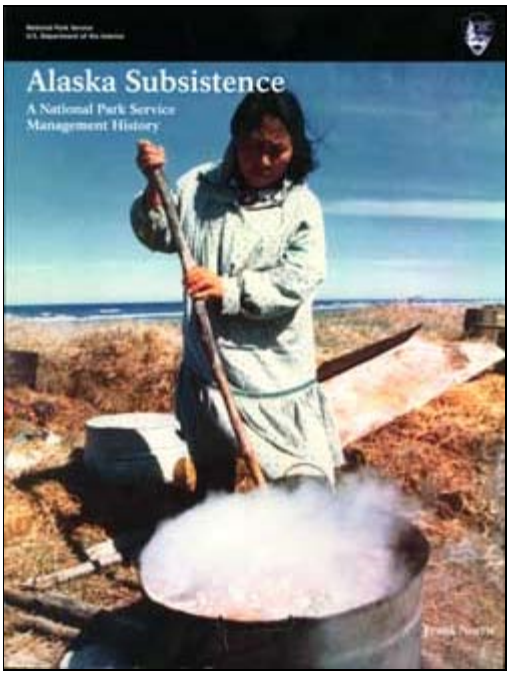
Alaska Subsistence

A National Park Service Management History



ALASKA SUBSISTENCE: A National Park Service Management History

By
Frank Norris

September 2002

Alaska Support Office
National Park Service
U.S. Department of the Interior
Anchorage, Alaska

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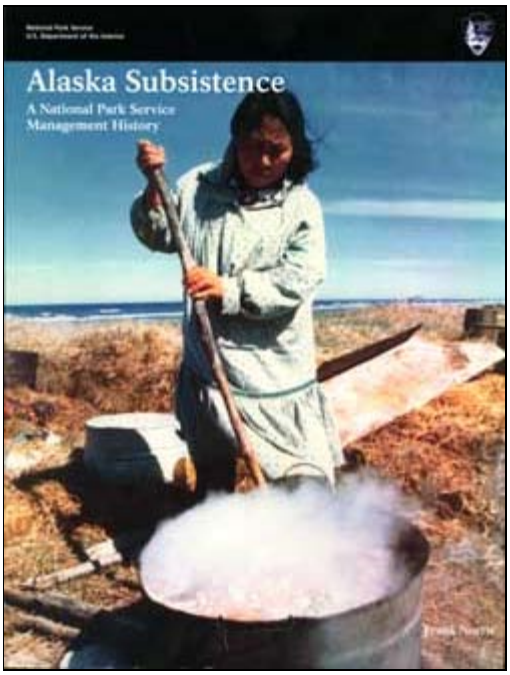
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PREFACE

When the first Europeans visited Alaska's shores during the 1740s, all of the local residents they met were engaged in a subsistence lifestyle. This state of affairs, however, did not last. The arrival of outsiders soon brought development, and consequent resource damage, in various forms; the harvesting of sea otter pelts came first, and before long there were fur-seal harvests, commercial fishing, mines, and farms. Commercial fishing, perhaps the most far-flung industry, brought scores of packing plants and hundreds of fish traps, and virtually all of these developments demanded cities and towns to support and supply them. By the early twentieth century, the invasion of a cash economy had fundamentally altered the lifeways of Native residents throughout Southeastern Alaska, and by the time Alaska gained statehood in the late 1950s, subsistence patterns throughout much of the remainder of Alaska had been altered to a greater or lesser degree. Despite these intrusions, subsistence remained a viable way of life to many residents. Even in Alaska's most remote areas, however, non-Native intrusions brought subtle but important changes to age-old harvesting patterns. In the years that followed statehood, the pace of change accelerated, and developments related to actual or potential oil extraction proliferated in the Alaska "bush." In response to these encroachments, rural residents began to organize, and before long they petitioned government officials in hopes of retaining some protection for their land base and their subsistence way of life. In due time, both the federal and state governments responded. In 1969, the U.S. Congress passed the Tlingit and Haida Settlement Act, which played a large role in settling land claims in southeastern Alaska, and two years later, Congress passed the Alaska Native Claims Settlement Act (ANCSA), which addressed land claims issues elsewhere in the state. Several years later, legislators began to address subsistence issues. In 1978, the Alaska Legislature passed its first subsistence law, and in 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which made extensive provisions for how subsistence resources would be managed on Alaska's federal lands.

This study is a chronicle of how subsistence management in Alaska has grown and evolved. As will be readily seen, the process by which the initial subsistence laws were created was long, tortuous, and emotionally charged. Subsistence management since 1980, moreover, has taken many unexpected twists and turns because of decisions made at the executive, legislative and judicial levels in both the state and federal government. Because Alaska's development patterns, and the relative independence of its Native populations, was so dissimilar from that of the other 49 states, it is perhaps unsurprising that Congress, in 1980, created a subsistence management system that was uniquely tailored to Alaska's people and conditions. Because of this distinctiveness, Federal land managers whose sole work experience has been outside of Alaska have little comprehension of the reality of subsistence or of the legalities of subsistence management. Today, only a select few—primarily managers and staff people in specific state and federal agencies—understand Alaska's regulatory system as it pertains to subsistence, and even fewer are aware of the historical underpinnings of that system. This study, therefore, was commissioned, in part, to provide a step-by-step process for understanding why subsistence regulations developed as they did. It is hoped that this study will help a broad range of people—subsistence managers, superintendents and refuge managers, legislators, subsistence users, and other Alaska residents—gain an

appreciation of why the subsistence landscape developed into its present reality.

Subsistence in Alaska today is still an emotional, highly-charged topic, and debates over subsistence policy continue to garner front-page headlines. Perhaps a primary reason for the topic's high visibility hinges on the all-important definition of subsistence. Subsistence—widely perceived as "living off the land"—means different things to different people. Some people tend to define the term narrowly, in terms of its nutritional or economic contributions. Others, however, take a broader view, recognizing that subsistence has cultural and spiritual connotations: that it is nothing less than a way of life or world view of which hunting, fishing, and gathering are only a part. Non-natives tend to support the first definition, Natives the second; but the lines are blurred, and both groups feel that the definition that they use legitimizes their right to harvest the state's subsistence resources.

Many Alaska residents, observing the current status of Alaskan subsistence management, despair at its complexity and its apparent lack of logic, and Alaskans from seemingly all sides of the political spectrum find fault with the current management regime, perhaps because subsistence as practiced today does not conform to their perception of that activity. This study, it is hoped, will attempt to frame Alaskans' confusion over the issue in a historical perspective. The emotions inherent in any debate related to subsistence, however, will doubtless remain for an extended period. A major reason for this state of affairs is that Alaska's population today has grown by more than 200,000 since ANILCA's passage in 1980, and in addition, rising incomes and technological advances have made it far easier for hunters and fishers to gain access to even the most remote parts of Alaska; as a result, there are many more conflicts between subsistence users and other user groups today than there were twenty years ago. Today, the pressure for access to Alaska's rural fish and game resources is so great that rationing of scarce resources is becoming increasingly necessary, and whenever rationing takes place, there are bound to be winner—sand losers. This study documents the nature of the decisionmaking process that has created the rules, regulations, and interpretations that currently hold sway in the subsistence arena.

This study has been organized in a roughly chronological fashion. The first three chapters, all fairly brief, set the stage for ANCSA and other post-1971 events. Chapter 1 is a historical outline of Alaska's lifeways, with a particular emphasis on its Native and rural populations. Chapter 2 is a brief sketch of how the National Park Service, outside of Alaska, established a policy toward subsistence activities, particularly as they relate to Native American residents living adjacent to park units. And Chapter 3 chronicles NPS subsistence-related actions at the three large Alaska units that preceded ANILCA: Mount McKinley National Park, Katmai National Monument, and Glacier Bay National Monument. Given that broad introduction, Chapter 4 describes how Alaska's first subsistence law (in 1978) came to be, and it also explains the administrative and legislative process that brought about ANILCA and its various subsistence provisions.

Later chapters in the study show the process by which the state and federal laws have been implemented. Chapter 5, which spans the 1980-84 period, discusses the initial post-ANILCA period, during which the state and federal governments reached a broad working agreement on subsistence matters and during which initial meetings were held of both the state-sponsored regional subsistence advisory committees and the NPS's subsistence resource commissions. Chapter 6, which covers the remainder of the 1980s, focuses on the *Madison* court decision and its ramifications, the initial SRC recommendations and the Interior Secretary's responses to them, and other aspects of state and federal subsistence management. Chapter 7, which begins in late 1989, focuses almost entirely upon the *McDowell* decision and its ramifications; it chronicles the federal assumption of subsistence wildlife management on federal lands, the process by which federal regulations were established according to the new regime, and the creation of the federally-managed regional advisory councils. Chapter 8

deals with NPS subsistence management (specifically wildlife management) during the 1990s, and it features a number of organizational changes within the NPS, and it also chronicles SRC activities and recommendations and the agency's responses to them. Chapter 9 discusses the federal (and specifically the NPS) management of subsistence fisheries; a key theme of this chapter is the landmark *Katie John* decision and the legislative, administrative, and judicial responses to it. Concluding remarks are offered in Chapter 10.

Inasmuch as this study has been written under NPS auspices, its primarily theme is the National Park Service and its actions relative to subsistence management. Subsistence, however, is a highly cooperative endeavor, and both legal strictures and common logic dictate that any history of this topic must give ample consideration of management efforts by the State of Alaska, and more specifically the Alaska Department of Fish and Game and the boards that help establish departmental policy. Also important have been the various sister agencies involved in federal land management policy; the U.S. Fish and Wildlife Service has assumed a critical administrative position, but the Bureau of Indian Affairs, the Bureau of Land Management, and the U.S. Forest Service also have key roles to play. The Federal Subsistence Board, established in 1990, is a major decisionmaker in the subsistence management arena; its evolution, and the process by which it operates, are covered to some extent in this study. The activities of this and other federal and state entities, however, are usually noted within the context of National Park Service decisionmaking.

As this study has hopefully made clear, the path of subsistence policy development, seen from the long lens of history, has often been volatile and unpredictable. Because of that lack of predictability, any historical study of subsistence—this one included—will soon become dated and irrelevant. As noted in the conclusion, there is virtually no certainty about the future direction of subsistence policymaking. Regardless of that future, it is hoped that this study will provide some perspective on the nature of Alaska subsistence and the role of the National Park Service in managing this all-important activity.

The author has made a good-faith effort to accurately describe and interpret the information contained in this study, and as noted in the acknowledgements, he thanks the many people who have graciously agreed to review draft versions. Any errors of fact or judgment, however, are solely the author's responsibility.

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ACKNOWLEDGEMENTS

Although I have lived in Alaska for almost twenty years, some of it in rural surroundings, I had only vague notions about subsistence when I began this project more than three years ago. As a result, I have sought help from a wide variety of people, both within and outside the NPS, in order to gain an understanding of the economic, legal, political, and cultural manifestations of this remarkable subject. Thanks first go to former Deputy Regional Director (and current Denali Superintendent) Paul Anderson, who initially suggested the need for this study; and to Bob Gerhard and Sandy Rabinowitch, who play key roles here in Anchorage in managing the NPS's subsistence program. All three have been consistently supportive of my efforts during the research and writing of this study, and all three made copious, careful editorial suggestions that considerably improved an earlier draft.

In a more general sense, I offer gracious thanks to many other Alaska NPS employees; some work here in Anchorage, while others serve out in various park headquarters. To one extent or another, I have contacted virtually everyone on the Alaska Support Office staff that has had subsistence responsibilities, and I have also sought help from the various park subsistence coordinators. I thank them all for sharing their experience and advice. I must, however, cite a few of them for special assistance. Included on any "short list" must be Hollis Twitchell, the longtime subsistence chief at Denali National Park and Preserve; Steve Ulvi, who (like Twitchell) lived a subsistence lifestyle before serving as Gates of the Arctic National Park and Preserve's longtime subsistence expert; Devi Sharp, who ably answered a plethora of questions about subsistence activities at Wrangell-St. Elias National Park and Preserve; Ken Adkisson, at Western Arctic National Parklands, who clarified several murky subject areas; Wayne Howell at Glacier Bay National Park and Preserve, who steered me through the long, complex history of subsistence activities in that area; Karen Stickman, who patiently answered several Lake Clark-related questions; and both Clarence Summers and Janis Meldrum of the Alaska Support Office, who often went well out of their way to answer questions that demanded patient, exacting explanations. NPS managers, all helpful, have included Dave Mills, Superintendent at Gates of the Arctic National Park and Preserve and Yukon-Charley Rivers National Preserve; Dave Spirtes, Superintendent of Western Arctic National Parklands; Lou Waller, the longtime head of the Alaska Region's Subsistence Division; and Judith Gottlieb, the current NPS representative to the Federal Subsistence Board. Finally, a sincere note of appreciation goes to Supervisory Historian Sande Anderson and to Cultural Resources Team Manager Ted Birkedal for their consistent support of such a long-term project.

To gain historical perspective, I have contacted a broad range of former Alaska NPS employees, who in all cases have been courteous in sharing their time and knowledge. I was fortunate to be able to converse with each of the Alaska Region's former directors—John Cook, Roger Contor, Boyd Evison, Jack Morehead, and Bob Barbeeand I have gained insights from each. NPS employees during the years immediately before and after ANILCA's passage—whose memories are invaluable and in many ways irreplaceableincluded Bill Brown, Ted Swem, Bryan Harry, John Kauffmann, Ray Bane, and the late Bob Belous.

In order to gain a sense of the ways in which subsistence policies have developed outside of Alaska, I have often depended on the knowledge of agency colleagues. In February 1999 I sent a blanket email to historians and interpreters throughout the NPS, and I'd like to thank the many individuals who have helped explain the ways in which subsistence activities—both legal and informal—take place on NPS lands. The names of many—though certainly not all—of these informants have been noted in the endnotes attached to Chapter 2. I'm also glad to have received comments to a draft of this study from two NPS Washington-office representatives: Janet McDonnell, Bureau Historian in the National Center for Cultural Resources, Stewardship, and Partnership Programs, and Pat Parker, Chief of the agency's American Indian Liaison Office..

Many outside the agency have also provided valuable insight into Alaskan subsistence. A number of people who have served on the various park and monument subsistence resource commissions provided hints and advice. Of particular help has been Florence Collins, with the Denali SRC; Jack Reakoff, with the Gates of the Arctic SRC; Walter Sampson, with the Kobuk Valley SRC; and John Vale, formerly with the Wrangell-St. Elias SRC. At the Office of Subsistence Management, I was ably helped by its director, Tom Boyd, and also by staff members Helen Armstrong, Nancy Beres, Helga Eakon, Cliff Edenshaw, Vince Mathews, Patricia McClenahan, and Pat Petrivelli. Taylor Brelsford of the Bureau of Land Management was enormously helpful. And several subsistence experts with the Alaska Department of Fish and Game have been glad to assist me. Terry Haynes in Fairbanks has been singularly helpful, along with Robert Wolfe in Juneau, Jim Fall in Anchorage, Jim Marcotte in Fairbanks, and Jim Magdanz in Kotzebue. I also received invaluable assistance from several academic and consulting historians, including Lary Dilsaver with the University of South Alabama in Mobile, Tim Rawson with Alaska Pacific University in Anchorage, and Ted Catton with Historical Research Associates, Inc. in Missoula, Montana..

Many of the people noted above, and others besides, have assumed a "double duty" for this project. Not only have they given me their knowledge and insights, but they have also volunteered to read over portions the draft text and offer text corrections. A few stout-hearted souls have read and commented on the entire study, including Dick Stenmark, Bill Brown, Steve Ulvi, Lou Waller, Taylor Brelsford, and Terry Haynes. Thanks to all of these people, the final text is a vast improvement over its previous incarnation..

Finally, I could not have completed this study without the extensive knowledge and cooperative assistance of librarians and archivists in both Anchorage and Juneau. Those who have been especially helpful in steering me in the right direction include Bruce Merrell, at Loussac Library; Bruce Parham, at the National Archives and Records Administration branch office; Celia Rozen and Cathy Vitale, at the Alaska Resources Library and Information Services; John Stewart, at the Alaska State Archives; and Kay Shelton and Sondra Stanway, with the Alaska State Library's Historical Collections..

This study is truly a collaborative effort, and it would have been a poor effort indeed without such widespread support. The author, however, is solely responsible for any errors of fact or interpretation that remain in the final product.

Frank Norris
June 15, 2002

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LIST OF ACRONYMS

§ — Section

ACS — Alaska Cluster of Superintendents
ADF — Alaska Department of Fisheries
ADF&G — Alaska Department of Fish and Game
ADN — Anchorage Daily News
AFN — Alaska Federation of Natives
AEC — Atomic Energy Commission
AHS — Alaska Historical Commission
AKSO — Alaska (System) Support Office
ALC — Alaska Legislative Council
ALSC — Alaska Legal Services Corporation
ANB — Alaska Native Brotherhood
ANCSA — Alaska Native Claims Settlement Act
ANIA — Aniakchak National Monument and Preserve
ANILCA — Alaska National Interest Lands Conservation Act
ANS — Alaska Native Sisterhood
AOA — Alaska Outdoor Association
AOC — Alaska Outdoor Council
APG — Alaska Planning Group
ARO — Alaska Regional Office (Anchorage)
ASA — Alaska State Archives
ASL — Alaska State Library
ASRC — Arctic Slope Regional Corporation
ATF — Alaska Task Force
ATV — all-terrain vehicle

BELA — Bering Land Bridge National Preserve
BIA — Bureau of Indian Affairs
BLM — Bureau of Land Management
BSF&W — Bureau of Sport Fisheries and Wildlife

C&T — Customary and Traditional
CACFA — Citizens' Advisory Commission on Federal Areas
CAKR — Cape Krusenstern National Monument
CFR — Code of Federal Regulations
CIRI — Cook Inlet Region Incorporated
CPSU — Cooperative Park Study Unit
CRM — Cultural Resource Management
CV — civil

DEIS — Draft Environmental Impact Statement
DENA — Denali National Park and Preserve
DOI — Department of the Interior

EA — Environmental Assessment
EIRAC — Eastern Interior Regional Advisory Council
EIS — Environmental Impact Statement

F&WS — Fish and Wildlife Service
FEIS — Final Environmental Impact Statement
FES — Final Environmental Statement
FSB — Federal Subsistence Board

GAAR — Gates of the Arctic National Park and Preserve
GLBA — Glacier Bay National Park and Preserve
GMP — General Management Plan
GMU — Game Management Unit
GPO — Government Printing Office
GRPO — Grand Portage National Monument
GSA — General Services Adminstration

HB — House Bill (Alaska Legislature)
HJR — House Joint Resolution (Alaska Legislature)
H.R. — House of Representatives bill (U.S. Congress)
HRH — H. Russel Holland

IAP — Indian Assistance Program
IDT — interdisciplinary team
IOS — Interior Office of the Solicitor
IRA — Indian Reorganization Act

KATM — Katmai National Park and Preserve
KEFJ — Kenai Fjords National Park
KOVA — Kobuk Valley National Park

LAA — Legislative Affairs Agency
LACL — Lake Clark National Park and Preserve
LEIS — Legislative Environmental Impact Statement

MOA — Memorandum of Agreement
MOMC — Mount McKinley National Park
MOU — Memorandum of Understanding

NANA — Northwest Alaska Native Association
NARA — National Archives and Records Administration
NARF — Native American Rights Fund
NEPA — National Environmental Policy Act
NGS — National Geographic Society
NHP — National Historical Park
NHS — National Historic Site
NM — National Monument
NOAT — Noatak National Preserve
NP — National Park
NPres — National Preserve
NPS — National Park Service
NR — National River
NRA — National Recreation Area

NRAC — Natural Resource Advisory Committee
NS — National Seashore
NWAK — Northwest Alaska Parklands (CAKR, KOVA, and NOAT)

OMB — Office of Management and Budget
ORV — off-road vehicle
OSM — Office of Subsistence Management

PCA — Photo Collection Album

RAC — Regional Advisory Council
RFR — request for reconsideration
RG — Record Group
RS — Resources/Subsistence (i.e., Subsistence Division at ARO)
RS — Revised Statute (e.g. RS 2477)
RuralCAP — Rural Alaska Community Action Project, Inc.
RZC — resident zone community

S. — Senate bill (U.S. Congress)
SA — special action
SAC — Subsistence Advisory Committee
SB — Senate Bill (Alaska Legislature)
SLA — Session Laws of Alaska
SMP — Subsistence Management Plan
SRC — Subsistence Resource Commission

TCC — Tanana Chiefs Conference

UNESCO — United Nations Educational, Scientific and Cultural Organization
USDI — U.S. Department of the Interior
USFS — U.S. Forest Service
USGS — U.S. Geological Survey

WIRAC — Western Interior Regional Advisory Council
WRST — Wrangell-St. Elias National Park and Preserve
WSPG — Washington Subsistence Policy Group

Y-K — Yukon-Kuskokwim [Rivers]
YUCH — Yukon-Charley Rivers National Preserve
YUGA — Yukon-Charley and Gates of the Arctic national park units

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Alaska Subsistence

A National Park Service Management History

Chapter 1:
ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971

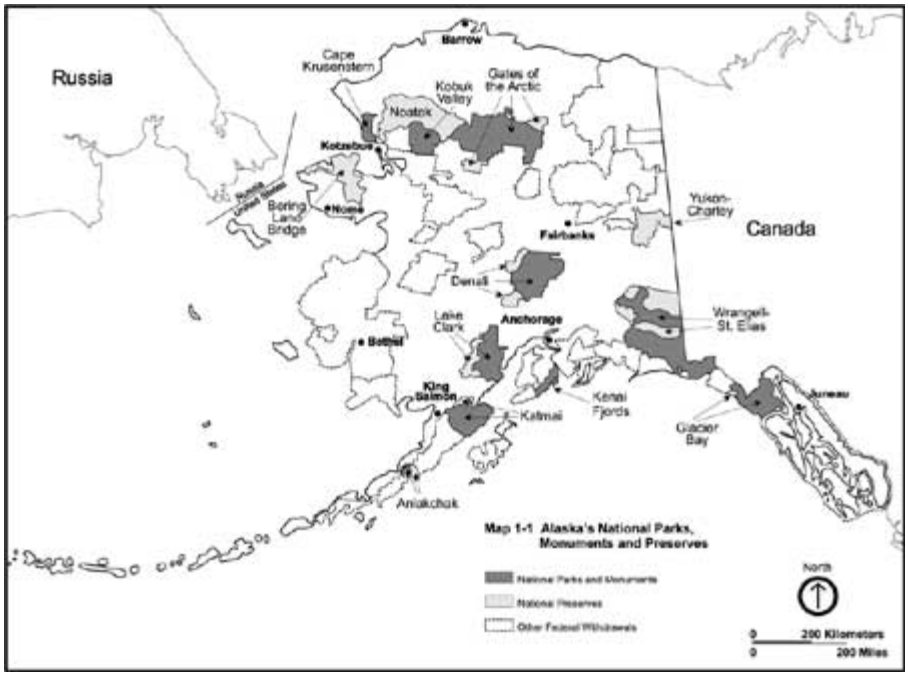
A. Alaska's Native Cultures

Before the arrival of the first European explorers, an estimated 60,000 to 80,000 people lived in the area now known as Alaska. Three separate groups of people lived there: Indians, Aleuts, and Eskimos.

Of these groups, Indians occupied more of Alaska's territory at the time of contact than any other Native group. A broad panoply of Athabaskan Indian groups, including the Dena'ina, Koyukon, Tanana, and Ahtna, occupied the vast interior valleys of the Yukon, Tanana, Copper, Koyukuk, and upper Kuskokwim rivers. Among these groups, which collectively comprised about 10,000 individuals, the Dena'ina were the only group that occupied coastal territory. In addition to these groups, a variety of coastal Indians—most notably the Tlingit, Haida, and Eyak—lived in what is now southeastern and south-central Alaska. Their territory was far smaller than that of the Athabaskans, but because of their richer resource base, the population of these three groups also numbered about 10,000.

Along the western margin of Alaska lived the Aleuts, about 15,000 of whom lived at the rime of European contact. Aleut villages were scattered along the lower Alaska Peninsula and in the Aleutian and Pribilof Islands. The various Eskimo peoples numbered about 30,000 in the mid-eighteenth century. The Eskimos, then as now, were coastal people who occupied the Arctic coastal plain, all of western Alaska, much of the Alaska Peninsula, and the Gulf of Alaska. The four main Eskimo peoples were the Inupiaq, Siberian Yup'ik, Central Yup'ik, and the Alutiiq or Sugpiaq. [1]

European exploration and settlement, which began in 1741, impacted some Native groups more than others. Hardest hit were the Aleuts, the first Native group to be exposed to the Russian fur hunters; within fifty years after the arrival of the first explorers, much of the Aleut population had been either annihilated or subjugated. To a lesser extent, many groups that lived along the coast of south central or southeastern Alaska were negatively impacted by hunting and settlement activity during the 126-year period that Alaska was known as Russian America. In addition, Natives in the middle Yukon River basin—particularly those who lived near the Hudson's Bay Company post at Fort Yukon—were influenced by the interior fur trade, and the Inupiat living in communities bordering the Chukchi Sea and Arctic Ocean were influenced by the commercial whaling trade. (Both the interior fur trade and the coastal whaling trade commenced during the 1840s.) But Native groups living elsewhere had little or no contact with Europeans, and their lifeways and population levels continued much as they had for generations. Though many Russians had little regard for Alaska's Native populations (they characterized them as "uncivilized"), [2] their narrowly focused pursuit of a single commodity—sea otter pelts—and the small number of Russian settlers were ameliorating factors in their overall influence on Native lifeways.



Map 1-1. Alaska's National Parks, Monuments and Preserves.
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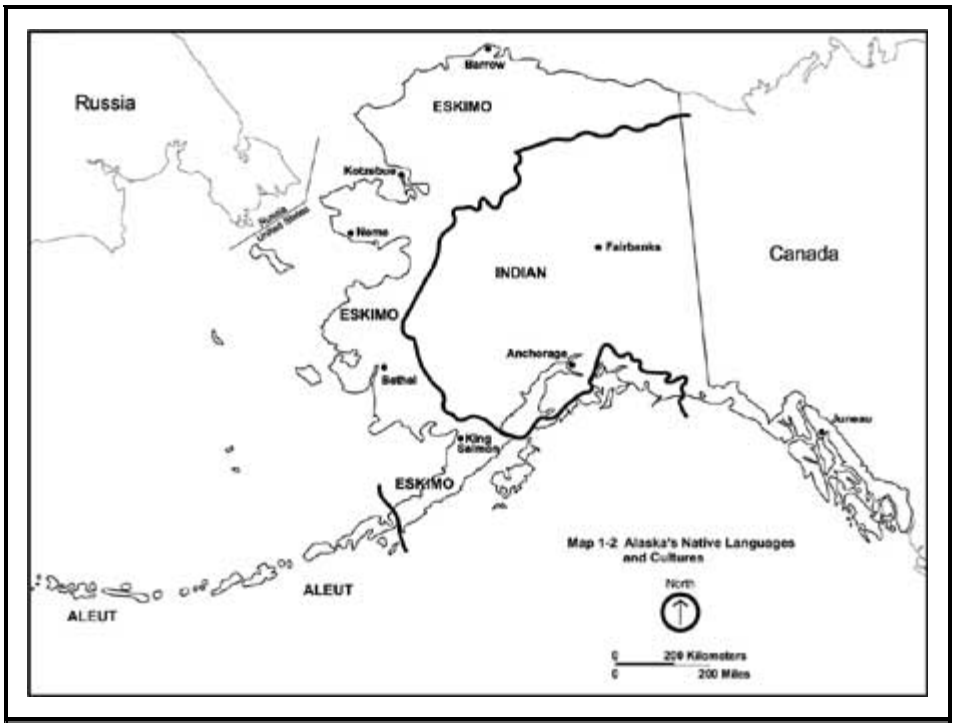
Chapter 1:
ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971 (continued)

B. Alaska Natives and the U.S. Government

In 1867, the United States government purchased Alaska from the Russians. (The purchase of the agreement stipulated that all Alaskans were either from "uncivilized tribes" or were "inhabitants of the ceded territory." But as David Case has noted, nearly all Alaska Natives, as a judicial practice, were categorized as "uncivilized," either because of their status during the Russian period or, as elaborated upon below, because of their treatment under existing U.S. law. [3]) At the time of the purchase, fewer than a thousand Russians or mixed-race Creoles lived in Alaska, and many of those that had been involved with the Russian-American Company or in other official capacities soon returned to Russia. In their stead came a small flood of Americans, most of whom descended on Sitka. But the lack of economic opportunities in the new possession caused many of the newcomers to return home. As late as 1880, only about 400 "whites" (as the census described them) lived in Alaska. During the following decade, major gold strikes in the Juneau-Douglas areas and fisheries developments throughout the so-called "panhandle" brought a tenfold increase in the number of non-Native residents in southeastern Alaska. Even so, the 1890 census recorded fewer than 5,000 non-Natives anywhere in the District of Alaska. Most non-Natives lived in Sitka, Juneau, Douglas, Wrangell, Kodiak, and other coastal towns and villages. [4]

Government was slow to come to Alaska; the first Organic Act providing for a civil administration was not passed until 1884, and full territorial government, via second Organic Act, had to wait until 1912. Alaska Natives, however, were ruled not from Sitka (Alaska's first capital under the U.S. flag) or Juneau (where the capital moved in 1906); instead, Native affairs were administered directly from Washington, D.C., where policies toward Indians had been a primary tenet of government policy since the days of George Washington and John Adams. An Indian policy followed during the first several decades, which promoted domestic trade and prevented foreign alliances, was eventually replaced a more hard-edged policy that sought the complete removal of Indians from the path of westering settlers. This latter policy led, in the 1840s, to the first Indian reservations. In 1849 the Department of the Interior was created, which included the Office of Indian Affairs; ever since then, working with America's Native groups has been an Interior Department function. For much of the rest of the nineteenth century, the official policy of both Congress and the U.S. Supreme Court was to protect Indians and promote their welfare. But other elements in the government—the Army and many in the Office of Indian Affairs among them—were hostile to Native hopes, and a strong majority of Americans had little sympathy for the Indians' plight. During the 1880s the publication of several stirring works, including Helen Hunt Jackson's *A Century of Dishonor* and her better-known *Ramona*, brought forth the first seeds of nationwide sympathy for the Natives' cause. By that time, most Native Americans living in the coterminous states were confined to reservations and had, to a large extent, become wards of the government. [5]

Alaska's Natives, as noted above, were largely ignored by governmental Indian policy during the first three decades of American rule, primarily because their land and resources were either "undiscovered" or were not coveted by non-Natives. But when Native and non-Native resources did come into conflict, Natives suffered. Perhaps the worst area of conflict was in the salmon canning industry, which had flourished in Oregon and Washington before migrating to Alaska in 1878. Alaska's first two canneries were founded at Klawock and Sitka, and in the years that followed their establishment, civilian and military authorities made no effort to prevent the takeover of the most productive salmon habitat by packing companies based in Washington, Oregon, and California. This was first accomplished by the direct appropriation of clan-owned fishing streams, and later by the widespread installation of company-owned fish traps. Aspects of Federal policy also tended to be anti-Native. Within a few years of the Alaska Purchase, for example, Congress exempted Natives from a prohibition on the fur seal harvest. This exemption, while positive for the long-term health of the fur seal population, was not principally intended for the Natives' welfare; instead, it ensured that Pribilof Islands residents would legally be able to conduct the annual harvest. And because the Bureau of Fisheries and successor agencies provided the workers less than adequate compensation, a form of indentured servitude took hold there over the next several decades. [6]



Map 1-2. Alaska's Native Languages and Cultures. Source: Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land* (1968), p. 5.
(click on image for an enlargement in a new window)

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Chapter 1:
ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971
(continued)

C. The Lure of Gold and the Non-Native Population Influx

Slowly, the appearance of new business opportunities began to debunk the old stereotypes. On the Pribilof Islands, for example, the harvesting of fur seals proved so profitable that within a few years the U.S. Treasury had been repaid Alaska's $7.2 million purchase price. Of more wide-ranging importance was the discovery of gold, in August 1880, along Gastineau Channel in southeastern Alaska, and by 1882 Juneau and nearby Douglas were thriving gold camps. Word soon leaked out that gold prospects lay on the far side of Chilkoot Pass, and in 1880 a group of prospectors obtained permission from the Chilkat Indians to gain access over the Chilkoot Trail. The wide-ranging prospectors, before long, found gold in paying quantities in various parts of the Yukon River drainage, and word of those discoveries brought a heightened level of prospecting activity. By 1895 a major gold camp had been located at Fortymile, just east of the Canada-U.S. border, and at Circle, 208 miles downstream from Fortymile. And everywhere the prospectors ventured, they impacted the local Native populations: by hunting, by tree cutting, and by providing Natives with wage-based jobs in mines or wood camps.

The year 1896 witnessed the first of three gold strikes that transformed the north country. The Klondike gold discovery, in August of that year, brought tens of thousands of Argonauts from the far corners of the world to the Yukon and Klondike river valleys, primarily in 1897 and 1898. No sooner had that rush begun to fade than gold was discovered on the Seward Peninsula, and tens of thousands more rushed to Nome and other nearby gold camps. Finally, a major gold strike took place in the Interior of Alaska in August 1902, and by 1905 Fairbanks was a full-blown gold camp.

These strikes, and other discoveries made in their wake, transformed Alaska demographically. By 1900, for example, the U.S. Census claimed that Alaska had more white than Native inhabitants, although the number of whites and Natives remained fairly similar as late as the eve of World War II. [7] (See Table 1-1, page 5) More important to Native lifeways, however, the scattered distribution of gold camps meant that prospectors (and to a lesser extent other non-Natives) were interacting with Natives throughout the territory. Non-Natives, it appeared, were thrusting themselves into economic enterprises in the most remote corners of the territory, and everywhere they went they began to impact the Natives' long-established lifeways.

Table 1-1. Population of Alaska and Selected Areas, 1890-2000

	Alaska (total)	Non-Native	Native	Native % of Total	Anchorage (a)	Fairbanks (b)	Juneau (c)	Ketchikan (d)	A/F/J/K as % of Total	Kenai Peninsula (e)	Mat-Su Area (f)	# Non-Rural (g)	% Non-Rural (g)
1890	32,052	8,521	23,531	73.4%	0	0	1,253	40	4.0%	480	0	0	0.0%
1900	63,592	36,555	27,037	42.5%	0	0	1,864	459	3.6%	728	0	0	0.0%
1910	64,356	39,025	25,331	39.4%	0	3,541	1,644	1,613	10.6%	1,692	677	0	0.0%

1920	55,036	28,478	26,558	48.3%	1,856	1,155	3,058	2,458	15.5%	1,851	715	0	0.0%
1929	59,278	29,295	29,983	50.6%	2,277	2,101	4,043	3,796	20.6%	2,425	876	0	0.0%
1939	72,524	40,066	32,458	44.8%	3,495	3,455	5,729	4,695	24.0%	3,002	2,366	0	0.0%
1950	128,643	94,780	33,863	26.3%	11,254	5,771	5,956	5,305	22.0%	4,699	3,534	11,254	8.7%
1960	226,167	183,645	45,522	18.8%	44,237	13,311	6,797	6,483	31.3%	9,053	5,188	66,622	29.5%
1970	302,853	252,248	50,605	16.7%	102,994	30,618	13,556	10,041	51.9%	15,836	6,509	148,410	40,0%
1980	401,851	337,748	64,103	16.0%	174,431	53,983	19,528	11,316	64.5%	25,282	17,816	231,605	57.6%
1990	550,043	464,345	85,698	15.6%	226,338	77,720	26,751	13,828,	62.7%	40,802	39,683	312,032	56.7%
2000	626,932	528,889	98,043	15.6%	260,283	82,840	30,711	14,070	61.9%	49,691	59,322	349,377	55.7%

NOTES:

(a) — includes Anchorage Borough (1970), Municipality of Anchorage (1980 through 2000).

(b) — includes Fairbanks North Star Borough (1970 through 2000).

(c) — includes Greater Juneau Borough (1970 through 1990), Juneau City and Borough (2000).

(d) — includes Ketchikan Gateway Borough (1970 through 2000).

(e) — includes Kenai census district (1910-20); Kenai, Seldovia, and Seward census districts (1929-39); Homer, Seldovia, Seward, and a portion of the Anchorage census district (1950); Kenai-Cook Inlet and Seward election districts (1960); Kenai Peninsula Borough plus Seward Census Division (1970), and Kenai Peninsula Borough (1980 through 2000).

(f) — includes Cook Inlet census district (1910); Cook Inlet and part of Knik census districts (1920); Talkeetna, Wasilla, and part of Anchorage census districts (1930); Palmer, Talkeetna, Wasilla, and part of Anchorage census districts (1940); Palmer, Talkeetna, and Wasilla census districts (1950); Palmer-Wasilla-Talkeetna election district (1960), and Matanuska-Susitna Borough (1970 through 2000).

(g) — Non-rural population and percentages are based on the populations of individual cities, towns, and identified unincorporated areas—not boroughs—that total 7,000 people or more.

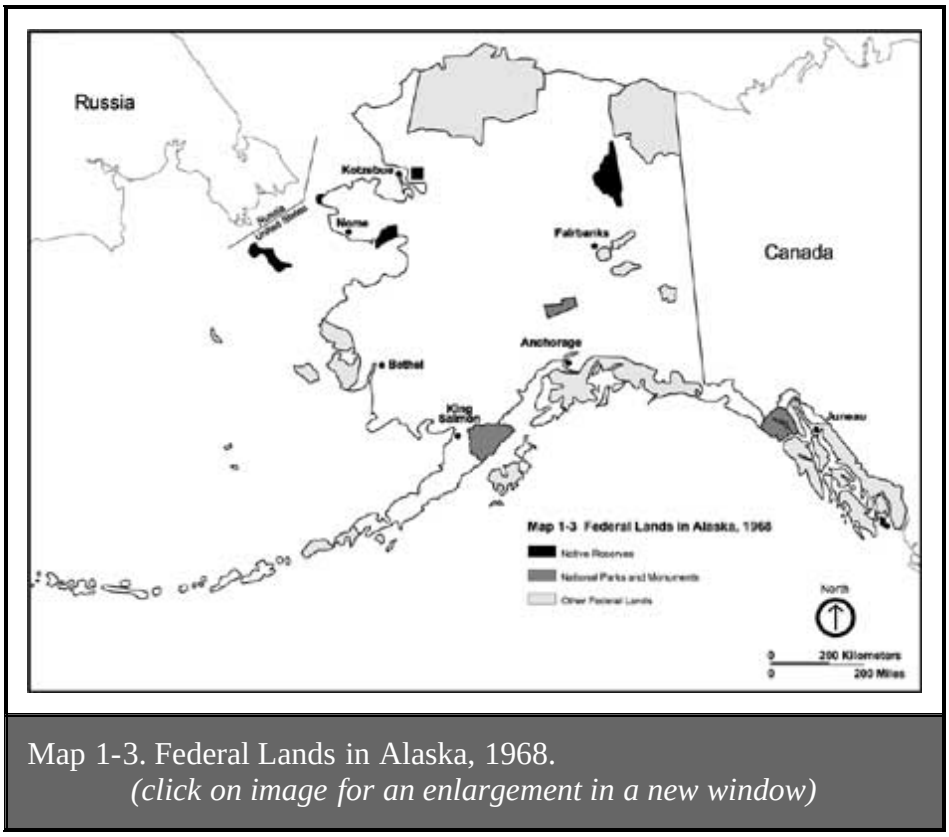
Along the coast, similar impacts were taking place because of the booming salmon-canning industry. After its founding in 1878, the industry quickly grew along Alaska's shoreline, and by the mid-1890s more than 50 canneries dotted the coast between Southeastern Alaska and Bristol Bay. Wherever the canneries were built, the lifestyles of local Native populations were transformed. This transformation took place for two reasons: some succumbed to the lure of fishing and cannery jobs, while others, all too often, were affected because of the depletion of the fisheries resource.

The federal government was by no means a passive player in the transformation of the Natives' culture. In 1884, as part of the first Organic Act, language was inserted to "make needful and proper provision for the education of children of school age in the Territory of Alaska, without reference to race." The implication of racial equality was mostly honored in the breach; for every town that had a substantial white population, the Bureau of Education operated separate white and Native schools. That separation was enhanced in 1905 when Congress passed the Nelson Act, which authorized whites living in any "camp, village, or settlement" to petition for their own school district; this act, in a short time, left the Bureau of Education as almost the sole educator of Alaska's Natives. The per-capita funding of Bureau of Education schools was typically far poorer than in white schools, and as time went on, the funding gap became more pronounced. [8]

More appropriate to this study, however, was the Bureau's policies toward its educational facilities. One policy, similar to a long-established practice of the Bureau of Indian Affairs outside of Alaska, and also that of the many religious denominations that had been educating Alaska Natives since the 1880s, was that the most efficient way to educate Native children was to remove them from their households. As part of the prevalent assimilationist policy, parents typically signed away their daughters until age 18 and their sons until age 21; some children went to village day

schools, while others headed off to remote boarding schools. Both venues adopted a similar regime; Natives were asked to aspire to white values and were required to speak English to the exclusion of all other tongues. Under this system, most Natives were educated poorly at the various village day schools. Only a select few went to high schools, either in the larger towns or outside of Alaska. The policy of the Bureau of Education and its post-1930 successor, the Bureau of Indian Affairs, to establish schools in some Native villages but not others played a major role in the centralization of Native villages. [9]

Prior to the white man's coming, Alaska Natives had a diversity of residential patterns. Some lived in year-round villages; some had primary residences in villages, but headed out to summertime fish camps or carried out other itinerant activities; and still other Natives were so dependent upon seasonal migration patterns that no home was considered more permanent than any other. But intrinsic to Europeans was the concept of commercialization, and the Natives' participation in that concept—sometimes in a voluntary fashion, at other times enforced—demanded an increased reliance on permanent villages and a reduction in the number of those villages. The imposition of the Russian Orthodox Church, and other Christian denominations during the post-1867 period, reemphasized these patterns. As a result of these processes, most Alaska Natives were settled in permanent villages by the late 1930s. But some Natives continued to follow an itinerant lifestyle, and in a number of instances—such as at Anaktuvuk Pass, Lime Village, and Sleetmute—permanent settlement did not take place until several years after the conclusion of World War II. [10]



Map 1-3. Federal Lands in Alaska, 1968.
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ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971 (continued)

D. Federal Policies Toward Alaska's Natives, 1890-1950

Central to the government's Indian policy on a nationwide basis was the reservation system. The country's first Indian reservation had been established during the 1840s, and by the late nineteenth century the reservation was the primary vehicle by which the government classified Natives and their land base. In their ideal state, reservations existed to protect tribal members from non-Native incursions, guarantee tribal identities, and provide welfare and assistance programs. All too often, however, the federal government used reservations as a vehicle to subjugate and segregate Natives from the larger society. Once formed, reservations were often whittled down to a small fraction of their former area, and on many reservations, commonly-owned lands were given over to individual families and then sold to non-Natives. The government also used its trust responsibility toward Native tribes to convert them from a nomadic to an agricultural existence; to educate them in the white man's ways; and to ensure their conversion to Christian beliefs and a reliance on the English tongue. [11]

Most Alaska Natives were spared the reservation experience, primarily because Alaska's first General Agent for Education, Sheldon Jackson, did not believe in them. Governor John Brady, a friend of Jackson's and of a similar mind, wrote that "the reservation policy [in the western United States] has not worked well and has wrought mischief. It would not be good policy to introduce it to Alaska, where the [Native] people are self-supporting and of keen commercial instincts." But William Duncan, another person prominent in southeastern Alaska affairs, disagreed. Duncan, an Anglican priest at a Tsimshean village in northern British Columbia, decided in 1886 to take his flock elsewhere. Casting about for a location in Alaska, he contacted Congressional representatives. Worried that his flock might fall prey to "saloons and other demoralizing institutions," he urged Congress to set aside a tract of land at least five miles from the nearest white town. That body, in response, agreed to allow him and his parishioners to move to Annette Island, south of present-day Ketchikan. In accordance with Duncan's wishes, Congress in 1891 established the Metlakatla Indian Reserve, which included all of Annette Island.



Natives groups have been fishing Alaska's waters for thousands of years. This early twentieth century dipnetting scene was taken along the Copper

River. NPS (WRST)

This reservation, now known as Annette Island Indian Reservation, turned out to be an anomaly; it was, in practical terms, Alaska's only Congressionally-designated Native withdrawal. [12]

Since the 1890s, various federal departments have moved to establish variants on the reservation system. As part of his concern about the "betterment" of the Native population, for example, Sheldon Jackson played a major role in the establishment of a series of reindeer reserves in northwestern Alaska. Then, from 1905 to 1919, he successfully lobbied the Interior Department's Office of Education to establish an additional fourteen Alaska Native reserves. These reservations, which ranged in size from 17 acres (Chilkat Fisheries Reserve) to 316,000 acres (Elim Reserve), were called executive order reserves and were created with the express purpose of developing Native economic self-sufficiency. Congress, in 1919, passed a law prohibiting the creation of additional "Indian" reserves except by Act of Congress. The Secretary of the Interior, however, circumvented the law by establishing several "public purpose reserves" in Alaska that were de facto Native reserves. Between 1925 and 1933 the Secretary created five such reserves, which ranged in area from 110 acres (Amaknak Island, near Unalaska) to 768,000 acres (Tetlin). Beginning in 1934, a new lands concept came into vogue when Congress passed the Indian Reorganization Act. Harold Ickes, Franklin Roosevelt's Secretary of the Interior, seized upon Section 2 of the act and, in response to appeals from various Alaska Natives for protection from non-Native interests, created the first two "IRA reserves" in 1943. (These were the Venetie Reserve and the Karluk Fishing Reserve.) During the next six years four additional reserves were established. No new reserves for Alaska's Natives were established between 1949 and the passage of the Alaska Native Claims Settlement Act in 1971. [13]

The IRA reserves, and the two forms of executive reserves that preceded them, were limited in their application and less than fully welcomed by those whom they were ostensibly created to protect. The various reserves that were created in the early- to mid-twentieth century were established under the best of intentions, and many succeeded in their purported purpose. But many Natives, not wanting to be classified as "reservation Indians," actively fought the inclusion of their lands into reserves, and in several cases they were successful in having the withdrawals repealed. [14] The creation of the various reserves, moreover, appears to have had little if any effect on educational funding or other measures of governmental assistance, and it appears that the residents of most Native villages were never included in a reservation and had few regrets about that state of affairs.

Early in the period in which the Federal government toyed with the idea of limited reservations (either Native reserves or IRA reserves), Congress also provided a basis for Natives to own land on an individual basis. In 1906, it passed the Alaska Native Allotment Act, which was a modification of the General Allotment Act of 1887. The 1906 act authorized the Interior Secretary "to allot not to exceed one hundred and sixty acres of nonmineral land ... to any Indian or Eskimo of full or mixed blood who resides in and is a Native of said district ... and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity." Potential allottees needed to show only minimal evidence of use and occupancy. This act, which was the product of enlighted policymaking, was a clear attempt to give Natives a legal device that prevented their expropriation by non-Native trespassers, and it further underscored the government's conviction (in the words of legal scholar David Case) "that traditional reservation policies did not suit the semi-nomadic lifestyles practiced by the majority of Alaska's Natives." [15]



Subsistence fishers in northwestern Alaska during the summer of 1974. NPS (ATF Box 10), photo 4464-28, by Robert Belous

Although the federal government's half-hearted attempts to educate Natives and place them on reservations often had deleterious impacts, the government did make an honest effort to aid Alaska's Natives when it came to fish and game regulation. Generally speaking, few strictures were placed on Native fish and game harvesting; and Natives were specifically exempted from such fish and game laws as the Alaska Game Law of 1902, the White Act of 1924, and the Alaska Game Law of 1925. [16] (The White Act was the basic act governing the salmon fisheries until statehood.) The U.S. Supreme Court, in the landmark *Hynes v. Grimes Packing Company* decision, made it clear that White Act provisions did not explicitly grant a preference to residents of Alaska's ad hoc Indian reserves. But when resources did conflict, federal agencies sometimes intervened on behalf of rural users, both Native and non-Native. About 1920, for example, the U.S. Bureau of Fisheries barred the Carlisle Packing Company from establishing a floating cannery along the lower Yukon River because it feared that the cannery would capture fish normally harvested by upriver subsistence users. [17]

During the territorial period, the Federal government played a dominant role; the Territorial legislature, by contrast, had limited powers to regulate Alaskan affairs, though the extent of those powers slowly broadened over the years. Both Natives and non-Natives during this period were able to pursue fishing for personal-use purposes with few restrictions. Fishing licenses were first instituted in 1942, and from then until statehood, non-Natives paid just $1 per year for a license while "native-born Indian or Eskimo" fishers were not required to purchase one. [18] While the Fish and Wildlife Service created specific seasons and bag limits for "game fish" in the most heavily populated areas of the territory, the harvest of salmon for personal uses remained unregulated until the 1950s, when modest restrictions were imposed for Resurrection Bay and a few streams in the Anchorage area. [19]

In 1949, Alaskans got their first real voice in territorial fish management when the legislature established the Alaska Department of Fisheries; for the next ten years, the U.S. Fish and Wildlife Service asked the Alaska Fisheries Board—all of whom were Alaska residents—to provide input on a wide range of management actions. One of the first issues the board addressed was the establishment of an equitably applied personal use fishery. A major problem, at the time, was that some residents were harvesting large quantities of fish just before or after the legal season; they used commercial equipment but claimed that they were harvesting for their personal use. To overcome these perceived abuses, board members toyed

with the idea of prohibiting the use of commercial gear during the 48-hour period surrounding each legal season. [20] But the board was unable to convince Fish and Wildlife Service authorities to establish such a provision; limits on personal-use salmon harvesting, moreover, were never implemented during the territorial period.

Throughout this period, Natives in most of Alaska had only a tenuous relationship to the prevailing non-Native commercial sector. Moreover, they were isolated from each other and physical interaction was difficult. For all of these reasons and more, Natives in most of Alaska were poorly organized outside of local trading and kinship networks.

Exceptions to this generalization arose in Interior and southeastern Alaska. By the early twentieth century, many Interior Athapaskans—particularly those living along the Yukon or Tanana rivers—had been interacting with non-Natives for years, particularly during the Klondike gold rush and its aftermath. In 1912, various village leaders met and established the Tanana Chiefs Conference. The organization is now more than 85 years old; since the 1971 passage of the Alaska Native Claims Settlement Act, TCC has served as the non-profit arm of Doyon, Ltd., the regional corporation for much of Interior Alaska. [21]

Southeastern Alaska Natives organized during the same period and for similar reasons. These Natives, most of whom were Tlingit, Haida, or Tsimshian Indians, had by the early twentieth century been exposed to more than a century of Russian or Anglo acculturation, and many were tied, at least in part, to the predominant commercial economy—as fishermen, cannery workers, or in a wide variety of other occupations. In 1912, twelve Tlingits and one Tsimshian met in Juneau and formed the Alaska Native Brotherhood, a primary purpose of which was the recognition of Native citizenship rights. The ANB, in 1915, was joined by the Alaska Native Sisterhood, and chapters (called camps) of both organizations soon spread throughout southeastern Alaska. The ANB lobbied the territorial legislature for the realization of its goals, and in 1915 the legislature passed two laws favoring Natives: one enabled them to become citizens, while the other provided self-government to southeastern Native villages under certain conditions. In response to ANB pressure, Congress in 1924 granted citizenship to all Alaska Natives. By that time, the ANB and the ANS had assumed a broad mantle of new goals. Both organizations have remained active ever since. [22]

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ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971 (continued)

E. Statehood and its Ramifications

As noted above, the U.S. Census in 1900 first recorded that the Alaska non-Native population exceeded that of Alaska's Natives. The population of the two groups, however, was fairly similar, and as the twentieth century wore on it remained so; as late as 1939, Alaska's racial composition was approximately 54% white, 45% Native, and 1% from all other groups. But World War II brought a massive influx of non-Natives to support the war effort, and in-migration (primarily from the "lower 48") continued during the booming postwar years. Because of improved conditions, the Native population expanded, too, but by 1960 Natives comprised less than 19 percent of Alaska's population. [23] (See Table 1-1) New highways, airports, communications sites, oil drilling pads, and homesteads began to dot the landscape. The Anchorage and Fairbanks areas and the Kenai Peninsula witnessed the most profound changes, but to a lesser extent, life also began to change in the Alaska bush.

A major political movement in Alaska during the postwar period was the push for statehood. A statehood bill had first been submitted by Alaska's Congressional delegate back in 1916, but little momentum for statehood was generated until World War II. After the war, the informal team of Delegate E. L. "Bob" Bartlett and Governor Ernest Gruening applied pressure at every turn in the statehood cause. That cause was helped immeasurably by a referendum that was held on the subject in November 1946; in that vote, more than 58 percent of those who went to the polls favored statehood. The road to statehood proved long and arduous, however, and Congress did not pass a statehood bill until June 1958. Alaska officially became the 49th U.S. state on January 3, 1959. [24]

The Alaska Statehood Act stated clearly that all Alaskans should have equal access to the state's fish and game resources. Article VIII, Section 3 stated that "Wherever occurring in their natural state, fish, wildlife and waters are reserved for common use." Section 15 stated that "No exclusive right or special privilege shall be created or authorized in the natural waters of the State," and Section 17 read that "Laws and regulations governing the use or disposal of natural resources shall apply equally to all purposes similarly situated with reference to the subject matter and purpose to be served by the law or regulation." [25] Thus all Alaskans—rural and urban, Native and non-Native—had equal access to Alaska's fish and game resources. These statements would loom into ever-greater significance in future years as federal and state interests grappled over legal rights to the management of state resources. The ramifications of these jurisdictional tug-of-wars will be discussed in chapters 6 and 8.

In the minds of Alaska's Natives, statehood represented a new, ominous threat to the use of their traditional lands, because it set in motion a process by which millions of acres would be conveyed to state ownership. Prior to statehood, more than 99 percent of Alaska's land area was owned by the Federal government, and the provisions by which land could be secured for specific purposes (via homesteads, trade and manufacturing sites, Native allotments, Federal

conservation withdrawals, etc.) were sufficiently narrow in their scope that the vast majority of Alaska outside of the southeastern panhandle was still open entry land. [26] Alaska's Natives—who lived and carried on subsistence activities on much of this land—were given mixed messages regarding their legal rights to it. Section 8 of Alaska's first Organic Act, passed in 1884, merely reiterated the status quo from the 1867 Alaska Purchase Treaty when it stated:

> the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupations or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress. [27]

Native interests, over the years, attempted to address the long-standing problem of aboriginal title through "future legislation," the first bill with that goal in mind having been introduced in 1940. Congress, however, sidestepped the question, both in 1940 and throughout the period leading up to statehood. [28] Section 4 of the Alaska Statehood Act made no move to quash that quest; it suggested a preference of Native subsistence rights over those of the proposed state when it noted that "said State and its people do agree and declare that they forever disclaim all right and title ... to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts...." Indeed, a later court ruling explained that the act "would neither extinguish [aboriginal and possessory claims] nor recognize them as compensable." But the Statehood Act made no attempt to resolve the long-simmering question of aboriginal title; and more ominously, Section 6(b) of the same act permitted the new state to select up to 102,550,000 acres of "vacant, unappropriated and unreserved" public [i.e., federal] lands in Alaska. This acreage represented more than one-quarter of Alaska's land area—an area roughly the size of California. And regardless of where the state made its selections, the lands it chose would be impinging on areas that Natives had used from time immemorial. [29]

The statehood act, despite its failure to provide a land settlement, gave the state's rural residents (many of whom were Native) their first subsistence protections. Prior to statehood, such protections were largely unnecessary because neither residents nor Outside sportsmen exerted much long-term impact on game and fish stocks, except in the areas surrounding a few large towns. As AFN attorney Donald Mitchell noted in a hearing, years later, before the state legislature,

> There was little [resource] pressure because there was such a small population in Alaska; there was not unacceptable levels of pressure on a lot of rural fish and game resources. ... and the federal statutes that controlled the regulation of fish and game were relatively liberal because they had no reason to be otherwise.

During the late 1950s, the territorial legislature prepared for statehood in two significant ways. First, the 1957 legislature passed a bill (SB 30) that established the Alaska Department of Fish and Game and the Alaska Fish and Game Commission, and a key part (Section 5) of that bill provided for fish and game advisory committees. The establishment of a broad network of advisory committees offered local residents throughout Alaska the potential to affect Fish and Game Commission decision making. (The bill's immediate impact, however, was more apparent than real; by the end of 1958, most of the six active advisory committees were located in towns with relatively large, non-Native populations.) [30] The legislature also geared up for statehood by formulating a series

Hugh Wade (left), Alaska's acting territorial governor in 1958, fought to ensure that Alaska's Natives would have a fair share of the new state's fish and game resources. William A. Egan (right) served as Alaska's first governor (1959-1966) and again from 1970 to 1974. ASL/PCA 213-1-2

of statutes that would provide the basis for regulations. One of those statutes dealt with Fish and Game regulation (which later became Title 16 under the State of Alaska's statutory system), but according to Mitchell's recollection, the legislature "somehow ... failed to include adequate provision to take care of the Native people that resided in rural Alaska that had a very large stake in fish and game resources." [31] But Alaska's acting governor at the time was Hugh Wade, a former area director of the Alaska Native Service, [32] and Wade reacted to the statute's passage by writing a letter stating "that there must have been some mistake" in omitting resource protection to Alaska's Natives. That letter was forwarded on to Washington, D.C. where it was introduced onto the floor of the U.S. House of Representatives, and the thrust of Wade's letter eventually emerged as Section 6(e) of the Statehood Act. Section 6(e), according to Mitchell, "reserved to the federal government the authority to manage fish and game until such time as the Secretary of the Interior certified that the Alaska Legislature had submitted a proposal for the adequate management of Alaska's fish and wildlife resources." [33]

In 1959, the newly-minted state legislature—recognizing that the federal government held a de facto veto pen over Alaska's fish and game statutes—adopted a fish and game statute (Title 16) that distinctly defined the difference between sport and subsistence fishing. This statute, which was to be administered by the Alaska Board of Fish and Game, became effective in 1960. [34] It defined fishing according to gear type; subsistence fishing was defined as a personal-use activity that relied on gill nets, seines, fish-wheels and similar gear, [35] while sport fishing implied a hook-and-line harvesting method. In accordance with this distinction, subsistence users were required to obtain a permit and to submit harvest records to the Department of Fish and Game, and separate subsistence regulations were included in the state's first-ever commercial fishing regulations booklets. [36] Separate classifications, however, did not imply a preference for subsistence fishing over sport or commercial fishing, and urban residents were free to engage in subsistence fishing. In regard to hunting, the statute made no distinction between subsistence and sport harvests. [37]

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Alaska Subsistence

A National Park Service Management History

Chapter 1:
ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971 (continued)

F. Toward a Land Claims Settlement

Not long after Alaska became a state, officials in the new government began to organize, evaluate, and select appropriate lands as part of their Congressional allotment. And predictably, several of those selections brought protests from rural residents (primarily Alaska Natives) whose traditional use areas were being jeopardized. By 1961, state officials had already selected and filed for more than 1.7 million acres near the Tanana village of Minto. In response, the Bureau of Indian Affairs that year filed protests on behalf of the villages of Northway, Tanacross, Minto, and Lake Alegnagik for a 5.8 million-acre claim that included the recent state selections. More conflicts, it appeared, were sure to follow. [38]

Other threats to the Natives' traditional lands and lifestyle surfaced during the same period. Back in 1957, the U.S. Atomic Energy Commission had conceived of "Project Chariot," a plan to explode a nuclear device at Cape Thompson, near the Inupiat village of Point Hope. [39] The AEC initially announced that the blast was needed to create a harbor that would be used for mineral shipments. Nearby villagers, however, denounced the project beginning in 1959 for two reasons: worries over atomic radiation and because the project was "too close to our hunting and fishing areas." In 1961, Inupiat artist Howard Rock was so moved by the AEC's high-handedness that he decided to publish a weekly newspaper, the *Tundra Times*, that would address Natives' concerns. Rock spearheaded a campaign against the proposed project, which the government was eventually forced to abandon. [40]

Another huge project was the Rampart Dam proposal, which would have inundated more than 10,000 square miles of the Yukon River valley from the Tanana-Rampart area to the Woodchopper-Coal Creek area, within today's Yukon-Charley Rivers National Preserve. Planning for the project began shortly after statehood, and in 1963 it received a major impetus when U.S. Senator Ernest Gruening urged its construction. Natives were chagrined at the proposal and at Gruening, too, who proclaimed that the proposed dam would flood "only a vast swamp" that was "uninhabited except for seven small Indian villages." The battle over the dam raged for another four years. Finally, in June 1967, Interior Secretary Stewart L. Udall canceled the project, citing economic and biological factors as well as the drastic impact on the area's Native population. [41]

All of these impacts—the land claims process, Project Chariot, the Rampart Dam proposal, and other incidents (such as the protests that followed Rep. John Nusunginya's 1961 arrest for hunting ducks out of season) [42]—awakened Native leaders to the fact that only by organizing would they be able to have their collective voices heard. The first opportunity to organize came in November 1961, when the Association on American Indian Affairs, a New York-based charitable organization, convened a Native rights conference in Barrow that was attended by representatives from various coastal villages, some from as far away as the lower Kuskokwim River. A report prepared at the conference stated, "We the Inupiat have come

together for the first time ever in all the years of our history. We had to come together.... We always thought our Inupiat Paitot [our homeland] was safe to be passed down to our future generations as our fathers passed down to us." Later that year, meeting representatives formed Inupiat Paitot, a new regional Native organization. [43]

Other Native organizations followed in short order. In 1962, the Tanana Chiefs Conference was reorganized to deal primarily with "land rights and other problems." During the next few years, Alaska Natives formed several new regional organizations, such as the Bristol Bay Native Association, primarily to press for a land claims settlement. In October 1966, representatives of the newly-formed groups met in Anchorage to form an Alaska-wide Native organization; this group was formally organized the following spring as the Alaska Federation of Natives. [44]

In the meantime, Natives on both an individual and collective level were attempting to provide form and substance regarding how the Federal government should resolve the land claims situation. In response to a land freeze request by a thousand Natives from villages throughout western and southwestern Alaska, Interior Secretary Udall in 1963 appointed a three-person Alaska Task Force on Native Affairs. The task force's report, issued later that year, urged the conveyance of 160-acre tracts to individuals for homes, fish camps, or hunting sites, the withdrawal of "small acreages" in and around villages; and the designation of areas for Native use (but not ownership) for traditional food-gathering activities. Natives, with the assistance of the Association on American Indian Affairs, flatly opposed the task force's recommendations and successfully fought their implementation. In the meantime, they lobbied the Congressional delegation for a more favorable land claims settlement. [45]

The land claims issue quickly crystallized on December 1, 1966 when Secretary Udall, by the first of a series of executive orders, imposed a freeze on land that had been claimed by various Native groups. Udall acted in response to a request from the newly-formed Alaska Federation of Natives; they, as Natives had been doing since 1963, had protested to the Secretary because the state, which had gained tentative approval to the ownership to hundreds of thousand of acres of North Slope land, had announced plans to sell potentially lucrative oil and gas leases for those properties. (What was "frozen" in the first executive order was potential oil-bearing acreage near Point Hope. [46] Commercially-viable quantities of North Slope oil and gas, at this time, had not yet been discovered, but drilling rigs had been moved to other North Slope properties and geologists were hopeful that new deposits would be located.) Because of Udall's action—which was soon applied to other North Slope tracts and extended to the remainder of the state's unreserved lands in August 1967—neither the state nor any private entities could secure title to any land that had been subject to Native claims until Congress resolved the issue. As noted above, Natives by this time had already claimed title to large tracts in western and southwestern Alaska, and within a few months of Udall's action they had filed claims for some 380,000,000 acres—an area approximating that of Alaska's entire land area. [47] The State of Alaska, whose land selections were halted by the freeze, vociferously protested the Secretary's action. The land freeze remained, however, until Congress was able to resolve the issue through appropriate legislation. [48]

One important area of the state, it should be noted, was relatively unaffected by the Udall's executive orders. In southeastern Alaska, the overwhelming preponderance of land, by the mid-1920s, had already been withdrawn by the federal government, either for Tongass National Forest or Glacier Bay National Monument. Because this state of affairs gave Natives few opportunities to acquire their own acreage, Congress had first addressed land claim issues in the Tlingit and Haida Jurisdictional Act, passed on June 15, 1935. That act authorized a "central committee" of Natives in that region to bring suit in the U.S. Court of Claims to compensate them for federal lands from which aboriginal title had been usurped. In response, William Paul and other lawyers representing the Alaska Native Brotherhood (ANB)

filed a $35 million suit "for the value of the land, hunting and fishing rights taken without compensation." But other factors intervened, the lawsuit was sidelined, and in 1941 the ANB formed a separate entity—soon to be called the Central Council of Tlingit and Haida Indians of Alaska—to take up the cause. The case itself was filed by James Curry in 1947. After many delays, the Court of Claims decided on October 7, 1959 that the Tlingits and Haidas had established aboriginal title to six designated areas. [49] But it took another nine years—until January 19, 1968—for the court to award the Tlingit and Haida Indians of Alaska $7.55 million in monetary damages. Although the court awarded the plaintiffs less than one-fourth of the amount they had originally requested—an amount that Central Council president John Borbridge judged to be "grossly inadequate"—it also concluded that Indian title to more than 2.6 million acres of land in southeastern Alaska had not been extinguished. Eighteen months later, Congress passed a law that authorized the Tlingit and Haida Central Council to manage the proceeds of the judgment fund for the benefit of the Tlingit and Haida Indians. [50]

The stakes involved in the land-claims controversy rose dramatically in late 1967 and early 1968 when oil, in gargantuan quantities, was discovered on the North Slope. Most if not all of the land above the underground oil reservoirs, as suggested above, was either owned or had been selected by the State of Alaska. Further testing showed that the Prudhoe Bay field, in one geologist's opinion, was "almost certainly of Middle-Eastern proportions." Optimism about the field's potential ran to such Olympian heights that a state oil-lease sale, held in Anchorage in September 1969, brought in more than $900 million in bonus bids. [51] The rush was on.

But the oil, valuable as it was, benefited no one unless it could reach outside markets, and to provide a transport mechanism an oil-company consortium called the Trans-Alaska Pipeline System, in late 1969, applied to the Interior Department for a permit to construct a hot-oil pipeline from Prudhoe Bay to the port of Valdez on ice-free Prince William Sound. Interior Department approval was necessary because the proposed pipeline right-of-way, and the proposed North Slope haul road, crossed hundreds of miles of federal lands. Secretary Hickel, well aware of the land claims controversy, favored the pipeline, and in early March 1970 he was on the verge of issuing a permit for construction of the haul road. But on March 9, five Native villages, one of which was Stevens Village, sued in district court to prevent the permit from being issued, citing claims to the pipeline and road rights-of-way. In response to that suit, Judge George L. Hart issued a temporary injunction against the project until the lands issue could be resolved. [52]

By the time Judge Hart made his decision, Congress had been grappling with the land claims issue for more than three years. The issue had been the subject of at least one task force, a Federal Field Committee report, an Interior Department proposal, several Congressional bills and legislative hearings. But opposition from mining and sportsmen's groups, plus the widely divergent views of various key players, had slowed progress toward a mutually acceptable solution. Hart's decision, however, forced the powerful oil companies to lobby for a resolution to the lands impasse, and the path toward a final bill gained new momentum. [53]

The stage was set for Congress to act. The path toward a land claims bill would be long and tortuous, and a final bill—the Alaska Native Claims Settlement Act—would not emerge until December 1971. The details of that act, and its implications on National Park Service policy in Alaska, will be discussed in Chapter 4.

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Alaska Subsistence

A National Park Service Management History

Chapter 2:
THE NATIONAL PARK SERVICE AND THE SUBSISTENCE QUESTION

Native Americans throughout the United States have had a long and complex history of interacting with the National Park Service and with those, both in Washington, D.C. and in the various parklands, who have been entrusted to carry out the agency's policies. In this chapter, an attempt is made to briefly illustrate how NPS policy toward subsistence activities historically developed in non-Alaskan venues. To some extent, the agency's attitude toward subsistence activities has been one facet of how Native Americans and the NPS have related with each other over the years. Three recently-published studies—by Robert H. Keller and Michael F. Turek, by Mark David Spence, and by Philip Burnham—have ably addressed NPS-Native American relationships in areas outside of Alaska, and they have been repeatedly used as source materials. Those interested in this larger question, therefore, would be advised to consult these or other sources. It should be emphasized that both Natives and non-Natives have engaged in subsistence uses in the vicinity of NPS units. As noted at the conclusion of this chapter, these practices continue to the present day. Most of the chapter, however, pertains to actions and policies taken prior to the mid-1970s, when NPS planners began developing a subsistence policy that would be applied to Alaska park units.

A. Early Policies Toward Native Americans and Subsistence

As historian Roderick Nash and others have noted, one of the philosophical progenitors of the national park idea was a proposal by George Catlin, a Philadelphia-based artist and writer. Nine years earlier, Catlin had traveled up the Missouri River to Fort Pierre, in present-day South Dakota. He had been horrified by the fort's influence on the lives of Plains Indian people; conversely, however, he was impressed by the Indians' character and by the area's large animal populations. In an 1841 publication, Catlin asked his readers to imagine them

> as they might in the future be seen ... preserved in their pristine beauty and wildness, in a magnificent park, where the world could see for ages to come, the native Indian in his classic attire, galloping his wild horse, with sinewy bow, and shield and lance, amid the fleeting herds of elks and buffaloes. What a beautiful and thrilling specimen for America to preserve and hold up to the view of her refined citizens and the world, in future ages! A nation's Park, containing man and beast, in all the wild and freshness of their nature's beauty!

Catlin envisioned that such a park would encompass the entire Great Plains, all from way from the Mexican to the Canadian border. Noble as Catlin's idea may have been, however, it ran diametrically opposite to U.S. government policy at the time. As ecologist Raymond Dasmann has poignantly noted, "[h]alf of Catlin's dream was realized. The animals were given the first national park. The Indians had a different appointment with destiny." [1]

When Congress created the first national park in 1872, to protect the geysers and other natural features in the Yellowstone country, the nation was less than a century old. Although a transcontinental railroad between the various midwestern and Pacific states was an accomplished reality, the vast country of the desert and intermountain west was still largely unsettled by non-Natives. As the U.S. Census Bureau indicated, there was an unbroken line in the western Great Plains beyond which the frontier was still alive and well—the frontier being defined as an area in which the density of population (both Native and non-Native) did not exceed two persons per square mile. Although many Native American groups, by 1872, were confined to reservations, many others were not: among those who had not yet been subjugated were various Sioux and Cheyenne tribes (the Battle of the Little Bighorn was four years in the future), along with a number of Navajo, Hopi, Ute, Apache, and other groups. Most of the NPS's "crown jewels"—Yosemite, Mount Rainier, Crater Lake, Grand Canyon, Glacier, and Rocky Mountain national parks—were inhabited by Indians, primarily if not exclusively, when Yellowstone National Park was established. [2]

Because the National Park Service would not come into existence for more than four decades after Yellowstone became a reality, the policies of the early national parks—as they pertained to American Indians as well as a host of other subjects—can best be discerned from language contained in the various enabling acts and from contemporary accounts that detail the nature of early park management.

Yellowstone, like virtually all of the early national parks, had a long history of Native use prior to the 1870s. Bands of Plains Shoshones were perhaps the main residents, but the nearby Crow and Blackfeet Indians commonly traveled through the area on hunting, trading, or war-making trips. The famous Washburn exploring party of 1870, which was one of several early non-Native groups to explore the area within the present-day park, encountered various abandoned Indian camps and relied on a number of well-used Indian trails. Paradoxically, however, members of the Washburn expedition later claimed that the proposed park was a primeval wilderness that was "never trodden by human footsteps." [3] The park's enabling act, perhaps operating from that spurious assumption, ominously noted that the Interior Secretary "shall provide against wanton destruction of the fish and game found within said park [and] shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom...." [4] The park act, however, did not generally ban hunting and fishing, and despite the ban on "wanton destruction," depredations continued by non-Native hide-hunters, poachers and others for a decade or more. [5] During the next few years, many Shoshones began to retreat from contact; the Treaty of Fort Bridger, signed in 1868, was one reason for their gradual relocation from the Yellowstone country, although a growth in the number of non-Native visitors may have also spurred their disappearance. By the late 1870s, many Shoshones had been relocated to Wyoming's Wind River Indian Reservation; and the Nez Perce, who passed through the park in 1877, were later captured by U.S. troops and similarly transferred to a reservation. By 1880, Superintendent Philetus Norris was demanding that all Indians leave Yellowstone. He gave three reasons for his action. First, Norris stated that "Yellowstone is not Indian country and no natives lived in the park." Second, "Indian fear of geysers kept them out of the park" (he quoted a Shoshone who had told him that the geysers were "heap, heap bad"), and finally, Norris claimed that "Yellowstone is for the use and enjoyment of all Americans." Thus, it appears that a combination of faulty anthropology, a skewed (and incorrect) notion of Natives' belief systems, and a narrowly-defined concept of "Americans" justified the Natives' expulsion. [6] Then, in 1894, Congress passed a new law stating that "all hunting ... at any time of any bird or wild animal ... is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park by means of seines, nets, traps ... or in any other way than by hook and line...." The law's primary intention was to solidify the park's stature as a game reserve, but it also underlined Congress's interest in keeping Indians, as well as other nearby residents,

out of the park. Given those attitudes, which were not unusual among policymakers at that time, Natives were excluded from the park and its resources for decades afterward. As late as 1935, the U.S. government denied a petition from nearby Crow Indians to regain access. [7]

Congress established Yosemite as a national park in 1890; 36 years earlier, however, Abraham Lincoln had reserved Yosemite Valley and assigned it to the State of California. Here, the Natives' lot was dramatically different than at Yellowstone. Initial contacts were unfortunate; in 1852, area gold miners killed several of the area's Miwok inhabitants and drove away the remainder. Not long afterward, however, the Miwoks returned on either a seasonal or year-round basis. For the next several decades, the State of California nominally administered the area, though they had little interest in active management. During this period, tourists considered the Miwoks "one of the many attractive features of Yosemite;" but Helen Hunt Jackson, the well-known Indian sympathizer, ironically called them "filthy" and "uncouth." John Muir, who played a major role in establishing the national park, similarly found them "mostly ugly, and some of them altogether hideous," and he felt that they had "no right place in the landscape." In 1890, Yosemite's boundaries dramatically enlarged when the area became the country's second national park. Fifty-two Indians, in response, petitioned Congress for compensation for "the overbearing tyranny and oppression of the white gold hunters" who had destroyed their previous way of life. Their petition was ignored, however, and the U.S. Army, which began administering the area surrounding Yosemite Valley, exerted an increasing amount of pressure to limit Native hunting activities. The administrators of Yosemite Valley, however, were far more tolerant toward the area's Natives than their Yellowstone counterparts, and for several decades into the twentieth century, Yosemite Valley boasted an "Indian village," where several Native American park employees resided along with their families. [8]

Mount Rainier National Park, established in 1899, gave new evidence of how Native Americans and their culture were treated within parks. Here, as at the other early parks, Indian place names were common, and the concessioner employed Indians to provide a sense of atmosphere and to sell curios to tourists. But tourists to Mount Rainier learned little about the area's Native American history, about the local groups or about prominent Native American individuals. Local Yakimas, [9] prior to the park's establishment, had hunted at a site southwest of the mountain that is still known as Indian Henry's Hunting Ground, and just east of the mountain a Yakima band had often hunted at Yakima Park (now known as the Sunrise area). After NPS officials began administering the park they found evidence, in 1915, of ongoing hunting activity in Yakima Park. An Interior Department Solicitor's opinion that year upheld the Natives' right to continue their traditional activity so long as it did not impinge upon the park's stated purposes. The Department, however, made no move to establish regulations that would have implemented that opinion. Then, less than a year later, Congress stepped in. On June 30, 1916, it passed an act which accepted the State of Washington's cession of exclusive jurisdiction over lands within the park. That act, among its other provisions, gave the NPS the right of exclusive jurisdiction over the park, and NPS officials on the local level, as a result, moved to ban subsistence hunting in the park. To test that right, a Yakima hunting party re-entered the park in October 1916. The park supervisor, in response, sought counsel from an NPS official in Washington. He urged that the Yakimas be arrested. By the time local rangers could act, however, the hunters had left the park with their game. The following October, Native hunters entered the park again. Alerted of their presence, the park supervisor and two other officials drove to Yakima Park and arrested six Indians who were in possession of freshly skinned deer hides. All pleaded guilty and were given small fines. The case made it clear that the new agency lacked a definite policy regarding subsistence hunting by Natives, and it set a precedent that would be used at other parks for years afterward. As an ironic coda, it should be noted that while the NPS was zealous in its enforcement of laws prohibiting hunting at Mount Rainier National Park, it had no problem with Native Americans' use of the park for berry picking or spear fishing.

Officials sensed, correctly or not, that both activities were carried on only occasionally (and thus had few long-term impacts on park resources). Spear fishing, moreover, was tolerated and even encouraged because of its inclusion in Yakima interpretive demonstrations. [10]

Many motives have been ascribed for the rise of the national park movement, but as the examples of Yellowstone, Yosemite, and other early parks made clear, they did not include a role for Indians. This state of affairs was due, in part, to the fact that most of the early parks were located in the raw, unsettled west; and although the western frontier was becoming a popular subject for dime novels and wild west shows, it was still too recent and too dangerous for most policymakers and potential park visitors. As noted in Chapter 1, large numbers of white Americans, beginning in the 1880s, sympathized with the Natives' plight and recognized that they had often been treated unjustly. But their attitudes, which were heavily influenced by ideas dating back to the Enlightenment, demanded that Native Americans be "civilized" rather than respected for their lifeways and belief systems. And a byproduct of those attitudes, at the various national parks, was that there was little direct interaction between Native Americans and non-Native tourists. Most park visitors, rightly or wrongly, either ignored Native Americans or perceived them as a vague, sullen, largely invisible threat. [11] Indeed, some white Americans (and particularly those who lived in the western states and territories) openly discriminated against Native Americans. Attitudes such as these remained for years afterward and had a strong impact on early NPS policies toward Native Americans.

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Alaska Subsistence

A National Park Service Management History

Chapter 2:
THE NATIONAL PARK SERVICE AND THE SUBSISTENCE QUESTION (continued)

B. Establishing an NPS Management Policy, 1916-1933

The National Park Service came into being on August 25, 1916, primarily because the 36 parks and monuments then in existence had grown into a "hodgepodge of areas inconsistently managed and inadequately protected." [12] The new agency's first two leaders, Stephen Mather and Horace Albright, were members of a so-alled "college-educated managerial elite" that were in positions of power in several federal conservation agencies at that time. Perhaps because of their educational level and field experience, both Mather and Albright had a genuine interest in archaeology and Native artifacts; they also had a genuine concern for Indians and could defend Native interests as they understood them, and they recognized that tribes had a historic, inherent relationship with parks. Their knowledge of living Indians, however, bordered on being superficial and naive. Correctly or not, Mather and Albright perceived that national park visitors preferred romantic stereotypes and "picturesque" misconceptions rather than the realities of Indian life. And, like most Americans at that time, elements of racism surfaced in their descriptions of Indians and their cultures. Both the stereotypes and the misconceptions are apparent in a book that Albright wrote in 1928, where he stated that visiting the various western national parks gave the visitor the opportunity to find "Real, live Indians! the kind that wear feathers, don war paint, make their clothes and moccasins of skins.... The best place for the Dude to see the Indian in his natural state is in some of the national parks." [13]

The brevity of the Congressional act that established the NPS demanded that additional, detailed guidance be provided to help direct park management policy. Interior Secretary Franklin Lane provided the general orientation of that policy in a May 1918 letter to Director Mather. (Lane's letter, in actuality, was probably written by Horace Albright after discussions with Mather.) The letter was unequivocal in his attitude toward hunting—"hunting will not be permitted in any national park"—but as to fishing, the letter noted that "mountain climbing ... boating, and fishing will ever be the favorite sports." It made no statement about non-recreational fishing. (It can only be assumed that officials were opposed to the activity, although it probably did not loom as a major issue.) Regarding the parks' botanical resources, Lane's letter urged the prohibition of tree-cutting except for certain specified uses (none of which related to subsistence), and the letter's other statements about botanical matters were similarly irrelevant to subsistence concerns because they pertained primarily to grazing and the collecting of museum specimens. [14]

During the next several decadest—hat is, from the agency's inception until the 1960s—the National Park Service was often insensitive to the needs of Native Americans that lived on the margins of the various NPS areas. At many park units, agency personnel and Native Americans rarely if ever came into conflict. But in virtually all of the "crown jewel" parks and in many other large western park units, Native Americans and the NPS clashed

repeatedly over a variety of issues, including subsistence. In part, these conflicts stemmed from the fact that the NPS during this period was "fixed on growth as necessary for agency survival," and in order to satisfy the dictates of Congress and to please park visitors, "it demonstrated little genuine concern for Native rights." [15] And the fact that the NPS emerged victorious from many of its disagreements with its Indian neighbors stems, in part, from the hierarchy of governmental agencies. The National Park Service, in comparison with many other government agencies, traditionally ranked poorly in budgets and visibility because it lacked scientific or military prestige and because its programs—bent on retaining the status quo—neither produced dollars nor protected potential wealth. But compared with the Bureau of Indian Affairs, another Interior Department agency, the NPS ranked high. This is because the BIA had virtually no lobby, no public popularity, no tourist industry, and few avid Congressional supporters. [16] Case-by-case specifics about the nature of those conflicts, and the evolution of NPS policy toward subsistence, are described below.

The area included within today's Glacier National Park, in northern Montana, was once home to members of the Blackfeet confederacy. But as in other parts of the west, the coming of the white man had whittled down the Blackfeet's domain. Their legal dealings with the Federal government had begun in 1851, when a treaty (in which they had not participated) allotted them a large swath of the northern plains. But beginning in 1868, new agreements reduced the size of that allotment, and in 1895 the U.S. government finagled the Blackfeet into selling a twenty-mile-wide "mineral strip" for $1.5 million. This 800,000-acre expanse included the eastern half of present-day Glacier Park, along with additional lands to the south. The Blackfeet were firm in their conviction that the land sale would not affect their ability to hunt, fish, graze, or cut timber on the "mineral strip," and the agreement that Congress approved reflected those concerns. [17] But when Congress began considering the area as a national park, no Blackfeet or other Indians were invited to make their views known, and when the park became a reality in May 1910, the enabling act contained no provisions for hunting, fishing, or timber rights. A number of Blackfeet ignored the law, and in response, they were either jailed or removed, and their guns, traps, and game were confiscated. Perhaps based on those incidents, a 1914 law confirmed the obvious: that all hunting was prohibited in the park, along with all fishing except by hook and line. NPS officials, who soon recognized that the area's megafauna migrated between the park and the nearby Blackfeet Reservation, tried in the interests of wildlife conservation to purchase an additional six-mile-wide strip east of the park. Both the BIA and the Blackfeet rejected the Service's entreaties, however, and throughout the 1920s Indian hunting continued inside the park as well as on reservation land. In 1924, a Blackfeet leader went so far as to circulate a petition calling for recognition of Indian rights in the park. But the petition went nowhere, and in 1925 the Blackfeet and others filed a lawsuit based, in part, on the NPS's policy of actively prohibiting subsistence activities in the park. This lawsuit dragged on for ten years; meanwhile, the NPS made a renewed attempt to buy the six-mile strip east of the park's eastern border. During the late 1940s the NPS, for ecological reasons, belatedly recognized that it made little sense to purchase Blackfeet land. The Indians, for their part, pressed their case throughout this period for harvesting the park's game, fish, and timber resources; they have continued to do so, thus far without success. [18]

Grand Canyon is another example of an area that was reserved by the Federal government prior to the establishment of the National Park Service, although many activities related to Native use had taken place after the agency's creation. The canyon and the surrounding rimlands were designated as a forest reserve in the early 1890s, and in 1906 the area was reclassified as a game reserve; it became a national monument in 1908, and in 1919 Congress declared the area as Grand Canyon National Park. Here, as elsewhere, Natives had been living in the area long before Spanish explorers visited the area in 1540. These Natives, primarily Havasupai and Navajo Indians, remained in the area until American settlers began to arrive during the 1880s. Legally, they disappeared soon afterward; Federal agencies

ignored their land rights and their prior occupation as they created the various conservation withdrawals, and NPS reports for many years after the park's 1919 establishment paid virtually no attention to area Indians. The Havasupai and Navajo, however, had not left. A few Havasupais continued to reside at Indian Garden, along the Bright Angel Trail, until the agency evicted them in 1928. Others continued to live within the park boundaries for years afterward; some hunted along the South Rim, and some worked in the park, either as NPS employees or for concessioners. By the late 1920s, the NPS had set aside a small area for the Havasupais, called Supai Camp, near Grand Canyon Village. Managing Supai Camp would cause NPS officials much vexation for decades to come. [19]

The NPS and local Indians had few if any recorded use conflicts over Grand Canyon National Park land. But before long, difficulties arose when the agency attempted to expand its boundaries. As early as 1919, NPS Director Stephen Mather mulled over the idea of building a road from the El Tovar Hotel to Cataract Canyon, near Supai Village. (Park land, at that time, extended all the way west to the rim above Cataract Canyon, while the Havasupai Indian Reservation was small—less than one square mile—and located entirely below the rim.) The road would have been built had the construction cost (some $2 million) not been so high, and in 1930 the NPS proposed purchasing Indian land in the area, an action for which it was heavily criticized. Somewhat later, during the mid-1950s, Havasupais living at Supai Camp began to assert their right to hunt deer in the park, actions that resulted in arrests and a partially-successful NPS campaign to close Supai Camp. At Grand Canyon, as elsewhere in the NPS system, agency officials had little sympathy toward allowing Natives to carry on activities that Congress had not specifically provided them. (This lack of sympathy, as noted later in this chapter, would abruptly change during the 1970s. As one aspect of those changed sympathies, Congress in 1975 transferred 169,000 acres of Park Service and Forest Service land along the canyon's south rim to the Havasupai tribe.) [20]

A third example of how the NPS and adjacent Natives coexisted is that of Mesa Verde National Park, established in June 1906. The Mesa Verde country, in southwestern Colorado, had long been a Ute homeland. But miners and other settlers began filtering into the area in the 1860s, and by the 1880s a series of treaties had relegated the Utes to a 15-mile-wide sliver of territory north of the Colorado-New Mexico border. The Mesa Verde legislation had further reduced the Ute Mountain Utes' reservation by 42,000 acres; and a subsequent boundary adjustment, necessitated by a surveying error, increased the park by an additional 175,000 acres, much of it gained at the Indians' expense. Less than a year later, a field inspection revealed that many of the best ruins were still outside of the new park's boundaries, so the Interior Department proposed trading land on nearby Ute Mountain for the land in question. The Utes initially refused to bargain, but using overtly coercive tactics, a land swap was implemented in May 1911; 19,500 acres on Ute Mountain was traded for 10,000 acres adjacent to the new national park. Yet another surveying error caused 1,320 additional acres to be transferred from Bureau of Indian Affairs to Interior Department jurisdiction, an action that was taken in 1913 without the Utes' knowledge or consent. [21] When the NPS inherited the park in 1916, officials with the new agency quickly learned that the Utes were still smarting over the strong-armed tactics that had been used five years earlier. Perhaps as a result, the Utes had no qualms about hunting, grazing livestock, cutting timber, or otherwise using park lands. The NPS took no immediate action in such cases; what it did show an interest in was additional land, in adjacent Mancos Canyon, that was "rich in cliff dwellings and archaeological material." Off and on for more than fifty years, NPS tried to acquire Mancos Canyon land. But no deal was ever completed. Not until 1970 did the agency drop its quest for Ute land. [22]

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Alaska Subsistence

A National Park Service Management History

Chapter 2:
THE NATIONAL PARK SERVICE AND THE SUBSISTENCE QUESTION (continued)

C. Shifting Policies Toward Native Americans, 1933-1963

As the NPS grew and matured, it began to adopt new paradigms toward Natives that resided on lands adjacent to newly-designated park units. Part of this change in attitude took place because the Franklin Roosevelt administration, during the mid-1930s, declared an "Indian New Deal," and the ramifications of the changed status of Indians in the Federal hierarchy had the practical effect of producing a rough stalemate between Natives and various land management bureaus. [23] Three examples of the shift in the agency's behavior during the creation of new park units (at Olympic and Everglades national parks and Grand Portage National Monument) are described below, and illustrations are provided showing a gradual loosening of strictures pertaining to subsistence uses.

Olympic National Park, located in northwestern Washington, was established by Congress in 1938. The process that created that park, however, was a half-century in the making. The idea of a national park—to protect the Roosevelt elk, other game and non-game animals, and several ancient stands of fir, spruce, and cedar—was first proposed by Judge James Wickersham in 1890. (Wickersham, then living in Tacoma, moved to Alaska in 1900 and spent some forty years there as a lawyer, judge, and Congressional delegate.) The Olympic Peninsula, at the time, was home to ten tribal or band groups, most of whom lived in coastal villages. Wickersham, however, felt that designating a park would cause no dislocation to area Natives. These groups, he claimed, stayed close to the coast because they were frightened by legends of mountain spirits and by savage gods that practiced cannibalism. [24]

Here, as elsewhere, the Federal government reserved much of the peninsula without regard to Native uses or claims. President Grover Cleveland reserved some 2.1 million acres there in 1897, but his successor, William McKinley, lopped off huge chunks of it to timber interests. By 1904, a proposal for an "Elk National Park" had arisen. That effort failed, but five years later, Theodore Roosevelt withdrew some 600,000 acres on the peninsula to establish Olympic National Monument. Woodrow Wilson stripped away most of the forested lands from the newly established monument. Twenty years later, however, Franklin D. Roosevelt played a key role in the campaign for a national park. The park bill that Roosevelt signed in 1938 was notable in that Indian treaty rights were explicitly protected [25], although Native issues had played no role in the park campaign and no Natives were consulted. Two years later, the NPS acquired a remarkable strip of land along the wild Pacific shoreline. Considering the complexity of the Native population and the variety of resource issues, relations between the NPS and area Natives during the next several decades were remarkably amicable. Part of that amicability, it appears, was based on the fact that local Indians, by and large, were invisible to the agency. A direct result of that invisibility was that park rangers did not overreact when they heard about occasional, illegal Indian elk or deer hunts. [26]

Everglades National Park, in southern Florida, was the subject of a long, agonizing birthing

process; Congress authorized the park in 1934 but the NPS did not begin to administer it until 1947. This "river of grass" had long been home to the Seminole Indians, but few paid attention to them until the early twentieth century, when growing concerns about both their way of life and preserving the dwindling wildlife populations brought about the creation of a 100,000-acre Indian reservation and game preserve. The Florida land boom of the 1920s brought huge new threats to the Everglades, and in response to the sharp increases in ecological degradation, Robert T. Morris and Ernest F. Coe founded the Tropic Everglades Park Association. For the next two decades, Morris and Coe's organization fought for a park against local politicians and sport hunters. [27]

But before a park could be established, the Seminole Indians—who depended on the proposed parklands for subsistence—would also need to be considered. When the NPS first discussed the area, in 1930, officials discovered that the Seminoles' reservation, which was key to the proposed park, could legally be cancelled because the affected Indians hunted on their land but did not live there. But the BIA, which was also conducting an area study, declared that there was "an intimate connection between the Indians and the park" and that the Seminoles had to retain hunting rights in any future park proposal. Conservationists involved in the project likewise did not relish a Seminole removal from the areas being proposed for the park, so when Congress passed the Everglades National Park Act in 1934—which authorized a park but provided no land—the lives of local Natives were unaffected. Federal officials hoped that the park would become a reality through state and private land donations. [28]

Interior Secretary Harold Ickes, who helped organize support for the park, was a maverick administrator who, unlike others, felt that the local Indians enjoyed a special status. In a March 1935 radio address, he spoke of the historic injustices to Indians that had often accompanied the establishment of new parks, and he further declared that "the Seminoles ought to have the right of subsistence hunting and fishing within the proposed park." [29] Ickes had thus thrown a moral dimension into the fight for the Everglades, a factor that heretofore had never been considered; and as a practical matter, he had found a way, at least theoretically, to marry the ideas of Native use and wildlife preservation into the park proposal. BIA chief John Collier responded to Ickes's address by proposing a new sentence into the 1934 park act, which read "[Nothing] in this Act shall be construed to lessen any existing rights of the Seminole Indians which are not in conflict with the purposes [of] Everglades National Park." Ernest Coe, however, was furious at its inclusion, and in response to his criticism, NPS officials (and later Ickes, too) softened their stance. By 1936, Coe had been reassured that Indians had "no special rights or privileges within national parks." [30]

The following year, several Seminoles spoke out about the issue; in remarks to the press, they vowed never to leave the Everglades and would continue to hunt there regardless of how federal decision makers resolved the matter. Federal officials, perhaps in response, quietly agreed on a long-term plan to remove the affected Indians to sites north of the proposed park, but they indefinitely postponed the implementation of that plan; and throughout this period, Seminoles continued to hunt, trap, and fish in that area. (Major species harvested included alligators and frogs as well as various fish species.) By 1947, land donations and funds for additional land acquisition began to turn the park from an idea to a reality, and a Fish and Wildlife Service officer, Daniel Beard, was assigned to help write a refuge management plan. Beard, sensitive to the realities of Indian life, allowed several bands to reside within park boundaries. He hoped to include Natives as park rangers, and he also proposed that Native use of the area be a major interpretive theme. As to subsistence, however, he demanded that frogging be prohibited and that hunting be restricted to specific park areas. Once the park was established, however, NPS officials let it be known that those prohibitions would not be enforced. Indians, to this day, continue to live on leased land within park boundaries, but they seldom use the park except for traditional burials. [31]

At Grand Portage, in northeastern Minnesota, the agency showed a new willingness to work with Native groups on what was targeted as a mutually-beneficial park area. This 710-acre parcel, which was declared a national historic site in 1951 and a national monument in 1958, included within its boundaries a long-established Chippewa village, and it indirectly commemorated the role of American Indians as well as non-Native trappers in the northern fur trade. In order to establish the park unit, the Chippewa donated almost half of the monument's land, and in return, the NPS guaranteed the tribe free access across the monument, job preferences, the stimulation of handicraft sales, and other advantages. It was perhaps the first time in which agency personnel had worked together with Native representatives on a park proposal. Indeed, the stipulations of a tribal resolution formed the backbone of the enabling legislation. [32]

As noted above, Secretary Franklin Lane had recommended in 1918 that the NPS adopt a policy prohibiting hunting in the national parks, and seven years later, Secretary Hubert Work reiterated that policy and expanded it to monuments as well as parks. The government's first *Code of Federal Regulations*, published in 1938, noted that "the destruction ... or disturbance of ... any animal, bird, or other wildlife ... is prohibited," and it more specifically it stated that

> The parks and monuments are sanctuaries for wildlife of every sort, and all hunting, or the killing, wounding, frightening, capturing, or attempting to capture at any time of any wild bird or animal, ... is prohibited within the limits of the parks and monuments. [33]

The policy's primary effect was to protect wildlife populations by stopping sport hunting. An unfortunate byproduct of this policy was that Native Americans, who often had few nutritional alternatives, were severely impacted by the ban. But as the examples above (all of which date from the pre-1960 period) have suggested, the agency's prohibition against hunting was something less than ironclad. [34]

Consider the following examples. At Yellowstone, Mount Rainier, Glacier and Grand Canyon, the NPS vigorously enforced anti-hunting laws; and with the possible exception of Glacier, the agency apparently succeeded in both driving subsistence users away and preventing them from returning. But at Mesa Verde, Olympic, and Everglades, and probably at a number of other national parks as well, park officials were less than zealous in their enforcement efforts, knowing full well that subsistence activities occasionally took place. In these latter parks, NPS officials tacitly condoned subsistence harvests so long as they remained both small in scale and away from the public view. In addition to the above parks, either hunting or sheep grazing took place at several park units in the Four Corners area. These activities were openly allowed in both Navajo and Canyon de Chelly national monuments (primarily because the units were on Navajo tribal land), but NPS pressure eventually forced Natives to abandon these activities at Chaco Canyon National Monument (now Chaco Culture National Historical Park) and Wupatki National Monument. [35] Hunting on an informal basis—officially illegal, but tolerated—also took place in Hawaii National Park (where hunting helped control the booming feral goat population), at Great Smoky Mountains National Park, at Virgin Islands National Park, and doubtless at a number of other park units. [36]

The parks that condoned subsistence hunting during this period were by no means the only units in the NPS system where hunting took place. As Richard Sellars's excellent history of NPS natural resource management has described, officials in Grand Teton National Park in 1950 bowed to public pressure and began allowing recreational sportsmen to hunt elk in Jackson Hole as a means of culling an overstocked herd. In addition, the agency often authorized hunting in national park units to control predators. Most of this hunting was done by NPS rangers, but outside hunters were occasionally brought in. (This activity, quite

common during the Mather era, began to decline during the 1930s but did not cease until years later.) And beginning in the mid-1930s, the agency had responded to Americans' increasing recreational needs by establishing the first national recreation areas. These units, which during this period were primarily based on reservoirs, often allowed a broad range of activities, including hunting, that were not generally authorized in national parks or monuments. [37]

In addition to the relatively small number of park units where hunting took place, scattered other park units allowed other subsistence activities on either a legalized or informal basis. If it is assumed that the definition of "subsistence uses" as applied in the Alaska Lands Act is used here—to include hunting, fishing, and collecting—then twenty or more park units that were established prior to 1965 supported subsistence activities. (See Table 2-1, following page.) Several parks, as described above, allowed hunting, and at least two national parks formally allowed subsistence fishing—both located at the time in U.S. territories—while other units condoned the activity on an informal basis.

Table 2-1. Known Subsistence Uses in Non-Alaskan NPS Units That Were Established Prior to 1976

Date Established	Park Unit	Allowable Use(s)
	Hunting and Fishing:	
1899	Mount Rainier NP, Wash.	spear fishing (Natives)
1933	Fort Pulaski NM, Ga.	"protein fishing" (local residents)
1936+	national recreation areas (selected)	hunting, fishing, etc.
1937+	national seashores (selected)	hunting, fishing, etc.
1938	Olympic NP, Wash.	hunting (Natives)
1938	Hawaii NP (Kalapana Extension)	fishing (Kalapana residents)
1947	Everglades NP, Fla.	hunting, fishing, trapping (Natives)
1956	Virgin Islands NP, V.I.	fishing (local residents)
1966+	national lakeshores (selected)	hunting, fishing, etc.
1968	Badlands NM, S.D. (South Unit)	hunting, etc. (Natives)
1970	Apostle Island NL, Wis.	hunting, fishing, trapping (Natives)
1972	Buffalo NR, Ark.	various uses (local residents)
1974+	national preserves (all)	hunting
	Collecting:	
1890	Yosemite NP, Calif.	plants, nuts, berries (Natives)
1899	Mount Rainier NP, Wash.	berries (Natives)
1915	Rocky Mountain NP, Colo.	nuts, ceremonial purposes (Natives)
1916	Haleakala NP, Hawaii	plants, berries (local residents)
1919	Grand Canyon NP, Ariz.	nuts, salt (Natives)
1929	Badlands NM, S.D.	plants (Natives)
1930	Great Smoky Mtns. NP, N.C.-Tenn.	plants, nuts, berries (local residents)
1932	Great Sand Dunes NM, Colo.	nuts (local residents)

1932	Bandelier NM, N.M.	ceremonial purposes (Natives)
1933	Death Valley NM, Calif.-Nev.	nuts (Natives)
1933	Saguaro NM, Ariz.	cactus fruit (Natives)
1933	Walnut Canyon NM, Ariz.	nuts, flowers
1937	Organ Pipe Cactus NM, Ariz.	cactus fruit (Natives)
1968	Lake Chelan NRA, Wash.	wood, etc. (local residents)
1968	Redwood NP, Calif.	ferns (Natives)
1970	Apostle Islands NL, Wis.	rice harvesting (Natives)
1972	Point Reyes NS, Calif.	berries (local residents)
1975	Voyageurs NP, Minn.	rice, berries (Natives)

Sources: see text

Fishing in the National Park system, according to federal rules, was either prohibited entirely or was open only to recreational sportsmen. NPS regulations stated that "Fishing with nets, seines, traps, ... or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in hand, is prohibited," and they further stated that "The canning or curing of fish for the purpose of transporting them out of a national park or monument is prohibited." [38] The only exceptions to these regulations applied at Fort Jefferson and Glacier Bay national monuments, where commercial fishing was allowed, and at Hawaii and Virgin Islands national parks (see below), where personal-use (i.e., subsistence) fishing was allowed to continue. At all four units, fishing was tightly regulated by user, gear type, and season. A few additional park units, primarily in the southeastern or southcentral states, allowed fishing with trot and throw lines (i.e., fishing lines with multiple hooks) while a few others allowed small seines to be used on bait fish such as minnows and crawfish. [39]

Perhaps the most well known example of legalized subsistence fishing in a national park unit is Hawaii Volcanoes National Park, which was established as Hawaii National Park in 1916. In June 1938, Congress expanded the park's boundaries along the Kalapana coast, and the language in the bill gave explicit permission for the "Native Hawaiian residents" in the extension area to fish along the coast above the high tide line and also to collect limpets, locally called *opihi*. [40] Subsistence fishing is also legally allowed in Virgin Islands National Park. The bill establishing the park, which passed Congress in 1956, specifically provided for fishing "by traditional means;" local residents had a long history of subsistence fishing using traps. [41] At Georgia's Fort Pulaski National Monument, and perhaps at other NPS units, "protein fishing" (i.e., fishing by indigent local residents) has long taken place; though not specifically sanctioned, officials condone the practice because it does not impair overall park values and because it provides opportunities for area residents to visit the park. [42]

Far more numerous are instances in which park units (all of which were established prior to 1963) allowed the collection, by local residents, of either plant materials (for nutritional, construction, or craft purposes) or various materials for ceremonial purposes. Agency regulations, first issued in 1938, discouraged any such practices; they bluntly stated that "the destruction, ... removal, or disturbance in any way of ... any tree, flower, [or] vegetation ... is prohibited." There were only two general exceptions to this rule. First, "flowers may be gathered in small quantities when, in the judgment of the superintendent or custodian, their removal will not impair the beauty of the park or monument." In addition, allowances were made for "collections for scientific or educational purposes." Both of these activities required a written permit from a superintendent or custodian. [43] By 1943, the regulations remained restrictive, and they further noted that "the unauthorized possession of any flower or other

vegetation in any park or monument is prohibited." [44] But by the 1960s, regulations presented a mixed message. On the one hand, they noted that

> the possession ... removal or disturbance in any manner of any animal and plant matter and direct or indirect products thereof, including but not limited to petrified wood, flower, cone or other fruit, egg, nest, or nesting site ... is prohibited, except as otherwise provided in this section or in special regulations for a park area.

A later paragraph in those regulations, however, provided for personal use gathering under certain circumstances:

> The gathering or possession for personal consumption or use, of only such fruits and berries as the Superintendent may designate is permitted. All such fruits and berries shall be picked by hand. The gathering or collecting of such objects for the purpose of sale is prohibited. [45]

The only park-specific exception mentioned in the 1938 regulations was at Hawaii National Park, where visitors "may, with the permission of the park superintendent, pick and eat, or carry away, such fruits as the superintendent may designate." Based on that provision, visitors to the park (primarily that portion of the park that became Haleakala National Park in 1960) have a long history of collecting *a'kala* (native raspberries), and under specified conditions, locals have long taken certain native plant materials for traditional uses. [46] Elsewhere, plant materials have been collected at many other park units, including the following:

Badlands NP (S.D.), where the Lakota Sioux harvest prairie turnip [47]

Death Valley NP (Calif.), where the Timbisha Shoshone collect pinyon nuts [48]

Grand Canyon NP (Ariz.), where Natives collect both pinyon nuts and salt [49]

Great Sand Dunes NP (Colo.), where local residents collect pinyon nuts [50]

Great Smoky Mountains NP (N.C./Tenn.), where the Cherokee collect ramps (wild leeks) and all local residents collect nuts and berries [51]

Organ Pipe Cactus NM (Ariz.), where the Tohono O'odham gather cactus fruit [52]

Rocky Mountain NP (Colo.), where Natives collect nuts [53]

Saguaro NP (Ariz.), where the Tohono O'odham gather cactus fruit [54]

Walnut Canyon NM (Ariz.), where pinyon nuts and elderberry flowers are collected [55]

Yosemite NP (Calif.), where the Miwok and Paiute collect mushrooms, elderberries, and black oak acorns for food, and bracken fern root, sedge root and willow shoots for basket making [56]

Of these activities, only the cactus fruit collecting practiced by the Tohono O'odham has gained specific legal sanction, either by provisions in the enabling legislation or via special use permits. Activities in the other park units have been conducted on an informal basis. Pinyon nut collecting may well have taken place in a number of other units in the southwestern states than those listed here. [57]

Ceremonial collecting was also tolerated, though less evidence has been gathered in this

regard. It is known, for example, that material for ceremonial purposes has long been collected at both Rocky Mountain NP (Colo.) and Bandelier NM (N.M.). [58] Similar activities may well have taken place at a number of other park units.

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Alaska Subsistence

A National Park Service Management History

Chapter 2:
THE NATIONAL PARK SERVICE AND THE SUBSISTENCE QUESTION (continued)

D. Emergence of New NPS Policies, 1963-Present

Beginning in the early 1960s, the NPS began to adopt new attitudes toward Native Americans. A number of reasons probably lay behind the agency's change of perspective. Part of the change was caused by an increased sympathy toward Native causes by society as a whole; part was doubtless caused by an increased sensitivity toward Natives among agency employees; and part was probably caused by increased militancy among Native groups that either lived adjacent to existing park units or were involved in agency attempts to establish new park units. For each of these reasons, the NPS by the early 1970s was significantly more respectful of Native viewpoints, and NPS employees responded by allowing greater Native uses of existing parks, by making Native themes an increased part of park interpretive programs, by including Native concerns in the planning of new parks, and by similar measures. This increased recognition in the role of Native Americans in the parks has continued to the present day.

One way in which the NPS has shown its sensitivity toward Native Americans has been in its increased willingness to establish new units based upon Indian historical themes or units in which Natives were consulted as part of the proposal process. In that context, the year 1965 looms as significant. In May of that year, Congress established the Nez Perce National Historical Park to commemorate the lifeways as well as the historical struggle of the Nez Perce people. The park, though headquartered in Spalding, Idaho, is spread across 38 sites in Idaho, Montana, Oregon, and Washington. This model "partnership park" has been managed by the Nez Perce tribe ever since; only five of the 38 sites are owned by the NPS. [59] Three months later, Congress established Hubbell Trading Post National Historic Site. The site, established to commemorate historical trading activities between Navajos and non-Native traders, is located in the midst of the Navajo Indian Reservation and has long depended on Native staff and interpretive themes. [60] Later that decade, the NPS began working with the Pima Indians toward establishing another partnership park at Snaketown, an archeological site located on the Gila River reservation south of Phoenix, Arizona. Congress went so far as to authorize a park, but the Pimas blocked the process and prevented its implementation. [61]

Five years after the Nez Perce and Hubbell Trading Post units were established, Congress created Apostle Islands National Lakeshore in northern Wisconsin. This unit is significant because the process by which it was established marked a significant change in how Native groups were able to mold park legislation that directly affected their interests. The idea of protecting the twenty-two Apostle Islands in an NPS unit had been initially proposed in the early 1930s. That effort had failed, but a second attempt in the mid-1950s had resulted in the establishment of a state forest on three of the islands. By the early 1960s, conservationists recognized that the islands were being threatened by summer home construction as well as by potential logging operations. Preserving the islands clearly demanded a federal effort.

Complicating the effort, however, were the Bad River and Red Cliff Chippewa; both bands had reservations in the area, and both depended on area resources for hunting, fishing, trapping, and wild rice harvesting. But the initial Congressional bill to emerge on the issue proposed that the federal government purchase all lands on the two reservations, both tribal lands and individual allotments, in favor of new lands that the Interior Department would provide away from the proposed park. But within months of the bill's emergence, the Chippewa support for the bill had winnowed away. Despite that opposition, park backers pushed ahead, and a park bill passed the U.S. Senate in early 1967. That July, however, negotiations reached a standstill because the two Indian bands—who were backed by newly-empowered, Washington-based Native rights organizations—collectively agreed that any new park should not infringe on Indian lands or tribal rights. Some park backers, given that position, reluctantly agreed to push for a bill that included no reservation land. But others, most notably the NPS and the Interior Department, fought the idea. The testimony of the latter two parties, however, ultimately proved unpersuasive, and in a landmark victory for Native rights, the bill that passed Congress and became law in September 1970 did not include Indian lands. Rights to Indian hunting, trapping, fishing, and rice harvesting within the newly created national lakeshore were also protected. [62]

The 1960s were also notable because the NPS began to make internal organizational changes on the behalf of Native American interests. In 1963, the agency's Southwest Region commenced its Indian Assistance Program (IAP), a novel effort headed by archeologist Leland Abel. That program, a cooperative arrangement between the NPS and BIA, provided cultural resource management, maintenance and design, and archeological assistance to Indian tribes throughout the region. To increase accessibility to the tribal officials with whom they worked, IAP staff were located in Phoenix, Arizona and Gallup, New Mexico as well as in Santa Fe. The program expanded in popularity and, backed by NPS officials at both the regional and Washington level, it remained active for almost twenty years. Another organizational change that the NPS implemented that decade occurred in 1968 when the Southwest Region created a special Navajo Lands Group, headed by John E. Cook, to help manage Navajo-area sites. [63] Shortly afterward, NPS Director George Hartzog—at the behest of new Interior Secretary Walter Hickel—asked Cook to head an Indian Economy Task Force, which entailed a nationwide survey regarding how Natives and the NPS could work together on issues of mutual concern. [64]

During the 1970s, Indian tribes became increasingly aggressive in pursuing their interests, and in the face of new resistance to NPS policies, the agency became increasingly sensitive to Native issues. In this decade, as in the previous one, the Southwest Region was at the forefront. But on a national level, no real progress took place until the late 1970s. Work on a servicewide Indian relations policy began in 1978 (using principles that had first been espoused by Chief Historian Verne Chatelain back in the 1930s), and after almost a decade of effort the agency issued a completed Native American Relationships Management Policy. This document, distributed in 1987, stated in unequivocal terms that the agency, more than just tolerating Native presence in and around parks, would respect and promote tribal cultures as an active park component. [65] The NPS also signaled its interest in Native affairs when Director Russell Dickenson, in 1982, appointed Bill Fields as the agency's first tribal liaison. Fields, a Cherokee who had grown up on the Navajo reservation, was an old NPS hand; at the time of his appointment, had worked for years in the Southwest Region's Indian Assistance Program and had headed the program since 1979. [66]

The 1960s also marked a watershed period because the agency began to broaden the types of uses that would be allowed in both new and existing parks. The agency, during this period, was justifiably proud of its successes, over the years, in preventing the incursions of unwanted activities in the parks, both in the "crown jewels" and elsewhere. But in its mission to make the agency more relevant to minority and other urban residents, NPS Director

Hartzog instituted a expansionist and activist park policy as part of President Lyndon Johnson's "Great Society" program, and between 1964 and 1972, sixty-nine new NPS units came into being. Several new units were national recreation areas located near large urban centers, and several more were national seashores or lakeshores; only five of the sixty-nine were national parks. Most of the new national recreation areas, national seashores and national lakeshores allowed hunting, although the activity was typically prohibited in urban-based units. [67]

The other major way in which the NPS began to change its organizational habits during the mid-1960s, as they related to Native Americans and other local residents, was to incorporate the concerns of those groups in the various new NPS units. Most new parks, to be sure, did not focus on Native or local-resident themes, but the new park units—regardless of theme—did differ from previously-created park units in that they took pains to incorporate local lifeways (Native or non-Native) into the park planning process. And this process of incorporation often resulted in local land uses, that in an earlier period would have been prohibited, being legitimized in the newly-established park units.

The following parks, all of which were established between 1963 and 1972, illustrate the range of allowed uses:

Badlands NP (S.D.) — Oglala Sioux can hunt, etc. in the newly-designated South Unit, [68]

Buffalo NR (Ark.) — local residents still utilize area resources [69]

Lake Chelan NRA (Wash.) — Stehekin residents can gather wood and other local materials [70]

Point Reyes NS (Calif.) — Hispanic ranch hands pick berries [71]

Redwood NP (Calif.) — Natives can collect maidenhair ferns for baskets [72]

Voyageurs NP (Minn.) — Ojibwe can harvest wild rice and pick berries [73]

Many parks that have been established since 1972 have also made special provisions for the local residents' needs, but inasmuch as they are not the primary focus of this report they will not be discussed here. [74] One major change, however, was the agency's decision to create a new park category, and in October 1974 the first two "national preserves" came into being. This category, the process that brought it into being, and the category's applicability to the various Alaska park proposals will be discussed in Chapter 4.

This change of attitude has also affected a number of the existing parks. Although generalization is difficult due to the small number of parks for which data are available, it appears that a general trend has emerged in recent years to either allow subsistence activities by local residents, so long as that activity is compatible with overall park goals, or to officially permit and codify various subsistence activities that previously had been allowed on only an informal or surreptitious basis. [75]

Perhaps at the expense of overgeneralization, it appears that during the early years of the national parks, both before and after the formation of the National Park Service in 1916, there was a strong tendency to suppress existing subsistence activities, often through law enforcement actions. Legislation creating new parks and monuments, moreover, generally forbade subsistence activities because it was perceived that such activities ran counter to the NPS Organic Act goal of "conserv[ing] the scenery and the natural and historic objects and the wild life therein." But even in the early days, there were a few parks where subsistence activities (either fishing or collecting) were legally allowed. In addition, there were other

parks where informal subsistence activities—hunting included—were condoned, either because of political sensitivities or because there was a recognition on the part of NPS officials that these activities were causing no long-term harm to the resource base. The tendency to allow subsistence activities in new and existing park units, on either a legal or informal basis, began to increase after 1963, and a recognition of local lifeways has become, in recent years, an important part of park planning efforts. The following chapter will investigate how the agency's changing attitude toward subsistence has been applied to the various Alaska park units that were established prior to the 1970s.

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Alaska Subsistence

A National Park Service Management History

Chapter 3:
SUBSISTENCE IN ALASKA'S PARKS, 1910-1971

In December 1971, when Congress passed the Alaska Native Claims Settlement Act, the National Park Service managed some 6.9 million acres of Alaska real estate. That acreage covered less than 2 percent of Alaska's land mass but it comprised more than 28 percent of all NPS-managed land. [1] By that date, the agency had gained experience managing five Alaska park units, all of which had been established between 1910 and 1925. Two of the five units were established in order to preserve exceptional examples of Native American values and architecture, while the other three park units considered Native American values slightly if at all. It is perhaps ironic to note that the two units established with Native American values in mind have been largely irrelevant to the subsistence issue, while the three parks which soft-pedaled Native values (at least in their original goals) have had, by necessity, a long record of dealing with Native American and other rural residents' values and concerns.

Alaska's first national park unit was Sitka National Monument, established by presidential proclamation in August 1910 to commemorate two items of Native American interest: a remarkable collection of totems and the site of an epic 1804 battle between local Tlingits and the Russian Navy. The battle had been a major turning point in Russian-Tlingit relations, and the eventual Russian victory allowed for the subsequent Russian settlement of Sitka. The totems, carved by Haida craftsmen, were of remarkable importance as well; they had been collected from various Southeastern villages, brought to the 1904 World's Fair in St. Louis, and had been returned to Indian River Park after the festivities had concluded. The territory's second park unit, proclaimed in October 1916, was based on a similar theme. Old Kasaan National Monument was established to protect a recently-abandoned Haida village that contained a wide variety of artistry—dwellings, totems, house posts, and other domestic architecture.

Although both monuments were established in hopes of commemorating and preserving Native architecture and artistic values, only one succeeded in doing so. Sitka National Monument was successfully managed because it was located adjacent to an active small town, and because hundreds of tourists visited the site each year. But Old Kasaan National Monument, remote and located well away from the major steamship route, fell victim to an early fire, and both weather and neglect caused the remaining objects to deteriorate into insignificance. Sitka National Monument, now known as Sitka National Historical Park, has become an increasingly popular destination over the years. At Old Kasaan, however, the site became so degraded that in 1955, Congress (at the agency's urging) delisted the national monument. Both sites, because of their small size (and in Sitka's case, its urban location) have hosted few subsistence activities over the years, and as the following chapter notes, Congress did not

consider subsistence activities at Sitka National Historical Park when it passed the Alaska Lands Act in 1980. The remainder of this chapter considers subsistence issues in the three large park units that were established prior to the Alaska Native Claims Settlement Act: Mount McKinley National Park, Katmai National Monument, and Glacier Bay National Monument. [2]

A. Mount McKinley National Park

Mount McKinley National Park was established on February 26, 1917, when President Wilson signed the bill that Congress had passed just a week earlier. The park was the brainchild of Charles Sheldon, a wealthy hunter-naturalist from Vermont, who had first visited the area in 1906 and had been so captivated by the experience that he returned a year later, built a cabin along the Toklat River, and spent the winter there. Sheldon, though a visitor, lived a subsistence lifestyle, killing meat as necessary for sustenance. Though particularly interested in Dall sheep, he was highly intrigued by the area's caribou populations and, as historian William Brown notes, "birds, bears, moose, foxes, and the multitudes of small creatures [also] caught his attention." During his ten-month stay along the Toklat River he befriended several Kantishna miners and also met some market hunters, but so far as is known, he met few if any area Natives. [3]

Sheldon hatched the idea of a "Denali National Park"—based on a "heraldic display of wildlife posed against stupendous mountain scenery"—in a January 1908 journal entry. He did not immediately act on that idea, however. In August 1912, Congress passed an act that created an Alaska Railroad Commission; this was followed two years later by the Alaska Railroad Act, which paved the way for a government-backed railroad connecting the Gulf of Alaska with the Alaskan interior. Sheldon's concerns turned to alarm in April 1915, when President Wilson announced that the route to be followed, from Seward to Fairbanks, would go through the Nenana River Canyon, just east of the magnificent gamelands where he had lived and studied. [4] Worried that a railroad to the area would bring market hunters who would decimate the area's wildlife, Sheldon acted. Five months later, the influential Boone and Crockett Club, of which Sheldon was a longtime officer, formally endorsed a McKinley park proposal.

The park idea, once released to the public, soon captured the imagination of many members of the Eastern elite. But Alaskans, by contrast, were solidly against any bill that promised restrictions against hunting, either by setting bag limits, imposing unreasonably short hunting seasons, or instituting hunting closures over specified geographical areas. The McKinley park bill, realistically speaking, affected only one populated area. But that area—the Kantishna mining district—was well known to Alaska's delegate, James Wickersham (who had reconnoitered the area during his unsuccessful attempt to climb Mount McKinley in 1903), and the park proposal called for much of the Kantishna area to be surrounded by parkland. Wickersham was normally a conservationist; he was familiar with the park's backers and had attended several Boone and Crockett Club dinners over the years. [5] But in order to mollify his Kantishna-area constituents, he demanded that language be inserted into the park bill allowing local prospectors and miners to "take and kill game or birds therein as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly." [6]

Given that language, the McKinley park bill passed the Senate unanimously in 1916 and—largely on the basis of a *National Geographic Magazine* article that appeared the following January—House action quickly followed. What emerged from the legislative battle was the nation's second largest national park. (Only Yellowstone was larger.) But from the point of view of subsistence users, the bill was particularly remarkable because Mount McKinley, unlike any other national park or monument, legalized subsistence hunting, at least under

certain conditions. For more than a decade following the bill's passage, Mount McKinley was the only national park where local hunters legally enjoyed that privilege. [7]

It was clear from the Congressional hearings preceding the park's establishment that the protection of game populations from market hunters was the park's primary goal, and the NPS's management activities during the park's initial years were also clearly focused in that direction. But the agency's work was severely hampered by a lack of money. Although the park bill passed in early 1917, Congress did not vote to authorize operating funds until midway through the 1920-21 fiscal year, and the first NPS representative—Superintendent Henry P. "Harry" Karstens—did not arrive until June 1921. [8] During those intervening four years, the government railroad crept ever closer to the park. Some feared the worst about the effect of that access on game populations; one area visitor noted that "there has been great destruction of game and fur-bearing animals" in the park, while another feared that "the Mt. McKinley Park meat hunters appear to be slaughtering without stint." A Kantishna-based observer, however, flatly stated in a February 1920 letter [quoted verbatim] that these accounts are

> all Pipedream Stories and not founded on facts ... to my knowledge the Scheep are holding their own, the Caribou have incrased enormously ... and the Moose are the only ones that are loosing out, on account of the Cow-killing especially by Indians in the late Winter. The Indian never goes any further then his Belly drives him, when Fish are plenty they never come in in here; but the last 3 years Salmon wher Scarce and the Indians had to get meat. If you want to save the Game, feed the Indians in Fishless Years. [9]

Once on the ground, Karstens—who had lived in the north country for more than twenty years and was locally known as the "Seventy Mile Kid"—was forced to work virtually from scratch. Operating on the most meager of budgets, he and his assistants had to to spend much of their time constructing park buildings—either near McKinley Park Station, at the present-day headquarters complex, along the park road, or at various perimeter locations. The cabins along the perimeter, and along the park road as well, supported extended ranger patrols against market hunters, and by the late 1920s depredations against the park's wildlife were becoming increasingly rare. Rangers recognized, however, that the original park boundaries had failed to include some of the most favorable sheep and caribou habitat. So to better protect the area's megafauna, the park's boundaries were expanded in 1922 and again in 1932. [10]

As noted in the previous chapter, the NPS, on a nationwide basis, had an inimical attitude toward hunters during this period; it was explicitly mentioned in both Secretary Lane's 1918 letter to Director Mather, and was mentioned again in Secretary Work's 1925 letter. [11] That attitude, combined with the clear recognition that much of the early park rangers' effort at Mount McKinley was being expended to combat the depredations of market hunters, did not bode well for the legitimate rights of area subsistence hunters.

Part of the problem, Karstens soon learned, was one of definition. The park's enabling act specifically allowed local residents to "take and kill game or birds therein as may be needed for their actual necessities when short of food," but what was the difference between gathering "actual necessities when short of food" (by prospectors and miners) and poaching (by market hunters and recreational sportsmen)? NPS officials in Washington, in 1921, sent Karstens a series of strongly-worded draft regulations, which empowered park staff to punish violators of the poaching ban with the confiscation of their game and their hunting outfits. They were less helpful, however, in formulating a system that would prevent market hunters and poachers from masquerading as prospectors and miners. Karstens, asked for his opinion on the matter, pushed for a regulation that would allow local miners to feed game meat to

their dogs under hardship conditions, and he also pushed for a special exception for two local Indian groups, who often engaged in springtime hunting in the park because they had exhausted the dried and smoked fish supply laid out the previous summer. The final regulations did not specifically allow for either provision. They did, however, require that prospectors and miners keep tabs of the game that they killed, and on an informal basis, NPS officials let it be known that the local Indians' needs for food was a delicate issue, suggesting that enforcement actions against them be undertaken only under egregious circumstances. [12]

The obvious ambiguities regarding the hunting provision became a headache to Karstens almost as soon as he arrived at the park; conservationists railed about the wanton killing of park game, while those representing the mining constituency propounded opposing arguments. At times, such as when Interior Secretary Work prepared his 1923 report to the president, concern over wanton game killing (justified or not) rose to such heights that proposals were made to repeal the hunting provision. But his recommendation was not backed up by either Congressional action or by a sufficient park budget to hire a sufficient ranger force to terminate poaching and market hunting. (From 1922 to 1924, Karstens and an assistant ranger comprised the entire park staff.) And the difficulty in identifying deserving game users finally forced Karstens to urge a change in the regulation. As he noted in a January 1924 letter,

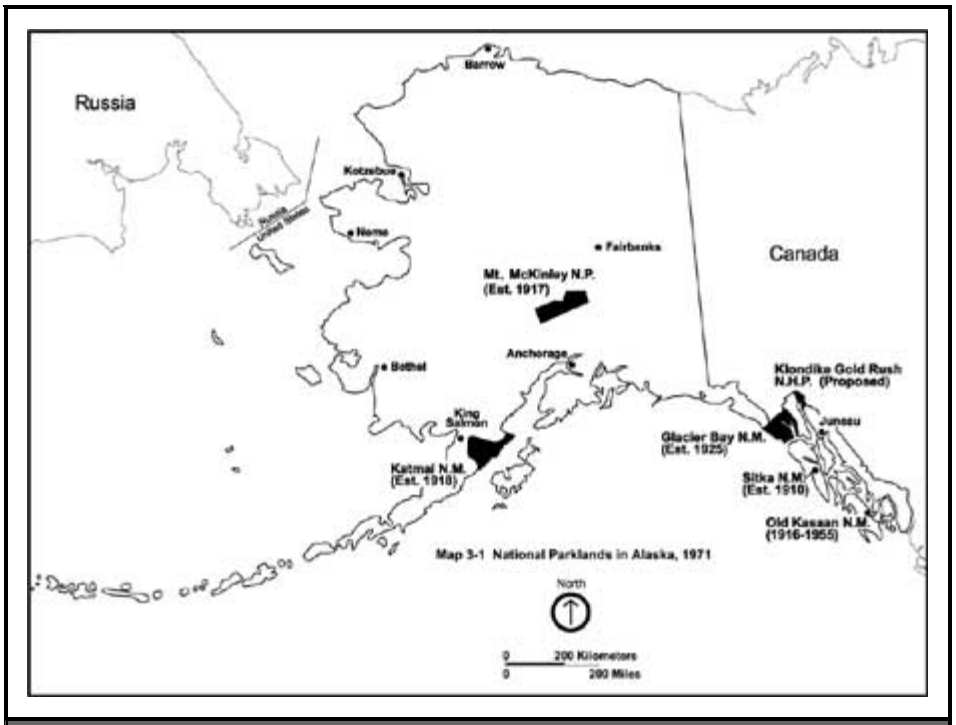
> My recommendation would be to close the park to all hunting. As long as prospectors are allowed to kill game, just as surely will the object of this park be defeated. Any townie can take a pick and pan and go into the park and call himself a prospector. This is often the case. Compromises will not do, for compromises only leave loopholes for further abuse. [13]

Karstens's letter gave further evidence to those who hoped to repeal the hunting provision. Meanwhile, problems continued. A park ranger, for example, cited local resident Jack Donnelly for killing and transporting game from the park, but a local jury, in February 1924, failed to convict him "because of the reluctance of the people ... to convict anyone for illegal hunting." That same month, influential Outside outdoorsman William N. Beach was convicted of illegally killing a sheep in the park after openly boasting of the deed to a Washington NPS official. (He was fined $10 and court costs.) And as late as 1927, Chief Ranger Fritz Nyberg was well aware that there were at least 25 trappers operating along the park's boundaries, "practically all" of whom "have dogs that are fed from caribou and sheep." But neither funds nor cabins were sufficient to patrol the park's boundary and prevent depredations. [14]

Those who, in light of today's attitudes, were genuine park-area subsistence users were treated unevenly when discovered by NPS rangers. So far as the records indicate, no local non-Natives were cited for slaughtering game meat in the park, primarily because rangers, on their patrols, discovered that virtually every person found with a freshly-killed animal claimed to be a prospector or miner. Once, however, Natives were arrested under similar circumstances. On November 15, 1924, a park ranger caught two Nenana men, Enoch John and Titus Bettis, with four freshly-killed sheep within the park boundary. The two men freely admitted their guilt and were "pretty well scared and repentant" to park officials. But they committed their offense because of ignorance: "some of the white men around Healy" had advised them that these hunting grounds were outside of the park, and park officials were also quick to recognize that John's health was poor, his eyesight was failing, and his family's "living conditions were bad and they had very little food in the house." Superintendent Karstens, asked to resolve the matter, simply asked the two Natives to sign an affidavit acknowledging their act, and he also admonished them "to use their good influence with the tribe and tell them they must not hunt in the park." Acting Director Arno Cammerer, upon

receiving Karstens's report, congratulated him on the "excellent manner in which you handled these cases" and that "publishing your disposition of these cases in Healy was good business and will be helpful." [15]

Karstens's January 1924 letter, as it turned out, proved critical in the battle over the fate of the park's controversial hunting provision. The letter, combined with other reports that documented wholesale killing of park wildlife, jolted park protectors into convening the following month and organizing an anti-hunting legislative strategy. That strategy finally bore fruit on May 21, 1928, when Congress repealed the hunting provision. For more than fifty years after the passage of that act, hunting of all types was prohibited in Mount McKinley National Park. [16]



Map 3-1. National Parklands in Alaska, 1971.
(click on image for an enlargement in a new window)

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B. Katmai National Monument

The remote Katmai region of southwestern Alaska, which was little known at the time even to most other Alaskans, became world famous in early June 1912. An Aleutian Range volcano, which was then thought to be Mount Katmai, erupted with such force that it deposited several cubic miles of volcanic ash on the surrounding countryside. Scientists soon recognized that the explosion was one of the largest to be recorded in historic times. In its aftermath, scientists from both the U.S. Geological Survey and the National Geographic Society flocked to the area. A botanist from Ohio State University, Robert Fiske Griggs, headed NGS expeditions to the area during the summers of 1915, 1916, and 1917, and the publicity that followed his discovery of the "Valley of Ten Thousand Smokes" (the "smokes" were fumaroles, or jets of volcanic steam, that emanated from the valley floor west of the eruption site) captivated Interior Department officials to such an extent that President Woodrow Wilson proclaimed the area a national monument in September 1918. [17]

In 1930, Griggs returned to the area—his first trip back since 1919—in order to study plant succession in the Valley of Ten Thousand Smokes. Griggs entered the monument by ascending the Naknek River and by crossing the length of Naknek Lake; and despite the scope of his research, he was not oblivious to the area's remarkable fish and wildlife populations. As Griggs may or may not have known, his visit to the area took place in the midst of a long-running controversy over the protection of the Alaskan brown bear, and game-protection advocates beginning in 1928 had proposed either Admiralty Island or Chichagof Island (both in southeastern Alaska) as national monuments. NPS officials, at the time, were totally incapable of managing their existing national monuments (the agency's 1930 budget for *all* of the country's national monuments was only $46,000), so they had little interest in acquiring a new management area. But they did want to placate the wildlife conservationists, so after Griggs returned from his sojourn that year, Assistant Interior Secretary Ernest Walker Sawyer quizzed him about Katmai's brown bear populations. Sawyer, by his letter, sincerely hoped that Griggs would provide him ammunition that would justify the expansion of Katmai's boundaries so as to include areas of prime brown bear habitat. And to a large extent, Griggs' letter, dated November 22, 1930, did not disappoint; it noted that "the Katmai National Monument is the only place in the world where the great Alaskan brown bear can be preserved for posterity." He outlined a large area of brown bear habitat north, northwest, and northeast of the existing monument, one which, with small alterations, was accepted by Interior Department officials and signed by President Herbert Hoover five months later. Hoover's proclamation, signed April 24, 1931, more than doubled the monument's size; for more than 45 years thereafter, Katmai had more land area than any other NPS unit. [18]

Neither Wilson's nor Hoover's proclamations mentioned any human occupation of the area.

[19] What may not have been widely known, however, was that former Native villages were included in both the original monument and area included in the 1931 expansion. These villages, along with several other longtime area habitation sites, both west of the Aleutian Range and along the Pacific littoral, had been evacuated as a result of the June 1912 eruption. The residents, fearful for their lives, had all moved voluntarily—the coastal inhabitants to Perryville, south of Chignik, and the interior villagers to New Savonoski, near Naknek—but before long, many of these residents yearned for their former homelands. New Savonoski residents, for example, made several attempts to resettle Old Savonoski, their former village, only to quickly recognize the impossibility of doing so because of the suffocating ash layer. [20] NPS officials, who had not yet set foot in the monument, were only vaguely aware of the former villages and had no inkling of any attempted resettlement efforts; had they been apprised of them, they would probably have resisted the Natives' efforts, assuming that the agency's conduct toward Katmai's Natives was similar to the way it had interacted with Natives elsewhere in the country (see Chapter 2).

Because of the area's remoteness—the Russian-era saying "God's in his heaven and the czar is far away" was still applicable here—area residents, both Native and non-Native, continued to use the monument for years after the monument's establishment. Because most of the area within the original (1918) monument was largely overlain by a foot or more of volcanic ash, few alternative uses were available for that land. But between 1918 and 1931, a number of Naknek-area residents began to filter into the area that Hoover would eventually include in the expanded monument. Trappers—some Native, others non-Native—were the most visible users; at least five lived legally in the monument each winter during the years that preceded Hoover's 1931 proclamation. Remote as the area was, the proclamation had no effect on area lifeways, and it was not until 1936 that an Alaska Game Commission officer visited the area and informed NPS officials of area trapping activity. Two years later a General Land Office investigator, A. C. Kinsley, spoke to most of the trappers and determined the legitimacy of their claims. (Those who had settled prior to 1931 were entitled to a claim to their trapping cabins but were not allowed to trap; those who came after 1931 could neither settle nor trap. To trappers, the distinction meant little.) Most moved out soon afterward, but a few had to be forcibly evicted. The onset of World War II diverted federal authorities to more critical wartime pursuits, and by the late 1940s it was discovered that a few trappers had returned to the monument. Those, however, were quickly routed, and by 1950 (when active, staffed management of the monument began) the problem had vanished. [21]

Reindeer herders, a primarily Native occupation that had been active since the 1890s, constituted a second group that moved into the monument during this period. According to Mount McKinley Superintendent Frank Been, who visited the park for several weeks in 1940, a herd of 10,000 reindeer had been brought "to the vicinity of the Naknek River ... sometime within the past 10 years," and that a portion of that herd "could graze into the north west corner of the park"—that is, in the area west of Lake Coville and north of Naknek Lake. At least one reindeer station was established in the monument at this time; it was located on Northwest Arm, near the northwestern end of Naknek Lake. This group left of its own accord prior to any intervention by NPS or other government officials. [22]

During the 1920s and 1930s, a number of local Native residents made annual hunting pilgrimages from either New Savonoski or South Naknek to the Savonoski River valley. (This valley was primarily outside the monument during the 1920s but was within its boundaries after April 1931.) Throughout this period these expeditions were scarcely noticed by the authorities, but when permission was asked to continue the practice, the NPS issued a denial and in 1939 the hunts came to a halt. [23]

Area Natives also carried on subsistence fishing activities in the monument. Louis Corbley, the Mount McKinley ranger who flew over the monument in 1937, landed at both Lake

Brooks and "Old Village" (Old Savonoski, which had been abandoned since 1912), and in early September 1940, Superintendent Frank Been visited both Savonoski village and the two-cabin "fishing village" at the mouth of Brooks River. At the latter site, Been observed Native fishing activities—gill netting and fish drying on racks—and he also spoke at length with "One-Arm Nick" Melgenak, the "Native chief at New Savonoski." (As later testimony made clear, Melgenak and his family had made an annual trek to the site since 1924 if not before.) Been, who was accompanied by Fred Lucas, the Naknek-based U.S. Bureau of Fisheries agent, learned that the fish were "dried for dog food and for the Indian, who uses the fish for food, especially when money for white man's food runs low." He also learned that "the law permits taking salmon that are to be used for dog food, or food for the one who catches them. The salmon may be caught at any time and any place if the catch is to be used for dog food even though the product is for sales as dog food." Lucas estimated that 150,000 salmon spawned in either Brooks Lake or Brooks River, and although Natives harvested fewer than 10,000 of them, he "deplored the take of these fertile salmon because they were caught before they had deposited their eggs." [24]

So far as is known, the Melgenak family and other area Natives continued to visit the Brooks River mouth to harvest salmon each year during the 1940s. But in 1950, Northern Consolidated Airlines established a sport fishing camp nearby. Soon afterward, area Natives began to delay their arrival at the site until after the camp had closed for the season. Testimony collected during the 1980s consistently indicates that Natives arrived each year during the 1950s, but beginning about 1960 their visits became less frequent. [25] (They may also have harvested fish at other monument locations, but the NPS's presence at the monument during this period was so limited that the two groups rarely encountered one another away from Brooks Camp.) It was not until 1969 that the monument had become an independently-managed entity; by that time, Native fishing trips into the monument had all but ceased. [26]

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SUBSISTENCE IN ALASKA'S PARKS, 1910-1971 (continued)

C. Glacier Bay National Monument

Glacier Bay National Monument, in southeastern Alaska, has witnessed a more long-standing, contentious controversy over subsistence rights than any other Alaska park unit. The Tlingit and Haida peoples who traditionally populated southeastern Alaska were the first to be impacted by commercial fishing and other U.S.-based economic development activities; perhaps for that reason, it is not surprising that these Native groups were also the first to organize themselves, economically and politically. By the time Glacier Bay National Monument was proclaimed by President Calvin Coolidge, in February 1925, southeastern Natives had been living and interacting with U.S.-based migrants for more than fifty years, and they had been interacting with European-based peoples for well over a century. This long exposure, combined with the complex, powerful culture that southeastern Natives had enjoyed prior to European contact, suggests—at least in hindsight—that neither the National Park Service nor any other governmental agency would be able to unduly restrict the Natives' lifestyle without vociferous protest.

As Ted Catton's park administrative history indicates, the 1925 monument proclamation was the direct result of a campaign orchestrated by the Ecological Society of America, and more specifically by ecologist William S. Cooper and botanist Robert F. Griggs. When these two men first floated the monument idea, they were unaware of any Native issues related to land rights or ownership; citing the oft-used "worthless lands argument," [27] they assured the skeptical that the establishment of a monument would not impair economic growth because the area was economically useless. Before long, mining interests and homesteaders—both of which were locally active—came forth to denounce the proposal, and on the basis of utilitarian concerns (which included a few small Native allotments near the bay's mouth), the proposed area was substantially reduced. Coolidge's proclamation, signed February 26, 1925, made no mention of any Native connection to the area; the only cited evidence of a cultural context was that the monument had a "historic interest, having been visited by explorers and scientists since the early voyages of Vancouver in 1794, who have left valuable records of such visits and explorations." No attempt was made to extinguish any of the Native allotments prior to the issuance of Coolidge's proclamation. [28]

Because the new park unit remained unstaffed for years after its establishment, the agency had no way of knowing if area Natives (or non-Natives, for that matter) used the newly-withdrawn area for subsistence activities. But from the monument's inception, the agency intended to keep such uses away from the monument. Using a paradoxical argument that must have confounded local residents, the NPS prohibited the use of "firearms, traps, seines, and nets" in the monument without a custodian's permission, but the agency assigned no monument custodian from whom permission could be sought. Despite that prohibition, a number of Tlingits residing in Hoonah asked a Bureau of Indian Affairs official about

hunting and carrying firearms in the monument; and a few months later, more than 150 Hoonah residents petitioned Alaska delegate Tony Dimond to allow hair seal hunting in the monument. These two actions took place in the spring and summer of 1937, some two years before the monument's boundaries were expanded to include all of Glacier Bay's waters. [29] Notably, however, neither action was forwarded to NPS or other Interior Department officials, and the lack of such action prevented Native use patterns from being taken into account during the period in which the monument expansion was being proposed.

In April 1939, President Roosevelt more than doubled the size of Glacier Bay National Monument, and within a few months administration officials became aware of how much Hoonah-area Tlingits used the newly-acquired monument lands. (The NPS had been told that "various officials or families among the Indians" claimed small tracts of newly-proclaimed monument land, but the agency felt that they were primarily of individual rather than tribal interest.) The BIA, which was not consulted prior to Roosevelt's action, loudly protested the monument expansion and defended the Hoonahs' continued use of Glacier Bay resources. The NPS responded by dispatching Mount McKinley Superintendent Frank Been to Hoonah that August, and in October 1939 the two agencies met and agreed to allow the Natives "normal use" of the monument's wildlife. This allowance included hunting (of both terrestrial and marine animals), trapping, and gull egg collecting. [30] In the eyes of NPS officials, however, this agreement was of an interim nature; as agency director Arno Cammerer noted in a December 1939 letter to Frank Been, "It is our intention to permit the Indians to take hair seals and to collect gull eggs and berries as they have done in the past, until a definite wildlife policy can be determined." [31]

Although they continued to honor the October 1939 agreement, NPS officials made no secret that they were uncomfortable with some of its ramifications; namely, it undermined their agency's authority, and it gave Native residents (who were allowed to hunt, trap, and gather in the monument) rights and privileges that were not extended to non-Native residents. For those reasons, the agency began looking for ways to rescind the agreement as early as 1940. Owing to the slashed budgets that World War II brought, however, nothing was done for the time being. But in 1944 the NPS arranged for the Fish and Wildlife Service to begin patrolling monument waters. (They did so because the fisheries agency, unlike the NPS, was financially and logistically able to enforce federal regulations there.) Hoonah residents were soon warned to cease trapping and seal hunting in Glacier Bay, and a year later, an F&WS warden arrested "three or four" Natives for hunting and trapping in the monument.

During this same period, the BIA was undertaking a nationwide investigation of Native land claims, and as part of that effort the Interior Department delegated a study of the Tlingits' rights in southeastern Alaska to attorney Theodore H. Haas and anthropologist Walter R. Goldschmidt. Of particular interest to the NPS, the two men attempted to clarify areas in the monument where Tlingits could claim possessory rights. Their report, released in the fall of 1946, concluded that the Tlingits' claims extended over large parts of Glacier Bay, Dundas Bay, and Excursion Inlet, all of which were included in the monument. The publication of that report brought BIA and NPS officials together again to work out an updated agreement. That meeting took place in December 1946, during a time of economic duress on the Hoonahs' part. The agreement worked out that day gave the Hoonahs the right—for four years only—to hunt hair seals, carry firearms, and hunt berries in the monument. [32]

For years after that agreement was forged, the Hoonahs walked a tightrope between their moral claim to the area, based on historical use and cultural ties, and the agency's longtime prohibitions against hunting. The NPS's regional director, for example, laid the groundwork to prevent the pact's renewal as early as 1947; biologist Lowell Sumner, after a ten-day visit that June, wrote a report questioning the legitimacy of the Hoonahs' seal hunting practices. (Specifically, Sumner noted the Hoonahs' recent increase in the seal harvest and the overtly

commercial nature of that harvest; "the natives today have forsaken their ancestral way of life," he intoned. Based on that perception, he decried the apparent decline in the bay's seal population in light of the Natives' new hunting practices. He also urged the prohibition of seal hunting in various portions of the bay that had been glaciated in 1890. [33]) A visit to Hoonah in 1948 by Assistant Interior Secretary William Warne tipped the scales back in favor of the Natives, but the NPS, in the spring of 1950, countered by assigning a seasonal ranger, Duane Jacobs, to Glacier Bay. (The agency had been trying to establish a presence at the monument for several years, but other budgetary priorities had intervened.) Jacobs's marching orders were to "visit the area this summer, view the situation, and bring forth a factual study report as to the protection needs of the area." [34] In his concluding report that fall, Jacobs noted that "widespread evidence of poaching [of various animal species] was found," and that "the greater part of this poaching can properly be charged against the native population ... which centers in and around Hoonah...." He was careful to note that that not all of the Indians were violators and that not all of the Hoonahs' game violations were occurring in Glacier Bay, and he further noted that the existing state of affairs stemmed largely from a lack of previous enforcement efforts. To reduce the poaching problem, Jacobs urged the establishment of "a small force of rangers, well equipped and extremely mobile," and he "strongly recommended that the agreement allowing natives to hunt seals in monument waters be cancelled." Despite those recommendations, however, the monument's ranger force remained small throughout the 1950s. And regarding DOI's four-year seal-hunting agreement, the December 1950 deadline came and went without incident, and the 1946 agreement lapsed. [35]

During the next few years, the seal hunting issue was not a high NPS priority; few overt conflicts took place between the Hoonahs and agency rangers, which led the agency to assume that Native use of the bay was minimal and fading. When the issue arose again at a meeting in early 1954, all parties—the NPS, F&WS, BIA and the Hoonahs—all agreed that the "continued use" of Glacier Bay resources by Hoonah Natives was a "fair and logical solution to the problem." The various officials agreed in principle to renew the 1946 agreement, with an added proviso that local seal hunters be required to obtain permits. That agreement was renewed, largely without changes, in 1956, 1958, 1960, and 1962. [36]

In 1963, the context of Native seal hunting in the monument began to dramatically change. These seals had long been hunted in many Alaskan coastal areas, by both Natives and non-Natives, and because the animals' diet consisted at least partially of salmon, the territory had awarded a bounty to seal hunters ever since 1927. The bounty, however, was seldom sufficient to warrant harvesting for that reason alone, and seal harvesting remained at a fairly low level. But beginning in the fall of 1962, the overharvesting of seals in the North Atlantic and Arctic oceans—the areas that had traditionally supplied the commercial seal market—resulted in a new wave of interest in Alaskan harbor seal (hair seal) pelts, and the increasing value of seal pelts caused many to significantly augment their harbor seal harvesting activities. From 1963 to 1966, a record number of seals were harvested throughout Alaska, by both Natives and non-Natives. After the mid-1960s, harvests abated somewhat, but widespread harvesting continued in Alaska until 1972, when the Congressional passage of the Marine Mammal Protection Act prohibited non-Natives from taking seals, whales, polar bears, sea otters, and other marine mammals. [37]

It was within the context of the newly "discovered" harbor seal market that two Glacier Bay rangers, in March 1964, encountered a Hoonah encampment on Garforth Island, a small island in the bay just west of Mount Wright. The abandoned camp, which had been used by two seal hunters the previous summer, bore unmistakable evidence that a large herd of seals —some 243, by the rangers' count—had been harvested. The ranger, appalled by the sight of so many rotting corpses, was well aware that the practice was legal; even so, he declared that "this type of shooting has no place in a National Monument." Soon afterward, he learned that

another hunter had recently taken 300 seals from the bay. Guessing that the bay's total seal population was 800 to 1,000 strong, he rued that "there are no bag limits, no closed season, and no closed area to protect this population ... Under present agreement this entire herd could be wiped out if the natives so desire." [38]

The increased seal take caused NPS officials—none of whom had been on staff when the previous (1939, 1946, or 1954) agreements had been signed—to reassess the legitimacy of seal hunting in Glacier Bay. Those who dictated park policy during the mid-1960s took a hard line against seal hunting, at least in their public statements; they asserted that the earlier agreements had been forged to help the Hoonahs through the critical period following World War II, and the monument's latest master plan (completed in 1957) had stated that Native seal hunting would be "reduced and eliminated within a reasonable period of time." NPS officials, however, fully recognized that many Hoonahs were small-scale subsistence users. They were also aware that the only local residents who were making a significant impact on the monument's seal populations were a few large-scale seal hunters, who openly declared their interest in harvesting solely for the monetary rewards brought by hides and bounty. Faced with the impossibility of sanctioning the activities of one group while prohibiting those of another, and charged by Congress with protecting the park "and the wild life therein" (as noted in the NPS's 1916 Organic Act), agency officials had little choice but to push for a termination of the seal-hunting agreement that had been in place, in one form or another, since 1939. Given the agency's quandary, it was perhaps beneficial to all of the involved parties that interest in the subject declined during the waning years of the 1960s. In part, this state of affairs was attributable to a decline in the number of seal hunting permits, and it was also because NPS officials in Washington told park staff to let the issue subside. [39]

Local Natives, despite the lack of a currently-functioning agreement, continued to hunt seals in the monument. But the vexing issue was by no means resolved, and the uncertainty surrounding it would hang over the heads of both seal hunters and park staff until well after the December 1971 passage of the Alaska Native Claims Settlement Act. How the issue was handled during the 1970s is discussed in Chapter 4; more recent activities surrounding this issue are discussed in chapters 6 and 8.

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Alaska Subsistence

A National Park Service Management History

Chapter 3:
SUBSISTENCE IN ALASKA'S PARKS, 1910-1971 (continued)

D. The Alaska Native Cultural Center Proposal

The National Park Service had no Alaska presence outside of the various parks and monuments throughout the territorial period and for the first several years of statehood. But in November 1964, newly-appointed NPS Director George Hartzog appointed a special task force to prepare an analysis of "the best remaining possibilities for the service in Alaska," and two months later, the group produced *Operation Great Land*, a bold blueprint of potential agency activities. Among its many recommendations, the report identified thirty-nine Alaska zones or sites that contained outstanding recreational, natural, or historical values, and it also called for the establishment of an Alaska-based office. In response, the agency established the Alaska Field Office, located in Anchorage. The office, opened in April 1965, was minimally staffed; it seldom consisted of more than a biologist, a planner, and a secretary. The staff worked under the direction of the Mount McKinley National Park Superintendent. [40]

In October 1967, the potential for an enhanced level of agency activity arose when NPS Director Hartzog, along with Assistant Director Theodor Swem, were invited to meet with Governor Walter Hickel in Juneau. At this meeting, which had been arranged by Federal Field Committee for Development Planning in Alaska chairman Joseph Fitzgerald, the two NPS officials floated various park proposals. [41]

In addition, Hickel—at the behest of Congresswoman Julia Butler Hansen (D-Wash.), who had just returned from an Alaskan vacation—was presented with the "Native Cultural Centers" idea. This concept envisioned that the National Park Service would assist in

> the development of places where Alaska visitors can see examples of native culture in appropriate settings and, through meeting and talking with natives, can gain greater understanding and appreciation for those who have inhabited this strange, hostile land for centuries. [42]

The beneficiaries of this idea, however, would by no means be limited to tourists. Natives, and Native communities, were recognized as being in the midst of a rapid transformation between traditional and modern ways, and traditional occupations, housing styles, and other cultural elements were being cast aside as Natives—particularly in western and northern Alaska—attempted to cope with those changes. The NPS hoped that the establishment of various cultural centers might serve as cultural touchstones, where Natives across the state would learn about their own traditional culture. [43]

The NPS's San Francisco Service Center responded to the Juneau meeting by designating a three-person team to travel to selected sites in "native Alaska." That four-week trip, taken in May and June 1968, was intended to investigate not only the cultural center idea but to

"examine the present state of preservation among the native villages and recommend courses of historic preservation which could result in greater understanding and appreciation of the native cultures by visitors and the native Alaskans themselves." The trio visited several of Alaska's largest population centers, including Barrow, Kotzebue, Nome, Juneau, Wrangell, Ketchikan, Fairbanks, and Anchorage. The team also visited six Eskimo (Inupiat) villages, two Siberian Yup'ik villages, and two Athapaskan villages. It made no attempt to visit any Central Yup'ik villages, and it opted not to focus on Aleut culture because the Aleuts "retain very few of the old cultural traditions." [44]

The team's report, written shortly after its return to San Francisco, was quick to point out that "It is not a foregone conclusion that the National Park Service is the most logical agency to spearhead this study, or to 'carry the ball' on the cultural center concept. But a first step must be taken by someone if the goal of cultural preservation is to be achieved." Having said that, the team recommended the establishment of three centers, all located "near the larger cities and readily accessible to the tourists": an Eskimo Native Culture Center in Nome, an Athapascan Native Culture Center in Fairbanks, and Southeast Coastal Indian Culture Center in Ketchikan. Regarding preservation, the report recommended that "some of the most representative native villages" be designated National Historic Landmarks "to give them proper recognition and encourage local preservation efforts." Finally, it recommended that Congress designate a commission "to investigate establishment of cultural centers and their effect on the state and the nation." The commission would be composed of representatives from a variety of federal and state agencies, native groups, and tourism organizations. [45]

It is difficult to ascertain the immediate reaction to the issuance of this report, but it had little practical effect. During the next few years, no one—neither the NPS, Native groups, nor tourism organizations—stepped up to adopt any of the report's recommendations. The report, however, was nevertheless valuable because it signaled the NPS's interest in Native preservation issues, both in the identification and analysis of structural preservation (which had been the NPS's traditional role, as evidenced by Sitka and Old Kasaan National Monuments) but in broader cultural preservation issues as well. The agency stepped gingerly into the latter theme and made it clearly known that resolving such issues was best handled by Native groups themselves, but the agency's concern over the loss of traditional cultural elements motivated the agency to both present the issue to a broader public and suggest possible solutions.

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
THE ALASKA LANDS QUESTION, 1971-1980

A. Congress Passes a Native Claims Settlement Bill

As noted in Chapter 1, Alaska's Native peoples, by and large, had rejected the traditional reservation system that had predominated in other U.S. states. Lacking that land base, these groups, over the years, had pressed the U.S. Congress for a bill that would provide legal rights to their traditional use lands. The Federal government, however, never showed much inclination to respond to Natives' needs; the closest it had come to doing so had been in during the 1940s, when Interior Secretary Harold Ickes had implemented a series of "IRA reservations," so named because they were authorized by amendments to the 1934 Indian Reorganization Act. Those reservations, however, proved to be of limited value and most were of short duration; and as the decade of the 1960s dawned, the only lands specifically allotted to Alaska Natives were a smattering of 160-acre parcels (that had been granted by the 1906 Allotment Act) and such individual parcels as Natives had been able to acquire. [1] Except for the Metlakatla reservation near Ketchikan, Alaska Natives owned virtually no communal land. This state of affairs, to be sure, was not perceived as a critical problem during the first half of the twentieth century; as late as 1960, non-Natives had little continuing interest in the vast majority of Alaska's land base, and conflicts over ownership and resource use were small in scope and generated little heat in the public policy arena.

A series of events beginning in the mid-1960s brought increased pressure for a Native land claims bill. The first major event, necessitated by Natives' ire over state land selections, was Interior Secretary Stewart Udall's land freeze, which was carried out in stages beginning in 1966. The formation of the Alaska Federation of Natives during the winter of 1966-67 helped crystallize support for a land claims bill. But what really created momentum for a Native claims bill was the Prudhoe Bay oil strike, along with the concomitant recognition that the North Slope's "black gold" would be valueless if a way could not be built to carry the oil to Outside markets; and the Interior Department refused to allow the construction of a pipeline unless the Native claims issue was addressed. [2]

Because Natives claimed rights to lands throughout Alaska, the net effect of each of these actions was to increase pressure for Natives to consummate a lands settlement, and a major byproduct of that increasing pressure was that each proposal that purported to resolve the issue resulted in an increasing number of acres for Native ownership and use. One of the first Native claim proposals, for instance, was a 1963 Interior Department plan that would have granted 160-acre tracts to individuals for homes, fish camps, and hunting sites, along with "small acreages" for village growth. (As noted in Chapter 1, the Native Allotment Act, passed sixty years earlier, had already granted Natives the right to obtain 160-acre parcels if they could prove use and occupancy.) One subsequent proposal called for the creation of a 20-square-mile (i.e., 12,800-acre) reservation surrounding each Native village, while another, somewhat later proposal suggested a 50,000-acre grant to each village along with a small cash payment to village residents. [3]

Congress made its first attempt to solve the native land claims issue in June 1967 when Senator Ernest Gruening, at the request of the Interior Department, introduced S. 1964, which would have authorized a maximum of 50,000 acres in trust for each Native village. Native rights leaders were vociferously opposed to S. 1964—Emil Notti stated that it was "in no way fair to the Native people of Alaska." So just ten days later, both Gruening and Rep. Howard Pollock (D-Alaska) submitted bills (S. 2020 and H.R. 11164, respectively) on behalf of the Alaska Federation of Natives. These bills were intended to confer jurisdiction upon the Court of Claims regarding Alaska Natives' land claims. Later that year, Edward "Bob" Bartlett, Alaska's other U.S. Senator, submitted his own bill (S. 2690) pertaining to the land claims issue. All four bills were brief and none were extensively debated, although they did serve as a vehicle for further discussions. [4]

By January 1968, a land claims task force appointed by Governor Walter Hickel recommended that Native villages be granted a total of 40 million acres and that cash payments be provided which, under specified conditions, would total more than $100 million. Later that year, the Federal Field Committee for Development Planning in Alaska issued a report, entitled *Alaska Natives and the Land*, that recommended a land grant of from four to seven million acres plus a cash grant of $100 million and 10 percent of public lands mineral royalties; shortly afterward, the Interior Department countered with a proposal to provide 12.5 million acres and $500 million. [5] The Natives soon weighed in with their own proposal, which included 40 million acres and $500 million; in addition, it called for the creation of twelve regional Native corporations that would manage the land and money received in the settlement. But no one in a position of power advocated extensive Native land grants; Senator Henry Jackson (D-Wash.) stated that "The last thing that I think we want is tremendous land grants, resulting in large, idle enclaves of land," while another Senate Interior Committee member, Clinton Anderson (D-N.M.) asked, "If all the people who claimed aboriginal title were granted land, there would not be enough for the rest of us, would there?" As in 1967, none of the land-claims settlement bills submitted in either Congressional chamber received so much as a committee hearing. [6]

Up until this time, the various legislative proposals did not include land in southeastern Alaska. But as noted in Chapter 1, a January 1969 Court of Claims decision awarded the Tlingit and Haida plaintiffs money and land in a case that had first been filed back in 1935. Despite that award, however, the court had decreed that Indian title had not been extinguished to more than 2.6 million acres of land in Alaska's southeast. As a result, Natives in southeastern Alaska joined their colleagues elsewhere in the state to push for an equitable lands settlement.

Early in 1969, Congress began sorting through the various proposals, and the Senate Interior Committee attempted to work out an acceptable bill that fall. Bickering within the committee, and occasional leaks to the press of the Committee's negotiations, effectively prevented progress for several months. Then, in April 1970, a Federal judge halted all work on the proposed pipeline until the native claims issue could be worked out (see Chapter 1); as a result, various oil companies joined the chorus of those pushing for a viable Native claims bill. Within a week, the Senate Interior Committee reported a bill out, which called for $1 billion in compensation plus 40 million acres of land surrounding the villages. That bill, S. 1830, passed the Senate in July 1970, but the House did not act. The bill died with the adjournment that fall of the 91st Congress. [7]

Early in 1971, the prospects for a bill looked bleak. But in April, President Richard Nixon presented a special message to Congress that called for a 40 million-acre land entitlement and a $1 billion compensation package; that same month, Chairman Henry Jackson of the Senate Interior Committee submitted a revised bill (S. 35) that was co-sponsored by Alaska's two newly-minted senators, Mike Gravel and Ted Stevens. Attention then shifted to a House

subcommittee, which reported out its version of a bill in early August, and on October 20 the entire House passed a land claims bill (H. 10367). In early November, the Senate overwhelmingly passed a bill that differed significantly from the House's version. The House-Senate conference committee sifted through these differences and reported out compromise legislation in early December. That compromise, which called for a $962.5 million cash payment, a 40 million-acre land conveyance, and numerous other provisions, was passed by both legislative bodies. President Nixon signed the Alaska Native Claims Settlement Act (ANCSA) on December 18, 1971. [8]



Alaska's two U.S. Senators during the 1970s were Mike Gravel (left) and Ted Stevens. ADN

Alaska Natives were hopeful that that any land settlement bill that passed Congress would contain language that would provide not only land ownership but also legal protection for the Natives' continued use of the public lands. This provision was necessary because, as *Alaska Natives and the Land* had made clear, Alaska Natives needed far more land for their traditional uses than simple land grants could provide. To provide for this need, the earliest land-settlement bills—S. 1964, introduced in mid-June 1967—included the first tentative attempt to legislate protections for continued Native access and use. Section 3(e) of the brief bill stated, in part, that

> The Secretary of the Interior may ... issue to natives exclusive or nonexclusive permits, for twenty-five years or less, to use for hunting, fishing, and trapping purposes any lands in Alaska that are owned by the United States without thereby acquiring any privilege other than those stated in the permits. Any patents or leases hereafter issued in such areas ... may contain a reservation to the United States of the right to issue such permits and to renew them for an additional term of not to exceed twenty-five years in the discretion of the Secretary. [9]

The other three bills submitted that year contained no such protection. By the following year, however, Secretary Udall's land freeze had been in effect for over a year, and optimism about the Prudhoe Bay oil strike was quickly spreading. Perhaps in response, all three of the land-settlement bills introduced in 1968 addressed the issue of "aboriginal use and occupancy." S. 2906, introduced on February 1, stated that "The Natives of Alaska may continue to use or occupy, for hunting, fishing, and trapping purposes, and for any other aboriginal use any

lands that are owned by the United States." But H.R. 15049, introduced the same day by Rep. Howard Pollock, made no such sweeping provision; it stated only that the Interior Secretary could grant lands outside the state's various Native villages "if he finds that such additional grant is warranted by the economic needs of the native group or his determination that the native group has not received a reasonably fair and equitable portion of the lands settled upon all native groups and granted by this Act." A third bill (S. 3859), submitted by Sen. Gruening in July 1968, was similar to the plan described in S. 1964 a year earlier; it gave the Interior Secretary the ability to "issue permits to Natives in Alaska giving them the exclusive privilege for not more than fifty years from the date of this Act to hunt, fish, trap, and pick berries ... on any land in Alaska that is owned by the United States. Such use shall not preclude other uses of the land, and shall terminate if the land is patented or leased." None of these bills advanced beyond the committee stage. [10]

On April 15, 1969, the Senate Committee on Interior and Insular Affairs broke new ground when it submitted S. 1830, the "Alaska Native Claims Settlement Act of 1969." S. 1830, among its other provisions, introduced the term "subsistence" to the legislative lexicon. [11] Section 13 of the bill, which addressed the "Protection of Subsistence Resources," stated that the Interior Secretary

> shall, after a public hearing, ... determine whether or not an emergency exists with respect to the depletion of subsistence biotic resources in any given area of the State and may thereupon delimit and declare that such area will be closed to entry for hunting, fishing, or trapping, except by residents of such area ... The closing authorized by this section shall not be for a period of more than three years, and may be extended by the Secretary after hearing, and a published finding that the emergency continues to exist. [12]

This bill (both its subsistence provisions and other elements) was considerably revised and expanded over the following year. [13] As noted above, S. 1830 passed the Senate in July 1970 but, owing to inaction in the House, it did not become law.

During the next few months, additional effort was expended toward perfecting the bill's subsistence provisions, so by the time the Interior Department introduced a new land claims bill the following January (S. 35), the subsistence title (Section 21) had doubled in length. It continued, with some modifications, the provisions contained within S. 1830. In addition, it gave the Interior Secretary the power "to classify ... public lands surrounding any or all of the Native Villages ... as Subsistence Use Units," and it was those units that the Interior Secretary was empowered to close if, as noted above, "subsistence biotic resources" became depleted. According to longtime AFN attorney Donald Mitchell, the subsistence section in S. 35 "wasn't particularly friendly toward Native interests" and was not the product of any AFN officials. He averred that its probable author was David Hickok, a staff member on the Federal Field Committee for Development Planning in Alaska. [14]

As S. 35 made its way through the legislative process that year, its subsistence provisions became further refined, and by October 1971 a four-page subsistence title had emerged. It included provisions for both subsistence units and for closure of such units if necessary, as the January iteration of the bill had delineated. In addition, it specified that the various Native villages described in the Act "shall designate the areas ... which (A) historically have been used for subsistence purposes by their members, and (B) still are necessary, desirable and in use for such purposes." The Alaska Native Commission, which would be created by the Act, was empowered to determine the amount of these "subsistence use permit lands" for each village; the total amount of these lands for all villages would be 20,000,000 acres. The title further stated that "five years after the issuance of each subsistence use permit, and every five years thereafter, the Secretary shall review the question of whether the area still is being use

for subsistence purposes. If the Secretary finds ... that the area is not being so used in whole or in part, he shall terminate the permit with respect to the unused lands." As in the January version of S. 35, Natives were not consulted on any of the language contained in Section 21. [15]

These subsistence provisions were included in the bill that passed the Senate in early November. But the House-passed bill omitted any such provisions, primarily because Wayne Aspinall (D-Colo.), the head of the House Interior Committee, felt that existing law was sufficient to provide these protections. When the House-Senate conference committee met to iron out the differences between the two bills, the powerful Aspinall prevailed on the Senate conferees to accept the House bill as it pertained to the all-important subjects of land and money. (It did so despite two last-minute appeals to the contrary by the Alaska Federation of Natives.) The remaining, "B-List" sections of the bill—that dealt with subsistence and other management issues—were referred by Senator Alan Bible (D-Nev.) to Alaska's Congressional delegation for resolution. These issues were decided, to a large extent, at a meeting in Senator Stevens's office on Saturday, December 4. Meeting attendees included the state's Congressional delegation (Rep. Nick Begich and senators Ted Stevens and Mike Gravel), along with Alaska Governor William A. Egan and Attorney General John Havelock. No Alaska Natives were present. A memorandum that was prepared after that meeting recommended that no subsistence provisions should be included in the bill reported by the conference committee. The conference, in turn, accepted that recommendation. Natives, upon hearing the news of what had transpired at the weekend meeting, were outraged at being excluded and were similarly chagrined at many of the group's conclusions. They were not, however, angry at the lack of a subsistence provision. Subsistence, at the time, was "not a political issue," and conflicts over subsistence resources on Alaska's public lands were few and far between. [16]

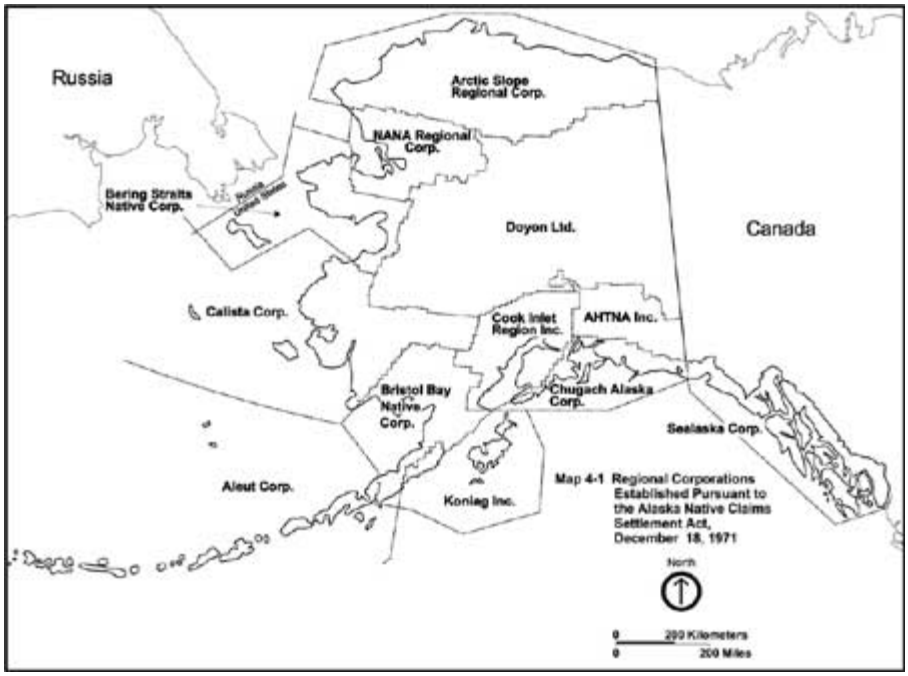
Although the bill, as signed into law, lacked a specific subsistence provision, the conference report accompanying the bill expressly stated that the bill protected Native subsistence users. A section of the report that was probably written by David Hickok noted the following:

> The conference committee, after careful consideration believes that all Native interest in subsistence resource lands can and will be protected by the secretary through the exercise of his existing withdrawal authority. The secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these land are in short supply or otherwise threatened. The conference committee expects both the secretary and the state to take any action necessary to protect the subsistence needs of the Natives. [17]

Alaska conservationists, who had become increasingly active during the 1960s, were concerned when they heard about the large amounts of acreage that were being considered as part of the various Native claims settlement bills. (This concern had been growing ever since State land selections had begun a decade earlier.) Conservationists' concerns, which were also shared by officials in the various Federal land management agencies, resulted in pressure to include a special lands provision in any Native claims bill that emerged from Congress. This provision, its proponents hoped, would call for a survey and evaluation of the Alaska's federal lands for parklands, wildlife refuges, and other "national interest" lands. [18] The head of the influential Federal Field Committee for Development Planning in Alaska, Joseph Fitzgerald, recognized as early as 1966 that planning for a multifaceted "park complex" would be central to any Native claims settlement, and Fitzgerald assigned David Hickok, a member of his staff, to work with Congressional leaders on a national interest lands provision that would be included in Native claims legislation.

Federal land management officials, during this period, were also active in the planning arena. The Interior Department, in accordance with the Multiple Use and Classification Act of 1964, was charged with reviewing its lands to determine which should be disposed of and which should be retained under multiple use management, and by the late 1960s the Bureau of Land Management had completed a classification scheme in the Iliamna Lake area. [19] The National Park Service, for its part, had been planning for potential Alaska parklands since the fall of 1964. By the late 1960s it had already completed a number of initial planning studies, and provisions for park planning had gained a more broad-based legitimacy through the efforts of Interior Secretary Walter Hickel's Alaska Parks and Monuments Advisory Commission and the Federal Field Committee for Development Planning in Alaska. [20]

Legislative efforts to include a national interest lands provision had begun early. Such a provision was included in S. 1830 (which the Senate had passed in 1970), and due to pressure from conservationists, it was also included in various bills that the Senate Interior and Insular Affairs Committee considered in 1971. On the House side, conservation-minded representatives John Saylor (R-Pa.) and Morris Udall (D-Ariz.) had announced in May that they intended to introduce an interest lands provision, but due to lobbying by Natives, the State of Alaska, the oil industry, and administration officials, an amendment calling for a national interest provision was defeated in both the House Interior and Insular Affairs Committee and the full House. But Alan Bible (D-Nev.), a member of the Senate Interior and Insular Affairs Committee, vowed to fight for a national interest lands provision, and when he introduced such an amendment on the Senate floor on November 1, the Senate regarded it as non-controversial and handily accepted it. In the House-Senate conference committee, the interest lands provisions was considered on December 9, and the conferees readily agreed to the provision—specifically, a provision that would give the Interior Secretary authority to withdraw up to 80 million acres, to be studied for possible inclusion to either the national park, wildlife refuge, wild and scenic river, or national forest systems. [21] This provision, known as the "d-2" provision because it was located in Section 17 (d) (2) of ANCSA, was the fundamental engine that drove NPS planning in Alaska for the remainder of the decade.



Map 4-1. Regional Corporations Established Pursuant to the Alaska Native Claims Settlement Act, December 18, 1971.
(click on image for an enlargement in a new window)

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
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(continued)

B. The Interior Department Begins Planning for New Parks

The National Park Service, which managed less than seven million acres of Alaska land in December 1971, reacted to ANCSA's passage by commencing an immediate, whirlwind effort to identify and evaluate lands for consideration as National Park System units. On December 21, just three days after the bill signing, Director George Hartzog assigned Theodor Swem, the agency's Assistant Director for Cooperative Activities, to coordinate the agency's Alaska effort; six days later, Swem requested the assistance of Richard Stenmark of the Alaska Group Office in Anchorage in identifying and evaluating proposed withdrawal areas. [22] The NPS and other land management agencies acted quickly because they had to: according to the timetable laid out in ANCSA, they had just 90 days to make a preliminary withdrawal of d-2 lands and nine months to issue a final withdrawal order. Given that timetable, agency officials hurriedly compiled what meager resources they had on Alaska's outstanding natural and cultural areas; they then began assembling an ad hoc planning team that was intended to provide information and guidance about potential parklands—either new NPS units or extensions to existing units.

On March 15, 1972, Interior Secretary Rogers C. B. Morton made the preliminary withdrawal of d-2 lands. (See Table 4-1 at right.) They comprised the following areas (names in *italics* are of present park units).

The combined acreage of the twelve proposed new units and two park additions totaled some 45 million acres. Significantly, the NPS made no provision, during this initial withdrawal, for land that would later be included in either Kenai Fjords National Park or Cape Krusenstern National Monument, and the initial withdrawal also failed to include any additions to Glacier Bay National Monument. [23]

In May 1972, just a few weeks after Morton's withdrawal, NPS Assistant Director Ted Swem brought a contingent of NPS planners to Alaska,

Table 4-1. Proposed NPS Areas in Alaska, March 15, 1972

Study Area Name *(Present Park Name)*	Study Area Acreage
New Areas:	
Aniakchak Crater (*Aniakchak NM*)	279,914
Chukchi (*none*)	68,400
Gates of the Arctic (*Gates of the Arctic NP & Pres*)	11,323,118
Great Kobuk Sand Dunes (*Kobuk Valley NP*)	302,729
Imuruk Lava Field (*Bering Land Bridge NPres*)	209,182

and for the next several months the team fanned out across the state and did what it could to gather information about these and other potential parklands. NPS staff also worked with other Interior Department agencies to coordinate the land withdrawal process. [24] On September 13, Interior Secretary Morton issued his final 80,000,000-acre land withdrawal, which included 41.7 million acres for new or expanded NPS units. During the six-month study period, the NPS dropped several areas and added new ones, so that the September withdrawal areas largely approximated the areas—at least in name—that Congress adopted several years later.

Lake Clark Pass (*Lake Clark NP & Pres*)	3,265,036
Mount Veniaminof (*none*)	562,386
Noatak River (*Noatak NPres*)	9,003,000
Nogabahara Sand Dunes (*none*)	91,244
Saint Elias — Chugach (*Wrangell-St. Elias NP & Pres*)	8,318,778
Tanana Hills (*Yukon-Charley Rivers NPres*)	1,779,210
Additions to Existing Park Units:	
Katmai National Monument	1,218,490
Mount McKinley National Park	4,019,251

Once the withdrawal process was completed, the NPS and the other land management agencies had another major ANCSA-imposed deadline to meet: the completion, by mid-December 1973, of master plans and draft environmental impact statements for each of the proposed national interest lands units. In response to that mandate, these agencies began to intensively study the areas that they had selected; they studied each unit's wildlife and fisheries, inventoried cultural resources, assessed interpretive themes and tourist potential, local and area transportation patterns, and performed other research tasks intended to demonstrate the suitability of these areas to Congress and the public.

As part of that information gathering effort, these agencies responded to the data they gathered by increasing or decreasing the size of the various proposed units; and in response to conflicts between these agencies, the total acreage assigned to each agency's withdrawals changed as well. This fine-tuning took place during various increments between late 1972 and late 1973, and it continued throughout the following year during the agencies' preparation of final environmental statements for each of the various proposed units. Table 4-2 on the facing page shows the extent to which unit acreages changed during this period.

Table 4-2. Evolution of Proposed NPS Areas, September 1972 to January 1975

Area Name (Sept. 1972)	Area Name (Dec.1973/Jan. 1975)	Study Area Acreage		
		Sept. 1972	Dec. 1973	Jan. 1975#
New Areas:				
Aniakchak Crater	Aniakchak Caldera	740,200	440,000	580,000
(none)	Cape Krusenstern	(none)	350,000	343,000
Gates of the Arctic	Gates of the Arctic	9,388,000	8,360,000	9,170,000
Great Kobuk Sand Dunes	Kobuk Valley	1,454,000	1,850,000	1,854,000
Imuruk	Chukchi-Imuruk	2,150,900	2,690,000^	2,708,000

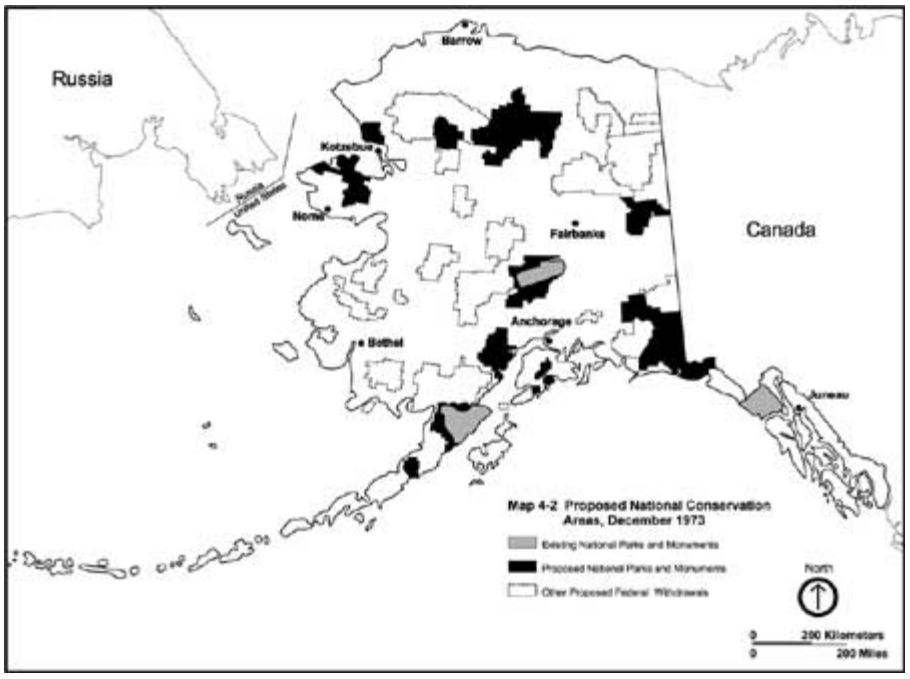
Kenai Fjords	Harding Icefields-Kenai Fjords	95,400	300,000	305,000
Lake Clark Pass	Lake Clark	3,725,620	2,610,000	2,821,000
Noatak	Noatak	7,874,700	7,500,000*	7,590,000*
Wrangell-St.	Wrangell-St. Elias	10,613,540	13,200,000@	14,140,000@
Yukon River	Yukon-Charley Rivers	1,233,660	1,970,000	2,283,000
Additions to Existing Park Units:				
Katmai National Monument		1,411,900	1,187,000	2,054,000
Mount McKinley National Park		2,996,640 [25]	3,180,000	3,210,000 [26]

- The various final environmental statements were issued between November 1974 and February 1975; January 1975 was chosen as a midpoint during the publication process.

^ - In Dec. 1973, Chukchi-Imuruk National Wildlands was a joint proposal between NPS and the Bureau of Sport Fisheries and Wildlife (BSF&W), but by January 1975 the unit proposal was for Chukchi-Imuruk National Reserve, to be administered by the NPS.

* Proposals called for the Noatak National Ecological Reserve (in Dec. 1973) and the Noatak National Arctic Range (in Jan. 1975) to be jointly managed by the BSF&W and the Bureau of Land Management. It is included here because of Noatak's eventual inclusion as an NPS unit.

@ - In December 1973, the Wrangell-St. Elias area was divided into a Wrangell-St. Elias National Park (NPS, 8,640,000 acres) and the Wrangell Mountain National Forest (USFS, 4,560,000 acres); by January 1975, the acreage of the NPS area was still 8,640,000 acres while the USFS area had risen to 5,500,000 acres.



Map 4-2. Proposed National Conservation Areas, December 1973.
(click on image for an enlargement in a new window)

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
THE ALASKA LANDS QUESTION, 1971-1980 (continued)

C. NPS Planners Consider the Subsistence Question

Driven by the promise of vast new additions to its system, [27] National Park Service leaders in the wake of ANCSA's passage began their planning effort, hoping in the process to maximize the number of acres in new or expanded park units—provided, of course, that the resources included in those areas were of sufficient caliber to warrant NPS designation. Subsistence values were a secondary consideration. Agency planners, recognizing ANCSA's generous land conveyance provisions, took care to avoid including village sites in the various proposed park units. Beyond that consideration, however, they had no compunction about including subsistence use areas within the various proposed units. Never, either at this early stage or at any other time in the proposal process, did any NPS official propose redrawing proposed boundary lines in order to exclude subsistence users. As historian Frank Williss has noted, the NPS's new approach—of preserving large ecosystems as a primary goal rather than providing for recreational and developmental needs within the parks—was one witnessed, to some extent, throughout the National Park System. Because of the acreages involved, however, the tilt toward preservation (combined, simultaneously, with a concern for the protection of traditional land uses) was more pronounced in Alaska than elsewhere. [28]

At the time of ANCSA's passage, subsistence activities had been taking place throughout Alaska for hundreds if not thousands of years. Urban as well as rural residents harvested subsistence resources; both Natives and non-Natives participated in a subsistence lifestyle. Some depended on subsistence resources more than others; a subsistence-based lifestyle remained healthy and strong in many areas, while in several areas subsistence activities were becoming less important. [29] But NPS planners, along with other federal officials, were only vaguely cognizant of these and other essential facts about Alaska's subsistence lifestyle. (The initial definition of subsistence, according to one early planner, was "timber and game for local use.") [30] NPS officials, as a consequence, commenced the park proposal process relying more on preconception and supposition than on hard, verifiable data. It is not surprising, therefore, that the agency's initial subsistence-related proposals were dramatically transformed during the planning process that preceded the passage of Alaska lands legislation.

The NPS made its first public utterance about subsistence activities in the proposed parks in July 1972, when it issued a short report documenting values and issues related to its various proposed units (as listed in the March 1972 preliminary withdrawals). This report, which paved the way for the revised recommendations that Secretary Morton issued two months later, expressly condoned the legitimacy of the Alaska Native cultures when it stated that

> Nowhere else in America are the landscapes and life communities so directly and obviously involved with the cultural heritage of the people. In its growing involvement with cultural themes, the National Park Service would expect to work closely and successfully with the Alaskan natives to ensure that new parks in Alaska are not only expressive of a national land ethic but also of the cultural heritage of these Alaskans. [31]



Inupiat hunters hauling a seal kill just offshore from the proposed Cape Krusenstern National Monument during the summer of 1974. NPS (ATF Box 13), photo 4465-20, by Robert Belous

The report was less specific about overtly condoning the legitimacy of subsistence uses. It did, however, briefly describe subsistence activities (including harvesting areas and species hunted) for the various proposed park units. Seen from a historical perspective, the report's approach to subsistence appears unpolished—there are several references to "subsistency" hunting and fishing—but because virtually no subsistence data existed that pertained to the national interest lands, the newly-obtained information proved highly valuable. [32] Significantly, subsistence uses as described in the report seem to apply only to Alaska Natives. One shortcoming of the report was its failure to mention any human uses in the proposed Aniakchak Crater unit. (This omission was corrected in subsequent reports.) In addition, the report noted that in the proposed Katmai extension, "many of [the] animals [in the proposed unit] have never been hunted by man and know little fear of him;" and regarding the proposed Kenai Fjords unit, the report noted that human use "tends to be extremely light, with fishermen being the most numerous public intruders." These notes, brief as they were, may have set a precedent because the Alaska Lands Act, as passed in 1980, did not authorize subsistence activities either in Kenai Fjords National Park or in the newly-expanded portions of Katmai National Park. [33]

Shortly after the release of the July 1972 park proposal document, state and federal authorities settled a legal matter in a way that had far-reaching ramifications on the future of Alaska subsistence. The conflict was over land claims. The previous January, the State of Alaska—which had been unable to file any claims during the years preceding ANCSA's passage—had filed for 77,000,000 acres under the Statehood Act. Two months later, however, confrontation arose when Interior Secretary Morton made his initial 80,000,000-acre national interest lands withdrawal. A month later, the state sued over the legality of some 42,000,000 acres that had been claimed by both governments. The land-claims conflict, if allowed to fester, threatened to derail the national interest lands planning process, but on September 2, the state announced that it had agreed to drop its lawsuit and its claim to the contested acreage. In return for that action, however, the state was allowed to select large blocks of national interest lands that had been part of the Gates of the Arctic and Mount McKinley park proposals. In addition, the state extracted a crucial concession: that some 124,000 acres of land in the Aniakchak Crater proposal area would be open to sport hunting. [34] Before long, NPS and Congressional authorities recognized that lands in other proposed park units also needed to provide for sport hunting; and as noted below, Congressional approval of the first two NPS-administered "national preserves" in October 1974 created a classification under which sport hunting could be authorized. The September 2, 1972 agreement, in short, proved to be the wedge that, years later, resulted in 19,000,000 acres of national preserves in Alaska.

Between September 1972 and December 1973, as noted above, a primary purpose of the NPS's Alaska Task Force was the further investigation of the various proposed park units, and the fruits of that investigation were encapsulated in various master plans and draft environmental impact statements (DEISs). To a large extent, the NPS forged its subsistence policy during that time. (Most of this was ad hoc policymaking, although Bob Belous of the NPS, in November 1973, completed an interim report on subsistence use in the proposed parklands at the behest of Assistant NPS Director Ted Swem and Alaska Task Force Director Al Henson. [35]) Most if not all of the documents produced in December 1973 included a separate section discussing subsistence, and the subsistence recommendations emanating from these documents are a logical outcome of those discussions.

Most of these recommendations were surprisingly consistent with one another. In statements that presaged the possibilities for both cultural change and ecological degradation, the various DEISs and master plans typically made the following recommendation:

> Except as may otherwise be prohibited by law, existing traditional subsistence uses of renewable resources will be permitted until it is demonstrated that these uses are no longer necessary for human survival. If the subsistence use of a resource demonstrates that continued subsistence uses may result in a progressive reduction of animal or plant resources which could lead to long range alterations of ecosystems, the managing agency, following consultation with communities and affected individuals, shall have the authority to restrict subsistence activities in part or all of the park. [36]



Inupiat woman poling a boat in northwestern Alaska, 1974. NPS photo by Robert Belous

In a notable departure from the implications suggested in the July 1972 document, all of the units proposed to be added to the National Park System, including Kenai Fjords and the Katmai extension, included provisions for subsistence within their DEISs. Another notable change was that race was no longer a factor in determining subsistence eligibility. [37] But clouding the picture was the fact that many subsistence users would be competing with others for the available resources. This was because the proposals for six of the nine new NPS areas—Aniakchak Caldera, Chukchi-Imuruk, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and Yukon-Charley—allowed sport hunting to continue. This state of affairs was doubtless spurred by pressure from hunting groups and was a logical outgrowth of the September 1972 decision that had ensured the continuation of sport hunting in portions of the Aniakchak proposal. [38]

Particular attention was paid to subsistence at five of the proposed parks. In the Wrangell-St. Elias National Park proposal document, an extended discussion on the subject detailed differences between subsistence and sport harvests, and it also included several harvest tables that had been prepared by a resource management team from the Joint Federal-State Land Use Planning Commission. [39] At Kobuk Valley, a primary purpose of the NPS proposal was "to foster the continuation of the Alaska Eskimo culture by providing for traditional resources uses, such as hunting, fishing, and gathering, provided such uses are consistent with the preservation of primary resource values." To accomplish that goal, the agency proposed that the monument be closed to sport hunting, and perhaps to justify the proposed hunting ban, the draft EIS provided an extensive discussion of the Eskimos' strong dependence on subsistence harvests for their food intake. [40] Noatak, similar to Kobuk Valley, was singled out as an area where subsistence activities were a central aspect of the proposal. Stating that "the

Noatak Valley represents the largest undeveloped and pristine river valley in the United States ... best characterized as a vast primitive expanse by virtue of low human numbers, scant development, outstanding scenery, and concentrations of wildlife," the draft EIS concluded that the Noatak and adjacent Squirrel River basins were "of significant value as natural, undisturbed laboratories," in large part because "such areas are practically nonexistent in the conterminous United States, and are becoming increasingly rare worldwide." Based on that premise, a primary purpose of the so-called Noatak National Ecological Range —to be jointly managed by the Bureau of Land Management and the Bureau of Sport Fisheries and Wildlife—was "to continue to make available renewable natural resources for subsistence uses, and to protect and conserve these resources for all Americans." As with the Kobuk Valley proposal, the Noatak document provided extensive data to demonstrate area residents' dependence on locally available fish, game, and other food sources. [41] A fourth proposal in which subsistence values were emphasized was the Chukchi-Imuruk National Wildlands document. A primary purpose of this unit, which was to be co-managed by the the NPS and the Bureau of Sport Fisheries and Wildlife, was the "interpretation of the ecological, geological, cultural, and scenic features and processes of the area, with emphasis on developing understanding and respect for an alternative cultural system as exemplified by the present day American Eskimo culture." [42]

A final proposal in which extensive attention was paid to subsistence lifeways and resources was at Gates of the Arctic. Of particular interest at the proposed park were the Nunamiut people—so-called mountain Eskimos—who resided at Anaktuvuk Pass. As historian Ted Catton has explained in remarkable detail, these villagers were historically anomalous to other northern Alaskan residents in that they were inland, nomadic people whose diet and lifestyle revolved around caribou and their migrations. By 1900, however, most of the Nunamiut had moved to the Arctic coast, and by 1920 the mountains were probably entirely deserted. (So-called "push factors"—namely, a crash in the caribou population—were the primary cause of the migration, but the "pull factors" of whaling ships, trading posts, and mission schools along the Arctic coast may have also played a role.) During their tenure along the coast many Nunamiut learned English, adopted Christianity, and absorbed other aspects of American culture. But the lure of the mountains (and a rebound in the caribou population) caused the group to migrate seasonally away from the coast, and after 1939 they gave up traveling to the coast altogether. In 1943, a Nunamiut group was "discovered" by pilot Sigurd Wien at the north end of Chandler Lake; two years later, a USGS surveyor witnessed a Nunamiut caribou hunt. [43]

In 1949, the Nunamiut—five families from Chandler Lake, followed by eight families from the Killik River —moved to a plateau at the headwaters of the John River and founded the village of Anaktuvuk Pass; before long a school, airstrip, and church were established at the site. [44] The Nunamiut, like other Native peoples, welcomed these and other trappings of modern civilization. Non-Natives who encountered them, however, were mesmerized by the more traditional aspects of culture that they represented. Located in the isolated wilderness of northern Alaska, and carrying on many traditions that had remained unchanged for hundreds of years, those who visited—and wrote about—the Nunamiut identified this so-called "lost tribe" as being uniquely "ancient," "Stone Age," and "timeless." This distinction, whether it was accurate or not, was shared by anthropologists, government planners, and other observers, and it fit neatly into the widely-held notion—largely promulgated by conservationist Robert Marshall—that the central Brooks Range was the "ultimate" or "last great wilderness." [45] A series of anthropologists, drawn to Anaktuvuk Pass, were so enamored by what they saw that they encouraged the Nunamiut to value their primitiveness. The villagers responded to these visits amicably enough; even so, they marched ahead and—to the dismay of many—acquired new technology as the occasion demanded. By doing so, they lost much of their charm in the perception of non-Natives, many of whom were ardent wilderness enthusiasts. The Nunamiut, sensitive to these changing attitudes, soon began to feel that they were being treated as intruders in their own homeland. [46]

It was in the midst of this process—in which outsiders' admiration of the Nunamiut's traditional lifestyle was being tempered by the invasion of new technology—that the NPS began considering a parkland in the central Brooks Range. The agency, at the behest of Interior Secretary Stewart Udall, had first considered the area as a park unit back in 1962, when he had sponsored the visitation of a film crew to the Arrigetch

Peaks area. Political sensitivities forced Udall to leave that film footage on the proverbial cutting room floor, and the park idea was shelved for the time being. [47] Then, in June 1968, an NPS team again reconnoitered the area. (During that visit, planner Merrill Mattes acidly noted that Anaktuvuk Pass was "not exactly Shangri-La.") The report resulting from that visit recommended a 4.1 million-acre, two-unit Gates of the Arctic National Park; the two units of that park, perhaps in deference to the Nunamiut presence, were drawn well away from Anaktuvuk Pass and the John River valley. That park proposal, along with proposals pertaining to Mount McKinley National Park, Katmai National Monument and four non-Alaska park areas, were forwarded to Interior Secretary Stewart Udall in a package that became known as "Project P." This package, which was forwarded to President Lyndon Johnson in January 1969—in the last few days before Richard Nixon was inaugurated—proved controversial. As a result—and several reasons have been speculated behind his action—Johnson signed proclamations pertaining to only three of the seven park proposals. Of the Alaska proposals, Johnson agreed to sign only the Katmai expansion proclamation; left unsigned were proclamations to create Gates of the Arctic National Monument, along with a proposed 2.2 million-acre expansion to Mount McKinley National Park. [48]

No sooner had the monument proposal been rejected than progress—in the form of a winter haul road—thrust its way up the John River Valley and through Anaktuvuk Pass. The road, dubbed the "Hickel Highway," was carved out during the midwinter months of 1968-69, and for six weeks after its completion large trucks roared through the village. A similar scenario repeated itself for a few weeks the following winter. [49] Then, in December 1971, came ANCSA's passage, and with it came the legal right for newly organized regional and village corporations to select land in and around Anaktuvuk Pass. [50]

It was in the atmosphere of these changes that the NPS resurrected its Gates of the Arctic park proposal. At first, NPS planners (who were hired in May 1972) paid little attention to the area's Native populations. The July 1972 proposal boundaries, for example, stayed more than 12 miles away from Anaktuvuk Pass, and the brief report on the park proposal merely noted that "caribou and moose are hunted mainly for subsistence by local people, many of whom depend upon the game for most of their food." [51]

Shortly after the issuance of that report, Native interests began to recognize that the National Park Service might well be an ally in their cause. Anticipating (or perhaps hoping) that the NPS would protect their subsistence resources, the Nunamiut Corporation (the newly-established village corporation for Anaktuvuk Pass) and the Arctic Slope Regional Corporation (the regional corporation encompassing the village) began to entertain the idea of a permanent dual-ownership arrangement. Sensing common ground with the NPS, Native officials formalized this idea on April 23, 1973, when ASRC's president testified before the Joint Federal-State Land Use Planning Commission that the Inupiat Eskimos were in favor of a Nunamiut National Park that would be cooperatively managed by the NPS and the Eskimos. This bold action was the first proposal of its kind in Alaska. [52]

In response to the ASRC proposal, NPS planner John Kauffmann began discussing with the Nunamiut just how such a park plan might jibe with the agency's own proposals. What emerged from those discussions was a proposal, issued in December 1973, for a tripartite park unit. The eastern and western thirds of the central Brooks Range would be designated the Gates of the Arctic Wilderness Park; in this 7,130,000 acre area, which the NPS would manage, subsistence hunting by Natives would be permitted, but non-Native sportsmen would be limited to "fair-chase hunting." (The fair-chase concept, hearkening back to the methods practiced by elite sportsmen decades earlier, suggested a minimum ten-day stay in the wilderness and a lack of dependence on radio and other communications.) Sandwiched between the two units of the wilderness park, an area called the Nunamiut National Wildlands was proposed. In that 2,390,000-acre expanse, which included Anaktuvuk Pass and adjacent



Drying fish nets near Ambler, September 1974. NPS (ATF Box 10), photo 4765-7, by Robert Belous

areas, management would be largely similar to that of the wilderness park. In the wildlands, however, subsistence hunting would take priority over sport hunting, and the NPS, the Nunamiut Corporation, and the ASRC would cooperatively manage the area. Ironically, the continuation of subsistence activities was not an expressly stated purpose of either the wilderness park or the wildlands proposal; instead, the wildlands proposal was more generic. It stated that a primary purpose would be "to assure that the outstanding cultural, natural, and recreational resources in the area are managed in a manner which will perpetuate the resource values for public use and benefit." [53]

The NPS, at both the local and national levels, and the various Native parties were all in full agreement with the proposal as outlined above. But the Federal government's Office of Management and Budget (OMB) was not. On December 16, 1973—just one day before the Interior Secretary's deadline to forward this and the other park proposals to Congress—the OMB rejected the National Wildlands concept, which was to have been applied to both the Nunamiut and Chukchi-Imuruk proposals. As noted in an errata sheet that was stapled to the front of each draft EIS, the OMB explained that the national park system should not be encumbered with new area designations. Much to the chagrin of Interior Department officials, the OMB refused to countenance proposals in which the NPS shared its management authority with non-Federal parties (in the Nunamiut case) or with other Federal agencies (in the Chukchi-Imuruk case). In the Nunamiut case, OMB was willing to allow a cooperative agreement issued by the Interior Secretary allowing a Native corporation "mutually compatible administration" of park lands; in the Chukchi-Imuruk case, Interior Department officials reacted to OMB's dictum by declaring that the NPS would administer the area. [54]

As noted above, the period between September 1972 and December 1973 witnessed a huge increase of NPS knowledge about land use activities on lands being proposed for inclusion in park units, and the issuance of the various DEISs in December 1973 reflected the agency's increasing sophistication toward subsistence matters. The various DEISs, by proposing the continuation of subsistence activities in all of the proposed park units, clearly showed that the NPS was sensitive to the needs of both Native and non-Native subsistence users. (See Table 4-3, opposite page.) The Federal government, moreover, openly advocated subsistence as a core value in two proposed park units (Kobuk Valley and Noatak [55]), and in the Gates of the Arctic proposal, the NPS supported a unit—the Nunamiut National Wildlands—that would be jointly managed with two Native corporations. The OMB's rejection of the latter proposal tempered the agency's future actions toward that park proposal, but it in no way diminished the agency's philosophical attitudes toward the value of subsistence in that area. The NPS, quite apparently, had a special recognition toward

subsistence values in the proposed northern-tier parks: Gates of the Arctic, Noatak, Kobuk Valley, Cape Krusenstern, and Chukchi-Imuruk. As former employee Bob Belous noted, the agency had no intention of downplaying the significance of subsistence activities in the other proposed park areas. Subsistence in the northern tier parks, however, "was more susceptible to publicity," and the photographs and descriptions that emanated from the various NPS proposal documents for these park units often highlighted Natives, Native harvesting, and Native craft items. [56]

Table 4-3. Subsistence Eligibility in the Proposed Alaska Parklands, 1973-1980

Proposed Park Unit	12/73 DEIS	1/75 FES	10/77a HR 39	10/77b HR 39	2/78 HR 39	5/78 HR 39	10/78 S 9	12/78 Proc.	1/79 HR 39	5/79 HR 39	10/79 S 9	12/80 Law
Aniakchak	Y	**Y**	N	N	**Y**	**Y**	N	Y	Y	Y	N	Y(t)
Bering Land Bridge	Y*	**Y**	**Y**	**Y**	**Y**	**Y**	**(Y)**	Y	Y	Y	***(Y)***	***(Y)***
Cape Krusenstern	Y	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Y	Y	Y	***Y***	***Y***
Gates of the Arctic	Y*	Y	N	**Y**	**Y**	**Y**	Y(t)	Y	Y	Y	Y(t)	Y(t)
Kenai Fjords	Y	**Y**	N	**Y**	**Y**	**Y**	N	N	N	N	N	N
Kobuk Valle	Y*	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Y	Y	Y	***Y***	***Y***
Lake Clark	Y	**Y**	N	**Y**	**Y**	**Y**	N	Y	Y	Y	N	Y(t)
Noatak	Y*	**Y**	N	**Y**	**Y**	**Y**	(Y)	Y	Y	Y	(Y)	(Y)
Wrangell-St. Elias	Y*	**Y**	N	**Y**	**Y**	**Y**	N	Y	Y	Y	N	Y(t)
Yukon-Charley R's	Y	Y	N	**Y**	**Y**	**Y**	(Y)	Y	Y	Y	(Y)	(Y)
Denali Additions	Y	**Y**	N	**Y!**	**Y**	**Y**	N	Y	Y	Y	N	Y(t)
Glacier Bay Add'ns	Y	**Y**	N	**Y**	**Y**	**Y**	N	Y	Y	Y	N	N
Katmai Additions	Y	**Y**	N	**Y**	***Y***	***Y***	N	Y	Y	Y	N	N
Alagnak Wild. R.@	--	--	N	N	**Y**	**Y**	Y	--	Y	Y	Y	Y

Note: The above chart covers subsistence uses on proposed new lands only. Several of the units noted above, at various times during the proposal process, had both parks (or monuments) and preserves. In those cases, the above use decisions pertain only to the proposed parks or monuments; in all of the adjacent preserves, subsistence uses are allowed. The names given for the proposed park units are those in the final (Dec. 1980) bill; other names, as noted elsewhere, were often used in the various environmental statements or draft legislative bills.

Document Identification:
DEIS = Draft Environmental Impact Statement; FES = Final Environmental Statement; HR 39 = House Bill 39; 10/77a = 10/12/77 Committee Print #1; 10/77b = 10/28/77 Committee Print #2; S 9 = Senate Bill 9, Proc. = Presidential Proclamation; Law = Alaska National Interest Lands Conservation Act, signed 12/2/80.

Symbols on Chart:
Y = subsistence is sanctioned
N = subsistence is prohibited
Y(t) = subsistence is sanctioned "where such uses are traditional"
Y* = subsistence is sanctioned, and additional measures are proposed to protect subsistence values
Y = subsistence is a purpose of the proposed parkland
Y = "protecting the viability of subsistence resources" is a purpose of the proposed parkland

(Y) = subsistence is sanctioned by virtue of its status as a proposed national preserve
Y! = subsistence is sanctioned only on the proposed North Addition
@ = Alagnak Wild River was in an "area of environmental concern" near the proposed Katmai National Park in 1973 and 1975. In the 95th Congress, the House continued to treat the Alagnak as part of a proposed Katmai addition. But S 9, in Oct. 1978, gave it separate treatment, and bills in the 96th Congress did the same.

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(continued)

D. NPS Subsistence Activities in Alaska, 1972-1973

After NPS planners, as part of their work with the Alaska Task Force, turned in their recommendations about proposed park units to Congress in December 1973, the focus of the park planning process officially moved from the executive to the legislative branch. Congress, however, showed little interest in the matter; as Frank Williss has noted, "Neither the Nixon nor the Ford administrations showed any inclination to work for passage of the bill in 1974 or subsequent years." NPS staff, however, remained active on the issue. The agency continued to carry on an intensive effort to gather data that would be available as Congress deliberated the measure; much of that activity, at least initially, was directed toward the preparation of final environmental statements for the various proposed park units. [57]

During the preparation of the draft and final environmental documents, NPS personnel were active in other spheres that dealt with subsistence uses and Native relationships in Alaska. One focus of activity was a renewed spotlight on the Native Alaskan heritage center idea. As noted in Chapter 3, an NPS planning team in 1968 had recommended the establishment of at least three Alaska Native cultural centers: that is, easily-accessible sites where both visitors and Alaska residents could learn about Native Alaskans and their lifeways. That idea had not emerged from the proposal stage, but within a year of the passage of ANCSA in late 1971 the idea of a series of heritage centers that would "collect, document, and preserve local artifacts and ... display them in a meaningful, organized manner" was presented in a NPS report. [58]

The report, which compiled both Native and non-Native ideas related to the topic, shied away from specific recommendations. Instead, the report suggested a range of alternatives: one or more state centers (primarily for tourists) that would represent all Alaska Natives, one or more regional centers (for both tourists and Natives) that would be located in each regional corporation's geographical boundaries, and a series of village centers (primarily for villagers) that would "provide communal focal points ... so important to village social life and necessary for village cohesiveness." The NPS, for its part, offered technical and organizational capabilities; it also offered staff that might assist with the design and implementation process (although the agency "should not primarily serve as the final producer of working plans"). The agency even suggested a series of pilot projects and a list of regional corporations that might logically adopt those projects. It did not, however, offer major funding for such centers; money to build and maintain these facilities would need to come either from grant programs of private organizations and foundations or from the regional corporations themselves. [59]

So far as is known, this report did not result in any immediate action toward implementing heritage centers in Alaska. The concepts presented in the report, however, did not winnow away. During the 1970s, several entities considered the idea, but the idea remained in the

conceptual stage until after the passage of the Alaska Lands Act. In 1987, momentum finally began to build when various Native organizations founded a group dedicated to planning and constructing such a center. That group surmounted numerous obstacles in its quest. By the summer of 1994 they had obtained a 26-acre parcel, and on May 8, 1999 the Alaska Native Heritage Center opened to the public. The site has been open on a year-round basis ever since. A detailed account of the process that resulted in the center is noted below. [60]

Throughout this period, NPS officials were dealing with ongoing issues relative to allowable activities within the existing parklands. As Chapters 2 and 3 have suggested, subsistence uses at Mount McKinley National Park and Katmai National Monument were not an issue; regulations at these and most other U.S. park units prohibited hunting, subsistence fishing, trapping, and other consumptive uses. At Glacier Bay National Monument, however, the agency's official prohibitions were tempered by the recognition that harbor seal harvesting, berry picking, and other subsistence activities had long been practiced by Tlingits residing in nearby Hoonah. In recognition of that fact the Interior Department had adopted, with some misgivings, a *laissez-faire* attitude; NPS Director Arno Cammerer, in 1939, had noted that the agency had "no intention of making any sudden changes in the uses which the Indians have been accustomed to make of the monument area," and in December 1946 that attitude was reflected in an agreement forged in Washington between the Bureau of Indian Affairs and the NPS. [61] That agreement, again with some misgivings, was renewed in 1954, 1956, 1958, and 1960. But the March 1964 discovery by NPS rangers of scores of Native-killed harbor seal carcasses forced the agency to rethink its previous position in the matter. The recognition that at least some Hoonahs were harvesting seals for commercial purposes, and the inability to legally separate the few market hunters from others who made only occasional use of the monument's subsistence uses, caused some park officials to conclude that there was no easy way to sanction Native seal hunting without jeopardizing the monument's resources. [62]

Park officials, at the suggestion of the agency's Washington hierarchy, decided to let the seal problem subside, and the agency tried its best to ignore the problem for the remainder of the decade. The Alaska Native Claims Settlement Act, with its multitudinous provisions, had the potential to address this problem. But as noted above, the Act did not contain a provision protecting Native people's historic uses of public lands for subsistence purposes, and a solution to Glacier Bay's subsistence dilemma remained unsolved. [63] But less than a year later, on October 21, 1972, President Nixon signed the Marine Mammal Protection Act into law. The law's primary thrust was the prohibition of marine mammal harvesting. Specifically excluded from the prohibition, however, was "any Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean." The Act condoned subsistence harvesting, and it also allowed a limited commercial use of the harvested animals. But it did not allow these Natives to engage in a blatant commercial harvest, nor did it allow marine mammal harvests to be "accomplished in a wasteful manner." [64]

Feeling empowered by provisions in the Act, Glacier Bay Superintendent Robert Howe wrote to his superior, Alaska State Director Stanley T. Albright. In that letter, written just five days after the Act's passage, he asked for authority to terminate harbor seal harvesting in the monument. Howe noted that "We truly believe that seal hunting in Glacier Bay is neither legal nor longer necessary. In fact, considering the new national legislation it might be illegal anywhere when 'hide hunting' is the end result." Three weeks later, Albright telephoned Howe and asked him to inform Hoonah's residents that their harvesting privileges in the monument had been terminated. Whether he immediately did so is uncertain, and the first documented communication on the matter between the NPS and Hoonah residents did not take place until January 1974, when the monument's chief ranger telephoned Hoonah's mayor, Frank See, and told him about the hunting prohibition. The agency never put the rule against Native hunting in writing, nor did it ever hold a public meeting on the subject. But perhaps

because the mayor and other Hoonah residents were in the midst of other matters that were just as critical to the community—if not more so—agency officials received no protests regarding the hunting ban. Beginning in 1974, therefore, the NPS maintained an official prohibition against Native hunting in Glacier Bay. [65]

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(continued)

E. Studying the Proposed Parks, 1974-1976

After the NPS and other Federal land management agencies, as required by the ANCSA timetable, turned in the various draft EISs and master plans for the proposed conservation areas in December 1973, emphasis turned toward the preparation of a series of final environmental statements (FESs). To a large extent, changes in the EISs would be based on the tenor of public comment. In addition, however, the gathering and analysis of new data by agency staff brought more changes. As in the rest of the Alaska planning effort, there was little time to lose; final documents which incorporated both the additional field work and the heavy volume of public participation had to be completed and published in little more than a year. [66]

In order to prepare the various final environmental statements, NPS personnel fanned out across the state during the summer of 1974. The preparation of the FESs took place that fall. They were completed and distributed to the public between December 1974 and February 1975.

In their approach to subsistence, the recommendations in the various FESs were even more far-reaching than those in the December 1973 draft EISs. All proposed NPS units, for example, were still open to valid subsistence uses. As in the various draft documents, almost all of the final environmental statements issued the following boilerplate statement, which was similar to (though more specific than) language in the December 1973 documents:

> Except as may be otherwise prohibited by Federal or State law, existing traditional subsistence uses of renewable resources will be permitted until it is determined by the Secretary of the Interior that utilization not physically necessary to maintain human life is necessary to provide opportunities for the survival of Alaskan cultures centering on subsistence as a way of life. If it is demonstrated that continued subsistence uses may result in a progressive reduction of animal or plant resources which could lead to long range alterations of ecosystems, the managing agency, following consultation with the Alaska Department of Fish and Game, communities and affected individuals, shall have the authority to restrict subsistence activities in part or all of the park unit. [67]

Additional subsistence-related proposals were also offered. Most of the proposals for NPS-administered units—in fact, all but the Gates of the Arctic and Yukon-Charley proposals—included proposed park purposes that related to either Native subsistence activities or other Native activities. [68] The two strongest of these statements were at Cape Krusenstern, where the NPS promised "to encourage and assist in every way possible the preservation and



By 1968, when this photo (in Barrow) was taken, snowmachines were beginning to replace dog teams throughout rural Alaska. NPS (ATF Box 8), photo by Merrill J. Mattes

interpretation of present-day Native cultures," and at Kobuk Valley, where the agency stated its intention "to foster the continuation of the Alaska Eskimo culture by providing for traditional resource uses, such as hunting, fishing, and gathering, provided such uses are consistent with the preservation of primary resources values." [69] Three proposed park units—Aniakchak, Harding Icefield-Kenai Fjords, and Lake Clark—had as a purpose "to provide for Native involvement in ongoing monument operations, research, and the provision of visitor services" [70] Both the Katmai and the Lake Clark proposals included language, in their park purposes, calling upon the agency "to encourage and foster cooperative agreements between the NPS and Native groups [as well as with other entities] to help assure optimum use of the region's resources" [71] Still other park purposes were for "developing understanding and respect for ... the present-day American Eskimo culture" (for the Chukchi-Imuruk proposal) and "to insure that ... traditional Native lifestyles and subsistence uses are allowed to continue" (for the Harding Icefields-Kenai Fjords proposal). [72] Provisions pertaining to access were also offered. At Aniakchak, the agency promised to "work with Natives in providing for access to lands in the monument in which Natives have interests," and the Gates of the Arctic FES stated that "The Secretary [of the Interior] may authorize snowmobile use for subsistence purposes within the park." The Gates of the Arctic document, in addition, introduced the traditional use concept. "Traditional subsistence use of the park," it noted, "will be allowed to continue." The document later went on to define as traditional such activities as hunting, fishing, trapping, and fuel gathering. [73]

A key element in the preparation of the various FESs was the growing expertise about the proposed parks by NPS staff. Some of these employees specialized in particular themes—geology or zoology, for example—but others immersed themselves in the study of particular clusters of park units. This expertise had begun back in the spring of 1972, when the agency had decided to organize four study teams to collect information for the various proposed park units. The initial captains of these study teams, chosen in May of that year, were John Kauffmann, Paul Fritz, Urban Rogers, and John Reynolds; in addition, the agency assigned Zorro Bradley to head a fifth team that would study historical and archeological areas and provide cultural resource assistance to the other four teams. [74] During the preparation of the draft and final EISs the personnel heading the study teams changed; Paul Fritz and Urban Rogers, for instance, were replaced by Gerald Wright and Fred Eubanks, respectively. Beginning in early 1975, however, the level of park expertise dramatically increased when Director Gary Everhardt decided to add ten new professionals to the planning team. These "keymen," as they were called, were given the task of gathering and coordinating knowledge about individual park units. John Kauffmann, who since 1972 had been spearheading the agency's efforts for several proposed parks in northwestern Alaska, became the keyman for the Gates of the Arctic proposal, but most of the other keymen transferred to their new positions from the Denver Service Center. [75]

In addition to their park responsibilities, each of the keymen was assigned an additional collateral duty, and one high priority project in the latter category was the preparation of a subsistence policy statement. Robert Belous, the keyman for the Cape Krusenstern and

Kobuk Valley proposals, had written an interim subsistence report back in November 1973; as a follow-up, he issued a *Subsistence Policy for Proposed NPS Areas in Alaska*, completed in September 1975. Belous then teamed up with Dr. T. Stell Newman, the keyman for the Chukchi-Imuruk proposal, and in April 1976 the two completed a *Draft Secretarial Policy: Subsistence Uses of New National Park Service Areas in Alaska*. Newman wrote a final subsistence policy document, *The National Park Service and Subsistence: A Summary*, which was issued in November 1977. [76] The 1976 draft policy was "widely circulated in Alaska for public comment" (according to language in the 1977 study), and the comments generated in response to that draft helped mold the Secretary of the Interior's position on subsistence when he submitted the Department's proposals to Congress in September 1977. In prefatory remarks for the 1977 study, Newman noted that in order to gain a "better understanding of this unique lifestyle," the NPS had conducted "over ten man-years of professional anthropological research ... on the nature of subsistence in the proposed parklands." [77]



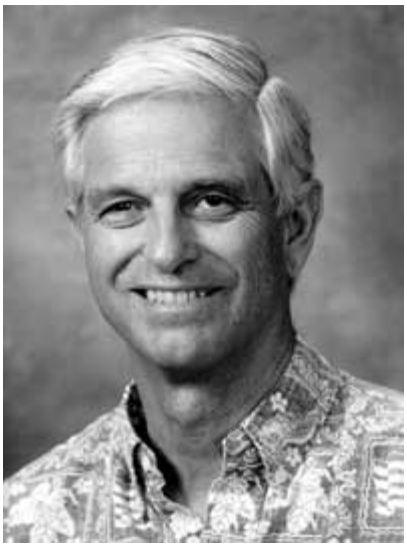
Bob Belous worked for the NPS in Alaska from 1972 through the early 1980s. Besides his excellence as a photographer, he played a major role in forging the agency's subsistence policies. NPS (AKSO)

As historian Bill Brown has noted, a major source of philosophical guidance for agency officials during this period was ecologist Raymond Dasmann and his concept of the "future primitive." Dasmann, in a seminal 1975 paper on the subject, noted that it was "a good time to reexamine the entire concept of national parks and all equivalent protected areas." "Is it not strange," he stated, that park managers the world over had "taken for granted that people and nature were somehow incompatible"? After suggesting that the world was divided into "ecosystem people" (that is, people who were members of "indigenous traditional cultures") and "biosphere people" (that is, "those who are tied in with the global technological civilization"), he noted that ecosystem people were institutionally fragile because they were dependent upon a single ecosystem for their survival. Historically, he noted, only biosphere people had created national parks. But because of a sharp rise in global development, ecosystem-based homelands were rapidly diminishing. Concerned about that trend, he urged that a profound change be instituted in how national parks should function. "National parks," he noted, "must not serve as a means for displacing the members of traditional societies who have always cared for the land and its biota." "Few anywhere would argue with the concept of national parks," he continued, "but many would argue with the way the concept has been

applied—too often at the cost of displacement of traditional cultures, and nearly always with insufficient consideration for the practices and policies affecting the lands outside of the park." He therefore made several specific recommendations. First, "The rights of members of indigenous cultures to the lands they have traditionally occupied must be recognized, and any plans for establishing parks or reserves in these lands must be developed in consultation with, and in agreement with, the people involved." In addition, Dasmann urged that "wherever national parks are created, their protection needs to be coordinated with the people who occupy the surrounding lands. Those who are most affected by the presence of a national park must fully share in its benefits...." NPS officials recognized that their options were limited in the various long-established parklands of the Lower 48 states. In Alaska, however, the millions of acres being considered as new national parklands provided an excellent tableau where Dasmann's ideas might be manifested. [78]

All three of the documents that Belous and Newman produced from 1975 to 1977 were philosophically consistent with, and were logical extensions of, the recommendations that had been laid out in the draft and final EISs. The documents were unequivocal regarding the legitimacy of subsistence activities in the various proposed park units. The 1975 study, for example, noted that the NPS "recognizes that the continuance of such harvest of wild food and other biological resources from lands currently proposed as additions to the National Park System ... is an important opportunity for retaining an unbroken link with the Nation's cultural past." It further noted that

> The goal of this proposed policy on subsistence use of renewable resources on national parklands created under ANCSA is to provide the opportunity for rural Native people engaged in a genuinely subsistence-centered lifestyle to continue if they so desire, to allow such people to decide for themselves their own degree of dependency and the rate at which acculturation may take place.



G. Bryan Harry, who served as director of the NPS's Alaska Area Office from 1975 to 1978, called Belous a "gigantic philosophical champion of Natives in the national parks." NPS (AKSO)

Portions of the 1975 draft policy, as noted above, suggested a preference for Native use. Other parts of that policy, however, backed off from that preference. Subsistence permits, for example, would be issued to "local residents who have demonstrated customary and consistent use of [Subsistence] Zones for the direct consumptive use of renewable resources at the time of enactment of ANCSA," a local resident being defined as "a Native or non-Native living in the vicinity of a Subsistence Zone and making consistent and customary use of the Zone for subsistence purposes." The 1976 and 1977 documents made clear that Natives and non-Natives would have equal access to subsistence resources; as noted in the 1976 report, "The need for subsistence resources is not the exclusive claim of Native people in Alaska.... This is consistent with the Alaska State Constitution which recognizes no racial priority but considers all citizens equal under the law." [79]

Other key areas of subsistence policy were first discussed and evaluated in these documents. The idea of a Subsistence Resource Council as a local management element first arose in the 1975 statement, as one leg in a "tripartite" arrangement that would also include the NPS and the Alaska Department of Fish and Game. The rationale that demanded the existence of a series of subsistence councils also brought about the insistence that subsistence resources be

managed on a regional basis. The study noted that "Because of broad variations in subsistence use patterns and problems across the state ... each unit will be managed under a separate and distinct management plan with a local subsistence resource council representing each unit." Third, the agency made it clear that the proposed subsistence provisions, appropriate as they were, would pertain only to the Alaska parks. The 1976 study noted that because the allowance of subsistence principles comprised "a distinct departure from longstanding NPS management principles," it was therefore "imperative that such design and management departures ... are not to be a precedent for alteration of park system management for existing units in or outside the State of Alaska."

A final theme the various policy statements covered was the subsistence zone idea. The policy writers made it clear that subsistence, in the agency's opinion, was a modern as well as a traditional land use, and that "ancient aboriginal ways of life [should not] be artificially restored or preserved as a static remnant of the past through legislation or prohibition." But even though the agency had no intention of generally suppressing subsistence activities, it did conclude that subsistence uses should not be allowed throughout all of the proposed park units. As the 1976 document made clear,

> Not all parklands proposed under ANCSA, or regions within such parklands, are of equal importance for subsistence purposes. Areas of special importance and consistent utilization will be designated as "Subsistence Zones." The Secretary will designate such Zones following consultation with the local Subsistence Resource Council and the State Department of Fish and Game.

The 1977 document reiterated the contrast in subsistence dependency; it noted that "Subsistence needs and practices vary widely across the state, from a major dependence in the northwestern Alaska proposals to scant dependence in most other proposed parklands." It also took the subsistence zone idea from the general to the specific; it contained maps outlining proposed subsistence zones for all but three of the proposed parks. No subsistence zone was planned for Aniakchak, either because data was unavailable or because subsistence use was deemed "slight," and subsistence zone maps were omitted for the Glacier Bay extensions and for the Noatak proposal because insufficient data was available to delineate an accurate use area.

Another activity that the NPS undertook during the 1974-1976 period—one that played a large role in delineating the various subsistence zones noted above—was the completion of a series of studies on subsistence use in the various proposed parks. As has been noted, virtually no data was available about subsistence use in the national interest lands prior to ANCSA, and park planners eagerly sought subsistence data to help guide the evolving legislative proposals. The preparation of these studies was entrusted to the University of Alaska's Cooperative Park Studies Unit, which had been established in 1972 to stimulate park-related research. One of CPSU's two subentities was the Anthropology and Historical Preservation Program, which was headed by Zorro Bradley, an NPS anthropologist and adjunct faculty member at the Fairbanks campus. [80]

During the first several years of the CPSU's existence, historical and cultural studies were largely overlooked. The program did, however, gain one key contact: a Hughes schoolteacher named G. Ray Bane. During the winter of 1973-74, Bane had told a friend that he and his wife, Barbara, planned a 1,400-mile dog-mushing trip. From Hughes, which was a Koyukon Athabaskan village, they would mush down river to Huslia; north to Shungnak, a Kobuk River Inupiat village; then on to Kotzebue, Wainwright (where he had previously taught), and Barrow. Zorro Bradley, having caught wind of the trip, asked Bane to send him a report of his observations along the way. The Banes took their trip, as planned, between February and May 1974, and while visiting Fairbanks shortly afterwards, Bane and Bradley discussed

the idea of a subsistence study of Shungnak, which was just beyond the borders of the proposed Gates of the Arctic unit. As Bane later recalled, the NPS "needed to know Shungnak's land use patterns and how the reality of a park would change them." Bane's proposal was approved shortly afterward, and the couple moved that summer to Shungnak. The Banes were later joined by anthropologists Richard K. Nelson and Douglas Anderson. The three of them, along with several other researchers, pooled their efforts and emerged with a landmark document entitled *Kuuvangmiit; Traditional Subsistence Living in the Latter Twentieth Century*, which revealed the subsistence patterns of five Kobuk River Eskimo villages. [81]

In June 1975, the CPSU's cultural program became far more active when it commenced identifying and evaluating broadly-defined historical sites as defined in Section 14(h)(1) of the Alaska Native Claims Settlement Act. For the next fourteen months, a ten-person CPSU team inventoried more than 7,000 Alaskan historical sites. Once that task had been completed, team members started work on cultural studies related to specific proposed park units, and many of those studies focused on subsistence use patterns. Compiling those studies caused many CPSU researchers to make repeated visits to various villages surrounding the proposed park units; by their actions, they complemented the role of the agency's various "keymen." By 1977, a considerable body of subsistence data had been gathered; that data proved invaluable as hearing testimony when various Alaska lands proposals were being considered that year in the U.S. House of Representatives. By 1979, subsistence studies had been completed and published for the Aniakchak, Cape Krusenstern, Gates of the Arctic, Katmai, Lake Clark, Mount McKinley, Noatak, and Yukon-Charley proposals. [82]

Ray and Barbara Bane, who had resided in northern Alaska since the early 1960s, came to the attention of NPS officials shortly before they embarked on a 1974 dogsled trip. Ray later joined the agency, and for more than 20 years thereafter he was an important voice in the subsistence arena. George Wuerthner photo

One event during this period, significant as it was for the proposed parklands, took place thousands of miles from Alaska. On October 11, 1974, President Gerald R. Ford signed Congressional legislation that established the first two national preserves: Big Cypress in southern Florida and Big Thicket in eastern Texas. As historian Frank Williss has noted, the preserve concept allowed for hunting and other land uses, so long as those uses did not affect the preservation of the natural values for which the area was established. Prior to the signing of this bill, the only NPS-administered areas in which a diversity of land uses were allowed were the national recreation areas, which were popularly perceived to be limited to reservoir environments. But the bill's passage, coming as it did in the midst of the national interest lands planning process, suggested the possibility to future Congresses that national preserves—allowing any number of nontraditional uses—were a legislative option for the various Alaska park proposals. [83] Two years before President Ford signed the bill, the State of Alaska had convinced Interior Secretary Morton, as part of a larger agreement, to allow sport hunting in the coastal portion of the Aniakchak Crater proposal. The ramifications of this agreement had the potential to open additional national interest lands to sport hunting. [84] Many park supporters—from both inside and outside the agency—were "nervous about a park with hunting," according to one planner active in developing various park proposals. But as noted above, Interior Department planners in December 1973, lacking other alternatives, had decided to allow sport hunting in many park proposal documents. The preserve idea thus served as a way to segment the various park proposals based on historical levels of sport hunting activity; and in January 1976, NPS planners posited just such a division for the proposed Lake Clark unit. [85]

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F. The State Gets Involved

As noted in Chapter 1, Alaska Natives prior to the 1960s had made many attempts to acquire land for their own purposes. The Alaska Statehood Act, however, had set a process into motion that promised to usurp huge expanses of land that Natives had been using for subsistence purposes for time immemorial. But as a practical matter, rural Natives during this period (and rural non-Natives as well) had few conflicts from other users in their pursuit of subsistence fish and game resources. Rural users, moreover, benefited in 1960 by the institution of separate subsistence fishery regulations—brought about by the inclusion of Section 6(e) in the state constitution—for those who used gill nets, seine gear, and fish wheels. Both Natives and non-Natives, of course, used gill nets and seining equipment, but the creation of separate regulations for these gear types provided a modicum of protection to Native families who fished primarily for personal and family consumption. As to hunting, the state made no distinction in its regulations between subsistence and sport hunting.

Jay Hammond served as Alaska's governor from 1974 to 1982. He signed the state's first (1978) subsistence law; in many other ways, he oversaw the formulation of state subsistence policy, both before and after ANILCA's passage. ASL/PCA 213-4-16a

By the decade of the 1970s, however, conditions regarding hunting and fishing resources were clearly changing. The oil boom had brought both increased wealth to existing residents and a dramatic influx to Alaska of Outside residents, and fish and game populations in many rural areas began to be impacted for the first time. (The number of Alaska resident fish and game licenses, for example, "practically doubled" between 1965 and 1975.) There was a widespread recognition that unless regulatory steps were taken, subsistence resources would eventually be overwhelmed by sport and commercial users. [86] In response, both the Commissioner and the Board of Fish and Game, in 1973, issued a policy statement recognizing that subsistence use would be assigned the highest use priority. It noted that because of "culture, location, economic situation, or choice, large numbers of people will find it impossible to abandon or alter their [subsistence] way of life," and for those reasons, subsistence resources would thenceforth be allocated to users based on "cultures and customs, economic status, alternative resources, ... location and choice of life style." The Board of Fish and Game did not respond to that policy statement by enacting regulations or by otherwise implementing enforcement powers. [87] It did, however, begin to strengthen local fish and game advisory committees, who advised the Board and the Department on issues important to area hunters and fishers, by funding trips by advisory board chairs to Fish and Game Board meetings. [88]

In 1975, the conflict over subsistence reached a crisis point when the western Arctic caribou herd crashed. Many rural Native Alaskans, who were heavily dependent on the herd, were rocked by the crash; area villages, who had typically harvested around 20,000 animals per

year, were forced to get by on a 3,000-animal harvest. The legislature, hoping to improve the villagers' plight, responded by passing HB 369, which for the first time authorized the Board of Game to regulate subsistence hunting as a separate activity and to create subsistence hunting areas. In 1976, the Game Board responded to the legislature's action by authorizing 3,000 harvest permits, to be distributed among hunters in Native villages; it also developed a three-tiered system for allocating access to hunting resources at times of scarcity. The three tiers, each tailored to increasing levels of scarcity, were 1) community access to alternative resources, 2) family income and resource dependence, and 3) individual ability to cope with the hardship. The Board of Fisheries and the Board of Game, trying to support rural sport hunters during the crisis, appeared less than enthusiastic in their general support of the subsistence lifestyle; a joint policy statement issued that year warned that "limitations on the productivity of fish and game must discourage continued increases in the numbers of subsistence type resource users." [89]

The state game board's decision to allot hunting resources, when scarce, to residents who lived closest to the available game angered a number of urban Alaskans, who felt that the resource should be equally available to everyone. In December 1976, therefore, the Tanana Valley Sportsmen's Association filed suit to annul that decision. That suit was successful. The state legislature, in reaction to the court decision, established a system for defining legitimate subsistence uses and users. The legislature made it clear that subsistence uses would have a preference over other consumptive uses, and it reiterated the Game Board's recently-established criteria to determine who would have access to harvest subsistence resources in times of scarcity. [90]

In 1976, the Board of Game first provided an opportunity for local residents to petition for subsistence hunting areas in order to encourage their adoption. The legislature also issued a finding about the subsistence use of wildlife. It stated that

> The legislature finds that traditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and that the protection of subsistence usage of these resources is essential to the health, safety, and general welfare of the citizens of the state in those areas. [91]

In 1977, the U.S. Congress began actively pursuing legislation that would satisfy ANCSA's national interest lands provision—Section 17(d)(2). The Alaska legislature was fully aware that ANCSA had imposed a seven-year timetable for the implementation of national interest lands legislation. The legislature also concluded, somewhat begrudgingly, that it would need to pass its own subsistence law before Congress passed Alaska lands legislation. The need for such a law stemmed from two clauses: Section 6(e) in the Alaska Statehood Act (noted in Chapter 1), and language in ANCSA's conference committee report (noted earlier in this chapter). Because of those two clauses, the legislature was well aware that if it did not enact a "proposal for the adequate management of Alaska's fish and wildlife resources," the federal government would be authorized to manage fish and game resources on Alaska's national interest lands. Indeed, various working drafts of H.R. 39—the primary vehicle for Alaska lands legislation in the U.S. House of Representatives—clearly announced an impending federal takeover if the state failed to act. [92]

In recognition of those factors, the 1977 Alaska legislature established an Interim Committee on Subsistence, which was chaired by Rep. Nels A. Anderson, Jr. (D-Dillingham). The eight-person committee (seven House members and one Senate member) was charged with collecting available data, conducting hearings, and gathering public testimony on the subsistence issue. In pursuit of that goal, the committee held thirteen hearings, in communities large and small,

Nels Anderson, from Dillingham, served in the Alaska House of Representatives from 1975 through 1981 and was a

between August and December 1977. Those hearings, attended by some 500 people, helped formulate the basis for future legislation. [93]

major supporter of subsistence use protections. ASL/PCA 01-1919

In 1978, the Alaska State Legislature passed HB 960, a broadly applicable subsistence law. The law, which was signed by Governor Jay Hammond on July 12, became effective on October 10. It provided that "it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs, and traditions of Alaskan residents." It also provided that whenever it was necessary to restrict the taking of fish and game, "subsistence use shall be the priority use." Subsistence uses, as defined in the law, meant

> the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicrafts articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption; and for customary trade, barter or sharing for personal or family consumption. For the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

The legislature made it clear that race would play no role in determining access to subsistence resources. However, it sidestepped the delicate issue of just what constituted "customary and traditional uses" (so-called C&T uses) and it also failed to define who was qualified to be a subsistence user. [94] To help address these and other issues, the legislature as part of HB 960 established a "Section of Subsistence Hunting and Fishing" in the Department of Fish and Game. (The House Special Committee on Subsistence tried but failed to establish a full-fledged Division of Subsistence Hunting and Fishing.) For the next several years, the legislature had a Special Committee on Subsistence that served year-round in an oversight capacity. [95]

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
THE ALASKA LANDS QUESTION, 1971-1980
(continued)

G. Congressional Alaska Lands Act Proposals, 1977-1978

On November 2, 1976, Jimmy Carter defeated incumbent Gerald Ford in the U.S. presidential election. Throughout the Ford administration, Congress had shown little inclination to face the Alaska lands issue head-on. But with Carter's election, both the presidency and the Congress were controlled by Democrats, and with just two years remaining in the timetable set by ANCSA, Congress tried to solve Alaska's long-simmering national interest lands issue. On January 4, House Interior Committee chair Morris K. Udall submitted H.R. 39, a conservation-oriented Alaska lands bill; shortly afterward, bills reflecting numerous other philosophical positions were introduced in either the House or Senate. [96]

When the 95th Congress opened, much of the information available on the national interest land issue was contained in a series of environmental statements and master plans that the executive branch (i.e., the NPS and other agencies in either the Interior or Agriculture departments) had prepared several years previously. Those documents contained finely distilled recommendations regarding subsistence and a host of other lands issues. Lawmakers, however, were by no means obligated to follow the agencies' lead; and predictably, Congressional leaders showed a remarkable independence regarding how subsistence and other land issues should be legislated.

Because of the lack of previous Congressional activity pertaining to this issue, the Udall bill was widely recognized as a work in progress and, as the Arizona Congressman himself said, the bill was "intended to establish a framework for legislative consideration on this important matter." It proposed more than 64,000,000 acres of national parklands, and the various park acreages in the Udall bill were significantly larger than those noted in the environmental documents that Interior Department staff had prepared several years earlier.



Two of the major Congressional supporters of Alaska subsistence rights were Morris Udall (left), head of the House Interior and Insular Affairs Committee, and John

Udall prefaced his bill with a statement that emphasized the cultural aspects of the subsistence issue. In part, it reads as follows:

> I have also sought in this legislation to protect the existing way of life of many Alaska Natives. We live in an age of rapid change. Whether the subsistence use patterns, a social order unknown to most Americans, will continue to be the lifestyle of these hardy people far into the future is questionable.

> But we have at tempted to design a framework that will insure that those individuals who want to subsist—who depend upon subsistence for survival—can continue to do so. [97]

Seiberling, head of the House Subcommittee on General Oversight and Alaska Lands. ADN

Several years later, at the conclusion of the Alaska lands battle, Udall again addressed the vision that he had hoped to see manifested in this bill. He noted that he, Rep. John Seiberling (D-Ohio), and Rep. Vonno L. Gudger, Jr. (D-N.C.), among others, had made a commitment to Alaska's Native people at the beginning of the 95th Congress. Specifically, they

> promised that any legislation enacted into law would recognize the importance of the subsistence way of life to the survival of the Alaska Native people, and would contain management provisions which recognize the responsibility of the Federal government to protect the opportunity from generation to generation for the continuation of subsistence uses by the Alaska Native people so that Alaska Natives now engaged in subsistence uses, their descendants, and their descendants' descendants, will have the opportunity to determine for themselves their own cultural orientation and the rate and degree of evolution, if any, of their Alaska Native culture. [98]

The bill itself, a scant 29 pages long, made only a brief statement about subsistence. It made no specific suggestions regarding which proposed parks should allow subsistence. It did, however, imply that only a portion of each proposed park should be open to subsistence uses. Section 701(a) of the bill noted that

> the Secretary may designate "subsistence management zones" to include various geographical areas where subsistence activities have customarily occurred in and adjacent to national interest lands, without regard to boundaries established for such lands by this Act.

Section 101(a)(1) applied this concept more specifically to the 13.6 million-acre Gates of the Arctic park proposal by noting that no more than 2.5 million acres of the park could be included in a subsistence management zone. In addition to the zone concept, H.R. 39 discussed several additional subsistence ideas. It noted, for instance, that those eligible for subsistence activities in the proposed parks should be "people who exercise and who continue to exercise customary, consistent, and traditional use of subsistence resources in the national interest lands established by this Act, as of December 18, 1971, and their direct descendents." The bill clearly stated that subsistence was a priority use—Section 101(b) noted that "Subsistence uses of national interest lands will in all cases be given preference over any competing consumptive use in a subsistence management zone"—and based on that priority, it laid out a process for allotting subsistence resources in times of scarcity. At the same time, however, the bill's sponsors exhibited a certain wariness about the effect of subsistence uses on park resources, because one of the bill's provisions called for periodic reports to the Congress "on the effect of all hunting and fishing, including subsistence uses, on the flora and fauna within the lands included in this Act." A final concept it introduced was that of locally generated input into the regulatory process. The bill proposed the establishment of a series of ten-member "regulatory subsistence boards," one for each national interest lands unit. The purpose of each board was to "advise the Secretary or his designee on matters of concern to subsistence permittees" and to review and approve the various subsistence permit applications for that unit. [99]

Another major feature of Udall's bill was its sanction of the national preserve concept as applied to Alaska parklands. As noted above, the nation's first two national preserves (in Texas and Florida) had been signed into law in October 1974. In its various final

environmental statements for the proposed Alaska park units, published just two or three months later, the administration had proposed no preserves. Udall's bill, however, proposed such a classification for Noatak, Yukon Charley Rivers, and the Chisana area. (The latter area was just north of Wrangell-St. Elias National Park.) H.R. 39 narrowly defined the preserve concept, as noted below:

> We have established ... certain areas, managed under the National Park Service as national preserves to be opened to hunting. This classification makes available to sportsmen some of the most unique hunting areas in the world, while at the same time continuing to preserve all values in the remaining national parks and national monuments. The option of permitting hunting in a national preserve is the only deviation from a national park. We continue existing policy permitting hunting in national wildlife refuges. [100]

The preserve concept, a necessary political compromise with sport hunting interests [101], would remain a staple of most future Congressional proposals pertaining to the Alaska lands issue.

Many Alaskans, and a broad spectrum of Outside development groups, found the Udall bill repugnant. To counter its recommendations, Alaska Senator Ted Stevens introduced S. 1787 on June 30. This bill, a product of discussions between the Alaska Congressional delegation, Governor Jay Hammond, and a lobbying group called the Citizens for Management of Alaska Lands, proposed setting aside some 75,000,000 acres in various management systems. Regarding subsistence recommendations, Stevens's bill was even more brief than Udall's. In a cursory overview of "Wildlife Management" (Section 4304), the bill asserted the primacy of state regulation, and it reiterated that in times of scarcity "subsistence purposes shall be given preference over the taking of fish and game for other purposes." [102]



This photograph of Anna (Dennis) and Pete Gregory was taken in Nikolai in 1984 or 1985. Terry Haynes photo

To gauge public opinion regarding the evolving bills and to gather additional information,

Rep. John Seiberling (D-Ohio), chair of the newly formed Subcommittee on General Oversight and Alaska Lands, sponsored a series of field hearings, both in Alaska and in five Outside locations, between April and September 1977. More than 2,300 people testified at those hearings; perhaps 1,000 of these were from Alaska, and included among them were a number of rural subsistence users. Supporters of a strong H.R. 39, as expected, overwhelmed opponents in the various Lower 48 hearings, but many were surprised to find that the Alaskans who testified were nearly evenly split on the issue. [103]

At one of the field hearings—held in Fairbanks in August 1977—Governor Hammond weighed in with the State of Alaska's position on subsistence. His four-page statement was of a general nature and elaborated on four basic tenets: 1) "subsistence habitat should be rationally protected on all lands, not just D-2 lands," 2) "the management must be unified, professional, not splintered and politicized," 3) "subsistence must be given priority on national interest lands, as it has been given priority in State law and policy on all lands of the State," and 4) "local people are demanding greater say in regulation of fish and game harvests in their areas and to the extent they can be accommodated ... this say should be provided." Hammond added that he hoped "to propose State legislation which could far better and less traumatically address the subsistence issue than alternatives before you." (His words proved prophetic; as noted in Section F above, the state's first subsistence law was enacted less than a year later.) But perhaps because there was no such law in 1977, Hammond hedged on the preference issue. He freely admitted to "the perception that state regulation has either favored urban hunters too much, or not favored rural hunters enough when the difficult allocation decisions were made," but he also testified that "a thorough review of recent fish and wildlife regulations [would] show scores of cases where the local rural user has been favored in regulation." He concluded by stating, "I would hope this Congress establishes the priority of subsistence uses where there is a conflict on national interest lands." [104]

The next major step in the legislative process took place on September 15, when Interior Secretary Cecil Andrus weighed in with the Department's recommendations in testimony before the House Interior and Insular Affairs Committee. Regarding subsistence, he reiterated Udall's proposal for subsistence management zones; these would be designated by the Interior Secretary and would be closed by that official, if necessary, should resources be in jeopardy. The state, however, would be responsible for managing, administering, and enforcing subsistence regulations. A strict non-racial subsistence policy would be adopted; to help determine eligible subsistence users, the state would be authorized to establish various local advisory committees. [105]

During the weeks that followed Andrus's testimony, staff working for the House Subcommittee on General Oversight and Alaska Lands substantially modified the original bill to incorporate both Interior Department testimony and the hundreds of comments that the public had contributed during the summer's field hearings. By October 12, the bill's Committee Print No. 1 was three times as long as the bill had been in January, and during the two weeks that followed, additional mark-up sessions lengthened the bill yet again. What emerged on October 28 was a 187-page version (called Committee Print No. 2) that bore little resemblance to Udall's initial bill. [106]

The two committee prints issued in October offered starkly contrasting subsistence provisions. The language of the January bill, which was unspecific yet vaguely limiting, was reflected in the October 12 committee print recommendations. The October 12 version of H.R. 39 authorized subsistence activities in just three proposed park units: Kobuk Valley, Cape Krusenstern, and Bering Land Bridge. In those units, subsistence was one of several park purposes, but in each case, subsistence was the last purpose listed. The following language was used in each case: "... and, in a manner consistent with the foregoing [i.e., the other park purposes], to provide opportunities for continued subsistence uses." But the

October 28 committee print was dramatically different; it stated that the "continued viability of subsistence resources for continued subsistence users" [107] was a purpose of almost all of the proposed park units. With the odd exception of Aniakchak, subsistence was a sanctioned activity in every one of the newly-proposed park units, and the bill also provided the sanctioning of subsistence in Glacier Bay and Katmai additions as well as Mount McKinley's proposed north addition. [108]

The subsistence provisions of H.R. 39 became increasingly detailed as a result of the October staff-committee input. In the October 12 committee print, subsistence was just one of several topics in the bill's "General Administrative Provisions" title. But by October 28, subsistence had emerged as a standalone theme—Title VII—which contained twenty sections and occupied twenty-two pages of double-spaced text. Title VII in the October 28 committee print, for the first time, gave a detailed version of a proposed advisory committee structure that included an "Alaska Subsistence Management Council" as well as a series of regional and local subsistence boards. In addition, this version of H.R. 39 introduced the following concepts, all of which later became law: the idea of cooperative agreements between the Secretary and other organizations; the idea of federal enforcement, if state authorities failed to implement a subsistence priority; the ability of the Secretary to issue subsistence regulations; and the role of subsistence in the formulation of land use decisions. The bill's regional and local subsistence boards, however, differed from those in the present Alaska Lands Act in that they were based on regional and village Native corporation boundaries. This bill also differed from existing law in that it continued to promote the subsistence zone idea, as Udall's original bill had done. [109]

A key point under discussion in the subcommittee's negotiations was whether the federal or state government would manage the national interest lands' fish and game resources. Rep. Seiberling, who had attended many public hearings about H.R. 39 the previous summer, gave the following summary on the subject:

> We heard strong and diverse opinions on this question from the people of Alaska. Some Native groups believe that Federal management is essential if subsistence uses are to be adequately protected. Other witnesses testified that the Alaska State Fish and Game Commission should be responsible.... Two points seem clear: That regulation of hunting and fishing needs to be on a statewide basis, and that the Federal Government has the right to require that management of wildlife resources on Federal lands follow guidelines designed to protect subsistence users, as well as the national interest. The subcommittee print would expressly authorize the State to regulate hunting and fishing on the public lands in Alaska, so long as the State's program for so doing meets certain specified requirements designed to meet the State and Federal Government's responsibilities to protect the rights of subsistence users. Of course, ultimate responsibility over administration of the Federal lands rests with the Federal Government, and our draft language so provides. [110]

Seiberling later went on to say that under the subcommittee's bill, "Alaska would be the only state in the Union with statutory recognition of its role in regulating hunting and fishing on Federal lands." [111] This system—management by the state, with Federal monitoring and oversight—characterized each of the bills that followed, although the specific role of the state and federal governments changed as Alaska lands legislation was debated and refined.

"Yesterday...a consensus title on subsistence was agreed to. I consider this to be one of the miracles of the day."

Rep. John Seiberling

Little legislative action took place on either H.R. 39 or on other Alaska lands bills until January 1978, when the House Subcommittee on General Oversight and Alaska Lands began its consideration of the bill. Regarding subsistence, competing interests had strongly differing opinions about Title VII of Committee Print No. 2, but by January 30, many of those differences had been amicably resolved. As Rep. Seiberling noted a day later in the *Congressional Record*,

> Yesterday, the subcommittee adopted a revised title VIII [sic] of the bill, dealing with the problem of protecting the subsistence lifestyle of the rural residents of Alaska, many of whom—especially the Natives—are almost totally dependent on the fish and game that they can catch or kill. While this was a subject whose importance was stressed during our many months of hearing on this legislation, there were great differences of opinion as to how subsistence uses could be protected, and to what extent. Many people doubted that a provision could be drafted that would be acceptable to all concerned. However, through continuing collaboration between the subcommittee's majority and minority staff, the State of Alaska's Government, representatives of the Alaskan Natives and rural residents, and the Department of the Interior, and with the continued insight and participation of our colleagues, Don Young [R-Alaska] and Lloyd Meeds [D-Wash.] and other members of the subcommittee, a consensus title on subsistence was agreed to. I consider this to be one of the miracles of the day. [112]

The subcommittee completed its work on H.R. 39 on February 7, and the newly-revised bill showed subtle but important differences from Committee Print No. 2. Subsistence, for example, was a proposed purpose in *all* of the new and expanded park units (Aniakchak included), but at Katmai, subsistence would be limited to the proposed Alagnak addition. As for Title VII, two new sections were added; one on limitations, another one proposing a reimbursement to the State of Alaska for costs —not to exceed $5,000,000 per fiscal year—"relating to the implementation of the State program." In addition, the structure for local participation was changed; under the new regime, there would be "not less than five or more than twelve fish and game management regions [not necessarily following Native corporation boundaries] which, taken together, shall include all public lands where the State is exercising regulatory authority under this title." Local and regional fish and game councils would be organized within each of these regions, and all references to an "Alaska Subsistence Management Council" were expunged. A final change—one that disappointed many conservation activists—was the elimination of any reference to subsistence management zones. [113]



Don Young has represented Alaska in the U.S. House of Representatives since 1973. In that capacity, he was a strong voice in the creation of ANILCA in 1980 and in subsequent years has played a hand in many subsistence matters. Office of Rep. Don Young.

During the negotiations over the subsistence title, a key issue that defied easy solution was deciding who had first priority, in times of scarcity, to harvest subsistence resources. As noted in the legislative history, "early drafts of the subsistence title by the House Interior Committee allocated access to subsistence resources on an ethnic basis, an approach similar in concept to that suggested by the [ANCSA] Conference Committee." Section 709(b) of Committee Print No. 2, issued in late October 1977, reflected that notion; it noted that in the event of a declining or depleted resource, "highest priority" would be given "to allowing continued subsistence uses by

Alaskan Natives primarily and directly dependent upon the particular resource." The hierarchy of those who were then eligible for the harvest was similar to criteria developed in 1975 by the Alaska Game Board; it noted that those most deserving were "other persons [i.e., non-Natives] primarily and directly dependent upon the particular resource as a mainstay of their livelihood," followed by "other Alaskan Native subsistence users" and then by "other customary or appropriate users." [114]

But in the months following the issuance of Committee Print No. 2, two factors combined to remove the Native preference. According to the *Congressional Record*, the "ethnic basis" for access to subsistence resources" was abandoned when "Governor Hammond correctly pointed out that under the Alaska Constitution, the State cannot participate in a subsistence management system which would require it to allocate access to subsistence resources on the basis of 'Nativeness.'" [115] Perhaps because of Hammond's comments, Congressional support for a Native preference quickly eroded. Attorney Donald Mitchell recalled that Interior Committee staffers Harry Crandell and Stan Sloss, who were asked to cobble together revised language in the weeks that followed the issuance of Committee Print No. 2, were surprised to discover, at a January 1978 mark-up session, that "all members of the [Alaska Lands and General Oversight Subcommittee] were highly unenthusiastic about a Native priority ... there was not even one vote in support ... it was obvious that the politics had changed." [116] This new state of affairs was later explained on the House floor by subcommittee chair John Seiberling, who noted that:

> ... even though we had a subsistence provision in our bill, it must not be based upon race, that even though we have a commitment to the Natives of Alaska, we must honor that commitment in such a way that we do not set them apart and above other people similarly situated. After a great deal of work and travail, we managed to work out a subsistence provision that does protect their rights and is nevertheless, not based on race. Mr. Chairman, I said to the Natives when I was in Alaska that as far as I was concerned, the trail of broken promises was going to stop right here. I think title VII of our bill ... attains that objective. [117]

What replaced a racial preference was a preference based on rural residency. Section 702 of the February 1978 proposal stated that management policies on Alaska's public lands should "cause the least adverse impact possible on rural people," and Section 705(c)(3)(C) stated that in times of scarcity, "priorities for such consumptive uses" should be based on "(i)customary and direct dependence upon the resource as the mainstay of one's livelihood, (ii) local residency, and (iii) availability of alternative resources." [118] As noted above, the 1978 Alaska legislature had passed a subsistence law that—being consistent with the "equality" clause in the Alaska Constitution—contained no rural preference. The difference in language between the state law and the evolving federal law on this subject would prove vexing in the years ahead, and as Chapter 7 notes, the Alaska Constitution's equality clause would later wreak havoc on the state's ability to manage subsistence resources on public lands.

After emerging from Rep. Seiberling's subcommittee, H.R. 39 was considered by the full House Interior Committee. The bill passed that committee on May 3 and was referred to the full House, where it was debated beginning on May 17. After three days of floor debate, the bill passed the House 279-31 on May 19. Many features of the Alaska lands bill were hotly debated both in committee and on the House floor, but perhaps because Rep. Seiberling had been so inclusive in the subcommittee's deliberations, few changes were made in the House regarding subsistence (regarding either area eligibility or Title VII language) after mid-February. [119]

On May 23, H.R. 39 was reported to the Senate, where it languished because of the stated opposition to the bill by Alaska's two senators, Ted Stevens and Mike Gravel. Sen. Stevens,

who was adroit at parliamentary tactics, resolved that if he could not pass a bill amenable to his terms, he would delay the bill at every step. All recognized that the timetable set by ANCSA demanded resolution of the issue by December 18, 1978; if no bill was passed by that deadline, the protections given to Alaska's national interest lands would lapse. Stevens reasoned that the looming deadline would create conditions fostering a compromise between H.R. 39 and the ideas advocated by many of Alaska's more conservative residents. [120]

To a large extent, Stevens's tactics worked, and by the time an Alaska lands bill emerged from the Senate Energy and Natural Resources Committee, it was early October and just eight days remained before the Senate was scheduled to adjourn for the year. The bill, as reported, was considerably weaker than either the Interior Department or conservationists had advocated. It called for relatively small parks or monuments, relatively large preserve areas, and the creation of several national recreation areas that would be open to a variety of multiple-use activities. In its approach to subsistence, its recommendations were remarkably similar to those advocated in Udall's early (January and mid-October 1977) versions of H.R. 39. In both of these bills, the protection of "the viability of subsistence resources" was an explicit purpose in only three proposed units in northwestern Alaska (Bering Land Bridge, Cape Krusenstern, and Kobuk Valley); [121] S. 9 also allowed subsistence in the proposed Gates of the Arctic unit, but only "where such uses are traditional." [122] Neither S. 9 nor the early versions of H.R. 39 sanctioned subsistence in any of the other proposed parks or monuments.

It seems remarkable, at least in retrospect, that the subsistence-related recommendations of avowed conservationists (such as those embodied in Udall's early versions of H.R. 39) would be so similar to those of Alaska's two senators, who were largely responsible for crafting the Senate committee bill. Conservationists, at first, did not want subsistence activities in many proposed parklands because they were driven by the idea of preserving Alaska's most "pristine" ecosystems; and as a practical notion, many felt that the subsistence lifestyle was such a marginal activity in many park areas that its elimination would cause minimal hardships. Alaska's senators, however, were motivated by an entirely different philosophy. Incensed that Alaska lands legislation would be "locking up" Alaska's most valuable resources, Alaska's senators fought back by attempting to open up as much acreage as possible to the broadest array of land uses. They were particularly sensitive to the demands of urban sportsmen and the guiding profession, and in response to those demands, the bill that passed the Senate committee appears to have leveled the playing field, so to speak, by giving subsistence users and urban sportsmen equal access to fish and game resources in the various proposed park units located outside of northwestern Alaska. In the Senate bill's treatment of the proposed Lake Clark, Wrangell-St. Elias, Gates of the Arctic, and Aniakchak units, for example, both rural residents and urban sportsmen were able to harvest fish and game in the preserve portion of the units, but neither group was able to harvest resources in the proposed park or monument portion of these units.

The report accompanying the Senate committee bill took pains to explain its actions regarding subsistence activities in two proposed NPS units: Noatak and Gates of the Arctic. The Noatak was proclaimed a throwback to nature in its purest form. The report lauded the area as "the largest mountain-ringed river basin in North America still virtually unaffected by human activities," and Smithsonian Institution officials had dubbed it "one of the most biologically significant land-water units still left in a pristine state." Local residents, however, were part of that "pristine state," because the report concluded that permitted activities would include both subsistence uses and "compatible recreational uses ... that will not interfere with ... the subsistence uses of the local people." Consistent with that theme, senators expected the NPS to "work closely with Native village inhabitants of the region to assure that Native cultural values are enhanced by establishment of the Noatak National Preserve." At Gates of the Arctic, however, the emphasis was on classification and limitation.

The report noted that "boundaries between the park units and the preserve were delineated to largely contain the subsistence use zone of the Anaktuvuk Pass people in the preserve." The Senate report further stated that

> subsistence use of the park may be essential at times or continuously in some places for the continued survival of the local people. The committee also feels, however, that the subsistence patterns of the park are well known and can be identified. ... It is not the intent of the Committee that [the fourteen named] drainages be considered the only places where subsistence can occur. But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas.

To ascertain specific subsistence hunting areas, the Committee urged a "thorough study of the subsistence patterns of the people of Anaktuvuk Pass." If the study showed that subsistence hunting areas had changed, the park's subsistence zone could be adjusted to reflect the new reality. [123]

In addition to advocating major changes in which parks would be open to subsistence, the Senate committee bill also proposed a different methodological approach to the protection of subsistence resources, as embodied in the bill's subsistence management title. It matched provisions that had been included in the May 1978 House-passed bill regarding a requirement that the Secretary monitor and report on the state's progress on implementing the subsistence title (Section 806); and in addition, it required the Secretary to inform Congress of these implementation efforts (Section 813). Perhaps the most dramatic change, however, was the addition of two sections specifying how subsistence decision-making would take place in the three NPS parks or monuments that sanctioned subsistence uses. Section 808 defined the roles and responsibilities of the various Subsistence Resource Commissions—an advisory body composed of members chosen by the State of Alaska, the Interior Department, and the various Regional Advisory Councils—while Section 816 defined the terms under which the various parks or monuments would be closed to subsistence uses. [124]

In an attempt to forge a compromise between the House-passed bill and the Senate committee bill, Sen. Henry Jackson (D-Wash.), head of the Senate Energy and Natural Resources Committee, arranged a series of ad hoc meetings between the bill's key players with just three days left in the session. By October 14, the Senate's final day before adjournment, the committee had reached tentative agreement on most major issues. But at that point, Sen. Gravel—who had not previously participated in these meetings—made a number of additional demands that seemed extraordinary to the other meeting participants. The practical result of his demands was that no Alaska lands bill emerged from the 95th Congress. [125]

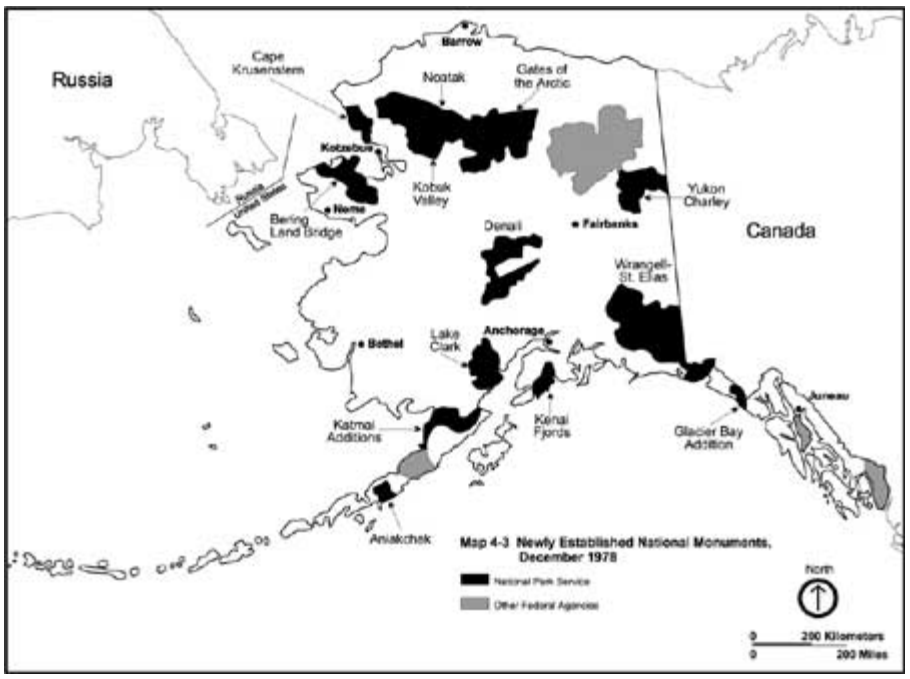
The Interior Department, perhaps in anticipation of such action (or, more appropriately, inaction), prepared documentation to protect Alaska's national interest lands until such time as the Congress could pass an Alaska lands bill. Thus on November 16, 1978, Interior Secretary Cecil Andrus withdrew more than 110 million acres of Alaska land, and on December 1, President Jimmy Carter—using as his authority the 1906 Antiquities Act—issued a series of proclamations designating seventeen national monuments. Together, they covered some 55,965,000 acres of Alaska's national interest lands. [126]

Carter's monument proclamations tremendously expanded the amount of Alaska land under the management of the National Park Service and other land management agencies. (Thirteen of the seventeen monuments, comprising some 40,780,000 acres of Alaska land, were to be administered by the NPS.) Of the thirteen NPS monuments (ten new units plus three extensions of existing units), all but one—newly-designated Kenai Fjords National

Monument—specifically allowed subsistence. [127]

The proclamations for monuments sanctioning subsistence further stated that the Secretary of the Interior "may close the national monument, or any portion thereof, to subsistence uses of a particular fish, wildlife or plant population" for any of several reasons, and in addition, the Secretary was empowered to "promulgate such regulations as are appropriate, including regulation of the opportunity to engage in a subsistence lifestyle by local residents." In response to that clause, NPS personnel scurried to formulate regulations relating to subsistence and other topics. The details of that process are discussed in Chapter 5 of this study.

All sides in the battle over Alaska's lands recognized that a legislative solution was both necessary and worthwhile. Accordingly, the process left unfinished by the 95th Congress would be approached once again during the 96th Congress.



Map 4-3. Newly Established National Monuments, December 1978.
(click on image for an enlargement in a new window)

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
THE ALASKA LANDS QUESTION, 1971-1980
(continued)

H. An Alaska Lands Bill Becomes Law

Because House members had fully discussed Alaska lands issues in the 95th Congress, the bill that was introduced in mid-January 1979 to address those issues—again entitled H.R. 39—was in many aspects not drastically different from that which had passed the House of Representatives the previous May. Subsistence was different, however. Perhaps because the proposed parklands were already protected via Carter's proclamation, Title II (the title that in earlier bills had proposed the various park units) was given over to changing the units' designation—from national monuments to national parks—no language about subsistence was included in the "purposes" section. Title VII, moreover, was a stripped-down version of the bill that the House had passed eight months earlier; previously fifteen sections in length, the new version was composed of just nine sections. [128]

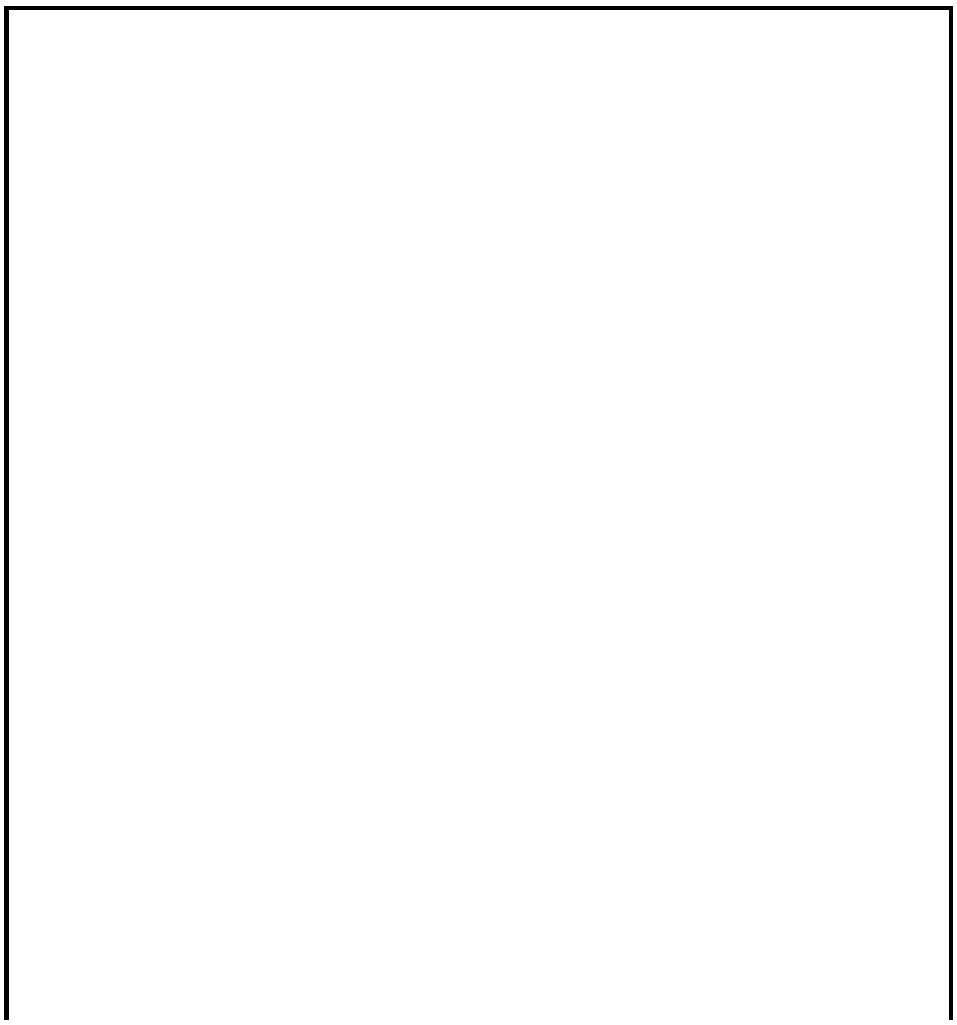
H.R. 39 wended its way through the House of Representatives more quickly than it had in the previous Congress, and on May 16, 1979, the House passed the bill on a 360-65 vote. This bill made no statement regarding which proposed park units would allow subsistence; it was assumed, therefore, that the decisions that President Carter had made in December 1978 were appropriate. In other aspects, the bill was more akin to the document that had passed the House a year earlier than the bill that had been introduced in mid-January. A few changes were evident, however. The May 1979 House bill, for example, omitted any requirement that the Interior Secretary submit periodic reports to Congress on Title VII implementation. The bill also failed to recognize, on a park-by-park basis, the importance of subsistence as a purpose for the designation of any park units. Instead, Sec. 202(f) of the House-passed bill declared the legitimacy of subsistence uses on Alaska's parklands via the following language:

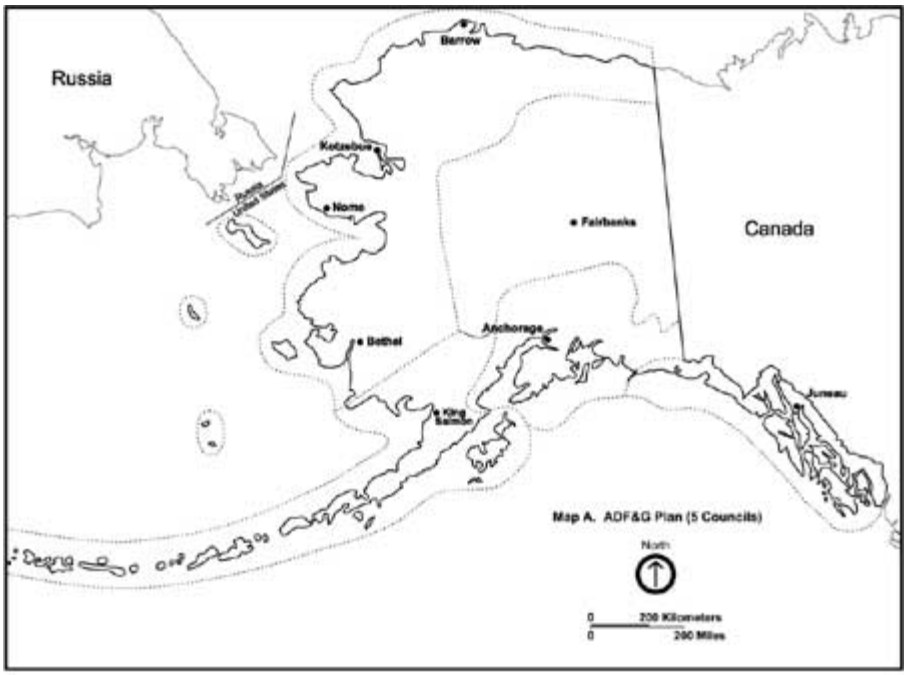
> The Secretary shall administer and manage those units of the National Park System established or redesignated by this Act to ensure the opportunity to continuation of subsistence uses by local residents, where such uses were permitted on January 1, 1979. [129]

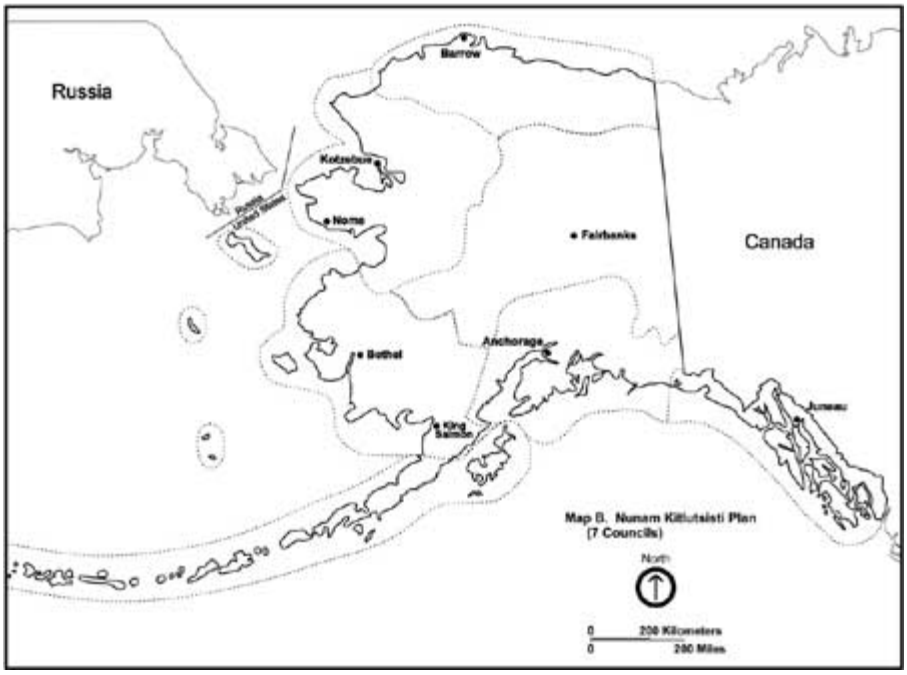
The May 1979 bill, in a manner similar to the January 1979 and the May 1978 bills, continued to promote the idea of regional and local participation. By now, it had been decided that there would be "at least seven Alaska subsistence resource regions;" within those regions, there would be one "regional advisory council" and "such local advisory committees within each region as [the Secretary] finds necessary at such time as he may determine ... that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system...." [130]

The idea of regional councils, and other decentralized aspects of fish and game management, had long been debated by state officials. Natives and other rural residents, in general, favored a decentralized management system, while urban residents favored a continuation of the

system—featuring local committees advising the fish and game boards—that had existed since statehood. During the 1971 legislative session, Senate Majority Leader Jay Hammond (R-Naknek) had submitted a bill that called for ten regional fish and game boards, and by the following year a proposal for twelve such boards had cleared the legislature. Governor William Egan vetoed the bill "because of procedural problems and technical flaws." [131] The state took no further action for the next few years, but in August 1977, Jay Hammond—now Alaska's governor—testified that he was "reviewing a proposal I suggested several years ago regarding the creation of regional or so-called satellite fish and game boards." Just two months after that testimony was given, federal officials—as part of H.R. 39—proposed a series of federally-controlled regional and local subsistence boards, all of which would report to an Alaska Subsistence Management Council. Hammond, now convinced that his initial proposal had merit, agreed with the latest wrinkle in H.R. 39 and pushed for a similar, state-managed system. [132] His ideas were sufficiently persuasive that by February 1978, the notion of an Alaska Subsistence Management Council had been eliminated—in its place would be five to twelve regional advisory councils—and the bill that passed the House in May 1978 called for "at least five" regional management councils. (The bill passed by the Senate Energy Committee in October 1978 also contained this provision.) A year-end annual report by the Alaska Department of Fish and Game noted that the Department had proposed and mapped out a five-region system; the fish and game boards were ready to consider proposals "to provide for regional participation in the development of fish and game regulations." They hoped to take action on the plan in the next few months. Native groups, however, openly worried that the Department's proposed boards would decide matters on the basis of politics rather than biology. As an alternative, Nunam Kitlutsisti drafted its own proposed bill; it called for seven regional resource councils and a far more decentralized way of revising the fish and game regulations. [133] (See Map 4-4)







Map 4-4. Proposed Regional Management Councils, 1978.
(click on image for an enlargement in a new window)

In early 1979, the long-simmering debate between regional boards and regional advisory councils began anew when Alaska House Speaker Terry Gardiner (D-Ketchikan) introduced a bill (HB 193) calling for seven regional fish and game boards. Governor Hammond, in response, asked the legislature to pass a bill (HB 304), supported by the Alaska Federation of Natives, that authorized six regional advisory councils. The legislature, as it turned out, passed neither measure. [134] The joint fish and game boards, following the script that they had laid out in late 1978, established regulations for five fish and game regions (each with an advisory council) on April 7, 1979. [135] Native groups, in response, let it be known that they hoped to see even more regional autonomy, either by increasing the number of management regions or by replacing regional advisory councils with regional boards. The version of H.R. 39 that passed the House in May 1979 (calling for seven regional advisory councils) was

therefore a slight improvement on the joint boards' month-old advisory system. [136] Neither this bill, nor any other previous bill given serious Congressional consideration, made any special provisions for participatory bodies whose sole concern would be the various proposed park units.

In the 96th Congress, as previously, a surge of Alaska lands bill activity in the House of Representatives was followed by a general lack of interest in the Senate. The Senate's Energy and Natural Resources Committee did not take up H.R. 39 until October 9; much to the dismay of conservationists, chairman Henry Jackson used the bill passed by his committee the previous October as a mark-up vehicle. Three weeks later, the committee reported out a bill, S. 9, that contrasted sharply with the House-passed bill. [137] Similar to the bill that the same committee had voted out in early October 1978, it made relatively modest acreage allotments for the national parks and for wilderness areas, although it allotted a relatively large number of acres in national preserves and also allotted several million acres into three national recreation areas.

Several other features differed between the House-passed bill and the Senate Energy Committee's bill. The Senate bill, identical to its October 1978 predecessor, noted that subsistence was a stated purpose for three proposed units: Bering Land Bridge National Preserve, Cape Krusenstern National Monument, and Kobuk Valley National Park. In addition, subsistence was a permitted use at Gates of the Arctic National Park as well as at Cape Krusenstern and Kobuk Valley. Those eligible to use those resources, however, differed between these three units. At Cape Krusenstern, anyone following the provisions of Title VIII would be permitted to use the area for subsistence purposes. At Kobuk Valley, however, that privilege was extended only to local residents who adhered to the title's provisions, and at Gates of the Arctic, subsistence could take place only by local residents and only "where such uses are traditional in accordance with the provisions of title VIII." [138] Neither the remaining park and monument units (Aniakchak, Kenai Fjords, Lake Clark, and Wrangell-St. Elias) nor the three unit extensions (Glacier Bay, Katmai, and Mount McKinley) offered provisions for subsistence. The report accompanying the passage of the Senate committee bill made additional comments about the virtues of the Noatak and Gates of the Arctic proposals; the language of those comments was almost identical to that which had appeared in the report that had accompanied the passage of the October 1978 committee bill. [139]

In the bill's subsistence title (which was Title VII in the House bill but Title VIII in the Senate bill), the Senate Committee bill made several additional modifications to the House-passed bill. Most of these were simple reiterations of the October 1978 Senate Committee bill, and among those reiterations were the two sections dealing with subsistence resource commissions. Minor alterations were also made to public participation for subsistence users outside the parks; for instance, the minimum number of statewide subsistence resource regions was changed from five (in the 1978 Senate committee bill) to six. [140]

Another new concept that emerged during the committee's work was the recognition that wildlife in the various national park units would be managed according to a slightly different standard than on other public lands. Section 815(1) of the bill proposed what no previous Senate or House bill had done—that "subsistence uses of fish and wildlife within a conservation system unit" needed to be "consistent with the conservation of healthy populations," while subsistence uses in national parks and monuments needed to be managed so as to be consistent "with the conservation of natural and healthy populations of fish and wildlife." In the report that accompanied the committee bill, the term "healthy" was defined but "natural and healthy" was not. It explained suggested management differences between NPS and non-NPS areas as follows:

> 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 the 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 programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem. ... The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. [141]

Two weeks after the Senate bill emerged from the Energy and Natural Resources Committee, Senators Paul Tsongas (D-Mass.) and William Roth (R-Del.) introduced a more conservation-oriented bill as a substitute to the committee-passed bill. The introduction of that substitute, however, effectively delayed action until the following summer. On July 21, 1980, the bill was finally debated on the Senate floor, but when Sen. Stevens witnessed the strength of votes (on amendments) in favor of a strong conservation-oriented bill, he prevailed upon the Senate leadership to take the bill off the floor. The leadership then appointed an ad hoc committee of three senators—Henry Jackson, Paul Tsongas, and Mark Hatfield (R-Ore.)—who held several private meetings in an attempt to forge a compromise between the dramatically diverse factions. Out of the meetings of the "three Senators behind closed doors" came Amendment No. 1961, which was Sen. Tsongas's own substitute to the Senate's Energy and Natural Resources Committee bill. On August 18, the full Senate addressed that bill, which was co-sponsored by senators Jackson, Tsongas, Hatfield, and William Roth. The bill, as intended, was a delicate compromise between the House-passed bill and the Senate's committee bill; Tsongas himself noted, "If you look at H.R. 39 and S. 9 issue by issue, the substitute pretty much comes in the middle between those two bills. We did not intend it to work out that way, but, in fact, that is what happened." Soon afterward, the full Senate voted to accept that substitute in lieu of the committee's bill, and the following day, Amendment No. 1961—the ad hoc group's version of the Alaska Lands Act—passed the Senate by a vote of 78-14. [142]

House members, who looked on with guarded disappointment at the Senate's actions, vowed to iron out the many differences between the two bills in a House-Senate conference committee. Those efforts proved halting, however, and many issues remained unresolved when Congress recessed on October 15. House members, in particular, hoped that further progress could be made when Congress re-convened a month later. But all hopes of compromise were dashed on November 4, when Ronald Reagan—an avowed opponent of a pro-conservation bill—was elected president. That event, plus the Republican party's assumption of control over the Senate, forced advocates of the House bill to give up the fight and agree to the Senate-passed bill. On November 12, House members agreed to the Senate bill, and on December 2, 1980, President Jimmy Carter signed into law the Alaska National Interest Lands Conservation Act. [143]

The various senators that huddled together and emerged with Amendment No. 1961 in July and August 1980 made some significant changes to the bill that the Senate Energy and Natural Resources Committee had passed the previous October. Some of those alterations pertained to the nature of subsistence activity that would be allowed in the various parks and monuments. The committee bill, it may be recalled, authorized subsistence activities only at Cape Krusenstern, Kobuk Valley, and Gates of the Arctic (as well as on all of the national preserve lands), and the bill protected "the viability of subsistence resources" only at Bering Land Bridge National Preserve as well as at Cape Krusenstern and Kobuk Valley. [144] Amendment No. 1961, however, broadened those notions. The subsistence viability

protections remained at the same three units noted above, but in addition, the number of new or expanded parks or monuments allowing subsistence mushroomed from three to seven. Unlike the Senate-pass bill, however, all seven of the units sanctioning subsistence permitted the activity only by local residents, and in five of the seven units—not just at Gates of the Arctic—the activity was allowed "where such uses are traditional." By contrast to the many changes in Title II, the assembled senators had little interest in tinkering with the Senate committee's version of Title VIII. The only known change to that title was in Section 807 (dealing with judicial enforcement); here alterations were made because "all of the parties involved" had felt that the section was cumbersome and ambiguous. [145]

Amendment No. 1961, as noted above, allowed subsistence uses in many new park units on a "where traditional" basis; incorporating this language on a widespread scale was a painful compromise between the Senate committee bill (which allowed subsistence in only three park units) and the House-passed bill (which allowed subsistence in almost every new or expanded park unit). Because the term "where traditional" had not been applied on such a broadly-applicable basis before, Sen. Charles Mathias (R-Md.) took pains to elaborate on how the term should be applied. As part of a report describing the so-called "Tsongas Substitute," Mathias noted the following:

> In two areas, Cape Krusenstern National Monument and Kobuk Valley National Park, subsistence uses are wide-spread throughout the park units. In other instances subsistence uses have traditionally occurred in selected portions of the areas and on specific populations of wildlife. The intent of authorizing subsistence within Gates of the Arctic, the northern addition to Denali, Lake Clark, and Aniakchak is to protect those traditional uses in traditionally used portions of the units and on traditionally used populations. The Secretary should continue his research efforts to add to existing data concerning which portions of the parks and which populations have traditionally been for subsistence purposes. The Secretary should work with the Subsistence Council to define "subsistence zones" within those parks and monuments which authorize subsistence. [146]

Further—and somewhat contradictory—information about the concept emerged in the Senate the very next day, as evidenced by this dialogue between two key formulators of the final bill:

> *Mr. [Mark] Hatfield:* Am I correct in stating that the use of the phrase "where such uses are traditional" means that those portions of the parks and those populations within the parks which have been traditionally used would be available for subsistence while the rest of the park area would not be available for subsistence.
>
> *Mr. [Henry] Jackson:* The Senator is correct. The management of this provision must be a flexible one that accounts for the movements of animals. For example, the great caribou herds of northern Alaska that migrate through the mountain passes of the Brooks Range do not use the same passes each year. ... If a [moose] population changes its range then the Park Service should adjust the subsistence hunting zone to accommodate that change. The phrase "where such uses are traditional" also means that if a village has traditionally used a particular valley for subsistence then they should be allowed to continue their use of that valley for those species they have usually hunted. [147]

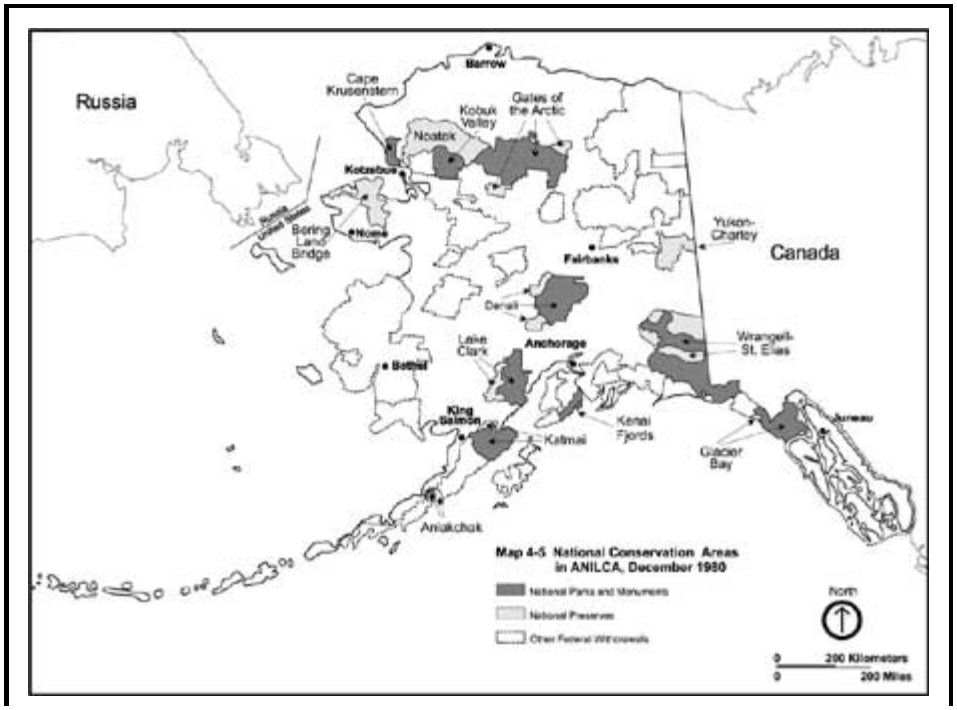
By the time the Alaska Lands bill was signed, there were relatively few points of strong contention in the arena of subsistence management; the House and Senate bills were remarkably similar in that aspect. On the one hand, sport hunting interests complained that

too many acres were in national parks or monuments, and a plain-speaking Sen. Gravel (R-AK) stated that he "always feared that ... the massive, restrictive conservation system units designated in this legislation would be used to terminate or severely curtail existing recreational and traditional uses of the lands involved." Some conservationists, on the other hand, grumbled that they had given away too much in order to preserve the so-called "Alaska lifestyle." As Rep. James H. Weaver (D-Ore.) noted in September 1980,

> The Senate [bill, which became law] would allow anyone who built a cabin in a national park before 1974 to keep and use that cabin even though he or she had no right to do so and are, in effect, trespassers. In addition, these trespassers can pass on their unique privilege until the death of the last immediate family member residing in the cabin. The bill also gets so specific about permitting continuation of so-called traditional uses—such as snowmobiles, airplanes, and even temporary campsites, tent platforms, and shelters, no matter where they occur—that the ability of Federal land managers to exercise flexibility and discretion in regulating the public lands will be severely reduced. [148]

Roger Contor, who followed the act's legislative progress in his capacity as the NPS's assistant to the director on Alaska matters from 1977 to 1979 [149], recognized that the final wording in the bill's subsistence section was a hard-fought, contentious compromise. In a 1984 speech to the Alaska Game Board, he noted that "During the weeks when Title VIII was being formulated, arguments were presented over nearly every written word. The same was true for the words which went into the *Congressional Record* and the *Senate Report*." Recognizing that the Game Board generally favored liberalizing the game regulations, Contor remarked that "many groups were adamant, and still remain so, that there should be NO hunting allowed in the parks, subsistence or otherwise." [150] All agreed that translating the law into a functioning bureaucratic reality would be lengthy and difficult.

Nine long years after the passage of the Alaska Native Claims Settlement Act, Alaska's rural subsistence users finally had a basic legal apparatus that promised to protect their interests. Much of their success in protecting those interests, however, depended on the success of the regulatory mechanisms that would be organized in accordance with the Alaska National Interest Lands Conservation Act. Chapter 5 will cover the process of that organization and implementation.



Map 4-5. National Conservation Areas in ANILCA, December 1980.
(click on image for an enlargement in a new window)

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Alaska Subsistence

A National Park Service Management History

Chapter 5:
INITIAL SUBSISTENCE MANAGEMENT EFFORTS

On December 1, 1978, President Jimmy Carter signed a proclamation that established seventeen national monuments covering some 55,965,000 acres of Alaska land. The NPS that day was put in charge of thirteen monuments; the other four were to be administered by either the U.S. Fish and Wildlife Service or the U.S. Forest Service. Of the ten new monuments and three expanded monuments placed under NPS stewardship, the proclamation decreed that "the opportunity for the local residents to engage in subsistence hunting ... will continue under the administration of this monument" in every case, except in the new Kenai Fjords National Monument. With a flourish of his pen, therefore, President Carter legitimized subsistence activities on some 40,210,000 acres of newly proclaimed NPS-managed land. [1]

A. Establishing a Regulatory Framework

As was noted in Chapter 4, the NPS and other land management agencies had known since mid-October 1978 that Congress would not be able to produce an Alaska lands bill prior to the December 17 deadline, and since mid-November there had been some inkling that the president would be issuing a proclamation to protect those lands until such time as Congress was able to act. Immediately after President Carter issued his December 1 proclamation, Interior Department officials recognized that the state could not enforce a ban on hunting in the new monuments and the Department could not enforce the proclamation's other provisions. The department, therefore, assembled a three-person, Washington-based team—Molly N. Ross and Thomas R. Lundquist from the DOI's Office of the Solicitor, and Michael V. Finley from the NPS's Division of Ranger Activities and Protection—that began assembling management regulations for the new monuments. The process of compiling and approving the new management regulations would take several months; in the meantime, established NPS management regulations prevailed in all of the newly-designated monuments. [2]



In 1979, and again in 1981, Michael Finley helped craft regulations (primarily related to subsistence) for Alaska's new NPS units. Finley later served as the superintendent for both Yosemite and Yellowstone national parks. NPS (AKSO)

The team quickly recognized that the new Alaskan monuments were distinct from other national monuments because of various subsistence and access provisions contained in the president's proclamation. In order to

legitimize those activities, which were technically illegal under existing management regulations, and to calm the fears of many rural Alaskans, both the NPS and the Fish and Wildlife Service issued final interim rules on December 26—effective immediately—allowing relaxed subsistence and access provisions. [3] In an Interior Department directive published in the January 15, 1979 *Congressional Record*, Secretary Andrus noted that the regulations were "aimed at giving short term guidance on issues such as subsistence and access on the new monuments." They were issued, he noted, "in order to modify existing NPS regulations which may have barred, among other things, subsistence activities by local rural residents and in-holders, and routes and methods of access to areas within and across the new national monuments." The temporary regulations specifically stated that the new monuments would be open to subsistence hunting, fishing, and trapping, and also allowed the use of airplanes for subsistence purposes. Regarding commercial trapping, NPS official Robert Peterson determined—inasmuch as the 1978-79 trapping season was already underway—that the activity would be allowed for the remainder of the season. [4]

Meanwhile, two team members (Molly Ross and Michael Finley) continued their work, often meeting with—and paying close attention to—the core subsistence group in the NPS's Anchorage office. On February 28, 1979, the NPS published an Advanced Notice of Proposed Rulemaking in the *Federal Register*. From that date until April 6, the agency solicited public comments regarding how the new national monuments should be managed. Comments were solicited in the following subject areas: aircraft access; unattended and abandoned property; firearms, traps, and nets; illegal cabins; firewood; pets (i.e., dog teams); subsistence; hunting and trapping; and mining. The public reacted to the comment period by submitting 1,979 letters, all but 248 of which were form letters from the Alaska Outdoor Association. Ross and Finley spent the next several months sifting through the comments; the document that emerged from their analysis was signed by Robert L. Herpst, the Interior Department's Assistant Secretary for Fish and Wildlife and Parks, and was published as a twenty-page proposed rule in the June 28, 1979 *Federal Register*. [5] For the next ninety days, the public was invited to submit comments on the general management regulations. The NPS, hoping to elicit the broadest possible response, held well-advertised public hearings in both Anchorage and Fairbanks in mid-August; in addition, "informal public meetings were held in virtually every community affected by the proposed rules." [6] The agency received a total of 245 public comments by the September 26 deadline, and it was anticipated that a final rule would be issued on November 1. But in a surprise move, Interior Department officials took no further action in the matter. They perhaps reasoned that the Final Interim Rule that had become effective on December 26, 1978 was sufficient for administering the newly-established monument lands for the time being, but they also recognized—or perhaps hoped—that Congress would soon pass an Alaska lands bill, which would demand the preparation of a new set of management regulations. [7] Therefore, the public comments that were submitted during the summer of 1979 were held in reserve awaiting a more permanent outcome from Congress.

The regulations outlined in the proposed rule covered a broad range of topics, and they played a central role in how subsistence activities would be managed, both in the immediate and long-term future. The regulations, for example, made the first statements about how the NPS would regulate aircraft use; they stated that fixed-wing aircraft would be allowed, although park superintendents had the ability to ban their entry on either a temporary or permanent basis under certain specified circumstances. Regarding cabin use, those who used cabins on NPS land could continue that use, at least for the time being; those who used cabins built before March 25, 1974 could obtain a renewable five-year permit, while cabins built after that date were eligible for only a non-renewable, one-year permit. [8] Regarding weapons, the regulations distinguished between recreational users, who could carry only firearms, and local rural residents authorized to engage in subsistence uses who "would be

permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law." Motorboat use would be generally permitted, except in various small lakes in Lake Clark National Monument; off-road vehicles would be restricted to "established roads and parking areas;" and snowmobiles "would be permitted only in specific areas or on specific routes." In all three cases, park superintendents would have the power to restrict access on either a temporary or permanent basis. [9]



A major discussion point in the formulation of the 1979 regulations centered on where, and to what extent, aircraft would be allowed for subsistence uses. Paul Starr photo

The topic of subsistence, officials readily agreed, "was perhaps the most divisive of all the issues submitted for comment." Members of the Alaska Outdoor Association submitted 1,731 form letters opposing any subsistence program that did not allow all Alaskans to share equally in the state's fish and wildlife resources. Urban Alaskans generally favored state control and rural Alaskans favored federal control. [10] The NPS, however, proposed "a hybrid State/Federal structure as suggested by the comments from the major environmental organizations, the AFN, and several other commentors." At the time, differing subsistence management schemes were being proposed in the various "d-2" bills on Capitol Hill, and the Service "selected and combined the features which it believes best accommodate the management needs of the new Alaska National Monuments." [11]

The subsistence section of the proposed rule broke new ground by defining "local rural residents" and by proposing that eligibility should be based either on residence in a so-called residence zone or on the possession of a designated subsistence permit. The regulations specified that there would be 39 designated "resident zone communities." [12] (See Table 5-1, following page.) In addition, Section 13.43 of the regulations provided specific criteria under which residents who lived outside those communities could qualify for subsistence permits. A special provision for Gates of the Arctic National Monument allowed Anaktuvuk Pass residents to use aircraft, under certain circumstances, to conduct subsistence activities; another, for Lake Clark National Monument, prohibited the subsistence hunting of Dall sheep. [13]

Table 5-1. Resident Zone Communities for Alaska National Parks and Monuments, 1979-1981

Aniakchak N.M.:
1979 = Chignik
Chignik Lagoon
A1981 = Chignik Lake
Meshik
Port Heiden

Bering Land Bridge N.M.:
1979 = Buckland
Deering
Shishmaref
Wales
1981 = none

Cape Krusenstern N.M.:
1979 = Kivalina
Kotzebue
Noatak

Denali N.M./N.P.:
1979 = Minchumina
Telida
A1981 = Cantwell
Nikolai

Gates of the Arctic N.M./N.P.:
1979 = Alatna
Allakaket
Ambler
Anaktuvuk Pass
Bettles (+Evansville 1981)
Kobuk
Shungnak
A1981 = Hughes
Nuiqsut
Wiseman

Katmai N.M.:
1979 = Egegik
Igiugig
Kakhonak
Levelock
1981 = none

Kobuk Valley N.M./N.P.:
1979 = Ambler
Kiana
Kobuk
Noorvik
Shungnak
A1981 = Kotzebue
Selawikv

Lake Clark N.M./N.P.:
1979 = Nondalton
Port Alsworth
A1981 = Iliamna
Lime Village
Newhalen
Pedro Bay

Wrangell-St. Elias N.M./N.P.:
1979 = Chistochina
Chitina
Copper Center
Gakona
Gulkana
McCarthy
Mentasta Lake
Nabesna
Slana
Yakutat
A1981 = Chisana
Gakona Junction
Glennallen
Kenny Lake
Lower Tonsina
Tazlina
Tok
Tonsina

Yukon Charley N.M.:
1979 = Circle
Eagle
Eagle Village
1981 = none

Note: A = added

During the seven-month period in which the proposed management regulations were being formulated and subject to public comment, NPS officials attempted to establish a

management structure that would complement the vast new acreage that the president and Congress were in the process of bestowing. For more than a decade prior to the December 1978 presidential proclamations, the NPS had supported a central-office presence in Alaska; it had been variously known as the Alaska Field Office, the Alaska Group Office, the Alaska State Office and, most recently, the Alaska Area Office. When Alaska Area Office Director G. Bryan Harry, in September 1978, transferred to Honolulu to become director of the NPS's Pacific Area Office, NPS Director William Whalen let it be known that his replacement, whoever it might be, would serve as an ad hoc regional director. John E. Cook, whom Whalen picked for the job that month, was a third-generation NPS employee who had previously served as both an Associate Director in Washington as well as the Southwest Regional Office director. Whalen picked him, in large part, because he "has had more experience setting up new park system areas than anyone I know. ... The actions we take and do not take in Alaska now will set the tone for our work there for decades to come." Cook, for his part, was equally excited about the challenge, averring that it was "too good an opportunity to pass up." Well before he assumed his position in March 1979, Cook made it clear that he would report directly to Whalen. Cook would serve as Area Director in name only; in due time, he would become the agency's first regional director for Alaska. [14]

Throughout much of 1979, both before and after the proposed rule was issued, the NPS had virtually no ability to administer the many bureaucratic functions that might have logically followed from President Carter's proclamations. Because Congress had played no role in establishing the various monuments, and because the agency had little advance notice of their establishment, the NPS in large part was forced to administer the new monuments using existing resources. The agency knew full well that many Alaska residents were openly hostile to the establishment of new national parklands, and a large-scale protest near Cantwell and more small-scale protests in communities surrounding Wrangell-St. Elias and Yukon Charley Rivers national monuments were obvious manifestations of that hostility. [15] Those attitudes clearly indicated that the agency should take a cautious, incremental approach toward its newly acquired lands, and considering the budgetary situation, the NPS had few other options. The agency estimated that the management of the monuments during Fiscal Year 1979 would cost between $3.5 million and $5.2 million. Personnel ceilings and budget constraints, however, prevented the agency from assigning new people to the monuments or acquiring management facilities, and its request to reprogram existing funds for the purpose was denied. [16]

Despite a general lack of funds, Alaska Area Director John Cook realized that specific situations—the hunting season, for example—demanded an NPS presence, and he felt that the agency should pursue an "aggressive, selective enforcement of sport hunting" in the newly-designated monuments. In the summer of 1979, therefore, he recruited and organized a 22-person team, all of them on loan from other NPS regions. By August 1 the so-called "Ranger Task Force" was on duty in Anchorage, and team members remained in various Alaska-based positions until the hunting season began to taper off. During the winter of 1979-80 the NPS again had a minimal presence in the new monuments; Cook was, however, able to hire three permanent, full-time rangers whose sole responsibilities would be managing the new monuments. [17] Staffing remained largely absent until the late summer of 1980, when the agency deployed a smaller group, informally known as the "Ranger II Task Force." The 1979 and 1980 task force rangers had a wide variety of responsibilities: patrolling huge areas, answering hundreds of questions about the monuments, searching for downed aircraft, and issuing citations (when necessary) for illegal hunting. [18] Most of their hunting-related work involved sport hunting. Subsistence conflicts doubtless surfaced from time to time, but rangers issued no citations during this period for violations of subsistence regulations.

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Alaska Subsistence

A National Park Service Management History

Chapter 5:
INITIAL SUBSISTENCE MANAGEMENT EFFORTS (continued)

B. ANILCA and its Management Ramifications

The agency's presence in the new monuments remained small and only occasionally visible until December 2, 1980, when President Carter signed the Alaska National Interest Lands Conservation Act. This act established by statute that subsistence hunting, fishing, and gathering would be legitimate activities on some 41,458,000 acres of new parklands. The lands under consideration were much the same as those in the national monuments that had been designated two years earlier. [19] Section 1322 of ANILCA, however, had abolished the national monuments; that act of abolition, by extension, also nullified the interim management regulations that had been effective since late December of 1978.

In the wake of ANILCA's passage, NPS officials scurried to assemble a management authority for the newly established park units. A major task that had to be undertaken immediately—even before the various superintendents were hired—was the creation and implementation of management regulations for the newly expanded parklands. As was the case in late 1978 and early 1979, haste was warranted in the issuance of regulations. As noted in the *Federal Register*, "many of the[se] provisions relieve the otherwise applicable restrictions of [existing regulation], which are inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms, preservation of natural features, abandoned property, and camping and picnicking are relieved by these regulations." [20]

The task of drafting the management guidelines fell to five Interior Department employees. Solicitors Molly Ross and Thomas Lundquist, and Michael Finley, now part of the Department's Division of Legislation, were veterans of the effort that had compiled the 1979 regulations; joining them were Maureen Finnerty, of the NPS's Division of Ranger Activities and Protection, and William F. Paleck, from the NPS's newly-established Alaska Regional Office in Anchorage. [21] Using as a template the June 1979 Proposed Rule, the 245 letters that had been submitted during the 90-day period that followed its issuance, the changes in land status between the 1978 proclamations and the 1980 Congressional act, and ANILCA's legislative history, [22] Ross and Finley issued a new Proposed Rule for Alaska's newly-established parklands on January 19, 1981 and gave the public 45 days—until March 6—to submit comments on the proposed regulations. [23]



John Cook was chosen to direct the NPS's Alaska office in September 1978 and remained at the helm in Anchorage until 1983. NPS

The January 1981 regulations, in fact, differed significantly from those that had been announced in the proposed rule

issued nineteen months earlier. Some of the changes, to be (AKSO) sure, were obvious adjustments to the units that had been designated in ANILCA; others, however, were modifications based either on public testimony or the changed opinions of NPS decision makers. In the subsistence section, for example, the January 1981 regulations defined a family for the first time; changed the method by which resident zones were determined; changed the system (in Sec. 1344) under which people living outside resident zone communities could conduct subsistence activities; deleted the prohibition of specific uses (Dall sheep hunting and motorboat use) in the new Lake Clark unit; added Cantwell to the list of subsistence zone communities; and modified numerous other subsistence-related provisions. [24] A key contributor to the tone of the new regulations was NPS planner Dick Hensel, formerly of the Fish and Wildlife Service, who urged that the regulations be as flexible as possible; due to the vagaries of subsistence harvesting patterns, he averred that "subsistence is not a regulatory program in its usual sense" and worked to have the regulations reflect that fluidity. [25]

The public was given until March 16, ten days later than originally scheduled, to submit comments. A four-person team—everyone on the January 1981 team except Michael Finley—then began to analyze the 391 submitted comments. [26] The team was operating under a severe, self-imposed time constraint—the agency had announced in January that it hoped to issue final regulations in late March—but the volume and complexity of comments forced the team to make a more deliberate effort. A Final Rule was not published until June 17, 1981. [27] The rule was made "immediately effective to provide public guidance in time for peak park use seasons." Federal regulators, moreover, recognized that the regulations were not the last word; they were "the minimum necessary for interim administration of Alaska park areas." They also promised that "[f]urther rulemaking efforts will involve more expansive public guidance on the implementation and interpretation of ANILCA." [28]

Comments were submitted on a variety of subject areas, but subsistence issues continued to be both vexatious and contentious; as noted in the *Federal Register*, "the issue of subsistence continues to be the most difficult of all the issues affecting the new National Park Service areas in Alaska." The State of Alaska, and many in-state groups, felt that the federal government should play no role in regulating subsistence, particularly during the first year following ANILCA's passage. In deference to those attitudes, the agency agreed to delete a system of residence zones and subsistence permits as they pertained to the national preserves, although it stood firm in its conviction that it would manage subsistence activities in preserves as well as in the parks and monuments. In another compromise with Alaska-based interests, the regulations did not contain any provisions that would have immediately implemented sections 806 (federal monitoring), 807 (judicial enforcement), 810 (impacts on land use decisions), and 812 (research). The agency, however, averred that it had "certain basic responsibilities" to carry out the other provisions of ANILCA as they pertained to subsistence activities. The NPS had no problem with the state's regulation of subsistence activities so long as it was consistent with federal law; the agency, in fact, anticipated "that a State subsistence program, implementing ANILCA's various mandates, [would] eventually supersede most federal regulation of subsistence." [29]

The NPS recognized that the definitions of certain terms would be an important aspect of subsistence management, and in recognition of that importance, the agency discussed several terms that had been incorporated into ANILCA. Regarding "healthy" and "natural and healthy" (as noted in Sections 802(1), 808(b), and 815(1)), the regulations did not explicitly define either term, although explanatory paragraphs sprinkled throughout the regulations shed light on their applicability. The agency also chose not to define the terms "customarily and traditionally," suggesting instead that establishing such a definition demanded additional comment, research, and advice from various local advisory bodies. In addition, it modified

the application of the "customary trade" concept that had been propounded in both the June 1979 and January 1981 proposed rules to include the "making and selling of certain handicraft articles out of plant materials" in Kobuk Valley National Park and a portion of Gates of the Arctic National Preserve. [30]

The terms "local resident" and "rural resident" had been used in ANILCA, and because only "local rural residents" (either subsistence permit holders or those who lived in resident zone communities) were eligible to carry on subsistence activities, the regulations sought to define the term more specifically. The regulations suggested specific criteria—tax returns, voter registration, and so forth—that would help determine whether an individual qualified as a "local rural resident," and they also listed specific cities and towns that, in the agency's opinion, either qualified or did not qualify as "rural" communities. But this list was by no means exhaustive; another effort, at some later date, would need to more clearly define the boundary line between urban and rural. [31]

Regarding the "where traditional" clause (which pertained to five of the newly-established park units), the NPS—perhaps on Dick Hensel's advice—chose not to designate any specific hunting zones. Instead, it noted that various local advisory bodies "should facilitate such local input into these designations." The agency warned, however, that "local rural residents should comply with ... Congressional intent ... by not hunting in any areas [of these five park units] where subsistence hunting has not, in recent history, occurred." [32]

In regards to the determination of resident zones, the NPS recognized that it was treading a narrow, median pathway. At one extreme was the state, which wanted to abolish all resident zones, thus opening up subsistence hunting opportunities to all regardless of their residence; while at the other extreme, conservation groups wanted resident zones replaced by subsistence permits, thus ensuring that only well-established hunters would be allowed subsistence hunting privileges in the national parks and monuments. The NPS, guided by ANILCA's legislative history, insisted that resident zones would be the primary mechanism for determining subsistence eligibility; in deference to the state, however, the agency agreed to adopt a more liberal definition for what constituted a bona fide resident zone community. [33] Because of that liberalized definition, the number of resident zone communities increased for most of the new park units, and the total number of communities near national parks or monuments rose from 31 to 53. (See Table 5-1.) The agency hoped, by selecting a relatively large number of resident zone communities, to reduce the number of subsistence users that would need to obtain subsistence permits. (These became known as "13.44 permits" because they were discussed in Sec. 13.44 of the final regulations.) [34]





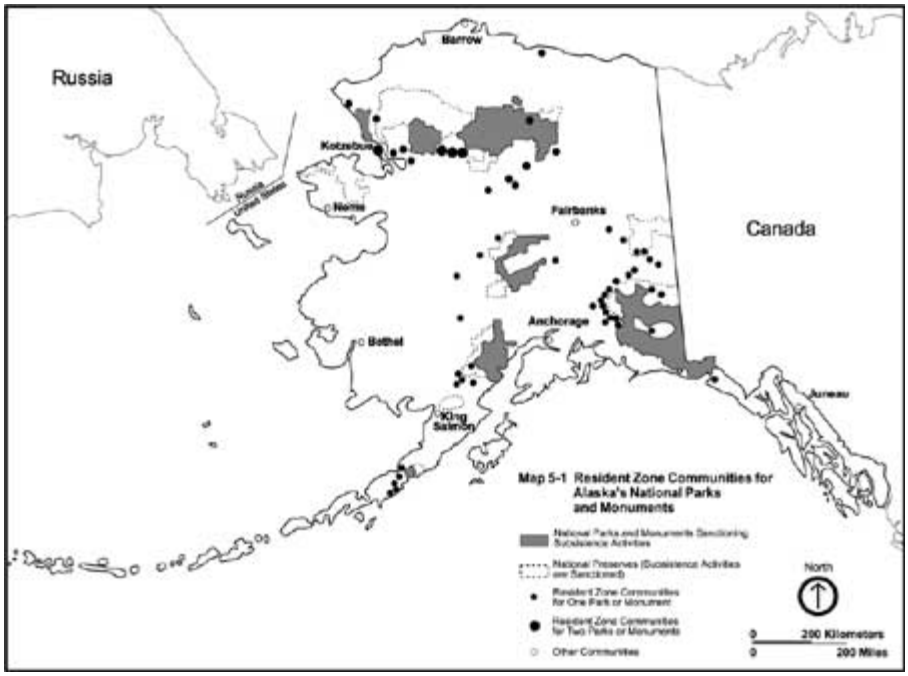
The first group of seasonal employees to work in Alaska's parks after ANILCA's passage met in June 1981; several became experts on subsistence matters. Top row, left to right: Dick Ring* (GAAR), Kim Bartel (YUCH), Mary Hoyne (WRST), Timothy Wingate (LACL), Ray Bane* (GAAR), Jacquelynn Shea (GAAR). Second row: George Wuerthner (GAAR), Linda Lee (CAKR), Debbie Sturdevant, Kit Mullen (WRST), Susan Steinacher (GAAR), Skye Swanson (GAAR). Third row: Thomas Rulland (GAAR), Gladys Commack (CAKR), Gail McConnell (CAKR), Clair Roberts (LACL), William Goebel (YUCH), John Morris. Bottom row: David Chesky (LACL), Charlie Crangle (LACL), Karen Jettmar (CAKR), William "Bud" Rice (NOAT), Maggie Yurick (GAAR), Steve Ulvi (YUCH), Mike Tollefson* (LACL). NPS (AKSO). Those marked with a * were not *seasonal* employees.

During the seven-month period following ANILCA's passage in which management regulations were being drafted and approved, NPS officials in Alaska were carrying on a myriad of other activities in an attempt to establish facilities and personnel in the newly-established park units. Within weeks of ANILCA's passage, Alaska Regional Office [35] Director John Cook began hiring the first new park superintendents (see Appendix 3), and by the late spring of 1981 a skeletal management presence was on site at each of the new parks. (The number of permanent, full-time staff ranged from two to six that first year.) Considering the acreages and responsibilities involved, the initial park budgets were decidedly modest. The first park headquarters, as a rule, were humble affairs; in a few fortunate cases, the agency was able to carve out space in existing federal facilities, but elsewhere, park staffs were forced to make do with a substandard or deteriorating physical plant. [36]

Cook, who had been no stranger to confrontation during his previous management stints, recognized that anti-NPS sentiment in the aftermath of ANILCA ran high in many parts of Alaska. Agency personnel in the vicinity of many park areas, moreover, had had little interaction with local residents. In response to those conditions, Cook deliberately chose a non-confrontational management style and recommended a similar attitude on the part of his staff. The new regional director was fully aware that ANILCA's provisions, along with the newly-approved management regulations, had given the agency broad management power over the parks and park users; but he was also keenly aware that arbitrary or excessive

exercise of that power would antagonize many Alaska residents. He recognized, for the time being at least, that it was of primary importance that the agency, both on an institutional and personal level, be good neighbors and low-key educators. [37]

This attitude was reflected in the agency's approach to subsistence. During the mid-to-late 1970s, when the agency was formulating its various final environmental statements and defending the proposed parks before Congress, a subsistence "brain trust" had developed among the Alaska NPS staff. The initial members of this ad hoc group, Robert Belous and T. Stell Newman, had written several subsistence policy statements (see Chapter 4), and in the late 1970s they were joined by historian William E. Brown, anthropologist (and CPSU head) Zorro Bradley, and others. Cook, recognizing the group's collective expertise, gave the group a high degree of independence in day-to-day policy formulation. That policy, carried out at the park level by the various superintendents and by rangers, was primarily educational during this period. [38] After ANILCA was passed, Belous continued to use a "soft touch" approach and made periodic, informal visits to those communities with which they had become familiar during the mid-1970s. Subsistence expert Ray Bane, who was living in Bettles at the time, made similar visits throughout northern Alaska. And park staff, most notably Superintendent C. Mack Shaver (of the Northwest Alaska Areas cluster) did likewise, hoping by their visits to establish trust, dispel rumors, and provide information about agency operations. [39]



Map 5-1. Resident Zone Communities for Alaska's National Parks and Monuments.
(click on image for an enlargement in a new window)

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C. Alaskans React to the State and Federal Subsistence Laws

As noted in Chapter 4, the Alaska State Legislature passed a basic subsistence law in 1978. Governor Hammond signed it on July 12, and it became effective on October 10. Among its other provisions, the law "established in the Department of Fish and Game a section of subsistence hunting and fishing." [40] The new Subsistence Section was not given the usual management and enforcement responsibilities; instead, its role was limited to socioeconomic research and various planning functions. During its first two years, the division grew slowly; though a chief (Dr. Thomas D. Lonner), an assistant chief (Paul Cunningham), and a support person (Tricia Collins) came on board in February 1979, the Section was not actually operational until that summer. (See Appendix 1.) The first field-office positions were not filled until the fall of 1979, and the Section was not fully functioning until 1980. Once up and running, the Section began producing a series of technical reports; most were of a qualitative nature and were a direct response to regulatory proposals being considered by the Alaska Boards of Fisheries and Game. By the spring of 1981, Section personnel were working in nine different offices scattered around the state. [41] On July 1 of that year, via administrative means, the Subsistence Section was upgraded to Division status. Staff growth during this period was dramatic. [42]

NPS Historian Bill Brown, the region's first cultural resource chief, was an influential player in subsistence policy development both before and after ANILCA's passage. Nan E. Elliot photo, from *I'd Swap My Skidoo for You*

During the same two-year period, the legislature continued to keep a close eye on subsistence issues. The state's House of Representatives, for example, had a Special Committee on Subsistence that had been active since 1978 (see Chapter 4). This committee, which was dominated by members of the so-called "Bush caucus," remained active through the early 1980s. The committee during this period worked all year long; between legislative sessions it served a general oversight function for the Department of Fish and Game, collecting and distributing information on a wide range of subsistence issues and working with federal authorities on Alaska Lands legislation. [43] Perhaps because the new subsistence law had little immediate impact on hunting or fishing regulations, and because the federal government had not yet passed an Alaska Lands Act, the state legislature had little interest during this period in either modifying or repealing the 1978 subsistence law. [44]

The legislature's "wait-and-see" attitude during this period was shared, to some extent, by members of the state's Board of Game and Board of Fisheries. The joint boards, in March 1979, held a meeting before a "packed house" in Anchorage to consider adopting new regulations in the wake of the subsistence law's passage. [45] They deferred taking such a step for the time being; four days later, however, they adopted a "Policy Statement on the

Subsistence Utilization of Fish and Game" that was, in large part, a reflection of verbiage in the 1978 subsistence law. In addition, they moved to publish the first booklet that was exclusively devoted to subsistence fishing regulations. (As noted in Chapter 1, subsistence regulations had been published ever since 1960, but they were scattered within the annual commercial fishing regulations booklets.) In lieu of regulations, the fish and game boards continued to apply a common regulatory framework to all harvests. Separate subsistence regulations reflective of the new subsistence law were not approved until after the Alaska Lands Act was passed. [46]

The joint boards, reacting to pressure applied by both Governor Hammond and the evolving Alaska Lands Bill, also acted on the long-simmering issue of regional advisory councils. On April 7, 1979, as noted in Chapter 4, the boards promulgated regulations that established five vaguely-defined fish and game regions, each of which would support a regional advisory council. Four of the regional councils held meetings that year. [47] A fish and game official, stressing the tentative nature of the councils, stated that

> none of these regional councils are required to meet. Instead, what we intend to do is offer Advisory Committees the opportunity to meet as a regional council and to discuss regional issues ... Scheduling the meetings as we have done demonstrates the good faith of both Boards in improving the Advisory Committee system. [48]



Charles M. (Mack) Shaver served as the first superintendent of the NPS's so-called Northwest Alaska Areas: Cape Krusenstern National Monument, Kobuk Valley National Park, and Noatak National Preserve. NPS (AKSO)

Fish and Game Commissioner Ronald Skoog defended the board's role. The councils, he noted, "should help our efforts in the Congress relative to 'regionalization' as proposed in the current (d)(2) legislation. It should at least demonstrate that the State is attempting to improve the public participation process by promulgating responsive regulations and by addressing the concerns of rural residents." Speaking in early 1981, Skoog further noted that "since regional councils were established, more than half of their recommendations have been adopted." Among rural subsistence interests, however, the meetings of the newly-created councils were greeted with skepticism if not cynicism. An observer at one October 1979 meeting concluded that it was "less than completely effective in providing public input into the regulatory process," while a participant at another meeting noted it was "merely a forum for the executive director of the Boards of Fish and Game to express his personal opinions." [49]

In December 1980, the Board of Fisheries held its first hearings on the state's 1978 subsistence law. It did so in response to worries about overfishing in Cook Inlet; since the passage of the 1978 law, there had been a huge increase in the number of subsistence fishing permit applications, and a substantial increase in the subsistence salmon harvest was an inevitable result. In order to rationalize that activity, and in response to the District Court's decision in the so-called Tyonek case (*Native Village of Tyonek vs. Alaska Board of Fisheries*), [50] the board established ten characteristics for identifying the "customary and traditional uses" of Cook Inlet salmon. Based on those characteristics, the board decided to adopt a set of criteria drawn from them, and then to apply those criteria to various communities, groups, and individuals who wanted to conduct subsistence fishing activities in

Cook Inlet. The board partially completed this task in December 1980; three months later, the board completed the task and issued its first subsistence fishing regulations under the new (1978) law. [51]

The passage of Alaska Lands Act legislation in late 1980, and the clear recognition that a rural subsistence preference was a critical adjunct of federal as well as state law, caused a furor of protest among many Alaskans, particularly urban sportsmen and their representatives. (Many blamed Alaska's Congressional delegation for the rural preference; Fairbanks resident Bill Waugaman, for example, stated that "Stevens and Young have always gone along with the Alaska Federation of Natives lobbyists" and that "it was Senator Stevens who told us in 1978 that there would be no subsistence section in the Alaska Lands Act if the state adopted its own subsistence law." [52]) Their collective frustration was expressed in two similar moves—a citizens' initiative and a legislative approach—that aimed to repeal the 1978 subsistence law.

Action on the citizens' initiative, called the "Personal Consumption of Fish and Game" initiative or simply the Personal Use Initiative, was already underway within days of ANILCA's passage. Sam E. McDowell, Warren E. Olson, and Tom Scarborough submitted an initial petition for "The Alaska Anti-Discrimination Fishing and Hunting Act" on December 18; a month later, however, the Attorney General rejected it because "the title of your initiative does not accurately express the subject of the bill." Undeterred, backers rewrote the petition and submitted it again, and on March 25, the Attorney General approved the initiative and allowed its backer to begin gathering the 16,265 signatures necessary for it to be placed before Alaska's voters. [53] Broad in its approach, the initiative pledged to not only repeal existing Fish and Game Code provisions that related to subsistence hunting and fishing, but it also "would, for fishing, hunting, or trapping for personal consumption, prevent classification of persons on the basis of economic status, land ownership, local residency, past use or dependence on the resource, or lack of alternative resources."

By the time the voter's initiative had been readied for signature gathering, a legislative bill (HB 343) had been introduced by Rep. Ramona Barnes (R-Anchorage). Less than two weeks after its March 16 submittal, the House Special Committee on Subsistence held a hearing on the bill at East High School in Anchorage. Some 600 people jammed into the hearing room; according to press reports, the vast majority in attendance backed Rep. Barnes' bill. [54] The Alaska House then voted on whether to move the bill out of the Special Committee. But in a crucial April 23 test, and on three subsequent occasions, Barnes was unable to muster a majority vote. On June 3, she withdrew her bill. [55] The backers of the personal use initiative, meanwhile, worked to gather a sufficient number of signatures to secure a place on the ballot. Completed petitions were filed with the Division of Elections by January 11, 1982, and on March 5, Lieutenant Governor Terry Miller certified to the requisite number of valid signatures. Both backers and opponents geared up for a statewide vote, which would take place at the next general election on November 4, 1982. [56]

Ronald O. Skoog served as Alaska's Commissioner of Fish and Game under Governor Hammond, from 1974 through 1982. ASL/PCA 01-4515

Aside from questions that surrounded the potential repeal of the subsistence law, subsistence matters were considered in a broad variety of venues during 1981 and 1982. In the spring of 1981, for example, the state Board of Game (as noted above) adopted subsistence hunting regulations. Other matters were put off until the legislative session ended, but soon afterward, state and federal authorities began a series of interactions that were designed to bring the state into compliance with ANILCA's provisions. [57] Fish and Game commissioner Ronald Skoog commenced the process on May 27 by submitting a compilation of state statutes, regulations, and other documents pertaining to subsistence. Interior Department officials, in response, met with

ADF&G representatives on September 3 and discussed the documents' perceived shortcomings. Follow-up meetings were held on September 28 and 29 and again on November 5 and 6. [58] State officials dragged their feet because they were reluctant to toy with the state's regulatory and advisory system. [59] Federal officials, however, knew they held the upper hand; according to Section 805(d) of ANILCA, the federal government could legally assume control over the subsistence program if the state, by December 2, failed to adopt regulations related to definition, preference, and participation (as specified in Sections 803, 804, and 805). To conform to that timetable, ADF&G officials held a meeting of the joint game and fish boards on December 1, just one day before the deadline. At that meeting, the joint boards passed a key resolution that was intended to respond to federal concerns. [60]

Regarding issues of definition (Section 803), the combined boards recognized that ANILCA called for subsistence use only in areas where such use was "customary and traditional." Given that recognition, they initially defined "subsistence uses" as

> Customary and traditional uses in Alaska 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, and for the customary trade, barter or sharing for personal or family consumption.

The joint boards also defined "rural subsistence uses," and noted that the boards would "identify rural and other subsistence uses of fish or game resources" by referring to eight criteria that helped identify customary and traditional uses. (These criteria were similar to the ten "characteristics of subsistence fisheries" for the Cook Inlet Area, as noted above, that the Board of Fisheries had grappled with beginning in December 1980.) For instance, was there a long-term, consistent pattern of use? Did it recur in specific seasons of the year? Was the resource harvested near a user's residence? Were the skills involved in resource harvesting handed down from generation to generation? And did individuals use a wide variety of game and fish species? These patterns of use typified subsistence harvesting methods; as a result, affirmative responses to these and similar questions clarified "customary and traditional" uses by individuals and communities. These criteria, it should be noted, could be applied in urban as well as rural communities, and the combined fish and game boards avoided a specific definition of "rural areas" in their resolution. [61]



Another ticklish issue related to preference was a determination of how fish and wildlife resources would be apportioned in times of scarcity. The 1978 law, as noted above, had listed three criteria that outlined the degree to which local residents depended on subsistence resources. (These criteria were 1) customary and direct dependence upon the resource as the mainstay of one's livelihood, 2) local residency, and 3) availability of alternative resources.) The joint board's December 1981 resolution incorporated these criteria. Under no conditions, it noted, would fish or game managers allow populations to drop to the point that a sustained yield management regime could not be maintained. [62]

Regarding local and regional participation (Section 805), the combined boards addressed the status and role of the regional fish and game councils. As noted above, the joint boards had established five such councils in April 1979,

and ADF&G officials had held meetings of four of those councils during the intervening two years. Several state legislators, in the wake of ANILCA's passage, had let it be known that "the state of Alaska currently has regulations in place and is currently operating regional councils and local councils which do all of the things enumerated in Section 805" of ANILCA. Federal authorities, however, reminded the state that ANILCA demanded at least six such councils, and that provision for these councils needed to be established by regulation. In response, the boards addressed the matter in their resolution and stated that the councils "shall take appropriate action, within their authority, to provide for rural and other subsistence uses." [63]

Ramona Barnes (R-Anchorage), who served in the State House for ten terms (1979-85 and 1987-2001), was an avid states' rights advocate who, in 1982, sponsored a bill to repeal the state's 1978 subsistence law. Alaska LAA

The joint boards, having passed a general policy on subsistence, also passed their first hunting regulations that provided for a subsistence preference. Specifically, residents of particular areas within game management units 23, 24, and 26—most of whom lived in or near newly-designated NPS units—were provided an increased opportunity to hunt Dall (mountain) sheep. [64] Having taken those actions, the joint boards were hopeful that the federal government would immediately certify their efforts and allow the state to formally assume control over the subsistence management program outlined in ANILCA. The Interior Secretary's office, however, delayed action, and for the next several months it was "engaged in a review process." [65]

Just two months after the Fish and Game Boards established a regulatory basis for the regional fish and game councils, board staff organized initial, two-day meetings for the six councils. (See Table 5-2, facing page.) The councils met during February and March 1982; a quorum was achieved everywhere except in Bethel, where the Western Regional Council met. Just as in their 1979 incarnation, each regional council was composed of the chairs of the various local advisory committees within that region; the number of committee members thus ranged from 4 to 15. [66] (See Appendix 2.) The meetings were primarily introductory, but as part of the agenda, council members were asked to nominate three people to each park or monument subsistence resource commission in their region. [67]

Table 5-2. Regional Advisory Council Chronology, 1971-present

1971 — Sen. Jay Hammond (R-Naknek) submits a bill calling for ten regional fish and game boards. It passes the Legislature, but Gov. William Egan vetoes it.

Oct. 1977 — H.R. 39 calls for a series of federally-controlled regional subsistence boards

Feb. 1978 — Revised H.R. 39 calls for between 5 and 12 state-managed regional subsistence management councils

May 1978 — House-passed H.R. 39 calls for "at least five" regional subsistence councils. The bill that passed the Senate committee in October includes an identical provision.

1979 — state legislators propose two bills; one calls for seven regional fish and game boards, the other for six regional advisory councils. Neither bill passes.

Mar.-Apr. 1979 — joint fish and game boards, following a 1978 plan, establish regulations for five fish and game regions, each with an advisory council

May 1979 — U.S. House passes H.R. 39, which calls for seven regional advisory councils

Summer-Fall 1979 — four of the five state-managed regional councils meet

Aug. 1980 — Senate-passed bill calls for "at least six" such councils. In Dec. 1980, this bill becomes law.

Feb.-Mar. 1982 — Initial meetings of the six state-managed councils. In April, the combined fish and game boards pass revised council regulations

1982-84 — Sporadic meetings of some councils; by late 1983, most were inactive.

Late 1984-early 1985 — hiring of staff coordinators signals renewed interest in RACs.

Mid-to-late 1980s — A few councils meet during 1985-86 period, but generally quiet in late 1987-early 1988. Partial revival of state councils in 1988 and 1989.

1990-92 — Shortly after federal assumption, FSB commissions study on effectiveness of regional and local decisionmaking. Study recommends federal manage- ment of regional decisionmaking; FSB adopts this alternative in April 1992. State-managed regional councils cease functioning soon afterward.

1992-93 — Selection process for regional council members and coordinators.

Sept.-Oct. 1993 — First federally-sponsored RAC meetings.

In the midst of these meeting dates, Interior Secretary Watt formally responded to the adequacy of the state subsistence program. In a February 25 letter addressed to Governor Hammond, Watt noted that, in most aspects, "the State program appears to satisfy section 805(d) of the Alaska National Interest Lands Conservation Act." His primary concern was that the state had "not demonstrated that it has established 'laws' which provide for all of the essential provisions" of sections 803, 804, and 805. He specifically noted that the joint boards' December 1981 resolution "cannot be relied upon to satisfy Title VIII because it has not been promulgated as a regulation and thus is not binding on the Boards of Fisheries and Game." A second difficulty, Watt noted, was that the definition of "subsistence uses" as included in the December 1981 resolution was not specific to "rural Alaska residents" as ANILCA demanded. The state program must "identify ... rural subsistence users and extend ... the section 804 priority [for rural residents] and section 805 participation scheme [for regional councils] to those users." Finally, Watt stated that during times of fish or game scarcity, the state's program "must provide that restrictions will be applied among rural residents engaged in subsistence uses; the December 1981 policy resolution gave "the highest priority to local residents in rural areas" but omitted any requirement that these residents be subsistence users. Hoping to be helpful, Watt delineated his suggestions by



During the 1970s, William P. Horn served as a staff assistant to Rep. Don Young. After ANILCA became law, he became Interior Secretary Watt's undersecretary in charge of Alaskan affairs. He remained in that position until 1988. ADN

specific additions and deletions to text in the December 1981 policy resolution. He assured Hammond that "If enacted in its entirety as a regulation, the approach embodied in the suggested edited revision would comply with all applicable provisions of Title VIII." [68]

The next scheduled meeting of the joint fish and game board was in early April 1982. The adoption of regulations that would be compatible with ANILCA was an important agenda item, so to clarify the federal government's stance, ADF&G Commissioner Ron Skoog invited William P. Horn, the Interior Undersecretary charged with advising Watt on "d-2" issues, to speak at the Anchorage meeting. [69] (See Appendix 1.) Horn, at the meeting, put a human face on the regulations laid out in Watt's letter, and he emphasized that "the department remains, philosophically and policy wise, strongly committed to state management." If the board approved compatible regulations, Horn promised that "the [Interior] secretary will immediately issue the letter of approval and the responsibilities for implementing this program will remain firmly in the state. I guess I can't emphasize enough how much we wish we could do that...." He warned, however, that unless the board issued "some form of a regulation or law that establishes the [rural] priority in a proper fashion that conforms with the federal statute, we will shortly be forced to issue some kind of preliminary finding of noncompliance." If the department issued such a finding, the federal government might be forced to assume fish and wildlife management on Alaska's federal lands, "perhaps as soon as a month and a half from now," Horn added. [70]

Although Watt, in his letter, had noted that the state had some flexibility in responding to the three problem areas—"the State definition [of 'rural Alaska residents'] need not be identical to section 803," for example—many fish and game board members recognized that they had little latitude in complying with the federal government's dictum. Jim Rearden, a Game Board member from Homer, called it "blackmail," while joint boards chair Clint Buckmaster, from Sitka, noted that he was "sick to the core and the heart" over his decision. Some board members, along with many outside observers, used an analogy to poker; they concluded that the state should call the federal government's "bluff" and dare them to take over fish and wildlife management. ("The situation could hardly be worse than it is now," many felt.) Others, however, urged the joint boards to adopt the revised regulation. After three hours of deliberations, the boards voted 10 to 3 to comply with federal subsistence requirements. [71]



Shown in this early-1980s photograph (left to right) are John Sandor (U.S. Forest Service), Keith Schreiner (U.S. Fish and Wildlife

Service), unidentified, Interior Secretary James Watt, Sen. Ted Stevens, Sen. Frank Murkowski, and Curt McVee (Bureau of Land Management). Watt, in May 1982, certified that the State of Alaska's subsistence program was in compliance with ANILCA provisions. NPS (AKSO)

The joint board regulation, as decided on April 6, made no mention of what constituted a "rural" Alaskan, and neither the Alaska legislature nor the joint boards had specifically defined rural residency since the October 1978 passage of the state's subsistence law. But just a day later, the fish and game boards moved to conform with Section 804 of ANILCA by defining which areas were eligible to hunt and fish for subsistence purposes. It defined as rural (and therefore eligible for subsistence) those areas that were "outside of the road-connected area of a borough, municipality, or other community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs." Excluded were the residents of Anchorage along with the "road connected" portions of the state's most heavily-populated boroughs: Fairbanks North Star, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, and Sitka. These areas, when combined, comprised only a small part of Alaska's land mass; populations levels outside of the road system, however, were so scattered that only 15 percent of the state's residents, according to this system, qualified as subsistence users. [72]

On April 29, 1982, Governor Hammond transmitted the final elements of the state's subsistence and use program to the Interior Secretary James Watt. On May 14, Watt responded by certifying to Hammond that the state's subsistence program "will be in compliance with sections 803, 804, and 805 of ANILCA as of June 2, 1982. As a result of this certification of compliance, the State retains its traditional role in the regulation of fish and wildlife resources on the public lands of Alaska." A mid-May press report noted that "Watt's action was a direct rebuff to those opposing a priority subsistence measure." [73]

One immediate response to the Interior Department's certification of the state's subsistence program—and the various late-winter meetings of the regional advisory councils—was that the federal government began to reimburse the state for certain costs related to subsistence management. Section 805(e) of ANILCA had stated that "The Secretary shall reimburse the State ... for reasonable costs relating to the establishment and operation of the regional advisory councils." Based on the fact that the state had organized various late-winter meetings of the regional advisory councils, as well as its fulfillment of the other federally-mandated aspects of its subsistence program, the federal government provided the state with a $960,000 reimbursement for Fiscal Year 1982. During the following funding cycle, reimbursements were increased to $1 million and remained at that level for the next several fiscal years. (See Table 5-3, following page.)

Table 5-3. State Subsistence Budgets and Federal Reimbursements, 1982-1990

Fiscal Year	Reimbursable State Subsistence Program Funds	Federal Reimbursement	Federal Contribution (Percent)
1982	$2,512,200	$ 960,000	38.2
1983	2,957,000	1,000,000	33.8
1984	3,804,000	1,000,000	26.2

1985	4,367,800	1,000,000	22.8
1986	4,270,000	980,000	23.0
1987	3,324,800	932,000	28.0
1988	2,995,000	974,000	32.5
1989	2,600,000	974,000	37.5
1990	3,000,000+	750,000	25.0

Source: Section 806 and 813 reports; Richard Marshall and Larry Peterson, *A Review of the Existing Alaska Department of Fish and Game Advisory System and a Determination of its Adequacy in Fulfilling the Secretary of the Interior's and the Secretary of Agriculture's Alaska National Interest Lands Conservation Act Title VIII Responsibilities* (Anchorage, F&WS, June 1991), 7.

On August 23—more than three months after Watt certified the state's program—Interior Undersecretary Horn wrote to the regional directors of the various Alaska land management agencies and laid out guidelines on how the state's program would be monitored by federal officials. A key decision made in that letter was the designation of a single agency that would coordinate federal monitoring efforts. In that letter, Horn noted, "it has been determined that lead responsibility for the monitoring of fish and wildlife populations on all public lands will be vested in the Fish and Wildlife Service." [74] The F&WS's role as a centralizing agency for subsistence matters was initially quite small. A precedent had been set, however, and in early 1983 the Secretary designated the F&WS as the lead agency for the federal government's annual Section 806 (monitoring) reports. [75] Later that same year, the agency was asked to coordinate the Interior Department's review and response to the various Regional Council annual reports. [76] In future years, the F&WS would be called on to shoulder additional coordinating functions as federal managers assumed more subsistence responsibilities. [77]

During the six months that intervened between the Interior Secretary's program certification and the November 1982 election, Alaska voters were given ample opportunity to consider the legitimacy of the "Personal Consumption of Fish and Game" initiative (often called the Personal Use Initiative) which had been certified by the state elections division in March 1982. As noted on the ballot, the proposal

> would, for fishing, hunting, or trapping for personal consumption, prevent classification of persons on the basis of economic status, land ownership, local residency, past use or dependence on the resource, or lack of alternative resources. It would, as does existing law, also bar classification by race or sex for any taking of fish or game. It repeals existing provisions of the Fish and Game Code which provide for, or relate to, subsistence hunting and fishing. [78]

The proposition would, in short, repeal all state-sponsored legislative and regulatory actions that, since 1978, had established a legal basis for subsistence in Alaska.

This initiative, which appeared on the ballot as Proposition 7, was favored by the Alaska Outdoor Council and a broad array of sport hunters and sport fishers, many of whom resided in urban areas. Organized under the ad hoc, Anchorage-based Alaskans for Equal Hunting and Fishing Rights or the Fairbanks-based Citizens for Equal Hunting and Fishing Rights, initiative backers stated that "Alaskans are not happy with the present discriminatory system

in both state and federal law.... The present law has effectively repealed subsistence for 85% of Alaska's residents. [79] Passage of this initiative would restore the concept of equality in fish and wildlife resource allocation." They urged changes in both state and federal laws that related to subsistence. But many others, who formed under the umbrella group Alaskans for Sensible Fish and Game Management or Southeasterners Organized for Subsistence, liked the provisions of the 1978 law and wanted the keep the status quo. They warned that despite the obvious state's-rights orientation of Secretary Watt, passage of the initiative would bring an immediate federal takeover of fish and wildlife management. They argued, moreover, that ANILCA—the keystone of the state's subsistence management system—would be virtually impossible to change if the initiative was approved. Governor Hammond and all three members of Alaska's Congressional delegation urged Alaskans to reject the measure. [80]

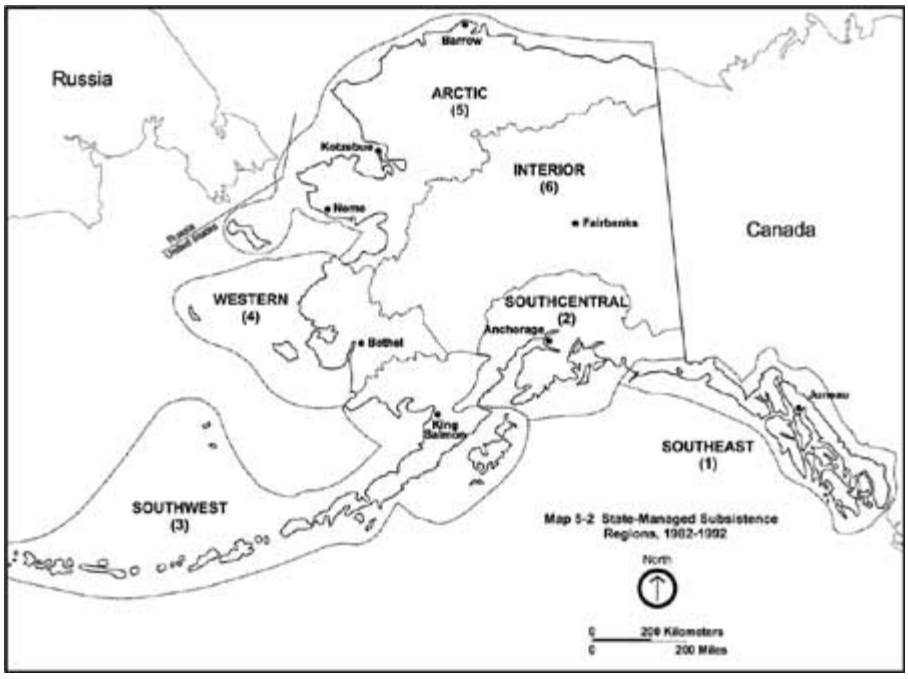
After a tense, combative campaign, Alaskans cast their vote on the Personal Use Initiative on November 2, 1982. The initiative was decisively defeated, 111,770 to 79,679 (58.4% to 41.6%). The state-managed program—with its rural preference—appeared to be secure, at least for the foreseeable future. Outgoing Fish and Game Commissioner Ron Skoog, who supported the initiative, noted that the fish and game boards would be meeting in December and might choose to tinker with the definition of "rural" at that time. Skoog also felt that the "good, strong expression of public opinion" expressed by the initiative might spur the legislature into renewed action; and he also felt that William Sheffield, the newly-elected governor, might provide a new spark in the subsistence debate by appointing sympathetic members to the fish and game boards. [81]

Neither Sheffield nor the Thirteenth (1983-84) Alaska Legislature showed any particular inclination to meddle with the rural preference issue. [82] The joint fish and game boards, however, appeared unwilling to accept the status quo. At a March 24, 1983 meeting, the joint boards repealed the regulation defining rural residence (*Alaska Administrative Code*, Title 5, Section 99.020) that they had approved in April 1982. They took the action because the Alaska Attorney General, in a February 25 letter to Governor Sheffield, had determined that a definition of "rural" was not required by either state or federal law; the joint board's year-old definition, moreover, "posed equal protection and vagueness problems." [83] The Interior Department accepted that change. As a 1984 Interior Department report noted,

> The Boards did not substitute another definition for this term. The rural resident requirement of section 803 is satisfied, however, by the "rural" provision of 5 AAC § 99.010(a)(2). [This section states that "subsistence uses are customary and traditional uses by rural Alaska residents."] It is also anticipated that the criteria of 5 AAC § 99.010(b)(1)-(8), which identify customary and traditional uses, will result in the application of the preference to rural residents, as required by sections 803 and 804. [84]

The joint boards' action thus removed specific geographical boundaries delineating rural from urban areas. Making those distinctions, in the future, would be a function of customary and traditional use determinations.





Map 5-2. State-Managed Subsistence Regions, 1982-1992.
(click on image for an enlargement in a new window)

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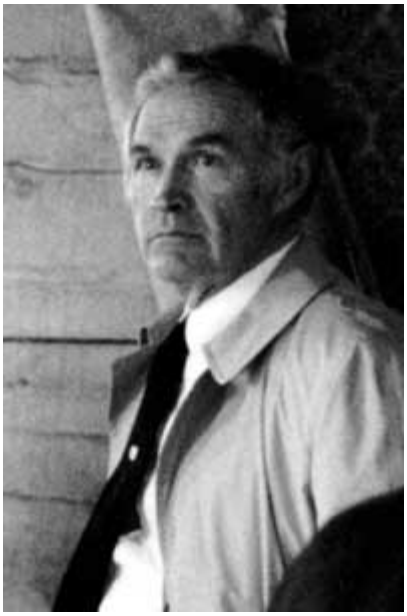
Alaska Subsistence

A National Park Service Management History

Chapter 5:
INITIAL SUBSISTENCE MANAGEMENT EFFORTS (continued)

D. The NPS Organizes a Subsistence Program

Although, as noted above, NPS officials (along with Interior Department solicitors) had been active in establishing management regulations for the various new and expanded national park units, the agency's only other major subsistence-related duty pertained to the establishment and operation of subsistence resource commissions (SRCs). [85] Section 808 of ANILCA had specified the formation of seven park or monument SRCs, whose members were to be appointed "within one year from the date of enactment of this Act:" in other words, by December 2, 1981. The Act stated that the Interior Secretary was responsible for appointing one-third of the SRC members, but the remaining members were appointed by either the Governor of Alaska or by the various state-managed regional advisory councils. On December 1—one day before the Congressional deadline—NPS representative Bob Belous appeared before a joint meeting of the Alaska fish and game boards to announce that his agency was having only limited success in establishing the various SRCs. Belous noted that the NPS, acting on behalf of the Interior Secretary, had selected its quota of seven SRC candidates. But the two non-Federal entities had failed to fulfill their part of the bargain. (Indeed, the six regional advisory councils that fulfilled ANILCA's requirements had not yet been established.) Belous, however, was not gloating. He noted, somewhat sheepishly, that the funding that had been requested to support the various SRCs had been recently stricken from the FY 1982 federal budget. Because of a budget stalemate, he admitted that it was "impossible to predict" if support funding would be restored any time soon. [86]



Roger Contor served as the NPS's regional director for Alaska from 1983 to 1985. NPS (AKSO)

Budget problems for the agency in Alaska proved to be a long-term problem. Despite those difficulties, however, a full complement of 63 Alaskans had been chosen for the new SRCs within three months of Belous's presentation to the fish and game boards. As part of the state effort to gain federal approval for its activities relative to Title VIII of



Lou Waller, in his capacity as regional chief of the NPS's Subsistence Division, was a key player in subsistence decision making between 1984 and the mid-1990s. Lou Waller photo

ANILCA, Governor Hammond appointed three members to each of the seven SRCs; and the newly-formed regional advisory councils, at their initial (February or March 1982) meetings, also appointed members to park and monument SRCs that were located in their regions. By the end of March, all nine members had been chosen for each of the seven SRCs, and by late May, ADF&G had passed on these names to NPS Regional Director John Cook. [87]

The NPS, meanwhile, was also active. The NPS, working with the Interior Department's Solicitor's Office, began preparing charters for the seven SRCs. In late April 1982, these charters were submitted for approval to Interior Secretary Watt, and on May 20, Acting Interior Secretary Donald Hodel approved all seven charters. The charters specified that they would be operating indefinitely; that members would be initially appointed for staggered terms (either one, two, or three-year terms) and for three-year terms thereafter; that the SRCs would meet twice per year, and that the Interior Department would spend $10,000 per year for their support. [88] Hodel sent the letter to NPS Director Russell E. Dickenson, who forwarded a copy to Morris Udall and James McClure. These two men chaired committees in the House and Senate, respectively, that oversaw Interior Department operations. [89]

Meanwhile, the NPS and the other federal land management agencies in Alaska had begun to work with Alaska fish and game officials on a workable Memorandum of Understanding (MOU). During the winter of 1981-1982, as noted above, the state and federal governments were slowly working out the conditions under which the Interior Secretary would certify the state's subsistence management program, and an MOU was intended to clarify the subsistence responsibilities of each state and federal agency. The U.S. Fish and Wildlife Service was able to quickly arrive at mutually agreeable language with the Alaska Department of Fish and Game, and on March 13, 1982—a full two months before Interior Secretary Watt certified the state's management program—ADF&G and F&WS signed their MOU. [90] Hopes were high that the NPS would sign its MOU with the state soon afterward—in April an Interior Department official stated that he was "currently negotiating" such an agreement—but the agreement was not signed by both parties until October 14. The MOU, in general, reiterated the fact that the subsistence management lay squarely in the state's hands; the state's management program, however, had to recognize NPS management guidelines and the Federal role as specified in ANILCA. The MOU listed a series of functions to which either the federal or the state agency was solely responsible, and it also listed a series of goals that

were the mutual responsibility of both agencies. [91]

During the same week that NPS official John Cook and Fish and Game Commissioner Ron Skoog signed their MOU, the state and federal governments announced the appointment of the 63 initial SRC representatives. A month later, on November 4, their terms officially began; their terms would expire in November of either 1983, 1984, or 1985. The NPS hoped that the SRCs would quickly become active, but (as a 1984 letter tactfully explained it), there were "a series of procedural and administrative delays which have prevented the operation" of the various commissions. [92] Funding was the key sticking point; no funds were available to support the SRCs in either the 1982 or 1983 fiscal years.

As part of its oversight responsibility as outlined in Section 806 of ANILCA, the Interior Secretary (and his staff) in the summer of 1983 compiled an initial report that "monitor[ed] the provisions by the State of the subsistence preference set forth in section 804." That report, which was intended to be prepared "annually and at such other times as [the Secretary] deems necessary," was prepared for the relevant Senate and House committee as well as for the State of Alaska. In January 1984, the completed report was forwarded to the relevant committee chairs in the U.S. House and Senate. Twenty-seven pages long exclusive of attachments and staff comments, it chronicled the many efforts between state and federal officials to collaborate on a mutually-agreeable subsistence management plan. [93] This was the first of a series of Section 806 reports that would be prepared, in response to ANILCA's dictates, for the remainder of the decade.

During 1982 and 1983, the NPS underwent a number of staff changes that, in sum, had significant repercussions on how the agency managed its subsistence program. John Cook, who had overseen Alaska's subsistence program from the days that had immediately followed the national monument proclamations, left Alaska in March 1983, and during the same period several members of the freewheeling subsistence "brain trust"—including Bill Brown and Bob Belous—severed their ties with the agency's regional office operation. In May 1983, Cook was replaced by Roger J. Contor, a self-described conservative who was then serving as superintendent of Olympic National Park in Washington. [94] (Contor, as noted in Chapter 4, was no stranger to Alaska affairs; from 1977 to 1979, he had served as NPS Director William Whalen's point man for Alaska.) Contor, to a greater degree than Cook, felt that Alaska's park units could be managed much like those located elsewhere in the system. As Contor described it, he spent much of his tenure in Alaska "trying to preserve the integrity of the word 'park'." Based on the newly-protective Servicewide stance that Congress had adopted in the 1978 act that expanded Redwood National Park, Contor's philosophy was to limit activities within parks that were not specifically guaranteed by either ANILCA or subsequent regulations. [95]

In December 1983, the agency's subsistence program gained new momentum when Contor named Dr. Louis R. Waller to co-ordinate the Alaska subsistence effort. Waller, a ten-year Alaska veteran with the Bureau of Land Management, had worked in the bush (in McGrath) as well as in Anchorage. He assumed his new position in January 1984. [96] His appointment was a major step forward in organizing the agency's subsistence management efforts; although the agency had been responsible for subsistence matters since December 1980 (and to a lesser extent since December 1978), no one before Waller had worked full-time on problems related to subsistence coordination or management. (See Appendix 3.) Waller thereafter served as the primary point of contact for subsistence issues, although many of the agency's subsistence decisions were the joint product of discussions between Waller, Contor, and Associate Regional Director Michael Finley.

The long-awaited funding to operate the various subsistence resource commissions finally became available in December 1983, and soon afterward the agency took steps to make them

active, operating entities. [97] In March 1984, Waller contacted the six superintendents of parks for which Congress had designated SRCs, [98] and arrangements were made to hold a series of introductory meetings. (See Table 5-4, following page.) The first such meeting was that of the Aniakchak SRC, held in King Salmon on April 18. These were followed, in quick succession by a combined meeting of the Cape Krusenstern, Gates of the Arctic, and Kobuk Valley SRCs in Kotzebue on May 3; of the Denali and Lake Clark SRCs, in Anchorage on May 10-11; and the Wrangell-St. Elias SRC, near Copper Center on May 15-16. Sufficient members of each commission except Aniakchak were present to constitute a quorum. [99] The various park superintendents (who were the designated commission management officers), along with subsistence coordinator Lou Waller, presided over these meetings and provided extensive background literature to each commission. A key agenda item was the selection of a chairperson (see Appendix 4); much of the remainder of the various meetings was devoted to a description and clarification of the various commissions' roles and functions. The various SRC members were told that one of their first responsibilities would be (as noted in Sec. 808(a) of ANILCA) to "devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument." [100] (See Appendix 5.)

Table 5-4. Subsistence Resource Commission Chronology, 1977-present

Jan. 1977 — Initial version of H.R. 39 provided for "regulatory subsistence boards"

Oct. 1977 — Committee print of H.R. 39 proposes an "Alaska Subsistence Management Council" as well as for regional and local advisory committees

Oct. 1978 — Senate Committee version of H.R. 39 first proposes park and monument subsistence resource commissions

1979-80 — House-passed version of H.R. 39 (May 1979) provides for regional and local subsistence advisory committees (but not SRCs), but Senate-passed version (August 1980) includes an SRC provision.

Dec. 1980 — Senate bill becomes law.

1981-82 — Initial SRC members selected, but commissions remain inactive due to lack of startup funding

April 1984 — Initial SRC meeting was for the Aniakchak SRC, in King Salmon. Remaining SRCs held their introductory meetings a month later.

Nov. 1985 — Initial SRC Chairs meeting, in Anchorage. Subsequent meetings held in Nov. 1988 (Fairbanks) and Dec. 1989 (Anchorage)

1986-87 — Initial hunting plan recommendations submitted to the Interior Secretary

1988 — The Interior Secretary responds to the initial recommendations.

1994 — Initial SRCs began submitting game management recommendations to RACs; by 1996 this was a regularly-accepted, if informal, practice

June 1996 — Resumption of SRC Chairs meeting, annual meetings held thereafter

Nov. 1998 — SRCs given authority to submit some recommendations to NPS's Regional

Director instead of to Interior Secretary

March 2002 — First SRC non-game Hunting Plan recommendations become federal regulations

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Waller, during this period, also worked with the Alaska Game Board in order to inform the board—and Alaska's hunters—about NPS hunting policies in the various park units established by ANILCA. In 1983, the agency had been pleased when the board revised its widely-distributed hunting regulations booklet to reflect the prohibition of sport hunting in the various parks and monuments. In March 1984, however, it became concerned with several proposals that the board was considering for land in and around Gates of the Arctic National Park. The agency questioned, for example, the need to change a regulation that had not been requested by local residents; it was concerned that the boundary of a proposed bull moose hunting regulation was a national park unit boundary and not a game management unit boundary; it was perplexed that brown bear proposals were being considered that did not match well-defined traditional use patterns; and it was alarmed at proposed wolf control programs that might affect wolf populations within the national parks. [101]

Despite the NPS's arguments to the contrary, the Board of Game, at its March 1984 meeting, implemented the regulations that pertained to the Gates of the Arctic area. The agency, however, refused to sit idly by. On August 22, Regional Director Roger Contor wrote the game board a detailed letter that bemoaned a "problem with communications" between the two bodies. He reminded the board, moreover, that the State-Federal Memorandum of Understanding, signed in October 1982, required "timely consultation, coordination of resource planning," and a pledge "to resolve management differences between the [ADF&G] and the Service before expressing a position in public." Contor broadly hinted that the state had sidestepped the MOU in its Gates of the Arctic proposals; he then briefly outlined several of the NPS's primary management tenets and described why the proposed regulations clashed with them. He specifically noted that a "natural and healthy" management mandate in the parks and monuments (as specified in ANILCA) often diverged from the state's mandate for "sustained yield" management, and he criticized that board for not paying heed to the "where traditional" clause as elaborated upon in the legislative history. He then reiterated some of the specific concerns that the agency had expressed in its March letter. [102]



In 1983 or 1984, key NPS personnel met for a superintendents' conference at Glacier Bay Lodge. Top row, left to right: Mike Finley (ARO), Jim Berens (ARO), Dave Mihalic (YUCH), Dave Morris (KATM). Second row: Robert Cunningham (DENA), Mack Shaver (NWAK), Bill Welch (ARO). Third row: Ernie Suazo (SITK), Dick Sims (KLGO), Dave Moore (KEFJ), Larry Rose (BELA), Bob Peterson (ARO). Fourth row: Mr. & Mrs. Roger Contor (ARO), Mike Tollefson (GLBA), Paul Haertel (LACL). Bottom row: Mrs. Finley, unidentified, Mrs. Welch, Mrs. Ring (holding infant), Chuck Budge (WRST). NPS (AKSO)

In response to Contor's missive, Alaska Fish and Game Commissioner Don Collinsworth wrote an equally detailed letter, responding to Contor point by point. He, like Contor, quoted extensively from ANILCA's legislative history. Collinsworth recommended, "as a courtesy to the National Park Service," that the Board of Game reconsider two of its three previous proposals. And to avoid such conflict in the future, he laid out a four-step process by which the two agencies would be kept informed of potential changes in the hunting regulations for areas within the NPS's purview. [103]

To further the communications process, both Contor and Associate Regional Director Michael V. Finley appeared personally before the Board of Game at its December 1984 meeting. Contor, in his remarks, noted that the recent exchange of letters indicated "that there are many agreements between the ADF&G and the National Park Service and some disagreements. We are not alarmed by some disagreement when trying to resolve issues as complex and emotionally charged as subsistence." He briefly discussed the NPS's management constraints, then made two specific suggestions: 1) "that the regulation proposal form be modified or supplemented in such a manner so as to become a consistency test or checklist for any regulatory proposal for lands administered by the NPS," and 2) "that development of subsistence hunting recommendations by each local commission [i.e., a local advisory committee, a regional advisory council, or a park-specific subsistence resource commission] should generally occur prior to the Board of Game making any changes in regulations which have been in effect." Finley, who also spoke that day, limited most of his remarks to the two proposals (for brown bear and for bull moose) that the game board had agreed to reconsider. Finley recommended that the two regulations be rescinded; doing so "would represent the first of many steps necessary in working together towards the development of appropriate and effective game regulations for NPS units in Alaska." [104] The Board made no immediate move to rescind either action. On other matters, however, the Board became increasingly sensitive to NPS concerns after that date, primarily because Waller, Finley, and other agency officials became regular attendees at Board meetings. [105]

In 1984, the NPS manifested a changed attitude toward subsistence in other ways as well. One was in the realm of enforcement. During the first few years after ANILCA's passage, as noted above, agency personnel—recognizing that obvious antagonism that many Alaskans had toward federal officials, and their own need to blend into community and civic life—had stressed education and tolerance rather than enforcement. The arrival of Contor and Waller, however, signaled the beginning of a new paradigm; education and a "soft touch" approach would be replaced by the enforcement of regulations, and care would be taken to prevent the expansion of subsistence uses beyond those that ANILCA and the regulations had specifically guaranteed. [106] It is not surprising, therefore, to note that the first disciplinary actions taken against those who violated subsistence regulations were recorded during this period. In March 1984, for example, two Gates of the Arctic rangers arrested Larry Fitzwater for trapping near Oolah Lake; trapping for subsistence purposes was legal in a national park, but Fitzwater lived in Bettles, and Oolah Lake was not considered "traditional" to Bettles

residents. The confusion over the subsistence statutes, along with a general resentment that many rural residents felt toward any federal agency, caused many to vent their anger at the NPS. In reaction, the agency de-emphasized its enforcement of the subsistence statutes while the park's SRC researched and analyzed the matter. [107] So far as is known, the agency during the 1980s issued only a handful of subsistence-related citations, mostly at the various Northwest Area park units. [108]

The NPS also began to change its attitude toward cabin management in the various national park units. To the chagrin of some conservationists, ANILCA (according to one Congressman) allowed "anyone who built a cabin in a national park before 1974 to keep and use that cabin," even if the federal government held an unencumbered land title. Their right to use the cabin, moreover, could be passed on to immediate family members. [109] The management regulations, adopted in June 1981, provided little new information concerning this subject area, so to assure the uniform treatment of cabin applicants in Alaska's far-flung park areas, regional office personnel in 1982 developed cabin permit guidelines. But the Citizens' Advisory Commission on Federal Areas (CACFA), [110] along with several individuals, protested the guidelines. In response, the NPS in mid-March 1984 issued a Proposed Rule that would

> permit both the continuation of appropriate existing cabin use and the development of appropriate new cabin use where the law allows.... The Department is hopeful that this proposed regulation will minimize the regulatory burden on Alaskan residents required by law, but without sacrificing the "due process"—i.e., legal procedures—necessary for protection of these residents' interests. [111]

This process, though not directly related to the interpretation or enforcement of provisions in Title VIII, was of primary interest to subsistence users because cabins were a primary adjunct of the lifestyles of many people who harvested subsistence resources. The public was originally given two months—until June 4, 1984—to comment on the proposed regulations, although two subsequent efforts to provide input pushed the deadline for comments back to January 1985. During the nine-month period allotted for comment, the NPS held three public meetings on the subject (in Anchorage, Fairbanks, and Juneau), and it eventually received 269 comments. [112] After the public comment period lapsed, Interior Department officials (outside of the NPS) "took some considerable interest" in the regulations and significantly reworked the agency's proposed final regulations. As a result of these and other activities, more than two years passed between the issuance of a proposed and final rule. The final cabin regulations were finally issued (via the *Federal Register*) in mid-September 1986; they went into effect a month later. [113]





In early 1984, the NPS proposed cabin management regulations for the various Alaska park units. These were finalized and implemented in 1986. Paul Starr photo

During the period that the NPS was forwarding its cabin management proposals, it and other federal agencies were hard at work completing a large, comprehensive report on the implementation of Title VIII. Congress had mandated that the first so-called Section 813 report be submitted to the appropriate committee heads by early December 1984. In order to fulfill that mandate, the Fish and Wildlife Service—in concert with the NPS and other federal agencies—completed a draft version of a massive volume entitled *Subsistence Management and Use: Implementation of Title VIII of ANILCA* in November 1984. The volume, as specified by ANILCA language, was a compendium of information about Alaska's fish and wildlife populations, subsistence harvest patterns, the economic and cultural role of subsistence, and the role of state and federal governments in managing subsistence resources. Beginning in late December, the Fish and Wildlife Service distributed more than 150 copies of the draft report to interested agencies, native corporations, and individuals for public comment; the agency specified a comments deadline of February 25, 1985 but actually accepted comments until March 20. Relatively few commented on the draft, however, and a final report was completed and distributed to the appropriate Congressional committees (and to other interested parties) in May and early June of 1985. [114]

Throughout the period in which the NPS subsistence program was gaining substance, the state-based subsistence management system was taking shape as well. As noted above, each of the regional fish and game councils had held an initial meeting in February or March of 1982. (See Appendix 2.) After that point, however, regional council meetings were held on a more sporadic basis. During the fall of 1982 or the spring of 1983, four of the six councils met. By 1984, some councils—particularly the Interior Regional Council, headed by Royce Purinton III, and the Southeast Regional Council, headed by Gordon Williams—held regular meetings, carried on a lively correspondence with Interior Department officials and submitted annual reports. [115] But the remaining councils were, for all practical purposes, inactive. The lack of activity was blamed, in part, on the inability of ADF&G to fund a staff coordinator (also called a "regulatory program assistant") for each regional council. But by October 1984, "hiring procedures [were] currently underway" to fund these six positions; by the end of November, half of the coordinator positions had been filled; and by March 1985

the only unfilled position was that of the Arctic Regional Coordinator. [116] The establishment of the coordinator positions promised an increasingly important future involvement of the various regional councils.

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Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989

A. The Madison Decision and Its Impacts



The Alaska Supreme Court, in February 1985, upset the state's three-year-old subsistence management system when it ruled that "subsistence is not strictly limited to rural communities." Members of the court that year (left to right) included justices Jay A. Rabinowitz (chief), Allen Compton, Warren W. Matthews, Daniel Moore, and Edmund Burke. Alaska Court System

On February 22, 1985, an Alaska Supreme Court decision dealt a major blow to the state's newly developed subsistence management system. On that day, the court announced its verdict in the landmark *Madison v. Alaska Department of Fish and Game* case. The court concluded, in the words of Justice Daniel A. Moore, Jr., that "subsistence use is not strictly limited to rural communities." The Supreme Court's interpretation of the Alaska constitution's "equal access" doctrine meant that any Alaska Board of Fisheries regulations advocating a rural preference ran contrary to the legislature's intent when it enacted the 1978 subsistence law. The Interior Secretary reacted to the Supreme Court's decision by stating that the Alaska Legislature needed to pass a law guaranteeing a rural subsistence preference; if it did not do so, the federal government would be obliged to assume management of Alaska's subsistence program. The legislature, in fact, eventually did pass an amended subsistence law. The practical effect of the Supreme Court's decision, however, was that for the sixteen-month period between February 1985 and June 1986, there was considerable uncertainty about the future of ANILCA's subsistence management program.

The problem had begun back in 1981, when the Alaska Board of Fisheries—based on the ten "characteristics of subsistence fisheries" that it had developed at its December 1980 meeting—ruled that subsistence fishing in Cook Inlet would be limited to the residents of Tyonek, English Bay, [1] and Port Graham. This ruling excluded a number of longtime subsistence fishers from the Homer and Kenai areas, because neither area fit the board's subsistence criteria. Gene Madison and nine other fishers from the Kenai coastline responded to the Fisheries Board decision by applying for subsistence permits. When these were denied they filed suit, arguing that the 1981 regulation exceeded the scope of the state's subsistence law. These ten appellants were later joined by another group of subsistence fishers, headed by Louis Gjosund, from the Homer area. In two different superior court cases, judges backed the Fisheries Board and ruled that the regulation was "consistent with the statutory grant of

authority." But the Supreme Court reversed the trial courts' decisions and argued that the regulation was invalid because it was "contrary to the legislature's intent in enacting the 1978 subsistence law." The Supreme Court ruled that the subsistence law was not specific enough to exclude urban Alaskans from subsistence fishing and hunting. The court thus ruled that all Alaskans, in effect, qualified for a subsistence preference. [2]

Alaskans immediately recognized the importance of the *Madison* decision and the imbalance it created between ANILCA and Alaska's subsistence law. Governor William Sheffield, in response, mulled the matter over for awhile with his advisers; then, on March 13, he submitted a bill for the Alaska legislature's consideration that would include a rural definition in the statutes and thus make state and federal laws mutually compatible. His bill (HB 288) was intended to accomplish that objective by making laws of the regulations that the Supreme Court had struck down on February 22. [3]

Bill Sheffield, Alaska's governor from 1982 to 1986, played an active role in hammering out a revised state subsistence law in response to the Madison decision. ASL/PCA 213-5-2

The Alaska Board of Game, in response to the *Madison* decision, convened an emergency meeting to consider management alternatives. At that meeting, held in Juneau on April 2 and 4, the board—fearing that the abandonment of the rural preference would result in a wholesale slaughter of the state's major wildlife species—authorized 54 so-called Tier II subsistence hunts in cases where the number of hunters needed to be limited. (The game board, as noted above, had made a statutory provision in December 1981 for hunts that would rationalize the number of users in times of scarcity, but never before had such a hunt actually been implemented.) Those hoping to obtain permits for these hunts were asked to fill out a questionnaire. Questions were directed at determining three criteria: 1) customary and direct dependence on the resource as the mainstay of one's livelihood, 2) local residency, and 3) availability of alternative resources. Applicants received a maximum of 90 points (30 points for each of the three questions), and only the highest-ranked applicants received permits. The game board's new system, which excluded non-Alaska residents entirely, ensured that many —though not all—of the permit holders would be residents of the game management units where the hunts were planned. [4]

No sooner had the Game Board acted than another court decision was issued that further undermined the state's subsistence regulations. On April 12, 1985, the Alaska Court of Appeals, in *State of Alaska vs. Eluska*, exonerated a Kodiak resident (David Eluska) who had shot a deer out of season because he claimed to be a subsistence hunter. (The Board of Game, at this time, had issued almost no separate subsistence regulations, and the plaintiff argued that he could not be prosecuted if there were no regulations that specifically provided for subsistence uses.) [5] The court's legitimization of a "subsistence defense" threatened the enforceability of a wide range of wildlife regulations, because it suggested that many practices that would otherwise be considered as the illegal taking or possession of wildlife would be justified in the guise of a "subsistence use." The combined effect of the *Madison* and *Eluska* decisions could not be overestimated; it appeared that all Alaskan residents, citing these decisions, could now take fish and wildlife—under the guise of subsistence harvesting —without regard to season and bag limit. [6]

The Alaska Legislature, meanwhile, attempted to hammer out a solution to the subsistence dilemma caused by the *Madison* decision. Many House members, for instance, were opposed to Sheffield's bill, and two competing bills—HB 414 and HB 448—suggested alternative solutions. But on May 2, HB 288 passed the House on a 21-19 vote, and two days later it passed again in a reconsideration vote, 21-18. That bill, still largely unchanged from its original form, called for a rural preference and defined a rural area as "a community or area of the state in which the taking of fish and wildlife for personal or family consumption is a

significant characteristic of the economy of the community or area."

The bill was soon moved to the Alaska Senate and was referred to the State Affairs Committee. The Senate, however, was led by President Don Bennett (R-Fairbanks) who wanted to put off consideration of the bill until 1986, noting that Sheffield's bill was "too complicated and politically charged to be solved in two months." The State Affairs Committee chair, moreover, was Mitch Abood (R-Anchorage), who had submitted a subsistence bill (SB 320) that differed significantly from the House-passed bill. Abood, whose views on the subject were similar to those of the Alaska Outdoor Council, refused to move HB 288, and the legislature took no further action on it before it adjourned for the year on May 12. [7]

A month after the legislature adjourned, on June 10, the game board met again and began reworking the subsistence regulations. On June 21, it completed its task and issued a series of emergency rules regarding the newly developed system. [8] It also announced that more than fifty of the newly improvised Tier II hunts would be held during the late summer-early fall hunting season. The key qualification for inclusion in a Tier II hunt, according to the new criteria, was local residency; urban residents would have a preference for hunts held near the state's large urban areas, while rural residents were similarly favored for hunts held in units away from the road system. The urban sport-hunting establishment howled in protest at the game board's decision; the executive director of the Alaska Outdoor Council, for example, complained that board's action "infuriated many hunters throughout the State who were suddenly excluded from participating in popular big game hunts." [9]

In response to the legislative impasse, Governor Sheffield met with Assistant Interior Secretary William Horn on August 19 to sound out the federal government's next move. Horn's answer came a month later, on September 23, when he informed the governor that Alaska's subsistence program was no longer in full compliance with the requirements of Title VIII of ANILCA. Alaska, Sheffield was told, would have until June 1, 1986 to bring its subsistence management program into compliance with ANILCA. If the state was unable to do so, the federal government would be forced to assume administration of subsistence use on Alaska's federal lands. [10]

Given that ultimatum, the legislature attempted to formulate a bill that would combine the federal government's demand for a rural preference with conditions compatible with the state's own interests. Senator Abood, who had played a major role in derailing HB 288 in the 1985 legislature, frankly stated that the problem lay in the "outdated" definitions of rural and urban residency originally promulgated in ANILCA. "How can you say today that everything is rural but Anchorage, Ketchikan and Fairbanks?" Abood asked rhetorically. Kenai and Soldotna, he added, may well have been rural in 1970 or 1975; now, however, more roads and an increased reliance on air transportation were blurring the distinction between rural and urban settings. [11]

When the legislature convened again in January 1986, legislators—recognizing the unpalatable downside—vowed to pass, by June 1, a version of HB 288 that would satisfy federal regulators. On March 5, the federal government weighed in on the legitimacy of that definition; Assistant Interior Secretary Horn flew in from Washington and testified that "In my opinion, the pending bill [SCS CSHB288] would be certified by the Department of the Interior." [12] A week later, the Senate Resources Committee held a hearing on the bill and emerged with two key definitions that would remain unchanged after that day. The committee now defined a rural area as "a community or area of the state in which the non-commercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area." The bill also provided a new definition of "subsistence uses;" they were "the noncommercial, customary and

traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state." Finally, the bill provided a new method (a revision of the 1978 bill) by which subsistence resources would be allocated in the event of a shortage. The Resources Committee approved the bill on April 15. [13]

State Senator Rick Halford, in the spring of 1986, urged his colleagues to adopt a new subsistence law based on economic need rather than a rural preference. ASL/PCA 01-3630

The bill was then referred to the Senate Judiciary Committee, chaired by Patrick Rodey (D-Anchorage). During the committee's deliberation, Sen. Rick Halford (R-Chugiak) inserted an amendment linking subsistence with economic need, and the committee passed the bill (which included Halford's amendment) on April 19. Halford, an advocate of sport hunting interests, inserted this "needs-based" approach because it allowed access to subsistence resources by urban as well as rural residents. (Halford maintained that "many Alaskans are frustrated by the subsistence law" and that passage of a rural-preference bill "will mean more court cases, more dividing of the people of Alaska and continued conflict.") Interior officials made it known, however, that Halford's provision violated federal law and that they would not accept any bill that did not include a rural preference. The bill then moved to the Senate floor, where a key vote was to take place. Would a "needs-based" approach, or a rural preference, survive in the final Senate bill? Senator Stevens's advice to the legislature was simple; adopt a rural preference or face a federal subsistence takeover. [14]



Robert E. Gilmore, in the spring of 1986, was the U.S. Fish and Wildlife Service's regional director for Alaska. In that capacity, he came within an eyelash of assuming administrative control over Alaska's subsistence harvest. On May 10, however, the Alaska legislature passed a revised subsistence law, and

On Friday, May 9—just a few days before the legislature adjourned for the year—two key subsistence-related events took place. Federal officials, preparing to assume subsistence management duties if the state legislature failed to pass an appropriate bill by June 1, announced that they had recently created a five-person Subsistence Resource Management Board, which consisted of "top officials" of the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Forest Service, and Fish and Wildlife Service. Robert Gilmore, Regional Director of the Fish and Wildlife Service and chair of the new board, stated that "it is our intention to make the transition from state to federal management as simple and cost effective as possible," and he also said that "we will do everything in our power to open federal lands to hunting and fishing seasons as Alaskans have come to expect." But lacking other alternatives, he noted, federal officials "must nevertheless proceed in the development and implementation of a federal subsistence management program." [15]

John G. (Jack) Fuller, a House member from Nome from 1979 to 1987, was a strong supporter of the revised subsistence bill that the legislature passed in 1986. ASL/PCA 01-2484

That step, however, proved unnecessary because of action taking place in Juneau. That same day, Governor Sheffield's subsistence bill—by now somewhat modified, as noted above—was finally considered on the Senate floor. In a key vote, the

the state retained management authority. ADN

Senate voted 11-9 to reject the Judiciary Committee's version of the bill. It then voted 13-7 to adopt the Resources Committee's version. Several amendment's were then offered on the Senate floor, a key one (by Sen. Jack Coghill) being a personal use amendment that was similar to Halford's needs-based approach. [16] Coghill's amendment was rejected on a 10-10 tie vote; shortly afterward, the Senate passed the Resource Committee's version of the subsistence bill, 12-8. [17] House concurrence with the Senate bill followed a day later, and Sheffield signed the bill into law on May 30. [18] Rep. Jack Fuller (D-Nome), who for years had been closely following subsistence issues, noted that "the bush is very comfortable with the bill. It's taking us back to 1984 where we were before Madison." Shortly afterward, the rural definition was incorporated into the state statutes, and the game board repealed the Tier II regulations, established in December 1981, that had been used on various hunts beginning in April 1985. [19]

The state's action, taken just three weeks before the June 1 deadline, guaranteed that subsistence would continue to be a state-managed activity for the foreseeable future. The legislature, at long last, had crafted a subsistence statute that would hold up in state court as well as keep the state in compliance with ANILCA. The program that resulted from that law promised to give priority to customary and traditional uses of fish and wildlife by residents of rural communities and areas.

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Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

B. The State of Alaska's Subsistence Management Program

In the wake of the legislature's approval of a revised subsistence law, the Alaska Department of Fish and Game continued to manage Alaska's fish and wildlife throughout the state; they did so with the reassuring knowledge that they had the legal clearance to do so for subsistence uses as well as for sport, commercial, and personal-use purposes. The state agency continued to administer the subsistence regulations through the fish and game boards.

The game board responded to the revised subsistence law by making a series of new determinations of rural versus non-rural residency. Their first actions were taken in a Juneau emergency meeting from May 27 to June 4, 1986, less than a month after the subsistence law was passed. Because the previous year's Tier II hunts were now irrelevant, the board—hoping to re-establish a legal basis for future hunts—made its initial rural versus non-rural determinations in areas where Tier II hunts had been held during the summer and fall of 1985. Five months later, in late November 1986, the Joint Board of Fisheries and Game met in hopes of classifying each Alaska community as either rural or non-rural. Using more sophisticated criteria than the game board had used, the joint board largely rubber-stamped the game board's actions and classified many additional communities as well. They were unable to complete the task, however, and it was not until March 1987 that the joint board had completed its initial classification. [20] In 1987 and 1988, the joint boards mulled over the proposed reclassification of several communities that had both rural and non-rural characteristics, [21] and in April 1989 a Ninth Circuit Court of Appeals judge handed down a key decision about the Kenai Peninsula, another area with both rural and non-rural characteristics. [22] By the end of the decade, rural Alaska (as designated by the joint board) was somewhat smaller than the joint board had decreed back in April 1982. All of Alaska was rural except for a majority of the Kenai Peninsula; the Valdez, Ketchikan, and Juneau areas; and most of the railbelt between Seward and Fairbanks. [23]

The fish and game boards made other actions in response to the new subsistence law. Because a rural preference had been reinstituted, the Tier II hunts of 1985 were discarded and the three-tiered system in place prior to February 1985 was restored. [24] Because a key to eligibility under the new system was a community's ability to prove "customary and traditional" use of local subsistence resources (using the eight criteria adopted in December 1981), the Alaska game and fish boards—backed by the research efforts of ADF&G Subsistence Division staff—made a number of "customary and traditional" determinations. These were not the first such determinations; prior to 1986, the Board of Game had made a "C&T" ruling on Nelchina caribou, and the Board of Fisheries had made a similar ruling on Copper River salmon. The number of rulings increased, however, after 1986; typically, the game and fish boards made such determinations for populations and stocks that were subject to regulatory actions or conservation concerns. By 1989, the two boards had made C&T

determinations on most major wildlife species, black bears being a notable exception. [25]

The Alaska Game Board, as had been true since ANILCA's passage, relied to some extent on the recommendations provided by the six regional advisory councils, the scores of local advisory committees, and agency staff. Congress, through the provisions contained in Section 805 of ANILCA, intended that the six regional advisory councils would be primary vehicles by which subsistence information would be reported to the fish and game boards, and they would also be the primary forums for advocating issues of interest to subsistence users.

In order to carry out the stipulations of Section 805, the ADF&G in early 1985 hired staff coordinators for each regional advisory council (as noted in Chapter 5), and several of the councils held a meeting soon afterward. (Except for the Interior Council, the various councils had been inactive for the previous two years, and a few had been dormant since their initial meetings in early 1982.) The various coordinators were hopeful that each council would start meeting on a regular basis; two meetings per year was considered the minimum in order to transmit meaningful recommendations to the fish and game boards. (See Appendix 2.) The coordinators were similarly hopeful that the councils would send annual reports on their activities to the Interior Secretary's representative. [26] That lofty goal, however, was dashed by the grim financial realities of the mid-1980s. The "oil bust," caused by a reduction in the cost per barrel of North Slope oil combined with a reduction of oil output, put a severe strain on the state's budget, and the reduction in the state's budget was felt particularly keenly by the ADF&G's Division of Boards. As a report written in late 1985 noted,

> Since the beginning of the State Fiscal Year in July 1985, the Division of Boards has been forced to operate under a substantially reduced budget with a major reduction in the allocation of travel money for advisory committees and councils. ... These reductions in travel money have caused some discontent among local and regional committee members. [27]

This financial crunch was exacerbated by the federal government's refusal to provide the full measure of fiscal participation that had been suggested by ANILCA. As noted in Chapter 5, so-called "ANILCA reimbursements" had begun in Fiscal Year 1982, and for the next several years the federal government had provided the state $1 million annually to the state. (See Table 5-3) State and federal authorities, however, quarreled over the funding level. State officials, citing Section 805(e) language that such reimbursement levels "may not exceed 50 per centum of such costs in any fiscal year" and that total annual payments "shall not exceed the sum of $5,000,000," complained that they were being underpaid. Fish and Game Commissioner Don Collinsworth, for example, complained in a 1987 letter that

> We continue to believe that the current level of reimbursement, averaging 20% of the costs of the state program, is not adequate to provide the support contemplated in ANILCA. We believe that Section 805 establishes a compact between the state and federal government that requires an adequate level of reimbursement. ... The state should be reimbursed the full 50% for costs associated with implementation of Section 805. [28]

A year later, the State of Alaska's concerns were again reflected in language contained within the federal government's annual Section 806 report. "The state of Alaska," the report noted, "believes that serious consideration should be given to significantly increasing the grant program administered by the Fish and Wildlife Service to the Department of Fish and Game to assist in both the fish and game advisory system as well as subsistence research." [29] But federal officials were lukewarm to the state's pleas, for two reasons. First, they found it impossible—despite repeated attempts—to pinpoint where, within ADF&G, the Section 805 funds were being spent. [30] Second, they were concerned about the health of the regional

advisory councils. A major purpose of the ANILCA reimbursement was for council support, but federal officials were well aware that the state was less than enthusiastic in this regard. They perceived that the state was using very little of the federal government's Section 805 funds for the operation of the regional councils. This perception, correct or not, did not auger well for increased reimbursements in future years. [31]

The regional councils' anemic funding levels, which persisted for much of the 1980s, resulted in their inability to perform many basic functions. Because of chronic funding shortages, and because of problems related to weather and the itinerant nature of subsistence activity, the three councils that were located away from Alaska's main road and ferry system (specifically the Western, Southwest, and Arctic councils) met either intermittently or not at all for the remainder of the decade. Due to the paucity of meetings, none of the councils was able to complete an annual report. In the other three regions, travel costs were less burdensome; consequently, the regional councils were able to meet more frequently. But even in these regions, councils rarely met more than once per year, and the preparation of annual reports was the exception rather than the rule. [32] Exacerbating these difficulties was the ADF&G's inability to keep staff coordinators (see Appendix 2). Although all six regions had a staff liaison in June 1985, budget difficulties forced a reduction in the number of staff positions to five in June 1986, to four in June 1987, and to just one in June 1988. [33]

As if financial and staff difficulties were not enough, the various regional councils also suffered from a lack of direction; as Morehouse and Holleman have noted, the various councils "were not committed to subsistence uses in purpose or composition. They were also ... lacking in clear, consistent procedures." [34] The Division of Boards, asked to look into the matter, "identified as a major concern the ambiguity surrounding the role of the advisory committees in the State rule-making processes" and noted the "lack of definition and clarity in the State and Federal statutes regarding the role of the committees and councils." Some regional councils, as a result, did not meet because of a perceived "lack of pressing needs." The writing of annual reports, moreover, may have been overlooked either because the councils did not perceive "a sufficient number of issues to warrant the writing of an annual report" or because of a "perception that agencies are not responsive to these reports." [35]

Two specific problems—federal versus state mandates and inconsistent attitudes toward regional council input—contributed to the shared sense of confusion. State officials, citing specific state regulations and Section 805(a)(3) of ANILCA, told the regional councils that one of their primary responsibilities should be making recommendations about proposed fish and wildlife regulations. [36] But according to ANILCA's dictates, the council's only officially-prescribed avenue of expression was its annual report to the Interior Secretary. Federal officials, asked to comment on what an annual report should ideally contain, did not dispute the councils' role in making fish and wildlife recommendations. They did, however, note that these recommendations had no place in the annual report. "The reports," they noted, "might be most effective if they focus on land management issues for which the federal agencies have jurisdiction. Examples of such issues raised in past reports include comments and recommendations on land management plans, ... on cabin policy, fire management, water quality, park subsistence resource commissions, and subsistence data needs on public lands in a particular region." [37] Compounding the councils' frustration was the extent to which federal agencies paid attention to their recommendations. The regional councils typically expended a substantial amount of effort in the preparation of their annual reports, and council members were often chagrined when Interior Department representatives either gave less than forthright responses, waited many months to respond, or (on occasion) failed to respond at all. [38]

Underlying the poor functioning of the regional advisory councils was the lack of a core support constituency. Congress had insisted on the councils due to the AFN and other rural-

Alaska concerns, but virtually no one in Alaska fought for their legitimacy. The state's many local advisory committees felt threatened by them; the ADF&G bureaucracy, long dominated by sport and commercial interests, had little interest in supporting them; and even Congress, which had created the councils, was tepid in the financial contributions it made to their operation.

It appears, in retrospect, that Congress had envisioned that the regional councils would be a voice for subsistence users, much as the well-established local fish and game advisory committees were a forum for the views of sport and commercial hunters and fishermen. But the reality of the regional councils, in most instances, fell short of that goal. With rare exceptions, the councils did not provide input to the joint boards regarding proposed changes in the fish and wildlife regulations, and few of the regional councils' recommendations suggested changes to either federal or state subsistence policies. [39]

Rural Native groups, who stood to gain the most benefit from a well-established system of regional councils, were particularly frustrated by the inadequacy of their implementation. They were disappointed that many council members, while "residents of the region" (as ANILCA demanded) were not subsistence users, and they were displeased at the perceived bias in the decisions rendered by the joint boards. As Thomas Morehouse and Marybeth Holleman noted in an overview of the subsistence management system,

> The problem [was that] the whole structure of regulation depended on the judgments and actions of state boards and agencies that were largely controlled or influenced by sport and commercial users and professional wildlife managers. Thus, vague or abstract statutory terms like "customary and traditional uses" and "reasonable opportunity" were defined and interpreted by regulators and managers whose values, interests, and experiences typically were not those of rural, and especially Native, subsistence users. The result was subsistence regulation based on a sport and commercial model, definitions of "customary and traditional uses" that reflected individual instead of group or collective interests and practices, and a management orientation that viewed subsistence more as a state-bestowed privilege than a federally-guaranteed right. [40]

State fish and game officials, prodded by complaints from federal officials and rural subsistence users, reacted as best as they could to the inequities in the state's advisory system. For example, they urged both state and federal officials to provide greater funding; they conducted teleconferences when funding prevented face-to-face meetings; and they urged the regional councils, whenever possible, to submit annual reports. Despite those measures, however, the manifest inequalities of the state-managed system would continue for the remainder of the decade.

Throughout this period, the Subsistence Division in the state's Department of Fish and Game continued to be active. As before, it had two primary functions: providing advice to department managers and the boards of fisheries and game, and researching and publishing a series of baseline subsistence studies. (These studies, based primarily on social science—not biological—research methods, were initially qualitative in nature; toward the late 1980s, however, an ever-greater percentage of the division's reports were quantitatively based.) The division had enjoyed a strong growth during its first five years of existence; according to one employee, the Division "was in its heyday" in 1982, with a 27-member professional staff. But the "oil bust" of the mid-1980s, and its consequent effect on state revenues, hit the division hard, and the division was forced to close four of its nine area offices. Underlying the division's struggle was a recognition by staff that ADF&G was primarily responsive to sport and commercial users and that it was led by those interests were primarily related to resource development and conservation. Given those priorities, the Subsistence Division

played a more marginal role in departmental affairs as the decade wore on; by 1990, the division's budget was just 4.7 percent of ADF&G's total. [41]

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Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

C. Managing Subsistence Activities on Alaska's Parklands

During the fifteen-month period between the Madison decision and its resolution by the Alaska legislature, the NPS's presence as it pertained to subsistence questions consisted of one full-time staff person in the Alaska Regional Office, staff in the various Alaska parks who worked on subsistence issues, and the various Alaska subsistence resource commission (SRC) members. Lou Waller, variously known as the subsistence coordinator or the subsistence liaison, was the only agency staff person who worked on subsistence issues on a full-time basis. Working with Waller in Anchorage was Associate Regional Director Michael V. Finley. In the parks, the agency relied on an informal staff network—primarily superintendents, but also rangers or management assistants—who worked on subsistence issues on an intermittent, ad hoc basis (see Appendix 3). [42] Providing advice to the NPS staff presence were the various members of the subsistence resource commissions, nine members for each of seven SRCs.

As noted in Chapter 5, the NPS held a series of initial SRC meetings in April and May of 1984; all attracted a quorum except the Aniakchak meeting. At these meetings, NPS officials instructed the various SRC members—in accordance with Section 808 of ANILCA—that their primary duty would be to "devise and recommend to the Secretary [of the Interior] and the Governor a program for subsistence hunting within the park or park monument."

ANILCA, however, gave few specifics about the subsistence hunting program and it provided few additional details about the SRC's role, a fact that was frankly addressed in the various introductory meetings. At the May 3 meeting, for example, Commission members were told that the commissions were "totally unique to the Park Service and the country" and that they

> need to take the set rules, regulations, and requirements that the Park Service and Commissions are under, plus the public input and feelings they have about administering these lands and develop it into a recommendation for the Secretary of the Interior on how subsistence land programs should operate within the respective parks and monuments. [43]

Commission members were to have broad latitude on what they recommended to the Interior Secretary. Aniakchak SRC members, for example, were told that their hunting plan recommendations should be made "as a result of their own independent judgement. They should not be influenced by the appointing agency." And commission members for park units in northern Alaska were similarly instructed that they "shall not be influenced by the appointing authority or by any special interest but will be the result of the Commission's independent judgments." Members were cautioned, however, that the road ahead would not be easy; as one SRC heard it, "it will take time to understand all the rules and regulations the Commission has to operate under." [44]

Once the hoopla from the first meeting subsided, however, the different SRCs began to express themselves in strikingly different ways. NPS officials were well aware that subsistence activities were greater at some park units than at others; as Table 6-1 (following page) suggests, the potential for subsistence use at Wrangell-St. Elias and the northwestern park units appeared far greater than at Lake Clark, Aniakchak, and the newly-expanded portions of Denali National Park. [45] The charter of the various SRCs stated that each "meets approximately twice a year or as often as circumstances require." But some SRC members, inevitably, chose to be more participatory than others (see Appendix 5); the Gates of the Arctic and Cape Krusenstern SRCs, for example, held three meetings in 1984, while the Aniakchak SRC met just once. Most SRCs, moreover, experienced a dropoff in interest after their initial meeting, and several follow-up meetings either lacked a quorum or were cancelled prior to their scheduled date.

Table 6-1. Population of Resident Zone Communities for Alaska National Park Units, 1970-2000

	1970	1980	1990	2000
Aniakchak N.M.:				
Chignik	8	178	188	79
Chignik Lagoon	---	48	53	103
Chignik Lake	117	138	133	145
Meshik	---	---	---	---
Port Heiden	66	92	119	119
	266	456	493	446
Cape Krusenstern N.M.:				
Kivalina	188	241	317	377
Kotzebue	*1,696*	*2,054*	*2,751*	*3,082*
Noatak	293	273	333	428
	2,177	2,568	3,401	3,887
Denali N.P.:				
Cantwell	62	89	147	222
L. Minchumina	---	22	32	32
Nikolai	112	91	109	100
Telida	---	33	11	---
	174	235	299	354
Gates of the Arctic N.P.:				
Alatna	30	31	35	

Allakaket	174	133	138	97
Ambler	*169*	*192*	*311*	*309*
Anaktuvuk Pass	99	203	259	282
Bettles	---	49	36	43
Evansville	57	45	33	28
Hughes	85	73	54	78
Kobuk	---	*62*	*69*	*109*
Nuiqsut	---	208	354	433
Shungnak	*165*	*202*	*223*	*256*
Wiseman	---	8	33	21
	749	1,205	1,541	1,691

Kobuk Valley N.P.:

Ambler	*169*	*192*	*311*	*309*
Kiana	278	345	385	388
Kobuk	---	*62*	*69*	*109*
Kotzebue	*1,696*	*2,054*	*2,751*	*3,082*
Noorvik	462	492	531	634
Selawik	429	535	596	772
Shungnak	*165*	*202*	*223*	*256*
	3,199	3,882	4,866	5,550

Lake Clark N.P.:

Iliamna	58	94	94	102
Lime Village	25	48	42	6
Newhalen	88	87	160	160
Nondalton	184	173	178	221
Pedro Bay	65	33	42	50
Port Alsworth	---	22	55	104
	420	457	571	643

Wrangell-St. Elias N.P.:

Chisana	---	---	---	0
Chistochina	33	55	60	93
Chitina	38	42	49	123
Copper Center	206	213	449	362
Gakona	88	87	25	215
Gakona Junction	---	---	---	---
Glennallen	363	511	451	554
Gulkana	53	104	103	88
Kenny Lake	---	---	423	410

Lower Tonsina	---	40	---	---
McCarthy	---	23	25	42
Mentasta Lake	68	59	96	142
Nabesna	---	---	---	---
Slana	---	49	63	124
Tazlina	---	31	247	149
Tok	214	589	935	1,393
Tonsina	---	135	38	92
Yakutat	190	449	534	680
	1,253	2,387	3,498	4,467
Total Population, All Resident Zone Communities:	6,208	8,680	11,315	13,282

Note: *Italics* indicate resident zone communities for more than one national park unit. The population of these four communities has been counted just once in the statewide total. Population figures are not available for all communities.

Sources: U.S. Census, *Number of Inhabitants - Alaska*, 1970; Alaska Department of Labor, *Alaska Population Overview, 1990; Census and Estimates*, July 1991; U.S. Census web page, May 2001.

In order to guarantee their continuing viability, at least one SRC toyed with the idea of lowering its meeting quorum from six to four. [46] Others floated the idea of having alternate members. The NPS, however, disallowed that option. Instead, SRCs adopted a proxy system; members who knew that they would be unable to attend a meeting made it known that another member (usually the SRC chair) would be able to vote in their stead. [47] Another method that made it easier to organize a quorum was a change in the various SRC charters, suggested at the March 1986 Gates of the Arctic SRC meeting. The SRC formulated a resolution stating that "a member's three year term should continue until the member resigns, or is removed by the appointment source, or is either reappointed or replaced by a new appointee." The change, finalized in November 1986, made it possible for members who wished to continue their involvement to remain on an SRC after their designated term was over. [48] Thanks to Gates of the Arctic's resolution, the need to rely on a proxy system proved mercifully brief, and after 1986, most SRCs had little trouble mustering up a quorum. But not all. The Aniakchak SRC, for example, made repeated attempts to meet after March 1985; each attempt, however, resulted in either the lack of a quorum or a cancelled meeting date.

Immediately after the various SRCs' initial meetings, work began on considering recommendations for a subsistence hunting plan. One of the first questions that the SRCs considered was the role of these recommendations in various evolving general management plans (GMPs). The NPS, at the time, was compiling draft GMPs for each of the parks that had been established or expanded by ANILCA. (Section 1301 of the act demanded that "a conservation and management plan" for each park unit be completed "within five years from the date of enactment of this Act.") NPS staff, moreover, told the various SRC members that any recommendations they made would be included in the subsistence sections of the various GMPs. [49]

The SRCs' opportunity to influence the general management planning process, however, was more apparent than real. At Lake Clark National Park and Preserve, for example, the GMP planning process by May 1984 was already so far along that the park's SRC had no substantive opportunity to influence the final GMP, which was published just three months later. [50] As for the other ANILCA park units, the draft GMPs were issued in March 1985. That same month, the first SRCs passed suggested hunting plan resolutions. Because an extensive public comment period followed the issuance of the various draft GMPs, SRC members were hopeful that these and other resolutions would be considered and perhaps implemented as part of that public comment period.

Such hopes, however, proved overly optimistic. There was, as expected, a public comment period between the issuance of the draft GMPs (in March 1985) and the revised draft GMPs (in December 1985), and the public was given another opportunity to provide comments prior to the December 1986 issuance of the final GMPs. [51] Two factors, however, effectively prevented the SRCs' recommendations from being incorporated into the various GMPs. First, the SRCs—primarily because of the attendance problems cited above—were often slow to formulate subsistence recommendations; just one SRC passed recommendations during 1984, and by August 1985 only four others had done so. [52] A more important factor that delayed the hunting plan recommendation process was a belated recognition that a public process was required before any such plans could be implemented. That process demanded input from local residents, the State of Alaska, and the Interior Secretary, and written approval of the Interior Secretary had to be obtained before an SRC recommendation could be incorporated into a park's GMP.

Because virtually everyone involved—NPS staff, SRC members, and other interested parties—was unaware at the outset that the approval of hunting plan recommendations would be such a time-consuming process, the agency's inability to immediately incorporate the SRCs' recommendations into the developing GMPs produced some of the first conflicts on the SRCs. The Alaska Federation of Natives' Janie Leask, for example, made the following complaint to the NPS in August 1985:

> It seems logical that, within the planning process, the development of subsistence programs [i.e., plans] would either precede, or be done in unison with, the development of General Management Plans. After all, the subsistence management plan is an important sub-element within the GMP and as such should influence the final result of the GMP effort, not the reverse. [53]



Janie Leask, head of the Alaska Federation of Natives from 1982 to 1989, was a strong advocate of subsistence regional advisory councils. She also urged NPS officials to write subsistence plans either before, or as part of, park general management plans. ADN

The Wrangell-St. Elias SRC, in an August 1985 resolution, echoed the AFN's statement; it recommended that the comment period for the park's draft GMP be extended "until the subsistence management plan has been submitted and accepted by the Secretary of Interior." [54] But the NPS, which was under severe pressure to meet the December 1985 deadline outlined in Section 1301 of ANILCA, rejected such an extension. Instead, it beefed up the verbiage in the December 1985 drafts regarding subsistence—the March 1985 draft GMPs for both the Denali and the Wrangell-St. Elias units had failed to address subsistence in a subsistence

section—and the agency stated that it intended, at some future date, to complete a subsistence management plan for each park unit. This promise was reiterated in each of the final GMPs that was issued in December 1986. [55]

Another problem that both the SRCs and NPS staff faced during the planning process that preceded the issuance of the final GMPs was what specifically the SRCs should produce. Section 808 of ANILCA stated that the various SRCs were to "devise and recommend ... a subsistence hunting program," but it gave no real direction regarding what that program should contain. Left to their own devices, the various SRCs passed a series of resolutions that were applicable to the users, use patterns and needs at each park unit, but there was no consistency or comparability between the themes that these resolutions addressed.

Recognizing that Congress's instructions were vague at best, the Gates of the Arctic SRC in November 1984 stated that their park's hunting plan components—all of which the SRC "would like to see in the GMP"—should encompass some thirty subject areas. The Gates of the Arctic SRC, perhaps the most active of the seven similarly-constituted bodies, passed a January 1986 resolution stating that the SRC—not the NPS—should write the park's subsistence management plan. [56] NPS officials rebuked that notion and wrote their own seven-page "subsistence use management" section in the final (December 1986) Gates of the Arctic GMP. Regarding the other ANILCA parks, NPS officials kept a hands-off attitude (as they promised they would do) regarding which subjects the SRCs should address in their hunting plan recommendations, and the agency provided little policy direction in this area. As a result, some SRCs' "hunting programs" were limited to just one or two resolutions, while the most active SRC, for Gates of the Arctic, passed twenty-four resolutions.

As noted above, Section 808 of ANILCA required that all SRC resolutions be subject to a public comment period before being submitted to the Secretary of the Interior for approval. During the comment period, which typically lasted several months, the resolution was presented to local advisory committees, subsistence regional advisory councils, State of Alaska officials, and to the general public. NPS staff also worked in an advisory capacity with the various SRCs and encouraged them to submit broadly-defined hunting plan recommendations (which needed to be directed to the Interior Secretary) instead of recommendations in a diversity of other subject areas (that were primarily intended for NPS staff). Because of this process, the first SRC recommendations were not forwarded to the Interior Secretary until mid-March 1986. [57] The various SRCs, in coordination with NPS staff, continued to submit hunting plan recommendations for the next eighteen months. By September 1987, five of the seven SRCs had submitted formal recommendations: [58] Aniakchak had sent five recommendations (four in 1986, one in 1987), Denali had sent three recommendations (all in 1986), Gates of the Arctic seven (all in 1987), Lake Clark one (in 1986), and Wrangell-St. Elias four (three in 1986, one in 1987). [59]

According to Section 808 of ANILCA, all recommendations emanating from the various SRCs were to be responded to by either the Interior Secretary or his designated appointee; NPS officials could not serve as signatories. That separation between the SRCs and the NPS, however, was more apparent than real, because Alaska-based NPS personnel were in a far better position to evaluate the technical merits of the various SRC recommendations than Interior Department bureaucrats in Washington, D.C. Moreover, it was Alaska Regional Office personnel—specifically Lou Waller, the region's subsistence coordinator—who organized the NPS response to each recommendation. Working in concert with the



Attending a meeting of the Alaska Land Use Council were (left to right): Donald P. Hodel (Interior Department), John A. Sandor (U.S. Forest Service), Vernon Wiggins (Interior Department, standing) and Alaska Governor Jay Hammond. From 1985 through 1989, Hodel served as President Reagan's Interior Secretary. ADN

various park superintendents and the regional director, Waller compiled the various agency responses, then forwarded them to Interior Department officials in Washington. Officials in the office of Interior Secretary Donald P. Hodel spent several months mulling over the recommendations; between March and May 1988, they responded to those recommendations. [60] The responses that were finalized in March 1988 were signed by William P. Horn, who served as the Assistant Secretary for Fish and Wildlife and Parks; responses finalized in April or May were signed by Susan Reece, who served in an acting capacity for Assistant Secretary Horn. [61]

In order to provide proper deference to the SRCs' efforts, Section 808 of ANILCA stated that the Interior Secretary was obligated to accept each SRC recommendation

> 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.

Such a stipulation might suggest that many if not most of the SRCs' recommendations would be accepted by the Interior Secretary without modification. Such, however, was not the case. In fact, the Interior Secretary accepted without question a fairly small proportion of the recommendations he received; he either partially accepted, or accepted in modified form, a number of other recommendations; and he rejected many others, either because of their perceived irrelevance to a "subsistence hunting program" or because they were in direct contradiction to federal laws or regulations. The Interior Department, in most if not all cases, maintained a "strict constructionist" interpretation of subsistence laws and regulations; that is, it was likely to approve of any SRC actions that voluntarily limited subsistence activity (either the number of species, its means of access, or its geographical extent), but it took a dim view of any proposals that condoned a real or perceived expansion of subsistence activity. A specific analysis of the various recommendations, and the Interior Department's responses to them, is included below.



Flensing a seal, near Kotzebue, July 1974. "Flensing" is the process of removing blubber from a marine mammal. NPS (ATF, Box 13), photo 118, Robert Belous photo

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Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

D. SRC Recommendations: Eligibility Issues

One of the most commonly discussed themes by the various SRCs dealt with eligibility issues. Titles II and VIII of ANILCA, combined with the June 1981 regulations that helped codify Title VIII, made it clear that potential subsistence users of Alaska's national park units needed to satisfy two basic criteria. First, individuals needed to reside in a part of Alaska judged to be rural, according to the Alaska Joint Boards of Fisheries and Game. Second, depending on where they lived, potential subsistence users needed to satisfy one of two other criteria. They must live in one of several designated resident zone communities; these communities were defined as those which contained "significant concentrations of rural residents ... who have customarily and traditionally engaged in subsistence uses within a national park or monument." If they did not live in such a community, they could legally harvest park or monument resources by obtaining a subsistence permit (also known as a 13.44 permit). In order to obtain such a permit, an individual or members of his or her family needed to demonstrate that they "customarily and traditionally engaged in subsistence uses within a national park or monument."

Given the scope of Section 808, the SRCs felt free to tinker with eligibility requirements so long as their recommendations did not run contrary to the above regulations. Given that latitude, the SRCs considered the following five ideas in their eligibility recommendations: 1) adding or deleting specific resident zone communities, 2) creating a large, communal resident zone for a network of communities that shared specific cultural characteristics, 3) drawing boundaries around residential zone communities, 4) establishing community-wide subsistence permits in communities anticipating growth, and 5) applying a cut-off date after which new residents would be ineligible to harvest subsistence resources. These five ideas will be discussed in the order presented.

1. Adding or Deleting Resident Zone Communities. Because public hearings in both 1979 and 1981 had given both the NPS and the public ample opportunity to help decide which communities should be resident zone communities, most SRCs felt little need to modify the established list of eligible communities. Several SRCs, however, moved to expand that list. In March 1985, for example, the Aniakchak SRC voted to add Pilot Point and Ugashik to the list because residents of those communities "have traditionally used the monument for subsistence purposes." And five months later, the Wrangell-St. Elias SRC voted to add Northway to the eligibility list because the village "has always utilized the resources from the park and preserve for subsistence purposes. Their use was customary and traditional and this Commission believes their omission on the resident zone list was an oversight." Members of the Wrangell-St. Elias SRC also discussed eliminating a resident zone community—Slana, during an April 1986 meeting—but the idea was never put forth as an SRC resolution. [62] Interior Department officials, asked to respond to the Aniakchak SRC's resolution, noted that

> to date, the Service has no indication from the residents of Ugashik or Pilot Point that they have any interest in subsistence hunting within the monument or that they have a history of customary and traditional subsistence use within the monument. No one in either of these communities has ever requested a permit to subsistence hunt or trap within Aniakchak. Until a request for resident zone is made by these communities, the National Park Service will not explore further designating them as resident zone communities for Aniakchak National Monument. The residents will continue to be eligible for subsistence hunting by permit. [63]

The Wrangell SRC's recommendation to the Interior Secretary regarding Northway brought forth an almost identical response; because "the Service has had no indication from the residents of Northway that they have any interest in subsistence hunting within the park," a May 1988 letter noted, "the NPS will not further explore designating it as a resident zone." Both letters noted that the NPS, prior to allowing a new resident zone community, would need to determine that a "significant concentration" of permanent residents had a history of customary and traditional subsistence use in the local park unit. [64]



McCarthy, Alaska, as seen in this June 1980 aerial view, is a resident zone community for Wrangell-St. Elias National Park. NPS (ATF), Box 2

Underlying the stark differences between the SRCs' and the NPS's positions were major differences in perception, plus a lack of broadly-available knowledge about local subsistence activities. The NPS's refusal to grant new resident zone communities was a sound decision, based on a prima facie evidence. But the lack of subsistence permit requests did not necessarily indicate that residents from these three communities did not harvest subsistence resources from a park unit (or wished to do so). Rural Alaskans, both Native and non-Native, have long shunned regulations in any form—they have often been less than enthusiastic, for example, about obtaining fishing and hunting licenses—and considering the relatively new presence of the various NPS units, it is perhaps not surprising that park-area subsistence users were reluctant to apply for so-called 13.44 permits. While the NPS's refusal to approve of the new resident zones may have been logical based on the existing evidence, the agency's action doubtless rankled both SRC members and other area subsistence users because it underscored the government's lack of willingness to fully understand the vagaries of subsistence

harvesting.

SRC members, as it turned out, gave a mixed reception to the Interior Secretary's refusal. The Aniakchak SRC chair's response, at a January 1990 meeting, was a promise to discuss the matter further with Ugashik and Pilot Point village council representatives; after that meeting, the matter was effectively dropped because more than two years elapsed until the next SRC meeting. [65] But the Wrangell-St. Elias SRC, which held its December 1989 meeting in Northway, re-submitted a resolution on the Northway resident-zone issue that was almost identical to its 1986 resolution. In the resolution's justification, the SRC noted that the meeting was "apparently the first time any NPS staff had traveled to Northway and been available to discuss Park Service regulations including subsistence eligibility. Many Northway residents probably were unaware of the permitting process and about their being prohibited from hunting in the park without a subsistence permit." At the meeting, "several local residents testified to their use of some areas in the park and preserve," and Commission members "noted the reluctance of some residents, especially elders, to reveal all areas they use for subsistence purposes to outsiders." [66]

2. The Communal Resident Zone Idea. A high-profile issue for two of Alaska's SRCs during the 1980s was a proposal to create a single, large resident zone for a series of communities in northwestern Alaska. The NPS regulations, passed in 1981, had made no explicit provisions for such a zone; instead, both Congress and the Interior Department had made it clear that resident-zone determinations would be made on a community-by-community basis. Recognizing that Cape Krusenstern National Monument had three resident-zone communities, all located fairly close to its borders, NPS staff in May 1984, using an "arbitrary definition, ,,, drew a line from Cape Krusenstern to the furthest village (Kotzebue) and anyone living that far away from the monument all the way around is automatically considered a local rural resident." At the same meeting, however, commission members recommended—based on regional cultural and linguistic similarities—that Cape Krusenstern and Kobuk Valley SRC members "get together with Northwest Areas [NPS staff] and coordinate the subsistence hunting program." [67]

Allakaket, located near the confluence of the Alatna and Koyukuk rivers, is a resident zone community for Gates of the Arctic National Park. George Wuerthner photo

At a February 1985 joint meeting of the Cape Krusenstern and Kobuk Valley SRCs, one SRC member suggested that Noatak and perhaps other villages be added to "the Kobuk Valley list," which "would allow for annual migration and seasonal patterns of wildlife and fishing." Soon afterward, however, that suggestion was expanded upon; it was suggested that "everyone who resides in Game Management Area 23 [which included the three Northwest Areas parks plus a large amount of adjacent territory] be allowed access to the parks based on the common knowledge that in the past[,] residents have subsistence hunted and fished in these areas as a tradition." Later in the same meeting, a suggestion was "also made that the present resident zone be changed to include all of the NANA region." (The boundaries of the Northwest Alaska Native Association region, which was one of the thirteen ANCSA regional corporations, were roughly similar to Game Management Unit 23, although NANA's boundaries were based more on legal descriptions than on rivers and drainage divides.) [68]

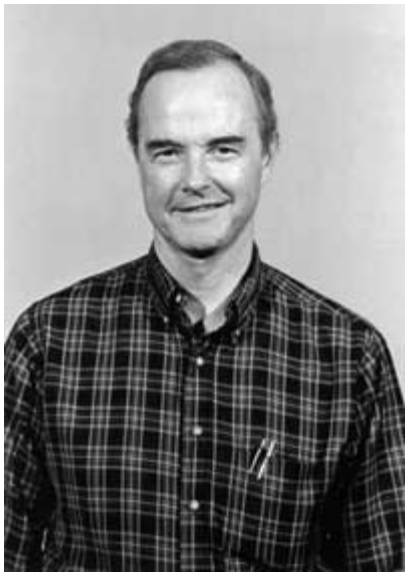
A year later, at another joint Cape Krusenstern-Kobuk Valley SRC meeting, the assembled members passed a joint resolution "that the resident zones for the Kobuk Valley National Park and Cape Krusenstern National Monument coincide with the political boundaries of what is known as the NANA region." Among the reasons for their action were that "the people of the NANA region consider themselves a cohesive social and cultural unit with an ancient history of residency," that "the residents of the NANA region have historically been a highly mobile people moving between and maintaining relationship within all the villages of

the region," and that "the general sparseness, seasonal availability, and unpredictability of local wild resources requires subsistence users to pursue subsistence resources without regard to jurisdictional boundaries." [69] This resolution was sent to appropriate state and local groups, and in February 1986 it was discussed at public meetings held in "five strategically located communities with[in] the NANA Region." Five months later, NPS official Ray Bane reported that local residents had provided "no substantial negative feedback" to the proposal, and the joint SRCs got ready to forward an amended resolution to the Interior Secretary. [70] Thereafter, however, the commission chairs dragged their feet on the matter; at the July 1987 joint SRC meeting, it was noted that Walter Sampson (the Kobuk Valley SRC chair) had signed the resolution but Frank Stein (the Cape Krusenstern chair) had not. A reluctant Stein continued to waffle on the issue for the rest of the decade; as he noted at a July 1989 meeting, he may have delayed doing so in order to see how the Interior Secretary responded to other SRCs' recommendations. [71] Regardless of the reason, the communal resident zone idea—which by all accounts enjoyed broad regional support—had not been submitted to the Interior Secretary by the end of the decade.

3. Resident Zone Community Boundaries. An issue that many SRCs grappled with during the 1980s was whether boundaries should be applied around resident zone communities. The June 1981 regulations defined resident zone communities as having "significant concentrations" of subsistence users of a nearby park or monument, but they offered no direction regarding who would decide where community boundaries should be located. In the case of incorporated towns, the town's boundaries normally served this purpose, and in some unincorporated communities an "easily identifiable population cluster" provided a clearly-defined ad hoc boundary. But in other areas, poorly-defined population clusters made community identification (and thus a definition of just who lived in the various resident zone communities) a difficult task.

Most SRCs did not deal with this issue during the 1980s, because there was little pressure or need to do so. But in areas experiencing actual or anticipated growth (see Table 6-1), defining a resident zone community's boundaries was one method by which existing residents could protect their access to subsistence resources from newcomers moving into a community's periphery. (Another way to protect this access was to adopt a community-wide permit system or roster. This method is discussed below.) At Cantwell, one community where several large development projects were in the offing, the NPS had drawn a boundary back in 1981-82, before the SRCs had become active. That boundary was set at a three-mile radius from the town's post office. In May 1984, the Denali SRC at its initial meeting concurred with the boundary that the NPS had established. [72] Lake Minchumina, another Denali resident zone community, moved to establish a community boundary several years later. As noted below, local SRC members responded to an anticipated residential influx by suggesting a community-wide permit system. But in January 1986 the local fish and game advisory committee objected to the idea. To resolve the issue, an April 1986 public hearing was held at Lake Minchumina, where local people instead recommended a community was held at Lake Minchumina, where local people instead recommended a community boundary that would reach from one to three miles from the lakeshore. The Commission, acting on those suggestions, recommended a 1°-mile distance "because this includes the homes of all the present local residents, and excludes more distant areas where [recent] land sales have taken place or are proposed." [73] This recommendation was forwarded to Interior Secretary Hodel three months later. The department, in its April 1988 response, noted that the SRC's action was "a solid recommendation that should serve to maintain the integrity of the subsistence lifestyle and culture of the Lake Minchumina community, assuming that the permanent population of the community remains relatively stable." Some observers—most notably Jack Hession, of the Sierra Club's Alaska office—urged the establishment of resident zone boundaries throughout the state, and NPS subsistence staff also encouraged the SRCs in this regard. The SRCs, however, appear to have acted only when either real or potential growth

threatened an area's access to nearby subsistence resources. [74]



Boyd Evison, the NPS's regional director for Alaska from 1985 to 1991, made significant decisions related to resident zone boundaries, airplane access, and other subsistence-related matters. NPS (AKSO)

Wrangell-St. Elias was the only other park for which resident zone boundaries were considered. Here, however, a suggested direction came from Interior Department officials, not from the SRC. The NPS, perhaps unwittingly, had made the first move toward defining park-area resident zones in August 1985, when an unknown NPS official had stated that any resident that lived "50 miles from [the] park border qualifies as [a] subsistence user." NPS Regional Director Boyd Evison, in a November 1985 letter, attempted to shed light on the subject; in response to the Service's purported establishment of a "larger, all-encompassing resident zone by drawing a line from Tok [then] generally along the Glenn and Richardson Highways, then south around the southwestern boundary of the park/preserve," Evison forthrightly stated that this notion was "not related to any designated resident zone but has been used as a general 'rule-of-thumb' in determining local rural residency for subsistence permit applications." [75] The park SRC's various recommendations provided no further direction on this subject. Regional officials, however, felt that additional information was needed on the subject. In an October 1987 briefing paper, subsistence coordinator Lou Waller noted that because

> growing settlement along the highway [system] has made it increasingly difficult to delineate clear community boundaries ... an unwritten policy has evolved identifying all of the highway communities and residents along the Copper River drainage as a single large resident zone. While not intentional, this policy can be seen as contrary to both congressional intent and NPS regulations.

To remedy the situation, Waller recommended that "the boundaries for all unincorporated resident zone communities must be defined by each affected park superintendent," although "the park Subsistence Resource Commissions may be involved in this process." [76]

Waller's concerns were passed along to the Interior Department. In its April 1988 response to the SRC recommendations, the department's Acting Assistant Secretary included many of those concerns. After noting two new construction projects in the area and their anticipated demographic impacts, the Secretary's representative noted that "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." [77] The Wrangell-St. Elias SRC, however, was unswayed by such arguments. During its December 1989 meeting, the commission "reiterated [its] 1988 determination that the resident zone communities of Wrangell-St. Elias [have] not significantly changed, thus no change is necessary to further restrict eligible residents (such as the Park Service suggestions to define boundaries...)." [78]

4. The Community-Wide Permit Idea. Another issue related to eligibility was whether, and to what extent, communities experiencing actual or anticipated growth should adopt a permit system in order to protect access to subsistence resources for long-term residents. NPS officials, during several of the introductory SRC meetings during the spring of 1984, were quick to offer this alternative; at the first Gates of the Arctic SRC, for example, commission

members were told that "When a community significantly changes in character it is to be re-evaluated for eligibility. If it has changed significantly enough, it should be removed from the list of designated resident zone communities and individual permits would be issued." [79]

Two SRCs, in response, showed immediate interest in such an alternative. At Denali, as noted above, NPS officials had responded to potential growth challenges several years earlier by establishing a boundary around Cantwell, a motion with which the newly-formed SRC concurred shortly after it became a working entity. Thus it was no surprise that Denali SRC members, in June 1984, prepared a "proposed recommendation regarding subsistence zones" and specifically urged that "for the communities of Lake Minchumina and Cantwell, the resident zone designation be dropped and subsistence use in the park additions be implemented by use of an individual permit system." Such an action was suggested because the resident zone designation at these two communities "is not working" and because "some subsistence users and members of the Subsistence Commission" were concerned about the impacts of an "influx of new residents" upon subsistence resources. [80] Cantwell residents were worried (as they had been since 1981-82) about the proposed Susitna Dam development, Healy-Willow Intertie project, and Valdez Creek mining development, while Lake Minchumina residents were concerned about a spate of new land sales in the area. A year later, the SRC voted to recommend that both Lake Minchumina and Cantwell be changed to a permit system. [81] As noted above, meetings at Lake Minchumina in January and April 1986 resulted in a withdrawal of the SRC's recommendation for that community (and the imposition of a community boundary in its stead), but the proposal for Cantwell met with widespread local approval. In July 1986 the SRC forwarded it to Interior Secretary Hodel; the proposal noted that "in order to preserve the natural and healthy wildlife populations there, we feel that hunting and trapping should be limited to local residents who have traditionally used the area, and that this can be done most effectively by using the permit system." [82] The NPS, in an initial response, noted that the SRC's "concept is solid," and the Interior Department, in its formal response, was similarly approving; it stated that "the Commission's recommendation is consistent with Congress' intent to protect opportunities for the subsistence lifestyle by local rural residents." The department noted that "Congress intended the Service to avoid initially the use of subsistence permits or other devices that focus on individuals rather than communities. Congress also recognized, however, that significant post-ANILCA alterations in the composition of a community could warrant a shift to a permit system or other individual-based system for determining subsistence eligibility." [83]

Lake Clark was the other SRC that acted upon the community-wide subsistence permit idea. The Port Alsworth area, at the time, was experiencing increased land sales at the Keyes Point development, and the park SRC was worried about similar real estate ventures. In response to these growth pressures, the SRC at its second (November 1984) meeting wrote up a draft hunting plan recommendation, a major part of which dealt how local subsistence users could deal with "the potential for rapidly increasing full time and seasonal populations within resident zones." To guarantee continued access to subsistence resources, the SRC planned to "meet with village leaders and traditional councils to determine those within the [park's] resident zones having established ... a history of [customary and traditional] use. A list of those individuals and families having established such use will be prepared and posted in the Post Office of each village for a period of 30 (thirty) days." The commission passed this recommendation in August 1985 and sent it out for comment; seven months later, the unmodified document was forwarded to the Interior Secretary. [84] Alaska's Fish and Game Commissioner Don Collinsworth, who commented on the SRC's recommendation later in 1986, generally approved of the idea of roster regulations (they seemed "completely consistent with the intent of Congress," in his opinion), and Governor Sheffield, who also commented that year, was noncommittal on the subject. Perhaps based on those opinions, the Interior Department approved of the concept of a community-wide permit system for four

Lake Clark-area communities (Iliamna, Newhalen, Nondalton, and Port Alsworth), much as it had for one Denali-area community (Cantwell). [85]

The Interior Department's approval letters to both the Denali and Lake Clark SRCs indicated that the two recommendations would not become federal regulations until rulemaking was completed, and the SRCs were warned that the process "can be somewhat lengthy and involved." [86] To facilitate the process, NPS officials met with Denali SRC members in July 1988 to develop draft regulations. But just three months later, the process was thrown into disarray when Collinsworth, in an apparent about-face, formally objected to the roster idea. (He may have done so because Steve Cowper, who became Alaska's governor in December 1986, did not share the same opinions on the subject as his predecessor.) [87] In August 1989, Cowper elaborated upon the state's objection to the idea of a community-wide subsistence permit system. He gave three reasons for his decision:

> First, the responsibility for regulating subsistence use lies with the State, and the NPS has not availed itself of our regulatory process to address this issue. Second, the substance of the proposal is not justified by the facts. Third, the proposal would foster divisiveness in rural communities at a time when the State is working hard to minimize conflicts among subsistence and other resource users.

The state's position, an apparent reversal of the views it expressed three years earlier, was clearly based on the state's unwillingness to allow federal limitations on subsistence access. Because the state had previously weighed in on the concept, and because Cowper's letter was written more than a year after the Interior Department's approval, Interior officials were not obligated to respond. The letter's practical effect, however, was to cloud an already murky picture. [88]

As the decade ended, the issue of community-wide subsistence permits (by now called "roster regulations") was still in limbo. The NPS, which had been tasked by the Interior Secretary to prepare such a regulation, had made little headway; state officials, from the Fish and Game Department up to the Governor's Office, were openly advocating that the SRCs move cautiously in implementing such a regulation, and as a practical matter, the lack of expected development activity in either the Cantwell or Port Alsworth areas reduced the urgency for implementing a "roster regulation." (The Denali SRC, in fact, now favored Cantwell's retention as a resident zone community rather than its adoption of a roster system, although it "still supported a regulation to create a procedural roster alternative." [89]) During the 1990s, additional decisions and interpretations would continue to refine the parameters of this theme.

5. Subsistence Eligibility Cut-Off Dates. Closely related to the idea of community-wide subsistence permits was that of cut-off dates for subsistence eligibility. Neither ANILCA nor the regulations that followed provided specifics regarding how long people needed to live in residence zone communities in order to access subsistence resources. (The only guidance in this sphere surfaced during Congressional hearings, when Rep. Udall noted that eligible residents needed to have an "established or historical pattern of subsistence use." [90] Lacking a more specific provision, existing regulations allowed such access to all residents, regardless of their length of residency.) Regarding subsistence permits, which were proposed as one way to guarantee subsistence access to "customary and traditional" users, neither ANILCA nor its accompanying regulations gave specific advice on how these users might be defined; in the absence of such advice, the various SRCs addressed this topic in various recommendations that were submitted to the Interior Secretary.

The idea of a cut-off date for subsistence eligibility was first addressed at the initial meetings between SRC members and NPS staff; as noted in the minutes of the first Wrangell-St. Elias

SRC meeting, Commission member Bob Anderson stated that "there should be some type of cut off date for the qualification of subsistence hunting. [Mr. Anderson's] opinion was there had to be a stopping point somewhere." The SRC openly wondered what cutoff date should be used; in response, Interior Department solicitor Jack Allen noted in November 1984 that "the cutoff date of 1978 or 1979 in the resident zones ... is feasible, but the Commission should obtain community response.... December 1980 would probably be the cutoff date, with a lawsuit being inevitable." [91] Subsistence Coordinator Lou Waller, however, recommended an earlier date. He noted that each park general management plan—which was finalized in 1984 and 1986—had a page defining "traditional;" that page noted that "traditional means" or "traditional activity" demanded "an established cultural pattern ... prior to 1978 when the unit was established." In addition, he cited the dictionary definition of "tradition" (which was on the same GMP page) and postulated that area residents needed to demonstrate a generation of use in order to be eligible to harvest park wildlife. [92]



During the mid- to late 1980s, the state's SRCs weighed in with a multitude of suggested cut-off dates for subsistence eligibility; some felt that December 1980 (when ANILCA became law) was best, while others suggested dates ranging from 1978 to 1986. Paul Starr photo

The Wrangell-St. Elias SRC, as it turned out, made no recommendations that included reference to a cutoff date, and the next SRC to discuss a cutoff date—Cape Krusenstern—considered "compiling a list of individuals who are eligible for subsistence resources and who had lived in the region as of 1979." [93]. But after February 1985, most SRC actions appeared to favor a December 1980 cutoff date. That August, for example, the Lake Clark SRC produced a draft subsistence hunting program stating that "for the purposes of subsistence hunting, ... the twin tests of domicile within a resident zone or other area within or near a park and customary and traditional use established by persons and families preceding the passage of ANILCA, December 2, 1980, will be applied." [94] In January 1986, the combined Cape Krusenstern and Kobuk Valley SRCs passed a resolution resolving that "subsistence uses of [the two park units] be limited to those persons who had their primary place of residency within the NANA region on December 2, 1980..." [95] In March 1986, the Aniakchak SRC wrote a draft recommendation (which was never finalized) urging that "the subsistence uses of Aniakchak National Monument be limited to those persons who had their primary place of residency within the local region on Dec. 2, 1980, members or their immediate families, and their direct descendants who continue to reside in the local region." [96] And later that same month, the Gates of the Arctic SRC passed a resolution stating that "in general, local residents of the region with an established pattern of subsistence use within the park prior to December 02, 1980, are eligible to continue engaging in subsistence activities in the park." [97]

Denali was the only SRC to formally recommend a non-1980 eligibility date. Back in June 1984, when the body had first addressed the issue, it had taken pains to state that

> eligibility for a subsistence permit in [Lake Minchumina and Cantwell] not be limited to only those users who have or are families with established historical patterns of subsistence prior to ANILCA. A second category of user should be eligible; those who take over the subsistence uses of persons or families who cease subsistence uses, due to death, age, infirmity or move permanently from the community. [98]

Once most of the SRCs had expressed their views, the State of Alaska weighed in on the issue. In letters written in early May 1986 to at least two SRC chairs, Governor Bill Sheffield stated that "limiting participation in subsistence hunting and fishing to persons who have lived in the [park units] before 1980 may not be fair to people who have moved to the area in the last six years. A retroactive cut-off date could also present legal problems." Fish and Game Commissioner Don Collinsworth gave much the same conclusion four months later. He noted that

> Assistant Secretary William Horn, testifying before the Alaska Senate Resources Committee on March 5, 1986, indicated that Congress expressly rejected the use of fixed cut-off dates for identifying who would be eligible to participate in subsistence uses. The Alaska Department of Law has also indicated that they feel that this approach would not be upheld in court, because people who have moved into the areas between 1980 and the present may well have to rely on the harvest of fish and game. [99]

Federal authorities, confronted with the threat of a lawsuit, appear to have ignored the state's pleas, primarily because many NPS officials felt that setting some sort of cutoff date was a logical way to stabilize hunting pressure in the parks. [100] Given the necessity of a cutoff date, the day of ANILCA's passage—however arbitrary—appeared to be more legally defensible than any other. Perhaps as a result, the Interior Department accepted the ANILCA cutoff date as proffered by both the Lake Clark and Gates of the Arctic SRCs. [101] The Interior Department was also agreeable, however, to a non-ANILCA cutoff date under certain circumstances; regarding the Denali SRC recommendation, it readily accepted the notion of a April 17, 1986 cutoff date for determining Cantwell residents' eligibility for subsistence harvests, inasmuch as the SRC mailed its recommendation to the Interior Secretary on that date. [102]

Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

E. SRC Recommendations: Access Issues

Beyond questions of eligibility, access was a major theme of interest to the new subsistence resource commissions. The Alaska Lands Act, and the regulations that followed in its wake, gave some direction on how specific access-related problems might be resolved, but in other areas the SRCs were able to provide some management and policy direction. A host of questions were raised about both aircraft access and surface access, and a dilemma related to surface access at one park unit led to serious discussion of a land trade. These subject areas—aircraft access, surface access, and the proposed land trade—will be discussed below in the order presented.

Title VIII of ANILCA gave some direction regarding subsistence access. Section 811 stated the following:

> (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.

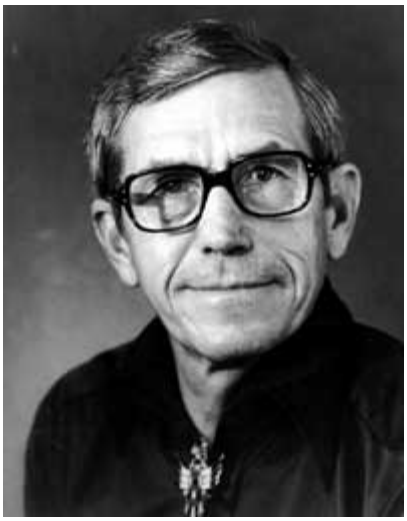
ANILCA did not specifically refer to the legality of aircraft access (which, because it was not a form of "surface transportation," was not subject to clause (b)), but the legislative history discussed the subject in some detail. On the House side, Representative Morris Udall stated that

> in most new units of the National Park System the taking of wildlife by local rural residents for subsistence by local rural residents for subsistence uses has not necessitated the use of aircraft as a means of access, but this concept is not absolute. For example, some years the caribou herds do not use the mountain passes near the village of Anaktuvuk Pass during their annual migration. Since this village has no alternative sources of food, the use of aircraft is essential for the continued survival of the Anaktuvuk Pass people. Similarly, residents of Yakutat have customarily used aircraft for access to 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.
>
> Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, these types of situations are the exception rather than the rule and

> that only rarely should aircraft use for subsistence hunting purposes be permitted within National Parks, National Monuments and National Preserves. 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 occurred. [103]

This verbiage answered many questions; left unanswered, however, was the all-important question regarding whether the agency would allow exceptions to its no-airplanes-for-subsistence policy other than the two cited above. In the meantime, the NPS's ad hoc "good neighbor" (i.e., non-enforcement) policy during the years that immediately followed ANILCA created the impression, at least in the minds of some rural residents, that the agency might continue such a policy for the foreseeable future.

One of the first major policy disputes in the access arena flared up in the summer of 1985. Members of the Wrangell-St. Elias SRC that summer squared off with NPS and other federal officials over whether subsistence users could legally access the park by airplane for subsistence purposes. In the Wrangell-St. Elias area, hunters had been using aircraft to harvest wildlife, for what they claimed were subsistence purposes, for several years prior to ANILCA's passage. But neither the legislative history that accompanied ANILCA nor the regulations that followed its passage specifically validated their usage patterns. [104] Wrangell-St. Elias's first superintendent Charles Budge, perhaps recognizing the strong anti-park sentiment among a number of area residents, made no overt moves to curtail subsistence-related aircraft access during the early 1980s. And as if to condone such activities, Budge wrote subsistence user Sue Entsminger in February 1984 stating that



Charles Budge, who served as the first superintendent of Wrangell-St. Elias National Park and Preserve, made a key decision on subsistence aircraft access that was later overturned by the agency's regional director. NPS (AKSO)

> 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. [105]

Shortly after Budge wrote his note, however, the NPS's attitude toward aircraft access began to shift. Perhaps it was a changing of the reins at Wrangell-St. Elias (where Richard H. Martin assumed the superintendency in February 1985), perhaps it was the existence of a full-time subsistence coordinator (Lou Waller), or perhaps it was a belated recognition—more than four years after ANILCA—that it was time for the NPS to begin enforcing its regulations. Whatever the reason, the product was a July 2, 1985 letter from Regional Director Roger Contor to various park superintendents concerning aircraft access. Written in response to a letter from Sue Entsminger "requesting additional information regarding aircraft access for subsistence hunting in the National Park System areas in Alaska," Contor's letter was clear and unequivocal:

> 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, or a private inholding, outside the park/monument

boundary or in the preserve and then walk into the park/monument. [106]

W. T. Ellis, who served as chairman of the Wrangell-St. Elias SRC, was staunchly opposed to Contor's interpretation of the regulations as they pertained to aircraft access, [107] and on August 2 the park's SRC submitted two hunting plan recommendations on the issue. The first, an "emergency recommendation," stated that because Contor's letter represented "a permanent change in access for the Wrangell-St. Elias area," the NPS should therefore be required to proceed with closure regulations, which included a 60-day public comment period and public hearings in the affected area. The SRC, by taking this action, hoped to derail or at least delay the implementation of Contor's letter, inasmuch as hunting season was set to begin on August 10. The second recommendation, which the SRC passed on the same day, was more generic; it recommended "the use of aircraft as the primary means of reasonable access for subsistence hunting and trapping as there is only 100 miles of roads available for access into 13 million acres of hunting area." [108]

Federal officials, however, took exception to both of the SRC's recommendations. In a letter to the SRC chairman, Assistant Secretary William Horn stated that the July 2 memorandum was "considered by the Department of the Interior to be a formal written correction to a previous and incorrect interpretation" of an existing federal regulation prohibiting aircraft use in Alaskan national park units. [109] In a separate letter, Horn rebuffed the other SRC's recommendation as well; although he recognized that "it would be more desirable to use aircraft to hunt [wildlife for subsistence purposes] inside the park, ... this is totally inconsistent with Congressional intent. ... If [aircraft] is used primarily for the purpose of subsistence hunting, then that is clearly not allowed." [110] To set the record straight, each person given a Tier II permit to hunt caribou in Game Management Unit 11 "was mailed a letter briefly explaining the regulation and several news releases have been issued on this and related subjects." NPS officials also held a September 9 public meeting at the park's Glennallen headquarters; significantly, however, no local residents attended the meeting. [111]

Members of the park's SRC, obviously miffed at both of the Interior Department's decisions, charged that the NPS hoped to "run the Alaska parks as they do in the lower 48" by "eliminat[ing] use of the Parks and Preserves by people as much as possible;" furthermore, it wanted to "restrict human use and participation to small segments of lands, located adjacent to the road system, where every move by humans is regimented and well regulated." [112] Beyond their rhetorical bravado, however, SRC members pressed Interior officials on one specific point; could they prove the legality of their decisions? Contor's July 1985 memo had been "confirmed verbally" by Interior Department solicitors, but in an October 4 letter, chairman Ellis requested a copy of a solicitor's opinion on the subject. Perhaps in response, Interior Department Solicitor F. Christopher Bockmon reviewed Contor's memo, both of Horn's letters, and other pertinent documents, and in an April 2, 1986 memorandum he concluded that both Contor and Horn were correct. Bockmon noted that the NPS could "clearly ... 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." [113]



Byron Mallott has been a Native leader since 1965 when, as a 22-year-old, he was elected Yakutat's mayor. Due largely to testimony that Mallott made to a

Congressional panel, NPS officials allowed the use of airplanes to access the Malaspina Forelands area (in Wrangell-St. Elias National Park) for subsistence purposes. ADN

Although actions by the Wrangell-St. Elias SRC provided the basis for Interior Department decision making as it pertained to aircraft access for subsistence purposes, subsistence users throughout the state were intrigued by the controversy. At Aniakchak National Monument, for example, SRC members in March 1985 had passed a resolution asking that aircraft access be allowed for subsistence purposes. To justify their action they noted that "aircraft have been used by local residents in the area adjacent to the monument for approximately 30 years. The people rely upon aircraft as a means of access to subsistence resources throughout the region and recommend that this same use should be allowed within the monument." [114] A year later, the Gates of the Arctic SRC passed a similar resolution "allowing aircraft access inside [the park] in certain areas." The resolution noted that "There are some families who have had prior use of aircraft in the park before the park was established; and these families used the aircraft to get to areas otherwise inaccessible by ground transportation, and the areas where they hunted were used mainly by them." [115] Subsistence users in both of these parks were no doubt chagrined to hear that Department officials had all but eliminated aircraft access for subsistence purposes at Wrangell-St. Elias. At Aniakchak, the SRC's recommendation was passed on to the Interior Department, which (as expected) refused to sanction aircraft access. It noted that only "extraordinary circumstances could warrant the use of aircraft for subsistence purposes. [But] At present, such circumstances do not exist in Aniakchak National Monument." The Gates of the Arctic SRC, perhaps mindful of decisions made at Wrangell-St. Elias on the subject, modified its original (March 1986) recommendation, and in its recommendation to the Interior Department asked that the aircraft-access regulations "not be interpreted by the NPS as restricting in any way travel of local rural residents on scheduled air carriers between villages in or near the park." The Interior Department rejected that recommendation as well because it "would presumably take a person out of his community's traditional use zone and into that of another. This could prove detrimental to the satisfaction of subsistence needs of local residents..." [116] During the mid- to late 1980s, both park superintendents and regional officials received a number of letters from longtime subsistence users protesting the Department's aircraft access policy; to judge by the number and intensity of these letters, aircraft access appeared to be one of their most unpopular policies applied to Alaska's newly-established national park units.

NPS officials, recognizing the unclear nature of the 1981 aircraft access regulations as they pertained to the national parks and monuments, pressed Interior Department solicitors in early August 1985 for answers to similar questions as they pertained to the national preserves. Did the existing regulations, for example, allow the agency to legally prohibit aircraft access to preserves for the purpose of subsistence hunting within the preserve? And if not, what actions would be necessary to extend to the agency such an authorization? At a September 5 meeting, solicitor Chris Bockmon told NPS officials that the agency currently had no power to issue such a prohibition and that a new regulation would be necessary to create such an authority. Bockmon, however, was asked not to respond in writing to the request for a legal opinion. [117]

Another knotty question with which the NPS grappled during the mid- to late 1980s was how to manage the use of all-terrain vehicles (ATVs) by subsistence users. Outsiders often had unrealistic notions regarding how rural Alaskans traveled to access the wildlife and fish they harvested; romantic notions suggested foot travel, oar-powered boats and dog teams, but the reality was that by the late 1970s such innovations as motorboats, snowmobiles and ATVs were either replacing or supplementing earlier transportation modes. [118] In recognition of these new technologies—and in anticipation of technologies yet to come—ANILCA's legislative history recognized "the importance of snowmachines, motorboats, and other means

of surface transportation traditionally employed for subsistence purposes on the public lands." It further noted that the bill's provisions were "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." [119]



In ANILCA's legislative history, Congress expressly stated that snowmachines would be a valid means of access for subsistence harvesting. Interior Department regulations, passed in 1981, similarly declared that such uses would be permitted in park areas. NPS (AKSO)

The verbiage in the legislative history helped form the basis for the 1981 regulations, which noted (in Title 36 CFR, Section 13.46(a)) that "the use of snowmobiles, motorboats, dog teams and other means of surface transportation employed by local rural residents engaged in subsistence uses is permitted within park areas...." Against the objections of an environmental group, which noted that off-road vehicles were "abhorrent to the notion of subsistence hunting," the Interior Department allowed its use in accordance with Section 811 of ANILCA. And the NPS took a similarly dim view of another environmental group's suggestion to limit ATV use to local rural residents who could prove "traditional use." [120] In this issue, as in others, policy that had not been clearly laid out in the regulations was decided upon by two entities: the NPS and the various SRCs. The NPS's only agencywide guidance on the subject, at the time, was an executive order, first issued in 1972, that was applicable to all public lands. [121] Given that lack of policy, tensions soon surfaced. This was because many entities—state agencies, the Citizens' Advisory Commission on Federal Areas, SRC members, and many other local users—favored the legitimization of ATV use in the parks, both to ensure the continuation of existing travel patterns and because of its practical utility in the largely unroaded Alaskan bush. NPS personnel, on the other hand, had little sympathy for ATV use and often looked for opportunities to curtail such activity.

Based on various master plans and environmental statements that the agency had completed prior to the passage of ANILCA, NPS officials recognized that ATV use was widespread in several new or expanded park units. After a brief "honeymoon period," in which the agency made no moves to sanction or restrict ATV use, the NPS established a long-term ATV policy.

Two actions, both taken during the mid-1980s, shaped that policy: the completion of the various park general management plans (GMPs) and various SRC resolutions on the subject. Taken in retrospect, it appears that the GMPs—and the various public comments that preceded the December 1986 final plans—were a stronger determinant of NPS policy toward ATVs than any actions taken by the various SRCs.

One of the agency's first policy statements on the issue—and, as it turned out, one of its most broad, comprehensive statements on the issue—was made at the first meeting of the combined Lake Clark and Denali SRCs in May 1984. Lake Clark National Park and Preserve, at the time, was well on its way toward completing its general management plan (its GMP apparently served as a pilot study for the ANILCA parks), and the comments made at that meeting were broadly applicable to each of the ANILCA parks. An unnamed NPS official at the meeting noted that

> Addressing the area of what is traditional — ATV's in one area were around for quite awhile. We are generally taking the position that ATV's are not traditional; snow machines, motorboats, dog teams are. In areas where ATV's have been around since World War II for subsistence purposes, ATV's may be "traditional." That will be the problem of the Superintendent. We might say, however, they are not traditional uses to run the animals down but to move the animal. In ten years there will be another technology that will be improved from the ATV, that is faster. [122]

NPS officials, during this period, were quick to note that ATV use varied considerably. In the newly-established portions of Denali National Park, for example, they noted that "existing information indicates that specific ORV use has not regularly been used for subsistence purposes," and at Lake Clark, the NPS stated that "there is very little actual subsistence hunting within the park itself; most of the hunting is done around in the preserve." [123] Other GMPs suggested that ATVs were widely used—the Cape Krusenstern document, for example, noted that "Three-wheeled ATVs carry local residents back and forth in the villages and along the monument's ocean beaches, where only summer foot travel once occurred —"but no documents directly stated that ATVs were used for subsistence purposes. [124]

Prior use, however, was not necessarily translated into policy. Based on language in the regulations (43 CFR 36.11 (g)(1)), several GMPs noted that "snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed" could be used for subsistence purposes. But they further noted that "any additional information about traditional means"—about ATVs, for example—"will be reviewed on a case-by-case basis." [125] Based on that process, the NPS at several parks decided to prohibit the use of ATVs for subsistence purposes. The Kobuk Valley GMP, for example, stated that

> The use of ORVs is not allowed because the use has not been shown to be a traditional means of access. Any new information related to the traditional use of ORVs for subsistence gathered by the National Park Service or provided by others will be reviewed for consistency with ANILCA. [126]



Paul Haertel served as the first superintendent of Lake Clark National Park and Preserve, from 1980 to 1987. He then moved to the Alaska Regional Office where, as Lou Waller's supervisor, he worked on many subsistence issues. NPS (AKSO)

Using similar language, the NPS also concluded that the use of ATVs for subsistence use would not be allowed in Aniakchak National Monument, Gates of the Arctic National Park, or the expanded portions of Denali National Park. As a justification for these actions, the NPS—at the insistence of Regional Director Boyd Evison—quoted a legal-dictionary definition of "tradition" and noted that "to qualify under ANILCA, a 'traditional means' or 'traditional activity' has to have been an established cultural pattern, per [the definition noted above], prior to 1978 when the unit was established." [127]

At the three remaining ANILCA parks, where ORV use was more widespread, the GMPs did not state that ATVs were a traditional means of access. (At least one final GMP, in fact, noted that "three- and four-wheeled vehicles were not determined to be a traditional means of access for subsistence...". [128]) Instead, the documents tacitly condoned existing ATV use because of a lack of language expressly prohibiting the practice. At Cape Krusenstern, for

example, the final GMP contained the pro forma statement that "the use of ORVs for subsistence is not allowed because the use has not been shown to be a traditional means of access." It provided a process, however, to "determine whether ATVs are traditional for subsistence" which allowed "for opportunities to review additional data." The recently-completed Cape Krusenstern land exchange, moreover, authorized subsistence on two trail easements between Kivalina and Noatak in conjunction with the Red Dog Mine road corridor. At Lake Clark, the GMP noted that most subsistence use "occurs by means of boat, three wheeler, snowmachine, and foot travel;" it then stated that "existing traditional patterns and means of access and circulation will be maintained." [129] Finally, the Wrangell-St. Elias GMP—based on an earlier finding that ATV use was a traditional activity in the park—noted that "the use of ORVs/ATVs by local rural residents for subsistence purposes may be permitted on designated routes, where the use is customary and traditional under a permit system implemented by the superintendent. ... Currently, ORV use is limited to existing routes...." These tentative approvals, moreover, were further clouded with language recognizing the environmental damage associated with ATV use and a statement—taken directly from Section 13.46(b) of the 1981 regulations—declaring each superintendent's prerogative to close routes that damaged park resources. [130]

Members of the various SRCs generally favored either the expansion or the continuation of ATV use within the parks and monuments. [131] NPS officials, as suggested by the above policy statements, were more responsive to these comments at some park units than at others. At Aniakchak, for example, the SRC passed a resolution urging the Interior Secretary to allow subsistence use of the monument by three-wheeler; the Interior Department, however, reiterated language contained in the GMP and stated that "the use of three-wheelers is not a traditionally used form of surface transportation for access to the monument for subsistence use." [132] But at Wrangell-St. Elias, NPS officials recognized the widespread nature of ATV usage by both subsistence and sport hunters. At a November 1984 SRC meeting, Chief Ranger Bill Paleck noted that "a local rural resident (subsistence user) can take an ATV any place they want." The NPS's recognition of the popularity of ATV use, plus strong support for their continuation by park SRC members, apparently played a major role in ensuring long-term ATV use for local residents. [133]

At Gates of the Arctic, existing ORV use centered around the community of Anaktuvuk Pass. [134] NPS officials, soon after ANILCA, let it be known that ATV use was prohibited within the national park. This rule generated little controversy at first, but during the early 1980s two factors—a dramatic growth in the number of ATVs used by village residents, plus the August 1983 Chandler Lake agreement, which conveyed surface rights to more than 100,000 acres from the ASRC to the NPS—brought disgruntlement to many village residents. One by-product of the 1983 agreement was the creation of a small network of ATV easements in the park's non-wilderness areas. Residents, however, sometimes took ATVs into the wilderness portions of the park in their pursuit of caribou, and they chafed at any restrictions that prevented them from gaining access to wildlife on which they depended. In order to circumvent the agency's restrictions, they took part in a legal challenge of the position that ATVs were not a traditional means of surface transportation. [135]

At a 1984 SRC meeting held in Anaktuvuk Pass, local residents stated that "their most pressing concern was to obtain access to certain parklands that were important use areas." As a result of this testimony—and perhaps because of the impending legal challenge—Superintendent Richard Ring "agreed to hold talks to resolve the differences." [136] By January 1985, the agency was working on a proposed park boundary adjustment with the Nunamiut Corporation "which would include a portion of the upper Nigu River drainage," and that November, the Nunamiut Corporation stated its interest in discussing the matter further. (Officials, for the time being, allowed existing ATV use to continue.) Before such an adjustment could take place, however, the NPS decided to study the broader issue of ATV

use in and around Anaktuvuk Pass. That study, which was also supported by the Bureau of Indian Affairs and North Slope Borough, began in early 1986 and continued for the next two years. [137] Meanwhile, specifics of a proposed land exchange—between the NPS, the Arctic Slope Regional Corporation, and the Nunamiut Corporation—began to emerge. At the park's March 1986 SRC meeting, the Commission passed a resolution urging "the Arctic Slope Regional Corporation to get together with the National Park Service and Nunamiut Corporation to discuss a land exchange with the Park Service to resolve access into traditional subsistence areas for the residents of Anaktuvuk Pass." [138] By the spring of 1987, park superintendent Roger Siglin reported that "everyone seemed pleased" with progress on the land exchange, and in January 1989 four entities—the ASRC, NPS, Nunamiut Corporation and the City of Anaktuvuk Pass—signed a detailed draft agreement intended to resolve the ATV controversy. [139] All parties recognized that the problem required a legislative solution, because only Congress had the power to add or eliminate wilderness acreage. The NPS, preparing for that eventuality, set to work on a legislative environmental impact statement. The completion of that document took place during the 1990s; that and succeeding activities are discussed in Chapter 8.

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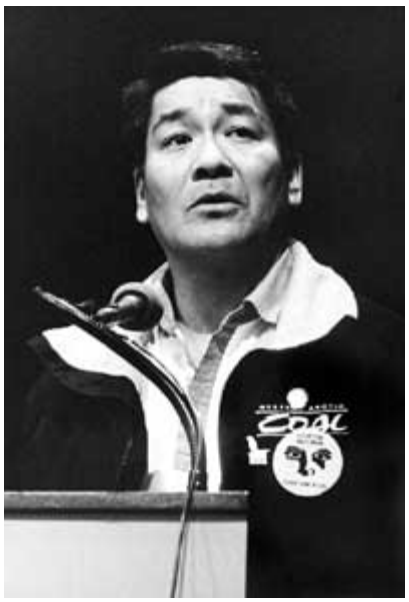
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Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

F. The Controversy over Traditional Use Zones

As noted in Chapter 4, differences between the House and Senate bills on the subsistence question had resulted in the inclusion of traditional use zones in ANILCA. (The House of Representatives felt that subsistence was a legitimate activity throughout most of the new or expanded park units, while the Senate felt that subsistence activities should have been limited to the preserves, the so-called northwestern park units, and certain portions of Gates of the Arctic.) Final language hammered out in the bill signed by President Carter stated that subsistence uses in five park units—Denali, Gates of the Arctic, Lake Clark, Wrangell-St. Elias—would take place "where such uses are traditional, in accordance with the provisions of Title VIII." Although the various draft bills that preceded ANILCA gave some indication of historically-defined traditional use areas at Gates of the Arctic, [140] neither ANILCA nor the 1981 regulations provided guidance on where—at any of the five park units—these traditional use areas should be located. This issue, therefore, would be decided by either NPS officials or the SRCs.



In November 1984, NPS officials released maps of known traditional use zones in Gates of the Arctic National Park. Two months later, at an SRC meeting, North Slope

At various early SRC meetings for each of these five park units, NPS officials (usually Lou Waller, the subsistence coordinator) discussed the traditional use zone idea. The agency explained that one such zone would be drawn for each community; beyond the limits of that zone, subsistence harvesting would be prohibited. Based on his knowledge of ANILCA's legislative history as well as the June 1981 regulations, Waller stated that "it is the local committee, regional council and [subsistence resource] commission"—not the NPS—that should be the driving force behind the delineation of traditional use zone boundaries. [141]

At Gates of the Arctic, a special urgency surrounded the creation of these zones, and no sooner had the first SRC meeting convened than pressure began to be exerted to map out applicable zones for each resident zone community. In a criminal court case decided just a few weeks earlier—one in which Larry Fitzwater had been prosecuted for illegally trapping in a national park—the judge had allowed the defendant to avoid most of his fine because subsistence zones had not yet been identified. [142] As a result of that decision, the NPS concluded that "the traditional use areas must be defined to assure that

Borough Mayor George Ahmaogak and a host of others criticized the maps' limitations as policy instruments. ADN



Dick Ring served as the first superintendent of Gates of the Arctic National Park and Preserve. In response to the barrage of criticism expressed over the traditional use zones issue, the park's SRC was given eighteen months to formulate a decision in the matter. The issue remained a sticking point between the agency and local residents for years afterward. NPS (AKSO)

new uses and radical changes do not occur as a result of the state's implementation [of] game regulations." NPS officials, at that meeting, laid out an accelerated implementation agenda. "Within the next couple of months," they stated, "maps [of traditional use areas] will be published with community by community descriptions. ... The Commission and public will have a chance to suggest changes. ... It would be timely to make recommendations at a July meeting since the Park Service needs something in place by November." Commission members, still new to their positions, may or may not have recognized that the agency, by drawing traditional use zone maps on their own, was ignoring the SRC's advisory role that had been clearly intended by Congress. So the SRC members bided their time, recognizing (or perhaps hoping) that their opinions would be heard during the upcoming public comment period. [143]

After the July meeting, Ray Bane and other park staff—using the "areas listed in Senate Report 96-413 and first hand experience"—began to prepare a series of draft 1:250,000-scale maps of traditional use zones for each of the park's ten resident zone communities. [144] In mid-November, a parkwide map delineating suggested winter and summer use zones was shown to the park's SRC (see Map 6-1, facing page), and in December, park staff circulated additional maps in the various resident zone communities. To gauge the maps' accuracy, residents of those communities were asked to "provide information on traditional areas of subsistence use." Area residents were given a January 1985 deadline—which was later extended to March 1—to submit comments. In order to encourage public involvement, SRC chair James Schwarber contacted several organizations and asked for their input. [145]

The first opportunity for park staff (and the park SRC) to hear the public's reaction to the proposed traditional use plan took place when the park SRC met at Fort Wainwright in late January 1985. At that meeting extensive written testimony was presented by representatives of RuralCAP, the Alaska Legal Services Corporation, the Citizens' Advisory Commission on Federal Areas, and North Slope Borough. Representatives of other organizations presented oral testimony. Most if not all of this testimony opposed the NPS's proposal. The RuralCAP representative, for example, stated that the agency's plan

> proves the futility of trying to pin subsistence users down to exact areas. ... [T]o try to fit subsistence uses as practiced by Natives into closely-defined areas ... is not just futile, it is debilitative, unfair, and in some cases, arrogant. ... Do not make the mistake of attempting to write with fingers of fire in tablets of stone what and where and how subsistence users shall subsist. Be flexible — the resources and users are both flexible. [146]

The Citizens' Advisory Commission statement, drawing a similar conclusion, stated that "it is the 'traditional' pattern of subsistence people to follow the game, rather than the game to follow the people into traditional areas." It questioned "whether or not there is any area in the [park] that has not, at some time in the past, been used for subsistence activities," and it

criticized the agency for countermanding ANILCA's dictum to "cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands." Finally, it urged caution by quoting Rep. Morris Udall; "fundamental fairness seems to require ... that if there is any doubt as to whether subsistence hunting should be permitted within a particular area, that the decision be made on the basis that subsistence hunting should be permitted rather than restricted." [147]

Mayor George Ahmaogak of North Slope Borough used the NPS's own words to fight the proposed traditional use zones. Ahmaogak, in particular, took exception

> to the brief amount of research time spent on this project by the National Park Service. Ray Bane, in *Tracks in the Wildland*, agreed. He stated, "since most of the resources in this area are subject to drastic population changes, surveys would have to cover several decades in order to give an accurate picture of resource damage. Land use or harvest quota policies based on short term surveys would be extremely difficult to justify in many cases." When asked by one of my staff if the National Park Service planned continued research on subsistence issues, Richard Ring, Superintendent of Gates of the Arctic, said no. Mr. Ring seems to feel he has done his duty, though few outside the Park Service agree. [148]

The ALSC statement, making a legal point, noted that "the formal designation and mapping of such [traditional use] areas within the park is not required by the law, may in fact be prohibited by the law, and in any event is undesirable and inappropriate at the present time." The next ten pages of the statement provided data to support that statement. [149]

Based on these and similar statements, the park's SRC—at the NPS's request—unanimously passed Resolution 85-01 on the subject. The Commission resolved that

> In order for the Subsistence Resource Commission to properly pursue its responsibilities, ... the National Park Service is not justified in initiating, and is requested to refrain from any formal rule making efforts regarding traditional use zones for this park until this entire issue can be more fully researched, and the Subsistence Resource Commission can make a formal recommendation ... within 18 months of today; and that the current request for information period [with a March 1 deadline] be extended indefinitely to allow maximum public involvement and input.... [150]

Soon after the meeting, this resolution—with an appropriate cover letter explaining and justifying the SRC's action—was mailed to Interior Secretary William P. Clark and other appropriate officials. [151] A month later, NPS Regional Director Roger Contor responded to the Clark letter and noted, in an introductory paragraph, that the agency "appreciates the complex issues associated with implementation of Title VIII" and that "the resolution of many associated side issues, such as definition of traditional use areas, is something for which there is little or no precedent." In an apparent change in agency policy, Contor then noted that the agency "is clearly in full agreement with the substance of Resolution 85-01." As an explanation for that apparent change in course, the letter stated that "Superintendent Ring [at the January 1985 meeting] requested that the Commission make its recommendations within a reasonable period of time. We feel 18 months is a reasonable time allowance for this complex issue." [152] The NPS's action defused the traditional—zone controversy for the time being. That May, the park issued a new public notice asking for "information on the traditional areas of subsistence use" for the various resident zone communities. The new deadline for comments was April 15, 1986. This date, almost a year away, still allowed ample time for the SRC to mull over the matter prior to its self—imposed July 1986 deadline.

Inasmuch as the issue had antagonized almost everyone in Anaktuvuk Pass by this time, it also gave the agency time to let tensions over the issue cool down. [153]

Little was heard about this issue at Gates of the Arctic until January 1986, when SRC members passed a resolution demanding that any "agencies or individuals engage[d] in mapping and identifying traditional use areas or access routes ... be required to actively involve user communities within Gates of the Arctic National Park." Another resolution, passed at the same meeting, asked that the SRC be allowed—but not required—to draw traditional use boundaries. [154]



A 1984 meeting of the Gates of the Arctic National Park Subsistence Resource Commission. Pictured (left to right) are Jim Schwarber (Alatna River), Rick Caulfield (Fairbanks), unidentified, Roosevelt Paneak (chair, Anaktuvuk Pass), and Dan Wetzel (Fairbanks). NPS (GAAR)

Neither of those resolutions, however, adequately responded to the SRC's self-imposed deadline for resolving the traditional use zone issue. So at its March 1986 meeting, the SRC cobbled together a recommendation on the subject. In recognition of the dynamic nature of the caribou and other subsistence resources, the communal nature of the subsistence users, and the lack of research pinpointing historical subsistence patterns, the SRC resolved—as part of the park's subsistence hunting plan—that:

1. No lines should be drawn restricting traditional use,

2. That if boundaries are set up that they be flexible for the residents of all user communities of the park,

3. More research be done on the traditional use by subsistence users of the resident communities, and

4. Input from all resident communities [should] be sought for the identification of

> traditional use areas. [155]

By the culmination of the March 1986 meeting, the SRC had gone on record as having passed twenty-four resolutions, three of which pertained to the traditional use zones issue. Commission members recognized that many of these resolutions were clearly inappropriate for inclusion in a subsistence hunting program. At its June meeting, therefore, the SRC edited and reworked its earlier resolutions in its preparation of its final subsistence hunting plan for submission to the Interior Secretary. At that meeting, SRC member (and professional subsistence researcher) Rick Caulfield held a traditional use workshop. At its conclusion, he reported "that the specific traditional use areas on maps is not a very good idea," that "subsistence uses needs to be flexible according to supply and demand of that particular area," and that "communities need to regulate [where subsistence hunting takes place], not agencies." [156] Based on the results of that workshop and the SRC's earlier recommendation, the commission prepared a page-long recommendation on the subject. It stated, in part, that

> Flexibility, mobility, and adaptability are essential in providing for the continuance of subsistence opportunities. Territorial requirements of subsistence users may include those actively used at a particular point in time, but may also include "reservoir" areas traditionally used at other times when local need or resource dynamics dictate. ... The Commission [therefore] believes that the geographic areas available for subsistence harvests by local rural residents should at least include the total territory utilized during the lifetimes of individuals comprising the community. ... [M]uch of what is now Gates of the Arctic National Park has, over time, been traditionally used for subsistence.
>
> [T]he Commission has carefully reviewed the suggestion that formally-designated (mapped) traditional use areas for each resident zone community be established. However, ... the Commission recommends that such designations not be made. Formally-designated traditional use areas are considered unnecessary for effective management of the Park, and would likely be culturally inappropriate, administratively cumbersome, and unduly arbitrary. Instead, the Commission believes that existing limitations on access and eligibility ... are sufficient to protect park resource values and meet Congressional intent. [157]

On July 23, the NPS issued a public notice asking for comments on the SRC's traditional use zones statement (along with other aspects of the park subsistence hunting program). At least some NPS officials—Northwest Alaska Areas Superintendent C. Mack Shaver, for example—remained strict constructionists on the issue. Speaking for himself and his staff in a July 1986 memorandum to the region's subsistence coordinator, Shaver noted that

> we don't believe a subsistence management proposal for Gates can just ignore the "where traditional" wording in ANILCA. Perhaps anyone using "strictly traditional" methods and means could be allowed access to the entire park but modern access methods ... open up areas never accessible before. Congress intends only that those leading a subsistence lifestyle prior to ANILCA be allowed to continue to do so—not that anyone wishing to experience such a life be allowed to move into an NPS resident zone and try it out. [158]

James Pepper, Gates of the Arctic's management assistant, shared many of Shaver's opinions on the subject. He noted that "the law is clear in Sections 203 and 201 and the accompanying legislative history that Congress expected that portions of the park would be closed to all hunting." He furthermore complained that the Commission, during the intervening period between initial vote on the subject (in January 1985) and its final (June 1986) resolution to

the Interior Secretary, had

> still not provided any information whatsoever, but only the argument that it disagrees with what is clearly Congressional intent. The meetings and the time for testimony and for evaluation costs money and we believe the Commission wasted the money with no apparent honest attempt to use the 18 months, except for the purpose of delay. [159]

Officials in the agency's Alaska Regional Office, however—still smarting from the backlash against the traditional use zone idea at the January 1985 SRC meeting—were more conciliatory to the commission's June 1986 resolution. Regional Director Boyd Evison, hoping to avoid the negative publicity that the issue had caused thus far, worked with Waller and other subsistence officials and helped outline two alternatives that the Interior Secretary might consider. In one alternative it was suggested that despite ANILCA's dictum to draw traditional use zone boundaries, "Congress also made it clear that subsistence users were to be allowed to shift their use areas when and if the wildlife populations moved to new or different areas." But that alternative also warned SRCs that they "should be asked to identify traditional use zones by community," and "failure by the SRC to do this will necessarily result in the NPS having to use the best information available to define the traditional use areas." The second alternative, less confrontational than the first, noted that "the identification of traditional use zones may not be necessary from a management perspective if it is true that subsistence users will not expend any more time, money, and energy than is necessary to harvest wildlife resources," and that given certain caveats, "there is no need to determine traditional use zones by defining boundaries on a map." [160]

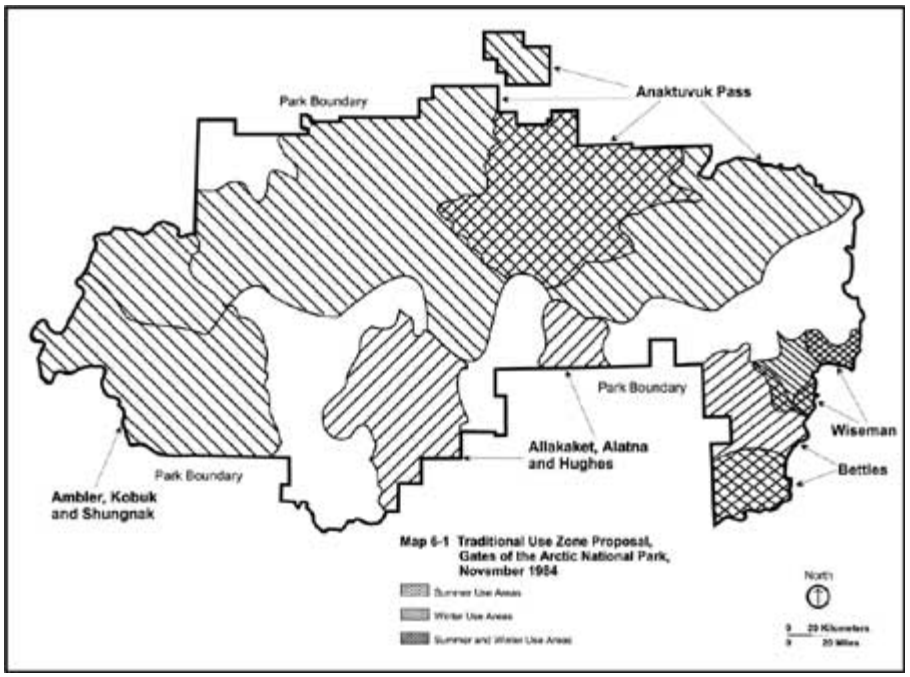


This photo shows Dick Martin, Wrangell-St. Elias's superintendent from 1985 through 1990, pulling the tramcar across the Kennicott River. Dick Martin photo

In March 1987, the park's SRC responded to the various public comments and finalized its draft subsistence management program; on May 6, the Commission forwarded its various recommendations to Interior Secretary Hodel. A year later, the Department responded with a rejection of the SRC's traditional use zone recommendation because it "seems to imply that the entire park is an area of traditional use" and because "Congress was clear in its intent to have ... some areas of the park remain, for the most part, unhunted." Following the first alternative outlined above, the Department felt "that the Commission, in conjunction with local communities and the National Park Service, should analyze the patterns of subsistence use ... and develop a definition of traditional subsistence areas by community." [161] The Interior Department's relatively hard-edged response, combined with a strongly-voiced opposition to such an approach at the state and local level, thus left the NPS in a quandary. From that point forward, the traditional use zones idea at Gates of the Arctic would remain in a legal limbo; the issue would stay unresolved because of the clash of values between the Interior Department's May 1988 directive and the park SRC's disagreement with that directive.

As noted above, the traditional use zones idea was considered at each of the five park units in which the "where such uses are traditional" clause was applicable, but only at Gates of the Arctic did the issue generate much controversy. NPS officials at two of the other four parks in this category took an opposing philosophical stance from those at Gates of the Arctic. At Denali, for example, superintendent Robert Cunningham stated at a 1987 SRC meeting that the traditional zone issue was not a problem at that park, and the SRC took no action on the

issue. [162] And at Wrangell-St. Elias, Superintendent Richard Martin stated that the imposition of traditional use zones "would be an administrative nightmare" because the numerous, poorly-defined communities that ringed the park "would result in a myriad of overlapping traditional use areas. Enforcement much less determination of these areas would be virtually impossible." [163] At several of the early SRC meetings, the region's subsistence coordinator made a pro forma announcement that commission members should consider delineating such zones, and four years later, the Interior Department's response to various SRC hunting plan recommendations occasionally included a similar admonition. [164] But Gates of the Arctic was the only park unit where NPS had pressed SRC members to delineate traditional use zones, and without that pressure, SRC members felt no inclination to do so on their own.



Map 6-1. Traditional Use Zone Proposal, Gates of the Arctic National Park, November 1984.
(click on image for an enlargement in a new window)

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G. SRC Wildlife Management Issues

Title VIII of ANILCA, and the regulations that followed in their wake, were unclear regarding which organizations would have a major say in wildlife management decisions in the various newly-established national park units. Secretary Watt's May 1982 decision that the State of Alaska had satisfied the mandates of ANILCA's Section 804 made it clear that the State would play a lead role in wildlife management, but NPS officials reserved the right to influence subsistence harvest decisions within national park unit boundaries. And as several 1984 letters by NPS officials made clear (regarding bear and caribou regulations in Gates of the Arctic National Park), the agency had every intention of recommending changes in the wildlife regulations when necessary. (See Chapter 5.)

The SRCs, which became active in the spring of 1984, were given varying instructions as to their role in wildlife management within the national parks and monuments. NPS officials told the Gates of the Arctic SRC, for example, that "Some state regulations could be addressed. It would not be redundant of the Fish and Game Advisory Committee and Regional Council's obligations of reviewing regulations." Furthermore, it was "perfectly legitimate to comment on specific proposals to the Game Board." The Lake Clark and Denali SRCs were also told that they could recommend changes to the hunting regulations; they were forewarned, however, that all recommendations had to be submitted to the Interior Secretary (as noted in Section 808), who could then recommend changes in the state fish and wildlife regulations. The Cape Krusenstern SRC, at its first meeting, looked forward to addressing wildlife management issues because "subsistence issues were not being adequately addressed in the Advisory Committee system." NPS officials, in response, suggested that commission members "go through the regulation booklet and mark things that bother [them] the most. They could then discuss them at the next meeting and start working on those issues" so "that the regulations be written closer to the way people actually live. In this manner people will not be violating the law every time they go subsistence hunting." Commission members were told that working on wildlife regulations was a valid (and direct) SRC function



Minnie Gray, an Inupiat from Ambler, is seen butchering a caribou in this mid-1970s photo. During the 1980s, SRCs demanded the right to make game-related proposals, but Interior Department officials disagreed with them, ruling that their role was "not

because "when the recommendations go to the Secretary, they will also be sent to the Governor." [165]

practicable." NPS (ATF, Box 8), photo 1161-7, Robert Belous photo

During the next several years, the various SRCs made occasional generalized wildlife management recommendations. In August 1985, for example, the Wrangell-St. Elias SRC—despite specific language from Senate Report 96-413 stating that "[i]t is contrary to the National Park Service concept to manipulate habitat or populations"—passed a resolution stating that "resource management (predator control) is needed in order to provide for the customary and traditional use of the subsistence resources as mandated in ANILCA." And that November, the combined Cape Krusenstern and Kobuk Valley SRCs expressed concern over the "limited reporting of Dall Sheep kill" in the western Brooks Range. [166] But they stopped short of recommending specific changes in seasons and bag limits, evidently feeling that their influence was better directed to either the regional advisory councils or the local fish and game advisory committees. (In January 1986, in fact, the Cape Krusenstern-Kobuk Valley SRCs "decided not to act on the changes in the sheep hunting regulations by the Board of Game," but have Pete [Schaeffer] bring this to the local ADF&G Advisory Board at their next meeting.") NPS officials, during the same period, made a number of specific hunting proposals, and by the fall of 1986, Regional Director Boyd Evison was submitting a single, yearly, statewide series of agency recommendations for the state game board to consider. [167]

The Gates of the Arctic SRC, hoping to retain its role in specific wildlife management decisions, sent a hunting plan recommendation to the Interior Secretary stating that it "will continue to work with local fish and game advisory committees, regional councils, and with the boards of fisheries and game to ensure that resource values are protected," and it further recommended that the agency should use the SRC as a "sounding board" for "all NPS recommendations and proposals to the state boards of fisheries and game." But the Interior Department, citing scheduling concerns, threw cold water on the SRC's proposal. It noted that

> Given the time constraints of the State's regulation proposal process, NPS and the Alaska Department of Fish and Game are not always able to consult each other (as required by their Memorandum of Understanding) on proposals each may be submitting for consideration. Considering the time and expense required to conduct a Commission meeting, it is not practicable to use the Commission as a "sounding board" for NPS recommendations to the boards of fisheries and game. When possible, however, the NPS would like to discuss wildlife allocation proposals with the Commission. [168]

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H. Glacier Bay Subsistence Conflicts

Many of the subsistence issues that took place within Alaska's NPS units were decided, or at least discussed, by members of the various park or monument subsistence resource commissions. But several issues surfaced at so-called standalone preserves (i.e., preserves that were not associated with a park or monument of the same name), and issues also occasionally arose within the "old" (i.e, pre-ANILCA) parks. [169] The most contentious such issue during this period related to the legality of subsistence hunting and fishing in Glacier Bay National Park.

On the surface, the issue appeared to have been clearly resolved. As has been noted in Chapters 3 and 4, the NPS, along with the Hoonah Tlingit and the Bureau of Indian Affairs, had wrestled with the issue for more than three decades, beginning in the late 1930s. But in early 1974, the issue was seemingly decided when Glacier Bay National Monument's chief ranger, Charles Janda, contacted Hoonah Mayor Frank See and informed him that the Code of Federal Regulations' prohibition against the killing of wildlife in National Park Service units applied to Glacier Bay as well. Neither the mayor nor other Hoonah residents appear to have protested that action, and for the remainder of the decade only scattered protests reached the ears of Park Service officials. [170] During the years that immediately preceded the passage of the Alaska Lands Act, it appeared that Hoonah residents were far more concerned over other overarching issues—fighting clear-cut logging on Tongass National Forest lands that surrounded their village, making land selections pursuant to ANCSA, organizing the Huna Totem Corporation, and dealing with the closure of the Inian Islands fishing grounds to the town's seine fleet—than Glacier Bay subsistence matters. The final Alaska Lands Act, moreover, did not include any language that altered the existing prohibition against subsistence uses in the newly-designated Glacier Bay National Park; in fact, sections 203 and 816(a) of the act specifically appeared to reinforce the status quo. The agency's General Management Plan for the park and preserve, released in 1984, was clear on the topic: citing *Congressional Record* language, it noted that "lands and waters within the national park area ... are closed to subsistence uses." [171]

During the mid-1980s, however, actions by both an international agency and the ADF&G had the (perhaps unintended) effect of raising subsistence issues once again. In 1986, the United Nations Educational, Scientific and Cultural Organization (UNESCO) designated Glacier Bay and nearby Admiralty Island as a "biosphere reserve" as part of its International Man and the Biosphere program. This designation heightened agency awareness of the special nature of park resources, and perhaps as a result, NPS officials mulled over the idea of reducing or eliminating commercial fishing in the park. That same year, however, the state's fish and game department was immersed in a study of Hoonah residents' subsistence uses. That study, for which interviews were conducted in the spring of 1986, pointed out that

at least some of the Hoonahs' subsistence harvesting took place in Park waters, and as a logical follow-up to that study, the local fish and game advisory board proposed that the State of Alaska Board of Fisheries issue subsistence permits for Glacier Bay. [172] NPS officials protested the action, claiming both ANILCA's prohibition against subsistence uses and a lack of state jurisdiction in the waters of Glacier Bay. Perhaps as a result of that protest, the Board of Fisheries turned down the local advisory board's proposal. [173]



In 1969, NPS officials stated that George Dalton, Sr. (second from right) was one of only two true subsistence hunters using the waters of Glacier Bay. In September 1986, NPS officials visited Hoonah and met with him. They included Regional Director Boyd Evison, Director William Penn Mott, and Glacier Bay Superintendent Mike Tollefson. NPS (AKSO)

Hoonah residents raised the issue again in the fall of 1988 during public hearings about the park and preserve's wilderness plan. The following spring, the state fisheries board took up the residents' cause and determined that they were entitled to catch salmon in Glacier Bay National Park according to their "customary and traditional use." Soon afterward, ADF&G Commissioner Don Collinsworth began issuing them subsistence permits for Glacier Bay and Excursion Inlet. NPS officials were clearly alarmed by the state's action and, in late May 1989, they implored the ADF&G commissioner to stop issuing subsistence permits. Collinsworth, however, proved stubborn, and issued 80 subsistence permits; NPS officials, in response, posted boating regulations at various points in Hoonah. A month later, Tlingit leaders announced their intention to sail a flotilla into Glacier Bay and fish in several of the bay's salmon streams. Just a day before the confrontation, however, the ADF&G opened up a new seining area in Hawk Inlet (east of Hoonah and outside of the park), and Hoonah residents responded to the state's action by sailing away from Glacier Bay in favor of the newly-opened area. The confrontation was averted. But that fall, many Tlingits showed a renewed militancy toward the issue, and as the decade came to a close, the long-term status of Glacier Bay subsistence harvesting seemed murky and tenuous. [174] As Chapter 8 relates in greater detail, the issue remained active until well into the 1990s.

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Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

I. Miscellaneous NPS Subsistence Management Issues

During the mid- to late 1980s, most subsistence issues dealt with by NPS officials and SRC members were related to issues of eligibility, access, traditional use zones, and wildlife management. But issues related to trapping and the national preserves loomed as well, and vexing definitions emanating from ANILCA and the 1981 regulations were also addressed. This section discusses these and related matters.

At the various introductory SRC meetings, NPS officials clarified trapping's role in the various national park units. Members were told that trapping was allowed only for subsistence purposes; the activity was "not intended to be solely or predominantly commercial." Trappers, similar to hunters, who lived in resident zone communities would not need a permit. Permits would, however, be required for those who lived outside of resident zone communities or for those who maintained a cabin within a park unit. NPS officials said that they would do their utmost to "preserve a lifestyle," and to that end, the regulations guaranteed that the children of subsistence user would also be able to obtain permits, regardless of whether the children had themselves engaged in subsistence activities. [175]

The only trapping policy issue to emerge during this period was a recommendation submitted by the Wrangell-St. Elias SRC. The issue was trapping with a firearm on the national preserves. This practice had been prohibited in Alaskan national park units (in parks and monuments as well as preserves) since June 1983 as a result of two sets of regulations: the June 1981 final regulations that defined a trap as "a snare, trap, mesh, or other implement designed to entrap animals others than fish," and June 1983 NPS-wide regulations that defined "trapping" as "taking or attempting to take wildlife with a trap." [176] The NPS made no attempt to enforce this regulation for the next several years, and both the draft and the revised draft versions of the park general management plans (issued in March and December 1985, respectively) made no reference to these regulations. At the Board of Game meeting held from January 7-15 1986, state game officials admitted that they were unaware of the NPS's trapping restrictions; indeed, they stated that as many as twenty wolves may have been taken in NPS preserves by the land and shoot method, by those with a trapping license, during the recently-concluded season. To set the record straight, therefore, Lou Waller of the NPS gave the Game Board the federal definition of "trap" as stated in 36 CFR Section 13.1. On January 21, NPS Regional Director Boyd Evison met with ADF&G Commissioner Don Collinsworth on the matter, and on February 14, the NPS sent the state a letter formally conveying the NPS prohibition of firearm use for trapping. [177] NPS officials, as a result, were now free to enforce its prohibition of same-day-airborne hunting (with hunters who held either a hunting or a trapping license) in the various national preserves. As a logical follow-up to that issue, NPS officials inserted the following statement in the final (November 1986) GMPs; "Trapping in national park system units can be conducted only using

implements designed to entrap animals." [178]

The Wrangell-St. Elias SRC chair, at the time, was W. T. (Bill) Ellis, a commercial guide and pilot who typically hunted in the preserve. He was an outspoken advocate of predator control in general, and aerial wolf hunting in particular. Perhaps because of Mr. Ellis's influence, therefore, the SRC, in April 1987, responded to the newly-included GMP verbiage by recommending that "trapping be allowed with the use of a firearm on Preserve lands within Wrangell-St. Elias National Preserve." The recommendation noted that Alaska state law allowed trapping with a firearm and that "in many places in Alaska this is the customary and traditional means of trapping." The recommendation's intent, therefore, was to align federal with state law. The recommendation was submitted to the Interior Secretary in August 1987, but the Interior Department failed to respond to it. [179]



Bill Ellis, a master guide and pilot, chaired the Wrangell-St. Elias National Park Subsistence Resource Commission from its inception, in 1984, to 1994. He often tangled with NPS officials over subsistence policy matters. Thelma Schrank photo

Although the federal government failed to address this issue, it was nevertheless resolved in the SRC's favor (and, more specifically, in Mr. Ellis's favor) when the state agreed to modify its regulations pertaining to same-day-airborne harvesting. The State Game Board revised its same-day-airborne provisions for wolves by 1) eliminating the previous allowance for trapping but 2) establishing such an allowance for hunting. For the first time, therefore, fly-in sport hunters were free to harvest wolves with a hunting license in NPS areas in Alaska. Legally speaking, it was the first time since 1983 that hunters visiting the national preserves had been able to harvest wolves and other furbearers with a firearm; but since most hunters had been unaware of the NPS's regulations prior to early 1986, the de facto prohibition against all wolf hunting in the preserves had been in force for less than two years.

NPS officials, fully aware that any form of habitat manipulation was forbidden in Alaska's park units, adopted an emergency one-year regulation (beginning in November 1988) prohibiting same-day-airborne hunting of wolves in NPS areas. At the same time, the agency began drafting a proposed rule for permanent adoption; that rule was published in the June 9, 1989 *Federal Register*. The public was given 70 days (until mid-August) to comment on the rule, and during that period the agency conducted hearings in 15 Alaska communities and collected more than 1,400 comments, 94 percent of which favored the rule's implementation. Based on that response, NPS officials began preparing a final rule on the subject. [180]

Regarding Alaska's ten national preserves—three "standalone" preserves and seven others contiguous to national parks or monuments—a variety of issues ensued. As noted in Chapter 4, the preserve concept, which was a newly-emergent NPS unit classification during the years that immediately preceded ANILCA's passage, was promulgated in order to allow sport hunting. Shortly after ANILCA became law, Interior Department officials—in a major concession to the State of Alaska—agreed to relax eligibility requirements to subsistence users in the various preserves. As noted in the June 1981 regulations,

> The National Park Service has decided to eliminate the system of resident zones and subsistence permits for identifying "local rural residents" in park preserves.

> The Park Service agrees 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. The Park Service believes that the remaining reasons for identifying "local rural residents" in preserves—namely, to control subsistence fishing and log cutting—can be handled through other regulatory mechanisms, such as enforcement of State subsistence law with regard to fishing and retention of the permit requirement for cutting of live standing timber. [181]

In October 1982, the NPS and the Alaska Department of Fish and Game signed a master Memorandum of Understanding. Virtually all of its provisions applied to the preserves as well as to the parks and monuments, but one in particular would become a point of contention in later years. In that provision, the NPS and ADF&G mutually agreed

> To recognize that the taking of fish and wildlife by hunting, trapping, or fishing on certain Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Park or Preserve goals, objectives or management plans. [182]

Two years later, in the spring of 1984, NPS officials told SRC members at the various introductory meetings that the commissions would deal exclusively with park or monument issues; preserve-related issues would be of interest only insofar as they influenced parks or monuments. (This was because Section 808(a) of ANILCA established an SRC "for each park or park monument.") [183] Given that dictum, most SRCs overlooked subsistence issues on nearby preserves. But the combined Cape Krusenstern and Kobuk Valley SRCs, which often met in conjunction with one another, occasionally discussed subsistence matters throughout Game Management Unit 23 (and thus included Noatak National Preserve), and the Wrangell-St. Elias SRC felt a keen interest in matters pertaining to Wrangell-St. Elias National Preserve. In November 1984, for example, the SRC had a "discussion among the members present [about] commercial operators within the preserve. Although members at that meeting were counseled that "this commission would not address issues in the Preserve," the transcriber noted that "this commission believed they were supposed to deal with issues in the Preserve also." [184]

As noted above, a major access issue erupted in July 1985 when Regional Director Roger Contor ruled that subsistence users could not use an aircraft to access either preserve lands or adjacent non-NPS lands with the express intention of accessing park or monument subsistence resources. As part of that ruling, Contor was quick to point out that "current regulations do not prohibit the use of aircraft for subsistence purposes in any of the preserves." He further interpreted the June 1981 regulations to require "a person to be a local rural resident in order to qualify for subsistence uses in the preserve." Soon afterward, however, the NPS retracted the latter statement inasmuch as there were no resident zones—and thus no agency-defined "local rural residents"—associated with the preserves. [185] Some NPS officials hoped to "add preserves to the definition of local rural residency," but their efforts were unsuccessful. [186]

The 1982 Master MOU, as noted above, gave the ADF&G the right to enforce state fish and game regulations "unless State regulations are found to be incompatible with documented Park or Preserve goals, objectives, or management plans." During the 1980s, the sole instance in which this provision was utilized dealt with wolf control. ANILCA, the regulations written in its wake, and the Master MOU all made it clear that the NPS would not allow wildlife manipulation within the various park units, so when the Alaska Board of Game moved to allow the aerial "trapping" of wolves on preserve lands, NPS officials protested the Board's action. [187]

Another problem faced by both the NPS and SRC members was the murky definition of certain critical terms used in Title VIII of ANILCA. As noted in Chapter 5, the June 1981 regulations contained four such terms: "healthy," "natural and healthy," "customarily and traditionally," and "customary trade." Regulators at that time were well aware of their lack of specificity in these matters. Regarding the first two terms, they readily admitted that "the Service has not defined these new terms in the context of this interim rulemaking. ... However, the Service has quoted at length from Congress' explanation of these concepts ... in order to guide park officials in their implementation of them." Regulators also chose to avoid defining "customarily and traditionally ... since their definition requires extensive prior comment and research as well as the advice of the local committees, regional councils, and park and monument commissions." [188]

One of these matters was addressed in December 1981, when the joint fish and game boards provided an eight-pronged definition of "customary and traditional." (As noted in Chapter 5, this term had originally been defined in March 1981, in a Cook Inlet fisheries case, using ten criteria.) When the state, the following spring, formally assumed management of subsistence resources on federal lands, that definition was applied to NPS and other federal lands in Alaska. The definition remained unchanged until the *Madison* court decision forced the state to adopt a new subsistence law; as part of the negotiations resulting in that law, the state legislature adopted a letter of intent. That letter specifically mentioned eight criteria for identifying customary and traditional uses of fish and wildlife resources; these criteria were similar (though not identical) to those adopted in December 1981. [189] "Customary and traditional" was not defined as part of the June 1981 agency regulations (despite one group's urgings), and several years later the NPS's subsistence coordinator drafted a letter urging one of the SRCs to "provide local input into the definition of these terms...". [190] No action, however, was taken on the matter.



Subsistence catch with gillnet, Unalakleet River drainage, June 1976. Ross Kavanagh photo (NPS-AKSO) #1025

Attempts to define "healthy" and "natural and healthy" proved more controversial. The June 1981 regulations, while avoiding a precise definition, provided a contextual definition with a liberal sprinkling of both terms, and the 1979 Senate report discussed "healthy populations of fish and wildlife" at some length. But park managers, told they must manage "natural and healthy" fish and wildlife populations in the parks and monuments and "healthy" populations

in the preserves, were uncomfortable with the terms' lack of specificity. At one of the introductory SRC meetings, members were told that the practical effect of the "natural and healthy" definition was that if "there is no longer a natural [wildlife] population, [the superintendent] must impose a restriction [on harvesting], injunction, or legislative action." At another early meeting, a park superintendent noted that in order to maintain natural and healthy populations of animals subject to trapping, "the level of use is not to exceed what it was at the time of ANILCA." [191]

The preparation of the various park GMPs during the mid-1980s generated further questions and comments, and in addition, considerable discussion on the subject arose at meetings of the Gates of the Arctic SRC. In preparation for the SRC's January 1985 meeting, an environmental organization submitted comments urging that "the ADF&G and the NPS work together to establish a definition of what constitutes 'natural and healthy' wildlife populations," and a commentor from another organization postulated that inasmuch as "subsistence uses by local residents have been, and are now, a natural part of the ecosystem," any deviance from that norm (including "the concept of the park itself") should be considered "unnatural." [192] But any further discussion of the concept was postponed because of the furor that arose over traditional use zones. Not for another year did the SRC discuss the idea. An ADF&G representative at a January 1986 meeting noted that there was "no necessary contradiction between sustained yield [which was the state's fish and wildlife management philosophy] and natural and healthy populations." During the GMP process, public concern about the vague definition was widespread that "'natural and healthy' wildlife populations should be defined and management implications identified." [193] But the various final GMPs did not address those concerns. Mack Shaver, who served as the NPS's Northwest Areas superintendent, felt that present-day subsistence harvests were often "at least partly a consumptive and potentially damaging use of ecosystem resources" and that this "threat relates directly to naturalness and health." He therefore pressed the agency to define the two terms, inasmuch as it was "unlikely that the Board of Game will use those terms as criteria until we arrive at manageable definitions." [194]

Gates of the Arctic was the only park or monument SRC to address this issue when it recommended that "the term 'natural and healthy' population should be applied to the Park as a whole, and not just to limited geographic areas." Regional subsistence personnel, who attended an SRC meeting shortly after receiving the recommendation, asked commission members

> to assist the NPS in defining what "natural and healthy" meant to them, the local subsistence users. Emphasis was placed on the concern that the NPS was not to manage on a "sustained yield" basis. The exchange of ideas here, as in most of the meeting, was constructive. [195]

But neither the Gates of the Arctic SRC nor any of the other SRCs provided additional written input on the "natural and healthy" issue. The Interior Department, moreover, responded to Gates of the Arctic SRC's efforts by ignoring its "natural and healthy" recommendation. In a blanket statement, it noted that

> NPS is required to maintain natural and healthy populations for all wildlife species within the park. This means that NPS must actively attempt to maintain natural and healthy populations of wildlife at all times, and cannot delay management efforts until a natural and healthy situation no longer exists. [196]

One term that was defined fairly specifically was that of customary trade. The term had first appeared in 1978 as part of the "subsistence uses" definition in the state's subsistence law. Shortly after President Carter's national monument proclamation in December 1978, the

public was given the first of several opportunities to comment on the "customary trade" concept as well as on several other examples of "subsistence uses." A working definition thus emerged in the June 1979 proposed rule, which was refined in the January 1981 proposed rule and the June 1981 final rule. [197] The final rule noted that the definition

> serves to expand the permissible exchange to include, in addition [to barter], furs for cash. One rural group, however, pointed out a customary trade practice that the proposed definition of "subsistence uses" did not cover: the customary and traditional making and selling of certain handicraft articles out of plant materials. The Park Service has included special provisions in the final regulations to allow for these activities (e.g., the making and selling of birch bark baskets) in the two park areas where they are known to occur, Kobuk Valley National Park and the southwestern preserve area of Gates of the Arctic Park and Preserve.

Shortly afterward, in December 1981, the joint fish and game boards passed their own regulations and defined customary trade somewhat more loosely. Customary trade was defined as "the limited noncommercial exchange, for minimal amounts of cash, of fish or game resources." The state's definition, among its other implications, sanctioned a more broad-based trade in plant materials than its NPS equivalent. [198]

The various GMPs, issued during the mid-1980s, clarified the role of customary trade in national park units. The Gates of the Arctic GMP, for example, noted that both barter and customary trade were "recognized as being a part of the subsistence lifestyle and economy. Customary trade largely centers around the sale of furs, although other items are also part of trade networks." The authors of the 1979 Senate Report, it noted, did "not intend that 'customary trade' be construed to permit the establishment of significant commercial enterprises under the guise of 'subsistence uses.'"

One gray area in the customary trade realm—the sale of caribou antlers—was brought to the agency's attention by the Cape Krusenstern SRC in late 1989. Through the mid-1980s, antlers were not an issue because most antlers from subsistence-caught caribou were left in the field by hunters; only a small number were used in craft items. But in the late 1980s, buyers from Korea arrived in northwestern Alaska to purchase wild caribou antlers. Selling these items was legal, at the time, according to state law. But federal regulations in this area were perceived to be sufficiently unclear that the question was referred to the Interior Department's solicitor. Much later, officials concluded that antlers could be collected from caribou that had been harvested for subsistence purposes; the customary trade regulations, however, prevented the intentional collection of antlers or the harvesting of animals for the sole purpose of antler collection. [199]

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Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

J. The SRCs During the 1980s: Concluding Remarks

During the late 1970s, Alaska's two senators had insisted upon the inclusion of the various SRCs as part of developing Alaska Lands Act legislation. (As Chapter 4 indicates, the Senate had included the idea of various park-specific commissions in its October 1978 report; by contrast, the bills that passed the House in both May 1978 and May 1979 had called for a series of local advisory committees that would have been independent of NPS boundaries.) The specific purpose Congress granted to the various commissions was fairly narrow—to initially "devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument," and thereafter to "make recommendations to the Secretary and Governor for any changes in the program or its implementation which the commission deems necessary." [200]

Beyond the commissions' specific purpose, both the NPS and area subsistence users recognized that a primary goal of the SRCs was to provide local input to agency personnel. But no sooner had the SRCs begun to operate than dramatically differing institutional personalities began to be manifested. Three park units—Denali and Lake Clark national parks and Aniakchak National Monument—had relatively few subsistence users, and existing users appear to have been relatively comfortable with the way the NPS administered its subsistence regulations. With two other commissions—Gates of the Arctic and Wrangell-St. Elias—the contrasting philosophies between SRC members and the NPS brought friction. And in northwestern Alaska, the predominance of a single Native cultural group (the Inupiat Eskimo) and a single, powerful Native regional corporation (NANA) caused the two SRCs in that area—Cape Krusenstern and Kobuk Valley—to assume distinct identities and working relationships from the other five commissions.

That friction should have arisen between the NPS and area subsistence users was both inevitable and predictable. The NPS, as part of "the nation's principal conservation agency," was known around the world because, for more than 60 years, it had fought "to conserve the scenery and the natural and historic objects and the wild life therein." [201] With only scattered exceptions (as noted in Chapter 2), NPS lands prohibited resource harvesting activities, and the agency's positive public image was built, in large part, on its success in protecting park resources from hunters, collectors, and other resource users. The Alaska Lands Act, however, expressly permitted a wide range of subsistence uses within most of the newly-established and newly-expanded park units. NPS officials fully recognized that subsistence uses were a valid aspect of these park units. The Service's institutional philosophy, however, militated against an easy acceptance of these contrasting land uses. Moreover, those in charge of administering the agency's subsistence program—some of whom were unfamiliar with Alaska and its unique rural lifestyles—often chose to narrowly interpret the newly-established subsistence regulations.

Many subsistence users, by contrast, hoped for a broader interpretation of those same regulations. Before ANILCA was passed, many Natives who lived in and around the newly-established parks were from families who had carried on subsistence activities for hundreds of years, and most non-Native subsistence users had moved to rural Alaska, in part, to enjoy a lifestyle that was largely free from bureaucratic regulations. Natives, as a rule, supported ANILCA because it supported a continuation of their harvesting patterns, but non-Native hunters and fishers (again, as a rule) resented ANILCA because it imposed new regulatory roadblocks onto what had heretofore been, relatively speaking, a laissez faire system. Regardless of their feelings toward the Act itself, however, many rural residents—both Native and non-Native—were unhappy with specific ANILCA-based regulations, and it was at the SRC meetings where these people—many of whom were unfamiliar with those regulations—vented their collective spleen at NPS officials.

At SRC meetings, NPS officials got to know local subsistence users and learn about their lifeways, and it was at those same meetings where SRC members heard from NPS officials about how the agency—tied as it was to ANILCA and its regulations—explained how it intended to oversee subsistence issues. At meetings of some of the less contentious SRCs, the interplay between agency officials and subsistence users was amicable and low-key. But at others, starkly contrasting philosophies resulted in anger and antagonism. The Wrangell-St. Elias SRC, for example, passed several resolutions calling for the legitimization of practices (dealing with aircraft access and wolf control, for example) that were clearly contrary to agency regulations. (They were told beforehand that there was little chance of the Interior Secretary accepting them; and when the resolutions were in fact refused, they were submitted again in largely the same format as before.) The Gates of the Arctic SRC, another hotbed of independent-minded souls, passed a large number of resolutions that, in the federal government's opinion, were irrelevant to the "subsistence hunting program" called for in ANILCA. Moreover, all of the SRC's remaining resolutions (in other words, those that were deemed relevant) were, like those at Wrangell-St. Elias, rejected by the Interior Department. These refusals, which were issued in the spring of 1988, caused some commission members to be angry with, and distrustful of, agency officials.

Compounding the anger and distrust was a real or perceived lack of money for SRC operations. The various SRC charters, first signed in May 1982, called for an annual expenditure of $10,000 for each SRC, most of those funds to be expended for travel and per diem costs to an expected two meetings per year. SRC members soon found, however, that the given cost was fairly elastic; actual annual costs, during the first two fiscal years, ranged from approximately $1,600 to more than $48,000. (See Appendix 5.) Members were disappointed to learn that the various SRC budgets—with rare exceptions—did not allow authorized travel to other SRC meetings, to local Regional Advisory Council meetings, to state Game Board meetings, or for expert witnesses pertaining to pertinent SRC issues. [202] And in mid-1986, cutbacks to the NPS budget caused by the December 1985 passage of the Gramm-Rudman-Hollings deficit reduction act were so severe that SRC activity practically ceased for more than six months. (One Commission chair, James Schwarber from Gates of the Arctic, quit in disgust during this period, citing a "deteriorating level of support" and a "continuing lack of a comprehensive support policy.") SRC members grumbled, with some justification, that funds appeared to be available for actions perceived to be in the agency's best interests—for meetings to help determine subsistence use zones, for example—but scant funds were available for actions that furthered the interests of subsistence users. [203]

A frustration expressed by many SRC members was their inability to effectively interact with the other SRCs on matters of mutual interest. The NPS's primary way of keeping members current was to distribute meeting minutes to all of the state's SRCs. This system, however, proved ineffective because minutes had to be approved prior to distribution, and often a year or more lapsed before meeting minutes could be approved. The many meetings in which a

quorum could not be mustered merely exacerbated this problem. [204] To enhance communications, commission members also expressed an interest in meeting with one another, and in August 1985, members of the Wrangell-St. Elias SRC asked in exasperation, "will the Commission chairmen ever be able to meet with one another?" Perhaps in response to their outcry, the various SRC chairs met for two days in Anchorage in mid-November 1985. But that meeting proved highly contentious—two State of Alaska officials, at one point, became so incensed at the comments of one NPS official that they stormed out in frustration—and the next SRC chairs' meeting did not take place for another three years. [205] The NPS, hoping to maintain a dialogue, followed up its 1988 meeting (held on November 29-30 in Fairbanks) with a similar confab a year later (December 7, 1989, in Anchorage).

Based on their track record, the SRCs' success during the 1980s, at least to some extent, was based on various individuals' philosophical attitudes toward federal authority. Gates of the Arctic chair James Schwarber, in his resignation letter, stated that "the NPS continues to assign subsistence such a low priority among its responsibilities, that it appears to have no priority at all," and Wrangell-St. Elias SRC chair Bill Ellis, rankled over the NPS's opinion in the aircraft-access issue, told another SRC chair that "I have the feeling that we [i.e., the SRCs] are something that just has to be put up with and if we can be suppressed in any manner (commission appointments, money, etc.) it will be done. ... It is my impression that the Park Service feels the subsistence resource commissions are something to be listened to patiently and then ignored completely." But Denali SRC chair Florence Collins disagreed with Ellis; she told him that "the Park Service has been very cooperative with the Commission" and averred that "without the parks I think subsistence people would be a lot worse off than with them." [206] The opinions of other SRC members no doubt ran the gamut between those extremes of opinion, and most understood the inevitable tension between NPS policies and subsistence users' interests. All parties recognized that some policy differences had been ironed out during the first few years of the SRCs' existence. But as the decade of the 1980s wound down, many unresolved conflicts remained.

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Chapter 7:
THE FEDERAL ASSUMPTION PROCESS, 1989-1993

A. The Alaska Supreme Court Rules in the McDowell Case



In December 1989, the Alaska Supreme Court effectively struck down the state's subsistence management system in the McDowell case. Members of the court that year (left to right) included justices Jay A. Rabinowitz, Allen Compton, Warren W. Matthews (chief), Daniel Moore, and Edmund Burke. Alaska Court System

On Friday, December 22, 1989, the Alaska Supreme Court handed down a decision that had major, long-term consequences on how subsistence activities would be managed. In a 4-1 vote, the Court ruled that the legislature's 1986 subsistence law violated the Alaska constitution because its rural preference provisions illegally discriminated against residents who lived in non-rural areas. [1]

The case on which the court ruled was popularly known as *McDowell vs. the State of Alaska*; it was filed by Sam E. McDowell (an Anchorage businessman, former Board of Game member, and sport-hunting advocate) and three other men. [2] Their suit had originally been filed in 1983 to challenge the second-tier subsistence priority inherent in the state's 1978 subsistence statute. After its initial filing, the complaint was amended several times in order "to expand on the original theory and add challenges to various regulations," and in October 1984, the Superior Court granted some motions and deferred others. The Supreme Court's February 1985 *Madison v. Alaska Department of Fish and Game* decision forced the case into the judicial background for more than a year, but the Alaska Legislature's passage of a new subsistence statute in May 1986 shed new light on the lawsuit.

Shortly afterward, the plaintiffs again amended their complaint and decided to challenge the new law on constitutional grounds. Their primary argument was that the 1986 law, with its rural-preference provision, ran contrary to Article VIII of the Alaska Constitution, which guaranteed equal access for all Alaska residents to fish and wildlife resources. Based on that premise, McDowell and the other plaintiffs felt that the 1986 act

> unfairly excludes some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. ... [The plaintiffs] instead suggest that the right to subsistence should depend upon individual needs and traditions, not on one's place of residence. [3]

The case was first heard by Third Judicial District of the Superior Court in Anchorage. After hearing the case, Judge Douglas J. Serdahely in January 1988 ruled in favor of the defendants. But backed by attorney Cheri Jacobus, the plaintiffs appealed the decision to the Alaska Supreme Court. That court heard arguments in the case in April 1989 and considered the case over the next several months. [4] Based on the arguments presented, and the justices' inquiries, those familiar with the issue predicted that the Supreme Court would reverse Serdahely's decision. [5]

In its decision the court, as expected, largely sided with the McDowell and the other appellants. It acknowledged that a purpose of the 1986 act was "to ensure that those Alaskans who need to engage in subsistence hunting and fishing ... are able to do so," but it also noted that "the means used to accomplish this purpose are extremely crude." It therefore advised that "a classification scheme employing individual characteristics would be less invasive of the article VIII open access values and much more apt to accomplish the purpose of the statute than the urban-rural criterion." The court noted that its decision "does not mean that everyone can engage in subsistence hunting or fishing. ... We hold only that the residency criterion used in the 1986 act ... is unconstitutional." [6] The Supreme Court remanded the case back to Superior Court Judge Serdahely "to decide how the present system [should be] dismantled."

Neither federal nor state officials were entirely certain how to respond to the court's verdict. A U.S. Fish and Wildlife Service spokesman, Bruce Batten, noted that his agency had always preferred a unified state management system, and he further noted that "we don't have all the resources we would need" if federal assumption became necessary. But both he and others recognized that a federal assumption of fish and game management on federal lands was looming, and Batten bravely stated that "we're willing and ready to take on that responsibility if it comes our way." Sam McDowell, weighing in on the issue, said that the state should take the federal government to court over its right to manage subsistence resources. But state fish and game officials were left in a quandary; according to ADF&G official Dan Timm, "I guess everything stays in place until we get some Superior Court directions." Speculation arose that the two-tiered system used during the 1985 hunting season might be re-introduced. But no one was sure. John Trent, another ADF&G official, said that "It's gonna take some work. It'll certainly require some time. It will make the Board of Game meeting real interesting in the spring." [7]

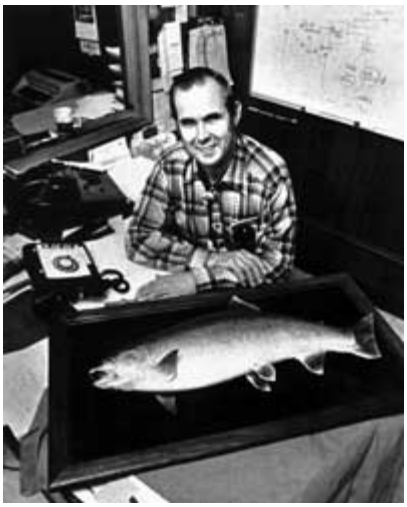
Because the Supreme Court decision nullified the legality of rural subsistence hunts, and because no substitute system was available, the ADF&G's short-term reaction was to close the state's presently-open, road-accessible subsistence hunts, including the Fortymile caribou hunts and the Dot Lake moose hunt. Moreover, the popular Nelchina caribou hunt along the Glenn and Denali highways was not able to begin as scheduled on January 1, 1990. But just two weeks after the Court's decision, on January 5, Chief Justice Warren Matthews postponed the effective date of the state Supreme Court's decision until July 1. State officials (as well as subsistence hunters) were relieved by the announcement. Alaska governor Steve Cowper noted that because of Matthews's ruling, "we no longer have to cancel authorized subsistence hunts," and the delay also gave the state precious time to figure out a new subsistence management system. But McDowell and the other court plaintiffs, backed by attorney Wayne Anthony Ross, decried the decision; arguing that the state subsistence-management system remained on questionable ground, Ross attempted to have Matthews's postponement rescinded. Two weeks later, Jacobus filed a brief to that effect with the high court; the justices, however, let the postponement stand. [8]

Alaskans, given five months to act before the deadline that Matthews had set, were left with three options. Some (such as the plaintiffs in the McDowell suit) were convinced that the state should sue the federal government over the legality of Title VIII of ANILCA. Others

felt that Senator Ted Stevens and the remainder of the Alaska Congressional delegation should attempt to revise Title VIII by removing its rural preference provisions. Many, however, felt that the most feasible alternative would be to pass a bill in the Alaska legislature that would be both legal under the Alaska constitution and in compliance with Title VIII. (Stevens himself said that "it will be better for Alaskans to resolve this issue themselves rather than get Congress in the act ... the group back [in Congress] is not friendly to Alaska as far as Alaskans using federal lands in Alaska.") As a result, great efforts were expended during the first half of 1990 to craft a revised subsistence bill that would be acceptable to Natives as well as non-Natives and to both rural and urban residents. [9]

During the Second Session of the Sixteenth Alaska Legislature, many proposals for a new, improved subsistence bill were brought forth. Early bills—offering a subsistence priority to low-income people, one based on a permit system—had little chance of becoming law for either legal or political reasons. [10] But a more workable solution emerged after a March 1 hearing; a day later, Governor Steve Cowper submitted a bill (HJR 88) proposing a constitutional amendment that guaranteed subsistence rights to Alaska's rural residents. Cowper's proposal, submitted at the behest of the Alaska Federation of Natives and first aired at a March 10 statewide teleconference, steered a middle course because it promised, to a large degree, to revive the old (pre-McDowell) subsistence law. Protestors soon formed, however, on both sides of Cowper's proposal. On one side were the sport hunters and fishermen, such as McDowell and Bondurant, who felt that the plan discriminated against people in cities. And on the other side were certain Native Alaskans, who felt that the proposal didn't go far enough in guaranteeing a Native preference. Cowper and others recognized the difficulty in attaining consensus on the matter, particularly because his proposal demanded a two-thirds affirmative vote from both the House and Senate before it could be submitted to Alaska's voters in the November 1990 election. [11] As the legislative session wore on, several hearings on the topic were held, and subsistence remained a high-profile issue. [12] But a proposal calling for a constitutional amendment failed in a House vote (the 20-20 vote took place on May 8), and no other comprehensive subsistence proposals were addressed by either state legislative body before the session ended on May 9. Recognizing the high stakes involved, Cowper knew that a special session offered the only possibility of breaking the impasse. [13]

During the period in which the legislature had been attempting to cobble together a new subsistence law, federal employees who were concerned about subsistence issues had not been idle. Recognizing that the federal government might need to assume subsistence management on July 1, representatives of the National Park Service, U.S. Forest Service, the Fish and Wildlife Service, Bureau of Land Management, and Bureau of Indian affairs formed an ad hoc planning group and began meeting on a periodic basis. On April 13, the U.S. Fish and Wildlife Service—acting as the lead agency administering federal subsistence matters—announced its "Intention to Propose Interim Rules Implementing Title VIII of ANILCA" in the *Federal Register*. The public was given until May 14 to comment on how the regulations should be drafted. [14] During this same period, four federal officials—John Hiscock of the NPS, Bill Knauer of the F&WS, Ken Thompson of the USFS, and DOI solicitor Keith Goltz—prepared a series of proposed temporary regulations. Their work was completed by June 1; a week later, the regulations appeared in the *Federal Register*. The



Sam McDowell, an Anchorage sport-hunting advocate and former game board member, was just one of four appellants in

McDowell v. State of Alaska. ADN

new regulations brought on another public comment period (though it was limited to ten days owing to the looming deadline), and between June 8 and June 18 public meetings were held in Anchorage, Fairbanks, Juneau, and Bethel. [15] Because of the publicity that surrounded this process, a wide range of Alaskans—federal and state administrative officials, members of the state legislature, and residents of every other stripe—knew what specific actions the federal government would take if no new subsistence law was in place by July 1.

While federal bureaucrats prepared for a possible assumption of subsistence fish and game management on federal lands, many Alaskans attempted to head off what they perceived to be a federal intrusion into an area best managed by state government. Governor Steve Cowper, who had spearheaded the constitutional-amendment idea during the regular legislative session, let it be known that he had a "secret plan to solve Alaska's subsistence crisis." He called legislators back to Juneau for a special session, to begin on June 25; and on the eve of that session he released the details of his plan (HB 599 and SB 553), which was similar to the proposal he had floated several months earlier. Arliss Sturgulewski (R-Anchorage), a state senator who was running for governor that year, weighed in with her own plan (SB 554 and SJR 87), which also espoused a constitutional amendment; in addition, a package of three bills that omitted any mention of a constitutional change (HB 600, HB 601, and SB 555) was espoused by various House and Senate Republicans. [16]

Soon after the session began, a compromise emerged that combined ideas from Cowper's and Sturgulewski's proposals. That finely-worded bill, SJR 86, omitted any specific reference to a rural preference; instead, it relied on a vaguely-worded reference to "community or area characteristics, geography, customary and traditional use, direct dependence, local residence or the availability of alternative resources" as a basis for preference in times of scarcity. Two days after the plan emerged, on June 28, the Senate passed the bill calling for a constitutional amendment by a 14-6 vote—the bare minimum necessary for passage. A day later, however, the House was able to muster no better than a 20-20 vote on SJR 86 (27 votes being needed for passage in the 40-member chamber), and during the remainder of the special session the most favorable vote—on July 3—was 23-17. On July 8, the 14-day session adjourned with no resolution to the subsistence stalemate. For the time being at least, the federal government was managing Alaska's fish and game on federal lands for subsistence purposes. [17]

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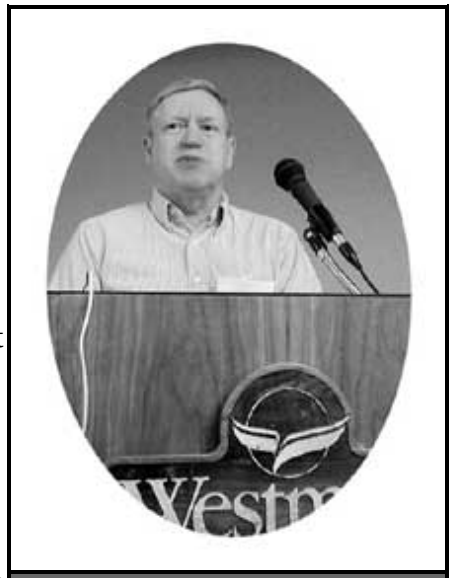
Chapter 7:
THE FEDERAL ASSUMPTION PROCESS, 1989-1993 (continued)

B. Initial Federal Subsistence Management Efforts

Federal officials, being unfamiliar with the day-to-day details of fish and game management and not knowing how long they might be entrusted with the task, were guided in their initial efforts by regulations that had been published just hours before the June 30 deadline that Chief Justice Matthews had set. These regulations, aired at the various public meetings during mid-June, were finalized later that month (as a "final temporary rule") and were published in the June 29 *Federal Register*. Sprawled out over more than fifty pages of that standardized government document, more than two-thirds of its contents was a compilation of specific game, fish, shellfish and trapping regulations, most of which were copied from similar state regulations. The remainder of the document, however, was an analysis of why these regulations were necessary, how they were formulated, and a general description of how federal agencies intended to manage subsistence resources. The federal government still hoped and expected that its management role would be temporary—the regulations reiterated that "it is preferable to have [subsistence fish and game] management responsibility lie with the State." To that end, government officials decided to make no initial changes to the State of Alaska's customary and traditional use determinations. In addition, the regulations were applicable only until December 31, 1991, unless the state was able to reassume subsistence management prior to that time. [18]

Key to the assumption process was the limited role that the federal government proposed over fisheries management. This role was reflected in regulations that excluded federal jurisdiction over navigable waters, which were defined as "those waters used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water." Federal regulators explained their decision in this way:

> There were many comments on the exclusion of navigable waters from the definition of public [i.e., federal] lands. ... There was a great deal of concern that the exclusion of navigable waters eliminated the majority of subsistence fishing, critical to the well being of rural communities. ... The United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands. [19]



Bill Knauer, a U.S. Fish and Wildlife Service employee, was one of the first federal employees at that agency in the post-*McDowell* era to work specifically on subsistence issues. USF&WS (OSM)

Because Alaska's navigable waters contained virtually all of the state's habitat in which fish were typically harvested for subsistence purposes, the practical effect of the regulations language (as noted above) was that the federal government had minimal authority to manage the state's subsistence fisheries. Although the June 29, 1990 issue of the *Federal Register* spent many pages detailing subsistence fish and shellfish regulations, federal managers made few decisions in the fisheries arena as long as this rule held sway. [20]

A central aspect of administering the new regulations was the formation of a Federal Subsistence Board. "Empowering the key Federal land management officials," the regulations noted, "is believed to be the best mechanism for implementing these temporary regulations." As the regulations noted, the board

> will function similarly to the State Boards of Fisheries and Game. [It] will broadly execute the Secretaries' subsistence responsibilities to include: maintaining healthy fish and wildlife populations; setting Federal subsistence seasons and bag limits; making determinations of rural and non-rural communities and areas; determining customary and traditional subsistence uses; establishing and determining the membership of Regional Advisory Councils and local advisory committees specific to public lands. [21]

A key aspect of the newly-constituted board, from the NPS's point of view, was that the board—in which the NPS had only one vote—had the legal authority to make resource decisions that affected the status of NPS lands. This shared authority, of course, applied to the other land management agencies as well. To some extent, this sharing of responsibility had also been felt prior to July 1990, when subsistence management decisions on federal lands had been entrusted to the state game and fish boards. Even so, the existence of the Federal Subsistence Board meant that individual agencies had to give up a measure of control. To ameliorate that loss of control, as noted later in this section, the board gave individual agencies some degree of control over their own lands by giving them lead-agency authority to respond to suggested changes in subsistence management patterns. Despite that authority, agencies participating in board decisions often had to accept management changes with which they disagreed.

Federal regulators originally proposed that the board have five members, to be composed of and either the regional or state director of important federal agencies. Four of the agencies—the Bureau of Land Management, Fish and Wildlife Service, Forest Service, and National Park Service—comprised Alaska's largest federal land managers. The fifth agency, the Bureau of Indian Affairs, was chosen for two reasons: it oversaw trust responsibilities for Native Alaskans, and because Native allotments which had been selected but not conveyed (and which the BIA consequently exercised some oversight) were considered federal public lands. [22] In these aspects, the board was thus identical to what had been proposed back in May 1986, when a vote of the Alaska legislature had narrowly avoided federal assumption. From all appearances, both federal officials and the general public—via their mid-June responses to the draft rule—were largely comfortable with the board's makeup.

The leadership in the originally-constituted board rested with one of the five agency heads; the chair was selected by the Interior Secretary in consultation with the Agriculture Secretary. The first board chair was Walter O. Stieglitz, who also served as Alaska's Fish and Wildlife Service chief; other charter board members included Boyd Evison (NPS), Niles Cesar (BIA), Edward Spang (BLM), and Michael Barton (USFS). Within a few months, however, Curtis McVee, who was Interior Secretary Lujan's Alaska representative, replaced Stieglitz as board chair, and the board thus increased from five to six members. [23] (See Appendix 1.)

The new Federal Subsistence Board, at first, had virtually no staff upon which it could rely, and only three agencies that comprised the board—NPS, F&WS, and BIA—had personnel that were trained in subsistence issues. One of the first actions following federal assumption, therefore, was a dramatic effort on the part of both the Fish and Wildlife Service (the lead agency administering the federal subsistence program) and other land management agencies to assemble qualified staff. The difficulty of this effort was underscored by the fact that such expertise might be needed for just a short-term period. Because the June 1990 regulations were specific regarding seasons and bag limits, regulations were in place for the various subsistence hunts that were scheduled to take place during the summer and fall of 1990. Staff involvement, however, was necessary to develop the remainder of the federal subsistence program. To assist the F&WS and the other three major land management agencies, Senator Ted Stevens earmarked $11.3 million in Fiscal Year 1991 appropriations "to fund the management of subsistence hunting and fishing on federal lands." The F&WS used its funds to beef up its subsistence staff, and before long, a new bureaucratic entity in the agency had been formed to address subsistence matters. [24] At the NPS, efforts by Associate Regional Director Paul Haertel helped bolster the Anchorage-based subsistence staff from just one person (Lou Waller) in early 1989 to six in late 1991. [25] (See Appendix 3.)

To assist the board in its work, the June 1990 regulations called for the formation of a staff committee that would be comprised of a representative of each of the organizations represented on the board. (See Appendix 6.) That committee, which was largely a continuation of the ad hoc federal planning group that had been meeting on a periodic basis ever since the *McDowell* decision had been meted out, initially consisted of Tom Boyd (BLM), Norman Howse (USFS), John Borbridge (BIA), Don Voros (F&WS), and Bob Gerhard (NPS). Members, at first, had no idea how long they would be serving in their positions—one member signed on with the understanding that he was on a two-month detail—but before long, members recognized that their work required a long-term commitment. [26]

Federal subsistence officials soon recognized that three primary tasks lay before them, all of which needed substantial public input between the summer of 1990 and the spring of 1991. One task involved the determination of rural versus non-rural areas. A second effort was a revision of specific hunting regulations for the 12-month period beginning July 1, 1991. And a third task involved finalizing other general aspects of the federal subsistence management program through the preparation of an environmental impact statement and the issuance of final regulations. The three tasks, taken together, required a huge amount of human input—by both federal officials and a wide range of interested groups and individuals—in just a short time. To guide the completion of those tasks, a newly-established staff committee began meeting on a weekly basis (and sometimes more often) beginning in the late summer of 1990. Some tasks were more complex and time-consuming than others. The three efforts will be addressed in separate paragraphs below.

As noted in Chapters 5 and 6, the state fish and game boards had dealt with the prickly problem of rural versus non-rural determinations numerous times during the 1980s. In April 1982, and again in June 1986, the boards had confronted the issue head-on, and during meetings that followed each of those dates the issue periodically resurfaced. But federal authorities were by no means tied to any previous decisions made by their state counterparts, and federal and state regulations differed. The June 1990 regulations (using guidance derived from the legislative history for ANILCA) stated that "communities 7,000 or greater in population are presumed to be non-rural" and that "a community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area." But because "a community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status," the regulations mandated that the board "publish the characteristics it will use in determining rural or non-rural status." [27] It would then make a preliminary determination for all Alaska communities; that decision would be reviewed at a series of public meetings to be held around the state. The board would make final determinations—again, as determined by language in the regulations—by December 31, 1990.

The public process for making rural versus non-rural determinations commenced with an announcement in the September 25, 1990 *Federal Register*. That announcement kicked off a public comment period on the subject. A day later, based on staff recommendations, the board made its preliminary determinations, and on October 4 the list of affected communities was published in the *Federal Register*. The board proposed non-rural designations for Anchorage, Kenai-Soldotna, Palmer-Wasilla, Fairbanks, Juneau, Ketchikan, Kodiak, Sitka, Homer, Seward, Valdez and Adak. The rest of the state was proposed for rural status. Board chairman Walter Stieglitz, in a press release, emphasized the preliminary nature of the board's decisions, and he further announced that hearings would be held in each of the communities for which non-rural status had been proposed. The public was given until December 10 to comment on the board's proposed recommendations. [28]

Communities in many of the areas declared to be non-rural attempted to reverse the board's proposed designation, and residents were particularly active in those communities that had between 2,500 and 7,000 population. They pressed their case in speeches at either the board field hearings—59 such meetings were held between October 23 and early December, all but two of which took place in Alaska—or at various state-managed Regional Advisory Council meetings. On December 17, the board met again and decided that the designation of three communities—Kodiak, Saxman (near Ketchikan), and Sitka—should be changed from non-rural to rural. The designation for all other Alaska communities remained as announced on September 26. [29] The board's decisions, as it turned out, largely mirrored the rural/non-rural determinations that the state fish and game boards had made prior to the *McDowell* decision; the only areas with a changed status were Adak, which switched from rural to non-rural, and both Saxman and the Cantwell-Nenana corridor, which went from non-rural to rural.

Before the board (and the staff that worked with it) completed the process of ascertaining its rural/non-rural determinations, work began on a revision of hunting regulations for the year scheduled to begin on July 1, 1991. (See Tables 7-1 and 7-2, following page.) Because of the huge workload that was immediately thrust on federal officials, the public had a fairly limited period of time in which to make suggestions regarding the following year's subsistence hunting regulations. As noted above, the board held almost sixty meetings throughout the state during the fall of 1990. One purpose of those meetings was to solicit comments about changes in the subsistence hunting regulations that had gone into effect on July 1. Alaskans, in response, made a number of suggested revisions (in either oral or written form) during that process, and the board apparently made several amendments to existing regulations during that period. In mid-December, federal officials opened a 30-day public comment period—until January 15, 1991—for changes to the subsistence hunting regulations. The public responded with 182 proposals. Board staff discarded some proposals because they appeared to be irrelevant to the process at hand; then, during February, staff distributed the remainder to the public

for their comments. The comments were forwarded on to the board and its staff, and at a four-day meeting beginning March 4, the board made its initial set of decisions. The regulations approved at the March meeting were published in the April 16, 1991 *Federal Register* for a 30-day comment period. Then, at a June 4-5 meeting, the board made decisions on another slate of proposals, some of which had been discarded by board staff prior to the March meeting. The new (1991-92) regulations were published in the June 26, 1991 *Federal Register*. [30]

Table 7-1. Federal Subsistence Hunting Regulations Chronology, 1990-1993

For Regulatory Year	Proposed Rule Published	1st Public Meetings (#; dates)	Proposal Deadline	No. of Proposals	Proposals Dist. to Public	2nd Pub. Mtgs. (#; date)	Deadline for Comments	FSB Decision Meeting	Final Regs Pub'd	Regs Go Into Effect	FSB Appeals Meeting
1991-1992	12/15/90	[none@]	1/15/91	182	2/91	1; 4/24/91*	---	3/4-7/91, 6/4-5/91	6/26/91	7/1/91	12/18/91
1992-1993	12/9/91	6; 1/92	1/23/92	236	2/92	---	3/9/92	4/6-10/92	5/28/92	7/1/9	27/29/92
1993-1994	9/17/92	13; 10/92	11/16/92	63	12/2/92	13; 1-2/93	2/13/93	4/5-8/93	6/1/93	7/1/93	8/10/93

@ - There were no public meetings in late 1990 or early 1991 specifically related to seasons and bag limits, but between late October and early December 1990, approximately sixty meetings were held throughout Alaska "to take public comment on subsistence uses on Federal public lands in Alaska."

These meetings were to explain, and obtain comments upon, various general aspects of Federal subsistence management; and more specifically to obtain comments on proposed rural/non-rural designations. Many comments were doubtless received regarding seasons and bag limits, even though the Proposed Rule (i.e., proposed regulations) were not distributed until after the meetings had concluded.

* - The April 1991 follow-up meeting, in Anchorage, was held *after* the FSB meeting and eight days after the Proposed Regulations for 1991-1992 were issued in the *Federal Register*.

Table 7-2. Proposals Considered by the Federal Subsistence Board, by Region, 1991-1993

NOTE: Numbers associated with the various regions indicate the number of proposals affecting each region. Because the FSB deferred many proposals, the number of proposals acted upon is less than the state total. Special actions and requests for reconsideration are omitted from this table. The regions noted in the table were those devised by the State of Alaska in early 1982.

Source: Final Rule, as published in the May 28, 1992 *Federal Register*; 1991 records from FSB meeting transcripts, OSM.

Regulatory Year (FSB Mtg. Date)	Region 1 (Southeast)	Region 2 (South-central)	Region 3 (Southwest)	Region 4 (Western)	Region 5 (Arctic)	Region 6 (Interior)	Multiple/ Statewide	State Total
1991-1992 (Mar/Jun '91)	13	18	25	9	17	30	3	115*@
1992-1993 (Apr.'92)	14	14	6	13	14	16	0	77*

* - The number of proposals that the FSB discussed is less than the number proposed to the board because the staff committee discarded many proposals as being irrelevant to the FSB's regulatory process.

@ - The FSB decided upon 79 proposals at its March 1991 meeting and another 36 proposals that June.

The largest job facing the board during its initial months of operation—and perhaps its most visible vehicle for interacting with potential subsistence users—was the compilation of a report that would address a number of general questions pertaining to federal subsistence management. As noted above, the prickly issue of rural versus non-rural determinations had been addressed in late 1990, but many other questions remained. For instance, how adequate was the present, state-managed system of local fish and game committees and regional subsistence advisory councils? How should the term "customary and traditional," when applied to the use of fish and wildlife, be defined? Did existing regulations properly address the environmental, socioeconomic and cultural impacts of subsistence activities? And what other topics pertaining to federal subsistence management needed to be addressed? Federal authorities fully recognized that the temporary subsistence regulations, finalized in June 1990, had (by necessity) been prepared in haste, and they also recognized that those same regulations would only be applicable until December 31, 1991. Federal authorities, of course, still had no idea if the Alaska legislature would be able to pass a bill authorizing the state to regain subsistence management of its fish and game resources on federal lands, and they continued to state that they had no particular interest in direct fish and game management. Even so, they had to prepare for the possibility of long-term management responsibilities. In order to address a broad range of management questions, Federal Subsistence Board staff undertook the preparation of an environmental impact statement that would outline several possible management approaches.

The process began in mid-October 1990, when a Fish and Wildlife Service press release announced that work on the EIS was about to begin. Just days after the issuance of that press release, the first of 57 public meetings were held in communities across Alaska asking for comments about the federal subsistence management system. (These meetings, noted above, also solicited comments about rural/non-rural determinations.) The public meetings, held between late October and early December, were attended by a total of 1,690 people, and the public responded with 206 written comments, 91 comment forms, and 28 toll-free telephone calls. Federal officials were thus provided a broad range of views on how subsistence resources should be managed on the state's public lands. These comments, together with the existing regulations and input from the various land managing agencies, provided board staff the data necessary to compile the draft EIS. [31] The document was assembled over a nine month period by an interdisciplinary team; most of the fourteen authors were Fish and Wildlife Service employees, although a sprinkling of Forest Service, Park Service, and Bureau of Land Management employees also contributed. [32]

One of the major issues that board staff wrestled with during the preparation of the draft EIS was the adequacy of the state's subsistence advisory councils. (See Appendix 2.) As noted in chapters 5 and 6, the Alaska legislature had first passed a bill recommending regional fish and game decisionmaking back in 1971; Governor Egan, however, had vetoed that bill. Eight years later, the Department of Fish and Game had established the first such councils, and they had been placed on a more formal regulatory footing by action of the combined fish and game boards in April 1982. But because of both fiscal constraints and a multitude of other factors, the various councils had a spotty track record.

On July 1, 1990, the assumption of federal management forced officials to reassess the legitimacy of the state-managed councils. Responding to the requirement set forth in Part 100.11(a) of the temporary (June 1990) federal subsistence regulations, the Federal Subsistence Board commissioned a study in order to ascertain how problems associated with the councils might be overcome. Fish and Wildlife Service employees Richard Marshall and Larry Peterson, assigned to write the study, used the hundreds of comments made during the fall 1990 public hearings—many of which addressed this specific topic—as a primary research tool.

Board chair Curtis McVee, asked for his comments, stated that the councils "are functioning with varying degrees of success. Apparently some councils are not regarded as representative of the population within the region they serve. Some councils do not seem to have much influence on management programs and all of the councils suffer from lack of financial support necessary to fulfill their roles." [33] McVee, in a separate communication, also let it be known that the councils, until such time as the report was completed, were in legal limbo. Although several regional councils continued to meet, McVee announced that "no State Regional Council," for the time being, "shall be considered legitimately

constituted under the Federal Advisory Committee Act and Section 805 of ANILCA." Interior Department representative Vernon Wiggins expressed similar thoughts. As a "strictly interim measure," he noted, the board continued to rely on recommendations made by councils under the existing state advisory system," but only "until the study was completed and pending a final determination on whether a permanent management program would become necessary." [34]

The authors completed a draft report on the state's advisory council system in early May 1991 and a final report was distributed in September. Because the June 1990 regulations demanded that three topics be examined, the authors provided three conclusions:

> 1)The existing subsistence resource regions are adequate to fulfill the Secretaries' responsibilities under Title VIII of ANILCA,
>
> 2)The existing regional advisory councils are not, as a whole, sufficiently adequate to fulfill the Secretaries' responsibilities under Title VIII of ANILCA. [and]
>
> 3)The existing local advisory committees are, in all but a few cases, adequate to fulfill the Secretaries' responsibilities under Title VIII of ANILCA. [35]

The draft Environmental Impact Statement, distributed during the week of October 7-11, 1991, gave four contrasting scenarios on how federal subsistence management might work.

- Alternative I (the no-action alternative) urged a continuation of the existing federal subsistence regulations as published in the June 29, 1990 *Federal Register*. The board would continue to have six members and there would continue to be six state-managed regional advisory committees.
- Alternative II called for the abolition of the board; in its stead, each federal agency would independently manage subsistence activities on the lands under its purview. Each agency would appoint its own regional advisory councils; a total of 36 such councils would thus be created.
- Alternative III, emphasizing local involvement, called for the establishment of twelve regional advisory councils, the establishment of a sixteen-member board (of which most members were Regional Advisory Council representatives), and the establishment of a state-managed local advisory committee for every rural community in the state (up to 283 in all).
- Alternative IV would keep the existing six-member board but would increase the number of regional advisory councils from six to eight. These councils, perhaps in response to Marshall and Peterson's report, would be sponsored and operated by the federal government.

The alternatives in the draft EIS discussed other subsistence-related topics as well. Two of the alternatives, for example, stated that the rural/non-rural determinations made by the board in December 1990 should remain. Another, however, stated that eligibility "would be determined strictly by population number," and only residents in communities less than 7,000 population would be eligible for subsistence activities on federal lands. A final alternative stated that "Anchorage, Fairbanks, Juneau and Ketchikan would be the only non-rural communities." Regarding customary and traditional uses, all four alternatives stated that the State of Alaska's determinations, which the board had adopted *en masse* on July 1, 1990, "would remain ... unless changed by the board on the recommendation of a local advisory committee [or regional council] or based on information obtained through State or Federal Agency research." All four alternatives called for a continuation of the existing local fish and game advisory committees; language describing Alternative IV, however, cautioned that "Federal advisory committees might be formed if the Board determined that the State committees were not fulfilling the requirements of ANILCA." [36]

When the Board issued the draft EIS, it gave the public two months—until December 9—to submit comments. Hoping to solicit a wide range of public opinion, it outlined a schedule of forty public hearings, which were to be held both throughout Alaska as well as in Washington, D.C. Hearings were to begin on October 28 and would conclude on December 6. When the board issued the draft EIS, chair Curtis McVee professed objectivity in the process. NEPA policy, however, required a preferred alternative. The draft EIS, therefore, noted that the fourth option (as outlined above) was the government's Proposed Action. [37]

Interest in the process was such that the board held a total of forty-two public hearings, and in addition, the Fish and Wildlife Service held sixteen public meetings at National Wildlife Refuge offices. As a result of those meetings, which attracted hundreds of participants, the public submitted 198 letters plus an additional 350-plus oral comments which merited an official response. [38]

Because the hearings schedule extended into late November, and because the public had several additional weeks to submit comments, board personnel were well aware—even before the draft EIS was distributed—that new, permanent regulations would not be in place prior to the December 31, 1991 deadline stated in the temporary subsistence management regulations. The need to extend, for five or six months, the effective date of the temporary regulations was first (and erroneously) made public in early June 1991, but it was not officially addressed until early December. The press release announcing the proposed delay noted that "this action will allow time for completion of an environmental impact statement and programmatic regulations," but it was also hoped that the delay would also allow extra time for Governor Walter Hickel to "work out a cooperative agreement to let the state regain subsistence hunting management." The board noted that it would be taking comment on the time extension at its December 18, 1991 meeting. Comments would be due by December 20. [39]

Soon after the December 9 deadline for public comments to the draft EIS, federal staff proceeded to analyze those comments and quickly began assembling the final EIS. On January 30, 1992, proposed final subsistence regulations were published in the *Federal Register*, and five days later the board commenced a 45-day public comment period that would continue to March 16. [40] But the two-volume final EIS was not distributed until late February; this left the public fewer than three weeks to comment on the findings contained in the newly-published document. [41]

The recommendations contained in the final EIS largely mirrored those contained in Alternative IV (the "Proposed Action") in the draft document. Like the draft, the final EIS recommended the continuation of a six-member board and the establishment of eight federally-managed subsistence regional advisory councils. Local advisory committees, as in the draft, would be managed by the state, but federally-sponsored committees could be formed if the existing committees failed to fulfill the requirements outlined in Section 805 of ANILCA. The document made numerous other recommendations, most of which had first been suggested in the draft version published four months earlier. [42]

Regulations specified that there would be a thirty-day waiting period between the publication of the final EIS (as noted in the *Federal Register*) and the all-important Record of Decision. [43] Following the issuance of the EIS, the board had a single public hearing—at the Board's March 9 meeting in Anchorage. The public then had one more week—until March 16—to provide written comments on the EIS's recommendations.

On April 6, soon after the 30-day waiting period had run its course, Interior Secretary Manuel Lujan, Jr., with the concurrence of Forest Service Regional Director Mike Barton, approved the Record of Decision on Alaskan subsistence management. [44] The two men decided "to implement Alternative IV as identified in the Final Environmental Impact Statement ... with modifications." Two modifications were made. First, the officials decided to increase the number of regions—and corresponding regional advisory councils—from eight to ten. Second, they decided to modify the rural determination process by allowing a five-year grace period for any communities transitioning from rural to non-rural status. Except for those modifications, the federal subsistence program was to be implemented as noted in Alternative IV.

To conform to the particulars of that alternative, the board's regulations were modified. Those regulations—which listed various customary and traditional use determinations for game, fish, and shellfish throughout Alaska—were published as a Final Rule in the May 29, 1992 *Federal Register*. They became effective on July 1, 1992. [45] Two years after the federal government assumed management of Alaska's subsistence resources on the public lands, permanent federal regulations were in place.

During the period in which the draft and final EISs were being written and the Record of Decision produced, the board and supporting staff completed a second round of hearings and deliberations pertaining to subsistence hunting regulations (as they pertained to seasons and bag limits, methods and means). The board, as it had in 1990-91, began its annual regulations cycle by publishing proposed regulations in December. Then, in mid-January 1992, it held six public hearings in locations scattered around the state. By the January 23 deadline, the board had received some 200 proposals to change the regulations, and during the week of April 6-10 the body voted on how to respond to each proposal. The

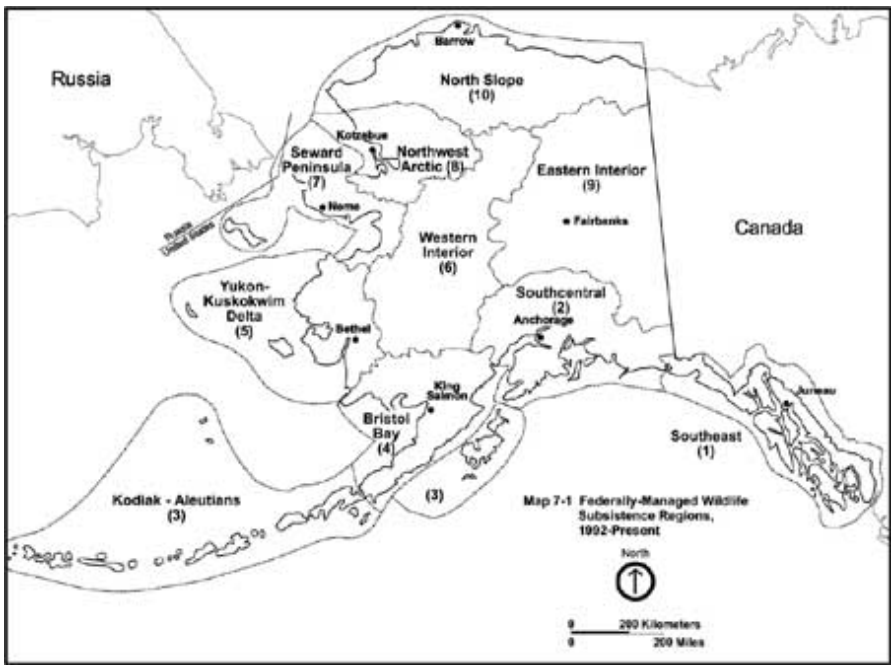
regulations, as modified, were published in the May 28, 1992 *Federal Register* and became effective on July 1. Unless otherwise acted upon, the regulations were to remain in force until June 30, 1993. [46]

By the time the board had completed its second annual review of subsistence regulations, basic board customs and procedures had begun to emerge in order to expedite the completion of the tasks at hand. Staff, for example, assigned each proposal to the agency which would be most affected by the proposed action, and in many cases, other agencies deferred to the opinions of the representative from the so-called "lead agency". The F&WS representative, perhaps not surprisingly, was generally regarded as being most knowledgeable about wildlife biology questions (and was thus deferred to in this area), and the BIA representative—again not surprisingly—generally weighed in on the side of Native rights. Early board representatives recall that these evolving customs fostered a sense of harmony among the various agency heads. [47]

The federal assumption of subsistence game management, at first glance, removed any obligation for the Interior Department to subsidize ADF&G's Subsistence Division. (As noted in Chapters 5 and 6, Section 805 of ANILCA called for the federal government to reimburse the state government for costs associated with the management of subsistence activities on federal lands.) But immediately after federal assumption, federal officials recognized the obvious: that they could be far more effective managers if they utilized the ADF&G's experience, data, and technical expertise. Both federal agencies and the public started submitting requests to the ADF&G for information and technical assistance. By the end of 1990, the ADF&G and the U.S. Fish and Wildlife Service (the latter acting on behalf of the Federal Subsistence Board) had worked out a one-year agreement that called for the ADF&G to provide three general areas of expertise: 1) technical assistance to and coordination with federal staff, 2) subsistence data collection in rural Alaska communities, and 3) maintenance and updating of ADF&G's Community Profile Database (CPDB). In return for those products and services, F&WS provided more than $230,000 in funding to the Department's Subsistence Division. (This funding was less than one-third of what the federal government had provided in fiscal year 1990 as part of its "ANILCA reimbursement," but was nevertheless a helpful source of funding for the state's beleaguered Subsistence Division.) The federal-state agreement was renewed on an annual basis for the next several years, but the federal government gradually lost interest in the program, and by the mid-1990s funding levels were far lower than in fiscal year 1991. But other funds became available to the state subsistence program from both the F&WS and other federal agencies. Some of these monies were interagency funds that were channeled, during the early 1990s, through *Exxon Valdez* restoration allotments, but individual agencies—including the NPS—also provided funding to state personnel as part of specific agency projects. [48]

A significant by-product of the federal government's decision to establish federally-sponsored regional advisory councils was the State of Alaska's decision to abandon its own, ten-year-old regional council system. As noted above, the *McDowell* decision had no immediate impact on the existing regional council system, and for more than two years after that decision various regional councils continued to meet. As in the late 1980s, however, some councils were more active than others; the Southeast and Interior councils, for example, continued to meet on a regular basis and submit annual reports, while the Western and Southwest councils, for all practical purposes, were dormant. By the fall of 1991, the publication of the board's draft EIS (which advocated a federally-sponsored regional advisory council system as its preferred alternative) forced ADF&G personnel to recognize that the new system, if implemented, would largely usurp the role that the state-sponsored councils had long undertaken. And perhaps in response to the EIS's recommendation, cuts were proposed in the Division of Boards' budget that promised to eliminate the regional councils. Members of the various councils, not surprisingly, fought both the proposed cuts and the draft EIS's preferred alternative, and as late as March 1992 members of the Interior Council were laying plans for future meetings. But the issuance of the Record of Decision in April apparently forced ADF&G officials to sever funding to the state-sponsored regional councils. All ceased operating in June 1992, at the end of the state's fiscal year. [49]





Map 7-1. Federally-Managed Wildlife Subsistence Regions, 1992-Present.

(click on image for an enlargement in a new window)

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Chapter 7:
THE FEDERAL ASSUMPTION PROCESS, 1989-1993 (continued)

C. Establishing the Federal Regional Advisory Councils

As noted above, the April 1992 Record of Decision that followed the issuance of the Final EIS on subsistence management stated that there would be ten federally-sponsored regional advisory councils, one for each region in Alaska. As shown in the Final EIS, the boundaries of these regions would reflect those that had been established by the State of Alaska, except that both the Arctic and Southwest regions "would be divided into two regions respectively to reflect the subsistence use patterns of each region." The Record of Decision, issued shortly afterward, added two additional regions at the behest of Native subsistence user groups. One new region was created by cleaving the old Interior Region into western and eastern regions, and another new region appeared in the western portion of the old Arctic region. These two changes were made "to provide for more participation by rural residents in subsistence management" and "to reflect more closely the differences in social and cultural patterns of the of the affected subsistence users." [50]

Neither the Final EIS nor the Record of Decision, however, gave specific direction on how the various Regional Advisory Councils should be established. The Federal Subsistence Board, entrusted with that responsibility, began that task less than three weeks after the Record of Decision was issued. Hoping that the appointment of regional council members would proceed quickly, a member of the board staff noted on April 21 that "we anticipate the need for Council training and use as early as late summer 1992," and on May 28 the same staffer predicted that the councils "hopefully ... will be operational and functioning by early fall." [51] Such predictions, however, proved to be unduly optimistic.



Since August 1993, staff coordinators have been assigned to each of the ten federally-designated subsistence regions in Alaska. This photo, taken during the late 1990s, shows (left to right) Vince Mathews, Fred Clark, Cliff Edenshaw (holding child), Barbara

Armstrong, Helga Eakon, and John Andrew. USF&WS (OSM)

Board staff had three major tasks to complete before the new regional advisory councils could begin meeting. First, federal charters for each region needed to be approved and filed with the appropriate standing committees in both the Senate and the House of Representatives. [52] Second, qualified staff needed to be hired to assist each of the newly-appointed councils. And third, the subsistence users in each of the state's ten advisory-council regions had to be canvassed; from that number, a full complement of qualified, geographically-diverse members (between seven and thirteen, depending on the region) needed to be selected.

The first task completed was the completion of charters for the ten newly-constituted councils. By early July 1992, charters had been prepared and had been deemed acceptable to the five agencies whose representatives comprised the Federal Subsistence Board; in addition, representatives of the USDI's Office of the Solicitor and the Office of General Council had also approved the proposed charters. Later that month they were forwarded to Washington, and on January 19, 1993, Interior Secretary Manuel Lujan, Jr. signed all ten charters.

As noted in the charters, council members were to meet "at least twice each year." The councils had six functions. They were expected to:

> 1) review, evaluate, and make recommendations on proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife on public lands within the region,
>
> 2) provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife on public lands within the region,
>
> 3) encourage local and regional participation in the decisionmaking process,
>
> 4) prepare an annual report detailing the council's activities,
>
> 5) appoint members to one or more subsistence resource commissions, and
>
> 6) make recommendations on customary and traditional use determinations.

According to the various charters, each regional council would have estimated annual operating costs of $100,000, which included one person-year of staff support. [53]

The process of selecting candidates for the regional councils began in the late spring of 1992. By early June, board staff had assembled a list of key contacts in each region. [54] Beginning in August, various rural newspapers and radio stations began to get the word out. Then, in October, board staff held a series of thirteen meetings across Alaska that was designed, in part, to solicit interest in, and nominations for, the various regional council positions. [55] Potential candidates were given until November 15 to submit applications, and a total of 260 candidates applied for 84 open positions. Board staff members then screened the candidates and evaluated their qualifications. This process was largely completed by the end of the 1992 calendar year, but Interior Secretary Bruce Babbitt did not officially appoint the new council members until August 11, 1993. [56]

The selection process for the various regional coordinator positions took place during the same general period as that of the regional council members. In July 1992, the various local advisory committee chairs and other key contacts were apprised that the board was interested

in hiring four regional coordinators that would act as support staff for the various regional councils. A fifth coordinator, for southeastern Alaska, would be chosen by the U.S. Forest Service. The positions were publicized in the rural Alaska media over the next two months, and the various public meetings in October addressed the coordinator positions as well as the regional council member positions. [57] Potential applicants were given until November 1 to apply for the four board-appointed positions, which were to be located in Anchorage, Bethel, Fairbanks, and Kotzebue. The change in administration, and perhaps a re-examination of available funds and applicants, resulted in internal delays, and the selection of the five regional subsistence coordinators was not announced until late May of 1993. (See Appendix 2.) The selected candidates were Carol Jorgenson (Southeast Region), in Juneau; Helga Eakon (Southcentral, Kodiak-Aleutian Islands, and Bristol Bay Regions), in Anchorage; John Andrew (Yukon-Kuskokwim Delta Region), in Bethel; David James (Western Interior and Eastern Interior Regions), in Fairbanks; and Barbara Armstrong (Seward Peninsula, Northwest Arctic, and North Slope Regions), in Kotzebue. Most began work within a month of their appointment. Staff support for each regional council consisted of a social scientist and a biologist as well as a coordinator; staff social scientists included Ron Thuma, Taylor Brelsford, George Sherrod and Helen Armstrong, while staff biologists included Robert Willis, Dave Fisher, Conrad Guenther, and Steve Kovach. [58]

No sooner had the various coordinators been hired than the board took steps to implement the regional advisory council system. On July 27-29, the board held a training session for the new coordinators. [59] Two months later, the first regional advisory councils meetings were held. The first meeting, that of the Southcentral regional council, was held in Anchorage on September 15. Meetings of the other nine councils were held over the next several weeks. The last regional council to convene was the Yukon-Kuskokwim Delta council; it met in Bethel on October 20. (The meetings were largely occupied with introducing the new members to the new regime and the consideration of a myriad of proposals for regulation changes for the 1994-95 regulatory year.) All of the councils promised to meet again during the winter of 1993-94. To ensure that all members were aware of standards and guidelines under which that and all future meetings would be conducted, the Office of Subsistence Management prepared a Regional Advisory Council operations manual, a draft copy of which was completed in November 1993. [60]

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Chapter 7:
THE FEDERAL ASSUMPTION PROCESS, 1989-1993 (continued)

D. Alaskan Responses to Federal Assumption

As noted above, the federal government was forced to assume management of subsistence activities on public lands because the *McDowell* decision struck down the rural preference provision contained in the state's subsistence law, and because the Alaska legislature failed to pass a bill conforming to ANILCA requirements prior to the June 30, 1990 deadline. Many Alaskans were unhappy that the federal government had to assume subsistence management, although most also recognized why such an action had been necessary. Given that state of affairs, there was a diversity of opinion regarding how the state might regain subsistence management; some advocated an administrative or legislative solution, while others sought help in the judicial arena.

The first move to return subsistence management to the state began even before federal assumption began. On June 22, 1990, a group of 24 individuals and sportsmen's organizations filed a lawsuit in the Fairbanks U.S. District Court claiming that certain provisions of ANILCA were unconstitutional. In a lawsuit that became known as "McDowell II" because one of the fourteen individuals was Sam E. McDowell, the plaintiffs asked the court to declare ANILCA's Title VIII unconstitutional, to declare that any discrimination among subsistence users based on residence was similarly unconstitutional, and to grant an immediate injunction against any Title VIII enforcement. In mid-October 1992, District Court Judge Russel Holland rejected the plaintiffs' assertions in a 52-page ruling. [61]

Less than a week after the McDowell II lawsuit was filed, the Alaska legislature established a study group to investigate the subsistence situation. During the 1990 special session, the legislature's compromise plan—decided on June 26—proposed the creation of a Commission on the Subsistence Use of Fish and Game (more informally known as the Subsistence Review Commission) that would remain active for two years. Though the plan itself failed, a bill manifesting the commission idea (SB 555) passed the Senate on June 27 and the House on July 2. Three weeks later, on July 23, Governor Cowper signed the bill into law. The governor, however, waited until after the November election to appoint the various commission members. So far as is known, the commission never met. [62]

In the fall of 1990, the state's fish and game decision-makers weighed in on the issue. On October 30, at a joint meeting, the Alaska boards of fisheries and game declared that all Alaska residents were subsistence users because, despite three days of trying, they were unable to agree on a definition of subsistence hunting and fishing. The board, obviously frustrated at the lack of a legislative resolution to the subsistence issue, issued a statement noting that

> the courts have required action to identify subsistence users which is impossible to comply with at this time under these legal constraints. ... At the present time

> the Joint Board of Fisheries and Game have no other option than to apply the standard that all Alaskans are now eligible subsistence users. [63]

Based on that ruling, the joint boards opened several all-Alaskan subsistence harvests. But sport and commercial interests, worried about overharvesting, filed suit against the board's action. Rulings on their suits, returned during May and August 1991, declared that the joint board's action was invalid. Future all-Alaskan subsistence harvests would be prohibited. [64]

In November 1990, the state's voters elected longtime Alaskan Walter J. Hickel to the governor's chair. Hickel, who years earlier had served both as a governor and the U.S. Interior Secretary, ardently hoped to return subsistence management to the state, and a central campaign platform was a promise, in the subsistence arena, to not touch the state constitution. [65] Perhaps because the legislature, early in its 1991 session, made no serious move toward passing a subsistence statute, Hickel established a Subsistence Advisory Council, which met for the first time on February 25. The six-member Council was composed of three Natives (Mitch Demientieff, Gene Peltola, and Matthew Iya) and three non-Natives (John Burns, Eric Forrer, and former governor Jay Hammond). It met seven more times over the next two and one-half months; at its final meeting on May 1, it announced a failure to reach a consensus. [66] The legislature adjourned that year without taking serious steps to address the ongoing subsistence dilemma.

Walter J. (Wally) Hickel served as Alaska's governor during the 1960s, then again from 1990 to 1994. During his second term, he established a Subsistence Advisory Council and advocated a modified version of a rural preference. The state, however, was unable to regain blanket management authority over subsistence resources. ASL/PCA 01-4208

Recognizing that the state had one last opportunity to act before federal authorities imposed permanent subsistence regulations, Governor Hickel in mid-September 1991 unveiled a proposal calling for a modified version of the rural preference, but it also allowed urban residents to qualify for subsistence by meeting a set of criteria. (McKie Campbell, the deputy fish and game commissioner and Hickel's top deputy on subsistence matters, stated that the proposed bill would pass constitutional muster, though he conceded that it wouldn't lead to a resumption of state management of fish and game on federal land.) During the first two months of the regular 1992 legislative session, Hickel and Campbell discussed various legislative proposals. [67]



Then, in the midst of the 1992 legislative session, the Hickel administration undertook another subsistence-related action when it filed a lawsuit over control of many of the state's navigable waters. The February 27 suit against the federal government, known as *Alaska vs. Lujan*, [68] contended that agency regulations overstepped Congress's intent when it passed ANILCA in 1980. Hickel, obviously frustrated over recent NPS actions pertaining to the closure of commercial fishing in Glacier Bay (see Chapter 8), stated that "we tried to negotiate with the federal managers when they began dictating our fisheries. [But] that didn't work. So, now we are taking action. ... Federal bureaucrats are doing everything they can to undo what we did at statehood." Defendants in the suit included the Interior and Agriculture secretaries and the Federal Subsistence Board. Hickel's aides stressed that the suit was peripheral to the conflict over the rural preference issue. "This is not a lawsuit against ANILCA or against

McKie Campbell, a deputy commissioner of the Alaska Department of Fish and Game during the early 1990s, was Governor Hickel's top assistant on subsistence matters. ADN

subsistence," Campbell noted, and the suit "does not apply to federal lands. ... This is simply a straight title action, saying the state has title and control over its navigable water. The Park Service sometimes seems to view their parks as their private garden and Alaska's residents should be kept out." Buttressing that argument, five pages of the complaint contained a list of waterways from Kotzebue to Glacier Bay that, in the eyes of state officials, were wrongly covered by federal rules. Campbell averred that Hickel was "still very interested in regaining single state control of all fish and game. But he intends to do that through the legislative process with all parties working together, rather than through the judicial process." [69] One immediate effect of Hickel's action was an AFN-sponsored countersuit. The Alaska Federation of Natives often held views that were dramatically different from those of the Hickel administration, and their suit argued that the state government should be forced to give up control of all subsistence fishing to federal agencies. [70] No decisions on either suit were forthcoming in the foreseeable future.

Despite Campbell's February 27 promise, the state administration during the regular 1992 legislative session never weighed in with a bill that called for a constitutional amendment, and without executive support, subsistence-related bills had little chance for passage. Hickel, unlike Cowper, strongly felt that no Alaska residents should be promised special treatment under the constitution, and he fervently hoped that Congress would resolve the matter by eliminating the rural preference contained in Title VIII of ANILCA. [71]

As the regular legislative session drew to a close, a frustrated Hickel announced his intention to call a special session to resolve outstanding subsistence problems, and on Monday, June 15, the session began. [72] The governor that day submitted two identical bills, HB 599 and SB 484; other subsistence-related bills introduced that day included HB 600, by Rep. Ramona Barnes (R-Anchorage); HB 601, by Rep. David Finkelstein (D-Anchorage); and SB 485, by Sen. Albert P. Adams (D-Kotzebue). Hickel's bill passed the House Judiciary Committee but soon ran into headlong opposition in the full House. Adams's bill, meanwhile, was able to thread its way onto the Senate floor but was voted down 13-7. In an attempt to stave off certain defeat, a six-member House-Senate conference committee was appointed to consider Hickel's House bill. They were unable to agree on language acceptable to all sides, however, and on June 22 the bill quietly died. As in the regular 1992 legislative session, no bill calling for a rural-preference amendment to the state constitution received serious consideration because of objections from the Hickel administration. [73]

The only bill that emerged from the special session, Rep. Finkelstein's HB 601, was "a limited subsistence bill;" it called for the creation of non-subsistence areas, both on the Kenai Peninsula and in other areas, where the risk of conflict between subsistence and other uses was sharpest. The Alaska boards of fisheries and game, acting immediately after the vote was taken, vowed to push ahead and subdivide portions of the Kenai Peninsula into non-subsistence zones. But the Kenaitze Indians, along with Natives from Ninilchik, Eklutna and Knik filed suit against the new law, and on October 26, 1993 Superior Court Judge Dana Fabe declared that the 16-month-old law was unconstitutional. [74] State law, for all intents and purposes, was back to where it had been in early 1990, in the aftermath of the McDowell decision.

Those Alaskans who hoped to regain subsistence management of Alaska's public lands were still hopeful, however. In February 1992, it may be recalled, the State of Alaska had filed a lawsuit (Alaska vs. Lujan, later known as Alaska vs. Babbitt) against several ANILCA provisions at the behest of Governor Hickel, and many Alaskans were buoyed by a preliminary district court decision in that suit. Judge Russel Holland, on November 19, 1993,

stated that he was "tentatively of the opinion" that ANILCA was ambiguous on the question of whether the federal government had the power to take any subsistence regulation away from the state. But the hopes of state's-rights advocates were dashed a year later when Holland ruled against the state in the case, and in January 1995 newly-elected governor Tony Knowles ordered state lawyers to drop Hickel's suit. Judicial challenges to Alaska vs. Babbitt had apparently run their course, and the state dropped its case. [75] The only practical way, it seemed, for the state to re-establish management authority over the state's subsistence resources was for the legislature to pass a bill (with a two-thirds majority) asking the state's voters to add a rural preference clause to the state's constitution. The legislature, however, showed little inclination to approve such a bill, so the federal government continued to manage subsistence resources on Alaska's public lands.

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Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT

A. Status of the NPS Subsistence Program, 1990-1991

As noted in Chapter 6, a major action of the various NPS subsistence resource commissions during the late 1980s had been the submission of hunting plan recommendations. These recommendations had been submitted, for the most part, in 1986 and 1987, and representatives of the Interior Secretary had responded to those submissions between March and May 1988. Inasmuch as these submissions had comprised the first official exchange between the SRCs and the Interior Secretary's office, it is perhaps unsurprising that the Secretary accepted some recommendations, rejected others, and modified still others. The Secretary's office, it appears in retrospect, applied a strict-constructionist approach in its interpretation of the subsistence regulations.

In general, the submission-and-response process was valuable in an educational sense, because it clarified specifics of regulations whose interpretations had not previously been meted out. In many instances, SRCs tacitly accepted the Interior Secretary's opinions. But regarding a number of issues, SRC members patently disagreed with the Secretary's rulings and vowed to re-submit either the same or similar recommendations all over again. Such was the state of affairs during the waning months of the 1980s.

Little change was in evidence during the first year or two of the 1990s. SRC activity, on the whole, seemed sluggish (see Appendix 5); during 1990, four of the state's seven SRCs did not meet, and one other SRC, from Aniakchak National Monument, met but was unable to muster a quorum. (The Denali SRC, normally active, stayed dormant that year; chair Florence Collins opted out of a proposed October 1990 Commission meeting in order "to keep the Park Service from spending money for a meeting we felt could accomplish little.") [1] The following year, activity picked up considerably—five of the seven SRCs were able to hold a legally-constituted meeting—but between January 1990 and the fall of 1991, few official expressions of opinion emerged from the various SRC meetings. During this period, most of the SRCs mulled over recommendations that the Interior Secretary had rejected back in 1988. [2]



Alaska's NPS superintendents, gathered for a 1991 conference. They included (left to right): Ernest Suazo (BELA), Karen Wade (WRST), Andy Hutchison (LACL), Roger Siglin (GAAR), Alan Eliason (KATM), Ralph Tingey (NWAK), Russ Berry (DENA), Marv Jensen (GLBA), Don Chase (YUCH), Anne Castellina (KEFJ), Clay Alderson (KLGO), and Mickie Hellickson (SITK). NPS (AKSO)

The only official SRC recommendation that found its way to the Interior Secretary's desk during 1990 or 1991 was a proposal that had been finalized years earlier. This proposal, a combined recommendation of the Cape Krusenstern and Kobuk Valley SRCs to combine resident-zone communities within the boundaries of the NANA Regional Corporation, had been readied for submission to the Interior Secretary back in 1986; but for reasons that were discussed in Chapter 6, the proposal had gone into bureaucratic limbo. It resurfaced because of a chance question posed by Walter Sampson, the Kobuk Valley SRC head, at the SRC chairs' meeting in December 1989. Sampson, angry at NPS officials, claimed that the incident "causes me to question the commitment of some of the personnel in your agency" regarding the SRCs; furthermore, it "emphasizes the inadequate support that we have received from NPS personnel over the years." NPS officials, however, tactfully defended their actions. A year later, on March 12, 1991, the proposal was officially submitted to the Interior Secretary. [3]

One reason for the relative paucity of activity—which, in large part, was a continuation of the state of affairs that had existed during the mid- to late 1980s—was the relative lack of staff and budget that the NPS provided for subsistence program management. As noted in chapters 5 and 6, the agency's Alaska Regional Office had hired a full-time Subsistence Coordinator in early 1984, and during 1987-88, the addition of new (if short-term) staff members brought about the establishment of a separate Subsistence Division. Between 1989 and 1991, as noted in Chapter 7, the regional office's subsistence staff swelled from one to six. [4] (See Appendix 3.) At the field level, however, subsistence-related matters continued to be handled as one of many collateral duties of a park's superintendent, management assistant, chief ranger, or resource management specialist.

The lack of staff time that could be devoted to subsistence matters, plus the small ($10,000) budget allotted to each of the SRCs, meant that subsistence concerns maintained a relatively

low profile among park priorities. Moreover, few within the agency were in a position to advocate for the needs of park-area subsistence users. This state of affairs caused a state of widespread restiveness among some SRC members; one member later noted that the NPS during this period was "trying to eliminate subsistence as soon as possible," while another charged that "Any component of a hunting plan which is outside the scope of what NPS feels 'could prove detrimental to the satisfaction of subsistence needs of local residents' [is] unilaterally rejected without full consideration." [5] SRC members constructively reacted to the situation by calling for an increase in the SRC budgets, for an increase in the number of yearly meetings, [6] for new opportunities to communicate with other SRCs, [7] and for funding to travel to meetings of the State Game Board, the newly-established Federal Subsistence Board, or other regulatory bodies. [8] But agency officials, in response, typically denied these requests. The frustration level was such that SRC members occasionally resigned their positions with a strongly-worded letter to the agency, while those who remained in their positions sometimes complained about the intransigence and insensitivity of NPS officials, both at the park and regional levels. [9]

As noted above, a troubling undercurrent during this period—and an underlying concern of the subsistence community ever since ANILCA's passage—was that NPS officials were trying to curtail subsistence use in the various Alaska park units. During the 1970s, when Congress considered various Alaska lands questions, both Natives and non-Natives openly worried that subsistence, in the face of technological change and widespread economic development, might be on the verge of extinction. In May 1979, for example, House Interior Committee Chairman Morris Udall noted,

> ... change is occurring very rapidly in rural Alaska and it seems to me that as rural Alaskan people become more dependent on a cash economy, fewer and fewer will be dependent on subsistence resources and even fewer would qualify under our priority system. [10]

Despite that worry, however, the language contained in ANILCA (as noted in Chapter 4) clearly told rural Alaskans that the federal government would "protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents." Furthermore, the bill's access provisions ensured that subsistence users would continue to "have reasonable access to subsistence resources on the public lands," and that methods of access could legally include "snowmobiles, motorboats, and other means of surface transportation...." [11]

During the years that followed ANILCA, Udall's prediction turned out to be wide of the mark; "living off the land" continued to a viable, sought-after lifestyle choice by some rural-based non-Natives, and for many Natives, keeping a subsistence-based lifestyle became an increasingly important aspect of cultural identification. Subsistence, it was clear, was not going to fade away any time soon. From time to time, however, frustrated SRC members charged that the NPS was trying to hamstring subsistence opportunities, and some subsistence users—mindful of traditional policies in parks outside of Alaska—may have felt that the agency's long-term goal was to eliminate subsistence activities in the parks altogether. Agency officials, in fact, had no such intention, but the NPS's perceived intransigence on various subsistence policy matters implicitly suggested that the agency had little interest in either supporting or encouraging subsistence uses.

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Alaska Subsistence

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Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

B. NPS Subsistence Program Changes, 1991-1993

The McDowell court decision of December 1989, as noted in Chapter 7, had a profound, dramatic effect on how subsistence management activities throughout Alaska, and to a large extent, the changes that the McDowell decision wrought inevitably began to affect the process by which the National Park Service administered subsistence activities on its parklands. The most obvious result of McDowell took place on July 1, 1990, when federal officials assumed responsibility for overseeing subsistence activities on the three-fifths of Alaska's land mass that was administered by various federal land management agencies. The State of Alaska, as has been stated, vociferously opposed this action and attempted, through various means, to regain management authority. Alaska's three-man Congressional delegation, for its part, also preferred a unified system of state management rather than a strong federal management role. The delegation, however, recognized that the federal government, at least in the interim, needed a secure funding base for its management efforts. To that end, therefore, Senator Ted Stevens earmarked $11.3 million in Fiscal Year 1991 appropriations "to fund the management of subsistence hunting and fishing on federal lands." Much of that funding allotment was funneled to the U.S. Fish and Wildlife Service, which was the lead agency administering the federal government's subsistence program; portions of it, however, were distributed to the National Park Service and other federal land management agencies. [12]

As noted above, some of the NPS's budgetary allotment was directed to the Alaska Regional Office, and the agency was able to hire three new Subsistence Division personnel in 1991. But parks were the primary recipients of the NPS's allotment. [13] By November 1990, at least one Alaska park superintendent had told his SRC that federal assumption would result in new subsistence staff, and by March 1991, other park units had received word that new Subsistence Specialists would be joining the ranks. [14] (See Appendix 3.) But subsistence staff was not the parks' only priority, so when Lou Waller, in conjunction with other regional officials, decided to allot funds to each park unit in which subsistence activities took place, superintendents reacted in a variety of ways. Some, as suggested above, hired new individuals to manage park subsistence activities, but at other parks, existing staff—chief rangers, management assistants, or cultural resource specialists—readjusted their duties to accommodate subsistence-related concerns and spent the bulk of the new subsistence funds on equipment or other priorities. [15] Subsistence funds, moreover, were gradually phased in; the first subsistence coordinators were hired during the summer of 1991, but some hiring and other subsistence-related expenditures did not take place until the following year. By mid-1992, each park had designated an employee to oversee subsistence-related concerns. [16]

A primary aspect of the subsistence coordinators' job was to provide a local contact for the implementation of subsistence policies and regulations. In that capacity, the coordinators

organized and helped conduct SRC meetings, approved various subsistence-related permits, and discussed subsistence problems with both park staff and subsistence users. The interpersonal nature of those interactions, and the fact that the agency, at long last, had personnel in place who could focus on subsistence concerns, inevitably meant that the agency's policies could be described and explained more effectively to users than was previously the case. Subsistence users, however, also benefited; NPS representatives, having more time to listen to users, began to more fully understand their lives, their subsistence patterns, and their concerns with federal policies. In a number of cases, subsistence coordinators—several of whom had lived in rural Alaska prior to assuming their jobs—empathized with the users' concerns. They also came to recognize, all too often, that users had legitimate grievances against the agency's interpretation of various subsistence regulations, and as a result, they took an advocacy role with park and regional officials in an attempt to modify the agency's stance. [17] Not surprisingly, NPS employees who were primarily or exclusively involved with subsistence matters were more likely to empathize with the plight of subsistence users than those to whom subsistence duties were a tangential part of their job.

Perhaps the first evidence of this empathy was manifested not long after the first subsistence coordinators began working at the parks. As noted above, several SRCs spent time during 1990 and 1991 mulling over how to react to the Interior Secretary's responses to their initial hunting plan recommendations, and in late 1991, they began sending revised recommendations back to Secretary Lujan. The Wrangell-St. Elias SRC sent him two recommendations in December 1991; its action was followed three months later by a similar letter from the Gates of the Arctic SRC, which made three recommendations. Both of the SRC letters contained at least one recommendation that was similar if not identical to those that had been rejected in 1988.



Roger Siglin, who served as Gates of the Arctic's superintendent from 1986 to 1993, occasionally clashed with regional officials on subsistence-related issues. NPS (AKSO)

Recognizing that part of the SRCs' ire toward the government was based on its lackadaisical response to their hunting plan recommendation, the Interior Secretary began to formulate a response to both letters soon after they arrived in Washington. Regarding the Wrangell-St. Elias letter, there was apparently little controversy over what the Interior Secretary should say; steering a cautious course, the Secretary's office urged further study for both of the issues that the SRC had raised. [18] But in regard to the Gates of the Arctic SRC's recommendations, a diversity of opinion emerged. In his initial overview of the SRC's letter, park superintendent Roger Siglin unequivocally stated that all three SRC recommendations —related to resident zones, access, and traditional use zones [19] — were "reasonable and within the purview of the commission." Siglin stopped short of wholeheartedly endorsing the three recommendations—he was cautious in his support for the first two and remained neutral on the third—but he did not reject any of them out of hand. [20]

Shortly after he sent the letter, however, several members of the region's Subsistence Division met with park staff in Fairbanks. Siglin, in response, penned a revised letter. He thanked Division personnel for "clarifying the appropriate format, timing, and content for these comments now and in the future;" he did, however, "feel strongly that park staff perspective ... is a necessary element if background is required for Secretarial analysis and response." Siglin reiterated that each of the SRC's recommendations were "reasonable and within the purview of the commission," but perhaps

at the region's insistence, numerous clarifying comments were added to each discussion item. [21] The recommendations were then forwarded to Washington, where they were reviewed by Deputy Undersecretary Vernon R. Wiggins and other Interior Department officials. As a result of that review, the Secretary's office stated that the first recommendation was "consistent with Congress' intent to protect opportunities for subsistence users," and it further stated that "the NPS has drafted a proposed regulation" that would have implemented that recommendation. But the Secretary, taking the same protective stance that it had in 1988, rejected the SRC's other two recommendations. "Congress," the letter stated, "intended that NPS management relative to subsistence is to maintain traditional NPS management values," and the Secretary apparently felt that the SRC's two recommendations ran contrary to those "traditional ... values." [22]

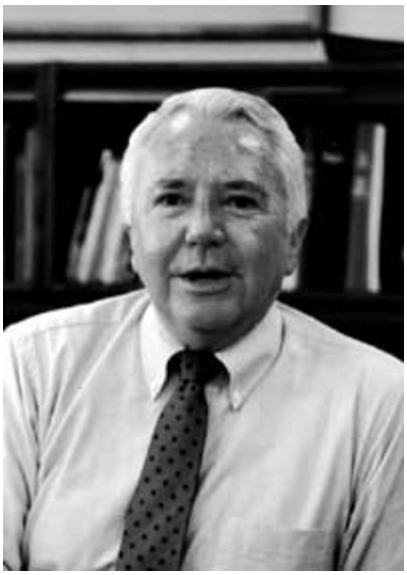
During the same period in which the Secretary was considering Gates' SRC recommendations, the region's Subsistence Division staff was producing the first of several subsistence issue papers. By December 1992, two such papers—dealing with ORV/ATV use and the construction of structures in park areas—had been completed in draft form and circulated to the various subsistence superintendents. These thematic papers were an attempt to simplify the complexity of concerns surrounding various subsistence issues; each began with a reiteration of the 1981 regulations and pertinent language from the *Congressional Record*, to which were added opinions and interpretations previously expressed by Washington-based Interior personnel as well as regional NPS officials. No attempt was made to forge new policy; instead, these papers provided the opportunity to express existing policy in the simplest possible terms. [23]

Gates of the Arctic Superintendent Roger Siglin reacted strongly to both the substance and the implications of the two draft issue papers. In a December 1992 letter to regional Subsistence Division head Lou Waller, Siglin declared that "a piece meal policy-setting approach without the benefits of a coherent regional subsistence policy built on reasoned debate and consensus is premature at this time." He complained that

> there is still a general tendency for managers to react to consumptive subsistence activities as an adverse use within these vast park system units. This tendency has been widespread and debilitating with respect to the process of seeking creative management solutions to these critical issues. We have made very little progress [in this area] since the passage of ANILCA.

Siglin also decried the "years of restrained funding" in the subsistence arena, and he vowed that "We must be in this for the long haul and reject simplistic or shortsighted solutions that unnecessarily restrict the options of future managers." Siglin, by this time, knew that regional subsistence head Lou Waller had organized a brief Subsistence Workshop, which was to be held in January 1993. Perhaps in anticipation of that upcoming event, he requested "that superintendents and subsistence managers from the parks have the opportunity to discuss these critical regulatory position statements as well as other concerns as a group." [24]

Other superintendents shared Siglin's concerns. [25] The tone of the various draft issue papers, combined with the Interior Secretary's narrowly-focused response to the Wrangell-St. Elias and Gates of the Arctic recommendations and the restrictive way in which regional subsistence officials were handling the Wrangell-St. Elias resident zone boundary issue, made park personnel feel increasingly empathetic toward subsistence users. Indeed, several superintendents were convinced that if the present regime continued, subsistence activities would begin to



John M. (Jack) Morehead served as the Regional Director for Alaska's NPS units from 1991 to 1994. NPS (AKSO)

decline, and there was a vague perception that, given a continuation of existing policies, subsistence might well be regulated out of the parks. [26] Moreover, a perceived gap between how field personnel and regional personnel were interpreting subsistence regulations suggested that a reassessment of subsistence management policies was in order. Inasmuch as Regional Director John M. Morehead was himself a strong advocate for the rights of subsistence users, he readily agreed to a request from various superintendents that the January subsistence workshop be scuttled in favor of an extended conference that would allow a broad discussion of subsistence matters. As noted in one of Gates of the Arctic SRC's newsletters, the week of March 22-26, 1993 would be spent

> thoroughly evaluating the statewide subsistence management program. The Regional Director and staff will meet with Superintendents and staff ... in a variety of sessions designed to identify problem areas within the programs and develop solutions. The Alaska Regional Director will make the final decision regarding the general agency philosophy toward subsistence in the parks, the appropriate balance between field areas and the Anchorage office in staffing and funds, and just how policies will be developed in the future. [27]

The conference, held in Anchorage, took place much as had been planned. [28] A variety of officials—superintendents and subsistence coordinators, regional managers, a Solicitor's Office representative and a cultural resource expert—shared ideas on philosophy, problem areas and possible solutions. As Lake Clark superintendent Ralph Tingey noted, "A major benefit of this conference is that it finally focuses all managers on a single important issue." The tone of the meeting was set by retired NPS historian William E. Brown, who gave the first oration. Many who attended the conference were stirred by both the power of his verbiage and his iconoclasm, and the daring tone he set as the conference's self-described "point man" may well have allowed other attendees to pursue similarly independent policy positions. [29]

One of the most-discussed problem areas was the degree to which parks should be involved in the subsistence decisionmaking process. Siglin, the first superintendent to speak, stated that frustration levels in the parks were high and that parks wanted more of a direct role in the decision making process; Karen Wade, from Wrangell-St. Elias, said that the agency needed a decentralized and localized approach to subsistence management; and Deputy Regional Director Paul Anderson advocated an approach that encouraged greater involvement of front-line employees. Bob Gerhard, from the Northwest Areas Office, also appeared to be arguing for a change in the decision making structure when he posed the rhetorical question, "Is subsistence here to stay or are we going to try to nitpick it apart and have it go away?" But others appeared to disagree with these viewpoints. Marvin Jensen, from Glacier Bay, argued for a more unified approach to subsistence and more teamwork with the regional office, and

Joe Fowler from Lake Clark also bemoaned that there was a lack of consistency in how the agency dealt with subsistence. Chris Bockmon, from the Solicitor's office, concluded that the various laws and regulations under which the NPS operated argued for a unified approach to subsistence management. "Management must be more consistent than divergent in approach," he added. Regional subsistence chief Lou Waller, trying to steer a path midway between these viewpoints, said that subsistence management latitude was analogous to a "broad road with white outer markers. It is possible to maneuver within the lines, but we must avoid going over them and totally off the route intended by Congress." ("Management of ... the Alaska national parks," Waller said later, "should not be management by popularity.") Cary Brown, from Yukon-Charley Rivers, also appeared to espouse portions of both viewpoints when he averred that the agency needed a "system that allowed for local determinations with consistency between parks." [30]

Beyond that central question, participants presented a broad array of subsistence-related problems. One of the few commonly-held problem areas lay in education and training; several NPS field personnel readily admitted their ignorance regarding subsistence matters, and in addition, field staff repeatedly mentioned that SRC members needed periodic training. Finally, those who were involved in subsistence admitted to a general lack of direction; in order to gain a renewed orientation, therefore, the assembled participants completed a draft policy statement for the regional subsistence program. For the next four years, that draft document remained the region's best statement of subsistence policy direction. [31]

Perhaps because the conference was the first time in which such a diversity of decision-makers had met on the topic, few new policy directions were established. [32] Even so, the conference was widely perceived as being successful. At a mid-April meeting of the Gates of the Arctic SRC, for example, Superintendent Siglin felt that

> changes will be seen as a result of that conference. One is that subsistence is a legitimate use of park resources, strongly endorsed by Morehead. Also he expects stronger general support for SRCs. ... SRC members [however] must also respect the constraints that laws put on subsistence users, seek ways to minimize conflicts between wilderness and subsistence users, and support sound wildlife practices. [33]

One organizational change that resulted from the March 1993 conference was the establishment of an ad hoc Superintendents' Subsistence Committee. By June 1993, this group had already held two teleconferences, and briefing papers had been completed on several of the major topics that had been addressed at the conference. In addition to completing the remainder of the briefing papers, two goals that the ad hoc committee hoped to pursue were the establishment of an annual meeting of the various SRC chairs and further training for rank-and-file SRC members. [34]





Regional NPS officials in 1993 included (top row, left to right): Clay Alderson (KLGO), Bill Welch (ARO), Steve Martin (GAAR), Bob Gerhard (NWAK). Second row: Mickie Hellickson (SITK), Karen Wade (WRST), Anne Castellina (KEFJ), Dave Ames (ARO). Third row: Jack Morehead (ARO), Paul Haertel (ARO), Judy Gottlieb (ARO), Don Chase (BELA). Fourth row: Paul Anderson (ARO), Janet McCabe (ARO), Russell Berry (DENA), Marvin Jensen (GLBA), Will Tipton (KATM). Front row: Ralph Tingey (ARO), Paul Guraedy (YUCH). NPS (AKSO)

During the summer of 1993, however, the momentum that had been established in the wake of the subsistence conference apparently dissipated. [35] Perhaps because of the July 1993 retirement of Roger Siglin, who had played a crucial role in organizing the subsistence conference, no further meetings of the Superintendents' Subsistence Committee took place.

In many respects, it appeared that the subsistence conference, at best, had had a temporary impact on long-established decision making patterns. Despite the urgings of two SRCs as well as the Superintendents' Subsistence Committee, the agency made no move during the summer or fall of 1993 to convene a meeting of the SRC chairs; similarly, nothing was done regarding training for SRC members. And subsistence users continued to be vexed by departmental inaction on several key SRC resolutions; in one particularly flagrant case, a resolution put forth by the Lake Clark SRC calling for so-called roster regulations, foot-dragging at the Secretarial level was such that the SRC was forced to send a reminder note to the Interior Secretary asking for a response. That letter, sent in August 1992—more than six years after the SRC had sent its resolution—brought forth only a lukewarm response from the NPS's Washington office. No one appeared willing or able to break the bureaucratic logjam. By the fall of 1993, these and similar actions (or inactions) were causing park superintendents to again voice the same complaints that had been heard prior to the March conference. Many of those complaints were directed at the Subsistence Division's chief who, in the opinion of many superintendents, refused to consult or coordinate with them on various subsistence proposals and activities. [36]

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C. Agency Program Modifications, 1993-1996

Regardless of the success or failure of the March 1993 conference, the issues that had been raised there refused to go away; and before long, conflict arose once again between park and regional officials. The next area of contention took place in the Northwest Alaska Areas Office as a result of nearly-identical hunting plans that the Cape Krusenstern and Kobuk Valley SRCs had forwarded to the Interior Secretary. (This plan included six thematic areas; the first such area included a critical recommendation calling for a huge resident zone to include all residents within the NANA Regional Corporation boundaries, while other recommendations dealt with aircraft and ATV access, traditional use areas, and sundry topics. (Portions of the plan, as noted in Chapter 6 as well as in Section A [above], had been finalized back in the mid-1980s but had never been sent to Washington.) These resolutions were finally mailed to Secretary Babbitt shortly after an August 1993 joint SRC meeting.



Bob Gerhard, who served as the superintendent for the Northwest Alaska Areas from 1992 to 1996, has been involved with subsistence issues in Alaska since the 1970s. He currently serves as a program manager in the regional office. NPS (AKSO)

Superintendent Bob Gerhard, hoping to influence the agency's actions or at least hoping to crystallize agency opinions, sent Regional Subsistence Chief Lou Waller what was admittedly a "very rough draft" of a response letter in October 1993. In that letter, he noted that the SRCs' proposed resident-zone idea was "generally within the guidelines stated in ANILCA §808, and to be consistent with the intent of the legislation," and regarding other SRC recommendations, Gerhard appeared eager to be as amenable as the laws and regulations allowed.

The regional office responded by meeting with park staff in mid-November; then, three weeks later, it penned its own response letter which dealt less liberally with the SRCs' recommendations. Park staff, who had been promised that they would be immediately apprised of all regional-office actions in the matter, had to wait more than two weeks before hearing about the region's draft letter. Gerhard, clearly taken aback by the turn of events, told regional officials that "if we are supposed to be working together on this project, I do not think we are doing it well." [37] He made a renewed attempt to ink a mutually-acceptable

draft response letter, but as the files on this subject clearly indicate, park and regional officials were unable to forge a final response letter. Finally, in June 1994, the two SRCs signaled that their patience had worn thin. In identical letters written to Interior Secretary Babbitt, Cape Krusenstern SRC chair Pete Schaeffer and Kobuk Valley SRC chair Walter Sampson let it be known that because "we have not received a response to our recommendations ... further meetings of the Commission will be contingent upon the receipt of a formal response to the recommendations contained in the proposed hunting plan." [38]



Ralph Tingey, the superintendent for Lake Clark National Park and Preserve from 1992 to 1996, was a key member of a 1994 task force that produced a draft review of subsistence laws and agency regulations. Ralph Tingey photo



Jon Jarvis, who was Wrangell-St. Elias's superintendent from

By this time, new pressures were beginning to confront the Park Service. Beginning in late 1993, Clinton administration officials let it be known that the NPS, along with other government agencies, would be facing likely budget cutbacks and a staff reorganization. The NPS, in response, recognized the necessity of moving many personnel to the parks from central and regional office positions. But regional officials were also aware that reorganization methods that might work at other regional offices would hold little relevance in Alaska, where subsistence management was a major agency function. And as suggested above, it was becoming increasingly obvious that the subsistence problems that had brought about the Spring 1993 superintendents' conference had not been solved, and there was almost a complete breakdown in communications between regional subsistence officials and several park superintendents. In the spring of 1994, therefore, Regional Director John M. Morehead (in the words of one subsistence expert) "threw up his hands" over the continuing difficulties between the regional office and the field and demanded that the major subsistence problems be re-analyzed by establishing a regional subsistence working group or task force. As Gates of the Arctic Superintendent Steve Martin explained, "the task force was a working group of NPS managers [intended] to assess the subsistence management program and identify issues requiring policy development." The group, which was asked to look "at subsistence issues on a regional basis," was selected by Deputy Director Paul Anderson and Management Assistant William Welch; it consisted of superintendents Ralph Tingey and Steve Martin along with subsistence specialists Lou Waller, Hollis Twitchell, and Jay Wells. Others attended meetings and contributed to the discussion from time to time. [39]

The task force, which met for the first time on May 12, quickly recognized that its primary task would be the compilation of a subsistence issues paper that would clearly and explicitly describe the major subsistence management issues. It may be recalled that the regional subsistence division, back in late 1992, had written a few draft position papers on specific thematic topics, but the 1994 task force wanted consistency in how a wide variety of subsistence laws and regulations was being interpreted. The task force, therefore, undertook a comprehensive review of laws and regulations that affected Alaskan

1994 to 1999, was the principal author of a report that reviewed of the region's natural resources program. One outcome of that report was the dissolution of the region's subsistence division. NPS (AKSO)

subsistence activities. It met some twenty times over the next several months (primarily but not exclusively in Anchorage), and by the fall of 1994 it had completed a "Draft Review of Subsistence Laws and National Park Service Regulations." The group felt that it had broken much new ground during the discussions that resulted in that document; at the same time, however, members felt that there was little need to distribute the document to anyone outside of the agency. As a result, only a few copies of the draft document were produced, and for more than a year the document was largely ignored. [40]

During 1994 and 1995, the specific direction in which the agency's reorganization was to take place became increasingly clear. Former regional offices, for example, were cleaved into either field offices or system support offices, and funding allocation authority was significantly shifted from the old regional offices to the newly-formed Alaska Cluster of Superintendents. Months after implementing that change, however, it became increasingly obvious to officials at the park level that the call for reorganization as detailed in the NPS Restructuring Plan—particularly as it related to natural resource management—had not yet been implemented at the regional level; in addition, the new balance of power between the regional office and the parks (from "directing" the parks to providing "support" to them) was not being applied in Alaska. To overcome these structural problems, Field Director Robert Barbee in early December 1995 organized a four-person team, headed by Wrangell-St. Elias superintendent Jon Jarvis, to analyze the problem and recommend workable solutions. [41]

The team soon ascertained that the existing natural resource management system (consisting of the Subsistence, Natural Resources, Minerals Management and Environmental Quality divisions) was an inefficient organizational breakdown. Rather than subdividing tasks by program or issue, it argued, tasks should instead be based upon discipline or function. It thus recommended that natural resource programs be undertaken by four new divisions (or "teams"), plus one existing division that would assume a new function. The plan called for seven of the nine staff members who then comprised the Subsistence Division to be included in either the Biological Resources or Program Support Teams, both of which were new; the remaining two staffers would be added to the long-established Cultural Resource Division. The plan, to a large extent, was worked out in a series of meetings in mid-February 1996. Agency leadership broadly approved the plan during the last of those meetings, and a report delineating the reorganization process—dubbed the "Jarvis report"—was prepared soon afterward. [42] By May of 1996 the Subsistence Division ceased to exist; most of its former functions were assumed by interdisciplinary teams of new and old staff and by other members of the natural resource and cultural resource teams. [43] Paul Anderson, who had assumed leadership of the NPS's subsistence program in late 1994, continued to guide the agency's subsistence efforts during this transition period; key to his management style was the promotion of a more consultative and participatory approach to addressing and resolving subsistence issues.

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D. The NPS Subsistence Program, 1996-present



Paul Anderson served as the Alaska Region's Deputy Superintendent from 1992 to 2002. From 1994 to 1999, he served as the NPS's representative to the Federal Subsistence Board. NPS (AKSO)

No sooner had the mid-February meetings taken place than SRC members and other observers began to recognize, to an ever-increasing degree, that NPS staff bore a new attitude toward subsistence issues. (Superintendent Jarvis himself called it a "new paradigm.") Personnel at both the support office as well as the various parks listened anew to subsistence users' concerns, and agency personnel made renewed attempts to solve long-simmering issues related to eligibility, access, and similar topics. And as if to underscore the agency's willingness to sound out subsistence users' concerns, Deputy Regional Director Paul Anderson invited the various SRC chairs to an Anchorage workshop on June 1, 1996. It was the first time that the chairs had met in more than six years; furthermore, the NPS noted that "the meeting was a very positive and productive session and several recommendations resulted." [44]

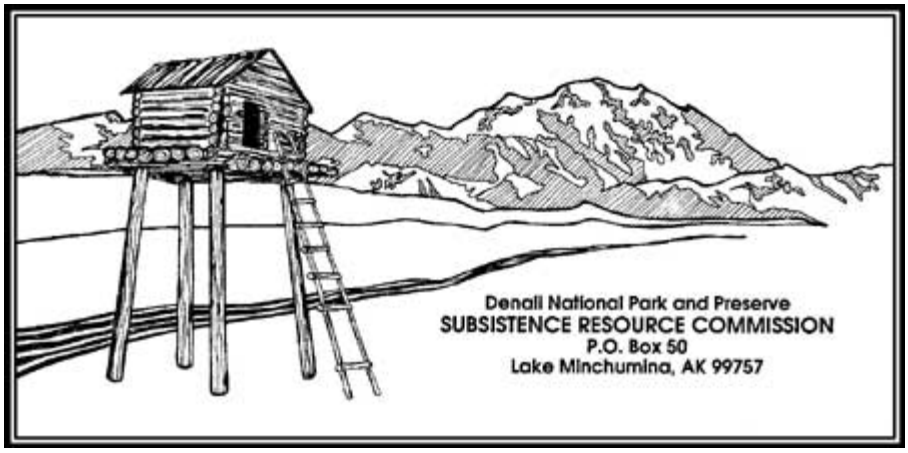
Even before reorganization was complete, several subsistence experts felt that one significant way the agency could display a new openness toward subsistence issues was by preparing a public document explaining its stance on eligibility, access, and similar matters. As noted above, the NPS had expended a great effort two years earlier in order to prepare a "Draft Review of Subsistence Law and National Park Service Regulations," and shortly after Alaska's NPS superintendents met in mid-October 1995, agency officials decided that this document should be dusted off and used as the basis for public comment. [45] Over the next few months, members of all of the active SRCs were given a copy of the document and asked to comment on it. Copies were also distributed to state officials, regional advisory councils, representatives of Native corporations and conservation groups, post office boxholders in resident zone communities, and others interested in subsistence activities on NPS lands. [46] Bob Gerhard, an ad hoc subsistence coordinator in the regional office, played the lead role in distributing the document and receiving comments related to its strengths and weaknesses.

NPS subsistence staff, after receiving a broad array of comments, held a subsistence workshop in Anchorage on April 14-15, 1997 and hammered out a final draft, which was

issued that July. This paper was critiqued once again, and a final copy was completed and distributed a month later. Despite the "final" nature of the August 1997 paper, those who coordinated its completion were careful to note that "the document is living and will continue to evolve." As if to emphasize the open process that produced the paper, each section of it included not only the final text but all comments to the draft and the NPS's response to those comments. Just a week after it was completed, the issues paper was distributed to an assembled meeting of SRC chairs; soon afterward, it was mailed out to local fish and game advisory committees, Native organizations, federal and state agencies, conservation groups, and interested individuals. The NPS produced and distributed more than 250 copies of the issues paper to a broad array of interested individuals: federal and state legislators, SRC members, and other subsistence users as well as to NPS staff. [47]

A project far more massive, and no less important to the various SRCs, was the preparation of a series of subsistence management plans. As has been noted above, Title VIII of ANILCA gave few specifics as to what specifically constituted a "program for subsistence hunting" in the various park units, and because of that lack, the SRCs provided widely varying versions of what, in their opinion, fulfilled that requirement. The NPS, as a result, occasionally fumed that what the SRCs submitted fell short of a "program for subsistence hunting," and although various general management plans called for the preparation of a subsistence management plan, agency officials were loathe to make specific suggestions for what specifically was needed.

Shortly after the reorganization was completed, Superintendent Jarvis suggested that what constituted a "subsistence management plan" was, to a large degree, a compendium of all subsistence-related actions—Congressional laws, departmental regulations, agency interpretations and SRC recommendations—pertaining to a particular park unit. Given that administrative road map, he asked if subsistence specialist Janis Meldrum would be able to work together with Jay Wells, his chief ranger and subsistence coordinator, to assemble such a record for Wrangell-St. Elias National Park. Work began in the spring of 1996, and by February 1997 Meldrum had an initial draft ready for distribution to the park's SRC members. For the next two years, the park's SRC reviewed and critiqued the plan at its semiannual meetings; in response to members' comments, Meldrum revised and expanded the draft plan. Finally, in November 1998, the public review process had been completed, and Meldrum and the SRC declared that a mutually satisfactory product was at hand. [48]



The Denali National Park Subsistence Resource Commission has had the same chairperson—Florence Collins of Lake Minchumina—since its inception in 1984. Since 1993, communications from Denali's SRC have sported this handsome letterhead. NPS (DENA)

Meldrum has also compiled two other subsistence management plans. In the spring of 1997, she began work on the Denali National Park SMP and was able to complete an initial draft plan in time for the SRC's July 1997 meeting; the plan, however, did not go through its ninety-day public review period until the fall of 1999, and the SRC did not officially approve it until August 2000. And in the fall of 1997, she began work on a similar effort for Lake Clark National Park. She distributed an initial draft of the volume at the park SRC's February 1998 meeting, and after a ninety-day public review period, the Lake Clark SRC declared the plan complete at its October 2000 meeting. [49]

Two other subsistence management plans were guided, to some extent, by the efforts of subsistence specialist Clarence Summers. In mid-1997, Summers assisted Steve Ulvi on a plan for Gates of the Arctic National Park, and during the same period he started work with Susan Savage (and later with Donald Mike) on a similar volume for Aniakchak National Monument. The Gates of the Arctic volume was initially shown to park's SRC in January 1998, but a draft of the Aniakchak volume was not ready until its SRC met in November 2000. The Gates of the Arctic SRC, along with Superintendent Dave Mills, declared that its subsistence management plan was complete at the November 14, 2000 SRC meeting; as for Aniakchak, the monument's SRC approved its hunting plan at a Chignik Lake meeting on February 20, 2002. [50]

The success of the various subsistence management plans has spawned similar educational efforts at various park units. The goal of some of these efforts has been to educate subsistence users about basic hunting rules and regulations, while other efforts have attempted to educate the general public about subsistence activities and their role in Alaska's national park units.

The first such effort, begun in February 1998 at the request of the Denali National Park SRC, was the preparation of a users' guide that would give condensed, pertinent information about subsistence rules and regulations as they pertained to Denali-area subsistence users. This short report was first presented to the SRC at its August 1998 meeting; the SRC approved a final version six months later, and in August 1999 copies were mailed to all postal boxholders in Denali's four resident zone communities.

Soon after work began on the Denali report, park and support-office staff began work on a similar effort at Wrangell-St. Elias. But based on suggestions from the park's SRC, the agency decided, in lieu of a users' guide, to compile a series of public-education hunting maps and a brochure briefly describing the park's subsistence program to area subsistence users. By early May 1998, the NPS had produced maps for the Northway and Tanacross areas for caribou, for sheep, and for moose. The maps were well received by the residents of those communities. By the following March, copies of the final brochure had been mailed out to all boxholders in the park's 18 resident-zone communities, and two months later, a new set of hunting maps (for sheep, caribou, and moose) was made available to residents of twelve area communities.

At other park units, SRCs have suggested new ways to publicize the agency's subsistence program. In the fall of 1998, work began on a Lake Clark National Park users' guide, and two years later a similar effort began at Gates of the Arctic National Park. The Lake Clark guide was completed in March 2001, while the Gates of the Arctic guide has been finished in draft form. At Denali National Park and Preserve, the SRC opted for a subsistence brochure; unlike its equivalent at Wrangell-St. Elias, this was intended primarily for park visitors rather than area subsistence users. Alaska Support Office staff completed this task in early 2001. [51]

In the years since the issuance of the so-called "Jarvis report," relations between NPS staff

and subsistence users have been fairly amicable. This "era of good feeling"—which was a decided change from the storminess that had characterized relations in past years—has emerged for several reasons. First, both park staff and support-office (regional) staff came to recognize both the necessity and desirability of finding common solutions to subsistence-related problems. And as a corollary to that mutual recognition, the agency has been able to provide sufficient staff time and financial support to allow SRC members and other subsistence users to periodically and democratically express their opinions on subsistence-related issues.

Communication has been a key to this "new paradigm." The agency, for example, has encouraged each of the SRCs to meet as often as necessary and has consistently provided funding for travel and per diem expenses, even when meeting in remote, rural locations. In addition, the agency has arranged for annual opportunities for the SRC chairs to meet, discuss common problems, and formulate resolutions of mutual interest. [52] The SRCs, with the agency's blessing, have made recommendations on a wide variety of topics in recent years, and their advice is now sought by the various regional advisory committees on matters pertaining to wildlife and fisheries management within the areas of their jurisdiction. In recognition of that expanded role, the SRCs now often schedule their meetings so that they can take maximum advantage of either 1) submitting new wildlife and fish proposals so they can be considered by a regional advisory committee, or 2) evaluating previously-submitted proposals that affect wildlife and fish populations within a given park unit.



Since 1996, the various SRC chairs have met each year to discuss common issues and concerns, both with each other and with NPS officials. Photographed at their October 2001 meeting, chairs included (left to right): Pete Schaeffer (CAKR), Ray Sensmeier (WRST), Florence Collins (DENA), Jack Reakoff (GAAR vice-chair), and Walter Sampson (KOVA). Author's collection

Managing Alaskan subsistence resources in recent years has been a more decentralized process than had been the case prior to the Subsistence Division's dissolution. The so-called Jarvis report had suggested one possible management solution—in lieu of a formalized divisional structure, "interdisciplinary teams (IDTs) would be formed to handle existing and new issues ... each IDT would be ... temporary or long term as the project dictated." Indeed, an ad hoc IDT structure was employed during much of 1996 and 1997 (i.e., during the

completion of the issues paper) to accomplish subsistence-related goals; the only formal structure was that provided by a so-called Subsistence Committee of the Alaska Cluster of Superintendents. [53] But as the issues paper neared its completion, subsistence personnel began to recognize the need for some form of regularized organization. In order to provide a periodic forum for the discussion of common subsistence issues, Bob Gerhard—who had been serving as an ad hoc subsistence facilitator since his return to Anchorage in September 1996—convened a monthly teleconference beginning in June 1997. [54] This meeting, which provided the opportunity for park subsistence coordinators, superintendents, regional managers and regional subsistence staff to share ideas and opinions, met each month on a fairly regular basis.

The latest change to the subsistence management structure took place in 1999. In mid-February of that year, the various park subsistence coordinators, along with other subsistence experts, convened for several days in Anchorage and established a regional Subsistence Advisory Committee. By forming such a committee, subsistence personnel were provided a designated conduit for evaluating subsistence projects; as such, it put them on a par with their co-workers in the natural resource and cultural resource spheres. [55] Several months later, the Alaska Cluster of Superintendents approved the petition that officially sanctioned the committee. Ever since that time, subsistence personnel have continued to meet once each month; meetings of the Subsistence Advisory Committee have alternated with meetings of the more loosely-affiliated group that had been meeting since June 1997. Another managerial change in 1999 was a direct outgrowth of the assumption of fisheries management on federal lands, which took place on October 1 (see Chapter 9). In recognition of that action, Sandy Rabinowitch became the de facto coordinator of wildlife-related subsistence activities—particularly as they related to the Federal Subsistence Board—while Bob Gerhard assumed a coordinating role over the agency's subsistence fisheries management efforts.

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E. Subsistence in the Legislature, Part I: the Case of Glacier Bay

One of the most contentious subsistence-related issues that the NPS dealt with during the 1990s concerned subsistence harvesting in Glacier Bay and in adjacent waters within Glacier Bay National Park. As noted in Chapter 6, provisions within ANILCA had made it clear that subsistence uses in these areas were prohibited. The State of Alaska, however, had kept the issue alive, and owing in part to actions by Fish and Game Commissioner Don Collinsworth, the NPS and Hoonah residents narrowly avoided a confrontation over the issue during the summer of 1989.

That fall, many Hoonah residents renewed their intention to press for subsistence access to Glacier Bay, and before long, the NPS and the ADF&G were once again at loggerheads. Commissioner Collinsworth, as he had in 1989, moved to issue subsistence permits for Glacier Bay; and the state legislature, in a similar vein, passed a resolution asking that the NPS "amend its regulations in order to ... expressly provide for subsistence uses in the Park." The NPS, in response, told state authorities that the agency had "no administrative authority for allowing subsistence activities in the park." Having few other alternatives, it tried to dampen what had become a high-profile issue and announced that it would be "lenient in its enforcement" of the subsistence regulation. The agency encountered few enforcement problems that summer. [56]

By this time, authorities on both sides of the issue recognized that the only way to change the existing state of affairs—that is, the only way for local residents to gain legal, long-term subsistence access into Glacier Bay—lay in the passage of federal legislation. [57] Alaska's Congressional delegation took no immediate action in the matter. But in August 1990, the Alaska Wildlife Alliance filed suit against the NPS in the Anchorage District Court, claiming that the agency, among other things, was allowing illegal commercial and subsistence fishing to occur. A month earlier, on July 1, the NPS—perhaps knowing of the imminent AWA suit—made it known that it intended to issue a proposed rule regarding commercial fishing in the bay; that rule would state that commercial fishing in the bay's few wilderness waters would be immediately prohibited and that commercial fishing in the remainder of the bay be prohibited after December 1997. (Subsistence was not addressed in the proposed rule.) The Congressional delegation stridently opposed this proposed rule, which was issued on August 5, 1991. [58]

Anticipating that rule, both Senator Frank Murkowski and Representative Don Young introduced bills that summer that would authorize both commercial fishing and subsistence uses in Glacier Bay. (One other provision in these bills was related to cruise ship entry.) In September and October, the NPS held hearings on the proposed



Marvin Jensen served as the superintendent of Glacier Bay National Park and Preserve from 1988 to 1995. Fishing issues, both commercial and subsistence, remained controversial throughout this period. NPS (AKSO)

commercial fishing regulations in eight Alaskan communities as well as in Seattle. The following May, Murkowski's and Young's bills were addressed by their respective subcommittees; they were passed by voice votes in June and advanced to the full committee. In October 1992, however, the bill collapsed in the Senate during the waning hours of the 102nd Congress. [59] The status quo remained, at least for the time being. Although similar bills would be resurrected in the 103rd Congress, they would be no more successful than their predecessors. [60]

During the fall of 1992, in the midst of last-minute negotiations over Senator Murkowski's Glacier Bay bill, an incident took place in the bay that started a whole new round of controversy related to subsistence fishing's legal status. On October 6, NPS rangers observed Gregory Brown, a Tlingit residing in Hoonah, hauling a dead hair seal from a skiff to a seine boat. Inasmuch as the action took place near Garforth Island, which is located near Adams Inlet within the bay, the rangers cited Brown for violating the prohibition against subsistence harvesting. Brown readily admitted that he had killed the seal; it was needed, he claimed, for a "payback party" (a kind of potlatch) for a recently deceased relative. Given these circumstances, Brown's citation aroused strong feelings in Hoonah. The Huna Traditional Tribal Council soon sent a letter of protest to Alaska's Congressional delegation; it charged that "we are made criminals for our food" and reiterated longstanding concerns that the NPS was insensitive to the Hoonah's cultural and historical ties to Glacier Bay. [61]

Those who defended Brown checked the various federal regulations that pertained to the NPS's management of the park's marine waters. They evidently discovered that a 1987 technical amendment to the agency's 1983 regulations meant that the regulations specifically applied to privately owned lands but that it was "silent as to the applicability" of the regulations on other "non-federally owned lands and waters" within the boundaries of park areas. Therefore, the regulations as they existed in 1992 "had the unforseen and unintended affect [sic] of rendering ambiguous the applicability of NPS regulations to navigable waters in Glacier Bay National Park." Because the NPS did not have clear regulatory authority over the navigable waters of several NPS units—of which Glacier Bay was just one example—the Interior Department moved to dismiss the case in December 1993. [62]

The loss of this case, of course, meant that the NPS had no clear authority to enforce a broad range of regulations pertaining to Glacier Bay's marine waters. In order to reassert that authority, Russel Wilson of the NPS's Alaska Regional Office was asked to draft an interim rule that established the federal government's clear regulatory authority without addressing the larger question of who owned the park's submerged lands. This rule, which was promulgated "to insure the continued protection of park wildlife ... and to clearly inform the public that hunting continues to be prohibited," was published in the *Federal Register* on March 29, 1994; it became effective the same day and was to remain valid until January 1, 1996. The public was given ninety days—until June 27, 1994—to comment on the interim

rule. After receiving and considering those comments, the NPS published a Proposed Rule, which was broadly applicable to units throughout the National Park System, in December 1995. [63] The rule called for another round of public comments, to end in February 1996, and during that period both the Alaska Attorney General and the state legislature (among other entities) submitted comments. Five months later, the NPS issued a final rule on the subject. The NPS, with this rule, thus regained the legal ability to enforce subsistence (and other) regulations on Glacier Bay's waters while sidestepping the complicated issue of submerged lands ownership. [64]

Meanwhile, NPS officials moved to curtail commercial fishing within the bay. As noted earlier in this chapter, activities during the early 1990s had led to a standoff; the NPS—faced with a wall of protest at a series of public meetings—had been unsuccessful in promulgating a commercial fishing ban in Glacier Bay National Park, but Alaska's congressional delegation had likewise been unsuccessful in two successive Congresses in implementing a bill that would have allowed subsistence fishing and mandated the continuation of commercial fishing. A small part of that standoff was resolved in conservationists' favor in 1994, when District Judge H. Russel Holland ruled, in Alaska Wildlife Alliance's lawsuit against the NPS, that commercial fishing was prohibited in the park's wilderness waters. Three years later, this decision was upheld in the Ninth Circuit Court of Appeals. In other matters related to Glacier Bay fishing, however, the standoff continued. What eventually emerged from this standoff was a series of informal workshops among the major stakeholders—Interior Department officials, commercial fishermen, area residents, and others, collectively known as the cultural fishing working group—that made major strides in resolving outstanding issues. These meetings continued until the winter of 1997-98. [65]

In April 1997, NPS officials decided that they would once again issue a proposed rule that called for a termination of commercial fishing in Glacier Bay. The rule was similar to that proposed in August 1991, but it called for a 15-year rather than a 7-year phaseout period. The NPS's action, predictably, resulted in Senator Murkowski submitting a section into a larger bill (authorizing ANILCA amendments) that would have legalized both subsistence and commercial fishing in the bay. This bill was similar to bills that the Senator had submitted in both 1991 and 1993. [66] During the next several months, NPS staff began preparing an environmental assessment related to its proposed rule, and the agency held several public hearings in area communities as part of that effort. The NPS issued a final report on that topic in April 1998.



Frank Murkowski has been Alaska's junior U.S. Senator from 1981 to the present time. He introduced bills in 1991, 1993, 1997, and 1999 that would have legitimized or expanded fishing rights in Glacier Bay. Office of Sen. Murkowski

Before the NPS could issue a final rule, however, Senator Stevens was successful in implementing a compromise between the NPS's and Murkowski's position. In the waning hours of the 105th Congress, Stevens inserted a clause (Section 123) into the huge Omnibus Consolidated and Emergency Supplemental Act for Fiscal Year 1999 (P.L. 105-277), which was signed by President Clinton on October 21, 1998. Stevens's compromise allowed commercial fishing to continue unimpeded outside of Glacier Bay proper; within the bay, it delineated zones where commercial fishing would be prohibited. (The section made no mention of subsistence issues.) [67] Senator Murkowski and Representative Young reacted to

the compromise by introducing legislation on March 2, 1999 that would have allowed commercial fishing to continue. (That bill remained alive for most of that session before stalling.) Senator Stevens, however, was more successful. In May 1999, Stevens was able to insert a paragraph (Section 501) in the 1999 Emergency Supplemental Appropriations Act (P.L. 106-31) that provided a $23 million compensation package for commercial fishers who were impacted by the closures outlined in the October 1998 bill. Given those mandates, NPS officials began enforcing these closures in non-wilderness waters on June 15, 1999. (Enforcement of closures in wilderness waters had begun four months earlier.) [68] In the light of the two recent congressional measures, the agency re-issued a proposed rule on August 2. The new proposal proved uncontroversial, and a final rule on the subject was issued on October 20. [69]

Although Alaska's Congressional delegation was unable to overturn the ban on subsistence uses in Glacier Bay, park officials became increasingly sensitive to local concerns (some of which related to subsistence issues) and began meeting with local residents on items of mutual interest. A major outcome of a series of meetings with Hoonah residents was a Memorandum of Understanding, signed on September 30, 1995 and effective for five years, between Glacier Bay National Park and Preserve and the Hoonah Indian Association. The MOU had several objectives: "to formally recognize our government-to-government relations and recognize areas of mutual concern and support, establish a framework for cooperative relationships, and promote communication between both parties." Since that time the Hoonahs have discussed with NPS officials a number of subsistence-related concerns—a cultural fishery program, the gathering of berries and gull eggs, and other matters—which the agency has attempted to accommodate whenever possible. [70] The MOU was updated for an additional five years on September 29, 2000.

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F. Subsistence in the Legislature, Part II: Gates of the Arctic ATV Use

Another contentious subsistence-related issue during this period dealt with the all-terrain vehicles (ATVs) in Gates of the Arctic National Park. As Chapter 6 has noted, the NPS determined during the early 1980s that ATVs were not a traditional means of access in the park; then, in January 1986, the NPS issued a memorandum stating that Anaktuvuk Pass residents' use of ATVs was nontraditional. But NPS officials, recognizing that the amount of ATV-accessible land was insufficient to support villagers' needs, had begun talks back in 1984 to resolve the situation, and in March 1986 the park's Subsistence Resource Commission passed a resolution supporting the concept of a three-way land exchange between the NPS, the Arctic Slope Regional Corporation (ASRC) and the Nunamiut Corporation. Work on an exchange agreement was finalized on January 20, 1989, when the NPS, ASRC, Nunamiut Corporation and the City of Anaktuvuk Pass signed a draft agreement. Among its other provisions, the agreement would have designated several thousand acres as wilderness (of both existing parkland and Native lands transferred to the federal government), and deauthorized wilderness on several thousand additional acres. [71] All parties knew that only Congress could approve these actions, so a team of 11 NPS officials set to work on a legislative environmental impact statement (LEIS) that would provide a factual basis for the proposed land transfers. In the meantime, all parties recognized that until a bill passed Congress, ATV use on park lands was technically illegal. To circumvent that technicality, and to serve the greater interest of a negotiated settlement, NPS officials granted a series of one-year extensions to the 1986-88 ATV impact study, because only under the guise of that study could park ATV use legally continue in areas where a historical pattern had been established. [72]

Work on the document consumed far longer than anyone expected; at least five working drafts were prepared. [73] A final version of the draft LEIS was issued in January 1991. It offered three alternatives, the first of which called for a continuation of the status quo. A second alternative, which combined a negotiated agreement with proposed legislation, was the NPS's proposed action. And a third alternative called for all elements of the second alternative plus a land transfer from the NPS to the ASRC; some 28,115 acres of NPS wilderness land northwest of Anaktuvuk Pass would be transferred to the ASRC, while a 38,840-acre parcel northeast of the village would be transferred from the ASRC and the Nunamiut Corporation to the NPS. This latter parcel would become designated wilderness land.

The second alternative—the NPS's proposed action—stated that 17,825 acres within Gates of the Arctic National Park would be designated as wilderness and would thus be prohibited to ATV use. It also called for the deauthorization of wilderness on 73,880 acres in the park, plus the allowance of dispersed ATV use for subsistence purposes on 83,441 acres of park

nonwilderness. (Within the latter category, a network of designated ATV easements had existed since the 1983 Chandler Lake Exchange Agreement—in which ASRC had transferred key Native lands within the park to the federal government—but area residents soon found that access to caribou often took them well away from those easements.) As stated in the draft LEIS, the proposal was intended to "foster a more reasonable relationship between NPS, recreational users and the village residents and provide better public access across Native land to park land." [74]

During March 1991, the NPS held public hearings on the draft LEIS in Anchorage and Fairbanks as well as in Anaktuvuk Pass. [75] As a result of those meetings, the agency received six written replies plus additional oral input. It then commenced preparing its final LEIS, which was completed in February 1992 and issued two months later. In a surprising move, the agency adopted its third alternative—not the second alternative, which had been championed a year earlier. Due to slight variations in acreage calculation from the previous year's document, the NPS agreed to allow 73,992 acres of Gates of the Arctic National Park wilderness to be transferred to less restrictive uses: 46,231 acres would allow for dispersed ATV use, while another 27,762 acres would be transferred from NPS to ASRC ownership. In addition, the deal called for 17,985 acres of park land to be designated as new wilderness, and another 80,401 acres of nonwilderness park land to be opened to dispersed ATV use, and another 2,880 acres of nonwilderness park land to be transferred to Native ownership. A final aspect of the deal, as noted above, was that the ownership of a 38,840-acre parcel northeast of Anaktuvuk Pass would be transferred from Native corporations to the NPS; all of that acreage, moreover, would be designated wilderness. [76] On October 20, 1992, an Interior Department official issued a Record of Decision in favor of implementing the third alternative; that decision was then forwarded to the other three governments for their signature.

The NPS, it should be noted, was careful in its Anaktuvuk Pass-area negotiations to sidestep the larger question of whether ATVs were a traditional means of access in Alaska's national park units. As the Record of Decision noted, the agency still did "not consider ATVs a traditional means of access for subsistence use in Gates of the Arctic National Park and Preserve and prohibits their use on NPS land. The Native community of Anaktuvuk Pass contends, however, that ATVs have been traditionally used and are necessary to reach subsistence resources in the summer. ... The proposed agreement and legislation meet the objective of resolving the ATV controversy. ... The agreement will also avoid a legal battle over the meaning of the legislative phrase '...other means of surface transportation traditionally employed...' and the NPS position that ATVs are not a traditional means of surface transportation." [77]

The last of the four participants in the Anaktuvuk Pass-area land exchange signed the agreement on December 17, 1992. [78] Revised agreements were signed in both 1993 and 1994, and in June 1994 the administration finally submitted the proposal to Congress. A month later, on July 13, bills intended to implement the agreement were introduced. Two different bills were submitted in the U.S. House of Representatives that day: H.R. 4746, introduced by Rep. George Miller (D-Calif.) by request, and H.R. 4754, by Alaska Representative Don Young. [79] A third bill, S. 2303, was introduced a week later by Alaska Senator Frank Murkowski. The three bills, all called the "Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1994," were identical in asking for an additional 56,825 acres of park wilderness and the dedesignation of 73,993 acres of park wilderness. Where they differed, however, was whether new wilderness acreage was contemplated elsewhere. Miller's bill, which was backed by environmental interests, called for an additional 41,000 acres of Bureau of Land Management wilderness in the Nigu River valley adjacent to Noatak National Preserve, while Young's and Murkowski's bills made no such provision.

On September 21, the major players in this issue—George Miller, Bruce Vento (D-Minn.), and Don Young—brokered a deal and agreed to settle the differences in acreage, and on September 27 the Senate Energy and Natural Resources Committee issued a report on S. 2303 that called for an additional 17,168 acres of wilderness in the Nigu River Valley. (This figure was chosen so that the bill would result in no net change in wilderness acreage.) This acreage was also incorporated into H.R. 4746. During the closing weeks of the 103rd Congress, many additional NPS-related provisions were added onto H.R. 4746, so when the bill passed the House of Representatives on October 3, the various provisions related to Gates of the Arctic National Park were just one section of a much larger omnibus bill. H.R. 4746 was forwarded on to the Senate, which received the bill on October 8; the Senate, however, was unable to pass a bill containing an Anaktuvuk Pass land exchange during the waning hours of the 103rd Congress. [80]

A bill to implement the deal was quickly re-introduced in January 1995, and because it was fairly noncontroversial, it moved fairly quickly. H.R. 400, introduced on January 4 and calling for 17,168 acres of new wilderness acreage in the Upper Nigu River to be added to Noatak National Preserve, sailed through the House Resources Committee on January 18, and on February 1 the bill passed the full House on a unanimous 427-0 vote. [81] Action then shifted to the Senate, which waited for several months before considering it. The full Senate considered the measure on June 30. During those deliberations, Sen. Robert Dole (R-Kan.) introduced an amendment to the bill urging action on provisions unrelated to the Anaktuvuk Pass ATV issue. The bill, with Dole's amendment, passed the Senate that day on a voice vote. [82] That bill's provisions, however, were soon folded into an even larger bill, H.R. 1296, which passed the Senate on May 1, 1996. Four months later, during the waning weeks of the 104th Congress, legislators cobbled together an even more comprehensive bill, H.R. 4236. This bill, called the Omnibus Parks and Public Lands Management Act of 1996, was introduced on September 27, and within the next month it passed both houses of Congress. President Clinton signed the bill on November 12. [83] Twelve years after Anaktuvuk Pass residents and NPS officials began working on the problem, the land exchange was finally implemented. Anaktuvuk Pass residents responded by holding a festive November 14 celebration in the village's community hall. [84]

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G. SRC Recommendations: Eligibility Issues

During the 1990s, SRC members and other subsistence users continued to be concerned over several eligibility-related issues. Among them were 1) the consideration of new resident-zone communities, 2) the delineation of resident-zone boundaries, 3) the establishment of a community-wide "roster system," and 4) the imposition of a residency requirement. These four topics will be discussed in the order listed above.

1. New Resident Zone Communities. As noted in Chapters 5 and 6, Alaska's national park units had 49 different resident zone communities at the close of the 1980s; this was the same number that had been listed in the June 1981 subsistence management regulations (see Table 5-1). [85] During the 1980s, SRCs had sent letters to the Interior Secretary recommending that Ugashik, Pilot Point and Northway be considered as new resident zone communities, but each had been rejected on the grounds that the NPS knew of no proven interest in subsistence hunting by residents of those communities.

During the 1990s, these and other communities were considered anew for resident zone status. At Aniakchak, SRC members recognized in 1990 that a logical first step to involve Ugashik and Pilot Point residents was to have them apply for 13.44 permits; given that option, the SRC received no further action for new resident zones. Seven years later, a similar scenario was played out at Denali; the SRC asked the park superintendent for assistance in obtaining resident zone status for Tanana, and in response, the NPS dispatched the park's subsistence coordinator to the community but found no one there interested in obtaining a 13.44 permit. [86]

All other activity pertaining to potential new resident zones occurred at Wrangell-St. Elias National Park. As has been noted in greater detail in the park's subsistence management plan, the SRC responded to the Interior Secretary's denial of eligibility for Northway by resubmitting, in December 1991, a recommendation that was similar in intent to that which it had submitted in August 1985. Seven months later, the Interior Secretary responded to the SRC by noting that "the NPS must first verify that [Northway has] a significant concentration of local rural residents with a history of subsistence use." [87] Four years later, the SRC also recommended the addition of Tetlin and Dot Lake as resident-zone communities, and before long Tanacross, Healy Lake, and Cordova were considered as well. The NPS responded to each of these requests by either 1) studying the situation (support-office staff wrote a 1998 environmental assessment regarding the eligibility of Northway, Tetlin, Tanacross, and Dot Lake), 2) holding a public hearing soliciting interest from townspeople, or 3) asking an agency anthropologist to visit each community and ask residents about local subsistence-harvesting patterns. [88] In time, the NPS found that five villages—Dot Lake, Healy Lake, Northway, Tanacross, and Tetlin—were eligible to be new resident zone communities. As a result, the agency published a proposed rule on the subject in June 2001 and a final rule in

February 2002. The rule became effective on March 27, 2002. [89]

2. Resident Zone Boundaries. As noted in Chapter 6, NPS officials had made some attempts during the 1980s to establish boundaries around the resident zone communities, but their efforts had been only modestly successful. By 1990, in fact, only two resident zone communities had established boundaries, both of which were near Denali. The Wrangell-St. Elias SRC, by contrast, had dug in its heels and stated its refusal to establish any such boundary lines.

This halting progress continued during the 1990s. Communities adjacent to several park areas moved to establish resident zone boundaries, but elsewhere, NPS officials and SRC members skirmished over the issue, resulting in an awkward standoff. At Denali, for example, the park SRC decided in June 1994 to establish boundaries around the two resident-zone communities (Nikolai and Telida) that did not previously have one. [90] And at Gates of the Arctic, the park SRC responded to a request from the Wiseman Community Association by moving, in September 1991, to establish boundaries for Wiseman; the NPS responded to the SRC's proposal the following February by conditionally approving the proposed boundaries. [91]



Karen Wade, Wrangell-St. Elias's superintendent from 1990 to 1994, weighed in on many subsistence issues. A particularly nettlesome issue was that of resident zone community boundaries: whether boundaries should be established, and if so, where they should be located. NPS (AKSO)

At most park units, NPS officials were relatively unconcerned about the application of boundaries; as Regional Director John Morehead noted, "it has not been necessary to literally identify community boundaries because the geographic extent of the communities is easily identifiable." But at Wrangell-St. Elias, conditions were different because "the geographic confines of the communities designated in 1981 were never clearly identified for eligibility purposes, primarily because the communities are along highway systems." [92] Here, the NPS and the SRC had less amicable relations. In the late 1980s, it may be recalled, the Interior Secretary's office had intimated that the park SRC should "conservatively" establish boundaries for its resident-zone communities, but the SRC defiantly responded that "no change is necessary to further restrict eligible residents (such as the Park Service suggestions to define boundaries)." A second round of conflict in this arena erupted in the early 1990s. It began in June 1992, when NPS officials began working on a proposed boundary for Glennallen. By late November, they had expanded their effort and, at an SRC meeting, officials again proposed conservatively-drawn boundaries around each of the park's 18 resident-zone communities. "The intent of the Park Service," Superintendent Karen Wade told the SRC, "is to put boundaries into effect in a timely manner after consultations with the Commission." The Commission, however, "expressed concerns with the boundaries as presented to it," and its response was to recommend a second set of boundaries for 15 of the 18 communities: a long, 15-mile-wide resident zone that paralleled the northern and western park boundary. (This band would include all resident-zone communities located along the Glenn and Richardson highways between Slana and Tonsina). The SRC, together with the park, agreed to solicit and consider public comment on both sets of boundaries before making a recommendation to the Interior Secretary. A public comment period, in which proposed maps were distributed to interested persons, began on January 19 and ended on March 26, 1993. [93] On April 6, the park SRC met and decided to establish a subcommittee that would

"complete the draft recommendations which had been started." The subcommittee, in fact, soon emerged with a draft proposal—to adopt the same 15-mile-wide resident zone it had recommended several months earlier—and in April 1994 the full SRC recommended the same action. The NPS, however, was less than enthusiastic over the SRC's proposal, and in the SRC's 1995 annual report the agency noted that the proposal was "still in review." [94] But sometime during the next few years—perhaps because of the "Jarvis report" and its ramifications—the agency had a change of heart. In November 1998, the minutes for the park's SRC meeting noted that Jack Hession of the Sierra Club "also felt ... that RZC [resident zone community] boundaries should be established. Again, NPS disagrees with that." [95]

Although most parties agreed that the idea of establishing boundaries for existing resident-zone communities should be dropped, most likewise agreed that it was necessary to establish boundaries as a prerequisite for the establishment of any new resident zone communities. SRC members recognized that doing so was a political necessity; as park resource manager Russell Galipeau noted,

> to establish these communities as RZC but without boundaries ... would be rejected by the environmental community. [It] is our preference that each community would have up to one year from the date of establishment to recommend to the Superintendent the boundaries of their communities; if they do not do it within a year then would default to the census of 1990 for the designated areas. [96]

One high-profile issue related to resident zone boundaries that has been previously referred to (see Section C, above, and Chapter 6) was the proposal, by two northwestern Alaska SRCs, to have a single large residence zone that encompassed all land within the NANA Regional Corporation boundaries. This proposal had been discussed at a joint meeting of the Cape Krusenstern and Kobuk Valley SRCs as far back as February 1985; a proposal had been prepared for submission to the Interior Secretary in January 1986; and the Interior Secretary had actually been considering such a resolution since August 1993. But park and regional staff had differed on how a response letter should be worded, and the continuing standoff had resulted in a June 1994 letter from the two SRC chairs that they would cease meeting until the Interior Secretary had sent them a "formal response to the recommendations contained in the proposed hunting plan." The chairs' strong stand resulted in a predictable new round of draft responses by both park and regional officials, and by February 1995 Regional Director Robert Barbee had approved a draft response that was forwarded on to Washington. But no answer from Washington (from either the NPS or the Interior Secretary's office) was immediately forthcoming, and the lack of apparent activity made it appear, to SRC officials at least, that the agency was in no rush to respond to the August 1993 hunting plan.

During the same period in which the "Jarvis report" was approved and renewed exposure was given to the "Draft Review of Subsistence Law and NPS Regulations," Northwest Alaska Areas personnel reasserted their previously-held position relative to the Cape Krusenstern/Kobuk Valley SRCs' hunting plan. In mid-April 1996, they conducted their own assessment of the "Draft Review" package, and they concluded, in part, that

> The resident zone for Kobuk Valley National Park and for Cape Krusenstern National Monument is a single area (coinciding with the NANA Regional Corporation boundaries). The people of the Northwest Arctic Region consider themselves a cohesive social and cultural unit and have traditionally hunted throughout the area without regard to jurisdictional boundaries. The large single area resident zone best represents the traditional and continuing hunting patterns of the people of the area. [97]

A more important factor in breaking the logjam, however, was a July 1996 fact-finding trip to Kotzebue taken by Deborah Williams, the Interior Department's Alaska representative, and by Deputy Interior Secretary John Garamendi. During that trip, Northwest Areas Superintendent Bob Gerhard mentioned the issue to Williams and Garamendi. Williams, dismayed at the standoff, facilitated a meeting of park staff, regional office staff and a Secretary's representative that finally brought action. Interior Department officials issued a response letter to the SRCs' hunting plan on September 25, 1996. On the resident-zone boundary issue, they concluded that the Commissions' recommendations were "worthy of further investigation." As a result, they demanded that the NPS, within a year, complete a report assessing the subsistence and environmental impacts of the SRCs' recommendation. [98] By early 1999, park staff had begun work on both a "Section 810" report on the topic and an accompanying environmental assessment. But the SRCs' seven-year hiatus delayed resolution of the issue, and efforts to work out a broad agreement have not yet been consummated. [99]

Recognizing that the key criterion for defining a resident zone community has been "significant concentrations" of subsistence users, several efforts were made during the 1990s to more specifically define the term. In 1992, the Interior Secretary's office informed one SRC that the "significant concentrations" requirement had to be verified before any new resident zone communities could be considered. At Gates of the Arctic, the SRC was asked to help on the definition, and in July 1993, subsistence coordinator Steve Ulvi cautiously stated, "Some have suggested that 'significant concentrations' may mean at least 51% of the people within a community." [100] During the winter of 1996-1997, the term was debated again as part of the public process that resulted in the August 1997 issues paper; some felt that 51% of the population constituted a "significant concentration," while others argued that a more vaguely-defined "cultural vitality" (or "subsistence character") determined eligibility as a resident zone community. The final issues paper reflected both viewpoints. [101]



Lake Clark National Park SRC Meeting, February 2001. Those in attendance include (left to right) Chief Ranger Lee Fink (NPS), SRC chair Glen Alsworth (from Port Alsworth), and members Andrew Balluta (Newhalen), Lary Hill (Iliamna), Howard Bowman (Lake

Clark), Bill Trefon, Sr. (Nondalton), and Melvin Trefon (Nondalton). Balluta also serves on the Bristol Bay Subsistence Regional Advisory Council. NPS (LACL), photo by Karen Stickman

3. The roster regulations idea. A third major issue related to eligibility was whether resident-zone communities would opt for so-called "roster regulations" (a community-wide permit system) in order to protect subsistence opportunities for long-term community residents. As noted in Chapter 6, both the Lake Clark and Denali SRCs had advanced such an idea because members were concerned about an influx of residents due to large-scale development projects, and the Interior Department in its 1988 responses had certified the concept's validity. Clouding the picture, however, was the State of Alaska's reversal of its previous position approving the idea; in addition, the Denali SRC—no longer worried about impending development in the Cantwell area—was now less than enthusiastic about pushing the idea for that community.

During the 1990s, the roster regulations issue was considered by four SRCs, two of which had been active on the issue during the previous decade. At Denali and Lake Clark, the SRCs hoped that the Interior Department would follow its 1988 approval of the roster regulations concept by initiating a rulemaking process. That process, however, did not begin until July 1991, when the NPS's regional director submitted a proposed rule to Washington. That rule, revised by the regional office in October, was reviewed by the NPS's Solicitor's office in February 1992. The rulemaking, however, was halted for the time being because in January 1992, President Bush issued a broad moratorium on the issuance of new government regulations. Glen Alsworth, who was apprised of the moratorium later that year, questioned the "apparent inaction of the Department of the Interior in promulgating regulations;" further, he stated that the Lake Clark SRC "does not feel that the presidential moratorium should have any effect upon this particular action" because "it does not stand to effect the economy." But Washington-based NPS official John H. Davis begged to differ; he replied that "While the proposed rule may not appear to have a significant effect on the economy, the moratorium is more inclusive" and that "a strict reading of the criteria would indicate that the proposed rule could not be exempted." [102]

Just a month after Davis's letter, President Bush's defeat in the 1992 general election campaign promised new leadership in Washington. The change of leaders, however, brought a temporary slowdown in administrative machinery, and the lack of movement on the roster regulations issue forced Morehead, in July 1993, to once again write to Washington "to reemphasize the need for publication of the Alaska Region's proposed regulation." "Both the NPS in Alaska and the Lake Clark and Denali SRCs," he wrote, "have been distressed by the delay in publication of this regulatory package. This delay has seriously affected the credibility of the NPS" because of the failure of the SRCs' program recommendations "to be 'promptly' implemented." Morehead noted that "a delay of 5 years in implementing mandated departmental action seems unreasonable. We hope," however, "that the new administration will make the publication of this proposed regulation a priority." [103] The Washington office, however, did not move on the issue, and in February 1995—more than a year and a half after Morehead's second reminder letter—an obviously frustrated Florence Collins complained to Secretary Babbitt about the department's inaction. She noted, with understated emphasis, that "it has been seven years since we submitted our proposal and nearly as many years since the proposed Roster Regulations have been submitted to the Department. [The SRC] feels this delay is inappropriate," and "we respectfully request" that some action take place on the issue by July 1. [104] Given such a reasonable plea from one of Alaska's most conscientious subsistence representatives, NPS officials scrambled to provide some answers; in April, Regional Director Barbee noted that "we anticipate a proposed rule to be published in the Federal Register in the next few months," and in June Barbee informed her that "we

continue to support the proposal" and "we are hopeful for further action by July 1, as you have requested." [105] But Alaskan officials, to their chagrin, soon learned that a key Washington official "may be willing to move [the roster regulation] along, but it doesn't appear to be a high priority...." Given that state of affairs and other complications, the proposal continued to languish in Washington, and in mid-July 1995, Barbee was again forced to note that "DOI continues to review the proposal and has not yet requested publication in the Federal Register which would start formal rulemaking." [106]

This state of affairs remained until August 1996, when the Denali SRC was asked to comment on the "Draft Review of Subsistence Law and NPS Regulations." During the SRC's section-by-section review of that document, it reiterated its general support for a roster regulation, but it further avoided a prickly issue by stating that "we do not want to be the responsible party for picking the roster list members. The Commission as a group is not familiar enough with all the individuals within the resident zone populations to be able to fairly identify all eligible users." [107] When the Lake Clark SRC met in February 1998, its members discussed the proposed roster regulations, and comments from members appeared to be similar to those stated, eighteen months earlier, by the Denali SRC. Based on such qualified support—and the lack of any population increase that threatened the area's subsistence resources—the Lake Clark SRC moved to rescind the original set of proposed regulations. Soon afterward, the NPS withdrew the rule from consideration based on a perception that the Lake Clark and Denali SRCs no longer supported such an action. [108]

By mid-1998, therefore, the long-discussed idea of a roster regulation appeared to be dead. But an action from an unexpected source —the Aniakchak National Monument SRC—soon revived the idea. During the early 1990s, this Aniakchak SRC had wrestled with the roster regulations issue, and in a March 1992 hunting plan recommendation it had concluded that it "supports the development of a ... roster regulation." The Commission admitted that it had no interest in "changing resident zone status right now," but it did want "the opportunity to do so [later] if needed with the option of using a roster system." This recommendation was duly forwarded to others for their comment, but due to the Commission's inability to muster a quorum for its meetings, the recommendation could not be forwarded to the Interior Secretary until October 1998. The official response, received by the SRC a month later, stated that the NPS promised to "re-submit a draft proposed rule for a roster eligibility system." As a result of that submission, the roster regulations idea is again alive and well. At present, however, the Interior Department has not yet approved a draft rule for publication as a proposed rulemaking. [109]

Communities in one other SRC—Gates of the Arctic—have toyed with the idea of a roster regulation. As noted above (Section F), the NPS was involved in a land use issue in the Anaktuvuk Pass area that began in 1983 and continued for more than a decade. Between 1989 and 1991, the NPS compiled a Legislative Environmental Impact Statement (LEIS) on ATV use in the Anaktuvuk Pass area, and options that were considered in the draft and final versions of the LEIS called for the replacement of the Anaktuvuk Pass resident zone with a roster regulation. In light of that process, the park's SRC passed a May 1991 resolution that stated, in part,



> 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



Woman flensing a sheefsh with an ulu at the water's edge, June 1974. NPS (ATF, Box 10), photo 2341-3, by Robert Belous

> 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 a year-round road or significant changes in the local economy to the degree in which subsistence no longer comprises a major component. Because of its unique history, circumstances, and the stated desires of the representatives of the community of Anaktuvuk Pass, the Commission supports the elimination of the resident zone and the development of a roster system, subject to Commission review, as described in the proposed Agreement among the National Park Service, the Nunamiut Corporation and the City of Anaktuvuk Pass. [110]

But changes in the "proposed Agreement" in the next few months removed the need to eliminate the Anaktuvuk Pass resident zone, and by February 1992, the resolution that was sent to the Interior Secretary made no mention of a roster regulation. Similarly, SRC minutes beginning in early 1990 show that the residents of Wiseman seriously weighed the idea of establishing a roster regulation for their community. But in August 1991, the Wiseman Community Association held a public meeting and decided "that we ... want to retain our Resident Zone Status." Since that time the issue has not again surfaced, either in Wiseman or in any of Gates of the Arctic's other resident zone communities. [111]

4. Residency requirements. A fourth eligibility issue that subsistence resource commissions debated was, how long does someone need to live in a resident zone community in order to harvest subsistence resources? The subsistence regulations clearly state that subsistence harvests would be open to those who lived in resident zone communities (or those outside of such communities who qualified for 13.44 permits). Beyond that requirement, the regulations are relatively lenient; they note that "This concept [of a local rural resident] does not impose a durational residency requirement." [112]

Despite that interpretation, various SRCs have broached the idea of a minimum period of residency in order to protect area subsistence resources. In May 1988, it may be recalled, the Interior Secretary had disallowed the SRC's attempt to impose a 12-month minimum residency, citing the 1981 regulation as the reason for doing so. They continued to retain such a stance until November 1989, but the state—which managed subsistence at the time—also rejected the idea because it was inconsistent with state statutes. Given that advice, at least one Commission member pressed for a recommendation "that emphasizes the need for a [resident] state hunting license" (which required a 12-month residency in the state), but the SRC's 1991-1992 recommendations omitted any mention of a residency requirement. [113]

The issue lay dormant for the next several years, but in March 1997 the Wrangell-St. Elias SRC resurrected it as part of its review of the draft issues paper. The SRC concluded that

> an individual should be required to live in a resident zone community for at least one year before becoming eligible for subsistence uses within the national park. There was concern that people are establishing "instant eligibility" with no intent of living in the community on a permanent basis. The SRC felt that a minimum residency requirement of one year would be sufficient. [114]

At its next meeting, in November 1997, the Wrangell-St. Elias SRC passed a draft hunting plan recommendation calling for a one-year residency requirement. The recommendation made an exception for students and the military; these individuals would be allowed to temporarily leave the area and retain their subsistence eligibility if they had previously established residency. [115] This vote was followed, just ten days later, with a similar draft

recommendation (for a "minimum residency requirement" of undetermined length) from the Aniakchak SRC. Almost a year later, at an Anchorage meeting, the SRC chairs discussed these two recommendations, and in October 1999, the issue arose again. A key question emanating from the discussions was: Inasmuch as resident hunting licenses were required of all subsistence hunters, was a one-year residency requirement necessary? Since that time, the various SRCs have shown a diversity of opinion on the topic, but no move has yet been made by those who favor a residency requirement to suggest new or modified regulations. [116]

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Alaska Subsistence

A National Park Service Management History

Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

H. SRC Recommendations: Access Issues

During the 1980s, most of the state's SRCs were concerned about questions of subsistence access to the various park units; NPS officials endeavored to explain access-related laws and regulations, and various SRCs passed recommendations intended to either clarify subsistence legalities or lodge a clear statement of intent regarding the legitimacy of existing access methods. Conflict erupted between the NPS and the SRCs on numerous access questions. By the end of the decade, most of the state's SRCs—though they may or may not have been pleased with how the Interior Department and NPS interpreted the regulations—at least had a clear idea on what those regulations were.

Access questions remained prominent through most of the 1990s. These questions took several forms, including 1) protests against the NPS's subsistence aircraft access policies, 2) protests against the agency's all-terrain vehicle policies, and 3) attempts, by both SRC members and NPS staff, to study the legality and methodology of access into Alaska's park units.

As ANILCA's legislative history and the final 1981 regulations had made clear, aircraft were to be used only sparingly to access subsistence resources in the Alaskan parks. In only two cases—at Anaktuvuk Pass (in Gates of the Arctic National Park) and on the Malaspina Forelands (in Wrangell-St. Elias National Park)—were aircraft to be considered a "traditional" (and thus legitimate) form of subsistence access. Furthermore, NPS officials ruled that it was illegal for subsistence hunters to fly to an area just outside of a national park in order to harvest wildlife inside a park's borders. These regulations and interpretations angered many subsistence users because, in their estimation, the use of aircraft was the primary way to access subsistence resources in remote areas.

These protests continued. Between 1988 and 1990, for example, several Gates of the Arctic airplane owners—one an SRC member—publicly stated their opposition to the agency's subsistence access policy. [117] Several years later, a Glennallen resident told the Wrangell-St Elias superintendent, "you realize that traditional access to most areas in the park has been by aircraft. In fact, in many cases [it] is the only reasonable access." At Wrangell-St. Elias, feelings about the NPS's access policy—first clarified in 1985—continued to run so strong that in 1997, the park SRC urged the agency to "change its policy to allow subsistence users to fly to the preserve, to private lands within the park or to land adjacent to [the] park and then walk into the park to subsistence hunt." And at Aniakchak—as at Wrangell-St. Elias—SRC members were disgruntled with the Interior Secretary's 1988 refusal to recognize aircraft access as "traditional." The Aniakchak SRC, however, decided in 1992 "not to pursue [the issue of] airplane access at this time ... there were not very good places to land within the monument anyway." [118]

NPS staff and SRC members also debated a closely related aviation access issue; namely, can someone living in a park's resident zone community fly to another resident zone community for subsistence hunting purposes? Back in 1987, the Gates of the Arctic SRC had recommended that the subsistence regulations "not be interpreted by the NPS as restricting in any way [the] travel of local rural residents on scheduled air carriers between villages in or near the park." The Interior Department, however, skeptically noted that such an activity "would presumably take a person out of his community's traditional use zone and into that of another. This could prove detrimental to the satisfaction of subsistence needs of local residents." The recommendation was denied. [119] The SRC fully recognized the NPS's rationale as it pertained to flying to the boundary of a national park for subsistence purposes, but it argued that flying between resident zone communities—for whatever reason—did not fit that criteria. At several meetings during 1989 and 1990, the SRC and agency staff wrestled with the problem, but the SRC, holding fast to its opinion, stubbornly insisted that "the NPS has no authority to restrict air access between resident zone communities," and in both its draft (1991) and final (1992) recommendations it noted that "travel between resident zones located outside the park by eligible users should not be considered as accessing the park by aircraft. NPS has no jurisdiction over lands outside the park and applying Section 13.45 to such lands is clearly outside the scope of their authority." The Interior Department, however, continued to take a hard line; using language almost identical to that employed in 1988, the Department refused to implement the SRC's recommendation. [120] The conflict, to a large extent, was reflective of the long-running difference of opinion between the agency and subsistence users over traditional use zones (see Chapter 6 and Section I); many NPS officials felt that each resident zone community had its own, geographically-limited traditional use zone, while "some commission members felt that resident zone subsistence users should have customary and traditional use in all of Gates of the Arctic National Park." [121]

In a few cases, the NPS's access rules forced subsistence users who had both a winter home and summertime hunting cabin to choose a "primary, permanent home." Jeff Poor, for example, maintained one residence in a resident zone community (Bettles) and another in a remote area (Iniakuk Lake). Poor typically flew his plane from Bettles to Iniakuk Lake, and from there he entered Gates of the Arctic National Park via snowmachine and ran a trap line. The NPS had no problem with his dual residency, with his snowmachine activities or with his trap line operation; it was, however, concerned about his using the Iniakuk Lake cabin as a temporary residence prior to trapping operations. If he chose Bettles as his permanent residence, he was free to "engage in subsistence activities within the park" but he could not fly to his cabin prior to entering the park. If he chose Iniakuk Lake as his primary residence, he would also be free to harvest the park's subsistence resources and would similarly be free to fly in and out of his cabin anytime he chose; but if he did so, he would need to obtain a subsistence permit (13.44 permit). Given those options, Poor chose the latter course, and in late 1993 he became the holder of a subsistence permit. [122]

A second access issue revolved around the NPS's surface transportation policies, specifically as they related to all-terrain vehicle (ATV) use. During the 1980s the NPS had let it be known—based on its observation of existing conditions—that ATV use would be tacitly condoned for subsistence-access purposes at Cape Krusenstern National Monument, Lake Clark National Park, and Wrangell-St. Elias National Park, so long as subsistence users remained on existing routes and ATV use did not unduly damage park resources (see Chapter 6). At the other parks, the agency declared that ATV use was not traditional and was therefore prohibited.



Russell Berry was the superintendent of Denali National Park and Preserve from 1989 to 1994. Beginning in 1992, Berry and his subsistence specialist, Hollis Twitchell, commenced a process that re-evaluated subsistence ATV use patterns in the Cantwell area. NPS (AKSO)

At parks where ATV use was prohibited, subsistence users and park staff reacted in widely divergent ways to the agency's dictums. At Gates of the Arctic, for example, the 1983 Chandler Lake land agreement in the Anaktuvuk Pass area (see Chapter 6) meant that ATV use, previously confined to Native- and state-owned lands within park boundaries, was now taking place on NPS lands. But NPS officials felt so strongly about prohibiting ATV use in the park that they initiated a series of discussions that culminated, more than a decade later, in the Congressional passage of a four-way land swap. At Aniakchak, the monument's SRC reacted to the Interior Secretary's prohibition against ATV use by deciding "not to pursue [the issue of] ATV access at this time." [123] At Cape Krusenstern, NPS officials in 1992 took a narrow view and stated that ATVs were "currently not allowed," but in language reflective of the park's general management plan, the park superintendent told SRC members that the agency "was interested and ready to work with [them] to identify trails and access routes." The SRC, in response, took a bold stand; it recommended to the Interior Secretary "that traditional use of ATVs ... be allowed in the Monument for subsistence purposes and to access inholdings." But the Secretary responded that "there has been no evidence presented to indicate that subsistence use of ORVs in CAKR is a traditional means of access for subsistence," and he thus vetoed the SRC's recommendation. [124]

At Denali, new information about ATV use resulted in a reassessment of the agency's access rules. In the newly-expanded portions of Denali National Park, it may be recalled (from Chapter 6) that ATV use was prohibited because, as noted in the park's GMP, "existing information indicates that specific ORV use has not regularly been used for subsistence purposes." Hollis Twitchell, the newly-hired park subsistence coordinator, reiterated the park's stance at a 1992 SRC meeting held in Cantwell. But as the minutes noted, "some hunters were not aware of this prohibition," and two months later, Twitchell explained the park's position once again to southside subsistence users. [125] Cantwell resident Vernon J. Carlson responded to the news by writing a letter to Superintendent Russell Berry; that letter described past ATV uses in the area and included affidavits from eight local residents detailing similar activities. Berry, who had long known that subsistence hunting had been taking place in park areas adjacent to Cantwell area, expressed a new willingness to learn more about ATV use patterns. The park scheduled an open house in Cantwell to solicit information on the customary and traditional uses of ATV use; that meeting, held on November 3, 1993, revealed that as early as the 1940s, one or more local residents had taken an ATV into the Windy Creek drainage of the "old park." In addition, several areas in the not-yet-designated "new park"—Bull River, Cantwell Creek, and Dunkle Hills—had

witnessed ATV use for mining access. [126]

Steve Martin, who replaced Berry as park superintendent during the winter of 1994-95, showed an immediate interest in resolving the situation. During the summer of 1995, therefore, he met with Twitchell and Carlson and visited several of the Cantwell residents' better-traveled subsistence routes; during that inspection, he was able to witness both the long history of use and the relative lack of environmental degradation that resulted from that use. Given that situation, he let it be known, on an informal basis, that the NPS had few qualms with a continuation of existing route usage in various "new park" drainages west of Cantwell. [127] The SRC, not surprisingly, welcomed this apparent change of stance; in August 1996, it reiterated that "people in the Cantwell resident zone have used ATVs traditionally," and members unanimously passed a motion stating that "Access [to the park] should be allowed at the same level as 1980, with reasonable allowances for restrictions to preserve the environment." The following year, the NPS began "the process of preparing an environmental assessment on subsistence ORV use within the park." [128] That study has not yet been completed.

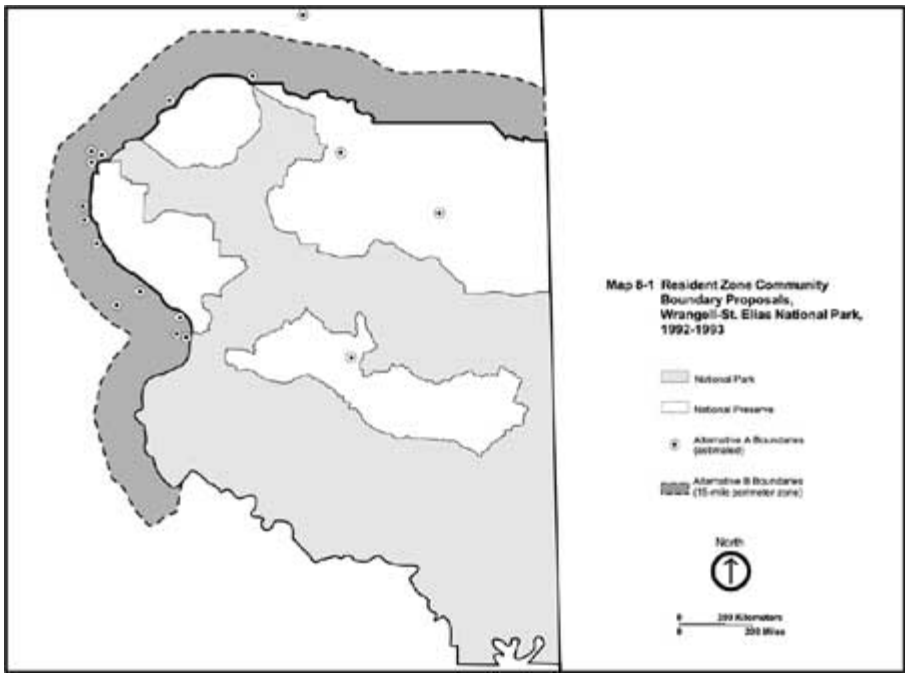


Steve Martin, as the Gates of the Arctic superintendent (1993-94), backed user concerns in the traditional use zone issue; later, as the Denali superintendent (1994-2002), he worked to resolve the issue of subsistence ATV use near Cantwell. NPS (AKSO)

At parks in which historical access patterns are not well known, both park staff and SRC members have sought to clarify such uses by requesting funding for further research on the subject. At various times during the 1990s, several Alaska parks have requested subsistence access studies. At Aniakchak National Monument, the SRC in 1992 requested that the NPS "conduct a study on the modes of transportation, including aircraft, and routes and areas of access used for subsistence by area residents prior to ... 1980." At Cape Krusenstern, interest in an access study first surfaced in 1991, and in 1993 the monument's SRC formally asked the NPS to "identify and study conflicts between local residents who are engaged in subsistence hunting ... and other persons using aircraft in the same areas." The Interior Department responded to both recommendations by urging the NPS to undertake these studies. Neither study, however, has yet been funded. [129]

At Wrangell-St. Elias, the SRC's December 1991 passage of a hunting plan recommendation advocating an access study has engendered a complicated series of events. The Interior Secretary's reply, in July 1992, noted that "the NPS is in the process of incorporating, within the [park's] Resource Management Plan, a study of subsistence access and use areas within the park." [130] And indeed, by the following August the final park RMP featured a study that was intended "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." The park, however, made no immediate move to fund the study, and in December 1993 the state's Department of Fish and Game had told the NPS that it was initiating its own study of subsistence and traditional access in the park and preserve. [131] Shortly after it began its study, ADF&G staff asked their NPS counterparts to examine pertinent records; the NPS granted that request, though with considerable caution. The park's SRC, upon hearing that the ADF&G's effort was faltering due to a funding shortfall, recommended that the NPS "contribut[e] staff time and/or funding toward its completion." But the NPS replied that "the anticipated 1995 subsistence research budget will be needed for the completion of ongoing

projects." In November 1995, the state completed a pilot "study of traditional access used prior to ... 1980." The state, by this time, had identified some 1,400 miles of historical routes (so-called RS 2477 routes) within the national park. NPS officials worried that if federal regulations were approved sanctioning the state's claims, the routes would then become state rights-of-way. The issue, however, was then tied up in the courts. At the time of this writing it remains so, and no resolution between the state and federal governments is expected in the foreseeable future. The NPS, for its part, has not yet been able to secure funding for its own subsistence access study. [132]



Map 8-1. Resident Zone Community Boundary Proposals, Wrangell-St. Elias National Park, 1992-1993.
(click on image for an enlargement in a new window)

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Alaska Subsistence

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Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

I. A Renewed Discussion of Traditional Use Zones

As noted in ANILCA, five Alaska park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali additions—contained language stating that subsistence uses would take place "where such uses are traditional, in accordance with the provisions of Title VIII." As noted in Chapter 6, the NPS asked the various SRCs to help delineate traditional use zone boundaries, but the SRCs—despite considerable prodding from NPS officials—were reluctant to make such determinations. By the end of the 1980s, most of the state's SRCs had mulled over the issue; the Gates of the Arctic SRC had spent considerable time on the matter. The result was an awkward standoff, but none had seriously considered (let alone recommended) any traditional use zones.

This pattern, of NPS encouragement and SRC recalcitrance, continued on into the early 1990s. At Wrangell-St. Elias (where NPS staff, during the mid-1980s, had stated that the imposition of traditional use zones "would be an administrative nightmare") and at Lake Clark, neither government officials nor SRC members showed any particular interest in changing the existing state of affairs. And at both Aniakchak and Denali, the only opinion expressed by SRC members, predictably, was that the entire park unit should be considered a traditional use area for everyone living in the various resident zone communities. Even the Cape Krusenstern SRC—where the "where traditional" clause did not apply—got into the act; it too passed a hunting plan statement "recommend[ing] that the entire Monument be classified as a traditional use area." [133]

Most of the discussion pertaining to this topic during the 1990s was directed to Gates of the Arctic National Park, where attention had also been focused during the 1980s. In May 1988, it may be recalled, the Interior Secretary had responded the SRC's May 1987 recommendation with a strongly-worded denial: the recommendation "will not be implemented because [it] seems to imply that the entire park is an area of traditional use. Congress was clear in its intent to have the Commissions and NPS identify traditional use areas and to have some areas of the park remain, for the most part, unhunted. ... We believe that the Commission ... should analyze the patterns of subsistence use following establishment of each community and develop a definition of traditional subsistence areas by community." [134]

This difference of opinion between the SRC and the federal government continued for the next several years. After learning that the Interior Secretary had rejected its recommendation, the SRC mulled over the issue for awhile; then, in November 1990, it once again decided "that the entire park be generally classified as a traditional use area," and it further noted that its conclusion was "consistent with, if not compelled by, the intent of Title VIII." In February 1992, that recommendation—with an added caveat that "when a wild, renewable resource must be protected in a specific area, the NPS will take appropriate steps to protect [it]"—was

forwarded once again to the Interior Secretary. The Secretary, however, was no more favorably disposed to this recommendation than he had been to the SRC's previous (1987) proposal. The Secretary further noted that the NPS "was in the process of incorporating, within the Resource Management Plan, a study of traditional use areas for designated resident zone communities. ... Based upon the data presented in the study, the NPS will initiate a process to identify traditional subsistence hunting use areas." The agency promised to "consult with and involve the Commission" in this process. Even so, its decision to initiate such a study and, by implication, to identify park areas where subsistence hunting might not be allowed, was clearly a change in tactics—and one that threatened to undermine the SRC's role in the process. [135]

The SRC, unbowed by the Secretary's letter, fought back. At its October 1993 meeting, it passed a new traditional use area recommendation because it felt "compelled to defend their definition of 'traditional use.'" Citing "elders of the communities within the Gates of the Arctic resident zone" as well as the 1982 publication, *Tracks in the Wildland*, the park SRC again resolved to "clearly define ... the entire 8.4 million acres of the park/preserve as the 'traditional use area.'" [136] This proposal (Recommendation 9) was sent to the Interior Secretary on April 11, 1994; shortly afterward, SRC officials learned that the NPS—in conformance to the Interior Secretary's instructions—had indeed included a proposal for a traditional use zone study (S102) in the park's still-developing Resource Management Plan. [137]

By this time, however, various NPS officials were beginning to rethink their long-held views on subsistence policy. The various park superintendents, for example had by this time held a subsistence management conference; the park had a new superintendent, Steve Martin, who had not previously worked in Alaska; and Martin, moreover, was a key member of the ad hoc group of NPS officials that spent much of the spring and summer of 1994 conducting a thorough review of subsistence laws and regulations. Martin, analyzing the traditional use zone issue in May 1994, sent Waller a draft response note which said, in part, that "The Gates of the Arctic staff has reviewed the substantial information available on this issue. ... Initial findings support the contention that nearly all of the 8.4 million acre unit has been used for subsistence activities at least since the contact period in the mid to late 1800s by those residing in the area of the park." Martin urged that the NPS "define the terms and legislative guidance pertinent to this particular issue to ensure that research, analysis, and designation of traditional use areas is consistent for the five ['where traditional'] park areas," and he concluded that various "key criteria ... must be identified [and] be carefully considered before deciding whether each community must have exclusive areas delineated." And two months later, he prepared a five-page briefing statement on the topic; most of the statement justified his conclusion that "the Subsistence Resource Commission proposition ... is reasonable and acceptable." Key to his argument were two statements that were gleaned directly from the *Congressional Record*:

> 1) if the subsistence zone concept is to be applied to any park areas, fundamental fairness seems to require that the designation and boundaries be made by the subsistence resource commissions ... rather than park planners and researchers, and 2) that if there is any doubt as to whether subsistence hunting should be permitted within a particular area, that the decision be made on the basis that subsistence hunting should be permitted rather than restricted. [138]

Martin's views, not surprisingly, were not shared by everyone. Ray Bane, an NPS subsistence specialist, countered that "the NPS must constructively work with local residents to identify use areas and to devise a flexible and effective system for accommodating traditional subsistence uses," while Jack Hession of the Sierra Club, who defined a "traditional national park" as one that was "closed to the consumptive use of wildlife," chided the NPS for its 13°-

year delay "in establishing the five new traditional parks envisioned by Congress." [139] Faced with such a strong diversity of opinion, the agency's new regional director, Robert Barbee, approved of a draft response to the SRC's recommendation saying only that "the application of [the 'where traditional'] mandate is being examined by the Department. At the conclusion of this review, the Secretary will address the Commission's concerns regarding Recommendation 9." But perhaps because the NPS made no move to finalize its draft review of subsistence policies, the Interior Secretary did not immediately respond to the SRC's recommendation. The SRC waited until May 1996—two years after its initial submittal—before it publicly questioned the delay. Regional Director Barbee, in response, politely noted that the Secretary was "currently reviewing all the comments/suggestions received." Otherwise, however, no official response was forthcoming. [140]



Caribou herd crossing a stream in northwestern Alaska. NPS (ATF, Box 13), photo #69

NPS staff addressed the traditional use zone issue, along with a number of other subsistence issues, during the review and comment period that preceded the completion of the NPS's August 1997 subsistence issues paper. Gates of the Arctic and Denali were the only SRCs that commented on the issue; both, predictably, stated that the whole park area was a traditional use zone. The NPS, in its final document, hedged on the issue; it noted that Gates of the Arctic's staff was "currently responding" to the park SRC's recommendation and that it had not yet been determined whether the Federal Subsistence Board's "customary and traditional" determinations would be used as a basis for defining traditional use areas. [141]

Shortly after the issues paper was completed, however, the agency's position as it related to traditional use zones became slightly more clear. In November 1998, for example, Wrangell-St. Elias Superintendent Jon Jarvis stated at an SRC meeting that

> Jack Hession [of the Sierra Club] has been saying ... that the NPS has the responsibility to zone the park into [a] traditional park [where all hunting is prohibited] and areas that subsistence could take place. We disagree with that. Per the recommendations from [the SRC], NPS experience, and all the C&T recommendations, is that the whole park should be used for subsistence.

A similar point of view emerged at Aniakchak, where a November 1998 response to an SRC recommendation allowed qualified subsistence users to hunt and trap throughout the

monument. [142]

At Gates of the Arctic, additional information relative to this issue was gathered beginning in the winter of 1997-98, when the NPS, at long last, began work on a traditional subsistence use area analysis. That study, entitled *Traditional Subsistence Use Areas: Information Necessary for Making a Determination for Gates of the Arctic National Park*, was presented in draft form to the SRC at its April 20-21, 1999 meeting. But the SRC, upon receiving the report, decided that the status quo was working well; it therefore passed a resolution stating that a determination of traditional use areas is unnecessary as a management action. NPS staff, for their part, also recognized the wisdom in opting not to designate traditional use zones. [143]

Three weeks after the SRC meeting, Jack Hession of the Sierra Club pressed the agency to designate these zones. A long letter to Regional Director Robert Barbee served as a petition on the topic under the Administrative Procedures Act, and Hession later stressed that "such a zoning effort is required, not discretionary." Barbee, however, disagreed. In a July 8, 1999 response, he reiterated that the Gates of the Arctic SRC "currently does not wish to work further on this issue ... and there is no immediate need to make formal designations. ... We do not agree with your conclusion," he continued, "that NPS regulations mandate formal designations of traditional use areas. ... We do not believe that there is a need to make such [traditional use zone] designations at this time, but will certainly reconsider this decision if in our judgment it becomes necessary to do so in the future." A recently completed subsistence management plan reflects the language of Barbee's July 1999 letter. The plan notes that "Title 36, Part 13, Code of Federal Regulations, Section 13.41 gives the NPS the option of designating areas 'where such uses are traditional' as a management tool, if necessary, but it remains an option and not a fundamental directive of the law or the regulation itself." [144]

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Chapter 8:
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J. Wildlife Management Issues

As noted in Chapter 6, the various park SRCs during the 1980s played a minimal role in making wildlife-allocation decisions. When the SRCs met for the first time in the spring of 1984, NPS officials told several SRCs that they could either recommend changes to the state subsistence hunting regulations (on seasons and bag limits or methods and means of harvesting), or they could comment on wildlife management proposals affecting the park areas. But as the decade wore on, the lack of support that the NPS provided to the SRCs made it difficult to have members provide regular advice on wildlife allocation questions, and when the Gates of the Arctic SRC, in 1986, recommended that it be a "sounding board" for NPS recommendations and proposals, the Interior Secretary replied that it was "not practicable" to use the Commission in that capacity. Perhaps as a result, almost the only specific wildlife management actions that SRCs made during the 1980s were occasional protests against the Alaska Game Board's negative C&T determinations. (As noted in Chapter 6, above, and in Section M, below, Denali was the only SRC to file any such protests.) During this period, most specific wildlife proposals that affected NPS lands were either proposed or supported by agency officials.



Raymond Paneak, an Anaktuvuk Pass resident, chaired the Gates of the Arctic Subsistence Resource Commission from 1989 to 1998. NPS (GAAR)

A meeting of the SRC chairs in December 1989, however, apparently resulted in a change of attitudeby both subsistence users and federal regulators. Just a month later, a Gates of the Arctic SRC member asked chairman Raymond Paneak "if there was a consensus on what is a hunting plan" and Paneak, who had discussed the issue at the chairs' meeting, replied that "there was no clear answer." Members were also well aware that their recent hunting plan recommendations to the Interior Secretary had taken fourteen months for a response. On the heels of those discussions, member Bill Fickus recommended that the subsistence moose hunt in the Wiseman area be moved from December to November. Superintendent Roger Siglin, in response, perhaps surprised those in attendance by saying he "thought that such a suggestion may be more readily responded to by the [state] Game Board rather than being addressed in the hunting plan," and the SRC decided to assemble information on the proposal for the upcoming Game Board meeting. [145]

The federal assumption of authority over subsistence wildlife management on federal lands, which took place on

July 1, 1990, had the practical effect of shifting subsistence decision making from the state Game Board to the newly-created Federal Subsistence Board. Before long, several SRCs considered wildlife management issues. At a May 1991 SRC meeting, Gates of the Arctic Superintendent Siglin encouraged his park's SRC to become more involved:

> The commissions to date have ... talked very little about hunting seasons and bag limits or means and methods of take of wildlife. Roger stated that he thought it was particularly appropriate [to get more involved] now that the federal government is managing subsistence on federal lands. ... The commission needs to start thinking about a broader ranger of subsistence management issues. ... He also stated that he strongly encourages the Commission to broaden their horizons a little bit and think about other things that should be a legitimate part of a hunting plan or recommendations outside the hunting plan.

Later at the same meeting, Stan Leaphart, head of the Citizens' Advisory Commission on Federal Areas, agreed with Siglin but became more specific. As paraphrased, he noted that the Park Service and the Federal Subsistence Board had an opportunity to outline a role for the Subsistence Resource Commission in the review and development of the annually-revised regulations. Leaphart thought that it would be appropriate to draw a more formal mechanism for putting the proposed regulations in front of the Subsistence Resource Commission so that they could respond to them in a timely fashion. He suggested that the commission make such a recommendation to the Secretary.

Immediately afterward, NPS subsistence specialist Clarence Summers chimed in; he added that "nothing prevents the subsistence resource commission from making recommendations on methods and means, seasons and bag limits." Given that newly-conferred role, the SRC quickly generated three resolutions (a moose proposal and two brown bear proposals) for submittal to the Federal Subsistence Board and approved all three by unanimous votes. [146] To be valid, the proposals needed to be presented to the board by May 16; NPS staff, however, let the proposal "slip through the cracks." The error was not discovered until SRC members asked about the proposals at the September 1991 SRC meeting. SRC members, upon hearing of the snafu, merely asked the NPS Subsistence Coordinator to "make sure that commission recommendations get to the board." Five months later, the SRC passed a resolution in which it expressed its approval of four different board proposals. [147]

Other SRCs got involved, too. In November 1991, Wrangell-St. Elias SRC member John Vale asked Summers, "Can we make proposals to the Federal Subsistence Board about seasons and bag limits?" Summers replied that "If the SRC feels it is important to make proposals to the FSB, then you should go ahead and do it." Jay Wells of the park staff agreed, and shortly afterward the SRC voted to submit a wildlife recommendation to the board. (Regional Director Morehead had made it known that he supported the SRC's move.) Hoping to become a more prominent part of the advisory process, the SRC made two actions. First, it sent the board a note asking the NPS to consult with the SRC before it submitted any proposals to the board. In addition, the SRC proposed that its charter be changed "to authorize travel to Federal Board meetings regarding subsistence hunting plan/season or bag limits on park lands." The measure passed unanimously, and a letter to that effect was sent to Interior Secretary Manuel Lujan, Jr. The Secretary, however, squelched the idea. Taking a narrow view, he noted that while "I understand the importance of seasons and bag limits to subsistence users of park areas ... representation [of SRCs at board meetings] is unnecessary [because of the] unique, interlocking system of representation" between the Interior Secretary, the SRCs and the state-sponsored regional advisory councils. Lujan, therefore, may have had no problem with the SRCs either generating, or commenting upon, specific Federal Subsistence Board proposals. He seemed unwilling, however, to sanction any economic subsidy that might encourage the SRCs' participation in the proposal process. That

unwillingness set him apart from at least some NPS regional and park officials. [148]



Manuel Lujan served as President Bush's Interior Secretary from 1989 to 1993. He finalized several policy documents pertaining to Alaska subsistence matters, many of which were drafted by Vernon Wiggins, his Undersecretary for Alaskan Affairs. NPS (AKSO)

In 1992, more SRCs became involved with specific wildlife proposals. In late March, the Aniakchak SRC passed a draft hunting plan recommendation for an extended moose-hunting season, and two months later, the Denali SRC passed a similar recommendation (which also called for a modification of the moose hunting season). That year the Lake Clark SRC did not propound any of its own proposals; it did, however, review various proposed board regulations for the upcoming (1992-1993) season. [149] That fall, an NPS officials told the Aniakchak SRC that "the Regional Director wants us to make sure [that the] Commission is aware of proposals that NPS makes" because proposals with joint SRC-NPS sponsorship had a greater chance of passage at the board than proposals with just a single sponsor. (The commission, in response, wrote a letter of support to the board; the specific NPS proposal dealt with caribou harvesting in and near the monument.) [150] The NPS, by this time, appeared to be clearly advocating an increased role for the SRCs in the annual hunting-regulations revision process.

During the next two years, few SRCs took an active part in the revision of wildlife management regulations. But despite this lull in activity, a key change took place in the federal government's attitude toward SRCs. In June 1993 the Denali SRC made further actions on its moose-season proposal, and that October it forwarded its proposal to the Interior Secretary. But this time, the Secretary's office did not reject the SRC's proposal out of hand, as in 1992; instead, it "direct[ed] the NPS to investigate the biological ramifications of the additional hunting season on the moose population ... and the customary and traditional basis of any possible late fall moose hunt in the area." The NPS was to present a report on the matter to the Federal Subsistence Board "as soon as possible." The Interior Secretary, at long last, acted much as the Game Board would have acted in a similar situation; it quickly responded to the SRC's proposal and demanded a brief study that included both biological and anthropological viewpoints. [151] Denali, however, was virtually the only SRC during this period that was active in the wildlife-management arena. It may be recalled (from Chapter 7) that there were no regional advisory councils (at either the state or federal levels) between June 1992 and September 1993, and during the winter of 1993-94, the ten federally-charted regional advisory councils were just getting started. Given 1) the lack of a regional advisory network, 2) the fact that the federal board was largely unaware of the SRCs' role and expertise, and 3) the fact that recommendations to the Interior Secretary were simply redirected back to the federal board, there was little encouragement for the SRCs to advance wildlife management proposals to either the Interior Secretary or to the Federal Subsistence Board.

By the winter of 1994-1995 (see Appendix 2), the various regional advisory councils had gained a year's experience, and the SRCs recognized the propriety of forwarding comments on federal wildlife management recommendations to the appropriate regional advisory councils. The Denali and Gates of the Arctic SRCs, and perhaps others as well, played an active role in the newly-evolving system that winter, and within a year the other active SRCs were taking part as well. [152]

In February 1996, the Wrangell-St. Elias SRC recognized the practical reality of the new system and asked Interior Secretary Babbitt to amend the various charters so that the SRC would be allowed "to report not only to the park Superintendent, but to the Federal Subsistence Board and the Federal Regional Subsistence Advisory Councils." Park staff backed the plan; they said that the SRC's proposal "is in effect what is happening right now," and further noted that "the FSB and the Regional Councils are very concerned about getting the input of the SRCs before they make decisions...." The agency's Office of Policy, asked to comment on the proposal, recognized that the idea, if approved, should apply to all of the state's SRCs. Its response, however, was cautious; because of language in the Federal Advisory Committee Act, it felt that "there is no basis by which we could have [the SRCs] 'report' to [a regional] council." The NPS's "issues paper," completed in August 1997, urged that the SRC's recommendation be adopted, and the agency's regional director contacted the Secretary's office twice that year in hopes of resolving the matter. The Secretary, however, did not respond to the Commission's recommendation. In lieu of a formal, written response, NPS officials decided instead to informally respond to the Wrangell-St. Elias SRC's request at a subsequent SRC chairs' conference; at that conference, agency officials informally told the assembled chairs that it had approved the SRC's request. All of the SRCs would henceforth have full authority to submit subsistence-related hunting or fishing recommendations to the regional advisory councils; for legal reasons, however, the agency did not feel it necessary to alter any verbiage in the various SRC charters. The various SRC chairs accepted that decision, and the issue has apparently been resolved. [153]

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K. Miscellaneous Subsistence Management Issues

Although the most common issues that the SRCs faced were related to eligibility and access issues, traditional use zones and wildlife management, other issues arose from time to time. These included trapping issues, attempts to get some of the Interior Secretary's authority (on hunting plan recommendations, SRC charters, the appointment of SRC members, and similar actions) delegated to the NPS's Alaska Regional Director, and issues related to definitions of various key subsistence terms. These will be addressed in the order presented.

As noted in Chapter 6, the NPS and the state had spent much of the 1980s wrestling over whether trapping would be allowed with the use of a firearm in the various Alaska park units. By 1983, the NPS had passed the necessary regulations, but state wildlife officials remained unaware of them until January 1986. The NPS formally asserted its authority in the matter soon afterward, and the agency's various final (November 1986) general management plans stated that "Trapping in national park system units can be conducted only using implements designed to entrap animals." Wrangell-St. Elias's SRC, however, countered that in many parts of Alaska, the trapping of free-ranging furbearers with a firearm was a customary and traditional practice, and it further argued that state law allowed trapping with a firearm; based on those premises, the SRC sent Interior Secretary Donald Hodel an August 1987 recommendation asking that "trapping be allowed with the use of a firearm on Preserve lands within Wrangell-St. Elias National Preserve." W. T. (Bill) Ellis, the SRC's chair, was largely responsible for submitting that recommendation.

Soon afterward, the Game Board responded to Ellis's concerns by legitimizing the practice of same-day-airborne sport hunting. NPS officials, however, were concerned that the Game Board's action had the potential to jeopardize the populations of wolves and other furbearers in the preserves, so in November 1988 the agency issued an emergency, one-year moratorium on same-day-airport sport hunting. In June 1989, it proposed a permanent rule on the subject. Of the hundreds of public comments submitted, a strong majority supported the agency's proposed action. But before a final rule was published, state officials agreed to exclude the preserves from the state's same-day-airborne provisions. That exception went into effect in August 1990, and a *Federal Register* notice announcing that exception was published soon afterward. [154] But the state's action abrogated the need for moving forward with the final rule, and the NPS's rule making process on the issue was held in abeyance, at least for the time being.

During the early 1990s, same-day airborne wolf hunting remained a high-profile issue among the state's hunters and wildlife managers. In 1992, for instance, the State Game Board decided to prohibit same-day airborne wolf hunting and it continued its prohibition against land and shoot trapping, but in 1993, the Board reversed course and relaxed its land-and-shoot trapping regulations. None of these actions, it must be emphasized, legalized either

same-day-airborne hunting or same-day-airborne trapping of wolves or of any other furbearers in any NPS areas; taking furbearers with either a hunting or a trapping license had been prohibited since the fall of 1988. Even so, however, NPS officials were concerned about two lingering issues. First, many worried that the 1993 Game Board decision had relaxed the state's land-and-shoot regulations as they pertained to NPS areas. A second concern, similar to the first, was that they were concerned about future Game Board actions and wanted to guarantee that those actions—whatever they might be—would not lessen protection for the parks' furbearers from either hunters or trappers that employed land-and-shoot methods. In response to these and similar concerns, the agency in September 1994 prepared a revised proposed rule. That rule had two parts: one part restated the agency's prohibition on land-and-shoot hunting on areas under its jurisdiction in Alaska, while the other part "clarif[ied] the existing NPS prohibition of using firearms and other weapons to take free ranging wildlife under a trapping license on lands under the jurisdiction of the NPS in the State of Alaska." The firearms prohibition, however, was not ironclad, because it "expressly recognize[d] as an exception, the common trapping practice of using a firearm to dispatch wildlife that is already caught in a trap." The revised proposed rule was published in the *Federal Register* on November 15, 1994; the public was given 30 days to provide comments. [155] But many of those who initially commented on the trapping provisions were apparently confused about the rule's intent and effect, so as a result, the agency issued another rule on April 14, 1995 that opened up the comment period for another 60 days. [156]

Only two SRCs provided comments to the rule, but both strongly opposed it. Raymond Paneak, speaking for the Gates of the Arctic SRC, stated that "the NPS seems to have a problem ... interpreting trap to mean only using an implement designed to entrap animals, under a trapping license, and to eliminate the customary and traditional practice of incidentally taking furbearers with firearms, which are free-ranging." He stated that "100% of the GAAR subsistence trappers used and currently use ... the customary and traditional practice of shooting free-ranging furbearers under a trapping license," and charged that the agency's "ill-thought out definition, and [its] enforcement of a 14 year old unenforced definition, ... drastically reduce[s] the limits concerning hunting bag limits for shooting furbearers." The Denali SRC, in a similar vein, "unanimously opposed the restriction of use of firearms in taking furbearers under a trapping license" and asked that the agency's definition of "trapping" be redefined to include taking "by any traditional and customary means. This includes the use of firearms and bow and arrow." [157]

Opposition from two of the state's major SRCs caused NPS officials (particularly those at Denali and Gates of the Arctic) to rethink the necessity of issuing a final rule on the subject. Meanwhile, the other half of the November 1994 proposed rule—that dealt with land-and-shoot hunting—was issued as a final rule on April 11, 1995. In a key modification of terminology, the proposed rule (which proposed a prohibition on land-and-shoot hunting) was re-interpreted as a prohibition of land-and shoot taking (which included both hunting and trapping). This definitional reinterpretation, to a large extent, provided NPS managers much of what they had been seeking when they had formulated the proposed firearms clarification rule in September 1994. [158]

Although SRC members and other subsistence users took some comfort in knowing that the firearms rule had not been finalized, many continued to advocate that the NPS renounce it. During the review period that preceded the issuance of the "issues paper," for instance, both the Denali and the Wrangell-St. Elias SRCs passed motions opposing the NPS's proposed rule. The final issues paper, as a result, presented a mixed message: it stated that "a firearm is not an approved method of taking free roaming furbearers under the authority of a trapping license." The NPS, it continued, "acknowledges the longstanding practice of doing so under state regulations, but [it] has a concern for high trapping harvest limits for many furbearers." [159]

Since the publication of the issues paper, NPS officials have attempted to tread a delicate middle ground on the firearms trapping issue. At the SRC chairs' meeting in October 1998, the chairs recommended that NPS officials "continue to work on the issue of trapping regulations, and the prohibition of use of firearm under a trapping license." In response, the NPS admitted that "this has been [a] difficult issue for us. While a strict reading" of the regulations prohibited the practice, the agency admitted that "there is a longstanding practice of doing so under state regulations." The NPS further concluded that "it may be difficult to attempt a change in our regulations at this time." Similar pleas from the SRC chairs at the fall 1999 and fall 2000 meeting have brought similar replies from NPS officials. [160] Meanwhile, individual SRCs continued to tell the NPS about the folly of its regulation. Gates of the Arctic SRC member Jack Reakoff, for instance, stated that "he can't really back off on this issue, although he is not sure how to proceed from here." In response, agency officials were equally candid; as Gates of the Arctic subsistence coordinator Steve Ulvi told his SRC, "we are in a non-enforcement scenario for something that is traditionally done, which is not a good solution." [161]

A second "miscellaneous" subsistence issue dealt with during the 1990s—and solved to some extent—was the nettlesome problem of authority delegation. Since the establishment of the SRC back in 1984, SRC members (and many NPS officials, too) felt that many necessary actions related to SRC operations were either delayed or completely overlooked because most SRC communications were directed to the Interior Secretary in Washington, D.C. The Interior Secretary's office, not surprisingly, had little institutional expertise in subsistence-related matters, and it also had an overwhelming number of other demands that competed for its time and attention. As a result, both routine actions (such as the appointment and re-appointment of members) and the evaluation of hunting plan recommendations often took months or even years. By the end of the 1980s, NPS officials were well aware of the SRCs' frustration related to this topic, but they made no moves to change the system. But they also knew that State of Alaska officials liked the fact that the current system gave both the state and federal governments a prominent role, and they were wary that any moves toward authority delegation conveyed the appearance that the NPS was acquiring additional powers. [162]

This frustration continued into the 1990s, and in 1991 the Wrangell-St. Elias SRC became sufficiently concerned about the problem that they sent the Interior Secretary the following resolution: "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." Secretary Lujan, however, responded by requesting the NPS to speed up its appointments deadline. "There is no need to delegate my appointment authority to assure timely appointments," he noted. [163]

The issue simmered for the next several years and was partially addressed in the NPS's August 1997 issues paper. It noted that "as a result of recent restructuring ... the majority of decision-making for subsistence issues in Alaska is now vested in the Superintendents of parks where subsistence issues 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, ... hunting plan recommendations must still be submitted to the Secretary of the Interior ... but many issues can and are being resolved at the local level." SRC members, however, wanted more, and at the October 1998 chairs' meeting a resolution was passed stating that Secretarial response times to SRC recommendations were "unacceptable." Just one month later, the Secretary's office, for the first time, allowed the NPS's Regional Director to respond to a hunting plan recommendation. When it came time to respond to the chairs' request, therefore, the NPS was able to note that the agency was in "preliminary discussions with the Secretary of the Interior's office concerning the possibility of the Secretary delegating the response to

your hunting plan recommendations to the Regional Director in Alaska." [164] Moving proactively on the issue, Regional Director Robert Barbee wrote to Assistant Interior Secretary Don Barry in July 1999 and specifically requested formal delegation of signature authority on all hunting plan recommendations. Two months later Barry granted that authority, at least as it pertained to "straightforward issues." The SRC chairs, encouraged at the news, asked the NPS to develop an appeal procedure in case disagreements arose with the regional director's decisions. The agency, in response, made it clear that such an appeal procedure already existed. "If you have a disagreement with a response from the Regional Director," an official noted, "you can write to the Secretary with your concerns." [165]

A final, vexing issue that the SRCs addressed was that of definitions. ANILCA and the 1981 regulations based much of its subsistence policy emphasis on specific terms, but as Chapter 6 notes, it was less than forthright in applying exact definitions to terms such as "customary and traditional," "natural and healthy" and "customary trade." Because neither Congress nor the Interior Department defined these terms with any degree of specificity, both the NPS and the various SRCs discussed these terms in some detail during the 1980s. In more recent years, attempts to define critical subsistence-related terms have met with mixed success. A discussion related to "significant concentrations" has been presented (see Section G, above); in this section, similar efforts are made in defining "natural and healthy" and "customary trade."

As noted in Chapter 6, neither the NPS nor the SRCs had much progress in defining "natural and healthy" during the 1980s. The NPS made little headway because of the sheer difficulty of formulating a definition that would be broadly accepted; and the SRCs were reluctant to finalize any measure that had the potential to limit subsistence harvests. This state of affairs continued on into the 1990s. At Gates of the Arctic, Superintendent Roger Siglin responded to a 1992 SRC recommendation—one that asked the NPS to protect an area's subsistence resources until it reached a "harvestable level"—by asking the agency to define "natural and healthy ... so that SRC members can use commonly agreed upon terminology in their recommendations or challenge our definition of terms if they are so inclined." The recommendation, as it turned out, was rejected because the Interior Secretary interpreted the term "harvestable level" to be akin to the maintenance of a "healthy" population (as the national preserves were supposed to be managed); the parks and monuments, by contrast, were to be managed "to maintain traditional NPS management values" in which the manipulation of "habitat or populations to achieve maximum utilization of natural resources" was prohibited. The Interior Department, therefore, took a small first step in defining "natural and healthy;" though it could not otherwise be more specific, the term clearly did not allow for wildlife or habitat manipulation. [166]

A few months later, at an SRC teleconference, two members asked park staff to define various subsistence-related terms. Subsistence coordinator Steve Ulvi responded by noting that "natural and healthy" was "used in reference to the NPS's mandate for managing wildlife populations that are used for subsistence. ... Wrangell-St. Elias National Park staff is currently working on a proposal for management of the Mentasta Caribou herd that defines the term. Other agencies will have to buy into the idea for it to work." The plan, in fact, defined "natural," but it was silent regarding a definition of "healthy." [167] A year later, as noted above, the so-called "subsistence task force" spent the summer reviewing NPS subsistence management policies. Gates of the Arctic Superintendent Steve Martin, a key member of the task force, stated at the



Dave Spirtes, the superintendent of Bering Land Bridge National Preserve since 1994 and Western Arctic National Parklands since 1996, has been a leader in the "natural and healthy" issue and numerous other subsistence-related topics. NPS (AKSO)

outset that a primary task force goal was "to decide ... what criteria to use for natural and healthy populations." The "natural and healthy" issue was, in fact, debated in some detail during the preparation of the task force's original (1994) report. Then, in August 1995, a ten-person working group that included three superintendents spent a day in Fairbanks mulling over the issue, and perhaps in response, Bering Land Bridge Superintendent David W. Spirtes produced his own draft report on "NPS Wildlife Policy for ANILCA Areas" that spent several pages analyzing the "natural and healthy" issue. [168]

By early 1997, the Alaska Cluster of Superintendents (ACS) recognized that "there is still some internal [definitional] debate between parks and preserves," and to clear up the issue it asked the region's Natural Resource Advisory Council (NRAC) to prepare a report comparing "natural and healthy" [as derived from ANILCA] with "optimal sustained yield" [which is ADF&G's guiding harvest principle]. Because of that "internal debate," the agency was unable to produce a clear definition as part of the August 1997 issues paper. Instead, the paper merely noted that the NPS's "major role is to see that [natural and healthy] 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." [169]

In response to the ACS directive, NRAC established a six-person Natural and Healthy Subcommittee, and in February 1998, Rich Harris of that subcommittee produced a draft 16-page report on the subject. Chief among the report's conclusions was that "natural" was defined as "the condition of a biological population, community, or landscape without substantial alteration by humans for other than subsistence activities," and that the definition of "healthy" was "a population that is self-sustaining within its habitat over the long term." Although the subcommittee members were "completely satisfied with our definitions," others were not; Superintendent Spirtes, for instance, felt that the conclusions of the "biological group" were "not rooted in the extensive administrative record of ANILCA or NPS policy." By July 1, Spirtes had produced his own draft treatise on the subject, and on July 23 he issued an updated draft entitled "An NPS Interpretation of Natural and Healthy." Other players, however, took exception to Spirtes's conclusions; Superintendent Martin, for example, felt that "the original review document drafted by the ad hoc committee [i.e., the NRAC subcommittee] provided a more solid basis upon which to further refine the definitions of natural and healthy and the process to apply those definitions." [170] For the time being, at least, the NRAC study appeared to be the primary vehicle for discussion

among NPS subsistence decision makers.

In an attempt to create a less contentious path, Superintendent Jon Jarvis recommended that the terms be defined both biologically and legally, and in February 1999 a three-person panel completed work on a report that espoused that approach. That spring, a small group met in Anchorage to finalize the definition, but with no finality at hand, the project was delegated to Hunter Sharp, the chief ranger at Wrangell-St. Elias National Park and Preserve. Jarvis, however, left Alaska soon afterward, leaving Sharp as the park's acting superintendent for the next several months and, by necessity, delaying efforts toward a workable definition. In January 2001, hoping to bring closure to the long, unresolved process, Superintendent Spirtes completed and distributed an updated version of the report from the three-person panel. [171] A month later, agency staff held a conference in Anchorage in hopes of arriving at a consensus on the issue. But despite this and subsequent meetings on the subject, no definitions of either "natural" or "healthy" have yet been agreed upon by all parties. In the various recently-completed park subsistence management plans, the most detailed statement of current status is that

> several multi-disciplinary teams of NPS staff from across the State have been tasked to develop the legal and biological assessment framework and definitions of "natural and healthy." ... Once a strategy addressing these concepts is developed that meets the approval of park managers and NPS administrative policies, this document will be presented to the SRC and other entities as appropriate, for review. [172]

Greater progress has been made in recent years in defining "customary trade." As noted in Chapter 6, the various general management plans that were issued during the mid-1980s helped clarify the June 1981 definition as it pertained to specific park units, and in 1989 a minor controversy erupted at Cape Krusenstern National Monument over the sale of dropped (shed) caribou antlers.

Neither the NPS nor the SRCs showed much interest in customary trade issues for the next several years, but the term was discussed at some length during the comment period that preceded the issuance of the August 1997 issues paper. The NPS allotted an entire section of the paper to customary trade, and its primary statement on the topic was largely a restatement of the existing canon. Several commentors, however, disagreed with the agency's policy position and told the NPS that such items as dried fish, crafts, utensils, clothing, meat from hares, and any handicrafts made from animal, minerals, or vegetation should all be permitted for sale under the "customary trade" clause so long as significant quantities of cash were not involved. In response, the agency promised to "work with the Federal Subsistence Board and the state, as appropriate, to ensure that all customary trade practices are recognized and permitted." [173]

A few months after the issues report was distributed, the Western Interior Regional Advisory Council (WIRAC) wrote the NPS and asked that the "customary trade" definition in which "only furs may be exchanged for cash" be broadened to "allow the sale of handicrafts made from nonedible byproducts of fish and wildlife resources." The agency, in response, stated that no conflict existed. As Deputy Regional Director Paul R. Anderson stated, "what you request is and always has been permitted under ANILCA and under NPS regulations." But because there was an apparent misunderstanding on the issue, Anderson dispatched a series of letters to the SRC chairs in December 1998 that clarified NPS policy in the "customary trade" arena. [174]

The SRC chairs, upon reading those letters, recognized that the agency's customary trade policies, in many cases, did not allow the continuation of many historically-established

trading patterns. At its October 1999 meeting, therefore, the chairs suggested that each SRC "review the NPS customary trade regulations to ensure that local customary trade practices are recognized and authorized ... and that NPS customary trade regulations should be consistent with Federal Subsistence Board regulations." The NPS, in response, was quick to agree that these regulations "should to the extent possible address local customary trade practices," so it asked the various SRCs to "review this issue[,] provide us with your recommendations", and provide "whatever specific information you have about those practices." [175] Several SRCs responded to the agency's request for information and recommendations. In October 2000, the SRC chairs again raised the issue. The NPS, hoping to move the issue forward, promised to convene a small group of park and regional office staff to discuss customary trade issues. From that meeting, it hopes to prepare some draft regulatory language, or at least some guiding principles, to accommodate those practices. [176]

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Alaska Subsistence

A National Park Service Management History

Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

L. The Federal Program (Wildlife Issues), 1993-present: General Trends

As was noted in Chapter 7, the federal government began managing subsistence resources on federal lands on July 1, 1990. On that date, responsibility for federal subsistence decision-making was entrusted to the Federal Subsistence Board. For the next two years, the State of Alaska continued to manage a series of six regional advisory councils. But on April 6, 1992, the federal government's Notice of Decision regarding subsistence management ruled that ten federally-chartered regional advisory councils would be established. Given that decision, the State of Alaska stopped funding its regional council network just two months later. For more than a year after the state councils' termination date, no regional advisory councils existed at either the state or federal level. Slowly, however, the constituent elements of a federal advisory system began to emerge. In May 1993, the Federal Subsistence Board hired the five subsistence coordinators that would be entrusted to run day-to-day regional council operations, and that August, Interior Secretary Bruce Babbitt officially appointed the 84 men and women that were to serve on the various regional councils. The initial meetings of the ten regional advisory councils were held between September 15 and October 20, 1993.

At the time of the first regional council meetings, the Federal Subsistence Board had been in operation for more than three years. Its members, at the time, were John M. Morehead (National Park Service), Walter O. Stieglitz (Fish and Wildlife Service), Edward Spang (Bureau of Land Management), Michael Barton (Forest Service), and Niles Cesar (Bureau of Indian Affairs). The sixth member was interim chairman Ronald McCoy, who also served as the U.S. Interior Department's Alaska Representative in an acting capacity. Richard S. Pospahala, who was the Assistant Regional Director in charge of the Fish and Wildlife Service's Office of Subsistence Management, provided staff support to the federal board. Pospahala had been serving in that capacity ever since the federal government had assumed management over subsistence on federal lands. Four of the six federal board representatives—Walt Stieglitz, Ed Spang, Mike Barton, and Niles Cesar—were also charter members, having run their agencies' Alaska operations since July 1990 if not before. Assisting the federal board was a five-member staff committee that was also in its fourth year of operation. Its members, at the time, were Norman Howse (Forest Service), Tom Boyd (Bureau of Land Management), John Borbridge (Bureau of Indian Affairs), Richard Pospahala (Fish and Wildlife Service), and John Hiscock (National Park Service). All except Pospahala and Hiscock had been serving on the staff committee since its inception.

By the time the first regional councils met, the Federal Subsistence Board had already established an annual schedule on how subsistence proposals would be submitted and evaluated. This process was based, to a large extent, on how the Board had been operating since 1990. The initial step in that annual schedule, the proposal solicitation, was normally announced between mid-August and early September. Soon afterward—usually in September or October—regional councils held their first meetings. (See Table 8-1, following page.) Council members, other subsistence users, agency staff and the general

public were invited to these meetings in order to ensure a wide variety of subsistence proposals. The proposal deadline was shortly after the last of the fall regional advisory council meetings. Staff then spent the next several weeks evaluating those proposals before distributing them for public comment. The public was normally given six to eight weeks to weigh in on the various proposals. The regional councils then held a second series of meetings; these usually took place between late January and mid-March. At those meetings, regional council members mulled over each proposal; and based on written comments, oral testimony, and staff analyses, the proposals were either accepted, rejected, or accepted with modification. These recommendations were then forwarded to the Federal Subsistence Board, which met sometime between early April and early May and made final decisions. Those decisions were then published as regulations in the *Federal Register*. Unless subject to appeal, they were implemented on July 1.

Table 8-1. Federal Subsistence Hunting Regulations Chronology, 1993-present

For Regulatory Year	Proposed Rule Published	Fall RAC Meetings	Proposal Deadline	No. of Proposals	Dist. of Props. to Public	Comment Period Deadline	Winter RAC Meetings	FSB Decision Meeting	Final Regs. Pub'd in *Fed. Reg.*
1994-1995	9/2/93	9/15/93-10/20/93	11/1/93	88	11/15/93	1/14/94	1/25/94-3/4/94	4/11/94-4/15/94	6/3/94
1995-1996	9/2/94	10/3/94-11/4/94	11/11/94	69	12/1/94	1/13/95	1/30/95-3/3/95	4/10/95-4/14/95	6/15/95
1996-1997	8/15/95	9/11/95-10/18/95	10/27/95	67	11/17/95	1/26/96	2/8/96-3/19/96	4/29/96-5/3/96	7/30/96@
1997-1998	8/7/96	9/9/96-10/25/96	11/8/96	76	11/15/96	1/6/97	1/27/97-2/28/97	4/7/97-4/11/97	5/29/97
1998-1999	7/25/97	9/9/97-10/17/97	10/24/97	109	11/14/97	1/16/98	2/16/98-3/20/98	5/4/98-5/8/98	6/29/98
1999-2000	8/17/98	9/9/98-10/23/98	10/23/98	63	11/13/98	1/8/99	2/22/99-3/24/99	5/3/99-5/5/99	7/1/99
2000-2001	9/10/99	9/28/99-10/27/99	11/5/99	61	11/26/99	1/14/00	2/21/00-3/24/00	5/2/00-5/4/00	6/30/00
2001-2002	8/24/00	9/12/00-10/18/00	10/27/00	50	11/24/00	1/12/01	2/19/01-3/23/01	4/30/01-5/2/01	6/25/01
2002-2003	8/27/01	9/10/01-10/19/01	10/26/01	48	11/23/01	1/4/02	2/19/02-3/22/02	5/13/02-5/16/02	6/28/02

@ - The regulations cycle could not be completed by June 30, a notice in The May 23, 1996 *Federal Register* extending the existing regulations until July 31.





These photos, taken at an October 1999 Bristol Bay Regional Advisory Council meeting, show a typical subsistence advisory council meeting in action. The photo at left shows council members (left to right) Robert Heyano, Timothy Enright, Andrew Balluta, Peter Abraham, Dan O'Hara (chair) and Robin Samuelson. In the right-hand photo, Andy Aderman of the U.S. Fish and Wildlife Service speaks before an audience that also includes OSM employee Helga Eakon (left) and Lake Clark-Katmai Superintendent Deb Liggett (back of room, wearing a vest). USF&WS (OSM)

During the regional councils' first year of operation (late 1993 and early 1994), the process that resulted in new regulations was often bumpy and unpredictable. The first series of meetings, not surprisingly, were somewhat inefficient; there was little precedence on how the meetings should be organized, and the previous, state-managed regional council system had been judged a poor model by both federal officials and subsistence users. Council members and agency staff, from both the Office of Subsistence Management as well as the individual agencies, were unsure of what roles they would play or how meeting agendas would be organized. Moreover, because few working relationships had been established—between council members and their staff, between the staff members at the various federal agencies, and between council members and the Federal Subsistence Board—there was a general lack of understanding, and in some cases, a lack of trust. Compounding these problems was a severe lack of staff and resources on the part of federal subsistence managers. A further factor clouding the picture during this period was the fact that virtually everyone involved assumed that subsistence management, due to legislative action, might revert to the State of Alaska at any time; as a result, both staff and board members tended to make decisions that, in hindsight, appeared tentative or incremental. [177]

During their first year of operation, the regional councils faced a daunting workload. Much of that workload was analyzing various subsistence hunting proposals and making recommendations about so-called "Subpart D" harvest regulations (i.e., seasons and bag limits, and harvesting methods and means). Then, as now, agency staff gave council members background reports that addressed biological capacity, historical use patterns, and similarly relevant information. But because the various parties had no history of cooperation and little familiarity with each other, as noted above, problems erupted. For instance, each proposal was given to a single agency (either the NPS or the F&WS) for analysis and recommendations. As a result, there were often inconsistencies between agencies on what these reports should contain. [178] All too often, moreover, the information that was presented in the reports reflected the agency's bias regarding subsistence harvesting. (Proposals written by NPS staff, for example, were perceived to be more conservative than those by F&WS staff.) Another problem quickly surfaced regarding data legitimacy; agency biologists often trusted only "Western science" (i.e., survey data on population trends, of which little was sometimes available) while ignoring or discounting traditional ecological knowledge (TEK) and other local perspectives. [179]

Council members, confronted with such biases, did their best to fairly evaluate the various proposals. Because the federal advisory system was still new, however, regional councils occasionally disagreed with the recommendations of either agency staff or committee staff; these disagreements were usually based on political rather than scientific factors. This generalization also held true with the Federal Subsistence Board; on the one hand, an observer at the April 1994 Board meeting reported that the regional councils "played a key role" in the Board's decisionmaking process, but on the other hand, the federal board reversed the regional councils' recommendations in some cases. [180] The regional councils, who represented subsistence users, were often philosophically and temperamentally at odds with federal board members and agency staff, who enforced and interpreted the laws and regulations. Much of this antagonism, to be sure, was merely a manifestation of the real or perceived treatment that subsistence users had received from government officials—at both the state and federal levels—in recent years. Whether the antagonism was warranted or not, it was nevertheless unmistakable, and all parties recognized that all parties needed to work together if the as-yet-untried federal council system had any chance to succeed. [181]

In addition to their work on the "Subpart D" regulations, the regional councils recognized that a large backlog of unanalyzed customary and traditional use ("C&T") determinations had built up during the three-plus years since federal assumption; sooner or later, those determinations needed analysis and recommendations. In this area, federal staff moved to lighten the councils' workload. Even before the first regional councils met, an interagency staff committee had convened to work out various problems related to C&T determinations; before long, it had developed a schedule and process for addressing the backlog of C&T requests. [182] This staff work, and a broad public recognition that the C&T backlog was being addressed at the staff level, allowed council members to concentrate on other matters. (Despite that recognition, the importance of C&T-related issues meant that some people continued to address these matters; resolution of these matters, however, were delayed for the time being.) As noted below, it would take several years for staff members to arrive at an acceptable format by which the councils would be able to recommend which specific communities were legally entitled to harvest specific wildlife species.

Table 8-2. Proposals Considered by the Federal Subsistence Board, by Region, 1993-present

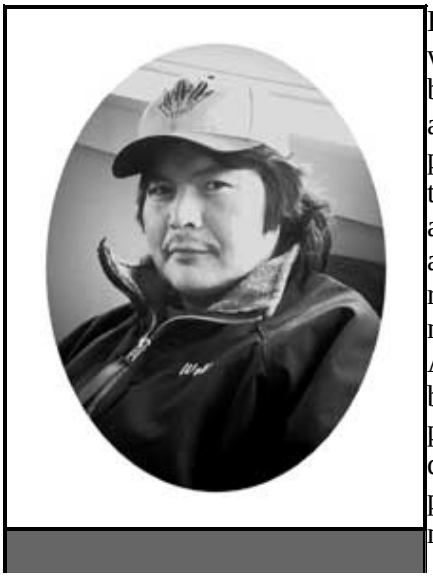
Regulatory Year	Region 1 (FSB	Region 2 (Southeast)	Region 3 (Southcentral)	Region 4 (Bristol	Region 5 (Yukon-	Region 6 (NW.	Region 7 (Western	Region 8 (Eastern	Statewide (North	STATE TOTAL

Mtg. Date)			Bay)	Kusk.)	Interior)	Arctic)	Interior)	Slope)		
1993-1994 (Apr. '93)	8	2	2	2	3	1	3	1	4	63

NOTE: The numbers within the chart indicate the number of proposals affecting each region. Because many proposals affected more than one region, the sum of the proposals approved in each region may exceed the state total; also, because the FSB has deferred many proposals, the number of proposals acted upon is less than the state total. Special actions and requests for reconsideration are omitted from this table. Source: Final Rule (annual), as published in the *Federal Register*.

Regulatory Year (FSB Mtg. Date)	Region 1 (Southeast)	Region 2 (Southcentral)	Region 3 (Kodiak-Aleutians)	Region 4 (Bristol Bay)	Region 5 (Yukon-Kusk.)	Region 6 (Western Interior)	Region 7 (Seward Pen.)	Region 8 (Eastern Interior)	Region 9 (Eastern Interior)	Region 10 (North Slope)	S/M*	STATE TOTAL
1994-1995 (Apr. '94)	6	1	2	9	3	3	2	3	8	4	1	88
1995-1996 (Apr. '95)	4	5	2	8	2	3	8	2	7	7	0	69
1996-1997 (Apr. '96)	13	11	3	11	2	6	5	1	9	3	1	67
1997-1998 (Apr. '97)	18	37	1	14	3	9	3	3	5	2	0	102
1998-1999 (May '98)	18	18	4	17	2	21	7	2	9	2	0	109
1999-2000 (May '99)	1	22	3	11	1	4	2	1	13	1	0	63
2000-2001 (May '00)	2	8	3	7	1	9	4	0	3	0	1	61
2001-2001 (May '01)	4	8	3	7	0	12	1	0	3	2	2	49
2002-2003 (May '02)	12	5	4	4	2	3	5	2	2	2	1	43

* - the "S/M" column indicates either statewide proposals (S) or those that affected multiple regions (M).



By the second annual round of regional council meetings, which were held in the fall of 1994, the federal system had begun to improve. One significant improvement was that all parties tried to be as inclusive as possible. The various park and monument SRCs, as noted above, were invited to take part in the process; and Native corporations, local fish and game advisory committees, and other entities were also invited to submit proposals and testify at the various regional advisory council and Federal Subsistence Board meetings, all of which were open to public comment. Another major improvement, which was initially risky but bode well for the long-term viability of the federal program, was a change in the way that proposals were developed; instead of each agency compiling its own proposal analyses and recommendations, federal staff members, for the first time, analyzed and made staff

Gerald Nicholia, from Tanana, has been a member of the Eastern Interior Regional Advisory Council since the 1990s and has been its chair since 2000. USF&WS (OSM)

recommendations as part of interdisciplinary teams. These teams included appropriate regional council coordinators as well as various agency staff. [183]

A third positive development was the regularity of the meeting schedule. Because meetings of the staff committee, the regional councils, and the federal board were held on a consistent, predictable schedule, the various stakeholders soon became more familiar with each other. Many of the regional council meetings were multi-day affairs that were held in small towns and villages; here, as well as in urban settings, federal staff and subsistence users increasingly learned to see other participants in the system beyond the official roles that they assumed. This budding network of professional and personal relationships allowed meetings to run more smoothly, and before long, subsistence users and agency staff alike began to understand a broader context behind their opinions and decisions. Given that increasing understanding, federal staff were more likely to approve well-justified user-generated proposals; in other cases, however, subsistence users gained an ever-greater understanding as to why federal officials had to deny certain proposals. Before long, the percentage of regional advisory council decisions that were reversed by the federal board (which was never very high to begin with) began to drop. [184] Subsistence users also began to recognize—perhaps to their surprise—that most federal officials were honestly concerned about rural residents' long-term welfare in their wildlife management reports and decisions. This perception, which was a stark contrast to attitudes that had prevailed when the state had managed subsistence resources, caused many rural residents to support the federal system and decry the state's ongoing efforts to regain subsistence management. [185]

One reason that the federal system was able to work as successfully as it did was because it was funded far better than the old state-managed system. Under the state system, as noted in Chapters 5 and 6, ADF&G's Subsistence Division "was in its heyday" in the early 1980s, but the "oil bust" that followed shortly afterward forced severe cutbacks; several of its field offices were forced to close, and the Division played an increasingly marginal role in departmental affairs as the decade wore on. [186] The state's other subsistence-related funding area was the regional advisory councils, which were part of the department's Division of Boards budget. Advisory council meetings were sporadic during the early 1980s, but in early 1985 the department hired a series of subsistence coordinators. Within months, however, the councils' travel budget was truncated, and between 1985 and 1988 all but one of the coordinator positions were eliminated. At the end of the decade the state made a renewed effort to hire subsistence coordinators and organize regional council meetings, but the state's effort was halfhearted at best. In 1992, shortly after the federal government issued its Record of Decision on its subsistence management program, the Alaska legislature eliminated all funding for the regional councils, and that June they ceased operating.

Subsistence users soon discovered, by contrast, that the federal government was willing to invest substantial resources in order to make its subsistence management program work. (See Table 8-3, facing page.) Given that level of budgetary input, the OSM seemed to be consistently capable of organizing a regular retinue of regional council meetings, federal board meetings, and staff committee meetings. The fact that most regional council meetings took place in rural settings, and the additional fact that OSM consistently had funds available for travel, per diem, and other expenses gave additional assurance to subsistence users that the federal government was fully committed to its subsistence management responsibilities.

Table 8-3. Office of Subsistence Management -Budget and Employee Strength, 1990-present

Fiscal	Subsistence Budget ($ million)	Number of OSM

Year	F&WS (total)	OSM/Refuges	OSM/Fisheries Monitoring	Employees
1990	$2.128	$1,240		5-15
1991	7.976	4,903		20-25
1992	n/a	n/a		30
1993		4,169		n/a
1994		4,155		33
1995		4,082		31
1996		4,127		30
1997		4,177		n/a
1998		4,177		30
1999		4,237	$8,000	31
2000		4,225	11,027	29-37
2001		4,225	11,027	43-50
2002		4,232	10,740	50

Source: Nancy Beres (Administrative Specialist, OSM), May 31, 2002 interview. Budget figures were obtained from F&WS internal documents; employment data were derived from OSM organizational charts and telephone lists. The budget figures quoted above are "before shared costs" by the F&WS's regional office; actual operating budgets, therefore, are 2-6% less. n/a = not available.

As was noted in Chapter 7, the federal assumption of subsistence management and the cessation of the state-charted regional advisory councils did not spell the end of the state involvement in federal subsistence activities. Federal officials were quick to recognize that the data and experience of the state's Subsistence Division personnel could be invaluable in furthering their own management goals, and beginning in 1990 a series of annual cooperative agreements were instituted; the federal government provided funding in exchange for data collection and the maintenance of the Division's Community Profile Database, among other tasks. These funding levels decreased each year, and by fiscal year 1995 the federal government provided less than $50,000 to support Subsistence Division programs. But soon afterward, the federal government began to allot specific funds for ADF&G liaison and staff support, and by the late 1990s more than $125,000 in annual funding assistance was being provided. A far larger economic inflow during this period was provided by specific federal agencies such as the Fish and Wildlife Service, NPS, and Minerals Management Service. As the state legislature decreased its support for subsistence programs, Subsistence Division personnel came to increasingly rely on program and project support provided by the F&WS, NPS and other federal agencies. [187]

The workload that federal subsistence managers assumed during the mid-1990s remained heavy. As noted above, a major task that the regional councils and federal board faced throughout this period was eliminating the backlog of proposals to either establish new customary and traditional (C&T) use determinations or revise existing determinations. Early in the process, federal managers had hoped to research these determinations for each rural settlement and for each applicable wildlife species. That process, however, promised to be exhaustive, and staff soon recognized that such an approach might require a minimum of 25 years to complete. [188] An event at the April 1995 Federal Subsistence Board meeting, however, forced federal managers to rethink their approach toward C&T determinations. As part of a Board discussion of a proposals 43 and 44 (regarding the Seward Peninsula musk ox herd), federal board solicitor Keith Goltz read aloud a letter from Mike Anderson, a solicitor in the Department's Washington office. That letter stated, in effect, that the Board was obligated to honor the C&T recommendations of the various regional councils unless certain

specified criteria had been violated. Based on the contents of that letter, federal board members overrode the NPS's recommendation regarding the musk ox proposal. They did so because it was contrary to a vote of the Seward Peninsula Regional Advisory Council and because it did not meet any of the three criteria for rejection. [189]

In response to the solicitor's new interpretation, the federal board's way of handling C&T proposals dramatically changed. Instead of an exhaustive, staff-driven approach that had characterized the process prior to 1995, the various RACs took the lead and began making C&T proposals. And the federal board responded in kind. During its spring 1996 meeting, the board "for the first time ... acted on proposed regulations to the Subpart C regulations governing customary and traditional use determinations." But the proposals that were generated during this period were by no means piecemeal. Instead, several proposals asked for C&T determinations for all species within specific villages, and in some cases, C&T proposals were made for entire game management units. Given that new approach, the C&T proposal backlog disappeared. During the mid-1990s, between 60 and 90 proposals were presented to, and acted upon by, federal managers in each annual regulatory cycle. (See Tables 8-1 and 8-2, pages 218 and 219 respectively.) Some of these proposals urged a modification in C&T determinations, while others were for changes in seasons and bag limits or in methods and means of subsistence hunting. By 1998, the backlog for wildlife species had finally been eliminated. [190]



Since 1994, Sandy Rabinowitch has been a program manager and NPS representative to the Federal Subsistence Board's Staff Committee. NPS (AKSO)

The National Park Service during this period had a mixed record of support for the federal subsistence management effort. During the 1993-1994 regulatory cycle, when the federally-chartered regional advisory councils were meeting for the first time, "official" NPS support consisted of Regional Director John M. Morehead, who served as the agency's Federal Subsistence Board representative, and John Hiscock, the agency's staff committee representative. Assisting Hiscock in the preparation of wildlife proposals were three regional office employees—Bruce Greenwood, Paul Hunter, and Clarence Summers—along with various park subsistence coordinators. In late 1994, several personnel changes were made: Robert Barbee replaced Morehead, Barbee in turn asked Deputy Regional Director Paul Anderson to assume responsibilities over the agency's subsistence program, and Sanford (Sandy) Rabinowitch replaced Hiscock. The agency's staffing level, for the time being, remained constant. That stability, however, was torn asunder in early 1996 by the dissolution of the Alaska Support Office's Subsistence Division. As noted above, Subsistence Division personnel were reassigned to one of three other divisions.

The three regional office employees assigned to federal board projects, along with virtually all other former Subsistence Division staff, were given added responsibilities by their new supervisors that were unrelated to subsistence. Rabinowitch, forced to make do with only half the staff time that he had previously enjoyed, was able to realize some efficiencies because his staff—and the park subsistence coordinators on whom he depended so heavily—were now thoroughly familiar with the proposal process. Based on their collective expertise, Rabinowitch fashioned a system whereby agency staff ranked all proposals as high, medium, or low. Proposals ranked as "high" were researched more thoroughly than those in the "medium" category; similarly, staff invested more time and effort in proposals ranked "medium" than those judged to be of low priority. [191]

With one notable exception—the October 1999 assumption of fisheries management, which

will be discussed in Chapter 9—the federal subsistence management program has witnessed few major changes since the mid-1990s. The annual regulatory round has continued to follow the same general schedule that was initially established in 1993-1994, and the regional advisory councils and the Federal Subsistence Board have continued to meet on a regular, predictable basis. (Except for occasional work sessions, where no policy decisions are made, all meetings are open to the public and are announced beforehand, both in local media and via the *Federal Register*.) [192] Funding for the Office of Subsistence Management has remained sufficient to maintain effective oversight authority (see Table 8-3), and the various agencies supporting the federal board have also been able to consistently budget sufficient funds to maintain their roles in the subsistence program. [193] By the late 1990s, it was becoming increasingly evident that the federal subsistence program was maturing. The program, now almost ten years old, offered consistency and predictability to subsistence users and their representatives on the various regional advisory councils. Because the federal government, through its regional advisory council meetings, held public forums throughout the state twice each year, longstanding tensions between subsistence users and agency staff began to ease; in addition, staff representatives of the various federal agencies also began to trust each other to an increasing degree because the federal interagency staff committee met numerous times each year. One positive byproduct of this longtime interaction is that the number of proposals forwarded to the federal board has decreased each year since 1998. (As noted in Table 8-1, there were 109 proposals advanced for the 1998-1999 regulatory year, while only 48 proposals were submitted for the 2002-2003 regulatory year.)



Judy Gottlieb, an Alaska resident since the 1970s, has represented the NPS on the Federal Subsistence Board since March 1999. NPS (AKSO)

Another positive sign has been that a decreasing number of the proposals that have been submitted are deemed contentious. In recognition of that fact, Forest Service representatives on the Federal Subsistence Board's staff committee successfully lobbied for a "consent agenda." This provision, reserved for proposals that were either approved or rejected by all involved parties—the state, regional council members, and federal agency staff—was intended to streamline the federal board meetings by limiting the time that board members spent on uncontroversial proposals. Recent years, in fact, have seen an increasing number of proposals appear on the consent agenda. (The inclusion of a state ADF&G representative at the staff committee's springtime meeting, where many decisions regarding wildlife proposals are made, has further boosted the number of consent items.) A decrease in the number of overall proposals, along with an increasing percentage of proposals on the consent agenda, has made Federal Subsistence Board meetings in recent years shorter than ever before; whereas meetings during the mid-1990s had taken five days to complete, most meetings since 1998 have typically been just three days long, and both the 2001 and 2002 meetings were completed in just two days. [194]

Yet another sign that the federal program was maturing was an increase in the effectiveness of data collection and monitoring programs conducted by cooperative groups. In 1992, the Office of Subsistence Management commenced its first so-called Section 809 agreements with such entities as the Association of Village Council Presidents, in the Yukon-Kuskokwim area; the Tanana Chiefs Conference and the Council of Athabaskan Tribal Governments, in interior Alaska; and the Bristol Bay Native Association. Some of these agreements, inevitably, were more successful than others, and by 1996 a new cooperative model arose, in which state Subsistence Division personnel played a major role both in designing projects and analyzing the data that had been collected by the employees of the various Native organizations. The new model was widely seen to be more cost effective and

time efficient, and it also resulted in a more useful final product. [195]

At the National Park Service, one major change since the mid-1990s took place in March 1999 when Judith C. Gottlieb, the Associate Regional Director in charge of Resources, replaced Paul R. Anderson as the agency's federal board representative. Gottlieb had been an Alaska resident for more than twenty years and had been involved with subsistence issues for much of that time. Another major change was Bob Gerhard's involvement in the program beginning in the fall of 1996. Gerhard, like Gottlieb, was fully experienced on subsistence matters; he had served as superintendent of the three Northwest Alaska Areas park units, where subsistence was a major concern, and he had also spent two years as the agency's federal board staff committee representative. Otherwise, however, the program has changed little since the mid-1990s; the number of staff hours available to support the federal subsistence hunting program (both in the Alaska Support Office as well as in the parks) has not grown, and few major changes have taken place in staff support for wildlife issues. Details of the agency's support of the federal subsistence fisheries program are provided in Chapter 9.

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Alaska Subsistence

A National Park Service Management History

Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

M. The Federal Program (Wildlife Issues), 1993-present: Specific Issues

The overall federal subsistence management system has considered several actions that have been of particular interest to the National Park Service and to subsistence users within NPS units. They have included 1) proposed changes to regional council boundaries, 2) proposed changes in regional-council representation on the SRCs, 3) the selected lands issue, 4) issues concerning migratory bird hunting and egg gathering, and 5) the debate over the validity of individual customary and traditional use determinations. These issues will be discussed in the order presented.

1. Proposed Regional Council Boundary Changes. Three changes in regional council boundaries have been proposed in or near a national park or monument. One change, made during the public process that produced the federal government's EIS on subsistence management, involved the westernmost portion of the boundary line between Northwest Arctic Region (Region 8) and North Slope Region (Region 10). The final EIS, which was produced in February 1992, showed that the boundary line in this area for its proposed alternative (Alternative IV) was also the boundary line between Game Management Units 23 and 26A. In early April, however, the Record of Decision for the EIS showed that approximately 75 miles of this boundary had moved southward. Though the Record of Decision stated that "the Board recommends the regional boundaries follow the boundaries of the existing Game Management Units established by the Alaska Department of Fish and Game," the new regional council boundary was moved away from the GMU boundary. The new boundary, close to the northern tip of Cape Krusenstern National Monument, was nearly collinear with the boundary between the NANA Regional Corporation and the Arctic Slope Regional Corporation. It was moved at the apparent suggestion of Native corporation officials, who had recommended the new boundary as part of a regional-council alternative that the federal board had not adopted. [196]

Boundary-modification measures were also discussed in and near Gates of the Arctic National Park and Preserve. As noted above, regional council boundaries were collinear with ADF&G game management unit boundaries in many cases. The City of Anaktuvuk Pass, which lay astride a regional boundary, petitioned the Federal Subsistence Board, in late 1992 or early 1993, to have the boundary line moved south so that all incorporated land would be included in the North Slope Region. In April 1994, the Gates of the Arctic SRC seconded the city's petition. At a meeting in Anaktuvuk Pass, it recommended that the regional council boundary line be moved 10 to 30 miles south so that all of the village's "traditional subsistence use area" would fall within the North Slope Region. But the idea was never approved primarily because village residents were assured that the boundary's location would have no effect on the continuation of their traditional hunting patterns. The SRC also suggested that a smaller area, at the western end of the park and preserve, be moved from the

Western Interior and Northwest Arctic regions into the North Slope Region; this was because Anaktuvuk Pass residents claimed that the area was part of the Nunamiuts' traditional trapping territory. This proposal was actively considered until the matter was discussed at a Northwest Arctic Regional Advisory Council meeting in Kotzebue in early 1995. Members of that regional council, however, openly worried that adopting such a resolution would set a precedent for many other communities that were located near regional council boundaries. The proposal, therefore, was voted down. Based on that opposition, the federal board failed to support the measure when it voted on the matter in mid-April. [197]

2. SRC Representation on the Regional Councils. Another regional council matter that concerned the various SRCs was the delegation of which regions would be able to appoint new SRC members. As was noted in Chapter 5, the NPS had originally decided back in 1982 which of the new, state-chartered regional advisory councils would be able to choose members for the new SRCs; and in November 1984, a memo from the agency's regional director, Roger Contor, had explained and justified that process. That distribution of regional representation had worked satisfactorily until the early 1990s. But in April 1992, the Federal Subsistence Board determined that the number of regional councils would increase from six to ten. No sooner had the Board made its decision than SRC members, in certain cases, began to complain that the new system did not provide adequate representation for their park's subsistence users.

Two SRCs lobbied for a change. At Denali National Park, two appointments had traditionally been made from the Interior Regional Council and one from the Southcentral Regional Council. But in May 1992, just a month after the Federal Subsistence Board's decision, the Denali SRC—recognizing that most subsistence users lived south of the park—asked that the former representation be reversed: that is, one should come from the Interior Regional Advisory Council and two from the Southcentral Regional Advisory Council. And eighteen months years later, the SRC asked for an additional change; in order to incorporate the interests of subsistence users who lived west of the park, it asked that one of the two Southcentral regional council appointments be shifted to the new Western Interior Regional Advisory Council. The commission's charter has not yet been changed to reflect that request. Despite that omission, areas west of the park are represented; members from both McGrath and Telida (the latter a resident zone community) have been on the commission since the mid-1980s. [198] The Gates of the Arctic SRC was also uncomfortable with the distribution of regional council seats. The commission's first charter, signed prior to its first (May 1984) meeting, stated that the SRC would have two Arctic Regional Council seats and one Interior Regional Council seat. But when the first charters were issued that reflected the shift from state to federal councils, representation shifted to two members from the Western Interior regional council and one from the Northwest Arctic regional council. Anaktuvuk Pass resident Raymond Paneak, who chaired the SRC, was quick to recognize that the new alignment excluded representation from villages north of the park (and including Anaktuvuk Pass as well). So at an October 1993 meeting, the SRC passed a resolution stating "that the Western Interior Regional Advisory Council (6) should defer the appointment of one seat of the Gates SRC to the Arctic [i.e., North Slope] Region (10) ... as many resident zone people live in region 10." The public, given the opportunity to comment on the proposed change, was "strongly in favor of shifting one of the Western [Interior] Region's SRC appointments so that each of the three regions has one appointment," and in January 1995 the SRC asked Secretary Babbitt to implement the change. Babbitt approved the change, and in 1996 the commission's charter was amended to reflect the new representation. [199]

3. The Selected Lands Issue. As noted in Chapter 1, the 1958 passage of the Alaska Statehood Act gave representatives of the new state the right to select up to 102,550,000 acres of "vacant, unappropriated and unreserved" federal lands for their own purposes. Based on that provision, state lands officials began selecting lands soon afterward, and before long the state

had laid claim to tens of millions of acres of Alaskan real estate. Then, as noted in Chapter 4, Congress passed the Alaska Native Claims Settlement Act in December 1971. That law gave Alaska's Natives—through a series of new regional and village corporations—the right to select 40 million acres of Alaskan land; and Native groups lost no time in selecting millions of acres of their own. But for both state- and Native-selected lands, there was no guarantee that selecting lands guaranteed ownership, and even if ownership was the eventual result, millions of acres of lands often remained in the "selected" category, sometimes for ten or twenty years or more.

These "selected" lands, which were legally still owned by the federal government, were not a management issue during the decade that followed the passage of ANILCA; this was because the Alaska Department of Fish and Game management extended to all selected lands save those that were located within national parks and monuments. In the wake of the *McDowell* decision, the federal government took steps to assume subsistence management of Alaska's federal lands, and as part of the regulation-writing process that federal officials undertook in early 1990, a decision was made to not assume jurisdiction over the "selected" lands. Key to their decision was Section 102 of ANILCA, which stated that "public lands" specifically excluded "land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act" and "land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation." The 1990 temporary regulations, therefore, duly noted that "Lands validly selected by the State or Native corporations are therefore excluded from this public lands definition." The federal government's final subsistence regulations, which became effective on July 1, 1992, made no changes regarding this point. [200] Selected lands were to be managed by state, not federal, authorities.

Subsistence groups, at first, seemed unconcerned over the issue. But on April 12, 1994, the Northwest Arctic Subsistence Regional Advisory Council and a broad spectrum of Native groups submitted a "Petition for Rule-Making by the Secretaries of Interior and Agriculture that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA." The following February, a public comment period began when a Petition for Rulemaking was published in the *Federal Register*. The Alaska Legislature, furious at the move, quickly introduced a joint resolution "requesting the Congress to amend ANILCA to clarify that the term public lands means only federal land and water and that any extension of federal jurisdiction onto adjacent land and water is expressly prohibited." This resolution was introduced on March 6, and by May 12 it had passed both legislative chambers and was headed for the governor's desk. The Denali SRC, however, generally supported the Petition for Rulemaking. It agreed that "a limited expansion of federal jurisdiction ... could be beneficial," and it noted that many lands in the Denali National Park area that were "originally selected for their subsistence resources ... are closed to the federal subsistence program." [201]

In April 1996, the Interior and Agriculture departments took the process a step further. As part of a larger action pertaining to management of the subsistence fisheries, they expressed their intent to amend the definition of "public lands" to include selected lands by publishing an Advanced Notice of Proposed Rulemaking in the *Federal Register*. Specifically, the notice stated that

> After reviewing the matter, the Secretaries have concluded as a matter of law that certain selected but not conveyed lands are governed by the terms of ANILCA Sec. 906(o)(2), 43 U.S.C. Sec. 1616(o)(2), which provides that "Until conveyed, all Federal lands within the boundaries of a Conservation System Unit ... shall be administered in accordance with the laws applicable to such unit." Accordingly, the Secretaries have determined that all Federal lands within the units specified in

> ANILCA Sec. 906(o)(2) will be administered as part of the unit to which they belong and will be subject to the administrative jurisdiction of the Federal Subsistence Board until conveyed from Federal ownership. The contemplated change relating to the definition of public lands contained in the preliminary regulatory text reflects the Secretaries' conclusions in this regard. [202]

Later that year, two SRCs made their opinions known on the matter, both as part of the process that resulted in the August 1997 issues paper. In the summer of 1996, the Denali SRC reiterated its interest in having the selected lands opened up to Title VIII subsistence uses. And the Gates of the Arctic SRC passed a resolution requesting that all people living in the park's resident zone communities, along with all 13.44 permit holders, be granted a positive customary and traditional use determination for all of the park's subsistence resources. (This action, among its other effects, granted local residents access to selected as well as public lands.) But Alaska's Congressional delegation, recognizing that the proposed rulemaking was an effective federal takeover of a large amount of state-owned acreage, opposed the idea. On September 13, 1996, an amendment was inserted into the Fiscal Year 1997 Interior Department appropriations bill (Sec. 318 of H.R. 3662) that would have made it impossible to apply federal regulations to selected lands. [203] But the amendment was removed not long afterward, and no further Congressional action took place on the matter. The NPS, in its final issues paper, stated that it "still believes that the federal subsistence program should extend to selected lands." [204]

After August 1997, the fate of the selected lands issue was dependent upon whether the federal government would assume management over navigable waters within federal conservation units. (See Chapter 9.) In December 1997, the Interior and Agriculture departments issued a Proposed Rule on the subject; as part of that proposed rule, they suggested that the following qualifier be added to the "public lands" definition: "until conveyed, all Federal lands within the boundaries of any unit of the National Park system ... shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA." This qualifier was also included in the Final Rule that the Secretaries issued in January 1999. [205] The State of Alaska, during its 1999 legislative session, was unable to piece together a subsistence plan that conformed to federal guidelines, so the Secretaries' final rule was implemented on October 1. Since then, agency officials have managed subsistence on selected lands within the various NPS units much as they have federally-owned lands.

4. Migratory Bird Hunting and Gull Egg Collecting. Residents in various parts of the Alaskan bush had long hunted migratory birds and collected migratory bird eggs as part of their traditional harvesting patterns. That activity, however, had been illegal ever since the Congressional passage, in July 1918, of the Migratory Bird Treaty Act. (This act, signed into law by President Woodrow Wilson, put into effect the Convention Between the United States and Great Britain for the Protection of Migratory Birds which had been ratified two years earlier. Great Britain had acted on Canada's behalf.) The 1918 law made it unlawful "to pursue, hunt, take, capture [or] kill ... any migratory bird, any part, nest, or eggs of any such bird" that migrated between the United States and Canada. The treaty gave the Interior Secretary the authority to permit specific harvesting of various migratory bird species, but by barring all migratory bird hunting between March 10 and September 1, it effectively prevented Alaskan residents from legally conducting traditional migratory bird harvests. The United States broadened the provisions of the Migratory Bird Treaty Act in February 1936 when it signed a similar treaty with the United Mexican States. [206]

Even prior to statehood, the Fish and Wildlife Service—which administered and enforced the act—was well aware of the conflict between the law and traditional hunting patterns. And in a few well-publicized cases, rural Alaska residents strongly protested agency enforcement

measures; in 1961, for example, the arrest of state representative John Nusunginya (D-Point Barrow) for hunting ducks out of season caused 138 other area residents to harvest ducks and present themselves for arrest to federal game wardens. (A year later, all charges were dropped.) [207] Based on such an incident, the Fish and Wildlife Service was low-key in its enforcement efforts. As the agency later noted,

> The Service has recognized for many years that residents of certain rural areas in Alaska depend on waterfowl and some other migratory birds as customary and traditional sources of food, primarily in spring and early summer. Because of this long established dependence, prohibitions on taking during the closed season generally have not been strictly enforced provided that the birds were not taken in a nonwasteful manner and were used for food. [208]

Officially, however, the prohibition remained. Negotiators from both the U.S. and Canada, hoping to solve the problem, signed an agreement on January 30, 1979 that would have allowed subsistence hunting of waterfowl outside of the normal hunting season. The treaty, however, did not take effect because the U.S. Senate never ratified it. A year later, Congress passed ANILCA with a subsistence provision. But Congress, aware of the stalemate in the international negotiations, was careful to note 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 (40 Stat. 755; 16 U.S.C. 703-711)." [209] ANILCA, as stated in Chapter 4, brought 13 new or expanded units into the NPS system. Inasmuch as migratory bird harvesting had traditionally taken place in several of those units—including Aniakchak, Gates of the Arctic, Wrangell-St. Elias and the various Northwest Alaska Area parks—NPS officials soon recognized that the migratory bird issue was an agency concern.

John Nusunginya, from Barrow, represented the North Slope in the first two Alaska Legislatures to convene after statehood (1959-1963). In May 1961, he struck a blow for Inupiat hunting rights when he instigated the famous Barrow "duck-in." ASL/PCA 01-3422

During the years immediately following ANILCA's passage, Fish and Wildlife Service staff began to recognize that drastic declines were taking place in various Yukon-Kuskokwim Delta bird populations. Four species were particularly affected: cackling Canada geese, emperor geese, Pacific white-fronted geese, and Pacific brant. The cause of that decline was contested; agency managers felt that spring harvesting in the delta was the primary reason, while local residents claimed that their harvest rates had not increased. Residents speculated, instead, that either overhunting or habitat loss in the birds' wintertime home (in California and Mexico) may have caused the decline. To ensure the health of those populations, the F&WS worked with the ADF&G and local residents on a goose management plan. That plan was finalized in 1984 and renewed in 1985, but a suit challenging the legality of those plans was filed in the Alaska District Court. The Court's ruling, issued in January 1986, stated that the 1925 Alaska Game Law—and not the 1918 Migratory Bird Treaty Act—governed subsistence hunting for migratory birds in Alaska. On the heels of that decision, the F&WS began a rulemaking process to permit and regulate subsistence hunting for migratory birds throughout Alaska. The agency planned public hearings and hoped to issue a final rule in time for the spring 1988 migratory bird harvest. That process, however, was halted by an October 9, 1987 ruling from the Ninth Circuit Court of Appeals, which reversed the District Court's ruling. The Appeals Court held that any regulations for subsistence hunting of migratory birds must be in accordance with the 1916 U.S.-Canada treaty and the 1918 act. The decision did, however, give the F&WS some leeway in enforcing the measure, and the agency responded by concentrating its enforcement efforts on aircraft access to nesting areas, egging, and taking for the four above-named bird species. [210]

Following that ruling, Fish and Wildlife Service officials decided to push for a new cooperative goose management plan, and it also issued a proposed policy on how it would enforce the MBTA's closed-season policy. In addition, it asked the U.S. State Department to begin negotiations on legalizing the subsistence harvest during the closed season by proposing amendments to both the U.S.-Canada and U.S.-Mexico treaties. By 1993, the Service had either been assured (or was hoping) that the two countries were close to an agreement, and on that basis it wrote a draft environmental assessment regarding the impacts of legalizing a expanded hunting season on Alaska's migratory bird populations. That study, announced in mid-August 1993, recommended several action alternatives; the preferred alternative called for modified Convention that allowed a regulated harvest during a portion, but not all of, the currently closed period. The public was given until mid-October to comment on the draft EA. Many of those who responded requested that the Service include additional materials on such subjects as the demographics and harvest situation in Alaska. Given those requests, the Service issued a second draft in early March 1994, and two months later it issued its final environmental assessment, entitled *Regulation of Migratory Bird Subsistence Hunting in Alaska*. The Service's acting director approved the final EA on July 1, 1994. [211]

Before long, the State Department's negotiations began to bear fruit. On December 14, 1995, Interior Secretary Bruce Babbitt and Canadian Deputy Prime Minister Sheila Copps signed a protocol amending the U.S.-Canada treaty, and a similar protocol was signed with Mexico that same year. In October and November 1997, the U.S. Senate ratified the amendments to migratory-bird treaties with Canada and Mexico, respectively, and in the fall of 1999 the amended treaties with both countries were formally implemented. F&WS officials, at that time, promised rural Alaskans that specific hunting regulations reflecting the amended treaties would be implemented by 2001; until that time, residents would be bound to existing policy, which allowed subsistence harvests so long as they were compatible with sustainable conservation. The process, however, has proven to be more complex than anticipated. As a result, no regulations are expected prior to the spring of 2003. [212]

NPS officials, and those who harvested subsistence resources in NPS units, were periodically updated on the status of these negotiations. The Wrangell-St. Elias SRC, which was the active SRC from a park unit most involved with migratory bird issues, sent an April 1994 letter to Interior Secretary Bruce Babbitt that made two requests: first, that regulations be adopted which provided for a fall subsistence harvest of waterfowl consistent with the State's season and bag limits, and second, that amendments to the Migratory Bird Treaty Act were needed to protect the subsistence harvest of bird eggs, especially sea gull and tern eggs. (The SRC, in making these requests, apparently knew that the Interior Secretary, which carried out the provisions of the Migratory Bird Treaty Act, was "authorized and directed ... to determine when ... it is compatible with the terms of the conventions to allow hunting, taking, capture, [and] killing" of the various species that were subject to the Act, and the SRC also apparently knew that the Secretary had authorized a longer-season migratory bird hunt in various parts of western Alaska.) The Interior Department, in its response, referred both to the ongoing negotiations and the F&WS's environmental assessment; pending further negotiations, however, the Department refused to sanction any activities that conflicted with Migratory Bird Treaty Act provisions. The Department told the SRC that its request for a fall waterfowl subsistence harvest was "in conflict with the existing Federal subsistence management regulations," but in order to initiate a new regulations process, it indicated a willingness to "consider this matter in the future" if the SRC resubmitted its request in the form of a hunting plan recommendation. [213] At its next meeting (in February 1996), the Wrangell-St. Elias SRC did just that; it passed a two-part recommendation and forwarded it on to various local and regional advisory committees, and in December 1996 it sent its recommendation to the Interior Secretary. [214]

The Interior Secretary, unsure of his legal position, spent almost two years mulling over the matter. But in June 1998, the Department's Office of the Solicitor dashed cold water on the SRC's proposal. First, it concluded that the Federal Subsistence Board had no management authority over migratory birds; thus the board was powerless to allow a fall waterfowl hunt. A second, more sweeping conclusion was that not even the long-expected Migratory Bird Treaty Act amendments would legalize waterfowl hunting or egg collecting in an NPS unit. Wrangell-St. Elias Superintendent Jon Jarvis told his SRC that only Congress could legally sanction these activities. He stated that

> there is a body of congressional law that says no park value can be derogated [i.e., diminished in value] without specific direction from Congress. The Secretary does not have the authority to allow [a] migratory bird hunt in a National Park Unit because Congress never gave that authority to the Secretary in Title VIII. Even if you modified the Migratory Bird Treaty you still could not hunt, because Congress has said specifically [that] the only kind of hunting you can do in a National Park in Alaska is that which falls in the provisions of Title VIII. [215]

In a subsequent letter to the SRC chairs, an NPS official further clarified the matter and suggested that the legal harvesting of waterfowl and their eggs, in national preserves as well as in the parks and monuments, might require Congressional action. [216]

Not long after NPS officials told the Wrangell-St. Elias SRC of the Interior Solicitor's opinion, the Gates of the Arctic SRC protested the action. Citing Section 802 of ANILCA, which stated that it was "the policy of Congress ... to provide the opportunity for rural residents engaged in a subsistence way to life to do so," SRC chairperson Pollock Simon, Sr. stated that because the

> 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. [217]

Taking a cue from both the Interior Department Solicitor as well as the Gates of the Arctic chair, NPS officials began working with their counterparts at the Fish and Wildlife Service to resolve the problem without Congressional intervention. (Fish and Wildlife Service officials had a more relaxed interpretation of the treaties, laws, and regulations; as F&WS employee Mimi Hogan noted, "the subsistence hunters in the Wrangell-St. Elias National Park Subsistence Resource area can legally take waterfowl, snipe, and cranes consistent with federal and state hunting regulations. The decision on whether hunters are eligible to hunt migratory birds within Wrangell-St. Elias Park and Preserve is a National Park Service decision based on their interpretation of Title VIII....") Before long, NPS officials began to rethink its former position, in part because the definition of "subsistence uses" in Sec. 803 of ANILCA, which included "the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption," seemed broad enough to include migratory birds. This issue, however, was not resolved quickly. In October 1999, NPS officials told the SRC chairs that they were "hopeful for a positive resolution to the issue." Four months later, however, the agency had "still not been able to complete the necessary consultation" with Interior Department Solicitors in Washington, D.C. [218]

Finally, on May 16, 2000, the NPS responded to the two hunting plan recommendations that the Wrangell-St. Elias SRC had made in December 1996. Robert Barbee, speaking on behalf of the Interior Department (due to its newly-implemented delegation authority), 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 users are otherwise allowed. ... The traditional harvest of migratory birds may be permitted in parks and monuments, as long as such harvest is consistent with the Migratory Bird Treaty Act. ... Earlier analysis of the impact of [ANILCA sections 815 and 816] 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.

The NPS thus approved of the first of the SRC's two recommendations, and it permitted the requested fall waterfowl harvest as long as it was consistent with MBTA regulations. It stopped short, however, of approving the other recommendation, which advocated a general exception to the spring and summer prohibition against harvesting migratory birds and their eggs for subsistence purposes. This recommendation, the NPS concluded, could not be approved until the Fish and Wildlife Service had approved regulations in accordance with the amendments to the Canadian and Mexican migratory bird treaties, which were finalized in the fall of 1999. As noted above, these regulations had not been adopted even in February 2001; as a result, NPS officials told the SRC chairs that the NPS was powerless to relax this prohibition until the F&WS's regulations process had been finalized. [219]

5. The Individual C&T Issue. A final area of interest revolved around the following question: should it be legal, under the federal management program, for individuals who had a customary and traditional pattern of subsistence use to continue that use if they lived in an area where the Federal Subsistence Board had not established a positive C&T determination? Relatively few Alaskans, to be sure, fit both of these criteria, but because neither ANILCA nor the subsistence regulations directly addressed this subject, the resolution of the so-called "individual C&T" issue has been a complex, drawn-out process.

The precursors of this issue reached back to the mid-1980s, several years before the federal government assumed jurisdiction over the subsistence resources on Alaska's federal lands. As noted in Chapters 5 and 6, the Alaska's Board of Fisheries and Board of Game made its first rural determinations in April 1982. Then, in the wake of the *Madison* case, the joint board made a new series of rulings regarding rural residency between May 1986 and March 1987 that covered the entire state. But some communities did not clearly fit either a rural or non-rural definition, so between 1987 and 1989 the joint boards, on a case-by-case basis, either moved—or refused to move—several areas from a non-rural to a rural classification.

One area that fell into a regulatory gray area was the 84-mile stretch of the Parks Highway between mileposts 216 and 300. (Milepost 216, six miles north of Cantwell, is the boundary line between Game Management Units 13E and 20A; while Milepost 300, four miles south of Nenana, is near the boundary between Game Management Units 20A and 20B.) Many residents along this highway corridor live in the small communities of Healy, Anderson/Clear, and Denali Park/McKinley Village, while others carry on a more dispersed lifestyle. Many of the residents of this road corridor have long harvested subsistence resources. But when Interior Department personnel began compiling regulations on how the newly-expanded Denali National Park should be managed, they decided that none of the communities in this corridor should be designated as resident zone communities. The June 1981 regulations listed Cantwell as the only resident zone community along the Parks Highway. This did not mean, of course, that subsistence harvesting in Denali National Park was limited to residents of designated communities. It did, however, mean that residents who lived outside of these designated communities needed a so-called 13.44 permit in order to

hunt; to obtain a 13.44 permit, moreover, required that prospective permittees be required to satisfy various customary and traditional (C&T) criteria.

When the Alaska joint boards made their initial rural determination rulings, in April 1982, this road corridor was judged to be rural. That ruling remained until March 1987, when—perhaps as a result of growth taking place along the eastern border of Denali National Park—the state board reversed its earlier decision and declared the area to be non-rural. On the basis of that decision, the NPS revoked all 13.44 permits for residents along the Parks Highway corridor. In reaction to the state board's decision, local fish and game advisory committees filed a petition for a change back to rural status. At a joint board meeting, held in Anchorage in March 1988, that petition was granted. But in an ironic twist, the Alaska Game Board (which met in a separate session a few days later) "examined the question of whether people domiciled in this area had customary and traditional uses of moose and caribou in Units 20(A) and 20(C). Based on their review, the board was unable to conclude that the people in this area met the criteria." The state "assumed that [the joint board's rural determination] would allow the Park Service to reissue the subsistence permits it canceled last year." The NPS, however, interpreted the situation differently, and based on the state's negative C&T determination, NPS officials could not reissue any 13.44 permits to residents who lived along the Parks Highway corridor. The Board of Game was unable to re-address the situation for the next several years, much to the chagrin of local residents. [220]

When the Federal Subsistence Board began managing subsistence resources on federal lands in July 1990, it adopted all of the state's decisions regarding rural or nonrural status until it had the opportunity to undertake its own rulings process. That process, as noted in Chapter 7, was conducted between September and December 1990. It concluded with the federal board recommending that the entire 84-mile road corridor be declared rural. But this decision, while laudable, was a reaffirmation of the status quo. For reasons outlined above, it had little direct impact on the ability of local residents to obtain 13.44 permits.

In December 1990, six residents who lived along the eastern boundary of Denali National Park (between mileposts 216 and 239) wrote a letter to the Federal Subsistence Board. They outlined the joint game board's voting history as it pertained to their area and asked why they had not received subsistence permits for hunting within the park. The Denali SRC, which supported the residents' efforts, sent its own letter to the federal board in March 1991. Because the SRC's letter dealt specifically with Denali National Park it was forwarded to the NPS, and in September 1991 the agency's regional director, John M. Morehead, responded. He noted that

> When the federal government implemented its interim subsistence regulations (on July 1, 1990), the state Board of Game's determinations for C&T uses were adopted. The current determinations preclude Parks Highway residents between mileposts 216 and 239 from subsistence use of caribou and moose within Game Management Unit 20C, which includes portions of Denali National Park. Accordingly, Parks Highway residents are not qualified to subsistence hunt within Denali National Park for those animals. However, the superintendent is authorized to issue permits to Parks Highway residents who meet NPS eligibility criteria for other subsistence uses within Denali National Park.

Morehead assured those affected, however, that the federal board would "adopt a process for making C&T determinations prior to July 1, 1992" and that "once a process is adopted, the Board will review existing determinations for consistency with that process." All the residents had to do, therefore, was to exercise some



Nenana resident Mitch Demientieff, during the mid-1980s, worked briefly as a regional council coordinator for the Alaska Department of Fish and Game. Since 1995, he has served as the Federal Subsistence Board chair. ADN

restraint; in the not-too-distant future, they would be able to "submit written comments on C&T determinations" in hopes of changing caribou and moose subsistence regulations along the highway corridor. [221]

Local residents and SRC members, hoping for an expedited review of their case, were chagrined to hear in May 1992 that their request for a C&T determination review was ranked poorly and that "it may be several years before it comes before the board." SRC coordinator Hollis Twitchell, in response, recommended that the request be changed from the "new rural community category" to the more highly-ranked "appeal category" based on the negative C&T determination that the Alaska Board of Game had given previously. The newly-minted Eastern Interior Regional Advisory Council (EIRAC) was also supportive; it noted in the fall of 1993 that the Council's "highest priority C&T issue" was along the Parks Highway, and it voted unanimously for the Federal Subsistence Board to act "as soon as possible." But the board made no immediate moves because it was buried under an avalanche of other C&T requests from throughout the state. [222] NPS officials, doing what they could in support of local residents, decided to re-issue 13.44 permits to residents in the McKinley Village area residents for both 1994 and 1995. But their gesture had little practical effect, because only the FSB could act on the negative C&T determination. [223]

By early 1995, the FSB had still not ruled on whether the Parks Highway corridor satisfied the federal government's C&T criteria, and no action appeared likely in the foreseeable future. So the Denali SRC suggested a new angle: obtaining C&T determinations for individual permit holders—all of whom lived between mileposts 216 and 239—rather than for the entire road corridor. (The May 1992 final regulations appeared to allow for individual C&T determinations for those harvesting subsistence resources on NPS land because they stated that "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.") The SRC wrote to Acting Superintendent Steve Martin and asked him "to be sure the original [13.44] permittees know about possible actions they could take to expedite the appeal process or how to apply for an individual exception to the determination." Shortly afterward, the SRC wrote the Federal Subsistence Board. It asked, once again, that it reexamine its existing C&T regulations for the area, but "If the area does not meet the customary and traditional criteria for subsistence use of moose and caribou, we believe the Federal Subsistence Board should grant a waiver to the individuals residing in the area who have subsistence use permits issued by the National Park Service." [224]

The SRC's coordinator, Hollis Twitchell, responded to the interests of his commission by submitting a federal board proposal in the late summer of 1995. Proposal 19 requested a change in the C&T determination for moose in Game Management Unit 13E, and for caribou in GMUs 20A and 20C, for people living along the Parks Highway between mileposts 216

and 239. During their subsequent review, the Eastern Interior and Southcentral regional councils generally supported the proposal, but at EIRAC's request, Healy and the park headquarters area were excluded from the proposal. In late April and early May 1996, the board met and approved the modified proposal. NPS officials, upon hearing the news, told McKinley Village subsistence permit holders that they were now free, for the first time since the spring of 1987, to harvest moose and caribou in the newly-expanded portions of Denali National Park. [225]

The board's favorable action negated the need for any McKinley Village residents to seek an individual C&T determination. But as noted above, C&T determinations for Healy residents did not change, and one of the major area subsistence users—Dan O'Connor, the son of longtime advocate Pat O'Connor—lived in Healy, which had been excluded from the area "freed up" in the recently-approved proposal. The federal regulations related to individual C&T determinations seemed tailor-made for O'Connor; he lived in a community without a positive C&T determination for moose, but because he had lived there since 1981, he had a well-established (and well-known) pattern of harvesting moose for subsistence purposes. Thus it was not particularly surprising that O'Connor, in mid-March 1997, wrote the federal board and requested an individual exception to the existing C&T determination for moose in Game Management Units 20C and 13E. To expedite matters, he requested a ruling prior to the fall moose season, and to buttress his case, the Denali SRC followed up with a supporting letter. But because the letter was written just six weeks before the federal board's annual meeting, the board did not immediately respond to his request. The NPS's federal board staff committee representative responded to the rejection by pursuing a new vote prior to the fall moose season, but the board informed him that C&T determinations were made only once per year, at the spring meeting. [226]

Later that summer, Dan O'Connor continued his quest for access to the park's subsistence resources by submitting Proposal 38—which was simply a more formal version of his March 1997 request. But O'Connor was not the only person requesting an individual C&T determination that year. A similar proposal was active at Wrangell-St. Elias National Park and Preserve, where Frank Entsminger had submitted two proposals requesting a positive C&T determination—Proposal 25 for Dall sheep and Proposal 29 for goat—for areas in Game Management Unit 11 located south of the Sanford River. Entsminger submitted his proposal on behalf of himself and six other individuals. Based on those proposals, NPS personnel conducted C&T analyses for all eight of the affected parties. In the process of compiling those reports, four of the seven families that had initially supported proposals 25 and 29 indicated that they were no longer interested in pursuing an individual C&T determination for either sheep or goat in a portion of GMU 11. [227]

All three of these proposals, however, had to be delayed. In January 1998, the Wrangell-St. Elias superintendent contacted the various parties interested in proposals 25 and 29 that their federal board proposal would need to be deferred because of a severe and unanticipated staff shortage. Then, two months later, the NPS informed the federal board that the agency had contacted the Interior Department's Office of the Solicitor and was requesting an opinion on the legality of individual C&T determinations. On the basis of that advice, the board decided to defer action on all three of the individual C&T proposals at its May 1998 meeting. The issue was held in abeyance until the Solicitor's Office issued its opinion. Meanwhile, an identical



Tom Boyd (right) has served since 1995 as the chief of the U.S. Fish and

series of proposals was submitted to the board in the late summer of 1998; the Wrangell-St. Elias proposals were numbers 9 and 11, while the Denali proposal was number 25. [228]

Wildlife Service's Office of Subsistence Management (OSM). Peggy Fox (left) also has extensive experience working on subsistence issues, with both the Bureau of Land Management and OSM. USF&WS (OSM)

It was widely anticipated that an opinion would be forthcoming from the Solicitor's Office in the spring of 1999, and in late March, Regional Solicitor Lauri J. Adams issued a review on the subject. She noted that federal board chair Mitch Demientieff had asked her to judge the validity of the statement "For areas managed by the national Park Service, where subsistence uses are allowed, the [C&T] determinations may be made on an individual basis," which was found in two different sections of the *Code of Federal Regulations*: 36 CFR § 242.16(a) and 50 CFR § 100.16(a). In response to that task, Adams noted that

> 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 [ANILCA] ... for lands administered by the National Park Service. ... [W]e believe the approach to C&T adopted by both the [June 1990] Temporary Regulations and the [May 1992] Final Rule reflects a reasonable administrative interpretation of ANILCA and is legally supportable.

Based on the Regional Solicitor's decision, the Federal Subsistence Board at its May 1999 meeting supported the individual C&T concept. The board unanimously approved Dan O'Connor's request for a C&T determination to hunt moose for subsistence purposes in GMUs 13E and 20C. Both of Frank Entsminger's proposals (regarding sheep and goat hunting in GMU 11) were also approved, but only two of the three individuals who still sought a positive C&T determination were awarded it. Shortly after the board made its initial decisions, the NPS established a policy by which future individual C&T determinations would be made. Since then, however, no new C&T proposals of this nature have been submitted to the federal board. [229]

Alaska Subsistence

A National Park Service Management History

Chapter 9:
THE SUBSISTENCE FISHING QUESTION

A. The Federal Role in Subsistence Fisheries Management, 1980-1992

As Chapters 5 and 6 noted, the federal government during the 1980s played a marginal role in the management of the state's game populations for subsistence purposes. Federal officials, to be sure, played a key role during 1981 and early 1982 in order to ensure that the State of Alaska's subsistence management program followed the guidelines that had been outlined in ANILCA and the subsistence management regulations. Between May 1982 and the end of the decade, federal officials were called upon, in the period following various court decisions, to clarify ANILCA's specific intent to state officials. Except for those periods, NPS officials played some role in interpreting game management regulations on NPS-administered lands, and officials representing other federal land management agencies also played a minor role on lands managed by those agencies.

But the federal government in general, and the NPS in particular, played almost no role during the 1980s in the management of fish populations for subsistence purposes. As had been true since the 1958 Statehood Act, Alaska's navigable waters were managed by the state. And of specific interest to the NPS, both agency officials and park-area subsistence users appeared to be far more interested in the management of game than fish populations. Perhaps as a result, there are few known instances in which NPS officials brought specific fish management issues before the state Fisheries Board. The various subsistence resource commissions, moreover, were excluded from any advisory role related to fisheries; when the Gates of the Arctic SRC made a fisheries recommendation to the Interior Secretary in May 1987, an Interior Department official responded that "the Commission's legislative authority is for hunting and that fisheries are not within that area of authority." [1]

The Alaska Supreme Court's ruling in the *McDowell* case in December 1989 (see Chapter 7) portended a major change in the federal government's role in fish management. In striking down the state's 1986 subsistence law, the court made no distinction between subsistence hunting and subsistence fishing. In the wake of *McDowell*, moreover, federal officials recognized that they might well be assuming the management of both fish and game resources on federal lands. Given six months in order to prepare for an assumption of subsistence management, Interior and Agriculture Department officials were able to cobble together a ten-week, two-stage public process in which the nature of federal management would be described and discussed. By June 1, officials had completed work on a "proposed temporary rule," and by the end of June a "final temporary rule" had been compiled and published in the *Federal Register*. The final rule laid out the regulations under which the federal government managed subsistence resources on Alaska's public lands for the next two years.

One major decision that emerged from the spring 1990 public process was that the federal government proposed a narrow, limited role over fisheries management. Both the June 8 and the June 29 regulations specifically excluded federal jurisdiction over navigable waters,

which were defined as "those waters used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water." Federal regulators explained their decision in this way:

> There were many comments on the exclusion of navigable waters from the definition of public [i.e., federal] lands. ... There was a great deal of concern that the exclusion of navigable waters eliminated the majority of subsistence fishing, critical to the well being of rural communities. ... The United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands.

Because Alaska's navigable rivers contained virtually all of the habitat in which fish were typically harvested for subsistence purposes, the practical effect of deciding on the above language was that the federal government continued to have minimal authority to manage the state's subsistence fisheries. Although the June 29, 1990 issue of the *Federal Register* spent many pages detailing subsistence fish and shellfish regulations, these pages were to a large extent ignored; because fishing activity was almost entirely limited to the navigable waterways, federal managers made few decisions in the fisheries arena for the next several years. [2]

As noted in Chapter 7, the federal government undertook a major assessment of its subsistence responsibilities during the 1990-1992 period when it compiled a draft and final environmental impact statement on the subject. The process that culminated in the final EIS included a 45-day public comment period and numerous public meetings. After the EIS was completed, federal officials issued a Record of Decision on April 6, 1992. On May 29, the federal government published final regulations on how subsistence activities would be managed on public lands.

The final regulations made no changes in the federal government's stance toward the management of fisheries for subsistence purposes. As noted in the May 29 *Federal Register*,

> Numerous comments were received concerning the definitions of Federal lands and public lands. All of these comments focused on the issue of jurisdiction over fisheries in navigable waters. Many felt that the definitions should include navigable waters to protect subsistence use and the subsistence priority. They strongly believe it was Congress' intent to protect subsistence rights as broadly as possible. Additionally, many individuals commented that most subsistence resources are found in navigable waters.
>
> The scope of these regulations is limited by the definition of public lands, which is found in section 102 of ANILCA and which only involves lands, waters, and interests therein title to which is in the United States. Because the United States does not generally own title to the submerged lands beneath navigable waters in Alaska, the public lands definition in ANILCA and these regulations generally excludes navigable waters. Consequently, neither ANILCA nor these regulations apply generally to subsistence uses on navigable waters. [3]

Alaska Subsistence

A National Park Service Management History

Chapter 9:
THE SUBSISTENCE FISHING QUESTION (continued)

B. The Katie John Decision

Well before the government published its 1992 final rule on Alaska subsistence management, both federal officials and a broad spectrum of other interested individuals recognized that actions were taking place in the federal courts that had the potential to significantly broaden the federal government's role in the management of the state's subsistence fisheries. Court actions had begun during the mid-1980s, and by the time the final rule was published, a decisive case was ready to be ruled upon by a district court judge. [4]

The case, *Katie John vs. the United States of America* (known informally as the "Katie John case,"), had its origin in a longstanding quarrel over fishing rights. Batzulnetas, a longtime Ahtna village, was located along the banks of the swift, silty Copper River at the confluence of Tanada Creek, a clearwater stream. The site was thus "the perfect location for a fish camp," and for hundreds of years, area Natives harvested the sockeye salmon that ascended the drainage each summer. Batzulnetas remained an active seasonal village until the middle of the twentieth century; its last chief was Sanford Charlie, who died during the 1940s. After World War II, the village's residents resettled at Mentasta Lake and other year-round settlements accessible to the newly-developed highway system. But Batzulnetas, located not far south of Nabesna Road, continued to be widely used as a seasonal fish camp through the early 1960s.

In 1964, however, the Ahtnas' seasonal lifestyle was dealt a severe blow when the Alaska Board of Fisheries and Game shut down subsistence fishing (that is, fishing with nets and fishwheels) at Batzulnetas and other upriver fish camps. Fisheries managers did so because the Copper River, by this time, was supporting a wide array of commercial, sport, and personal-use fisheries, and state biologists posited (correctly or not) that if the Ahtnas caught too many fish in certain upriver "terminal streams," it would have disastrous effects, both on the various downstream users and on the viability of certain salmon stocks. After that decision, the village site was used less often, and before long, Batzulnetas was effectively abandoned. [5] And not long after that, the village and other area lands came under scrutiny by conservationists and Interior Department officials. In December 1978, President Carter included the former village site in Wrangell-St. Elias National Monument, to be administered by the National Park Service, and two years later, the old village was included as part of the 8.3 million acre Wrangell-St. Elias National Park. [6]

Although local Natives did not legally protest the state's 1964 fishing closure, many remained interested in the old village site. During the early 1970s a newly-established regional Native corporation, Ahtna, Inc., filed a 1,600-acre claim to the lands surrounding the village. Three local Native residents—Katie John, Doris Charles, and Gene B. Henry—filed claims to smaller parcels in and around old Batzulnetas. [7] None made an immediate attempt to resettle in the area, but by the early 1980s, Katie John and Doris Charles—two Ahtna elders residing in Mentasta Lake—"began talking about going back" to the former village site. The

women may then have spoken to NPS officials about the situation. [8] In 1984, John and Charles traveled to Fairbanks and presented their case to the Alaska Board of Fisheries. The Board, however, voted 5 to 2 against their proposal; it suggested instead that they fish at various downstream sites—Slana, Chistochina, or Chitina—where subsistence harvesting was allowed. [9]



Katie John near her fishwheel on the Copper River, 1994. Erik Hill, ADN

The elders, however, persisted. (As John later noted, "We're Indian people and I don't like park rangers or game wardens coming in here telling us what to do like they own everything. That makes me mad. ... I don't want to be on somebody else's land. I like to do my fishing on my own land right there.") Hoping to gain fishing rights for herself, and for her grandchildren as well, she began talks with the Boulder, Colorado-based Native American Rights Fund (NARF), which was opening an office in Anchorage. Attorneys Robert T. Anderson and Lawrence Aschenbrenner, representing NARF, agreed in 1985 to file a lawsuit (*Katie John vs. State of Alaska*) on John and Charles's behalf. That suit, filed against the State of Alaska in U.S. District Court, requested that the residents of Dot Lake and Mentasta (i.e., where former Batzulnetas residents were now living) had the right to fish at the old village site. The fish board, in response to the suit, relented in 1987 and allowed locals, after obtaining a permit, to harvest a maximum of 1,000 sockeye salmon. The following year, the board further relaxed its rules and eliminated the salmon quota. But the women pressed on, still feeling that their rights were being curtailed. John and Charles, who by now were joined by the Mentasta village council, launched another District Court suit to allow continuous fishing and without the need for a permit. The plaintiffs were victorious in court, and by that fall they had won the right to a subsistence fishery that was continuously open from June 23 through October 1. But before the order could take effect, the December 1989 *McDowell* decision struck down the rural preference that Alaska subsistence users had previously enjoyed. The net result of the year's two court decisions was the creation of a subsistence fishery that included Batzulnetas in which all Alaskans could take part, regardless of their rural or urban residency. [10]

By July 1990, federal assumption of subsistence hunting was an accomplished fact, at least for the time being. Rural residents, as a result, once again had a statutory advantage in the harvest of game animals. But because fish populations in the state's navigable waters were still managed by state authorities, urban populations still had the same opportunities to harvest fish for subsistence purposes as their rural counterparts. Mentasta area residents felt that that system was unfair, so in September 1990, John and others petitioned the newly-established Federal Subsistence Board for reconsideration of the temporary regulations that applied to subsistence fishing at Batzulnetas. The Board, however, denied their request, based in large part on the fact that navigable waters did not fall within the definition of "public lands." [11]

Then, in early December 1990, the plaintiffs sought a judicial remedy. Three parties—Katie John, Doris Charles, and the Mentasta Village Council—challenged the federal government's recent decision that placed Alaska's navigable waters under state control. (This decision, as noted above, had been announced in the June 29, 1990 *Federal Register*.) The plaintiffs, backed by NARF, filed *Katie John vs. United States of America* in hopes of broadening the definition of "public lands" as noted in Section 102 of ANILCA to include navigable waters;

and on a more pragmatic note, the plaintiffs also asked for a federal subsistence fishery in the Batzulnetas area. Named as plaintiffs in the suit were the federal government along with the Interior and Agriculture Department secretaries. [12]

The lawsuit was soon placed before U.S. District Court Judge H. Russel Holland. Fewer than sixty days after it was filed, federal attorneys analyzed the case and concluded that an additional defendant needed to be the State of Alaska, which managed the state's subsistence fisheries. [13] Soon afterward, state lawyers agreed to join the case; on the plaintiff's side, the Alaska Federation of Natives signed on in a supporting role. (After this point, state lawyers were the primary defendants, while federal solicitors took an increasingly neutral position.) The case was argued before Judge Holland in December 1991, but no decision was immediately forthcoming. Over the next two years the case ballooned in importance as a number of similar, ancillary suits—regarding subsistence fisheries management in Copper Center, Quinhagak, Stevens Village, and elsewhere—were consolidated into the Katie John case. [14] By 1993 the case had been consolidated with *State of Alaska vs. Babbitt*, in which Holland was also the deciding judge. [15]

A new wrinkle was injected into the fray in July 1993 when the Native American Rights Fund submitted a petition to the Secretaries of Agriculture and the Interior. That petition requested that the two secretaries include navigable waters within the definition of "public lands" as used in implementing Title VIII, and they were intended to validate the regulations pertaining to fish and shellfish that the federal government, on June 1, 1993, had issued for the 1993-1994 season. The secretaries made no immediate response to this petition; instead, they hoped that Judge Holland's court decision would clear up the murky waters surrounding this issue. [16]

In the fall of 1993, Judge Holland made the first of a series of preliminary findings in the *Katie John* case. In mid-November, according to a contemporary news report, he was "seriously considering arguments by state lawyers that federal subsistence management in the state was never intended when Congress passed [ANILCA]." More specifically, Holland was "tentatively of the opinion" that ANILCA provided little direction regarding whether the federal government had the power to take any subsistence regulation away from the state. State lawyers were "tentatively very happy" with the finding; they envisioned, at the very least, that subsistence fisheries rulings would continue to be enforced by ADF&G, and some people felt that Holland's remarks had presaged the disbanding of the federal government's entire, three-year-old subsistence management program. [17] But a second preliminary ruling, made two months later, was less favorable to the state's interests. Holland tentatively concluded that public lands as defined in ANILCA included both land and water. "Much of the best fishing is in the large navigable waterways where one has access to the most fish," he wrote. "By their regulations which exclude navigable waters from the jurisdiction of the Federal Subsistence Board, the Secretary abandoned to [the] state control of the largest and most productive waters used by rural Alaskans who have a subsistence lifestyle." The ruling, if finalized, promised to impose federal subsistence law on all of the state's navigable waters and make only rural Alaskans eligible for subsistence fishing rights under the Federal regulations. [18]

Given those preliminary rulings, Holland gave both sides in the case one last opportunity to present arguments. By this time the federal government, though a nominal defendant in the case, had largely stayed away from the fray. But when lawyers met on March 18, Justice Department lawyers—prodded by a their superiors in the Clinton administration—argued that federal law should apply on at least some of the state's navigable waters: specifically, on waters within national parks, wildlife refuges, and other designated conservation units. [19]

In his final ruling, however, Holland rejected the federal government's middle-of-the-road

offerings and ruled strongly in favor of Alaska's Native groups. In a 42-page ruling issued on March 30 in Anchorage, Holland concluded (according to a local newspaper account) that "the needs of rural Alaskans aren't being met by current policies and that the federal government has the legal power and obligation to take over management of subsistence fisheries on all navigable waters." Using language similar to that initially used in his January 1994 preliminary ruling, he wrote that

> By limiting the scope of Title VIII to non-navigable waterways, the Secretary has, to a large degree, thwarted Congress' intent to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so. Much subsistence fishing and much of the best fishing is in the large navigable waterways where one has access to the most fish....
>
> [Therefore], the court concludes that the Secretary, not the State of Alaska, is entitled to manage fish and wildlife on public lands in Alaska for purposes of Title VIII of ANILCA. ... The court further concludes that the Secretary's interpretation of Section 102 is unreasonable. For purposes of Title VIII, "public lands" includes all navigable waterways in Alaska. [20]

In his decision, Holland declined to use the "reserved water rights" doctrine as a means of determining the geographic scope of Title VIII. (This latter doctrine would have provided an additional basis for federal jurisdiction over a navigable waterways in so-called "federal enclaves.") He did, however, invoke a more broadly-defined "navigational servitude" doctrine, which meant that a federal preference should apply to all navigable waters, including most rivers, lakes, and coastal waters inside the state's three-mile jurisdiction. (He noted that "even if navigational servitude is viewed as a power to regulate rather than as a property interest, Congress exercised that power to protect subsistence uses by rural Alaskans.") [21]

Native groups, not surprisingly, were elated by the decision. Hickel administration officials, by contrast, pronounced the judge's conclusion "incorrect." They vowed to appeal the decision to the Ninth District Appeals Court; as a stopgap measure, they intended to ask for a stay in the ruling until after the appeal had been decided. [22]

Soon after he made his decision, Holland agreed to the requested stay, and the Ninth Circuit Court of Appeals agreed to hear the case. [23] Meanwhile, federal bureaucrats acted to continue the validity of the fish and shellfish regulations. (Those regulations, as noted above, had been issued on June 1, 1993; they were valid for the 1993-1994 season, but they were set to expire on June 30, 1994.) Worried that "a lapse in regulatory control after July 1 could seriously affect the continued viability of fish and shellfish populations [and] adversely impact future subsistence populations for rural Alaskans," the Office of Subsistence Management issued an interim rule on June 27, 1994 that "effectively extends the existing regulations until December 31, 1995, ... or until the court [of appeals] directs the preparation of regulations implementing its order." The current fish and shellfish regulations, therefore, remained on hold pending the Court of Appeals' decision. [24]

That fall, the appeals court placed the state's appeal of Judge Holland's on a "fast track," and on February 8, 1995, three appeals-court judges heard oral arguments on the case in Seattle. By this time, state attorneys—who were backed in their effort by their counterparts in six other western states—had conceded that some of their previous opinions could not withstand the appeals process. State attorneys, therefore, argued that the subsistence priority granted by the federal government applied only to navigable waters on federal land, while attorneys representing Native groups, citing ANILCA language, argued that all of the state's navigable waters should be included under the subsistence preference. [25]

On Thursday, April 20, Senior Circuit Judge Eugene A. Wright of the Ninth U.S. Court of Appeals issued the long-anticipated ruling in the Katie John case. The 2-1 ruling, expressed in a nine-page opinion, supported some of Judge Holland's conclusions but rejected others. In a major victory for Native groups, the Ninth Circuit stated that Congress clearly intended the subsistence preference to apply to fisheries on navigable waters; federal intervention, the court noted, was needed because state subsistence policies had failed to protect villagers. As Judge Wright noted,



In August 1995, the Alaska Supreme Court strongly upheld states' rights in the *Totemoff* case. Justices on the court that year included (left to right) Dana Fabe, Jay A. Rabinowitz, Robert L. Eastaugh, Allen T. Compton (chief), and Warren W. Matthews. Alaska Court System

> ANILCA's language and legislative history indicate clearly that Congress spoke to the precise question of whether some navigable waters may be public lands. They clearly indicate that subsistence uses include subsistence fishing. ... And subsistence fishing has traditionally taken place in navigable waters. Thus, we have no doubt that Congress intended that public lands include at least some navigable waters. [26]

In making that decision, the Circuit Court reversed two key decisions that the District Court had made a year earlier, namely about the reserved water rights doctrine and the navigational servitude concept. Specifically, the appeals court decision noted that "the definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine..." These waters, at a minimum, were those that ran through national parks, preserves, forests, and wildlife refuges, but they might include other federal lands as well. But the appeals court rejected the notion that the federal government had broader jurisdiction, because it noted that "the navigational servitude is not 'public land' within the meaning of ANILCA because the United States does not hold title to it." The court, in fact, admitted that "ANILCA's language and legislative history do not give us the clear direction necessary to find that Congress spoke to the precise question of which navigable waters are public lands," so it concluded by imploring, "let us hope that the federal agencies will determine promptly which navigable waters are public lands subject to federal subsistence management." [27] Given that task, Interior Department agency heads met just a day after the ruling to determine which waterways might be included. State lawyers, disappointed with the ruling, responded by asking for a stay of Wright's ruling. In addition, they promised that they would appeal the case yet again, to the U.S. Supreme Court if necessary. [28]

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Alaska Subsistence

A National Park Service Management History

Chapter 9:
THE SUBSISTENCE FISHING QUESTION (continued)

C. State and Federal Responses to Katie John, 1995-1999

On the heels of the Katie John decision, Alaskans—and their representatives in Washington—recognized that the federal government was going to assume the management of the subsistence fisheries on a major portion of the state's federal land unless some alternative could be worked out. Those who hoped to avoid federal assumption soon recognized that several possible solutions—some judicial, some legislative—were available. First, State attorneys could pursue judicial means to overturn the Katie John appeals court decision. Second, State attorneys could try to get the federal government out of the subsistence management arena by arguing that the fish and game management was a state, not federal function. Third, the Alaska legislature could pass a bill that would amend the state constitution so as to conform to ANILCA. Fourth, Alaska's legislators in Congress could push for the passage of a bill that altered ANILCA and eliminated the rural-preference provision. And fifth, Alaska's Congressional delegation could, through parliamentary means, delay the implementation of federal fisheries management until one of the other four options could be implemented. Each of these possible solutions was contemplated, and many were acted upon (sometimes repeatedly) between 1995 and 1999. A brief chronicle of these actions follows.



Tony Knowles, the Governor of Alaska since 1994, has consistently supported the idea that the state should manage all of Alaska's fish and game

One of the first major state actions, which was taken even before the Appeals Court rendered its verdict, was to withdraw from a case alleging that the state—not the federal government—was legally entitled to manage subsistence resources. As was first noted in Chapter 7, Hickel administration officials, in February 1992, had filed a suit (called *Alaska vs. Lujan*) that challenged the authority of federal agencies to take over subsistence management. District Court Judge Holland, in March 1994, had ruled against the state in this suit. (By this time the suit, now called *Alaska vs. Babbitt*, had been consolidated with *Katie John vs. USA*). Then, shortly after being sworn into office, Governor Tony Knowles announced his intention to drop the lawsuit. Many members of the Republican-dominated legislature were enraged by Knowles' action; they vowed that they would attempt to intervene in the case, and they hurriedly committed $20,000 to support a team of Washington lawyers who promised to represent them. But in early February 1995 the Ninth U.S. Circuit Court of Appeals rejected the legislature's action, ruling that the legislature was "not empowered under state law to intervene in this appeal." [29]

resources; similarly, he has been a consistent supporter of having the Alaska legislature adopt a bill giving Alaska's voters the opportunity to vote on a subsistence-related amendment to Alaska's constitution. Office of Gov. Knowles



Fran Ulmer has served as Alaska's lieutenant governor since 1994. In 1995, she championed a "rural plus" proposal for bringing the state into compliance with the federal subsistence statutes; in addition, she has taken an active role in several task forces related to the subsistence issue. ADN

As noted above, state lawyers responded to the April 1995 appellate-court decision in the *Katie John* case [30] by attempting to have it overturned. Their initial efforts, however, were less than successful. On August 8, the federal appeals court rejected the state's request for a reconsideration of the *Katie John* ruling. Given that rebuff, representatives from the state Attorney General's office got ready to appeal the case to the U.S. Supreme Court. State lawyers were heartened by a series of actions that took place in the months following Wright's decision. In August 1995, the Alaska Supreme Court's decision in the Totemoff case (*Totemoff v. Alaska*) "defiantly lays out the case for why all navigable waters fall under state jurisdiction," according to one news account. And four months later, a dissenting opinion in the Katie John appeal was made public; that opinion reiterated the need, first expressed in April 1995, to solve the fisheries dispute through the legislature, not the courts. [31]

Once the *Katie John* case was decided by the Ninth Circuit Court, the door remained open for the state legislature to produce a bill that recognized a rural subsistence preference and otherwise conformed to federal subsistence guidelines. [32] But the 1995 legislature, which was nearing the end of its regular session when the appeals court issued its ruling, made no particular efforts prior to its May 16 adjournment to pass a bill bringing subsistence management back to the state. (The legislature may have been hoping that the U.S. Supreme Court would overturn the appeals court ruling.) The appeals court, during this period, made no effort to assign a deadline for federal assumption of subsistence fisheries resources; instead, it deferred to the Supreme Court, which was expected to decide in the spring of 1996 if it would accept the Katie John appeal. Meanwhile, Governor Knowles hired Julian Mason as a mediator, who exerted some quiet diplomacy in hopes of creating some common ground between the disparate factions. [33]

Late in 1995, Governor Tony Knowles and his lieutenant, Fran Ulmer, began exploring new options to a federal takeover. Early in his administration, Knowles had made it clear that he would accept virtually any subsistence solution so long as it adhered to two basic principles: 1) that the state, not the federal government, should manage Alaska's fish and wildlife resources, and 2) the essential role of subsistence in the culture and economy of rural Alaska needed to be protected. [34] In early November, word leaked out that administration officials —hoping to solve the subsistence dilemma within these two parameters—had been quietly meeting with hunting and fishing groups; out of those meetings emerged a plan, spearheaded by Ulmer. That plan, which was unveiled on November 15, had three major tenets: 1) a concept called "rural plus," that guaranteed subsistence privileges both to rural residents and to those who had rural roots, 2) implementing changes to the Alaska Lands Act, and 3) amending the Alaska Constitution so as to conform with the Alaska Lands Act. [35] In response to criticisms of the plan, primarily by outdoor groups, Ulmer modified portions of her plan over the coming weeks. By early February 1996, she had completed a revamped plan

—still in provisional form—and then pitched it to various interested parties. [36]

The major body to which she presented her plan, of course, was the Alaska State Legislature, which had begun its annual session in January 1996. But despite Ulmer's Herculean efforts, state legislators showed no particular inclination to move any subsistence bill that demanded changes to the Alaska constitution. Before long, the federal appeals court—still not knowing how the Supreme Court might act—ordered the Interior Department to begin the preparation of regulations for the assumption of fisheries management. It was widely anticipated at this time that the federal government would assume control over the subsistence fisheries later that year, perhaps in October. A federal assumption of fisheries management, however, would take place only if the Supreme Court refused to act.

This rough timetable was torn asunder on March 6 when Alaska's Congressional delegation moved to delay the process resulting in a federal fisheries assumption. Ted Stevens, a longtime member of the Senate Appropriations Committee, inserted a clause into an Interior Department spending bill that delayed any possible federal assumption until October 1, 1997. Interior Department official Deborah Williams protested the move, stating that it "directly contradicts the order of the 9th Circuit," and AFN President Julie Kitka echoed Williams' disappointment. Both, however, recognized that because of the power exerted by the Congressional delegation, little stood in the way of the provision becoming law. The delegation, by its action, hoped that the one-year moratorium would give the Alaska Legislature sufficient time to pass a subsistence bill that met federal guidelines. [37]

The provision, at the time, had no direct impact on Alaska fisheries management. But during the next two months, Stevens' action assumed a far higher level of importance. Several reasons buttressed that assumption. First, it became increasingly obvious that the subsistence compromise brokered by Lt. Governor Ulmer had failed because state legislative leaders refused to accept its provisions; the legislature, in fact, adjourned in early May 1996 without seriously addressing the issue. (A special session was held that year, but subsistence issues were not addressed during the thirty-day session.) [38] Another factor contributing to the heightened importance of Stevens' action was the U.S. Supreme Court's refusal, on May 13, to accept the state's appeal of the Katie John case. All parties now recognized that, with other options foreclosed, time was running out; unless some new action intervened, the federal government in October 1997 would be assuming control over much of Alaska's subsistence fisheries. [39]

Federal officials, in response to the appeal court's order, were already at work on drafting subsistence fishing regulations when Senator Stevens moved to delay the fisheries assumption date, and by late March 1996 a confidential blueprint of the draft regulations was aired to the press and public. State legislative leaders, fearing the worst, stated that the regulations called for the "total pre-emption of ... state management of fish and game resources." Interior and Agriculture Department officials, however, responded that they were simply following court orders and that the draft was subject to change before it was released to the public. Deborah Williams noted that "Our highest priority is to assist the state in the resumption of fish and game management. But right now we have to comply with the court orders. ... None of this is to be interpreted as the Department of the Interior seeking control of fisheries to the exclusion of giving the state the opportunity to do so." [40] The regulations, which were



Ted Stevens, who has represented Alaska in the U.S.

officially released to the public on April 4 as an Advanced Notice of Proposed Rulemaking, were indeed broad in their scope. Because the regulations proposed a broad definition of waters where the federal government had "reserved water rights," the federal government was planning to assume control over subsistence fisheries on rivers adjacent to federal lands as well as those within federal lands, and it also outlined how federal agencies would limit commercial and sportfishing in state waters if such uses interfered with subsistence harvests. The public was given until June 14, 1996 to comment on the draft regulations. [41]

Senate since 1968, responded to the April 1995 decision in the *Katie John* case by giving the state legislature several opportunities to comply with subsistence guidelines as set forth in ANILCA. Office of Sen. Stevens

In order to give the public the opportunity to learn about and evaluate the regulations, federal bureaucrats scheduled nine public hearings during the public comment period; the first was held in Anchorage on May 13, the last in Fairbanks on May 28. The Anchorage meeting was attended by about 50 people, but only 18 spoke. Thirteen of those speakers, most of whom represented Native groups, favored the plan; AFN representative John Tetpon, for example, noted that "subsistence users cannot expect a fair hearing from the [state Fisheries Board] and they have in fact rarely gotten one ... Our dependence on the federal government to protect our way of life has been because they are our last resort." But the plan had three major critics: the Republican-led legislature, the Knowles administration, and the Alaska Outdoor Council. Assistant Attorney General Joanne Grace, one of those critics, complained that the plan "goes well beyond the priority that Congress actually granted ... and gives the Federal Subsistence Board authority that Congress did not intend it to have." And Attorney General Bruce Botelho said that it was "unworkable and highly offensive to the principles of state sovereignty" to propose limiting harvests on state lands in order to ensure adequate subsistence harvests on federal lands. But Interior Department representative Deborah Williams defended the plan; she noted, somewhat apologetically, that "There's not a single person in the Department of the Interior, to my knowledge, that wants to do this. But everyone realizes that in the absence of state action, we're required by law to do it." [42] By December 1996, Fish and Wildlife Service officials were "drawing up proposed fishing rules for public comment next summer" because they wanted to be ready to implement those rules, if necessary, by the October 1, 1997 deadline. [43]

By the fall of 1996, a broad spectrum of Alaskans recognized that the only realistic way in which Alaskans could forestall the federal assumption of subsistence fisheries management was for the Alaska legislature to pass a bill, signed by Governor Knowles, that would allow Alaskans to vote on an amendment to the Alaska constitution providing for a rural subsistence preference. [44] That vote by the state legislature would then have to be followed by its approval by a majority of Alaskan voters. As noted in Chapters 4, 5 and 6, Alaskans had voted on and approved a subsistence measure in the November 1982 election; during the 1978 and 1986 legislative sessions, moreover, the state legislature had approved subsistence bills. When polled on the subject during the 1990s, a strong majority of Alaskans—urban as well as rural—felt that the Alaska legislature should pass a subsistence bill that fit within ANILCA's framework so that Alaska's voters would at least have an opportunity to express their opinion on the subject. (By 1998, one poll showed that 90 percent of Alaskans wanted the chance to vote on the issue.) [45] That majority, however, was not reflected in the opinions of the Republican-dominated legislature. The legislature, dominated by urban interests and often described as conservative, seemed to have little interest in passing a subsistence bill that conformed to ANILCA; by its inaction, it prevented such a statewide vote from taking place.

That trait, for better or worse, continued during the 1997 legislative session. On May 12 the first session of the twentieth Alaska legislature adjourned without passing any measure—

either the administration-backed resolution (HJR 10) or any other—that would have averted the assumption of subsistence management by federal authorities. The Knowles administration, recognizing that time was running out, began working with Alaska's Congressional delegation in hopes that minor changes in both state and federal law could avert a takeover. [46] By mid-June, the Congressional delegation had proposed several amendments to ANILCA, and on July 10, the "high-level task force" that Governor Knowles had convened [47] was urging the adoption of a plan that addressed the state constitutional issue. But problems immediately surfaced with both proposals; the Alaska Federation of Natives protested that the Congressional delegation's amendments were divisive and discriminatory, and the Alaska Outdoor Council—which backed a far different proposal—denounced the Knowles task force plan because it "asks Alaskans to forfeit equal protection without eliminating the discriminatory process that strips certain Alaskans of their inherent rights." [48] Knowles, still hoping to find a way to avert federal fisheries management, redoubled his efforts with the task force, but he was unable to persuade legislative leaders to hold a special session during the weeks that preceded the October 1 deadline. [49]

During this period, federal officials reluctantly recognized that they might be assuming fisheries management on many of Alaska's navigable rivers despite the best intentions of both state and federal officials. As part of their planning effort, those officials had to decide whether the expansion of the federal subsistence program into the fisheries arena demanded the preparation of an environmental impact statement. Recognizing that federal subsistence managers had prepared a major EIS back in 1990-92, at the commencement of the federal program, officials tentatively decided that inasmuch as fisheries management was an expansion of an existing program, any impacts addressed by that expansion could be addressed in an environmental assessment (EA) rather than in an EIS. Based on this decision, federal subsistence officials went to work on the EA and completed it on June 2, 1997. The EA also concluded that "no significant impacts to fisheries resources and subsistence, sport or commercial fisheries would occur" with federal subsistence fisheries management. The two Secretaries promised to reassess the need for an EIS prior to the issuance of a Final Rule (i.e., a finalized set of subsistence fisheries regulations). [50]



Julie Kitka, president of the Alaska Federation of Natives since 1989, opposed tactics that delayed the implementation of the *Katie John* decision for more than four years. ADN

By early September 1997, state leaders had apparently given up hope that a federal takeover could be averted prior to the October 1 deadline. But starting about September 15, Knowles and Babbitt began discussing the parameters of a possible delay, and given their concurrence, the two sought out Senator Ted Stevens in hopes of securing a second postponement of federal intervention. [51] Beginning on September 28, Stevens (who, by good fortune, served as the chairman of the Senate Appropriations Committee) began meeting Knowles and Babbitt. After "two hard days of closed-doors bargaining," a deal was reached. Stevens was able to delay the deadline fourteen months, from October 1, 1997 to December 1, 1998; by the latter date, he postulated, there would be sufficient time for the Alaska legislature (given one last chance) to approve a constitutional amendment and also sufficient time for a statewide vote to be held on the issue. Because all parties agreed that it was in Alaska's best interest to have state law in conformance with ANILCA, the three parties agreed to two key ANILCA amendment proposals that served as "an inducement for a reluctant Legislature to act." These provisions, according to some observers, gave greater

deference to the state in subsistence fish and game management. At Stevens' behest, they were slipped into an Interior Department appropriations bill, the passage of which—all parties recognized—was a "near-certainty." [52] Stevens announced the agreement with a note of finality: "This is probably the last thing we can do to give the state Legislature an opportunity to act. We'll just have to wait and see what the Legislature is going to do." Alaska Native leaders severely criticized the backroom nature of the last-minute negotiations; they stopped short, however, of opposing the overall agreement. [53]

Federal officials, who continued to use a carrot-and-stick approach during this period, made several moves during the months that preceded the Alaska State Legislature's 1998 session. As noted above, they had issued an "advanced notice of proposed rulemaking" related to subsistence fisheries management back in April 1996, and after a June 1996 deadline they had begun evaluating those comments in an attempt to formulate proposed regulations related to subsistence fisheries management. The Interior and Agriculture secretaries approved the results of that evaluation by December 4, 1997; eleven days later, the Proposed Rule on the subject was released to the public. The verbiage within that rule specified how the federal government intended to administer a fisheries management program. [54]

Many of the proposed regulations—regarding seasons and bag limits, methods and means of fishing—were in large part a duplication of existing state regulations. But in at least three specific subject areas, officials let it be known that the federal management system would be a departure from the status quo. First, regulations pertaining to customary trade were more broadly applicable in the proposed federal system than they were in the existing state-managed regime. Second, the new rules were specific regarding which waters federal authorities intended to manage. Federal agency heads, after weighing several alternatives, decided that they planned to manage 102,491 miles of inland waterways. [55] This alternative included "all navigable waters within the exterior boundaries of listed Parks, Preserves, Wildlife Refuges, and other specified units managed by the Department of the Interior and all inland navigable waters bordered by lands owned by the Federal government within the exterior boundaries of the two National Forests." [56] This alternative was chosen because "it would fully implement the Ninth Circuit's ruling while avoiding the serious management difficulties that would arise from checkerboard jurisdiction over segments of rivers within Department of Interior Conservation System Units...". The third change pertained to those lands and waters that were not placed under federal jurisdiction, and it was a reiteration of language that had first been included in the agreement that Stevens, Knowles, and Interior Department officials had worked out in September 1997. These proposed ANILCA amendments would clearly specify that the Secretaries are "retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference." The publication of the proposed regulations, at least at first, did not cause much of a stir, primarily because most of them were a reflection either of existing federal subsistence rules (as they related to wildlife management) or of existing state fishing regulations. [57]

But despite Stevens' advice, and despite the federal government's issuance of proposed subsistence fisheries regulations, the Alaska legislative leadership made no attempt to formulate or present a subsistence bill that conformed with ANILCA's provisions. Instead, it took an opposite tack. On January 12, which was the first day of the 1998 session, the Alaska Legislative Council (ALC)—fourteen lawmakers, mostly Republicans, whose role was to act on the Legislature's behalf when the body was not in session—filed suit in the U.S. District Court in Washington, D.C. This suit challenged the authority of the Department of the Interior to pre-empt state management of fish and game in Alaska. This suit, called *Alaska Legislative Council vs. Babbitt*, was similar to the *Alaska vs. Babbitt* case that the Knowles

administration had dropped in early 1995; by filing its suit, the legislature (which had vociferously protested when the administration had abandoned the suit) signalled its intent to revive the arguments that the Hickel administration had originally propounded back in 1992. [58] The ALC was careful to file its suit in the District of Columbia District Court because previous filings regarding ANILCA and subsistence "have not fared ... well" in either the District Court in Alaska or the Ninth Circuit Court of Appeals. On January 23, Interior Department lawyers asked the D.C. District Court to move the case back to Alaska; that move was denied, however, and the case was eventually heard by D.C. District Court Judge James Robertson. [59]

Aside from the ALC lawsuit, Alaska's legislators made several moves in 1998 on subsistence-related issues. At first, prospects for an bill aimed at solving the subsistence dilemma seemed particularly bleak; on the session's first day, for example, House members Mark Hodgins (R-Kenai) and Vic Kohring (R-Wasilla) introduced a bill (HB 295) that would have prohibited state troopers from enforcing federal statutes or regulations on subsistence hunting and fishing in Alaska when those laws or regulations violate either the state or federal constitution. [60] Although the Knowles administration attempted to convince lawmakers to adopt the recommendations of the subsistence task force, the resolution containing those recommendations (HJR 46) was not seriously considered. [61] What did emerge from both the House and Senate was a subsistence bill (HB 406) stating that preference for subsistence resources would be limited to areas where a "cash-based economy" was not "a principal characteristic of the economy, culture, and way of life." [62] Inasmuch as many legislators were critical of ANILCA's rural provision, because it provided subsistence privileges to many rural residents that did not take part in a subsistence harvest while denying those privileges to non-rural residents who had a historical pattern of doing so, HB 406 (according to its sponsors) was an attempt to legalize subsistence opportunities for those who truly deserved it. Critics charged, however, that the bill's provisions were so restrictive that subsistence activities might be eliminated virtually everywhere. They also claimed that the bill disregarded community traditions; that it would be a bureaucratic nightmare; and—perhaps most important—that it would not prevent a federal takeover of the state's fisheries. [63]

The legislative session adjourned for the year on May 12. Well before that time, however, Knowles had made it known that he would veto the legislature's bill, primarily because it did not resolve the state's subsistence quagmire. [64] As an alternative, he called the legislature into a special session, which was to begin on May 26.

Just one day after legislators adjourned, a new group called Alaskans Together came into being. That group, headed by Anchorage businessman and sportfishing advocate Bob Penney, was formed with the sole purpose of allowing Alaskans a statewide vote on a subsistence bill. [65] Knowles, for his part, hoped that the legislature would adopt a resolution (HJR 101) that was based on the recommendations of his 1997 subsistence task force. (In an attempt to mollify legislators who chafed at ANILCA's perceived inequities, this bill would "allow" the Legislature to adopt a rural preference but did not "require" one.) On May 28, however, the resolution fell victim to a 20-20 tie vote in the House; given that vote, the Senate never voted on it. The special session sputtered to a close on June 1 without adopting any sort of subsistence bill. [66]

The indefatigable governor, still hoping for a solution, pressed state leaders for yet another vote on the issue. On July 3, he ordered the legislature back for a second special session, to begin on July 20. Legislative leaders—many of whom had been part of Knowles' task force—told the governor that they were frankly uncertain as to whether a bill could be passed that was compatible with ANILCA's provisions. House leaders, building upon efforts made in the previous special session, cobbled together one plan that made some effort among fellow legislators. But the last-ditch plan was unable to garner a broad base of approval; a House

resolution (HJR 201) passed 22-17, five votes short of passage, and the Senate never took a vote. Just two days into the session, legislators voted to adjourn and return to their home districts. [67] Secretary Babbitt, in response, issued a press release expressing his disappointment at the legislature's inaction. The state's failure to act, he noted, "leaves the U.S. no choice but to oppose any extension of the moratorium on final subsistence fishery management rules" and that "the subsistence management requirements of federal law must now be implemented by federal agencies." The federal government, he noted, was fully prepared to begin managing the federal subsistence fisheries beginning December 1. [68]



In 1998, Anchorage sport-fishing advocate Bob Penney expressed his frustration with the legislature's lack of progress on a subsistence amendment that he organized a group called Alaskans Together. His plan, however, was ignored in favor of Governor Knowles's plan, which fell victim to a tie vote in the Alaska House. ADN

Just three days after they adjourned, lawmakers learned that a district court judge had dismissed the lawsuit (*Alaska Legislative Council vs. Babbitt*) that the ALC had filed in January. (The judge, James Robertson, had done so because the six-year window in which lawsuits could be filed against ANILCA had lapsed more than a decade earlier.) Legislators, taking a quick glance at the calendar, recognized that just two days remained to pass a bill, calling for a constitutional amendment, that could be voted upon by Alaskans in the November 1998 election. But inasmuch as there was no groundswell of interest for convening a third special session, the electoral deadline passed without incident. The ALC then requested that the case be heard in the District of Columbia appeals court. [69]

Throughout the 1998 state legislative season—the regular session plus the two special sessions—federal bureaucrats had been reluctantly preparing for what, all felt, would be a December 1, 1998 assumption of fisheries management on Alaska's federal lands. Beginning in late January, and extending through late March, the Office of Subsistence Management held 31 public hearings in locations throughout urban and rural Alaska on the proposed regulations that had been issued the previous December. These meetings had two purposes: to educate the public regarding the rationale behind the new regulations, and to receive comments on the relevance and appropriateness of specific proposed regulations. Interested persons were given 120 days—until April 20—to submit comments. In response to particulars in the proposed regulations, many Alaskans submitted oral comments at both public hearings and Regional Advisory Council meetings, and 74 written comments were also submitted. [70]

On August 11, 1998, Alaska Federation of Natives President Julie Kitka wrote to Secretary Babbitt, urging him "to oppose any congressional attempt to continue the current moratorium against implementing the *Katie John* ruling." Rep. Don Young as well as Sen. Frank Murkowski had, by this time, introduced legislation to extend the Congressional moratorium for another two years. But as late as September 10, Senator Stevens had been consistent in his public statements that he would not pursue an extension. [71] That resolve apparently changed, however, toward the end of September; he met with Secretary Babbitt and attempted to broker a third postponement: a ten-month moratorium ending on September 30, 1999. Babbitt agreed, but the Secretary did so only by convincing Stevens to agree to the following: 1) allowing final regulations relating to federal subsistence fisheries management

to be printed, 2) offering $11 million for subsistence management purposes. (If the state legislature succeeded in placing a subsistence amendment on the ballot prior to September 30, the state received the allotment; if not, the funds would be directed to the Interior and Agriculture departments. If the state did not act by June 1—presumably at the end of its regular legislative session—$1 million of the $11 million allotment would be directed to federal agencies as an advance payment.)

The Stevens-Babbitt deal was announced on October 13. Babbitt noted that "I do this with some reluctance, because immediate protections would be appropriate. ... But, we must recognize the practical reality that the federal agencies involved need time and planning for orderly implementation of a federal program. This approach provides us that." Stevens, for his part, recognized that he was grateful for the reprieve; "The Secretary drove a hard bargain," he noted, and the remainder of the Alaska Congressional delegation was quick to agree to the deal. The AFN's Julie Kitka, predictably, was "angry and disappointed," but opponents of a rural preference such as Rod Arno (of the Alaska Outdoor Council) and Sen. Robin Taylor (R-Wrangell) were pleased by the action. Some were caught by surprise: ex-Attorney General Charlie Cole felt "duped" by the secret pact, and Interior Department representative Deborah Williams, who was apparently not informed of the negotiations, announced that she was resigning her position shortly after hearing that a deal had been consummated. [72] Language implementing the delay was included in the Omnibus Appropriations Bill that was then being finalized in Congress. [73]



Robin Taylor, a legislative leader from Wrangell, has long opposed the passage of any subsistence bill that contained rural preference language. Alaska LAA

On December 18, just two months after Babbitt brokered his deal with Senator Stevens, the Interior Secretary finalized the final set of regulations pertaining to federal subsistence fisheries management. These regulations were released to the public on January 4, 1999 and were published in the *Federal Register* four days later. Babbitt, in a press release, said that "These regulations provide the framework we are prepared to undertake this year if the Alaska Legislature fails to take necessary actions. The Department of the Interior is under court order to ensure that Alaska is in compliance with federal law, and with today's announcement we begin the final steps." Babbitt and other Interior Department officials, at the time, expressed optimism that the legislature could pass a bill calling for a constitutional amendment allowing for a rural subsistence priority; if such a bill were passed, the federal government would postpone its assumption of fisheries management until Alaskans had the opportunity to vote on the measure in the 2000 general election. If such a bill were not passed, however, the final regulations—now completed and published—underscored the federal government's resolve to assume management over the subsistence fisheries later that year. (Asked at a January 5 press conference whether any new extensions might take place, Babbitt emphatically responded "No. If the Legislature fails to act this year, we will take over management on October 1, 1999.") Despite the large volume of public response to the December 1997 proposed rule—much of which had come from the ten regional advisory councils—there were few substantial changes between the proposed and final regulations. Subsistence users, moreover, were assured that "Little change in existing subsistence fishing practices in rural areas is initially anticipated under these regulations, because they largely parallel existing state regulations." [74]

It was probably no coincidence that the federal government's final subsistence management

regulations were released just prior to the convening of the 1999 session of the Alaska State Legislature, and starting on January 19—when the opening bell rang—legislators felt more pressure than ever to work out a bill that would allow the state to continue managing its subsistence resources. [75] The stark reality, however, was that chances for passage of such a bill were slim in the Senate and questionable in the House. Hoping to move some sort of bill, House Speaker Brian Porter (R-Anchorage) first floated the idea of a bill that would grant a hunting and fishing preference to subsistence users rather than to rural residents. A month later, however, Interior Department officials rejected the idea as being unworkable. In mid-April, Governor Knowles renewed his call for a subsistence solution and asked legislators to pass a bill that would allow Alaskans to vote on the measure. (Knowles, urging legislators to act, said that "if they fail to act on a constitutional amendment, they will be remembered as the Legislature that let in the Trojan horse of federal management.") Stevens, by this time, had told the legislature that it was "your decision, your judgment" because he had washed his hands of the matter, and Senator Murkowski had likewise stated that no more "takeover delays" would be forthcoming. [76] But the legislature showed no particular willingness to address the subsistence issue—one leading legislator noted that it would be a "waste of time" even holding hearings on the issue, considering its many past failures—and it adjourned on May 19 without having passed a significant subsistence bill. [77] Governor Knowles, hoping to avert the looming trainwreck, warned legislators that he would be calling them back into a special session on the topic in either August or September. House Majority Leader Joe Green, for his part, vowed that legislators would meet in a bipartisan "subsistence summit" in hopes of working out a broadly-applicable solution. [78] The summit, however, was never held; as Green later noted, too many legislators were "dug in" on one side or another to warrant such a meeting. [79] Meanwhile, the June 1 deadline (which had been worked at by Babbitt and Stevens the previous October) came and went, ensuring that the federal government received an initial $1 payment to begin preparing for the implementation and enforcement of federal subsistence regulations. [80]



In June 1999, House Majority Leader Joe Green (R-Anchorage) attempted to organize a bipartisan "subsistence summit." But the positions of House members were so firmly entrenched that the idea was soon abandoned.

In mid-July 1999, less than three months before the October 1 deadline, the District of Columbia appeals court dealt the legislature another blow; it decided to reject the Alaska Legislative Council's appeal of the suit (*Alaska Legislative Council vs. Babbitt*), that the District Court had dismissed in July 1998, citing the ALC's lack of standing in the matter. [81] Then, on August 10, Governor Knowles announced that he would be calling the legislature back into session in late September. "We are facing a severe threat to our sovereignty," he intoned, "The day of reckoning is here." To give the legislature a head start on its deliberations, he offered specific wording for a proposed constitutional amendment. It read: "The Legislature may, consistent with the sustained yield principle, provide a priority to and among rural residents for the taking of fish and wildlife and other renewable natural resources for subsistence." Legislative leaders, however, were not optimistic; neither the Senate President nor the House Speaker were confident that they could muster up the necessary votes (14 and 27, respectively) to pass the constitutional amendment [82]

The special session began on September 22, and one of the state house's first acts was to introduce Knowles' proposed resolution as House Joint Resolution 201. But after a few days of mulling it over, legislators substituted their own

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resolution (HJR 202), which read

> The legislature may provide a preference to and among residents for a reasonable opportunity to take an indigenous subsistence resource on the basis of customary and traditional use, direct dependence, proximity to the resource, or the available opportunity of alternative resources. [83] The preference may be granted only when the harvestable surplus of the resource, consistent with the sustained yield principle and sound resource management practices, is not sufficient to allow a reasonable opportunity for all beneficial uses. [84]

After a few additional days, the resolution—still numbered HJR 202—was reworked to read as follows:

> The legislature may, consistent with the sustained yield principle, provide a preference to and among residents to take a wild renewable resource for subsistence uses on the basis of customary and traditional use, direct dependence, the availability of alternative resources, the place of residence, or proximity to the resource. When the harvestable surplus of the resource is not sufficient to provide for all beneficial uses, other beneficial uses shall be limited to protect subsistence uses. [85]

On Tuesday, September 28, House members voted on the resolution, which was controversial because it failed to specify a rural priority. [86] The resolution passed, 28-12. Action then moved on to the State Senate, where members had crafted a more narrowly-defined resolution (a Finance Committee Substitute for HJR 202) calling for a rural preference. In a key vote, held on the morning of Wednesday, September 29, senators voted 12-8 in favor of the proposal. But because the proposed constitutional amendment required a two-thirds vote for passage, the resolution fell two votes short. [87] In a brief Thursday meeting, the Senate chose not to reconsider the vote it had taken the day before, and the decision was made to adjourn. [88] Federal subsistence managers, for better or worse, were in the fisheries business.

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Chapter 9:
THE SUBSISTENCE FISHING QUESTION (continued)

D. Federal Planning Prior to Fisheries Assumption

On October 1, 1999, federal subsistence officials released a series of press releases that announced the obvious: the commencement of federal subsistence management of fisheries on the navigable waterways in, or adjacent to, Alaska's federal conservation units, and the transfer of an additional $10 million to the Interior and Agriculture departments (agreed to by Stevens and Babbitt as part of the October 1998 moratorium) to fund a federal subsistence management program. Officials were quick to state that they were undertaking such an action with considerable reluctance. They announced that regulations under the new regime would largely resemble those that were already in place; that many of the state's most popular commercial and sport fisheries would be largely unaffected by the change; and that to the largest extent possible, they would rely on state personnel and state-generated data in order to effectively fulfill their management mandate. Statements issued by federal as well as state fisheries officials made it plain that a single, state-managed fisheries management system was preferable to the newly-established dual management system. But the appeals court decision in the *Katie John* case, combined with the legislature's failure to forward a constitutional amendment to Alaska's voters, left federal officials with no other alternative. [89]

Given the terms of the October 1998 moratorium, and the strong subsequent statements made by both Senator Stevens and Secretary Babbitt, it surprised virtually no one that the legislature's failure to act in 1999 was followed by the federal assumption of fisheries management. Given that climate throughout the year, federal officials effectively had a year to prepare for fisheries management. But inasmuch as there had been three previous moratoria, two of which had been worked out at virtually the last minute, the federal government by October 1999 was fairly well versed in the politics of brinkmanship; more important, it (by necessity) had a strong track record in planning for a possible fisheries assumption.

As noted above, Senator Stevens and Secretary Babbitt had cobbled together the first fisheries moratorium in March 1996. Even before that time, officials on the Federal Subsistence Board's staff committee had informally begun to plan for the day—which was unspecified at that time—when the federal government might begin managing the state's subsistence fisheries. But federal officials made few concrete plans during this period. In September 1997, when the second moratorium was worked out on the fiscal year's last day, the extent of the federal government's preparedness was the completion of a draft question-and-answer sheet; beyond that, federal officials were hopeful that a Proposed Rule on subsistence fisheries would be readied "shortly after October 1." It was similarly felt that a Final Rule would be completed "likely during the Spring of 1998" and thus in time for the 1998 fisheries season. [90]

Federal officials, still hoping for a legislative resolution, made no specific preparations for a fisheries assumption during the first half of 1998 except for the extensive public process

(noted above) related to the Proposed Rule that had been issued in December 1997. Governor Knowles focused his efforts that year on a special session, and both he and federal officials were hopeful that that session would break the subsistence impasse. But the special session adjourned on July 21 without forwarding a proposed constitutional amendment to Alaska's voters. In response to the legislature's inaction, Secretary Babbitt issued a press release announcing that he and Agriculture Secretary Dan Glickman fully intended to assume management over the state's federally-managed subsistence fisheries when the current moratorium expired on December 1. And to prepare for that eventuality, the two secretaries had written to both the Office of Management and Budget and to the House and Senate Appropriations Committees requesting $9.5 million to implement the court order in the *Katie John* case. [91] Regarding specific planning actions, the Secretary noted that:

> In proceeding with implementation, final regulations can not be published before December 1, 1998. A timeline is currently under development that outlines the steps leading to the publication of these regulations. ... The new federal subsistence fishing regulations are planned to go into effect with the spring 1999 seasons. Detailed operational planning, and discussions on coordination with the Alaska Department of Fish and Game are now being initiated, in preparation for the implementation. [92]

The National Park Service, along with the other agencies represented on the Federal Subsistence Board, was already well underway in its planning efforts by this time; they had been goaded into action in April 1998 by the Secretaries' budget request. At that time, federal authorities had concluded that the NPS would receive $1.85 million out of the projected $9.5 million fiscal year 1999 budget allotted to subsistence fisheries management, [93] and agencies officials had already compiled a fairly specific budget outlining how its allotment would be spent. The agency, in its attempt to formulate a decentralized fisheries management system, proposed four park clusters; within each cluster, it proposed a budget including labor needs and ancillary expenses. [94]

Because federal officials had commenced a stepped-up effort in July 1998, they were better prepared than ever for a possible fisheries assumption when Senator Stevens and Secretary Babbitt worked out a third fisheries moratorium that October. Their agreement, moreover, paved the way for the issuance of final subsistence fisheries regulations; as noted above, they were issued in early January 1999, almost nine months before the moratorium expired. Given the tone of both Stevens's and Babbitt's verbiage in the months that followed their October 1998 pact, federal officials had a greater-than-ever certainty that a fisheries assumption would indeed take place if the state legislature failed to act. As a practical matter, therefore, officials had almost a year to map out the details relating to a federal subsistence fisheries program.

Federal officials, in fact, made the most of the months that remained before October 1. Their first task was writing an overview of how the federal subsistence fisheries program would be organized and implemented. On March 26, the Federal Subsistence Board's staff committee sketched out a brief Fisheries Implementation Work Plan. That plan, released in tabular form, delineated fourteen specific issues; [95] within each issue, it outlined a series of steps within each issue that had to be addressed by specific deadline dates. By April 21, the work plan had evolved into the Federal Subsistence Fisheries Implementation Plan, which called for the creation of a series of subcommittees or working groups related to each of fourteen issues and the publication of a series of issue papers. [96]

The Staff Committee, as promised, set to work on completing issue papers related to all fourteen issues, and by June 14 brief "issue papers"—in reality nothing more than a list of goals, tasks and assignments—had been completed on all fourteen topics. [97] Two of these

topics, however, demanded a more detailed treatment: 1) organizational structure, staffing, and budget, and 2) information needs (data management). In order to work on these topics, the Federal Subsistence Board began by establishing a six-person subcommittee on information needs and information, which was called the Organizational Blueprint Sub-Committee. Patty Rost, Gates of the Arctic's Resource Management Specialist, was its NPS representative. The group immediately went to work. By July 9, each of the federal government's four major land management agencies had submitted reports detailing information issues and concerns; the subcommittee, in turn, used that information to compile a document called *Federal Subsistence Fisheries Management: Operational Strategy for Information Management*, which was presented to the Federal Subsistence Board on August 2. [98]

Federal Fisheries Region	**State Fisheries Region**
Arctic/Kotzebue/Norton Sound	Kotzebue-Northern, Norton Sound-Port Clarence
Yukon River	Yukon
Kuskokwim River	Kuskokwim
Bristol Bay/Alaska Peninsula/Kodiak	Aleutian Islands, Alaska Peninsula, Chignik, Bristol Bay, Kodiak
Cook Inlet/Gulf of Alaska	Cook Inlet, Prince William Sound
Southeast Alaska	Yakutat, Southeastern Alaska

The report introduced several concepts that have been followed by federal fisheries managers ever since. One major decision that the subcommittee made was to organize Alaska, for the purpose of subsistence fisheries information gathering, into six regions. [99] It was widely recognized that the ten-region structure that the Federal Subsistence Board had established for wildlife management in April 1992 could not logically be applied to the state's fisheries; and the subcommittee likewise agreed that federal fisheries managers—for the purposes of information gathering—did not need to use the same thirteen-region system that the Alaska Department of Fish and Game had long used. The six recommended regions, it should be noted, would be for information gathering only. Inasmuch as the January 1999 Final Rule delineated the subsistence fisheries according to state fisheries areas, the federal government decided to continue to use thirteen state-defined fisheries areas for regulatory purposes. For federal advisory purposes, however, the existing ten-region system held sway. The August 1999 report made no attempt to recommend a separate regional advisory structure for fisheries management. Fisheries management proposals, therefore, would continue to be discussed and evaluated by the same ten regional advisory councils that had been in existence since the fall of 1993.

Beyond those geographical parameters, the report detailed the process by which information input and management decisions would interplay before, during, and after each fisheries season. In addition, it identified three classes of information needs—subsistence harvest

studies, stock status and trends studies, and traditional environmental knowledge (TEK) studies [100]and it outlined a process by which federal officials would generate and evaluate fisheries research projects within these three classifications. The report, which received a broad approval from federal board members, served as the basis for sequential efforts.

Table 9-1. Proposed Staff and Budget for Federal Subsistence Fishers Management, Summer 1999

Program Administration:	***Proposed New Staff***		***Proposed Budget***	
Agency	FY 2000	FY 2001	FY 2000	FY 2001
Office of Subsistence Management	7	14	$2,000,000	$2,345,000
National Park Service	9.5	16	1,000,000	1,805,000
U.S. Forest Service	7.5	15	967,000	1,580,000
Fish and Wildlife Service	3	6	969,000	1,221,000
Bureau of Indian Affairs	1	2	130,000	245,000
Bureau of Land Management	1	2	140,000	200,000
DOI Office of the Solicitor	1	1	115,000	115,000
	30	56	$5,321,000	$7,511,000

Resource Monitoring:	***Proposed New Staff***			***Proposed Budget***		
Agency	FY 2000	FY 2001	FY 2005	FY 2000	FY 2001	FY 2005
National Park Service	10.6	12.0	16.8	$1,089,000	$$1,858,000	$$2,601,000
U.S. Forest Service	22.0	21.0	29.4	$2,033,000	$3,920,000	$5,706,000
Fish and Wildlife Service	22.4	28.0	39.2	$2,283,000	$4,958,000	$6,773,000
Bureau of Indian Affairs	--	--	--	$130,000	$255,000	$357,000
Bureau of Land Management	1.6	2.0	2.8	$144,000	$400,000	$560,000
	56.6	63.0	88.2	$$5,679,000	$$11,391,000	$$15,997,800

By the time the federal board had acted on the so-called "Blueprint Report," less than two months remained before the October 1 deadline. As a result, there was little time remaining to complete the crucial report on organizational structure, staffing, and budget. A four-person interagency team from the staff committee immediately set to work immediately, and just two weeks later it emerged with an initial draft. A second draft of the report was presented on August 30, and a third draft was completed on September 9. The publication of each report

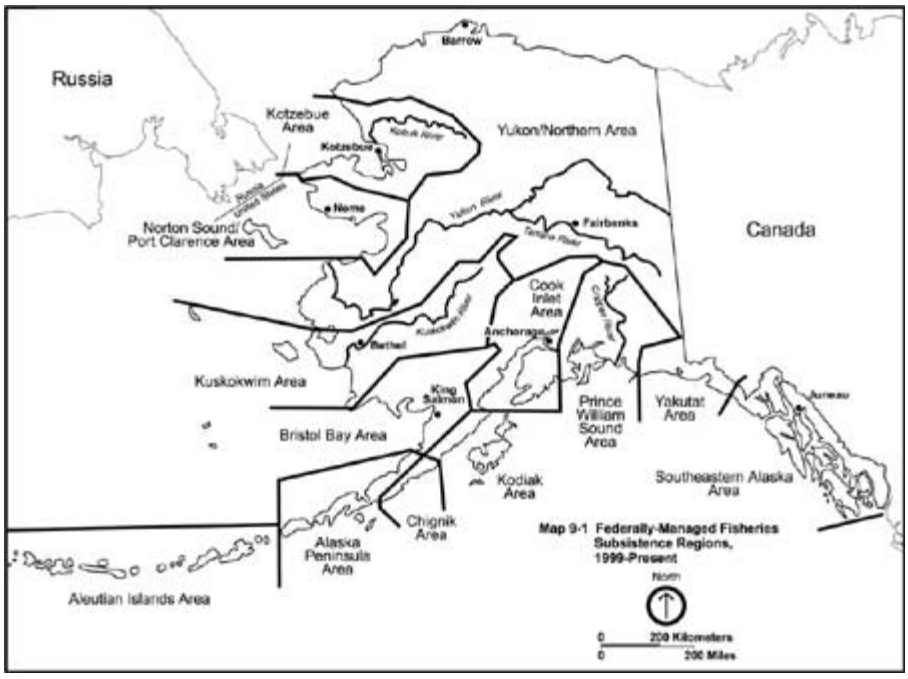
was followed by a flurry of activity; agencies were usually given just three or four days to critique each document. [101] On September 14, the Federal Subsistence Board met to evaluate the report. It had to make a major decision that day; should it adopt individual agency resource monitoring (Alternative 1), or should it adopt unified resource monitoring (Alternative 2)? The report was evenhanded in its comparison of the two alternatives, but in a key statement, it noted that "On balance, the subcommittee is convinced that the greater effectiveness and efficiency of the unified resource monitoring program are compelling." (This was consistent with recommendations made in the Organizational Blueprint report completed in early August.) Given that rationale, the Board at its September 14 meeting "agreed in principle to the proposed organizational structure and program strategy with a commitment of funding and staffing to support it." [102]

The proposed program was divided into two distinct segments: program administration and resource monitoring. In the program administration arena, the various agencies envisioned that during the first year following federal fisheries assumption (FY 2000), 30 new, full-time employees and a $5.3 million budget would be needed; but during full funding years (FY 2001 and thereafter), 56 employees and a $7.5 million budget would be necessary. The remainder of the $11 million that was being allotted to subsistence fisheries management—about $5.7 million—would be directed toward resource monitoring efforts; this amount would increase to $11.4 million in FY 2001 and $16.0 million in FY 2005. Staff and budgetary requirements as detailed by the various agencies is noted in Table 9-1 above.

Most federal agencies, not knowing for sure whether they would be managing the subsistence fisheries, held off on hiring new staff until after October 1. A few short-term hires, however, were made in anticipation of the upcoming assumption. In late August, the National Park Service hired Dave Nelson, a fisheries biologist who had logged 28 years with the Alaska Department of Fish and Game. At the same time, Mary McBurney began working for the NPS; she had previously served with the Western Alaska Fisheries Development Association (in Nome) and with Cordova District Fisherman's United. [103]

With the completion of the *Organizational Structure and Program Strategy* report on September 15, two weeks before the October 1 deadline, federal subsistence officials were in an excellent position to begin managing the subsistence fisheries. Having a completed report also gave a clear signal to Alaska's legislators, who were getting ready to convene a special session on the subsistence issue, just what sort of management system could be expected if state lawmakers failed to forward a subsistence-related constitutional amendment to Alaska's voters prior to the deadline. Having completed the most critical aspects of their planning efforts, federal managers made further preparations during the last two weeks of September. All the while, they were well aware that action by the Alaska legislature might well make virtually all of their planning efforts irrelevant. But the legislature, as noted above, failed to pass the required constitutional amendment, and beginning on October 1, federal agencies began managing the subsistence fisheries on almost 60 percent of Alaska's lands.





Map 9-1. Federally-Managed Fisheries Subsistence Regions, 1999-Present.

(click on image for an enlargement in a new window)

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Chapter 9:
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E. Implementing the Federal Subsistence Fisheries Program

On October 1, federal managers implemented the fisheries regulations that had been proposed in December 1997 and finalized in January 1999. By this time, they were already aware that no new regulations would be implemented until March 2001. Inasmuch as the process to establish the next set of regulations (for 2001) would not begin until January 2000, federal subsistence officials spent the fall of 1999 on other matters, chief of which related to budgeting and training. In early October 1999, the Interior Secretary's Alaska representative, Marilyn Heiman, let it be known that the agencies would be free to proceed with the program administration aspects of their proposed fisheries management program. Later that same month, however, Senator Murkowski held a hearing of his Energy and Natural Resources Committee. During the course of that meeting, Secretary Babbitt promised that the fisheries resource monitoring program would not be solely entrusted to federal agencies; instead, it would rely in large part on the existing expertise of the Alaska Department of Fish and Game, Alaska Native organizations and other regional groups. Babbitt also promised that 60 per cent of the federal subsistence fisheries budget would be directed toward fisheries resource and harvest monitoring, not toward program administration. [104] Staff, in response, immediately set to work evaluating which organizations would be eligible for inventory and monitoring projects and how the selection process would proceed. By this time, it had been decided that a separate organization within the Office of Subsistence Management, called the Fisheries Information Service, would oversee the annual inventory and monitoring process.

Table 9-2. Federal Subsistence Fishing Regulations Chronology, 1997-present

For Regulatory Year	Proposed Rule Published	Winter RAC Meetings	Proposal Deadline	No. of Proposals	Dist. of Props. to Public	Comment Period Deadline	Fall RAC Meetings	FSB Decision Meeting
2000*	12/17/97	2/16/98-3/20/98				4/20/98		
2001	2/2/00	2/15/00-3/24/00	3/27/00	43	5/8/00	6/16/00	9/12/00-10/13/00	12/4/00-12/8/00
2002	2/13/01	2/22/01-3/29/01	3/30/01	43	5/7/01	6/6/01	9/11/01-10/19/01	12/11/01-12/13/01
2003	2/11/02	2/19/02-3/22/02	3/29/02	28	5/6/02	6/14/02	*9/9/02-10/11/02*	*12/17-19/02,1/13-17/03*

Note: proposed dates are shown in *italics.** The initial federal fisheries regulations were released to the public as a proposed rule on December 15, 1997 and published in the *Federal Register* two days later. The public was given 120 days to comment on them, and they were discussed at each of the winter 1998 RAC meetings. A final rule was published in the January 8, 1999 *Federal Register;* it was slightly modified and published as a corrected Final Rule in the *Federal Register* on July 1, 1999. These regulations remained in effect from October 1, 1999 until March 1, 2001.

Table 9-3. Fisheries Proposals Considered by the Federal Subsistence Board, 2000-present

Regulatory Year (FSB Mtg. Date)	Region 1 (Southeast)	Region 2 (Southcentral)	Region 3 (Kodiak-Aleutians)	Region 4 (Bristol Bay)	Region 5 (Y-K Delta)	Region 6 (Western Interior)	Region 7 (Seward Pen.)	Region 8 (N.W. Arctic)	Region 9 (Eastern Interior)	Region 10 (North Slope)	S/M*	STATE TOTAL
2001 (Dec.2000)	15	3	4	1	2	1	0	2	3	0	0	33
2002 (Dec.2001)	20	12	0	0	0	1	1	1	3	0	0	37
2003 (Dec.2002)	*7*	*12*	*1*	*2*	*3*	*0*	*1*	*0*	*0*	*0*	*2*	*28*

NOTE: The number of proposals for the 2003 regulatory year (in *italics*) is an estimate inasmuch as the FSB has not yet evaluated them.

* - The "S/M" column indicates either statewide proposals (S) or those that affected multiple regions (M).

Meanwhile, the NPS and other land management bureaus commenced a large-scale effort to discuss the new management scheme with a broad spectrum of Alaskans. Throughout the month of October 1999, staff from the Office of Subsistence Management and various federal agencies talked at the various regional advisory councils about the new system, and in mid-October 1999 NPS officials spent considerable time on the topic during the annual Subsistence Resource Commission chairs' meeting. Federal officials had long hoped that these meetings would be followed by a two- or three-day training session, which would be open to all regional advisory council members, the Federal Subsistence Board, an array of state and federal officials, and the public. But that meeting, originally scheduled for mid-November 1999, had to be delayed until after the holidays. It was finally held at Anchorage's Egan Convention Center on January 24-27, 2000. The meeting gave all of the major players in the subsistence management scheme the opportunity to present their viewpoints. Furthermore, significant progress was made in informing participants of the status of the federal program, in publicizing the multifaceted nature of subsistence management, and in providing a framework on how decisions would be made during the upcoming fishing season. [105]

By the time of the training session, federal subsistence officials were well underway with the development of an interagency monitoring effort. The Federal Subsistence Board had approved two fisheries monitoring projects—a weir along the Kwethluk River and improved sonar technology at Pilot Station on the Yukon River—at its December 1999 meeting. By late January 2000, moveover, it had outlined 17 proposals, worth a total of $1.25 million, for gathering subsistence fisheries information; these proposals, to be implemented in locations throughout the state, would be acted upon at an federal board meeting in early February. Two months later, the board approved 24 more projects, and at a May 2000 meeting it approved four final monitoring projects. [106]

In the midst of the fisheries training conference, State of Alaska officials let it be known that they still had a vital interest in managing all of the state's navigable waterways. On January 26, 2000, Attorney General Bruce Botelho announced that state lawyers had filed a notice of appeal in the Katie John case (*Katie John v. United States*). In making such an action, state lawyers explained that they had been premature in appealing Judge Holland's March 1994 District Court decision; it was premature because Holland had not entered a final judgment at that time. Such a final judgment was finally decided—almost six years later—on January 7, 2000. Based on that decision, state lawyers again asked the Ninth Circuit Court of Appeals to evaluate the merits of the *Katie John* case. Botelho, in announcing the appeal, remarked that "Katie John has a right to her subsistence way of life and we will stand by her." But the case, he reiterated, "is only about the state's authority to manage its own waters." [107]

Governor Knowles and other state officials, during this period, also attempted to stir up momentum for a constitutional amendment in the Alaska legislature. On February 9, legislators introduced the same bill that had cleared the House the previous September. This year, however, Knowles' efforts were met with lukewarm support because of his recent decision to appeal the Katie John suit. Alaska Federation of Natives leaders, in response, hurriedly organized a day-long conference in Anchorage; they emerged from the conference vowing—for the first time ever—not to support a constitutional amendment. Instead, they passed a resolution urging Congress to develop a "Native and rural priority" in managing resources on federal lands. Based on that lack of support, Knowles' bill foundered that year; it was never voted upon by either legislative body. [108]

During the same period in which the legislature was considering Knowles' bill, federal and state officials were hard at work hammering out a formal document outlining the nature of their working relationship as it pertained to subsistence fisheries management. By January 13, 2000, an ad hoc federal-state working group had completed a discussion draft of a Memorandum of Understanding for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska. That document, largely intact, emerged two months later as an Interim Memorandum of Agreement. A panoply of officials—three from the state plus the six members of the Federal Subsistence Board—initialed the document shortly afterward. It became effective when the last signatory—Alaska Game Board Chair Lori Quakenbush—approved the Interim MOA on April 26. [109]

Meanwhile, agencies began beefing up their staffs, in a process that largely followed the budgets that had been proposed in 1998 and approved in late 1999. Most if not all of the four land management agencies gained staff between the fall of 1999 and the spring of 2000. During this period, the NPS gained seven new permanent subsistence-related positions. The first person to be hired, shortly after the October assumption, was program manager Bob Gerhard, who had long been involved in subsistence matters for the agency. (See Appendix 3.) The following spring, the agency obtained four fisheries biologists/managers: Charles Lean, an ex-ADF&G staffer based at the Bering Land Bridge office in Nome; Fred Andersen, another former ADF&G employee who worked out of the Gates of the Arctic/Yukon-Charley Rivers office in Fairbanks; Eric Veach, a former southeastern Alaska Forest Service employee who began working at the Wrangell-St. Elias office in Glennallen; and Mary McBurney, who transferred into the position from other duties in the agency's Anchorage office. Fish and game veteran Dave Nelson, like McBurney, was converted from temporary to permanent status during this period. A final hire during this period was anthropologist Janet Cohen, who had formerly worked in Kodiak for ADF&G's Subsistence Division; she commenced work in Anchorage in June 2000. Veach and Cohen were additionally advantageous to the agency because they had worked for the Nez Perce and Navajo tribes, respectively. [110]



NPS subsistence staff, who met at the annual SRC chairs' meeting in Anchorage in October 2001, included Fred Andersen (fisheries specialist, Fairbanks), Devi Sharp (WRST SRC coordinator), Ken Adkisson (SRC coordinator for CAKR and KOVA), Mary McBurney (fisheries specialist, Anchorage), Charles Lean (fisheries specialist, Nome), and Tom O'Hara (ANIA SRC coordinator). Author's collection

No sooner had the Interim MOA been initialed and the new staff situated in their positions than the fishing season commenced. In both the Yukon and Kuskokwim River drainages, the summer of 2000 was one of the most dismal seasons on record, and in order to gain respectable escapement numbers, fisheries managers were forced to severely curtail subsistence fisheries harvests and—in a few cases—eliminate them altogether. [111] The problem was one that had become increasingly evident during the past several years, and the difficulties involved in making in-season management decisions were made no easier in light of the fact that federal and state fisheries managers were forced to make cooperative decisions for the first time. Despite the difficulties in implementing the new system, there was a widespread recognition that the difficulties with the fisheries harvest were due almost exclusively to factors other than the new management system. Fisheries managers, to the largest extent possible, used established, ad hoc organizations such as the Kuskokwim River Subsistence Management Working Group and the Yukon River Drainage Fisheries Association; and in the case of the Yukon River, the decisionmaking process was eased considerably because state and federal authorities had signed a management protocol on May 25. [112] Fisheries managers were further aided because the Federal Subsistence Board, early in the season, had delineated a clear-cut system of lead federal officials for each of twelve fisheries regions in the state. [113]

By the end of the summer of 2000, the federal subsistence fisheries program was nearing the end of its first year of operation. (See Tables 9-2 and 9-3.) To evaluate the effectiveness of the program, Senator Murkowski visited Anchorage on August 23 and held a second post-assumption hearing of his Energy and Natural Resources Committee. Interior Department personnel, as part of their testimony, were quick to point out that they had followed through on most if not all of the promises that Babbitt had made during the previous (October 1999) hearing. They also noted that the Department had hired 21 new employees—18 of them Alaskans—to support the department's management effort. Anticipated future staff included 13 DOI employees and 9 Agriculture Department (U.S. Forest Service) employees. Based on completed and anticipated staffing, it appeared that the federal agencies' staffing presence (40 positions) would fall significantly short of the 56 positions that had been planned during the months prior to fisheries assumption. [114]

A second hearing, held in Juneau several months later, focused on the degree of success that state and federal officials had had in their implementation of a dual management system. Both Tom Boyd, head of the federal government's Office of Subsistence Management, and Frank Rue, Commissioner of the state's Department of Fish and Game, noted that officials had "worked mostly in cooperation." The two officials acknowledged, however, that the two systems had substantially different mandates and that the underlying conflict between them occasionally bubbled to the surface. Rue noted a few complaints about federal interference in setting escapement levels—he "felt they were in our business a little too much" in that regard, he noted. The soft-spoken Boyd, in turn, candidly noted that "I would say we've had some rough spots. ... We've walked into a legacy of distrust in rural Alaska." The ADF&G commissioner regretfully noted that several longtime Department staffers were now working for federal agencies, and he darkly warned of increasing trouble as the number of federal managers increased. Boyd, in response, noted that the federal government had never sought responsibility over fisheries management; it had, in fact, consistently advocated returning unified management to the state. Furthermore, he noted, that "it is not [the federal government's] intent to go out there and be overlords of the situation. ... Everyone is cooperating to the extent that it's legally possible." [115]

Meanwhile, state officials continued to pursue both legislative and judicial means to reassert its authority over the management of subsistence resources. Throughout the spring and summer of 2000, the state actively pursued its appeal of Judge Holland's decision in the *Katie John* case. The Alaska Legislative Council, apparently unwilling to undertake the case with only the state's legal personnel, quietly inked a contract with two Washington D.C.-based lawyers to prepare a legal brief supporting the appeal. (Details of the contract were not released either to the full Legislature or to the public until October.) [116] Perhaps in response to that brief, the Ninth Circuit announced in mid-July 2000 that it would reconsider its April 1995 decision; furthermore, it agreed to have the case presented to a eleven-judge "en banc" panel rather than the three-judge panel that had weighed in on the previous Appeals Court decision. Arguments in the case were presented to the en banc panel in San Francisco on December 20, 2000.

Five months later, on May 7, 2001, the Ninth Circuit issued its decision. In an 8-3 vote, it again ruled in favor of Katie John. Circuit Court Judge Alex Kozinski issued the majority opinion. The vote guaranteed a continuation of the status quo regarding the federal government's role in managing Alaska's subsistence fisheries. Long before the circuit court issued its ruling, state officials promised—if the state lost its case—that it would appeal the case to the U.S. Supreme Court. But on August 15-16, 2001, Governor Knowles convened a

In May 1999, the Ninth Circuit Court of Appeals, in an *en banc* ruling, largely reaffirmed the decision that the court had made in April 1995.

Circuit Judge Alex Kozinski wrote the majority opinion in that case. Alex Kozinski Collection

Subsistence Summit in Anchorage. At the end of that meeting the forty-two Alaskans on the governor's task force issued a declaration stating that "the subsistence way of life for Alaska Natives and rural Alaskans must be protected by our state government." Perhaps based on the conclusions of that task force, Knowles decided, on August 27, that the state would not appeal the Katie John case to the U.S. Supreme Court. It was up to the legislature, he noted, to allow Alaskans to vote on a constitutional amendment that would let the State of Alaska, once again, manage subsistence resources in a unified statewide system. [117] Three weeks later, the Alaska Constitutional Legal Defense Conservation Fund fought back; it filed a Superior Court suit in Anchorage in an attempt to force Knowles to appeal the case to the nation's high court. On September 26, Judge John Reese rejected that appeal. Little more than a week later, the Alaska Legislative Council also acted when it asked the U.S. Supreme Court for permission to appeal the Katie John case, but on October 12 that too was rejected. [118]

The only alternative to continued federal management, it appeared, was the passage of a constitutional amendment by the Alaska Legislature. To that end, various task force members formed a drafting committee, headed by Attorney General Bruce Botelho, which met eight times during the next several months. On December 17, the committee concluded its work and recommended broadly-acceptable language for a proposed constitutional amendment. When the 2002 legislative session began a month later, the governor made it clear that the passage of a subsistence amendment should be one of the legislature's top priorities, and in mid-February he released the text of his recommended amendment. Momentum to pass such a bill grew on April 2, when Anchorage voters, by a lopsided 72%-28% margin, approved an advisory measure that demanded a subsistence vote by all Alaskans. But neither legislative body passed such a bill during the regular session. Knowles, in response, demanded that the legislature consider subsistence as part of a special session that would begin immediately after the regular session concluded. [119] But that session, which began on May 17, made no significant moves toward resolving the long-standing problem. By May 19, pro-vote legislators were frankly admitting that there was insufficient support for a constitutional amendment; given that state of affairs, Senate Resources Committee Chair John Torgerson urged that the issue be reconsidered at some later date. A second special session, begun on June 24, did not address subsistence concerns. [120] As a result of the legislature's continuing inaction, the issue remains unresolved. It is yet to be seen if a legally-viable subsistence amendment can pass muster with both the Alaska Legislature and the state's electorate.

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Alaska Subsistence

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Chapter 10:
CONCLUDING REMARKS

To a large extent, questions related to subsistence use and management are a direct function of land ownership, and particularly during the years prior to ANILCA, many conflicts over subsistence use were subsumed within larger fights over land ownership and control. After the U.S. government purchased Russian America from Czar Alexander II, U.S. officials adopted a distinctly different policy toward Native populations in Alaska than it did elsewhere. That new policy, which was largely the result of changing attitudes toward Natives throughout the United States, avoided a reliance on the reservation system. One result of that policy was that Natives, individually or collectively, had almost no land that they could call their own. They were, however, able to continue to use vast expanses of the unclaimed, federally-owned domain for subsistence purposes. The federal government, throughout the pre-statehood period, did not address larger questions about Native rights to Alaska lands.

This policy, which was consistent with the general attitude that the federal government took toward Alaska, had few initial impacts on Alaska's Native inhabitants. During the late nineteenth century, indeed, the amount of land that was intensively utilized by non-Native populations remained quite small. The twentieth century, however, brought a large migration of non-Native prospectors, followed by the scattered growth of transportation networks, agricultural and mineral lands, and commercial fishing grounds, along with the villages and towns needed to support those developments. The coming of World War II, moreover, accelerated those developments, and by the time the statehood movement reached its final stages, Alaska's Natives felt sufficiently concerned about the potential loss of subsistence resources that provisions for subsistence fishing were included in the state's original fish and game statutes. The larger question of Native land rights, however, was again put on the back burner, and it was not until the late 1960s that a combination of factors—a federal land freeze, the discovery of North Slope oil, and efforts by Native Alaskans to organize on a statewide scale—forced the Native land rights issue.

Congress, in response, passed the Alaska Native Claims Settlement Act (ANCSA), which provided both cash payments and land allotments. Land allotments were to be selected by regional corporations and village corporations, both of which were ANCSA creations. The architects of ANCSA were fully aware that these land allotments, generous though they may have been, were far less than was necessary to accommodate the Natives' subsistence needs. In order to provide for subsistence, the U.S. Senate inserted a provision that provided legal protection for the Natives' continued subsistence use of the public lands. The House, however, did not go along with that provision. The final bill, as a result, was silent on the issue. An important footnote stemming from ANCSA, however, was a Conference Committee report stating expectations for future action relative to Native land rights.

Planning for that future was not long in coming, because Section 17(d) of that act set in motion a long period of planning that resulted in the classification of Alaska's unreserved lands into conservation system units and other reserved areas. Within weeks of ANCSA's

passage, the federal and state governments, along with a broad spectrum of Native, environmental and user groups, began working to shape the nature of Alaska's rural lands in their favor. Most groups concentrated their fight on how large the various conservation units would be, who would manage them, and to what extent wilderness and sport hunting would be allowed. But the National Park Service—along with the State of Alaska, Native groups, the Joint Federal-State Land Use Planning Commission, and a number of other interested parties—were also vitally interested in how any final settlement effort would impact Alaskan subsistence activities. Between 1972 and early 1975, the NPS and other federal agencies produced a series of draft and final environmental statements detailing proposed plans for the future of much of rural Alaska. These documents served as a basis for the decisions that Congress would make.

Then, in January 1977, Congress began working in earnest to resolve the Alaska lands issue. In their approach to subsistence, members of the House and Senate initially presented wildly diverse ideas. Some, for example, recommended a Native preference while others recommended a rural preference; some urged that the federal government manage subsistence activities while others pressed for state management; and some urged that subsistence activities be sanctioned in almost all of the proposed NPS units, while others felt that subsistence, in most units, should be either limited in its application or prohibited entirely. Many of the details regarding how subsistence activities would be managed (i.e., the paragraphs that comprise today's Title VIII) were settled, to a large extent, in early 1978. The extent of acreage on which subsistence activities would be sanctioned, however, was the subject of a tug-of-war that would not be settled until President Carter signed the final bill on December 2, 1980. Among its other provisions, ANILCA decreed that subsistence activities would be legal in all but one of the newly-established park units, and thus 43.0 million of the 43.6 million acres in the newly-established NPS units would be open to subsistence. However, in five of the seven newly-established parks or monuments (comprising 20.2 million acres), subsistence would not necessarily be allowed everywhere but "where such uses are traditional in accordance with the provisions of title VIII."

Given that dictum, the NPS did its best to implement Title VIII and the other ANILCA provisions. The wheels, at first, turned slowly; ANILCA, after all, had brought about a greater than eight-fold increase in Alaska's NPS acreage, and the agency perforce spent much of the initial post-ANILCA period hiring staff, acquiring a rudimentary physical plant, and in other ways establishing an minimal organizational presence. (Historian Bill Brown perhaps said it best when he stated that the NPS's approach during this period was "show the flag, keep a smile on your face, be educational, and don't march in with jack boots.") Meanwhile, NPS officials spent much of the six-month period following ANILCA establishing regulations for their newly-established lands. New regulations regarding some NPS activities were unnecessary because there was no need to distinguish the new Alaska parks from those located outside of the state; regarding subsistence, however, the realities of Alaska's rural lifestyle were so distinctive that many new *Federal Register* pages were needed in order to provide effective, appropriate management regulations. Because both the regional office and the parks themselves had to limp along with slim staffs and meager funding, little active work was done to resolve subsistence issues; and although ANILCA had stated that the various park and monument subsistence resource commissions (SRCs) would have a "program for subsistence hunting" ready by June 1982, the cold reality was that the first SRCs did not even meet until April and May of 1984.

Between 1984 and 1989, most of the SRCs met at least once per year, and during this period some of the initial battles over subsistence issues were waged. Most of the initial SRC members were well-respected local residents, and they were well aware that any actions they took had to fit within the legal framework of ANILCA and its subsequent regulations. Many of the SRC members, however, were subsistence users, and many also had a keen interest in

continuing the laissez faire system that had been in place prior to ANILCA's passage. Agency officials, however, recognized that ANILCA and the regulations placed certain constraints related to subsistence access, eligibility, and use, and throughout the mid-to-late 1980s Interior Department officials rejected many SRC recommendations that would have allowed a relatively broad interpretation of the regulations. Friction and frustration was the inevitable result. SRC members, all too often, felt that the government was trying to restrict legitimate subsistence activities; moreover, some SRC members (and some agency staff as well) felt that the NPS was trying to eliminate subsistence entirely. Agency officials, in response, countered that they were merely trying to interpret the letter as well as the spirit of ANILCA and its regulations.

Throughout the decade that followed ANILCA's passage, the State of Alaska managed subsistence resources throughout the state. The Interior Department, after some initial misgivings, officially certified the legitimacy of the state's program as applied to federal lands in May 1982. The state's voters rejected a referendum of the state's initial (1978) subsistence law in the fall 1982 elections. In early 1985, the Alaska Supreme Court issued a ruling in the *Madison vs. Alaska Department of Fish and Game* case which nullified a key provision of the initial subsistence law, and as a result, the Alaska legislature passed an amended subsistence law in May 1986. Beginning in 1982, the state began overseeing a series of six regional subsistence advisory councils, but funding and other difficulties limited the councils' effectiveness.

In December 1989, the world of subsistence management was rent asunder when the Alaska Supreme Court, in *McDowell vs. State of Alaska*, ruled that the rural preference provisions contained in the state's revised (1986) subsistence law illegally discriminated against urban residents. The Alaska legislature, in response to that court decision, recognized that the State of Alaska could retain its lead role in subsistence management if it passed a bill mandating a rural preference. (This bill would forward a constitutional amendment that Alaska's voters would decide at the next general election.) The legislature, however, was unable to pass such a bill, so on July 1, 1990, the federal government began managing certain subsistence activities. The Federal Subsistence Board—composed of representatives of the NPS and four other federal agencies—played a major role in implementing the new management scheme.

Federal agencies in the wake of the *McDowell* decision recognized that they would be required to assume certain tasks related to subsistence management if the legislature failed to address the issue, so they hurriedly compiled a series of temporary subsistence harvest regulations. One of those decisions, that would loom large in upcoming years, was that the federal government would manage subsistence activities only on lands within the various federal conservation units. In addition, federal regulators determined that jurisdiction over subsistence would not extend to the state's navigable waters; as a result, federal agencies' jurisdiction would be related to hunting and trapping, and also to fishing in non-navigable waters. (Because few issues arose regarding fishing in non-navigable waters, the practical result of this decision was that the great majority of the federal officials' responsibility was related to subsistence hunting.) Federal agency personnel spent the next two years preparing an environmental impact statement that provided a more specific direction for the federal subsistence program; it was approved by the Interior and Agriculture secretaries in April 1992. A major element in that decision was that the State-managed regional subsistence advisory system did not adequately reflect the concerns of both urban and rural subsistence users; as a result, the state's six-region system was superceded by a federally-managed ten-region system.

One by-product of the federal assumption of subsistence management was that the NPS was provided with significantly increased funding to administer subsistence programs in Alaska's park units. The agency took advantage of that opportunity by hiring subsistence coordinators

in the field and beefing up the subsistence staff in the Anchorage office. The field coordinators soon became familiar with the nearby resident-zone communities and with area subsistence users; and perhaps not surprisingly, many of them quickly recognized that many users had valid complaints about inequities in the existing subsistence management system. The field coordinators' empathy, in many cases, was passed on to park superintendents, who began to chafe at the strict-constructionist way in which subsistence regulations were being interpreted by regional officials. The growing antagonism between park and regional officials led first, in 1993, to a week-long subsistence conference; then, a year later, continuing friction led to the appointment of a working group that was tasked to review the various laws and regulations that pertained to the NPS's administration of subsistence activities. That effort resulted in a draft report that was quietly shelved. But an entirely separate effort—one that was assigned to restructure the agency's approach to natural resource management—recommended the breakup of the region's subsistence division. Recommendations contained in a February 1996 report signaled a major shift in attitudes toward subsistence management; soon afterward, agency officials unearthed a previously-discarded report on subsistence laws and regulations and used it as a springboard for reinterpreting and clarifying the agency's stance on a variety of subsistence issues. The agency, during this period, took some pains to let the SRCs know that it was showing a renewed interest in users' concerns. Since then, relations between the SRCs and the agencies have considerably improved, and the NPS has made a yeoman effort to listen to the SRC members' concerns and accommodate their legitimate requests. This is not to say, however, that subsistence users are uniformly satisfied with either the style of NPS management or the agency's responses to users' recommendations. A dialogue, however, has been established in recent years that had not existed previously.

As noted above, the NPS has been one of several federal agencies which, since 1990, has jointly made management decisions regarding subsistence regulations within the various federal conservation units. In the fall of 1993, federally-sponsored regional advisory councils began advising the Federal Subsistence Board. Given this operational structure, the federal subsistence regulatory system has continued making subsistence decisions to the present day. But beginning in the spring of 1994, Alaskans began to recognize that the federal government's management reach in the subsistence field might extend from a primary focus on hunting to one that also included fishing. Anchorage District Court Judge H. Russel Holland ruled, in the *Katie John vs. USA* case, that "the federal government has the legal power and obligation to take over management of subsistence fisheries on all navigable waters." That decision was soon relayed to the Ninth Circuit Court of Appeals. In an April 1995 ruling, Judge Eugene Wright (speaking for the appeals court majority) stated that "we have no doubt that Congress intended that public lands include at least some navigable waters." Judge's Wright's decision thus reaffirmed the notion that the federal government should be managing at least some of the state's navigable waters; the scope of that management, however, was significantly narrower than that envisioned by Judge Holland.

Judge Wright's decision in the *Katie John* case, coupled with the U.S. Supreme Court's refusal to accept the state's appeal, put additional pressure on the Alaska Legislature to pass a bill providing for a constitutional amendment that would have allowed a rural subsistence preference. But the legislature, in both 1995 and 1996, refused to act. Alaska's Congressional delegation, hoping to buy time, was thrice able to extend the deadline for which the federal government would assume management of subsistence fishing. But the Alaska legislature, for whatever reason, opted not to forward a rural-subsistence provision to Alaska's voters, and in October 1999 the federal government assumed jurisdiction over subsistence fishing on more than half of the state's navigable waters. The federal government issued final regulations relative to subsistence fishing in January 1999; most of these regulations are still in effect. The federal expansion of subsistence fishing management meant that both the Federal Subsistence Board and the various regional advisory councils now assume a much more

active role than had been assigned to them back in 1992; the Board now makes many fishing-related decisions each December in addition to the hunting and trapping decisions it makes each April or May.

Seen from a historical perspective, it appears that subsistence management—which in Alaska is a consistently emotional and high-priority topic—has itself been treated with a startling lack of consistency. The NPS (and to extent other federal agencies as well) has ebbed and flowed in its attitude toward subsistence users; at times, it has seemingly offered subsistence users a carte blanche approach to subsistence access, eligibility, and other aspects of subsistence management, while at other times, many subsistence users felt that the agency was attempting to whittle away at legitimate subsistence uses and consign these activities to a historical dustbin.

As this paper has noted, the agency has never, in reality, openly advocated either extreme. But seen from an organizational point of view, the agency's varying approaches should come as no surprise. As early chapters have pointed out, the NPS built its reputation over the years through strong efforts to protect scenic landscapes and wildlife populations for public enjoyment, and key to its organizational philosophy during its early years was the prevention of hunting, personal use fishing (i.e., fishing that was not intended for sport), and other subsistence activities within park borders. But during the years following ANCSA's passage, the agency leaders in Alaska quickly concluded that Alaska Natives and other rural residents had long used tens of millions of acres of potential parkland; and furthermore, an alliance between Alaska Natives and conservationists was politically necessary in order to ensure the passage of a strong Alaska lands bill. Given that alliance, agency leaders were proud to note that subsistence uses—primarily by Alaska Natives—would be a key aspect of the new parks. When these concepts were presented in Congress, the U.S. House largely accepted what the agency had proposed. The Senate was initially much more restrictive in its approach; the final bill, though necessarily a compromise, was still a radical departure from what the NPS had historically championed.

During the initial years after ANILCA's passage, the NPS retained its low-key, laissez faire approach to subsistence management, and agency officials did their utmost to win friends among park neighbors. In a state that was traditionally hostile to conservation and federal control, such an attitude was critically necessary; and considering skeletal budgeting and staffing levels, the agency would have been shortsighted to act otherwise. But within a few years, officials apparently felt that enough time had elapsed since ANILCA that the agency could afford to revert to a more traditional management style. For the remainder of the 1980s the agency retained its relatively conservative approach; it did so in order to let Alaskans of all stripes know that the parks, as specially-protected places, needed to be managed quite differently than lands elsewhere in Alaska. But in doing so, the agency aroused the enmity of many local residents and subsistence users, some of whom resented the very existence of the various park units as well as any specific park-related restrictions. This attitude prevailed until the early 1990s, when the combined actions of superintendents and subsistence coordinators forced a reinterpretation of many agency regulations and brought about new levels of communication between agency personnel and subsistence users.

Today, Alaska's subsistence management "system"—if that is the proper term—is a complex melange that is managed by both the state and federal governments. Subsistence decisions are made by the state game and fish boards and by the Federal Subsistence Board, and serving these boards in an advisory capacity are various local advisory committees, subsistence resource commissions, regional advisory councils, along with other groups and agencies. Despite the Federal Subsistence Board's titular leadership, a seeming tyranny of democracy prevails, in which both rural and urban Alaskans of all stripes have a voice, and rural groups additionally benefit through various so-called Section 809 agreements through which various

data collection, project management and monitoring projects are conducted.

At first glance, it would appear that the present system is, at long last, in a relative state of equilibrium; the Alaska legislature's track record suggests that a unified subsistence management regime will not be adopted in the near future, and the Alaska governor's August 2001 decision to not appeal the *Katie John* decision suggests that no major court decisions any time soon will significantly affect the existing subsistence management regime. The chronicle of what has happened thus far, however, suggests otherwise. This study has shown that ever since 1970, some major event affecting Alaska's subsistence management—either a legislative act or a major court decision—has taken place every five to seven years. Given that time line, it must be recognized that turbulence is the norm rather than the exception, and it should come as little surprise if further dramatic changes occur within the next few years.



"Nobody like regulations—even I don't. But we need them. We've got to protect what we've got here. if you let this land get completely run over there wouldn't be room for man or beast." NPS (AKSO), photo.

—Percy Duyck
(Nenana resident and member of the
Denali National Park Subsistence Resource Commission), 1999

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APPENDIX 1:
State and Federal Subsistence Leaders, 1974-present

Appendix 1. State and Federal Subsistence Leaders, 1974-present

Commissioners of the Alaska Department of Fish and Game:

1974-82 = Ronald O. Skoog (Governor Hammond appointee)
1983-86 = Don W. Collinsworth (Governor Sheffield appointee)
1986-90 = Don W. Collinsworth (Governor Cowper appointee)
1990-94 = Carl L. Rosier (Governor Hickel appointee)
1994-present = Frank Rue (Governor Knowles appointee)

Subsistence Division Chiefs. Alaska Department of Fish and Game:

1979-81 = Thomas Lonner
1981-83 = Dennis D. Kelso
1983-91 = Steven R. Behnke
1991-95 = Robert G. Bosworth III
1996-present = Mary C. Pete

U.S. Department of the Interior Alaska Representatives:

Special Assistant to the Interior Secretary (based in Anchorage)
1978-79 —Jerry Gilliland (BLM)
Deputy Undersecretaries for Alaskan Affairs (based in Washington, D.C.)
1981-88 = William P. Horn (1985-88, also Asst. Sec. for Fish, Wildlife and Parks)
1988-93 = Vernon R. Wiggins
Special Assistants to U.S. Interior Secretary for Alaska (based/n Anchorage):
1990-93 = Curtis V. McVee
1993-94 = Ronald McCoy (acting)
1994-98 = Deborah Williams
1998-99 = Bob Anderson (acting)
1999-2001 = Marilyn Heiman
2001-present = Cam Toohey; also Drue Pearce (in D.C.)

Federal Subsistence Board Chairs:

1990 = Walter O. Stieglitz
1990-92 = Curtis V. McVee
1992-94 = Ronald McCoy (interim)
1994-95 = William L. Hensley

1995-present = Daniel (Mitch) Demientieff

National Park Service. Alaska Regional (Field Directors) FSB Representatives if different:

1979-83 = John E. Cook
1983 = Robert L. Peterson (acting)
1983-85 = Roger J. Contor
1985-91 = (Quincy) Boyd Evison
1991-94 = John M. (Jack) Morehead
1994-2000 = Robert D. Barbee — 1994-99 = Paul R. Anderson
2000-present = Robert L. Arnberger — 1999-present = Judith C. Gottlieb

Fish and Wildlife Service. Region 7 (Alaska) Directors:

1979-83 = Keith Schreiner
1983-85 = Robert E. Putz
1985-87 = Robert E. Gilmore
1987-94 = Walter O. Stieglitz
1994-present = David B. Allen

Bureau of Land Management. Alaska State Directors:

1971-84= Curtis V. McVee
1984-89 = Michael J. Penfold
1990-94 = Edward Spang
1994-98 = Tom Allen
1999-2002 = Francis (Fran) Cherry
2002-present = Henri Bisson

Forest Service, Regional Foresters for Region 10 (Alaska): FSB Representatives (if different):

1971-76 = Charles A. Yates
1976-84 = John A. Sandor
1984-94 = Michael Barton
1994-99 = Phil Janik — Bob Williams, 1990-95
1999-2001 = Rick Cables — Jim Caplan, 1996-2001
2001-present = Dennis Bschor — Wini Kesler, 2001-present

Bureau of Indian Affairs Area Director Juneau Area Office:

1980-1989 = Jake Lestenkof
1989-1990 = Rusty Farmer, Merret Youngdeer, and George A. Walters (all acting)
1990-2000 = Niles Cesar (Area Director, Juneau Area)
2000-present = Niles Cesar (Regional Director, Alaska Region)

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APPENDIX 2:
Regional Advisory Commission Chairs and Coordinators

Appendix 2. Regional Advisory Council Leaders, 1981-Present

State-Sponsored RACs
(1981-1992, incomplete list):

Southeast (Region 1):
Chairs: Gordon Williams (1983-85), Gretchen Goldstein (1988), Ann L. Lowe (1991-92)
Coordinators* (Juneau): Vikki J. Benner (1985), Beth Stewart (1986), John S. Thiede (1987), Janice Hotch (1989-92)

Southcentral (Region 2):
Chairs: T. J. Hinkle (1985-87), W. T. (Bill) Ellis (1989), Paul Zimmerman (1991-92)
Coordinators (Anchorage): Jean Lobb (1985), Karen Brandt (1986-88), Martha Hutton (1989), Ann Wilkinson (1990-92)

Southwest (Region 3):
Chairs: Leon Braswell (1981-85), Joe Chythlook (1987-90), Robert Heyano (1992)
Coordinators (Dillingham): Dorothy S. Wilson (née Flensburg) (1985-86)

Western (Region 4):
Chairs: John Thompson (1985), Frank Fox (1991-92)
Coordinators (Bethel): David Friday (1985), Clara Kelly (1986), Ida Alexie (1988-92)

Arctic (Region 5):
Chairs: Calvin Moto (1985), Weaver Ivanoff (1989), Pete Schaeffer (1989), Jerry Norton (1992)
Coordinators (Nome): Heidi Hart (1985), Victor Karmun (1986), Martha J. Ramoth (1989), Barbara Armstrong (1989-92)

Interior (Region 6):
Chairs: Kevin B. Charles (1983), Royce D. Purinton III (1984-92)
Coordinators (Fairbanks): Daniel (Mitch) Demientieff (1985-86), Sherrill Peterson (-Booth) (1987-91), Vince Mathews (1991-92)

* - Note: Coordinators were formally called Regional Regulatory Program Assistants (RRPAs)

Federally-Sponsored RACs
(1993-present)

Southeast (Region 1):
Chair: William C. Thomas, Sr. (1993-present)
Coordinators: Carol Jorgensen (1993-95), Fred Clark (1995-2001), Bob Schroeder (2002-present)

Southcentral (Region 2):
Chairs: Roy S. Ewan (1993-98), Ralph Lohse (1998-present)
Coordinators: Helga Eakon (1993-2000); Ann Wilkinson (2000-present)

Kodiak-Aleutians (Region 3):
Chairs: Mark E. Olsen (1993-99), Vince Tutiakoff (1999-2000), Della Trumble (2000-present)
Coordinators: Helga Eakon (1993), Moses Dirks (1994-96), Cliff Edenshaw (1996-2000), Michelle Chivers (2001-present)

Bristol Bay (Region 4):
Chair: Daniel J. OHara (1993-present)
Coordinators: Helga Eakon (1993-98), Jerry Berg (1999-2000), Cliff Edenshaw (2000-present)

Yukon-Kuskokwim Delta (Region 5):
Chair: Harry O. Wilde, Sr. (1993-present)
Coordinator: John Andrew (1993-2000), Alex Nick (2000-present)

Western Interior (Region 6):
Chairs: Harold Huntington (1993-94), Ray Collins (1995-96), Carl Morgan (1997-98), Ronald Sam (1999-present)
Coordinators: David James (1993-94), Vince Mathews (1994-present)

Seward Peninsula (Region 7):
Chairs: Sheldon l. Katchatag (1993-99), Grace Cross (1999-present)
Coordinators: Barbara Armstrong (1993-96), Cliff Edenshaw (1996-99), Helga Eakon (1999-2000), Ann Wilkinson (2000-02), Barbara Armstrong (2002-present)

Northwest Arctic (Region B):
Chairs: Walter G. Sampson (1993-96), Fred Armstrong (1996-97), Willie Goodwin (1998-2002), Raymond Stoney, acting (2002-present)
Coordinator: Barbara Armstrong (1993-2002), Helen Armstrong (2002-present)

Eastern Interior (Region 9):
Chairs: Lee A. Titus (1993-95), Craig Fleener (1996), Chuck Miller (1997-99), Gerald Nicholia (2000-present)
Coordinators: David James (1993-94), Vince Mathews (1994-2000), Donald Mike (2000-present)

North Slope (Region 10):
Chair: Fenton O. Rexford (1993-2001), Harry Brower, Jr. (2001-present)
Coordinator: Barbara Armstrong (1993-present)

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APPENDIX 3:
NPS Subsistence Officials, 1980-present

Appendix 3. NPS Subsistence Officials, 1980-present

1) at the parks: Superintendents	Subsistence Managers/ Coordinators

Aniakchak NM & NPres/Katmai NPres:

1980-87 = David K. Morris
1987-90 = Gilbert R. (Ray) Bane
1990-93 = Alan D. Eliason
1993-98 = William Pierce
1998-present = Deborah A. Liggett

1986-88 = Dave Manski
1990 = Kim Speckman
1991-95 = Susan Savage
1998-2000 = Donald Mike
2000-present = Tom O'Hara

Bering Land Bridge NPres:

1981-88 = Larry Rose
1989-93 = Ernest J. Suazo
1993-94 = Don Chase
1994-present = Dave Spirtes

1990present = Ken Adkisson
1992present = Fred Tocktoo (subsistence technician)

Cape Krusenstern NM/Kobuk Valley NP/Noatak NPres:

1980-87 = Charles M. (Mack) Shaver
1987-90 = Alan D. Eliason
1990-92 = Ralph H. Tingey
1992-96 = Bob Gerhard
1996-present = Dave Spirtes

1985-86 = Ray Bane
1987-92 = Jonas Ramoth
1992-98 = Lois Dalle-Molle
1998-present = Ken Adkisson

Denali NP & NPres:

1980-89 = Robert C. Cunningham
1989-94 = Russell W. Berry
1994-2002 = Steve Martin
2002-present = Paul R. Anderson

1991-present = Hollis Twitchell

Gates of the Arctic NP & NPres:

1981-86 = Richard G. Ring

1984-85 = Ray Bane (mgmt. asst.)

1986-93 = Roger Siglin
1993-94 = Steve Martin
1994-present = David D. Mills

1991-2000 = Steve Ulvi
2000-01 = Jeff Mow
2001-present = Fred Andersen

Glacier Bay NP & NPres:

1980-83 = John F. Chapman
1983-87 = Michael J. Tollefson
1988-95 = Marvin D. Jensen
1995-98 = James Brady
1998-present = Tomie Lee

1991-95 = Mike Sharp
1995-present = James Capra

Lake Clark NP & NPres:

1980-87 = Paul Haertel
1987-92 = Andrew E. Hutchison
1992-96 = Ralph H. Tingey
1996-98 = William Pierce
1998-present = Deborah A. Liggett

1992-94 = Joe Fowler
1994-99 = Lee Fink
1999-2002 = Karen Stickman
2002-present = Mary McBurney

Wrangell-St. Elias NP & NPres:

1980-84 = Charles A. Budge
1985-90 = Richard H. Martin
1990-94 = Karen P. Wade
1994-99 = Jon Jarvis
1999-present = Gary Candelaria

1990-96 = Jay Wells, Jim Hannah
1996-97 = Jay Wells, Donald Mike
1998 = Danny Rosenkranz
1998-99 = Heather Yates, Devi Sharp
1999-present = Devi Sharp

Yukon-Charley Rivers NPres:

1981-85 = David A. Mihalic
1985-93 = Donald D. Chase
1993-95 = Paul Guraedy
1995-present = David D. Mills

1981-83 = Bill Foreman
1983-91 = Steve Ulvi
1991-93 = Cary Brown
1993-95 = Jan Dick
1995-present = [see GAAR list]

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2) at the Alaska Regional (Support) Office, Anchorage:

Louis R. Wailer (liaison/coordinator), 1984-96
Tony Sisto (based in Fairbanks), 1987-88
Dave Mills (ADF&G), 1987-88
Kibby Robertson (support), 1988
Clarence Summers, 1988-present
John Hiscock, 1989-94
Betty Barlond (support), 1989-97
Janis Meldrum, 1991-present
Bob Gerhard, 1991-92, 1996-present

Ray Bane, 1992-98
Don Callaway, 1992-present
Paul Hunter, 1993-present
Bruce Greenwood, 1994-present
Sandy Rabinowitch, 1994-present
Mary McBurney, 1999-2000
Dave Nelson, 1999-present
Rachel Mason, 2000-present
Janet Cohen, 2000-present

NOTE: ARO's Division of Subsistence was established in 1987. In the fall of 1995, the division name was changed to Subsistence/Legal. The division was disbanded in the spring of 1996. Dave Mills, an ADF&G employee, worked for the NPS under the auspices of the

Inter-Personnel Act (IPA). Since 1996, Bob Gerhard and Sandy Rabinowitch have worked in the Alaska Field Office, not the Alaska Support Office.

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3) Fisheries Specialists:

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* Arctic Cluster (BELA/CAKR/KOVA/NOAT), in Nome = Charles Lean, 2000-present
* Coastal Cluster (KATM/LACL/ANIA), in Anchorage = Mary McBurney, 2000-present
* Copper Basin/Southeast Cluster (WRST/GLBA), in Glennallen = Eric Veach, 2000-present
* Interior Cluster (DENA/GAAR/YUCH), in Fairbanks = Fred Andersen, 2000-present

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APPENDIX 4:
Subsistence Resource Commission Chairs, 1984-present

Appendix 4. Subsistence Resource Commission Chairs, 1984-Present

Aniakchak NM:
1985-1994 = Orville Lind, Meshik/Port Heiden
1994-present = Henry (Harry) Kalmakoff, Jr., Chignik Lake

Cape Krusenstern NM:
1984 = Frank Green, Kotzebue
1984-1991 = Frank Stein, Kotzebue
1991-present = Peter L. Schaeffer, Kotzebue

Denali NP:
1984-present = Florence Collins, Lake Minchumina (later in Fairbanks)

Gates of the Arctic NP:
1984 = Roosevelt Paneak, Anaktuvuk Pass
1984-1986 = James A. Schwarber, Alatna River
1986-1989 = Benjamin Nageak, Barrow
1989-1998 = Raymond Paneak, Anaktuvuk Pass
1998 = Delbert J. Rexford, Barrow
1999-present = Pollock Simon, Sr., Allakaket

Kobuk Valley NP:
1984-present = Walter G. Sampson, Noorvik (later in Kotzebue)

Lake Clark NP:
1984-present = Glen Alsworth, Port Alsworth

Wrangell-St. Elias NP:
1984-1994=W. T. (Bill) Ellis, Gakona (later in Nabesna)
1994-1996 = Roy Ewan, Gakona
1996-1999 = John Vale, Yakutat
1999-present = Ray Sensmeier, Yakutat

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APPENDIX 5:
Subsistence Resource Commission Activity, 1984-present

Appendix 5. Subsistence Resource Commission Activity for Alaska National Parks and Monuments, 1984-present

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Aniakchak NM:																
Meetings	4/18	**3/4**	3/12	10/14	None	None	1/11	None	**3/24+11/5**	None	3/10	4/6	None	**2/4+11/13**	**10/5**	**3/29**
Budget	$1,640	8,280	7,929	13,541	10,666	8,366	9,361	3,500	$10,965	9,623	4,552	7,600	4,607	6,107	14,500	15,900
FTE	0.02	0.25	0.	0.17	0.17	0.1	1.7	1.7	1.7	1.7	0.1	0.2	0.1	0.1	0.4	0.4
Cape Krusenstern NP:																
Meetings	**5**+7+11	*2/1*	**1/29+6/6**	**7/13**	None	**6/22+11/20**	None	**3/12**	***6/11***	***8/18***	None	None	None	None	None	None
Budget	$3,587	8,914	6,871	21,017	0	8,325	9,417	7,421	$9,632	8,509	4,607	4,607	4,607	4,607	9,000	8,000
FTE	0.1	0.25	0.12	0.24	0.0	0.1	1.7	1.7	1.7	1.7	0.1	0	0.1	0.1	0.4	0.4
Denali NP:																
Meetings	**5/10**+7/13	**4/15+8/9**	**4/17**	6/5	**6/17**	**7/14+12/9**	None	**2/26**	**3/6+5/28**	**6/28+11/30**	**6/8**	**2/17+6/16**	**4/29+8/9**	**3/28+8/29**	**2/9+8/28**	**2/26+8/6**
Budget	$2,600	10,132	10,773	15,931	13,087	8,306	8,398	9,948	$11,731	9,574	13,812	16,169	16,169	16,407	16,407	17,000
FTE	0.15	0.25	0.14	0.17	0.34	0.1	1.7	1.7	1.7	1.7	1.8	0.5	0.5	0.5	0.5	0.5
Gates of the Arctic NP:																
Meetings	**5+7+11**	**1+3+6**	**1+3+6**	**3/12**	**3/17**	**6/7+11/16**	**1+5+11**	**5/7+9/11**	**2+5+10**	**4/13+10/19**	**1+4+5**	**1/19+11/7**	**5/14+11/13**	**4/29**	**1/14**	**4/20+11/15**
Budget	$5,504	48,616	48,470	18,050	9,550	10,566	18,927	23,232	$22,635	25,127	32,185	21,540	21,540	21,915	20,320	20,600
FTE	0.3	0.8	0.8	0.17	0.17	0.1	1.7	1.7	1.7	1.7	0.3	0.3	0.3	0.3	0.3	0.3
Kobuk Valley NP:																
Meetings	**5/4**+6/26	*2/1*	*1/29+**6/6***	**6/8**	None	***6/20+11/20***	None	***3/12***	***6/11***	***8/18***	None	None	None	None	None	None
Budget	$3,587	13,320	11,854	20,671	0	9,229	7,999	7,514	$10,570	12,676	4,607	4,607	4,607	4,607	10,150	8,000
FTE	0.1	0.3	0.3	0.24	0.0	0.1	1.7	1.7	1.7	1.7	0.1	0.1	0.1	0.1	0.2	0.2
Lake Clark NP:																
Meetings	**5/10+9/29**	**5/11**	None	None	None	**5/2+11/6**	**5/7**	None	**5/11**	**5/11**	**4/27**	**5/22**	**1/24**	**1/15+10/23**	**2/2**	**1/21**
Budget	$4,080	9,552	2,341	7,639	0	8,069	9,894	6,998	$8,571	7,903	10,857	11,250	11,250	10,750	11,050	13,000
FTE	0.1	0.3	0.1	0.08	0.0	0.1	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7
Wrangell-St. Elias NP:																
Meetings	**5/15**+11/1	**4/22+8/1**	**4/7**	**2/19**	**12/1**	**12/4**	None	**3/19+11/13**	**11/30**	**4/7**	**4/6**	None	**2/28+12/5**	**2/25+11/3**	**4/6+11/17**	**4/20**
Budget	$1,700	36,525	13,360	16,160	0	11,226	12,262	10,113	$9,606	13,604	12,307	0	11,250	20,750	18,500	17,700

FTE	0.2	0.8	0.4	0.17	0.0	0.1	1.7	1.7	1.7	1.7	1.7	0.0	0.5	0.5	0.5	0.5

Explanation of Table:
Meeting dates are month/day for SRCs that met once or twice during a given year; month (only) is given if the SRC met three times during a given year.

Dates of thrice-annual meetings are as follows: Cape Krusenstern 1984= 5/4+7/30+11/29; Gates of the Arctic 1984=5/4+7/31+11/16; 1985=1/23+3/8+6/12; 1986=1/29+3/25+ 6/17; 1990=2/25+5/5+10/24; as well as in 1992 and 1994.

Meeting dates in **bold** denote a meeting that mustered a quorum; meeting dates in *italics* indicate joint meetings with another SRC. For SRC meetings that were held over a two- or three-day period, the date indicates the meeting's first day.

FTE = full-time equivalents. Thus "0.2" in the FTE column means that one NPS employee spent one-fifth of his or her time supporting SRC operations.

Source: DOI Forms 552 and 558 (Reports of Federal Advisory Committee), annual.

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APPENDIX 6:
Federal Subsistence Board Staff Committee Members, 1990-present

Appendix 6. Federal Subsistence Board Staff Committee Members, 1990-present

Chief, Subsistence Division, Fish and Wildlife Service (FSB Staff Director):
1990 = Glenn Elison (Assistant Regional Director)
1990-1995 = Richard S. Pospahala (Assistant Regional Director), Jim Kurth (OSM Head)
1995-1998 = Thomas H. Boyd (Deputy Assistant Regional Director)
1998-present = Thomas H. Boyd (Assistant Regional Director)

Staff Committee Chair (non-voting)
1998-99 = Thomas H. Boyd
1999-present = Peggy Fox

National Park Service representatives:
1990-1992 = Bob Gerhard
1992-1994 = John Hiscock
1994-1999 = Sandy Rabinowitch
1999-present = Sandy Rabinowitch (wildlife), Bob Gerhard (fisheries)

Fish and Wildlife Service representatives:
1990 = Donald J. Voros
1990-1995 = Richard Pospahala
1995-1998 = Thomas H. Boyd
1998-1999 = Tom Eley
1999-2000 = George Constantino (acting)
2000-present = Greg Bos (wildlife)
2000-present = Rodney Simmons (fisheries)

Bureau of Land Management representatives:
1990 = Thomas H. Boyd
1990-1992 = Bishop Buckle
1992-1995 = Thomas H. Boyd
1995-1999 = Peggy Fox
1999-2001 = Curt Wilson
2001-present = Taylor Brelsford

Forest Service representatives:
1990-1995 = Norman Howse
1995-present = Ken Thompson

Bureau of Indian Affairs representatives:
1990-1995 = John Borbridge, Jr.
1995-present = Ida Hildebrand

Native Liaison (appointed by FSB chair):
2000-present = Carl Jack

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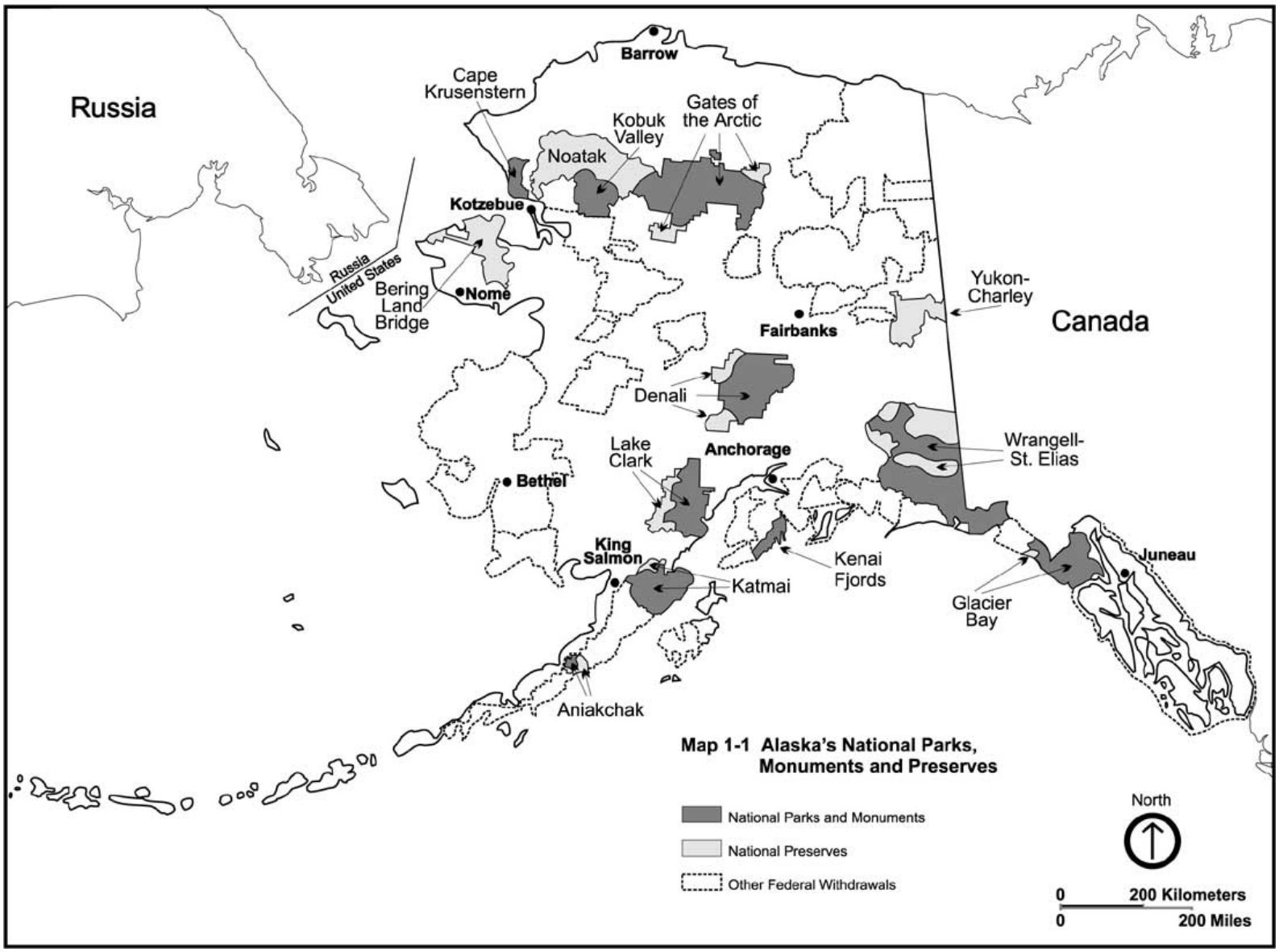
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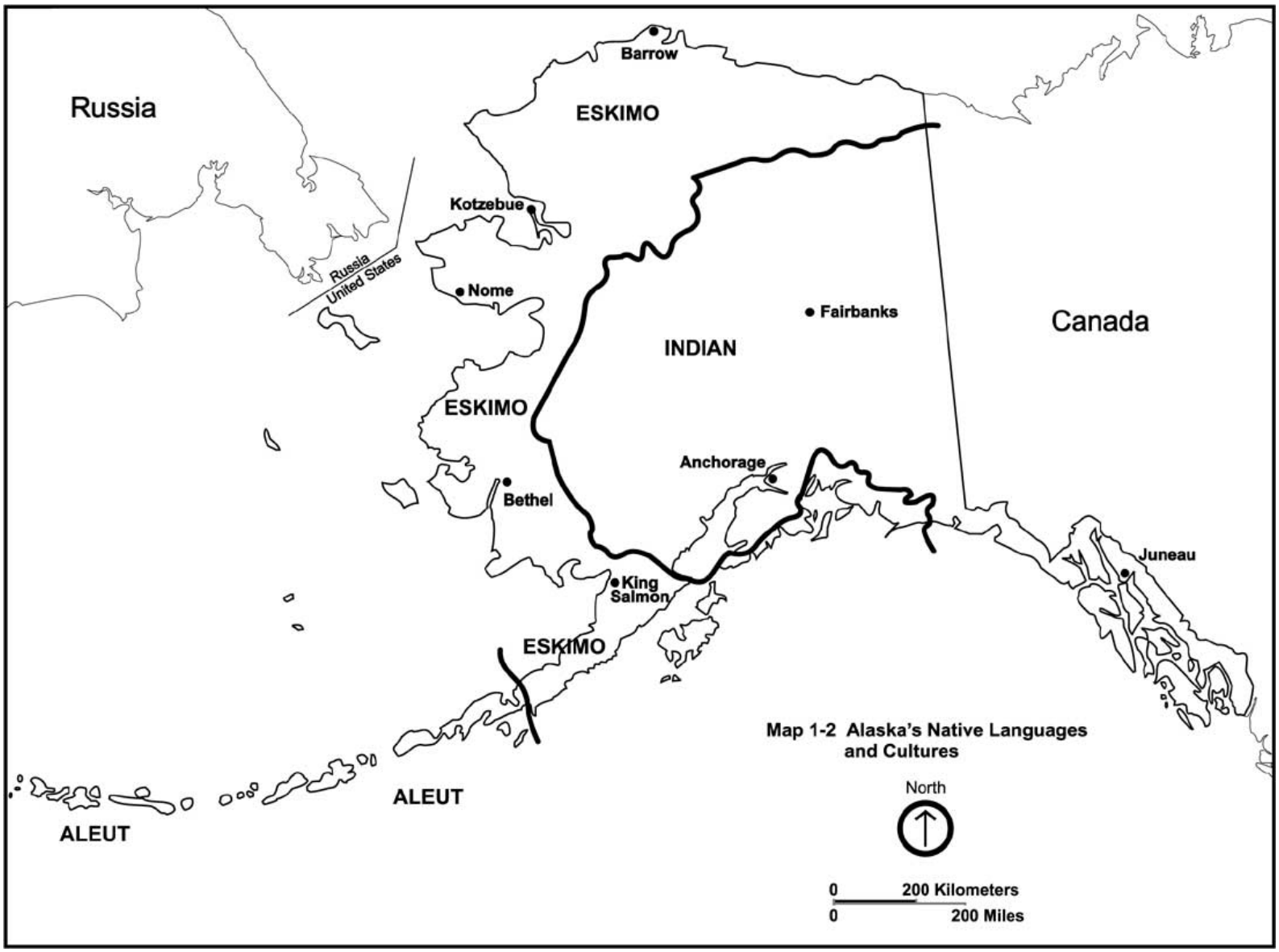
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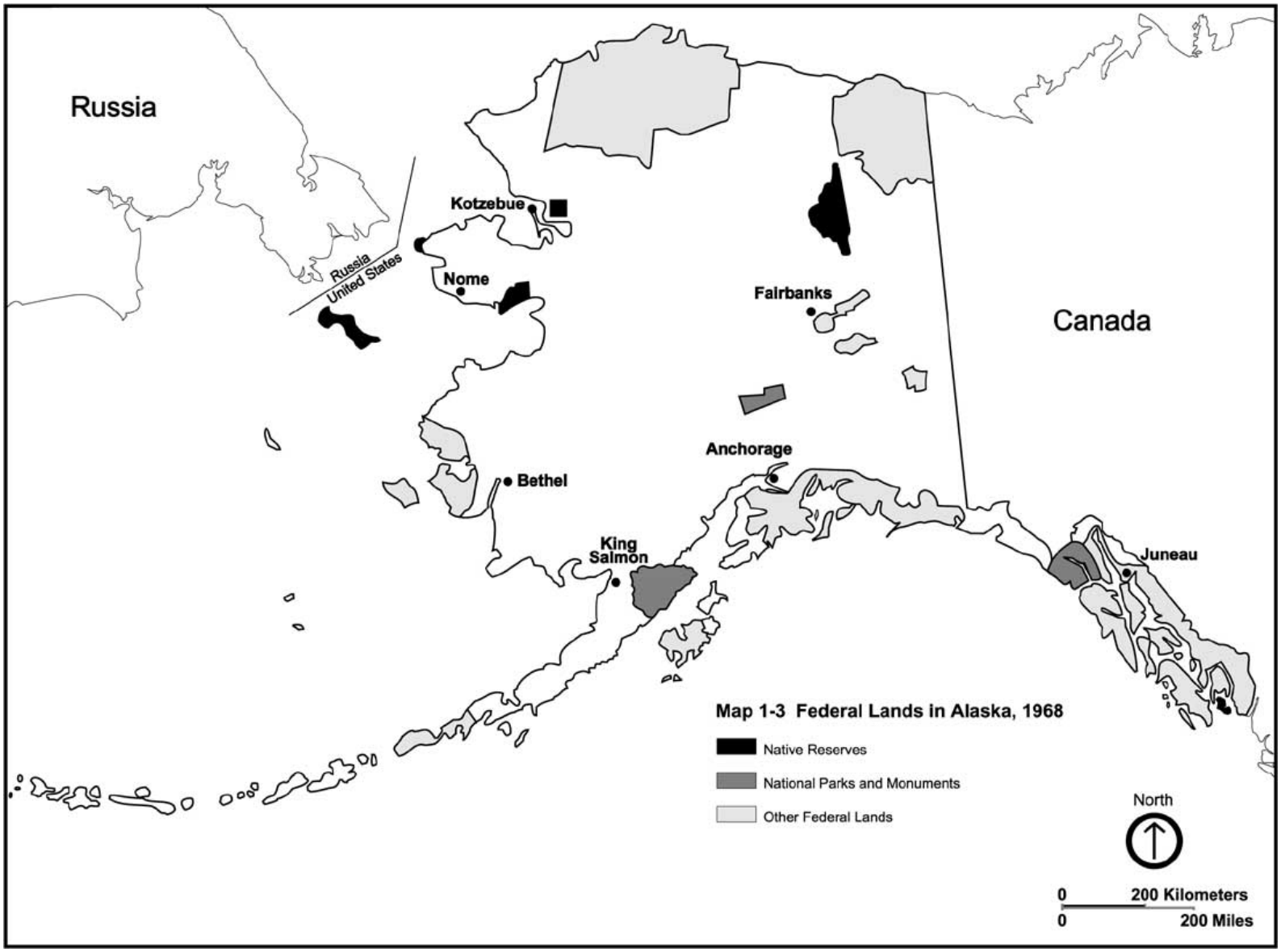
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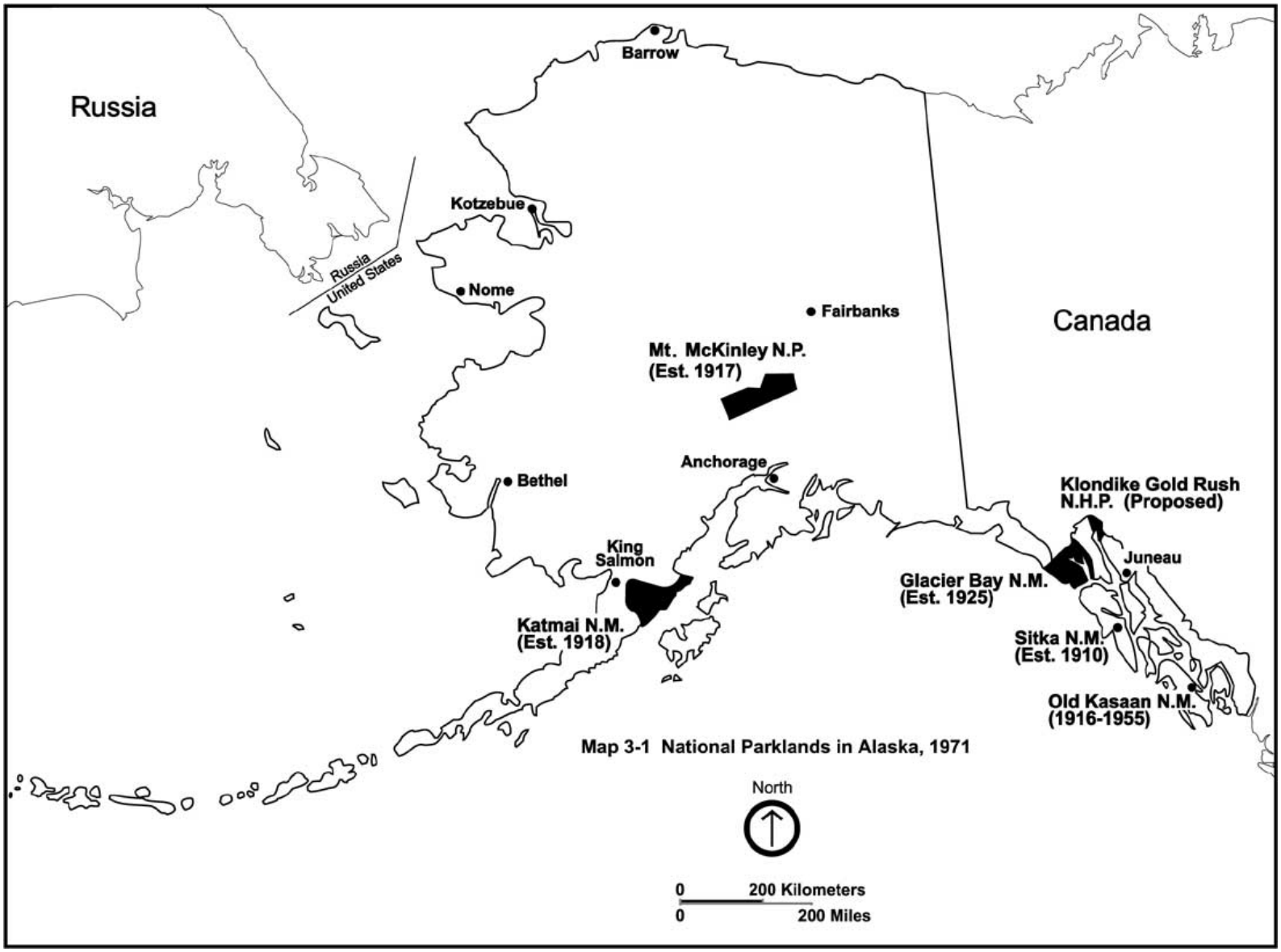
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Last Updated: 14-Mar-2003


Russia
Barrow
Cape Krusenstern
Gates of the Arctic
Kobuk Valley
Noatak
Kotzebue
Russia
United States
Bering Land Bridge
Nome
Yukon-Charley
Canada
Fairbanks
Denali
Lake Clark
Anchorage
Wrangell-St. Elias
Bethel
King Salmon
Kenai Fjords
Katmai
Juneau
Glacier Bay
Aniakchak
Map 1-1 Alaska's National Parks, Monuments and Preserves
National Parks and Monuments
National Preserves
Other Federal Withdrawals
North
0 200 Kilometers
0 200 Miles

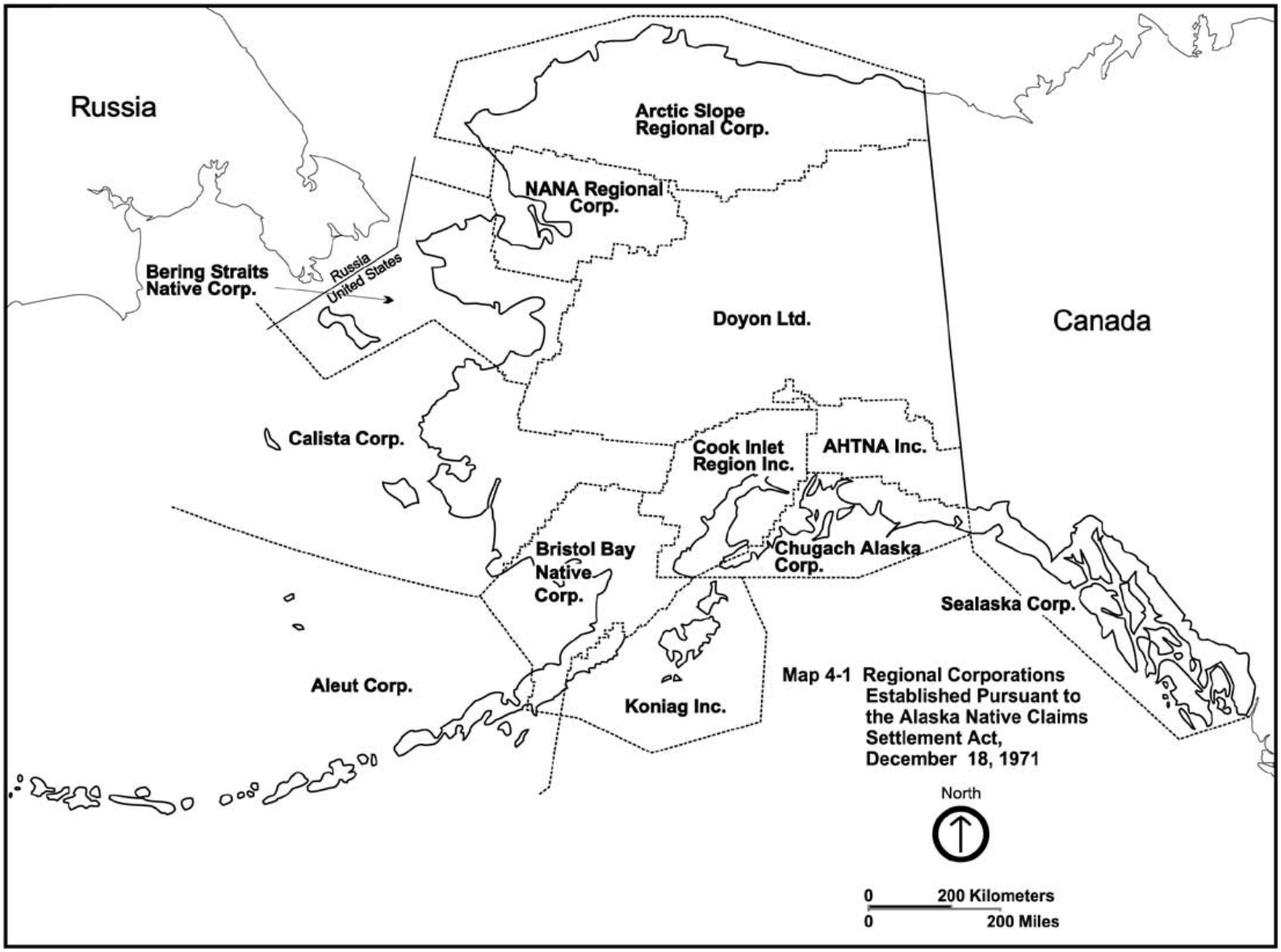


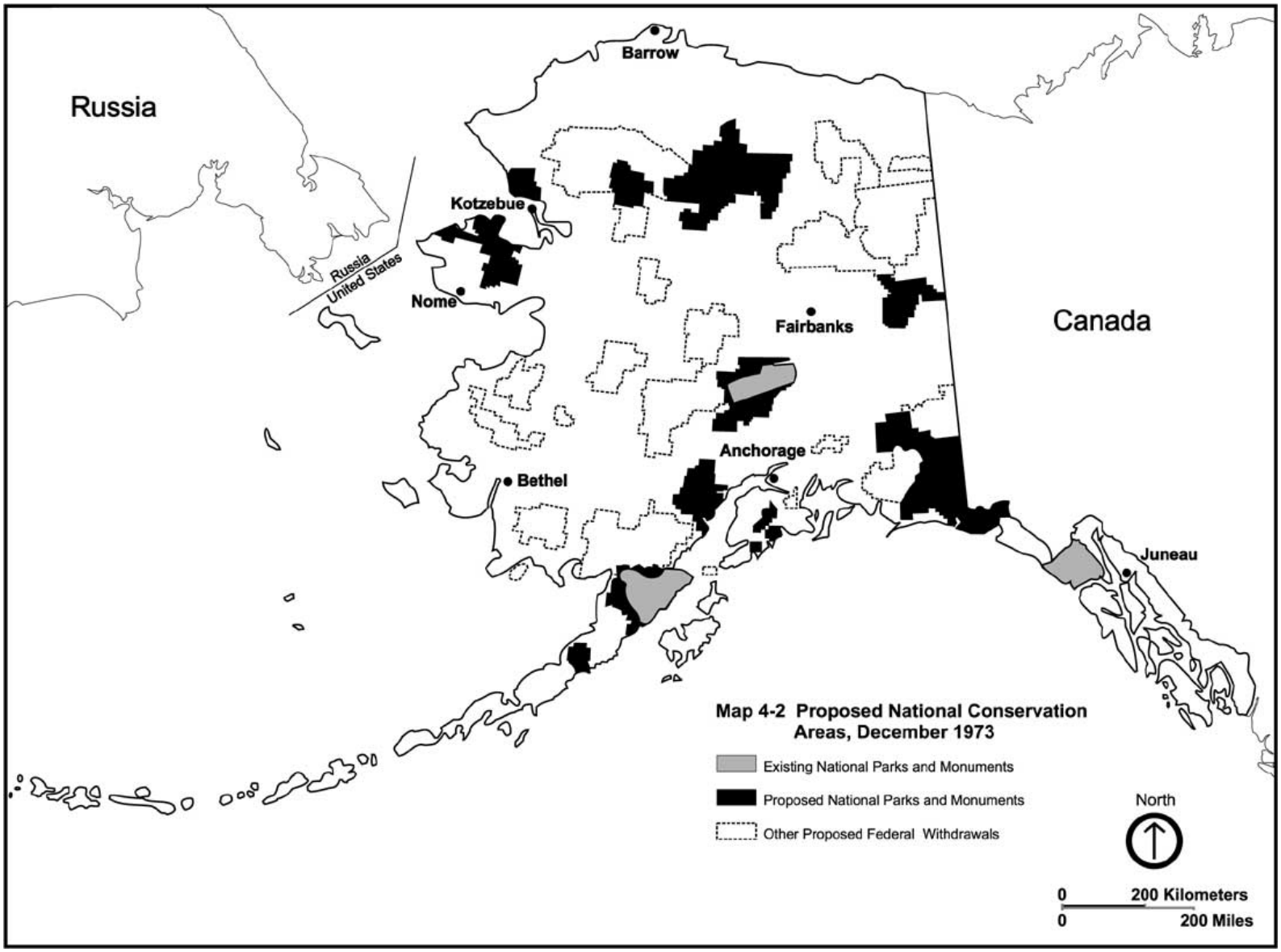
Map 1-2 Alaska's Native Languages and Cultures

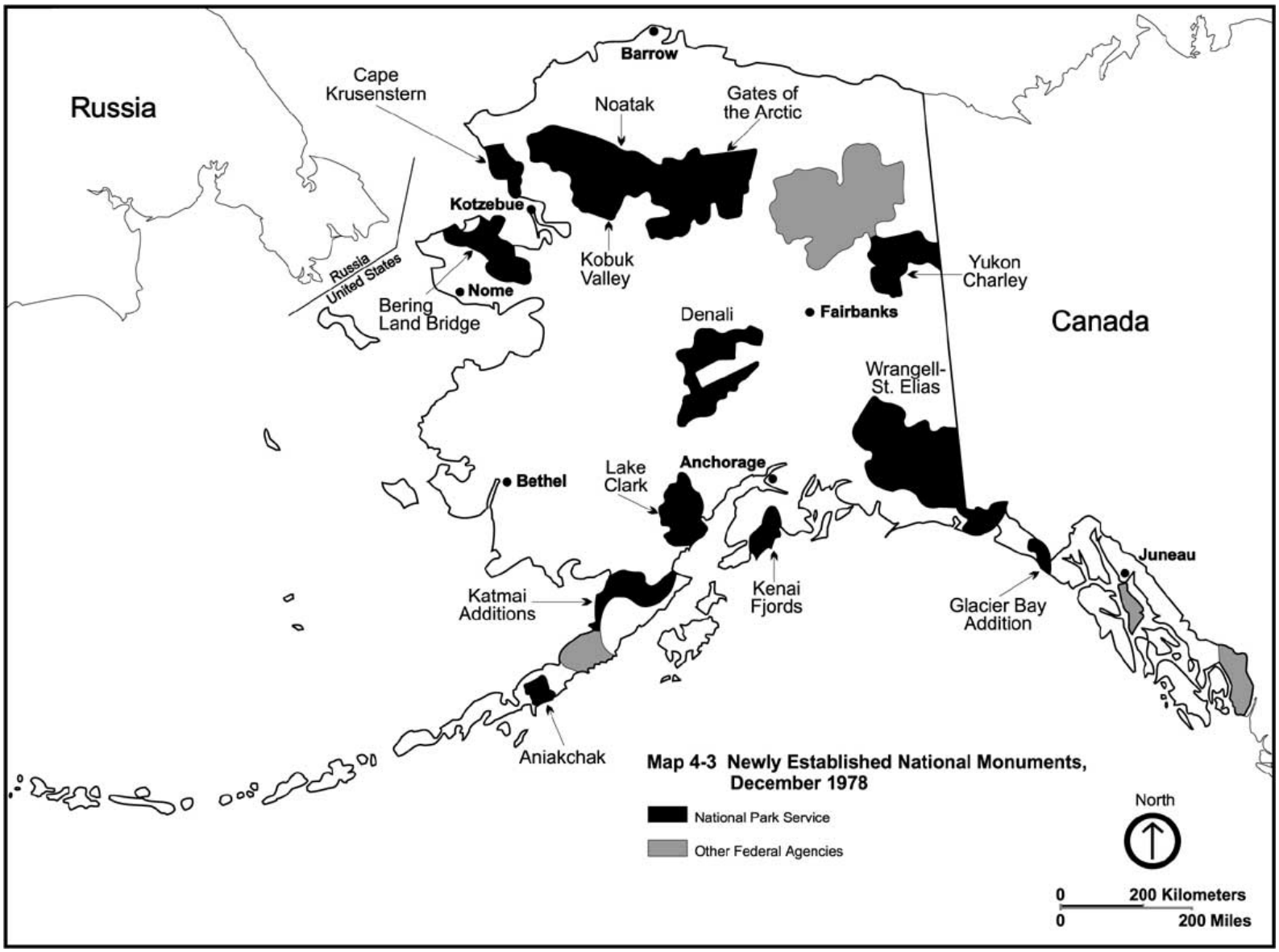

Russia
Kotzebue
Russia
United States
Nome
Fairbanks
Canada
Anchorage
Bethel
King
Salmon
Juneau
Map 1-3 Federal Lands in Alaska, 1968
Native Reserves
National Parks and Monuments
Other Federal Lands
North
0
200 Kilometers
0
200 Miles

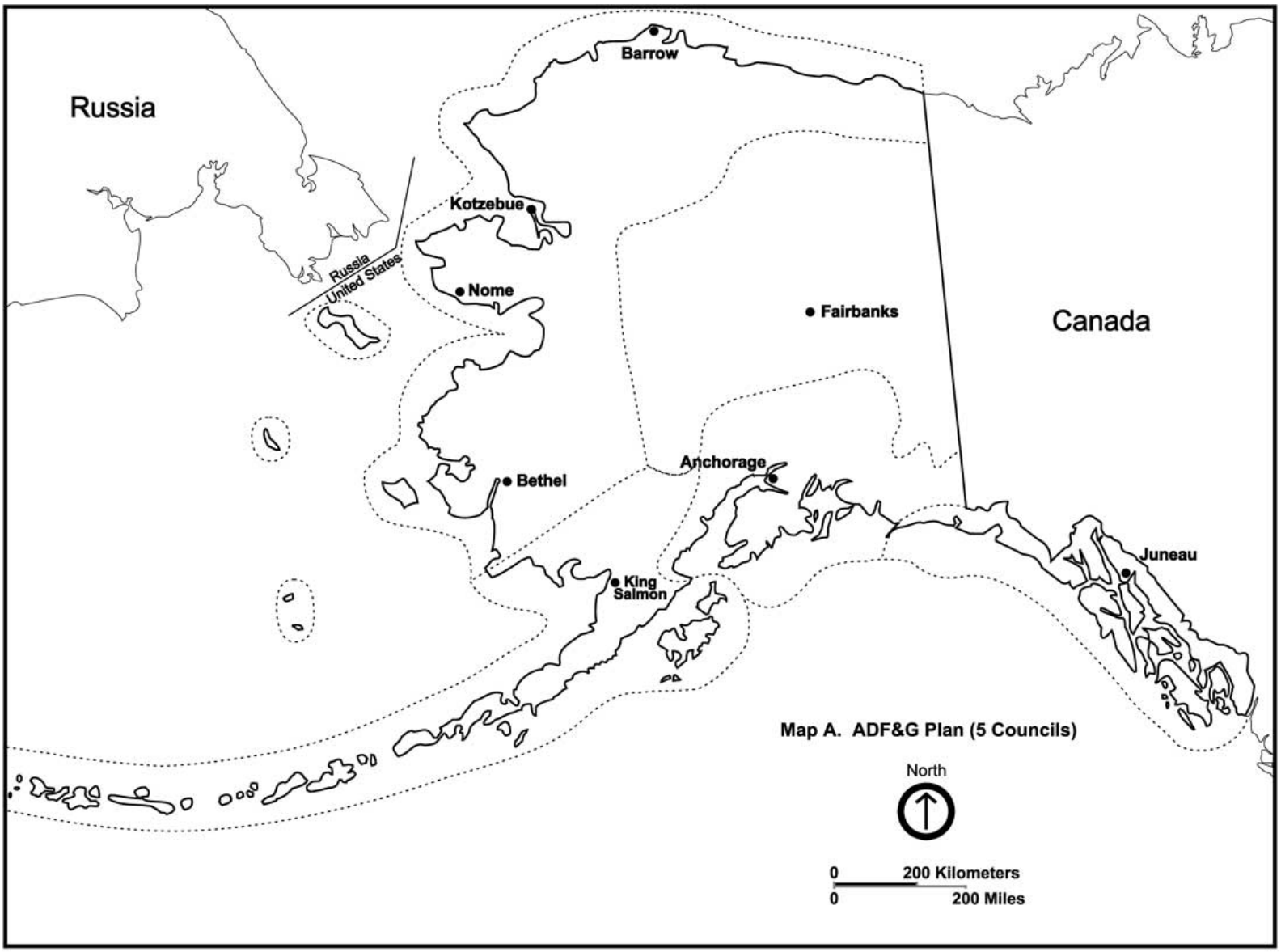


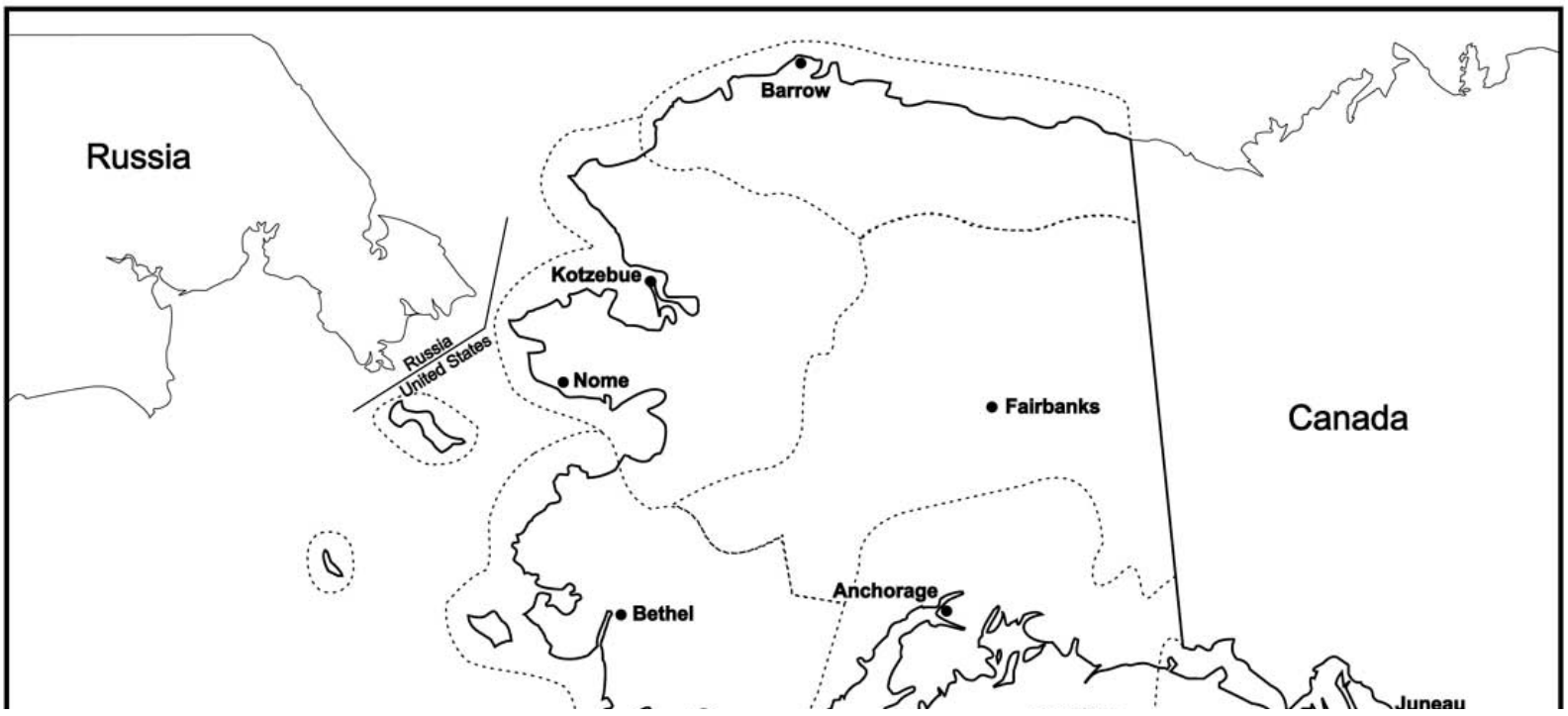
Map 3-1 National Parklands in Alaska, 1971

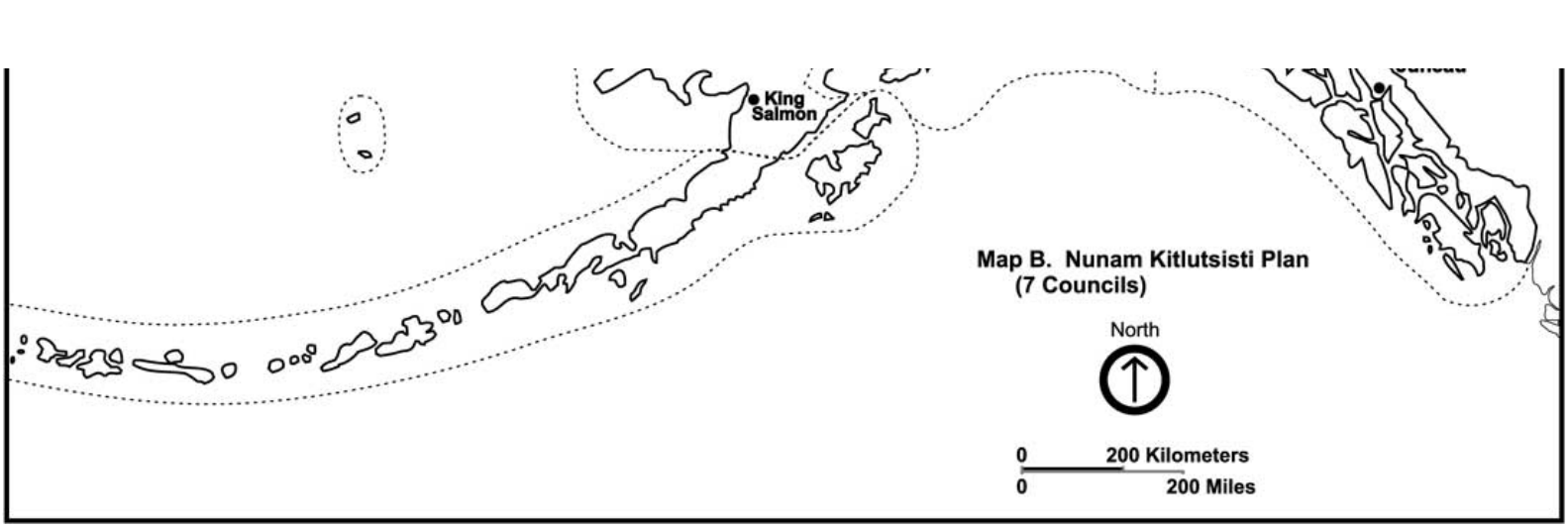

Russia
Arctic Slope Regional Corp.
NANA Regional Corp.
Bering Straits Native Corp.
Russia
United States
Doyon Ltd.
Canada
Calista Corp.
Cook Inlet Region Inc.
AHTNA Inc.
Bristol Bay Native Corp.
Chugach Alaska Corp.
Sealaska Corp.
Aleut Corp.
Koniag Inc.
Map 4-1 Regional Corporations Established Pursuant to the Alaska Native Claims Settlement Act, December 18, 1971
North
0 200 Kilometers
0 200 Miles

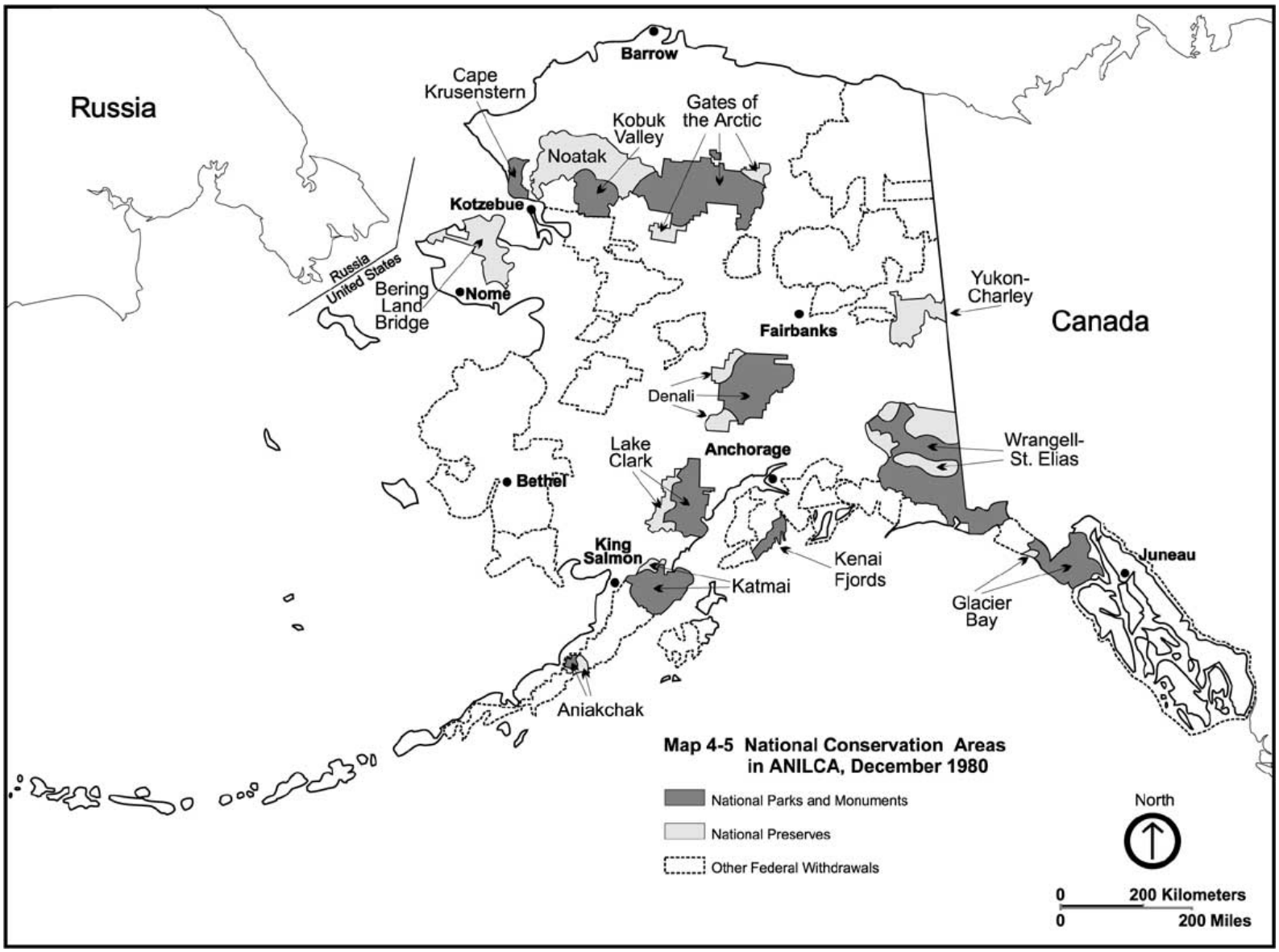

Barrow
Russia
Kotzebue
Russia
United States
Nome
Fairbanks
Canada
Anchorage
Bethel
Juneau
Map 4-2 Proposed National Conservation Areas, December 1973
Existing National Parks and Monuments
Proposed National Parks and Monuments
Other Proposed Federal Withdrawals
North
0 200 Kilometers
0 200 Miles

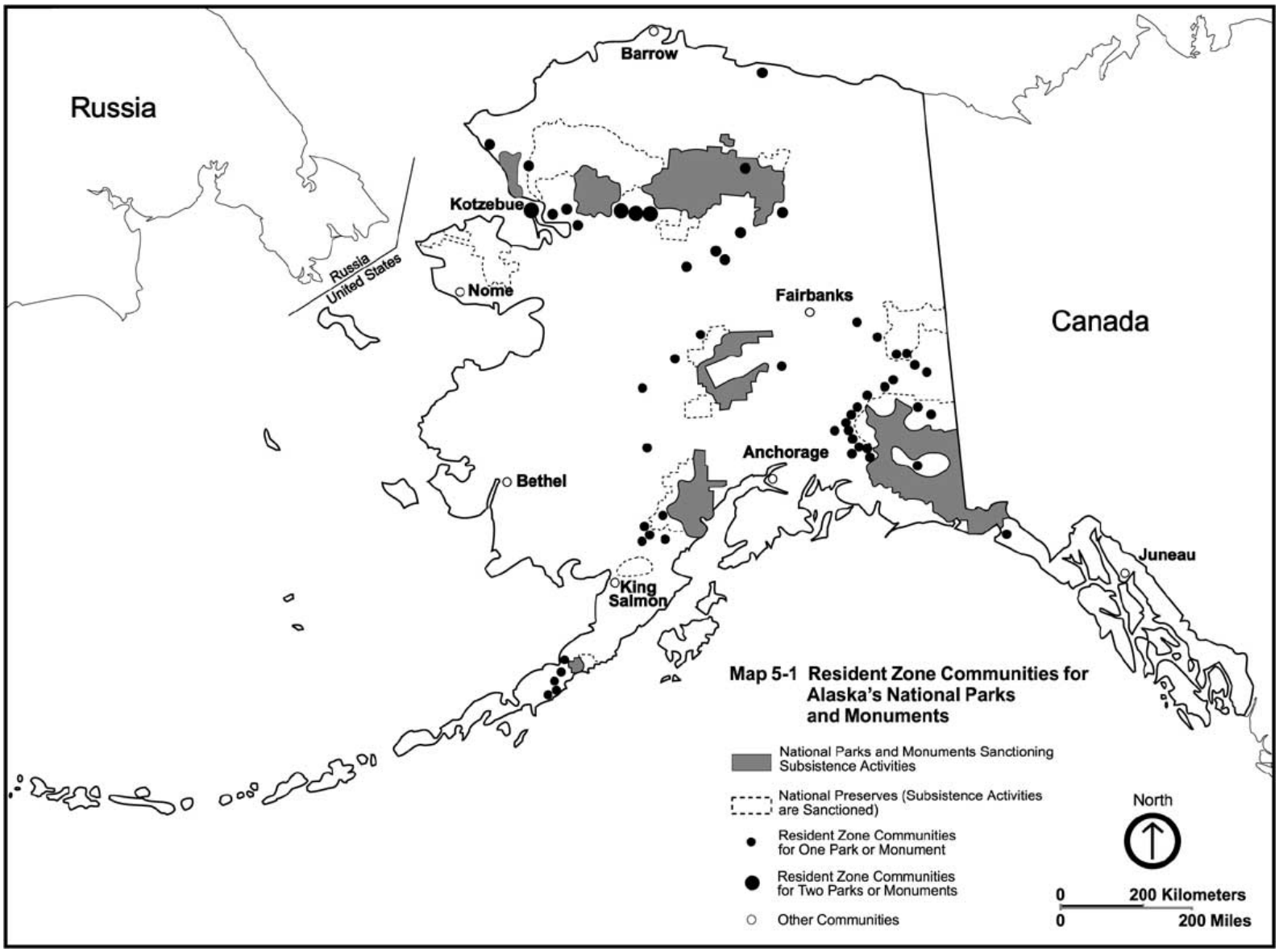

Russia
Cape Krusenstern
Barrow
Noatak
Gates of the Arctic
Kotzebue
Kobuk Valley
Yukon Charley
Russia
United States
Nome
Bering Land Bridge
Denali
Fairbanks
Canada
Wrangell-St. Elias
Bethel
Lake Clark
Anchorage
Juneau
Katmai Additions
Kenai Fjords
Glacier Bay Addition
Aniakchak
Map 4-3 Newly Established National Monuments, December 1978
National Park Service
Other Federal Agencies
North
0 200 Kilometers
0 200 Miles

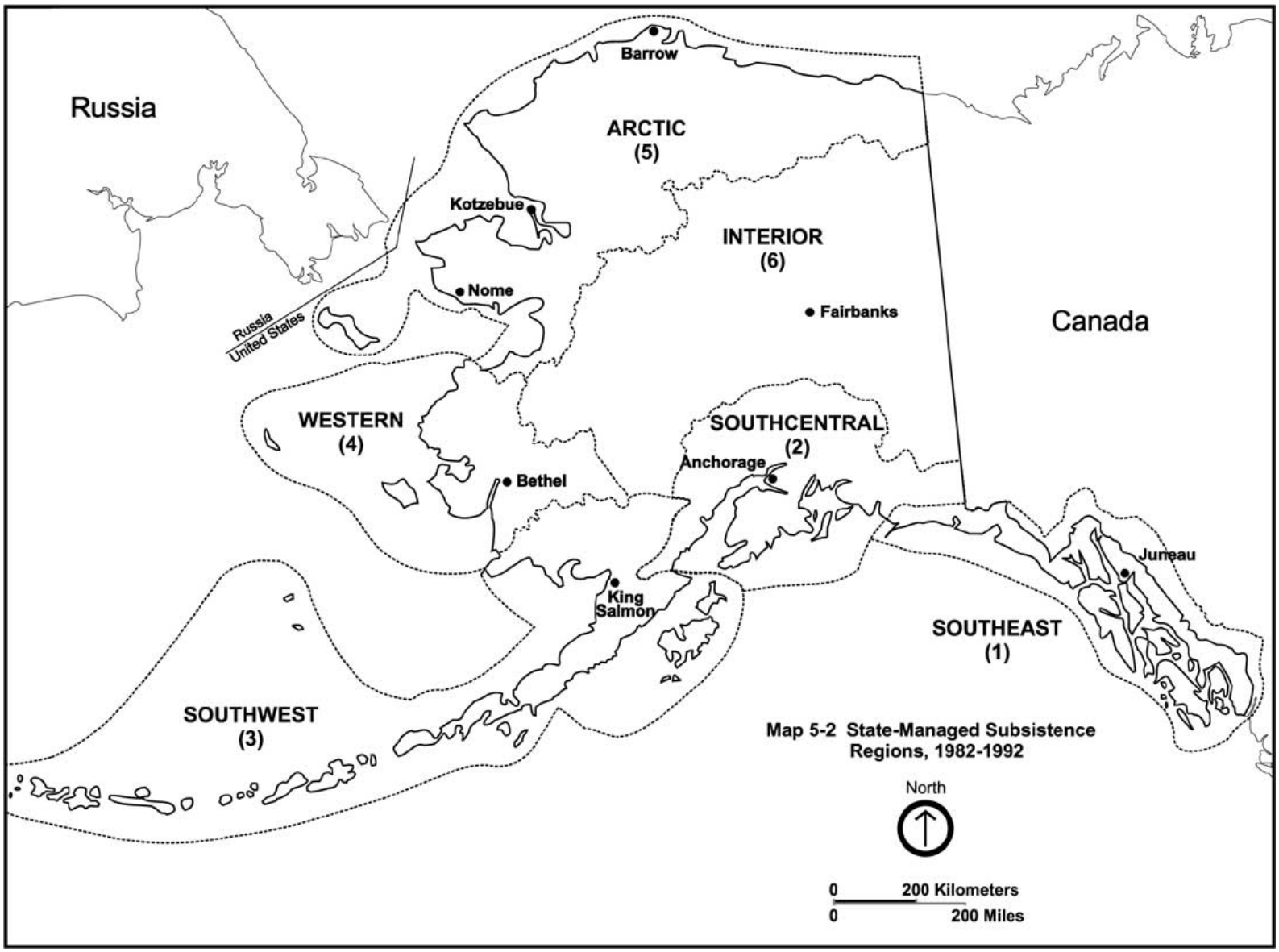

Barrow
Russia
Kotzebue
Russia
United States
Nome
Fairbanks
Canada
Anchorage
Bethel
Juneau
King
Salmon
Map A. ADF&G Plan (5 Councils)
North
0
200 Kilometers
0
200 Miles

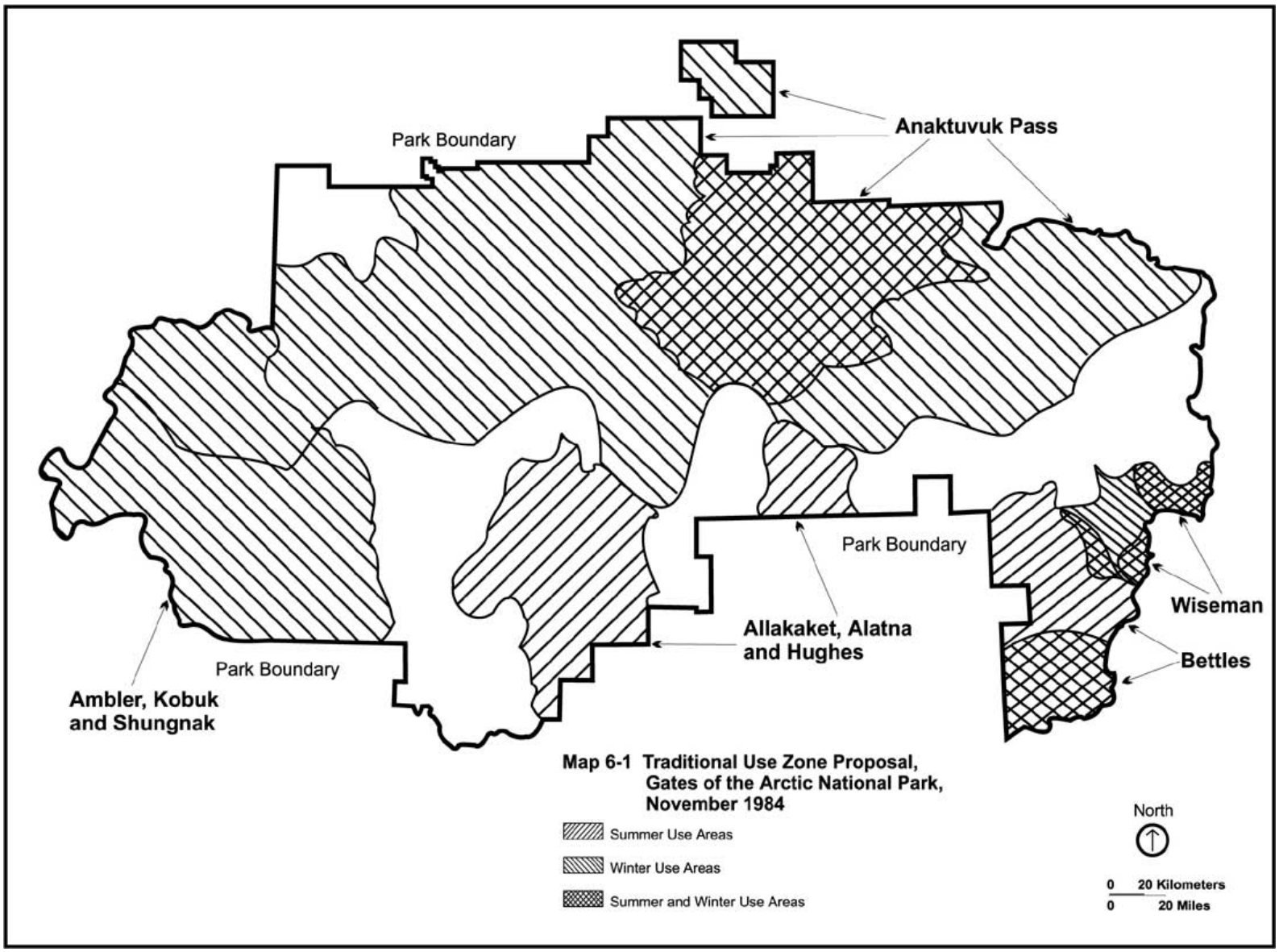

Barrow
Russia
Kotzebue
Russia
United States
Nome
Fairbanks
Canada
Anchorage
Bethel
Juneau


King Salmon
Map B. Nunam Kitlutsisti Plan
(7 Councils)
North
0 200 Kilometers
0 200 Miles

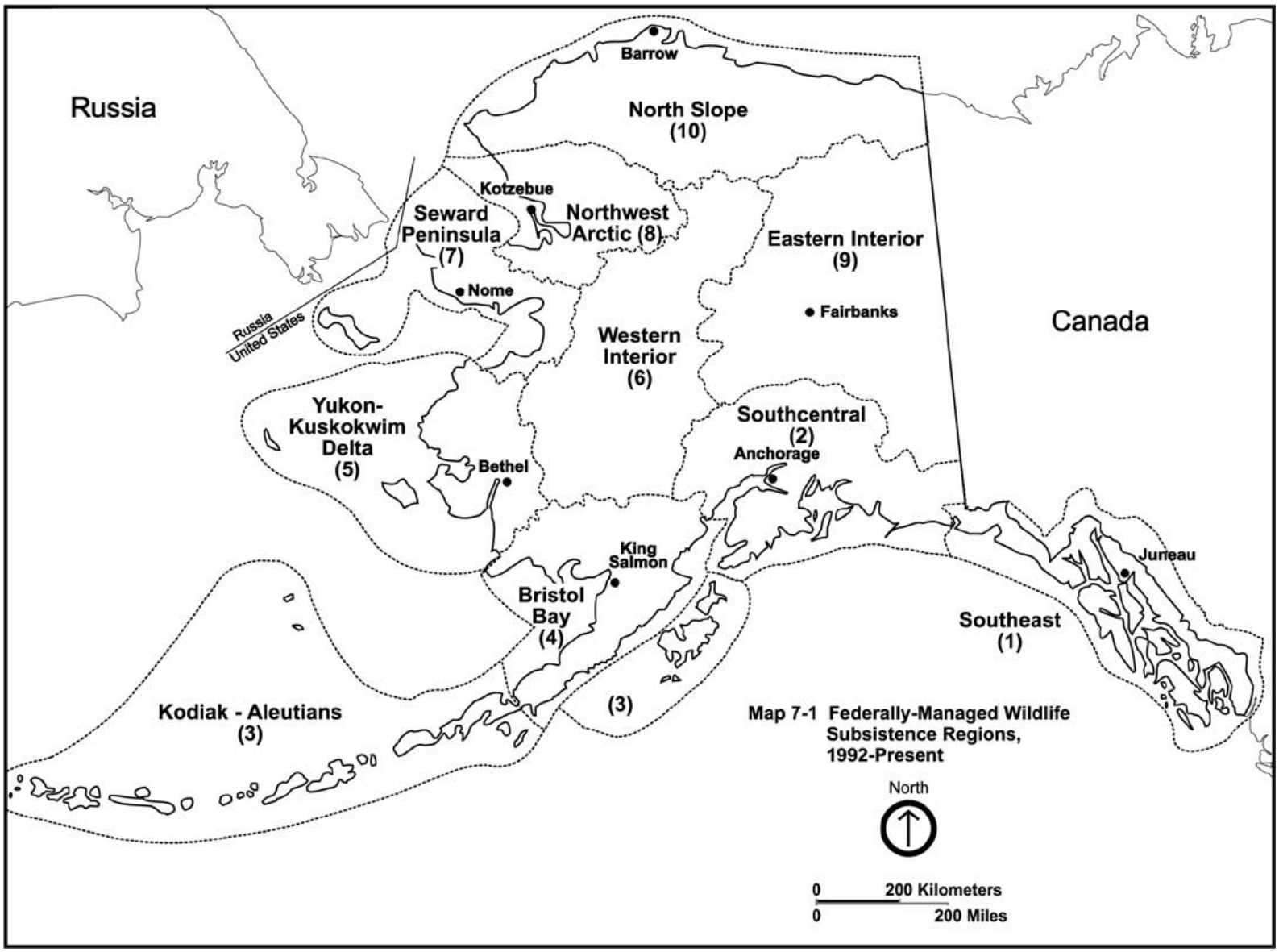

Russia
Barrow
Cape Krusenstern
Gates of the Arctic
Kobuk Valley
Noatak
Kotzebue
Russia
United States
Bering Land Bridge
Nome
Yukon-Charley
Canada
Fairbanks
Denali
Lake Clark
Anchorage
Wrangell-St. Elias
Bethel
King Salmon
Kenai Fjords
Katmai
Juneau
Glacier Bay
Aniakchak
Map 4-5 National Conservation Areas in ANILCA, December 1980
National Parks and Monuments
National Preserves
Other Federal Withdrawals
North
0 200 Kilometers
0 200 Miles

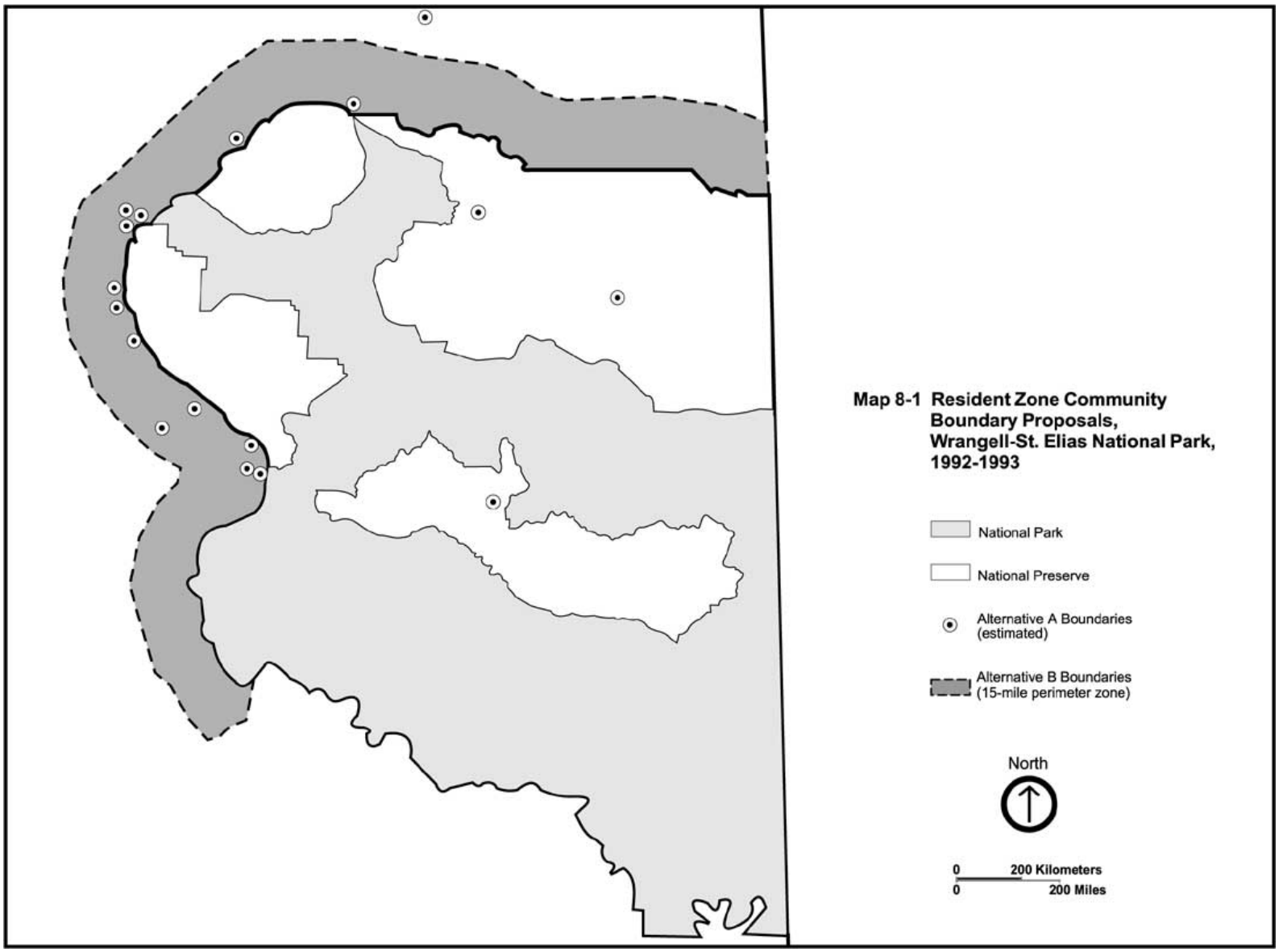

Barrow
Russia
Kotzebue
Russia
United States
Nome
Fairbanks
Canada
Anchorage
Bethel
Juneau
King
Salmon
Map 5-1 Resident Zone Communities for Alaska's National Parks and Monuments
National Parks and Monuments Sanctioning Subsistence Activities
National Preserves (Subsistence Activities are Sanctioned)
Resident Zone Communities for One Park or Monument
Resident Zone Communities for Two Parks or Monuments
Other Communities
North
0 200 Kilometers
0 200 Miles

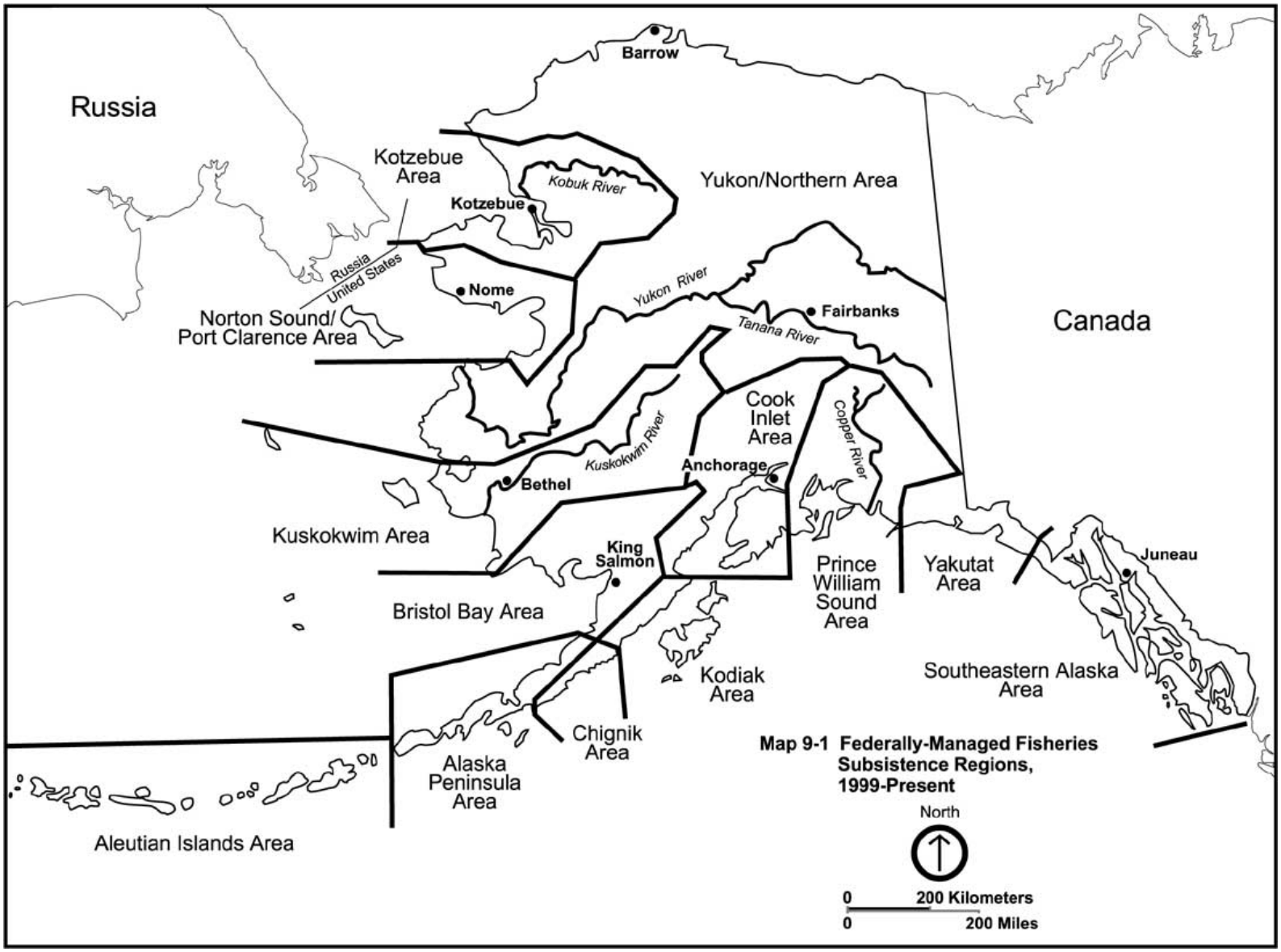

Russia
Barrow
ARCTIC
(5)
Kotzebue
INTERIOR
(6)
Nome
Fairbanks
Canada
Russia
United States
WESTERN
(4)
SOUTHCENTRAL
(2)
Anchorage
Bethel
Juneau
King
Salmon
SOUTHEAST
(1)
SOUTHWEST
(3)
Map 5-2 State-Managed Subsistence
Regions, 1982-1992
North
0 200 Kilometers
0 200 Miles



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Russia
Barrow
North Slope
(10)
Kotzebue
Seward
Peninsula
(7)
Northwest
Arctic (8)
Eastern Interior
(9)
Nome
Fairbanks
Canada
Russia
United States
Western
Interior
(6)
Yukon-
Kuskokwim
Delta
(5)
Southcentral
(2)
Anchorage
Bethel
King
Salmon
Juneau
Bristol
Bay
(4)
Southeast
(1)
Kodiak - Aleutians
(3)
(3)
Map 7-1 Federally-Managed Wildlife
Subsistence Regions,
1992-Present
North
0 200 Kilometers
0 200 Miles


Map 8-1 Resident Zone Community Boundary Proposals, Wrangell-St. Elias National Park, 1992-1993
National Park
National Preserve
Alternative A Boundaries (estimated)
Alternative B Boundaries (15-mile perimeter zone)
North
0 200 Kilometers
0 200 Miles



Map 9-1 Federally-Managed Fisheries Subsistence Regions, 1999-Present


native girl





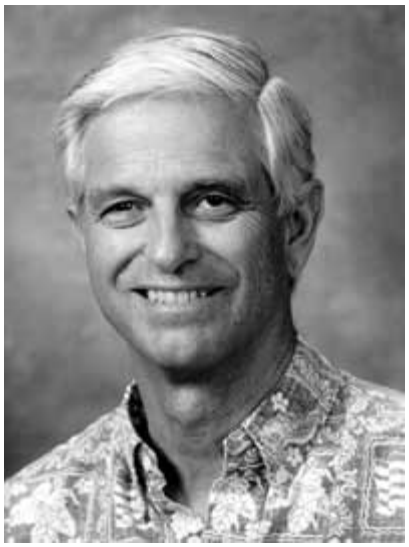
























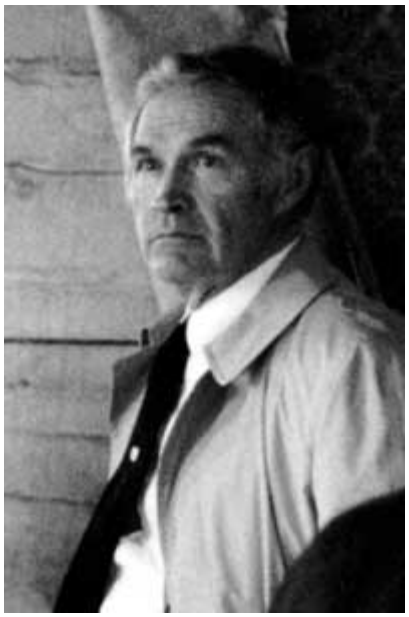




















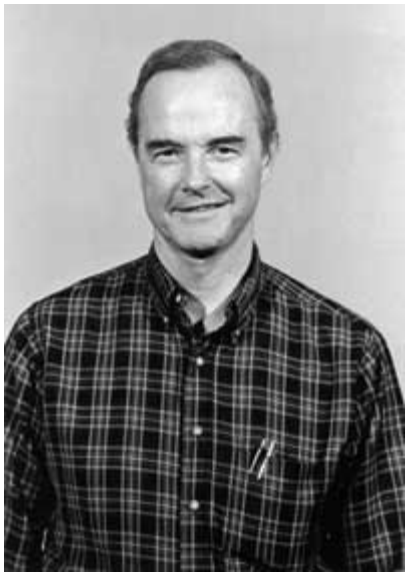




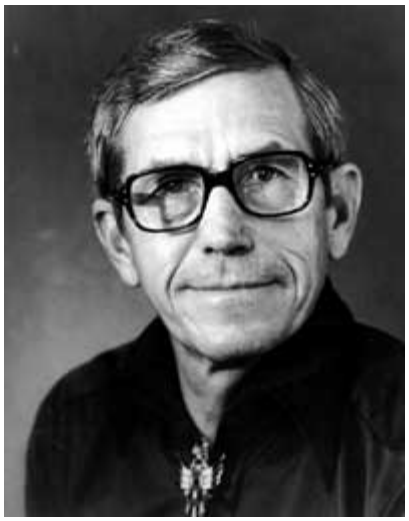



















COAL







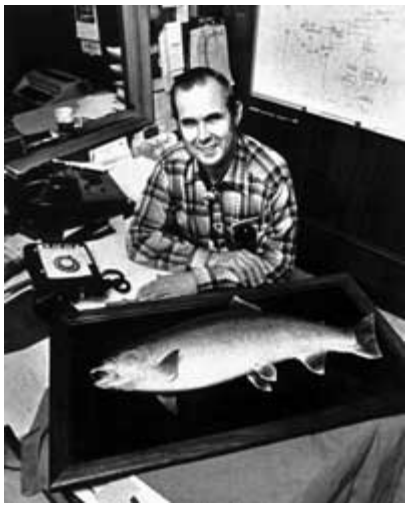












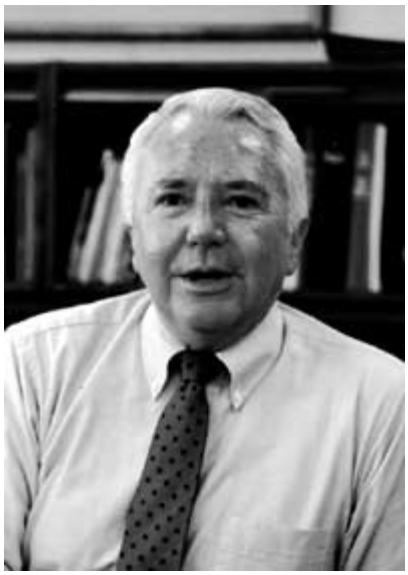












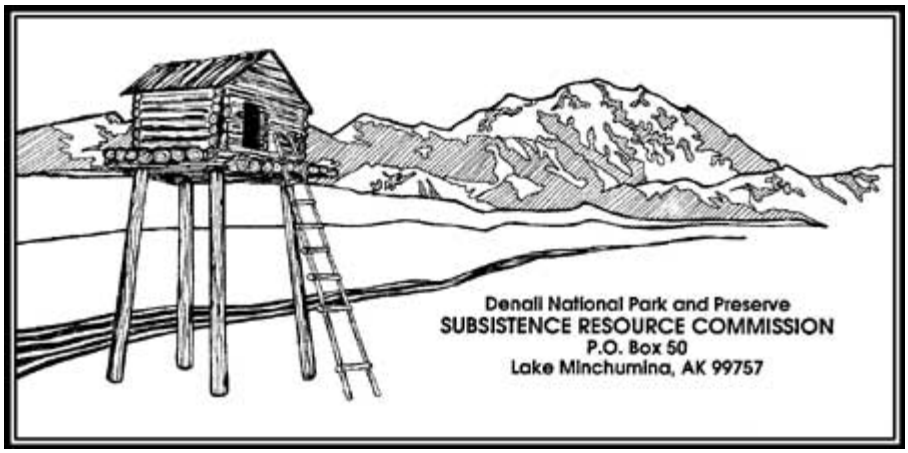











Denali National Park and Preserve
SUBSISTENCE RESOURCE COMMISSION
P.O. Box 50
Lake Minchumina, AK 99757



























































Alaska Subsistence

A National Park Service Management History

Chapter 1:
ALASKA NATIVE AND RURAL LIFEWAYS PRIOR TO 1971 (continued)

Notes — Chapter 1

[1] Joan M. Antonson and William S. Hanable, *Alaska's Heritage*, Alaska Historical Commission Studies in History No. 133 (Anchorage, Alaska Historical Society, 1985), 45; Michael E. Krauss, "Native Peoples and Languages of Alaska" (*map*), (Fairbanks, Alaska Native Language Center), 1982.

[2] David S. Case, *Alaska Natives and American Laws*, revised edition (Fairbanks, Univ. of Alaska Press, 1984), 6.

[3] Case, *Alaska Natives and American Laws*, 6, 57-58.

[4] Ted C. Hinckley, "Alaska Pioneer and West Coast Town Builder, William Sumner Dodge," *Alaska History* 1 (Fall, 1984), 7-19; Frank Norris, *North to Alaska; An Overview of Immigrants to Alaska, 1867-1945*, Alaska Historical Commission Studies in History No. 121 (Anchorage, AHC, June 1984), 2-8.

[5] Robert H. Keller and Michael F. Turek, *American Indians and National Parks* (Tucson, University of Arizona Press, 1998), pp. 18-19; James A. Henretta, *et al.*, *America's History*, third edition (New York, Worth Publishers, 1997), 127, 176, 182.

[6] Thomas A. Morehouse and Marybeth Holleman, *When Values Conflict: Accommodating Alaska Native Subsistence*, Institute of Social and Economic Research, Occasional Paper No. 22 (June 1994), 11; Steve Langdon, "From Communal Property to Common Property to Limited Entry: Historical Ironies in the Management of Southeast Alaska Salmon," in John Cordell, ed., *A Sea of Small Boats* (Cambridge, Mass., Cultural Survival, Inc., 1989), 308-09, 320-21. The long history of the Pribilof Islands fur seal harvest has been detailed in Dorothy Jones's *Century of Servitude: Pribilof Aleuts Under U.S. Rule* (Lanham, Md., University Press of America), c. 1980.

[7] Norris, *North to Alaska*, 5.

[8] Donald Craig Mitchell, *Sold American; the Story of Alaska Natives and Their Land, 1867-1959* (Hanover, N.H., University Press of New England, 1997), 90-92. Annual reports by the Governor of Alaska to the Secretary of the Interior between 1910 and 1930 typically decried the deplorable conditions and funding shortfalls in the Bureau of Education schools, but little was done to remedy the situation.

[9] Mitchell, *Sold American*, 94-96.

[10] Theodore Catton, *Inhabited Wilderness; Indians, Eskimos, and National Parks in Alaska* (Albuquerque, University of New Mexico Press, 1997), 173; Taylor Brelsford to author, January 18, 2002.

[11] Henretta, *America's History*, 530-33.

[12] Mitchell, *Sold American*, 177-78, 261-62; Case, *Alaska Natives and American Laws*, 87, 116. Congress also designated a small Native reserve at Klukwan (near Haines) in 1957 on land that had been withdrawn by executive order in 1913. In 1915, Alaska's delegate to Congress, James Wickersham, met with seven village chiefs in Interior Alaska, and because the recently-passed Alaska Railroad Act promised a major non-Native population influx, he urged them to petition for reservations around their communities. But the chiefs' spokesman replied that "We don't want to go on a reservation we want to be left alone." As it turned out, Wickersham's concerns were overstated; outside of the immediate rail corridor, the railroad brought only modest demographic and economic changes to Interior Alaska.

[13] Case, *Alaska Natives and American Laws*, 87-107.

[14] Mitchell, *Sold American*, 263-65; Case, *Alaska Natives and American Laws*, 90, 94-95, 104-05.

[15] Case, *Alaska Natives and American Law*, 133-39.

[16] Morehouse and Holleman, *When Values Conflict*, 11. This exemption, promulgated for either humanitarian reasons or perhaps because enforcement would have been a practical impossibility, remained because Natives, generally speaking, had but a slight impact on the resource base. Even so, some non-Natives resented the exemption. Agnes Herbert and A Shikári, in *Two Dianas in Alaska* (London, Thomas Nelson and Sons, 1909, pp. 81-82, 101-02) ruefully noted that "the natives are practically unrestricted as to time, numbers, or anything else in their wanton destruction of game, both great and small, throughout the country such policy is an error of judgment," and they sarcastically added that the Alaska Game Law was a "beautiful and beneficent arrangement which permits natives to kill game in and out of season."

[17] *Pacific Reporter*, 2d Series, Vol. 785 (1989), p. 6; Bob King to author, email, October 6, 1999.

[18] U.S. Fish and Wildlife Service, Alaska Game Commission, *Regulations Relating to Game and Fur Animals, Birds, and Game Fishes in Alaska*, Regulatory Announcement 43 (Washington, June 1954), 3, 20. Natives were defined as those "of one-half or more" Indian or Eskimo blood.

[19] US F&WS, *Regulations Relating to Game and Fur Animals* (June 1954), 6-7, 18-19. The regulations defined game fishes as grayling and various trout species.

[20] Alaska Department of Fisheries, *Annual Report No. 2* (Juneau, 1950), 12; ADF, *Annual Report No. 3* (Juneau, 1951), 12.

[21] Case, *Alaska Natives and American Laws*, 391.

[22] Claus-M. Naske and Herman E. Slotnick, *Alaska; a History of the 49th State* (Grand Rapids, MI, Eerdmans, 1979), 198-99; Case, *Alaska Natives and American Laws*, 406-09.

[23] Naske and Slotnick, *Alaska,* 306.

[24] *Ibid.,* 136, 146, 148, 154.

[25] As excerpted from L. J. Campbell, "Subsistence: Alaska's Dilemma," *Alaska Geographic* 17:4 (1990), 82.

[26] G. Frank Williss, *"Do Things Right the First Time": The National Park Service and the Alaska National Interest Lands Conservation Act of 1980* (Denver, NPS, September 1985), 61.

[27] Case, *Alaska Natives and American Laws,* 61, 64.

[28] Williss, *"Do Things Right the First Time,"* 63.

[29] Case, *Alaska Natives and American Laws,* 65, 69; Catton, *Inhabited Wilderness,* 184.

[30] "Fish and Game/Boards and Commissions, Reading Files" [various], 1950-1981, Series 556, RG 11, ASA. The following advisory committees met during 1958: Gastineau Channel, Homer-Seldovia, Ketchikan, Metlakatla, Nelchina, and Petersburg.

[31] Alaska House of Representatives, Special Committee on Subsistence, *Draft Report of the Special Committee on Subsistence; History and Implementation of Ch. 151 SLA 1978, the State's Subsistence Law* (May 15, 1981), 7-8.

[32] Evangeline Atwood and Robert N. DeArmond, comp., *Who's Who in Alaskan Politics; A Biographical Dictionary of Alaskan Political Personalities, 1884-1974* (Portland, Binford and Mort, 1977), 102.

[33] Alaska House, *Draft Report of the Special Committee,* 8. In a December 20, 2001 note to the author, Ted Catton notes that the stipulations contained in Section 6(e) predated 1958 by eight years. The bill in the 81st Congress was S. 50; the provision was Section 5(g).

[34] The one-year delay for the transfer of fish and game jurisdiction was due to the efforts of Rep. Alfred J. ("Jack") Westland (R-Wash.), who introduced the so-called Westland Amendment in 1957. Ted Catton to author, December 20, 2001.

[35] The *Session Laws of Alaska* for 1960, Chapter 131, Section 4 defined subsistence fishing as "the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board."

[36] For example, see ADF&G, *Regulations of the Alaska Board of Fish and Game for Commercial Fishing in Alaska,* 1960, 67. The state also considered subsistence uses as distinctive based on income levels. As noted in the March 22, 1963 *Daily Alaska Empire* (p. 1), the subsistence fishing license (which cost 25 cents per year) "could be purchased by a person who has obtained or is obtaining welfare assistance or has a gross family income of less than $3,600 per year." This income ceiling remained until 1980, when it was raised to $5,600.

[37] Alaska House of Representatives, *Draft Report of the Special Committee on Subsistence*

(1981), 12; Campbell, "Subsistence: Alaska's Dilemma," 82. The new regulations, which also provided for the system of fish and game advisory committees that had been established two years earlier, had the potential to allow a broad spectrum of fish and game decision making. But most of the early committees were formed in urban, non-Native areas, and urban sportsmen's groups—backed by the urban advisory committees that represented them—played a far more active role in fish and game decision making than did the individual or collective voices of rural residents. State of Alaska, *Session Laws, Resolutions, and Memorials* (Juneau, 1959), 91; ADF&G, *1959 Annual Report*, Report #11 (Juneau, 1959), 7; "Fish and Game/Boards and Commissions, Reading Files" [various], 1950-1981, Series 556, RG 11, ASA.

[38] Williss, *"Do Things Right the First Time,"* 64-65; Naske and Slotnick, *Alaska,* 209-10. To defend their rights, the Minto people hired attorney Ted Stevens, who had just stepped down from a long tenure with the Interior Department Solicitor's Office. Stevens, then in private practice, offered his services on a pro bono basis. Six years later, Governor Walter Hickel would appoint Stevens to the U.S. Senate, a position he still holds.

[39] During this period, nuclear explosions were by no means unheard of. Detonations had been taking place at Bikini Atoll, in the U.S. Marshall Islands, from 1946 to 1954; and on Amchitka Island in the Aleutian chain of Alaska, nuclear tests would take place in 1965, 1969, and 1971. In addition, many underground explosions took place.

[40] Williss, *"Do Things Right the First Time,"* 65-66; Naske and Slotnick, *Alaska,* 205-08.

[41] Williss, *"Do Things Right the First Time,"* 65-66; NPS, *The Alaska Journey; One Hundred and Fifty Years of the Department of the Interior in Alaska,* 30-31; Naske and Slotnick, *Alaska,* 211.

[42] This incident is covered in greater detail in Chapter 8, Section M(4).

[43] Naske and Slotnick, *Alaska,* 207-08. As David Case notes (pp. 396-97), the Inupiat Paitot lasted only a short time. In 1963, Inupiats formed a new organization, the Northwest Alaska Native Association, which lasted until the passage of ANCSA; then, to avoid confusion with the newly-formed NANA Regional Corporation, it changed its name to Mauneluk Association. In 1981, the spelling was changed to the more traditional Maniilaq Association.

[44] Case, *Alaska Natives and American Laws,* 389, 391, 401; Williss, *"Do Things Right the First Time,"* 66; Naske and Slotnick, *Alaska,* 214.

[45] Naske and Slotnick, *Alaska,* 212; Williss, *"Do Things Right the First Time,"* 66-67.

[46] Donald Craig Mitchell, *Take My Land, Take My Life; the Story of Congress's Historic Settlement of Alaska Native Land Claims, 1960-1971* (Fairbanks, University of Alaska Press, 2001), 132.

[47] Naske and Slotnick, *Alaska,* 214-15; Williss, *"Do Things Right the First Time,"* 67; Thomas R. Berger, *Village Journey; the Report of the Alaska Native Review Commission* (New York, Hill and Wang, 1985), 23; Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land* (Washington, GPO, October 1968), 440. Udall formalized the land freeze in Public Land Order 4582, which was issued on February 17, 1969.

In late 1968, given Richard Nixon's victory in the U.S. presidential race, Alaskans were hopeful that the land freeze might be lifted because Alaska Governor Walter Hickel, a freeze opponent, was nominated as the new Interior Secretary. Hickel initially stated that "what Udall can do by executive order I can undo." In order to gain Senatorial support for his nomination, however, he promised to retain the freeze until Congress could pass a land claims bill. Naske and Slotnick, *Alaska,* 216; Williss, *"Do Things Right the First Time,"* 67.

[49] Naske and Slotnick, *Alaska,* 202-03; Case, *Alaska Natives and American Law,* 380-81; *Tlingit and Haida Indians of Alaska v. United States,* 177 F. Supp. 452, 468 (Ct. Cl., 1959); Mitchell, *Take My Land, Take My Life,* 198, 213.

[50] *Anchorage Daily News,* January 20, 1968, 1-2; *Anchorage Daily News,* January 20, 2002, F4; Rosita Worl, "History of Southeastern Alaska Since 1867," in Wayne Suttles, ed., *Handbook of North American Indians: Vol. 7, Northwest Coast* (Washington, Smithsonian Institution, 1990), 153-56.

[51] NPS, *The Alaska Journey,* 95-96; Naske and Slotnick, *Alaska,* 218-19, 237-38.

[52] Naske and Slotnick, *Alaska,* 219-20; Williss, *"Do Things Right the First Time,"* 69.

[53] Naske and Slotnick, *Alaska,* 214-22.

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Alaska Subsistence

A National Park Service Management History

Chapter 2:
THE NATIONAL PARK SERVICE AND THE SUBSISTENCE QUESTION (continued)

Notes — Chapter 2

[1] Raymond Fredric Dasmann, "National Parks, Nature Conservation, and 'Future Primitive'," unpub. paper presented at the South Pacific Conference on National Parks, Wellington, N.Z., February 24-27, 1975, in Theodor R. Swem Collection, Conservation Library, Western History Collection, Denver Public Library. Also see Philip Burnham, *Indian Country, God's Country; Native Americans and the National Parks* (Covelo, Calif., Island Press, 2000), 15-16, 325; Roderick Nash, *Wilderness and the American Mind*, third edition (New Haven, Yale University Press, 1982), 100-01, 350; and Richard West Sellars, *Preserving Nature in the National Parks; A History* (New Haven, Yale University Press, 1997), 293.

[2] Robert H. Keller and Michael F. Turek, *American Indians and National Parks* (Tucson, University of Arizona Press, 1998), 19.

[3] Mark David Spence, *Dispossessing the Wilderness; Indian Removal and the Making of the National Parks* (New York, Oxford Univ. Press, 1999), 42-43; David Rains Wallace, *Yellowstone, a Natural and Human History*, Official National Park Handbook (Harpers Ferry, WV, NPS, c. 1999), 40-41.

[4] Lary M. Dilsaver, ed., *America's National Park System; the Critical Documents* (Lanham, Md.; Rowman and Littlefield, 1994), 28-29.

[5] Wallace, *Yellowstone, a Natural and Human History*, 65; Philip Burnham, *Indian Country, God's Country; Native Americans and the National Parks* (Covelo, CA, Island Press, 2000), 24-25. Also see Timothy Rawson, *Changing Tracks; Predators and Politics in Mt. McKinley National Park* (Fairbanks, Univ. of Alaska Press, 2001), 58.

[6] Spence, *Dispossessing the Wilderness*, 55-58; Keller and Turek, *American Indians and National Parks*, 23-24; Wallace, *Yellowstone, a Natural and Human History*, 41, 46.

[7] Dilsaver, ed., *America's National Park System*, 36; Keller and Turek, *American Indians and National Parks*, 24.

[8] Keller and Turek, *American Indians and National Parks*, 20-22; Spence, *Dispossessing the Wilderness*, 102, 106-13. Muir, who admitted that he knew little about the valley's Native residents, remarked that "the worst thing about them is their uncleanliness" but he quickly added that "nothing truly wild is unclean." Burnham, *Indian Country, God's Country*, 20-21.

[9] This tribe is now known as the Yakamas.

[10] Theodore Catton, *Wonderland; An Administrative History of Mount Rainier National Park* (Seattle, NPS, May 1996), 14-20; Keller and Turek, *American Indians and National Parks*, 25-26.

[11] Keller and Turek, *American Indians and the National Parks*, 232-33.

[12] *Ibid*., 27. The quote is from John C. Miles's *Guardians of the Parks* (Washington, Taylor and Francis, 1995), 1.

[13] Keller and Turek, *American Indians and the National Parks*, 28, 232. The quotes are from Albright's *Oh, Ranger!* (Palo Alto, Stanford University Press, 1928), 81-96.

[14] Dilsaver, ed., *America's National Park System*, 48-50, 62-65. In 1925, Interior Secretary Hubert Work issued a revised Statement of National Park Policy, which reiterated the prohibition toward hunting in both parks and monuments. The single exception to the prohibition described in 1925 was the case of Mount McKinley National Park, which is discussed in Chapter 3.

[15] Keller and Turek, *American Indians and the National Parks*, 233.

[16] *Ibid.*, 26-27.

[17] Spence, *Dispossessing the Wilderness*, 77-83; Keller and Turek, *American Indians and the National Parks*, 43-50.

[18] Spence, *Dispossessing the Wilderness,* 88-96; Keller and Turek, *American Indians and the National Parks*, 50-61; Christopher S. Ashby, *The Blackfeet Agreement of 1895 and Glacier National Park: A Case History*, unpublished M.A. thesis, University of Montana, 1985, Chapter 5.

[19] Keller and Turek, *American Indians and National Parks*, 131-36, 138-39, 157.

[20] Keller and Turek, *American Indians and National Parks*, 136-37, 140, 157, 164; Spence, *Dispossessing the Wilderness*, 135.

[21] Keller and Turek, *American Indians and National Parks*, 31-38.

[22] *Ibid.*, 39-41.

[23] Spence, *Dispossessing the Wilderness*, 134.

[24] Keller and Turek, *American Indians and National Parks*, 93-94; Evangeline Atwood and Robert N. DeArmond, comp., *Who's Who in Alaskan Politics* (Portland, Binford and Mort, 1977), 106. Atwood's biography of the controversial leader is *Frontier Politics; Alaska's James Wickersham* (Portland, Binford and Mort), 1979.

[25] Keller and Turek (p. 122) noted that the Olympic's enabling legislation, H.R. 10024, provided that "nothing herein shall affect any valid existing claim ... nor the rights reserved by treaty to the Indians of any tribes."

[26] Keller and Turek, *American Indians and National Parks*, 91, 99, 107-08, 122-23, 127-28.

As noted on p. 122, Natives were apparently no more guilty of occasional poaching than non-Natives.

[27] *Ibid.*, 219-21.

[28] *Ibid.*, 221-22.

[29] *Ibid*., 225. The use of the term "subsistence" is unusual at such an early date; as noted in a Chapter 4 endnote, subsistence as commonly used today was not applied in Alaska until 1969, when Congress was debating the proposed Alaska Native Claims Settlement Act.

[30] *Ibid.*, 225-26.

[31] *Ibid.*, 227-31; Devi Sharp interview, August 7, 2001.

[32] Tim Cochrane (Supt. GRPO) to author, email, February 12 and 13, 2002; Ron Cockrell, *Grand Portage National Monument, Minnesota: An Administrative History* (Omaha, NPS, 1983), 1, 3-5.

[33] *Code of Federal Regulations* (1938), Title 36, Sections 2.2(a) and 2.8(a). Nearly identical language appeared in the 1943 *CFR*, sections 2.2(a) and 2.9(a).

[34] One manifestation of the change in attitude between Indians and the federal government was a proposal by Lakota Sioux writer Iktomi Lila Sica for the creation of national "Indian-wild life sanctuaries" that would encompass lands surrounding Yellowstone, Glacier, and Wind Cave national parks as well as Badlands National Monument. These "wilderness area[s] for Indians and wild life" were a throwback to ideas espoused by George Catlin a century before, and more recently to Black Elk, a contemporary Sioux leader. Congress did not seriously consider this to be a "forcefully stated protest" (as quoted by historian Mark Spence), though it served "as a strong counterpoint to more popular concerns about wilderness preservation and management." Spence, *Dispossessing the Wilderness*, 134.

[35] Keller and Turek, *American Indians and National Parks*, 187-91, 194, 207, 211.

[36] Richard West Sellars, *Preserving Nature in the National Parks; a History* (New Haven, Yale University Press, 1997), 259-60; Frederic H. Wagner, et al., *Wildlife Policies in the U.S. National Parks* (Washington, D.C., Island Press, 1995), 82; Ries Collier email, July 22, 1998.

[37] Sellars, *Preserving Nature in the National Parks*, 72-75, 139, 180, 196-200; Dilsaver, *America's National Park System*, 87-88. As Barry Mackintosh noted in *The National Parks: Shaping the System* (Washington, NPS, 1985), pp. 62-63, national recreation areas were technically excluded from the National Park System because of fears that they would degrade park standards. This exclusion was overcome by a 1968 Congressional directive.

[38] *Code of Federal Regulations* (1938), Title 36, Section 2.9(a) and Section 2.10(b) and (h).

[39] See, for example, 36 *CFR* (1943), Title 36, Section 7.36(a). In 1992, Fort Jefferson National Monument was renamed Dry Tortugas National Park.

[40] Gary Somers interview, July 23, 1998; G. Bryan Harry, interview by Sande Faulkner, February 10, 1995; 36 *CFR* (1943), Section 7:25(d); 36 *CFR* (1988), Section 7:25(a)(3). The 1938 act, and the subsequent regulations, did not define the term "Native Hawaiian," and

they were also silent on how to define "residents of the Kalapana extension area." Enforcing these provisions brought headaches to NPS officials. One problem was overcome, many years later, when a "Native Hawaiian" was defined as "any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." The problem of how to precisely define a Kalapana resident has still not been solved; it became murkier, in fact, in 1990, when Kalapana's population was forced to flee in the face of an oncoming lava flow.

[41] Ries Collier email, July 22, 1998.

[42] Lance Hatten email, July 21 and 22, 1998.

[43] *Code of Federal Regulations* (1938), Title 36, sections 2.2(a) and (d).

[44] 36 *CFR* (1943), Title 36, sections 2.2(e); also see sections 2.2(a) and 2.15.

[45] 36 *CFR* (1967), Section 2.20 (a)(1) and (2).

[46] *Code of Federal Regulations* (1938), Title 36, Section 2.2(f); 36 *CFR* (1943), Title 36, Sections 2.2(d); Ron Nagata email, November 12, 1999.

[47] Email from Marianne Mills, July 21, 1998 and Jennie Vasarhelyi, July 22, 1998.

[48] Blair Davenport email, July 22, 1998.

[49] Email from Gary Cummins, July 21, 1998; Doug Brown, July 21, 1998; and Helen Fairley, August 3, 1998.

[50] Fred Bunch email, July 23 and August 6, 1998.

[51] Janet Rock email, November 4, 1999.

[52] Email from G. Frank Williss, July 15, 1998; Karren Brown, July 20, 1998; and William Wellman, July 23, 1998.

[53] Jeff Connor email, July 23, 1998.

[54] Email from G. Frank Williss, July 15, 1998; William Wellman, July 23, 1998; and Alexa Roberts, August 21, 1998.

[55] Email from Mary Blasing, July 23, 1998 and Helen Fairley, August 3, 1998.

[56] Craig Bates email, August 10, 1998.

[57] Fred Bunch email, August 6, 1998.

[58] Email from Chris Judson, July 21, 1998 and Jeff Connor, July 23, 1998.

[59] Keller and Turek, *American Indians and National Parks*, 13, 29; NPS, *The National Parks: Index 1997-1999* (Washington, NPS, 1997), 43, 59, 73, 92.

60

NPS, *The National Parks: Index 1997-1999*, 22.

[61] Keller and Turek, *American Indians and National Parks*, 29.

[62] *Ibid.*, 6-14.

[63] Ted Birkedal interview, November 2, 1999; Keller and Turek, *American Indians and National Parks*, 234.

[64] John E. Cook interview, April 18, 2001; John E. Cook to author, email, May 17, 2001.

[65] Just a year later, this policy was superceded by the NPS *Management Policies* (December 1988), in which Native American issues and concerns were included in numerous parts of the agency's overall policies. This policy, in turn, has been superceded by *Management Policies 2001*, published by the agency in December 2000.

[66] Keller and Turek, *American Indians and National Parks*, 234; Ted Birkedal interview, November 2, 1999.

[67] Mackintosh, *The National Parks: Shaping the System*, 62, 68-71, 76-78.

[68] Spence, *Dispossessing the Wilderness*, 135; Memorandum of Agreement between Oglala Sioux and NPS, January 2, 1976, in Sande Anderson files, AKSO; Marianne Mills email, July 21, 1998.

[69] Email from Karen Rogal, July 21, 1998 and Alexa Roberts, July 21, 1998.

[70] David Louter, *Contested Terrain; North Cascades National Park Service Complex, An Administrative History* (Seattle, NPS, 1998), 52-53, 137; David Louter email, July 21 and July 22, 1998.

[71] Sara Koenig email, July 22, 1998.

[72] Jean Rodeck email, July 23, 1998.

[73] Email from Julie Athman, July 20, 1998 and Jim Benedict, July 23, 1998.

[74] An informal query submitted to NPS interpretive specialists revealed that a number of non-Alaskan park units that were established after 1972 support subsistence activities, among them El Malpais NM (N.M.), Great Basin NP (Nev.), the Barataria Unit of Jean Lafitte NHP and Preserve (La.), Kalaupapa NHP (Hawaii), NP of American Samoa, and New River Gorge NR (W.V.).

[75] As evidence of this trend, Yosemite National Park and the American Indian Council of Mariposa County, in the fall of 1997, signed a Memorandum of Understanding about the use of the park for various "traditional" activities; several NPS units in southern Utah have recently adopted an MOU with the Southern Paiutes to formalize subsistence and other traditional activities that occur on NPS lands; the Blackfeet now have a good working relationship with Glacier National Park officials; and in February 1999, the Interior Department struck a deal with the Timbesha Shoshone to manage lands in and around Death Valley National Park. Spence, *Dispossessing the Wilderness*, 137-39; Craig Bates email, August 10, 1998; Lee Kreutzer email, August 12, 1998; and *Anchorage Daily News*, February

26, 1999, B-3.

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Alaska Subsistence

A National Park Service Management History

Chapter 3:
SUBSISTENCE IN ALASKA'S PARKS, 1910-1971 (continued)

Notes — Chapter 3

[1] *Webster's Geographical Dictionary* (Springfield, Mass., G. & C. Merriam Co., 1967), 1188-91; John Ise, *The National Park Service; A Critical History* (New York, Arno Press, 1979), 2.

[2] Congress authorized Klondike Gold Rush NHP, in the Skagway area, in June 1976. Perhaps because of its small size (about 13,000 acres), the park was judged not to have significant subsistence values.

[3] William E. Brown, *A History of the Denali-Mount McKinley Region, Alaska* (Santa Fe, NPS, 1991), 75-77, 83. Native use of the area has been documented in Terry L. Haynes, David B. Anderson, and William E. Simeone, *Denali National Park and Preserve: Ethnographic Overview and Assessment* (Fairbanks, NPS/ADF&G), 2001.

[4] Joan M. Antonson and William S. Hanable, *Alaska's Heritage*, Alaska Historical Commission Studies in History No. 133 (Anchorage, Alaska Historical Society, 1985), 369-70.

[5] Brown, *A History of the Denali-Mount McKinley Region*, 32-34, 87-88, 91.

[6] *Ibid*., 93, 146.

[7] *Ibid.*, 92-93; Lary M. Dilsaver, ed., *America's National Park System; the Critical Documents* (Lanham, Md.; Rowman and Littlefield, 1994), 63-64.

[8] Brown, *A History of the Denali-Mount McKinley Region*, 95, 136, 138, 146.

[9] Fred Hauselmann (Little Moose Creek, Kantishna Mining District; mailed from Nenana) to Secretary of the Interior, February 7, 1920, in "Wild Animals, Parts 1 and 2" file, Box 112, MOMC, Central Classified Files, Entry 6, RG 79, NARA DC.

[10] Brown, *A History of the Denali-Mount McKinley Region*, 136, 138-45, 185-89.

[11] As mentioned in Chapter 2, Secretary Work's letter stated that Mount McKinley (due to specific language in its enabling act) was an exception to the general prohibition against.

[12] Brown, *A History of the Denali-Mount McKinley Region*, 138, 145-47.

[13] *Ibid.*, 139, 147-48.

[14] *Ibid.*, 151-52, 156-57.

[15] Documents also refer to one of the hunters as Enos John and Enock John; the above spelling is as it appeared on the affidavit. Harry Karstens to NPS Director, November 18, 1924; Cammerer to Karstens, December 23, 1924; both in "Wild Animals, part 1 & 2" file, Box 112, Central Classified Files, Mount McKinley, Entry 6, RG 79, NARA DC.

[16] Brown, *A History of the Denali-Mount McKinley Region*, 148-49.

[17] Frank Norris, *Isolated Paradise; An Administrative History of the Katmai and Aniakchak National Park Units* (Anchorage, NPS, 1996), 17, 22-34.

[18] *Ibid.*, 39, 45-49.

[19] The 1931 proclamation noted that the land under consideration contained "features of historical and scientific interest," but this phrase was probably included to complement language originally propounded in the 1906 Antiquities Act, which was Hoover's authority for the expanding the monument.

[20] John A. Hussey, *Embattled Katmai; A History of Katmai National Monument* (San Francisco, NPS, August 1971), 329-69; Janet Clemens and Frank Norris, *Building in an Ashen Land; Katmai National Park and Preserve Historic Resource Study* (Anchorage, NPS, 1999), 30-32.

[21] Clemens and Norris, *Building in an Ashen Land*, 114-18.

[22] *Ibid.*, 151.

[23] Hussey, *Embattled Katmai*, 369.

[24] Frank T. Been, *Field Notes of Katmai National Monument Inspection*, November 12, 1940, pp. 9-11, 15, 24; Norris, *Isolated Paradise*, 214-15.

[25] Norris, *Isolated Paradise*, 214-17, 332; Clemens and Norris, *Building in an Ashen Land*, 129-30. As former park employee Pat McClenahan has noted, at least one witness in the so-called Melgenak land case claimed that NPS officials during the 1950s pressured Natives to leave the Brooks Camp area. The mere presence of the concessions camp there also played a role. Natives certainly disliked the increasing scrutiny of sport fishermen, and they likewise resented the fact that their long-established fishing patterns had been upset in the interest of accommodating Outside sportsmen. In the summer of 1966, someone—from either the NPS or the concessioner—razed the last of the structures associated with the Natives' use of the area. McClenahan to author, May 14, 2002.

[26] As *Isolated Paradise* notes on pp. 402-03, area Natives had long been harvesting late-spawning red salmon ("redfish") near the Naknek Lake outlet, but this area was not incorporated into the monument until January 1969. Park superintendents for decades afterward doubtless knew about this fishery, and they also had the power to close it down, but they did nothing to regulate it until the early 1990s.

[27] Historian Alfred Runte ably developed the "worthless lands thesis" in *National Parks; the American Experience* (Lincoln, University of Nebraska Press, 1979), 48-64.

[28] Theodore Catton, *Land Reborn; A History of Administration and Visitor Use in Glacier Bay National Park and Preserve* (Anchorage, NPS, 1995), 51-52, 56-58, 114.

[29] *Ibid.*, 102. The local Natives are now known as the Huna Tlingit.

[30] *Ibid.*, 109, 115-17.

[31] *Ibid.*, 103.

[32] *Ibid.*, 119-24; Walter R. Goldschmidt and Theodore H. Haas, *Possessory Rights of the Natives of Southeastern Alaska* (Washington, DC, Bureau of Indian Affairs), 1946.

[33] Lowell Sumner, *Special Report on the Hunting Rights of the Hoonah Natives in Glacier Bay National Monument*, (NPS, Region Four, August 1947), 1, 3, 7, in GLBA Archives.

[34] O. A. Tomlinson to Supt. Yosemite, April 25, 1950, in GLBA File 201, RG 79, NARA San Bruno.

[35] Duane Jacobs, *Report of Special Assignment at Glacier Bay National Monument, 1950 Season*, in GLBA File 207, RG 79, NARA San Bruno; Catton, *Land Reborn*, 125-30.

[36] Catton, *Land Reborn*, 131-32, 192.

[37] Linda Cook and Frank Norris, *A Stern and Rock-Bound Coast; Kenai Fjords National Park Historic Resource Study* (Anchorage, NPS, 1998), 136-40.

[38] Catton, *Land Reborn*, 191-94.

[39] *Ibid.*, 197-99, 202, 206; Wayne Howell to author, December 11, 2001.

[40] G. Frank Williss, *"Do Things Right the First Time;" the National Park Service and the Alaska National Interest Lands Conservation Act of 1980* (Denver, NPS, September 1985), 34-43.

[41] Frank Norris, *Legacy of the Gold Rush; An Administrative History of Klondike Gold Rush National Historical* Park (Anchorage, NPS, 1996), 84. Hickel showed interest in just one of the proposals, a historical park in the Skagway area. The momentum generated by that meeting resulted, nine years later, in the Congressional passage of the bill that authorized Klondike Gold Rush National Historical Park.

[42] NPS, *Alaska Cultural Complex, A Reconnaissance Report*, June 1968, 2.

[43] *Ibid.*, 9-11.

[44] Team members included Merrill J. Mattes, team captain and planner; Reed Jarvis, historian; and Zorro Bradley, archeologist. The Inupiat villages included Point Hope, Noatak, Kivalina, Wainwright, Wales, and Shishmaref; the Siberian Yup'ik villages included Gambell and Savoonga; and the Athapaskan villages included Fort Yukon and Arctic Village. NPS, *Alaska Cultural Complex*, 1-6, 24.

[45] *Ibid.*, 19-20.

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Alaska Subsistence

A National Park Service Management History

Chapter 4:
THE ALASKA LANDS QUESTION, 1971-1980
(continued)

Notes — Chapter 4

[1] David S. Case, *Alaska Natives and American Laws* (Fairbanks, Univ. of Alaska Press, 1984), 10-11; Claus-M. Naske and Herman E. Slotnick, *Alaska; A History of the 49th State* (Grand Rapids, Mich., Eerdmans, 1979), 198.

[2] Naske and Slotnick, *Alaska*, 214, 220.

[3] *Ibid.*, 212-14.

[4] G. Frank Williss, *"Do Things Right the First Time;" The National Park Service and the Alaska National Interest Lands Conservation Act of 1980* (Denver, NPS, September 1985), 68; S. 1964, H.R. 11164, and S. 2690, all in *Alaska Native Claims Settlement Act Legislative History*, vol. 1 (Bills), part 1, ARLIS; *Congressional Record* 113 (1967), Part 28, *passim*; Donald Craig Mitchell, *Take My Land, Take My Life* (Fairbanks, University of Alaska Press, 2001), 146-47.

[5] Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land* (Washington, GPO), October 1968.

[6] Naske and Slotnick, *Alaska*, 215, 217; Donald Craig Mitchell, *Take My Land, Take My Life*, 197; *Congressional Record* 114 (1968), Part 25, *passim*.

[7] *Ibid.*, 218-21.

[8] *Ibid.*, 221-22; Williss, *Do Things Right the First Time,"* 73, 82-85.

[9] S. 1964, 10, in *ANCSA Legislative History*, 1:1.

[10] S. 2906, 36; H.R. 15049, 24; and S. 3859, 13-14; all in *Alaska Native Claims Settlement Act, Legislative History*, v. 3 (Bills), part 1, ARLIS.

[11] The dictionary defines subsistence as "the minimum (as of food and shelter) necessary to support life." Prior to this time, "subsistence farming" was a common term for a "system of farming that produces a minimum and often inadequate return to the farmer," while "subsistence" was a synonym for food and kindred expenses that government agencies paid to its traveling employees. Most Natives never used the word "subsistence" before the ANCSA deliberations; as Jonathon Solomon of Fort Yukon noted, "I never heard the word subsistence until 1971 under the Native land claims act. Before that time, when I was brought up in the

culture of my people, it's always been 'our culture' and 'our land.'" *Webster's Ninth New Collegiate Dictionary* (Springfield, Mass., Merriam-Webster, Inc., 1986), 1176; Franklin G. Fox to Regional Director, Region IV, NPS, July 3, 1938, in File 600, MOMC, Entry 7, RG 79, NARA San Bruno; Thomas R. Berger, *Village Journey; the Report of the Alaska Native Review Commission* (New York, Hill and Wang, 1985), 52.

[12] S. 1830, 38-39, in *ANCSA Legislative History*, 1:1.

[13] Section 2(a)(7) of S. 1830, as passed by the Senate in July 1970, provided for "Protection of Native subsistence hunting, fishing, trapping, and gathering rights and, where it is within the power of the federal government, measure for the conservation of subsistence biotic resources."

[14] S. 35, *ANCSA Legislative History*, 3:1, 121-23; Donald Mitchell interview, May 13, 2002.

[15] S. 35, *ANCSA Legislative History*, 3:2, 299-303; Mitchell interview.

[16] Mitchell, *Take My Land, Take My Life*, 474-76; Mitchell interview.

[17] Theodore Catton, *Land Reborn; A History of Administration and Visitor Use in Glacier Bay National Park and Preserve* (Anchorage, NPS, 1995), 208-09; Williss, *"Do Things Right the First Time,"* 90; U.S. Senate, *Alaska National Interest Lands; Report of the Committee on Energy and Natural Resources ... to Accompany H.R. 39* (Report No. 96-413), 96th Congress, 1st Session (Washington, D.C., GPO, 1979), 231. Morris Udall, a leader in Alaska Lands Act legislation, noted that the Secretary and the State accepted the idea of promising "to take any action necessary to protect the needs of the [Alaska] Natives" in exchange "for the exclusion from that act [i.e., ANCSA] of a subsistence management title developed by the Senate." *Congressional Record*, May 4, 1979, H 2697. AFN attorney Don Mitchell, speaking years later, noted that it was the State of Alaska that lobbied to have the subsistence priority removed, with the apparent agreement that state management would improve. *Fairbanks Daily News-Miner*, December 3, 2000, A6.

[18] Williss, *"Do Things Right the First Time;"* 69-71.

[19] The Multiple Use and Classification Act (P.L. 88-607) became law on September 19, 1964. Although it was national in its scope, it made special provision for lands "situated in the State of Alaska exclusively administered by [the Secretary] through the Bureau of Land Management." Duncan A. Harkin, et al., *Federal Land Laws and Policies in Alaska, Vol. III* (Madison, Univ. of Wisconsin, October 1970), 1148; P.L. 88-607.

[20] Williss's *"Do Things Right the First Time,"* pp. 35-56 gives an excellent overview of early NPS planning efforts. Speaking on the subject years later, Sen. Ted Stevens (R-AK) said that he was "surprised" to discover in 1970 "that 50 million acres of Alaska had been classified as lands that were potential national parks." These classification orders "had been entered by the Department of Interior as internal guidance in dealing with Alaska lands." *Congressional Record*, August 19, 1980, S 11185.

[21] Williss, *"Do Things Right the First Time,"* 71-88; Catton, *Inhabited Wilderness*, 195-97.

[22] Williss, *"Do Things Right the First Time,"* 95-97.

[23] *Ibid.*, 104-05.

[24] John Kauffmann interview, April 29, 1999. The initial NPS planning team included John Reynolds (MOMC), Urban Rogers and Keith Trexler (LACL), Paul Fritz (WRST), Bob Belous (KOVA), and John Kauffmann (GAAR).

[25] Williss, *"Do Things Right the First Time,"* 120-24.

[26] *Ibid.*, 120-24, 142-43; Alaska Planning Group, [Various park FESs], p. 1.

[27] On the heels of ANCSA's passage, NPS Director George Hartzog was convinced that 95 percent of the 80,000,000 acres withdrawn under Section 17(d)(2) belonged in the National Park System. But Spencer Smith, head of the Bureau of Sport Fisheries and Wildlife, felt that four-fifths of that acreage was intended as national wildlife refuges. Both men, of course, suffered a rude awakening in March 1972 when Secretary Morton announced the preliminary withdrawals. Williss, *"Do Things Right the First Time,"* 104; Richard Stenmark interview, July 9, 1999.

[28] Williss, *"Do Things Right the First Time,"* 271-72; John Kauffmann interview, April 29, 1999. problem.

[29] The reality of subsistence during the 1970s is discussed in Jim Rearden's "Subsistence, a Troublesome Issue," *Alaska* 44 (July 1978), 4-6, 84-88; Walter B. Parker, *Subsistence Realities*, published by the Joint Federal-State Land Use Planning Commission in August 1977; and Berger, *Village Journey*, 1985. But in the early 1970s, neither state nor federal authorities had collected the information that would fill these and similar volumes.

[30] John Kauffmann interview, April 29, 1999.

[31] NPS, *Recommendations Regarding Alaska Native Claims Settlement Act 17(d)(2) Withdrawals*, July 1972, "Background," p. 3.

[32] Bob Belous, who was working as a Native liaison and photographer for the NPS at the time, summed up the agency's thinking at the time in a March 28, 2001 interview. "No one had special access to subsistence like Natives." He noted, "they deserved some recognition and maybe even preferential access."

[33] NPS, *Recommendations Regarding ANCSA Withdrawals*, July 1972, *passim.*; Williss, *"Do Things Right the First Time,"* 132.

[34] Frank B. Norris, *Isolated Paradise; An Administrative History of the Katmai and Aniakchak National Park Units* (Anchorage, NPS, 1996), 443-44; Williss, *"Do Things Right the First Time,"* 121-22.

[35] Bob Belous, *Subsistence Use of New Parklands in Alaska (An Interim Report)*, November 10, 1973, as noted in Williss, *"Do Things Right the First Time,"* 187, 248, 273; Belous interview, March 28, 2001. Belous, a former journalist and engineer, had joined the NPS in 1972. In the mid-to-late 1970s, he became a public liaison officer and the "keyman" for the proposed Cape Krusenstern and Kobuk Valley park units. He remained with the agency in Alaska through the early 1980s (see Chapter 5).

[36] See, for example, NPS, *Proposed Chukchi-Imuruk National Wildlands, Draft Environmental Impact Statement* (Washington?, the author, December 1973), 1-2. This document will hereafter be referred to as "NPS, *Chukchi-Imuruk DEIS*" and other DEISs will

be referred to in a similar fashion.

[37] Within the NPS, the change from a Native to a rural preference took place between July 1972 and December 1973. (At other agencies, no such shift took place, inasmuch as a Native preference was never seriously considered.) On a legislative level, as noted in Section G below, initial efforts once again suggested a Native preference, but by early 1978 the changeover to a rural preference had been effected. It remained that way until ANILCA was signed into law.

[38] Williss, *"Do Things Right the First Time,"* 147-51, 153-54.

[39] NPS, *Wrangell-St. Elias DEIS*, 126-46.

[40] NPS, *Kobuk Valley DEIS*, 2, 5, 134-45.

[41] U.S. Department of the Interior, *Proposed Noatak National Ecological Range, Draft Environmental Impact Statement* (Washington?, the author, December 1973), 1, 7, 146-55, 160-74.

[42] NPS, *Chukchi-Imuruk DEIS*, 8.

[43] William E. Brown, *Gaunt Beauty, Tenuous Life; Historic Resources Study, Gates of the Arctic National Park and Preserve* (n.p., NPS, January 1988), 516-58; Theodore Catton, *Inhabited Wilderness; Indians, Eskimos, and National Parks in Alaska* (Albuquerque, Univ. of New Mexico Press, 1997), 165-72; Catton, "Ecology and Alaska's National Parks" (paper given at the Alaska Environmental History Conference, Anchorage, August 2, 1998), 16.

[44] Catton, *Inhabited Wilderness*, 173, 177; NPS, *Proposed Gates of the Arctic National Wilderness Park and Nunamiut National Wildlands DEIS*, 104.

[45] Catton, *Inhabited Wilderness*, 167, 173, 175-77.

[46] *Ibid.*, 168; Edwin S. Hall, Jr., Craig Gerlach, and Margaret B. Blackman, *In the National Interest: A Geographically Based Study of Anaktuvuk Pass Inupiat Subsistence Through Time*, 2 vols. (Barrow, AK, North Slope Borough), 1985.

[47] John Kauffmann interview, April 29, 1999.

[48] Williss, *"Do Things Right the First Time,"* 44, 48-49, 56-58; Catton, *Inhabited Wilderness*, 187.

[49] Catton, *Inhabited Wilderness*, 188; Naske and Slotnick, *Alaska*, 239. The road was abandoned after the winter of 1969-70, and in 1974 the State of Alaska agreed to a court order that closed it to further use. *Congressional Record*, November 12, 1980, H 10535. Four years later, more than forty miles of the road was placed within Gates of the Arctic National Monument, and the area has been administered by the NPS ever since.

[50] Catton, *Inhabited Wilderness*, 197-98.

[51] NPS, *Recommendations Regarding Alaska Native Claims Settlement Act 17(d)(2) Withdrawals* (July 1972), 21, 30.

[52] Catton, *Inhabited Wilderness*, 199.

[53] *Ibid.*, 199-200; NPS, *Gates of the Arctic-Nunamiut DEIS*, 6.

[54] Catton, *Inhabited Wilderness*, 200; NPS, *Gates of the Arctic-Nunamiut National Wildlands, DEIS*, errata sheet, 2. The NPS's proposal had called for all land in the Wilderness Park "to be designated a wilderness by the legislation that creates it;" it would have been the only park proposal that would have done so. But the OMB's action struck down the wilderness park concept. Regarding the Chukchi-Imuruk proposal, the OMB also struck down a provision that would have provided for preferential hiring of Alaska Natives. Williss, *"Do Things Right the First Time,"* 141-42.

[55] Note that the Noatak proposal, at this time, was not an NPS proposal; as noted earlier, the area was to be jointly managed by the BLM and the BSF&W.

[56] Bob Belous interview, March 28, 2001.

[57] Williss, *"Do Things Right the First Time,"* 157, 160.

[58] NPS, *Native Alaskan Heritage Centers; A Proposal* (c. 1972), 4.

[59] *Ibid.*, 1-12.

[60] During the mid-1970s, the idea for a Native cultural center was espoused by Calista Corporation, one of the new ANCSA regional corporations. The corporation decided that a cultural center would be a critical adjunct to a proposed shopping concourse, to be located in Anchorage near its Sheraton Hotel property. The commercial facility was never developed, however, in part because of a lack of interest from other Native regional corporations. Other proposed sites during the 1970s for a Native cultural center were downtown (near Second Avenue and Christensen Drive) and on the Alaska Methodist University campus.

The idea lay fallow for the next several years, but in 1986 the cultural center concept was presented at that fall's Alaska Federation of Natives convention. The assembled delegates voted to pursue the idea, and soon afterward an ad hoc group consisting of representatives from each of the regional corporations was formed to move the concept forward. That group, Alaska Native Heritage Park, evaluated the pros and cons of fifteen potential sites, all of which were located in Anchorage. That process revealed that an optimal site for the proposed center was in east Anchorage, near the corner of Tudor Road and Campbell Airstrip Road. (This triangular-shaped 80-acre parcel, near Benny Benson School and today's Alaska Botanical Garden, had been designated as a cultural center site almost a decade earlier as part of the Far North Bicentennial Park plan.) Inasmuch as the parcel was municipally owned, the center's backers, in 1989, approached the Municipal Assembly for a long-term lease and soon afterward received it. The group then sponsored a site feasibility study, the results of which were favorable, and proceeded to raise design and construction funds. Their efforts were derailed, however, by project opponents—neighborhood groups and environmentalists—who submitted a petition to the city asking that the lease be repealed. A protracted delay then ensued over whether a lease repeal should be placed before Anchorage's voters; that logjam was broken in the fall of 1991, when a Superior Court judge decided to proceed with a vote. That vote, on November 3, 1992, resulted in a narrow (200-vote) victory for those who advocated that the lease be repealed. Supporters of a Native heritage center, therefore, were forced to look elsewhere.

Heritage center advocates responded to the ballot setback by seeking out new sites. The

group initially considered both public and privately-owned sites ranging from Palmer to the Kenai Peninsula. Soon, however, the focus narrowed to a few sites in northeastern Anchorage. One site on Fort Richardson, proposed during the waning days of the Bush administration, failed to materialize but an adjacent tract was considered near the Glenn Highway-Muldoon Road intersection. This 88-acre parcel, also on Fort Richardson, was owned by Cook Inlet Region, Inc. (CIRI), but the Municipality of Anchorage had a long-term lease. The multiplicity of interests was initially daunting. The center's backers, however, found both CIRI and the Federal government cooperative, and by July 1994 newly-elected mayor Rick Mystrom had helped arrange for 26 acres of the city's lease to be transferred to the Alaska Native Heritage Center. After a blessing ceremony that summer, fundraising began in earnest, and before long a broad array of interests—Federal agencies, Native corporations, foundations, corporations, and individuals—agreed to help underwrite the $14.8 million project. Given such broad support, backers were able to proceed with site preparation in 1997, and construction of the main building began in the late summer of 1998. The Alaska Native Heritage Center opened to the public the following spring. Jane Angvik interview, February 16, 2000; Steve Peterson interview, February 17, 2000.

[61] Catton, *Land Reborn*, 103, 117, 123-24.

[62] *Ibid.*, 132, 191, 202; Wayne Howell to author, December 11, 2001.

[63] Catton, *Land Reborn*, 206, 209-10.

[64] *Ibid.*, 211.

[65] *Ibid.*, 211-12; Wayne Howell to author, December 11, 2001.

[66] Frank Williss, *"Do Things Right the First Time,"* p. 160 notes that the deadline for comments to the various DEISs was July 22, 1974, and planners received more than 6,000 comments.

[67] See, for example, Alaska Planning Group, *Proposed Chukchi-Imuruk National Reserve, Final Environmental Statement* (Washington?, the author, 1975?), 1. The statement's wording varied slightly for the various proposals. The Mount McKinley National Park Additions proposal, the sole proposal omitting this verbiage, offered roughly similar language and promised that "existing established subsistence activities will be allowed to continue." APG, *Proposed Mount McKinley National Park Additions, Final Environmental Statement* (Washington?, the author, October 1974), 5.

[68] The lack of emphasis upon subsistence values as it pertained to the Gates of the Arctic proposal was striking, particularly in comparison to the extent to which the agency had backed the Nunamiut National Wildlands proposal in late 1973. In early 1974, a bill was submitted in Congress to establish a Nunamiut "cultural park," but it never got beyond the committee stage. Williss, *"Do Things Right the First Time,"* 156.

[69] APG, *Cape Krusenstern FES*, 1; APG, *Kobuk Valley FES*, 5.

[70] APG, *Aniakchak FES*, 2; APG, *Harding Icefield-Kenai Fjords FES*, 5; APG, *Lake Clark EIS*, 2.

[71] APG, *Katmai Additions FES*, 2; APG, *Lake Clark FES*, 2.

[72]

APG, *Chukchi-Imuruk FES*, 5; APG, *Harding Icefield-Kenai Fjords FES*, 5.

[73] APG, *Aniakchak FES*, 2; APG, *Gates of the Arctic FES*, 1, 8, 72-73.

[74] Williss, *"Do Things Right the First Time,"* 113; John Kauffmann interview, April 29, 1999.

[75] Williss, *"Do Things Right the First Time,"* 246-47.

[76] Newman, an anthropologist, arrived in Alaska in 1975 from the agency's Denver Service Center. Williss, *"Do Things Right the First Time,"* 247. Bill Brown, in a July 14, 1999 interview, noted that top Alaska Task Force officials approved the 1977 paper.

[77] T. Stell Newman, *The National Park Service and Subsistence: A Summary*, November 1977, 1.

[78] William E. Brown interview, July 14, 1999; Raymond F. Dasmann, "National Parks, Nature Conservation, and 'Future Primitive'," unpub. paper given at the South Pacific Conference on National Parks, Wellington, N.Z., February 24-27, 1975, in Theodor R. Swem Collection, Conservation Library, Western History Collection, Denver Public Library.

[79] Historian William E. Brown, in an April 18, 2001 interview, noted that NPS planners focused their primary attention in the subsistence realm on traditional indigenous people; this may have been a response, in part, to those who thought, or perhaps hoped, that Native subsistence would fade away. Alaska Area Director G. Bryan Harry, in fact, stated that NPS planner Bob Belous was known among some colleagues as a "gigantic philosophical champion of Natives in the national parks." (G. Bryan Harry interview, November 3, 1998) Newman, however, was more pragmatic, and the NPS, during this period, consistently agreed with the State of Alaska's "local rural" criteria for subsistence preference as a way to avoid exacerbating tensions between Natives and non-Natives.

[80] Williss, *"Do Things Right the First Time,"* 262-63.

[81] *Ibid.*, 260-62; Ray Bane interview, September 18, 1997. In addition to Bane, Anderson, and Nelson, the study's authors were Wanni Anderson and Nita Sheldon. The Banes' dogsled trip is recounted in Joe McGinness's *Going to Extremes* (New York, Alfred A. Knopf, 1980), 232-33.

[82] Williss, *"Do Things Right the First Time,"* 262-64, 268; Bill Brown interview, April 18, 2001. The Gates of the Arctic study, called *Tracks in the Wildland; A Portrayal of Koyukon and Nunamiut Subsistence*, was written by some of the same researchers who previously had worked on the Kuuvangmiit subsistence study. It was completed as a CPSU paper in 1978 and reprinted for more widespread distribution in 1982. A multipart study of subsistence patterns in the vicinity of the Bering Land Bridge proposal was completed in 1981. The only proposed park areas that were not studied as part of the CPSU effort were Kenai Fjords National Park (where subsistence activities were thought to be rare) and a small proposed parkland northwest of Glacier Bay National Monument.

[83] Williss, *"Do Things Right the First Time,"* 174ff. In 1980, Sen. Charles Mathias (R-Md.) explained the preserve concept this way: "Since the establishment of the National Park System in 1916, the consumptive use of wildlife resources with National Parks and National Monuments has been prohibited. However, when establishing new units of the National Park System the Congress has had a longstanding traditional practice of reviewing those values

and activities within new units which, if immediately curtailed, might result in substantial hardships to the local residents of the area. Congress has [therefore] authorized the continuation of certain uses within new parks and monuments which would be prohibited under traditional National Park Service management policies." *Congressional Record*, August 18, 1980, S 11135. John Cook, in an April 18, 2001 interview, noted that Dick Curry, a Nixon appointee with the Interior Department in Washington, was largely responsible for developing and selling the preserve concept.

[84] Williss, *"Do Things Right the First Time,"* 122; Frank B. Norris, *Isolated Paradise; An Administrative History of the Katmai and Aniakchak National Park Units* (Anchorage, NPS, 1996), 443-45.

[85] John Kauffmann interview, April 29, 1999; Williss, *"Do Things Right the First Time,"* 166-67. As part of that agreement, NPS planners initially proposed that subsistence uses be banned in Lake Clark National Park. The Alaska Area Director, however, overrode that decision.

[86] *Congressional Record* 124 (May 16, 1978), 14009; "A Brief History; Why Alaska Has a Subsistence Law," *Alaska Fish and Game* 21 (November-December 1989), 11.

[87] Alaska House of Representatives, Special Committee on Subsistence, *Draft Report of the Special Committee on Subsistence; History and Implementation of Ch. 151, SLA 1978, the State's Subsistence Law* (May 15, 1981), 15-16.

[88] Mil Zahn, "Advisory Committees; a Report to the Boards of Fisheries and Game," November 18, 1981, 3, in "ADF&G Regional Councils through FY 86" folder, AKSO. Zahn's report suggests that advisory board funding began in 1974; initially modest, funding dramatically increased in the late 1970s and early 1980s.

[89] Alaska House of Representatives, *Draft Report of the Special Committee on Subsistence* (1981), 2-3, 10-12, 16; Morehouse and Holleman, *When Values Conflict*, 12.

[90] Alaska House of Representatives, *Draft Report of the Special Committee on Subsistence* (1981), 11; Morehouse and Holleman, *When Values Conflict*, 13. See *State of Alaska v. Tanana Valley Sportsmen's Association*, in *Pacific Reporter*, 2nd series, vol. 583 [1978], pp. 854-60. In issuing his opinion in the lawsuit, Chief Justice Robert Boochever noted that "many" Alaska Natives "eke out a livelihood by reliance on fish and game. A few non-Natives have adopted similar means of livelihood."

[91] Alaska House of Representatives, *Draft Report of the Special Committee on Subsistence* (1981), 13-14.

[92] *Ibid.*, 8.

[93] Alaska House of Representatives, Interim Committee on Subsistence, *Final Report of the Interim Committee on Subsistence, Alaska Tenth Legislature, Second Session*, n.d. (ca. January 1978), 3-7, 11.

[94] Such a user, it appeared, could be either a rural or urban resident; and as part of the bill's legislative history, Rep. Anderson assured Fairbanks residents that they would be protected by the subsistence priority.

[95]

Alaska House of Representatives, Special Committee on Subsistence, *Final Report on Activities During the 1979 Interim* (January 25, 1980), 1, 16; Alaska Boards of Fisheries and Game, *Proposed Regulatory Changes Governing Subsistence Use of Fish and Game Resources, Advisory Committee Bylaws and Regional Resource Councils, to be Considered in Anchorage, Alaska, from March 24 Through March 28, 1979*. In February 1979, the House Special Committee on Subsistence submitted a bill (HB 199) intended to establish a Division of Subsistence Hunting and Fishing. A month later, it passed the House on a 24-15 vote. The measure stalled in the Senate, however, and was never enacted. The Subsistence Division was finally established, via administrative means, in July 1981 (see Chapter 5).

[96] Williss, *"Do Things Right the First Time,"* 157, 170, 172-74, 179-80.

[97] *Ibid.*, 174-75; *Congressional Record* 123 (January 4, 1977), 261-62.

[98] *Congressional Record* 126 (November 12, 1980), H 10545. Udall followed up these remarks that day by noting, "We made good on that promise" by including "a detailed subsistence title," explained below.

[99] H.R. 39, January 4, 1977, in *Public Law 96-487, Alaska National Interest Lands Conservation Act Legislative History, Vol. I*, pp. 207, 222-25; Williss, *"Do Things Right the First Time,"* 174-75.

[100] *Congressional Record* 123 (January 4, 1977), 261-62.

[101] As Udall noted in Congressional testimony, "We created a special new category, park preserves for the sole and only purpose of permitting sport hunting to continue." But some sport hunting groups remained unhappy. Alternative House bills in both the 95th and 96th congresses proposed that virtually all of Alaska's lands would be open to sport hunting, and at least one Congressman supporting those views chafed at language "giving priority in subsistence uses on public lands over the consumptive uses in the taking of fish and wildlife." *Congressional Record*, May 2, 1979, E 2013; May 4, 1979, H 2694.

[102] Williss, *"Do Things Right the First Time,"* 179; S. 1787, June 30, 1977, in *ANILCA Legislative History, Vol. III*, p. 75.

[103] Williss, *"Do Things Right the First Time,"* 196-97.

[104] "Statement of Hon. Jay S. Hammond, Governor of the State of Alaska," August 20, 1977, in *ANILCA Legislative History, Vol. XV*, 18-21; Donald Mitchell interview, May 13, 2002.

[105] Williss, *"Do Things Right the First Time,"* 191, 195.

[106] *Ibid.*, 187, 197-98; H.R. 39, October 12 and October 28 (1977) Committee Prints, in *ANILCA Legislative History, Vol. I*, 288, 544. Newly-appointed NPS Director William Whalen, during this period, commented that H.R. 39 was generally sensitive to subsistence. He felt, however, that mechanisms included in the bill were too specific and should instead be established through departmental policy and regulations.

[107] The exact language pertaining to the various park units differed slightly; the Kenai Fjords proposal, for example, offered "to provide opportunities for continued subsistence uses," while at Kobuk Valley, the bill proposed "to protect subsistence resources to assure continued viability of resources for continued subsistence uses."

[108] H.R. 39, October 12 and October 28 (1977) Committee Prints, in *ANILCA Legislative History, Vol. I*, 288, 544.

[109] H.R. 39, October 28, 1977 Committee Print, in *ANILCA Legislative History, Vol. I*, 627-646.

[110] *Congressional Record* 123 (December 15, 1977), 39072.

[111] *Congressional Record* 124 (February 23, 1978), H 1483. Udall later repeated a similar notion, stating that "for the first time in the history of the Republic, Congress would grant to a State the right to manage fish and wildlife on public lands of the United States." *Congressional Record*, May 4, 1979, H 2697.

[112] *Congressional Record* 124 (January 31, 1978), H 450. Also see *Congressional Record* 124 (May 15, 1978), 13780. Later that year, Udall noted that "the language of Title VII of the House bill represents a very carefully balanced compromise of the views of the two Committees, the State of Alaska, and rural Alaskans. Any significant alteration could be extremely unsettling and have far-reaching consequences." *Congressional Record* 124 (August 8, 1978), H 8124.

[113] H.R. 39, February 15, 1978, in *ANILCA Legislative History, Vol. II*, 13-25, 81-97; Williss, *"Do Things Right the First Time,"* 199.

[114] As noted below, the version of H.R. 39 that was issued in mid-February 1978 expunged all reference to race; as a result, the three criteria—none more important than any other in this version—were "customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources." H.R. 39, February 15, 1978, Sec. 704(c)(3)(C).

[115] *Congressional Record* 126 (November 12, 1980), H 10545-46. Also see George C. Coggins and Robert L. Glicksman, *Public Natural Resources Law* (Environmental Law Series), Release No. 14 (October 1996), 18-37 and 18-38.

[116] Mitchell interview, May 13, 2002.

[117] *Congressional Record* 124 (May 17, 1978), H 4103. Morris Udall made a similar promise, as noted in the *Congressional Record* 124 (June 21, 1978), E 3361. After Congress passed its final (1980) bill, Udall stated that "although the Federal and State subsistence management system is racially neutral, it is important to recognize that the primary beneficiaries ... are the Alaska Native people. ... The subsistence title would not be included in the bill if non-Native subsistence activities were the primary focus of concern." It was "included in recognition of the ongoing responsibility of the Congress [which is] consistent with our well recognized constitutional authority to manage Indian affairs." *Congressional Record*, November 12, 1980, H 10545.

[118] Later versions of HR 39 would clarify the rural priority; section 701 of the House-passed bill in May 1979, for example, stated that "the taking of fish and wildlife ... by rural residents shall be the first priority consumptive use...." By December 1980, the word "rural" had become even more firmly entrenched; it is found in sections 801, 802, and 803 of the Alaska National Interest Lands Conservation Act.

[119] Williss, *"Do Things Right the First Time,"* 200-04; H.R. 39, May 19, 1978, in *ANILCA*

Legislative History, Vol. II, 432, 521-39. This bill, somewhat restrictive, allowed sport hunting in national preserves only by specific action of the Interior Secretary.

[120] Williss, *"Do Things Right the First Time,"* 205-06.

[121] Protecting "the viability of subsistence resources" in the three proposed park units was a far cry from stating that subsistence was an avowed purpose in them (as H.R. 39 had done). See the *Congressional Record*, November 12, 1980, H 10547.

[122] U.S. Senate, *Designating Certain Lands in the State of Alaska as Units of the National Park, National Wildlife Refuge, National Wild and Scenic River, and National Wilderness Preservation Systems, and for Other Purposes; Report of the Committee on Energy and Natural Resources*, Report No. 95-1300 (October 9, 1978), 26-32, as noted in *ANILCA Legislative History*, vol. XXXIII, 582-88. This was the first committee-passed bill that contained the term "traditional." The bill did not, however, define "traditional" or specifically suggest how it might be applied.

[123] U.S. Senate, *Designating Certain Lands in the State of Alaska*, Report 95-1300 (October 1978), 124, 134-37. All of the drainages named in the Senate report were more accessible to Anaktuvuk Pass than any other settlement; almost all flowed north out of the Brooks Range.

[124] U.S. Senate, *Designating Certain Lands in the State of Alaska...*, (Senate Report No. 95-1300), October 1978), as noted in *ANILCA Legislative History*, Vol. XXXIII, 582-88. Subsistence management provisions in H.R. 39 in the 95th Congress had consistently been included in Title VII, but S. 9 as reported by the Senate committee in October 1978 included these provisions in Title VIII because the bill contained a provision (Title IV) for BLM conservation units that H.R. 39 had not considered.

[125] Williss, *"Do Things Right the First Time,"* 207-13.

[126] *Ibid.*, 214-18.

[127] *Congressional Record*, January 15, 1979, H 32-40. The proclamations for the various monuments where subsistence uses were sanctioned contained nearly identical verbiage on the theme: "The land withdrawn and reserved by this Proclamation for the protection of the ... phenomena enumerated above supports now, as it has in the past, the unique subsistence culture of the local residents. The continued existence of this culture, which depends on subsistence hunting, and its availability for study, enhance the historic and scientific values of the natural objects protected herein because of the ongoing interaction of the subsistence culture with those objects. Accordingly, the opportunity for the local residents to engage in subsistence hunting is a value to be protected and will continue under the administration of the monument."

[128] H.R. 39, January 15, 1979, in *ANILCA Legislative History, Vol. III*, 757-69.

[129] H.R. 39, May 24, 1979, in *ANILCA Legislative History, Vol. VII*, 24, 96-110. As Udall noted, Title VII of this bill was "based on the concepts originally developed in October of 1977. The major change is the elimination of a required priority for Alaska Natives." *Congressional Record*, May 4, 1979, H 2698.

[130] H.R. 39, May 24, 1979, in *ANILCA Legislative History, Vol. VII*, 24, 99. It could be argued that a major function of the "regulatory subsistence boards" (as noted in the January

1977 version of H.R. 39) and the local and regional subsistence boards (noted in Committee Print No. 2 on October 28, 1977) would be the regulation of activities in the various subsistence zones. These proposed zones, however, were not limited to NPS-administered areas, and the NPS was never specifically identified in Title VII of either bill.

[131] Hammond's 1971 bill was SB 36; the bill Egan vetoed in 1972 was a variation of HB 185. See *Anchorage Daily Times*, March 1, 1979, 43, and Ronald O. Skoog to Division Directors and Section Chiefs, September 2, 1977, in "Regional Boards, 1977" file, Series 537, RG 11, ASA.

[132] Hammond testimony, August 20, 1977, in *ANILCA Legislative History*, vol. XV, 20. In an August 1977 memo to his department heads, Hammond warned that "it is imperative the State structure a legislative proposal to counter [federally-directed] alternatives. ... Accordingly, I am not asking to be told why the Satellite Board System cannot work but rather how we can make it work. ... [We must get] some of the Natives to back off supporting the ethnic subsistence councils and federal management proposed in the Udall bill." Jay Hammond to Ron Skoog, et al., August 25, 1977, in "Regional Boards, 1977" file, Series 537, RG 11, ASA.

[133] Alaska Department of Fish and Game, *1978 Annual Report*, 6; RuralCAP, *What Happens Next? A Special Conference on Subsistence, December 6, 7, and 8, 1978* (Juneau?, the author, c. 1979), 13-15. Nunam Kitluksisti, based in Bethel, was an environmental program of the Association of Village Council Presidents.

[134] *Alaska House Bill History*, 1979-80; *Anchorage Daily Times*, March 1, 1979, 43; March 16, 1979, 53. Neither HB 193 nor HB 304 were acted upon after March 15, 1979.

[135] Alaska House of Representatives, Special Committee on Subsistence, *Interim Committee Newsletter No. 4* (September 1979), 22.

[136] *Congressional Record* 125 (April 30, 1979), H 2445.

[137] Williss, *"Do Things Right the First Time,"* 230-32.

[138] U.S. Senate, *Alaska National Interest Lands*, Report No. 96-413, 6-10.

[139] *Ibid.*, 147-48, 156-58.

[140] *Ibid.*, 34-40. A full description of the differences between the House-passed version of H.R. 39 and the Senate committee bill is included on pp. 232-35 of this document. The *Congressional Record* for August 4, 1980, S 10659 noted that the committee amendment, as it appeared that day, differed from the May 1979 version of H.R. 39 in two ways: how it related "to subsistence hunting by local residents within national parks and monuments," and "the means for enforcement of the subsistence preference." The *Congressional Record* for August 19, 1980, S 11199 largely repeats this discussion.

[141] U.S. Senate, *Alaska National Interest Lands*, Report No. 96-413, 233, 235. Two years later, in clarifying remarks subsequent to the bill's passage, Senator Stevens provided additional details on these concepts: "It is well recognized that habitat manipulation and predator control and other management techniques frequently employed on refuge lands are inappropriate within National Park or National Park Monuments. Section 815(1) recognizes this difference by providing that the level of subsistence uses within a National Park or

National Park Monument may not be inconsistent with the conservation of 'natural and healthy' fish and wildlife populations within the park or monument, while within National Wildlife Refuges the level of subsistence uses of such populations may not be inconsistent with the conservation of 'healthy' populations. Nothing in the phrase 'in their natural diversity' in Title III [the Fish and Wildlife Service title] is intended to disrupt the well-defined and long-recognized difference in the management responsibilities of the National Park Service and the Fish and Wildlife Service." *Congressional Record* 126 (December 1, 1980), S 15131. These and other concepts stressing the NPS's higher standards are included in Roger J. Contor, "Remarks to the Alaska Board of Game," December 2, 1984, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[142] Williss, *"Do Things Right the First Time,"* 232-35; *Congressional Record*, August 18, 1980, S 11116; August 19, 1980, S 11185, 11188-89. Sen. Stevens voted against the final bill; at the same time, however, he told other senators that "It is my hope now that "the Members [of the House] who have worked long and hard on this subject will see fit to seek approval by the House of the bill that will pass this body today."

[143] Williss, *"Do Things Right the First Time,"* 236-37.

[144] It may be recalled that back on October 12, 1977, Committee Print No. 1 of H.R. 39 stated that Bering Land Bridge, Cape Krusenstern, and Kobuk Valley were the same three units for which subsistence was sanctioned.

[145] P.L. 96-487, 94 Stat. 2377-83, 2426; *Congressional Record* 126 (November 21, 1980), H 11114-15; December 11, 1980, H 12351-52. The Senate's committee bill and the bill that became law were virtually identical in their approach toward subsistence; as Sen. Jackson noted after passage of the Senate bill, "While some technical changes have been incorporated, ... the subsistence title ... is taken almost entirely from the committee reported bill." Sen. Gravel agreed, noting that the latest substitute had "several minor changes to clarify traditional state and federal fish and wildlife management responsibilities." *Congressional Record* 126 (August 18, 1980), S 11118-19, S 11138.

[146] *Congressional Record* 126 (August 18, 1980), S 11135. Mathias's report, from which this paragraph was quoted, was based on the Senate Committee report, supplemented by material from the Interior Department. The "Subsistence Council" to which Mathias referred did not survive into the final bill.

[147] *Congressional Record* 126 (August 19, 1980), S 11198-99.

[148] *Congressional Record* 126 (August 19, 1980), S 11185; September 9, 1980, H 8638.

[149] As Frank Williss noted in *"Do Things Right the First Time"*, p. 169, Ted Swem had served as Assistant to the NPS Director for Alaska until his retirement in February 1976. William C. Everhart, a career NPS historian, replaced Swem on an interim basis until November 1977, when Contor assumed the position.

[150] Roger J. Contor, "Remarks to the Alaska Board of Game," December 2, 1984, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS. It is unsure which "weeks when Title VIII was being formulated" Contor refers to; perhaps these were in October 1977 and January 1978. The *Senate Report* on ANILCA and the *Congressional Record* resume of the bill's provisions were written in November 1979 and November 1980, respectively, and are repeatedly referenced above. In an April 11, 2001 interview, Contor noted that while conservation groups were strong supporters of NPS proposals to establish park units with

large acreages, they were less enthusiastic about guaranteeing traditional "park values" within the park units. According to Contor, conservation leaders were willing to sacrifice these park values in order to obtain large park units; they evidently hoped, by doing so, that they would be able to tighten up the subsistence provisions at some later date.

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Alaska Subsistence

A National Park Service Management History

Chapter 5:
INITIAL SUBSISTENCE MANAGEMENT EFFORTS (continued)

Notes — Chapter 5

[1] Williss, *"Do Things Right the First Time,"* 218; *Federal Register* 43 (December 5, 1978), 57009-57132. The NPS, as a result of the proclamation, became the instant steward of 40,780,000 new acres of Alaska land. As the *Congressional Record* noted on January 15, 1979, p. H 41, no provision was made for subsistence at Kenai Fjords (a 570,000-acre monument) because "there is no record of subsistence activity."

[2] *Anchorage Daily News*, December 7, 1978, 1; *Federal Register* 44 (June 28, 1979), 37743; Williss, *"Do Things Right the First Time,"* 224.

[3] *Federal Register* 43 (December 26, 1978), 60252-58. NPS and F&WS officials knew they were short-circuiting a public process by implementing the rule immediately; to delay, however, would have been "impractical and contrary to the public interest. Furthermore, good cause exists for making these interim regulations effective immediately." (See pp. 60252 and 60255.) Bill Brown, in an April 18, 2001 interview, noted that many rural Alaskans, in the wake of the December 1 monument proclamations, directed their anger—rightly or wrongly—at the NPS. Brown and other NPS employees were particularly vulnerable during this period, because they were asked to physically distribute the interim regulations to villages and to isolated individual dwellings throughout rural Alaska.

[4] *Congressional Record* 125 (January 15, 1979), H 41.

[5] William E. Brown interview, July 14, 1999; Williss, *"Do Things Right the First Time,"* 224; *Federal Register* 44 (June 28, 1979), 37732-37751. The proposed rule was also published in the *Congressional Record* 126 (July 23, 1980), S 9585-98; Sen. Mike Gravel (D-AK) commented on the regulations that same day (S 9585).

[6] *Federal Register* 44 (June 28, 1979), 37734; Alaska House of Representatives, Special Committee on Subsistence, *Interim Newsletter No. 4* (September 1979), 1. The agency held its Kotzebue meeting on September 6. Full-page advertisements preceded the all-day Anchorage and Fairbanks meetings, which were held on August 15 and 16, respectively, before an administrative law judge. According to newspaper accounts, most speakers railed against ANILCA language stating that rural residents had a preferential right to subsistence resources; those compiling management regulations, however, had no latitude to override Congress's clear intent on this matter. *Anchorage Daily News*, August 4, 1979, A7; *Anchorage Daily Times*, August 15, 1979, 1-2; August 16, 1979, A1, A12.

[7] Bob Gerhard to author, email, March 13, 2000.

[8] *Federal Register* 44 (June 28, 1979), 37736-37. The date March 25, 1974 is significant because Public Land Order 5418, issued on that date, closed to settlement all remaining public lands in Alaska. The NPS recognized that during the early 1970s "there was some confusion as to the status of land. Therefore, the March 25, 1974 date represents the most equitable cut-off point."

[9] *Ibid.*, 37737-38.

[10] *Ibid.*, 37734. The AOA comments were not reflected in the language of the June 1979 proposed rule because they were contrary to specific language in the various presidential proclamations.

[11] *Ibid.*, 37735.

[12] The number of designated resident zone communities in the various national monuments was as follows: Aniakchak, 2; Bering Land Bridge, 4; Cape Krusenstern, 3; Denali, 2; Gates of the Arctic, 7; Glacier Bay, none; Katmai, 4; Kobuk Valley, 5; Lake Clark, 2; Noatak, 3; Wrangell-St. Elias, 10; and Yukon-Charley, 3. Of the 45 listed communities, six were listed twice: Kivalina, Kotzebue, and Noatak were proposed as resident zone communities for both the Cape Krusenstern and Noatak park units, while Ambler, Kobuk, and Shungnak were listed as resident zone communities for both the Gates of the Arctic and Kobuk Valley park units. Stanley Leaphart, the longtime head of the state-sponsored Citizens' Advisory Commission on Federal Areas, stated in a 1989 meeting that the NPS had chosen these communities based on 1) the various Cooperative Park Studies Unit subsistence studies prepared for the NPS in the mid- to late 1970s, 2) the various final environmental statements prepared in 1974-75 for proposed NPS units, and 3) the Interior Department volume, *Final Environmental Supplement, Alternative Administrative Actions, Alaska National Interest Lands* (Washington, the author), c. 1978. Leaphart noted that the NPS "also reviewed information from several of its employees who had studied the subsistence lifestyle for years and in some cases who lived in the bush for years," and the agency also "interviewed state and local people knowledgeable about the subsistence lifestyle." GAAR SRC minutes, November 16-17, 1989, 10-11.

[13] *Federal Register* 44 (June 28, 1979), 37735, 37742-43, 37751. A second exception for aircraft—on the Malaspina Forelands near Yakutat—was mentioned in Senate Report 96-413 and in the November 12, 1980 *Congressional Record*, but it was not part of the 1979 regulations. (See Chapter 6, Section E.)

[14] Williss, *"Do Things Right the First Time,"* 255-56; *Anchorage Daily Times*, February 8, 1979, 45. Whalen noted that Cook was the chairman of the agency's Native American Policy Committee and that he was nominated, in part, because of his concern for the culture and traditions of Native Americans. His grandfather was Cherokee; he had lived for years on the Navajo Reservation; and as noted in Chapter 2, he had compiled a 1969 report for NPS Director George Hartzog on Native American-NPS relations. William E. Brown interview, July 14, 1999; John Cook interview, April 18, 2001; John E. Cook, "Institutional Memories for Managers," *CRM Bulletin* 16:1 (1993), 14-16.

[15] Williss, *"Do Things Right the First Time,"* 219, 223-24; *Anchorage Times*, December 15, 1978, 1; March 29, 1979, 51; *Anchorage Daily News*, August 1, 1979, 3. The largest demonstration in a park unit was held on January 13-14, 1979, when the "Great Denali-McKinley Trespass" was held in the community of Cantwell and on nearby lands within the boundaries of Denali National Monument. The demonstration, organized by the ad hoc Real Alaska Coalition, attracted some 1,500 protestors. It was monitored by a small uniformed

group of NPS rangers, primarily in Cantwell, and a larger contingent of agency personnel ready to respond if needed. A number of participants were surprised to learn that many supposedly prohibited activities were permissible in the new monuments. Despite a few overt acts of civil disobedience, no arrests were made. *Anchorage Daily News*, December 13, 1978, 2; January 15, 1979, 1, 6; *Anchorage Times*, January 14, 1979, A1, A2; January 15, 1979, A3.

[16] Williss, *"Do Things Right the First Time,"* 275.

[17] The three rangers were Charles A. Budge, who served as both ranger-in-charge at Wrangell-St. Elias National Monument and acting superintendent at Denali National Monument; Paul F. Haertel, who was both ranger-in-charge at Lake Clark and operations chief in the Alaska Area Office; and Charles M. (Mack) Shaver, who became the ranger-in-charge of the three northwestern Alaska monuments. Budge and Haertel, hired in 1979, and Shaver, hired in 1980, became superintendents of Alaska park units within weeks of ANILCA's passage. Williss, *"Do Things Right the First Time,"* 286-87; John E. Cook interview, April 18, 2001.

[18] Williss, *"Do Things Right the First Time,"* 280.

[19] This total was approximately 1.2 million acres greater than had been designated in December 1978. Of the new parklands open to subsistence activities, 21,774,000 acres were in five national parks, 698,000 acres were in two national monuments, and 18,986,000 acres were in ten national preserves. As noted in Chapter 4, the only newly-designated areas not open to subsistence activities were the additions to Glacier Bay and Katmai national parks, plus Kenai Fjords National Park.

[20] *Federal Register* 46 (June 17, 1981), 31836. Similar verbiage is stated in the *FR*, January 19, 1981, 5642.

[21] *Federal Register* 46 (January 19, 1981), 5655. Paleck was the only team member not based in Washington.

[22] As one element of the legislative history, Sen. Mike Gravel (D-AK) stressed that "the conservation units designated in this bill in Alaska are fundamentally different than those we have designated in the past in the lower 48 states. ... I hope that this Congress is putting the managing agencies on notice that the goal of the managing agencies should not be to bring the various parks and refuges in Alaska into "conformity" with the uses and regulations which might be appropriate in other units outside of Alaska—that the intent of the Congress is to preserve the differences outlined and accommodated for in this legislation in coming years." *Congressional Record* 126 (August 19, 1980), S 11186.

[23] *Anchorage Times*, January 17, 1981, B4; *Federal Register* 46 (January 19, 1981), 5642. Proposed regulations for the newly-established wildlife refuges (which were to be administered by the Fish and Wildlife Service) were issued the same day.

[24] *Federal Register* 46 (January 19, 1981), 5642-65.

[25] William E. Brown interview, April 18, 2001.

[26] *Federal Register* 46 (June 17, 1981), 31836, 31854. In addition to the written comments, four petitions containing a total of 622 signatures were submitted.

[27]

Final regulations applicable to both NPS and F&WS units were issued on June 17; they became effective on the day they were issued.

[28] *Federal Register* 46 (June 17, 1981), 31836; Resource Manager to Supt. DENA, January 13, 1986, in DENA SRC files.

[29] The final rule noted that most of these sections "do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. ... It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect." *Federal Register* 46 (June 17, 1981), 31839-40.

[30] *Federal Register* 46 (June 17, 1981), 31840-41, 31847-50, 31853. Congressional intent regarding the terms "healthy" and "customary trade" is discussed in Senate Report 96-413 (November 14, 1979), 232-34.

[31] *Federal Register* 46 (June 17, 1981), 31840-41, 31849, 31860. According to William Horn, the only guidance that Congress had provided—courtesy of the Senate Committee report, page 233—was that Anchorage, Fairbanks, Ketchikan and Juneau were urban and that Dillingham, Barrow, Bethel, Kotzebue, and Nome were rural. Harold M. Brown to Dennis Kelso, October 28, 1985, in "1986 Federal Assumption Project" folder, AKSO-RS.

[32] *Federal Register* 46 (June 17, 1981), 31840, 31849; William E. Brown interview, April 18, 2001.

[33] The *Federal Register* for June 17, 1981 (p. 31841) describes the liberalization process that took place between the interim regulations (*FR* June 28, 1979, 37742, 37749), the proposed final regulations (*FR* January 19, 1981, 5662), and the final regulations (*FR* June 17, 1981, 31860-61). This process expanded the way in which resident zones were determined: from "available information and research" to a consideration of "all relevant evidence concerning a community's qualification...". By doing so, political factors played a greater role in determining which communities would be included as resident zones.

[34] *Federal Register* 46 (June 17, 1981), 31840-41, 31850, 31863-64. As noted earlier, the regulations proposed in June 1979 noted 45 resident zone communities, but 14 of those communities were located near national preserves, which in the 1981 regulations were not subject to resident zone status. The specific number of resident zone communities per park unit in the June 1981 regulations was as follows: Aniakchak, 5 (an increase of 3 since June 1979); Cape Krusenstern, 3 (same); Denali, 4 (+2); Gates of the Arctic, 10 (+3); Kobuk Valley, 7 (+2); Lake Clark, 6 (+4); and Wrangell-St. Elias, 18 (+8). Of the 53 communities listed, four were noted twice: Ambler, Kobuk, and Shungnak were resident zone communities for both Gates of the Arctic and Kobuk Valley, and Kotzebue served as a resident zone community for both Cape Krusenstern and Kobuk Valley.

[35] On December 2, 1980, Interior Secretary Cecil Andrus issued a Secretarial Order that officially changed the NPS's Alaska Area Office into the Alaska Regional Office, and John Cook's position changed from Area Director to Regional Director. Williss, *"Do Things Right the First Time,"* 256.

[36] The first Yukon-Charley Rivers headquarters, for example, was a two-room historic cabin with no telephone; heat was provided a wood-fed barrel stove, but even so, "everything froze on the floor all winter long." Williss, *"Do Things Right the First Time,"* 287-89; NPS Budget Justification Book for FY 1981; Steve Ulvi to author, December 28, 2001. First-year budgets for the new, standalone park units ranged from $98,400 (for Bering Land Bridge National

Preserve) to $609,100 (for Wrangell-St. Elias National Park and Preserve).

[37] William E. Brown interview, July 14, 1999.

[38] *Ibid*. Brown summarized the NPS's approach during this period as follows: "show the flag, keep a smile on your face, be educational, and don't march in with jack boots." Others active in the "brain trust" during the late 1970s included anthropologists G. Ray Bane and Richard K. Nelson (both of whom had been hired by Zorro Bradley) and oral historian William Schneider.

[39] William E. Brown interview, April 18, 2001.

[40] *Anchorage Times*, February 15, 1979, 40.

[41] Alaska House of Representatives, Special Committee on Subsistence, *Final Report on Activities During the 1979 Interim*, January 25, 1980, 45-50; Alaska House of Representatives, Special Committee on Subsistence, *Draft Report of the Special Committee on Subsistence; History and Implementation of ... the State's Subsistence Law*, May 15, 1981, 16-19; Paul Cunningham to Ron Skoog, April 18, 1979, in "Reading File, 1978-1979," Series 556, RG 11, ASA.

[42] *Anchorage Daily Times*, March 29, 1981, 2; Dennis Kelso, *Technical Overview of the State's Subsistence Program* (Division of Subsistence Technical Paper Number 64), 25; James A. Fall to author, email, July 21, 2000; Terry Haynes interview, April 7, 1999. In September 1979, the term "Subsistence Division"—apparently erroneously—first appeared on an ADF&G report (Gregory D. Moore, *Issue Background: Buckland Food Shortage*, Technical Paper Number 7).

[43] Alaska House of Representatives, Special Committee on Subsistence, *Final Report on Activities During the 1979 Interim*, January 25, 1980, 1-6. A 1981 minority report of the Special Committee on Subsistence stated that the committee had "such a built in pro-subsistence bias that it has failed to objectively evaluate many important aspects of the issue. We can not expect a fair or reasonable solution based on the performance of this committee thus far."

[44] Several bills introduced during 11th Alaska legislature (such as HB 315 and HB 544) promised to weaken the new law, but none got beyond the committee stage.

[45] The March 24, 1979 meeting included testimony by Jerry Gilliland, the DOI's Alaska representative; various subsistence users also spoke. *Anchorage Times*, March 25, 1979, A-2.

[46] Special Committee on Subsistence, Alaska House of Representatives, *Minority Report, Together with Additional Views to Accompany HB 343, An Act Repealing Laws Relating to Hunting and Fishing..."* May 15, 1981, 8; Alaska House of Representatives, Special Committee on Subsistence, *Draft Report of the Special Committee on Subsistence; History and Implementation of ... the State's Subsistence Law*, May 15, 1981, 13; Morehouse and Holleman, *When Values Conflict*, 14; ADF&G, *Alaska Hunting Regulations*, Booklet No. 20 (1979-1980), 7.

[47] A meeting of the "Southeast Interim Regional Advisory Council" had been held in Juneau on March 9, 1979, a month before the joint boards met. Later that year, meetings were held in Bethel (October 6-7), Fairbanks (October 16-17), and Soldotna (October 22). No meetings

were held that year in either southwestern Alaska (Bristol Bay) or the Arctic (Seward Peninsula to North Slope). "Reading File 1979," Series 556, RG 11, ASA. The joint board assigned most (although not all) of the advisory committees to one of six regions, but they were careful not to establish specific regional boundaries.

[48] Greg Cook to Members, Board of Fisheries and Board of Game, August 6, 1979, in "Reading File 1979," Series 556, RG 11, ASA. Members of the Board of Fisheries and Board of Game fought the regional-council idea. In an August 1979 letter, Fish Board chair Nick Szabo noted that "the extensive meetings and hearings on regional councils the last two years have indicated that the general public would prefer to upgrade the present system rather than take on this new system. ... I have no problem with 'joint advisory committee meetings' as long as we can continue our past activities at an adequate level. I do object to setting up a 'half assed' regional council system at the expense of other Board activities and obligations." Nick Szabo to Greg Cook, August 31, 1979, in "Reading File 1979," Series 556, RG 11, ASA.

[49] Ronald O. Skoog to Jay S. Hammond, April 10, 1979, in "Reading File 1978-1979," Series 556, RG 11, ASA; Alaska House of Representatives, Special Committee on Subsistence, *Final Report on Activities During the 1979 Interim*, January 25, 1980, 22; *Anchorage Times*, March 19, 1981, 12.

[50] The Tyonek case (Civ. Action No. 3AN-80-3073, Alaska Superior Court, Third Judicial District) was a significant step toward the recognition of subsistence fishing rights because, among its other provisions, it established that Tyonek villagers, who valued king salmon as an early summer food resource, would legally be able to harvest them. Following a moratorium on all harvest of upper Cook Inlet king salmon to promote stock recovery, the Alaska Board of Fisheries had decided to manage these king salmon runs as a sports fishery. Earlier assurances that the Tyonek people would be able to renew their king salmon harvest when the stock had recovered were not upheld in the board's actions, leading to the lawsuit. Taylor Brelsford to author, January 18 and February 12, 2002.

[51] *Madison v. Alaska Dept. of Fish and Game*, in *Pacific Reporter*, 2nd Series, vol. 696 (1985), pp. 171-72.

[52] *Anchorage Times*, March 4, 1982, B3.

[53] Michael T. Matthews (Alaska Division of Elections) to author, April 25, 2000; *Anchorage Times*, January 22, 1981, B8; January 23, 1981, B2.

[54] *Anchorage Times*, March 19, 1981, B3; March 29, 1981, A1, A3.

[55] *Alaska House Bill History*, 1981-1982, for HB 343. In addition to Barnes's proposal, two other bills that were intended to repeal the 1978 subsistence law were submitted during the 1981 session: Senate Bill 355, introduced on March 31 by Sen. Tim Kelly (R-Anchorage), and House Bill 615, introduced on June 19 by Rep. Samuel R. Cotten (D-Eagle River).

[56] Matthews letter, April 25, 2000; *Anchorage Times*, March 2, 1982, A1. News that the petitions had been successfully completed was announced to the press three days before Miller officially certified the initiative.

[57] These meetings are referenced in a transcription of an April 5, 1982 speech by Interior Undersecretary William Horn to the Alaska Boards of Fish and Game, which are attached to a letter from Harold M. Brown to Dennis Kelso, October 28, 1985, in "1986 Federal

Assumption Project" folder, AKSO-RS.

[58] "Department of the Interior Report on the Implementation of Title VIII of ANILCA — Subsistence Management and Use," 2, in *1983-84 806 Report*.

[59] As Alaska's fish and game chief told a militant states-rights supporter, "It is the State's and the Boards' position that we will comply with the minimum—I repeat, minimum—requirements of ANILCA in order to insure the maintenance of State fish and wildlife management authority on Federal lands. The Boards and the Department of Fish and Game are not willing to risk any of the State's management responsibilities to the Federal government." Ronald Skoog to Warren E. Olson, November 16, 1981, in "Delineation of Boundaries" file, Series 542, RG 11, ASA. The underscoring is that of Mr. Skoog.

[60] *Anchorage Times*, December 1, 1981, 1.

[61] Joint Boards of Fisheries and Game, Resolution 81-1-JB; *Alaska Administrative Code*, Vol. 5, 99.10.

[62] Joint Boards of Fisheries and Game, Resolution 81-1-JB; *Alaska Administrative Code*, Vol. 5, 99.10.

[63] "Position Statement," 2, in Alaska House of Representatives, Special Committee on Subsistence, *Minority Report, Together with Additional Views to Accompany HB 343, An Act Repealing Laws Relating to Hunting and Fishing..."* May 15, 1981; *Alaska Administrative Code*, Vol. 5, 96.200.

[64] ADF&G, *Alaska Hunting Regulations*, Booklet No. 23 (1982-83), pp. 56, 69-70, at ADF&G, Anchorage. The following year, the Game Board made a new subsistence provision, for caribou in GMUs 12, 13, and 14 (see Booklet No. 24, pp. 40-41).

[65] Horn testimony, p. 8, attached to Harold M. Brown to Dennis Kelso letter, October 28, 1985, in "1986 Federal Assumption Project" folder, AKSO-RS.

[66] "List of Advisory Committees by Regional Council," c. 1982; Robert W. Larson to [various] Advisory Committee Chairmen, February 9-18, 1982, in "ADF&G Regional Councils thru FY 1986" folder, AKSO-RS; Ron Skoog to Tony Vaska, July 28, 1982, in "Staff Support for Regional Councils" file, Series 542, RG 11, ASA.

[67] Section 808(a) of ANILCA noted that each person appointed to an SRC needed to be "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."

[68] James G. Watt to Jay S. Hammond, February 25, 1982, in U.S. Department of the Interior, *806 Report, ANILCA and Related History, 1983*, January 10, 1984, Attachment 1.

[69] On January 21, 1981, Watt picked Horn—a former member of Rep. Don Young's staff—to be his assistant on Alaska issues. He remained an undersecretary until July 1985, when he became the Assistant Interior Secretary with NPS responsibilities. He stayed in that position until July 1988. *Anchorage Times*, January 21, 1981, 1; NPS, *Historic Listing of National Park Service Officials*, May 1, 1991, 4.

[70] *Anchorage Times*, April 4, 1982, A4; April 5, 1982, A1, A6; Horn testimony, pp. 6 and 8,

attached to Harold M. Brown to Dennis Kelso letter, October 28, 1985, in "1986 Federal Assumption Project" folder, AKSO-RS; *Southeastern Log*, October 1985, B4.

[71] *Anchorage Times*, April 6, 1982, A1, A4. These regulations became effective on May 30, 1982.

[72] *Anchorage Times*, April 7, 1982, A1, A4; *Alaska Administrative Code*, Vol. 5, 99.020. Interior Department spokesman William Horn was reportedly "pleased with the boards' adoption of the regulation ... he did not object to the boards' definition of rural, but added that it was not required by the federal government at this time."

[73] *Anchorage Times*, May 14, 1982, A1, A4; William P. Horn to Morris K. Udall, January 10, 1984, in Morehouse and Holleman, *When Values Conflict*, 14.

[74] Horn noted that the basis of his decision was the 1979 Senate Committee report (Report 96-413, p. 272) which stated that "the Secretary must develop a capability to monitor both the status of fish and wildlife populations on the public lands harvested for subsistence uses and State regulatory and enforcement activity to provide the preference for subsistence uses.... The monitoring capability must enable the Secretary to aid in the identification of potential problems before fish or wildlife populations become threatened with depletion...." Horn evidently felt that the F&WS's expertise in monitoring, and the identification of potential fish and wildlife problems, made the agency most appropriate in this regard.

[75] "Department of the Interior, Report on the Implementation of Title VIII of ANILCA — Subsistence Management and Use," p. 17; attachment to William P. Horn to Morris K. Udall, *Section 806 Report*, January 10, 1984.

[76] Acting Regional Director, F&WS to Royce Purinton, October 26, 1984, in "ADF&G Regional Councils thru FY 1986" folder, AKSO-RS.

[77] Horn's decision, on a practical level, meant that the first coordinator of Alaska's federal subsistence activities was Keith Schreiner, who had headed the Region 7 (Alaska) F&WS office since early 1979. As noted in Appendix 1, other ad hoc federal subsistence coordinators during the 1980s—all F&WS regional directors—were Robert E. Putz, Robert E. Gilmore, and Walter O. Stieglitz. *Anchorage Times*, February 26, 1979, 7; Betty Barlond to author, email, July 18, 2000.

[78] State of Alaska, *Official Election Pamphlet for Districts D-F and 5-11* (Juneau, the author, 1982), 100; *Anchorage Times,* March 2, 1982, A1.

[79] A 1985 Division of Subsistence study disputed the 85% figure; it noted that 20.4% (not 15%) of Alaskans "participated in subsistence activities to some degree." Of the estimated 110,000 subsistence participants, slightly more than half of them (54.5%) were non-Native. Robert Wolfe, "Myths, What Have You Heard?" *Alaska Fish and Game* 21 (November-December 1989), 16.

[80] *Anchorage Times*, March 4, 1982, B3; *Juneau Empire*, November 3, 1982, 2; John Katz testimony, in Alaska House of Representatives, Special Committee on Subsistence, *Draft Report of the Special Committee on Subsistence; History and Implementation of ... the State's Subsistence Law*, May 15, 1981, 50-53; State of Alaska, *Official Election Pamphlet*, 1982, 101; *Southeastern Log*, May 1982, 8 and August 1982, 7; *Anchorage Times*, April 5, 1982, A6; April 6, 1982, A1.

[81] *Juneau Empire*, November 3, 1982, 2; Douglas Pryor (Alaska Divisions of Elections) telephone call, March 23, 2000.

[82] The only subsistence-related activity in the 1983 legislature was HB 266, sponsored by Mae Tischer (R-Anchorage), which was submitted on March 14. HB 266, "an act establishing personal consumptive use of fish and game and the highest and best use of fish and game and creating in the Department of Fish and Game a Section of Consumptive Use," never got beyond the committee stage. *Alaska House Bill History*, 1983-84.

[83] Don W. Collinsworth to Bill Horn, December 15, 1983, 4, in *1983 806 Report, ANILCA and Related History*; *Anchorage Times*, March 25, 1983, B-1.

[84] "Department of the Interior Report on the Implementation of Title VIII of ANILCA — Subsistence Management and Use," 5, in *1983 806 Report, ANILCA and Related History*.

[85] ANILCA provided for SRCs at Aniakchak National Monument, Cape Krusenstern National Monument, Denali National Park, Gates of the Arctic National Park, Kobuk Valley National Park, Lake Clark National Park, and Wrangell-St. Elias National Park.

[86] Robert Belous, "NPS Presentation to Joint Session, Board of Game and Board of Fisheries," December 1, 1981, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[87] Mil Zahn to Ronald O. Skoog, March 31, 1982; Skoog to John E. Cook, May 21, 1982; both in "SRC General, thru FY 1987" folder, AKSO-RS. Although the SRC members had been chosen by late May 1982, the Interior Secretary's appointees had not yet been formally nominated to their positions. A similar situation appears likely with the other SRC appointees. The various regional advisory council members knew that four of the seven parks (Denali, Gates of the Arctic, Lake Clark, and Wrangell-St. Elias) were located in more than one region; those four parks, as a result, would need fewer than three members from each council. Even so, the various councils appointed three members to each park or monument SRC, leaving to NPS officials the task of choosing the number of council members that would represent each region. Between May and November 1982, the NPS rationalized the appointments for these four parks. No documentation to support that process, however, could be found in either NPS or state files, so in late 1984 the process was re-described and re-justified. Roger Contor to NPS Superintendents, November 29, 1984, in "SRC General, thru FY 87" folder, AKSO-RS files.

[88] Another charter provision called for each to be renewed biennially. As a result, the Interior Secretary renewed each SRC charter on the following dates: July 2, 1984; November 19, 1986; February 10, 1989; February 21, 1991; January 19, 1993; January 19, 1995; and March 11, 1996. (Tardiness in renewing the charters during the 1980s meant that no SRC business was conducted between May and July 1984, between July and November 1986, and between November 1988 and February 1989.) Since 1996, charter reauthorizations have been unnecessary because of a clause (Section 301(a)) inserted into Public Law 102-525, which Congress passed in October 1992. That clause stated that "The provisions of section 14(b) of the Federal Advisory Committee Act ... are hereby waived with respect to any advisory commission or advisory committee establish by law in connection with any national park system unit during the period such advisory commission or advisory committee is authorized by law."

[89] Mary Lou Grier (Acting Director, NPS) to Secretary of the Interior, April 26, 1982; Donald Paul Hodel (Acting Secretary of the Interior), "National Park Service Subsistence

Resource Commission" [various charters], May 20, 1982; Russell E. Dickenson to Morris Udall, etc., May 27, 1982; all in "Subsistence, SRC, SRC Appointments, 82-90" folder, AKSO-RS.

[90] "Department of the Interior, Report on the Implementation of Title VIII of ANILCA — Subsistence Management and Use," p. 19; attachment to William P. Horn to Morris K. Udall, *Section 806 Report*, January 10, 1984.

[91] "Master Memorandum of Understanding Between the Alaska Department of Fish and Game, Juneau, Alaska and the U.S. National Park Service, Department of the Interior, Anchorage, Alaska." The MOU, which was signed by NPS Regional Director John E. Cook on October 5, 1982 and by ADF&G Commissioner Ronald O. Skoog nine days later, was reproduced as an appendix to most of the draft and final general management plans that NPS's Alaska Regional Office produced during the mid-1980s.

[92] William C. Welch to Walter Johnson, March 5, 1984, in "WRST SRC thru FY 86" folder, AKSO-RS. As noted in the NPS's Alaska Region Annual Report for 1982, the 63 SRC appointments were announced on October 5.

[93] "Department of the Interior Report on the Implementation of Title VIII of ANILCA — Subsistence Management and Use," in *1983 806 Report, ANILCA and Related History*.

[94] William E. Brown interview, July 14, 1999; NPS, "John Cook Named Superintendent at Great Smoky Mountains National Park" (press release), January 26, 1983; NPS, "Roger J. Contor Appointed Director for Alaska National Parks" (press release), March 10, 1983; Williss, *"Do Things Right the First Time,"* 170. It is ironic that Contor's brand of conservatism, which advocated the extension of the established NPS management framework to the Alaska parks, contrasted sharply with James Watt's form of conservatism, which supported states' rights and local user initiatives.

[95] Roger Contor interview, April 11, 2001; Lou Waller to author, December 20, 2001. Section 101(6)(b) of the March 27, 1978 act (Public Law 95-250) stated, in part, that the "protection, management, and administration of [NPS] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established...."

[96] NPS/Alaska Region Press Release, December 22, 1983. Louis Waller interview, July 25, 2000; Roger Contor interview, April 11, 2001.

[97] DENA/LACL SRC minutes, May 10, 1984, 1.

[98] There were seven SRCs, but both Kobuk Valley NP and Cape Krusenstern NM (as well as Noatak National Preserve, which had no SRC) were administered by the Northwest Alaska Areas office, based in Kotzebue.

[99] The first Aniakchak SRC meeting for which a quorum could be mustered was on March 5-6, 1985.

[100] SRC folders, AKSO-RS. When the SRCs met for the first time, they were already more than two years late in satisfying the Congressionally-imposed requirement for a subsistence hunting program. As noted above, both the state and federal governments had been responsible for that tardiness.

[101] Bill Welch to Alaska Board of Game, March 7, 1984, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS. As noted in ADF&G's *Alaska Hunting Regulations*, park boundaries—not GMU or other naturally-defined boundaries—had first been cited in the 1982-83 booklet, pp. 39 and 56.

[102] Roger J. Contor to Brenda Johnson, August 22, 1984, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[103] Don W. Collinsworth to Brenda Johnson, November 21, 1984; Johnson to Contor, November 19, 1984; both in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[104] Roger J. Contor, "Remarks to the Alaska Board of Game," December 2, 1984; Michael V. Finley, "Remarks to the Alaska Board of Game," December 5, 1984; both in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[105] Roger J. Siglin to ADF&G/Division of Boards, August 26, 1986, in "ADF&G Boards, Aug. 86-FY 88" folder, AKSO-RS.

[106] Roger Contor, in an April 11, 2001 interview, noted that his guiding philosophy toward subsistence was to guarantee the continuation of a subsistence lifestyle to all those who legitimately qualified. ("No one in the NPS wanted to disenfranchise anyone," he noted.) But he was worried, for example, that the subsistence regulations could not prevent rural residents from hunting trophy-sized sheep and selling the horns on the black market. And it also rankled him that subsistence regulations had no residency requirement associated with resident zone communities; given that reality, he openly worried that the resident zone communities might attract scores of new residents who would have immediate access to nearby game populations.

[107] Leslie Barber, "The Fine Print of Subsistence," *Alaska Magazine* 51 (September 1985), 18. Mr. Barber, at the time, worked for the state-sponsored Citizens Advisory Commission on Federal Areas.

[108] CAKR/KOVA SRC minutes, June 6, 1986, 3-4; CAKR SRC minutes, July 13, 1987, 2.

[109] *Congressional Record* 126 (September 9, 1980), 8637.

[110] CACFA, intended as a state watchdog on actions by Federal land management bureaus, was established by the Alaska Legislature in response to ANILCA's passage; the product of SB 36, it became operational on June 19, 1981. In 1998, with the passage of SB 236, the legislature extended the commission's life for another five years (until June 30, 2003), but the 21st Alaska legislature removed the commission's funding and it was deactivated on June 30, 2000. Gina Spartz (Boards and Commissions, Office of the Governor), email to author, April 9, 2002.

[111] *Federal Register* 49 (April 3, 1984), 13160. The Proposed Rule was written by Joseph Alston of the Alaska Regional Office and Andy Ringgold of the Branch of Ranger Activities in Washington, D.C.

[112] *Federal Register* 51 (September 19, 1986), 33474, 33483. Public hearings were held in Anchorage, Fairbanks, and Juneau on May 21, 23, and 25, respectively.

[113] *Federal Register* 51 (September 19, 1986), 33474; Joseph Alston to author, email, August 1, 2000.

[114] U.S. Fish and Wildlife Service, *Subsistence Management and Use: Implementation of Title VIII of ANILCA* (also known as the *Section 813 Report*), March 1985, Section VIII; *Federal Register* 50 (January 11, 1985), 1644-45; Subsistence Liaison, Alaska Region to Alaska Superintendents, June 6, 1985, in "SRC General, thru FY 87" folder, AKSO-RS.

[115] Bob Larson to Beth Stewart, June 23, 1983, in "Misc. Information Requests" file, Series 542, RG 11, ASA. The various Interior and Southeast regional council reports are in the "ADF&G Regional Councils thru FY 1986" folder, AKSO-RS.

[116] Acting Regional Director, F&WS to Royce Purinton, October 26, 1984; Southwest Regional Fish and Game Council, Meeting Announcement, February 1, 1985; both in "ADF&G Regional Councils thru FY 1986" folder, AKSO-RS. The Arctic regional advisory council coordinator position was filled in the spring of 1985. The staff coordinators operated from offices in Anchorage, Bethel, Dillingham, Fairbanks, Juneau, and Kotzebue. All were local residents, and the Bethel and Kotzebue staffers were bilingual. The first Interior Regional Coordinator, Daniel (Mitch) Demientieff from Nenana, has remained active in subsistence management issues, and since 1995 he has served as chair of the statewide, interagency Federal Subsistence Board. *Section 806 Report*, 1985, 7; *Section 813 Report*, 1985, V-6; Mitch Demientieff to Interior Regional Council, February 4, 1985, in "ADF&G Regional Councils thru FY 86" folder, AKSO-RS.

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Alaska Subsistence

A National Park Service Management History

Chapter 6:
MANAGING ALASKA'S SUBSISTENCE PROGRAM, 1985-1989 (continued)

Notes — Chapter 6

[1] English Bay is now called Nanwalek; the village council changed the name in February 1992.

[2] "Madison vs. Alaska Dept. of Fish and Game," in *Pacific Reporter, 2nd Series*, vol. 696 (St. Paul, West Publishing, 1985), 168-72; *Anchorage Times*, February 23, 1985, A1, A12; *Southeastern Log*, October 1985, B3; L. J. Campbell, "Subsistence: Alaska's Dilemma," *Alaska Geographic* 17:4 (1990), 83.

[3] *Alaska House Bill History*, 1985-86, for HB 288; *Anchorage Times*, February 28, 1985, B-1; *Juneau Empire*, March 29, 1985, 3. Sheffield submitted an identical bill (SB 231) for the Senate's consideration, which never got beyond the committee stage.

[4] *Juneau Empire*, April 8, 1985, 3; Terry Haynes (ADF&G) interview, April 7, 1999; *Anchorage Daily News*, December 23, 1989, A-12; Haynes to author, email, May 24, 2002.

[5] *Anchorage Times*, April 13, 1985, A-1, A-12; *Pacific Reporter*, 2nd Series, vol. 698 (1985), p. 174.

[6] F&WS, *806 Report*, 1985, 1-2. On August 29, 1986, the Alaska Supreme Court reversed the Appeals Court's decision in the *Eluska* case, as noted in the *Pacific Reporter*, 2nd Series, vol. 724 (1986), pp. 514-19. But by that time, the Alaska legislature, as mentioned below, had passed a revised subsistence law.

[7] *Alaska House Bill History*, 1985-86 for HB 288 and S 320; *Juneau Empire*, April 8, 1985, 3. Abood felt that "there's no reason why a guy from Spenard can't qualify as a subsistence user." *Juneau Empire*, June 17, 1985, 3; June 20, 1985, 2.

[8] See the following *Juneau Empire* articles: June 10, 1985, 1; June 17, 1985, 3; June 24, 1985, 1, 2, 16.

[9] *Southeastern Log*, October 1985, B-4; November 1985, B-14. Most of the 54 Tier II hunts in 1985 were located near Alaska's large population centers; only ten were held in areas away from the road and marine-highway network. Almost half of the Tier II hunts were for moose, while the remainder were for Dall sheep, mountain goat, caribou, and bison. USF&WS, *806 Report*, 1985, 3-4. A map of where the Tier II hunts were held is found in Lou Waller to Alaska Region Superintendents, January 31, 1986, 14, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS.

[10] Gale A. Norton (Office of the DOI Solicitor) to Harold M. Brown (Alaska Attorney General), April 4, 1986, in "1986 Federal Assumption Project" folder, AKSO-RS. As an explanation of the June 1 deadline, Horn noted that "we are persuaded that the spirit and intent of section 805(d) warrants a grace period in order to provide the State with a reasonable opportunity to make the necessary adjustments to its program. We have chosen as a deadline June 1, 1986, because it is roughly one year from the time the State legislature failed to rectify the State subsistence statute." William P. Horn to Honorable William Sheffield, September 23, 1985, in *806 Report*, 1985, 19.

[11] *Southeastern Log*, October 1985, B-3, B-4.

[12] *Juneau Empire*, March 6, 1986, 3.

[13] *Session Laws of Alaska*, 1986, Chapter 52, Secs. 6, 9, 10, 11; Alaska Statutes 16.05.940(23) and 16.05.940(32); Harold M. Brown to Elizabeth A. Stewart, September 12, 1986, in *806 Report*, 1986, 41-42.

[14] *Anchorage Times*, April 23, 1986, A-1, A-14; May 9, 1986, A-7; *Juneau Empire*, May 1, 1986, 2; *Alaska Senate Journal* 14 (1986), 2446-47.

[15] *Anchorage Daily News*, May 2, 1986, B-1; Robert Gilmore, "Press Conference, Anchorage, Alaska," May 9, 1986, in "Press Releases thru FY 93" file, AKSO-RS.

[16] Coghill's amendment stated that "... the taking of fish by residents for personal or family consumption by hook and line, or by dipnet where currently established, shall have a reasonable preference over other consumptive uses of the resource." *Alaska Senate Journal*, 1986, 2718.

[17] *Alaska House Bill History*, 1985-86 for HB 288; *Alaska Senate Journal*, 1986, 2716-20.

[18] *Anchorage Times*, May 10, 1986, A-1; *Juneau Empire*, May 12, 1986, 1, 16; *Alaska House Bill History*, 1985-86 for HB 288. The final bill was called SCS CSHB 288(Res) am(S): that is, the Senate Committee Substitute of the Committee Substitute for House Bill 288, Resources Committee, as amended by the Senate.

[19] *Juneau Empire*, May 12, 1986, 1; Chapter 52, *Session Laws of Alaska*, 1986; Terry Haynes to author, email, May 24, 2002. The rural definition was added to Alaska Statutes 16.05.940. In September 1986, Governor Sheffield forwarded the text of the newly-passed subsistence law to Assistant Interior Secretary William Horn. Two months later, Horn certified the new law's legitimacy. He stated that "the new legislation cures the problems arising from the Madison decision. ... I am therefore pleased to inform you that we have determined that the State's subsistence program is once again in full compliance with sections 803, 804 and 805 of ANILCA." William P. Horn to Bill Sheffield, November 7, 1986, in "ADF&G thru FY 92" file, AKSO-RS.

[20] F&WS, *806 Report*, 1986, pp. 1-2; Robert E. Gilmore to Donald R. Horrell, July 17, 1986, in "State Subsistence Management Activity, 1981-1986" folder, AKSO-RS. Gilmore noted that during the spring 1986 meeting, the game board "limited the number of rural/non-rural determinations to those communities or areas affected by hunting proposals (such as Nelchina caribou) under immediate consideration."

[21] F&WS, *806 Report* for 1986 (p. 2) and 1988 (p. 3). In its May-June 1986 meeting, the

game board designated Glennallen as non-rural, but the Tok Cutoff-Nabesna Road Advisory Committee protested the action, and on August 6 the board reversed its earlier decision. In March 1987, the joint board ruled that the 84-mile Parks Highway corridor between Cantwell and Nenana was non-rural; but a year later, prodded by local advisory committees, it reversed its decision in this case as well. The joint board also considered changing the status of Seldovia and Valdez, both of which had been ruled as non-rural in June 1986. In March 1988, the board decided to change Seldovia from non-rural to rural, but it refused to make a similar ruling regarding Valdez. Bill Ellis to Bill Sheffield, July 25, 1986, in "ADF&G Regional Council thru FY 86" folder, AKSO-RS; DENA SRC minutes, June 5, 1987, in AKSO-RS files; NPS News Release, August 7, 1986, in "WRST thru FY 87" file, AKSO-RS.

[22] F&WS, *806 Report*, 1989, pp. 3, 5-6. In its May-June 1986 meeting, the game board ruled that the "entire Kenai Peninsula road-connected area" was non-rural. In July, various Kenai-area Natives responded by filing a suit, *Kenaitze Indian Tribe vs. Alaska*, in which they challenged the State's definition of "rural area" as being inconsistent with the meaning of "rural" as stated in Section 803 of ANILCA. In July 1987 the District Court ruled in the State's favor, but in April 1989 a Court of Appeals judge gave the plaintiffs priority use over the Kenai Peninsula's "hooligan" [eulachon] and salmon resources. The state board, however, did not respond to the judge's ruling and thus continued to classify the road-connected portion of the Kenai Peninsula as non-rural.

[23] Morehouse and Holleman, *When Values Conflict*, p. 15. A map delineating rural versus non-rural areas was included in an ADF&G Division of Subsistence publication, "How Alaska's Subsistence Law Affected Hunting Regulations," March 1990, p. 4.

[24] As noted earlier, the three-tiered system operated as follows: When game was plentiful, no restrictions were necessary. In cases of mild shortages, Tier I hunts were authorized; here opportunities by rural subsistence were unaffected, while opportunities by all other users were curtailed or eliminated. And in cases of severe game shortages, Tier II hunts would rationalize game resources among qualified subsistence users according to the three criteria listed in the revised subsistence law. Those criteria were "customary and direct dependence on the fish stock or game population as the mainstay of livelihood," "local residency," and "availability of alternative resources." Morehouse and Holleman, *When Values Conflict*, 15; *Session Laws and Resolves of Alaska*, 1986, Chapter 52, Section 6.

[25] James A. Fall to author, email, July 21, 2000. The federal government's Final EIS (FSB, *Subsistence Management for Federal Public Lands in Alaska, Final EIS*, Vol. I (Anchorage, F&WS, February 1992, p. II-17) notes that "In 1989, the State made customary and traditional use determinations for most large wildlife resources for most of the state."

[26] As noted above, the director of the F&WS's Region 7 (Alaska) office, in Anchorage, had served as the Interior Secretary's representative on federal subsistence issues since August 1982.

[27] U.S. Fish and Wildlife Service, *ANILCA Section 806 Monitoring Report*, 1985, 8.

[28] Don W. Collinsworth to David Olsen, August 20, 1987, in response to 1985-1986 *Section 806 Monitoring Report*.

[29] F&WS, *Section 806 Subsistence Monitoring Report*, 1988, 8.

[30] Lou Waller to author, December 20, 2001.

[31] ADF&G Subsistence Specialist Terry Haynes, in a March 12, 2001 email to the author, defended the state's role. He stated that "If the federal government reduced or limited the ANILCA reimbursement levels to the state because of our track record in operating the regional councils, to my knowledge this was never brought to our attention. Perhaps federal officials who advised the congressional budget committees made such arguments, but I don't recall ever hearing such an explanation. I do know that [ADF&G] never hid the manner in which the funding was used; indeed, the fact that much of the funding was applied to subsistence data collection was a response to the need for such information to facilitate implementation of Title VIII and support the public advisory participation in subsistence management."

[32] Between 1983 and 1988, the following regional councils submitted annual reports: Arctic, none; Interior, 1983 and 1984; Southcentral, none; Southeastern, 1983, 1985, 1986, 1988; Southwestern, none; Western, none.

[33] F&WS, *Section 806 Subsistence Monitoring Report* for 1985 (pp. 7-10), 1986 (pp. 7-10), and 1988, (pp. 6-8); and various entries in the "ADF&G Regional Councils thru FY86" and "ADF&G Regional Councils, FY 87-90" folders, AKSO-RS.

[34] Morehouse and Holleman, *When Values Conflict*, 16.

[35] F&WS, *Section 806 Subsistence Monitoring Report* for 1985 (p. 8) and 1986 (pp. 7-9).

[36] See, for example, Ron Jolin to Dan Calhoun, April 22, 1985, in "ADF&G Regional Councils thru FY 86" folder, and Karen Brandt to Regional Council Members, December 30, 1986,in "ADF&G Regional Councils, FY 87-90" folder, both AKSO-RS.

[37] Walt Stieglitz, "Federal Agency Guidelines for Receiving and Responding to Regional Advisory Council Annual Reports;" in draft, August 26, 1988 (in "ADF&G Regional Councils, FY 87-90" folder) and in final, November 30, 1988 (in 1989 806 Report, Section E).

[38] See, for example, Acting Regional Director, F&WS to Royce Purinton, October 26, 1984, in "ADF&G Regional Councils thru FY 86" folder, AKSO-RS.

[39] The difficulties with the state's advisory system (as expressed by a non-Native) are encapsulated in a letter by the Southcentral Regional Council chairman to Governor Steve Cowper on September 7, 1989, in "ADF&G Regional Councils, FY 87-90" folder, AKSO-RS.

[40] Morehouse and Holleman, *When Values Conflict*, 15-16. As Taylor Brelsford noted in a January 18, 2002 letter to the author, RuralCAP (Rural Alaska Community Action Program, Inc.) played a major role in spotlighting rural residents' frustration with the state-managed regional council system.

[41] Morehouse and Holleman, *When Values Conflict*, 13; Terry Haynes (ADF&G) interview, April 7, 1999; James A. Fall, "The Division of Subsistence of the Alaska Department of Fish and Game: An Overview of its Research Program and Findings, 1980-1990," *Arctic Anthropology* 27 (1990), 70.

[42] Boyd Evison email, April 12, 2001. Of particular assistance to Waller during this period was G. Ray Bane, a management assistant who worked at both the Gates of the Arctic and

Northwest Areas offices. C. Mack Shaver (at NWAK) and James Pepper (at GAAR) also contributed to the formulation of NPS subsistence policies.

[43] KOVA-CAKR-GAAR SRC minutes, May 3, 1984, 1.

[44] *Ibid.*; ANIA SRC minutes, April 18, 1984; GAAR SRC minutes, May 4, 1984, 8.

[45] At Lake Clark, an NPS official stated that "there is very little actual subsistence hunting within the park itself, most of the hunting is done around in the preserve," while at Denali, the SRC chair noted that "we are lucky, at Denali, to have very very few people in the area who use the park for subsistence." DENA/LACL SRC minutes, May 10-11, 1984, 6; Florence R. Collins to Walter [Sampson], April 20, 1987, in DENA SRC file.

[46] CAKR SRC minutes, November 29, 1984, 7; February 1, 1985, 1. Later, CAKR's SRC raised the quorum to five. The SRC for WRST, and KOVA (and perhaps other parks as well) also decided that five members constituted a quorum. Walter Sampson to Robert Newlin, Noorvik, February 15, 1985, in KOVA SRC file; WRST SRC minutes, May 16, 1984, 5.

[47] WRST SRC minutes, November 1, 1984, 2; CAKR SRC minutes, February 1, 1985, 1; January 29, 1986, 1. The August 1-2, 1985 meeting of the WRST SRC featured three proxy votes, but as the minutes noted, "The proxy vote system is not the proper way to conduct business. All members of the Commission should be serving."

[48] GAAR SRC Resolution 86-12, March 26, 1986; C. Mack Shaver to Frank Stein, November 1986, in CAKR SRC file. Shaver stated that the change had been "proposed by Lou Waller of our Regional Office...". As a result of the SRC's action, Alaska's seven SRC charters—all of which were renewed by the Interior Secretary on November 19, 1986—contained an extension provision. That provision became part of federal law in October 1992, when Public Law 102-525 was signed by President Bush. That law, which provided for "the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes," contained Section 301(b) which read, "In the case of any advisory commission or advisory committee established in connection with any national park system unit, any member of such Commission or Committee may serve after the expiration of his or her term until a successor is appointed."

[49] At the initial Cape Krusenstern SRC meeting, for example, an NPS official noted that "the information the commission develops for a subsistence hunting program will be used in the general management plan." CAKR SRC minutes, May 4, 1984, 2-3.

[50] The park's SRC was unable to provide input into the final GMP. That document's subsistence section was distressingly brief, although references to subsistence were sprinkled elsewhere in the volume. NPS, *Lake Clark National Park and Preserve General Management Plan and Environmental Assessment* (Anchorage, the author, August 1984), 4, 8-9, 17-18, 32-33, 87.

[51] The State of Alaska's comments on the various revised draft GMPs (issued in December 1985) were highlighted in the *Anchorage Times*, April 24, 1986, B-1.

[52] Denali was the first SRC to pass hunting plan resolutions; its first two were in June and July 1984, respectively. The Gates of the Arctic SRC, at its May 1984 meeting, hoped to submit its initial recommendations by July 1984, but it did not do so until March 1985. Other SRCs that submitted proposals in 1985 included those representing Aniakchak, Lake Clark, and Wrangell-St. Elias.

[53] Janie Leask (AFN) to Roger J. Contor, August 12, 1985, in ANIA SRC file.

[54] W. T. Ellis to "Dear Reviewer," August 15, 1985, in WRST SRC file.

[55] NPS, *Cape Krusenstern National Monument General Management Plan, Land Protection Plan, and Wilderness Suitability Review* (Denver, NPS, December 1986), viii; NPS, *Denali National Park and Preserve GMP* (Denver, NPS, December 1986), vi, 44.

[56] Benjamin P. Nageak to George N. Ahmaogak, December 19, 1984, 3-4; GAAR SRC Resolution 86-08, January 31, 1986; both in GAAR SRC file. In 1985, the Gates of the Arctic SRC passed seven hunting plan resolutions, and at its January 1986 it passed eight additional resolutions. Based on those actions, Resolution 86-08 stated that "reference to a separate plan by the National Park Service be deleted in the General Management Plan" because it "appears to duplicate the hunting program the Subsistence Resource Commission is currently developing."

[57] The Aniakchak SRC sent in a four-part resolution on March 17, 1986; one day later, the Lake Clark SRC sent in a two-page subsistence hunting program.

[58] The Cape Krusenstern and Kobuk Valley SRCs, at a joint meeting, had passed a single (and identical) resolution in January 1986, but the resolution was not sent to the Interior Secretary until years later, well after the federal government had begun to assume subsistence hunting management on federal lands. Cape Krusenstern SRC chair Frank Stein, asked by other SRC chairs in November 1988 why the resolution had not yet been forwarded to the Interior Secretary, replied that "we're waiting for their mistakes." CAKR SRC minutes, June 22, 1989, 1. See page 129.

[59] The Denali and Gates of the Arctic SRCs originally passed six and twenty-four recommendations, respectively, but negotiations between SRC members and NPS staff regarding appropriate themes for hunting plan recommendations resulted in fewer recommendations being submitted to the Interior Secretary.

[60] Because few Washington-based DOI or NPS officials had much subsistence expertise, Alaska NPS officials found it difficult to either move, or obtain comments on, the various SRC recommendations. Lou Waller interview, July 25, 2000.

[61] Although William Horn remained as the Interior Department's Assistant Secretary for Fish and Wildlife and Parks until July 1, 1988, he had let it be known several months earlier that he was interested in leaving his position in order to work for the Washington, D.C. office of an Alaska law firm. Because of the probable conflicts of interest involved, Horn recused himself from an active involvement on Alaska-based issues during his last several months of federal service. *Anchorage Daily News*, December 2, 1988, C4; December 2, 1990, B1.

[62] Aniakchak SRC recommendation 85-01(4), March 12, 1986, in ANIA SRC file; W. T. Ellis to "Dear Reviewer," August 15, 1985, in WRST SRC file. As noted in an October 1987 memo, Slana was a worrisome issue because a 1983 land withdrawal had engendered the "new community" of New Slana, which during the intervening period had grown to "over 200 persons, living directly along the northern boundary of the preserve ... this is a significant threat to park resources." Lou Waller to Paul Haertel, October 16, 1987, in WRST SRC file.

[63] William P. Horn to Orville E. Lind, March 15, 1988, in ANIA SRC file.

[64] Susan Reece to W. T. Ellis, May 18, 1988, in WRST SRC file.

[65] ANIA SRC minutes, January 11, 1990, 2.

[66] WRST SRC minutes, December 4, 1989, Proposed Recommendation #2.

[67] CAKR SRC minutes, May 4, 1984, 3.

[68] CAKR/KOVA SRC minutes, February 1, 1985, 3-4.

[69] CAKR/KOVA SRC minutes, January 30, 1986, "Joint Resolution."

[70] Frank Stein to Bill Sheffield, April 28, 1986; CAKR/KOVA SRC minutes, June 6, 1986, 1. Lou Waller (interview, July 25, 2000) notes that Bane helped write the resolution and even readied it for mailing.

[71] CAKR SRC minutes for July 13-14, 1987, 3 and 5, and June 22, 1989, 1. See endnote 58, above.

[72] NPS, *Denali National Park and Preserve, Draft Subsistence Management Plan*, February 6, 1999, 2:43; Hollis Twitchell to author, email, June 9, 2000. Twitchell noted that park officials imposed the boundary "without any public input because they were scared to death that the population of Cantwell was going to explode."

[73] Resource Manager to Supt. DENA, January 13, 1986; DENA SRC minutes, April 15, 1986; Denali NP SRC Hunting Program, April 1986, Recommendation 2.

[74] Susan Reece to Mrs. Florence Collins, April 22, 1988, in DENA SRC file; Hollis Twitchell interview, April 6, 1999.

[75] WRST SRC minutes, August 1, 1985, 3; Boyd Evison to Jack Hession, November 1, 1985, in "WRST thru FY 87" file, AKSO-RS.

[76] Lou Waller to Paul Haertel, October 16, 1987, in WRST SRC file.

[77] Susan Reece to W. T. Ellis, May 18, 1988, in WRST SRC file.

[78] "Dear Interested Citizen or Organization," December 29, 1989, in WRST SRC file.

[79] GAAR SRC minutes, May 4, 1984, 6. This verbiage was taken almost verbatim from the legislative history (*Congressional Record*, November 12, 1980, H 10541).

[80] "Denali NP SRC Proposed Recommendation Regarding Resident Zones," June 12, 1984, in DENA SRC file.

[81] DENA SRC minutes, August 9-10, 1985; "Public Notice," August 1985; both in DENA SRC file; Hollis Twitchell to author, email, June 9, 2000.

[82] Denali NP SRC Hunting Program," April 17, 1986, in DENA SRC file.

[83] NPS, "Initial Comments," ca. June 1986; Susan Reece to Florence Collins, April 22, 1988;

both in DENA SRC file.

[84] LACL SRC minutes, May 11, 1985; Glen R. Alsworth, Sr. to Secretary Donald Hodel, March 18, 1986, in LACL SRC file; John Branson interview, July 25, 2000.

[85] Bill Sheffield to Glen R. Alsworth, Sr., May 2, 1986; Don W. Collinsworth to Alsworth, September 16, 1986; Susan Reece to Alsworth, April 22, 1988, all in LACL SRC file.

[86] Reece to Alsworth, April 22, 1988, in LACL SRC file; DENA SRC minutes, June 17, 1988.

[87] Collinsworth to Boyd Evison, October 28, 1988; Collinsworth to Stan Leaphart, February 28, 1989; both in Terry Haynes (ADF&G) files. Collinsworth complained that the proposed regulation would cause "situations where Alaskan citizens that fully qualify for subsistence privileges under state laws and policies will not qualify as a bona fide subsistence user within the National Parks." Therefore, "these proposals may result in a declining use of parklands for subsistence purposes in the future, as the effect of the 'roster' concept has the potential to limit and reduce eligibility over time. We do not believe this is in keeping with the spirit and intent of ANILCA."

[88] "First Meeting, Denali SRC Committee Meeting, July 7, 1988;" Steve Cowper to Manuel Lujan, Jr., August 2, 1989; Subsistence Division to [NPS] Regional Director, Alaska, August 11, 1989; all in DENA SRC file.

[89] LACL SRC minutes, May 2, 1989, 2; November 6, 1989, 1; May 10, 1990, 1-2.

[90] *Congressional Record* 126 (November 12, 1980), H 10541.

[91] WRST SRC minutes, May 15-16, 1984, 3; November 1-2, 1984, 3.

[92] Waller to author, December 20, 2001; Hollis Twitchell interview, April 6, 1999; Steve Ulvi interview, April 6, 1999.

[93] CAKR SRC minutes, February 1, 1985, 3.

[94] "Recommendations Subsistence Hunting Program, Lake Clark National Park," August 1985, LACL SRC file.

[95] CAKR/KOVA SRC minutes, January 29-30, 1986.

[96] Orville Lind to Donald Hodel, March 17, 1986, in ANIA SRC file.

[97] Resolution 86-16, March 26, 1986, GAAR SRC files.

[98] DENA SRC, "Proposed Recommendation Regarding Resident Zones," June 12, 1984. Denali was not the only SRC to address the needs of post-ANILCA in-migrants. The Cape Krusenstern and Kobuk Valley SRCs, for example, passed a draft resolution in January 1986 stating that "persons not qualifying under the provisions of [the December 1980 residency date] may petition the appropriate Subsistence Resource Commission for such privileges." Two months later, the Gates of the Arctic SRC voted to recommend a procedure (Resolution 86-16) whereby recent residents might gain subsistence access to the park. And three months after that, the same body recommended that a twelve-month residency requirement be

imposed before residents could begin harvesting subsistence resources. The state, however, objected to the residency requirement, and the Interior Department, in a March 1988 letter, rejected such a requirement in favor of either an individual or community-based subsistence permit system.

[99] Bill Sheffield to Orville E. Lind [etc.], May 5, 1986; Don Collinsworth to Lind, September 16, 1986; both in ANIA SRC file. Sheffield sent a similar letter (on May 2, 1986) to the Lake Clark SRC chair, Glen Alsworth.

[100] See C. Mack Shaver to Subsistence Coordinator, Alaska Regional Office, July 31, 1986, GAAR SRC file.

[101] The approval of the Gates of the Arctic recommendation had appeared in the park and preserve's *General Management Plan* (p. 123), which had been released in December 1986, while the approval of Lake Clark's resolution was included in the department's April 22, 1988 response to the SRC's hunting plan recommendation. The Interior Department did not respond to the Aniakchak or Cape Krusenstern-Kobuk Valley recommendations inasmuch as they were never formalized.

[102] Susan Reece to Florence Collins, April 22, 1988, in DENA SRC file. The Interior Department's acceptance of the 1986 cutoff date appears to have been a compromise between the position of the NPS, which preferred a 1980 cutoff date, and that of the State of Alaska, which felt that "it might not be valid to make eligibility retroactive." NPS, "Initial Comments," c. June 1986, DENA SRC file; DENA SRC minutes, June 5, 1987, 2. This tension remained long after the Interior Department issued its letter; in August 1989, for example, Governor Cowper urged the Interior Department to abandon any proposed rulemaking that might preclude all qualified residents from hunting in parks, and two years later, a Sierra Club representative warned that "1986 can not be legally used" as a cutoff date and that December 1980 should be substituted instead. Steve Cowper to Manuel Lujan, Jr., August 2, 1989; Jack Hession to Boyd Evison, October 30, 1989; both in DENA SRC files.

[103] *Congressional Record*, November 12, 1980, H 10541. Similar language appeared in Senate Report 96-413, 169. Also see *Federal Register*, June 17, 1981, 31851-52, 31861, 31863-64. Native leader Byron Mallott, who hailed from Yakutat, insisted upon the Malaspina Forelands exception because the area's harsh, unpredictable weather often made water access unsafe.

[104] According to the June 17, 1981 *Federal Register* (p. 31841), "residents of Glennallen, Slana, and Tok submitted several comments [in response to the issuance of proposed subsistence regulations] that argued for allowance of aircraft as 'the most feasible and ecologically sound access means in many cases," but perhaps because other respondents had opposed aircraft for *any* subsistence uses, the proposed regulations were not changed. But here, as elsewhere in the state, the regulations were not immediately enforced. Local subsistence user Fred T. Williams, in a letter to Senator Frank Murkowski (August 13, 1985, in "WRST thru FY 87" file, AKSO-RS), noted that "The first couple of years [after ANILCA's passage] went along fine. Local residents were able to fly into the Park and hunt caribou, sheep and moose."

[105] W. T. Ellis to Regional Director, NPS, August 2, 1985, in WRST SRC file.

[106] Regional Director NPS to Alaska Superintendents, July 2, 1985; William P. Horn to Sue Entsminger, August 14, 1985; both in WRST SRC file. Those who were "otherwise permitted via exception" included certain residents of Anaktuvuk Pass and Yakutat, for

reasons explained above.

[107] Ellis was a longtime area hunting guide who had lost much of his guiding area when Wrangell-St. Elias National Park had been established, so his opposition to Contor's interpretation had personal as well as political implications.

[108] W. T. Ellis to Regional Director, NPS, August 2, 1985; Ellis to "Dear Reviewer," August 15, 1985; both in WRST SRC file.

[109] The "previous and incorrect interpretation," of course, was Budge's February 1984 letter. Horn further noted that "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." Thus no public hearings or comment period was necessary. Horn to Bill Ellis, October 29, 1985, in WRST SRC files.

[110] Horn to Bill Ellis, October 29, 1985; Horn to Sue Entsminger, August 14, 1985; both in WRST SRC file.

[111] Stanley T. Albright to Frank Murkowski, May 6, 1987, in "WRST thru FY 87" file, AKSO-RS; Horn to Ellis, October 29, 1985, in WRST SRC file. The NPS also held an open house in Fairbanks on the same subject.

[112] Fred T. Williams to Frank Murkowski, August 13, 1985, in "WRST thru FY 87" file, AKSO-RS; W. T. Ellis to Florence Collins, April 29, 1986, in DENA SRC file.

[113] Regional Director, Alaska Region to [various Alaska NPS] Superintendents, July 2, 1985; W. T. Ellis to Regional Director NPS, October 4, 1985; Bockmon to Regional Director NPS, April 2, 1986; all in WRST SRC file. Although Bockmon's decision was the Interior Department's final word on the subject, the park's SRC in August 1986 nevertheless decided to submit its non-emergency recommendation regarding aircraft access to the Interior Secretary. The department, in May 1988, rejected the recommendation and cited "the 1985 memorandum from the NPS Alaska Regional Director" as a principal clarifying document. The SRC, unbowed by this action, recommended in late 1989 that the Interior Secretary "list each of the park's resident zones as 'exempt communities' in order to continue traditional access via aircraft for subsistence activities," and it also recommended that the Interior Secretary "rescind the 1985 policy which bans eligible residents from subsistence activities if access to adjacent state, private, or preserve lands involves aircraft." The SRC, however, never forwarded these recommendations to Washington.

Richard Martin, who served as Wrangell-St. Elias's superintendent throughout this period, noted in a recent letter that a major effort during his tenure was "educating subsistence-eligible folks on the principle of surface transportation for subsistence activities. ... It took significant fortitude to reasonably communicate that message. I believe, ultimately, understanding and acceptance was achieved." Bill Ellis to "Dear Interested Citizen," December 29, 1989, in WRST SRC file; Martin to Betty Knight, August 30, 2001, in Admin History Correspondence File.

[114] ANIA SRC Subsistence Hunting Plan Recommendation 85-01, March 12, 1985.

[115] GAAR SRC Resolution 86-09, March 26, 1986.

[116] William P. Horn to Orville Lind, March 15, 1988, in ANIA SRC file; GAAR Subsistence Management Program, May 1987, in GAAR SRC file; Susan Reece to Benjamin Nageak,

May 18, 1988, in GAAR SRC file.

[117] James J. Berens to Regional Solicitor, USDI, August 7, 1985; Lou Waller to File, September 25, 1985; both in WRST SRC files.

[118] See, for example, *Tracks in the Wildland; a Portrayal of Koyukon and Nunamiut Subsistence* by Richard K. Nelson, Kathleen H. Mautner, and G. Ray Bane (Fairbanks, University of Alaska, 1982), pp. 90-107 and pp. 116-23. Although this study was published in the early 1980s, it was modified only slightly (and not updated) from a similar study, *Kuuvangmiit*, which was printed in January 1976.

[119] *Senate Report 96-413*, 275.

[120] *Federal Register*, June 17, 1981, 31841, 31861.

[121] President Nixon issued E.O. 11644 on February 8, 1972; on May 24, 1977, President Carter issued E.O. 11989, which amended that order. Both actions were published in the *Federal Register* a day after they were issued.

[122] LACL/DENA SRC minutes, May 10-11, 1984, 7. The unnamed NPS official may have been describing Cantwell—a town bordering Denali National Park—as the area where ATVs had been "around for quite awhile." As noted in Chapter 8, Cantwell-area residents during the early 1990s noted that ATV use on the south side of the Alaska Range had commenced between 1940 and 1950.

[123] NPS, *Denali National Park and Preserve General Management Plan*, December 1986, 45; LACL SRC minutes, May 10-11, 1984, 6.

[124] NPS, *Cape Krusenstern National Monument General Management Plan*, December 1986, 61-62.

[125] See, for example, the NPS's *Kobuk Valley National Park General Management Plan*, December 1986, 87.

[126] *Ibid*., 88.

[127] NPS, *Aniakchak GMP*, 33, 173; *Denali GMP*, 45, 195; *Gates of the Arctic GMP*, 123-24, 289; Evison email, April 17, 2001. The nontraditional nature of ATV use in Anaktuvuk Pass, located within Gates of the Arctic NP, was explained in a January 28, 1986 memo from the Acting Associate Regional Director, Operations to the park superintendent. See "Initial comments, GAAR Recommended Subsistence Hunting Program," January 8, 1987, in GAAR SRC file. This determination was a key rationale for a three-way land trade that was hammered out in 1986 and 1987; see description below.

[128] NPS, *Cape Krusenstern GMP*, vii-ix.

[129] NPS, *Cape Krusenstern GMP*, ix, 90-91; *Lake Clark GMP*, 17, 33; Richard Stenmark to Judith Gottlieb, December 8, 2001. In September 1984, a month after Lake Clark's GMP was released, superintendent Paul Haertel told the park's SRC members that "the subject of off road vehicles is something that we haven't addressed yet in our management and it is something that we need to." LACL SRC minutes, September 29, 1984, 3.

[130] *Wrangell-St. Elias GMP*, 17.

[131] A possible exception to this rule was a resolution from the Denali SRC; this resolution sought to ensure that "in those areas and routes open to subsistence surface transportation, only those means traditionally used in those specific areas and routes could continue to be used." DENA SRC, "Proposed Recommendation Regarding Surface Access," July 13, 1984, in DENA SRC files.

[132] ANIA SRC Hunting Plan Recommendation 85-01; William P. Horn to Orville Lind, March 15, 1988; both in ANIA SRC file.

[133] WRST SRC minutes, November 1-2, 1984, 3. The minutes of the April 7-8, 1986 meetings bear the following overprinted message; "Millie [Buck] and Walter [Charley, both SRC members] cautioned that many local people use ORV's currently & would not want to cut them out!"

[134] The first ATV, according to anthropologist Edwin Hall, had arrived there in 1961, three years before the arrival of the first snowmobile. Edwin S. Hall to James A. Schwarber, February 6, 1986, in GAAR SRC file. But the 1991 draft legislative EIS (see below, p. 4) noted that "ATVs were first introduced to the area by the U.S. Geological Survey in the late 1950s.... ATVs were used in the village in the early 1960s, but [Michael] Kunz [in a 1989 study] notes that the first Native-owned ATV—a Coot—was acquired in 1969." See Edwin S. Hall, Jr., Craig Gerlach, and Margaret B. Blackman, *In the National Interest: A Geographically Based Study of Anaktuvuk Pass Inupiat Subsistence Through Time*, 2 vols. (Barrow, North Slope Borough), 1985.

[135] NPS, *Draft Legislative Environmental Impact Statement, All-Terrain Vehicles for Subsistence Use, Gates of the Arctic National Park and Preserve* (Anchorage, the author, January 1991), 1-2, 4, 10.

[136] CAKR SRC minutes, November 29, 1984. The Anaktuvuk Pass meeting was held on July 31 and August 1, 1984.

[137] Stan Leaphart (Citizens' Advisory Commission on Federal Areas) to Jim Schwarber, January 23, 1985; Randy R. Rogers (Northern Alaska Environmental Center) to Schwarber, June 11, 1985; SRC minutes, January 29-31, 1986, 5; SRC minutes, June 17-19, 1986, 2; SRC Resolution 86-05, January 31, 1986; all in GAAR SRC file. The ATV study, written by Michael Kunz and Keith Troxel, was entitled *The Anaktuvuk Pass All-Terrain Vehicle Study, 1986-1988; a Narrative Report of Field Operations and Dispersed ATV Use* (Anchorage, NPS), 1989.

[138] GAAR SRC, Resolution 86-10, March 26, 1986; SRC minutes, June 17-19, 1986, 2.

[139] Tony Sisto to Lou Waller, March 13, 1987; SRC minutes, March 17-18, 1988, 4; both in GAAR SRC file; NPS, *Draft Legislative EIS*, January 1991, 11, 195-249.

[140] Gates of the Arctic, it may be recalled, had been the subject of a proposed, ad hoc traditional use zone back in the original (January 1977) version of HR 39, and the legislative history for both the House and Senate bill provided a rationale for this concept. Page 147 of Senate Report 96-413, for example, noted that "subsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people." Similarly, the Senate Committee felt "that the subsistence patterns of the park are well known

and can be identified." The report listed fourteen drainages within the park that "have apparently been used for subsistence hunting." It further noted that "It is not the intent of the committee that these drainage be considered the only places where subsistence can occur. But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas." Also see *Congressional Record*, November 12, 1980, H 10535, and *Federal Register* 46 (June 17, 1981), 31848.

[141] LACL SRC minutes, September 29, 1984, 4; *Federal Register*, June 17, 1981, 31848-49. Both the Senate and House records supported this conclusion; page 147 of Senate Report 96-413, for example, stated that "a park subsistence resource commission established by this Act will help further determine or modify these areas," and Rep. Morris Udall (in the *Congressional Record*, November 12, 1980, p. 10547) said that "fundamental fairness seems to require that the designation and boundaries of those zones be made by the subsistence resource commissions established by section 808, rather than by park planners and researchers."

[142] Leslie Barber, "The Fine Point of Subsistence," *Alaska* 51 (September 1985), 18.

[143] GAAR SRC minutes, May 4, 1984, 4, 7.

[144] During this period, as noted above, the community of Anaktuvuk Pass was in the midst of discussions of a possible land trade as well as the traditional use zone idea. So in order to gauge local opinion on these issues, Regional Director Roger Contor visited the community and discussed these and other NPS-related issues. During an April 11, 2001 interview, Contor recalled that one elderly Inupiat resident, during a community meeting, took him aside and (using a translator) suggested that certain named valleys near the community should be closed to snowmachines. Contor asked the gentleman if he could present that opinion to the larger group; having received that permission, he received a broad degree of approval from all those present. But when he related those discussions at a Fairbanks meeting of Doyon, Ltd. officials a few months later, he was severely criticized for attempting to limit local residents' options. That criticism, moreover, dogged Contor for months afterward.

[145] Supt. GAAR to Regional Director, ARO, May 31, 1984; "Public Notice, Extension of Request for Information," ca. January 1985; William P. Horn to Rep. Don Young, April 18, 1985; NPS, "Draft Briefing Statement for GAAR SRC Draft Hunting Plan Recommendation 9," July 21, 1994, 3, all in GAAR SRC file; Jim Kowalsky, "Subsistence Board Protests Park Service Hunting Zones," *The Council* (TCC newsletter), February 1985;.

[146] Vernita Zilys, "Remarks to the Gates of the Arctic Subsistence Resource Commission," January 23-24, 1985, in GAAR SRC file.

[147] Stan Leaphart (CACFA) to Jim Schwarber, January 23, 1985, in GAAR SRC file. (Udall's statement comes from the *Congressional* Record, November 12, 1980, H 10547.) A follow-up statement on the subject (Leaphart to Richard Ring, March 4, 1985, in GAAR SRC file), noted with some irony that "subsistence areas that overlap the most popular visitor areas have been left off the map altogether or off of summer subsistence zones. This interpretation ... makes it seem like a deliberate attempt to avoid subsistence/visitor conflicts." He then listed four popular recreational areas and linked each to various community subsistence areas.

[148] George Ahmaogak to James A. Schwarber, ca. January 23, 1985, in GAAR SRC file.

[149] ALSC, "Comments of Alaska Legal Services Corporation," January 21, 1985, in GAAR SRC file.

[150] GAAR SRC Resolution 85-01, January 24, 1985. Two months later, the ADF&G commissioner made a similar argument in a letter to the NPS. Don Collinsworth to Roger Contor, March 14, 1985, in GAAR SRC file.

[151] James A. Schwarber to William Clark, January 28, 1985; Schwarber to Rep. Don Young, January 28, 1985; both in GAAR SRC file.

[152] Roger J. Contor to James A. Schwarber, February 26, 1985, in GAAR SRC file. Judy Alderson (interview with author, June 27, 2000), who worked at the park during this period, noted that park staff "backed down" on the issue shortly after the January 1985 SRC meeting.

[153] NPS, "Public Notice, Information Requested," May 6, 1985, in GAAR SRC file. Boyd Evison, in an April 17, 2001 email, noted that the issue, and Supt. Ring's position on it, had put him "at serious odds with people at Anaktuvuk Pass;" by the summer of 1985, a widely-circulated petition demanding Ring's ouster had been presented to Sen. Ted Stevens.

[154] GAAR SRC Resolutions 86-04 and 86-06, January 31, 1986; GAAR SRC minutes, January 29-31, 1986, 22-23. Resolution 86-06 asked that the word "will" in the following two sentences (which appeared in the recently-released revised draft version of the park's GMP) be changed to "may;" "The Subsistence Resource Commission *will* address the issue of designation of traditional use areas. Based on their recommendations, the Park Service *will* propose the designation of traditional use areas for resident zone communities for review and comment by the affected communities and the general public." The park's final GMP, issued in December 1986, reflected the SRC's request. But in early 1986 the SRC was unsure of how the NPS would decide in the matter, so that March it forged ahead and passed Resolution 86-11, as described below.

[155] GAAR SRC Resolution 86-11, March 26, 1986; GAAR SRC minutes, March 25-26, 1986, 4.

[156] GAAR SRC minutes, June 18, 1986, 2.

[157] GAAR SRC, "Final Draft Outline, Subsistence Management Program for Gates of the Arctic National Park," June 19, 1986, in GAAR SRC file.

[158] NPS, "Public Notice," July 23, 1986; Supt. NWAK to Subsistence Coordinator ARO, July 31, 1986; both in GAAR SRC file. Shaver's narrow perception of traditional activities is further borne out by the following statement that described Eskimos' changing lifeways: "Because once-traditional subsistence activities now take less time with modern technology and because jobs are scarce, time often hangs heavily on people's hands." C. Mack Shaver, "Traditional National Park Values and Living Cultural Parks: Seemingly Conflicting Management Demands Coexisting in Alaska's New National Parklands," in *International Perspectives on Cultural Parks; Proceedings of the First World Conference, Mesa Verde National Park, 1984* (NPS/Colorado Historical Society, 1989), 313.

[159] James Pepper to Lou Waller, November 2, 1986, in GAAR SRC file.

[160] Boyd Evison to author, email, April 17, 2001; NPS, "Initial Comments — GAAR Recommended Subsistence Hunting Program," October 20, 1986 (later revised to January 8, 1987), in GAAR SRC files.

[161]

Richard A. Caulfield to Roger Siglin, March 23, 1987; Bill Horn to Benjamin P. Nageak, July 2,1987; Susan Reece to Nageak, May 18, 1988; all in GAAR SRC file.

[162] DENA SRC minutes, June 5, 1987, 1-2. A year later, at the park's next SRC meeting, the idea surfaced again, but most SRC members felt that "there was no pressing need to establish the zones" and the park's chief ranger, Tom Griffiths, "did not see a management problem at the present time." DENA SRC minutes, June 17, 1988, 4-5.

[163] Martin to Subsistence Liaison, Alaska Region, November 13, 1986, in WRST SRC minutes.

[164] See, for example, LACL SRC minutes, September 29, 1984; Susan Reece to W. T. Ellis, May 18, 1988, 4, in WRST SRC minutes.

[165] GAAR SRC minutes, May 4, 1984, 5; LACL/DENA SRC minutes, May 10, 1984, 3-4; CAKR SRC minutes, May 4, 1984, 4-5.

[166] W. T. Ellis to "Dear Reviewer," August 15, 1985, in WRST SRC file; C. Mack Shaver to Lou Waller, November 21, 1985, in CAKR SRC file; *Senate Report 96-413*, 171. The Interior Department, as expected, rejected Wrangell-St. Elias's predator control proposal in its May 1988 response.

[167] CAKR/KOVA SRC minutes, January 29-30, 1986, 1; Evison to ADF&G, November 14, 1986, in "ADF&G Boards, Aug. 86-FY 88" file.

[168] GAAR SRC, "Final Draft Outline, Subsistence Management Program for Gates of the Arctic National Park," June 19, 1986, 11-12; Susan Reece to Benjamin Nageak, May 18, 1988, 2-3; both in GAAR SRC file.

[169] The "standalone preserves" included Bering Land Bridge, Noatak, and Yukon-Charley Rivers, while pre-ANILCA park units that allowed subsistence uses in specified areas included Denali (formerly Mount McKinley), Glacier Bay, and Katmai.

[170] One Hoonah resident who fought for Glacier Bay subsistence rights during this period, and continues to do so today, is Robert Loescher, who served for a time as Sealaska Regional Corporation's Chief Executive Officer. Due in large part to his efforts, the Corporation sponsored a study, written by Norman Staton (*A National Treasure or a Stolen Heritage: the Administrative History of Glacier Bay National Park and Preserve, with a Focus on Subsistence*, 1999) which argues the legitimacy of reopening Glacier Bay to subsistence uses. Wayne Howell to author, December 11, 2001.

[171] Catton, *Land Reborn*, 212, 297-99; Howell to author, December 11, 2001; NPS, *Glacier Bay National Park and Preserve General Management Plan* (Denver, the author, September 1984), 46, 73.

[172] The study, written by Robert F. Schroeder and Matthew Kookesh, was entitled *Subsistence Harvest and Use of Fish and Wildlife Resources and the Effects of Forest Management in Hoonah*; it was published as Technical Paper No. 142 in ADF&G's Technical Paper series in November 1990. Similar results were presented in Robert G. Bosworth's "Consistency and Change in Subsistence Use in Glacier Bay, Alaska," in *Proceedings of the Second Glacier Bay Symposium* (NPS, 1988), 101-07.

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Catton, *Land Reborn*, 266, 298-300.

[174] Catton, *Land Reborn*, 300-304.

[175] DENA SRC minutes, July 13-14, 1984, 1; DENA GMP, December 1986, 42. All of these statements were derived from regulations language; see *Federal Register*, June 17, 1981, pp. 31839 and 31850-52.

[176] See 36 CFR 1.4 and 36 CFR 13.1(u), as noted in the *Federal Register* for June 17, 1981, 31855 and June 30, 1983, 30275. The 1983 regulations, which applied to all NPS units outside of Alaska, defined a trap to include "a mechanical device designed to entrap or kill animals other than fish." This more liberal definition allowed for firearm use.

[177] *Federal Register* 59 (November 15, 1994), 58804. The taking of wolves and other furbearers with a firearm, as just noted, was a serious issue in the national preserves, because sport hunters using aircraft—some of whom held state trapping licenses—could legally access the preserves. It was not, however, an issue in the parks inasmuch as it was generally illegal to land aircraft within the parks and monuments; furbearers, as a result, were in little danger in those areas and few questioned the wisdom of NPS policy on this subject.

[178] See, for example, the ANIA GMP, December 1986, 16 and the WRST GMP, December 1986, 38. Lou Waller interview, July 25, 2000.

[179] W. T. Ellis to Donald Hodel, August 29, 1987, in WRST SRC file; Lou Waller interview, July 25, 2000; Clarence Summers interview, August 22, 2001.

[180] *Federal Register* 59 (November 15, 1994), 58804. To view the proposed rule, see the *Federal Register* 54 (June 9, 1989), 24852.

[181] *Federal Register*, June 17, 1981, 31840.

[182] The ADF&G-NPS MOU was included as an appendix to various GMPs; see, for example, the ANIA GMP, December 1986, 146.

[183] See GAAR SRC minutes, May 4, 1984, 2, or LACL SRC minutes, May 10, 1984, 3; Lou Waller to author, December 20, 2001.

[184] WRST SRC minutes, November 1-2, 1984, 3.

[185] Contor to various NPS superintendents, July 2, 1985; Subsistence Liaison to File, September 25, 1985; both in WRST SRC file. In an October 3, 1985 letter to Senator Frank Murkowski, Alaska Regional Director Boyd Evison noted that the agency "decided not to restrict the use of aircraft for access to the national preserves ... due to the potential for public confusion, the circumstances leading up to the 1985 hunting seasons, past precedents, and the lack of clear authority in our regulations."

[186] C. Mack Shaver to Subsistence Coordinator, August 19, 1986, in "ADF&G Boards, Aug. 86-FY 88" folder, AKSO-RS.

[187] Boyd Evison to Director NPS, January 21, 1986, in "WRST thru FY 87" folder, AKSO-RS.

[188] *Federal Register*, June 17, 1981, 31840-41.

[189] Don Collinsworth to "Dear Reviewer," August 27, 1986; Harold M. Brown to Elizabeth A. Stewart, September 12, 1986; both in "ADF&G Boards, Aug. 86-FY 88" folder, AKSO-RS.

[190] *Federal Register*, June 17, 1981, 31841; Lou Waller to Cynthia Defranceaux, October 13, 1987, in WRST SRC file.

[191] DENA/LACL SRC minutes, May 10, 1984, 2; DENA SRC minutes, July 13-14, 1984, 1.

[192] Randy Rogers (NAEC) to Brenda Johnson, December 4, 1984; Stan Leaphart (CACFA) to Jim Schwarber, January 23, 1985, in GAAR SRC file.

[193] GAAR SRC meeting, January 29-31, 1986, 9, 17; CAKR GMP, December 1986, viii. Anthropologist Edwin Hall, asked to speak about "natural and healthy" populations at the January 1986 meeting, admitted that "I have difficulty with that concept."

[194] C. Mack Shaver to Subsistence Coordinator, AKSO, July 31, 1986, in GAAR SRC file; Shaver to Subsistence Coordinator, August 19, 1986, in "ADF&G Boards, Aug 86-FY 88" folder.

[195] "Final Draft Outline, Subsistence Management Program, GAAR," June 19, 1986, 11; Tony Sisto to Lou Waller, March 13, 1987, 3; both in GAAR SRC file.

[196] Susan Reece to Benjamin Nageak, May 18, 1988, in GAAR SRC file.

[197] *Federal Register*, June 28, 1979, 37741; January 19, 1981, 5651; and June 17, 1981, 31840.

[198] Alaska Statutes 16.05.940.

[199] CAKR SRC minutes, November 20, 1989, 5; Robert J. Wolfe and James Magdanz, *The Sharing, Distribution, and Exchange of Wild Resources in Alaska* (ADF&G, Division of Subsistence, January 1993), Section IV; Bob Gerhard interview, July 7, 2000; Paul R. Anderson to Harry Kalmakoff, Jr., December 2, 1998.

[200] ANILCA, Section 808(a).

[201] "An Act to Establish a National Park Service, and for Other Purposes" (39 Stat. 535), August 25, 1916, in Lary Dilsaver, ed., *America's National Park System, the Critical Documents* (Lanham, Md., Rowman and Littlefield, 1994), 46-47.

[202] The Gates of the Arctic SRC, on January 24, 1985, passed a resolution—citing language in Section 808(a) of ANILCA—that called on its chairman "to attend, consult, and testify" at a wide range of meetings that affected park-area users. Also see Bob Larson to Lewis [sic] Waller, November 1, 1984, and James A. Schwarber to Richard Ring, January 23, 1986, both in GAAR SRC file.

[203] Richard Ring to Regional Director, ARO, May 31, 1984; Schwarber to Bill Caldwell, February 17, 1985; Schwarber to Bill Sheffield, August 12, 1986; all in GAAR SRC file.

[204] Lou Waller interview, July 25, 2000.

[205] W. T. Ellis to Bill Paleck, January 26, 1985, in WRST SRC file; WRST SRC minutes, August 1-2, 1985, 1; CAKR/KOVA SRC minutes, January 29-30, 1986, 2; WRST SRC minutes, April 7-8, 1986, 4; Bob Gerhard interview, February 15, 2001.

[206] James Schwarber to Bill Sheffield, August 12, 1986, in GAAR SRC files; W. T. Ellis to Florence Collins, April 29, 1986; Collins to Ellis, May 13, 1986, both in DENA SRC files.

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Alaska Subsistence

A National Park Service Management History

Chapter 7:
THE FEDERAL ASSUMPTION PROCESS, 1989-1993 (continued)

Notes — Chapter 7

[1] Chief Justice Warren W. Matthews wrote the majority opinion and was supported by justices Allen Compton, Daniel Moore, and Edmond Burke, while Jay Rabinowitz wrote a dissenting opinion.

[2] The other plaintiffs were Dale E. Bondurant of Cooper Landing, Ronald Mahle of Anchorage, and Harold Eastwood from the Parks Highway corridor just east of Denali National Park and Preserve. All four plaintiffs, under the terms of the 1986 act, were disqualified from subsistence activities because they lived in areas that the joint Boards of Fisheries and Game had classified as non-rural. Besides the State of Alaska, the other defendants were the Alaska Department of Fish and Game, the Alaska Board of Fisheries, the Alaska Board of Game, and Fish and Game Commissioner Don Collinsworth. "McDowell v. State," *Pacific Reporter*, 2d Series, v. 785 (1990), 2.

[3] "McDowell v. State," 4-6. Sections 3, 15, and 17 of Article VIII specifically spelled out the state's equal access provisions.

[4] *Anchorage Daily News*, April 22, 1989, D2; August 4, 1989, E9. Cheri Jacobus argued the case for the appellants, while Donald Mitchell (of the Alaska Federation of Natives) and Assistant Attorney General Larri Spengler represented the defendants.

[5] *Anchorage Daily News*, December 23, 1989, A12; Lou Waller interview, July 25, 2000.

[6] "McDowell v. State," 9-11.

[7] *Anchorage Daily News*, December 23, 1989, A12.

[8] *Anchorage Daily News*, December 23, 1989, A12; January 6, 1990, C1; January 18, 1990, E2.

[9] *Anchorage Daily News*, February 19, 1990, E7; "Alaska News Nightly" transcript, January 1, 1990, in "Press Releases thru FY93" file, AKSO-RS.

[10] *Anchorage Daily News*, February 19, 1990, E7. Ramona Barnes (R-Anchorage) introduced House Bill 415 on January 15, while George G. Jacko, Jr. (D-Pedro Bay) introduced House Joint Resolution 74 on January 31.

[11] *Anchorage Daily News*, March 11, 1990, B1. The Native-preference idea was manifested

in a bill introduced by Rep. F. Kay Wallis (D-Fort Yukon).

[12] In mid-April, the Alaska Federation of Natives held a two-day conference seeking a unified Native position and decided that Cowper's proposal, while not ideal, was practicable and deserved widespread support. *Anchorage Daily News*, April 6, 1990, B4; April 10, 1990, B1; April 12, 1990, B2; May 10, 1990, D1.

[13] Other subsistence-related bills in the regular 1990 legislative session included HJR 90, submitted by the House Transportation Committee, and SJR 78, submitted by the Senate Rules Committee at the request of Gov. Cowper.

[14] *Federal Register* 55, April 13, 1990, 13922; June 29, 1990, 27114. Glenn Elison (USF&WS) received 72 comments during the 30-day comment period.

[15] *Federal Register* 55, June 8, 1990, 23522; June 29, 1990, 27114; "Proposed Temporary Rule," June 1, 1990, in "Temporary Regs" file, AKSO-RS. Elison and Howse received 152 comments during the ten-day public comment period; 109 oral comments at the four public meetings, plus 49 written comments. Some aspects of the proposed rule were released in mid-May; see *Anchorage Daily News*, May 11, 1990, A1.

[16] *Anchorage Daily News*, June 23, 1990, A1; L. J. Campbell, "Subsistence: Alaska's Dilemma," *Alaska Geographic* 17:4 (1990), 85.

[17] Campbell, "Subsistence," 86; *Anchorage Daily News*, June 29, 1990, A1. The Senate bill was passed only by extraordinary parliamentary means. On June 30—in the midst of the special session, and just hours before the federal regulations were scheduled to be implemented—the House, on a unanimous vote, rushed through a resolution (HR 16) requesting that the state Supreme Court extend the deadline. State lawyers, in response, made a last-minute appeal to stop the federal assumption. But two days later the Court denied the state's motion.

[18] *Federal Register*, June 8, 1990, 23521-36; June 29, 1990, 27114, 27117. These regulations, and the subsequent Final Rule published on May 29, 1992, contained specific statements that the regulations would not apply to NPS units where subsistence uses are not allowed. In large part due to NPS input into the regulatory drafting process, a separate clause was adopted in 1992 stating that the Federal Subsistence Board regulations would not supercede agency-specific language. This clause clarified that existing NPS subsistence regulations would not be affected by the new FSB regulations.

[19] *Federal Register*, June 29, 1990, 27115. Lou Waller, in a December 20, 2001 note to the author, notes that Vernon R. Wiggins, the Interior Secretary's Deputy Undersecretary for Alaskan Affairs, played a significant role in excluding navigable waters from the "public lands" definition.

[20] *Federal Register*, June 29, 1990, 27115. Because the State of Alaska still managed subsistence fisheries within the state's navigable rivers, the F&WS was still technically required to submit so-called Section 806 and Section 813 reports reporting on the state's compliance to Title VIII requirements. (See Chapters 5 and 6.) Both of these reports, moreover, were due in the fall of 1990. The state's reduced management role and the fluidity of the situation, however, caused F&WS Regional Director Walter Stieglitz, in October 1990, to write his superiors and ask that the completion of these reports be delayed a year. There being no apparent protest to that request, no further 806 or 813 reports were ever produced. Stieglitz to Director F&WS, October 26, 1990, in 806/813 report file, OSM.

[21] *Federal Register*, June 29, 1990, 27116, 27118.

[22] Tom Boyd to author, email, July 21, 2000. Lands that had been conveyed via a Certificate of Allotment, however, were not federal public lands, as a key 1990 decision made clear. Several other federal agencies, including the Army and Air Force, also owned land in Alaska. But the four agencies named above managed more than 99 percent of Alaska's public lands, and much of the land managed by remaining agencies (including the Army and Air Force) was not open to subsistence uses.

[23] Public comments during the spring of 1990 (As noted in the *Federal Register*, "Many commenters advocated subsistence user representation on the Federal Subsistence Board") may have been responsible for a sixth, non-agency member. *Anchorage Daily News*, May 2, 1986, B1; "Press Conference, Anchorage, Alaska, May 9, 1986," in "Press Releases thru FY 93" folder, AKSO-RS; *Federal Register*, June 29, 1990, 27116; Lou Waller interview, July 25, 2000.

[24] Press releases from the period indicate that during the summer of 1990, the F&WS had no organizational structure that specifically addressed subsistence issues. But by September of that year, a Subsistence Office had been established. Since January 1991, subsistence issues have been the province of the Office of Subsistence Management. See DOI press release, June 6, 1990; F&WS press release, September 26, 1990; and FSB press releases for October 8, 1991 and January 3, 1992, all located in "Press Releases thru FY 1993" file, AKSO-RS; OSM "Fiscal Year 1991 Organization and Staffing" chart, January 23, 1991, courtesy of Nancy Beres.

[25] Sen. Ted Stevens press release, October 16, 1990, in "Press Releases thru FY 93" folder, AKSO-RS; John M. Morehead interview, April 23, 2001. New employees in the NPS's Subsistence Division included John Hiscock, Clarence Summers, and Betty Barlond (who began work there in 1989) along with Janis Meldrum and Bob Gerhard (who began in 1991). All but Hiscock and Barlond are still involved with subsistence-oriented duties. As noted in Chapter 8, 1991 was also the year in which the first several park-based subsistence coordinators began work.

[26] *Federal Register*, June 29, 1990, 27123-24; Bob Gerhard interview, January 31, 2001.

[27] *Federal Register*, June 29, 1990, 27119.

[28] USF&WS press releases for September 26, 1990, October 4, 1990, and October 16, 1990; all in "Press Releases thru FY 93" folder, AKSO-RS; *Federal Register*, September 25, 1990, p. 39184.

[29] *Sitka Sentinel*, December 17, 1990, 1; F&WS press release, December 17, 1990; *Federal Register* 56 (January 3, 1991), 236-39. The board's Sitka, Saxman, and Kodiak meetings were held on October 29, November 13, and November 16, respectively. The two non-Alaska meetings were held in Seattle and Washington, D.C.

[30] F&WS press releases for December 10, 1990; February 20, 1991; June 27, 1991; and July 12, 1991, all in "Press Releases thru FY 93" folder,

AKSO-RS.

[31] F&WS Press Release, October 16, 1990. The Notice of Intent to prepare the EIS was

published in the October 25, 1990 *Federal Register*, p. 43013.

[32] FSB, *Draft EIS*, October 1991, p. VI-6.

[33] *Federal Register*, June 29, 1990, 27124; McVee to Martin Suuberg, January 31, 1991, in "Regional Councils FY 90-92" file, AKSO-RS.

[34] Curtis McVee to Royce Purinton, July 26, 1991; Vernon R. Wiggins to Don Young, January 22, 1992; both in "Regional Councils FY 90-92" file,

AKSO-RS.

[35] Richard Marshall and Larry Peterson, *A Review of the Existing Alaska Department of Fish and Game Advisory System and a Determination of its Adequacy in Fulfilling the Secretary of the Interior's and the Secretary of Agriculture's Alaska National Interest Lands Conservation Act Title VIII Responsibilities* (Anchorage, U.S. Fish and Wildlife Service), June 1991. Despite the June issue date, a July 26 letter noted that the report had not yet been released, and a September 23 letter suggests the report's recent completion. McVee to Royce Purinton, July 26, 1991, and Louis R. Waller to Subsistence Coordinators, September 23, 1991; both in "Regional Councils FY 90-92" file, AKSO-RS.

[36] Federal Subsistence Board, *Subsistence Management for Federal Public Lands in Alaska, Draft Environmental Impact Statement* (Anchorage, U.S. Fish and Wildlife Service, October 1991), vi-x. Notice of the Draft EIS was published in the *Federal Register* on October 17, 1991, p. 52056.

[37] FSB Press Release (F&WS press release 91-49), October 8, 1991; FSB, *Subsistence Management for Federal Public Lands* (draft), ix; FSB, *Subsistence Management for Federal Public Lands in Alaska, Final Environmental Impact Statement*, Vol. I, forematter.

[38] FSB, *Final EIS*, pp. V-1 through V-8.

[39] *Anchorage Times*, June 6, 1991, B2; FSB Press Release, December 6, 1991, in "Press Releases thru FY 93" folder, AKSO-RS; *Federal Register*, December 5, 1991, 63702. The *Times* article, quoting DOI spokesman Bob Walker, suggested that the fall meeting dates—and thus the delay in the process—were made "to allow time to hold hearings on the issue ... when more subsistence users could attend."

[40] FSB Press Release, February 4, 1992, in "Press Releases thru FY 93" folder, AKSO-RS; *Federal Register* 57 (January 30, 1992), 3676-87.

[41] The exact date of completion of the final EIS is unknown. But FWS employee William Knauer, at a February 25, 1992 meeting of the Gates of the Arctic SRC, noted that the volumes were "in the mail now." GAAR SRC minutes, February 25-26, 1992, 3.

[42] FSB, *Final EIS*, pp. II-15 through II-18.

[43] The notice for the Final EIS was published in the *Federal Register* on February 25, 1992, p. 6490.

[44] William W. Knauer (Chief, Boards and Advisory System Branch, F&WS) to Chief, Interagency Coordination and Legal Issues Division, OSM, April 21, 1992, in "Regional

Councils FY 90-92" file, AKSO-RS. The Record of Decision was announced in the May 7 *Federal Register* (p. 19591), more than a month after the decision was made.

[45] FSB, *Subsistence Management for Federal Public Lands in Alaska, Record of Decision* (Anchorage, the author, April 1992), 1-6; *Federal Register* 57 (May 29, 1992), 22940-64; FSB Press Release, June 11, 1992, in "Press Releases through FY 93" folder, AKSO-RS.

[46] Federal Subsistence Board press releases for December 6, 1991; January 3, 1992, and March 17, 1992; *Federal Register*, December 9, 1991, 64404 and May 28, 1992, 22530.

[47] Boyd Evison email, April 17, 2001; John M. Morehead interview, April 23, 2001.

[48] Terry Haynes to author, email, February 6, 2001; Greg Bos to author, facsimile, October 9, 2001.

[49] Ann Wilkinson to Advisory Committee Officers, Southcentral Region, November 8, 1991; Royce Purinton to Interior Regional Council Members, March 2, 1992; both in "ADF&G Regional Councils, FY 91-92" folder, AKSO-RS. News that the state-sponsored councils were being eliminated apparently spread imperfectly; notes of the May 28, 1992 Denali SRC meeting [p. 5] stated that "the State Regional Councils will no longer be funded," but minutes of a June 11, 1992 Cape Krusenstern/Kobuk Valley SRC meeting [p. 3] stated that "the current status of the Regional Councils is not clear."

[50] FSB, *Final EIS*, February 1992, II-15; FSB, *Record of Decision*, [April] 1992, 11. Notes from a January 1992 meeting of the Interior Department's Washington Subsistence Policy Group (WSPG) suggest that there was a heated debate over whether there should be 8 or 12 regions. The decision at that meeting was "to stay with 8, but discussion on possibly going to 12." Both BIA and NPS representatives favored 12, but Deputy Undersecretary for Alaskan Affairs Vernon R. Wiggins warned against such a move, contending that because there were 12 landholding regional Native corporations, having 12 regions "might be perceived as making it a 'property' on Native Corporations, and not representative of all subsistence users." Tony Sisto, WSPG meeting, January 14, 1992, in "Regional Councils FY 90-92" file, AKSO-RS.

[51] William W. Knauer to Chief, Interagency Coordination and Legal Issues Division, Office of Subsistence Management, F&WS, April 21, 1992, in "Regional Councils FY 90-92" folder; DENA SRC minutes, May 28, 1992; both in AKSO-RS collection.

[52] The number of Regional Advisory Council members—a total of 84—were to be apportioned as follows: Region 1, 13 members; Regions 5, 6, 9, and 10, 9 members; and Regions 2, 3, 4, 7, and 8, 7 members. Interim Chair, FSB to The Secretary, June 2, 1993, in "Jun-Sept. FY 93-94" folder, AKSO-RS.

[53] Curtis McVee to "The Secretary," n.d. (c. July 8, 1992), in "Regional Councils, FY 90-92" folder, AKSO-RS; USDI, "Charter, Northwest Arctic Subsistence Regional Advisory Council" [etc.], January 19, 1993, in "Regional Councils, Jun-Sept. FY 93-94" file, AKSO-RS. The charters were valid for two years and were to be renewed "every biennial anniversary" of ANILCA. Renewal dates for the various charters have been January 31, 1995; September 5, 1996, September 4, 1998, and September 26, 2000.

[54] Robert A. Gerhard to [NPS] Subsistence Coordinators, June 2, 1992, in "Regional Councils, FY 90-92" folder.

[55] These meetings were held in both urban and rural locations. The first was held on October 5 in Glennallen, the last on October 27 in Bethel. Curtis McVee to "Dear Reader," September 23, 1992, in "Press Releases thru FY 93" folder, AKSO-RS.

[56] The Interior Department did not announce the Secretary's appointments until August 19. Ron McCoy to The Secretary, June 2, 1993, in "Regional Councils, June-Sept. FY 93-94" folder, AKSO-RS; USDI Press Release, August 19, 1993, in "Press Releases thru FY 93" folder, AKSO-RS.

[57] F&WS, "Federal Advisory System Process and Target Dates," July 11, 1992, in "Regional Councils FY 90-92" folder, AKSO-RS; Curtis McVee to "Dear Reader," September 23, 1992, in "Press Releases thru FY 93" folder, AKSO-RS.

[58] Richard S. Pospahala to Interagency Staff Committee, May 25, 1993, in "Regional Councils, Oct thru May FY 93" folder, AKSO-RS. Jorgenson was hired by the Forest Service, while the remaining coordinators—and all of the other staff support—were Interior Department (F&WS) employees.

[59] Pospahala to Distribution List, July 19, 1993, in "Regional Councils, Oct thru May FY 93" folder, AKSO-RS.

[60] FSB Press Release, September 2, 1993, in "Regional Councils, June-Sept. FY 93-94" folder, AKSO-RS. A final version of the operations manual was completed in April 1995; see USF&WS, Office of Subsistence Management, *Federal Subsistence Regional Advisory Council Operations Manual* (Anchorage, the author), April 1995.

[61] *Anchorage Daily News*, June 23, 1990, B1, B3; October 17, 1992, B8.

[62] "Subsistence: Alaska's Dilemma," 86; *Senate Bill History, 1989-1990*, SB 555; *Anchorage Daily News*, November 9, 1990, E2.

[63] *Sitka Sentinel*, October 30, 1990, 1; *Anchorage Daily News*, October 30, 1990, A1. As noted in the November 11, 1990 *Anchorage Daily News*

(p. B-4), both an AFN board member and a Board of Game member sought to regain state management during this period by proposing the limitation of subsistence uses to rural residents on Alaska's federal lands. This proposal, however, was never passed by either the game or fish boards.

[64] *Anchorage Daily News*, August 13, 1991, A1.

[65] *Anchorage Daily News*, June 23, 1992, A8.

[66] *Anchorage Daily News*, February 26, 1991, B1; May 18, 1991, B11.

[67] See the following *Anchorage Daily News* articles: October 12, 1991, B15; January 4, 1992, B1; March 22, 1992, G3; May 6, 1992, B3; May 8, 1992, B2; and June 5, 1992, A12.

[68] Dean Dunsmore interview, May 11, 2001. Because of the legal concept of substitution, the state's lawsuit became known as *Alaska vs. Babbitt* beginning in January 1993.

[69] *Anchorage Times*, February 28, 1992, A1, A12.

[70] *Anchorage Daily News*, March 3, 1992, B1, B3.

[71] *Anchorage Daily News*, June 23, 1992, A8.

[72] *Anchorage Daily News*, June 1, 1992, B2; June 5, 1992, A12.

[73] *Anchorage Daily News*, June 16-23, 1992, A1; *House Bill History, 1991-92*, and *Senate Bill History, 1991-92*.

[74] *Anchorage Daily News*, June 24, 1992, A1; October 14, 1992, B2; October 27, 1993, B1, B3.

[75] *Anchorage Daily News*, November 30, 1993, D1; January 24, 1995, A1, A8. But as Joan Nockels noted (in "Katie John v. United States: Redefining Federal Public Lands in Alaska," *Environmental Law* 26 [Summer, 1996], 695-96), *Alaska vs. Babbitt* remained an active case. She noted that the state "withdrew its challenge and stipulated to dismissal with prejudice. The Ninth Circuit accepted the stipulation. Nevertheless, the consolidated cases proceeded under the case name *Alaska v. Babbitt*. This is unfortunate because, in Alaska, the case has always been referred to as the dispute. For the purpose of staying consistent with the Alaskan understanding of this dispute, the Note will refer to the Ninth Circuit ruling in *Alaska v. Babbitt* as the *Katie John* appellate court decision but will properly cite to *Alaska v. Babbitt*." Most recent accounts, by way of contrast, consistently refer to the case as *Katie John v. USA*. For the purposes of this report, therefore, this case (for actions after January 1995) will be called *Katie John v. USA* or simply the *Katie John* case.

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A National Park Service Management History

Chapter 8:
NPS SUBSISTENCE MANAGEMENT ACTIVITIES, 1990-PRESENT (continued)

Notes — Chapter 8

[1] Collins to Lou Waller, October 18, 1990, in DENA SRC files. The only two SRCs that held a legally-binding meeting in 1990 were those representing Gates of the Arctic National Park (which met three times) and Lake Clark National Park (which met once).

[2] As noted below, the Aniakchak, Denali, Gates of the Arctic, and Wrangell-St. Elias SRCs all sent in hunting plan recommendations that, to a greater or lesser extent, resembled recommendations that had been rejected in 1988. The Interior Secretary, however, did not receive the revised recommendations until 1992 or 1993.

[3] Walter Sampson to Boyd Evison, January 15, 1990; David B. Ames to Sampson, February 5, 1990; Frank Stein to Manuel Lujan, March 12, 1991; all in CAKR SRC folder.

[4] Lou Waller email, December 18, 2000. As noted in Chapter 7, new Subsistence Division employees included John Hiscock, Clarence Summers, and Betty Barlond (all hired in 1989), along with Janis Meldrum and Bob Gerhard (hired in 1991).

[5] GAAR SRC minutes, January 14, 1998, 3; Shirley L. Lee to "To Whom it May Concern," May 8, 1991, in GAAR SRC folder. The first quote, made at a 1998 meeting, is by Jack Reakoff, who joined the Gates of the Arctic SRC in 1990; he noted that "the NPS has changed for the better since the early days."

[6] John Vale of the Wrangell-St. Elias SRC complained in March 1991, "Why are we limited to $10,000? [W]e have to meet two times a year to be effective." Raymond Paneak of the Gates of the Arctic SRC, on the other hand, wanted more; he stated in May 1991 that he'd "like to see a commission meeting more than twice a year because the commission doesn't get anywhere with just two meetings." The NPS inexplicably rejected the Wrangell-St. Elias SRC's request, but the NPS's Clarence Summers responded to the Gates of the Arctic request by stating that "the budget allows for another one or two meetings this year." Indeed, Appendix 5 indicates that the Gates of the Arctic SRC—in the 1980s as well as the 1990s—often met three times per year. Beginning in January 1993, moreover, the budget for the Gates SRC—alone among Alaska SRCs—was raised from $10,000 to $25,000 per year. WRST SRC minutes, March 19, 1991, 1; Bill Ellis to Jack Morehead, October 21, 1991; WRST SRC meeting, November 13, 1991, 1; GAAR SRC minutes, May 8, 1991, 20; February 25-26, 1992, 1, 5; GAAR SRC newsletter, February 9, 1993, 1.

[7] In October 1990, the Denali SRC chair requested an SRC newsletter; that same year, the Gates of the Arctic SRC spoke out in favor of a joint meeting of all seven SRCs. Neither idea

was implemented. During the first half of the 1990s, the SRC chairs (despite protests to the contrary) did not meet; and for most SRC members, informal conversations with regional subsistence staff (such as Clarence Summers, who attended SRC meetings throughout Alaska during this period) appears to be the only way in which SRC members heard about other SRCs' activities. For some reason—perhaps it was coordinator Steve Ulvi's involvement—Gates of the Arctic SRC members stayed better informed than other commission members on statewide subsistence issues; they received periodic updates on the actions of the other SRCs, and in July 1992, Ulvi distributed the first of several detailed newsletters to his SRC. Collins to Waller, October 18, 1990; Collins to Clarence Summers, July 9, 1993, both in DENA SRC files; GAAR SRC minutes, January 27, 1990, 6; Raymond Paneak to All Subsistence Resource Commissions, January 31, 1990, in GAAR SRC file; GAAR SRC minutes, May 6, 1992, 6; NPS, *GAAR SRC Newsletter*, July 22, 1992.

[8] In the fall of 1991, the Wrangell-St. Elias SRC requested funds to travel to Federal Subsistence Board meetings, and several months later the Denali SRC made an identical request. In both cases, the Interior Secretary rejected the SRC's request, arguing that "such representation is unnecessary because the interest and involvement of the Commission are already reflected in the process" by which SRC members are chosen. Bill Ellis to Manual Lujan, November 14, 1991; Lujan to Ellis, February 21, 1992, both in WRST SRC file; Florence Collins to Lujan, March 9, 1992, 2; Lujan to Collins, May 28, 1992, both in DENA SRC file. Also see ANIA SRC minutes, January 11, 1990, 3.

[9] Gates of the Arctic SRC member Shirley Lee, who resigned in May 1991, rued that the "NPS ignores and pressures the commission," and that "the NPS has also failed to keep the Commission apprised of its budget." SRC member Delbert Rexford did not resign but stated that he was "deeply disturbed" that the SRC had "limited administrative support" to carry out its charter provisions. Lee to "To Whom it May Concern," May 8, 1991; Rexford to Raymond Paneak, April 15, 1993; both in GAAR SRC files.

[10] *Congressional Record*, May 2, 1979, E 2014.

[11] *Public Law 96-487*, December 2, 1980, Sec. 801(4), Sec. 802(1), and Sec. 811. Congress made it clear that subsistence users, within proper limits, should be able to utilize new technologies; it thus agreed with Shismaref resident George Olanna who told Congress, "We cannot be limited and restricted into one small world of the past, where hunting was done with spears and total demand of obtaining food and shelter was from the land. We are in a modern world where modern equipment is needed to survive. We cannot be pushed into a living museum where the western culture have created in order to satisfy his ego. It would be like, living in an imaginary western movie." *Congressional Record*, July 23, 1980, S 9598.

[12] Sen. Ted Stevens press release, October 16, 1990, in "Press Releases thru FY 93" folder, AKSO-RS.

[13] Lou Waller (December 20, 2000 interview) notes that parks augmented the funds from Stevens' allotment with additional funds that had been authorized for SRC use but not expended. The various SRC charters authorized a $10,000 annual expenditure, but as Appendix 5 notes, several SRCs spent less than their annual allotment.

[14] GAAR SRC minutes, November 14-15, 1990, 10; CAKR SRC minutes, March 12, 1991, 1.

[15] Clarence Summers interview, December 19, 2000; Lou Waller interview, December 20, 2000; Joe Fowler email, January 7, 2001; Jim Hannah interview, January 9, 2001. Individuals

who assumed responsibility for park subsistence activities included Susan Savage, ANIA/KATM; Ken Adkisson, BELA; Hollis Twitchell, DENA; Steve Ulvi, GAAR; Lee Fink, LACL; Lois Dalle-Malle, NWAK; Jay Wells, WRST; and Cary Brown, YUCH. Savage, Twitchell, Ulvi, and Dalle-Molle were hired to be subsistence coordinators, Adkisson became a subsistence coordinator after a previous stint as chief ranger, and Fink was hired as a resource management specialist and subsistence coordinator after serving as a local-hire pilot. At WRST, district ranger Jim Hannah incorporated subsistence protection duties into his job. Finally, Mike Sharp was hired as a subsistence ranger pilot under a two-park cooperative agreement; he was located in Yakutat and dealt with subsistence issues both at WRST (Malaspina Forelands) and GLBA (Dry Bay). Superintendents at WRST and YUCH opted to spend their subsistence funds on equipment for the subsistence program; subsistence concerns at these units were handled by existing staff.

[16] Hollis Twitchell was hired as DENA's subsistence specialist in July 1991 (Twitchell to Waller, July 24, 1991, in "Federal Subsistence Permits" folder, AKSO-RS Collection), but Lee Fink (Ralph Tingey interview, December 20, 2000) did not assume LACL's subsistence duties until late 1992. See Chief, Subsistence Division to Subsistence Coordinators, July 24, 1991, in ANIA and DENA SRC folders.

[17] Steve Ulvi and Hollis Twitchell, who began working as park subsistence coordinators in 1991, noted that regional subsistence specialists during this period were dead set against any expansion of subsistence eligibility that was not specified in the regulations. When either suggested a relaxation of eligibility requirements, the regional officials' stock response was, "We think you're giving away the farm." Ulvi interview, April 6, 1999; Twitchell interview, March 22, 1999.

[18] Jennifer A. Salisbury to Bill Ellis, July 14, 1992, in WRST SRC files.

[19] Recommendation #1 reaffirmed the legitimacy of the existing, community-based resident zone system. Recommendation #2 was in two parts; one advocated the legality of subsistence hunters to fly between resident zone communities, while the other supported the recent, four-party agreement regarding ATV use in the Anaktuvuk Pass area. Recommendation #3 asked that "the entire park be generally classified as a traditional use area." GAAR SRC, "Subsistence Hunting Plan," February 25, 1992, in SRC files.

[20] Superintendent, GAAR to Chief, Subsistence Division, Alaska Region, May 13, 1992, in GAAR SRC files. The letter, to a large extent, was written by the park's Subsistence Coordinator, Steve Ulvi. The specifics regarding the three issues with which the SRC was concerned are discussed in greater detail later in this chapter.

[21] Superintendent, GAAR to Regional Director, July 13, 1992, in GAAR SRC files.

[22] Jennifer A. Salisbury to Raymond Paneak, December 3, 1992, "SRC Hunting Plan Responses" file, AKSO-RS. As noted later in this chapter, this "proposed regulation" was never implemented.

[23] Superintendent GAAR to Chief, Subsistence Division, December 11, 1992, in GAAR SRC files; Steve Ulvi, email to the author, November 17, 2000. "Subsistence superintendents," as used here, include the superintendents of all park units in which subsistence is a legally-authorized activity.

[24] Superintendent GAAR to Chief, Subsistence Division, December 11, 1992, in GAAR SRC files.

[25] John Morehead (in an April 23, 2001 interview) indicated that one of the most restive superintendents was Russ Berry (DENA), and several sources have noted that Karen Wade (WRST) was also active in expressing her frustrations with the existing NPS subsistence management system.

[26] Hollis Twitchell interview, March 22, 1999; Steve Ulvi interview, April 6, 1999.

[27] Alaska Superintendents to Jack Morehead, January 21, 1993, in Paul Anderson files; NPS, *Gates of the Arctic SRC Newsletter*, February 9, 1993, in GAAR SRC files; John Morehead interview, April 23, 2001.

[28] The conference was held at the Holy Spirit Retreat House, in the Upper Hillside section of Anchorage.

[29] Steve Ulvi interview, April 17, 2001; Bill Brown interview, April 18, 2001; Paul Anderson interview, April 30, 2001.

[30] "Notes — Subsistence Workshop, 3/22-26/93," Ray Bane personal files; Waller to the author, December 20, 2001.

[31] This statement remained in draft form until April 1997, when it was slightly modified at an NPS subsistence workshop. It emerged as the NPS Subsistence Mission Statement, which was published as part of the August 1997 Subsistence Management Program.

[32] See John M. Morehead to Jack Hession letter, June 1, 1993, in WRST SRC files.

[33] GAAR SRC minutes, April 13-15, 1993, 2.

[34] Bob Gerhard to Regional Director, ARO memo, June 29, 1993, in Gerhard files; GAAR SRC minutes, June 18, 1993, 2.

[35] John M. Morehead interview, April 23, 2001.

[36] Glen Alsworth to Manuel Lujan, August 17, 1992; John H. Davis to Alsworth, October 1, 1992; both in LACL SRC files; John Morehead interview, April 23, 2001.

[37] Lois Dalle-Molle to Betty Barlond, October 5, 1993; Bob Gerhard to Jack (Morehead) and Paul (Anderson), December 22, 1993; both in CAKR SRC files.

[38] Pete Schaeffer to Bruce Babbitt, June 13, 1994, in Cape Krusenstern SRC file; Walter Sampson to Babbitt, June 13, 1994, in Kobuk Valley SRC file.

[39] GAAR SRC minutes, May 10-11, 1994, 2-4; Paul Hunter to Lou Waller email, May 31, 1995, in DENA SRC file; Hollis Twitchell interview, April 6, 1999; Paul Anderson interview, April 30, 2001.

[40] Ralph Tingey interview, January 11, 2001; Paul Anderson interview, April 30, 2001.

[41] NPS, AKSO, *Natural Resources Program Review, "Reinventing Natural Resources Management,"* February 1996, 2-4, 15. The team consisted of two Alaskan NPS managers (Jon Jarvis of WRST and Judy Gottlieb of AFO), a non-Alaska NPS employee (John Varley

from the Yellowstone Center for Resources), and an Outside biologist unaffiliated with the NPS (Gerry Wright from the National Biological Service).

[42] NPS, *Natural Resources Program Review*, 2, 4, 14-15.

[43] AKSO telephone lists, March 7, 1996 and June 21, 1996.

[44] Jon Jarvis to Lou Waller, February 26, 1996 email, WRST SRC files; GAAR SRC Minutes, November 13-14, 1996, 10.

[45] Ralph Tingey interview, January 11, 2001; Bob Gerhard to author, email, January 11, 2001; Gerhard to author note, October 1, 2001.

[46] DENA SRC, April 29, 1996 and August 9, 1996; GAAR SRC, May 14-16, 1996, 2; November 13-14, 1996, 15, 21; WRST SRC, February 25-27, 1997, 8; John Vale to Bob Barbee, March 8, 1997, in WRST SRC files.

[47] NPS, *Subsistence Management Program*, editions of July 3, 1997 and August 18, 1997. The April 1997 workshop was held at Grace Hall on the Alaska Pacific University campus; see "Background Materials for Use at the Subsistence Workshop, April 14-15, 1997," Janis Meldrum collection, NPS.

[48] WRST SRC minutes, February 25-26, 1997, 2, 8; November 3-4, 1997, 3; November 17-18, 1998, 5. Since 1998, the SMP has been augmented as needed in response to various agency and SRC actions.

[49] Hollis Twitchell to author, email, January 16, 2001; Janis Meldrum interview, January 12, 2001.

[50] Steve Ulvi email, January 11, 2001; Mary McBurney interview, January 12, 2001; McBurney to author, email, April 8, 2002.

[51] Janis Meldrum to author, email, January 12, 2001 and August 23, 2001.

[52] Since June 1996, meetings of the SRC chairs have taken place on the following dates: August 25, 1997; October 13, 1998; October 19, 1999; October 17, 2000, and October 23, 2001. All of these meetings have been held in Anchorage.

[53] NPS, "Update from the Subsistence Committee of the Alaska Cluster of Superintendents," January 6, 1997, in "Management Plan, Summer 97" file, author's collection.

[54] Bob Gerhard to the author, email, June 3, 1997.

[55] "Park Subsistence Coordinators Meeting, February 17-19, 1999" (agenda), author's files.

[56] Catton, *Land Reborn*, 303-05; Alaska Legislative Resolve 89 (1990); Paul F. Haertel to Director NPS, June 21, 1990, in "R Correspondence, 1989-90" file, AKSO-RS collection.

[57] Catton, *Land Reborn*, 305; Stan Leaphart to James M. Ridenour, April 10, 1990; Haertel to Director NPS, June 21, 1990; both in "R Correspondence, 1989-90" file.

[58] Catton, *Land Reborn*, 287-88. The proposed rule, however, brought such a storm of protest

that the original October 4 comment deadline was later extended to November 3. Because of circumstances described in a endnote below, no final rule was ever issued. See the *Federal Register* 56 (August 5, 1991), 37262-65, and *Federal Register* 56 (September 13, 1991), 46589.

[59] Catton, *Land Reborn*, 312-13; "Park May Be Opened to Commercial Fishing," *National Parks* 66 (September/October 1992), p. 9; Mary Grisco, "Regional Report/Alaska," *National Parks* 66 (November/December 1992), p. 22. Rep. Young submitted two bills—H.R. 3156 and H.R. 3158—on July 31, 1991, while Sen. Murkowski submitted S. 1624 on August 2.

[60] Chip Dennerlein, "Regional Report/Alaska," *National Parks* 67 (September/October 1993), p. 24; *Anchorage Daily News*, April 29, 1993, E1; May 13, 1993, B1. In a March 1993 briefing statement for newly-appointed Interior Secretary Bruce Babbitt, the NPS noted that while it "does not agree with the subsistence portion of the bills [which were H.R. 704 and S. 291], we could assist in drafting a more narrow and appropriate alternative for Native fishing and gathering."

[61] Catton, *Land Reborn*, 313.

[62] NPS Press Release, December 9, 1993; *Federal Register* 59 (March 29, 1994), 14565; *Federal Register* 61 (July 5, 1996), 35134.

[63] *Federal Register* 59 (March 29, 1994, 14564-66; *Federal Register* 60 (December 5, 1995), 62233-36.

[64] *Federal Register* 61 (July 5, 1996), 35133-37. The ticklish ownership issue, which (as Catton notes on p. 278 and elsewhere) had been considered off and on by both state and federal lawyers since the early 1980s, lay dormant until March 1999, when Alaska Attorney General Bruce Botelho announced the state's intention to sue the federal government in the matter. The state filed such a suit that November; it included many other southeastern Alaska submerged lands in addition to those in Glacier Bay. The case is still unresolved; a final decision in the case is not expected for several years.

[65] Wayne Howell to author, December 11, 2001; *Anchorage Daily News*, December 18, 1997, F4; John Quinley interview, October 13, 2000.

[66] *Anchorage Daily News*, April 10, 1997, E4; October 3, 1997, B1; April 14, 1998, F1. Murkowski inserted Section 12 into S. 967 on June 26, 1997, but by the time the bill emerged from markup, on October 29, the provision had been removed.

[67] NPS, *Glacier Bay Update* 1 (August/September 1999), 1-2, 5; *Anchorage Daily News*, October 22, 1998, A-1.

[68] NPS, *Glacier Bay Update*, 1-2; *Anchorage Daily News*, February 27, 1999, E1; March 24, 1999, D1; June 14, 1999, B1; May 13, 1999, A1; June 18, 1999, B1. Young's bill, H.R. 947, went nowhere, but Murkowski's bill, S. 501, was the subject of a July 29 report and was amended on November 19.

[69] *Federal Register* 64 (August 2, 1999), 41854; *Federal Register* 64 (October 20, 1999), 56455-64.

[70] NPS, *Glacier Bay Update*, 2; *Anchorage Daily News*, October 15, 1998, B7; September

20, 1999, B1; October 4, 1999, B1.

[71] The agreement, at this stage of negotiations, would also have abolished Anaktuvuk Pass as a resident zone community and replaced it with a roster system; that is, a list of eligible subsistence users. The community had asked for this change "to protect [residents] from new people moving in." GAAR SRC minutes, January 27-29, 1990, 8-9. But in the fall of 1991, the roster-system idea was dropped after the NPS held a series of meetings in Anaktuvuk Pass on the matter, and it was not included in any of the various Congressional land-exchange bills. GAAR SRC meeting, September 11, 1991; Roger Siglin to John T. Shively, September 27, 1991, in SRC file.

[72] GAAR SRC minutes, November 16-17, 1989, 4; January 27-29, 1990, 6-7; November 14-15, 1990, 6; Raymond Paneak to Secretary of the Interior, January 31, 1990; Paul Haertel to Paneak, February 22, 1990; all in SRC file.

[73] GAAR SRC minutes, November 14-15, 1990, 4.

[74] NPS, *Draft Legislative Environmental Impact Statement, All-Terrain Vehicles for Subsistence Use, Gates of the Arctic National Park and Preserve, Alaska* (Anchorage, the author, January 1991), 3, 41.

[75] Meetings were held on March 19 in Anaktuvuk Pass, on March 20 in Fairbanks, and on March 21 in Anchorage. NPS Press Release, February 25, 1991.

[76] NPS, *Final Legislative Environmental Impact Statement, All-Terrain Vehicles for Subsistence Use, Gates of the Arctic National Park and Preserve, Alaska* (Anchorage, the author, February 1992), cover letter, 62; NPS Press Release, April 28, 1992.

[77] NPS, R*ecord of Decision, Final Legislative Environmental Impact Statement, All-Terrain Vehicles for Subsistence Use, Gates of the Arctic National Park and Preserve, Alaska* (Anchorage, the author, October 20, 1992), 1-2, 4; NPS Press Release, October 30, 1992; *Anchorage Daily News*, December 11, 1992, A-11.

[78] The three non-federal signatories were ASRC President Dick Adams, Mark Morry of the Nunamiut Corporation, and Anaktuvuk Pass mayor Reed Nay. GAAR SRC minutes, April 13-15, 1993, 6.

[79] *Anchorage Daily News*, June 22, 1994, A1; July 14, 1994, B1.

[80] *Congressional Record* 140 (February 1, 1994), pp. 26033-34 and the *Congressional Record* website (www.access.gpo.su_docs/aces/aaces002.html); *Anchorage Daily News*, September 22, 1994, B1; October 11, 1994, B1. Also see House Report 103-769 (October 3, 1994) and Senate Report 103-424 (November 30, 1994).

[81] *Anchorage Daily News*, January 19, 1995, B3; *Congressional Record* 141 (February 1, 1995), 3262-65; also see House Report 104-8 (January 27, 1995), p. H 839.

[82] *Congressional Record* 141 (June 30, 1995), pp. S 9561, S 9592-95. Also see Senate Report 104-44 (April 7, 1995), p. S 5546.

[83] *Anchorage Daily News*, May 3, 1996, B5; November 13, 1996, A1.

[84] GAAR SRC minutes, November 13, 1996, 2.

[85] As noted in Table 5-1, the regulations listed a total of 53 communities, of which four—Ambler, Kobuk, Kotzebue, and Shungnak—served as resident communities for two different park units.

[86] ANIA SRC minutes, January 11, 1990, 2; Susan Savage to ANIA SRC Chairman, etc., April 28, 1992, 4; GSA, Form T-820-H (1997) for DENA SRC; DENA Subsistence Management Plan, August 18, 2000, 2:5.

[87] Bill Ellis to Secretary of the Interior, December 2, 1991; Jennifer A. Salisbury to Ellis, July 14, 1992; both in WRST SRC files.

[88] WRST SRC minutes for November 3-4, 1997, 3-4; November 17-18, 1998, 4-5; GSA, Form T-820-H (1996) for WRST SRC; Tom Carpenter to Jon Jarvis, March 23, 1998; WRST Press Release, August 30, 1999; all in WRST SRC files.

[89] *Federal Register* 66 (June 14, 2001), 32282-84; *Federal Register* 67 (February 25, 2002), 8481-84. The implementation of this regulation marked the first time, in the 18-year history of the NPS's subsistence resource commissions, that an SRC recommendation—with the exception of so-called "subpart D" regulations—has resulted in a new or modified regulation.

[90] Florence Collins to Russell Berry, June 9, 1994, in NPS, *Denali National Park and Preserve Subsistence Management Plan*, August 18, 2000, 2:42-45. These boundaries were established even though, according to the SRC chair, "people from ... Nikolai and Telida do not use park lands for subsistence." Collins to Harold Huntington, December 1, 1993, in DENA SRC files.

[91] Annette Burroughs to GAAR SRC, August 11, 1991; GAAR SRC minutes, September 11, 1991, 3; February 25-26, 1992, 3-4. As noted in the minutes, the NPS approved the newly-established boundaries "as long as the community understands that the Service retains the option of reducing the limits of the resident zone or eliminating the resident zone and going to a permit system in the future if a lot of changes take place within the community. The commission agreed with the Park Service's plan."

[92] John M. Morehead to Jack Hession, June 1, 1993, in WRST SRC files.

[93] Lou Waller and John Hiscock to Jay Wells and Clarence Summers, facsimile, June 17, 1992; Karen Wade to Jack Morehead, email, December 2, 1992; Wade to Bill Ellis, January 4, 1993; all in WRST SRC files.

[94] NPS, "Summary of Actions Taken at the April 7-8 SRC Meeting," n.d.; GSA, Form T-820-H (1995) for WRST SRC; both in WRST SRC files.

[95] WRST SRC minutes, November 17-18, 1998, 3-4.

[96] WRST SRC minutes, November 3-4, 1997, 3-4.

[97] NPS, *Draft Review of Subsistence Law and NPS Regulations*, September 26, 1995, as revised by the NWAK Working Group, April 18, 1996, 5:23-31.

[98] Bob Gerhard to Ron McCoy, July 23, 1996; George T. Frampton, Jr. to Pete Schaeffer,

September 25, 1996; both in CAKR SRC files; Bob Gerhard interview, October 23, 2000.

[99] Ken Adkisson to author, email, January 16, 2001; Clarence Summers interview, April 4, 2002.

[100] Jennifer A. Salisbury to Bill Ellis, July 14, 1992, in WRST SRC files; NPS, *Gates of the Arctic SRC Newsletter*, July 7, 1993.

[101] NPS, GAAR SRC minutes, November 13-14, 1996, 19; John Vale to Robert Barbee, March 8, 1997, in WRST SRC files; NPS, *Subsistence Management Program*, August 1997, 9.

[102] John M. Morehead to Director, NPS, July 5, 1991; DENA SRC minutes, May 28, 1992, 1; Glen Alsworth to Sec. Manuel Lujan, August 17, 1992; John H. Davis to Alsworth, October 1, 1992; all in DENA SRC files.

[103] John M. Morehead to Director, NPS, July 9, 1993, in DENA SRC files.

[104] Collins to Babbitt, February 17, 1995, in DENA SRC files. The bold type is as in Ms. Collins's letter.

[105] Robert D. Barbee to Wallace A. Cole, April 11, 1995; Barbee to Collins, June 6, 1995; both in DENA SRC files.

[106] Paul Hunter to Lou Waller, email, May 31, 1995, in DENA SRC files; Barbee to Lisa Natwick, July 13, 1995, in LACL SRC files.

[107] DENA SRC minutes, August 9, 1996, 8.

[108] NPS, *Lake Clark National Park and Preserve Subsistence Plan* (October 5, 2000), 2:4-5.

[109] ANIA SRC minutes, March 24-25, 1992, 35; Harry Kalmakoff, Jr. to Sec. Bruce Babbitt, October 14, 1998; Robert D. Barbee to Kalmakoff, November 23, 1998; all in ANIA SRC files; NPS, *Lake Clark National Park and Preserve Subsistence Plan* (October 5, 2000), 2:5. As noted in Appendix 5, no Aniakchak SRC meetings between November 1992 and February 1997 were able to attract a quorum of their membership.

[110] GAAR SRC, "Subsistence Management Program," May 8, 1991, in GAAR SRC files.

[111] GAAR SRC, "Subsistence Management Program," February 25, 1992; Annette Burroughs to the SRC, August 11, 1991; both in GAAR SRC files.

[112] *Federal Register*, June 17, 1981, 31849.

[113] GAAR SRC minutes, November 16-17, 1989, 6, 11-12; November 14-15, 1990, 5.

[114] John Vale to Robert Barbee, March 8, 1997, in WRST SRC files.

[115] John Vale to Gov. Tony Knowles, November 4, 1997, in WRST SRC files.

[116] NPS, *Lake Clark National Park and Preserve Subsistence Plan* (October 5, 2000), 2:28-29. The Aniakchak, Lake Clark, and Wrangell-St. Elias SRCs have gone on record as being

in favor of a residency requirement, while the Denali and Gates of the Arctic SRCs have professed little interest in implementing it.

[117] Jim Pepper to Richard Stenmark, October 17, 1986; Roger Siglin to Ray Smith, August 16, 1988; GAAR SRC minutes, May 25, 1990, 2; Siglin to Rick Reakoff, July 13, 1990; all in GAAR SRC files.

[118] Lee R. Adler to Jon Jarvis, February 7, 1998; John Vale to Robert Barbee, March 8, 1997; both in WRST SRC files; Susan Savage to ANIA SRC chair, April 28, 1992, 3, in ANIA SRC files.

[119] Benjamin P. Nageak to Donald Hodel, May 6, 1987; Susan Reece to Nageak, May 18, 1988; both in GAAR SRC files.

[120] GAAR SRC minutes for November 16-17, 1989, 11; January 27-29, 1990, 6; November 14-15, 1990, 5-6; GAAR SRC, "Subsistence Management Program," May 8, 1991, 3; February 25, 1992, 2; Jennifer A. Salisbury to Raymond Paneak, December 3, 1992; all in GAAR SRC files.

[121] GAAR SRC minutes, May 5-6, 1992, 5.

[122] Roger Siglin to Jeff Poor, August 3, 1992; Steve Ulvi to Jeff and Cheryl Poor, June 7, 1993, both in GAAR SRC files; Steve Ulvi to the author, email, November 17, 2000.

[123] Susan Savage to ANIA SRC, April 28, 1992, 3, in ANIA SRC files.

[124] Pete Schaeffer to Bruce Babbitt, August 24, 1993; George T. Frampton, Jr. to Schaeffer, September 25, 1996; both in CAKR SRC files.

[125] DENA SRC minutes, March 6, 1992, 3; May 28, 1992, 5.

[126] DENA SRC minutes, June 28, 1993, 3; Clarence Summers, telephone conversation record, November 5, 1993; both in DENA SRC files; NPS, *Denali National Park and Preserve Subsistence Management Plan*, August 18, 2000, 5:5-6. Other sources have indicated that the earliest ORV use along Windy Creek was in 1950.

[127] NPS, DENA Subsistence Management Plan, August 2000, 5:6; Hollis Twitchell interview, January 18, 2001.

[128] DENA SRC minutes, August 9, 1996; GSA, Form T-820-H (1997) for DENA.

[129] ANIA SRC Recommendation 92-7 (November 6, 1992); Robert D. Barbee to Harry Kalmakoff, Jr., November 23, 1998, both in ANIA SRC files; GSA, Form T-820-H (1991) for CAKR; CAKR SRC Hunting Plan Recommendation 2A, August 24, 1993; George T. Frampton, Jr. to Pete Schaeffer, September 23, 1996, both in CAKR SRC files; Lois Dalle-Malle to author, email, January 18, 2001; Mary McBurney to author, email, January 19, 2001.

[130] Bill Ellis to Secretary Lujan, December 2, 1991; Jennifer A. Salisbury to Ellis, July 14, 1992; both in WRST SRC files.

[131] NPS, *Wrangell-St. Elias National Park and Preserve Resource Management Plan*, August 1993, Study #S100.01 (14:1-3); Terry L. Haynes to Paul Anderson, January 12, 1994;

both in WRST SRC files.

[132] G. Ray Bane to Lou Waller, January 25, 1994; Roy Ewan to Bruce Babbitt, April 18, 1994; George T. Frampton to Roy Ewan, September 12, 1994; Frank Rue to "Dear Reader," November 29, 1995; WRST SRC minutes, November 3-4, 1997, 4. The state's June 1994 report, written by ADF&G's ANILCA Program Office, was called *Documentation of Traditional and Subsistence Access in Wrangell-St. Elias National Park and Preserve: A Review of Existing Source Materials*, while the November 1995 study, by Terry Haynes and Stan Walker, was entitled *Pilot Project; Documenting Traditional and Subsistence Access in Wrangell-St. Elias National Park and Preserve*.

[133] Orville Lind to Randy Briggs, November 10, 1992; DENA SRC minutes, August 9, 1996; CAKR SRC, Recommendation 3, August 24, 1993. ANIA SRC Recommendation 92-1, passed in November 1992, stated that "Trapping was customary and traditional in all drainages of the Monument." This was a marked departure from the SRC's April 1987 recommendation, which identified particular drainages where historical trapping had taken place.

[134] Susan Reece to Benjamin Nageak, May 18, 1988, in GAAR SRC files.

[135] GAAR SRC minutes, November 14-15, 1990, 6; GAAR SRC, "Subsistence Hunting Plan" for May 8, 1991 and February 25, 1992; Jennifer A. Salisbury to Paneak, December 3, 1992; all in GAAR SRC files.

[136] GAAR SRC, "Draft Recommendation #9—Gates of the Arctic National Park Traditional Use Area," November 9, 1993. *Tracks in the Wildland; A Portrayal of Koyukon and Nunamiut Subsistence* (Cooperative Park Studies Unit, University of Alaska, 1982) was written by Richard K. Nelson, Kathleen H. Mautner, and G. Ray Bane; it was an excellent compendium of subsistence lifeways in and around Gates of the Arctic National Park and Preserve.

[137] GAAR SRC minutes, May 10-11, 1994, 9.

[138] Martin to Waller, email, May 18, 1994; Martin, "Briefing Statement (Draft)," July 21, 1994; both in GAAR SRC files. The quote is excerpted from the *Congressional Record* 126 (November 12, 1980), p. 29280 (H 10547). Martin's subsistence coordinator, Steve Ulvi, helped draft both the May email and the July briefing statement.

[139] Ray Bane to Mike Finley, July 22, 1994; Jack Hession, "Five Latent Traditional National Parks in Alaska," June 23, 1994; both in GAAR SRC files.

[140] George T. Frampton to Raymond Paneak (draft), September 28 and October 13, 1994; GAAR SRC minutes, May 14-16, 1996, 34-35; Paneak to Bruce Babbitt, June 3, 1996; Robert D. Barbee to Paneak, June 24, 1996; all in GAAR SRC files.

[141] DENA SRC, August 9, 1996; GAAR SRC, November 13-14, 1996, 17; NPS, *Subsistence Management Program*, August 1997, 6-7.

[142] WRST SRC minutes, November 17-18, 1998, 3-4; Robert D. Barbee to Harry Kalmakoff, Jr., November 23, 1998, in ANIA SRC files.

[143] GAAR SRC minutes, January 14-15, 1998, 24-26; NPS, *GAAR Subsistence Management*

Plan (draft), January 25, 2000, 12:6-7; Don Callaway interview, January 19, 2001; NPS, *Traditional Subsistence Use Areas; Information Necessary for Making a Determination for Gates of the Arctic National Park* (draft), April 18, 1999, in GAAR SRC files. The report was written by Don Callaway, Paul Hunter, and Steve Ulvi.

[144] Jack Hession to Robert D. Barbee, May 6, 1999; Hession to Barbee, June 6, 1999; Barbee to Hession, July 8, 1999; NPS, *DENA Subsistence Management Plan* (August 18, 2000), 12:1.

[145] GAAR SRC minutes, January 27-29, 1990, 2.

[146] GAAR SRC minutes, May 7-8, 1991, 3, 20, 26.

[147] GAAR SRC minutes, September 11, 1991, 2; February 25-26, 1992, 5.

[148] WRST SRC minutes, November 13-14, 1991, 1; Bill Ellis to Curtis McVee, November 14, 1991; Lujan to Ellis, February 21, 1992; all in WRST SRC files; John Morehead interview, April 23, 2001.

[149] ANIA SRC minutes, March 24-25, 1992, 36; DENA SRC minutes, May 28, 1992, 4-5; GSA, Form T-820-H (1992) for LACL.

[150] ANIA SRC minutes, November 5-6, 1992, 3.

[151] Denali staff reacted to the Interior Secretary's directive with an April 7 letter that fully supported the SRC, and on August 17, the Federal Subsistence Board adopted the SRC's recommendation. At Aniakchak, the Interior Secretary made no equivalent ruling because that SRC—plagued as it was by poor meeting attendance—did not forward its moose-season recommendation to the Interior Secretary until 1998. Denali SRC minutes, June 28, 1993, 4; Florence Collins to Bruce Babbitt, October 18, 1993; George T. Frampton, Jr. to Collins, January 10, 1994; Russell W. Berry, Jr. to Chief, Subsistence Division, April 7, 1994; William L. Hensley to Collins, September 29, 1994, all in DENA SRC files.

[152] Florence Collins to Federal Subsistence Board, February 17, 1995, in DENA SRC files; Raymond Paneak to Fenton Rexford, January 20, 1995, in GAAR SRC files; John Vale to Lee Titus, February 29, 1996, in WRST SRC files; GSA, Form T-820-H (1996) for LACL.

[153] John Vale to Bruce Babbitt, February 29, 1996; Jay Wells to Judy Gottlieb, email, July 17, 1996; Chick Fagan to Clarence Summers, August 2, 1996; George T. Frampton, Jr. to Vale, August 30, 1996; NPS, *Wrangell-St. Elias National Park and Preserve Subsistence Plan* (September 30, 1999), 1:11; Bob Gerhard interview, August 22, 2001.

[154] *Federal Register* 55 (October 30, 1990), 45663; *Federal Register* 59 (November 15, 1994), 58804.

[155] *Federal Register* 59 (November 15, 1994), 58804.

[156] *Federal Register* 60 (April 14, 1995), 19011-12.

[157] Raymond Paneak to Robert D. Barbee, February 9, 1995, in GAAR SRC files; Florence Collins to Barbee, June 16, 1995, in DENA SRC files. The GAAR letter was written largely at the behest of SRC member Jack Reakoff.

[158] *Federal Register* 60 (April 14, 1995), 19011; Office of the Federal Register, *Code of Federal Regulations, Title 36*, Chapter 1, §13.21 (1998), 180; Paul Hunter interview, January 24, 2001. The regulations terminology was modified by the elimination, between the proposed and final rules, of the phrase "under State or Federal hunting laws and regulations" in paragraph (a)(4) of §13.21.

[159] WRST SRC minutes, February 25-26, 1997, 8; John Vale to Robert Barbee, March 8, 1997, in WRST SRC files; GSA, Form T-820-H (1997) for DENA; NPS, *Subsistence Management Program*, August 1997, 25-26.

[160] Judy Gottlieb to Florence Collins, May 17, 1999, in *Denali SMP* (August 18, 2000), 1:11-12; Gottlieb to Collins, February 4, 2000, in *Denali SMP* (August 18, 2000), B:3; Gottlieb to Harry Kalmakoff, Jr., February 8, 2001, in ANIA SRC files.

[161] GAAR SRC minutes, April 20-21, 1999, 4; Florence Collins to Judy Gottlieb, February 14, 2000, in DENA SRC files.

[162] Lou Waller to author, December 20, 2001.

[163] Bill Ellis to Manuel Lujan, November 14, 1991; Lujan to Ellis, February 21, 1992; both in WRST SRC files. In 1990, a Gates of the Arctic SRC member, Charlie Brower, voiced his "concerns that the ... Park Service and not the Secretary of the Interior" commented on the various park hunting plan recommendations. NPS officials, however, quickly reassured him that the park's recommendations "did go to the Secretary of the Interior's office for approval" and that "the person rejecting the previous hunting plan was the Secretary of the Interior's assistant and was not the 'Park Service.'" GAAR SRC minutes, November 14-15, 1990.

[164] NPS, *Subsistence Management Program* (August 1997), 5; Judy Gottlieb to John Vale, May 17, 1999.

[165] Robert Barbee to Assistant Secretary for Fish and Wildlife and Parks, July 28, 1999; Bill Pierce to NPS-Alaska Region, fax, September 20, 1999; Judith C. Gottlieb to Glen Alsworth, February 4, 2000, in NPS, *Lake Clark National Park and Preserve Subsistence Plan* (October 5, 2000), 1:13.

[166] GAAR SRC, "Subsistence Hunting Plan," February 25, 1992; Roger Siglin to Chief, Subsistence Division, May 13, 1992; Jennifer A. Salisbury to Raymond Paneak, December 3, 1992; all in GAAR SRC files.

[167] GAAR SRC minutes, June 18, 1993, 2; NPS, *GAAR SRC Newsletter*, July 7, 1993, 3. The NPS's *Mentasta Caribou Herd Cooperative Management Plan*, June 1995, p. 3, stated that "For the purpose of managing this herd, the agencies agree to interpret 'natural' to mean, in part, free from human manipulation for the express purpose of maximizing yield for humans. Rather, humans will be considered an integral component of the predator/prey system and will share with predators the naturally occurring production of caribou."

[168] GAAR SRC minutes, May 10-11, 1994, 2; Supts. WRST, DENA, and GAAR to Deputy Field Director, Alaska, September 8, 1995; David Spirtes to Subsistence Workgroup, February 6, 1996; both in Jon Jarvis, comp., "Natural and Healthy" folder, WRST.

[169] NPS, *Subsistence Management Plan*, August 1997, 2.

[170] Natural Resources Advisory Council [NPS], "A Definition of Natural and Healthy as Used in the Alaska National Interest Lands Conservation Act," February 26, 1998; Dave Spirtes to Jon Jarvis, email, April 23, 1998; [Dave Spirtes,] "Natural and Healthy" (draft), July 1, 1998; [Spirtes,] "An NPS Interpretation of Natural and Healthy," July 22, 1998; Steve Martin to Spirtes, August 31, 1998; all in Jon Jarvis, comp., "Natural and Healthy" folder, WRST.

[171] [Jon Jarvis] to Steve Ulvi, etc., email, c. December 15, 1998; Kyran Kunkel, Harry Bader, and Steve Ulvi, "A Suggested Legal and Biological Framework for Managing Natural and Healthy Fish and Wildlife Populations in National Park System Units in Alaska," February 3, 1999; Dave Mills to Gary Candelaria, email, January 11, 2000; [Dave Spirtes,] "Legal and Biological Framework for Managing Natural and Healthy Populations of Fish and Wildlife Under ANILCA," c. January 2001.

[172] WRST SRC minutes, November 3-4, 1997, 2; GAAR SRC minutes, January 14-15, 1998, 15; NPS, *GAAR SMP* (January 25, 2000), 7:4. Also see NPS, *DENA SMP* (August 18, 2000), Introduction:7 and NPS, *ANIA SMP* (January 3, 2001), 9:8.

[173] Florence Collins to Robert Barbee, August 29, 1996, in NPS, *DENA SMP* (August 18, 2000), B:2; John Vale to Robert Barbee, March 8, 1997, in WRST SRC files; NPS, *Subsistence Management Program*, August 1997, 27.

[174] Carl Morgan to Robert Barbee, January 21, 1998; Paul R. Anderson to Morgan, August 24, 1998; in NPS, *DENA SMP* (August 18, 2000), 9:5-7; Anderson to Harry Kalmakoff, Jr., December 2, 1998, in WRST SRC files; Anderson to Florence Collins, December 2, 1998, in NPS, *DENA SMP* (August 18, 2000), 9:7. The January 1998 WIRAC letter also mentioned that "trade in the sense of cash exchange" has long "included handicrafts made from ... various plant materials." But because plant materials were not included in the Council's policy recommendation, the NPS did not address the issue at that time.

[175] Judith C. Gottlieb to Glen Alsworth, February 4, 2000, in NPS, *LACL SMP* (October 5, 2000), 1:12.

[176] Florence Collins to Judy Gottlieb, February 14, 2000, in NPS, *DENA SMP* (August 18, 2000), 9:4, B:5; NPS, *ANIA SMP* (January 3, 2001), 11:5; Judith C. Gottlieb to Harry Kalmakoff, Jr., February 8, 2001, in ANIA SRC file.

[177] Taylor Brelsford to author, January 18, 2002; Janis Meldrum to author, March 5, 2002.

[178] During the 1993-94 round of proposal analysis, agencies that were most affected by specific subsistence proposals were given broad latitude to make analyses and recommendations as they saw fit; thus F&WS staff, for example, were allowed predominant consideration on proposals that primarily affected Alaska's national wildlife refuges. This agency deference still exists today, though to a lesser extent than before.

[179] Taylor Brelsford to author, January 18, 2002.

[180] GAAR SRC minutes, May 10-11, 1994, 8; Taylor Brelsford to author, January 18, 2002. Part of the reason for these reversals was traceable to a lack of funding; the OSM, that first year, was unable to provide travel funds for regional council representatives to attend the April 1994 Federal Subsistence Board meeting in Anchorage. Janis Meldrum to author, March 5, 2002.

[181] Janis Meldrum interview, January 30, 2001; Sandy Rabinowitch interview, February 8, 2001.

[182] Members of this committee included Bob Gerhard and Janis Meldrum (NPS), Helen Armstrong (OSM), John Borbridge (BIA), Rod Kuhn and Steve Zemke (USFS), and others.

[183] Taylor Brelsford, in a January 18, 2002 note to the author, noted that the OSM management at the time—Dick Pospahala, Jim Kurth, Dick Marshall, and Peggy Fox—imposed this new, cooperative model over the objections of many staff members.

[184] Sandy Rabinowitch interview, January 31, 2001.

[185] This trend, however, is by no means universal. Members of some regional advisory councils, particularly those situated away from the road system, appear to strongly prefer the federal program, while members of other regional councils have long supported an active state management regime. Terry Haynes interview, May 15, 2002.

[186] Terry Haynes interview, April 7, 1999.

[187] Terry Haynes to author, email, February 6, 2001; Don Callaway interview, February 13, 2001.

[188] Bob Gerhard interview, January 31, 2001.

[189] Paul Anderson interview, April 30, 2001; Sandy Rabinowitch to author, email, May 2, 2001.

[190] Bob Gerhard interview, January 31, 2001; Mitch Demientieff to Roy Ewan, May 28, 1996, in NPS, *DENA SMP* (August 18, 2000), 12:19; Paul Anderson interview, April 30, 2001.

[191] Sandy Rabinowitch interview, January 31, 2001.

[192] The regional advisory councils have continued to have two meetings per year. The Federal Subsistence Board, which had met four to six times per year during the mid-1990s, has gradually increased its workload over the years, and since the federal fisheries assumption in October 1999, Board meetings have been held about once per month. Perhaps half to three-quarters of those meetings have been open to the public; the remainder have been work sessions with OSM and agency staff. Regional council meetings, which are organized by the various regional council coordinators, are typically advertised in rural newspapers, on local radio stations, and in public buildings where the meetings will take place. Federal Subsistence Board meetings, which are publicized by OSM's Statewide Support Division, typically involve advertisements in Alaska's urban and rural newspapers as well as the official government channels. Sandy Rabinowitch interview, January 31, 2001 and February 5, 2001; Karen Laubenstein to author, email, February 5, 2001.

[193] Sandy Rabinowitch interview, February 5, 2001. Federal agencies other than the NPS have typically assigned either one or two people to their federal subsistence program support efforts; at the BIA, for example, staff involvement has usually been limited to the agency's staff committee representative, while at several other agencies, a staff assistant or other support person has augmented the staff committee representative's efforts.

[194] Sandy Rabinowitch to subsistence staff, email, April 13, 2001; Bob Gerhard interview, April 27, 2001.

[195] Taylor Brelsford to author, January 18, 2002.

[196] FSB, *Final Environmental Impact Statement, Subsistence Management for Federal Public Lands in Alaska* (February 1992), II-15 plus maps 7, 9, and 10; FSB, *Record of Decision, Subsistence Management for Federal Public Lands in Alaska* (April 1992), 9-11.

[197] GAAR SRC minutes, May 10-11, 1994, 5-6; Raymond Paneak to "To whom it may concern," January 11, 1995; Don Callaway interview, February 2, 2001; Steve Ulvi interview, February 2, 2001.

[198] DENA SRC minutes, May 28, 1992, 4; Russell Berry, Jr. to Regional Director, Alaska, May 29, 1992, in DENA SRC files; NPS, *DENA SMP* (August 18, 2000), 1:17-19 and Appendix G.

[199] GAAR SRC, Resolution 93-03 (October 18, 1993), in GAAR SRC files; Raymond Paneak to Bruce Babbitt, January 26, 1995; NPS, *GAAR SMP* (January 25, 2000), 1:7.

[200] Public Law 96-487 (December 2, 1980), Sec. 102(3); *Federal Register* 55 (June 29, 1990), 27115, 27122; *Federal Register* 57 (May 29, 1992), 22942, 22951-52.

[201] *Federal Register* 60 (February 2, 1995), 6466-67; *Federal Register* 61 (April 4, 1996), 15014; *Alaska Senate Bill History, 1995-1996*, Senate Joint Resolution 19; Florence Collins to Federal Subsistence Board, February 17, 1995, in DENA SRC files. The petitioners also included the Stevens Village Council, Kawerak, Inc., Copper River Native Association, Alaska Federation of Natives, Alaska Inter-Tribal Council, RuralCAP, and the Dinyee Corporation.

[202] *Federal Register* 61 (April 4, 1996), pp. 15016.

[203] DENA SRC minutes, August 9, 1996, 7; GAAR SRC minutes, November 13-14, 1996, 11, 16-17.

[204] NPS, *Subsistence Management Program*, August 1997, 6-7.

[205] *Federal Register* 62 (December 17, 1997), 66217, 66223; *Federal Register* 64 (January 8, 1999), 1280, 1287-88; ANILCA, Sec. 102(4); NPS, *DENA SMP*, August 18, 2000, 1:20.

[206] http://www4.law.cornell.edu/uscode/16/703.text.html ; http://www.fws.gov/~r9mbmo/intrnltr/intreat.html. According to the Fish and Wildlife Service, "the framers of the [1916] Convention were [apparently] aware of subsistence activity but unaware of the extent to which it was needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for subsistence uses." *Federal Register* 58 (August 13, 1993), 43119.

[207] Claus-M. Naske and Herman E. Slotnick, *Alaska; A History of the 49th State* (Grand Rapids, Eerdmans, 1979), 207.

[208] *Federal Register* 52 (December 31, 1987), 49450.

[209] http://laws.fws.gov/lawsdigest/treaty.html; ANILCA, Sec. 815(4).

[210] *Federal Register* for the following dates: May 19, 1986, 19349-50; July 18, 1986, 26029; and December 31, 1987, 49449-50; Taylor Brelsford to author, January 18, 2002.

[211] *Federal Register* for the following dates: December 31, 1987, 49449-50; August 13, 1993, 43119-20; August 31, 1993, 45915; March 7, 1994, 10654-55; July 7, 1994, 34859-60.

[212] http://laws.fws.gov/lawsdigest/treaty.html; http://www.fws.gov/~r9mbmo/intrnltr/intreat.html; http://www.gaiabooks.co.uk/environment/migratorytreaty.html ; Bob Stevens interview, May 22, 2001.

[213] ANIA SRC minutes, November 5-6, 1992, 3; Roy Ewan to Bruce Babbitt, April 18, 1994; George T. Frampton, Jr. to Roy Ewan, September 12, 1994; both in WRST SRC files.

[214] John Vale to Lee Titus, February 29, 1996; Vale to Bruce Babbitt, December 6, 1996; both in WRST SRC files.

[215] Chris Bockmon (IOS) to Clarence Summers, email, June 10, 1998, in Summers email file; WRST SRC minutes, November 17-18, 1998, 6. Also see GAAR SRC minutes, April 20-21, 1999, 3.

[216] Judith C. Gottlieb to Florence Collins, May 17, 1999, in NPS, *DENA SMP* (August 18, 2000), 1:11.

[217] Pollock Simon, Sr. to WRST SRC, May 12, 1999, in GAAR SRC files.

[218] Bockmon to Summers, June 10, 1998; Mimi Hogan (Migratory Birds Division, F&WS) to Clarence Summers, proposed email, February 24, 1997, in Summers email file; Judith C. Gottlieb to Glen Alsworth, February 4, 2000, in NPS, *LACL SMP* (October 5, 2000), 1:14.

[219] Robert D. Barbee to Ray Sensmeier, May 16, 2000, in NPS, *WRST SMP* (November 3, 2000), 6:17; Judith C. Gottlieb to Harry Kalmakoff, Jr., February 8, 2001, in ANIA SRC file.

[220] Florence Collins to ADF&G, June 18, 1988; Beth Stewart to Collins, July 12, 1988; Collins to ADF&G, December 14, 1989; all in NPS, *DENA SMP* (August 18, 2000), 4:4-5.

[221] Dennis R. Kogl, etc. to "Subsistence Board," December 3, 1990; John M. Morehead to Lee Basner, September 30, 1991; both in DENA SRC files.

[222] DENA SRC minutes, May 28, 1992, 3; June 28, 1993, 4; Lee Titus to Ron McCoy, November 23, 1993, in NPS, *DENA SMP* (August 18, 2000), 4:7. EIRAC's 1993 letter mentioned the prominent role that McKinley Village resident Pat O'Connor was already playing; specifically, it noted that "this problem has been 'in resolution' for an unreasonably long time despite all the time and effort that Mr. O'Connor in particular has devoted to it."

[223] NPS, *DENA SMP* (August 18, 2000), 4:2-3.

[224] Florence Collins to Steve Martin, February 17, 1995; Collins to FSB, June 16, 1995; both in DENA SRC files; *Federal Register* 57 (May 29, 1992), 22948.

[225] NPS, *DENA SMP* (August 18, 2000), 4:3, 9, 10.

[226] Florence Collins to Chair, Federal Subsistence Board, March 29, 1997, in DENA SRC files; Sandy Rabinowitch interview, February 13, 2001.

[227] NPS, *WRST SMP* (November 3, 2000), 9:8.

[228] Florence Collins to FSB, February 13, 1998, in DENA SRC files; [Janis Meldrum], "Staff Analysis" (P99-9/11), in FSB proposal files; WRST SRC minutes, November 17-18, 1998, 7. The NPS's August 1997 issues paper (p. 8) noted that "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."

[229] NPS, *WRST SMP* (November 3, 2000), 9:8-9. All parties sought to avoid listing the names of individual C&T holders in the subsistence regulations. The wildlife regulations that were issued on July 1, 1999, therefore, showed no change in the affected GMUs from those that had been issued a year earlier. What was added, however, was a new clause in the final corrected federal fish and wildlife regulations. That clause noted the Board's broad acceptance of the individual C&T concept. It also noted that "the Fish and Wildlife Service and the local National Park Service superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments;" the names would not be listed in the regulations themselves. *Federal Register* 64 (July 1, 1999), 35781-85, 35823.

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Alaska Subsistence

A National Park Service Management History

Chapter 9:
THE SUBSISTENCE FISHING QUESTION (continued)

Notes — Chapter 9

[1] Benjamin Nageak to Steve Cowper, May 6, 1987; Susan Reece to Nageak, May 18, 1988; both in GAAR SRC files. Reece gave a negative response because Section 808(a) of ANILCA asked the various SRCs "to devise and recommend ... a program for subsistence hunting within the park or park monument."

[2] *Federal Register*, June 8, 1990, 23523; June 29, 1990, 27115. Bob Gerhard, who has worked on federal subsistence program issues for many years, recalls just a sprinkling of fishing issues: a statewide proposal to allow hook-and-line fishing as a legitimate subsistence harvesting tool, plus scattered regional issues. Bob Gerhard interview, March 22, 2001; regarding a regional issue, see *Federal Register* 58 (June 1, 1993), 31175-76.

[3] *Federal Register* 57 (May 29, 1992), 22942.

[4] See, for example, GAAR SRC minutes, May 7-8, 1991, 4, and CAKR SRC minutes, June 11, 1992, 3.

[5] *Anchorage Daily News*, September 25, 1994, A6-A7.

[6] G. Frank Williss, *"Do Things Right the First Time,"* 218, 239; NPS, *The National Parks: Index 1999-2001*, 20.

[7] NPS Ownership Maps, AKSO Lands Division. The Bureau of Land Management has conveyed all three parcels—which are 60, 160, and 80 acres in extent, respectively—to the claimants.

[8] Both women were senior citizens; John was born in October 1915, while Charles was born about 1908. The Native American Rights Fund's website www.narf.org/pubs/justice/1999spring/spring1999.htm stated that the two women "petioned officials" of the newly-established NPS unit, but the "officials still refused to allow John and others to resume fishing at their camp." No known park administrative records, however, indicate that NPS personnel ever spoke with John or "refused to allow" them to carry on subsistence fishing activities. Geoff Bleakley to author, email, February 22, 2001.

[9] *Anchorage Daily News*, September 25, 1994, A6-A7.

[10] *Ibid*., A7; Joan M. Nockels, "Redefining Federal Public Lands in Alaska," *Environmental Law* 26 (Summer 1996), 696-97; *Anchorage Daily News*, February 11, 1986, C1; January 15, 1994, D2; Geoff Bleakley email, February 22, 2001; Westlaw citation 1994 WL 487830 (D.Alaska), 7. *John vs. State of Alaska*, also known as "*Katie John I*," was Case No. A85-

0698 Civil. A detailed chronology of the Batzulnetas fishery is provided in Bob Gerhard and Dave Nelson's *A Summary of the Batzulnetas Subsistence Fishery*, revised draft (NPS, May 2000), 5-9.

[11] Westlaw citation 1994 WL 487830 (D.Alaska), 8.

[12] *Anchorage Daily News*, December 8, 1990, D2. The case number was A90-0484-CV (HRH).

[13] *Anchorage Daily News*, January 31, 1991, B2.

[14] *Anchorage Times*, December 11, 1991, A1, A8; *Anchorage Daily News*, March 3, 1992, B3; *Anchorage Daily News*, November 30, 1993, D1. The case number was A92-0264-CV (HRH).

[15] Dean Dunsmore, in a May 11, 2001 interview, noted that on May 15, 1992, *Alaska vs. Babbitt* (then known as *Alaska vs. Lujan*) was consolidated with *Katie John vs. USA*.

[16] *Federal Register* 59 (June 27, 1994), 32923.

[17] *Anchorage Daily News*, November 30, 1993, D1.

[18] *Anchorage Daily News*, January 15, 1994, D1-D2.

[19] *Anchorage Daily News*, March 19, 1994, A1, A8.

[20] Westlaw citation 94 WL 487830 (D.Alaska), 12-13.

[21] *Ibid*., 9-13.

[22] *Anchorage Daily News*, April 1, 1994, A1, A12.

[23] Regional NPS Director John Morehead was glad to hear of Judge Holland's stay; in an April 23, 2001 interview, he admitted that he was "terrified" by the District Court decision inasmuch as the agency, at the time, had neither staff nor experience in subsistence fisheries management.

[24] *Federal Register* 59 (June 27, 1994), 32923-24.

[25] *Anchorage Daily News*, February 9, 1995, C3. The three judges that heard the case were Eugene A. Wright, Cynthia Holcomb Hall, and Charles Wiggins. Joanne M. Grace, an Assistant Attorney General, presented the State of Alaska's case, while defending attorneys included Elizabeth Ann Peterson of the U.S. Department of Justice and Robert T. Anderson of the Native American Rights Fund.

[26] *State of Alaska v. Bruce Babbitt, et al.* (Case No. 94-35480) and *Katie John, et al. v. United States of America, et al.* (Case No. 94-35481), as noted in *Federal Reporter* , 3rd Series, v. 54 (1995), p. 552. Judge Hall was the lone dissenter.

[27] *Ibid*., 552-54.

[28] *Anchorage Daily News*, April 21, 1995, A1, A11. By August 1995, agency heads had

decided to hold off making any decisions on applicable waterways until all of the various Katie John appeals had been exhausted. *Anchorage Daily News*, August 9, 1995, A10.

[29] *Anchorage Daily News*, January 24, 1995, A1, A8; January 26, 1995, A1, A10; February 8, 1995, A1, A10. Knowles noted that "This whole suit [*Alaska vs. Babbitt*] was a rabbit trail to begin with."

[30] There is some confusion regarding the formal name related to the Katie John case. As Joan Nockels noted in her article "Katie John v. United States: Redefining Federal Public Lands in Alaska," *Environmental Law* 26 (Summer, 1996), 695-96, *Alaska vs. Babbitt* remained an active case after the state dropped its suit. She noted that the state, in January 1995, "withdrew its challenge and stipulated to dismissal with prejudice. The Ninth Circuit accepted the stipulation. Nevertheless, the consolidated cases proceeded under the case name *Alaska v. Babbitt*. This is unfortunate because, in Alaska, the case has always been referred to as the *Katie John* dispute. For the purpose of staying consistent with the Alaskan understanding of this dispute, this Note will refer to the Ninth Circuit ruling in *Alaska v. Babbitt* as the *Katie John* appellate court decision but will properly cite to *Alaska v. Babbitt*." Most recent accounts, by way of contrast, consistently refer to the case as *Katie John v. USA*. For the purposes of this report, therefore, this case (for actions after January 1995) will be called *Katie John v. USA* or simply the *Katie John* case.

[31] *Anchorage Daily News*, August 9, 1995, A1, A10; *Anchorage Daily News*, December 24, 1995, B1.

[32] As noted in Chapter 7, the legislature had attempted to solve the problem in both 1990 and 1992—special sessions were held in each of those years to address the problem—but neither session produced a bill that allowed the state to regain management control over subsistence resources. In 1994, after a legislative session in which little interest was shown in a subsistence bill, Alaska Attorney General Bruce Botelho had suggested another special session dealing with subsistence. That session, however, never materialized. *Anchorage Daily News*, July 24, 1994, D3.

[33] *Anchorage Daily News*, November 4, 1995, A1. Several sources, including the RuralCAP website (www. ruralcap.subcurrent.htm), update for November 1998 and the October 14, 1998 issue of the *Anchorage Daily News* (p. A1), have suggested that the Alaska congressional delegation inserted delaying language in a Fiscal Year 1996 appropriations bill. But no such action took place. Bill Knauer to the author, email, March 23, 2001.

[34] Office of the Alaska Governor, Press Release, August 10, 1999 (99-171).

[35] *Anchorage Daily News*, November 4, 1995, A1; November 15, 1995, B7; December 7, 1995, D3.

[36] *Anchorage Daily News*, December 31, 1995, G2; January 4, 1996, B2; February 5, 1996, D2; February 9, 1996, B2. During the same period in which Ulmer and the task force were working on the subsistence problem, a group of sport fishers were working on the so-called "fish initiative." The initiative's purpose was to amend Alaskan fish and game regulations in order to guarantee that the needs of subsistence, sport fishing, and personal-use fishers would be considered prior to those of commercial fishers. In mid-October 1995, Lt. Gov. Ulmer approved the wording of the proposed initiative, and by the following February a sufficient number of signatures had been gathered to guarantee its placement on the November 1996 ballot. But on August 26, the Alaska Supreme Court declared the initiative unconstitutional. *Anchorage Daily News*, October 13, 1995, A1; February 16, 1996, B5; August 27, 1996, A1.

[37] *Anchorage Daily News*, March 7, 1996, B1, B3. Newspaper accounts reporting Stevens' action initially stated that he had extended the deadline to May 1997; two months later, however, similar accounts stated that Stevens' provision was "blocking the program from taking effect until at least Oct. 1." *Anchorage Daily News*, May 14, 1996, A1.

[38] *Anchorage Daily News*, April 23, 1996, A1; April 28, 1996, K2; May 8, 1996, A1; May 19, 1996, F2. The special session lasted from May 8 to June 6, but official business took place only during the session's first nine days and its last four days.

[39] *Anchorage Daily News*, May 14, 1996, A1, A8; May 19, 1996, F2.

[40] *Anchorage Daily News*, March 21, 1996, E1, E3; March 22, 1996, B1, B3; April 5, 1996, B7.

[41] *Federal Register* 61 (April 4, 1996), 5014-18.

[42] *Anchorage Daily News*, May 12, 1996, C12; May 15, 1996, B2. Hearings were also held in Juneau, Sitka, Kotzebue, Bethel, Nome, Kenai/Soldotna, and Dillingham.

[43] *Anchorage Daily News*, December 27, 1996, B3.

[44] Even Anchorage-area business leaders, whose opinions were normally in line with the legislative majority, spoke out in favor of a statewide vote. *Anchorage Daily News*, December 12, 1996, B1.

[45] See, for example, the following *Anchorage Daily News* citations: May 25, 1990, C4; June 13, 1992, B3; December 3, 1997, B1; May 1, 1998, B1; and May 25, 1998, A1.

[46] *Anchorage Daily News*, May 13, 1997, D1; May 23, 1997, A1. Several Native legislators submitted their own resolution (HJR 3); it fared no better than the administration's proposal.

[47] The governor's task force was composed of Gov. Knowles, Lt. Gov. Ulmer, Senate President Mike Miller, House Speaker Gail Phillips, ex-Attorney General Charlie Cole, Permanent Fund leader Byron Mallott, and ex-Governor Jay Hammond. *Anchorage Daily News*, July 10, 1997, B1; July 27, 1997, G2.

[48] *Anchorage Daily News*, June 18, 1997, B1; July 19, 1997, D10. The AOC-backed proposal, HJR 21, had been introduced by Reps. Beverly Masek (R-Willow) and Scott Ogan (R-Palmer) and had been co-sponsored by nine other House members during the recently-concluded session.

[49] *Anchorage Daily News*, July 27, 1997, G2; August 25, 1997, E2; September 6, 1997, A1, A10.

[50] [OSM], "Questions and Answers," December 8, 1997, 3. (This handout was distributed at the March 12, 1998 public meeting in Anchorage; see below.) The Final Rule on subsistence fisheries (*Federal Register* 64 [January 8, 1999], 1285), stated that the Interior Secretary, with the concurrence of the Agriculture Secretary, signed a Finding of No Significant Impact. Bill Knauer to author, March 19, 2001.

[51] *Anchorage Daily News*, September 20, 1997, D1, D3.

[52] These amendments, in fact, were successfully included in the Interior appropriations bill, which passed Congress and became law. However, both amendments had a so-called "sunset clause." Because the Alaska legislature failed to act on a subsistence bill prior to December 1, 1998, the amendments never took effect.

[53] *Anchorage Daily News*, October 1, 1997, A1, A4; October 2, 1997, A1; September 6, 1997, A10. Although state legislative leaders sometimes stated that federal officials actively coveted an increased management role, such was not the case. As Fish and Wildlife staffer William Knauer explained it, "We would just as soon not do that ... I can categorically say there's not a one of us that is champing at the bit. The folks in [the federal subsistence] program ... have got other things they could be accomplishing for the resources here in Alaska." Perhaps because they neither wanted nor expected to manage the subsistence fisheries, federal subsistence officials had no contingency plans regarding a specific management strategy; if Stevens' postponement had not occurred, officials would presumably have spent the winter of 1997-1998 formulating proposed and final subsistence fisheries regulations.

[54] *Anchorage Daily News*, December 16, 1997, D1.

[55] This mileage amounted to approximately 52.2% of Alaska's 196,234 miles of inland waterways.

[56] This quote is taken from a general description of the various alternatives, as noted on page 66218 of the December 17, 1997 *Federal Register*. The verbiage in the proposed regulation itself (Subpart A, Section 3, Parts (b)(1) and (b)(2), as noted on page 66222 in the same document) reads somewhat differently, though the intent is the same.

[57] *Federal Register* 62 (December 17, 1997), 66216-18. The proposed regulations also addressed the "selected but not conveyed" issue, which was discussed in Chapter 8.

[58] *Anchorage Daily News*, December 30, 1997, A1; January 16, 1998, B8. On December 29 the ALC had voted 9-2, with three abstentions, in favor of spending $175,000 to support the proposed suit.

[59] *Anchorage Daily News*, January 27, 1998, B6.

[60] *Alaska House Bill History, 1997-1998*, 148. The bill went nowhere; after January 12, no further action took place on it.

[61] HJR 46 proposed the following amendment to the Alaska Constitution: "The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence." HB 320—which, like HJR 46, was submitted by the Rules Committee on January 14 at the governor's behest—was a companion bill, containing changes to the Fish and Game regulations based on language contained in HJR 46.

[62] HB 406 passed the House, by a 23-16 vote, on April 21; it passed the Senate, 14-5, on May 11.

[63] *Anchorage Daily News*, May 25, 1998, A1, A10. Another bill proposing a subsistence amendment, submitted by the House Judiciary Committee on March 30, was HJR 66; it was no more successful than the administration-backed resolution.

[64] Gov. Knowles vetoed HB 406 on June 12, more than a month after warning that he would do so.

[65] *Anchorage Daily News*, May 13, 1998, A1; May 14, 1998, A1; May 22, 1998, D1; May 25, 1998, A10. On May 21, the lobbying group raised tempers throughout the state when it published a photo of a person who bore a strong likeness to former Soviet Premier Nikita Khrushchev; under that photo ran the caption, "There's a name for people who refuse to let other people vote."

[66] *Anchorage Daily News*, May 25, 1998, A10; June 2, 1998, A1; *Alaska House Bill History, 1997-1998*, 97-98, 281-82.

[67] *Anchorage Daily News*, July 4, 1998, A1; July 20, 1998, A1; July 21, 1998, A1; July 22, 1998, A1.

[68] DOI Press Release, July 22, 1998; Tom Boyd to NPS, email, July 24, 1998.

[69] *Anchorage Daily News*, July 25, 1998, A1, A6.

[70] *Federal Register* 64 (January 8, 1999), 1277.

[71] RuralCAP website (www. ruralcap.com/subcurrent.htm) update for September 10, 1998, pp. 8-9.

[72] According to the *Anchorage Daily News*, October 16, 1998, D1, Williams submitted her resignation letter on October 6. She had discovered on that day that Secretary Babbitt—without her knowledge—was negotiating with Senator Stevens on another extension.

[73] USDI News Release, October 13, 1998; Sen. Ted Stevens Press Release, October 13, 1998; *Anchorage Daily News*, October 14, 1998, A1.

[74] [OSM], "Summary of Final Regulations" — part of FSB News Release, January 5, 1999; *Federal Register* 64 (January 8, 1999), 1277-84; RuralCAP website (www. ruralcap.com/subcurrent.htm), January 1999, 2; Office of the Alaska Governor, Press Release, April 19, 1999 (99-076); *Anchorage Daily News*, April 9, 1999, B1-B2.

[75] *Anchorage Daily News*, January 10, 1999, F2.

[76] *Anchorage Daily News*, February 6, 1999, C1, C3; Office of the Alaska Governor, Press Release, April 19, 1999 (99-076).

[77] *Anchorage Daily News*, May 20, 1999, A1; May 21, 1999, B4.

[78] *Juneau Empire*, June 13, 1999, A1, A3.

[79] Rep. Green to the author, email, March 26, 2001.

[80] Sen. Ted Stevens, Press Release, October 13, 1998; *Anchorage Daily News*, June 2, 1999, A1.

[81] *Anchorage Daily News*, July 14, 1999, A1.

[82] *Anchorage Daily News*, August 10, 1999, B3; August 11, 1999, B1; Office of the Alaska Governor, Press Release, August 10, 1999 (99-171). The wording of the amendment was a slight modification of that which had appeared in a 1998 legislative resolution, as noted above.

[83] Many of these terms, it may be noted, were similar if not identical to those used in ANILCA Section 804.

[84] *Fairbanks Daily News-Miner*, October 8, 1999, A4.

[85] *Ibid.*

[86] The resolutions, it may be noted, used "place of residence" instead of "rural." Based on that terminology, the Alaska Attorney General's office stated that the resolution would prevent a takeover, but not without an accompanying statute that specified a rural subsistence priority. Interior Department solicitors made no initial comments regarding the resolution's legitimacy. *Anchorage Daily News*, September 30, 1999, A1.

[87] *Ibid.*, A1, A12. Among those who opposed the resolution, one of the most outspoken was Senator Robin Taylor (R-Wrangell). He stated, "What we're really talking about here is ... are [state officials] going to enforce the federal law against our people, or is the federal government going to enforce the federal law against our people?" He and other opponents complained that the rural priority discriminated against urban Alaskans who wanted to hunt and fish for food; given that lack of fairness, it mattered little who managed the resources.

[88] *Anchorage Daily News*, October 1, 1999, A1.

[89] On October 1, the Office of Subsistence Management released 1) a press release, with quotes from Bruce Babbitt, Marilyn Heiman, and Mitch Demientieff, 2) a two-page "Questions and Answers" sheet, and 3) a "Summary of Final Regulations" sheet. These "final regulations" had first appeared in the January 8, 1999 *Federal Register*. That same day, the state made its own views known via a press release from the ADF&G Commissioner.

[90] [OSM], "Questions and Answers Regarding the Proposed Rulemaking for Extended Jurisdiction in Alaska Subsistence Management," September 30, 1997.

[91] Bruce Babbitt (Interior Secretary) to Franklin D. Raines (OMB Director), April 21, 1998.

[92] Tom Boyd (OSM) to NPS, email, July 24, 1998.

[93] Secretary Babbitt's April 21, 1998 letter to OMB Director Raines specified that the FY 1999 budget for other federal agencies involved in the subsistence fisheries management would be as follows: F&WS, $3.8 million; USFS, $3.0 million; BIA, $0.5 million; BLM, $0.2 million; and Office of the Solicitor, $0.1 million. Of the projected $9.5 million budget, $3.3 million was to be directed to program administration, $5.1 million to resource monitoring, and $1.0 million to law enforcement.

[94] Proposed FY 99 Budget Chart, July 30, 1998. The NPS proposed a Coastal Cluster (KATM, LACL, and ANIA); an Interior Cluster (DENA, GAAR, and YUCH), an Arctic Cluster (BELA, CAKR, KOVA, and NOAT); and a Copper Basin/Southeast Cluster (WRST and GLBA). KEFJ, KLGO, and SITK were not included because subsistence was not an authorized activity in those units. With its allotment, the agency proposed seven positions in

each cluster; all would work a six-month stint in FY 1999, with four of the seven gaining year-round positions in FY 2000.

[95] The fourteen issues were 1) Organizational structure, staffing, and budget, 2) Cooperative management with tribes and Native organizations, 3) Federal-state cooperative management strategy, 4) National Marine Fisheries Service/North Pacific Fisheries Management Council coordination, 5) Regional council structure, 6) Petitions for extraterritorial jurisdiction, 7) Customary trade, 8) Training and education needs and options, 9) Annual regulatory process, 10) Harvest reporting, 11) Data management, 12) Public outreach, 13) Enforcement, and 14) Federal Subsistence Board structure.

[96] FSB Staff Committee, "Fisheries Implementation Work Plan," March 30, 1999; Sub-Committee for the Development of a Blueprint for Interagency Functions, Roles, and Responsibilities, *Federal Subsistence Fisheries Management: Operational Strategy for Information Management*, c. August 2, 1999, 39.

[97] FSB Staff Committee, "Federal Subsistence Fisheries Implementation Plan," in Bob Gerhard files. The plan was dated April 21, 1999, but the various issue papers that comprised the plan were not completed until mid-June.

[98] Sub-Committee for the Development of a Blueprint for Interagency Functions, Roles, and Responsibilities, *Federal Subsistence Fisheries Management: Operational Strategy for Information Management*, c. August 2, 1999. Besides Patty Rost, the other subcommittee members included Charles Krueger (FWS), Taylor Brelsford (OSM), Cal Casipit (USFS), Ken Harper (F&WS), Ida Hildebrand (BIA), Ken Thompson (USFS), and Laird Jones (ADF&G liaison).

[99] *Ibid*., 26.

[100] In later months, these three classes were boiled down to two: 1) stock status and trends studies, and harvest monitoring/TEK studies.

[101] Subcommittee on Organizational Structure, Staffing, and Budget, *Federal Subsistence Fisheries Management: Organizational Structure and Program Strategy*, drafts dated August 16, August 30, and September 9, 1999. Members of the subcommittee included Peggy Fox (BLM), who chaired the group, along with Bob Gerhard (NPS), Charles Krueger (F&WS), and Taylor Brelsford (OSM).

[102] OSM, "Federal Subsistence Fisheries Update," July 1999, 2; Subcommittee on Organizational Structure, Staffing, and Budget, *Federal Subsistence Fisheries Management: Organizational Structure and Program Strategy*, September 15, 1999, page i.

[103] Bob Gerhard to NPS Subsistence staff, email, August 26, 1999. Gerhard notes that the F&WS also hired an employee prior to the assumption to work on subsistence projects.

[104] Subsistence Advisory Committee meeting notes, October 7, 1999 and November 5, 1999; Janis Meldrum to NPS Subsistence Staff, email, November 3, 1999; Kenneth L. Smith to Frank Murkowski, September 18, 2000.

[105] [OSM], "Agenda, Federal Subsistence Fisheries Management Training," (program agenda), January 24-27, 2000.

Federal Subsistence Management Program, "Fisheries Resource Monitoring Projects for Spring 2000," review draft, January 14, 2000. The budget for all 45 projects totaled some $5.6 million. Of that total, 40% was directed to the ADF&G, 38% to rural organizations or local-hire projects, and 22% to federal agencies. OSM, Fisheries Information Service, "Proposed Projects Budget Worksheet," April 22, 2000, 7.

[107] State of Alaska News, January 26, 2000 (www. state.ak.us/local/pr0023.html); *Anchorage Daily News*, January 27, 2000, B1. Judge Holland, for legal reasons, had been unable to issue a final order until after the last moratorium expired on September 30, 1999.

[108] *Anchorage Daily News*, February 10, 2000, B1; February 16, 2000, A1; April 25, 2000, A1.

[109] "Interim Memorandum of Agreement for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska, between U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the Federal Subsistence Board and Alaska Department of Fish and Game, Alaska Board of Fisheries, and Alaska Board of Game," April 26, 2000.

[110] Another new hire during this period was Rachel Mason, a cultural anthropologist formerly with the F&WS's Office of Subsistence Management. Mason began work in January 2000 and assumed a broad range of duties, many of which were related to subsistence.

[111] See the following closure announcements: FSB Press Release, August 11, 2000 (special action); *Federal Register* 65 (August 24, 2000), 51542-44; *Federal Register* 65 (September 13, 2000), 55190-92.

[112] Peggy Fox and Kevin C. Duffy to Frank Rue, etc., memorandum, May 25, 2000. The protocol signed on May 24 and May 25 was called the Yukon River Drainage Subsistence Salmon Fishery Management Protocol for the Year 2000; as its title suggests, it was valid for only one year.

[113] Federal Subsistence Board, News Release, May 30, 2000. In two of the twelve regions, NPS officials played a lead role; they were Gary Candelaria (WRST Superintendent) and Dave Spirtes (WEAR Superintendent). The twelve regions have since been increased to thirteen.

[114] Kenneth L. Smith to Frank Murkowski, September 18, 2000.

[115] *Anchorage Daily News*, February 15, 2001, B1.

[116] *Ibid*., October 13, 2000, B1.

[117] *Ibid*., July 20, 2000, B1 and May 8, 2001, B1, B3; Bob Gerhard to Subsistence Staff, email, December 12, 2000; Governor of Alaska, August 27, 2001 press release (#01196).

[118] *Anchorage Daily News*, issues of September 14, 2001, B2; September 27, 2001, B6; October 5, 2001, B1; and October 13, 2001, B4.

[119] *Ibid*., issues of January 13, 2002, B1; February 15, 2002, B-1; and April 3, 2002, A1.

[120] *Ibid*., issues of May 18, 2002, A8; May 20, 2002, B1; and June 24, 2002, B1.

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