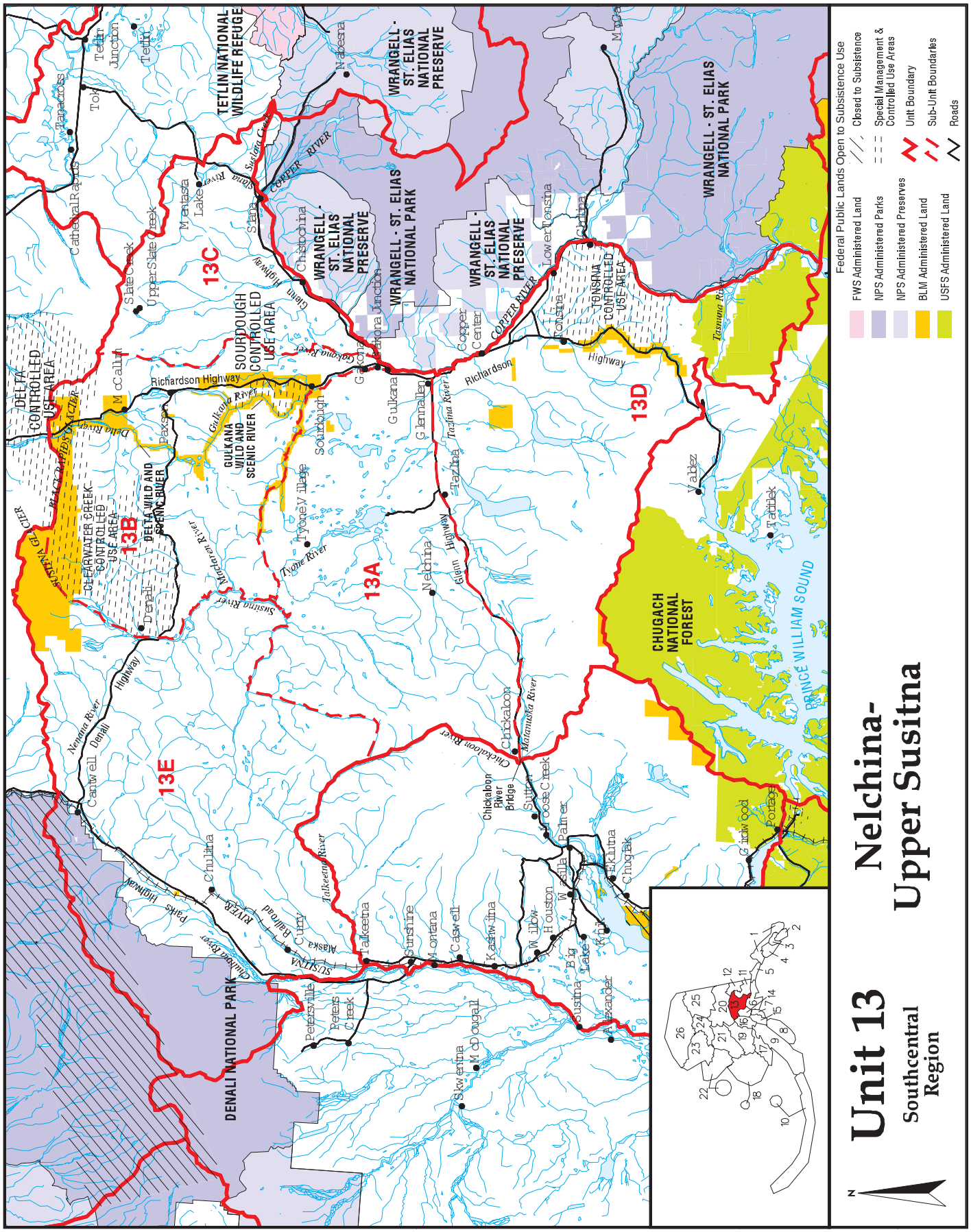

Map 5 Yukon-Northern Area
Upper Yukon River
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
BLM Non-navigable Waters Only
USFS Administered Land
Closed to Subsistence
Roads
Area Boundary
Federal Boundary
Fishing Districts
Subdistrict or Section
CANADA
US
ARCTIC NATIONAL WILDLIFE REFUGE
YUKON FLATS NATIONAL WILDLIFE REFUGE
YUKON - CHARLEY RIVERS NATIONAL PRESERVE
STEESE NATIONAL CONSERVATION AREA
WHITE MOUNTAINS NATIONAL RECREATION AREA
Fortymile Wild & Scenic River
Delta Wild & Scenic River
TETLIN NATIONAL WILDLIFE REFUGE
WRANGELL - ST. ELIAS NATIONAL PARK AND PRESERVE
DENALI NATIONAL PARK
DENALI NATIONAL PRESERVE
KANUTI NATIONAL WILDLIFE REFUGE
GATES OF THE ARCTIC NATIONAL PARK
GATES OF THE ARCTIC NATIONAL PRESERVE
NOWITNA NATIONAL WILDLIFE REFUGE
KOYUKUK NATIONAL WILDLIFE REFUGE
INNOKO NWR
INNOKO NATIONAL WILDLIFE REFUGE
FAIRBANKS
5A
5B
5C
5D
6A
6B
6C
4A
4B
4C


Unit 5
Southeast Region
Yakutat
Federal Public Lands Open to Subsistence Use
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
USFS Administered Land
Closed to Subsistence
Special Management & Controlled Use Areas
Unit Boundary
Sub-Unit Boundaries
Roads
5A
5B
CANADA
US
GLACIER BAY NATIONAL PARK
GLACIER BAY NATIONAL PRESERVE
WRANGELL - ST. ELIAS NATIONAL PARK
WRANGELL - ST. ELIAS NATIONAL PRESERVE
TONGASS NATIONAL FOREST
YAKUTAT BAY
Dry Bay
Cape Fairweather
Alsek River
Tatshenshini River
E. NUNATAK GLACIER
W. NUNATAK GLACIER
NUNATAK BENCH
Nunatak Fiord
Russell Fiord
Harlequin Lake
Dangerous River
Yakutat
HUBBARD GLACIER
Disenchantment Bay
MALASPINA GLACIER
YAHTSE GLACIER
GUYOT HILLS
Ivy Bay
Point Riou
N


Unit 6D Subareas - Goat Registration Hunts
RG245
RG244
RG243
RG242
RG252
RG249
RG250
WRANGELL - ST. ELIAS NATIONAL PARK
6A
6B
6C
6D
GULF OF ALASKA
PRINCE WILLIAM SOUND
CHUGACH NATIONAL FOREST
MILES GLACER
Miles Lake
Copper River
Ridge River
Richardson Highway
Copper River Highway
Cordova
Valdez
Chitina
Tatitlek
Bligh Island
Hinchinbrook Island
Cape Hinchinbrook
Cape Suckling
Kanak Island
Kayak Island
Wingham Island
Katalla
Palm Point
Cottonwood Point
Flag Point
Middleton Island
Knight Island
Montague Island
Evans Island
Chenega
Chenega Bay
Whittier
Portage
Port Wells
Cape Fairfield
Unit 6
Southcentral Region
Cordova-Valdez
Federal Public Lands Open to Subsistence Use
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
USFS Administered Land
Closed to Subsistence
Special Management & Controlled Use Areas
Unit Boundary
Sub-Unit Boundaries
Roads
N

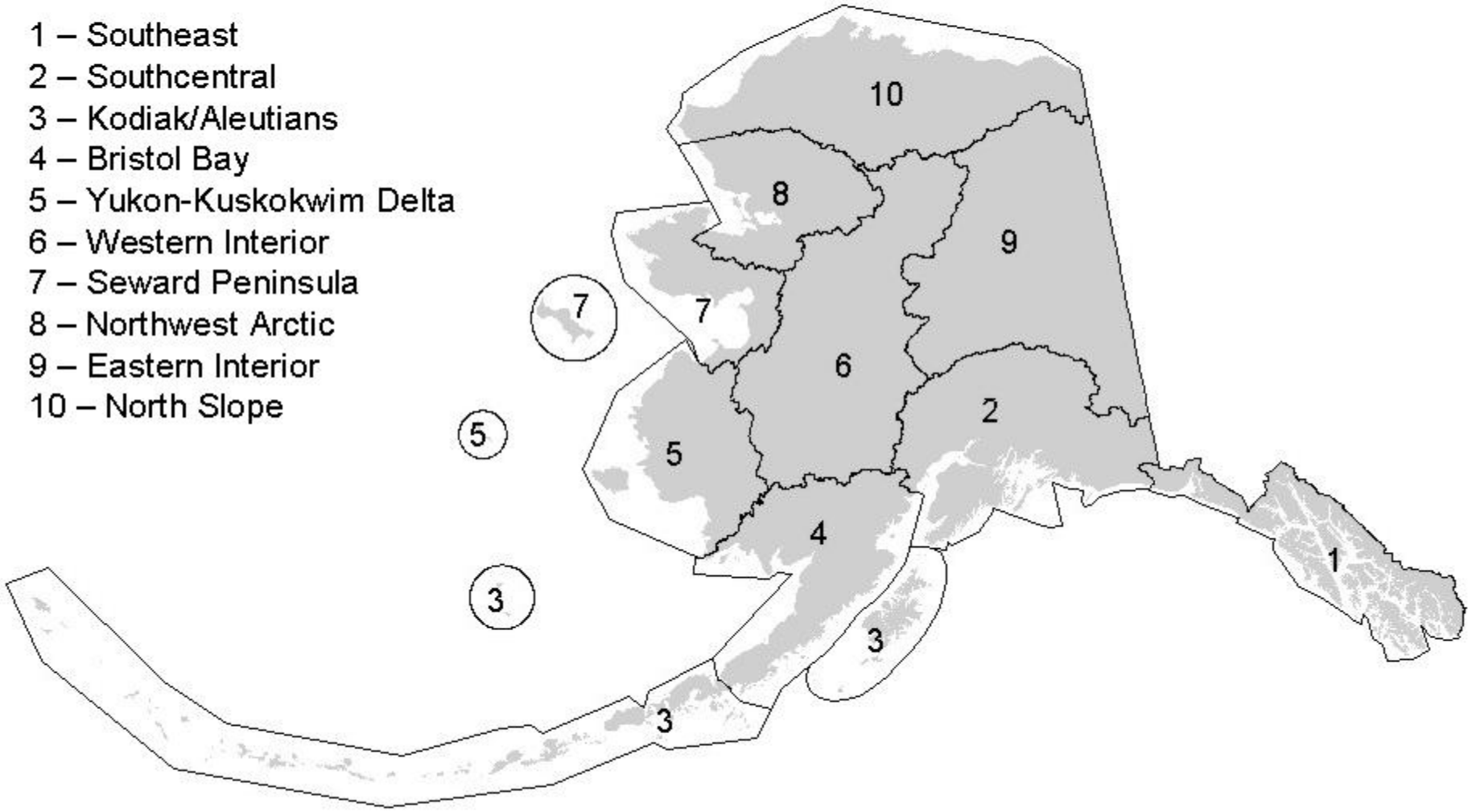

Susitna Creek
Slana
COPPER RIVER
Nabesna Road
Chistochina
Glenn Highway
Gakona River
WRANGELL - ST. ELIAS NATIONAL PRESERVE
Gakona Junction
Sanford River
Gakona
Gulkana
Nabesna
Pickerel Lake Winter Trail
WRANGELL - ST. ELIAS NATIONAL PARK
Glennallen
Tazlina
WRANGELL - ST. ELIAS NATIONAL PRESERVE
Chisana
Copper Center
WRANGELL - ST. ELIAS NATIONAL PRESERVE
COPPER RIVER
Richardson Highway
Kenny Lake
Tonsina
Lower Tonsina
WRANGELL - ST. ELIAS NATIONAL PARK
Chitina
WRANGELL - ST. ELIAS NATIONAL PRESERVE
Kennicon River
McCarthy
CHITINA
McCarthy Road
RIVER
US
CANADA
BARNARD GLACIER
11
WRANGELL - ST. ELIAS NATIONAL PARK
CHUGACH NATIONAL FOREST
Miles Lake
MILES GLACIER
N
Unit 11
Southcentral Region
Wrangell Mountains - Chitina River
Federal Public Lands Open to Subsistence Use
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
USFS Administered Land
Closed to Subsistence
Special Management & Controlled Use Areas
Unit Boundary
Sub-Unit Boundaries
Roads


Dot Lake
Tanana
Tanacross
Cathedral Rapids
Tok
Tetlin Junction
Taylor Highway
Robertson River
Slate Creek
Upper Slate Creek
Glenn Highway
Tetlin
Tetlin Lake
Ladue River Drainage
Northway Junction
Northway
Alaska Highway
Mentasta Lake
TETLIN NATIONAL WILDLIFE REFUGE
US
CANADA
Slana
Suslota Creek
Noyes Mountain
Nabesna Road
COPPER RIVER
Nabesna River
Chistochina
WRANGELL - ST. ELIAS NATIONAL PRESERVE
Platinum Cr.
Tetschlmda Cr.
Jack Cr.
Pickerel Lake
Pickerel Lake - Winter Trail
Nabesna
Sanford River
12
WRANGELL - ST. ELIAS NATIONAL PARK
WRANGELL - ST. ELIAS NATIONAL PRESERVE
Chisana
NABESNA GLACIER
White River
WRANGELL - ST. ELIAS NATIONAL PRESERVE
WRANGELL - ST. ELIAS NATIONAL PARK
Lower Tonsina
Chitina
COPPER RIVER
WRANGELL - ST. ELIAS NATIONAL PRESERVE
McCarthy
N
Unit 12
Eastern Interior Region
Upper Tanana - White River
Federal Public Lands Open to Subsistence Use
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
USFS Administered Land
Closed to Subsistence
Special Management & Controlled Use Areas
Unit Boundary
Sub-Unit Boundaries
Roads


Unit 13
Southcentral Region
Nelchina-
Upper Susitna
Federal Public Lands Open to Subsistence Use
FWS Administered Land
NPS Administered Parks
NPS Administered Preserves
BLM Administered Land
USFS Administered Land
Closed to Subsistence
Special Management & Controlled Use Areas
Unit Boundary
Sub-Unit Boundaries
Roads
13A
13B
13C
13D
13E
DENALI NATIONAL PARK
CHUGACH NATIONAL FOREST
WRANGELL - ST. ELIAS NATIONAL PARK
WRANGELL - ST. ELIAS NATIONAL PRESERVE
TETLIN NATIONAL WILDLIFE REFUGE
SOURDOUGH CONTROLLED USE AREA
TONSINA CONTROLLED USE AREA
DELTA CONTROLLED USE AREA
CLEARWATER CREEK CONTROLLED USE AREA
GULKANA WILD AND SCENIC RIVER
DELTA WILD AND SCENIC RIVER
PRINCE WILLIAM SOUND
COPPER RIVER
Richardson Highway
Glenn Highway
Alaska Railroad
Denali Highway
Parks Highway
Nelchina
Tazlina
Glennallen
Gulkana
Copper Center
Chitina
Chistochina
Slana
Tok
Tetlin Junction
Tanacross
Northway
Nabesna
Mentasta Lake
Cantwell
Denali
Healy
McKinley Village
Paxson
Cantwell
Chulitna
Talkeetna
Sunshine
Montana
Caswell
Willow
Houston
Wasilla
Palmer
Eklutna
Chugiak
Big Lake
Knik
Susitna
Alexander
Petersville
Peters Creek
Skwentna
McDougall
Chickaloon
Chickaloon River Bridge
Sutton
Moose Creek
Matanuska River
Talkeetna River
Nenana River
Susitna River
Tyone River
Gulkana River
Tazlina River
Copper River
Slana River
Tonsina River
Valdez
Tatitlek
Glacier Creek
Ice Worm Glacier
Black Glacier
Eureka Summit
Gakona Junction
Lower Tonsina
Tonsina
Slate Creek
Upper Slate Creek
Cathedral Rapids
Mentasta Lake
Slana
Chistochina
Gakona
Copper Center
Lower Tonsina
Tonsina
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Tatitlek
Glacier Creek
Ice Worm Glacier
Black Glacier
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Gakona Junction
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Slate Creek
Upper Slate Creek
Cathedral Rapids
Mentasta Lake
Slana
Chistochina
Gakona
Copper Center
Lower Tonsina
Tonsina
Valdez
Tatitlek

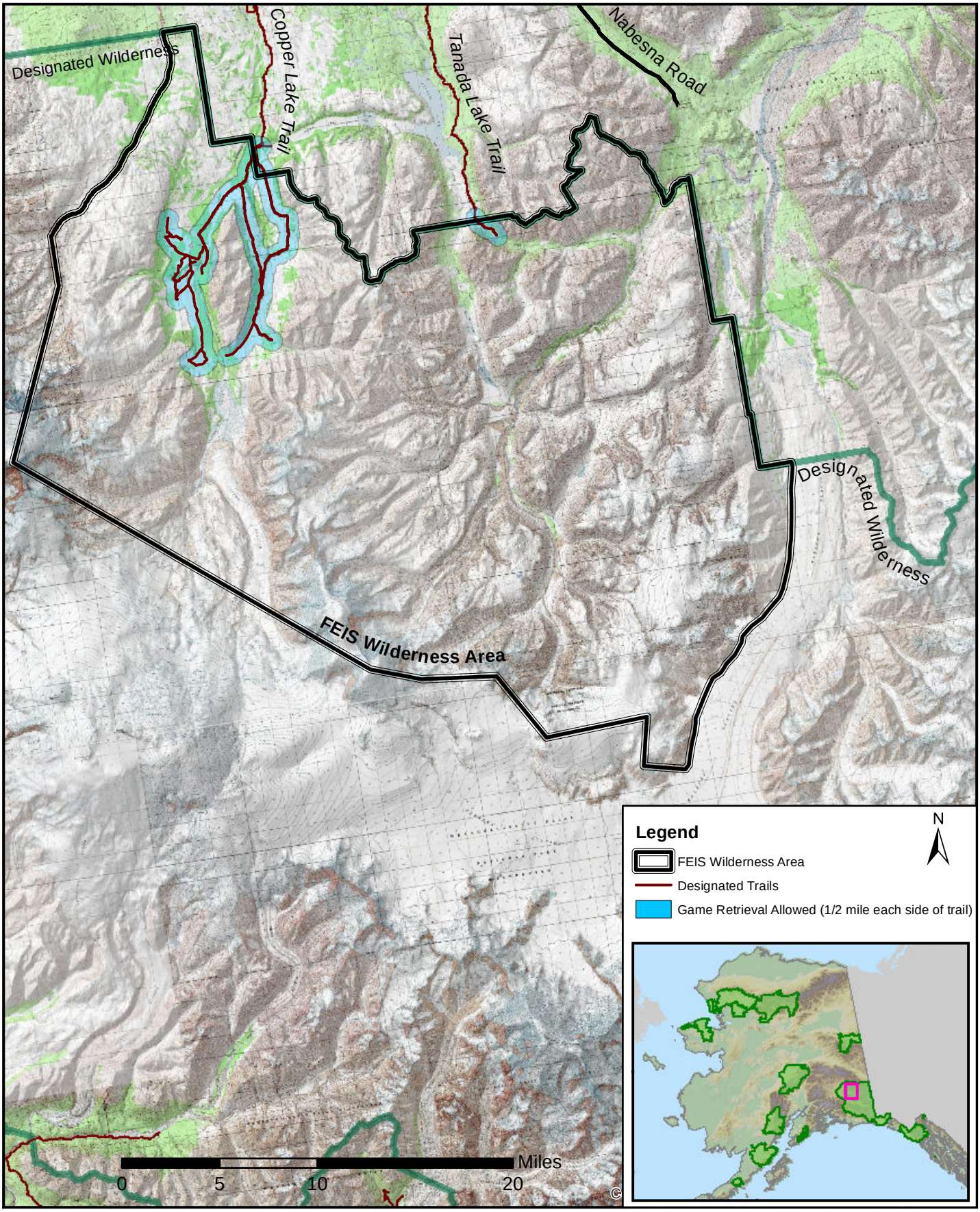
Regional Advisory Council Areas

1 – Southeast
2 – Southcentral
3 – Kodiak/Aleutians
4 – Bristol Bay
5 – Yukon-Kuskokwim Delta
6 – Western Interior
7 – Seward Peninsula
8 – Northwest Arctic
9 – Eastern Interior
10 – North Slope



FEIS Wilderness Area Designated Trails Map

Alaska Region
Wrangell St. Elias National Park & Preserve
U.S. Department of the Interior



Park_Project S:\GIS\OHV\FEIS_Wild_Area

Date: 1/27/2014

Appendix F

Subsistence Brochures

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Appendix G

Comments on the Plan

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JUL 2 ...

Sierra Club
Alaska Field Office
241 E. Fifth Avenue, Suite 205, Anchorage, Alaska 99501
(907) 276-4048 • FAX (907) 258-6807



June 27, 1998

Mr. John Vale
Chair, Subsistence Resource Commission
Wrangell-St. Elias National Park and Preserve
c/o Yakutat Ranger Station
P.O. Box 137
Yakutat, AK 99689

Mr. Jon Jarvis, Superintendent
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Mile 105.5 Old Richardson Highway
Copper Center, AK 99573

Re: Subsistence Plan - Review Draft, Wrangell-St. Elias National Park and Preserve

Dear Mr. Vale and Mr. Jarvis:

Thank you for sending me a copy of the Subsistence Plan-Review Draft, January 1998 (Plan). To my knowledge, the proposed subsistence plan for the park/preserve is the first national park subsistence plan since passage of ANILCA in 1980. It follows the publication of the National Park Service's (NPS) Subsistence Management Program of August 1977, which sets forth general policy guidelines for subsistence management. Thus in addition to its importance for the park/preserve, the Plan also takes on even more significance as the first concrete example of how the NPS intends to implement the subsistence management provisions of ANILCA pursuant to its 1997 Subsistence Management Program.

As proposed, the Plan is incomplete in three important respects. Most importantly, it fails to acknowledge the key ANILCA directive requiring the NPS to zone the park into traditional subsistence use and non-subsistence areas. Second, it disregards Congress's wish to see periodic reviews of the current status of the existing subsistence resident zones. And third, it makes no mention of the need to map subsistence zone community boundaries.

1. **Traditional subsistence use areas and non-subsistence areas.** In ANILCA, Congress directed the National Park Service to determine traditional subsistence use areas

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in five new national park areas, including Wrangell-St. Elias NPP.[1] Once this task is accomplished, the remaining park areas with no history of customary and traditional subsistence use are to be managed as traditional national park areas, i.e., as areas closed to subsistence.

In the National Park Service's pre-ANILCA planning and research effort of 1972-1977, it was found that substantially large areas in the five new proposed national parks could qualified as traditional national park areas. In ANILCA, Congress left to the NPS the detailed task of identifying and mapping the subsistence and non-subsistence areas.

This zoning task is the basis for, and must precede, any subsistence management plan. In the absence of zoning, a subsistence management plan has no point of reference, no specific, mapped, traditional subsistence use area or areas to which it is intended to apply. It is planning for a mystery area or areas, and it has no basis in law.

Moreover, a subsistence plan not preceded by the required zoning has serious consequences for the park. Such a plan is applied to the entire park, which is treated as if it qualifies in its entirety as a traditional subsistence use area. This in turn allows subsistence activities in park areas that were not traditional subsistence use areas when ANILCA was passed, because in the absence of zoning there are no lines on a map to guide subsistence (and traditional park) users.

This problem is exacerbated by the use of progressively more powerful and efficient off-road vehicles, snow machines, and motorboats, all of which are deployed by qualified subsistence users. Once the non-subsistence areas are entered and subsistence hunting and other subsistence activities become established over time, the National Park Service will have a difficult time removing the uses.

Seventeen and one half years after ANILCA, none of the five park areas has been zoned as required. The Plan does not even acknowledge this task for WSE-NPP, which suggests that the same fate will befall the other four park areas as well, should the National Park Service fail to meet its obligation in this regard.

2. **Review of the status of existing subsistence resident zones.** The Review Draft does not discuss Congress's recognition in ANILCA that the composition of the residents of subsistence resident zones may change over time, and that certain originally eligible communities may no longer qualify as resident zones. Congress expects that the National Park Service will periodically evaluate the evolution of the existing subsistence resident zone communities.[2] Congress noted that allowing communities to retain resident zone

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[1] The other four parks are Aniakchak NM, Lake Clark NP, Denali NP (1980 additions), and Gates of the Arctic NP.

[2] Senate Report (96-413) to accompany H.R. 39, Senate Energy and Natural Resources Committee, November 14, 1979, p. 170.

status when no longer qualified for that status jeopardizes "unit values" and the interest of legitimate subsistence users who must then compete with others who do not meet subsistence eligibility criteria but who can engage in "subsistence" hunting and fishing solely by virtue of their community residence.

So far none of the 18 WSE subsistence resident zone communities has been reevaluated, to my knowledge, although more than 17 years have passed since 1980 and Alaska's economy and populations have changed dramatically since then.

Two communities that should be the first to be reevaluated are Glennallen and Tok, both regional centers on the Alaska highway system. In the draft interim management regulations of January 19, 1981, Glennallen and Tok were not designated as resident zones. In the final interim regulations, published in June 1981, they were, probably as a result of political pressure.

3. Resident zone community boundaries. According to the Plan, "Resident zone community boundaries are not necessary at the present time; no further actions are planned by NPS."[3] No explanation for this policy is given.

However, in the absence of resident zone community boundaries, subsistence management consistent with ANILCA is undermined. For example, without boundaries, the National Park Service cannot determine the evolution of the existing subsistence resident zone communities. If the boundaries of a subsistence zone community as of December 2, 1980 are not identified and specifically mapped, a comparison of the composition of the residents in 1980 with the composition of residents today cannot be made. This subverts Congress's desire to protect park values and subsistence resources by ensuring that only qualified communities continue to have resident zone status.

Also, in the absence of resident zone boundaries, newcomers with no connection to historic and customary subsistence who settle near but not within the concentration of houses and structures making up the typical subsistence resident zone community could claim to be residents of the communities and thus be instant subsistence users of the park. This subverts Congress's intent that only qualified local rural residents be authorized to continue subsistence activities in the park.

Recommendations

Before taking any further action on a subsistence management plan for Wrangell-St. Elias NPP, the National Park Service should:
1. Determine and map the traditional subsistence use areas, and the non-subsistence areas. Apply the subsistence management plan to the former, and manage the latter as a traditional national park as, for example, Katmai National Park is managed.
Zoning of the other four park areas should also begin concurrently with the

[3] Plan, II-3.

WSE-NPP effort.
2. Determine and map boundaries of the WSE-NPP subsistence resident zone communities as these communities existed as of 12/2/80.
3. Review the evolution of the existing WSE-NPP resident zone communities using the boundaries established pursuant to 2 above. Begin with Glennallen and Tok.

Thank you for this opportunity to submit these comments.

Sincerely,

Jack Hession

Jack Hession
Alaska Representative

cc: Deborah Williams, Special Assistant to the Secretary for Alaska
Don Barry, Assistant Secretary of the Interior
Bob Stanton, Director, National Park Service
Bob Barbee, Alaska Regional Director, National Park Service

United States Department of the Interior
NATIONAL PARK SERVICE
Wrangell-St. Elias National Park/Preserve
P.O. Box 439
Mile 105.5 Old Richardson Hwy.
Copper Center, AK 99573

IN REPLY REFER TO:

L30

October 16, 1998

Jack Hession, Alaska Representative
Sierra Club
Alaska Field Office
241 E. Fifth Avenue, Suite 205
Anchorage, Alaska 99501

Re: Subsistence Plan - Review Draft, Wrangell-St. Elias National Park and Preserve

Dear Mr. Hession:

Thank you for your letter of June 27, 1998, regarding the Wrangell-St. Elias National Park and Preserve Subsistence Plan.

You stated that as proposed the Plan is incomplete in three important aspects. The first being, the Plan fails to acknowledge the key ANILCA directive requiring the NPS to zone the park (and four other Alaskan parks) into traditional subsistence use and non-subsistence use areas. Our review of ANILCA does not support your conclusion. Section 201 (9) states that "subsistence ..shall be permitted in the park, where such uses are traditional..." Title 36, Part 13, Code of Federal Regulations, written to implement ANILCA within National Park System units, states:

> Section 13.41: Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in..... Wrangell-St. Elias National Park..

This regulation gives National Park Service the *option* of designating areas "where such uses are traditional" as a management tool but it remains an option not a *fundamental directive*. Fundamental directives are derived from the plain language of the law. Title VIII of ANILCA clearly states we are to provide for a continued opportunity for subsistence. Section 810 (a) (3) (C) directs that reductions of lands available to

subsistence are to be undertaken with great care and only after taking steps to minimize adverse impacts upon subsistence users. Zoning the park would have the effect of prohibiting subsistence use in some sections of the park.

Title VIII Section 801 (5) requires that the National Park Service be guided in management decisions by the local rural residents who have personal knowledge of local conditions and subsistence practices. To satisfy that requirement the National Park Service has established and empowered local, regional, and statewide subsistence advisory councils and for parks Subsistence Resource Commissions. None of these advisory groups has recommended the zoning of Wrangell-St. Elias into subsistence zones and non-subsistence zones. On the contrary, oral histories, personal interviews, testimony, archeological investigations and studies on customary and traditional use indicate what is intuitively obvious, people sought the resource where-ever it occurred.

Secondly, you stated the Review Draft disregards Congress's wish to see periodic reviews of the current status of the existing subsistence zones. While ANILCA does not specifically require periodic reviews of the status of the existing subsistence residence zones, the Park Service recognizes that Congress expected the resident communities to evolve and change over time as stated in Senate Report No. 96-413. The Subsistence Resource Commissions exist in part to provide the periodic review of the subsistence program and to recommend changes in policy needed to adapt to changes such as community composition.

Finally, you stated that the subsistence plan makes no mention of the need to map subsistence zone community boundaries. However, the subsistence plan does address this issue on both pages nine and eleven of Appendix B. "SRC involvement will be sought in any mapping that takes place in the future. Park managers and staff will work with subsistence advisory groups to identify needs for mapping of resident zone boundaries, and will work closely with those groups when communities are mapped" (Appendix B, pg. 11).

Your comments on the Draft Subsistence Plan will be submitted to the Subsistence Resource Commission for their consideration. The next meeting will be in Gulkana village November 17 and 18, 1998 and you are cordially invited to attend and present your views.

Sincerely,

Jonathan B. Jarvis
Superintendent

cc: John Vale, Chairman Wrangell-St. Elias Subsistence Resource Commission
Fred John, Jr., Vice Chairman Wrangell-St. Elias Subsistence Commission

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

Division of Subsistence

1300 COLLEGE ROAD
FAIRBANKS, AK 99701
PHONE: (907) 459-7258
FAX: (907) 479-5099

March 20, 1998

Mr. John Vale, Chair
Wrangell-St. Elias National Park
Subsistence Resource Commission
P.O Box 439
Copper Center, AK 99573

Dear Mr. Vale.

Thank you for inviting the Department of Fish and Game to comment on the January 1998 draft Subsistence Plan for the Wrangell-St. Elias National Park and Preserve, and for soliciting our input on your commission's Draft Hunting Plan Recommendation 97-01. This letter briefly addresses both topics.

Draft Subsistence Plan

The draft Subsistence Plan should be a useful tool for tracking both subsistence management issues identified by your commission and actions taken to address these concerns as they apply to the park and preserve. Please note that some of the concerns addressed below are directed through the commission to the National Park Service. State representatives hope to discuss these and other issues concerning the subsistence planning process with NPS officials later this spring.

Chapter 5, Subsistence Access: Current NPS subsistence access policy as described on page 1 does not indicate whether a subsistence user can legally use aircraft to access inholdings in the park and then walk into the park to conduct subsistence activities. The Solicitor's Opinion appears to prohibit this practice, but this plan provides a forum to clarify what is and is not allowed.

As noted on page 2 of this section, in 1994 the department published a report documenting existing data sources concerning traditional and subsistence access in the area prior to creation of the park and preserve. In 1995, the department published a companion report based on interviews with 50 Alaskans who had spent time in what is now the northern part of the park and preserve area prior to December 1980. Although the NPS has questioned the applicability of some traditional access information recorded in this report to addressing the commission's request for an access study, we recommend that it be acknowledged on page 2 as a relevant source of information on pre-ANILCA access in the northern area of the park unit.

On page 3 of this section, the NPS interprets "traditionally employed" to define a vehicle or mode of transportation used in a multigenerational fashion (i.e., for a minimum of 20 years) prior to 1980. The NPS does not plan to revise this definition and authorizes the superintendent to make "traditionally employed" determinations on a case-by-case basis. However, comments are solicited on a method for dealing with the evolution of technology related to use of transportation modes "traditionally employed" in park areas. The department recommends that four-wheeled off-road vehicles (ORV) be considered as one example of how ORV technology has evolved and resulted in a safer version of their three-wheeled predecessors.

Chapter 7, Wildlife Harvest. On page 3 of this section, the NPS cites its current efforts to develop a definition of "natural and healthy." The department agrees that a recommended definition should be discussed with the commission prior to completion, but also firmly believes that consultation with the state is essential and would be consistent with provisions of the Master Memorandum of Understanding between the NPS and the department. We recognize that this is a challenging task but believe the department's expertise could contribute to the process.

Chapter 9, Customary and Traditional (C&T) Use Determinations. A useful addition to this section would be a list of park resident zone communities and individuals eligible for 13.44 permits who are disallowed from hunting certain wildlife species in the park because of the C&T use determinations made by the Federal Subsistence Board. The reasons for certain resident zone communities losing their C&T eligibility should be explained. The NPS may also want to explain to the commission its position on proposal nos. 25 and 29 submitted to the Federal Subsistence Board seeking individual C&T use determinations for individuals currently ineligible due to the negative community findings.

Similarly, the rationale for disqualifying some otherwise eligible subsistence users from certain areas of the park should be explained. C&T use eligibility for some species currently is divided into areas north and south of the Sanford River. If species movements and abundance change, as they often do over time, the current C&T use might prohibit some local residents from hunting wildlife in the park. For example, the Mentasta Caribou Herd frequented the south Wrangells in the 1980s when herd numbers were relatively high, and substantial harvest occurred south of the Sanford River. In recent years, the herd has declined and been most accessible in northern areas of the park. The management plan should discuss the steps required to modify the C&T eligibility requirements if significant changes occur to the availability of wildlife north and south of the Sanford River.

Hunting Plan Recommendation 97-01

The department has not conducted a thorough legal analysis of this recommendation. However, the proposed residency requirement does raise legal questions for which the commission should seek guidance from legal counsel before proceeding. The commission also should review the definition of "resident" in 50 CFR 100.4 to see if enforcement of the existing regulations would address your concerns. This regulation requires permanent, primary residence in one location, and identifies a set of factors indicative of a person's permanent, primary home. If the commission's concern is to assure that new entrants claiming local residency are legitimately local "residents," this regulation provides an objective standard for review of such claims.

This concludes our comments on these planning items. The department will be happy to clarify our comments and provide further input to your plan upon request

I hope to attend your upcoming meeting in Tanacross and will look forward to continuing our dialogue with your commission.

Sincerely,

Terry L. Haynes
Statewide Coordinator

cc: Sally Gibert
Tina Cunning
Kathy Swiderski
Jim Fall
Bob Tobey
Elizabeth Andrews

Sierra Club
Alaska Field Office
241 E. Fifth Avenue, Suite 205, Anchorage, Alaska 99501
(907) 276-4048 • FAX (907) 258-6807



June 27, 1998

Mr. Robert Stanton
Director, National Park Service
U.S. Department of the Interior
1849 C St., N.W.
Washington, D.C. 20240

Dear Mr. Stanton:

I understand that your Alaska visit will include stops at Wrangell-St. Elias National Park and Preserve, and Katmai National Park and Preserve.

At Katmai, the National Park Service is attempting to implement a development plan for the Brooks River area. Several interested parties, including the Sierra Club, oppose the plan, which involves relocating the current lodge and NPS facilities complex to a new site on the south side of Brooks River. Brooks River is the most important brown/grizzly bear stream in the national park system.

Rather than summarize our position here, I am enclosing a copy of my remarks on the draft development plan; a summary version, and more detailed comments prior to publication of the draft plan.

At Wrangell-St. Elias National Park and Preserve, a draft subsistence management plan is under public review. It is an especially important plan because it is the first draft subsistence plan to be issued since passage of the Alaska National Interest Lands Act of 1980 (ANILCA).

Most importantly, the draft indicates that the National Park Service does not intend to carry out a fundamental directive under ANILCA: zoning the park (and four other Alaska parks) into traditional subsistence use areas in which qualified local rural residents can continue to engage in subsistence activities; and into non-subsistence areas to be managed as traditional national park areas. Wrangell-St. Elias NPP may contain vast areas that can serve as traditional national parks, Congress has told the Service to identify the areas, but the Service has so far refused to do so. It is not too late to set the Service on the right course.

I am enclosing some background information that explains this issue in more detail.

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Following your trips to the two parks, I would be interested in your thoughts on these issues. I hope you have enjoyable and productive visits.

Sincerely,

Jack Hession

Jack Hession
Alaska Representative

cc: Mr. Bob Barbee

enc.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶ 2

To Karen	From Russ
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Lee R. Adler
Box 285
Glennallen, Ak. 99588

Feb. 7, 1998

Superintendent, Wrangell St. Elias National Park
Box 439
Copper Center, Ak. 99573

Subject: Review of Wrangell - St. Elias subsistence plan, draft

Dear Mr. Jarvis:

Here are a few concerns I have pertaining to your draft proposal.

1. Access to the Park for subsistence use continues to be the number one problem for local residents.

Sec. 811 of ANILCA states that "rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the Public lands." I am sure that after 17 years of Park Service management in the Wrangells, you realize that traditional access to most areas in the Park has been by aircraft. In fact in; many cases is the only reasonable access. I find no place in ANILCA where the use of aircraft are prohibited.

The use of Solicitors and Secretary of the Interior opinions to justify this position is not realistic, nor does it meet the spirit of the Act. These people are not knowledgeable about traditions, or local needs. I might add that aircraft are the least damaging to the environment of all forms of transportation.

It cannot be assumed that ownership of an aircraft is prohibitive for the common man. I paid $13,000 for my Citabria in 1981 and have used it for subsistence hunting for the past 16 years, while living on an annual income well below the poverty level.

I have lived in Glennallen since 1969 and have seen the "good old days" die, and the new age with all it's repressive regulations shoved on to us. From 1969 to 1975, I was virtually the sole administrator of what is now called the Subject Park. Since this was only 1/3 of my administrative area, I had to be very efficient with my time. As a Biologist for the BLM, I was only able to visit the Wrangells about 4 times per year. At that time moose, Dall sheep and caribou were much more plentiful than they are now. This is probably due to the increase in the wolf and grizzly populations. During those days, I do remember seeing wolves and grizzlies on my over flights.

2. Waterfowl hunting in the Park. State seasons and bag limits should be honored in the Park. However, I know of no history of spring hunting or egg gathering in the Park-preserve.

3. Although the caribou that frequent the Park-preserve are called the Mentasta herd, they are really overflow animals from the Nelchina herd that were left behind on the many migrations of the Nelchina herd through the Park. With the present high predator population, it is doubtful whether this herd will be able to come back with out a new influx from the Nelchina herd.

4. Dall sheep. This population held up good until about 1991. Since then I have noticed a marked decline in the overall numbers, especially in the Wrangell front: Sanford-south to Chitina. Also, the area south of the Chitina river. I suspect that wolf predation is the main limiting factor.

Since subsistence is supposed to be the key element, I see no reason for a full curl requirement for unit 12. Conversely, the taking of ewes and lambs cannot be justified in Unit 11. I have heard of several people from Anchorage who have killed ewes in unit 11. For an Anchorage resident to drive out to the McCarthy road for about 25 lb. of boned out meat does not make sense from a subsistence or economic point. With these regulations it is quite possible to destroy the Dall sheep population in that area.

5. Moose. The moose population has decreased markedly since the Park Service took over management of the Wrangells. This is also due largely to an increase in the wolf and grizzly predation.

The type of bull taken by subsistence hunters in unit 11 should be either one bull, or one bull over 36" antlers. The spike bull- 50" rule makes field identification almost impossible, and is not in keeping with traditional subsistence needs.

Sincerely,

Lee R. Adler,
Wildlife Biologist