

AN ANALYSIS OF ELIGIBILITY FOR SUBSISTENCE HUNTING
IN THE WRANGELL-ST. ELIAS NATIONAL PARK, ALASKA

By

Randall R. Rogers

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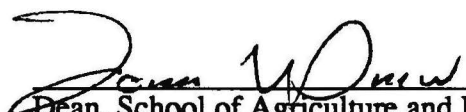





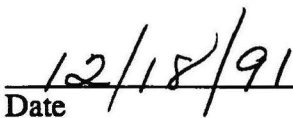
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WRANGELL-ST. ELIAS NATIONAL PARK, ALASKA

A
THESIS

Presented to the Faculty
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Abstract

This study of eligibility for subsistence hunting in the Wrangell-St. Elias National Park was initiated because of potential population growth of local communities eligible for subsistence hunting. The study examines the resident zone community and individual permit methods of determining park subsistence eligibility. Methods used include a legal analysis of subsistence hunting in new national parks in Alaska, numerical analysis of human population trends and wildlife resource uses, and interviews with persons concerned with park subsistence policy. The study finds that Congress intended that the resident zone system be the primary means of determining park subsistence eligibility; however, the legal framework and data indicating population increases in some local communities suggest there is reason to consider changing some of the existing resident zones to the individual permit system. Current population trends and wildlife harvest levels do not indicate a crisis situation. The National Park Service should articulate the criteria for eligibility decisions in a written policy and increase efforts to inform and involve local residents.

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Chapter 1.0 Introduction

The Copper River Basin, Upper Tanana River and Wrangell Mountains region of Alaska has been the homeland and source of sustenance for aboriginal peoples since the glacial retreat at the end of the Pleistocene. The region includes people from three Athabaskan Native linguistic groups; the Ahtna of the Copper River Basin and the Tanacross and Upper Tanana within the upper Tanana River Valley. Throughout the history of human occupation of this land Native peoples have been dependent on wild products from the land for food, fiber, and fuel. Beginning in the early 1800's and continuing to the present time, non-Native explorers, miners and settlers have moved into the region. Many of these people have also relied largely on wild resources to support their livelihoods. In recent times, activities which harvest resources from the land and are used by the individual harvester and his or her family have been identified by the term subsistence. Subsistence is a way of life which is difficult to precisely define but involves collecting and using a wide variety of natural resources according to seasonal availability, sharing within the family and community and adapting to changing circumstances. In modern times many subsistence users have integrated participation in the cash economy with subsistence practices to support their livelihoods.

Following the passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA, P.L. 92-203) and a protracted battle over conservation of federal lands in Alaska, in 1978, President Carter proclaimed much of the federal lands in this region as the Wrangell-St. Elias National Monument. This action culminated prior administrative land withdrawal actions and years of debate between conservation, development and

Native interests and placed the area under the management of the National Park Service (NPS), greatly changing the way the land and subsistence uses of natural resources are managed. Both the national monument proclamation and subsequent legislation which permanently established the park, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA, P.L. 96-487), specifically provided for continued subsistence uses of the new park lands, including hunting. This thesis examines the policy of the NPS with regard to determining who is eligible to participate in subsistence hunting in the Wrangell-St. Elias National Park and Preserve. The study emphasizes the inland portion of the park and the adjacent communities which are accessible by the existing road network.

Three basic methodologies were used to collect, analyze and present information on the topic of eligibility for subsistence hunting in the Wrangell-St. Elias National Park and Preserve. These include:

- 1) The development of the legal framework guiding subsistence on national park lands in Alaska;
- 2) Examination of how subsistence hunting was managed in the Wrangell-St. Elias National Park and Preserve through July 1, 1990, including presentation of data on local community history of subsistence uses of the park and human population and wildlife harvest trends, and;
- 3) Interviews of persons concerned with or affected by national park subsistence eligibility and management policy.

The primary emphasis of the legal analysis is to describe the intent of Congress in providing for continued subsistence uses within several new components of the national park system in Alaska, with specific application to the Wrangell-St. Elias National Park

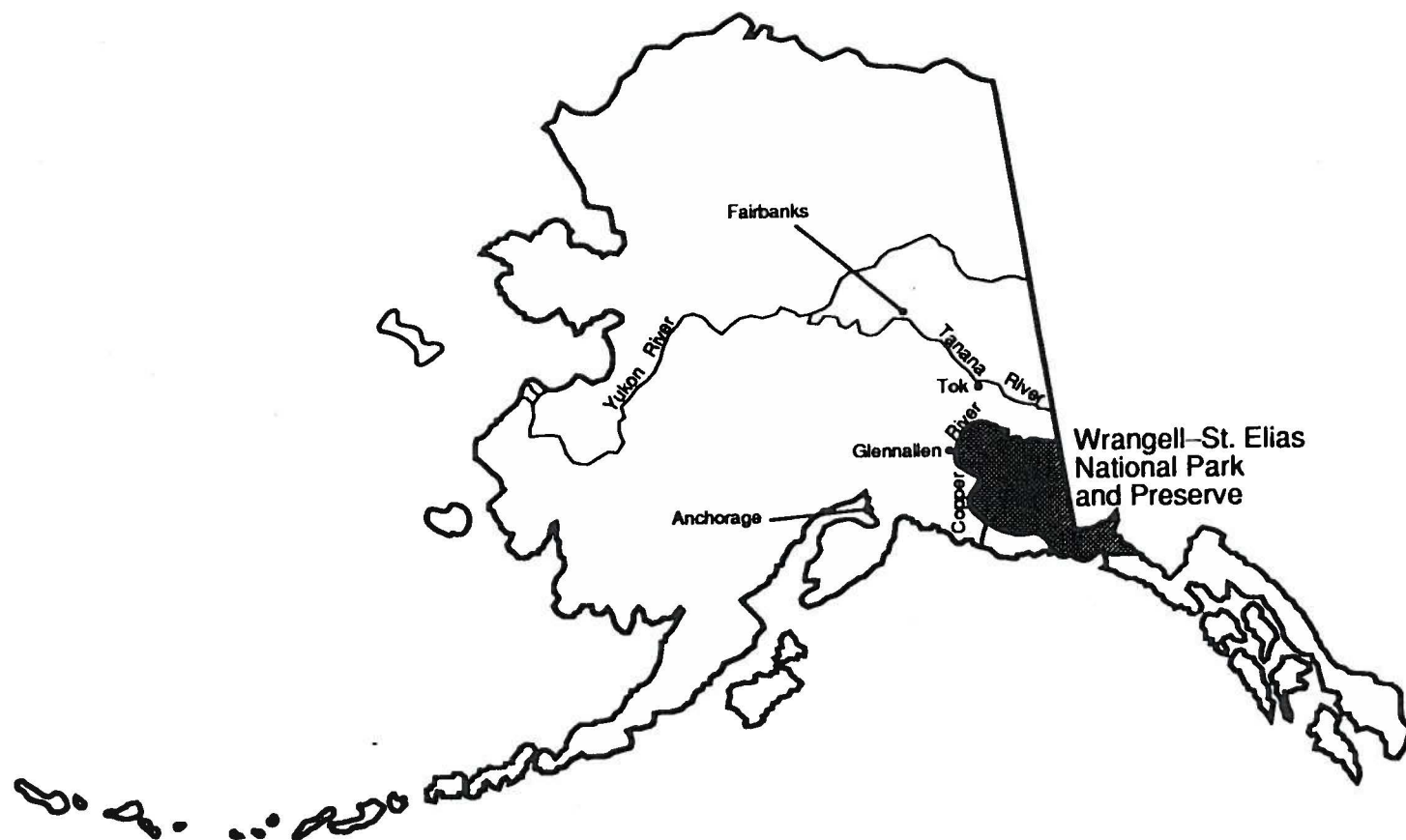
and Preserve. This thesis does not attempt to revisit the basic decisions made by Congress at the time the park/preserve was established. Because the Alaska Department of Fish and Game (ADF&G) has played a major role in managing the harvest of fish and wildlife within the park, the legal framework of state wildlife management and how it relates to national park wildlife management mandates is also presented.

When Congress passed ANILCA with provisions for subsistence hunting in national parks, a new conservation concept was brought into the NPS. In Alaska, the agency is now charged with protection of internationally significant wildlands and wildlife populations and protecting and managing customary and traditional subsistence hunting by local rural residents as well as allowing sport hunting on national preserve lands. The challenge given the NPS is to fulfill its mandates for wildlife and wildland protection and that of providing for continued subsistence and sport hunting, and to do so in a manner which will allow the system to continue to operate successfully into the future. The success of efforts to integrate subsistence hunting into national park conservation can be viewed as a measure of nation's success in protecting traditional ways of life and natural ecosystems while Alaska continues to develop.

1.1 Study Setting

1.1.1 Regional Setting

The Wrangell-St. Elias National Park and Preserve (WRST) extends over a large and diverse region of southcentral Alaska (Map 1). The national park contains a vast region of extremely rugged high mountain terrain which is heavily glaciated. The eastern border of the WRST is contiguous with Kluane National Park in Canada. The western border of the WRST is marked by the Copper River, a large glacial river which drains into Prince William Sound to the south. The northeast portion of the WRST drains into



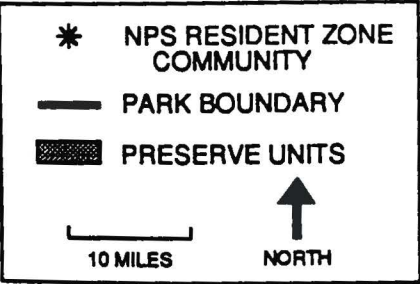
MAP 1: LOCATION OF WRANGELL-ST. ELIAS
NATIONAL PARK & PRESERVE

the Tanana River, a major branch of the Yukon River. From the Copper Basin (elevation under 2,000 feet), the high peaks of the Wrangells including Mt. Sanford (16,237 feet), Mt. Wrangell (14,163 feet), Mt. Drum (12,010 feet), and Mt. Blackburn (16,390 feet) dominate the landscape on clear days (Map 2).

The climate of the WRST is generally characterized by long, harsh winters and relatively warm, short summers but varies greatly in different regions of the park. The southern coastal region of the park has a maritime climate with extremely heavy precipitation averaging over 130 inches a year. The Copper River Basin is in the transitional zone between the maritime and continental climates with much less precipitation at 10 to 12 inches annually. The transitional and interior portions of the WRST are subject to extreme seasonal temperature variations, with lows down to -60 degrees F and highs occasionally reaching the 90s. North of the coastal climate zone, the lower regions of the WRST are dominated by a boreal forest environment. Alpine tundra is found at elevations between 3,000 and 5,000 feet. Much of the park above 5,000 feet is covered with perpetual ice and snow or rock (United States Department of the Interior [USDI], 1986, pages 100-106).

The diverse environments of the WRST provide habitat for a wide variety of wildlife species which include caribou, moose, Dall sheep, mountain goats, brown/grizzly bear, black bear, wolves, red fox, wolverine, martin, river otter, mink, lynx, beaver and numerous bird species common to Alaska. The Copper River serves as a migration route for several species of salmon, a portion of which spawn inside the WRST.

The WRST lies close to several of Alaska's major highways, making the national park one of the most accessible in the state (Map 2). The Richardson Highway, which runs between Valdez and Fairbanks, lies to the west of the park/preserve. The Trans-Alaska Pipeline traverses the Copper Basin roughly parallel to the Richardson Highway.



MAP 2: WRANGELL-ST. ELIAS NATIONAL PARK & PRESERVE AND THE RESIDENT ZONE COMMUNITIES

Two gravel roads originally built for mining access now provide access into the park/preserve. The McCarthy Road extends approximately sixty miles into the WRST in the Chitina River valley, following the old bed of the Copper River and Northwestern Railway which once served the Kennicott Copper Mine. The Nabesna Road on the north side of the WRST links Nabesna to the Tok Cutoff through the village of Slana.

Most of the people in the region live in small communities or loose aggregations of households strung along the highways paralleling the west bank of the Copper River. Glennallen is the major population and business center in the Copper Basin and Tok is the major center in the upper Tanana River region. An estimated 18 percent of the residents of the Copper Basin and 36 percent of the residents of the Upper Tanana are Native (Arctic Environmental Information and Data Center [AEIDC], 1988, pages 16-17). The heterogeneous nature of the population makes it difficult to generalize about subsistence uses (Reckord, 1983, page 6). Nonetheless, Holly Reckord and other researchers have identified groups in the region with distinctive subsistence lifestyles and harvest practices.

1.1.2 Overview of Subsistence in the Region

Subsistence has historically been central to the region's social, cultural and economic systems (AEIDC, 1988, page 18). Native residents continue their dependency on subsistence resources, not only because of their social and cultural traditions are inextricably tied to the land but also for purely economic reasons, particularly during lean times. Most non-Native residents, as well, find the harvest of wild resources central to the successful support of their households and a valued part of their rural lifestyle (ibid, page 20). The history of the region's cash economy is marked by sharp peaks of activity,

such as that which occurred during construction of the Trans-Alaska Pipeline, and broad troughs of decline. This circumstance heightens the continuing importance of subsistence in the region (ibid, page 19).

Subsistence plays a central role in the maintenance of Indian ceremonial and religious life. Contemporary Ahtna and Tanacross people still place a high value on subsistence knowledge, teach it to their children, and practice it in every day life (Ahtna-Tanacross Association, 1988, page B-3). Sharing of wild resources is a binding social force within and between villages. Non-Native resident hunting, fishing and gathering activities not only defray the high cost of living, they also have assumed a sociocultural role extending far beyond whatever recreational benefits are associated with them (AEIDC, 1988, page 28). The continued dependence of some people on subsistence resources should not be underestimated (Reckord, 1983, page 57).

The spatial and temporal fluctuations which are characteristic of boreal forest fish and wildlife populations greatly affect the subsistence user's ability to harvest subsistence resources. In general, people utilize the species when they are abundant and often substitute abundant species for non-abundant ones (Reckord, 1983, page 11). Seasonal wildlife cycles define the subsistence cycle. Some mammals hibernate; fish, such as grayling and salmon, run; and waterfowl migrate. Some primary subsistence species are subject to marked shifts in overall population levels. Animal populations also show marked seasonal shifts in spatial distribution. For example, species such as caribou and moose may winter in one area during one year and then not return to the same area for several years.

Subsistence is an adaptive lifestyle which demands response to changing circumstances. Over the last 150 years subsistence practices in the WRST region have responded to economic, technological, demographic, and social changes which have been either introduced from outside the region or have occurred within the region itself. A

more complete documentation of these changes and a description of both Native and non-Native subsistence practices in the region can be found in Holly Reckord's report "That's the Way We Live, Subsistence in the Wrangell-St. Elias National Park and Preserve" (1983).

Moose, caribou, salmon, seal, waterfowl and snowshoe hare are the major wildlife species taken for subsistence purposes. Sheep, goat, and bear are also taken, but their importance is much greater for sport hunting. Trapping for fur occurs throughout the park/preserve (USDI, 1986, page 123). Berry-picking and wood gathering for home heating and cooking is an important and common subsistence activity in the region, and spruce logs are cut for cabin construction. Salmon is probably the single most important subsistence food source within the region (Reckord, 1983, page 63). Although salmon is perhaps the major contributor in pounds of wild foods harvested and consumed, other fish and wildlife species may be equally important in the overall subsistence cycle. In their report "Alaska Over-the-Horizon Backscatter Radar System: Characteristics of Contemporary Subsistence Use Patterns in the Copper River Basin and Upper Tanana Area" AEIDC (1988) provides detailed information on subsistence use patterns within the region, including tables of the seasonal rounds of subsistence activities. The ADF&G has issued several technical reports on subsistence practices in the region.

1.2 Background: An Overview of the Establishment of the Wrangell-St. Elias National Park and Preserve and Subsistence Hunting Provisions.

On December 2, 1980, the U.S. Congress passed ANILCA thereby establishing the nation's largest national park, the 13.2 million acre Wrangell-St. Elias National Park and Preserve. In addition to establishing a vast system of conservation units in Alaska, this major legislation also recognized the national importance in retaining the opportunity for

a subsistence way of life by Native and non-Native residents of rural Alaska. Unlike components of the National Park System in other states, ANILCA specifically provided for the continuation of customary and traditional subsistence uses, including hunting, in several of Alaska's new national parks. Further complicating management policy, ANILCA allows continued state management of fish and wildlife harvest within new units of the National Park System, where such uses are allowed, and subject to the constraints of federal law.

Under ANILCA, new lands in the national park system were designated either as monuments, parks or preserves. In areas designated as preserve both sport and subsistence hunting is allowed. In several new park and monument areas only subsistence hunting is allowed. As the name implies, the Wrangell-St. Elias National Park and Preserve includes both park and preserve designations (Map 2). In this thesis the acronym "WRST" refers to the entire Wrangell-St. Elias National Park and Preserve. The terms park and preserve are applied only to lands with those specific designations, except where used in direct quotes from other sources. When the terms park or park areas are generically used in ANILCA, it normally refers to all lands administered by the NPS.

ANILCA, Title VIII, requires that subsistence uses of fish and wildlife by rural residents be given priority over sport and commercial uses of such resources on all federal public lands in Alaska. Title VIII also provides that subsistence uses of fish and wildlife within national parks or monuments must be consistent with the conservation of natural and healthy populations of fish and wildlife. State law directs the ADF&G to manage fish and game on a sustained yield basis.

After passage of ANILCA, the ADF&G system of fish and game management was certified by the Secretary of the Interior as meeting the legal requirement of providing a priority for use of fish and wildlife resources to rural subsistence users. In 1990 a legal

priority for use of fish and wildlife resources to rural subsistence users. In 1990 a legal decision was issued which found the state rural resident subsistence priority in conflict with the state constitution, forcing the federal government to take over fish and wildlife management on federal public lands in Alaska beginning July 1, 1990.

The legislative history of ANILCA indicates that the opportunity for subsistence hunting in national parks and monuments was to be continued "by local rural residents who have, or are a member of a family which has, an established or historical pattern of subsistence uses within such units." (U.S. Congress, Senate Report 96-413, page 169, November 14, 1979). The legislative history of ANILCA further indicates that Congress envisioned two basic systems which could be used to determine eligibility for subsistence uses within national parks; designation of entire communities as resident zones and authorization of individuals and families through permits. There are eighteen designated NPS resident zone communities in and around the WRST (Map 2). Under the resident zone system anyone who permanently resides in a designated resident zone community is recognized as an eligible subsistence hunter of the park. The individual permit system has only been used in the case of local rural residents living outside one of the resident zone communities who qualify based on a personal or family history of subsistence hunting use of the park at the time ANILCA was passed. Under the resident zone community system essentially all local rural residents in the WRST region have been eligible for subsistence hunting in the park, regardless of their historical pattern of subsistence uses of the park.

Under the process used by the Alaska Board of Game (BOG) prior to July 1, 1990, qualifications for the subsistence priority were initially based on a Tier I determination of rural status and findings of customary and traditional use, normally made on a

community-wide basis. Beyond the basic Tier I qualification requirement, Tier II provided for allocating fish and game resources among subsistence users, should harvest need to be more tightly controlled to protect wildlife resources. The BOG process did not distinguish land ownership in subsistence eligibility decisions; thus, a BOG determination applied the same on national park lands as other federal and state lands. The BOG did acknowledge that NPS regulations were more restrictive in determining eligibility.

Both the NPS and ADF&G systems of determining subsistence eligibility are initially based on community-wide decisions and have worked fairly consistently with each other during the initial period following passage of ANILCA. As wildlife and human population factors change, both the NPS and ADF&G systems include mechanisms to shift to more individualized subsistence eligibility decisions. However, the precise criteria and point of change for shifting to individualized subsistence eligibility decisions vary between the federal and state systems.

1.3 Need for the Study

Traditionally, national parks in the United States have not allowed hunting or consumptive uses of wildlife. When large parks were established in Alaska in areas where aboriginal people had subsisted for thousands of years and other persons had established subsistence and sport hunting lifestyles, Congress authorized continuation of these activities within specified limitations. There is a delicate balance to be struck between fulfilling the conservation purposes of the WRST and continuation of consumptive uses of wildlife. Without carefully balanced management, conflict between consumptive and non-consumptive users of wildlife is likely to increase. This thesis is dedicated to providing information which can contribute to park management reaching the necessary balance of these wildlife resource uses.

The Wrangell-St. Elias National Park and Preserve is the ideal location for a study of the methods used to determine eligibility for subsistence hunting in Alaska's national parks. Many of the issues which will eventually face the NPS with regard to subsistence eligibility in the national park system throughout Alaska are currently found in the WRST. Pressures from increasing human population may affect the WRST sooner than other, more remote parks. The WRST has over one million acres of state and private land inholdings and is located adjacent to the existing Alaska highway system. The United States Air Force initiated construction of an Over-the-Horizon Backscatter Radar system in the area which might have resulted an immediate influx of new residents; however, the project was cancelled. Other actions which may result in increasing populations in the vicinity of the park include the proposed construction of the Trans-Alaska Gas System and continuing residential land disposals by the State of Alaska. All of these factors point to the need to examine the question of subsistence hunting eligibility and devise workable management programs before wildlife populations are threatened, conflicts develop between park user groups or other resource problems develop.

The question of determining who is eligible to subsistence hunt is probably the most significant issue involving subsistence in national parks at the present time. Because ANILCA's legislative history indicates that subsistence eligibility is to be based on personal or family history of use, decisions made now will greatly affect the future numbers of eligible subsistence hunters in parks. Numbers of qualified hunters will, in turn, affect the per-capita harvest levels which can be allowed and the ability of those dependent on subsistence hunting to sustain their livelihood.

The current resident zone community system of determining eligibility for subsistence hunting within the Wrangell-St. Elias National Park allows new residents within these zones to qualify for subsistence hunting within the park. This system minimizes

bureaucratic regulation of subsistence in the park but does not limit eligibility to persons with a personal or family history of use of wildlife within the park. The resident zone system can lead to increased competition for wildlife resources if a large number of new residents move into the region.

Congress did not articulate whether persons who lack a personal or family history of subsistence hunting in the park, but who qualify through moving into a resident zone community, would lose their park subsistence eligibility if a change is made to an individual permit system. If a change is made to an individual permit system, persons who were eligible under the resident zone system but who do not qualify for an individual permit will be reluctant to give up their park hunting privileges. As more people move into the region the controversy involved in changing from one system to the other will be greater because more people will be directly affected.

Some members of the Subsistence Resource Commission for the Wrangell-St. Elias National Park (SRC for the WRST) and others are concerned that, if eligibility for subsistence hunting is restricted to persons with a personal or family history of use in the park, subsistence hunting will eventually be eliminated from the park. On the other hand, if the communities are stable or grow internally, the number of qualified subsistence hunters could remain constant or rise and not necessarily affect the suitability of the community as an NPS resident zone.

Because of concern about increasing populations in the region of the WRST, the NPS has encouraged the SRC for the WRST to consider implementing an individual permit system in place of some of the resident zone communities. At the present time the commission is reluctant to recommend eliminating resident zone communities and use of individual permits, partly because they are unsure of the need to restrict eligibility and partly because of the likelihood that communities will become divided between those

who are, and those who are not, eligible to subsistence hunt in the park.

It is crucial to examine all of these issues in the context of what Congress actually intended when the WRST was established. It is clear that some limitations were placed on subsistence use in the park and preserve. The actual extent of these limitations and the most equitable method of balancing the limitations and protections of subsistence hunting in the WRST are much less clear.

Chapter 2.0 Research Design

2.1 Research Methods

There are no previous studies or standard methodologies for a study on national park subsistence eligibility policy. The researcher spent considerable time discussing the project proposal with representatives of the NPS, ADF&G and staff in various departments of the University of Alaska Fairbanks before selecting three primary study methods. Early in the investigations into the subject, it became apparent that there are widely varying interpretations of the legal requirements of ANILCA regarding national park subsistence eligibility. This led the researcher to conclude that an analysis of the legal intent of congress was necessary to establish a baseline by which to evaluate policy decisions. Next, it was apparent that there was substantial disagreement, in terms of human population increases and pressure on the wildlife resources, on whether there is a need to change the NPS eligibility program from the resident zone system to the individual permit approach. To address this information gap data were compiled from a variety of sources to document conditions in the local communities and trends in wildlife harvest. Finally, interviews were conducted with persons affected by WRST subsistence decisions in order to add a human dimension to the legal and numerical information.

This thesis generally follows the writing style of the Publication Manual of the American Psychological Association, Third Edition (American Psychological Association, 1990). Where this manual does not provide specific detail on the necessary writing style the author has attempted to be consistent throughout the thesis.

2.1.1 Legal Analysis

The legal framework guiding subsistence on national park lands in Alaska is examined by reviewing the applicable provisions of federal and state law and tracking the legislative history of ANILCA to identify congressional intent where necessary. The analysis does not cover every aspect of federal and state subsistence law; the focus is on the main legal provisions affecting national park subsistence eligibility.

The legal analysis follows the recommendations of the U.S. Department of the Interior Solicitor's Office which state:

The Alaska National Interest Lands Conservation Act is the Senate-passed H.R. 39....The Senate-passed H.R. 39 was a compromise bill lacking substantial direct legislative history (e.g. there is no Committee Report on the Senate-passed bill). While some direct legislative history on the Act itself exists in Congressional Record statements on the Senate and House-passed H.R. 39, it is not extensive because of the compromise nature of the Senate-passed H.R. 39. There will be many instances where further evidence of congressional intent will be required to resolve statutory ambiguity. In these situations, there will be a need to examine the legislative history of comparable provisions in the Senate Committee, House-passed and House Committee bills to discern congressional intent. (Widman, 1980)

Accordingly, in this analysis first consideration is given to the statutory provisions of ANILCA. Where critical points are not fully clear in the law itself, the legislative history is referenced. In some cases, it was necessary to track the evolution of comparable provisions in several versions of the Act to synthesize an interpretation of congressional intent. The primary sources of legislative history referenced are:

- * Senate Report No. 96-413, November 24, 1979.
- * House Report No. 96-97, Parts I and II, April 18, 1979.
- * House Floor statements made when the House concurred in the Senate-passed H.R. 39, November 12, 1980.

In cases where there are conflicts between House floor statements and Senate floor statements or Senate Report 96-413, the Senate version has priority as authors of the bill which the House later voted to accept.

2.1.2 Analysis of Local Communities

The analysis of local communities and wildlife use trends draws on information available in published reports, government files and analysis of ADF&G, Division of Subsistence, household subsistence use survey data. Estimates of the portions of households in local communities which report using the WRST for subsistence purposes before 1981 are derived from the ADF&G subsistence use survey data base and are presented in section 4.2. This information most closely parallels the NPS subsistence eligibility requirement of having a "personal or family history of subsistence use" before the park/preserve was created, and is therefore of key importance to this study.

The Division of Subsistence household survey was conducted as part of a cooperative effort by the Division of Subsistence, the National Park Service and the U.S. Air Force to document potential impacts on subsistence in the region from construction of the proposed U.S. Air Force Over-the-Horizon Backscatter Radar. The survey was conducted with standard Division of Subsistence procedures with a few additional survey questions added to obtain specific data on subsistence use of the proposed radar sites and the WRST. For the smaller communities in the region, a 100 percent sample of all households was targeted for the subsistence harvest survey. For the larger communities, households were stratified into three groups based on harvest levels in order to obtain more accurate information on overall community harvest, then 25 percent of the households were randomly selected for the survey.

Through a cooperative agreement for this thesis project, the ADF&G, Division of Subsistence, provided a copy of the statistical data base from the 1988 Copper River Basin and Upper Tanana Subsistence Use Update study. These data were analyzed with a Statistical Packages for Social Science (SPSS-X) program. The analysis was accomplished by first aggregating the data base to a household level so that percentages of

households in the sample communities could be obtained. Next, a series of crosstabulations were done to obtain percentages of households in the study communities which report having used the WRST for subsistence purposes, as determined by selecting for certain variables. Trends in hunting patterns are examined using recent harvest report information obtained from the ADF&G and information on pre-park harvest levels as reported by Murphy and Dean (1978).

2.1.3 Interviews

The researcher conducted interviews during the summer of 1989 with persons concerned with or affected by national park subsistence eligibility policy and management. The interview procedures were not designed to obtain a statistically valid representation of views of the region as a whole, but to present views of affected park users to complement the legal and numerical information.

A standardized interview guide was used to provide general direction to the discussions while allowing respondents the flexibility to express their individual thoughts and concerns relating to subsistence in the WRST region. The object of this type of interview was "not to elicit choices between alternative answers to pre-formed questions but, rather, to elicit from the interviewee what he considers to be important questions relative to a given topic....Its object is to carry on a guided conversation and to elicit rich, detailed materials that can be used in qualitative analysis (Lofland, 1984, emphasis added).

In June, 1989, 34 letters were sent to residents of the Copper Basin and upper Tanana River region to introduce the study and inquire about their willingness to participate in an oral interview. Included was a "willingness to participate form" and a stamped return envelope. The names of persons contacted for interviews were obtained from three

primary sources: members of the SRC for Wrangell-St. Elias National Park, fifteen members of State Fish and Game Advisory Committees in the region, and eleven Native village councils and organizations. These sources were selected because people were more likely to be aware of fish and game regulatory issues in the region and to obtain a diversity of viewpoints from the different communities in the region. This sample selection method favored more long time residents of the region because it may take a while for new residents to become familiar enough with fish and game issues to serve on one of these advisory boards.

The researcher traveled throughout the region for several weeks during July and August, 1989, attempting to contact people and conduct interviews. The first interviews were scheduled with people who had returned participation forms. Next, attempts were made to contact by telephone those who did not respond in writing. A few interviews resulted from recommendations about knowledgeable persons obtained during the interview process. During October, 1989, one interview was conducted in Anchorage with a representative of a national environmental organization which had written to the NPS expressing concern about subsistence eligibility. This interview was intended to bring into the study the "national perspective" which had advocated creation of the WRST. This interview used some of the questions from the standard interview guide but focused primarily on the conservation perception of congressional intent of subsistence in Alaska national parks. Questions about community subsistence use of the WRST did not apply.

Eleven full interviews of an hour or more were completed. The researcher spoke with several persons who did not want to participate in full interviews. The main reason given for declining to participate was a mistrust of subsistence research. The researcher spoke with several people in the Tok area who were upset because the BOG had determined residents of the area did not have customary and traditional use of Dall Sheep in a

portion of the WRST. This decision was based on preliminary Alaska Division of Subsistence household survey data analysis, the same data used in this thesis. One person indicated that Holly Reckord's subsistence report had resulted in unfavorable subsistence regulatory decisions. One person declined an interview because of mistrust of the researcher due to his previous employment with an Alaska environmental organization. This person did submit written comments which were included in the interview results. Several people in the Slana area were contacted for interviews and decided that they would prefer to conduct a group discussion involving all the available members of the Tok Cutoff/Nabesna Road State Fish and Game Advisory Committee. This meeting provided some clear insights into the perspectives of the local residents but did not provide individual interview responses.

Because time and travel budget constraints did not allow returning to the region in fall for additional interviews, written copies of the interview questions were sent to people who had expressed an interest in having their views included in the study. Five additional responses were obtained this way. Some of these responses were incomplete because the researcher was not present to explain the interview questions or answer questions about various state and federal regulations.

2.2 Goals and Objectives of the Study

GOAL: To provide information and recommendations to assist decision makers in formulating subsistence eligibility policies which can best continue the opportunity for traditional subsistence hunting and conserve wildlife populations within the Wrangell-St. Elias National Park and Preserve.

Objective A: To describe the legal framework guiding subsistence hunting in the Wrangell-St. Elias National Park and Preserve and make recommendations on policies needed to ensure subsistence management is consistent with legal mandates.

Objective B: To describe how subsistence hunting has been managed in the WRST, to document the characteristics of local communities and wildlife harvest patterns, and to evaluate the information in the context of the legal guidelines for national park subsistence eligibility.

Objective C: To describe the views of local residents and park users concerned with management of subsistence in the park/preserve in order to integrate their perspectives on WRST subsistence eligibility into management recommendations.

2.3 Limitations of the Study

2.3.1 Legal Analysis

The legal framework in this thesis presents a theory of the intent of Congress in authorizing continued subsistence uses in the WRST and the relationships of federal and state laws affecting subsistence hunting in the park/preserve. Other interpretations of the law have been and will be presented. While this analysis attempts to objectively portray the legal framework of WRST subsistence hunting, many of these issues are likely to be litigated in the future and only then will the law be conclusive.

2.3.2 Analysis of Local Communities

Significant differences may exist in the makeup of local communities, their population trends and wildlife harvest patterns between the WRST and other more remote national parks in Alaska. One major difference is the presence of highway access in the WRST region. Because of these differences the workability of the resident zone community and individual permit systems in the WRST may be significantly different than in other national parks in Alaska.

The ADF&G subsistence use survey was conducted in 1988. The primary use of this data base in this project is to estimate the percentages of households in each community which used the park for subsistence purposes before the park was established in 1980. Some households may have left the communities between 1980 and 1988 causing the 1988 figures to deviate somewhat from the actual situation in 1980. Further, the household survey only asked about park/preserve subsistence use for the activities of caribou, moose and Dall sheep hunting, furbearers and firewood. If households used the park/preserve for subsistence hunting of other species, fishing or berrypicking it is not included in the data. For this reason, the data presented on community subsistence use of the WRST cannot be considered conclusive of all the subsistence uses which may have taken place in the WRST. However, because caribou, moose and sheep hunting are the primary subsistence hunting activities in the WRST, the computer data base does provide the best available estimate of community history of hunting in the park. The figures can best be used to compare the relative concentrations of pre-park subsistence users in the various communities.

2.3.3 Interviews

The oral interviews are intended to provide the reader with an overview of some of the different perspectives on management of WRST subsistence eligibility. The interviews are not a statistically valid representation of the views of local residents or national park conservation advocates. Further, during the interviews with local residents it was apparent that many people are not familiar with national park subsistence eligibility regulations. In several cases the interviews were the first description of the resident zone and individual permit systems that the interviewee had encountered. Due to the lack of previous information and thought on the two NPS eligibility programs by many of the respondents, the interviews should be considered only a preliminary indication of the views of local residents on WRST subsistence eligibility.

Chapter 3.0

The Legal Framework of Subsistence Hunting in Alaska National Parks

3.1 Introduction

The overarching legal framework guiding subsistence hunting in the WRST and in Alaska's national parks in general, is established in ANILCA. Title II of ANILCA establishes new units of the National Park System and describes the purposes for which they are to be managed. Title VIII establishes a priority for use of fish and wildlife on federal public lands in Alaska for subsistence purposes, over other consumptive uses such as sport hunting and commercial fishing. Title VIII defines subsistence in terms of customary and traditional use of fish and wildlife. The working definition of this phrase is critical to both federal and state subsistence regulatory decisions. ANILCA further requires a system of local fish and wildlife advisory committees and regional councils designed to give local users of fish and wildlife resources a greater role in management decisions.

While ANILCA established federal guidelines for fish and wildlife uses on federal public lands, it also specified that as long as state laws and regulations provided for the subsistence definition, preference and participation required under ANILCA sections 803, 804 and 805, the state could continue to manage fish and wildlife on federal public lands. The result has been a system of fish and wildlife management which was primarily administered by the state but which had a large degree of federal oversight. If the state does not comply with ANILCA's requirements for a priority for subsistence uses,

the federal government is compelled to take over fish and wildlife management on federal public lands in Alaska. As a result of litigation on the subsistence priority, the federal government assumed management of fish and wildlife on federal public lands in Alaska on July 1, 1990.

A full description of the legal challenges to the federal and state subsistence laws is beyond the scope of this thesis; however, it must be noted that the courts have ruled: (1) that the state subsistence law's definition of rural is inconsistent with the meaning of the term in ANILCA (*Kenaitze Indian Tribe v. State of Alaska*, 860 F 2d 312 [9th Cir 1988]); and (2) the preference for subsistence uses of fish and game by rural residents in state law violates the state constitution's provision specifying that all residents of the state must have equal access to fish and game resources (*McDowell v. State of Alaska*, 785 P 2d 1 [AK 1989]). While the Kenaitze decision could have been resolved by a change in the state's definition of rural, the McDowell decision precluded a subsistence preference for rural residents alone under state law, forcing the federal government to assume fish and wildlife management on federal public lands in Alaska.

This analysis focuses on the legal framework of national park subsistence hunting established by Congress in 1980 and in place through June 30, 1990. Even though the federal government has assumed full responsibility for subsistence management of fish and wildlife on federal public lands in Alaska, including national parks, revisions to state and/or federal law may result in a return to the state of some or all fish and wildlife management responsibilities. Because of the potential for new legislation and the possibility of a return of state fish and game management responsibilities, it remains important to examine both the federal and state legal framework of national park subsistence hunting in place prior to the federal takeover.

3.2 The Federal Legal Framework of Subsistence in Units of the National Park System in Alaska

3.2.1 The Origins of Federal Subsistence Laws in Alaska

The Alaska Statehood Act of 1958 (P.L. 85-508) authorized the state to select 103.55 million acres of vacant, unappropriated and unreserved public land as a federal land grant. This land was to be used, among other things, as a natural resource base for the new state to build a sound economic future. Before the state land selection process had progressed very far, however, Alaskan Natives protested that they were being denied lands to which they had prior aboriginal right. In 1966 the U.S. Interior Department placed a freeze on further conveyance of federal land until the Native claims issue could be resolved.

The Alaska Native Claims Settlement Act of 1971 (ANCSA, P.L. 92-203) authorized Alaskan Natives to select about 44 million acres of federal land and provided nearly one billion dollars for extinguishment of other Native claims based on aboriginal title, including hunting and fishing rights. Section 17 (d)(2) of ANCSA authorized the Secretary of the Interior to withdraw up to 80 million acres of federal lands to protect the national interest in the lands as National Parks, National Wildlife Refuges and other conservation purposes until Congress acted to make final designations. This provision of ANCSA initiated what became known as the D-2 lands debate, eventually resulting in passage of ANILCA and creation of the Wrangell-St. Elias National Park and Preserve.

While ANCSA extinguished Native hunting and fishing rights based on aboriginal title, Congress made it clear that the Secretary of the Interior and the state were expected to maintain Native subsistence hunting opportunities. In adopting ANCSA the Congress stated:

The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority...The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives. (U.S. Congress, Report No. 92-746, 1971, emphasis added)

After experiencing frustrations in working with the state and federal governments to protect subsistence opportunities under this regime, the Alaska Native community played a key role in advocating better federal protection of subsistence opportunities than was provided in ANCSA. The Joint Federal-State Land Use Planning Commission for Alaska which was established by ANCSA recognized the continued need for protection of subsistence opportunities. In its recommendations for federal conservation units submitted to Secretary of the Interior Rogers C. B. Morton in August, 1973, the commission stated:

UNLESS PROHIBITED in the recommendations which follow, hunting, fishing, trapping, berrypicking, timber cutting for local consumption for fuel and home building, and other subsistence activities should be permitted. Where a conflict arises between the taking of such resources from the land for sport or commercial purposes or for subsistence need, preference should be given to the taking for subsistence need. (Joint Federal-State Land Use Planning Commission, 1973)

The initial version of the Alaska Lands Act specified that "the Secretary shall permit the continuation of such subsistence uses of fish, wildlife, and plant resources within the areas...established by...this Act and upon all other public lands in Alaska" (U.S. Congress, H.R. 39, introduced January 4, 1977). The bill specified that the Secretary of the Interior would have full authority to manage and regulate the taking of wildlife in federal conservation units in cooperation with "regulatory subsistence boards." A later version of the bill, H.R. 39 Committee Print No. 2, provided that whenever it was necessary to curtail the consumptive use of fish or wildlife on the public lands, subsistence uses by Alaska Natives were to be given a specific preference.

Alaska's Governor Jay Hammond made arguments against a system of split federal/state wildlife management and establishing a subsistence preference based on Native ethnicity. He pointed out that wildlife movements do not correspond to political boundaries and that a subsistence preference based on ethnicity would violate the Alaska State Constitution. Governor Hammond did support a subsistence priority based on rural residency. These arguments resulted in the final version of ANILCA allowing continued state wildlife management on federal lands under federal guidelines, even in conservation units, and a subsistence preference for rural residents, both Native and non-Native.

In his floor statement accepting the Senate-passed version of the Alaska Lands bill, Interior Committee Chairman Morris Udall stated:

Of all the groups in Alaska with a stake in passage of the Alaska National Interest Lands Conservation Act, no group will be more profoundly affected than the Alaska Native residents of the more than two hundred native villages scattered throughout rural Alaska. The cultural identity of those residents, and the economy of their villages, remain interwoven [sic] today, as they have for generations, with the harvest of fish, wildlife and plants, for subsistence uses....Although the Federal and State subsistence management program established in the bill is racially neutral, it is important to recognize that the primary beneficiaries of the subsistence title and other provisions in the bill relating to subsistence management are the Alaska Native people. Although there are many non-Natives living a subsistence way of life in rural Alaska which may be an important national value, the subsistence title would not be included in the bill if non-Native subsistence activities were the primary focus of concern. Rather, the subsistence title and the other subsistence provisions are included in recognition of the ongoing responsibility of the Congress to protect the opportunity for continued subsistence uses in Alaska by the Alaska Native people... (Cong. Rec. H 10545, Nov. 12, 1980)

This passage demonstrates that, while ANILCA's subsistence preference is not based on ethnicity, Congress established the subsistence preference primarily to benefit Alaska Natives. Congressman Udall went on to say that the "administrative structures and regulations for conservation system units, including national parks and monuments, shall be established and implemented in a manner consistent with protection and continuation of Alaska Native culture and Native subsistence activities" (ibid).

The topic of federal versus state management of fish and wildlife in national interest lands was the subject of considerable debate in the formation of ANILCA. As noted previously, the original version of the Alaska lands bill provided for a system of management of subsistence uses of fish and wildlife on the public lands under the authority of the Secretary of the Interior. The Secretary would have been authorized to "publish regulations prescribing conditions under which subsistence uses may be conducted, including, but not limited to, the establishment of limits on the number and type of wildlife species to be utilized and the length of season during which subsistence activities may be engaged in..." (H.R. 39, January 4, 1977).

Based at least in part on Governor Hammond's testimony against the split federal/state fish and game management system, the House Interior Committee reported that "The Committee feels strongly that the traditional daily management authority of the State of Alaska should be maintained. The State, with its existing infrastructure, is best able to manage subsistence and other resources" (House Report 96-97, Part I, page 231, April 18, 1979). In the dissenting views section of the report some members of the Committee noted

There is at present no Federal law which grants any state the authority to administer fish and wildlife resources outright on the public lands. The Subsistence Title VII [later changed to Title VIII] in our preferred version of H.R. 39 would be the *first legislative expression of the Congress which grants the State a statutory right to regulate the taking of fish and wildlife on public lands*, with Federal oversight, as required by the Constitution, at a minimum. (House Report 96-97, page 544, emphasis in the original)

The dissenting views go on to include a discussion of the legal history of states rights in managing fish and wildlife concluding with the *Kleppe versus New Mexico* decision where the Supreme Court ruled that the United States:

has Constitutional power to enact laws and regulations controlling and protecting...(its) lands, including the...resident species of wildlife situated on such lands, and that authority is superior to that of a State. (*Kleppe v. New Mexico*, 426 US 529, 49L Ed 2d 34, 96 [S Ct 2285])

This was a hallmark legal decision which conclusively demonstrated that the federal government has full authority to manage fish and wildlife on federal lands, and upon state lands when state wildlife management might adversely affect the federal interest in wildlife on federal lands. This authority is routinely exercised in units of the National Park System. In the description of committee amendments included in the Senate Energy Committee's report, the report which describes the version of the subsistence title which became law, the committee noted:

The subsistence management provisions of S.9 as introduced reflect a delicate balance between the traditional responsibility of the State of Alaska for the regulation of fish and wildlife populations within the state and the responsibility of the Federal Government for the attainment of national interest goals, including the protection of the traditional lifestyle and culture of Alaska Natives. (Senate Report 96-413, page 232)

This approach remained intact in the final version of ANILCA and is articulated in Section 1314 which provides:

- (a) Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act, or to amend the Alaska Constitution.
- (b) Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over management of the public lands. (ANILCA Sec. 1314, 16 USC 3202)

3.2.2 The Subsistence Policy on Federal Lands in Alaska

Title VIII of ANILCA includes the major provisions guiding fish and wildlife management and subsistence uses on all federal public lands in Alaska. Sections 808 and 815, among others, have provisions which apply specifically to units of the national park system. This discussion describes the provisions of Title VIII which apply to all federal public lands in Alaska. This will help to set a context for understanding how they apply, or are modified, on lands managed by the National Park Service.

Section 801 describes the congressional findings on subsistence management and use. Sec. 802 declares that it is the policy of Congress that:

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established...the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses.... (ANILCA, Sec. 802, 16 USC 3112)

Subsistence uses on all federal public lands must be consistent with the conservation of healthy populations of fish and wildlife. Of particular significance to national park subsistence is the requirement that subsistence uses of resources be consistent with the purposes for which each unit, or park in this case, was established.

Sec. 803 defines the term subsistence uses as:

...the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term--

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis... (ANILCA, Sec. 803, 16 USC 3113)

Subsistence is defined as customary and traditional uses by rural Alaska residents and the interpretation of these terms is critical to subsistence regulatory decisions. Of significance to national park subsistence hunting eligibility, the statutory definition of family covers a broadly extended family unit.

Sec. 804 establishes criteria for allocation among subsistence users when fish and wildlife resources cannot meet all subsistence needs, stating:

Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
 - (2) local residency; and
 - (3) the availability of alternative resources.
- (ANILCA, Sec. 804, 16 USC 3114)

The three criteria for allocating subsistence uses of fish and wildlife when needed to protect the viability of the populations are to be considered in the aggregate and are not listed in their order of priority.

Section 805(a) requires the Secretary of the Interior, in consultation with the state, to establish a system of Alaska subsistence resource regions with local advisory committees and regional advisory councils. The advisory councils review and evaluate matters relating to subsistence uses of fish and wildlife and prepare an annual report on subsistence which is submitted to the Secretary of the Interior. ANILCA, Section 805(d) allows the state to continue its responsibilities for managing the taking of fish and wildlife on federal public lands, so long as state law is consistent with the subsistence definition, preference and participation provisions of Title VIII.

Sec. 806 provides for federal monitoring of the state subsistence law while Sec. 807 provides for judicial enforcement of the subsistence preference. Sec. 808 provides for establishment of national park and monument subsistence resource commissions. The role of the park subsistence resource commissions is addressed in detail under Section 3.2.3. Sec. 809 provides for cooperative agreements to effectuate the purposes of Title VIII while Sec. 810 requires evaluation of federal actions for possible impacts on subsis-

tence.

Section 811 requires that rural residents engaged in subsistence uses have reasonable access to subsistence resources on the public lands. The Secretary is required to permit on the public lands "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation" (ANILCA Sec. 811, 16 USC 3121). Sections 812-814 provide for research, reporting and promulgation of regulations regarding subsistence uses.

Section 815 is the "Limitations and Savings" clause which places a limit on the level of subsistence harvest of fish and wildlife. This provision is described in Section 3.2.3 where the differences between federal lands in general and NPS limitations are described. Finally, Sec. 816 provides for closures to subsistence uses.

3.2.3 National Park and Preserve Subsistence Management Provisions

3.2.3.1 Establishment of the Park and its Purposes

Proposals for conservation unit designations in the Copper Basin/Wrangell region varied widely during the Alaska Lands Act debate. The legislative proposals originally submitted by the Department of the Interior on December 18, 1973 called for establishment of a Wrangell-St. Elias National Park and a Wrangell Mountain National Forest (DOI, 1973 a and b). Different versions of the Alaska Lands Act considered by the various House and Senate committees divided the proposed conservation unit into subunits of park, preserve, and national recreation area. The majority of the congressional discussions on how to divide the WRST among these three designations focused on the need for mineral development and allocation of areas for sport hunting for Dall sheep. Different versions of the bill varied in how subsistence hunting was to be dealt with in the

WRST.

The final version of the Alaska Lands Act, ANILCA, provides that:

The park and preserve shall be managed for the following purposes among others: To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscapes in their natural state; to protect habitat for, and populations of, fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals; and to provide continued opportunities, including reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII.

(ANILCA, Section 201(9), 43 USC 1610, emphasis added)

This provision limits park subsistence to local residents where subsistence hunting on federal public lands in general is only restricted to rural residents. While ANILCA does not identify subsistence as a specific purpose of the park, an action which would have granted subsistence the same status as protecting habitats for and populations of fish and wildlife, it is clearly an activity given great importance as part of park management responsibilities.

3.2.3.2 Administrative Provisions

ANILCA, Section 203, directs the Secretary of the Interior to administer newly established areas of the National Park System in Alaska according to the National Park Service Organic Act of 1916 (39 Stat. 535, 16 U.S.C. 1 et seq.) and under Section 1313 and other applicable provisions of ANILCA. Section 203 provides that hunting is allowed in national preserves, subsistence uses by local residents are allowed in national preserves and, where specifically permitted, in national parks and monuments. ANILCA, Sec. 1313 provides further guidance for administration of national preserves stating:

A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park...except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation. (ANILCA, Sec. 1313, 16 USC 3201)

This passage indicates that national preserves are to be managed the same as parks, with the exception that sport hunting is allowed and is not confined to local residents. Sec. 1313 also provides that, except in emergencies, any regulations proposed by the Secretary to restrict hunting, fishing or trapping in preserves "shall be put into effect only after consultation with the appropriate state agency" (ibid).

Sec. 1314, Part (c)(1) provides that areas designated as national parks shall be closed to the taking of fish and wildlife except that "the Secretary shall administer those units of the National Park System...established by this Act and which permit subsistence uses, to provide an the opportunity for the continuance of such uses by local rural residents..." (ANILCA, Sec. 1314, 16 USC 3202).

3.2.3.3 Limitations on National Park and Preserve Subsistence Hunting

Section 815 of ANILCA includes the Limitations and Savings Clauses applying to subsistence use of federal public lands. Part (1) provides that "nothing in this title shall be construed as...permitting the level of subsistence uses of fish and wildlife in a conservation system unit to be inconsistent with the conservation of healthy populations, and within a park or monument to be inconsistent with the conservation of natural and healthy populations of fish and wildlife" (ANILCA, Section 815, 16 USC 3125; emphasis added). Thus, the basic standard for managing subsistence uses of fish and wildlife within national parks is to conserve natural and healthy populations of fish and wildlife. The phrase natural and healthy is difficult to precisely define; however, its intent as a limitation is demonstrated by tracking the origin of the clause.

The original version of the Alaska Lands legislation permitted subsistence uses on national interest lands only by people who had established and exercised customary, consistent, and traditional use at the time ANCSA was passed on December 18, 1971. Subsequent versions of the bill considered by the House during 1978 and 1979 include a different limitation statement indicating that:

Nothing in this title shall be construed as...permitting the level of subsistence uses of fish and wildlife on such lands to be significantly expanded beyond the level of such uses occurring during the ten year period before January 1, 1978. (H.R. 39, Sec. 714, in House Report 96-97, page 53, April 23, 1979)

This ten year standard remained in several versions of the bill but the language was removed in the Senate Energy and Natural Resources Committee and replaced with the natural and healthy standard. The Committee Report states:

The Committee adopted an amendment to Section 815(1) which eliminated the 10-year standard of measurement on the level of subsistence uses on the public lands. In place of the 10-year standard the Committee substituted language to clarify that nothing in the subsistence management and use title is intended to permit the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with "the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife." The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. (Senate Report 96-413, Nov. 14, 1979, page 235)

The Senate Committee defined the term healthy stating:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of the ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly the ability and capacity of a population or species to respond to changes in its ecosystem, the greater the safety factor must be....

The Committee recognizes that the policies and legal authorities of the

managing agencies will determine the nature and degree of management programs affecting the ecological relationships, population dynamics, and manipulation of the components of the ecosystem. (Senate Report 96-413, page 233)

The Senate Committee report further clarifies the intent of park subsistence in the description of park administration which states:

In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreation Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that this concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to ensure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units. (Senate Report 96-413, page 171)

Although use of the term park is not defined in ANILCA, this phrase demonstrates that in this context, park applies to both park and preserve areas and all NPS lands are to be managed for natural and healthy wildlife populations. The House of Representatives, in accepting the Senate version of the Alaska Lands bill, affirmed the concept of managing National Park System units on a ecologic basis by stating:

Congress intends that the Secretary shall manage the National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the take of fish and wildlife, and trapping, is that the preeminent natural values of the park shall be protected in perpetuity, and shall not be jeopardized by human uses. These are very special lands, and this standard must be set very high: the objective of Park System lands must always be to maintain the health of the ecosystem, and the yield of fish and wildlife for hunting must be consistent with this requirement. (Cong. Record at H. 10549, November 12, 1980)

While the natural and healthy standard which finally became law is difficult to define, it is also clear that the Congress still intended this as a limitation on subsistence hunting designed to keep the practice consistent with the basic park purposes. Since subsistence uses of fish and wildlife are the priority consumptive use over sport and commercial uses, all consumptive uses must be managed according to the natural and healthy standard. Because protecting habitat and populations of fish and wildlife is one of the primary purposes of establishing the WRST, conservation of natural and healthy populations of fish and wildlife is the paramount duty of the National Park Service in managing both consumptive and non-consumptive uses of fish and wildlife in the WRST.

3.2.3.4 Eligibility for National Park Subsistence Hunting

ANILCA, Sec. 816(a) provides that "[a]ll national parks in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by the Act" (ANILCA Sec 816, 16 USC 3126). Section 1314(c) indicates that:

...areas designated as national parks...shall be closed to the taking of fish and wildlife, except that--

(1) notwithstanding any other provision of this Act, the Secretary shall administer those units of the National Park System, and those additions to existing units, established by this Act and which permit subsistence uses, to provide for an opportunity for the continuance of such uses by local rural residents; and

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable state and federal law." (ANILCA Sec. 1314, 16 USC 3202)

This phrase reaffirms the intent to restrict subsistence in units of the National Park System, both parks and preserves, to local, rural residents. The word continuance is particularly significant in this phrase. It may imply that Congress intended to continue the opportunity for subsistence hunting by local rural residents in general, or it may imply that only those individuals or families which had been using the park for subsistence at the time the act was passed should be allowed to continue such uses. The concept of

continuing the opportunity for subsistence uses is used several times in Title VIII in reference to all federal public lands. There is no specific wording in ANILCA which limits subsistence hunting in national parks more narrowly than local rural residents or which indicates what Congress specifically meant by the word continue. Several sections of ANILCA's legislative history are very explicit on the intent of subsistence hunting in national parks. Senate Report No. 96-413 states:

In addition to the cultural importance of the subsistence lifestyle, the Committee is also aware that curtailment of subsistence uses would impose many hardships on residents of rural Alaska. It is a combination of these factors which has led the committee to conclude there is a need to continue the opportunity for subsistence uses of renewable resources, including wildlife, within certain National Parks and Monuments by local rural residents who have, or are a member of a family which has, an established or historical pattern of subsistence uses within such units. (Senate Report 96-413, page 169, emphasis added)

This same language also appears twice in both House and Senate floor statements. This legislative history indicates that Congress intended to protect both the cultural aspects of the subsistence lifestyle and the ability of local residents dependent on subsistence resources in those areas which became National Parks to continue to obtain their livelihood, at least in part through subsistence activities. The passages articulate the congressional intent to continue subsistence uses by local rural residents who had already established a pattern of use before the parks were created. By including family history of use Congress provided a mechanism to continue subsistence uses in national parks through generations, so long as the family members are local rural residents.

The legislative history of Sec. 804 indicates that "customary and traditional subsistence uses must be evaluated on a community or area basis rather than an individual basis" (Cong. Record, H.10546, Nov. 12, 1980). This phrase can be interpreted as meaning that eligibility for National Park subsistence hunting must be determined on a community basis. However, Sec. 804 applies to allocation priorities for subsistence uses

of fish and wildlife on federal public lands in general, not eligibility for subsistence hunting in national parks. Therefore, this legislative history should not be read as overriding that which applies directly to national parks, even though the allocation criteria of Sec. 804 do apply in parks.

Based on the clear and consistent legislative history of Sec. 203 of ANILCA, it can reasonably be concluded that the basic intent of ANILCA was to protect and continue National Park subsistence hunting by "local rural residents who have, or are members of a family which has, an established or historical pattern of subsistence hunting within the park..." (Cong. Record H. 10541). To meet this basic intent, Congress described two systems of determining eligibility for National Park subsistence hunting; the resident zone and individual permit systems. Senate Report 96-413 states:

The Committee intends that communities which contain concentrations of local rural residents with established or historical patterns of subsistence use of wildlife within those units be identified and designated as "resident zones." Persons whose primary, permanent place of residence is within a zone should be permitted to harvest wildlife within the park or monument for subsistence uses without obtaining a National Park Service permit....[t]he Committee believes that designation of resident zones rather than National Park Service regulation of subsistence hunting by individual permit has a number of advantages...most importantly, rural communities and cultures will not be burdened by implementation of a complex, and in many instances culturally disruptive, regulatory system, unless necessary in specific instances to protect and administer unit values...the resident zone approach to subsistence hunting is consistent with the protection of park and monument values only so long as such zones remain composed primarily of concentrations of residents with an established or historical pattern of subsistence use of wildlife within the units. The direction of the evolution of many rural communities is as yet undetermined. As a result, the composition of residents within a particular community may alter substantially in the future. If so, the Committee expects, and section 203 and title VIII so authorize, the National Park Service to protect unit values by determining eligibility of residents of communities within previously designated resident zones for subsistence hunting purposes through implementation of an individual permit system. (Senate Report 96-413, page 170)

This passage of the legislative history indicates that while the basic intent of Congress is to limit subsistence hunting within National Parks to persons with an established

history of personal or family subsistence use of the particular park unit, a certain amount of flexibility was provided to minimize bureaucratic regulations and accommodate community cultural patterns. By describing resident zones as being composed primarily of concentrations of local rural residents with established or historical patterns of subsistence use of wildlife, it is implied that a resident zone may include some portion of residents without an established history of use. This passage also indicates that Congress expected the National Park Service to protect unit values by implementing an individual permit system if the resident zones reach a point where they are not composed of concentrations of residents with a personal or family history of use. This implies that the National Park Service has a duty to protect unit values by ensuring that eligibility is primarily restricted to persons with a personal or family history of subsistence use, in addition to conserving natural and healthy populations of wildlife. By restricting park subsistence eligibility to those with a personal or family history of use, thereby limiting the opportunity to a fewer number of families, the congressional intent of providing continued subsistence hunting opportunities for those dependent on the wildlife resources of the park when it was established, has a greater likelihood of being accomplished.

The Senate Energy and Natural Resources Committee Report 96-413 and other legislative history further clarify the difference in National Park subsistence eligibility by directly following the resident zone and individual permit discussion with an affirmation of the general subsistence preference of Title VIII. Following directly from the passage cited above in Senate Report 96-413 the Committee wrote:

[t]here may come a time when wildlife available for subsistence uses may be insufficient to satisfy the subsistence needs of local rural residents who choose to continue a subsistence way of life. For example, pressures on wildlife populations may become sufficiently intense that in order to insure the perpetuation of a viable self-sustaining population within the park system unit there may be a need to restrict the subsistence take of such populations by residents of communities properly within designated resident zones and by residents who engage in subsistence uses by permit. In such situations the Committee intends that local rural residents of communities or areas which are most

dependent upon the resource and which have the least access to alternative resource should be given a priority use of the population for subsistence purposes pursuant to the provisions of section 804. (Senate Report 96-413, page 170)

These passages from the legislative history read together indicate that National Park subsistence eligibility is a management concern of the NPS which must be met to protect unit values. It is not an issue to be dealt with only during a shortage of wildlife resources. Under that situation, the subsistence preferences of Title VIII, Sec. 804 apply in addition to the NPS subsistence eligibility requirement of personal or family history of use. At the same time, the legislative history indicates that the resident zone system is the preferred method of making eligibility determinations. If the requirement for a personal or family history of use was placed in the statutory provisions of ANILCA it would have removed the flexibility needed to operate under a resident zone system. The precise point at which the conversion from resident zones to individual permits should be made based on the communities being composed primarily of concentrations of residents with an established or historical pattern of such use is much less clear. The word primarily indicates that, as a minimum, the majority of the community should have a history of subsistence uses in the park.

3.2.3.5 Subsistence Hunting as an Ongoing Park Use

The NPS responsibility to manage parks to allow continued subsistence uses is not a temporary duty which should be phased out over a period of time. This fact is articulated in the Senate Energy Committee Report which states:

Since the establishment of the National Park System in 1916, the consumptive use of wildlife resources within National Parks and National Monuments has been prohibited. Such units have traditionally been viewed as sanctuaries for the nonconsumptive enjoyment of the American public. However, when establishing new units of the National Park System the Congress has had a long-standing traditional practice of reviewing those values and activities within new units which, if immediately curtailed, might result in

substantial hardship to the local residents of the area. Consequently, in appropriate instances certain grazing and inholder activities have been phased out of such units gradually, rather than terminated immediately at the time of establishment of the unit.

In other instances, because of their unique significance to the Nation the Congress has authorized the continuation of certain uses within new parks and monuments which would be prohibited under traditional National Park Service management policies. For example, in Hawaii Volcanoes National Park and the Big Cypress National Preserve certain types of subsistence activities are authorized to continue as a result of congressional recognition of their cultural significance. In both units subsistence activities within the park and preserve were specifically linked by the Congress to culturally distinct groups of people: Native Hawaiians at the Volcanoes Park, and the Miccosukee and Seminole Indian tribes of Florida in Big Cypress. The Congress also adopted a similar approach with respect to continuation of local commercial fishing within the Virgin Islands National Park.

With respect to the situation of local residents in and near certain new national parks and monuments established by this Act, the committee believes that the establishment of these new units should protect the opportunity for local rural residents to continue to engage in a subsistence way of life. The Committee notes that the Alaska Native people have been living a subsistence way of life for thousands of years, and that the Alaska Native way of life in rural Alaska may be the last major remnant of the subsistence culture alive today in North America. In addition, there is also a significant non-Native population residing in rural Alaska which in recent times has developed a subsistence lifestyle that also is a cultural value.

In addition to the cultural importance of the subsistence lifestyle, the Committee is also aware that curtailment of subsistence uses would impose major hardships upon many residents of rural Alaska. It is a combination of these factors which has led the Committee to conclude that there is a need to continue the opportunity for subsistence uses of renewable resources, including wildlife, within certain National Parks and Monuments by local rural residents who have, or are a member of a family which has, an established or historical pattern of subsistence uses within such units. The Committee believes that local rural residents who maintain their primary, permanent residence within or near such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution. (Senate Report 96-413, pages 168-169)

The Senate Energy Committee Report indicates that subsistence in Alaska's national parks is a cultural value to be continued and it is not an activity such as grazing which should be phased out over time. The report indicates that rural residents living in or near new park units should have the opportunity to decide for themselves how their

own lifestyle and community evolves. This implies that individuals or communities may discontinue a subsistence lifestyle through their own choosing, but there is no indication that National Park Service management should attempt to phase out subsistence.

Several major changes were made in subsistence provisions from the Senate Committee reported bill to the final version of ANILCA, including adding subsistence uses as a permitted use of the WRST. In the final Senate compromise bill, the Senate Energy Committee's approach to the subsistence title was retained while the House's provisions for allowing subsistence uses in specific units, including the WRST, was adopted. This course of events highlights the significance of the legislative history of Senate Report 96-413 as applies to Title VIII and national park subsistence management.

3.2.3.6 Traditional Use Areas

ANILCA, Section 201(9) indicates that subsistence uses by local residents shall be permitted in WRST where such uses are traditional. The legislative history explains the intent of this phrase. The topic of subsistence traditional use areas in National Parks and Monuments was discussed by Senators Jackson and Hatfield in Senate Floor debate on the day the Senate passed the Alaska Lands bill. The Senators' discussion went as follows:

Mr. HATFIELD. Under the terms of the substitute subsistence uses shall be allowed by local rural residents in Aniakchak National Monument, Lake Clark National Park, Gates of the Arctic National Park, and the Wrangell/St. Elias National Park, and the additions to Mount McKinley National Park where such uses are traditional. Am I correct in stating that the use of the phrase "where such uses are traditional" means that those portions of the parks and those populations within the parks which have been traditionally used would be available for subsistence while the rest of the park area would not be available for subsistence.

Mr. JACKSON. The Senator is correct. The management of this provision must be a flexible one that accounts for the movements of animals. For example, the great caribou herds of northern Alaska that migrate through the mountain passes of the Brooks Range do not use the same passes each year. The people of Anaktuvuk Pass, for example, who have traditionally harvested the Arctic caribou herd should be given the flexibility to hunt caribou if they

migrate through a different pass than the one usually utilized. This is the meaning of the term traditional populations. A village may traditionally hunt a particular moose population. If that population changes its range then the Park Service should adjust the subsistence hunting zone to accommodate that change. The phrase "where such uses are traditional" also means that if a village has traditionally used a particular valley for subsistence then they should be allowed to continue their use of that valley for those species they have usually hunted.

Mr. HATFIELD. I agree with the chairman's explanation of this section. I would further like to clarify that the language of the Kobuk Valley National Park and the Cape Krusenstern National monument concerning subsistence does not include the phrase "where such uses are traditional." Am I correct in stating that the reason for this is that those particular northern areas have subsistence uses generally throughout the units rather than distinct portions of the parks like the other areas and that this is the reason that the language is more general for Cape Krusenstern and Kobuk Valley.

Mr. JACKSON. The Senator is correct. (Cong. Record S. 11198-99, August 19, 1980)

This conversation demonstrates that the Senate leadership intended to confine subsistence hunting in Wrangell-St. Elias National Park to areas and species traditionally used. In applying this policy the National Park Service is directed to use considerable flexibility to accommodate changing migration routes or ranges of species traditionally used. The House, as expressed by Interior Committee Chairman Morris Udall, did not fully agree with the traditional use area provision. Congressman Udall emphasized the need for flexibility in this policy stating:

...with respect to several of the new parks, the Senate bill intends to permit subsistence hunting only within certain subsistence zones within the park. I have reservations about this concept because I am uncertain if data presently exists which is definitive enough to enable the National Park Service to say with any degree of confidence that subsistence hunting has or has not traditionally taken place within a certain area. Consequently, if the subsistence zone concept is to be applied to any park areas, fundamental fairness seems to require that the designation and boundaries of those zones be made by the subsistence resource commission established by section 808, rather than by park planners and researchers, and that if there is any doubt as to whether subsistence hunting should be permitted within a particular area, that the decision be made on the basis that subsistence hunting should be permitted rather than restricted. (Cong. Record H. 10547, Nov., 12, 1980)

This floor statement reaffirms the congressional desire for flexibility in defining traditional use areas. Nevertheless, the phrase "where traditional" was retained in the final bill. The passage suggests the park subsistence resource commissions should have primary responsibility for delineating traditional use areas.

3.2.3.7 Responsibilities of National Park Subsistence Resource Commissions

The Senate Energy and Natural Resources Committee conducted extensive discussions about where, and the conditions under which, subsistence hunting would be allowed in national parks and monuments. A great deal of this discussion involved debate over the appropriate roles of the federal and state governments in park subsistence hunting management. In one of the Committee mark-up sessions, Chairman Henry Jackson argued that when dealing with national park subsistence management, that it should be administered with a three-way input from the natives, the state and the Federal Government. This approach of a tripartite commission composed of subsistence users and the state and federal governments evolved to become the park Subsistence Resource Commissions (SRCs). The original concept was to involve all of these parties in decisions affecting park subsistence hunting.

Section 808 of ANILCA provides for establishment of the SRCs for each park or monument where subsistence uses are authorized. The law does not specifically articulate whether these commissions' recommendations are limited to park and monument areas or should apply throughout the park units, including the preserve areas. Because subsistence uses in both parks and preserves is limited to local residents and the natural and healthy wildlife management standard applies in both designations, it follows that SRC recommendations would also apply throughout the NPS unit. The SRCs are established in addition to the system of local and regional advisory committees created under

Section 805 for local participation in decisions affecting subsistence uses on federal public lands in general. Within one year of the passage of the Act, the Secretary and the Governor were directed to appoint three members to each of these commissions. The regional advisory councils established under Section 805 were also to appoint three members to the park SRCs in their regions making a total of nine members per commission. The members appointed by the regional advisory committees must be persons who are also engaged in subsistence uses within the particular park.

Each SRC was to devise and recommend to the Secretary and Governor a program for subsistence hunting within the park within eighteen months after the passage of the Act. The commissions are directed to conduct hearings and make recommendations for changes in the hunting program each year after the initial program is submitted.

Section 808(b) requires the Secretary to:

promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife within 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. (ANILCA, Sec. 808, 16 USC 3118)

The Secretary of the Interior is required to permit subsistence uses by local residents in accordance federal and state law pending implementation of the subsistence hunting program prepared by the SRC.

The SRCs were intended to play an important advisory role in park subsistence management as evidenced by the requirement for the Secretary of the Interior to promptly implement the program or respond in writing why it cannot be done. While the SRCs are instructed to recommend a program for subsistence hunting within the park, there is very little indication of what constitutes such a program. Section 808(a) states that:

Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or separately by the technical and administrative personnel of the State and Department of Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to the preparation of the plan at a convenient location in the vicinity of the park or park monument. (ANILCA Sec. 808, 16 USC 3118)

That is the most specific direction given concerning what is involved in a subsistence hunting program. In his floor statement made accepting the Senate version of the Alaska Lands bill Interior Committee Chairman Morris Udall indicated that it would be more appropriate for the SRCs to define traditional use areas than the national park service staff, which suggests that this is a topic which could be covered in a park hunting program. The SRC's subsistence hunting programs could include recommendations on provisions needed to maintain natural and healthy wildlife populations and deal with the issue of park/preserve subsistence eligibility.

3.2.4 NPS Subsistence Eligibility Regulations

Subsistence regulations promulgated by the NPS in 1981 cover a variety of topics including the designation of resident zone communities, criteria for issuing individual subsistence permits, prohibitions of aircraft use and other access regulations, subsistence use of timber and plant materials and provisions for establishing closures to subsistence uses of fish and wildlife. Regulations for management of the national monuments promulgated by the NPS prior to passage of ANILCA provide the most thorough description of the criteria for resident zone communities ever articulated and also shed light on the intent of the later regulations. This discussion will focus on regulations affecting subsistence eligibility.

The Presidential Proclamations of new National Monuments in Alaska made by Jimmy Carter on December 1, 1978, recognized the value of preserving the opportunity for local rural residents to engage in subsistence as a lifestyle. Under interim regulations promulgated by the NPS on December 26, 1978, local rural residents were allowed to continue subsistence hunting in the Wrangell-St. Elias National Monument under state regulation. All sport hunting was prohibited as was landing of aircraft within the monument for subsistence purposes.

Prior to the passage of ANILCA, final regulations for management of Alaska National Monuments were published in the Federal Register on June 28, 1979. Significantly, these regulations delineated criteria for establishing resident zone communities and identified the initial resident zone communities for each new monument. These regulations used identification of local rural residents as a means of distinguishing subsistence hunters from sport hunters. In keeping with the subsistence limitation provision proposed in the Alaska National Interest Lands legislation at the time, the subsistence program was not to allow a significant expansion of subsistence uses beyond the ten year period before January 1, 1979. The main purposes and policy of the regulations was to "provide for the opportunity to engage in a subsistence lifestyle....by local rural residents..." and "that nonwasteful subsistence use of fish, wildlife and plant resources shall be the first priority consumptive use" (Federal Register June 28, 1979, page 37748). One of the policy objectives for the regulations, as explained in the section-by-section analysis, was to "provide the opportunity for local rural residents who are dependent on the resources now within the monument areas to continue their existing subsistence lifestyle, should they choose to do so" (Federal Register, June 28, 1979, page 37740, emphasis added).

To meet the policy objectives, the regulations proposed a program for identifying local rural residents who may engage in subsistence hunting within the monuments. This program was the initial definition and use of the NPS resident zone and individual permit subsistence hunting eligibility program. The section by section analysis of the regulations state that "data available at this time has enabled the Service to identify concentrations of people, residing throughout the monument areas and in certain additional areas just outside the monument boundaries ("resident zones"), who are economically dependent on, and have historically used, the renewable resources of the monument" (Federal Register June 28, 1979, page 37740). The analysis in the regulations acknowledges that:

In certain respects this initial system may suffer from both over-and under-inclusiveness. For example, everyone who lives within a resident zone, despite the individual's degree of dependence on the monument's resources, is granted the privilege of taking the renewable resources in the monument. Anyone who lives outside the resident zone, however, must demonstrate his or her economic dependence on, and historical use of, the resources being granted the privilege....as data becomes available the Service will consider ways to give preference to those individuals who are most dependent on monument resources, who do not have alternative resources available, and who live in places where a genuine subsistence lifestyle predominates. (Federal Register, June 28, 1979, page 37740)

In further explanation, the regulations state:

local rural residents are persons who either live in designated "resident zones" (Section 13.42) or hold a "subsistence permit" (Section 13.43). "Resident zones" are designated, and "subsistence permits" will be issued, on the basis of geographical, economic and historical criteria, i.e., residency in or near the monument, dependence on the monument resources as the mainstay of livelihood, and history of use of monument lands. In the case of "resident zones" the service applies these criteria to "concentrations" of people based on available research; in the case of "subsistence permits" for people who live outside resident zones, the superintendent will apply these criteria to individual applicants.

The so-called economic criterion states that local rural residents are "dependent, as the mainstay of [their] livelihoods[s], upon the subsistence uses of wild, renewable resources taken within the monument." In applying this criterion the Service seeks to identify communities and individuals who primarily depend on, or whose economies are predominated by, subsistence uses of wild renewable resources of the new monuments.

The so-called historical criterion states that local rural residents have, or

are members of families which have, "established patterns of subsistence hunting, fishing, or gathering activities within the monument, or a history of subsistence activities within the monument as demonstrated by use of fish camps, trapline cabins, hunting camps, cache sites, and other identifiable locations of subsistence use." By means of this criterion, the Service intends to focus on the subsistence tie of the community or individual to the particular monument area. (Federal Register, June 28, 1979, page 37742)

Significantly, this is the most precise description of the criteria for resident zones ever articulated. Based on these criteria and available research on subsistence uses in the area, the NPS designated Chistochina, Chitina, Copper Center, Gakona, Gulkana, McCarthy, Mentasta Lake, Nabesna, Slana and Yakutat as the initial resident zone communities for the Wrangell-St. Elias National Monument.

Following the passage of ANILCA in December, 1980, the NPS issued Proposed Rules for Management of National Park System Units in Alaska. These proposed regulations designated the same resident zone communities as the monument regulations but, defined a resident zone as:

(1) The area within a park area, and (2) The communities and areas near a park which contain preponderant concentrations of local rural residents who, without using aircraft as a means of access for the purpose of taking fish and wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within the park area. (Federal Register, January 19, 1981, page 5562)

In the final interim rules promulgated in the Federal Register on June 17, 1981, the term describing the resident zones was changed from "preponderant concentrations" to "significant concentrations" of rural residents who have customarily and traditionally engaged in subsistence uses within the park. This change was made because:

...the word "preponderant" implied more numerical precision than is possible without an extensive standardized study of rural villages in Alaska, certainly an impossible task in the context of this interim rulemaking. The Park Service adopted the word "significant" to clarify that the subsistence experts must exercise some discretion in examining the nature and needs of each community. (Federal Register, June 17, 1981, page 31841)

In the final rules, the NPS tried to adopt the subsistence user identification system that Congress intended, citing the legislative history on the resident zone and individual permit systems. The NPS also adopted "a more liberal designation of communities for inclusion in resident zones" (Federal Register, June 17, 1981, page 31841) in keeping with the intent of Congress that a system of resident zones be the primary mechanism for identifying local rural residents in park areas. The regulations acknowledge that full implementation of ANILCA will require further regulations and that the resident zone system will, in all likelihood, undergo changes in the future. Significantly, the final rules acknowledge that data, such as a standardized study of rural villages in Alaska, is lacking and subsistence experts must exercise discretion in judging the needs and nature of each community.

With this perspective, the NPS expanded the list of resident zone communities to the present designations which include Chisana, Chistochina, Chitina, Copper Center, Gakona, Gakona Junction, Glennallen, Gulkana, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Slana, Tazlina, Tok, Tonsina and, Yakutat. There is no record of any formal analysis of which communities contain significant concentrations of persons with a personal or family history of subsistence uses in the park. In some instances, communities were added to the list of resident zones based on the public hearing testimony of local residents that they had used the park in the past without using airplane access. When public comment was collected on the draft regulations a public hearing was not held in the village of Northway so there was no support expressed for its inclusion as a resident zone.

The NPS regulations guiding subsistence eligibility now in effect state that a resident zone shall include:

- (1) The area within a national park or monument, and
- (2) The communities and areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a national park or monument. (36 CFR 13.43)

By defining a resident zone as the area within a national park or monument many newcomers may become eligible for subsistence hunting within the WRST park. The WRST contains thousands of acres of state and private land inholdings which could be subdivided and developed for residential and commercial purposes. Because these lands are all within the WRST, which under the regulations can be argued to be one large resident zone, any persons moving into these lands would become an eligible subsistence hunter in the park, regardless of their history of use. Over time, this situation has the potential to greatly increase the numbers of eligible subsistence hunters in the park in a manner contrary to the intent of Congress. The regulations also provide for addition and deletion of resident zone communities when such community or area does or does not meet the criteria set forth, as quoted above. With regard to subsistence permits, the regulations go on to state:

Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a national park or monument may apply to the appropriate Superintendent....for a subsistence permit authorizing the applicant to engage in subsistence uses within the park or monument. The Superintendent shall grant the permit if the permit applicant demonstrates that,

- (1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument... (36 CFR 13.44(a))

While ANILCA Title VIII defines subsistence in terms of "customary and traditional uses" and NPS regulations refer to persons and families who have "customarily and traditionally" engaged in subsistence uses, neither the law or regulations define the phrase customary and traditional. The interpretation and application of this phrase can make a

significant difference in who is considered eligible for subsistence hunting. Legislative history indicates that the intent was to identify persons with a long standing pattern of use of traplines, fish and hunting camps etc, before the park was established. Whether the intent is twenty years before or twenty days before establishment of the park is not certain, although again, the primary intent of Congress in allowing subsistence hunting in the park was to benefit Alaska Natives who have a very long custom and tradition of using the lands. A strict interpretation of "customarily and traditionally" would result in only those persons and families with a long standing tradition of using the WRST being eligible to subsistence hunt in the park while a liberal interpretation might allow anyone who has used the park up to the time the regulations were promulgated.

Because in the ANILCA statute Congress only limited subsistence to local rural residents and did not specifically provide for a system of resident zones and individual permits to limit subsistence hunting eligibility to persons with a personal or family history of use, the law is left open to varying interpretations. Given this ambiguity in ANILCA, three basic interpretations of the meaning of the law can be presented. One interpretation is that ANILCA is clear on its face value that all local rural residents should be allowed to participate in subsistence hunting in the park. The second possible interpretation is that Congress intended to strictly limit subsistence uses in national parks in Alaska to those with a personal or family history of customary and traditional subsistence use at the time the parks were established. The third interpretation is that Congress intended to primarily restrict subsistence eligibility in national parks to those with a personal or family history of use but wanted to establish an eligibility system which included the flexibility to adapt to specific conditions.

Under the first interpretation, the legislative history of ANILCA is irrelevant because the law itself is sufficiently clear. If this theory is followed then it can be argued

that the NPS went beyond its statutory authority in promulgating regulations intending to restrict eligibility to those with a personal or family history of subsistence uses within the park. The problem with this interpretation is that it directly conflicts with a large body of legislative history from both the Senate and House and there is no explanation by the Congress for such a major change from the earlier versions of the act, if one was intended. Under the second interpretation the resident zone system of eligibility cannot be used at all because it does allow some persons with no history of subsistence uses to come into a resident zone community and become eligible for subsistence in the park. This interpretation contradicts both the ANILCA statute and its legislative history.

The third approach is the only interpretation which is consistent with both the ANILCA statute and its legislative history. Under this theory, Congress did not place the requirement for a personal or family history of use in the statutory provisions of ANILCA because it would have removed the flexibility to operate under the resident zone system and Congress expected the legislative history to be used to clarify intent. This thesis is premised on this third interpretation holding true.

3.3 The State Legal Framework of Subsistence

The state system of fish and game management in place through June, 1990, had very few legal provisions which applied specifically to national park areas. State hunting regulations in effect up to June 30, 1990, provided that only those individuals who qualify under federal regulations are allowed to hunt during subsistence seasons within national park or monument boundaries. For the most part, subsistence hunting in national parks/preserves and sport hunting in national preserves are managed under the normal system of fish and game management applied throughout the state. The following discussion describes the general system of state management of fish and game as it affects the

subsistence priority.

The Constitution of the State of Alaska provides the overall direction for management of fish and game by the state. Of particular importance is the provision that "[f]ish,...wildlife,...and all other replenishable resources...shall be utilized, developed and maintained on the sustained yield principle..." (Alaska Const. Art. VIII, Sec. 4, emphasis added). A second constitutional provision which has implications for state subsistence management is the clause which states "[w]herever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use" (Alaska Const. Art. VIII, Sec. 3). Under this clause, in December, 1989, the Supreme Court of the State of Alaska ruled that the subsistence preference for rural residents required by ANILCA and placed in state law, violates the state constitution (*McDowell v. State of Alaska*, 785 P.2d 1, [AK 1989]).

State law defined subsistence uses in terms of residency in rural areas. Rural areas were defined as "a community or area of the state in which the noncommercial, customary, and traditional use of fish and game for personal or family consumption is the principle characteristic of the economy of the community or area" (A.S. 16.05.940 [25]). The United States Ninth Circuit Court of Appeals found this definition of "rural" to be inconsistent with the meaning of the term in ANILCA (*Kenaitze Indian Tribe v. State of Alaska*, 860 F2d 312 [9th Cir 1988]).

The Alaska Statutes provided a priority for subsistence use of fish and game very similar to the federal requirements of ANILCA. In fact, in the chronology of events leading to the passage of ANILCA the state subsistence law was adopted first, based on the version of Title VIII then being considered by Congress. Up through June 30, 1990, the state subsistence priority was based on a two level system referred to as Tier I and Tier II. To qualify for the initial Tier I subsistence eligibility a person was required to be a rural

resident and have customary and traditional use established for the species and area of subsistence hunting or fishing. At the Tier I level subsistence eligibility decisions were made on a community or area basis. Tier II was used only when necessary to restrict the subsistence harvest and then allocations were made according to three criteria which are virtually the same as those in ANILCA, Sec. 804. Specifically, the statutes provide:

If the harvestable portion is not sufficient to accommodate all consumptive uses....but is sufficient to accommodate subsistence uses....then nonwasteful subsistence uses shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy subsistence uses....If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited...by applying the following criteria: (1) customary and direct dependence on the fish stock or game populations as the mainstay of livelihood; (2) local residency; and (3) availability of alternative resources. (A.S. 16.05.258)

Prior to the changes caused by the two previously mentioned legal decisions, the Boards of Fisheries and Game decided which communities and areas qualified for the rural subsistence priority in a three-step process. First the boards determined what areas are rural and can qualify for subsistence fishing and hunting. Next each board determined what communities or areas have customary and traditional use of particular populations of fish and wildlife according to the following eight criteria:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near or reasonably accessible from, the user's residence;
- (5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding 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 and fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter,

sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompass individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social and nutritional elements of the subsistence user's life. (5 AAC 99.010(b)(1-8))

Finally, the boards adopted regulations to provide reasonable opportunities for communities to subsistence hunt and fish following traditional patterns. Currently, both rural and urban residents of the state qualify for the subsistence preference; however, the three criteria for allocation among subsistence users have not changed. The regulations guiding the boards go on to say:

When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock of game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, giving maximum protection to subsistence users who (1) live closest to the resource; (2) have the fewest available alternative resources; and (3) have the greatest customary and direct dependence upon the resource. (5 AAC 99.010(f))

The boards cannot allow "...uses which will jeopardize or interfere with the conservation of fish stocks or game populations on a sustained-yield basis" (5 AAC 99.010(g)).

State laws and regulations provide for a system of fish and game local advisory committees and regional advisory councils similar to what is required under ANILCA. Advisory committees are to be "composed of persons well informed on the fish or game resources of the locality" (AS 16.05.260). Regional councils are established:

to provide a regional forum for the collection and expression of opinions and recommendations on matters relating to fish and wildlife resources, to assist the boards in deliberations concerning regulations, and to provide for public participation in the regulatory process to help adequately protect subsistence uses. (5 AAC 96.200)

3.4 Comparison of Federal and State Legal Requirements

3.4.1 Standards of Wildlife Management

ANILCA requires the NPS to manage for natural and healthy wildlife populations. In contrast, the Constitution of the State of Alaska requires that fish and game be managed on the sustained yield principle. "It is not clear whether such standards require the Secretary of the Interior to administer public lands in a manner at variance with state management principles" (Kelso, 1980). This comment was made in a report by the State Division of Subsistence in a preliminary analysis of the likely affects of the Senate-passed version of the Alaska Lands Act which became law.

The state constitution's provision for sustained yield management requires healthy populations of game, but does not necessarily strive to maintain natural abundance and diversity of species, as is articulated in the legislative history of Sec. 203 and 815 of ANILCA. Under the principle of sustained yield, the state has used techniques to increase availability of game for human consumption, a practice inconsistent with national park mandates. For example, the state has authorized land-and-shoot wolf hunting by airplane in the Wrangell-St. Elias National Preserve to increase moose/wolf ratios above those which would naturally occur in order to facilitate human harvest. At the same time, state fish and game policies also provide for a broad range of management programs in terms of the intensity of manipulation of various species. Nevertheless, in terms of practical application of management policies, there is a very real difference between the state's sustained yield and NPS's natural and healthy wildlife management legal mandates.

3.4.2 Subsistence Eligibility

In contrast to the rural residency requirement of ANILCA, all residents of the state are potentially eligible for subsistence hunting under state law. The provisions of state law which identify priorities among subsistence users during shortages of game are similar to the subsistence priority required for all federal lands under ANILCA. The NPS subsistence hunting eligibility requirement of having a "personal or family history" of subsistence hunting in the particular park places an additional constraint on national park subsistence eligibility, beyond that required for federal public lands in general or under past and present state law.

Both the state and NPS subsistence eligibility requirements are initially community based. State Tier I subsistence eligibility decisions are made on a community or area wide basis and NPS subsistence eligibility is initially based on resident zone communities. In these situations decisions affecting subsistence eligibility apply to all residents of the community equally. As factors affecting subsistence eligibility change, both the state and NPS systems provide for shifting from community based decisions to more individualized subsistence eligibility decisions; however, the factors triggering the change differ. The three criteria of ANILCA, Sec. 804, which apply to all federal public lands in Alaska and the criteria for allocation among subsistence users in state law are triggered based on shortages of fish and wildlife resources relative to the number of potentially eligible subsistence users. The NPS criteria for shifting from resident zone communities to an individual permit or roster approach of determining subsistence eligibility are based on the community concentration of residents with a personal or family history of subsistence uses in the park, independent from consideration of fish and wildlife resource shortages.

One obvious difference between state subsistence eligibility laws and that of the NPS is that ANILCA limits subsistence eligibility in national parks and preserves to local residents as a matter of general policy. In application, in some cases the state limited subsistence uses beyond the former rural residency requirement to local rural residents. This was accomplished through area and species-specific customary and traditional findings of the Boards of Fisheries and Game. Rural residents who qualify as customary and traditional subsistence users in their area of residence do not necessarily qualify in other locations in the state. When fish and game resources are too scarce to accommodate all subsistence uses and maintain sustained yield management, the Boards must further restrict take according to the three criteria mentioned previously, one of which is according to "who lives closest to the resource" (5 AAC 99.010(f)(1)).

In a scenario of game scarcity the three criteria in federal and state law for allocation among subsistence users could become more restrictive than the NPS eligibility requirements. For example, subsistence eligibility could be limited to only local residents with the greatest customary and direct dependence on the resource and no alternative resources available. It can be argued that if the park wildlife management standard of natural and healthy is maintained, then there should never be any further restriction of subsistence users according to the three criteria used by the Board of Game. In reality, natural and healthy wildlife populations might be present even when subsistence species such as moose and caribou are very scarce. In a natural cycle of predator and prey relationships wolves and bears could depress game populations to very low levels. The same result could arise from increased populations of subsistence users. In these scenarios, the sustained yield principle would require the Board of Game to strictly limit sport hunting and limit subsistence users according to the three allocation criteria in both preserve and park areas. The NPS wildlife management standard of natural and healthy may cause the

restrictions among subsistence users to be triggered at an earlier point because game populations cannot be enhanced by techniques such as predator control or habitat manipulation. This illustrates a key difference between the state's sustained yield and the NPS's natural and healthy mandates for wildlife management.

In a scenario of adequate game the NPS requirement of personal or family history of use, if strictly implemented under the individual permit system, would result in less competition for game in the park for customary and traditional users than the state system which formerly considered all local rural residents eligible to hunt in the park, regardless of history of use. The outcome of the state process is dependent on the abundance of game at the point the Board of Game decides to implement the subsistence preference and allocation criteria, a judgement call which cannot be predicted. Regardless of whether the subsistence preference and allocation criteria are implemented under federal or state authority, the greater the number of eligible subsistence hunters there are, the greater the likelihood there will be of a need to reduce or eliminate sport hunting to provide for the subsistence priority.

The state's subsistence regulatory system has been heavily based on the community concept, although the boards could adopt regulations for issuance of subsistence permits for individuals. The general subsistence provisions of ANILCA also stress making decisions about customary and traditional uses on a community basis. Individual assessment of subsistence eligibility would be a huge undertaking on a statewide basis and might fail to consider the importance of sharing subsistence resources among members of the community, a critical aspect of traditional subsistence culture. Nevertheless, the state has used Tier II individual permits in some areas where it has been required due to low game populations or large numbers of hunters. Depending on the amount of game resources available for harvest under sustained yield, these permits are issued based on the same

three allocation criteria of who: (1) lives closest to the resource; (2) has the fewest available alternative resources; and (3) has the greatest customary and direct dependence upon the resource.

The national park subsistence eligibility program, which is generally intended to limit subsistence hunting to persons having a personal or family history of use at the time the parks were established, adds an additional complication to legal problems involving the State Constitution's equal access provision. The NPS eligibility regulations, if fully implemented, would further divide rural residents into the classes of those who have a personal or family history of use in the park and can continue subsistence hunting, and those who do not. Given the results of recent litigation on these issues, the NPS eligibility restrictions may also violate the state constitution, if implemented under state law. The question that remains is to what degree this situation actually complicates state management of hunting in the park, should management be returned to the state. Perhaps, due to the supremacy of federal law, the state can simply defer decisions on national park subsistence eligibility to the NPS and continue managing subsistence hunting for those who are eligible. Alternatively, this legal conflict could preclude some or all state fish and game management authorities. It is also possible that litigation which has already been initiated could result in a decision that the rural subsistence priority of ANILCA also violates the federal constitution.

Chapter 4.0 The Existing Situation

This chapter presents information on three areas critical to subsistence management and eligibility decisions in the WRST. First, the basic framework under which subsistence hunting has been managed in the WRST is described in order to establish a context for further subsistence eligibility decisions. Second, estimates of the portions of the communities which used the WRST for subsistence purposes prior to establishment of the park/preserve without using airplane access, are presented. These estimates provide key information which most closely relates to the viability of a community as an NPS resident zone community. This is followed by information on the population trends of local communities, another factor which relates to the need to change from the resident zone to individual permit method of determining NPS subsistence eligibility. The chapter concludes with information on wildlife harvest trends in the WRST region in order to show how establishment of the park/preserve has affected the take of wildlife. All the information viewed together should be helpful in determining which local communities are best suited to be managed as national park subsistence resident zone communities.

This analysis draws on information from several sources including Alaska Department of Labor population estimates, ADF&G Division of Subsistence household survey data and ADF&G game harvest information. One of the difficulties encountered is that much of the information is based on different sampling units and cannot be readily compared. For example, the national park resident zone communities do not all correspond to ADF&G Division of Subsistence survey units and, the Division of Subsistence survey

units do not correspond to Alaska Department of Labor population census units. For this reason, the same community names do not appear on all the tables and graphs, although most of the names are consistent.

4.1 WRST Subsistence Hunting Management

This section explores how subsistence in the WRST, and Alaska national parks in general, has been managed by the National Park Service and Alaska Department of Fish and Game through June 30, 1990. There is very little published information on this topic so much of it is taken from agency correspondence and regulations, the views of involved persons and the author's own observations. During the term of the project the researcher attended two meetings of the SRC for the WRST and spoke with many different state and federal agency representatives working on the subject.

4.1.1 An Overview of NPS and State Management Responsibilities

The NPS controls land use within the WRST, regulating means of access and permits for base camps or cabins. The ADF&G maintained primary responsibility for management of both sport and subsistence hunting seasons and harvest limits within the WRST through June 30, 1990. Subsistence hunting eligibility has been regulated to some extent by both the ADF&G and NPS. The NPS deferred decisions concerning the urban or rural status of communities and customary and traditional use determinations to the State Board of Game (BOG). A state hunting license is required to hunt in the WRST so if the BOG determines that communities or individuals do not qualify for subsistence hunts or permits, the decision is binding on NPS lands. Thus far, the NPS has determined subsistence eligibility in the WRST park almost entirely by the resident zone community

system. Since July, 1990, the federal government has assumed management of subsistence hunting on federal lands, and subsequently the Federal Subsistence Board has been established. At least initially, this federal board has followed the state BOG urban/rural and customary and traditional decisions. The federal board has accepted some state customary and traditional determinations that are more restrictive than the NPS individual permit criteria. Management of sport hunting, including in national preserves, has remained with the state.

In October, 1982 the ADF&G and NPS signed a Master Memorandum of Understanding (MMOU) to outline the two agencies responsibilities for management of fish and wildlife in Alaska units of the National Park System. The agencies agree that the MMOU establishes procedural guidelines for cooperation but, "does not create legally enforceable obligations or rights" (NPS/ADF&G MMOU, 1982) and either party can terminate the agreement by providing notice in writing 120 days in advance. In this agreement, the two agencies acknowledge their differing mandates for wildlife management of sustained yield versus natural and healthy populations. The ADF&G agrees to "manage fish and resident wildlife populations in their natural species diversity on [National Park] Service lands." The agencies agree that the ADF&G will act as the primary agency responsible for management of subsistence uses of fish and wildlife on state and NPS lands and "to coordinate planning for management of fish and wildlife resources on Service lands so that conflicts arising from differing legal mandates, objectives, and policies either do not arise or are minimized." The agencies further agree that "implementation by the Secretary of the Interior of subsistence program recommendations developed by Park and Park Monument Subsistence Resource Commissions pursuant to ANILCA Section 808 (b) will take into account the existing State regulations and will use the State's regulatory process as the primary means of developing park subsistence use regulations."

The MMOU strongly emphasizes using the state regulatory process to set subsistence policy and make subsistence use regulations. It is not clear whether the emphasis on state management of subsistence uses is intended to include regulations for the determination of national park subsistence hunting eligibility or to be limited to setting seasons and harvest limits. The MMOU's strong wording implies that all subsistence regulation should be accomplished under the state's regulatory process. At the same time, the NPS subsistence regulations promulgated prior to the MMOU specifically establish an eligibility determination program to be implemented by the NPS.

4.1.2 NPS Subsistence Management

The Subsistence Resource Commission for Wrangell-St. Elias National Park (SRC for the WRST) conducted eight meetings in communities around the park between May 15, 1984, and December 5, 1989. The commission originally submitted recommendations for a hunting program to the Governor and Secretary of the Interior in August, 1986. On May 18, 1988, nearly two years after the commission submitted the recommendations, the Secretary of the Interior sent his formal response to the SRC for the WRST.

Under the provisions of ANILCA, Sec. 808, the SRCs were to devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park within eighteen months after passage of the Act. None of the subsistence resource commissions came close to meeting this deadline. The bureaucracy involved in establishing and renewing the charters of the commissions, making appointments, and providing funding and feedback to the commissions has been a major factor in the time taken to develop the subsistence hunting programs.

The lack of specific guidance on the role of the commissions and content of a subsistence hunting program has made it difficult for the commissions to proceed. On one hand, the NPS must give the SRCs the freedom to develop their own hunting programs while on the other hand, the NPS must provide guidance to ensure consistency with federal law. The NPS has prepared a briefing book for members of the SRCs which includes some of the basic provisions of ANILCA and some portions of the pertinent legislative history. The NPS has given little guidance on what should be included in a subsistence hunting program and what type of planning procedures should be used to develop such a program. The only written feedback came when the Secretary of the Interior rejected most of the recommendations of the commissions. The problem of lack of guidance in developing subsistence hunting programs is compounded by the fact that many local subsistence users who are members of the commissions are not educated in dealing with bureaucratic processes or planning procedures.

During the ANILCA debates the Senate Energy and Natural Resources Committee described the subsistence resource commissions as tripartite commissions representing the interests of the state, federal government and local subsistence users. However, nearly all the appointments have been local subsistence users who do not necessarily represent a particular state or federal interest. As a result, the SRCs are not operating under the tripartite management scheme envisioned by at least some members of Congress.

Another potential problem with the membership of the SRC stems from the fact that, to a large degree, Native people in the Copper Basin region do not participate in the local and regional state fish and game advisory councils. With three SRC positions coming from the regional advisory councils the likelihood of adequate Native representation is reduced.

An additional problem has resulted from lack of information on NPS management and regulation of subsistence. In the WRST region many people are uncertain what rules apply to hunting in the park. The NPS has prepared a few brochures on hunting in the park which are available in the NPS offices; however, there is essentially no information available to the public in sporting goods stores and other locations where hunting licenses are acquired. Aside from the SRC meetings which have been held in various local communities, the NPS has made very little effort to distribute information and solicit the views of local subsistence users. There have been no special efforts to ensure the involvement of the Native community through application of cross-cultural communication techniques or other methods. The NPS has never hired staff for each park to deal specifically with subsistence management. The net result is that ten years after passage of ANILCA there remains a critical information gap on NPS hunting regulations.

Several members of the different SRCs, regional fish and game advisory councils and state agencies have been critical of the NPS support of the SRCs. The ADF&G has criticized the NPS for giving the SRCs around the state inconsistent and contradictory advice. In a letter identifying issues of concern with respect to the SRCs, the Commissioner of the ADF&G stated "there is a need for timely action to be taken by federal and state appointing authorities with regard to making appointments to the SRCs and maintaining current charters for the SRCs" and "there is a need for a greater level of collaboration and communication between the National Park Service and the department regarding the schedule, agenda, and role of the ADF&G as a participant in the SRC meetings" (Collinsworth, 1989). The state has also submitted numerous comments to the NPS and Secretary of the Interior articulating the state's disagreement on the legal issues involved with park subsistence management, including the issue of eligibility. Richard

Caulfield (1988) wrote that "the (subsistence resource) commissions are now at a cross-roads; preparation of the subsistence hunting programs is nearly completed. The manner in which the Secretary of the Interior and National Park Service respond to those recommendations will be critically important in building upon the efforts made thus far." Among other recommendations, Caulfield suggested that the federal government should provide "full and timely administrative and logistical support to the commissions" and seek "to strengthen Native involvement in resource decision-making through cooperative research, planning, and management..." (ibid).

The hunting program initially submitted by the SRC for the WRST included three recommendations involving aircraft access for subsistence, predator control and the addition of Northway as a resident zone community. The Secretary of Interior responded to the initial recommendations stating that:

The recommended program cannot be implemented....because it is not within the guidelines stated in Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA) and other applicable laws and regulations that direct management of the National Park System. The nature of the recommendations would tend to alter management of the park in such a manner that would be contrary to the purposes for which the park was established. (Department of the Interior [DOI], 1988)

The recommendation of the SRC to allow aircraft access for subsistence was generated, at least in part, as a result of the NPS change in policy on this issue. In the years immediately following passage of ANILCA, the Superintendent of the WRST interpreted the regulations as allowing the use of aircraft for flying into the preserve or private lands and then using other access to enter the park for subsistence hunting. The NPS later changed the policy on aircraft access, stating that the earlier interpretation was incorrect, and ruled that persons could not use aircraft for access into the preserve or private lands for the purpose of subsistence hunting within the park. The recommendation of the hunting program begins by stating "Current National Park Service interpretation of its rules

and regulations regarding aircraft access to park/preserve land(s) is contradictory to its past stand on this matter" (SRC for the WRST, 1986). The Secretary's response indicates that "the 1985 memorandum from the NPS Alaska Regional Director was issued to clarify the use of aircraft for subsistence use when the Regional Office became aware that there was inconsistent application of the regulations by NPS superintendents in Alaska" (DOI, 1988). This change in policy confused and upset many local residents and has been a continuing source of controversy and subject of discussion and recommendations by the SRC.

The second recommendation of the SRC states that "it would appear that if predator control is required to maintain healthy populations and subsistence needs, the Secretary of the Interior has the authority to allow or even order such predator control" (SRC for the WRST, 1986). In response, the Secretary cited legislative history of ANILCA indicating that the NPS is not expected to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses in national park units.

The third recommendation of the SRC asks that the village of Northway be added to the resident zone for the WRST. The recommendation notes that the village of Northway has always utilized the resources from the park/preserve for subsistence purposes in a customary and traditional manner and, "the failure to include Northway in the resident zone was probably an oversight when the resident zones were created" (SRC for the WRST, 1986). The Secretary's reply states that "in order to designate the community of Northway as a resident zone community, NPS would have to determine whether or not a significant concentration of people who permanently reside in this community have a history of customary and traditional subsistence use in the park" (DOI, 1988). This response indicates that the Department of Interior is no longer applying the liberal policy in

designation of resident zone communities used in the 1981 federal rulemaking, although the criteria currently used to evaluate resident zone communities has not been articulated in writing.

In the response to the SRC proposed hunting program the Office of the Secretary suggests that the commission "work with the NPS to develop a viable program that meets the area's subsistence needs and is consistent with the purposes for which the Wrangell-St. Elias National Park was created" (DOI, 1988). The Secretary suggested the SRC work to establish resident zone community boundaries and/or eliminate some resident zones, work on defining local for the purpose of defining local, rural residents, provide input on traditional subsistence hunting zones and trapline management, and provide input on how to allocate game resources among subsistence users according to the three criteria of ANILCA Section 804, should the need arise.

In December, 1989, the SRC resolved to have the authority to make appointments to the commission delegated from the Secretary to the NPS Alaska Regional Director in hopes of avoiding the extensive delays in appointments. The SRC for the WRST has rejected the idea of removing the resident zone status of any of the local communities for the present time and has focused more on making recommendations to increase hunting opportunities than supporting the conservation purposes of the WRST.

In a few other Alaska national parks, the SRCs and/or the NPS have proposed eliminating resident zone communities and going to the individual permit system. The SRC for Lake Clark National Park proposed using a roster of eligible residents rather than requiring each person to carry a permit, although, the practical effect is the same as using individual permits. Two approaches for establishing cutoff dates for qualifying for such rosters have been proposed. One approach requires having an established pattern of subsistence use in the park prior to Dec., 2, 1980 when ANILCA was passed. The second

approach uses the date of the regulation change removing the resident zone as the cutoff date. The latter approach essentially grandfathers in all families who began hunting in the park between the time ANILCA was passed and the resident zone status removed.

Another problem the NPS has faced with the current resident zones for the WRST is that none of the communities has legally defined boundaries. In most of the more remote national park areas in Alaska the communities are either legally defined or are located in discrete, recognizable areas. In the WRST region, most of the communities are located on the main highway system where the town is the main cluster but might be spread out along the highway for many miles in either direction. The practical effect of the situation is one large resident zone community stretching northward from the city limits of Valdez, which is not qualified because of its urban designation, to Tok, the furthest resident zone community. The NPS has not required individual permits for anyone living within this large region.

4.1.3 State Subsistence Hunting Regulation Prior to July 1, 1990

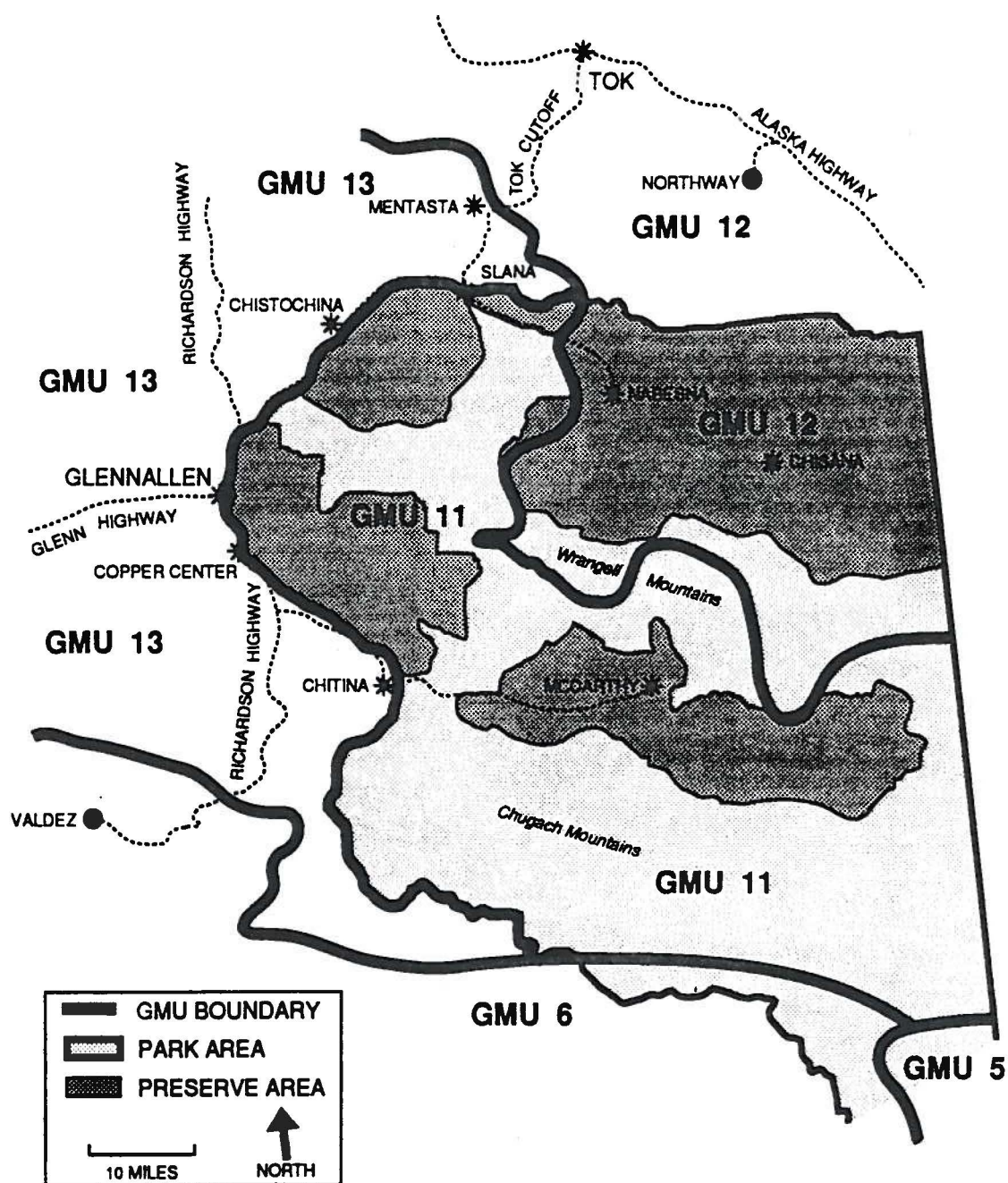
Nearly all local residents of the WRST region were determined to live in rural areas and have customary and traditional subsistence use and therefore qualified under Tier I of the state subsistence preference eligibility program. The few exceptions are noted below.

Prior to the legal decisions resulting in federal takeover of subsistence management of fish and game on federal lands, the BOG ruled that nearly all of the Copper Basin and Upper Tanana region is rural, and eligible for the subsistence hunting and fishing preference. The single exception is Valdez which was determined to be urban and was therefore ineligible for the state's Tier I subsistence preference in the WRST or elsewhere. Prior to the state determination that Valdez is urban, the NPS had issued twenty one individual subsistence permits for residents of Valdez who applied and qualified under

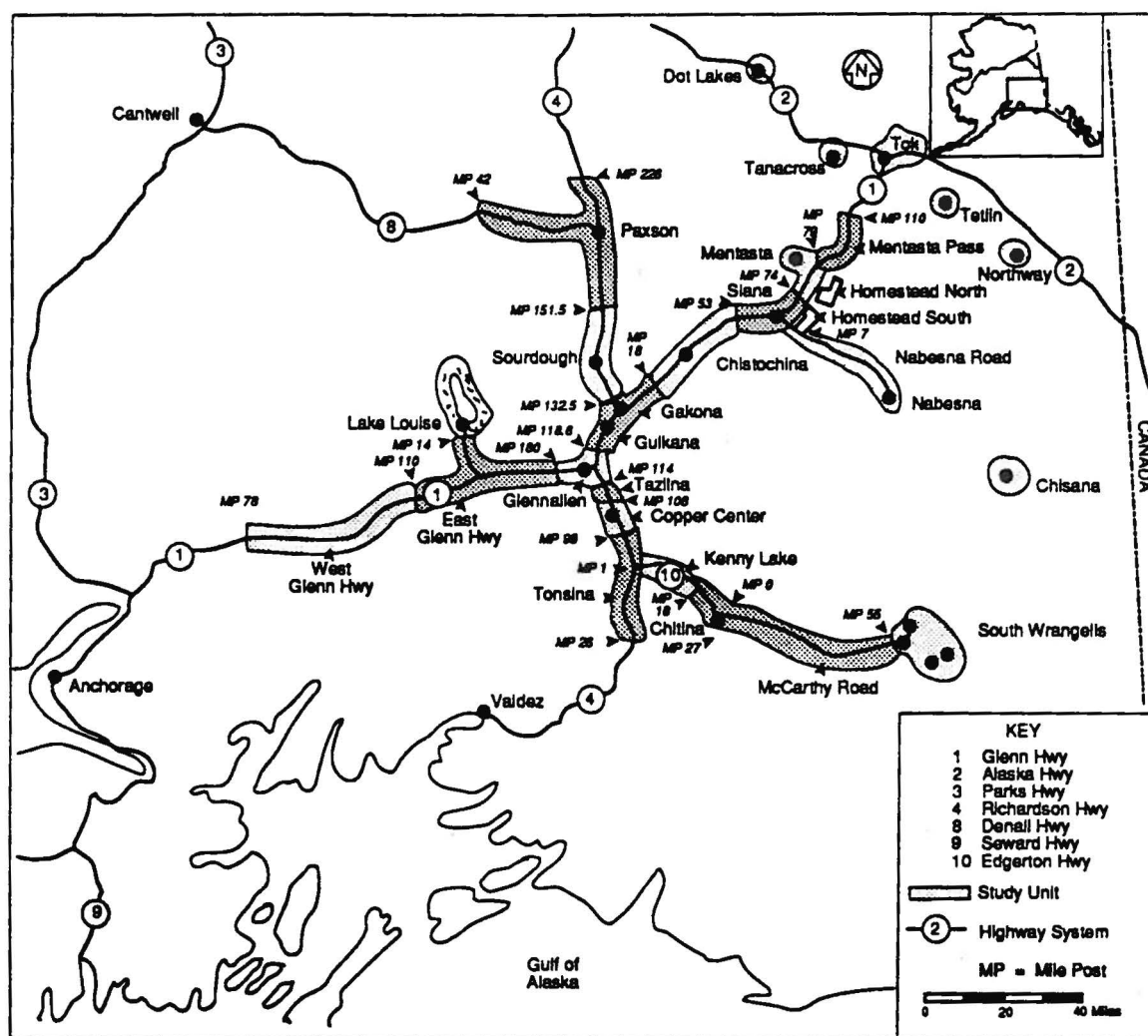
NPS regulations, since the community as a whole is not an NPS resident zone. These permits were withdrawn by the NPS when the State Board of Game ruled that Valdez is urban.

The BOG made several determinations of customary and traditional use of game in the WRST region for the purpose of eligibility for the subsistence priority according to the criteria in state regulations. The BOG had no defined policy for judging and weighting the different criteria and, as a result, there was no guaranteed consistency in customary and traditional determinations. This flexibility allows the BOG to adjust its decisions to meet varying circumstances throughout the state, but also makes it difficult to project the outcome of the state eligibility process.

State Game Management Units (GMUs) do not all correspond to the boundaries of the WRST. The majority of the WRST in the main study area lies within GMUs 11 and 12 (Map 3). The BOG ruled that nearly all residents of GMUs 11, 12 and 13 (A)-(D) have customary and traditional (C&T) use of moose within the WRST. The primary exception among residents of the immediate WRST region are Slana Homesteads North and South which are separated from the original community of Slana in the ADF&G, Division of Subsistence, household subsistence use survey data (Map 4). Many of these persons became residents of the region after 1980 as a result of the Bureau of Land Management homestead program. The BOG determined these communities do not have C&T use of moose in the southern portion of GMU 12, roughly that portion of GMU 12 within the WRST; therefore they do not qualify for subsistence moose hunting in that area. Essentially all local residents are considered to have C&T use of caribou in Unit 11 which is the majority of the WRST. The BOG ruled that residents of Tok and other upper Tanana communities, as well as residents of Slana Homesteads North and South, do not have C&T use of Dall sheep in Unit 11; therefore these local residents do not meet



MAP 3: STATE GAME MANAGEMENT UNIT (GMU) AND NATIONAL PARK AND PRESERVE BOUNDRIES



**MAP 4: 1988 ALASKA DIVISION OF SUBSISTENCE
HOUSEHOLD SUBSISTENCE USE SURVEY
STUDY COMMUNITIES** (adapted from ADF & G)

note: Not all of these study units are included in the analysis of this thesis.

the state's Tier I criteria to qualify for subsistence use of that species. Because the BOG ruled these communities ineligible for Dall sheep hunting, precluding them from obtaining state permits, they were not allowed to subsistence hunt for this species in the Unit 11 portion of the WRST, even though Tok and Slana are NPS subsistence resident zones. It is likely that some residents of these communities could qualify for NPS individual subsistence permits, even though the state ruled that the community as a whole does not have C&T use. Since the NPS has deferred C&T decisions to the state, there is no mechanism to allow that to occur.

The 1989-90 state seasons and harvest limits in the WRST region provided some preference for subsistence hunters both within and outside the WRST. In GMU 11, caribou hunting regulations gave preference to local subsistence hunters by allowing an unlimited number of permits for either sex while sport hunters had a drawing for 100 limited permits for bulls only. Sheep hunting in GMU 11 favored subsistence hunters by allowing one sheep of either sex while sport hunters could only harvest one full curl ram. There was no preference for subsistence use of moose in GMU 11 with all hunters allowed one bull.

The BOG never fully implemented all aspects of the state subsistence regulatory program in place prior to July 1, 1990. Under Tier I some communities could have been designated as urban and further C&T decisions may have been made. If competition for game resources increased, eventually there may have been a need to restrict subsistence hunting opportunities among subsistence users according to the three state criteria applied under Tier II.

4.2 Community History of Subsistence Uses Within the WRST

According to the Code of Federal Regulations, NPS resident zone communities are to be primarily composed of concentrations of persons with a personal or family history of subsistence uses in the park, without using airplane access. Estimates of the percentages of households in each community which report using the WRST for subsistence activities prior to 1981, without using airplane access, are the best data available which closely parallels this definition a resident zone community and is therefore of key importance to the thesis. These estimates are derived from analysis of the ADF&G's Copper Basin and Upper Tanana Subsistence Use Household Survey data base. The community study units used by the ADF&G in their household subsistence use survey are shown in Map 4.

With the ADF&G household subsistence use data base it is only possible to obtain information on what year households report first using the WRST for the subsistence activities--the computer analysis does not describe a household's history of use. Whether households who first used the WRST in 1979 or 1980 would actually be eligible to continue subsistence hunting in the WRST under the individual permit system depends on the NPS interpretation and application of the phrase "customary and traditional." For the purposes of this analysis, any household who used the WRST for subsistence purposes prior to 1981 is considered to have a personal or family history of use established before the WRST was created.

4.2.1 Percentages of Households In Local Communities Which Report Using the WRST for Subsistence Purposes Before 1981

To estimate concentrations of local residents with a history of subsistence uses in the WRST without using airplane access a computer program was designed which selects

for records of households using either the park or preserve, for any resource activity, before the year 1981 and, eliminates those using airplane access. While the primary focus and concern of subsistence regulation and this project involves hunting, the regulations which define the criteria for resident zones only require significant concentrations of persons with a personal or family history of subsistence uses; therefore, all resource activities are included in this analysis. It must be emphasized that the ADF&G household survey questionnaire and the resulting data base did not include all subsistence uses such as fishing, a major subsistence activity in the region. For this reason, the percentages of households in communities who have used the WRST for subsistence before 1981 should be considered as minimum estimates (see Limitations of Study, 2.3.2, page 22). Further, these data do not take into account sharing resources within communities, often an important aspect of the subsistence lifestyle.

Communities or areas with 50% or greater of the households having used the WRST for subsistence purposes prior to 1981 without air access include Chitina at 61.1%, Kenny Lake at 53.7%, Mentasta at 58.3%, Nabesna Road with 83.3%, Slana with 54.5%, and South Wrangells just at 50% (Figure 1). The data indicate that these communities are, or nearly are, primarily composed of residents who have used the WRST for subsistence purpose before the park/preserve was established and, therefore, likely meet the minimum definition of a resident zone community identified in the Code of Federal Regulations. These data show that the communities of Northway, Homestead North, Homestead South, Tazlina and Tok all have less than 25 percent of the households which report using the WRST for subsistence prior to 1981, without airplane access.

Interestingly, the NPS resident zone community of Slana includes the ADF&G survey units of Slana and Homesteads North and South. According to analysis of the ADF&G data base, Slana has a relatively high concentration of households which used

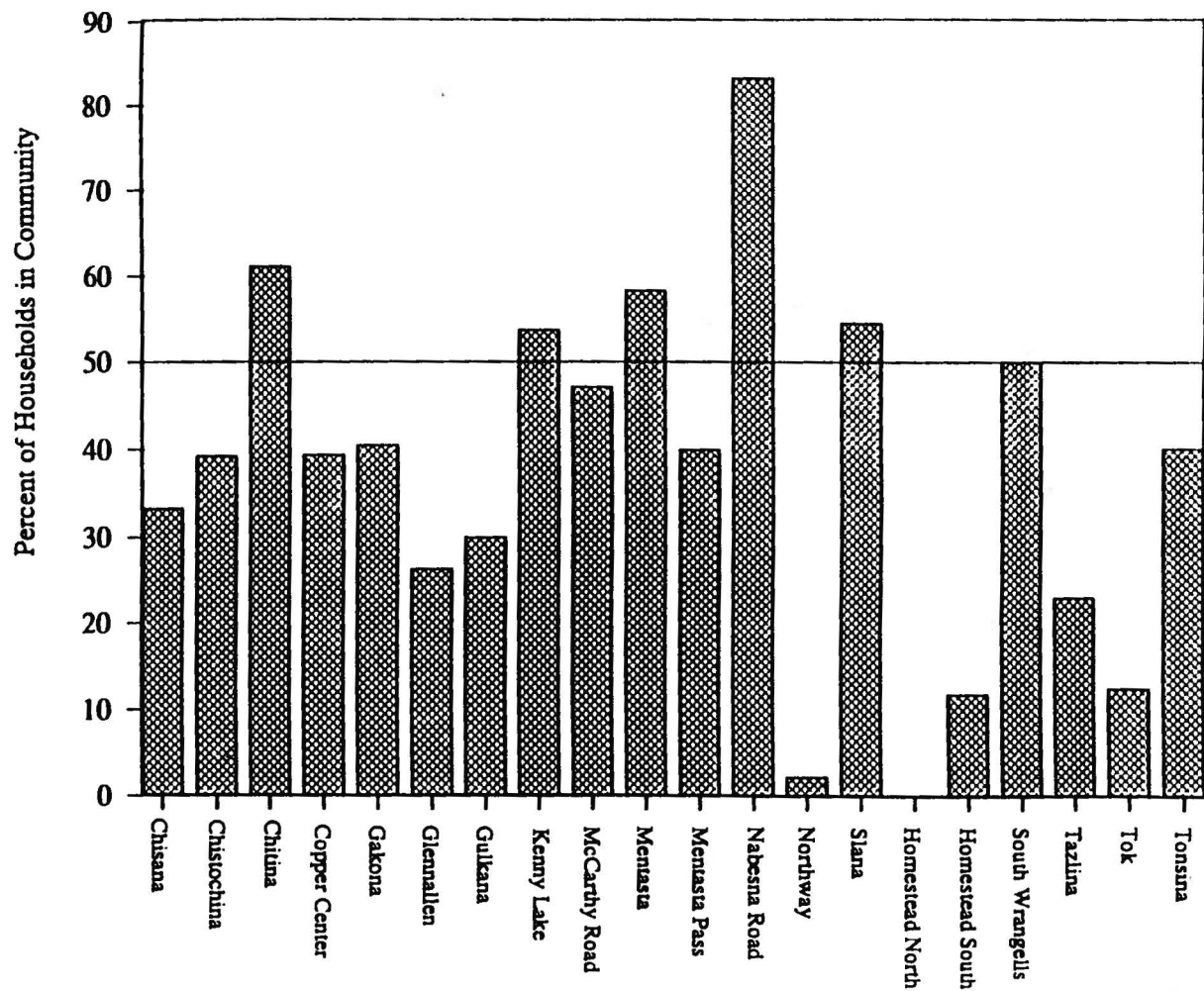


Figure 1: Percent of households in local communities which report first using the WRST for subsistence purposes before 1981.

source: Analysis of ADF&G household subsistence use survey data.

the park for subsistence prior to 1981 yet, Homesteads North and South have quite low concentrations. If these ADF&G data units were all lumped together, the combined figure for the NPS resident zone of Slana would likely be somewhere under 50 percent. This illustrates the importance of defining and considering community boundaries for the ADF&G survey units and NPS resident zone communities when evaluating data for eligibility decisions. Depending on how boundaries are drawn, distinctly differing conclusions can be reached.

4.2.2 Percentages of Households in Local Communities Which Report First Hunting in the Park After 1980

The portion of households in each community which first hunted in the park after 1980 should approximate the percent of households which began hunting after the WRST was established and which would not be eligible to subsistence hunt in the park under the individual permit system. This computer analysis selects for just hunting activities in park designated areas only because new residents and non-residents are allowed to sport hunt in the preserve, regardless of their history of use. This analysis does not distinguish access modes because selecting out airplane access might eliminate some households who have begun hunting in the park since 1980, even though airplane access for subsistence is not allowed.

The percentage of households which report first hunting in the park after 1980 in the study communities ranges from 0 to nearly 30 percent (Figure 2). The data show that the communities of Kenny Lake and Homestead South have approximately 30 percent of their households which report having started hunting in the WRST park after 1980. Because newcomers would not be eligible to hunt in the park under the individual permit system, these communities would be most affected by a change from the resident zone to

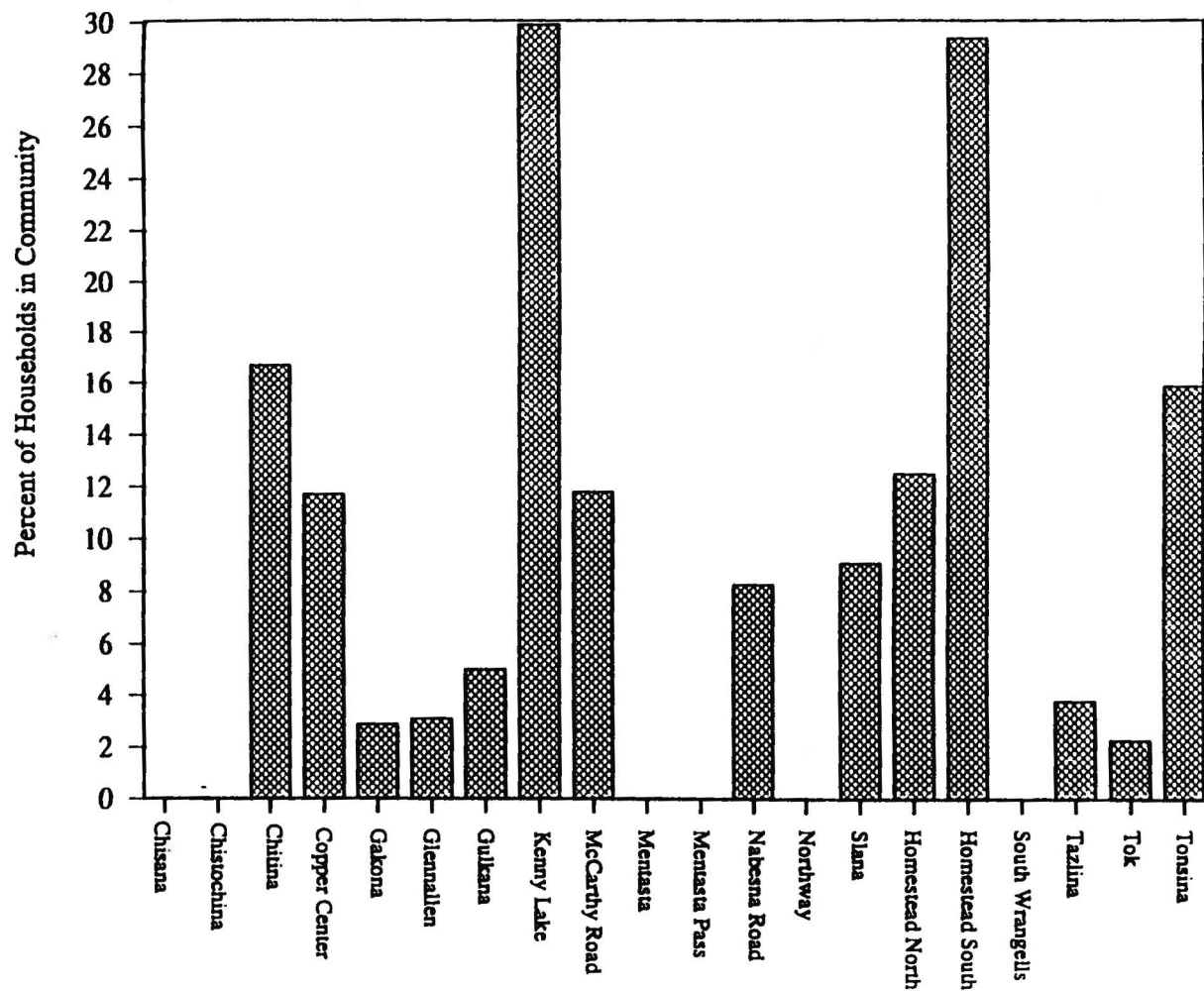


Figure 2: Percent of households in local communities which report first hunting in the WRST park after 1980.

source: Analysis of ADF&G household subsistence use survey data.

individual permit system of determining park subsistence eligibility.

4.3 Population Trends of Local Communities

The purpose of this section is to document population trends of communities in the WRST region to provide information, beyond the concentrations of households which report having used the WRST for subsistence uses before 1981, which relates to the need of changing the designations of NPS subsistence resident zone communities. Because of concern about increasing populations of some resident zone communities, the NPS has encouraged the SRC for the WRST to consider changing over from the resident zone system to the individual permit system of determining park subsistence eligibility, at least for some communities.

The concern about rising populations was heightened because of the possibility of population increases which might have resulted from proposed construction and operation of the U.S. Air Force Over-the-Horizon Backscatter Radar project. The Air Force projected that "the population change caused by one antenna site could range from 3% to 6% in the Copper River valley and 8% to 10% in the Tanana Valley. If both antennas were located at sites that affect Copper River valley communities, the population increase could have been as much as 12% of the projected 1991 population for the Copper River valley (USAF, DEIS, 1987). The Final Environmental Impact Statement recommends using sites near Tok and Gulkana for the radar antennas (USAF, FEIS, 1987). Very few, if any, of the construction and military personnel working on the project would have a personal or family history of subsistence hunting in the WRST, but all would be eligible for subsistence hunting under the present resident zone system. Most recently, funding for the Backscatter Radar Project has been cut; however, efforts have increased to begin

construction of the Trans-Alaska Gas System. Regardless of the specific cause, the population of the WRST region is likely to increase in the future. It should be kept in mind that population increases alone are not necessarily cause for concern. If the new persons are born into local families with a history of customary and traditional subsistence uses in the WRST it does not necessarily lessen the viability of the community as a national park resident zone.

The population of the region in and around the WRST has been increasing over the last few decades. Between 1970 and 1980, the decade of construction of the Trans-Alaska Pipeline, most of the local communities increased in population, some by more than 100 percent (Alaska Department of Labor, 1981). From the establishment of the WRST in 1980 up to 1990 there was a much less dramatic increase in regional population, with some individual communities actually decreasing in size (Table 1). The overall Copper River Census Subarea population increased only 1.5% during this ten year period. Despite this relatively minor change in the population of the Copper River Basin as a whole, several individual communities show significant change. The data indicate that the population of Tazlina increased seven fold and Copper Center more than doubled. The population of the Copper Basin communities of Tonsina and Gakona declined by over 70 percent. Some of the more radical population changes may have been caused, at least in part, by changes in the boundaries of the Department of Labor census units. In the Upper Tanana region, the communities of Northway and Tok increased in population by over 50 percent while Northway Village showed little change. The coastal town of Yakutat increased by nearly 20 percent.

Table 1: Regional Population Trends *

Source: Alaska Department of Labor (1991)

<u>Community or Census Area</u>	<u>1980 Population</u>	<u>1990 Population</u>	<u>Population Change 1980-1990</u>	
			(numbers)	(percent)
Chistochina	55	60	5	9%
Chitina	42	49	7	16.6%
Copper Center	213	449	236	110.8%
Gakona	87	25	-62	-71.3%
Glennallen	511	451	-60	-11.7%
Gulkana	104	103	-1	-1.0%
Mentasta Lake	59	96	37	62.7%
Northway	73	123	50	68.5%
Northway Village	112	113	1	0.9%
Slana	49	63	14	28.6%
Tazlina	31	247	216	696.8%
Tok	589	935	346	58.7%
Tonsina	135	38	-97	-71.8%
Yakutat	449	534	85	18.9%
Entire Copper River Census Subarea	2,721	2,763	42	1.5%

* The Alaska Department of Labor census units do not all correspond to NPS resident zone communities. The table demonstrates population trends in some of the key communities for which data is available. The data for the entire Copper River Census Subarea shows the overall population trend in the main study area. Northway, Northway Village, Tok and Yakutat are not in the Copper River Census Subarea and some census units in the Subarea are not included in the table.

4.4 Regional Trends in Wildlife Harvest

The relative competition for game resources and pressure on wildlife from hunting since the WRST was established is important in judging the urgency of restricting subsistence hunting eligibility. Some members of the SRC have indicated that there is no reason to limit park subsistence hunting eligibility because they feel hunting pressure is down in the WRST due to limiting hunting in some areas to subsistence hunting and the attendant access restrictions. This section provides information concerning how much game is taken within versus outside the WRST by local communities and how wildlife harvest rates in the WRST have changed since the park/preserve was established. The information gives an indication of how important the WRST is in providing subsistence game resources relative to non-park areas.

The information presented in this section includes both subsistence and sport hunting data and should be viewed as a general indication of wildlife harvest trends. The data for 1973-77 come from ADF&G harvest ticket information as presented by Murphy and Dean (1978). The data for the 1987-88 hunting season were obtained directly from the ADF&G harvest reports and include both harvest ticket and permit hunt information. The 1987-88 harvest records were selected for analysis because that is the same year the household subsistence use survey was conducted. Because the data from pre-park years and the data from 8 years after the park was established are derived from the source they should provide a reasonably accurate estimate of changes in WRST hunting pressure.

4.4.1 Local Community Harvest Within and Outside the WRST

ADF&G community harvest printouts report information for only a few communities within the study region including Chitina, Copper Center, Gakona, Glennallen,

McCarthy, Mentasta, Northway, Slana and, Tok. The community harvest printouts were hand tabulated to examine the portions of moose, caribou and sheep harvested within and outside the WRST by residents of these communities. With the exception of Dall sheep, no major portions of the community harvests are in GMU 12, so the harvest in GMU 11 is treated as being the entire harvest within the main study region of the WRST (Map 3).

Of 400 caribou reported taken by all communities combined, only 32 or 8% came from GMU 11 in the WRST. The harvest records show that the far majority of caribou taken by communities in the region in 1987-88 came from GMU 13 outside the WRST.

Of a total of 171 moose reported taken by these local communities, 24 or 16.3% came from GMU 11. A few moose were taken in GMU 12 which could have been in the WRST. Of a total of 52 Dall sheep reported taken, 28 or 53.8% were taken in GMU 11. Most of the sheep harvest in GMU 12 occurs in the WRST northeastern preserve unit (Heimer, 1990, personal communication). Approximately half of the sheep reported taken in other units came from GMU 12, for a rough total of 40 sheep likely to have come from within the WRST. For this reason it is likely that the portion of sheep harvested by the local communities which come from within the WRST is greater than the 53.8% indicated for GMU 11 alone.

Overall, these data indicate that the majority of the take of big game species in 1987-88 from communities in the region of the WRST come from outside the WRST National Park and Preserve. The significant exception is Dall sheep, of which more than half were taken within the WRST. Although the game obtained in the WRST may be critically important to some subsistence hunters, the data suggest that the WRST is not, at present, the major provider of game resources for residents of the region as a whole.

4.4.2 Wildlife Harvest Levels Before and After Creation of the WRST

This subsection examines the level of hunting and wildlife harvest within the WRST, before and after the WRST was established, to see if significant changes in harvest levels have occurred as a result of creation of the park/preserve. Again, the figures reported include both sport and subsistence harvest. ADF&G personnel report that hunting has steadily declined in the WRST since the park was established because of airplane access restrictions and changes in the availability of game within and outside the park/preserve (Toby, personal communication, 1990).

Table 2 indicates a relatively small change in caribou hunting in GMU 11 since the WRST was established with the number of hunters having increased by 6.5% and the number successful, or harvest, down only 3.4%. In the 1988-89 season the number of caribou permits issued in GMU 11 was reduced, resulting in harvest of only 55 caribou (Toby, personal communication, 1990). This is less than half the caribou harvest shown for 1987-88 in Table 2. Overall, it appears there has been some decrease in caribou hunting in GMU 11 since the WRST was established; however, the many complicating factors such as changing herd sizes, hunting regulations and NPS access restrictions make it difficult to state exactly how drastic the change has been and what the major reasons are.

It is much more apparent that the level of moose and sheep hunting in the WRST has decreased since the park/preserve was established. Table 2 shows that the number of moose hunters and the number successful has gone down over 40% since the WRST was established while the success rate has gone up 2%. GMU 12 is included in Dall sheep hunting statistics presented in Table 2 because, as noted above, most of the GMU 12 sheep harvest occurs in the WRST. Table 2 shows that sheep hunting in GMUs 11 and 12 has also gone down nearly 40% since the WRST was established. Overall, the data indicate that both numbers of hunters and take of wildlife has significantly declined in the

Table 2: Comparative caribou, moose and Dall sheep harvest levels in the Wrangell-St. Elias National Park and Preserve, 1973-77 and 1987-88, before and after creation of the park/preserve.

Sources: 1973-77 data from Murphy and Dean (1978)
1987-88 data from ADF&G harvest reports

<u>species*</u>	<u>hunting data type</u>	<u>1973-77 average</u>	<u>1987-88</u>	<u>change from 1973-77 average to 1987-88</u>	<u>percent change from 1973-77 average to 1987-88</u>
caribou	number of hunters	199	212	+13	+6.5%
	number successful	116	112	-4	-3.4%
	success rates	56%	53%	-3%	-5.4%
moose	number of hunters	338	194	-144	-42.6%
	number successful	100	58	-42	-42%
	success rates	28%	30%	+2%	+7.1%
Dall sheep	number of hunters	751	461	-290	-38.6%
	number successful	350	200	-150	-43%
	success rates	47%	43%	-4%	-8.5%

* Caribou and moose data are from Game Management Unit 11 only. Dall sheep data includes Game Management Units 11 and 12.

WRST since the park/preserve was established.

Comparing the 1987-88 total harvest information in Table 2 with the community harvest information presented earlier shows that local residents harvested 32 caribou of the total of 112 reported taken in GMU 11 or about 29% of the caribou harvest in the WRST. Similarly, local residents harvested approximately 41 percent (24 out of 58) of the moose taken in GMU 11 in 1987-88 and approximately 20 percent (40 out of 200) of the Dall sheep harvested in GMUs 11 and 12.

The three most obvious conclusions which come from the harvest report data are: 1) during the 1987-88 study year local communities in the region eligible for subsistence hunting in the WRST obtained the majority of their big game subsistence resources outside the park/preserve; 2) the number of hunters and take of big game animals has gone down approximately 40 percent since the park/preserve was established, and; 3) the majority of big game harvested in the park/preserve was taken by non-local persons.

Chapter 5.0 The Views of Persons Affected by WRST

Subsistence Eligibility Policy

Chapters 3 and 4 of this thesis have presented legal and quantitative information which apply to WRST subsistence eligibility decisions. This chapter adds a human dimension to the study by describing the views of the persons most concerned and affected by WRST subsistence policy. The information was obtained primarily by conducting interviews during the summer of 1989.

Fish and game regulation, particularly with regard to subsistence, is a very important and emotionally charged topic for many residents of the region. Due to this situation the names of persons interviewed are not included in this thesis. The categorization of views is very general and represents an overall synthesis of the main perspectives observed by the researcher. Of course, within any given group there are individual opinions which may differ from the generalized views presented here. The interview procedures were not designed to obtain a statistically valid representation of views of the region as a whole but, rather, to present views of affected park users to compliment the legal and numerical information presented earlier.

This analysis presents an overview of three different perspectives on subsistence in the WRST which is synthesized from the interviews and discussions with local people. Holly Reckord (1983, page 188) categorized subsistence users in the WRST region as either Native or non-Native. She identified three typologies of subsistence strategies among non-Natives based on factors such as length of residency and reliance on modern technology. The categorization used in this study generally distinguishes between Native

and non-Native subsistence users but likely includes Reckord's Type II non-Native strategists with Natives. Reckord's Type II strategists utilize few modern conveniences and attempt to limit dependency on the cash economy. The three basic perspectives used in this study are categorized as follows:

Category A: Composed of residents of the region who have a long pattern of use of fish and game resources and generally do not have expensive mechanized forms of backcountry access available, primarily of Native ethnicity.

Category B: Composed mainly of non-Native residents of the region, most of whom have been in the area and used fish and game resources for a long period of time and also have airplanes or other relatively costly mechanized transport means available.

Category C: A national conservationist perspective on subsistence management and regulation in the park.

5.1 The Category A Perspective on Subsistence Hunting in the WRST Region

5.1.1 General View of the WRST and the Subsistence Preference

Persons with the Category A perspective support the subsistence priority of ANILCA and feel that customary and traditional users should have priority for hunting eligibility in the park. Several persons in this group expressed support for creation of the WRST with provisions for subsistence hunting and indicated that they are glad they are able to continue hunting in the park. One respondent replied "I think it (creation of the park) had a pretty positive influence because we are still able to hunt there for subsistence hunting. They try to keep mostly local people living in the area hunting there." At the same time, the ANILCA subsistence priority and creation of the park is not uniformly

viewed as positive. Another respondent commented "Whatever changes they make up in that park usually hurts people in one way or another. Since they really haven't defined what subsistence is it really makes your head swim. I have my own ideas about what subsistence is because I live it."

Overall the group tended to perceive the WRST as being either positive for subsistence or that establishment of the park/preserve had not influenced subsistence to any large degree. Some Category A respondents commented that the park is a good place for game reproduction and that it has helped protect wildlife habitat from development. Generally, Category A respondents felt that the major impacts to subsistence hunting in the region have resulted from regional population increase and increased hunting pressure from people coming from outside the region. With regard to competition for game from new persons arriving in the region, one respondent stated "You see new people come in like this the first thing they do is run down ANILCA, ANCSA because they say we have no rights to be treated better than other people. We was (sic) here 10,000 years ago...".

Several respondents in Category A explained that true subsistence is a way of life that involves a longstanding pattern of use and seasonal cycle that cannot be reflected in park regulations which are based in a western cultural perspective. Some respondents remarked that using all parts of animals is central to traditional subsistence and that traditional subsistence foods are important for cultural reasons as well as food for survival. One respondent felt that the NPS should be gathering and recording information on subsistence traditions and patterns of use to assist in making decisions about customary and traditional use.

5.1.2 Knowledge of NPS Subsistence Regulation and Views on the SRC

With the exception of Natives who have served on the SRC, most Native people were not well informed about park subsistence hunting regulations. One person commented "Down in the Northway area a lot of people used to go up in the Chisana...with the park being established people didn't understand the regulations so they just kinda (sic) quit going up there." Several persons remarked that it would be very helpful if the park service would make a small brochure or pamphlet which explained the park subsistence regulations in common language. One respondent summarized the problem stating:

I think they (NPS) are busy doing their thing. Which isn't necessarily informing the public. They've got their own programs and plans and job descriptions and so on and I think probably their way of informing the public is pretty much different. It seems as if the park service's mentality or the park service's direction is more toward visitors. Their whole emphasis I should say is toward tourism and visitors to the park rather than resource users within the park.

Several respondents in Category A indicated that they perceive the SRC to be dominated by "commercial interests" or persons whose primary concern is not true subsistence. One person noted "I was really surprised how little Native participation there seemed to be on the board, it seemed like almost the whole board was made of sporthunters and guides...". Another respondent stated "...about the advisory council, to me anything that the national park system puts together sooner or later becomes dominated by the commercial interests. They say the squeak gets the grease. Indian people by and large are not squeakers." Several Native respondents in the Copper Basin stated that they do not participate in the system of state fish and game advisory committees or councils, but rather formulate proposals to the Board of Game through Native village councils.

5.1.3 Preferred Approach to NPS Subsistence Eligibility and

Fish and Game Management

Several Category A respondents perceived that state fish and game managers fight the subsistence priority while the federal system supports it. At the same time, the group generally supported the state Board of Game process of setting seasons and bag limits and making customary and traditional determinations. Several respondents felt greater cooperation is needed between the NPS and ADF&G with one person stating:

I think the state Board of Game is doing a fairly good job now. If the subsistence commission handles it (eligibility) I think they could be influenced by the bureaucrats in the park service. I can see them working together to resolve issues when the resources are being depleted. I can see the commission and the Board of Game working together.

To several respondents the only way to fully protect the Native culture is to return to a system of tribal game management where decisions are made by the community as a whole, not by outside regulators. One person stated "What we'd like is to regulate our own hunting grounds here in this village. Our own tribal hunting laws." These comments applied to fish and game management in general and were not necessarily restricted to Native-owned lands.

While there was clear support for a priority for customary and traditional users among Category A, when questioned about how to actually set the priority, several respondents were concerned that the system should be fair to all. Even in Category A where respondents would presumably remain eligible under either system, a permit eligibility system which results in "dividing the community" is looked upon with skepticism. In addition, many Native respondents felt that permits would be a cultural hardship, at least on the more traditional elders. Many elders have a difficult time understanding the state permitting system without adding the complications of federal permitting. One person summarized the trade-off on the different eligibility systems:

I think for sure there probably should be some sort of cut off date. Customary and traditional use should include people who have been using the resource, not people who have just moved in. The resident zone thing isn't going to work...customary and traditional use should have a cutoff date. And those who have a history of use prior to that should be able to continue it down through their generations. That's a very, very difficult thing because its hard to be fair to everybody.

Overall respondents in Category A prefer the existing resident zone system of determining park hunting eligibility. A few Category A respondents preferred the individual permit system for the present time and more thought it may be necessary in the future.

One respondent stated:

Its o.k. (the resident zone system) probably for present but in the future when we are getting to have more and more population and many of these people decide that they are going to be subsistence hunters...it will become less and less fair.

Another person commented:

I think they should take care of it (subsistence eligibility) before it gets populated, that way the game won't become scarce. Instead of just letting everybody go ahead and hunt and then deplete the game and then do something about it, I feel would be a little late. There's a lot of non-Natives around here that's been living here for years and years and it hurts them too.

5.1.4 Views on NPS Subsistence Access

Respondents in Category A did not feel that airplane access is necessary for subsistence. In fact, many in this group felt that using airplanes or other expensive technological equipment is inconsistent with a true subsistence lifestyle. One person noted "I have never heard of a Native people around this area ever packing a moose out with an airplane." Several respondents indicated that people coming primarily from outside the region with ATVs scared the game further away from the areas more easily accessible without such vehicles. One person commented "...I think they should cut out those three wheelers. Its a really unhealthy life for the game to be just chased around out there. Three wheelers are not traditional for hunting." Several respondents felt that they could

not compete with hunters using this type of expensive equipment. Several persons in Category A indicated that confusion over access regulations in the park caused the biggest change in access patterns, not the regulations themselves. At the same time, there was concern expressed for the requirement to obtain permits for ATV access on traditional trails.

5.1.5 Other Comments and Concerns

During the interviews it became apparent that Native people in the region have had their subsistence lifestyle severely disrupted for many decades by intrusions into the region and that many have a fatalistic attitude that they will eventually lose this part of their culture. One respondent commented:

I think it would be nice to use the Alaska Native Land Claims (to determine customary and traditional use) but then you'd have people moaning and groaning about it....If you take the Natives and just did it that way it would have been a lot simpler and...somehow this thing got all fouled up and got the state involved and now its local residents and its got to be this way and that way. Its not right...when you think about it. Why worry about it anymore, its not even worth worrying about anymore.

Another person noted:

Subsistence has kind of lost its momentum in priorities....Basically its a situation where if we don't deal with drugs and alcohol abuse there's no reason to think about Indians in terms of subsistence in the future. Subsistence is not only a lifestyle but its a system of beliefs.

One respondent summarized the Native perspective on modern subsistence management in the region stating:

So the old time Indian can't deal in terms of past. He can't deal with terms of future. The white man can but the Indian can't because to him what you call the future is just an extension of today. Walter Northway, years ago when he was still clear minded, speaking in terms of the future, he mentioned this in passing, "**wherever we were we still are.**" We live in this land with the land and for the land. It doesn't matter whether its Batzulnetas or Mentasta or Onion Creek. If we were there we still are there. I have adopted that concept as my own means of

hanging on to the rationality in a world that has gone crazy with concepts like subsistence. It makes sense to me and helps to maintain balance and that's critical.

5.2 The Category B Perspective on Subsistence Hunting in the WRST Region

There were only a few full interviews completed which were categorized as "B"; however, a number of persons with this general perspective submitted written response forms. In addition, many of the views expressed at the meeting of the Tok Cutoff/Nabesna Road Fish and Game Advisory Committee fell into this category.

5.2.1 General View of the WRST and the Subsistence Preference

To Category B respondents the major factor which has affected subsistence hunting in the region was establishment of the Wrangell-St. Elias National Park and Preserve. Many people were completely against the park idea in the first place and continue to believe that national park management is the cause of most subsistence management problems. One person succinctly summed up their views in written comments stating "ANILCA was a RAW BAD DEAL in my opinion" (emphasis in original). Several persons indicated that they feel the long-term intent of the NPS is to eliminate hunting completely from the WRST.

Some persons in this category also oppose the subsistence priority established by ANILCA for federal lands in general, as well as those that apply in the park itself. While respondents in this group commonly spoke of restrictions created by the park, no one indicated a positive feeling about sport and subsistence hunting being allowed to continue in the preserve areas or the continuation of subsistence hunting in the park. One respondent indicated:

Basically everything has went along the way a lot of us felt it would. The park is being used less and less each year. It goes back to the same thing-- confusion in the regulations, not adequate access to the park like there was before. General attitudes of people-- they feel like the park service is always overshadowing. A lot of people don't like to go over there for the simple reason they're not always sure if they're right, wrong or....

5.2.2 Knowledge of NPS Subsistence Regulation and Views on the SRC

Respondents in Category B were somewhat more familiar with park subsistence regulations and the SRC than Category A, but still felt that much better public information is needed on the subject. One person noted "Most of them (area residents) have no idea what these commissions are." When familiar with the SRC, respondents commonly felt that the commission is doing a good job but the park service pays little attention to their recommendations. One respondent described the role of the commission stating:

I think they (the SRC) are kind of a liaison between the local rural residents and the park service and help us to get changes made that help make subsistence a better deal for us instead of this rhetoric. I don't always agree with the commission but overall they have our interests at heart.

One person who is a member of the SRC voiced frustration about the lack of support given the commission by the NPS stating:

We need to have meetings in a timely fashion-- we were supposed to have a meeting last March that is yet to be funded, is yet to be scheduled. Now they are talking sometime next winter. Its just like the charters that were up for all the commissions...they were let slide. There was three months they couldn't have any meeting because they had to go through all the rigmarole. It takes an act of Congress to keep your membership up. As far as who the state picks, who the feds pick. I feel that the commissions are not being given any...- there's no guidelines from the feds or from the state really how to function or operate and they do not have the backing to support them as far as educating the populace that they even exist and what they are there for....The thing is there never is any...there is usually an announcement on the radio or a little blip in the local paper "there's a meeting"-- its not the way to do it, let's put it that way. Whatever they do they need to revise their whole PR system.

5.2.3 Preferred Approach to NPS Subsistence Eligibility and Fish and Game Management

Category B respondents generally indicated that the less regulation and restriction on subsistence in the park the better. One person commented, "Include the whole park in hunting. That would be better for the game and everything because then the whole park game would be managed." In keeping with this approach, Category B respondents felt that subsistence eligibility should be restricted only when necessary due to resource shortages and then it should be done by the State Board of Game. Several respondents in this group are members of local state fish and game advisory committees and use this system to bring proposals to the Board of Game. Generally, Category B respondents indicated a strong preference for state fish and game management, occasionally indicating that the park service has no authority to manage game populations. One respondent commented "That's the state's responsibility. Managing that game within that park. I strongly feel that the national park service has nothing to do with the caribou over there. Period."

Category B respondents all favored the existing resident zone system of determining park subsistence hunting eligibility, at least for the foreseeable future. A few persons noted that it might be wise to monitor the populations of communities in the region for major growth and that if a large growth occurred, individual permits might need to be considered. Several persons in Category B indicated that they do not perceive a large increase in the regional population or pressure on the park game resources. One respondent stated:

And that's another problem that I have with permits is the simple thing, granted you got people that move in the area and also people moving out. I think its been a fairly even flow with what's going out is coming in. Were not really gaining a lot....The park service can change that rule within a very short

time, as far as permits and redefining these resident zones. I think its something they need to look at every 2 or 3 years. I have no problem with that. But in the immediate future I absolutely feel there's no need in this day and age right now to jump into individual permits.

One written comment summarized the perspective that subsistence eligibility should not be restricted stating "No, individual permit-- NOT GOOD. All should qualify equally" (emphasis in original). At the other end of the spectrum of Category B views another written comment suggested "Eligibility systems should be established by the park system. Fish and Game (ADF&G) should be the "keepers" of the game herd conditions and allowed to control numbers of game that are takeable and control length of seasons to control the harvest."

From the Category B perspective, one basic problem with the individual permit system is that it will result in "dividing communities" and eventually eliminate subsistence hunting from the WRST. The concern is that under the permit system, persons recently moving to the region will not be allowed to hunt, while their next door neighbor who has lived in the area longer, will be allowed to hunt in the park. This situation is viewed as fundamentally unfair. One respondent described the situation stating:

There's a lot of hard feelings just in a state level on subsistence between Anchorage people and areawide people. I don't want to see neighbor against neighbor just because one guy has been here five years and he's eligible now and all of a sudden tomorrow this guy that's only been here a year and he's not. You are going to create a lot of animosity in these small communities and the damage there is not anywhere near what we're talking about for the limited use of that park over there. The additional use right now of the new people moving in versus what we are loosing in population doesn't anywhere comply with what hardship you might involve in these little communities.

5.2.4 Views on NPS Subsistence Access

Within Category B access into the park for subsistence is considered a major problem as demonstrated by the comment "Now there is a real problem with access into the WRST because you cannot land (an airplane) and hunt in the hard park but you can, of

course, in the preserve. You have to be able to access it to utilize it." Several persons indicated that they perceive that hunting pressure has gone down in the park due to access restrictions and limiting subsistence to local users only. Respondents commonly indicated that it was useless for Congress to allow subsistence in the park when people can't get there because airplane access is not allowed. Most Category B respondents felt that airplane access is the traditional form of access into the Wrangells and should be allowed to continue. One person responded that there is a need to "Open up the park to airplanes. They've used airplanes in the Wrangells for the last 70 or so years-- now all of a sudden its illegal. But river boats never were used until the last 10 or 15 years are legal. They can outprice some airplanes too." Another respondent questioned why airplanes had been allowed in Yakutat and not in the Copper Basin when it can be just as dangerous to cross the Copper River as Yakutat Bay. Several persons indicated that the restrictions on airplane access do not make sense when you consider that airplanes cause less damage than ATVs and often cost less than fancy riverboats.

5.2.5 Other Comments and Concerns

Several Category B respondents felt that the NPS needs to become more involved with the local community and learn to better understand local concerns. On the topic of providing better information one person stated:

The park service needs to put out brochures that they could have at sporting goods stores or wherever....They may have some at the park service but I feel the park service needs to have, as far as their rules and regulations, put a pamphlet out like the state does. Give them to your local vendors... Get them in the private sector, not strictly in their office. Where people buy their hunting licenses.

Some persons indicated that park personnel are not trained or briefed to understand how Alaska parks are different from other national parks and that once employees begin to understand local management concerns they are shipped off to another part of the country. One respondent noted:

When they (NPS) transfer people in they ought to be aware this is not managed like Yellowstone or Yosemite, there's different management for the system right here. I don't know how much advance knowledge they even give their people. Those people are here basically for a three or four year stay and then on to someplace else. That's normal for their system. What happens you get a new guy transfers in you'd think they would want him to attend some of these local meetings just to get the feeling of what's going on. A guy he comes in...he's here for a year or two and he's gone. They're not here long enough to really get out of their own system. This State of Alaska is entirely different than most places. So there is a problem right within their own management way of doing things. Maybe by the time they are starting to grasp it they are gone.

A written comment, which may reflect the views of many persons in Category B, succinctly states "The NPS has an anti-hunting mindset, and they are stopping even subsistence hunting wherever they can. The ANTIS motivate NPS" (emphasis in original).

5.3 The Category C Perspective of Subsistence Hunting in the WRST

This narrative is provided because it represents a significant park user clientele which advocated creation of the WRST in the first place. The perspective focuses on the conservationists' perceived intent of Congress with regard to subsistence in Alaska national parks rather than direct experiences with park subsistence management. The perspective is derived from a single interview with a Sierra Club representative, the main group which has written to the NPS expressing an interest in the eligibility issue. The respondent was involved in many of the congressional hearings and discussions on subsistence in national parks during the ANILCA debates. The main points should be repre-

sentative of an overall conservation perspective; however, different environmental organizations may approach the specific issues differently, just as local residents differ in their views.

5.3.1 General View of Subsistence Hunting in the WRST

From a conservation perspective subsistence hunting is a use allowed by Congress in several of Alaska's national parks which must remain within certain constraints. The respondent noted that "Certainly the parks were not seen (by Congress) as some sort of reservoir of wildlife and other subsistence resources sufficient to forever take care of newcomers, be they members of families of traditional subsistence users or newcomers in general. Otherwise you defeat the purpose of the park." From the conservation perspective the NPS has full authority to manage fish and game and determine eligibility within the park in cooperation with the park SRC and state fish and game managers and advisory boards.

Subsistence in parks is more narrowly constrained than subsistence on state or federal lands in general. One such constraint is the national park services' mandate to maintain "natural and healthy" wildlife populations. The respondent commented:

There's a difference between sustained yield and managing for natural and healthy by implication if nothing else. Sustained yield suggests you can crop the animals off up to the point at which the populations are reproducing themselves and not threatened with any long term harm. You treat them as a crop. Whereas natural, and this is spelled out in the legislative history if I recall, natural and healthy suggests a level of take that is far less than under sustained yield. You manage them differently-- you allow diversity in the age of the species involved. That for example would involve a deemphasis on trophy hunting. You would aim for a population of whatever species that included so called trophy size animals. That's what people who come to the area for non-consumptive uses in part come to enjoy. You don't want to see a bunch of youngsters and no full grown animals. For example, in the Wrangells if you're out hiking in the park it would be nice see some full curl rams once in a while as opposed to all younger animals. And there's another reason too, its not just viewer enjoyment from the esthetic perspective. It also has to do with genetic composition of the species. Some science is saying that this trophy hunting may have long term adverse effects on these populations. If that's

true, and I guess there is a lot of dispute in the scientific community, then to manage them for sustained yield could be incompatible with the very purposes of each national park which is established in this state essentially for non-consumptive purposes to maintain and preserve populations as we find them.

Congress intended to permit persons traditionally dependent on wildlife resources within the park to continue this use. In the respondents' view "the legislative record is clear that anyone who moved in after 1980 does not enjoy that same opportunity by law. That Congress did not intend newcomers to have the same hunting, fishing and other subsistence activities in the park." At the same time, Congress did not specifically intend to phase-out or eliminate subsistence hunting from the parks. Subsistence might be phased out over the decades through changes in the various communities or might continue indefinitely. The respondent stated:

I don't think Congress intended it (phasing out subsistence in parks) one way or another, they just assumed that if people were there practicing this way of life as defined by Congress, that could continue. But that if in the long run over the decades subsistence phased out, then the area would more or less become quote "pure" unquote, national park. Typical of parks in the lower 48 where they don't have any hunting at all.

5.3.2 Views on the SRC and State Fish and Game Advisory Boards

The SRCs are supposed to be made up of local persons who often know more about the wildlife resources than the park service itself. The respondent stated:

These folks have intimate local knowledge, far more so than probably some of the park service people who haven't been around that long. So they can play a vital role in advising the park service on these matters. That's why they were set up. Congress recognized you have to talk to the people who know what the facts are.

In the Category C perspective, it was presumed by Congress that local subsistence users on the SRCs would want to limit subsistence eligibility in their own self interest if new persons moving into the area resulted in increased competition for game. The respondent stated:

...by dealing with the knowledgeable local people who themselves are presumably qualified subsistence users it carries with it the notion that these people are going to be on special alert to make sure that only qualified residents are permitted to do this and not allow outsiders or other competitors to come in and enjoy the benefits and in effect compete with the genuine subsistence users. You can assume that if they realize what their real interests are they are not going to be interested in having just anyone show up and partake in the bonanza.

With regard to the function of the SRC the respondent commented:

I would say their (the SRC's) role is to help the park service determine, first and foremost of all, who's qualified and who isn't. Among those residents who were present at the time of the Act (ANILCA). In terms of determining who's qualified or not you have to find out if this person...met the standards as primarily dependent on fish, wildlife and other subsistence resources of the park for the...majority of their livelihood. That's the concept. It's not that they do a little of it but that the majority of their activities center on it and that without it they would be in deep, deep trouble.

Other functions of the SRCs described by the respondent include:

...assisting the park service in determining the areas traditionally used, species traditionally hunted, the amount traditionally removed, the amount of fish and wildlife and other subsistence resources that have been utilized over the decades...and advising them (the NPS) as to whether or not what the fish and game department (ADF&G) is proposing is consistent with these explicitly higher standards-- natural and healthy populations. As local people who are aware of the status of the populations.

5.3.3 Preferred Approach to NPS Subsistence Eligibility and

Fish and Game Management

The resident zone system of determining subsistence hunting eligibility is workable at present in some national parks like the Northwest Areas but is not workable in other areas on the road system such as the WRST. The resident zone system is all right when there are few new people moving into the zone from outside areas but is not acceptable when the population grows significantly from outside persons. The definition of what constitutes a "significant increase in population" is much lower from the conservation perspective than from that of Category B. The respondent noted:

...that in far removed regions of Alaska, lets take the NW area, that a subsistence resident zone concept for all practical purposes would incorporate the overwhelming majority of genuine subsistence use as qualified. While you might have a handful of non-qualified users you would ignore that because of the administrative simplicity of dealing with everybody equally. You just sort of say, well that's the cost of not having to go out and give everybody a permit and go through all that. Elsewhere, take a classic example along the road system such as in the case of Denali or Wrangell-St. Elias National Park its unworkable as hell. In the Wrangells a line was drawn around the region and 19 separate subsistence residence zones have been established which you probably find a lot of people that ordinarily would not qualify as genuine subsistence users. Glennallen and Tok, to give you some examples, are full of people who otherwise would not have any opportunity to hunt in a national park but, by virtue of being in roped-in in this vast subsistence resident zone, they qualify. And that's totally contrary to congressional intent and at some point we'll have to do something about that.

In this perspective, subsistence eligibility requires not only having lived in the local area since before the park was created but, also being primarily dependent on resources taken from the park for the main livelihood. Subsistence hunting is also intended to be limited to the areas and species traditionally used and the level of wildlife take should not increase beyond traditional levels.

In areas affected by population increase the individual permit system has the advantage of reducing the amount of wildlife taken from the park. This will help keep harvest levels at the minimum necessary to sustain a genuine subsistence way of life. Another advantage of the individual permit system is that individual circumstances can be evaluated so that decisions are not always made on the basis of general criteria which may not fit a particular situation.

From a conservation perspective the ADF&G should adjust Game Management Unit boundaries to reflect parks, preserves and other areas with differing legal management requirements. The park service has the primary authority to manage subsistence hunting within the park but should work with the SRC and state advisory boards and managers.

Chapter 6.0 Conclusions and Recommendations

The conclusions and recommendations in this chapter are organized in the same order as the body of this thesis. First, key points of the legal framework of national park subsistence management are reviewed followed by the major conclusions identified in Chapter 4.0, The Existing Situation. Next conclusions relating to the views of persons affected by national park subsistence management are presented. Finally, the major conclusions and recommendations of the entire study are summarized. In many instances information from these different areas of research overlap, and the discussion of the conclusions must draw on other sections of information.

6.1 The Legal Framework of National Park Subsistence Management

6.1.1 ANILCA, Section 201(9) provides that subsistence uses by local rural residents shall be permitted in the WRST, where such uses are traditional.

This provision of ANILCA authorizes subsistence uses within the WRST. While the concept of defining where subsistence uses are traditional seems straightforward, traditional use areas may be very difficult to define because of the lack of historical data and dynamic nature of the subsistence lifestyle and the fish and wildlife populations which support it. The upholding of the natural and healthy standard of fish and wildlife populations is probably more critical to meeting the purposes for which the WRST was established.

6.1.2 ANILCA, Section 802(1) also requires that subsistence uses must be managed in a manner consistent with the purposes of each conservation unit established.

One of the primary purposes for which the WRST was established is to protect fish and wildlife habitat and populations (ANILCA, Section 201(9)). Subsistence is not a primary purpose of the WRST but is clearly an important aspect of park management responsibilities.

6.1.3 Congress established the Limitations and Savings clauses of ANILCA, Section 815 to keep the continued subsistence use of fish and wildlife consistent with the purposes of the various conservation units.

The standard articulated in ANILCA, Section 815 is that subsistence use of fish and wildlife within a park must not be inconsistent with the conservation of natural and healthy populations of fish and wildlife. By including the natural component in this standard Congress recognized that wildlife management in units of the National Park System is intended to be more conservation-oriented than that on other federal lands. In authorizing subsistence uses within national parks and preserves, Congress indicated that traditional NPS management values should be maintained. The Senate Energy Committee wrote that the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity and ecological integrity of animals as part of their ecosystem. The Congress did not expect the NPS to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses.

In the above context the term park means a component of the National Park System, both park and preserve designated areas. Further, Section 813 indicates that preserves

should be managed the same as parks except that sport hunting is allowed, so it can be concluded that the natural and healthy standard for managing wildlife applies throughout the WRST.

6.1.4 Congress made the decision to allow continued sport hunting in much of the WRST, consistent with the overall subsistence preference of Title VIII.

Congress designated the major portion of the more accessible regions of the WRST as preserve. Non-local residents and commercial guiding operations can participate in sport hunting in preserves. If wildlife resources decline or the number of subsistence users increase to the point where allocations according to the criteria of Section 804 are necessary, sport hunting in the preserves may need to be reduced or possibly eliminated to provide for subsistence uses. This relationship demonstrates the influence of the number of eligible subsistence hunters on the viability of continued sport hunting in the preserve areas.

6.1.5 In authorizing continued subsistence uses in units of the National Park System in Alaska, Congress intended to provide the opportunity to continue a subsistence lifestyle in the parks for those individuals and families who were dependent on resources within the parks at the time they were established.

Both the Senate and House legislative history demonstrate that the intent was to provide for continued subsistence uses by local rural residents who have, or are a member of a family which has, an established or historical pattern of subsistence use with the particular park area. Congress intended as a matter of policy that eligibility for subsistence in national parks be restricted primarily to those with an established pattern of use when the parks were established, and not just during wildlife resource shortages

when the allocation criteria of Section 804 would also apply. The established personal or family history of use, combined with local residency, is the means by which subsistence in the parks can be continued through the generations.

6.1.6 There is no congressional intent to phase subsistence uses out of Alaska national parks--subsistence is to be an ongoing part of park management.

If the offspring of persons with established patterns of use permanently relocate in other areas so that the chain of generations of a family which had the use pattern established when the park was created is broken, subsistence could be phased-out of the park. This situation can only arise from the choice of residence and lifestyle of those born into families with an ongoing established subsistence use pattern--it is not within the authority of the NPS to intentionally phase subsistence out of the national parks where it is authorized by Congress.

6.1.7 Congress intended that the resident zone system be the primary means of identifying qualified national park subsistence users but also recognized that the individual permit system might be necessary when a large proportion of the community has not traditionally used the park for subsistence purposes prior to its establishment.

Once the point is reached where the resident zones are not composed primarily of residents with established or historical patterns of use in the particular park area without using airplane access, the NPS was expected to implement an individual permit system to restrict subsistence eligibility. The phrase composed primarily implies that Congress intended NPS resident zone communities to be predominantly, or at least fifty one per-

cent, composed of residents or families with a pattern of subsistence uses established in the park. This appears to be intended as the minimum criteria for a community to meet in order to be a valid NPS resident zone community.

6.1.8 There is no indication that persons who moved into a resident zone community after establishment of the park and became eligible to hunt because of the community's resident zone status, would retain their subsistence hunting privileges if a conversion is made to the individual permit system.

While Congress did not intend to provide opportunities to establish new subsistence lifestyles in national park units, the resident zone system has the effect of allowing that to occur on a temporary basis as long as the community as a whole is primarily composed of residents with patterns of subsistence use established before the park was created. The resident zone system is intended to provide the flexibility to avoid the use of a permit system, only so long as that remains consistent with the overriding purpose of continuing the opportunity for subsistence uses by those persons and their families who were dependent on resources within the parks when the parks were established.

6.1.9 When the NPS established the existing resident zone communities for the WRST there was no formal analysis of the concentrations of individuals and families within the various communities who had a personal or family history of subsistence uses within the park.

The resident zones were liberally established by the NPS in keeping with intent of Congress to avoid individual permit systems wherever possible.

6.1.10 NPS regulations describe the area within a park as a resident zone and the term is not further defined, allowing the possibility of large increases in the number of eligible subsistence hunters in the WRST.

The WRST contains thousands of acres of state and private land inholdings which could be subdivided and developed for residential, recreational or commercial purposes. Because private land inholdings are not excluded by definition and, these lands are all within the WRST, persons moving onto these lands may become eligible subsistence hunters in the park, regardless of their family history of use.

6.1.11 The requirement of the Constitution of the State of Alaska to manage fish and game on a sustained yield basis is significantly different than the NPS's mandate to manage fish and wildlife populations on a natural and healthy basis.

These differing mandates for wildlife management could lead to legal complications, possibly to the point of precluding state management of fish and wildlife in units of the National Park System. The federal government has full authority to manage fish and wildlife on federal lands according to the mandates of Congress, should this potential state constitutional conflict be proven valid.

6.1.12 The state constitution's equal access clause very likely precludes the state from providing a preference for subsistence eligibility in NPS units for persons or families with an established history of use in the WRST, thereby requiring the NPS to make eligibility decisions.

Because the equal access clause of the state constitution precludes the state from giving preference to rural residents over urban residents on federal lands in general, it fol-

lows that it also precludes the state from establishing a preference for rural residents with a history of subsistence use in a national park, over rural residents with no history of use. At least initially, the state must provide equal access, or eligibility, for all residents to utilize fish and wildlife, whether it is in a national park or not. Because this conflicts with the federal national park eligibility requirements, the NPS must maintain responsibility for determining eligibility.

6.1.13 Both the NPS and state systems of determining subsistence eligibility are initially community based but shift to individual or family based decisions with varying criteria.

NPS resident zone communities are intended to be judged on the concentration of individuals and families in the communities with a history of subsistence uses in the park, a factor which may change based on new persons moving into the communities. The state's Tier I subsistence eligibility decisions are also community or area based. Sport hunting may be substantially reduced or eliminated at Tier I. The state's Tier II individual qualifications are triggered based on wildlife resources being inadequate to meet all subsistence hunting demands and maintaining game populations at a sustained yield level. The point at which the NPS or state shift from community based decisions to individualized decisions may not be the same, possibly leading to inconsistencies where state eligibility remains community based while NPS eligibility shifts to the individual permit approach. The same situation will also apply to subsistence eligibility decisions made by the federal subsistence board for all federal lands under the criteria of ANILCA, Section 804, since these criteria are virtually the same as the state's, although they may be interpreted differently in the federal and state systems. Regardless of whether the state or federal government implements allocation among subsistence users, the NPS eligibility

criteria must be maintained in national park units.

6.1.14 Initially, the NPS subsistence eligibility requirements may be more restrictive than the Section 804/Tier II provisions, however, as competition for wildlife resources becomes more intense, the overall federal and state criteria may result in equal or tighter restrictions.

At the present time the NPS individual permit approach to subsistence eligibility can result in conflicts with the community based approach to subsistence management. However, as allocation of wildlife resources is further restricted according to the criteria of Sec. 804 of ANILCA or Tier II in state law, both of those systems will also become based more on individual history of subsistence practices rather than community patterns. Generally, in a situation where fish and wildlife stocks are adequate to meet all needs, the NPS subsistence eligibility requirement of having a personal or family history of use at the time the park was established is more restrictive than the general provisions of ANILCA Title VIII or state law. As competition for fish and wildlife resources increases, the allocation criteria of ANILCA, Section 804 and A.S. 16.05.258 restrict subsistence eligibility tighter and tighter until eventually they may become more restrictive than the NPS eligibility requirements. For example, in a scenario of intense competition for subsistence resources, these allocation criteria could: 1) limit subsistence harvest according to definition of "local" more constrained than that used by the NPS; 2) define customary and traditional use as several generations of use going back much further than the date of establishment of the parks, and; 3) consider the availability of alternative resources, possibly eliminating those with substantial cash incomes. At the same time, the criteria of Section 804 and state law may allow more flexibility, a factor which can be important in subsistence decisions.

6.2 The Existing Situation

6.2.1 WRST Subsistence Hunting Management

6.2.1.1 The NPS maintains primary authority for subsistence eligibility decisions in national park units.

Although the Master Memorandum of Understanding (MMOU) between the NPS and ADF&G did not clearly articulate state and federal agency responsibilities for determining subsistence eligibility in Alaska national parks, the NPS promulgated regulations which defined the NPS responsibility for subsistence eligibility prior to execution of this agreement with the state. State game regulations have acknowledged that NPS authorization is required for subsistence hunting in national parks.

6.2.1.2 The NPS has not provided the Subsistence Resource Commissions adequate support and guidance in developing subsistence hunting programs.

Inadequate funding, delays in renewing the commission's charters and making appointments to the commissions and lack of constructive advice in preparing a subsistence hunting program, are all factors which have contributed to the failure of the commissions to have approved subsistence hunting programs over eight years after they were due. Because subsistence management is a unique responsibility of the NPS in Alaska, it demands additional management attention, beyond that provided to the more traditional park management functions such as managing visitor use. Recently the NPS has begun hiring subsistence specialists for each park and this should help improve subsistence management efforts.

6.2.1.3 The state has not participated on the Subsistence Resource Commission according to the tripartite scheme envisioned by Congress.

Because essentially all the appointments to the SRC have been local subsistence users there has been little formal representation of the state in SRC deliberations. The lack of full state participation in SRC deliberations has made it difficult to accomplish the degree of coordination needed between state and federal fish and wildlife managers. Differing mandates and philosophies of federal and state managers has also contributed to the lack of adequate coordination among the agencies.

6.2.1.4 The recommendations of the SRC for the WRST, as articulated in the proposed hunting program, focus more on advocating minimal restrictions for subsistence hunting rather than recommending how to manage subsistence hunting in a manner consistent with national park mandates.

Even though subsistence and sport hunting is allowed in the WRST, hunting is more constrained than prior to designation of the park. Perhaps it is a natural tendency to resist this greater degree of hunting regulation. There may also be uncertainty on the legal requirements of ANILCA for managing subsistence in national parks. Whatever the causes are, there is a disparity between the proposed subsistence hunting program and the requirements of ANILCA.

6.2.1.5 The NPS policy on designation of resident zone communities has become more conservative since the liberal approach used in the initial designations in 1981.

The negative response of the Secretary of the Interior to the WRST subsistence hunting program's recommendation to add Northway as a resident zone suggests that a

change in policy in designating resident zones has occurred. In the 1981 rulemaking public testimony of previous use of the park resulted in communities being added as NPS resident zones. More recently, similar testimony before the SRC has not been adequate to add Northway as an NPS resident zone community. The lack of a clearly defined NPS policy which articulates the criteria for judging the viability of a community as an NPS subsistence resident zone may contribute to misunderstandings among local people, possibly leading to mistrust of the NPS decision making process.

6.2.2 Community History of Subsistence Uses Within the WRST

6.2.2.1 The survey data used in this study suggest that few of the communities established by the NPS as subsistence resident zone communities for the WRST in the 1981 rulemaking, actually were primarily composed of residents with a personal or family history of subsistence uses in the park prior to establishment of the park.

The data provide reason to question whether some of these communities were qualified for designation as NPS subsistence resident zones in 1981, according to the criteria identified in the Code of Federal Regulations. Of the communities analyzed the data indicate that only the communities of Chitina, Kenny Lake, Mentasta, Nabesna Road and Slana have more than 50 percent of the households which report using the WRST for subsistence purposes before 1981 without aircraft access. The data indicate that Northway, Homestead North, Homestead South and Tok all have less than 20 percent of the households who used the WRST for subsistence purposes without air access before the park was established. This indicates a lower probability that these communities meet the minimum definition of an NPS resident zone community. Again, it must be emphasized

that the estimates of community subsistence uses in the WRST presented in this thesis should be considered as minimums because the data base did not include all subsistence use activities or account for community sharing patterns.

6.2.2.2 The survey data suggest that a significant number of persons have begun hunting in the WRST park areas since the park/preserve was established.

For the communities of Kenny Lake and Homestead South the data indicate that nearly thirty percent of the households first hunted in the WRST park after 1980. In the entire data base, which includes some communities which are not NPS resident zones, 6.7 percent of the households report first hunting in the park after 1980. This could equate to as many as one hundred or more new hunters using the park. While in a very large park such as the WRST this does not necessarily correlate to significantly increased hunting pressure, the data do demonstrate that at least some new residents in the region will begin using the park for subsistence purposes, if allowed to do so under the resident zone system.

6.2.3 Population Trends of Local Communities

Between 1980 and 1990 the population of much of the WRST region showed little increase. A few individual communities show large increases in population which may be cause for concern and further examination.

The population of the entire Copper River Census Subarea increased only 1.5 percent, or 42 people, between 1980 and 1990. The communities of Copper Center and Tazlina more than doubled in size while others grew smaller. In the Upper Tanana Region the community of Tok shows the most significant numerical increase with 346 new

residents during this period. With the exception of communities such as Tok which show large population increases, population increase alone does not provide a strong rationale for removing the resident zone status of local communities in favor of the individual permit system.

6.2.4 Regional Trends in Wildlife Harvest

6.2.4.1 During the 1987-88 hunting season, local communities for which data is available acquired most of their big game resources outside the WRST.

During that year approximately 8 percent of the local caribou harvest and 16.3 percent of the local moose harvest came from within the WRST. The WRST provided a more significant portion of the local Dall sheep harvest that year at almost 54 percent. Although the game obtained in the WRST may be very important to some subsistence hunters, the data suggest that the WRST is not, at present, the major provider of game resources for residents of the region as a whole. The importance of the WRST to local hunters could increase if the availability and competition for game outside the park/preserve increased relative to that within the WRST.

6.2.4.2 The number of hunters and take of big game animals has gone down approximately 40 percent since the park/preserve was established.

Some of the decrease in game harvest in the WRST may be due to increased availability of game in areas outside the park, such as the Nelchina Caribou Herd. The decrease in harvest is not unreasonable to expect with the designation of the area as a unit of the National Park System, limitations on eligibility for hunting within park areas and the attendant access restrictions. Because of the many factors influencing annual harvest

rates and the single year of recent harvest data analysis, this figure should only be considered a rough estimate in the change in harvest in the WRST. Nevertheless, these data do not indicate that there is likely to be wildlife resource shortages in the WRST due to hunting pressure.

6.3 The Views of Persons Affected by WRST Subsistence Management

Throughout the interviews the researcher noted that very few local residents were well informed about NPS hunting regulations. The lack of information and thought on the trade offs to be made, depending on whether NPS eligibility is determined under the resident zone or individual permit system, made it difficult to get conclusive answers on the preference of one system over the other. While in many instances there may be sharp differences of opinion among local residents concerning management of WRST wildlife resources, nearly all local residents interviewed felt the NPS should place greater effort on communicating, providing information and working with local residents on the topic of subsistence.

6.3.1 Category A Respondents: Composed of residents of the region who have a long pattern of use of fish and game resources and generally do not have expensive mechanized forms of backcountry access available, primarily of Native ethnicity.

Persons in this category viewed the establishment of the WRST as positive or neutral and felt that population increase and non-local hunters coming into the region is the biggest impact on subsistence opportunities. Views commonly expressed in this category include:

- * Strong support for the subsistence priority of ANILCA.

- * Favor the resident zone system of eligibility, at least for the present, but also believe customary and traditional hunters should have priority.
- * Do not feel that airplane access is necessary for true subsistence hunting.
- * Feel the SRC and State Fish and Game Advisory Committees are dominated by sport and commercial interests.
- * Expressed support for a tribal system of fish and game management.
- * Some have adopted a fatalistic attitude that the current approach to fish and game management is so bureaucratic and dominated by sport/commercial interests that the subsistence way of life will soon be gone forever.
- * Commonly expressed frustration concerning lack of information about national park subsistence regulation.
- * Some respondents indicated that the NPS seems mainly concerned with visitors to the park and that working with local residents is not a high priority to the park service.

6.3.2 Category B Respondents: Composed mainly of non-Native residents of the region, most of whom have been in the area and used fish and game resources for a long period of time and also have airplanes or other relatively costly mechanized transport means available.

Persons in Category B felt that establishment of the WRST is the biggest factor affecting hunting in the region and view establishment of the national park as very negative. Views commonly expressed by Category B respondents include:

- * The subsistence preference of ANILCA as unfair and unworkable.
- * The NPS intends to eliminate all hunting in the WRST over time.
- * The SRC is doing a good job but the NPS gives the commission little support.

- * Concern about the lack of public information on NPS subsistence regulations.
- * Fish and game management is a state responsibility which the NPS should not be involved in.
- * Strong support for Alaska Board of Game decision making process.
- * Unanimously favored the resident zone system of determining WRST subsistence eligibility; however, some were willing to consider the individual permit system, if large regional population increases are documented.
- * Restrictions on airplane access conflict with traditional practices and make much of the park unavailable for subsistence hunting.

6.3.3 Category C Respondent: A national conservationist perspective on subsistence management and regulation in the park.

From this conservation perspective, Alaska's national parks were set aside for preservation purposes and subsistence hunting is more constrained than on federal lands in general. Views expressed by the Category C respondent include:

- * The opportunity to continue subsistence hunting was to be provided for those persons primarily dependent on the park wildlife resources as the mainstay of their livelihoods.
- * Congress did not intend to allow new persons moving into the national park areas to become eligible to subsistence hunt in the parks.
- * The SRCs were to be composed of local persons knowledgeable about park wildlife resources and should be used for guidance on decisions on topics such as eligibility.
- * The NPS has full authority to manage fish and wildlife but should work with the SRC and the state.

- * While subsistence hunting in national parks was intended to be kept within limits as defined by the eligibility criteria and the natural and healthy wildlife standard, Congress did not specifically intend to phase subsistence use out of parks.

6.4 Overall Conclusions and Recommendations (Some conclusions in this section are repeated from previous sections in order to lay a foundation for management recommendations.)

6.4.1 The natural and healthy standard for NPS wildlife management is specifically intended as a limitation on consumptive uses of wildlife

Regardless of whether subsistence eligibility is determined by the resident zone community system or the individual permit system and the numbers of eligible subsistence hunters in the park/preserve which result, the overriding management concern is maintenance of natural and healthy wildlife populations.

Recommendation: The NPS must ensure that wildlife within the entire park and preserve is managed according to the natural and healthy standard. The only difference in managing the park and preserve areas should be that sport hunting is allowed in the preserve units, so long as wildlife resources are adequate to support such use consistent with the subsistence preference of ANILCA.

Natural and healthy can be defined as: Management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, recognizing that subsistence uses by local rural residents have been and are now a natural part of the ecosystem, that habitat manipulation or control of other species for the purpose of maintaining subsistence uses, is not appropriate, and that

consumptive uses of fish and wildlife populations must be limited if necessary to ensure that the natural balance which has been maintained for thousands of years is not adversely disrupted.

6.4.2 The national park subsistence resource commissions have authority to provide subsistence hunting recommendations in both park and preserve areas.

The only aspect of hunting within units of the National Park System in Alaska which is outside the scope of the SRCs is sport hunting within the preserve areas.

Recommendations: The NPS should recognize that the SRC has the authority to provide subsistence management recommendations throughout the entire WRST, not just within the park areas. The NPS should increase support of the SRCs and the subsistence management program in general. Greater efforts should be placed on providing adequate information and education on NPS subsistence management policies and involving the Native community in NPS subsistence decisions.

In order to improve their effectiveness the SRC should focus on making recommendations allowable under ANILCA's provisions for subsistence management in national parks. This requires recognition that hunting opportunities are more narrowly constrained in areas designated by Congress as components of the National Park System.

6.4.3 The term primarily composed suggests that a resident zone community should contain more than one half of individuals and families with a history or pattern of subsistence uses established in the park prior to the park's creation, without using airplane access.

Adequate data to assess concentrations of community residents with a history of subsistence uses in the parks may often be lacking.

Recommendations: Beyond this minimum criteria for a valid resident zone, the SRCs for each park should judge what constitutes a community which is primarily composed of residents with a personal or family history of subsistence uses within the park. The SRCs could judge primarily composed as meaning anywhere from 51 to 99 percent of the community. The SRCs were intended by Congress, and are also best able, to make subjective judgements about the various local communities on topics such as the cultural importance of subsistence practices within the park. The SRCs for different parks may judge the concentrations of traditional subsistence users necessary for designation of the community as a resident zone differently, depending on what interpretation is best to meet local conditions and needs.

6.4.4 There is no indication that Congress intended that persons or families without a history of subsistence uses established in the park before its creation, but who have been eligible under the resident zone system, would be grandfathered in to retain subsistence hunting privileges in the park if a change is made from the resident zone system to the individual permit system.

The resident zone system of determining national park subsistence eligibility which is currently in use has the effect of allowing persons residing in resident zone communities who have no established pattern of customary and traditional uses in the park prior to its creation, to be eligible for subsistence hunting in the park. Some proposals by the NPS and/or SRCs to change resident zone communities to the roster form of the individual permit system for other parks in Alaska would have the effect of grandfathering in new arrivals. The effect of grandfathering in these persons will depend greatly on the degree of population change which has taken place in the specific resident zone community.

Recommendations: If resident zone communities are converted to the individual permit system before significant population increases from non-traditional subsistence users takes place, grandfathering in new arrivals will have little effect on the wildlife resource base or competition with traditional subsistence users. This approach can avoid the potential controversy of disqualifying some persons who have initiated a pattern of using the park/preserve, yet remain reasonably consistent with congressional intent, given the flexibility in NPS eligibility provided by Congress. If significant population increases from new arrivals take place before the resident zone is converted to an individual permit system, then it will not be possible to grandfather these persons in without increasing competition for traditional subsistence users and pressure on wildlife populations, thereby conflicting with the intent of Congress.

For park subsistence eligibility, having established a personal or family use of park resources at the time the park was created should be viewed as the minimum requirement for individual permit eligibility decisions or decisions on the viability of a resident zone, according to the concentrations of such persons within a given community. Beyond this point, if scarcity of game resources requires further reduction of harvest the criteria of ANILCA, Section 804 would come into effect and then be used to allocate among those meeting the minimum qualification. Using the date of passage of ANILCA as a cut-off date would make a more clear and defensible policy basis than using individual customary and traditional determinations, at least for initial subsistence eligibility within the park. If customary and traditional determinations under Section 804 become necessary they should be made according to the recommendations of the SRC.

6.4.5 The existing situation of having, in effect, one large resident zone from the city limits of Valdez to the edge of Tok, including all the area within the park/preserve, does not pertain to concentrations of individuals and families with personal or family history of subsistence uses in the park and, therefore, is not consistent with the intent of Congress in providing for the resident zone system of subsistence eligibility.

The large acreage of inholdings within the park, many of which have been or will be subdivided for residential purposes, creates the possibility of large increases in the number of eligible subsistence users.

Recommendations: Boundaries of the resident zone communities should be defined so that it can be determined who is, or is not, a resident of the community and what is the concentration of traditional park subsistence users in the community. Individual permits should be granted to those persons living outside the boundaries of the resident zones who qualify according to the criteria in the Code of Federal Regulations.

At the first opportunity the NPS eligibility regulations should be revised to eliminate the area within a park from being considered a resident zone. Traditional users who live within the park will still remain eligible for individual subsistence permits.

6.4.6 Available data indicate that some resident zone communities for the WRST established by the NPS in 1981 may not have been primarily composed of residents with a history or pattern of subsistence uses in the park prior to the establishment of the park and possibly should not have ever been designated as resident zones.

At the same time, the population of the overall region has not increased significantly enough to warrant major concern over the change in viability of resident zones.

Some individual communities including Copper Center, Tazlina and Tok have increased fairly significantly in population since 1980. For communities with a large population increase, it is necessary to look further to determine if the population of the community is rising from newcomers or from children in families with a history or pattern of subsistence use in the WRST before the park was established, before changes in the viability of the resident zone can be determined.

Recommendations: While the data indicate there is no immediate emergency to revise all the resident zones based on population increases or resource threats, there is reason to review the initial designations of resident zones and changes in local communities which may have occurred since that time. The more people who move into a resident zone community and begin subsistence hunting in the park but then later become ineligible due a change to the individual permit system, the more controversy and strife there will be over the change and this should be avoided to the extent possible.

The communities which should be the first priorities for consideration of management under the individual permit system should be those with low concentrations of households which used the WRST for subsistence before 1981 and that also show significant population increases since 1980.

Moving to the individual permit system will provide greater preference to those with a history or pattern of subsistence uses in the park at the time the park was established. This is consistent with the intent of Congress, within the flexibility of the resident zone system to be exercised at the discretion of the SRC. The NPS should make all possible attempts to work with the SRC on appropriate resident zone designations. If the SRC is unwilling to make recommendations to restrict eligibility within the flexibility of communities being primarily composed of residents with a history of subsistence uses in the park/preserve, then the responsibility will fall to the park superintendent.

Unless major problems become apparent, before changes are made to the current resident zone communities the NPS should establish a clearly defined and consistent policy on eligibility. The precise criteria for judging local communities as NPS resident zones and for individuals to participate in subsistence activities should be articulated in a written policy statement developed with input of the SRCs. NPS should delineate all possible situations where communities, families and individuals are or are not eligible for subsistence uses in the parks and preserves. In marginal situations where the NPS cannot articulate eligibility in written policy based on congressional intent, the policy should indicate that the SRCs will make the eligibility recommendation to the NPS superintendent. In order to provide well thought out input for SRC eligibility recommendations, local residents should be fully informed about the two NPS eligibility systems, including the trade off between keeping eligibility consistent community wide under the resident zone system and providing greater preference for traditional users of the WRST under the individual permit or roster system. The NPS should work with the SRC to consider the merits of specific resident zone community designations.

6.4.7 Managing wildlife within the park/preserve according to the natural and healthy standard and limiting subsistence to families with a history of subsistence uses established before the WRST was created does present legal problems for state fish and game management as required by the Alaska Constitution.

These legal difficulties may be significant enough to require the NPS to exercise the primary role in managing wildlife and hunting, including sport hunting, within the park and preserve. The degree of management authority which the NPS is required to exercise

will depend on the ability of state and federal agencies to cooperate and potential litigation by wildlife users which might result in requiring strict adherence to state and federal law.

Recommendations: Due to the NPS requirement to restrict subsistence eligibility to persons with a personal or family history of use and the resulting legal complications caused by the state constitution's equal access clause, the NPS should control park subsistence eligibility, even if state fish and game management authority is returned. Further, the NPS must work with the ADF&G to ensure that both subsistence and sport hunting seasons and bag limits are consistent with maintaining the NPS natural and healthy wildlife management standard. If the ADF&G is unable to set harvest limits consistent with the natural and healthy standard, the NPS may be required to assume a greater role in controlling wildlife harvest in the parks.

6.4.8 Since the federal government has assumed subsistence management of fish and wildlife on federal public lands in Alaska, it is no longer possible for the NPS to defer urban/rural or customary and traditional determinations to the state.

Recommendations: The federal subsistence management program should acknowledge the overriding eligibility criteria which apply in national parks. This may result in subsistence eligibility in the parks being more narrowly constrained than on surrounding federal lands managed by other agencies. At the same time, persons who qualify for NPS individual subsistence permits should be allowed to continue their use of the park even if the federal subsistence board ruled that a community as a whole does not have customary and traditional subsistence use established. If conservation of natural and healthy wildlife populations requires individual allocations among subsistence users according to the

criteria of ANILCA, Section 804, then some subsistence users who qualify for NPS individual permits may be restricted from hunting. However, these persons should not be restricted because of a community based decision not intended to specifically apply in a national park.

6.4.9 The Subsistence Resource Commissions have not functioned as the tripartite advisory body intended by Congress to coordinate the input of local subsistence users, state fish and game managers and the NPS on decisions affecting subsistence uses of wildlife within the parks.

The ADF&G has accumulated knowledge and data on the fish and wildlife populations and harvest levels in the WRST region and throughout the state for decades. The NPS has nowhere near the same knowledge base and is not likely to obtain the same expertise in the near future.

Recommendation: Despite the legal and management reasons for the NPS to have primary authority for managing hunting within the park and preserve, the state should have an increased role in NPS and SRC discussions according to the tripartite management system envisioned by Congress. Further, the NPS should make greater efforts to participate in discussions of state fish and game management policies, since those decisions will affect fish and wildlife populations which traverse park/preserve boundaries. Cooperation among the managing agencies is essential!

Literature Cited

- Ahtna-Tanacross Association. (1988). Alaska Over-the-Horizon Backscatter Radar System: cultural and traditional aspects of subsistence. Anchorage, AK: AEIDC, University of Alaska Anchorage.
- Alaska Department of Labor. (1981 and 1991). Alaska Population Overview. Juneau, Alaska.
- American Psychological Association. (1990). Publication Manual of the American Psychological Association. (8th rev.) Washington, D. C.: American Psychological Association.
- Arctic Environmental Information and Data Center. (1988). Alaska Over-the-Horizon Backscatter Radar System: Characteristics of Contemporary Subsistence Use Patterns in the Copper River Basin and Upper Tanana Area. Anchorage, AK: AEIDC, University of Alaska Anchorage.
- Caulfield, R. (1988) The Role of Subsistence Resource Commissions in Managing Alaska's New National Parks. In: M.M.R. Freeman and L.N. Carbyn (eds.), Traditional knowledge and renewable resource management in northern regions. Boreal Institute for Northern Studies, Occasional Publication, No. 23, Edmonton, Canada.
- Collinsworth, D. (1989). Letter to the Citizens Advisory Commission on Federal Areas, February 28. Juneau, AK: Alaska Department of Fish and Game.
- Heimer, W. (1990). Personal communication, May 1990.
- Joint Federal-State Land Use Planning Commission. (1973). Report of the Joint Federal-State Land Use Planning Commission. Washington, D.C.: U.S. GPO
- Kelso, D. (1980). Implementation Issues Posed by Title VIII of the Senate Passed D-2 Bill. Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Number 62. Fairbanks, AK.
- Kenaitze v. Alaska. (1988) 860 F2d 312 (9th Cir 1988).
- Kleppe v. New Mexico. 426 US 529, 49 L Ed 2d 34, 96 S Ct 2285.

- Lofland, J. (1984). Analyzing Social Settings: a guide to qualitative observation and analysis. (2nd ed.) Wadsworth Publishing Co.
- McDowell v. Alaska. (1989) 785 P.2d 1 (AK 1989).
- Murphy, E. and F. Dean. (1978). Hunting Activity and Harvest in the Wrangell-St. Elias Region, Alaska 1973-1977. Fairbanks, AK: Alaska Cooperative Park Studies Unit, University of Alaska Fairbanks.
- Reckord, H. (1983). That's the Way We Live: Subsistence in the Wrangell-St. Elias National Park and Preserve (Occasional Paper No. 34). Fairbanks, AK: Alaska Cooperative Park Studies Unit, University of Alaska Fairbanks.
- Subsistence Resource Commission for the Wrangell-St. Elias National Park. (1986). Letter to the Secretary of the Interior with Subsistence Hunting program Recommendations, August 8. Copper Center, AK: National Park Service.
- Toby, B. (1990). Telephone conversation with the author May 24, 1990.
- U.S. Air Force. (1987) Draft environmental impact statement: Alaska Over-the-Horizon Backscatter Radar System. Department of the Airforce, Air Force Systems Command, Electronic Systems Division.
- U.S. Air Force. (1987) Final environmental impact statement: Alaska Over-the-Horizon Backscatter Radar System. Department of the Airforce, Air Force Systems Command, Electronic Systems Division.
- U.S. Congress. (1916). National Park Service Organic Act. 16 U.S.C. 1, et seq.
- U.S. Congress. (1971). Alaska Native Claims Settlement Act. Public Law 92-203.
- U.S. Congress. (1971). Alaska Native Claims Settlement Act: Report of the Conference Committee. Report 92-746.
- U.S. Congress. (1977). H.R. 39, introduced January 4, 1977. In: Alaska National Interest Lands Conservation Act: Legislative History, Volume 1. Juneau, AK: Alaska Department of Fish and Game.
- U.S. Congress. (1977) H.R. 39, Committee Print No. 2. In: Alaska National Interest Lands Conservation Act: Legislative History, Volume 1. Juneau, AK: Alaska Department of Fish and Game.

- U.S. Congress. (1979). Alaska National Interest Lands Conservation Act: Report Together With Supplemental and Dissenting Views to Accompany H.R. 39. 96th Congress, 1st Session, 1979. H. Rept. 96-97.
- U.S. Congress. (1979). Alaska National Interest Lands: Report of the Committee on Energy and Natural Resources United States Senate Together With Additional Views to Accompany H.R. 39. 96th Congress, 1st Session. S.Rept. 96-413.
- U.S. Congress. (1980). Alaska National Interest Lands Conservation Act of 1980. Public Law 96-487.
- U.S. Department of the Interior, Interior Solicitors Office. (1980). Memorandum by Gary Widman titled Introduction to and summary of comparable sections to the Alaska Lands Act. In: Alaska National Interest Lands Conservation Act: Legislative History, Volume 40. Juneau, AK: Alaska Department of Fish and Game.
- U.S. Department of the Interior. (1973a). Final Environmental Statement. Proposed Wrangell Mountains National Forest. Anchorage, AK: National Park Service.
- U.S. Department of the Interior. (1973b). Final Environmental Statement. Proposed Wrangell-St. Elias National Park. Anchorage, AK: National Park Service.
- U.S. Department of the Interior. (1986). Wrangell-St. Elias National Park and Preserve General Management Plan. Anchorage, AK: National Park Service.
- U.S. Department of the Interior. (1988). Letter from the Office of the Secretary to the Subsistence Resource Commission for the Wrangell-St. Elias National Park, May 18. Copper Center, AK: National Park Service.
- U.S. National Park Service and Alaska Department of Fish and Game. (1982). Master Memorandum of Understanding. In: Wrangell-St. Elias National Park and Preserve General Management Plan. Anchorage, AK: National Park Service.