

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 270

706 SCOMM22: ALASKA LANDS FILE 1977-78

ALASKA BASIN DATA SHEET
SOUTH DISTRICT ALASKA

Basin: Gulf of Alaska (Hydrocarbon Basin #6 on the attached map)

Location: Southcentral and southeast Alaska

Area: 37,000 square miles

Number of Discovered Oil & Gas Fields: One oil field - the Katalla Oil Field which was produced up to 1935 from very shallow wells and seeps.

Production: 154,000 barrels estimate from Katalla Oil Field

Oil Seeps: Numerous

Number of Exploratory Wells Drilled: 36 (does not include an estimated 44 shallow wells of the Katalla area).

Footage Drilled: 353,000 feet (does not include Katalla wells)

Sedimentary Section Thickness: Up to 25,000 feet

Age of Prospective Section: Tertiary

Comments: This area lies both onshore and offshore and future discoveries may lie along a coastal strip almost 300 miles long. Some of the proposed D(2) acquisitions would greatly limit accessible areas onshore for support facilities and/or pipeline construction to port facilities as well as limiting, or closing out many harbors to access.

HIGH POTENTIAL AREAS
MINERAL RESOURCES

Atlantic Richfield Company, through its subsidiary the Anaconda Company, has identified areas of Alaska with high mineral potential. This information is based on our limited knowledge of the true mineral potential in Alaska. The lands described in the following pages and identified on the attached map represent our best guess as to selected areas that have high potential for economic mineral development.

Definitions used in the following material:

High Mineral Potential means that an area has geological characteristics considered favorable for economic concentrations of minerals. In the areas outlined, additional geologic work is needed to actually locate a mineral deposit.

Gross Metal Value is the dollar value of a potential deposit obtained by multiplying estimated total pounds of metal by the current market price. Gross metal value is not the profit a company will obtain by developing a mineral deposit; in high cost areas such as Alaska, the amount of profit derived from mining a metal deposit will be relatively small. It is important to realize that these areas could have several mineral deposits, each with the gross metal value indicated.

**DESCRIPTION OF HIGH POTENTIAL
MINERAL EXPLORATION AREAS
STATE OF ALASKA**

1. BROOKS RANGE SCHIST BELT (Mineral Area A on the attached map)

Mineral Potential: The Brooks Range Schist Belt contains the Ambler District, potentially one of the world's largest mineral areas. If it is allowed to be developed, the Ambler District will become a major base metal mining district. The known mineral reserves of the district have a Gross Metal Value of approximately 7.5 billion dollars. Several of the known deposits are only partially delineated by drilling and the Gross Metal Value of the district is expected to increase with further exploration. The lack of a transportation system and uncertainties about access across withdrawn areas are preventing the development of the Ambler District deposits.

Rocks similar to the Ambler District are known to occur in a belt of rocks as illustrated on the map. A large part of this favorable rock type occurs inside the federal withdrawals and has not been prospected. Recent exploration along the belt outside of the proposed federal withdrawals produced a new discovery of mineralization in 1978.

Possible Land Conflicts: A portion of one of the known deposits of the Ambler District, the Sun Deposit, is inside the Gates of the Arctic National Monument. In addition, transportation to the Ambler District is blocked to the east by the "Boot" of the Gates of the Arctic National Monument. Access from the west is blocked by the proposed Selawik and Koyukuk National wildlife refuges. If an access corridor is not provided in the pending Alaska lands legislation, the deposits of the Ambler District will most likely never be developed.

2. NORTHERN BROOKS RANGE (Mineral Area B on the attached map)

Mineral Potential: In 1976 and 1977 discoveries of outcropping lead, zinc, silver mineralization and Paleozoic carbonate rocks were made by industry exploration teams. The deposits occur in a belt of rocks which form the northern edge of the Brooks Range. This same belt of rocks continues into the Yukon territory where similar lead, zinc, silver deposits are already producing metals and economic benefits. One ore body of this type can be expected to have a Gross Metal Value in excess of several billion dollars. Exploration activity in areas of the belt outside of federal land withdrawals was very intense during this 1978 field session.

Possible Land Conflicts: The favorable rocks are found in parts of Noatak National Monument, NPRA, Gates of the Arctic National Monument, the Arctic National Wildlife Refuge, and the Arctic National Wildlife Range. Access from the known deposits to the transportation system of interior Alaska is also blocked off by federal land withdrawals.

3. SOUTHEAST ALASKA (Mineral Area C on the attached map)

Mineral Potential: All of Southeast Alaska is known to be highly mineralized. The deposits may be classified into three distinct groups:

- a. Porphyry molybdenum deposits. The second largest molybdenum deposit in North America, the Quartz-Hill deposit, occurs in Southeast Alaska. Numerous other prospects containing mineralization of this type are known but have not yet been extensively prospected. The Gross Metal Value of the Quartz-Hill deposit is approximately 7 billion dollars.
- b. Platinum group metals associated with ultramafic intrusive rocks. The platinum group metals (platinum & palladium) and copper, nickel and chrome are known to be associated with ultramafic intrusive rocks. Large bodies of this rock type occur throughout Southeast Alaska and several of them have produced minor quantities of these metals. The largest copper-nickel deposit in the United States is located in Glacier Bay National Monument. The Gross Metal Value of these deposits is in excess of a billion dollars.
- c. Massive sulfide copper, lead, zinc, and silver deposits similar to those of the Ambler District are known to occur in Southeast Alaska. These deposits could have a Gross Metal Value of .5 to 1 + billion dollars.

Possible Land Conflicts: The Quartz-Hill molybdenum deposit is located inside the newly created Misty Fjords National Monument. The Greens Creek silver, lead, zinc-gold deposit is located within the newly created Admiralty Island National Monument. Several known copper-nickel rich ultramafic intrusives are inside of Forest Service withdrawals. A large part of the known mineral areas in Southeast Alaska were included in Forest Service RARE II and Section 204b withdrawals.

4. SEWARD PENINSULA (Mineral Area D on the attached map)

Mineral Potential: The northwestern Seward Peninsula is the only area in the United States that has the potential to develop economic reserves of tin. During war time, this area becomes strategically important to the security of the nation. In addition, the area has produced over 6-1/2 million ounces of gold since the start of the 20th century.

Possible Land Conflicts: A large part of the prospective area containing tin mineralization is inside of the newly created Bering Land Bridge National Monument and will be closed to mineral development.

5. KENNECOTT (Mineral Area E on the attached map)

Mineral Potential: The copper mines at Kennecott, Alaska have been a major producer of copper. These extremely high grade copper deposits are the type needed to develop a mine in high cost areas such as Alaska. The deposits are extremely difficult to find but the potential for additional discoveries remains high.

5. KENNECOTT (Cont.)

Possible Land Conflicts: The entire area is included in the newly created Wrangell-St. Elias National Monument.

6. NORTHERN ALASKA RANGE (Mineral Area F on the attached map)

Mineral Potential: A belt of favorable rocks for the formation of massive sulfide copper, silver, lead-zinc deposits has been recently recognized in the Northern Alaska Range. These deposits were discovered as recently as 1975 and 1976. Their potential Gross Metal Value is in excess of one billion dollars.

Possible Land Conflicts: The belt of favorable rocks extends into the newly created Mt. McKinley National Monument and the Tetlin withdrawal 204 E area.

7. ALASKA PENINSULA (Mineral Area G on the attached map)

Mineral Potential: The Alaska Peninsula contains numerous exposures of intrusive rocks which carry mineralization similar to the copper deposits (copper, molybdenum, silver & tin) in the southwestern lower 48. Because of its strategic location near tide water the development of these deposits would be facilitated. The Gross Metal Values of these type of deposits is approximately a billion dollars.

Possible Land Conflicts: Most of the favorable area is withdrawn as a study area or part of the newly created Katmai and Becharof National Monuments.

8. EASTERN ALASKA-PRECAMBRIAN PALEOZOIC (Mineral Area H on the attached map)

Mineral Potential: Some of the largest ore deposits in the world are contained in rocks of Precambrian age. Rocks of equivalent age are thought to exist in this little explored region of Alaska. An ore deposit of this type is expected to have Gross Metal Values in excess of 1 billion dollars (copper, lead, zinc & silver).

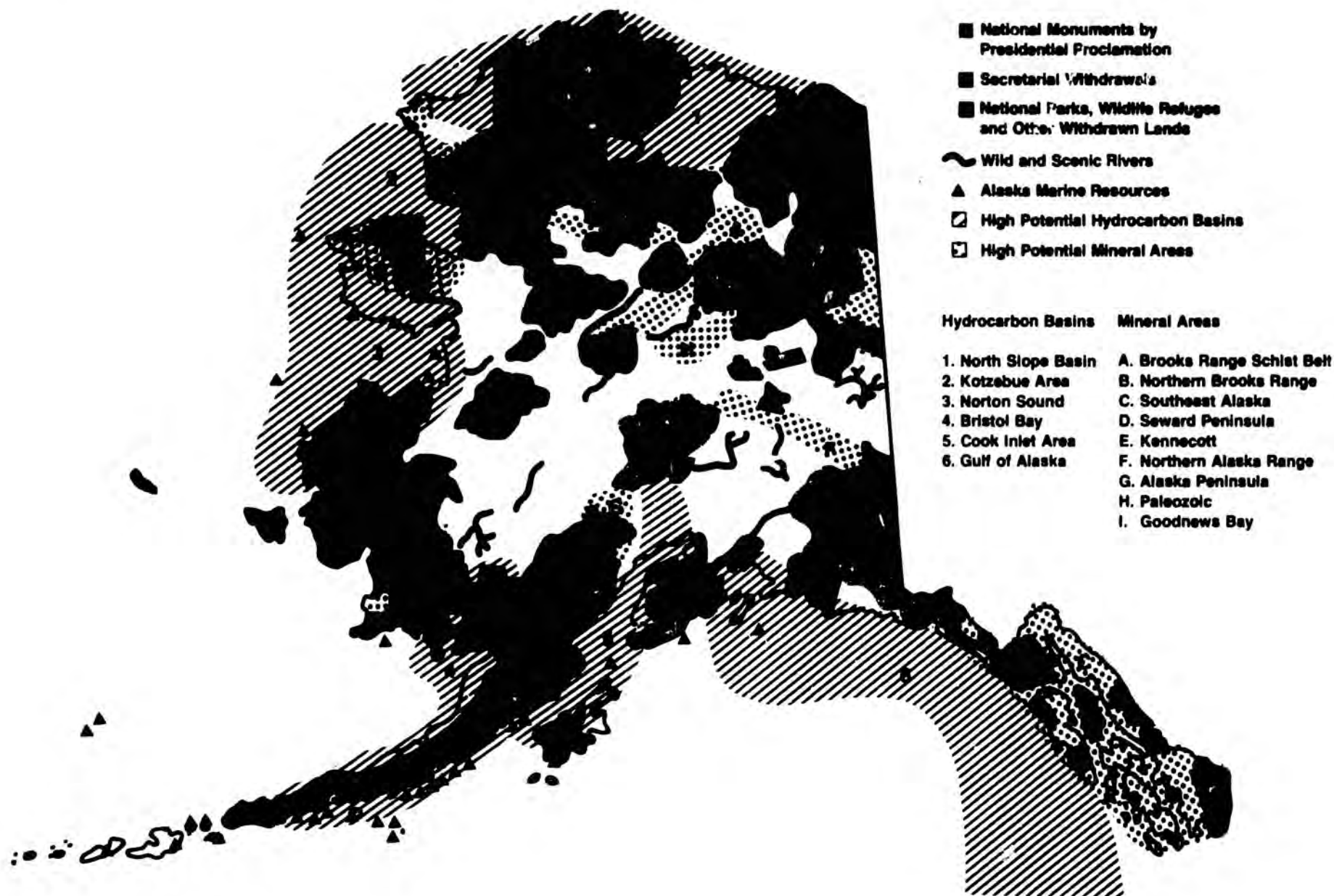
Possible Land Conflicts: A large part of the favorable area occurs in the newly created Yukon-Charlie and Yukon Flats National Monuments. The remainder of the area is withdrawn under the BLM 204 actions.

9. GOODNEWS BAY (Mineral Area I on the attached map)

Mineral Potential: The Goodnews Bay area has been the principal source of platinum metal in the United States. Most of the production in this area has come from placer deposits; however, the source of the placers is thought to be a belt of ultramafic intrusive rock which are known to contain this type of mineralization. The Gross Metal Value of deposits of this strategic metal and copper/nickel deposits could be in excess of 1 billion dollars.

Possible Land Conflicts: Almost all of the prospective area is currently withdrawn from mineral exploration under the Togiak and Yukon Delta 204 withdrawals.

Alaska National Interest Lands — High Potential Mineral and Oil Areas



MEMO TO: The Honorable Terry Miller
Lieutenant Governor

FROM: John W. Katz *JK*
Special Counsel

SUBJECT: Alaska Lands Legislation

DATE: December 12, 1979

File
Hand: 12/12/79
AK 39
Comparative
Analysis/Katz

For your information and use, I am enclosing copies of a comparative summary of the Udall-Anderson bill (H.R. 39), the measure recently reported by the Senate Energy Committee (formerly S.9), and existing law. The latter point of comparison was included so that you can assess the three non-judicial alternatives which currently exist.

The summary is the product of a cooperative effort involving my staff and the staffs of each member of the Congressional delegation. It is my understanding that each staff concurs in the accuracy of the analysis which is presented.

If you or members of the Blue Ribbon panel have any questions concerning the subject matter or the accompanying enclosure, please let me know.

COMPARATIVE SUMMARY

Alaska Lands Bill

The following is a comparative summary of the major Alaska lands proposals pending before Congress and their relationship to existing land status. This document is designed to compare and contrast the changes in existing law and regulation effected by S.9, as reported out of the Senate Energy Committee in October of 1979, and H.R. 39, the Udall-Anderson substitute bill passed by the House in May, 1979.* These two bills are representative of the legislative alternatives that might be passed by Congress and implemented to replace National Monuments proclaimed by the President, executive withdrawals made by the Secretary of the Interior, and the existing laws and regulations that accompany these monuments and withdrawals. Comparison of the provisions of "S.9", "H.R. 39", and "Monuments/Executive Withdrawals" (existing law), is made by reflecting each of the above alternatives (in light of) six areas of major concern: (these being;) (1) Conveyance of State and Native lands; (2) Access and Transportation; (3) Development of High-Value Commodity Resources; (4) Wildlife Management; (5) Sport Hunting; (6) General Management Provisions; and (7) Geographic Areas. Any improvements or failings in the two legislative proposals are best demonstrated when examined in contrast with existing laws which are applicable to the seven major areas of concern expressed above.

*While the Udall-Anderson bill differs in some respects from S.222 and the Tsongas Substitute, these differences (except for relatively small variations in the acreage figures and for relatively minor changes noted elsewhere in the text) are not germane to this analysis. Thus, it is fair to say that the geographic designations and management provisions of all three bills are virtually the same in their impact.

X. State Selections

Under the 1958 Alaska Statehood Act, Alaska was granted a total of 103.4 million acres of land to support the costs of Statehood and to create an economy that would sustain the State. This grant of lands remains largely unfulfilled. Section 17(d)(2) of the Alaska Native Claims Settlement Act provided for identification of lands within d-2 withdrawals which the State was interested in selecting.

Existing law (in-place executive withdrawals and existing regulations) and pending bills have three major impacts on State lands: (1) impact on lands already owned or selected by the State of Alaska; (2) impact on lands the State of Alaska identified as "interest lands" and in November, 1979 to fulfill the Statehood Act land entitlement; and (3) effects on conveyance of selected lands to the State.

1. Monuments/Executive Withdrawals (Existing Law) --

(a) The withdrawal boundaries encompass approximately 7 million acres of existing valid State lands and selections as inholdings.

(b) Approximately 12 million additional acres identified by the State as "interest lands" and selected in November, 1978, are unavailable as a result of the monuments and executive withdrawals. High priority selections located in the Yukon Flats, Chulitna, Ambler Valley and Iliamna Lake areas are denied to the State by the withdrawals.

(c) To date, the State has received effective title to only 37.5 million acres or approximately one-third of its Statehood entitlement -- the State is still entitled to receive another 65 million acres. In an attempt to correct this situation, the Interior Department has begun a program to expedite conveyance of uncontested State selections. However, even under this program, it will be years before the State is finally vested with equitable title to the lands it has selected. Moreover, numerous regulations governing State selections are outdated, unworkable, or do not reflect situations created long after Statehood by later laws such as the Alaska Native Claims Settlement Act (ANCSA) or the Federal Land Policy and Management Act (FLPMA). Many of these problems cannot be corrected by administrative action.

2. H.R. 39/ Udall --

(a) Its unit boundaries include approximately 4 million acres of existing valid State lands and selections as inholdings.

(b) Approximately 12 million additional acres of "interest lands" are denied to the State by the bill. High priority selections denied to the State are located in the Yukon Flats, Chulitna, Ambler Valley, and Iliamna Lake areas.

(c) No provision of the bill expedites conveyance of the remaining 65 million acres of State land selections. The "conveyance" title in H.R. 39 merely reconfirms State selections which have already been conveyed to the State or previously recognized as valid. In addition, it contains no provision conveying any of the "interest lands". Lastly, it does not amend existing selection conveyance regulations nor solve certain problems not foreseen at Statehood.

(3) S.9 as Reported --

(a) Virtually all existing valid State lands and selections are excluded from its unit boundaries.

(b) Approximately 5 million acres of "interest lands" are included in the boundaries of conservation units and denied to the State. However, high priority selections in the Yukon Flats, Chulitna, Ambler Valley, and Iliamna Lake are conveyed to the State. Additionally, approximately 25 million acres of other "interest lands" are conveyed.

(c) S.9 includes a comprehensive land conveyance title which effectuates legislative conveyance of existing State selections including those "interest land" selections filed in November, 1978 and not in conflict with S.9 units. It also contains provisions which amend existing State selection regulations and clarify the relationship between State selections and present and future administrative actions. Following the passage of S.9, nearly 95% of the State's entitlement will have been legislatively conveyed to the State of Alaska.

B. Native Lands

1. Monuments/Executive Withdrawals (Existing Law) --

In 1971, ANCSA granted 44 million acres to Native Corporations in Alaska. Since that time, only 25 percent of the land entitlement has been conveyed to the Natives. Currently, the Administration has announced a program to expedite conveyance of lands to the Native Corporations.

2. H.R. 39/ Udall --

It would instantly convey to the appropriate Native Corporation the core township surrounding the Native village. In addition, the bill includes provisions designed to clarify ambiguities and solve problems pertaining to certain sections

tions and affect land exchanges and agreements between various Native Corporations, the Federal government, and the State.

S. 9 as Reported --

The bill provides for immediate conveyance of core townships to Native Corporations. However, the immediate conveyance procedure is optional enabling those Corporations which are currently being conveyed land under existing law to avoid the confusion of simultaneous legislative conveyance. In addition, the bill established an expedited procedure for conveying the remaining Native lands. Provisions regarding the implementation of ANCSA land exchanges are identical to those contained in H.R. 39.

II. TRANSPORTATION & ACCESS

There are three distinct areas of law encompassed by this heading:

(a) Major rights-of-way across Federal conservation units in the form of highways, pipelines, railroads, etc.;

(b) Access to private, State, or Native lands located within Federal units; and

(c) Special access for traditional activities (e.g. hunting, trapping, rural travel, etc.) in conservation units requiring the use of airplane, snowmobiles, and motorboats.

1. Monuments/Executive Withdrawals (Existing Law) --

(a) Approval of highways, pipelines, railroads, and other transportation systems requiring rights-of-way over Federal land presently requires time consuming and complicated determinations by the Secretary of Transportation and/or other agencies in conjunction with the Secretary responsible for administering the Federal lands over which the right-of-way is sought. In some cases, Congressional approval is required although issuance of a right-of-way is usually governed by statute. The combination of decision makers and the decision-making procedures vary with the type of transportation right-of-way applied for and the differing land designations which the proposed system will affect.

Under existing law, the land-managing Secretary frequently has the discretion to deny rights-of-way across conservation system units based upon a single criterion: the compatibility of the proposed right-of-way with the purpose

of the affected land designation. Additionally, National Environmental Policy Act requirements and other statutes and regulations often demand long studies, lengthy decision-making processes, and judicial review. Moreover, if an application for a right-of-way is denied, the aggrieved applicant must prove that the Secretary acted in the arbitrary and capricious fashion to obtain judicial relief. This standard is a nearly insurmountable barrier which makes it extremely difficult to get courts to reverse Secretarial decisions.

(b) Access to in-holdings within conservation system units is not well-defined in existing law. Recent Justice Department opinions assert that no right of access to in-holdings within Federal lands is required by statute or common law. (Note: this does not apply to specific statutory rights granted to holders of mining claims). The prevalent Federal view regards access to in-holdings as a discretionary policy decision rather than a right.

(c) Presently most traditional modes of access are permitted under the regulatory regime which governs the withdrawals in Alaska. However, there is no statutory guarantee that such access to areas shall be permitted in the future as the Secretary has virtually unfettered discretion to deny such access.

2. H.R. 39/Udall --

(a) Rights-of-way for transportation systems are governed primarily by existing law. In cases in which there is no authority to issue a right-of-way, the Secretary can recommend that the right-of-way be issued and his recommendation will be considered by Congress. Applicants may also appeal to the President in cases where a land-managing Secretary denies a right-of-way permitted by existing law. In such cases, the President must make a determination, and that decision is subject to Congressional review.

(b) Access for inholders within or "effectively surrounded" by conservation system units is guaranteed but subject to reasonable regulation in H.R. 39. Inholders are granted assured access for economic and other purposes. Any party effectively surrounded shall have feasible access based on assessment of various environmental and economic factors.

(c) H.R. 39 provides for traditional modes of access via airplane, snowmobiles, or motorboat. This provision contemplates that such modes of access should be permitted as a means of pursuing traditional activities on conservation system units.

3. S.9 as Reported --

(a) S.9 rewrites existing law and provides a comprehensive transportation title designed to streamline the various procedural requirements involved in obtaining rights-of-way for

transportation or utility systems across Federal lands. The process has five major features: (i) The State and the Secretary of Transportation are involved in a special transportation planning process which impacts on the issuance of rights-of-way; (ii) The Secretary is directed to render decisions on applications within a specified period of time; (iii) Decisions shall be made pursuant to nine specified criteria including economic feasibility and environmental compatibility; (iv) Certain Secretary decisions on rights-of-way are subject to Congressional review; (v) All Secretarial decisions to deny a right-of-way are subject to expedited judicial review.

(b) Access for in-holders within or effectively surrounded by conservation system units is guaranteed but subject to reasonable regulation in H.R. 39. Inholders are granted assured access for economic and other purposes. Any party effectively surrounded shall have feasible access based on assessment of various environmental and economic factors. This bill emphasizes economic feasibility although the most economically feasible access is not mandated in every case.

(c) S.9 broadens the concept adopted in the House bill for ensuring traditional access. This access is subject to reasonable regulation, but the Secretary can only prohibit access where he can demonstrate that significant resource damage is being caused by access and after he has held a hearing in that area affected.

III. HIGH COMMODITY RESOURCES

High value commodity resources in Alaska impacted by the withdrawals and the pending bills include (a) oil and gas, (b) hardrock minerals, and (c) timber products. The following outlines the effects of the status quo and the proposals on these resources.

1. Monuments/Executive Withdrawals (Existing Law) --

(a) These withdrawals encompass approximately 45 million acres of lands with oil and gas potential. Under existing law, those areas within "emergency withdrawals" may be leased for exploration and developed at the Secretary's discretion; oil and gas activities are barred in the Monuments. In addition, areas recommended by the Interior Department for Wilderness (e.g. Arctic Range, Kenai Moose Range, etc.) are administratively closed to oil and gas exploration and development.

(b) Regarding hardrock minerals, three specific impacts are examined: (i) Impact on major existing mineral discoveries -- five of the nine major discoveries (Picnic Creek, Mt. Prindle, Orange Hill, Greens Creek, and U.S. Borax) are included in Monuments which preclude development. Moreover, access to the Arctic find in the Ambler district is blocked by the "boot" of the Gates of the Arctic Monument; (ii) Impact on Mineral Districts--

Areas rated important for mineral development such as Chulitna, Squirrel River, and the Kilbuck Mountains, and the upper Ambler Valley are withdrawn.

(c) Regarding Alaska's timber conomy, approximately 6 million acres of de facto Wilderness are created within the Tongass National Forest. The withdrawal of these lands will reduce the annual allowable timber harvest to 360 million board feet per year (MMBF/yr) and eliminate up to 2000 existing timber-related jobs.

2. H.R. 39/Udall --

(a) The units in the bill encompass nearly 40 million acres of land with oil and gas potential (not including NPRA). The Arctic Wildlife Range is designated Wilderness which bars exploration and possible future development. The National Petroleum Reserve - Alaska (NPRA) is classified as a Wildlife Refuge but is to be opened for oil and gas leasing if the Secretary deems such leasing compatible with the Refuge purposes. However, leasing in NPRA shall not be conducted per existing law. Exploration and development are divided and separate Federal approval would be needed before development of an oil discovery could proceed. Existing law requires no such two-step approval when one obtains an onshore oil and gas lease.

(b) (i) Four of the nine major discoveries are included within Parks, Preserves, Wilderness areas, Refuges, etc., (Mt. Prindle, Orange Hill, Greens Creek, and U.S. Boarx*). While these designations are theoretically subject to valid existing rights, experience clearly indicates that is nearly impossible to develop major mines within such areas. (ii) Areas rated important for mineral development such as Chulitna, Squirrel River, the Kilbuck Mtns., and the upper Ambler Valley are closed to mineral entry and development of existing claims effectively barred.

(c) H.R. 39 designates 5.9 million acres of Wilderness units within the Tongass Forest in Southeast Alaska. These wilderness designations will reduce the allowable cut to 360 MMBF/yr. A harvest reduction of this magnitude will eliminate up to 2000 existing timber-related jobs. In an attempt to offset this employment impact, the bill authorizes an increased appropriation of \$8 million annually for improved silviculture to increase timber yields on non-wilderness lands. However, even if these extra funds are appropriated each and every year, the cut can only be raised to 410 MMBF/yr which is below harvest levels.

*The Tsongas Subsitute does contain provisions to permit development of the Borax molydenum discovery, but the wilderness boundary is much closer to the claims and may create regulatory problems during development.

(a) Conservation units encompass approximately 25 million acres of land with oil and gas potential. The Arctic Wildlife Range is excluded from Wilderness and is subject to a five year oil and gas study program to assess its oil and gas potential and to determine the conflicts, if any, between oil development and wildlife resources. The oil study is limited to geophysical and seismic work with Congressional approval required prior to any drilling or development work. Also on the North Slope, the status of NPRA is unaffected by the bill.

In addition, the Secretary is directed to establish a program to facilitate oil and gas leasing on non-North Slope Federal lands outside conservation system units. Moreover, the Secretary is required to act on applications for oil and gas leasing on Wildlife Refuges (not designated as Wilderness) within a specified period of time.

Leases are to be issued pursuant to an environmental compatibility finding. However, the Secretary has the burden of proof of documenting the bases for denying an application -- a change from existing law.

(b) (i) All nine of the major mineral discoveries are excluded from land designations which prevent development. However, three of the discoveries are in units where mining is specifically permitted but not guaranteed. In addition, a developed right-of-way across the Gates' "boot" is guaranteed to provide access to the Picnic and Arctic finds located in the Ambler district.

(ii) Areas rated important for minerals such as Chulitna, Squirrel River, the Kilbuck Mtns., and the upper Ambler Valley are transferred to State ownership or designated as a multiple-use areas and may be open to future mineral development.

In addition, S.9 provides a grace period for claim validation affecting holders of mineral claims located in BLM Conservation Areas and National Recreation Areas. Those Holding claims within withdrawn units would be granted a grace period for perfecting their claims if such lands are later reopened to mining.

(c) S.9 designates 4.3 million acres of Wilderness within the Tongass Forest. It also creates 2 million acres of Special Management Areas (SMA's). Although timber within the SMA's is included in the Annual Allowable Cut calculation, no harvest can occur unless authorized by Congress after the ten year study period. During the ten year period, the Secretary of Agriculture is directed to monitor the timber industry and report to Congress if the 520 MMBF/yr goal cannot be met without harvesting in the SMA's. SMA status is to be reviewed at the end of the ten year period. The bill also authorizes \$12 million to improve timber practices and aid in the harvest of marginally economic timber. If these funds are available,

the non-wilderness portions of the Forest will provide a cut of 520 MMBF/yr -- without the funds the harvest will be 430 MMBF/yr. If cutting is never permitted in the SMA's during the 100 year rotation and if no extra moneys are appropriated, the cut will be reduced 360 MMBF/yr at some point in the 100 year cycle.

IV. WILDLIFE MANAGEMENT

Wildlife management deals with the traditional relationship between the State of Alaska and the Federal government regarding wildlife management, particularly as it relates to state management of wildlife to insure adequate provisions for sport and subsistence uses.

1. Monument/Executive Withdrawals (Existing Law) --

(a) No provision affirming the traditional roles of the Federal and State governments is included among proposed regulations governing Monuments or other executive withdrawals.

(b) The proposed regulations governing the Monuments created by President Carter track the approach taken in the Udall bill and in so doing the regulations provide for Federal oversight which means that after consulting with the State and making certain findings the Secretary may involve himself in daily management of fish and game resources.

(c) Subsistence hunting is permitted in all Monuments except the Kenai Fiords unit (sport hunting is prohibited in Park Service Monuments).

2. H.R. 39/Udall* --

(a) No provision affirming the traditional role of the State and Federal governments regarding wildlife management is included in the bill.

(b) H.R. 39 provides, for a subsistence preference on Federal lands when a limitation on taking is required. The Secretary is directed to oversee State implementation of the subsistence preference and to notify the State of changes which he determines are necessary in that implementation. If the State does not make these changes, the Secretary shall close the area affected to all but subsistence uses. This may necessitate the setting of methods and means, bag limits, season lengths and harvest quotas -- all of which are traditional State prerogatives.

3. S.9 as Reported --

(a) A provision specifically reaffirming the traditional relationship between the State and Federal government regarding wildlife management is included in the bill.

*The Tsongas Substitute more closely tracks S.9 in this area.

(b) S.9 provides for a subsistence preference, based on existing State law, when a limitation on taking is required. The Secretary is authorized to monitor State implementation of the subsistence preference. At the request of a local or regional advisory board, the Secretary shall ask for changes in the State's program if he makes specific findings that the subsistence preference is not being satisfied. The Secretary after making certain findings shall ask for judicial review of the State's program but only limited to the specific regulation involved -- not on a general basis. However, judicial action is limited only to that regulation involved and for the length of that regulation which in many instances is only for an annual basis.

V. SPORT HUNTING

A. Land Closed to Hunting

1. Monuments/Executive Withdrawals (Existing Law) --

The existing withdrawals prohibit sport hunting on 42 million acres of Federal lands. These withdrawals include the Wrangells-St. Elias, Gates of the Arctic, Mt. McKinley additions, Katmai additions, and a number of other important sport hunting areas.

2. H.R. 39/Udall --

The House version of H.R. 39 bars sport hunting on 27 million acres of Federal land including the Gates of the Arctic area and major portions of the Wrangells-St. Elias, Mt. McKinley additions, and Katmai additions.

3. S.9 as Reported --

The bill closes 22.2 million acres of Federal lands to sport hunting. However, sport hunting is allowed in major portions of the Gates of the Arctic, Wrangells-St. Elias, and Katmai and Mt. McKinley additions.

The following chart demonstrates the major differences among the three measures regarding which specific areas are open or closed to sport hunting:

ACREAGE OPEN TO SPORT HUNTING (In Millions of Acres)

	<u>S.9</u>	<u>H.R.39</u>	<u>Monuments/Exec. Withdrawals</u>
Gates of the Arctic	3.2	-0-	-0-
Wrangells	4.3	3.3	-0-
McKinley	1.2	0.4	-0-
Katmai	0.4	0.2	-0-
TOTAL	9.1	3.9	-0-

B. Other Hunting Provisions

1. Monuments/Executive Withdrawals (Existing Law) --

(a) Since there is no sport hunting allowed in the monuments, there are no special regulations to permit hunting related activities.

(b) Since there is no sport hunting allowed in the Park Service Monuments, with withdrawal regulations do not address the status of the hunting guides now operating in these areas. On non-Monument withdrawals, guiding remains subject to State regulation.

2. H.R. 39/Udall --

(a) there are no provisions which specifically permit hunting related activities to continue in Preserves, Refuges or Wilderness areas.

(b) Subject to stringent criteria, guided hunting and trapping can continue for a ten year period within National Parks & Monuments.

(c) Sport hunting is not a statutorily designated use in the Refuges designated in the bill.

3. S.9 as Reported --

(a) The bill contains provisions ensuring that hunting related activities such as the construction of campsites, location of equipment caches, etc., shall be permitted within Preserves, Wilderness areas, Refuges, and other areas.

(b) The bill provides that the State of Alaska shall continue to regulate the guide industry. Additionally, there is no grandfather clause for guides included in Parks & Monuments.

(c) Sport hunting is statutorily recognized as a use for which Wildlife Refuges designated in the bill are to be managed.

VI. GENERAL MANAGEMENT PROVISIONS

In addition to those management provisions discussed in earlier sections of this comparative study, S.9 and H.R. 39 make other important modifications to existing law. This section analyzes some of the most significant modifications of existing law made by the two bills and how the modifications would affect future land use and management in Alaska.

A. Condemnation/Land Acquisition

1. Monuments/Executive Withdrawals (Existing Law) --

The existing laws which govern the national monuments and executive withdrawals generally empower the land-managing Federal agencies with great discretion to acquire private

and Native Corporation inholdings without the consent of these entities. This issue is not clearly resolved in existing law and litigation is a likely possibility.

2. H.R. 39/ Udall --

H.R. 39 provides immunity from involuntary condemnation for State lands and lands granted pursuant to the Alaska Native Claims Settlement Act (ANCSA). Under the bill, such lands cannot be condemned merely for the purposes of adding to a conservation system unit. State owned lands within or contiguous to conservation system units may be acquired by exchange. Condemnation of other private inholders is subject to Secretarial discretion.

3. S. 9 as Reported --

The bill protects inholdings owned by the State, Native Corporations and private individuals receiving title under ANCSA or the Native Allotment Act from involuntary condemnation for purposes of adding to a conservation system unit. Other private landowners are provided various degrees of protection under the bill. In each case, the Secretary is required to make a determination that the inholding is causing significant detriment to the purpose of the conservation system unit and must make a good-faith effort to exchange other Federal lands for the inholding prior to undertaking condemnation and purchase procedures.

B. Cabins

1. Monuments/Executive Withdrawals (Existing Law) --

A sub-issue is that of cabins located on Federal (public) lands which have been closed to entry. In many instances, occupants of such cabins are legally trespassers and could be evicted under existing Federal law. However, proposed monument regulations permit continued occupancy of some cabins in specified circumstances. Any permitted occupancy shall be strictly constrained to one and five year occupancy permits.

2. H.R. 39/ Udall --

It does not deal with the problem of cabins occupancy. Presumably, cabin occupants would be treated as trespassers under existing law.

3. S. 9 as Reported --

It codifies and improves upon the approach proposed in the national monument regulations. Long-time occupants would be permitted to retain the use of their cabins so long as such use does not significantly impact the purpose of the conservation

certain criteria, through the lifetime of the principal occupant or the continuous occupancy by the last surviving member of the immediate family presently living in the cabin.

C. Wilderness Management

1. Monuments/Executive Withdrawals (Existing Law) --

Under existing law, the Secretary may determine, subject to the provisions of the Wilderness Act, what uses may be permitted as compatible with Wilderness designations.

2. H.R. 39/ Udall --

H.R. 39 authorizes very limited fisheries and aquaculture activities in Forest Wilderness only. However, fisheries enhancement is barred on approximately 61 million acres of other Wilderness. Existing and new public use cabins would be allowed in Forest Wilderness units, but would be prohibited on 61 million acres of Wilderness under other management systems.

3. S. 9 as Reported --

S. 9 permits a broader range of aquaculture, fisheries enhancement activities, and facilities on all Wilderness areas with the specific exception of 6.1 million acres of National Park Service Wilderness. Existing public use cabins would remain and be maintained in all Wilderness areas under this bill, and new cabins may be constructed as necessary for the protection of public health and welfare.

D. Exemption from Wilderness Review

1. Monuments/Executive Withdrawals (Existing Law) --

Existing law directs the Secretary of the Interior to apply Section 603 of the Federal Land Policy and Management Act to review each 5,000 acre tract of roadless Federal land in Alaska for possible Wilderness designation. In the interim, all affected lands would be managed as de facto Wilderness.

2. H.R. 39/ Udall --

It does not exempt or lessen the burden on the Secretary to complete Wilderness reviews per Section 603 of all roadless areas on Federal lands in Alaska.

3. S. 9 as Reported --

Section 1317 statutorily exempts Alaska from the mandatory Wilderness review provisions of Section 603. The Secretary retains discretionary power to recommend Federal lands for Wilderness designation, but is no longer required to do so.

Any recommendations for Wilderness can only be implemented through Congressional action.

E. Revocation and "No More"

These concepts refer respectively to:

(a) The revocation by Congress of the National Monuments and executive withdrawals imposed on Alaska in November and December of 1978;

(b) The requirement that any future Federal withdrawals for conservation system units in Alaska be granted only by act of Congress and not by executive or administrative action; and

(c) That the bill contain a Congressional policy finding that no more land withdrawals for conservation system units are needed.

1. Monuments/Executive Withdrawals (Existing Law) --

Obviously, imposition of these withdrawals in late 1978 created the need for such provisions.

2. H.R. 39/Udall --

H.R. 39 does not provide for either the revocation or the "no more" concept.*

3. S.9 as Reported --

S.9 revokes the National Monuments and executive withdrawals in the face of Congressional designation made in the bill. Thus, any lands currently within the monuments or withdrawals which are not within a conservation system unit established or expanded by S.9 are returned to the public domain or conveyed to the State, if selected.

The Senate Committee bill does not contain a provision requiring that future Federal withdrawals in Alaska for conservation system units be created only by Act of Congress, but it does contain a policy finding that no more land withdrawals for conservation system units are needed.

*The Tsongas Substitute has a revocation clause but replaces the withdrawals with H.R. 39 units and boundaries.

<u>Land Designations</u>	<u>S. 9-1979</u>	<u>Gall-Anderson H.R. 39</u>	<u>Monuments/ Executive Withdrawals</u>
<u>"New Set Asides"</u>			
Parks/Monuments	22.2	27.0	56.0
Preserves	18.0	17.0	-0-
N.R.A.'s	4.8	-0-	-0-
Refuges	41.0	79.0	57.1*
Forests	8.7	2.5	-0-
Wild & Scenic Rivers	1.2	2.0	-0-
BLM Conservation Areas	<u>7.4</u>	<u>-0-</u>	<u>-0-</u>
TOTAL	103.3	127.5	113.0
<u>Wilderness</u>			
Parks	29.7	34.1	-0-
Refuges	4.3	27.5	-0-
Forests	<u>4.3</u>	<u>5.9</u>	<u>-0-</u>
TOTAL	38.3	67.5	-0-**
<u>Other Withdrawals</u>			
Special Mgmt. Areas	2.1	-0-	-0-
Forest Withdrawals***	<u>-0-</u>	<u>-0-</u>	<u>8.0</u>
TOTAL	2.1	-0-	8.0
<u>Total Affected Lands</u>			
New Set Asides	103.3	127.5	113.0
Existing Lands Redesignated Wilderness	13.5	27.5	-0-
Other Withdrawals	<u>2.1</u>	<u>-0-</u>	<u>8.0</u>
TOTAL	118.9	155.0	121.0

* "Emergency" withdrawals which may last up to 20 years; land use to be determined by the Secretary. Additionally, a substantial percentage of these lands are being added to the wildlife refuge system by executive action.

** Wilderness can only be established by Congress.

*** Emergency & RARE II withdrawals in the Chugach and Tongass Forests.

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

TO: [

Governor Jay S. Hammond
Office of the Governor
Pouch A
Juneau, Alaska 99811

DATE: September 24, 1979

FILE NO:

TELEPHONE NO:

FROM:

John W. Katz
Special Counsel
Office of the Governor
Washington, D.C.

SUBJECT: State Comments on Proposed
Management Regulations

For your information, I am enclosing a copy of the State's submission to the Department of the Interior with respect to that agency's proposed regulations to govern the administration of the new national monuments in Alaska.

As you will notice, this submission consists of three parts: your August 15 testimony in Anchorage, section-by-section comments drafted by Tom Meacham and me, and an appendix prepared by the Department of Fish and Game. The State's written critique has been supplemented in a series of meetings which we have held with Interior Department personnel, including Assistant Secretary Robert Herbst, the national and Alaskan directors of the Park Service, and the Fish and Wildlife Service, staff people in Secretary Andrus's office, lawyers from the Solicitor's office, and other staff persons in Alaska and Washington, D.C. The comment period for the proposed regulations ends on September 26, and we expect final rules to be issued some time in November.

If you have any questions or comments regarding the accompanying enclosures, please let me know.

cc: Lt. Governor Terry Miller

STATE OF ALASKA

OFFICE OF THE GOVERNOR

ANCHORAGE

September 7, 1979

Also sent to:

Area Director
National Park Service
540 West Fifth Avenue
Anchorage, Alaska 99501

Area Director
U.S. Fish & Wildlife Service
Department of the Interior
1011 East Tudor Road
Anchorage, Alaska 99507

Dear Sir:

Enclosed please find the comments of the State of Alaska in response to the Department's rulemaking concerning proposed regulations published in the Federal Register by the National Park Service and the U.S. Fish and Wildlife Service to govern future administration of the national monuments created last year by Presidential proclamation.

Our comments are divided into two principal parts. The first part consists of testimony delivered by Governor Hammond during hearings held by the Department in Anchorage on August 15, 1979. This testimony sets forth the basic framework of the State's position and identifies our major problems with the proposed regulations. The second portion of our submission consists of detailed line-by-line comments prepared by the Attorney General's Office in coordination with the Office of the Governor. These comments elaborate upon the concerns expressed by Governor Hammond and include a number of suggested changes. In so doing, we have sought to compile and synthesize the input of various State agencies and of individuals and organizations that have communicated their concerns to the State.

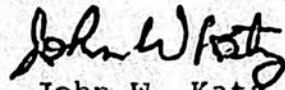
For the sake of brevity, the State has confined most of its comments to problems which we perceive in the proposed regulations. By so doing, we do not mean to overlook the fact that the proposed rules depart from their existing counterparts by permitting a number of uses which would otherwise be prohibited. In this regard, it is our understanding that certain individuals and organizations may seek to weaken the current proposals by suggesting additional prohibitions and restrictions. We would strongly oppose such an effort and do not want our silence on certain points to be construed as anything less than full support for the allowance of uses related to the Alaskan lifestyle. Rather, as our detailed comments will indicate, we are hopeful that the Department will build upon the start embodied in the current proposals by permitting additional uses, reducing unnecessary administrative discretion and restrictions, and otherwise developing substantive guidelines and procedures designed to perpetuate existing lifestyles. In

Area Director
Page Two
September 7, 1979

our opinion, these objectives can be achieved to some extent without jeopardizing the stated purposes of the monument proclamations, which cannot be altered significantly unless and until there is a legislative or judicial resolution.

The comments submitted herein will be supplemented in subsequent meetings between representatives of the Interior Department and the State. We look forward to continuing our joint efforts to improve the current proposals.

Sincerely,



John W. Katz
Special Counsel

JWK/dw

cc: Governor Hammond
Lt. Governor Miller

Attachments

STATE OF ALASKA COMMENTS
PROPOSED NATIONAL PARK SERVICE
ALASKA NATIONAL MONUMENT
GENERAL MANAGEMENT REGULATIONS

Following are the comments of the State of Alaska concerning the proposed final regulations of the National Park Service, U.S. Department of the Interior regarding Alaska National monuments.

Supplementary Information. Though the supplementary information provided with the proposed final regulations does not constitute a part of the regulations themselves, several items contained in this information, or omitted from the supplementary information and the regulations require comment.

1. Subsistence. On page 37739 of the Federal Register is contained the statement that,

The regulations for the new national monuments must afford protection to the many values which support the monument designations. According to the proclamations, the protection of the subsistence lifestyle must "enhance," not detract from, the other historic and scientific values of the monuments.

A review of the national monument Proclamations does not support this statement, since maintenance of a subsistence lifestyle is recognized as a values of the monument, co-equal with historic and scientific values (and in fact a part of the "scientific and historic" values); subsistence is not subordinated to these other values, and is not conditioned by the Proclamations upon its "enhancement" of the other values mentioned.

2. Taking of Fish and Wildlife. Though sport hunting is forbidden in the national monuments by the Proclamations, the provision of subsistence hunting and trapping within the monuments, as well as sport and subsistence fishing requires that the relationship between the state and federal governments be clarified regarding fish and game management. Attached is proposed language which would accomplish this result. (Attachment A).

3. Condemnation. No statement is contained in the supplementary information, nor are regulations proposed, on the subject of condemnation of inholdings within national monuments. The regulations recognize that private and public inholdings will exist within these monuments, and provide access to these inholdings. However, any mention of federal authority to condemn and acquire, or otherwise restrict through easements, the use of these inholdings is missing from the regulations. Under what general guidelines or philosophy will condemnation or zoning authority be exercised? Under what general circumstances will involuntary acquisition of inholdings be sought, so as to achieve refuge management goals and purposes or to limit or eliminate inconsistent use of inholdings? Some general statements regarding the policies of the National Park Service toward inholdings should, the State feels, be contained in the regulations.

The State's position regarding acquisition authority is reflected in the attached proposed language. (Attachment B). As a general matter, we believe that Federal acquisition is contrary to the purposes and objects of the Alaska Statehood Act and the Alaska Native Claims Settlement Act and certain other Federal laws, and therefore should only be exercised in cases involving significant detriment to important monument values.

4. Water Management. The National Monument Proclamations have created an ambiguity regarding the status of water and water rights within the monuments. The proclamations purport to appropriate and withdraw "all waters" within the monument boundaries, and then to reserve "all water necessary to the proper care and management of those objects protected by the monument". The conflict between the purported appropriation of the entire quantity of water within the monument, and the reservation of only that water "necessary" for the protection and management of the monument, should be resolved by regulation. Under the Winters doctrine of federal reserve water rights, the United States has reserved and appropriated that quantity of water necessary for the protection and management of the monument, but any quantity of water in excess to such purposes is subject to appropriation by others under state water laws. Failure to resolve this ambiguity through the regulations will perpetuate uncertainty about the extent of the federal right.

5. Purpose of the Monument. The monument Proclamations for the national monuments contained a statement of the various purposes for which each monument was proclaimed. Nowhere in the regulations are these purposes set forth in the same fashion as they appear in the Proclamations. Where elements

of the purposes do appear in the regulations, they are paraphrased, extracted, or otherwise not identical to the underlying proclamations. The State believes that because the proclamations form the basis for the monuments and the regulations, the purposes of each monument should be set forth verbatim in Subpart A.

6. Federal Administrative Manuals. It is the State's understanding that, in several areas in which deficiencies or unacceptable breadth of administrative discretion have been identified, the National Park Service intends to rely upon its administrative manuals for guidance, rather than seeking more concise, definitive regulations. The State objects to this approach. Administrative manuals of the managing agency are both voluminous and not subject to easy public access. It is doubtful that the general public either knows of their existence, nor where they may be obtained and researched. Further, the administrative manuals, in contrast to regulations, are not subject to prior public notice, review and comment before promulgation. Therefore, the State feels that reliance upon the agency's administrative manuals for guidance in discretionary decisions and identified deficiencies in the proposed regulations should be minimized, and the regulations themselves corrected to circumscribe discretion and to eliminate such deficiencies.

7. Management Plans. The proposed regulations do not require the National Park Service to adopt an overall plan for the comprehensive management of each national monument. While such a goal may exist as a matter of departmental policy, it should be embodied in regulation to protect traditional uses, to make the process systematic, and to afford the interested public adequate opportunity for notice, review and comment.

8. Proposed Regulations. The following comments pertain to the proposed regulations, contained at 44 Federal Register 37744-37751 (June 28, 1979). The affected section is cited, followed by the State's comment or proposed change:

13.1(k) (Definitions): The term "temporary" should be defined as a period not exceeding 90 days, rather than 12 months, which is excessive and unwarranted.

13.2(e) (Applicability and Scope): The regulations should be made inapplicable to privately-owned lands, including lands owned by a Native regional corporation or an individual

Native pursuant to the 1906 Native Allotment Act and the Alaska Native Claims Settlement Act. The concept, stated in the proposed regulations, of Indian lands owned "tribally" is not applicable to Alaska, with the sole exception of the Metlakatla Reservation in Southeast Alaska, which does not lie within a monument. Further, it is not clear that State or other non-federal public lands are not subject to the regulations. This fact should be set forth in this section.

13.10(a) (Access): The requirement for an access permit by persons with a "valid property or occupancy interest in lands" raises several problems. Does this regulation require a validity challenge to be made of each unpatented mining claim for which access is sought? The State believes that such a requirement is both unnecessary and unreasonable. Under Section 13.12(a)(4) and (b)(4), a person seeking to obtain a permit for an existing cabin is required to disclaim any interest in the real property on which the cabin is located. How, then, can such a person assert the necessary "valid property or occupancy interest in lands" required to obtain an access permit under Section 13.10? This section does not recognize existing routes of travel, which may be section line easements or public user easements established under 43 U.S.C. Section 932 of other authority. No access permit should be required for access to inholdings by those means for which no permit is required for general use of the monument by the public, including but not limited to snow-machine use, foot travel, or horseback riding. Because the limitation on access can effectively curtail activities which are otherwise permitted within the monuments, the State suggests that the attached language be inserted. (Attachment C).

There is need to limit individual administrator discretion by specifying the requirements for issuance of a permit for access required by Section 13.10. Suggested language for issuance and denial of permits, as well as notice, hearing and appeal procedures for implementation of management decisions, are attached. (Attachment D).

Section 13.11 (Aircraft): The State supports the treatment of fixed-wing aircraft by this regulation. However, there is no logic to the more restrictive treatment of helicopters, including the requirement of a permit. While sport hunting by use of a helicopter for transportation or support is illegal under state law and is not permitted by the national monument proclamations, the use of a helicopter in support of fishing, mining and other activities is not illegal, a fact which is not recognized

in the proposed regulation. This regulation would make such use unlawful without a permit. The prohibition against use of aircraft for subsistence purposes (with the exception of Anuktuvuk Pass) is not supported by fact, since there are several other areas in which the lawful and necessary use of aircraft for support of subsistence hunting has been fully documented in the past.

The discretion of the superintendent regarding restriction or closure of aircraft use must be circumscribed by explicit, legally-definable terms, as emphasized in the State's Attachment D.

Section 13.12 (Cabins and Other Structures): A requirement in Section (a)(2) for a "sketch and photograph" is redundant; surely one or the other will suffice.

The State supports the regulations regarding recognition of existing cabins and other structures, as a satisfactory minimum proposal on which to base regulation of these facilities. The 5-year use and occupancy permit, non-transferrable but renewable in the case of cabins existing prior to March 25, 1974 leaves ambiguous the question of the fate of such a cabin if the applicant, the head of a household, dies. Must the family be evicted, or can the family rely upon issuance of the permit to the deceased head-of-household to continue occupancy for their own natural lives? This proposed regulation deals with the problem too simply, and does not recognize the fact that existing occupancy and use of such cabins may vary considerably from case to case. The State supports issuance of a permit which would be valid throughout the life of the last immediate family member occupying the cabin.

The prohibition in subsection (d) against rebuilding cabins or structures which are destroyed or deteriorate is not in the best interest of the public, and is unduly harsh. The possibility that deliberate destruction or arson by unidentified persons may be used as a means to eliminate existing cabins and cabin permits should not be overlooked.

The superintendent should be required to authorize the construction and use of cabins and other related structures necessary for the accomplishment subsistence activities where it is determined that such structures are reasonably necessary to accommodate that use, since the continuation of subsistence is one of the purposes of the monuments. The State has attached language which would accomplish this result. (Attachment E).

The superintendent's range of discretion regarding the issuance of cabin permits must be suitably defined and circumscribed, as the State has proposed previously. (Attachment D).

13.14 (Commercial Fishing Operations): The regulations imply that commercial fishing operations may only continue at that level which was present at the time the monument was established. This would prevent, unjustifiably in the State's view, the possible increase in the level of commercial fishing in many instances without harm to the resource. Such a decision is within the traditional regulatory authority of the State of Alaska.

Federal permits for commercial fishing should be required only in situations where commercial fishing activities involve land-based operations on lands which are within monuments. The authority of the superintendent to control operation of motorboats on waters within monuments is sufficient to control any abuses of this aspect of commercial fishing.

There are no standards set forth for the content or issuance of a commercial fishing permit. Such standards should be set forth, together with a definition of the range of discretion afforded the superintendent for issuance or denial of such permits, as has been suggested previously by the State.

There is no mention in the regulations of sport fishing, and while this activity is permitted within national parks and national monuments elsewhere, its omission in these regulations raises questions concerning the opportunity of the public to engage in sport fishing within the Alaska national park monuments.

13.15 (Firearms, Traps and Weapons): While the "carrying" of a firearm within the Alaska national monuments is permitted, there is no authorization to use the firearm unless the person carrying it is an authorized subsistence user. If its utility for a non-subsistence user is for personal protection that authorized emergency use should be stated, as it has been stated in the proposed Fish and Wildlife Service regulations at Section 98.42 regarding wildlife monuments.

Subparagraph (e) permits weapons (including firearms) "within or upon a device used for transportation", provided that the weapons are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in the monument. If a firearm is carried on the person, or on horseback, as opposed

to a mechanical transportation device, is this regulation intended to be applicable? If it is applicable, then the entire purpose of carrying a firearm for personal protection, which is assumed to be permitted by Section 13.15(a), would be defeated by the fact that the firearm would not be available for emergency use.

The range of discretion of the superintendent in determining what areas should be opened or closed to the use of firearms must be suitably circumscribed, as the State has stated previously in its comments.

Section 13.16 (Motorboats): Subparagraph (e) requires a determination that motorboats are causing "considerable adverse effects". Such a finding has no recognized legal meaning; a legal standard of "significant adverse effects" does have such meaning. Therefore, it is suggested that the adjective "significant" be substituted for "considerable". The provision in this subsection concerning reopening of an area formerly closed should allow mitigation of prior adverse effects as a justification for re-opening.

The decision of the superintendent to close an area to motorboats is, at the present time, a decision unbounded by standards or specific considerations, and thus his discretion is subject to the same criticisms raised by the State earlier in its comments on other sections of these regulations.

Section 13.17 (Off-road Vehicles): Because these regulations are guided by Executive Order 11644, the regulations should follow exactly the reasons stated in the Executive Order, and the superintendent's range of discretion should be governed by that Order.

Subparagraph (b) (4) requires that restrictions imposed by the superintendent "may relate" to certain factors; this language should be changed to "shall relate", to define the range of administrative discretion; if there are other factors which might be considered, they should be listed.

Subparagraph (b) (5) sets the standard of "considerable adverse effects"; again, this phrase has no recognized legal meaning, and should be changed to "significant adverse effects".

Section 13.19 (Preservation of Natural Features): Subsection (b) states that the superintendent "may" permit the gathering of natural materials if certain standards, which are stated in the proviso section, have been met. If these standards have been met, then the superintendent should be required to issue a permit. Thus "may" should be changed to "shall". The necessity of defining and circumscribing the range of discretion of the superintendent, which now appears unlimited in this regulation, has been discussed earlier in the State's comments.

Section 13.20 (Snowmobiles): The State is concerned with the approach taken in the snowmobile regulation, since there is no need to designate travel routes for snowmachines due to the absence of any terrain damage if suitable snow cover is present. The philosophy here should generally support the concept that the monuments are open to snowmachines for lawful uses unless otherwise closed or restricted. The comments regarding the relationship of the regulations to Executive Order 11644, previously stated in the State's comments to the off-road vehicle section, are applicable here.

Subsection (b) (5) requires a finding of "considerable adverse effects"; again, this concept has no legal meaning, and the word "significant" should be substituted for "considerable".

Section 13.21 (Unattended or Abandoned Property): This section does not define the range of discretion of the superintendent to impound unattended property, and in subsection (c) the concept of such property "interfering with" is not defined sufficiently to inform the public of what property or actions are covered by the regulation. For example are stored traps and equipment, the contents of cabins, and similar items for uses nominally permitted under the regulations, "unattended personal property"? The State's previous comments concerning the range of administrative discretion are applicable here. (attachment D).

Subpart B (Subsistence): For the reasons discussed in the accompanying testimony of Governor Hammond, we believe that the proposed regulations are deficient in their treatment of subsistence use. While the State disagrees with some of the legal and policy underpinnings of the proposed regulations, we recognize that the drafters are bound by the language of the Solicitor's Office. Accordingly, so that our comments will be of maximum assistance, we have incorporated these constraints into the following comments.

As a general matter, we believe that the treatment of subsistence should conform to the provision of the Breau-Dingell bill or S.9, as the State proposes to amend it. Both bills reflect a substantial evolution in most people's thinking about the mechanics of the subsistence. Either bill, as a result, represents the broadest consensus which we have yet been able to achieve with respect to the regulation of subsistence use.

It is unnecessary to require, prior to any shortage in fish or wildlife populations, that local rural residents shall have the "first" priority consumptive use of such resources. Only when such resources must be allocated between resource users is a priority ranking necessary. Policy considerations which should be taken into account in determining such priority should include that policy which would have the least adverse impact upon rural residents, and that policy which would allow continuation of a subsistence lifestyle. The order of priorities for distinguishing between subsistence users should, the State feels, adopt the following sequence:

1. A particular resource is not in jeopardy. Therefore, all persons may sport fish, and subsistence uses may be allowed without differentiation between subsistence users.
2. The resource is in some jeopardy. Therefore, only rural residents may fish (if that is the resource in jeopardy), and other subsistence uses would continue pursuant to the Proclamations.
3. The resource is in greater jeopardy. Therefore, only local rural residents can hunt, fish, or trap for that particular resource. The eligibility of such residents would be determined by establishing residence zones which encompass concentration of people known to have a historical relationship to the resource involved. For these purposes, zones would encompass not only affected villages and towns, but persons residing in the vicinity of such communities. At this stage, there would be no need to obtain a permit, except by persons outside the residence zone who can qualify as provided below.

Before moving to the next step, access and seasonal restrictions should be used to protect the interests of local residents.

4. The resource is in still greater jeopardy. Therefore, for the first time, distinctions must be made among local residents. Accordingly, it is necessary to make a finding with respect to an individual's historic dependence upon the subsistence resource involved. A permit would then be issued. The final regulations should clearly specify the criteria for approval or disapproval of a permit and should describe in general the terms and conditions which may be included in a permit.
5. The resource is in still greater jeopardy. Therefore, it is necessary to make distinctions among local residents who have a historic dependency on the resource. At this point, it would be appropriate to determine whether the resource involved is the mainstay of the user's livelihood. Such a determination would involve consideration of alternative food sources and economic criteria. Because of the arbitrary and difficult nature of these determinations, we suggest that they be used only as a last resort.
6. The resource is in such jeopardy that all hunting, fishing, or trapping for that resource must be terminated until the resource recovers sufficiently to allow for resumption of some levels of take.

We believe that the final regulations should provide for each of the discrete steps just described, but that such steps should be used in sequence only as the condition of the resource deteriorates. If a full-blown regulatory scheme set forth in the proposed regulations is not altered as we have suggested, it is extremely likely that the detrimental impacts discussed in the Governor's testimony will materialize. As a consequence, the perpetuation of subsistence hunting, fishing and trapping, which is an objective of both the Department and the State, could well be jeopardized.

The requirement in Section 13.40 that the level of subsistence not exceed that occurring during the 10-year period before January 1, 1979 requires additional discussion before implementation by regulation. The State recognizes certain deficiencies in the current approach. However, before concurring in a change, we want to assure ourselves that the solution is better than the current proposal. Thus, for example, we are opposed to the creation of a "closed class" of subsistence users. The concept proposed in the regulations would, in effect, create a closed class of subsistence users, while all proposed legislation dealing with subsistence uses has emphasized that the class is not limited to the present generation, or those persons presently living a

The requirement in Section 106.11(b)(2) that the level of subsistence not exceed that occurring during the 10-year period before January 1, 1979 requires additional discussion before implementation by regulation. The State recognizes certain deficiencies in the current approach. However, before concurring in a change, we want to assure ourselves that the solution is better than the current proposal. Thus, for example, we are opposed to the creation of a "closed class" of subsistence users. The concept proposed in the regulations would, in effect, create a closed class of subsistence users, while all proposed legislation dealing with subsistence uses has emphasized that the class is not limited to the present generation, or those persons presently living a subsistence lifestyle, but is open to all persons now engaged, and so engaged in the future, so long as the resource is not jeopardized.

106.21 (State Regulation of Subsistence Uses):

The State is very concerned with the means by which state implementation of subsistence uses within the monuments is to be dealt with. If the State assumes regulatory responsibility, a later decision that the State has failed to properly carry out that responsibility is a very serious one, and should receive much higher initial consideration and review than is provided in the proposed regulations. We believe that any Federal decision that the State not in compliance with subsistence management requirements, and thus substituting the Department for the State as the direct manager of fish and resident wildlife, should be reached judicially in the first instance, as proposed legislation would do. A copy of proposed language which would accomplish this is attached. (Attachment F).

A less satisfactory alternative, in the State's view, but one which is preferable to the proposed regulation, is to adopt provisions which would, upon a finding by the Department that the State had failed to adequately implement the subsistence provisions, authorize the area manager to close the lands to all but subsistence uses. However, a decision to open lands previously closed to subsistence uses by the State would require a finding by the Secretary, not the area manager, that the State had failed to implement the subsistence provisions, and that such a remedy was necessary. A decision of this magnitude, placing the federal government directly in the role of fish and wildlife manager, is of such significance due to its effect upon federal-state relations that it should be made only at the highest level within the Department.

subsistence lifestyle, but is open to all persons now engaged, and so engaged in the future, so long as the resource is not jeopardized.

Section 13.43 (Subsistence Permits): No time limit is given within which the superintendent must reach a decision denying or approving a subsistence permit. Such a time limit is necessary, and an APA-type procedural protection should be provided, unless the required "informal hearing" is sufficiently defined so as to provide this type of necessary protection. The phrase "informal hearing" should be modified by regulations which define exactly what an "informal hearing" constitutes. Such a definition is required throughout the regulations, wherever the phrase "informal hearing" appears.

13.44 (State Regulation of Subsistence Uses):

The State is very concerned with the means by which state implementation of subsistence uses within the monuments is to be dealt with. If the State assumes regulatory responsibility, a later decision that the State has failed to properly carry out that responsibility is a very serious one, and should receive much higher initial consideration and review than is provided in the proposed regulations. We believe that any Federal decision that the State is not in compliance with subsistence management requirements, and thus substituting the Department for the State as the direct manager of fish and resident wildlife, should be reached judicially in the first instance, as proposed legislation would do. A copy of proposed language which would accomplish this is attached. (Attachment F).

A less satisfactory alternative, in the State's view, but one which is preferable to the proposed regulation, is to adopt provisions which would, upon a finding by the Department that the State had failed to adequately implement the subsistence provisions, authorize the area manager to close the lands to all but subsistence uses. However, a decision to open lands previously closed to subsistence uses by the State would require a finding by the Secretary, not the area manager, that the State had failed to implement the subsistence provisions, and that such a remedy was necessary. A decision of this magnitude, placing the federal government directly in the role of fish and wildlife manager, is of such significance due to its effect upon federal-state relations that it should be made only at the highest level within the Department.

Section 13.45 (Prohibition of Aircraft Use): As stated previously, certain areas have a past history of subsistence use, with lawful transportation by aircraft an integral part of that use. Designating only Anuktuvuk (Section 13.74(a)(2)) ignores this prior history.

Section 13.46 (Use of Snowmobiles and Motorboats for Subsistence Activities): The "informal public hearing" needs definition. If it is defined in the administrative manual, as we understand, then this definition should be stated in the regulations.

Section 13.49 (Subsistence Use of Timber and Plant Material): The proposed regulations make the subsistence use of timber allowable under a permit, if it is determined that such subsistence use is compatible with the purposes for which the monument was established. The Presidential Proclamations do not establish a priority among historic, scientific and subsistence uses of the monument land. Therefore, this attempt to subordinate subsistence uses to the other purposes for which the monument was established is contrary to the Proclamations.

Section 13.50 (Closure to Subsistence Uses): The authority granted the superintendent to close national monuments to subsistence uses " . . . or to take such other measures as may be necessary to provide for the public safety, administration, or to secure the natural stability and continued viability of one or more populations of fish, wildlife, or plants, . . . " goes beyond the recognized authority of the superintendent to close lands. It is the State's traditional function to set seasons and bag limits for allowed subsistence fishing and hunting throughout the State, and within the monuments. Without legislative authority, the superintendent has no implied power to take such measures. This regulation should state explicitly that those "other measures" which are authorized in this section do not include authorization of seasons or bag limits. In particular, the regulations should state, either in Section 13.50 or in a separate section, the allocation of authority between the State, as primary fish and resident wildlife manager, and the Federal government, as primary land and habitat manager. Pending legislation furnishes a model for such a provision, which is attached to these comments. (Attachment A).

Further, Section 13.50 requires clarification to the effect that restrictions on subsistence uses may be imposed only for one or more of the reasons justifying closure to subsistence uses, and not for unlisted uses unrelated to the status of the subsistence resource.

Section 13.70-.82 (Special Regulations): As mentioned previously, the lawful use of aircraft for subsistence hunting support has not been recognized in any of the national monuments except Gates of the Arctic. Following is a list of those other areas in which the use of aircraft for subsistence hunting and fishing has been significant in the past, and has not been detrimental to the resource:

- | | |
|-------|---|
| 13.70 | Chignik, Chignik Lagoon, Port Heiden, Pilot Point, Ugashik |
| 13.71 | None |
| 13.72 | Kotzebue, Noatak |
| 13.73 | Minchumina, Telida, Nikolai |
| 13.74 | Alatna, Allakaket, Ambler, Anaktuvuk, Bettles, Kobuk, Shungnak, Hughes |
| 13.75 | Yakutat |
| 13.76 | Egigik, Igiugig, Kakhonak, Levelock, Naknek, South Naknek, King Salmon |
| 13.77 | None |
| 13.78 | Kotzebue |
| 13.79 | Nondalton, Port Alsworth, Newhalen, Iliamna, Pedro Bay, Lime Village |
| 13.80 | Kivalina, Kotzebue, Noatak |
| 13.81 | Christochina, Chitina, Copper Center, Gakona, Gulkana, McCarthy, Mentasta Lake, Nabesna, Slana, Yakutat, Glennallen |
| 13.82 | Circle, Eagle, Eagle Village, Central |

ATTACHMENT A

(New Section) Suggested language for clarification of relationship between Federal and State fish and game management authority.

TAKING OF FISH AND WILDLIFE. (a) Nothing in these regulations is intended to enlarge or diminish the responsibility and traditional authority of the State of Alaska for management of fish and wildlife on the public lands except as specifically provided by these regulations, or to amend the Alaska Constitution.

(b) Except as specifically provided otherwise by these regulations, nothing in these regulations is intended to enlarge or diminish the responsibility and authority of the Department over the public lands.

(c) The taking of fish and wildlife in all national monuments shall be carried out in accordance with the provisions of the Proclamations, these regulations and applicable state and federal law. Notwithstanding any other provision of these regulations, the Department shall administer and manage those national monuments which permit subsistence uses, to ensure the opportunity for the continuance of such uses by local rural residents. Fishing shall be permitted in accordance with the provisions of these regulations and other applicable state and federal law.

ATTACHMENT B

[New Section]. Suggested language for land acquisition policy.

(a) **LAND ACQUISITION AUTHORITY.** Except as otherwise provided in these regulations, the Secretary may acquire by purchase, donation, exchange, or otherwise any lands within the boundaries of any national monument. Any such land owned by--

(1) the State or a political subdivision of the State;

(2) a Native Corporation which has Natives as a majority of its stockholders;

(3) the actual occupant of a tract, title to the surface estate of which was on, before, or after the date of enactment of this Act conveyed to such occupant pursuant to section 14(c)(1) of the Alaska Native Claims Settlement Act, or a descendent of such occupant, or any subsequent transferee, so long as such land is not used by such transferee in a manner detrimental to the values of the national monument in which it is located; or

(4) any other landowner, or subsequent transferee, so long as such land is not used by such landowner or transferee in a manner detrimental to the values of the monument in which it is located may only be acquired for such purposes with the consent of the State, political subdivision of the State, Native corporation, occupant, transferee, or other landowner, as the case may be. No land described in paragraphs (3) and (4) which may be acquired without the consent of the owner may be so acquired unless, after notice and hearing in the vicinity of the affected monument, the Secretary finds that use of such land by the owner would be detrimental to the values of the monument in which it is located.

(b) **IMPROVED PROPERTY.** No improved property shall be acquired under subsection (a) without the consent of the owner unless the Secretary first determines that such acquisition is necessary to the fulfillment of the purposes for which the affected national monument was established.

(c) **RETAINED RIGHTS.** The owner of an improved property on the date of its acquisition, as a condition of such acquisition, may retain for himself, his heirs and assigns, a right of use and occupancy of the improved property for non-commercial residential or recreational purposes, as the case may be, for a definite term of not more than twenty-five years, or in lieu thereof, for a term ending at the death of the owner or the death of his spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partially donated, the Secretary shall pay to the owner the fair market value of the owner's interest in the property on the date of its acquisition, less the fair market value on that date of the right retained by the owner. A right retained by the owner pursuant to this section shall be subject to termination by the Secretary upon his determination that such right is being exercised in a manner inconsistent with the purposes of the Proclamations on these regulations, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(d) **DEFINITIONS.** For the purposes of this section, the term "improved property" means--

(1) a detached single family dwelling, the construction of which was begun before December 1, 1978 (hereinafter referred to as the "dwelling"), together with the land on which the dwelling is situated to the extent that such land--

(A) is in the same ownership as the dwelling or is Federal land on which entry was legal and proper, and

(B) is designated by the Secretary to be necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures necessary to the dwelling which are situated on the land so designated, or

(2) property developed for noncommercial recreational uses, together with any structures accessory thereto which were so used on or before December 1, 1978, to the extent that entry onto such property was legal and proper.

In determining when and to what extent a property is to be considered an "improved property", the Secretary shall take into consideration the manner of use of such buildings and lands prior to December 1, 1978, and shall designate such lands as are reasonably necessary for the continued enjoyment of the property in the same manner and to the same extent as existed before such date.

(e) CONSIDERATION OF HARDSHIP. The Secretary shall give prompt and careful consideration to any offer made by the owner of any property within a national monument to sell such property, if such owner notifies the Secretary that the continued ownership is causing, or would result, in, undue hardship.

ATTACHMENT C

(Section 13.10(a)) Suggested language for access to inholdings.

(a) Notwithstanding any other provision of these regulations, the Area Director shall permit the use of snowmachines (during periods of adequate snow cover), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by the Proclamations, these regulations or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Area Director to protect the values of the national monuments, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected monument, the Area Director finds that such use would be detrimental to the resource values of the monument. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities within national monuments where such use is permitted by the Proclamations, these regulations, or other law.

(b) Notwithstanding any other provisions of these regulations, in any case in which State-owned or privately-owned land or a mining claim or valid occupancy is within or is effectively surrounded by one or more national monuments, the State or private owner or occupant, and their successors in interest, shall be granted by the Area Director such rights as may be necessary to assure adequate and economically feasible access for economic and other purposes to the affected non-federal land. Such rights shall be subject to reasonable regulations to protect the values of the adjacent national monument lands.

ATTACHMENT D

Suggested language for appeal from permit and management decisions.

(a) Who May Appeal: A permittee, permit applicant, or any person whose rights or privileges are adversely affected by any action of the superintendent relating to this Part 13, may appeal such action as provided in this section.

(b) Preliminary Procedure: Prior to making an adverse decision or order regarding a permit or application for permit, the superintendent shall provide the permittee or applicant with written notice of the proposed action and its proposed effective date. In each case the written notice shall provide an analysis of the specific factors previously adopted as criteria for decision on each type of permit, as applied to the facts of the case. The superintendent shall base his decision upon substantial evidence considering the administrative record as a whole. The administrative record shall include all public comments timely submitted to the superintendent for consideration.

(c) Standards for Decisions: In determining whether to permit, restrict, curtail, or modify any public use, access, or activity otherwise allowed or prohibited under this Part 13, the superintendent shall consider conflicts with other public uses, public health and safety, significant environmental and resource impacts, scientific research activities, protection of endangered and threatened species, preservation of historic values, and other applicable federal and state laws and regulations. The superintendent shall make available upon request a written decision, including an analysis of the factors required by this paragraph. The decision shall be based upon substantial evidence derived from the administrative record as a whole. The administrative record shall include all public comments timely submitted to the superintendent in response to the notice.

(d) Procedure on Appeal: Within 30 days after issuance of the notice described in paragraphs (b) and (c) of this section, any adversely affected person, permittee, or permit applicant may: (1) file with the superintendent with a written statement of objection to the proposed action or date and the reasons for such objection; or (2) initiate the appeals procedures in paragraph (e) of this section, including the submission of written objections to the proposed action and the reasons for such objection. The permittee, applicant, or other adversely affected person shall be notified in writing of the superintendent's final decision or order within thirty (30) days after receipt of the statement of objection.

(e) Limitation of Appeals: The permit applicant, permittee, or adversely affected party shall have thirty (30) days from the issuance of the superintendent's final decision or, in the case of a direct appeal initiated pursuant to (d) (2) of this section, the postmarked date of initial notice from the superintendent, within which to file written appeal to the Area Director. The appellant shall be notified of the Area Director's decision within 30 days of receipt of the appeal. The Area Director's decision shall constitute final agency action on the permit revocation or rejection.

(f) Oral Presentation: Upon request, the appellant shall be provided an opportunity for oral presentation before the Area Director within the thirty (30) day appeal period.

(g) Addresses: The addresses of the appropriate officials to whom appeals may be taken shall be furnished in each notification or order.

(h) Compliance Pending Appeal: Compliance with any final decision or order of the superintendent shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Area Director, and then only upon a determination by the Area Director that such suspension will not be detrimental to the interests of the United States.

ATTACHMENT E

(Section 13.12) Suggested language for uses incident to allowed uses.

ALLOWED USES. (a) Within all national monuments where the taking of fish and wildlife for sport, commercial or subsistence purposes is permitted in accordance with the provisions of the Proclamations or other applicable state and federal law, the monument manager shall permit, subject to reasonable regulation to insure compatibility, the continuance of existing uses, and the future establishment and use, of campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities. Such facilities and equipment shall be constructed, used, and maintained in a manner consistent with the protection of the area in which they are located. All new facilities shall be constructed of materials which blend with, and are compatible with, the immediately surrounding landscape. Upon termination of such activities and uses (but not upon regular or seasonal cessation), such structures or facilities shall, upon written request, be removed from the monument by the permittee.

(b) Notwithstanding the foregoing provisions, the monument manager may determine, after adequate notice, that the establishment and use of such new facilities or equipment would constitute a significant expansion of existing facilities or uses which would be detrimental to the purposes for which the affected national monument was established, and may thereupon deny such proposed use or establishment.

ATTACHMENT F

(Section 13.44) Suggested language for judicial enforcement of decisions to pre-empt State subsistence management.

If the Secretary receives substantial information to the effect that the preference for subsistence uses set forth in this Subpart B is not adequately provided for, and setting forth the facts upon which such information is based and detailing efforts to obtain timely relief through available State grievance procedures, the Secretary shall investigate and report publicly on the results of his investigation. If the Secretary determines in writing that, based upon substantial evidence in the administrative record, the preference for subsistence uses is not adequately provided and that timely relief has not been obtained, he shall submit his views to the Governor and seek to ensure the adequate and timely provision of such preference through discussions with the State. The Secretary shall inform the person or persons who submitted the information to him of the results of such discussions. If the Secretary determines that the State has failed to make adequate and timely provision for the preference for subsistence uses after having been provided a reasonable opportunity to do so and that such failure threatens the ability of local Alaska residents to satisfy their subsistence needs, the Secretary shall bring an action in the United States district court to require the State to take such actions as are necessary to provide such preference.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

September 21, 1979

Also sent to:

Area Director
National Park Service
540 West Fifth Avenue
Anchorage, Alaska 99501

Area Director
U.S. Fish & Wildlife Service
Department of the Interior
1011 East Tudor Road
Anchorage, Alaska 99507

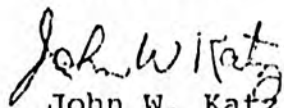
Dear Sir:

The accompanying material from the Alaska Department of Fish and Game is submitted as an appendix to comments previously submitted by the State of Alaska with respect to the Department's proposed regulations to govern administration of the new national monuments in Alaska.

This enclosure was received too late to be included in our original submission. Because we believe that the information will be most useful in the Interior Department's rulemaking, we are forwarding this material notwithstanding our lack of prior communication to you. While we find Fish and Game's comments generally consistent with the State's position, as reflected in our previous correspondence, any conflicts in policy should be resolved in favor of positions articulated in Governor Hammond's testimony and our earlier line-by-line critique.

Thank you for your consideration of this additional material.

Sincerely,


John W. Katz
Special Counsel

cc: Governor Hammond
Lt. Governor Miller

Attachments

TO: [

John Katz
Special Assistant
Office of the Governor

DATE:

September 17, 1979

FILE NO:

TELEPHONE NO:

FROM:

Ronald O. Skoog
Commissioner
Department of Fish and Game



SUBJECT: Monument Regulations

The enclosed comments were prepared by our Game Division and Subsistence Section to address the proposed monument regulations. Please refer to my earlier comments as well as the enclosed as you prepare the State's response.

The enclosed addresses specific Federal regulations with the intention of deleting or revising same in accordance with our conception of the State's best interest. These comments are at the operative level and do not specifically address the policies expressed in the State's lawsuit; i.e. that the designation of such monuments is an illegal act and that State fish and game regulations therefore apply unfettered by Federal regulations.

The Department of Interior has the authority to allow sport hunting in monuments, and should have done so. They could have allowed for a broad spectrum of subsistence use under State control, but they did not. It is not in the best interest of either the State, the people, or the game and fish resources to unnecessarily limit taking in these monuments. In sum, our comments on the specifics of these regulations do not constitute tacit approval of Federal regulation, but rather comprise our attempts to limit the adverse impact of Federal regulation on the people of Alaska.

The strategy employed by the Subsistence Section involves incorporating "for subsistence use" in many regulations as a specifically mentioned priority to be protected in relation to other uses. The sum of such provisions is that subsistence use is to be elevated and may thus continue for a longer period under fewer restrictions. The costs accrue in that regulations regarding access, visitation, and so on may become more restrictive in order to favor subsistence.

Within the frame work for comment, I feel that continuation of unfettered subsistence use in Parks especially should be our highest priority goal, and I urge you to seriously consider incorporating the Subsistence Section strategy in the overall State response. With the expected support from AFN and similar groups, this line of comment may well have the greatest opportunity to achieve the desired goals of change.

The 10 year provision for subsistence harvest levels is completely unacceptable, as is the onerous provision for Federal oversight of fish

and game management. Adoption of the Park Service subsistence definitions and priorities has placed the USF&WS in the potentially untenable situation of applying more severe restrictions to "subsistence" use than to "nonsubsistence" use, while the former is the first priority use.

Within these comments we have used the term "nonresident" to refer to all persons not designated as "local, rural residents" for the purpose of these regulations. Also, the Subsistence and Game comments both list additional communities for inclusion as "resident zone" communities; such lists are to be considered additive.

Enclosure

Comments on Fish and Wildlife Regulations for Alaskan Monuments

and

Comments on Regulations Proposed by National Park Service for
Alaska National Monuments

by

Alaska Department of Fish and Game

Game Division

September 17, 1979

Comments on Fish and Wildlife Regulations for Alaskan Monuments

Part 96 - Administrative Provisions

Subpart A - Introduction

96.11 Purpose of regulations

No comment

96.12 Definitions

No comment

96.13 Other applicable laws

No comment

96.14 Scope

These regulations (Parts 96-106) or any authority therefrom shall not apply in any emergency situation involving significant risk to human life or limb.

Subpart B - Public Notices

96.21 General provisions

(a) The public should be notified of any change in access or use by the following procedures:

- (1) official signs
- (2) special regulations
- (3) maps in office of monument manager and area director
- and
- (4) publication in major newspapers having general circulation in Juneau, Anchorage, Fairbanks and Nome

(b) In determining whether to modify public use, access or activity... monument manager shall consult with the State before imposing modifications. Such modifications shall be based upon significant evidence and not just administrative opinion or hearsay.

Subpart C - Permits

96.31 General provisions

No comment

96.32 Permits required to be exhibited on request

No comment

96.33 Revocation or rejection of permits; appeals

No comment

Subpart D - Fees and Charges

96.41 General provisions

No comment

Subpart E - Concessions

96.51 General provisions

No comment

Subpart F - Safety Regulations

96.61 Public safety

No comment

96.62 Reporting of accidents

No comment

Part 97 - Public Entry and Use

Subpart A - Introduction

97.11 Purpose of regulations

No comment

Subpart B - Public Entry

97.21 General trespass provision

(b) add domestic goats to list of animals prohibited from general access to monuments.

97.22 General regulations on entry

No comment

97.23 Exception for entry for economic use privileges

No comment

97.24 Exception for emergency access

No comment

Subpart C - Public Use and Recreation

97.31 General provisions

No comment

97.32 Recreational uses

No comment

97.33 Special regulations

Without knowledge of "procedures contained in the Departmental Manual," which presumably provide public hearings, State input, etc. into process of making "special regulations," one cannot intelligently comment in detail on this matter.

97.34 Special regulations concerning public use, etc. (reserved)

No comment

97.35 Cabin sites

There does not appear to be any good reason for not allowing use of previously occupied cabins for all recreational purposes. Special use permits for such purposes should be issued to the owner on a renewable, 5-year basis for the lifetime of the owner. Such permits should only be revoked for sufficient cause. Permittees should be notified in advance of such revocation and be permitted to correct any circumstance(s) which is the basis for revocation.

97.36 Public assemblies and meetings

No comment

97.37 Guiding operations

No comment

Part 98 - Prohibited and Restricted Acts

Subpart A - Introduction

98.11 Purpose of regulations

No comment

Subpart B - Taking Violations

98.21 General provisions

No person shall take any animal or plant...except as authorized under this Subchapter II, except in any emergency involving significant risk to human life or limb.

Subpart C - The Use of Vehicles

98.31 General provisions regarding vehicles

No comment

98.32 Boats

No comment

98.33 Aircraft

(c)(3) Immediate salvage of valuable parts by the operator of downed aircraft is permissible without permit.

(d) Closures or restrictions shall be published in newspapers of general circulation in Juneau, Anchorage, Fairbanks and Nome on 4 consecutive weeks.

Subpart D - The Use of Weapons

98.41 Fireworks and explosives

No comment

98.42 Firearms

No comment

98.43 Weapons other than firearms

No comment

Subpart E - Injuring or Damaging Plants and Animals

98.51 Disturbing, injuring and damaging plants and animals

No comment

98.52 Introduction of plants and animals

Although the intent of this regulation is to prevent the introduction of unwanted plants and animals into National Monuments, the wording is so broad as to extend the prohibition beyond what is needed or desirable. The language should be more precise, as this wording could affect the foodgathering activities of local subsistence users.

Subpart F - Actions Against Real or Personal Property

98.61 Destruction or removal of property

No comment

98.62 Search for and removal of valued objects

No comment

98.63 Mining

No comment

Subpart G - Unauthorized Use of Light and Sound Equipment

98.71 Motion or sound pictures

Without knowledge of the "provisions of 43 CFR Part 5" it is difficult to comment on this otherwise unacceptable restriction. Who or which of the values to be protected by the monument function would be hurt by taking movies for "subsequent commercial use" as long as it did not involve undue harassment of wildlife? Harassed wildlife do not make good movie actors. They run away. How about commercial still photos?

98.72 Audio equipment

No comment

Subpart H - Personal Conduct

98.81 Alcoholic beverages

No comment

98.82 Possession and delivery of controlled substances

No comment

98.83 Interference with persons engaged in authorized activities

No comment

Subpart I - Miscellaneous Prohibitions

98.91 Private structures

No comment

98.92 Unattended or abandoned property

The inclusion of adequate provisions to allow for storage and use of essential equipment for such activities as commercial and subsistence fishing and trapping is critical.

This part dealing with rights-of-way, easements, fees therefore, etc. are beyond our competency to offer constructive criticism. Perhaps our habitat or land specialists can comment appropriately.

Part 101 - Feral Animal Management

Subpart A - Feral Animals

101.11 Control of feral animals

No comment

101.12 Disposition of feral animals

add: or may be humanely destroyed.

Part 102 - Fish and Wildlife Species Management

Subpart A - Surplus Fish and Wildlife

102.1 Determination of surplus fish and wildlife populations

This regulation should include appropriate wording requiring the concurrence of the State in any determination of surplus or lack thereof. If concurrence between the State and Service cannot be achieved the available data should be submitted to a disinterested wildlife expert for analysis and resolution, e.g. expert committee of Wildlife Society.

102.2 Methods of surplus fish and wildlife population control and disposal

add: (3) use in bona fide scientific studies requiring sacrifice of animals for collection of specimens for laboratory analysis.

Subpart B - Terms and Conditions of Fish and Wildlife Reduction and Disposal

102.11 Donation and loan of fish and wildlife specimens

No comment

102.12 Commercial harvest of fishery resources

No comment

102.13 Official animal control operations

No comment

102.14 Trapping and sport hunting and fishing programs

No comment

Subpart A - General Provisions

103.11 Sport hunting authorization

add: Such closure or restriction of sport hunting shall only be instituted following consultation with and agreement from the State, and be based on valid scientific data, and not simply a matter of unilateral opinion of either party.

103.12 General provisions

(c) add: by either jurisdiction

(3) ...will be published in the Federal Register,

add: in local newspapers in Juneau, Anchorage, Fairbanks, and Nome during 4 consecutive weeks and...

103.13 Procedure for publication for special regulations

(t) Special regulations shall be initiated only with the concurrence of the State.

103.14 Migratory game bird special regulations (reserved)

No comment

103.15 Big game and small game special regulations for individual national wildlife monument areas (reserved)

All regulations applying to big or small game shall be in compliance with State regulations and will not be published except with the concurrence of the State.

Part 104 - Sport Fishing

104.11 Sport fishing authorization

add: ...but only after concurrence of the State.

104.12 General regulations

No comment

104.13 Procedure for publication of special regulations

(e) Special regulations may be amended as needed but only after consultation with the State and on the grounds of significant scientific data.

Subpart A - General Provisions

105.11 Trapping authorization

add: Such restrictions shall be imposed only after consultation with the State and will not be in conflict with maximum sustained yield management principles.

105.12 General provisions

No comment

Subpart B - Trapping Program

105.21 Trapping program

add: Such restrictions shall be imposed only after consultation with the State and will not be in conflict with maximum sustained yield management principles.

Part 106 - Subsistence

Subpart A - Introduction

106.11 Purpose and policy

(a) Unlike the NPS regulations, the "local rural resident" is not identified in this section by village of residency. Are we to assume that only villages located within the Yukon Flats and Becharof Monuments qualify as residencies of "local rural residents?" Are all "local rural residents" going to be identified by individual special permits at the discretion of the monument manager?

(b) (2) The comments in our earlier memo and those of the Subsistence Section clearly point to this restriction as providing the greatest potential for loss of subsistence use privileges in National Park Monuments. Inclusion in Fish and Wildlife Monuments is neither reasonable nor justified since the proclamations and Fish and Wildlife policy state "subsistence shall be the first priority consumptive use," and this provision places a limit on the resources that may be allotted to subsistence users but leaves "nonsubsistence" use open ended.

(3) add: Such restrictions or prohibitions shall not be imposed prior to consultation with the State.

106.12 Definitions

(3) We have commented at length in the NPS analysis on the use of the phrase "customary trade" to describe commercial trapping, i.e. trapping furbearers for pelts which are then sold for money. Since commercial trapping is allowed in Fish and Wildlife Monuments, it is imperative that "subsistence" trappers be allowed to sell furs as well.

Subpart B - General Provisions

106.21 State regulation of subsistence uses

As iterated in my previous memo, the State program for regulation of subsistence uses legally applies unless specifically superceded by Federal regulation. The provisions of 106.21 (b) which require State enactment of the "10 year" maximum harvest level before State regulations apply, is not acceptable. The carrot is State control, the stick is found in 106.21 (d) whereby if the State does not adopt a regulatory program in compliance with (b) then the Area Director may impose seasons, bag limits, etc... "and may also include the closure of all or part of the affected monument to all consumptive users of a particular species of fish or wildlife except subsistence."

106.22 Use of snowmobiles and motorboats for subsistence activities

(a) Notice of restrictions shall be published weekly in newspapers of general circulation in Anchorage and Fairbanks for 4 consecutive weeks...

All restrictions will be shown on maps...and by posting of signs in the vicinity, etc....

106.23 Subsistence use of timber and plant material

No comment

106.24 Closure to subsistence uses

Notice of intent and also final action shall be published weekly in newspapers in Anchorage and Fairbanks on 4 consecutive weeks before and also after final action.

13.1 Definitions

(e) Definition of firearm includes so-called air rifles which are not firearms in any legal or technical sense.

(k) The term temporary means period of time not to exceed 60 days.

13.2 Applicability and scope

None of the restrictions in 36 CFR Part 13 apply in any situation involving risk to human life or limb.

(e) ...(including Indian and Eskimo lands...)

Subpart A - Public Use and Recreation

13.10 Access

(a) This section should specifically include language providing access to Park lands by persons without occupancy rights for recreational purposes without requirement for permit. No reasonable mode of access should be prohibited where resultant environmental damage is negligible.

13.11 Aircraft

(g) Taking of valuable components from disabled aircraft by owner at time of "rescue" should not require a permit. Illegal salvage can take place very rapidly regardless of State or Federal regulations. It should not be up to the discretion of governmental authorities whether or not a person can salvage his private property from public lands upon which the property is legally placed. An individual's right to ownership of private property should not be alienated for other than just cause... The means of salvage may require some regulation, but not the right to salvage one's own private property.

13.12 Cabins and other structures

(d) This paragraph should be clarified regarding the legality of making "small repairs" to cabins occupied under permit. For example, if a falling limb punctures the roof, breaks a window, etc., it should be permissible to make repairs. A reasonable alternative might be to issue one non-transferable permit for the lifetime of the owner(s), and allow repairs as necessary without restriction? (i.e. cabins built prior to March 25, 1974.)

13.13 Camping

(c) and (d) Temporary or permanent closure of specific areas to camping should include under all circumstances the posting of appropriate signs on the closed area in addition to other forms of legal notice.

Notices of closure should be published in local papers in Juneau, Anchorage, Fairbanks, and Nome for four consecutive weeks. The most certain way for persons to be informed of illegal camping is by posting those areas in which camping is illegal. Regulations should maximize convenience to public.

13.14 Commercial fishing operations

No comment

13.15 Firearms, traps, and weapons

(a) In the "section by section analysis" it is implied, if not stated outright, that the only reason for a recreationist having a firearm in a monument is for purposes of preventing "injury or loss of life inflicted by dangerous animals." Firearms are useful in the wilderness not only in emergencies involving protection from dangerous animals (e.g. bears, rabid animals, rutting moose, etc.) but also for emergency signaling, taking of food or securing shelter (the body cavity of a recently killed moose is good shelter from freezing). Regulations regarding firearms possession are enacted in the interests of public safety. Such regulations may be appropriate in areas where human densities are high and human/human interactions are the principal threats to health and well being. Such traditional thinking must, however, be modified to accommodate the exigencies of bush life in Alaska, where human densities are very low and most threats to the health and well being of visitors arise from natural forces.

(c) and (d) In those instances where special regulation of firearms by NPS edict is unavoidable, it should be mandatory upon NPS personnel to adequately post such temporary or permanent control areas, in addition to the other normal means of informing the public. Notices of restrictions should be prominently published in local papers of general circulation in Juneau, Anchorage, Fairbanks, and Nome during 4 consecutive weeks.

(e) No comment

13.16 Motorboats

(c) and (d) Temporary or permanent closures or restrictions should be announced in at least one newspaper of general circulation for 4 consecutive weeks in each of the following cities: Juneau, Anchorage, Fairbanks, and Nome and by posting of appropriate signs.

13.17 Off-road vehicles

(b), (3) and (4) Routes specifically open or subject to restricted use or temporary closure should be identified by appropriate posting, and on maps available from Superintendent.

13.18 Picnicking

Since no standards are announced by which areas closed to picnicking are determined it is assumed that such closures will not be made in a capricious fashion or solely for the convenience of the Park Service.

13.19 Preservation of natural features

(a) Prohibitions against use of dead or downed timber as fuel for campfires should be:

- (1) published in general newspapers in Juneau, Anchorage, Fairbanks, and Nome during 4 consecutive weeks,
 - (2) designated on maps at monument headquarters,
- and
- (3) by adequate and appropriate posting.
 - (4) such dead or downed timber can be used at any time or place despite restrictions in emergencies

(b) The superintendent will (not may) permit...gathering for non-commercial use (not just personal)...

added: (5) clams, shellfish and other edible seafood for prompt, non-commercial use as food.

Portions of a park area where such gathering is restricted shall be:

- (1) published in general newspapers in Juneau, Anchorage, Fairbanks and Nome on 4 consecutive weeks;
 - (2) designated on a map...
- and
- (3) by appropriate and adequate posting

13.20 Snowmobiles

(a) The use of snowmobiles is permitted in all monuments except where specifically prohibited.

(b) - (2) Notice of opening or closing of area for snowmobile use shall be published in Federal Register and in general newspapers in Juneau, Anchorage, Fairbanks and Nome on 4 consecutive weeks and public will have at least 60 days following last publication to comment.

- (3) Routes and areas on which snowmobile use is permitted will be:
 - 1) designated by posting
- and
- 2) by marking on a map...
- (4) Restricting or temporary closure of any route or area will be by both:
 - 1) appropriate posting
- and
- 2) marking on a map...

13.21 Unattended or abandoned property

- (b) Superintendent may...
 - (2) establish reasonable limits...
 - (3) prescribe reasonable and adequately protective manner...
 - (4) designate areas...property may be left for reasonable periods of time...

Such designations and restrictions shall be published in Federal Register, designated on map...and published in general newspapers in Juneau, Anchorage, Fairbanks, and Nome on 4 consecutive weeks.

Subpart B - Subsistence

13.40 Purpose and policy

Subpart (a) provides for subsistence use privileges to local rural residents "who comply with applicable State and Federal law." The implication is that of limited entry with a potential permit denial to anyone who fails or has failed to comply with State or Federal law. Reasonable flexibility should be retained to allow continued use by persons who at one time violated a fish or game law.

(b), (1) The term "Whenever it is necessary to restrict..." may be interpreted differently by State and Federal agencies. A mechanism should be proposed for joint consultation and decision-making on this important point.

(b), (2) As previously iterated, the 10-year mean harvest concept is the single most detrimental regulation to be applied to subsistence use. Data are not and cannot be made available to support such arbitrary figures. The concept ignores population fluctuations of fish, game, and humans as well as changes in usage based on availability of alternate resources.

(b), (4) Wildlife may be taken by anyone at anytime there is unforeseen threat to human life or limb involving:

- (a) bodily harm
- (b) potentially rabid animals
- (c) starvation
- (d) exposure to elements (e.g. use of caribou skins to prevent freezing)
- (e) other threatening circumstances

13.41 Definitions

(a) The definition of family excludes any member who is not a local, rural resident from legally sharing in the subsistence caught bounty of his family. Arbitrary distinctions such as these tend to operate against customary and traditional usage and family ties.

(d), (2) The limitation of "customary trade" to the exchange of furs for cash is an arbitrary one which runs contrary to past local practice in many instances. This regulation should be open ended to the extent that customary trade can be documented as having occurred.

13.42 Determination of resident zones

Add: The Department contends that available research was not utilized in determining resident zones for purpose of subsistence use of monuments. Listed communities should be expanded to include our recommendations under Subpart C, 13.70 et. seq.

13.43 Subsistence permits for persons who permanently reside outside a resident zone

No comment

13.44 State regulation of subsistence uses

These regulations are unacceptable to the State as drafted. Comments in the Subsistence Section response provide appropriate substitute wording and the rationale behind the change. A recent AAG's opinion holds that State authority to regulate does not have to be recognized or formally adopted by the Monument managers to exist. The Federal regulation drafters do not appear to be cognizant of this fact.

Although the Federal Government as the land owner may place certain restrictions on access and use, principally through regulation of trespass, the State's position is that the imposition of Monument status is illegal and subsequent rulings and regulations are similarly illegal. The position of the Boards of Game and Fish is that the State shall propose and implement reasonable regulations regarding hunting, fishing and trapping use in GNM's regardless of monument status. Further restrictions may be enacted and enforced by Federal authorities, but the State contends that such restrictions are illegal.

13.45 Prohibition of aircraft use

As iterated in our earlier response, the prohibition of aircraft use wrongfully distinguishes between methods and means and the subsistence user. Persons designated as legitimate subsistence users should have the option to fill subsistence needs by any reasonable means. Persons do not have to own aircraft to utilize them for hunting and fishing. Chartering is a common method of access.

The prior designation of communities under Subpart C before aircraft use is allowed precludes emergency use of this means of relief. The regulations should state (assuming the general ban is retained) "Aircraft use for subsistence purposes may be allowed by the Area Manager following adequate demonstration of need."

13.46 Use of snowmobiles and motorboats for subsistence activities

(a) No restriction of snowmobiles or motorboats should be imposed without prior public hearings in all affected villages (not just in the affected vicinity).

Notice of proposed or emergency closures should be published in a newspaper of general circulation within the resident area (not just within the state).

All restrictions should be shown on:

(1) maps in Superintendent's office

(2) notices in local post offices

and also

(3) by the posting of signs in the vicinity of the restrictions

13.47 Subsistence fishing

No comment

13.48 Subsistence hunting and trapping

No comment

13.49 Subsistence use of timber and plant material

No comment

13.50 Closure to subsistence uses

Notice of actions and reasons justifying them shall be published in at least one newspaper of general circulation within the affected area (not just within the state).

Subpart C - Specific National Monuments in Alaska

13.70 Aniakchak National Monument

(a), (1) add Meshik to resident zone

13.71 Bering Land Bridge National Monument

add: Brevig Mission, Teller, Nome, and Council to resident zone for Bering Land Bridge Monument.

13.72 Cape Krusenstern National Monument

No comment

13.73 Denali National Monument

(a), (1) add Nicolai and McGrath to resident zone; add Cantwell, McKinley Village, Healy, Colorado, Lignite, Hurricane, Talkeetna, Petersville, and Cache Creek to Denali Extension.

13.74 Gates of Arctic National Monument

add: Wiseman

(a), (2) Aircraft use: Allow on Noatak River above confluence with Nimiuktuk River.

The provision for use of aircraft in subsistence hunting by residents of Anaktuvuk allows such use only "in extraordinary cases where no reasonable alternative exists..." and then only by a presumably individual "permit issued by the Superintendent."

If the residents of Anaktuvuk are to be permitted to use aircraft as an uneconomic, non-traditional means of subsistence hunting, then all citizens in all resident zones of all monuments should also be permitted to do so.

13.75 Glacier Bay National Monument

No comment

13.76 Katmai National Monument

(a) Add villages of King Salmon, Naknek, and South Naknek to resident zone. Remove village of Egegik unless aircraft permitted and other villages included.

13.77 Kenai Fjords National Monument

No comment

13.78 Kobuk Valley National Monument

(a) Add Selawik and Kotzebue to resident zone.

13.79 Lake Clark National Monument

(a), (1) Add following villages to resident zone: Iliamna, Newhalen, Pedro Bay, Pile Bay and Seversens.

(2) No justification whatever to prohibit taking of Dall sheep just because cannot find recent evidence of use.

(b), (1) No need whatever to flatly prohibit use of motorboats on any lakes in monument. Occasional operation of rubber boats (e.g. Avon) with small outboard motors by recreationists can be controlled by permit and adequately preserve the so-called "ecologic integrity" of these lakes. While it is quite practical to haul in a rubber raft and small motor, it is impractical to haul in any normal canoe. A relatively small amount of motorboat use on these large lakes cannot in any conceivable way measurably alter the ecology.

13.80 Noatak National Monument

Allow aircraft above Nimiuktuk River confluence with Noatak River.

13.81 Wrangell-St. Elias National Monument

Add following villages to resident zone: Glennallen, Kennicott, Northway, Tetlin, Tok, Tonsina, Tazlina, Kenny Lake.

13.82 Yukon-Charley National Monument

Add Central, Chicken and Boundary to resident zone.

APPENDIX

This Appendix contains detailed comments by the Alaska Department of Fish and Game on proposed final regulations for U.S. Fish and Wildlife Service and U.S. National Park Service Monuments. These comments serve as background for the State's overall recommendations on the proposed regulations.

The Appendix also contains an inclusive list of communities whose residents have used resources in the respective Monuments for subsistence purposes. The State recommends this list as the basis for establishing resident zones pursuant to Subpart C of the National Park Service regulations.

PROPOSED AMENDMENTS TO SUBPART C -
SPECIAL REGULATIONS -
SPECIFIC NATIONAL MONUMENTS IN ALASKA

In general, the State finds that the list of communities whose inhabitants have used Monument areas for subsistence purposes more or less traditionally is deficient. Therefore, the State proposes that the following revised list of communities constitute the basis for resident zones for the respective monuments.

- 13.70 Chignik, Chignik Lagoon, Meshik, Pilot Point, Port Heiden, Ugashik.
- 13.71 Brevig Mission, Buckland, Deering, Council, Kotzebue, Nome, Shishmaref, Teller, Wales.
- 13.72 Ambler, Buckland, Deering, Kivalina, Kiana, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, Shungnak.
- 13.73 Cache Creek, Cantwell, Colorado, Healy, Hurricane Lignite, McGrath, McKinley Village, Nikolai, Petersville, Talkeetna.
- 13.74 Alatna, Allakaket, Ambler, Anaktuvuk, Bettles, Hughes, Kobuk, Shungnak, Wiseman.
- 13.75 Yakutat.
- 13.76 Egigik, Igiugig, Kakhonak, King Salmon, Levelock, Naknek, South Naknek.
- 13.77 No change.
- 13.78 Ambler, Kiana, Kobuk, Kotzebue, Norvik, Selawik, Shungnak.
- 13.79 Iliamna, Lime Village, Newhalen, Nondalton, Pedro Bay, Pile Bay, Port Alsworth, Seversen's.
- 13.80 Anaktuvuk, Kivalina, Kotzebue, Noatak.
- 13.81 Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kennicott, Kenny Lake, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tazlina, Tetlin, Tok, Tonsina, Yakutat.
- 13.82 Boundary, Central, Chicken, Circle, Eagle, Eagle Village.

TO: John Katz, Special Assistant
Office of the Governor

DATE: September 11, 1979

FILE NO:

TELEPHONE NO:

FROM: Tom Lonner, Chief
Subsistence Section
Department of Fish and Game

SUBJECT:

This short critique of proposed National Park Service regulations was prepared following a review of extensive comments prepared by Game Division, RurALCAP, Alaska Federation of Natives, and staff of the Subsistence Section, ADFG. The Subsistence Section agrees with many of the penetrating observations, questions, and alternatives appearing in these commentaries. However, since the Subsistence Section plays a particularly significant role in the State management system, the major differences between existing State and proposed Federal management systems should be noted.

These differences are somewhat surprising given the history of the State subsistence statute (SLA 960) and subsequent policy and procedure adopted by the Alaska Boards of Fisheries and Game. The State subsistence statute is a liberal, flexible section of law which has as its objective the protection of the subsistence priority on the use of Alaska's wild resources. It is written in such a way as to allow discretion in the manner of meeting subsistence needs and the introduction of scientific information to decision makers on changing subsistence needs and activities. Following enactment of this legislation, the Alaska Boards of Fisheries and Game adopted a policy statement and a set of procedures for explicitly meeting subsistence needs, consistent with the status of wild resources. These Board actions were encouraged in testimony from representatives of the Department of Interior and the National Park Service; the testimony assured the Boards that the policy and procedure were consistent not only with pending D-2 legislation but the upcoming subsistence regulations on National Monuments. It should be noted that the policy and procedure avoided both over-definition of subsistence and establishment of fixed criteria for subsistence eligibility and harvest levels. In effect, the new legislation and procedure tended to reflect and protect the day-to-day reality of subsistence but not restrict or otherwise alter that reality.

It was the expectation by the Subsistence Section that subsequent Federal actions would be consistent with these State actions. Based on extensive reading of subsistence studies conducted by Park Service, the Subsistence Section anticipated regulations based on findings of these studies. The studies unequivocally and uniformly note the inability to establish historical harvest levels due to lack of data; they also note the inability to explain or project the considerable fluctuations in the availability of the constellation of subsistence resources and consequent subsistence harvest levels.

It was with considerable dismay that the Section discovered in Park Service regulations the clear intention to carefully circumscribe subsistence harvest levels, participation, and other activities without documentation supporting the need or utility of such regulation. These regulations will alter the subsistence reality, creating changes in human activities with unpredicted and unpredictable consequences in the human and natural environments.

While both State and Federal policy clearly support continuation of subsistence, differences between State and Federal regulations are quite clear. The State annually utilizes procedures to establish harvest limits sufficient to the needs of subsistence users and status of the resources. Federal regulations intend to establish an annual harvest level (based on very recent historical analysis) and to manage activities within that level, regardless of changing human and environmental conditions.

The Subsistence Section does not understand how setting such conservative restrictions furthers Park Service's purposes, i.e. protecting:

- 1) Subsistence as a valued activity
- 2) Subsistence users and their cultural heritage
- 3) Wild Resources
- 4) Interests of other park users

It is not assumed that the Park Service intends to sacrifice some or all of these values for sake of administrative simplicity. However, the Subsistence Section suggests that the Park Service has selected a singularly inappropriate tool to achieve its purposes.

The park Service appears to have no vital stake in harvest levels per se. Biological monitoring, harvest levels, bag limits, seasons and salvage are more appropriately the concern of wildlife managers, in this case, the Alaska Department of Fish and Game. However, the Park Service does have a powerful vested interest in maintaining certain levels and mixes of wildlife populations.

The Subsistence Section suggests that the Park Service delete all language dealing with harvest levels and, concurrently, introduce extensive language describing its goals for wildlife within its boundaries. For example, it might quantify its goals into species density per unit area, balance among species, and so on. The Department of Fish and Game would then manage toward these objectives within fluctuations of human and environmental conditions. For example, losses within the constellation and subsistence resources can be offset with normal and sensitive management tools. Similarly, alterations in subsistence harvest, due to changing economic and population dynamics, can be easily accomplished without endangering any of the purposes of the Park Service or involving the Park Service directly in wildlife management.

Two additional benefits would flow from this approach:

- 1) State management of subsistence would be consistent across all Alaska lands and species.
- 2) Trends and patterns in resource availability and harvest which have characterized subsistence dependency and for centuries would not be immediately and irremediably constrained by limitations based on analysis of a single decade.

APPENDIX A
SUBSISTENCE SECTION COMMENTS

Overall: The most disturbing element of the proposed regulations is the lack of any intention to regulate and zone nonresident visitor access to Alaska National Monuments. Presidential Proclamations which established the monuments cited the subsistence lifestyle as a value to be protected. Over-regulation of subsistence, as reflected in the proposed regulations, will erode subsistence into a facsimile of the original activity, while lack of regulation of non-resident visitors will allow conflicts with subsistence to occur to the detriment of both the quality of the visitor experience and the protection of subsistence activities.

Other disturbing themes in the proposed regulations include Park Service intentions to supercede State fish and game management authority, and NPS intentions to use economic dependency criteria to evaluate subsistence users.

Sec. 13.1 (k) "temporary" is defined as a period of time not to exceed 12 months. A number of sections (13.11, 13.13, 13.15, 13.16, 13.20) permit "temporary" closures or restrictions upon the discretion of a monument superintendent without prior notice, comment, or explanation. Consequently, closures or restrictions which may engender considerable personal and community hardship may be imposed for up to a full year without a preliminary finding of immediacy, without prior notice to affected local residents, without consideration of the impact of such administrative action upon affected local residents and communities, and without opportunity for public comment. A 60 day limitation, rather than one year, and followed by public hearings in the locale affected is more consistent with the time frame for emergency action established in sections 13.46(a) and 13.50. (These comments follow directly from and are consistent with the draft comments of the Alaska Federation of Natives)

13.10 (a) Should be amended to read "...valid property, occupancy or subsistence use interest in land..." etc. Explanation: This change is in keeping with the protection of traditional travel routes used to gain access to lands for subsistence purposes.

13.11 (b) Should be amended to read "...shall be guided by factors such as the potential for conflicts with subsistence uses, other public uses..." etc. Explanation: The potential for conflict between subsistence activities and aircraft is high. The monument superintendent should consider this factor.

13.13 (b) Should be amended to read "...shall be guided by factors such as the potential for conflicts with subsistence use, other public uses..." etc. Explanation: Non-resident camping in the immediate vicinity of ongoing subsistence activities may interfere or conflict with subsistence users.

13.14 Delete in entirety. This section suggests that the Park Service may supercede State authority to manage commercial fisheries. Furthermore, it is not clear whether a permit is proposed to be issued to each fisherman or the fishery as a whole.

13.15 (b) Should be amended to read "...shall be guided by such factors as subsistence uses, other non-resident visitor uses, public health and safety..." etc. Explanation: Subsistence uses of firearms should have clear and separate consideration in any plan to restrict the use of firearms on National Monument lands.

13.15 (f) This regulation is extremely important. It should be left intact.

13.16 (b) Should be amended to read "...shall be guided by factors such as the potential for conflict with subsistence uses, other public uses..." etc. Explanation: The superintendent should be careful to restrict non-resident use of motorboats where they interfere with subsistence activities, and on the other hand be careful not to impose restriction which would preclude motorboat support of subsistence activities.

13.17 (b) (1) Should be amended to read "...shall be guided by factors such as the potential for conflict with subsistence uses, other public uses..." etc. Explanation: The superintendent should consider whether non-resident use of off-road vehicles conflicts with subsistence activities. Conversely the superintendent should consider whether restriction of off-road vehicles would limit subsistence uses.

13.17 (b) (4) Should be amended to read "...reduce conflicts between different land uses, provided that subsistence uses shall be the priority use." Explanation: Uses of Alaska National Monument lands towards the end of subsistence should have priority over other land uses.

13.20 (b) (1) Should be amended to read "...shall consider such factors as the potential for conflict with subsistence uses, other public uses..." etc. Explanation: 1) Extreme care must be used to ensure that non-resident users of snowmachines do not interfere with existing subsistence activities. 2) Designated areas of recreational snowmachine use should not include areas of subsistence use. 3) The volume of recreational snowmachine use should not be so large as to cause degradation of natural values of the area.

13.21 (a) Add to the existing language: "Provided that the superintendent shall take into consideration the traditional and seasonal subsistence uses in controlling unattended personal property."

13.21 (b) Add to the existing language: "Provided that the superintendent shall take into consideration the traditional and seasonal subsistence uses in controlling unattended personal property." Explanation: (for both 13.21 (a) and (b) changes) In Kobuk Valley National Monument, tent frames and fish racks are often left intentionally for subsequent use the following year. Similarly traps, wood stoves, tent frames, and other gear are often left unattended for use the following winter. It is likely that this situation also occurs in Noatak National Monument and Gates of the Arctic National Monument.

13.40 (a) Delete in entirety and substitute: "The purpose of this support is to provide for the spatial and temporal regulation of non-resident visitation in the Alaska National Monuments such that non-resident visitation does not interfere with existing subsistence uses and activities." Explanation: 1) The purpose of this new language is to protect the subsistence lifestyle. Reference Presidential Proclamations 4612-4619, 4621, 4622, 4624-4627, which establish that the continued existence of the unique subsistence culture of local residents is a value to be protected (sic). (Federal Register, Dec. 5, 1978). 2) It is the intent of this new language to protect the subsistence lifestyle from adverse impacts, rather than to decimate subsistence values through regulation. 3) Visitation may be easily regulated towards a positive visitor experience in Alaska National Monuments. There is ample precedent in the policies and regulations of the National Park Service in the contiguous lower 48 states that visitor access and use must sometimes be regulated to protect existing monument values. In Alaska the subsistence lifestyle is an existing, desirable, and even more sensitive monument value.

13.40 (b) Delete the word "consumptive" where the word occurs.
Explanation: The taking of fish and game resources for human food should be the priority use of the Alaska National Monuments.

13.40 (b) (2) Delete in entirety. Explanation: 1) This policy is a usurpation of the State of Alaska's right to manage fish and game resources. 2) This policy does not make good biological sense. Cyclic and non-cyclic annual population fluctuations, and variations in the cycles themselves often occur over periods longer than 10 years in the Arctic. 3) There is historical precedent for increasing subsistence use in that the NANA region once supported a much larger population totally on subsistence activities. 4) There is not enough existing data on subsistence use and need to be able to make final determinations of quantities of resources harvested. 5) Subsistence harvests vary with the relative abundance of each species. If, for example, caribou are very low one year then the salmon harvest may be high in response. Strict subsistence harvest quotas would preclude these natural variations. 6) Does "significant expansion" refer to the amounts of resources harvested or the number of people participating in a subsistence lifestyle?

13.40 (b) (3) ~~Delete in entirety.~~ Explanation: 1) If the safety of visitation is threatened by subsistence use, then visitation should be regulated, not subsistence. 2) Subsistence should not be regulated for the nebulous reason of "administration." 3) The Alaska Dept. of Fish and Game should make any determination of the necessity of curtailing harvests, not the National Park Service.

13.41 (a) As the subsection now stands a person must not only be a member of the family of a rural resident but also himself be a rural resident. Such an approach keys "family" not on biological or psychological relationships between human beings, but rather on the place of domicile of all members of the family unit. Application of the proposed definition would result in the anomaly of an Alaska Native raised in a village but now domiciled in a non-rural area being unable to participate at the family dinner table during a visit to his village in the consumption of a moose or caribou taken by his father or brother in a national monument. The insertion of this additional eligibility requirement in the definition of "family" reflects a troubling lack of appreciation of the cultural values which are recognized and protected by the language of the monument proclamations which establish the continuation of the subsistence way of life as an important value to be protected within monument areas. (Taken verbatim from draft AFN comments on proposed monument regulations.)

13.41 (b) The monument proclamations which provide the legal justification for the promulgation of these regulations speak only to subsistence uses by "local residents," not by "local rural residents." Since the definition of "subsistence uses" includes the threshold requirement of rural residency, the use of the term "local rural residents" may prove confusing to persons unschooled in the evolution of the subsistence lexicon. The term should be changed to "local resident." (Taken verbatim from AFN draft comments on proposed monument regulations.)

13.41 (c) The commitment to the protection of the subsistence way of life includes provision for allowing local residents to continue in that way of life if, and to the extent, they (not NPS or the State of Alaska) choose to do so. Local residents with established patterns of subsistence uses within monuments must be permitted to continue such uses. Consequently, "resident zones" should be areas within, or communities and areas near monuments in which persons with established patterns of subsistence uses reside. An analysis of the overall degree of dependence of such persons on subsistence resources within a monument as the mainstay of livelihood, or of the percentage of subsistence needs of such persons which are satisfied by resources within a monument vis-a-vis resources outside the monument are not relevant to the identification of a "resident zone" and reference to those types of criteria should be eliminated from the definition. (Taken verbatim from AFN draft comments on proposed monument regulations.)

13.41 (d) (2) Delete in entirety and substitute:

"Customary trade shall mean--

(i) the exchange of furs for cash; and

(ii) the exchange of other fish, wildlife, and plant resources, or their parts, for cash as may be designated in subpart C of this part.

Explanation: 1) In Cape Krusenstern National Monument, beluga are harvested and the white muktuk is bartered for goods or cash. 2)

Parts of animals used for craft purposes are often initially sold or traded before being fashioned into functional or artistic objects.

- 13.42 "Resident zones" should be based upon the identification of communities and areas in which concentrations of persons who have established patterns of subsistence uses within adjacent monuments reside, and not upon an additional determination of the degree to which such persons depend upon the harvest of subsistence resources within a monument as "the mainstay of their livelihoods." (Taken from AFN draft comments on proposed monument regulations.)

In the first place, sufficient data to support such judgements does not exist and would be extremely difficult to collect. Secondly, such a system would be very difficult if not impossible to administer equitably. If permits for subsistence must be issued, they should be issued on a community basis only.

- 13.43 The previous discussion of the economic dependence criteria and other problems in section 13.42 is also applicable to 13.43 (a) (1). This situation -- persons who reside outside a resident zone -- is the only situation where it should be necessary to issue "subsistence permits" to individuals. All other permits should be issued to communities. An additional subsection (a) (3) should be added in order to provide for hardship exemptions in the discretion of the superintendent.

Denial of a permit to engage in subsistence works a hardship only on the applicant. Time is not of the essence here for the National Park Service. The appeal period should be extended from 60 to 180 days, with authorization to the Director to waive the 180 day limit for good cause.

Subsection (d) must be modified to ensure that every applicant who is denied a permit by the superintendent shall be entitled to a hearing before the Alaska Area Director at a reasonable location in the applicant's area of residence. As drafted, this section leaves entitlement to an evidentiary hearing to the discretion of the Director, a situation inconsistent with recognized constitutional principles relating to so valuable a property right, Pence v. Kleppe, 529 F. 2nd 135 (9th Cu., 1976) (taken from AFN draft comments on proposed monument regulations.)

- 13.44 (a) Should be amended to read, "The State of Alaska may regulate, in a manner consistent with sound scientific resource management practices, the taking of fish and wildlife within Alaska National Monuments by local residents for subsistence purposes, by any

qualified persons for commercial fishing purposes, and by any qualified persons for sport fishing purposes." Explanation:

1) The State of Alaska must retain its constitutional right to manage fish and game resources within Alaska National Monuments. 2) It is proper that State management be challenged on the basis of its scientific propriety. This is a healthy process and will result in better management. It would be improper for the National Park Service to question State management on the basis of differing philosophies of management (perceived natural population stasis vis-a-vis perceived harvestable increments, for example), on the basis of differing administrative viewpoints (licensing procedures), or on the basis of permitted methods of harvest (possible disputes over the caliber of a weapon necessary to harvest certain big game). 3) The National Park Service must understand the deleterious, confusing effect that several different sets of harvest limits and means would have on the subsistence user. In the NANA region, for example, it is conceivable that an Innpiat hunter from Kotzebue would have to recognize several different sets of new monument boundaries, the different set of resource rules which apply to each boundary and the rules which apply outside the boundaries, and would potentially have to possess three or four sets of hunting permits. It would be much better to have one consistent set of harvest rules for each Game Management Unit now in existence under State management.

13.44 (c) Delete in entirety. Explanation: 1) The Alaska Area Director of the National Park Service must not have the authority to supercede State resource management anywhere within Alaska. 2) There are no expressed scientific criteria in consideration of which the Alaska Area Director must rely in making a decision under this paragraph. He may not be qualified to make such scientific judgements. 3) The regulatory program used by the State of Alaska to control, "methods and means of take, access, season lengths, bag limits, and harvest quotas..." depends upon a system of local and regional fish and game advisory boards which provide local input for the statewide Boards of Fish and Game. The state boards compare these inputs with the best available scientific knowledge from the Department of Fish and Game, and reach a decision concerning resource harvest regulations. The National Park Service has not provided any comparable means of local, representative input into the Alaska Area Director's decision making process before a restrictive decision is made.

13.44 (d) Delete in entirety. Explanation: 1) An appeal process should necessitate a review of the problem by an authority higher than the Alaska Area Director, the entity who is responsible for imposing federal authority over state authority in the first place. As a corollary, in the federal and state court system, the same judge who applies a ruling is not authorized to review an appeal concerning that same ruling. 2) Consistent with the discussion of 13.44 (c), the National Park Service should not have the authority to supercede State fish and game management.

13.44 (e) Delete in authority. Explanation: See discussion under 13.50.

13.46 (a) Should be amended to read "...shall consider factors such as possible conflicts with subsistence uses, effects on public health, ..." etc. Explanation: Subsistence uses should be the principle criteria in any restrictive decision which might adversely affect the taking of food by local residents.

13.46 (b) The second sentence in this subsection should be deleted. Explanation: The current phrasing of 13.46 (b) is unnecessary as it duplicates existing State law.

13.49 This section should be modified to clarify that "the specifications of a permit" issued pursuant to this section may not include a requirement that fair market value, or other fees or charges, be paid for house logs or other plant materials. In the NANA region a sufficient cash economy does not exist within the subsistence lifestyle to pay such fees. (Adapted from draft AFN comments on proposed monument regulations.)

In addition, such permits as specified in this section should be available to communities as well as individuals. The taking of house logs or other plant materials is often a community effort as well as an individual effort.

13.50 Add to the existing language, "Provided that such closure authority as described in this section shall not supercede the scientific determination of proper resource harvest levels and subsistence needs as determined by the State of Alaska." Explanation: 1) The authority granted the superintendent under the proposed regulation is far too broad with respect to the deleterious effects such restrictive actions might have on subsistence users. 2) "Administration" is not sufficient cause for closure of subsistence activities. 3) If "Public safety" factors are at stake, then non-resident visitation should be restricted or curtailed, not the taking of food by subsistence users. 4) If the "...continued viability of one or more populations of fish, wildlife, or plants" is at stake, then the State of Alaska should be notified so that existing emergency harvest closure authority may be implemented. The superintendent does not necessarily have the scientific background or judgement to make such decisions. 5) There is no provision in this section for local comment before an emergency closure of subsistence harvest is imposed. If it were determined, for example, that the beluga harvest at Shesolik (within Cape Krusenstern National Monument) must be closed due to a threat to recreational boating, a 60-day closure could be imposed without consultation with local residents. Such closure would impose a severe hardship on subsistence users of beluga.

13.71 Kotzebue should be included in the list of communities lying within the resident zone. Based on a 1972 survey of subsistence activities and harvest (NANA, 1974) (NANA, unpubl.). Kotzebue residents use areas within Bering Land Bridge National Monument for subsistence purposes.

13.72. The following communities should be added to the list of communities included within the resident zone:

Kobuk
Shungnak
Ambler
Kiana
Noorvik
Selavik
Buckland
Deering

Based on historical data of general knowledge and a subsistence survey conducted by NANA in 1972 (NANA, 1974)(NANA, unpubl.). the Cape Krusenstern coastal area, especially Shesolik, has always been an area of congregation for region residents on an annual basis. A large enough data base on the amount and regularity of this use does not yet exist to exclude any regional communities from the Cape Kruseustern National Monument resident zone.

Also, Section 13.14 in the proposed regulations should not apply to Cape Krusenstern due to the existing commercial fishery.

13.78 The following communities should be added to the list of communities included in the resident zone:

Selavik
Noatak
Kotzebue

Based upon a subsistence survey conducted by NANA in 1972 (NANA, 1974) (NANA, unpubl.), Selavik, Noatak, and Kotzebue subsistence users have traditionally used the area within Kobuk Valley National Monument.

13.80 The following communities should be added to the list of communities included within the resident zone:

Kobuk
Shungnak
Ambler
Kiana
Noorvik

Based upon a subsistence survey conducted by NANA in 1972 (NANA, 1974)(NANA, unpubl.) Kobuk, Shungnak, Ambler, Kiana, and Noorvik have all traditionally used the area within Noatak National Monument for subsistence purposes.

**Proposed Additions to the
Proposed Regulations for
Alaska National Monuments**

Under Subpart B, a new regulation:

13.51 Regulation and Closure of non-Resident Visitation

The superintendent, upon notification by a representative body of a community or region included in the resident zone for an Alaska National Monument, or upon the advice of the State of Alaska, and after adequate notice and informal public hearings, shall have the authority to regulate by permit the volume and timing of non-resident visitors entering particular areas within the affected Alaska National Monument. The superintendent shall also have the authority to close particular areas within an Alaska National Monument to non-resident visitors pursuant to the criteria listed in this section and (a).

(a) The superintendent, in determining whether to regulate by permit or close non-resident visitor access to a particular area within an Alaska National Monument shall consider such factors as potential or actual conflicts with subsistence users, interference with subsistence activities or access, public safety, soil, vegetation, fish or wildlife, fish or wildlife habitat, endangered or threatened species or their habitats, historic or scientific values, or other management considerations consistent with monument purposes.

(b) Such regulation by permit, or closure, of non-resident visitor access by a superintendent shall remain in effect for up to 180 days, at which time the public shall be afforded the opportunity to appeal the restrictions to the Alaska Area Director. Within 30 days the Alaska Area Director shall hold an informal public hearing regarding the appeal. If the actions taken by the superintendent are deemed appropriate by the Alaska Area Director, the superintendent pursuant to (a) of this section, may continue the regulation by permit, or closure, to non-resident visitation for up to one year, at which time further appeals may be heard.

Explanation: 1) This regulation would be consistent with the proposed changes in 13.40 (a), which states in essence that non-resident visitation may have to be regulated in order to protect subsistence use.

2) Uncontrolled non-resident visitation may have an adverse effect on the values of a monument. There is ample precedent in existing National Park Service regulations in lower 48 monuments, that visitation must sometimes be controlled in order to preserve existing monument values/

3) If residents of a community included in a resident zone feel or can show that non-resident visitation is adversely affecting their subsistence activities in a monument, they should have the right and the means to request control of visitation.