ALASKAN NATIVE SUBSISTENCE:

CURRENT REGULATORY REGIMES AND ISSUES

VOLUME XIX

PAPER FOR ROUNDTABLE DISCUSSIONS OF
SUBSISTENCE

OCTOBER 10 - 13, 1984

ANCHORAGE, ALASKA

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

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Steve J. Langdon
Associate Professor of Anthropology
University of Alaska, Anchorage
Anchorage, Alaska

Transcripts of the Alaska Native Review Commission are produced in two series. Those in Roman Numerals are for the Roundtable Discussions. Those in Arabic numbers are for the Village Meetings.

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INTRODUCTION

Alaskan Native peoples have inhabited the vast expanses of the northwestern corner of North America continuously for the last 3,000 years. In some areas their history of occupation goes back even further. From the icy tundra of the North Slope to the windswept shores of the Aleutians to the intricate fjords of southeast Alaska, Eskimos, Aleuts, and Indians constructed cultures built on the foundation of hunting, fishing, and gathering the natural resources of the land and sea. Complex technologies, seasonal adjustments of residence, kinship organizations, ceremonial and ritual institutions, and belief systems were adjusted to the fundamental and intimate linkage between Alaskan Native peoples and the resources which supported them. The term subsistence is now used in Alaska to capture the "customary and traditional" relationship of Alaskan Native peoples to the land, sea, and each other.

With the coming of Euroamerican peoples, new elements and relationships were added to previous patterns. Some of the changes of the 18th and 19th century benefited Alaskan Native peoples, but many were detrimental. Through the slavery, disease, and usurpation of resources, the linkage of Alaskan Native peoples to the land and sea around them endured. In the 20th century the pace of change for Alaskan Natives accelerated markedly with radical new directions being set in motion by the Alaska Native Land Claims Settlement Act (ANCSA) of 1971. That act extinguished Alaskan Native hunting and fishing rights based on aboriginal title, placed 44 million acres of fee simple land in the hands of Native regional and village profit making corporations, and raised serious questions about the intent of the federal government to maintain its trust responsibilities to Alaskan Native peoples after full implementation of ANCSA.

The consequences of that act have not yet been fully experienced, but Alaskan Natives seem in general to have serious questions about its outcomes. Some of the problems were dealt with in the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 which set aside in refuges, parks, and other land categories significant amounts of acreage to be protected for subsistence purposes. But many other problems have remained to be addressed. For example, it is not clear how the State and Federal systems established to insure the continuity of Alaskan Native subsistence are carrying out their mandate. Nor is it entirely clear that the structure and dynamics of the regimes established will satisfactorily meet the subsistence concerns of Alaska Native peoples.

As part of its charge from the ICC to undertake a comprehensive review of the effects and implications of ANCSA, the Alaska Native Review Commission (ANRC) is conducting an assessment of the present condition of subsistence for Alaskan Native peoples. The intent of this paper is to provide background and overview of the subsistence question in Alaska at the present time. The paper attempts to treat a number of topics. The first section

defines subsistence, establishes in broad fashion the present demographic situation and subsistence patterns of Alaskan Native peoples, and explores the current grounds for Alaskan Native views on subsistence rights. The second section describes the regulatory regimes under which the subsistence harvesting of fish and animals takes place. Particular attention is paid to the self-regulatory institutions Alaska Natives have established. The third section describes the regulatory regimes governing the land which provide the necessary habitat for fish and animal populations. The fourth section attempts to identify both fundamental and general as well as practical and specific issues confronting Alaskan Native subsistence at the present time. The final section outlines three general strategies which are apparent at the present time in discussions over the future of Alaskan Native subsistence.

I. ALASKAN NATIVE SUBSISTENCE: DEFINITION AND DESCRIPTION

In this section a basic definition of subsistence will be provided, the current characteristics of Alaskan Native subsistence will be briefly described, and the basis of Alaskan Native claims to subsistence rights will be examined.

DEFINITION

A society characterized by the term "subsistence" is one in which economic activities are directed toward production for use by a small group of people. That small group may consist of a band of hunting and gathering people, a village of horticultural people, or a household group or set of household groups in a hunting and gathering or horticultural society. Subsistence societies tend to be localized in which the group develops longstanding ties to and knowledge of the resources available to them in their accustomed geographic range. The technology used in subsistence societies is simple so that virtually all members of the group have access to the means to produce for themselves. As members of the group, individuals also have access to the resources - fish, animals, plants, water - found within their accustomed geographic range which are necessary to survive. Although production in these societies tends to be limited to the direct needs of the producers, there is often a small exchange sector as well. Some exchange may be directed to obtaining products and goods not available to the group from its own resources or territory but much of it takes the form of distribution to kinsmen and others to fulfill social obligations, to demonstrate prowess and to receive status and prestige. Exchange, however, is not the major motive for production but rather the continuous flow of goods necessary to the maintenance of the social unit.

A subsistence society is also characterized by a particular set of social institutions and principles. Production, distribution, and consumption are all organized by principles of kinship affiliation. Relationships to other people are almost always

accomplished on the basis of the definitions of kinship. Kinship carries with it both the right to share in the production of others as well as the responsibility to share with others. This does not result from making laws but rather from growing up in a culture in which the proper way to behave is demonstrated every day for others to learn. Kinship relationships are also fulfilled by ritual and ceremony which demonstrate the linkage of people to each other and reaffirm mutual obligations.

Finally, subsistence societies typically have a set of beliefs and values which link the human participants in the natural order to the natural resources, particularly the living ones, on which they depend. These belief systems tend not to dichotomize the living world into human and other, but rather to link together in an order ordained by some ultimate force the lives and spirits of humans and others. Among Alaskan Natives there are often more direct links in addition to respect, deference, and obligation shown to animals and their spirits, in that some animals are conceived to have been human at one point and transformed into their current form in the past. This is further affirmation of the essential unity between humans and animals in spiritual nature and supports the notion of their mutual dependence and obligation. Nelson (1983: 159), for example, notes that Koyukon leave a portion of fat from their kills for wolves to eat and, when they encounter an unconsumed animal clearly killed by wolves, assign its availability to themselves as stemming from the wolf's reciprocal obligation to humans. It should be noted that subsistence societies are not necessarily characterized by such beliefs, but Alaskan Native societies had and still, to a certain degree, have such belief systems.

The subsistence society has a number of requirements. Its land base is extensive in order to tolerate fluctuations in the abundance of the species it is dependent upon. It has a significant amount of flexibility built in to shift from one species to another and from area to area, but it is absolutely dependent on harvests of fish and animals (Lonner 1983). It is through capturing, processing, distributing, celebrating, and consuming naturally occurring fish and animal populations that subsistence societies define the nutritional, physical health, economic, social, cultural, and religious components of their way of life. Without harvests, there is no subsistence.

CONTEMPORARY CHARACTERISTICS

Ethnicity and Demography. In order to understand the nature of subsistence activities in contemporary Alaskan Native societies, it is first useful to have an overview of the number of ethnic groups, their size and location, and their present distribution between rural and urban areas.

The five major indigenous groups in Alaska which remain culturally distinct from each other and the non-Native majority are the Inupiaq Eskimo, the Yup'ik Eskimo, the Aleut, the Athapaskans, and the Tlingit, Haida and Tsimshian. Both

traditionally and at present, these groups occupied different areas of Alaska. The Inupiat occupy the high arctic of northern and northwest Alaska. Yup'ik speaking groups occupy the lowlands of the Yukon-Kuskokwim delta region, Bristol Bay, the Alaska Peninsula, and St. Lawrence Island in the Bering Sea. Other Yup'ik speaking groups include the Koniag of the Kodiak archipelago and the Chugach of lower Cook Inlet and Prince William Sound. Athabascan populations occupy the boreal forest of the interior of Alaska gaining a saltwater foothold only on the water of upper Cook Inlet. The Aleut occupy the western end of the Alaska Peninsula, as well as the Aleutian and Pribilof Islands. Tlingit, Haida, and Tsimshian are occupants of insular and mainland southeastern Alaska.

In the 1980 census, of the 401,851 people living in Alaska, 64,103 (16%) were Alaskan Native. In 1970, the 50,654 Alaskan Natives represented 16.7% of the 302,647 residents of the state. While the overall growth rate of the State was a substantial 33%, the Alaskan Native population grew at nearly the same rate, a startling 27%. Whereas growth in the non-Native population was largely due to inmigration, the growth of the Alaskan Native population is attributable to a rate of natural increase of 2.3% per year. Although larger than the non-Native rate of 1.9%, the 1980 Native rate is lower than it was in 1962 when it peaked at 3.8% per year.

Analysis of the distribution of Alaskan Natives between rural and urban settlements indicates little shift in the proportion of the population located in each kind of community. In 1970, about 21,860 people or 43% of the Native population lived in villages, communities under 1,000. In 1980, 26,500 Natives or 41% of the population lived in villages. Let us now turn to an examination of the Alaskan Native population in the four largest communities of the State, Anchorage, Fairbanks, Juneau, and Ketchikan. The importance of these communities is that Alaskan Native residents are specifically excluded from subsistence priority in these communities by the legislative intent of ANILCA as will be discussed further below. In 1980, the Native population of Anchorage was 8,722; of Fairbanks, it was 2,987; of Juneau, it was 2,148; and of Ketchikan it was 1,336. The combined total of Alaskan Natives in these communities was 15,193; this represents 23.7% of the 1980 Alaskan Native population excluded from subsistence priority by ANILCA. It should also be noted that between 1970 and 1980, the Native population of these four communities grew by 55%, a faster rate of growth than that of the overall Native population.

An important point in the foregoing to be noted is that the villages seemed to be retaining their strength as of 1980. This is especially significant since the 1980 Native population was older than it was in 1970. While villages held their own and urban centers grew, the Native population of towns in the 1,000-3,000 size range declined. This implies a conscious decision on the part of young adults to live in the villages, a decision not available to the children of 1970 (Noss 1982:4). Although some

have predicted that declines in the availability of wage labor in the villages due to declines in state oil revenues and inability to sustain construction projects in the villages, it has not been demonstrated that this pattern has began to occur.

One final demographic point which bears on the question of Alaskan Native subsistence is the growth of the non-Native population in regional centers such as Dillingham, Bethel, Nome, Kotzebue, and Barrow. The growth of state services (borough services in the case of Barrow) in these regional centers was accomplished by the inmigration of non-Natives to fill the positions, many of which required professional degrees.

Contemporary Subsistence. The subsistence activities of Alaskan Natives vary at the present time based on a number of different factors. The one most important characteristic distinct from those discussed above is that subsistence is now integrated with the cash economy in the lives of all Alaskan Natives. Modern technology is used for transportation, harvesting, and processing and this requires cash to purchase and maintain the modern subsistence round. In addition to subsistence technology, cash is required by most contemporary Alaskan Natives for clothing, home heating, electricity, and some food purchases.

The diet of most rural Alaskan Natives is still dominated by subsistence harvests for protein although the actual amount varies from area to area. Figure 1 presents a schematic of the major subsistence resources harvested in the 12 regional corporation areas of the state. On-going research by the Subsistence Division of the Alaska Department of Fish and Game is gradually revealing the dimensions of subsistence utilization in communities throughout the state. Recent studies in subsistence-intensive southwest Alaska, meaning in the Yukon-Kuskokwim and Bristol Bay areas, has shown annual subsistence production per household to range from about 4,000 to 8,000 pounds, with per capita ranges of from 500 to 1,200 pounds. The cash value of annual subsistence production (without netting out costs) has been estimated to range from $1800 to $6500 per capita in different villages (Wolfe et al. 1984: 47). The reasons for the variability are to date unclear and seem to combine factors of annual fluctuations in resources, weather and access, and individual household preferences. Notably it has been demonstrated that the increasing availability of cash is not correlated with the declines in production, but often appears to increase both the amount of harvest as well as the number of species harvested (Wolfe 1979). In other parts of the state, subsistence production tends to be somewhat lower than in the rural western, northwestern, and northern areas.

Subsistence activities are still primarily conducted by the extended family group. Hunting and fishing are undertaken by single or related males while women in the family gather, process, and store the production. The distribution of subsistence products to kinsmen and others either informally or through ceremonies and rituals continues to persist in most parts

Figure 1. Statewide Subsistence Resources

RESOURCES	AHTNA	ALEUT	ARCTIC SLOPE	BERING STRAITS	BRISTOL BAY	CALISTA	COOK INLET	CHUGACH	DOYON	KONIAG	NANA	SEALASKA
Marine Mammals												
Bowhead whale			✓	✓								
Beluga whale			✓	✓	✓	✓					✓	
Seal		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Sea lion		✓			✓	✓	✓	✓		✓		
Bearded seal			✓	✓		✓					✓	
Walrus		✓	✓	✓	✓	✓						
Polar bear			✓	✓								
Terrestrial Mammmals												
Caribou	✓	✓	✓	✓	✓	✓	✓		✓		✓	
Moose	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Sheep	✓		✓		✓		✓	✓	✓		✓	
Goat	✓							✓				✓
Deer								✓		✓		✓
Bear	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Beaver	✓			✓	✓	✓	✓	✓	✓		✓	
Muskrat	✓				✓	✓	✓	✓	✓		✓	
Porcupine	✓		✓		✓			✓	✓		✓	
Hare	✓		✓		✓	✓	✓	✓	✓	✓	✓	
Birds												
Waterfowl	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Seabirds		✓	✓	✓		✓		✓		✓	✓	
Ptarmigan	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Fish												
Salmon	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Halibut		✓					✓	✓		✓		✓
Whitefish			✓	✓	✓	✓		✓	✓		✓	
Trout	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓
Eulachon				✓	✓	✓	✓	✓			✓	✓
Herring		✓		✓	✓	✓	✓	✓				✓
Cod		✓	✓	✓	✓	✓	✓	✓			✓	
Miscellaneous												
Trees/shrubs	✓		✓	✓	✓	✓	✓		✓		✓	
Greens/roots	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Berries	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shellfish		✓	✓	✓	✓	✓	✓	✓		✓		✓

of Alaska. Figure 2 summarizes the kinds of distribution and exchange of subsistence products conducted in different regions of the state.

The Subsistence Division of the Alaska Department of Fish and Game has recently identified the characteristics of the "mixed, subsistence-based socioeconomic system" as a "taxonomically distinct type of local economy" which is especially prevalent in Alaskan Native communities (Wolfe and Ellanna 1983). The elements which characterize this type of socioeconomic system are as follows (Wolfe et al 1984:50-51):

1. Community-wide seasonal round. Subsistence activities of a community follow a yearly cycle regulated by the appearance of fish and animal resources. The seasonal round is a regular annual pattern pursued by the majority of households in a community.
2. High production. Production from resources important to subsistence is high and constitutes the majority of protein consumed by most of the households in the community. Dependence is high because production from fish and animal resources is the most dependable source of income from year to year.
3. Domestic mode of production. Production, processing and distribution are conducted by the domestic unit which in the extended family typically consists of several households. Capital goods and labor are controlled and mobilized by decisions in these domestic groups.
4. Non-commercial distribution and exchange networks. Subsistence products are shared, distributed and exchanged through non-commercial transactions frequently in large quantities. Although kinsmen are the major recipients, others are also common recipients of subsistence production. Non-producing and marginal households are typically recipients of subsistence products through this process.
5. Traditional systems of land use and occupancy. Fishing and hunting areas used by communities are influenced by systems of non-codified customary laws defining rights of access. Traplines, fishcamps, fish sites, berry patches, and other areas are recognized as the customary use area of particular kinship groups and communities.
6. Mixed economy. Subsistence activities are undertaken with modern technology requiring integration with the monetary economy. Typically, but not necessarily, monetary incomes at the community level are relatively low and erratic. Money that is available is invested in the equipment necessary for subsistence.

Although this set of factors shows significant variability from community to community, it does provide a schematic framework for characterizing the present subsistence-based patterns which are both preferred and necessary for rural Alaskans.

Figure 2. Statewide Distribution and Exchange

NATIVE REGIONS	HISTORIC	RECENT
Ahtna	potlatch, sharing, intertribal trade	potlatch ceremonies, subsistence exchange
Aleut	ceremonial distribution, sharing, formalized sharing, intervillage trade	sharing, subsistence exchange
Arctic Slope	ceremonial distribution, formalized sharing, kin and non-kin formal partnerships, intervillage, intertribal, intercontinental trade	commercial exchange, ceremonial distribution, sharing, formalized sharing, partnership, subsistence exchange
Bering Straits	ceremonial distribution, sharing, formalized sharing, kin partnerships, intertribal trade	commercial exchange, ceremonial distribution, sharing, formalized sharing, subsistence exchange
Bristol Bay	ceremonial distribution, sharing, formalized sharing, non-kin partnerships, intervillage, intertribal, and intercontinental trade	commercial exchange, sharing, subsistence exchange
Calista	ceremonial distribution, sharing, formalized sharing, non-kin partnerships, intervillage and intertribal trade	commercial exchange, ceremonial distribution, sharing, subsistence exchange
Chugach	ceremonial distribution, sharing, formalized sharing, kin partnerships	sharing
Cook Inlet	potlatch ceremonies, sharing, kin and non-kin partnerships, intertribal trade	potlatch ceremonies, sharing, subsistence exchange
Doyon	potlatch ceremonies, sharing, formalized sharing, kin and non-kin partnerships, intervillage and intertribal trade	commercial exchange, potlatch ceremonies sharing, subsistence exchange
Koniag	ceremonial distribution, sharing, formalized sharing, trade	
NANA	ceremonial distribution, formalized sharing, kin and non-kin partnerships, intervillage, intertribal, and intercontinental trade	commercial exchange, sharing, formalized sharing, partnerships, subsistence exchange
Sealaska	potlatch ceremonies, sharing, intervillage and intertribal trade	potlatch ceremonies, sharing, subsistence exchange, commercial sharing

THE BASIS OF SUBSISTENCE RIGHTS AS PERCEIVED BY ALASKAN NATIVES

What concepts and approaches are used to justify subsistence rights? Which ones are used by Alaskan Natives for defining their subsistence rights? It appears that there are three basic kinds of definitions, each of which has somewhat different implications for Alaskan Native subsistence users. These are economic, cultural and legal/political. But the most prevalent position in the Alaskan Native community combines elements of the three together, and lays its greatest emphasis on another ground - moral. The moral basis for Alaskan Native subsistence activites is that they have always done it and always will because it is right. It is right because it has been done as it was ordained to be in the natural order. Although this position exists and has internal validity within the Native community, the other three are more frequently cited as the basis for Alaskan Native subsistence rights when they must confront the larger non-Native society on the issue.

Economic. Economic bases of justification for subsistence essentially make two points. The first point is that subsistence activities are productive in that they provide "real income" to subsistence producers. That is, economic analyses of most subsistence activities reveal that subsistence users are efficient in their use of resources in that what they produce exceeds in value the costs of production (Wolfe 1979). A large amount of difficulty surrounds analyses of this variety stemming from the problems associated with assigning dollar values to the non-market subsistence products, deciding how to value the labor expended by the subsistence producer, and deciding how to prorate the costs of certain capital items (snow machines, three-wheelers, skiffs, outboards) which are used for activities other than subsistence production. A further extension of this argument is that not only does subsistence produce "real income," the costs of subsistence products are substantially below that of available substitutes and it is therefore further displayed to be economically rational. These two points essentially emphasize the individualistically rational, economically defensible elements in subsistence production.

The other economic argument that is presented in defense of subsistence preference is to identify the total value of production which subsistence activities add to the state economy and overcome its invisibility in the macroanalysis of the state economy. This perspective is then occasionally converted in some arguments into a case for subsistence preference based on what it would cost the larger society (government) to replace subsistence production if it were denied or destroyed. In both of these cases, replacement values for the products are typically used.

In the American market-based economic system which seeks to convert all utilities to dollar values in order to weigh and measure them against each other in cost-benefit analyses, these economic perspectives are probably the easiest to present to mainstream non-Native policy makers.

One very common economic perspective from mainstream society invoked for orienting to subsistence is that it is a form of welfare which only the needy engage in. An underlying implication of this position is that anyone who could successfully enter the wage economy fulltime would certainly do so consequently only those incapable (and therefore deficient) persit in subsistence activities. Following from this is the logical leap to the proposition that in times of shortage, the needy should have access. Jay Hammond, ex-Governor of the State, appears to be an example of this viewpoint as he advocates income criteria for the determination of those eligible to engage in subsistence hunting or fishing when there was likely to be excess demand for the resource or when the resource was less abundant.

The Alaskan Native economic viewpoint generally emphasizes that substitutes are not available locally or that they are too costly. Subsistence products meet basic needs that can be met in no other way.

Cultural. Cultural arguments for a subsistence preference generally make the case that societies or cultures with subsistence economies are qualitatively different from market-based societies or cultures. The argument, based on ethnographic studies and theories from anthropology, contends that subsistence-based societies are not characterized by the institutional divisions found in market-societies, but rather are a "seamless web" of relationships of which the primary one is kinship. Subsistence economies and cultures based on hunting and gathering have a number of characteristics including kinship as the basis for social interaction, production for use as opposed to exchange value, complex exchange of labor, technology, and subsistence products organized by non-market kinship, tirual or ceremonial means, relatively limited wants, resource territories held in common, religious systems oriented to the harmonious balancing of relationships including those between humans and animals. In the cultural view, in order for hunting, fishing, and gathering activities to be labelled as subsistence activities, they must be meshed or integrated with these other elements and form a distinctive sociocultural system. The result is a integrated whole which sets the subsistence producer apart from those participating in a market economy.

The Subsistence Division's definition of subsistence economies represents a modification of this view in that it does not make as many sharp distinctions as are outlined above, but it still presents a set of typological defining characteristics of a subsistence economy as a qualitatively distinct form.

Interestingly, one can also identify a welfare component in the cultural approach to subsistence, but it is different from that advanced under the banner of economic rationality. In the cultural view, subsistence production, distribution, and exchange are motivated in large part by cultural norms of kinship principles along with ritual and ceremonial obligation. There are no

needy in a subsistence economy when resources are adequate because sharing and distribution which flow from kinship obligations, norms of generosity, and enhancement of prestige insure that all are provided for.

The Alaskan Native viewpoint which parallels the cultural perspective is most frequently couched in the phrase "way of life." This can be seen in the Yupikta Bista publication entitled "Does One Way of Life Have to Die So Another Can Live?" The Native viewpoint stresses the inherent meaning and value of subsistence activities. Those activities, for some, are definitional of themselves. Identity, self-worth, and the ultimate meaning of life are inextricably linked to subsistence activities in this view. The Alaskan Native view is also flexible reflecting the history of adaptation to new resources. It does not reify the past conceptually nor suggest an empirical reification in the present, but rather seeks to carry forward the essential character of the past into the future.

Legal/Political. In the logic of the legal/political position, the fundamental principle involved is that of the aboriginal title of Alaskan Natives to Alaska. That title arises out of the occupation of the land and the use of the resources of the land and sea from time "immemorial." These rights are passed on from one generation to the next by virtue of birth and they can be activated whenever a Native individual chooses to do so. Furthermore Alaskan Natives have their own principles for regulating access and use of resources and many do not feel that the State or Federal government has the legitimate right to regulate or govern Alaskan Native subsistence practices in any way. Subsistence activities are usually linked to the locale of birth by virtue of membership in that community however they can be extended to those who have moved into a community or married into a community.

The legal/political justification of Alaskan Native subsistence in the context of a State Constitution which mandates development and common property ownership of fish and game resource is difficult from the standpoint of a minority with somewhat different objectives than the majority. Furthermore the language of the Alaska Native Claims Settlement Act seems to state on the face that aboriginal claims and rights have been extinguished.

In the Alaskan Native view, how has ANCSA impacted their subsistence rights? Many Natives knowledgeable of the land claims process assert that the legislative history carries the explicit wording of an implicit contract between Alaskan Natives and Congress to protect subsistence rights and deal with them more fully in future legislation. In this view, subsistence rights subsequent to ANCSA rest on the legislative history which states "The Conference Committee expects that both the Secretary and the State to take any action necessary to protect the subsistence needs of the Native" (Case and Stay 1983: 9-3). This is taken to mean that Congressional intent was to reserve

Alaskan Natives subsistence rights and transfer the responsibility for the protection of those rights to the State.

The Alaskan Native leadership recognized that perhaps this legal basis was inadequate for protection and therefore sought additional protection for subsistence rights in ANILCA and through the State Subsistence Law.

ANILCA provides that rural Alaskans, Native and non-Native, are to have subsistence priority for harvests of fish and game on federal lands. The State subsistence law establishes a preference for subsistence users of fish and game resources and provides a non-ethnically based definition of a subsistence user. But other Alaskan Natives who look at ANILCA see another section which differentiates Alaskan Native claims to subsistence from non-Native claims and further confirms the fiduciary or trust responsibility of the United States to protect Alaskan Native subsistence rights. This proposition focuses on Section 801(4) which reads as follows:

> in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents.

The commerce clause is the source of the "trust" responsibility of the federal government to Native Americans. Only Native Americans have such a relationship with the United States government therefore this section is interpreted as confirmation of the federal government's responsibility to protect rural Alaskan Natives' rights to subsistence.

The fiduciary or trust basis for Alaskan Natives rights is also supported by Section 2(c) of ANCSA which declares that:

> no provision of this Act shall replace or diminish any right, privilege or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or Alaska.

The fiduciary responsibility for Alaskan Native welfare in general is supported by ANCSA and for rural subsistence in particular by ANILCA.

Summary. Many Alaskan Natives, perhaps even a majority, do not accept the legitimacy of either the State or Federal government to deny their fishing, hunting, gathering, and trapping activities. Economic, cultural and legal foundations are all cited as the basis for Alaskan Native subsistence rights. Yet for many Alaskan Natives, the basis for their feeling is that they have a birthright to carry on these activities due to the fact that their parents and their ancestors from time "immemorial" have engaged in these activities subject to no outside regulation. They have been sovereign in their subsistence activities establishing a seasonal round, territories, and customary practices among themselves to regulate their relationship with the natural world. Subsistence has defined a meaningful way of life that is coterminous with existence. For many Alaskan Natives, these grounds, ultimately moral in nature, are fundamental.

II. REGULATORY REGIMES FOR FISH AND ANIMAL HARVESTING

In this section the characteristics of the regulatory regimes which currently govern Alaskan Native subsistence activities are described. The regimes are often interrelated and those linkages are noted. Those discussed here include customary and traditional practices, state, federal, treaty, tribal, and Alaskan Native self-regulatory institutions. The recent emergence of formal Alaskan Native institutions of self-regulation are given extensive treatment because no other general treatment of them exists.

CUSTOMARY AND TRADITIONAL PRACTICES

As a result of their complete dependence on their productive relationships with renewable resources, particularly fish and animal populations, Alaskan Native groups over the centuries developed a vast array of customary and traditional practices which regulated their relationship with these species. The question of whether or not Native American cultures were inherently conservationist has been a matter of considerable scholarly and public debate in the past decade and a half. In my view the issue is considerably more complex than either the proponents or opponents of the view realize. The major flaw in these debates is the inability to see the larger economic, social and cultural system in which peoples beliefs and behaviors were embedded. The understanding of Alaskan Native relationships with the natural environment must be considered a complex, integrated adaptation in which population size, technology, and economic relationships are as important to understand as are beliefs and behaviors based on those beliefs. The three variables of population, technology, and economy must be considered first as the set of given conditions under which the beliefs and behaviors operate. Each has implications for relationships between Alaskan Natives and the natural resources on which they depended.

Population. The Alaskan Native population at the time of contact has usually been estimated at 75-100,000 people. Archeological evidence which is to date relatively sparse is slowly revealing a picture of population growth and decline over centuries gradually leading to population expansion. That expansion was accomplished by moving into areas unoccupied by other humans. All Alaskan Native groups have oral accounts of population movements by their ancestors many of which were undertaken in search of better hunting and fishing. In addition, the archeological record reveals that over time, Alaskan Natives came to use a broader range of resources and to make more intensive use of certain resources.

Despite the population expansion into all corners of Alaska, (the filling up of the ecological niches), the population of Alaskan Natives had not reached levels which might seriously threaten the resources on which they depended by the time of European contact. Their expansion and utilization of renewable resources was accomplished without degradation of those resources.

Technology. A major hallmark of human adaptation has been the development of more sophisticated technologies which increase our ability to produce. Alaskan Native archeology reveals the same inventive impulse found elsewhere in the world as technologies gradually changed to provide new opportunities for harvesting. Technologies for hunting sea mammals and for capturing anadromous fish provide clear evidence of development towards more and more complex forms increasing the efficiency and capability of Alaskan Native peoples to harvest animals and fish. Despite the technological advancement, Alaskan Native technologies had their limitations. In only one or two exceptional cases were the technologies advanced enough to cause harm to fish and animal populations. And in these cases, a variety of checks and balances in the overall adaptation, including beliefs and behaviors, insured the maintenance of the natural populations on which Alaskan Natives depended.

Economy. In addition to population numbers and technological capabilities, the nature of Alaskan Native economies must also be considered. Alaskan Native economies were primarily, although not exclusively, of a subsistence nature. By that is meant, in part, that production was essentially for use by a limited social group, that of the related kinsmen however defined. Although trade and exchange existed among all Alaskan Native groups, the amount of goods produced for exchange and the amount of time spent on that production and the trading process were limited by the necessity of self-sufficiency, that is producing one's own food, clothing, and shelter. The limited extent of the trade or exchange sector meant that the supply of additional production from scarce or potentially damageable natural resources was bridled. Customary exchange, as it is now termed, nevertheless was important as a facilitator and maintainer of social relationships between individuals and groups as well as for providing goods not available to people through direct production. Exchange also depends on demand for resources and alternatives which are desired in exchange for one's own goods. Here too were limitations to the extent of the trade networks in which Alaskan Natives were meshed. The essentially subsistence characteristic of the Alaskan Native economy coupled with the modest trade networks meant that there was little or no outlet for increased production over what could be consumed or processed and stored for consumption by the kin group, at least in material terms.

Beliefs and Behaviors. In addition to the fundamental constraints identified above operating on Alaskan Native production orientation, a number of additional characteristics can be found which ordered the relationship of Alaskan Natives groups to resources and to each other. In his account of the Koyukon view of the northern forest, Richard Nelson states that this Alaskan Native group developed a system which managed the demands of the Koyukon with the resources which nature could supply through four mechanisms: territory and range principles, attitudes towards competitors for resources important to subsistence, methods of avoiding waste, and implementation of sustained yield practices

(Nelson 1983: 216). These principles can be extended without exception to my knowledge to all other Alaskan Native groups, although the principles may be elaborated and emphasized in different ways from one group to another. Another critical dimension of Alaskan Native orientation toward natural resources which is a foundation of Nelson's analysis but not identified directly in the above set is a system of beliefs in the interrelatedness of all life forms and of life forms with spiritual counterparts which could influence the empirical world in powerful ways. This underlying principle links together mechanisms two, three, and four of Nelson's set. Each of these five mechanisms will be discussed.

Virtually all Alaskan Native groups had concepts of territory and range which define the customary and traditional areas in which members of the group harvested their resources. The concepts differed between groups and even within groups variation in territorial conceptions from one resource to another could be found. Among the Tlingit and Haida people of southeast Alaska, for example, property rights to certain highly productive or important stream or locations on rivers were held by groups of kinsmen known as clans. Typically, several clans lived in a single village and each had its own streams where clansmen went to obtain their salmon. Areas for hunting seals or collecting abalone, on the other hand, might be considered available for general use by any member of the village. In northwest Alaska among the Inupiat of the Kotzebue Sound area, 12 territorial groups who were differentiated from each other by the territories of their harvests have been identified by Burch (1975). Members of each group are able to identify the basic outline of their territory as well as that of their neighbors. In some locations there might be overlap of use by several groups but in other locations clear territorial control by one group would be characteristic. Access to these territories was based on kinship relatedness. In the interior, concepts of range and territory were known among the Koyukon people who recognized certain families right to specific fishing locations and, following the introduction of the fur trade, developed traplines or trapping territories and rules to order the new and possibly divisive pursuit of furs. In this case, although traplines gave exclusive right to the owner to harvest furbearers, other members of the community continued to have access to the territory for hunting of birds and large mammals. Examples of these kinds of principles and their operation could be offered for every Alaskan Native group in some form or other.

There are two key components to the concept of territory in order for it to be useful in regulating wildlife harvests. The first of these is the recognition of the claimed rights by others and their respect for them. There is no doubt that mutuality or reciprocity for each other's resource territories was commonplace among Alaskan Natives. Often this would be revealed in the research process by a researcher discovering that certain people indicated that they had no knowledge about a certain area, because they did not use it, and would indicate to the researcher

who in the community would know about it. Respect for the territorial claims of others was high between Alaskan Native groups. Procedures were available, however, for persons outside of the property-holding group to gain access to the area for resources, often merely by making a direct request to the head of the group whose territory it was.

The second aspect of territory was the willingness to protect it against intrusive use by others. This theme can also be identified in the oral histories of Alaskan Native groups. In the northwest area, if an intruder could not establish to the satisfaction of members of the group controlling the territory he entered his kinship relatedness, he could be killed. Encountering a group of intruders could lead to a direct and immediate armed clash. Clan groups among the Tlingit also have oral history accounts of warfare engaged in to protect resource territories from unauthorized use by others. Thus, although the principle of respect for the harvesting territories of others was commonplace, when it was violated Alaskan Native groups protected their rights.

The regulatory importance of the principle of territorial rights, mutual recognition, and protection when necessary is that demand for resources and harvesting pressure on them were limited and controlled. Groups were able to develop systematic knowledge about their own resources and, at the same time, their survival became linked to that of their resources. Observation over many years, in some cases generations and the transmission of that information from one generation to the next provided the means for the comprehension of resource dynamics and the effects of human activities on resources.

The underlying religious or cosmological system linked lifeforms of this world together in webs of mutual dependence and linked spiritforms to the lifeforms through powers of influence. This set of beliefs led Alaskan Native groups to a different attitude toward their trophic competitors, that is species such as wolves, dolphins, killer whales, and grizzly bears who share similar prey with humans, than European groups. These species were not defiled nor killed in an attempt to limit or eradicate competition with humans but rather they were typically respected. Even if they were hunted, this was done in an often near-reverential fashion with attendant preparation and mollification of the spirit of the animal once it had been taken. Bear hunting, for example, among Athabascan groups brought prestige due to the bravery inherent in undertaking such a task as well as spiritual power of a man who proved himself worthy enough to kill such an animal. To undertake the drastic transformation of the natural relationships among species through eradication was not a conceptual possibility for human beings who were a part of the natural order and neither above that order nor specially anointed to transform it.

The third principle noted above was the avoidance of waste. There are several dimensions to this principle. First, fish and

animals were not be harvested unless they were needed. Second, appropriate processing and caching was important to insure that humans maximized their consumption and spoilage or scavenger consumption was avoided. Another aspect of this dimension was typical behavior of Alaskan Native groups remarked upon by a vast array of early observers. This was utilization of nearly all the fish or animal which harvested for some purpose or another. In addition to the consumption of animal organs and viscera typically discarded by Euroamericans, skins, antlers, bones, intestines, and other parts were used by Alaskan Natives to produce clothing, tools, equipment, art or ritual objects, storage containers, and a variety of other products used in daily life. Richard Nelson points out that Koyukon hunters go to great lengths to insure that a wounded animal is captured rather than abandon it for pursuit of another.

A variety of principles were used by Alaskan Native groups to maintain the productivity of important resources. Some of these were consciously designed, others the result of taboos and ritually prescribed behaviors. In the interior, Nelson indicates that Koyukon avoid harvesting young animals since they will be more valuable when older. Trappers monitor the number of animals in beaver lodges and on the trap line, lessening or halting harvests at certain levels in order to insure continued productivity. In southeast Alaska, fish weirs were consciously taken out of streams to insure that salmon would be able to reach the spawning grounds. In addition to the maintenance of animal populations, Alaskan Native behaviors also reflected an understanding of maintaining a habitat that is both congenial to and capable of sustaining fish and animals. Notable examples of this are Kutchin principles of cleaning kill sites of all remains. Caribou are known to avoid areas of dried blood. Attention to these details insure that migratory routes usually used by the animals will not become offensive to them.

The principles noted above are maintenance principles to insure the continuity of the fish and animal populations. Alaskan Native groups also engaged in behaviors which likely enhanced the habitat for certain species. An example of this kind of practice is the use of fire by eastern Athabascan groups (Upper Tanana) in certain circumstances to produce willow and shrub growth for moose and furbearers (Johnson 1981). Return of remains of fish and marine mammals to rivers, lakes, and streams may also contribute important nutrients necessary to the overall productivity of the ecosystem.

Underlying many of the behaviors identified above was a belief system in which animal protective spirits had control over the location and prevalence of members of their species. The deference, respect, non-wasteful usage, and controlled harvest were driven in substantial part by the belief that the animal protective spirit might withhold the species from human harvest if humans were not properly respectful. Boastfulness and contempt for animals were severely proscribed and bad luck, illness or denial were attributed to such breaches of appropriate

behavior. These beliefs were pervasive and ordered much Alaskan Native behavior.

Contemporary Persistence. Shifts in Native culture and subsistence activities have occurred as a result of contact with Euroamerican culture. Some (Sherwood 1981) have suggested that Native conservation systems either did not exist or broke down rapidly following the introduction of rifles and the commercial economy. Evidence can be cited of wasteful Native harvesting. Two points should be made about those depredations. First and foremost they occurred in an altered sociocultural environment in which the ability of Natives to control their resources was severely undermined. New users made demands on their resources and although most Alaskan Native groups objected to the appropriation of their resources, they were nearly powerless to stop it. When the initial conditions of population, technology, and economy changed, it became a new adaptational setting, and it is to be expected that new forms of behavior might appear. Second, the incidents which occurred were not widespread and were the product of a relatively small minority of individuals, perhaps even those who had become most detached from their Native cultures of birth as they attached themselves to the commercial exchange economy of the immigrants. It is untenable to propose either that general Native cultural patterns can be characterized on the basis of an isolated number of cases or that situations of wildlife mismanagement in an entirely altered socioeconomic and sociocultural setting can be used to make judgements about the characteristics of previous adaptations.

What is remarkable is the degree of durability and persistence of many of these practices in many parts of Alaska down to this day. The persistence of these practices is most prevalent in the subsistence-based communities in the Bristol Bay, Yukon-Kuskokwim and Norton Sound regions bordering the Bering Sea, in the non-road-connected Athabascan areas of the interior, in the Kotzebue Sound area of northwest Alaska, and on the North Slope. Although many of the patterns continue to be found among other Alaskan Native groups, they are most pervasive in the areas noted.

Riordan (1983) ascertained that residents of a relatively recently founded Yup'ik village in southwest Alaska continue to eschew use of a berry patch in close proximity to their village because it is the traditional territory of residents of another village a short distance away. Wolfe et al (1984) report that villagers from neighboring communities do not venture into the areas of the other village for sea mammal hunting. Even within one of the villages, patterns of historic resource use link two different kin groups to different tributaries of the main river and those patterns of use continue to this day with each group respecting the other's territory. A number of Alaskan Native village groups, for example the Koyukon, oppose the extreme efforts at wolf control which the Alaska Department of Fish and Game is presently engaged in through aerial hunts. Prohibitions against waste are still powerful since such behavior continues to

be regarded extremely negatively by the vast majority of Alaskan Native groups. As noted in the section on self-regulation below, the tribal council of Venetie has codified traditional principles of caribou hunting. Attitudes of respect and deference towards animals by hunters are also prevalent. In 1979, the community of Barrow harvested no whales and this was attributed by many elders to the audacity of the hunters announcing how many animals they were going to harvest through the AEWC (Worl 1981).

In the context of the recently formed self-regulatory organizations such as the Alaska Eskimo Whaling Commission, the Eskimo Walrus Commission, the Waterfowl Conservation Committee and the International Porcupine Caribou Commission, Alaskan Natives call for better, more scientific management and habitat protection to insure the continued viability of the fish and animal populations on which they have depended and continue to depend in large part. These traditional behaviors can continue to be a significant component of wildlife management systems when effectively linked with new sources of information and expanded powers of monitoring, habitat protection, and enforcement.

STATE SUBSISTENCE MANAGEMENT

The subsistence priority established by the Alaska State legislature in 1978 is part of a broader state regulatory regime for the management of fish and game animals and the land, air and water resources of the state. The laws and regulations which govern the state's system of management are subject to the State Constitution. Prior to addressing the subsistence regime, the constitutional constraints on State actions must be noted.

There are two important provisions of the State Constitution relevant to Alaskan Natives' subsistence activities. The State Constitution reserves Alaskan fish and animal populations to the people as common property "subject to preferences among beneficial uses." The quoted passage allows the State to make distinctions between certain types of uses. Those distinctions among beneficial uses, subject to constitutional constraints, review by the judicial system and modification by the legislature, are established by the Boards of Fish and Game. The State's Constitution also provides that no distinctions in the application of State laws can be made on the basis of race, sex, age, gender, religion, or ethnic origin. This constraint has been interpreted to preclude the State from providing a preference for Alaskan Natives.

Background. The present State subsistence regulatory regime has evolved in the past 10 years from two major sources. The first source was development within State and the second source is the requirements of the State mandated by the Alaska National Interest Land Claims Act (ANILCA) of 1980. Both sources of influence need to be noted.

State management of fish and game began in 1960 following the transfer of those responsibilities from the federal government. The state system of fish and game management was developed out of a populist distaste for management by administrative prerogative. Consequently a system was established whereby separate panels, called the Board of Fish and the Board of Game, of knowledgeable and informed citizens appointed by the governor and approved by the legislature, would establish the regulations and the priorities among beneficial uses in the harvesting of Alaska's fish and animal populations. The Department of Fish and Game (ADFG) was created to collect the biological information necessary to sound management of fish and game populations. At the present time the Division of Fish and Wildlife Protection (FWP) within the Department of Safety is the enforcement agency for fish and wildlife harvesting regulations. The Boards of Fish and Game meet periodically to consider the regulations as well as proposals from ADFG, FWP, or the public, either as individuals or organizations, for changes in the regulations. The Boards set the regulations for fish and game utilization in the state of Alaska. They can be directed, however, by the legislature or the courts.

In implementing a fish and game management regime, the State of Alaska provided no special or distinctive consideration to Alaskan Natives nor to their subsistence activities. Alaskan Natives were assumed to be subject to regulation similar to other citizens and subsistence activities were assumed to be subject to regulation as any other fishing and hunting activities. The State through the Boards and ADFG began establishing seasons, methods, and bag limit regulations throughout the state as information was gathered on the biological health of various species. The subsistence activities of Alaskan Natives were assumed to follow these rules as any other activities. In some areas and for some species, the State aggressively attempted to enforce its regulations, meeting with differential rates of success (see Hooper Bay Waterfowl Plan section below). For the most part, enforcement discretion favored traditional Native uses. In general, subsistence activities were able to proceed in the 1960s without major disruption due to fairly low levels of demand.

By 1970, the population of the state of Alaska had grown to slightly over 300,000 people. The population of rural Alaska had expanded dramatically over the decade as well due to high reproductive rates among Alaskan Native populations. In the early 1970s it became apparent to the Boards of Fish and Game that a number of conflicts over resource use were emerging between subsistence, sport, and commercial uses. In 1974, an informal principle of subsistence priority was established by the Board of Game to use in its deliberations on regulations. No research was done to determine how often or under what conditions this informal principle was invoked. In addition, it was also determined that the process of obtaining public input on regulations needed to be expanded due to the growth in the number and

complexity of issues the Boards had to address as well as the conflicts between the competing use groups. To meet this dilemma, a system of local advisory councils began to emerge, at least in part modelled on the independent initiatives of the North Slope Borough to create a borough Fish and Game advisory committee and Nunam Kitlutsisti in the Yukon-Kuskokwim area to organize local residents into multiple community advisory committees in 1973. A statewide coordinator was hired in 1974 to establish and organize local advisory committees but soon left the position when he perceived that the advisory committees would not be able to have much influence due to the lack of funding available to them. Local groups had to aggressively lobby to insure that advisory committees were funded and at least given an opportunity to submit their proposals and recommendations. It has been suggested that the greater formalization of the advisory system process begun in 1975 and more fully funded and implemented in 1977 was designed to forestall federal initiatives to require more effective control at the local level. This may be true, but it is also true that many participants in the Boards of Fish and Game regulatory process recognized the need for greater local input even though they opposed greater local control.

In 1975, increasing pressure on large mammals from the urban population of Alaska which was being expanded dramatically by the construction of the trans-Alaska oil pipeline and from the growing sports hunting/guiding industry led Rep. Huntington, an Athabascan from Galena, to introduce a bill establishing provisions for the creation of "subsistence hunting regulations" AS 16.05.257. The regulations pursuant to the legislation allow the Board of Game to create areas where subsistence hunting only is allowed. Further, the Board is allowed to limit the taking of animals to one sex, establish closed and open seasons to protect subsistence hunting, and to regulate the transportation methods and means which can be used in certain areas. No subsistence hunting areas have ever been created under these regulations; however a number of areas where transportation methods are limited have been created. These are called "controlled use" areas. It should be noted that the Board is not obligated to create a subsistence hunting area to protect subsistence. The statute merely grants it the authority through the word "may." A fierce battle was fought in the lower middle Yukon area in 1977 to establish a subsistence hunting area to protect moose from nonlocal harvesting pressure. Local residents ultimately had to settle for a "controlled use" area which prohibited the use of airplanes in the area. This was accomplished over severe opposition by the guiding industry and sport hunters.

The passage of ANCSA, with its specific language extinguishing aboriginal fishing and hunting rights of Alaskan Natives created concerns in certain sections of the Alaskan Native community. The ability of the Boards of Fish and Game, traditionally dominated by appointees from commercial fishing and sport hunting backgrounds, to equitably and fairly treat the subsistence needs of Alaskan Natives was suspect to the Native leadership. In fact, outright hostility towards Alaskan Natives'

subsistence activities was occasionally identified. It was felt that additional State protection for subsistence activities was necessary. Based on this concern, legislation specifying that subsistence was the priority use of Alaskan fish and animal populations was drafted and passed in 1978. Prior to this time subsistence hunting and fishing were defined only in terms of "personal use." The new law did not speak directly to Alaskan Natives but invoked language which could be applied indiscriminately to all. It has been suggested that the State and those interests who would adamantly oppose the issue later were willing to accept this legislation in 1978 in an attempt to assure Congress that Native concerns were being handled adequately at the State level. That is, the d(2) debate on the amount of lands to be withdrawn by the federal government aided passage of the subsistence law.

Section 17 d(2) of ANCSA directed the Secretary of the Interior to withdraw up to 80 million acres of "unreserved lands in the state of Alaska" to add to or create new units in the National Park, Forest, Wildlife Refuge and Wild and Scenic Rivers systems. Acrimonious debate over this process took place throughout the latter half of the 1970s with the majority of Alaskans, not necessarily Alaskan Natives however, pitted against conservationists on the amount of acreage, location and special use provisions which would be attached. Under President Carter over 100 million acres were withdrawn for this purpose and another 56 million acres put into National Monument status. The debate ultimately produced the controversial ANILCA legislation withdrawing 41 million acres for new federal purposes. ANILCA was actively opposed by the State of Alaska. Alaskan Native leaders perceived the d(2) process as an opportunity to address hunting and fishing rights which had "fallen through the cracks" of ANCSA but about which there had been an understanding between Native leaders and congressional leaders implicit in the legislative history of ANCSA. Title VIII of ANILCA, "Subsistence Management and Use," among other things, created additional conditions for subsistence use on federal lands and conditions for the State subsistence regime if the State wishes to retain management authority over fish and animal populations on federal lands. In this section will be treated the additional conditions which ANILCA mandated for the State subsistence regime while in the next section, the subsistence regime established for different federal land jurisdictions will be examined.

State Subsistence Law. Alaska Statutes AS 16.05.257(h)(1) and AS 16.05.940(22) define subsistence uses as "the customary and traditional uses in Alaska of wild, renewable resources" for certain purposes. Those purposes are elaborated as follows:

> ...for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or

family consumption; for the purposes of this paragraph, 'family' means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

In the legislative history, Rep. Anderson indicated that customary and traditional was meant to cover the "historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc." which would apply both to aboriginal uses as well as to uses by later immigrants. The law requires the Boards of Fish and Game to establish regulations "permitting the taking of game for subsistence use unless the board determines,...that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained yield basis."

The priority for subsistence use as well as the criteria for establishing priorities among subsistence users, should that be necessary, are found in the following wording of the statute authorizing the Boards of Fish and Game to establish regulations:

> Whenever it is necessary to restrict the taking of fish to assure the maintenance of [fish stocks; game resources] on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:
> (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
> (2) local residency; and
> (3) availability of alternative resources.

It is important to underscore that in passing the subsistence law, the legislature mandated that if subsistence uses are present they must be authorized. This is a major departure from the previous operation of fish and game management.

Related Legislation. The 1978 legislature also created a subsistence section within the Department of Fish and Game to collect information as needed and requested by the Boards on subsistence issues. That section has since been upgraded to divisional status which in the ADFG hierarchy equates Subsistence with Habitat, Game, Commercial Fishing, and Sport Fishing. Legislation to decentralize control of Alaskan fish and animal resources by creating seven regional Boards of Fish and Game and creating new statewide Boards of Fish and Game composed of one member from each of the regional boards was also introduced in 1978 but defeated.

Implementation. It would not be an exaggeration to state that most non-Native members of the Boards of Fish and Game at the time of the passage of the legislation were hostile toward

the new legislation and several lobbied against it. The Boards made no attempt to alter regulatory provisions or to determine a process for implementing the priority. A fundamental problem was establishment of a set of criteria to determine what "subsistence use" was.

Subsistence Use Criteria. The first exercise in establishing criteria for subsistence use came about as the result of a court case brought by the residents of the Cook Inlet Tanaina Athabascan community of Tyonek. This community, with a traditional king salmon subsistence fishery, had had their fishery eliminated on biological grounds in 1964. By 1979 the stocks had rebounded sufficiently to allow for fishing, and the Board of Fish had adopted a management plan for Upper Cook Inlet king salmon which allocated the stocks between commercial and sports users, totally ignoring the priority for subsistence uses of the community of Tyonek. The villagers petitioned the Board for reinstitution of their subsistence fishery in the fall of 1979 and were denied. They then took their case to State Superior Court which found in Native Village of Tyonek v. Alaska Board of Fisheries, May 1980, that the Board of Fish had acted incorrectly and could not deny a subsistence fishery for the Tyonek villagers absent a finding that such a harvest would endanger the sustained yield of the species. A consent decree was entered which allowed the Tyonek subsistence fishery to take place in 1980 and subsequent years.

It was at this juncture that the Board was forced to establish criteria for subsistence use. Ten criteria for identifying subsistence uses in Cook Inlet were put together at the Decmber 1980 Board of Fisheries meeting in response to the Tyonek case. Those ten criteria later served as the basis from which the joint Boards of Fish and Game developed eight criteria for identifying subsistence uses on a statewide basis. The original 10 definitional criteria for the establishment of subsistence fishery use are as follows:

1. long-term stability of the subsistence fishery
2. community identification with the fishery in question
3. targeting on specific species
4. efficiency of harvest methods
5. proximity of fishery to user's residence
6. ease of access to the fishery
7. relationship of current uses to historical methods of preparation
8. inter-generational transmission of fishing knowledge
9. community and family sharing
10. reliance on a variety of resources

These criteria were subsequently challenged by a group of fishermen in the Kachemak Bay area of Cook Inlet who were not considered to be subsistence fishermen when the Board of Fisheries applied the criteria to all Cook Inlet fisheries. In Gjosund v. Alaska Department of Fish and Game, the Superior Court upheld the 10 criteria but ruled that the Board had misapplied

them. The criteria were also upheld in Madson v. Alaska Department of Fish and Game, in which a group of Kenai area residents brought suit. Thus, the criteria have been upheld by the only two courts to consider them. Both cases are consolidated in the state Supreme Court, pending decision.

In December 1981, the Boards of Fish and Game jointly adopted eight criteria as the standard for determination of subsistence use. The eight criteria currently in force are summarized as follows:

1. long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
2. a use pattern recurring in a specific season(s) of each year;
3. a use pattern consisting of means and methods of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
4. the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;
5. means of handling, preparing, preserving and storing has been traditionally used by past generations, but not excluding recent technological advances where appropriate;
6. a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;
7. a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving...a community may include specific villages or towns with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection;
8. use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and in which that pattern of subsistence uses provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

These criteria have been applied in a number of cases to identify subsistence uses of particular resources, and subsistence hunting and fishing seasons have then been authorized. Some examples include provisions for subsistence fishermen on the Copper River; provisions for subsistence hunting of Nelchina caribou; provisions for subsistence harvesting of coho by Angoon residents; provisions for closing certain waters in the southern part of Prince of Wales Island to commercial abalone harvesting in order to protect subsistence abalone harvests; provisions for subsistence fishing by the residents of Tyonek, English Bay, and Port Graham; and provision for a subsistence hunt of caribou by residents of Deering and Buckland. This is not meant to be an exhaustive compilation of application of the subsistence criteria and enactment of regulations to protect subsistence uses.

It should also be pointed out that these established provisions may not necessarily uphold the subsistence priority. The village of Hydaburg has challenged the provisions citing their inadequacy for the protection of subsistence. Likewise, it appears that the subsistence permitting process for the Nelchina caribou herd is not adequately providing for Alaskan Native subsistence uses.

ANILCA Subsistence Requirements for State Compliance. ANILCA Section 805(d) requires the State subsistence management regime to be the same as federal law in three areas if the state is to retain management authority over fish and wildlife populations on federal lands. Those areas are (1) the definition of "subsistence uses," (2) preferences for those uses in times of relative resource shortage, and (3) a public participation system.

The ANILCA definition of "subsistence uses" specifically refers to "rural" residents as those to whom the subsistence priority applies. Legislative history of the act indicates that at least four communities were intended to be considered "urban": Anchorage, Fairbanks, Juneau, and Ketchikan. The history is also specific in its intent not to exclude residents of regional centers such as Dillingham, Bethel, Nome, Kotzebue, and Barrow from subsistence uses. The Boards of Fish and Game have grappled with the "rural" definition dilemma. First, they defined as non-rural people living in a community over 7,000 in size or in the road-connected area of an organized borough. This was later repealed on the advice of the Attorney General due to its vagueness and equal protection problems. At the present time there is no definition of rural or use of the term rural in State statutes, but the application of the eight criteria appears to result in identification of rural uses. Acknowledgment in the regulation containing the eight criteria satisfied the Department of Interior's concerns under ANILCA. The Attorney General's office has issued an opinion analyzing the legislative history, concluding that the intent of the the state law and its implementation both provide for protection of rural subsistence uses.

The language in the State subsistence law and ANILCA are virtually identical with regard to when the subsistence priority is to take force. In both cases this occurs either when the resource is biologically scarce (but not threatened) or when subsistence harvests are threatened by the level of other harvests or activities.

ANILCA mandated a system of public participation which includes local advisory committees and six regional councils. The State already had statutory provisions for both, although only local advisory committees were active at the time of the passage of ANILCA. ANILCA further specifies that regional councils have regulatory precedence over subsistence which can be superseded by the Boards of Fish and Game only if regional council actions are

not based on substantial evidence, violate state or federal laws, or threaten fish and wildlife populations. The regional councils may also make recommednations on other fish and game matters, but those recommendatins which do not concern subsistence are not entitled to special consideration. The State was required to implement this authority for regional councils and also to upgrade aspects of the local advisory system. ANILCA authorized reimbursement of up to $5,000,000 annually for the state's implementation of the subsistence regulatory regime although the level requested and appropriated to date has not exceeded $2,000,000 for any year.

State Conformity with ANILCA. ANILCA required that the State submit materials to the Secretary of the Interior indicating their compliance with ANILCA conditions prior to December 2, 1981 if it wished to retain management authority over fish and wildlife on federal lands. In a visit to the state in 1981, Secretary Watt made it clear that ANILCA required that he assume management of fish and wildlife on federal lands if the state did not comply. The State made a preliminary submission of its laws and regulations in March 1981 to obtain an Interior interpretation on what additional action would need to be taken to comply with ANILCA requirements in their December 2, 1981 submission. The December 2, 1981 submission included an integrated statement from the Attorney General's office on how the overall State regime fit together to meet ANILCA requirements. After review, Secretary Watt determined that additional actions were necessary and the state made two relatively minor submissions on December 23, 1981 and on May 3, 1982. On May 14, 1982, Watt informed Governor Hammond that the state's compliance would be completed on June 2, 1982 and "as a result of this certification of compliance, the State retains its traditional role in the regulation of fish and wildlife resources on the public lands in Alaska."

Current State Subsistence Regime: Summary. At present the State of Alaska's subsistence regime consists of the following components:

1. Statutory mandate that subsistence uses be authorized, with a priority in situations of relative resource shortage.
2. Statutory definition of subsistence uses.
3. Board regulations recognizing rural users' interests.
4. Local advisory committee system in all regions of the state.
5. Regional council system with substantial subsistence authority.
6. Subsistence Division conducting statewide research program with local staffing.
7. Some regulations addressing rural subsistence interests.

FEDERAL SUBSISTENCE MANAGEMENT

The two most important pieces of strictly domestic legislation pertaining to the management of subsistence are ANILCA and the Marine Mammal Protection Act. The regulatory regimes established by these two acts are discussed in this section as well as the less important Endangered Species Act.

Alaska National Interest Lands Conservation Act (ANILCA)

The legislative background and constraints placed on Alaskan fish and wildlife management by ANILCA were discussed in the previous section on state subsistence managment. This section will treat ANILCA's subsistence regime which is applicable to most federal lands, except those specifically treated in the Act.

Section 804 of ANILCA establishes a general priority for "nonwasteful subsistence uses" on public lands for rural, both Native and non-Native, residents of Alaska. This priority, however, is not applicable to all federal lands and is limited by other purposes for lands specified in the act. These additional provisions will be noted below. The priority is to be activated whenever it is necessary to restrict the taking of populations of fish and wildlife for subsistence uses to protect the continued viability of the fish and wildlife or to insure the continuance of subsistence practices. If restriction among subsistence users is to occur, those limitations must be based on criteria of customary and direct dependence upon the populations as the mainstay of livelihood; local residency; and the availability of alternative resources.

These provisions apply to most federal lands in Alaska. In particular lands in the National Forests, and lands controlled by the Bureau of Land Management including the National Petroleum Reserve are subject to this provision. The exceptions are the Misty Fjords National Monument, in which no hunting or fishing activities are authorized, and Admiralty Island National Monument, in which subsistence activities by residents of Admiralty Island only are authorized. Note that hunting and fishing by the general population can occur on the non-monument lands and that the subsistence hunting and fishing priority occurs only if the restrictions noted in the previous paragraph become necessary.

Lands in National Wildlife Refuges (ANILCA Title III) are managed by the U.S. Fish and Wildlife Service and designated as available for subsistence uses by local residents subject to two other purposes. Those purposes are "to conserve fish and wildlife populations and habitats in their natural diversity" and to fulfill international treaty obligations. Subsistence uses are to be accommodated in keeping with these two purposes. All of the nine new refuges created by ANILCA and six of the seven previously created refuges provide for subsistence use by local residents. The only exception is the Kenai National Wildlife Refuge. Regulations were published for subsistence uses in National Wildlife Refuges on June 17, 1981.

Lands in the National Park Service have still another subsistence regime and different parks, monuments and preserves have slightly different regimes. Section 816(a) closes all parks and monuments to the taking of wildlife, except for subsistence. All of the new park lands, except for the Kenai Fjords National Park, allow for subsistence activities which are "traditional." Definition and application of the term "traditional" has become a significant stumbling block in certain cases for present subsistence activities. Several parks allow airplane usage for subsistence practices while several others do not. Katmai National Park and Glacier Bay National Park (previously a National Monument) are closed to most hunting and fishing, while the original area of Denali National Park is closed to all hunting and fishing. The National Park Service has under its jurisdiction four National Preserves created by ANILCA in which subsistence hunting and fishing by local residents are allowed. A final type of jurisdiction under National Park Service management authority are the National Monuments. In one of the two new monuments created by ANILCA under Park Service jurisdiction, subsistence activities by local residents are allowed while in the other subsistence uses are only allowed in "traditional" areas.

The National Park Service regulations published on June 17, 1981 have more extensive implications for subsistence than the Fish and Wildlife Service regulations due to the greater complexity of ANILCA requirements for these lands. Park Service regulations authorize subsistence uses in national preserves, throughout Cape Krusenstern National Monument and Kobuk Valley National Park, and "where such uses are traditional" in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the addition to Denali National Park.

Subsistence Resource Commissions. Section 808 of ANILCA mandates that Subsistence Resource Commissions were to be created for all parks and monuments under National Park Service jurisdiction within a year after the passage of ANILCA. These nine member bodies were to have three members from the regional council in which the park or monument was located, three members appointed by the Secretary of the Interior and three members appointed by the Governor of Alaska. Only the three members from the regional council are required to be subsistence users in the park; there are no restrictions of any kind on the Secretarial or Gubernatorial appointments. The Commissions were charged to "devise and recommend", within 18 months after passage of ANILCA, a program for "subsistence hunting" within the park or monument. The Secretary is authorized to implement the plan unless he finds and stipulates in writing that the proposed program "violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents."

The Resource Commissions were not formed according to the schedule stipulated in ANILCA. Appointments were not made until late 1982 or 1983 due to delays in establishing the regional council system. Most commissions did not hold their first meetings until the summer of 1984. The process of preparing "subsistence hunting programs" is now underway with a target date for completion of June, 1985. None have been completed as of October, 1984.

In the interim, NPS regulations have interpreted ANILCA and established a number of important principles including the meaning of the term "traditional" as it is applied to species, locations, methods of harvesting and access, and seasons. There is some evidence that the term may also be extended to harvest levels as well. Further, the concept of "resident zone" was developed in keeping with legislative intent to determine who "traditional" users might be. A set of communities defining the "resident zone" of each park or monument have been established based on Park Service studies done in the 1970s. Residence in one of the named communities defines a person as a "traditional" user and allows subsistence activity in the relevant park or monument. Other qualified users may obtain "subsistence permits" if they do not live in the resident zone and apply to the Park Service. Use of airplanes for subsistence access to the parks is denied to all communities except Anaktuvuk Pass in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park.

Subsistence Access and Research. Section 811 requires that "reasonable access" to subsistence resources on public lands be made available to rural residents. Section 812 requires research to be done on "fish and wildlife and subsistence uses on the public lands." This may be done cooperatively and is supposed to make use of "the special knowledge of local residents." Results of the research are to be made available to relevant local and regional councils.

Subsistence Monitoring. Sections 806 and 813 of ANILCA mandate monitoring of subsistence provisions of the bill by the Secretary of the Interior. Section 806 requires the Secretary to monitor the State's provision for the subsistence preference and make an annual report to committees in the U.S. House of Representatives and Senate. The report is to include the Secretary's "views on the effectiveness of the implementation of [Title VIII] including the State's provision of such preference" and to offer recommendations.

The first 806 report summarizes the history of the process of State concurrence with ANILCA, discusses the regulations developed by the FWS and NPS, traces the development of monitoring systems being constructed cooperatively by the agencies, identifies three court cases filed under the judicial enforcement provisions of ANILCA for subsistence protection (section 807), and notes cooperative agreements which have been developed by ADFG with FWS, NPS and Forest Service in March,

October, and May 1982 respectively. Under "recommendations" the 806 report identifies "areas of concern" to be given "special attention." The areas of concern identified were the manner in which rural subsistence priority would be implemented by the state, the ambiguity in State regulations requiring the subsistence priority to be invoked when subsistence uses are threatened by other uses, and the adequacy of funding and support for the regional councils and local advisory committees.

The State's response to these concerns included in the report was that "rural" is provided for in regulations, subsistence use protection from other uses is provided for in statutes and the reimbursement appropriation should be increased to $2.0 million to assist in the support of the advisory system process.

The 806 report found that NPS and FWS subsistence regulations appear to have caused minimal disruption in the subsistence activities of local rural residents. It says that neither agency knows of "any evidence of community hardship or resource jeopardy relating to subsistence activities." It finds that the State of Alaska has developed a "legally sufficent" subsistence regime to comply with ANILCA Title VIII. Finally, it concludes that to date, "title VIII has been implemented effectively by the State and Federal government."

Section 813 of ANILCA mandates a report four years after enactment and then every three-year period thereafter. The report is to include:

(1) an evaluation of the results of the monitoring undertaken by the secretary as required by Section 806;
(2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;
(3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;
(4) the role of subsistence uses in the economy and culture of rural Alaska;
(5) comments on the Secretary's report by the State, local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;
(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and
(7) such other recommendations the Secretary deems appropriate.

The report is presently being developed by the U.S. Fish and Wildlife Service and a draft for comment is supposed to be available sometime in October, 1984. A total of four person months were funded to develop sections 3 and 4 which pertain directly to subsistence activities.

Marine Mammal Protection Act (MMPA)

In 1972 the Marine Mammal Protection Act was passed which authorized the federal management of marine mammal species. This authority to manage these species is vested in the U.S. Fish and Wildlife Service and in National Marine Fisheries Service. In Alaska, the Fish and Wildlife Service is responsible for polar bear, walrus, and sea otter while the National Marine Fisheries Service is responsible for sea lion, whales (beluga, gray, bowhead), porpoises, dolphins, and seals.

These agencies report to the Marine Mammal Commission, a three-person body with regulatory and policy-making responsibilities under the act.

Of all federal legislation presently in force, the MMPA is probably the least restrictive and most favorable to Alaskan Natives. As presently operating, the act precludes all harvest of marine mammals except by Alaskan Natives. The exemption for Natives is nearly absolute. Alaska Native harvesting is limited only in that, (1) it must be nonwasteful and (2) no commercial sale of raw products from marine mammal harvests can be made. However if products of marine mammal harvests are converted into "authentic articles of handicrafts" such as weaving, carving, stitching, sewing, tracing, beading, drawing or painting, they may be sold. Alaskan Natives may hunt and harvest as long as the purposes of the act are being met without restriction on season, bag limits, or methods. This can only be changed if the Secretary of the Interior determines that a particular species is "depleted." A "depleted" stock is one which has been determined to be declining over a significant number of years, or is declining such that it is likely to be subject to the provisions of the Endangered Species Act or is below the optimum carrying capacity of that species. This is a significant power because natural populations will fluctuate around optimum levels spontaneously in response to environmental conditions without in any way endangering the species. Although this provision has never been invoked, it does present a possible avenue of constraint on Alaskan Native harvesting of marine mammals. A more restrictive possibility is that the federal government would transfer management authority to the state as allowed by the MMPA.

State Management of Marine Mammals. From 1959 to 1972, the State exercised management over ten species in which it determined the State and its residents had interests. Following withdrawal of State management authority, steps were initiated to regain management authority. In 1976 the State applied to the Secretary of the Interior for transfer of the management of ten species of marine mammals which it had previously managed: polar bears, sea otters, sea lions, walrus, beluga whale, and five seal species (ribbon, ringed, bearded, spotted and harbor). As discussed more fully under the Eskimo Walrus Commission below, the State did not implement the Alaskan Native exemption in its proposed management. The transfer was only partly effected when it was challenged and halted by People of Togiak v. United

States. Based on the court's finding for the people of Togiak in that suit, the State withdrew its request for return of marine mammal management authority.

In 1981, amendments to the MMPA established conditions under which, if met, the U.S. would transfer management authority to the State. Those conditions require that the Secretary of the Interior may not transfer management authority to the State of Alaska unless subsistence rights of those persons customarily and directly dependent upon the species are made a priority by State law (Case and Stay 1983: 7-21). However, the 1981 amendment does not specifically mention Alaskan Natives but instead refers to "rural Alaskan residents." Given this language and the Secretary's finding that the State of Alaska's subsistence regime is in conformance with ANILCA Title VIII, it is likely that the present subsistence regime which makes no specific provision for Alaskan Natives would be found to be in compliance with the MMPA amendment. The State's authority over marine mammals is only in force as long as the subsistence priority is in place.

The State has expressed a desire to regain management and ADFG developed a formal request for transfer in 1982. One of the strongest points in the State's favor is that they have the experienced personnel and are in a better position to manage the species. Furthermore, the federal agencies appear to agree with that position. However, recent discussions in public and in the media in which the State has appeared to be critical of federal management efforts to date has resulted in FWS indicating that they will begin a more restrictive management regime if the State does not regain management authority in the near future.

According to a recent position paper developed by the ADFG Game Division Director, the following are "non-negotiable" federal requirements which must become the "basics and givens" for State management of marine mammals:

- management actions must be directed at maintaining the health and stability of marine ecosystems;
- marine mammal populations to be maintained within their optimum sustainable population range to the extent possible;
- if the management regime incorporates taking for non-subsistence purposes, economic benefits must be directed, to the maximum extent practicable, to coastal rural residents who engage in subsistence taking;
- taking must be in a humane manner;
- taking must be in a non-wasteful manner;
- federal/state cooperative agreements must be in place for species which range outside of territorial waters;
- the regulatory process must adhere to the State's Administrative Procedures Act;
- annual federal review of the State's program;
- a management program must adhere to mandates of the State Constitution;
- a management regime must incorporate obligations of international treaties and agreements; and

- incidental catches of marine mammals must be reduced to the lowest numbers practicable.

One of the most important preconditions for the State to regain management is the holding of scientific hearings on the status of the species, their optimum sustained populations, and the maximum allowable take within the OSP range. Those hearings have not yet been held and will only occur after the State has filed a formal request for return of management. That request has not been made since the State does not yet have in place pieces of the regime necessary to satisfy federal requirements.

A number of additional preparatory steps have been taken however. The State has considered legislation defining and banning wanton waste; this legislation was introduced during the 1984 legislative session. In order to meet the requirement concerning economic opportunities from nonsubsistence harvests, the State passed the Marine Mammal Guiding Act in October, 1983 which may be deemed adequate for purposes of transfer although it only partially meets the recommendations of the Eskimo Walrus Commission. The issue of marine mammal guiding is more fully discussed in the section on the Eskimo Walrus Commission. Other steps are being taken including informal information and education meetings in the coastal villages to involve the affected parties in the decision-making process and to outline the potential management concepts and options available to the State of Alaska. State efforts for regaining management authority have been shifted out of the fast track ADFG entered in 1982 as the new Sheffield administration opted to step back and consult more widely on the matter.

Native Positions on State Management. Opinion in the Native community on State management varies. A major reason for the variation derives from the different roles marine mammals play in the economies and cultures of the different areas. Commercial fishermen would like State management so that competition for fish with seals and sea lions can be controlled. Walrus and seal hunters are concerned about opening access to non-Natives. An added consideration is the need for cash in the villages to allow the younger people to stay in the communities. Nunam Kitlutsisti, the environmental protection group of the Yup'ik people of southwestern Alaska (Yukon-Kuskokwim delta) has indicated opposition to State management on the grounds that the State has not shown good faith in committing itself to the defense of the habitat necessary to sustain the resources. Furthermore, they feel the State is likely to impose unnecessary restrictions and activate excessively punitive enforcement measures. The Eskimo Walrus Commission, as discussed below, has not taken a position but seeks greater involvement in whatever regulatory regime for walrus emerges. It has been suggested by researchers for the State Legislature's Rural Research Agency that the Commission is leaning toward opposing State management at this time. The Alaska Federation of Natives has called for a delay in order to fully explore issues and options. The Rural Community Action Program (RurALCAP) request for public hearings,

protection of rural subsistence users' interests, and consideration of their views has at least partially been accomplished as ADFG has embarked on informal meetings around the State since January 1984. There has not as yet been a call for public hearings on the topic.

Nunam Kitlutsisti has called for a Native workshop on the issue to be convened by the Eskimo Walrus Commission and the Alaska Federation of Natives prior to the Alaska Federation of Natives convention in October, 1984. This workshop should help bring about a unified Native position, to the extent possible, on the direction they would like to see marine mammal management take.

Endangered Species Act

The aim of this 1973 act is to protect species near extinction ("endangered") and those "likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range." Alaskan Natives residing in Alaska and non-Natives who are permanent residents of Alaskan Native villages are given specific exemption in the act as long as their taking is for subsistence use and is non-wasteful. Local sale of meat to other villagers is also allowed. Language similar to the MMPA for creation of authentic Native articles which can be sold is also found the the Endangered Species Act. Natives are, however, subject to Secretarial regulation if it is determined that Native takings would "materially and negatively" affect the threatened or endangered species.

TRIBAL REGULATION

Elsewhere in the United States, Native American subsistence rights are typically dealt with through treaty provisions. The treaties specify or imply certain hunting and fishing rights and tribal governments exercise some mixture of exclusive or concurrent jurisdictional rights with state and federal governments. Keys to Native American rights of self-regulation in hunting and fishing are found in the concepts of "Indian country" and the terms of their treaties which establish "reservations" wherein tribes retain their limited sovereignty.

The federal government has recognized the existence of tribes in Alaska in a number of pieces of legislation and judicial decisions. However, because the United States suspended its treaty-making with tribes in 1871, prior to active involvement on a government-to-government basis with Alaskan Natives, there are no treaties with Alaskan Natives and no reservations except Metlakatla. Only on such reservations is it likely that exclusive jurisdiction over hunting and fishing activities could be realized by Alaskan Natives.

This does not mean that there is no "Indian country" in Alaska nor that there is no tribal jurisdiction. At the present time, the term "Indian Country" is interpreted by the Bureau of Indian Affairs to apply solely to the Metlakatla Reservation on Annette Island in southeast Alaska and to Alaskan Native allotments in restricted deed (trust) status. Only on these lands do Alaskan Natives have some exemption, although the extent of exemption for allotments is not presently clear, from State regulation and some authority for independent establishment of subsistence regulations.

This is a fairly strict interpretation since "Indian Country" is defined by federal statute as including any reservation, allotment or "dependent Indian community." This definition seems to clearly include allotments with restricted deeds and statutory reservations (Metlakatla), and a broader interpretation would allow extension of the designation of "Indian Country" to allotments with unrestricted deeds, to reservations created by executive order (Klukwan), and to reservations created by executive order and revoked by ANCSA (Venetie, Tetlin, St. Lawrence Island, and others). An even broader rendering of the "Indian Country" definition of "dependent Indian community" could extend the concept to all Alaskan Native communities recognized under ANCSA since ANCSA clearly indicates that the fiduciary or "trust" responsibility of the United States government to Alaskan Natives was not extinguished by the settlement act. Consequently an argument can be made that the term "dependent Indian community" applies to any Alaskan Native community which continues to be covered by the fiduciary responsibility, and since all ANCSA-recognized Alaskan Native communities are so covered, their lands become "Indian country." Whether this interpretation could be extended to corporation lands, to lands held by municipal governments of ANCSA-recognized communities, or to lands held in trust for ANCSA-recognized communities not organized under Alaskan municipal status would be a matter for additional interpretation. A key problem with the foregoing is that mere preservation of the "trust" relationship may not be enough to qualify for "dependent Indian community" status and that the stricter test of tribally owned and occupied land might be necessary. A further problem is that transference of lands from the corporations to the tribal government may not be sufficient to supersede State interests in subsistence regulation.

Alaskan Native communities with previously created reservations by executive order which were revoked by ANCSA may have stronger grounds for seeking some form of subsistence self-regulation than other Alaskan Native groups. In Cheyenne-Tribes v. Oklahoma, it was indicated, but not decided that it might be possible for ceded land now held as public to be subject to concurrent state and tribal jurisdiction (Case and Stay 1983: 11-4,5). This might be particularly beneficial to Venetie's efforts at self-regulation (see discussion below), St. Lawrence Island and other Alaskan Native communities with previous reservations created by executive order.

The importance of the concept of "Indian Country" is that although tribes may have governments without any tribally owned land, they have little protection from the courts for their subsistence or regulatory interest in other lands however those lands came to be held by state or federal governments. The bottomline is that without reservations or other federally recognized forms of tribal land, Alaskan Natives are likely only to be able to exercise concurrent jurisdiction with the state. Given the P.L. 280 status of Alaska whereby the federal government transferred to the State authority to adjudicate criminal and civil matters involving Alaskan Natives, concurrent jurisdiction probably only means that Alaskan Natives can impose stricter regulations on themselves, but probably not non-Natives, than the State does but not that they can relax State regulations. Specifically P.L. 280 indicates that tribal ordinances or customs will be given "full force and effect in the determination of civil causes of action" if they are "not inconsistent with any applicable civil law of the State" (Case and Stay 1983:11-8).

At the present time, then, only the Metlakatla Reservation has been judicially held to be exempt from State jurisdiction. Moreover, restricted allotments have been held subject to some forms of local regulation as in People of South Naknek v. Bristol Bay Borough (466F. Supp. 870 (D.Alaska) where the borough was allowed to tax restricted allotments as personal property. Another recent case raises more direct questions for Alaskan Native subsistence rights. A woman with a restricted deed allotment on the Copper River recently moved from her allotment to Wasilla. She has traditionally and customarily fished for salmon at a site on her allotment and, when she lived on the allotment, qualified for subsistence permits under state regulations. Since she has moved to Wasilla, however, she is no longer considered to be a resident of the community for subsistence permitting purposes and did not receive a permit to subsistence fish for salmon from her allotment site this year.

If Alaskan Natives are to use tribal governments and rights for subsistence protection, new laws or court decisions will be necessary to strengthen the claims of the vast majority of Alaskan Natives.

INTERNATIONAL TREATIES AND SUBSISTENCE MANAGEMENT

Alaskan Native subsistence activities are affected by a number of international treaties to which the United States is a signatory. It is often the case that Alaskan Native interests have not been considered in the negotiation of the treaties. Even rarer is actual consultation with Alaskan Native groups during the process of negotiating treaties in order to insure that their interests are protected. Treaties by themselves provide no authority and therefore are accompanied by domestic legislation which establishes the federal mechanism for implementing the terms of the treaty. Since treaties have

federal authority which supersedes state authority they can provide greater leverage for Alaskan Natives to the extent that Alaskan Native subsistence practices are recognized and given special treatment, usually some form of exemption. Without such language, opportunities for Alaskan Natives to influence Federal and State fish and wildlife management are much diminshed (Case and Stay 1983: 7-3). Case and Stay (1983: 7-3) contend that language expressly recognizing Alaskan Natives affirms the status of Alaskan Native as members of tribal governments, provides some support for assertion of tribal authority over their own members, and affirms government-to-government relationships between Alaskan Natives and the federal government.

The most important treaties and enabling domestic regulation which bear on Alaskan Native subsistence activities are the migratory waterfowl treaties, which are implemented through the Migratory Bird Treaty Act, the International Convention for the Conservation and the Regulation of Whaling, the Convention on the Conservation of the North Pacific Fur Seal, and the Convention for the Conservation of Polar Bears. Specific implications in each of these treaties for Alaskan Native subsistence harvests are noted below.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements a number of different treaties, each of which have different language pertaining to the rights of Alaskan Natives. The treaty with the British covering Canadian relationships signed in 1916 prohibits harvest of migratory game birds from March 10 to September 1 with no relevant exemption for Alaskan Natives. Discussed below in the section dealing with the Hooper Bay Waterfowl Plan are the special provisions of the Alaska Game Commission Act which modify this treaty ban. Other treaties have been signed with Mexico, Japan (1974), and the Soviet Union (1976) each with somewhat different provisions. The Japanese treaty is more liberal providing an absolute exemption for Eskimos and Indians to take migratory birds and their eggs, as long as it is for food or clothing. The latest treaty, that with the Soviets, however substantially reduces the autonomy and harvest rights of Alaskan Natives for migratory birds. The treaty and the new amendments do not explicitly provide for Alaskan Natives, they allow the Secretary of the Interior to issue regulations and determine the "nutritional and essential needs" of "indigenous inhabitants", and they permit State laws not inconsistent with Federal law. Case and Stay suggest that this is evidence of a trend toward "more flexible and undefined treatment of Alaska Native rights" (Case and Stay 1983: 7-17). The legal interpretation of the constraints or freedoms for Alaskan Natives' rights to take migratory birds resulting from these treaties is presently being litigated.

International Convention for the Conservation and the Regulation of Whaling

This treaty came into force in 1946 and was implemented by the Whaling Convention Act of 1946. This treaty and act fit the description of having been negotiated and implemented without consultation with the affected Alaskan Natives. Up until the late 1970s, the scope and authority of the International Whaling Commission to regulate the subsistence harvest of the bowhead whale was not an issue because the United States had been able to obtain an exemption, which was in turn authorized in the domestic legislation (Whaling Convention Act). In 1977, the IWC did not grant that exemption. The issue then became whether or not the IWC could regulate aboriginal subsistence whaling under the convention and, further, whether the United States could under the Whaling Convention Act. Those two issues are pending in U.S. Court. In the meantime, both the IWC and the United States have acted to implement subsistence whaling regimes. Further discussion on this issue can be found in the section dealing with the Alaska Eskimo Whaling Commission below.

Convention on the Conservation of North Pacific Fur Seal

At this time perhaps the most troublesome and unresolved subsistence dilemma arising from international treaties is that of the rights of the Pribilof Aleuts to harvest the fur seal. The harvest of fur seals has been under international treaty since the late 1800s in order to control pelagic sealing and prevent the extinction of the species. The most recent of these agreements was ratified in 1957 and subjects the harvest to strict regulations. The 1957 treaty provided an exception for Alaskan Natives but entered restrictive requirements on the technology that could be used to harvest the seals in the water. It specifies that the rights of "Indians, Ainos, Aleuts or Eskimos dwelling on the coastal water of the North Pacific Ocean" can only be exercised with traditional methods (vessels must be propelled by oars, paddles, or sails and have no more than five crewmen) and firearms are banned. Finally, hunters could not be employed to harvest the seals by another party, public or private. This additional requirement effectively precluded contemporary Aleuts from exercising the aboriginal exemption. The denial of access to modern technologies is the first attempt to link Alaskan Native hunting rights to the utilization of traditional methods only.

In 1976 the treaty and the implementing legislation were amended. The amendment provided no exemption for Alaskan Natives even with technological limitations. Instead, only "due consideration" of the "subsistence needs" of Alaskan Natives who live on the islands is required. Case and Stay (1983: 7-7) have suggested that this provision could be interpreted to mean that subsistence hunting of fur seals is allowed only when other resources are not available. The Fur Seal Act is not as restrictive, but the amendment still bans any independent cooperation.

In 1983 as part of the United States government's withdrawal from direct jurisdiction of the Pribilof Islands several additional amendments were passed which allowed for the harvest to be contracted by the government to the Native corporation and authorized the transfer of federal property. No attempt was made to alter the subsistence regulations through amendments. The Pribilof position was that such an attempt might raise a red flag to conservationist groups antagonistic to the fur seal hunt and endanger the entire settlement.

The treaty is presently up for re-ratification and was recommended for extension for four years by the joint scientific committee of all four signatory nations. The terms for the extension set a quota of 22,000 seals to be harvested for commercial purposes in 1985, the first quota set on the harvest since 1915. Although it appears that the position of the federal government is to reapprove the language, there is a movement by conservationist groups to insert language allowing the United States to reduce its component of the harvest to zero or to terminate the treaty. The Pribilovians are examining possible alternatives to the present subsistence constraints for consideration as amendments to the Fur Seal Act if it is re-ratified. If it is not extended, then the Pribilofs would fall under the terms of the Marine Mammal Protection Act with its provisions for external determination of "wasteful" harvests, a jurisdictional authority which the Pribilof population finds unsatisfactory. Nor do the Pribilovians find the prospect of falling under the State law with its subsistence regime an acceptable alternative. It is a time of considerable flux in the management of northern fur seal and the future of the Pribilof Aleuts.

The Convention for the Conservation of Polar Bears

A treaty for the conservation of Polar bears was signed by the Arctic nations (U.S., U.S.S.R., Canada, Denmark, Norway) in 1976. It provides an exemption from the absolute prohibition of polar bear hunting to "local people" using "traditional methods." It is not clear what "traditional methods" include but probably not snowmobiles and perhaps not even rifles. If such an interpretation were correct, the exemption would be virtually meaningless to Alaskan Natives.

Furthermore, the exemption is not complete since harvest of "local people" can only occur "in accordance with the laws of that party." The phrase "that party" certainly refers to federal law and may also include State law as well.

Finally the exemption language is linked to taking polar bears "in the exercise of their traditional rights." Again it is not clear how the term "traditional rights" is to be interpreted. If it were interpreted strictly, it could be argued that those rights were extinguished by ANCSA. Even under this interpretation it might be argued that "traditional rights"

continued farther than three miles offshore since the water and ice found in that region were not under United States jurisdiction at the time of the settlement. A less restrictive reading could allow application of the exemption without regard to ANCSA and thus Alaskan Natives would continue to have harvest rights.

ALASKAN NATIVE SELF-REGULATORY SUBSISTENCE COMPACTS

In several areas of Alaska, Alaskan Natives have organized formal compacts and organizations for self-management of subsistence. These bodies vary considerably in their complexity, membership, relationship with other state, federal, and international agencies, and manner of functioning. In addition to formal organizations, there are also other mechanisms of self-regulation more formal than traditional practices, but not as formal as the organizations created by compact. This section will describe the nature and functioning of non-traditional Alaskan Native self-regulation of both types identified above. The Alaska Eskimo Whaling Commission is dealt with in greater detail due to its degree of formalization and recognition as well as the complexity of the relationships which are revealed by its history.

ALASKA ESKIMO WHALING COMMISSION

Background. Inupiaq people of coastal northwestern Alaska and Siberian Yup'ik people of St. Lawrence Island have hunted the bowhead whale for at least 1,200 years and Eskimos in general may have harvested whales for more than 4,000 years (Bockstoce 1976; Giddings 1967). Cultural institutions such as festivals, whaling crews, and ceremonies were developed demonstrating the centrality of the bowhead hunt and harvest to these populations. Permanent villages were established based on the reliability of the bowhead hunt from year to year (Worl 1978, 1979). It has been estimated that the bowhead population was between 10,000 and 30,000 animals in 1847 (Feierabend 1980). In the latter half of the 19th century, American whalers entered the Chukchi Sea and began the harvest of bowhead whales for commercial sale which reduced the population to 10-20% of its initial size by 1914 when the commercial hunt ended. In the whaling villages, as elsewhere in Alaska, Inupiat and Yupik people began integrating elements of the cash economy with the subsistence-based livelihood which had sustained them for centuries. New technologies, goods and cash did not displace the bowhead whale which remained an essential component of the diet and the hunt with its related ceremonies and distributions which remained a core feature of coastal Inupiaq and Siberian Yupik culture into the 1970s. In the mid-1970s the number of whales harvested escalated as the population and the number of crews increased, at least in part a result of increased cash availability due to development activities on the North Slope. Another likely factor in the growth of bowhead whaling was the collapse of the Northwest Arctic caribou herd, the other major staple of the Inupiaq diet.

The IWC Ban on Bowhead Whaling. Unbeknownst to Alaskan Eskimo whalers, the International Whaling Commission (IWC), an independent regulatory body formed by a treaty in 1946 to which the United States was a signatory, had become increasingly concerned about the bowhead from 1972 on. Each year it requested the United States to undertake studies on the status and size of the bowhead stock. The IWC also recommended that steps be taken to limit the expansion of the fishery and the loss of struck but not landed whales. In June, 1977 the IWC adopted a complete ban on bowhead whaling after reviewing information on stock status and size.

Alaskan Eskimo whalers were first informed of the possibility of a ban in January of 1977 and, although invited to attend the IWC meeting, declined as they were advised that a complete ban would be an unlikely action. At the June IWC meeting, by unanimous vote, excepting the U.S. abstention, the Commission imposed a complete ban on the harvesting of the bowhead deleting their standard exemption which had previously allowed aboriginal whlaing for bowheads. Following IWC announcement of the ban, efforts were begun by Alaskan Eskimos, primarily under the leadership of then North Slope Borough Mayor Eben Hopson, to reverse the ban. These efforts included direct discussions with federal representatives all the way to then Vice President Mondale and legal challenges through the Supreme Court of the United States.

Legal Challenges Brought by the Eskimo Whalers. Two court cases were filed by the Eskimo whalers seeking to overturn the ban. The first, Adams vs. Vance, was filed in mid-October, 1977 after the negotiations between the whalers and the government broke down over the refusal of the United States to file an objection to the IWC ban in October, 1977. Such an objection would have made the ban nonbinding on the United States. The decision of the United States government not to object to the ban was based in part on an Environmental Impact Statement which was developed in compliance with the National Environmental Policy Act (NEPA) after the finding that action on the ban constituted a "major Federal action significantly affecting the quality of the human environment." It should be noted that the Department of the Interior supported the filing of an objection based on the trust responsibility of the federal government for Native citizens. Of major importance in the Supreme Court's decision not to require the United States to object to the ban was government's contention, supported by a large number of conservation organizations, that such an objection would seriously damage the credibility of the United States in its international conservation efforts. The court's position was that the request for the ban would require an unwarranted "intrusion into the core concerns of the executive branch." The court did not present a finding on the whalers claim that the IWC, and therefore the Whaling Convention Act of 1949 which established the domestic regulations implementing the treaty, lacked the authority to regulate aboriginal subsistence whaling since its express purpose was to regulate commercial whaling. Importantly, the major grounds for requesting the federal government to act was the fiduciary

responsibility principle which requires the federal government to act in the best interests of Native Americans.

In 1980, in Hopson vs. Kreps, the whalers asserted that the U.S. violated the Whaling Convention Act by not filing an objection since the Whaling Convention Act includes specific protection for Alaskan Native rights. The Court of Appeals (Ninth Circuit) decision was quite favorable, upholding the whalers claim that the U.S. should have filed an objection since the Whaling Convention Act includes specific language exempting aboriginals from its terms. However its implications were rendered moot by the fact that when the decision was handed down, there was no ban. The IWC had put in place a quota system allowing for the continuation of Eskimo whaling. The Eskimo whalers felt that the quota was insufficient and so sought a complete exemption which was not granted. Should the IWC in the future again impose a complete ban on bowhead whaling, this decision will be critical in protecting Eskimo whaling barring any amendments to the Whaling Convention Act or actions based on the Marine Mammal Protection Act.

Despite their recourse to action in federal courts, from the initial ban down to this day, Alaskan Eskimo whalers have never capitulated to federal or international claims to regulation of whaling, staunchly asserting that their aboriginal sovereign unextinguished right to whale also means the right to self-regulation. After the Supreme Court ruling in Adams vs. Vance, North Slope Borough Mayor Eben Hopson declared "I don't care who imposes the moratorium...we're going to continue to hunt" (Anchorage Times, 10/22/77).

Formation of the Alaska Eskimo Whaling Commission. At the end of August, 1977 some 70 Alaskan Eskimo whalers met in Barrow under the leadership of North Slope Borough Mayor Eben Hopson, to organize the Alaskan Eskimo Whaling Commission (Worl 1981: 15). The Commission, actually born on September 1, 1977, was initially founded to present a united Eskimo political force to battle the IWC bowhead ban. Its initially stated threefold purpose was:

> "1. To insure that bowhead whale hunting was conducted in a traditional, non-wasteful manner;
> 2. To communicate to the outside world the facts concerning bowhead whale hunting, the way it was done, the centrality of the hunt to the cultural and nutritional needs of the Eskimo, the Eskimo's knowledge of the whale, and the reasons why any moratorium on such hunting would have disastrous impact upon the Eskimo community; and
> 3. To promote extensive scientific research on the bowhead whale so as to insure its continued existence without unnecessary disruption of Eskimo society."

It is clear from points 1 and 3 that the AEWC from its inception intended to pursue self-regulation through a combination of traditional (harvesting techniques, property rights, and rules of hunting conduct) and modern (scientific research)

methods with the aim of preserving and protecting traditional Eskimo whaling.

Organizational Structure. The initial AEWC was composed of nine commissioners representing each of the nine traditional whaling villages (Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuiqsut, and Kaktovik). The whaling captains from each community would elect their own commissioner. Membership was divided into voting and non-voting classes with voting members required to be captains "registered" by the commission.

It should be noted that traditional management of the hunt was accomplished at the local level. Traditional whaling norms and laws are implemented by ceremonial houses (or qaliqi) in Point Hope, local associations of whaling captains in other communities (the Barrow Assocation of Whaling Captains dates to the late 1940s or early 1950s [Worl, P.C.]), and traditional village councils in other communities (Worl 1981: 16). The new organization initially neither encapsulated nor eradicated the previous organizations. Most persist to this day although some of their functions have been superseded by the AEWC.

Management Plan. In the ensuing two months following the formation of the AEWC during which time unsuccessful efforts were made to convince the United States government to object to the IWC ban, the Eskimo whalers and their lawyers became aware that there was no federal regulatory system whatsoever for whaling and that federal officials would be positively responsive to the emergence of such regulations from the Eskimos themselves. It was the federal government's position that a formal regulatory system which would restrain the level of harvest and control wasteful harvesting methods would go a long way toward convincing the IWC to lift its ban on subsistence whaling. With such a management plan in place, the federal government indicated it would petition the IWC for reconsideration at a special December, 1977 meeting.

The AEWC acted quickly to fill the regulatory void and adopted a management plan on November 5, 1977. That plan provided in part for eligibility to harvest and methods of harvest as follows:

a) whaling captains must register with the AEWC and agree that they and their crews will abide by AEWC regulations.

(Registration requirements include submission of evidence of qualifications to serve as captain.)

b) records of whales sighted, struck, and harvested must be kept.
c) the shoulder gun may be used only
   (i) when accompanied by harpoon with or without a darting gun.
   (ii) after a line has been secured to the bowhead whale,

or

(iii) when pursuing a wounded bowhead whale with a float attached to it.

d) the level of harvest shall not exceed subsistence needs.

In addition, captains are required to report sightings, attempted strikings, actual strikings, and landings to their local commissioner who compiles the information and submits it to the Executive Director. The organization also restricts harvesting methods to "traditional means" (harpoon, darting gun, shoulder gun) and institutionalizes traditional proprietary claims of the captain and crew which strikes the whale first, in the designated area with the appropriate methods. The initial AEWC management plan included provisions for adjudication of violations and punitive actions for those who determined to have violated the regulations. Punishment includes denial of harvesting rights and monetary fine of not more than $1,000 to be assessed by the AEWC.

A special scientific committee was also established which would be controlled by scientists and which would set overall limits on the hunt at levels no greater than the net recruitment rate of the species.

Federal and Eskimo Whaler Reaction to IWC Reconsideration. At the special IWC meeting convened in December, 1977, the question of Alaskan Native bowhead whaling again was considered and the IWC withdrew its ban and initially established a quota of 12 landed or 18 struck for 1978 which was later increased to 14 at the June, 1978 IWC meeting. The Eskimo whalers were under the impression at the December, 1977 meeting that the United States would seek full exemption until reliable research established the need for a quota (Arctic Coastal Zone Management Newsletter 12/77: 4). When it became clear that the IWC would establish a quota, Mayor Hopson suggested a compromise harvest figure of 18. This was well below the 45 figure which had been established by the AEWC's scientific committee based on population figures and a net recruitment of 4%. The United States delegation then reduced the number to 15 landed and 30 struck but backed off when the Eskimo whalers objected to this lower figure. Although Hopson's figure appeared to be agreeable to the IWC Technical Committee, it was later further reduced to the final figure of 12 landed and 18 struck. The whalers reluctantly agreed to accept the compromise position. The AEWC acceptance of the quota was contingent upon several conditions including the development of cooperative management in which AEWC regulations would be accepted by the federal government, further research on weaponry, AEWC participation in IWC decisions, and a commitment by the U.S. to seek full restoration of the harvest (Worl 1981: 16).

The whalers' attitude toward the outcome of the December, 1977 ICC meeting is summarized in the following quotation from the Arctic Coastal Zone Management Newsletter published by the North Slope Borough:

> "Thus, the IWC confirmed its claim to be able to regulate Native American subsistence whaling by United States citizens, something that it had been secretly urged to do since 1970 by an axis of U.S. civil servants and the Washington, D.C. conservationist lobby. This all happened in Tokyo on December 8, 1977, another day of infamy caused by Washington, D.C. beaurocrats [sic] who betrayed their Trust obligations to protect the constitutional rights of America's Inupiat community" (Arctic Coastal Zone Management Newsletter 12/77: 6).

With the establishment of the quota and the management system proposed by the AEWC now in place, the federal government (National Marine Fisheries Service) published regulations based on powers it claimed from the Whaling Convention Act of 1949 in April, 1978. With several relatively minor exceptions, the published regulations were congruent with those of the AEWC. The regulations further defined the allocation of landings and strikes among the nine whaling communities. The regulations also allowed for the transfer of strikes or landings between communities should one community be unable to utilize its alloted number. This was to be an important principle in the next year.

The AEWC did not legally object to these regulations since it had provisionally agreed to them contingent on the federal actions noted above. The AEWC further refined their own regulations and included as interim regulations for 1978 reference to the allocation of whales and strikes found in the federal regulations. The 1978 AEWC interim regulations also stipulated that "No whaling captain shall continue to hunt the Bowhead Whale after the quota set forth in S230.74 C.F.R. for his village of domicile is reached."

The 1978 Season. Having made the decision to live with the quota for one year, the AEWC had before it the monumental task of managing the hunt. There was strong feeling among a number of whalers that the compromise was wrong and that no one but the Eskimos had the right to regulate the bowhead hunt. Further, there was the problem of insuring that all the captains fully understood the new regime and that information could be rapidly disseminated to insure that no captains unknowingly violated the regulation of not hunting after the village quota had been reached. In Barrow, an epistemological dilemma arose. The Inupiat contended that "Ingutuks" (short, fat whales) were distinct from bowheads ("Ahgviks") and not covered by the ban (NOAA 1978:10) Barrow captains continued to hunt after their quota of three whales had been landed and subsequently landed an "Ingutuk." Recognizing the dilemma, the AEWC requested Richard Frank, the U.S. Commissioner, to visit Barrow to discuss the situation. Frank found that an honest disagreement about fact existed but indicated that all the whales were to be regarded as bowheads. Whaling ceased at Barrow following Frank's visit. Subsequently an unfilled quota from Kivalina via Point Hope was transferred to Barrow so that both that community as well as all Eskimo whalers

and the AEWC were in compliance with IWC quota at that time.

The 1979 Season. The framework for and attitude toward the 1979 bowhead hunt was set at the IWC meeting in June 1978 when the schedule for 1979 was established. In apparent recognition of the commitment to the Eskimo whalers, the initial United States position before the IWC was that the increased numbers discovered through the first major census effort the previous year (the estimated size of the bowhead population was increased from 1300 to 2250) would allow a 2% harvest or 45 whales. This was also the number which the AEWC scientific committee came up with. The IWC did not accept this proposal and instead imposed a quota of 18 whales landed or 27 struck. The AEWC Commissioners walked out of the meeting and when they determined that the U.S. government intended to abide by the new IWC quota system, Hopson and two other whalers, on behalf of the AEWC filed Hopson vs. Kreps (see above). The refusal to reinstate the aboriginal exemption was taken by the AEWC as a serious breach of faith on the part of both the IWC and the United States. Jake Adams, first Chairman of the AEWC said he felt personally betrayed by the action. The AEWC immediately repudiated the 1978 quota and made plans to set its own quota for a fall hunt in 1978. After the IWC quota had been taken, Barrow whalers made plans for a fall hunt, but bad weather precluded any further harvests in 1978. Food shortages that winter were especially acute in Barrow and Point Hope.

In the spring of 1979, the AEWC met to set its own quota of 39 spring and 6 fall whales. The intent of the whalers was to follow their own management system, but weather again limited the number of whales taken in both the spring and fall keeping the whalers below the IWC imposed and U.S. backed quota. A number of Inupiaq elders asserted that the reason for the failure of Barrow whalers to catch any in 1979 was due to their abrogation of spiritual norms by asserting how many whales they were going to catch. Traditional religious beliefs require humility in the hunt since the whale alone determines its fate and any whaler must be worthy in order for a whale to give itself to him. In the view of the elders, the norm of humility and dependence was violated resulting in the failure of the hunt (Worl 1981: 16).

The 1980 Season. In June, 1979 the IWC announced virtually the same quota, 18 landed or 26 struck, for 1980 as had been in effect in 1979. And again in the next spring, the AEWC met and set their quota at virtually the same level it had been for 1979. This year, however, the weather was much better and the opportunity for exceeding the IWC quota presented itself. It will be recalled that the federal government allocated landings and strikes to communities in its annual spring regulations. The purpose of this appears to have been to provide a further check on effort in addition to the total struck and landed quota since regulations specifically allow for transference of strikes or landings from one community to another. Barrow's quota for 1980 was set at 5 whales landed or 7 struck. In late June, Barrow whalers landed 2 additional whales, apparently at the direction

of AEWC leadership to follow the AEWC management plan. This constituted a violation of the IWC-imposed federal quota and prompted a telegram order from the National Marine Fishery Service to cease whaling. After some discussion, the AEWC leadership sent out the word to cease whaling again hoping that their compliance would result in a more favorable management regime.

It is not clear from the written materials available what the situation of landed and struck whales was at that time. The AEWC claims that even with the additional Barrow whales, the overall landed number of whales was 16. The position taken by the National Marine Fisheries Service, however, was that the village quota at Barrow of both landed and struck had been exceeded, and the overall number of strikes had also been exceeded. Subsequently during the fall season, the villages of Nuiqsut and Kaktovik also captured their allotted whales which meant that both the overall struck and landed federal quotas had been exceeded after the fall hunt. The whalers, however, were still well within the AEWC quota.

The National Marine Fisheries Service sent dossiers on the violations to the Attorney General of the United States who subsequently ordered a grand jury investigation, subpoenaing 5 whaling captains, several of whom were officers of the AEWC. Senator Stevens, the Department of the Interior, and the State of Alaska all objected to the criminal proceeding noting that less severe avenues of due process were available. The subpoenaed parties refused to testify before the grand jury in October and several of the subpoenas were dropped. Contempt orders were successfully obtained against the AEWC Chairman, Eugene Brower and an AEWC staff researcher. Eventually the investigation and the charges were dropped in April, 1981.

The conduct of the bowhead whale hunt in 1980 was exacerbated even further when the IWC, with U.S. acceptance, established a new regime which called for a quota of 45 landed or 65 strikes over the next three years. On average, this was a reduction of the annual quota from 18 landed to 15 landed. However, there were positive developments as well as the IWC began to contemplate a subsistence whaling regime with AEWC involvement. The AEWC Reference Manual regards 1980 as a "turning point" apparently due to the IWC establishing a committee to consider the distinction between commercial and subsistence whaling.

The 1981 Season. The spring of 1981 found the Eskimo whaling communities under extreme pressure due to the federal investigation. At the annual AEWC convention in Barrow, whalers and their wives announced their intentions to persist in the hunt and to go to jail if necessary. For reasons not completely clear, the federal government chose to break the deadlock and invited AEWC officers to Washington in March. These discussions resulted in a cooperative agreement between NOAA and AEWC for the management of the hunt. The agreement itself states that "The AEWC...will manage the 1981 and 1982 whale hunt." Elsewhere the agreement states that "If the AEWC does not meet the conditions of this

agreement, or the Management Plan, NOAA may withdraw the authority of the AWEC for management and will manage the bowhead addition." The agreement also specifies that its legitimacy derives from "authorities governing management of living marine resources, including but not limited to the Marine Mammal Protection Act of 1972." The Management Plan jointly agreed to required modification of both the AEWC plan for harvest as well as the IWC-mandated federal quota for the harvest. The compromise quota reached allowed 32 strikes, an increase, although it still specified that only 17 could be landed without penalty. A major concession by the federal government was its agreement that all 32 strikes could be landed with the provision for a $1,000 fine for each whale over the 17 legally allowed by the quota. The agreement was signed on March 25, 1981 and constituted an "historic occasion" in the eyes of most of the participants. One AEWC document stated that it was a cooperative agreement "recognizing Eskimos' right to self-regulation" by the United States government, a contention certain to be denied by the federal government. An additional part of the cooperative agreement entered apparently included the understanding that the federal government would drop the investigation and charges stemming from the 1980 hunt.

Although this new agreement provided substantial national and international legitimacy to the AEWC, it was not bought without cost. The levels of harvests and strikes which the agreement bound the AEWC to enforce were still perceived as unnecessary and damaging by many. It made the AEWC responsible for allocating the permitted strikes among the villages, a task that has become increasingly divisive. It also violated the principle of sovereign as opposed to delegated self-regulation which many whalers and crewmen supported. The 1981 whaling season produced several violations of the cooperative management plan and so the AEWC held their first enforcement hearings in August.

The 1982 Season. With the vigor of its new-found legitimacy, the AEWC negotiated an extension of the cooperative agreement based on successful implementation in 1981. The new agreement called for a minimum of 19 strikes per year over the next 5 years with annual negotiations to determine the exact level. It also eliminated criminal penalties for violation of the management plan. Perhaps most importantly, the new agreement included an amendment which stated that "Nothing in this Agreement shall be construed to support or contradict the position of either party regarding the jurisdiction of the International Convention for the Regulation of Whaling, 1946, or the Whaling Convention Act of 1949 with respect to aboriginal subsistence whaling by Alaskan Eskimos." It sponsored a conference on the biology of the bowhead whale and coordinated its research efforts by delegating its research function to the North Slope Borough for interaction with international and federal agencies.

In 1981 the AEWC had transformed itself from an association to a non-profit corporation in order to raise funds to finance its legal, educational, and scientific activities. In 1982 it

reverted to association status and in so doing obtained reauthorization of delegation of tribal authority to regulate from the Indian Reorganization Act (IRA) councils of four villages (Gambell, Savoonga, Wales, Kivalina) and the Inupiaq Community of the Arctic Slope (representing the 5 North Slope communities). Violations by several whalers were again dealt with in enforcement hearings and fines were levied.

The 1983 Season. The rollover agreement established by the IWC in July, 1980 was essentially pre-empted by the new federal-AEWC cooperative management agreement. Consequently, a new negotiation was taken up with the IWC by the United States with the AEWC as a party in the delegation. Furthermore, the IWC established a separate committee for the review and recommendation of subsistence apart from commercial whaling. Bolstered by new census data which showed the bowhead population to be at least 3,800 whales, the joint U.S./A.E.W.C. position was to seek an annual bowhead catch quota of 35 whales. The IWC instead established a two-year regime of 45 strikes of which 27 could be used in 1984. This left only 16 for 1985, but the AEWC accepted this position on the likelihood of being able to increase the level through amendment in 1984 when better data would, in their view, likely indicate even greater numbers of bowheads than previous counts had shown. This optimism should certainly be tempered by the fact that the overwhelming preponderance of opinion of IWC nations was to impose a sharply reduced quota of 10 whales annually on the Eskimos. Only strategic lobbying was able to obtain this level of support.

The necessity for seeking an increase in the number of allotted strikes did not arise, however, since only 18 strikes were used in 1983.

The 1984 Season. Of the two-year quota of 45 strikes, 27 remained at the beginning of 1984. As of mid-July, the National Marine Fisheries Service reported that 11 whales had been landed and an additional 11 had been struck leaving but 5 five strikes for the fall season.

The IWC meeting did not take up the question of bowhead whaling at its summer meeting. This would seem to imply that at the present time there is no quota for 1985.

IWC Aborginal Whaling Regime. The AEWC appears to regard the IWC's adoption of a separate regime for subsistence whaling as positive movement. The schedule amendment proposed for regulation of subsistence whaling contains the following principle. Subsistence whaling to satisfy aboriginal subsistence need shall be permitted on stocks below maximum sustained-yield (MSY) levels so long as they are set at levels which will allow whale stocks to move to the MSY level. Thus, a rebuilding program is required. An additional condition is that the Commission shall also establish "minimum stock levels below which whales shall not be taken." Although the currently operating census figure of 3,800 and the presently accepted recruitment rate figure of 7%

would appear to protect Alaskan Eskimo whaling for the present, should either of those figures be revised in the light of new data, the potential exists for the IWC to once again declare a complete ban. Since the validity of the scientific data on which IWC actions have been taken in the past has been a point of significant disagreement, the AEWC's involvement in determining and validating those numbers would appear to be crucial to continuing the relatively smooth operation of the present regime.

THE HOOPER BAY WATERFOWL PLAN

Background. The harvesting of migratory waterfowl proper and their eggs is a traditional subsistence activity of most Alaskan Natives. The activity is often of major importance to the health of Alaskan Natives because the harvesting of migratory waterfowl is typically conducted in the spring when the birds return to their nesting areas in various parts of the state. This is traditionally a time of scarcity in Alaskan Native subsistence economies and waterfowl provide the first fresh food of the spring. Although all Alaskan Native groups harvested both eggs and the waterfowl proper, the availability differed significantly from one area to another. Major nesting areas for the waterfowl are found in the vast coastal plain of the Yukon-Kuskokwim delta area, on the North Slope, and in the Yukon Flats region. It is in the first two of these areas that the continued practice of traditional subsistence harvesting has been threatened by recent attempts to impose federal regulations.

The first federal activity to address Alaskan Natives harvest of migratory waterfowl occurred in 1918 with the passage of the Migratory Bird Treaty Act (MBTA) implementing the migratory bird treaties with Canada and Great Britain. It mandates a closed season on bird or egg harvesting from March 10 until September 1, but does contain an exemption for Alaskan Natives to harvest certain species for subsistence purposes during the closed season. However, the provision was not extended to cranes, geese, migratory ducks, and swans which were in fact the main species used for food. In 1925, the federal government established the Alaska Game Commission and additionally provided that no regulation shall prohibit any Indian or Eskimo to take animals during closed season when in "absolute need of food and other food is not available." It is on the interpretation of the phrase "absolute need of food" that arguments over the intent of the exemption result.

Enforcement of the seasonal closure on protected species from Alaskan Native harvesting was not attempted until after World War II when the Biological Survey of the Department of Agriculture occasionally hired enforcement officers who were known to confiscate prohibited birds and in some cases boats, nets, and guns. Such instances were rare however primarily due to realization by employees of the Biological Survey that strict enforcement efforts would be met with defiance and an atmosphere of extreme hostility would result. Furthermore, it was not possible to

effectively enforce the ban. Nevertheless, the law stayed on the books making activities engaged in by Alaskan Natives for hundreds of years illegal when restrictive interpretations of the exempting language were used. The pattern of erratic enforcement created confusion and resentment in village populations.

Following Alaskan statehood in 1959 new, more vigorous attempts at enforcement were undertaken by Federal agents. The State was also delegated the authority under the terms of the Statehood act to adopt hunting regulations and attempted to use that authority to regulate subsistence waterfowl hunting. However, according to one interpretation presently being litigated between the state and AVCP, the Statehood Act did not repeal the 1925 exemption of hunting for subsistence uses. Several citations of villagers in southwestern Alaska occurred in 1960, and on the North Slope, two days after State Representative John Nusungingya was arrested, 138 other men shot ducks and presented themselves to Federal game wardens for arrest (Arnold 1976: 95). The charges were dropped the next year. In 1961 Federal officials toured villages throughout the areas of extensive waterfowl harvesting (the North Slope and the Yukon-Kuskokwim delta) and informed the residents that the prohibition on spring harvests would be strictly enforced and that violations would result in arrest and prosecution. Fish and Wildlife Service planes were used to patrol and were fired upon on several occasions. Due to the hostility and widespread opposition which was occurring, the Fish and Wildlife Service backed off its strict enforcement regime and adopted a more conciliatory policy including a "subsistence permit" mechanism for people in need to harvest the prohibited species legally. The legal rationale used to justify this course of action was a reading of the absolute need phrase in a broad fashion.

New migratory waterfowl treaties with Japan (1974) and the Soviet Union (1976) brought significant changes in Federal legislative authority over Alaskan Native migratory waterfowl harvesting. The Japanese treaty represented a liberalizing trend in that the exemption for Eskimos and Indians required simply that birds or eggs be used for their own food and clothing. The Soviet treaty, however, introduced a major new element into the picture. The MBTA provided no authority to any Federal agency to set restrictions on the exempted Alaskan Native harvest. Language in the Soviet Treaty required amendments to the MBTA in 1978 which authorize the Secretary of the Interior to issue regulations so that "indigenous inhabitants in the State of Alaska shall be permitted" to "meet their own nutritional and essential needs." The amendment stipulates that the Secretary of Interior will determine what those needs are. Of note is the lack of reference to social, cultural, or religious needs since it is unlikely that, absent specific language, they would be allowed to fall under the "essential" category. A federal permit is required for any taking of migratory waterfowl. In addition, the Secretary is allowed to establish seasons of use which is a clear erosion of an absolute right to harvest as needed by Alaskan Natives. The federal legislation also provides that State laws

not inconsistent with Federal law can be applied. Finally, legislative history of the amendments reveal that the term "indigenous inhabitants" was not intended to apply only to Alaskan Natives but to non-Natives who have a subsistence need to harvest migratory birds. Pending amendments take the additional step of attempting to limit subsistence harvests to present levels. Taken as a whole, the amendments (and pending additions) constitute a major erosion of Alaskan Native rights to harvest waterfowl. "The United States seeks to enforce its regulations without specific protection for Alaska Natives, leaving to the discretion of federal officials decisions which are rightly left for Native people" (Case and Stay 1983: 7-17).

Beginning about 1975, the waterfowl enforcement issue emerged again as the State attempted to forbid subsistence harvests for any reason including dire need. The State successfully arrested and convicted a southwestern Alaskan Native villager in 1975 for taking birds 6 days before the season opening. In 1976 a more aggressive effort at enforcement by State Wildlife Protection Officers resulted in citations being issued to individual hunters in 5 different villagers. Near-violent confrontation occurred with younger hunters in the village of Quinhagak which was averted only when village elders halted the young men's hunting. Nunam Kitlutsisti, the organization empowered to protect the environment and the hunting and fishing rights of Alaskan Natives in the Yukon-Kuskokwim region of the State, contended that the citations were violations of State regulations and published statements that no harassment of people hunting birds for "need" would occur. Further, the Division of Fish and Wildlife Protection had an agreement with the Association of Village Council Presidents (AVCP) that the village councils would determine to whom the "need" criteria would be applied if arrests were made. This was not done. In 1977, AVCP suggested the State adopt a "subsistence permit" system similar to the Fish and Wildlife system so that a villager could be assured that his hunting was legal prior to the beginning of the season. The Attorney General apparently rejected the proposal on the grounds that it was illegal and the Fish and Wildlife Service program was as well. At present the State defers to Federal action, although they are unsatisfied with the policy of non-enforcement and their perception of Federal law.

The Current Situation. The Fish and Wildlife regime of "subsistence permits" and pragmatic enforcement has come under fire in the last several years by a coalition of outside (primarily Californian) sportsmen's groups who have noted declines in the availability to them of certain migratory waterfowl and have attributed this to Alaskan Native harvesting. Nunam Kitlusisti have claimed that the declines are due to habitat losses in California due to development activities and to overharvesting by the sports hunters. Censuses of waterfowl numbers, in Alaska conducted by the Fish and Wildlife Service, presented at a workshop in Anchorage in February 1983 revealed declines in some species with major concern being expressed about black brants, Canadian cackling and whitefronted geese. According to a 1980 Fish and

Wildlife waterfowl harvest census, these species accounted for between 25 and 30% of Alaskan Native migratory waterfowl harvests in the Yukon-Kuskokwim area.

In July, the Fish and Wildlife Service and the Alaska Department of Fish and Game (Subsistence and Game Divisions) met to formulate a plan of action to protect the threatened species by reducing harvest levels. They agreed that enforcement in the face of noncooperation on the part of the villages was not possible. Pragmatically it could not be accomplished without extraordinary expense. It would undermine attempts to gain rapport on other fish and game management issues. It could be dangerous to the health and safety of lives on both sides. It was unfair to impose unilateral reductions on villagers without reductions on other sporthunting groups. The upshot of this discussion was to approach AVCP and Nunam Kitlutsisti to seek voluntary reductions through self-enforcement. AVCP and NK agreed to further discussions on the matter but made as a condition of their involvement direct discussions with Californian and Mexican officials and groups who were either resource users or habitat managers of the areas where the three species winter.

In the latter part of July, at the Pacific Flyway Council meeting, various sport hunting groups threatened to bring a lawsuit enjoining the State of Alaska and the Fish and Wildlife to strictly enforce the terms of the MBTA.

In August, a meeting was held in Bethel attended by representatives from California sports hunting groups, the California Department of Fish and Game, ADFG, FWS, NK, and AVCP as well as representatives from 30 villages in the Yukon-Kuskokwim area. At the meeting it was proposed that both major user groups (Alaskan Native villagers and California sport hunters) engage in voluntary harvest reductions. The villagers also suggested that the California groups organize to protect the birds winter habitat in the Sacramento Valley which was being degraded by development activities. The California groups suggested that the Alaskan Native villagers purchase duck stamps, the proceeds from which would be used to purchase more habitat lands. At this meeting the AVCP formed, as a subsidiary organization, the Waterfowl Conservation Committee composed of the NK board of directors plus several other individuals knowledgeable about waterfowl. Plans were laid for further meetings to develop a mutually agreeable system of harvest reduction.

In October, a Bethel meeting of the Alaskan parties was held to discuss options which Fish and Wildlife had developed to stop the declines of the geese species. These proposals were discussed later in October at the AVCP convention. In formulating their position, AVCP determined that any plan developed would be between their organization and other parties. They rejected piecemeal proposals for dealing with individual villages or only with those villages in the delta. The rationale for this was that AVCP was the "tribal" governing body in whom was vested the authority to regulate fish and wildlife, and it was this body

which had the authority to assume regional governance responsibility. AVCP in turn delegated responsibility at the local level either to traditional or IRA councils, not to municipal entities.

In November and January meetings were held in Chevak and Sacramento for direct negotiations between the Alaskan and Californian groups. A tentative plan consisting of a set of proposals was reached with each organization authorized to return to their respective membership to obtain assent. To the disappointment of AVCP and NK, Mexican parties were never brought into the discussions. In January, an Information and Education Task Force was established among the Alaskan parties (WCC, ADFG, FWS) to develop a program for informing the villagers of the plan.

On January 26-27, 1984 in Hooper Bay, a special AVCP convention of village representatives was held for the purpose of refining and ratifying the plan. Although there was some initial disagreement from several villages based on a misunderstanding, eventually this was cleared up. A village-by-village vote was taken which resulted in unanimous acceptance. No votes were taken in individual villages on terms of the plan.

AVCP and NK attached an additional condition to their ultimate signing of the plan which was that a public letter be circulated under the signatures of the Fish and Wildlife Service and the Alaska Department of Fish and Game which would state that the villagers were not responsible for the declines in the species. They felt that the overwhelming preponderance of media attention and agency opinion had unfairly and incorrectly labeled Natives as the culprits. Although several draft letters from the agencies have been submitted to AVCP and NK, all have been rejected to date as unsatisfactory. The upshot is that the plan has yet to be signed by the AVCP as of October, 1984 even though it was implemented during the 1984 season.

Terms of the Hooper Bay Waterfowl Plan. The Hooper Bay Plan calls for voluntary reductions in hunting and egg collecting on Canadian cackler, black brant, and whitefronted geese by sports and subsistence hunters. The duration of the agreement is for one year. Cacklers receive the greatest protection since no hunting or egging is allowed on this specie by either sports or subsistence hunters. For black brants and whitefronts, terms are more liberal. Sport hunters are required to reduce their harvests by 50% while subsistence hunters are allowed in the spring only prior to nesting, in the fall after birds are on the wing with no hunting allowed during nesting, rearing or molting periods. In addition, no egging on these species is to be allowed. Subsistence hunting provisions also include the provision that traditional hunting and egging are to resume when certain population objectives of the species are met, and a provision allowing subsistence taking without penalty "in dire emergency."

Additional understandings about "issues of concern" were addressed including data collection, habitat protection, involvement of Mexico in the plan, information dissemination,

involvement of the WCC in all FWS migratory waterfowl planning, FWS refraining from disturbing geese, and development of a letter stating that subsistence hunting is not to blame for the declines. One important and noteworthy element of the agreement written for concurrence under the signature of the regional director of FWS by the President of AVCP, and the Commissioners of Fish and Game for the States of Alaska and California is use of the term "tribal councils" to refer to the traditional village governments in the Yup'ik communities.

Monitoring, Verification, and Enforcement in the Hooper Bay Plan. Monitoring of harvests is to be accomplished by a combination of FWS surveys in 11 villages, AVCP harvest calendars (anonymous) in another 16 villages, and general observation by biologists in 11 field camps. Native subsistence harvest monitors were to be hired in each community. An intensive information and education outreach program was conducted in the spring by a joint FWS, ADFG, and AVCP task force to inform villagers of the provisions of the agreement. It was intended that "peer pressure" would be used to accomplish voluntary compliance. If violations were observed by any party (Native subsistence hunter, Fish and Wildlife Protection Officer, AVCP President, or FWS biologist) they were to be reported to FWS who would in turn inform AVCP. AVCP and FWS would jointly request local village authorities (tribal) to correct these situations. This was accomplished either by a local meeting or by an addi-tional information and education session. If village authorities are unable to correct the situation, such cases will be referred to a council composed of the AVCP President, FWS Regional Director, and the Commissioner of ADFG for "discussion and resolution." Law enforcement proceedings are to be used only as a last resort.

Results. Subsistence Division personnel indicated that it appeared that the program had worked well. Based on surveys and harvest calendars, it was estimated that harvests of the protected species had dropped significantly. Anonymous harvest calendars did reveal some harvesting of the proscribed cacklers which initiated a contact with the village council from which the calendars had come. That contact revealed that some of the reported cacklers were, in fact, nearly identical geese called taveners. The nearly identical appearance of the two species made it difficult to distinguish between the two species when on the wing. AVCP and FWS have not completed their analysis of the data nor assessment of the effectiveness of the program to date. Review of program results and action on the other "issues of concern" addressed in the plan this fall and winter will provide the basis for AVCP's decision whether or not to seek an extension of the plan.

Court Suit. During the spring, two Alaskan-based sportsmen's groups, the Alaska Fish and Wildlife Federation and Outdoor Council, Inc. and Alaska Fish and Wildlife Conservation Fund, Inc., filed suit in federal court against the Commissioner of Fish and Game and the Director of the Fish and Wildlife Service. The plaintiffs sought an injunction to prevent the

agreement from taking effect and to enjoin the two agencies to enforce a ban on subsistence hunting of the three species plus Emperor geese. The suit was joined by several individuals, AVCP, and AFN on behalf of Native interests. The injunction was not granted, and the case is currently pending.

ESKIMO WALRUS COMMISSION

Background. The Pacific walrus has traditionally been the major resource used for subsistence by the Siberian Yup'ik population inhabiting St. Lawrence Island as well as the Inupiaq inhabitants of King, Sledge, and the Diomede Islands in the vicinity of the Bering Straits. It has also traditionally been a secondary resource of great importance to communities on the western coast from the Seward Peninsula to Barrow. Finally, occasional use of walrus is also traditional among coastal mainland Yup'ik populations from Norton Sound to Bristol Bay.

As noted above, the Marine Mammal Protection Act of 1972 provided a blanket exemption to Alaskan Native peoples for the harvest of walrus, among other species, for subsistence uses including barter in a nonwasteful fashion as long as the species was not determined to be "depleted" and endangered by Alaskan Native harvests. The act included a provision for the State to assume management of the one, several, or all marine mammals provided they assume responsibilities specified in the act. The State of Alaska assumed interim responsibility for walrus management in 1976 and immediately imposed regulations on Alaskan Native harvesting. They established harvest quotas for communities which resulted in restrictions on several communities whose quota was met. Other communities who had not taken their quota were allowed to continue hunting and this was not perceived to be fair. Further the state closed traditional harvesting areas in Bristol Bay used by the residents of the Yup'ik village of Togiak. These quotas and closures caused great resentment among Alaskan Native walrus hunters particularly since there was no biological rationale as the walrus population was healthy. This combination of factors provided the catalyst for political mobilization on several fronts, one of which was formation of the EWC. The establishment of the AEWC in 1977 provided a model for the walrus hunters and several of the founders of the walrus commission had participated in the forming of the AEWC providing them with useful experience. Residents of St. Lawrence Island and the North Slope communities share patterns of bowhead whale and walrus harvests although they differ in the relative importance of the two species. Unlike the AEWC and the Hooper Bay Plan, the EWC has not to date had village tribal authorities delegate regulatory powers to it.

Formation of the EWC. In August 1978, a year after the formation of the AEWC, walrus hunters from the Bering Straits communities of Gambell, Savoonga, Nome, Wales, Shishmaref, and Diomede gathered in Gambell and formed the Eskimo Walrus Commission. The purpose for forming the EWC was to "show that

the...walrus hunting communities can responsibly satisfy their needs for walrus in a manner consistent with proper walrus management." By-laws of the organization were drafted at that time.

Members of the EWC had concerns in a number of areas. A major goal was to establish a formal Native presence in the management of walrus which had been missing up until this point. This meant involvement in the collection and analysis of data and in the formulation of walrus management plans. A second major concern was for the biological health of the species upon which they depended. Rapid increases in the number of walrus from 1976 to 1979 gave rise to a concern that the stock might collapse causing significant hardship in the walrus hunting communities. In the Eskimo view, management was not addressing this serious matter. Another concern was the continuing media attention to claims that Eskimos were wastefully hunting walrus for ivory to sell, an illegal activity under the MMPA. Members of the commission wished to educate the public that such incidents were extremely rare and repudiated by the overwhelming majority of subsistence walrus hunters. Further they wished to establish a presence and atmosphere which clearly indicated to Eskimo walrus hunters that harvesting only for sale of ivory was unacceptable.

By the end of 1978, a number of additional communities joined the EWC from Norton Sound, Nunivak Island, and south to Bristol Bay. At the present time, the following villages, governments, and associations hold membership in the EWC: Gambell, Savoonga, Shishmareff, King Island, Nome, Kwigillingok, Togiak, Mekoryuk, Point Hope, Wainwright, Brevig Mission, Kivalina, North Slope Borough, Maanilaq, and AVCP. Members of the commission are appointed in several ways; in communities with boat captains associations, the boat captains elect their commissioner. In other communities they are appointed either by the traditional or IRA village council (tribal) or by the municipality. The governing bodies of associations and governments appoint their member.

Activities of the EWC. The EWC initiated a number of educational and scientific activities, including contacts with the Marine Mammal Commission and the U.S. Fish and Wildlife Service to obtain funding to do baseline studies on walrus harvests in the communities and to monitor and report annual harvest levels. These efforts have apparently been highly satisfactory, providing data to the Fish and Wildlife Service which might otherwise be unavailable.

Educational efforts were begun in the villages to insure that harvesting practices, levels, and uses would follow traditional aims. Although some progress has been made, the EWC has not been able to attain the degree of compliance with traditional, subsistence harvesting practices that they would like. There appears to be significant difference of opinion between older and younger hunters on the harvesting and use question.

In 1980, the Walrus Technical Committee was founded to provide scientific advice to the Commission. The committee was composed of walrus scientists from state and federal agencies and universities. In addition to advising the EWC, the Walrus Technical Committee also reports to the Marine Mammal Commission.

An important event in 1981 provides evidence on the orientation and functioning of the EWC. Federal agents acting on reports from Fish and Wildlife Service personnel and State Wildlife Protection officers seized $450,000 worth of taw ivory and "implicated 20 persons in 5 states in the illegal trade." The chairman of the Eskimo Walrus Commission issued a statement accusing the Fish and Wildlife Service of a sting-type operation in which high prices offered by a Native purchaser were used to entrap individuals who would normally not sell ivory. Although the chairman, Jonah Tokienna, went on to support the arrests on the grounds that it would eliminate illegal competition in the ivory carving trade, the EWC criticized the FWS for their lack of positive presence in walrus management and their failure to work with the EWC. A cooperative effort with the EWC, the statement noted, would have resulted in identification of others known to illegally deal in ivory. The statement included recommendations that the FWS "should have identified, uniformed personnel that should have an honest relationship with the Native communities, instead of 'cloak and dagger' tactics or harassment" (Tundra Times, 2/11/81).

Management Plan. In 1984 the EWC prepared its management plan for walrus. It was adopted for a number of purposes including "encouraging" self-regulation of walrus hunting by the "people who use and need walrus the most." Other purposes include involvement in decision-making and research, representation of walrus hunting communities in the review of development activities (OCS), seeking methods to increase utilization of walrus products, and responding to negative publicity about walrus hunting.

The plan is quite comprehensive in scope. It addresses the biological status and health of the walrus population and proposes various protections for the animal and its habitat from harassment, pollution, and unnecessary harvest. It provides for the subsistence take of walrus as the priority but also provides for a recreational or sport hunt, but only after subsistence requirements have been met and under strict guidelines. Marine mammal guiding regulations and eligibility criteria for guides required for the recreational hunt are elaborated. Guides are required to be Native, to be residents of coastal villages in the walrus area and to have engaged in subsistence hunting for the walrus for 10 years among other things. With regard to harvest levels, the plan says that no community quotas should be set but rather "flexible" harvest levels should be set based on the biological status of the stock. Required equipment for harvesting walrus is established including the requirement that each boat hunting walrus must have two harpoons with lines and floats. In communities with boat captains asso-

ciations, there may be additional regulations concerning harvesting techniques, property rights, and other matters of local importance.

Despite its scope, the plan is notably absent certain provisions for self-regulation. It does not authorize the Commission to monitor and enforce its harvesting regime through presentations of evidence, and determination of facts. It is not empowered to impose any sanctions on hunters determined to have violated its regulations. Under a section entitled "Conformity", "concerns" are to be directed by mail to the walrus commission office in Nome. The section emphasizes education and information to hunters about the need for compliance. Other sections which might be used to expand its enforcement authority are sections 6.3 (a) and (b) which allow the Commission to act as "enforcement agent for any governmental entity authorized to enforce these regulations" and which empowers the EWC to establish additional interim regulations. To date, however, no enforcement activities have been undertaken.

One of the most controversial aspects of walrus hunting is the question of whether or not non-Native hunting, either recreational or commercial, and commercial hunting should be allowed. Positions on these issues vary both between communities and within communities. Within communities opinion often differs between younger and older generations. The younger generation appears to support both commercial hunting and non-Native hunting as they are perceived as providing opportunities for cash necessary for the young to maintain their village residence. Older men tend to oppose both viewing them as endangering the resource, the subsistence way of life, and ultimately the existence of the villages.

The EWC has supported non-Native hunting but only with Native guides. They have not supported strictly commercial hunting since sufficient data is not available to make a determination about the latter. They proposed legislation for the licensing of marine mammal guides with an eye toward that eventual possibility. In keeping with their management plan, the bill calls for designation of guiding areas and requires, among other things, that the licensed guide be a resident of the area and have subsistence hunted the species for at least ten years. A law was passed but did not include a requirement for establishing local areas or a requirement for residency in the area. The former probably could have been accommodated in the legislation however the latter was likely deemed unconstitutional and therefore excluded.

BELUGA HUNTING IN THE NANA REGION

Background. In a number of coastal areas in western Alaska, the small white whale known as beluga or belukha is an important species used for subsistence. Based on research by Feldman (In Press), of various Alaskan Natives groups who harvest beluga, the species is of greatest importance to peoples living around Kotze-

bue Sound who had poor access to bowhead and walrus populations which tend to stay in the more open waters of the Bering and Chukchi Sea. Historically beluga have tended to appear in large herds in two major locations in Kotzebue Sound, Eschscholtz Bay and Shesaulik Bay. The groups who harvested the beluga in these two locations were distinct and the methods and rules for the harvest were also different. In the recent past, people from Kotzebue, the lower Kobuk River, and the northern shore of Kotzebue Sound have tended to hunt at Shesaulik Spit on the north side. People from the north side of the Seward Peninsula, particularly the villages of Buckland and Deering, have tended to hunt at Elephant Point in Eschscholtz Bay in the southeastern corner of Kotzebue Sound.

At the present time, Federal management authority for belugas is vested in the National Marine Fisheries Service which has little presence or actual involvement in management of beluga anywhere in Alaska, including Kotzebue Sound.

Recent Developments. In the 1960s and 1970s, the population of Kotzebue expanded rapidly. The development of commercial fishing for chum salmon increased the number of outboard-powered boats and increased horsepower in the boats expanded the range of the Kotzebue hunters. Shesaulik Spit is in relatively close proximity to Kotzebue by boat and increased activity in the area by Kotzebue-based boats is evident. During the period under discussion, the annual appearance of beluga at Shesaulik Spit has changed. The numbers of beluga which appear are much reduced and in some years none have actually entered the bay. There is no evidence of declines due to environmental factors or overharvesting consequently other factors more specific to Shesaulik Spit are thought to be responsible. In particular, increased boat activity and noise appear to be a factors in the decline.

At the same time, the population appearing at Eschscholtz Bay has remained stable and the Inupiaq population hunting the belugas has also stayed relatively stable. However, since the mid-1970s, hunters from Kotzebue who in the past typically went to Shesaulik Spit for beluga have been coming in ever-increasing numbers to Eschscholtz Bay. This has increased the competition for the whales and has disrupted the efforts of Deering and Buckland hunters to prosecute the hunt in the cooperative manner which they use. Especially disjunctive are styles of pursuit and property claims to the whales. Kotzebue Sound methods appear to be more individualistic with property rights belonging to the captain whose boat makes the first strike. Deering and Buckland hunters use a cooperative hunting technique involving the slow driving of one or several belugas toward shore for harvesting. Property rights are established during the driving process when the pursued whales are separated from the main school. The actual striking of the whale establishes additional rights but whales being driven are the property of those driving them until the whales escape.

These divergent approaches to harvesting the beluga have led to considerable acrimony between the hunters in recent years. In addition, the Deering and Buckland hunters are afraid that the increasing numbers of hunters from Kotzebue will eventually drive the beluga away from Elephant Point just as it did from Shesaulik Spit. They object not only to the increasing numbers, but more importantly to the behavior of some of the Kotzebue hunters who, they feel, race noisily around the bay in their boats upsetting the belugas and making them skittish and less easily driven. Furthermore, Deering and Buckland hunters were especially concerned about harassment of mothers with their offspring on the calving grounds feeling that such disruption would force the beluga to seek a new location to give birth to their young. These concerns finally led to discussions among leaders of the Deering-Buckaland group to establish a hunting regime that would insure the continued return of the beluga to Eschscholtz Bay.

The position of the Kotzebue hunters has been that they too have a right to hunt the belugas in Eschscholtz Bay and that their use of boats for hunting is no more disruptive to the belugas than that of the Buckland and Deering hunters. They also contend that Buckland and Deering hunters worsen the situation by collecting wood during the time they are at Elephant Point for beluga hunting. This additional vessel activity, which Kotzebue hunters do not participate in, is seen by the Kotzebue group to be a serious problem.

Both groups agree that something must be done since harvests of beluga in Escholtz Bay have also begun to decline. In 1979, only seven belugas were harvested. This precipitated a subsistence crisis in Buckland forcing villagers to request a special season and quota of caribou in order to replace the beluga they normally take. What precisely is to be done, however, has remained a difficult problem to solve.

Management Rules for the Beluga Hunt at Eschscholtz Bay. In order to insure the continuance of the hunt, a set of formal rules were developed by the senior hunters from Buckland and Deering. The rules were first promulgated in 1980 or 1981 and distributed on paper to the hunters who came to Elephant Point. Some Kotzebue hunters resented the rules and were not responsive to them, but the majority and the Kotzebue IRA informally agreed to abide by the unilaterally developed Buckland-Deering rules. Nevertheless, little progress was made in controlling the hunt. The beluga harvest again was very low with only 39 whales being taken (typically the harvest is 100-150) in 1983 and the situation on the hunting ground improved very little.

IRA Involvement. On May 28, 1984 a meeting was held in Buckland with representatives and hunters from Kotzebue, Deering and Buckland in attendance. The IRA forum was used to discuss what to do about the deteriorating situation in Eschscholtz Bay. It was decided to draft a list of rules and use the IRA representatives as information agents to inform and educate the hunters about them. The rules were published in the June, 1984

edition of Northwest Arctic Nuna, the regional newspaper.

Eight rules were established which beluga hunters were asked to read "carefully." It was not indicated that they would be enforced or that any actions would be taken against those who violated them. However, the spokesman for Buckland hunters was quoted as follows: "We are making these rules so people will follow them, and everyone will have more success in hunting." Rules addressed boating and noise problems, defined camping locations, urged continuance of "Eskimo tradition of not bothering with another hunter's beluga" (but it did not define the rules to determine when a beluga became someone's), urged hunters to follow appointed leaders and captains and obey all directions, required the burning of wastes and leftovers from beluga and prohibited dumping them in the bay, urged communications with the main camp at Elephant Point prior to hunting and urged hunters not to bring alcohol or drugs to the Point because "We do not wish to see any more fatal accidents."

Although IRA representatives were involved in the discussion of the rules and are appointed as sources of information, it is not clear if each of the affected community's IRA's passed the rules. Moreover it is not clear that any greater degree of success in controlling behavior detrimental to the hunt was accomplished in 1984 over previous years. The recent consolidation of the NANA area IRAs into a single body may provide the opportunity for further evolution of self-regulation of beluga hunting in Kotzebue Sound.

The beluga case is an example of conflicts which can arise between Native groups over access and use to resources. Mechanisms need to be established to work out these disagreements in Native institutions to insure that Native management over resources used for subsistence is maintained.

INTERNATIONAL PORCUPINE CARIBOU COMMISSION

Background. The vast region from the Colville River in Alaska to the Mackenzie River in the Yukon Territory is the home of the Porcupine caribou herd presently numbering in excess of 100,000 animals. This herd has been a major (if not the primary) resource for subsistence use of a number of Kutchin Athabaskan groups in the Yukon and Alaska and for Inuit and Inupiat groups in Yukon and Alaska as well. In recent times the populations with the greatest involvement with and dependence on the Porcupine herd are found in the communities of Fort Yukon, Arctic Village, Venetie, and Kaktovik in Alaska, and Old Crow in the Yukon.

In Alaska, the Arctic Wildlife Refuge in the northeastern corner of the state encompasses the majority of Alaskan territory which the Porcupine caribou herd uses. This jurisdiction was established by President Eisenhower in 1960 following years of effort by the Wilderness Society to have it created. The determination of the Wilderness Society derived in substantial

part from studies done by Olaus Murie, noted conservationist, and the National Park Service in the early 1950s which identified the uniques values of the area. In the mid-1960s, efforts were begun on the Canadian side to create a co-terminous reserve on the Yukon side and establish an international reserve. Both Canadian and Alaskan Natives played a role in these efforts through the sharing of their detailed knowledge of the area with western scientists and their support for habitat protection for the herd.

Initiatives in the late 1970s. Efforts on the Canadian side stalled until the Berger Commission inquiry in the mid-1970s which resulted in the Berger report recommending, among other things, establishment of a wildlife preserve in the northern Yukon territory to protect the herd, its habitat and the subsistence harvests of the indigenous hunters. Canadian federal officials became interested in this proposal particularly as it became linked to the land claims issue in the Yukon territory. In July 1978 the minister of Environment and the minister of Indian and Northern Development announced the suspension of mineral entry and oil and gas exploration in a large area of the northern Yukon in order to provide for the conservation of the herd. At the same time, they called for negotiations with the United States to establish understandings for the protection of the herd.

In Alaska, efforts to establish an international treaty to protect the herd began in earnest in the late 1970s when a proposal to open calving grounds appeared in a draft of a U.S. House of Representatives Interior Committee proposal for settlement of the D-2. At this time, the Athabascan communities joined together to oppose the proposal and the Inupiaq community of Kaktovik, without North Slope Borough involvement, presented parallel opposition. At this juncture, the Athabascan and Inupiat initiatives were uncoordinated and unintegrated. Representatives of the groups traveled to Washington, D.C. in late 1978 to testify in opposition to the proposal to open the Arctic Wildlife Refuge for oil and gas leasing. It was from this threat and the growth of concern on the Canadian side that Native interest in a treaty establishing an international commission to protect the herd was stimulated.

Negotiations were begun in late 1978 between the U.S. and Canada when Secretary of the Interior Andrus met in Ottawa with the Canadian Ministers on the issue. The Alaskan Native groups sent a telegram to Andrus requesting to be a party to the negotiations. The primary concerns of the Native leadership were in maintaining herd numbers and the habitat on which it depended. The State of Alaska, driven by opinions from the Department of Fish and Game, saw the discussions, which at this time had been extended beyond the Porcupine herd to include the 40-mile and Chisana herds which were also transboundary caribou, as further attempts at federal pre-emption of State management. They opposed the nation-to-nation negotiations outright and mobilized Senator Stevens to oppose them as well. The State's opposition as well as that of the Yukon Territory which likewise regarded

the Canadian federal action as potentially leading to unacceptable constraints on their interests, caused a stall of this effort. Native leaders, however, continued to maintain a lobbying presence and a cooperative effort with environmentalist groups throughout the (d)2 negotiations to try and protect the Porcupine herd.

By June 1980, the Native position on the hoped-for treaty had been firmed up into draft form including provision for the State to maintain management authority, for only the Porcupine herd to be addressed, and for procedural strength to be given the international commission for regulating habitat and hunting. Among those procedures were obligations to notify potentially affected parties of changes in the management regulations, obligations to take testimony and respond to testimony. These "action-forcing" mechanisms would require the commission as well as the State and Territorial management authorities to respond formally to objections and provide justification for continuing to implement actions which had been challenged. They could not simply ignore objections. Consultants to the Native groups apparently regarded this as the strongest position possible. In August 1980 prospects looked good for establishing a federal initiative to seek the treaty, despite continued blanket opposition by the state, even though they had no opposition to the habitat protection measures which were the heart of the proposed treaty. With the election of Ronald Reagan as President, the change in administration forced reconsideration by the Native and conservationist interests to determine if they could continue their effort with the new administration.

On the Canadian side, the Yukon government continued to be hostile to the proposal and the difficulties between the two countries over fisheries issues made pursuit of a new U.S.-Canadian treaty impossible.

Events since 1981. During 1981, a number of new directions emerged. First, on the initiative of ADFG Game Director Ron Summerville, the State of Alaska attempted to enter into a government-to-government agreement with the Yukon territory to pre-empt the federal initiative. This was done without notification by either party to the national level of their intentions. Stevens apparently supported the Alaskan effort and reportedly had earmarked $70,000 in U.S. funds to be transferred to the Yukon Territory for caribou studies as part of the agreement. Following revelation of this information, the Native groups sent a letter of objection to Senator Stevens and Secretary Watt noting that this action had been done without regard for Federal laws and mandated studies. In December 1982 the Canadian federal government objected, sending a note to the United States indicating that the Yukon Territory had no standing to enter into international agreements and, furthermore, was not the owner of the lands in question. Stevens backed off from his support and called for an exchange of diplomatic notes to get Federal level negotiations started again. These were precluded by the press of

the settlement of the Yukon land claims issue on the Canadian side.

The North Slope Borough requested the State to support negotiation of the international treaty as early as 1976. Their efforts received the same response from the State as the others: no treaty. Since that time, the community of Kaktovik has preferred to pursue the issue on their own without the direct involvement of the North Slope Borough.

Formation of the IPCC. During the period since 1978 when the issue first arose, leadership in the Alaskan Native arena on the matter has come primarily from Jonathon Solomon, Mayor of Fort Yukon. In 1981, the Tanana Chiefs Conference which had actively provided support to the effort up until that time, suggested that talks be conducted on a tribe-to-tribe basis with the Yukon Kutchin to determine if a "Native only" agreement could be worked out. Talks between the two groups did take place in late 1981 in Arctic Village and Whitehorse. Although there was discussion of an "Indian only" treaty, the major topics under discussion were how to get the two federal governments back into negotiations. This was based on the realization that only with the weight of federal commitment and protection could habitat conservation be realistically addressed. With that aim in mind, the International Porcupine Caribou Commission was created in December, 1982. The major purpose of the Commission was its "charge" to "take immediate and continuing action for the long-term conservation of Porcupine caribou and their habitat." The resolution establishing the Commission explicitly mentions the important nutritional, cultural and spiritual needs of the people which are nurtured by the Porcupine caribou herd. It also grounds its existence in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which speak to fundamental subsistence, religious, and cultural rights which cannot be abrogated. The international treaty and an implementing authority was the first priority of the commission. The members of the commission were representatives from the communities of Arctic Village, Fort Yukon, Venetie, and Kaktovik in Alaska and Old Crow in the Yukon Territory.

The Sheffield Administration Position. The new State administration which followed the gubernatorial election of 1982 brought major changes in the highest levels of the Department of Fish and Game which had, during the previous administration, been opposed to any federal involvement through an international treaty. It was not clear, however, how the new administration would respond to this issue. Discussions initiated by the Commission consultant in early 1983 did not produce any breakthrough on the state position. In the fall, the Commission requested Senator Sackett discuss the treaty with the Governor who apparently agreed to consider the issue on its merits. Sheffield directed ADFG Commissioner Collinsworth to set up a task force. Discussions were begun among affected State agencies and the Commission was brought into the talks as well.

The ability to address the issue was further enhanced when in March, 1984 a 6-party agreement on the protection of the herd and its habitat was signed between the Canadian federal government, the Yukon Territory, the Northwest territories, and three affected Native groups (CYI, COPE, and Dene-Metis).

On June 14, 1984 an agreement between the U.S. Fish and Wildlife Service, the State of Alaska, and the IPCC-Alaska delegation was signed outlining the major intent of an international agreement. The State's terms were that they would retain management authority in Alaska, that the purpose of the international agreement "should be to ensure the international coordination of management and to conserve the size, health, and productivity of the [herd] and its habitat." The State also required its concurrence before federal acceptance of any agreement, and arrogated to itself responsibility for coordination of negotiations and any proposed actions with appropriate use groups and other concerned parties. Administratively the State required that the agreement interface "smoothly with State management and regulatory processes." Further they required that any organization created by international agreement be advisory in nature. The only consideration of harvesting principles was the statement that "provisions for human use of the PCH should recognize existing state and federal laws and the importance of the PCH to Alaskans." No explicit mention of, or role for the IPCC is identified. The IPCC attempted to insert a subsistence priority for traditional users, but the state was unwilling to accept anything additional beyond the subsistence protections of state law.

The Alaskan delegation of the IPCC passed a resolution this year specifying the terms of the international agreement which they would like to see established. This was passed April 19, 1984 in Arctic Village. These terms include the area to be encompassed, that all public lands are to be included, that "a strong international authority be established", one-half of whose members are "IPCC nominees." The authority is suggested to consist of two committees, one of caribou specialists (including at least one representative from each community "significantly dependent" upon the PCH for subsistence) and one of land owners. Specific terms for habitat protection are also laid out. The IPCC further proposes that the convention authority be authorized to establish an overall harvest and equitable distribution between the two countries should it be necessary. Finally, the resolution calls for subsistence priority but adds that definition of subsistence should not be in the convention but "adhere to the laws and regulations which prevail in each country."

Comparison of the IPCC position with the State position reveals no commitment of the State to anything beyond broad notions of habitat protection and following State laws for human uses. Although assertions of self-regulatory rights have not been a part of the IPCC agenda to date, they have not been repudiated by the organization. It would appear that the IPCC

agreement with the State may present difficulties for the realization of sovereign self-regulatory powers over Porcupine caribou harvests at a later date.

VENETIE TRADITIONAL CARIBOU MANAGEMENT

Background. In northeastern Alaska prior to ANCSA there existed a reservation created by executive order known as the Venetie Reservation. The inhabitants of that reservation are Kutchin Athabascans who live primarily in two communities, Arctic Village and Venetie. These two communities are both heavily dependent on the Porcupine herd and are members of the IPCC. Following ANCSA, the people elected to abolish their reservation and take their land in fee simple. In 1980, they determined that fee simple title was extraordinarily dangerous and not in their collective best interests. They decided to abolish their village corporations and transfer the title to their land back to their traditional, IRA government. They hoped through that procedure to reestablish trust status for the land exempting it from taxation and state regulation. Since that time, Venetie has been a major force in the assertion of the tribal sovereign rights of Alaskan Natives.

Traditional Caribou Management. In 1981 the village council of Arctic Village took the unusual step among Alaskan Native groups of formally codifying as tribal law certain traditional principles of relationship between themselves and the caribou (Caulfield 1984). A major motivation in this codification was the observation that some of the hunters, especially younger people, were not observing traditional practices. Foremost in the traditional Kutchin practice is the injunction not to waste. This first applies to harvesting in that one should only kill an animal when in need of its products. Furthermore, kill only what you need, no more. An additional provision against waste is to use as many of the parts of the caribou as possible. It is especially proscribed to leave useful parts at the kill site. It would appear that the prohibitions against waste, in Kutchin terms, were not being adhered to so the elders decided to have the tribal council formally codify these rules. It is clear that the rules are intended to apply to non-Kutchin hunters who might be hunting on Arctic Village lands since they were distributed to air taxi operators in the area so that nonlocal hunters would be aware of them.

A final rule of importance in the traditional Kutchin way is to remove all evidence of the hunt by burying caribou remains that will not be used and especially leaving no blood stains on the surface of the earth. This is a religious imperative which derives from the Kutchin view of the relationship between human beings and animals. If humans do not show respect for the animal spirits by following appropriate harvesting and processing behaviors, the animals will not make themselves available for future harvests. The codification of the principle of cleaning up the kill site completely after processing speaks to a fundamental concern of traditional Kutchin society and cosmology that

is the continuation of human life through respect and deference for animal life. That the Arctic Village community has taken the step of reifying these traditional spiritual concepts and behaviors into secular law is evidence of both the resiliency of the traditional cosmology and behavior and its ability to be flexibly incorporated into contemporary institutions and practice.

Violations of the rules are to be reported to the village council. Research by Caulfield (1984) found that violations of the rules occurred after their promulgation and were reported to the village council. No formal action was taken by the council to determine the facts, make a finding or carry out sanctions. However, the council did inquire of the offending parties how many caribou they had taken and informed them of the council's harvest limits. Further, the council monitored the kill site and the transport of the meat from the village to insure that none of the harvest was wasted. It is possible that these subtle and noncoercive tactics, more characteristic of traditional practices, satisfactorily meet the aims of the council without the need for confrontation and punishment.

III. REGULATORY REGIMES FOR LAND MANAGEMENT

In addition to a regime of law and practice governing the harvesting and use of fish and animals, there is also a regime of law and practice which controls the habitat, the land and water, which the subsistence resources require. These too have a major influence on present and future subsistence activities and will be discussed in this portion of the paper.

First, the present regimes of ownership and use of Alaskan land will be reviewed. A general overview of the patterns of land ownership will provide an understanding of the areas of the state in which the regulatory regimes for fish and animals discussed in the previous section apply. Then the provisions for usage of those lands, particularly as they pertain to the habitat for the resources and to the conditions for subsistence uses will be summarized.

Although this discussion is only addressed to land ownership and management issues, at least equal in importance for Alaskan Native subsistence are the regimes for water management, both marine and freshwater. As home to fish and marine mammals and importance to land mammals, the nature of the water habitat is a fundamental issue to the maintenance of Alaskan Native subsistence.

ALASKAN LAND OWNERSHIP

Ownership of Alaska's 375 million acres fall into the following major categories: State, Federal (National Parks, National Wildlife Refuges, National Forest Units, Bureau of Land Management, Military Reservations), Alaskan Native corporations, Alaskan Native individuals, and non-Native private parties. After completion of the conveyance of lands required by ANCSA and ANILCA, approximately 59% of Alaska will be owned by the federal government, 28% by the State, and 11% by the Native corporations.

State. The Statehood act authorized the selection of 104 million acres of land by the State of Alaska. The state's total entitlement will probably eventually be in the neighborhood of 110 million acres pending settlement on lands underlying navigable waters. To date, the State has received some form of conveyance to approximately 79 million acres or 76% of its ultimate share. Of those 79 million acres, less than 25 million have been surveyed and patented; the remainder is in a status called "tentative approval" which allows for reconsideration of a selection.

Federal - National Parks. The National Park Service of the Department of the Interior presently manages 52 million acres primarily in parks, monuments, and preserves.

Federal - National Wildlife Refuges. The U.S. Fish and Wildlife Service of the Department of the Interior presently manages 77 million acres primarily in the refuge system.

Federal - National Forest Units. The U.S. Forest Service of the Department of Agriculture presently manages 23 million acres in forests, monuments, and wilderness areas.

Federal - Bureau of Land Management. The Bureau of Land Management of the Department of the Interior presently manages 65.9 million acres including the 23 million acre National Petroleum Reserve on the North Slope and 3 million acres for the White Mountains Recreation Area, Steese National Conservation Area and six Wild and Scenic River units created by ANILCA.

Federal - Military Reservations. The Army, Navy, and Air Force in the Department of Defense, and the Coast Guard in the Commerce Department together presently manage 2.1 million acres of Alaskan land.

Alaskan Native Corporations. Twelve regional and approximately 200 village corporations are entitled to 44 million acres of land under the terms of ANCSA. The eventual entitlement of the Native corporations should come to 46 million acres due to additions of submerged lands under non-navigable waters. Approximately 33 million acres, or 75% of their eventual entitlement, have been conveyed to the Native corporations as of September, 1984.

Alaskan Native Individuals. Approximately 7,500 Alaskan Native individuals have applications pending for Native allotments under the 1906 Native Allotment Act. Their total claims come to 1.3 million acres. It is only since 1982 that any significant acreage has passed into private Native hands. As of the end of the 1983 federal fiscal year, only 67,179 acres out of the possible 1.3 million acres have been completely passed into Native hands (Rural Research Agency 1984).

Non-Native Private Lands. At the present time approximately 1.0 million acres of Alaska are held by non-Natives in the form of homesteads, commercial sites, and patented mining claims.

FEDERAL LAND USE REGULATORY REGIMES

The three important federal laws to consider in determining the uses to which federal lands can be put are ANILCA, the Federal Land Policy and Management Act of 1976 (FLMPA) and the National Environmental Protection Act of 1972 (NEPA). In this section NEPA will not be treated; FLMPA provisions will be briefly summarized and ANILCA provisions will be given greatest attention.

FLPMA

This act established the basic framework of the federal government's land policy. It has three basic principles which guide the use of federal lands. The first principle is that

federal policy should be to retain all public land in federal ownership unless it is clearly in the public interest to dispose of certain lands. Second, public lands are to be managed for multiple use and sustained yield. Third, public lands are to be managed to avoid unnecessary environmental degradation. These policies guide BLM lands in Alaska which do not have more restrictive purposes designated for them in ANILCA.

ANILCA

ANILCA is a complex piece of legislation with numerous provisions. The following discussion will describe the general policies towards land management and subsistence in ANILCA, then it will describe the specific land management objectives under the different land management jurisdictions, then land management policies pertinent to subsistence established by ANILCA will be discussed, and finally the land management planning process will be outlined.

General Policies. The general federal policy toward ANILCA lands is established in sections 101 and 802. The more specific land and habitat provisions required under each of the agency jurisdictions are dealt with under titles II, III, and V which define the purposes for which Parks, Refuges, and National Forests are created. Titles IV, VI, and VII create Conservation and Recreation Areas, Wild and Scenic River Systems, and Wilderness Systems, the purposes of which are generally related to the park, refuge, national forest, or BLM jurisdiction which is responsible for managing them. Under Section 101, Congress states its general intent "to protect the resources related to subsistence needs." In Section 802, Congress provided that "utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands...the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so." Although resource development (mining, oil and gas) and disposal of land for settlement are provided for under certain types of jurisdiction, the primary emphasis is on the protection of natural resources and their habitat and the priority use of those resources for subsistence.

Specific Policies. Specific provisions under titles II, III, and V establish the purposes to which parks, refuge, and national forest lands are to be put. Park lands covered in section II, have the greatest restrictions, allowing no resource development (with several exceptions) or or settlement. The purpose of the parks in general is "to maintain" the natural state of park characteristics; "assure continuation of the natural process of biological succession"; "protect habitat for and populations of, fish and wildlife...." Each created park or monument has more specific language of purpose providing for the special characteristics of the area in which it is found. As noted previously, "traditional" subsistence uses consistent with these purposes are authorized for most park jurisdictions. All refuges have similar

purposes, namely: "to conserve fish and wildlife habitats in their natural diversity." It appears that they are less restricted from the standpoint of human intervention. That is, certain resource development activities could conceivably occur on refuge lands, if they were deemed compatible with the ANILCA-mandated purpose of the refuge. Further, unlike parks, in refuges certain enhancement activities for subsistence species (hatcheries, predator control) might occur as long as the natural diversity was maintained. National forests are to be managed for multiple use, specifically to balance timber harvest with the need to maintain habitat for anadromous fish and land mammals, particularly deer which is a major subsistence species in the Tongass National Forest in southeast Alaska. It should be noted that ANILCA actually entrenches a provision which violates the FLMPA if it applied to Forest Service land. Section 705 of ANILCA requires the Forest Service to maintain a supply of 4,500,000,000 board feet per decade to the timber industry of southeastern Alaska. This figure exceeds the sustained yield figure available from Tongass National Forest Lands. The section also authorizes expenditures of at least $40,000,000 or whatever the Secretary finds necessary to insure the maintenance of that supply.

General purpose BLM lands, or those other than the National Petroleum Refuge and Conservation and Recreation Areas, are similar to National Forest lands in that they are to be used according to FLMPA standards. BLM's mandate is to examine all their lands to determine their most beneficial uses. This could include a variety of resource development activities, dispoal of land for settlement, and establishment of trade and manufacturing sites. They have a broad set of possible uses of land and only the general advice to avoid environmental degradation where possible.

Subsistence Policies. In addition to the general and specific purposes policies relevant to subsistence, there are also land management policies and procedures specifically established for subsistence in Title VIII. Procedurally the most important is Section 810 while Sections 806 and 813 establish reporting and monitoring requirements for review of the implementation of Title VIII provisions.

Section 810. Protections for habitat necessary for subsistence is provided in this section entitled "Subsistence and Land Use Decisions." The section states:

> "In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition of public land needed for subsistence purposes."

The section requires that notice of disposition of the lands must be given to the State, local communities and regional councils,

and hearings in the vicinity of the area involved must be held if proposed actions "would significantly restrict subsistence uses." The agency official is also required to (a) determine that restriction of subsistence uses is necessary, (b) insure that the proposed activity will involve the minimum amount of public land necessary, and (c) reasonable steps are taken to minimize adverse impacts upon subsistence uses and resources. As Case and Stay (1983: 9-25) note, these requirements are essentially "procedural."; "If the agency follows the procedure and still reasonably concludes that the disposition is appropriate, then the lands can be disposed of even if there is an adverse effect on subsistence" (Case and Stay 1983: 9-25).

Of particular note in this regard is the operationalization of the phrase "significantly restrict subsistence uses." The development of an interpretation for that phrase is discussed in the next section and has been the focus of several court cases. Even if the proposed actions are determined to have an adverse significant impact on subsistence, hearings and mitigation are all that are required.

Section 810(b) authorizes preparation of an Environmental Impact Statement if proposed actions warrant. A question has arisen over the meaning of "significant impact" in NEPA and "significantly restrict" in Section 810(a) as discussed below.

"Significant Restriction". The 810 requirement to examines activities of agencies for their effect on subsistence has had the greatest influence to date on the Bureau of Land Management which has the authority to open lands for oil and gas leases, mineral entry, and settlement. BLM's awareness of the requirement to judge the impact of their actions on subsistence is apparent in an agency memo dated August 9, 1982 entitled "Guidance on Subsistence Management Land Use" which states in part:

> Subsistence uses of land and resources will be given special consideration as required in ANILCA by treating subsistence as an 'affected environment' (1502.15) in all environmental analysis (BLM, August 9, 1982, page 2).

The Interim Guideline further noted that when a "significant restriction of subsistence uses" is identified as a potential impact, the hearings required under ANILCA 810 should be held as part of the EIS procedure.

The Guideline acknowledged but did not analyse the twin standard under which subsistence interests were to be considered. The NEPA threshold which determines whether a fuller Environmental Impact Statement is required is the term "significant impact." The Guideline declined to assert whether the two standards were co-terminus or whether one required a lesser showing than the other.

Two challenges combined during 1983 to urge the BLM to reconsider and sharpen its subsistence impact review procedures. The first of these is found in a suit Kunaknana et al v. Watt heard

before Judge Fitzgerald in U.S. District Court. This challenge argued that the BLM had not met the 810 requirements in its Final Environmental Impact Statement for the NPR-A Leasing Program. In an amendment to the Record of Decision which was specifically endorsed by the Court, the BLM outlined their view on what constitutes "a significant restriction on subsistence uses" and a further definition of the term "significant."

The second challenge was an appeal before the Interior Board of Land Appeals lodged by the Sierra Club Legal Defense Fund on behalf of Nunam Kitlutsisti and the villages of Sleetmute, Stony River and Tuluksak. This appeal argued that the decisions in the 1008 reviews of the Upper Kuskokwim and Nyac Planning blocks ought to be set aside due to deficiencies in BLM's treatment of subsistence topics, both as an affected environment under the NEPA process and under ANILCA 810. Generally, this appeal argued that the BLM had insufficient information to preclude the occurance of "significant impacts" and should have proceeded with both the 810 Hearing process and an EIS. On the question of the relationship between the two standards of NEPA and ANILCA 810, this appeal argued that the 810 threshold was lower, so that even if a finding of no significant impact under NEPA was identified, the potential for significant restrictions on subsistence uses still required the 810 Hearings. The case was not decided before the Appeals Board, as the BLM agreed to withdraw the decisions in question.

The most important outcome of these two challenges was the emergence and endorsement by the court in Kunaknana et al v. Watt of a standard for determining what subsistence impacts were and a definition of what constituted significant impact. This material is contained in the amended Record of Decision on the NPR-A Leasing Program and later emerged as agency policy on the presumption that these provisions would likely survive further judicial review.

The BLM authors of the amendment to the Record of Decision on the NPRA Leasing Program argued that there were four types of restrictions on subsistence uses:

- a proposed action might result in a decline in the population of species important for subsistence;
- a proposed action might result in the redistribution of a species important for subsistence;
- a proposed action might curtail the access of subsistence harvesters to the game populations;
- a proposed action might increase competition for wildlife resources from non-rural residents.

While these clearly are "restrictions" the threshold of what constitutes a "significant restriction" is unsatisfactory. To quote:

> If activities central to the subsistence lifestyle are precluded by ... development ... and,
> If the number of individuals whose activities are precluded

> represents, in the eyes of a reasonable observer, a major proportion of active subsistence harvesters .... The restrictions on subsistence would be significant.

This test requires that "a major proportion" of subsistence harvesters be "precluded", meaning completely halted, from "central" subsistence activities before a proposed action would be deemed significant.

This logic has been further embedded within the Department of the Interior in a Memorandum dated July 19, 1984, from the Office of the Secretary outlining department-wide procedures for compliance with ANILCA 810 and the NEPA requirements as they relate to subsistence. The Departments policy reiterates the components of potential restriction, and uses the term "significant restriction" without defining the term in this context. Appended to the Department's policy is an extensive Instruction Memorandum prepared by the State Director's Office, BLM Alaska, in which the NPR-A case views on the "significant restriction" threshold are repeated.

Management Plans. What are the mechanisms for implementation of these purposes? All federal agencies are presently engaged in planning processes pertinent to the lands in their jurisdiction. ANILCA specifically identifies the development of plans for the parks and refuges. The planning process is conducted by in-house staff and/or contract specialists to determine uses of the lands. Typically, an inventory of lands, resources (both renewable and non-renewable), and uses is attempted, followed by a demarcation of the lands into zones. Specific uses for lands in the various zones are identified on the basis of the resources as well as the present and possible uses. Initial drafts are prepared usually on the basis of the documents and personal information of the area known to the staff. Drafts of management plans are then submitted for public review and comment. In most cases, either an information and education meeting or a hearing will be held in at least some of the communities with a direct interest in the lands under the plan. Following review and analysis of the oral and written comments received by the public, the agency presents a final draft to the relevant Secretary for approval. These documents are then supposed to become the guide for the management of the lands and resources specified.

One such plan which was in the process of development prior to ANILCA is the Tongass Land Use Management Plan (TLUMP). This 10-year plan lays out goals for timber sales, land use classifications, and general- and specific-use provisions for different land classifications. A division of game biologist stated that the timber harvesting levels of the plan had been exceeded on an annual basis and that this had been pointed out to the Forest Service on a number of occasions by a variety of sources. The response of the Forest Service to date has been to indicate that the concerns will be reviewed in the next planning cycle for the plan. The upshot of this is that the plans are not legally binding documents; they can be ignored if their provisions inhib-

it certain activities deemed important at some point in time by agencies.

The NPS, FWS, FS, and BLM are all engaged in the planning process throughout the state. Only one refuge plan, that for the Kenai National Wildlife Refuge, has been completed to date. A Fish and Wildlife Service source indicated that that plan was deficient in establishing standards for water quality on the reserve even though that was one of the express purposes for the reserve established in ANILCA. The Park service plans are also in process. The Forest Plan for the Tongass National Forest has been in place for several years and a plan for the Chugach National Forest, the other major jurisdiction of the Forest Service in Alaska, is presently out for public comment.

BLM has completed several plans and presently has several other plans in process. These plans include a number of alternatives for mining and settlement. Jim Kowalsky of the Tanana Chiefs Conference, the non-profit association representing the Athabascan communities of interior Alaska, stated that the interaction between the BLM and TCC communities has been of uneven quality during the planning process. He indicated that the research on subsistence uses done for the plans was in general poor, being based on a single day's involvement in villages mapping use areas with a limited number of village residents. He also indicated concerns with the hearing process in which a single date was set for a village's input on the plans which did not consider possible village conflicts for the date. He felt this limited and arbitrary hearing schedule had resulted in low levels of village response to the plans. Finally, in later stages of plan development when the overall responses and concerns were addressed for modification or mitigation, the TCC had attempted to be involved with mixed results being included in some discussions and excluded in others. He expressed concern about the BLM plan for the Koyukuk River area which included alternatives with significant levels of settlement possibility.

The most complete of the various planning activities mandated by ANILCA are the Section 1008 reviews for oil and gas leasing which have a 1985 deadline for completion.

Section 1008. Section 1008 of ANILCA mandates the establishment of an oil and gas leasing program for all non-north slope federal lands. Planning and land use decisions in the National Petroleum Reserve and the Arctic National Wildlife Refuge, both on the North Slope, are covered under the remainder of Title X. The result of 1008 efforts to date has been planning for large blocks of federal land, some amounting to nearly 3 million acres. By its statewide scope, the 1008 review process has proceeded farther in coming to grips with the subsistence requirements of ANILCA Title VIII than other federal land use planning efforts.

Background. The 1008 requirements for oil and gas lease sales reflects the desire among some segments of the Congress to re-open Federal lands in Alaska following a decade and a half of sharp restrictions occasioned by the Alaska Native Claims Settlement Act and the ANILCA deliberations. In 1982 the Secretary of the Interior directed the BLM to extend the 1008 review process to consider re-opening federal lands in Alaska to mineral entry and settlement, uses also curtailed during the ANCSA and ANILCA deliberations. All federal land-managing agencies have responsibility for this review on lands within their jurisdiction.

The 1008 review process has emerged as the most pointed of a long series of land planning exercises conducted by the Bureau of Land management in Alaska dating back to the mid-1970s. By the early 1980's Management Framework Plans (MFP's) - were in place for four regions in the state. Typically, the MFP's established broad goals and objectives for large areas under BLM jurisdiction. The MFP typically encompassed a number of the planning blocks which were to be the focus of the 1008 process. By the early 1980's federal land planning had evolved - largely through FLPMA - and required a slightly different form of regional planning, now termed the Resource Management Plan. These larger planning exercises are relevant to the 1008 process in key respects: where the larger plans existed, the proposed actions under the 1008 review were to be consistent with the MFP provisions; where the regional plans were not in place or were not adequate by the FLPMA derived standard, the 1008 process was to concurrently establish or improve the regional plans.

The 1008 Review process has been guided by the subsistence-oriented requirements of ANILCA 810 and by the environmental review requirements of the National Environmental Policy Act (NEPA).

Specific 1008 Reviews. Beginning with the Minchumina planning block in 1981, the Bureau of Land Management has conducted a number of 1008 reviews. The Denali-Tiekel study was completed in 1982; the Seward Peninsula study in 1983; the Upper Kuskokwim and NYAC blocks in 1983, though these decisions have been deferred as a result of an administrative challenge; and the Iditarod-George in 1984. Scheduled for FY85 are studies in planning blocks known as Anvik-Bonasila, Venetie, Goodnews Bay, Kvichak, Central Yukon, Steese Mountain and White Mountain.

The status of broader planning exercises in the area of these planning blocks has affected the process by which they are reviewed. In areas where the MFP was adequate, the 1008 review of discrete planning blocks proceeded. This was the case for those blocks under the Southwest Management Framework Plan, ie: Minchumina, Upper Kuskokwim, Nyac, Iditarod-George. Where the MFP had been prepared without consideration of oil and gas leasing, the 1008 review of planning blocks proceeded concurrently with amendment of the MFP. This was the case with Denali-Tiekel and the Seward Peninsula. Where no MFP had been developed, the RMP

procedure is underway, and 1008 consideration of planning blocks is being conducted concurrently with the development of these land use plans. This is the case for the Steese and White Mountain National Recreation Areas, the Central Yukon planning block and the Venetie planning block.

Review Process. While the specific program for 1008 review has differed in various parts of the state, depending on the degree of expected opposition and the status of other BLM land use planning efforts, a generalized pattern can be identified. The following sequence of procedures leading from plan development to plan implementation is normal.

Public Notification - Announcement of the planning block review is made and potentially affected villages are supposed to be notified. Notification includes a schedule of public information meetings.

Scoping Meetings - As specified in the notifications, meetings occur in the villages identifying the possible oil and gas, mineral entry, and settlement uses that the plan will be analyzing.

Environmental Assessment - Based on a review of the published literature, State and Federal agency documents, and public input, the BLM's staff prepares the Environmental Assessment (EA) document including a discussion of subsistence use patterns and ANILCA 810 considerations. No field research on subsistence is undertaken for EA preparations. If an EA determines that proposed actions will have "significant impact", then the more elaborate research process leading to an Environmental Impact Statement (EIS) is set in motion. This may result in field research on subsistence matters.

Public Review and Comment - When completed, the EA is distributed to the villages and general public for review and comment. A second series of comment meetings are held in the effected areas to summarize the EA and obtain additional comment. The timing of meetings and period available for review is often considered unsatisfactory by village residents.

Decision-making - Written and oral comments on the EA are reviewed by the BLM staff and may result in modifications to the preferred alternative in the plan. A Record of Decision is then made which is followed by Public Land Orders which implement the decision.

806 Report Treatment of 810. Another of the subsistence procedures established by ANILCA is the Section 806 reporting requirement for reviews of the implementation of Title VIII to be annually submitted to the Secretary of the Interior. The Section 806 report is least adequate in its review of the subsistence monitoring requirements of ANILCA in its discussion of 810. That review simply notes that under the auspices of the Alaska Land Use Council, standards for 810 evaluations are being developed jointly by State, Federal and Native participants and that two suits were filed, Angoon v. Marsh and Village of Gambell v. Watt under 810. Both of those suits claim that agencies failed to

conduct 810 reviews. Concerns on the North Slope and in the central Kuskokwim over 810 reviews were not identified in the 806 report.

STATE LAND MANAGEMENT

In this section the State of Alaska's provisions for lands management as they are relevant to subsistence activities will be partially reviewed. It is not possible to fully review State policies, so particular emphasis will be paid to State policies toward land disposal. State policy on water quality and general environmental assessment will also be briefly discussed.

Although the Department of Natural Resources will be the major focus of this section, several other departments and agencies have significant roles vis-á-vis the natural resources and habitats necessary to subsistence activities. Among the most important of these are the Department of Fish and Game Habitat Division which has the responsibility for determining the status and needs of Alaska's fish and animal populations, the Department of Environmental Conservation which is especially important to monitoring and maintaining the quality of Alaskan water, and the Alaska Power Authority which conducts feasibility studies on sources of power in Alaska, particularly dams for hydroelectric power. A complete review of the State's policies which affect subsistence would address not only these agencies but also the Department of Transportation which is responsible for the planning and development of Alaskan highways and transportation systems and the Department of Commerce which, among other things, houses the Division of Tourism, a strong promoter of this industry in Alaska.

Several general observations are in order before proceeding to State land disposal activities. The State's Constitution states that it is the policy of the State "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Crucial to this terminology is what constitutes the "public interest." Is it to be simply the will of the majority or is it to be a balance between the desires of various interest groups? The future of subsistence considerations in State land management policy depends on the answer to that question. An answer which suggests that the "public interest" is merely the will of the majority will likely doom the future of subsistence in Alaska.

There is no Section 810 for the State of Alaska. There is no requirement in State law that land management actions should minimize their impact on subsistence activities. There is no requirement in State law to determine whether a proposed action might result in "significant restriction" on subsistence activities. There is no requirement for hearings if subsistence uses will be "significantly restricted." The only requirement is that effects on fish and animal resources, not subsistence uses

or lifestyles, be minimized. The lack of protection for subsistence uses in State land management and habitat protection issues is a fundamental danger to Alaskan Native subsistence uses.

State Land Policies. In the State of Alaska, the Department of Natural Resources (DNR) is empowered by the Legislature to provide full use benefits of Alaska's resources to the greatest advantage of Alaska's citizens. There are nine divisions within DNR, each with a specific role:

Division of Agriculture - encourages agricultural development
Division of Forestry - manages state forest lands
Division of Geological and Geophysical Surveys - identifies and inventories natural resources
Division of Land and Water Management - manages the State's land and water resources
Division of Management - administrative arm of the department
Division of Mining - manages the State's mineral resources
Division of Oil and Gas - manages the State's fossil fuels
Division of Parks - manages the State's park system and cultural resources
Division of Technical Services - provides engineering and survey services

The most important division of DNR from the standpoint of subsistence resources and habitat is the Division of Land and Water Management because of its responsibility for the land disposal programs.

State Land Selection Policy. Based on hearings conducted by the Alaska Public Forum in 1977 and 1978, the Department of Natural Resources developed criteria for the selection of lands. In both the general criteria for selection and in the categories of land based on the criteria, subsistence lands "critical to subsistence lifestyles" are clearly mentioned. The State then has a public record mandating selection of lands for subsistence uses. Other uses for lands include community expansion, economic development, recreation, access and wise use (Rural Research Agency 1984: 17).

Planning and State Land Conveyance Policy. Similar to the Federal agencies, the State ideally requires a land use plan under AS 38.04.065 to make long-range use plans for large areas. DNR has developed a number of plans which are nearing finalization at the present time. These include the Susitna, Tanana Basin, and Southeast Tidelands plans. In addition, the State participated with Federal agencies, Native corporations, and local groups in the Bristol Bay Cooperative Management Plan mandated by Section 1203 of ANILCA. Land plans for most of western and northern Alaska are not expected to be completed until the 1990s (Rural Research Agency 1984: 21).

The purpose of these plans is to coordinate the multiple uses of State lands and to insure that unwanted cumulative effects of numerous smaller actions do not thwart the accomplishment providing "for the maximum benefit of the people." To that end, ideally it has been hoped that land disposal would not occur until an overall plan in an area has been completed. Political pressure through the Beirne Homestead Initiative of 1980 and subsequent actions by the State legislature mandating the disposal of 100,000 acres in both 1981 and 1982, combined to prevent this policy from being put into effect. As a result of these pressures a short-term, small-scale DNR program for making lands available has emerged.

Land Availability Determination System (LADS). In order to accomplish its politically pressured objective of making land available for private ownership, DNR developed the LADS system to identify and classify settlement lands for disposal in different regions of the state. In the past lands were nominated for disposal from a variety of sources including DNR staff, other State agency personnel, and local governments. More recently DNR has been soliciting nominations for land disposal from individual citizens. An extensive review process on the proposed disposals is undertaken in DNR. Following completion of in-house review, the proposal is submitted to other agencies and local governments for review. Local hearings are held where opposition to disposals is almost always unanimous. Based on comments, the Disposal Review Committee (DRC) made up of three members of DNR makes a final recommendation. That decision is not subject to any authority other than the Commissioner and the Governor. No other agency or interest has any power to intervene. Although DNR is presently considering a more formal process of involving other agencies in the disposal review and disposition process, "it is DNR's position that it would be an unlawful delegation of authority to let any group other than DNR make the decision to sell State lands" (Hawkins 1983: 12).

Land Disposal in Rural Alaska. This program under the Sheffield Administration has abandoned the Hammond administration's guideline of not disposing of rural lands north and west of the so-called "Porcupine-Yukon-Kuskokwim River line" except under special circumstances. That policy was prompted by local opposition to land disposal which recognized actions to be a threat to traditional land use, and the social and cultural values associated with that land use. In rescinding the October 1982 Departmental Order, the new administration has determined to force land disposal in portions of rural Alaska over the unified and defiant opposition of local residents. In Bristol Bay, the State forced the local study group to accept land disposals of 14,000 acres on the grounds that the actual fair share for Bristol Bay should be 50,000 acres over the next ten years. This level of disposal was proposed despite research indicating that resources used for subsistence would likely be completely utilized on the basis of local growth and demand alone without the additional demands of the new settlers. The rationalization offered by DNR for this action was the desire for land offerings

coming from the urban areas of the state (Rural Research Agency 1984: 52). This is clearly an indication that traditional relationships of people to land and the importance of previous and contemporary land uses to those who are now actually using the lands are of secondary importance to the demands of urban recreationalists.

Water Quality. The issue of water quality in regards to subsistence activities has recently become an issue. Within the State management system, the Department of Environmental Conservation is responsible for establishing water quality standards. Permits to operate various projects which impact state waters, particularly those associated with anadromous fish streams, are made contingent on the maintenance of water quality standards. If those standards are not maintained, the Department of Environmental Conservation informs the Department of Natural Resources who is required to suspend the operator's permit until such time that it is demonstrated that water quality will be maintained.

One of the major water quality problems posed for fish and wildlife populations and thus for subsistence are the placer mining activities. In 1983 the Alaska Department of Fish and Game identified 435 placer mining operations in the State of Alaska, most of which were in operation on anadromous fish streams. Of those 435, ADFG identified nine as priority enforcement streams in which the water quality was crucial to a sizable run of anadromous fish. One of those was the Tuluksak River, a tributary of the Kuskokwim in southwest Alaska.

Tuluksak. The Tuluksak River case has come into prominence because of the dependence of the Yup'ik village of Tuluksak on the river for drinking water and salmon returning to the river for subsistence. A placer mining operation up the river proposed to divert the river and the villagers objected.

Water quality studies in the river indicate that when the mine is in operation, the turbidity causes arsenic to be suspended in the water making it unfit for human consumption. Pat Wennekens of the U.S. Fish and Wildlife suggests that the State has been unwilling to set water quality standards at normal levels because of the additional costs which this would pose for the mine operator. In the development-oriented atmosphere of the present administration he further suggested, environmental protections have been minimized.

Water quality in the Tuluksak case is also important because the sediments carried down the river settle in FWS refuge wetlands which are important waterfowl nesting and breeding grounds. This circumstance has activated a federal interest in the matter.

A variety of observers of this case have indicated that violations by the mining company are overwhelming and that the requirements which the State should impose are clear. To date the State has been unwilling to impose those standards; however,

the operation's permit has been suspended pending a hearing on the village of Tuluksak's challenge to the State permit.

General State Environmental Assessment. One of the major projects with significant environmental impacts presently under study in Alaska is the Susitna Dam project. Because of the requirement for Federal Energy Research Commission permits prior to the construction of this dam, the project is required to follow NEPA standards of review. The Alaska Power Authority is the lead agency in coordinating the studies necessary to satisfy NEPA and FERC standards. Richard Fleming of the APA indicated that, in general, the State requires little in the way of assessment of environmental impact prior to a decision to act. He indicated that noteworthy examples of the lack of environmental assessment and impact planning were coal leases and agricultural developments. The basic attitude toward environmental assessment and impact analysis might be summarized by Tom Hawkins, State Director of the Division of Land and Water Management, who remarked about the possibility of cooperative planning efforts with federal agencies that "our lack of support is that they're [federal agencies] subject to a multitude of federal procedural requirements that lengthen the process and add nothing to the quality of the final study." If it were only procedural requirements that the State objected to, then he might have support. Other observers, however, suggest that the stricter environmental assessment standards of the federal government are what the State objects to.

NATIVE LAND MANAGEMENT

The major categories of Native lands are the 44 million acres held by the regional and village corporations and the 1.0-1.3 million acres to be held by individual Natives through the allotment program. Central issues to Native land management and subsistence activities is ownership and access and the effects of development.

Native Allotments. The fundamental question posed by the Native allotment program is ownership and access. One of the key issues in the allotment area is the question of access. As discussed earlier, communal or common property was the mechanism whereby most Alaskan Native groups organized their access to resources prior to the coming of Euroamericans. The concept of an allotment is quite different and poses special problems when lands allotted to an individual were in fact used and enjoyed by a wider group of individuals. The assignment of fee simple title to an individual thus can have the possible effect of denying access to people who traditionally used the land. The allotment holder is in a further bind since according to BIA policy, he should not merely allow others to use his site as they have traditionally. Although rarely invoked, BIA policy is that such uses are only to occur if the allotment holder charges a fee for such use. This is part of the burdensome paternalism of the BIA's trust policy towards allotments.

Perhaps more dangerous than privatization of locations customarily used by a wider group is the prospect of sales of fee simple (or unrestricted) allotments. As of the end of 1982, only a very few acres of allotted land in Alaska had ever been sold. However, with the acceleration of the finalization of allotments, a significant surge in the sale of allotment lands has occurred in the past two years. Past experience with the Dawes Act on reservations in the United States displayed a dramatic loss of lands due to that allotment process.

Many subsistence activities depend on high quality locations for the harvesting and processing of certain resources. The privatization of access through allotments constitutes a fundamental shift in the orientation of Alaskan Natives to resources and may lead to reductions in access to resources by many. Even more dangerous, however, is the prospect of wholesale alienation of allotted lands and the loss of access attendant on those sales.

Native Corporation Lands. The complex and competing claims on Alaskan Native corporations are nowhere as salient as on the issue of the management of lands. From the outset, regional and especially village corporations have been burdened with the responsibility of selecting and protecting lands for the subsistence use of their shareholders and balancing those demands against selections for mineral, timber, and other developable resources. Issues surrounding Native corporation lands include their retention for subsistence, their protection for resources used for subsistence, and their reconveyance to shareholders through 14(c)(3) provisions of ANCSA or through Shareholder Homesite provisions of ANILCA.

Time did not permit sufficient research to be done on the topic of Native corporation development policies and subsistence. Research on Native corporation policies and subsistence activities are thus beyond the scope of this effort. A number of important issues were identified for further research at a later time.

ALASKA LAND BANK PROGRAM

Background. Recognizing the jeopardy Alaska Native corporation lands were placed in by ANCSA's 20-year term of exemption from State and local taxes, the Alaska Native leadership developed the concept of the land bank into which undeveloped Native corporate lands could be placed to continue the exemption from taxation as well as provide other protections. The land bank concept also was conceived as a way for the Federal government and Native corporations to cooperatively manage lands in a way that would be mutually beneficial meeting some shared and some different purposes. The Land Bank concept was included in ANILCA where its provisions are specified in section 907.

Provisions of 907. The purpose of the program is to enhance the quality and quantity of renewable resources and to facilitate management and protection of those resources. It is noteworthy that there is no expressly-stated purpose to enhance Native welfare through the program. Further, any private landowner, not merely a Native corporation, can seek a land bank agreement whether or not the land in question is adjacent to or abuts federal land. More restrictive terms apply to land that abuts federal land than to lands which do not.

Land bank protections for Native corporation lands were automatic for the first three years after passage of ANILCA. Extension of the protections, however, require additional actions by the parties. Agreements between the federal agency with jurisdiction over the adjoining land and private party are the mechanism for placing lands in the land bank. Agreements are to be for 10 years with the possibility for 5-year renewals. Section 907 specifies a number of terms to be met for an agreement to occur. These include that lands shall not be developed, improved, mortgaged, or sold either prior to or while subject to the land bank agreement. The private lands are required to be managed "in a manner compatible with the management plan" of the federal lands if they are adjoining. Section 907 (b)(2) states, however, that "nothing in this section or the management plan of any Federal or State agency shall be construed to require a private landowner to grant public access on or across his lands." Further, refusal to grant recreational access to the general public "shall not be grounds for refusal of the Secretary or State to enter into an agreement with the landowner." Access is to be provided to federal agency heads to administer their own lands, conserve fish and wildlife, or carry out obligations. Lands can be withdrawn from the land bank provided the back taxes (if any) are paid and proper notification procedures are followed. The private landowners are given the opportunity to propose additional terms consistent with the general terms of agreement which the Secretary must accept. Finally, failure to agree with additional terms proposed by the Secretary can not be used as grounds to refuse to enter a land bank agreement.

Section 907 also provides for benefits to private landholders as long as they comply with the terms of the land bank agreement. These include technical and other assistance for fire control, trespass control, resource and land use planning, fish and wildlife management, and protection of any special values of lands. Native corporation lands (but not other private lands) are protected from adverse property claims, State, local and federal taxation, and alienation for other corporate debts and liabilities.

It appears that Native corporations are required to activate the terms of the land bank within a certain time from the date of passage of the act or from the date of land conveyance.

The section also suggests that the State of Alaska could participate by passing similar legislation which could then con-

ceivably result in three-sided land bank agreements, presumably increasing cooperative efforts to attain the purposes of Section 907. As of September, 1984 no state land bank program had been enacted although the Sheffield administration was actively considering the possibility of developing legislation to create a state land bank program.

Implementation. To date, no Alaskan Native corporate or other private lands of which I am aware have been placed in the land bank program. A proposed agreement between the National Park Service and the Gunahoo Corporation (a merged corporation of the Huslia, Hughes, Allakaket, and Alatna village corporations) was stalled in July 1984 due to the nature of the terms of the agreement specified by the National Park Service which were unacceptable to the Native corporation. Of greatest concern to the Native corporation was the requirement that their land be available for access by the general public. The agreement is on hold pending additional negotiation on the disputed terms.

Proposed Guidelines. Utilization of the land bank program has in part been held up by the lack of implementing regulations. These were not offered until June 1984. Those guidelines provide a number of interpretations of land bank terms. A key element of the guidelines is that no non-reimbursement agreements for federal benefits (noted above) will be agreed to by the federal government "unless significant and substantial public benefits are granted by the landowner." The most significant and substantial public benefits which appear to be required are provisions for general public access to private lands and enhancement of easement access. In other words, if a Native corporation does not agree to these terms, they will be required to reimburse the Federal government for any of the benefits identified above which they wish to receive.

The land committee of AFN filed preliminary comments on the proposed guidelines in July, 1984 noting in general that the "stipulations and tone of the guidelines discourage rather than encourage use of the Land Bank provisions." In areas where interpretation of 907 is left to the Secretary of the Interior, without exception the guidelines propose restrictive measures detrimental to Native interests. In several instances, the punitive interpretations are clearly beyond the bounds authorized by ANILCA, most notably the requirement for public access to Native lands in the land bank.

The vision of the land bank as the instrument for the protection of village corporation lands advanced by the regional corporations and the AFN, has been severely clouded by these proposed guidelines. One regional corporation land manager indicated that village corporation leaders in his region who had previously looked upon the land bank favorably were now hostile to it.

IV. ISSUES IN ALASKAN NATIVE SUBSISTENCE

The previous sections have described and documented a number of the important elements in the current practice of Alaskan Native subsistence. An attempt will be made in this section to pull out key issues for Alaskan Native subsistence at the present and discuss them. The section is divided into two components. The first level of discussion is broad, treating fundamental and general questions, and the second is more directed, treating pragmatic and specific questions.

FUNDAMENTAL AND GENERAL ISSUES

1. Is there a future for the subsistence-based lifestyle in the State of Alaska?

In Maps and Dreams, Hugh Brody sensitively portrays the dilemmas which confront the subsistence-based society of the Beaver Indians (Athabascans) of northern British Columbia. He describes the continual erosion of their traditional territory as agriculture, roads, sports hunters, and oil and gas development devour the lands. He describes the continual process of adjustment and adaptation which the Beaver must undertake in order to persist in their subsistence behaviors always, it seems, backpedaling in the face of new penetrations. Is this the vision of the future of subsistence in Alaska?

It is not possible to adequately generalize about the status of subsistence in the State of Alaska. Nevertheless, there are certain areas of the state which appear to closely correspond to the Beaver situation already. An example would be the upper Tanana villages of Dot Lake, Tanacross, Tetlin, and Northway. Road access to the hunting vicinities of these communities and settlement in the area by significant numbers of non-Natives have significantly eroded the subsistence alternatives of these villages in the last 30 years. Perhaps the subsistence law will provide new opportunities, but only time will tell.

Elsewhere in the state, particularly in the Yukon-Kuskokwim delta area where roads and inmigrant settlement have not been major factors, the subsistence-based economy is quite vital. Many of these communities have the additional protection afforded by the existence of sizable federal refuges near them. Even though subsistence is robustly vigorous at present, these communities must face problems of potential environmental degradation due to OCS oil and gas development; of expanding cash needs created by the new homes, rising consumer expectations, and the rising costs of the technologies of subsistence; and of the natural growth of their own population. Thus although subsistence appears to be able to sustain itself here, it is not without potential difficulties. The time-honored practices of adjustment and adaptation can likely accomodate many of the internally generated stresses, however, external pressures have vastly greater potential for altering the subsistence-based way of life.

At the present time, there is a substantial land base available to subsistence through Alaskan Native lands and federal lands. The State of Alaska, however, is pursuing policies which treat subsistence as residual behaviors, that is behaviors to be tolerated if they do not conflict with other more important, from the State's viewpoint, economic activities. The future of subsistence is tied at least to the maintenance of Native and Federal lands and their protections. State actions, particularly in the area of remote settlement policies, do have the potential to dramatically disrupt traditional village adaptations before the turn of the next century. Although less likely, sale of lands to recreationalists by village corporations and individual Native allottees has a similar potential.

It is also important to stress the lack of a framework for considering the substantial and wideranging ecosystemic interactions upon which resources important for subsistence depend. Resources important for subsistence are intimately related to the maintenance of ecosystem productivity in areas removed from the direct jurisdiction of those dependent on them. For example, beluga hunters in Eschscholtz Bay depend on the marine environments of Cook Inlet, Shelikof Strait, and Bristol Bay where the belugas feed during certain times of the year. A mechanism to insure that all potentially affected parties of development activities are identified and given responsible consideration is needed.

2. Are Alaskan Native subsistence rights different from those of other Alaskan residents?

Earlier in this paper, the definitions of subsistence use and the criteria used by the State and Federal governments to determine what constituted subsistence use were elaborated. Those tests provide only indirect benefits to Alaskan Natives who, by the terms of the criteria, are at present more likely to qualify. Although those criteria and their application are at present useful (in most cases), in the longer-term there are fundamental problems with them for Alaskan Natives. This is because they establish the possibility for allowing some Natives to pursue subsistence activities and some not to in the same community. Furthermore, those definitions may come to exclude Alaskan Natives from subsistence uses as has happened to the Kenaitze people of the Kenai area and other Alaskan Natives living on the Kenai Peninsula. Even at the present time, at least 25% of Alaskan Natives are not considered eligible under the terms of the criteria used for identifying subsistence uses.

Most Alaskan Natives have a strong belief in their moral right to subsistence in the area of the their home community. They feel their right precedes that of others. At the present time, Alaskan Natives receive no formal or direct consideration in the subsistence policies of either the State or Federal government. If Alaskan Native rights as Alaskan Natives are to be recognized, new legal and political efforts will be required.

3. How should Alaskan Native subsistence rights be defined?

The fundamental issue in this question which follows from the previous one is whether the present situation in which subsistence is defined by geographic and cultural means ("rural" and eight-point criteria) is adequate for Alaskan Natives. Certainly there are other theoretical possibilities such as a blanket definition for all Alaskan Natives who either are shareholders in a corporation or children of shareholders. Or the subsistence priority theoretically could be applied on a tribal basis. Redefinition of the standards presently in use would not be easy, but Alaskan Natives may wish to attempt to do so now before legal access to subsistence is further eroded.

4. Do the present regulatory regimes for managing subsistence correspond with Alaskan Native wishes?

Another way of phrasing this question is to what degree does the present system have legitimacy with Alaskan Natives? Do they feel it is fair and right and therefore abide by its rules? As we have seen, both in the bowhead whale case and in the Yukon-Kuskokwim waterfowl case, Federal laws based on international treaties have been regarded by Alaskan Natives as illegal intrusions into their subsistence practices. It is probably true that the system as it operates is considered legitimate only to the extent that it protects local priorities and corresponds with local practices in most of rural Alaska. Most observers of rural Alaska are cognizant that the hunting and fishing practices of Alaskan Natives do not completely correspond to the laws of the State of Alaska. There is widespread confusion among Alaskan Natives about the laws, a substantial amount of circumscription of the laws and even some outright defiance. The growth of information and education about the advisory committee system and the power of the regional councils in matters of subsistence may increase the legitimacy of the system in the eyes of rural users. But that is likely to occur only if those systems adequately take into consideration local concerns.

There is another aspect of the legitimacy question as well. A recent paper by an ex-Alaska Department of Fish and Game employee in northwest Alaska discusses the problems of legitimacy (Moore 1984). He notes that many of the State's laws confront longstanding traditional practices for no sound biological reason and therefore alienate Alaskan Natives from the regime. A recent example of this was the prosecution of a young hunter for caching or burying caribou for later retrieval. This is customary and traditional yet violates State law. Another example is the current common use of snowmobiles by Native hunters to herd caribou, an efficient technique which when used judiciously causes no stress. This too violates State law. Often State enforcement efforts selectively decline to enforce clearly oppressive regulations, but their existence on the books can turn a hunter into a criminal at the drop of a hat.

One final upshot of the legitimacy dilemma recognized by local State and Federal resource managers is that without the participation of village residents in reporting harvests, that is without adequate data, it is impossible to identify the status and trends in populations of fish and animals. Only with local participation in the reporting of data can adequate management be accomplished. Thus the question of legitimacy is of importance not only to who gets to hunt and fish what, but also to efforts to manage the resources in an environment of competing users.

5. Is subsistence a priority to Alaskan Natives to the extent that they would advocate stricter laws and regulations on development, settlement or other activities, which would, in their general applicability, also restrict certain activities of the Native regional and village corporations?

A key issue in the previous discussion is the question of the protection of habitat protection for the fish and animal populations necessary to subsistence. This question poses the knotty dilemma of balancing the Alaskan Natives' need for cash at both the individual and corporate level against the needs of fish, animals, and subsistence users for an extensive, undegraded environment. Are these activities presently being balanced appropriately by the State? If greater restrictions are necessary for the protection of subsistence resource habitat, will Native corporations be able to competitively develop their resources?

PRAGMATIC AND SPECIFIC

The more pragmatic and specific issues to be addressed in this section are divided into State, Federal, and Tribal topics.

State Issues. As the previous sections have described, there are a number of important issues in the State approach to subsistence management which affect Alaskan Natives.

1. Rural Definition and Standard. At present all communities are considered rural and potentially eligible for subsistence uses, except Anchorage, Fairbanks, Juneau, and Ketchikan. In certain rural areas, however, such as the Copper River Basin and Cook Inlet, the eight criteria have been used to determine subsistence uses, and have eliminated certain residents of those areas from subsistence uses. In Cook Inlet, Alaskan Natives, such as the Kenaitze, have been excluded from subsistence uses based on application of the 8-point criteria. This same fate could eventually befall Alaskan Natives in the mixed regional centers such as Dillingham, Bethel, Nome, and Kotzebue. With the present system, some if not all Alaskan Natives will probably be denied subsistence uses in these kinds of communities.

2. Residency. At present, an unknown number of the 25% urban Alaskan Native population return to their home communities on a seasonal basis for subsistence activities. As demonstrated by

the case of the Copper River woman with the allotment, strict application of the residency standard could preclude subsistence activities in the future for many Alaskan Natives.

3. Opportunity vs. Harvests. The State law only requires that opportunities for subsistence activities be provided. Unlike the James Bay Cree and Council of Yukon Indian settlements in Canada which guarantee a numeric level or quota of the harvest of certain species to Native Americans, the State of Alaska only guarantees the subsistence priority for opportunity to harvest. The present regime can allow unlimited expansion in the numbers of rural subsistence users to the point of eroding the harvests and reducing the efforts of the present users. An opportunity-based criterion is extremely difficult to fight because of the problems in demonstrating a decline in opportunity.

4. Burden on Present Subsistence Users. The present system places a burden on those attempting to obtain their rightful priority for subsistence. They must demonstrate not only that there are constraints imposed on their activities by the regulations, but that they meet the criteria for subsistence use. The priority is often presented in a clearly backhand fashion by establishing late winter seasons. Why not allow either a longer season for subsistence harvest or allow the subsistence season to be opened earlier than the regular season? Furthermore, because of the extreme animosity towards subsistence among some segments of urban Alaska, Alaskan Natives may be inhibited from asserting their legal rights. A possible example of this can be found in the hesitancy of the people of Fort Yukon to seek a subsistence priority for moose which are scarce in the Yukon Flats area.

5. "Mainstay of livelihood". This phrase initially appeared in state law and was later adopted into ANILCA conformance requirements. Given the administrative and judicial record of interpretation of laws affecting Alaskan Native subsistence to date, this phrase could easily be used to severely limit the number of Alaskan Natives who qualify under the second-tier of criteria for subsistence use.

6. Personal Use Category. The recent emergence of the personal use category is seen by some Alaskan Natives as threatening communities where commercial and subsistence uses by Alaskan Natives constitute the economic base. It is their fear that personal use will supersede commercial use, thus eroding the cash base of these communities. The Attorney General's office suggests that this will not occur because only subsistence has priority in State law. All other uses and their order of priority are dealt with on a case-by-case basis.

7. Species Used for Subsistence. Certain species are presently proscribed for subsistence harvests. The most notable example of this is musk-ox in the Nelson Island area which are primarily designated for big game hunting purposes.

8. Settlement and Development. There is no Section 810 requirement in Alaskan State law. The State is not required to mitigate the adverse effects of land disposal or settlement activities on present subsistence uses. They are only required to minimize adverse impacts on subsistence resources. In land disposals, the State is only required to insure adequate house logs, firewood, and water for the total population. They are not required to determine if there are sufficient fish and animal resources to adequately support the population of users. In the regulations published for the recent Bristol Bay upland oil lease, the State admitted that "measures may not adequately address the problem of cumulative impacts of oil and gas development on the local subsistence lifestyle."

9. Local Control. The North Slope Borough has long had a Borough Fish and Game Committee to review the potential impacts of various activities on natural resources. In 1984 Senator Ferguson introduced legislation to allow the subcontracting of fish and game management to local governments or coastal resource service boards. This may help solve questions of data collection for management and the legitimacy of the system. It does not necessarily buttress Alaskan Native subsistence requirements.

10. Advisory Committees and Regional Councils. A number of issues surrounding this topic have been noted. These include the problem of information and education on how these bodies work, the ability of the Boards of Fish and Game to thwart consideration of certain topics at certain times, the representativeness of the bodies, the support staff necessary to make them function properly and the inadequacy of procedures for funding participation by rural residents in the process. Joint efforts by RurAL CAP and the Tanana Chiefs Conference to educate rural Native committee and council members may help alleviate some of this difficulty. Only time will tell if the hiring of the regional coordinators, when that finally occurs, will help those entities function.

Federal Issues. The provisions of Title VIII of ANILCA provide substantially greater protection for Alaskan Natives than do State policies. Still there are a number of important issues which presently affect Alaskan Native subsistence.

1. "Traditional". This term holds the potential for substantial restrictions on Alaskan Native subsistence activities in certain National Parks. At the same time that this term may be used to limit areas, species, methods, seasons, and harvest limits, the subsistence rights of Alaskan Natives in "resident zone" communities are not protected should those communities experience significant population growth due to inmigration. Ironically, the State Board of Game, acting on proposals by the local advisory committee, has recently attempted to expand subsistence activities by raising the bag limit and lengthening the season in Gates of the Arctic National Park. The National Park Service has responded by indicating that these new regulations violate the "traditional" use patterns of the park. It is uncertain whether

or not the Subsistence Resource Commissions will be able to significantly influence that definition and use to which the term "traditional" is put.

2. 810 Review. The protections afforded to subsistence users by section 810 are ultimately only procedural in nature. If subsistence is to have real protection, checks against adverse impacts should be established or approval of development activities by local groups should be required prior to any activities which would adversely impact subsistence.

3. "Significant Impact". The standard of a majority of subsistence harvesters being "precluded" from central subsistence activities should, at the very least, be substantially relaxed. In addition, the standard which at present merely activates a requirement for local hearings should be expanded. It should also activate procedures for local groups to authoritatively reject proposed activities which would adversely impact their subsistence harvests.

4. Land Bank. If the promise of ANCSA for lands to sustain village subsistence activities and of ANILCA to protect those lands from taxation and adverse possession is to be upheld, the proposed regulations for the Land Bank must be drastically altered. At present they represent a nearly coercive attempt to require Native corporations to open their lands for recreational purposes to non-shareholders.

5. Involvement of Natives in Review. There are two components to this issue. First, the Bureau of Indian Affairs through its Rights Protection function should have a greater degree of involvement in all aspects of Title VIII implementation. They are a major source for protection of Alaskan Native subsistence rights within the federal bureaucracy. It does not appear that they were ever approached about the State's compliance with ANILCA requirements for State retention of management authority on federal lands. A Memorandum of Understanding between the Assistant Secretaries of the Interior for Fish and Wildlife and Parks, Land and Water Resources, Indian Affairs, and Policy, Budget and Administration asserts that the Bureau "shall have the right to a meaningful participatory role in developing and planning the programs which implement Title VIII." Further, it requires "an active role" for the Bureau in fulfilling the 806 monitoring and reporting requirements. Despite these understandings, the Bureau has been either overlooked or ignored in the development of Title VIII programs. They were not consulted in the development of the initial 806 report nor were they signatories to the recently completed Subsistence Monitoring Guidelines developed cooperatively by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Alaska Department of Fish and Game. They are not even mentioned in the Guidelines as a source of information or an entity to inform. Neither does it appear that the Bureau has been involved in the Bureau of Land Management's development of a regime for determining subsistence impact

in the NPR-A case.

It is possible that funding has not permitted the Bureau to staff the Title VIII question. If that is the case, then adequate funding should be provided to fully protect Alaskan Native interests in ANILCA. It is also possible that by keeping the Bureau of Indian Affairs out of Title VIII, that Native Americans trust rights to subsistence would be downgraded and perhaps ignored.

In addition to the Bureau, it is not clear that Alaskan Native groups have been directly involved in the formulation or review of Section 806 and 813 monitoring and reporting requirements. The only possible avenue for Alaskan Natives involvement in those activities may have come through the Alaska Land Use Council on which two Native corporation representatives sit.

6. MMPA and Fur Seal Treaty. Major battlegrounds for protection of Alaskan Native subsistence rights as Alaskan Natives are the Marine Mammal Protection Act and the Fur Seal Act ratification process. In both of these cases there are moves to further erode Alaskan Native subsistence rights by recasting them into the mold of rural rights under the State's subsistence regime. It should be kept in mind that the steps toward self-regulation that were gained by the AEWC and the Hooper Bay Waterfowl Plan were gained in the context of international treaties and enabling legislation which spoke directly to the rights of Alaskan Natives.

Native Issues. There are several issues of importance to subsistence among Native groups themselves.

1. Tribal Authority. Establishment of formal status of tribal governments for regulating subsistence activities could assist in overcoming the dilemma of State residency requirements. If subsistence rights were based on tribal membership, then tribes would determine who had those rights.

2. Access to Subsistence Lands. Adequate procedures need to be established to insure that locations which traditionally have been open to all members of the group continue to be. This requires delicate handling of ANCSA 14(c)(3) provisions for conveyance of subsistence campsites to subsistence users.

V. ALASKAN NATIVE SUBSISTENCE STRATEGIES

Three strategic approaches to the issue of Alaskan Native subsistence rights appear evident in current positions on the issue. These are the ANCSA-ANILCA approach, the ANCSA-ANILCA Plus approach, and the Tribalization-Nativization approach.

ANCSA-ANILCA Approach. Proponents of this view assert that the provisions of ANCSA and ANILCA taken together are sufficient for Alaskan Native subsistence. In this view it is important to husband ANCSA lands carefully and insure that there productivity for subsistence resources is maintained. ANILCA rights, in this view, reaffirm trust rights of Alaskan Natives to subsistence. These should be pursued more aggressively than they have been heretofore and, when effectively implemented, will provide adequate protection for subsistence.

This view does not see any apparent dilemmas in the exclusion of urban Alaskan Natives from subsistence regarding it as a necessary trade-off for the protection of rural users. Nor does it appear to regard State policies as dangerous to the subsistence rights of rural Natives. Fundamentally it acquiesces to the present regimes as the best possible in the context of the trade-offs available, but insists on full protection through implementation of the Title VIII programs.

ANCSA-ANILCA Plus. Supporters of this view accept the ANCSA-ANILCA framework as a foundation on which to build additional protections for Alaskan Native subsistence rights. It is suggested in this view that selectively chosen legal cases can accomplish considerable strengthening of Alaskan Native rights. This position also suggests that additional legislation is necessary to provide greater habitat protection from State authorized development activities. This might be accomplished in State but more than likely would be accomplished through an ANILCA-like conformance procedure in the area of habitat and subsistence lifestyle protections, perhaps in the amendments to ANCSA to deal with 1991 issues. Changes in Land Bank regulations are viewed as especially important to protect lands necessary for subsistence. Another key in this view is to require that the State assure the fish and animal resources will be sufficient for local demands prior to disposing of lands in areas which would lead to competition with rural Alaskan Native subsistence users.

This view also seems to regard the ANCSA-ANILCA framework as adequate, but is not naive about the impacts of State activities on Alaskan Native subsistence. It appears to accept the rural compromise as necessary and the eight criteria as adequate for the protection of Alaskan Native subsistence.

Tribalization-Nativization. This view does not consider the ANCSA-ANILCA framework as satisfactory to meeting the subsistence and cultural objectives of Alaskan Natives who wish to retain traditional ties to their ancestral lands. The State and Federal provisions are seen as short-term buyout measures in the plan for

termination of Alaskan Natives as peoples living in cultures linked to the land. Instead these voices call for new relationships, perhaps along the lines which the Menominee Indians took to retribalize their lands after termination. Proponents see these new directions as leading to enhanced authority to regulate their own in hunting and fishing matters, and to protect their lands from corporate takeovers. Paramount in this view is the cultural identity derived from subsistence and the lands on which it is based.

The proponents of this view do not appear to be concerned about the substantial loss of capital and cash which would likely follow transformation of corporate lands into tribal lands. The dangers posed by loss of lands far outweigh the attractions offered by development of those lands through corporate mechanisms.

The strategies outlined above may not fully represent the entire range of options or opinions which Alaskan Natives hold on subsistence issues. They are,however, indicative of the positions of some of the major actors in the area. What strategy or combination of strategies will be pursued is a matter for studied consideration of the benefits afforded by each and the complicated weighing of the multiple objectives of Alaskan Natives as they face the future.

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