

SUBSISTENCE

Publications

(FILE 3)

The Fine Print of SUBSISTENCE

By Leslie Barber

Illustration by Robert Chrestensen, staff

Larry Fitzwater was trapping wolverine in the Brooks Range wilderness near Ulu Lake one wintery January day. He noticed a plane was landing and walked over to greet its occupants, with whom he was acquainted.

Had he greeted them in 1979, the encounter would have been amiable. However, this was 1984. The land upon which Fitzwater had been trapping was now part of the national parks and preserves created in Alaska in 1980. The two acquaintances were park rangers. They arrested Fitzwater for illegally trapping in a national park. Trapping is legal in a national preserve.

In April, Fitzwater, of Bettles, was brought to trial in Fairbanks. He served as his own attorney. The park service testified that it had twice shown Fitzwater that the boundary between the park and the preserve was at the southern end of the lake. He claimed he thought the boundary between the park and the preserve was 15 miles away from the lake. The court found him guilty.

During sentencing, however, Fitzwater continued his defense by arguing that he was subsistence trapping. Subsistence trapping is legal in the park.

If he had been trapping in Kobuk Valley National Park, which is west of the Gates of the Arctic National Park and Preserve, the trial would have stopped with Larry's

announcement that he was subsistence trapping. Subsistence hunting and trapping are legal everywhere in that park. However, Fitzwater was subsistence trapping in Gates of the Arctic National Park, where subsistence trapping is allowed only "where traditional."

The Park Service argued that since Fitzwater was not trapping in an area they considered

People supported families, maintained traditions and supplemented retirement incomes with local resources.

"traditional" for Bettles residents, he was still guilty of illegally trapping in the park. Had he been a resident of Anaktuvuk Pass, his subsistence trapping would have been legal.

The judge accepted the Park Service argument, and Fitzwater was fined \$500 (\$400 of which was suspended) for illegally trapping in the park, even though what the law considered "traditional" had not

been defined through regulations and no maps were available to show residents where they could and could not subsist. Fitzwater, like subsistence users for centuries, learned of the area through word of mouth from friends in Bettles who knew people in the lake area. The people themselves were surprised at the ruling.

The result was community-wide anger with the National Park Service. The Park Service responded with efforts to define on a map where residents of different villages could subsistence hunt. The map resulted in more public outcry. The Subsistence Resource Commission, composed of subsistence users of the park, requested that the mapping attempt be delayed for 18 months. In the meantime, the commission planned to examine the legality of limiting communities to separate subsistence areas and to collect research on where subsistence traditionally occurred in the park. The Park Service honored their request.

How is it that a simple act of subsistence — trapping a wolverine — which five years ago would have gone unnoticed, became the subject of legal repercussions, political controversy and strained relations between neighbors and fellow Alaskans?

Subsistence — living off the

land — has provided Alaskans an economic base for centuries. Eskimos, Indians and Aleuts lived entirely by subsistence until Russian and English traders arrived. Trappers, gold miners and homesteaders eked out an existence by relying on trapping, hunting, fishing, berry picking and log cutting for firewood and buildings. Even missionaries, schoolteachers and town merchants subsisted to survive in a land of high prices and uncertain shipments.

The growth of city life, more reliable transportation systems and greater employment opportunities in Alaska resulted in less need by many Alaskans to rely on subsistence, and the differences between subsistence, sport and commercial resource harvest blurred.

I came to Alaska in 1973, planning to "live off the land." After renting a small cabin, planting a garden and preparing to hunt and fish, I was told by my neighbors that I had to live here a year and earn below a certain income level to be eligible for a subsistence license.

Later, I learned what my neighbors were calling a "subsistence" license was actually a low-income sport hunting and fishing license. The only difference between the low-income version and the regular sport license was the price: 25¢ as opposed to \$15. I had to live in the state for a year to qualify for resident sport hunting and fishing license or pay larger nonresident fees and hunt with a guide for sheep, grizzly and polar bears.

Fortunately, a neighbor took a liking to me and kept me supplied with salmon and moose. He also introduced me to the ways and reasons why rural Alaskans sometimes skirted the fish-and-game laws. People supported families, maintained traditions and supplemented retirement incomes with local resources when the supply boat or plane didn't arrive, when the supermarket's shipment stayed on the dock in Seattle, and when commercial fishing and logging turned sour.

The Alaska Native Land Claims Settlement Act in 1971 and the construction of the trans-Alaska oil pipeline in the mid-1970s brought money and jobs to the state. More

people could buy snow machines, boats and rifles for subsistence, but had less time for it. This further blurred the distinctions between subsistence, sport and commercial economies.

If a commercial fisherman in Kotzebue spent the winter trapping, was he subsistence trapping, commercial trapping or recreational

transportation, for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal family consumption and for the customary trade, barter or sharing for personal or family consumption."

So much for clarification. The federal government decided to define subsistence anyway.

In 1980 the federal government added to the subsistence

confusion when it withdrew more than 100 million acres of land under the Alaska

National Interest Lands

Conservation Act (ANILCA). As a political compromise, Congress added subsistence to the act. If subsistence could continue, large amounts of land (such as almost the entire Brooks Range, with the exception of the pipeline corridor and a small corridor near Kotzebue) could be taken for national parks and monuments, wildlife refuges, national recreation areas and national forests. Subsistence hunting would be allowed in most of the new Alaskan national parks. This was an important departure from the usual National Park Service policy of not allowing hunting and trapping in national parks.

The federal act defined subsistence similarly to the state's law with one glaring exception: subsistence on such federal areas as national parks was limited to "rural" Alaskan

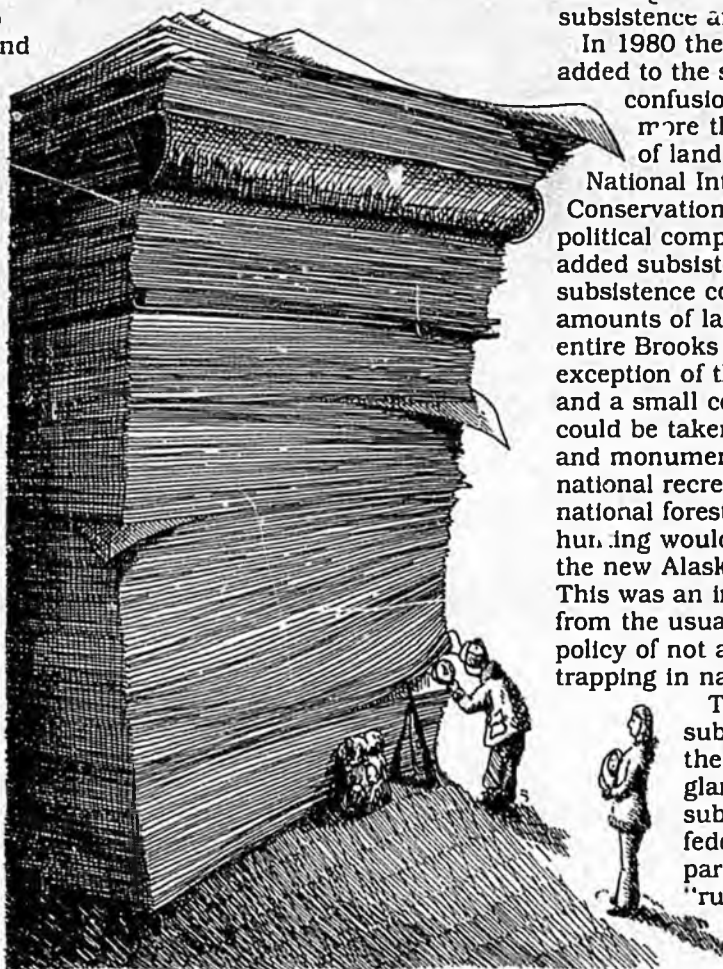
residents. The federal government went even

further and identified which Alaskan communities and areas were rural when making National Park Service regulations for Alaska.

The regulations defined rural communities as "significant concentrations" of people outside of Ketchikan, Juneau, Anchorage and Fairbanks, who had "customarily and traditionally engaged in subsistence within the park area." The rural communities and areas eligible for subsistence in national parks became known as "rural resident zones."

Now, the commercial fisherman living in Kotzebue may be subsistence trapping, but if he and

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trapping? If he had a brother working for a local corporation, earning the same income that year and trapping only on weekends, was the brother's trapping subsistence, recreational or commercial?

In 1978 the state of Alaska decided to define subsistence to clarify some of the confusion and conflict and to prevent the federal government from doing it instead. Subsistence was defined by the legislature as the:

"customary and traditional uses in Alaska of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or



*The Glacier City recorder's home and office as it looked in 1919.
(Stephen Foster Collection; Archives, University of Alaska, Fairbanks)*

Flying into the Past

By Ron Dalby, staff

I banked the helicopter into slow, tight circles above the confluence of the Glacier River and Bearpaw Creek. From inside the ship, six pairs of eyes peered vainly into the dense foliage 100 feet below. According to an old map, a fair-sized town once stood at the junction of the two streams. However, the brush and trees had grown so thick that nothing was visible. Finally, on the third time around, the intercom crackled with a voice from the back seat. One of the passengers had seen something through the trees. We decided to land.

The only landing site was a small gravel bar where the two rivers

came together. Slowly I steered the ship through the twisting gap between the trees on either side of the narrow Glacier River. Just as we touched down, the two of us in the front seats glimpsed the remains of an old building about a hundred yards from the helicopter. When the rotor finally stopped, we all jumped out to explore. Within minutes we stumbled into a ghost town, a relic from Alaska's past.

My passengers in the helicopter were National Park Service personnel. Not the usual Park Rangers that everybody deals with, but historians, archaeologists and anthropologists who delve into the past. We were exploring the recent

addition to then-Mount McKinley National Park. (The park has since been renamed Denali.) The land we were searching, along with millions of acres throughout Alaska, had recently been added to the national park system in the controversial Alaska National Interest Lands Conservation Act, or d-2 lands bill as it is known locally. This was early fall 1980 and the Park Service was interested in finding out what specifically was hidden in the new regions under its control.

Kantishna, in the western part of the park, has a long mining history dating back to the turn of the century. Gold is still actively mined at Kantishna, historically only one of

SUBSISTENCE

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his brother moved to Anchorage, they would be unable to continue because they would no longer be in a rural community. People living in Wiseman, a haul road community that bordered on the newly formed Gates of the Arctic National Park, could subsistence hunt, trap and fish in the park, but the people of Coldfoot, a community 15 miles south of Wiseman that also bordered

on the park, could not. Coldfoot was not designated a rural resident zone community in the regulations.

If a person from Wiseman moved to Coldfoot, he lost his subsistence hunting rights in the park unless he could prove he had a tradition of hunting in the area of the park before 1980. Yet, if a Coldfoot person moved to Wiseman, he could hunt in the park without ever having hunted anywhere before.

The state was also required to have a subsistence law that

complied with the federal law to exercise fish and game management authority on the federal lands. So, in 1981 the state defined rural as anywhere outside an organized municipality or not connected to the road system. However, the next year that was rescinded, based on fears that the phrase would be taken to court and ruled discriminatory. The joint Boards of Fish and Game revised the law so it continued to apply to rural residents, to be in compliance with the federal law.

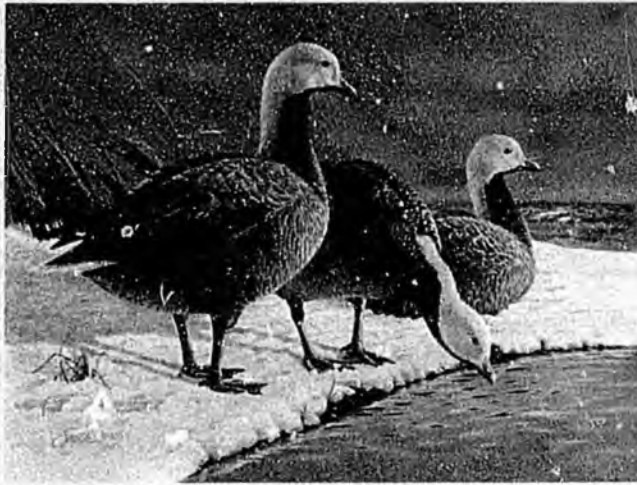
On February 22, 1985, in a case involving subsistence fishing in Cook Inlet, the Supreme Court of the State of Alaska ruled subsistence uses cannot be limited to only rural subsistence users, and that subsistence uses cannot be limited unless all other uses have been eliminated. It now appears that, because of this ruling, all state residents who can show a history of "customary and traditional use" may be eligible for subsistence. The ruling also raised the question of how the state's compliance with the federal side of the equation may be affected.

Subsistence became further complicated because both the state and the federal governments based their subsistence laws on the phrase "customary and traditional" without defining it. As a result, each federal land manager, such as a national park superintendent, can define "customary and traditional." His interpretation determines who is allowed to subsist in that particular park, unless his opinion is overturned on appeal. Rigid and often misunderstood interpretations of "traditional" have led to accusations that subsistence regulations are racially biased.

Both the federal and state subsistence laws provide for subsistence priority regardless of race. Congress created its subsistence law "to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents."

However, in some areas of the state, non-Natives have traditionally formed a very small minority of the subsistence population. Some National Park Service personnel do not consider them to constitute a large enough group to be considered "traditional," but rather an exception to the tradition. Therefore, non-Natives are sometimes disqualified from subsistence activities in which their neighbors, who are part of the dominant Native

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subsistence will eventually die out in the parks? Will this be the result of the federal law set up for the "continuation of the subsistence life?"

The whole thrust of the subsistence title of ANILCA is: "The Congress finds and declares that -- the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic traditional, and social existence."

More confusion was added to the subsistence issue when the federal government agreed that the state would manage fish, game and subsistence on federal lands, but that it would take over that management if it were not satisfied with the state's management. A Memorandum of Understanding between the Alaska Department of Fish and Game and the National Park Service was written stating that Alaska is "the primary agency responsible for management of subsistence uses of fish and wildlife on state and park service lands, pursuant to applicable state and federal laws." In 1982, the Secretary of the Interior issued a letter stating that the state subsistence law complied with the federal law. However, that compliance was based on the state's honoring the federal law's limiting of subsistence to rural residents. The recent state supreme court ruling prevented the state from giving rural subsistence fishing preference in Cook Inlet.

The federal parks are required by law to manage wildlife for "natural and healthy populations" while the state is required by its constitution to manage wildlife for "sustained yield." Opinions vary on whether these two phrases are compatible.

"Natural and healthy" prohibits habitat manipulation, such as planting or burning, and control of predators, such as wolves. Depending upon who is interpreting the phrase, natural and healthy may or may not allow for sport, personal and subsistence hunting, fishing and trapping. Hunting and trapping for sport, personal and subsistence use has traditionally not been allowed in national parks. Sustained yield allows all of the above.

Some people see "natural and healthy" and "sustained yield" as being in conflict. That is true only if one sees hunting and trapping as

group, can participate in the rural zone.

For example, non-Native trapping methods are not considered traditional in the western Gates of the Arctic, but Eskimo trapping methods are. Only a minority of non-Natives have traditionally inhabited the western region of the Gates of the Arctic, and only a small segment of that minority trapped there. One non-Native trapper was denied permission by the Park Service to build a line cabin on his trapline there, but told he could put up a tent. According to the Park Service interpretation, non-Natives build individual base cabins and then construct smaller shelter cabins along their trail, but Eskimos trap in and out of villages with tents. Also, non-Natives "own" traplines. Eskimos consider any trapping area free taking for anyone who gets there first.

This contrasts with the Denali National Park. There, the minutes of the Subsistence Resource Commission show that "it is generally known that you do not use someone else's trapline." The Denali Commission is attempting to assure that such trapping can continue to be passed on as it has been traditionally, even to newcomers.

The boundaries of a rural community or area are also controversial. The regulations state only "the following communities and areas are included . . ." The size of a community or area is left to interpretation.

One park, such as Gates of the Arctic, may define a community by its legal boundaries; another may define a community as including all or portions of the area surrounding the community. For example, the Denali commission is attempting to define Lake Minchumina as all the area within two miles of the lake.

One couple living between Gates of the Arctic and the rural community of Wiseman was not allowed to subsistence trap within the park, even though they had been trapping in the park the two previous years, because they were not living in Wiseman. In Wiseman, they would have automatically been eligible to do so. They resolved the problem by moving to Wiseman, eight miles farther away from the park than they already were. The irony is that if they had stayed where they were, they would not have been able to use their traplines, but someone from the Lower 48 could have moved into Wiseman and used them. Similar situations exist in other areas of the state.

Who, then, can subsistence hunt

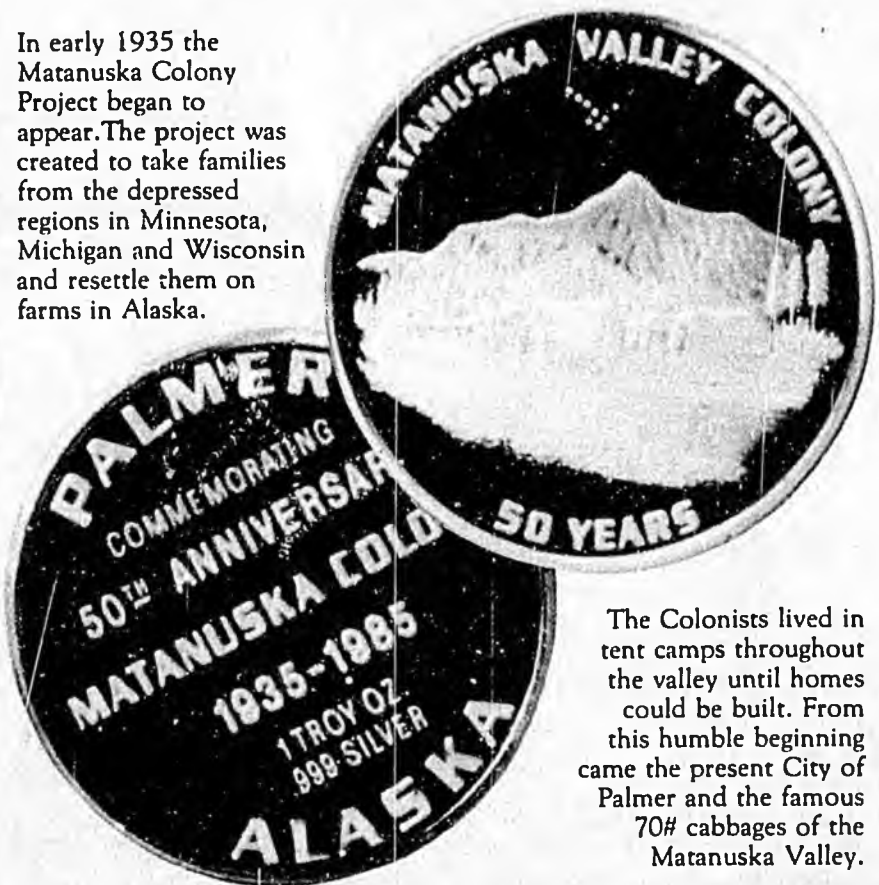
in a national park? According to the National Park Service regulations, which are subject to the interpretation of each superintendent and/or park staff, only those people living in the park or in a rural community or area of the park, or those people who have obtained a special use permit, can hunt in a national park. People must show they have traditionally used the park for subsistence to obtain a special use permit. Sound intricate? The intricacies promise to grow worse.

The federal subsistence law is "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." Does this mean that only those residents subsisting prior to the law have the right to continue? Or does this mean that any rural resident who becomes engaged at any time in a subsistence way of life is guaranteed the right to the continuation? Will the result of conflicting and restricting interpretations of the subsistence regulations and law be that

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unnatural acts. In the Gates of the Arctic, subsistence hunting has been practiced for thousands of years. The animal populations have evolved with hunting. To limit hunting would be an unnatural occurrence in those animal populations. Subsistence is even considered a natural part of the ecosystem by the congressional history on subsistence.

Nevertheless, conflicting interpretations of these two phrases have resulted in such problems as the lack of agreement between the state and federal governments on a working definition for "natural and healthy," as applied to hunting and trapping bag limits and seasons for federal lands.

As a result, if the moose population is low, wolf control can be used on state land but not on park land. Yet the people who subsist in the park also depend on a healthy moose population. And the moose and wolves blithely cross the boundaries between state and federal lands, regardless of their management.

Until the governmental agencies involved, or the courts, ultimately decide such issues, Alaskans are left with a plethora of subsistence interpretations with the potential to pit urban populations against rural, non-Natives against Natives, and neighbor against neighbor.

In the meantime, how does a person, who wants to subsist, avoid the "who is eligible to subsist and where" quagmire in which Larry Fitzwater found himself?

The best answer is to check with the Alaska Department of Fish and Game or the federal agency administering the land upon which one wishes to subsist. Subsistence can be likened to surgery — a second opinion can't hurt. If not satisfied, still puzzled or faced with a legal action (like Fitzwater), get help through the various agency and legal channels.

People having subsistence-use problems with the federal land agencies, such as National Park Service, can appeal through the

hierarchy of the federal land-managing agency. Several national parks have Subsistence Resource Commissions that will try to solve subsistence problems involving their particular work. Alaskans also have a unique agency, the Citizens' Advisory Commission on Federal Areas, which was designed by the state legislature as an ombudsman for Alaskan citizens or organizations having problems with federal land agencies. These commissions will

mediate and advise on subsistence problems involving federal lands.

On problems on state land that are not being satisfactorily resolved by a state agency, the state Ombudsman's Office can be approached. The Boards of Fisheries

and Game will listen to problems involving subsistence fishing, hunting and trapping. The Bureau of Indian Affairs will assist Natives with subsistence problems. Alaska Legal Services will aid people with low incomes with subsistence legal actions and questions. This list of agencies and legal channels is by no means complete.

Appeals and legal solutions are slow and complex processes. The earlier a question or potential conflict is checked out, the more likely the results will be pleasant. Too often, a problem reaches an agency too late: the appeal deadline has passed, the trial has already been held, or the paperwork was signed without a reading or understanding of the consequences contained in the fine print.

At a time of increasing competition for resources, Congress and the state legislature went to great lengths to protect continued subsistence opportunities. But Alaskans will have to work to ensure that those opportunities are not lost in the mass of rules and procedures spawned by the laws. □

Alaskans are left with a plethora of subsistence interpretations with the potential to pit neighbor against neighbor.

When she's not busy pounding out stories for ALASKA® magazine, Leslie Barber works for the Citizens' Advisory Commission on Federal Areas.



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Continued from page 27

layer of grease. We were thankful just to be alive.

When the others wouldn't eat, a soldier came in and took me by the shoulder and led me into their room so they could see that I was still alive. Then he yanked me back into the room with Charley.

O the sixth day of our captivity at 9:15 p.m., when the officers and interpreter were gone, a soldier came into the room and motioned me to follow him, pointing to me and holding his hand to his ear to indicate a telephone call.

Startled, I followed him to a room where there was an ancient telephone that looked to be about one model later than the hand-cranked style. I picked it up and heard, faintly, words in Russian.

"Hello, hello," I said, speaking and alternately listening for about a minute. Then I heard someone speaking English. It turned out to be Susan Arnold, calling from the U.S. Embassy in Moscow! People knew

where we were. It was a tremendous relief.

Later the next morning, we received a telephone call from Alaska's Sen. Ted Stevens, calling from Washington, D.C. The connection (for the telephone equipment) was poor, but I understood that Senator Stevens

*"Korean jet 707
tried to escape,"
he answered,
"Boom! Five
Americans. No
problem."*

wanted to know if any of us were hurt and what we were charged with. He told me that he had the State Department in Moscow working for our release.

"If you are being held on a technical violation, they should release you soon," he told me.

I told him that the Russians had tried to get me to sign many papers that said we had intentionally violated the Soviet boundary.

"Don't admit to anything you didn't do," he warned.

"We aren't going to sign anything," I told him.

"Is there anything you want me to tell your parents?"

"Everybody's fine."

I was taken back to my room, and minutes later the interpreter and an officer arrived. The telephone call had been a miracle. How they even found the number was incredible, let alone the timing. It was obvious the officers knew nothing about it. I think the guard who led me to the phone got into trouble over it, for we never saw him again after it was learned that I received a call.

The call came at a good time, for we were feeling low, having gone days without more than a few catnaps and without proper food. The stress was building, and we were wondering if we were going to get out. But now that our government knew we were here, we were encouraged.

After I had been questioned again, with the same questions over and over, the officer and the interpreter left. Later, when the officer learned about the phone calls, he was so angry he screamed. It didn't help his humor any when Charley and I refused to talk, answer or do

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N A R R A T I V E

Objective: To redefine "subsistence user" in the most narrow and precise manner possible as a means of determining those individuals eligible for qualification as a "subsistence user" under a rewritten Alaska State statute.

Background: Since 1981, the State of Alaska has defined a subsistence user in a sufficiently broad manner so as to allow the largest possible number of individuals in Alaska (except residents in the urban centers, i.e., Anchorage, Fairbanks, Juneau, etc., which are excluded by Congressional action) to qualify for the subsistence privilege set forth in Title VIII of ANILCA. Recent legal decisions in the Alaska Supreme Court have resulted in the striking of certain provisions of the state's subsistence program. Thus, the state's subsistence program is in disarray and under threat of take-over by the federal government.

At least part of the "problem" with the state's subsistence program lies in the Boards of Fish and Game having attempted to define those who might qualify as a "subsistence user" sufficiently broad so as to allow the maximum number of Alaska residents to benefit from the subsistence privilege. The Boards knowingly chose this course and direction. The Boards of Fish and Game apparently were persuaded that the best interest of the largest number of Alaskans lie in maximizing the number of Alaskans who could qualify for the subsistence privilege. Time

has demonstrated that this decision may not, in fact, have been in the best public interest.

Some argued, at the time the Boards of Fish and Game instituted the state-managed subsistence program, that the public interest would be better served if the definition of subsistence user was constructed along the most narrow parameters possible. That is, define subsistence user such that only those individuals, resident in Alaska who:

- 1) actually rely upon taking of wild fish and game and other natural resources for sustenance^{*}; and
- 2) who demonstrated a customary and traditional reliance on subsistence taking for such sustenance, would fall within the definition of subsistence user.

One advantage of this more narrow approach would be to reduce the number of individuals affected by the subsistence program during the course of its normal operation. Large numbers of people would only be affected in the event it becomes necessary to restrict taking of any particular species within a particular

* Sustenance: "means of sustaining life; nourishment, means of livelihood." American College Dictionary of the English Language, Random House, NY, NY.

region of the state because of declining fish or wildlife population levels. Restrictions on taking are infrequent events, unlikely to occur under sustained yield management practices. Thus the state would be able to go about its business of managing resident fish and game on state lands without having to provide the subsistence opportunity to the hundreds of thousands it now has to appease under the broadly defined program presently in place. Stated another way, a narrower definition would continue to provide the priority to those who truly need it and were entitled to ~~it~~ when they needed it the most, that is when fish and wildlife population levels forced invoking the priority system.

This approach is, of course, diametrically opposite of that taken by the State of Alaska in its program established in 1981 and in the program established following the recent Supreme Court decision.

Issue: When considering such a narrowing of the definition of subsistence user the question that immediately arises is, "What criteria will be used to make the determination that an individual actually depends upon subsistence taking for subsistence?"

It is fairly well agreed that the State Department of Fish and Game (along with other agencies of both state and federal government in Alaska) can accurately determine which communities and groups of residents within the state have customarily and traditionally relied on taking of wild natural resources as a means of

sustenance. The issue, then, lies in determining who must rely on subsistence resources in order to survive in an absolute sense, i.e., "sustenance".

Since a strictly "needs based" system for determining eligibility is generally agreed to be outside the bounds of the present federal statute, other factors must be considered.

This paper addresses only the issue of criteria that might be used to ascertain who actually relies on subsistence taking of wild resources for sustenance.

There are, in fact, numerous criteria and numerous potential sources of data and information one could use to ascertain who actually relies upon subsistence for sustenance in Alaska. Alaska state government agencies such as the Alaska Departments of Fish and Game; Commerce and Economic Development; Labor; Community and Regional Affairs; and others have, over the past several years, compiled statistical information which could be factored into a formula for defining eligibility. Additionally, federal agencies such as the Bureau of the Census and the several federal land managing agencies (National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Bureau of Indian Affairs) all have data and information bases that could input to the determination. A group of individuals, familiar with the kinds and sources of information and data being considered and who were given precise parameters within which to function could easily develop criteria of the type outlined below, and, using

that material, construct proper components of a qualification system.

The first action that must occur, however, is for those who are framing this program and those who will manage it, to depart from the prevailing mind set that entire communities and groups of people must be allowed to qualify. Instead, it must be accepted that guidelines for the subsistence privilege will be based upon individuals meeting whatever criteria are established. For example, individuals living in Bethel, not the entire population of Bethel, will qualify. The same will be true for all geographic locations in Alaska except those which Congress precluded from the privilege. Once a person qualifies for the subsistence privilege, he would be granted a "subsistence license." The system contemplated here would obviously require establishment of a whole new bureaucracy (or at least a "beefed-up" bureaucracy over that currently in place) within state government to administer the subsistence program. It should be pointed out though, that the State of Alaska currently receives some \$1.0 million annually from the federal government to help defray the costs of the subsistence program. One important component of the system would probably have to include some sort of an appeals mechanism to rule on cases where a potential subsistence user is denied the privilege by the state bureaucracy. There seems to be no way to avoid this bureaucratic system, when the alternative is considered.

The following considerations (among others) should be evaluated:

1. Community population size. A policy decision could be made by the Legislature that the population size of the community or place in which a person resides will be a major factor in determining one's eligibility for subsistence. The premise for this determination lies in the presumption that once a village or community reaches a certain population level, say 500 persons (it could be 350 or 675-whatever the Legislature determined), the local infrastructure of community services, transportation, and communication and the existing internal systems for procuring non-subsistence foods, etc., will have reached a level of development where it is unlikely that the vast majority of residents in that community will, of necessity, rely upon subsistence taking for sustenance. Obviously, exceptions to the "rule" will occur and for them the state will have to provide. But, since this program is based upon individuals, not entire communities of people, this should not be allowed to be a bar to the program being effective.

2. What kind of commercial enterprises are available in the immediate vicinity? Does the community have a general merchandise or food store? What are the sources of heating fuels, goods, and personal services? Is the volume of retail trade in that store such that the residents of the area rely upon the store for purchase of the majority of their foodstuffs and other essential necessities, and thus taking the wild resources is really supplementing the food supply as contrasted with it being the principal source? What is the proximity of the community to these sources?

3. Level of receipt of government aid programs. Are large numbers of residents of the community recipients of "welfare" or other government subsidy? Do the data associated with this factor demonstrate, either independently or in conjunction with other data, that subsistence is the means of sustenance in the community? Care must be taken in applying these data and drawing conclusions from their application. The data in this case could mean entirely different things to different people.

4. Employment data and income levels. Are levels of employment and income in the community sufficiently high to indicate that the community exists on a "cash economy" as contrasted with a so called "subsistence economy?" Is the applying subsistence user above or below the established "poverty level" of income?

5. Availability of employment opportunities. Is there any indication that employment is available within the community? What is the geographic proximity of employment opportunities to the community in which the applicant resides?

6. Are there any evidences of "importation" of income to the community from sources outside the community; i.e., family members working on the North Slope and bringing income into the economy of the community?

7. ADF&G harvest record data could supply indications of the level of taking of fish and wildlife resources by local people as subsistence. This would provide an indication of the extent to which any individual should qualify for the subsistence privilege.

Conclusion: Clearly, there are numerous other criteria that could be factored into this determination. The above list does not approach completeness. These are cited merely as ideas to foster thinking as to how one would approach narrowing the number of individuals eligible for the subsistence qualification.

And, it is clear that some subjective decisions will, of necessity, have to be made in not only arriving at those criteria to be written into either law or regulation, but as well by the bureaucracy in administering whatever program it is the Legislature finally imposes. Those who will be critical of the premise that the category of users should be narrowed in number and those who will be critical of the application of some subjective criteria and judgement-making should be reminded that the task of the elected Legislature is to make those very kinds of decisions through the political process under which our government works. It is within the prerogative of the Legislature to make the laws and the rules--and thus the policy decisions associated therewith--so long as those decisions withstand the test of constitutionality and public opinion.

I. DOMESTIC FISHERIES, REGULATION, AND THE COMMERCE CLAUSE

A. Ownership of Animals *Ferae Naturae*

The roots of western man's inharmony with his environment and his attitudes toward exploitation of natural resources were already evident in the Old Testament.¹ Whatever their origin there is deep-seated tradition in our law that every man, as an individual, has an equal right to pursue and take to his own use all such animals as are *ferae naturae*, i.e., of a wild nature, the property of no one, but liable to be seized by the first occupant. Traditionally, also, the sovereign has asserted ownership of migratory species, under a variety of theories. In Roman law, animals *ferae naturae* were considered to belong in common to all the citizens of the state. Speaking to English common law, Blackstone asserted that such animals were prerogative property vested in the King alone. The original 13 colonies succeeded to the rights of the Crown, from which has developed in American law theories regarding the ownership of wild game and fish. The rule of law which American courts have consistently recognized is that animals *ferae naturae* are owned by the States, not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common. The property right is a *common ownership . . . to be exercised . . . as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.*²

But the "ownership" is not unqualified. It is the law that whoever claims title to animal *ferae naturae* must first reduce them to possession.³ Where statutes speak of title to game and fish as being in the State, they speak to the State's police power to regulate the taking and use of wild game and fish, do not affect a landowner's interest in land,⁴ and have generally involved the relationship between a State and an individual, not between a State and the Federal Government.⁵ The ownership theory is not without modification. "To put the claim of the State upon title is to lean upon a slender reed," said Mr. Justice Holmes, because wild animals are in the possession of no one and "possession is the beginning of ownership."⁶ The ownership theory has been characterized as "a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource."⁷

B. State Authority To Regulate Fish and Wildlife

Most of the Federal case law to date has dealt with the authority of the States to regulate the exploitation of wildlife by individuals, and has consistently held that as between the State and the individual the State can control and regulate the common property in game and fish within the jurisdiction of the State. In *McCready v. Virginia*, 94 U.S. 395 (1876), at issue was the power of the State of Virginia to prohibit citizens of other States from planting oysters within the internal or tide

¹White, Lynn Jr., "The Historical Roots of Our Ecologic Crisis," 155 *Science* 1203, March 10, 1967; Baer, Richard A. Jr., "Land Misuse: A Theological Concern," *The Christian Century*, Oct. 12, 1966.

²*Geer v. Connecticut*, 161 U.S. 519, 529 (1896); *Martin v. Waddell*, 16 Pet. 367; *McCready v. Virginia*, 94 U.S. 391; *Smith v. Maryland*, 18 How. 71; *Manchester v. Massachusetts*, 139 U.S. 240; *Lawton v. Steele*, 152 U.S. 133; *Ward v. Race Horse*, 163 U.S. 504; *Patson v. Pennsylvania*, 232 U.S. 138; *United States v. McCullagh*, 221 Fed. 298; *United States v. Shauver*, 214 Fed. 154; *Silz v. Hesterberg*, 211 U.S. 31; *Kennedy v. Becker*, 241 U.S. 556. See also *Commonwealth v. Agway, Inc.*, 210 Pa. Superior Ct. 150 (1967).

³*Pierson v. Post*, 3 *Causes* 175 (N.Y., 1805). See also *Koop v. United States*, 296 F.2d 53 (C.C.A. 8, 1961).

⁴See *McKee v. Grant*, 260 U.S. 127, 135 (1922).

⁵*Geer v. Connecticut*, *supra*; *Ward v. Race Horse*, *supra*; *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928).

⁶*Missouri v. Holland*, 252 U.S. 416, 434 (1920).

⁷*Toomer v. Witsell*, 334 U.S. 385 (1948).

US CONGRESS STRATTON COMMISSION 1966-1968

4 VOLUMES COVER MAIN COPY "OUR NATION AND THE SEA"
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VII-71

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[discussing Geer v. Connecticut] . . . it is there held the power of the state over game within its territorial limits is not terminated by the act of the individual in reducing it to his exclusive and lawful possession, but, on the contrary, the power of the state follows the game into the hands of the lawful exclusive possessor, and in the assertion of its title held therein in trust for all the people of the state it may so control its use and disposition as to absolutely forbid and prohibit its coming under the protection and control of the commerce clause of the national Constitution. And the reason for the rule is apparent. If the state, either by its laws, or in the absence of prohibitive laws, once permits game to come under the authority of the commerce clause of the national Constitution, then all state control or authority thereover of necessity must cease to exist, and its trust title for the common good of all the people of the state be cut off and destroyed . . .

Speaking after enactment of the Migratory Bird Treaty Act and before *Missouri v. Holland*, the District Court for the Western District of Missouri said:

*Primarily the state, both as trustee for the rights of all its people and in the exercise of its police power, has control over the right to reduce animals *ferae naturae* to possession. [Citations omitted] And in the absence of treaty there appears to have been no delegation of paramount authority to the federal government. Under the foregoing authorities, therefore, as well as on principle, this act, in the absence of treaty, would be unconstitutional, as exceeding the legitimate powers of Congress, and so it has been held in cases substantially identical. *United States v. Shauver*, 214 Fed. 154; *United States v. McCullagh*, 221 Fed. 288. That this power in the state is subject to any valid exercise of authority under the provisions of the federal Constitution is clear; and that a valid exercise of the treaty making power may be recognized as such a valid exercise of authority has been foreshadowed by necessary implication or by express reservation in the decisions of the Supreme Court of the United States. [Citations omitted.]*

Eight years after *Missouri v. Holland*, the Supreme Court held that the commerce clause could reach shell fish shipped and sold in interstate commerce. In *Foster-Fountain Packing Co. v. Louisiana*, 278 U.S. 1 (1928), Foster-Fountain challenged the Louisiana Shrimp Act, which asserted the State's ownership of shrimp within its waters and provided that shrimp caught in its waters must be headed and hulled before being shipped out of the State. Distinguishing this case from *Geer v. Connecticut* because the Shrimp Act expressly authorized shrimp meat and bran to be shipped and sold in interstate commerce, the Court said, 278 U.S. at 12:

Consistently with the Act all may be, and in fact clearly all is, caught for transportation and sale in interstate commerce. As to such shrimp the protection of the commerce clause attaches at the time of the taking . . . But, in direct opposition to conservation for intrastate use, this enactment permits all parts of the shrimp to be shipped and sold outside the State. The purpose is not to retain the shrimp for the use of the people of Louisiana; it is to favor the canning of the meat and the manufacture of bran in Louisiana by withholding raw or unshelled shrimp from the Biloxi plants. But by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control. Clearly such authorization and the taking in pursuance thereof put an end to the trust upon which the State is deemed to own or control the shrimp under the authority of the Act necessarily thereby become entitled to the rights of private ownership and the protection of the commerce clause. [Emphasis added.]

The paramount authority of the commerce clause was challenged again in 1948 when citizens of Georgia sued to enjoin South Carolina State officials from enforcing statutes of that State regulating commercial shrimp fishing in the three-mile maritime belt off the coast.¹⁴ One of the statutes challenged

¹⁴*Toomer v. Witsell*, 334 U.S. 335 (1948).

waters of that State, which power was upheld by the Court. *Manchester v. Massachusetts*, 139 U.S. 240 (1891), is cited as authority for the State of Massachusetts to control and regulate the catching of fish by individuals within the bays of that State. The authority of the State to control and regulate its own citizens in their exploitation of resources beyond the territorial sea, in the absence of Federal legislation, was confirmed in *Skiriotes v. Florida*, 313 U.S. 69 (1941), as was the authority of the State to control and regulate such exploitation by both citizens and noncitizens of the State while in the territorial sea boundaries of the State (*Toomer v. Witsell, supra*). For the effective enforcement of hunting and fishing restrictions, the State may forbid the possession within its borders of certain gear, such as nets, traps, and seines (*Miller v. McLaughlin*, 281 U.S. 261, 264 (1930)). The State may also forbid the transportation outside the State of game killed therein (*Geer v. Connecticut, supra*), and to make illegal the possession, during the closed season, of game imported from abroad (*Silz v. Hesterberg*, 211 U.S. 31 (1908)).

C. Treaties and Regulation

"No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of [migratory] birds, but it does not follow that its authority is exclusive of paramount powers."⁸ It is well settled in American law that as between a State and the Federal Government, laws passed pursuant to the valid exercise of the treaty-making power of the Federal Government⁹ are the supreme law of the land. This was expressly confirmed in the landmark case of *Missouri v. Holland*, which held that the Migratory Bird Treaty¹⁰ and the Migratory Bird Treaty Act¹¹ passed pursuant thereto were supreme law of the land, supervening State laws and creating rights superior to those of the States or their citizens.

D. Commerce Clause and Regulation

However, before the enactment of the Migratory Bird Treaty, there was doubt and uncertainty as to the power of the Congress to deal with the hunting and killing of game birds. In 1913, the Congress passed a law deeming migratory birds to be "within the custody and protection of the government of the United States," and asserted the authority of the Department of Agriculture to adopt suitable regulations to prescribe closed seasons and to prohibit the killing of migratory birds.¹² This Act was first contested in *United States v. Shauver*, 214 Fed. 154 (D.C.E.D. Ark., 1914). On initial hearing, counsel for the Government did not contend that power to enact the legislation was under the commerce clause, but under the power to make regulations respecting the property of the United States.¹³ Citing numerous cases to the effect that "animals *ferae naturae* . . . are owned by the States, not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common," the court stated that it was "unable to find any provision in the Constitution authorizing Congress, either expressly or by necessary implication, to protect or regulate the shooting of migratory wild game when in a state," and declared the Act unconstitutional. On rehearing, the court dismissed the case after counsel for the Government contended that the Act was authorized by the commerce clause.

To similar effect was *United States v. McCullagh*, 221 Fed. 288 (D.C. Kan., 1915), decided nine months after the *Shauver* case, and testing the same Act. Holding the Act unconstitutional, the court stated, 221 Fed. at 292:

⁸Mr. Justice Holmes in *Missouri v. Holland*, 252 U.S. 416, 434 (1920).

⁹U.S. Const., art. 1, §8, cl. 3.

¹⁰39 Stat. 1702 (Dec. 8, 1916)

¹¹Act of July 3, 1918, 40 Stat. 755, as amended, 49 Stat. 1556 (June 20, 1936), 16 U.S.C. 703-711.

¹²Act of March 4, 1913, 37 Stat. 828.

¹³Art. 4, §3, cl. 2, "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States . . ."

required all boats licensed to trawl for shrimp in the State's waters to dock at a South Carolina port, unload, pack, and stamp their catch before shipping or transporting it to another State. The Court declared this statute unconstitutional. Concurring with the Court's decision, Mr. Justice Frankfurter said, 334 U.S. at 409:

... When a State regulates the sending of products across State lines we have commerce among the States as to which State intervention is subordinate to the Commerce Clause. That is the nub of the decision in Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1. South Carolina has attempted such regulation of commerce in shrimp among the States. In doing so she has exceeded the restriction of the Commerce Clause.

The line to be drawn between the legitimate exercise of the State's police power to regulate the taking and use of animals *ferae naturae*, and the paramount powers of the United States under the commerce clause is not clear. However, the Supreme Court has enunciated certain general principles regarding the States' police power.¹⁵ In each case involving the commerce clause, the courts must balance the adverse effect on interstate commerce imposed by a State law against the local benefits which the law was designed to achieve. In holding that a Maryland law prohibiting the use of purse nets in the tidal waters of the State had a rational basis and that the interference with interstate commerce was "merely incidental," the District Court in *Corsa v. Tawes*¹⁶ said:

... in the absence of conflicting Congressional legislation under the commerce clause regulation of the coastal fishery is within the police power of the individual states ... Congress has not sought to impose uniformity, but has been content to leave the matter to local authority and has recently made this intention explicit . . . [citing the Submerged Lands Act of 1953].

Doubtless catching menhaden and processing them into useful products is a legitimate occupation and in commerce the interstate aspects of which cannot be interfered with arbitrarily. But the same Constitution which puts interstate commerce under the protection of Congress recognizes the sovereignty of the states in local regulation for the protection of their natural resources. If the adverse effect on interstate commerce is only incidental and indirect and is outweighed by the local benefits which the statute is designed to achieve, the commerce clause will not render the enactment invalid. . .

E. Submerged Lands Act

To fill out a consideration of the Federal-State powers to regulate fisheries, attention must be given to the Submerged Lands Act of 1953,¹⁷ which provides in part:

It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States

...
18

The Act defines "natural resources" to include minerals and "fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life . . ."¹⁹ Finally, the Act provides:

¹⁵ See, for instance, *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440 (1960).

¹⁶ 149 F. Supp. 771, 773, 776 (D. Md., 1957), *affirmed*, 355 U.S. 37 (1957).

¹⁷ Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301-1315.

¹⁸ 67 Stat. 31, 43 U.S.C. 1311(a).

¹⁹ 67 Stat. 29, 43 U.S.C. 1301(e).

*The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States . . .*²⁰

We have been unable to find any case law or administrative interpretations of the section quoted immediately above, but would like to make two observations about the section. The effect of *United States v. California* was to invest the United States with a proprietary interest, to which Mr. Justice Frankfurter alluded in his dissent.²¹ This seems to have been confirmed in *United States v. Louisiana*,²² where the Court stated:

Since the Act concededly did not impair the validity of the California, Louisiana, and Texas cases, which are admittedly applicable to all coastal States, this case draws in question only the geographic extent to which the statute ceded to the States the federal rights established by those decisions. . .

While the ownership of certain lands within state boundaries has been held to be an inseparable attribute of the political sovereignty guaranteed equally to all States, . . . the geographic extent of those boundaries, and thus of the lands owned, clearly has nothing to do with political equality. A fortiori this is true in the case of maritime boundaries beyond low-water mark, since, except as granted by Congress, the States do not own the lands beneath the marginal seas. [Emphasis added.]

Regulatory authority over natural resources in the navigable waters within the seaward boundaries of the States has not been completely relinquished by the Congress, and could be asserted if necessary to do so in the best interest of rehabilitation of the U.S. fisheries. The "proprietary rights of ownership" and "title" to natural resources granted by the Submerged Lands Act, as they pertain to migratory species of fish, are subject to the limitations previously discussed regarding title to animals *ferae naturae*, which may be part of the meaning of the phrase "if any it has" in 43 U.S.C. 1311 (b), where Congress relinquished "all right, title, and interest of the United States, if any it has, in and to all said. . . natural resources."²³ This also includes relinquishment of the public trust in which the State holds "title" to animals *ferae naturae* once a State permits the shipping and sale of such resources in interstate commerce.²⁴ Patently, the Congress has not relinquished the power to regulate interstate commerce in recognizing, confirming, establishing, and vesting proprietary rights of ownership and rights of management over such natural resources in the States. Congress could assert regulatory powers pursuant to the Commerce Clause if it found that the failure of the States to manage the marine fisheries imposed an undue burden upon interstate commerce.

F. Conclusions and Summary

Summing up the discussion of the power of the Federal Government to participate in the regulation of United States fisheries, we conclude (1) that when enabled pursuant to a treaty, the Federal Government has clear authority to regulate fisheries, which authority would supervene any State laws on the subject, and which could be exercised exclusively if the Congress were so to choose and (2) that the commerce clause could be invoked to warrant Federal regulation or participation in regulation of species shipped and sold in interstate commerce.

²⁰67 Stat. 32, 43 U.S.C. 1314.

²¹332 U.S. 19, 45 (1946).

²²363 U.S. 1, 7, 77 (1959).

²³67 Stat. 31, 43 U.S.C. 1311(b).

²⁴Cf. *Foster-Fountain Packing Co. v. Louisiana*, 278 U.S. 1 (1928); *Toomer v. Witsell*, 334 U.S. 335 (1948).

In the one case in which Congress sought to regulate migratory birds without a treaty, two District Courts held the Act unconstitutional in the exercise of the States' ownership of animals *ferae naturae* and their police power to regulate the taking and use of such animals. However, subsequent Supreme Court decisions have found that when shrimp are caught for shipment and sale in interstate commerce the trust upon which the State owns or controls the shrimp for the benefit of its people is lost, and the protection of the commerce clause attaches at the time of the taking. The Supreme Court and lower Federal courts have oft stated that in the absence of Federal legislation, the State may regulate the taking and use of migratory species. Despite giving title to "natural resources" in the waters within the boundaries of the States, and Congress' vesting of the right and power of the States to manage the natural resources in accordance with State law under the Submerged Lands Act, the power of Congress to regulate interstate commerce has not been diminished. The proprietary right to the living resources has been affirmed, to the extent it existed, but the authority to regulate interstate commerce has not been relinquished by the Congress.

While asserting that there is ample authority under the commerce clause for the United States to regulate U.S. fisheries, we contend that measures short of Federal regulation can be invoked toward removal of inhibiting institutional barriers, and for the rehabilitation of U.S. commercial fisheries on sound scientific, economic, and legal concepts. The issue of how such change can be achieved is a very sensitive political question that hits at the very roots of American federalism. The question is not whether Congress has the power to create change, but whether Congress will assert the power and how.

II. ORGANIZATIONAL ALTERNATIVES FOR FISHERIES

A. A Statement of Fisheries Problems

1. Federal Authority

Regulation of the fisheries in the United States is exercised by the States under existing law; the Federal Government acts in a research, advisory, and coordinating role. Inasmuch as there has been no substantial change since the following excerpt was included in a Senate Report of the 79th Congress, it is *à propos* here:

... In the States, the Federal Government acts, for the national interest, as a research, advisory, and coordinating agency wherever several States are concerned with a common conservation problem. It engages in fishery restoration and management activities, including propagation, independently in waters under Federal jurisdiction, and in collaboration with the States in other waters where national interest is involved. It develops and disseminates knowledge about whole fishery resources (i.e., as opposed to local segments of them). It collaborates in the conservation of species shared between the United States and other nations. It promotes the fullest and most widespread utilization of the commercial fish catch, and the achievement of the highest standard of quality of the fishery products.

*The foregoing is a statement of an ideal. The Federal Government has never done justice to these functions because its fishery conservation agency. . . has never been given broad enough direction by the Congress to permit it to carry out a unified program to suit the needs of the country as a whole. Without a fundamental plan, the Service has evolved by a process of tacking on projects one by one, which have generally been thrust upon it to meet particular crises, often as the result of pressure by special groups. The appropriations to the Service are based principally on the support of these projects. Thus the Federal Service is helpless to execute a dynamic program based on national needs; instead, it can only carry on with its agglomerate of activities inherited from the past, and wait for further crises which its timely services would otherwise have averted. . . .*²⁵

²⁵"Fishery Resources of the United States," Sen. Doc. No. 51, 79th Congress, 1st Sess. (1945), Committee on Commerce, at p. 132.

LET'S GO SUBSISTENCE FISHING

(A ~~Discussion~~-Paper)

10 April 1985

Bill Caldwell

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LET'S GO SUBSISTENCE FISHING

(A Discussion Paper)

You and I, no matter where we live in Alaska or what we do, are subsistence fishers. So I am told. Solely because we are residents of Alaska. So let's plan a subsistence fishing trip. Maybe several thousand of us from all over the state can take set gill nets and find a nice spot along Cook Inlet, near a village heavily dependent upon a subsistence economy. Let's time our trip to overlap with the overlap of the king, coho and sockeye runs. I don't know how to fish with a set gill net, but no matter. I'm sure that in no time we can learn from a true subsistence fisher how each of us can catch a freezer-full of salmon in just a few days. And we can have a grand party at the same time. Scatter a few truckloads of beer cans along the beaches. Kill a few bears in self-defense. Invade Indian country. Maybe photograph some Indians in their natural habitat of sport fishermen and oil refineries. We could have a ball, in blatant defiance of the federal subsistence law.

Is this possible? Well... apparently our state supreme court has conferred this fundamental right upon us. Madison v. Alaska Dept. of Fish & Game (22 Feb. 1985). Or so it is said by a number of distinguished observers and participants. These people have considerable experience dealing with the subsistence issue and deciphering opinions of the Supreme Court of Alaska, but I am not convinced. Nay, I am persuaded of the opposite.

I.

The Ratio Decidendi of the Madison Decision

In order to determine whether all five of our supreme court justices decided simultaneously and unanimously to go fishing when they should have been at work, I have reviewed the briefs filed by the state and AFN, and I have read the Madison opinion quite a few times. The result is that I have come to see the Madison judgment as a basically correct and just response to a nine-year effort by the Board of Fisheries and the state qua state, acting in a highly partisan manner on behalf of sport and commercial fishing interests, to screw the subsistence users of Cook Inlet--Native or non-Native, rural, urban or anything in between.

A. The legislative, administrative, judicial and factual background. The following chronological summary of the events leading up to the Madison decision is derived primarily from the AFN and state briefs in Madison, the Madison opinion, and the 1981 supreme court opinion in Kenai Peninsula Fisherman's Cooperative Ass'n v. State, 628 P.2d 897 (1981).

1. From 1960 until 1978 "subsistence fishing" was defined by the legislature as fishing "for personal use...with gill net, seine, fish wheel, long line...." In conjunction with the 1978 subsistence law (AS 16.05.251(b)), the definition of "subsistence fishing" was changed to fishing with gill nets, etc., "for subsistence uses." AS 16.05.940(22). "Subsistence uses" was defined as "the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption...." AS 16.05.940(23).

"Sport fishing" has been consistently defined as fishing "for personal use" with hook and line held either in the hand or attached to a pole or rod. Id., §(21). "Commercial fishing" has always meant taking fish "with the intent of disposing of them for profit...." Id., §(5).

2. Prior to the mid-1970's, subsistence fishing occurred side-by-side with sport and commercial fishing in Cook Inlet, with little apparent conflict, the subsistence take being viewed as de minimus. (Between 1971 and 1977, an annual average of only 87 subsistence permits were issued, with an average annual catch of only 405 salmon. The commercial harvest, in contrast, averaged about two million fish per year. The subsistence take is understated, however, "since many people did not obtain permits and some commercially caught salmon were used for subsistence." Madison slip op. at 3 n.l.) But the rapid population growth of Anchorage and the Kenai Peninsula brought tens of thousands of sport fishers into direct competition with the Cook Inlet commercial fishery for access to king and coho stocks. Kenai Peninsula subsistence fishers, lacking political clout, bore the brunt of the sport/commercial conflict.

3. In 1976 the Board of Fisheries arbitrarily closed the southern district of Cook Inlet to subsistence fishing for the 1977 season. Residents of Homer sued and won an injunction restoring "subsistence net fishing."

4. In December 1977 the Board, without regard to subsistence fishing needs, adopted a comprehensive management policy for Cook Inlet salmon stocks. The policy, which apparently favored sport

over commercial interests, basically sought to allocate the spring and fall king and coho runs for sport use, while allocating the summer sockeye runs to commercial use. See Kenai, 628 P.2d at 899-901. In a suit by commercial fishers, this 1977 policy was declared invalid because the Board violated the Administrative Procedure Act. Id. at 904-06. The policy had also been adopted in regulatory form in 1978 and 1979.

5. The Cook Inlet regulations governing the 1978 season closed the central district to commercial fishing after 15 August, although the subsistence season remained open. Commercial fishers, accustomed to taking some of their catch for personal use, therefore applied for subsistence permits. Combined with enhanced public awareness of the state's subsistence fishing provisions, this resulted in a significant increase in the number of Cook Inlet subsistence fishing permits. (Subsistence permits numbered 323 with a catch of 3,735 salmon in 1978, compared to a commercial harvest of over five million fish. In 1980, when household rather than individual permits were issued, there were 1,331 subsistence permits with a catch of 14,775, compared to a commercial catch of over four million. Madison at 9 n.7.)

6. The Board's unsurprising response to the perceived "increase" in subsistence fishing, now being identified as such, was to impose restrictions. For the 1979 season, the Board limited access to subsistence fishing by reducing the length of gill nets, fishing periods and available shoreline, and it changed the subsistence season in the central district from August 1 - September 21 (the coho run preferred by sport interests) to June

23 - August 15 (the sockeye runs being managed for commercial interests).

7. Even more stringent restrictions on subsistence fishing were imposed by the Board for the 1980 season: the entire shoreline of the Kenai Peninsula in the central district was closed to subsistence fishing, although a few miles of dangerous, inaccessible beach in the southern portion of the northern district were opened to subsistence; in the southern district, the Board further reduced the allowable length of subsistence gill nets and closed the Homer Spit and the shoreline east of the Spit to subsistence fishing. This harsh action, aimed at a miniscule portion of the Cook Inlet salmon harvest, spawned three successful lawsuits against the Board, by residents of Tyonek, Homer and Kenai.

8. Meanwhile, the legislature in 1978 had enacted the state subsistence law, mandating that the Board protect subsistence as the priority use. AS 16.05.251(b) (attached as Appendix A). In response to its litigation setbacks in the summer of 1980, the Board now seized upon the new law, contrary to its spirit, as a means of accomplishing its goal of curtailing the subsistence fishery. At its December 1980 meeting, the Board, in violation of the Administrative Procedure Act and the open public meetings law, established characteristics for identifying "customary and traditional uses" of Cook Inlet salmon, and adopted criteria for applying the characteristics.

9. At its March 1981 meeting, the Board adopted as a formal regulation a revised version of its criteria, ten in number, for

identifying "customary and traditional uses." 5 AAC 01.597 (attached as Appendix B). The Board also determined to apply all of the ten criteria, so that any user or user group, subcommunity or community, had to measure up to each of the criteria in order to qualify as subsistence users. Any personal-consumption gill net user not qualifying for subsistence consideration under the criteria would simply be thrown into "equal" competition with the sport and commercial interests, to be dealt with at the Board's discretion. As the above history reveals, this meant, in practical effect, that those who had for many years been taking Cook Inlet salmon with gill nets for personal and family consumption would receive no consideration from the Board -- they would be accorded the lowest priority imaginable. And that is precisely what happened. The Board rigorously applied its ten criteria and determined that throughout the whole of Cook Inlet only three communities (Tyonek, English Bay and Port Graham), and no individuals, groups or subcommunities, qualified for the subsistence fishery. Thus, for the 1981 Cook Inlet season, the Board prohibited all fishing with gill nets for personal and family consumption, except for the three villages found to satisfy all ten criteria. This action "eliminated from the protection of the subsistence statute the majority of Cook Inlet fishermen who formerly fished under subsistence regulations" (Madison at 12), including such groups as the Kachemak Bay Subsistence Group (they had "shown the existence of a community of interest," but their members "were either too widely dispersed or were too heterogeneous to be considered identifiable as a community") and

the Kenaitze Indians of Kenai (who had "made an adequate showing of handling salmon by traditional modes (e.g., using all parts of the fish, including the heads, fins, tails and eggs; drying, smoking)," but were nonetheless excluded). State's Brief at 43.

10. Residents of Homer (the Gjosund case which was decided by the supreme court as part of the Madison opinion) and Kenai (Madison) sued the Board and obtained preliminary injunctions, from the Kenai and Homer superior courts, preserving at least some of their subsistence fishing opportunities for the 1981 season. Among several appealing causes of action, the plaintiffs in both cases alleged that the "ten criteria" regulation was invalid under the state subsistence law.

11. At its March 1982 meeting, the Board responded to the lawsuits and court injunctions by creating a "personal use fishery" (5 AAC 77.001), which was opened in the central district (Kenai) for the June sockeye run (residents would have preferred the fall coho run), and in the southern district (Homer) for the fall coho run. "Thus, 'personal use fishing' joined 'commercial fishing' and 'sport fishing' as activities which can be regulated by the board in its discretion" (State's Brief at 14) -- and by now we know what that means.

12. At that same meeting, the Board also met jointly with the Board of Game and adopted a joint, uniform regulation designed to facially comply with the federal (passed December 1980) and state subsistence laws. 5 AAC 99.010 (Appendix C). This joint regulation, containing eight criteria for identifying "customary and traditional uses" of both fish and wildlife, was drawn largely

from the Board's Cook Inlet "ten criteria" regulation (Appendix B) of the previous year. There are at least two major differences: (1) The joint regulation does not require, as did the Board's Cook Inlet regulation, that a use pattern must satisfy all eight of the criteria in order to receive recognition as a "customary and traditional use." (2) The joint regulation limits subsistence protection to "rural" Alaskans, whereas the Cook Inlet regulation did not contain the express limitation "rural" (although everyone seems to agree that, as applied, it had that effect, and the "rural" limitation on subsistence was expressly articulated in the Board's new "personal use fishery" regulation).

13. The Joint Board's spring 1982 subsistence regulation was submitted to the Secretary of the Interior as part of the state's package designed to show paper compliance with Title VIII of ANILCA. In May 1982, that renowned advocate of the subsistence way of life, James Watt, certified the state's compliance, and therefore the state's duty to protect the subsistence way of life of, at the least, rural Alaskans, with special emphasis on Alaska Natives. (The state's voters confirmed this duty the following November when they rejected, by a substantial margin, an initiative to repeal the state's subsistence law.)

14. The two Madison lawsuits proceeded to final judgments, one of which was appealed to the supreme court by the state and one by the plaintiffs. Both superior courts held, however, that the Cook Inlet "ten criteria" regulation was not invalid under the state's subsistence law. Under these criteria, the Madison plaintiffs did not qualify as "customary and traditional"

subsistence fishermen because theirs was not "a use pattern established by an identified community... having preponderant concentrations of persons showing past use" (Madison at 25-26), i.e., because they weren't part of an "identifiable subsistence community or group." Id. at 26.

B. Summary. To my eye, the series of events described above paints a picture of a Board of Fisheries decidedly hostile to any aspect of the subsistence way of life, and resolutely insensitive to those who, regardless of how they ought now to be classified, had been classified for at least two decades as subsistence fishermen. The ten criteria which the Board devised were, in the abstract, a good start at giving some practical content to the legislative guideline of "customary and traditional use." But the Board then determined to apply the criteria in a very mean-spirited way. The Board had acquired a mindset, a charitable description of which would be that the Board didn't want to be bothered with these pesky subsistence claims; it wanted to get on with the politics of sport vs. commercial fishing uninterrupted by this subsistence nonsense. Those who were true subsistence advocates apparently were able to take enough advantage of this scenario (which included violations of the APA and the open-meetings law) to get the Board to adopt criteria that bore some relation to the various degrees of subsistence (and/or "personal use," as you prefer) lifeways on the Cook Inlet. Unfortunately, the reasonableness of the criteria belied the manner in which they were implemented.

If it is not farfetched to view the subsistence laws as

protective, rather than destructive, of the subsistence way of life, then surely the Board of Fisheries was in need of some firm-handed redirection, if not out-right reversal. I have been understanding both the federal and state subsistence laws as positive laws designed to afford affirmative maximum protection to subsistence uses (however they may be defined) of Alaska's wild renewable resources; to impose upon all state and federal resource managers the affirmative duty to identify and protect subsistence resources and their users. It is only after subsistence has been fully secured that sport and commercial may enter the picture. The process followed by the Board, however, turned this statutory framework upside down. The Board proceeded first to protect sport and commercial interests as much as possible, in accordance with the prevailing politics of the day, and then it sought to restrict subsistence uses to the maximum extent feasible in the face of an ongoing series of lawsuits and judicial injunctions.

Under the subsistence law the Board should have been shielding the subsistence fishery from sport and commercial pressures. Instead, it was doing the opposite. The "customary and traditional use" guideline was intended, by both Congress and the state legislature, to receive a liberal interpretation and application; it was to be accorded breadth, depth and flexibility. Instead, the Board seized upon the guideline to restrict subsistence uses. The Board gave "customary and traditional use" a strict and narrow meaning, and then applied its criteria in a rigid, inflexible manner. Rather than fulfilling its affirmative obligation to identify and protect customary and traditional

subsistence uses, the Board reversed the process contemplated by the law and imposed upon subsistence users a heavy burden of persuasion that their use patterns met all of the Board's "customary and traditional use" criteria. The state richly deserved losing this lawsuit.

II.

The Madison Decision

The supreme court's 22 February Madison decision is not a work of art, but neither is it the product of hasty decision-making and sloppy thinking. I believe these guys really were at work when they should have been, and I don't begrudge anybody a fair amount of fishing time. If they are due any criticism at all, it should be grounded in their dispassionate discussion of the facts vis-a-vis the Board of Fisheries.

As the supreme court saw the facts, it recognized that in Cook Inlet "the subsistence salmon fishery is most visible in the smaller, more isolated villages, where the subsistence group represents a larger percentage of the population." Slip op. at 3. At the same time, however, the court found that there existed "a core group of residents of each Cook Inlet community [which] has traditionally fished for Cook Inlet salmon for subsistence." Id. For reasons I will return to, it should be emphasized that the court was dealing with a subsistence use pattern by persons, whether they lived in "rural" or "urban" communities and areas, who harvested resources nearby--near to where they lived. The case did not involve a traditional use pattern by persons who didn't reside in the harvest area.

Throughout its opinion, the court emphasized that the purpose of the subsistence law was the protection of subsistence uses, and that the Board had perverted that legislative purpose. "Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect." Id. at 27. In arriving at its judgment, the court rejected the Board's principal contention that the 1978 subsistence law required, or at least authorized, the Board to curtail the previously recognized class of subsistence users by limiting the subsistence priority to "individuals residing in those rural communities that have historically depended on subsistence hunting and fishing." Id. at 15-16. The court thought the Board's argument evidenced "a fundamental misconception about the [law's] structure." Id. at 16.

As the supreme court explained to the Board, and as appears from the plain meaning of the statute, the state subsistence law confer priority rights upon two potential tiers of subsistence users. Id. The first tier is that broad class of all subsistence users, however they may be defined. The second tier consists of that subclass of "preferred subsistence users" who have the greatest customary and direct dependence on the resource in question, who live closest to it, and who have the least access to alternative resources. All subsistence uses have priority over sport and commercial uses. Before any restrictions may be placed on subsistence uses, sport and commercial uses must be eliminated. Subsistence uses may be curtailed only upon findings that

sustained yield necessitates restriction and that the elimination of sport and commercial uses is not adequate to protect sustained yield. Only then may the Board begin to restrict subsistence uses by the application of criteria designed to afford top priority to second-tier preferred users. Id. at 16-17. The court's understanding of the statute's operation seems unassailable.

The court rejected the state's contention that the Madison plaintiffs should not receive the priority protection afforded to first-tier (i.e., all) subsistence users, and that they should be satisfied with their new status as "personal use" fishers, with no priority rights over sport and commercial interests (and we know what that means). The court concluded that the law's "customary and traditional" guideline does not authorize the Board to define first-tier subsistence users solely in terms of their area of residence, since the statute only speaks to area of residence in connection with identifying second-tier preferred subsistence users, and because "customary and traditional" refers to "uses," not "users." Id. at 17-18. The court reviewed the legislative history, and found that "there is no indication that legislators understood the 1978 subsistence law to restrict subsistence use to either a rural or a community context." Id. at 22.- The court thus held that the Board's interpretation of the law was incorrect (id. at 23).

Finally, the court held that the manner in which the Board applied the subsistence law, like its interpretation of the law, was erroneous. The court noted that the Board had not followed the suggestion of Tom Lonner, then director of ADF&G's subsistence

division, that "customary and traditional use" determinations should be made on a case-by-case basis, and that Lonner's warning that the Board's ten criteria "might not suffice as a test" of individual subsistence applicants was ignored. Id. at 24-25. The court further found that "[u]nder the board's regulation, many individual users who have historically depended on subsistence fishing are eliminated from subsistence use at the outset." Id. at 26-27. The court therefore declared the regulation invalid as being "inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing..., because it operates too restrictively in its initial differentiation between subsistence and non-subsistence uses." Id. at 27.

That is the essence of the Madison decision. It gives broad protection to any resource-harvest activity that arguably qualifies as a subsistence use. It thus gives the law a liberal interpretation, as the legislature intended. Even the few footnotes and passages which the proponents of the governor's bill emphasize and exaggerate really create no cause for panic within the subsistence community. Nor should the sport and commercial interests be alarmed, unless they are so greedy as to want it all for themselves.

III.

Is The State In Compliance With Federal Law?

It is fatuous to suggest that Madison places the state in noncompliance with the federal subsistence law, Title VIII of ANILCA (Appendix D). First of all, the state supreme court is without power, at least in the non-constitutional context, to

place the state in noncompliance with Title VIII. Once the state was certified as being in compliance, at least on paper (the 1978 subsistence law and the 1982 joint subsistence regulation), with Title VIII, then the state became obliged, by operation of supervening federal law, to implement the subsistence preference mandated by Congress, "unless and until [such state laws are] repealed." §805(d). The state supreme court has no authority to "repeal" laws, an act which can be accomplished only by the legislature or the voters. Furthermore, the Madison court has not purported to repeal the subsistence law; it has merely given it a broader and more protective scope than the Board of Fisheries wanted to deal with.

If the Madison court had in fact construed the state subsistence law in a manner that materially conflicts with the substantive guarantees of Title VIII, there would be a simple remedy: a suit in federal court under §807 to enjoin the state to implement the subsistence preference as contemplated by Congress. I do not believe that such a lawsuit could succeed, because I cannot read Madison as creating a conflict with Title VIII. It is true that Congress defined the subsistence uses which it protected as "the customary and traditional uses by rural Alaska residents" (§803)(emphasis added), whereas state law does not contain the "rural" limitation, but there is no evidence that Congress intended to preclude the state from protecting a broader class of subsistence uses -- so long as the state provides maximum protection to the class identified by Congress. The Madison decision does just that.

While the court construed the state law (correctly, it seems) as according priority to a broader class than "rural Alaska residents," the court also made it abundantly clear that the law affords maximum, first-priority protection to "preferred subsistence users," who are to be identified by the legislative criteria of "customary and direct dependence on the resource, local residency, and availability of alternative resources." Madison at 16. These criteria are identical in both the federal and state laws, and they undoubtedly provide maximum protection to rural Alaska residents. Moreover, the court expressly stated that characteristics like the Board's ten criteria could be employed "to distinguish first-tier general subsistence users from second-tier preferred subsistence users, since most of the [ten] criteria relate to either 'customary and direct dependence' or 'local residency,' two of the three criteria set out" in the subsistence laws. Id. at 16-17.

Thus, the supreme court has construed state law as giving a general subsistence-use priority to all historical subsistence uses, some of which may be engaged in by persons who might not properly be classified as "rural" residents. Nonetheless, the court has also made it clear that Bush Alaska is due to receive first-priority protection. That is all that Congress has required. Whether users such as the Madison plaintiffs should be given priority over commercial and sport interests, as the court held, or be treated as "personal users" with no priority over sport and commercial users, as the Board of Fisheries contended, is not a question that Congress addressed in Title VIII. The

Madison holding does nothing to dilute the federal mandate -- it in fact reinforces it -- and the issue was therefore properly resolved as a question of state policy. (I also note that neither AFN's brief nor the state's brief even suggests that the state would be in noncompliance with Title VIII if the court construed state law as giving a subsistence preference to those classified by the Board as "personal users.")

IV.

Are All Alaskans Now Subsistence Users?

Of course not. The supreme court said no such thing. The fact that the court rejected the Board's narrow and rigid restrictive interpretation of the "customary and traditional use" standard hardly signifies that the court read the standard right out of the law. It is understandable how those who were committed to and who vigorously defended the Board's approach would now have a difficult time accepting the possibility that theirs was not the only reasonable means of resolving the issue. But the rest of Alaska should not be stampeded by the defeatist hyperbole that all Alaskans, apparently including those many Alaskans who don't harvest wild resources and don't want to, are now subsistence users under Madison.

In holding that the 1978 law's "customary and traditional use" standard did not authorize the Board to restrict first-tier subsistence users to either a rural or a community context, the court relied heavily upon the remarks, during debate, of Representative Nels Anderson, the floor manager of the subsistence bill. As the court summarized that part of the debate concerning

the "customary and traditional" standard (at 21):

Anderson argued for the retention of "customary and traditional" for use as a guideline. His major concern focused on the potential pressure put on resources by newcomers. In his view, the words "customary and traditional" recognized and protected a historical subsistence use by both native and non-native Alaskans. The words were not intended to restrict subsistence use.

The court found additional evidence of the intended scope of the "customary and traditional" guideline in Anderson's response to the expression of concerns that the subsistence preference might not protect Fairbanks residents who had developed a custom of travelling to the Chitina Dip Net Fishery to catch salmon for personal and family consumption. Anderson responded to these concerns with assurances that (Madison at 22)

where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section.

But does this make "all Alaskans" subsistence users? Would residents of Juneau, where there is not "a custom to go [up] to the Chitina area," also be entitled, if they now desired, to receive a subsistence preference in the Chitina Dip Net Fishery? I don't see how this legislative history can be read as protective (or rather, creative) of a non-existent use pattern. Nor do I read Madison as so holding. Rather, the court simply determined the following from the legislative history (at 23):

The legislative history indicates that the legislature intended to protect subsistence use, not limit it. The words

"customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both native and non-native Alaskans. In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of "customary and traditional" as a restrictive term conflicts squarely with the legislative intent.

Thus, "customary and traditional" does not encompass all Alaskans. While "not strictly limited to rural communities," it is not without boundaries. It is a guideline designed to identify and protect "historical subsistence use."

In the above hypothetical, it seems to me that the Board of Fisheries would have little difficulty in determining that there is no historical use pattern in which it is the custom of Juneau residents to travel to the Chitina fishery. Hence, they would not be entitled to a subsistence preference over sport and commercial fishers. (Of course, if there were such a historical use pattern, then Juneau residents, like Fairbanks residents, would be entitled to a first-tier subsistence preference. And, too, a Juneau resident could move to Fairbanks and then participate in the Chitina dip net fishery on a first-tier priority basis over sport and commercial harvests.) While this determination has the effect of favoring Fairbanks residents over Juneau residents, it is not because of their respective residencies, but rather because of the existence or non-existence of a historical subsistence use pattern.

Let us take the example of Lime Village for a somewhat different application of the "historical subsistence use" guideline. By longstanding Native custom and tradition, Lime

Villagers have hunted moose and caribou in their traditional-use area on a year-round basis, in conjunction with the harvest of numerous other wild renewable resources. Theirs is a thoroughly non-wasteful, true subsistence economy, predicated upon a widespread system of sharing and exchange which distributes harvested resources throughout the households of the village. Under the most stringent "customary and traditional" criteria, all would recognize Lime Villagers as the paradigm class of second-tier preferred subsistence users, entitled to maximum protection under the subsistence law -- the first people to be protected, the last to be restricted, in the event the sustained yield of moose and caribou is in jeopardy.

The use pattern of moose and caribou in the Lime Village area involves two other general classes of users, both nonresidents of the area: (1) other Alaskans who enter the area primarily by airplane to hunt moose and caribou in the fall for personal and family consumption, and probably for sport (trophies) as well; (2) non-residents of Alaska (and perhaps some urban Alaska residents) who participate in guided fall sport hunts for trophy animals (the wanton-waste law insures plenty of meat for the guides, their assistants, families and friends). The first pattern of non-local uses might arguably qualify as first-tier subsistence uses under the Madison decision, while the second pattern would have to be classified as sport or commercial, or both. In the event of a threat to sustained yield, the second use pattern would have to be curtailed or eliminated first, and then the first use pattern, before any restrictions could be imposed upon the preferred use

pattern of Lime Village.

At present, the moose and caribou populations are healthy, with no known threat to sustained yield. The two non-local fall use patterns have been fully accommodated for many years by the sport hunting regulations adopted by the Board of Game. There has been no occasion, at least in recent years, to place any restrictions on the Lime Village use pattern. Yet the Board of Game, by virtue of the same sort of perverse reasoning (although apparently not with the evil motive) employed by the Board of Fisheries, has restricted the subsistence uses of Lime Villagers by the imposition (with criminal and property-confiscation sanctions) of arbitrary calendar-based hunting seasons and individual bag limits which are wholly incompatible with their subsistence way of life.

The Board of Game is not insensitive to the needs of Lime Villagers, nor to their way of life. And the Board seems to recognize that the most direct, reasonable and realistic way to protect the village's subsistence use pattern would be to establish a non-restrictive village harvest level which accords with their traditional take, with no closed seasons, individual bag limits or other restrictions imposed upon those domiciled in Lime Village. The other two classes of users (nonlocal) would continue to be fully accommodated through existing regulations. But the Board is told, and it has acted upon the advice, that under Madison it cannot employ this approach unless it opens up the Lime Village hunting territory to all Alaskans, for all seasons; hence, the Board must stick with arbitrary seasons and

bag limits. In other words, a decision which condemned the use of the subsistence law as a restrictive device is being used, in Wonderland fashion, to justify unnecessary and inappropriate restrictions on the subsistence rights of the people of Lime Village.

Providing an appropriate village harvest level guideline for Lime Village, and eliminating restrictive closed seasons and individual bag limits for those domiciled there, would not violate the subsistence law as construed in Madison. This would be protective action, not restrictive. It would constitute simple and straightforward "recogni[tion of the] historical subsistence use" pattern of the people of the village, in accordance with the "customary and traditional" guideline. Madison at 23. And it would not constitute a "grandfather rights system," which the supreme court eschewed. Id. at 26-27 n.17. Anyone from Fairbanks, Anchorage or elsewhere who desires to participate in the historical subsistence use pattern of Lime Village is free, subject to means and inclination, to move there and participate. No one, under this system, would be restricted from participating in one of the three historical use patterns (a second-tier subsistence use pattern, a first-tier pattern and a sport/commercial pattern) extant in the Lime Village traditional use territory. No restrictions on historical subsistence use. And that is what, and it is all, that Madison is about.

In sum, Madison does not ipso facto convert all Alaskans into subsistence users. To be sure, the court broadened the protected class considerably beyond the limits set by the Board of

Fisheries. Yet, the "customary and traditional use" guideline retains significant substance. In order to qualify for first-tier subsistence protection from sport and commercial interests, one must still be engaged in, or seeking to engage in, a "historical subsistence use."

V.

Is The Governor's Bill Necessary Or Appropriate?

The governor's bill (House Bill No. 288) is being sold on several grounds, none of which are particularly persuasive. For one thing, it is said that Madison creates a situation of total chaos with respect to implementation of the subsistence law. For the panic-prone, this assertion may have appeal, but it is based on not a little bit of sophistry, some of which I have attempted to dispel in the foregoing pages. I find it hard to believe that the boards of fish and game are incapable of developing a reasonable mechanism for implementing the subsistence law as construed in Madison.

It is also said that the governor's proposal is necessary to allow the boards to continue implementing the subsistence law as they had before Madison. If this means that the Board of Fisheries would be authorized to continue to do as it did to the Madison plaintiffs, then the proposed bill is an outright disgrace. Moreover, if the intended implication is that the boards had been adequately protecting even the rural subsistence way of life prior to Madison, the implication is contradicted by the evidence.

Stripped of the attendant sophistry and hyperbole, the gut

issue presented by the governor's bill is whether those whom the Board of Fisheries sought to classify as "personal users" should have a priority over sport and commercial users. In other words, should Alaskans who seek to harvest fish and game for personal and family consumption, but who are not living a Bush lifeway, have a preference over those who harvest for sport or profit? That is the issue, and it should be the sole focus of debate.

From the perspective of those Natives and non-Natives engaged in the Bush subsistence way of life, the governor's bill offers nothing, and to the extent that it would by implication give approval to the pre-Madison management regime, it is potentially harmful. From the perspective of the Native peoples of Alaska, the bill also offers nothing positive, and is probably harmful in that it would take away the protection Madison offers for the growing numbers of urban and semi-urban Natives. This leaves me doubting either the necessity or the propriety of the governor's bill.

VI.

Conclusion

I'm sure I must be missing something. Maybe the governor's bill really is a good idea. It just seems that the reasons offered to support it are all wrong. Wrong about Madison. Wrong about how the subsistence law ought to operate. Wrong about the politics, even. The governor's proposal is unabashedly restrictive. Contrary to the spirit of the subsistence preference, it proposes to reduce the number of Alaskans who are classified and protected as subsistence users. The beneficiaries,

without apology or explanation, are the sport and commercial interests, and from the publicity I've seen, it is not at all clear that they are as passionately concerned with the subsistence competition (as distinguished from their brawl with each other) as the advocates of the governor's bill seem to believe.

Certainly it is possible -- despite the actions of the great majorities of our state and national legislatures, the vote of a clear majority of Alaskans at referendum, and the unanimous judgment of our supreme court -- that the sport and commercial political backlash, combined with the voices of those who can see only with their anti-Native blinders on, will bring about a repeal of the subsistence preference. Maybe the best political posture in the face of this threat, be it distant or near at hand, is to treat subsistence as a very small, insignificant part of the demand for Alaska's renewable resources; as a quaint, romantic way of life, barely hanging on from the old days in only a few remote regions where the people have not yet received the message that free enterprise capitalism, underwritten by government, is the true meaning of life.

Perhaps the approach represented by the governor's bill is politically expedient and, in the short run, politically wise. I'm glad I'm not a politician (it's embarrassing enough to be a lawyer). I still see a policy of restricting the number of Alaskans who qualify for some degree of subsistence protection as counterproductive in the long run. Such a policy undervalues the importance of subsistence, dealing with it as something to be restricted rather than protected. The Madison court took the

opposite approach, and its decision has instinctive appeal for that reason alone.

All of this energy might be better expended in an effort to develop an approach to implementing the subsistence law as construed by the supreme court. (In order to do that, however, the state will have to put aside its draconian interpretation of Madison.) The boards' joint subsistence regulation (Appendix C) is a basically sound structure which does not need a major overhaul to comport with the Madison ruling. The court expressly stated that "customary and traditional use" criteria, like the eight criteria listed in 5 AAC 99.010(b), are appropriate for identifying and protecting second-tier preferred subsistence users. The boards simply need to slightly broaden the scope of the criteria so that they will encompass all uses of the first-tier class. This can be done by eliminating the "rural" restriction and by adding a few additional criteria designed to cover all historical subsistence use patterns. Also, the joint regulation, unlike the Cook Inlet regulation struck down in Madison, does not require a use pattern to meet all of the criteria in order to qualify for subsistence protection. This should be made explicit in the regulation, so that all of the various degrees of subsistence use will be identified and protected.

More importantly, the boards should begin actually implementing the approach mandated by the regulation, which has received little more than lip service to date (except when it has been resorted to and perverted as a restrictive device). The

procedures mandated by the regulation are relatively simple and straightforward:

1. The boards' first obligation is to identify subsistence uses of fish and game, using appropriate criteria. Although all subsistence uses have not yet been studied and identified, there is a substantial body of data available. The boards should direct the Subsistence Division to dust off all of those subsistence studies and begin compiling some sort of systematic listing, beginning first with areas having the greatest user competition in relation to resource abundance. §§99.010(a)&(b).

2. The boards are then required to determine the approximate amounts of fish and game "necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses." §99.010(c). (The "reasonable opportunity" guideline has been frequently used as a restrictive standard and should be eliminated. The boards should allow for all customary and traditional opportunities, not some arbitrary opportunity which the boards subjectively determine to be reasonable.) Again, the Subsistence Division should compile this information and present it to the boards.

3. The boards are next required to "adopt regulations that provide an opportunity for the subsistence taking of fish or game in amounts sufficient to provide for the customary and traditional uses" which have been identified. §99.010(d). The Department, including the subsistence and other appropriate divisions, should be directed to present such proposed regulations to the boards.

4. If the sustained-yield status of resources is determined

adequate to permit non-subsistence uses, then the boards may exercise their discretion to permit sport and commercial uses. §99.010(e).

5. If sustained yield would be threatened or jeopardized by sport and/or commercial uses, however, then those uses may not be allowed. Moreover, if sustained yield is not sufficient to provide for all identified subsistence uses, then the boards must implement "a series of graduated steps" to restrict first-tier subsistence users in accordance with the criteria for giving maximum protection to second-tier preferred subsistence users. §99.010(f).

Under the framework established by this regulation, the boards, as required by both the federal and state laws have the affirmative duty to identify and protect subsistence uses and users. The burden to protect is on the state, rather than the burden of proving entitlement to protection being placed on the users.

Although this is the reverse of the approach followed by the Board of Fisheries, it is the one now mandated by Madison, it has been the law since 1982, and it should be implemented without further delay or excuse. Someone in power should get this process started.

Meanwhile, let's go fishing.

Bill Caldwell
10 April 1985

Sec. 16.05.251. Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980)

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1978)

APPENDIX A

Sec. 16.05.940. Definitions. In this chapter

(22) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means 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 handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the 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;

CHARACTERISTICS OF SUBSISTENCE FISHERIES.

(a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

APPENDIX B

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the inter-generational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES.

(a) In applying a subsistence priority, the boards will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) Each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) Each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near or reasonably accessible from the user's residence;

(5) the means of handling, preparing, preserving and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving, customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community for purposes of subsistence uses may include specific villages or towns, with a historical preponderance of subsistence users, and in addition encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest before subsistence uses are restricted. If all available restrictions for nonsubsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who:

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

TITLE VIII — SUBSISTENCE MANAGEMENT AND USE

DEFINITIONS

16 USC 3113. **Sec. 803.** As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term —

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses —

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

PREFERENCE FOR SUBSISTENCE USES

Sec. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

16 USC 3114.

Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

APPENDIX D

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 805.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision. Implementation.

JUDICIAL ENFORCEMENT

Sec. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Civil actions.
16 USC 3117.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

Hearing.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

From: The Hunt
John G. Mitchell
Penguin Books
1980

Book Four

YUNGNAQUAGUQ

War in the Woods

No one can be certain of the figures, for it is difficult to count what one cannot readily see, and Alaska is so huge, wall to wall, some people measure it by time zones instead of miles. In such a land, and in its waters, the state of the art of taking census of wildlife populations cannot be far removed from the science of counting fingers. Still, people try. One of the latest attempts came up with thirteen million waterfowl, two hundred thousand caribou, one hundred fifty thousand moose, ditto the walrus, forty thousand Dall sheep, ditto the Sika black-tailed deer, and three million seal of several species. On a statewide basis, no one much bothers keeping track of snowshoe hare, porcupine, beaver, and ptarmigan, which are likewise edible and generally plentiful. And only Saint Peter knows how many millions of char, grayling, halibut, lake trout, pike, chinook, coho, sockeye, and sheefish are swimming around in the Great Land's lakes and rivers and bays. By any measure, it is a movable feast—seemingly enough to sustain the expectations of Alaska's licensed hunters and fishermen, their household kin, and a visiting corps of sportsmen from Outside; enough, too, to feed some thirty thousand bush Alaskans for whom the rifle, the snare, and the net are the primary tools of daily life. Yet for all the bountiful appearances, some of Alaska's game species are stretched against the hard thin line of human demand. And the numbers are such that not a few of the resource users may have to do without in the years ahead. It has already come to

that, swiftly and surprisingly, in this last great wild hunting ground of the United States.

When shortages come, hard decisions cannot be far behind. When a renewable resource is pressed to the line, how does one decide who is to get the so-called surplus? To whom goes the moose of Nowitna? To the poverty-level Athapaskan Indian who lives out there, or to the dentist from Fairbanks who arrives by chartered plane? Who gets the salmon off Angoon? The villagers, or the trawlers from Sitka and Seattle? Where and when should the migratory geese of the Kuskokwim fall? In the spring, on the subsistence hunter from Eek? Or in the autumn, on the blind of the sport hunter at Lake Berryassa, California?

In Alaska, the word "subsistence" goes by a hundred different definitions, depending on the definer and whether he is white and rich and asphalted in the city or red and poor in the bush, or vice versa, and to what degree he may or may not believe that the old ways are now compromised by gasoline engines, nylon nets, and telescopic sights. "I guess the word 'subsistence' does not yield to a consensus definition," says David Johnson, a game biologist in Kotzebue. "If it doesn't yield, I wonder if it even exists as such."

"Subsistence is bullshit," says Darrell Farmen, an Anchorage taxidermist and member of the State Board of Game.

Tom Lonner is chief of the Department of Fish and Game's Subsistence Division. He says, "Complexity is something most people cannot deal with. So they simplify in favor of bias and they say, 'Subsistence does not exist.'"

"Please try to fathom our great desire to survive in a way somewhat different from yours," say the Eskimo elders of Nightmute, "and thus see why the hunters will continue to go out."

"Subsistence is based on need," says John Schaeffer, the executive director of the Northeast Alaska Native Corporation. "Who needs the resource more? Who is going to starve if the resources are made available to the subsistence hunter before they are made available to some trophy hunter? That is the whole point of the game. It is not just food for the stomach. It is food for the soul."

"There was an Eskimo in Togiak," says Ohio congressman John Seiberling. "He summed it up in one sentence. He said, 'We must hunt or die.'"

The Yupik Eskimos have their own special word: *Yungnaquaguq*, the means to perpetuate life. And they ask, "Does one way of life have to die so another can live?" The answer from the hunter's gun has always been *yes*. One life must end to nourish another. It could be different with people and their traditional life styles, if only the clock will allow it.

There was a time in Alaska, and a recent time at that, when the questions and answers came a little easier. Then, according to the state constitution, fish and game were to be "reserved to the people for common use," and all regulations governing disposal of natural resources were to "apply equally to all persons." Then, state game laws could define subsistence hunting as "the taking of game animals by a state resident for food or clothing for personal or immediate family use." Which was simplicity itself, for under that definition, everyone in Alaska—rich or poor, urban or rural, red or white—could consider himself a subsistence hunter. And almost everyone did; or did until the mid-1970s, when the U.S. Congress began redefining "subsistence" in the process of drafting legislation for the National Interest d-2 Lands of Alaska (the approximately 100 million acres to be set aside as parks and refuges under Section d-2 of the Alaska Native Claims Settlement Act of 1971); and when, simultaneously, the once great numbers of the Western Arctic caribou herd came tumbling down.

The crash of the Western caribou herd, from 250,000 animals in 1970 to barely 50,000 six years later, left many Alaskans with a feeling of *déjà vu*. They had been here before: the Nelchina herd, northeast of Anchorage, falling from 70,000 to 8,000 in ten years; the Fortymile herd on the Klondike Plateau, down from 50,000 to 6,000; and the 12,000 moose of the Tanana Flats south of Fairbanks quartered to 3,000 in less than a decade. After those earlier crashes, they had listened to the game managers speak of calf losses due to severe winters

and "too many" wolves. Yet hardly anyone spoke of too many hunters. Hardly anyone noticed—in the context of available game—that Anchorage was now the third-fastest-growing city in the nation, or that Fairbanks was fairly brimming with thousands of oil workers newly arrived from the hunting grounds of Texas and Oklahoma. And when the moose biologists went to the Game Board to ask that the season be closed in the over-harvested Tanana Flats, the Game Board refused.

But the disaster in the Western Arctic was something else. Out in the bush of that region, sourdough loners and Native villagers depended on caribou meat for their tables. True, a trapper could mush down the Wulik River to the little store at Kivalina and trade in his food stamps for beefsteak. But at six dollars a pound, or more, after air freight? And the villagers could simply eat fish. But for how long?

Seeing a clear need for some kind of preferential regulation, the Game Board decided to issue permits for the taking of three thousand caribou bulls. Each bush village would receive a quota based on recommendations by Native corporations and village councils, and the councils in turn would issue the permits on the basis of need, considering such factors as family size, alternate food sources, and employment opportunities—the last consideration being somewhat moot, as jobs in the bush are rare. In any event, most of the Natives of the Northwest were willing to work with the new regulations. But not the Tanana Valley Sportsmen's Association of Fairbanks. On behalf of a white man who claimed he was denied a caribou permit at Nuiqsut, the sportsmen filed a suit in the state's Supreme Court seeking to overturn the new regulations on the issue of "common use" and constitutional rights. The court found in favor of the plaintiffs. The caribou permit hunt was closed in the Northwest. And sportsmen's hats sailed into the air at Fairbanks, where there are always alternate sources of food and some jobs for skilled workers, and usually cash rather than food stamps, and where beefsteak is not quite so dear as in Nuiqsut or Kivalina.

Federal policy for managing the d-2 lands in Alaska

brought further complexity to the subsistence puzzle. Most of the villagers living in the bush are Indians, Eskimos, and Aleuts, and there was much concern in Washington this time to do right by them after more than a century of broken treaties and abrogated rights for aboriginal Americans in the Lower Forty-eight. There was also a huge disdain both Inside and Outside for Alaska's competency in managing fish and game on federal lands. Many Outsiders of the environmentalist persuasion felt it was bad enough that the game herds should collapse, but even worse that the state's response more often than not should be war on wolves. It was this same skeptical constituency which helped shape the first d-2 bill to reach the floor of the U.S. House of Representatives. Arizona congressman Morris Udall's H.R. 39 would have given subsistence users priority over other consumptive users on some 100 million acres of federal land, whenever harvest restrictions became necessary (as in the case of the Western Arctic herd). And in its original version, H.R. 39 would have taken from the state, and handed over to the Secretary of the Interior, sole authority for managing subsistence uses of those lands. Though the Udall measure died in the U.S. Senate in 1978, Washington's message to Juneau was loud and clear: Either protect subsistence on federal lands or lose what the state has viewed as its traditional right to manage resident fish and game on these lands.

This time Alaska responded with something more substantial than a war on wolves. Out of the state legislature came House Bill 960, amending the old inclusive definition of subsistence to mean "the customary and traditional uses in Alaska of wild, renewable resources for such 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, . . . and for the customary trade, barter, or sharing for personal or family consumption." Within the Department of Fish and Game, the measure established a Subsistence Division with special advisory responsibilities; and it further authorized the boards of fish and game to make subsistence "the priority use." In ex-

treme cases, allocation of a resource could be restricted to local residents demonstrating "customary and direct dependence upon the resource as the mainstay of one's livelihood."

Not everyone was pleased with House Bill 960. Most of the villagers were, for the law staked out their prior right to local resources. And the feds were pleased, if only for the sake of the Eskimos and Indians. And there was satisfaction as well for some Outside environmentalists, although others with a certain anthropomorphic friendship for animals would continue to wonder why Eskimos couldn't eat food stamps instead of seals and caribou. But the urban sport hunters of Alaska were *not* happy. And the big-game guides with clients from Houston and Stockholm and Frankfurt am Main were definitely not happy. And some of the sourdough loners out in the bush were not happy either, remembering, however inappropriately to any clear understanding of the law, that there had been this white man who had gone in vain to Nuiqsut for a permit. And now it is getting ugly, out there in the woods.

Shots have been fired at floatplanes. One hunting party returned to its aircraft to find it demolished by an ax. An adventuresome Outsider, floating the Koyukuk, had his raft shot from under him and hid in the bush for two nights awaiting police rescue. Silent strangers glower at each other from passing canoes. Athapaskans radio the game warden to demand that he "check out" Eskimos coming upriver with rifles and moose tags. Eskimos on the coast complain that Indians net too many spawning-run salmon upstream. The Alaska Outdoor Association of Anchorage warns its sporting followers that their "rights" are being "given away to the Alaskan Natives and/or the so-called subsistence users." The Real Alaska Coalition, headed by guide Ken Fanning, calls for a "Monumental Trespass" by sport hunters on some fifty million acres of d-2 land designated national monuments under the Antiquities Act. National Park Service regulations allow only subsistence users to hunt within most of these monuments. Yet Fanning is telling all Alaskans to "go out into the monuments and do everything" they did in the past.

It could get even uglier. The hunting population of Alaska,

in the bush as well as in the cities and towns, keeps growing. Native youths are coming home to their villages from regional high schools and colleges, and from some jobs that no longer exist, to indulge a sense of place and cultural identity, and to await the disposition of awards—slim, on an individual basis—accruing from the Alaska Native Claims Settlement Act of 1971. Civilized ways will follow them home, to be sure; and, to some extent, an increasing dependence on the cash economy. There will have to be cash for subsistence. One cannot pour seal oil into a snow machine and expect the engine to start; nor stuff fox pelts into the breech of a .30/06 and have something come out the other end. But the sports in Fairbanks and Anchorage say: Baloney. If you want to subsist, go back to the dogsled and the bow and arrow.

One day, perhaps, after the Antiquities Act monuments have evolved by law into d-2 national parks, in a time of traditional life styles balanced even more precariously against the march of technology and urban ways, there may also be trouble between the subsistence hunter and his sometime ally, the preservationist from Outside. Half a dozen Alaskans of as many persuasions have shared with me this vision, and I subscribe to it. The vision is of this group of wilderness backpackers, all from Outside, topping a tundra rise in the Gates of the Arctic, at the foot of the Arrigetch Peaks. Suddenly they are brought up short by what is before them. But not by the sawtooth crags of the Arrigetch. By this Eskimo hunter kneeling over a head-shot caribou, and by the steam that is rising from the animal's body as the Eskimo's knife opens the gut to the autumn air. And the backpackers, as might be expected since they hail from such cities as Berkeley and Santa Barbara and Greenwich and Palm Beach, turn away with disgust and a vow to urge their congressmen to outlaw *all* hunting in Alaska's new national parks. For they each have this certain friendship for animals, and the conviction that food stamps and tourism and scenery should be more than enough to nourish an Eskimo's soul.

Bob Willard is a Tlingit Indian from Angoon. We have come to the Viking Café in Juneau to speak of his people and subsistence. It is May. Salmon are moving again through the jade-green Chatham Strait. They are schooling up for the spring run. The open boats of the fishermen are trolling the shoals of Admiralty Island, probing the fjords of Chichagof and the coves of Kuiu. It is harvest time in the Southeast. Yet here at dusk in Juneau is this Tlingit, talking politics in a white man's café.

Politics have been a good part of Bob Willard's life away from Angoon. For four years, by appointment of former Governor Keith Miller, he served as the state's human rights commissioner. He has worked with the Sealaska Corporation, one of thirteen regional profit-seeking entities established by the Alaska Native Claims Settlement Act. And he is chairman of the legislative affairs committee of the Alaska Native Brotherhood, an organization founded by Tlingits in 1912 to help Indians achieve citizenship and voting rights in the new territory. At that time, the laws governing such things stipulated that Indians must first sever their tribal relationships. To obtain the right to vote, a Tlingit was expected to adopt the civilized ways of the whiskey-soaked white men who had plundered the land of its gold, spoiled the salmon streams, and spread smallpox and syphilis through the villages. Somehow the Tlingits survived all of it. Even the franchise.

"In 1890," Willard is saying, "twenty-two of the chiefs met up near Haines to talk about driving the white men out. They were very angry. The whites were ravaging the creeks and taking the timber and changing the life style of the people. But it was September." And now Willard laughs. "It was harvest time. It is almost always harvest time in the Southeast. The Tlingits were too busy to fight. Otherwise we would have thrown you all out." Willard looks at me closely and smiles. "It's still not a bad idea, you know. We're just not that serious about it. Yet."

Willard speaks cautiously of the new national monument on Admiralty Island which would be designated as wilderness under various d-2 scenarios. Angoon is likewise on Admiralty

Island, and Willard says its people are in favor of wilderness so long as it keeps out the big pulpwood operators from the mainland and protects the villagers' traditional use of deer and bear and berries and roots, and sawlogs for the winter stoves. "But we do not forget what happened at Glacier Bay," he adds. "We don't want Admiralty to be turned into another Glacier Bay. When that place was set up as a national monument, the government told the Tlingits they would have exclusive subsistence use. The government said the Tlingits could go in there and hunt. But later, somebody changed the rules. Later, the people had to check in their rifles before the rangers would let them go into the monument. We sure don't want that again."

Resource regulations are monumentally abhorrent to the Tlingits, as, indeed, they are to most Native peoples of Alaska. And most of the bad feeling is directed not at the federal government but at the state's Department of Fish and Game. As "IRS" spells trouble to many enterprisers of the cash economy, so does the bureaucratic "Fish 'n' Game" to the practitioner of bush subsistence. Let Juneau send a biologist to Angoon to catalogue the villagers' wild harvest, and it is as if King John had dispatched the sheriff of Nottingham into Sherwood Forest to audit the assets of Robin Hood. "We have it all catalogued," says Bob Willard. "But we won't give it up. The more you speak of numbers, the more you get regulated."

Once, in Kivalina on the Chukchi Sea, I sat by the shore with an Eskimo woman, awaiting the return of her husband from a seal hunt off Cape Krusenstern. And she told me this story of the state's Fish 'n' Game man coming from Nome to ask her for a list of the Kivalina hunters. "What is it you want of them?" the woman inquired of the stranger. He said he had come to discover how many caribou the hunters were taking. She gave him a list of names, and he went away, knocking at doors. Later, the woman met the stranger on his way to the airstrip. "Did you find what you came for?" she asked. The man had a sad look on his face and he shook his head no. "If I were a hunter," said the woman, "I wouldn't tell a game warden anything either." The man from Nome said, "But I'm not a game warden. I'm a wildlife biologist." And the woman said, "That

doesn't make any difference. I'm not a fool. I'm an Eskimo."

Now, in the Viking Café in Juneau, Bob Willard suddenly remembers again that it is harvest time in the Southeast. "Wait a minute," he says. "I wonder what I'm doing here. This is May. There's no *r* in the month. I could be taking all the clams I can use. The abalone's ready. The seaweed, too. The table is set. What am I doing in here with you guys when I could be out *there*? The trend is to go home. We see our people coming back."

And what about Bob Willard?

"Next year," he says. "My job here is just about done. Next year, I'm going to hunt and fish and do what I was made to do. I'm going home to Angoon."

In the morning, a floatplane took me from Juneau to Angoon. We landed on a bay behind the village, taxied to a pier where half a dozen fishing boats were moored. Some of the boats, or rather their operators, are licensed to fish commercially; and because of the resulting cash income from salmon and shellfish, and the sharing ways of the people, who regard themselves as being all of one family, five hundred strong, Angoon is not altogether the sort of village that one might consider typically bush. Nor is it urban, for the old ways of setting the table with the fat of the land and the sea still prevail.

At a conference table in one of the public buildings, I spoke with some of Angoon's elders and the leaders of its village corporation, Kootznoowoo, Inc. Charlie Jim, Sr., said: "You people don't eat what we eat. What would you think if *we* made the rules and I said to you, 'Listen—we limit you people to one cow and three chickens.' Too many laws are made behind our backs. This thing hurts."

George Jim, Sr., who is seventy-seven and leader of the Tlingit's Shark Clan, said: "We use it all." Because someone had mentioned allegations of waste. "We use it all. We dry the fish and put it away for wintertime. And the eggs. We use it all. And seal, we use the skin for shoes. Bear, for wintertime. Deer, we dry it. *Just* the way we always been using it."

Daniel Johnson said: "In each region of Alaska, it's different. Each region will have to define its own needs, its own way of life. We've lost some of it. But we're still holding on to the most crucial parts of it. And we're being cut down by the regulations. On deer, before, there was no limit to what we could smoke or salt. Now, we are limited to the same as the sport hunters. Now, they are taking the happiness out of the people."

Jimmy George, who is ninety and leader of the Tlingit's Killer Whale Clan, said: "We try to obey the United States because they adopted us. But they treat us as foreigners. What's going to happen to us? They never listen to us. They do not hear what we have to say."

And Jimmy George's wife, Lydia, said: "My generation is lost between the two cultures. But the younger people—they will try to make our history work for us."

And Edweel John said: "The people who make the regulations—do they know what the word 'subsistence' means? Do you? We do. All our people do. Did the state define the word 'subsistence'? They can't. They don't know nothing. But you take *me* out, partner, out in the cold. I still know what to do. I know where I'm *at*. The old-timers taught me. Jimmy George. George Jim. My dad. They taught me how to get along. *Subsistence!* You can't define subsistence. It's *our* way of life."

Then Charlie Jim of Kootznoowoo put in again: "Our people, when they had nothing but their regular food—no false teeth, no eyeglasses, no sickness among them. All right. When the others came moving in on *us*, we began to eat white people's food. I remember one chief said our people began to live on cow's milk instead of their mother's and that's why they're crazy. Today, some of our children can't speak their own tongue. But we still remember. We're not eating up everything from Alaska. When we were living here—the Natives, alone—there was always enough food. Where did it all go? There is no man alive who can say we can't have what is here. This is our food. We were made to have it."

Tom Lonner holds the third-toughest job in Alaska, after those of the governor, Jay Hammond, and the Commissioner of Fish and Game, Ronald Skoog, who is Lonner's boss. Possibly it is just as tough to be a wildlife biologist from Nome on assignment to Kivalina, but I doubt it. For Lonner is a sociologist in a bureaucracy that plays by the rules of biopolitics. He is chief of the Subsistence Division of the Alaska Department of Fish and Game, and his job is to close the widening gap that prevails between the regulators in Juneau and what he refers to as "the unseen economy" of the bush.

As Lonner saw it when I spoke with him at his office in Juneau, the gap must be filled with information. What, he asked, is the true level of need in rural Alaska, in all of Alaska? How great is the harvest in pounds of food and cash equivalents? What is the level of human effort involved in subsistence? To what extent does subsistence offset the burden of welfare? These are difficult questions in Alaska—as difficult for the traditional Fish 'n' Game man lacking rapport with the villagers as for the Native hunter, who fears that sharing data with Fish 'n' Game will only lead to further regulation, and who, when asked why he needs more game than the law allows, simply replies that this is his food, and that he was made to have it.

Over the years, various Native, state, and federal researchers have attempted to piece together estimates of the subsistence harvest in pounds of food and cash equivalents. All of these studies were of a regional or local nature, and the figures were often drawn from calendar forms distributed to villagers who may or may not have been diligent in computing their harvest of wild foods. In any event, the ball-park figure appears to fall somewhere between 800 and 1,600 pounds per person per year. Which coincides, at the middle of that range, with Lonner's own estimate of 40 million pounds of wild edibles annually statewide.

A few examples. One household survey conducted by the University of Alaska in 1972 determined that a large majority of the people of Akiachak and Mountain Village, both in the Yukon-Kuskokwim Delta region, obtained more than three quarters of their meat and fish by hunting and fishing. Those

who tended to rely on protein obtained from the village stores were generally older people incapable of hunting or fishing. In 1973, the U.S. Fish and Wildlife Service surveyed a number of Yukon-Kuskokwim villages. At Tuluksak, they found that 180 villagers, in an average year, harvested 10 moose, 6 bears, 500 beavers, 2,000 muskrats, 2,000 geese and ducks, 3,000 ptarmigans, 16,000 whitefish, 8,000 salmon, 3,000 smelt, 8,000 pounds of berries and wild rhubarb, as well as various pounds and numbers of other critters and plants. The per capita consumption of this food was computed at 1,619 pounds. Apprised of Tuluksak's prodigious appetite, the Alaska Department of Fish and Game scoffed, and said the figures were inflated. And perhaps they were, especially when one considers the fact that the average person in Anchorage annually consumes only about 260 pounds of store-bought fish and meat. On the other hand, one must remember that the person in Anchorage also eats great quantities of potatoes, rice, vegetables, and dairy products, while the Kuskokwim Eskimo generally does not. Moreover, much of the wild meat and fish is dried before it is eaten, and in the drying process loses up to three quarters of its original weight. And one must remember, too, that meat in the bush often spoils for lack of proper storage, and that even though snowmobiles have largely replaced the sled, sled dogs are still maintained—and fed—by some village families.

As for cash equivalents, the Fish and Wildlife Service figured that the Tuluksak villager's 1,619 pounds of wild food carried a value, if it had passed by the cash register of a market in Bethel (the regional center), of \$2,146. That was in 1973 dollars. Today the value would be well over \$3,000.

"If subsistence should ever collapse in this state," Lonner was saying, "the replacement food will have to come in by air and it will cost at least a hundred million dollars a year. Who's going to pay for it? From whose treasury will the dollars flow?"

I asked him how long he felt subsistence could last, given the growing demand from all quarters on a renewable but finite resource. And he said: "No one knows. Alaska is like a desert. The richness of life you see is only at the oases. A couple of bad winters and you can lose an oasis. Ecosystem management

doesn't go on here. There's this vast system. You stick your fist in it and the ripples go out. But you never see where they end up. And we've only begun to try."

I worry for Lonner, as I worry for the economy of the bush, and for the wildlife which supports it. I worry for Lonner because I do not detect, among the rank and file of the Game Division of the Department of Fish and Game, much enthusiasm for what he believes in and for what he is charged by the legislature to do. For better or worse, game managers in Alaska, as elsewhere, still pay their dues to the sportsmen. Both manager and sport tend to be cut from the same bolt of cloth. They speak the same language. They mourn the diminishment of favors for the great middle class. Certainly there are sensitive and perceptive men at headquarters and in the field, but there are more who say, in effect, that subsistence hunters have neither the right nor the need to be treated preferentially in the allocation of scarce resources, and who openly proclaim that the issue of subsistence must surely fall somewhere between baloney and a sinister plot. Or so it would seem when Game Division Director Ron Somerville is quoted in the Anchorage *Times* as having told a gathering of the Alaska Outdoor Association that the subsistence issue is "a front to cover the deals and the unholy alliance between the Natives and preservationists." And so it would seem when Game Board member Jim Rearden is quoted in the Fairbanks *Daily News-Miner* as saying that subsistence would not be a real concern in the villages if it were not for the agitations of "full-time, paid employees" of such "special-interest groups" as the Rural Alaska Community Action Program (RurAL CAP) and the Alaska Federation of Natives. So the war goes on. And no end in sight.

Delta Springtime

The way the old Yupik Eskimos used to tell it, Raven created the earth and then raked the land with his talons, and that is how the great rivers of the Yukon and the Kuskokwim found

their way to the Bering Sea. Raven did well, for otherwise there would never have been this vast plain built on the rivers' sediments, sprawling across western Alaska from Kuskokwim Bay to Norton Sound. There would never have been these winding sloughs and lakes and potholes by the thousands speckling the tundra from the Kilbuck Mountains north to the Nulato Hills. And probably, too, there would never have been this whirring of feathered wings in the springtime as Raven's multitudinous children—brant and scaup and eider and oldsquaw and pintail and teal, emperor and white-fronted and Canada geese—came down from the skyway to nest in the tussocks where the Yupik crouched, waiting with his *qilamitaaq*. For Raven had taught the Eskimo hunter how to catch a low-flying bird when his family was hungry for fresh red meat. Raven had shown how to make weights out of whalebone or walrus ivory. Each of five weights was tied to a braided sinew, and the sinews were fastened at their unweighted ends to a single grip made of wing feathers. When the hunter hurled his *qilamitaaq* aloft, the sinews cut through the air like whips, and woe to the duck or the goose that happened to get in their way. This is how Raven turned the Yupik people into waterfowlers. They were good at it, too; though not as good as they would be after Raven and the *qilamitaaq* were replaced by Remington and his shotgun.

It seems a place more splendid for birds than for people, the Yukon-Kuskokwim Delta. Fifty thousand square miles—an area the size of New York State—and half of it water, running to the sea or pooled in ponds and cutoff riverbeds running nowhere. Except for willow and alder, and spruce along the upland reaches of the two main rivers, trees eschew the Delta, leaving it instead to moss and lichens, to grass and sedge. As for mammals, apart from people, there are seals along the coast and furbearers inland. But moose and caribou are uncommon in the lowlands, and those that occasionally drift into the downstream country are regarded as migratory aberrations. Considering such circumstances, an Outsider might wonder why the ancient Yupiks selected this sparse country for their homeland, and why so many contemporary ones choose to remain. When the first whites—the *gussoks*—began to poke up

the rivers in their whaleboats, ten thousand Eskimos were living on the Delta. Now they are seventeen thousand. They live in villages called Platinum and Pilot Station and Nightmute and Aniak and Russian Mission and Crooked Creek, and for the most part they subsist on salmon. The salmon are dried on racks in the sun. After a long winter of eating dried fish, the Yupiks are eager for spring. When spring comes to the Delta, the Yupiks know that fresh red meat cannot be far behind.

They say that the first birds arrive at their nesting grounds even while snow still covers the tundra and the ponds remain locked in ice. One hundred and seventy species have been sighted in the Delta, shore and water birds mostly, maybe as many as 100 million individuals in a given season. Of all swans winging the Pacific flyway, eight of ten are believed to nest in the Yukon-Kuskokwim Delta. And eight of ten of the continent's emperor geese nest here, too. During fall migration, some birds from the Delta set course for, and ultimately touch down on, most of the Canadian provinces, all of the contiguous United States, Mexico, Central and South America, many of the Pacific islands, and much of eastern Asia. The U.S. Fish and Wildlife Service guesses that nowhere else in the world is there an area of similar size "as critical to so many species."

Migratory game-bird hunting regulations for Alaska are promulgated by the Fish and Wildlife Service; and by Outside standards, they are fairly liberal. In the Delta region, the season for waterfowl runs from September 1 to December 16. The daily bag limits are ten to fifteen ducks, depending on the species; four white-fronted or Canada geese, singly or in aggregate; six emperor geese, four brant, and two cranes. Researchers figure that half of all the waterfowl harvested throughout Alaska in the course of a year are taken in the Yukon-Kuskokwim Delta, which half adds up to about 125,000 birds. Of these, most are shot out of season, in the spring. In a study of harvest patterns in the mid-1960s, David R. Klein of the University of Alaska figured that the typical Yupik hunter probably killed about seventy-eight ducks and geese each year, and that more than half of these were taken during the illegal spring season. Nowadays, the individual harvest may be even higher. And the

total harvest most certainly is. Since 1964, the human population of the Delta has doubled, and some demographers expect it to top forty thousand by the year 2000. If it should, and if the harvest should increase proportionately, Delta hunters could be taking more birds than the resource can safely afford to lose.

For certain champions of the subsistence life style, it is difficult to place much stock in the dour projections when ducks and geese seem to rise like thick clouds of smoke across the Delta horizon. Once, in Washington, D.C., I raised the question of numbers with a lobbyist for one of the Alaskan Native organizations, and he said to me: "It can't happen. To make a dent in those birds, you'd need a battery of Gatling guns in every village." And yet in some villages, there are hunters who fear that it *can* happen; that, in fact, a great diminishment of numbers has already begun. Not necessarily because of shotguns on the Delta; because of what is happening to the birds Outside. At the Delta village of Hooper Bay, Raphael Murrain said to me: "According to the older men, each spring fewer and fewer of the birds come back from where they have wintered. There is much stress on the birds in the south. Look at California. All chemicals and pollution, and they fill the marshes with cement. And down there are many sport hunters. They outnumber us. They take more birds. What use do they have for the birds? They don't need them. They take them for fun."

There is considerable misunderstanding between the subsistence waterfowlers of Alaska and the sportsmen Outside. Oregonians and Californians, camouflaged in their October duck blinds, also note a diminishment of numbers, and they curse bush Alaskans for shooting "their" birds out of season in May. The sports wonder why the hunters of the Delta cannot hold their fire until the first of September. Yet when the hunters of the Delta hear this complaint, they are incensed. I'd be incensed, too. By the first of September, many of the birds are not only out of range but out of Alaska, already on their way toward the blinds of California. There is also a matter of feathers. Outside, the sports have this theory that Eskimos waste honkers in order to market the goosedown to Eddie Bauer and L. L. Bean. In the Yupik villages, elders note youths returning from

Anchorage with parkas and sleeping bags lofted with down, and, knowing it is not they who supply the material, suspect it must be those white-face hunters at the other end of the flyway. (In fact, most of the down used commercially for garments and sleeping bags comes from domestic geese in Canada, Germany, and the People's Republic of China.)

And finally it would seem that the bird in the bush gets the can of worms, for there is confusion and misunderstanding as well in the matter of international treaties. An accord signed in 1916 by the United States and Canada prohibited the hunting of most species from March 10 to September 1. A 1936 treaty with Mexico outlawed the taking of ducks during the same period, but said nothing of geese or swans, or of subsistence, for that matter. In Alaska, federal fish and wildlife agents were thoroughly bewildered. One year there was token enforcement, the next year there wasn't. At Barrow, in 1960, they arrested an Eskimo for shooting ducks out of season. Two days later, 138 other Eskimos shot ducks, then presented themselves for arrest. After some legal maneuvering, charges against all of them were dropped. The feds warned that further violations would be prosecuted. But they were not, for the game wardens turned the other way. And now there was another treaty, with Japan. It provided for subsistence use of migratory birds by Alaskan Indians and Eskimos, but not by Aleuts or bush whites; and it further proscribed the taking of fowl during their principal nesting season. In effect, the treaty gave with one hand and took away with the other. Next came an agreement with the Soviet Union, which sanctioned the taking of migratory birds and their eggs, under U.S. Department of the Interior regulation, by indigenous Alaskans for their own nutritional and other needs in remote villages. And which also inspired the United States and Canada to amend their old 1916 accord with similar language. But before the Secretary of the Interior can issue subsistence regulations legalizing a spring-summer hunt by bush Alaskans—thereby gaining some measure of control over the harvest—the Japanese and Mexican treaties must likewise be amended. Toward that end, negotiations proceed slowly at the bargaining table. No doubt the diplomats in-

involved might act more expeditiously were they to spend a winter in a Delta village, dining on dried salmon, dreaming of meat.

Chevak is a Delta village located halfway between the mouths of the Yukon and Kuskokwim rivers. It sits on a low bluff above its own meandering river, nameless on most maps, about six miles inland from the mud flats of Hooper Bay. The population is three hundred, more or less. Most of the people eat salmon and whitefish and seal and berries, and birds in the spring. And there is always some *gissok* food at the general store for those who can afford it. For those who, affording it, can stomach it.

The birds had come to Chevak ahead of me. Now they were out on the tundra making their nests. Most of the shooting was over, at least for a while, for the first king salmon had just been taken near Hooper Bay and soon the fish would be making their run; and the people had put away their shotguns in order to ready their boats and nets for the crucial catch. We walked down from the airstrip into the village and straightaway saw some birds that would not be nesting. They hung from the drying racks upside down, plucked and brown, and wrinkled by the sun—the layaway surplus of a harvest of fresh meat. Then a cool wind came off the river, and the drying birds turned slowly under the racks, each like a small chicken charred on a roasting spit.

Chevak is a relatively new village, dating to 1951. Old-timers still think of themselves as the *Qemirmuit*, the people from the hills, and they remember the place called Kashunuk, to the south, where there were houses made of driftwood and tundra sod, and everyone went to fish camp after the birds came in May, and when it took all day to reach the ocean, going for seals, paddling first with the current and then against the tide, instead of an hour or two with the revved-up power of a hundred horses slung from the back of one's boat. Going back generations, there are stories of Russian traders who exchanged their rifles for the Eskimos' furs—how the bargain was struck

when the *gussok* held the rifle straight up, butt on the ground, and the Yupik trapper piled his skins one upon another until the stack of furs was level with the rifle's muzzle. One stack for one rifle. It cost that much, even then.

It is different now, in Chevak, though not altogether. The houses are made of plywood and particle board and tar paper in the eclectic *gussok* style of poor man's Anchorage, or Albuquerque, or Appalachia. It is not an efficient way to live, warm, in the subarctic; but it is the way now nonetheless—sod insulation having been decreed unsuitable for civilized people according to the wisdom of missionaries and government meddlers over the years. And besides, there is oil for the stoves, though warmth may cost a small family two hundred dollars a month, and often more. And there is the big generator of the Alaska Village Electrical Cooperative, fired by Number One oil beside the general store, and the power lines in frostproof conduits running along the boardwalks and into the houses to light the lamps and service the freezers where some of the wild foods are stored.

There is television in Chevak. It comes by relay out of Bethel, though at the time of my visit it was not in operation. The translator device, the village's central receiver, was on the fritz and the village council had voted not to repair it, at least for the duration of the summer. I was informed that the decision was in the best interest of the children. True, there was much to be learned from television about the world Outside. But television was best for the winter, to keep the children quiet and out of mischief indoors. Now the days were long and warm, and it was better that the children learn a thing or two about their own outside while the Sonys and Sylvania's stood darkly silent in the corners of the thin frame houses. And as I strolled through the village that first evening, I watched the children in scattered groups chattering delightedly, each individual taking his or her turn, at whatever they happened to be playing, without the peevish competitive bawling I generally associate with prepubescents gaming in the backyards of my own experience. "Hi!" they called in English when they spied me watching. "What's *your* name?" Dark eyes and ruddy cheeks

turning my way. Tummies full of bird meat, probably. Too young yet to wonder about treaties and regulations, or about the forces that would soon be pulling them, one way or another, between the old and the new. The gentle people, I remembered someone saying of the Yupiks. The gentlest in the harshest of all possible worlds.

"My father saw the ocean as a plate." It was mealtime, and Leo Moses sat at the kitchen table of his home in Chevak. With the tips of his fingers, he lightly touched the edge of a plastic dinner plate set before him. Resting in the center of the plate were a bowl of fish soup and the breast and thighs of a dried ptarmigan. The fingers tiptoed across the plastic to the food. "The ocean was a plate," he said, "and you always took the first bite from the edge that was closest to you." The fingers took hold of a piece of the bird and held it up for his inspection. "We were told never to finish all the food that was in the plate," he went on. "The big one, out there. The ocean. We were told not to do that so there would always be something left for tomorrow." Leo Moses stared for a long time at the piece of meat, and then he said, "Excuse me," and ate it. Watching, I wondered if the apology was being offered to us. Or to the bird.

Moses is an uncommon Eskimo in that he has tasted not only of the white man's world, both Inside and Out, but also of the bitter sauce of making regulations. For a time, by appointment of former Governor William Egan, he sat as a member of the then joint Board of Fish and Game. It was a painful experience. "There were laws then that we were violating and are still violating," he said. "Like barter." I interrupted to explain that it was my understanding that trade and barter of wildlife was now permissible under the liberal definition of subsistence, but he dismissed the information. Perhaps he felt that while the language of the law might have changed, the intent in Juneau, still, was to restrict the Eskimo's bartering custom. As if nothing had changed, he said, "The law says you cannot barter subsistence food. But it is our way. What is the difference? Salmon or money. They are the same."

"Except that you can eat the salmon," I said.

"But first you must buy the net," he replied. "With money."

Was there no need, then, for any regulations? Should the people be allowed to take whatever, whenever they wanted?

"Of course not," said Moses. "There *must* be regulations, but they must make sense. It's not like it used to be in the old days. There is no longer plenty of everything left out there. You hear of wanton waste. Sure, but we're not wasting. You have more than you need, you share it. Of course—birds. Some are just killing off too many. I know damn well they're not *that* hungry. Good thing shotgun shells are rising in cost." He laughed, then came out of it, suddenly, with a frown. "Why are the geese depleting so fast? In my time, when I was young, there used to be *lots*. *Geese!* Right now, you go out hunting and you see a few flying around. What is there going to be twenty, thirty years from now? It's a joy to kill those animals, to eat them, but how do you preserve enough so that everybody will be satisfied? And cranes. Cranes are going down, too. Man, there used to be cranes just like music." Moses lifted his face toward the ceiling, mimicked the crane with a guttural cry. And was silent for a while before saying, "We're in a race with a dying world. Not here so much. There's a lot you can see flying from here to Bethel, and from Bethel to Anchorage, and Anchorage to Juneau. There's a lot of land here in Alaska no one has ever set foot on. No one. But when I flew from Tacoma to D.C., I look down there and the whole earth is just like a checkerboard. I get lost out there. Sure. We're taking a lot more than we used to. Before the shotgun time, we were told, 'Do not rejoice that the birds are flying, for they aren't going to come falling down on you.' Now, because of the equipment, the shotguns and the outboard motors, when the geese molt the boats go out there and get all they want. And there's a lot more families than we had years ago, too. The problem is, what will we eat if we don't watch out what we're doing? Some people don't think. They're alive, but just day to day. They don't know how to look to the future."

Village elders share Leo Moses's concern for the future, as well as his reverence for the past. The oldest among them is Joe Friday, who was seventy-seven the spring spoke with him in Chevak, one of the last of the Kashunuk people. David Friday, his son, turned the English into Yupik, and back again, as we sat by the stove. I had a feeling of redundancy sitting there, as all Outsiders who come to Chevak to learn of subsistence eventually wind up beside the Friday stove. Congressman Morris Udall, the d-2 architect, had lowered his six-foot-four frame through this same doorway to speak with Joe Friday, and, forgetting the scale of an Eskimo's house, cracked his head on the doorjamb going out. Members of the entourage were amused, for across the obstruction a bumper sticker proclaimed the Fridays' allegiance: "Save Alaska's Wilderness." As Udall went out, he said he was grateful for the reminder.

I learned this about Joe Friday. When school is in session in Chevak, twice each week he leaves the side of his stove and goes down the boardwalk to the classrooms to tell the children about the old times at Kashunuk, about the traders and the piles of fur, the whales on the beach, the journeys by dogsled and kayak, the adventures of Raven, and the way it was when the stoves burned driftwood, the lamps were filled with seal oil, and walls were made of tundra sod to turn back the winds of December. I learned that Joe Friday does not tell the children that this is the way it can be again, or even ought to be, only that they should know this was the way their grandparents had come, and that the things of the land and the sea—of the air, too—were the Eskimo's strength, and always would be, until they were Eskimo no more. Should it ever come to that. And sometimes, when schoolboys are of a certain age, Joe Friday invites them to join him and the elders at the *qasgiq*, the fire bathhouse that is sunk in the ground, with a deep pit for the willow logs, the hot smoky air flushing the senses, the hunters imparting the wisdom of their accumulated years. They would speak of the birds, and how each hunter had to be careful to dress himself in the colors of the tundra, then crouching and using only one's voice to bring the birds into range. Then, on the tundra, when the birds were on their nests with eggs, it was

said that "the whole world is food." But now such a thing is said only in the *qasgiq*. Now, with shotguns and baskets on the tundra, to say such a thing would not only be foolish. It would make people sad.

Alaska, as anyone who isn't a Texan might already have guessed, is a state of superlatives. Among other distinctions, it has the highest per capita income in the nation, a fast two thousand bucks beyond the U.S. average. And it used to be higher, proportionately, when pointy-toe boots were taking a shine off the pipeline between Prudhoe Bay and Valdez. The bucks come and the bucks go, also with distinction, for Alaska matches its blue-ribbon incomes with a cost of living higher than that of any other state in the Union. Shelf prices on some items in Anchorage are 60 percent higher than in Seattle; in Bethel, 40 percent higher than in Anchorage. By the time a box of cereal or a gallon of gasoline reaches Chevak, the value of the Seattle dollar may have deflated 130 percent. Which might be acceptable if there were adequate income in Chevak. But there isn't. For more than half of the Native families of the Yukon-Kuskokwim Delta, incomes fall below the national bottom line, otherwise known as the Poverty Level. The figure for Native poverty statewide, as measured by family dollars, is nearly 40 percent. So here in this great wealthy state are these gaping holes into which government sticks its welfare and food stamp programs. And Raven only knows how much more it might cost—Tom Lomer guessed \$100 million—if most of the poor ones did not already prefer to help plug the holes with their shotguns and rifles and nets.

Some of the sports in Fairbanks and Anchorage do not like to dwell intellectually on this side of the bush economy. They seem to prefer to traffic in tales of Eskimos at Barrow riding in taxicabs, full-fare, to the sea to shoot at ducks; of hunters from Anaktuvuk flying in chartered planes, courtesy of the Bureau of Indian Affairs, to shoot at caribou; and of Tlingit fishermen on holiday in Hawaii, surfing on a surfeit of cash from the salmon of Alaska's Southeast. The sports like to see it that way. There

are sports who drive taxis in New York City. The way they tell it, the people of Harlem have rocking chairs on Easy Street. Because once or twice there was this black man in a Cadillac outside the Plaza Hotel, and the sun just happened to sparkle on the rings on his fingers when the cabbie cruised by. I suppose some people see only what they want to see.

In the bush, nothing is easy. Not now. For if one takes a job for cash wages, then he has scant time for the hunting. And if one does *not* have a job, or income from furs or fish, then he may have all the time in the world, but not enough cash to hunt. Consider the facts as assembled by Michael Nowak, a researcher who spent five summers on Nunivak Island, southwest of Hooper Bay, appraising the hunters of Mekoryuk. At the time of his observations, about three quarters of the men were employed, full- or part-time, mostly in small public works projects. Nowak's objective was to ascertain the cost to these men of acquiring (on holidays and weekends for the fully employed) about 2,000 pounds per family of traditional Eskimo foods. In his computations, equipment expense was amortized over a "primary life-span" of four years (at 1975 prices). The checklist included a .222 rifle at \$190, a 12-gauge shotgun at \$230, and a 20-gauge at \$180; one boat, with two outboards and fuel tanks, at about \$2,200, plus maintenance; a snowmobile at \$1,800; a fishnet at \$120, and assorted lines and lures for taking tomcod through the ice in winter. Ammunition for the three weapons was calculated at the rate of about \$28 for sixty shells, and fuel for the engines at \$1.10 a gallon. Nowak then shuffled these expenses into five separate decks of subsistence activity: the taking of seal, reindeer (harvested by permit from a managed herd on Nunivak Island), salmon, tomcod, and birds, and came up with the following results.

To kill five seals for 620 pounds of dressed meat and oil, the Mekoryuk hunter had to spend \$812. The cost per pound: \$1.31. To kill four reindeer, total weight 400 pounds, \$450. And cost per pound: \$1.13. To net 375 pounds of salmon, dried weight, \$525. Cost per pound: \$1.40. To catch 250 pounds of tomcod, \$150. Cost per pound: \$0.60. And to take 25 geese, 60 ducks, and 25 ptarmigan, \$688. Cost per pound: \$1.91. Nowak

figured all this hunting and fishing added up to about 76 days afield per hunter-fisher. But the value of man-hours was not fed into the computations.

So, what did it all mean? To Nowak it meant that while subsistence was costly, it was far less costly than the market shelf. While the price of fresh, frozen, and canned *gussok* meats and fish averaged out at \$2.19 a pound, the Mekoryuk hunter's game averaged \$1.30. And Nowak observed: "In parts of southwestern Alaska where income levels are lower, the economic significance of traditional subsistence activities is even greater. There a family with an income of \$4,500, obtaining 2,000 pounds of traditional game, could save a little over 39 percent of that income." There was, however, a certain grim prospect in this, for Nowak also found that inflation was affecting major equipment costs to a greater extent than groceries. If the trend should accelerate, he warned, "the present savings realized through pursuit of traditional foods will continue to diminish until at such time in the future they may cease to exist at all." In which case, should it come to that, the cost-benefit ratios might have to take something else into account—namely, nutrition.

It is a lopsided contest, game vs. *gussok* food. Seal meat has ten times more iron than beef does. A ptarmigan has twice the vitamin B of a chicken. Stack a steer against a moose, and Old Bossie turns out to have twelve times the saturated fats of the wilder ungulate, and only one third the protein, gram for gram. Stack the steer against a caribou and the point spread is even greater.

Nutritionists have been fascinated and awed by the high-protein, low-carbohydrate diet of traditional northern peoples ever since the early Arctic explorers faltered on scurvy while their Eskimo guides remained healthy and strong. Possibly the Native stomach had evolved but little, biochemically, from glacial times when there were few greens to eat. Whatever the adaptive reason, fish and meat have always brought vigor to Arctic people. But some of the old strength is going out of them because of the white flour, the sugared breakfast cereals, the soda pop and candy so many are now bringing home from the

gussok's shelf. There are better items to choose from, but not better by much. Problems of transportation and winter supply are such in the North that many of the foodstuffs must come to the bush in cans, and half of the contents are either water or additives. "In rural Alaska," says Michael Holloway, an Anchorage physician who works on Native health problems, "there's only one word to describe the imported food. It's junk."

The effects of junk are beginning to show among the young—in anemia, in dental cavities, in otitis media (the ear disease said to be triggered, in part, by high sugar intake), in vitamin deficiency. A survey conducted for the Yukon-Kuskokwim Health Corporation by nutritionist Barbara Knapp of Bethel found that the dietary compositions of five Delta villages, including Hooper Bay, have changed drastically over the past two decades. Comparing her own findings with those of a similar survey in 1961, Knapp discovered that protein intake had decreased overall by 50 percent, only to be replaced by "low nutrient" carbohydrates. Intake of calcium and iron was well below the recommended daily allowance, and dangerously so for women of child-bearing age. And this was occurring even among families in which at least half the food eaten was obtained from the subsistence harvest.

The effects of junk are beginning to show, too, in rural Alaska's rising rate of alcoholism. Not that eating canned tuna makes one any more disposed to the bottle than caribou does. It is just that the switch in the supply systems—the substitution of food stamps for foraging—leaves some of the people with nothing to do. At a hearing in Anchorage on Morris Udall's House Bill 39, the d-2 icebreaker, one of those giving statements was Don Mitchell, an attorney for the Alaska Federation of Natives. Mitchell spoke of the subsistence resource, and what it might cost to replace that if the resource were lost. Maryland congressman Goodloe Byron listened to Mitchell, then wondered aloud about food stamps. "We are talking," said Byron, "about a free food stamp program for all Americans who make less than four thousand dollars a year. You don't have to buy anything any more. It's given to you. Wouldn't that draw in the food industry?"

Mitchell replied: "I doubt that very much when you are talking about villages of two or three hundred people way out on the end of the economic food chain. More important, even if it did, I think the fundamental issue about subsistence—and why Native people are so upset about it, and they are not upset about it because of our statistics about dollars—[is that] the only reason those villages exist, the only purpose they have, is to allow a convenient staging area for a group of people who have lived together over hundreds of years to get game in their area. If you take away that function, there is no reason to be there. The severe alcohol abuse problems in rural Alaska are ungodly. I wouldn't want to sit around all day reading paperback books and waiting for someone to bring me something to eat. I'd go nuts."

"I think," said Ohio congressman John Seiberling, "it is very difficult for a person who has never lived in a Native village to comprehend that the subsistence life style is the foundation of the Native culture. If we substitute food stamps, even if they are free, even if they are adequate, even if we can get the food up there, we have destroyed their culture."

Apropos of going nuts, a story is told of an Eskimo village on a northern river where the elders would as soon turn back the clock as watch their people be wasted by too much leisure. I cannot vouch for the tale's accuracy, and since I do not wish to slander the place I shall leave it unnamed. In any event, I am told that some years ago the village council decided to take a giant step forward into the Age of Petroleum by installing tanks for the storage of heating oil. The oil would replace firewood in the villagers' stoves, after conversion of the hardware, and those who could afford the oil seemed delighted, for now they would not have to forage by snow machine or sled for the logs that had warmed them through the cold in traditional times. The first winter came and went, and the second and third. Then the village council members began to brood. Something had taken the happiness out of the people. It wasn't a shortage of money; some of the men had jobs on the pipeline. It was a surge of drinking and drugs and divorce. The councillors went about knocking on doors, asking the people why it had

come down to this. Then they pooled the responses. And were stunned to learn that some of the people were troubled because, in the fall and winter, there was nothing to do. Before the oil tanks, some of the people had spent as much as half of their cold-weather time gathering wood. After the tanks, they sat inside their houses, looking at calendars. Or bottles.

"What's the solution?" a council elder asked of his colleagues.

The youngest replied, "Simple. We blow up the tanks and tell the people to go out and get wood."

Going for Uguruk

It is June in Kivalina on the shore of the Chukchi Sea, in the land of the saltwater people. It is the time when the sun is high above the drifting ice and the air is warm; a time, too, for the sky to play tricks on a stranger. Beyond the lead of open water and the edge of the ice, a great white wall looms above the horizon, as though it were cantilevered on a cushion of air. Landward, over the barren hills between Kivalina and Cape Krusenstern, tall mountains hover like faraway clouds. This is a puzzlement for the stranger, to see things that he knows cannot possibly be, for the mountains in reality and substance are sixty miles beyond the limit of human vision, screened by the curve of the earth. What is it, then, that makes such a liar of the sky? The Eskimo-hunters smile. It is *innipkak*, they say in Inupiat, the tongue of the North, which is different from Yupik. It is the mirage that occurs when the wind is from the west and sunlight refraction causes an image beyond the horizon to hover above it. *Innipkak*, now, is a very good sign. It means that the succulent, red-bellied Arctic char will be running again down the Wulik River; that the leads will be widening in the rotting sea ice; and that the time has come at last for the hunters to be out in their boats, as we are, going for *uguruk*.

Uguruk—the bearded seal in *gussok* words, *Erignathus barbatus* in the taxonomist's—commands a place of honor on the

Eskimo's list of wild foods. It is the fatted pig of the North, both staple and *pièce de résistance* at the saltwater people's table. Custom, taste, and the availability of species vary somewhat, place to place, so that among the gifts of the sea, it is not always the *uguruk* that scores the highest. Some villages place greater merit with the beluga whale, others with the choice parts of the walrus. But in Kivalina, the *uguruk* is all things to all people, though landward the Barren Ground caribou is also important, when circumstance and game laws allow it to be had.

In June, the seals begin to follow the ice as it recedes to the north. They bask in the sun at the edge of the floes, each adult weighing four to seven hundred pounds (the largest of all the hair seals); and yielding, when taken, a great store of flavorful meat, enough blubber to fill a barrel, and a tough yet pliable hide from which the Eskimos fashion their snug *mukluk* boots—*mukluk* being the Yupik word for the bearded seal. In earlier times, the hide was also used to cover the ribs of the *umiak*, the old skin boat that has now been replaced, for the most part, by the long, double-hulled wood dory with the engine of many horses and the spoor of unburned hydrocarbons awash in its wake.

We are cruising south, now, through the jagged leads two or three miles offshore. Ray Hawley is at the wheel. His son, Abner, sits next to him, with binoculars. In the bow, in a white parka and rubber hip boots, head turning slowly from side to side as he scans the ice, is James Hawley. And David Swan is there, too. The elder Hawleys are brothers, members of one of Kivalina's oldest and largest families. It is said in the village that all of the Hawleys are great hunters, though possibly James is the greatest when the *uguruks* are taking the sun on the ice and his fast, flat-shooting .25/06 is close at hand under the covered prow of the boat. There is no doubt who is in charge here, yet no one speaks in tones of deference or command. In fact, no one speaks. James points with his hand, the boat follows. The hand reaches back, fingers spread wide above the open palm, and the engine stops. The boat drifts through the water. There is a sound as from a thousand fountains, slowly

dripping. In shining droplets, the ice returns itself to the glass-smooth sea.

Hawley and Swan crouch low in the bow of the boat. Now I can see the *uguruk*, a hundred yards out from the edge of the ice, sleeping. It is a big one, probably a bull. Hawley takes his rifle from under the prow and locks a cartridge into the chamber. The drifting boat grinds lightly against the ice. The animal raises its head. Hawley leans forward and rests his elbows on the prow for support. Steady. Steady now. Taking his time to make sure the *uguruk* has not been alarmed. Knowing he cannot afford to miss this time. Not after the pup, the little one a few miles back, shot clean but then lost in the water, sunk. If it was the best of times to be going for *uguruk*, it was also the worst, for the ice-floe fountains render the seawater fresh to a depth of twenty feet, and what goes down into it, deprived of saline buoyancy, does not soon come up. We tried to retrieve the pup, using a barbed, weighted *niksik* like a grappling hook in the water, to no avail. So many seals are lost, and few recovered, when they go like this, flopping head-shot into the unbuoyant sea. The critics of subsistence call it wanton waste, as if the loss were intentional. The hunters call it bad luck. And mourn the loss, not only for themselves but for the animal, believing, as I am told they do, that the life of an animal taken will somehow flow on through the people who use it, as long as they use it well.

The recoil from the .25/06 kicks a puff of dust out of the shoulder of Hawley's parka. The head of the *uguruk* falls to the ice. There is the briefest silence after the shot, except for the water, dripping, and then the echo comes back at us, bouncing like a pinball off the *innipkak* walls of the Chukchi Sea. Hawley snaps the bolt of his rifle open and shut, leans forward across the prow—steady, steady now—and squeezes off one more, for insurance. Now the seal is surely dead. Even so, no one speaks.

There is a certain rhythm to subsistence in the North that is scored by the cycle of the seasons. In Kivalina and in scattered

camp along the Chukchi coast toward Kotzebue, each month or two seems to offer a special harvest or, if not, at least a time to prepare for the next. The Hawley brothers tell of this, as does David Swan; and there is also the splendid monograph prepared by William and Carrie Uhl for the Cooperative Park Studies Unit at the University of Alaska, a work that examines the subsistence patterns of the beach dwellers of the Cape Krusenstern area. Piecing these written and oral reports together, one might construct a calendar running on from *uguruk* time somewhat like this:

July and August, in the old days, were the months for trade, chiefly with the people of the Noatak Valley, inland. Now, for those who can, the summer is a time of harvesting cash. Sometimes there are jobs in the commercial salmon fishery at Kotzebue, or with the U.S. Bureau of Land Management, fighting fires in the interior. One summer, seventeen of the men of Kivalina went off to the fire lines, and that was a lot, in wages, even for a village of two hundred and fifty people. Summer, too, is for harvesting sour dock and berries. The sour dock, a rhubarb-like plant, is ready for picking in July, and some families will put away as much as one hundred pounds of it, for cooking, or will store it in barrels and sealskin pokes. Raw, sour dock ferments and is used for pickling certain fishes and meats. No sooner has this been done than it is time to harvest blueberries and *akpik*, the cherished salmonberry with its citrus flavor. Inupiat Eskimos are so fond of *akpik* they will travel far afield, and at great expense of time and energy, to gather it. Groups of women will go off for ten days, camping and picking *akpik*, while the men, the hunters, stay at home minding children. A hunter will do even that, for *akpik*.

In the fall, September and October, char return from the sea to the Wulik and Kivalina rivers, and the people take them with lures and nets. There are a few late-flying geese and ducks also, though not as many as in the spring; and offshore, new ice brings *natchiq*, the ringed seal, the little cousin of *uguruk*. Now *tutu*, the caribou, are coming down from the passes of the Brooks Range, and it is good to take them at this time of year when they are still fat and the meat is not yet too strong from

the rut. And down in the lagoons of Cape Krusenstern are whitefish that, in aggregate, can only be measured in tons.

According to the Uhls—and to Robert Belous, a National Parks Service specialist who flew charter with me one day over the Krusenstern lagoons—the saltwater people have developed an ingenious method of exploiting these whitefish. And nature does most of the work. The whitefish come to the lagoons in the spring, flushed from the mouths of the Kobuk and Noatak rivers by the crest of the runoff and carried by it to the cape across Kotzebue Sound. Here, the fish enter the lagoons through open sloughs, and spend the summer subsisting on insects. And what the whitefish don't know will ultimately hurt them, for some lagoons in the summer soon become traps.

It happens like this. When the fish find the open sloughs in the spring, there is still enough ice offshore to block the sea's natural urge to hurl swells at the shore. The inshore water is therefore glass-smooth. But after the ice recedes, the sea becomes its old bitchy self, scratching the face of the shore and redistributing loose sand and gravel in such a way as to plug up the outlets of the whitefish lagoons.

Now come the Eskimos with shovels and sucks in September. They dig a ditch. They start on the beach and dig inland toward the lagoon. The ditch is wide and shallow near the sea, then becomes progressively narrower as it approaches the lip of the plugged-up lagoon. When the final break is made with the shovels, the water of the lagoon rushes toward the sea. But never quite gets there; the porous gravel of the beach sops it up. The whitefish in the lagoon feel the pull of the water, and perceiving a way to the sea, follow the flow—only to be left, flopping, high and dry on the beach. Where the Eskimos sack them.

The days grow shorter, the ice is almost fast once again at the shore. Now, in November and December, some of the men turn to trapping, running their lines up the rivers and creeks. In Kotzebue, the skin of a wolf will fetch \$250; a good wolverine, more than \$300. A white fox brings \$50. And sometimes, with luck, there is lynx. Its fur is considered by some the best for the insides of parkas, and the meat is good, too—like the

breast of a turkey, some *gussoks* say. Short days also bring snowshoe hare and ptarmigan to the hunter's pot, and the large Arctic hare, *ukallisugruk*. Then the midday sun hangs low on the southern horizon, the snow piles high, and the people wait. For February.

With increasing daylight in late winter, and generally good conditions for snow-machine travel, the men go out from the village after ringed seal in one direction, and caribou in the other. And some of the women jig through holes in the ice for whitefish and Bering cisco. Then April comes, and May and June with the birds nesting, the sky playing tricks, the hunters in white parkas going out in their boats, the hand of James Hawley reaching back, stopping the engine, now drifting, the bolt of the rifle snapping in place, the elbows braced, and once again, between the shot and the echo, a sound as of fountains, slowly dripping.

Our boat rides low in the water. It is late in the day, and we are returning to Kivalina with a ton and a half of *uguruks*, five of them side by side under the tarps. The last killed is my cushion, I can feel its lingering warmth through the canvas. When the boat swerves to starboard to avoid an ice floe, the yielding blubber beneath me rolls the same way. I move to the floor.

James Hawley, my windbreak, still sits in the bow, scanning the ice. I admire his skill with the rifle. Besides the first pup, only one other seal was lost in the water. So it is five for seven, and Hawley has taken them all. That is the uncommon thing about subsistence hunters. It seems not to matter at all who gets the shot, so long as the shooting is clean and effective. There is no taking of turns, no prize for the first or the biggest. It is not a game they are playing. True, Abner did take one shot, but only because it is part of his education to learn to kill seals. Ray Hawley and David Swan did not fire once. They did not have to. They already know how to kill seals, though not as well as James Hawley does.

The boat grinds against the gravel shore. Village boys, fishing nearby with handlines for char, pull in their lures and run

down the beach to see what the boat brings. Village men stroll our way, waving. The hunters attach ropes through slits in each *uguruk's* jaw and flippers, and the people heave and pull, laughing when someone slips on the gravel; and one by one the great silver animals slide reluctantly over the gunwale and up the wide beach to a bench of grass where the women are waiting with their sharpened *ulus*, the meat cleavers of the North.

Now the *uguruk* is rolled on its back. The knife moves swiftly along the belly, from chin to the anus. Then the skin is pulled off with the blubber attached. The abdomen flesh is cut away. Out come the internal organs. The ribs are sectioned and removed. The animal is reduced to smaller and smaller pieces. A young woman with a cup scoops blood from the carcass and pours it into a barrel that is sunk in the ground. Two others begin to slice the blubber into small strips the length of store-bought bacon. The strips will be stored in sealskin pokes, where fermentation renders the blubber into an oil that is used not only as preservative of other foods but as condiment for almost every meal. The head of the seal will be boiled for four hours and come out of the pot as a head cheese to be shared with neighbors. The shoulder meat will be hung to dry for a few days before pot-roasting. The flippers will be buried with oil in a grass-lined hole until the hair slips off, then savored as *uguruk's* most succulent gift. The ribs will be hung on racks, drying for wintertime. The outer layers of the small intestines will be pinched from the inners and minced with blubber to make the delicacy called *qaiq*. And the blood in the barrel? The blood will be saved for broth, or mixed with wood ashes to coat the outside of a sealskin poke. So who is to say that the Eskimos are wrong? I mean about life after death, and the way in which animals live again in the viscera of the people who use them.

Still, there is a suspicion among city folk, inside and outside Alaska, that the corollary of subsistence is waste, in terms of both absolute animal numbers and the utilization of individual animal parts. Perhaps it is not enough that the outer layer of the *uguruk's* intestine is eaten with blubber, and the inner part fed to the dogs; though the inners were once blown full of air and dried, for ditty bags, before some *gussok* invented plastic.

As for the absolute number of animals taken, sometimes there is waste. It has been documented, for example, that at the time of the crash of the Western Arctic caribou herd, some young Native men—not necessarily from Kivalina—did indeed kill more *tuttu* than their villages could possibly use, chasing the animals on snow machines and leaving the carcasses cached in the snow for ravens and wolves. Yet a white man at Kotzebue confessed to the same. Rotten apples in every barrel, I suppose; and besides, there was no legal limit then on how many *tuttu* a hunter might take. Now the trigger fingers are not quite so heavy throughout bush Alaska, for the people are warned.

"Let me lay it right on the table," said Congressman Morris Udall at a hearing in Shishmaref, speaking to Eskimos. "You want to cover thirty miles a day, instead of the five or ten the way you used to. I think the motorboat is here to stay and the snow machine is here to stay. We will write this [d-2] bill so that subsistence includes the right to use motorboats and snow machines. I think we ought to recognize, however, that subsistence is only going to be good if we can keep up the permanent level of the cache, if we can keep the walrus and seal populations coming back year after year. . . . To the extent that you have machines and modern equipment to go off after them, there is a danger you will deplete the species on which subsistence depends. You better bear that in mind."

On the bench of grass at Kivalina, the men stand apart, watching the women with *ulus* and talking among themselves of the hunt. The talk drifts to walrus. Many have been sighted on the ice to the north. Too many, maybe, a hunter says. And skinny—not enough clams for so many walrus. And these newspaper stories from Seattle and Anchorage, all about "head-hunting." Sure, there may be a few Eskimos here and there who take the walrus only for its tusks, ivory bringing the price that it does. But what about the walrus that die of natural causes, or the ones that are mournfully lost to the sea by a misplaced shot, and which later wash up on the beach, only to be de-tusked or beheaded by some *gussok* from a Cessna cruising the coast between Barrow and Nome? It happens both ways. Besides, when the too many walrus go the way of the caribou,

crashing, then the federal and state Fish 'n' Game men will have to find scapegoats. And one Eskimo hunter says to another, "Hey, Scapegoat. Guess who?"

It is getting on toward midnight now, yet the sun still hangs in the sky, poised like an *innipkak* mirage over the coastal hills of the Brooks Range. I walk to the edge of the gravel beach and stare at the water. There is an iridescent film of petrol lapping at the shore, no doubt the smallest of spills from some outboard nearby. Or could it be a seep from the floor of the sea? Possibly, for geologists tell us that under the floor of the Chukchi is a mother lode of gases and oil. The same federal agency that would zealously protect the subsistence way of life in Alaska—the Department of the Interior—has published maps showing areas of the state's outer continental shelf that are under consideration for petroleum exploration and leasing. And drilling. One of these areas is identified as the Hope Basin. Across the lead of open water and the edge of the ice, I am looking at the Hope Basin now. And I recall a voice that I heard once in Washington, D.C., a voice concerned about walrus and *uguruk* and other creatures essential to the people who live on these shores. "Have you ever seen the rigs off Santa Barbara?" the voice is saying. "Well, that's the Hope Basin. When they get around to it, it's going to be full-tilt boogie."

Game on the Rivers

Alaskans are hugely partial to moose. No other big-game animal is distributed so widely across the Great Land, and none pursued with such fierce loving determination. Alaskans are in fact so determined to have their moose and eat them, too, that they kill about ten thousand every year, though fewer than half this number are officially tagged and reported to the authorities who keep score of the harvest. Moose steak is no less cherished in Anchorage than in Allakaket; it pleases the Euro-American to about the same high degree as the Athapaskan. Total consumption statewide runs to more than five million

edible pounds each year, or about twelve and a half pounds per capita; which, though not a great deal, is still more than the national per capita ingestion of fish, and more than twice the consumption, per capita, of lamb and veal in the Lower Forty-eight. However you slice it, there is nothing quite like the prospect of moose, or of no moose at all, to bring out the feist in Alaskans. Men break laws to assure a fresh moose in the meat locker. Given the gap between supply and demand in the woods, men may soon be breaking each other.

Time used to be, say twenty years ago, a man could take his moose in his own backyard, or not far beyond it. At dawn, he could drive a few miles past the city limits of Anchorage, or go out of Fairbanks, across the Tanana River and into the willow flats, and, with luck, have his moose on the ground by noon. Time, too, when the Indian stalking a moose on the banks of the faraway Koyukuk River never saw white men on Opening Day. Times change. Now, because of increasing mobility and leisure, but mostly because of intolerable pressures on game near the cities, the hunters of Fairbanks and Anchorage are pushing into gamier places farther from home, into places the villagers view as their own.

Consider the Koyukuk, a remote watershed rolling from the Central Brooks Range to the Yukon River near Galena, some three hundred miles from Fairbanks. According to one estimate, about six thousand pounds of game meat was taken out of this area by airplane in 1975. By 1977, the airborne meat had quadrupled to nearly twenty-four thousand pounds, much of which went to Anchorage and Fairbanks. There could have been more. By the same estimate, for every four pounds of game flown out, six were left behind on the ground, at the site of the kill. And the sports speak of waste.

The prospect of meat left to rot on the ground and of moose antlers flying to faraway cities infuriates the people of bush Alaska. Their councillors write angry letters to the Board of Game. Their Native associations demand regulations to discourage the influx of alien guns. In response to these demands—in reluctant response, some would have it—the Board

approved a number of changes in the rules. For critical areas here and there, the season for moose was drastically shortened, which turned away some of the urban hunters (but few of the rural ones, since much of the local harvest occurs out of season in any event). For some areas, too, the Board authorized "registration hunts," and these require each hunter to obtain, carry, and later surrender for the record a special permit bearing his home address. Not that this of itself is a deterrent to urban hunters; it simply gives the game managers a more accurate picture of where hunters are coming from and of what they are taking away.

The only real deterrent, so far, is what is known as a controlled use zone. The control is of transportation. In effect, you may walk in, or swim in—but fly into a controlled use zone you must not. Leaving is easier: You may fly out. Yet if you do, and have killed a moose, you can't take it with you. Controlled use zones are nice places to visit, but you wouldn't want to hunt there. The last I heard, only two had been approved by the Board, both on the Koyukuk River.

Under the state's new subsistence provisions, the ultimate step would be to declare an area off limits to all hunters from Outside, whatever their mode of travel. But the sports are certain to test this provision in court. They have promised as much. Tom Scarborough, a director of the Real Alaska Coalition and past president of the Tanana Valley Sportsmen's Association, told me in Fairbanks that attorneys are prepared to challenge subsistence zoning on constitutional grounds. "We'll stir up a lawsuit," he said, "to settle this issue of common use once and for all." Shades of the caribou permits at Nuiqsut.

So anger in the bush is matched by pique in the cities. Among hunting folk, the distemper seems to run strongest in Fairbanks, where sporting bias is carried by the hometown press, the *Daily News-Miner*, and by the newsletter of the Interior Wildlife Association of Alaska ("the voice of the hunter in the State of Alaska"), which holds that "hunting, fishing, and trapping as we have known it [*sic*] is practically wiped out" as a result of the Alaska Native Claims Settlement Act and Presi-

dent "Adolf Carter's Salt Agreement: Steal Alaskans' Land Today," otherwise known as the Antiquities Act. Fairbanks provides fertile ground for such palaver. Regardless of its voting profile, despite its university, I'd guess Fairbanks ranks among the most intrinsically conservative cities of America—a legacy, no doubt, of past or present affiliation with Big Oil, Big Military, and Regular Guys who believe that bigness is the best way to go. Except in government.

Poking into the woof and warp of hunting sentiment in Fairbanks, I found people more or less hanging to the ends of two threads. One led to the conclusion that those who pay should have the say; that whereas fish and game management in Alaska is financed through license fees and matching funds, and whereas most of these fees are paid by urban sportsmen and Outsiders on guided trips, and whereas many bush folk pay nothing at all, now therefore be it resolved that sportsmen, having paid their dues, should be entitled to take moose anywhere that moose are available for common-use taking, subject to reasonable biological, rather than socioeconomic, constraints. Moreover, the feeling goes, the Natives had better get flexible about subsistence. Otherwise the rug will come out from under them as legislative reapportionment deflates the Bush Caucus and restores power to the solons of Fairbanks and Anchorage, where more than half of Alaska's people already live.

The other thread leads back to the Alaska Native Claims Settlement Act (ANCSA) of 1971. The act extinguished all claims based on "aboriginal title" in exchange for the transfer to Native groups of 44 million acres of federal land and the payment, over time, of some \$900 million. Sportsmen of a certain pique say this should have been more than enough to keep the Natives happy. They say that ANCSA effectively abolished for all Natives any preferential right to fish and game. Yet the final report of the House-Senate conference committee on ANCSA said otherwise. The committee said it believed that "all Native interest in subsistence resource lands can and will be protected by the Secretary [of the Interior] 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 . . . when the subsistence resources of these lands are in short supply or otherwise threatened. The conference committee expects both the Secretary and the state to take any action necessary to protect subsistence needs of the Natives."

Pique and anger in moose country are heightened further by a good bit of confusion as to who may or may not qualify as a bona fide subsistence hunter. The intent of the language from Congress may be clear enough insofar as Indians and Eskimos are concerned, but what about the pale-skin sourdough loners who have come into the country with the dew of Boston or Birmingham behind their ears? Congressman John Seiberling wondered about this himself at a hearing in Anaktuvuk.

"Let me ask you the sixty-four-thousand-dollar question," he said to Rosita Worl, a Harvard anthropologist who was offering d-2 testimony on the strength of two years' work among the people of the Arctic Slope. "As a practical matter, how can the authorities, whether they are federal or state, know which are subsistence hunters and which are not? . . . We can't just say Natives have the right because I think that would probably violate the federal constitution. . . . We are going to have to make it clear if a white man comes up here and starts to live Native-style and live on the land, that he is a subsistence user also. Do you agree with that?"

"No," Rosita Worl responded. "I said that subsistence is a right that has been achieved after three thousand years or ten thousand years."

Seiberling did not buy altogether the Worl criteria. Neither do those Indians and Eskimos who are married to bush whites, much less the sourdoughs themselves. "Damn it to hell," a boondock exile from Outside told me one day in a middle Yukon village. "My people were eating moose meat ten thousand years ago, too. The Pilgrims ate wild turkeys. And my great-great-grandpappy lived on deer. So because my own folks eat cows in Missouri, who's the dropout? Papa or me?"

The village hangs above the river where the rounded ridges of the Kuskokwim Mountains tumble down to the Yukon trench. Indians once called the place Melozikaket, after the Melozitna River, which comes out of the Ray Mountains and enters the Yukon two miles upstream, on the other side. That was before 1907, when white men discovered gold in the village creek. Afterwards, many of the Indians moved out, to a place called Kokrines, upriver, and many white men moved in. By 1912, there were one thousand whites in Melozikaket, only they didn't call it that any more. They called it Ruby. And in honor of their own cultural heritage and their individual expectations, they went about renaming almost everything; so that before long the maps showed Boston Dome and New York Creek, and Easy Money Creek, and down the trail a faraway piece, an outpost called Poorman, which proved in time to be the most appropriate name of all. Then the Indians came home again from Kokrines. When I flew into Ruby last time out, the census digits showed a population of 190 Indians and 30 whites. But the digits keep going up, for in addition to being a splendid place for Indians, Ruby is as likely a perch as any for those moose-hungry sourdough loners from Outside.

Moose and salmon are the mainstays of Ruby. The salmon come in seasonal waves, silvers and chums, the latter being known by Eskimos downstream as dog salmon, since these are the fish which they feed to their dogs. Indians do not especially care what Eskimo dogs eat. But to hear the word "dog"—applied to a salmon *they* eat—hurts. It is a small enough matter, inter-tribally, though it adds somewhat to the ancient territorial rancor.

The moose also come in waves; not seasonally, but decade to decade, depending on weather and wolves and browse, and more recently on the number of boats and floatplanes bringing urban hunters from far away. Ruby hunters, and their subsistence counterparts from Tanana upstream, have a special place that is generally better than others for moose. It is the taiga country of the Nowitna River, which joins the Yukon between

the two villages. But now the Nowitna has become a special place for autumn travelers from Fairbanks and Anchorage, too. In the autumn of my own visit, the Game Board had imposed a ten-day season along the Nowitna, and ordered that the hunt be by registration, so that permits would show where the hunters were coming from and what they were taking away. "We wanted this four years ago," said Harold Esmailka, operator of Harold's Air Service, which is based in Galena, though Harold himself lives in Ruby. "But the urban votes on the Board were against it. Now we have it. The game is here for everyone. And God help us all if the moose should ever be shot out from under us."

Down a dirt road from Esmailka's place is the home of Albert and Dolly Yryana, the elders of Ruby's pale-skin tribe. Dolly's parents mined for gold near Dawson, in the Yukon Territory, then moved to Alaska in 1917. By the time she reached Ruby, most of the miners and grubstakers were gone, but new folk were moving in, including Albert Yryana, who arrived from a farm near Houghton, Michigan, by way of Southeast, in 1935. Houghton is in the iron and tall-timber precincts of Michigan's Upper Peninsula. It is a place of tough-minded Finns and irascible winters; and there was and is, probably, no better turf for seasoning those who would trade the Outside for the bush of Alaska. Albert Yryana, pushing seventy, hunts moose and traps marten and beaver and takes fish from the river, prospects a little for gold, and, with Dolly, tends to a summer garden where cabbages grow bigger than basketballs under round-the-clock sun. "It's the best place in the world to make a living," he said to me in his backyard, sweeping his arm from the cabbage patch toward the dark spruce forest beyond. "You fertilize the garden, throw down the seeds, and jump back—just in time to get out of the vegetables' way."

The prospect of agriculture in Alaska is intriguing to white-haired Albert Yryana, as it is to many whose ethnic roots lie behind them somewhere deep in the hardscrabble fields of Northern Europe. It seems an incongruity to hear them speaking of farming here on the edge of nowhere. Yet farming is what all pioneers have eventually wanted to do, after the moose

and beaver were gone, and the gold. Down the Alaska Highway from Fairbanks, near a place called Delta Junction, ten thousand acres are in cultivation, mostly to barley, and agronomists already are speaking of seeding a half million more. There are expectations of a market in Japan. And if that doesn't work, then the grain will be used to support a domestic meat industry. Barnyard sheep—grain-fed in winter, in summer grazing Granite Mountain and the Macomb Plateau. And this greatly worries the wildlife people, who remember what happened to the wild bighorns, Outside, when domestics were unleashed on the Rocky Mountains. But Albert Yryana wasn't speaking of the Delta project in his backyard at Ruby. He was speaking of *Ruby*, and of Yukon River places round about, the Flats upriver, possibly, and of fields of waving grain, and barges, and draglines dredging a fifty-mile canal to spill the Yukon's waters into the Kuskokwim at Bethel, the nearest seaport.

"What's wrong with *that* idea?" said Albert Yryana. I said nothing, though I expect I should have, if only to inquire how one could possibly hold agribusiness by one hand and salmon and beaver and moose by the other.

We walked out in front of his place and stood on the dusty road that goes down to the edge of the river, and then I did ask Yryana to share with me his thoughts on subsistence in general, and moose in particular. He addressed himself to both succinctly, and democratically. "Each man is entitled to the same privileges," he said. "That is the American way. If a man wants to hunt, *any* man, then let him hunt. But we must not forget that people are increasing in Alaska, and so are wolves. One or another is going to have to give up moose meat. Or there won't be any left."

Jim and Betsy Hart are the proprietors of the Ruby Roadhouse, a homey hostel offering bed and board, downhill from Albert Yryana's cabbage patch. The roadhouse dates to mining days, when there was a little more traffic than there is today; although the roads, now as then, go nowhere, except to Poorman,

which is also nowhere in any event. Judged by the criteria of Harvard anthropologist Rosita Worl, the Harts, with their modest business and white skin, would not qualify as subsistence users, for they lack the uninterrupted ten-thousand-year continuum of scratching a living out of the woods. But under less rigid values, the Harts would seem to come about as close as village white folk can, for they do take fish from the river and game and fuel from the woods, and without these resources they would not in all likelihood be able to carry on. Nor would they want to.

Jim and Betsy Hart met in 1970 at a commune near Fort Collins, Colorado. He was a carpenter; she, a candlemaker. In the youthful, earthy spirit of that time, they longed to be off to wilder places, which, at least on this continent, are generally known to be found by following the compass north by northwest. Soon they were heading for Alaska, but got only as far as Washington State. In Washington, they encountered other young couples who had already tested their verve against the long Alaskan winters and, deciding that discretion was the better part of valor, had returned to the Outside. The Harts agreed they would put Alaska out of their minds. They bought a piece of land west of Spokane, miles from the nearest human settlement, erected a tent, and proceeded to build a log cabin, where they lived for nearly three years. But Jim kept dreaming of Alaska. "Forget it," said Betsy. "We're not going." Jim said they were. And they did. Fairbanks was booming in 1975. Good carpenters could count on good money. If the work slowed in one place, you simply moved to another. Still, there was this yearning for the bush, for living close to the land. For a while, they lived at Emmonak, a Yupik village near the mouth of the Yukon. And then Galena. And after four years in Alaska, they felt they were seasoned. Jim and Betsy Hart were ready for Ruby.

I stayed with the Harts at the Ruby Roadhouse for two days in early September, waiting for the moose season to open on the Nowitna, the "Nuvi," as everyone seemed to call it in town. We ate salmon hearts for breakfast and sheefish for supper—fresh, and no cardboard and cellophane for the trash. On

the third day, Jim Hart took me to the Novi in his boat, about fifty miles the way the Yukon turns, two and a half hours by the clock, with the big outboard engine straining against the knotty current. And as the golden foliage of riverbank birches flicked by, we talked about city and country things, and hunting, and how bush people feel when strangers come into their woods, looking to take away moose.

"Even in Washington," Hart was saying, "it used to drive me nuts. You're living out there in the woods, making a huge payment on the land every month, and here come these guys in hunting season, who are living in town on hundred-foot lots, making huge payments on houses. Well, hell. It was *their* choice." He pointed to the left bank, where a cluster of tumble-down huts hunkered above the river. "Kokrines," he said. "The old village. Just ghosts, now." And then picked up the train of his thoughts. "I have these friends in Fairbanks," he said. "Nice guys. They live there, I live here. They have movies and fancy clothes. I do without. But I have moose and salmon. That's *my* choice. So why shouldn't they do without some of the things we have here?"

The river straightened out ahead of us like a lake. Hart lowered his head behind the windscreen, lit a cigarette, and said, "You know? So many people spend so much time getting ready to move to the country, they never quite get here."

"There're still a lot who do," I said.

"Nine out of ten won't stay."

"That still leaves one. Times how many?"

"Who knows?" he said.

No one knows how many young men and women from tamer places are moving to rural Alaska, and staying, as the Harts did. By some accounts, the rate of immigration has leveled off. By other estimates, it is growing yearly. In Juneau, Robert LeResche, the state's Commissioner of Natural Resources, told me: "Everyone's dream of Alaska is a little cabin out in the bush. The Natives are getting worried. And I don't blame them." In Kotzebue, John Schaeffer of the Northwest Alaska Native Association said: "The hippies—I don't mean that nastily, but that's what most of them were ten years ago—

the hippies bring the Western culture with them. When you have twenty of them moving into an Eskimo village of, say, a hundred people, then you are going to have disruption."

The state of Alaska no longer officially tolerates squatters in cabins on its own remote lands. Instead, it encourages a kind of pay-as-you-go homesteading, parochially known as "open to entry." After just one year's residency, for example, a *nouveau* Alaskan might purchase, near Circle Hot Springs northeast of Fairbanks, a 4.3-acre lot for as little as \$2,600; or rent it, on a five-year lease, for \$182 a year, with the right to build and an option either to buy or to renew the lease for another five years. Or, if a parcel is unsurveyed, one might stake out five acres himself and pay annual rental of only \$150 for ten years, meanwhile living there in a homemade cabin, with an option to buy at the expiration of the lease. Or, with at least three years' residency under the belt, one might apply for a "home-site entry," also of five acres, and live and die on it at absolutely no cost other than the expense of filing the application, platting the land, and building the cabin. Given the price of housing Outside, where the most modest of homes on a hundred-foot lot starts somewhere around \$40,000, I'd guess one hell of a lot of young folks in the years ahead will be spending less time getting ready to move to the country, and more of it living there. Which isn't good news for Robert LeResche or John Schaeffer. Or Jim Hart, for that matter.

"So what are you going to do," I asked him, "when it starts getting crowded around here?"

We had come to the mouth of the Novi, and now Hart swung the boat in a wide arc that carried us out of the silt-creamed Yukon into the tannin waters of the tributary stream. "I don't know what I'm going to do," he said. "Maybe I'll buy an old paddle-wheel steamboat and take the tourists up and down the river. And maybe I won't. Maybe Betsy and the kids and I—we'll go on down the river somewhere and build a cabin and fish and hunt and trap—goodbye, roadhouse—and just watch all the water roll by. Maybe."

The two Indian men had pitched their tent on a point of land a mile up from the mouth of the Novi. With a chain saw, they laid in a good supply of spruce logs for the fire. Then they hung some salmon strips on the branch of a willow, set up a latrine back in the brush, and fashioned a sign out of two spruce stakes, an old poncho, and some paint. The sign addressed itself to the river and to whoever might be passing by. It said, though not in so many words, that this was where, if you didn't have one already, you could pick up a Fish 'n' Game permit to go up the Novi with rifles, for moose. Having done all of this, the two men, Fred Jordan of Tanana and Jim Honea of Ruby, sat down on a couple of stumps and waited for Roland Quimby.

September is a splendid time to be on the Novi. Warm days and cool nights, mosquitoes in full retreat, hardwood foliage bright against the Gothic spruce. It is a flat, muskeggy kind of country upstream, with ponds and bogs enough to wet the fetlocks of a fair number of moose, and browse enough to give the bulls a head start toward trophy antlers. Probably, the Novi has always been a pretty good place for browsers, though, going back far enough, of a different kind. Upriver a way, years ago, earlier travelers found mastodon bones exposed in the side of an undercut bank; and ever since, there has been speculation as to whether these great Pleistocene elephants were ever hunted here by men, and if so, whether the hunters were settled-down residents of the country or outsiders trespassing through, on their way to Nowhere from Asia.

Roland Quimby was coming to the Novi more or less from that direction though he had started a good bit closer, in Galena. Quimby is the state's wildlife biologist for the middle Yukon region. Into this turf of his, you could drop the entire state of Kentucky and still have room for Maryland, if you spread it around the edges. In Louisville or Annapolis, a biologist gets in his car and is out of bounds in an hour. In Galena, Quimby gets in his putt-putt to make the rounds and has to count days to make sure he'll get home before freeze-up. And now he was up beyond Ruby and Kokrines, turning at the Novi to Jordan and Honea's camp on the eve of Opening Day.

All through the afternoon, before Quimby's arrival, and my own, Jordan and Honea had sat on the point of land counting boats. Eighteen had come by since noon, mostly small boats with two or three hunters in each, but some with groups much larger. Altogether, Jordan figured, there were probably sixty rifles upriver, not counting those coming in by floatplane. The traffic let up for a while and then, just before dark, four more boats came by, including a cabin cruiser and a larger vessel of a kind that once might have been used for commercial fishing. I counted eight faces on the fishing boat, but there might have been more hidden among the crates and duffels and coolers and tarps and tents, and oil drums, cluttering the deck.

Two of the men needed permits and came ashore. They were from Fairbanks. They said they had put into the Yukon off the Haul Road, 230 miles upriver. They hoped to rendezvous in the morning with another boat that had put in at Manley Hot Springs, on the Tanana River. They wanted to know how many hunters were already checked through, ahead of them. "Lots," said Fred Jordan. Honea and Jordan were filling out the permits. They were not regular employees of the Department of Fish and Game; just temporaries, salaried under a grant to the state from the Bureau of Indian Affairs. One of the Fairbanks hunters kept looking at Quimby and me as Jordan asked him some routine questions for the permit. The hunter seemed to be wondering what an Indian was doing here on white man's business. I wanted to say to him, but didn't: What are *you* doing here on *Indian* business? Then the two went away with their permits, and Quimby called after them, "Take 'er easy." The hunters turned and waved. "Don't know what they'll do if they get a moose," said Quimby, watching the boat pull away with its gunwales scant inches out of the water. "If they try to take one out of here, they'll sink."

After supper, we sat by the fire, roasting our boots. Fred Jordan told us of the people's resentment in Tanana when the boat hunters come through. Jim Honea said it was probably not as bad in Ruby since the boat hunters rarely went that far, though a few went even beyond, past Galena and then up the Koyukuk.

"Most of the hunters are from Fairbanks," I said. "Where are the local people?"

"Busy with other things," Jim Hart put in. He had decided to spend the night and go back to Ruby in the morning. "Commercial fishing just ended here the other day. People are getting in their firewood now. And the weather's still warm. Lot of the people don't have the freezer capacity for a moose. They'll wait until the end of the month. Then it'll be cold enough to hang the meat in a shed."

"So a ten-day season in September doesn't have much value for the local people."

"Let's just say," said Jim Hart, "that it's not used."

Quimby dropped another spruce log into the fire. The log flared, and light flickered softly across his face. After a while, he said, "If there's anything that's really impacting the boreal ecosystem up here, it's not mineral development and it's not the pipeline. It's the BLM [Bureau of Land Management] and its policy of putting out fires." Around the campfire, heads nodded agreement. "I don't know," he went on. "If it keeps going like this—I mean as far as moose are concerned—only thing to do is drop back and punt."

Forest fires seem to be the key to moose survival in interior Alaska. A fire will sweep away the spruce cover, fertilize the earth with its ashes, and bring on a bloom of rich browse. Studies show a big difference between moose densities in old-growth forests and those on burnt-over lands some five years, say, after the fire. Yet the BLM, for the most part, still subscribes to the gospel according to Smokey the Bear. And so does the state of Alaska, which, for all its official obeisance to hunting, seems more intent on growing mortgages than moose.

In the morning, Hart went back to Ruby, to put away fish for the winter, while Quimby and I moseyed along the Novi, checking out sloughs for moose. And it wasn't long before we saw one, a cow, about a hundred yards off at the dry end of a meander. Quimby throttled down the outboard, stilled it, and we drifted. "I guess this beats going to meetings," he said.

"It ought to," I said. "You must take a lot of heat."

"They never prepared me for it at Syracuse. Few years ago, the forestry school sent letters to alumni asking how well we felt the curriculum prepared us for our work. I wrote back saying everything was fine, but that I sure could have used some learning in the politics of wildlife."

"The Natives don't think very highly of you guys."

"So I've discovered. But we're not trying to win a popularity contest. We're trying to manage a— There she goes." I looked down the slough in time to see the cow pussyfoot into a line of willows. Quimby went on. "I see RurAL CAP people and sport hunting people come into these meetings and shout, 'Hey! How about us?' But I've never seen a moose come to any meeting. I kind of feel *someone's* got to speak for the moose."

Onion Portage

Before it was over, there was another river, another golden autumn morning looking for game. This river was the Kobuk, two hundred miles from Ruby, north by northwest; the morning, at a place known as Onion Portage, where Kobuk people used to shortcut a riverine oxbow before aft-slung motors and fossil fuel made portaging silly. Bob Belous of the National Park Service was with us, and David Cline of the National Audubon Society, and Nelson and Edna Greist, an Eskimo couple from Ambler, upstream. Proof of the pudding that State Game Director Ron Somerville was right on the target: an "unholy alliance between the Natives and preservationists." What more could you ask?

The previous afternoon, we had come downriver from Ambler in Greist's boat. We passed some fish camps, a few other boats with berry pickers chugging upstream, passed the Portage and Greist's own camp nearby, and pulled in at the homestead of Howard and Erna Kantner on a hill overlooking a broad valley near the Kobuk's confluence with the Hunt River. Beyond the hill were the Baird Mountains, and unseen

beyond them, the Noatak Valley and the main stem of the Brooks Range. Beyond that, the Arctic Slope, north by northwest. And then, nothing. Not even Nowhere.

Howard and Erna Kantner—he from Toledo, she from Cleveland—have lived on the Kobuk River for sixteen years. They have two children. Their home is a log igloo built into the side of the hill, sod-roofed, one room with alcoves, and windows on one side only, facing the river. There is a wood stove, made from an oil drum; a small windmill with generator, for light in the winter; a garden with zucchini, for the summer; an out-house, a sauna also built into the hillside, and a meat shack on stilts. For a month in the summer, the family goes to Kotzebue to work in the commercial fishery. In the winter, Kantner traps lynx. They eat the lynx meat; also berries, fish, and caribou, and sometimes moose. In good years, the caribou come south out of the mountains along the Hunt River in the fall, and Kantner takes them on the tundra plain behind his hill, as the ancient people may have done when they, too, lived in igloos of log and onion portage.

We climbed the hill and sat with the Kantners, drinking coffee and talking about the country. Their place, and the Portage, lie just inside the eastern boundary of Kobuk National Monument. The Kantners are uneasy about living inside a park, especially since it happens they don't own the land. They simply moved onto it, sixteen years ago, and no one in the federal government seemed to care much, one way or the other. But suddenly the government does care, for Bob Belous of the Park Service was here in their home now, speaking of options, of leases or conveyances. There would surely be some accommodation. And the Kantners listened closely, nodding their heads; wondering, possibly, how different it might be with the Smokey the Bear hats cruising back and forth on their street, the river.

Dave Cline and Belous wrestled with that idea far into the night, after we left the Kantners, in a candlelit cabin not far from the Greists' fish camp. The cabin was built by the late J. L. Giddings, the Brown University scientist whose trowel first uncovered the middens and house pits of the long-ago

caribou hunters of Onion Portage. And Giddings had lived here through all the summers of his painstaking dig.

In the morning, while Nelson Greist loaded the boat with turnips from his garden, and Cline scouted the shoreline for wild onions, Belous and I walked up through the site of the main dig to a knoll overlooking the river on one side, and, on the other, tundra rolling off to the barren slopes of the Bairds and the notch where the Hunt River comes out of the mountains.

Belous said: "From here you can see forever. From here, people for ten thousand years have been looking up at that pass, and at this time of year, too. There weren't any spruce or birch here then, along the river. The trees didn't come in until about seven thousand years ago. But the people were here then. Imagine it. The men with their spears, coming up here to wait for the caribou. The herd coming down from the mountains, piling up at the edge of the river, then plunging across. That's probably where the people took most of them. In the water, from boats. All those years. My God, what a resource."

Giddings himself had pictured the early hunts in much the same fashion. In his book *Ancient Men of the Arctic*, he wrote of the caribou streaming "determinedly by the thousands down past the slopes of Jade Mountain onto the high ground leading to Onion Portage." And there, he guessed, the Kobuk people had built "diverting fences to lead the caribou down slopes and into the water where they might be slaughtered with spears from one-man bark canoes. As soon as the animals began to appear," Giddings went on, "men, women, and children all took part, urging the caribou along until they plunged into the stream where the spearsmen waited. I could visualize the brown-gray herds pouring rhythmically over the bare slopes between the mouth of Jade Creek and Onion Portage, the splashing of paddles in the boats, the plunging of spears and knives into the demoralized swimmers, the spurts of blood mingling with the rush of the blue Kobuk water, and the dead and dying animals, held aloft by their buoyant coats, drifting with the current to the gravel beach at Onion Portage."

The caribou would be coming soon. We had seen the lead-

ers the day before, from the air, survivors of the herd that had crashed and was on its way back, building strength in numbers. The lead bulls were out on the plain below Jade Mountain, breasts showing white against the purpled heath. Already the word had gone out in Ambler and Kiana and Noorvik. The men in their boats would be on their way any day now. With rifles.

Belous had been watching the pass with his hand at an angle against the temple, shading his eyes. Suddenly the hand came down, the wrist flicked out of the cuff of his jacket, the edge of a watch flashed in the sunlight. Belous seemed surprised, and maybe a little bit sorry, that the watch was there.

"Time we were getting back?" I asked.

Belous nodded, but his eyes were still fixed on that notch in the mountains.

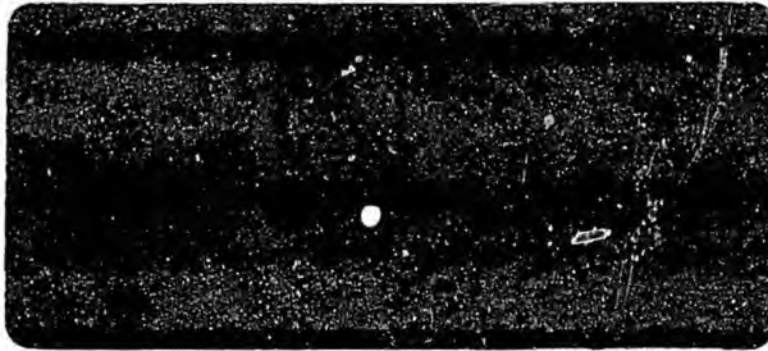
Book Five

COUNTRY MATTERS

ALASKA OUTDOOR COUNCIL
SUBSISTENCE CONSENSUS POINTS

AUGUST 21, 1985

1. Permitting: A permit will be required for subsistence preference use. Permitting will be based on personal or family qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that: (1) the wild resource taken be used for personal and family consumptive use only; (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent family; and (3) the permit should be limited to a family unit with income from all sources at or below Federal poverty levels with no more than one subsistence license per family unit.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations regarding applicable or substituted species by area, seasons, quotas, bag limits and methods and means as authorized by the Boards of Fish or Game. The opportunity to harvest will be given a preference but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges or commercial sale shall be included in subsistence use.



Alaska Department of Fish & Game
Division of Subsistence
Technical Paper Series



TECHNICAL OVERVIEW OF THE STATE'S
SUBSISTENCE PROGRAM

by
Dennis D. Kelso

Technical Paper Number 64

Alaska Department of Fish and Game
Division of Subsistence
Juneau, Alaska
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I. INTRODUCTION

Alaska's human history is thoroughly entwined with the use of wild, renewable resources. Among northern aboriginal peoples, adaptations directly related to patterns and cycles of resource availability are among the key elements of sociocultural differentiation. After contact with western society, the harvest and distribution of locally available food and materials continued to provide essential economic, nutritional, cultural and social benefits to a large number of communities and households. For non-Native residents, as well, the traditional use of fish and game has satisfied similarly important needs. Today both Natives and non-Natives participate in subsistence economic systems. These economies may be understood as non-codified systems of production and distribution which effectively facilitate the harvest, use and exchange of renewable resources. Although modern subsistence systems in Alaska usually have some cash flow, they produce goods primarily for local consumption rather than for export and have only limited connections to the market economy. See Lonner, T., Subsistence as an Economic System in Alaska: Theoretical and Policy Implications (1980). Even in towns having viable non-subsistence economic elements, subsistence systems nevertheless may be functional and vital to the entire community at certain times of the year, or to subcommunities, groups, or households which rely on subsistence harvests.

II. POLICY DEVELOPMENT PRIOR TO ENACTMENT OF THE STATE'S SUBSISTENCE STATUTE

Against this background, the State of Alaska has generated policies, research, and regulations to address subsistence. The evolution of

these developments began at statehood. However, the State's first Fish and Game Title, enacted in 1959, contained only one reference to subsistence. Subsistence fishing was identified as non-commercial fishing with a gill net, seine or fish wheel. See AS 16.05.940(17). Accordingly, the Board of Fish and Game regulated non-commercial gill net and fish wheel fishing as subsistence. Although subsistence fishing regulations were adopted, the Board did not establish specific criteria for participation in the fishery; anyone could apply for a subsistence fishing permit.

In regulating game harvests, the Board did not adopt explicit subsistence provisions or differentiate between subsistence hunting and other types of hunting.

This approach to subsistence must be considered in context: harvest competition was still relatively low from Alaska's small population; in many areas enforcement of regulations was minimal or non-existent; and information on the extent and patterns of subsistence use was not readily available. Under these circumstances the Board concluded that its bag limits and seasons were sufficient to provide for subsistence.

Even before increased harvest demands from all user groups led the Board to adopt formal policies on subsistence, the Alaska Legislature demonstrated its concern for the continuation of subsistence opportunities. In 1961, the House passed a resolution urging amendments to the federal Migratory Waterfowl Act which would have allowed spring hunting of migratory waterfowl; the House emphasized the importance of this harvest

to residents of northern and western Alaska. See 1961 Alaska Sess. L., House Resolution No. 29 (April 3, 1961). In 1963, the Senate requested the Secretary of the Interior to rule formally "that migratory waterfowl may be taken in Alaska by persons who have been traditionally or are otherwise dependent on them for subsistence." 1963 Resolutions of Alaska, Senate Resolution No. 50 (March 26, 1963).

In 1975 the Alaska Legislature divided the Board into distinct Boards of Fisheries and Game. See AS 16.05.251 and AS 16.05.255. For the first time the legislature also authorized the Board of Game to regulate subsistence hunting apart from other types of hunting. See AS 16.05.257 other provisions governing the Board's authority in relation to subsistence use appear in AS 16.05.255). The legislative letter of intent accompanying House Bill 369, which was adopted as chapter 199, Session Laws of Alaska 1975, contained the following language:

It is the intent of the majority of the House Resources Committee in reporting out HB 369 to have the Board of Fish and Game adopt regulations relating to subsistence hunting parallel to the regulations governing the existing fishing regulations.

It is not the intent of the committee to deny subsistence hunting to any resident of the state of Alaska who is eligible to subsistence hunt. It is further the intent of the committee that the Board define subsistence hunting by regulation.

In 1976, the legislature changed the subsistence hunting provisions so that local residents could petition for subsistence hunting areas. See AS 16.05.257. In its findings, the legislature stated:

[T]raditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and . . . 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.

Section 1, chapter 269, Session Laws of Alaska 1976.

During the same year, the Boards adopted a policy statement which provided, in part:

By reason of culture, location, economic situation or choice, large numbers of people will find it impossible to abandon or alter their way of life at a pace paralleling changes brought by new shifts in land status and ownership, nonrenewable resource developments, road extensions and transportation improvements and a phenomenal rate of population growth. . . .

The existing variety of cultures and life styles in Alaska are of great value and should be preserved. While limitations on the productivity of fish and game must discourage continued increases in the numbers of subsistence type resource users, domestic utilization is still of fundamental importance to many Alaskans, and accordingly it is assigned the highest priority among beneficial uses.

Policy Statement on Subsistence Utilization of Fish and Game, Alaska Board of Fish and Game and the Commissioner of Fish and Game, #75-12-FB.

The Board of Game soon attempted to implement this policy through an emergency regulation allowing a limited harvest of bulls from the then-declining Western Arctic Caribou Herd. The regulation authorized 3,000 permits to be distributed among 16 northern villages. The village allocations were to be based on recommendations of village councils and corporations in light of population, need, availability of alternative food and employment, and other factors which assist in meeting "minimum sustenance" needs. This action would have provided a clear priority for rural users of the Western Arctic Herd. However, the Alaska courts ruled that improper administrative procedures had been used in implementing the regulatory decision. Thus, without reaching the question of the Board's authority to allocate on the bases chosen, the court nullified the action. See State v. Tanana Valley Sportsmen's Association, 583 P. 2d 854 (Alaska 1977).

III. POLICY DEVELOPMENT IN THE PERIOD BETWEEN ENACTMENT OF CHAPTER 151, SESSION LAWS OF ALASKA 1978, AND ENACTMENT OF PUBLIC LAW 96-487 (DECEMBER 2, 1980)

Between 1975 and 1978 numerous bills were introduced in the Alaska Legislature to make provision for subsistence: Ultimately, House Bill 960 emerged as the composite legislative vehicle for resolving the various policy approaches. H.B. 960 became chapter 151 of the 1978 Alaska Session Laws. The full text of the statute appears in Appendix 1. When it became effective on October 10, 1978, the new statute established specific parameters for the State's subsistence program. Among the most significant provisions are the following:

1. A definition of "subsistence uses" which leaves to the Boards of Fisheries and Game the task of giving content to "customary and traditional uses" through the Board's normal administrative procedures;
2. Priority for subsistence uses in allocations of both fish and game resources;
3. Mandatory procedures for use by the Board of Game when considering special hunting regulations for subsistence;
4. A new research program within the Department of Fish and Game to provide baseline data, issue-specific information, and policy recommendations related to subsistence use of fish and game.

A. The Department of Fish and Game Subsistence Task Force

The enactment of chapter 151, Session Laws of Alaska 1978, meant that the Department and the Boards would have to make certain adjustments to meet the statutory mandate. In August 1978, the Commissioner of Fish and Game appointed a Subsistence Task Force to advise him on appropriate steps for implementation of the new law. In November 1978 the Task Force issued its report containing numerous recommendations. This report is attached as Appendix 2. Its conclusions were of necessity

limited by the extremely small amount of data then available on subsistence systems, but they emphasized the importance of an energetic, integrated program -- including critical regulatory steps:

[T]he Boards of Fisheries and Game will carry the principal burden in defining terms expressed in the law, in determining what constitutes 'subsistence use' in practice, in deciding where and for what species a subsistence priority should be established, and in deciding by what regulatory means this priority will be implemented.

Final Report of the Subsistence Task Force, Alaska Department of Fish and Game (November 20, 1978) at 2.

The Task Force noted that "a number of existing policies, regulations, and management strategies accommodate or provide a preference to subsistence-type uses." Id. at 4. In addition, the report observed:

A wide range of regulations have been promulgated which favor local uses through timing and duration of seasons, liberal or non-existent bag limits, legalization of sale or barter in some cases, constraints on means of access, and even selective enforcement. . . . However, it is also clear that in some cases these mechanisms are no longer adequate in practice, or may not meet new legal criteria. While the Task Force recognizes that various changes in details of policy and in regulations will be necessary, it is important to emphasize that the flexibility of the present regulatory system can accommodate the changing needs of both subsistence and other resource users.

Id. at 4-5.

B. The Boards of Fisheries and Game: Policy Statements and Regulatory Actions

The Alaska Boards of Fisheries and Game also acted quickly to clarify how the existing system would be used to meet the new law's requirements. During their spring 1979 joint meeting, the Boards adopted a policy statement which provided, in part:

Whenever possible, the subsistence priority should be achieved by existing regulatory techniques, such as open and closed seasons, bag limits, control of methods and means of take, and controlled use areas. When a resource is plentiful enough to accommodate all uses, the Boards may not need to distinguish between different types of use. Special regulations such as designation of a subsistence hunting or fishing area to allocate a subsistence resource to local subsistence users may be enacted if the above approach is inappropriate or ineffective.

If further restriction is necessary, priority among subsistence users will be based on 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 Board will depend heavily on data gathered by the Subsistence Section in achieving priority for subsistence and in considering the three factors above.

Alaska Boards of Fisheries and Game, Policy #79-5-JB (March 1979).

This policy is attached as Appendix 3.

The Alaska Attorney General's opinion which accompanies this overview analyzes how the Tier I - Tier II priority structure addresses the interests of rural residents. It is important to note here, though, that the Boards' statement expressly considered the needs of users residing in rural areas, i.e., those users who are "local" to the resource:

Implicit in the two criteria of 'direct dependence' and 'availability of alternative resources' is the idea that a subsistence priority is based to some extent on the actual needs of people. Subsistence needs of individuals, families, and cultural groups may differ in type and degree. . . . Elements to consider in establishing the level of subsistence need include location, local cultures, tradition, customs, and alternative resources.

The Boards recognize the need for regional differences in the approach to fish and game management and they will maintain flexibility by periodically examining social and economic conditions, as well as biological conditions which may warrant a change in subsistence uses and the Board's regulations.

Id.

The non-binding guidelines adopted by the Boards also articulate steps to protect local harvest opportunities. These guidelines provide, in part:

1. When the Board finds it necessary to restrict the harvest of a resource, the Board shall determine appropriate bag limits and season restrictions governing all user groups. The subsistence preference may be accomplished by setting limits and seasons sensitive to local use patterns in the area affected.
2. When the Board finds it necessary to restrict the harvest further, the Board shall determine appropriate controls on access governing all user groups. The subsistence preference may be accomplished by making it more inconvenient for distant user groups to engage in harvest.
3. When the Board finds it necessary to restrict the harvest further, the Board shall determine appropriate methods and means governing all user groups. The subsistence preference may be accomplished by adopting methods and means most available to local user groups.
4. When the Board finds it necessary to restrict the harvest further, the Board may create a regulation which allows for adequate subsistence harvest by residents of the area and a limited sport harvest by other user groups. This area accomplishes the subsistence priority addressed in 1978 SLA 151.
5. When the Board finds it necessary to restrict the harvest further and still implement the subsistence priority, the Board shall create a subsistence area which allows for a quota-controlled harvest by residents of the area only. . . .
6. When the Board finds it necessary to restrict the harvest to a limited number of area residents, the Board shall utilize criteria for allocation (consistent with 1978 SLA 151) among area residents based, in part, on the suggestions and evidence provided by area residents. . . .

Alaska Boards of Fisheries and Game, Proposed Procedure for Implementation of 1978 SLA-151 (March 1979) (emphasis added). The full text of the Proposed Procedure is attached as Appendix 4.

The Boards' policy statement also noted that subsistence uses provide a variety of benefits which are not limited to nutrition:

The Board of Fisheries and the Board of Game recognize that existing cultures and life styles in Alaska are of great value and should be preserved. Accordingly, customary and traditional subsistence uses of fish and game are assigned a priority among beneficial uses. . . .

Beyond directly satisfying food requirements, home consumption of fish and game tends to preserve cultures and traditions and gives gratification to a strong desire possessed by many Alaskans to harvest their own food. The latter functions seem genuinely important to the physical and psychological well-being of a large number of Alaskans.

Alaska Boards of Fisheries and Game, Policy #79-5-JB (March 1979).

C. The Subsistence Section, Alaska Department of Fish and Game in the Period Prior to December 2, 1980.

At about the same time as the Boards were considering their policy statement, the new Subsistence Section of the Department of Fish and Game was just beginning operations. Its role, development and funding are significant indices of the State's progress in creating a high quality subsistence program which satisfies Title VIII requirements.

The duties of the Subsistence Section were specified in AS 16.05.094:

The section of subsistence hunting and fishing shall:

- (1) compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;
- (2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;
- (3) make information gathered available to the public, appropriate agencies, and other organized bodies;
- (4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

The research responsibilities of the Section fall into two major areas:

(a) baseline research having multiple utility for informing the public, government agencies and other entities, see AS 16.05.094 (1), (2) and (3); and (b) issue-specific information gathering for use by the Department, the Boards, and the public. See AS 16.05.094 (4), (5) and (7). In addition, the Section's policy recommendation roles extend beyond allocation to include the full range of regulatory matters which may affect subsistence uses. See AS 16.05.094 (4), (5) and (6).

The Alaska House of Representatives Special Committee on Subsistence described the evolution of the Subsistence Section as follows:

Much of the responsibility for implementation of the subsistence law was assigned to the new, statutorily created, Subsistence Section in the Department of Fish and Game. See AS 16.05.094. Because the Department had never conducted social research, an immense gap existed between programs for biological studies and programs needed for socio-economic research on subsistence. Indeed, the Department was in no position to provide the extensive data needed by the Boards to make reasonable decisions affecting subsistence. By contrast to the other divisions of the Department, the duties specified by AS 16.05.094 for the Subsistence Section give heavy emphasis to socio-economic research with none of the management and enforcement functions normally associated with the Department.

In order to meet [its statutory] responsibilities, the Subsistence Section needed a staff which could not only understand basic biological relationships, but also conduct effective socio-

economic research. Of course, this required the Department to hire personnel with substantially different skills than those normally associated with fish and game management. As a result, the Subsistence Section was not actually operational until mid-1979.

Although the subsistence law was approved by the Governor in July 1978, staffing the new Subsistence Section was a time-consuming process. A Chief and Assistant Chief were appointed in February 1979; and hiring of 'resource specialists,' the new Subsistence Section job class, was underway in mid-1979. Positions in Anchorage, Barrow, Bethel, Dillingham, Kotzebue and Nome were filled by late 1979. Addition of resource specialists in Fairbanks, Galena and Juneau required several more months; and regional supervisors were not hired until early 1980. Applicants also were recruited through the fish and game technician registers and assigned to specific field offices.

In addition to these personnel matters, the Section made administrative arrangements and equipment purchases associated with field office start-up. Taken together, the normal steps necessary to become operational meant that the Subsistence Section was not able to begin actual field work until mid-1979, and was not fully operational until 1980.

Since its inception, the Section has produced more than 30 technical reports. Initial Subsistence Section projects were directed primarily toward resource allocation problems and regulatory proposals to be considered by the Alaska Boards of Fisheries and Game. In addition to these matters, recent studies have addressed a variety of critical resource use problems, and have substantially increased the information available on the roles of subsistence in family and community life; historical and present patterns of use; elements of subsistence economic systems, and many other issues. . . .

The Section's highly productive research program has provided essential data for decision making by the Boards and has established fundamental baseline data for many areas. Such studies often are the only work ever addressed to these problems; and the Section's ground-breaking applied research has moved the Department of Fish and Game into a potentially productive era of using both biological and socio-economic research tools.

The Section's program continues to be exceptionally active. Numerous projects currently are in progress throughout the state. Staff members conduct their field operations from offices in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kotzebue, and Nome, as well as several small communities.

"History and Implementation of CH. 151, SLA 1978, the State's Subsistence

Law," Special Committee on Subsistence, Alaska House of Representatives, First Session, Twelfth Legislature (May 15, 1981) at 16-20.

Despite the difficulties inherent in establishing a new program where none had existed previously, the Subsistence Section rapidly established a field base and a set of preliminary research priorities. Initial research products were used directly by the Boards during the 1980 regulatory cycle. For example, the highly successful Copper River Subsistence Salmon Management Plan was based substantially on Subsistence Section research data. See 5 AAC 01.647. The Plan is attached as Appendix 5. Research projects were begun as rapidly as field positions could be filled. In addition, bilingual local persons were hired to work with the Section's resource specialists. By December 1980 a statewide staffing pattern had been established, two mid-level program staff had been added outside of Section headquarters, and studies were in progress for all regions.

Although the Section's early research efforts were aimed primarily at major allocation issues, the unavailability of reliable baseline data compelled the Section to begin developing its own program of applied research to address these data needs. Potential subsistence impacts resulting primarily from proposed land use changes and industrial development underscored the importance of high quality baseline information which could be used in various processes: impact assessments, land and resource use planning, and community decision making. Accordingly, during calendar year 1980 the Subsistence Section planned projects within each region to conduct applied baseline research. By December

1980 these efforts were developing as the foundation of the Section's program, and other issue-specific studies were designed in conjunction with sound baseline work.

D. Subsistence Regulations and Public Participation in Regulatory Processes

Alaska law expressly provides for a system of advisory committees "composed of persons well informed on the fish or game resources of the locality." AS 16.05.260. The advisory committee chairman has authority to hold public hearings on fish or game matters. Id. In addition, the statute explicitly contemplates regulatory recommendations by the committees:

Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations.

Id.

In making regulatory decisions affecting subsistence uses, the Boards directly utilize information provided by advisory committee representatives at regulatory meetings. Although the procedures of the two Boards differ in detail, both provide opportunities for advisory committee representatives to offer information as the Boards consider particular regulatory proposals. This goes well beyond the participation normally provided to the general public.

In addition to the local advisory committees, the Boards established "a system of regional fish and game councils to provide a regional forum

for the collection and expression of opinions and recommendations on matters relating to fish and wildlife resources and to assist the Board of Fisheries and Game in deliberations concerning promulgation of regulations." 5 AAC 96.200. The Boards also created six "fish and game resource management regions": Southeast, Southcentral, Southwest, Western, Arctic, and Interior. 5 AAC 96.210. These regions encompass all lands and fresh waters and were identified "[f]or the purposes of conservation and management of the fish and wildlife resources of the state." 5 AAC 96.210. A copy of the 1980 Regulations for Local Fish and Game Advisory Committees and Regional Councils is attached as Appendix 6.

The Board of Fisheries and the Board of Game utilized substantially different approaches in adopting regulations for subsistence uses. The Fisheries Board enacted separate regulations for subsistence fishing; this approach was consistent with the formal divisions between commercial, sport, and subsistence fishing which had existed since statehood. The Alaska Subsistence Fishing Regulations for 1979 and 1980 are attached as Appendices 7 and 8. In contrast to this approach, the Board of Game provided for all harvests within the same regulatory framework. This approach was consistent with the Boards' policy statement which emphasized that special regulations to accommodate the subsistence priority would be used only when other methods are not sufficient. See Alaska Boards of Fisheries and Game, Policy #79-5-JB (March 1979). The 1979 and 1980 Alaska Game Regulations are attached as Appendices 9 and 10.

IV. DEVELOPMENT OF POLICIES AND REGULATIONS IN THE PERIOD FROM DECEMBER 1980 UNTIL DECEMBER 1981

A. Joint Board Consideration of the Analytical Approach Suggested By the Department of Fish and Game¹⁹

The Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96-487 (December 2, 1980), became effective while the Boards of Fisheries and Game were conducting their fall joint meetings. The Boards listened to an explanation of the new law's implications from staff of the Governor and of the Attorney General, and were advised to proceed cautiously in assuring that the State retains full management authority. The Boards also reviewed the Tier I - Tier II priority format suggested by the Alaska Department of Law and approved the Department of Fish and Game position paper on subsistence.

The Department of Law suggested three levels of priority implementation corresponding to three general levels of resource abundance:

1. When resource populations are adequate to satisfy all user demands without impairing sustained yield, the priority does not come into play;
2. Tier I: When resource populations are such that some harvest restrictions are necessary to maintain sustained yield or to assure continuation of subsistence uses, a priority must be provided to subsistence;
 - a. The Boards have discretion to determine how the priority should be structured;
 - b. The Boards can allow non-subsistence uses to continue as long as the priority for subsistence is adequate;
3. Tier II: When further restriction is necessary to maintain sustained yield or to assure continuation of subsistence uses, three statutory criteria must be employed:
 - a. Customary and direct dependence upon the resource as the mainstay of one's livelihood;
 - b. Local residency; and
 - c. Availability of alternative resources.

The Board can allow non-subsistence uses to continue if it concludes that they are in the public interest and that the core subsistence use will receive adequate priority.

The Department of Fish and Game presented a position paper containing five recommendations for specific steps to assure that the subsistence priority is met:

1. Examine existing subsistence uses and regulations by area and species;
2. Characterize subsistence uses in Alaska on the basis of identifiable factors;
3. Select criteria and evaluative measures by which the statutory language will be implemented;
4. Include subsistence provisions in all management plans;
5. Follow decision-making procedures which integrate the subsistence priority and make statutory compliance a routine matter.

See Subsistence: A Position Paper, Alaska Department of Fish and Game (November 24, 1980). The position paper is attached as Appendix 11.

Of particular significance to the present overview are the two parts of the position paper covering characteristics of subsistence use and implementation of statutory language.

The Department of Fish and Game suggested a set of interlocked continua which might be helpful in describing customary and traditional uses:

Long <-----Time Depth----->Short
Rural<-----Community Base----->Urban
Kinship<-----Social Role----->Individual/Family
Community<-----Economic Role----->Personal Use
and regional
economic and nutritional
self-sufficiency

Food, clothing, fuel, tools, shelter, handicraft, barter, etc. <-----Actual Uses-----> Primarily food

Many resources (fish, game, fowl, vegetation, etc.) <-----Range of Uses-----> Few Species

More stable patterns <-----Pattern of Uses-----> Less stable opportunistic
(area, time, species, gear, efficiency, productivity, use level, sharing/bartering, division of labor, effort level, etc.)

Due to changing economic and resource conditions, and local population growth <-----Variation in use level and pattern-----> Due to high urban immigration

Primarily extended kinship community, inter-generational, and cultural <-----Social and Psychological Products-----> Primarily individual and immediate family

Subsistence: A Position Paper, Alaska Department of Fish and Game
(November 24, 1980) at 3-4.

The position paper noted that the Boards have administrative authority to determine what combination of points along these continua constitutes customary and traditional use in order to provide the priority. In addition, the left ends of these continua taken together may be understood as corresponding generally to rural subsistence patterns.

However, the Department emphasized that the continua were not intended as absolute formulas but rather were offered as a framework within which

the Boards can make decisions on a case-by-case basis. That is, although the Boards might rely upon the continua as analytical tools, the particular combination of factors indicating customary and traditional use should be determined specifically for each situation considered.

In suggesting methods for implementing the statutory language, the position paper recommended ways in which subsistence could be accommodated using routine procedures and case-specific data:

It is suggested that the Boards consider customary and traditional uses to be those noncommercial and nonwasteful uses (as defined in AS 16.05.940[]) . . . which have been pursued by a community or a group of persons for a significant period of time. . . .

[I]t is the historic use pattern of the community or group which is to be accorded a priority in regulation. the use pattern for Tier I is made up of a number of elements needing consideration (e.g., areas, times, methods and means, species, stocks, productivity, efficiency, and so on). Evidence on these elements should be considered by the Boards.

The range of elements useful for consideration by the Boards in Tier I and Tier II decisions may be applied on a statewide basis. However, the criteria and measures within each element may vary on an area-by-area, case-by-case basis.

For example, in Tier II decisions, 'direct dependence' is a statutory element for consideration. The Board may conclude that one criterion within 'dependence' is the role of the resource in meeting nutritional needs. The measure within the criterion may be, for example, the number of meals per week in which the resource is normally used. Other measures could be the timing of consumption (e.g., first fresh meat in spring) or nutritional significance (e.g., source of particular fats or oils, foods that preserve well for winter.) It is suggested that the Boards begin their analysis of customary and traditional use with an assessment of user profiles and use patterns on a case-by-case basis. This would give the Department an opportunity to uncover the elements which appear naturally in real-life situations. After consideration of a number of cases, the Boards could then identify those elements, criteria, and measures which they have found most useful in their analyses. This process will, in turn, make the Department['s] research and Boards' decision-making more routine.

Id. at 6-7.

B. Board of Fisheries Regulatory Actions

At the December 1980 meetings, only the Board of Fisheries considered regulatory proposals. (The Board of Game normally conducts regulatory business during its spring meeting.) At that session, the Board received advisory committee and staff reports as well as public testimony on subsistence and adopted most of its finfish regulations for 1981. The Alaska Subsistence Fishing Regulations 1981 are attached as Appendix 12.

The Board also adopted Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, #80-79-FB, which established ten characteristics for identifying "customary and traditional" uses of Cook Inlet Salmon. The findings and policy #80-79-FB are attached as Appendix 13. The Board deferred final action on Cook Inlet salmon regulations until its spring meeting. In April 1981 it considered additional testimony and reaffirmed the basic thrust of the previously adopted criteria. In its Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB, the Board recognized that "the past and current permitting system and regulations governing subsistence fishing in Cook Inlet do not necessarily reflect and protect the customary and traditional use of salmon resources in the area." In order to rectify these inconsistencies, the Board adopted the following "characteristics", all of which were to be applied in identifying customary and traditional uses:

1. A long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance.
2. A use pattern established by an identified community, sub-

community, or group having preponderant concentrations of persons showing past use.

3. A use pattern associated with specific stocks and seasons.
4. A use pattern based on the most efficient and productive gear and economical use of time, energy, and money.
5. A use pattern occurring in reasonable geographic proximity to the primary residence of the community, group, or individual.
6. A use pattern occurring in locations with easiest and most direct access to the resources.
7. A use pattern which includes a history of traditional modes of handling, preparing, and storing the product (without precluding recent technological advances).
8. A use pattern which includes the intergenerational transmission of activities and skills.
9. A use pattern in which the effort and products are distributed on a community and family basis (including trade, bartering, sharing, and gift-giving).
10. A use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

Alaska Board of Fisheries, Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB (April 6, 1981) (attached as Appendix 14).

The Board also applied these ten criteria to information on the record concerning uses of Cook Inlet salmon. The villages of English Bay, Port Graham, and Tyonek were found to have customary and traditional uses because they had established all ten characteristics. Accordingly, the Board adopted subsistence fishing regulations applicable to those communities.

For purposes of the present overview, it is important to note that the

ten criteria provide substantial protection for rural communities. Indeed, the content of these characteristics clearly makes it easier for residents of rural villages to establish their customary and traditional uses than for urban residents to make a similar showing. All ten criteria must be applied in evaluating evidence which indicates customary and traditional use; therefore, it is much more difficult for residents of urbanized areas to make the requisite showing. The communities which demonstrated their subsistence uses of Cook Inlet Salmon under the ten criteria were all small villages without road connections to a major urban area.¹

The Board's development and use of specific eligibility criteria are important for several reasons. Although the Board had adopted regulations since statehood in order to govern subsistence fishing and had made subsistence allocations since long before the effective date of the State's subsistence statute, this was the first time the Board had made a formal regulatory decision about which uses should be designated as subsistence.

In the past, subsistence fishing permits had been available to any applicant; no explicit eligibility standards had been applied. Accordingly, in many areas "subsistence" fishing had grown to mean something other

¹/ The Board recognized that "these use patterns may occur in road-connected communities as well as in non-road-connected areas" and that the ten characteristics may be established not only by communities but also by subcommunities, groups and individuals. Alaska Board of Fisheries, Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB, (April 6, 1981). However, on the record presented, the Board concluded that no other showing of customary and traditional uses of Cook Inlet Salmon had been made.

than the subsistence use contemplated by chapter 151, Session Laws of Alaska 1978. That is, in certain areas a high proportion of subsistence permittees were new participants in the fishery who had few, if any, historic, economic, or other established connections to the resource.

By using its 10-point formula, the Board was able to allocate salmon in an area of resource competition which previously had been characterized by unlimited issuance of "subsistence" fishing permits without regard to whether the use was customary and traditional. Accordingly, the Board's 1981 spring meeting laid important groundwork for a regular, predictable inquiry using the general approach suggested in the Department's position paper on subsistence.

C. Board of Game Regulatory Actions

The Board of Game took steps at its 1981 spring regulatory meeting which increased the likelihood that certain rural residents would receive a permit to hunt the Nelchina Caribou Herd. After hearing staff reports, advisory committee recommendations, and public testimony, the Board expressed its view that all Alaska residents who hunt the Nelchina herd for meat should be considered eligible for a permit at Tier I. The Board also noted that within this group is a smaller segment having a higher level of reliance on the resource.

The Board adopted regulations allocating 1600 permits to hunt the Nelchina Caribou Herd. Of this total, 1450 were reserved for resident meat hunters (Tier I in the Board's analysis) and non-resident hunters; 150 were tentatively reserved for users meeting Tier II standards. All permits were to be issued by random drawing. In addition, a special winter

season was created so that applicants receiving Tier II permits could take caribou when the herd is in the eastern part of its range.

To participate in the Tier II drawing for a permit to hunt the Nelchina Caribou Herd during the winter season, each applicant was required, in part, to show that he or she:

1. Resides in game management unit 13, 14A or 14B and has no permanent abode elsewhere;
2. Lives or has lived for the previous five years in a household "where not commercially taken fish and game have comprised more than half of the meat and fish of the diet"; and
3. Is a member of a household having a gross income of \$12,000 or less for the previous income tax filing year.

See 5 AAC 81.055(c) (3).

The Nelchina Caribou hunt conditions provided, in part:

1. No more than five percent of the permits will be issued to non-residents of Alaska;
2. Up to 150 Tier II permits will be valid for the fall and winter seasons; the remaining permits will be valid for the fall season only;
3. Applications for Tier II permits will be drawn first;
 - a. If all 150 permits are issued, the remaining unsuccessful applications will be included in the drawing for the fall hunt;
 - b. If fewer than 150 permit applications are received, excess permits will be available as part of the permit pool for the fall season.

See 5 AAC 81.055. A copy of Alaska 1981-82 Permit Drawing Hunts is attached as Appendix 15; the drawing for the 150 Tier II permits is described at page 3 under "Caribou Hunt 503". General application requirements and fees are summarized on page 1 of the drawing hunt brochure.

The Board of Game intended that the eligibility characteristics described

above correspond to the Tier II requirements of the Alaska subsistence law:

1. customary and direct dependence upon the resource as the mainstay of one's livelihood;
2. local residency; and
3. availability of alternative resources.

AS 16.05.255(b). Adoption of Tier II criteria represents the Board's clearest statement about eligibility for the subsistence priority, and it indicates how the Board intends to use these standards to protect the most dependent users. The Alaska Game Regulations 1981 are attached as Appendix 16.

D. Summary of Subsistence-Related Board Activities

The foregoing descriptions of Board policies and regulations are intended only to highlight Board actions affecting subsistence; this overview is not intended to suggest that the final form of Board policy has been reached. Prior to enactment of the State subsistence statute, the Boards had considered a variety of subsistence allocation issues; and subsistence regulatory proposals have been addressed on a case by case basis since the new law became effective. The Boards' approaches to subsistence continue to be refined. Indeed, regulatory proposals before the Boards at their December 1981 meetings may further this evolutionary process.

Although the Boards have chosen different approaches, both have adopted certain measures which tend to benefit rural residents. The diverse specific measures chosen are too detailed to be discussed here, but memoranda by the Department staff members who serve, in part, as

regulations advisors during Board meetings are attached as Appendices 17 and 18; these memoranda describe the Boards' diverse regulatory actions related to subsistence.

E. The Subsistence Division

The Subsistence Section was elevated to Division status by order of the Governor during 1981. This change recognized the importance of the subsistence program to the Department's mission. As of July 1, 1981, the Subsistence Division has the same status as all other divisions of the Department.

The Division has continued to develop its field-based research program in the directions discussed previously. The planning which was begun in 1980 for more comprehensive baseline research in all regions of the State was transformed into initial field efforts -- including contractual work in areas without Subsistence Division staff -- and into budget requests. These research functions have become even more important in light of the Fisheries Board's emphasis on community characteristics. In addition, the enactment of ANILCA has generated a variety of planning processes in which regional councils have a role. Accordingly, the Subsistence Division has strengthened its baseline efforts for fiscal year 1982 and plans enhanced baseline research activities for fiscal year 1983 to provide a better foundation for other ANILCA-related projects.

In 1981, the Subsistence Division also opened two new offices in rural communities, Nikolai and Fort Yukon, and staffed them with qualified local residents. In addition, Resource Specialists were hired for the

Southeast Alaska Region and for the Copper River Basin-Prince William Sound area in the Southcentral Alaska Region.

The following Subsistence Division research products ² were completed between December 1980 and December 1981:

- Andersen, D., Statewide Subsistence Bibliography and Index;
- Andersen, D., Subsistence Bibliography Project--Arctic Coast;
- Andersen, D., Subsistence Bibliography Project--Northwest Alaska;
- Andersen, D., Subsistence Bibliography Project--Northern Interior;
- Cunningham, P., A Technical Report Describing an Algorithm to Estimate Number of Persons Who Have Participated in the Cook Inlet Subsistence Fishery Four or More Years;
- Behnke, S., Contemporary Fish and Wildlife Use and the Economy of the Inland Denaina (draft);
- Behnke, S., Draft Options for Naknek River Subsistence Fishery;
- Behnke, S., Memorandum: Status of Subsistence Fisheries in Bristol Bay, 1980;
- Behnke, S., Naknek River Subsistence Proposals;
- Behnke, S., Subsistence Use of Brown Bear in the Bristol Bay Area: A Review of Available Information;
- Caulfield, R., Interim Report on the Survey of Permit Holders in the Tanana River Subsistence Permit Fishery (Subunit Y6-C);
- Caulfield, R., Tanana River (Y-6C) Subsistence Permit Fishery Utilization Study, 1981 Operational Plan;
- Huntington, C., Survey Information for Subsistence King Salmon Drift Gill Netting in Yukon Area District 4A;
- Kelso, D., Presentation to the Special Committee on Subsistence;
- Langdon, S., and Worl, R., Distribution and Exchange of Subsistence Resource Use in Alaska (Note: contractual study);

^{2/} A list of the Subsistence Division's major written products completed since the Division began operating in 1979 appears as Appendix 19.

Pedersen S., and Caulfield R., Some Elements of Subsistence Land and Resource Use Within the Range of the Porcupine Caribou Herd in Alaska;

Stanek, R., Subsistence Fishery Permit Survey: Cook Inlet -- 1980;

Stanek, R., Nelchina Caribou Use Assessment;

Stanek, R., Tyonek King Salmon Subsistence Fishery: 1980 Activities Report;

Stickney, A., Subsistence Resource Utilization: Nikolai and Telida -- Interim Report;

Stickney, A., Subsistence Resource Utilization: Nikolai and Telida -- Interim Report II;

Thomas, D., Nome River Subsistence Research Report;

Thomas, D., Norton Sound - Bering Strait Subsistence King Crab Fishery;

Thomas, D., Norton Sound Baseline Subsistence Study: Shaktoolik;

Veltre, D., and Veltre, M., A Preliminary Baseline Study of Subsistence Resource Utilization in the Pribilof Islands;

Wolfe, R., Yukon Delta Sociocultural Systems Analysis (draft) (Note: contractual study prepared for Alaska Outer Continental Shelf Socio-economic Studies Program, Bureau of Land Management).

V. THE DEPARTMENT'S ANILCA TITLE VIII IMPLEMENTATION PROGRAM

The Department began planning in 1980 for ANILCA implementation.

By early 1981, a comprehensive plan and a budget request had been prepared. During the 1981 legislative session, the Department's ANILCA implementation budget was approved. Approximately three and one-half million dollars were appropriated specifically for Title VIII implementation during fiscal year 1982 in the following project categories:

1. Establishing regional councils;
2. Operational and technical support for regional councils;
3. Resource assessments;

4. Litigation;

5. Data support for state and regional council representatives to park and park monument commissions.

The Department began full implementation efforts on July 1, 1981. The sequential phases of the Department's Title VIII effort will be implemented throughout fiscal year 1982 and will continue as a regular part of the Department's ongoing program.

A. Establishment of Regional Councils

Prior to ANILCA, the State's regional councils operated within general, flexible regions. The Department and the Boards have now initiated action to clarify the regional boundaries in order to reinforce the institutional role of the councils.

The Boards have always believed that flexibility is essential if the councils are to be effective. That is, fish and game frequently cross political and geographical boundaries. These resource populations may be taken in more than one region. In order for the regional council system to address the concerns of all the people who may harvest these animals, the councils must be structured to allow participation by all groups interested in a particular resource question.

In order to assure that regional differences in subsistence use are adequately accommodated and workable boundaries are developed, a public participation process was initiated during the summer of 1981. Two boundary delineation workshops were held in late September as the first steps in this public participation process. One of these workshops was organized specifically to include representatives of local advisory

first steps in this public participation process. One of these workshops was organized specifically to include representatives of local advisory committees and of groups interested in subsistence. The materials resulting from these workshops are attached as Appendix 20. Packets of information, including a variety of boundary options, were distributed to advisory committees, workshop participants, legislators, and others. Additional public comment was solicited prior to the Commissioner's selection of regional boundaries for submission as a proposal to the Boards. Substantial comment was received before the Commissioner's final choice. Proposed boundaries will be submitted to the joint meeting of the Boards of Fisheries and Game in December.

The Boards also will be considering regulations to govern the conduct of regional council business and the manner in which council recommendations are addressed. Although existing regulations establish procedures for regional council functioning, proposals will be offered which articulate the councils' authority and operations so as to make clear that the regular, formal council role apparently intended by Congress has been firmly established. In addition, the Board will consider proposals which incorporate the Title VIII standards for Board review of regional council recommendations.

Regulations governing the regional councils can be adopted only by the Boards of Fisheries and Game acting jointly. The Boards meet regularly in the spring and fall of each year to consider regulatory proposals. Accordingly, the December 1981 meeting is the Boards' first opportunity to consider proposals since the Department's ANILCA response program was

approved by the Alaska Legislature. It is also the first time specific proposals reflecting Title VIII regional council considerations have been submitted to the Boards. Because consideration of these proposals will not be completed prior to December 2, 1981, a summary of relevant action by the Boards will be submitted as a supplement to this submission.

B. Staffing, Technical Support and Scientific Data for the Regional Councils

The Department has begun to implement three kinds of support for the regional councils: (1) operational-logistical support, (2) technical liaison and social science data support, and (3) biological data support. The first of these, operational-logistical support, will be provided by six new professional positions plus clerical staff attached to the Executive Director, Alaska Boards of Fisheries and Game. To the extent practicable, these staff will be assigned to a particular council and be located full time in the region served by that council. They will assist the council in conduct of its day-to-day operations, including: arranging travel, agendas, and accounting services; distributing Board-related materials; responding to questions; facilitating intracouncil and intercouncil communication; recording minutes of meetings; assisting councils in transmitting their views to the Boards; advising the councils concerning available resources which may be useful in performance of council work; and providing logistical support for all phases of the council's authorized functions.

The Executive Director has prepared position descriptions which have been submitted for approval by the Alaska Department of Administration.

Recruitment and hiring can begin as soon as these administrative steps are completed. Because of the time lags involved in this process, it is unlikely that full staffing will be achieved by December 2, 1981. Nevertheless, the positions have been funded and the Department is committed to hiring qualified professionals. Progress in staff development for the councils will be summarized in a supplement to this submission.

The Subsistence Division currently is hiring two levels of professional staff to provide technical liaison and social science data to the regional councils. As part of its operating budget, the Division will add six Resource Specialist III positions. To the extent practicable, these staff will be assigned to and located in regions associated with particular councils. These staff will be qualified social science professionals with expertise in a range of field and institutional settings. Their functions will include: direct technical liaison to the regional councils; technical consultation with councils and staff regarding conduct of council functions; provision of extant technical and scientific data to councils; coordination and supervision of Division field research related to regional council concerns throughout the region; design and quality control of studies conducted at the regional council's request; and provision of technical services to the council in formulating its work products (e.g., annual reports and regulatory recommendations).

In light of these responsibilities, the Resource Specialist III's will have little time for original field research; accordingly, the Alaska Legislature approved two years of funding for six Resource Specialist II's

to conduct field studies in response to regional council needs. These efforts will build upon ongoing baseline work conducted as part of the Division's core program and will address three areas:

1. Problem-specific, applied research directed toward anticipated data needs of the councils;
2. Issue-specific, applied research in response to data requests of the councils;
3. Issue-specific, applied research in response to data requests of the councils' representatives to park and park monument commissions.

The Resource Specialist II positions are intended as full time field research positions, and to the extent practicable they will be located in the region served by a particular council.

Because Title VIII makes clear that the highest quality, most current social science data are necessary in order to fulfill regional council functions, the Subsistence Division's program is intended to provide sound baseline data (ongoing project), current data and technical liaison (new Resource Specialist III positions), and issue or problem area studies (new Resource Specialist II positions).

All the new resource specialist positions have been approved and recruitment is underway. Three of the six R.S. III's have been hired. It is anticipated that staffing will be substantially complete by early 1981.

In order to fulfill the regional councils' authorized functions, reliable biological information also is required. Accordingly, the Department's management divisions -- Commercial Fisheries, Game, and Sport Fish -- have been authorized to conduct data analyses and field studies which will

provide resource information to the councils. Although these tasks will differ depending upon the species and questions being studied, the following are representative steps:

1. Determine key harvest or conflict areas;
2. Review and assemble existing data for use by the councils;
3. Design and conduct field studies (e.g., surveys of harvest catch and effort, catch sampling, life histories, catalogs and inventories, surveys of resource abundance and population structure);
4. Compile and analyze new field data, including data processing functions;
5. Assemble and distribute new data to local advisory committees and regional councils.

The management divisions also will provide limited operational and technical support to the regional councils. Services anticipated for the local advisory committees and regional councils include preparing and presenting proposals and supporting materials, staff comments, and data or technical information on resource status and use. The Game Division also will supplement the council staff with clerical assistance, formal recording of the proceedings, audio-visual equipment, and other logistical services.

VI. SUMMARY

The State of Alaska has implemented a comprehensive subsistence program based upon the priority appearing in Alaska's subsistence statute. Research leading to both baseline and issue-specific data is conducted by the Subsistence Division, Alaska Department of Fish and Game. These data are used by the Boards of Fisheries and Game in considering allo-

cation proposals. The information also is used by state and federal agencies, local communities, and other entities in making decisions affecting subsistence land and resource use.

The existing local advisory committee and regional council system provides a participation framework that is consistent with Title VIII provisions. The Department and the boards presently are in the process of delineating regional boundaries within which the councils will operate. In addition, the Boards will consider proposals for regulations to govern the conduct of regional council business and the standards by which council recommendations are considered. The Department also has developed a plan for providing adequate, qualified staff to the regional councils and for fulfilling other Title VIII functions.

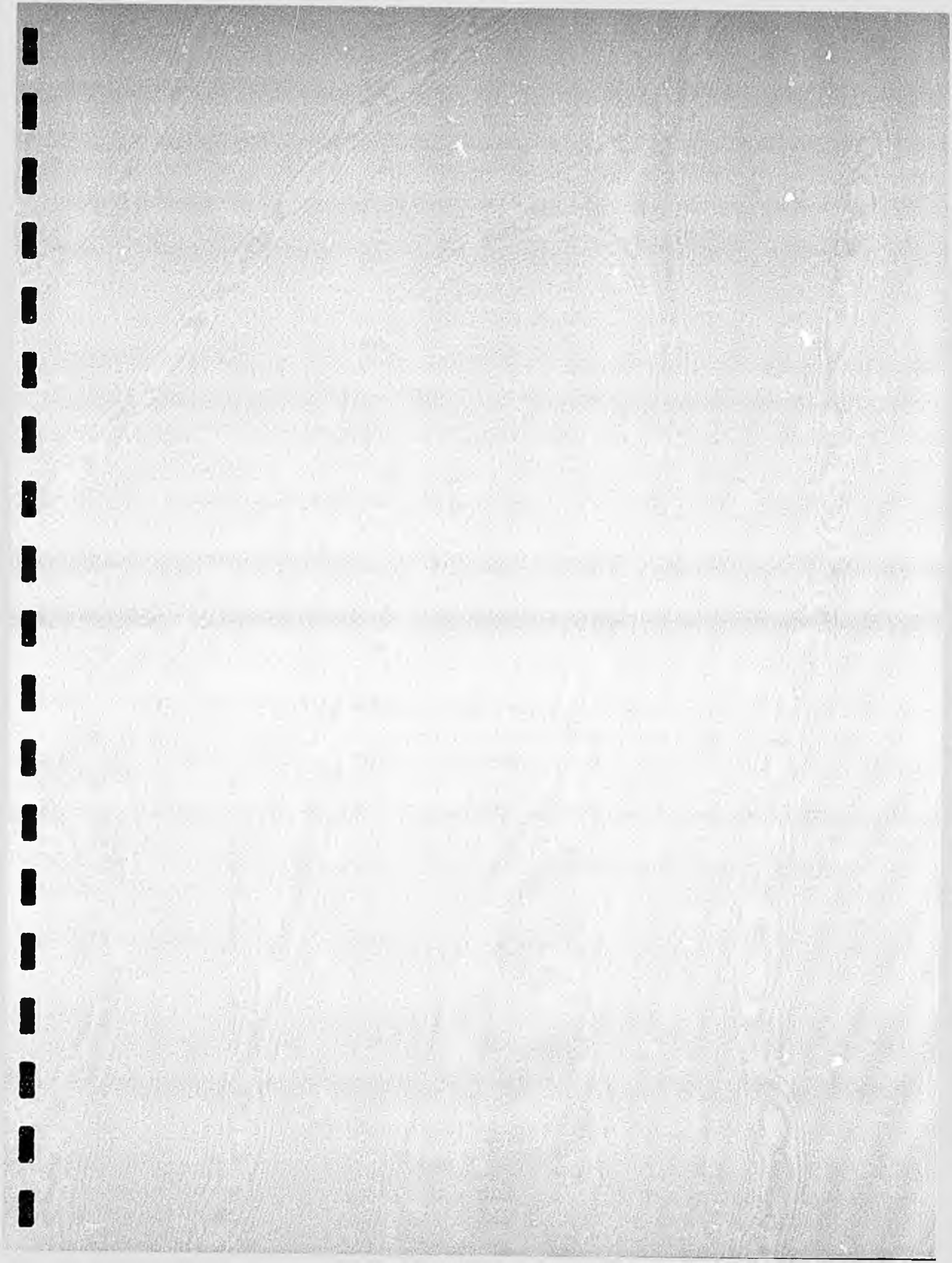
When these refinements and extensions are complete, the State will have a fully integrated system of research, management, and regulatory participation. These diverse program elements, together with the provisions of law discussed in the Attorney General's opinion, establish the performance required by Title VIII of the Alaska National Interests Lands Conservation Act.

Appendices

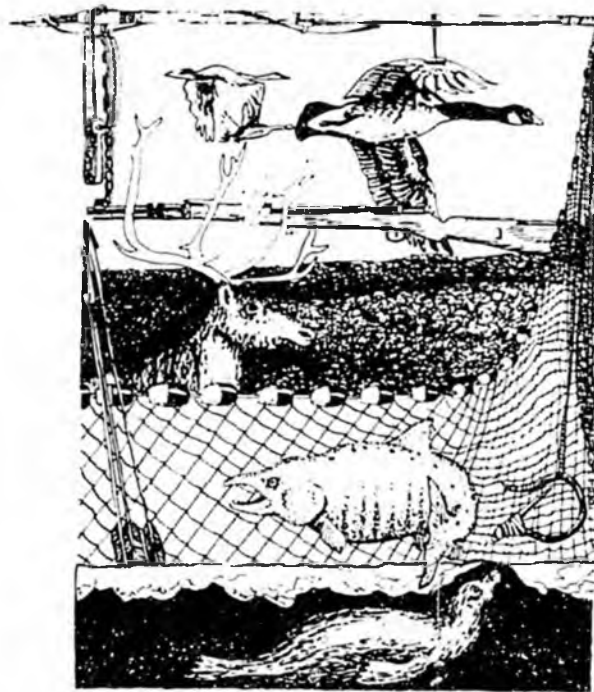
1. Chapter 151, Alaska Session Laws of 1978
2. Final Report of the Subsistence Task Force, Alaska Department of Fish and Game (November 20, 1978)
3. Alaska Boards of Fisheries and Game, Policy # 79-5-JB (March 1979)
4. Alaska Boards of Fisheries and Game, Proposed Procedure for Implementation of 1978 SLA-151 (March 1979)
5. Copper River Subsistence Salmon Management Plan, 5 AAC 01.630 and 5 AAC 01.647
6. 1980 Regulations for Local Fish and Game Advisory Committees and Regional Councils
7. 1979 Alaska Subsistence Fishing Regulations
8. 1980 Alaska Subsistence Fishing Regulations
9. 1979 Alaska Game Regulations
10. 1980 Alaska Game Regulations
11. Subsistence: A Position Paper, Alaska Department of Fish and Game (November 24, 1980)
12. 1981 Alaska Subsistence Fishing Regulations
13. Alaska Board of Fisheries, Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, #80-79-FB
14. Alaska Board of Fisheries, Amended Findings and Policy Regarding Subsistence Use of Cook Inlet Salmon, Resolution #81-91-FB (April 6, 1981)
15. Alaska 1981-82 Permit Drawing Hunts
16. 1981 Alaska Game Regulations
17. Memorandum from Robert A. Hinman, Deputy Director, Division of Game to Greg Cook, Executive Director, Boards of Fisheries and Game, "Subsistence Provisions in 5 AAC" (May 27, 1981)
18. Memorandum from Robert C. Clasby, Regulation Specialist, Division of Commercial Fisheries, to Ronald O. Skoog, Commissioner, "Subsistence Provisions in 5 AAC - Fish Regulations" (August 4, 1981).

19. Subsistence Division Written Work Products

20. Alyeska Regional Boundary Workshop Summary



SUBSISTENCE



Alaska Department of Fish & Game
Division of Subsistence
Technical Paper Series



IMPLEMENTATION ISSUES POSED BY TITLE VIII
OF THE SENATE-PASSED D-2 BILL

by
Dennis D. Kelso

Technical Paper Number 62

Alaska Department of Fish and Game
Division of Subsistence
Fairbanks, Alaska
October 29, 1980

William Demmert, Deputy Commissioner
Department of Fish and Game

October 29, 1980

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Implementation Issues
Posed By Title VIII
of the Senate-Passed
d-2 Bill

I. Introduction

Two questions have been posed:

1. What legal issues must be evaluated in the course of the Department's interpretation and implementation of Title VIII?
2. ,To what extent can the existing frameworks of the Department and the Boards (including advisory committees and regional councils) accommodate the requirements of Title VIII?

In considering these matters, I shall make the following assumptions in order to consider directly the problems that may arise in management by the State of Alaska:

1. Title VIII is adopted by Congress.
2. Potential difficulties under the United States Constitution do not invalidate Title VIII. 1

3. Binding provisions of Title VIII supersede existing state subsistence provisions. ²
4. The State of Alaska wishes to continue managing fish and game resources on federal lands.

If any of these assumptions does not hold, an entirely new analysis would be required.

Almost every section of Title VIII can be viewed as affecting the state's management approach to some extent. I have selected for discussion those provisions which, in my view, have the most direct or problematical implications. The present draft of Title VIII contains numerous editorial inconsistencies and ambiguities; I have not examined these internal difficulties unless they seem likely to hamper state implementation or interpretation.

The present analysis attempts only to identify potential problems. My assessment of these matters is preliminary; it would be premature to suggest how a court actually would deal with any of these issues. Additional legal research could provide a clearer indication of the likely outcome for any particular problem.

II. Overview of Major Questions

Numerous questions may arise in conjunction with specific sections of Title VIII. Not all of these issues are equally important. The following

broad areas of potential difficulty are, in my view, most likely to require resolution in the course of interpreting and implementing Title VIII. The discussion in III., infra, highlights additional questions as well.

A. Does Title VIII require the State of Alaska to implement the section 804 subsistence preference for taking of fish and game on federal lands regardless of whether the state wishes to supersede, pursuant to section 805, the Secretary of the Interior's authority?
(III. F.)

1. Can the state be compelled to participate if the management criteria are impermissible under the Alaska Constitution?
(III. F.)

B. If the state wishes to assume full management authority via section 805, is new enabling legislation needed, or do existing state statutes provide sufficient authority? (III. D.)

1. Are the section 804 preference and the underlying section 803 definition of "subsistence uses" consistent with the existing state priority and definition? (III. B. & C.)

a. If not, is new enabling legislation required?
(III. B. & C.)

b. Would state statutes adopting the section 304 preference and the underlying section 803 definition of "subsistence uses" be valid under the Alaska Constitution? (III. B. & C.)

2. Is the framework for local and regional participation of section 805 consistent with the present fish and game local advisory committee and regional council structure? (III. D.)

a. If not, is new enabling legislation required? (III. D.)

b. Would state legislation containing the limitations and standards of section 805 be valid under the Alaska Constitution? (III. D.)

III. Discussion

A. Congressional findings (Section 301) and policy (Section 302)

Legislative findings generally are viewed by courts as supplying reasons and explanations--not conferring power or determining rights. C. Sands, 1A Sutherland Statutory Construction §20.03, at 54 (4th ed. 1972 and supp. 1980). Accordingly, although they do not enlarge the scope or effect of a statute, findings may be used to explain

the basis for the legislative action--particularly if compliance with constitutional requirements is a potential issue. Id. §20.04.

The findings section of Title VIII, therefore, poses no problems by itself for State management. However, the findings describe the Title's general objectives and provide "factual" background against which the policy declarations of section 802 must be read. Because enforcement of Title VIII depends on regulatory actions by administrators and rule making bodies that have not participated in formulation of the legislative language, these stated purposes are significant not only for judicial clarification of ambiguous statutory provisions but also for administrative guidance in implementing such provisions. See id. §§20.12-.13.

The findings and policy sections introduce several themes suggesting potential conflicts with state regulatory, statutory or constitutional requirements:

- (1) Emphasis on protection of subsistence opportunities for rural residents, §§801 (1), 801 (5), 802 (1);
- (2) Suggestion that dependency is a threshold characteristic for subsistence, §§801 (2), 802 (1);³
- (3) Suggestion that subsistence uses have priority only over other consumptive uses, §802 (2);⁴

(4) Introduction of different standards for management of fish and game populations: "continued viability," e.g., §§802 (1), 802 (2)-(3), 816 (b), "healthy populations," e.g., §§802 (1), 815 (1), 815 (3), "natural and healthy populations," e.g., §815 (1),

(5) Indication that "meaningful" participation by certain rural residents in management--both of fish and wildlife and of subsistence uses--requires a new "administrative structure," §801 (5).

The specific questions raised by each of these potential problem areas are discussed in connection with the specific implementation language of Title VIII.

B. Definitions (Section 803)

The definition of "subsistence uses" in Title VIII differs from the Alaska statutory language in two major respects. (The relevant language appears in Appendix I.) First, Title VIII limits subsistence to customary and traditional uses of wild renewable resources by rural Alaska residents. This limitation to rural residents does not appear in the Alaska definition. See AS 16.05.940(26). A second difference is reflected in the characterizations of trade, barter and sharing. AS 16.05.940(26) states that subsistence use includes "customary trade, barter or sharing for personal or

family consumption." Section 803 is phrased: "for barter, or sharing for personal or family consumption and for customary trade." In section 803, the modifier "customary" is separated clearly from both "barter" and "sharing;" similarly, the phrase "for personal or family consumption" modifies "sharing" only--not "barter" or "trade."

This discontinuity between Title VIII and the Alaska statute also is shown by a shift in the definition of "barter." In part, AS 16.05.940(27) defines "barter" as "the exchange or trade of fish or game, or their parts, taken for subsistence uses." Section 803 omits the words "or trade." Thus, the language of Title VIII suggests that (1) "customary trade" differs in kind from "barter" and (2) neither barter nor customary trade expressly is required to be "for personal or family consumption." In the absence of a judicial decision, the proper construction of the Alaska definition remains open to argument because the applicability of modifying language can be interpreted in more than one way. Title VIII avoids these subtle ambiguities but may diverge from the meanings of these terms in Alaska law.

Two levels of potential legal problems are implicated by these differences:

- (1) Does AS 16.05.940(26) preclude the Boards and the Department from managing resources for subsistence uses on federal lands

if those uses are defined more narrowly than the meaning provided by the state law?

(2) Does the Alaska Constitution preclude the state from providing a preference for taking fish and game on federal lands for subsistence uses when one of the eligibility criteria is rural residence?

With regard to the first set of potential problems, it should be noted that the Boards of Fisheries and Game have only the authority delegated by the legislature through statutes. See AS 44.62.030; Hootch v. Alaska State-Operated School System, 536 P.2d 793, 807 n. 56 (Alaska 1975); see generally AS 16.05.221, .241, .251, .255, .257; State v. Tanana Valley Sportsmen's Ass'n., 583 P.2d 854, 858 (Alaska 1973).

The Boards are authorized to adopt regulations which permit taking of fish and game for subsistence uses as defined by statute. See AS 16.05.251, .255, .940(26). There is a serious question whether the Boards may adopt regulations that allow such taking for uses defined in a manner deviating from AS 16.05.940(26). If not, a valid enabling statute would be required before the Boards could adopt regulations addressing the "subsistence uses" contemplated by Title VIII.

Even if a statutory adjustment were made, it would be subject to provisions of the Alaska Constitution. If the constitution does

not permit such distinctions among residents, then neither the statute nor the regulations adopted under authority of the statute would be valid. ⁵ An adequate treatment of the constitutional implications of the present AS 16.05,940(26) and of the narrower "rural" definition of subsistence would require additional research and is beyond the scope of the present discussion.

C. Preference for Subsistence Uses (Section 804).

Section 804 diverges from Alaska's existing priority in several respects. (The relevant language appears in Appendix II). One significant difference may be Title VIII's provision that "the taking . . . for non-wasteful subsistence needs shall be accorded preference over the taking on such lands of fish and wildlife for other purposes." This statement suggests that the preference operates constantly regardless of whether populations are adequate to satisfy demands for both subsistence and non-subsistence uses. However, the second sentence of section 804 creates ambiguity about when the preference takes effect. It lists three criteria to be used in formulating "appropriate limitations" for implementing the preference "[w]henever it is necessary to restrict the taking of populations of fish and wildlife . . . to protect the continued viability of such populations, or to continue [subsistence] uses."

Two interpretations are possible:

(1) In contrast to Alaska's statutory provisions, ⁶ the preference is effective at all times on federal lands, but limitations based on the listed criteria must be used to implement the preference when the specified circumstances occur;

(2) The first sentence of section 804 merely indicates Congress' general view of the preference, and the operational language in the second sentence means that the priority becomes effective only when restrictions on taking are necessary for the described reasons.

The uncertainty is not reduced by the somewhat confusing language of the policy statement in section 802 (2):

[N]onwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska [;] when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses.

If punctuation is supplied after the word "Alaska," the resulting compound sentence seems to contemplate a priority for subsistence uses and a preference for the taking of fish and wildlife populations under circumstances parallel to those listed in section 304. Although the significance of the language variation is not clarified elsewhere

in Title VIII, this reading may offer some support for the second interpretation of section 804, i.e., a meaning parallel to that of Alaska's statutory priority.

If there is a substantive difference in meaning as suggested in the first interpretation, however, such a preference may be intended to convey rights or benefits different from those provided by 1978 Session Laws of Alaska, chapter 151. This is a matter of more than syntax. If Title VIII requires enactment of preferential measures which operate regardless of population status, amendment of Alaska's subsistence statute may be necessary to authorize valid Board action consistent with such a preference and thereby to satisfy the requirements of section 805 (d).

A second set of potentially important language differences between section 804 and current Alaska law involves the standards which trigger "appropriate limitations" based on the three criteria⁷ listed in section 304 (1)-(3). As noted above, one of the circumstances requiring application of these criteria in section 804 is the need to restrict the taking of populations of fish and wildlife in order to protect their "continued viability."

It is not clear whether "continued viability" is a standard as rigorous as the "sustained-yield" requirements of AS 16.05.251(b) and AS 16.05.255(b). If "continued viability" deviates from "sustained-yield," a pair of potential problems exists similar to those described above in discussing the definitional language for

"subsistence uses." That is, by statute the Boards of Fisheries and Game are required to make subsistence uses the priority when taking of fish or game must be restricted to assure sustained-yield. See AS 16.05.251(b), .255(b). In addition, the Alaska Constitution states that "[f]ish, . . . wildlife . . . and other replenishable resources belonging to the State shall be . . . maintained on the sustained yield principle." Alaska Const. art. VIII, §4. Under American legal principles, fish and wildlife resources are held in trust by the state for the benefit of the people.⁸ That is, even if the federal government has the power to mandate certain management regimes on federally owned lands, the state's interest in fish and wildlife nevertheless may be sufficient to implicate requirements of the Alaska Constitution. Accordingly, two questions may arise:

(1) Does "continued viability" differ from "the sustained yield principle"?

(2) If so, does the Alaska Constitution prohibit the legislature from authorizing the Boards to manage subsistence uses under any principle other than sustained yield?

Arguably, the Boards simply could manage subsistence uses on a sustained-yield basis since a population necessarily would be "viable" if it produces sustained yield. The question then becomes:

Does application of the three criteria of section 304 at the sustained-yield threshold violate the intent of Congress in enacting this section? 9

Even if "appropriate limitations" based on the three criteria of section 804 are triggered by the necessity for restrictions--either to protect continued viability of populations or to continue subsistence uses--the timing of such limitations may differ significantly from current state statutory requirements. As discussed in note four, the first tier of Alaska's subsistence priority becomes effective when restrictions on taking are necessary either to assure maintenance of sustained yield or to assure continuation of subsistence uses. However, Alaska's three criteria, which are essentially equivalent to the criteria of section 804, are not triggered until additional restrictions become necessary--beyond those associated with the first tier of the priority. Alaska statutes 16.05.251(b) and 16.05.255(b) provide:

If further restriction is necessary, the Board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (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 parallel criteria in Title VIII operate regardless of whether "further restriction is necessary." Unlike the two-tiered priority structure of Alaska's statute, these criteria must be used as the

bases for "appropriate limitations" to implement the preference at roughly the threshold level of the State's first-tier priority. That is, the criteria of section 804 (1), (2) and (3) function "whenever it is necessary to restrict the taking of populations of fish and wildlife . . . for subsistence uses in order to protect the continued viability of such populations, or to continue such uses."

One other potential problem should be mentioned. The preference extends to taking of fish and wildlife for "nonwasteful subsistence uses." The term "nonwasteful" is not defined in Title VIII; obviously, its meaning is important in determining whether Alaska's statutory and regulatory provisions are compatible with congressional intent. See generally AS 16.30.020.

D. Local and Regional Participation (Section 805)

Title VIII establishes a framework for local and regional involvement in fish and game policy making for all federally owned lands in Alaska. See §805 (a) - (c). If the State of Alaska timely "enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in sections 803, 804, and 805," the state's laws may supersede those sections. §805 (d). The apparent purpose of section 805 (d) is to create a mechanism by which the State of Alaska may retain management over fish and game on federal lands. ¹⁰ The cited language--"consistent with, and which provide for

the definition, preference, and participation specified"--leaves at least one question unresolved: whether the definition and preference set forth in sections 803 and 804 must be adopted essentially verbatim in order to satisfy section 805 requirements. Potential legal problems with the specific language of sections 803 and 804 have been discussed previously.

The local and regional participation contemplated by section 805 requires the State of Alaska to provide a local and regional advisory structure as described in section 805. ¹¹ The regional councils must be authorized to perform at least one function which is not part of their presently existing responsibilities--preparation of an annual report containing certain information and recommendations. See §805 (a) (3) (D); Memorandum from Greg Cook, Executive Director, Alaska Boards of Fisheries and Game, to the Alaska Board of Fisheries and Board of Game (September 2, 1980) at 2; see generally 5 AAC 96.070, .250, .270.

The requirements and functions listed in section 805 (a) and (b) differ in certain respects from Alaska's regulations presently governing local advisory committees and regional councils. E.g., compare 5 AAC 96.250 with Title VIII, §805 (a) (3) (A) - (D); compare 5 AAC 96.500 and 5 AAC 96.510 with Title VIII, §805 (b). However, the enabling statute, AS 16.05.260, appears broad enough to authorize validly enacted regulations along the lines indicated by these provisions.

Section 805 (d) does not expressly require members of local advisory committees or regional councils to be rural residents of the region or to be subsistence users. Although regional residency is necessary for membership on the regional council, this requirement already is established by 5 AAC 96.230. However, the local advisory committees must be able to advise and assist the regional councils in carrying out their functions; and the Secretary of the Interior is authorized to supplant the state's fish and game advisory committees if they "do not adequately perform" these duties. §805 (a) (emphasis added). The congressional findings specify an administrative structure enabling "rural residents who have personal knowledge of local conditions and requirements to have a meaningful role" in management. §801 (5) (emphasis added). Thus, although Title VIII does not by its terms preclude non-subsistence users or non-rural residents from serving on these advisory bodies, the state's representation structure may be displaced by the Secretary's actions under section 805 (a) - (c) unless local advisory committees and regional councils have substantial rural, subsistence-oriented membership. Nevertheless, as long as the advisory committees and regional councils are constituted so as to perform the functions listed in section 805, the state's current regulations relating to composition of advisory committees and regional councils apparently would be sufficient. See 5 AAC 96.030, .040, .230.

More serious difficulties are presented by section 805 (d), which would limit the Boards of Fisheries and Game ("the State rulemaking authority") in their handling of recommendations from

the regional councils. (Section 805 (d) appears in Appendix III.) That is, the rulemaking authority is required to consider the regional councils' advice and recommendations on taking of fish and game within their regions for subsistence uses. The rulemaking authority "may choose not to follow any recommendation" but only if it determines that the recommendation:

- (1) is not supported by substantial evidence presented during the course of the rulemaking authority's administrative proceedings;
- (2) violates recognized principles of fish and wildlife conservation; or
- (3) would be detrimental to the satisfaction of rural subsistence needs.

If the state rulemaking authority does not "adopt" the recommendation of a regional council, the "factual basis and the reasons for its decision" must be set forth.

Current regulations require the Boards of Fisheries and Game to meet at least once a year and also to hold in each region at least one hearing per year. See 5 AAC 96.600; see also AS 16.05.300. In addition, the Boards must meet jointly a minimum of once each year to consider matters of mutual concern--including topics relating to local fish and game advisory committees." Id. The regulations

make clear that the Boards are to consider recommendations of local fish and game advisory committees and of regional fish and game councils. See 5 AAC 96.600; see also 5 AAC 96.050(1)-(2), .050(4), .050(5), .250(a)(3), .250(c). However, present statutes and regulations do not limit the Boards in determining whether to follow recommendations of the local advisory committees or regional councils.

Presumably, the three types of reasons listed in section 805 (d) for choosing not to follow recommendations of regional councils already are within the scope of the Board's authority under AS 16.05.260; but section 805 (d) expressly requires the state to go beyond de facto compliance with the three permissible rationales. According to Section 805 (d), state management over the taking of fish and game for subsistence uses may not supersede management by the Secretary of the Interior pursuant to sections 803, 804 and 805 unless "[l]aws establishing a system of local advisory committees and regional advisory councils" require the state rulemaking authority to consider the advice and recommendations of the regional councils. Section 805 (d) then goes on to describe the limited circumstances under which the Boards may reject the councils' recommendations. As discussed above, section 805 (d) also establishes as a prerequisite for state management that the state "enacts and implements laws of general applicability which are consistent with, and which provide for the . . . participation specified in . . . [section 805]." Taken together, then, these references to state enactments necessary to retain management over taking of fish and game resources for subsistence use imply that a statutory change is needed which

explicitly limits the Boards' power to reject recommendations from the regional councils. 12

A related problem may arise concerning the extent of each Board's reporting responsibilities should it decide not to follow the recommendation of a regional council. Under the present regulations and enabling statute, the Board must inform the local advisory committee if the committee's recommendations are not followed. See AS 16.05.260; see generally 5 AAC 96.610(f). Section 805 (d) of Title VIII appears to go farther than the state requirements. If regional council recommendations are "not adopted," the state's rulemaking authority "shall set forth the factual basis and the reasons for its decision" (emphasis added). Thus, section 805 (d) apparently would require the Board (1) to make findings of fact--or at least to identify the evidence upon which its decision is based--and (2) to explain its reasoning process. Such a reporting requirement is consistent with making a record to facilitate the judicial enforcement provisions of section 207, but may not be addressed adequately by current Alaska law.

In summary, the major question raised by the provisions of section 205 (d) is whether the participation guidelines of Title VIII require amendment of state legislation under which the local and regional fish and game advisory system now operates. Because the new requirements substantially shift the authority over regulatory decisions affecting fish and game management related to subsistence uses, additional questions also should be examined:

(1) Is such a sharing of authority consistent with the requirements of other Alaska statutes and of Alaska case law concerning administrative rulemaking and delegation of rulemaking authority?

(2) Does such heavily weighted input from local and regional subsistence users contravene any provision of the Alaska Constitution? 13

E. Federal Monitoring (Section 306)

This section underscores the importance of the Secretary of the Interior's role regardless of whether the State of Alaska complies with Title VIII's formal requirements. Apparently, this monitoring section would be utilized only if the state chose to retain management authority related to taking of fish or game for subsistence uses on federal lands--although application of section 806 is not expressly limited by its language. 14 Section 806 requires monitoring of the state's performance in implementing the section 304 preference. Title VIII's local and regional participation framework is not mentioned in the monitoring provisions. Section 805 (a) (2) does indicate that the Secretary of the Interior must establish local advisory committees "at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in [§805 (a) (3) (D) (iv)]." However, Title VIII does not expressly indicate whether the Secretary's authority under

section 805 (a) remains effective beyond the specified timetable: one year from the date of Title VIII's enactment.

Several potential questions remain: Does the Secretary of the Interior have authority to create local advisory committees or regional advisory councils to supplant the state system more than a year after Title VIII's enactment date? If so, what procedure must be followed? If not, how would reimbursement to the state under section 805 (e) (1) be affected if the Secretary determines, more than a year after Title VIII's enactment date, that the state advisory committees and regional councils do not adequately perform the functions required by section 805? Does the Secretary have implied authority to enforce the provisions of Title VIII--other than that expressly granted by sections 805 and 807?

F. Judicial Enforcement (Section 807)

This section creates an elaborate, interactive enforcement format potentially involving local advisory committees, regional councils, the Secretary of the Interior, an "appropriate State agency," the Alaska governor and the federal court system. This is an entirely new enforcement mechanism, and a variety of practical and policy implications are suggested. The limited scope of this memorandum precludes a full examination of possible implementation problems. It should be noted, however, that section 807 provides, in part:

This section shall constitute the sole Federal judicial remedy created by this title for a local advisory committee or regional advisory council which determines that the preference for subsistence uses set forth in subsection (sic) 804 has not been adequately provided by the State in its region.

§807 at 142 (emphasis added). This language implies (1) that state judicial remedies may remain open to local advisory committees or regional councils and (2) that additional federal remedies may be available to parties other than the committees or councils.

One other potential problem with section 807 should be identified. The first sentence speaks of notification to the Secretary "by a local advisory committee or regional advisory council established by the Secretary or the State pursuant to section 805" (emphasis added) that inadequate provision is being made to implement the section 804 preference. The rest of the section addresses correction of such alleged inadequacies in state management. If the Secretary has taken over the advisory bodies but the state is still expected to manage for the subsistence preference of section 804, a potentially major cluster of questions is raised:

(1) Does Title VIII contemplate some level of state management on federal lands regardless of whether the state complies with the standards of sections 803, 804 and 805?

(2) Can the state assume full management of fish and game resources on federal lands even if the Secretary of the Interior

concludes that the state has not met section 805 requirements?

That is, if the Secretary:

(a) establishes at the outset local advisory committees and/or regional advisory councils to take the place of the state's existing system; or

(b) allows the state's existing system to function initially but later determines pursuant to section 805 (a) (2) that the state system does not meet the requirements of section 805.

(3) Does Title VIII attempt to require the State of Alaska to implement the section 804 preference on federal lands regardless of whether the state chooses to preclude under section 805 (d) the Secretary's implementation of sections 803, 804 and 805 (a), (b) and (c)? 15

Finally, it should be noted that section 807 specifically provides for judicial review of the state's performance only in providing section 804 preference. The local and regional participation framework is not addressed; accordingly, the adequacy of the state's advisory committee and regional council structure may not be a proper basis for an action under section 807 unless such alleged shortcomings can be shown to have resulted in the state's failure to provide adequately for the section 804 preference. When read with sections 805 and 806, this limited scope of judicial review is especially

confusing. That is, section 806 explicitly grants the Secretary only the authority to monitor and report on the state's performance in providing the section 804 preference. Section 805 authorizes the Secretary to implement a federal system of advisory committees and regional councils to perform certain functions, but the Secretary is not permitted to take such actions if the State of Alaska has enacted and implemented within one year laws containing certain provisions. See §805 (d). Accordingly, it is possible that complaints by local advisory committees or regional advisory councils about the state's compliance with section 805's policy participation standards could not be brought in federal court under section 807. A lawsuit in state court might be the only avenue open to the committee or council, and there may be a question whether advisory committees or regional councils can maintain such a suit against the state in light of their status as part of the administrative structure.

G. Park and Park Monument Subsistence Resource Commissions
(Section 808)

The framework of commissions created by this section raises a variety of practical and policy implications which are beyond the scope of this memorandum. I do note, however, that no mechanism appears in section 808 for the State of Alaska to assume the Secretary's role in considering or implementing the program and recommendations submitted by each commission. The significance of this for the state's implementation of other Title VIII provisions depends on the meaning of "program for subsistence hunting." §806 (a).

If such programs are essentially management plans, they may reduce significantly the extent of state management control on park and park monument lands. Indeed, the language of section 808 (c) 16 suggests that direct management by the commission and the Secretary is possible--regardless of whether the state properly is implementing the subsistence preference on other federal lands.

H. Access (Section 811)

The provisions of this section apply to the federal land managing authority. Nevertheless, state management choices also may be affected.

The Secretary must permit appropriate use of surface transportation traditionally employed for subsistence purposes by local residents. Obviously, exercise of the Secretary's discretion with respect to non-local people and nonsurface transportation could affect significantly the scope of permissible regulations enacted by the Boards of Fisheries and Game. Questions to be resolved include:

- (1) What is the meaning of "local"?
- (2) What criteria will the Secretary use to determine whether a particular means of surface transportation has been employed traditionally?

(3) What criteria will the Secretary use to evaluate "appropriate" uses of surface transportation?

IV. Concluding Note

The sections of Title VIII discussed in this memorandum have been selected because they pose, in my view, significant interpretive problems or potential legal difficulties that may affect the State of Alaska in attempting to comply with Title VIII requirements. Other sections and provisions suggest both important practical impacts on subsistence users and major policy implications for the state. I have not attempted to deal with these matters or with interpretive problems that may confront federal agencies in their implementation efforts. Several discussion drafts prepared by Department staff have identified a variety of policy related issues. See, e.g., Memorandum from Greg Cook, Executive Director of Alaska Boards of Fisheries and Game, to Board of Fisheries and Board of Game (Sept. 2, 1980); G. Cook, D-2 Title VIII Implementation (Draft); Memorandum from Tom Lonner, Chief, Subsistence Section, to Deputy Commissioner Bill Demmert, Alaska Department of Fish and Game (Sept. 15, 1980); Game Division, H.R. 39 - Legal Questions.

Footnotes

1. Examination of possible issues arising under the Federal Constitution requires research and discussion beyond the scope of this memorandum. For example: Are equal protection guarantees infringed by granting a preference to rural residents? Do Alaska Natives living in nonrural areas have an equal protection claim in light of the traditional and cultural values recognized by section 801 (1)? Is the preference unconstitutionally vague?

2. A validly enacted federal statute is the supreme law of the land, and all inconsistent state enactments are invalid. See, e.g., Sperry v. Florida, 373 U.S. 379, 384 (1963); Free v. Bland, 369 U.S. 663, 666 (1962); Gibbons v. Ogden 22 U.S. (9 Wheat.) 1, 211 (1824). If a state law is in direct conflict with a federal statute, the state law is superseded. See generally Fouke Co. v. Mandel, 386 F. Supp. 1341, 1358 (D. Md. 1974); see also Pennsylvania v. Nelson, 350 U.S. 497, 502-506 (1956); Skiriotes v. Florida, 313 U.S. 69, 75 (1941). Where Congress has intended to occupy fully a field in which power has been granted to it, all state enactments touching the area are invalid if they impair the operation and objectives of federal statutes; that is, Congress may "pre-empt" the field. See, e.g., Fouke Co. v. Mandel, 386 F. Supp. 1341, 1360 (D. Md. 1974).

3. This idea does not reappear in the management provisions of Title VIII. Indeed, the preference described in section 304 does not

hinge on any showing of dependency. Accordingly, I have not discussed this potential discontinuity between state and federal provisions.

4. Section 802 (2) provides, in part:

[N]onwasteful subsistence uses of fish and wildlife . . . shall be the priority consumptive uses . . . on the public lands of Alaska.

There may be a question whether inclusion of the words "consumptive uses" in Title VIII, section 802 (2) indicates that taking for subsistence uses might not be preferred over taking for non-consumptive uses in some circumstances. In my view, a potential problem could arise if courts rely on this language to explain the scope of the preference. Although section 804 does not refer specifically to "consumptive uses," it states:

[T]he taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded preference over the taking on such lands of fish and wildlife for other purposes.

(Emphasis added.)

Section 802 (1) also bears on this question but offers no firm resolution. In part, it states:

[C]onsistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.

(Emphasis added.) This language suggests that Congress intends for non-consumptive uses of federal land to be limited if adverse impacts would result for subsistence-dependent rural residents. However, section 802 (1) also states:

[C]onsistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to Titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

These provisions identify possible tension between the Title VIII subsistence preference and the other purposes to be served by the federal conservation system units.

Despite such limitations on the preference, some additional protection may be afforded through subsistence hunting programs on lands classified as parks or park monuments. Under section 808, the Secretary of the Interior must implement promptly the program and recommendations of the subsistence resources commission established for each national park or park monument unless he finds in writing that the purposes or recommendations would (1) violate recognized principles of wildlife conservation, (2) threaten conservation of "healthy populations" of wildlife in the park or park monument, (3) be contrary to the purposes for which the park or park monument is established or (4) be detrimental to the satisfaction of local residents' subsistence needs. §208 (b). Under this approach, a commission could submit a program which favors subsistence harvesting over non-consumptive activities; and the Secretary

apparently would be required to adopt the plan unless he determines that it comes within one or more of the listed bases for rejection. As indicated earlier under section 802 (1), the extent of the subsistence preference in relation to non-consumptive uses ultimately may depend upon the Secretary's interpretation of "purposes for which the parks or park monument is established."

Whether Alaska's statutory subsistence priority applies against non-consumptive users is ambiguous. The legislative findings of the 1978 Session Laws of Alaska, chapter 151, section 1 state, in part:

[I]t is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources.

This language does not limit application of the statute to consumptive uses; indeed the Alaska Boards of Fisheries and Game are required to adopt regulations "permitting the taking of [fish or game] unless the board determines . . . that adoption of such regulations will jeopardize or interfere with the maintenance of [fish stocks or game resources] on a sustained-yield basis." AS 16.06.251(b), .255(b). These provisions suggest that the legislature may have intended to permit taking for subsistence uses even when non-consumptive uses would be impaired. However, the first-tier priority established by AS 16.05.251(b) and AS 16.05.255(b) begins to operate only when "it is necessary to restrict the taking of [fish or game] to assure the maintenance of [fish stocks or game resources] on a sustained-yield basis or to assure the continuation of subsistence uses of such resources." AS 16.05.251(b), .255 (b) (emphasis added). Therefore, it is

not entirely clear whether Alaska's current subsistence priority or the Title VIII preference provides the more rigorous guarantees if each set of provisions is considered as a whole.

Although important interpretation and policy issues are involved in whether the section 804 preference favors subsistence uses over non-consumptive uses, this question probably does not pose serious barriers to state implementation of relevant Title VIII provisions. That is, competition with non-consumptive users on federal lands is most likely to arise because of land management decisions or activities occurring within particular classifications. State fish and game management decisions normally would not affect these sources of potential competition for use of subsistence resources. Even if Alaska's statute differs from Title VIII in the extent of the priority granted to subsistence uses against non-consumptive uses, management under the state approach probably would have no practical effect on the balance struck by Congress or the Secretary of the Interior between these types of use. (On state lands, of course, the situation would differ substantially.) Therefore, the state's regulatory provisions need not address this possible difficulty on federal lands. The question remains, though, whether a state enabling statute granting a priority more broadly applicable than the section 804 preference would be invalid under federal supremacy principles--especially the pre-emption doctrine. See generally citations at note 2 supra. Because Title VIII expressly contemplates shared responsibility for management--including state enactments addressed to a subsistence priority--it is arguable that Congress did not intend to occupy the field to the exclusion of state enabling

legislation which is more broadly based than the Title VIII preference as long as operation of the federal statute is not impaired.

5. Title VIII is ambiguous about whether the state's participation in management as specified in sections 803, 804 and 805 is entirely optional. Indeed, certain language may suggest that state actions in conformity with Title VIII standards are mandatory. See discussion at III. F. and notes 14 & 15 infra. If so, a potentially important legal question is whether Congress can override the provisions of Alaska's constitution and require state action which otherwise would be invalid. See generally L. Tribe, American Constitutional Law §5-20 (1978). In this connection, it must be asked whether an Act of Congress purporting to assure compliance with fundamental guarantees of the federal Constitution (e.g., civil rights legislation) stands on a different footing from one such as Title VIII which implements policy choices based upon the United States' relationship with Alaska Natives (derived, in part, from the commerce clause) and congressional power under the property clause. See generally id. §§5-11 to 5-15. See generally id. §§5-11 to 5-15.

6. Although AS 16.05.251(b) and AS 16.05.255(b) make subsistence "the priority" (emphasis added) whenever the taking of fish or game must be restricted to maintain resource stocks on a sustained-yield basis or to assure continuation of subsistence uses, the Alaska legislature's statement of intent refers to subsistence use as "a priority use of Alaska's fish and game resources." 1978 Alaska Sess. Laws ch.151, §1 (emphasis added). Such statements of intent or legislative findings normally are not

viewed by the courts as conveying rights or powers. C. Sands, 1A Sutherland Statutory Construction §20.03 (4th ed. 1972 & supp. 1980). However, as discussed in III. A. supra, such findings sometimes are used to explain the basis for the legislature's action or to indicate how the codified portions of the statute are to be implemented.

7. The state and federal criteria differ in two respects. First, the word "resource" in AS 16.05.251(b) (1) and AS 16.05.255(b) (1) is replaced by "populations" in Title VIII, section 304 (1). The importance of this difference is unclear. Greg Cook has suggested that no real significance should be attached to this change. See Memorandum from Greg Cook, Executive Director, Alaska Boards of Fisheries and Game, to the Board of Fisheries and the Board of Game (Sept. 2, 1980) at 2. I agree that no substantive change from state law is effected by this difference, although the language appearing in section 304 may make explicit certain considerations which are implicit in Alaska's subsistence priority. Possibly the word "populations" was intended to clarify that population-specific or stock-specific dependence should be considered in implementing the subsistence preference. The language also may be meant to emphasize that the preference is addressed to taking of particular stocks or populations of resources--not general types of resources or substitute resources. In the context of AS 16.05.251(b), this interpretation problem was considered partially by the court in the Tyonek king salmon subsistence controversy. See Native Village of Tyonek v. Alaska Bd. of Fisheries, Civ. Action No. 3AN-20-3073 (Alaska Superior Ct., 3rd Jud. Dist., May 23, 1980) (order granting preliminary injunction).

Another difference between the criteria of section 804 and those in current Alaska statutes is the omission in section 804 (1) of the word "one's" from the language appearing in AS 16.05.251(b) (1) and AS 16.05.255(b) (1): "mainstay of one's livelihood" (emphasis added). This change possibly reflects the drafters' intention to de-emphasize individual dependency levels and to permit consideration of community livelihood. However, the local residency criterion of section 804 (2) appears to be directed at individuals.

8. Unlike plants and other relatively immovable objects, birds and other animals have not generally been considered to be anyone's property as long as they are wild. That is, "ownership of wild animals, so far as they are capable of ownership, is in the state not as a proprietor but in its sovereign capacity as the representative and for the benefit of all its people in common." *State v. Rodman*, 58 Minn. 393, 400, 59 N.W. 1098 (1894), quoted with approval in *Geer v. Connecticut*, 161 U.S. 519, 529 (1896). The state has absolute power to regulate taking of game as part of its quasi-sovereignty insofar as its exercise is not incompatible with, or restrained by, the rights conveyed to the federal government by the United States Constitution. *Geer v. Connecticut*, 161 U.S. 519 (1896). The state may regulate or prohibit the killing of game; but such power is to be exercised "as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good." *Id.* at 529. For a more complete discussion of the public trust doctrine, see G. Cook, *The Natural Resources*

Article (Article VIII) of the Alaska Constitution and its Relation to Management of Fisheries and Wildlife (1979).

9. Title VIII also contains other terms suggesting management standards that may differ from "sustained yield." See, e.g., §302 (1) ("healthy populations"); §815 (1) ("healthy populations," "natural and healthy populations"); §815 (3) ("healthy populations"). It is not clear whether such standards require the Secretary of the Interior to administer public lands in a manner at variance with state management principles. Nor does Title VIII clarify the extent of the differences among these terms. For example, the context of section 815 (1) suggests that "natural and healthy populations" (the standard for national parks and monuments) is a subset of "healthy populations" (the standard generally applicable to federal conservation system units). The term "natural and healthy" may require that characteristics typical of "natural" populations (e.g., age structure) be retained. However, Title VIII neither provides definitions nor indicates how these standards affect the "continued viability" threshold of section 804.

Section 815 (1) provides, in part:

Nothing in this title shall be construed as . . . permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

if "continued viability" is a less rigorous standard than either "healthy" or "natural and healthy," a strict reading of section 815 (1) suggests that harvests on conservation system units may never be allowed to reach the level at which "it is necessary to restrict the taking of populations of fish and wildlife . . . in order to protect the continued viability of such populations." Accordingly, the three criteria of section 804 may never be used if the population remains above the "continued viability" threshold. It should be remembered, however, that the criteria also could be triggered when the taking of fish or wildlife populations must be restricted "to continue [subsistence] uses." Under this interpretation, the preference framework of section 804 might have substantially fewer applications on federal conservation system units (including national parks and monuments) than on other public lands.

Analogous problems may result from interaction of the "healthy population" standard of section 815 (1) and the "continued viability" standard of section 816 (b) which provides, in part:

Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary . . . to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken . . . to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population.

Thus, a potential conflict exists between sections 815 (1) and 816 (b), and it remains unclear whether on conservation system units (including national parks and monuments) closures will occur before the "continued viability" level is reached. The confusion is increased by other provisions of section 816 (b) which seem inconsistent with the standards of section 815 (1):

Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands . . . to assure the continued viability of a particular fish or wildlife population.

Accordingly, Title VIII is ambiguous and potentially contradictory about the effects of these different management standards and their interactions. Also uncertain are their impacts on the subsistence preference of section 804.

10. The effect of appropriately worded state laws is not entirely clear from the language of section 305 (d):

[S]uch laws, unless and until repealed, shall supersede such sections [303, 304, 305] insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses.

A close reading of sections 803, 804, and 805 shows that they do not purport to "govern" State responsibility at all. Instead, they address the responsibilities of the Secretary of the Interior and establish certain standards which apply to all federal lands in Alaska. To the extent that the state's management would be inconsistent with these requirements, the Secretary could displace the state's traditional authority.

However, none of the cited sections of Title VIII expressly indicates that Congress intends to compel or "govern" state management directly. But see note 5 supra, discussion at III. F. and notes 14 and 15 infra. Accordingly, there may be a question about the effectiveness of this language in returning management to the State of Alaska. Given this section's obvious intention to permit replacement of secretarial activity by state management, however, it seems likely that a court would construe these provisions in a manner which leaves intact state management of subsistence if appropriate "laws of general applicability" are enacted.

11. Given the subsistence focus of Title VIII and the explicit delineation of authority in section 805 (a) (3) for the regional councils, there may be a question whether the councils are limited to consideration of subsistence matters only. In my view, the authority required by section 805 (a) (3) is broad enough to encompass the full range of fish and wildlife issues contemplated by the present regulations establishing the state's regional fish and game council system. See generally 5 AAC 96.200. Section 805 (a) (3) suggests that the listed content areas must be part of the council's inquiries--regardless of any other authority they may have.

12. In order to retain management authority over the taking of fish and game for subsistence uses on federal lands, the State of Alaska must enact and implement "laws of general applicability" containing certain elements. §805 (d). Promulgation of appropriate administrative regulations apparently would not be sufficient in light of the implication in section 805 (d) that "laws" means enactments at the level of enabling legislation

which limit the authority of the Boards of Fisheries and Game. See §805 (d) at 137, line 25 and 138, lines 1-6. Thus, Title VIII seems to require statutory conformity with these sections.

13. For example, the quasi-regulatory authority of the regional advisory councils would be insulated from some of the procedural constraints and political checks which normally affect Alaska's legislative and administrative bodies. The Alaska Constitution states:

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Alaska Const., art. VIII, §2 (emphasis added). Accordingly, there may be a question whether regulations derived from regional council recommendations would be valid if the Boards of Fisheries and Game--the administrative extension of the state's legislative processes and power--are not free to reject such recommendations except in limited circumstances.

14. Questions may remain as to whether Title VIII attempts to compel state management according to the section 804 preference regardless of the state's choice under section 805. See note supra and discussion at III. F. and note 15 infra.

15. The language of section 805 (d) seems to support such a reading:

[State laws of general applicability which are consistent with, and which provide for the definition, preference and participation specified by sections 803, 804 and 805, respectively] shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses.

(Emphasis added.)

16. Section 808 (c) provides:

Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

If state laws which address the taking of fish and game for subsistence uses apply on park and park monument lands only until a program is adopted under section 808 (a), the state's management authority would be substantially reduced--regardless of whether the requirements of sections 803, 804 and 805 were met.

APPENDIX I

AS 16.05.940(26) and (27)

(26) "[S]ubsistence uses" means 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 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; 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;

(27) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Title VIII, §803

As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption, for barter, or sharing for personal or family consumption and for customary trade. For the purposes of this section, the term--

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses--

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

APPENDIX II

AS 16.05.251

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resources as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

NOTE: AS 16.05.255(b) is identical to AS 16.05.251(b) except that AS 16.05.255(b) refers to the Board of Game, game, and game resources.

Title VIII, 6804

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded preference over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such preference shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

APPENDIX III

Title VIII, §805 (1)

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

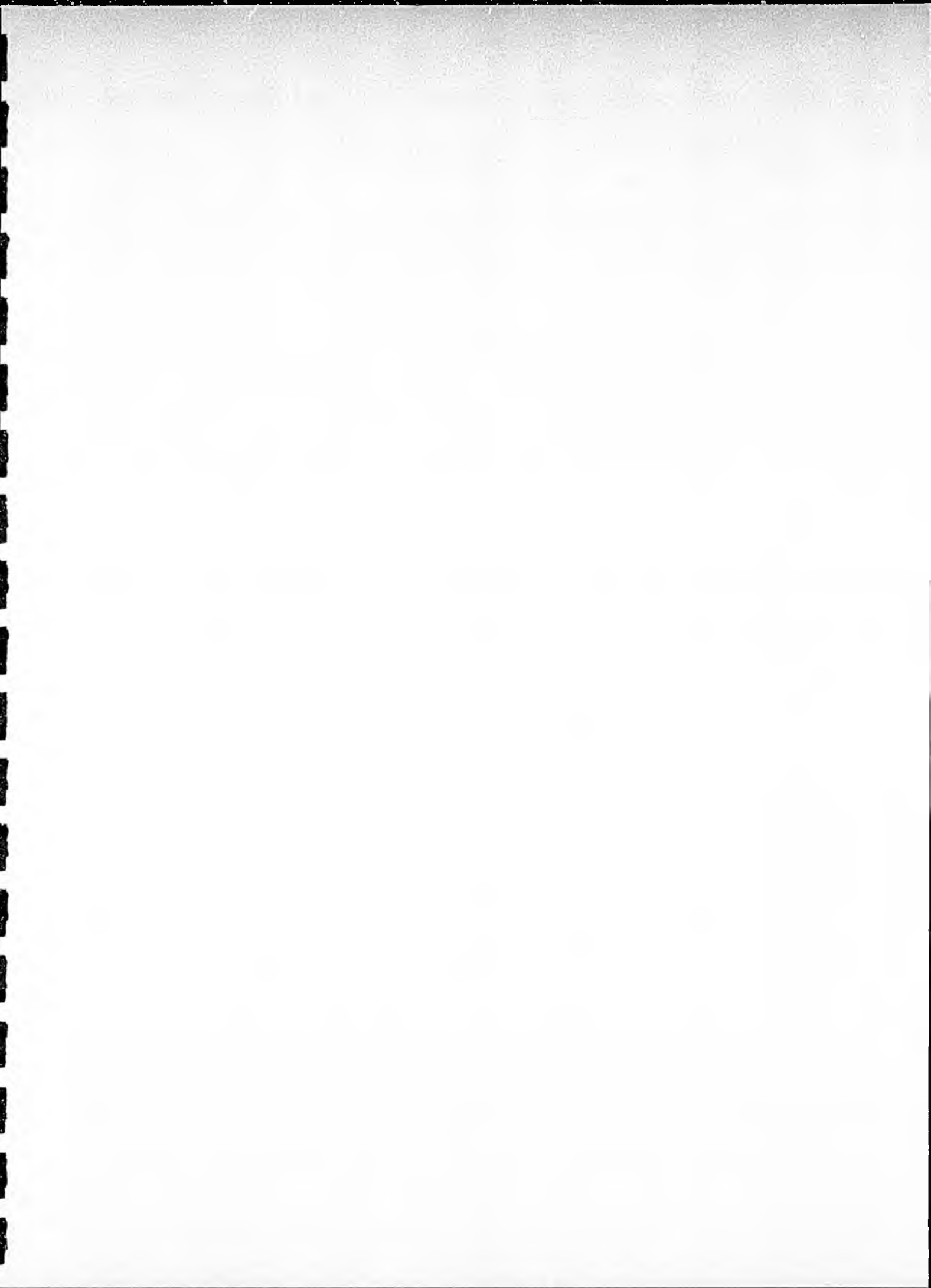
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117	A	Magdanz, James S. and Annie Olanna 1985 Bering Sea King Crab Update.
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* out of print

DRAFT POSITION ON SUBSISTENCE ISSUES

BACKGROUND

The Alaska Supreme Court decision in Madison holds that pre-1978 urban subsistence users cannot be disqualified on the basis of urban residency if sport and commercial uses of the resource in question is still allowed. Federal subsistence priority is for rural Alaskans only; the state law did not restrict the priority to rural residents only.

The state has been managing subsistence on all lands, but that legal ability is now in doubt because of Madison. In order for the state to manage subsistence on federal lands, and effectively set other harvest regulations applicable on federal lands, the State priority must agree with the federal. Otherwise the federal government will be required to manage subsistence of federal lands. Both the federal and state subsistence laws have an unstated, but now judicially recognized, two-tier approach. Tier one is the priority afforded subsistence over sport and commercial users when resource shortage demands restrictions. Tier one is where sport and commercial users are eliminated (when that occurs). Tier two provides that if further restriction on harvest is necessary, then local subsistence residents dependent on the resource and without alternatives shall have priority. This two tier approach must also be maintained if state law is to be consistent with federal.

ENVIRONMENTAL AND SPORT POSITIONS

Environmental groups have not taken positions on the subsistence issues, but may do so this fall, after hearing a presentation by Judge Berger at the Alaska Environmental Assembly. Judge Berger is chairing a commission reviewing the Settlement Act. The environmental groups will probably take a general position favoring subsistence for rural residents only. Sport groups are generally looking at a variety of positions, running from their traditional total opposition to attempts to struggle with specific subsistence issues related to: (1) targeting subsistence on specific stocks, (2) qualification for subsistence use, and (3) whether the first and second tier preferences can or should be implemented without totally eliminating recreational use.

POSSIBLE WFA POSITION

(1) Support amending the law to allow the Board of Fish and Game to identify particular stocks that are customarily, traditionally, culturally and in terms of consumption, significant subsistence stocks and therefore to target subsistence preference on them. Whether subsistence should be targeted on hatchery fish, transplanted game (bison, black-tail deer on Kodiak and Afognak, musk oxen), whether subsistence should be targeted or not targeted on steelhead and rainbow trout in specific locales, whether

subsistence should be targeted on moose in the Nome area where they never existed until twenty years ago, are reasonable questions regardless of the answers.

(2) Support criteria for allowing or prohibiting the Boards to shift target stocks. A criterion might be the availability of prior or contemporaneous stocks that are abundant and suitable. Therefore, the board could shift the subsistence harvest on the east beaches of Cook Inlet of late Kanai River coho (13,000 fish of a 20,000 fish run over which sport and subsistence competition is intense) to the more abundant, generally more palatable sockeye that run the east beaches a month before. In contrast, the same criterion would prohibit shifting the Tyonek king salmon harvest (3500 fish off an 80,000 fish run) because those fish are the first fresh fish of the year.

(3) Support amending the law to allow subsistence for rural residents only.

(4) Support making first tier qualification as follows: the subsistence user must be (1) rural, and (2) must be further qualified by being customarily and traditionally tied to subsistence use by virtue of (a) residing in an area for which the Board for reasons of administrative simplicity has qualified everyone, or (b) residing in a community for which the Board has qualified everyone, or (c) by being a member of a rural cultural group for which the board has qualified everyone, or (d) qualified on that basis of individual customary and traditional need.

Examples could be qualifying everyone in Kotzebue for simplicity, qualifying Dot Lake and Copper Center (but not Glen Allen) in the Glen Allen area, qualifying customarily and traditionally dependent groups in Kaktovik or Bethel but not the transient employees of ITT at the Kaktovik DEW-Line Station or the Bethel newcomers providing social services in the cash economy.

Such a scheme would allow the rural-only federal requirement to be met, and so could most of the sport opposition to allowing an unrestricted preference for rural residents who are in the mainstream cash economy and not significantly tied to subsistence culture, economics and traditions. Urban subsistence would be prohibited. The permit sport hunts now closed by urban subsistence needs could open and probably would allow slightly increased sport harvest by virtue of eliminating rural residents not customarily and traditionally tied to subsistence. Tier-two subsistence would remain as it is. State management of subsistence on federal lands would remain.

Jeff Parker

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Dept of Fish + Game

1983

REGULATIONS

for

LOCAL FISH AND GAME ADVISORY COMMITTEES

and

REGIONAL COUNCILS



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TITLE 5. FISH AND GAME
PART 7. FISH AND GAME ADVISORY COMMITTEES
CHAPTER 96. LOCAL FISH AND GAME ADVISORY
COMMITTEES
AND REGIONAL FISH AND GAME COUNCILS

ARTICLE 1. LOCAL FISH AND GAME ADVISORY COMMITTEES

5 AAC 96.010. ESTABLISHMENT OF A LOCAL FISH AND GAME ADVISORY COMMITTEE SYSTEM. There is established a system of local fish and game advisory committees to provide a local forum for the collection and expression of opinions and recommendations on matters relating to the management of fish and wildlife resources.

Authority: AS 16.05.260

5 AAC 96.020. CREATION OF LOCAL FISH AND GAME ADVISORY COMMITTEES. The boards, in accordance with the Administrative Procedure Act (AS 44.62), will establish advisory committees within each of the fish and game resource management regions described in 5 AAC 96.210. A committee must represent all user groups in the region as required in 5 AAC 96.060 (e)(1). A group of 25 interested persons may request the boards to create a committee. When considering a request to create a committee, the boards will consider the factors in 5 AAC 96.420. A committee must be approved by the boards before starting its operations. (In effect before 1983; am / 183, Register)

Authority: AS 16.05.260

5 AAC 96.021. ESTABLISHMENT OF ADVISORY COMMITTEES. (a) The following local fish and game advisory committees are established:

(1) in the **Southeast Alaska Region**: Angoon, Elfin Cove, Craig, Klawock, Ketchikan, Hydaburg, Wrangell, Petersburg, Kake, Gastineau Channel, Upper Lynn Canal, Sitka, Pelican, Hoonah, Yskutat, Port Alexander, Hyder, Sumner Strait;

(2) in the **Southcentral Alaska Region**: Copper River/Prince William Sound, Valdez, Copper Basin, Anchorage, Seward, Kenai/Soldotna, Central Peninsula, Homer, Port Graham/English Bay, Seldovia, Tok Cutoff/Nabesna Road, Paxson, Denali, Matanuska Valley, Mt. Yenlo, Tyonek;

(3) in the **Southwest Alaska Region**: Nushagak, Naknek/Kvichak, Lake Iliamna, Nelson Lagoon, Chignik, Kodiak, Sand Point, King Cove, False Pass, Unalaska/Dutch Harbor, Lower Bristol Bay, Togiak;

(4) in the **Western Alaska Region**: Central Bering Sea, Lower Kuskokwim, Central Kuskokwim, Lower Yukon;

(5) in the **Arctic Alaska Region**: Norton Sound, Kotzebue, Northern Seward Peninsula, Upper Kobuk, Lower Kobuk, Noatak/Kivalina, Western Arctic, Eastern Arctic, St. Lawrence Island, Southern Norton Sound; and

(6) in the Interior Alaska Region: McGrath, Clear/Healy, Delta, Upper Tanana/Forty-mile, Yukon Flats, Fairbanks, Tanana, Ruby, Galena, Koyukuk, Grayling/Anvik/Shageluk/Holy Cross, Eagle. (Eff. / /83, Register)

Authority: AS 16.05.260

5 AAC 96.022. DETERMINATION OF COMPLIANCES. Repealed 12/13/79.

5 AAC 96.025. QUALIFICATION OF MEMBERS. Repealed 12/13/79.

5 AAC 96.030. COMPOSITION OF LOCAL FISH AND GAME ADVISORY COMMITTEES. Repealed / /83.

5 AAC 96.040. QUALIFICATIONS FOR MEMBERS. To qualify for membership on a committee, a candidate must have knowledge of and experience with the fish and wildlife resources and their uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.045. REMOVAL FOR CAUSE. Repealed 12/13/79.

5 AAC 96.050. FUNCTIONS OF LOCAL FISH AND GAME ADVISORY COMMITTEES. A committee may:

- (1) develop regulatory proposals for submission to the boards;
- (2) evaluate regulatory proposals submitted to them and make recommendations to the appropriate board;
- (3) provide a local forum for fish and wildlife conservation and use;
- (4) advise the appropriate regional council regarding the conservation, development, and use of fish and wildlife resources;
- (5) work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and
- (6) cooperate and consult with interested persons and organizations (including government agencies) to accomplish the foregoing. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.080. UNIFORM RULES OF OPERATION. (a) Each committee must comply with the uniform rules of operation contained in this section.

(b) Organization. All committees are organized under authority of AS 16.05.260 and are administered by the boards.

(c) Responsibilities. Each committee is responsible for performing the functions described in 5 AAC 96.010 and 5 AAC 96.050 in accordance with provisions of 5 AAC 96 — 5 AAC 99.

(d) Title. Each committee must have a title.

(e) Membership.

(1) Each committee must have at least 5, but not more than 15 members. The members must be representative of fish and game user groups in the area served by the committee. To the extent possible, at least three user groups shall be represented on each committee, and membership shall include representatives from each town or village located in the area that the committee represents. To insure full representation of an area, the boards may assign seats on the committee to represent specific user groups.

(2) The boards will appoint the original five members of each committee; additional members will be selected by the boards from names submitted to them by a committee.

(3) Each committee member and each voting age resident of the area of committee jurisdiction under 5 AAC 97.005 who attends a committee election may vote on nominations for membership. Nominees receiving the most votes are elected. A committee need not establish a quorum to elect new members. The committee may not refuse membership to an elected nominee if committee membership is less than 15.

(4) A newly-elected member has full voting and office-holding privileges upon election, but is subject to confirmation by the boards.

(5) A newly-elected member loses membership status if his confirmation is refused by the boards.

(6) A committee must begin its duties when the first five members are appointed by the boards.

(7) Each advisory committee may appoint two alternates; however, any member of an advisory committee who is the sole representative from a village or town may also appoint an alternate. Each alternate must satisfy all criteria and qualifications required of advisory committee members as set out in this chapter. When acting as a member of an advisory committee, an alternate is entitled to the benefits, privileges, and responsibilities of a regular member.

(f) Terms of members. Each committee shall establish the terms of its members so that not more than one-third of the committee members' terms expire in one calendar year. Terms commence on January 1 and expire on December 31 of the year designated or until a successor has been duly elected at the next committee meeting. Maximum length of a term is three years.

(g) Vacancies. A committee shall fill vacancies through nomination and election as set out in (e) of this section. A committee must give reasonable public notice of vacancies. The term of a member filling a vacancy must be in accordance with (e) of this sec-

(1) the death, resignation, or refusal to accept election by any member;

(2) the recurring absence of a member from regularly advertised meetings without reasonable justification, as determined by a majority vote of the committee; or

(3) removal of a member by the boards for cause.

(h) Nominations. A nomination for committee membership may be submitted to the committee orally or in writing, at any regular meeting (even if there is no quorum) by a member or by a qualifying resident of the area served by the committee. The committee must act on all nominations in accordance with (e) of this section at the next regular meeting. A qualifying resident is a person who maintains an abode in the area served by the committee as defined in 5 AAC 97.005 and is a resident of Alaska as defined in AS 16.05.940(14).

(i) Officers. The officers of a committee consist of a chairman, vice-chairman, and a secretary. The term of office for officers is two years starting January 1 and ending December 31 of the following year, or until the next meeting when new officers can be elected.

(j) Chairman. The chairman is elected by a majority vote of a quorum of the committee and is the presiding officer. A chairman must meet the qualifications of 5 AAC 96.040. The chairman of a committee, or his designee, is also a member of the regional council established in 5 AAC 96.220; however, any committee member who is a member of the council must be a resident of the region.

(k) Vice-chairman. The vice-chairman is elected by a majority vote of a quorum of a committee and shall assist the chairman and assume his duties when the chairman is absent.

(l) Secretary. The secretary is elected by a majority vote of a quorum of a committee and may be, but need not be, a member of the committee. The secretary shall carry out the usual duties associated with the office. If the secretary is not a committee member, he has no vote on committee business.

(m) Resignation of Officers. When an officer resigns before his term expires, the committee shall hold a special election to fill the office for the unexpired term.

(n) Removal for Cause. The boards may remove any member of a committee for cause. As used in this section, "cause" includes:

(1) repeated unjustifiable absence from meetings;

(2) conviction of a crime or administrative disciplinary action for behavior inconsistent with the responsibility of committee or council membership within the last five years;

(3) disregard for or violation of the provisions of 5 AAC 96 — 5 AAC 97 governing the committee and council system; or

(4) failure, at any time, to meet the qualifications for committee membership.

(o) Meetings.

(1) Regular Meetings. A committee must meet at least twice a year to remain active under 5 AAC 96.450. A committee may meet at times appropriate to the process described in 5 AAC 96.610, and at other times considered desirable, to formulate regulatory proposals, review and comment on proposals, and consider matters appropriate to the committee's functions set out in 5 AAC 96.050.

(2) Special Meetings. A chairman, with the concurrence of a majority of the committee members, may call special meetings at which any person may submit statements to the committee on any matter relating to the committee's functions set out in 5 AAC 96.050.

(3) All meetings of a committee are open to the public and must be advertised in the area where the committee is organized.

(4) Whenever feasible, notice should be given at least ten days before a regular meeting and three days before a special meeting.

(p) Joint Committee Meetings. Each committee shall cooperate with other committees on matters of mutual interest and concern, and may upon approval of the chairman of the joint boards or his designee, hold joint meetings to accomplish this purpose.

(q) Quorum. A majority of all the members serving on a committee constitutes a quorum for the transaction of business. Every action or decision of a majority of the members present at a duly held meeting of a committee, at which a quorum is present, is an act of the committee.

(r) Rules of Meetings. Meetings of a committee must be conducted according to the latest edition of Robert's Rules of Order.

(s) Record of Meetings. Preliminary minutes of committee meetings must be recorded in writing and forwarded to the director of the division of boards within three weeks after each meeting. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.070. REPORT OF ACTIVITIES. Repealed / /83.

5 AAC 96.080. INTERACTION OF LOCAL ADVISORY COMMITTEES WITH REGIONAL FISH AND GAME COUNCILS. (a) A committee chairman, or his designee, is a member of a council established in 5 AAC 96.220. The chairman of each committee, or his designee, shall attend meetings of the applicable council in accordance with 5 AAC 96.530(a). Any committee member who is a member of a council must be a resident of the region.

(b) A committee is the primary forum for discussion by local residents of fisheries and wildlife management issues in their area. Councils shall assist the committees to this end. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

ARTICLE 2. REGIONAL FISH AND GAME COUNCILS

5 AAC 96.200. ESTABLISHMENT OF A REGIONAL FISH AND GAME COUNCIL SYSTEM. There is established a system of regional fish and game councils to provide a regional forum for the collection and expression of opinions and recommendations on matters relating to fish and wildlife resources, to assist the boards in deliberations concerning regulations, and to provide for public participation in the regulatory process to help adequately protect subsistence uses. (In effect before 1982; am 6/2/82, Register 82; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.210. FISH AND GAME RESOURCE MANAGEMENT REGIONS. (a) For the purposes of conservation and management of the fish and wildlife resources of the state there are created the following fish and game resource management regions:

(1) Southeast Alaska, consisting of all lands and waters of Game Management Units 1 through 5, that part of Unit 6 east of Cape Suckling, and adjacent marine waters;

(2) Southcentral Alaska, consisting of all lands and waters of Game Management Units 6 west of Cape Suckling, 7, 9A, 11, 13 through 16, and adjacent marine waters;

(3) Southwest Alaska, consisting of all lands and waters of Game Management Units 8, 9B—E, 10, 17, and adjacent marine waters;

(4) Western Alaska, consisting of all lands and waters of Game Management Unit 18 and that portion of the Kuskokwim River drainage in Game Management Unit 19 downstream from, and including, the George River drainage and the Hoholtna River drainage, and adjacent marine waters;

(5) Arctic Alaska, consisting of all lands and waters of Game Management Units 22, 23, 26, and adjacent marine waters; and

(6) Interior Alaska, consisting of all lands and waters of Game Management Units 12, 20, 21, 24, 25, and that portion of the Kuskokwim River drainage in Unit 19 upstream from the George River drainage and the Hoholtna River drainage.

(b) The Game Management Units mentioned in (a) of this section are described in 5 AAC 90.010.

(c) A board will, in its discretion, temporarily change the boundaries of regions for individual resource issues. (In effect before 1982; am 6/2/82, Register 82; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.220. REGIONAL FISH AND GAME COUNCILS. (a) The boards will establish a council within each region defined in 5 AAC 96.210. Each council will

consist of the chairmen, or their designees, of the active committees established within the region. Any committee member who is a member of a council must be a resident of the region. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.230. QUALIFICATIONS FOR MEMBERSHIP. Repealed / /83.

5 AAC 96.240. NON-VOTING MEMBERS. Repealed / /83.

5 AAC 96.250. FUNCTIONS OF REGIONAL FISH AND GAME COUNCILS.

(a) Each council is authorized to:

(1) hold public meetings on fish and wildlife matters;

(2) elect officers;

(3) in consultation with the local fish and game advisory committees in its region and with the department, review, evaluate, and make recommendations to a board on existing and proposed regulations, policies, and management plans, and other matters relating to the uses of fish and wildlife resources within its region;

(4) perform other duties specified by a board; and

(5) submit to the boards, the department, and the Secretary of the Interior of the United States, by November 15 of each year, an annual report, containing

(A) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region, and other fish and wildlife uses that the council identifies;

(B) an evaluation of current and anticipated subsistence needs for use of fish and wildlife populations within the region, and of other fish and wildlife needs that the council identifies;

(C) a recommended strategy for the management of fish and wildlife populations within the region to accommodate the identified fish and wildlife uses and needs; and

(D) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(b) A council shall provide a forum for, and assist its local fish and game advisory committees in, or obtaining the opinions and recommendations of people interested in fish and wildlife matters so as to achieve the greatest possible local participation in the decision-making process. If differences of opinion exist among the committees, the council shall attempt to develop areas of compromise and to reach a regional consensus on matters of controversy.

(c) A council will, in its discretion, present recommendations concerning the conservation, regulation, management, and use of fish and wildlife resources within its region, along with the evidence upon which the recommendations are based, to the appropriate board.

(d) A council will, in its discretion, make recommendations to the boards on the creation, consolidation, distribution, or operation of the committee system. (In effect before 1982; am 6/2/82, Register 82; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.260. UNIFORM RULES OF OPERATION. (a) Rules. Every action taken by a council must comply with the uniform rules of operation for committees set out in 5 AAC 96.060(j), (k), (m), (q), (r), and (s). The rules in (b) through (d) of this section supersede the corresponding rules in 5 AAC 96.060(c), (e), (o), and (t).

(b) Responsibilities. A council shall perform the functions described in 5 AAC 96.250 in accordance with the provisions of 5 AAC 96 and 97.

(c) Membership. Membership on a council is as provided in 5 AAC 96.220.

(d) Meetings. Each council shall hold regular meetings at times appropriate to the process described in 5 AAC 96.610. The chairman or a majority of a council's members may call a special meeting at which any interested person may submit statements to the council on any matter related to the purposes for which the meeting is called. Council meetings are public meetings under AS 44.62.310 and 44.62.312 and must be advertised in the region. The council shall allow public testimony at every council meeting.

(e) Recommendations. A council must convey any recommendation to the appropriate board, in writing and with a justification or explanation, 10 working days before the start of the board meeting. (In effect before 1982; am 6/2/82, Register 82; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.270. REPORT OF ACTIVITIES. Repealed / /83.

5 AAC 96.280. ATTENDANCE AT MEETINGS. When adequate funding exists, the chairman, or his designee, shall attend regulatory meetings of the boards. Each council shall cooperate with other councils on matters of mutual interest and concern, and will in its discretion, hold joint meetings, authorized by the boards, to accomplish this purpose. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

ARTICLE 3. ADMINISTRATION OF LOCAL FISH AND GAME ADVISORY COMMITTEES

5 AAC 96.400. OPERATION OF LOCAL FISH AND GAME ADVISORY COMMITTEE SYSTEM. Repealed / /83.

5 AAC 96.410. DISTRIBUTION OF LOCAL FISH AND GAME ADVISORY COMMITTEES. The boards will, to the extent feasible, establish and locate committees to allow an opportunity for all citizens of the state to participate in the regulatory system. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.420. REVIEW OF REQUESTS FOR LOCAL FISH AND GAME ADVISORY COMMITTEES. (a) The boards will review requests to create committees. Factors that the boards will evaluate include:

(1) whether an existing committee could be expanded to include members who represent the interests of the persons making the request;

(2) whether representation of all user groups on existing committees in the area is adequate;

(3) whether residents of the local area are likely to participate actively on the proposed committee;

(4) whether there are likely to be enough qualified people interested in serving on the proposed committee;

(5) whether logistical problems would make it difficult to provide assistance to the proposed committee;

(6) whether the committee would enhance participation in the decision-making process by persons dependent on fish and wildlife resources;

(7) the recommendation of the appropriate council; and

(8) the efficiency of existing committees. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.430. REVIEW OF NOMINATIONS FOR MEMBERSHIP ON LOCAL FISH AND GAME ADVISORY COMMITTEES. (a) The boards will review nominations for membership on committees at the first joint meeting following receipt of the nominations. Factors that the boards will evaluate include:

(1) whether a candidate meets the qualifications of 5 AAC 96.040;

(2) whether confirmation of a candidate will enhance the purposes of the committee as described in 5 AAC 96.010 and 5 AAC 96.050; and

(3) whether confirmation of a candidate would result in broader or more balanced representation of user groups in the area.

(b) Before considering any candidate for committee membership, the boards will ask the Commissioner of the Department of Public Safety to determine

whether the candidate has been convicted of violating a fish and game law or regulation within the preceding five years. The boards' determination on any candidacy is final. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.440. BOARD ASSISTANCE. The boards will provide information regarding board meetings to committees so that committees may plan maximum participation in the boards' deliberations. In addition, a board may request a committee to meet and to formulate recommendations on a subject or issue identified by the board. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 98.450. COMMITTEE STATUS AND MODIFICATIONS TO STATUS. (a) A committee is active if it forwards minutes from two meetings per year to the boards' office in Juneau.

(b) The boards may place a committee on an inactive list by committee request or board action. The committee may reactivate by holding a meeting and informing the boards of their active status through committee minutes.

(c) Committees may merge if each affected committee votes to request merger, and if the boards determine that the merger should occur, after considering the factors in 5 AAC 96.420.

(d) The boards may merge an inactive committee with an active committee if the boards give the committees notice of the proposed merger, if the inactive committee does not express an intention to reactivate, or if it does not do so within a reasonable time after notice, and if the boards determine that the merger should occur, after considering the factors in 5 AAC 96.420.

(e) The boards may dissolve a committee if it has been inactive for two years and if it fails to respond to board inquiries about its desire to remain in existence, or for failure to act in accordance with the provisions of 5 AAC 96 and 97. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.460. ATTENDANCE AT MEETINGS. (a) When adequate funding exists the boards will, in their discretion, request the department to reimburse committee members for the following:

(1) travel to local committee meetings and necessary related expenses;

(2) travel, approved in advance, for the purpose of joint meetings between two or more committees; and

(3) travel and other necessary expenses approved in advance by the boards for committee chairmen or their designees to attend board meetings. A chairman's

designee must be a committee member. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

ARTICLE 4. ADMINISTRATION OF REGIONAL FISH AND GAME COUNCILS

5 AAC 96.500. OPERATION OF REGIONAL FISH AND GAME COUNCIL SYSTEM. The boards will, in their discretion, provide assistance to councils and maintain the council system so as to enable the councils to comply with the purposes and functions described in 5 AAC 96.200 and .250. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.510. STAFF ASSISTANCE. The commissioner may assign staff or hire regional coordinators to aid councils in achieving maximum interaction with committees, the boards, and the department. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.520. REGULAR AND SPECIAL MEETINGS. The boards will provide information to councils so that councils can schedule meetings at times that will maximize the council's participation in the boards' deliberations concerning fish and wildlife resources. In addition, a board may request a council to meet and to formulate recommendations on other issues affecting fish and wildlife resources. A board may require a regional fish and game council to review and comment on any recommendation received by a board from a committee or from a council, or require that a council meet with another council on matters of mutual concern. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.530. ATTENDANCE AT MEETINGS. (a) When adequate funding exists, the boards will request the department to reimburse council members for travel and expenses incurred in attending council meetings approved by the boards, and will request reimbursement for each council chairman or his designee for travel and other approved expenses incurred in attending board meetings. A chairman's designee must be a council member.

(b) When adequate funding exists, the boards will request the department to provide funds to councils for travel to joint council meetings approved by the boards and for other approved expenses necessary for joint council business and meetings. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.540. DIRECTION FROM THE BOARDS. The boards will, in their discretion, give direction to the councils on the nature and format of council actions in order

to enhance council assistance to the boards. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

ARTICLE 5. ADOPTION OF FISH AND GAME REGULATIONS

5 AAC 96.600. MEETINGS. The boards will each hold at least one regular meeting a year and as many other meetings, including special meetings on specific issues, as the boards consider necessary. The attendance of a Board of Fisheries member at a council meeting constitutes a board hearing in accordance with AS 16.05.300(b). The boards will hold at least one joint meeting each year to consider matters of mutual concern, including matters relating to committees and councils. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.610. PROCEDURE FOR DEVELOPING FISH AND GAME REGULATIONS. (a) For the purpose of developing fish and game regulations, each board will observe the procedures set forth in this section. The deadlines for each phase will be set by the appropriate board for each meeting and will be announced to committees, councils, and the public.

(b) Phase 1. Each board will solicit regulatory proposals or comments to facilitate their deliberations. The boards may limit those sections or portions of the existing regulations that will be open for change. The boards will provide forms to be used in preparing proposals. Notices soliciting proposals will be distributed statewide. In order to be considered, a proposal must be received by the boards before the designated deadline unless provided otherwise by a board.

(c) Phase 2. After the deadline for receiving proposals, the division of boards will compile all proposals received on time, including proposals from department staff and other government agencies, distribute them to the public through department offices, and send them to committees and councils. Proposals postmarked after the deadline may be considered if the proposal is covered in the legal notice.

(d) Phase 3. Committees and councils may review the proposals at a public meeting in accordance with the following:

(1) each council shall attempt to reach a consensus before making its recommendation to the board;

(2) each committee and council may request technical and scientific support data and prepared testimony from the department, and

(3) each recommendation to a board from a council must include a justification or explanation for the request.

(e) Phase 4. Each board will give legal notice of timely received proposals. In accordance with the Administrative Procedure Act (AS 44.62), each board will hold a public hearing and will act on proposals or develop alternatives on the subject matter legally noticed, after reviewing the recommendations by a council. The final decision

on all proposals remains the responsibility of a board. However, if a recommendation or proposal from a council concerns the subsistence use of fish or wildlife within its region, a board may choose not to follow the recommendation only if the board determines that it is not supported by substantial evidence presented during the course of the board's administrative proceedings, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation regarding subsistence use is not adopted by a board, the board will set out in writing the factual basis and the reasons for its decision.

(f) Phase 5. After completion of procedures required by the Administrative Procedure Act (AS 44.62), a board will notify each committee and council of the actions taken on their respective proposals and the reasons for those actions, including any decision made under (e) of this section regarding a recommendation from a council concerning the subsistence use of fish or wildlife within its region. (In effect before 1982; am 6/2/82, Register 82; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.620. SUPPLEMENTAL REGULATIONS AND ACTIONS. Repealed / /83.

5 AAC 96.630. SPECIAL MEETINGS. In conjunction with any special meeting called under 5 AAC 96.600, each board will follow the procedures set out in 5 AAC 96.610 to the extent time permits; however, a board may modify the procedures if it would be more suitable for any particular special meeting. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.640. REGULAR MEETINGS. A board may modify the procedures set out in 5 AAC 96.610 in conjunction with any regular meeting if to do so would enhance public, committee, or council participation in the board's deliberations. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

5 AAC 96.650. STAFF ASSISTANCE. Repealed / /83.

5 AAC 96.660. COMPLIANCE. The failure of a committee, council, or a board to observe procedures set out in 5 AAC 96 — 5 AAC 97, except as may be required by the Administrative Procedure Act (AS 44.62), does not invalidate a regulation adopted by a board. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

ARTICLE 6. GENERAL PROVISIONS

5 AAC 96.900. REMOVAL FOR CAUSE. Repealed / /83

5 AAC 96.910. DEFINITIONS. In 5 AAC 96 — 5 AAC 99

(1) "boards" means the Board of Fisheries and the Board of Game acting jointly;

(2) "board" means the Board of Fisheries or the Board of Game acting individually;

(3) "committee" means a local fish and game advisory committee;

(4) "council" means a regional fish and game council;

(5) "region" means a fish and game resource management region; and

(6) "designee" means a committee or council member who has been designated by the chairman. (In effect before 1983; am / /83, Register)

Authority: AS 16.05.260

AS 16.05.251

AS 16.05.255

5 AAC 98.920. SUPPLEMENTAL ACTION. Repealed / /83.

CHAPTER 97. ADVISORY COMMITTEE CLOSURES

ARTICLE 1. AREAS OF JURISDICTION

5 AAC 97.005. AREAS OF JURISDICTION FOR ADVISORY COMMITTEES. For the purpose of emergency closures on taking fish and game during established seasons, the following areas of jurisdiction are established for the advisory committees specified in this section:

(1) finfish

(A) Southeastern Alaska area

(i) all waters of Alaska between the latitude of Cape Fairweather and the International Boundary at Dixon Entrance;

(ii) fish and game advisory committees with concurrent jurisdiction are Ketchikan Advisory Committee, Craig Advisory Committee, Anqoon Advisory Committee, Sitka Advisory Committee, Gastineau Channel Advisory Committee, Upper Lynn Canal Advisory Committee, Pelican Advisory Committee, Kake Advisory Committee, Wrangell Advisory Committee, Petersburg Advisory Committee, Hydaburg Advisory Committee, Hoonah Advisory Committee, and Elfin Cove Advisory Committee;

(B) Yakutat-Yakataga area

(ii) fish and game advisory committees with concurrent jurisdiction are Copper Basin Advisory Committee, Tok Cutoff/Nebesna Road Advisory Committee, and Paxson Advisory Committee;

(E) Cook Inlet - Resurrection Bay area

(i) all waters of Alaska north of the latitude of Cape Douglas and west of the longitude of Cape Fairfield;

(ii) fish and game advisory committees with concurrent jurisdiction are Seward Advisory Committee, Kenai/Soldotna Advisory Committee, Mt. Yenlo Advisory Committee, Homer Advisory Committee, Anchorage Advisory Committee, Matanuska Advisory Committee, Central Peninsula Advisory Committee, Seldovia Advisory Committee, Denali Advisory Committee, and English Bay/Port Graham Advisory Committee;

(F) Kodiak - Chignik area

(i) all waters of Alaska south of the latitude of Cape Douglas and east of a line extending southeast from Kupreanof Point;

(ii) fish and game advisory committees with concurrent jurisdiction are Kodiak Advisory Committee and Chignik Advisory Committee;

(G) Alaska Peninsula - Aleutian Islands area

(i) all Pacific Ocean waters of Alaska west of a line extending southeast from Kupreanof Point and Bering Sea waters south and west of a line extending northwest from Cape Menshikof;

(i) all waters of Alaska north of the latitude of Cape Fairweather and east of the longitude of Cape Suckling;

(ii) fish and game advisory committees with concurrent jurisdiction are Yakutat Advisory Committee and Copper River/Prince William Sound Advisory Committee;

(C) Prince William Sound - Lower Copper River area

(i) all waters of Alaska west of the longitude of Cape Suckling and east of the longitude of Cape Fairfield, and the Copper River below the Million Dollar Bridge;

(ii) fish and game advisory committees with concurrent jurisdiction are Copper River/Prince William Sound Advisory Committee, Copper Basin Advisory Committee, and Valdez Advisory Committee;

(D) Upper Copper River area

(i) all waters of the Copper River drainage above the Million Dollar Bridge;

(ii) fish and game advisory committees with concurrent jurisdiction are Sand Point Advisory Committee, King Cove Advisory Committee, False Pass Advisory Committee, Nelson Lagoon Advisory Committee, and Unalaska/Dutch Harbor Advisory Committee;

(H) Bristol Bay area

(i) all waters of Alaska east of a line from Cape Newenham to Cape Men-shikof;

(ii) fish and game advisory committees with concurrent jurisdiction are Iliamna Advisory Committee, Lower Bristol Bay Advisory Committee, Nushagak Advisory Committee, Naknek/Kvichak Advisory Committee, and Togiak Advisory Committee;

(I) Kuskokwim area

(i) all waters of the Kuskokwim River drainage and all waters of Alaska south of the latitude of Cape Romanzof, north of the latitude of Cape Newenham and including Nunivak and St. Matthew Island waters;

(ii) fish and game advisory committees with concurrent jurisdiction are Lower Kuskokwim Advisory Committee, Central Kuskokwim Advisory Committee, Central Bering Sea Advisory Committee, and McGrath Advisory Committee;

(J) Lower Yukon area

(i) all waters of the Yukon River drainage below the mouth of the Bonasila River and waters of Alaska between the latitude of Canal Point Light and the latitude of Cape Romanzof;

(ii) fish and game advisory committees with concurrent jurisdiction are Lower Yukon Advisory Committee, Grayling/Anvik/Shageluk/Holy Cross Advisory Committee, and Koyukuk Advisory Committee;

(K) Upper Yukon River area

(i) all waters of the Yukon River drainage from the mouth of the Bonasila River to the U.S./Canada border, excluding the Tanana River drainage;

(ii) fish and game advisory committees with concurrent jurisdiction are Fort Yukon Advisory Committee, Tanana Advisory Committee, Galena Advisory Committee, Ruby Advisory Committee, Lower Yukon Advisory Committee, Grayling/Anvik/Shageluk/Holy Cross Advisory Committee, and Koyukuk Advisory Committee;

(L) Tanana River area

(i) all waters of the Tanana River drainage;

(ii) fish and game advisory committees with concurrent jurisdiction are Tanana Advisory Committee, Delta Advisory Committee, Clear/Healy Advisory

Committee, Tok Cutoff/Nabesna Road Advisory Committee, Tok Advisory Committee, and Fairbanks Advisory Committee;

(M) Norton Sound - Port Clarence area

(i) all waters of Alaska between the latitude of Cape Prince of Wales and the latitude of Canal Point Light;

(ii) fish and game advisory committees with concurrent jurisdiction are Norton Sound Advisory Committee and Southern Norton Sound Advisory Committee;

(N) Kotzebue Sound area

(i) all waters of Alaska between the latitude of Point Hope and the latitude of Cape Prince of Wales;

(ii) fish and game advisory committees with concurrent jurisdiction are Kotzebue Advisory Committee, Upper Kobuk Advisory Committee, Lower Kobuk Advisory Committee, Northern Seward Peninsula Advisory Committee, and Noatak/Kivalina Advisory Committee;

(2) shellfish

(A) Southeastern Alaska - Yakutat area

(i) all waters subject to the jurisdiction of the state between the longitude of Cape Suckling and the International Boundary at Dixon Entrance;

(ii) fish and game advisory committees with concurrent jurisdiction are Angoon Advisory Committee, Ketchikan Advisory Committee, Craig Advisory Committee, Klawock Advisory Committee, Sitka Advisory Committee, Gastineau Channel Advisory Committee, Kake Advisory Committee, Upper Lynn Canal Advisory Committee, Wrangell Advisory Committee, Petersburg Advisory Committee, Pelican Advisory Committee, Yakutat Advisory Committee, Hydaburg Advisory Committee, Elfin Cove Advisory Committee, and Hoonah Advisory Committee;

(B) Prince William Sound area

(i) all waters subject to the jurisdiction of the state between the longitude of Cape Suckling and the longitude of Cape Fairfield;

(ii) fish and game advisory committees with concurrent jurisdiction are Copper River/Prince William Sound Advisory Committee, Valdez Advisory Committee, and Seward Advisory Committee;

(C) Cook Inlet area

(i) all waters subject to the jurisdiction of the state west of the longitude of Cape Fairfield and north of the latitude of Cape Douglas;

(ii) fish and game advisory committees with concurrent jurisdiction are Seward Advisory Committee, Seldovia Advisory Committee, Homer Advisory Committee, English Bay/Port Graham Advisory Committee, and Central Peninsula Advisory Committee;

(D) Westward area shellfish other than king crab

(i) all Pacific Ocean waters subject to the jurisdiction of the state south of the latitude of Cape Douglas, east of 172° E. longitude and Bering Sea waters east of 172° E. longitude;

(ii) fish and game advisory committees with concurrent jurisdiction are Kodiak Advisory Committee, Chignik Advisory Committee, Sand Point Advisory Committee, King Cove Advisory Committee, False Pass Advisory Committee, and Unalaska/Dutch Harbor Advisory Committee;

(E) Westward area king crab

(i) in king crab statistical area K as defined by 5 AAC 34.400, the Kodiak Advisory Committee shall have jurisdiction;

(ii) in king crab statistical area M as defined by 5 AAC 34.500, the Chignik Advisory Committee, Sand Point Advisory Committee, King Cove Advisory Committee, and False Pass Advisory Committee shall have concurrent jurisdiction;

(iii) in king crab statistical area O as defined by 5 AAC 34.600, the Unalaska/Dutch Harbor Advisory Committee, King Cove Advisory Committee, and False Pass Advisory Committee have concurrent jurisdiction;

(iv) in king crab statistical area Q as defined by 5 AAC 34.900, the Kodiak Advisory Committee, Chignik Advisory Committee, Sand Point Advisory Committee, King Cove Advisory Committee, False Pass Advisory Committee, Unalaska/Dutch Harbor Advisory Committee, and Norton Sound Advisory Committee have concurrent jurisdiction;

(3) game

(A) Southeastern Alaska

(i) in Game Management Unit 1A as defined by 5 AAC 90.010(1)(a), the Ketchikan Advisory Committee, Craig/Klawock Advisory Committee, and Hydaburg Advisory Committee have concurrent jurisdiction;

(ii) in Game Management Unit 1B as defined by 5 AAC 90.010(1)(B), the Wrangell Advisory Committee, Petersburg Advisory Committee, and Kake Advisory Committee have concurrent jurisdiction;

(iii) in Game Management Unit 1C as defined by 5 AAC 90.010(1)(C), the Gastineau Channel Advisory Committee, Upper Lynn Canal Advisory Committee, Angoon Advisory Committee, Petersburg Advisory Committee, Wrangell Advisory Committee, Kake Advisory Committee, and Sitka Advisory Committee have concurrent jurisdiction;

(iv) in Game Management Unit 1D as defined by 5 AAC 90.010(1)(D), the Upper Lynn Canal Advisory Committee and Gastineau Channel Advisory Committee have concurrent jurisdiction;

(v) in Game Management Unit 2 as defined by 5 AAC 90.010(2), the Craig Advisory Committee, Klawock Advisory Committee, Ketchikan Advisory Committee, Wrangell Advisory Committee, Petersburg Advisory Committee, Kake Advisory Committee, and Hydaburg Advisory Committee have concurrent jurisdiction;

(vi) in Game Management Unit 3 as defined by 5 AAC 90.010(3), the Petersburg Advisory Committee, Wrangell Advisory Committee, Kake Advisory Committee, and Sitka Advisory Committee have concurrent jurisdiction;

(vii) in Game Management Unit 4 as defined by 5 AAC 90.010(4), the Sitka Advisory Committee, Gastineau Channel Advisory Committee, Petersburg Advisory Committee, Pelican Advisory Committee, Wrangell Advisory Committee, Kake Advisory Committee, Upper Lynn Canal Advisory Committee, Hoonah Advisory Committee, and Elfin Cove Advisory Committee have concurrent jurisdiction;

(viii) in Game Management Unit 5 as defined by 5 AAC 90.010(5), the Yakutat Advisory Committee, Gastineau Channel Advisory Committee, and Copper River/Prince William Sound Advisory Committee have concurrent jurisdiction;

(B) Southcentral Alaska

(i) in Game Management Unit 6 as defined by 5 AAC 90.010(6), the Seward Advisory Committee, Copper River/Prince William Sound Advisory Committee, Valdez Advisory Committee, Copper Basin Advisory Committee, and Anchorage Advisory Committee have concurrent jurisdiction;

(ii) in Game Management Unit 7 as defined by 5 AAC 90.010(7), the Seward Advisory Committee, Anchorage Advisory Committee, Kenai/Soldotna Advisory Committee, Central Peninsula Advisory Committee, Homer Advisory Committee, and English Bay/Port Graham Advisory Committee have concurrent jurisdiction;

(iii) in Game Management Unit 8 as defined by 5 AAC 90.010(8), the Kodiak Advisory Committee and Anchorage Advisory Committee have concurrent jurisdiction;

(iv) in Game Management Unit 11 as defined by 5 AAC 90.010(11), the Copper Basin Advisory Committee, Tok Cutoff/Nabesna Road Advisory Committee, Paxson Advisory Committee, and Anchorage Advisory Committee have concurrent jurisdiction;

tion. A chairman shall declare a vacancy on the committee when any of the following events occur:

(v) in Game Management Unit 12 as defined by 5 AAC 90.010(12), the Tok Cutoff/Nabesna Road Advisory Committee, Fairbanks Advisory Committee, Delta Advisory Committee, and Paxson Advisory Committee have concurrent jurisdiction;

(vi) in Game Management Unit 13 as defined by 5 AAC 90.010(13), the Paxson Advisory Committee, Copper Basin Advisory Committee, Clear/Healy Advisory Committee, Tok Cutoff/Nabesna Road Advisory Committee, Denali Advisory Committee, Anchorage Advisory Committee, Matanuska Advisory Committee, and Copper River/Prince William Sound Advisory Committee have concurrent jurisdiction;

(vii) in Game Management Unit 14 as defined by 5 AAC 90.010(14), the Mt. Yenlo Advisory Committee, Matanuska Advisory Committee, Anchorage Advisory Committee, and Denali Advisory Committee have concurrent jurisdiction;

(viii) in Game Management Unit 15 as defined by 5 AAC 90.010(15), the Central Peninsula Advisory Committee, Kenai/Soldotna Advisory Committee, Homer Advisory Committee, Seldovia Advisory Committee, Seward Advisory Committee, Anchorage Advisory Committee, and English Bay/Port Graham Advisory Committee have concurrent jurisdiction;

(ix) in Game Management Unit 16 as defined by 5 AAC 90.010(16), the Central Peninsula Advisory Committee, Anchorage Advisory Committee, Mt. Yenlo Advisory Committee, Matanuska Advisory Committee, Denali Advisory Committee, and Kenai/Soldotna Advisory Committee have concurrent jurisdiction;

(C) Bristol Bay - Western Alaska

(i) in Game Management Unit 9 as defined by 5 AAC 90.010(9), the Naknek/Kvichak Advisory Committee, Iliamna Advisory Committee, Nelson Lagoon Advisory Committee, Chignik Advisory Committee, Kodiak Advisory Committee, Sand Point Advisory Committee, King Cove Advisory Committee, False Pass Advisory Committee, and Anchorage Advisory Committee have concurrent jurisdiction;

(ii) in Game Management Unit 10 as defined by 5 AAC 90.010(10), the False Pass Advisory Committee and Unalaska/Dutch Harbor Advisory Committee have concurrent jurisdiction;

(iii) in Game Management Unit 17 as defined by 5 AAC 90.010(17), the Nushagak Advisory Committee, Naknek/Kvichak Advisory Committee, and Iliamna Advisory Committee have concurrent jurisdiction;

(iv) in Game Management Unit 18 as defined by 5 AAC 90.010(18), the Central Bering Sea Advisory Committee, Lower Kuskokwim Advisory Committee, Lower Yukon Advisory Committee, and Central Kuskokwim Advisory Committee have concurrent jurisdiction;

(D) Northern Alaska

(i) In Game Management Unit 19 as defined by 5 AAC 90.010(19), the McGrath Advisory Committee, Central Kuskokwim Advisory Committee, Lower Kuskokwim Advisory Committee, and Anchorage Advisory Committee have concurrent jurisdiction;

(ii) In Game Management Unit 20 as defined by 5 AAC 90.010(20) the Fairbanks Advisory Committee, Clear/Healy Advisory Committee, Paxson Advisory Committee, Tok Cutoff/Nahesna Road Advisory Committee, Denali Advisory Committee, Delta Advisory Committee, Fort Yukon Advisory Committee, and Tok Advisory Committee have concurrent jurisdiction;

(iii) In Game Management Unit 21 as defined by 5 AAC 90.010(21), the Ruby Advisory Committee, Galena Advisory Committee, Clear/Healy Advisory Committee, Central Kuskokwim Advisory Committee, Lower Yukon Advisory Committee, Koyukuk Advisory Committee, Grayling/Anvik/Shageluk/Holy Cross Advisory Committee, Fairbanks Advisory Committee, and Tanana Advisory Committee have concurrent jurisdiction;

(iv) In Game Management Unit 22 as defined by 5 AAC 90.010(22), the Norton Sound Advisory Committee, Kotzebue Advisory Committee, Northern Seward Peninsula Advisory Committee, and Southern Norton Sound Advisory Committee have concurrent jurisdiction;

(v) In Game Management Unit 23 as defined by 5 AAC 90.010(23), the Kotzebue Advisory Committee, Norton Sound Advisory Committee, Northern Seward Peninsula Advisory Committee, Upper Kobuk Advisory Committee, Lower Kobuk Advisory Committee, and Noatak/Kivalina Advisory Committee have concurrent jurisdiction;

(vi) In Game Management Unit 24 as defined by 5 AAC 90.010(24), the Galena Advisory Committee, Koyukuk Advisory Committee, Ruby Advisory Committee, Tanana Advisory Committee, and Fairbanks Advisory Committee have concurrent jurisdiction;

(vii) In Game Management Unit 25 as defined by 5 AAC 90.010(25), the Fort Yukon Advisory Committee, Tanana Advisory Committee, and Fairbanks Advisory Committee have concurrent jurisdiction;

(viii) In Game Management Unit 26 as defined by 5 AAC 90.010(26), the Barrow Advisory Committee and the Fairbanks Advisory Committee have concurrent jurisdiction. (In effect before 1980; am 7/11/81; Reg 79)

Authority: AS 16.05.260

ARTICLE 2. EMERGENCY CLOSURES

5 AAC 97.010. ADVISORY COMMITTEE EMERGENCY CLOSURES. (a) After delegation of authority from the commissioner, a committee may initiate an emergency closure during an established season for the taking of fish or game within its area of jurisdiction described in 5 AAC 97.005, under the procedures in this section. No committee may initiate an emergency opening.

(b) After initiation of an emergency closure by a committee, a majority of the members of a majority of the committees in the affected area of jurisdiction described in 5 AAC 97.005 must, by affirmative vote, ratify the action. A committee member may not vote by proxy or delegation. An emergency closure initiated by a committee is not effective until reviewed by the commissioner under (c) and (d) of this section and until field announcement is made under (f) of this section.

(c) An emergency closure initiated by a committee must be based on sound conservation reasoning and the sustained-yield principle. An emergency closure initiated by a committee must be necessary for the immediate protection of a stock, species, or population, and may not be initiated for the purpose of achieving primarily social, economic, or other nonbiological goals. The commissioner or his authorized representative shall review the emergency closure initiated by a local advisory committee to ensure compliance with these standards.

(d) The chairman of a committee voting to initiate an emergency closure must:

(1) at least 48 hours before the closure is to become effective, notify the commissioner by telegram, telephone, or in writing, of the decision to initiate the emergency closure; the time, area, and species involved; which committees the initiating committee contacted, and the vote of each committee regarding the closure.

(2) prepare a signed affidavit identifying the roll call vote of the committee, and a written emergency order, following the format specified in the Advisory Committee Emergency Order Manual printed by the department, stating the findings of fact made by the committee to justify the closure, and specifying the evidence relied upon by the committee; the chairman must provide these documents to the department office nearest the affected area at least 48 hours before the effective date of the emergency closure.

(e) Upon receipt of the documents specified in (d)(2) of this section, the commissioner shall make a reasonable effort to contact the chairmen of other committees of the appropriate council, so that the committees can vote for or against ratifying the closure. The commissioner shall notify the chairman or vice-chairman of the appropriate board, of a committee's emergency closure action. The commissioner shall provide the appropriate board with a copy of all written material pertinent to the emergency closure.

(f) The commissioner shall take appropriate action to make field announcement of the emergency closure within 48 hours after receipt of the documents specified in (d)(2) of this section, if the commissioner finds that the closure meets the standards of (b), (c), and (d) of this section. An emergency closure becomes effective after formal field announcement by the commissioner or his authorized representative.

(g) An emergency closure adopted by a committee under this section expires 120 days after its effective date or when superseded by regulation. (In effect before 1980, AS 7/11/81, Register 79; amended 7/11/83, Register 79)

Authority: AS 16.05.260

5 AAC 97.015. AUTHORITY OF THE BOARDS OVER EMERGENCY CLOSURES.
Repealed / /83.

5 AAC 97.020. NOTICE TO PUBLIC OF EMERGENCY CLOSURES. Repealed
/ /83.

CHAPTER 98. AREAS OF JURSDICTION FOR ANTLERLESS MOOSE SEASONS

ARTICLE 1. AREAS OF JURISDICTION

5 AAC 98.005. AREAS OF JURISDICTION FOR ANTLERLESS MOOSE SEASONS. Repealed / /83.



United States Senate

WASHINGTON, D.C. 20510

September 25, 1982

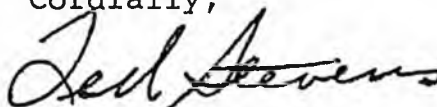
Dear Fellow Alaskan:

In response to the many requests from Alaskans for background and my position on the subsistence hunting issue, I prepared a review of the federal and state laws affecting subsistence. The paper also includes some observations about the referendum to repeal our subsistence law.

Because the issue is of such great importance to all of us, I am sending you a copy of that position paper.

With best wishes,

Cordially,



TED STEVENS

United States Senator

THE SUBSISTENCE HUNTING ISSUE IN ALASKA

By Ted Stevens

For the last quarter of a century I have been involved in the fight for Alaska's rights to manage fish and game on all lands within its borders -- including Federal lands. We fought against Federal management during the Statehood fight. When we were granted Statehood, fish and game management was withheld until the State submitted a fish and game management program which was approved by the Secretary of the Interior. It was a long, hard battle, but we did gain that right.

Our right to manage fish and game was not easily gained and we should never jeopardize our authority. Federal management could lead to fish traps, to closed areas to "protect" the wolves, to prohibition on hunting -- not only on Federal lands but on those state and private lands near Federal lands. In short, it could lead to total disaster for Alaska's fishermen and hunters.

Yet, despite those high stakes, Alaska's right to manage fish and game is in jeopardy because of the "subsistence" controversy in our State. I think this controversy is widely misunderstood.

This is not an issue of native vs. non-native; it is not even a question of who has "rights" that others do not have. The question, most simply, is one of allocation. What I mean by allocation is this: if there is ever a shortage of any species of fish or game, who will be allowed to take that particular species first? Of course, under proper game management, shortages of fish or game may occur only on occasion and only in specific areas. But, because the potential does exist, contingency plans must be made in advance by the State.

One of the arguments I hear most often is that the Alaska Constitution prohibits a hunting preference. Proponents of that argument cite Article VIII, Section 3 of the Alaska Constitution which states: "Whenever occurring in the natural state, fish, wildlife and waters are reserved to the people for common use." That is what section 3 says and I support section 3.

However, what I never hear quoted is the next section of Article VIII of Alaska's Constitution. It says, "Fish, forests, wildlife, grasslands and all other replenishable resources belonging to the State shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses." It is clear to me that the drafters of the Constitution understood the need to provide for allocations -- preferences among users -- in times of shortages and explicitly allowed for those allocations in Article VIII.

Fish and game allocation in Alaska has always been managed with an eye toward the interests of the local residents of any one area. Alaska has 26 game units. Under subsistence management schemes developed under state law, there is a preference for residents in the game unit near the area to be hunted or fished.

For instance, in the Nelchin area, which is the only area that I am aware of which will be specifically restricted for subsistence caribou hunters this year, out of 1,750 permits to be issued for the hunt, 450 are for the local residents. The remainder will go for other hunters on an equal basis including a predominant number of Anchorage and Fairbanks hunters. This allocation is virtually identical to the historic state management of caribou when permits are required to preserve the herds.

The Cook Inlet area -- perhaps the most competitive fishery in the state -- is another example. The harvest of fish in that region can be broken down roughly as 95% commercial, 4.5% sport and 5% subsistence. State

I think most Alaskans would agree that, if there is a shortage despite the best efforts of the State to prevent it, those who depend on fish and game for their daily survival ought to have preference. Similarly, a preference should exist for personal consumption over pure sport hunting. This is what the Alaska Constitution contemplates for resource allocation, that was the Alaska law before passage of the D-2 bill, and that is the law today.

However, the initiative on the ballot this fall, which, if passed would repeal the State law, will ultimately result in Federal management of fish and game to preserve a subsistence preference already existing in state law.

So, how did we get here and why are we now facing the loss of our right to manage fish and game on Federal lands within the State?

During consideration of the D-2 bill, the State encountered another threat to its right to manage fish and game. The Udall/Andrus legislation introduced in the House of Representatives required Federal management of fish and game on virtually all Federal lands in Alaska. When D-2 came to the Senate Energy Committee, I tried to delete the House-passed requirement of Federal management. Frankly, we were not successful in deleting the House position altogether. However, it was obvious that the Senate Committee did have some reluctance to deprive Alaska of its management authority. Because of that reluctance, we were able to work with Senators Hatfield, Jackson and McClure to develop an alternative to the House bill which avoided the takeover by the Federal Government.

When passed, the alternative approach in D-2 was based on the Alaska law already on the books -- the law the subsistence initiative seeks to repeal. In fact, it is important to remember that the D-2 bill as passed did not require Alaska to make substantial changes in its laws, it simply required us to maintain the allocation system already in Alaska law at the time the D-2 bill passed. There was then, and is now, an Alaskan subsistence priority for all Alaskans -- Native and non-Native -- who are rural residents relying on fish and game for subsistence. When we say rural residents we're talking about places like Tok, Delta, Haines, Skagway, as well as Anaktuvuk Pass, Kotzebue and Bethel. This State priority does not mean that subsistence users have an exclusive right to hunt or fish -- it means that they have a right to a preference. The Alaska law does not create a class system, rather it protects specific uses. It is an allocation of the resource to those who traditionally had priority when species protection requires limitations on taking.

The D-2 bill as passed, required Alaska to maintain the preference I just explained. But, it was also clear as to the question of what would happen if Alaska did not maintain such a preference -- the Federal Government would then be required to take control of the management on Federal lands and would have impact on management over all lands to protect the subsistence preference.

I have talked with Secretary Watt on this point, and despite his personal reluctance and my strong opposition, he has no choice but to obey the law. This would be disaster for Alaska -- not necessarily under Secretary Watt (although he might be forced to close Federal lands to all hunting because of the lack of funding and personnel to manage them) but could be a catastrophe under another Administration that simply opposed hunting altogether. Everyone would lose -- except those in the House of Representatives and the last Administration who wanted Federal control from the very beginning.

That is the crux of the matter -- if Alaska repeals its subsistence laws, the Federal Government will take over.

Some people believe that the passage of the initiative to repeal the Alaska law on subsistence will change the Federal law. This is simply not true. If the initiative passes, it will repeal the Alaska law which was the basis of the compromise enabling us to retain state management of fish and game.

I, for one, cannot believe that Alaskans want to see our fish and game regulations fashioned in Washington, D.C. Nor can I believe that we want Federal management concepts used in Alaska -- that was one of the main reasons we fought for Statehood.

The language worked out in the Senate was not everything we wanted -- but it was a thousand times better than the immediate Federal takeover that would have occurred under the Udall/Andrus bill. They sought Federal control -- but lost. We must not let them win now.

For these reasons, I oppose the initiative.

Report on subsistence hunting

UNITED STATES SENATE

WASHINGTON, D.C. 20510

Zed Stevens

U.S.S.

BLK. RT.

Missa good

APHA LEGISLATIVE REPORT

This session of the 14th legislature is shaping up to be one of the most important in the past few years. Several issues of great concern to the guiding industry are being looked at. Among the most important are the subsistence issue, the guide bill and a new bill for sportfish guides. One other bill which may or may not have a large impact on the guiding industry is HB 133 and its companion SB 103. This bill substantially increases the required amount of insurance on a per seat basis for those flying for hire. Although this is basically aimed at air taxi operators, there could be some effect on the air support provided by those in the outfitting business.

The subsistence bill (HB 288) introduced by Governor Bill Sheffield was in direct reaction to the recent Madison Case. In *Madison vs the State of Alaska*, the Alaska Supreme Court found that subsistence could not be regulated upon a rural basis as

defined by the 1978 State Statute. In its opinion, the court stated subsistence under state law must be extended to all Alaskans. Just what effect this is going to have is not quite clear. The Attorney General's Office is claiming commercial fishing and non-resident hunting and fishing will have to be eliminated this summer. In a resolution recently submitted to the legislature, the joint boards of Fish and Game stated legislative action was needed to insure the continuation of commercial and sport uses in certain parts of the state.

There are many complex problems created by the subsistence issue. The most difficult is to decide which method should be used to determine who qualifies and who doesn't. Under the Alaska Constitution, wildlife resources are to be managed by the state for the common use of Alaskans. Right now, the legislature is trying to deal with this issue and it is becoming

clear that a thorough investigation is needed before an acceptable solution can be found. From the testimony presented by various groups so far, it would seem a more equitable solution than the governor is providing should be looked for.

Senator Arliss Sturgulewski is currently working on legislation to extend the tenure of the guide board, as well as rework the current statutes relating to guiding. It appears that a bill will be forthcoming this session which will basically follow the proposed legislation offered by APHA. One change will have to do with the way areas get exchanged. This bill should be introduced soon and referred to senate resources which Senator Sturgulewski chairs.

Last year, a provision to allow guides to lease state land to build facilities for a headquarters was incorporated into Senator Bettye Fahrenkamp's Bill, SB 375. It seems there is some confusion over the status of this legislation. This bill did pass and the Department of Natural Resources has started processing applications. After talking with DNR special assistant Dee Frankfourth, I obtained information which could clarify the issue. The following was prepared and sent by Dee:

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HUNT KODIAK ISLAND



Sitka Blacktail Deer taken by W. T. (Yoshi) Yoshimoto, 1984

Dick Rohrer
P.O. Box 2219-A, Kodiak, Alaska 99615
1-907-486-5835

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that the bull was just over the hill. I wasn't disappointed. Quick! I grabbed my spotting scope and tripod and crawled back up to the crest. There was no doubt that it was the same fellow I had seen the day before. I set the tripod up just to admire the bull, and told Ken to have a look. This almost proved to be a mistake, Ken's eye wasn't at the scope more than a couple of seconds before he had grabbed his rifle and jacked a round into the chamber. "Ken" I whispered, "I think we can get a little closer by slipping back down the hill, and then move in under and over that small rise." "No, I think we are close enough," he responded. "You say it's about 300 yards?" I confirmed the range, and helped him get in a position to shoot. I had seen Ken and his .270 perform in the past, and had no doubts that he would do just fine.

Pulling the rifle into his shoulder, Ken took a deep breath and squeezed the trigger. The .270 cracked with the first shot hitting low in the brisket. The bull staggered, then started to run just as the second round went off in the chamber. This time the bull went down hard. He tried to regain his feet but a third round put the bull down for good. Ken muttered something about needing to go back to the shooting range, but I feel the blame could be more directly placed on my shoulders as I probably shouldn't have told Ken to look through the spotting scope. The excitement is a major part of the hunt, and that big rack would excite anybody. In addition, I had underestimated the range. In that wide open country it can be extreme-

ly difficult to judge distance and when we paced it off we found it close to four hundred yards.

It took longer than usual to cape and dress out the animal as we took frequent breaks to admire the big rack and to relive the day's experiences. A snow squall hit us while we were skinning, chilling our hands but doing little to dampen our spirits.

We both returned to camp with the cape, rack and as much meat as we could carry. I promptly left for a second load of meat and returned an hour or two later, just as Keith had arrived.

When he saw the rack he was just as excited as Ken and I. Once again we relived the hunt, and only after much backslapping and congratulations did we get around to tying the rack on the wing struts and breaking camp.

Later Mike Simpson of Conroe Taxidermy in Texas, green scored the trophy at 484 Boone and Crockett points. After drying, it officially scored 454 points and placed #6 in the Boone and Crockett record book. Safari Club International scored the rack at 635 $\frac{7}{8}$, making it a "new" SCI record. 🐾



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WANTED: YOUR HUNTING STORY...

Do you have an exciting, unusual, or just downright interesting hunting story? We would like to print it in the Alaska Professional Hunter Newsletter, along with any photographs or illustrations you may be able to include. The deadline for each issue of this newsletter falls on the 10th of the month preceding the month of publication. So if you want your story to appear in a certain month's issue, get it in the mail so we will receive it by the 1st of the month preceding the month of publication.

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by Dee Frankfourth,
DNR Special Assistant

Department of Natural Resources Report: STATE LAND LEASE FOR HUNTING CAMPS

Guides with an exclusive or joint use guiding area should now find it easier to get a land lease from the state for erecting hunting camps. Last year the legislature changed the law on land leases by expanding the terms under which a lease could be negotiated with the state. Now more guides and other commercial operators will be able to lease land through negotiation rather than acquiring a lease at a competitive public auction.

Under the new provisions most leases can be negotiated directly with the Department of Natural Resources if 1) the appraised value of the transaction is \$5,000 a year or less, and 2) the term of the lease does not exceed ten years. In some cases, however, where the interest is high in a given tract of land, the state may choose to offer a lease competitively even if the terms are within the usual negotiable limits.

Applications are being accepted at all of the Department's Land and Water area and regional offices. An application must include:

- a complete and legible map outlining the land a guide wishes to lease
- a sketch of the existing and planned improvements within the requested parcel
- a \$50.00 filing fee
- identification of access to the parcel

Applications are advised to keep their parcel size to the minimum needed to conduct their activities. This will keep the annual rental cost down and will also reduce the conflicts with other land uses, making the likelihood of issuance much greater.

DNR will then verify with the Division of Occupational Licensing that the applicant is a registered guide with an assigned guiding area. Once the application is received, DNR will conduct a standard interagency review, including a coastal zone consistency review if appropriate. Notice of the pending application will be provided to the other guides sharing a

joint use area so that all affected parties will be informed about land uses in the area. Notice will also be given to the general public through local newspapers. The public will generally have a 30-day comment period.

The decision on whether or not a survey is required will be made on a case by case basis, and will depend on the sufficiency of existing monumentation as well as the congestion of neighboring land uses. For example, if there are considerable leases or private tracts of land in the vicinity of the proposed lease, it is quite likely a survey will be necessary so property lines are clearly defined.

After the interagency review and public notice period, the regional office of DNR's Land and Water Division will determine if issuing the lease is in the best interests of the state. The average length of time for processing all types of leases last year was five months, so guides should expect a similar processing time.

Leases may be transferred to another party only with the approval of DNR's Contract Administration Unit and only if the individual receiving the lease is a registered guide with an exclusive or joint use area.

Applications for negotiated leases are available at the following offices:

**SOUTHCENTRAL
REGIONAL OFFICE:**
Frontier Building, 10th Floor
3601 C Street Pouch 7-005

Anchorage, AK 99510
907-276-2653

MAT-SU AREA OFFICE:
Century Plaza, Suite 202
Mile .5, Knik Road
Pouch 4008
Wasilla, AK 99687
907-376-3594

NORTHERN REGIONAL OFFICE:
4420 Airport Way
Fairbanks, AK 99701
907-479-2243

**SOUTHEASTERN
REGIONAL OFFICE:**
400 Willoughby Street
Juneau, AK 99801
907-465-3400



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SOUTHERN TANZANIA

Hunt July through December. Best elephant area available, two elephants allowed on some hunts.

Game available: Cape Buffalo, Baboon, Bushbuck; Bushpig; Crocodile, Oribi; Duiker; Elephant; Cape Eland; Hartbeest; Hippopotamus; Impala; Kudu, greater; Lion; Leopard; Reedbuck, bohor; Sable; Antelope; Warthog; Waterbuck; Wildebeest; Zebra \$16,380 each—two hunters, one guide. This is adequate for the area.

License costs: If all the above game is killed, \$6267 per person, plus \$10-\$12 per pound for ivory. Tusks average 60-80 pounds per side, but up to 100 pounds per side is possible.

Charter: \$1,000 per person.
Observer fee: About \$100 per day.
Price includes all costs while on the hunt, including license, permits, guides, food, lodging.

Achesons book all hunts directly with the Mongolians. We do not operate through another company—and we never have.

Season in Mongolia: June through November.

ZIMBABWE

Rosslyn Safaris offers cat, buffalo, and elephant, along with sable, kudu, and a wide variety of other plains game animals. From the comfort of a lodge. Its location next to Wankie Park insures ample game population.

11 Days

One hunter, one guide—\$6,850
Two hunters, one guide—\$6,250 each
Observer: \$1,300
Game hunted: Buffalo, Kudu, Waterbuck, Sable, Impala, Warthog, Duiker, Grysbok, Steenbok.

15 Days

One hunter, one guide: \$9,950
Two hunters, one guide: \$9,050 each.
Observer: \$1,800.
Game hunted: Lion, Buffalo, Sable, Kudu, Kudu cow (2), Waterbuck, Duiker, Steenbok; or Leopard or Elephant, Walrusbuck cow (2), Zebra, Impala, Impala doe (3), Warthog, Bait Warthog (4), Grysbok.

28 Days

One hunter, one guide: \$18,250.
Observer: \$3,300.
Game hunted: Elephant, Lion, Leopard, and all other game.

TROPHY FEES: Available on request.

SOUTH AFRICA

Limpopo Safaris

South Africa offers a sportsman the widest variety of game and terrain found on any safari in Africa.

14 Days, Western Transvaal and Zululand

One hunter, one guide—\$7,600.
Two hunters, one guide—\$6,800 each.
Observer—\$1,880.

TROPHY FEES: Available on request.

Twenty-two different varieties of game may be hunted on this classic safari, including leopard!! Hunt the thornbush plains of the South African "veld" Seven to ten days. Then move to the more tropical "low veld" of Zululand!

The above charges cover all guiding fees, government taxes, confirmation fees, transportation and lodging on the safari, visas, and preparation of game in the field.

Not included are trophy fees payable only if animals are killed or wounded, dipping, packing, and freight of trophies, cost of air charter, international flights, or hotel charges.

Season: year-round.

LETABA

This is the biggest and best big game concession in South Africa, and is the only open area where all local species of big game can be legally hunted. Success on cats and buffalo is superb. Elephant with tusks to 90 pounds per side have been taken.

The camp consists of thatched, insect-proof chalets on the banks of the Letaba River. The Letaba concession adjoins Kruger Park, one of the largest game preserves in Africa.

14 Days

One hunter, one guide—\$8,900
Two hunters, one guide—\$6,200 each
Observer—\$1,860

21 Days

One hunter, one guide—\$13,300
Two hunters, one guide—\$12,250 each
Observer—\$2,820

TROPHY FEES: Available on request.

Additional Expenses:

Air charter (usually none)
Trophy documentation, packing, dipping, etc.—\$250-\$350

Not included are trophy fees payable only if animals are killed or wounded, dipping, packing, and freight of trophies, cost of air charter, international flights, or hotel charges.
Season: year-round

BOTSWANA

A traditional tent safari in the famous game rich Okavango and Kalahari Concessions.

10 Days

One hunter, one guide—\$7,050
Two hunters, one guide—\$5,550 each
Observer—\$1,000

14 Days

One hunter, one guide—\$9,630
Two hunters, one guide—\$7,530 each
Observer—\$1,420

21 Days

One hunter, one guide—\$14,070
Two hunters, one guide—\$10,920 each
Observer—\$2,080

The above charges cover all guiding fees, government concession fees, confirmation fee, dipping, packing, and transportation of trophies, lodging in camp, transportation while on the safari, and preparation of game in the field.

The above charges do not cover trophy or license fees, export duty, air charter from Maun, Botswana to camp and return, transportation from your home to Maun, or lodging while not on safari.

Species	License Fee	Trophy Fee	Export Duty
Buffalo	\$100	\$200	\$10
Duiker	5	-	2.50
Eland	150	200	25
Gemsbok	75	150	25
Hartebeest	30	50	10
Impala	15	15	5
Kudu	150	200	25
Ostrich	35	50	40
Lechwa	75	100	25
Lion	800	900	42.50
Leopard	400	600	52.50
Reedbuck	75	100	25
Sable	150	200	25
Sitatunga	100	200	25
Springbok	15	15	5
Steenbok	5	5	2.50
Tsessebe	50	100	10
Warthog	5	5	2.50
Wildebeest	30	50	5
Zebra	100	200	40

Season: April-November

RANCH HUNT

This is the Cadillac of Kalahari safari camps. All game indigenous to the Kalahari, plus numerous other game animals introduced to the region!

10 Days

One hunter, one guide—\$4,350
Two hunters, one guide—\$3,350
Observer—\$1,200

TROPHY FEES: Black Wildebeest, \$500; Nyala, \$600; Eland, \$500; Burchell Zebra, \$400; Hartmann Zebra, \$400; Blue Wildebeest, \$400; Kudu, \$400; Gemsbok, \$300; Hartebeest, \$300; Impala, \$200; Blesbok, \$200; Ostrich, \$200; Springbok, \$150; Steenbok, \$80; Duiker, \$80; Warthog, \$80; Waterbuck, \$1,000.

The above listed charges cover all accommodations on safari, guide fees, transportation during the safari, visas, trophy preparation in the field, packing and dipping of trophies, transportation of trophies to Windhoek for shipping, and confirmation fees.

Trophy fees are payable only after the animal is killed or wounded.

Not included are transportation from your home to camp, trophy shipment from Windhoek to you home, or trophy fees.

Transportation from Windhoek to camp around \$300 round trip.

Season: year-round.

SOUTHWEST AFRICA (NAMIBIA)

The Kalahari of Namibia is the heart of prime kudu, gemsbok, and other varieties of desert game hunting. The same kudu which required 14 days of hard hunting in Kenya or Zambia can usually be taken here in only seven to ten days. Relaxed hunting. Highest quality, lowest cost safaris in Africa at this time.

7 Days (Ranch Hunt)

Offering all game indigenous to the Kalahari region.

One hunter, one guide—\$2,750
Two hunters, one guide—\$2,300 each
Observer—\$600

The above charges cover all transportation from Windhoek to camp and return, concession fees, lodging, confirmation fees, guiding fees, field preparation, packing and dipping of trophies.

Trophy fees are payable only after the animal is killed or wounded.

Not included are trophy fees, transportation from your home to safari headquarters, hotels, shipping of trophies your home.

Season: year-round.

MONGOLIA

Hunting was opened in Mongolia in approximately 1967. Each year, over 100 sportsmen from around the world hunt different areas of Mongolia for a variety of animals, from the largest sheep in the world to the Ammon Ammon sheep to the plateau timberland where Maral Stag, similar to our American elk, are hunted.

The Mongolian government has an extremely efficient and well-organized hunting operation, which I highly recommend. Sheep may be hunted from as early as June through to the end of November. A number of different areas are hunted. The High Altai Mountains are not particularly hard to hunt and elevation is not that high. Rams of up to 72 inches, which is the world record, have been taken. Average rams run 55 inches with 19- to 20-inch bases. Ibex are included in the cost of the hunt, \$16,500.

Mid Altai Range, where rams average around 50 inches, 16- to 19-inch bases. Again, ibex is included \$10,000.

Low Altai Range, where you hunt the Ammon Dairi sheep, about the size of our bighorns, 36 to 42 inches, with 16- to 17-inch bases. Again, ibex is included \$7,500.

The Low Altai is a relatively easy area to hunt, similar to hunting mule deer in the West.

Camps are quite comfortable.

Ask for more detailed information on Mongolia.

The Maral Stag can be included on hunts after August 15 for an additional \$2,000.

Success is 100% on sheep, ibex and stag. Air fare under \$2,000 round trip.



The following letter was sent to the Alaska Department of Fish and Game in response to its call for public comment on the return of marine mammal management to the state. It points out why management by the state would be beneficial to the Natives now hunting these species, all other Alaskans and the marine mammal populations themselves.



Editor

MMPA: A Conservation Failure

Dear Sirs:

You have requested public comment on the possible return of marine mammal management to the state of Alaska. Here are my views on this important issue:

In 1972, when, under the Marine Mammal Protection Act the federal government seized control of marine mammals from the states, Alaska had within its waters and under state management about 2 million individual marine mammals of 10 species — polar bear, sea otter, sea lion, harbor seal, ringed seal, ribbon seal, bearded seal, spotted or largha seal, walrus and beluga whale.

Not one of these species was threatened, endangered or overhunted. All were protected by sound conservation regulations.

Alaska immediately requested return of management of its marine mammals, and since 1973 hundreds of thousands of tax dollars have been spent in that effort.

The federal government's stewardship of Alaska's marine mammals has been a failure: "benign neglect" is the best that can be said for it.

Since 1973, two federal agencies have been responsible for these animals: the U.S. Fish and Wildlife Service for polar bear, sea otter and walrus, and the National Marine Fisheries Service for the other seven species. Each agency has its own management philosophy and neither has had money to do more than token research. Terms of the MMPA largely preclude reasonable management by these agencies.

The federal government did not replace the excellent marine mammal research and management program of the state.

The polar bear population is stable. Last year (1984) Alaska Eskimos killed at least 135 female polar bears — the highest known figure for an annual kill of that sex. This is bad management, and potentially harmful for the species. From 1961-72, under state management, when female polar bears with cubs, and cubs, were protected, the annual Alaska female polar bear kill averaged only 65.

The sea otter has reached peak

numbers in some island areas, and die-offs have occurred — a waste. In other areas it has continued to prosper, especially where it had been transplanted by the state of Alaska before the MMPA. Some populations are damaging valuable fisheries, including a Dungeness crab fishery in Prince William Sound.

Harbor seals are in serious conflict with commercial fishermen in some areas. They are decreasing in the Gulf of Alaska.

Sea lions are also in serious conflict with commercial fishermen in some areas. This species is decreasing in the Aleutians.

Bering and Chukchi Sea ice seal numbers — ringed, ribbon, bearded, largha — are stable.

Walrus numbers peaked at 280,000 in 1980, which exceeded the carrying capacity of the Bering Sea. The species is now declining: basically, they're starving.

Wasteful and essentially commercial hunting of walrus for ivory alone is common in the Bering Sea, contrary to terms of the MMPA: the act prohibits waste. In 1980 a Fish and Wildlife Protection trooper told me he had seen headless walrus piled up to three deep along a 100-mile stretch of the Bering Sea coast — animals that had been shot and the heads removed by Eskimo hunters for the ivory.

This valuable resource deserves better treatment.

Beluga whale numbers are probably unchanged.

In summary, Alaska's marine mammal populations were generally healthier and better balanced under state management.

Neglect of our marine mammals since the MMPA has cost Alaska millions of dollars, and the balance of some stocks (walrus, sea lion, sea otter) has deteriorated so that years of careful management will be needed to return them to pre-MMPA health.

Marine mammals are a renewable resource of great value that require management: they cannot be ignored.

Management includes harvest of surplus stocks, control of animals where conflicts exist with valuable fisheries, and protection where stocks are low. None of these techniques has been used with our marine mammals for 12 years.

The MMPA allows only Alaska's Eskimos, Indians and Aleuts to hunt marine mammals. For these people there is no bag limit, no closed season and no protection of females with young.

Sale of raw skins and raw ivory is prohibited.

Prior to the MMPA 10 percent to 14 percent of the gross income of some Eskimo villages was from sale of raw seal skins. Howard Ness, a National Marine Fisheries Service economist, calculated in 1975 that the Alaska Native economy lost more than \$500,000 in 1973-74 alone because of loss of these sales.

Nonresident hunters paid Alaskan guides \$3,000 to \$5,000 for a polar bear hunt prior to the MMPA, for an annual average (1961-72) kill of 259 mostly male polar bears. This means that Alaskans received more than \$1 million annually from guiding fees for polar bear hunts prior to the MMPA. In addition, these hunters spent money in Alaska for travel, food, lodging and other items. There was no

detrimental impact on the polar bear population.

Guided hunts for walrus were starting to become an important income producer for Alaska prior to the MMPA. These hunts gave a substantial boost to the economy of northwest Alaska, with no detrimental impacts to the resource.

Prior to the MMPA the European market bought annually from Alaskans between 8,000 and 10,000 sealskins, and 4,000 to 6,000 sea lion (pup) hides. These were surplus animals, and their loss did not affect the stocks as a whole. Annual value to Alaskans was about \$300,000.

Much damage is occurring to commercial fishermen's gear by uncontrolled populations of seals and sea lions. Pete Islieb, a Cordova fisherman, and former member of the Alaska Board of Fisheries, testified that loss to fishermen from sea mammals in Prince William Sound alone exceeded \$100,000 (in 1974). The animals destroy nets, damage fish caught in nets so they are unmarketable, and destroy crab

pot buoys, which results in loss of valuable crab pots.

In 1975, Islieb estimated that such losses exceeded \$1 million annually, statewide.

These losses could be considerably reduced by harvest of surplus marine mammals.

Since 1973, by my crude calculations, Alaska has lost at least \$45 million because of loss of control of its marine mammals.

In November 1984, the USFWS in Alaska said in a position statement, "... that management of the polar bear, walrus, and sea otter should be returned to the state of Alaska."

Reasons given were:

1. The MMPA places restrictions upon the federal government that impedes sound management [of Alaska's marine mammals].
2. Under the MMPA, harvest of a marine mammal cannot be restricted by federal action until stocks have been found to be depleted, and then only after lengthy hearings before an administrative law judge.
3. Under state control, Alaska would be able to regulate harvest *before* a stock becomes depleted — which would not require hearings.
4. The state of Alaska has an established history of high quality research and management of marine mammals.

5. Legislative history of the MMPA and amendments consistently has shown the intent of Congress to be for return of marine mammal management to the states.

The fight for statehood revolved around two primary issues: Alaskans wanted to be able to vote for the president, and we wanted to be able to manage our own fish and game. Despite the reality of statehood, the federal government has been responsible for our huge and valuable sea mammal populations for the last 12 years, and the results have been similar to those that helped to create the thirst for statehood — mismanagement of Alaska's valuable wildlife.

We should immediately make every effort to return marine mammal management to Alaska. Our marine mammals, and all Alaskans, will benefit.

Jim Rearden
Outdoors Editor
ALASKA® magazine



This photograph was hand-delivered to Outdoors Editor Jim Rearden by a state Fish and Wildlife Protection trooper who said the photographer was a "private, but private, citizen who is not an employee of any state agency. He wishes to remain anonymous."

The message with the photograph indicated the picture was taken in June 1981, near Nome. "At the time," said the message, "six boats were 'subsistence hunting' out of Nome. There were 19 walrus on this ice floe and they had been killed with automatic weapons. Only the ivory and the ossiks [sold in souvenir shops] had been removed. Then each carcass had a wedge-shaped 'vent' cut in the back to insure that the carcass would sink with no evidence of the killing left behind."

A walrus pup, orphaned and left to starve after its mother was destroyed, raised its head in the midst of this grisly scene just as the photographer snapped the picture.

Adult walrus can weigh 2,000 pounds or more, and the meat is edible.

RIC DAVIDGE

FEB 28 1986

Arlis,

Here is the latest information on the marine mammal program in Alaska. You will notice some questions being raised regarding the impacts of subsistence on walrus, polar bears. Hope this answers the questions you have raised.

Ric

ADMINISTRATION OF THE
MARIAN MANDEL
PROTECTION ACT OF 1972

JANUARY 1, 1984 TO DECEMBER 31, 1984



U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240



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Administration of the
MARINE MAMMAL PROTECTION ACT OF 1972
Annual Report
January 1, 1984 - December 31, 1984

Prepared by
Department of the Interior
U.S. Fish and Wildlife Service
Washington, D.C. 20240

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

MARINE MAMMAL PROTECTION ACT

Report of the Department of the Interior

The Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407, 86 Stat. 1027, (1972), 95 Stat. 979 (1981)) states in section 103(f) that "Within six months after the effective date of this Act (December 21, 1972) and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary including, where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals."

The responsibility of the Department of the Interior is limited by section 3(11)(B) of the Act to those mammals that are members of the orders Carnivora (polar bear, sea otter and marine otter), Pinnipedia (walrus), and Sirenia (manatee and dugong). Accordingly, published herewith is the report of the Department of the Interior for the period January 1, 1984, to December 31, 1984, on the administration of the Act with regard to those mammals.

Issued at Washington, D.C., dated MAY 28 1985


Acting Associate Director

ADMINISTRATION OF THE MARINE MAMMAL PROTECTION ACT OF 1972

January 1, 1984 - December 31, 1984

Report of the Department of the Interior

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INTRODUCTION

AUTHORITY

The passage of the Marine Mammal Protection Act of 1972, hereafter referred to as the Act or MMPA, gave the Department of the Interior responsibility for manatees, polar bears, walrus, sea and marine otters, and dugongs. The Fish and Wildlife Service (FWS or Service) is responsible for managing the marine mammals in the Department of the Interior and for enforcing the moratorium on taking and importing marine mammals and marine mammal parts.

The FWS administers requests for waiving the moratorium and for the return of management authority to States, issues permits, conducts research programs, enforces provisions of the Act, publishes rules and regulations to manage marine mammals, cooperates with the States, and participates in international activities and agreements. In addition, the Service lists and delists species as endangered or threatened and undertakes other Endangered Species Act (ESA) related responsibilities and maintains a close working relationship with the Marine Mammal Commission (MMC) and its Committee of Scientific Advisors.

General information on distribution and migration, abundance and trends, general biology, ecological problems, allocation problems, regulations and research can be found in the 1979 annual report. Thus, it is not repeated here. There were no significant changes during this report period in the status of any of the species of marine mammals whose management is the Service's responsibility.

SPECIES LIST

Species List and Status of Marine Mammals With FWS Jurisdiction Under the Marine Mammal Protection Act and the Endangered Species Act

<u>Species</u>			
<u>Scientific Name</u>	<u>Common Name</u>	<u>Marine Mammal Protection Act</u>	<u>Endangered Species Act</u>
<u>Ursus maritimus</u>	Polar bear	Yes	No
<u>Enhydra lutris</u>			
<u>lutris</u>	Sea otter-Alaska	Yes	No
<u>Enhydra lutris</u>			
<u>nereis</u>	Sea otter-Southern	Yes	Threatened
<u>Lutra felina</u>	Marine otter	Yes	Endangered
<u>Odobenus rosmarus</u>	Walrus	Yes	No
<u>Dugong dugon</u>	Dugong	Yes	Endangered
<u>Trichechus</u>			
<u>manatus</u>	West Indian manatee	Yes	Endangered
<u>Trichechus</u>			
<u>inunguis</u>	Amazonian manatee	Yes	Endangered
<u>Trichechus</u>			
<u>senegalensis</u>	West African manatee	Yes	Threatened



Polar bear. U.S. Fish and Wildlife Service photo by Jim Brooks.

APPROPRIATIONS

The most recent funding authorization by Congress for the Service was under Section 114 of the amended MMPA (16 U.S.C. 1361-1407, 86 Stat. 1027 (1972); 95 Stat. 979 (1981) for fiscal year (FY) 1984; and 98 Stat. 440 (1984) for FY 1985 through 1988). The calendar year (January 1, 1984 - December 31, 1984) covered by this report, however, overlaps FY 1984 and FY 1985, and funds authorized (Auth.) and appropriated (Appr.) for both fiscal years are shown below (in \$000).

Reporting Year Funding (January 1 to December 31, 1984)

	<u>MMPA Section 114</u>	
	<u>Auth.</u>	<u>Appr.</u>
FY 84	\$2,000	\$1,249
FY 85	\$2,500	\$1,292

The funding breakdown is as follows (in \$000):

	<u>Actual</u> <u>FY 84</u>	<u>Projected</u> <u>FY 85</u>
<u>Marine Mammal Protection Act</u>		
Research and Development		
Alaskan sea otter	\$ 73	\$ 50
Walrus	18	15
Polar bear	303	252
Total Research	<u>\$ 394</u>	<u>\$ 317</u>
Management		
Permit activities	\$ 25	\$ 25
Law enforcement activities	465	456
Other management activities	365	494
Total Management	<u>\$ 855</u>	<u>\$ 975</u>
MMPA Grand Total	<u>\$1,249</u>	<u>\$1,292</u>
<u>Endangered Species Act</u>		
Section 6 (Grants-to-States)		
California - Sea otter	\$ 93	\$ 53
Florida - Manatee	15	120
Total Section 6	<u>\$ 108</u>	<u>\$ 173</u>
Section 15		
Research and Development		
Endangered/threatened otters	\$ 244	\$ 271
Manatee	262	379
Monk seal	0	2
Total Section 15 Research	<u>\$ 506</u>	<u>\$ 652</u>
Management		
Endangered/threatened otters	\$ 171	\$ 269
Manatee	117	114
Monk seal ^{1/}	25	25
Total Section 15 Management	<u>\$ 313</u>	<u>\$ 408</u>
ESA Grand Total	<u>\$ 927</u>	<u>\$1,233</u>

^{1/} Although the National Marine Fisheries Service (NMFS) has primary responsibility for the monk seal, the species utilizes a National Wildlife Refuge, thereby becoming a management responsibility of the FWS pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee).

SUMMARY OF 1984 PROGRAM

OUTER CONTINENTAL SHELF (OCS) OPERATIONS AND ENVIRONMENTAL STUDIES

The Service participates in the Department's OCS Minerals Leasing and Development Program primarily by providing advice, input and review at various decision stages. The Service provides technical expertise on the management of fish and wildlife resources and the habitats on which they depend. During the report period, the Service participated in several lease sales and suggested protective measures for the appropriate marine mammal species.

During 1984, the Department held six oil and gas lease sales in the following locations: Eastern Gulf of Mexico (Sale 79, 1/5/84); Navarin Basin (Sale 83, 4/17/84); Central Gulf of Mexico (Sale 81, 4/24/84); Western Gulf of Mexico (Sale 84, 7/18/84); Diapir Field (Sale 87, 8/22/84) and Southern California (Sale 80, 10/17/84). Deletions and prohibitions in various lease areas continue to offer protection to marine mammals under the jurisdiction of the Service.

RESEARCH AND DEVELOPMENT

The Division of Biological Services managed a group of studies for the Minerals Management Service (MMS) in support of OCS leasing known as "ecological characterizations." This ecological information base assists in comprehensive coastal resource planning and management. Each characterization contains a narrative section on important marine mammal species in the region, their distribution, migration routes, and habitat preferences and requirements.

The Ecological Characterizations for the Caloosahatchee River/Big Cypress Watershed, on the southwest coast of Florida, was published. In addition, characterizations of the Tampa Bay Watershed, in southwest Florida, and the Big Bend and Panhandle areas in northwest Florida, are in preparation. The Florida Ecological Atlas, a companion document to the Ecological Characterizations, contains maps showing the critical habitat of endangered marine mammals and information on species abundance and habitat preferences in a narrative accompanying the maps. These documents map the critical habitat of endangered marine mammals and discuss species abundance and habitat preferences in a narrative accompanying the maps. Southwestern Florida was mapped in 1984, and similar atlases for northwestern Florida and Tampa Bay are nearing completion.

The Marine Mammal Section of the Denver Wildlife Research Center (DWRC) and the Alaska Fish and Wildlife Office of Research are responsible for carrying out research under the MMPA. Emphasis has been given to determining the ecological effects of human activities related to development and exploitation of the marine environment on marine wildlife and ecosystems.

Research conducted by the Service or under contract during FY 84 is summarized below.

Service Conducted Research

1. Polar bear
 - a. Determine distribution, timing and importance of polar bear maternity denning in Alaska.
 - b. Determine distribution and movement patterns of Alaskan polar bears.
 - c. Determine biological parameters of polar bears of the western and northern populations.
2. Sea otter and marine otter
 - a. Determine annual and seasonal distribution, abundance and composition of populations of sea otters and other marine mammals of Prince William Sound, Alaska.
 - b. Provide the biological basis for determining Optimum Sustainable Population (OSP), estimating sustainable yield, delineating stocks, and for identifying factors important to effective zonal management of sea otters in southeastern Alaska.
 - c. Determine the abundance, size and status of southern sea otter populations.
 - d. Determine the physiology, behavior and life history of sea otters in California.
 - e. Determine the interactions between southern sea otters and nearshore communities.
 - f. Determine the status of the marine otter.
3. Walrus
 - a. Evaluate areas for potential use for population assessment, investigate hauling out patterns, and determine basic biology of walruses on hauling grounds.
4. Hawaiian monk seal
 - a. Determine the status of the Hawaiian monk seal.
5. Manatee and dugong
 - a. Determine the status, distribution, movements and population biology of all taxa of sirenians.
 - b. Determine basic reproductive and behavioral characteristics of the West Indian manatee.
 - c. Determine ecosystem relationships of the West Indian manatee.
 - d. Determine causes of mortality and conduct biological studies on materials salvaged from carcasses of the West Indian manatee in the U.S. and Puerto Rico.

Contracted Research'

1. San Nicolas Island ecological study. Principal investigator: W. Doyle, University of California (\$53,000 ESA Section 15 funds).

2. Initial studies of radiotelemetry implants in California sea otters. Principal investigator: D.B. Siniff, University of Minnesota (\$11,300 ESA Section 15 funds).
3. Marine ecosystems and habitats with specific reference to manatee salvage and mortality. Principal investigator: D. O'Dell, University of Florida (\$20,000 ESA Section 15 funds).
4. Public awareness of the status of the manatee and problems associated with boating and diving activities in the vicinity of manatees. Florida Department of Natural Resources (\$15,000 ESA Section 6 funds).
5. Preparation of the draft Environmental Impact Statement (EIS) on the translocation of southern sea otters. Cooperative Agreement. Principal investigator: W. Doyle, University of California-Santa Cruz (\$170,000 ESA Section 15 funds).
6. Sea otter studies: mortality causes; salvage and necropsy; and observation of incidental take. Cooperative Agreement. Principal investigator: R. Hardy, California Department of Fish and Game (\$53,000 ESA Section 6 funds).
7. Determine feasibility of regulating movement of sea otters; improve capture techniques. Cooperative Agreement. Principal investigator: R. Hardy, California Department of Fish and Game (\$40,000 ESA Section 6 funds).

ENFORCEMENT

The Service's Division of Law Enforcement investigates known, alleged or potential violations of the Act involving illegal take or importation of marine mammals or their products for which the FWS is responsible. In addition, it assists the National Marine Fisheries Service (NMFS) by making apprehensions and conducting investigations in cases involving species under that agency's jurisdiction. Results of these efforts are referred to NMFS for its consideration and appropriate action. However, under a NMFS/Service memorandum of understanding, the Service retains authority over those investigations that involve endangered marine mammal species. Violations are referred to the Department's Office of the Solicitor for civil action or to the Department of Justice for criminal action.

Seventy-five marine mammal investigations were pending as of January 1, 1984, and Service agents initiated three hundred and twenty-one new investigations during 1984. A total of one hundred and eighty-three marine mammal investigations were closed during the year, leaving two hundred and thirteen investigations remaining in a pending status as of December 31, 1984.

Records to date indicate that in 1984 forty-six cases were filed in criminal court and ninety cases were filed civilly.

Alaska Law Enforcement Actions

Undercover investigations continued to be the primary method of detecting violations of the MMPA, particularly in the illegal commercialization of raw parts. However, surveillance of haul-out areas and overt law enforcement operations on the hunting grounds also proved important.

During the spring of 1984, near Cape Seniaven on the Alaska Peninsula, six fishing boats were observed harassing and shooting walrus. No attempts were made to retrieve any of the walrus. Several days later, search warrants were served on all of the boats, resulting in the seizures of firearms used in the shootings. Civil penalty proceedings have been initiated against all of the captains.

A search warrant was served on the fishing vessel Invader after reports that crew members had purchased raw walrus ivory from the Natives at Mekoryuk, Alaska. A quantity of raw ivory was seized. Criminal charges were filed in U.S. District Court, Anchorage, Alaska, on three of the crew members. All pled guilty and received fines and probated sentences.

In a joint investigation with the NMFS, an Alaskan Native resident of Anchorage purchased a raw polar bear hide in Barrow, Alaska, and agreed to sell it to an undercover agent for \$3,000. He also sold raw seal skins to the undercover agent. Prosecution is pending.

An informant notified FWS Special Agents that an Alaskan Native had offered to sell him eight sea otter hides for \$1,500 each. The informant and a Special Agent met the Native at an Anchorage tannery and made a down payment on the hides. The tannery, which was not registered to handle sea otters, was later searched and seventeen sea otter hides were seized. Criminal charges have been filed against the Native and civil penalty proceedings filed against the tannery.

A non-Native Anchorage resident and a resident of Wales, Alaska, were arrested in Anchorage when they agreed to sell three polar bear hides and raw walrus ivory to undercover agents. The hides and ivory were seized. Both subjects pled guilty and served jail sentences; no fines were imposed because of their inability to pay.

Alaska Enforcement Summary

1. Active investigations:
 - a. Walrus 27
 - b. Polar bear 11
 - c. Sea otter 3

2. Closed investigations:
 - a. Walrus 2
 - b. Polar bear 1
 - c. Sea otter 1

3. Cases submitted for civil penalty:
 - a. Walrus 11
 - b. Polar bear 1
 - c. Sea otter 1

4. Civil penalties:
 - a. Eleven people involved in \$27,100 of penalties, and forfeiture value of \$2,450; 350 hours of community service.

5. Criminal penalties:
 - a. Three people involved in six months jail time.
 - b. Fines assessed total \$2,475.

PERMITS AND REGISTRATIONS

Other than providing an exemption for the nonwasteful take of nondepleted marine mammals by Alaskan Natives for subsistence or handicraft purposes, the MMPA generally prohibits the take or import of marine mammals and marine mammal products although exceptions may be made under permit for scientific research or public display. These permits may be issued only if it is determined by the Service that there will be no adverse effects on the health and well-being of the marine mammal species, populations and their marine ecosystems. Registered agent permits are issued to authorize the buying or selling of raw marine mammal parts or products by non-Alaskan Natives (i.e., persons other than Alaskan Indians, Eskimos or Aleuts) or to enable marine mammal hides to be tanned to facilitate trade of these products among Alaskan Natives.

During 1984, nine permits for scientific research were issued; one was subsequently cancelled by the FWS. Seven permits were issued for the import and public display of a total of nine captive born polar bears, two for the capture and export of eight Alaskan sea otters, and one permit was issued for the import and display of 14 Inuit crafted walrus artifacts. One application for the import and public display of a wild polar bear cub was denied. Ten registered agent permits were issued. The following is a brief description of permit actions taken in 1984.

Scientific Research Permits

PRT-684532, U.S. Fish and Wildlife Service, San Simeon, California, issued for the period 10/15/84 through 10/31/87 to conduct research on West Indian manatees within the U.S. and Puerto Rico including: (1) radio tag and/or tetracycline mark; (2) attach peduncle tags or free-floating tether tags; (3) tail

notch free ranging, human-accustomed animals; (4) freeze brand injured and rescued animals; (5) carry out non-harmful studies on rehabilitation; (6) collect dead and injured animals; and (7) export parts from salvaged dead animals for further research.

PRT-672624, U.S. Fish and Wildlife Service, Denver, Colorado, issued for the period 2/16/84 through 12/31/84 to conduct research by capturing 27 southern sea otters on the California coast from Rugged Point to Cambria including: (1) tag and release animals over 15 pounds for future monitoring; (2) immobilize animals using Fentanyl, or Fentanyl and Azaperone in order to take 20cc blood samples; and (3) salvage animals that die or are found dead and collect biological samples, or aid and care for sick or injured animals.

PRT-672629, Kerry Foresman, University of Montana, Missoula, Montana, issued for the period 2/9/84 through 6/30/86 authorizing the import of 300 polar bear blood samples per year from Canada for research.

PRT 2-9931, Richard N. Silverstein, M.D., Staten Island, New York, issued for the period 3/2/84 through 12/31/84 to kill one adult polar bear in northwestern Alaska in order to collect various samples for biomedical research concerning vitamin A adaptations in bears and possible relevance to humans. A bear was not collected and the permit was cancelled on 5/10/84 at the permittee's request.

PRT-681784, Dr. John Fletemeyer, Nova University, Dania, Florida, issued for the period 8/31/84 through 8/31/86 to conduct research on West Indian manatees in southeastern Florida including the use of side-scan sonar to detect manatee movements and close range photography.

PRT 2-10022, Sea World Inc., San Diego, California, issued for the period 5/23/84 through 5/31/86 to take one southern sea otter from the California coast between Santa Cruz and Pismo Beach for research purposes.

PRT-678319, Dr. Donald Siniff, University of Minnesota, Minneapolis, Minnesota, issued for the period 6/1/84 through 11/30/87 to conduct research on up to 150 Alaskan sea otters in Prince William Sound, Alaska. Activities include capture, anesthetization, flipper tagging, blood sampling, tooth extraction and implanting radio transmitters on up to 100 animals (no more than 50 in one year), of which 50 will be tagged with temple tag transmitters.

PRT-688234, Dr. Donald Siniff, University of Minnesota, Minneapolis, Minnesota, issued for the period 12/20/84 through 12/31/87 to capture up to 100 southern sea otters from the California coast in the vicinity of the Santa Maria River and Ano Nuevo Island for the purpose of implanting radio transmitters.

PRT-681844, All-Union Scientific Institute of Fisheries and Oceanography, Moscow, USSR, issued for the period 11/7/84 through 12/31/85 to take by killing: 200 Pacific walrus, 200 ribbon seals, 200 largha seals, 100 ringed seals, 300 bearded seals and 100 Steller sea lions in the southeastern Bering Sea during a joint USA-USSR expedition. Research is for the purpose of studying the abundance, distribution and dynamics of rookeries under ice conditions, as well as the age/sex composition and reproductive capacity of walrus, ice seals and sea lions.

Public Display Permits

PRT 2-11389, Tulsa Zoological Park, Tulsa, Oklahoma, issued for the period 6/18/84 through 6/30/85 for the import and public display of two captive-born polar bears for the Moscow Zoo, Moscow, USSR.

PRT-679263, Morris Museum of Arts and Science, Convent, New Jersey, issued for the period 6/29/84 through 6/29/85 for the import and public display of 14 Inuit crafted artifacts made in whole or in part from walrus material.

PRT-682196, Sunshine International Aquarium, Tokyo, Japan, issued for the period 9/4/84 through 12/31/84 for the capture and export of one male and three female Alaskan sea otters from Alaska for public display.

PRT-682207, Matsushima Aquarium, Miyagi, Japan, issued for the period 9/4/84 through 12/31/84 for the capture and export of one male and three female Alaskan sea otters from Alaska for public display.

PRT-683050, Detroit Zoo, Royal Oak, Michigan, issued for the period 9/17/84 through 9/30/85 for the import of one captive-born female polar bear from the Ruhr Zoo, West Germany, for public display.

PRT-683054, Detroit Zoo, Royal Oak, Michigan, issued for the period 9/17/84 through 9/30/85 for the import of one female captive-born polar bear from the Kolmarden Zoo, Sweden, for public display.

PRT-684744, Milwaukee Zoo, Milwaukee, Wisconsin, issued for the period 10/17/84 through 10/17/85 for the import of one female captive-born polar bear from the Ruhr Zoo, West Germany, for public display.

PRT-679058, Detroit Zoo, Royal Oak, Michigan, issued for the period 6/25/84 through 6/30/85 for the import of one captive-born female polar bear from the Skansen Zoo, Stockholm, Sweden, for public display.

PRT-684998, Cincinnati Zoo, Cincinnati, Ohio, issued for the period 10/23/84 through 10/31/85 for the import of one male and one female captive-born polar bear from the Baby Zoo, Wengst, West Germany, for public display.

PRT-684019, Milwaukee Zoo, Milwaukee, Wisconsin. This application to import one wild, orphaned polar bear cub for public display was denied on the basis of pertinent regulations prohibiting the import of any marine mammal that was nursing at the time it was removed from the wild except for research purposes.

PRT-683815, San Francisco Zoo, San Francisco, California, issued for the period 12/21/84 through 12/21/85 for the import of one polar bear from the Manitoba, Canada, Department of Natural Resources, for public display.

Registered Agent Permits

PRT-671391, Frontier Tanning Company, Anchorage, Alaska, for the period 1/6/84 through 10/31/85.

PRT-671182, Jack Coughlan, Anchorage, Alaska, for the period 1/1/84 through 12/3/85.

PRT-672258, Jerry Austin, St. Michael, Alaska, for the period 2/1/84 through 1/31/86.

PRT-673154, Wilderness Taxidermy, Tok, Alaska, for the period 2/23/84 through 2/28/86.

PRT-680927, Kodiak Taxidermy, Kodiak, Alaska, for the period 8/8/84 through 7/31/86.

PRT-681597, George Kritchen, Cordova, Alaska, for the period 8/24/84 through 8/31/86.

PRT-683423, New Method Fur Dressing Company, San Francisco, California, for the period 9/21/84 through 2/28/85.

PRT-683754, Northland Furs, Kasilof, Alaska, for the period 9/27/84 through 9/30/86.

PRT-683953, Arctic Harvest Exports, Point Hope, Alaska, for the period 10/4/84 through 9/30/86.

PRT-675131, Fickes Taxidermy, Anchorage, Alaska, for the period 4/6/84 through 3/31/86.

INTERNATIONAL ACTIVITIES

The Service's international efforts to conserve marine mammals and their habitats are an important component of its overall efforts to achieve the objectives of the MMPA. The following describes the principal international activities carried out by the Service during the report period.

Excess Foreign Currency Program

During this report period, the Service received no new congressional authorizations for use of excess foreign currencies. However, the Service continued work in Egypt, Pakistan, and India using carryover funds authorized in previous years. These authorizations were requested under Section 8 of the Endangered Species Act, which allows such funds to be expended on projects deemed by the Secretary of the Interior to be necessary for the conservation of endangered or threatened species.

The Service has continued to collect information on the effects of oil pollution on marine organisms in the Persian Gulf as a result of the Iraq-Iran war. Monitoring is difficult because of the war situation, allowing no direct on-the-spot research.

The establishment of a park area at Ras Mohamed in the Red Sea has allowed the Egyptian Wildlife Service to station two personnel at the town of Sharm El-Sheikh. Part of their activities include monitoring of the dugong population in that area.

US-USSR Environmental Agreement: Marine Mammal Project

In partnership with the NMFS, the Service cooperates with the USSR Ministry of Fisheries and USSR Academy of Sciences in an extensive program of laboratory research and joint survey expeditions to foster the conservation and management of marine mammals of importance to both countries. During 1984 American and Soviet scientists took part in five exchanges totaling 11 man-months, all under the auspices of the bilateral US-USSR Environmental Agreement.

In March and April, two Soviet delegations visited the United States to take craniological measurements in the pinniped collections of several natural history museums, and to analyze cetacean odontocete data and color morphometrics of harbor seals. At the same time, an American biologist travelled to the Soviet Union to continue studies of parturition marks in sperm whale teeth.

Activities during the second half of the year included a September sea otter workshop in Nakhodka, USSR, at which five Americans presented papers, and a joint walrus survey cruise in the Bering Sea (November-December) aboard the USSR vessel, "Zakharovo," in which four Soviet and three American specialists participated. Data were gathered on physical condition, reproduction, feeding

habits, diseases and contaminant levels. Copies of the final report are available from the Service's Office of International Affairs, 18th and C Streets, N.W., Room 2441, Washington, D.C. 20240.

STATUS REPORTS

Reporting and Sealing Regulations

As previously authorized by Congress, the Service began to develop mandatory marking, tagging and reporting (formally referred to as reporting and sealing) regulations for polar bear, walrus and sea otter harvested by Alaskan Natives for subsistence or handicraft purposes. The intended effect of this action is to assist the Service in monitoring the harvest of polar bear, walrus and sea otter, and in obtaining essential biological data needed to manage properly these marine mammal species or stocks. The action is also intended to help in controlling the illegal take, trade and transport of specified raw marine mammal parts. The planned implementation will be in FY 86.



Polar bear with kill on the Arctic National Wildlife Refuge. U.S. Fish and Wildlife Service photo by Dave Olson.

Polar Bear

The current status of the polar bear in Alaska has not been definitively determined but is believed to be stable, and possibly at a level lower than earlier predicted. Polar bears are well distributed throughout their historical range. Recent estimates by various researchers on the numbers of polar bears in Alaska range from a low of 3,000-5,000 to a high of 9,500. Although the comparison of these various population estimates is not possible because they were derived by using different methods, it is generally agreed that the population currently appears to be stable and probably has not declined in recent years. Information needed to establish accurate population levels and trends, however, is not currently available. Future work on polar bear movements, productivity and survivability is required before more definitive population estimates or indices can be established.

Under the Act, only Alaskan Natives are, at present, allowed to harvest polar bears legally for subsistence or handicraft purposes. The Act further provides that such taking can be done without regard to the number, age, sex, reproductive condition or time of year unless the species is declared depleted. Polar bears are generally taken when available throughout the fall, winter and spring seasons. Very few Alaskan Natives hunt specifically for polar bears. Most animals are taken close to villages during the course of seal hunting or other activities, but the 1984 season may have been an exception to this general rule.

Recent estimates on the number of polar bears taken are based on harvest surveys conducted by the Alaska Department of Fish and Game (ADF&G) through the 1979 harvest season and, most recently, by the FWS. However, because compliance to harvest surveys has been on a voluntary basis, data collected should be considered as the minimum take.

During the 1983/84 harvest period, a minimum of 283 bears were taken by hunters from 15 villages (Table 1). This represents a record number of bears taken for subsistence purposes. It coincides with the extremely heavy ice conditions which persisted throughout the Chukchi and Bering Seas during the fall and winter periods. Preliminary estimates indicate the harvest was composed of 55.7 percent males, 33.6 percent females and 10.7 percent of the animals with sex not reported. As in previous years, about 79 percent of the bears were taken in the western sector and 25 percent in the northern sector. Snow machines were used as the predominant mode of transportation for hunting. Hunting was concentrated near villages and along coastal areas.

Ice extended to the south as far as the Pribilof Islands and persisted at southern latitudes for longer periods of time than normal. Persistent northerly winds and unusually cold temperatures contributed to these ice conditions. This combination of events contributed to the prolonged presence of bears in coastal areas. Polar bears were taken by hunters in villages which previously had little or no history of harvesting bears. For example, a hunter

 Table 1. Alaskan Polar Bear Harvest by Village, 1980-1984.*

<u>Village</u>	<u>7/80 to</u> <u>7/81</u>	<u>7/81 to</u> <u>7/82</u>	<u>7/82 to</u> <u>7/83</u>	<u>7/83 to</u> <u>7/84</u>
Kaktovik	23	1	1	1
Barrow	7	6	11	21
Wainwright	8	15	17	29
Pt. Lay	1	4	2	8
Pt. Hope	9	7	21	29
Kivalina		1		3
Kotzebue				2
Wales	6	11	8	20
Shishmaref	29	22	13	78
Brevig Mission				5
Diomede	1	3		10
Nome				1
Gambell	6	1	6	26
Savoonga	16	21	9	49
Hazen Bay				1
All Others		1	3	
Totals	<u>106</u>	<u>93</u>	<u>91</u>	<u>283</u>

* U.S. Fish and Wildlife Service data. Numbers are subject to change depending upon voluntary reports that are completed.

took a large male polar bear near Nome on Labor Day after Norton Sound was ice free. Traditionally, polar bears do not occur near Nome, but are found to the west in the Bering Sea. Other villages with little history of polar bear take, but where bears were taken in 1984, include the villages of Kotzebue, Kivalina, and Brevig Mission. St. Lawrence Island residents reported that approximately ten polar bears summered on the island. These animals were believed to have left the area sometime before fall as hunters were unable to locate tracks after the first snowfall. Westerly spring winds apparently contributed to the July presence of polar bears in the Etolin Straits near the Yukon River Delta. The fate of bears summering on St. Lawrence Island and the Yukon River Delta is unknown, although polar bears have been known to swim long distances.

Harvest levels vary naturally and are related to availability of bears along coastal areas. Harvests through the 1940's were primarily carried out by Natives hunting with dog teams for subsistence and for hides to sell. Estimated annual harvests based on fur export records for 1925-53 averaged 117 bears killed per year. Hunting from aircraft began in the late 1940's, and gradually increased through the 1950's and 1960's. It was discontinued in 1972 with implementation of the MMPA. During the aerial hunting era, polar bear harvests averaged approximately 160 bears annually between 1954-1960, and increased to 260 bears taken annually between 1960-72. About 13 percent of the harvest (34 bears per year) were taken by Alaskan Natives.



Pacific walrus. U.S. Fish and Wildlife Service photo.

There is a growing concern that the Native take of polar bears without regard to the number, age, sex, and time of year may have a significant adverse effect on the polar bear population in Alaska, and, even further, on the population in the Yukon Territory and the Northwest Territories of Canada since polar bear migration routes are known to cross the United States/Canada border. Concerns have been expressed by the Canadian, Norwegian, and Danish governments, all of which are parties to the International Agreement for the Conservation of Polar Bears. With their low reproductive rate (more than 3.5 years between litters, with the average litter size being less than two), polar bears are extremely sensitive to overharvesting if excessive killing of females is allowed to occur; current evidence suggests that this may indeed be the case. The State of Alaska has the opportunity to effect an active management program should they request, and ultimately regain, management authority. If they do not elect to assume management for the species for which FWS has management responsibility, the FWS intends to expand its management capabilities.

Walrus

The 1984 walrus harvest monitoring program was the fifth consecutive year that spring harvests were measured by the Service in five Bering Sea villages. The five villages -- Gambell, Savoonga, Little Diomedes, Nome/King Island, and Wales -- were chosen based upon past surveys that showed 70-80 percent of the spring harvest occurs in them. An estimated 70-80 percent of the statewide harvest occurs in the springtime. The number of walrus retrieved in 1984 set four individual village records. The combined total was greater than any recorded for subsistence hunting in the five villages. The 3,981 animals were comprised of 1,316 (33.1 percent) adult males, 1,562 (39.2 percent) adult females, 442 (11.1 percent) adults for which the sex was unknown, and 661 (16.6 percent) calves (Table 2). The total American harvest (the USSR also allows the harvest of walrus) is higher than these numbers indicate for a number of reasons: (1) the Service's harvest survey currently covers an estimated 50-60 percent of the harvest; (2) harvest reporting is on a voluntary basis; (3) public demand for ivory continues to increase; and (4) a high number -- estimates of 40-50 percent are not uncommon -- of walrus taken sink before retrieval is possible.

Biological indicators suggest that the current walrus population, recently estimated at 270,000 to 290,000 animals, is no longer increasing and probably in decline. Reproductive success is down as shown by analysis of reproductive tracts collected from females. Sex and age class surveys indicate that fewer calves are being brought into the population either from poor survivability, a decrease in the numbers of females impregnated or a decline in the number conceived and born. Poor survival may have led to low recruitment to the breeding population, possibly since the mid-1970's. The population is now comprised of predominantly old-age animals of lower

 Table 2. Retrieved Walrus Harvest in Selected Bering Sea Villages, 1984

<u>Village</u>	<u>Male</u>	<u>Female</u>	<u>Unknown</u>	<u>Calves</u>	<u>Total</u>
Gambell	373	528	193	405	1,499
% of Total	25	35	13	27	
% Adults	34	48	18	--	
Savoonga	557	219	32	203	1,011
% of Total	55	22	3	20	
% Adults	69	27	4	--	
Nome/King Island	27	26	103	1	157
% of Total	17	17	66	1	
% Adults	17	17	66	--	
Little Diomede	269	657	77	40	1,043
% of Total	26	63	7	4	
% Adults	27	66	8	--	
Wales	90	132	37	12	271
% of Total	33	49	14	4	
% of adults	35	51	14	--	
Totals	1,316	1,562	442	661	3,981
% of Totals	33	39	11	17	
% Adults	40	47	13	--	

 reproductive potential. These indicators combined with increasing harvest trends (Figure 1) are reason for concern.

During September, FWS and ADF&G personnel conducted aerial walrus surveys between solid pack ice and more southerly open water. Objectives of the survey were to prepare for the joint US-USSR survey to be conducted in September of 1985 by testing various survey designs, defining a zone with low and high density concentrations of walrus and to survey open water areas for the presence of, and sightability of, walrus. High densities of walrus were not encountered, and the preliminary test raised more questions than it answered.

The FWS continued an active role on the Pacific Walrus Technical Committee (PWTC). Primary objectives of the PWTC are to discuss current research and management topics and to provide advice and guidance to the Eskimo Walrus Commission.

Sea Otter-Alaska

The past decade has seen apparent population increases in Alaska. The population now approaches 150,000 to 200,000 animals, depending upon the estimate used. In some areas, the population may be at or exceeding historic levels.

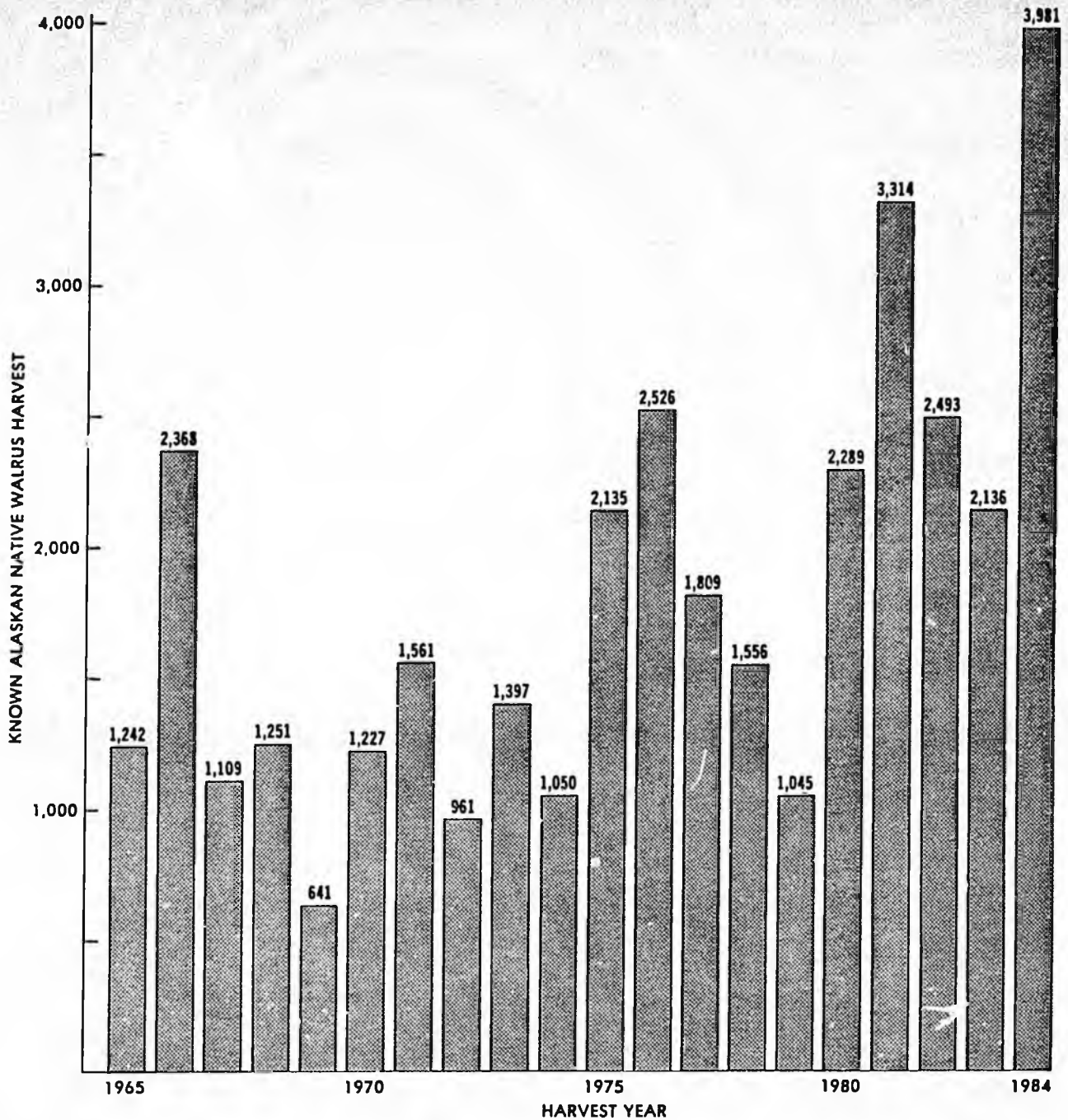


Figure 1. Annual retrieved spring harvest of Pacific walrus from Gambell, Savoonga, Little Diomedé, Wales and Nome/King Island, Alaska. Data provided courtesy of the Alaska Department of Fish and Game for 1965-1979. U.S. Fish and Wildlife Service data from 1980-1984.

Population surveys were conducted in western Prince William Sound and Kodiak Archipelago. The overall population in western Prince William Sound has not increased substantially from 1974 to 1984, but the population may have shifted from the southeastern to the northwestern part of the Sound. In the Kodiak Archipelago, the overall numbers of sea otters appear to be about the same over a

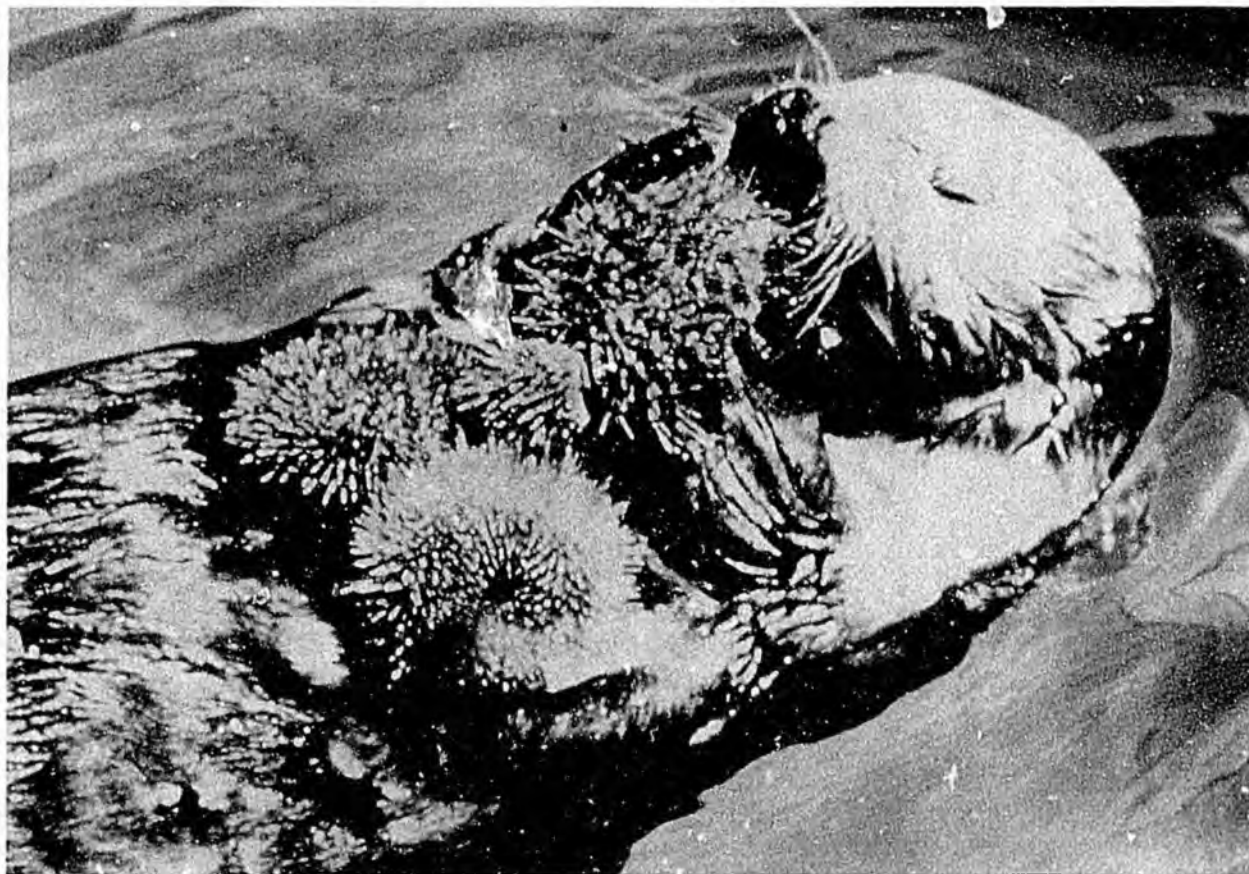
nine year period between surveys (1975-1984) for the same area. Major distributional shifts were observed with apparent changes in population centers.

An increasing number of complaints of sea otter damage to shellfish fisheries is being received. The actual cause of shellfish declines is unknown, but complaints have been received from Cordova, Kodiak and their environs. Total sea otter mortality is unknown, but it is suspected to be increasing from human activities such as setnet fishing (dead sea otter pups have been observed in setnets), and from Native take. One to two telephone calls per week have been received from Natives seeking information on legalities of their taking sea otters.

A Marine Mammal Commission Workshop on sea otter containment was attended.

Sea Otter-Southern

In 1977 the southern sea otter, already afforded protection under the MMPA, was listed as a "threatened" species under the ESA. That Act required that a recovery plan be prepared by the Service for each listed species. The Southern Sea Otter Recovery Plan, developed and approved by the Service's Director in February 1982 and currently under revision identified and set priorities on



Sea otter with three sea urchins. U.S. Fish and Wildlife Service photo.

management and research actions that are needed to protect and recover the species. The Office of Sea Otter Coordination (OSOC) was created in 1984 for the purpose of implementing an effective and coordinated recovery program.

The southern sea otter was reduced to possibly as few as 30-50 animals at the turn of the century as a result of overharvest by the commercial fur trade industry. Although this population apparently increased at about five percent per year from 1914 until the mid 1950's, surveys conducted by the California Department of Fish and Game (CDF&G) and the Service have not detected any increase in the population in recent years and even suggest a possible modest decline. Population surveys conducted in 1984 by the CDF&G and the Service resulted in actual counts of 1,203 and 1,304 sea otters, respectively.

Five-Year Status Review. The Five-Year Status Review required by the ESA was completed in 1984. It assessed the status of the southern sea otter after five years of Federal protection under the Act. The review also addressed two petitions: one to delist the sea otter (submitted jointly by Save Our Shellfish, the Greater Los Angeles Council of Divers and the Pacific Legal Foundation) and one to reclassify it as endangered (submitted by Friends of the Sea Otter). A comprehensive assessment of all pertinent issues relevant to the contemporary status of the sea otter was made. Based on the findings pursuant to Section 4(b)(3)(B) and Section 4(c)(2)(B) of the ESA, the Service determined that the southern sea otter is appropriately classified as a threatened species. The principal threats to the population are: potential contamination of individuals and/or habitat by accidental oil spills, incidental take in gill and trammel nets, increases in toxic pollutants within its range, and intentional shooting. The classification as threatened is appropriate because the Service is implementing an active recovery program.

Translocation. A primary goal of the MMPA is to restore marine mammal populations that have diminished below their Optimum Sustainable Population (OSP) levels. The Southern Sea Otter Recovery Plan identifies research and management actions considered necessary for the conservation of the southern sea otter as well as steps necessary to determine and attain the OSP level. One of the primary goals is to conduct appropriate research and take appropriate management actions to establish at least one additional colony of sea otters at a site sufficiently distant from the extant population in order to preserve a portion of the population in the event of a catastrophic oil spill. The research associated with translocation will aid the Service in evaluating the impacts on the ecosystem of reestablishing a sea otter population in unoccupied historical habitat, the effectiveness of containing a translocated population, and the population dynamics of a reestablished population. Results will be useful in determining OSP and assessing the need for, and likely consequences of, future translocations. Steps have been taken toward the establishment of an additional sea otter colony.

For the purpose of identifying potential translocation sites, the Service in 1983 contracted with J. L. Dobbins Associates, Inc., to compile and analyze available biological, ecological and socioeconomic information for the Pacific coast of Washington, Oregon and California. The analysis included such subjects as habitat suitability for supporting otters, present and proposed oil and gas development, other resource conflicts, and potential of natural barriers to contain the population's expansion. The analysis culminated in May 1984 with the publication of Compilation and Mapping of Available Biological, Ecological and Socio-Economic Information Bearing on the Protection, Management and Restoration of the Southern Sea Otter. Four sites (San Nicolas Island, Ventura County, California; the northern coast of California; the southern coast of Oregon; and the northern coast of Washington) showed the most promise as translocation sites.

Because of the controversial nature and potential environmental impacts of a sea otter translocation, the Service decided to prepare an Environmental Impact Statement (EIS) to evaluate various issues, alternatives and consequences associated with a translocation and to seek public input to the decision-making process. A Notice of Intent to prepare an EIS was published June 27, 1984, and scoping meetings were held on July 23 (Santa Barbara) and July 25 (Monterey).

The most frequently raised issues regarding the translocation involved economic impacts on commercial shellfish fisheries and oil development, risks of oil spills to sea otters, the need for a plan to contain the translocated population, threats of environmental contaminants to the sea otter, economic impacts on kelp harvesting, the need to establish a reserve breeding colony, the need for a law enforcement plan, and the need for a public education program.

An Interagency Project Review Team (IPRT) was established to provide assistance in defining issues and alternatives as well as to provide suggestions concerning the content of the EIS. The IPRT is comprised of Federal and State officials including representatives of the Service, MMS, MMC, National Oceanic and Atmospheric Administration, U.S. Coast Guard, CDF&G, California Fish and Game Commission, California Coastal Commission and California State Lands Commission. Meetings (open to the public) were held August 6 and October 4, 1984, in San Francisco, and November 8, 1984, in Sacramento.

In addition to personnel from the Service's OSOC, the Division of Wildlife Research and the Division of Program Plans, the drafting of the EIS has also been carried out through a Cooperative Agreement with the University of California-Santa Cruz. To assure technical accuracy of the draft EIS the Service has also selected an Expert Review Group comprised of experts in physical oceanography, modelling risks of marine pollution, marine ecology, marine mammal behavior/population dynamics and marine socio-economics. This group was selected to provide objective, impartial review and commentary on the draft and preliminary final EIS.

By the end of 1984, a complete working draft of the EIS had been completed. The draft EIS was scheduled for release to the public before the end of this fiscal year.

In conjunction with the EIS, the Service is preparing a proposed rulemaking and translocation plan for establishing an experimental population of sea otters, as authorized by Section 10(j) of the ESA. The translocation plan will serve as the basis for requesting a research permit under Section 101(a) of the MMPA.

In 1984 the Service, the MMC and the CDF&G intensified their efforts to determine why the sea otter population has not expanded in the past decade. Preliminary data indicated that commercial gill and trammel nets were incidentally entangling and drowning a significant number of southern sea otters. In September of this year CDF&G completed a preliminary analysis of data collected over the last three years and released the information at a public meeting in Morro Bay. The report indicated that otter mortality throughout its range is substantial, estimating that an average of 105 otters per year had drowned since 1973. This rate of loss means that 5-10 percent of the population may be drowning in nets each year. Continuation of this level of mortality seriously threatens the recovery of sea otters and if the situation is left unchecked, could result in the reclassification of the southern sea otter to an endangered status.

The CDF&G held public meetings in Morro Bay (September 11 and October 29, 1984) and Monterey (October 2, 1984) to give fishermen, conservation groups and other concerned citizens the opportunity to comment and offer recommendations on ways to eliminate accidental drowning of sea otters in commercial fishing nets. Since incidental take is significantly impacting the sea otter population CDF&G, on January 27, 1985, invoked a temporary emergency closure of the sea otter range to gill and trammel net fishing until long term legislative solutions to the entanglement problems can be implemented.

State Senate Bill 89 was introduced on December 20, 1984, as a legislative solution to entanglement. The Bill, which proposed to ban the use of all large mesh (larger than three inches) entangling fishing nets within the 15 fathom depth curve throughout the sea otter's range, was approved by the Senate on March 14, 1985. The State Assembly approved an amended version (increasing net mesh size to 3.5 inches) on May 9, 1985. If the Senate concurs on the new version, it will be sent to the Governor for signature.

Section 7 Consultations. Pursuant to Section 7 of the ESA, the Service reviews federally funded, conducted or permitted activities which may affect the southern sea otter and issues Biological Opinions and recommendations to minimize impacts. In 1984, the Service issued two non-jeopardy opinions to the MMS for proposed offshore oil and gas development and production. The first consultation (March 14, 1984) involved proposed oil

development and production in the Santa Ynez Unit of the Santa Barbara Channel, California. The data suggested that the probability is low that an oil spill resulting from the project would reach the southern sea otter range along the central California coast or San Nicolas Island (a potential translocation site).

The second consultation (October 31, 1984) involved proposed oil development and production in the Point Arguello Field. This project is located approximately 30 miles south of the southern extent of the current sea otter range (Santa Maria River). The draft EIS for the proposed production plan predicted that the likelihood of a spill occurring and contacting the sea otter range is very low (less than 0.1 percent per spill). Because of the low probability of a spill and the low numbers of otters in the southern portion of the range, a local spill in the project area is not likely to have a significant adverse impact on the sea otter population at this time.

The Service also issued a non-jeopardy Biological Opinion to the Corps of Engineers (COE) on October 24, 1984, regarding maintenance dredging of Morro Bay, San Luis Obispo County, where up to 60 otters have occurred during the past year.

Permits. During the 1984 reporting period, the OSOC worked closely with the Federal Wildlife Permit Office on the issuance of sea otter research permits. Sea World, Inc., of San Diego, California, received authorization to take one male sea otter for scientific research involving captive propagation and reproductive studies.

Another permit issued to Don Siniff of the University of Minnesota involved experimental telemetry studies using radio implants. The research is funded by the MMS and designed to provide more information on southern sea otter reproduction, mortality and behavior (e.g., movement patterns). After issuance of the telemetry permit, during the period of March 1984 through July 1984, an experienced veterinarian surgically implanted radio transmitters into the peritoneal cavity of five southern sea otters. To date, none of these sea otters show any adverse effects from the implants. One otter is missing and believed drowned in a gill or trammel net. Information on energy budgets, activity patterns, and behavior has been collected.

Section 6. The Service provided funding to CDF&G through Section 6 (Grant-in-Aid to the States) of the ESA. Methods for containing sea otters and controlling their movements were studied by CDF&G with these funds. This program was initiated in recognition that protection of sea otters from oil spills and managing a new colony of sea otters would be enhanced with the development of means to control their movement. The 1984 studies were designed to examine the feasibility of herding otters (using a variety of acoustic devices) and to improve methods of capturing sea otters.

The results of the acoustic herding tests (a one year study) indicated that the test animals were aware of the stimuli but the level of intensity was not sufficient to elicit a directional or avoidance response. The results indicate that herding, structured as it was in this effort, will probably not prove viable as a technique for clearing areas which have been occupied for long periods of time. Isolated kelp beds can be cleared for short periods of time, however.

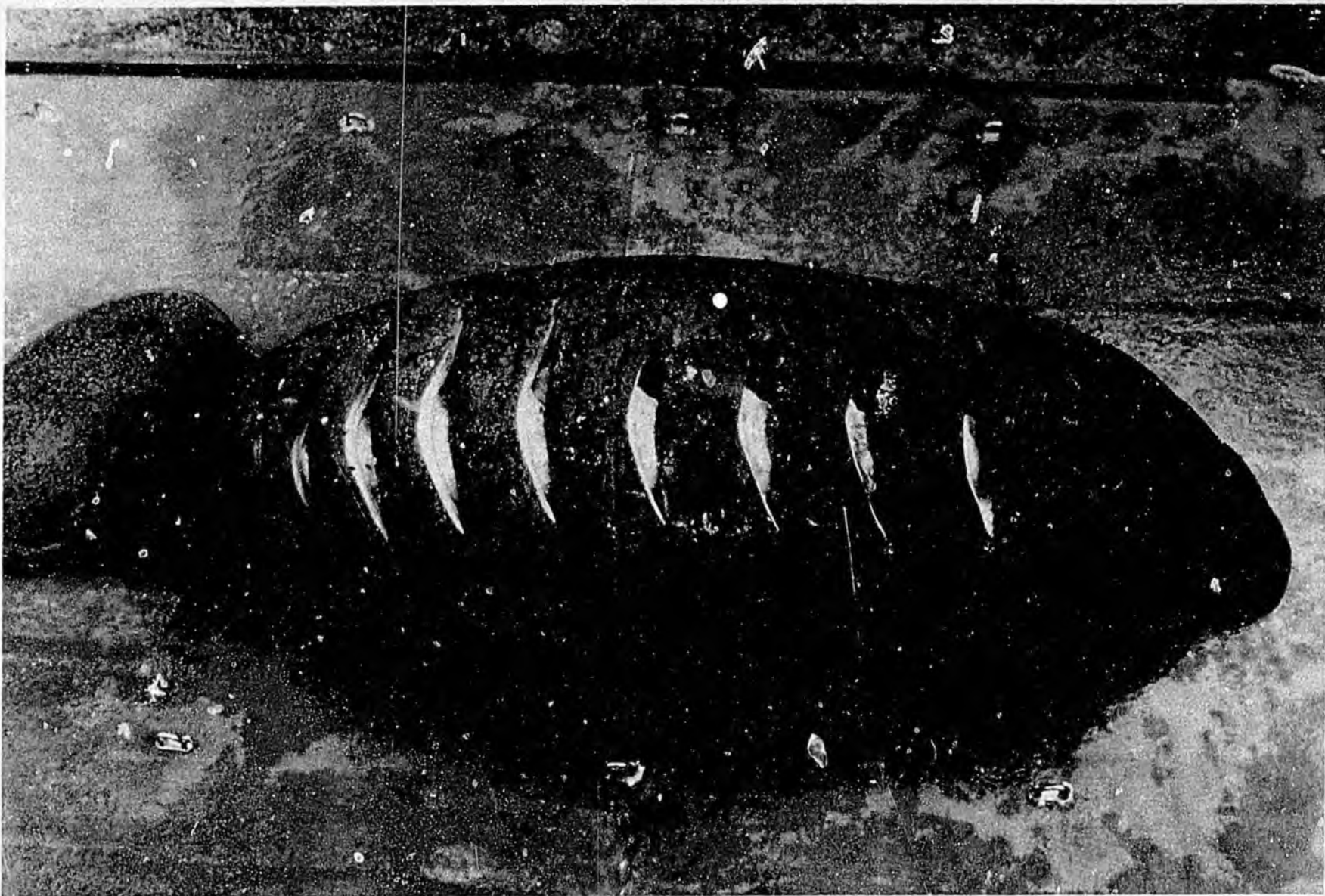
The development of effective methods of capturing otters requires several years of study. Development of rapid and effective capture techniques is vital to sea otter management and recovery. Rapid capture of specific otters could facilitate the removal of otters from an area in imminent danger of oil contamination. If translocation plans are implemented, a certain age and sex ratio must be achieved for the group of otters selected as the nucleus of the new breeding colony. Again related to translocation, otters that stray from the translocation site would be captured and returned to either the translocation site or the original capture site. The capture and recapture of otters is also necessary to monitor the progress of research animals, tag, and take body weights and measurements.

Section 6 funds are also being used to obtain an index of the sea otter mortality rate and to determine the causes of death. The CDF&G program involves sea otter carcass salvage and observation of incidental take of sea otters in commercial fishing nets.

The carcass salvage program involves computer cataloging of all verified observations of dead sea otters. Necropsies are performed on fresh carcasses; those animals suspected of being shot are X-rayed. During the reporting period, 131 sea otter mortalities were reported by salvage personnel. Of the 131 animals that were recovered, 24 animals were known to have died directly or indirectly by human causes (18 by gill net operations and 6 by gun shot wounds). A large percentage of the salvaged otters were classified as "unknown" for cause of death. It is believed that a large number (105) of these "unknown" cases were drowned in gill and trammel nets.

Manatee

Service and University of Miami salvage personnel recovered a record 131 manatee carcasses in 1984. Results of necropsies indicated the following causes of death: 35 (27 percent) boat/barge collision; 3 (2 percent) crushed/drowned in flood gates in canal locks; 1 (1 percent) human poaching; 26 (20 percent) dependent calves; 25 (19 percent) natural causes; 40 (30 percent) undetermined; and 1 (1 percent) non-related, not examined. While 21 cold-related mortalities partially account for the high total mortality figure, the 35 boat/barge mortalities reflect a record number in this category and are more than double the 1983 level.



Fresh, fatal boat collision propeller wounds on a West Indian manatee.
U.S. Fish and Wildlife Service photo.

A variety of materials continued to be collected from carcasses for study by cooperating scientists. External measurements, photographs and notes were taken for each salvaged carcass. While in the past the complete skeletons were cleaned and sent to museums, this year only skeletons from carcasses in select size classes were curated with the emphasis being on finding appropriate repositories for the large number of curated skeletons already stored at the Sirenia Project laboratory in Gainesville, Florida.

This year an agreement was reached with the Florida Department of Natural Resources (FDNR) to assume responsibility for the salvage program in 1985. The shift of responsibility will occur over a transition period and be completed by July 1, 1985. The Service also has provided \$106,000 in ESA Section 6 funds to FDNR for the salvage program over a three-year period.

Coordination with the COE continued in an effort to minimize manatee mortality in water control structures and navigation locks operated by that agency. While the reduction in this category of deaths from six in 1983 to three in 1984 would appear to indicate progress, it cannot be related to any action on the part of the COE. Although the COE did install screens at the St. Lucie lock in May 1983 in an effort to reduce mortalities, two mortalities subsequently occurred at this lock. Based on a review and analysis of 1984 lock mortality data relative to current COE operation practices, the Service has renewed its effort to focus COE attention on devising a solution to the lock mortality problem.

Through a cooperative agreement with the Florida Cooperative Fish and Wildlife Research Unit (FCFWRU), the Service funded Dr. Jane Packard to prepare a draft "Proposed Research/Management Plan For Crystal River Manatees" (see 1980 and 1982 Annual Reports). The draft research/management plan, distributed for review in early 1984, consists of three volumes: an illustrated executive summary; the technical plan in loose-leaf format and a compendium of background material. Land-use planning techniques were used to map manatee habitat, human activities and to examine the overlap. Throughout the project, emphasis has been given to encouraging local participation and responsibility in making land-use decisions that affect manatees and their habitat. Local citizens and city, county, regional and State agencies contributed information used to define problems and opportunities for resolution of these problems. The Service has considered all responses from reviewers, and a Service position on the plan will be announced by the Regional Director in Atlanta by mid 1985.

The Service continued to fund other manatee studies at the FCFWRU. These studies, also conducted by Dr. Packard, involved an assessment of techniques for manatee population surveys, development of a standardized population survey technique, and a review of manatee marking techniques. Dr. Packard's research resulted in two research reports in 1984: "Report No. 6, Review of Manatee Marking

Techniques," and "Report No. 5, Factors Influencing Indices of Manatee Abundance in the Ft. Myers Region, Winter 1983/84." Continued field trials during the winter of 1984/85 will hopefully result in a refined methodology which, with appropriate modification, can be applied at several locations within Florida and form the basis for a statewide population index. This, in turn, will enable the Service to determine manatee population trends.

Researchers at the Service's Sirenia Project laboratory continued studies of basic reproductive and behavioral characteristics of manatees individually recognized by unique scar patterns. These studies continue to provide valuable information germane to understanding reproductive characteristics as they relate to manatee population biology. A female observed at Blue Spring this year appeared to be pregnant at three years of age, which is two years younger than pregnant females observed at Crystal River two years ago. However, if she was actually pregnant, she failed to have a successful birth. Data analysis on reproduction is nearly complete, and a manuscript is in preparation. The Service will continue monitoring the Crystal River population and a tentative agreement has been reached with FDNR to assume monitoring the Blue Spring population for the purpose of gathering data on various population parameters.

The Manatee Identification Catalog initiated in 1981 was updated and now includes three years of data from statewide observations. This study, funded by the Service and Florida Power and Light Company, has proved to be particularly useful in documenting long distance manatee movements throughout the State. Thus far, 746 individual manatees have been included in the catalog, providing some indication that the Florida population of manatees may be larger than the frequently reported figure of 1,000.

A major achievement this year was the successful development of a saltwater radio transmitter. Last winter 14 manatees were fitted with the tethered, floating transmitter at Crystal River, and based on these trials and subsequent modifications a reliable transmitter is available for field research to determine manatee distribution and movements in southwest Florida in 1985. As a result of these field trials on Crystal River manatees and aerial surveys flown by staff at the Chassahowitzka National Wildlife Refuge (NWR), valuable information was also gained on manatee movements in the south Big Bend area which will prove extremely useful as the Service assesses the need for additional habitat protection in that area. Service manatee researchers also collaborated with Florida State Museum researchers under contract with the U.S. Navy in efforts to determine manatee distribution in Puerto Rico in general and more specifically at the Roosevelt Roads Naval Base. These studies were completed in March 1985, and a final report is due by June 1985.

The Service continues to pursue acquisition of approximately three acres of water bottoms adjacent to the Crystal River NWR. Control of the water bottoms is necessary to post a manatee



A West Indian manatee being fitted with a tethered, floating transmitter in the Crystal River, Citrus County, Florida. U.S. Fish and Wildlife Service photo.

sanctuary area. Appraisals are being completed to determine a fair market price. Presently the bottoms continue to be leased from the owner during the winter months. An environmental assessment and initial planning have been completed for acquisition of a site and facilities on Kings Bay for a refuge headquarters and interpretive center.

During the report period, the Service conducted 33 formal endangered species consultations for actions that might impact the West Indian manatee. This is a major increase from the five formal consultations in 1983, reflecting an increased awareness by the COE and increasing development pressures in Florida. Consultations are required under Section 7 of the ESA for actions that are federally funded, authorized or carried out that may affect a listed species or its critical habitat. Consultations result in biological opinions which are issued by the Service's Washington Office, regional offices, and/or field stations. The results of biological opinions, although not binding, must be considered before decisions are made. Since manatees are distributed throughout most of Florida's estuaries, bays and coastal waters, a considerable number of Federal actions affect these marine mammals. Most of the consultations conducted during the reporting period were with the COE and concerned proposed construction or expansion of boating facilities. The Service in 1984 issued one finding of "will promote the conservation," 29 findings of "is not likely to jeopardize," and three findings of "is likely to jeopardize" the continued existence of the West Indian manatee.

The Service continues to support the Manatee Rescue Contingency Plan conducted through cooperative agreements with Sea World and Miami Seaquarium. The agreements provide for rescue services and rehabilitation for injured or distressed manatees. The Service has renewed the agreements with these two organizations for 1985.

The FDNR, through the Florida Marine Patrol, continued to operate the toll-free "Resource Alert Watch Line" whereby people in Florida can report observations of injured, distressed or dead manatees. If the reports are valid, Marine Patrol notifies the Service's Jacksonville field station of injured or distressed animals or it tows and secures the carcasses of dead animals and notifies one of the three salvage/necropsy teams.

The FDNR manatee program received a large boost this year with a new source of funds available from the Boating Improvement Fund. The Service is cooperating fully with FDNR as they shape their manatee program and assume an expanding role in the conservation of the manatee.

Dugong

Dugongs occur in limited numbers throughout Indonesia including Palau Island, Trust Territories of the Pacific Islands. This island group has opted for Republic status under the Compact of Free Association between the United States of America and the Trust Territories.

The Service has executed a Memorandum of Understanding (MOU) with the Republic of Palau providing for technical assistance in resource conservation. An item in the MOU is the provision for review of research proposals. This provision was included at the specific request of the Republic of Palau. They do not presently have the staff to make these evaluations or to conduct baseline studies of their resources.

Aerial surveys and citizen interviews designed to determine the distribution and status of dugongs around the Island of Palau were completed. The Service continues to assemble literature on the distribution and status of dugongs.

Traditionally, the dugong had high cultural significance to the Palauans, as well as affording a good source of protein. A bracelet made from the atlas vertebra of a dugong could be worn only by the chiefs of villages or municipalities, and as a consequence, the dugong was effectively conserved by the chief. At the present, the role of traditional chiefs has been greatly diminished resulting in little protection for this species.

Modern technology (speed boats, explosives, spear guns, etc.) has also had a tremendous impact on the taking of this species. The limited resources of the Republic of Palau are insufficient to promote protection of the dugong from illegal taking.

Unregulated taking of the dugong has become critical. There is substantial disagreement among Palauans and outside researchers on the number of dugongs present in Palau. Aerial surveys made by Brownell, Anderson, Owen, and Ralls in 1977 and 1978 led them to estimate that the population consisted of not more than 50 individuals, substantially less than estimates offered by most local residents. An additional survey was conducted by Service personnel in 1983, which indicates that the population size probably remains about the same. Certainly, there has not been any improvement in the situation. Data from this survey will be analyzed along with those from previous surveys and a more detailed report will be presented in the future. Brownell, et al., speculated that even if there were 150 animals, the estimated poaching rate of 20 dugongs per year probably exceeded annual recruitment. Therefore, the Palau dugong population could be exterminated by the end of this century.

Service efforts have been directed towards developing a census methodology that is understood and accepted by the Palauans. Without this acceptance, any results derived will be suspect. However, this effort has not been a sustained one due to insufficient resources. An effective methodology which incorporates the observations and concerns of the Palauans is essential. Unless the fragile nature of this isolated dugong population can be clearly demonstrated to the Palauans, any effort to promote conservation of the dugong will be virtually ineffectual.

Two formal Section 7 consultations under the ESA were completed during 1984. Both involved applications received from the COE requesting permits for dredge and fill activities in the Republic of Palau. Both biological opinions issued by the Service concluded that the actions were not likely to jeopardize the continued existence of the dugong.

Hawaiian Monk Seal

Endangered species funding in 1984 for the Hawaiian monk seal was utilized in support of the Service's Field Station at Tern Island, French Frigate Shoals (FFS). Service activities in relation to monk seals focused on management studies at FFS and Laysan Island, and on cooperative research projects with the NMFS in the Hawaiian Islands NWR and Johnson Atoll NWR.

The Refuge staff operated the Tern Island facility throughout 1984, and, in so doing, provided an opportunity to continue management studies initiated in 1979. The seal population using Tern Island was monitored via surveys conducted every four days. The location of all animals identifiable by scars or other marks was recorded. Monthly atoll surveys of the other islets were also made by boat from Tern Island. A Service volunteer at Tern



Hawaiian monk seals on a beach in the Hawaiian Islands National Wildlife Refuge. U.S. Fish and Wildlife Service photo.

Island assisted in the census and individual identification of seals that haul out there. Service personnel also served on the Monk Seal Recovery Team which met during the year.

Data collected by NMFS and FWS personnel during October 1983 - September 1984 indicate that pup production was up from the previous year (estimated 106 vs. 90 pups), and the number of seals hauling out on Tern Island continues to increase; more than 100 seals were observed hauled out during surveys conducted in 1984. Seal surveys at FFS in 1984 included continuation of the aerial photo project begun in 1981. During supply flights to Tern Island, all sandy islets at FFS were photographed using 35mm slide film. The objectives of this project are to monitor abundance and distribution of seals within the atoll, to derive an estimate (or index) of pup production, to estimate age (size) structure of the population, and to monitor habitat conditions and habitat selection by seals. December 23, 1984, was the last day of this aerial monk seal pilot survey. FWS personnel have compiled all aerial photo data and will now analyze that information to determine if the aerial photo survey has met program objectives. If determined to be effective, aerial surveys will be continued in the future when NMFS long-term studies are not taking place on the atoll. During 1985, NMFS personnel will be at the atoll conducting studies to determine the population and production of monk seals.

Special Use Permits were issued to the NMFS for cooperative monk seal studies conducted in the Hawaiian Islands NWR. These studies involved field camps on three remote Refuge islands and NMFS personnel stationed at FFS. The primary purpose of these studies was to assess populations and production of seals through tagging. At Laysan Island, efforts were concentrated on documenting mobbing behavior of adult male monk seals so as to identify individual adult males involved in such attacks. Marine debris that would entangle seals was destroyed and samples were taken for analysis of origin. Field camps were established at Necker Island (June 20-28 and August 5), Laysan Island (May 29-August 7 and October 22-November 6), Lisianski Island (July 2-August 6), and Pearl and Hermes Reef (July 3-August 5). NMFS personnel were stationed at Tern Island at FFS from January 1-27 and March 7-August 31.

Other cooperative studies involved the capture and removal of six underdeveloped pups from FFS for transfer and headstarting at Kure Atoll; one underdeveloped pup was transported to the Waikiki Aquarium for research purposes. Five of the six seals taken for rehabilitation survived through 1984. These remain in Honolulu pending screening for disease. The male pup will be retained in captivity. Ten adult seals which were identified by NMFS personnel as mobbers were captured on Laysan Island during October 1984. Nine of these survived, and were later transferred to and released at Johnston Atoll NWR on November 9 in an attempt to reduce the frequency and severity of mobbing incidents. By the end of 1984, none of the seals had been recently sighted after their release. An extensive coordination effort was

required for this project between the Service, Defense Nuclear Agency, U.S. Air Force and NMFS.

Monk seal field surveys were conducted on Nihoa and Midway by FWS personnel. Field efforts on Midway also included coordination with the U.S. Navy and the contractor to minimize conflicts with monk seals. A proposal to develop an overlay NWR on Midway is presently being negotiated with U.S. Navy staff. A cooperative agreement involving U.S. Navy lands was finalized between the NMFS, FWS and U.S. Navy.

The Service continued work on a Refuge Master Plan for the Hawaiian Islands NWR. The Master Plan includes long range management alternatives for FWS in view of its importance to monk seals and monk seal recovery efforts. Intra-Service formal consultation as required by Section 7 of the ESA was initiated to assess the impact of the Master Plan on the monk seal. The biological opinion issued by the Service's Regional Director in Portland concluded that the adoption and implementation of the Plan would promote the conservation of the species.

John Shively, representing the NANA Corporation and the Alaska Federation of Natives, is an excellent summation of the evolution of the "Nativeness" issue in the House to which I would direct any member interested in more information on this subject.

Because of the Governor's objections, we adopted (and the bill retains) a racially-neutral approach to the subsistence allocation issue. Subsistence uses are defined as the customary and traditional uses of wild, renewable resources for personal and family consumption by all residents of rural Alaska, Native and non-Native alike. Subsistence uses by rural residents shall have a priority over the taking of renewable resources by non-rural residents of Alaska, non-residents of Alaska, and aliens.

If in a particular instance a particular fish or wildlife population cannot even safely sustain a harvest only by rural residents engaged in subsistence uses, then priorities among such rural residents will be established on the basis of the racially-neutral criteria of local residency, availability of alternative subsistence and other food resources other than the resource being allocated, and the degree of dependency of individual rural residents on the allocated resource as the mainstay of livelihood. The neutral criteria will be applied evenhandedly to all rural residents, Native and non-Native alike, who harvest the allocated resource for subsistence uses.

Although I will address the operation of the subsistence priority later in my remarks, I raise the history of the subsistence priority here to point out that while the statutory allocation scheme is racially neutral, its application may result in instances in which significantly more Natives than non-Natives may be afforded access to a particular subsistence resource. Such a result will be consistent with a statutory approach based, as the subsistence title is, upon the constitutional authority of the Congress to manage Native affairs.

However, Mr. Speaker, I would hasten to emphasize that it is also true that a racially-imbalanced allocation system may result from time to time not because the subsistence priority favors Natives over non-Natives, but merely (as is a well-recognized fact of life) the vast majority of the residents of rural Alaska happen to be Alaska Natives.

For example, if there are only six communities in a particular State game management unit, all of which are Alaska Native villages in which Alaska Natives predominate in the population, and the biologists determine that the local moose herd cannot safely sustain a harvest greater in size than the number normally harvested by residents of the local area for subsistence uses, then the subsistence priority requires the State to adopt regulations which restrict moose hunting within that game management unit to only the residents of that unit. The responsibility of the Federal Government to protect Alaska Native subsistence activities will be met, but all non-Native residents of the area will be treated in a manner identical to that of their Native neighbors. In other words, the criteria used to allocate access to the moose in my example is based upon "residency," with all similarly situated residents treated in an identical manner. It also should be noted that the residency component in the subsistence priority, both rural residency and local residency, is not intended to impose a durational residency requirement.

Mr. Speaker, there is another significant reason to emphasize that the subsistence title and the subsistence provisions in other titles are enacted based upon our constitutional authority to manage Indian affairs. The so-called "(d)(2)" issue in general, and the subsistence title and other subsistence provisions of this bill in particular, are

derivative of the Alaska Native Claims Settlement Act. The Federal courts have consistently recognized the Settlement Act to be Indian legislation, entitled to all of the legal presumptions and statutory interpretations associated with that generic class of statutes. While the Alaska National Interest Lands Conservation Act obviously is not Indian legislation in its entirety, the subsistence title and the other subsistence related provisions are. And under well-recognized canons of statutory construction, any ambiguities in the title and other provisions must be resolved in favor of the Alaska Native people.

This result is also consistent with the Congressional policy established by section 802(1) that the management of the public lands shall cause the least adverse impact possible on rural residents who depend upon subsistence uses. This policy requires that administrative structures and regulations for conservation system units, including national parks and monuments, shall be established and implemented in a manner consistent with the protection and continuation of Alaska Native culture and Native subsistence activities.

Consequently, in general, no permit or quota system for the subsistence use of wildlife within national parks and monuments and other conservation system units should be imposed on rural residents unless necessary to protect the continued viability of a particular wildlife population, and then only with respect to that particular population. However, trapping and other customary trading activities may be an exception to this general rule.

The policy also requires that regulatory systems which employ income requirements not be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska, and consequently can be invidiously destructive to Alaska Native culture. To key eligibility to harvest wildlife within a national park, for example, upon a determination of whether a resident of a Native village was able to secure temporary employment away from his village, has a wife who is a health or teacher's aide with a steady source of income, or has a job in the village as a corporation officer or power plant operator, is to key eligibility on criteria which embody the seeds of destruction of Native culture sown in the guise of regulation. Such regulatory structures may be bureaucratically convenient but represent a disrespect for the Alaska Native culture, and the community cohesion which is one of its greatest attributes, which we have gone to great lengths throughout the Alaska lands bill to protect. It is the intent of the bill in general, and the subsistence title in particular, so far as possible to allow the Alaska Native people to choose for themselves the direction and pace, if any, of the evolution of their own culture.

Mr. Speaker, I also would like to briefly review the requirements imposed on the subsistence management system by the subsistence priority established in section 804. Section 804 is based upon section 704(b)(5)(B) and (C) of the version of H.R. 39 passed by the House during the 95th Congress. The only major difference between any of the subsistence preference sections has been the inconsistent use of the words "preference" and "priority". Mr. Speaker, in terms of the legal effect of the section I do not believe that there has ever been any intent to alter the legal requirements of the section by the use of one as opposed to the other, of these two terms. Rather, this difference reflects the idiosyncratic styles of the various committee draftsmen. Consequently, I do not believe that the State of Alaska need modify its State subsistence statute, which uses the term "priority", in order to be in compliance with the "preference" requirement of section 804. However, the State statute may need to be modified to comply with other

requirements of both section 804 and other provisions of the title.

The subsistence preference applies to individual wildlife populations and fish, and State regulation of the taking of each population and stock must be consistent with section 804.

The State must first identify the customary and traditional subsistence uses of each population and stock by rural residents. It should be emphasized that this evaluation must be based upon subsistence use, not upon any form of economic or other need. It also should be emphasized that the level of subsistence uses by rural residents of particular wildlife populations and fish may have been repressed by State regulatory activities and, consequently, recent historical levels of harvest of a particular population or stock may not accurately reflect the normal level of the customary and traditional subsistence use of such population.

The King salmon fishery on the west side of Cook Inlet and the caribou harvest in the Copper River area are two recent examples of this situation. From 1964 until this past June, when the subsistence King salmon fishery was finally opened to the residents of the village of Tyonek by a State court order implementing the State subsistence statute, the residents of that village have been prohibited from harvesting a subsistence resource which prior to 1964 had been harvested for generations. Obviously, an analysis of the customary and traditional subsistence use of King salmon by residents of the village of Tyonek over even the past ten years would result in a determination that King salmon are not a customary and traditional subsistence resource of that village, a determination which would be erroneous.

Because of the decline of the caribou population in the Copper River area, the State reduced the total harvest of the population and established a lottery in which the residents of villages in the Copper River area have had to compete against sport hunters from around the State for a caribou hunting permit. Any analysis of the level of customary and traditional subsistence use of caribou by rural residents in the Copper River area will produce a figure far below the normal customary and traditional subsistence use of the resource which would have resulted if the State had not imposed a regulatory system on the rural residents of the area which subordinated subsistence uses to the needs of urban sport hunters.

Mr. Speaker, similar examples are too numerous to mention. The point I am making is that the subsistence priority requires the State of Alaska to determine the customary and traditional subsistence use of a particular wildlife population or fish which would have reasonably been made by rural residents if their subsistence uses had consistently been respected and adequately protected by State regulation.

It also should be noted that customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis. If not, our commitment in this legislation to the protection of the Alaska Native subsistence way of life would be terminated in one generation as rural residents with established subsistence uses pass away and their descendants with no established customary and traditional uses take their place in the subsistence cycle.

As I have mentioned earlier, and as the subsistence title itself specifically states, it is the intent of this legislation to protect the Alaska Native subsistence way of life, and the Alaska Native culture of which it is a primary and essential element, for generation upon generation, for as long as the Alaska Native people themselves choose to participate in that way of life, and to leave for the Alaska Native people themselves, rather than to Federal and State resource

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should be noted that a recommendation of a regional council pursuant to Section 305 would not be supported by substantial evidence if the recommendation is inconsistent with the conservation of healthy populations of fish and wildlife. The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

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 manipulation of the components of the ecosystem.

Definition of "Subsistence Uses"

Although many residents of cities such as Ketchikan, Juneau, Anchorage, and Fairbanks harvest renewable resources from the public lands for personal or family consumption, by its very nature a "subsistence use" is something done only by Native and non-Native residents of "rural" Alaska. The Committee adopted an amendment to clarify this point by limiting application of the definition to areas of "rural" Alaska including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other Native and non-Native villages scattered throughout the State. However, the Committee does not intend to imply that the rural nature of such communities is a static condition; the direction of the economic development and rural character of such communities may change over time. It should be emphasized that this amendment is not intended to impose a "durational" rural residency requirement in the definition or impede the traditional movement of Alaska residents between the rural areas and the major population centers and vice versa. Nor does the amendment prohibit the taking of fish and wildlife on certain public lands by normal residents. Rather, nonsubsistence uses may continue in accordance with existing law but do not enjoy any preference on the public lands, and, consequently, may be restricted pursuant to Section 804 when necessary to protect subsistence resources or to ensure the satisfaction of the subsistence needs of rural residents.

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The definition has been modified to eliminate the "for personal or family consumption" limitation upon the taking of wild, renewable resources for "customary trade". The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses". The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title.

Local And Regional Participation

An amendment to section 805 clarifies that regardless of whether the regional council system is established by the Secretary or the State, the relationship between the regional councils and the Secretary or the State is the same; that is, either the Secretary or the State may choose not to follow a recommendation made by a council if the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Another important amendment clarifies that if the State enacts and implements laws of general applicability which satisfy the requirements of Sections 803, 804, and 805, then, unless and until repealed, such State laws shall supersede Sections 803, 804, and 805 insofar as such sections govern State responsibility for the taking of fish and wildlife on the public lands for subsistence uses.

Judicial Enforcement

The major amendment to Section 807 clarifies that while the Secretary is not required to hold a hearing (either informal or pursuant to formal procedures set forth in the Administrative Procedures Act) prior to bringing a civil action against the State on behalf of a local committee or regional council, he is required, prior to bringing such action, to make a determination in writing setting forth substantial evidence that the State has failed to make adequate and timely provision of the subsistence preference after having been provided a reasonable opportunity to do so, and that such failure threatens the ability of local residents to satisfy their subsistence needs.

Subsistence and Land-Use Decisions

The Committee adopted two important technical amendments to Section 810. The first substitutes the well-recognized legal standard of "reasonable" in place of "adequate" to describe the steps which the head of a Federal agency must take to minimize adverse impacts on subsistence uses prior to permitting a withdrawal, reservation, lease, permit, or other use, occupancy, or disposition of the public lands which would significantly restrict subsistence uses, although it should be recognized that steps which are "inadequate" to minimize adverse impacts will rarely be "reasonable" within the meaning of this section. The second amendment clarifies that the requirements of Section 810 are "procedural" in that until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses.